

STATE OF NEW YORK

2410

2023-2024 Regular Sessions

IN SENATE

January 20, 2023

Introduced by Sen. BAILEY -- read twice and ordered printed, and when printed to be committed to the Committee on Judiciary

AN ACT to amend the judiciary law, in relation to applications for enhanced attorney's fees in medical, dental and podiatric malpractice cases

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

1 Section 1. Subdivision 4 of section 474-a of the judiciary law, as
2 amended by chapter 485 of the laws of 1986, is amended to read as
3 follows:

4 4. In the event that claimant's or plaintiff's attorney believes in
5 good faith that he or she is entitled to greater compensation than the
6 amounts provided in the fee schedule set forth in subdivision two of
7 this section[~~, because of extraordinary circumstances, will not give him~~
8 ~~adequate compensation~~], an application for greater compensation may be
9 made upon affidavit with written notice and an opportunity to be heard
10 to the claimant or plaintiff and other persons holding liens or assign-
11 ments on the recovery. Such application shall be made to the justice of
12 the trial part to which the action had been sent for trial; or, if it
13 had not been sent to a part for trial, then to the justice presiding at
14 the trial term calendar part of the court in which the action had been
15 instituted; or, if no action had been instituted, then to the justice
16 presiding at the trial term calendar part of the Supreme Court for the
17 county in the judicial department in which the attorney has an office.
18 Upon such application, the justice, in his or her discretion, [~~if~~
19 ~~extraordinary circumstances are found to be present, and without regard~~
20 ~~to the claimant's or plaintiff's consent,~~] may fix as reasonable compen-
21 sation for legal services rendered an amount greater than that specified
22 in the schedule set forth in subdivision two of this section, provided,
23 however, that such greater amount shall not exceed the fee fixed pursu-
24 ant to the contractual arrangement, if any, between the claimant or

EXPLANATION--Matter in italics (underscored) is new; matter in brackets
[-] is old law to be omitted.

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1 plaintiff and the attorney. Factors to be considered by the court in
2 determining whether to grant an application for an enhanced fee pursuant
3 to this subdivision shall include, but not be limited to whether the
4 performance of the attorney was superior, taking into account the
5 attendant circumstances including the result of the case in light of the
6 nature of the liability and damages issues, and whether the claimant or
7 plaintiff consents to the application; provided, however, that no such
8 determination shall be contingent on such claimant's or plaintiff's
9 consent thereto; and, provided further, that the attorney need not
10 submit the number of hours expended. If the application is granted, the
11 justice shall make a written order accordingly, briefly stating the
12 reasons for granting the greater compensation; and a copy of such order
13 shall be served on all persons entitled to receive notice of the appli-
14 cation.

15 § 2. This act shall take effect immediately.