



Legislation Text

File #: Res 0746-2003, **Version:** A

Proposed Res. No. 746-A

Resolution calling upon the Governor and Legislature of New York State to meet their constitutional and statutory duty to provide counsel for indigent defendants by increasing the rates paid to assigned counsel, with no distinction between in-court and out-of-court work, index the assigned counsel rates to inflation, and eliminate the ceiling on total per case compensation, and further calling upon the Governor and Legislature to fully fund the increase in these rates.

By Council Members Clarke, Barron, Comrie, Davis, Felder, Gerson, Jackson, Koppell, Reed, Sanders, Seabrook, Stewart, Weprin, Yassky, Brewer and Moskowitz

Whereas, In *Gideon v. Wainwright* the United States Supreme Court held that the Sixth and Fourteenth Amendments require states to provide counsel for criminal defendants charged with a felony offense who cannot afford to hire counsel; and

Whereas, Following the Supreme Court's decision, the New York Court of Appeals held that all indigent criminal defendants in New York, and not just those charged with a felony, are entitled to counsel; and

Whereas, These landmark decisions led the New York State Legislature to enact County Law Article 18-B, which mandates that each county in the State make provision for those charged with a crime who cannot afford counsel; and

Whereas, Assigned counsel represent defendants in homicides and situations where institutional providers have a conflict of interest, which is frequently the case in juvenile delinquency and child protective cases; and

Whereas, Assigned counsel also play a critical role in Family Court matters, representing parents in proceedings such as adoption, foster care, paternity, allegations of abuse and neglect, and allegations of domestic violence; and

Whereas, The rate of compensation for assigned counsel in New York - \$40 per hour for in-court work and \$25 per hour for out-of-court work - is lower than that paid in all but a few states; and

Whereas, The rate of compensation for assigned counsel has remained unchanged for the last 17 years, although the cost of living has risen 70% during this period; and

Whereas, The Chief Administrative Judge for New York estimates that the hourly overhead of most assigned counsel is \$34.75, meaning that assigned counsel lose money if they perform any out-of-court preparation work, a problem that is even more acute in New York City where overhead is higher; and

Whereas, Total compensation in assigned counsel cases is arbitrarily capped, such that compensation for misdemeanors is limited to \$800 per case and compensation for felonies is limited to \$1200 per case; and

Whereas, As a result of the low rates and arbitrary caps on total compensation the quality and quantity of assigned counsel has declined precipitously; and

Whereas, In 2000, on 40% of court days there were no attorneys to accept cases in Manhattan Family Courts; each week, in each county, ten to twenty cases are adjourned in Family Courts, and sometimes mothers must return to Family Court two or three times before counsel is available; and

Whereas, Chief Judge Judith S. Kaye has stated that the previous "crisis" with assigned counsel is now a "catastrophe" and three years ago proposed that assigned counsel rates be increased to \$75 per hour for felonies and \$60 per hour for misdemeanors; and

Whereas, Governor Pataki recently proposed a similar increase as the Chief Judge proposed in 2000; and

Whereas, In 2002, the New York State Assembly passed a bill sponsored by Assemblywoman Helene E. Weinstein that would increase assigned counsel rates to \$75 per hour for felonies and \$60 per hour for misdemeanors, raising the compensation caps to \$3200 in misdemeanor cases and \$4800 in all other cases; and

Whereas, The Judicial Conference of the United States, presided over by Supreme Court Justice William Rehnquist, recommended in 2000 that counsel appointed in federal criminal cases receive \$113 per hour; and

Whereas, The previous rate of \$75 paid to appointed counsel in federal criminal cases was widely recognized as being too low and was increased to \$90 per hour; and

Whereas, In *Nicholson v. Williams*, the United States District Court for the Eastern District of New York damningly held that as a "direct result" of their paltry rates of compensation, assigned counsel "regularly are appointed too late, fail to appear in court for hearings, do not properly prepare for hearings, inadequately interview and advise clients, and are not available to return phone calls about court or related matters," that "the present assigned counsel system is corrupting of legal ethics and a disgrace to the law," and that "representation of counsel of abused mothers is largely a sham;" and

Whereas, The district court ordered that assigned counsel rates for mothers in Family Court proceedings be increased to \$90 per hour, the minimum necessary to protect the constitutional rights of indigent mothers, with no distinction between in-court and out-of-court work, raising the compensation cap to \$1500 per case; and

Whereas, In February, in *New York County Lawyers' Association v. New York*, a New York Supreme Court justice held that the inadequate assigned counsel rates violate the constitutional and statutory right to legal representation of children and indigent adults in New York City Family and Criminal Courts; and

Whereas, The Supreme Court ordered that assigned counsel rates in all cases be increased to \$90 per hour, with no distinction between in-court and out-of-court work, and no ceiling on total per case compensation; and

Whereas, The inaction of the Governor and Legislature of New York in the face of this catastrophe denies the citizens of this state equal access to justice; now, therefore, be it

Resolved, That the Council of the City of New York calls upon the Governor and Legislature of New York State to meet their constitutional and statutory duty to provide counsel for indigent defendants by increasing the rates paid to assigned counsel, with no distinction between in-court and out-of-court work, index the assigned counsel rates to inflation, and eliminate the ceiling on total per case compensation, and further calls upon the Governor and Legislature to fully fund the increase in these rates.

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