

**NEW YORK STATE SUPREME COURT  
APPELLATE DIVISION, FOURTH DEPARTMENT**

**HONORABLE GERALD J. WHALEN  
PRESIDING JUSTICE**

# **Assigned Counsel Reimbursement Guidelines**



Linda J. Kostin, Director  
Attorneys for Children Program  
New York State Supreme Court  
Appellate Division, Fourth Department  
2020

## **COMPENSATION AND REIMBURSEMENT GUIDELINES JUDICIARY LAW 35(8)**

### **A. Compensation for Legal Services**

1. Time Records
  - a. Attorneys must maintain sufficient time records to ensure that vouchers submitted reasonably and accurately reflect services provided to clients.
  - b. All vouchers are subject to audit both before and after payment.
  - c. All activities, in-court and out-of-court, must be billed in real time, e.g., start time and end time.
2. Compensation Rate
  - a. The compensation rate for in and out-of-court time is \$75.00 an hour.
3. In-Court and Out-of-Court Time
  - a. In-Court time is time spent at court facilities in conjunction with an appearance before a judge.
  - b. In-Court time includes:
    - i. Time spent in the presence of the judge either in the courtroom or in chambers.
    - ii. Time spent in a court ordered conference at court facilities in conjunction with an appearance.
    - iii. Time spent waiting at court facilities to appear before the judge if you are waiting in the courtroom.
  - c. All other time expended in representing your client, including time spent at court facilities for purposes other than appearance before a judge, e.g., reviewing files, meeting with the client, is out-of-court time.
  - d. Activity description must be sufficient to justify the charges, e.g., "Meeting with my client to discuss desired custody and visitation schedule." "Phone call with Respondent's attorney to discuss a proposed visitation schedule."
4. Double-billing
  - a. Double-billing is the practice of rendering legal services on multiple cases in a given period and then requesting payment for the entire period on the voucher for each case. For example, waiting at court one hour for two cases to be called and then requesting payment for one hour for each case. Another example is charging travel time to court for each case when the attorney appears in court on more than one case.

## B. Expenses of Representation

1. **The State is not responsible for the costs of representation associated with divorce, annulment or equitable distribution because those issues could not have been resolved in Family Court.**
2. In General
  - a. The State of New York will pay reasonable expenses of representation, e.g., out-of-pocket expenses incurred by an attorney, but not office overhead costs.
  - b. Expenses for in-office computer-assisted legal research, e.g., Westlaw and Lexis) and facsimile transmission (fax) charges are considered office overhead costs, and will not be reimbursed.
  - c. Expenses must be broken down, e.g., number of stamps, number of miles, number of copies.
3. Travel/Mileage
  - a. The State will reimburse for travel and mileage. Mileage is reimbursable at the statutory rate. Enter the number of miles per trip in the expense itemization worksheet. Round mileage to the nearest whole number, e.g., 38.6 miles would be 39 miles.
  - b. The statutory rate is based on the date of travel. You can locate the appropriate statutory rate on the Online Voucher homepage.
  - c. Travel and Mileage charges should be in accordance with MapQuest.
  - d. Tolls are reimbursable with receipts.
  - e. Parking fees are reimbursable up to \$5.00 without receipt.
  - f. Other travel expenses, including food and lodging, are not reimbursable.
4. Miscellaneous Expenses
  - a. Printing and photocopying expenses will be reimbursed at the rate of \$.15 per page. For reimbursement you must indicate the number of pages at \$.15.
  - b. Other itemized out-of-pocket expenses, such as postage, are reimbursable without additional documentation to a maximum of \$15.00. For reimbursement you must indicate the number of stamps at the rate.
  - c. Reimbursement claims for more than \$15.00 must be documented by receipt or some other proof of payment.
  - d. Expenses reimbursable on a voucher:
    - i. Tolls - Receipt required
    - ii. Parking - Receipt required over \$5.00

- iii. Copies - Receipt required over \$15.00, if copies in excess of \$15.00 were done in-house, please indicate that in activity description
  - iv. Postage - Receipt required over \$15.00
  - v. Medical Records - Receipt required over \$15.00
  - vi. Service of Process - Invoice and proof of payment
  - vii. Subpoena/Witness Fees - Proof of payment
- e. Expenses not reimbursable:
  - i. Filing Fees - Filing fees should be waived
  - ii. Food and Lodging
  - iii. Administrative expenses: cost of in-office computer assisted legal research, e.g., Westlaw, facsimile charges, preparation of vouchers.
- f. Expense reimbursed directly to provider:
  - i. Expert Services - See Section D
  - ii. Trial Transcripts - See Section E

### C. Preparation of Vouchers

1. Submission of a voucher required
  - a. To receive compensation for legal services, the Assigned Attorney must use the Online Voucher program. To obtain access, contact the AFC Program.
2. When to submit vouchers
  - a. In general, all claims for compensation and reimbursement for a proceeding should be submitted at the conclusion of the case.
  - b. If the voucher is submitted more than 90 days from the last activity date, you must complete an affirmation explaining the reason for the delay in submission.
3. Interim Vouchers
  - a. An interim voucher is required if any of the following circumstances exist:
    - i. Extraordinary circumstances - Cost of legal services provided exceeds \$4400.00 - *Affirmation of extraordinary circumstances required.*
    - ii. Case has over 18 months of consecutive work without reaching disposition.
    - iii. An attorney has been relieved of assignment.
4. Activity Description
  - a. Provide an activity description for all charges, including: in-court, out-of-court and expenses.
  - b. Activity description must provide sufficient detail to qualify the

activity taking place, e.g., Review Order Assigning Counsel, Phone call with Petitioner's Attorney re: custody schedule, Draft letter to client re: next court appearance.

5. Submitting a voucher
  - a. First, complete the online voucher activity worksheet and expense worksheet. Then complete the online voucher and upload all supporting documentation. Print the completed document and prepare an additional copy for your records.
  - b. Supporting documentation includes:
    - i. Order Assigning Counsel
    - ii. Completed Assigned Counsel Expense Worksheet
    - iii. Expense Itemization Worksheet
    - iv. Required receipts
  - c. Submit the original, signed voucher to the court for signature.

D. Expert Services

1. The State of New York will pay the reasonable expenses of representation, e.g., compensate non-attorney experts, such as investigators, physicians, mental health professionals and social workers, for services to clients that are necessary to assure effective representation. **Please use the model Order for Expert Services available on the AFC Program website under the tab for Judiciary Law 35(8).**
2. Authorization and Allocation - **For budgetary reasons, if the expert fee is greater than \$1000.00, you must obtain authorization by email or telephone from the Director or Deputy Director of the AFC Program. Please call (585)530-3170.**
  - a. Services to the Client Only
    - i. The State of New York is responsible for the full cost of expert services provided to a client.
  - b. Services to the Client and Participants Jointly
    - i. The State of New York is responsible only for a proportionate share of the cost of expert services when those services are provided jointly to a client and non-indigent participant(s) in a proceeding.
  - c. Services Not Reimbursable
    - i. **The State of New York is not authorized to pay for expert services to participants in a proceeding other than the client, or for services unrelated to the client's representation, e.g., treatment or counseling.**
  - d. Compensation Guidelines
    - i. The Chief Administrator of the Courts has adopted

the following hourly rates, effective January 1, 2018 as guidelines for payment of non-attorney professionals under Judiciary Law §35 and County Law §722-c:

Psychiatrist	\$250.00
Certified Psychologist	\$150.00
Physician	\$250.00
Certified Social Worker	\$75.00
Licensed Investigator	\$55.00

3. Payment to the Expert Service Provider
  - a. The Expert is compensated directly by the AFC Program after the services have been rendered and upon submission of an online voucher.
  - b. To obtain payment for expert services:
    - i. The Expert must complete the online voucher form. In order to obtain access to the online expert worksheet and voucher, the expert must register for the online voucher system by contacting the AFC Program.
    - ii. Prior to completing the Online Voucher, the Expert will complete the Expert Activity Worksheet containing an entry for each day on which services were rendered, including the date, the time expended, and a brief summary of service provided, including the name of the individual to whom the services were rendered.
    - iii. Attach the Order Authorizing Expert Services.
    - iv. Submit the original voucher and supporting documentation to the court for signature by the judge.

E. Trial Transcripts

1. The attorney can obtain transcripts for use in representing a client at trial by using the New York State Minute Order Form - Supreme Court. The stenographer or transcriber provides the transcript directly to the attorney who incurs no out-of-pocket expense. Transcript costs are paid by the State of New York directly to the stenographer or transcriber. Do not pay the stenographer directly.
2. For use at the trial level, only one transcript is authorized and you must obtain permission if the cost exceeds \$300.00. An attorney can obtain a Minute Order Form as well as a copy of the Claim for Payment Form from the AFC Program website under the Judiciary Law 35(8) tab. Once you have the Minute Order Form, complete the following steps:

- a. The attorney completes the top portion of the Minute Order Form and presents the form to the corresponding Supreme Court Justice for signature.
- b. Following the Judge's signature, Supreme Court retains a copy of the form and returns the original form to the attorney for transmittal to the stenographer or transcriber.
- c. When the transcript is delivered, the attorney must sign the appropriate portion of the original form.
- d. The stenographer or transcriber retains a copy of the form and forwards the originally signed Minute Order Form and Claim for Payment to the AFC Program for review and payment.