

County Law Article 18-B
Representation of Persons Accused of a Crime or Parties
before the Family Court or Surrogate's Court

§ 722. Plan for Representation

The governing body of each county and the governing body of the city in which a county is wholly contained shall place in operation throughout the county a plan for providing counsel to persons charged with a crime or who are entitled to counsel pursuant to section two hundred sixty-two or section eleven hundred twenty of the family court act, article six-C of the correction law or section four hundred seven of the surrogate's court procedure act, who are financially unable to obtain counsel. Each plan shall also provide for investigative, expert and other services necessary for an adequate defense. The plan shall conform to one of the following:

1. Representation by a public defender appointed pursuant to county law article eighteen-A.
2. In criminal proceedings, representation by counsel furnished by a private legal aid bureau or society designated by the county or city, organized and operating to give legal assistance and representation to persons charged with a crime within the city or county who are financially unable to obtain counsel. In proceedings under the family court act, representation by a private legal aid bureau or society, or by any corporation, voluntary association, or organization permitted to practice law under the authority of subdivision five of section four hundred ninety-five of the judiciary law.
3. Representation by counsel furnished pursuant to a plan of a bar association in each county or the city in which a county is wholly contained whereby the services of private counsel are rotated and coordinated by an administrator, and such administrator may be compensated for such service. Any plan of a bar association must receive the approval of the state administrator before the plan is placed in operation. In the county of Hamilton, such representation may be by counsel furnished by the Fulton county bar association pursuant to a plan of the Fulton county bar association.
4. [Until Jan 1, 2004] Representation according to a plan containing a combination of any of the foregoing. Any judge, justice or magistrate in assigning counsel pursuant to sections 170.10, 180.10, 210.15 and 720.30 of the criminal procedure law, or in assigning counsel to a defendant when a hearing has been ordered in a proceeding upon a motion, pursuant to article four hundred forty of the criminal procedure law, to vacate a judgment or to set aside a sentence, or in assigning counsel pursuant to the provisions of section two hundred sixty-two of the family court act or section four hundred seven of the surrogate's court procedure act, shall assign counsel furnished in accordance with a plan conforming to the requirements of this section; provided, however, that when the county or the city in which a county is wholly contained has not placed in operation a plan conforming to that prescribed in subdivision three or four of this section and the judge, justice or magistrate is satisfied that a conflict of interest prevents the assignment of counsel pursuant to the plan in operation, or when the county or the city in which a county is wholly contained has not placed in operation any plan conforming to that prescribed in this section, the judge, justice or magistrate may assign any attorney in such county or city and, in such event, such attorney shall receive compensation and reimbursement from such county or city which shall be at the same rate as is prescribed in section seven hundred twenty-two-b of this chapter.

4. [Eff Jan 1, 2004] Representation according to a plan containing a combination of any of the foregoing. Any judge, justice or magistrate in assigning counsel pursuant to sections 170.10, 180.10, 210.15 and 720.30 of the criminal procedure law, or in assigning counsel to a defendant when a hearing has been ordered in a proceeding upon a motion, pursuant to article four hundred forty of the criminal procedure law, to vacate a judgment or to set aside a sentence or on a motion for a writ of error coram nobis, or in assigning counsel pursuant to the provisions of section two hundred sixty-two of the family court act or section four hundred seven of the surrogate's court procedure act, shall assign counsel furnished in accordance with a plan conforming to the requirements of this section; provided, however, that when the county or the city in which a county is wholly contained has not placed in operation a plan conforming to that prescribed in this subdivision or subdivision three of this section and the judge, justice or magistrate is satisfied that a conflict of interest prevents the assignment of counsel pursuant to the plan in operation, or when the county or the city in which a county is wholly contained has not placed in operation any plan conforming to that prescribed in this section, the judge, justice or magistrate may assign any attorney in such county or city and, in such event, such attorney shall receive compensation and reimbursement from such county or city which shall be at the same rate as is prescribed in section seven hundred twenty-two-b of this article.

5. (Added, L 1999) In classification proceedings under article six-C of the correction law or from an appeal thereof, representation shall be according to a plan described in subdivisions one, two, three or four of this section. If such plan includes representation by a private legal aid bureau or society, such private legal aid bureau or society shall have been designated to give legal assistance and representation to persons charged with a crime.

Upon an appeal in a criminal action, and on any appeal described in section eleven hundred twenty of the family court act, article six-C of the correction law or section four hundred seven of the surrogate's court procedure act, wherein the party is financially unable to obtain counsel, the appellate court shall assign counsel furnished in accordance with the plan, conforming to the requirements of this section, which is in operation in the county or in the city in which a county is wholly contained wherein the judgment of conviction, disposition, or order of the trial court was entered; provided, however, that when such county or city has not placed in operation a plan conforming to that prescribed in subdivision three or four of this section and such appellate court is satisfied that a conflict of interest prevents the assignment of counsel pursuant to the plan in operation, or when such county or city has not placed in operation any plan conforming to that prescribed in this section, such appellate court may assign any attorney in such county or city and, in such event, such attorney shall receive compensation and reimbursement from such county or city which shall be at the same rate as is prescribed in section seven hundred twenty-two-b of this chapter.

§ 722-a. Definition of crime

For the purposes of this article, the term "crime" shall mean a felony, misdemeanor, or the breach of any law of this state or of any law, local law or ordinance of a political subdivision of this state, other than one that defines a "traffic infraction," for which a sentence to a term of imprisonment is authorized upon conviction thereof.

§ 722-b. Compensation and reimbursement for representation

[Until Jan 1, 2004, § 722-b, reads as set out below:] All counsel assigned in accordance with a plan of a bar association conforming to the requirements of section seven hundred twenty-two whereby the services of private counsel are rotated and coordinated by an administrator shall at the conclusion of the representation receive compensation at a rate not exceeding forty dollars per hour for time expended in court or before a magistrate, judge or justice, and twenty-five dollars per hour for time reasonably expended out of court, and shall receive reimbursement for expenses reasonably incurred; except that counsel assigned for representation in an appellate court shall receive compensation at a rate not exceeding forty dollars per hour for time reasonably expended, whether in court or out of court. Where a defendant is charged with a crime which may be punishable by death compensation shall not exceed two thousand four hundred dollars where one counsel has been assigned, and shall not exceed three thousand two hundred dollars where two or more counsel have been assigned. Where a defendant is charged with one or more other felonies, compensation shall not exceed one thousand two hundred dollars. Where a defendant is charged with one or more other crimes, compensation shall not exceed eight hundred dollars. For representation pursuant to the provisions of section two hundred sixty-two of the family court act, article six-C of the correction law or section four hundred seven of the surrogate's court procedure act, compensation shall not exceed eight hundred dollars. For representation upon the hearing of a motion for a writ of error coram nobis or a motion to vacate judgment or set aside sentence made pursuant to article four hundred forty of the criminal procedure law, compensation shall not exceed eight hundred dollars. For representation in the court of appeals on an appeal from a judgment of death, compensation shall not exceed two thousand eight hundred dollars where one counsel has been assigned, and shall not exceed three thousand two hundred dollars where two or more counsel have been assigned. For representation in an appellate court on an appeal from a judgment of conviction for one or more other felonies, compensation shall not exceed one thousand two hundred dollars. For representation in an appellate court on an appeal in any other criminal action or proceeding, or on any appeal described in section eleven hundred twenty of the family court act or section four hundred seven of the surrogate's court procedure act, compensation shall not exceed eight hundred dollars.

For representation on an appeal, compensation and reimbursement shall be fixed by the appellate court. For all other representation, compensation and reimbursement shall be fixed by the court where judgment of conviction or acquittal or order of dismissal was entered. In extraordinary circumstances a trial or appellate court may provide for compensation in excess of the foregoing limits and for payment of compensation and reimbursement for expenses before the completion of the representation.

Each claim for compensation and reimbursement shall be supported by a sworn statement specifying the time expended, services rendered, expenses incurred and reimbursement or compensation applied for or received in the same case from any other source.

No counsel assigned hereunder shall seek or accept any fee for representing the party for whom he is assigned without approval of the court as herein provided.

1. [Eff Jan 1, 2004, § 722-b, reads as set out below:] All counsel assigned in accordance with a plan of a bar association conforming to the requirements of section seven hundred twenty-two of this article whereby the services of private counsel are rotated and coordinated by an administrator shall at the conclusion of the representation receive:

(a) for representation of a person entitled to representation by law who is initially charged with a misdemeanor or lesser offense and no felony, compensation for such misdemeanor or lesser offense representation at a rate of sixty dollars per hour for time expended in court or before a magistrate, judge or justice, and sixty dollars per hour for time reasonably expended out of court, and shall receive reimbursement for expenses reasonably incurred; and

(b) for representation of a person in all other cases governed by this article, including all representation in an appellate court, compensation at a rate of seventy-five dollars per hour for time expended in court before a magistrate, judge or justice and seventy-five dollars per hour for time reasonably expended out of court, and shall receive reimbursement for expenses reasonably incurred.

2. (Added, L 2003) Except as provided in this section, compensation for time expended in providing representation:

(a) pursuant to paragraph (a) of subdivision one of this section shall not exceed two thousand four hundred dollars; and

(b) pursuant to paragraph (b) of subdivision one of this section shall not exceed four thousand four hundred dollars.

3. For representation on an appeal, compensation and reimbursement shall be fixed by the appellate court. For all other representation, compensation and reimbursement shall be fixed by the trial court judge. In extraordinary circumstances a trial or appellate court may provide for compensation in excess of the foregoing limits and for payment of compensation and reimbursement for expenses before the completion of the representation.

4. Each claim for compensation and reimbursement shall be supported by a sworn statement specifying the time expended, services rendered, expenses incurred and reimbursement or compensation applied for or received in the same case from any other source.

No counsel assigned hereunder shall seek or accept any fee for representing the party for whom he or she is assigned without approval of the court as herein provided.

§ 722-c. Services other than counsel

[Until Jan 1, 2004, § 722-c reads as set out below:] Upon a finding in an ex parte proceeding that investigative, expert or other services are necessary and that the defendant or other person described in section two hundred forty-nine or section two hundred sixty-two of the family court act, article six-C of the correction law or section four hundred seven of the surrogate's court procedure act, is financially unable to obtain them, the court shall authorize counsel, whether or not

assigned in accordance with a plan, to obtain the services on behalf of the defendant or such other person. The court upon a finding that timely procurement of necessary services could not await prior authorization may authorize the services nunc pro tunc. The court shall determine reasonable compensation for the services and direct payment to the person who rendered them or to the person entitled to reimbursement. Only in extraordinary circumstances may the court provide for compensation in excess of three hundred dollars.

Each claim for compensation shall be supported by a sworn statement specifying the time expended, services rendered, expenses incurred and reimbursement or compensation applied for or received in the same case from any other source.

[Eff Jan 1, 2004, § 722-c reads as set out below:] Upon a finding in an ex parte proceeding that investigative, expert or other services are necessary and that the defendant or other person described in section two hundred forty-nine or section two hundred sixty-two of the family court act, article six-C of the correction law or section four hundred seven of the surrogate's court procedure act, is financially unable to obtain them, the court shall authorize counsel, whether or not assigned in accordance with a plan, to obtain the services on behalf of the defendant or such other person. The court upon a finding that timely procurement of necessary services could not await prior authorization may authorize the services nunc pro tunc. The court shall determine reasonable compensation for the services and direct payment to the person who rendered them or to the person entitled to reimbursement. Only in extraordinary circumstances may the court provide for compensation in excess of one thousand dollars per investigative, expert or other service provider.

Each claim for compensation shall be supported by a sworn statement specifying the time expended, services rendered, expenses incurred and reimbursement or compensation applied for or received in the same case from any other source.

§ 722-d. Duration of assignment

Whenever it appears that the defendant is financially able to obtain counsel or to make partial payment for the representation or other services, counsel may report this fact to the court and the court may terminate the assignment of counsel or authorize payment, as the interests of justice may dictate, to the public defender, private legal aid bureau or society, private attorney, or otherwise.

§ 722-e. Expenses

All expenses for providing counsel and services other than counsel hereunder shall be a county charge or in the case of a county wholly located within a city a city charge to be paid out of an appropriation for such purposes.