



New York State Court of Claims

ATTORNEY REFERRAL PROGRAM

The New York State Court of Claims is the exclusive forum for civil litigation seeking damages against the State of New York, which may include allegedly wrongful conduct of its employees for which the State is responsible under the legal principle of respondeat superior.



THE PROGRAM

Since many civil claims arise from incidents in state prisons and state medical facilities, many claimants are pro se because they lack the ability and funding to locate counsel. In 2022, the Court of Claims established an Equal Justice in the Courts (EJIC) Committee and, as part of its mission, the Court seeks to improve equal access to justice for indigent and unrepresented litigants who come before the Court.

Court of Claims Judges have observed that the lack of representation of incarcerated or formerly incarcerated people and other indigent pro se litigants has potentially affected the prosecution of their claims. Claims have been dismissed on procedural and/or substantive grounds which may otherwise have proceeded to trial followed by a Court decision on the merits. This Attorney Referral Program is a direct result of the Court's intent to eliminate this impediment to justice.

FOR MORE INFORMATION

Those unfamiliar with Court of Claims practice will note several differences from Federal and State Court practice. The most significant difference is that trials in the Court of Claims are non-jury and, although in-person trials are available, claimants participating in the Attorney Referral Program must agree to a virtual trial. The Court of Claims provides detailed procedural information and filed decisions on its website:

<https://ww2.nycourts.gov/COURTS/nyscourtofclaims/faq.shtml>.

The Court is also conducting continuing legal education (CLE) throughout the state to provide attorneys with important "how-to" information.

See **Frequently Asked Questions** on the reverse side.

FREQUENTLY ASKED QUESTIONS

1. What claims qualify for this program?

Since this is a pilot program, only the following claims filed on or after January 1, 2023 will be eligible: (1) involving injuries that occurred at Coxsackie, Greene or Washington Correctional Facilities; and (2) alleging medical malpractice/medical negligence, general negligence, or assaults.

2. Can a claimant obtain an attorney referral before a claim is filed?

No, the referral is only available for claims already filed in the Court of Claims.

3. How does a claimant receive an attorney referral?

The Court has compiled a list of attorneys admitted to practice in New York State who are interested in handling these types of claims. A claimant can mail the Request for Referral form to the Court of Claims Clerk, P.O. Box 7344, Capitol Station, Albany, NY 12224. Claimants may also request an attorney who speaks a language other than English and the Court will make every effort to meet that request.

After reviewing the request, the Court will send the claimant the names and contact information for several attorneys randomly selected from the list. It will be the responsibility of the claimant to contact these attorneys to request representation.

The attorneys will be sent a copy of the claim to review before deciding to accept the referral. The claimant makes the decision about which attorney to hire and negotiates a fee with the attorney. The attorney will then notify the Court of their representation by filing with the Chief Clerk of the Court a Notice of Appearance.

4. How does an attorney get on the list and what is the cost?

Any licensed attorney interested in being added to the list may email the request to claimsreferrals@nycourts.gov. There is no fee to be added to the list. The request should also indicate whether the attorney is a member of the bar in good standing and whether they speak languages other than English.

5. Is there a fee for the claimant to use this program?

No. The program is free but the attorney may charge a fee for their legal services once they are hired. Such a fee agreement must be in writing and is negotiable. Typically, this is a “contingency fee”, which means the attorney will collect a percentage of any judgment awarded by the Court or by a settlement after the attorney is reimbursed for any out-of-pocket expenses incurred by the attorney in the prosecution of the claim, such as expert fees.

6. Is a claimant guaranteed an attorney through this program?

No. This is not a program to assign an attorney to represent a claimant because there is no right to counsel in civil cases. The attorneys on the list are not obligated to represent a claimant who contacts them. The purpose of the program is to connect claimants looking for attorneys with attorneys interested in handling claims in the Court of Claims. However, there is no guarantee that a successful match will be achieved.

7. If contacted by a claimant, what is the next step for the attorney?

Since the program involves a filed claim, that claim is available for attorney review once they are contacted by the claimant. The attorney may email claimsreferrals@nycourts.gov to request a copy of the claim and other filed documents.

After reviewing the claim and conversing with the claimant by phone, the attorney may decide to accept representation. The attorney should mail to the claimant an agreement drafted in compliance with 22 NYCRR 1215 and attaching a copy of the Statement of Client’s Rights pursuant to 22 NYCRR 1210, and obtain a signature. Then, the attorney should file a Notice of Appearance with the Chief Clerk of the Court of Claims and complete the paperwork to have the matter placed into New York State Courts Electronic Filing system (NYSCEF). The case will then proceed through litigation.

If the attorney decides not to accept the case, they should write to the claimant of that decision, with a copy to the Court. The attorney will remain on the list for future referral.

8. Will the attorney be required to travel?

No travel is required. An attorney can communicate with a client in a correctional facility in person or by phone by scheduling an appointment. Most court appearances are virtual, including pre-trial conferences and trials. The State is defended by an Assistant Attorney General and most interaction, including depositions, is virtual.