



NEW YORK STATE
Unified Court System

OFFICE OF COURT ADMINISTRATION

LAWRENCE K. MARKS
CHIEF ADMINISTRATIVE JUDGE

JOHN W. McCONNELL
COUNSEL

MEMORANDUM

August 8, 2017

To: All Interested Persons
From: John W. McConnell
Re: Request for Public Comment on Proposed Increase in the Hourly Rates of Compensation of Court-Appointed Experts Pursuant to Judiciary Law § 35 and County Law § 722-c

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The Administrative Board of the Courts is seeking public comment on a proposal, proffered by the Attorney for the Child Directors in the Appellate Division of Supreme Court, to increase the hourly rates of compensation to experts appointed by the court pursuant to Judiciary Law §35 and County Law §722-c. As described by the Directors in a supporting memorandum (Exh. A), the compensation schedule currently in use has remained unchanged since 1992, leading to growing difficulties in recruitment of well qualified and experienced mental health and other professionals as expert witnesses. The proposal calls for reimbursement of psychiatrists at a rate identical to that of physicians, and hourly rates of compensation of experts as follows:

	<u>Current Rate</u>	<u>Proposed Rate</u>	<u>Full Cost-of-Living Increase (1992-2017)</u>
Physician	\$ 200	\$ 250	\$ 350
Psychiatrist	125	250	220
Psychologist	90	150	156
Social Worker	45	75	80
Investigator	32	55	55

A copy of the 1992 Administrative Order setting the current rates is attached as Exh. B; copies of Judiciary Law §35 and County Law §722-c are attached as Exh. C. It is anticipated that the Unified Court System will seek legislative amendment of those provisions in Judiciary Law §35(4) and County Law §722-c which currently cap the compensation of court-appointed experts in various proceedings absent a finding of “extraordinary circumstances.”

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Persons wishing to comment on the proposed rates should e-mail their submissions to rulecomments@nycourts.gov or write to: John W. McConnell, Esq., Counsel, Office of Court Administration, 25 Beaver Street, 11th Fl., New York, New York 10004. **Comments must be received no later than October 11, 2017.**

All public comments will be treated as available for disclosure under the Freedom of Information Law and are subject to publication by the Office of Court Administration. Issuance of a proposal for public comment should not be interpreted as an endorsement of that proposal by the Unified Court System or the Office of Court Administration.

EXHIBIT A

MEMORANDUM

May 17, 2017

TO: Hon. Lawrence Marks, Chief Administrative Judge

FROM: Attorney For Child Directors

SUBJECT: Proposal to increase compensation rates for expert witnesses

The Attorney for Child Directors, in consultation with the Division of Financial Management, are requesting changes to the compensation rate guidelines for experts as outlined in the attached revisions to Budget Bulletin 1001. The proposed changes require Administrative Board approval. Related statutory changes to maximum compensation rates for experts under Judiciary Law §35 (4) and County Law §722-c should also be considered.

The hourly rates identified in Budget Bulletin 1001 were last increased over 25 years ago (1992). The statutory maximum compensation amounts were last increased in 2003 for County Law and in 1985 for Judiciary Law. The rates are too low and as a result, many trial court judges are forced to apply the "extraordinary circumstance" provision and paying vouchers at arbitrary rates that exceed the guidelines. In addition, attorneys are finding it difficult to retain experts under the existing rates. The proposed changes will ensure more effective representation through the increased availability of experts and will also provide trial court judges with equitable and fair compensation guidelines.

The new compensation rates are based on an analysis of cost-of-living adjustments and current market conditions. In addition, it is recommended that the rate for psychiatrists and physicians be made equal. The current distinction in the hourly rate for a physician (\$200) versus a psychiatrist (\$125) is inconsistent with educational levels and market standards. A psychiatrist is a physician who specializes in mental health and, as such, the rates should be equal.

The volume of activity for expert witnesses is generally with social workers and psychologists. Based on historical activity, the Division of Financial Management estimates the annual cost to implement the new rates is \$600,000. It is recommended that the effective date of the rate increase be in September to accommodate the cost increase in the current fiscal year.

In addition to the changes to the Budget Bulletin, we are recommending related statutory changes to the maximum compensation rates set forth in Judiciary Law §35 (4) and County Law §722-c as attached. An increase in the maximum compensation rates is not expected to have a negative fiscal impact for the counties or the State. As stated, judges are consistently applying the "extraordinary circumstances" in awarding total compensation. We submit proposed statutory changes for legislative counsel's consideration in the UCS legislative program.

Proposed Changes to Hourly Rates for Experts

Profession	Current Hourly Rate	Proposed New Hourly Rate	Increase	% Change	Hourly Rate per COLA (1992 to 2017)
Psychiatrist*	125	250	125	50%	220
Physician*	200	250	50	25%	350
Psychologists	90	150	60	67%	156
Social Worker	45	75	30	66%	80
Investigator	32	55	23	72%	55

* Based on educational requirements and market conditions, it is recommended that psychiatrists and physicians be paid the same hourly rate. A psychiatrist is an M.D. who specializes in mental health. Although the recommended rate for psychiatrists would exceed the COLA for the time frame, the current rate is inconsistent with educational levels.

EXHIBIT B

ADMINISTRATIVE ORDER OF THE
CHIEF ADMINISTRATOR OF THE COURTS

Pursuant to the authority vested in me, and upon consultation with the Administrative Board of the Courts, I hereby adopt as guidelines for the payment of reasonable compensation to court-appointed psychiatrists and other nonlawyer professionals pursuant to section 35 of the Judiciary Law and section 722-c of the County Law the following hourly rate for each category of professional:

Psychiatrist	\$ 125.00
Certified Psychologist	90.00
Physician	200.00
Certified Social Worker	45.00
Licensed Investigator	32.00

Implementation of these guidelines shall be consistent with the provisions of law and subject to the limitations on maximum payments and exceptions for extraordinary circumstances contained in those provisions of law.


CHIEF ADMINISTRATOR OF THE COURTS

Dated: February 6, 1992

AO/ 73 /92

EXHIBIT C

As of 08/03/2017 09:41AM , the Laws database is current through 2017 Chapters 1-163

Judiciary

§ 35. Assignment of counsel to indigent persons and appointment of physicians in certain proceedings. 1. a. When a court orders a hearing in a proceeding upon a writ of habeas corpus to inquire into the cause of detention of a person in custody in a state institution, or when it orders a hearing in a civil proceeding to commit or transfer a person to or retain him in a state institution when such person is alleged to be mentally ill, mentally defective or a narcotic addict, or when it orders a hearing for the commitment of the guardianship and custody of a child to an authorized agency by reason of the mental illness or mental retardation of a parent, or when it orders a hearing to determine whether consent to the adoption of a child shall be required of a parent who is alleged to be mentally ill or mentally retarded, or when it orders a hearing to determine the best interests of a child when the parent of the child revokes a consent to the adoption of such child and such revocation is opposed or in any adoption or custody proceeding if it determines that assignment of counsel in such cases is mandated by the constitution of this state or of the United States, the court may assign counsel to represent such person if it is satisfied that he is financially unable to obtain counsel. Upon an appeal taken from an order entered in any such proceeding, the appellate court may assign counsel to represent such person upon the appeal if it is satisfied that he is financially unable to obtain counsel.

b. Upon an appeal in a criminal action or in a proceeding in the family court or surrogate's court wherein the defendant or person entitled to counsel pursuant to the family court act or surrogate's court procedure act, is financially unable to obtain counsel, the court of appeals or the appellate division of the supreme court may assign counsel other than in the manner as is prescribed in section seven hundred twenty-two of the county law only when it is satisfied that special circumstances require such assignment.

2. The chief administrator of the courts may enter into an agreement with a legal aid society for the society to provide assigned counsel in the proceedings specified in subdivision one of this section. The agreement shall be in a form approved by the chief administrator and shall provide a general plan for a program of assigned counsel services to be provided by such society. It shall also provide that the society shall be reimbursed on a cost basis for services rendered.

3. No counsel assigned pursuant to this section shall seek or accept any fee for representing the person for whom he or she is assigned without approval of the court as herein provided. Whenever it appears that such person is financially able to obtain counsel or make partial payment for the representation, counsel may report this fact to the court and the court may terminate the assignment or authorize payment, as the interests of justice may dictate, to such counsel. Counsel assigned hereunder shall at the conclusion of the representation receive compensation at a rate of seventy-five dollars per hour for time expended in court, and seventy-five dollars per hour for time reasonably expended out of court, and shall receive reimbursement for expenses reasonably incurred. For representation upon a hearing, compensation and reimbursement shall be fixed by the court wherein the hearing was held and such compensation shall not exceed four thousand four hundred dollars. For representation in an appellate court, compensation and reimbursement shall be fixed by such court and such compensation shall not exceed four thousand four hundred dollars. In extraordinary circumstances the court may provide for compensation in excess of the foregoing limits.

4. In any proceeding described in paragraph (a) of subdivision one of this section, when a person is alleged to be mentally ill, mentally

defective or a narcotic addict, the court which ordered the hearing may appoint no more than two psychiatrists, certified psychologists or physicians to examine and testify at the hearing upon the condition of such person. A psychiatrist, psychologist or physician so appointed shall, upon completion of his services, receive reimbursement for expenses reasonably incurred and reasonable compensation for such services, to be fixed by the court. Such compensation shall not exceed two hundred dollars if one psychiatrist, psychologist or physician is appointed, or an aggregate sum of three hundred dollars if two psychiatrists, psychologists or physicians are appointed, except that in extraordinary circumstances the court may provide for compensation in excess of the foregoing limits.

4-a. In any proceeding under article ten of the mental hygiene law, the court which ordered the hearing may appoint no more than two psychiatrists, certified psychologists or physicians to examine and testify at the hearing upon the condition of such person. A psychiatrist, psychologist or physician so appointed shall, upon completion of his or her services, receive reimbursement for expenses reasonably incurred and reasonable compensation for such services, to be fixed by the court in accordance with subdivision (a) of section 10.15 of the mental hygiene law.

5. All expenses for compensation and reimbursement under this section shall be a state charge to be paid out of funds appropriated to the administrative office for the courts for that purpose. Any rules and orders respecting the assignment and compensation of counsel, and the appointment and compensation of psychiatrists, psychologists or physicians pursuant to this section and the form and manner of processing of a claim submitted pursuant to this section shall be adopted by the chief administrator. Each claim for compensation and reimbursement pursuant to subdivisions three and four of this section shall be submitted for approval to the court which made the assignment or appointment, and shall be on such form as the chief administrator may direct. After such claim is approved by the court, it shall be certified to the comptroller for payment by the state, out of the funds appropriated for that purpose.

6. Assigned counsel and guardians ad litem appointed pursuant to the provisions of title two of article nine-B of the social services law shall be compensated in accordance with the provisions of this section.

7. Whenever the supreme court or a surrogate's court shall appoint counsel in a proceeding over which the family court might have exercised jurisdiction had such action or proceeding been commenced in family court or referred thereto pursuant to law, and under circumstances whereby, if such proceeding were pending in family court, such court would be authorized by section two hundred forty-nine of the family court act to appoint an attorney for the child, such counsel shall be compensated in accordance with the provisions of this section.

8. Whenever supreme court shall exercise jurisdiction over a matter which the family court might have exercised jurisdiction had such action or proceeding been commenced in family court or referred thereto pursuant to law, and under circumstances whereby, if such proceedings were pending in family court, such court would be required by section two hundred sixty-two of the family court act to appoint counsel, supreme court shall also appoint counsel and such counsel shall be compensated in accordance with the provisions of this section.

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County

§ 722-c. Services other than counsel. 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.