

## MEMORANDUM

TO: John W. O'Connell, Esq.  
Counsel, Office of Court Administration

FROM: Barbara A. DiFiore  
Assigned Counsel Plan Administrator – Kings Queens and Richmond counties

SUBJECT: Proposal to Increase Compensation Rates for Expert Witnesses

DATE: September 25, 2017

I write in support of the proposal to increase compensation rates for expert witnesses in a variety of categories, including physicians, psychiatrists, psychologists, social workers and investigators. The services provided by trained professionals in these five categories are absolutely essential to the ability of Assigned Counsel Plan attorneys to provide effective representation to clients charged with crimes in Kings, Queens and Richmond counties.

#### Background

The Assigned Counsel Plan of the City of New York was established in 1965 as the result of an agreement between 6 bar associations and the City of New York. Since 1965, Assigned Counsel Plan attorneys have represented clients in criminal cases when the institutional providers cannot do so due to a conflict of interest or for other “good cause”. In 2016, attorneys who serve on the panels of the Assigned Counsel Plan handled thousands of felony and misdemeanor cases to final disposition including 34 homicide trials, 109 felony trials and 26 misdemeanor trials.

#### The Current Situation

Under the terms of the Bar Association Plan of 1965, Assigned Counsel Plan attorneys were authorized to handle all cases in which a sentence of life imprisonment or a sentence of death could be imposed. As a result, Assigned Counsel Plan attorneys handle the vast majority of homicide cases in Kings, Queens and Richmond counties. These cases often require the use of multiple experts, including physicians, psychiatrists, psychologists, social workers and investigators. It is critically important that attorneys representing clients in homicide cases have access to quality experts in order to be able to provide effective representation.

Assigned Counsel Plan attorneys also represent clients in very serious felony cases that often go to trial. The charges in these cases include the following: attempted murder; first and second degree robbery, burglary and assault cases; sexual assaults, drug possession and sale; possession and use of firearms.

Low compensation rates have contributed to a steady decline in the numbers of experts who are willing to work on cases assigned to Assigned Counsel Plan attorneys. For example, several years ago the Assigned Counsel Plan was able to enlist the services of five pathologists to assist in “cause of death” determinations in homicide cases. As of September 2017, there is only one pathologist willing to accept

assignments on a regular basis. Others have taken an occasional assignment but only under special circumstances (i.e., a highly interesting case or a previous working relationship with the assigned attorney).

In addition to pathologists, Assigned Counsel Plan attorneys also utilize the services of physicians, particularly in assault cases. Years ago, there were several physicians who consulted on criminal cases. At present, there is only one physician who has agreed to work with Assigned Counsel Plan attorneys on a regular basis. When physicians are needed in specialty areas such as orthopedics or neurology, it is almost impossible to obtain those services without a substantially enhanced rate. Physicians who testify in tort cases often receive thousands of dollars for a consultation and a few hours of testimony. It is difficult to compete when physicians can earn such high fees in civil litigation. Assigned Counsel Plan attorneys must often resort to networking among friends, neighbors and relatives to find a doctor willing to work even at a substantially enhanced rate.

Many clients charged with serious offenses have been diagnosed with a variety of psychiatric disorders. In such instances, it is imperative that Assigned Counsel Plan attorneys have access to the services of competent psychiatrists with experience in diagnosing the presence of mental illness and in assessing the feasibility of a psychiatric defense. At present there are several highly qualified psychiatrists who accept case assignments more out of a sense of duty to help clients who need their services to mount a cohesive psychiatric defense than out of a desire to earn high pay. Still, the number of psychiatrists willing to work with Assigned Counsel Plan attorneys on cases has dropped to the point where there are only about five who regularly work with the program. Psychiatrists should be compensated at the same hourly rate as physicians not only because they hold degrees in medicine but because their work is indispensable to constructing meaningful psychiatric defenses in serious cases.

Psychologists and social workers are also vital to providing effective representation to clients charged with serious crimes. At present, there are only about 10 psychologists and about 5 social workers who are willing to work with Assigned Counsel Plan attorneys on a regular basis due to the low compensation rates. Currently, the rates for mental health professionals working on assigned cases for members of the CJA panel range from \$200 - \$350 per hour. The availability of higher rates from other public defense agencies makes it difficult to attract qualified professionals to work on Assigned Counsel Plan cases. The paucity of experts willing to accept assignment poses a great challenge to attorneys given the volume of serious felony and homicide cases currently carried by the Assigned Counsel Plan attorneys.

The services of investigators are especially critical to mounting a vigorous defense in criminal cases. These professionals are increasingly unwilling to accept assignments without being paid at an enhanced rate. This is due to the fact that investigators can earn a higher hourly rate working on private criminal cases, insurance fraud investigations or matrimonial matters. In addition, the federal CJA Penal rate for investigators ranges from \$80 to \$95 per hour. It is difficult to attract the best and most experienced investigators when there are other public agencies and private entities willing to pay much higher rates per hour.

### Estimated Fiscal Impact

It is difficult to accurately estimate the fiscal impact of the proposed change in rates due to the fact that the financial data for the Assigned Counsel Program is maintained by another city agency, the New York City Department of Finance. In addition, there is no case management system in place that synthesizes data on payments to experts.

The Assigned Counsel Plan does track the hourly rates that have been authorized by courts in the following categories in 2017:

Category	Current Rate Per Hour	Range of Rates Per Hour	Most Common Rates Per Hour
Physicians	\$200	\$200 - \$250	\$200; \$250
Psychiatrists	\$125	\$125 - \$300	\$200; \$250
Psychologists	\$90	\$90 - \$350	\$150; \$200
Social Workers	\$45	\$45 - \$100	\$75; \$90
Investigators	\$32	\$32 - \$75	\$32; \$50

Many Assigned Counsel Plan attorneys have been submitting enhanced rate requests on behalf of the experts that they deem necessary to the proper representation of their clients. The majority of these requests have been granted by the court based on the difficulty in obtaining the services of qualified experts at the 1992 rates.

The upper limit of the potential added costs can be figured using 2016 Plan expenditures:  
(Source: 2017 UCS195 form filed with the Office of Court Administration.)

- Investigators: 2016 Expenditures: \$306,027.

If the rate were increased by 72%, spending on investigators would increase by \$220,339.

- All Other Experts: 2016 Expenditures: \$845,636.

No breakdown is available as to which types of experts are in this category. However, assuming an across-the-board average increase of 60% for all experts other than investigators, spending on this category would be expected to increase by no more than \$507,381.

Based upon this calculation, the highest possible fiscal impact for increasing the rates for investigators and the other categories of experts would be \$727,720.

### Other Factors to Consider in Assessing Impact

There are other aspects that should also be considered in evaluating the need to raise the rates. These range from lessening the workload on the courts in New York City to facilitating the ability of attorneys to meet their obligations to their clients under the U.S. Constitution.

In New York City, enhanced rate vouchers increase additional administrative burdens on Administrative and Supervising Judges. The City of New York seeks a review of each enhanced rate voucher that is

submitted to the New York City Department of Finance for payment. A trial judge reviews and signs the voucher initially and then sends the voucher to the Department of Finance. Once the Department of Finance staff notes that the judge at the trial level has approved an enhanced rate, the staff sends the voucher to the relevant Administrative or Supervising Judge for further review and approval. The authority for these reviews comes from 22 NYCRR Section 127.1. As more and more investigators and experts seek enhanced rates, the number of vouchers for which secondary review is sought has increased substantially. Not only does this create more work for judges but it also delays payments to experts and investigators while the Department of Finance awaits final approval from the Administrative and Supervising Judges.

Providing clients with qualified experts and investigators has the potential to avoid wrongful convictions. When clients do not receive an effective defense, they often face unjust incarceration for years and even decades. There is an economic impact to wrongful incarceration as well. Over the last several years, the City of New York has paid out millions of dollars to settle wrongful conviction lawsuits.

Lastly, Assigned Counsel Plan attorneys need access to a variety of quality investigators and experts to fulfill their obligations to clients under the Sixth Amendment to the United States Constitution. Indeed, this obligation outweighs any financial impacts that may be cited by municipal and county authorities. The Supreme Court of the United States recently reiterated the importance of securing the services of qualified experts and the duty of assigned counsel to zealously advocate for those services, even in situations in which the state has imposed statutory caps on spending. See *Hinton v. Alabama*, 571 US \_\_\_ (2014).

### Summary

Given the need for a substantial increase in all categories, my recommendation is as follows:

Category	Current Rate Per Hour	Recommended Rate Per Hour
Physicians	\$200	\$350
Psychiatrists	\$125	\$350
Psychologists	\$90	\$150
Social Workers	\$45	\$80
Investigator	\$32	\$55

Raising the hourly rates for physicians, psychiatrists, psychologists, social workers and investigators will lead to a number of positive outcomes for clients served by the Assigned Counsel Plan. It will expand the pool of experts and investigators willing to accept case assignments and will enable the program to continue to work with experts and investigators who are well-qualified to perform services on criminal cases. It will reduce the workload currently borne by Administrative and Supervising Judges in Kings, Queens and Richmond counties. It will streamline the system for approval of vouchers and enable experts and investigators to be paid more quickly and efficiently. Attorneys will be able to meet their obligations to provide effective assistance of counsel and to prevent wrongful incarceration because they will be able to more easily access qualified experts and investigators to work on their cases. At the same time, the fiscal impact of the higher rates is relatively minor when compared to the benefits that will be reaped by experts, investigators, attorneys, judges and, ultimately, clients.



# **New York State Defenders Association, Inc.**

## ***Public Defense Backup Center***

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To: John W. McConnell, Counsel, Office of Court Administration

Re: Comments on Proposed Increase in the Hourly Rates of Compensation of Court-Appointed Experts Pursuant to Judiciary Law § 35 and County Law § 722-c

Date: October 11, 2017

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Thank you for the opportunity to submit comments regarding the proposed increase in the hourly rates of compensation of court-appointed experts pursuant to Judiciary Law § 35 and County Law § 722-c.

The New York State Defenders Association (NYSDA) is a not-for-profit membership association; its mission is to improve the quality and scope of publicly supported legal representation to low income people. Most of NYSDA's over 1,700 members are public defenders, legal aid attorneys, assigned counsel, and private practitioners throughout the state, along with others who support the right to counsel, including client members. With funds provided by the State of New York, NYSDA operates the Public Defense Backup Center (Backup Center), which offers legal consultation, research, and training to nearly 6,000 lawyers who represent individuals who cannot afford to retain counsel in criminal and family court cases. As part of its support services to public defense providers and state and local governmental entities, NYSDA provides consultation and technical assistance about legal and policy issues relevant to criminal and family court systems, delivery of defense services, and barriers thereto.

### **I. Proposed Increase in Hourly Rates of Compensation Would Help Support the Right to Present a Defense**

NYSDA supports the proposal to increase the hourly rates of compensation of court-appointed experts pursuant to County Law § 722-c and Judiciary Law § 35. Public defense clients have a right to present a defense<sup>1</sup> and are entitled to funds for investigative, expert, and related auxiliary services.<sup>2</sup> County Law § 722 specifically provides that “each plan for public defense representation “shall ... provide for investigative, expert and other services necessary for an adequate defense.” And state and national professional standards require that attorneys have access to and use such

<sup>1</sup> See, e.g., *Crane v Kentucky*, 476 US 683 (1986); *People v Aphyalth*, 68 NY2d 945 (1986).

<sup>2</sup> “Essential to any representation, and to the attorney’s consideration of the best course of action on behalf of the client, is the attorney’s investigation of the law, the facts, and the issues that are relevant to the case.” *People v Oliveras*, 21 NY3d 339, 346 (2013).

October 11, 2017

services. See New York State Office of Indigent Legal Services (ILS Office), [\*Standards and Criteria for the Provision of Mandated Representation in Cases Involving a Conflict of Interest\*](#),<sup>3</sup> Standards 3 (access to and use of investigative services as needed to provide quality representation) and 4 (access to and use as needed the assistance of experts); ILS Office, [\*Standards for Parental Representation in State Intervention Matters\*](#), Standards G (Model of Representation – Multidisciplinary Practice), O-1 (Ongoing social work support), and O-7 (Expert witnesses); American Bar Association, *Criminal Justice Standards*, [\*Defense Function\*](#), Standards 4-4.1 (Duty to Investigate and Engage Investigators) and 4-4.4 (Relationship with Expert Witnesses); see also New York Rules of Professional Conduct, 22 NYCRR Part 1200, Rule 1.1(a) (a lawyer must “provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation.”); ILS Office, [\*Standards for Parental Representation in State Intervention Matters\*](#), Standard B (“Experience and Training. Counsel must possess sufficient experience, training, knowledge, and skills necessary to provide high quality representation to clients in state intervention matters.”).

These constitutional, statutory, and professional mandates can only be meaningfully fulfilled if statutory rates and court guidelines authorize fees that investigators and experts are willing to accept. While some qualified individuals may offer to work at reduced rates for public defense cases, this is not a practicable basis for a guideline. Setting rates at a level which will attract only those professionals willing to work for a deflated rate shrinks the pool of available experts and severely limits options for quality services.

#### **A. Hourly Rate Guidelines Should Be Based on the Full Cost-of-Living Increase**

The hourly rate guidelines should be updated to the full cost-of-living amount, not just the proposed rate. For the physician, psychologist, and social worker categories, the proposed rate does not align with the full cost-of-living increase. Unfortunately, no explanation is provided for why the proposed rate does not match the full cost-of-living increase. Unless there is some evidence that the 1992 hourly rate guidelines were higher than the actual hourly rates that experts charged for their services at that time and/or that hourly rates have not increased at a rate similar to the standard cost-of-living adjustment, there is no justification for adopting new guidelines that are below the full cost-of-living increase.

We support the proposal to align the rates of physicians and psychiatrists. There is no reason why a psychiatrist’s expert witness rate should be, or in reality is, less than that of any other type of physician.

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<sup>3</sup> These standards were extended to include all trial level representation effective January 1, 2013. See Standards and Performance Criteria, available at <https://www.ils.ny.gov/content/standards-and-performance-criteria>.

October 11, 2017

## B. Hourly Rates Must Be Guidelines, Not a Ceiling

The August 8, 2017 memorandum does not state that the proposed hourly rates are intended to be guidelines. However, the original rates were described as guidelines in AO/73/92, and the May 17, 2017 Memorandum from the Attorney for Child Directors notes that the request was for “changes to the compensation rate guidelines ....” In the years since the 1992 guidelines were released, we have heard from public defense attorneys that some courts have treated the guidelines as a ceiling on hourly rates.<sup>4</sup> While the newly proposed guidelines are more in line with the current cost of retaining investigators and experts, some cases will warrant the retention of experts at an hourly rate above those rates.<sup>5</sup> We encourage the Administrative Board of the Courts to continue to treat the hourly rates as guidelines and to remind courts that they are guidelines and not hourly rate ceilings.

## C. Guidelines Should Include a Provision for Adjustment or Review on a Regular Basis

The cost of retaining experts, investigators, and other service providers increases on a regular basis<sup>6</sup> and any new guidelines adopted by the Administrative Board of the Courts should include a mechanism for review and adjustment of hourly rates.<sup>7</sup> This could be done by adding a provision for an annual cost of living adjustment or a direction that a particular office within the Unified Court System review the rates on a regular basis, perhaps yearly or every two years. This will ensure that guideline rates do not remain stagnant for another 25 years and will provide judges, public defense providers, and funders with a more realistic picture of the cost of these critical services.

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<sup>4</sup> See, e.g., ILS Office, *Implementing the Quality Improvement Objectives in the Hurrell-Harring v. The State of New York Settlement: 2016 Update*, at 32-33, available at <https://www.ils.ny.gov/files/Hurrell-Harring/Quality%20Improvement/Hurrell-Harring%20Updated%20Quality%20Improvement%20Plan%20111016.pdf> (noting that, although the 1992 Guidelines have not been updated in 24 years, the hourly compensation rates are still often used by courts and assigned counsel programs).

<sup>5</sup> There are a number of different reasons why a higher hourly rate may be warranted, such as where the case involves a specialized area of expertise or there are a limited number of experts in the relevant field.

<sup>6</sup> SEAK, Inc. (Skills, Education, Achievement, Knowledge) conducts regular surveys of expert witness fees. <https://www.seak.com/expert-witness-fee-study/>. In its 2014 report on the aggregate expert witness fee survey results, SEAK noted that expert rates had increased modestly since its 2009 survey; average fees for testifying at trial increased a total of 2.9% over the five-year period and the average fees for file review and case preparation have increased 12% over five years. <https://www.seak.com/wp-content/uploads/2014/07/Expert-Witness-Fee-Data.pdf>. And the 2017 report on the aggregate survey results noted that “[e]xpert rates have increased well beyond the rate of inflation since SEAK’s last survey in 2014.”

<sup>7</sup> In 2006, the Commission on the Future of Indigent Defense Services recommended that the Chief Administrative Judge “issue a new administrative order updating the hourly rate guidelines, and that OCA review the guidelines at least every two years and update them as needed.” *Final Report to the Chief Judge of the State of New York* (June 18, 2006), Addendum at AD-2, available at [http://www.courts.state.ny.us/ip/indigentdefense-commission/IndigentDefenseCommission\\_report06.pdf](http://www.courts.state.ny.us/ip/indigentdefense-commission/IndigentDefenseCommission_report06.pdf).

October 11, 2017

#### **D. Guidelines Should Be Expanded to Include More Categories of Experts**

The 1992 guidelines only address five categories of services, some of which overlap. In the past 25 years, the categories of experts used in criminal and family court cases has expanded. The guidelines should be expanded to include categories such as: interpreting/translation<sup>8</sup>; medical expertise in addition to physicians, such as nursing; DNA; mitigation; interrogation/false confession; eyewitness identification; forensic sciences (fingerprints, ballistics, blood spatter, arson, etc.); accident reconstruction; toxicology; pharmacology; engineering; biomechanics; cell phone and other technology; and forensic accounting. Having additional categories will remind judges, public defense providers, and other members of the criminal and family court systems of the wide spectrum of experts that may be needed in individual cases and rate guidelines will offer a starting point for assessing the appropriateness of a particular fee request. Whether or not new categories are added to the guidelines, the guidelines should state that it is not an exclusive list of possible experts that are covered by County Law § 722-c.

#### **E. Increased Guidelines Will Likely Encourage More Experts to Participate in Public Defense Cases and More Applications for Expert Witnesses**

The low hourly rates have discouraged many investigators and other experts from participating in public defense cases and also discouraged public defense attorneys from filing applications under County Law § 722-c. In its 2006 report, *Status of Indigent Defense in New York: A Study for Chief Judge Kaye's Commission on the Future of Indigent Legal Services*, The Spangenberg Group indicated that it “heard from attorneys in many counties that it is difficult to find experts and investigators to take cases at the available rates.”<sup>9</sup> The report covered a number of related problems: lack of guidance on hourly rates; tacit pressure on defense attorneys not to apply for experts to keep costs down; courts “put in the position of guarding the county’s coffer”; and underutilization of experts as part of the culture of the practice.<sup>10</sup>

Ten years later, the New York State Office of Indigent Legal Services reported similar problems.<sup>11</sup> Noting that “[a]n additional and pressing barrier to quality representation is compensation rates for

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<sup>8</sup> Defense attorneys need access to independent interpreters to communicate with their clients. *See, e.g.,* ILS Office, *Standards for Parental Representation in State Intervention Matters*, Commentary to Standard F-5 (“The attorney must ensure access to a competent sign or other language interpreter for all interactions when a communication barrier exists between the client and the attorney .... Counsel should not rely on court interpreters for attorney-client communications.”); The Spangenberg Group, *Status of Indigent Defense in New York: A Study for Chief Judge Kaye’s Commission on the Future of Indigent Legal Services* (June 16, 2006), at 70-72, available at <http://www.nycourts.gov/ip/indigentdefense-commission/SpangenbergGroupReport.pdf>.

<sup>9</sup> The Spangenberg Group, *Status of Indigent Defense in New York: A Study for Chief Judge Kaye’s Commission on the Future of Indigent Legal Services*, at 76.

<sup>10</sup> *See id.* at 72-77; *see also* Commission on the Future of Indigent Legal Services, *Final Report to the Chief Judge of the State of New York*.

<sup>11</sup> ILS Office, *Implementing the Quality Improvement Objectives in the Hurrell-Harring v. The State of New York Settlement: 2016 Update*, at 32-33.

October 11, 2017

non-attorney supports,” the report described one county where the rates provided by the assigned counsel program for investigators and interpreters were so low that experienced investigators and interpreters stopped taking public defense cases.

Increasing the guideline rates, and adopting a regular review of guideline rates, will likely encourage more investigators and experts to work with public defense attorneys. Defenders will gain access to more qualified experts and be encouraged to file applications under County Law § 722-c, thus removing a significant barrier to the provision of quality representation throughout the public defense system.

## **II. Amendment of Statutory Caps Critical to Quality Public Defense Services**

According to the August 8, 2017 proposal, it is anticipated that the Unified Court System will seek a legislative amendment to the statutory compensation caps in County Law § 722-c and Judiciary Law § 35(4). NYSDA supports such an amendment. For the increase in the hourly rate guidelines to be meaningful, it must be accompanied by an amendment to these compensation caps. Otherwise, the number of hours an expert is able to work on a case will be severely limited, except in cases where the court finds that there are “extraordinary circumstances” for exceeding the cap. For example, if the hourly rate guideline for a physician is increased to \$250, but the statutory cap of \$1,000 remains in place, then the physician will only be compensated for four hours of work. In most cases, four hours is not enough time for a physician to review all of the relevant medical records, let alone discuss those records and the relevant issues with the attorney. While some courts may agree that such a limitation meets the standard of “extraordinary circumstances,” others would consider this entirely ordinary and not approve an expenditure over the cap.

### **Conclusion**

Overall, NYSDA supports the proposal to increase the hourly rates under County Law § 722-c and Judiciary Law § 35. We encourage the Administrative Board of the Courts to accept the full cost-of-living hourly rate, not the lower proposed rates; alert judges that the rates are guidelines only, not a ceiling on hourly rates; regularly review the guidelines; and expand the categories of experts included in the guidelines. We expect that the increase will encourage more providers of expert services to agree to take public defense cases, which will make it easier for defenders to locate qualified experts and in turn improve the quality of representation provided to public defense clients.

However, without a change in the statutory caps on expert compensation, the increased guideline rates will not have a sufficient impact on the quality of public defense representation. Therefore, we also support the Unified Court System’s anticipated effort to seek legislative amendment to the Judiciary Law and County Law regarding the cap on expert compensation.

If you have any questions regarding these comments, please feel free to contact Charles F. O’Brien, Executive Director, or Susan C. Bryant, Deputy Director, at 518-465-3524.

## JOE SCROPPO, PH.D., J.D.

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August 21, 2017

John W. McConnell, Esq., Counsel  
Office of Court Administration  
25 Beaver Street, 11th Fl  
New York, NY 10004

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

Dear Mr. McConnell:

I am writing in my capacity as both a forensic psychologist and attorney.

I am past-president of the New York State Psychological Association's Forensic Division, am currently an Assistant Clinical Professor of Psychiatry at the Hofstra University School of Medicine, serve as training faculty at the St. John's University Postdoctoral Certificate Program in Forensic Psychology, was appointed by the Hon. Gail Prudenti to the Board of Advisors at the Center for Children, Families and the Law (Hofstra University School of Law), and currently serve as a member of the NYSBA Committee on Children and the Law.

My statements in this letter, however, reflect only my own views on the issue.

I have been performing forensic evaluations, in both criminal and family matters, in New York since 1997. As noted in the Memo accompanying the Request for Public Comment, the payment rates for forensic mental health services authorized pursuant to Judiciary Law Section 35 and County Law Section 722-c have not increased in 25 years.

Forensic mental health evaluations entail special risks and demands for a mental-health practitioner (MHP). First, there are typically severe external outcomes associated with the forensic MHP's work—the forensic MHP's report and testimony could mean the difference between an acquittal and a sentence of 25-years-to-life in prison. Or, it could mean the difference between the continuation or termination of a mother's parental rights to her child. Similarly, it may mean that a good parent obtains significant physical or legal custody of a child or is instead denied that custody. In short, the stakes could not be higher.

Consequently, forensic MHPs must maintain state-of-the-art knowledge about the scientific research and practice developments in their area. This alone demands an enormous commitment of time and effort. Moreover, forensic MHPs must exercise an extremely high level of diligence in conducting all facets of their evaluations, including the

writing of comprehensive reports and providing testimony that can actually guide attorneys and judges in managing cases.

In addition, the examinees in these forensic matters are typically persons of very limited socio-economic standing, and are often persons dealing with cultural, linguistic, financial, and other challenges that make their attendance and participation in forensic evaluations especially challenging and demanding of the MHP's time and skill.

Furthermore, by taking on these high-risk matters, forensic MHPs also expose themselves to considerable risk in the form of potential licensing board complaints or lawsuits from persons who perceive themselves as disfavored by the evaluator's report and/or testimony.

These enhanced risks and demands are part of the forensic MHP's job, but it become untenable to accept such risks and demands when reimbursement lags dramatically behind what a forensic MHP can earn in easier and much less stressful areas of practice.

Notably, the forensic mental health evaluation of criminal defendants is especially risky and demanding. *Forensic MHPs*, for example, typically must travel to the Rikers Island Jail in order to conduct an adequate evaluation—an ordeal that in and of itself necessitates negotiating access, finding adequate space, dealing with frequent interruptions (alarms, counts, etc.), and conducting evaluations in conditions that are often less than adequate. To be able to perform a comprehensive evaluation, forensic MHPs often must repeat this process numerous times, and they are often entirely uncompensated for the time and effort needed to surmount these bureaucratic and institutional hurdles.

Finally, in trying to obtain payment for their services, forensic MHPs also face multiple daunting hurdles, ranging from the requirement to produce multiple affidavits to establish "extraordinary circumstances," extremely long delays, and sometimes-unexplained reductions or cutting of their vouchers after the work has been performed.

Unfortunately, it is the indigent criminal defendants and the low-income parents who lose out. In the absence of an adequate evaluation from a competent forensic MHP, potentially exculpatory criminal defenses are compromised or nullified, and families are subjected to evaluations that, because of inadequate funding, are performed by persons who are less than fully qualified or who simply cannot justify the time needed to conduct a comprehensive evaluation.

In sum, I strongly support the proposed increase in compensation rates for forensic MHPs—it is a relatively small investment that will attract and keep talented forensic MHPs working in this area and will result in much better outcomes for the criminal and family-court cases.

*As a final note, I strongly recommend that the proposed payment rates for physicians, psychiatrists, and psychologists be equal.* All of these professionals have doctoral-level training and have invested years in obtaining the knowledge, skills, and experience in performing forensic evaluations. There is no inherent difference in the skill sets offered by these professionals, and the rates should reflect that equality. For example although unable to prescribe medication, psychologists are trained and experienced in the administration of psychological tests, which is often an essential component of a well-done forensic evaluation. In essence, each of these professionals is carrying out an assessment and is not providing treatment—at the level of assessment, these different professions are equally capable of carrying out a good evaluation, although each has a slightly different blend of skills.

Sincerely,

A handwritten signature in black ink, consisting of several overlapping loops and a horizontal line extending to the left.

Joe Scroppo, Ph.D., J.D.

[REDACTED]

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**From:** Tom Ciorciari <tomc@theg-i-a.com>  
**Sent:** Thursday, August 10, 2017 11:32 AM  
**To:** rulecomments  
**Subject:** Comment on rate increase

[REDACTED] [REDACTED]

Dear John W. McConnell, Esq

I wish to comment on the proposed rate increase with respect to Investigators. For many years I have been unable to provide services to the NYS OCA Assigned Counsel because the rate of \$32/hour was insufficient to properly conduct an investigation with the necessary resources. In order to successfully represent a client an investigator needs to rely on various database services that cost a significant amount of money each month. It is virtually impossible for an independent investigator to maintain these systems and work for the hourly rate of \$32/hour.

Some of these investigations are difficult and complicated and require resources. The NYPD spends hundreds of thousands of dollars in the aggregate investigating and arresting individuals with their investigators making much higher hourly rate than the defense counsel's investigator. Therefore it has always been my opinion that the indigent defendants go insufficiently defended and are therefore victimized by an antiquated system.

With a rate increase such as this it becomes much more financially feasible for a company such as mine to provide the proper services to assigned counsel.

Additionally assigned counsel should be able retain a company with many resources to assist in their investigations and not rely on an individual whose expertise and availability may be limited. The NYPD has vast resources to draw upon and so should the defendants.

Several years ago I assisted assigned counsel attorney John Rodriguez Esq in the defense of a defendant named Sean Steer who was facing a double murder charge. The ultimate result was a complete acquittal of the defendant who has since enrolled in college and become a productive person . I spent a significant amount of time and resources to this which caused my overall business to suffer and I barely made enough money to cover my expenses so I did not take on assigned counsel cases any longer.

I feel this should not be the case and does a great disservice to the justice system as a whole.

Thank you for soliciting our opinions and taking the time to consider them.

Regards,

Thomas Ciorciari  
President  
Global Intelligence Associates, LLC  
631-656-0505  
34 East Main Street

Smithtown, NY 11787

Fax # 631-406-7253

[REDACTED]

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**From:** Jeanette Baskin <jcbaskinlcsw@gmail.com>  
**Sent:** Thursday, August 10, 2017 12:29 PM  
**To:** rulecomments  
**Subject:** Rate increase for Social Workers

[REDACTED] [REDACTED]

The increase will be the first in over thirty years, it is certainly overdue. Given the additional paperwork over the years as well as the limitations as to what can be charged, means that the 45 per hour is more in the area of 30 per hour. At the 45 per hour it is not worth it for a social worker who is expected to also pay for their own malpractice insurance and all taxes associated with a 1099. I feel it is long over due and that the increase should be at least 80 an hour. As social workers we are often sent into the field with angry, drug addicted or those accused of domestic violence, we earn our degrees, we pay for our license, we often pay for our further education in the field of Forensic Social Work and yet we are considered to be less worthy then those who sit in offices getting a story not knowing what is true or not, you are losing the expert social workers as a result. I would urge an increase to 80 per hour with the future increase to be 125 per hour. It could also be done by what experience and license qualifications a Social Worker has achieved.

Jeanette Conti Baskin LCSW-R

[REDACTED]

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**From:** Pamela Thomas <ptlcsw77@gmail.com>  
**Sent:** Thursday, August 10, 2017 3:31 PM  
**To:** rulecomments  
**Subject:** Fwd: OCA Memo Seeking Comments on Proposed Increase in Expert and Investigator Rates (Social Workers)

[REDACTED] [REDACTED]

Sent from my iPhone

Begin forwarded message:

**From:** Pamela Thomas <[ptlcsw77@gmail.com](mailto:ptlcsw77@gmail.com)>  
**Date:** August 10, 2017 at 2:35:20 PM EDT  
**To:** "Difiore, Barbara" <[BDifiore@cityhall.nyc.gov](mailto:BDifiore@cityhall.nyc.gov)>  
**Cc:** "Asaro, Maria" <[MAasaro@cityhall.nyc.gov](mailto:MAasaro@cityhall.nyc.gov)>  
**Subject:** Re: OCA Memo Seeking Comments on Proposed Increase in Expert and Investigator Rates (Social Workers)

To Whom It May Concern,

I welcome this proposed increase for much needed services provided to families and individuals. As professionals we provide valuable expertise and should be compensated fairly. There has not been an increase in over 20 years. I believe an increase is well overdue. I appreciate the time and effort put forward to recognize professionals that provide these services to the Courts.

Sincerely,  
Pamela Thomas, LCSW  
Forensic Social Worker

Sent from my iPhone

Sent from my iPhone

On Aug 10, 2017, at 10:54 AM, Difiore, Barbara <[BDifiore@cityhall.nyc.gov](mailto:BDifiore@cityhall.nyc.gov)> wrote:

The Office of Court Administration is seeking comments on a proposed increase in the rate paid to social workers assigned pursuant to Section 722(c) of the County Law.

If you would like to submit comments, please see attached memo.

Barbara

<OCA Memo Seeking Comments on Rate Increase for Experts August 2017.pdf>

**EDWARD W. GOEHLER**

*Attorney at Law*  
11 Groton Avenue  
Cortland, N.Y. 13045  
607.758.8080

\*\*\* service by fax not accepted\*\*\*  
fax no.: (607) 793-9469

August 10, 2017  
Via EMAIL/Facsimile

John W. McConnell, Esq.  
Office of Court Administration  
25 Beaver St.; 11<sup>th</sup> Floor  
New York, N.Y. 10004

Re: 722 increases for experts.

Dear Mr. McConnell:

Kindly consider this as my comment per the request for public comment on the proposed increase for rates of compensation for court appointed experts per County Law §722-c. I've been a practicing attorney for about 30 years, in criminal and family law practice, and have been the County Public Defender at times. I presently handle both retained cases and assigned cases per the assigned counsel system in 3 different counties.

While I do not necessarily oppose in principle the listed experts receiving an increase in pay for their work, I am appalled that there is no proposal, and indeed seems to be not even any discussion, from OCA relative to increasing assigned counsel rates.

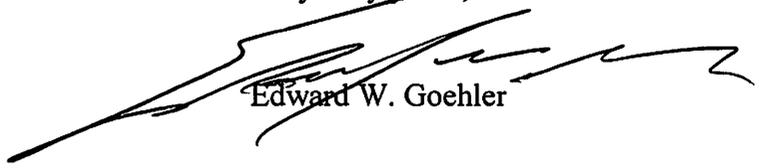
Why is there no proposal to increase the rate of pay for assigned counsel from your office? The rates have not been raised for longer than I can remember. Judges have received increases during that time of course, and now experts, but nothing in the works for the assigned counsel attorneys who carry the burden of helping indigent criminal defendants and family court litigants navigate the court system? The present 18B rates don't even cover the overhead of running a law office.

Until your office supports and advances a proposal for an increase in assigned counsel rates for 18B attorneys I don't see why your office should be advocating for any other entities' increase in pay rates. Experts AND 18B attorneys should be receiving an increase in pay rates.

It truly seems like OCA has no interest at all in promoting a long overdue increase in the rate of pay for 18B attorneys. I've seen OCA vigorously advocate for Judge raises, but nothing for the people in the trenches doing the work.

The dishwasher repairman from Lowes receives a higher hourly rate than the \$60/\$75 hour New York pays for misdemeanor/felony representation. Please advise if there is any plan or proposal coming from your office to raise pay rates for 18B attorneys. Thank you for your time.

Very truly yours,

  
Edward W. Goehler

[REDACTED]

---

**From:** Ziv Cohen <zec@principiumpsychiatry.com>  
**Sent:** Thursday, August 10, 2017 7:11 PM  
**To:** rulecomments  
**Subject:** FW: OCA Memo Seeking Comments on Proposed Rate Increase in Expert and Investigator Rates (Psychiatrists)  
**Attachments:** OCA Memo Seeking Comments on Rate Increase for Experts August 2017.pdf  
**Importance:** High

[REDACTED] [REDACTED]

Dear Sir,

I strongly support the proposed rate increase for psychiatrists, and making the psychiatrist rate the same as other MD physicians.

Thank you kindly,

Ziv E. Cohen, M.D., F.A.P.A., PLLC  
Clinical Assistant Professor of Psychiatry  
Weill Cornell Medical College

200 W 57th St, Suite 304  
NY, NY 10019  
Tel 212-335-0236

[www.principiumpsychiatry.com](http://www.principiumpsychiatry.com)  
[www.manhattantms.com](http://www.manhattantms.com)

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---

**From:** Difiore, Barbara [<mailto:BDifiore@cityhall.nyc.gov>]  
**Sent:** Thursday, August 10, 2017 11:14 AM  
**To:** Difiore, Barbara <[BDifiore@cityhall.nyc.gov](mailto:BDifiore@cityhall.nyc.gov)>  
**Cc:** Asaro, Maria <[MAAsaro@cityhall.nyc.gov](mailto:MAAsaro@cityhall.nyc.gov)>  
**Subject:** OCA Memo Seeking Comments on Proposed Rate Increase in Expert and Investigator Rates (Psychiatrists)  
**Importance:** High

The Office of Court Administration is seeking comments on a proposed increase in the rate paid to psychiatrists assigned pursuant to Section 722(c) of the County Law.

If you would like to submit comments, please see attached memo.

Barbara

[REDACTED]

---

**From:** Edward Tucker <socialworkforensics@yahoo.com>  
**Sent:** Friday, August 11, 2017 12:05 PM  
**To:** rulecomments  
**Cc:** Nancy Matles; Nancy Matles  
**Subject:** Proposed rate increase for Social Workers

[REDACTED] [REDACTED]

Dear Mr. McConnell, Esq.,

I am a Licensed Clinical Social Worker that has been on the Court-Appointed Mental Health Experts panel for over 20 years. Although I feel that the proposed hourly rate increase for Social Workers from \$45 to \$75 is certainly a step in the right direction, I do not feel that this "gesture" is truly acknowledging the contributions that our profession is actually providing in the resolution of the issues presented by the court cases that we service.

In order for a Social Worker to qualify to be on the panel, one must possess an MSW (Masters of Social Work) degree, as well as a state license (LCSW - Licensed Clinical Social Worker). The state license must be renewed every three years. This involves earning 40 CEUs (Continuing Education Units), which entails participating in 40 hours of costly class instruction, related to the state of the art aspects of our profession. These courses must be approved by the New York State licensing board.

The services that Social Workers provide to the court are multi-dimensional. The reason that these cases are referred for the purpose of the comprehensive Social Work intervention reflects their extraordinary magnitudes. That is, the complex nature of the litigant and issues involved, as well as the range of questions posed by the court, which necessitate lengthy clinical interviews, mental status evaluations, field home visits, ongoing negotiations both verbally, in person and in writing with multiple community agencies and collaterals, record reviews, internet research, preparation of correspondence, the production of comprehensive written reports and, when required, court appearances to testify.

The services provided by the court appointed Social Workers thus include, and even surpass, those of both the panel Psychologists and Licensed Investigators. In addition to the above, court appointed Social Workers on the mental health panel routinely must provide comprehensive observation and evaluation/assessment, as well as ongoing case management, often to assist the clients with navigating the Judicial system. We routinely work hand in hand with the referring attorneys for months at a time in resolving the various tangential aspects that surface with these cases on behalf of the clients being represented. These "partnerships" in managing these troublesome cases are always well appreciated by the attorneys because a proper disposition on the matters presented can then be facilitated.

This reasoning partially justified the similar action that is being taken with the proposal to now reimburse Psychiatrists at a rate identical to that of Physicians. Consequently, it is felt that the proposed hourly rates of compensation for Social Workers be equal to those of the Psychologists (\$150). At the least, one might wish to compare the rate offered to Social Workers on the Nassau County Bar Association Assigned Counsel Defender Plan (ACDP) panel. For over 10 years, the

ACDP has had an hourly compensation rate for services rendered by their panel Social Workers of \$100.

Thanking you in advance for your kind attention and fair consideration to this request. I look forward to hearing from you with respect to this matter at your earliest convenience.

Respectfully submitted,

Edward J. Tucker, LCSW  
Forensic Social Worker

[REDACTED]

---

**From:** MR CITYPI <discoveryinvestigations@yahoo.com>  
**Sent:** Friday, August 11, 2017 6:53 PM  
**To:** rulecomments; MR CITYPI  
**Subject:** Memorandum Dated August 8th, 2017: Proposed Increase to Court Appointed Experts.

[REDACTED] [REDACTED]

Let me introduce myself. My name is Ness Matos, President, Discovery Investigations Inc. Expert Investigator with City Counsel Plan (18B).

I am a retired New York City investigator with 25 years of service, army veteran, bilingual and hold a BS degree in Criminal Justice. I have had the opportunity to work on high profiles court cases.

My investigatory business has not reached its full capacity because my employees (retired police officers) were unable to take assignments that pays below the cost of living standards in the City of New York.

Hearing this good news of the proposed increases to court-appointed experts (investigators) bring hope and satisfaction to continue serving the Unified Court System, attorneys, judges, families, individuals and others in the circle for qualified and experienced investigators to all.

I personally want to thank all involved in this proposed increase to court-appointed experts.

With great thanks,

Ness.

[REDACTED]

---

**From:** latatche@aol.com  
**Sent:** Sunday, August 13, 2017 6:33 PM  
**To:** rulecomments  
**Subject:** Rate increase for Social Workers

[REDACTED] [REDACTED]

Good day,

I Latatche Farley, LCSW am a duly Licensed clinical Social worker with over 15 years of experience in the state of New York. I commend the board for submitting a rate increase/ adjustment based on the cost of living adjustment. This rate increase will provide the opportunity for Licensed social workers to have a rate increase , but Im unsure if we have equable pay to the other professions doing similar work. As a LCSW, I have clinical experience in the area of children and families and specialized experience to qualify me for the 18B panel. Im wondering if the board will reconsider amending the rate of LCSW to be of similar and/or equal to that of a licensed psychologist based on education level. Once again, Thank you and I appreciate the hard work and effort to increase the rate for qualified professionals.

*Latatche Farley*

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# BROOKDALE

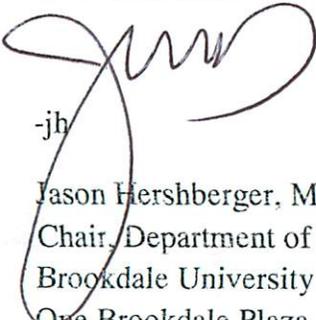
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*The Leader of Healthcare in East Brooklyn*

August 10, 2017

John W. McConnell, Esq. Counsel  
Office of Court Administration  
25 Beaver Street- 11<sup>th</sup> Floor  
New York, New York 10004

I support the rate increase and parity between psychiatrist and physician. (Both are physicians, so I wonder why we should even keep a distinction.).

All of the cases I have worked have required a rate adjustment to 250 by the presiding judge. The current rates serve merely to slow down the process of retaining psychiatric experts and is in need of reform.



-jh

Jason Hershberger, M.D.  
Chair, Department of Psychiatry  
Brookdale University Hospital and Medical Center  
One Brookdale Plaza  
1200-K, 12<sup>th</sup> FL CHC  
Brooklyn, NY 11212

EDWARD J. TUCKER, LCSW  
 LICENSED CLINICAL SOCIAL WORKER  
 socialworkforensics@yahoo.com  
 (201) 599-1049

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*EDWARD J. TUCKER, LCSW*  
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[socialworkforensics@yahoo.com](mailto:socialworkforensics@yahoo.com)

Mr. John W. McConnell, Esq.  
Counsel  
Office of Court Administration  
25 Beaver Street – 11<sup>th</sup> floor  
New York, NY 10004

August 11, 2017

Matter of:

**PROPOSED RATE INCREASE FOR PANEL SOCIAL WORKERS**

Dear Mr. McConnell, Esq.,

I am a Licensed Clinical Social Worker that has been on the Court-Appointed Mental Health Experts panel for over 20 years. Although I feel that the proposed hourly rate increase for Social Workers from \$45 to \$75 is certainly a step in the right direction, I do not feel that this "gesture" is truly acknowledging the contributions that our profession is actually providing in the resolution of the issues presented by the court cases that we service.

In order for a Social Worker to qualify to be on the panel, one must possess an MSW (Masters of Social Work) degree, as well as a state license (LCSW - Licensed Clinical Social Worker). The state license must be renewed every three years. This involves earning 40 CEUs (Continuing Education Units), which entails participating in 40 hours of costly class instruction, related to the state of the art aspects of our profession. These courses must be approved by the New York State licensing board.

The services that Social Workers provide to the court are multi-dimensional. The reason that these cases are referred for the purpose of the comprehensive Social Work intervention reflects their extraordinary magnitudes. That is, the complex nature of the litigant and issues involved, as well as the range of questions posed by the court, which necessitate lengthy clinical interviews, mental status evaluations, field home visits, ongoing negotiations both verbally,

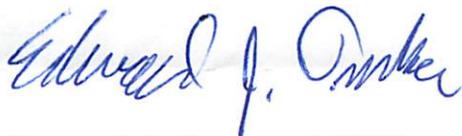
in person and in writing with multiple community agencies and collaterals, record reviews, internet research, preparation of correspondence, the production of comprehensive written reports and, when required, court appearances to testify.

The services provided by the court appointed Social Workers thus include, and even surpass, those of both the panel Psychologists and Licensed Investigators. In addition to the above, court appointed Social Workers on the mental health panel routinely must provide comprehensive observation and evaluation/assessment, as well as ongoing case management, often to assist the clients with navigating the Judicial system. We routinely work hand in hand with the referring attorneys for months at a time in resolving the various tangential aspects that surface with these cases on behalf of the clients being represented. These "partnerships" in managing these troublesome cases are always well appreciated by the attorneys because a proper disposition on the matters presented can then be facilitated.

This reasoning partially justified the similar action that is being taken with the proposal to now reimburse Psychiatrists at a rate identical to that of Physicians. Consequently, it is felt that the proposed hourly rates of compensation for Social Workers be equal to those of the Psychologists (\$150). At the least, one might wish to compare the rate offered to Social Workers on the Nassau County Bar Association Assigned Counsel Defender Plan (ACDP) panel. For over 10 years, the ACDP has had an hourly compensation rate for services rendered by their panel Social Workers of \$100.

Thanking you in advance for your kind attention and fair consideration to this request. I look forward to hearing from you with respect to this matter at your earliest convenience.

Respectfully submitted,

A handwritten signature in blue ink that reads "Edward J. Tucker". The signature is written in a cursive style with a large, stylized initial "E".

Edward J. Tucker, LCSW  
Forensic Social Worker

## Access Diversified Investigations, Inc.



- NYS Licensed For Private Investigations
- Tel# 845-445-0319
  - Tel# 845-627-2811
  - Fax# 845-738-8052

Executive Plaza,  
20 Old Nyack Tpk., Suite 100  
Nanuet, NY, 10954  
Email: [peye4hire@gmail.com](mailto:peye4hire@gmail.com)  
[accessofficemail@gmail.com](mailto:accessofficemail@gmail.com)

Atten: John W. McConnell, Esq., Counsel,  
Office of Court Administration,  
25 Beaver Street, 11<sup>th</sup> Fl.  
New York, NY 10004

Aug. 16, 2017

Dear Sir,

I am in full agreement to a proposed increase for investigators, not less than the projected compensation fee of your memorandum. The current rates are not only outdated but impede the the overall administration of due diligence and practical application of the investigative process to the defending attorneys' both in criminal and family matters.

At a glance, investigators are subject to many challenging quest, inclusive of imminent danger; physically, civilly and criminally. They frequent neighborhoods at night that many persons will not enter in the broad of daylight. Even police detectives do not enter these areas without a partner. Queries to prosecution witnesses run a thin line between potential tampering accusations resulting fabricated comment to a prosecutor by his or her witness. Constant reentry in some neighborhoods in follow up to prior obtained information, now inconsistent with other subsequently verified information, can create environmental hostility and confrontation.

Due diligence is challenged in that often times at the given rates one finds oneself seeking the shortest means of accomplishing a goal in the quickest amount of time to balance overhead and the like in their business operation. Consequently there is less discourse between attorneys and investigators, timely completion of investigation orders, vouchers and discovery information both old and current. Thus investigators elevating in their practice and soliciting support personnel are unable to stabilize and retain said support, which is often an integral component of a credible work product to the defense of the accused party and his or her counsel.

Conclusively, many investigators endure all of the above and more with almost uncanny application. This requires, experience, integrity, guts and education. The currents rates, provide questionable incentive and marginalizes a truly incredible justice system. A respectable increase is long overdue.

Sincerely,

Monroe Romell Anderson, Pres.  
Access Diversified Investigations, Inc.

*ELLEN HERSKOWITZ, LCSW*  
*Social Work consultant*

*1385 York Avenue #7J  
New York, New York 19921  
Tel# (212)737-1347  
eherskowit@aol.com*

*September 15,2017*

*John W. McConnell, Esq. Counsel  
Office of Court Administration  
25 Beaver Street-11<sup>th</sup> Floor  
New York, New York 10004*

Dear Mr. McConnell,

*It was great news to hear that the experts would be benefitted by an increase in compensation that we so long deserved. It's about time that the many myriad of activities that we encounter day to day with the many different clientele we engage and serve and the continuous attempts to assist and resolve them in and out of court gets recognized and appreciated.*

*I have been working as a licensed clinical social worker for 26 years and 20 of those here in New York. I love the work I have been educated and trained to do and have remained well respected as an expert by all the courts that I have appeared in throughout the boroughs. I am well experienced in many fields of social work, special needs, mental health and education. I continue to remain open to educate those professionals that ask for information related to their clients. Since I am a lone practitioner I am limited to the amount of cases I can appropriately handle although I am always giving unexpected referrals to all attorneys who call me with questions.*

*Thank you for supporting this crucial increase that has been so needed and appreciated in our field of work and assistance we give to the attorneys, ACS, Agencies and of course our clientele, the most important.*

*Sincerely,  
Ellen Herskowitz*

# MAKING IT WORK

## *Custody and Visitation*

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September 5, 2017

John W. McConnell, Esq  
Counsel, Office of Court Administration  
25 Beaver Street  
New York, N.Y. 10004

Dear Mr. McConnell:

Re: Requests for Public Comment on Proposed Increase in the Hourly Rates of Compensation of Court Appointed Experts Pursuant to Judiciary Law 35 and County Law 722c.

Reasons to support a change in payment to psychologists providing forensic services, be it supervised or therapeutic supervised visitation, or custody evaluations.

A. **SUPERVISED AND THERAPEUTICALLY SUPERVISED VISITATION**

The assumption is that the psychologist is doing more than just observing and monitoring for safety. Instead she or he is acting as a highly trained mental health professional who can, and does intervene in whenever needed, in various ways, to ensure the maximum beneficial outcome for all concerned.

1. **Rate of Reimbursement is Lower than for Traditional Therapy.**

Right now the rate is \$90 **per hour**, which hasn't changed since 1992.

Today insurance companies do not reimburse by the hour, but by 45 minute segments. Since a psychologist could earn **at least** \$90 dollars from insurance companies for 45 minutes of work, why would one want to accept less, especially considering the work is more difficult than traditional therapy. Also, to be discussed later in detail, complicated billing which is not reimbursed means the provider is actually receiving less than the \$90 per hour rate.

---

***MIW Staff:***

<b>Paul Marcus, Ph.D.</b>	<b>Tel/Fax:</b>	<b>(516) 487-7454</b>
<b>Irene Wineman Marcus</b>	<b>Tel:</b>	<b>(516) 487-7454</b>
<b>Felice Schulman-Marcus, Ph.D., LCSW-R</b>	<b>Tel:</b>	<b>(516) 292-0976</b>
<b>Randolph Marcus, DSW, LCSW-R</b>	<b>Tel:</b>	<b>(516) 292-0976</b>
	<b>Fax:</b>	<b>(516) 833-6021</b>

***Locations:***

<b>115 Wooleys Lane, Great Neck, N.Y. 11023</b>	1
<b>749 Durham Rd., East Meadow, N.Y. 11554</b>	
<b>114-06 Queens Blvd., Suite A-9, Forest Hills, N.Y., 11375</b>	

## 2. Costs Related to Providing Services have Increased

The expenses related to delivering services have increased significantly over the last twenty-five years (e.g., rent, malpractice, supplies, licensing, electricity, heating), while reimbursement has remained the same.

## 3. Harder work when compared to Traditional Psychotherapy

The nature of the work (supervised and therapeutic supervised visitation) requires considerable skill and is harder than traditional psychotherapy in multiple respects.

### Comparisons between Traditional therapy vs. Supervised and Therapeutic Supervised Visitation (in bold print)

- usually one client, or family, wants to come for visits. They seek out therapy and choose the therapist.

**Typically, one parent is resistant to coming to visits and tries to avoid or sabotage the process. Frequently the child(ren) do not want to come either. Visits are mandated by a court, not voluntary, and the client has no say in the supervisor or supervisory process.**

**As a result, there is typically a good deal of anxiety, psychic pain, hostility and resistant behavior from parents and children that needs to be skillfully handled/managed. The supervisor must be experienced enough to deal with these difficult emotions and ideally create a positive interaction between children and the parent they are seeing within a very limited time frame and under conditions that are often far from optimal (e.g., Orders of Protection lead to increased tension).**

- there is little to no overt hostility towards the therapist or therapeutic process

**One, or both parents are often openly hostile towards the process, and sometimes towards the supervisor as a authority in charge of the process.**

- many visits are granted by the insurance company, so there is time to develop rapport and trust with clients, and it is generally easy to have additional visits approved by insurers.

**The supervisor must be skillful enough to quickly develop rapport and some trust with parents and children who are often anxious, hostile, resistant, etc.**

**Court orders only grant a few hours for intake and observation/intervention, usually no more than six, plus time for coordination and report writing. The supervisor has to be able to effectively handle the diverse emotions and personalities**

of the parents and children in a significantly limited time frame towards the goal of producing helpful results for the families and the court system.

It is also often difficult to obtain supplemental court orders and there can be long gaps between the end of one court order and receipt of a supplemental order. Since it can take weeks to obtain a supplemental order, or because the next court date is delayed, there can be a lengthy gap in services. This negatively impacts progress made in repairing disrupted parent-child relationships.

#### 4. More Complicated Administrative Tasks

- scheduling therapy sessions is fairly easy, as is obtaining compliance from the clients with whatever schedule is agreed to. Clients and the therapist speak the same language.

**Scheduling is difficult. Parents don't call or respond to calls in a timely manner. Their phones may not be working or take messages. They may have language limitations. Considerable time has to be spent repeatedly calling one or both parties and trying to come up with a mutually agreeable time to meet. Visits often have to be changed, frequently at the last minute, because a parent must go to work, a child or parent becomes ill, etc. Many clients fail to show up, necessitating adjustments, dealing with the angry parent who is present and disappointed children. Lawyers and law guardians have to be contacted to gain their assistance in scheduling and holding visits.**

**Clients sometimes don't speak English, so a translator has to be found and coordinated with while conducting visits.**

**Visits have to be scheduled/held in a way that takes into account Orders of Protection (very common) or to otherwise prevent problems between parents who are hostile towards each other. Parents may have to be separated in the waiting area; exchanges of children may have to be outside the building.**

**To meet the needs of clients who have young or school age children, or who work weekdays, visitation options on weekends are crucial. This means supervisors have to work on Saturday and/or Sunday.**

**Time needs to be devoted to following up (calls, emails) with law guardians after clients go to court as often MIW does not receive timely feedback on the new status of a case.**

**Almost two hours of time must be allotted for every case to deal with administrative issues and report writing. This is in addition to the hour or so needed for billing, to be discussed next.**

- billing is easy, because there is one insurer or the client pays. A medical biller can be used if the therapist doesn't want to do the billing, and payment is reasonably timely.

**Billing is increasingly difficult. There are two different systems for billing, the County and the Judiciary. Each has its own requirements, which are lengthy. The amount of administrative time needed for any case related to coordination, report writing and billing almost always takes three hours or more. Billing itself takes about one hour in total for every case. This includes billing the County and Judiciary, plus time for setting up and maintaining systems to record and monitor what gets paid, and when, in addition to dealing with problems related to payment.**

**The billing process is so complicated that it cannot easily be turned over to a medical biller.**

**It can take months to receive payment.**

**Time spent related to billing is not reimbursed in court orders. Consequently, it means at least one hour of reimbursed time is lost for every case. That is, if one is paid \$900 for a case (10 hours), you are really receiving \$810 because you had one unpaid hour. This means the provider is being paid \$81 an hour, not \$90.**

**MIW billed over 200 times in 2016. That is more than 200 hours of work. Divide that by a 40 hour work week, and it comes to over five weeks of time devoted to billing, which again, is not paid for. That is a totally unfair expectation to place on providers.**

- there is little, to no report writing, or the need to regularly coordinate with other systems (e.g., legal, ACS), nor is there a need to make recommendations to a court about what should occur with a family.

**Reports are needed by the court related to every case, with recommendations expected. Limited time is reimbursed for report writing, so the key is to write them in a way that will be useful, but doesn't take too long. Reports must be faxed to the court, and sent to a law guardian if one is appointed. Reports are subject to attack by lawyers, so they have to be carefully crafted with an understanding of how the legal system works and what are reasonable recommendations in light of the resources available through the courts and other agencies. The provider must also coordinate with the law guardian and deal with representatives from other involved at times, e.g., ACS.**

- the therapist is almost never called to court.

**The supervisor/therapist must be willing, and able to go to court and testify. Most therapists are not experienced in doing this, nor do they want to testify and be grilled by lawyers.**

## B. FORENSIC CUSTODY EVALUATIONS

Most of the above factors already discussed also pertain to child custody evaluations

- Reimbursement rates being lower than insurance cases
- Scheduling Problems
- Limited Hours for the Evaluation
- Complicated Administrative Tasks
- Difficult Billing Process

However, there are also unique factors as a much lengthier report is required and the recommendations have to do with child custody decisions, not unsupervised access. This involves evaluating “both” parents and taking into account a wide variety of factors to make fair and useful recommendations to the court. The psychologist must be able to integrate all of his or her findings into a comprehensive report that will stand up to critique by lawyers for the respective parents, the law guardian, and ultimately the court – no small task. Finally, the psychologist must have the skills, and willingness, to go to court to defend the report if requested. This can involve hours of testimony and handing questions from lawyers who may want to discredit the report - a stressful process.

In summary, doing therapeutic supervised visitation, supervised visitation, and child custody evaluations, is difficult, complicated work. The therapist must have excellent skills in assessment, rapport building, intervention and facilitation, report writing and overall dealing with a host of complex scheduling and interpersonal difficulties within a limited time frame. There are also burdensome administrative tasks related to coordination, scheduling, and billing.

If all of this doesn't support increasing the rate of compensation, I don't know what does.

Respectfully,

Paul Marcus, Ph.D. (Licensed Psychologist)

Director, Making It Work –

September 5, 2017

John W. McConnell, Esq  
Counsel, Office of Court Administration  
25 Beaver Street  
New York, N.Y. 10004

Dear Mr. McConnell:

Re: Requests for Public Comment on Proposed Increase in the Hourly Rates of Compensation of Court Appointed Experts Pursuant to Judiciary Law 35 and County Law 722c.

Reasons to support a change in payment to psychologists providing forensic services, be it supervised or therapeutic supervised visitation, or custody evaluations.

A. **SUPERVISED AND THERAPEUTICALLY SUPERVISED VISITATION**

The assumption is that the psychologist is doing more than just observing and monitoring for safety. Instead she or he is acting as a highly trained mental health professional who can, and does intervene in whenever needed, in various ways, to ensure the maximum beneficial outcome for all concerned.

1. **Rate of Reimbursement is Lower than for Traditional Therapy.**

Right now the rate is \$90 **per hour**, which hasn't changed since 1992.

Today insurance companies do not reimburse by the hour, but by 45 minute segments. Since a psychologist could earn **at least** \$90 dollars from insurance companies for 45 minutes of work, why would one want to accept less, especially considering the work is more difficult than traditional therapy. Also, to be discussed later in detail, complicated billing which is not reimbursed means the provider is actually receiving less than the \$90 per hour rate.

## 2. Costs Related to Providing Services have Increased

The expenses related to delivering services have increased significantly over the last twenty-five years (e.g., rent, malpractice, supplies, licensing, electricity, heating), while reimbursement has remained the same.

## 3. Harder work when compared to Traditional Psychotherapy

The nature of the work (supervised and therapeutic supervised visitation) requires considerable skill and is harder than traditional psychotherapy in multiple respects.

### Comparisons between Traditional therapy vs. Supervised and Therapeutic Supervised Visitation (in bold print)

- usually one client, or family, wants to come for visits. They seek out therapy and choose the therapist.

**Typically, one parent is resistant to coming to visits and tries to avoid or sabotage the process. Frequently the child(ren) do not want to come either. Visits are mandated by a court, not voluntary, and the client has no say in the supervisor or supervisory process.**

**As a result, there is typically a good deal of anxiety, psychic pain, hostility and resistant behavior from parents and children that needs to be skillfully handled/managed. The supervisor must be experienced enough to deal with these difficult emotions and ideally create a positive interaction between children and the parent they are seeing within a very limited time frame and under conditions that are often far from optimal (e.g., Orders of Protection lead to increased tension).**

- there is little to no overt hostility towards the therapist or therapeutic process

**One, or both parents are often openly hostile towards the process, and sometimes towards the supervisor as a authority in charge of the process.**

- many visits are granted by the insurance company, so there is time to develop rapport and trust with clients, and it is generally easy to have additional visits approved by insurers.

**The supervisor must be skillful enough to quickly develop rapport and some trust with parents and children who are often anxious, hostile, resistant, etc.**

**Court orders only grant a few hours for intake and observation/intervention, usually no more than six, plus time for coordination and report writing. The supervisor has to be able to effectively handle the diverse emotions and personalities**

of the parents and children in a significantly limited time frame towards the goal of producing helpful results for the families and the court system.

It is also often difficult to obtain supplemental court orders and there can be long gaps between the end of one court order and receipt of a supplemental order. Since it can take weeks to obtain a supplemental order, or because the next court date is delayed, there can be a lengthy gap in services. This negatively impacts progress made in repairing disrupted parent-child relationships.

#### 4. More Complicated Administrative Tasks

- scheduling therapy sessions is fairly easy, as is obtaining compliance from the clients with whatever schedule is agreed to. Clients and the therapist speak the same language.

**Scheduling is difficult. Parents don't call or respond to calls in a timely manner. Their phones may not be working or take messages. They may have language limitations. Considerable time has to be spent repeatedly calling one or both parties and trying to come up with a mutually agreeable time to meet. Visits often have to be changed, frequently at the last minute, because a parent must go to work, a child or parent becomes ill, etc. Many clients fail to show up, necessitating adjustments, dealing with the angry parent who is present and disappointed children. Lawyers and law guardians have to be contacted to gain their assistance in scheduling and holding visits.**

**Clients sometimes don't speak English, so a translator has to be found and coordinated with while conducting visits.**

**Visits have to be scheduled/held in a way that takes into account Orders of Protection (very common) or to otherwise prevent problems between parents who are hostile towards each other. Parents may have to be separated in the waiting area; exchanges of children may have to be outside the building.**

**To meet the needs of clients who have young or school age children, or who work weekdays, visitation options on weekends are crucial. This means supervisors have to work on Saturday and/or Sunday.**

**Time needs to be devoted to following up (calls, emails) with law guardians after clients go to court as often MIW does not receive timely feedback on the new status of a case.**

**Almost two hours of time must be allotted for every case to deal with administrative issues and report writing. This is in addition to the hour or so needed for billing, to be discussed next.**

- billing is easy, because there is one insurer or the client pays. A medical biller can be used if the therapist doesn't want to do the billing, and payment is reasonably timely.

**Billing is increasingly difficult. There are two different systems for billing, the County and the Judiciary. Each has its own requirements, which are lengthy. The amount of administrative time needed for any case related to coordination, report writing and billing almost always takes three hours or more. Billing itself takes about one hour in total for every case. This includes billing the County and Judiciary, plus time for setting up and maintaining systems to record and monitor what gets paid, and when, in addition to dealing with problems related to payment.**

**The billing process is so complicated that it cannot easily be turned over to a medical biller.**

**It can take months to receive payment.**

**Time spent related to billing is not reimbursed in court orders. Consequently, it means at least one hour of reimbursed time is lost for every case. That is, if one is paid \$900 for a case (10 hours), you are really receiving \$810 because you had one unpaid hour. This means the provider is being paid \$81 an hour, not \$90.**

**MIW billed over 200 times in 2016. That is more than 200 hours of work. Divide that by a 40 hour work week, and it comes to over five weeks of time devoted to billing, which again, is not paid for. That is a totally unfair expectation to place on providers.**

- there is little, to no report writing, or the need to regularly coordinate with other systems (e.g., legal, ACS), nor is there a need to make recommendations to a court about what should occur with a family.

**Reports are needed by the court related to every case, with recommendations expected. Limited time is reimbursed for report writing, so the key is to write them in a way that will be useful, but doesn't take too long. Reports must be faxed to the court, and sent to a law guardian if one is appointed. Reports are subject to attack by lawyers, so they have to be carefully crafted with an understanding of how the legal system works and what are reasonable recommendations in light of the resources available through the courts and other agencies. The provider must also coordinate with the law guardian and deal with representatives from other involved at times, e.g., ACS.**

- the therapist is almost never called to court.

**The supervisor/therapist must be willing, and able to go to court and testify. Most therapists are not experienced in doing this, nor do they want to testify and be grilled by lawyers.**

## **B. FORENSIC CUSTODY EVALUATIONS**

Most of the above factors already discussed also pertain to child custody evaluations

- Reimbursement rates being lower than insurance cases
- Scheduling Problems
- Limited Hours for the Evaluation
- Complicated Administrative Tasks
- Difficult Billing Process

However, there are also unique factors as a much lengthier report is required and the recommendations have to do with child custody decisions, not unsupervised access. This involves evaluating “both” parents and taking into account a wide variety of factors to make fair and useful recommendations to the court. The psychologist must be able to integrate all of his or her findings into a comprehensive report that will stand up to critique by lawyers for the respective parents, the law guardian, and ultimately the court – no small task. Finally, the psychologist must have the skills, and willingness, to go to court to defend the report if requested. This can involve hours of testimony and handing questions from lawyers who may want to discredit the report - a stressful process.

In summary, doing therapeutic supervised visitation, supervised visitation, and child custody evaluations, is difficult, complicated work. The therapist must have excellent skills in assessment, rapport building, intervention and facilitation, report writing and overall dealing with a host of complex scheduling and interpersonal difficulties within a limited time frame. There are also burdensome administrative tasks related to coordination, scheduling, and billing.

If all of this doesn't support increasing the rate of compensation, I don't know what does.

Respectfully,

Paul Marcus, Ph.D. (Licensed Psychologist)

Director, Making It Work –

ANDREW P. LEVIN, MD  
ADULT AND FORENSIC PSYCHIATRY  
280 NORTH CENTRAL AVE SUITE 309  
HARTSDALE, NY 10530-1839  
TELEPHONE (914) 250-4450 EXT. 103  
FAX (914) 214-5486  
APLEVIN2@CS.COM

August 29, 2017

John W. McConnell, Esq. Counsel  
Office of Court Administration  
25 Beaver Street – 11<sup>th</sup> Floor  
New York, New York 10004

**Re: Rate Increase Proposal**

Dear Mr. McConnell:

As a Board Certified forensic psychiatrist working in the NY Metro region for 25 years, I find the proposed increase in the fees under Judiciary Law 35 and County Law 722-c most welcome. The prior fee of \$125/hr. precluded my participation in these cases. Although the fee of \$250 hr. is still well below the usual rates for forensic psychiatric consultation, it will enable me (and likely others) to undertake these cases on an occasional basis. The rate increase also rectifies the prior discrimination against psychiatry as against other medical specialties. This reflected longstanding prejudice and a lack of understanding by the courts as to the extent of psychiatric training and expertise.

Please contact me if you have further questions regarding my response to the proposed change.

Respectfully,



Andrew P. Levin, MD  
Diplomate, Psychiatry and Forensic Psychiatry  
American Board of Psychiatry and Neurology

[REDACTED]

---

**From:** jcaseylcsw@yahoo.com  
**Sent:** Thursday, August 31, 2017 10:39 AM  
**To:** rulecomments  
**Subject:** Proposed Increase in the Hourly Rates of Compensation of Court Appointed Experts

[REDACTED]

[REDACTED]

As an 18-B panel licensed clinical social worker assigned to Queens County, I encourage the Administrative Board of Courts to strongly consider adapting the proposed rate of increase for social workers. The current rate of \$45.00 per hour is below market rate when compared to what insurance plans pay. Insurance plans generally pay \$40.00 (GHI) to \$60.00 (Blue Cross and Blue Shield) for a 30 to 40 minute session. A co-payment of \$10.00 to \$25.00 will be collected from the client for the same service. A consideration that I take into account when considering whether to take an assignment from the 18-B Panel is whether or not I will wind up turning away insurance clients when scheduling 18-B cases. An increase in the 18-B rates will remove this economic stigma associated with 18-B cases.

Respectfully submitted,

John F. Casey, LCSW-R  
347-583-0974

[REDACTED]

---

**From:** Andrew Levin <aplevin2@cs.com>  
**Sent:** Tuesday, August 29, 2017 9:48 AM  
**To:** rulecomments  
**Subject:** Rate increase  
**Attachments:** aplevin2.vcf

[REDACTED] [REDACTED]

Dear Sir:

As a Board Certified forensic psychiatrist working in the NY Metro region for 25 years, I find the proposed increase in the fees under Judiciary Law 35 and County Law 722-c most welcome. The prior fee of \$125/hr. precluded my participation in these cases. Although the fee of \$250 hr. is still well below the usual rates for forensic psychiatric consultation, it will enable me (and likely others) to undertake these cases on an occasional basis. The rate increase also rectifies the prior discrimination against psychiatry as against other medical specialties. This reflected longstanding prejudice and a lack of understanding by the courts as to the extent of psychiatric training and expertise.

Please contact me if you have further questions regarding my response to the proposed change.

Respectfully,

Andrew P. Levin, MD

--

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**BARBARA WINTER, LMSW**  
**101 EAST 16TH STREET 2J**  
**NEW YORK, NEW YORK 10003**  
**SOCIAL WORK CONSULTANT**  
Phone and Fax: 212-674-8491  
[b33winter@aol.com](mailto:b33winter@aol.com)

August 28, 2017

John W. McConnell, Esq., Counsel  
Office of Court Administration  
25 Beaver Street, 11<sup>th</sup> floor  
New York, N. Y. 10004

Dear Mr. McConnell:

I am a Licensed Master Social Worker who has been on the Mental Health Experts panel for more than 20 years. I am writing to comment on the Office of Court Administration's proposed rate increase for panel professionals, and specifically, social workers. Twenty-five years without an increase is a very long time, and I applaud OCA for addressing this issue and recommending increases. However, I do not think the proposed rate of \$75/hour for social workers is commensurate with the services we provide.

Social work services are very comprehensive and are often required throughout the length of the court case, which is, unfortunately, often measured in years. In addition to evaluations and interviews, social workers do extensive field work, including home visits, parent-child visit observations, as well as attend school, medical and agency appointments, conferences and meetings. In addition, we conduct research for services, make referrals, engage in phone advocacy, review records, write reports for the court, and attend, and sometimes testify at, court hearings.

As you see, the range of services is very broad and I believe the extensive field work, which is fairly common for social workers, provides a unique dimension to the court when it reviews all the data on a case.

I would also like to point out that this field work involves travel time and carfare for public transportation, which is not reimbursed. For most of my field visits I expend one - two hours of unpaid travel time, sometimes more; recently I traveled by subway and bus a total of 2 ½ hours to conduct a home visit. As noted above, a large part of my time is spent in the field, which means traveling. This should be given some consideration in determining the payment rate.

Currently, when I work on private cases, I am paid \$150 - \$200/hour. Therefore I believe that the hourly rate for social workers should, at minimum, be \$125/hour; I understand that Nassau County is already paying \$100/hour.

Thank you for your attention.

Sincerely yours,

Barbara Winter, LMSW

[REDACTED]

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**From:** AudioPaint <fpiazza@audiopaint.com>  
**Sent:** Friday, August 25, 2017 10:17 AM  
**To:** rulecomments  
**Subject:** 18b rate increases

[REDACTED] [REDACTED]

Dear Sir/Madame,

My name is Frank Piazza and I have been an expert member of the panel since approximately 2006. My company Audio Paint, Ltd provides forensic audio and video services. Our offices are located on the Upper West Side of Manhattan.

I do agree that increasing rates is long overdue. Thank you for finally addressing this matter.

The document I received via email speaks only of medical professionals and their increases. Please consider addressing forensic service providers as well.

In my case, I have been providing analysis and scientific requests for local attorneys seeking assistance with their audio and video evidence. Our work is well documented within the audio and video forensic community since 2000. Our clients include the US Attorneys Office, FBI, DOJ, Private Law Firms, State Agencies, Investigative Agencies and global clients as well. Additionally, we regularly provide services for local attorneys within all of Manhattan, Brooklyn, Queens and the Bronx. These attorneys engage us through the 18b panel.

It is worth noting that the existing rate-document (prepared in 1989) does not address our service category (Audio Forensics, Video Forensics). This should be updated. Also, judges default to a \$60.00 hourly rate when signing an order. This needs to change as well. Currently, when a Judge signs an order where I am named as the expert, I request a rate that is well above this default rate. This sometimes causes a problem and sometimes not. I'm happy to say, most times it is routinely approved.

My hourly rate for the private sector is \$350.00. My minimum fee is 4-hours. This rate considers my background, experience, education, maintaining a state-of-the-art editing facility, software, continuing education and renting office space in New York City.

In other States such as Florida, Connecticut and North Carolina, their fixed rate ranges between \$175.00-225.00 for forensic experts in my field. It is my opinion that New York City's 18b rates need to reflect the overall cost basis of doing business in Manhattan.

I would suggest two things to accommodate the panel:  
1. Increase the hourly rate for these services to \$225.00.  
2. Increase the CAP to \$2000.00.

By doing this you are recognizing and retaining excellent experts and also reducing the administrating time needed to address custom requests.

There is an audio and/or video component in roughly 75-90% of criminal cases. The importance of retaining competent experts capable of handling both audio and video evidence can't be expressed enough.

A fair, mutually agreed upon rate must be reached to properly compensate an expert for this important work.

Thank you for reading and considering my comments. I would certainly be available to discuss this further. Please do not hesitate to reach me at your convenience.

Sincerely,

Frank Piazza  
President, Audio Paint, Ltd  
Legal Audio Video  
212-873-8772

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[REDACTED]

---

**From:** Phyllis Weiner <phyllisdweiner@msn.com>  
**Sent:** Thursday, August 24, 2017 3:14 PM  
**To:** rulecomments  
**Subject:** Regarding increase in payments to Experts for the courts.

[REDACTED] [REDACTED]

I definitely think that the hourly rate should be increased at a minimum to \$250. per hour for physicians. The present \$200. per hour is below what other jurisdictions are paying for physician experts. Psychiatrists are physicians with MD degrees who further their post graduate training in the specialty area of psychiatry and should receive the same rate as other physicians. This does not include psychologists, social workers or therapists who have a completely different set of training and credentialing requirements.

\$250 is still well below the standard for physician experts who review court cases that involve medical malpractice where the minimum standard is \$350. per hour.

Phyllis Weiner MD

[REDACTED]

---

**From:** Heather Coyle <hcoyle.hc@gmail.com>  
**Sent:** Wednesday, August 23, 2017 10:42 AM  
**To:** rulecomments  
**Cc:** Heather Coyle  
**Subject:** Re increase in expert rates

[REDACTED] [REDACTED]

Good morning,

I am a DNA expert and private consultant since 2002. My rate has stayed at \$100.00 per hour for these many years since I frequently work for indigent defense services and it is an affordable rate for their budgets. Also, many private clients cannot afford the high rates for standard cases or after incarceration, for post conviction review, appeals, and for repeat trial after a mistrial. I have good caseloads so I would humbly request that my rate is appropriate for my client base. I believe that raising my rate will reduce my client base and not be in the best interest of the people. Thank you. Sincerely, Heather Coyle, PhD., Identacode Consulting LLC, tel. 914-438-8223

[REDACTED]

---

**From:** Jayne Roberman <jrforensic@optonline.net>  
**Sent:** Tuesday, August 22, 2017 6:59 PM  
**To:** rulecomments  
**Subject:** increase of hourly rates to compensate mental health professional experts

[REDACTED] [REDACTED]

Dear Mr. McConnell,

I am a social worker with 34 years post-masters experience in the field of forensic social work. I know first hand, how difficult it is to accept cases on court appointment at the rate of \$45/hour. This is lower than 1/4 of my hourly private rate. Since I became a private practitioner, working on custody, visitation, and child protective matters in Family and Supreme Courts in NYC, in 1993, the hourly rate for social workers has not changed.

It is a hardship for so many of us to take cases at this rate as our work and our skill base enables us to receive far more on private cases. Subsequently, there are many social workers who will not take them at all and, therefore, many underserved clients. I am fully committed to taking such cases as I believe it's important to help individuals who cannot afford to pay privately and to assist the Courts in these matters as well. However, I cannot take them on a regular basis.

I implore you and others making this decision to raise the rate to \$100-125/hour rather than \$75/hour to reflect a more reasonable representation of the going rates and the contribution excellent social workers make to the field.

Please feel free to let me know if I can be of further assistance in this matter.

Thank you very kindly,

Jayne Roberman

Jayne Roberman, LMSW  
Social Work Consultant  
20 Plaza Street East, Suite A14  
Brooklyn, NY 11238  
Ph: 646-247-8127  
Fax: 586-816-8127  
[jrforensic@optonline.net](mailto:jrforensic@optonline.net)  
[www.jayneroberman.com](http://www.jayneroberman.com)

[REDACTED]

---

**From:** Henry Gonzalez LCSW <henrycswph@aol.com>  
**Sent:** Tuesday, August 22, 2017 12:37 PM  
**To:** rulecomments  
**Subject:** proposed increase comment

[REDACTED]

[REDACTED]

I am in agreement

Thank You

Henry

Henry Gonzalez. LCSW  
303 5Th Avenue, Suite 1108  
New York, New York, 10016  
914-400-6379 Fax # 212-595-3445

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[REDACTED]

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**From:** George Schiro <gjschiro@cs.com>  
**Sent:** Tuesday, August 22, 2017 9:05 AM  
**To:** rulecomments  
**Subject:** Rate increases for OCA experts

[REDACTED] [REDACTED]

Dear Mr. McConnell:

I support the increase in rates for the categories presented; however, these rate increases do not address forensic science experts and crime scene investigation experts. I have been a listed forensic science/crime scene investigation expert for over eight years with the Assigned Counsel Plan (ACP). As such, I went through a vetting process (one of the better vetting processes I have seen). I have consulted on several cases through the ACP and have testified twice in New York as an expert. The current rates for forensic science/crime scene investigation experts are not competitive with other areas of the country. My hourly rate is currently \$250/hr.; however, I am willing to work within caps set by governmental administrative bodies. The current New York rates are well below other limits set by other agencies throughout the country. For example, Florida and Tennessee cap their expert rates at \$200/hr. This means that as an expert, I'm more likely to take a case from another jurisdiction before I take on a New York case. In order to be more competitive and have a pool of the best experts available, then New York should raise their rates for forensic science/crime scene investigation experts. This increase should be in line with the other categories presented in the memo. If you have any questions or need more information, feel free to contact me. Thank you for your time.

Sincerely,

George Schiro, MS, F-ABC  
Lab Director  
Scales Biological Laboratory, Inc.  
220 Woodgate Dr. S.  
Brandon, MS 39042 USA  
O. 601-825-3211  
C. 337-322-2724  
Fax: 601-825-1411  
E-mail: [Gjschiro@cs.com](mailto:Gjschiro@cs.com)  
Web: [www.forensicscienceresources.com](http://www.forensicscienceresources.com)

█

[REDACTED]

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**From:** TL Services <thomaslofrese@yahoo.com>  
**Sent:** Monday, August 21, 2017 12:00 PM  
**To:** rulecomments  
**Subject:** Increase in payment for investigative work.

[REDACTED] [REDACTED]

Social Security payment increases have been made over the years and expert rates for investigators remain the same. I feel an increase is logical. Thank you for allowing my input.

Thomas LoFrese, PI  
TL Services Investigations LLC

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[REDACTED]

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**From:** JAKE Z. <zajatrans@hotmail.com>  
**Sent:** Monday, August 21, 2017 10:57 AM  
**To:** rulecomments  
**Subject:** From Jakub Zaic, 18B interpreter

[REDACTED] [REDACTED]

Good Morning,

Yes, increases are really overdue. Question is, why interpreters were left out? It would be nice if we were also included.

Respectfully

Jakub Zaic

█

**Mark L. Taff, M.D.**  
 Forensic Pathologist  
 511 Hempstead Avenue  
 Suite 2  
 West Hempstead, New York 11552  
 Office Telephone: (516) 292-2300

August 16, 2017

John W. McConnell, Esq.  
 Counsel  
 Office of Court Administration  
 25 Beaver Street  
 11th Floor  
 New York, NY 10004

Re: Comments on Proposed Increase in Hourly  
 Rates of Compensation of  
 Court-Appointed Experts Pursuant to  
 Judiciary Law § 35 and County Law § 722-c

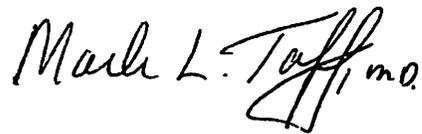
Dear Mr. McConnell:

1. As a board-certified forensic pathologist who has been on the 18-B panel of experts since 1992, I am delighted to know that The Administrative Board of the Courts is considering to raise the hourly rates for expert witness services from \$200.00 to \$250.00.
2. Although the 25% increase is generous, the problem lies is with the 5-hour statutory cap for the review and analysis of very complicated murders and assaults. During the past 5 years, I have probably handled more 18-B criminal cases than any other forensic pathologist expert in the City or State of New York. Based on my experience, it is almost impossible to properly evaluate a murder case in just 5 hours, especially when record files are hundreds or thousands of pages long. Moreover, there are many 18-B attorneys on the panel who have limited experience in handling murders, sex crimes, child abuse and assaults. I have needed many hours beyond the statutory cap in order to properly prepare attorneys for plea bargain negotiations and trials. In recent years, several lawyers have requested that I act as a courtroom advisor during the direct and cross-examination of forensic experts. In addition, I have helped many lawyers craft Q&As for both direct and cross-examinations. Such preparation has resulted in several favorable outcomes for defense attorneys and their clients. The additional work has resulted in several invoices ranging from a few thousand dollars up to as much as \$20,000.00. As long as affirmations explained the "extraordinary circumstances", most 18-B lawyers and judges were gracious enough to approve my invoices exceeding the statutory cap.
3. The Office of Court Administration should be aware that there are very few qualified board-certified forensic pathologists in the Greater Metropolitan Area available to act as defense experts. The majority of professionals with proper qualifications are between 35-50 years old and are currently employed as full-time medical examiners in New York City and surrounding suburban counties (e.g. Nassau, Suffolk, Westchester, Rockland, Orange). Moreover, the majority of the medical examiners did their post-graduate forensic pathology/medical examiner training at the Office of Chief Medical Examiner (OCME) of the City of New York. Because of these past ties, many suburban medical

examiners are reluctant to go against former colleagues and OCME where they did their post-graduate training.

4. In recent years, Michael Alperstein, Esq. Administrator, First Department, Assigned Counsel Plan, has asked me to recommend other forensic pathologists to join the 18-B panel. I made a few recommendations and, for reasons unknown, the experts turned down the offer or tried a few cases and subsequently withdrew. I do not know if their decision to quit was based on the low rate of compensation, unpleasant interactions with lawyers, types of cases, laziness, professional burnout, health reasons, uninterested, etc. Retired medical examiners receive pensions and health benefits from their government jobs and do not need extra money. Some experts no longer wish to participate in the criminal adversarial system.
5. Although it is a good idea to raise the hourly fees for experts, I don't think that the monetary enticement will draw the few experts living in or close to New York City to the 18-B panel. The majority of experts who might be interested are most likely over the age of 60, retired and in failing health.
6. If you have any questions or concerns, please feel free to contact me. I will be happy to meet with you and/or members of the Administrative Board of the Courts to discuss the matter further. Thank you for giving my comments your consideration.

Sincerely,



---

Mark L. Taff, M.D.

Wed

Date: 8/16/2017

@ 6pm

To: John W. McConnell, Esq  
Counsel  
Office of Court Administration  
25 Beaver Street, - 11th Floor  
New York, NY 10004

Tel: 212-428-2150

Fax: 212-428-2155

From: Dr. Mark Taff, M.D.  
Forensic Pathologist  
511 Hempstead Ave., Suite #2  
West Hempstead, NY 11552

Tel: (516) 292-2300 / cell 646-634-0342

Fax: ( )

COMMENTS: Please call Dr. Taff at: (516) 292-2300 to confirm receipt of FAX correspondence. Thank you.

RE: Comments on Expert Compensation

Tot. Pgs (3)

Cover (1)

Comments (2)

**Important:** The information contained in this facsimile is intended only for the use of the individual or entity to which it is addressed and contains information that is privileged, confidential and exempt from disclosure under the law. If the reader of this message is not the intended recipient, or the employee or agent responsible for delivering the message to the intended recipient, you are hereby notified that any dissemination, distribution, or copying of this communication is strictly prohibited. If you have received this

[REDACTED]

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**From:** Tibs9@aol.com  
**Sent:** Sunday, August 20, 2017 4:40 PM  
**To:** rulecomments  
**Subject:** Dr. P. Marcus

[REDACTED] [REDACTED]

Thanks so much for your suggestion to raise the rates for psychologists, this seems long overdue. While \$150 per hour is still way below a reasonable private rate, it is a very good step in the right direction. Needless to say, the work of a forensic evaluator puts oneself in "harm's way" both in terms of the harshness of the work and its importance to the families we are dealing with and the court.

Best,

PM

[REDACTED]

---

**From:** Maria R. Burgio <drmburgio@hotmail.com>  
**Sent:** Friday, August 18, 2017 7:12 PM  
**To:** rulecomments  
**Subject:** Re: Proposed Rate Change for Mental Health Professionals

[REDACTED] [REDACTED]

Dear Ms. Asaro,

There is a misconception that all clinical psychologists provide therapeutic mental health services. However, there are clinical psychologists with training beyond that necessary to obtain a Ph.D. and licensure in psychology.

My situation is an example of this. The following experience and training in medical areas make my expertise comparable to Physicians and Psychiatrists and I am currently working as an expert witness having to justify "extraordinary circumstances" each time to get paid the \$200/hour rate on a court-ordered appointment agreeing to this fee as signed by a judge.

Here are the extraordinary circumstances:

Psychopharmacology 400 hours: allowing me to complete a one year precept under a prescribing physician which would give me prescription privileges (which I don't care to pursue)

Graduate courses in Medical Physiology, and a medical course in endocrinology at Brooklyn College where I received a Masters Degree in Experimental Psychology and worked in a physiology laboratory for three years, studying hormones and aggression.

Doctoral level courses relevant to my later work with disabilities, both psychiatric and physical, include: Cognitive Development, social-emotional development, the study of child psychopathology, and two and one half years of psychological testing and psychometric theory, not including the years of professional training in custody and other forensic credit-bearing courses.

Eight years experience (including one year post-Doc to qualify for my NYS licensing examination) working for the Office Mental Retardation and Developmental Disabilities. This work assessing and overseeing the psychiatric needs of brain damaged individuals -in addition to graduate courses mentioned above- has given me the capacity to work as a neuropsychologist (More recently, neuropsychology has been recognized as a separate specialty requiring a curriculum separate from most graduate clinical psychology programs).

I have practiced for 23 years both as a clinical psychologist and a neuropsychologist. The Social Security Administration contracted my neuropsychological services to adjudicate disability cases along with MDs. I also conducted disability evaluations for the NYS Department of Disability.

One can see that even though all licensed psychologists can work as clinicians, not all can work as neuropsychologists. They are two different specialties.

The expense for psychological testing is extraordinarily higher than having a therapy practice requiring a mere consultation room with space for clinical records.

In my situation, I have in my possession over \$10,000 in test equipment which must be updated on an ongoing basis. For example, the updated version of a Wechsler's intelligence test cost \$1,000 in the mid-1990s. I use both adult and child versions. These and other tests become outdated and newer versions must be purchased after one year in publication. Test answer sheets need replenishing. Another example is the MMP!-2 computerized clinical report which costs \$48 per patient. This test uses a forensic population version which is important to criminal cases. Medical transcription services is another expense.

Therefore, I believe that neuropsychology is and should be on par with physician and psychiatrist, and the proposed rate increase should be \$250.

Maria R. Burgio, Ph.D.  
Brooklyn Psychological Services  
Clinical and Forensic Psychology Services  
73 Mansion Street  
Poughkeepsie, New York 12601  
(310) 849-9931

[REDACTED]

---

**From:** Raul Cuesta <baty94@aol.com>  
**Sent:** Friday, August 18, 2017 5:17 PM  
**To:** rulecomments  
**Subject:** 18b rates increase comments.

[REDACTED] [REDACTED]

Good day, I think it's about time that the Experts rates be increased. I think Interpreters like myself should get \$75 per hour, since we haven't seen an increase in about 15 to 20 years. I urge you to take my proposal in consideration, let's not forget that everything has gone up in the last 15 to 20 years. Thank you for this positive news.

Raul Cuesta  
Certified Spanish Interpreter / Translator

Raul Cuesta  
baty94@aol.com

[REDACTED]

---

**From:** Bruno Rocco Valenti <bvalenti@newyorkforensicsgroup.com>  
**Sent:** Friday, August 18, 2017 3:34 PM  
**To:** rulecomments  
**Subject:** Adjustment of 18 B fees

[REDACTED] [REDACTED]

Good Afternoon,

After a recent email regarding adjustments to Expert fees and request for opinion, I am responding to such request. As a Firearms/Toolmarks examiner, it should be noted that the 18B payment of \$60.00 per hour is from 1992 and should be adjusted to a fair wage by today's standards. As a guide, an accepted fee is \$200.00 per hour on a firearms/ballistics case. Private attorneys are billed 200-250 an hour for similar case review and evidence examination. The New York City Legal department has accepted fees from my company at \$200 per hour on case review and have paid as high as \$250 per hour for expert opinion from similar background qualifications. Similar fees are obtained from the Defender Groups throughout the five boroughs as well as billing as low as \$150 an hour for some of the other companies that absorb 18 B work. I would say the current fees accepted from 1992 are a bit antiquated and could be improved. I hope this range helps establish an improved rate for experts such as myself providing services to the city.

Any further questions,  
Do not hesitate to contact me

Bruno R Valenti  
New York Forensics Group  
[P.O. BOX 1512](#)  
[Smithtown, New York, 11787](#)  
[631-255-4515](#)  
[bvalenti@newyorkforensicsgroup.com](mailto:bvalenti@newyorkforensicsgroup.com)  
[www.newyorkforensicsgroup.com](http://www.newyorkforensicsgroup.com)

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[REDACTED]

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**From:** Christopher Sbaratta <drsbaratta@gmail.com>  
**Sent:** Friday, August 18, 2017 4:51 PM  
**To:** rulecomments  
**Subject:** Comments on Proposed Rate Increase Experts (pursuant to Section 722(c))

[REDACTED] [REDACTED]

John W. McConnell, Esq. Counsel

Office of Court Administration

25 Beaver Street – 11<sup>th</sup> Floor

New York, New York 10004

Historic rates have been woefully below market rates for professionals who have terminal degrees and serve as experts in legal/medical matters.

Psychologists level of expertise indicates a wage for services that will attract quality professionals. This work is tedious and difficult and there is a need for these experts in these matters. The consequence, should these wages not increase, is to attract only the poorest quality and most financially desperate psychologist to manage very important matters visavis public service and health.

A wage increase will attract more psychologists - and more quality experts than those who would accept this work at a rate so far below what is worth an experts time/effort.

Thank you

**Christopher A. Sbaratta, PhD**  
**New York University: Adjunct Professor**  
**Department of Applied Psychology**  
Kimball Hall, 8th Floor  
246 Greene Street  
New York, NY 10003

**New York State Psychological Association**  
Forensic, Early Career (Past President)  
Brooklyn Region (Past Rep to Council)

[REDACTED]

---

**From:** Bruno Rocco Valenti <bvalenti@newyorkforensicsgroup.com>  
**Sent:** Friday, August 18, 2017 3:34 PM  
**To:** rulecomments  
**Subject:** Adjustment of 18 B fees

[REDACTED] [REDACTED]

Good Afternoon,

After a recent email regarding adjustments to Expert fees and request for opinion, I am responding to such request. As a Firearms/Toolmarks examiner, it should be noted that the 18B payment of \$60.00 per hour is from 1992 and should be adjusted to a fair wage by today's standards. As a guide, an accepted fee is \$200.00 per hour on a firearms/ballistics case. Private attorneys are billed 200-250 an hour for similar case review and evidence examination. The New York City Legal department has accepted fees from my company at \$200 per hour on case review and have paid as high as \$250 per hour for expert opinion from similar background qualifications. Similar fees are obtained from the Defender Groups throughout the five boroughs as well as billing as low as \$150 an hour for some of the other companies that absorb 18 B work. I would say the current fees accepted from 1992 are a bit antiquated and could be improved. I hope this range helps establish an improved rate for experts such as myself providing services to the city.

Any further questions,  
Do not hesitate to contact me

Bruno R Valenti  
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[REDACTED]

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**From:** bortiz4@roadrunner.com  
**Sent:** Friday, August 18, 2017 2:27 PM  
**To:** rulecomments  
**Cc:** MAsara@cityhall.nyc.gov  
**Subject:** Rate Increases for Experts

[REDACTED] [REDACTED]

Greetings: Mr. John W. McConnell;

I commend all who are and have been genuinely involved in securing a Rate Increase on behalf of all Experts. I, Benny Ortiz, Private Investigator, can only confirm what everyone already knows. A \$55.00 Rate is certainly a substantial enhancement in the correct direction.

It is excessively challenging also overwhelming to maintain a cost effective Operation, when the Expenses exceed Income, which is not at a balance or synchronized with a moderate profitable margin.

I totally Support the Subject Matter.

I thank you, for your genuine attention and as we move positively forward to secure a hopeful Resolution. I would like to meet with you and provide further detail on Subject matter if needed.

Much Appreciated: On Duty Services, Inc.

[REDACTED]

---

**From:** David Wolitzky, Ph.D. <dwolitzky@aol.com>  
**Sent:** Friday, August 18, 2017 1:29 PM  
**To:** rulecomments  
**Subject:** fees

[REDACTED] [REDACTED]

It is absurd in this day and age to pay psychiatrists \$100/hour more than psychologists and psychologists twice as much as social workers.

This gross discrepancy surely is not "evidence-based", that is there is no evidence that the evaluations and reports by psychiatrists are superior to those by psychologists and social workers.

At the risk of sounding boastful, I can tell you that several attorneys have told me that that my reports are far and away the best they have ever read.

If you want to do this the right way rather than simply the bureaucratic way, take the time to have a panel examine samples of reports by psychiatrists, psychologists, and social workers, with the profession redacted of course, and see if there are consistent differences in quality of the report!!

Sincerely yours,

David L. Wolitzky Ph.D.  
80 5th Avenue  
10th Fl., Suite 1001  
New York, NY 10011  
(917) 952-4477

[REDACTED]

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**From:** Perry, Alan <Alan.Perry@nychhc.org>  
**Sent:** Friday, August 18, 2017 12:31 PM  
**To:** rulecomments  
**Subject:** pay raise

[REDACTED]

[REDACTED]

My comment:  
Great idea!!!  
Alan Perry, Ph.D.

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Visit [www.nyc.gov/hhc](http://www.nyc.gov/hhc)

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**JOHN F. MATULA**  
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[execpi@earthlink.net](mailto:execpi@earthlink.net)

[www.MatulaPI.com](http://www.MatulaPI.com)

8/18/2017

John W. McConnell, Esq.  
Office of Court Administration  
25 Beaver St. 11<sup>th</sup> Fl  
New York, NY 10004

Dear Mr. McConnell:

I am in full agreement with the proposed hourly rate increase for licensed investigators, from \$32.00 to \$55.00 per hour. This increase is way overdue.

Considering alone the vast cost of living difference between neighboring counties (Westchester, Nassau, Suffolk), the rates for these counties has been higher at \$55.00 per hour for many years, while the most expensive area, the 5 boroughs of New York has been way behind at \$32.00 per hour.

As a licensed and bonded Private Investigator for over 30 years, I have found myself refusing assigned counsel investigations from long standing attorney clients because of the extremely low hourly rate allowed. This, in my opinion, has a direct effect on the overall outcome of the defendant's case.

I sincerely hope that you approve the rate increase proposed as soon as possible.

Very truly yours,

*John F. Matula*  
John F. Matula, CFE  
Licensed Private Investigator

[REDACTED]

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**From:** Ellen Weld <jsands11@optimum.net>  
**Sent:** Friday, August 18, 2017 12:07 PM  
**To:** rulecomments  
**Subject:** proposed rate increase

[REDACTED] [REDACTED]

I would certainly support such an increase provided it would not result in significant limitations on hours ordered for a case which could potentially make it more difficult to explore issues in cases warranting such.

I find that some judges order an excessive number of hours for forensics (e.g., 40 hours which is typically not needed). Supervised visits are usually ordered at 6 hours but could be ordered to be 3 hours of visits. However, in cases where the visitation goes on for extended periods of time, the 3 hours would not be realistic.

Ellen C. Weld, Ph.D.  
NYS Licensed Psychologist

71-58 Austin Street, Suite 208  
Forest Hills, NY 11375  
Phone (917) 554-7295  
Fax (516) 442-1535

[REDACTED]

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**From:** Dr. Ronald A. Paynter MD, FACEP, CPE <ronpvpma@aol.com>  
**Sent:** Friday, August 18, 2017 12:06 PM  
**To:** rulecomments  
**Subject:** RATS pHYSICIAN

[REDACTED] [REDACTED]

The NYC rates (\$200) are \$75.00 below my standard rate of \$275.00/hour. Thank you,

Dr. Ronald A. Paynter MD, FACEP, CPE  
927 Oceanfront  
Long Beach, New York 11561  
office 516 431 6599  
cell 516 643 5043

[REDACTED]

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**From:** Mike Rivas <irsisinv@aol.com>  
**Sent:** Friday, August 18, 2017 11:42 AM  
**To:** rulecomments  
**Subject:** Raise

[REDACTED]

[REDACTED]

About time!!!

Mike Rivas Sent from my iPhone

[REDACTED]

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**From:** Daniel Reisberg <reisberg@reed.edu>  
**Sent:** Friday, August 18, 2017 11:39 AM  
**To:** rulecomments  
**Subject:** Proposed changes in hourly compensation rates

[REDACTED] [REDACTED]

I note that the proposed changes increase the payment rate for psychologists from \$90 to \$150.

I routinely appear as an expert in other jurisdictions, and note that the proposed rate is still markedly lower than the rate paid by other jurisdictions. In federal court, I am compensated at the rate of \$250/hour. In state court, the rate varies somewhat from jurisdiction to jurisdiction. In most counties in Washington state, and in Idaho, I am compensated at \$250/hour. In Oregon, I am compensated at \$210/hour. In Colorado, I am compensated at \$200/hour.

I also wonder whether NY perhaps needs some clarity with regard to the types of expertise. Often a psychologist testifying in court will be a mental-health professional, testifying about why some participant in the case did what he or she did, or perhaps testifying about whether the defendant was truly responsible for his or her actions.

In contrast, research psychologists like myself - experts with scientific training, and not mental-health expertise - provide educational testimony, helping the finder of fact think through what science teaches us about how people perceive, remember, and then report on what they remember. This sort of educational testimony is crucial, for example, in cases that center on an eyewitness identification, or a witness's narrative about how an event unfolded.

Experts in this domain will almost invariably have a Ph.D. in Experimental Psychology (the scientific research end of psychology) and often decades of research experience.

It is unclear to me how NY would justify paying experts of this type at a rate lower than that of other professionals.

I might also mention that NY is arguably at the edge of an expert shortage. I reside in Oregon, thousands of miles from NY, but routinely get inquiries about whether I might help with a NY case — because no local experts are available. In obvious ways, this seems a considerable disservice to defendants in the state, and it does seem plausible that NY's rather low rate of compensation is contributing to this situation.

Daniel Reisberg

-----  
Daniel Reisberg  
Patricia & Clifford Lunneborg Professor of Psychology  
and Associate Editor, Journal of Applied Research in Memory & Cognition  
Psychology Department (Rm 128)  
Reed College

3203 SE Woodstock Blvd  
Portland, OR 97202-8199

voice: 503-517-7402, or 503-770-0636

fax: 503-914-0477

email: < [reisberg@reed.edu](mailto:reisberg@reed.edu) >

**From:** Dom Manzi <dvminvestigations@gmail.com>  
**Sent:** Friday, August 18, 2017 11:24 AM  
**To:** rulecomments  
**Subject:** Propose Wage Increase For Expert Investigators



**DVM INVESTIGATIONS AND SERVICES LLC**  
LICENSED \* INSURED \* BONDED\* NEW YORK \* NEW JERSEY

I am in favor for the proposed wage increase to \$55.00 or higher for the services of an expert private investigator. In order for the 18b panel to remain competitive and add qualified, experienced private investigators to its panel, an increase in the hourly wage is long overdue. Private Investigators are facing increases in licensing fees and state regulations causing them to avoid working for a lower rate of pay. The private sector is a much more lucrative area to make an honest day's living. Private Investigators who submit to the 18b panel are doing their part in assisting indigent defendants in order to get them a fair trial. The panel should recognize this and increase the hourly wage.

Additionally, investigators used to be able to get paid for travel time. There is an great amount of travel time on these particular cases due to most of the defendants are incarcerated. The investigators have to travel to courts and correctional facilities to conduct interviews. The panel should consider a travel reimbursement. Maybe at a lower rate than the \$55 per hour, but enough to make it worth the effort to travel to different locations.

For You Consideration,

Dominick Manzi  
President, DVM Investigations and Services LLC.

Dominick V Manzi  
DVM Investigations and Services LLC  
1.718.948.1843  
[www.dvminvestigationsandservices.com](http://www.dvminvestigationsandservices.com)

[REDACTED]

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**From:** paul hymowitz <paulhymowitz@gmail.com>  
**Sent:** Friday, August 18, 2017 11:18 AM  
**To:** rulecomments  
**Subject:** expert rates

[REDACTED] [REDACTED]

compensation for experts has not changed in the more than twenty years i've been doing forensics. The low rate makes me reluctant to take on such cases. While a given judge may order "enhanced fees", this is variable and involves additional bureaucratic hurdles to get paid. As private rates have continued to increase, the disparity with the public fees creates a two-tier system that can deprive families of needed services while narrowing the range of experiences for the expert.

## Mark L. Taff, M.D.

Forensic Pathologist  
511 Hempstead Avenue  
Suite 2  
West Hempstead, New York 11552  
Office Telephone: (516) 292-2300

August 16, 2017

John W. McConnell, Esq.  
Counsel  
Office of Court Administration  
25 Beaver Street  
11th Floor  
New York, NY 10004

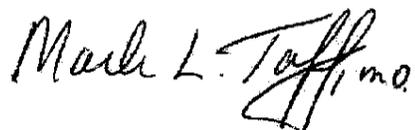
Re: Comments on Proposed Increase in Hourly  
Rates of Compensation of  
Court-Appointed Experts Pursuant to  
Judiciary Law § 35 and County Law § 722-c

Dear Mr. McConnell:

1. As a board-certified forensic pathologist who has been on the 18-B panel of experts since 1992, I am delighted to know that The Administrative Board of the Courts is considering to raise the hourly rates for expert witness services from \$200.00 to \$250.00.
2. Although the 25% increase is generous, the problem lies is with the 5-hour statutory cap for the review and analysis of very complicated murders and assaults. During the past 5 years, I have probably handled more 18-B criminal cases than any other forensic pathologist expert in the City or State of New York. Based on my experience, it is almost impossible to properly evaluate a murder case in just 5 hours, especially when record files are hundreds or thousands of pages long. Moreover, there are many 18-B attorneys on the panel who have limited experience in handling murders, sex crimes, child abuse and assaults. I have needed many hours beyond the statutory cap in order to properly prepare attorneys for plea bargain negotiations and trials. In recent years, several lawyers have requested that I act as a courtroom advisor during the direct and cross-examination of forensic experts. In addition, I have helped many lawyers craft Q&As for both direct and cross-examinations. Such preparation has resulted in several favorable outcomes for defense attorneys and their clients. The additional work has resulted in several invoices ranging from a few thousand dollars up to as much as \$20,000.00. As long as affirmations explained the "extraordinary circumstances", most 18-B lawyers and judges were gracious enough to approve my invoices exceeding the statutory cap.
3. The Office of Court Administration should be aware that there are very few qualified board-certified forensic pathologists in the Greater Metropolitan Area available to act as defense experts. The majority of professionals with proper qualifications are between 35-50 years old and are currently employed as full-time medical examiners in New York City and surrounding suburban counties (e.g. Nassau, Suffolk, Westchester, Rockland, Orange). Moreover, the majority of the medical examiners did their post-graduate forensic pathology/medical examiner training at the Office of Chief Medical Examiner (OCME) of the City of New York. Because of these past ties, many suburban medical

- examiners are reluctant to go against former colleagues and OCME where they did their post-graduate training.
4. In recent years, Michael Alperstein, Esq. Administrator, First Department, Assigned Counsel Plan, has asked me to recommend other forensic pathologists to join the 18-B panel. I made a few recommendations and, for reasons unknown, the experts turned down the offer or tried a few cases and subsequently withdrew. I do not know if their decision to quit was based on the low rate of compensation, unpleasant interactions with lawyers, types of cases, laziness, professional burnout, health reasons, uninterested, etc. Retired medical examiners receive pensions and health benefits from their government jobs and do not need extra money. Some experts no longer wish to participate in the criminal adversarial system.
  5. Although it is a good idea to raise the hourly fees for experts, I don't think that the monetary enticement will draw the few experts living in or close to New York City to the 18-B panel. The majority of experts who might be interested are most likely over the age of 60, retired and in failing health.
  6. If you have any questions or concerns, please feel free to contact me. I will be happy to meet with you and/or members of the Administrative Board of the Courts to discuss the matter further. Thank you for giving my comments your consideration.

Sincerely,



---

Mark L. Taff, M.D.

[REDACTED]

---

**From:** Valerie Gotlib <valeriegotlib@gmail.com>  
**Sent:** Monday, October 9, 2017 9:15 AM  
**To:** rulecomments  
**Subject:** Support for Rate Increase for Experts

[REDACTED] [REDACTED]

To Whom It May Concern:

As a criminal defense attorney experts are critical, in almost every case, to ensure I am providing my clients with effective representation. It is no coincidence that the majority of my clients suffer from substance abuse issues, mental illness, or both. And the root to so many of these issues are frequently grounded in issues related to the client's childhood or adolescent years. The inability to rely on capable experts to help identify these issues and understand them cripples defense attorneys from providing the representation our clients require and deserve.

It is too often the case that experts retained to assist on these cases are not compensated adequately for their diligent and difficult work. The fact that that I often find myself in the position of having to choose between asking an expert to forgo critical work or perform such work pro bono is deplorable. To make matters worse, it is becoming increasingly difficult to find competent experts willing to work for the current rates. We should be able to select the experts we rely on based on their qualifications and experience not on who is willing to work for the lowest rate. I fully support a rate increase for experts.

I sincerely appreciate your taking the time to listen to my comments on this important issue. Please do not hesitate to contact if I can be of any assistance or provide additional information.

Thank you,

Valerie Gotlib  
E-mail: [valeriegotlib@gmail.com](mailto:valeriegotlib@gmail.com)  
Phone: 917-536-8171  
<http://www.linkedin.com/in/valeriegotlib>

[REDACTED]

---

**From:** melcarr23@gmail.com on behalf of Melanie Carr <melaniecarr@post.harvard.edu>  
**Sent:** Friday, October 6, 2017 12:46 PM  
**To:** rulecomments  
**Subject:** OCA Rate Increase for Experts

[REDACTED] [REDACTED]

Dear Mr. McConnell,

I am writing in support of the rate increase for court-appointed experts. I have been working as a private investigator and mitigation specialist (also known as a sentencing advocate or social worker) in court-appointed criminal defense for the past 20 years. I was based in Louisiana for the first decade of my career, and I have been based in New York City for the past decade. In 2002, I was granted an Echoing Green Fellowship to launch a nonprofit organization called A Fighting Chance, which sought to improve investigation and mitigation development services for poor people facing the death penalty and other lengthy sentences in the Deep South. Since 2007, I have been in private practice in New York City as a licensed private investigator and mitigation specialist, working primarily in court-appointed criminal defense.

Throughout my career, I have been appointed to work on public defender cases in federal court and state courts all across the U.S. (NY, CT, VT, PA, NJ, SC, FL, AL, MS, LA, TX, and CO). I have also consulted with public defender agencies and practitioners in VA, GA, OK, KS, MO, MI, IN, and TN. The going rate for experienced private investigators working on court-appointed cases in other states is typically around \$75-100/hr. The going rate for experienced mitigation specialists on court-appointed cases is \$100-125/hr. The local rate for New York City should be commensurate with the high cost of living here, so it should arguably be higher than the national average.

When I first moved to New York City in 2007, I was appalled to learn that the maximum rate for investigators in 18B cases was set at only \$30/hr, and that there was a cap of \$1000 per case. Despite this dramatic rate cut, compared to my accustomed rate of \$75-100 in Louisiana, I worked on a few 18B murder cases, as a favor to a colleague. These cases were quite complex, and needed well over the 34 hour limit to investigate. For example, one involved an alleged gang conspiracy that a joint task force of the NYPD and the FBI had been investigating for over two years prior to the indictment. This alleged gang had over 100 members, and the investigation had taken the task force to three different countries. In comparison, a single trip to Rikers to interview my client about the relevant people and events in the indictment took up over 15% of the investigation budget. This young defendant was facing decades in prison, if not the rest of his life, and he did not have the tools he needed to evaluate and challenge the state's charges against him. The attorney on the case petitioned the court to raise the \$1000 cap, but even with additional funds, I was still unable to make much of a dent in the investigation that was necessary to prepare the case for trial or plea negotiations.

Over 15 years ago, the American Bar Association issued guidelines for the capital defense function, which called for a mitigation specialist as a basic component of a capital defense team, along with two attorneys and a fact investigator. Since then, the use of mitigation specialists has expanded increasingly across criminal defense, as public defenders, judges, and appeals courts have come to realize the importance of individualized sentencing. Mitigation specialists supply defense attorneys and judges with the information they need to litigate for, negotiate, and/or craft appropriate sentences that focus on deterrence and reduced recidivism. For example, the U.S. Supreme Court in *Miller, Graham, and Montgomery* has required judges to consider several key aspects of the defendant's background as they determine sentencing for juveniles charged in adult court. Attorneys do not have the skills, training, or experience required to develop adequate information on these issues. Besides, attorneys typically cost more per hour. Engaging a mitigation specialist is key to developing this type of evidence, which is vital to determining the appropriate sentence in accordance with the law.

Provision of mitigation development services in pre-trial litigation can also reduce the cost of appeals and unnecessary over-incarceration. Mitigation specialists are trained to screen defendants for mental health disorders, intellectual disability, and substance abuse. These circumstances can lead to false confessions in innocence cases, scapegoating by controlling co-defendants, or reduced culpability in other regards. The identification of these issues in the early pre-trial stages can lead to tailored sentences, focusing on rehabilitation and deterrence, as well as avoiding the cost of over-charging, over-sentencing, appeals, and re-sentencing in the future. In addition, mitigation specialists have frequently proven themselves useful in working with defendants and their family members to negotiate settlements in cases, which avoids the cost of a jury trial, and minimizes the cost of appeals.

In order to pay my rent, health insurance, taxes, and otherwise support myself while living here in the city, I have stopped taking 18B cases in favor of federal cases or cases funded by jurisdictions outside the city. Several of my colleagues have done the same. If the city were to raise the hourly fees for investigators and mitigation specialists (social workers) by the proposed margin, many of my colleagues and I would be willing and able to work on 18B cases again. Even with the proposed increases, the rate will still be below-market, but we would like to participate in these cases and do what we can to improve 18B representation in our home community. In conclusion, I support the proposed increases, and I hope they will be issued by the city.

Thank you for your consideration.

Sincerely,  
Melanie Carr  
20 Jay St., Ste. 209  
Brooklyn, NY 11201  
office [347-644-0523](tel:347-644-0523)  
mobile [504-473-7272](tel:504-473-7272)  
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[REDACTED]

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**From:** Thomas Caffrey <tacaffrey@gmail.com>  
**Sent:** Wednesday, October 4, 2017 2:59 PM  
**To:** rulecomments  
**Subject:** Increase in Experts' Hourly Rate of Compensation

[REDACTED] [REDACTED]

October 4, 2017

Gentlepersons:

I have been providing evaluations for New York City's Family Court since 1992.

I have reviewed the proposed rate increases, and would like to make a recommendation regarding the proposed psychologists' rate. Given that the proposed rate (\$150) already falls \$6 below psychologists' per COLA rate, and given the infrequency of the kind of rate correction you are currently carrying out (first in 25 years), I suggest that the psychologists' rate be set at no less than \$200, rather than the proposed \$150.

Respectfully yours,

Thomas A. Caffrey, Ph.D.  
NYS License #5261  
Past President (2010),  
Forensic Division,  
New York State Psychological Association

Thomas A. Caffrey, Ph.D.  
1841 Broadway (#702)  
(Columbus Circle)  
New York, NY 10023  
212/977-3189

[REDACTED]

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**From:** chayceinv4u@aol.com  
**Sent:** Tuesday, October 3, 2017 11:06 PM  
**To:** rulecomments  
**Subject:** Proposed rates

[REDACTED]

[REDACTED]

Greetings!

I am a NYS Licensed Private Investigator and a former District Attorney Detective. I am writing on behalf of the proposed rate increase for Investigators from 32.00 per hour to 55.00 per hour. The existing rate of 32.00 per hour is not sufficient to cover the current cost of living adjustments and market conditions. As a panel expert, it has been my experience that the enhanced rate is often applied due to the extraordinary circumstances of my case assignment. This process causes a significant delay with the required judges signatures and leads to inconsistent compensation. If the hourly rate is increased it would lessen the need for an enhanced rate and increase the availability of qualified and proficient individuals like myself.

Deirdre Johnson, Chayce's Private Investigation, LLC

## JOE SCROPPO, PH.D., J.D.

609 PENINSULA BOULEVARD  
WOODMERE, NY 11598

LICENSED PSYCHOLOGIST  
ATTORNEY AND COUNSELOR AT LAW

E-MAIL: SCROPPO@OPTONLINE.NET

VOICE: (516) 791-1438  
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August 21, 2017

John W. McConnell, Esq., Counsel  
Office of Court Administration  
25 Beaver Street, 11th Fl  
New York, NY 10004

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

Dear Mr. McConnell:

I am writing in my capacity as both a forensic psychologist and attorney.

I am past-president of the New York State Psychological Association's Forensic Division, am currently an Assistant Clinical Professor of Psychiatry at the Hofstra University School of Medicine, serve as training faculty at the St. John's University Postdoctoral Certificate Program in Forensic Psychology, was appointed by the Hon. Gail Prudenti to the Board of Advisors at the Center for Children, Families and the Law (Hofstra University School of Law), and currently serve as a member of the NYSBA Committee on Children and the Law.

My statements in this letter, however, reflect only my own views on the issue.

I have been performing forensic evaluations, in both criminal and family matters, in New York since 1997. As noted in the Memo accompanying the Request for Public Comment, the payment rates for forensic mental health services authorized pursuant to Judiciary Law Section 35 and County Law Section 722-c have not increased in 25 years.

Forensic mental health evaluations entail special risks and demands for a mental-health practitioner (MHP). First, there are typically severe external outcomes associated with the forensic MHP's work—the forensic MHP's report and testimony could mean the difference between an acquittal and a sentence of 25-years-to-life in prison. Or, it could mean the difference between the continuation or termination of a mother's parental rights to her child. Similarly, it may mean that a good parent obtains significant physical or legal custody of a child or is instead denied that custody. In short, the stakes could not be higher.

Consequently, forensic MHPs must maintain state-of-the-art knowledge about the scientific research and practice developments in their area. This alone demands an enormous commitment of time and effort. Moreover, forensic MHPs must exercise an extremely high level of diligence in conducting all facets of their evaluations, including the

writing of comprehensive reports and providing testimony that can actually guide attorneys and judges in managing cases.

In addition, the examinees in these forensic matters are typically persons of very limited socio-economic standing, and are often persons dealing with cultural, linguistic, financial, and other challenges that make their attendance and participation in forensic evaluations especially challenging and demanding of the MHP's time and skill.

Furthermore, by taking on these high-risk matters, forensic MHPs also expose themselves to considerable risk in the form of potential licensing board complaints or lawsuits from persons who perceive themselves as disfavored by the evaluator's report and/or testimony.

These enhanced risks and demands are part of the forensic MHP's job, but it become untenable to accept such risks and demands when reimbursement lags dramatically behind what a forensic MHP can earn in easier and much less stressful areas of practice.

Notably, the forensic mental health evaluation of criminal defendants is especially risky and demanding. Forensic MHPs, for example, typically must travel to the Rikers Island Jail in order to conduct an adequate evaluation—an ordeal that in and of itself necessitates negotiating access, finding adequate space, dealing with frequent interruptions (alarms, counts, etc.), and conducting evaluations in conditions that are often less than adequate. To be able to perform a comprehensive evaluation, forensic MHPs often must repeat this process numerous times, and they are often entirely uncompensated for the time and effort needed to surmount these bureaucratic and institutional hurdles.

Finally, in trying to obtain payment for their services, forensic MHPs also face multiple daunting hurdles, ranging from the requirement to produce multiple affidavits to establish "extraordinary circumstances," extremely long delays, and sometimes-unexplained reductions or cutting of their vouchers after the work has been performed.

Unfortunately, it is the indigent criminal defendants and the low-income parents who lose out. In the absence of an adequate evaluation from a competent forensic MHP, potentially exculpatory criminal defenses are compromised or nullified, and families are subjected to evaluations that, because of inadequate funding, are performed by persons who are less than fully qualified or who simply cannot justify the time needed to conduct a comprehensive evaluation.

In sum, I strongly support the proposed increase in compensation rates for forensic MHPs—it is a relatively small investment that will attract and keep talented forensic MHPs working in this area and will result in much better outcomes for the criminal and family-court cases.

As a final note, I strongly recommend that the proposed payment rates for physicians, psychiatrists, and psychologists be equal. All of these professionals have doctoral-level training and have invested years in obtaining the knowledge, skills, and experience in performing forensic evaluations. There is no inherent difference in the skill sets offered by these professionals, and the rates should reflect that equality. For example although unable to prescribe medication, psychologists are trained and experienced in the administration of psychological tests, which is often an essential component of a well-done forensic evaluation. In essence, each of these professionals is carrying out an assessment and is not providing treatment—at the level of assessment, these different professions are equally capable of carrying out a good evaluation, although each has a slightly different blend of skills.

Sincerely,

Joe Scropo, Ph.D., J.D.

Joe Scropo, Ph.D., J.D.

**BZB INVESTIGATIVE & SECURITY SERVICES LLC;***NYS LIC. 11000122917*

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October 2, 2017

John W. McConnell, Esq. Counsel  
Office of Court Administration  
25 Beaver Street -11<sup>th</sup> Floor  
New York, New York 10004

In response to the proposed increase rate of pay for Experts assigned pursuant to Section 722(c), I am encouraged that this is a positive step toward equitable compensation for the exhaustive efforts Experts, especially Investigators undertake on the behalf of indigent clients that we serve. The proposed rate of \$55.00 is a start but it in no way covers the deficit that most Investigators operate in. I don't think that the services we provide is given the importance it deserves. The information that we obtain can be the difference of life in prison or freedom.

The proposed increase in the pay rate may decrease the number of Experts that leave the panel, which is a positive step in the right direction. I do feel that just like the cost of living increases and union increases for the public sector, our reviews should be on a regular basis(ex.3-4yrs) to keep up with the economy.

Overall a raise in the rate is welcomed and appreciated. This will also decrease the need for enhanced rate requests. I thank you for all your efforts in obtaining the possibility of a change for us.

[REDACTED]

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**From:** Daniella Liebling <daniliebling@yahoo.com>  
**Sent:** Monday, September 25, 2017 2:30 PM  
**To:** rulecomments  
**Subject:** Proposed Rate for Social Work Experts

[REDACTED] [REDACTED]

To whom it may concern,

I am an 18B Panel Social Worker with over 25 years of Family Court related experience in NYC.

Prior to taking 18B Panel cases, I worked at the Legal Aid Society-Juvenile Rights Division, at Court Appointed Special Advocates (CASA), and at Columbia Law School's Family and Prisoner's Rights Clinics.

In 1999 I began working on a free lance basis primarily accepting cases from Family Court.

Initially the \$45.00 per hour rate of pay was extremely low. However, by taking as many cases as possible, I was able to earn enough to continue working on a free lance basis. However, as the years passed, it became more and more difficult to make a livable wage simply by accepting Family Court case referrals.

Not only has the \$45.00 hourly rate been extremely low, but each case requires an extremely complicated and time consuming record keeping and billing process that has not been allowed to be billed for.

In addition, most social work cases require travel to and from many homes, schools, foster care agencies, etc. Yet, Social Workers were informed that our travel could only be compensated for on a one-way basis.

Ultimately, as a result of the extremely low rate of pay, I had to drastically decrease my free lance Family Court work in order to take up other more sustainable work.

To be quite frank, not only has the \$45.00 hourly rate *not* been a sustainable one for many years, but it has been an extreme insult to me as a dedicated and experienced masters level social worker to be paid a rate that is lower than many house cleaning professionals currently receive.

Therefore, I am strongly in favor of the proposal to raise the Social Worker rate to \$75.00 per hour. In all honesty however, \$75.00 is still not nearly high enough. Especially in contrast to the rates proposed for Psychologists for example. Yet, a rate of \$75.00 per hour will certainly help to encourage more social workers to consider doing this important work.

Respectfully Submitted,

Daniella Liebling, L.M.S.W

Social Work Consultant

[REDACTED]

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**From:** Benzaquen Psychological Services, PLLC <thepsychgroup@optonline.net>  
**Sent:** Wednesday, October 11, 2017 3:20 PM  
**To:** rulecomments  
**Subject:** comments on rate increase for Experts

[REDACTED] [REDACTED]

I am very much in favor in an increase in the rate paid to Experts. The current payscale of \$90 per hour to psychologists is not adequate. A comprehensive evaluation involves a lot of work and should be compensated more appropriately. This increase is long overdue! Additionally, the Courts should be more generous with the number of hours given to perform an evaluation, especially given the huge task involved in performing each evaluation.

Thank you for the opportunity to offer my comments.

**Isaac Benzaquen, Ph.D.**

*Director of Services*

**Benzaquen Psychological Services, PLLC**

143 Maple Avenue • Cedarhurst, NY 11516

Tel: 516-295-4104

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**William J. Leahy**  
 Director

**Andrew M. Cuomo**  
 Governor

**Joseph F. Wierschem**  
 Counsel

Improving the Quality of Mandated Representation Throughout the State of New York

**October 11, 2017**

John W. McConnell, Esq.  
 Counsel, Office of Court Administration  
 25 Beaver Street, 11<sup>th</sup> Floor  
 New York, NY 10004

**Re: Request for Comment on Proposed Increases in  
 Compensation Rates for Court-Appointed Experts**

Dear Mr. McConnell:

This submission is in response to your request for comments on proposed increases in the hourly rates of compensation paid to experts appointed by the court, pursuant to Judiciary Law § 35 and County Law § 722-c. The Office of Indigent Legal Services applauds the proposal, and endorses and adopts the comments of the New York State Defenders Association. NYSDA supports the proposed increases and recommends additional reforms that would advance our mission—improving the quality of mandated representation in this State.

As NYSDA states, the proposed increase in hourly rates of compensation will encourage more experts to participate in public defense cases, cause defense counsel to make more applications for experts, and improve the quality of representation to clients. The proposed increase is also consistent with ILS Standards regarding the use of experts, social workers, and investigative and other services (Standards and Criteria for the Provision of Mandated Representation in Cases Involving a Conflict of Interest, Standards 3, 4; Standards for Parental Representation in State Intervention Matters, Standards F-5, G, O-1, O-7). ILS also supports OCA's proposed legislative amendment to the statutory caps, so that extraordinary circumstances will not need to be shown when experts provide services for more than several hours at the increased rates.

We agree with NYSDA that additional reforms should be implemented. The guidelines should state that they do not enumerate an exclusive list of possible experts, given the wide spectrum of experts often needed to provide effective representation. Further, we are in accord with NYSDA that the hourly rate guidelines should provide for a full cost-of-living increase for physicians, psychologists, and social workers, and that the new rates for psychiatrists should similarly increase so that they are aligned with physician rates. In addition, trial courts should be reminded by the Administrative Board of the Courts that the hourly rates are not ceilings. As our Office has found, although the 1992 Guidelines have not been updated, the rates stated therein are often applied (Implementing the Quality Improvement Objectives in the *Hurrell-Harring v. State of New York Settlement*: 2016 Update, at 32-33). Finally, to ensure that the rates do not remain stagnant going forward, the amended guidelines should provide a mechanism for regular adjustments.

Very truly yours,

  
 Cynthia Feathers

**ILS Director of Quality Enhancement for  
 Appellate and Post-Conviction Representation**



**NYSAC**  
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ASSOCIATION OF COUNTIES

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President: Hon. MaryEllen Odell, Putnam County | Executive Director: Stephen J. Acquario, Esq.

John W. McConnell, Esq  
Counsel, Office of Court Administration  
25 Beaver Street  
New York NY 10004

## **Re: Request for Comment on Proposed Increases in Compensation Rates for Court-Appointed Experts**

Dear Mr. McConnell,

This submission is in response to your request for comments on proposed increases in the hourly rates of compensation paid to expert witnesses appointed by the court, pursuant to Judiciary Law § 35 and County Law § 722-c. The New York State Association of Counties (NYSAC) appreciates the request for input on this important matter as it directly impacts county government services and budgets. NYSAC highly recommends the Board rejects this proposal as written. While the goal of ensuring quality expert witnesses is a worthy pursuit, the method as laid out in this proposal will not achieve this desired result. Additionally, this proposal provides no method to pay for increased costs other than placing them on the backs of already overburden county tax payers. If an alternative approach is considered in conjunction with the State Budget process, where the State picks up additional costs, NYSAC could endorse such efforts.

This proposal seeks to almost double the hourly wage of expert witnesses. Under County Law § 722, counties are required to pay for expert witnesses who are often needed in family and criminal courts. As you know, our counties proudly provide the legal services for both prosecutors and the defense in Criminal Court. We are also the petitioners and represent the respondents in Family Court. Expert witnesses are frequently required in Criminal and Family Court due to the complexity of the issues involved as well as the importance of obtaining a fair in proper determination in both.

### **This Approach Will Not Improve the System**

The justification in this proposal for increasing the hourly wage is based on a premise that currently expert witnesses are hard to obtain and that this increased wage will widen the availability pool. While counties have expressed to NYSAC issues related to legal services, not one county has ever reported a difficulty of procuring expert witnesses. Of the numerous County Attorneys we reached out to, none reported back a lack of expert witness availability as being an issue.

Even assuming there is a lack of expert witnesses availability, increasing the hourly wage will not improve this issue. Under the current system, no matter the hourly wage, there is a cap of \$1,000.00 in a court case per expert witness. This cap can only be overcome if the court finds extraordinary circumstances. Raising the hourly wage will only result in the cap being hit faster. This will result in a system where expert witnesses are constantly appealing to the court seeking reimbursement over the cap. This system could shrink, not grow, the pool of interested expert witnesses.

### **County Budgets Under Attack**

Ensuring quality expert witnesses is a desirable goal. However, counties cannot afford any potential increased costs to be passed onto them. This is a State Constitutional responsibility. Since 2012, counties have been living within a State imposed property tax cap. In this same time, sales tax rates in upstate New York have been stagnant. Considering the numerous services counties provide for their residents on the State's behalf (DA, Indigent Defense, Highway, Sheriff, DSS, Health Department, County Clerk, etc.) coupled with zero budget flexibility, our level of government has been stretched thin. Accordingly, counties cannot take on any additional costs without State reimbursement.

We wish to bring to your attention that the State is already requiring counties to front and pay for large portions of new programs related to the NYS Court System such as Raise the Age Criminal Responsibility and Indigent Defense Expansion. To illustrate how restricted county budgets are at this time, some counties opted to reject a recent State imposed raise to the DA's salary as this \$30,000.00 increase represented 1/3 of the total allowable tax levy growth in smaller counties.

NYSAC believes reforms could be implemented but it must be an approach that reaches the desired goal of increasing the pool of quality expert witnesses and this cannot be achieved through more costs placed on county governments. Finally, and most importantly, this effort should be done during the State Budget process, where the State picks up additional costs.

Sincerely,



Stephen J. Acquario

Executive Director