



NYSACDL
NEW YORK STATE ASSOCIATION
OF CRIMINAL DEFENSE LAWYERS



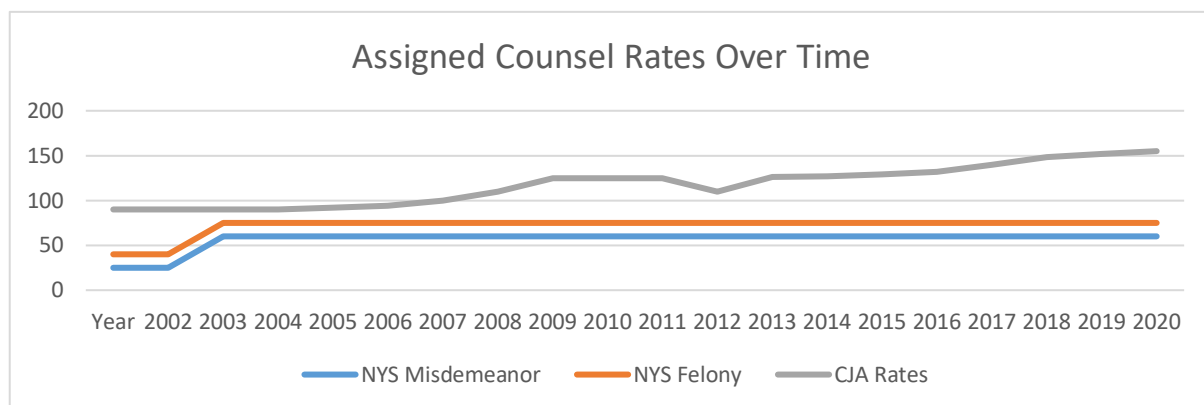
MEMORANDUM IN SUPPORT

Statement of Support for an Increase in Assigned Counsel Fees

The New York State Constitution, the United States Constitution, and the landmark Supreme Court decision of *Gideon v. Wainwright* mandate competent counsel in criminal matters, regardless of one's ability to pay. There is a comparable right to quality counsel in certain family court proceedings. However, without attorneys willing and able to take up the defense of indigent persons, the entire criminal and family court systems would collapse. Across New York State, we have an abundance of experienced and knowledgeable criminal and family court defense attorneys unwilling to accept assignments to represent people who are eligible for counsel due to the excessively low Assigned Counsel rates set by Article 18-b of the County Law.

Currently, Article 18-b sets compensation rates paid to attorneys for Assigned Counsel work at \$60 per hour for misdemeanor matters and \$75 per hour for felony, family court representation, and other matters. Statutory maximums of \$2,400.00 per misdemeanor case and \$4,400.00 for felonies, family court cases, and other matters also limit Assigned Counsel attorney fees. The only possible way to receive payment in excess of these caps is to petition the court and demonstrate extraordinary circumstances.

Assigned Counsel rates have been raised only once in the last 35 years and have remained unchanged since 2004. In contrast, since 2002 the federal government, pursuant to the Criminal Justice Act, has increased rates for federal assigned defense counsel frequently and substantially. Federal assigned counsel rates have increased 13 times over that time span with a 72% increase in rates, from \$90 per hour to \$155 per hour. (See graph below). Federal law includes an annual cost of living adjustment and further sets maximum limits for case charges far above those for the State. The cases adjudicated within the State system are no less complicated or perilous for our clients than federal cases. They should not be treated so dissimilarly in terms of compensation.



Pursuant to the settlement of the *Hurrell-Harring* lawsuit, the New York State Office of Indigent Legal Services was given a mandate to ensure that counties improve the quality of Assigned Counsel Programs across the State. Recruitment and training of qualified assigned counsel and retention of those trained is a necessary element to maintaining a strong and capable defense bar. However, much like the situation that led to the rate increase in 2004, Assigned Counsel Panels are trending towards, or already in, a crisis. The caseloads of Assigned Counsel Panel attorneys are increasing exponentially, while the number of attorneys willing and able to accept assignments is decreasing alarmingly fast. For example, the Onondaga County Assigned Counsel Program has seen a 13% reduction in their panel since 2005. Onondaga County expects, without a change in rates, the decline to continue in years to come. Assigned Counsel Programs across the State are finding it more difficult to retain quality attorneys in their programs while keeping caseloads manageable.

New York can improve the quality of representation simply by increasing the rates, as a rate increase will lead to greater numbers of qualified attorneys able to accept assignments and an associated decrease in caseloads. With the cost of living increasing, and the time and effort it takes to defend criminal or family court clients growing, the inequity of extremely low rates will intensify unabated. Against the backdrop where District Attorney and Judicial salaries have risen sharply since 2004, the inequities are even starker.

We urge you to no longer ignore the growing issue of insufficient compensation for assigned counsel attorneys. The Covid-19 pandemic has resulted in an increase in the workload of assigned counsel due to a backlog of pending cases and, the economic challenges resulting from the pandemic have led to an increase in the number of people financially eligible for assigned counsel. Without a significant increase in the rates, Assigned Counsel Providers from across the state will soon be unable to meet their constitutionally and statutorily mandated duty to provide competent counsel in all criminal and family court cases. The obvious effect of this failure will be increased rates of conviction, conviction of innocent persons, increased incarceration rates, temporary and permanent separation of families, court backlog, and a lack of access to justice for those we represent. The costs of this failure, in both terms of human and monetary capital, will be far greater than simply raising the rates to match cost of living and inflation increases seen over the past 18 years.

Accordingly, we respectfully request that Section 722-b of County Law 18-b be amended as follows:

- increase Assigned Counsel rates for 2022 to \$120 per hour for misdemeanors and \$150 per hour for felonies and other matters, for both in-court and out-of-court work.
- add a provision that ensures an automatic annual cost of living rate increase.
- payment for the increase in rates should be an expense absorbed by the State; with the counties continuing to pay their current share while the State pays the difference.
- the statutory maximum amounts should be eliminated in order to encourage adequate time expenditure on individual cases.

It is difficult to imagine a system that devotes over \$3 billion per year for the Department of Corrections and Community Supervision, which has resulted in the disproportionate mass incarceration of marginalized members of the community, yet turns its back on funding the

fundamental right of those individuals to receive effective assistance of counsel. If properly resourced, public defenders and assigned counsel attorneys could do more for public safety than any other institution. We are in the best position to assess the needs of the clients we serve, and connect them with much needed services, not cages. Moreover, our family defenders will be better equipped to help keep families together, reducing the adverse childhood experiences the trauma of removal creates. Given the time that has passed since the last increase and the challenges ahead for providers, we believe this increase is both equitable and urgently needed for the continued provision of quality representation to all public defense clients within our State.

Questions? Contact:

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