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New York County Lawyers Association Issues Proposed 18B Statement

Furnishing assigned counsel for indigent criminal defendants in all 50 states has been constitutionally required for almost 60 years now, since the Supreme Court's decision in *Gideon v. Wainwright*. Anyone who has ever watched a criminal justice show on television recognizes that part of the Miranda warning ("if you cannot afford a lawyer one will be appointed for you."). In New York, the constitutional right to counsel has been extended to children and indigent adults in family court proceedings. Part of the obligation to furnish assigned counsel is compensating them adequately for their work.

Hourly pay rates for assigned counsel for children and the indigent in criminal and family court cases in New York have not been increased for 20 years. In New York such lawyers are often referred to as 18B counsel (after the legislative section that provides for them to be retained and paid) and attorneys for children ("AFC"). The current rates for 18B lawyers are \$75 per hour in felony cases and \$60 for misdemeanors, and AFC lawyers receive \$75 per hour. Assigned counsel in the federal courts, by contrast, make more than twice as much.

At NYCLA we have sued, now twice, to force New York to honor its constitutional commitments. Our first such suit, 20 years ago, led to the last rate increase, after we prevailed in court. Thereafter, however, the State made no effort to update those agreed rates to take account of inflation or legal job market conditions. As a result, last July, we, along with other county and specialty bar associations, again filed suit. Our able counsel is Michael Dell at Kramer Levin.

After we filed a motion for a preliminary injunction, the State asked the Court to hold off on deciding the motion, pending budget discussions that were to include a significant 18B and AFC rate increase. State legislative leaders seemed on-board for an increase that would essentially double the applicable rate, but these discussions fell through.

We have been forced to press ahead with our litigation, and we are confident we will prevail. There was a hearing held last week before Hon. Lisa Headley, on our motion for a preliminary injunction, and she has taken the matter under advisement, and it is sub judice.

Members of the judiciary across the state have supported NYCLA's efforts. They see in their courts every day the consequences of inadequate compensation for 18B and AFC lawyers. Fewer lawyers can afford to undertake representation of the indigent and children when pay rates are so low; as a result, fewer and fewer lawyers are available. When the indigent and children cannot be represented their cases have to be postponed, and court backlogs simply increase. This makes no sense for the criminal justice system as a whole, but is a direct consequence of the state's unwillingness to take action.

A demonstration will be held to support our cause—today—in front of the Governor's Office. We call for an end to the violation of the constitutional rights of children and indigent adults to meaningful and effective legal representation by the 18B and AFC panels in family and criminal court proceedings.

Twenty years without a raise is enough. The state must act. Either the legislature must pass an adequate bill that the Governor will sign, or a court must find that delays of twenty years in raising compensation have resulted in the denial of due process and the right to counsel.

About the New York County Lawyers Association

The New York County Lawyers Association (www.nycla.org) was founded in 1908 as one of the first major bar associations in the country that admitted members without regard to race, ethnicity, religion, or gender. Since its inception, it has pioneered some of the most far-reaching and tangible reforms in American jurisprudence and has continuously played an active role in legal developments and public policy.

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