

Memorandum in Support

NYSBA #11-A

March 18, 2026

A.2682

By: M. of A. Magnarelli
Assembly Committee: Judiciary
Effective Date: April 1st, 2026

AN ACT to amend the county law and the judiciary law, in relation to hourly compensation and reimbursement for representation; and to repeal certain provisions of the county law relating thereto.

LAW AND SECTION REFERRED TO: Section 722-b of the County Law and Section 35 of the Judiciary Law.

THE NEW YORK STATE BAR ASSOCIATION SUPPORTS THIS LEGISLATION

The New York State Bar Association submits this memo to stress the importance of ensuring continued support for access to justice, and to express the organization's strong support of an annual cost of living adjustments (COLA's) to the hourly rates for both AFC offices and assigned counsel attorneys (18-B attorneys) statewide.

This legislation would provide regular cost of living adjustments to 18-b assigned counsels and Attorney of the Child assigned counsels. The 18-b panels throughout NYS consist of attorneys who are certified by the Appellate Division to handle all cases in Family Court, Surrogate Court, Supreme Court, and Criminal Court, representing children and adults in multi-faceted cases where families and liberties are at risk of being taken away. Despite their vital role and extensive experience, 18-b lawyers/Attorneys for Children did not receive an increase in their rates for over twenty years until the current rate of \$158 per hour was passed in the 2023-24 State Budget. To continue to maintain the quality of the attorneys currently available, and to attract experienced and qualified attorneys, 18-b attorneys/Attorneys for Children must be provided regular cost of living adjustments on par with their federal counterparts.

The New York State Bar Association's Criminal Justice Section and Committee on Mandated Representation wrote about the need to increase Assigned Counsel Rates and the need for annual review and adjustments in their 2021 report.¹ NYSBA's Committee on Families and the Law also included a recommendation for an increase in Assigned Counsel Rates and a provision to increase rates periodically without the need for new legislation in their 2022 Racial Justice and Child

¹ Committee on Mandated Representation, 2021 Revised Standards for Providing Mandated Representation, January 30, 2021, https://nysba.org/wp-content/uploads/2020/02/Standards-for-Quality-Mandated-Rep_2021.pdf

Welfare Report.² A COLA is necessary to restore and maintain panel membership to sufficient numbers to ensure equitable access to justice for New York's children as well as indigent litigants. New attorneys with significant student loan debt will not work for \$158 per hour without an annual COLA as they cannot pay their student loans and live with today's inflation. Moreover, it has become apparent that experienced members of the bar in all four Judicial Departments are reluctant to join the AFC panel and commit to developing an AFC practice out of fear that the current rate will remain in place for another 19 years without an increase. New York State has a pattern of taking nearly two decades to increase the hourly rate for AFCs and assigned counsel attorneys. The rate of \$25/\$40 per hour was in effect for 18 years (1986-2004). In 2004, the rate increased to \$75 per hour, and this rate remained in place for 19 years. A statutory annual COLA, in parity with the annual COLA for assigned counsel in federal courts, would allay the fear of a stagnant hourly rate for two decades once and for all. Whereas the federal assigned counsel rate was \$158 per hour on April 1, 2023, the federal rate has been raised twice since that date and is currently \$172 per hour.

The damage incurred as a result of the absence of a COLA has arguably resulted in irreparable harm to children and families, particularly children and families of color who are disproportionately represented in Family Court. Moreover, the AFC Programs and the Courts expend invaluable time and resources to ensure children and eligible litigants are provided with timely access to counsel. Without sufficient panel attorneys, the constitutional right to counsel is compromised. The implementation of COLA is a means to ensure that this mandate is met.

To ensure that New York's children and indigent litigants receive the quality representation they deserve regular cost of living adjustments for panel AFCs and 18-b assigned counsels are essential.

Based on the foregoing and the attached reports, the New York State Bar Association supports this legislation.

² Report and recommendations of the Committee on Families and the Law Racial Justice and Child Welfare, April 2022, <https://nysba.org/wp-content/uploads/2022/03/Committee-on-Families-and-the-Law-April-2022-approved.pdf>