

## Local Law Filing

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Text of law should be given as amended. Do not include matter being eliminated and do not use italics or underlining to indicate new matter.

### COUNTY OF LEWIS

#### Local Law No. 2 of the Year 2014

#### **A LOCAL LAW ESTABLISHING RULES AND REGULATIONS FOR THE PAYMENT OF DEFENSE COUNSEL ASSIGNED PURSUANT TO COUNTY LAW ARTICLE 18-B**

**BE IT ENACTED** by the Board of Legislators of the County of Lewis as follows:

#### **SECTION 1. TITLE**

This local law shall be entitled “**A LOCAL LAW ESTABLISHING RULES AND REGULATIONS FOR THE PAYMENT OF DEFENSE COUNSEL ASSIGNED PURSUANT TO COUNTY LAW ARTICLE 18-B.**”

#### **SECTION 2. LEGISLATIVE FINDINGS**

The Board of Legislators finds that:

- 1) Pursuant to County Law § 722, the governing body of each county is obligated to provide legal counsel to those persons who are charged with a crime or who are entitled to counsel pursuant to section two hundred sixty-two or section eleven hundred twenty of the family court act, article six-C of the correction law, section four hundred seven of the surrogate's court procedure act or article ten of the mental hygiene law, who are financially unable to obtain counsel.
- 2) The Board of Legislators has heretofore established a plan to provide legal counsel in such circumstances by authorizing a contract for a public defender and a conflict defender.
- 3) In those cases where there are multiple parties who are eligible for defense counsel pursuant to County Law § 722, it is necessary for the applicable court to assign counsel (herein "Assigned Counsel") to represent such persons who are not being represented by either the public defender contractor or the conflict defender.

- 4) It is in the public interest to set forth a clear and concise set of regulations for the administration and payment of claims made by Assigned Counsel.

### **SECTION 3. PURPOSE**

The purpose of this Local Law is to establish rules and regulations for the administration and payment of vouchers for attorneys who are assigned to represent indigent parties pursuant to County Law Article 18-B.

### **SECTION 4. AUTHORITY**

This local law is enacted pursuant to the authority granted by Municipal Home Rule Law § 10 which authorizes a county to adopt local laws not inconsistent with any general law relating to its property, affairs or government, and among other things, specifically authorizes a county to adopt a local law regarding:

- (1) The transaction of its business; and
- (2) The presentation, ascertainment, disposition and discharge of claims against it.

### **SECTION 5. REGULATIONS FOR PAYMENT OF ASSIGNED COUNSEL**

The County of Lewis hereby establishes the following rules and regulations for the submission and payment of claims for payment by Assigned Counsel.

#### **A. SUBMISSION OF VOUCHERS**

1. Assigned Counsel shall submit vouchers directly to the designated administrator of the Assigned Counsel program (herein, "Administrator").
2. After the review of the voucher, the Assigned Counsel Administrator will send it to the assigning judge for approval and signature. The judge will return the voucher to the Assigned Counsel Administrator who will process payment through the Lewis County Treasurer's office.
3. Original Signature. Assigned Counsel's *original* signature must appear on the face sheet of the voucher to receive payment from the Lewis County Treasurer. The Administrator will return vouchers submitted with photocopied signatures for affixing of an original signature, thus delaying payment.
4. Submission Deadline.
  - a. FOR ALL VOUCHERS SUBMITTED ON OR AFTER APRIL 1, 2014, Assigned Counsel must submit vouchers to the Administrator within NINETY (90) calendar days of the completion of a case (see, definition below). Vouchers that are submitted after NINETY (90) days from the date of completion will not be processed for payment, except upon court order made upon application by the Assigned Counsel, on notice to the County Attorney, providing sworn proof demonstrating extraordinary circumstances that prevented Assigned Counsel from complying with this deadline and demonstrating why the late voucher submission should be approved.

5. Case Completion.

- a. For criminal matters, case completion shall be deemed to be the date of sentencing, or the date of dismissal, or the date of granting of an Adjournment in Contemplation of Dismissal ("ACD"). The only exception to this is when the judge orders a *Bench Warrant*. In bench warrant cases, the Assigned Counsel Program deems the completion date to be four weeks from the issuance of the warrant.
- b. For Family Court matters, case completion shall be the date of entry of a final order.
- c. In the event that Assigned Counsel services are terminated other than through the finalizing of the matter pending in court, or in the event that an Assigned Counsel withdraws from representation, in either event, case completion shall be deemed to be the date of such termination or the date such withdrawal is approved by the court.

6. Subject to audit. All vouchers submitted for payment to the Administrator are subject to audit. When appearing in court on multiple cases, Assigned Counsel must apportion their time *actually* spent as well as allowed travel time or mileage (*see*, Paragraph "B" below), among the cases handled in that same court.

7. Partial Payments. Partial payments or interim vouchers are *not* authorized. Counsel should submit vouchers *only* at the completion of a matter. The only exception is where extraordinary circumstances are present (i.e., multiple homicides). In such cases, the court must notify the Administrator in writing of circumstances that the attorney believes warrants payment of an interim voucher.

8. Withdrawal/Reassignment. When you must withdraw from a matter, the voucher should show that the judge relieved you from assignment and should name the new assigned attorney, if known.

**B. EXPENSES**

1. Travel Time.

- a. For attorneys who maintain offices within Lewis County, billing the County for *mileage* for travel within Lewis County is not permitted. It is permissible to bill *time* spent traveling to and from court as out of court time *only*. Assigned Counsel must apportion the time *actually* spent traveling among the various cases handled on that same trip.
- b. For attorneys whose only office(s) is outside Lewis County, Assigned Counsel have the option to bill for *mileage* for travel to and from court in Lewis County *or* to bill *time* spent traveling to and from court as out of court time, but *not both*. If Assigned Counsel bills for travel time, counsel must apportion the time *actually* spent traveling among the various cases handled on that same trip.

2. Parking. The County will *not* reimburse Assigned Counsel for parking of vehicles for routine court appearances or jail visits.

3. Photocopies. The Assigned Counsel Program reimburses for photocopies up to a *maximum* of \$.15 per page for necessary copies. Counsel must attach a receipt or

statement showing the date, number and purpose of the copies. For voluminous copying, a court order for services should accompany any invoice. If you or your firm would normally absorb the costs of routine copying for retained clients, counsel should not bill the County for copies associated with the assigned counsel program. Note that the American Bar Association Standards for Assigned Counsel Programs provide that routine expenses normally absorbed in the fee charged to a retained client, such as in-house photocopying, is not reimbursable under an assigned counsel plan.

4. Long Distance Phone Calls. If requesting reimbursement for long distance telephone calls, the attorney must attach a copy of the phone bill to the voucher. If the bill refers to multiple matters, the attorney should clearly identify the calls for which counsel seeks reimbursement.
5. Out-of-Pocket Expenses. Receipts must accompany any request for payment of any other out-of-pocket expenses (i.e., Federal Express, certified mail).
6. Overhead Expenses. Routine overhead expenses are not reimbursable under the Assigned Counsel Plan. It is *not* permissible to bill the County for preparation of your voucher as a retained client would not pay you for preparing the bill. The only cost associated with billing that is permissible is the time devoted to preparing the following: court orders for expert services, court orders for 722-d orders, and court orders, court certifications, and attorney affidavits for payment of compensation more than the statutory amount.

C. **EXPERT SERVICES**

1. Court Order. A court order must accompany any voucher requesting payment for services of an expert. It is Assigned Counsel's responsibility to obtain the court order for expert services pursuant to County Law § 722-c *before* hiring the expert (i.e., paralegal, investigators, interpreters). After performance of the expert service, counsel should give the court order to the expert for submission with a Lewis County claim voucher.
2. There is a statutory limit of \$300 for payments for expert services. A court order authorizing payment in the requested amount must accompany any request for payment of more than the \$300.00 statutory maximum.
3. Travel Arrangements. The Assigned Counsel Program will authorize payment for travel costs associated with an expert witness only in extraordinary circumstances. *Prior* court approval must accompany any request by assigned counsel for expert travel.

D. **EXTRAORDINARY EXPENSES**

1. Court Order. A court order must accompany any voucher requesting payment for fees or expenses incurred in excess of limits set by County Law § 722-b.

**SECTION 6. EFFECTIVE DATE**

This Local Law shall take effect immediately upon filing with the Secretary of State.

(Complete the certification in the paragraph that applies to the filing of this Local Law and strike out that which is not applicable)

**1. (Final Adoption by Local Legislative Body Only.)**

I hereby certify that the Local Law annexed hereto, designated as Local Law No. 2 of 2014, of the County of Lewis was duly passed by the Lewis County Board of Legislators on January 9, 2014, in accordance with the applicable provisions of law.

~~**2. (Passage by Local Legislative Body with Approval, No Disapproval or Repassage After Disapproval by the Elective Chief Executive Officer\*).**~~

~~I hereby certify that the Local Law annexed hereto, designated as Local Law No. \_\_\_\_\_ of 20\_\_\_\_, of the County, City, Town, Village of \_\_\_\_\_ was duly passed by the \_\_\_\_\_ on \_\_\_\_\_, 20\_\_\_\_, and was approved, not approved, repassed after disapproval, by the \_\_\_\_\_, and was deemed duly adopted on \_\_\_\_\_, 20\_\_\_\_, in accordance with the applicable provisions of law.~~

~~**3. (Final Adoption by Referendum.)**~~

~~I hereby certify that the Local Law annexed hereto, designated as Local Law No. \_\_\_\_\_ of 20\_\_\_\_, of the County, City, Town, Village of \_\_\_\_\_ was duly passed by the \_\_\_\_\_ on \_\_\_\_\_, 20\_\_\_\_, and was approved, not approved, repassed after disapproval, by the \_\_\_\_\_ on \_\_\_\_\_, 20\_\_\_\_. Such Local Law was submitted to the people by reason of a mandatory/permissive referendum, and received the affirmative vote of a majority of the qualified electors voting thereon at the general/special/annual election held on \_\_\_\_\_, 20\_\_\_\_, in accordance with the applicable provisions of law.~~

~~**4. (Subject to a Permissive Referendum and Final Adoption Because No Valid Petition was Filed Requesting Referendum.)**~~

~~I hereby certify that the Local Law annexed hereto, designated as Local Law No. \_\_\_\_\_ of 20\_\_\_\_, of the County of Lewis was duly passed by the Lewis County Board of Legislators on \_\_\_\_\_, 20\_\_\_\_, and was approved, not approved, repassed after disapproval, by the \_\_\_\_\_ on \_\_\_\_\_, 20\_\_\_\_. Such Local Law was subject to permissive referendum and no valid petition requesting such referendum was filed as of \_\_\_\_\_, 20\_\_\_\_, in accordance with the applicable provisions of law.~~

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\* Elective Chief Executive Officer means or includes the chief executive officer of a county elected on a county-wide basis, or if there be none, the chairman of the county legislative body, the mayor of a city or village, or the supervisor of a town where such officer is vested with the power to approve or veto Local Laws or Ordinances.

**5. (City Local Law Concerning Charter Revision Proposed by Petition.)**

I hereby certify that the Local Law annexed hereto, designated as Local Law No. \_\_\_\_\_ of 20\_\_, of the City of \_\_\_\_\_ having been submitted to referendum pursuant to the provisions of Section (36)(37) of the Municipal Home Rule Law, and having received the affirmative vote of a majority of the qualified electors of such city voting thereon at the special/general election held on \_\_\_\_\_, 20\_\_, became operative.

**6. (County Local Law Concerning Adoption of Charter.)**

I hereby certify that the Local Law annexed hereto, designated as Local Law No. \_\_\_\_\_ of 20\_\_, of the County of \_\_\_\_\_, State of New York, having been submitted to the electors at the General Election of November \_\_\_\_\_, 20\_\_, pursuant to the subdivisions 5 and 7 of Section 33 of the Municipal Home Rule Law, and having received the affirmative vote of a majority of the qualified electors of the cities of said county as a unit and of a majority of the qualified electors of the towns of said county considered as a unit voting at said general election, became operative.

**(If any other authorized form of final adoption has been followed, please provide an appropriate certification).**

I further certify that I have compared the preceding Local Law with the original on file in this office and that the same is a correct transcript therefrom and of the whole of such original Local Law, and was finally adopted in the manner indicated in Paragraph 1, above.



**TERESA K. CLARK, CLERK  
LEWIS COUNTY BOARD OF LEGISLATORS**


**(Seal)**

**Dated: April 4, 2014**

**(Certification to be executed by County Attorney, Corporation Counsel, Town Attorney, Village Attorney or other authorized Attorney of locality.)**

**STATE OF NEW YORK )  
COUNTY OF LEWIS ) ss:**

I, the undersigned, hereby certify that the foregoing Local Law contains the correct text and that all proper proceedings have been had or taken for the enactment of the Local Law annexed hereto.



**JOAN E. McNICHOL, ESQ.  
LEWIS COUNTY ATTORNEY**

**Dated: April 4, 2014**