



State of New York
Supreme Court, Appellate Division
Third Judicial Department
Law Guardian Program
P.O. Box 7288, Capitol Station
Albany, NY 12224-0288

John E. Carter, Jr.
Director
(518) 471-4850

Phone: (518) 471-4825
Fax: (518) 471-4757
e-mail lgp3d@nycourts.gov
<http://www.nycourts.gov/ad3/lg>

Betsy R. Ruslander
Assistant Director
(518) 471-4826

FREQUENTLY ASKED QUESTIONS

Law Guardian Qualifications

Q. Who can serve as a law guardian in the Third Judicial Department?

A. A law guardian must be an attorney admitted to practice in New York State who has been designated by the Appellate Division, Third Department to represent children in Family Court proceedings and Supreme Court custody matters.

Q. Are there additional requirements for becoming a law guardian?

A. Yes. An attorney must be in good standing, and must meet the requirements of the Appellate Division, Third Department concerning introductory training and experience for law guardians. The introductory training requirement is met by attending the Law Guardian Program's two-day seminar, "Fundamentals of Law Guardian Advocacy," held twice a year (usually in June and December) in the Capital District. The experience requirement is met through participation, as counsel or with a mentor, in the major types of cases in which law guardians represent children. These requirements are detailed in section 835.2 (a) of the rules of the Appellate Division, Third Department (*Administrative Handbook*, p. 9).

Following designation, an attorney must receive continuing legal education related to the representation of children to continue to serve as a law guardian. The Law Guardian Program offers a wide range of seminars to help attorneys meet this requirement; please see the "Seminar Schedule" link on our web page.

Q. How does an attorney begin the process of becoming a law guardian?

A. By filing a completed panel application form with Family Court in the county where the attorney wishes to serve as a law guardian. The form is available from any Family Court, and is included in the *Administrative Handbook* (attachments section, figure 1). Details of the application process can be found in 835.2 (a) of the Appellate Division rules (*Administrative Handbook*, p. 9).

Compensation

Q. Can the Law Guardian Program compensate attorneys who are not members of county law guardian panels for representing children?

A. No. By statute, only duly-designated law guardian panel members may be compensated by the Law Guardian Program.

Q. Does the Law Guardian Program compensate guardians ad litem appointed for adults under CPLR Article 11?

A. No. The Law Guardian Program is authorized to pay for representation of children by law guardians under Family Court Act § 249 only; it has no authority to compensate guardians ad litem for adults.

Q. Can a law guardian be paid before a case has concluded?

A. Yes. Although a law guardian is typically compensated at the conclusion of a case, the Law Guardian Program's Compensation and Reimbursement Policies and Procedures provide for submission of interim vouchers under certain circumstances (*Administrative Handbook*, p. 23). Generally, an interim voucher will be authorized when disposition is not imminent, and either (1) the case has lasted more than a year; or (2) the amount of the voucher will exceed \$2,500.

Q. Can a law guardian be paid for work done after a case has concluded?

A. Yes. Supplemental vouchers may be filed with the approval of the trial judge (*Administrative Handbook*, p. 27).

Q. Can a law guardian submit computerized billing records?

A. Yes, as long as they contain the same information required on the Attorney Activity Sheet, the second page of the Law Guardian Voucher (*Administrative Handbook*, p. 30).

Q. What is the current rate of reimbursement for mileage?

A. For travel on or after 1/1/09, the mileage reimbursement rate is \$.55 per mile. For travel prior to that date, the following mileage reimbursement rates apply:
Travel between 7/1/08 and 12/31/08: \$.585 per mile;
Travel between 1/1/08 and 7/1/08: \$.505 per mile;
Travel between 1/1/07 and 12/31/07: \$.485 per mile;
Travel between 1/1/06 and 12/31/06: \$.445 per mile;
Travel between 9/1/05 and 12/31/05: \$.485 per mile;
Travel between 1/1/05 and 8/31/05: \$.405 per mile;
Travel between 1/1/04 and 12/31/04: \$.375 per mile.

Expert Services

Q. Can a law guardian retain an expert to assist with representation of a child?

A. Yes. The Law Guardian Program is authorized to reimburse law guardians for expenses of representation, which includes the cost of expert services.

Q. For what purposes may law guardians retain experts?

A. Law guardians may retain experts to provide services directly related to the representation of their clients, such as case preparation assistance and testimony. However, the Law Guardian Program cannot pay for expert services unrelated to representation, such as treatment or therapy for the child, or for services to an individual other than the child, such as a parent who is a party to the proceeding.

Q. How does a law guardian retain an expert to provide representation-related services?

A. The law guardian retains an expert in the following manner:

- 1) When the need for services becomes apparent, the law guardian contacts the expert and reaches a tentative agreement on the specific services to be provided and their estimated maximum cost;
- 2) If services are to be provided jointly to the child and other participants in the proceeding, the law guardian requests the trial court to allocate the total cost of the services among the child and the other participants;
- 3) When the cost to the Law Guardian Program will exceed \$1,000, the law guardian obtains advance approval from both the trial court and the Law Guardian Program;
- 4) The law guardian confirms the agreement with the expert and authorizes the expert to perform the services.

For complete information, see *Administrative Handbook*, p. 32.

Q. How does a law guardian obtain advance approval for an expert services cost of more than \$1000?

A. The law guardian completes an Experts Services and Representation Expense Preapproval Form (*Administrative Handbook*, attachments section, figure 5) and submits it to the trial judge. After action by the trial judge, the form is transmitted to the Law Guardian Program. If services are required immediately, the preapproval process can be initiated by telephone, fax or e-mail.

Q. Will the Law Guardian Program pay the full cost of expert services provided jointly to the child and other participants in a proceeding, such as a psychological evaluation of an entire family in a custody case?

A. No; the Law Guardian Program can pay only for the portion of the expert services attributable to the representation of the child. When expert services are provided jointly to the child and other participants in a proceeding, the trial court will apportion the cost

of services among the participants, and the Law Guardian Program will pay the child's share of the total cost.

Q. Can experts be paid directly by the Law Guardian Program?

A. Yes. See *Administrative Handbook*, p. 33.

Appeals

Q. Where are Law Guardian Vouchers submitted for representation on appeal?

A. Directly to the Law Guardian Program in Albany; no action by the trial court is required.

For further information, contact:
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