

Part 835
Family Court Law Guardian Panels

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Section 835.1 Departmental advisory committee.

The presiding justice shall appoint a departmental advisory committee consisting of at least one Supreme Court justice, one Family Court judge, one law guardian panel member, one representative of a family and child welfare agency, one law school professor, one county attorney, and such additional persons as the presiding justice deems necessary to perform the functions of the advisory committee. The clerk of the Appellate Division, Third Judicial Department, shall be a member of the committee ex officio. The term of appointment shall be for two years. The departmental advisory committee shall oversee the operation of the law guardian program in this department and shall annually make recommendations to the presiding justice with respect to promulgation of standards and administrative procedures for improvement of the quality of law guardian representation in the department.

Section 835.2 Law guardian panels.

(a) Initial designation to law guardian panel.

- (1) Eligibility. An attorney is eligible for designation as a member of the law guardian panel of a county of this department when the attorney:
 - (A) Is a member in good standing of the Bar of the State of New York;
 - (B) Has attended 12 hours of introductory law guardian training conducted by the Appellate Division; and
 - (C) Has attained experience in law guardian representation by:
 - (i) Substantial participation, either as counsel of record or as co-counsel with a law guardian mentor, in:
 - (1) A juvenile delinquency or person in need of supervision proceeding;
 - (2) A child abuse, child neglect, or termination of parental rights proceeding; and
 - (3) A custody or visitation proceeding; and
 - (ii) Participation as counsel or co-counsel in, or observation of, two hearings in Family Court at which testimony is taken.
- (2) Application. An attorney may, at any time, apply for membership on a law guardian panel designated for a county in his department. Such an application

shall be in the form prescribed by the Appellate Division, and shall be submitted to a Family Court judge of the county.

(3) Action by the Family Court Judge. The Family Court judge shall review the application, and take one of the following actions:

(A) When the judge determines that the attorney has met the eligibility requirements of paragraph (1) above, and is otherwise qualified to provide appropriate representation for children, the judge shall approve the application and forward it to the Appellate Division with the recommendation that the attorney be added to the county law guardian panel;

(B) Except as provided in (C) below, when the judge determines that the attorney has not met the eligibility requirements of paragraph (1) above, the judge shall defer action on the application, forward a copy of the application to the Appellate Division, and refer the attorney to a law guardian mentor;

(C) When the judge determines for good cause that an attorney should not be designated as a law guardian panel member, the judge shall deny the application in writing, stating the basis for the denial, regardless of whether or not the attorney has met the eligibility requirements of paragraph (1) above. The attorney may request review of such denial by the Appellate Division.

(4) Waiver of eligibility requirements. The Appellate Division may waive the eligibility requirements set forth in paragraphs (1) (B) and (C) above when:

(A) An attorney requests such waiver in writing, endorsed by a judge of Family Court; and

(B) The attorney has sufficient relevant experience in the practice of law to demonstrate clearly the ability to represent children effectively; provided, however, that an attorney added to a law guardian panel based on a waiver granted pursuant to this paragraph must attend 12 hours of introductory training conducted by the Appellate Division within one year of designation.

(5) Law guardian mentors. When a judge of Family Court has deferred action on the application of an attorney for membership on a law guardian panel pursuant to paragraph (3) (B) above, the judge shall designate an experienced law guardian as a mentor to assist the attorney in meeting the eligibility requirements of paragraph (1) (C) above, and to familiarize the attorney with the representation of children and the operation of the Law Guardian Program. With the agreement of the mentor, the attorney may act as co-counsel in a proceeding specified in paragraph (1) (C) (i) above to which the mentor has been assigned as law guardian, provided that the mentor shall be the attorney of record in the proceeding and shall be responsible for all aspects of the representation provided. When the attorney has met the eligibility requirements, he or she shall so inform the Family Court judge, who shall then take action as provided in paragraph (3) above.

(b) Redesignation of Panels.

(1) The Appellate Division shall, on or before January first of each year,

designate an annual law guardian panel for each county in the department from lists of attorneys approved with respect to their competency by the Family Court judges of such counties upon consideration of the following factors:

- (A) Rapport with clients;
- (B) Case preparation;
- (C) Legal knowledge;
- (D) Vigor of advocacy;
- (E) Punctuality.

(2) All current members of an annual law guardian panel for a county shall be redesignated to the annual law guardian panel, provided the law guardian has complied with the appropriate training and education requirement set forth in section 835.4(b) of this Part, and provided further that the law guardian has been found qualified for redesignation upon consideration of the factors of law guardian competency in paragraph (b) (1) (A-E) above.

(3) When a Family Court judge determines that a current law guardian should not be redesignated to the annual county law guardian panel, the judge shall submit to the Appellate Division a written recommendation to that effect, setting forth the basis of the recommendation with specific reference to the factors of law guardian competency. The Appellate Division shall provide written notice of the recommendation and a copy of the written recommendation to the law guardian concerned, who may submit to the Appellate Division a written response and such additional documentation as the law guardian believes may assist the Appellate Division in considering the judge's recommendation.

(c) Limitations on annual law guardian panel membership. When adequate numbers of attorneys are available in a county:

- (1) Only the names of attorneys who reside or maintain an office in the county should appear on the panel list for that county; and
- (2) The Family Court judge or judges of the county may decline to designate additional attorneys to the panel.

(d) Removal from annual law guardian panel. An attorney may, at any time, apply to a Family Court judge of the county in which he or she serves on a law guardian panel to have his or her name removed from the panel list. Upon receipt of such request, the Family Court may make a written recommendation to the Appellate Division that the attorney's name be removed; upon receipt of such recommendation, the Appellate Division shall remove the attorney's name from the panel list, if appropriate. If the Family Court denies such request, such denial shall be in writing and state the reasons for the denial. The attorney may request review of such denial by the Appellate Division.

Notwithstanding the provisions of subdivision (b) above, a Family Court judge may, at any time, recommend to the Appellate Division the removal of an attorney's name from an annual law guardian panel for good cause, including, but not limited to, misconduct or lack of diligence in performing law guardian assignments.

The Appellate Division may, on its own motion at any time, remove an attorney's name from an annual law guardian panel.

Section 835.3 Assignment of law guardians.

(a) Any attorney designated to an annual law guardian panel in a county may also be assigned as a law guardian in any other county in the Third Department, provided the assigning Family Court judge has obtained the prior approval of a Family Court judge of the county in which the attorney has been designated to an annual law guardian panel and of the Appellate Division.

(b) The following factors, among others, should be considered when law guardian assignments are made:

- (1) the experience and qualifications of the law guardian;
- (2) the nature and difficulty of the case;
- (3) continuity of representation of the minor in successive proceedings;
- (4) that assignments among law guardians on a panel are made in a fair and impartial manner.

(c) No law guardian shall be assigned to represent a minor when such assignment may involve a legal or ethical conflict of interest. A law guardian who serves as a judge or justice of a city, town or village court, or law clerk to a judge or justice, shall not be assigned or accept assignment as a law guardian in the county where that court is located in any type of proceeding over which that court could exercise jurisdiction. A law guardian who serves as district attorney, county attorney, or municipal corporation counsel, or as an assistant in any such office, shall not be assigned or accept assignment as a law guardian in the county where the attorney so serves in any type of proceeding in which such office could represent a party. Whenever a law guardian undertakes service or accepts employment in any of the above positions or offices, the law guardian shall inform the Family Court of any county in which he or she serves on a law guardian panel of such service or employment. The law guardian may complete any matter previously assigned, provided the assigning judge approves of the completion of such assignment and provided completion of such assignment involves no legal or ethical conflict of interest.

Section 835.4 Training and education

(a) Law guardians shall be expected to be thoroughly familiar with:

- (1) provisions of the Family Court Act and relevant provisions of the Domestic Relations Law, Social Services Law, Penal Law and Criminal Procedure Law;
- (2) the basic principles of child development and behavior;
- (3) the existence and availability of community-based treatment resources and residential facilities; and
- (4) recent case law and legislation relating to the foregoing.

(b) To be eligible for redesignation to a law guardian panel in this department pursuant

to section 835.2(b) of this Part, a law guardian shall have completed within the preceding two years at least six hours of training and education for law guardians sponsored or co-sponsored by the Appellate Division, Third Department. If prior approval is obtained from the Appellate Division, Third Department, by the law guardian or the sponsoring organization, attendance at an appropriate educational and training program sponsored or co-sponsored by one or more of the following or similar organizations may be substituted: the Appellate Divisions of the First, Second or Fourth Departments; the American Bar Association; the New York State Bar Association; a Family Court; a local or regional bar association or law guardian association; a law school; or a legal aid society. This biennial continuing education and training requirement for law guardians may also be fulfilled by (a) viewing videotapes approved for such purpose by the Appellate Division, Third Department, and filing with the Appellate Division, Third Department an affidavit attesting to such a viewing or (b) attendance at six hours of training and education for newly-designated law guardians as described in section 835.2(a)(1)(B) of this Part. For good cause shown and upon the written recommendation of a Family Court judge, the Appellate Division, Third Department may waive or defer the training and education requirement set forth herein.

Section 835.5 Compensation.

(a) Claims by law guardians for services rendered pursuant to Family Court Act § 245 shall be submitted for approval to the Family Court judge on forms authorized by the Chief Administrator of the Courts; after approval or modification, the Family Court shall forward the claim to the Appellate Division for approval and certification to the Comptroller for payment. If a claim is received by the Appellate Division more than 90 days after the date of completion of services, the law guardian may be requested to provide an affidavit (1) stating that counsel has not previously applied for payment or been paid for the services in question, and (2) explaining the reasons for the delay in submitting the claim for payment. The Appellate Division reserves the right to disapprove any claim for compensation by a law guardian received more than 90 days after the completion of services.

(b) Claims for compensation by law guardians in excess of the statutory limits set by Family Court Act § 245 and Judiciary Law § 35 shall be accompanied by a sworn statement by the law guardian describing the nature of the proceeding, specifying the time and services rendered and expenses incurred, and detailing the circumstances deemed to be extraordinary justifying a fee in excess of the statutory limits. In the absence of the attorney's affidavit in support of the excess fee, compensation in excess of statutory limits shall not be allowed.

(1) The following are among the factors which may be considered in determining whether extraordinary circumstances exist justifying a fee in excess of statutory limits:

- (i) Unusually complex factual or legal issues;
- (ii) Novel issues of law requiring extensive legal research;
- (iii) Lengthy or necessary trial or other in-court proceedings which alone raise the compensation claims above statutory limits;

(iv) Other unique or unusual circumstances which required the law guardian to spend time on a case raising the compensation claim above the statutory limits.

(2) The expenditure of time alone will not ordinarily be considered an extraordinary circumstance warranting additional compensation.

(c) When a law guardian expects his reasonable expenses, allowable pursuant to Family Court Act § 245 and Judiciary Law § 35, to exceed the sum of \$300, for instance for investigative, expert or other services, the law guardian, before incurring such expenses, shall obtain the approval of the Family Court judge and of the Appellate Division.

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22 NYCRR 822.4(d) Assignments of counsel by the supreme court or a surrogate's court to represent children in proceedings wherein compensation is authorized pursuant to Judiciary Law § 35(7) shall be made from a law guardian panel designated under section 835.2(a) of Part 835 of these rules.