

N.Y.Ct.Rules, § 823.1

MCKINNEY'S NEW YORK RULES OF COURT
SUPREME COURT, APPELLATE DIVISION, THIRD DEPARTMENT
PART 823. MENTAL HYGIENE LEGAL SERVICE

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Current with amendments received through 11/1/2000

§ 823.1 Definitions

Except as otherwise appears herein, whenever used in this Part any term defined in Mental Hygiene Law section 1.03 shall have the meaning set forth therein and, in addition, the following terms shall have the following meanings:

- (a) Service means the Mental Hygiene Legal Service.
- (b) Director means the head of the Service referred to in Mental Hygiene Law section 47.01 or his or her duly authorized designee.
- (c) Court shall mean Supreme Court, County Court or Surrogate's Court.
- (d) Patient shall mean a person residing in a facility for the mentally disabled which is licensed or operated by the Department of Mental Hygiene or the Department of Correctional Services, or a person residing in any other place for whom the Service has been appointed counsel or court evaluator pursuant to Article 81 of the Mental Hygiene Law.
- (e) Guardian shall mean a person or entity appointed as a guardian, standby guardian or limited guardian as provided in article 17-A of the Surrogate's Court Procedure Act or article 81 of the Mental Hygiene Law.

Cross References

Mental Hygiene Law, see McKinney's Book 34A.

SCPA, see McKinney's Book 58A.

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§ 823.2 Duties of the Director

(a) With regard to patients in facilities governed by the Mental Hygiene Law:

(1) The director shall inform each patient of his or her rights to a judicial hearing, to review pursuant to Mental Hygiene Law sections 9.35 and 15.35, to an appeal and to be represented by the Service or by privately retained counsel.

(2) In every case in which a hearing is requested or ordered or in which an application or petition is made to the court with regard to a patient which may or may not require a hearing, the director shall investigate the patient's case, examine the patient's records, interview the patient and also, in the discretion of the director, interview other persons having information relevant to the patient's case. If the patient has counsel the court may request the director to perform any services on behalf of the patient within the scope of and consistent with the Service's statutory duties.

(3) The director shall examine the patient's facility records as often as the director deems necessary.

(4) The court may request the director to render or undertake any assistance or service on behalf of a patient consistent with the Service's statutory duties.

(5) When a hearing has not been demanded, if the director determines that the case of a patient should be heard by the court, or be reviewed by a court or court and jury, the director may, in his or her discretion, demand a hearing on behalf of such patient or may request that the case of the patient be reviewed by the court, or court and jury, in accordance with the power granted to the Service in the Mental Hygiene Law.

(6)(i) The director shall ascertain that the notices to be given to patients and other persons required under the Mental Hygiene Law have been duly served and posted and that there has been compliance with the procedures required by the Mental Hygiene Law for the hospitalization, transfer, retention and release of patients.

(ii) The director shall ascertain that all requirements of law as to

patients' admissions, treatment and discharge affecting patients' rights have been complied with.

(7) The director shall review the status of every person who has been an informal patient or a voluntary patient for a period of 12 consecutive months and shall ascertain that there has been compliance with the Mental Hygiene Law. If the director finds that the patient is willing and suitable for continued hospitalization in such status he or she shall so certify in the patient's record. If the director finds that the patient is unwilling or unsuitable for continued hospitalization in such status he or she shall take whatever action he or she deems necessary in accordance with the Mental Hygiene Law.

(b) In those guardianship proceedings pursuant to article 81 of the Mental Hygiene Law or article 17-A of the Surrogate's Court Procedure Act in which the Service participates as counsel, court evaluator, guardian-ad-litem or party:

(1) Upon receipt of notice of application in such proceedings, the director shall:

(i) examine the papers and ascertain that the notices required to be given to parties and patients and, as far as known to the director, to other persons entitled thereto, have been duly served and that there has been due compliance with the prescribed statutory procedure;

(ii) examine the records relating to the affairs or medical or psychiatric condition of the party or patient;

(iii) interview every such party or patient, advise him or her of the nature of the proceeding and of his or her legal rights including the right to legal representation and the right to a court hearing, determine whether he or she has any objections to the proceeding or to the proposed guardian or whether he or she has any other objections;

(iv) interview any psychiatrist, examining physician or psychologist, or such other psychiatrist or physician who has knowledge of the party or patient's mental and physical condition;

(v) obtain all available information as to the extent and nature of the party or patient's assets;

(vi) obtain all available information concerning the party or patient's family, background and any other fact that may be necessary or desirable.

(2)(i) The director shall notify the court of any request for hearing.

(ii) In the director's discretion, and in the interest of the party or patient, the director may demand a hearing.

(3) The director shall inform the party or patient of the progress and status of all proceedings.

(4) In all proceedings for the discharge of a guardian, the enforcement or

modification of a guardianship order, or the approval of a guardian's report or accounting, intermediate or final, the director shall inform the party or patient of the nature of the proceeding and his or her rights. The director may perform such additional services on behalf of the party or patient as are within the scope of, and consistent with, the Service's statutory duties.

(5) The director may, in an appropriate case and in his or her discretion, apply to the court for the discharge of the guardian or the enforcement or modification of an order appointing the guardian.

(6) The director is authorized to apprise the examiners charged with the review of accounts with regard to any matter within the jurisdiction of such examiner affecting the welfare and property of a party or patient for whom a guardian has been appointed.

(7) The director shall perform such other duties and responsibilities as may be required by Article 81 of the Mental Hygiene Law.

(c) With regard to inmates, defendants or patients committed to, transferred to or placed in facilities for the mentally disabled pursuant to the Correction Law or to the Criminal Procedure Law:

(1) In all matters or proceedings in which the Service is required to be served with notice, the director shall:

(i) examine the papers, and shall ascertain that the notices required to be given have been duly served and that there has been due compliance with the prescribed procedure;

(ii) inform the inmate, defendant or patient of his or her rights including the right to judicial hearing, to review, to appeal and to be represented by the Service or by privately retained counsel;

(iii) when a hearing has not been demanded, if the director determines that the case should be heard by the court or be reviewed by a court, or court and jury, the director may, in his or her discretion, demand a hearing or may request that the case be reviewed by the court or court and jury;

(iv) examine the records of the inmate, defendant or patient;

(v) interview the attending psychiatrist, examining physician or psychologist who has knowledge of the condition of the inmate, defendant or patient;

(vi) interview all other persons having information relevant to the matter or proceeding;

(vii) perform such other services on behalf of the inmate, defendant or patient as the director in his or her discretion may determine. The court may request the director to perform additional services within the scope of, and consistent with, the Service's statutory duties.

(d) With regard to applications for authorization to administer psychotropic medication and to perform surgery, electro-convulsive therapy or major medical treatment in the nature of surgery

upon parties or patients in facilities:

(1) Copies of notice of such applications shall be served upon the director of the Service of the judicial department in which the proceeding is brought and the director of the Service of the judicial department in which the facility is located.

(2) In all such proceedings the director shall:

(i) examine the papers, and shall ascertain that the notices required to be given have been duly served:

(ii) interview and inform the party or patient of the nature of the proceeding and of his or her rights, including the right to a judicial hearing, to appeal and to be represented by the Service or by privately retained counsel, and determine whether he or she has any objection to the proceeding;

(iii) when a hearing has not been demanded, if the director determines that the case should be heard by the court, the director may, in his or her discretion, demand a hearing on behalf of the party or patient;

(iv) examine the records of the party or patient;

(v) interview the party or patient's attending and consulting psychiatrist, physician or psychologist who has knowledge of the party or patient's condition;

(vi) interview all other persons having information relevant to the matter or proceeding;

(vii) perform such other services on behalf of the party or patient, as the court may request or the director may determine, consistent with the Service's statutory duties.

(e) In all the foregoing proceedings, the Service shall represent the inmate, defendant, party or patient unless they otherwise have counsel or counsel has been dispensed with pursuant to Article 81 of the Mental Hygiene Law.

(f) In all the foregoing proceedings, the director may, in his or her discretion, submit briefs, affidavits, affirmations or trial memoranda, consistent with the Service's role in the proceeding.

(g) In all of the foregoing proceedings, the director shall assist the directors of the Service in the other judicial departments in regard to any proceeding pending in any other judicial department which pertains to a patient residing in the Third Judicial Department.

Cross References

Correction Law, see McKinney's Book 10B.

Criminal Procedure Law, see McKinney's Book 11A.

Mental Hygiene Law, see McKinney's Book 34A.

SCPA, see McKinney's Book 58A.

N. Y. Ct. Rules, § 823.2
NY R A DIV 3 DEPT § 823.2
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N.Y.Ct.Rules, § 823.3

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§ 823.3 Guardian Ad Litem and Court Evaluator

In any proceeding before the court involving a patient, the court may appoint the director as guardian ad litem or court evaluator consistent with, and within the scope of the director's statutory duties, except when the director advises the court that such appointment would create a conflict of interest with the director's duties as counsel pursuant to 823.2 of this Part.

N. Y. Ct. Rules, § 823.3
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N.Y.Ct.Rules, § 823.4

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§ 823.4 Additional Psychiatric, Psychological, Medical or Expert Opinion

(a) Pursuant to Judiciary Law section 35 or any other statute, rule or regulation providing for additional opinion the director shall assist in obtaining, through a panel or otherwise, such additional opinion.

(b) No psychiatrist, psychologist, physician or other expert shall be appointed by the court if he or she is disqualified under provisions of the Mental Hygiene Law or if he or she is employed at the institution in which the patient is hospitalized or residing or to which the patient may be transferred as a result of the proceeding in which the expert is to render his or her opinion.

Cross References

Judiciary Law, see McKinney's Book 29.

Mental Hygiene Law, see McKinney's Book 34A.

N. Y. Ct. Rules, § 823.4

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§ 823.5 Review of Proposed Transfer of Patient or of Changes of Status of Patients

(a) In every case in which it is proposed to transfer a patient from one facility to another facility or to change his or her admission status to another, the director shall review the proposed transfer or change of status.

(b) In any such case, the director, in his or her discretion, may request a hearing on behalf of the patient.

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N.Y.Ct.Rules, § 823.6

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§ 823.6 Fees

(a) When authorized by statute the director may request that the court award the Service a reasonable fee.

(b) The director's requests for fees shall be based upon a rate of compensation of \$30 per hour.

(c) Fees awarded the Service shall be maintained and dispensed in accordance with law.

Cross References

Mental Hygiene Law, see McKinney's Book 34A.

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§ 823.7 Records to Be Confidential

(a) All records and files of the director in any proceedings covered by this Part shall be confidential.

(b) All such records and files of the director may be exhibited only at the discretion of the director or upon order of the court.

N. Y. Ct. Rules, § 823.7

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