SUPREME COURT OF THE STATE OF NEW YORK

APPELLATE DIVISION, FIRST DEPARTMENT
41 MADISON AVENUE - 39th FLOOR
NEW YORK, NEW YORK 10010

TO: Members of the Panel of Attorneys for Children

FROM: Jane Schreiber, Esq.
Director of the Office of Attorneys for Children

RE: ADMINISTRATIVE HANDBOOK

The Office of Attorneys for Children of the Appellate Division, First Department has prepared this Administrative Handbook to describe the operation of its Program.

The Office of Attorneys for Children works to provide high quality legal services to children and parents involved in Family Court proceedings. There are approximately 150 members on the Panel of Attorneys for Children. Attorneys who represent children and parents are compensated for their work and reimbursed for reasonable expenses associated with the representation of their clients.

Included in this Handbook are statutory provisions, court rules, guidelines and forms for Attorneys for the Child and Assigned Counsel Plan attorneys in the Family Courts of New York and Bronx Counties. Members of the Panel of Attorneys for Children in the First Judicial Department may be permitted to select an area of practice expertise. When certification upon appointment to the Panel is limited to an area of expertise, attorneys may only accept assignments in that specialty.

Please review the information contained in this Handbook and retain it for future reference. The Appellate Division, First Department, Office of Attorneys for Children, and the courts in which you will be serving, thank you for your work on behalf of children and parents.

A. RULES OF THE CHIEF JUDGE

Part 7

<u>Attorneys for Children</u>

§ 7.2 Function of the Attorney for the Child

(a) As used in this part, "attorney for the child" means a law guardian appointed by family court pursuant to § 249 of the Family Court Act, or by the supreme court or a surrogate's court in a proceeding over which the family court might have exercised jurisdiction had such action or proceeding been commenced in family court or referred thereto.

(b) The attorney for the child is subject to the ethical requirements applicable to all lawyers, including but not limited to constraints on: ex-parte communication; disclosure of client confidences and attorney work product; conflicts of interest; and becoming a witness in the litigation.

(c) In juvenile delinquency and person in need of supervision proceedings, where the child is the respondent, the attorney for the child must zealously defend the child.

(d) In other types of proceedings, where the child is the subject, the attorney for the child must zealously advocate the child's position.

(1) In ascertaining the child's position, the attorney for the child must consult with and advise the child to the extent and in a manner consistent with the child's capacities, and have a thorough knowledge of the child's circumstances.

(2) If the child is capable of knowing, voluntary and considered judgment, the attorney for the child should be directed by the wishes of the child, even if the attorney for the child believes that what the child wants is not in the child's best interests. The attorney should explain fully the options available to the child, and may recommend to the child a course of action that in the attorney's view would best promote the child's interests.

(3) When the attorney for the child is convinced either that the child lacks the capacity for knowing, voluntary and considered judgment, or that following the child's wishes is likely to result in a substantial risk of imminent, serious harm to the child, the attorney for the child would be justified in advocating a position that is contrary to the child's wishes. In these circumstances, the attorney for the child must inform the court of the child's articulated wishes if the child wants the attorney to do so, notwithstanding the attorney's position.

[PROMULGATED by order of the Chief Judge, Dated October 17, 2007]

B. STATEWIDE ATTORNEY FOR CHILD ADVISORY COMMITTEE

SUMMARY OF RESPONSIBILITIES OF THE ATTORNEY FOR THE CHILD

While the activities of the attorney for the child will vary with the circumstances of each client and proceeding, in general those activities will include, but not be limited to, the following:

(1) Commence representation of the child promptly upon being notified of the appointment;

(2) Contact, interview and provide initial services to the child at the earliest practical opportunity, and prior to the first court appearance when feasible;

(3) Consult with and advise the child regularly concerning the course of the proceeding, maintain contact with the child so as to be aware of and respond to the child's concerns and significant changes in the child's circumstances, and remain accessible to the child;

(4) Conduct a full factual investigation and become familiar with all information and documents relevant to representation of the child. To that end, the lawyer for the child shall retain and consult with all experts necessary to assist in the representation of the child.

(5) Evaluate the legal remedies and services available to the child and pursue appropriate strategies for achieving case objectives;

(6) Appear at and participate actively in proceedings pertaining to the child;

(7) Remain accessible to the child and other appropriate individuals and agencies to monitor implementation of the dispositional and permanency orders, and seek intervention of the court to assure compliance with those orders or otherwise protect the interests of the child, while those orders are in effect; and

(8) Evaluate and pursue appellate remedies available to the child, including the expedited relief provided by statute, and participate actively in any appellate litigation pertaining to the child that is initiated by another party, unless the Appellate Division grants the application of the attorney for the child for appointment of a different attorney to represent the child on appeal.

[APPROVED by the Administrative Board of the Unified Court System October 4, 2007]

C. RESPONSIBILITIES REGARDING APPEALS

1. Attorneys who represent children or adults in the Family Court are responsible for advising their clients as to their right to appeal. As with all aspects of representation, you are expected to have a meaningful discussion with your client regarding appeal.

2. If your client indicates that they wish to appeal the Family Court ruling, you must file a Notice of Appeal. If you are NOT ON THE APPELLATE PANEL, you must comply with Family Court Act §1118. Thereafter, you must confirm that Appellate Counsel has been appointed, and make yourself and your file available to appellate counsel for consultation.

3. If you are on the Trial and Appellate panels, you must determine whether there is a conflict that prevents you from representing your client on appeal. If there is a conflict you must follow (2) above. If there is no conflict, you must comply with Family Court Act §1121.

II. STATUTORY PROVISIONS RELATING TO REPRESENTATION BY THE PANEL OF ATTORNEYS FOR CHILDREN

A. FAMILY COURT ACT

a. Article 2, Part 4

<u>Attorneys for Children</u>

§ 241. Findings and purpose

This act declares that minors who are the subject of family court proceedings or appeals in proceedings originating in the family court should be represented by counsel of their own choosing or by an attorney for the child. This declaration is based on a finding that counsel is often indispensable to a practical realization of due process of law and may be helpful in making reasoned determinations of fact and proper orders of disposition. This part establishes a system of attorneys for minors who often require the assistance of counsel to help protect their interests and to help them express their wishes to the court. Nothing in this act is intended to preclude any other interested person from appearing by counsel.

§ 242. Attorney for the Child

As used in this act, "attorney for the child" refers to an attorney admitted to practice law in the state of New York and designated under this part to represent minors pursuant to § 249 of this act.

§ 243. Designation

(a) The office of court administration may enter into an agreement with a legal aid society for the society to provide attorneys for children for the family court or appeals in proceedings originating in the family court in a county having a legal aid society.

(b) The appellate division of the supreme court for the judicial department in which a county is located may, upon determining that a county panel designated pursuant to subdivision (c) of this section is not sufficient to afford appropriate attorney for child services, enter into an agreement, subject to regulations as may be promulgated by the administrative board of the courts, with any qualified attorney or attorneys to serve as attorney for the child or as attorneys for children for the family court or appeals in proceedings originating in the family court in that county.

(c) The appellate division of the supreme court for the judicial department in which a county is located may designate a panel of attorneys for children for the family court and appeals in proceedings originating in the family court in that county, subject to the approval of the administrative board of the courts. For this purpose, it may invite a bar association to recommend qualified persons for consideration by the said appellate division in making its designation, subject to standards as may be promulgated by such administrative board.

§ 244. Duration of designation

(a) An agreement pursuant to subdivision (a) of § 243 of this chapter may be terminated by the office of court administration by serving notice on the society sixty days prior to the effective date of the termination.

(b) No designations pursuant to subdivision (c) of such § 243 may be for a term of more than one year, but successive designations may be made. The appellate division proceeding pursuant to such subdivision (c) may at any time increase or decrease the number of attorneys for children designated in any county and may rescind any designation at any time, subject to the approval of the office of court administration.

§ 245. Compensation

(a) If the office of court administration proceeds pursuant to subdivision (a) of § 243 of this chapter, the agreement shall provide that the society shall be reimbursed on a cost basis for services rendered under the agreement. The agreement shall contain a general plan for the organization and operation of the providing of attorneys for children by the respective legal aid society, approved by the said administrative board, and the office of court administration may require such reports as it deems necessary from the society.

(b) If an appellate division proceeds pursuant to subdivision (b) of such §243, the agreement may provide that the attorney or attorneys shall be reimbursed on a cost basis for services rendered under the agreement. The agreement shall contain a general plan for the organization and operation of the providing of attorneys for children by the respective attorney or attorneys, and the appellate division may require such reports as it deems necessary from the attorney or attorneys.

(c) If an appellate division proceeds pursuant to subdivision (c) of such §243, attorneys for children shall be compensated and allowed expenses and disbursements in the same amounts established by subdivision three of § 35 of the judiciary law.

§ 246. Supervision by administrative board

The administrative board of the judicial conference may prescribe standards for the exercise of the powers granted to the appellate divisions under this part and may require such reports as it deems desirable.

§ 248. Appropriations

The costs of attorneys for children under § 245 shall be payable by the state of New York within the amounts appropriated therefor.

§ 249. Appointment of Attorney for Child

(a) In a proceeding under article three, seven, ten or ten-A of this act or where a revocation of an adoption consent is opposed under § 115-b of the domestic relations law or in any proceeding under §358-a, 383-c, 384 or 384-b of the social services law or when a minor is sought to be placed in protective custody under § 158 of this act, the family court shall appoint an attorney for the child to represent a minor who is the subject of the proceeding or who is sought to be placed in protective custody, if independent legal representation is not available to such minor. In any proceeding to extend or continue the placement of a juvenile delinquent or person in need of supervision pursuant to §756 or 353.3 of this act or any proceeding to extend or continue a commitment to the custody of the commissioner of mental health or the commissioner of mental retardation and developmental disabilities pursuant to § 322.2 of this act, the court shall not permit the respondent to waive the right to be represented by counsel chosen by the respondent, respondent's parent, or other person legally responsible for the respondent's care, or by an attorney for the child. In any other proceeding in which the court has jurisdiction, the court may appoint an attorney for the child to represent the child, when, in the opinion of the family court judge, such representation will serve the purposes of this act, if independent legal counsel is not available to the child. The family court on its own motion may make such appointment.

(b) In making an appointment of an attorney for the child pursuant to this section, the court shall, to the extent practicable and appropriate, appoint the same attorney for the child, who has previously represented the child. Notwithstanding any other provision of law, in a proceeding under article three following an order of removal made pursuant to article seven hundred

twenty-five of the criminal procedure law, the court shall, wherever practicable, appoint the counsel representing the juvenile offender in the criminal proceedings as attorney for the child.

§ 249-a. Waiver of counsel

A minor who is a subject of a juvenile delinquency or person in need of supervision proceeding shall be presumed to lack the requisite knowledge and maturity to waive the appointment of an attorney for the child. This presumption may be rebutted only after an attorney for the child has been appointed and the court determines after a hearing at which the attorney for the child appears and participates and upon clear and convincing evidence that (a) the minor understands the nature of the charges, the possible dispositional alternatives and the possible defenses to the charges, (b) the minor possesses the maturity, knowledge and intelligence necessary to conduct his own defense, and (c) waiver is in the best interest of the minor.

b. Article 2, Part 6

<u>Counsel for Indigent Adults in Family Court Proceedings</u>

§ 261. Legislative findings and purpose

Persons involved in certain family court proceedings may face the infringements of fundamental interests and rights, including the loss of a child's society and the possibility of criminal charges, and therefore have a constitutional right to counsel in such proceedings. Counsel is often indispensable to a practical realization of due process of law and may be helpful to the court in making reasoned determinations of fact and proper orders of disposition. The purpose of this part is to provide a means for implementing the right to assigned counsel for indigent persons in proceedings under this act.

§ 262. Assignment of counsel for indigent persons

(a) Each of the persons described below in this subdivision has the right to the assistance of counsel. When such person first appears in court, the judge shall advise such person before proceeding that he or she has the right to be represented by counsel of his or her own choosing, of the right to have an adjournment to confer with counsel, and of the right to have counsel assigned by the court in any case where he or she is financially unable to obtain the same:

(i) the respondent in any proceeding under article ten or article ten-A of this act and the petitioner in any proceeding under part eight of article ten of this act;

(ii) the petitioner and the respondent in any proceeding under article eight of this act;

(iii) the respondent in any proceeding under part three of article six of this act;

(iv) the parent, foster parent, or other person having physical or legal custody of the child in any proceeding under article ten or ten-A of this act or § 358-a, 384 or 384-b of the social

services law, and a non-custodial parent or grandparent served with notice pursuant to paragraph (e) of subdivision two of § 384-a of the social services law;

(v) the parent of any child seeking custody or contesting the substantial infringement of his or her right to custody of such child, in any proceeding before the court in which the court has jurisdiction to determine such custody;

(vi) any person in any proceeding before the court in which an order or other determination is being sought to hold such person in contempt of the court or in willful violation of a previous order of the court, except for a contempt which may be punished summarily under §755 of the judiciary law;

(vii) the parent of a child in any adoption proceeding who opposes the adoption of such child.

(viii) the respondent in any proceeding under article five of this act in relation to the establishment of paternity.

(b) Assignment of counsel in other cases. In addition to the cases listed in subdivision (a) of this section, a judge may assign counsel to represent any adult in a proceeding under this act if he determines that such assignment of counsel is mandated by the constitution of the state of New York or of the United States, and includes such determination in the order assigning counsel;

(c) Implementation. Any order for the assignment of counsel issued under this part shall be implemented as provided in article eighteen-B of the county law.

c. Article 11

<u>Appeals</u>

§ 1118. Applicability of civil practice law and rules

The provisions of the civil practice law and rules apply where appropriate to appeals under this article, provided, however, that the fees required by § 8022 of the civil practice law and rules shall not be required where the attorney for the appellant or attorney for the movant, as applicable, certifies that such appellant or movant has been assigned counsel or an attorney for the child pursuant to §249, 262 or 1120 of this act or §722 of the county law, or is represented by a legal aid society or a legal services program or other non-profit organization, which has as its primary purpose the furnishing of legal services to indigent persons, or by private counsel working on behalf of or under the auspices of such society or organization. Where the attorney for the appellant or the attorney for the movant certifies in accordance with procedures established by the appropriate appellate division that the appellant or movant has been represented in family court by assigned counsel or an attorney for the child, pursuant to §249, 262 or 1120 of this act or §722 of the county law, or is represented by a legal aid society or legal services program or some other non-profit organization, which has as its primary purpose the furnishing of legal services to indigent persons, or by private counsel working on behalf or under the auspices of such society or organization, and that the appellant, who has indicated an intention to appeal, or movant, continues to be eligible for assignment of counsel and, in the case of counsel assigned to represent an adult party, continues to be indigent, the appellant or movant shall be presumed eligible for

poor person relief pursuant to §1101 of the civil practice law and rules and for assignment of counsel on appeal without further motion. The appointment of counsel and granting of poor person relief by the appellate division shall continue for the purpose of filing a notice of appeal or motion for leave to appeal to the court of appeals.

§ 1121. Special procedures

1. Consistent with the provisions of §§ 354.2, 760 and 1052-b of this act the provisions of this section shall apply to appeals taken from orders issued pursuant to articles three, seven, ten and ten-A and parts one and two of article six of this act, and pursuant to §§358-a, 383-c, 384, and 384-b of the social services law.

2. Upon the filing of such order, it shall be the duty of counsel to the parties and the attorney for the child to promptly advise the parties in writing of the right to appeal to the appropriate appellate division of the supreme court, the time limitations involved, the manner of instituting an appeal and obtaining a transcript of the testimony and the right to apply for leave to appeal as a poor person if the party is unable to pay the cost of an appeal. It shall be the further duty of such counsel or attorney for the child to explain to the client the procedures for instituting an appeal, the possible reasons upon which an appeal may be based and the nature and possible consequences of the appellate process.

3. It shall also be the duty of such counsel or attorney for the child to ascertain whether the party represented by such attorney wishes to appeal and, if so, to serve and file the necessary notice of appeal and, as applicable, to apply for leave to appeal as a poor person, to file a certification of continued eligibility for appointment of counsel pursuant to § 1118 of this article, and to submit such other documents as may be required by the appropriate appellate division.

4. If the party has been permitted to waive the appointment of an attorney for the child or counsel appointed pursuant to §249-a or 262 of this act, it shall be the duty of the court to advise the party of the right to the appointment of an attorney for the child or counsel for the purpose of filing an appeal.

5. Where a party wishes to appeal, it shall also be the duty of such counsel or attorney for the child, where appropriate, to apply for assignment of counsel for such party pursuant to applicable provisions of this act, the judiciary law and the civil practice law and rules, and to file a certification of continued eligibility for appointment of counsel and, in the case of counsel assigned to represent an adult party, continued indigency, pursuant to § 1118 of this article and to submit such other documents as may be required by the appropriate appellate division.

6. (a) Except as provided for herein, counsel for the appellant shall, no later than ten days after filing the notice of appeal, request preparation of the transcript of the proceeding appealed therefrom.

(b) Counsel assigned or appointed pursuant to article eleven of the civil practice law and rules or §1120 of this act shall, no later than ten days after receipt of notice of such appointment, request preparation of the transcript of the proceeding appealed from.

(c) In any case where counsel is assigned or appointed pursuant to paragraph (b) of this subdivision subsequent to the filing of the notice of appeal, such counsel shall, within ten days of such assignment or appointment, request preparation of the transcript of the proceeding appealed from.

(d) Where the appellant is seeking relief to proceed as a poor person pursuant to article eleven of the civil practice law and rules, the transcript of the proceeding appealed from shall be requested within ten days of the order determining the motion.

7. Such transcript shall be completed within thirty days from the receipt of the request of the appellant. Where such transcript is not completed within such time period, the court reporter or director of the transcription service responsible for the preparation of the transcript shall notify the administrative judge of the appropriate judicial district. Such administrative judge shall establish procedures to effectuate the timely preparation of such transcript. The appellate divisions may establish additional procedures to effectuate the timely preparation of transcripts.
The appellate division shall establish procedures to ensure the expeditious filing and service of the appellant's brief, the answering brief and any reply brief, which may include scheduling orders. The appellant shall perfect the appeal within sixty days of receipt of the transcript of the proceeding appealed from or within any different time that the appellate division has by rule prescribed for perfecting such appeals under subdivision (c) of rule five thousand five hundred thirty of the civil practice law and rules or as otherwise specified by the appellate division. Such sixty day or other prescribed period may be extended by the appellate division for good cause shown upon written application to the appellate division showing merit to the appeal and a reasonable ground for an extension of time. Upon the granting of such an extension of time the appellate division shall issue new specific deadlines by which the appellant's brief, the answering brief and any reply brief must be filed and served.

B. JUDICIARY LAW

Article 2

General Provisions Relating to Courts and Judges

§ 35. Assignment of counsel to indigent persons and appointment of physicians in certain proceedings

1. a. When a court orders a hearing in a proceeding upon a writ of habeas corpus to inquire into the cause of detention of a person in custody in a state institution, or when it orders a hearing in a civil proceeding to commit or transfer a person to or retain him in a state institution when such person is alleged to be mentally ill, mentally defective or a narcotic addict, or when it orders a hearing for the commitment of the guardianship and custody of a child to an authorized agency by reason of the mental illness or mental retardation of a parent, or when it orders a hearing to determine whether consent to the adoption of a child shall be required of a parent who is alleged to be mentally ill or mentally retarded, or when it orders a hearing to determine the best interests

of a child when the parent of the child revokes a consent to the adoption of such child and such revocation is opposed or in any adoption or custody proceeding if it determines that assignment of counsel in such cases is mandated by the constitution of this state or of the United States, the court may assign counsel to represent such person if it is satisfied that he is financially unable to obtain counsel. Upon an appeal taken from an order entered in any such proceeding, the appellate court may assign counsel to represent such person upon the appeal if it is satisfied that he is financially unable to obtain counsel.

b. Upon an appeal in a criminal action or in a proceeding in the family court or surrogate's court wherein the defendant or person entitled to counsel pursuant to the family court act or surrogate's court procedure act, is financially unable to obtain counsel, the court of appeals or the appellate division of the supreme court may assign counsel other than in the manner as is prescribed in §722 of the county law only when it is satisfied that special circumstances require such assignment.

2. The chief administrator of the courts may enter into an agreement with a legal aid society for the society to provide assigned counsel in the proceedings specified in subdivision one of this section. The agreement shall be in a form approved by the chief administrator and shall provide a general plan for a program of assigned counsel services to be provided by such society. It shall also provide that the society shall be reimbursed on a cost basis for services rendered.

3. No counsel assigned pursuant to this section shall seek or accept any fee for representing the person for whom he or she is assigned without approval of the court as herein provided. Whenever it appears that such person is financially able to obtain counsel or make partial payment for the representation, counsel may report this fact to the court and the court may terminate the assignment or authorize payment, as the interests of justice may dictate, to such counsel. Counsel assigned hereunder shall at the conclusion of the representation receive compensation at a rate of seventy-five dollars per hour for time expended in court, and seventy-five dollars per hour for time reasonably expended out of court, and shall receive reimbursement for expenses reasonably incurred. For representation upon a hearing, compensation and reimbursement shall be fixed by the court wherein the hearing was held and such compensation shall not exceed four thousand four hundred dollars. For representation in an appellate court, compensation and reimbursement shall be fixed by such court and such compensation shall not exceed four thousand four hundred dollars. In extraordinary circumstances the court may provide for compensation in excess of the foregoing limits.

4. In any proceeding described in paragraph (a) of subdivision one of this section, when a person is alleged to be mentally ill, mentally defective or a narcotic addict, the court which ordered the hearing may appoint no more than two psychiatrists, certified psychologists or physicians to examine and testify at the hearing upon the condition of such person. A psychiatrist, psychologist or physician so appointed shall, upon completion of his services, receive reimbursement for expenses reasonably incurred and reasonable compensation for such services, to be fixed by the court. Such compensation shall not exceed two hundred dollars if one psychiatrist, psychologist or physician is appointed, or an aggregate sum of three hundred dollars if two psychiatrists, psychologists or physicians are appointed, except that in extraordinary circumstances the court may provide for compensation in excess of the foregoing limits.

4-a. In any proceeding under article ten of the mental hygiene law, the court which ordered the hearing may appoint no more than two psychiatrists, certified psychologists or physicians to examine and testify at the hearing upon the condition of such person. A psychiatrist, psychologist

or physician so appointed shall, upon completion of his or her services, receive reimbursement for expenses reasonably incurred and reasonable compensation for such services, to be fixed by the court in accordance with subdivision (a) of § 10.15 of the mental hygiene law.

5. All expenses for compensation and reimbursement under this section shall be a state charge to be paid out of funds appropriated to the administrative office for the courts for that purpose. Any rules and orders respecting the assignment and compensation of counsel, and the appointment and compensation of psychiatrists, psychologists or physicians pursuant to this section and the form and manner of processing of a claim submitted pursuant to this section shall be adopted by the chief administrator. Each claim for compensation and reimbursement pursuant to subdivisions three and four of this section shall be submitted for approval to the court which made the assignment or appointment, and shall be on such form as the chief administrator may direct. After such claim is approved by the court, it shall be certified to the comptroller for payment by the state, out of the funds appropriated for that purpose.

6. Assigned counsel and guardians ad litem appointed pursuant to the provisions of title two of article nine-B of the social services law shall be compensated in accordance with the provisions of this section.

7. Whenever the supreme court or a surrogate's court shall appoint counsel in a proceeding over which the family court might have exercised jurisdiction had such action or proceeding been commenced in family court or referred thereto pursuant to law, and under circumstances whereby, if such proceeding were pending in family court, such court would be authorized by §249 of the family court act to appoint an attorney for the child, such counsel shall be compensated in accordance with the provisions of this section.

8. Whenever supreme court shall exercise jurisdiction over a matter which the family court might have exercised jurisdiction had such action or proceeding been commenced in family court or referred thereto pursuant to law, and under circumstances whereby, if such proceedings were pending in family court, such court would be required by §262 of the family court act to appoint counsel, supreme court shall also appoint counsel and such counsel shall be compensated in accordance with the provisions of this section.

C. COUNTY LAW

Article 18-B

Representations of Persons Accused of Crime or Parties before the Family Court or Surrogate's Court

§ 722. Plan for representation

The governing body of each county and the governing body of the city in which a county is wholly contained shall place in operation throughout the county a plan for providing counsel to persons charged with a crime or who are entitled to counsel pursuant to § 262 or §1120 of the family court act, article six-C of the correction law, §407 of the surrogate's court procedure act or article ten of the mental hygiene law, who are financially unable to obtain counsel. Each plan shall

also provide for investigative, expert and other services necessary for an adequate defense. The plan shall conform to one of the following:

1. Representation by a public defender appointed pursuant to county law article eighteen-A.

2. In criminal proceedings, representation by counsel furnished by a private legal aid bureau or society designated by the county or city, organized and operating to give legal assistance and representation to persons charged with a crime within the city or county who are financially unable to obtain counsel. In proceedings under the family court act, representation by a private legal aid bureau or society, or by any corporation, voluntary association, or organization permitted to practice law under the authority of subdivision five of § 495 of the judiciary law.

3. Representation by counsel furnished pursuant to a plan of a bar association in each county or the city in which a county is wholly contained whereby the services of private counsel are rotated and coordinated by an administrator, and such administrator may be compensated for such service. Any plan of a bar association must receive the approval of the state administrator before the plan is placed in operation. In the county of Hamilton, such representation may be by counsel furnished by the Fulton county bar association pursuant to a plan of the Fulton county bar association.

4. Representation according to a plan containing a combination of any of the foregoing. Any judge, justice or magistrate in assigning counsel pursuant to §§ 170.10, 180.10, 210.15 and 720.30 of the criminal procedure law, or in assigning counsel to a defendant when a hearing has been ordered in a proceeding upon a motion, pursuant to article four hundred forty of the criminal procedure law, to vacate a judgment or to set aside a sentence or on a motion for a writ of error coram nobis, or in assigning counsel pursuant to the provisions of § 262 of the family court act or § 407 of the surrogate's court procedure act, or in assigning counsel to a defendant when a case has been calendared for consideration of resentencing pursuant to subdivision four of § 601-d of the correction law or when a court is otherwise called upon to consider whether a proper term of post-release supervision was imposed as part of a determinate sentence, shall assign counsel furnished in accordance with a plan conforming to the requirements of this section; provided, however, that when the county or the city in which a county is wholly contained has not placed in operation a plan conforming to that prescribed in this subdivision or subdivision three of this section and the judge, justice or magistrate is satisfied that a conflict of interest prevents the assignment of counsel pursuant to the plan in operation, or when the county or the city in which a county is wholly contained has not placed in operation any plan conforming to that prescribed in this section, the judge, justice or magistrate may assign any attorney in such county or city and, in such event, such attorney shall receive compensation and reimbursement from such county or city which shall be at the same rate as is prescribed in §722-b of this article. When a case has been calendared for consideration of resentencing pursuant to subdivision four of § 601-d of the correction law or when a court is otherwise called upon to consider whether a proper term of post-release supervision was imposed as part of a determinate sentence, the attorney appointed should be the attorney who appeared for the defendant in connection with the judgment or sentence or, if the defendant is currently represented concerning his or her conviction or sentence or with respect to an appeal from his or her conviction or sentence, such present counsel.

5. In classification proceedings under article six-C of the correction law or from an appeal thereof, representation shall be according to a plan described in subdivisions one, two, three or four of this section. If such plan includes representation by a private legal aid bureau or society,

such private legal aid bureau or society shall have been designated to give legal assistance and representation to persons charged with a crime.

Upon an appeal in a criminal action, and on any appeal described in § 1120 of the family court act, article six-C of the correction law or §407 of the surrogate's court procedure act, wherein the party is financially unable to obtain counsel, the appellate court shall assign counsel furnished in accordance with the plan, conforming to the requirements of this section, which is in operation in the county or in the city in which a county is wholly contained wherein the judgment of conviction, disposition, or order of the trial court was entered; provided, however, that when such county or city has not placed in operation a plan conforming to that prescribed in subdivision three or four of this section and such appellate court is satisfied that a conflict of interest prevents the assignment of counsel pursuant to the plan in operation, or when such county or city has not placed in operation any plan conforming to that prescribed in this section, such appellate court may assign any attorney in such county or city and, in such event, such attorney shall receive compensation and reimbursement from such county or city which shall be at the same rate as is prescribed in § 722-b of this chapter.

§ 722-a. Definition of crime

For the purposes of this article, the term "crime" shall mean a felony, misdemeanor, or the breach of any law of this state or of any law, local law or ordinance of a political subdivision of this state, other than one that defines a "traffic infraction," for which a sentence to a term of imprisonment is authorized upon conviction thereof.

§ 722-b. Compensation and reimbursement for representation

1. All counsel assigned in accordance with a plan of a bar association conforming to the requirements of § 722 of this article whereby the services of private counsel are rotated and coordinated by an administrator shall at the conclusion of the representation receive:

(a) for representation of a person entitled to representation by law who is initially charged with a misdemeanor or lesser offense and no felony, compensation for such misdemeanor or lesser offense representation at a rate of sixty dollars per hour for time expended in court or before a magistrate, judge or justice, and sixty dollars per hour for time reasonably expended out of court, and shall receive reimbursement for expenses reasonably incurred; and

(b) for representation of a person in all other cases governed by this article, including all representation in an appellate court, compensation at a rate of seventy-five dollars per hour for time expended in court before a magistrate, judge or justice and seventy-five dollars per hour for time reasonably expended out of court, and shall receive reimbursement for expenses reasonably incurred.

2. Except as provided in this section, compensation for time expended in providing representation:

(a) pursuant to paragraph (a) of subdivision one of this section shall not exceed two thousand four hundred dollars; and

(b) pursuant to paragraph (b) of subdivision one of this section shall not exceed four thousand four hundred dollars.

3. For representation on an appeal, compensation and reimbursement shall be fixed by the appellate court. For all other representation, compensation and reimbursement shall be fixed by the trial court judge. In extraordinary circumstances a trial or appellate court may provide for compensation in excess of the foregoing limits and for payment of compensation and reimbursement for expenses before the completion of the representation.

4. Each claim for compensation and reimbursement shall be supported by a sworn statement specifying the time expended, services rendered, expenses incurred and reimbursement or compensation applied for or received in the same case from any other source.

No counsel assigned hereunder shall seek or accept any fee for representing the party for whom he or she is assigned without approval of the court as herein provided.

§ 722-c. Services other than counsel

Upon a finding in an ex parte proceeding that investigative, expert or other services are necessary and that the defendant or other person described in §249 or §262 of the family court act, article six-C of the correction law or §407 of the surrogate's court procedure act, is financially unable to obtain them, the court shall authorize counsel, whether or not assigned in accordance with a plan, to obtain the services on behalf of the defendant or such other person. The court upon a finding that timely procurement of necessary services could not await prior authorization may authorize the services nunc pro tunc. The court shall determine reasonable compensation for the services and direct payment to the person who rendered them or to the person entitled to reimbursement. Only in extraordinary circumstances may the court provide for compensation in excess of one thousand dollars per investigative, expert or other service provider.

Each claim for compensation shall be supported by a sworn statement specifying the time expended, services rendered, expenses incurred and reimbursement or compensation applied for or received in the same case from any other source.

§ 722-d. Duration of assignment

Whenever it appears that the defendant is financially able to obtain counsel or to make partial payment for the representation or other services, counsel may report this fact to the court and the court may terminate the assignment of counsel or authorize payment, as the interests of justice may dictate, to the public defender, private legal aid bureau or society, private attorney, or otherwise.

§ 722-e. Expenses

All expenses for providing counsel and services other than counsel hereunder shall be a county charge or in the case of a county wholly located within a city a city charge to be paid out of an appropriation for such purposes.

D. CIVIL PRACTICE LAW AND RULES

a. Article 11

Poor Persons

§ 1101. Motion for permission to proceed as a poor person; affidavit; certificate; notice; waiver of fee; when motion not required

(a) Motion; affidavit. Upon motion of any person, the court in which an action is triable, or to which an appeal has been or will be taken, may grant permission to proceed as a poor person. Where a motion for leave to appeal as a poor person is brought to the court in which an appeal has been or will be taken, such court shall hear such motion on the merits and shall not remand such motion to the trial court for consideration. The moving party shall file an affidavit setting forth the amount and sources of his or her income and listing his or her property with its value; that he or she is unable to pay the costs, fees and expenses necessary to prosecute or defend the action or to maintain or respond to the appeal; the nature of the action; sufficient facts so that the merit of the contentions can be ascertained; and whether any other person is beneficially interested in any recovery sought and, if so, whether every such person is unable to pay such costs, fees and expenses. An executor, administrator or other representative may move for permission on behalf of a deceased, infant or incompetent poor person.

(b) Certificate. The court may require the moving party to file with the affidavit a certificate of an attorney stating that the attorney has examined the action and believes there is merit to the moving party's contentions.

(c) Notice. Except as provided in subdivisions (d) and (e) of this section, if an action has already been commenced, notice of the motion shall be served on all parties, and notice shall also be given to the county attorney in the county in which the action is triable or the corporation counsel if the action is triable in the city of New York.

(d) [Expires and repealed Sept 1, 2009] Waiver of fee in certain cases. Except as otherwise provided in subdivision (f) of this section, if applicable, a plaintiff may seek to commence his or her action without payment of the fee required by filing the form affidavit, attesting that such plaintiff is unable to pay the costs, fees and expenses necessary to prosecute or defend the action, which shall be available in the clerk's office along with the summons and complaint or summons with notice or third-party summons and complaint. The case will be given an index number, or, in courts other than the supreme or county courts, any necessary filing number and the application will be submitted to a judge of the court. If the court approves the application, the plaintiff will by written order be given notice that all fees and costs relating to the filing and service shall be waived. If the court denies the application the plaintiff will by written order be given notice that the case will be dismissed if the fee is not paid within one hundred twenty days of the date of the order.

(e) When motion not required. Where a party is represented in a civil action by a legal aid society or a legal services or other non-profit organization, which has as its primary purpose the furnishing of legal services to indigent persons, or by private counsel working on behalf of or under the auspices of such society or organization, all fees and costs relating to the filing and service shall be waived without the necessity of a motion and the case shall be given an index number, or, in a court other than the supreme or county court, an appropriate filing number,

provided that a determination has been made by such society, organization or attorney that such party is unable to pay the costs, fees and expenses necessary to prosecute or defend the action, and that an attorney's certification that such determination has been made is filed with the clerk of the court along with the summons and complaint or summons with notice or third-party summons and complaint or otherwise provided to the clerk of the court. Where an attorney certifies, pursuant to §1118 of the family court act, and in accordance with procedures of the appropriate appellate division, that a party or child who is the subject of an appeal has been represented in the family court by assigned counsel or an attorney for the child or by a legal aid society or a legal services or other non-profit organization, which has as its primary purpose the furnishing of legal services to indigent persons, or by private counsel working on behalf of or under the auspices of such society or organization, and, in the case of a counsel assigned to an adult party, that the party continues to be indigent, the party or child shall be presumed eligible for poor person relief pursuant to this section.

(f) [Expires Sept 1, 2009] Fees for inmates.

1. Notwithstanding any other provision of law to the contrary, a federal, state or local inmate under sentence for conviction of a crime may seek to commence his or her action or proceeding by paying a reduced filing fee as provided in paragraph two of this subdivision. Such inmate shall file the form affidavit referred to in subdivision (d) of this section along with the summons and complaint or summons with notice or third-party summons and complaint or petition or notice of petition or order to show cause. As part of such application, the inmate shall indicate the name and mailing address of the facility at which he or she is confined along with the name and mailing address of any other federal, state or local facility at which he or she was confined during the preceding six month period. The case will be given an index number if applicable, or, in courts other than the supreme or county courts, any necessary filing number and the application will be submitted to a judge of the court. Upon receipt of the application, the court shall obtain from the appropriate official of the facility at which the inmate is confined a certified copy of the inmate's trust fund account statement (or institutional equivalent) for the six month period preceding filing of the inmate's application. If the inmate has been confined for less than six months at such facility, the court shall obtain additional information as follows:

(i) in the case of a state inmate who has been transferred from another state correctional facility, the court shall obtain a trust fund account statement for the six month period from the central office of the department of correctional services in Albany; or

(ii) in the case of a state inmate who is newly transferred from a federal or local correctional facility, the court shall obtain any trust fund account statement currently available from such facility. The court may, in its discretion, seek further information from the prior or current facility.

2. If the court determines that the inmate has insufficient means to pay the full filing fee, the court may permit the inmate to pay a reduced filing fee, the minimum of which shall not be less than fifteen dollars and the maximum of which shall not be more than fifty dollars. The court shall require an initial payment of such portion of the reduced filing fee as the inmate can reasonably afford or shall authorize no initial payment of the fee if exceptional circumstances render the inmate unable to pay any fee; provided however, that the difference between the amount of the reduced filing fee and the amount paid by the inmate in the initial partial payment shall be assessed against the inmate as an outstanding obligation to be collected either by the superintendent or the municipal official of the facility at which the inmate is confined, as the case may be, in the same

manner that mandatory surcharges are collected as provided for in subdivision five of § 60.35 of the penal law. The court shall notify the superintendent or the municipal official of the facility where the inmate is housed of the amount of the reduced filing fee that was not directed to be paid by the inmate. Thereafter, the superintendent or the municipal official shall forward to the court any fee obligations that have been collected, provided however, that:

(i) in no event shall the filing fee collected exceed the amount of fees required for the commencement of an action or proceeding; and

(ii) in no event shall an inmate be prohibited from proceeding for the reason that the inmate has no assets and no means by which to pay the initial partial filing fee.

3. The institution at which an inmate is confined, or the central office for the department of correctional services, whichever is applicable, shall promptly provide the trust fund account statement to the inmate as required by this subdivision.

4. Whenever any federal, state or local inmate obtains a judgment in connection with any action or proceeding which exceeds the amount of the filing fee, paid in accordance with the provisions of this subdivision for commencing such action or proceeding, the court shall award to the prevailing inmate, as a taxable disbursement, the actual amount of any fee paid to commence the action or proceeding.

5. The provisions of this subdivision shall not apply to a proceeding commenced pursuant to article seventy-eight of this chapter which alleges a failure to correctly award or certify jail time credit due an inmate, in violation of § 600-a of the correction law and § 70.30 of the penal law.

§ 1102. Privileges of poor person

(a) Attorney. The court in its order permitting a person to proceed as a poor person may assign an attorney.

(b) Stenographic transcript. Where a party has been permitted by order to appeal as a poor person, the court clerk, within two days after the filing of said order with him, shall so notify the court stenographer, who, within twenty days of such notification shall make and certify two typewritten transcripts of the stenographic minutes of said trial or hearing, and shall deliver one of said transcripts to the poor person or his attorney, and file the other with the court clerk together with an affidavit of the fact and date of such delivery and filing. The expense of such transcripts shall be a county charge or, in the counties within the city of New York, a city charge, as the case may be, payable to the stenographer out of the court fund upon the certificate of the judge presiding at the trial or hearing. A poor person may be furnished with a stenographic transcript without fee by order of the court in proceedings other than appeal, the fee therefor to be paid by the county or, in the counties within the city of New York by the city, as the case may be, in the same manner as is paid for transcripts on appeal. Notwithstanding this or any other provision of law, fees paid for stenographic transcripts with respect to those proceedings specified in paragraph (a) of subdivision one of § 35 of the judiciary law shall be paid by the state in the manner prescribed by subdivision four of §35 of the judiciary law.

(c) Appeals. On an appeal or motion for permission to appeal a poor person may submit typewritten briefs and appendices, furnishing one legible copy for each appellate justice.

(d) Costs and fees. A poor person shall not be liable for the payment of any costs or fees unless a recovery by judgment or by settlement is had in his favor in which event the court may direct him to pay out of the recovery all or part of the costs and fees, a reasonable sum for the services and expenses of his attorney and any sum expended by the county or city under subdivision (b).

b. Article 12

Infants, Incompetents and Conservatees

R 1202. Appointment of guardian ad litem

(a) By whom motion made. The court in which an action is triable may appoint a guardian ad litem at any stage in the action upon its own initiative or upon the motion of:

1. an infant party if he is more than fourteen years of age; or

2. a relative, friend or a guardian, committee of the property, or conservator; or

3. any other party to the action if a motion has not been made under paragraph one or two within ten days after completion of service.

(b) Notice of motion. Notice of a motion for appointment of a guardian ad litem for a person shall be served upon the guardian of his property, upon his committee or upon his conservator, or if he has no such guardian, committee, or conservator, upon the person with whom he resides. Notice shall also be served upon the person who would be represented if he is more than fourteen years of age and has not been judicially declared to be incompetent.

(c) Consent. No order appointing a guardian ad litem shall be effective until a written consent of the proposed guardian has been submitted to the court together with an affidavit stating facts showing his ability to answer for any damage sustained by his negligence or misconduct.

§ 1204. Compensation of guardian ad litem

A court may allow a guardian ad litem a reasonable compensation for his services to be paid in whole or part by any other party or from any recovery had on behalf of the person whom such guardian represents or from such person's other property. No order allowing compensation shall be made except on an affidavit of the guardian or his attorney showing the services rendered.

III. NEW YORK CODE, RULES AND REGULATIONS

A. RULES OF THE CHIEF ADMINISTRATOR OF THE COURTS

Part 127

Assignment and Compensation of Counsel, Psychiatrists, Psychologists and Physicians

§ 127.1 Assignment and compensation of counsel, psychiatrists, psychologists and physicians

(a) Assignments and appointments of counsel, psychiatrists, psychologists, physicians and social workers shall be made by the court in accordance with such rules as may be adopted by each Appellate Division. Each Appellate Division may compile and maintain such lists of attorneys, psychiatrists, psychologists, physicians and social workers as it shall deem appropriate for the implementation of its rules. Such rules may provide that the appointment of psychiatrists, psychologists, physicians and social workers shall be made after consultation with the Mental Hygiene Legal Service.

(b) Each claim by assigned counsel, psychiatrist, psychologist or physician or social worker payable from State funds for services rendered to indigent persons, pursuant to § 35 of the Judiciary Law, shall be submitted on forms authorized by the Chief Administrator of the Courts for approval within 45 days after completion of service to the court which made assignment. Upon approval, the court shall thereupon, within 15 days after receipt, forward such claims to the appropriate Appellate Division for certification to the Comptroller for payment. If the initial assignment is made by either an Appellate Division or the Court of Appeals, the claim shall be submitted on a form promulgated by the Chief Administrator for approval to the Appellate Division or Court of Appeals, and thereafter, upon receipt of such approval, it shall be certified to the Comptroller for payment.

§ 127.2 Compensation of counsel and other providers in extraordinary circumstances

(a) Whenever an attorney, psychiatrist, psychologist, physician, or a person providing investigative, expert or other services, seeks compensation in excess of the statutory limits prescribed by Article 18-B of the County Law or § 35 of the Judiciary Law, because of extraordinary circumstances, he or she shall submit with his or her claim a detailed affidavit stating the nature of the proceeding, the manner in which the time was expended, the necessity therefor, and all other facts that demonstrate extraordinary circumstances. If the claim is by an attorney, the attorney shall state the disposition of the matter.

(b) The order of the trial judge with respect to a claim for compensation in excess of the statutory limits may be reviewed by the appropriate administrative judge, with or without application, who may modify the award if it is found that the award reflects an abuse of discretion by the trial judge. Any order modifying a trial judge's award shall be in writing.

(c) An application for review may be made by any person or governmental body affected by the

order.

§ 127.4 Compensation of attorneys for children

Claims by attorneys for children for compensation, expenses and disbursements pursuant to § 245 of the Family Court Act and § 35 of the Judiciary Law shall be determined pursuant to the rules of the appropriate Appellate Division.

§ 127.5 Workload of the attorney for the child

(a) Subject to adjustment based on the factors set forth in subdivision (b), the number of children represented at any given time by an attorney appointed pursuant to § 249 of the Family Court Act shall not exceed 150.

(b) For representation provided under an agreement pursuant to § 243(a) and (b) of the Family Court Act, the workload standards set forth in subdivision (a) may be adjusted based on such factors as:

(1) Differences among categories of cases that comprise the workload of the office covered by the agreement;

(2) The level of activity required at different phases of the proceeding;

(3) The weighting of different categories and phases of cases;

(4) Availability and use of support staff;

(5) The representation of multiple children in a case;

(6) Local court practice, including the duration of a case;

(7) Other relevant considerations.

(c) The administrators of offices pursuant to such agreements shall be responsible for managing resources and for allocating cases among staff attorneys to promote the effective representation of children and to ensure that the average workload of the attorneys for children in the office complies with the standards set forth in subdivision (a) as modified by subdivision (b).

(d) For representation provided by a panel of attorneys for children pursuant to § 243(c) of the Family Court Act, the Appellate Division may adjust the workload standards of subdivision (a) to ensure the effective representation of children.

(e) The Chief Administrator of the Courts, with respect to representation pursuant to § 243(a) of the Family Court Act, and the Appellate Divisions, with respect to representation pursuant to §243(b) and (c) of the Family Court Act, shall annually, at the time of the preparation and submission of the judiciary budget, review the workload of such offices and panels, and shall take action to assure compliance with this rule.

B. RULES OF THE CHIEF JUDGE

Part 36

Appointments by the Court

A member of the Panel of Attorneys for Children MUST register with the Office of Court Administration pursuant to Rule 36 of the Rules of the Chief Judge in order to be eligible to accept assignment as Counsel for the Child where private parties will pay for the representation. Applications for appointment can be found at www.nycourts.gov/ip/gfs.

§ 36.0 Preamble

Public trust in the judicial process demands that appointments by judges be fair, impartial and beyond reproach. Accordingly, these rules are intended to ensure that appointees are selected on the basis of merit, without favoritism, nepotism, politics or other factors unrelated to the qualifications of the appointee or the requirements of the case.

The rules cannot be written in a way that foresees every situation in which they should be applied. Therefore, the appointment of trained and competent persons, and the avoidance of factors unrelated to the merit of the appointments or the value of the work performed are the fundamental objectives that should guide all appointments made, and orders issued, pursuant to this Part.

§ 36.1 Application

(a) Except as set forth in subdivision (b), this Part shall apply to the following appointments made by any judge or justice of the Unified Court System:

(1) guardians;

(2) guardians ad litem, including guardians ad litem appointed to investigate and report to the court on particular issues, and their counsel and assistants;

(3) attorneys for children who are not paid from public funds, in those judicial departments where their appointments are authorized;

(4) court evaluators;

(5) attorneys for alleged incapacitated persons;

(6) court examiners;

(7) supplemental needs trustees;

(8) receivers;

(9) referees (other than special masters and those otherwise performing judicial functions in a quasi-judicial capacity);

(10) the following persons or entities performing services for guardians or receivers:

(i) counsel
(ii) accountants
(iii) auctioneers
(iv) appraisers
(v) property managers
(vi) real estate brokers

(11) a public administrator within the City of New York and for the counties of Westchester, Onondaga, Erie, Monroe, Suffolk and Nassau and counsel to the public administrator, except that only §§ 36.2 (c) and 36.4(e) of this Part shall apply, and that § 36.2 (c) shall not apply to incumbents in these positions until one year after the effective date of this paragraph.

(b) Except for §§ 36.2(c)(6) and 36.2(c)(7), this Part shall not apply to:

(1) appointments of attorneys for children pursuant to § 243 of the Family Court Act, guardians ad litem pursuant to § 403-a of the Surrogate's Court Procedure Act, or the Mental Hygiene Legal Service;

(2) the appointment of, or the appointment of any persons or entities performing services for, any of the following:

(i) a guardian who is a relative of (A) the subject of the guardianship proceeding or (B) the beneficiary of a proceeding to create a supplemental needs trust; a person or entity nominated as guardian by the subject of the proceeding or proposed as guardian by a party to the proceeding; a supplemental needs trustee nominated by the beneficiary of a supplemental needs trust or proposed by a proponent of the trust; or a person or entity having a legally recognized duty or interest with respect to the subject of the proceeding;

(ii) a guardian ad litem nominated by an infant of 14 years of age or over;

(iii) a non-profit institution performing property management or personal needs services, or acting as court evaluator;

(iv) a bank or trust company as a depository for funds or as a supplemental needs trustee;

(v) except as set forth in § 36.1(a)(11), a public official vested with the powers of an administrator;

(vi) a person or institution whose appointment is required by law;

(vii) a physician whose appointment as a guardian ad litem is necessary where emergency medical or surgical procedures are required.

(3) an appointment other than above without compensation, except that the appointee must file a notice of appointment pursuant to § 36.4(a) of this Part.

§ 36.2 Appointments

(a) Appointments by the judge. All appointments of the persons or entities set forth in § 36.1, including those persons or entities set forth in § 36.1(a)(10) who perform services for guardians or receivers, shall be made by the judge authorized by law to make the appointment. In making appointments of persons or entities to perform services for guardians or receivers, the appointing judge may consider the recommendation of the guardian or receiver.

(b) Use of lists. (1) All appointments pursuant to this Part shall be made by the appointing judge from the appropriate list of applicants established by the Chief Administrator of the Courts pursuant to § 36.3 of this Part.

(2) An appointing judge may appoint a person or entity not on the appropriate list of applicants upon a finding of good cause, which shall be set forth in writing and shall be filed with the fiduciary clerk at the time of the making of the appointment. The appointing judge shall send a copy of such writing to the Chief Administrator. A judge may not appoint a person or entity that has been removed from a list pursuant to § 36.3(e).

(3) Appointments made from outside the lists shall remain subject to all of the requirements and limitations set forth in this Part, except that the appointing judge may waive any education and training requirements where completion of these requirements would be impractical.

(c) Disqualifications from appointment.

(1) No person shall be appointed who is a judge or housing judge of the Unified Court System of the State of New York, or who is a relative of, or related by marriage to, a judge or housing judge of the Unified Court System within the fourth degree of relationship.

(2) No person serving as a judicial hearing officer pursuant to Part 122 of the Rules of the Chief Administrator shall be appointed in actions or proceedings in a court in a county where he or she serves on a judicial hearing officer panel for such court.

(3) No person shall be appointed who is a full-time or part-time employee of the Unified Court System. No person who is the spouse, sibling, parent or child of an employee who holds a position at salary grade JG24 or above, or its equivalent, shall be appointed by a court within the judicial district where the employee is employed or, with respect to an employee with statewide responsibilities, by any court in the state.

(4)(i) No person who is the chair or executive director, or their equivalent, of a state or county political party, or the spouse, sibling, parent or child of that official, shall be appointed while that official serves in that position and for a period of two years after that official no longer holds that position. This prohibition shall apply to the members, associates, counsel and employees of any law firms or entities while the official is associated with that firm or entity.

(ii) No person who has served as a campaign chair, coordinator, manager, treasurer or finance chair for a candidate for judicial office, or the spouse, sibling, parent or child of that person, or anyone associated with the law firm of that person, shall be appointed by the judge for whom that

service was performed for a period of two years following the judicial election. If the candidate is a sitting judge, the disqualifications shall apply as well from the time the person assumes any of the above roles during the campaign for judicial office.

(5) No former judge or housing judge of the Unified Court System, or the spouse, sibling, parent or child of such judge, shall be appointed, within two years from the date the judge left judicial office, by a court within the jurisdiction where the judge served. Jurisdiction is defined as follows:

(i) The jurisdiction of a judge of the Court of Appeals shall be statewide.

(ii) The jurisdiction of a justice of an Appellate Division shall be the judicial department within which the justice served.

(iii) The jurisdiction of a justice of the Supreme Court and a judge of the Court of Claims shall be the principal judicial district within which the justice or judge served.

(iv) With respect to all other judges, the jurisdiction shall be the principal county within which the judge served.

(6) No attorney who has been disbarred or suspended from the practice of law shall be appointed during the period of disbarment or suspension.

(7) No person convicted of a felony, or for five years following the date of sentencing after conviction of a misdemeanor (unless otherwise waived by the Chief Administrator upon application), shall be appointed unless that person receives a certificate of relief from disabilities.

(8) No receiver or guardian shall be appointed as his or her own counsel, and no person associated with a law firm of that receiver or guardian shall be appointed as counsel to that receiver or guardian, unless there is a compelling reason to do so.

(9) No attorney for an alleged incapacitated person shall be appointed as guardian to that person, or as counsel to the guardian of that person.

(10) No person serving as a court evaluator shall be appointed as guardian for the incapacitated person except under extenuating circumstances that are set forth in writing and filed with the fiduciary clerk at the time of the appointment.

(d) Limitations on appointments based upon compensation. (1) No person or entity shall be eligible to receive more than one appointment within a calendar year for which the compensation anticipated to be awarded to the appointee in any calendar year exceeds the sum of $ 15,000.

(2) If a person or entity has been awarded more than an aggregate of $ 75,000 in compensation by all courts during any calendar year, the person or entity shall not be eligible for compensated appointments by any court during the next calendar year.

(3) For purposes of this Part, the term "compensation" shall mean awards by a court of fees, commissions, allowances or other compensation, excluding costs and disbursements.

(4) These limitations shall not apply where the appointment is necessary to maintain continuity of representation of or service to the same person or entity in further or subsequent proceedings.

§ 36.3 Procedure for appointment

(a) Application for appointment. The Chief Administrator shall provide for the application by persons or entities seeking appointments pursuant to this Part on such forms as shall be promulgated by the Chief Administrator. The forms shall contain such information as is necessary to establish that the applicant meets the qualifications for the appointments covered by this Part and to apprise the appointing judge of the applicant's background.

(b) Qualifications for appointment. The Chief Administrator shall establish requirements of education and training for placement on the list of available applicants. These requirements shall consist, as appropriate, of substantive issues pertaining to each category of appointment -- including applicable law, procedures, and ethics -- as well as explications of the rules and procedures implementing the process established by this Part. Education and training courses and programs shall meet the requirements of these rules only if certified by the Chief Administrator. Attorney participants in these education and training courses and programs may be eligible for continuing legal education credit in accordance with the requirements of the Continuing Legal Education Board.

(c) Establishment of lists. The Chief Administrator shall establish separate lists of qualified applicants for each category of appointment, and shall make available such information as will enable the appointing judge to be apprised of the background of each applicant. The Chief Administrator may establish more than one list for the same appointment category where appropriate to apprise the appointing judge of applicants who have substantial experience in that category. Pursuant to § 81.32(b) of the Mental Hygiene Law, the Presiding Justice of the appropriate Appellate Division shall designate the qualified applicants on the lists of court examiners established by the Chief Administrator.

(d) Reregistration. The Chief Administrator shall establish a procedure requiring that each person or entity on a list reregister every two years in order to remain on the list.

(e) Removal from list. The Chief Administrator may remove any person or entity from any list for unsatisfactory performance or any conduct incompatible with appointment from that list, or if disqualified from appointment pursuant to this Part. A person or entity may not be removed except upon receipt of a written statement of reasons for the removal and an opportunity to provide an explanation and to submit facts in opposition to the removal.

§ 36.4 Procedure after appointment

(a) Notice of appointment and certification of compliance. (1) Every person or entity appointed pursuant to this Part shall file with the fiduciary clerk of the court from which the appointment is made, within 30 days of the making of the appointment, (i) a notice of appointment and (ii) a certification of compliance with this Part, on such form as promulgated by the Chief Administrator. Copies of this form shall be made available at the office of the fiduciary clerk and shall be transmitted by that clerk to the appointee immediately after the making of the appointment by the appointing judge. An appointee who accepts an appointment without compensation need not complete the certification of compliance portion of the form.

(2) The notice of appointment shall contain the date of the appointment and the nature of the appointment.

(3) The certification of compliance shall include: (i) a statement that the appointment is in compliance with §§36.2 (c) and (d); and (ii) a list of all appointments received, or for which compensation has been awarded, during the current calendar year and the year immediately preceding the current calendar year, which shall contain (A) the name of the judge who made each appointment, (B) the compensation awarded, and (c) where compensation remains to be awarded, (i) the compensation anticipated to be awarded and (ii) separate identification of those appointments for which compensation of $ 15,000 or more is anticipated to be awarded during any calendar year. The list shall include the appointment for which the filing is made.

(4) A person or entity who is required to complete the certification of compliance, but who is unable to certify that the appointment is in compliance with this Part, shall immediately so inform the appointing judge.

(b) Approval of compensation. (1) Upon seeking approval of compensation of more than $ 500, an appointee must file with the fiduciary clerk, on such form as is promulgated by the Chief Administrator, a statement of approval of compensation, which shall contain a confirmation to be signed by the fiduciary clerk that the appointee has filed the notice of appointment and certification of compliance.

(2) A judge shall not approve compensation of more than $ 500, and no compensation shall be awarded, unless the appointee has filed the notice of appointment and certification of compliance form required by this Part and the fiduciary clerk has confirmed to the appointing judge the filing of that form.

(3) Each approval of compensation of $ 5,000 or more to appointees pursuant to this section shall be accompanied by a statement, in writing, of the reasons therefor by the judge. The judge shall file a copy of the order approving compensation and the statement with the fiduciary clerk at the time of the signing of the order.

(4) Compensation to appointees shall not exceed the fair value of services rendered. Appointees who serve as counsel to a guardian or receiver shall not be compensated as counsel for services that should have been performed by the guardian or receiver.

(c) Reporting of compensation received by law firms. A law firm whose members, associates and employees have had a total of $ 50,000 or more in compensation approved in a single calendar year for appointments made pursuant to this Part shall report such amounts on a form promulgated by the Chief Administrator.

(d) Exception. The procedure set forth in this section shall not apply to the appointment of a referee to sell real property and a referee to compute whose compensation for such appointments is not anticipated to exceed $ 750.

(e) Approval and reporting of compensation received by counsel to the public administrator.

(1) A judge shall not approve compensation to counsel to the public administrator in excess of the fee schedule promulgated by the administrative board of the public administrator under SCPA 1128 unless accompanied by the judge's statement, in writing, of the reasons therefor, and by the

appointee's affidavit of legal services under SCPA 1108 setting forth in detail the services rendered, the time spent, and the method or basis by which the requested compensation was determined.

(2) Any approval of compensation in excess of the fee schedule promulgated by the administrative board of the public administrator shall be reported to the Office of Court Administration on a form promulgated by the Chief Administrator and shall be accompanied by a copy of the order approving compensation, the judge's written statement, and the counsel's affidavit of legal services, which records shall be published as determined by the Chief Administrator.

(3) Each approval of compensation of $ 5,000 or more to counsel shall be reported to the Office of Court Administration on a form promulgated by the Chief Administrator and shall be published as determined by the Chief Administrator.

§ 36.5 Publication of appointments

(a) All forms filed pursuant to § 36.4 shall be public records.

(b) The Chief Administrator shall arrange for the periodic publication of the names of all persons and entities appointed by each appointing judge, and the compensation approved for each appointee.

C. RULES OF THE APPELLATE DIVISION, FIRST DEPARTMENT

a. Part 611

<u>Attorneys for Children Plan</u>

§ 611.1 Introduction

(a)(1) The Family Court panels now established in the First Judicial Department pursuant to article 18-B of the County Law and pertinent provisions of the Family Court Act, shall continue in effect and shall constitute the Family Court Panel Plan in the First Judicial Department.

(2) The roster of attorneys for children certified pursuant to the Rules of the Chief Administrator Part 36 and the former Rules of the Court Part 614, to accept appointment as an attorney for a child pursuant to Family Court § 249(a), Civil Practice Law and Rules § 1202, or Uniform Rules of the Trial Court § 202.16(f)(3), shall continue in effect in this department as part of the Attorneys for Children Plan.

(3) The Family Court Panel Plan and the attorneys for children roster are merged to form the Attorneys for Children Plan. An attorney certified for appointment in one capacity shall be deemed certified for appointment in the other capacity and by virtue of the certification agrees to accept assignments and appointments in Supreme Court or Family Court.

(b) The Director of the Office of Attorneys for Children, appointed by the Presiding Justice of the Appellate Division, First Department, shall administer the Attorneys for Children Plan.

§ 611.2 Assignment of counsel in Family Court

Counsel to be assigned pursuant to the Family Court Act, § 262, shall be selected from such panels as have been established by the assigned counsel plan in the First Judicial Department.

§ 611.3 Appointment of Attorneys for Children in Family Court

Where for sufficient reason attorneys for children to be appointed pursuant to the Family Court Act, §249, cannot otherwise be designated as provided in § 243(a) of such act, the court may draw upon such panels as have been established by the assigned counsel plan for the First Judicial Department as if such panels had been separately established pursuant to § 243 (c) of such act.

§ 611.4 Certification of attorneys

Certification of an attorney as a member of any panel of the Attorneys for Children Plan shall be for a one-year term subject to:

(a) annual redesignation pursuant to Family Court Act, § 244(b); and

(b) recertification as directed by the justices of the Appellate Division, First Department.

§ 611.5 Departmental Advisory Committee

Commencing January 1, 1980, the justices of the Appellate Division, First Department established a Departmental Advisory Committee. This committee shall remain in operation and have the authority and responsibility to oversee the operation of the Attorneys for Children Plan and to consider all matters that pertain to the qualifications, performance and professional conduct of individual plan attorneys in their assignments and appointments as plan attorneys, and the representation of indigent parties in Family Court proceedings.

§ 611.6 Composition of the Departmental Advisory Committee

(a) The committee shall be composed of no fewer than 15 attorneys who shall be experienced in Family Court and domestic relations proceedings, three Family Court Judges, one mental health expert, one representative from each of the three bar associations designated in § 612.3 of this Title, one faculty member of an accredited law school in the First Judicial Department, the Director of the Office of Attorneys for Children and the Assigned Counsel Plan Administrator.

(b) The justices of the Appellate Division, First Department shall nominate all committee members, except the representatives of the three bar associations, who shall be nominated by the respective presidents of those associations. The presiding Justice may appoint such additional members to the committee as will facilitate its operation. The term of appointment for each committee member, except the Director of the Office of Attorneys for Children and Assigned Counsel Plan Administrator, shall be staggered and for a period of three years subject to renomination by the justices of the Appellate Division. The term of appointment for the Director of the Office of Attorneys for Children and the Assigned Counsel Plan Administrator shall be coextensive with the term of their respective positions.

(c) The Presiding Justice shall designate a chair and vice-chair of the committee.

§ 611.7 Duties of the Departmental Advisory Committee

The Departmental Advisory Committee shall conduct its activities and carry out the duties enumerated in this Part pursuant to the bylaws of the Assigned Counsel Plan Central Screening Committee, set forth in Part 612 of this Title. The Director of the Office of Attorneys for Children shall be substituted where reference in the bylaws is made to the administrator.

§ 611.8 Screening process

(a) All applicants for plan membership shall be screened by the Departmental Advisory Committee.

(b) The committee, in accordance with standards for admission to the panels, entitled "General Requirements for All Applicants to the Family Court Panels" and "General Requirements for Attorneys for Children to Qualify for Appointment in Domestic Relations Matters", shall make a determination as to whether an attorney is qualified for membership on any of the panels.

§ 611.9 Continuing legal education

(a) The Departmental Advisory Committee, in cooperation with the Assigned Counsel Plan, the Continuing Legal Education Office and the three bar associations designated in § 612.3 of this Title, shall:

(1) on a continuing basis, develop and conduct training and education programs that focus on Domestic Relations Law and Practice before the Family Court;

(2) annually promulgate a list of recommended training and education programs pertaining to domestic relations and family law sponsored by independent providers of legal education; and

(3) organize and operate a co-counsel program.

(b) Members of the Attorneys for Children Plan biennially must complete at least eight hours of

training and education programs that are either sponsored by the Departmental Advisory Committee or included on the list of recommended programs referred to in subdivision (a) of this section.

§ 611.10 Annual report

(a) No later than September 30th of each calendar year the Departmental Advisory Committee shall file with the Appellate Division a written evaluation of the panels and the panel attorneys, setting forth information regarding: the performance of plan attorneys, efficiency of the panels as a means of representing indigent parties, the training and education programs sponsored and recommended by the committee, and proposals for improving the operation of the Attorneys for Children Plan. In preparing the written evaluation, the committee may consult with Family Court judges and bar associations. Plan attorneys shall cooperate with the committee in preparing the evaluation.

(b) An annual report of the operation of the Family Court panels shall be filed by the Appellate Division with the Chief Administrator of the Unified Court System no later than January 31st of each calendar year.

§ 611.11 Continuity of powers

Nothing contained in this Part shall be construed to limit the powers of the Appellate Division or the presiding justice thereof or the administrator of the assigned counsel plan otherwise granted pursuant to law.

§ 611.12 Members of the Departmental Advisory Committee as volunteers

The members of the Departmental Advisory Committee, as volunteers are expressly authorized to participate in a State-sponsored volunteer program within the meaning of Public Officers Law, § 17(a).

b. Part 612

<u>Rules to Implement a Criminal Courts Plan</u>

§ 612.13 Appendix A - central screening committee indigent defendants assigned counsel plan

The Appellate Division, First Judicial Department, in furtherance of its obligation to provide indigent criminal defendants with competent counsel, approves the bylaws contained herein.

Membership on all assigned counsel panels is a privilege granted to qualified attorneys by the Appellate Division, First Judicial Department.

BYLAWS

1. Quorum and Voting.

1.1 A quorum of a majority of the Committee is required for the conduct of business.

1.2 Final action on proposed guidelines, applications and complaints requires a majority vote of a quorum.

2. Application for Certification or Recertification.

2.1 All applications for certification or recertification to the panels shall be addressed to the Administrator. The provisions of this section shall apply to applications seeking initial certification or recertification to the panels.

2.2 The Administrator shall examine each application for facial sufficiency. If it is found to be insufficient, the Administrator shall return the application to the applicant.

2.3 The Administrator shall promptly assign every application not returned pursuant to 2.2 to the Committee member for his or her review.

2.4 Within sixty days of receiving the application, the assigned committee member shall contact two-thirds of the required references, at least two in each category (judges, adversaries and colleagues) and shall recommend in writing, to the Chair, the action to be taken on the application. A copy of the recommendation shall be submitted to the Administrator. Requests for extension of the sixty day period shall be made in writing to the Administrator.

2.5 Upon receipt of the assigned committee member's recommendation, the Chair shall accept the recommendation or refer the application to the Committee for review. When the Chair refers an application to the Committee, the Chair shall invite the applicant to appear before the Committee. Upon a review of the assigned committee member's recommendation, the application and any other relevant material, the Committee shall vote on the application pursuant to § 1.2 of these bylaws. The Chair or the Committee shall take the following action on an application:

1) Certify the applicant to the panel(s) for which he or she is qualified;
2) Deny certification of the applicant to any of the panels for which he or she is not qualified;
3) Set conditions that the applicant must meet to establish the necessary qualifications for certification.

2.6 Applicants shall be advised by letter of the determination. In the event the applicant is denied certification, the letter must specify the reasons therefor.

2.7 The Committee's action is appealable to the presiding justice of the Appellate Division, First Judicial Department by the submission of a letter requesting review of the Committee's determination. The presiding justice's review of the Committee's determination is final and non-appealable.

2.8 An applicant denied certification to any panel may reapply for that panel one year after the date of the letter denying certification unless a shorter time or other conditions are set by the Chair or the Committee pursuant to § 2.5.

3. Complaints and Sanctions.

3.1 The Administrator, in consultation with the Chair, shall accept and keep records of written complaints concerning the competence and conduct of panel attorneys. Complaints made to the Administrator shall be forwarded to the Chair.

3.2 The Chair, in consultation with the Administrator, may dismiss complaints. Complaints not dismissed shall be referred to a committee member designated by the Chair for further investigation within thirty days of receipt of the complaint.

3.3 Once a complaint has been referred for further investigation, a subcommittee consisting of the Chair, the Administrator, and two additional committee members shall vote as to whether the attorney should be suspended. Suspension shall be imposed upon a majority vote of the subcommittee. The suspension shall continue pending a resolution of the complaint.

3.4 A panel member who is the subject of a complaint shall receive notice of the substance of the complaint. The notice shall advise the attorney that he or she may respond in writing.

3.5 Investigation by the designated subcommittee member shall be completed within ninety days. Extension of time to investigate a complaint may be granted by the Chair. Upon the completion of an investigation, the designated committee member shall make a report, with findings and recommendations, to the Committee.

3.6 The Committee shall, upon receipt of the report, invite the attorney to appear before the Committee, and upon having duly considered the attorney's statements and other relevant submissions, shall take one or more of the following actions, as shall be appropriate:

1) Dismiss the complaint;
2) Adopt the recommendation;
3) Reject the recommendation;
4) Suspend the panel attorney from any or all panels to which the attorney is certified and impose conditions upon the attorney's restoration to the panel;
5) Recommend the substitution of the panel attorney on some or all of the cases to which the attorney is currently assigned by notification to the trial court where the cases are pending;
6) Remove the attorney from any or all panels to which the attorney is certified.

3.7 At any time the Committee or subcommittee may vote to transmit the information it has developed to the District Attorney or the Department Disciplinary Committee.

3.8 The Chair shall promptly notify the attorney in writing of the Committee's action. In the event the determination imposes a restriction on the attorney's panel membership, the letter shall set forth the reasons therefor.

3.9 The determination of the Committee is appealable to the presiding justice of the Appellate Division, First Judicial Department by the submission of a letter requesting review of the Committee's determination. The presiding justice's review of the Committee's determination is final and non-appealable. 3.10 Nothing contained in these bylaws limits the authority of the Appellate Division to suspend or remove an attorney from the panels.

4. Responsibilities of Committee Members.

4.1 Committee members shall act expeditiously on applications and complaints referred to them. Any Committee member who fails to take timely action twice during any twelve month period shall be removed by the Presiding Justice.

5. Responsibilities of Officers.

5.1 An executive committee shall be formed, consisting of the Chair, the Vice-chair, Administrator and three members designated by the Chair. One of the three designees shall serve as Secretary.

5.2 The executive committee may act in place of the Committee in any matter that requires action by the Committee during a period in which the Committee is not scheduled to meet for more than thirty days. Any action taken by the executive committee shall be ratified by the Committee at its next meeting.

5.3 The Chair may designate subcommittees and may designate committee members to serve as chairs therefor.

5.4 All officers and executive committee members shall serve in their respective capacities for three years and may be reappointed by the Appellate Division.

D. RULES OF THE APPELLATE DIVISION, FIRST DEPARTMENT

Part 623

<u>Mental Health Professionals Panel</u>

§ 623.1 Access to mental health professionals

In custody and visitation, delinquency, persons in need of supervision, child abuse and neglect, termination of parental rights, family offense, and adoption cases, an evaluation of the parties by a mental health professional is often necessary to assist the court in reaching an appropriate decision. To assure that the court and the parties have access to qualified mental health professionals, a panel of social workers, psychologists and psychiatrists shall be established in the First and Second Judicial Departments in accordance with this Part and Part 680 of this Title.

§ 623.2 Mental health professionals certification committee

(a) A mental health professionals certification committee shall be established for the First and Second Judicial Departments.

(b) The committee shall be composed of no fewer than two justices of the Supreme Court, two judges of the Family Court, two lawyers, two social workers, two psychologists, and two psychiatrists. Half of the members in each class shall be appointed by the Presiding Justices of the First and Second Departments of the Appellate Division, respectively, for three-year terms. Committee members shall be eligible for reappointment for additional terms. The Directors of the Office of Attorneys for Children for the Appellate Division in the First and Second Judicial Departments, respectively, or their designees, shall be ex-officio members.
(c) The members of the committee shall serve as volunteers, authorized to participate in a State-sponsored volunteer program within the meaning of the Public Officers Law, §17.

§ 623.3 Duties of mental health professionals certification committee

Subject to the supervision of the Presiding Justices of the Appellate Division of the First and Second Judicial Departments, the mental health professionals certification committee shall establish procedures for:

(a) the appointment of applicants for membership on the panel of mental health professionals;

(b) periodic evaluation of panel members;

(c) training of panel members;

(d) investigating complaints made against panel members; and

(e) removal of mental health professionals from the panel.

§ 623.4 Establishment of mental health professionals panel

(a) *Eligibility requirements.* A member of the mental health professionals panel shall:

(1) be a social worker, psychologist, or psychiatrist licensed by the State of New York;

(2) complete six hours of introductory training approved by the Presiding Justices of the Appellate Division of the First and Second Judicial Departments;

(3) demonstrate that he or she has forensic experience, including having testified as an expert and/or having submitted a clinical report in connection with one or more of the following types of court proceedings: custody and visitation, delinquency, persons in need of supervision, child abuse and neglect, termination of parental rights, family offense, and adoption;

(4) maintain professional malpractice insurance; and

(5) meet such additional requirements as shall be established by the mental health professionals certification committee with the approval of the Presiding Justices of the Appellate Divisions of the First and Second Judicial Departments.

(b) *Application.* Licensed social workers, psychologists, and psychiatrists may apply for membership on the mental health professionals panel for the First and Second Judicial Departments by completing a questionnaire in the form prescribed by the mental health professionals certification committee.

(c) *Appointments to panel.* (1)The mental health professionals committee shall review applications and identify those mental health professionals who meet the eligibility requirements.
(2) The Presiding Justices of the Appellate Division in the First and Second Judicial Departments shall, by joint order, appoint the members of the mental health professionals panel from among those social workers, psychologists and psychiatrists recommended by the committee.

(3) Appointments to the panel shall be for a term of three years. Panel members may be reappointed to successive terms. Any panel member may be removed prior to the expiration of his or her term by the joint order of the Presiding Justices of the Appellate Divisions of the First and Second Judicial Departments upon the recommendation of the committee.

§ 623.5 Appointment of mental health professionals from panel

(a) *Appointment.* A court may appoint a mental health professional or professionals to evaluate adults and children in any case involving custody and visitation, delinquency, persons in need of supervision, child abuse and neglect, termination of parental rights, family offense, and adoption wherein compensation is paid privately or pursuant to Judiciary Law, §35 or County Law, article 18-B. Such appointments shall be from the mental health professionals panel promulgated pursuant to these rules. A court, upon a finding of good cause, may appoint a mental health professional who is not a member of the mental health professionals panel. The court's finding shall be set forth in order of appointment. This section shall not apply to providers of mental health services pursuant to a governmental contract.

(b) *Order of appointment.* The court appointing a mental health professional shall issue a written order setting forth the terms and conditions of the appointment including the method and rate of

compensation and by whom such compensation is to be paid. A copy of the order shall be provided to the mental health professional and to every party to the case, including the attorney, if any, for each child.

§ 623.6 Compensation of mental health professionals

(a) The compensation for mental health professionals appointed pursuant to Judiciary Law,§35 or County Law, article 18-B shall be at rates prescribed by the Chief Administrator of the Courts. Applications for payment for services rendered pursuant to those sections shall be submitted for approval to the court that appointed the panel member on forms authorized by the Chief Administrator of the Courts or by the appropriate local fiscal authority.

(b) The compensation of mental health professionals appointed in cases in which their fees shall be borne in whole or in part by the parties shall be at rates fixed by the court in accordance with the charge for such services prevailing in the community and the financial circumstances of the parties. Such compensation shall not exceed a sum certain to be set forth in the order of appointment, which sum shall be based on the selected rate and the estimated number of hours required to perform the necessary services. In the event that a greater expenditure of time is required than originally estimated, the mental health professional may apply to the court for additional fees in excess of the sum set forth in the order. The application shall be made by letter, a copy of which shall be forwarded to the party or parties responsible for the payment of the fee.

§ 623.7 Training and education

The mental health professionals certification committee shall establish a training and education program for members of the mental health professionals panel. The program may be established in cooperation with relevant professional organizations. The committee may make attendance at training sessions a requirement for continued membership on the panel of mental health professionals.

§ 623.8 Periodic evaluation of panel members

The mental health professionals certification committee shall establish procedures by which it shall periodically evaluate the work performed by each member of the panel of mental health professionals. In conducting its evaluation the committee shall seek information from judges and other appropriate and knowledgeable persons. The committee shall not recommend for reappointment to the panel any member whose performance has been determined to be unsatisfactory.

§ 623.9 Recommendation for removal

The Presiding Justices of the Appellate Division of the First and Second Judicial Departments may, by joint order, remove members of the mental health professionals panel. The mental health professionals certification committee may, at any time, recommend to the Presiding Justices that a mental health professional be removed from the panel.

§ 623.10 Annual report of the mental health professionals certification committee
On June 1st of each year the mental health professionals certification committee shall submit to the Presiding Justices of the Appellate Division in the First and Second Judicial Departments an annual report containing an evaluation of the operation of the mental health professionals panel and the training program and any recommendations concerning measures that should be adopted to improve the performance of the panel and the training program. A copy of that report shall be forwarded to the Chief Administrator of the Courts.

IV. PROGRAM COMPONENTS

OFFICE OF ATTORNEYS FOR CHILDREN
APPELLATE DIVISION, FIRST DEPARTMENT
ADMINISTRATIVE OFFICES

Address	**Telephone Numbers** (all numbers are 212 area code)
41 Madison Avenue - 39th Floor New York, NY 10010	
Jane Schreiber, Esq. Director	340-0514
Caroline Diaz	340-0595

Voucher/Payment Coordinator

Deborah Ramilo Administrative Assistant	340-0540
Cheng Cheng Gong Voucher Analyst/Payment Clerk	340-0596
Amy Ostrau Continuing Legal Education	340-0558
Fax	779-1891
Clerk's Office/Main Number 27 Madison Avenue New York, NY 10010	340-0400

ASSIGNED COUNSEL PROGRAM
OFFICE TELEPHONE DIRECTORY

Address Telephone Numbers
(all numbers are 212 area code)

253 Broadway - 8th Floor
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676-0066 (main number)

First Department Assignments
Michael Alperstein 676-0061

Lorraine Watson 676-0081

Second Department Assignments
Barbara DiFiore 676-0055

Jennifer Regis 676-0099

Background Unit
Kate Doherty 676-0418

Payment Department
Mimi Shui - Co-Director 676-0057

Larry Parkins - Co-Director 676-0093

Krisette Alexander 676-1469

Derek Denny 676-0090

Alberto Guttierrez 676-0093

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Vanessa Jenkins 676-0094

Mark McCullough 676-0086

Angelina Morcelo 676-0063

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Marcia Werchol, M.D.
Senior Director
Family Court Mental Health Services
60 Lafayette Street - 6th Floor
New York, NY 10013

Hon. Amanda White
Kings Family Court
330 Jay Street
Brooklyn, NY 11201

V. ADMINISTRATIVE POLICIES AND PROCEDURES

A. General Requirements for All Applicants to the Panel of Attorneys for Children

Click here to download Application

Attorneys apply to serve on the family court trial, supreme and appellate panels by completing an application form and submitting references [three from judges, two from opposing counsel and two additional references from other attorneys] and writing samples to the Office of Attorneys for Children. Applicants must be in good standing, admitted to the bar for at least three years, and committed to representing indigent parents and children in family and supreme court. Applicants must be highly competent and demonstrate a familiarity with an area of family law, including child protective proceedings [child abuse and neglect, extensions of placement, foster care review, permanency hearings and termination of parental rights, adoption], juvenile delinquency, PINS, paternity, child support, custody and visitation and family offenses. Applicants who are not experienced in the full range of proceedings may be partially certified and authorized to accept assignments only in their areas of expertise.

Once an application is complete and all of the supporting documentation received, it is forwarded to a member of the Departmental Advisory Committee, who contacts the applicant's references,

conducts an interview, reviews the written submissions and submits a recommendation to the full Committee. The full Committee then determines whether the applicant is qualified for panel membership.

An attorney who is partially certified may apply for full certification when they have gained experience and competence in the full range of proceedings. This may be done through second seating, attendance at training programs, co-counseling with senior experienced counsel and representation on privately retained matters.

When the partially certified attorney believes they are ready, they may submit an affirmation seeking full certification. The affirmation must describe in detail the nature of the cases on which the attorney worked, or observed, the substance of the work done and the case disposition. The affirmation should provide sufficient information to enable the Committee to understand what the partially certified attorney learned from the case. For example, rather than simply state that he or she watched a fact-finding hearing, it should indicate exactly what was observed, *e.g.*, in this neglect case based on allegations of parental drug use, I helped senior counsel prepare for and then observed the cross-examination of the agency caseworker to establish that the parent was regularly participating in a drug treatment program. A detailed description of training programs attended should also be included.

Upon receipt of the affirmation, the candidate's qualifications for panel service are re-evaluated by the Committee. The Committee will determine whether another interview will be required, whether additional references are needed and, ultimately, whether the applicant should be fully certified or deferred until such time that they have received additional experience.

Service on the Panel of Attorneys for Children is a privilege, not a right, and the final determination of qualification for panel membership is at the discretion of the Presiding Justice of the Appellate Division, First Department.

B. General Requirements for all Applicants for Recertification

Click HERE to Download Recertification Application

RECERTIFICATION FOR THE PANEL OF ATTORNEYS FOR CHILDREN

Type or print answers to all questions and attach your answers to the application along with the requested documents. You must sign the affirmation as well as the consent and authorization form.

If we do not receive your application by the recertification deadline, it will be assumed that you no longer wish to serve on the panel and your name will be removed from the roster and the Courts will be notified that you may no longer accept assignments.

When the review process is underway, we may request attorneys to bring files to our office.

In addition to the application, Appellate Panel members must complete the "Additional Questions" at the end of the application.

C. COMPENSATION AND REIMBURSEMENT POLICIES

a. Panel Membership Required

An attorney must be a member of the Appellate Division First Department's Panel of Attorneys for Children to be compensated by this office at state expense.

b. Compensation Rates

1. The compensation rate for both trial and appellate court proceedings is $75 per hour for both in-court and out-of-court time.

2. Compensation Rates in Excess of the Statutory Limits

Claims for compensation in excess of the statutory limits require an affirmation of "extraordinary circumstances." The threshold for documenting "extraordinary circumstances" is $4,400 for Attorney for the Child compensation claims and $1,000 for expenses of representation. The affirmation should set forth the specifics of the "extraordinary circumstances" that required the expenditure of time. The following, which must be described in detail, are among the factors which may be considered by the court in determining whether "extraordinary circumstances" exist justifying a fee in excess of statutory limits: unusually complex factual or legal issues; novel issues of law requiring extensive legal research; lengthy trial or other in-court proceedings which alone raise the compensation claim above statutory limits. 22 NYCRR 127.2 will continue to govern claims for compensation in excess of the statutory limits.

c. Compensation Guidelines

1. In-Court and Out-of-Court Time

a) In-court time is time spent at court facilities in the presence of the judge, either in the courtroom or in chambers, on a matter appearing on the court's calendar for that day.
b) In-court time includes time spent in a court-ordered conference at court facilities in conjunction with an appearance, whether or not the judge is present.
c) All other time expended in representing the child client, including time spent at court facilities for purposes other than an appearance before a judge, e.g., reviewing files, meeting with client, is out-of-court time.

2. Representation in Collateral Matters

a) An attorney for the child may be compensated for representation of a client in a legal or administrative matter collateral to the court proceeding for which the attorney for the child was assigned when:

i. The collateral matter arises from the same circumstances as the assigned court proceeding;
ii. Representation by the attorney for the child in the collateral matter is required to assure the most favorable outcome for the client in the assigned court proceeding.

3. Double-Billing Prohibited

Double-billing is the practice of rendering legal services on multiple cases in a given period, and then requesting payment for the entire period on the voucher for each case. For example, waiting at court one hour for two cases to be called, and then requesting payment for one hour for each case, would be double-billing.

4. Expenses of Representation

The Program will pay reasonable expenses of representation including out-of-pocket expenses incurred on behalf of the client. Office overhead, however, will not be reimbursed. Accordingly, the cost of computerized legal research, local telephone calls and facsimile transmissions, considered "office overhead," are not reimbursable. Long distance telephone and facsimile charges will, however, be considered for reimbursement with appropriate documentation. Complete documentation, including all receipts and an itemization of all expenses is required in order to reimburse attorneys for expenditures. Legible receipts in the form of canceled checks, or other documents that indicate that the bill was paid, must be submitted with the requests for payment.

Faxes: only long distance facsimile transmissions may be reimbursed. A copy of the paid bill must be submitted.

Telephone Charges: only long distance telephone charges may be reimbursed. A copy of the telephone bill must be submitted.

Photocopying: 15 cents per copy limit for copies produced outside of law office. The number of copies must be indicated and when payment is sought for 50 pages or more, a receipt must be submitted.

Postage: Federal Express, certified mail, etc., may be reimbursed. Receipts must be submitted.

Witness Fees & Process Service: May be reimbursed. A copy of the paid bill or the canceled check must be submitted.

Travel Expenses:

- mileage: As of 1/1/14, the State will reimburse attorneys $.56 per mile for mileage incurred traveling to or from a visit to a client, at a correctional or residential facility. From 1/1/13 to 12/31/13, the rate was $.565 per mile. From 7/1/11 12/31/12, the rate was $.555 per mile. From 1/1/11 to 7/1/11, the rate was $.51 per mile. From 7/1/08 to 1/1/11, the rate was $.585 per mile. Indicate number of miles traveled. Public transportation costs incurred to or from a visit to a client may be reimbursed, *e.g.*, to the home or residential facility;

- subway/bus fare: reimbursable if Metro cards are given to a client when released from detention or after Intake;

- tolls: receipt required;

- time spent traveling to and from court is not compensable.

Transcripts: are not paid on the web-voucher. Court reporters bill the Office on the "State of New York Standard Voucher" together with the "New York State Family Court Minute Order Form and Receipts."

5. Time Records

Panel members are expected to maintain case files containing, among other things, contemporaneous time records for each of their clients separate from their bills. These records should include a daily log or diary which records how much time was spent working on that case that day, what work was performed and where the work was performed. Time records must minimally include the date and time of the activity, client's name, actual amount of time expended and a description of the work performed.

All vouchers are subject to audit before and after payment. The time spent opening and closing a file, and completing a voucher is not compensable.

d. Voucher Preparation

1. *Submission of Web-Vouchers*

To receive compensation for legal services to a client, Attorneys for the Child must file a web-voucher. For questions and/or problems relating to the web-voucher, Panel members should contact Caroline Diaz at 212.340.0595 or cdiaz@courts.state.ny.us

Please prepare a web-based voucher along with any supporting documentation. The voucher (and all Assigned Counsel vouchers) must bear the **original** signature of the Attorney for the Child **and** the judge who presided over the case. The Attorneys for the Child should retain a copy of any vouchers and supporting documentation submitted.

When submitting a voucher for services rendered on an appeal, you must include a copy of your brief together with copies of all motion papers. Please write "APPEAL" on the top of the voucher.

A supplemental voucher may be filed when additional legal services are required after the conclusion of a proceeding, such as monitoring implementation of the dispositional order. The voucher should be submitted at the completion of the case. In the event special circumstances exist that you believe justify the submission of an interim voucher, you must obtain the permission of the Director.

2. Time Period for Submission

The voucher should be submitted within 45 days of the date of the disposition of the case. If a warrant is issued, and there is no return within 30 days, you should submit the voucher within 45 days after the expiration of the 30-day period. Vouchers more than 45 days old must be accompanied by an affidavit explaining the reason for the delay.

3. Family Court Appeals

Attorneys submitting a voucher for services rendered on an appeal must use the *web-based voucher*. Be sure to include the order of assignment, copies of all briefs and motion papers filed with the courts as well as copies of all court orders rendered in the case and receipts for expenses incurred. Please write "APPEAL" at the top of the voucher form.

An appellate voucher should not be submitted before the Court has rendered a final decision in the case and, in the event of an adverse judgment, a motion for leave to appeal to the Court of Appeals has been filed. Interim payments will not be considered except in exceptional circumstances. In the event that work must be done following submission of a final voucher, a supplementary voucher may be submitted, *e.g.*, to reflect work done on behalf of a respondent in answering appellant's motion to seek leave to appeal.

Work done on assigned appeals for adult litigants should be billed to the Assigned Counsel Plan, on their forms for that purpose, and accompanied by an hourly "activity sheet" in which you detail the date, hours, and nature of tasks performed. Vouchers for adult litigants should be mailed to the Assigned Counsel Plan, 253 Broadway - 2nd Floor, New York, New York 10007. The vouchers will be logged in and sent to the Clerk of the Court, Appellate Division, First Department, 27 Madison Avenue, New York, New York 10010. The voucher will be reviewed by the Presiding Justice, and forwarded to the Assigned Counsel Plan for payment by the City of New York.

Work done on assigned appeals for juvenile clients should be billed to the Office of Attorneys for Children on the web-based voucher and mailed, for review and payment by New York State to: Office of Attorneys for Children, 41 Madison Avenue - 39th Floor, New York, NY 10010.

Documentary proof of all expenses should accompany each voucher where reimbursement for expenses is sought. Examples of reimbursable expenses are copying done outside of law office and mailing costs and long-distance telephone calls.

You are responsible for submitting all appropriate forms and documentation in the case. Failure to submit a necessary document, submitting a voucher on an inappropriate form, or misdirecting a voucher for an adult litigant to the Office of Attorneys for Children, or for a child to the Assigned Counsel Plan, will result in delays in payment. A request to notify you "if there is anything wrong with the voucher" cannot substitute for a proper initial submission.

4. Who Pays and Where Do Vouchers Get Sent?

Payment for people determined by the Court to be unable to afford counsel:

Representation of Children:

Vouchers for representation of a child in any Court (Family, Supreme, Integrated Domestic Violence) are to be sent to the Office of Attorneys for Children.

Representation of Adults:

In Family Court - Vouchers are to be sent to the Assigned Counsel Plan for the City of New York.

In Integrated Domestic Violence Court - Vouchers are to be sent to the Assigned Counsel Plan for the City of New York.

Assigned Counsel Program is located at 253 Broadway, Suite 200, New York, NY 10007.

Where counsel is assigned pursuant to Judiciary Law 35(8) to represent an adult in Supreme Court, the 35(8) voucher must be signed by the Judge and submitted to the Appellate Division, First Department, Office of Attorneys for Children, 41 Madison Avenue, 39th Floor, New York, NY 10010.

Appeals:

All vouchers pertaining to Family Court matters should be attached to briefs submitted to the Appellate Division to the attention of Les Dickinson. Vouchers for the representation of children will be paid by the Office of Attorneys for Children, and after approval by the Presiding Justice, vouchers for the representation of adults will be forwarded for payment to the Assigned Counsel Plan for the City.

Intake Voucher Preparation:

1. Prepare a State intake voucher in the web and print
2. Prepare a handwritten City voucher
3. Submit both vouchers to the Judge for signature
4. Make copies of both vouchers
5. Attach a copy of the City voucher to the original State voucher
6. Attach a copy of the State voucher to the original City voucher

7. Mail all vouchers to the Office of Attorneys for Children.

Vouchers will be reviewed by the Office of Attorneys for Children. We will process the State voucher and forward the City voucher to the Assigned Counsel Plan.

D. EXPERT SERVICES

1. Compensation and Reimbursement Guidelines For Experts

a. Professional Services where the Parties are *Unable* to Afford the Cost

Where the parties are represented by members of the Assigned Counsel Plan and the children are represented by a member of the Panel, the cost of experts, investigators and interpreters in the family and supreme courts is regulated by statute. In these cases, New York State, through the Office of Attorneys for Children pays that portion of the fee which is attributable to the children and New York City's Assigned Counsel Plan pays that portion of the fee attributable to the adults.[1]

In such cases, the professional must preliminarily inspect the *court order* authorizing services and apportion the cost according to that order. For example, in a case where the court has ordered the evaluation of the mother, the father and one child, the City would pay 2/3s of the total and the State would pay the remaining 1/3 portion. Similarly, if there are two adults and three children, the City pays two-fifths [40%] for the adults, and the State pays three-fifths [60%] for the children.

b. Costs Apportioned in Accordance with the Number of Parties *Evaluated*

There are instances where the number of parties being *evaluated* is not the same as the number of parties involved in the litigation. Under these circumstances, it is the number of parties *evaluated* that determines how the cost is apportioned. Thus, in a case where two parents are litigating the custody of their three children, the court may want all five of them evaluated, as well two grandparents who are living in one of the parents' homes. In such a case, the order directing the examination will include the names of all individuals to be evaluated and the costs should be apportioned 4/7s to the City and 3/7s to the State.

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[1] If the parties are financially unable to obtain the cost of investigative, expert or other services that the court finds necessary, it may order them, whether counsel is assigned in accordance with the plan or not. Accordingly, a court order may direct the City and/or State to pay for the cost of expert services even though the parties are appearing without counsel or with privately retained counsel. In such cases, however, the order authorizing services should explicitly state that although the parties have private counsel, they are nevertheless, financially unable to pay the expert's costs.

c. Professional Services where the Parties *are* able to Afford Some of the Costs In cases involving parties who *are* financially able to afford some or all of the cost of expert services, the order should name the parties, direct that they will bear their proportionate share and indicate the extent to which each of them will also bear the cost of their child's evaluation. For example, if the father in a custody case with one child has been directed to pay for his part of a $900 fee, he will be responsible for his 1/3 share [$300], the State will pay the 1/3 portion for the child [$300], and the City will pay the remaining 1/3 [$300] for the mother's costs. If the court determines that the father is financially able, he will be directed to pay the cost of his own share as well as the child's share, with the City responsible for the remaining 1/3 portion. In such a case, the professional will have to collect the portion of the fee payable by the father directly from him.

d. Professional Services where the Child is Represented by a Legal Services Organization

There are instances where the children (or one of the adult parties) are represented by counsel who is neither a panel member nor a privately retained lawyer, for example, the children may be represented by the Juvenile Rights Division of the Legal Aid Society, Lawyers for Children, or the Children's Law Center, which receive their own government funding for experts. In such cases, the City will pay that portion of the cost attributable to the adults and the legal services provider will be responsible for the portion of the cost attributable to the children. Where, for example, a case involves two adults represented by Assigned Counsel, one child represented by the Juvenile Rights Division and one child represented by a member of the panel, the cost should be apportioned 50% percent to the City, 25% to the Juvenile Rights Division and 25% to the State.

e. Fees in Excess of $1,000 Require Documentation of "Extraordinary Circumstances"

The statute provides that only in "extraordinary circumstances" may the court provide for compensation in excess of $1,000. Accordingly, vouchers submitted for fees in excess of that amount must be supported by an affidavit from the expert or the attorney who retained the expert, establishing "extraordinary circumstances."

f. Addresses and Telephone Numbers

The cost of the children's fee must be billed on State voucher form JC - 2020. The cost of the adult's fee must be billed on the City form entitled "Assigned Counsel Plan 722-c Services-Expert Voucher." The State voucher must be sent to the Office of Attorneys for Children, Appellate Division First Department, 41 Madison Avenue, 39th Floor New York, NY 10010 [212.340.0597] and the City voucher must be sent to the Assigned Counsel Plan, 253 Broadway, 2nd Floor, New York, NY 10007. State voucher forms can be obtained from the Family Court Clerk's Office or from the Office for Attorneys for Children at the Appellate Division at the address/telephone number listed above. Assigned Counsel Plan vouchers and activity forms, can be obtained from the Family Court Clerk's Office or from the Assigned Counsel Plan office at the address/ telephone number listed above. Click HERE to be directed to their webpage. City expert vouchers must be notarized.

2. Fee Guidelines for Expert Services

The Chief Administrator has adopted the following hourly rates as guidelines for payment of non-lawyer professionals under Judiciary Law § 35 and County Law § 722-c:

Physician/Pathologist	(M.D.)	$200.00
Psychiatrist	125.00	
Certified Psychologist		90.00
Certified Social Worker	45.00	
Licensed Investigator		32.00
Forensic Experts:		60.00 (or flat fee)
Arson Investigators		
Ballistics		
Fingerprints		
Handwriting		
Polygraph		
Photography		
Scientific Experts:		75.00 - 100.00
Chemists		
Pharmacologists		
Toxicologists, etc.		
Interpreters/Translators	30.00 - 40.00	
Accountants	75.00 - 100.00	
Accident Reconstructionists	100.00	

When an Attorney for the Child anticipates that the cost of an expert will exceed the sum of $1,000 ("extraordinary circumstances") he or she must obtain prior approval of the court where the matter is pending. In order to obtain such approval, the attorney or the expert must submit an affidavit of "extraordinary circumstances

The Program is not authorized to pay for expert services for services unrelated to the client's representation, such as treatment or counseling.

The attorney should not pay the expert directly.

3. Submission of Expert Vouchers - JC-2020

Upon obtaining oral permission from the trial court judge for the appointment of an interpreter, social worker, investigator, psychiatrist or psychologist and the assent of the expert, orders pursuant to County Law § 722-c and Judiciary Law § 35, should be prepared by the expert or the attorney who retained the expert, including the name and full address of the proposed expert, and submitted to the court ex parte.

The expert should complete the following sections only:

Box 3: Payee ID - Social Security or Federal Tax ID number.

Box 4: Payee Name block - Insert the name, address and telephone number of the expert.

Box 5: Ref/Inv. No. - Enter the full name of the client for whom services were rendered. Check "other civil proceeding" and indicate the appropriate proceeding code and the "Jurisdiction of the Court." Indicate whether the services were provided for a case at the trial level ("original" for Family, Supreme and Surrogate's court cases) or at the appellate level (Appellate Division, First Department).

Box 7: Required Billing Information - Fill in A-C with type of service rendered, Judge's name, and case docket number.

Box 8: Summary of Services Provided.: Indicate the name of the Attorneys for the Child/Parent on the case and the number of adults and children for which services were rendered. All of the work done on the case should be described in detail on the "Assigned Counsel Plan, Expert Case Worksheet, Family Court." The respondent's name, the docket number, the date of assignment (the date the judge signed the order of assignment), the name of the payee (expert), the payee's (expert's) field of specialization and the date of disposition (the last day that the case was on before the judge) must be listed. Under "Activity Log," each section must be completed. The date that the work was done, the start and finish time, the total number of hours spent and a description of the activity must be indicated.

Box 9: Certification: Signature of the expert authorized to receive payment and date voucher is prepared.

Box 10: Court Use - For the signature of the judge who presided over the case, the date, and the county of origin.

E. OBTAINING TRANSCRIPTS

If requesting transcripts from a proceeding that is **not** before the Appellate Division, counsel should obtain a form entitled "*New York State Family Court Minute Order Form and Receipts*" and, if representing an adult, another form entitled *"Order Authorizing Services Other than Counsel under Article 18-b of the County Law, § 722-c*." Both forms can be obtained from the Family Court Clerk's Office.

Counsel should complete the top of both forms, indicating on the "New York State Family Court Minute Order Form and Receipts," the number of copies requested and the date on which counsel wishes to receive the completed transcripts. The form or forms should then be submitted to the trial judge for signature. If the judge signs the form(s), the judge may retain a copy for the file and counsel should deliver the remaining copies to the Supervising Court Reporter's Office.

If transcripts are being requested for a proceeding that **is** before the Appellate Division, counsel should skip the above steps and, instead, attach a copy of the Appellate Division's "Order of Assignment" to the Supervising Court Reporter's Office. After submission of the appropriate forms, the Supervising Court Reporter will direct the individual court reporters to transcribe the

minutes. Shortly thereafter, counsel will receive a list of the dates the proceeding was on before the Family Court and the name of the court reporter transcribing the proceeding for each date.

If the original request for transcripts involved a proceeding pending before the trial court, then the one original transcript when complete, will be provided directly to counsel. If the original request for transcripts involved a case pending before the Appellate Division, then the original will be sent to the Clerk's Office where it will be forwarded to the Appellate Division. A copy will then be provided to counsel.

After the minutes are completed and sent to or picked up by counsel, counsel will be asked to sign the "New York State Family Court Minute Order Form and Receipts" in the space indicated. The court reporter will then forward the "New York State Family Court Minute Order Form and Receipts" and, if the case involves the representation of an adult, the "Order Authorizing Services Other than Counsel under Article 18-b of the County Law, § 722-c," to the Office of Attorneys for Children or the Assigned Counsel Plan for payment.

Obtaining Transcripts of Mechanically Recorded Proceedings

If counsel is seeking transcripts from a proceeding that was mechanically recorded, counsel must again complete the form "*New York State Family Court Minute Order Form and Receipts*" and, if representing an adult, an *"Order Authorizing Services Other than Counsel under Article 18-b of the County Law, § 722-c*" and submit the forms to the trial judge for signature. When the judge signs the forms, counsel must submit the signed forms to the Family Court Clerk's Office. Again, if the transcript is sought in connection with an appeal, counsel need only submit the Appellate Division's "*Order of Assignment*" to the Clerk's Office. If the case involves the representation of a juvenile, counsel must also submit a "State of New York Standard Voucher."

The Clerk's Office will process the forms, assemble the necessary tapes and send them to a private service for transcription. The transcription service will forward the completed transcripts to the Family Court Clerk's Office where counsel will obtain them and be asked to sign where indicated. The service will then bill the Assigned Counsel Plan or the Office of Attorneys for Children directly.

F. TRAINING AND EDUCATION

NEW YORK CODE, RULES AND REGULATIONS

Part 1500

a. Mandatory Continuing Legal Education Program for Attorneys in the State of New York

§ 1500.1 Scope

There shall be a mandatory continuing legal education program in the State of New York (hereinafter program) which shall include a transitional legal education program for newly admitted attorneys, as set forth in subpart B of this Part, and a legal education program for all other admitted attorneys, as set forth in subpart C of this Part. A Continuing Legal Education Board shall accredit and oversee, as set forth in this Subpart, the courses, programs and other educational activities that will satisfy the requirements of the program.

§ 1500.2 Definitions

(a) *Accredited course or program* is a continuing legal education course or program that has met the standards set forth in § 1500.4(b) of this Part and has received advance accreditation approval by the Continuing Legal Education Board.

(b) *Accredited provider* is a person or entity whose continuing legal education program has been accredited by the Continuing Legal Education Board, and who has been certified by the Continuing Legal Education Board as an accredited provider of continuing legal education courses and programs in accordance with § 1500.4 (c)of this Part.

(c) *Ethics and professionalism* may include, among other things, the following: the norms relating to lawyers' professional obligations to clients (including the obligation to provide legal assistance to those in need, confidentiality, competence, conflicts of interest, the allocation of decision-making, and zealous advocacy and its limits); the norms relating to lawyers' professional relations with prospective clients, courts and other legal institutions, and third parties (including the lawyers' fiduciary, accounting and recordkeeping obligations when entrusted with law client and escrow monies, as well as the norms relating to civility); the sources of lawyers' professional obligations (including disciplinary rules, judicial decisions, and relevant constitutional and statutory provisions); recognition and resolution of ethical dilemmas; the mechanisms for enforcing professional norms; substance abuse control; and professional values (including professional development, improving the profession, and the promotion of fairness, justice and morality).

(d) *Skills* must relate to the practice of law and may include, among other things, problem solving, legal analysis and reasoning, legal research and writing, drafting documents, factual investigation (as taught in courses on areas of professional practice), communication, counseling, negotiation, mediation, arbitration, organization and trial advocacy.

(e) *Law practice management* must relate to the practice of law and may encompass, among other things, office management, applications of technology, State and Federal court procedures, stress management, management of legal work and avoiding malpractice and litigation.

(f) *Areas of professional practice* may include, among other things, corporations, wills/trusts, elder law, estate planning/administration, real estate, commercial law, civil litigation, criminal litigation, family law, labor and employment law, administrative law, securities, tort/insurance practice, bankruptcy, taxation, compensation, intellectual property, municipal law, landlord/ tenant, environmental law, entertainment law, international law, social security and other government benefits, and alternative dispute resolution procedures.

(g) *Regulations and guidelines* refers to the regulations and guidelines of the Continuing Legal Education Board set forth in Part 7500 of this Title.

§ 1500.3 The Continuing Legal Education Board

(a) *The Continuing Legal Education Board.* The Continuing Legal Education Board (CLE board) is hereby established.

(b) *Board composition.* The CLE board shall consist of 16 resident members of the bench and bar. Three members shall be chosen by each of the presiding justices of the Appellate Divisions, and four members shall be chosen by the Chief Judge of the State of New York. The Chief Judge shall designate the chair. Board members shall serve at the pleasure of the Administrative Board of the Courts.

(c) *Quorum.* Nine members shall constitute a quorum of the entire CLE board.

(d) *Term of service.* The term of board members shall be three years. Board members shall be appointed for no more than one three-year term.

(e) *Duties and responsibilities.* The CLE board is authorized to: accredit providers of courses, programs, and other educational activities that will satisfy the requirements of the program; determine the number of credit hours for which continuing legal education credit will be given for particular courses or programs; adopt or repeal regulations and forms consistent with these rules; examine course materials and the qualifications of continuing legal education instructors; consult and appoint committees in furtherance of its official duties as necessary; foster and encourage the offering of accredited courses and programs, particularly in geographically isolated regions; and report annually on its activities to the Chief Judge, the presiding justices of the Appellate Divisions and the Chief Administrator of the Courts.

(f) *Expenses.* Members of the CLE board shall serve without compensation but shall be reimbursed for their reasonable, actual and direct expenses incurred in furtherance of their official duties.

(g) *Confidentiality.* The files, records and proceedings of the CLE board, as they relate to an attorney's satisfying the requirements of this Part, shall be confidential and shall not be disclosed except in furtherance of the duties of the board or upon the request of the attorney affected, or as they may be introduced in evidence or otherwise produced in proceedings implementing this Part.

(h) *Appeal of determinations.* Any person or organization aggrieved by a determination pursuant to this Part may seek administrative review of that determination pursuant to the regulations and guidelines adopted by the CLE board.

§ 1500.4 Accreditation

(a) *Procedure.* Unless a provider has been granted accredited provider status pursuant to subdivision (c) of this section, accreditation of continuing legal education courses or programs

must be sought at least 60 days prior to the occurrence of the course or program, except in extenuating circumstances and with prior permission of the CLE board.

(b) *Standards.* Continuing legal education courses or programs to be accredited shall comply with the following guidelines:

(1) One hour of continuing legal education credit shall consist of at least 50 minutes of instruction, exclusive of introductory remarks, meals, breaks, or other non-educational activities.

(2) The course or program must have significant intellectual or practical content and its primary objective must be to increase the professional legal competency of the attorney in ethics and professionalism, skills, practice management and/or areas of professional practice.

(3) The course or program shall be taught by instructors with expertise in the subject matter being taught and shall be specifically tailored to attorneys.

(4) The faculty of the course or program shall include at least one attorney in good standing, who shall actively participate in the course or program.

(5) The course or program shall not be taught by a disbarred attorney, whether the disbarred attorney is the sole presenter or one of several instructors.

(6) The continuing legal education course or program must be offered by a provider that has substantial, recent experience in offering continuing legal education to attorneys, or that has demonstrated an ability to effectively organize and present continuing legal education to attorneys.

(7) Thorough, high quality, readable and carefully pre-written materials must be made available to all participants at or before the time the course or program is presented, unless the absence of materials, or the provision of such materials shortly after the course or program, is pre-approved by the CLE board. Written materials shall satisfy the criteria set forth in the regulations and guidelines.

(8) The cost of continuing legal education courses or programs to the participating attorney shall be reasonable.

(9) Providers must have a financial hardship policy as provided in the regulations and guidelines.

(10) The course or program must be conducted in a physical setting that is comfortable and conducive to learning.

(11) At the conclusion of the course or program, each participant must be given the opportunity to complete an evaluation questionnaire addressing the quality, effectiveness and usefulness of the particular course or program. A summary of the results of the survey(s) must be submitted to the CLE board at the end of the calendar year in which the course or program was given. Providers must maintain the questionnaires for a period of four years following the course or program.

(12) Providers of continuing legal education courses or programs shall provide a certificate of attendance to all persons completing the continuing legal education course or program.

(13) Providers of continuing legal education courses or programs must maintain an official attendance list of participants in the program, and the time, date, location, title, speaker(s) and amount of approved CLE credit for each course or program, for at least four years after the completion date.

(14) Programs that satisfy these standards and that cross academic lines, such as accounting-tax seminars, may be considered for approval by the CLE board.

(c) *Accredited provider status.*

(1) Procedure. Application may be made for accredited provider status by submitting the appropriate forms and materials to the CLE board pursuant to CLE board regulations and guidelines.

(2) Requirements. Accredited provider status may be granted at the discretion of the CLE board to applicants satisfying the requirements of this section and, as well, the following requirements:

(I) the provider has presented, within the prior three years, separate programs of continuing legal education that meet the standards set forth in subdivision (b) of this section and the regulations and guidelines of the CLE board; or

(ii) the provider has demonstrated to the board that its CLE activities have consistently met the standards set forth in subdivision (b) of this section and the regulations and guidelines of the CLE board.

Providers that meet the foregoing requirements may include bar associations, law schools, law firms and legal departments (including corporate, non-profit and municipal and State law departments).

(3) Duration of accredited provider status. Once a provider has been granted accredited provider status, the continuing legal education courses or programs sponsored by that provider are presumptively approved for credit for a period of three years from the date of the grant of such status.

(4) Accredited provider reports. Providers granted accredited provider status shall file a written report with the CLE board each year at a time fixed by the board. The report shall describe the continuing legal education activities conducted during the prior 12 months and shall be in such detail and form as required by the board and by the regulations and guidelines. The accredited status of a provider may be continued by filing an application for renewal with the board before the end of the provider's accreditation period.

(5) Renewal of accredited provider status. Renewal of accredited provider status shall be for periods of three years. The CLE board shall determine if there are pending or past breaches of these rules or regulations and guidelines, and the board, in its discretion, may condition renewal upon the provider meeting additional requirements specified by the board.

(i) If an application for renewal is timely filed, the accredited status shall continue until the board acts on the application.

(ii) If an application for renewal is not filed before the end of the provider's accreditation period, the provider's accredited status will terminate at the end of the period. Any application received thereafter shall be considered by the board as an initial application for accredited provider status.

(6) Revocation. Accredited provider status may be revoked by the board if the reporting requirements of these rules and regulations and guidelines are not met or, if upon review of the provider's performance, the CLE board determines that the content of the course or program materials, the quality of the CLE activities, or the provider' s performance does not meet the standards set forth in these rules and regulations and guidelines. In such event, the CLE board shall send the provider a 30-day notice of revocation by first class mail. The provider may request a review of such revocation, and the CLE board shall determine the request within 90 days of receipt of such request. The decision of the CLE board shall be final after such review.

(d) *Provider list.* A list of accredited providers whose continuing legal education courses or activities have been presumptively approved for credit shall be compiled and published periodically by the CLE board. Lists shall be made available at each of the appellate divisions and at such other offices and electronic sites as the Chief Administrator of the Courts shall determine.

(e) *Announcement.* Providers who have received approval for continuing legal education courses and programs may indicate that their course or program has received CLE board approval as follows:

"This (transitional) continuing legal education course (or program) has been approved in accordance with the requirements of the Continuing Legal Education Board for a maximum of _____ credit hours, of which _____ credit hours can be applied toward the _____ requirement, and _____ credit hours can be applied toward the _____ requirement."

Where a program or segment of a program might reasonably be used to satisfy more than one category of instruction, *e.g.*, either ethics or areas of professional practice, the approved provider may so indicate, but must state that duplicate credit for the same hour of instruction is not permitted; an election must be made by the attendee, and each hour may be counted as satisfying only one category of instruction. The following language may be used:

and an aggregate of _____ credit hours can be applied toward the _____ requirement or the _____ requirement.

§ 1500.5 Waivers, modifications and exemptions

(a) *Waivers and modifications.* The continuing legal education board may, in individual cases involving undue hardship or extenuating circumstances, grant waivers and modifications of program requirements to attorneys, upon written request, in accordance with the regulations and guidelines established by the CLE board and this Part.

(b) *Exemptions.* The following persons shall be exempt from the requirements of New York's continuing legal education program:

(1) subject to the requirements in §§ 1500.12(f) and 1500.22(n) of this Part, attorneys who do not practice law in New York. Attorneys practice law pursuant to this section if, during the reporting period, they give legal advice or counsel to, or provide legal representation for, a particular body or individual in a particular situation in either the public or private sector. The practice of law does not include the performance of judicial or quasi-judicial (*e.g.*, administrative law judge, hearing officer) functions;

(2) full-time active members of the United States Armed Forces and members of the military service of the State serving on active duty;

(3) attorneys with offices outside of New York who are temporarily admitted to practice in a court within New York for a case or proceeding; and

(4) attorneys who certify that they are retired from the practice of law pursuant to § 468-a of the Judiciary Law.

b. <u>Mandatory Continuing Legal Education for Newly Admitted Attorneys</u>

§ 1500.10 Application

(a) The requirements of this subpart shall apply to all newly admitted attorneys, who are not exempt from these requirements pursuant to § 1500.5(b) of this Part, during the first two years after their admission to the Bar of the State of New York.

(b) A newly admitted attorney is an attorney who has successfully passed the New York State Bar examination administered by the State Board of Law Examiners and who becomes duly admitted to the practice of law in New York after October 1, 1997.

(c) Attorneys who have been engaged in the practice of law in another state, the District of Columbia, any territory of the United States or any foreign jurisdiction, for at least five of the seven years immediately preceding admission to the New York Bar, shall not be deemed newly admitted attorneys for the purposes of this subpart, and shall be required to comply with the requirements of subpart C of this Part to the extent they are applicable.

§ 1500.11 Statement of purpose

Mandatory continuing legal education for newly admitted attorneys in the State of New York is a transitional continuing legal education program designed to help recent graduates and newly admitted attorneys become competent to deliver legal services at an acceptable level of quality as they enter practice and assume primary client service responsibilities. The program seeks to help the newly admitted attorney establish a foundation in certain practical skills, techniques and

procedures, which are and can be essential to the practice of law, but may not have been adequately addressed in law school. It includes courses targeting ethics and professionalism, skills, practice management and areas of professional practice.

§ 1500.12 Minimum requirements

(a) *Credit hours.* Each newly admitted attorney shall complete a minimum of 32 credit hours of accredited transitional education within the first two years of the date of admission to the Bar. Sixteen accredited hours shall be completed in each of the first two years of admission to the Bar as follows:

(1) three hours of ethics and professionalism;

(2) six hours of skills; and

(3) seven hours of law practice management and areas of professional practice.

Ethics and professionalism, skills, law practice management and areas of professional practice are defined in § 1500.2 of this Part. The ethics and professionalism and skills components may be intertwined with other courses.

(b) *Carry-over credit.* Except as provided in § 1500.13(b)(2) of this Part, a newly admitted attorney who accumulates more than the 16 hours of credit required in the first year of admission to the Bar may carry over to the second year of admission to the Bar a maximum of eight credits. Six credits in excess of the 16-hour requirement in the second year of admission to the Bar may be carried over to the following biennial reporting cycle to fulfill the requirements of subpart C of this Part. Ethics and professionalism credit may not be carried over.

(c) *Accredited courses or programs only.* Transitional continuing legal education credit will be granted only for courses and programs approved as such by the CLE board, except as provided in subdivision (d) of this section. No transitional continuing legal education course or program consisting of non-traditional formats, such as self-study, correspondence work, videotapes, audiotapes, motion picture presentations or on-line programs may be accepted for credit without prior permission from the CLE board, except as provided in the regulations and guidelines.

(d) *Other jurisdictions.* Transitional continuing legal education courses approved by another state, the District of Columbia, any territory of the United States or any foreign jurisdiction with requirements meeting the standards adopted by the CLE board shall count toward the newly admitted attorney's compliance with New York's transitional CLE program requirements in

accordance with the regulations and guidelines established by the CLE board and this Part.

(e) *Post-graduation/pre-admission.* A maximum of 16 credit hours of approved transitional CLE courses taken from the date of graduation from law school up through the date of admission to the New York Bar may be applied toward a newly admitted attorney's first-year CLE program requirements. Credit hours in excess of 16 may not be carried over and applied toward the second-year CLE requirement.

(f) *Obligations of attorneys exempt from the program requirements.*

(1) An attorney who is exempt from the requirements of this program and who is required to comply with the continuing legal education requirements of another jurisdiction shall comply with those requirements and shall certify to this compliance on the attorney's biennial attorney registration statement.

(2) An attorney who is exempt from the requirements of this program and who is not required to comply with the continuing legal education requirements of another jurisdiction shall so certify on the attorney's biennial attorney registration statement.

(3) An attorney who is exempt from the requirements of this program and who thereafter ceases to be exempt and commences the practice of law in New York during the first two years after admission to the Bar shall be required to complete by the end of those two years 1.5 credit hours of accredited continuing legal education as set forth in subdivision (a) of this section, in any combination of categories set forth in said section, for each full month of the two-year period during which the attorney practices law in New York.

(4) An attorney who permanently ceases to practice law in New York while commencing or continuing the practice of law in another jurisdiction shall be exempt from the requirements of this program for the year in which the permanent cessation from New York practice occurred, and shall comply with the requirements of any jurisdiction in which the attorney practices law during that year.

§ 1500.13 Reporting requirements

(a) *Attorney obligations.* Each newly admitted attorney subject to New York's transitional continuing legal education requirements shall retain the certificate of attendance for each approved transitional education course or program for at least four years from the date of the course or program.

(b) *Certification.*

(1) Except as otherwise authorized by this Part, each newly admitted attorney subject to New York's transitional continuing legal education requirements is required to certify along with the submission of his or her biennial attorney registration statement that the attorney has satisfactorily completed 32 credit hours of transitional continuing legal education (16 credit hours in the first year of admission to the Bar, 16 credit hours in the second year of admission to the Bar) and that the attorney has retained the certificates of attendance or other documentation required by the CLE board for the accredited courses or programs.

(2) A newly admitted attorney who is required to file his or her biennial attorney registration statement prior to completing the second year of admission to the Bar shall certify the actual number of credit hours of transitional continuing legal education completed at the time the statement is filed. The attorney shall remain responsible for completing the 16 second-year credit hours of transitional continuing legal education by the end of that second year after admission, but may apply 12 of the 16 credit hours to fulfilling the requirements of subpart C of this Part as set forth in § 1500.22(b)(3) of this Part.

§ 1500.14 Waivers or modifications

(a) A newly admitted attorney may apply in writing to the CLE board for a waiver or modification of program requirements based upon extenuating circumstances preventing the newly admitted attorney from complying with the requirements, in accordance with the regulations and guidelines established by the CLE board and this Part.

(b) Requests for extensions of time in which to complete program requirements based upon extenuating circumstances shall be made pursuant to the procedures contained in the regulations and guidelines and shall not be granted for a period of greater than 90 days absent special circumstances. If an extension is granted, the period of time by which a newly admitted attorney must complete the mandatory continuing legal education requirements applicable to all attorneys as set forth in subpart C of this Part remains the same.

§ 1500.15 Non-compliance

The names of newly admitted attorneys who fail to comply with transitional continuing legal education requirements will be submitted to the Appellate Division for appropriate action.

§ 1500.16 Effective date

Mandatory continuing legal education for newly admitted attorneys in the State of New York shall become effective on October 1, 1997.

c. <u>Mandatory Continuing Legal Education for Attorneys other than Newly Admitted Attorneys</u>

§ 1500.20 Application

The requirements of this Subpart shall apply to all attorneys who have been duly admitted to the practice of law in New York, are not exempt from these requirements pursuant to § 1500.5(b), and are not newly admitted attorneys subject to the requirements of Subpart B of this Part.

§ 1500.21 Statement of Purpose

It is of utmost importance to members of the Bar and to the public that attorneys maintain their professional competence by continuing their legal education throughout the period of their active practice of law. This Program establishes the minimum requirements for continuing legal education for attorneys other than newly admitted attorneys in New York State.

§ 1500.22 Minimum Requirements

(a) *Credit Hours*. Each attorney shall complete a minimum of 24 credit hours of accredited continuing legal education each biennial reporting cycle in ethics and professionalism, skills, law practice management or areas of professional practice, at least four (4) credit hours of which shall be in ethics and professionalism. Ethics and professionalism, skills, law practice management and areas of professional practice are defined in § 1500.2. The ethics and professionalism components may be intertwined with other courses.

(b) *Biennial Reporting Cycle.*

(1) The biennial reporting cycle shall be the two-year period between the dates of submission of the attorney's biennial registration statement.
(2) An attorney shall comply with the requirements of this Subpart commencing from the time of the filing of the attorney's biennial attorney registration statement in the second calendar year following admission to the Bar.
(3) A newly admitted attorney whose transitional two year post-Bar admission period has not been completed as of the last day the attorney registration statement in paragraph (2) is required to be filed may apply 12 credit hours of the second-year accredited transitional education credits required in § 1500.12(a) to fulfilling the requirements of this Subpart.

(c) *Carry-Over Credit*. An attorney who accumulates more than the 24 hours of credit in any one biennial reporting cycle may carry over a maximum of six (6) credits to the next biennial reporting cycle.

(d) *Course or Program Formats*. Continuing legal education courses or programs may include traditional live classroom or audience settings; teleconferences; video conferences; satellite

transmissions; videotapes; audiotapes; motion picture presentations; interactive video instruction; activities electronically transmitted from another location; self-study; correspondence work; and on-line computer courses.

(e) *Credit for Speaking and Teaching Activities*. Credit may be earned through speaking, teaching or participating in a panel in an accredited CLE program. Where teaching is done in tandem or by panel, teaching credit shall be given to all participants.

(f) *Credit for Teaching Law School Classes.* Credit may be earned through teaching in an ABA-accredited law school as may be permitted pursuant to the Regulations and Guidelines of the CLE Board.

(g) *Credit for Attending Law School Courses.* Credit may be earned for attending courses at an ABA-accredited law school after admission to practice in New York provided (I) the attorney is officially registered for the course, and (ii) the attorney completed the course as required by the terms of registration.

(h) *Credit for Judging Law Competitions*. Credit may be earned for preparing students for and judging law competitions, mock trials and moot court arguments, including those in high school, pursuant to the Regulations and Guidelines of the CLE Board.

(I) *Credit for Publications.* Credit may be earned, as may be permitted pursuant to the Regulations and Guidelines of the CLE Board, for legal research-based writing upon application to the CLE Board, provided the activity (I) produced material published or to be published, in print or electronically, in the form of an article, chapter or book written, in whole or in substantial part, by the applicant, and (ii) contributed substantially to the continuing legal education of the applicant and other attorneys.

(j) *Credit for Performing Pro Bono Legal Services.* Credit may be earned for performing uncompensated legal services for clients unable to afford counsel pursuant to (a) assignment by a court; or (b) a program, accredited by the CLE Board, of a bar association, legal services provider or other entity. Credit shall be awarded pursuant to the Regulations and Guidelines of the CLE Board, provided that no more than six hours of CLE credit may be awarded in a two-year reporting period for performing pro bono legal services, and no more than one credit hour of CLE credit may be awarded for every six hours of legal work performed.

(k) *Accredited Courses, Programs and Activities Only.* Continuing legal education credit will be granted only for courses, programs and activities approved by the CLE Board, except where credit is extended as provided in subdivision (m).

(l) *Individual Course Approval.* An attorney seeking approval of a course or program that has not otherwise been approved shall apply to the CLE Board for approval in accordance with Board procedures. Such approval must be sought at least 60 days prior to the occurrence of the course or program, except in extenuating circumstances and only with prior permission of the Board.

(m) *Other Jurisdictions*. Continuing legal education courses approved by another state, the District of Columbia, any territory of the United States or any foreign jurisdiction with requirements

meeting the standards adopted by the CLE Board shall count toward the attorney's compliance with New York's CLE Program requirements in accordance with the Regulations and Guidelines established by the CLE Board and this Part.

(n) *Obligations of Attorneys exempt from the Program Requirements.*

(1) An attorney who is exempt from the requirements of this Program and who is required to comply with the continuing legal education requirements of another jurisdiction shall comply with those requirements and shall certify this compliance on the attorney's biennial attorney registration statement.

(2) An attorney who is exempt from the requirements of this Program and who is not required to comply with the continuing legal education requirements of another jurisdiction shall so certify on the attorney's biennial attorney registration statement.

(3) An attorney who is exempt from the requirements of this Program and who thereafter ceases to be exempt and commences the practice of law in New York during a biennial reporting cycle shall be required to complete by the end of the reporting cycle one credit hour of accredited continuing legal education as set forth in § 1500.22(a), in any combination of categories set forth in said section, for each full calendar month of the biennial reporting cycle during which the attorney practices law in New York.

(4) An attorney who permanently ceases to practice law in New York while commencing or continuing the practice of law in another jurisdiction shall be exempt from the requirements of this Program for the reporting cycle in which the permanent cessation from New York practice occurred, and shall comply with the requirements of the jurisdiction in which the attorney practices law during that cycle.

§ 1500.23 Reporting Requirements

(a) *Attorney Obligations.* Each attorney subject to New York's continuing legal education requirements shall retain the Certificate of Attendance or other documentation required by the Board for each approved education course, program or activity for at least four (4) years from the date of the course, program or activity.

(b) *Certification.* Except as otherwise authorized by this Part, each attorney subject to New York's continuing legal education requirements is required to certify along with the submission of his or her biennial attorney registration statement that the attorney has satisfactorily completed 24 credit hours of continuing legal education for the current biennial reporting cycle and that the attorney has retained the Certificates of Attendance or other documentation required by the CLE Board for the accredited courses, programs or activities.

§ 1500.24 Waivers or Modifications

(a) An attorney may apply in writing to the CLE Board for a waiver or modification of Program requirements based upon extenuating circumstances preventing the attorney from complying with the requirements, in accordance with the Regulations and Guidelines established by the CLE Board and this Part.

(b) Requests for extensions of time in which to complete Program requirements based upon extenuating circumstances shall be made pursuant to the procedures contained in the Regulations and Guidelines and shall not be granted for a period of greater than 90 days absent special circumstances. If an extension is granted, the period of time by which the attorney must complete the mandatory continuing legal education requirements of the next biennial reporting cycle remains the same.

§ 1500.25. Non-compliance

The names of attorneys who fail to comply with continuing legal education requirements will be submitted to the Appellate Division for appropriate action.

§ 1500.26. Effective Date and Transition

The requirements of this Subpart shall become effective on December 31, 1998. Compliance with the certification requirement shall commence with biennial attorney registration statements filed on or after January 1, 2000, as follows:

(1) Attorneys who file their biennial registration statement in calendar year 2000 shall complete 12 credit hours of accredited continuing legal education as of the date of the filing in any combination of the categories set forth in § 1500.22(a). Attorneys who accumulate more than 12 credit hours at the time of this filing may carry over a maximum of six (6) credit hours to the next biennial cycle;

(2) Attorneys who file their biennial registration statement in calendar year 2001 must complete the full 24 credit hours of accredited continuing legal education as set forth in § 1500.22(a).

Approved CLE credits earned from January 1, 1998, may be applied toward fulfilling the requirements for the initial biennial reporting cycle.

G. WEEKEND INTAKE ASSIGNMENTS

a. Legal Authority and Judicial Order

<u>Administrative Order</u>

The court located at 100 Centre Street, New York, New York, Part 170, is hereby designated as a Supreme Court part. Part 170 will be open to accept the filing of pre-petition detention applications, filed under Family Court Act § 307.4, concerning juveniles who are arrested and detained on weekends.

The justice that presides in Part 170 will conduct only hearings following detention pursuant to Family Court Act § 307.4, which shall include the issuance of an order of detention, an order of protection pursuant to Family Court Act § 304.2, as well as any and all appropriate orders pursuant to these sections. Each case/application handled in Part 170 shall be subject to the same substantive and procedural law as would have applied to it had the case/application commenced in New York City Family Court.

This order shall in no way constitute an "opening" of the family court for any purpose.

b. Weekend Arraignment Procedure

Juveniles arrested in all five boroughs will be produced at 100 Centre Street at 10 am each weekend and Holiday. Panel attorneys, one from each Department, will appear 10 am to accept assignment of any conflict cases. There is a Panel Office, Room 1401, in 100 Centre Street. Attorneys will represent juveniles from their Department, and will keep those cases that are assigned to their county. Cases from other counties will be assigned to the intake person assigned on the day after weekend intake in the county where the case will be heard.

Attorneys interested in working weekend /Holiday intake must contact Caroline Diaz at (212) 340-0595.

VI. FORMS

- Membership Application for Panel of Attorneys for Children
- Application for Recertification
- Attorney for Child Voucher
- Weekend/Holiday Intake Voucher
- Assigned Counsel Voucher Judiciary Law § 35 (8)
- State of New York Standard Voucher
- New York State Family Court Minute Order Form and Receipts
- Voucher for Court Reporter Services Rendered
- Voucher for Assigned Counsel, Psychiatrist or Physician, Social Worker or Investigators
- Request for Transcript from Mechanical Recording
- Affirmation of Services for Privately Paid Attorneys for Children
- Sample Court Order Appointing Privately Paid Attorney for the Child(ren)
- Sample Court Order Approving Attorney for the Child Compensation
- Sample Court Order Authorizing Transcript of Record
- Sample Court Order for Observation and Evaluation
- Sample Court Order Appointing Mental Health Professional
- Sample Family Court Notices of Appeal
- Attorney's Certification of Appellant's Continued Eligibility or Poor Person's Relief and Assignment of Counsel
- Substitute Form W-9 Request for Taxpayer Identification Number & Certification
- Assigned Counsel Plan 722-C Services - Expert Voucher Family Court

- NYC Assigned Counsel Plan-Expert Voucher for 722-C Services in Criminal Court and Supreme Court Criminal Term
- New Vendor Request Form