



NEW YORK STATE
Unified Court System

OFFICE OF COURT ADMINISTRATION

HON. JOSEPH A. ZAYAS
CHIEF ADMINISTRATIVE JUDGE

HON. NORMAN ST. GEORGE
FIRST DEPUTY CHIEF ADMINISTRATIVE JUDGE

DAVID NOCENTI
COUNSEL

MEMORANDUM

To: All Interested Persons

From: David Nocenti

Re: Request for Public Comment on proposed amendments to Parts 623 and 680, and the addition of new Parts 825 and 1024, of the Rules of the Appellate Divisions, relating to mental health professionals panels

Date: March 4, 2024 – *Updated March 27, 2024*

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The Administrative Board of the Courts is seeking public comment on proposed amendments to Parts 623 and 680, and the addition of new Parts 825 and 1024, of the Rules of the Appellate Divisions, relating to mental health professionals panels.

In December 2021, the Blue-Ribbon Commission on Forensic Custody Evaluations (the “Commission”), which was created in response to reports of negative experiences with court-ordered evaluators in cases involving injuries and deaths of children, issued a report which included recommendations relating to the conduct of mental health evaluations.

In 2022, an internal Unified Court System working group reviewed the Commission’s report and made certain recommendations relating to mental health evaluations, which were then referred to a separate Joint Appellate Division Committee which was tasked with drafting amendments to the Appellate Division Rules to implement those recommendations.

The Joint Appellate Division Committee completed its work and recommended that all four Appellate Divisions adopt consistent rules governing mental health professional panels, which will apply to the use of court-ordered evaluations in custody and visitation, child abuse and neglect, juvenile delinquency and other family-related matters.

The Administrative Board therefore is proposing to:

- amend Part 623 of the Rules of the Supreme Court, Appellate Division, First Department (22 NYCRR § 623.1 *et seq.*);
- amend Part 680 of the Rules of the Supreme Court, Appellate Division, Second Department (22 NYCRR § 680.1 *et seq.*);
- add a new Part 825 to the Rules of the Supreme Court, Appellate Division, Third Department (22 NYCRR § 825.1 *et seq.*); and
- add a new Part 1024 to the Rules of the Supreme Court, Appellate Division, Fourth Department (22 NYCRR § 1024.1 *et seq.*).

The proposed changes are attached.

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Persons wishing to comment on the proposal should e-mail their submissions to rulecomments@nycourts.gov or write to: David Nocenti, Esq., Counsel, Office of Court Administration, 25 Beaver Street, 10th Fl., New York, New York, 10004. Comments must be received no later than April 5, 2024.

All public comments will be treated as available for disclosure under the Freedom of Information Law and are subject to publication by the Office of Court Administration. Issuance of a proposal for public comment should not be interpreted as an endorsement of that proposal by the Unified Court System or the Office of Court Administration.

Part 623 of the Rules of the Supreme Court, Appellate Division, First Department (22 NYCRR § 623.1 et seq.) is amended to read as follows:

PART 623
MENTAL HEALTH PROFESSIONALS PANEL

§ 623.1 Access to Mental Health Professionals

In custody and visitation, juvenile 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~~ may be 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~~ Oversight Committee

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

(b) Unless otherwise directed by the Presiding Justices of the Appellate Division of the First and Second Judicial Departments, 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 Appellate Division of the First and Second Judicial Departments of the Appellate Division, respectively, for three-year terms. Committee members shall be eligible for reappointment for additional three-year 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. If an administrator is appointed for the committee, the administrator shall also be an ex-officio member.

(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~~ Oversight 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 oversight~~ 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 such~~ hours of introductory training as approved by the Presiding Justices of the Appellate Division of the First and Second Judicial Departments;
- (3) demonstrate that ~~he or she~~ the applicant has ~~forensic~~ relevant 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, juvenile delinquency, persons in need of supervision, child abuse and neglect, termination of parental rights, family offense, and adoption, or, within the discretion of the mental health professionals ~~certification~~ oversight committee, demonstrate equivalent expertise; ~~by engaging in specialized training and in a monitored writing exercise~~
- (4) maintain professional malpractice insurance; ~~and~~
- (5) meet such additional requirements as shall be established by the mental health professionals ~~certification~~ oversight committee with the approval of the Presiding Justices of the Appellate ~~Divisions~~ Division of the First and Second Judicial Departments; ~~and~~
- (6) comply with such other statutory requirements applicable to court-ordered evaluations.

(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~~ an application in the form prescribed by the mental health professionals ~~certification~~ oversight committee.

(c) *Appointments to panel.*

- (1) The mental health professionals oversight committee shall review applications and identify those mental health professionals who meet the eligibility requirements.
- (2) The Presiding Justices of the Appellate Division ~~in~~ of 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 Division 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, juvenile 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. Except in exigent circumstances, the appointing court shall seek input from the attorney(s) for the child(ren) on the necessity and scope of an evaluation. 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, provided that the mental health professional has met the statutory requirements applicable to court-ordered evaluations. The court shall set forth the facts supporting this finding of good cause in the order of appointment. The court's finding shall be set forth in the 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 purpose and scope of the evaluation, 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. The written order shall also contain a notice that the parties may submit any complaints or concerns regarding the conduct of the assigned mental health professional panel member to the mental health professionals oversight committee.

(c) *Disclosure of Potential Conflict of Interest.* A mental health professional under consideration for appointment shall disclose to the court, all parties and attorney(s) for the child(ren) whether, in the prior two years, the mental health professional has been hired by a party, counsel for a party, attorney(s) for the child(ren) or other professionals involved in the case, either (1) as a paid non-neutral evaluator; or (2) to conduct a peer review of an evaluation by another mental health professional.

§ 623.6 Access to Evaluation Reports

(a) Where all parties are represented by counsel, a court shall provide a copy of the evaluation report to each counsel and attorney(s) for the child(ren). Counsel may show the report to the client

but shall not provide a copy to the client nor allow the client to copy or photograph any part of the report. Upon completion of the litigation or at such time when the attorney's involvement in the litigation ends, the copy of the report provided to counsel shall be returned to the court.

(b) Where one or more parties are self-represented, a court shall require the parties, counsel, and attorney(s) for the child(ren), to review the evaluation report in the courthouse and shall set such other conditions as may be warranted.

(c) In all matters, access to an evaluation report shall not be provided to any party or counsel until the recipient provides an affirmation, signed under penalty of perjury, that the recipient will not share the report or its content with any third party, that the report will not be copied or photographed, and that the contents of the report will not be quoted in litigation documents.

§ 623.6 623.7 Compensation of Mental Health Professionals

(a) The compensation for mental health professionals appointed pursuant to Judiciary Law § 35 or County Law § 722-c shall be set in accordance with guidelines promulgated 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, except that if, in the judgment of the mental health professional, the number of hours required to perform the necessary services is likely to exceed the number set forth in the order of appointment, he or she may make application to the court to amend that order by increasing the number of hours accordingly. 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.

§ 623.7 623.8 Training and Education

The mental health professionals ~~certification~~ oversight 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. Such training requirement shall be consistent with or in addition to any statutory continuing education requirements applicable to court-ordered evaluations.

§ 623.8 623.9 Periodic Evaluation of Panel Members

The mental health professionals ~~certification~~ oversight 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 and provide a means by which litigants and other members of the public may submit concerns regarding the conduct or qualifications of a panel member. The committee shall not recommend for reappointment to the panel any member whose performance has been determined by the committee to be unsatisfactory.

§ ~~623.9~~ 623.10 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~~ oversight committee may, at any time, recommend to the Presiding Justices that a mental health professional be removed from the panel.

§ ~~623.10~~ 623.11 Annual Report of the Mental Health Professionals ~~Certification~~ Oversight Committee

On June 1st of each year the mental health professionals ~~certification~~ oversight committee shall submit to the Presiding Justices of the Appellate Division ~~in~~ of 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.

Part 680 of the Rules of the Supreme Court, Appellate Division, Second Department (22 NYCRR § 680.1 et seq.) is amended to read as follows:

PART 680
MENTAL HEALTH PROFESSIONALS PANEL

§ 680.1 Access to Mental Health Professionals

In custody and visitation, juvenile 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~~ may be 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.

§ 680.2 Mental Health Professionals ~~Certification~~ Oversight Committee

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

(b) Unless otherwise directed by the Presiding Justices of the Appellate Division of the First and Second Judicial Departments, 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 Appellate Division of the First and Second Judicial Departments of the Appellate Division, respectively, for three-year terms. Committee members shall be eligible for reappointment for additional three-year 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. If an administrator is appointed for the committee, the administrator shall also be an ex-officio member.

(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.

§ 680.3 Duties of Mental Health Professionals ~~Certification~~ Oversight 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~~ oversight 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.

§ 680.4 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 such hours of introductory training as approved by the Presiding Justices of the Appellate Division of the First and Second Judicial Departments;
- (3) demonstrate that ~~he or she~~ the applicant has ~~forensic~~ relevant 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, juvenile delinquency, persons in need of supervision, child abuse and neglect, termination of parental rights, family offense, and adoption, or, within the discretion of the mental health professionals ~~certification~~ oversight committee, demonstrate equivalent expertise; ~~by engaging in specialized training and in a monitored writing exercise~~
- (4) maintain professional malpractice insurance; ~~and~~
- (5) meet such additional requirements as shall be established by the mental health professionals ~~certification~~ oversight committee with the approval of the Presiding Justices of the Appellate ~~Divisions~~ Division of the First and Second Judicial Departments; and
- (6) comply with such other statutory requirements applicable to court-ordered evaluations.

(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~~ an application in the form prescribed by the mental health professionals ~~certification~~ oversight committee.

(c) *Appointments to panel.*

- (1) The mental health professionals oversight committee shall review applications and identify those mental health professionals who meet the eligibility

requirements.

- (2) The Presiding Justices of the Appellate Division ~~in~~ of 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~~ Division of the First and Second Judicial Departments upon the recommendation of the committee.

§ 680.5 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, juvenile 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. Except in exigent circumstances, the appointing court shall seek input from the attorney(s) for the child(ren) on the necessity and scope of an evaluation. 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, provided that the mental health professional has met the statutory requirements applicable to court-ordered evaluations. The court shall set forth the facts supporting this finding of good cause in the order of appointment. ~~The court's finding shall be set forth in the 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 purpose and scope of the evaluation, 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. The written order shall also contain a notice that the parties may submit any complaints or concerns regarding the conduct of the assigned mental health professional panel member to the mental health professionals oversight committee.

(c) *Disclosure of Potential Conflict of Interest.* A mental health professional under consideration for appointment shall disclose to the court, all parties and attorney(s) for the child(ren) whether, in the prior two years, the mental health professional has been hired by a party, counsel for a party, attorney(s) for the child(ren) or other professionals involved in the case, either (1) as a paid non-

neutral evaluator; or (2) to conduct a peer review of an evaluation by another mental health professional.

§ 680.6 Access to Evaluation Reports

(a) Where all parties are represented by counsel, a court shall provide a copy of the evaluation report to each counsel and attorney(s) for the child(ren). Counsel may show the report to the client but shall not provide a copy to the client nor allow the client to copy or photograph any part of the report. Upon completion of the litigation or at such time when the attorney's involvement in the litigation ends, the copy of the report provided to counsel shall be returned to the court.

(b) Where one or more parties are self-represented, a court shall require the parties, counsel, and attorney(s) for the child(ren), to review the evaluation report in the courthouse and shall set such other conditions as may be warranted.

(c) In all matters, access to an evaluation report shall not be provided to any party or counsel until the recipient provides an affirmation, signed under penalty of perjury, that the recipient will not share the report or its content with any third party, that the report will not be copied or photographed, and that the contents of the report will not be quoted in litigation documents.

§ 680.6 680.7 Compensation of Mental Health Professionals

(a) The compensation for mental health professionals appointed pursuant to Judiciary Law § 35 or County Law § 722-c shall be set in accordance with guidelines promulgated 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, except that if, in the judgment of the mental health professional, the number of hours required to perform the necessary services is likely to exceed the number set forth in the order of appointment, he or she may make application to the court to amend that order by increasing the number of hours accordingly. 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.

§ 680.7 680.8 Training and Education

The mental health professionals ~~certification~~ oversight 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. Such training requirement shall be consistent with or in addition to any statutory continuing education requirements applicable to court-ordered evaluations.

§ 680.8 680.9 Periodic Evaluation of Panel Members

The mental health professionals ~~certification oversight~~ 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 and provide a means by which litigants and other members of the public may submit concerns regarding the conduct or qualifications of a panel member. The committee shall not recommend for reappointment to the panel any member whose performance has been determined by the committee to be unsatisfactory.

§ 680.9 680.10 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 oversight~~ committee may, at any time, recommend to the Presiding Justices that a mental health professional be removed from the panel.

§ 680.10 680.11 Annual Report of the Mental Health Professionals Certifications Oversight Committee

On June 1st of each year the mental health professionals ~~certification oversight~~ committee shall submit to the Presiding Justices of the Appellate Division ~~in~~ of 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.

The Rules of the Supreme Court, Appellate Division, Third Department (22 NYCRR § 805.1 et seq.) are amended by adding a new Part 825 to read as follows:

PART 825
MENTAL HEALTH PROFESSIONALS PANEL

§ 825.1 Access to Mental Health Professionals

In custody and visitation, juvenile 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 may be necessary to assist the court in reaching a 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 Third Judicial Department in accordance with this Part.

§ 825.2 Mental Health Professionals Oversight Committee

(a) A mental health professionals oversight committee shall be established for the Third Judicial Department.

(b) Unless otherwise directed by the Presiding Justice of the Appellate Division of the Third Judicial Department, the committee shall be composed of no fewer than one justice of the Supreme Court; one judge of the Family Court; one lawyer; and two mental health professionals who shall be either a social worker, a psychologist, or a psychiatrist. The members shall be appointed by the Presiding Justice of the Appellate Division of the Third Judicial Department for three-year terms. Committee members shall be eligible for reappointment for additional terms. The Director of the Office of Attorneys for Children, or the director's designee, shall be an ex-officio member. If an administrator is appointed for the committee, the administrator shall also be an ex-officio member.

(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.

§ 825.3 Duties of Mental Health Professionals Oversight Committee

Subject to the supervision of the Presiding Justice of the Appellate Division of the Third Judicial Department, the mental health professionals oversight 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.

§ 825.4 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 such training as approved by the Presiding Justice of the Appellate Division of the Third Judicial Department;

(3) demonstrate that the applicant has relevant 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, juvenile delinquency, persons in need of supervision, child abuse and neglect, termination of parental rights, family offense, and adoption, or, within the discretion of the mental health professionals oversight committee, demonstrate equivalent expertise;

(4) maintain professional malpractice insurance;

(5) meet such additional requirements as shall be established by the mental health professionals oversight committee with the approval of the Presiding Justice of the Appellate Division of the Third Judicial Department; and

(6) comply with such other statutory requirements applicable to court-ordered evaluations.

(b) Application. Licensed social workers, psychologists, and psychiatrists may apply for membership on the mental health professionals panel for the Third Judicial Department by completing an application in the form prescribed by the mental health professionals oversight committee.

(c) Appointments to panel.

(1) The mental health professionals oversight committee shall review applications and identify those mental health professionals who meet the eligibility requirements.

(2) The Presiding Justice of the Appellate Division of the Third Judicial Department shall, by 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 order of the Presiding Justice of the Appellate Division of the Third Judicial Department upon the recommendation of the committee.

§ 825.5 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, juvenile 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. Except in exigent circumstances, the appointing court shall obtain input from the attorney(s) for the child(ren), if any, on the necessity and scope of the evaluation to be ordered. 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, provided that the mental health professional has met the statutory requirements applicable to court-ordered evaluations. The court shall set forth the facts supporting this finding of good cause in the order of appointment.

(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 purpose and scope of the evaluation, 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. The written order shall also contain a notice that the parties may submit any complaints or concerns regarding the conduct of the assigned mental health professional panel member to the mental health professional oversight committee.

(c) *Disclosure of Potential Conflict of Interest.* A mental health professional under consideration for appointment shall disclose to the court, all parties and attorney(s) for the child(ren) whether, in the prior two years, the mental health professional has been hired by a party, counsel for a party, attorney(s) for the child(ren) or other professionals involved in the case, either (1) as a paid non-neutral evaluator; or (2) to conduct a peer review of an evaluation by another mental health professional.

§ 825.6 Access to Evaluation Reports

(a) Where all parties are represented by counsel, a court shall provide a copy of the evaluation report to each counsel and attorney(s) for the child(ren). Counsel may show the report to the client but shall not provide a copy to the client nor allow the client to copy or photograph any

part of the report. Upon completion of the litigation or at such time when the attorney's involvement in the litigation ends, the copy of the report provided to counsel shall be returned to the court.

(b) Where one or more parties are self-represented, a court shall require the parties to review the evaluation report in the courthouse and shall set such other limitations as may be warranted.

(c) In all matters, access to an evaluation report shall not be provided to any party or counsel until the recipient provides an affirmation, signed under the penalty of perjury, that the recipient will not share the report or its contents with any third party, that the report will not be copied or photographed, and that the contents of the report will not be quoted in litigation documents.

§ 825.7 Compensation of Mental Health Professionals

(a) The compensation for mental health professionals appointed pursuant to Judiciary Law, section 35 or County Law, section 722-c shall be set in accordance with guidelines promulgated 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, except that if, in the judgment of the mental health professional, the number of hours required to perform the necessary services is likely to exceed the number set forth in the order of appointment, he or she may make application to the court to amend that order by increasing the number of hours accordingly. 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.

§ 825.8 Training and Education

The mental health professionals oversight 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. Such training requirement shall be consistent with or in addition to any statutory continuing education requirements applicable to court-ordered evaluations.

§ 825.9 Periodic Evaluation of Panel Members

The mental health professionals oversight 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 and provide a means by which litigants and other members of the public may submit concerns regarding the conduct or qualifications of a panel member. The committee shall not recommend for reappointment to the panel any member whose performance has been determined by the committee to be unsatisfactory.

§ 825.10 Removal

The Presiding Justice of the Appellate Division of the Third Judicial Department may, by order, remove members of the mental health professionals panel. The mental health professionals oversight committee may, at any time, recommend to the Presiding Justice that a mental health professional be removed from the panel.

§ 825.11 Annual Report of the Mental Health Professionals Oversight Committee

On June 1st of each year the mental health professionals oversight committee shall submit to the Presiding Justice of the Appellate Division of the Third Judicial Department 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.

The Rules of the Supreme Court, Appellate Division, Fourth Department (22 NYCRR § 1000.1 et seq.) are amended by adding a new Part 1024 to read as follows:

PART 1024
MENTAL HEALTH PROFESSIONALS PANEL

§ 1024.1 Access to Mental Health Professionals

In custody and visitation, juvenile 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 may be necessary to assist the court in reaching a 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 Fourth Judicial Department in accordance with this Part.

§ 1024.2 Mental Health Professionals Oversight Committee

(a) A mental health professionals oversight committee shall be established for the Fourth Judicial Department.

(b) Unless otherwise directed by the Presiding Justice of the Appellate Division of the Fourth Judicial Department, the committee shall be composed of no fewer than one justice of the Supreme Court; one judge of the Family Court; one lawyer; and two mental health professionals who shall be either a social worker, a psychologist, or a psychiatrist. The members shall be appointed by the Presiding Justice of the Appellate Division of the Fourth Judicial Department for three-year terms. Committee members shall be eligible for reappointment for additional terms. The Director of the Office of Attorneys for Children, or the director's designee, shall be an ex-officio member. If an administrator is appointed for the committee, the administrator shall also be an ex-officio member.

(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.

§ 1024.3 Duties of Mental Health Professionals Oversight Committee

Subject to the supervision of the Presiding Justice of the Appellate Division of the Fourth Judicial Department, the mental health professionals oversight 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.

§ 1024.4 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 such training as approved by the Presiding Justice of the Appellate Division of the Fourth Judicial Department;
- (3) demonstrate that the applicant has relevant 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, juvenile delinquency, persons in need of supervision, child abuse and neglect, termination of parental rights, family offense, and adoption, or, within the discretion of the mental health professionals oversight committee, demonstrate equivalent expertise;
- (4) maintain professional malpractice insurance;
- (5) meet such additional requirements as shall be established by the mental health professionals oversight committee with the approval of the Presiding Justice of the Appellate Division of the Fourth Judicial Department; and
- (6) comply with such other statutory requirements applicable to court-ordered evaluations.

(b) Application. Licensed social workers, psychologists, and psychiatrists may apply for membership on the mental health professionals panel for the Fourth Judicial Department by completing an application in the form prescribed by the mental health professionals oversight committee.

(c) Appointments to panel.

- (1) The mental health professionals oversight committee shall review applications and identify those mental health professionals who meet the eligibility requirements.
- (2) The Presiding Justice of the Appellate Division of the Fourth Judicial Department

shall, by 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 order of the Presiding Justice of the Appellate Division of the Fourth Judicial Department upon the recommendation of the committee.

§ 1024.5 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, juvenile 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. Except in exigent circumstances, the appointing court shall obtain input from the attorney(s) for the child(ren), if any, on the necessity and scope of the evaluation to be ordered. 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, provided that the mental health professional has met the statutory requirements applicable to court-ordered evaluations. The court shall set forth the facts supporting this finding of good cause in the order of appointment.

(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 purpose and scope of the evaluation, 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. The written order shall also contain a notice that the parties may submit any complaints or concerns regarding the conduct of the assigned mental health professional panel member to the mental health professional oversight committee.

(c) *Disclosure of Potential Conflict of Interest.* A mental health professional under consideration for appointment shall disclose to the court, all parties and attorney(s) for the child(ren) whether, in the prior two years, the mental health professional has been hired by a party, counsel for a party, attorney(s) for the child(ren) or other professionals involved in the case, either (1) as a paid non-neutral evaluator; or (2) to conduct a peer review of an evaluation by another mental health professional.

§ 1024.6 Access to Evaluation Reports

(a) Where all parties are represented by counsel, a court shall provide a copy of the evaluation report to each counsel and attorney(s) for the child(ren). Counsel may show the report to the

client but shall not provide a copy to the client nor allow the client to copy or photograph any part of the report. Upon completion of the litigation or at such time when the attorney's involvement in the litigation ends, the copy of the report provided to counsel shall be returned to the court.

(b) Where one or more parties are self-represented, a court shall require the parties to review the evaluation report in the courthouse and shall set such other limitations as may be warranted.

(c) In all matters, access to an evaluation report shall not be provided to any party or counsel until the recipient provides an affirmation, signed under the penalty of perjury, that the recipient will not share the report or its contents with any third party, that the report will not be copied or photographed, and that the contents of the report will not be quoted in litigation documents.

§ 1024.7 Compensation of Mental Health Professionals

(a) The compensation for mental health professionals appointed pursuant to Judiciary Law, section 35 or County Law, section 722-c shall be set in accordance with guidelines promulgated 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, except that if, in the judgment of the mental health professional, the number of hours required to perform the necessary services is likely to exceed the number set forth in the order of appointment, he or she may make application to the court to amend that order by increasing the number of hours accordingly. 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.

§ 1024.8 Training and Education

The mental health professionals oversight 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. Such training requirement shall be consistent with or in addition to any statutory continuing education requirements applicable to court-ordered evaluations.

§ 1024.9 Periodic Evaluation of Panel Members

The mental health professionals oversight 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 and provide a means by which litigants and other members of the public may submit concerns regarding the conduct or qualifications of a panel member. The committee shall not recommend for reappointment to the panel any member whose performance has been determined by the committee to be unsatisfactory.

§ 1024.10 Removal

The Presiding Justice of the Appellate Division of the Fourth Judicial Department may, by order, remove members of the mental health professionals panel. The mental health professionals oversight committee may, at any time, recommend to the Presiding Justice that a mental health professional be removed from the panel.

§ 1024.11 Annual Report of the Mental Health Professionals Oversight Committee

On June 1st of each year the mental health professionals oversight committee shall submit to the Presiding Justice of the Appellate Division of the Fourth Judicial Department 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.