

*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 parties, counsel and 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.

(b)(i) 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 at the courthouse. The court shall set such conditions as may be warranted to ensure that the contents of the evaluation report are not disclosed by the parties, directly or indirectly, to the child(ren). Such conditions shall provide equitable access to the report to the parties, counsel, and attorney(s) for the child(ren).

(ii) Notwithstanding the foregoing, if the court determines that viewing the evaluation report at the courthouse is impracticable, the court may grant access to the evaluation report, other than at the courthouse, under such conditions as may be warranted, which shall provide equitable access to the parties, counsel, and attorney(s) for the child(ren). The court shall set such conditions on access to the evaluation report, other than at the courthouse, after considering, among others, the following factors: the prior conduct of the parties, the effect a proposed condition may have on a party's ability to effectively litigate, and the potential for abuse or inadvertent disclosure.

(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: (i) the recipient will not share the report or its contents with any third party, except a third-party retained or appointed to assist in the litigation and who signs a similar affirmation; and (ii) the report will not be copied or photographed.

#### **§ 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, the professional 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.