§ 835.1 Departmental Advisory Committee

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

§ 835.2 Panels of Attorneys for Children

(a) Initial Designation to a Panel.

(1) *Eligibility*. An attorney is eligible for designation as a member of the panel of attorneys for children of a county of this department when the attorney:

(i) is a member in good standing of the Bar of the State of New York;

(ii) has attended 12 hours of introductory training for attorneys for children conducted by the Appellate Division; and

(iii) has attained experience in the representation of children by:

(a) substantial participation, either as counsel of record or as co-counsel with a mentor as provided in paragraph (5) of this subdivision, in:

(1) a juvenile delinquency or person in need of supervision proceeding;

(2) a child abuse, child neglect, or termination of parental rights proceeding; and

(3) a custody or visitation proceeding; and

(b) participation as counsel or co-counsel in, or observation of, two hearings in Family Court at which testimony is taken; and

(iv) has no other full-time employment by any governmental agency. An attorney who is employed full-time by any governmental agency is not eligible for panel membership in any county without the express written permission of the employer, Family Court and Appellate Division, Office of Attorneys for Children.

(2) *Application*. An attorney may, at any time, apply for membership on a panel designated for a county in this department. Such an application shall be in the form prescribed by the Appellate Division, and shall be submitted to a Family Court judge of the county.

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

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

(ii) Except as provided in subparagraph (iii) of this paragraph, when the judge determines that the attorney has not met the eligibility requirements of paragraph (1) of this subdivision, the judge shall defer action on the application, forward a copy of the

application to the Appellate Division, and refer the attorney to a mentor as provided in paragraph (5) of this subdivision.

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

(4) *Waiver of Eligibility Requirements.* The Appellate Division may waive the eligibility requirements set forth in subparagraphs (1) (ii) and (iii) of this subdivision when:

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

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

(5) *Mentors*. When a judge of Family Court has deferred action on the application of an attorney for membership on a panel of attorneys for children pursuant to subparagraph (3)(ii) of this subdivision, the judge shall designate an experienced panel member as a mentor to assist the attorney in meeting the eligibility requirements of subparagraph (1)(iii) of this subdivision, and to familiarize the attorney with the representation of children and the operation of the attorneys for children program. With the agreement of the mentor, the attorney may act as co-counsel in a proceeding specified in clause (1) (iii) (a) of this subdivision, to which the mentor has been assigned as attorney for the child, provided, however, that the mentor shall be the attorney of record in the proceeding and shall be responsible for all aspects of the representation. When the attorney has met the eligibility requirements, he or she shall so inform the Family Court judge, who shall then take action as provided in paragraph (3) of this subdivision.

(b) Redesignation of Panels.

(1) The Appellate Division shall, on or before January first of each year, designate a panel of attorneys for children for each county in the department from lists of attorneys approved with respect to their competency by the Family Court judges of such counties upon consideration of the following factors:

(i) rapport with clients;
(ii) case preparation;
(iii) legal knowledge;
(iv) vigor of advocacy;
(v) punctuality; and
(vi) any information contained in the Annual Panel Re-designation Application.

(2) In order to be eligible for panel re-designation, a current panel member must submit a Panel Re-designation Application to the Office of Attorneys for Children on or before October1st of each year. Such application shall be in the form prescribed by the Appellate Division. Provided the attorney has been found qualified for redesignation upon consideration of the factors of competency in subparagraphs (1) (i)-(vi) of this subdivision, and has complied with the appropriate training and education requirement set forth in section 835.4(b) of this Part, the application shall be granted and the panel member redesignated to the panel.

(3) When a Family Court judge determines that a current panel member should not be redesignated to the county panel, the judge shall submit to the Appellate Division a written recommendation to that effect, setting forth the basis of the recommendation with specific reference to the factors of competency in subparagraphs (1) (i)-(vi) of this subdivision. The Appellate Division shall provide written notice of the recommendation and a copy of the written recommendation to the panel member, who may submit to the Appellate Division a written response and such additional documentation as the panel member believes may assist the Appellate Division in considering the judge's recommendation.

(c) Limitations on Panel Membership. When adequate numbers of attorneys are available in a county:

(1) Only the names of attorneys who reside or maintain an office in the county should appear on the panel list for that county; and

(2) The Family Court judge or judges of the county may decline to designate additional attorneys to the panel.

(d) Removal from the Panel. An attorney may, at any time, apply to a Family Court judge of the county in which he or she serves on a panel to have his or her name removed from the panel list. Upon receipt of such request, the Family Court judge may make a written recommendation to the Appellate Division that the attorney's name be removed; upon receipt of such recommendation, the Appellate Division shall remove the attorney's name from the panel list, if appropriate. If the Family Court judge denies such request, such denial shall be in writing and state the reasons for the denial. The attorney may request review of such denial by the Appellate Division. Notwithstanding the provisions of subdivision (b) of this section, a Family Court judge may, at any time, recommend to the Appellate Division the removal of an attorney's name from a panel for good cause, including, but not limited to, misconduct or lack of diligence in performing assignments. The Appellate Division may, on its own motion at any time, remove an attorney's name from a panel.

§ 835.3 Assignment of Attorneys for Children

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

(b) The following factors, among others, should be considered when assignments are made, subject to the discretion of the appointing judge:

(1) the experience and qualifications of the attorney;

(2) the nature and difficulty of the case;

(3) continuity of representation of the minor in successive proceedings; and

(4) that assignments among panel attorneys are made in a fair and impartial manner.

(c) No attorney, including one who serves as a judge or justice of a city, town or village court, or law clerk to a judge or justice, shall be assigned or accept assignment in any court as an attorney for the child when such assignment may involve a legal or ethical conflict of interest. An attorney who serves as district attorney, county attorney, or municipal corporation counsel, or as an assistant in any such office, shall not be assigned or accept assignment in any court as an attorney for the child in the county where the attorney so serves in any type of proceeding

in which such office could represent a party. Whenever an attorney accepts employment in any of the above offices, the attorney shall inform the Family Court of any county in which he or she serves on a panel of such employment. The attorney may complete any matter previously assigned, provided the assigning judge approves of the completion of such assignment and provided completion of such assignment involves no legal or ethical conflict of interest.

(d) An attorney who is employed full time with any governmental agency cannot be assigned or accept assignment in any court as an attorney for the child without the express written permission of the employer, Family Court and Appellate Division, Office of Attorneys for Children. An attorney may complete any matter assigned prior to the attorney obtaining such full-time employment, provided the completion of the assignment involves no legal or ethical conflict of interest and with the express written permission of the employer, Family Court and Appellate Division, Office of Attorneys for Children.

§ 835.4 Training and education.

(a) Attorneys for children shall be expected to be thoroughly familiar with:

(1) provisions of the Family Court Act and relevant provisions of the Domestic Relations Law, Social Services Law, Penal Law and Criminal Procedure Law;

(2) the basic principles of child development and behavior;

(3) the existence and availability of community-based treatment resources and residential facilities; and

(4) recent case law and legislation relating to the foregoing.

(b) To be eligible for redesignation to a panel of attorneys for children in this department pursuant to section 835.2(b) of this Part, a panel member shall have completed within the preceding two years at least six hours of training and education sponsored or co-sponsored by the Appellate Division, Third Department. If prior approval is obtained from the Appellate Division, Third Department, by the attorney or the sponsoring organization, attendance at an appropriate educational and training program may be substituted. This biennial continuing education and training requirement may also be fulfilled by (1) viewing video recordings approved for such purpose by the Appellate Division, Third Department, and filing with the Appellate Division, Third Department, a certification attesting to such a viewing or (2) attendance at six hours of introductory training and education as described in section 835.2(a)(1)(ii) of this Part. For good cause shown and upon the written recommendation of a Family Court judge, the Appellate Division, Third Department, may waive or defer the training and education requirement set forth herein.

§ 835.5 Compensation.

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

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

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

(i) unusually complex factual or legal issues;

(ii) novel issues of law requiring extensive legal research;

(iii) lengthy and necessary trial or other in-court proceedings which alone raise the compensation claim above statutory limits; and

(iv) other unique or unusual circumstances which required the attorney for the child to spend additional time on a case raising the compensation claim above statutory limits.

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

(c) When an attorney for the child expects the reasonable expenses of representation allowable pursuant to Family Court Act section 245 and Judiciary Law section 35 to exceed $1,000, for investigative, expert or other services, the attorney, before incurring such expenses, shall obtain the approval of the judge presiding in the proceeding and of the Appellate Division.

Revised: October 19, 2012