

RULES OF THE APPELLATE DIVISION, FOURTH DEPARTMENT

PART 1032

OPERATION OF ATTORNEYS FOR CHILDREN PROGRAM

1032.1 Office of attorneys for children; attorneys for children director

(a) An office of attorneys for children for the Fourth Judicial Department is established to ensure the provision of the highest quality of representation for children and to administer the attorneys for children program in a manner sensitive to local needs.

(b) The function of the office for attorneys for children shall be to provide continuing administrative direction to the attorneys for children program in the Fourth Judicial Department and to secure the cooperation of local bar associations, law schools and governmental agencies in order to achieve the goal specified in subdivision (a) of this section.

(c) The office of attorneys for children shall be administered by an attorneys for children director who shall be appointed by the Appellate Division and supervised by the presiding justice. The duties of the attorneys for children director shall include but not be limited to the following:

(1) to administer the office of attorneys for children program in accordance with the law and these rules;

(2) with the approval of the presiding justice and in consultation with the Fourth Department attorneys for children advisory committee, to implement standards, guidelines and procedures for the improvement of the attorneys for children program in the Fourth Judicial Department;

(3) in conjunction with local family courts, local bar associations, law schools or any other competent organization and in consultation with the Fourth Department attorneys for children advisory committee, to provide a continuing program of attorneys for children training and education that will allow applicant attorneys to satisfy requirements for designation to the panel, and to improve and maintain the professional competence of attorneys for children, and;

(4) to consult with the attorneys for children directors in the First, Second and Third Judicial Departments and with the Office of Court Administration to coordinate the operation of the programs in each department; and

(5) to prepare the annual report on the operation of the attorneys for children program in the Fourth Department.

1032.2 Attorneys for children advisory committee

(a) The presiding justice shall appoint a chairperson of the Fourth Department attorneys for children advisory committee and such other members as the presiding justice deems necessary to enable the committee to perform the functions specified in this section. The term of appointment shall be staggered and for a period of two years subject to reappointment by the presiding justice.

(b) The Fourth Department attorneys for children advisory committee may make recommendations to the presiding justice and the attorneys for children director with respect to:

(1) training of attorneys for children;

(2) the promulgation of rules, standards and administrative procedures for effective attorneys for children representation in the department;

(3) procedures necessary to insure that panel members are designated and assigned in a fair and impartial manner, having regard to the nature and difficulty of each case and the special qualifications of panel members; and

(4) procedures necessary to improve the operation thereof throughout the department.

1032.3 Members of Fourth Department attorneys for children advisory committee are volunteers

Each member of the Fourth Department attorneys for children advisory committee is a volunteer expressly authorized to participate in a State-sponsored volunteer program as provided in section 17(1) of the Public Officers Law.

1032.4 Attorneys for children panels

(a) Initial designation to attorneys for children panel

(1) *Eligibility.* An attorney is eligible for designation as a member of the

attorneys for children panel 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 and in any other jurisdiction in which the attorney is admitted to the practice of law;
- (ii) has completed the introductory training sponsored by the attorneys for children program; and
- (iii) has obtained experience in the representation of children by substantial participation, either as counsel of record or as co-counsel, in:
 - (1) a juvenile delinquency or person in need of supervision proceeding; and
 - (2) a child abuse, child neglect, or termination of parental rights proceeding; and
 - (3) a custody or visitation proceeding; and
 - (4) 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 with any other 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 the Attorneys for Children Program.

(2) Application. An attorney may, at any time, apply for membership on a county attorneys for children panel in this department. Such application shall be in the form prescribed by the Appellate Division and shall be submitted to the Attorneys for Children Program. The attorney will be notified whether the attorney has been selected to attend the introductory training set forth in subparagraph (1) (ii) of this subdivision.

(3) Action by the Family Court judge. After the attorney meets the eligibility requirements of paragraph (1) of this subdivision, the application for designation to a county panel shall be submitted for consideration to the supervising judge of Family Court in those counties where the supervising judge sits and in other counties to the most senior Family Court judge.

- (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, the judge shall defer action on the application, forward a copy of the application to the attorneys for children program, and refer the attorney to a mentor as provided in paragraph (4) of this subdivision;
- (iii) When the judge determines for good cause that an attorney should not be designated as an attorney for children panel member, the judge shall deny the application and state the reason for the denial in writing. The attorney may request review of such denial by the Appellate Division.

(4) Mentors. When a judge 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 to assist the attorney in meeting the eligibility requirements of subparagraph (1) 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 this subdivision, to which the mentor has been assigned as attorney for the child, provided, however, that the mentor shall be attorney of record in the proceeding and shall be responsible for all aspects of the representation. When the attorney has met the eligibility requirements, the attorney shall inform the judge, who shall then take action as provided in paragraph (3) of this subdivision.

(5) Action by the Appellate Division. Upon receipt of the application for designation to a county panel and the recommendation of the supervising or most senior Family Court judge that an attorney be placed on the attorneys for children panel, the Appellate Division shall:

- (i) designate the attorney to a county panel; or
- (ii) request further information from the applicant, which may include an interview; or
- (iii) decline to designate the attorney to a county panel. If not designated to a county panel, the attorney shall be informed of the basis of the decision and may request reconsideration.

(6) Waiver of eligibility requirements. The Appellate Division may waive the eligibility requirements set forth in subparagraph (1) (ii) of this subdivision when an attorney requests such waiver in writing; and

- (i) 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 an

attorneys for children panel based upon a waiver granted pursuant to this paragraph must complete the introductory training sponsored by the attorneys for children program at the next scheduled introductory training date.

(b) Designation to the advanced juvenile delinquency (AJD) attorneys for children panel

(1) *Eligibility.* An attorney is eligible for designation to the AJD attorneys for children panel of this department when the attorney:

- (i) is a member in good standing of the Bar of the State of New York and in any other jurisdiction in which the attorney is admitted to the practice of law;
- (ii) has completed the required initial attorneys for children AJD training, sponsored by the attorneys for children program; and
- (iii) has obtained sufficient relevant experience in the practice of criminal law to demonstrate the ability to represent children effectively in felony cases.

(2) *Application.* An attorney may, at any time, apply for membership on the AJD attorneys for children panel in this department. Such application shall be in the form prescribed by the Appellate Division and shall be submitted to the Attorneys for Children Program. The attorney will be notified whether the attorney has been selected to complete the introductory training set forth in subparagraph (1) (ii) of this subdivision.

(3) *Action by the Appellate Division.* Upon receipt of the application for designation to the AJD panel, the Appellate Division shall:

- (i) designate the attorney to the AJD panel; or
- (ii) request further information from the applicant, which may include an interview; or
- (iii) decline to designate the attorney to the AJD panel. If not designated to the AJD panel, the attorney shall be informed of the basis of the decision and may request reconsideration.

(c) Redesignation of attorneys for children panels

(1) The Appellate Division shall, on or before April 1 of each year, designate an annual attorneys for children panel for each county in the department from lists of attorneys who have been found competent by the Family Court judge(s) in those counties upon consideration of the following factors:

- (i) legal knowledge;
- (ii) rapport with clients;
- (iii) vigorous advocacy;
- (iv) case preparation;
- (v) courtroom demeanor; and
- (vi) any information contained in the Annual Panel Redesignation Application.

(2) To be eligible for redesignation to a panel an attorney for children shall submit a Panel Redesignation Application to the Office of Attorneys for Children on or before January 2nd 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 1032.5 of this Part, the application will be granted and the panel member redesignated to the panel.

(3) When adequate numbers of attorneys are available in a county, the Family Court judge or judges of the county may decline to designate additional attorneys to the panel.

(4) 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.

1032.5 Training and Education

- (a) To be eligible for redesignation to a panel an attorney for children shall:
- (i) have completed within the preceding two years at least one training program sponsored by the attorneys for children program, including ongoing training on domestic violence as incorporated into the attorneys for children training curriculum. If prior approval is obtained from the Appellate Division, attendance at an appropriate educational and training program sponsored or cosponsored by another New York State Judicial

Department, bar association, law school or legal aid society, may be substituted for training sponsored by the attorneys for children program. This biennial continuing education and training requirement may also be fulfilled by viewing video recordings totaling at least five and one-half hours, approved for such purpose by the Appellate Division, Fourth Department, and filing with the Appellate Division, Fourth Department, a certification attesting to such viewing.

1032. 6 Assignment of attorneys for children

(a) Any attorney designated to an attorneys for children panel in the Fourth Department may be assigned as an attorney for children in any adjoining county in the Fourth Department and in any other county not adjoining may be assigned upon prior approval of the Appellate Division.

(b) No attorney for children shall be assigned to represent a minor when such assignment involves an ethical conflict of interest. Attorneys serving in the following positions or employed by the following offices, if otherwise eligible for designation, shall disclose such employment to the court: judge or justice of a city, town or village court; law clerk to a judge or justice; district attorney; county attorney; and municipal corporation counsel. Attorneys serving in any of the above positions or employed by any of the above offices, shall not be appointed as an attorney for children in proceedings in which, by virtue of such position or employment, they have similar or equal subject matter jurisdiction or, in the county in which they are employed, the office in which they are employed participates as a party.

(c) Removal from attorneys for children panel. An attorney may request that his or her name be removed from an attorney for children panel. Upon receipt of such request, the Appellate Division shall remove the attorney's name from the panel. A Family Court judge, Supreme Court justice or surrogate may, at any time, recommend to the Appellate Division the removal of an attorney's name from an attorneys for children panel for good cause, including, but not limited to, misconduct, lack of diligence in performing attorneys for children assignments, or unwillingness to serve. An attorney whose name appears on an attorneys for children panel for two consecutive years and who has not served as an attorney for children shall be removed from the list by the Appellate Division. The Appellate Division may, on its own motion at any time, remove an attorney's name from an annual attorneys for children panel. Regardless of the basis for removal from the attorneys for children panel, an attorney may request reconsideration of such removal.

(d) Assignment of counsel by the Supreme or a Surrogate's Court to represent children in proceedings wherein compensation is authorized pursuant to Judiciary Law § 35 (7) shall be made from the panel designated pursuant to subdivision 1032.4.

(e) An attorney who is employed full-time with any governmental agency cannot be assigned or accept assignments in any court as an attorney for children without the express written permission of the employer, Family Court, and the Attorneys for Children Program. 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 the attorney has obtained the express written permission of the employer, Family Court and the Attorneys for Children Program.

1032. 7 Compensation

(a) An attorney for children seeking compensation for services rendered pursuant to Family Court Act § 245 shall submit a claim for approval to the Family Court on forms authorized by the Chief Administrator of the Courts. The Family Court shall certify the claim, subject to appropriate modifications, and shall forward the claim to the Appellate Division for approval and certification to the Comptroller for payment. When a claim is received by the Appellate Division more than 90 days after the attorney for children has completed the assignment, the attorney for children shall provide an affidavit stating that the attorney for children has not been paid for the services rendered, that a claim has not been submitted previously, and the reasons why the claim was not received within the 90-day period. The Appellate Division may, in the exercise of its discretion, disapprove any claim not received within the 90-day period.

(b) Compensation in excess of the limits established by Family Court Act § 245 and Judiciary Law § 35 shall not be approved absent a showing of extraordinary circumstances. An attorney for children submitting a claim for compensation in excess of the statutory limits shall submit, with the claim, an affidavit detailing the nature of the proceeding in which the services were rendered, the services rendered, the time expended, the expenses incurred and the facts that would support a finding of extraordinary circumstances. Absent such an affidavit, a fee in excess of the statutory limits shall not be approved.

(c) In determining whether there are extraordinary circumstances warranting compensation in excess of the statutory limits, the Family Court and the Appellate Division shall consider:

- (1) Whether the matter involved unusually complex factual or legal issues;
- (2) Whether a novel issue of law, which required extensive legal

research was involved;

- (3) Whether a lengthy trial or other in-court proceedings were necessary; and
- (4) Any other unique or unusual circumstances.

The expenditure of time alone, however, shall not constitute an extraordinary circumstance.

(d) When an attorney for children anticipates that expenses, as authorized pursuant to Family Court Act § 245 and Judiciary Law § 35, will exceed \$1000, the attorney for children shall, before incurring such expenses, obtain approval of the Family Court and the Appellate Division.