

**NEW YORK STATE SUPREME COURT  
APPELLATE DIVISION, FOURTH DEPARTMENT**

**HONORABLE GERALD J. WHALEN  
PRESIDING JUSTICE**

**ATTORNEYS FOR CHILDREN PROGRAM**

**ADMINISTRATIVE HANDBOOK  
FOR ATTORNEYS FOR CHILDREN**



Linda J. Kostin, Director  
Attorneys for Children Program  
New York State Supreme Court  
Appellate Division, Fourth Department  
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**TO: Attorneys for Children  
Fourth Judicial Department**

**FROM: Linda J. Kostin  
Attorneys for Children Program Director**

**RE: Administrative Handbook**

On behalf of Hon. Gerald J. Whalen, Presiding Justice of the Appellate Division, Fourth Department, and the members of the Court, thank you for your participation in the Attorneys for Children Program.

The purposes of the Attorneys for Children Program are to ensure the highest quality of representation of children and to administer the Program in a manner sensitive to local needs. To accomplish these purposes we conduct training seminars designed to build and sharpen your skills as an attorney for children and provide support through our website at <https://www.nycourts.gov/courts/ad4/AFC/AFC-index.html>, resource directories, case digests, etc. Further, we ensure that you are reimbursed for your services and the reasonable expenses associated with the representation of your clients. Finally, we always are available to answer questions and assist you in your work as an attorney for children.

The Attorneys for Children Program continues to seek new ways to help you serve your clients. Your suggestions are welcome. If I can assist you in any aspect of your service as an attorney for children, please do not hesitate to contact me.

We wish you the greatest success in your work as an attorney for children and in every other aspect of your legal career.

## **GENERAL POLICY CONSIDERATIONS**

### **Role of the Attorney for the Child**

Historically, the definition of the role of the attorney for the child has engendered a great deal of confusion. Many attorneys, and indeed many Judges, have viewed the role of the attorney for the child to be in the nature of a guardian ad litem. It is clear, however, that the role of the attorney for the child is very different from that of a guardian ad litem. A guardian ad litem, who need not be an attorney, is appointed as an arm of the Court to protect the best interests of a person under a legal disability. In contrast, the role of the attorney for the child is to serve as a child's lawyer. The attorney for the child has the responsibility to represent and advocate the child's wishes and interests in the proceeding or action.

With regard to the role of the attorney for the child, please carefully review Section 7.2 of the Rules of the Chief Judge and the Summary of Responsibilities of the Attorney for the Child that follow on page 4 and 5.

### **Protocols**

In view of the age of your clients and the sensitive nature of the cases in which you are appointed, you are presented with unique challenges. As an attorney for children, however, you always should act in a manner consistent with proper legal practice and should not assume the role of social worker, psychologist or advocate for one of the parties. Although it may be tempting to step outside the role of attorney for the child, particularly when the circumstances of the case are especially tragic, the rules of good lawyering are as applicable to you as to any attorney in a civil proceeding or action.

Examples of improper practices include:

- engaging in ex parte communications with the Judge without the express approval of all parties
- communicating with the parties in the absence of their counsel without obtaining consent from their counsel
- requesting confidential documents without the proper authorization of a party
- disclosing client confidences without the approval of the client. The attorney for the child should avoid attributing to the child any statements or recommendations regarding the ultimate disposition of the case, unless the child has specifically authorized the attorney

for the child to do so and understands the possible implications

- the attorney for the child should not be a witness at any time during the proceeding or in any subsequent proceeding by the same parties

Because trial courts vary with regard to their expectations of the attorney for the child, you should define your role and ensure that your role is understood by your client(s), the parties and their attorneys, as well as the Judge. We recognize that some trial courts are not fully aware of the proper role of the attorney for the child and, in some instances, may expect the attorney for the child to assume an improper role. Presiding Justice Whalen, the Fourth Department Attorneys for Children Advisory Committee, and the Attorneys for Children Program Office work to educate the bench about the proper role of the attorney for the child.

## **Section 7.2 of the Rules of the Chief Judge**

### **Section 7.2 Function of the attorney for the child.**

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

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

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

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

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

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

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

## **Summary of Responsibilities of the Attorney for the Child**

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

- (1) Commence representation of the child promptly upon being notified of the appointment;
- (2) Contact, interview and provide initial services to the child at the earliest practical opportunity, and prior to the first court appearance when feasible;
- (3) Consult with and advise the child regularly concerning the course of the proceeding, maintain contact with the child so as to be aware of and respond to the child's concerns and significant changes in the child's circumstances, and remain accessible to the child;
- (4) Conduct a full factual investigation and become familiar with all information and documents relevant to representation of the child. To that end, the lawyer for the child shall retain and consult with all experts necessary to assist in the representation of the child;
- (5) Evaluate the legal remedies and services available to the child and pursue appropriate strategies for achieving case objectives;
- (6) Appear at and participate actively in proceedings pertaining to the child;
- (7) Remain accessible to the child and other appropriate individuals and agencies to monitor implementation of the dispositional and permanency orders, and seek intervention of the court to assure compliance with those orders or otherwise protect the interests of the child, while those orders are in effect; and
- (8) Evaluate and pursue appellate remedies available to the child, including the expedited relief provided by statute, and participate actively in any appellate litigation pertaining to the child that is initiated by another party, unless the Appellate Division grants the application of the attorney for the child for appointment of a different attorney to represent the child on appeal.

**(Approved by the Statewide Law Guardian Advisory Committee 4-20-2007)**

**ATTORNEYS FOR CHILDREN PROGRAM  
APPELLATE DIVISION, FOURTH DEPARTMENT  
ADMINISTRATIVE OFFICE**

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**STATUTORY PROVISIONS**  
**RELATING TO**  
**ATTORNEY FOR THE CHILD REPRESENTATION**

Family Court Act sections 241, 242, 243, 245, 248, 249, and 249-a, inter alia , set forth the findings and purpose underlying the legislation authorizing attorney for the child appointments. The Rule of the Appellate Division, Fourth Department 22 NYCRR 1032 et seq. set forth the rules for the operation of the Attorneys for Children Program.

Judiciary Law §35(3),(7), inter alia, sets forth the compensation rate and limits where an attorney for the child is appointed in Family Court, Supreme Court or Surrogate's Court.

Under County Law §722-c the court may authorize an attorney to obtain expert services.

## **FAMILY COURT ACT**

### **Article 2, Part 4**

#### **ATTORNEYS FOR CHILDREN**

##### **§241. Findings and purpose**

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

##### **§242. Attorney for the child**

As used in this act, "attorney for the child" refers to an attorney admitted to practice law in the state of New York and designated under this part to represent minors pursuant to section two hundred and forty-nine of this act.

##### **§243. Designation**

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

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

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

#### §245. Compensation

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

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

(c) If an appellate division proceeds pursuant to subdivision © of such section two hundred forty-three, attorneys for children shall be compensated and allowed expenses and disbursements in the same amounts established by subdivision three of section thirty-five of the judiciary law.

#### §248. Appropriations

The cost of attorneys for children under section two hundred forty-five shall be payable by the state of New York within the amounts appropriated therefor.

#### §249. Appointment of attorney for the child

(a) In a proceeding under article three, seven, ten, ten-A or ten-C of this act or where a revocation of an adoption consent is opposed under section one hundred fifteen-b of the domestic relations law or in any proceeding under section three hundred fifty eight-a, three hundred eighty-three-c, three hundred eighty-four, or three hundred eighty-four-b of the social services law or when a minor is sought to be placed in protective custody under section one hundred fifty-eight of this act, the family court shall appoint an attorney to represent a minor who is the subject of the proceeding or who is sought to be placed in protective custody, if independent legal representation is not available to such minor. In any proceeding to extend or continue the placement of a juvenile delinquent or person in need of supervision pursuant to section seven hundred fifty-six or 353.3 of this act or any proceeding to extend or continue a commitment to the custody of the commissioner of mental health or the commissioner of mental retardation and developmental disabilities pursuant to section 322.2 of this act, the court shall not permit the respondent to waive the right to be represented by counsel chosen by the respondent, respondent's parent, or other person legally responsible for the respondent's care, or by assigned counsel. In any proceeding under article ten-B of

this act, the family court shall appoint an attorney to represent a youth, under the age of twenty-one, who is the subject of the proceeding, if independent legal representation is not available to such youth. In any other proceeding in which the court has jurisdiction, the court may appoint an attorney to represent the child, when, in the opinion of the family court judge, such representation will serve the purposes of this act, if independent legal counsel is not available to the child. The family court on its own motion may make such appointment.

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

#### §249-a. Waiver of counsel

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

## JUDICIARY LAW

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

\* \* \*

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

\* \* \*

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

## COUNTY LAW

### §722-c. Services other than counsel

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

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

## **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.

## ATTORNEY FOR CHILDREN ADVISORY COMMITTEE

The Presiding Justice appoints members of a departmental Attorneys for Children Advisory Committee to make recommendations to the Presiding Justice and the Director regarding training of attorneys for children and the promulgation of rules, standards and administrative procedures for the improvement of the representation of the children in the Fourth Department. The Advisory Committee also drafts practice guidelines and selects outstanding attorneys for the children for awards. The Committee consists of representatives of the Fifth, Seventh and Eighth Judicial Districts of the Fourth Department. The Committee is chaired by Hon. Lenora B. Foote-Beavers, Buffalo City Court Judge. The volunteer members of the Advisory Committee meet on a regular basis.

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## **ATTORNEY FOR CHILDREN LIAISONS**

The liaison program was created by the Attorneys for Children Advisory Committee to solicit suggestions and feedback from panel members on an annual basis. Additionally, the Director and Deputy Director depend on the liaisons to bring issues regarding attorneys for children to the attention of the Program and to disseminate information of interest to attorneys for children in their counties.

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## TRAINING AND EDUCATION OF ATTORNEYS FOR CHILDREN

### I. Introduction

To help assure the highest quality representation of children, the rules of the Appellate Division, Fourth Department, require that attorneys for children receive introductory training and continuing legal education to remain eligible for attorney for children assignments. The Attorneys for Children Program conducts a series of trainings each year to assist attorneys for children in meeting these requirements. Announcements of trainings are e-mailed directly to attorneys for children, and posted on the Attorneys for Children Program website. At the time of this publication, all trainings, including reference materials, are provided at no cost to attorneys for children.

The Appellate Division, Fourth Department has been approved by the New York State Mandatory Continuing Legal Education Board as an accredited provider of continuing legal education. Trainings conducted by the Attorneys for Children Program may be credited toward compliance with the state's continuing legal education requirements, as well as with the Appellate Division's rules on attorneys for children training and education.

### II. Attorneys for Children Training and Education Requirements

#### A. Introductory Training

1. Attorneys for children must receive introductory training prior to initial panel designation.
2. To enable attorneys for children to meet this requirement, the Attorneys for Children Program presents an Introduction to Effective Representation of Children training twice each year. The training presents an overview of all types of proceedings in which attorneys for children represent children. Additionally, the introductory training requirement includes mandatory training on domestic violence.

#### B. Continuing Legal Education of Experienced Attorneys for Children

1. To be eligible for continuing designation as a panel member when county panels are re-certified on April 1 of each year, an attorney for the child must have attended at least one continuing legal education live seminar sponsored by the Attorneys for Children Program within the previous two years or have watched at least 5.5 credit hours of approved webinars and/or videos on the Attorneys for Children Program website.
2. To enable attorneys for children to meet this requirement, the Attorneys for Children Program presents several training programs each year.

FOR CURRENT CLE REGULATIONS GO TO: [www.nycourts.gov/attorneys/cle](http://www.nycourts.gov/attorneys/cle)