

**STATUTORY PROVISIONS
RELATING TO
LAW GUARDIAN REPRESENTATION**

FAMILY COURT ACT

Article 2, Part 4

LAW GUARDIANS

§ 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 law guardians. 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 law guardians for minors 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. Law guardian.

As used in this act, "law guardian" 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 law guardians for 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 for the judicial department in which a county is located may, upon determining that a county panel designated pursuant to subdivision (c) of this section is not sufficient to afford appropriate law guardian services, 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 law guardian or as law guardians 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 law guardians 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, it may invite a bar association to recommend qualified persons for consideration by the said appellate division in making its designation, subject to standards as may be promulgated by such administrative board.

§ 244. Duration of designation.

(a) An agreement pursuant to subdivision (a) of section two hundred forty-three of this chapter may be terminated by the office of court administration by serving notice on the society sixty days prior to the effective date of the termination.

(b) No designation pursuant to subdivision (c) of such section two hundred forty-three may be for a term of more than one year, but successive designations may be made. The appellate division proceeding pursuant to such subdivision (c) may at any time increase or decrease the number of law guardians designated in any county and may rescind any designation at any time, subject to the approval of the office of court administration.

§ 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 providing of law guardians by the respective legal aid society, approved by the said 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 providing of law guardians 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 (c) of such section two hundred forty-three, law guardians shall be compensated and allowed expenses and disbursements in the same amounts established by subdivision three of section thirty-five of the judiciary law.

§ 246. Supervision by administrative board.

The administrative board of the judicial conference may prescribe standards for the exercise of the powers granted to the appellate divisions under this part and may require such reports as it deems desirable.

§ 247. [Repealed]

§ 248. Appropriations.

The costs of law guardians under section two hundred forty-five shall be payable by the state of New York within the amounts appropriated therefor.

§ 249. Appointment of law guardian.

(a) In a proceeding under article three, seven or ten 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-four-b or three hundred ninety-two of the social services law or when a minor is sought to be placed in protective custody under section one hundred fifty-eight, the family court shall appoint a law guardian 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 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, 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 a law guardian. In any other proceeding in which the court has jurisdiction, the court may appoint a law guardian 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) Notwithstanding any other provision of law, a proceeding under article three 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 counsel representing the juvenile offender in the criminal proceedings as law guardian.

§ 249-a. Waiver of counsel.

A minor who is a subject of juvenile delinquency or person in need of supervision proceeding shall be presumed to lack the requisite knowledge and maturity to waive the appointment of a law guardian. This presumption may be rebutted only after a law guardian has been appointed and the court determines after a hearing at which the law guardian 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 own defense, and (c) waiver is in the best interest of the minor.

§ 249-b. Rules of court

The chief administrator of the courts, pursuant to paragraph (e) of subdivision two of section two hundred twelve of the judiciary law, shall promulgate court rules prescribing workload standards for attorneys for children, including maximum numbers of children who can be represented at any given time, in order to ensure that children receive effective assistance of counsel comporting with legal and ethical mandates, the complexity of the proceedings affecting each client to which the law guardian is assigned, and the nature of the court appearance likely to be required for each individual client. Appointments of attorneys for children under section two hundred forty-nine of this part shall be in conformity with the rules.

JUDICIARY LAW

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

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3. No counsel assigned pursuant to this section shall seek or accept any fee for representing the person for whom he 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.

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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 a law guardian, 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 section two hundred forty-nine or section two hundred sixty-two of the family court act or section four hundred seven 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 services 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.

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.