STATE OF NEW YORK

2375

2021-2022 Regular Sessions

IN ASSEMBLY

January 19, 2021

Introduced by M. of A. DINOWITZ -- read once and referred to the Committee on Judiciary

AN ACT to amend the domestic relations law, in relation to court ordered forensic evaluations involving child custody and visitation

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. Subdivision 1 of section 240 of the domestic relations law is amended by adding a new paragraph (a-3) to read as follows:

(a-3) Forensic evaluator advisory panel. (1) An advisory panel is hereby created for the purpose of developing guidelines for qualifications and training of forensic evaluators as well as a code of ethics and standards of practice.

(i) The advisory panel shall consist of thirteen members, of which three shall be appointed by the speaker of the assembly, three shall be appointed by the temporary president of the senate, one shall be appointed by the minority leader of the assembly, one shall be appointed by the minority leader of the senate, two shall be appointed by the governor and three shall be appointed by the office of court administration.

(ii) Such appointed members shall be selected from among entities, organizations or individuals with expertise or practical experience related to forensic evaluations involving child custody and visitation.

(iii) Each member of the panel shall serve at the pleasure of the appointing authority, and any vacancy on the panel shall be filled in the same manner as the original appointment. Such panel members shall serve without compensation.

(2) The advisory panel shall:

(i) select a chairperson, from among its membership, approved by a majority of the authorized membership;

(ii) develop and regularly update a code of ethics for professionals conducting forensic evaluations in proceedings involving child custody

EXPLANATION--Matter in *italics* (underscored) is new; matter in brackets [-] is old law to be omitted.

LBD05749-01-1

and visitation, such code to be made publicly available on the office of court administration's website;

(iii) develop and regularly update standards of practice for professionals conducting forensic evaluations in proceedings involving child custody and visitation, such standards to be made publicly available on the office of court administration's website;

(iv) review any necessary information and make recommendations to the legislature and the chief judge on how best to support and promote forensic evaluations that comply with the advisory panel's code of ethics and standards of practice; and

(v) review any information and requests from the office of court administration in regards to forensic evaluations in proceedings involving child custody and visitation.

(3) The advisory panel shall issue a report, no later than June thirtieth of each calendar year, outlining the findings and recommendations of the panel and deliver such report to the governor, the speaker of the assembly, the temporary president of the senate, the minority leader of the assembly, and the minority leader of the senate.

(4) The advisory panel shall meet regularly at least two times in each year. Special meetings may be called by its chairperson.

(5) No member of the advisory panel shall be disqualified from holding any other public office or employment, nor forfeit any such office or employment by reason of appointment under this paragraph, notwithstanding the provisions of any general, special or local law, ordinance or city charter.

(6) The office of court administration shall provide the advisory panel with such staff assistance and support services as necessary for such board to perform the functions required of it under this section.

§ 2. Subdivision 1 of section 240 of the domestic relations law is amended by adding a new paragraph (a-4) to read as follows:

(a-4) Court ordered forensic evaluations involving child custody and visitation. (1) Appointment. The court may appoint a forensic evaluator on behalf of the court to evaluate and investigate the parties and a child in a proceeding involving child custody and visitation where the forensic evaluator:

(i) is a mental health professional currently licensed by the state, including but not limited to psychologists, psychiatrists, and social workers; and

(ii) has been placed on a roster of forensic evaluators involving child custody and visitation pursuant to this paragraph.

(2) Roster of forensic evaluators involving child custody and visitation. (i) (A) The chief administrator of the courts shall promulgate court rules for forensic evaluations in proceedings involving child custody and visitation. Such court rules shall provide for the development of training programs with the input of and in consultation with the state office for the prevention of domestic violence, state office of mental health, and the forensic evaluator advisory panel created by paragraph (a-3) of this subdivision.

(B) Forensic evaluator training programs shall include the dynamics of domestic violence and its effect on victims and on children and the relationship between such dynamics and the issues considered by the court, including, but not limited to, custody, visitation and child support. Such training programs along with the providers of such training shall be approved by the office of court administration following consultation with and input from the state office for the prevention of domestic violence, state office of mental health, and the forensic eval-

uator advisory panel created by paragraph (a-3) of this subdivision. All individuals conducting forensic evaluations in proceedings involving custody and visitation shall have completed such forensic evaluator training program within two years of such forensic evaluations.

(ii) Upon completion of such forensic evaluator training program by a mental health professional, the office of court administration shall place the name of such mental health professional on a roster for filling court appointments for forensic evaluations in proceedings involving child custody and visitation pursuant to this paragraph for the following two years. Such roster shall be public information and publicly available on the office of court administration's website.

(iii) Notwithstanding any provision of law to the contrary, no mental health professional shall be appointed by a court to conduct a forensic evaluation in a proceeding involving child custody and visitation pursuant to this paragraph unless such mental health professional has completed the forensic evaluator training program and has been placed on the roster of forensic evaluators or a waiver for equivalent training has been granted by the office of court administration.

(iv) The office of court administration may develop a program to waive specific training requirements based on equivalent training completed by professionals licensed by another state.

(v) The office of court administration shall review complaints regarding forensic evaluators and establish and use a process to resolve complaints and, after notice and an opportunity to be heard, temporarily suspend or remove evaluators from the roster of forensic evaluators when necessary.

(vi) Forensic evaluators appointed on behalf of the court under sections two hundred fifty-one and six hundred fifty-one of the family court act shall be from the roster of forensic evaluators maintained pursuant to this paragraph.

(3) Annual report. The chief administrator of the courts shall submit an annual report to the governor and legislative leaders no later than December thirty-first of each year. Such report, to the extent practicable, shall include, but need not be limited to:

(i) a description of the forensic evaluation process of appointment;

(ii) the number of professionals placed on the roster of forensic evaluators under this paragraph for each calendar year;

(iii) the data considered and the methodology and assumptions used in conducting such review and evaluation of the process, including but not limited to the number of evaluators appointed in child custody and visitation cases, the cost of the evaluators to the litigants and the number of times the court deviates from the recommendation of the evaluator, and an explanation for the deviation;

(iv) the number of complaints received regarding forensic evaluators, how the complaints were resolved, the length of time it took to reach resolution and an analysis of the effectiveness of the process; and

(v) other pertinent information as may be required and which the chief administrator of the courts deems advisable.

§ 3. Severability. If any clause, sentence, paragraph, subdivision, section or part of this title shall be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, subdivision, section or part thereof directly involved in the controversy in which such judgment shall have been rendered. It is hereby declared the intent of the legis-

lature that this act would have been enacted even if such invalid provisions had not been included herein.

§ 4. This act shall take effect immediately; provided, however, that section one of this act shall take effect on the thirtieth day after it shall have become a law; and provided further, however, section two of this act shall take effect on the one hundred eightieth day after it shall have become a law. Effective immediately, the addition, amendment and/or repeal of any rule or regulation necessary for the implementation of this act by the chief administrator of the courts, with the approval of the administrative board of the courts, on its effective date are authorized to be made and completed on or before such effective date.