



MEMORANDUM

To: All Interested Persons

From: Eileen D. Millett

Re: Request for Public Comment on the Proposed Amendment of Part 36 (22 NYCRR § 36.1(b)(2)(iii))

Date: October 1, 2020

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The Administrative Board of the Courts is seeking public comment on a proposal to amend 22 NYCRR Part 36, § 36.1(b)(2)(iii) to allow nonprofit institutions to act as attorneys for alleged incapacitated persons (AIP) without completing Part 36 enrollment and registration. Since 2014, the Administrative Board has authorized the Hofstra Center for Children, Families and the Law (CCFL), a nonprofit, to receive modest fees for providing legal services as attorneys for AIPs under Article 81 of the Mental Hygiene Law. The CCFL project allows low-income individuals to receive representation in cases where it may be difficult to find private attorneys to take on the matters due to the limited funds available (See Ex. A- Memo from Michele Gartner, Special Counsel for Surrogate and Fiduciary Matters).

The rule amendment that is proposed will allow CCFL and other nonprofits to act as attorneys for AIPs and guardians ad litem without requiring them to complete Part 36 enrollment and appointment paperwork. Michele Gartner, Special Counsel for Surrogate and Fiduciary Matters, states that the rule amendment is warranted because “[t]here is a great need for low-cost representation as attorneys for AIPs and guardians ad litem, and extending the not-for-profit exemption will ease the courts’ burden of finding appointees who are competent and willing to serve.” (Ex. A.)

The proposed amendment to § 36.1(b)(2)(iii) will be as follows (addition underlined):

(b) Except for sections 36.2(c)(6) and 36.2(c)(7) of this Part, this Part shall not apply to:

(2) the appointment of, or the appointment of any persons of entities performing services for, any of the following:

(iii) a nonprofit institution performing property management or personal needs services, or acting as court evaluator, attorney for an alleged incapacitated person, or guardian ad litem;

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Persons wishing to comment on the proposal should e-mail their submissions to rulecomments@nycourts.gov or write to: Eileen D. Millett, Esq., Counsel, Office of Court Administration, 25 Beaver Street, 11th Fl., New York, New York, 10004. Comments must be received no later than November 30, 2020.

All public comments will be treated as available for disclosure under the Freedom of Information Law and are subject to publication by the Office of Court Administration. Issuance of a proposal for public comment should not be interpreted as an endorsement of that proposal by the Unified Court System or the Office of Court Administration.

EXHIBIT A



Memorandum

TO: Eileen D. Millet, Counsel

FROM: Michele Gartner, Special Counsel for Surrogate & Fiduciary Matters

SUBJECT: Amendment to Part 36 re Not-for-profit exemption

DATE: September 2, 2020

The not-for-profit Hofstra Law Center for Children, Families, and the Law (“CCFL”), provides local families in need with low-bono and pro bono civil legal services. The office is staffed by recent Hofstra law school graduates who serve as salaried fellows for staggered one-year terms. One of the legal services it provides is serving as counsel to alleged incapacitated persons (“AIPs”) pursuant to Article 81 of the Mental Hygiene Law. Counsel for the AIP is appointed by the court to serve as the attorney for the person with an alleged incapacity to advocate for them and ensure that their rights and civil liberties are preserved to the greatest extent possible. MHL 81.10. The court may award the counsel “reasonable compensation,” for which the AIP may be liable. MHL 81.10(f). Because the Hofstra CCFL represents low-income individuals for modest fees, it provides services in cases where the AIP’s limited funds might make it difficult to find private attorneys willing to take on the matter.

Counsels for AIPs are subject to Part 36 even where the counsel is affiliated with a not-for-profit organization. Appointees who are subject to Part 36 must enroll on the Part 36 list, and for each appointment, both the appointee and the court must complete “appointment paperwork,” i.e., a Notice of Appointment and Certification of Compliance (UCS 872). Since its inception in 2013, the Hofstra CCFL has been excused from the Part 36 enrollment and paperwork requirements pursuant to annually renewed Administrative Orders.

This contrasts with the Part 36 treatment of not-for-profit organizations that serve as guardians or court evaluators, who are exempt from Part 36. §36.1(b)(iii). These organizations, like the

Hofstra CCFL, provide services for individuals who have limited assets to pay for those services. The rationale for the not-for-profit exemption, which is to facilitate the appointment of not-for-profit organizations that provide low and pro bono services, applies equally to those who serve as attorneys for AIPs. It is therefore suggested that Part 36 be amended to extend the exemption to that category. The same is true of not-for-profit organizations that serve as guardians ad litem in Surrogate's Court guardianship proceedings and in foreclosure proceedings in Supreme Court. There is a great need for low-cost representation as attorneys for AIPs and guardians ad litem, and extending the not-for-profit exemption will ease the courts' burden of finding appointees who are competent and willing to serve.

Accordingly, it is suggested that Part 36, Section 36.1(b) should be amended as follows:

(b) Except for sections 36.2(c)(6) and 36.2(c)(7) of this Part, this Part shall not apply to:

(iii) a nonprofit institution performing property management or personal needs services, or acting as court evaluator₁;] attorney for an alleged incapacitated person, or guardian ad litem.