



NEW YORK STATE
Unified Court System

OFFICE OF COURT ADMINISTRATION

LAWRENCE K. MARKS
CHIEF ADMINISTRATIVE JUDGE

EILEEN D. MILLETT
COUNSEL

MEMORANDUM

To: All Interested Persons

From: Eileen D. Millett

Re: Request for Public Comment on Proposal to Amend Part 36 to Allow a Party's Uncompensated Friends and Relatives to Act as Guardians Ad Litem Without Completing Part 36 Enrollment and Paperwork

Date: January 19, 2022

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The Administrative Board of the Courts is seeking public comment on a proposal, proffered by the Permanent Commission on Access to Justice (“Commission”), to amend Part 36.1(b)(2)(ii) “to allow a party’s friends and relatives to act as guardians ad litem in housing and other matters without completing Part 36 enrollment and appointment paperwork.” (Ex. A – Letter from Commission.) Due to a shortage of available fiduciaries willing to serve as guardians ad litem in housing matters, particularly in rural areas, and the lack of funding sources to compensate those who serve, friends and relatives of litigants are often called to serve as guardians ad litem for parties incapable of adequately prosecuting or defending their own rights. The Commission proposes an amendment to Part 36 (22 NYCRR §36.1(b)(2)(ii)) to exempt uncompensated friends and relatives from the administrative burdens of completing Part 36 requirements, which include enrollment and appointment paperwork, because it may deter these individuals’ willingness to serve (Ex. A, p. 2). The Commission also notes that the proposed rule amendment will reduce administrative burdens on the court, which must process the Part 36 applications.

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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 March 7, 2022.

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



PERMANENT COMMISSION ON ACCESS TO JUSTICE

HELAINE M. BARNETT, CHAIR

August 16, 2021

Eileen D. Millett
Counsel
New York State Unified Court System
Office of Court Administration
25 Beaver Street 11th floor
New York, New York 10004

Re: Proposed Amendment of Part 36 (22 NYCRR § 36.1(b)(2)(ii))

Dear Ms. Millett:

The New York State Permanent Commission on Access to Justice is writing to request an amendment to Part 36.1(b)(2)(ii) to allow a party's friends and relatives to act as guardians ad litem in housing and other matters without completing Part 36 enrollment and appointment paperwork.

Article 12 of the Civil Practice Law and Rules provides for the appointment of a guardian ad litem for "an adult incapable of adequately prosecuting or defending his rights." CPLR §1201. In housing matters, guardians ad litem are appointed for mentally or physically impaired litigants to safeguard these litigants' rights and advocate on their behalf to prevent eviction. As distinguished from an attorney, guardians ad litem have dual responsibility to the litigant and the court. On the litigant's behalf, the guardian ad litem mobilizes necessary resources to address the root cause of the litigation and sees the case through resolution. The guardian ad litem also makes a recommendation to the court for settlement based on the facts and circumstances presented and what they perceive to be in the litigant's best interest. Guardians ad litem often connect the impaired litigant with social services, help resolve lease violations, obtain rent arrears, and address financial issues.

Section 1204 of the CPLR provides that a guardian ad litem may be compensated by "any party or from any recovery had on behalf of the person whom such guardian [ad litem] represents or from such person's other property." In housing matters, there is no monied party or recovery award to compensate the guardian ad litem, nor is there other property that can be used for compensation. In addition, government or nonprofit programs that provide uncompensated or publicly compensated guardians ad litem are limited. This situation creates challenges for judges, particularly in rural areas, in finding individuals willing to accept uncompensated appointments. For these reasons, the Part 36 guardian ad litem lists are wholly inadequate to meet the needs of at-risk individuals in housing matters.

In the absence of a sufficient number of fiduciaries willing to serve as guardians ad litem in housing matters, friends and relatives who are willing to serve without compensation are called upon to fill this serious gap. Currently, these uncompensated individuals are subject to the requirements of Part 36, section 36.2(b)(3), which imposes burdens on friends and relatives and deters these individuals' willingness to serve. Those requirements also place administrative burdens on the court in circumstances not contemplated to be covered by Part 36. See sections 36.3, 36.4. The proposed rule amendment will eliminate these ministerial burdens, consistent with the current Part 36 exemption of guardians who are relatives. Section 36.1(b)(2)(i).

There are case types other than housing that would similarly benefit from exempting friends and relatives from the Part 36 requirements when there are no private or public funds to compensate a guardian ad litem, but an exemption is needed urgently for a mentally or physically impaired party at risk of eviction. Accordingly, it is suggested that Part 36.1(b)(2)(ii) should be amended 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 or entities performing services for, any of the following:

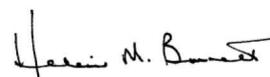
(ii) a guardian ad litem nominated by an infant of 14 years of age or over; or a guardian ad litem appointed pursuant to Article 12 of the Civil Practice Law and Rules, who is an uncompensated friend or relative of a party incapable of adequately prosecuting or defending the party's rights.

The enactment of this proposed amendment will exempt friends and family members from the Part 36 requirements, thus easing the administrative burdens on these uncompensated guardians ad litem, as well as the courts, while safeguarding the needs of New York's most vulnerable persons.

Please do not hesitate to contact me if you have any questions or need additional information.

Thank you.

Sincerely,



Helaine M. Barnett