

OUTLINE OF COURT RULES ON FIDUCIARY APPOINTMENTS AND THE FIDUCIARY CLERK

In all matters under Article 81, as well as in all other matters involving fiduciaries, Parts 26 and 36 of the Rules of the Chief Judge must be scrupulously followed. Compliance with these filing requirements is monitored by the Fiduciary Clerk, who is located in the Guardianship and Fiduciary Support Office (Room 148, 60 Centre Street, Manhattan). The following is a summary of some key aspects of these provisions, but all fiduciaries should consult them closely in full.

Part 36 of the Rules of the Chief Judge applies to appointments of, among others, a guardian, guardian ad litem, law guardians, court evaluator, court examiners, and attorney for an alleged incapacitated person (“AIP”), as well as a receiver, referee, and a person designated to perform services for a guardian or receiver, such as counsel, an accountant, and an appraiser or property manager. Section 36.1. Except for some provisions thereof, Part 36 does not apply to the appointment of a guardian who is a relative of the subject of a guardianship proceeding or a person nominated as guardian by the subject of such a proceeding or proposed by a party. Section 36.1(b)(2). Appointments under Part 36 shall be made from a list established by the Chief Administrative Judge. Section 36.2 (b) (1). The Justice may, however, make a designation from outside the list upon a finding of good cause, but in such case the basis for the appointment shall be set forth in writing and filed with the Fiduciary Clerk. Section 36.2 (b)(2).

Part 36 prohibits, among others, relatives of judges, employees of the Unified Court

System, and certain persons connected with a political party or involved in a candidacy for judicial office, as well as associates thereof, from being appointed. Section 36.2 (c). No receiver or guardian may be appointed as his or her own counsel, nor may a person associated with his or her law firm, absent a compelling reason. Section 36.2 (c) (8). The attorney for the AIP shall not be appointed as guardian, or counsel to the guardian, of that person. Section 36.2 (c)(9). No court evaluator shall be appointed as guardian for the AIP except under extenuating circumstances that are set forth in writing and filed with the Fiduciary Clerk. Section 36.2 (c)(10).

No person or institution is eligible to receive more than one appointment within a calendar year for which the anticipated compensation to be awarded in any calendar year exceeds \$15,000. Section 36.2 (d)(1). If a person or entity has been awarded more than an aggregate of \$ 75,000 during any calendar year, the person or entity shall not be eligible for compensated appointments by any court during the next calendar year. Section 36.2 (d) (2). These limitations do not apply where the appointment "is necessary to maintain continuity of representation of or service to the same person or entity in further or subsequent proceedings." Section 36.2 (d)(4).

All appointees must complete a Notice of Appointment and Certification of Compliance (UCS 872) and submit same within 30 days to the Fiduciary Clerk. An appointee who accepts an appointment without compensation need not complete the certification of compliance portion of the form. Section 36.4 (a).

If an appointee seeks compensation of more than \$500, he or she must file with the

Fiduciary Clerk, on a court-issued form (UCS 875), a statement of approval of compensation, which shall contain a confirmation to be signed by that Clerk that the appointee has filed the Notice of Appointment and Certification of Compliance. A Judge shall not approve compensation of more than \$500 and no compensation shall be awarded unless the appointee has filed the Notice and Certification and the Fiduciary Clerk has confirmed the filing to the Judge. Section 36.4 (b).

If the fees to appointees under Part 36 are \$5,000 or more, the Justice must provide a written explanation of the reasons therefor, which is to be filed with the Fiduciary Clerk along with the order approving compensation. Section 36.4 (b)(3).

Part 26 of the Rules of the Chief Judge requires that a Justice who has approved compensation of more than \$ 500 shall file with the Office of Court Administration the week after approval a statement of compensation on a form authorized by the Chief Administrative Judge. The appointees covered by Part 26 include guardians, court evaluators and counsel for an incapacitated person, as well as guardians ad litem, referees, counsel and receivers.

The Fiduciary Clerk maintains a database for tracking the filing by appointees of the required fiduciary forms. All original fiduciary forms are placed in the County Clerk's file and copies are mailed to the Office of Court Administration, where a statewide centralized database of reported appointments and approvals of compensation is maintained.