



NEW YORK  
CITY BAR

**COUNCIL ON  
JUDICIAL ADMINISTRATION**

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*Submitted via email*

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**Re: Proposals to Amend 22 NYCRR § 202.5 and § 36.2(d)**

Dear Mr. Nocenti:

The Council on Judicial Administration (“CJA”) and State Courts of Superior Jurisdiction Committee (“State Courts Committee”) of the New York City Bar Association appreciate the opportunity to comment on proposed Unified Court System rule amendments to (i) 22 NYCRR § 202.5 to permit redaction of personal information from filings in Article 81 guardianship proceedings and (ii) 22 NYCRR § 36.2(d) relating to compensation limits for Part 36 appointees.

**About the Association**

*The mission of the New York City Bar Association, which was founded in 1870 and has 23,000 members, is to equip and mobilize a diverse legal profession to practice with excellence, promote reform of the law, and uphold the rule of law and access to justice in support of a fair society and the public interest in our community, our nation, and throughout the world.*

## **Support for proposal to amend 22 NYCRR § 202.5**

The CJA and State Courts Committee support amending 22 NYCRR § 202.5(e) removing the present exclusion of Article 81 proceedings from the general requirement that confidential personal information (“CPI”) be redacted from court filings. The proposed amendment furthers the efficient administration of justice.

Redaction under the Rule provides assurance to litigants that their personal information is not being subject to unnecessary scrutiny or dissemination. The fear of misuse or embarrassment in disclosing this information is a potent force that may incline litigants to not be as forthcoming with such intimate and material information. By way of example, the law has already acknowledged this sensitivity to unnecessarily publicizing personal information in matrimonial actions through the protections afforded by Domestic Relations Law § 235 and 22 NYCRR § 202.5(e)(1)(v). On the other hand, Article 81 proceedings are unjustifiably left out.

By their nature, guardianship proceedings are extremely sensitive and personal. The disclosure of financial, medical and intimate information is required for the proper administration of these proceedings. Litigants seeking judicial intervention under Article 81 should not be fearful that these essential personal disclosures to the court will be misused or otherwise cause embarrassment. This amendment provides security against that concern to litigants and prevents its detrimental impacts on judicial economy.

Of course, if § 202.5(e) is amended as proposed, needed access to CPI by the court will still be available in filings under seal and/or upon camera inspection. Presumably court examiners requiring access to CPI will be afforded access to such information when needed to fulfill their court examiner responsibilities. Similarly, Guardianship Clerk’s offices should continue to have information needed to maintain their databases with due protection of confidential information in those databases.

## **Support for proposal to amend 22 NYCRR § 36.2(d)**

In regard to the proposed amendment to 22 NYCRR § 36.2(d), the CJA and State Courts Committee support the proposal to increase the annual compensation limit for persons appointed by judges pursuant to Part 36 from \$100,000 to \$125,000. Indeed, some of our members would support increasing the “cap” beyond \$125,000. Part 36 governs the appointment of, inter alia, guardians, attorneys for minors (not paid by public funds), court evaluators, attorneys for allegedly incapacitated persons, court examiners, supplemental needs trustees, receivers, referees (other than those acting in a quasi-judicial capacity) and persons serving as attorneys or subsidiary fiduciaries on behalf of guardians and receivers such as accountants, appraisers, property managers, real estate brokers, auctioneers, etc. At present, if a person has been awarded more than an aggregate of \$100,000 in compensation by all courts in any calendar year, that person is not eligible for compensated appointments by any court during the next calendar year. The purpose of the limitation is to broaden the pool of qualified individuals from which judges can appoint fiduciaries. The memorandum offered by the UCS Guardianship Advisory Committee (“memorandum”) recommends that the annual aggregate compensation limit for court examiners be increased to \$125,000, which seems entirely reasonable to the CJA and State Courts Committee.

As we know, court examiners are appointed by the Presiding Judges of the Appellate Division to examine annual accountings of fiduciaries. So the status of court examiners is an institutional one. The memorandum provides background information about the limitation and a rationale for an increase with respect to court examiners. It neither addresses whether the limitation should be increased with respect to other fiduciaries covered by Part 36, nor explains its failure to do so, but the CJA and State Courts Committee believe the increase proposed should apply to all Part 36 appointments.

The CJA and State Courts Committee understand that in New York County, for example, because of the present \$100,000 cap, the court is having difficulty appointing guardians, court evaluators, counsel to Alleged Incapacitated Persons and court examiners. We understand that the majority of court examiners in New York County are presently “capped” and of the 33 court examiners appointed to serve in that county less than 10 are presently able to accept new cases, the others having reached the \$100,000 limit for appointment this year.

Respectfully,

*Fran Hoffinger*

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Council on Judicial Administration

*Amy D. Carlin*

Amy D. Carlin, Chair  
State Courts of Superior Jurisdiction