

TOP 5 LIKES

1. **BE PREPARED**
 - Pretrial conferences
 - Motion practice
 - Settlement conferences
 - Trial
2. **KEEP AN OPEN MIND ABOUT YOUR CASE**
 - Strength/weaknesses
3. **BE RESPECTFUL OF**
 - Judge
 - Opposing counsel
 - Litigants
4. **BACK UP YOUR POSITION WITH FACTS AND LAW**
5. **CONTROL YOUR CLIENT/REASONABLE EXPECTATIONS**

TOP 5 DISLIKES

1. **BEING ARGUMENTATIVE AND/OR RUDE**
2. **LACK OF PREPAREDNESS**
 - Be accurate on what you represent to opposing counsel/court.
3. **ORGANIZE YOUR CALENDAR**
4. **BE REASONABLE WITH DEMANDS/OFFERS**



STATE OF NEW YORK SUPREME COURT
775 THIRD STREET
NIAGARA FALLS, NEW YORK 14301

Hon. Ralph A. Boniello, III
Justice of Supreme Court
Telephone: (716) 371-4010
Facsimile: (716) 371-4041

March 28, 2019

Re:

Dear Counsel:

The above captioned matter has been assigned to Hon. Ralph A. Boniello, III and a preliminary conference has been scheduled for **April 16, 2019 at 11:00 a.m.** Please forward a copy of the pleadings (summons, complaint, bill of particulars, answer with counterclaims) to the Court as soon as possible. In addition, Chambers requires email addresses, cell phone numbers and direct telephone numbers for all counsel.

Please note that all of the above are the attorneys we have listed on this case. If you are aware of any additional counsel or errors, please advise accordingly.

Adjournments will be granted only by permission of the Court, and not by consent of counsel.

Failure to appear may result in a default.

Very truly yours,

Hon. Ralph A. Boniello, III
Justice of the Supreme Court

RAB/dh



STATE OF NEW YORK SUPREME COURT
775 THIRD STREET
NIAGARA FALLS, NEW YORK 14301

Hon. Ralph A. Boniello, III
Justice of Supreme Court
Telephone: (716) 371-4010
Facsimile No. (716) 371-4041

March 28, 2019

Re:

Dear Counsel:

As you are aware, the above matrimonial has been transferred to the Hon. Ralph A. Boniello, III for further proceedings.

A pretrial conference has been scheduled with Judge Boniello, **Second Floor**, for **April 30, 2019 at 10:30 a.m.**

Pursuant to Section 202.16(f) of the Uniform Rules, the following must be filed with the Court at least ten (10) days prior to the preliminary conference and exchanged between the parties, if you have not already done so:

1. Statements of Net Worth;
2. All paycheck stubs for the current calendar year and the last paycheck stub for the immediately preceding calendar year;
3. All filed State and Federal income tax returns for the previous three (3) years, including both personal returns and returns filed on behalf of any partnership or closely held corporation of which the party is a partner or shareholder;
4. All W-2 wage and tax statements, 1099 forms and K1 forms for any year in the past three (3) years in which the party did not file a State and Federal income tax return;
5. All statements of accounts received during the past three (3) years from each financial institution in which a party has maintained any account in which cash or securities are held; and
6. Statements immediately preceding and following the date of commencement of the matrimonial action pertaining to:

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March 28, 2019

- a. any policy of life insurance having a cash or dividend surrender value; and
- b. any deferred compensation plan including, but not limited to, individual retirement accounts, pensions, profit sharing plans, KEOGH plans, 401K plans and any other retirement plan.

If you have any questions, please do not hesitate to contact me.

Very truly yours,

Deborah J. Holody
Secretary to Judge

/dh

STATE OF NEW YORK
SUPREME COURT : COUNTY OF NIAGARA

Plaintiff

Index No:

v.

EIGHTH JUDICIAL DISTRICT
UNIFORM SCHEDULING ORDER

Defendants.

**IT IS HEREBY ORDERED THAT THIS ACTION IS ASSIGNED TO THE:
 EXPEDITED X STANDARD COMPLEX TRACK
AND DISCLOSURE SHALL PROCEED AS FOLLOWS:**

This is to confirm that during a preliminary conference held, 2019, the following discovery schedule was established:

All Bill of Particulars to be completed by: ;

All paper discovery to be completed by: ;

All depositions to be completed by: ;

All physical examinations to be noticed: **Within thirty (30) days of Plaintiff's deposition;**

All physical examination reports to be completed: **Within forty-five days of Plaintiff's examination;**

All discoverable materials provided by: ;

All expert disclosure exchanged by: **Thirty (30) days prior to trial;**

Motions for summary judgment returnable **in accordance with CPLR 3212(a).**

Next pre-trial conference with the Court: ;

Note of Issue to be filed on or before: , or the case may be dismissed at the Court's discretion without further notice.

This statement constitutes an Order of the Court.

Hon. Ralph A. Boniello, III, J.S.C.

HON. RALPH A. BONIELLO, III

775 Third Street

Niagara Falls, New York 14301

Phone: (716) 371-4010 Fax: (726) 371-4041

Law Clerk:	John C. Fiorella, Esq. (716) 371-4011	(legal issues) email: jfiorell@nycourts.gov
Secretary:	Deborah Holody (716) 371-4010	(scheduling/adjournments) email: dholody@nycourts.gov
Court Clerk:	Kimberly Locurto (716) 371-4004	(motions/orders) email: klocurto@nycourts.gov
Court Reporter:	Amy Coghlan (716) 371-4036	(transcripts) email: acoghlan@nycourts.gov

SPECIAL TERM 2019

**E-FILES: WORKING COPIES FOR ELECTRONICALLY FILED PAPERS
ARE REQUIRED BY THIS COURT. BE SURE TO ATTACH THE REQUIRED
CONFIRMATION NOTICE FROM NYS COURTS E-FILING.**

**CIVIL MOTIONS WILL BE HEARD ON WEDNESDAYS COMMENCING AT 9:30 A.M.
ARTICLE 81 PROCEEDINGS WILL BE AT 11:00 A.M.
MENTAL HYGIENE PROCEEDINGS WILL BE HELD AT 1:30 P.M.**

SPECIAL TERM DATES 2019

JANUARY 16	JANUARY 30
FEBRUARY 13	FEBRUARY 27
MARCH 13	MARCH 27
APRIL 10	
MAY 15	
JUNE 12	
JULY 17	
AUGUST 14	
SEPTEMBER 11	SEPTEMBER 25
OCTOBER 9	OCTOBER 23
NOVEMBER 20	
DECEMBER 11	

The above dates are subject to change. In such event, the Court will notify moving counsel only. It is the responsibility of moving counsel to notify all opposing counsel of the rescheduled return date.

SPECIAL TERM MOTIONS ARE CALLED BY THE ORDER IN WHICH ATTORNEYS CHECK IN. KINDLY REPORT WITH THE COURT CLERK IMMEDIATELY UPON ARRIVAL.

NOTE: Motions, Cross-Motions and Orders to Show Cause will not be scheduled until and unless Chambers receives a paid, stamped Special Term Note of Issue.

CIVIL- all moving papers, answering papers, reply affidavits, memoranda and paid Special Term Notes of Issue, are to be received in Chambers by 3:00 p.m. the Wednesday before the return date, notwithstanding CPLR 2214(b), any papers submitted after 3:00 p.m. on Wednesday may result in an adjournment, at the Court's discretion. Affirmation of good faith required for discovery motions. Original papers **with Affidavits of Service** to be supplied to the Court. Oral argument required unless written consent by all attorneys to submit papers is received or the Court directs otherwise. TROs handled on a case-by-case basis. TROs must be on notice to other attorney if known or where a government entity is involved. Orders to Show Cause/TROs on a case assigned to another judge will be signed only upon prior written approval of IAS judge or his/her law clerk.

Adjournments: Motions cannot be adjourned generally. The first adjournment can be obtained without Court permission, on consent of all counsel, by informing the court clerk at least twenty-four (24) hours prior to return date. All other adjournments must have consent of the Court. Further, no more than three adjournments will be granted. After three adjournments, the motion may be dismissed by the Court.

MATRIMONIAL - all moving papers, answering papers, reply affidavits, memoranda and paid Special Term Notes of Issue, are to be received in Chambers by 3:00 p.m. the Wednesday before the return date, notwithstanding CPLR 2214(b), any papers submitted after 3:00 p.m. on Wednesday may result in an adjournment, at the Court's discretion. However, initial motions in matrimonial actions may be returnable at the preliminary conference, rather than matrimonial special term. In such case, the papers must be received in Chambers **at least seventy-two (72) hours prior to the return date.** Original papers **with Affidavits of Service** to be supplied to the Court. **Any request for financial relief will not be considered unless a 236(b) Financial Affidavit is attached to the motion.** TROs rarely granted if not mutual; if granted a quick return date is required and only where assets are in jeopardy or in extreme circumstances, supported by objective evidence (police or medical report). TROs on notice to other attorney, if known. Orders to Show Cause/TROs on a case assigned to another judge will be signed only upon prior approval of IAS judge or his/her law clerk. Oral argument required unless written consent by all attorneys to submit papers is received or the Court directs otherwise.

Adjournments: Motions cannot be adjourned generally. The first adjournment can be obtained without Court permission, on consent of all counsel, by informing the court clerk at least twenty-four (24) hours prior to return date. All other adjournments must have consent of the Court. Further, no more than three adjournments will be granted. After three adjournments, the motion may be dismissed by the Court.

Late Submissions: All motion papers, including cross-motions, answering affidavits, and reply affidavits must be submitted to the Court within the time periods prescribed herein and the CPLR, unless the Court directs otherwise. **Failure to comply with the filing deadline may result in either an adjournment of the motion or refusal by the Court to consider the untimely submission.**

Orders: All Orders shall be submitted to the Court within thirty (30) days of the decision.

Facsimilies (orders, subpoenas, etc.) will not be signed as originals.

APPENDIX A. STANDARDS OF CIVILITY

Preamble

The New York State Standards of Civility for the legal profession set forth principles of behavior to which the bar, the bench and court employees should aspire. They are not intended as rules to be enforced by sanction or disciplinary action, nor are they intended to supplement or modify the Rules Governing Judicial Conduct, the Code of Professional Responsibility and its Disciplinary Rules, or any other applicable rule or requirement governing conduct. Instead they are a set of guidelines intended to encourage lawyers, judges and court personnel to observe principles of civility and decorum, and to confirm the legal profession's rightful status as an honorable and respected profession where courtesy and civility are observed as a matter of course. The Standards are divided into four parts: lawyers' duties to other lawyers, litigants and witnesses; lawyers' duties to the court and court personnel; judges' duties to lawyers, parties and witnesses; and court personnel's duties to lawyers and litigants.

As lawyers, judges and court employees, we are all essential participants in the judicial process. That process cannot work effectively to serve the public unless we first treat each other with courtesy, respect and civility.

Lawyers' Duties to Other Lawyers, Litigants and Witnesses

I. Lawyers should be courteous and civil in all professional dealings with other persons.

A. Lawyers should act in a civil manner regardless of the ill feelings that their clients may have toward others.

B. Lawyers can disagree without being disagreeable. Effective representation does not require antagonistic or acrimonious behavior. Whether orally or in writing, lawyers should avoid vulgar language, disparaging personal remarks or acrimony toward other counsel, parties or witnesses.

C. Lawyers should require that persons under their supervision conduct themselves with courtesy and civility.

II. When consistent with their clients' interests, lawyers should cooperate with opposing counsel in an effort to avoid litigation and to resolve litigation that has already commenced.

A. Lawyers should avoid unnecessary motion practice or other judicial intervention by negotiating and agreeing with other counsel whenever it is practicable to do so.

B. Lawyers should allow themselves sufficient time to resolve any dispute or disagreement by communicating with one another and imposing reasonable and meaningful deadlines in light of the nature and status of the case.

III. A lawyer should respect the schedule and commitments of opposing counsel, consistent with protection of their clients' interests.

A. In the absence of a court order, a lawyer should agree to reasonable requests for extensions of time or for waiver of procedural formalities when the legitimate interests of the client will not be adversely affected.

B. Upon request complied with the simple representation by counsel that more time is required, the first request for an

extension to respond to pleadings ordinarily should be granted as a matter of courtesy.

C. A lawyer should not attach unfair or extraneous conditions to extensions of time. A lawyer is entitled to impose conditions appropriate to preserve rights that an extension might otherwise jeopardize, and may request, but should not unreasonably insist on, reciprocal scheduling concessions.

D. A lawyer should endeavor to consult with other counsel regarding scheduling matters in a good faith effort to avoid scheduling conflicts. A lawyer should likewise cooperate with opposing counsel when scheduling changes are requested, provided the interests of his or her client will not be jeopardized.

E. A lawyer should notify other counsel and, if appropriate, the court or other persons at the earliest possible time when hearings, depositions, meetings or conferences are to be canceled or postponed.

IV. A lawyer should promptly return telephone calls and answer correspondence reasonably requiring a response.

V. The timing and manner of service of papers should not be designed to cause disadvantage to the party receiving the papers.

A. Papers should not be served in a manner designed to take advantage of an opponent's known absence from the office.

B. Papers should not be served at a time or in a manner designed to inconvenience an adversary.

C. Unless specifically authorized by law or rule, a lawyer should not submit papers to the court without serving copies of all such papers upon opposing counsel in such a manner that opposing counsel will receive them before or contemporaneously with the submission to the court.

VI. A lawyer should not use any aspect of the litigation process, including discovery and motion practice, as a means of harassment or for the purpose of unnecessarily prolonging litigation or increasing litigation expenses.

A. A lawyer should avoid discovery that is not necessary to obtain facts or competent testimony or that is designed to place an undue burden or expense on a party.

B. A lawyer should respond to discovery requests reasonably and not strain to interpret the request so as to avoid disclosure of relevant and non-privileged information.

VII. In depositions and other proceedings, and in negotiations, lawyers should conduct themselves with dignity and refrain from engaging in acts of rudeness and disrespect.

A. Lawyers should not engage in any conduct during a deposition that would not be appropriate in the presence of a judge.

B. Lawyers should advise their clients and witnesses of the proper conduct expected of them in court, at depositions and at conferences, and, to the best of their ability, prevent clients and witnesses from causing disorder or disruption.

C. A lawyer should not obstruct questioning during a deposition or object to deposition questions unless necessary

D. Lawyers should ask only those questions they reasonably believe are necessary for the prosecution or defense of an action. Lawyers should refrain from asking repetitive or argumentative questions and from making self-serving statements.

VIII. A lawyer should adhere to all express promises and agreements with other counsel, whether oral or in writing, and to agreements implied by the circumstances or by local customs.

IX. Lawyers should not mislead other persons involved in the litigation process.

A. A lawyer should not falsely hold out the possibility of settlement as a means for adjourning discovery or delaying trial.

B. A lawyer should not assume a position to another counsel that counsel has not taken or otherwise seek to create an unjustified inference based on counsel's statements or conduct.

C. In preparing written versions of agreements and court orders, a lawyer should attempt to correctly reflect the agreement of the parties or the direction of the court.

X. Lawyers should be mindful of the need to protect the standing of the legal profession in the eyes of the public. Accordingly, lawyers should bring the New York State Standards of Civility to the attention of other lawyers when appropriate.

Lawyers' Duties to the Court and Court Personnel

I. A lawyer is both an officer of the court and an advocate. As such, the lawyer should always strive to uphold the honor and dignity of the profession, avoid disorder and disruption in the courtroom, and maintain a respectful attitude toward the court.

A. Lawyers should speak and write civilly and respectfully in all communications with the court and court personnel.

B. Lawyers should use their best efforts to dissuade clients and witnesses from causing disorder or disruption in the courtroom.

C. Lawyers should not engage in conduct intended primarily to harass or humiliate witnesses.

D. Lawyers should be punctual and prepared for all court appearances; if delayed, the lawyer should notify the court and counsel whenever possible.

II. Court personnel are an integral part of the justice system and should be treated with courtesy and respect at all times.

Judges' Duties to Lawyers, Parties and Witnesses

A judge should be patient, courteous and civil to lawyers, parties and witnesses.

A. A judge should maintain control over the proceedings and insure that they are conducted in a civil manner.

B. Judges should not employ hostile, demeaning or humiliating words in opinions or in written or oral communications with lawyers, parties or witnesses.

C. Judges should, to the extent consistent with the efficient conduct of litigation and other demands on the court, be considerate of the schedules of lawyers, parties and witnesses when scheduling hearings, meetings or conferences.

D. Judges should be punctual in convening all trials, hearings, meetings and conferences; if delayed, they should notify counsel when possible.

E. Judges should make all reasonable efforts to decide promptly all matters presented to them for decision.

F. Judges should use their best efforts to insure that court personnel under their direction act civilly toward lawyers, parties and witnesses.

Duties of Court Personnel to the Court, Lawyers and Litigants

Court personnel should be courteous, patient and respectful while providing prompt, efficient and helpful service to all persons having business with the courts.

A. Court employees should respond promptly and helpfully to requests for assistance or information.

B. Court employees should respect the judge's directions concerning the procedures and atmosphere that the judge wishes to maintain in his or her courtroom.

Civility in Litigation: A Voluntary Commitment

**The New York State Bar Association
Guidelines on Civility in Litigation**

NYSBA

A copy of the Report on Guidelines on Civility in Litigation prepared by the
Commercial and Federal Litigation Section may be obtained by writing:

**The New York State Bar Association
Legislation Department
One Elk Street
Albany NY 12207**

The following Guidelines were adopted by the House of Delegates of the New York State Bar Association as a standard of appropriate conduct for all participants in the litigation process, including lawyers, judges, court personnel and lay persons. They are not intended as a set of rules to be enforced by way of sanction or discipline but rather as guidance to those in the litigation process.

I. In dealing with other persons involved in the litigation process, a lawyer should be courteous and civil in all communications.

- A. Lawyers should act in a professional manner regardless of the ill feelings that their clients may have toward others.
- B. Lawyers can disagree without being disagreeable. They should recognize that effective representation does not require antagonistic or acrimonious behavior.
- C. Lawyers should not use vulgar language or make demeaning characterizations of other persons.
- D. A lawyer should require lawyers, employees and other persons under his or her supervision to conduct themselves with courtesy and civility.

II. When consistent with their clients' interests, lawyers should communicate with opposing counsel in an effort to avoid litigation and to resolve litigation that has already commenced.

- A. Lawyers should allow themselves sufficient time to resolve any dispute or disagreement by communicating with one another and imposing reasonable and meaningful deadlines in light of the nature and status of the case.
- B. Lawyers should seek to avoid unnecessary motion practice or other judicial intervention by negotiating and agreeing with the other counsel whenever it is practicable to do so.

III. A lawyer should respect the schedule and commitments of opposing counsel, consistent with protection of the clients' interests.

- A. A lawyer should agree to reasonable requests for extensions of time or for waiver of procedural formalities when the legitimate interests of the client will not be adversely affected.
- B. Upon request coupled with the simple representation by counsel that more time is required, the first request for an extension to respond to pleadings ordinarily should be granted as a matter of courtesy.
- C. A lawyer should not attach unfair and extraneous conditions to the extension of time. A lawyer is entitled to impose conditions appropriate to preserve rights that an extension might otherwise jeopardize or to seek reciprocal scheduling concessions.
- D. A lawyer should endeavor to consult with other counsel regarding scheduling matters in a good faith effort to avoid scheduling conflicts. A lawyer should likewise cooperate with opposing counsel when scheduling changes are requested, provided the interests of his or her client will not be jeopardized.
- E. A lawyer should notify other counsel and, if appropriate, the court or other persons, at the earliest possible time when hearings, depositions, meetings or conferences are to be cancelled or postponed.

IV. A lawyer should promptly return telephone calls and answer correspondence.

V. The timing and manner of service of papers should not be designed to cause disadvantage to the party receiving the papers.

- A. Papers should not be served in order to take advantage of an opponent's known absence from the office.
- B. Papers should not be served at a time or in manner designed to inconvenience an adversary, such as late on Friday afternoon or the day preceding a secular or religious holiday.
- C. Unless specifically authorized by law or rule, a lawyer should not submit papers to the court without serving copies of all such papers to opposing counsel in such a manner that opposing counsel will receive them before or contemporaneously with the submission to the court.

VI. A lawyer should not use any aspect of the litigation process, including discovery and motion practice, as a means of harassment or for the purpose of increasing litigation expenses.

VII. In depositions and other proceedings, and in negotiations, lawyers should conduct themselves with dignity and refrain from engaging in acts of rudeness and disrespect.

- A. Lawyers should not engage in any conduct during a deposition that would not be appropriate in the presence of a judge.
- B. Lawyers should advise their clients and witnesses of the proper conduct expected of them in court, at depositions and at conferences, and, to the best of their ability, prevent clients and witnesses from causing disorder or disruption.

VIII. A lawyer should adhere to all express promises and agreements with other counsel, whether oral or in writing.

IX. Lawyers should be candid with other persons involved in the litigation process.

- A. Lawyers should not falsely hold out the possibility of settlement as a means for adjourning discovery or delaying trial.
- B. A lawyer should not ascribe a position to another counsel that counsel has not taken or otherwise seek to create an unjustified inference based on counsel's statements or conduct.
- C. In preparing written versions of agreements and court orders, a lawyer should attempt to correctly reflect the agreement of the parties or the direction of the court.

X. Lawyers should be mindful of the need to protect the image of the legal profession in the eyes of the public.

SUPREME AND COUNTY CIVIL STANDARD & GOALS SUMMARY

New Standards and goals for disposition of civil actions in the Supreme and County courts became effective January 31, 2000 for pending cases filed on or after January 31, 2000. See Hon. Jonathan Lippman's Memo (May 31, 2000). Civil cases are classified as Expedited, Standard, or Complex, each with its own time frame. The designation is made by the attorney who completes the RJJ and is subject to review and re-designation by the Judge.

The time frames for all cases, excluding Contested Matrimonial and Tax Certiorari:

- ▶ **Expedited Cases**
 - Prenote Period 8 months from RJJ to Note
 - Note Period 15 months from Note to Disposition
 - Overall Period 23 months from RJJ to Disposition

- ▶ **Standard Cases**
 - Prenote Period 12 months from RJJ to Note
 - Note Period 15 months from Note to Disposition
 - Overall Period 27 months from RJJ to Disposition

- ▶ **Complex Cases**
 - Prenote Period 15 months for RJJ to Note
 - Note Period 15 months from Note to Disposition
 - Overall Period 30 months from RJJ to Disposition

Special Circumstances in Case Classification and S&G Time Frame, UCS 101 Instruction Manual, January 2008

- ◆ *Contested Matrimonial* are Standard but have specific time frames set forth by matrimonial rules.
 - Prenote Period: 6 Months from RJJ to Note
 - Note Period: 6 Months from Note to Disposition
 - Overall Period: 12 Months from RJJ to Disposition

- ◆ *Tax Certiorari* are Complex and have their own S&G rules.
 - Prenote Period: 48 Months from RJJ to Note
 - Note Period: 15 Months from Note to Disposition
 - Overall Period: 63 Months from RJJ to Disposition

- ◆ *Medical Malpractice* are generally Complex unless otherwise specified by the attorney filing the RJJ or the judge assigned to the case.

- ◆ *Unspecified* cases are Standard (except for Medical Malpractice cases).

Special Circumstances in Computation of Case Age, UCS 101 Instruction Manual, January 2008

- ◆ Appellate or Other Court (e.g. Federal Court Bankruptcy) Stays are not to be considered pending. Time spent during the stay is excluded from the age calculation.
- ◆ Restored cases are considered pending and will have a separate disposition.
 - ▶ The Pre-Note S&G and Total S&G will be calculated from the original RJI date.
 - ▶ The Note S&G period may use either the original NOI date or the Restored NOI date. This is determined by the judge handling the case.
- ◆ Cases marked off from Note to PreNote are removed from the Note inventory and are added to the PreNote inventory (not considered a final disposition) and will no longer have a Note S&G. The PreNote S&G will be recalculated from the original RJI date.
- ◆ Consolidated Tax Certiorari matters use the RJI date of the first proceeding filed.



NEW YORK STATE
Unified Court System


OFFICE OF COURT ADMINISTRATION

LAWRENCE K. MARKS
CHIEF ADMINISTRATIVE JUDGE

JOHN W. McCONNELL
COUNSEL

November 14, 2018

To: Hon. Michael V. Coccoma
Hon. George J. Silver

From: John W. McConnell 

Subject: Revised Part 36 Cap on Aggregate Compensation Allowed for Court Appointees

=====

Attached please find a copy of AO/02/18, effective October 18, 2018, which amends various portions of Part 36 of the Rules of the Chief Judge (22 NYCRR Part 36), governing appointments by the court. Notably, section 36.2(d)(2) has been amended to increase – from \$75,000 to \$100,000 – the compensation that an individual may be awarded under Part 36 in a calendar year while remaining eligible for new compensated Part 36 appointments in the year that follows. Under the amended rule, individuals who are awarded an aggregate amount of more than \$100,000 during 2018 will be ineligible for compensated Part 36 appointments during 2019.

Forms and other handouts will shortly be updated to reflect the change and can be found here: <http://www.inside-ucs.org/oca/professional-ct-services/guardian/index.shtml>.

Please distribute this memorandum to judges and other court staff who will be affected by this rule change. Questions about the amended rules may be directed to Michele Gartner, Special Counsel for Surrogate and Fiduciary Matters (212-428-5533; mgartner@nycourts.gov).

c: Administrative Judges
Maria Logus, Esq.
Scott Murphy
District Executives
Chief Clerks
Sam Younger
Michele Gartner, Esq.
Anthony Rossi, Esq.
Brian Balmes

*State of New York
Court of Appeals*



*Janet Di Fiore
Chief Judge*

*Court of Appeals Hall
Albany, New York 12207*

**ADMINISTRATIVE ORDER OF THE
CHIEF JUDGE OF THE STATE OF NEW YORK**

Pursuant to Article VI, § 28(c) of the State Constitution and section 211 of the Judiciary Law, upon consultation with the Administrative Board of the Courts, and with the approval of the Court of Appeals of the State of New York, I hereby amend, effective immediately, Part 36 of the Rules of the Chief Judge, by deleting the bracketed material and adding the underlined material.

Section 36.0 Preamble.

Public trust in the judicial process demands that appointments by judges be fair, impartial and beyond reproach. Accordingly, these rules are intended to ensure that appointees are selected on the basis of merit, without favoritism, nepotism, politics or other factors unrelated to the qualifications of the appointee or the requirements of the case.

The rules cannot be written in a way that foresees every situation in which they should be applied. Therefore, the appointment of trained and competent persons, and the avoidance of factors unrelated to the merit of the appointments or the value of the work performed, are fundamental objectives that should guide all appointments made, and orders issued, pursuant to this Part.

Section 36.1 Application.

- (a) Except as set forth in subdivision (b) of this section, this Part shall apply to the following appointments made by any judge or justice of the Unified Court System:
- (1) guardians;
 - (2) guardians *ad litem*, including guardians *ad litem* appointed to investigate and report to the court on particular issues, and their counsel and assistants;
 - (3) attorneys for the child who are not paid from public funds, in those judicial departments where their appointments are authorized;
 - (4) court evaluators;

- (5) attorneys for alleged incapacitated persons;**
- (6) court examiners;**
- (7) supplemental needs trustees;**
- (8) receivers;**
- (9) referees (other than special masters and those otherwise performing judicial functions in a quasi-judicial capacity); [and]**
- (10) the following persons [or entities] performing services for guardians or receivers:**
 - (i) counsel;**
 - (ii) accountants;**
 - (iii) auctioneers;**
 - (iv) appraisers;**
 - (v) property managers; and**
 - (vi) real estate brokers; and**
- (11) a public administrator within the City of New York and for the Counties of Westchester, Onondaga, Erie, Monroe, Suffolk and Nassau and counsel to the public administrator, except that only sections 36.2(c) and 36.4(f) of this Part shall apply, and that section 36.2(c) of this Part shall not apply to incumbents in these positions until one year after the effective date of this paragraph.**
- (b) Except for sections 36.2(c)(6) and 36.2(c)(7) of this Part, this Part shall not apply to:**
 - (1) appointments of attorneys for the child pursuant to section 243 of the Family Court Act, guardians *ad litem* pursuant to section 403-a of the Surrogate's Court Procedure Act, or the Mental Hygiene Legal Service;**
 - (2) the appointment of, or the appointment of any persons or entities performing services for, any of the following:**
 - (i) a guardian who is a relative of:**
 - (a) the subject of the guardianship proceeding; or**
 - (b) the beneficiary of a proceeding to create a supplemental needs trust; a person or entity nominated as guardian by the subject of the proceeding or proposed as guardian by a party to the proceeding; a supplemental needs trustee nominated by the beneficiary of a supplemental needs trust or proposed by a proponent of the trust; or a person or entity having a legally recognized duty or interest with respect to the subject of the proceeding;**
 - (ii) a guardian *ad litem* nominated by an infant of 14 years of age or over;**

- (iii) a nonprofit institution performing property management or personal needs services, or acting as court evaluator;
 - (iv) a bank or trust company as a depository for funds or as a supplemental needs trustee;
 - (v) except as set forth in section 36.1(a)(11), a public official vested with the powers of an administrator;
 - (vi) a person or institution whose appointment is required by law; or
 - (vii) a physician whose appointment as a guardian *ad litem* is necessary where emergency medical or surgical procedures are required; [and] or
- (3) an appointment other than above without compensation, except that the appointee must file a notice of appointment pursuant to section 36.4(b) of this Part.

Section 36.2 Appointments.

(a) Appointments by the judge. All appointments of the persons [or entities] set forth in section 36.1 of this Part, including those persons [or entities] set forth in section 36.1(a)(10) of this Part who perform services for guardians or receivers, shall be made by the judge authorized by law to make the appointment. In making appointments of persons [or entities] to perform services for guardians or receivers, the appointing judge may consider the recommendation of the guardian or receiver.

(b) Use of lists.

(1) All appointments pursuant to this Part shall be made by the appointing judge from the appropriate list of applicants established by the Chief Administrator of the Courts pursuant to section 36.3 of this Part.

(2) An appointing judge may appoint a person [or entity] not on the appropriate list of applicants upon a finding of good cause, which shall be set forth in writing and shall be filed with the fiduciary clerk at the time of the making of the appointment. The appointing judge shall send a copy of such writing to the Chief Administrator. A judge may not appoint a person [or entity] that has been removed from a list pursuant to section 36.3(e) of this Part.

(3) Appointments made from outside the lists shall remain subject to all of the requirements and limitations set forth in this Part, except that the appointing judge may waive any education and training requirements where completion of these requirements would be impractical.

(c) Disqualifications from appointment.

(1) No person shall be appointed who is a judge or housing judge of the Unified Court System of the State of New York, or who is a relative of, or related by marriage to, a judge or housing judge of the Unified Court System within the fourth degree of relationship.

(2) No person serving as a judicial hearing officer pursuant to Part 122 of the Rules of the Chief Administrator shall be appointed in actions or proceedings in a court in a county where he or she serves on a judicial hearing officer panel for such court.

(3) No person shall be appointed who is a full-time or part-time employee of the Unified Court System. No person who is the spouse, sibling, parent or child of an employee who holds a position at salary grade JG24 or above, or its equivalent, shall be appointed by a court within the judicial district where the employee is employed or, with respect to an employee with statewide responsibilities, by any court in the State.

(4)(i) No person who is a chair or executive director, or their equivalent, of a State or county political party (including any person or persons who, in counties of any size or population, possess or perform any of the titles, powers or duties set forth in Public Officers Law section 73[1][k]), or the spouse, sibling, parent or child of that official, shall be appointed while that official serves in that position and for a period of two years after that official no longer holds that position. This prohibition shall apply to the members, associates, counsel and employees of any law firms or entities while the official is associated with that firm or entity.

(ii) No person who has served as a campaign chair, coordinator, manager, treasurer or finance chair for a candidate for judicial office, or the spouse, sibling, parent or child of that person, or anyone associated with the law firm of that person, shall be appointed by the judge for whom that service was performed for a period of two years following the judicial election. If the candidate is a sitting judge, the disqualifications shall apply as well from the time the person assumes any of the above roles during the campaign for judicial office.

(5) No former judge or housing judge of the Unified Court System, or the spouse, sibling, parent or child of such judge, shall be appointed, within two years from the date the judge left judicial office, by a court within the jurisdiction where the judge served. Jurisdiction is defined as follows:

(i) the jurisdiction of a judge of the Court of Appeals shall be statewide;

(ii) the jurisdiction of a justice of an Appellate Division shall be the judicial department within which the justice served;

(iii) the jurisdiction of a justice of the Supreme Court and a judge of the Court of Claims shall be the principal judicial district within which the justice or judge served; and

(iv) with respect to all other judges, the jurisdiction shall be the principal county within which the judge served.

(6) No attorney who has been disbarred or suspended from the practice of law shall be appointed during the period of disbarment or suspension.

(7) No person convicted of a felony, or for five years following the date of sentencing after conviction of a misdemeanor (unless otherwise waived by the Chief Administrator

upon application), shall be appointed unless that person receives a certificate of relief from disabilities.

(8) No receiver or guardian shall be appointed as his or her own counsel, and no person associated with a law firm of that receiver or guardian shall be appointed as counsel to that receiver or guardian, unless there is a compelling reason to do so.

(9) No attorney for an alleged incapacitated person shall be appointed as guardian to that person, or as counsel to the guardian of that person.

(10) No person serving as a court evaluator shall be appointed as guardian for the incapacitated person except under extenuating circumstances that are set forth in writing and filed with the fiduciary clerk at the time of the appointment.

(d) Limitations on appointments based upon compensation.

(1) No person [or entity] shall be eligible to receive more than one appointment within a calendar year for which the compensation anticipated to be awarded to the appointee in any calendar year exceeds the sum of \$15,000.

(2) If a person [or entity] has been awarded more than an aggregate of \$100,000 [\$75,000] in compensation by all courts during any calendar year, the person [or entity] shall not be eligible for compensated appointments by any court during the next calendar year.

(3) For purposes of this Part, the term compensation shall mean awards by a court of fees, commissions, allowances or other compensation, excluding costs and disbursements.

(4) These limitations shall 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 36.3 Procedure for appointment.

(a) Application for appointment. The Chief Administrator shall provide for the application by persons [or entities] seeking appointments pursuant to this Part on such forms as shall be promulgated by the Chief Administrator. The forms shall contain such information as is necessary to establish that the applicant meets the qualifications for the appointments covered by this Part and to apprise the appointing judge of the applicant's background.

(b) Qualifications for appointment. The Chief Administrator shall establish requirements of education and training for placement on the list of available applicants. These requirements shall consist, as appropriate, of substantive issues pertaining to each category of appointment— including applicable law, procedures, and ethics—as well as explications of the rules and procedures implementing the process established by this Part. Education and training courses and programs shall meet the requirements of these rules only if certified by the Chief Administrator. Attorney participants in these education

and training courses and programs may be eligible for continuing legal education credit in accordance with the requirements of the Continuing Legal Education Board.

(c) Establishment of lists. The Chief Administrator shall establish separate lists of qualified applicants for each category of appointment, and shall make available such information as will enable the appointing judge to be apprised of the background of each applicant. The Chief Administrator may establish more than one list for the same appointment category where appropriate to apprise the appointing judge of applicants who have substantial experience in that category. Pursuant to section 81.32(b) of the Mental Hygiene Law, the Presiding Justice of the appropriate Appellate Division shall designate the qualified applicants on the lists of court examiners established by the Chief Administrator.

(d) Registration. The Chief Administrator shall establish a procedure requiring that each person [or entity] on a list reregister every two years in order to remain on the list.

(e) Removal from lists. The Chief Administrator may remove any person [or entity] from any list for unsatisfactory performance or any conduct incompatible with appointment from that list, or if disqualified from appointment pursuant to this Part. A person [or entity] may not be removed except upon receipt of a written statement of reasons for the removal and an opportunity to provide an explanation and to submit facts in opposition to the removal.

(f) Notwithstanding section 36.3(e), pending a final determination on the issue of removal, the Chief Administrator may temporarily suspend any person [or entity] from any list upon a showing of good cause that the person's conduct places clients or wards at significant risk of financial or other harm, or presents an immediate threat to the public.

Section 36.4 Procedure after appointment.

(a) Upon appointment of a fiduciary pursuant to this Part, the Court shall forward a copy of the appointment order to the designated fiduciary clerk within two (2) business days.

(b) Notice of appointment and certification of compliance.

(1) Every person [or entity] appointed pursuant to this Part shall file with the fiduciary clerk of the court from which the appointment is made, within 30 days of the making of the appointment:

(i) a notice of appointment; and

(ii) a certification of compliance with this Part, on such form as promulgated by the Chief Administrator. Copies of this form shall be made available at the office of the fiduciary clerk and shall be transmitted by that clerk to the appointee immediately after the making of the appointment by the appointing judge. An appointee who accepts an appointment without compensation need not complete the certification of compliance portion of the form.

(2) The notice of appointment shall contain the date of the appointment and the nature of the appointment.

(3) The certification of compliance shall include:

(i) a statement that the appointment is in compliance with section 36.2(c) and (d) of this Part; and

(ii) a list of all appointments received, or for which compensation has been awarded, during the current calendar year and the year immediately preceding the current calendar year, which shall contain:

(a) the name of the judge who made each appointment;

(b) the compensation awarded; and

(c) where compensation remains to be awarded[;]

[(d)] (i) the compensation anticipated to be awarded; and

[(e)] (ii) separate identification of those appointments for which compensation of \$15,000 or more is anticipated to be awarded during any calendar year. The list shall include the appointment for which the filing is made.

(4) A person [or entity] who is required to complete the certification of compliance, but who is unable to certify that the appointment is in compliance with this Part, shall immediately so inform the appointing judge.

(c) Approval of compensation.

(1) Upon the approval of compensation of more than \$500, the court shall file with the fiduciary clerk (i) on such form as is promulgated by the Chief Administrator, a statement of approval of compensation, which shall contain a confirmation to be signed by the fiduciary clerk that the appointee has filed the notice of appointment and certification of compliance; and (ii) a copy of the proposed order approving compensation.

(2) The court shall not sign an order awarding compensation exceeding \$500 until such time as the fiduciary clerk has confirmed that the appointee has properly filed the notice of appointment and certification of compliance. No compensation shall be awarded to an appointee who has not properly filed the notice of appointment and certification of compliance.

(3) Each approval of compensation of \$5,000 or more to appointees pursuant to this section shall be accompanied by a statement, in writing, of the reasons therefor by the judge. The judge shall file a copy of the order approving compensation and the statement with the fiduciary clerk at the time of the signing of the order. (4) Compensation to appointees shall not exceed the fair value of services rendered. Appointees who serve as counsel to a guardian or receiver shall not be compensated as counsel for services that should have been performed by the guardian or receiver.

(5) Unless otherwise directed by the court, a fiduciary appointee may utilize supporting attorneys and staff in their firm without additional Court approval. Support attorneys and staff may perform tasks only under the fiduciary appointee's direct supervision; all appearances and reports must be made by the fiduciary appointee; and all compensation earned by support attorneys or personnel shall be charged to the appointee for purposes of compensation limits pursuant to this Part.

(d) Reporting of compensation received by law firms. A law firm whose members, associates and employees have had a total of \$50,000 or more in compensation approved in a single calendar year for appointments made pursuant to this Part shall report such amounts on a form promulgated by the Chief Administrator.

(e) Reporting of compensation received by a referee to sell real property.

(1) A referee to sell real property shall make a letter application to the court to authorize payment over \$750 for a "good cause" adjournment or if there is a rebid or resale.

(2) Upon approval of compensation exceeding \$750 to a referee to sell real property, the Court shall file a copy of its compensation order with the appropriate fiduciary clerk, who shall generate the required Unified Court System forms and monitor compliance and filing with the Part 36 processing unit. Payment of such compensation may not be made until the plaintiffs in the matter have received a copy of the court's compensation order.

(3) Exception. The procedure set forth in this section shall not apply to the appointment of a referee to sell real property and a referee to compute whose compensation for such appointments is not anticipated to exceed \$750.

(f) Approval and reporting of compensation received by counsel to the public administrator.

(1) A judge shall not approve compensation to counsel to the public administrator in excess of the fee schedule promulgated by the administrative board of the public administrator under SCPA 1128 unless accompanied by the judge's statement, in writing, of the reasons therefor, and by the appointee's affidavit of legal services under SCPA 1108 setting forth in detail the services rendered, the time spent, and the method or basis by which the requested compensation was determined.

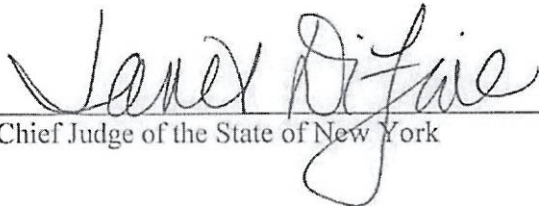
(2) Any approval of compensation in excess of the fee schedule promulgated by the administrative board of the public administrator shall be reported to the Office of Court Administration on a form promulgated by the Chief Administrator and shall be accompanied by a copy of the order approving compensation, the judge's written statement, and the counsel's affidavit of legal services, which records shall be published as determined by the Chief Administrator.

(3) Each approval of compensation of \$5,000 or more to counsel shall be reported to the Office of Court Administration on a form promulgated by the Chief Administrator and shall be published as determined by the Chief Administrator.


Section 36.5 Publication of appointments.

(a) All forms filed pursuant to section 36.4 of this Part shall be public records.

(b) The Chief Administrator shall arrange for the periodic publication of the names of all persons [and entities] appointed by each appointing judge, and the compensation approved for each appointee.



Chief Judge of the State of New York

Attest: 

Clerk of the Court of Appeals

Dated: October 18, 2018



AO/02/18