

David Nocenti

From: Edward Virshup <edvirshup@gmail.com>
Sent: Monday, July 8, 2024 3:42 PM
To: rulecomments
Subject: Proposal to amend 22 NYCRR § 202.5 to permit redaction of personal information from filings in Article 81 guardianship proceedings

Categories: Green category

As a Court Examiner, I object to the proposed rule change. Much of the information that you want to redact is very useful in conducting my review of annual accounts, preparing my report for and making recommendations to the Court. Not having such information would make my job harder. A rule change that would automatically seal Article 81 filings, giving access only to the parties and Court appointed personnel would make more sense. As an Examiner if, under the proposal, I received CPI (which I would request from the Guardian), failed to redact it from my Court Examiner Report and it was made public to the detriment of the IP I could be sued. No Court Examiner signed on for that.

Respectfully submitted,
Ed Virshup

Please be CAREFUL when clicking links or opening attachments from external senders.

David Nocenti

From: Hon. Nancy T. Sunshine
Sent: Tuesday, July 16, 2024 4:32 PM
To: rulecomments
Cc: Hon. Stephen J. Fiala; Hon. Audrey I. Pheffer; Hon. Milton A. Tingling; Hon. Ischia Bravo
Subject: Comment re Proposal to amend 22 NYCRR Section 202.5
Attachments: Request for Public Comment.pdf

Categories: Green category

Good afternoon Mr. Nocenti,
Please see the comments from the New York City County Clerks regarding the proposal to amend 22 NYCRR section 202.5.
Best regards,

Hon. Nancy T. Sunshine
County Clerk of Kings County &
Commissioner Of Jurors
360 Adams Street
Brooklyn, New York 11201
347-404- 9751
nsunshin@nycourts.gov

Please be CAREFUL when clicking links or opening attachments.

State of New York



Nancy T. Sunshine
County Clerk, Kings County

360 Adams Street
Brooklyn, NY 11201

July 16, 2024

Mr. David Nocenti, Esq.
Counsel
New York State Unified Court System
Office of Court Administration
25 Beaver Street, 10th Floor
New York, New York 10004

Via email: rulecomments@nycourts.gov

Re: Request for Public Comment – Proposal to amend 22 NYCRR § 202.5 to permit redaction of personal information from filings in Article 81 guardianship proceedings

Dear Mr. Nocenti,

I write on behalf of the undersigned County Clerks of the City of New York to express our enthusiastic support for the adoption of amending the current redaction court rule to permit redaction of personal information from filings in Art. 81 guardianship proceedings.

Having reviewed the proposal and given due consideration to the practical impacts implementation, the proposed change would have on all stakeholders; we conclude that adoption of the same would be in the best interests of all parties and provide a necessary and welcome enhancement to existing procedures.

Specifically, the proposed rule change would require filings in guardianship cases (MHL Art. 81 cases) to be subject to the redaction rule, requiring the filing parties to redact CPI (confidential personal information) from filed court documents, eliminating access to such personal information by the public.

This proposal remedies a significant concern, of public access to guardianship records which contain such highly sensitive information such as bank accounts numbers, social security numbers, personal medical information, and mental health information. By amending this redaction rule, filing parties will be permitted and required to redact such personal information from court filings.

We conclude that the proposed amended court rule provides an easy remedy to a current problem and ensures that access to sensitive personal information of litigants in guardianship cases is shielded from the

risk of identify thieves and available only to legitimate stakeholders. Therefore, we fully support the measure and urge its adoption.

Thank you for the opportunity to comment on this proposal and participate in the process of improving the rules governing redaction of court filings.

Respectfully submitted,

Nancy T. Sunshine

Hon. Nancy T. Sunshine
Kings County Clerk

(on behalf of)

Hon. Milton A. Tingling
New York County Clerk

Hon. Stephen J. Fiala
Richmond County Clerk

Hon. Audrey I. Pheffer
Queens County Clerk

Hon. Ischia Bravo
Bronx County Clerk

David Nocenti

From: Hon. Rachel Freier
Sent: Tuesday, July 23, 2024 12:11 PM
To: rulecomments
Cc: Aviva Love; Taylor Trefger; Janice Chen
Subject: – Proposal to amend 22 NYCRR § 202.5 to permit redaction of personal information from filings in Article 81 guardianship proceedings

Categories: Green category

To Whom This May Concern,

Please be advised that as a judge presiding in the Kings County Guardianship Part, I am in favor of amending 22 NYCRR § 202.5 to permit redaction of personal information from filings in Article 81 guardianship proceedings. This is important as guardianship records contain sensitive and private financial and medical information. The privacy of the incapacitated vulnerable individuals who are required to submit to court proceedings, should be protected. This should be self-understood.

Thank you for providing the opportunity to comment.

Hon. Rachel E. Freier
Supreme Court Justice
Kings County Supreme Court Civil Term
360 Adams Street
Brooklyn, New York 11201
347-296-1588



Please be CAREFUL when clicking links or opening attachments.

David Nocenti

From: David Nocenti
Sent: Friday, July 26, 2024 7:50 PM
To: rulecomments
Subject: FW: Comments on the Proposals to Amend 22 NYCRR § 202.5 and § 36.2(d)
Attachments: 20221331_Article81ConfidentialPersonalInfoRedaction.pdf

Categories: Red category, Green category

From: Dionie Kuprel <DKuprel@nycbar.org>
Sent: Friday, July 26, 2024 1:01 PM
To: [REDACTED]
Subject: Comments on the Proposals to Amend 22 NYCRR § 202.5 and § 36.2(d)

Good afternoon,

On behalf of the New York City Bar Association, please see attached comments on the proposals to amend 22 NYCRR § 202.5 and § 36.2(d), by the Council on Judicial Administration and the Committee on State Courts of Superior Jurisdiction.

Thank you for your consideration.

Dionie Kuprel (she/her/hers)
Administrative Assistant
New York City Bar Association | 42 W 44 Street, New York, NY 10036
212.382.6660 | dkuprel@nycbar.org | www.nycbar.org
Space Rental info | www.42west44.com

Please be CAREFUL when clicking links or opening attachments from external senders.

**NEW YORK
CITY BAR**

**COUNCIL ON
JUDICIAL ADMINISTRATION**

July 26, 2024

FRAN HOFFINGER
CHAIR
150 EAST 58TH STREET, 16TH
FLOOR
NEW YORK, NY 10155
Phone: (212) 421-4000
fhoffinger@hoffingerlaw.com

**COMMITTEE ON STATE COURTS
OF SUPERIOR JURISDICTION**

AMY D. CARLIN
CHAIR
40 WALL STREET, 32ND FL.
NEW YORK, NY 10005
Phone: (212) 530-4835
acarlin@lhrqb.com

Submitted via email

David Nocenti
Counsel
NYS Office of Court Administration
25 Beaver Street, 10th Floor
New York, NY 10004
[REDACTED]

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

Fran Hoffinger, Chair
Council on Judicial Administration

Amy D. Carlin

Amy D. Carlin, Chair
State Courts of Superior Jurisdiction

David Nocenti

From: David Nocenti
Sent: Tuesday, August 6, 2024 11:16 AM
To: rulecomments
Subject: FW: Send data from MFP13914596 08/06/2024 11:00
Attachments: DOC080624.pdf

Categories: Green category

-----Original Message-----

From: OCA Counsel's Office <noreply@nycourts.gov>
Sent: Tuesday, August 6, 2024 11:00 AM
To: [REDACTED]
Subject: Send data from MFP13914596 08/06/2024 11:00

Scanned from MFP13914596
Date:08/06/2024 11:00
Pages:1
Resolution:300x300 DPI

Please be CAREFUL when clicking links or opening attachments.



**NEW YORK STATE
ASSOCIATION OF
COUNTY
CLERKS**

Hon. Craig A. Hayner
President

Hon. Michael Bartolotti
Past President

Hon. Nancy Sunshine
1st Vice President

Hon. Gizelle Meeks
2nd Vice President

Hon. Andrea Bailey
3rd Vice President

Hon. Michael Keville
Treasurer

Hon. Bradford Kendall
Corresponding Secretary

Hon. Maureen Reynolds
Recording Secretary

July 31, 2024

Mr. David Nocenti, Esq.
Counsel
New York State Unified Court System
Office of Court Administration
25 Beaver Street, 10th floor
New York, New York 10004

Dear Mr. Nocenti,

As President of the New York State Association of County Clerks, I welcome the opportunity to comment on, and enthusiastically support, adoption of the proposed rule to permit redaction of personal information from filings in Article 81 guardianship proceedings.

This proposed rule amendment remedies a significant concern of County Clerks regarding public access to guardianship records (Mental Hygiene Law Article 81 proceedings) which contain highly sensitive personal information such as bank accounts numbers, social security numbers, personal medical and mental health records. By amendment of this redaction rule, filing parties will be permitted and required to redact such person information from court filings. This proposed rule amendment will ensure that access to such sensitive personal information of litigants in guardianship cases is shielded from the risk of identity thieves and available only to legitimate stakeholders.

Thank you for the opportunity to comment on this significant issue which promotes access to justice in that access to guardianship files is still permitted, but without the risk of exposing the sensitive financial and personal medical information of litigants.

The NYS Association of County Clerks endorses the adoption of the proposed court rule.

Respectfully submitted,

Craig A. Hayner
Saratoga County Clerk
President, New York State Association of County Clerks

David Nocenti

From: Andrea Champlin <Andrea@fliconline.org>
Sent: Friday, August 16, 2024 4:41 PM
To: rulécomments
Subject: Public Comment re: Re: Proposal to amend 22 NYCRR § 202.5 to permit redaction of personal information from filings in Article 81 guardianship proceedings
Attachments: Guardianship CPI Public Comment.docx
Categories: Green category

Hello,

Please see attached public comment regarding the proposal to amend 22 NYCRR § 202.5 to permit redaction of personal information from filings in Article 81 guardianship proceedings.

Thank you,

Andrea Champlin
Advocacy Specialist & Statewide Systems Advocate
Finger Lakes Independence Center (FLIC)
andrea@fliconline.org
215 Fifth Street
Ithaca NY 14850
Phone: 607.272.2433 Ext. 203

Please be CAREFUL when clicking links or opening attachments from external senders.



Finger Lakes Independence Center

Opening Doors to Independence

Re: Proposal to amend 22 NYCRR § 202.5 to permit redaction of personal information from filings in Article 81 guardianship proceedings

August 16, 2024

To Whom it May Concern:

My name is Andrea Champlin. I am the Statewide Systems Advocate at the Finger Lakes Independence Center (FLIC) in Ithaca, New York. FLIC is an independent living center, an organization staffed by people with disabilities to help other people with disabilities to live as independently as possible in their chosen communities.

Guardianship proceedings are very related to our mission and vision. Thank you for providing this opportunity to provide public comment on the proposed redaction of personal information from filings in Article 81 guardianship proceedings. I am writing to voice my enthusiastic support for the proposed amendment.

Guardianship proceedings are designed to protect individuals with severe mental health disabilities. Amending 22 NYCRR § 202.5 to permit redaction of personal information from filings in Article 81 guardianship proceedings will help to further protect both allegedly incapacitated people and people who are determined to be incapacitated. Imposing different standards for cases that fall under the Mental Hygiene Law is also a form of discrimination based on ability status.

Furthermore, stigma and discrimination can both have tremendously negative impacts on individuals with mental health disabilities (Torales et al., 2023). This effect becomes even more salient when individuals have additional dimensions of their identities that have been marginalized, such as being a person of color or a member of the Lesbian, Gay, Bisexual, Transgender, and Queer (LGBTQ) community (Torales et al., 2023). Redacting peoples' confidential and personal information during Article 81 guardianship proceedings is an important step towards safeguarding against the negative impacts of stigma and discrimination.

Sincerely,

Andrea Champlin
Statewide Systems Advocate
Finger Lakes Independence Center



Finger Lakes **Independence** Center

Opening Doors to Independence

References

Torales, J., Aveiro-Róbaló, T. R., Ríos-González, C., Barrios, I., Almirón-Santacruz, J., González-Urbieta, I., Caycho-Rodríguez, T., Castaldelli-Maia, J. M., & Ventriglio, A. (2023). Discrimination, stigma and mental health: What's next? *International Review of Psychiatry*, 35(3–4), 242–250.

<https://doi.org/10.1080/09540261.2023.2186218>