



NEW YORK STATE  
Unified Court System

OFFICE OF COURT ADMINISTRATION

TAMIKO AMAKER  
ACTING CHIEF ADMINISTRATIVE JUDGE

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MEMORANDUM

To: Judicial District Administrative Judges  
Surrogates (New York City)

From: Meredith R. Jones, Special Counsel for Surrogate and Fiduciary Matters  
Milton Yu, Managing Inspector General for Fiduciary Appointments *M.R.J.*

Date: December 20, 2022

Subject: Best Practice for Fiduciary Appointments Pursuant to the Compensation  
Limitations Exception under Part 36 of the Rules of the Chief Judge (22  
NYCRR § 36.1 et seq. ["Part 36"])

The Guardian and Fiduciary Services and Inspector General's Offices have devised the following Part 36 compensation cap exception best practice to better ensure Part 36 compliance, appointment process transparency, and accurate Fiduciary Case Management System (FCMS) recordkeeping.

**Best practice**

All compensation cap exception determinations pursuant to Part 36.2 (d) (4) should be set forth in writing in an order that details the exception and the reasons therefor. The order shall be uploaded to FCMS that has been updated to accept such orders with a notation that the appointment was made as an exception to the Part 36 rules. An order providing sample language is attached.

**Background**

Appointees subject to Part 36 include, but are not limited to, guardians, guardians ad litem, court evaluators, attorneys for alleged incapacitated persons, court examiners, supplemental needs trustees, receivers, mortgage foreclosure referees and six categories of professionals performing services for guardians and receivers (*see* 22 NYCRR § 36.1 (a)).

Part 36 governs the protocols, procedures and requirements for appointments and compensation and reporting of appointments and compensation of the fiduciaries appointed pursuant thereto. Under the rules, appointments may be prohibited or limited based upon the compensation awarded or anticipated (*see* 22 NYCRR § 36.2 (d)) as follows:

- (1) A person may receive only one appointment per calendar year for which the compensation is anticipated to be more than \$15,000 (*see* Part 36.2 (d) (1)).
- (2) A person who has been awarded more than \$100,000 in compensation during any calendar year, is ineligible for compensated appointments in the following calendar year (*see* Part 36.2 (d) (2)).

These limitations in appointments based upon compensation are not caps per se. They were made a part of the Part 36 rules to act as a limiting factor in the appointment process to promote confidence in judicial appointments and to combat any perception of favoritism in the appointment process or any perception by the public that a favored few received all the lucratively compensated appointments.

This rule is balanced with a sole exception of allowing a person who would not normally be eligible for appointment because they have exceeded the compensation caps set forth in Part 36 to nevertheless be appointed in a matter where the appointment is necessary to maintain the continuity of representation of or service to the same person or entity in a further or subsequent related proceeding (*see* Part 36.2 (d) (4)).

During the appointment process, a notification of appointment and certification of compliance is required to be filed by the appointee (*see* Part 36.4 (b) (1)). In the certification of compliance, the appointee must certify that they are in compliance with the limitations set forth in Part 36.2 (c) and (d). If the appointee is unable to make the appropriate certifications, the appointee must notify the appointing judge (*see* Part 36.4 (b) (4)).

In order for the appointee to be able to certify that they are in compliance with Part 36.2 (d) they must either not run afoul of the limitations set forth in Part 36.2 (d) (1) or (2) or meet the exception set forth in Part 36.2 (d) (4).

While the appointee may be able to certify that they have not run afoul of the compensation “caps” set forth in Part 36, it is the judge who must make the determination as to whether the exception applies to the proposed appointment. **This determination should be set forth in writing in an order that details the exception and the reasons therefor.** This order will then be uploaded to the system along with a notation that the appointment has been made as an exception to the Part 36 rules. This procedure will ensure compliance with Part 36, provide ready transparency in the appointment process and promote accurate and timesaving recordkeeping in FCMS.

Questions regarding this recommended best practice may be addressed to Meredith R. Jones, Special Counsel for Surrogate and Fiduciary Matters at (212) 428-5508 or [mjones@nycourts.gov](mailto:mjones@nycourts.gov) or to Milton Yu, Managing Inspector General for Fiduciary Appointments at (646) 386-3514 or [myu@nycourts.gov](mailto:myu@nycourts.gov).

Attachment: Sample Order

CC: Hon. Deborah Kaplan  
Hon. Norman St. George  
Linda Dunlap-Miller  
Scott Murphy  
District Executives (outside New York City)  
Chief Clerks of the Supreme Courts in New York City (Civil)  
Chief Clerks of the Surrogate's Courts in New York City  
Anthony Rossi  
Brian Balmes  
Sheena McNamara  
Fiduciary Liaisons

**SAMPLE**

**ORDER**

\_\_\_\_\_ COURT OF THE STATE OF NEW YORK  
COUNTY OF \_\_\_\_\_

-----X

\_\_\_\_\_

Plaintiff,

- against -

\_\_\_\_\_

Defendant.

-----X

**ORDER APPOINTING  
FIDUCIARY PURSUANT TO  
EXCEPTION TO  
COMPENSATION  
LIMITATIONS (PART 36.2 (d))**

Index No. \_\_\_\_\_

Upon all of the prior proceedings in this action/proceeding, it is

ORDERED that

Name: \_\_\_\_\_

Fiduciary ID: \_\_\_\_\_

Address: \_\_\_\_\_

\_\_\_\_\_

Phone: \_\_\_\_\_

FAX: \_\_\_\_\_

Email: \_\_\_\_\_

is appointed as \_\_\_\_\_  
(category of appointment)

for the following parties: \_\_\_\_\_;

and it is further

ORDERED THAT PURSUANT TO 22 NYCRR § 36.1, this appointment shall be subject to Part 36 of the Rules of the Chief Judge; and it is further

ORDERED, that this appointment qualifies as an exception to the compensation limitations set forth in Part 36.2 (d). Pursuant to Part 36.2 (d),

\_\_\_\_\_ has been appointed as  
(name of appointee)

\_\_\_\_\_,  
(category of appointment)

- despite having received a previous appointment this calendar year for which the compensation anticipated to be awarded in any calendar year exceeds \$15,000 or
- despite having been awarded more than an aggregate of \$100,000 in compensation in the previous calendar year.

The court finds that this appointment is necessary to maintain continuity of representation of or service to \_\_\_\_\_ who  
(name of party for whom appointment made)

was the subject of an appointment in the previous proceeding entitled \_\_\_\_\_ for the following

reasons: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_;

and it is further

ORDERED, that by accepting this appointment, \_\_\_\_\_  
(name of appointee)

certifies that s/he is familiar with the duties and responsibilities of a

\_\_\_\_\_ and has experience in such area, and is  
(category of appointment)

fully capable and prepared to assume those duties and responsibilities which are commensurate with his/her abilities; and it further

ORDERED, that attorneys or support staff in the appointee's office may perform tasks under the appointee's direct supervision [unless otherwise directed by the court], but all substantive appearances and reports must be performed and/or created by the appointee; and it is further

ORDERED, that upon receipt of this order, the \_\_\_\_\_  
(category of appointment)

shall complete and file with the fiduciary clerk the notice of appointment and certification of compliance pursuant to 22 NYCRR § 36.4 (b).

\_\_\_\_\_  
Hon.

Dated: \_\_\_\_\_