Women's Bar Association

OF THE STATE WBASNY OF NEW YORK

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John W. McConnell, Esq., Counsel
Office of Court Administration
25 Beaver Street, 11th Floor
New York, NY 10004

RE: Proposed Amendment of Rules Relating to 22 NYCRR Part 36

Dear Mr. McConnell:

Thank you for the opportunity to comment on the proposal related to Attorneys for Children and Part 36 of the Rules of the Chief Judge (22 NYCRR - Part 36). We appreciate the diligent efforts of the Matrimonial Practice Advisory and Rules Committee in re-visiting the issues of (a) whether it is appropriate to continue to denominate Attorneys for Children as fiduciaries, and (b) whether the limitation on compensation is current and serves the goals of Part 36.

Pursuant to 22 NYCRR Section 7.2 of the Rules of the Chief Judge, attorneys formerly known as "law guardians" underwent not only a name change, but a sea change, in their role and responsibility as advocates for children. The Rule clarified that the "attorney for the child" is neither an arm of the Court nor a neutral presence in the courtroom. Rather, subject to limited, enumerated exceptions, the Attorney for the Child must take a position consistent with the child's wishes and is bound by the same ethical obligations as the attorneys representing the parties.

The private-pay Attorney for the Child, however, has been included in a list of fiduciaries whose appointment, reporting demands, and compensation are governed by Part 36 of the Rules of the Chief Judge. In our view, however, including the Attorney for the Child in the Part 36 list of fiduciaries is inconsistent with the role of the Attorney for the Child is as an independent advocate. Although appointed by the judge, the Attorney for the Child does not make recommendations to the Court in an oral or written report regarding what is "best" for his/her client. Defining the Attorney for the Child as a fiduciary, a category of court appointees who owe a markedly different duty to their ward, is inconsistent with Rule 7.2 and undermines the autonomous role and responsibility of these trained professionals.

The proposed amendment to Part 36 maintains the applicability of Sections 36.2(a), (b), and (c), Section 36.3, and Section 36.4(a) and (g). The appointment of the Attorney for the Child still must be made by a judge from an approved list of applicants (absent a showing of good cause in a filed writing). The appointment of individuals who have certain disqualifying familial or employment relationships is disallowed. The Chief Administrator continues to be authorized to require the Attorney for the Child to complete the promulgated form for appointment, to maintain education and training requirements, to establish lists of qualified appointees, and to remove appointees from the list for unsatisfactory performance or inappropriate conduct.

The proposed amendment to Part 36 further requires that the Attorney for the Child report all appointments within thirty days of the notice of appointment and, upon completion of representation, to file a statement of services rendered for approval by the court. That final order of compensation, when signed by the judge, would be simultaneously filed with the fiduciary clerk.

Most importantly, therefore, the proposed amendments do not dilute the appointing judge's authority and discretion over his/her choice of appointee and all forms filed, including compensation approved for each appointee, are public records. Therefore, while excluding the applicability of inappropriate fiduciary provisions of Part 36 to private pay Attorneys for the Child, the protective provisions of Part 36 remain intact.

Further, we support the proposed increase in the cap on aggregate Part 36 compensation for all appointees, whether fiduciary or a private-pay Attorney for the Child. The aggregate cap of $75,000 was established over ten years ago, and unduly restricts persons whose awarded compensation in any year reaches that cap from accepted any Part 36 appointments in the subsequent year. Increasing the aggregate compensation cap to $100,000 or $125,000 would expand the list of qualified professionals eligible to serve in these important professional roles on whom the Court and vulnerable children rely.

Based on the foregoing, the Women's Bar Association of the State of New York (WBASNY) wholeheartedly supports the proposed amendments to Part 36 of the Rules of the Chief Judge. Thank you, again, for the opportunity to present our views and comments.

Very truly yours,

Amy Baldwin Littman
President, WBASNY