



NEW YORK STATE
Unified Court System

OFFICE OF COURT ADMINISTRATION

HON. JOSEPH A. ZAYAS
CHIEF ADMINISTRATIVE JUDGE

HON. NORMAN ST. GEORGE
FIRST DEPUTY CHIEF ADMINISTRATIVE JUDGE

DAVID NOCENTI
COUNSEL

MEMORANDUM

To: All Interested Persons

From: David Nocenti

Re: Request for Public Comment – Proposal to amend 22 NYCRR § 36.2(d) relating to compensation limits for Part 36 appointees

Date: July 2, 2024

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The Administrative Board of the Courts is seeking public comment on a proposal to increase, from \$100,000 to \$125,000, the annual compensation limit for persons appointed by judges pursuant to Part 36 of the Rules of the Chief Judge.

Attached as Exhibit A is a memorandum from the UCS Guardianship Advisory Committee, providing background on the proposed rule change. As noted in that memorandum, the current \$100,000 limit has not been increased since 2018, and Part 36 appointees awarded more than that amount in any calendar year are not eligible for new appointments under Part 36 for the following calendar year.

The specific change would be made to 22 NYCRR § 36.2(d), which would be amended to read as follows:

“(d) Limitations on appointments based upon compensation.

- (1) No person 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 has been awarded more than an aggregate of ~~\$100,000~~ \$125,000 in compensation by all courts during any calendar year, the person 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.”

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Persons wishing to comment on the proposal should e-mail their submissions to rulecomments@nycourts.gov or write to: David Nocenti, Esq., Counsel, Office of Court Administration, 25 Beaver Street, 10th Fl., New York, New York, 10004. Comments must be received no later than August 16, 2024.

All public comments will be treated as available for disclosure under the Freedom of Information Law and are subject to publication by the Office of Court Administration. Issuance of a proposal for public comment should not be interpreted as an endorsement of that proposal by the Unified Court System or the Office of Court Administration.

EXHIBIT A

**STATE OF NEW YORK
UNIFIED COURT SYSTEM
GUARDIANSHIP ADVISORY COMMITTEE**

**Office of Court Administration
25 Beaver Street, 10th Floor
New York, New York 10004
(212) 428-5508**

**Hon. David H. Guy
Chair**

MEMORANDUM

TO: Administrative Board of the Courts
FROM: Hon. David H. Guy
DATE: June 4, 2024
SUBJECT: Applicability of Compensation Limitation in Part 36.2 (d) (2) to Court
Examiners

This memorandum is submitted in response to the request from the Administrative Board of the Courts for a recommendation from the Guardianship Advisory Committee (GAC) as to whether the compensation limitation set forth in Part 36 of the Rules of the Chief Judge (22 NYCRR [Part] 36) should be either (1) increased or (2) contain an exemption for court examiners. This topic was discussed at the GAC meeting on May 8, 2024 and our recommendation is based on broad consensus of our committee.

The GAC recommends that the compensation limitation set forth in Part 36.2 (d) (2) be increased from \$100,000 to \$125,000.

Court examiners are fiduciary appointees subject to the reporting requirements and disqualifying factors and limitations of Part 36. Part 36.2 (d) (2) limits appointments based upon compensation awarded for Part 36 appointments as follows:

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

This “cap” on compensation has been increased only twice in over the last 20 years. On November 15, 2002, the cap was set at \$50,000. On February 4, 2008, this sum was raised to \$75,000. About a decade later, on October 18, 2018, the sum was raised to \$100,000.

In some areas of the state, particularly the large downstate counties, a significant number of experienced and capable court examiners have been rendered ineligible to serve due to awards that exceed the Part 36.2 (d) (2) “cap”. The First Department reported that one-half of the court examiners on their list are ineligible to serve as court examiners in 2024 because they have “capped” out.

A decrease in Part 36 list court examiners results in a higher caseload for those remaining on the list and compounds the problem. Higher caseloads also mean court examiners have less time to devote to necessary compliance efforts.

As a temporary solution, the GAC previously recommended a two year “moratorium” on Court Examiner fees being included in the Part 36 cap. After further review, the GAC recommends that the cap be raised from \$100,000 to \$125,000 and that Part 36.2 (d) (2) of the Rules of the Chief Judge be amended as follows:

(d) Limitations on appointments based upon compensation

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- (2) If a person or entity has been awarded more than an aggregate of [~~\$100,000~~] \$125,000 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.**

The GAC recommends the sum of \$125,000 based upon the annual average rate of inflation utilizing the consumer price index rates published by the U. S. Bureau of Labor Statistics (a copy of a table showing the Consumer Price Index U. S. City Average is annexed). The current rate of inflation is 3.4 percent based upon the consumer price index for May 2024. The U. S. Congressional Budget Office predicts that inflation will be 2.2 percent in 2025, 2.1 percent in 2026 and level to 2 percent a year to 2034 (see

The Budget Economic Outlook: 2024 to 2034, dated February 2024, page 43, www.cbo.gov/system/files/2024-02/59710-Outlook-2024.pdf). The GAC further recommends that this cap on compensation be periodically reviewed and increased commensurate with inflation.

If you have any questions, please feel free to contact me, or Meredith R. Jones, Special Counsel for Surrogate and Fiduciary Matters.

A handwritten signature in black ink, appearing to read "DAVID NOCENTI", with a large, stylized loop at the end.

cc: David Nocenti
Meredith R. Jones



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Consumer Price Index US City Average (1982-84 = 100)

Consumer Price Index for all Urban Consumers (CPI-U), Not Seasonally Adjusted
 U.S. City Average All Items 1982-1984=100 (R)=Revised

Year	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Avg
1995	150.3	150.9	151.4	151.9	152.2	152.5	152.5	152.9	153.2	153.7	153.6	153.5	152.4
1996	154.4	154.9	155.7	156.3	156.6	156.7	157.0	157.3	157.8	158.3	158.6	158.6	156.9
1997	159.1	159.6	160.0	160.2	160.1	160.3	160.5	160.8	161.2	161.6	161.5	161.3	160.5
1998	161.6	161.9	162.2	162.5	162.8	163.0	163.2	163.4	163.6	164.0	164.0	163.9	163.0
1999	164.3	164.5	165.0	166.2	166.2	166.2	166.7	167.1	167.9	168.2	168.3	168.3	166.6
2000	168.8	169.8	171.2	171.3	171.5	172.4	172.8	172.8	173.7	174.0	174.1	174.0	172.2
2001	175.1	175.8	176.2	176.9	177.7	178.0	177.5	177.5	178.3	177.7	177.4	176.7	177.1
2002	177.1	177.8	178.8	179.8	179.8	179.9	180.1	180.7	181.0	181.3	181.3	180.9	179.9
2003	181.7	183.1	184.2	183.8	183.5	183.7	183.9	184.6	185.2	185.0	184.5	184.3	184.0
2004	185.2	186.2	187.4	188.0	189.1	189.7	189.4	189.5	189.9	190.9	191.0	190.3	188.9
2005	190.7	191.8	193.3	194.6	194.4	194.5	195.4	196.4	198.8	199.2	197.6	196.8	195.3
2006	198.3	198.7	199.8	201.5	202.5	202.9	203.5	203.9	202.9	201.8	201.5	201.8	201.6
2007	202.416	203.499	205.352	206.686	207.949	208.352	208.299	207.917	208.490	208.936	210.177	210.036	207.342
2008	211.080	211.693	213.528	214.823	216.632	218.815	219.964	219.086	218.783	216.573	212.425	210.228	215.303
2009	211.143	212.193	212.709	213.240	213.856	215.693	215.351	215.834	215.969	216.177	216.330	215.949	214.537
2010	216.687	216.741	217.631	218.009	218.178	217.965	218.011	218.312	218.439	218.711	218.803	219.179	218.056
2011	220.223	221.309	223.467	224.906	225.964	225.722	225.922	226.545	226.889	226.421	226.230	225.672	224.939
2012	226.665	227.663	229.392	230.085	229.815	229.478	229.104	230.379	231.407	231.317	230.221	229.601	229.594
2013	230.280	232.166	232.773	232.531	232.945	233.504	233.596	233.877	234.149	233.546	233.069	233.049	232.957
2014	233.916	234.781	236.293	237.072	237.900	238.343	238.250	237.852	238.031	237.433	236.151	234.812	236.736
2015	233.707	234.722	236.119	236.599	237.805	238.638	238.654	238.316	237.945	237.838	237.336	236.525	237.017
2016	236.916	237.111	238.132	239.261	240.229	241.018	240.628	240.849	241.428	241.729	241.353	241.432	240.007
2017	242.839	243.603	243.801	244.524	244.733	244.955	244.786	245.519	246.819	246.663	246.669	246.524	245.120
2018	247.867	248.991	249.554	250.546	251.588	251.989	252.006	252.146	252.439	252.885	252.038	251.233	251.107
2019	251.712	252.776	254.202	255.548	256.092	256.143	256.571	256.558	256.759	257.346	257.208	256.974	255.657
2020	257.971	258.678	258.115	256.389	256.394	257.797	259.101	259.918	260.280	260.388	260.229	260.474	258.811
2021	261.582	263.014	264.877	267.054	269.195	271.696	273.003	273.567	274.310	276.589	277.948	278.802	270.970
2022	281.148	283.716	287.504	289.109	292.296	296.311	296.276	296.171	296.808	298.012	297.711	296.797	292.655
2023	299.170	300.840	301.836	303.363	304.127	305.109	305.691	307.026	307.789	307.671	307.051	306.746	304.702
2024	308.417	310.326	312.332	313.548									
Percent Change from 12 months ago													
1996	2.7%	2.7%	2.8%	2.9%	2.9%	2.8%	3.0%	2.9%	3.0%	3.0%	3.3%	3.3%	3.0%
1997	3.0	3.0	2.8	2.5	2.2	2.3	2.2	2.2	2.2	2.1	1.8	1.7	2.3
1998	1.6	1.4	1.4	1.4	1.7	1.7	1.7	1.6	1.5	1.5	1.5	1.6	1.6
1999	1.7	1.6	1.7	2.3	2.1	2.0	2.1	2.3	2.6	2.6	2.6	2.7	2.2
2000	2.7	3.2	3.8	3.1	3.2	3.7	3.7	3.4	3.5	3.4	3.4	3.4	3.4

Source: US Bureau of Labor Statistics

Year	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Avg
2001	3.7	3.5	2.9	3.3	3.6	3.2	2.7	2.7	2.6	2.1	1.9	1.6	2.8
2002	1.1	1.1	1.5	1.6	1.2	1.1	1.5	1.8	1.5	2.0	2.2	2.4	1.6
2003	2.6	3.0	3.0	2.2	2.1	2.1	2.1	2.2	2.3	2.0	1.8	1.9	2.3
2004	1.9	1.7	1.7	2.3	3.1	3.3	3.0	2.7	2.5	3.2	3.5	3.3	2.7
2005	3.0	3.0	3.1	3.5	2.8	2.5	3.2	3.6	4.7	4.3	3.5	3.4	3.4
2006	4.0	3.6	3.4	3.5	4.2	4.3	4.1	3.8	2.1	1.3	2.0	2.5	3.2
2007	2.1	2.4	2.8	2.6	2.7	2.7	2.4	2.0	2.8	3.5	4.3	4.1	2.8
2008	4.3	4.0	4.0	3.9	4.2	5.0	5.6	5.4	4.9	3.7	1.1	0.1	3.8
2009	0.0	0.2	-0.4	-0.7	-1.3	-1.4	-2.1	-1.5	-1.3	-0.2	1.8	2.7	-0.4
2010	2.6	2.1	2.3	2.2	2.0	1.1	1.2	1.1	1.1	1.2	1.1	1.5	1.6
2011	1.6	2.1	2.7	3.2	3.6	3.6	3.6	3.8	3.9	3.5	3.4	3.0	3.2
2012	2.9	2.9	2.7	2.3	1.7	1.7	1.4	1.7	2.0	2.2	1.8	1.7	2.1
2013	1.6	2.0	1.5	1.1	1.4	1.8	2.0	1.5	1.2	1.0	1.2	1.5	1.5
2014	1.6	1.1	1.5	2.0	2.1	2.1	2.0	1.7	1.7	1.7	1.3	0.8	1.6
2015	-0.1	0.0	-0.1	-0.2	0.0	0.1	0.2	0.2	0.0	0.2	0.5	0.7	0.1
2016	1.4	1.0	0.9	1.1	1.0	1.0	0.8	1.1	1.5	1.6	1.7	2.1	1.3
2017	2.5	2.7	2.4	2.2	1.9	1.6	1.7	1.9	2.2	2.0	2.2	2.1	2.1
2018	2.1	2.2	2.4	2.5	2.8	2.9	2.9	2.7	2.3	2.5	2.2	1.9	2.4
2019	1.6	1.5	1.9	2.0	1.8	1.6	1.8	1.7	1.7	1.8	2.1	2.3	1.8
2020	2.5	2.3	1.5	0.3	0.1	0.6	1.0	1.3	1.4	1.2	1.2	1.4	1.2
2021	1.4	1.7	2.6	4.2	5.0	5.4	5.4	5.3	5.4	6.2	6.8	7.0	4.7
2022	7.5	7.9	8.5	8.3	8.6	9.1	8.5	8.3	8.2	7.7	7.1	6.5	8.0
2023	6.4	6.0	5.0	4.9	4.0	3.0	3.2	3.7	3.7	3.2	3.1	3.4	4.1
2024	3.1	3.2	3.5	3.4									

Source: US Bureau of Labor Statistics

Consumer Price Index for all Urban Wage Earners and Clerical Workers (CPI-W), Not Seasonally Adjusted
U.S. City Average All Items 1982=100 (R)=Revised

Year	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Avg
1995	147.8	148.3	148.7	149.3	149.6	149.9	149.9	150.2	150.6	151.0	150.9	150.9	149.8
1996	151.7	152.2	152.9	153.6	154.0	154.1	154.3	154.5	155.1	155.5	155.9	155.9	154.1
1997	156.3	156.8	157.0	157.2	157.2	157.4	157.5	157.8	158.3	158.5	158.5	158.2	157.6
1998	158.4	158.5	158.7	159.1	159.5	159.7	159.8	160.0	160.2	160.6	160.7	160.7	159.7
1999	161.0	161.1	161.4	162.7	162.8	162.8	163.3	163.8	164.7	165.0	165.1	165.1	163.2
2000	165.6	166.5	167.9	168.0	168.2	169.2	169.4	169.3	170.4	170.6	170.9	170.7	168.9
2001	171.7	172.4	172.6	173.5	174.4	174.6	173.8	173.8	174.8	174.0	173.7	172.9	173.5
2002	173.2	173.7	174.7	175.8	175.8	175.9	176.1	176.6	177.0	177.3	177.4	177.0	175.9
2003	177.7	179.2	180.3	179.8	179.4	179.6	179.6	180.3	181.0	180.7	180.2	179.9	179.8
2004	180.9	181.9	182.9	183.5	184.7	185.3	184.9	185.0	185.4	186.5	186.8	186.0	184.5
2005	186.3	187.3	188.6	190.2	190.0	190.1	191.0	192.1	195.0	195.2	193.4	192.5	191.0
2006	194.0	194.2	195.3	197.2	198.2	198.6	199.2	199.6	198.4	197.0	196.8	197.2	197.1
2007	197.559	198.544	200.612	202.130	203.661	203.906	203.700	203.199	203.889	204.338	205.891	205.777	202.767
2008	206.744	207.254	209.147	210.698	212.788	215.223	216.304	215.247	214.935	212.182	207.296	204.813	211.053
2009	205.700	206.708	207.218	207.925	208.774	210.972	210.526	211.156	211.322	211.549	212.003	211.703	209.630
2010	212.568	212.544	213.525	213.958	214.124	213.839	213.898	214.205	214.306	214.623	214.750	215.262	213.967
2011	216.400	217.535	220.024	221.743	222.954	222.522	222.686	223.326	223.688	223.043	222.813	222.166	221.575
2012	223.216	224.317	226.304	227.012	226.600	226.036	225.568	227.056	228.184	227.974	226.595	225.889	226.229
2013	226.520	228.677	229.323	228.949	229.399	230.002	230.084	230.359	230.537	229.735	229.133	229.174	229.324
2014	230.040	230.871	232.560	233.443	234.216	234.702	234.525	234.030	234.170	233.229	231.551	229.909	232.771
2015	228.294	229.421	231.055	231.520	232.908	233.804	233.806	233.366	232.661	232.373	231.721	230.791	231.810
2016	231.061	230.972	232.209	233.438	234.436	235.289	234.771	234.904	235.495	235.732	235.215	235.390	234.076
2017	236.854	237.477	237.656	238.432	238.609	238.813	238.617	239.448	240.939	240.573	240.666	240.526	239.051
2018	241.919	242.988	243.463	244.607	245.770	246.196	246.155	246.336	246.565	247.038	245.933	244.786	245.146
2019	245.133	246.218	247.768	249.332	249.871	249.747	250.236	250.112	250.251	250.894	250.644	250.452	249.222
2020	251.361	251.935	251.375	249.515	249.521	251.054	252.636	253.597	254.004	254.076	253.826	254.081	252.248
2021	255.296	256.843	258.935	261.237	263.612	266.412	267.789	268.387	269.086	271.552	273.042	273.925	265.510

Source: US Bureau of Labor Statistics

Year	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Avg
2022	276.296	278.943	283.176	284.575	288.022	292.542	292.219	291.629	291.854	293.003	292.495	291.051	287.984
2023	293.565	295.057	296.021	297.730	298.382	299.394	299.899	301.551	302.257	302.071	301.224	300.728	298.990
2024	302.201	304.284	306.502	307.811									
Percent Change from 12 months ago													
1996	2.6%	2.6%	2.8%	2.9%	2.9%	2.8%	2.9%	2.9%	3.0%	3.0%	3.3%	3.3%	2.9%
1997	3.0	3.0	2.7	2.3	2.1	2.1	2.1	2.1	2.1	1.9	1.7	1.5	2.3
1998	1.3	1.1	1.1	1.2	1.5	1.5	1.5	1.4	1.2	1.3	1.4	1.6	1.3
1999	1.6	1.6	1.7	2.3	2.1	1.9	2.2	2.4	2.8	2.7	2.7	2.7	2.2
2000	2.9	3.4	4.0	3.3	3.3	3.9	3.7	3.4	3.5	3.4	3.5	3.4	3.5
2001	3.7	3.5	2.8	3.3	3.7	3.2	2.6	2.7	2.6	2.0	1.6	1.3	2.7
2002	0.9	0.8	1.2	1.3	0.8	0.7	1.3	1.6	1.3	1.9	2.1	2.4	1.4
2003	2.6	3.2	3.2	2.3	2.0	2.1	2.0	2.1	2.3	1.9	1.6	1.6	2.2
2004	1.8	1.5	1.4	2.1	3.0	3.2	3.0	2.6	2.4	3.2	3.7	3.4	2.6
2005	3.0	3.0	3.1	3.7	2.9	2.6	3.3	3.8	5.2	4.7	3.5	3.5	3.5
2006	4.1	3.7	3.6	3.7	4.3	4.5	4.3	3.9	1.7	0.9	1.8	2.4	3.2
2007	1.8	2.2	2.7	2.5	2.8	2.7	2.3	1.8	2.8	3.7	4.6	4.3	2.9
2008	4.6	4.4	4.3	4.2	4.5	5.6	6.2	5.9	5.4	3.8	0.7	-0.5	4.1
2009	-0.5	-0.3	-0.9	-1.3	-1.9	-2.0	-2.7	-1.9	-1.7	-0.3	2.3	3.4	-0.7
2010	3.3	2.8	3.0	2.9	2.6	1.4	1.6	1.4	1.4	1.5	1.3	1.7	2.1
2011	1.8	2.3	3.0	3.6	4.1	4.1	4.1	4.3	4.4	3.9	3.8	3.2	3.6
2012	3.1	3.1	2.9	2.4	1.6	1.6	1.3	1.7	2.0	2.2	1.7	1.7	2.1
2013	1.5	1.9	1.3	0.9	1.2	1.8	2.0	1.5	1.0	0.8	1.1	1.5	1.4
2014	1.6	1.0	1.4	2.0	2.1	2.0	1.9	1.6	1.6	1.5	1.1	0.3	1.5
2015	-0.8	-0.6	-0.6	-0.8	-0.6	-0.4	-0.3	-0.3	-0.6	-0.4	0.1	0.4	-0.4
2016	1.2	0.7	0.5	0.8	0.7	0.6	0.4	0.7	1.2	1.4	1.5	2.0	1.0
2017	2.5	2.8	2.3	2.1	1.8	1.5	1.6	1.9	2.3	2.1	2.3	2.2	2.1
2018	2.1	2.3	2.4	2.6	3.0	3.1	3.2	2.9	2.3	2.7	2.2	1.8	2.5
2019	1.3	1.3	1.8	1.9	1.7	1.4	1.7	1.5	1.5	1.6	1.9	2.3	1.7
2020	2.5	2.3	1.5	0.1	-0.1	0.5	1.0	1.4	1.5	1.3	1.3	1.4	1.2
2021	1.6	1.9	3.0	4.7	5.6	6.1	6.0	5.8	5.9	6.9	7.6	7.8	5.3
2022	8.2	8.6	9.4	8.9	9.3	9.8	9.1	8.7	8.5	7.9	7.1	6.3	8.5
2023	6.3	5.8	4.5	4.6	3.6	2.3	2.6	3.4	3.6	3.1	3.0	3.3	3.8
2024	2.9	3.1	3.5	3.4									
Source: US Bureau of Labor Statistics													

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