

## Memorandum in Support

### FAMILY LAW SECTION

FLS # 5

May 10, 2018

#### **The Family Law Section Supports the proposed amendment of the Rule Relating to Appointments by the Court (22 NYCRR Part 36)**

The proposed rule changes would increase the income caps for appointees pursuant to Part 36, and exclude private pay Attorneys for the Child(ren) from the application of certain aspects of Part 36 Rules.

Pursuant to 22 NYCRR §36.2(d)(2), if a person or entity has been awarded more than an aggregate of \$75,000 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 proposed amendment would increase, from \$75,000 to \$100,000 or \$125,000, the amount that a person or entity may be awarded in aggregate Part 36 compensation in a calendar year while remaining eligible for additional compensated appointments in the following year. The cap has not been amended since February, 2008, more than 10 years ago. The increase would allow qualified appointees covered by Part 36 Rules, such as guardians, guardian ad litem, and receivers, with the ability to provide further compensated service to the courts.

In addition, 22 NYCRR §36.1(a)(3) would be amended to exclude application of Part 36 to private pay Attorneys for the Child, with the exception of rules addressing appointment, use of lists, disqualification, and approval and reporting of compensation received. The appointments contemplated by Part 36 of the Rules of the Chief Judge are of persons selected to make decisions for, in what they deem to be in the best interests of, others (*i.e.* guardians, guardians ad litem, court evaluators, attorneys for alleged incapacitated persons, court examiners, supplemental needs trustees, receivers, referees, certain persons performing services for guardians or receivers, and public administrators), or made when the appointee is alleged to be incapacitated. The proposed change to Part 36 Rules reflects the significant changes in the role of attorneys representing children -- from law guardian to Attorney for the Child(ren) and, as such, from fiduciary to advocate -- since the adoption of the Part 36 Rules.

Based upon the foregoing, the Family Law Section **SUPPORTS** the proposed amendment of the rules relating to appointments by the Court (22 NYCRR Part 36) to (1) enlarge income caps for appointees; and (2) exempt Attorneys for the Child from various Part 36 provisions.