

### SUFFOLK ACADEMY OF LAW

The Educational Arm of the Suffolk County Bar Association 560 Wheeler Road, Hauppauge, NY 11788 (631) 234-5588



# **RECEIVERSHIP IN NEW YORK:**Part 36 Receiver Training

### **FACULTY**

Hon. Elizabeth Hazlitt Emerson, Suffolk County Supreme Court Hon. Thomas Whelan, Suffolk County Supreme Court Harvey B. Besunder, Esq., MargolinBesunder LLP Harold Deiters III, CPA, Empire Valuation Consultants Brian T. Egan, Esq., Egan & Golden, LLP Meredith Jones, Esq., Office of Court Administration

Moderator: Hon. John J. Leo, Suffolk County Supreme Court

April 26, 2022 Suffolk County Bar Association, New York

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### Hon. John J. Leo, Supreme Court-County of Suffolk

**Hon. John J. Leo** was admitted to practice in New York and before the Supreme Court of the United States, the United States District Court of the Southern and Eastern Districts. **Justice of the Supreme Court of the State of New York, County of Suffolk**, Justice Leo served as Town Attorney, Town of Huntington, and prior to Town Attorney, was in private practice. Hon. John J. Leo holds a B.A. in Economics, cum laude from Fordham University, M.B.A. NYU Graduate School of Business in Finance/Accounting and J.D. Fordham University School of Law.



# Meredith R. Jones, Esq. – Special Counsel for Surrogate and Fiduciary Matters Counsel's Office - Office of Court Administration

Meredith R. Jones is Special Counsel for Surrogate and Fiduciary Matters in Counsel's Office at the Office of Court Administration in the New York State Unified Court System. Prior to this position, Ms. Jones served as a Court Attorney-Referee in the Kings County Surrogate's Court for 18 years (from 2003 to 2021) where she, among other things, conducted conferences and hearings and researched and drafted proposed decisions and orders for the Surrogate. From 1996 to 2003, Ms. Jones worked in private practice with the law firm of Alter & Barbaro, Esqs. where she represented clients in a wide range of issues from real estate and landlord/tenant matters to matrimonial and personal injury litigation. At the same time, she served as Deputy Counsel for a State Senator where she provided advice and direction to constituents and lectured in the community regarding legal issues.

Ms. Jones is a graduate of Cornell University where she received her B.A. in History and her J.D. from Cornell Law School. She is admitted to practice law in the states of New York and New Jersey.

## BRIAN T. EGAN, ESQ., PARTNER Egan & Golden, LLP

Brian T. Egan earned his Bachelor of Arts degree *cum laude* in History, and a minor in Political Science, from Misericordia University in 1996. He attended St. John's University School of Law, where he was the Articles and Notes Editor of the American Bankruptcy Institute Law Review, and was graduated on the Dean's List with a *Juris Doctor* degree in 1999. During law school he clerked for the Honorable William L. Underwood, Jr., a Justice of the Supreme Court of the State of New York.

Since Mr. Egan's admission to practice, he has concentrated his practice on civil litigation, including among his experience commercial litigation, business law, and municipal law. He is routinely involved in cases which are of major media interest, and has been involved in cases featured on CBS' 60 Minutes and reported in the New York Times, Newsday, New York Post and the New York Law Journal. Mr. Egan is a two term Past Chairman of the Suffolk County Bar Association's Professional Ethics and Civility Committee and Past Chairman of the Municipal Law Committee. He also currently serves as a member of the Bar Association's Grievance Committee and Commercial Division Task Force. He has been appointed by various Justices of the New York Supreme Court to serve as a Referee and Receiver in a variety of complex commercial and real estate matters. Mr. Egan has lectured and published articles on municipal law, the use and procedures for the appointments of Receivers, and has taught attorney training programs approved and required by the New York State Unified Court System. He has represented a variety of municipalities and is currently the Village Attorney for the Incorporated Villages of Patchogue and Port Jefferson.

With family roots in Suffolk County, Long Island that date to 1641, and in the Patchogue community going back over a century, Mr. Egan is a member of the Sons of the American Revolution, Sons of Union Veterans of the Civil War, and a Steward of the Society of Colonial Wars in the State of New York. He is a Past President of the Brehon Society of Suffolk County, an association of Irish-American lawyers and judges, and served on the Board of Managers of the Brookhaven-Roe Y.M.C.A.

Mr. Egan is admitted to practice to the United States Supreme Court, United States Court of Appeals for the Second Circuit, the United States District Courts in the Southern, Eastern, and Western Districts of New York, and all New York State courts. He is a member of the Federal Bar Council, the New York State and Suffolk County Bar Associations.



### Harvey B. Besunder, Esq.

Mr. Besunder was admitted to the practice of law in 1967, and from 1991-2010 had had his own law practice in Suffolk County. In September 2010 he merged his firm with that of Bracken & Margolin, to form Bracken Margolin Besunder LLP. Prior to that time, he was a member of the firm of Cruser, Hills, Hills & Besunder, an Assistant County Attorney for Suffolk County in the Condemnation Department, a member of the Suffolk County Attorney's Office and a Law Assistant in the Suffolk County District Court.

From 1993-1994, Mr. Besunder served as President of the Suffolk County Bar Association, and has been a member and/or Chair of that Association's Condemnation Committee, Grievance Committee, Judiciary Committee, and Bench-Bar Committee.

Mr. Besunder is also an active member of the New York State Bar Association. From 1993 to 1997, he served on the Executive Committee of the Association's Real Property Section, and was a member of the Association's House of Delegates, Committee on Lawyer Discipline, By-Laws Committee and the Nominating Committee. From 1996-1999, he served as Chair of the Committee on Lawyer Discipline.

From 1988 to 1996, he served as a member of the Grievance Committee for the Tenth Judicial District, and in 1997, he was appointed to serve on the Judicial Salaries Commission and served on the Independent Judicial Qualifications Commission from 2007- 2011. He is currently a member of the Committee on Character and Fitness.

He has lectured extensively on behalf of the Suffolk Academy of Law, on such topics as ethics and the disciplinary process, real property issues, and for the State Bar on Condemnation valuation issues.

Mr. Besunder has received several awards of Recognition including a Special Award of Recognition, as well as two awards for Pro Bono service. In 2010 Mr. Besunder received the prestigious Presidents Award for Service to the Legal Profession.



# Justice Elizabeth Hazlitt Emerson — Suffolk County Supreme Court, Appellate Term, Second Department

JUSTICE ELIZABETH HAZLITT EMERSON graduated magna cum laude from Boston College and magna cum laude from Syracuse University College of Law. She has served as a Supreme Court Judge since 1996.

After spending several years in a general civil part, Justice Emerson was asked to help establish a commercial division in Suffolk County. Consequently, the Suffolk County Commercial Division was established in October 2002. At that time Justice Emerson became the first Commercial Division Justice in Suffolk County and has served in that capacity ever since.

Before coming to the Bench, Justice Emerson was a partner of Shearman & Sterling. Her practice included the representation of domestic and foreign commercial banks, investment banks, and corporations in the structuring, negotiating, and documentation of complex financing transactions. A representative sample of these transactions included acquisition financings, leveraged buyouts, restructurings, project finance, and public offerings.

Justice Emerson began her practice as an associate at White & Case, where, in addition to handling the types of transactions referred to above, she represented corporate clients in a variety of securities litigation, general commercial litigation, bankruptcy, and other complex proceedings.

She is a member of the Suffolk County Bar Association, the New York State Bar Association, and the New York State Bar Commercial and Federal Litigation Section. Justice Emerson is a founding member and co-chair of the Suffolk County Bar Association Commercial Division Committee.

She recently served as a member of the Chief Judge's Task Force on Commercial Litigation in the 21St Century. Justice Emerson currently serves as a member of OCA Second Special Commission on Fiduciary Appointments and chaired by Hon. Michael V. Coccoma. Justice Emerson also designed and implemented Project Assist, a program originally located at the John P. Cohalan, Jr., Courthouse in Central Islip, New York, that connects members of the public with programs providing services supporting basic needs.

Since 2004, she has authored Chapter 84, Secured Transactions, in the highly regarded Commercial Litigation in the New York State Courts.

Justice Emerson has served for many years as an adjunct professor at The State University at Stony Brook in the Masters in Business Administration program. She has also taught courses and presented lectures at other universities and law schools within the New York City metropolitan area such as Fordham University School of Law, St. John's University School of Law, and Dowling College.



### THOMAS F. WHELAN - NEW YORK STATE SUPREME COURT JUSTICE

Justice Whelan is a New York State Supreme Court Justice, who was elected to a 14 year term in November, 2000 and re-elected in November, 2014, to a second term, by the residents of Nassau and Suffolk Counties. He is a graduate of Columbia University and Brooklyn Law School.

Justice Whelan started his career in law as a law clerk to Suffolk County Court Judge Harvey Sherman and as a law clerk to NYS Supreme Court Justice Alfred Lama. He was also the Town Attorney for the Town of Babylon and spent 9 years in private practice in a law firm that concentrated in environmental law, zoning and commercial matters.

Since his election to the bench, Justice Whelan has lectured more than 28 times for the Suffolk County Bar Association and other Bar Associations regarding various aspects of the law and has published at least seven articles in the Suffolk Lawyer, the publication of the Bar Association. On four occasions, he has received an Award of Recognition from the Suffolk County Bar Association and he continues to devote time as a Judge in mock trials for high schools and Touro Law School. He is a chapter editor of the Bench Book for Trial Judges, published by Thomson Reuters. In 2013, he was elected an ASTAR Science and Technology Fellow and was a Director of the Suffolk Academy of Law, the educational arm of the Bar Association (2011 - 2014).

As a Supreme Court Justice, he currently presides over a Foreclosure Part. Previously, he did oversee an inventory of over 1,000 civil cases and concentrated on medical malpractice jury trials. He was assigned to the Commercial Division of Suffolk County from 2011-2014. From 2001-2013, he has presided over 616 jury trials; 122 non-jury trials; 539 hearings; and decided 17,566 motions, with 2,413 motions decided in 2010 alone.

Further, Justice Whelan, who is married with two children, is an active member of the Wading River Volunteer Fire Department (3rd Asst. Chief) and an Emergency Medical Technician (EMT). He was the Fireman of the Year in 2007, received the Chief's Award in 2012, and the High Point Award in 2009, 2011, 2012, 2013, 2014, 2015, 2019 and 2021.



# HAROLD L. DEITERS III CPA/ABV/CFF/CGMA,CFE, MAFF/CVA

Harold Deiters is a Senior Managing Director and the Managing Partner of the Long Island Office of Empire Valuation Consultants. Mr. Deiters is a trained professional in preparing damage calculations, business valuations and performing forensic accounting. His experience covers economic damages, valuations for matrimonial and estate tax purposes, gift planning, shareholder disputes and buy/sell agreements. He has extensive experience in tax return preparation, accounting and auditing both public and privately held companies, including manufacturing, wholesale and retail distribution, professional service organizations and not-for-profit organizations. In addition, Mr. Deiters has over 8 years of accounting experience in the private sector.



### **Empire Valuation Consultants**

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hd@empireval.com

### **Education**

Bachelor of Science in Accounting St. John's University (Jamaica, New York)

### Specific experience

- Professional in business appraisal and forensic accounting
- Experience covers valuations for matrimonial settlements, estate tax purposes, gift planning, shareholder disputes, buy/sell agreements, and complex forensic accounting projects
- Combined audit and investigatory skills result in meaningful solutions to economic damage and lost profit problems
- Extensive experience in accounting and auditing both public and privately held companies, including manufacturing, wholesale and retail distribution, professional service organizations, and not-for-profit organizations
- Previously in accounting in the private sector
- Trial experience in the New York State Supreme Court
- Accredited in Business Valuation (ABV) and Certification in Financial Forensics (CFF) and Chartered Global Management Accountant (CGMA) from the American Institute of CPAs (AICPA)
- Certified Fraud Examiner (CFE) credential from the Association of Certified Fraud Examiners
- Master Analyst in Financial Forensics (MAFF) and Certified Valuation Analyst (CVA) credentials
- Qualified to serve as Accountant to Receiver, pursuant to NYS Part 36



### Harold L. Deiters III, page 2

### **Industry Involvement**

- National lecturer on business valuation, forensic accounting and economic damages for the National Association of Certified Valuators and Analysts
- Member of Master Analyst of Financial Forensics® (MAFF®) Subject Matter Expert Group
- Member AICPA Certified in Financial Forensics (CFF) Credential Committee
- Member of the American Academy of Matrimonial Lawyers Interdisciplinary Committee
- Fundraising Chair of the Nassau County Bar Association WE CARE Advisory Board
- Member of the WE CARE Golf and Tennis Classic Committee
- Community Liaison Member We Care Advisory Board
- Member of the WE CARE Advisory Grant Committee
- Council Member, American Institute of Certified Public Accountant (AICPA)
- Past chairperson of the New York State Society of Certified Public Accountants (NYSSCPA)
- Current member, NYSSCPA Statewide Board of Directors
- Past president, Suffolk Chapter NYSSCPA
- Past chairperson, NYSSCPA Suffolk Cooperation with Attorneys Committee
- Past member, NYSSCPA Suffolk Accounting and Auditing Committee
- Cofounder and past president, Accountants-Attorney Networking Group

### **Community involvement**

Past adjunct professor, St. Joseph's College, teaching auditing principles

# PART 36 THE RULES OF THE CHIEF JUDGE



### **CERTIFIED TRAINING**

# Receivers

### Meredith R. Jones

Special Counsel for Surrogate & Fiduciary Matters

Office of Court Administration
25 Beaver Street, New York, New York 10004
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### PART 36. APPOINTMENTS BY THE COURT

#### § 36.0 PREAMBLE

Public trust in the judicial process demands that appointments by judges be fair, impartial and beyond reproach. Accordingly, these rules are intended to ensure that appointees are selected on the basis of merit, without favoritism, nepotism, politics or other factors unrelated to the qualifications of the appointee or the requirements of the case.

The rules cannot be written in a way that foresees every situation in which they should be applied. Therefore, the appointment of trained and competent persons, and the avoidance of factors unrelated to the merit of the appointments or the value of the work performed, are the fundamental objectives that should guide all appointments made, and orders issued, pursuant to this Part.

### § 36.1 APPLICATION

- (a) Except as set forth in subdivision (b) of this section, this Part shall apply to the following appointments made by any judge or justice of the Unified Court System:
  - (1) guardians;
  - (2) guardians ad litem, including guardians ad litem appointed to investigate and report to the court on particular issues, and their counsel and assistants;
  - attorneys for the child who are not paid from public funds, in those judicial departments where their appointments are authorized;
  - (4) court evaluators;
  - (5) attorneys for alleged incapacitated persons;
  - (6) court examiners;
  - (7) supplemental needs trustees;
  - (8) receivers;
  - (9) referees (other than special masters and those otherwise performing judicial functions in a quasi-judicial capacity);

- (10) the following persons performing services for guardians or receivers:
  - (i) counsel;
  - (ii) accountants;
  - (iii) auctioneers;
  - (iv) appraisers;
  - (v) property managers; and
  - (vi) real estate brokers; and
- (11) a public administrator within the City of New York and for the Counties of Westchester, Onondaga, Erie, Monroe, Suffolk and Nassau and counsel to the public administrator, except that only sections 36.2(c) and 36.4(f) of this Part shall apply, and that section 36.2(c) of this Part shall not apply to incumbents in these positions until one year after the effective date of this paragraph.
- (b) Except for sections 36.2(c)(6) and 36.2(c)(7) of this Part, this Part shall not apply to:
  - appointments of attorneys for the child pursuant to section 243 of the Family Court Act, guardians ad litem pursuant to section 403-a of the Surrogate's Court Procedure Act, or the Mental Hygiene Legal Service;
  - (2) the appointment of, or the appointment of any persons or entities performing services for, any of the following:
    - (i) a guardian who is a relative of: (a) the subject of the guardianship proceeding; or (b) the beneficiary of a proceeding to create a supplemental needs trust; a person or entity nominated as guardian by the subject of the proceeding or proposed as guardian by a party to the proceeding; a supplemental needs trustee nominated by the beneficiary of a supplemental needs trust or proposed by a proponent of the trust; or a person or entity having a legally recognized duty or interest with respect to the subject of the proceeding;
    - (ii) a guardian ad litem nominated by an infant of 14 years of age or over;
    - (iii) a nonprofit institution performing property management or personal needs services, or acting as court evaluator, attorney for an alleged incapacitated person, or guardian ad litem;
    - (iv) a bank or trust company as a depository for funds or as a supplemental needs trustee;
    - (v) except as set forth in section 36.1(a)(11), a public official vested with the powers of an administrator;

- (vi) a person or institution whose appointment is required by law; or
- (vii) a physician whose appointment as a guardian *ad litem* is necessary where emergency medical or surgical procedures are required; or
- (3) an appointment other than above without compensation, except that the appointee must file a notice of appointment pursuant to section 36.4(b) of this Part.

#### § 36.2 APPOINTMENTS

(a) Appointments by the judge. All appointments of the persons set forth in section 36.1 of this Part, including those persons set forth in section 36.1(a)(10) of this Part who perform services for guardians or receivers, shall be made by the judge authorized by law to make the appointment. In making appointments of persons to perform services for guardians or receivers, the appointing judge may consider the recommendation of the guardian or receiver.

#### (b) Use of lists.

- (1) All appointments pursuant to this Part shall be made by the appointing judge from the appropriate list of applicants established by the Chief Administrator of the Courts pursuant to section 36.3 of this Part.
- (2) An appointing judge may appoint a person not on the appropriate list of applicants upon a finding of good cause, which shall be set forth in writing and shall be filed with the fiduciary clerk at the time of the making of the appointment. The appointing judge shall send a copy of such writing to the Chief Administrator. A judge may not appoint a person that has been removed from a list pursuant to section 36.3(e) of this Part.
- (3) Appointments made from outside the lists shall remain subject to all of the requirements and limitations set forth in this Part, except that the appointing judge may waive any education and training requirements where completion of these requirements would be impractical.
- (c) Disqualifications from appointment.
  - (1) No person shall be appointed who is a judge or housing judge of the Unified Court System of the State of New York, or who is a relative of, or related by marriage to, a judge or housing judge of the Unified Court System within the fourth degree of relationship.
  - (2) No person serving as a judicial hearing officer pursuant to Part 122 of the Rules of the Chief Administrator shall be appointed in actions or proceedings in a court in a county where he or she serves on a judicial hearing officer panel for such court.
  - (3) No person shall be appointed who is a full-time or part-time employee of the Unified Court System. No person who is the spouse, sibling, parent or child of an employee who holds a position at salary grade JG24 or above, or its equivalent, shall be appointed by a court within the judicial district where the employee is employed or, with respect to an employee with statewide responsibilities, by any court in the State.
  - (4) (i) No person who is a chair or executive director, or their equivalent, of a State or county political party (including any person or persons who, in counties of any size or population, possess or perform any of the titles, powers or duties set forth in Public Officers Law section 73[1][k]), or the spouse, sibling, parent or child of that official, shall be appointed while that official serves in that position and for a period of two years after that official no longer holds that position. This prohibition shall apply to the members, associates, counsel and employees of any law firms or entities while the official is associated with that firm or entity.
    - (ii) No person who has served as a campaign chair, coordinator, manager, treasurer or finance chair for a candidate for judicial office, or the spouse, sibling, parent or child of that person, or anyone associated with the law firm of that person, shall be appointed by the judge for whom that service was performed for a period of two years following the judicial election. If the candidate is a sitting judge, the disqualifications shall apply as well from the time the person assumes any of the above roles during the campaign for judicial office.
  - (5) No former judge or housing judge of the Unified Court System, or the spouse, sibling, parent or child of such judge, shall be appointed, within two years from the date the judge left judicial office, by a court within the jurisdiction where the judge served. Jurisdiction is defined as follows:

- (i) the jurisdiction of a judge of the Court of Appeals shall be statewide;
- (ii) the jurisdiction of a justice of an Appellate Division shall be the judicial department within which the justice served;
- (iii) the jurisdiction of a justice of the Supreme Court and a judge of the Court of Claims shall be the principal judicial district within which the justice or judge served; and
- (iv) with respect to all other judges, the jurisdiction shall be the principal county within which the judge served.
- (6) No attorney who has been disbarred or suspended from the practice of law shall be appointed during the period of disbarment or suspension.
- (7) No person convicted of a felony, or for five years following the date of sentencing after conviction of a misdemeanor (unless otherwise waived by the Chief Administrator upon application), shall be appointed unless that person receives a certificate of relief from disabilities.
- (8) No receiver or guardian shall be appointed as his or her own counsel, and no person associated with a law firm of that receiver or guardian shall be appointed as counsel to that receiver or guardian, unless there is a compelling reason to do so.
- (9) No attorney for an alleged incapacitated person shall be appointed as guardian to that person, or as counsel to the guardian of that person.
- (10) No person serving as a court evaluator shall be appointed as guardian for the incapacitated person except under extenuating circumstances that are set forth in writing and filed with the fiduciary clerk at the time of the appointment.
- (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 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.

### § 36.3 PROCEDURE FOR APPOINTMENT

- (a) Application for appointment. The Chief Administrator shall provide for the application by persons seeking appointments pursuant to this Part on such forms as shall be promulgated by the Chief Administrator. The forms shall contain such information as is necessary to establish that the applicant meets the qualifications for the appointments covered by this Part and to apprise the appointing judge of the applicant's background.
- (b) Qualifications for appointment. The Chief Administrator shall establish requirements of education and training for placement on the list of available applicants. These requirements shall consist, as appropriate, of substantive issues pertaining to each category of appointment -- including applicable law, procedures, and ethics -- as well as explications of the rules and procedures implementing the process established by this Part. Education and training courses and programs shall meet the requirements of these rules only if certified by the Chief Administrator. Attorney participants in these education and training courses and programs may be eligible for continuing legal education credit in accordance with the requirements of the Continuing Legal Education Board.
- (c) Establishment of lists. The Chief Administrator shall establish separate lists of qualified applicants for each category of appointment, and shall make available such information as will enable the appointing judge to be apprised of the background of each applicant. The Chief Administrator may establish more than one list for the same appointment category where appropriate to apprise the appointing judge of applicants who have substantial experience in that category. Pursuant to section 81.32(b) of the Mental Hygiene Law, the Presiding Justice of the appropriate Appellate Division shall designate the qualified applicants on the lists of court examiners established by the Chief Administrator.
- (d) Reregistration. The Chief Administrator shall establish a procedure requiring that each person on a list reregister every two years in order to remain on the list.

- (e) Removal from lists. The Chief Administrator may remove any person from any list for unsatisfactory performance or any conduct incompatible with appointment from that list, or if disqualified from appointment pursuant to this Part. A person may not be removed except upon receipt of a written statement of reasons for the removal and an opportunity to provide an explanation and to submit facts in opposition to the removal.
- (f) Notwithstanding section 36.3(e), pending a final determination on the issue of removal, the Chief Administrator may temporarily suspend any person from any list upon a showing of good cause that the person's conduct places clients or wards at significant risk of financial or other harm, or presents an immediate threat to the public.

#### § 36.4 PROCEDURE AFTER APPOINTMENT

- (a) Upon appointment of a fiduciary pursuant to this Part, the Court shall forward a copy of the appointment order to the designated fiduciary clerk within two (2) business days.
- (b) Notice of appointment and certification of compliance.
  - (1) Every person appointed pursuant to this Part shall file with the fiduciary clerk of the court from which the appointment is made, within 30 days of the making of the appointment: (i) a notice of appointment; and (ii) a certification of compliance with this Part, on such form as promulgated by the Chief Administrator. Copies of this form shall be made available at the office of the fiduciary clerk and shall be transmitted by that clerk to the appointee immediately after the making of the appointment by the appointing judge. An appointee who accepts an appointment without compensation need not complete the certification of compliance portion of the form.
  - (2) The notice of appointment shall contain the date of the appointment and the nature of the appointment.
  - (3) The certification of compliance shall include: (i) a statement that the appointment is in compliance with section 36.2(c) and (d) of this Part; and (ii) a list of all appointments received, or for which compensation has been awarded, during the current calendar year and the year immediately preceding the current calendar year, which shall contain: (a) the name of the judge who made each appointment; (b) the compensation awarded; and (c) where compensation remains to be awarded (i) the compensation anticipated to be awarded; and (ii) separate identification of those appointments for which compensation of \$15,000 or more is anticipated to be awarded during any calendar year. The list shall include the appointment for which the filing is made.
  - (4) A person who is required to complete the certification of compliance, but who is unable to certify that the appointment is in compliance with this Part, shall immediately so inform the appointing judge.

#### (c) Approval of compensation.

- (1) Upon the approval of compensation of more than \$500, the court shall file with the fiduciary clerk (i) on such form as is promulgated by the Chief Administrator, a statement of approval of compensation, which shall contain a confirmation to be signed by the fiduciary clerk that the appointee has filed the notice of appointment and certification of compliance; and (ii) a copy of the proposed order approving compensation.
- (2) The court shall not sign an order awarding compensation exceeding \$500 until such time as the fiduciary clerk has confirmed that the appointee has properly filed the notice of appointment and certification of compliance. No compensation shall be awarded to an appointee who has not properly filed the notice of appointment and certification of compliance.
- (3) Each approval of compensation of \$5,000 or more to appointees pursuant to this section shall be accompanied by a statement, in writing, of the reasons therefor by the judge. The judge shall file a copy of the order approving compensation and the statement with the fiduciary clerk at the time of the signing of the order.
- (4) Compensation to appointees shall not exceed the fair value of services rendered. Appointees who serve as counsel to a guardian or receiver shall not be compensated as counsel for services that should have been performed by the guardian or receiver.
- (5) Unless otherwise directed by the court, a fiduciary appointee may utilize supporting attorneys and staff in their firm without additional Court approval. Support attorneys and staff may perform tasks only under the fiduciary appointee's direct supervision; all appearances and reports must be made by the fiduciary appointee; and all compensation earned by support attorneys or personnel shall be charged to the appointee for purposes of compensation limits pursuant to this Part.

- (d) Reporting of compensation received by law firms. A law firm whose members, associates and employees have had a total of \$50,000 or more in compensation approved in a single calendar year for appointments made pursuant to this Part shall report such amounts on a form promulgated by the Chief Administrator.
- (e) Reporting of compensation received by a referee to sell real property.
  - (1) A referee to sell real property shall make a letter application to the court to authorize payment over \$1,100 for a "good cause" adjournment or if there is a rebid or resale.
  - (2) Upon approval of compensation exceeding \$1,100 to a referee to sell real property, the Court shall file a copy of its compensation order with the appropriate fiduciary clerk, who shall generate the required Unified Court System forms and monitor compliance and filing with the Part 36 processing unit. Payment of such compensation may not be made until the plaintiffs in the matter have received a copy of the court's compensation order.
  - (3) Exception. The procedure set forth in section 36.4(b)(1) shall not apply to the appointment of a referee to sell real property and a referee to compute whose compensation for such appointments is not anticipated to exceed \$1,100.
- (f) Approval and reporting of compensation received by counsel to the public administrator.
  - (1) A judge shall not approve compensation to counsel to the public administrator in excess of the fee schedule promulgated by the administrative board of the public administrator under SCPA 1128 unless accompanied by the judge's statement, in writing, of the reasons therefor, and by the appointee's affidavit of legal services under SCPA 1108 setting forth in detail the services rendered, the time spent, and the method or basis by which the requested compensation was determined.

- (2) Any approval of compensation in excess of the fee schedule promulgated by the administrative board of the public administrator shall be reported to the Office of Court Administration on a form promulgated by the Chief Administrator and shall be accompanied by a copy of the order approving compensation, the judge's written statement, and the counsel's affidavit of legal services, which records shall be published as determined by the Chief Administrator.
- (3) Each approval of compensation of \$5,000 or more to counsel shall be reported to the Office of Court Administration on a form promulgated by the Chief Administrator and shall be published as determined by the Chief Administrator.

### § 36.5 PUBLICATION OF APPOINTMENTS

- (a) All forms filed pursuant to section 36.4 of this Part shall be public records.
- (b) The Chief Administrator shall arrange for the periodic publication of the names of all persons appointed by each appointing judge, and the compensation approved for each appointee.



### PART 36 OF THE RULES OF THE CHIEF JUDGE: AN EXPLANATORY NOTE

Part 36 of the Rules of the Chief Judge creates a system that broadens the eligibility for appointment to a wide range of applicants well-trained in their category of appointment, establishes procedures that promote accountability and openness in the selection process, and insulates that process from appearances of favoritism, nepotism or politics.

### 1. APPLICABILITY

Part 36 governs ten categories of primary appointments and six categories of secondary appointments (§ 36.1 [a]), as set forth below.

#### (A) GUARDIANS

Part 36 applies to guardians appointed for: 1) incapacitated persons pursuant to Mental Hygiene Law Article 81; 2) minors pursuant to Surrogate's Court Procedure Act article 17 or Civil Practice Laws and Rules article 12; and 3) the intellectually or developmentally disabled pursuant to Surrogate's Court Procedure Act article17-A (§ 36.1 [a][1]). If a person is appointed guardian upon a ward's nomination or a party's proposal, appointment is exempt from Part 36 (§ 36.1 [b][2][i]).

A guardianship where the appointee is a nonprofit institution, department of social services, or other public agency with legally recognized duties or interests is exempt from Part 36 (§ 36.1 [b] [2][i], [iii]). Guardianships in proceedings for the termination of parental rights (see Social Services Law § 384-b, Surrogate's Court Procedure Act § 403-a, Family Ct. Act article 6) are also exempt, since only persons or entities authorized by law may be appointed guardian in such proceedings (§ 36.1 [b][2][i], [vi]).

#### (B) GUARDIANS AD LITEM

Part 36 applies to guardians ad litem appointed under the general provisions of Surrogate's Court Procedure Act § 403 and Civil Practice Laws and Rules 1202, including guardians ad litem appointed to investigate and report to the court on particular issues (§ 36.1 [a][2]). Where a court appoints counsel or assistants to guardians ad litem, these appointees also are governed by the rules. If appointed a guardian ad litem upon the nomination of an infant of 14 years of age or over, the appointee is exempt (§ 36.1[b][2][ii]). Similarly exempt is a physician whose appointment as a guardian ad litem is necessary where emergency medical or surgical procedures are required (§ 36.1 [b][2][vii]).

#### (C) ATTORNEYS FOR THE CHILD (FORMERLY LAW GUARDIANS)

Privately paid attorneys for the child who are appointed in domestic relations matters in those Departments of the Appellate Division where authorized are subject to the provisions of Part 36 (§ 36.1 [a] [3]). Attorneys for the child appointed and paid from public funds are exempt (§ 36.1 [b][1]). (As a general rule, Part 36 applies only to appointees compensated at the expense of private parties, and not those compensated from public funds such as appointments pursuant to Family Court Act § 243, Surrogate's Court Procedure Act § 403-a, 407, Judiciary Law § 35, and County Law article 18-B.)

### (D) COURT EVALUATORS, ATTORNEYS FOR ALLEGED INCAPACITATED PERSONS, COURT EXAMINERS

In proceedings for the appointment of guardians for incapacitated persons pursuant to Article 81 of the Mental Hygiene Law, the court may appoint an attorney for the alleged incapacitated person (Mental Hygiene Law § 81.10) or appoint a court evaluator as an independent witness to investigate and report to the court (Mental Hygiene Law § 81.09). These appointments are governed by Part 36 (§ 36.1 [a][4], [5]), except that a nonprofit institution appointed court evaluator is exempt (§ 36.1 [b][2][iii]). The Mental Hygiene Legal Service, which may serve as attorney for an alleged incapacitated person or court evaluator, is also exempt (§ 36.1 [b] [1]).

If a guardian is appointed pursuant to Article 81 of the Mental Hygiene Law, the court may also assign a court examiner to audit and report on accountings required to be filed in such guardianship proceedings (Mental Hygiene Law §' 81.30, 81.31). Court examiners are designated by the Presiding Justice of each Department of the Appellate Division (Mental Hygiene Law § 81.32), and, upon designation, must comply with all the provisions of Part 36 (§§ 36.1 [a][6]; 36.3 [c]).

#### **(E) SUPPLEMENTAL NEEDS TRUSTEES**

Supplemental needs trustees (see Omnibus Budget Reconciliation Act of 1993 (42 USC 1396p[d][4], EPTL § 7-1.12, SSL § 366 [2][b][2][iii], 18 NYCRR § 360-4.5) may be appointed in a number of contexts in Supreme Court or Surrogate's Court, e.g., in infants' compromise orders, or in proceedings under article 17-A of the Surrogate's Court Procedure Act or Article 81 of the Mental Hygiene Law. When selected by the court and appointed by judgment or order, a supplemental needs trustee is subject to the provisions of Part 36 (§ 36.1 [a][7]), unless the appointee is a bank or trust company (§ 36.1 [b][2][iv]), or is appointed upon nomination by the beneficiary, or by the proponent, of the trust (§ 36.1 [b][2][i][b]).

### (F) RECEIVERS

Part 36 applies to receivers almost without exception (§ 36.1 [a][8]). In rare cases where the choice of receiver would be dictated by law, such an appointee would be exempt (§ 36.1 [b][2][vi]).

#### (G) REFEREES

Referees are treated differently under Part 36 depending on the purpose for which they are appointed. Under Articles 31 and 43 of the Civil Practice Laws and Rules, referees, sometimes called "special masters", are often used in a quasi-judicial capacity to supervise discovery or conduct trials in civil actions or proceedings. No matter what their title, if referees are used to perform a judicial function, they are exempt from Part 36 (§ 36.1 [a][9]). Referees appointed for all other purposes are governed by the rules. These appointments are usually for the purpose of performing an act outside of court, e.g., conducting the sale of real property in a mortgage foreclosure action or supervising a labor union election.

Referees to compute the value of, and sell, real property in the ordinary mortgage foreclosure action, and who receive compensation of \$1,100 or less, are subject to all of the provisions of Part 36 preliminary to appointment, including the disqualification provisions of section 36.2 (c), the limitations based on compensation of section 36.2 (d), and list enrollment under section 36.3. Upon appointment, however, these referees are not required to file the notice of appointment or certification of compliance that all other Part 36 appointees must file (§ 36.4 [e]).

# (H) SECONDARY APPOINTMENTS OF GUARDIANS AND RECEIVERS: COUNSEL, ACCOUNTANTS, APPRAISERS, AUCTIONEERS, PROPERTY MANAGERS, REAL ESTATE BROKERS

When a guardian or receiver subject to the provisions of Part 36 seeks to retain counsel, or an accountant, appraiser, auctioneer, property manager or real estate broker, the retained professional becomes a Part 36 appointee (§ 36.1[a][10]). The guardian or receiver must request that the judge appoint such a professional (§ 36.2 [a]), and the professional must comply with all the provisions of Part 36, including those governing list enrollment (§ 36.3), disqualification and limitation based on compensation (§ 36.2), and all filing requirements (§ 36.4).

### (I) PUBLIC ADMINISTRATOR AND COUNSEL TO PUBLIC ADMINISTRATOR

Certain sections of Part 36 apply to the appointment of a Public Administrator within the City of New York and for the counties of Westchester, Onondaga, Erie, Monroe, Suffolk and Nassau and counsel to the public administrator. Those sections include the disqualifications due to family relationship, employment, former employment, political party office or judicial campaign office found in section 36.2 (c) and the approval of compensation reporting requirements found in section 36.4(f).

### 2. APPROVED LISTS: APPLICATION, ENROLLMENT, USE

All persons whose appointments are governed by Part 36 (§ 36.1 [a] [1] – [10]), and who are not exempt under section 36.1 (b), must be enrolled on an approved list established by the Chief Administrator of the Courts (§ 36.3 [c]) from which all names for appointment must be selected (§ 36.2 [b][1]), except when good cause exists to appoint outside the list (§ 36.2 [b][2]). In those exceptional circumstances, the court must make a finding of good cause, in writing, and file its finding with the fiduciary clerk, who has the duty of supervising the filing of all papers in the Part 36 appointment process (see §§ 36.2 [b][2]; 36.4 [b][1], [c][1]-[3]). A copy of the finding also will be sent to the Chief Administrator of the Courts (§ 36.2[b][2]). A person not appointed from an appropriate list still must comply with all the other provisions of Part 36, e.g., the appointee must not be disqualified from appointment under section 36.2(c) or (d) and must file all Part 36 forms pursuant to section 36.4, but any education and training requirements may be waived (§ 36.2) [b][3]). At no time may a court appoint a person removed from a list for cause, or a person whom is currently suspended from an appointment list of the Chief Administrator of the Courts pending a final determination on the issue of removal (see §§ 36.2 [b][2]; 36.3[f]). (See § 36.3 [e] for the procedure for removal upon the Chief Administrator's determination of unsatisfactory performance or conduct incompatible with appointment from a list.)

To enroll on a list maintained by the Chief Administrator of the Courts, an applicant must have completed the required training for each category of appointment for which enrollment is requested (§ 36.3 [b]). Once all required training is completed, an application must be submitted on the application form promulgated by the Chief Administrator (UCS-870) (§ 36.3 [a]). Court examiners for proceedings under Article 81 of the Mental Hygiene Law and privately paid attorneys for the child in domestic relations actions first must be approved by the Appellate Division before being eligible for placement on a list.

Section 36.3 (d) provides for biennial re-registration, which will permit the Chief Administrator to keep all lists current.

### 3. DISQUALIFICATIONS

The following persons are disqualified from appointment (§ 36.2 [c]):

- (a) a judge or housing judge of the Unified Court System, or a relative of, or a person related by marriage to, a judge or housing judge of the Unified Court System within the fourth degree of relationship;
- (b) a judicial hearing officer in a court in which he or she serves as a judicial hearing officer (appointments may be accepted in courts in which he or she does not serve as a JHO);
- (c) a full-time or part-time employee of the Unified Court System;
- (d) the spouse, brother/sister, parent or child of a full-time or part-time employee of the Unified Court System at or above salary grade JG24, or its equivalent: 1) employed in a judicial district where the relative is applying for appointment or 2) with statewide responsibilities;
- (e) a person who currently serves, or has served within the last two years as chair, executive director, or the equivalent, of a state or county political party (including any person or persons who, in counties of any size or population, possess

- or perform any of the titles, powers or duties set forth in Public Officers Law §73[1][k]); or the spouse, brother/sister, parent or child of such political party official; or a member, associate, counsel or employee of a law firm or entity with which such political party official is currently associated;
- (f) a former judge or housing judge of the Unified Court System who left office within the last two years and who is applying for appointment within the jurisdiction of prior judicial service, as defined by section 36.2(c)(5) of the Rules of the Chief Judge; or the spouse, brother/sister, parent or child of such former judge;
- (g) an attorney currently disbarred or suspended from the practice of law by any jurisdiction;
- (h) a person convicted of a felony for which no certificate of relief from civil disabilities has been received;
- (i) a person convicted of a misdemeanor for which sentence was imposed within the last five years and for which no certificate of relief from civil disabilities, or waiver by the Chief Administrator of the Courts, has been received; or
- (j) a person who has been removed from an appointment list of the Chief Administrator of the Courts for unsatisfactory performance or conduct incompatible with appointment, or is currently suspended from an appointment list of the Chief Administrator of the Courts pending a final determination on the issue of removal.

The disqualifications for disbarred or suspended attorneys (see paragraph [g], supra) and convicted criminals (see paragraphs [h] and [i], supra) apply to any appointments under section 36.1 (a), even if otherwise exempted under the rules pursuant to section 36.1 (b).

Additionally, there are three disqualifications that do not limit list enrollment, but may render an enrollee disqualified from appointment due to the circumstances of a particular case. These disqualifications are: 1) receivers or guardians, or persons associated with the law firm of a receiver or guardian, are prohibited from being appointed counsel to the receiver or guardian (§ 36.2 [c] [8]); 2) counsel to alleged incapacitated persons in Mental Hygiene Law Article 81 proceedings are prohibited from being appointed guardian, or counsel to the guardian, for an incapacitated person they have represented (§ 36.2 [c][9]); and 3) court evaluators in Mental Hygiene Law Article 81 proceedings are prohibited from being appointed guardian for an incapacitated person in a proceeding in which they served as court evaluator (§ 36.2 [c][10]). In the first and third of these disqualifications, exceptions may be made. If there is a compelling reason, such as savings to the estate of the receivership or quardianship, the receiver or quardian may be appointed counsel. Similarly, if there are extenuating circumstances, such as the unavailability of others to be appointed guardian and a familiarity and trust developed between court evaluator and incapacitated person, a court evaluator may be appointed guardian upon a written finding by the court of extenuating circumstances.

There is also a disqualification relating to judicial campaign activity. This does not prevent list enrollment, but limits appointment by a judge for whom the enrollee acted as campaign chair, coordinator, manager, treasurer or finance chair in a campaign for a judicial election that took place less than two years prior to the proposed appointment (§ 36.2 [c][4][ii]). If the candidate is a sitting judge, the disqualification also applies to a person who assumes any of the above roles during the campaign for judicial office. Included in this disqualification are the spouse, brother/sister, parent or child of the campaign official, or anyone associated with the campaign official's law firm.

### 4. LIMITATIONS ON APPOINTMENTS BASED UPON COMPENSATION

Subdivision (d) of section 36.2 establishes two additional disqualifications from appointment, not related to list eligibility, but based upon anticipated or previously awarded compensation. These restrictions do not limit compensation per se, but use compensation as a basis for determining availability for future appointment. There are no exceptions to the application of these limitations, unless the court determines the appointment is necessary to maintain continuity of representation of the same person or entity in further or subsequent proceedings.

#### (A) THE \$15,000 RULE

Section 36.2 (d)(1) prohibits appointees from receiving more than one appointment in the same calendar year (i.e., January 1 to December 31) for which compensation in excess of \$15,000 is awarded in that calendar year or anticipated to be awarded in any calendar year. Two examples illustrate the rule. 1) If appointed as attorney for an alleged incapacitated person, and compensation of, for example, \$20,000 for that appointment is awarded or anticipated to be awarded in that same year, then the appointee is precluded from receiving another appointment in that calendar year for which compensation in excess of \$15,000 is anticipated either in that calendar or in any single future calendar year. 2) If appointed as guardian, and an annual commission of, for example, \$20,000 is anticipated to be awarded in the following calendar year, the appointee is precluded from receiving another appointment in the current calendar year for which compensation in excess of \$15,000 is anticipated to be awarded either in the current calendar year or in any single future calendar year.

#### (B) THE \$100,000 RULE

Section 36.2 (d) (2) establishes a limitation on appointments based on an annual, aggregate amount of compensation. If compensation is awarded in an aggregate amount of more than \$100,000 during any calendar year (no matter what year the appointment was made), the appointee will be ineligible for any compensated appointments during the next calendar year. It is the year of the award of compensation, and not the year of its actual receipt, that activates the application of the rule. Like its \$15,000 counterpart, the \$100,000 rule is a limitation on appointments, and not on compensation; nothing in the \$100,000 rule prevents a court's award, or an appointee's receipt, of total compensation exceeding \$100,000 in any calendar year. Excess compensation in one calendar year simply prevents compensated appointments in the following calendar year.

#### 5. PROCEDURE AFTER APPOINTMENT

### (A) COMBINED NOTICE OF APPOINTMENT AND CERTIFICATION OF COMPLIANCE

Part 36 appointees must complete and file with the fiduciary clerk within 30 days of appointment a notice of appointment and certification of compliance (§ 36.4 [b][1]), which will be sent to the appointee by the court immediately after appointment. If the appointee cannot certify qualification for appointment in the certification of compliance, or cannot accept appointment for any other reason, the appointee must immediately notify the court (§ 36.4 [b][4]).

The notice of appointment contains the date and nature of the appointment (§ 36.4 [b][2]), and the certification of compliance certifies that the appointee is not disqualified from service and is not otherwise precluded by any limitation based on compensation (§ 36.4 [b][3][ii]; see § 36.2 [d], [e]). The appointee must list all appointments received during the current calendar year (§ 36.4 [b][3][ii]), report the amount of compensation awarded for each (§ 36.4 [b][3][ii][B]), or, if not awarded, the total amount of compensation anticipated for each (§ 36.4 [b][3][ii][c][ii]), and separately identify appointments for which compensation is anticipated to exceed \$15,000 in any calendar year (§ 36.4 [b][3][ii][c][ii]). The appointee must also list all appointments for which compensation was awarded in the year immediately preceding the current calendar year (§ 36.4 [b][3][ii]]) and report the amount awarded for each (§ 36.4 [b][3][ii][B]). For all appointments, the name

of the appointing judge must be indicated (§ 36.4 [b][3][ii][A]).

There are two exceptions to this procedure. Although exempt from the application of Part 36 (see § 36.1 [b][3]), uncompensated appointees must still complete and file the notice of appointment section of the form (§ 36.4 [b][1]). This will allow uncompensated fiduciary activity to be recorded and appropriately recognized. The other exception applies to referees to compute the value of, and sell, real property. Although subject to the application and list process of Part 36 (see § 36.1 [a][9]), referees to compute and sell are relieved from the obligation to file the notice of appointment and certification of compliance form for appointments where total compensation is not anticipated to exceed \$1,100 (§ 36.4 [e][3]).

### (B) APPROVAL OF COMPENSATION

Judges who approve compensation of more than \$500 are required to file a statement of approval of compensation with the Office of Court Administration pursuant to Judiciary Law § 35-a (1)(a) and 22 NYCRR Part 26. Whenever a court is requested to approve compensation in excess of \$500 for a Part 36 appointee, a statement of approval of compensation on a form promulgated by the Chief Administrator of the Courts must be submitted for signature to the approving judge. The statement must contain a confirmation signed by the fiduciary clerk that the notice of appointment and certification of compliance was filed (§ 36.4 [c][1]). No judge may approve compensation of more than \$500 without this statement and the signed confirmation of the fiduciary clerk (§ 36.4 [c][2]). Additionally, every approval of compensation in excess of \$5000 must contain the judge's written statement of the reasons for such approval (§ 36.4 [c][3]). After signing the order awarding compensation and the statement of approval of compensation, the judge must file a copy of the order and the original statement with the fiduciary clerk. The fiduciary clerk will then forward the statement of approval of compensation to the Office of Court Administration for entry of the amount of compensation in its database under the name of the appointee. This will keep the database current for periodic publication under section 36.5.

The rules cite the standard for judicial approval of compensation, viz., fair value for all services rendered that are necessary to the performance of the appointee's duties (§36.4 [c][4]). This determination remains in the sound discretion of the court and depends on the factual circumstances of each case.

Unless the court directs otherwise, fiduciary appointees may utilize supporting attorneys and staff, however, all tasks must be directly supervised by the fiduciary appointee, and all appearances and reports must be made by the appointee (§36.4[c][5]). Court examiners and attorneys for the child must adhere to the rules of their respective Appellate Divisions, and should not assume that delegation is permitted.

#### 6. REPORTING LAW FIRM COMPENSATION

Section 36.4 (d) obligates law firms to report, in writing, to the Chief Administrator of the Courts whenever the aggregate total compensation for Part 36 appointments of law firm members, associates or employees reaches or exceeds \$50,000 in a single calendar year. The report of compensation received by law firms must be filed on form UCS-876 on or before March 31st of the following the calendar year.

The reporting of law firm compensation is for informational purposes only. Limitations based on compensation apply only to individual appointees, not firms, and the appointment and compensation of one person in a firm are only considered in certifying the eligibility of that individual for appointment and do not affect the eligibility of any other person in the firm.

#### 7. PUBLICATION

The notice of appointment and certification of compliance, statement of approval of compensation, and report of compensation received by law firms, filed pursuant to section 36.4, are public records, and the names of appointees and of appointing judges, and the amounts of approved compensation, are subject to periodic publication by the Chief Administrator of the Courts (§36.5).

### UCS-870 Application for Appointment: Qualification Statements

**8** Help

\* Required



### **Important**

All applicants must read Part 36 of the Rules of the Chief Judge (22 NYCRR), and the Explanatory Note prior to proceeding with their application.

Qualification	Statements •		

	answer <b>Yes</b> to any of the statements below, you are <b>not</b> qualified to file this application for ant to Part 36. Please check the appropriate box for each item.	appointme	ent
a.	I AM a full-time or a part-time judge or housing judge of the Unified Court System of the State of New York or a relative of, or related by marriage to, a full-time or a part-time judge or housing judge of the Unified Court System within the fourth degree of relationship (Town and Village judges are judges of the Unified Court System);	○Yes	○ No
b.	I AM a full-time or part-time employee of the Unified Court System;	○Yes	○ No
c.	I AM the spouse, brother/sister, parent or child of a full-time or part-time employee of the Unified Court System who holds a position at or above salary grade JG24, or its equivalent: 1) employed in a judicial district in which I am applying for appointment or 2) with statewide responsibilities;	○Yes	○No
d.	I AM a person who currently serves, or has served within the last two years, as chair, executive director, or the equivalent, of a state or county political party (including any person or persons who, in counties of any size or population, possess or perform any of the titles, powers or duties set forth in Public Officers Law §73[1][k]); the spouse, brother/sister, parent or child of such political party official; or a member, associate, counsel or employee of a law firm or entity with which such political party official is currently associated;	○ Yes	○No
e.	I AM a former judge or housing judge of the Unified Court System who left office within the last two years and who is applying for appointment within the jurisdiction of prior judicial service, as defined by section 36.2(c)(5) of the Rules of the Chief Judge, or the spouse, brother/sister, parent or child of such former judge;	○Yes	○ No
f.	I AM an attorney currently disbarred or suspended from the practice of law by any jurisdiction;	○Yes	○No
g.	I AM a person convicted of a felony for which no certificate of relief from civil disabilities has been received;	○Yes	○No
h.	I AM a person convicted of a misdemeanor for which sentence was imposed within the last five years and for which no certificate of relief from civil disabilities, or waiver by the Chief Administrator of the Courts, has been received;	○ Yes	○No
I.	I AM a person who has been removed from an appointment list of the Chief Administrator of the Courts for unsatisfactory performance or conduct incompatible with appointment, or is currently suspended from an appointment list of the Chief Administrator of the Courts pending a final determination on the issue of removal, or resigned from the appointment list in its entirety pursuant to an agreement with the Inspector General of the Courts;	○Yes	○No

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### UCS-870 Application for Appointment: Personal Information \* Required Name Attorney Name Change Name changes (other than corrections of misspellings) must be authorized by the Appellate Division in which you were admitted. To obtain instructions for changing your name officially on the Roll of Attorneys, contact the Appellate Division, 3rd Department. Spelling corrections and/or changes to your DOB, SSN or Admission Data cannot be made online. Please contact the Attorney Registration Office for further instructions. **Social Security Number** Social Security Numbers are required in order to administer the disbursement of moneys that may constitute taxable income. 42 U.S.C. §405 (c)(2)(C)(i). XXX-XX-If you need to change the Social Security Number on file, please contact Part 36. **Business Information Business Name:** Street: \* City/Town/Village: \* State: Zip: NY Country: (if not USA) Phone Number: (###-###) \* Email Address: \* Contact Information (email & address to which all correspondences are sent) Use your Business Information as your Contact Information **Business Name:** Street: \* City/Town/Village: \* State: Zip:

Previous Next

Email Address: \*

Country: (if not USA)

Phone Number: (###-###) \*

	r Appointment: Categories of Appointment				
<u>Help</u>	* Required				
	tified training IS required, resume IS NOT required)				
within two (2) years before the date	the application is submitted, except for the addition of new Article 81 for any previously approved category, then existing certified training is still				
<b>ATTORNEY FOR ALLEGED INC</b>	APACITATED PERSON (MHL Article 81 training)				
	y must be current in their registration to practice law in New York State.				
Year Training Completed: * 2008	Full Name of Training Provider: *  NEW YORK STATE BAR ASSOCIATION				
Number of Appointments Received	in the Last 10 Years: * None 1-10 More than 10				
COURT EVALUATOR (MHL Arti	cle 81 training)				
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2008	NEW YORK STATE BAR ASSOCIATION				
Number of Appointments Received	in the Last 10 Years: * None 1-10 More than 10				
GUARDIAN (MHL Article 81 tra	ining)				
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☑ RECEIVER					
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Number of Appointments Received	in the Last 10 Years: * None 1-10 More than 10				
SUPPLEMENTAL NEEDS TRUSTEE					
☐ ATTORNEY FOR THE CHILD (P	PRIVATELY PAID)				
□ COURT EXAMINER					
Categories of Appointment (cer	tified training IS NOT required, resume IS required)				
☐ COUNSEL TO RECEIVER					
COUNSEL TO GUARDIAN					
□ ACCOUNTANT					
☐ AUCTIONEER					
☐ APPRAISER					
☐ PROPERTY MANAGER					
☐ REAL ESTATE BROKER					
REFEREE					

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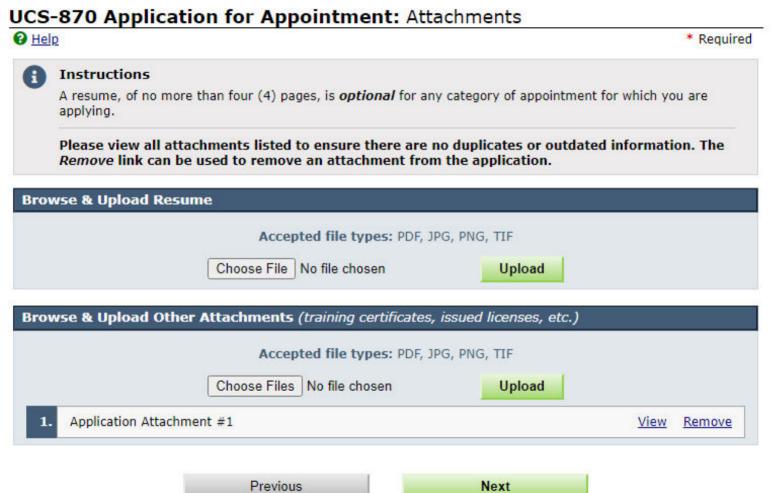
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\* Required

ve y	you ever been, or are proceedings pending in which you may be *			
1.	Committee and the control of the con	○ Yes	No	
2.	denied a professional or occupational license, or been censured by a licensing authority or had an occupational or professional license revoked or suspended?	○ Yes		
3.	3. held in contempt of court?			
4.	found civilly liable in an action involving fraud, misrepresentation, theft or conversion?	○ Yes		
5.	discharged in bankruptcy?	○Yes	No     No	
6.	found liable for unpaid money judgments, liens or judgments of foreclosure?	○Yes	( N	
7.	in default in the performance or discharge of any duty or obligation imposed by a judgment, decree, order or directive of any court or governmental agency?	○Yes	● No	
8.	removed as a fiduciary by a court of competent jurisdiction for misconduct?	○Yes		
9.	in forfeiture of a bond?	○ Yes		
0.	found to have committed an ethical violation as a member of a judicial, executive or	Ov	0.	
	legislative branch of government?	○ Yes	( N	
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olar You	legislative branch of government?  natory Notes  answered YES to any question, you MUST submit an explanation of your answer in detail, g  Option 1: Upload Explanatory Notes  Accepted file types: PDF, JPG, PNG, TIF  Choose Files No file chosen Upload			

Previous

Next



JCS-870 Application for Appointment: Verification	* Required
Personal Information	Required
Name:	
First:	
Middle:	
Last: Suffix:	
Social Security Number	
xxx-xx-	
Business Information	
Address:	
Phone:	
Email:	
Contact Information (email & address to which all correspondences are sent)	
Address:	
Phone: Email:	
Edit Personal Info	armatian
	Jilladoli
Categories of Appointment  Guardian Ad Litem	
Year Training Completed: 2008	
Full Name of Training Provider: NEW YORK STATE BAR ASSOCIATION	
Number of Appointments Received in the Last 10 Years: 1-10	
Court Evaluator	
Year Training Completed: 2008	
Full Name of Training Provider: NEW YORK STATE BAR ASSOCIATION	
Number of Appointments Received in the Last 10 Years: 1-10	
Receiver 2000	-
Year Training Completed: 2008 Full Name of Training Provider: NEW YORK STATE BAR ASSOCIATION	
Number of Appointments Received in the Last 10 Years: 1-10	
Guardian	
Year Training Completed: 2008	
Full Name of Training Provider: NEW YORK STATE BAR ASSOCIATION	
Number of Appointments Received in the Last 10 Years: None	
Attorney for Alleged Incapacitated Person	
Year Training Completed: 2008 Full Name of Training Provider: NEW YORK STATE BAR ASSOCIATION	
Number of Appointments Received in the Last 10 Years: 1-10	
Edit Categories of Appo	intment
Qualifications	
Counties Available for Appointment	-4
Albany, Rensselaer, Saratoga, Schenectady	
Foreign Languages Spoken Fluently	
ASL (American Sign Language)	
Academic Degrees Awarded	
BA/BS, JD	
Areas of Special Interest of Attorneys Admitted to Practice in New York or Other Jurisdictions	
Criminal Law, Family Law, Matrimonial, Real Estate Transactions	
<u>Edit Qual</u>	<u>fications</u>
Background Information	
Have you ever been, or are proceedings pending in which you may be	
convicted of a crime or offense, other than a traffic infraction (include military proceedings)?	No
<ol><li>denied a professional or occupational license, or been censured by a licensing authority or had an occupational or professional license revoked or suspended?</li></ol>	No
3. held in contempt of court?	No
4. found civilly liable in an action involving fraud, misrepresentation, theft or conversion?	No
5. discharged in bankruptcy?	No
found liable for unpaid money judgments, liens or judgments of foreclosure?	No
7. in default in the performance or discharge of any duty or obligation imposed by a judgment,	No
decree, order or directive of any court or governmental agency?	NO
8. removed as a fiduciary by a court of competent jurisdiction for misconduct?	No
9. in forfeiture of a bond?	No
10. found to have committed an ethical violation as a member of a judicial, executive or legislative branch of government?	No
branch of government:	

Edit Background Information

### Other Attachments

**Attachments** 

1. Application Attachment #1

Edit Attachments

View

AFFIRMATION: I affirm, under penalty of perjury: \*

I have fulfilled the training requirements for each category of appointment for which I am applying (see FAQ for categories of appointment for which certified training is required) and have retained a certificate of satisfactory completion for each training program I am required to attend;

I have read Part 36 of the Rules of the Chief Judge (22 NYCRR), and the Explanatory Note;

By checking YES, I affirm that the statements contained herein are true to the best of

Previous

○ Yes ○ No

○ Yes ○ No

my knowledge and belief, and this constitutes my electronic signature;

Submit

### UCS-870 Application for Appointment: Complete

Thank you for submitting an Amendment Application for Appointment Pursuant to Part 36 of the Rules of the Chief Judge.

Your Amendment Application for Appointment is PENDING.

Your name will not appear on the list(s) of eligible appointees for any amended categories and/or counties of appointment until your amendment has been approved. A receipt confirming the approval of your amendment will be sent to your contact email address once it has been reviewed.



### **Application Confirmation**

This document confirms the submission of an amendment to your Part 36 Application for Appointment, but not your eligibility to accept appointments for any amended categories and/or counties of appointment. You may print the document using the button below.

A Print Application Confirmation



### **ALERT** — Attorney Registration Information

Updating your Part 36 personal information does not update your Attorney Registration personal information.

If you wish to review your Attorney Registration personal information, please go to Attorney Registration Online.

### Home



### New York State Unified Court System

### Part 36 - Fiduciary Online

You are logged in as (Username: , FID # sian out

### Fiduciary Online

### Forms

Home

Re-registration

Amendment

### Manage

Personal Information

Upload Resume

#### View

My Applications

My Appointments

My Compensation

### Help

FAO

Contact Us

### UCS-872 Notice of Appointment: Proceed or Decline

@ Help



### **Review Appointment & Case Information**

Please review the appointment and case information shown below. If you notice any discrepancies or errors, please contact the appointing court directly.

### **Appointment & Case Information**

NOA #: 750866390

Appointment Date: 07/09/2020 Appointing Judge: John Doe

County/Court: Albany / County Court

Index #: 526414/2020

Title of Action/Proceeding: RESG TESTING

Category of Appointment: Receiver Case Type: Other Actions/Proceedings

> **Proceed to accept** and file the required Notice of Appointment and Certification of Compliance (Pursuant to 22 NYCRR §36.4)

> > - OR -

Decline this appointment and notify the court of your decision

Decline

Proceed



### Part 36 - Fiduciary Online

Re-registration Amendment

Forms

Personal Information Upload Resume

Manage

My Applications My Appointments My Compensation

View

Eligibility List Fiduciary Directory

Resources

Appointments Compensation

Search

FAQ Contact Us

Help

My Account Change Password Change Challenge Question Change Email Address

Sign Out

**8** Help

\* Required



### Compensated or Pro Bono?

To accept compensation for this appointment, you must meet certain qualifications, and all compensation awarded for this appointment <u>must</u> first be ordered by the court. \*\*

You may also accept this appointment pro bono (without compensation).

\*\* Section 36.2(d)(1) prohibits appointees from receiving more than one appointment within a calendar year for which the compensation anticipated to be awarded in a calendar year (current or future) exceeds the sum of \$15,000.

### **Appointment & Case Information**

NOA #: 750866390

Appointment Date: 07/09/2020

Appointing Judge: John Doe

County/Court: Albany / County Court

Index #: 526414/2020

Title of Action/Proceeding: RESG TESTING

Category of Appointment: Receiver

Case Type: Other Actions/Proceedings

Is this appointment accepted **WITHOUT** compensation (pro bono) or **WITH** compensation?

WITHOUT Compensation

WITH Compensation

Previous

Help

\* Required



### Compensated or Pro Bono?

To accept compensation for this appointment, you must meet certain qualifications, and all compensation awarded for this appointment <u>must</u> first be ordered by the court. \*\*

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### **Appointment & Case Information**

NOA #: 750866390

Appointment Date: 07/09/2020

Appointing Judge: John Doe

County/Court: Albany / County Court

Index #: 526414/2020

Title of Action/Proceeding: RESG TESTING

Category of Appointment: Receiver

Case Type: Other Actions/Proceedings

Is this appointment accepted **WITHOUT** compensation (pro bono) or **WITH** compensation?

WITHOUT Compensation

WITH Compensation

Anticipated compensation to be awarded for this appointment in any single calendar year (current or future) \*

\$15,000 or Less

More than \$15,000



Rules of the Chief Judge & Explanatory Note

\* Required

All appointees must read Part 36 of the Rules of the Chief Judge (22 NYCRR), and the Explanatory Note prior to proceeding with their notice of appointment form.

Qualif	ication Statements	
	ify that I am qualified to accept this appointment pursuant to section 36.2(c) of the Rules of (22 NYCRR) because all the following are true. Please check each box: *	the Chief
a.	I AM NOT a full-time or a part-time judge or housing judge of the Unified Court System of the State of New York or a relative of, or related by marriage to, a full-time or a part-time judge or housing judge of the Unified Court System within the fourth degree of relationship (Town and Village judges are judges of the Unified Court System);	☐ TRUE
b.	I AM NOT a full-time or part-time employee of the Unified Court System;	☐ TRUE
c.	I AM NOT the spouse, brother/sister, parent or child of a full-time or part-time employee of the Unified Court System who holds a position at or above salary grade JG24, or its equivalent: 1) employed in a judicial district in which I am applying for appointment or 2) with statewide responsibilities;	☐ TRUE
d.	I AM NOT a person who currently serves, or has served within the last two years, as chair, executive director, or their equivalent, of a state or county political party (including any person or persons who, in counties of any size or population, possess or perform any of the titles, powers or duties set forth in Public Officers Law §73[1][k]); the spouse, brother/sister, parent or child of such political party official; or a member, associate, counsel or employee of a law firm or entity with which such political party official is currently associated;	☐ TRUE
e.	I AM NOT a former judge or housing judge of the Unified Court System who left office within the last two years and who served within the jurisdiction of the court making the appointment, as defined by section 36.2(c)(5) of the Rules of the Chief Judge, or the spouse, brother/sister, parent or child of such former judge;	☐ TRUE
f.	I AM NOT a person who is serving or who has served as a campaign chair, coordinator, manager, treasurer or finance chair for the campaign of the judge making the appointment, or the spouse, brother/sister, parent or child of that person, or anyone associated with the law firm of such person, within two years of the following judicial election;	☐ TRUE
g.	I AM NOT a judicial hearing officer pursuant to Part 122 of the Rules of the Chief Administrator serving on a judicial hearing officer panel for the court making the appointment;	☐ TRUE
h.	I AM NOT an attorney currently disbarred or suspended from the practice of law by any jurisdiction;	☐ TRUE
i.	I AM NOT a person convicted of a felony for which no certificate of relief from civil disabilities has been received;	☐ TRUE
j.	I AM NOT a person convicted of a misdemeanor for which sentence was imposed within the last five years and for which no certificate of relief from civil disabilities, or waiver by the Chief Administrator of the Courts, has been received;	☐ TRUE
k.	I AM NOT a person who has been removed from an appointment list of the Chief Administrator of the Courts for unsatisfactory performance or conduct incompatible with appointment, or is currently suspended from an appointment list of the Chief Administrator of the Courts pending a final determination on the issue of removal, or resigned from the appointment list in its entirety pursuant to an agreement with the Inspector General of the Courts;	☐ TRUE

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### Appointments Received in the 2020 Calendar Year

Pursuant to §36.4(b), appointees are required to report all appointments received in the current calendar year. Section 36.2(d)(1) prohibits appointees from receiving more than one appointment in the same calendar year (i.e. January 1 to December 31) for which compensation in excess of \$15,000 is awarded in that calendar year or anticipated to be awarded in any calendar year.

- 1. Please review your 2020 pre-recorded Appointments on file with OCA listed below.
- Any 2020 appointments not listed, should be entered in the Appointments NOT on file with OCA section using one of two options.
  - Option 1: Manually entry. OCA will store your entries for any future 2020 appointments.
  - Option 2: Upload a file containing a list of your 2020 appointments.

### Appointments on file with OCA:

If you notice any discrepancies with the information listed, please contact the appointing court directly

Index/File #	County/Court	Appointing Judge	Anticipated Compensation to Exceed \$15,000
	Rensselaer Supreme		
	Albany Surrogate's		

### Appointments NOT on file with OCA:

To remove an appointment from the list, click the row's Remove link

Previous

Remove
• Add
· U
Bono) V Add
TFF
Upload
3

Next

**8** Help

\* Required



### Appointments for which Compensation was Awarded during 2019 Calendar Year

Section 36.2(d) establishes a limitation on appointments based on an annual, aggregate amount of compensation. If compensation is awarded in an aggregate amount of more than \$100,000.00 during any calendar year (no matter what year the appointment was made), the appointee will be ineligible for any compensated appointments during the next calendar year.

- 1. Please review your 2019 pre-recorded Compensation on file with OCA list below.
- Any 2019 compensation not listed, should be entered in the Compensation NOT on file with OCA section using one of two options.
  - Option 1: Manually entry. OCA will store your entries for any future 2020 appointments.
  - Option 2: Upload a file containing a list of your 2019 compensations.
- You must also report Total Compensation Awarded in 2019. A calculator is provided to assist with adding the totals from each section of this page.

### Compensation on file with OCA: \$17,484.47

If you notice any discrepancies with the information listed, please contact the appointing court directly

Index/File #	County/Court	Appointing Judge	Compensation
	Albany Supreme		\$
	Albany Supreme		\$1.
	Rensselaer Supreme		\$

### Compensation NOT on file with OCA: \$4,500.00

To remove a compensation award from the list, click the row's Remove link

Index/File #	County/Court	Appointing Judge	Compensation
12345	Albany Supreme	John Doe	\$4,500.00 <u>Remove</u>
Option 1: Manual	ly enter compensation a	wards by filling out the form and	clicking • Add
Index/File #:	County:	Court:	
Appointing Judg		Compensation Awarded: *	Add
Option 2: Browse	-	your compensation awards  oted file types: PDF, JPG, PNG, TIF	-F
			pload

### **Total Compensation Awarded:**

You are required to provide the total amount of compensation awarded during the 2019 calendar year

Total Compensation Awarded: *	Compensation on file with OCA: Compensation NOT on file (Option 1): Compensation NOT on file (Option 2):	\$17,484.47 \$4,500.00	
	Calculated Total:	\$21,984.47	Calculate

Previous

Next

### **Appointment & Case Information** Appointment to be accepted with anticipated compensation of \$15,000 or less NOA #: 750866390 Appointment Date: 07/09/2020 Appointing Judge: John Doe County/Court: Albany / County Court Index #: 526414/2020 Title of Action/Proceeding: RESG TESTING Category of Appointment: Receiver Case Type: Other Actions/Proceedings Edit Appointment Compensation Personal Information Name: First: Middle: Last: Suffix: **Social Security Number** XXX-XX-Contact Information (email & address to which all correspondences are sent) Address: Phone: Email: **Edit Personal Information** Appointments Received during 2020 Calendar Year Appointments on file with OCA: 2 Manually Entered Appointments NOT on file with OCA: 1 View/Edit Calendar Year Appointments Appointments for which Compensation was Awarded during 2019 Calendar Year Total Compensation Awarded: \$21,984.47 Compensation on file with OCA: Number of Compensation Awards: 3 Sum of Compensation Awards: \$17,484.47 Manually Entered Compensation NOT on file with OCA: Number of Compensation Awards: 1 Sum of Compensation Awards: \$4,500.00 View/Edit Prior Year Compensation AFFIRMATION: I affirm, under penalty of perjury: \* I certify that I am qualified to accept this appointment pursuant to section 36.2(d) OYes ONo ("Limitations on appointments based on compensation") of the Rules of the Chief Judge (22 NYCRR); By checking YES, I affirm that I accept this appointment with compensation, and that this OYes ONo constitutes my electronic signature.

Previous Submit

### UCS-872 Notice of Appointment: Complete

Thank you for accepting the Part 36 appointment indicated below and filing the required Notice of Appointment and Certification of Compliance.

### Appointment & Case Information

### Accepted with anticipated compensation of \$15,000 or less

NOA #: 750866390

Appointment Date: 07/09/2020

Appointing Judge: John Doe

County/Court: Albany / County Court

Index #: 526414/2020

Title of Action/Proceeding: RESG TESTING

Category of Appointment: Receiver

Case Type: Other Actions/Proceedings



### **UCS-872 Online Receipt**

To print a copy of your receipt, click the button below. An email confirmation containing a copy of the receipt has also been sent to dgruenbg@nycap.rr.com.

If you have any questions about this appointment, please contact the appointing court directly.



Download Receipt



### **Attorney Registration Information**

Updating your Part 36 personal information does not update your Attorney Registration personal information.

If you wish to review your Attorney Registration personal information, please go to Attorney Registration Online.



# **RECEIVERSHIPS IN NEW YORK**

**Part 36 Receiver Training** 

Tuesday, April 26, 2022

**In Person and Virtual** 







### Introductions - Hon. John J. Leo

Welcome and administrative matters



### **Overview – Meredith Jones**

Understanding receivership as a Part 36 appointment

Part 36 rules and list enrollment

Receiver appointment process and forms



## **Q & A**



### Receiverships: Substantive Issues – Brian Egan

Purpose of Receivership

Mortgage Foreclosure Receivership

Other Real Estate Receiverships (L & T issues)

Other Receiverships

Corporate/partnership dissolution

Receiver of a business

Not-for-profit corporation



### Receiverships: Procedural Issues – Hon. Thomas Whelan, Hon. Elizabeth H. Emerson, Harvey Besunder, Brian Egan

Motion for Appointment of Receiver – Hon. Thomas Whelan

Order appointing receiver

Bond

Accountants and Judicial Settlements of Accounts – Harvey Besunder

Termination of receivership by removal or discharge

Removal: motion, hearing, surcharge, order

Discharge: motion, order

Ethical Pitfalls in Receiverships



### **Break – 15 minutes**



# Compensation – Hon. Elizabeth H. Emerson and Panel

Commissions (CPLR 8004) [a]): case law discussion

Disbursements and extraordinary expenses

Allowance where funds are depleted (CPLR 8004[b])



### Secondary Appointments and Procedure for Appointment – Brian Egan

Counsel

Property manager

Other secondary appointees



# Miscellaneous Issues – Hon. Thomas Whelan and Panel

Insurance (liability, property, etc.)

Liability

Accounts and FDIC coverage

Taxes

Bankruptcy



## **Q & A**

# RECEIVERSHIPS IN NEW YORK

Part 36 Receiver Training



### **Panel**

Hon. John J. Leo

Meredith Jones

Brian Egan

Hon. Thomas Whelan

Hon. Elizabeth H. Emerson

Harvey Besunder

**Harold Deiters** 

# Receiverships in New York: Part 36 Receiver Training

SUFFOLK ACADEMY OF LAW – TUESDAY, APRIL 26, 2022, 6-9 PM HON. THOMAS F. WHELAN, J.S.C.

# Role and Duties of the Receiver

- ► A receiver is not an agent of the mortgagee or the owner but a fiduciary, and fiduciary principles govern the way a receiver acts.
- The primary function of a receiver is to preserve and protect the property or estate from harm while the underlying dispute is resolved
   all for the benefit of all persons interested in the estate.





# Should I accept the appointment?

- Who is the appointing judge?
- Which law firm is seeking the appointment?
- What kind of receivership is it?
- What type of property?
- What is the cash flow?





# Make sure the Order of Appointment has all the powers you are going to need

- Order- Should set forth <u>powers and duties</u> that a receiver should have.
- Order- Should set forth things that the owner of the property <u>must do</u> or refrain from doing and turn over to the receiver.



# Sample Ordered Provision

ORDERED, that the Temporary Receiver be and hereby is authorized to receive, and the defendant be and hereby is directed to turn over to the Temporary Receiver all rent lists, rent rolls, security deposits, and any and all records, service contracts, orders, leases, correspondence, registration statements, and agreements related to the management, operation, occupancy, insurance, maintenance, or service of or construction upon the mortgaged property held by said defendants, to any including the date upon which the Temporary Receiver files with the Clerk of the Court his/her oath and bond as set forth above.

# Can you choose a counsel? Sample Ordered Provision

ORDERED, that the Temporary Receiver be and hereby is authorized to retain \_\_\_\_\_ as legal counsel to represent the Receiver in all legal proceedings necessary to enforce the provisions of this Order and preserve the property; and it is further

ORDERED, that the Receiver be and hereby is authorized to institute and prosecute all legal proceedings necessary or desirable for the proper care and protection of the mortgaged property.

# You decide to accept the appointment-What next? When does the appointment become effective?

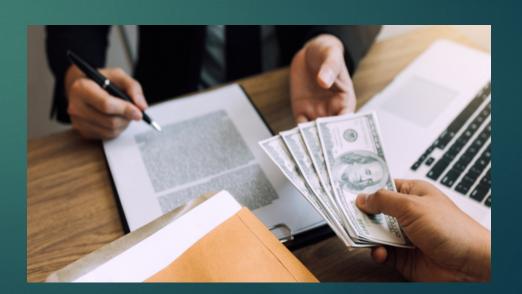


► <u>Helpful</u> hint - Wait a week before you qualify, i.e., filing your bond and oath and the Form 872. Talk to the attorneys on the case to see the status, if it can be ascertained.

# Operating during the receivership

- Be hands-on.
- Call the property manager.
- Check the electronic access bank records regularly.
- ▶ Be ready for emergencies.
- Record keeping is critical.





## Recent Cases

# <u>Sufficiency of evidence</u>: Claire MANNING-KRANES v. Marita MANNING-FRANZMAN, 175 A.D.3d 1403 (2d Dept 2019).

- ▶ Plaintiffs who were tenants in common with the defendants failed to make an evidentiary showing of necessity to appoint receiver.
- ▶ Plaintiffs' speculative and conclusory assertions were insufficient.

# Sufficiency of evidence | Interim funds: Michael MEAGHER v. Drew DOSCHER, 157 A.D.3d 880 (2d Dept 2018).

Appointment of temporary receiver was necessary given the state of affairs between the parties – evidence of litigation, licensing agreement, etc.

### Rule:

"[A] motion seeking such appointment 'should be granted only where the moving party has made a clear evidentiary showing of the necessity for the conservation of the property at issue and the need to protect the moving party's interests."

## Conclusion



- Helpful hint Always get court approval for anything that may seem out of the normal or beyond the order of appointment, or may come back as an objection when you are seeking your final accounting. Get the judge to approve the appointment or the payment to protect yourself.
- ► To request a copy of this PowerPoint presentation, please email suftwhelan@nycourts.gov.







#### **SCBA Lawyers Helping Lawyers Committee**

**The SCBA Lawyers Helping Lawyers Committee** provides free and confidential assistance to those in the legal community who are concerned about their alcohol or drug use and/or mental health or wellbeing or that of a colleague or family member.

Assistance is available to the legal community including attorneys, members of the judiciary, law students, and family members dealing with alcohol or substance abuse disorder, other addictive disorders, anxiety, depression, vicarious trauma, age related cognitive decline and other mental health concerns that affect one's well-being and professional conduct.

#### Please call the

Lawyers Helping Lawyers Helpline at (631) 697-2499 to speak with an attorney who will provide support and recommend resources. All calls are private and confidentiality is protected under Judiciary Law Section 499. (Lawyer Assistance Committee)