

16 Lake Street, Apt. 2C
White Plains, N.Y. 10603
June 4, 1989

Dear Reporter:

I am the daughter of George Sassower, who is featured in the attached story in the June 6th issue of The Village Voice. As you can see from the enclosed materials, the published story is the "tip" of an "iceberg" that will have significant judicial and political ramifications--if exposed.

At present, my father is incarcerated at the Metropolitan Correctional Center (MCC) under a defective and improper warrant of arrest and denied bail for the underlying misdemeanor--filing of a motion to enjoin extortion payments which now total over \$2,500,000.

This extortion is part of a documented and documentable story of what goes on with trusts, estates, and involuntarily-dissolved corporations whose assets fall into the custody of the Court. It is a story not about the corruption of one judge--but about a system of corruption. The corruption goes beyond the courts--and is made possible by the direct criminal complicity of the office of the Attorney General--and a panoply of other governmental agencies.

This is a sensational story--and a significant one. The People of New York have a right to know what goes on within the judicial and political system. They have a right to know that regulations and statutes, whose very purpose is to prevent unlawful aggrandizement on the part of the Court and its appointees, "look good on paper", but are not given obedience by the Courts, nor by the appropriate government agencies.

And the People should know that "it can and does happen here"--that in this country, (in the heart of New York, no less) there are criminal convictions and incarcerations without the constitutional guarantee of trial--and that agreements are criminally extorted whereby monies are paid to private pockets.

This horror story can be fully documented--and we ask only that you give us that opportunity and investigate the truth. At a time when every newspaper reports about jail overcrowding and the release pending trial of would-be cop-killers, George Sassower is denied bail for a misdemeanor and, notwithstanding recent surgery and a doctor's affidavit as to the state of his health, is incarcerated--"a prisoner of the courts and the judges who rule them" (Village Voice). I believe the Media has some questions to ask about this situation.

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Admittedly, every daughter wants to see her father as a hero, but I believe that the facts of this story--when investigated--will speak eloquently on their own.

In an age of cynicism, when scandal and corruption seem "the way of the world", the People deserve to know about courageous individuals, such as my father, who do not "sell" their integrity and who are willing to put life, livelihood, and reputation on the line to preserve the Constitution and the rule of law.

The enclosed materials give a "taste" of this story's significance. Do contact me for additional material and information. My number is (914) 428-8598. To leave a message, dial (914) 997-7937.

Your assistance in bringing these important matters before the public is greatly appreciated.

Sincerely,

A handwritten signature in cursive script that reads "Elena Ruth Sassower".

ELENA RUTH SASSOWER

Enclosures

Ocean Hill-Brownsville, 20 Years Later (STEVEN MUFSON, P.25)

the village

VOICE

Christgau
Defends Nixon
(Mojo, That Is)

P.70

VOL. XXXIIII NO. 23 • THE WEEKLY NEWSPAPER OF NEW YORK • JUNE 6, 1989 • \$1.00

GEORGE SASSOWER

The Man Who Sued Too Much



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ART SPIEGELMAN
ON THE MAKING
OF A CLASSIC
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MAUS LIVES

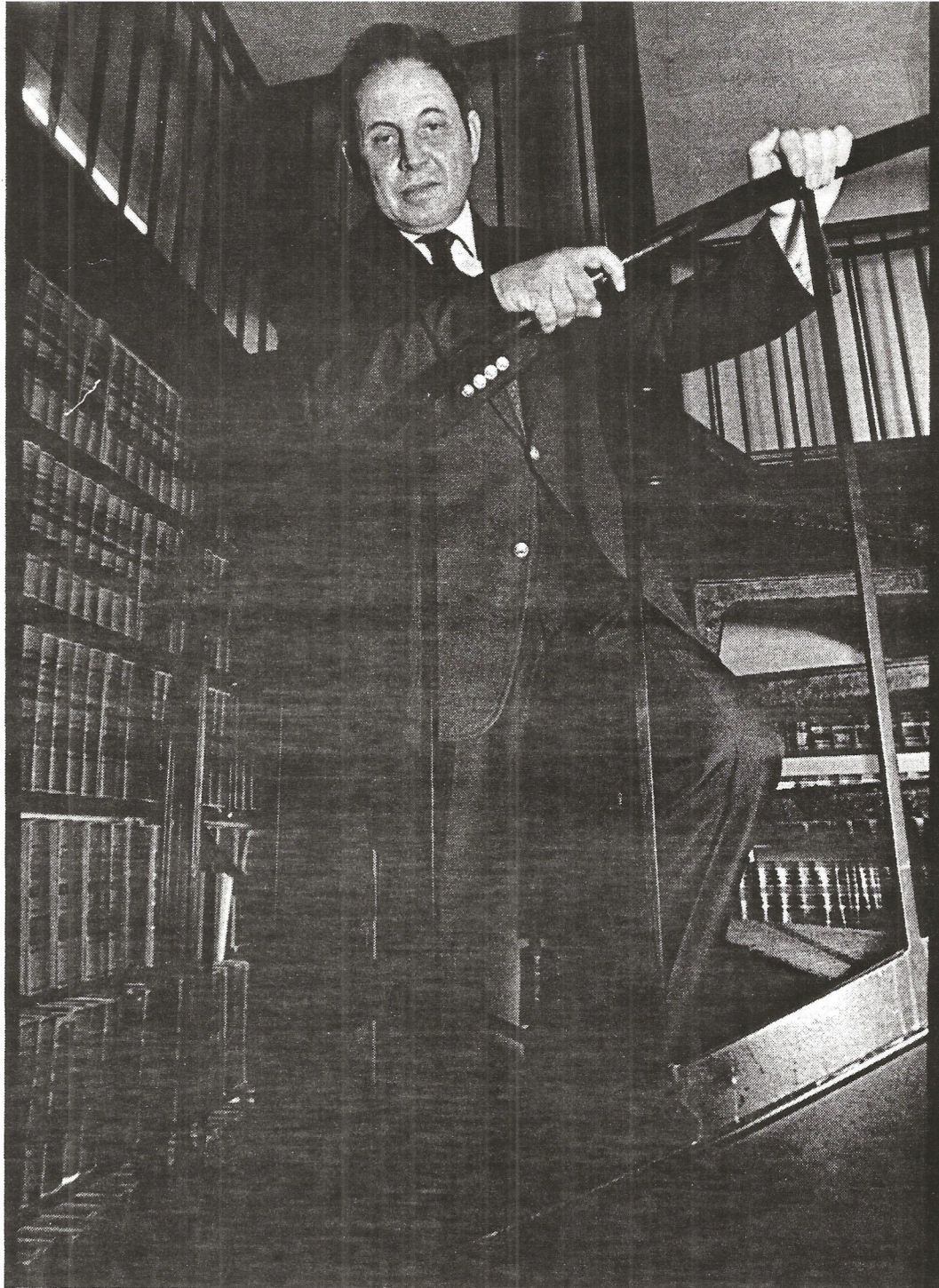
AN EXCLUSIVE EXCERPT (P.20)



To the Gulag

Courthouse Leper
George Sassower
Takes On Every
Judge in Town

BY JONATHAN FERZIGER



The man who sued too much: disbarred lawyer George Sassower

THE FEDS have finally busted George Sassower, the bane of New York's judiciary. After scouring virtually all the SROs on the Upper West Side, a half dozen U.S. marshals on a bright Thursday in May chased through nine stories of the Newton Hotel on Broadway and 94th Street and discovered the half-blind, 65-year-old ex-lawyer in a sixth-floor bathroom, waiting calmly, smoking a pipe. They put him in handcuffs, held him in jail overnight, and made him stand through an arraignment that went all day in fits and starts before U.S. magistrate Nina Gershon.

Though Sassower argued that the warrant for his arrest on contempt of court charges was filled with errors and that he was under a doctor's care after having undergone a delicate eye operation two weeks before, Gershon didn't flinch—even when he offered every penny he had left (about \$260) as bail. She sent him to Metropolitan Correctional Center to await trial in *United States of America v. George Sassower*. It was the eighth time Sassower has been incarcerated by a succession of state and federal judges who have done all they can just to make him shut up.

Some call Sassower a "legal terrorist." In its latest issue *Spy* magazine describes him as one of New York's most litigious citizens, up there with Donald Trump, Harry Helmsley, and Governor Mario Cuomo. Other people familiar with his 38-year career as a lawyer say he has a razor-sharp intellect, an insider's knowledge of the court system, and an obsession with exposing judicial corruption. The state's chief judge, Sol Wachtler, Attorney General Robert Abrams, and assembly judicia-

ry committee chairman G. Oliver Koppell take him seriously enough that they have personally reviewed his case.

What has Sassower done to bring the full weight of the judicial system down upon him? The disbarred lawyer has repeatedly violated orders forbidding him to file legal papers before any New York—or federal—court. "Sassower's protracted, repeated, and flagrant contumacy," as U.S. Magistrate Allyne Ross puts it, "virtually compels action to vindicate the authority of two federal courts." In other words, he won't shut up—not even after two sheriff's deputies broke into his apartment last year and seized his word processing equipment.

Sassower has been accusing judges of corruption for years, but few have paid any attention to his charges that the patronage system has gotten out of hand and turned into a criminal enterprise. "This is the favor bank. This is the payoff. This is money, money, money," Sassower says, sounding like a voice crying out in the wilderness.

Though dismissed by some as a fruitcake, Sassower has raised important questions about the integrity of New York's judicial system, particularly the way judges award lucrative guardianships and legal fees to politically connected law firms.

Prominent lawyers are appointed every day by the court to watch over monetary disputes involving the estates of dead or incompetent people. Such appointments are a key element of the judicial patronage system. They help to pay off political favors and take care of retired judges, politicians, and court cronies. (An example is John Zaccaro's appointment as con-

servator over the escrow account for an elderly woman in the early '80s, which contributed to the political problems of his wife, Geraldine Ferraro.)

THE ROOT OF Sassower's predicament can be found in what he calls a judicial *Fortune Cookie*, the 1966 movie about a photographer faking an injury in order to sue CBS Sports. Neither Walter Matthau nor Jack Lemmon had anything to do with Puccini Clothes Ltd., but when you crack the case open, it tells a story of pure greed.

Puccini was a downscale men's apparel firm, headquartered in a Flatbush Avenue warehouse, that was created over a gin rummy game in the late 1970s. The game was a regular event for Sassower's rich client, Hyman Raffé, Raffé's even wealthier pal, Milton Kaufman, and two small-time Long Island businessmen, Eugene Dann and Robert Sorrentino (then living in Seoul). Together they planned to make a little money selling cheap suits imported from Korea.

But when Kaufman died in 1979 the surviving three partners and Citibank (executor of Kaufman's will) started a tug-of-war, turning the company's assets into what Sassower calls an inviting cookie jar ripe for plunder.

Puccini was about the last thing Citibank cared about until the rest of Kaufman's millions were distributed. But when, according to court papers, the bank suspected that Dann, Sorrentino, and Raffé were interested in carving up what was left of the company, Citibank took action. Through its lawyers, Kreindler & Relkin, the bank sought involuntary dissolu-

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tion of Puccini, which was granted by state Supreme Court on June 4, 1980. The company's assets were placed in the hands of a court-appointed guardian who, through a wicked twist of fate, turned out to be former Mayor John V. Lindsay.

Actually, judges like to pick prominent lawyers and former cops to watch over estate matters because they have their reputations at stake and are considered less likely to raid the till. But just to protect unsuspecting legal customers, the state has set up a "client's security fund" which has paid out \$7.3 million since it was established in 1982. The fund's administrators say thefts from escrow accounts amounted to \$2.6 million in 1988 alone.

A *Daily News* survey found dozens of court-appointed guardianships awarded to influential politicians and judges in 1987 and 1988, including at least five assigned to former Bronx Surrogate Bertram Gelfand, who was removed from office because of a sex scandal. Gelfand, while still on the bench, gave a combined \$10,000 in appointments to Bronx Democratic Chairman/Assemblyman George Friedman, Democratic district leader Gerald Esposito and Herbert Evans, a former state chief administrative judge. Lawyers like doing the estate work because it usually involves little work and pays sizable commissions.

But when Lindsay saw Puccini would be no ordinary cakewalk, he went to some lengths to unload the case, and was dismissed nearly a year later by the court.

"Lindsay says, 'What's all this controversy? I don't want any part of it,'" recalled Donald Relkin, who represents Citibank in the dispute.

In early 1982, Puccini's assets of roughly half a million dollars were brought together in a single bank certificate of deposit while a new receiver, Lee Feltman, tried to sort out the mess. But by October 26, 1988, after the CD account had blossomed (with interest) to \$756,155, not one penny of the money had been paid to any of the three surviving partners.

Instead, Feltman's firm, Feltman Karesh Major & Farbman billed and collected \$687,080 in fees, although no court record exists approving distribution of the fees to the law firm until September 1988—at which point the Puccini account was empty.

Sassower saw this case as an exemplary demonstration of corruption in action. In what amounts to a page out of Dickens's *Bleak House*, he has filed more than 300 motions designed, according to Sassower, to expose the way judges close ranks to protect one another—and he is not afraid to call any sitting judge corrupt to his face.

The case is complicated and, in fact, rather than accept Sassower's version, the court-appointed referee, Donald Diamond, sided with Citibank, ruling that Sassower's litigation was a "tool of economic duress" calculated to wear down the opposition.

Sassower was found guilty of 63 counts of contempt of court.

When he refused to pay the fines, Sassower was put in jail—seven times. The Appellate Division affirmed the jail sentences. It is exceedingly unusual for a lawyer to be put in jail on such charges, but at least two dozen judges have reviewed the case and approved of Sassower's treatment.

Raffe, who wants nothing more to do with his former lawyer, was also faced with 71 counts of criminal contempt. By signing three extraordinary agreements in 1985, however, Raffe agreed to foot all legal costs incurred by Feltman's firm and Citibank's lawyers, Kreindler & Relkin, for defending against Sassower. In exchange, the court agreed to let him go free.

The tab so far has come to more than \$2.5 million, paid to both the Feltman and Kreindler firms. Raffe continues to pay with checks from his A.R. Fuel Co. business.

"That's outrageous. It's unbelievable. It's disturbing. But I'm not sure it's illegal," said Attorney General Abrams when he saw copies of the checks. Abrams is the statutory watchdog over court-appointed receivers like Feltman.

THE JUDGE Sassower is particularly bitter about is Francis T. Murphy, presiding justice over the appellate division of state Supreme Court in Manhattan and the Bronx. Murphy has some headaches of his own (*Voice*, May 9). Now under state investigation for alleged abuses of power in connection with disciplinary proceedings against half a dozen other lawyers, including Andrew Cuomo, C. Vernon Mason, and Joel Steinberg, the 62-year-old Murphy wants nothing more to do with Sassower. He refuses to discuss the case, calling the charges "scurrilous." Several other judges and lawyers have said they doubt Murphy would have wasted his time directing attention at Sassower.

While Sassower is owed some \$45,000 in legal fees from the Puccini account dating back 10 years, it's not money Sassower is concerned about. If it were, he would not have turned down a half-million-dollar settlement to drop his legal attack. Sassower is a zealot.

"How can 10,000 lawyers and judges be wrong and this one lunatic be right?" demands Donald Relkin, whose law firm billed and collected at least \$2 million from Puccini and the Kaufman estate. The question begs for a good answer.

At presstime, Sassower was being held at a federal detention center a block away from City Hall while his family filed a *habeas corpus* motion in an effort to get him released, if only on bail. He was placed in solitary confinement for several days. When Sassower told authorities about his history of heart trouble and asked for a cellmate, so someone could call a guard in case of an overnight seizure, the request was granted graciously.

In his new cell Sassower introduced himself to the guy sitting on the other bed. "What are you in for?" Sassower politely inquired.

"Murder," the other man replied.

Sassower told the guard he wouldn't mind going back to solitary.

Last Thursday, after asking to see Sassower, I was told by public information officer Alan Stiefel to write a letter, that the inmate would be consulted, and the request would most probably be granted.

After complying with the rules on Friday, I was kept waiting for one hour and then told prison authorities were too busy to deal with the request until after the Memorial Day holiday. Asked whether I could simply talk to Sassower during normal visiting hours, without a tape recorder or notebook, Stiefel said no. Gregory Bogdan, chief of public information at the federal Bureau of Prisons in Washington, D.C., refused to step in.

Meanwhile, Sassower lingers in jail, a prisoner of the courts and the judges who rule them. Last week, U.S. District Judge Nicholas Politan ordered that he be sent for a month to a federal psychiatric facility in Maryland or Missouri for observation. "Sounds like the gulag for daddy," Sassower's daughter Elena said.

"I don't know whether he's crazy or not," said Assemblyman Koppell. "But sometimes crazy people are right." ■

FACT STATEMENT

The events described herein involve the judicial trust assets of PUCCINI CLOTHES, LTD. ["Puccini"] -- "the judicial fortune cookie" -- where by legislative mandate, the Attorney General is the statutory fiduciary and guardian.

1. Puccini was involuntarily dissolved on June 4, 1980, its assets and affairs becoming custodia legis [the custody of the law], at that point in time and ever since.

2. Notwithstanding its dissolved status, it still remains a "person" within the meaning of the XIV Amendment of the Constitution of the United States and the mirrored provisions contained in the New York State Constitution.

3. The mere fact that a corporation is dissolved and helpless, does not mean that its assets can be, with impunity and without redress, made the subject of larceny and plundering.

4. Indeed the only reason for making the Attorney General the statutory fiduciary is to assure this helpless constitutional "person", and those interested in its assets, that it will not be "the custodian" -- the judiciary -- which does the stealing and plundering.

5. The judiciary, in this area of the law, includes its appointed receiver, invariably one of its "cronies", particularly when such dissolved corporation has substantial assets.

6. The judicial appointed receiver is the agent of the court -- an arm of the court, and subject to its exclusive judicial control.

"THE LAW'S MAJESTIC BEAUTY"

To assure the integrity of this constitutional "person", and to vouchsafe the legitimate interests therein, the legislature has fixed the receiver's fee, according to the value of the assets received by him, plus "necessary expenses" (Business Corporation Law §1217).

1. All compensation awarded by the judiciary to anyone, "in any capacity", in excess of \$200, must be reported to the Office of Court Administration, on prepared forms, "on the first business day of each week", and such records are specifically made open for public inspection (Judiciary Law §35a; 22 NYCRR Part 26).

2. Awarded fees cannot exceed "the fair value of the services rendered", and 22 NYCRR §36.4[b] specifically provides that:

"Each award of fees of \$2,500 or more to appointees pursuant to this section shall be accompanied by an explanation, in writing, of the reasons therefor by the judge making the award"

3. The judiciary, itself, recognizes that its appointees are not always "the most honest", and requires that such appointed receiver "file with the court an accounting at least once a year" (22 NYCRR §202.52[e]).

4. To aid the Attorney General in performing his fiduciary obligations properly, the receiver must file with the Attorney General's Office, as well as with the County Clerk, by February 1 of each year, a verified statement, which includes the "assets" of such involuntarily dissolved corporation (Business Corporation Law §1207[a][3]).

5. To make certain that the Attorney General does not become lax, or neglectful, or corrupt, in addition to his wide discretionary powers (e.g. Business Corporation Law §1214[a]), he is compelled to performed certain mandatory "duties", where he has no discretion whatsoever, including compelling the receiver to settle his filed accounting and distribute its assets, after the lapse of eighteen (18) months (Business Corporation Law §1216[a]).

6. While the court may extend the time to settle an accounting and to distribute the assets, there is no authority given anyone to excuse or extend the time for the filing of an accounting "at least once a year", or the service and filing of a §1207 statement by February 1 of each year.

7. The receiver must sign an oath of office, and file a bond payable "to the people", to insure "the faithful discharge of his duties as receiver" (Business Corporation Law §1204).

8. The appointing judge is made responsible for the qualifications of his appointee, and nepotism is prohibited (22 NYCRR §36.1).

9. True books of account must be kept, and made open to inspection (Business Corporation Law §1207[a][3]).

"QUIS CUSTODIET IPSOS CUSTODES"

The entire legal scenario in this field is so replete with checks and balances, between various officers of different branches of government, that there should be no need for media investigation and/or exposure -- or so it seems!

The question posed by the ancient Romans, "Quis Custodiet Ipsos Custodes", has been resolved by carefully tailored legislative statutes and judicial rules -- or has it?

PUCCINI -- "THE JUDICIAL FORTUNE COOKIE"

1. FACT -- Despite the mandate that an accounting be filed "at least once a year", in the nine (9) years since Puccini was dissolved, not a single accounting has been filed -- not one!

2a. FACT -- Despite the mandate, as a "duty", that the Attorney General make application for the settlement and distribution of an accounting after the expiration of eighteen (18) months, in the one hundred and eight (108) months since Puccini was involuntarily dissolved, not a single application has been made by ROBERT ABRAMS, Esq. ["Abrams"], the highest law enforcement officer in this state, and/or his office -- not one!

b. The failures of the Attorney General, and his office, become more serious when it is recognized that they have the documented proof in their possession of the massive larceny of judicial trust assets and extensive plundering.

3a. FACT -- Despite the mandate that all compensation awarded, in excess of \$200 be reported, approximately one million dollars (\$1,000,000) has been given to FELTMAN, KARESH, MAJOR & FARBMAN, Esqs. ["FKM&F"], the law firm of LEE FELTMAN, Esq. ["Feltman"], the receiver appointed by a member of the "Murphy judiciary" -- no reports have been filed (Exhibit "A").

b. Even if FKM&F had rendered services which were intended to benefit Puccini, or did benefit such constitutional "person"--which is not the case herein--they were not entitled to anything since FKM&F were not appointed by any judge, nor was there compliance with 22 NYCRR §660.24 (which was in effect at the time).

4. FACT -- Despite the mandate of the receiver to file a §1207 statement with the Attorney General and the County Clerk, by February 1 of each and every year, none has been filed for several years, or since I exposed the perjurious statements contained in the prior filings.

5. FACT -- There is an secret understanding and/or agreement by and between ABRAMS, MURPHY, Administrator XAVIER C. RICCOBONO, and former Administrator LOUIS FUSCO, that despite Abrams' fiduciary obligations to these judicial trusts, he will not give said obligations obedience, even those of a mandatory nature.

b. In the "evil judicial empire" of Presiding Justice FRANCIS T. MURPHY, "constitutional persons" such as Puccini are not just skimmed--but denuded--to satisfy the insatiable appetites of the judiciary and/or their appointees, and neither

ROBERT ABRAMS, nor anyone else in the Attorney General's Office will interfere.

c. Indeed, the understanding and practice is that Abrams and his office will actively aid, abet, and facilitate such larceny, plundering, and will participate in other criminal conduct, where necessary.

d. Senior Attorney, David S. Cook, Esq., is the attorney in the one-man unit, assigned to vouchsafe the assets of Puccini and other involuntarily dissolved corporations on behalf of the Attorney General. Any complaints regarding the handling of involuntarily dissolved corporations, which are constitutionally protected (U.S. Constitution, Amendment I, New York State Constitution, Article I, Section 9) are channeled to Mr. Cook.

e. In defending applications against the courts and judges, the Attorney General operates on a generally rotating basis with about 70-80 attorneys.

f. Nevertheless, when the massive larceny of Puccini's trust assets surfaced, with its judicial involvement therein, it was Mr. Cook who was exclusively assigned to represent the judiciary and the courts, arising out of their breach of trust responsibility, while simultaneously representing Puccini, his statutory ward.

"THE UNTOUCHABLES"

1. KREINDLER & RELKIN, P.C. ["K&R"], and its clients, including CITIBANK, N.A. ["Citibank"], engineered the larceny of Puccini's judicial trust assets, and inundated the courts with perjurious affidavits denying same.

2. In return for not exposing such larceny of judicial trust assets, or attempting to recover same on behalf of its judicial trust, FELTMAN, the receiver, was promised the balance of Puccini's judicial trust assets.

3. Since FELTMAN's commissions are fixed by legislative statute (Business Corporation Law §1207), the vehicle for such "bribe" payments, was to be and is, his law firm, FELTMAN, KARESH, MAJOR & FARBMAN (KM&F).

4. K&R and FKM&F are "criminals with law degrees" who have raped Puccini of all its tangible assets, leaving nothing for legitimate creditors and stockholders.

5. Under such circumstances, no true accounting can be rendered in the Puccini matter without exposing the larceny, plundering, perjury, extortion, and official and judicial corruption. There is no final accounting for Puccini.

the receiver may be entitled to according to law," means all such proper, legitimate and necessary outlay and expenses as the receiver incurred in the discharge of his duties and pursuant to

the authority with which he was vested by the court as its officer. *Hardt v. Levy*, 1897, 20 App.Div. 400, 46 N.Y.S. 815, affirmed 155 N.Y. 660, 49 N.E. 1097.

§ 1217. Commissions

(a) A receiver shall be entitled, in addition to his necessary expenses, to such commissions upon the sums received and disbursed as may be allowed by the court, as follows:

(1) On the first twenty thousand dollars, not exceeding five percent;

(2) On the next eighty thousand dollars, not exceeding two and one-half percent; and

(3) On the remainder, not exceeding one percent.

(b) If the commissions of the receiver so computed do not amount to one hundred dollars, the court in its discretion may allow such sum not exceeding one hundred dollars as shall be reasonable.

(c) When more than one receiver shall be appointed, the compensation herein provided shall be divided between them, as the court directs.

(L.1961, c. 855.)

Historical Note

Derivation. Gen.Corp.Law of 1929, §§ 191, 192. Formerly sections 277 and 278; renumbered 191 and 192 respectively, L.1929, c. 650; repealed by L.1973, c. 451, § 2. Former section 277 derived from CCP, § 2431-a, added L.1906, c. 293. Former section 278 derived from L.1883, c. 378, § 2, amended L.1886, c. 275, § 1; L.1901, c. 506, § 1; L.1906, c. 349, § 1.

Legislative Studies and Reports

1. Source: McKinney General Corporation Laws §§ 191 and 192.
 2. Changes: Revised.
- Comment: This section applies the commission scale set forth in General Corporation Law § 191, which is now limited to receivers in voluntary dissolutions, to all proceedings under the article. As a result the restrictions imposed by General Corporation Law § 192 have been eliminated.

Cross References

Commissions of receivers generally, see CPLR 8004.
Comparable provisions, see Not-For-Profit Corporation Law § 1217.

Library References

Receivers ⇨ 196 to 198.
C.J.S. Receivers §§ 386, 387, 389.

Notes of Decisions

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1. Purpose

The Act of 1883 was passed, in view of the scandals which had been set afloat in respect to the administration of the affairs of insolvent corporations through receivers; the object of the act was to supplement the existing legislation, in respect to the winding up of the affairs of insolvent corporations, and to provide further restrictions and safeguards against the misuse or depletion of corporate funds in the hands of the receivers. *United States Trust Co. v. New York, etc., R. Co.*, 1886, 101 N.Y. 478, 5 N.E. 316. See, also, *In re Warren E. Smith Co.*, 1898, 31 App.Div. 39, 52 N.Y.S. 877.

2. Law governing

Laws 1883, c. 378, § 2, which related to the fees of receivers of corporations applied only to receivers of corporations appointed in proceedings in insolvency and not to those appointed in actions to foreclose corporate mortgages; the fees of the latter were governed by section 3320 of the Code of Civil Procedure [now CPLR 8004], which provided for fees of receivers "except as otherwise specially prescribed by statute." *United States Trust Co. v. New York, etc., R. Co.*, 1886, 101 N.Y. 478, 5 N.E. 316.

Commission of receiver appointed under article 11 to administer judicial dissolution of corporation should have been

computed under this section governing commission rates for receivers, rather than under general provision for receivers' commissions under CPLR 8004. *Matter of T.J. Ronan Paint Corp.*, 1984, 98 A.D.2d 413, 469 N.Y.S.2d 931. See, also, *In re F.G.A. Concrete Const. Corp.*, 1966, 26 A.D.2d 639, 272 N.Y.S.2d 458; *La Vin v. La Vin*, 1953, 281 App. Div. 888, 119 N.Y.S.2d 573, appeal denied 281 App.Div. 984, 121 N.Y.S.2d 89.

The amount of a temporary receiver's commission where he was appointed on an application for the voluntary dissolution of a corporation was governed by sections 1547-1549 of the Civil Practice Act [CPLR § 8004 et seq.]; he was not limited to a commission based upon the cash which actually came into his hands; he could, in an extreme case, and as a maximum, be allowed the statutory rate of the value of the property coming into his hands for receiving and protecting the same. *Matter of Smith Co.*, 1898, 31 App.Div. 39, 52 N.Y.S. 877.

Where action, in which receiver was appointed, was not an action by a stockholder or general creditor for the appointment of a receiver of an insolvent corporation, but was an action by a mortgagee against a mortgagor to foreclose the mortgage and for a receiver during foreclosure, commissions of receiver were not to be computed under former General Corporation Law, § 192 [now this section] but under the Civil Practice Act [CPLR], though one of the defendants and principal mortgagor was a corporation. *Murphy v. Pfeiffer Glass, Inc.*, 1958, 15 Misc.2d 214, 180 N.Y.S.2d 639, modified on other grounds 11 A.D.2d 902, 202 N.Y.S.2d 937.

3. Expenses, recovery of

Time records of attorney of receiver appointed for administration of dissolution of corporation were insufficient to support award of attorney fees applied for by receiver; affidavit of services was required upon application to fix counsel fees on quantum meruit basis, and standard to be applied was fair and reasonable value of services rendered, taking into account time spent, difficulties involved in matters in which services were rendered, nature of services,

amount involved, professional standing of the counsel, and results obtained. *Matter of T.J. Ronan Paint Corp.*, 1984, 98 A.D.2d 413, 469 N.Y.S.2d 931.

Sum of \$10,000 was an ample award for legal services rendered for receiver of dissolved corporation in view of fact that the matter was settled prior to service of an answer by sole debtor and involved merely collection of facts, negotiations, and final settlement of one account after service of summons and complaint and before service of an answer. *In re F. G. A. Concrete Const. Corp.*, 1966, 26 A.D.2d 639, 272 N.Y.S.2d 458.

It is proper for the court to direct the receiver to retain from the assets of the corporation a specified sum as a fund from which to pay the necessary expenses of administration including his fees as receiver. *Matter of Atlas Iron Const. Co.*, 1897, 19 App.Div. 415, 46 N.Y.S. 467.

4. Sums received and disbursed—Generally

Commissions should not be allowed upon receipts and disbursements having only a constructive and not an actual existence; premium notes and loans, made on life insurance policies, are not assets upon which the receiver is entitled to commissions, as they merely constitute offsets against the liability of the company. *Atty. Gen. v. North American Life Ins. Co.*, 1882, 89 N.Y. 94.

The word "sums" as here used is construed as meaning totals or amounts and, as so construed, the commissions of a receiver are to be computed on the value of the entire property that comes to his hands and is distributed by him, where the property consists of cash, securities, notes, bonds, mortgages, evidences of indebtedness or choses in action. *People v. Brooklyn Bank*, 1909, 64 Misc. 538, 118 N.Y.S. 722.

What shall be deemed "sums received and disbursed" is said to be a matter of construction of the statute, in respect to which the courts are governed by the nature and purpose of the trust, and not necessarily by adjudications giving construction to other statutes on the subject relating to different trusts although susceptible of analogous interpretation; the

court will also regard the consideration deemed contemplated by the statute, by way of execution of the trust which supports the right to commissions. *People v. Mutual Ben. Associates*, 1886, 39 Hun 49.

5. — Particular cases

Where a receiver has advanced money to pay taxes upon lands covered by mortgages in the hands of the superintendent of insurance then being foreclosed, which advances were repaid from the proceeds of the foreclosure, the receiver is not entitled to commissions upon the sum so refunded. *Atty. Gen. v. North American Life Ins. Co.*, 1882, 89 N.Y. 94.

Where a receiver is appointed not by reason of insolvency but in consequence of a disagreement as to the management of the corporate affairs and the business is carried on by the owners of the stock, acting in connection with a clerk appointed at the expense of the receivership, he is not entitled to a commission on the sums received and expended by said persons in the management of the business, his commission being limited to that on the amount received on the sale of the property at auction, this being the only sum actually received and disbursed by him. *Matter of Woven Tape Skirt Co.*, 1881, 85 N.Y. 506.

Temporary receiver of corporation was not entitled to commissions on the amount which was on deposit in the corporate bank account when he assumed his duties nor on the interest generated thereon since such sums were not received and disbursed by him. *In re Kraemer*, 1972, 40 A.D.2d 1053, 338 N.Y.S.2d 913, appeal denied 32 N.Y.2d 609, 342 N.Y.S.2d 1025, 295 N.E.2d 655.

Temporary receiver of property of corporation appointed in stockholder's derivative action took no title to realty of corporation and where receiver was not granted power to transfer realty and none had been transferred and, at time of order awarding commissions, no relief was sought which called for conversion or transfer of realty, receiver was entitled to commissions on rents received by him from realty, but his right to an allowance based on value of the realty should await determination until final accounting. *La Vin v. La Vin*, 1953, 281 App.Div. 888, 119 N.Y.S.2d 573, appeal

denied 281 App.Div. 984, 121 N.Y.S.2d 89.

As to the commissions it is sufficient to say that the award was based upon the moneys that actually passed through the receiver's hands, which were collected by him and were paid out by various orders of the court; the fact that portions of this amount were subsequently paid out to persons claiming an interest in the fund or in money in his hands in settlement of claims against him as receiver, or having claims for liens upon the property of the corporation, did not prevent the receiver from being entitled to commissions upon the amount he actually received and disbursed. *Matter of Little*, 1900, 47 App.Div. 22, 62 N.Y.S. 27, affirmed 1901, 165 N.Y. 643, 59 N.E. 1125.

Where a receiver pays off an incumbrance upon property which he sells free and clear from debt, he is entitled to a commission on the amount paid to free the property from such incumbrance as so much money received and disbursed; such a transaction is not within the principle of the cases holding that executors, trustees or receivers selling property subject to incumbrances upon it are not entitled to commissions upon the amount of the incumbrances, as in the latter class of cases the incumbrances themselves are not paid but the purchaser receives the property subject to that which is upon it. *Matter of Security Life Ins., etc., Co.*, 1883, 31 Hun 36.

6. Rates of commission

The rate on sums received and disbursed, prescribed by former General Corporation Law, § 192 [now this section] as commissions payable to receivers of a corporation, was not a mandatory rate for interim allowance but a permissible maximum rate. *La Vin v. La Vin*, 1953, 281 App.Div. 888, 119 N.Y.S.2d 573, appeal denied 281 App.Div. 984, 121 N.Y.S.2d 89.

7. Payment of commission—Persons liable

Reasonable fees of temporary receiver appointed for foreign corporations, which had allegedly been nationalized by foreign government, and which allegedly had assets in New York, should be paid by plaintiff, who brought action for ap-

pointment of receiver, and plaintiff should be entitled to reimbursement from any corporate assets coming into hands of permanent receiver who might be appointed. *Talmon v. Societatea Romana Pentru Industria De Bumbac*, 1954, 206 Misc. 449, 132 N.Y.S.2d 776.

8. — Time of

Under provision of former General Corporation Law, § 192 [now this section] for commissions on moneys received and disbursed by receivers, the common practice was to award one-half of proper commission percentage when moneys were received and one-half when they were disbursed. *La Vin v. La Vin*, 1953, 281 App.Div. 888, 119 N.Y.S.2d 573, appeal denied 281 App.Div. 984, 121 N.Y.S.2d 89.

9. Reduction of commission

Although receiver appointed under this article for administration of dissolution of corporation would have been entitled to \$23,704.46 as interim commission under this section governing receivers' commissions, taking into account all facts and circumstances, considering nature of services rendered, time expended over 14-month period and sums "received and disbursed," receiver was entitled to commission of \$15,000, inclusive of disbursements and travel expenses. *Matter of T.J. Ronan Paint Corp.*, 1984, 98 A.D.2d 413, 469 N.Y.S.2d 931.

A receiver whose allowance has been reduced on the ground of being excessive may, in a proper case, instead of being compelled to return the entire amount in excess of that to which he was entitled, be allowed a credit for money advanced by him to protect the corporate assets. *People v. Brooklyn Bank*, 1913, 157 App.Div. 171, 142 N.Y.S. 75.

The court may, in determining the question as to the amount of the receiver's commission, take into consideration the manner in which he has executed his trust and may be justified in allowing no commissions upon funds improvidently used by him. *Matter of Commonwealth Fire Ins. Co.*, 1884, 32 Hun 78.

10. Extra compensation

Where party accepted appointment as a receiver of a corporation, he became

an officer of the court in the control of the corporation, and as such was not allowed to continue a pre-existing arrangement for his compensation in excess of commissions allowed him by statute. *Salmon v. Schenectady Mason Supply Corp.*, 1951, 276 App.Div. 609, 102 N.Y.S.2d 91.

Where the amount of a receiver's compensation is fixed by statute, the court has no power to exceed the amount allowed therein under the guise of extra compensation. *In re Orient Mut. Ins. Co.*, 1892, 66 Hun 633, 21 N.Y.S. 237.

The law contemplated one commission which is the entire compensation provided for collecting. *Atty.-Gen. v. Continental Life Ins. Co.*, 1884, 32 Hun 223.

In one of the early cases it is decided that a receiver is not authorized to act as counsel in the business of the trust, so as to entitle him to extra counsel fees; the commission allowed by law being intended as full compensation for his personal services in the execution of his trust. *Matter of Niagara Bank*, 1836, 6 Paige 213.

11. Solvency of corporation

On application for dissolution of corporation, whether voluntary or involuntary, there is no distinction between solvent or insolvent corporation in terms of receiver's fee or commission. *Matter of T.J. Ronan Paint Corp.*, 1984, 98 A.D.2d 413, 469 N.Y.S.2d 931.

12. Successive receivers

In determining the compensation of a receiver it has been decided that he is entitled, in addition to his necessary ex-

penses, to such commission, not exceeding five per centum upon the sums received and disbursed by him, as the court allows, but he will not be allowed commissions on property received and delivered to his successor in office. *Moe v. Thomas McNally Co.*, 1910, 138 App.Div. 480, 123 N.Y.S. 71.

Where a receiver resigns, before his trust is fully executed, the court will not allow him any commissions for service which he voluntarily escapes and the burden of which his successor takes. *People v. Mutual Ben. Associates*, 1886, 39 Hun 49.

Where the receiver first appointed dies, his successor is not entitled to the full commission on funds collected by his predecessor, the second receiver's only duty in respect to such sums being merely to disburse them. *Atty.-Gen. v. Continental Life Ins. Co.*, 1884, 32 Hun 223.

13. Unauthorized receivers

If an order appointing ancillary receivers is unauthorized, the court cannot without defendant's consent direct that they be paid or reimbursed out of defendant's property. *Moe v. Thomas McNally Co.*, 1910, 138 App.Div. 480, 123 N.Y.S. 71.

The fact that an order appointing receivers has been vacated does not establish that they are not entitled to compensation as a matter of law, if the order was not vacated for lack of jurisdiction but merely because improvidently granted. *People v. Oriental Bank*, 1909, 129 App.Div. 865, 114 N.Y.S. 440.

§ 1218. Special provisions relating to actions or special proceedings against foreign corporations

(a) In any action or special proceeding brought against a foreign corporation under this article, the following provisions shall apply:

(1) Service of the summons in such action may be made personally within the state of New York, by delivery of the same to any officer or director of the corporation, or by publication pursuant to an order obtained as hereinafter provided.

(2) An order directing service by publication of the summons shall be made upon application of a plaintiff in any such action and

shall be founded upon a verified complaint, alleging that the defendant is a foreign corporation and has or may have or may be entitled to assets, credits, choses in action or other property, tangible or intangible within the state and that such corporation has been dissolved, nationalized or that its authority or existence has been terminated or cancelled in the jurisdiction of its incorporation, or that it has ceased to do business, and upon an affidavit reciting that personal service of the summons cannot be effected within the state with due diligence and that a temporary receiver of its property within the state of New York has been appointed pursuant to this article in such action and that a copy of the order appointing the receiver has been served personally by or on behalf of such receiver upon a person, firm or corporation holding property, tangible or intangible, of the said foreign corporation, or against whom a claim or demand in favor of such foreign corporation exists and that demand therefor has been made upon such person, firm or corporation by or on behalf of such receiver.

(3) The order directing service of the summons shall require the publication thereof in a newspaper published in the state of New York in the English language at least once a week for four successive weeks, and shall also require the mailing on or before the date of the first publication of a copy of the summons, complaint and order to the corporation at its last known principal or head office in the state or country of its incorporation.

(4) In any such action, the summons shall be served personally or an order directing service thereof by publication shall be obtained and the first publication thereof made within sixty days after the appointment of the temporary receiver, and if served by publication, the service shall be made complete by the continuance thereof.

(5) If served by publication, service of the summons shall be deemed complete on the date of the last publication. The action shall be deemed commenced upon the issuance of the summons. The order appointing the receiver and the papers upon which the same is granted shall be filed in the office of the clerk of the court where the action is triable within ten days after the order is made.

(6) In the event that the defendant defaults in answering, or if after a trial the court is satisfied that the defendant has ceased to do business by reason of any thing or matter whatsoever, or that it has been dissolved, nationalized, or its authority or existence has been otherwise terminated or cancelled, the court shall thereupon direct judgment, appointing a permanent receiver and directing the receiver to liquidate the assets, credits, choses in action and proper-

ble of understanding criminal charge lodged against him and of making his defense, court should be assisted by opinion of an independent, disinterested psychiatrist pursuant to former section 32. *People ex rel. Sweeting v. Johnston*, 1966, 26 A.D.2d 685, 272 N.Y.S.2d 437.

Where record did not provide adequate basis upon which to make determination as to relator's ability to understand the charge against him and to make his defense, Attorney General would be directed to submit order on notice to attorney for relator providing for appointment of psychiatrist to be selected by court, ordering that relator be examined by such psychiatrist, that hospital records and briefs of counsel be made available to him, and that he make a written report to court. *Id.*

Issuance of blanket order granting each client of petitioner the privileges afforded to indigents under this section governing petitions for appointment of psychiatrist, certified psychologist and physicians in certain proceedings would not be appropriate. *Application of Southern Tier Legal Services*, 1979, 100 Misc.2d 1068, 420 N.Y.S.2d 591.

Court was not required by former section 32 to appoint independent psychiatrist to examine Matteawan State Hospital inmate seeking habeas corpus relief. *People ex rel. Hernandez v. Johnston*, 1965, 47 Misc.2d 145, 262 N.Y.S.2d 49.

7. Transcripts

Payment for transcripts, in the types of proceedings enumerated in this section pertaining to assignment of counsel to indigent persons, can be made available pursuant to its provisions. *Application of Southern Tier Legal Services*, 1979, 100 Misc.2d 1068, 420 N.Y.S.2d 591.

Courts are not in appropriate position to determine whether transcript should be made available, pursuant to this section pertaining to assignment of counsel to indigent persons, until after a particular hearing or trial has been held. *Id.*

Award of "blanket" relief, in regard to making stenographic transcripts available pursuant to provisions of this section pertaining to assignment of counsel to indigent persons, would be inappropriate. *Id.*

§ 35-a. Statements to be filed by judges or justices fixing or approving fees, commissions, or other compensation for persons appointed by courts to perform services in actions and proceedings

1. (a) On the first business day of each week any judge or justice who has during the preceding week fixed or approved one or more fees or allowances of more than two hundred dollars for services performed by any person appointed by the court in any capacity, including but not limited to appraiser, special guardian, guardian ad litem, general guardian, referee, counsel, special referee, auctioneer, special examiner, conservator, committee of incompetent or receiver, shall file a statement with the office of court administration on a form to be prescribed by the state administrator. The statement shall show the name and address of the appointee, the county and the title of the court in

which the services of the appointee were performed, the court docket index or file number assigned to the action or proceeding, if any, the title of the action or proceeding, the nature of the action or proceeding, the name of the judge or justice who appointed the person, the person or interest which the appointee represented, whether or not the proceeding was contested, the fee fixed or approved by the judge or justice, the gross value of the subject matter of the proceeding, the number of hours spent by the appointee in performing the service, the nature of the services performed and such other information relating to the appointment as the state administrator shall require. The judge or justice shall certify that the fee, commission, allowance or other compensation fixed or approved is a reasonable award for the services rendered by the appointee, or is fixed by statute. If the fee, commission, allowance or other compensation for services performed pursuant to an appointment described in this section is either specified as to amount by statute or fixed by statute as a percentage of the value of the subject matter of the action or proceeding, the judge or justice shall specify the statutory fee, commission or allowance and shall specify the section of the statute authorizing the payment of the fee, commission, allowance or other compensation.

(b) Paragraph (a) shall not apply to any compensation awarded to appointees assigned to represent indigent persons pursuant to Article 18-B of the county law, counsel assigned pursuant to section thirty-five of the judiciary law, law guardians or counsel appointed pursuant to the family court act, or referees appointed pursuant to section 78.25 of the mental hygiene law.

(c) Any judge or justice who fixes or approves compensation for services performed by persons appointed as referees to examine accounts of incompetents pursuant to section 78.25 of the mental hygiene law shall file, annually, with the office of court administration a statement containing such information regarding such appointments as the state administrator shall require.

2. The office of court administration shall annually submit to the appellate division of the supreme court in each of the judicial departments of the state a report containing a summary of the information contained in the statements filed with it pursuant to this section by the judges and justices sitting in courts in that department during the preceding year. Each appellate

division of the supreme court shall keep and file such reports and shall have power to make such rules respecting the supervision of all such court appointees within its judicial department as it may deem necessary.

3. The statements and reports required by this section shall be matters of public record and available for public inspection. Each court may permit the information contained therein to be made available for publication at such times and in such manner as it may deem proper.

Added L.1967, c. 625; amended L.1974, c. 615, § 3; L.1975, c. 834, § 1; L.1978, c. 93, § 1.

Historical Note

1978 Amendment. Subd. 1, par. (a). L.1978, c. 93, § 1, eff. Apr. 25, 1978, in sentence beginning "On the first" substituted "two hundred dollars" for "one hundred dollars."

1975 Amendment. Catchline. L. 1975, c. 834, § 1, eff. Sept. 1, 1975, substituted "filed by judges or justices fixing or approving fees, commissions, or other compensation for persons" for "filed by persons".

Subd. 1. L.1975, c. 834, § 1, eff. Sept. 1, 1975, added subd. 1 and omitted former subd. 1 which related to the filing of statements by certain court appointed persons, now covered by par. (a).

Subd. 2. L.1975, c. 834, § 1, eff. Sept. 1, 1975, redesignated former subd. 3 as 2 and substituted "by the judges and justices sitting in courts in that department during the preceding year" for "by persons appointed by courts or judges or justices there-

of to perform services in actions and proceedings instituted in such judicial department in the year for which the report is made" and omitted former subd. 2, which related to the filing of a statement by certain court appointed persons regarding fees and allowances, now covered by Subd. 1.

Subd. 3. L.1975, c. 834, § 1, eff. Sept. 1, 1975, redesignated former subd. 4 as 3 and former subd. 3 as 2.

Subd. 4. L.1975, c. 834, § 1, eff. Sept. 1, 1975, redesignated former subd. 4 as 3.

1974 Amendment. Subds. 1 to 3. L.1974, c. 615, § 3, eff. May 30, 1974, in each subdivision, substituted "office of court administration" for "judicial conference" and "state administrator" for "judicial conference".

Effective Date. Section effective July 1, 1967 pursuant to L.1967, c. 625, § 2.

New York Codes, Rules and Regulations

Filing of statements pursuant to this section, see 22 NYCRR Part 26, set out in McKinney's Court Rules Pamphlet.

§ 36. Personal assistants to judges and justices

1. Notwithstanding any other provisions of law, each justice of the supreme court may appoint and at pleasure remove one law clerk and one secretary, subject to standards and adminis-

trative policies promulgated pursuant to section twenty-eight of article six of the constitution.

2. Should a judge or justice of the unified court system cease to hold office for any reason other than expiration of his term, his personal assistants shall continue in office until a successor is appointed or elected to fill such vacancy. Until such vacancy is filled, the chief administrator of the courts shall determine the functions to be performed by such personal assistants.

Added L.1978, c. 156, § 8.

Historical Note

Effective Date. Section effective May 19, 1978 pursuant to L.1978, c. 156, § 15.

§ 37. Salary plan for non-judicial employees

1. Salary schedules for nonjudicial officers and employees allocated to salary grades; promulgation; placement thereon. (a) The chief administrator of the courts shall promulgate salary schedules for state-paid positions in the unified court system, allocated to salary grades, in accordance with law.

(b) Except as provided in paragraph (c) of this subdivision, or as otherwise provided by law, where a nonjudicial officer or employee of the unified court system, in a position allocated to a salary grade and paid pursuant to salary schedule (for purposes of this paragraph and paragraph (c), "former salary schedule"), is placed in such grade on another salary schedule (for purposes of this paragraph and paragraph (c) "new salary schedule"), he shall be paid a basic annual salary as follows:

(1) If his basic annual salary under the former salary schedule is identical with the first, second, third, fourth or fifth year rate of compensation of the grade of his position, or a rate of compensation equal to one or two additional increments above the maximum salary of such grade, that basic annual salary shall be increased to the corresponding rate of compensation in such grade as established by the new salary schedule;

(2) If his basic annual salary under the former salary schedule is less than the rate of compensation equal to two additional increments above the maximum salary of the grade of his position and is not identical with the first, second, third, fourth or fifth year rate of compensation of such grade or the rate of com-

§ 25.41

RULES OF CHIEF JUDGE

statement on the basis of the appeal, together with any supporting papers. The Chief Administrator shall review these statements, make any required adjustments, and notify the employee of his or her action.

(b) If the appeal has not been resolved to the satisfaction of the employee, the employee or the employee's representative may then appeal to the Classification Review Board within 60 days of receipt of notice of the action of the Chief Administrator of the Courts. This review board shall consist of three members, one appointed by the President of the State Civil Service Commission, one appointed by the State Comptroller, and a chairman, to be appointed by the Chairman of the Public Employment Relations Board. The Classification Review Board shall determine each appeal. The Classification Review Board shall consider all material submitted by the employee or the employee's representative, and shall send a copy of this material to the Chief Administrator, who shall be given a reasonable opportunity to respond. The Classification Review Board may, in its discretion, hold a hearing with relation to any aspect of any appeal.

(c) Any employee organization may bring an appeal pursuant to this procedure on behalf of any member or group of members.

(d) The Classification Review Board shall have jurisdiction to review appeals only from classifications and allocations determined pursuant to the classification plan established as set forth in subdivision (a) of this section.

(e) A determination of the Classification Review Board shall constitute an administrative order; subject, however, to review in a proceeding brought by either the employee, an employee organization, or the Chief Administrator pursuant to article 78 of the CPLR.

(f) This section shall apply only to appeals pending before the Classification Review Board as of the effective date of this subdivision [January 1, 1987].

§§ 25.42 to 25.45. [Renumbered 25.38 to 25.41.]

PART 26—FILING OF STATEMENTS PURSUANT TO JUDICIARY LAW § 35a

§ 26.1. General

(a) This section applies to any appointments made by a court after September 1, 1975, to positions

including but not limited to appraiser, special guardian, guardian *ad litem*, general guardian, referee, counsel, special referee, special examiner, conservator, committee of incompetent or receiver, and in connection with which fees of more than \$200 for the services performed have been awarded.

(b) This section shall not apply to attorneys appointed by a court to represent indigent persons pursuant to article 18-B of the County Law, section 35 of the Judiciary Law, or section 407 of the Surrogate's Court Procedure Act, or to law guardians appointed pursuant to the Family Court Act, or to appointments made prior to September 1, 1975; but in the case of referees appointed pursuant to section 78.25 of the Mental Hygiene Law, a statement shall be filed with the administrative office for the courts, annually, by the judge or justice who approved compensation for those services.

(c) Appointments made before September 1, 1975 shall continue to be governed by the rules of former Part 26 of these rules.

County Law, see McKinney's Book 11.

Judiciary Law, see McKinney's Book 29.

Family Court Act, see McKinney's Book 29A, Part 1.

Mental Hygiene Law, see McKinney's Book 34A.

SCPA, see McKinney's Book 58A.

FORMS

Motion by defendant in criminal action requesting assignment of counsel, see West's McKinney's Forms, CPL, § 210.15, Forms 1 to 4.

§ 26.2. Filing of Statements by Judges

Any judge or justice who has approved compensation of more than \$200 to a court appointee shall file with the administrative office for the courts, on the first business day of the week following approval, a statement of compensation required by this section.

§ 26.3. Judge's Statement of Approval of Compensation; Contents

The statement of approval of compensation shall be in substantially the following form, and shall contain the following specific instructions for its completion on the reverse side thereof.

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RULES OF CHIEF JUDGE

INSTRUCTIONS FOR COMPLETING STATEMENT OF
APPROVAL OF COMPENSATION

(This form should be completed only if the fee is more than \$200.)

(OCA-830)—Revised Oct. 1979

- Item 1 Enter the specific title of the court, e.g., Supreme Court, Surrogate's Court, etc., and enter the name of the county in which the appointing court is located.
- Item 2 Name and Address:
Enter name and mailing address of Appointee.
Social Security Number:
Enter social security number of Appointee.
Occupation:
Check appropriate box. If "other" please specify, e.g., physician, accountant, etc.
Firm Name:
Appointee's firm name must be entered here regardless of whether a member, partner, associate, counsel or employee and regardless of whether or not any fee or allowance received is to be retained or is to go to the firm.
Federal Employer No.:
Enter firm's Internal Revenue Service Federal Employer's Identification Number.
Where no number is available, enter "None".
Phone No.:
Enter appointee's phone number.
- Item 3 Enter date of appointment—month, day and year.
- Item 4 Enter either the docket, file, index number or any other identification assigned by the court to this matter. If there is not number assigned, enter "None".
- Item 5 Enter the title of the action or proceeding in which appointed, e.g., Smith v. Jones, Matter of Adams, etc. Please limit the title to 25 spaces. If it is a multiparty action, name only the first party, e.g., Smith et al v. Jones et al.
- Complete either item 6 or 6A, as appropriate.
- Item 6 Enter the first initial and full last name of the judge or justice who made the appointment. If made by the judge of a multi-judge court, enter "the Court".
- Item 6A Enter the first initial and full last name of the judge or justice who made the designation.
- Item 7 Enter the name of the person or interest represented. If there are multiple parties, enter the specific name of the client. If Appointee represents all plaintiffs or defendants in a multi-party case, state "all plaintiffs." If he represents the court, state "the Court." Please limit entry to 15 spaces.
- Item 8 Check the appropriate box for the nature of appointment. If it is not listed, check "z" and specify the capacity in which appointed, e.g., "psychiatrist", "medical expert", "fingerprint expert", etc.
- Item 9 Enter in appropriate box whether or not the proceeding was contested.
- Item 10 Enter the gross dollar value of the action, proceeding or estate before the court.
- Item 11 Estimate the time spent by the appointee on this case, such time being the basis for the fee entered in item 12. Do not include waiting time in the number of hours shown for the time actually spent in court.
- Item 12 Enter the amount of the net fee or allowance excluding disbursements, as finally approved.
- Item 13 The Judge or Justice approving the fee must enter the date fee was approved and sign the statement. If the compensation is specified or fixed by statute, indicate the section of the statute authorizing payment.

COURTS should address ALL STATEMENTS to:
Office of Court Administration
Post Office Box 3171
Church Street Station
New York, N.Y. 10008

§ 26.4. Fixing Amount of Compensation

The judge or justice approving compensation shall certify that the compensation approved is fixed by statute or, if not, is a reasonable award for the

services rendered by the appointee. If the fee for services performed is fixed by statute, the judge or justice shall specify the statutory fee and the sec-

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§ 26.5. Request for Information Regarding Filed Statements

A request for information regarding a filed statement must be made to the Office of Court Administration, 270 Broadway, Room 1106, New York, N.Y., 10007, in writing, specifying the information desired. The social security number of the appointee should be included in the request if available.

PART 27—COLLECTIVE NEGOTIATIONS WITHIN THE UNIFIED COURT SYSTEM

§§ 27.1 to 27.6. [Repealed]

PART 28—ALTERNATIVE METHOD OF DISPUTE RESOLUTION BY ARBITRATION

§ 28.1. Definitions

(a) The words "panel of arbitrators" or "panel" in this Part shall mean: (1) a group of three attorneys chosen to serve as arbitrators by the arbitration commissioner pursuant to section 28.4 of this Part; or (2) a single attorney assigned by the arbitration commissioner, as the Chief Administrator of the Courts, (hereinafter denominated the Chief Administrator), shall designate from time to time in a particular county or court; or (3) a single arbitrator in the event the parties, by stipulation, provide for arbitration before a single arbitrator in those cases where a panel of three arbitrators otherwise is required.

(b) The term "chairperson" shall mean the attorney so designated by the arbitration commissioner pursuant to section 28.4 of this Part, or the single arbitrator assigned by the arbitration commissioner.

§ 28.2. Mandatory Submission of Actions to Arbitration

(a) The Chief Administrator may establish in any trial court in any county the arbitration program authorized by this Part.

(b) In each county where an arbitration program is established by order of the Chief Administrator, all civil actions for a sum of money only, except those commenced in small claims parts and not subsequently transferred to a regular part of court, that are noticed for trial or commenced in the Supreme Court, County Court, the Civil Court of the City of New York, a District Court or a City Court, on or after the effective date of the order where recovery sought for each cause of action is \$6,000 or less, or such other sum as may be authorized by

law, exclusive of costs and interest, shall be heard and decided by a panel of arbitrators. The Chief Administrator may also, at any time, upon the establishment of the program in any particular court or county or thereafter, provide for the submission to arbitration of actions seeking recovery of such sums, that are pending for trial in those courts on the effective date of the order.

(c) In addition, upon stipulation filed with the clerk of the court where the action was commenced or, if the case was transferred, the clerk of the court to which it has been transferred, any civil action for a sum of money only, pending or thereafter commenced in such courts, including actions removed to a court of limited jurisdiction from the Supreme Court pursuant to CPLR 325(d), regardless of the amount in controversy, shall be arbitrated, and in any such action the arbitration award shall not be limited to \$6,000 exclusive of costs and interest, or to the monetary jurisdiction of the court. Any stipulation pursuant to this section may set forth agreed facts, defenses waived or similar terms, and to that extent shall replace the pleadings.

(d) In any action subject to arbitration under these rules or submitted to arbitration by stipulation, the arbitration panel shall have jurisdiction of any counter-claim or crossclaim for a sum of money only that has been interposed, without regard to amount.

(e) All actions subject to arbitration shall be placed on a separate calendar known as the arbitration calendar, in the order of filing of the note of issue, notice of trial or stipulation of submission, except that where a defendant is in default, the plaintiff may seek a default judgment pursuant to the provisions of CPLR 3215.

(f) The appropriate administrative judge, with the approval of the Deputy Chief Administrator, may direct a pretrial calendar hearing by the court of actions pending on the arbitration calendar. If an action is not settled or dismissed, or judgment by default is not directed upon the hearing, it shall be processed thereafter in accordance with the provisions of this Part.

CPLR, see McKinney's Book 7B.

§ 28.3. Arbitration Commissioner

(a) The Chief Administrator shall designate, in each county where arbitration is established pursuant to this Part, an arbitration commissioner. The compensation, if any, payable to a commissioner, other than a full time public official or employee who shall receive no compensation as such commissioner, shall be determined by the Chief Administrator within the appropriation made available for that purpose.

§ 36.2

RULES OF CHIEF JUDGE

(b) The lists maintained by the Chief Administrator shall contain such information as will enable the appointing judge to be apprised of the background of the applicants set forth therein. The lists may be maintained by court, county, judicial district, judicial department or combination thereof, and may be differentiated by type of appointment and area of special expertise.

§ 36.3. Reporting of Appointments

(a) Every person and institution receiving an appointment pursuant to this section shall file a notice of the appointment with the Chief Administrator of the Courts at a time and in a manner to be prescribed by the Chief Administrator. Such notice shall be a public record. The Chief Administrator shall arrange for the periodic publication of the names of all persons and institutions appointed by each appointing judge in appropriate law journals and periodicals.

(b) No later than March 31 of each year, the Chief Administrator shall report in writing to the Chief Judge on the operation of the procedures set forth in this Part, including recommendations for modification. A copy of each report shall be transmitted to the members of the Court of Appeals and the Administrative Board.

§ 36.4. Compensation

(a) Fees to appointees pursuant to this rule shall not exceed the fair value of the services rendered.

(b) Each award of fees of \$2,500 or more to appointees pursuant to this section shall be accompanied by an explanation, in writing, of the reasons therefor by the judge making the award.

§ 36.5. Applicability

This rule shall not apply to any appointment made before the effective date (April 1, 1986) of the rule.

ADMINISTRATIVE DELEGATIONS OF THE CHIEF JUDGE

PART 80—ADMINISTRATIVE DELEGATION NUMBER 1

§ 80.0. Preamble

Pursuant to article VI, section 28(b) of the State Constitution, the Chief Administrator of the Courts is delegated the following powers and duties.

Constitution, see McKinney's Book 2.

§ 80.1. Chief Administrator of the Courts; General Powers and Duties

(a) The Chief Administrator shall supervise on behalf of the Chief Judge the administration and operation of the unified court system, except as otherwise provided in section 80.3 of this Part with respect to the Appellate Divisions and Appellate Terms of the Supreme Court, and section 80.4 with respect to the Court of Appeals.

(b) In the exercise of this delegated responsibility and in accordance with the standards and administrative policies established, approved and promulgated pursuant to article VI, section 28(c) of the Constitution, the Chief Administrator shall:

(1) prepare the itemized estimates of the annual financial needs of the unified court system. These itemized estimates, approved by the Court of Appeals and certified by the Chief Judge, shall be transmitted by the Chief Administrator to the Governor and to the chairmen of the Senate Finance and Judiciary Committees and the Assembly Ways and Means and Judiciary Committees not later than the first day of December;

(2) establish the regular hours, terms and parts of court, and assign judges and justices to them, in consultation and agreement with the Presiding Justices of the appropriate Appellate Divisions on behalf of their respective courts; provided that if the Chief Administrator and the Presiding Justices are unable to agree, the matter shall be determined by the Chief Judge. Consultation and agreement shall not be required for temporary assignments, nor for the establishment of temporary hours, terms and parts of court;

(3) appoint and remove, upon nomination or recommendation of the appropriate administrative judge, supervising judge or judge of the court in which the position is to be filled or the employee works, or other administrator, all nonjudicial officers and employees, except the county clerks, commissioners of jurors, nonjudicial officers and employees of the town and village courts, and personal assistants who serve as law clerks (law secretaries) and secretaries to judges and justices;

(4) designate deputies and administrative judges in accordance with section 80.2 of this Part. The Chief Administrator may delegate to any deputy, administrative judge, assistant or court any administrative power or function delegated to the Chief Administrator;

(5) enforce and supervise the execution of the standards and administrative policies established, approved and promulgated pursuant to article VI, section 28(c) of the Constitution;

(6) adopt administrative rules for the efficient and orderly transaction of business in the trial

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§ 202.50

UNIFORM RULES

OF FACT AND CONCLUSIONS OF LAW" and "JUDGMENT", respectively.

(b) **Approved forms.** The paragraphs contained in Appendix "A-2" of this Part shall be used in the preparation of "FINDINGS OF FACT AND CONCLUSIONS OF LAW", "JUDGMENT", or "REFEREE'S REPORT OF FINDINGS OF FACT AND CONCLUSIONS OF LAW".

§ 202.51. Proof required in dissolution proceedings

In all actions in which the accounts of a receiver appointed in an action for the dissolution of a corporation are presented for settlement or to be passed upon by the court, a notice or a copy of an advertisement requiring the creditors to present their claims to a referee must be mailed, with the postage thereon prepaid, to each creditor whose name appears on the books of the corporation, at least 20 days before the date specified in such notice or advertisement. Proof of such mailing shall be required on the application for a final decree passing the accounts of the receiver unless proof is furnished that personal service of such notice or copy of advertisement has been made upon the creditors.

FORMS

Notice to creditors after dissolution, see West's McKinney's Forms, BCL, § 11:14.

§ 202.52. Deposit of funds by receivers and assignees

(a) Every receiver or assignee who, as such, receives any funds shall promptly deposit them in a checking account or in an interest-bearing account, as determined by the court, in a bank or trust company designated by the court. Such account shall be in his or her name as receiver or assignee and shall show the name of the case. The depository shall furnish monthly statements to the receiver or assignee and to the attorney for the receiver or the assignee.

(b) No funds shall be withdrawn from a receiver's or assignee's account, and no check thereon shall be honored, unless directed by court order or the check is countersigned by the receiver's or assignee's surety.

(c) The order appointing a receiver or assignee shall incorporate subdivisions (a) and (b) of this section.

(d) All checks by a receiver or assignee for the withdrawal of moneys shall be numbered consecutively. On the stub of each check shall be noted the number, the date, the payee's name and the purpose for which the check is drawn. Checkbooks, stubs, cancelled checks and bank statements of such bank accounts shall be maintained at the office of the

receiver or assignee or his or her attorney and shall be available for inspection by creditors or parties during business hours.

(e) **Receivers shall file with the court an accounting at least once each year.** An application by a receiver for final settlement of his or her account or by an assignee for leave to sell assets shall include a county clerk's certificate stating the date that the bond of the applicant was filed, that it is still on file and that no order has been entered cancelling the bond or discharging the surety thereon.

FORMS

Order appointing temporary receiver, see West's McKinney's Forms, BCL, § 12:15.

§ 202.53. Trust accountings; procedure

(a) Applications by trustees for interlocutory or final judgments or final orders in trust accountings or to terminate trusts shall be by notice of petition or order to show cause after the account has been filed in the county clerk's office.

(b) In all actions involving an accounting of a testamentary trustee or a trustee under a deed, notice must be given to the State Tax Commission before the accounts of such trustees may be approved.

(c) Where all parties file a written consent to the entry of a judgment or order, it may be presented at a motion part for consideration by the court.

§ 202.54. [Reserved]

§ 202.55. Procedure for perfection of civil appeals to the county court

(a) Within 20 days after the papers described in section 1704 of the Uniform Justice Court Act or section 1704 of the Uniform City Court Act have been filed with the county court, appellants shall notice the appeal for the next term or special term of county court by filing with the clerk of the county court, not less than 14 days prior to the date for which the appeal has been noticed, a notice of argument and a brief or statement of contentions with proof of service of a copy of each upon respondent. Respondent's papers shall be filed with the judge of the county court within 12 days after service of appellant's brief or statement of contentions, with proof of service of a copy upon appellant.

(b) If appellant does not comply herewith, the county court may, upon respondent's motion or upon its own motion, dismiss the appeal.

(c) Upon motion, the county court judge hearing the appeal may for good cause shown extend the time to a subsequent term or special term, in which case the appellant must notice the appeal for such

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him the amount of the debt or claim of the plaintiff; in such a case if any reason exists to question the judgment against the corporation, it is the duty of the receiver to apply to the court rendering it, to reopen the judgment and to be permitted to defend. *Pringle v. Woolworth*, 1882, 90 N.Y. 502.

84. Review

A receiver who has been appointed in an action for the dissolution of a corporation may take an appeal either in his own name or in that of the corporation, and an appeal taken in the name of the

corporation will be deemed to be that of the receiver in the name of the corporation. *People v. Troy Steel, etc., Co.*, 1894, 82 Hun 303, 31 N.Y.S. 337.

Where creditors, and not the receiver, applied for summary relief and this was granted notwithstanding the opposition of the receiver and the interests which he represented, the receiver was a party aggrieved within the meaning of section 1294 of the Code of Civil Procedure, now Civil Practice Act, § 557 [CPLR § 551] and had the right of appeal. *People v. St. Nicholas Bank*, 1894, 77 Hun 159, 28 N.Y.S. 407.

§ 1207. Duties of receiver upon appointment

(a) Upon appointment and qualification, a receiver shall have the following duties:

(1) To give immediate notice of his appointment by publication once a week for two successive weeks in two newspapers of general circulation in the county where the office of the corporation is located or, in the case of a foreign corporation against which an action has been brought under subparagraph (a)(4) of section 1202 (Appointment of receiver of property of a domestic or foreign corporation), in a newspaper of general circulation as directed by the court, requiring:

(A) All persons indebted to the corporation to render an account of all debts owing by them to the corporation and to pay the same to the receiver at a specified place and by a specified day.

(B) All persons having in their possession any property of the corporation to deliver the same to the receiver at the specified place and by the specified day.

(C) All creditors and claimants, including any with unliquidated or contingent claims and any with whom the corporation has unfulfilled contracts, to present their claims to the receiver in writing and in detail at a specified place and by a specified day, which shall not be less than six months after the first publication of such notice. Whenever a receiver is appointed in dissolution proceedings under article 10 (Non-judicial dissolution) or article 11 (Judicial dissolution), section 1007 (Notice to creditors; filing or barring claims) shall apply and shall control the giving of notice to creditors and claimants and the filing and barring of claims.

(2) To call a general meeting of the creditors of the corporation within four months from the date of his appointment by a notice to be published as directed in subparagraph (a)(1), setting forth the

time and place of such meeting, which time shall be not more than two months, nor less than one month after the first publication of such notice. At such meeting, or at an adjournment thereof, the receiver shall present a statement of all accounts and demands for and against the corporation, its subsisting contracts, and the money and other assets in his hands.

(3) To keep true books of account of all moneys received and expended by him as receiver, which books shall be open for inspection at reasonable times by creditors or other persons interested therein. On or before the first day of February in each year, for the preceding calendar year, and at such other times as the court shall direct, the receiver shall file with the clerk of the court by which he was appointed a verified statement showing the assets received, the disposition thereof, the money on hand, all payments made, specifying the persons to whom paid and the purpose of the payments, the amount necessary to be retained to meet necessary expenses and claims against the receiver, and the distributive share in the remainder of each person interested therein. A copy of such statement shall be served by the receiver upon the attorney-general within five days after the filing thereof.

(L.1961, c. 855; amended L.1962, c. 317, § 13; L.1962, c. 834, § 87; L.1963, c. 748, § 30.)

Historical Note

1963 Amendment. L. 1963, c. 748, § 30, eff. Sept. 1, 1963, redesignated former subpar. (1), cl. (D) as subpar. (2), and former subpar. (2) as (3).

Derivation. Gen.Corp.Law of 1929, §§ 171, 172, 174, 177, 178; repealed by L.1973, c. 451, § 2.

For history of said section 171, see derivation note under section 1206.

Said section 172, formerly sections 107 and 247; renumbered 172, L.1929, c. 650. Former section 107 derived from R.S., pt. 3, c. 8, tit. 4, art. 2, § 42, amended L.1858, c. 348, § 1. Former section 247 derived from R.S., pt. 2, c. 5, tit. 1, art. 8, § 26.

Said section 174, formerly 250; renumbered 174, L.1929, c. 650. Section

250 derived from R.S., pt. 2, c. 5, tit. 1, art. 8, § 8; R.S., pt. 3, c. 8, tit. 4, art. 3, § 70.

Said section 177, formerly 253; renumbered 177, L.1929, c. 650. Section 253 derived from R.S., pt. 3, c. 8, tit. 4, art. 3, § 74; R.S., pt. 2, c. 5, tit. 1, art. 8, § 27.

Said section 178, formerly 254; renumbered 178, L.1929, c. 650. Section 254 derived from R.S., pt. 2, c. 5, tit. 1, art. 8, § 28; R.S. pt. 3, c. 8, tit. 4, art. 8, § 74.

CPA § 977-b(6). For history of said section, see derivation note under section 1202.

Legislative Studies and Reports

1. Source: McKinney General Corporation Law §§ 171, 172, 174, 177 and 178; C.P.A. § 977-b(6).

2. Changes: Consolidated and revised.

Comment: This section merges present statutory material relating to

what a receiver must do upon appointment in order to allow for the varying interests of creditors, claimants, shareholders and the state.

The requirement for publication of notice of the receiver's appointment has been changed to publication in two newspapers for two weeks, as compared with one newspaper for three weeks under

General Corporation Law § 174 and two newspapers for six weeks under C.P.A. § 977-b(6).

It is provided in paragraph (a)(1)(C) that if a receiver is appointed in dissolution proceedings § 1007 shall apply and be controlling as to notice to creditors and the filing and barring of claims.

Cross References

Comparable provisions, see Not-For-Profit Corporation Law § 1207.

Notice of intention to file final account, see section 1216.

Penalty for concealing property from receiver after day specified in notice, see section 1208.

West's McKinney's Forms

Notice by receiver of—

Claims, see BCL Forms § 12:21.

General meeting of creditors, see BCL Forms § 12:22.

Library References

Corporations ⅈ511, 560(1 to 6), 622 (1) et seq., 671.

C.J.S. Corporations §§ 1357, 1505, 1506, 1517, 1524, 1753, 1755, 1928, 1929.

Notes of Decisions

Accounting by receiver 3

Notice of appointment 1

Notice of meeting 2

1. Notice of appointment

Publication of notice of appointment of a receiver for New York assets of a Cuban corporation in a foreign language newspaper was in conformity with former statutory, CPA § 977-b, requirements [now contained in this section], where the summons so published was itself printed in the English language, even though the newspaper was a Spanish language newspaper. *Hershbaum v. Compania Petrolera Trans-Cuba, S.A.*, 1961, 215 N.Y.S.2d 898.

2. Notice of meeting

The rights which the statutes secure to creditors in the case of a statutory final receiver of an insolvent corporation have been declared to be such only as pertain to the property which comes to the receiver to be administered and dis-

tributed to creditors by him, and they are not entitled to notice or a hearing except as to claims upon, and their rights in, such property. *Herring v. New York, etc., R. Co.*, 1887, 105 N.Y. 340, 12 N.E. 763.

3. Accounting by receiver

Interim account of receiver appointed under this article for administration of dissolution of corporation was incomplete and deficient in that balance sheet by accounting firm which supported intermediate account did not indicate that it was prepared in conformity with usual and customary accounting procedures, and transmittal letter from accountants stated that they relied upon representations of management and did not audit or review financial statements and therefore expressed no opinion thereon. *Matter of T.J. Ronan Paint Corp.*, 1984, 98 A.D.2d 413, 469 N.Y.S.2d 931.

A receiver appointed in proceedings to sequester the property of a corporation after the return of execution

against it unsatisfied will not be required to file an account where it appears that no assets of the corporation

have come into his hands. *Lyons v. Atlanta Hill Gold Min. & Mill Co.*, 1891, 60 Hun. 578, 14 N.Y.S. 533.

§ 1208. Penalty for concealing property from receiver

Any persons having possession of property belonging to the corporation, who shall wrongfully withhold such property from the receiver after the day specified in the notice given under section 1207 (Duties of receiver upon appointment), shall forfeit to the receiver double the value of such property, and the same may be recovered in an action by the receiver.

(L.1961, c. 855.)

Historical Note

Derivation. Gen.Corp.Law of 1929, § 176, repealed by L.1973, c. 451, § 2. Section 176 was formerly 252, renumbered 176, L.1929, c. 650. Section 252 derived from R.S., pt. 2, c. 5, tit. 1, art. 8, § 11.

Legislative Studies and Reports

1. Source: McKinney General Corporation Law § 176.

2. Changes: Revised.

Comment: This section provides a penalty of double the value of property

withheld wrongfully from a receiver. It does not apply to the simple failure to pay a debt as provided in General Corporation Law § 176.

Cross References

Comparable provisions, see Not-For-Profit Corporation Law § 1208.

Library References

Corporations ⅈ560(4), 561(1).
Receivers ⅈ74.

C.J.S. Corporations §§ 1506, 1507.
C.J.S. Receivers § 119 et seq.

§ 1209. Recovery of assets

(a) Whenever a receiver, by verified petition to the supreme court at a special term held in the judicial district in which he was appointed shall show that he has good reason to believe that any person has in his possession or under his control, or has wrongfully concealed, withheld or disposed of, any property of the corporation, or that any person can testify concerning such facts, the court, with or without notice, shall make an order requiring such person to appear before the court or a referee, at a time and place designated, and submit to an examination concerning such facts. In such order, or at any time thereafter, in its discretion, the court may enjoin and restrain such person from disposing of any property of the corporation in his possession or under his control.

Comment: The changes effected in the General Corporation Law by this section have been inserted to promote simplicity. There is no change in content except that unclaimed assets are to be paid to the state comptroller as aban-

doned property, rather than paid into court as provided in General Corporation Law § 186, and the word distribution has been substituted for "dividend" as used in General Corporation Law §§ 184, 185 and 186.

Cross References

Comparable provisions, see Not-For-Profit Corporation Law § 1212.

United States Code Annotated

Corporate liquidation, see section 331 et seq. of Title 26, Internal Revenue Code.

Library References

Corporations 511, 568, 629, 687.
C.J.S. Corporations §§ 230, 1357, 1397,
1574, 1767, 1892.

Notes of Decisions

Abandoned property 2
Shareholders' right to surplus 1

1. Shareholders' right to surplus

There was a clear and simple recognition in former General Corporation Law, § 185 [now this section] of the principle that every stockholder has a quasi lien upon, or an interest in, all the assets of the corporation, for the value of his distributive share of such assets, after the payment of the corporate indebtedness; and he is entitled to have a sale of assets for cash or its equivalent and cannot be compelled to submit to an exchange of his lien on the assets for a lien upon, or interest in, other securities. *People v. Anglo-American Savings, etc., Ass'n*, 1901, 60 App.Div. 389, 60 N.Y.S. 1054. See, also, *Smith v. Westchester Bronxville Realty Co.*, 1912, 78 Misc. 75, 137 N.Y.S. 690.

Upon the dissolution of a joint stock corporation the interests of the several stockholders are reduced to mere equitable rights to their several distributive shares of the funds of the corpora-

tion, upon principles of justice and equity among all the stockholders, and that in making distribution each stockholder is to be charged with the debts due from him to the corporation, so as to equalize the distributive shares of all the stockholders in the fund after payment of all debts due by them respectively to the corporation. *James v. Woodruff*, 1844, 10 Paige 541, affirmed 2 Denio 574.

2. Abandoned property

Where Delaware court confirmed recommendation of receiver, appointed by it for Delaware corporation in dissolution proceeding, that he should not prosecute certain claims against majority stockholder, failure of Delaware receiver to prosecute claims did not amount to "abandonment" of claims, so as to make them "derelict property" within New York, or give a permanent receiver of New York assets of the corporation, appointed pursuant to former CPA § 977-b, any title to the claims. *Hirson v. United Stores Corporation*, 1942, 263 App.Div. 646, 34 N.Y.S.2d 122, affirmed 289 N.Y. 564, 43 N.E.2d 712.

§ 1213. Omission or default of receiver

Upon notice to the attorney-general and upon such notice to creditors or others interested as the court shall direct, the court

may, in the furtherance of justice, relieve a receiver from any omission or default, on such conditions as may be imposed, and, on compliance therewith, confirm his action.

(L.1961, c. 855.)

Historical Note

Derivation. Gen.Corp.Law of 1929, § 173, repealed by L.1973, c. 451, § 2; formerly 194, renumbered 173, L.1929, c. 650. Section 194 derived from CCP, § 2429, amended L.1895, c. 175; L.1899, c. 599; originally revised from R.S., pt. 3, c. 8, tit. 4, §§ 65, 66.

Legislative Studies and Reports

1. Source: McKinney General Corporation Law § 173.

2. Changes: No substantial change.

Comment: Except for the correction of an apparent typographical error in General Corporation Law § 173, from

which this section is derived, no change or modification has been made. The General Corporation Law provision commenced: "Upon notice of the attorney-general ...". This has been changed to "Upon notice to the attorney-general ...".

Cross References

Comparable provisions, see Not-For-Profit Corporation Law § 1213.

Library References

Corporations 511, 560(1) et seq., 622(1) et seq., 687. C.J.S. Corporations §§ 1357, 1505, 1753, 1755, 1892.

§ 1214. Application by attorney-general for removal of receiver and to close receivership

(a) Whenever he deems it to be to the advantage of the shareholders, creditors or other persons interested in the assets of any corporation for which a receiver has been appointed, the attorney-general may move:

- (1) For an order removing the receiver and appointing another in his stead;
- (2) To compel the receiver to account;
- (3) For such other and additional orders as may facilitate the closing of the receivership.

(L.1961, c. 855.)

Historical Note

Derivation. Gen.Corp.Law of 1929, § 156, repealed by L.1973, c. 451, § 2; formerly 311, renumbered 156, L.1929, c. 650. Section 156 derived from L.1883, c. 378, § 7.

Legislative Studies and Reports

1. Source: McKinney General Corporation Law § 156.
 2. Changes: Reworded.
- Comment: General Corporation Law § 156 limited the authority of the attorney-general to receivers of an insolvent corporation. This has been changed in the belief that authority to act as provided in this section should exist in all receiverships under the article.

Cross References

Comparable provisions, see Not-For-Profit Corporation Law § 1214.
Removal of receiver, see CPLR 6405.

Library References

Corporations § 511, 558, 621(8), 622(5), 671. C.J.S. Corporations §§ 1357, 1487 et seq., 1752, 1757, 1928, 1929.

§ 1215. Resignation by receiver; filling any vacancy

(a) A receiver may petition the court appointing him for an order to show cause why he should not be permitted to resign.

(b) The petition shall be accompanied by a verified account of all the assets of the corporation received by him, of all payments or other disposition thereof made by him, of the remaining assets of the corporation in respect to which he was appointed receiver and the situation of the same, and of all his transactions as receiver. Thereupon, the court shall grant an order directing notice to be given to the sureties on his official bond and to all persons interested in the property of the corporation to show cause, at a time and place specified, why the receiver should not be permitted to resign. Such notice shall be published once in each week for six successive weeks in one or more newspapers as the court shall direct. If it shall appear that the proceedings of the receiver in the discharge of his trust have been fair and honest and that there is no good cause to the contrary, the court shall make an order permitting such receiver to resign. Thereupon he shall be discharged and his powers as receiver shall cease, but he shall remain subject to any liability incurred prior to the making of such order. The court, in its discretion, may require the expense of such proceeding to be paid by the receiver presenting the petition.

(c) Any vacancy created by resignation, removal, death or otherwise, may be filled by the court, and the property of the receivership shall be delivered to the remaining receivers or, if there are none, to the successor appointed by the court. The court may summarily enforce delivery by order in the action or special proceeding in which the receiver was appointed.

(L.1961, c. 855.)

Historical Note

Derivation. Gen.Corp.Law of 1929, §§ 157, 158, 167; repealed by L.1973, c. 451, § 2.

For history of said section 167, see derivation note under section 1206.

Said sections 157, 158, formerly 274 and 275; renumbered 157 and 158, re-

spectively, L.1929, c. 650. Sections 274 and 275 derived from R.S., pt. 3, c. 8, tit. 4, art. 3, § 85 and R.S., pt. 2, c. 5, tit. 1, art. 8, §§ 49, 51-56, 60, 62, respectively.

Legislative Studies and Reports

1. Source: McKinney General Corporation Law §§ 157, 158 and 167.
 2. Changes: Combined and reworded.
- Comment: Paragraphs (a) and (b) are derived from General Corporation Law § 158 and paragraph (c) from Gen. Corp.L. § 157 and the final two sentences of General Corporation Law § 167. The remaining portion of General Corporation Law § 167 has been transferred to § 1206.

Cross References

Comparable provisions, see Not-For-Profit Corporation Law § 1215.

Library References

Corporations § 511, 558, 621(8), 671.
C.J.S. Corporations §§ 1357, 1487 et seq., 1752, 1928, 1929.

Notes of Decisions

1. Permission to resign

Where it appears that no property of the corporation ever came into the hands of the receiver and the order appointing him has been vacated and set aside, it

has been held that he is entitled to his discharge. *People v. Bushwick Chemical Co.*, 1892, 63 Hun 633, 18 N.Y.S. 542, 45 N.Y.St.R. 329, affirmed 133 N.Y. 694, 31 N.E. 627.

§ 1216. Final accounting; notice; duty of attorney-general

(a) Within one year after qualifying, the receiver shall apply to the court for a final settlement of his accounts and for an order for distribution, or, upon notice to the attorney-general, for an extension of time, setting forth the reasons therefor. If the receiver has not so applied for a settlement of his accounts or for such extension of time, the attorney-general or any creditor or shareholder may apply for an order that the receiver show cause why an accounting and distribution should not be had, and after the expiration of eighteen months from the time the receiver qualified, it shall be the duty of the attorney-general to apply for such an order on notice to the receiver.

(b) Before presenting a final account, the receiver shall give notice of his intention to file it by publication, under subparagraph (a)(1) of section 1207 (Duties of receiver upon appointment), setting

forth the time and place of filing and presentation to the court. The receiver shall also give not less than eight days' written notice to the sureties on his official bond.

(c) Upon presentation of such account, the court shall hear the allegations, objections and proofs of all parties interested and allow or disallow such account, in whole or in part, and make a final order. The court may refer the account and the hearing, in whole or in part, to a referee who shall report thereon to the court. (L.1961, c. 855.)

Historical Note

Derivation. Gen.Corp.Law of 1929, §§ 155, 188 to 190; repealed by L.1973, c. 451, § 2. 268 derived from CCP, § 2431b, added L. 1906, c. 293.

Said section 155, formerly 227, added L. 1909, c. 240, § 40; renumbered 155, L. 1929, c. 650. Section 227 derived from CCP, § 175, amended L. 1877, c. 416; L. 1896, c. 94. Said section 189, formerly 269, amended L.1909, c. 240, § 42; renumbered 189, L.1929, c. 650. Section 269 derived from R.S., pt. 3, c. 8, tit. 4, art. 3, § 87.

Said section 190, formerly sections 270 and 271; renumbered 190, L.1929, c. 650. Sections 270 and 271 derived from R.S., pt. 3, c. 8, tit. 4, art. 3, §§ 89, and 88, respectively.

Legislative Studies and Reports

1. Source: McKinney General Corporation Law §§ 155, 188, 189 and 190. Comment: Derivative General Corporation Law sections are retained without substantial change.
2. Changes: Consolidated.

Cross References

Comparable provisions, see Not-For-Profit Corporation Law § 1216.

West's McKinney's Forms

Notice of intention by receiver to file accounts for final settlement, see BCL Forms § 12:32.
Order of reference of account of receiver, see BCL Forms § 12:33.

Library References

Corporations Ⓢ511, 558, 622(5), 687. C.J.S. Receivers § 365 et seq.
Receivers Ⓢ190 et seq.
C.J.S. Corporations §§ 1357, 1487 et seq., 1757, 1892.

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1. Necessity of accounting

A receiver when called to account cannot take advantage of the fact that the order by which he was appointed was void, where he has claimed to act and has acted in pursuance of such order; in such a case it has been said that he was a receiver de facto, for the time being and cannot escape an accounting for the moneys which came into his hands. *O'Mahoney v. Belmont*, 1875, 62 N.Y. 133.

Upon the theory that the court will not authorize a useless and expensive ceremony, a receiver will not be required to file an account where it appears that he has never been in possession of any corporate assets, as in such a case there is nothing to account for. *Lyons v. Atlanta Hill Gold Mining, etc., Co.*, 1891, 60 Hun 578, 14 N.Y.S. 533.

2. Time for final account

In view of pendency of action by permanent receiver of corporation undergoing dissolution against former owner of 50% of stock in corporation for waste and mismanagement, trial court's direction that the permanent receiver file his final account within 30 days after service of copy of the order was premature. *In re Hardan Realty, Inc.*, 1972, 38 A.D.2d 841, 331 N.Y.S.2d 181.

3. Hearing

Creditors have a right to be present at the hearing before a referee to pass on the accounts of the receiver; the taking of an account by a former receiver of a defendant corporation is one in which the creditors have an interest, indeed a double interest, one in obtaining an actual statement of property received and money paid out or expenses incurred, and another in the delivery of the property unappropriated which the receiver possesses at the time of the accounting; indeed, all persons having any interest in the estate which the receiver represents have a right to be present and be examined on any subject pertinent to the inquiry which springs out of the proceed-

ings itself. *Greason v. Goodwillie-Wyman Co.*, 1883, 38 Hun 138.

4. Order of reference—Generally

A reference was proper to take and state the account of a receiver appointed under section 2429 of the Code of Civil Procedure, [now section 1202] upon the voluntary dissolution of a corporation. *Matter of Home Book Co.*, 1908, 60 Misc. 560, 112 N.Y.S. 1012.

There should, before the order of reference is made in such cases, be presented a full and definite account, itemizing with particularity the various claims made by the receiver, verified also by his oath; and the reference should relate specifically to the claims presented in that form. *People v. Columbia Car Spring Co.*, 1878, 12 Hun 585.

5. — Fees

As to the payment of the fees of the referee it has been held that the court has power in the first instance to order that his fees be paid directly out of the fund, although the making of such an order is largely a matter of discretion. *Atty. Gen. v. Continental Life Ins. Co.*, 1883, 93 N.Y. 45.

6. — Rights of receiver

The receiver may appear before the referee, file exception to his report, and appeal from any order or decree, made at any stage of the proceedings, affecting the funds in his charge. *Atty. Gen. v. North America Life Ins. Co.*, 1880, 82 N.Y. 172.

It is the practice of the Supreme Court before passing upon the accounts of receivers to submit them to a referee where large sums must be accounted for; so it has been decided that where an order appointing receivers has been vacated and they apply for fees and commissions it should be ordered that their accounts and the objections thereto be referred, and that the referee report thereon with an opinion covering the question of the receivers' right to compensation and the amount thereof. *People v. Oriental Bank*, 1909, 129 App.Div. 865, 114 N.Y.S. 440.

An instruction to a referee, directed to take and state the accounts of a receiver, to "make all such just allowances as

Where a tenant, a corporation, has been dispossessed, a temporary receiver has power to maintain redemption proceedings and acts therein both for the corporation and its creditors and the corporation is not an indispensable party. *Bien v. Bixby*, 1896, 18 Misc. 415, 41 N.Y.S. 433.

7. — Continuance of business

It is not within the power of the court to authorize the temporary receiver of a corporation, appointed in a proceeding for the dissolution of the corporation, for the purpose of raising money to continue its business, to issue certificates of indebtedness which shall be liens upon the real property of the corporation prior to the lien of a mortgage given to a trustee to secure the payment of corporate bonds. *Matter of Westchester County Brewery*, 1911, 73 Misc. 352, 131 N.Y.S. 16.

It has been declared that a "temporary receiver, as such, has no authority to continue the business of the concern, and, unless he is authorized to do so by the court, the estate cannot be charged with liability incurred by him in the business," but that an objection on the ground of want of proper authorization cannot be taken for the first time on appeal. *Appleton v. Welch*, 1897, 20 Misc. 343, 45 N.Y.S. 751.

8. — Sale of property

A court of equity will not uphold an agreement entered into between temporary receivers of a corporation and others by which not only the parties agree to refrain from bidding at a foreclosure sale of the property but also to discourage others from bidding so that the property will be sacrificed at much less than its value and a sale made under such conditions may be set aside at the suit of a bondholder. *Atkins v. Judson*, 1898, 33 App.Div. 42, 53 N.Y.S. 504.

9. — Title to property

Determination that, under New York law, temporary receiver for Austrian association did not obtain title to association's claim against American society, was reasonable and would be accepted by United States Supreme Court. *Propper v. Clark*, 1949, 69 S.Ct. 1333, 337 U.S. 472, 93 L.Ed. 148.

The temporary receiver appointed by New York court for New York assets of German limited liability company which was enemy alien obtained no title to assets of German company by virtue of the appointment, in absence of license by Alien Property Custodian authorizing transfer of assets, and therefore such receiver had no right to intervene either as a matter of right or by permission in action by sole stockholder of company to recover assets of company. *Bernstein v. N.V. Nederlandsche-Amerikaansche, Etc.*, 1948, 76 F.Supp. 335.

Under former General Corporation Law § 162 [now this section], a temporary receiver did not, by virtue of his appointment, obtain title, but merely a right to possession. *Markham v. Taylor*, D.C.N.Y.1947, 70 F.Supp. 202, appeal dismissed 163 F.2d 940, affirmed 69 S.Ct. 1333, 337 U.S. 472, 93 L.Ed. 1480, rehearing denied 70 S.Ct. 33, 338 U.S. 841, 94 L.Ed. 514. See, also, *Clark v. Propper*, 1948, 169 F.2d 324; *Metropolitan Life Ins. Co. v. Sanborn*, 1901, 34 Misc. 531, 69 N.Y.S. 1009; *Keeney v. Home Ins. Co.*, 1877, 71 N.Y. 396, 27 Am.Rep. 60; *Cohen v. Sherman*, 1952, 279 App.Div. 939, 111 N.Y.S.2d 439; *Cobb v. Sweet*, 1899, 46 App.Div. 375, 61 N.Y.S. 545; *Mutual Brewing Co. v. New York, etc., Ferry Co.*, 1897, 16 App.Div. 149, 45 N.Y.S. 101.

A temporary receiver, is vested with title so far as the purposes of his trust require. *Matter of Smith Co.*, 1898, 31 App.Div. 39, 52 N.Y.S. 877.

The appointment of a temporary receiver does not operate to divest the corporation of its title to property undisposed of by him under the direction of the court and it may maintain an action prior to the appointment of a permanent receiver to recover damages alleged to have been sustained for the negligent loss of merchandise or its assignee may be substituted in its place. *Mutual Brewing Co. v. New York, etc., Ferry Co.*, 1897, 16 App.Div. 149, 45 N.Y.S. 101.

Temporary receiver appointed in voluntary proceeding for dissolution of corporation was merely a custodian and agent of the court to take and hold possession of corporate assets without title thereto and he had no power either to continue or discontinue the authority of

any officer or agent of corporation. *Garibaldi v. City of Yonkers*, 1949, 198 Misc. 527, 102 N.Y.S.2d 200.

10. Preservation of property

It is a duty of the receiver to preserve the property and he should endeavor to so preserve it that it will not be less valuable when final judgment is had. *Cobb v. Sweet*, 1899, 46 App.Div. 375, 61 N.Y.S. 545.

The relation of a receiver to the parties whom he represented, by reason of duty imposed upon him by former General Corporation Law § 162 [now this section] to preserve the property of the corporation, was so highly fiducial as to require of him the exercise of the utmost care in all his dealings. *Atkins v. Judson*, 1898, 33 App.Div. 42, 53 N.Y.S. 504.

§ 1204. Oath and security

(a) A receiver, before entering upon his duties, shall:

(1) Take and subscribe an oath that he will faithfully, honestly and impartially discharge the trust committed to him, and the oath shall be filed with the clerk of the court in which the action or special proceeding is pending.

(2) File with the clerk of such court a bond to the people, with at least two sufficient sureties or a bond executed by any fidelity or surety company authorized by the laws of this state to transact business, in a penalty fixed by the court appointing him, conditioned for the faithful discharge of his duties as receiver. The court may at any time direct a receiver to give a new bond with new sureties and with like condition.

(L.1961, c. 855; amended L.1963, c. 748, § 29.)

Historical Note

1963 Amendment. Par. (a). L.1963, c. 748, § 29, eff. Sept. 1, 1963, in sentence beginning "A receiver, before entering" substituted "shall" for "must".

Derivation. Gen.Corp.Law of 1929, §§ 153, 154, 164.

For history of said section 154, see derivation note under section 1202.

Said section 153, formerly sections 225 and 234; renumbered 153, L.1929, c. 650; and repealed by L.1973, c. 451, § 2. Former section 225, added L.1909, c. 240,

§ 40; derived from CCP, § 715; amended L.1877, c. 416 and L.1896, c. 94. Former section 234 derived from R.S., pt. 3, c. 8, tit. 4, art. 3, § 66.

Said section 164, Formerly 238; renumbered 164, L.1929, c. 650; and repealed by L.1973, c. 451, § 2. Section 238 derived from R.S., pt. 2, c. 5, tit. 1, art. 8, § 5.

CPA § 126. Repealed by CPLR, § 10001. It was from CCP §§ 1550, 1608, 2329.

Legislative Studies and Reports

1. Source: McKinney General Corporation Law §§ 153, 154, 164 and Civ. Prac.Act § 126.

2. Changes: Reworded; no substantial change.

Comment: This section combines and greatly abbreviates General Corporation

Law §§ 153, 154 and 164 without any change in substance or meaning. It provides that the receiver must take the oath prescribed and file the bond provided before entering upon his duties, which represents a two step operation more conveniently stated in one section.

PART 35—CHILD WITNESSES

§ 35.1. Development of Methods to Reduce Trauma to Child Witnesses

The Chief Administrator of the Courts shall consult with individuals, agencies and groups concerned with child psychology and child welfare and, based upon that consultation, shall develop and implement methods and techniques designed to reduce significantly the trauma to child witnesses likely to be caused by testifying in court proceedings. The Chief Administrator shall periodically review such methods and techniques to ensure their continuing effectiveness.

§ 35.2. Training and Education Programs Concerning Treatment of Child Witnesses

The Chief Administrator of the Courts shall include, as appropriate, in education and training programs offered to judges and nonjudicial personnel, programs concerning the social and psychological stages of child development to ensure that, where appropriate, courtroom procedures, including the questioning and treatment of a child witness by the parties, are adopted or modified to protect the child from emotional or psychological harm.

PART 36—APPOINTMENT OF FIDUCIARIES

§ 36.1. Appointment of Fiduciaries

(a) All appointments of guardians, guardians *ad litem*, conservators, committees of the incompetent or patient, receivers and persons designated to perform services for a receiver shall be made by the judge authorized by law to make the appointment upon evaluation by that judge of the qualifications of candidates for appointment. The appointing judge may select the appointee from the list of applicants established by the Chief Administrator of the Courts pursuant to section 36.2(a) of this Part. Should the appointing judge decide that a person or institution not included on that list of applicants is better qualified for appointment in a particular matter, the judge may appoint that person or institution, and in such instance shall place the reasons for such appointment and the qualifications of such appointee on the record. The appointing judge shall be solely responsible for determining the qualifications of any appointee.

(b) No person shall be appointed who is a relative of, or related by marriage to, a judge of the Unified Court System of the State of New York. This provision shall apply only to known relatives of judges and not to the professional associates of those relatives.

(c) No person or institution shall be eligible to receive more than one appointment within a 12-month period for which the compensation anticipated to be awarded to the appointee exceeds the sum of \$5,000, except that where the appointing judge determines that unusual circumstances of continuity of representation or familiarity with a case require an appointment for which compensation would exceed that permitted by this subdivision, the judge may make such appointment and must set forth in writing the reason for the exception. Each prospective appointee must disclose to the appointing judge all previous appointments received within the preceding 12 months.

(d) A prospective appointee whose appointment is subject to these rules shall certify in writing to the appointing judge, prior to the acceptance of the appointment, that the appointment will not be in violation of these rules.

(e) The provisions of this section shall not apply to:

(1) appointments of law guardians pursuant to section 243 of the Family Court Act or guardians *ad litem* pursuant to section 403-a of the Surrogate's Court Procedure Act;

(2) the appointment of a fiduciary without compensation; and

(3) the appointment of any of the following:

(i) a relative of, or person having a legally recognized duty or interest with respect to the affairs of, the infant, ward, incompetent, conservatee, decedent or beneficiary of an estate;

(ii) a guardian *ad litem* nominated by an infant of 14 years of age or over;

(iii) a nonprofit institution performing social services;

(iv) a bank or trust company as a depository for funds;

(v) a public administrator or a public official vested with the powers of an administrator;

(vi) a person or institution whose appointment is required by law;

(vii) a physician whose appointment as a guardian *ad litem* is necessary where emergency medical or surgical procedures are required.

§ 36.2. Lists of Available Applicants

(a) The Chief Administrator of the Courts shall provide for the application by persons and institutions seeking appointment as guardians, guardians *ad litem*, conservators, committees of the incompetent or patient, receivers and persons designated to perform services for a receiver. The Chief Administrator shall assemble such applications and shall maintain and make available for use by the appointing judge lists of applicants for appointment.

NOTE OF ISSUE AND CERTIFICATE OF
READINESS RULES

Note of Issue and Certificate of Readiness Rules §§ 103.1 et seq., which appear under Rules of the Chief Administrator of the Courts in CJS Court Rules volume, supersede all existing departmental rules and forms relating thereto.

§ 660.24. Appointment of referee, receiver, etc.—

On and after the effective date of this section no order or judgment providing for the appointment of a referee, receiver, person designated to accept service, arbitrator, guardian, guardian ad litem, committee of the person or property of an incompetent or conservator or person designated to perform services for a receiver such as but not limited to an agent, accountant, attorney, auctioneer, and appraiser ("appointee"), shall be entered, unless and until the following has been completed:

(a) The justice to whom such order or judgment is submitted ("originating justice") shall, upon determining to grant it, transmit to the presiding justice of the Appellate Division a copy thereof with the name or names of the appointees left blank. The presiding justice, or an associate justice, or a judicial administrative officer designated by him ("his designee"), shall select a justice of the Supreme Court ("appointing justice") who shall be empowered to make the appointment. The presiding justice or his designee shall notify the appointing justice of his selection as such. The appointing justice shall forthwith submit to the originating justice the name or names of the appointees to be inserted in the order or judgment.

(b) The presiding justice or his designee shall select the appointing justice who has the duty of appointment. Such selection shall be in rotation and no justice who has previously been selected as an appointing justice shall be selected again until all of the other justices have been so selected. The rotation in which the appointing justices are selected shall be within the exclusive discretion of the presiding justice or his designee.

(c) The foregoing subsection shall not apply:

(1) to appointments of a guardian ad litem of an infant, of a committee of the person or property of an incompetent, or of a conservator, where the appointee is a relative or one having a special connection with the infant or incompetent;

(2) to the designation of a bank or trust company as a depository for funds;

(3) where a person has previously been designated to accept service for any person and is subsequently appointed as guardian for such person; or

(4) to the appointment of a physician on the staff of a hospital or guardian ad litem for an infant patient of such hospital for the sole purpose of giving consent to the administration of blood transfusions or other emergency medical or surgical procedures required to save and preserve the life and health of said infant where such infant's parent or parents have refused to consent to the administration of such blood transfusions or performance of emergency medical or surgical procedures.

(d) No person shall be an appointee who is within the sixth degree of relationship of either the originating justice or the appointing justice.

(e) In the event the appointee shall refuse the appointment, the appointing justice shall substitute the name of another appointee. In the event that a substitution is required by virtue of the subsequent removal, death or resignation of the appointee, any application for a substitute appointment shall be deemed a new application and the procedures provided in this section shall be followed.

(f) Any appointment made without following the procedures provided in this section, shall be null and of no effect and no person so appointed shall be entitled to recover any compensation for the services

rendered or claimed to have been rendered. (Add, filed Aug 29, 1977, eff Sept 19, 1977; par (a), am, filed and eff Jan 16, 1978.)

§ 660.25. Rules covering electronic recording of depositions in civil cases.

(a) *When permitted.* Depositions authorized under the provisions of the Civil Practice Law and Rules or other law may be taken, as permitted by subdivision (b) of section 3113 of the Civil Practice Law and Rules, by means of simultaneous audio and visual electronic recording, provided such recording is made in conformity with this section.

(b) *Other rules applicable.* Except as otherwise provided in this section, or where the nature of videotaped recording makes compliance impossible or unnecessary, all rules generally applicable to examinations before trial shall apply to videotaped recording of depositions.

(c) *Notice of taking deposition.* Every notice or subpoena for the taking of a videotaped deposition shall state that it is to be videotaped and the name and address of the videotape operator and of his employer. The operator may be an employee of the attorney taking the deposition. Where an application for an order to take a videotaped deposition is made, the application and order shall contain the same information.

(d) *Conduct of the examination.* (1) The deposition shall begin by the operator stating on camera:

(i) his name and address;

(ii) the name and address of his employer;

(iii) the date, the time and place of the deposition; and

(iv) the party on whose behalf the deposition is being taken.

The person being deposed shall be sworn as a witness on camera by any authorized person. The officer before whom the deposition is taken shall identify and swear the witness on camera. If the deposition requires the use of more than one tape, the end of each tape and the beginning of each succeeding tape shall be announced by the operator.

(2) Every videotaped deposition shall be timed by means of a digital clock or clocks, which shall record hours, minutes, and seconds, and which shall at all times during the taking of the deposition be in the picture.

(3) More than one camera may be used, either in sequence or simultaneously.

(4) At the conclusion of the deposition, a statement shall be made on camera that the recording is completed. Immediately thereafter, the videotape shall be shown to the witness for examination, unless such showing and examination are waived by the witness and the parties.

(e) *Copies; transcription.* The parties may make audio copies of the deposition and thereafter may purchase additional audio or audio-visual copies. A party may arrange to have a stenographic transcription made of the deposition at his own expense.

(f) *Certification.* The officer before whom the videotape deposition is taken shall cause to be attached to the original videotape recording a certification that the witness was fully sworn or affirmed by him and that the videotape recording is a true record of the testimony given by the witness. If the witness has not waived his right to a showing and examination of the videotape deposition, the witness shall also sign the certification in accordance with the provisions of section 3116 of the Civil Practice Law and Rules.

(g) *Filing; objections.* (1) If no objections have been made by any of the parties during the course of the deposition, the videotape deposition may be filed by the proponent with the clerk of the trial court and shall be filed upon the request of any party.

(2) If objections have been made by any of the