

January 15, 2021

Glenn A. Grant, J.A.D.
Acting Administrative Director of the Courts
Hughes Justice Complex, P.O. Box 037
Trenton, NJ 08625-0037

Re: Comments on Proposed Background Screening Policy for Guardians of Incapacitated
Persons; Proposed Amendments to Rule 4:86

Dear Judge Grant:

Disability Rights New Jersey is the federally funded, designated protection and advocacy system for people with disabilities in the State of New Jersey. Under our federal enabling statutes, we conduct investigations of abuse and neglect, and provide legal representation, advocacy, education and training, and information and referral to people with disabilities, their families, and the professionals who serve them. Under our federal authority, we represent individuals subject to guardianship, both through their guardians and in cases where the individual seeks to challenge the guardianship itself or the scope of the guardianship. Through all our work, we strive to ensure that individuals with disabilities who are subject to guardianship are free from abuse, neglect, and financial exploitation. As such, Disability Rights NJ appreciates the opportunity to comment on the proposed amendments to Rule 4:86 (“Action for Guardianship of an Incapacitated Person or for the Appointment of a Conservator”).

Advocating and advancing the human, civil and legal rights of persons with disabilities

Understanding that the goal of the amendments is “to enhance protection of the vulnerable population of incapacitated adults from the risks of potential abuse, neglect, and financial exploitation by guardians appointed by the court to make decisions related to their care and financial affairs,” Disability Rights NJ wishes to bring to the attention of the Court that some of the language may be over-broad and/or vague. For example, the amendments require a certification with the proposed guardian’s criminal and civil judgment history but does not specifically define what constitutes the type or scope of criminal and civil judgments that need to be disclosed. The amendments also do not place time limits on the history that must be disclosed, which is potentially overbroad (i.e., the judgment was so long ago) and also risks non-disclosure of judgments lost to memory. This language may have a chilling impact on individuals who wish to serve as guardians. Disability Rights NJ believes that a certification may serve an important purpose and suggests that the potential chilling effect may be reduced if limiting language, such as definitions and time limitations, be included.

In addition, we are concerned about how this information could be used by individual judges. Some judges may use this information to disqualify all potential guardians who present with some information about a criminal or civil judgment history, while some judges may choose to ignore the information all together. There should be guidance provided to judges as to how much weight this certification should be given so that there is consistency among the judges in New Jersey.

Thank you for the opportunity to provide these comments. Should you wish to discuss further, please contact me at gorlowski@drnj.org.

Sincerely,

/s/ Gwen Orłowski

Gwen Orłowski
Executive Director