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April 12, 2016

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

Re: Comments to Proposed Amendments to R. 4:86

Dear Mr. Grant:

The following comments are submitted on behalf of the Guardianship Association of New Jersey, Inc. ("GANJI") a not-for-profit organization of lawyers, medical professionals, families, and individuals committed to supporting guardians, and other surrogate decision makers, in enhancing the lives of persons who require assistance.

Rule 4:86-2 Complaint; Accompanying Documents; Alternate Affidavits R. 4:86-2(b)(3)

This section proposes that the complaint include a case information statement ("CIS") in such form as promulgated by the Administrative Director of the Courts. The proposal includes a requirement that the CIS shall include the date of birth and social security number of the alleged incapacitated person.

The proposal violates R. 1:38-7, which sets forth certain redaction requirements intended to prevent the disclosure of sensitive financial and personal information. The proposed rule change subjects allegedly incapacitated persons to potential fraud and identity theft.

There is simply no need for the disclosure of the allegedly incapacitated person's date of birth and social security number in the CIS as they are made available to the guardian once properly appointed. Disclosure of this information at the beginning of a guardianship action is also premature as the person alleged to be incapacitated may indeed be found not to be so.

Rule 4:86-4 Order for Hearing
R. 4:86-4(a) Contents of Order
R. 4:86-4(a)(6) and R. 4:86-5(b)

This section proposes the order for hearing shall require that any proposed guardian complete guardianship training as promulgated by the Administrative Director of the Courts.

This proposed change is too vague as the anticipated training is not described in any fashion. It is unclear who will conduct the training, whether there will be a cost associated with it to the guardian, where the training will take place and how long the training session(s) would be. The proposed rule should only apply to new guardians and not to those already acting as guardians. Moreover, an individual should only be required to participate in the training one time regardless of the county of appointment.

Rule 4:86-4(a)(7) Appointment and Duties of Counsel
R. 4:86-4(a)(7)(B)

This proposed rule change would require the court appointed attorney's report to be filed with the court and served on all interested parties who have appeared in the matter at least ten days before the hearing date.

The proposed time frame is not practical because, it does not allow counsel enough time to review the application, investigate and prepare their reports. A more reasonable time frame would be to require the submission 5 days prior to the hearing.

Rule 4:86-5 Proof of Service; Appearance of Alleged Incapacitated Person at Hearing; Answer
R. 4:86-5(a)

The proposed change requires the plaintiff to file, not later than ten days prior to the hearing, proof of service of the notice, order for hearing, complaint and affidavits/certifications and proof by affidavit that the alleged incapacitated person has been afforded the opportunity to appear personally or by attorney, and that he/she has been given or offered assistance to communicate with friends, relatives or attorneys.

As it stands now, these items are filed prior to the hearing. The proposed changed time frame is not practical. Again, filing these documents five days prior to the hearing would be reasonable.

R. 4:86-5(c)

This proposed change would require plaintiff or appointed counsel to produce the alleged incapacitated person at the hearing, unless the plaintiff and the court appointed attorney certify that the alleged incapacitated person is unable to appear because of physical or mental incapacity.

This change puts an impractical and unfair burden on the court appointed attorney as he/she does not control the alleged incapacitated person and should not be required to assume the responsibility and potential liability for getting him or her to the hearing.

Rule 4:86-6 Hearing; Judgment
R. 4:86-6(d)(3)

This section requires the proposed form of order to be filed with the court not later than ten days prior to the hearing and also requires a judgment cover sheet to be included.

The proposed ten day requirement is not practical as it does not allow counsel enough time to review the application, investigate and report their findings to the court. Changing the requirement to five days would be more reasonable and would avoid having to submit multiple versions of a proposed form of judgment as the matter progresses.

The form for the proposed judgment cover sheet is not specified and therefore cannot be addressed other than to object to its requirement.

R. 4:86-6(e)(5)

This provision requires a guardian to keep the surrogate continuously advised of the whereabouts and phone number of the guardian and of the incapacitated person. It also requires the guardian to provide the surrogate with a copy of the incapacitated person's death certificate within 7 days of the guardian's receipt.

The proposed changes are vague as to what "continuously advised" means. It would be more appropriate to provide notification of a change of residence for either the guardian or the incapacitated person. Moreover, a guardian can provide notification of death without a death certificate which may not always be obtained by the guardian.

R. 4:86-10(b)

The proposed change expands the documents that may be submitted in lieu of the affidavits under R. 4:86-2(b). It should be noted that for the last several years, the Division of Developmental Disabilities has not provide certifications under the current rule for those individuals for whom the Division has limited contact. Thus, the use of the term "other services" in subparagraph (1) of the proposed rule change is too vague and may result in not receiving a certification from the Division. It is also unclear what licenses would be encompassed by "licensed care professional" in subparagraph (5).

Respectfully submitted,

Marisol Perez, Esq.
President