

NOTICE TO THE BAR

GUARDIANSHIP OF INCAPACITATED ADULTS – PROPOSED AMENDMENTS TO RULE 4:86 TO IMPLEMENT A BACKGROUND SCREENING POLICY FOR CERTAIN PROPOSED GUARDIANS – PUBLICATION FOR COMMENT

The Supreme Court invites written comments on a proposal to amend Rule 4:86 (“Action for Guardianship of an Incapacitated Person or for the Appointment of a Conservator”) to implement a new background screening policy for certain proposed guardians of adults who are adjudicated incapacitated. The proposed rule amendments are attached.

Overview

The proposed new background screening policy is intended 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. Currently, proposed guardians are evaluated by the court for suitability, but are not subject to any criminal history or civil judgment background screening.

Under the policy, certain proposed guardians would be subject to a check of Judiciary systems, a fingerprint or computerized criminal history check, and, at the discretion of the judge, a civil judgment search. The policy also would require proposed guardians to self-disclose and certify to any criminal and civil judgment history; acknowledge receipt and affirm compliance with the policy; and provide periodic reports to the court of any changes to their criminal and civil judgment history. An individual proposed to serve as guardian who has a negative history would have an opportunity to be heard as to whether the information disclosed or discovered would affect the individual’s ability to perform the duties of a guardian.

The policy exempts several categories of proposed guardians from the background screening process, including the parent or spouse of an incapacitated person; temporary guardians; qualified institutional guardians; and New Jersey attorneys in good standing.

Proposed Amendments to the Court Rules

The proposal would involve amending the following Rules of Court:

- Rule 4:86-2 (“Complaint; Accompanying Documents; Alternative Affidavits or Certifications”), to require a certification setting forth the criminal and civil judgment history of each proposed guardian;
- Rule 4:86-4 (“Order for Hearing”), to add to the order for hearing a requirement that any proposed guardian comply with the applicable background screening policy, including but not limited to fingerprinting, with a copy of the policy to be provided along with the order; and
- Rule 4:86-6 (“Hearing; Judgment”), to require the court-appointed guardian to confirm compliance with (i) any background screening policy, including as to fingerprinting, and (ii) the requirement to disclose changes to the guardian’s criminal or civil judgment history through any required periodic reporting.

Judiciary forms, including the model judgment of guardianship, also would be expanded consistent with the amendments to the Rules of Court.

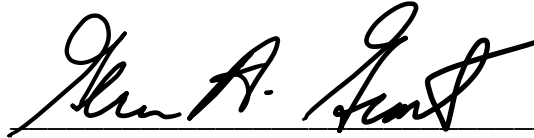
Please send any comments to the attached proposed rule amendments in writing by **Friday January 15, 2021** to:

Glenn A. Grant, J.A.D.
Acting Administrative Director of the Courts
Comments on Proposed Background Screening Policy for Guardians of
Incapacitated Persons; Proposed Amendments to Rule 4:86
Hughes Justice Complex, P.O. Box. 037
Trenton, NJ 08625-0037

Comments may also be submitted via email at the following address:
Comments.Mailbox@njcourts.gov.

The Supreme Court will not consider comments submitted anonymously. Thus, those submitting comments by mail should include their name and address, and those submitting comments by email should include their name and email

address. Comments are subject to disclosure upon receipt.

A handwritten signature in black ink, appearing to read "Glenn A. Grant", is written over a horizontal line.

Glenn A. Grant, J.A.D.

Acting Administrative Directors of the Courts

Dated: December 14, 2020

4:86-2. Complaint; Accompanying Documents; Alternative Affidavits or
Certifications

(a) ... no change

(b) Accompanying Documents. The complaint shall have annexed thereto:

(1) ... no change

(2) Affidavits or certifications of two physicians having qualifications set forth in *N.J.S.A.* 30:4-27.2t, or the affidavit or certification of one such physician and one licensed practicing psychologist as defined in *N.J.S.A.* 45:14B-2, in such form as promulgated by the Administrative Director of the Courts. Pursuant to *N.J.S.A.* 3B:12-24.1 (d), the affidavits or certifications may make disclosures about the alleged incapacitated person. If an alleged incapacitated person has been committed to a public institution and is confined therein, one of the affidavits or certifications shall be that of the chief executive officer, the medical director, or the chief of service providing that person is also the physician with overall responsibility for the professional program of care and treatment in the administrative unit of the institution. However, where an alleged incapacitated person is domiciled within this State but resident elsewhere, the affidavits or certifications required by this rule may be those of persons who are residents of the state or jurisdiction of the alleged incapacitated person's residence. Each affiant shall have made a personal examination of the alleged incapacitated person not more than 30 days prior to the

filing of the complaint, but said time period may be relaxed by the court on an *ex parte* showing of good cause. To support the complaint, each affiant shall state:

(A) ... no change

(B) ... no change

(C) ... no change

(D) ... no change

(E) ... no change

(F) ... no change

(G) ... no change

(H) an opinion on whether the alleged incapacitated person is capable of attending or otherwise participating in the hearing and, if not, the reasons for the individual's inability; **[and]**

(3) An affidavit or certification setting forth the criminal and civil judgment history of each proposed guardian, in such form as promulgated by the Administrative Director of the Courts. The certification may be supplemented at any time up to the time of qualification and acceptance of appointment. If no proposed guardian has been identified at the time of the filing of the complaint, the certification shall be filed no later than prior to the entry of the judgment of legal incapacity and appointment of guardian. The following shall be exempt from this requirement:

(A) individuals who are the parents in a parent and child relationship with an alleged incapacitated person, as “parent and child relationship” is defined by the New Jersey Parentage Act, N.J.S.A. 9:17-39;

(B) individuals who are married to an alleged incapacitated person in accordance with N.J.S.A. 37:1-29 et seq., in a civil union with an alleged incapacitated person as defined by N.J.S.A. 37:1-29, or in a domestic partnership with an alleged incapacitated person as defined by N.J.S.A. 26:8A-3;

(C) pendente lite temporary guardians appointed pursuant to N.J.S.A. 3B:12-24.1(c);

(D) agencies authorized to act pursuant to P.L.1985, c. 298 (C.52:27G-20 et seq.), P.L.1985, c. 145 (C.30:6D-23 et seq.), P.L.1965, c. 59 (C.30:4-165.1 et seq.) and P.L.1970, c. 289 (C.30:4-165.7 et seq.);

(E) public officials appointed as limited guardians of the person for medical purposes for individuals in psychiatric facilities listed in R.S.30:1-7;

(F) banks, trust companies, credit unions, savings and loan associations, or other financial institutions duly licensed or authorized to conduct business under applicable state or federal laws; and

(G) attorneys admitted to practice law and in good standing in the State of New Jersey; and

(4) ... no change

(c) ... no change

Note: Source – *R.R.* 4:102-2; former *R.* 4:83-2 amended and rule redesignated June 29, 1990 to be effective September 4, 1990; paragraphs (b) and (c) amended July 14, 1992 to be effective September 1, 1992; paragraph (b) amended July 13, 1994 to be effective September 1, 1994; paragraphs (a), (b), and (c) amended July 12, 2002 to be effective September 3, 2002; paragraphs (b) and (c) amended July 28, 2004 to be effective September 1, 2004; paragraphs (a), (b) and (c) amended July 9, 2008 to be effective September 1, 2008; caption amended, and paragraphs (a), (b) and (c) amended and captions added August 1, 2016 to be effective September 1, 2016; new subparagraph (b)(3) added _____ to be effective _____.

4:86-4. Order for Hearing

(a) Contents of Order.

(1) ... no change

(2) ... no change

(3) ... no change

(4) ... no change

(5) ... no change

(6) ... no change

(7) The order for hearing shall require that any proposed guardian comply with any applicable background screening policy for proposed guardians of incapacitated adults as promulgated by the Administrative Director of the Courts, including but not limited to fingerprinting. A copy of the policy shall be provided with the order for hearing.

[7] **(8)** If the alleged incapacitated person is not represented by counsel, the order shall include the appointment by the court of counsel for the alleged incapacitated person.

(b) ... no change

(c) ... no change

(d) ... no change

(e) ... no change

Note: Source – *R.R. 4:102-4(a)(b)*. Paragraph (b) amended July 16, 1979 to be effective September 10, 1979; paragraph (a) amended July 21, 1980 to be effective September 8, 1980; paragraph (a) amended July 16, 1981 to be effective September 14, 1981; caption of former R. 4:83-4 amended, caption and text of paragraph (a) amended and in part redesignated as paragraph (b) and former paragraph (b) redesignated as paragraph (c) and amended, and rule redesignated June 29, 1990 to be effective September 4, 1990; paragraph (b) amended July 13, 1994 to be effective September 1, 1994; paragraph (b) amended and paragraphs (d) and (e) added June 28, 1996 to be effective September 1, 1996; paragraphs (a), (b), (c), (d), and (e) amended July 12, 2002 to be effective September 3, 2002; paragraph (e) amended July 27, 2006 to be effective September 1, 2006; paragraphs (a), (b), (c), (d) and (e) amended July 9, 2008 to be effective September 1, 2008; paragraph (a) amended, subparagraphs enumerated and paragraphs (a)(6) and (a)(7) adopted, paragraph (b) amended and subparagraphs enumerated, and paragraph (c) amended August 1, 2016 to be effective September 1, 2016; subparagraph (a)(7) added and former subparagraph (a)(7) redesignated as (a)(8) to be effective.

4:86-6. Hearing; Judgment

(a) ... no change

(b) ... no change

(c) ... no change

(d) ... no change

(e) Duties of Guardian.

(1) Not later than 30 days after entry of the judgment of legal incapacity and appointment of guardian, the guardian shall qualify and accept the appointment in accordance with *R. 4:96-1*. The acceptance of appointment shall include an acknowledgment that the guardian has completed guardianship training as promulgated by the Administrative Director of the Courts in accordance with *R.*

4:86-5 (b). **The acceptance of appointment shall also include an acknowledgment of compliance with any background screening policy for proposed guardians of incapacitated adults promulgated by the Administrative Director of the Courts, including but not limited to fingerprinting and disclosure of any changes to the guardian's criminal or civil judgment history through any required periodic reporting.**

(2) ... no change

(3) ... no change

(4) ... no change

(5) ... no change

(6) ... no change

(7) ... no change

(f) ... no change

Note: Source – *R.R.* 4:102-6(a) (b) (c), 4:103-3 (second sentence). Paragraph (a) amended July 26, 1984 to be effective September 10, 1984; paragraph (a) amended November 5, 1986 to be effective January 1, 1987; paragraphs (a) and (c) of former *R.* 4:83-6 amended and rule redesignated June 29, 1990 to be effective September 4, 1990; paragraph (c) amended July 13, 1994 to be effective September 1, 1994; paragraphs (a) and (c) amended July 12, 2002 to be effective September 3, 2002; paragraph (a) amended July 28, 2004 to be effective September 1, 2004; paragraph (a) amended, text of paragraph (c) redesignated as paragraphs (c) and (d) and amended, paragraph (c) caption amended, and paragraph (d) caption adopted July 9, 2008 to be effective September 1, 2008; paragraphs (a) and (c) amended, new paragraph (d) added, former paragraph (d) amended and redesignated as paragraph (e), and new paragraph (f) added August 1, 2016 to be effective September 1, 2016; by order dated August 25, 2016 effective date of paragraph (f)(5) extended to March 1, 2017; subparagraphs (f)(4) and (f)(5)(B) amended July 31, 2020 to be effective September 1, 2020; paragraph (e)(1) amended _____ to be effective

_____.