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Morris County Surrogate Court

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BY CERTIFIED MAIL

Honorable Glenn A. Grant, J.A.D.
Acting Administrative Director of the Courts
Rules Comments
Hughes Justice Complex, P.O. Box 37
Trenton, New Jersey 08625



Re: **2016 Civil Practice Rules - Proposed Changes**

Dear Judge Grant:

As Surrogate of Morris County, please accept my comments to the proposed Rule changes as they pertain to the Surrogate and/or probate practice. I am writing in my individual capacity and my comments only reflect my personal opinion. I have reviewed the proposed changes to Rule 4:86-6 and make the following comments:

1. 4:86-6(d)(2) states that the "If there are extraordinary reasons justifying the waiver of a bond, that determination shall be set forth in a decision supported by the appropriate factual findings." My comment: The vast majority of guardianship cases, DDD or otherwise, the ward has no money and the bond is waived. Requiring the probate judges to issue "factual findings" in these cases is unwieldy and unnecessary.

2. 4:86-6(f)(1) proposes that "The Surrogate shall provide the entire guardianship file to the Court for review no later than seven days before hearing." My comment: For over 100 years, the Surrogate has been Deputy Clerk to the Probate Part. Surrogates have always provided their files to Judges. Why do you need a formal rule to state the obvious? This is the judicial equivalent of saying "The Surrogate should show up to work." If a particular Surrogate is not providing a file to a Judge, the remedy is a phone call, not a Rule change.

3. 4:86-6(f)(5) proposes that: "The Surrogate shall notify the court, and shall issue notices to the guardian in such form as promulgated by the Administrative Director of the Courts, in the event that: [A] the guardian fails to qualify and accept the appointment within 30 days after the entry of the judgment or legal incapacity and appointment of guardian in accordance with paragraph (e)(1) above." My comment: This proposal is innocuous but unreasonable. Historically, most guardianships hearings were conducted in open court and after the hearing, the guardians would walk over to their respective Surrogate office, and qualify. If the Courts are now doing most of these cases on the papers, this Rule suddenly adds a new layer of responsibility to the Surrogate's office. It has been this Surrogate's experience that guardians drag their feet in qualifying when the hearing is done on the papers. Hence, this proposal suddenly shifts the burden from the Superior Court to the Surrogate.

4. 4:86-6(f)(5) also proposes that: "The Surrogate shall notify the court, and shall issue notices to the guardian in such form as promulgated by the Administrative Director of the Courts, in the event that: [B] the guardian fails to timely file inventories, reports of financial accounting and/or reports of well-being filed in accordance with paragraphs (e) (3) thru (e)(5) above." My comment: This Rule makes the guardianship monitoring program -- a "voluntary" program coordinated by the AOC -- into a job description for the Surrogates. Now Surrogates will be legally responsible for the failure of any guardian who doesn't comply with any post-judgment filings. This is an unfunded mandate that the Surrogate is not staffed for.

Thank you.

Very truly yours,


SURROGATE JOHN PECORARO