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OCEAN COUNTY SURROGATE'S COURT

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Via email: Comments.Mailbox@judiciary.state.nj.us

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: 2014-2016 Supreme Court Rule Committee Report
Civil Practice Committee
Probate Part Rules**

Dear Judge Grant:

I am in receipt of a Notice to the Bar dated February 10, 2016 wherein the Rules Committee is recommending various court rule amendments in its 2014-2016 Report. I have reviewed the proposed guardianship rules, specifically R. 4:86-6(f), "Duties of Surrogate," and have some serious concerns which should be considered by the Court.

The proposed Rules seek to formalize the Court's Guardianship Monitoring Program. When initially presented to the Surrogates, the program was to be administered by the Superior Court Clerk's office though use of volunteers supervised by local vicinage state judiciary employees. The Surrogate's role was to make our files available to the Program as needed. The proposed rule as currently constituted significantly changes the Surrogates' role in the process, which will consume considerable staffing resources. Effectively, the rules shift the "monitoring" responsibilities from State employees to the County employees.

I am unclear why this dramatic shift is proposed without a concurrent state funding source to pay for the County's new obligations.

In addition to shifting responsibilities, the proposed Rules reinforce the monitoring components of the applicable statutes and rules, increasing the scope of the program. For several years now Probate Judges have been encouraged to require guardians to file an annual report of well being. While the probate code has permitted the Court to require these reports since 2005, in practice they were rarely ordered. The new rules emphasize this report, and model judgment includes a provision for them as well. Hence, well being reporting is becoming the rule, not the exception in most modern guardianship actions. Accordingly, the issue of tracking, enforcing, reviewing and acting on these reports is now relevant and significant. Proposed rules 4:86-6(f)5 and (f)6, place this responsibility squarely on the County Surrogates.

In Ocean County we have approximately 2500 active guardianships, 250 new guardianships every year, and nearly 1500 well being reports coming due in the near future. I do not have the staff to track, enforce, review and take action on these documents. Further, if a problem arises in a particular guardianship, a claim can be made that the Surrogate is somehow responsible because they negligently reviewed a report and failed to bring an issue to the attention of the Court. Superior Court Judges have immunity - Surrogates do not.

Additionally, the rules require tracking and enforcement of EZ accountings, which are ordered even in cases where there are no assets. This will also have a significant impact on my office, and we do not have the staff to comply.

As I assume you are aware, my office has a dedicated accounting department that tracks and audits formal accountings. Our work in "following the money" has uncovered fiduciary defalcations in the past, and we believe it serves as a deterrent to current fiduciaries that might otherwise stray. I cannot divert my limited resources away from this important program to implement the additional duties required by the proposed Rules.

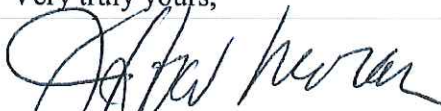
Accordingly, we recommend amendments as follows:

- 4:86-1(c)(2) Post-adjudication issues identified through monitoring may be forwarded for further action by the ~~County Surrogate~~; Superior Court, Chancery Division, Probate Part; and/or by the Administrative Office of the Courts.
- 4:86-6(f)(5) The Surrogate shall notify the court, and 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 entry of the judgment of legal incapacity and appointment of guardian in accordance with paragraph (e)(1) above; or
 - (B) The guardian fails to timely file inventories, ~~reports of financial accounting, or formal accountings, and/or reports of well being in accordance with paragraphs (e)3 through (e)5 above.~~

4:86-6(f)(6) The Surrogate shall immediately notify the court of emergent allegations of substantial harm to the physical or mental health, safety and and/or the property or business affairs of an alleged or adjudicated incapacitated person. All Reports of Well Being filed with the Surrogate shall be provided to the court for review, and action as deemed necessary by the court.

If you have any questions regarding the above, or need additional information, please do not hesitate to contact my office. I trust you will give our comments serious consideration.

Very truly yours,



JEFFREY W. MORAN
Ocean County Surrogate