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State of New Jersey
OFFICE OF THE PUBLIC DEFENDER
Division of Mental Health & Guardianship Advocacy
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JOSEPH E. KRAKORA
Public Defender

August 26, 2016

VIA ELECTRONIC MAIL

Hon. Glenn A. Grant, J.A.D.
Acting Administrative Director of the Courts
Rules Committee – Guardianship Forms
Hughes Justice Complex, PO Box 307
Trenton, New Jersey 08625-0037

Re: Proposed Guardianship Forms

Dear Judge Grant,

The Public Defender's Division of Mental Health & Guardianship Advocacy (The Public Defender) represents incapacitated and allegedly incapacitated individuals in guardianship proceedings pursuant to N.J.S.A. § 52:27EE-29 et seq. and N.J.S.A. § 30:4-165.14. After reviewing the proposed revised and new model forms relating to the guardianship on incapacitated adults, The Public Defender would like to offer the following comments as pertains to the proposed forms.

The first comment relates to the Certification of Physician or Psychologist. We would respectfully submit that in paragraph 10 of the proposed form, the language should be revised. Currently it reads as follows:

"My opinion based upon the examination of _____, and the history of her/his condition. The factual basis for my diagnosis and prognosis, and my opinion as to any areas in which the individual retains capacity, is:"

The Public Defender respectfully submits that the numbered paragraph 10 should read as follows:

"My opinion based upon the examination of _____, and the history of her/his condition. The factual basis for my diagnosis and prognosis, and my opinion as to capacity is:"

The change is based on a review of the documents by staff attorneys in this office. Upon reading the language they came to different conclusions with some attorneys inferring from the language the factual basis need only be provided if there is an area in which the certifying physician believes the individual retains capacity. Others thought that the factual basis needed to be provided regardless.

The Public Defender suggests that changing to language to "*The factual basis for my diagnosis and prognosis, and my opinion as to capacity is*" would bring more clarity to the paragraph. It would also better comport with R. 4:86-2(b) which requires:

the affiant's opinion of the extent to which the alleged incapacitated person is unfit and unable to govern himself or herself and to manage his or her affairs and shall set forth with particularity the circumstances and conduct of the alleged incapacitated person upon which this opinion is based, including a history of the alleged incapacitated person's condition.

Likewise, The Public Defender would suggest that the form provide more space for the doctor's statement so that more information can be provided. Also, a sentence could be added immediately following the blank lines, stating, "If more room is needed, please attach a separate report." This would make clear to the certifying physician that they are not limited to space.

The second comment relates to paragraph 8 the Judgement of Incapacity and Appointment of Guardian(s) of the Person and Estate, paragraph 8 "Reporting as to Person;" and Judgement of Incapacity and Appointment of Guardian(s) of the person, paragraph 7, "Reporting." Each of these paragraphs relates to the requirement of an annual report on the well-being of the person. There are two possible boxes for a judge to check: the first requiring the filing of an annual report on the well-being of the person, and the second, waiving the requirement for the guardian to file a report of the well-being of the person.

The Public Defender respectfully submits that the requirement of an annual report on the well-being of the person never be waived. And accordingly would request that the second box, with the option for waiving the annual report on well-being, be removed entirely. The reports on the well-being of the person serve to protect the interests of the incapacitated persons of the State of New Jersey.

The Public Defender is concerned that the provision of a box with the option to waive the annual report on the well-being of the person will lead to increased instances where the reporting is not required, and thereby incapacitated persons will have less protection for abuse, neglect, and exploitation. Though no reason for waiving the requirement comes to mind, presuming *arguendo* there is a legitimate reason for waiving the requirement, an order can be prepared by the party seeking waiver of the requirement.

Thank you for your time and attention to this matter. Should you have any questions or concerns, please do not hesitate to contact our office at the information listed above.

Respectfully Submitted,

/s/ Daniel F. O'Brien

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