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State of New Jersey

DEPARTMENT OF HUMAN SERVICES

DIVISION OF AGING SERVICES

OFFICE OF THE PUBLIC GUARDIAN FOR ELDERLY ADULTS

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September 28, 2016

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Acting Public Guardian

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

Dear Judge Grant:

I am writing on behalf of the New Jersey Office of the Public Guardian for Elderly Adults ("OPG"). We submit for consideration the following comments regarding the proposed model forms for use in matters related to guardianship of incapacitated adults.

Judgment of Incapacity and Appointment of Guardian(s) of the Person Form (new)

- OPG has concerns about the wording of Paragraph 1 of this form. Specifically, the use of the wording "[unable to govern himself/herself] **and manage his/her affairs in all areas**" to describe the adult who is incapacitated as to *person* (and not as to property) has potential to cause confusion. It suggests that the incapacitated person cannot handle his or her financial affairs. While it is true that the *caption* is clear that the guardianship is as to the person only, it has been our experience that recipients of the Judgment look to the wording set forth within the body of the document rather than to the caption when attempting to understand the nature and scope of authority.
- Paragraph 12 concerns revocation of previously executed documents. The proposed wording reads "[A]ny power of attorney previously executed" [by the subject incapacitated individual] be and hereby is revoked." The wording could be understood to revoke not only previously executed health care powers of attorney, but also general durable powers of attorney for the handling of financial affairs. The effect of such revocation would be a failure to honor the individual's duly-expressed preferences as to the handling of his property. Therefore, the wording as to the type of power of attorney should be clarified.

Judgment of Incapacity and Appointment of Guardian(s) of the Person and Estate Form

- Paragraph 13 concerns payment of the fees of court-appointed counsel. It directs that the Guardian of the *Person* pay such fees (the same wording is contained in Paragraph 11 of the proposed Judgment of Incapacity and Appointment of Guardian(s) of the Person). This section should be changed to make clear that this task is not the responsibility of the Guardian of Person. It might also make sense to clarify that the source of the funds is the incapacitated person's estate (or another source), and not personal funds of the guardian.

How to File a Motion in a Guardianship case (pro se packet)

- The paragraph defining "Incapacitated person" in the Definitions section suggests that the term "ward" is no longer in use. While we agree that the term "incompetent" is outdated and inappropriate, the terms "ward" and "guardian" describe a fiduciary relationship created by a Court. Both remain in use in New Jersey's statutes.

Respectfully Submitted,



Helen C. Dodick, Esq.

Acting Public Guardian for Elderly Adults of New Jersey