

#014

MONMOUTH COUNTY
OFFICE OF THE SURROGATE



PATRICIA COYNE
DEPUTY SURROGATE

HAZEL L. BOVE
SPECIAL DEPUTY SURROGATE

ROSEMARIE D. PETERS
SURROGATE

HALL OF RECORDS
1 EAST MAIN ST.
ROOM 118
FREEHOLD, N.J. 07728-1265
(732) 431-7330
FAX: (732) 303-7856
WEBSITE: visitmonmouth.com

September 30, 2016

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

Dear Judge Grant:

All staff members of the Monmouth County Surrogate's Office who have responsibilities related to guardianships of incapacitated adults have reviewed the Proposed Revised and New Model Forms published on July 25, 2016, and respectfully offer the following comments:

1. The requirement in new Rule 4:86-2(b)(3) that a Case Information Sheet be filed in such an action appears to be in conflict with Rule 4:5-1(b)(1) that exempts such a filing in probate actions.
2. In the Order for a Hearing, Paragraph 10 requires service by certified mail – return receipt requested. We currently also request service by regular mail. Should we discontinue this practice?
3. In the Order for a Hearing, Paragraph 11 requires that any proposed guardian shall complete guardianship training as promulgated by the Administrative Director of the Courts. Rule 4:86-5(b) requires this training to be completed "prior to the hearing, unless good cause shown, but no later than prior to qualification." The Surrogate as Deputy Clerk is not in a position to determine whether good cause exists if the proposed guardian has not yet completed training prior to the hearing. How is this to be handled?

Rule 4:86-6(e)(1) requires the guardian to qualify no later than 30 days after entry of the judgment and states that "The acceptance of appointment shall include an acknowledgment that the guardian has completed guardianship training...in accordance with R. 4:86(5)(b)." Will a form be developed for this acknowledgment or is it to be left to the individual Surrogates to incorporate this language into an existing form?

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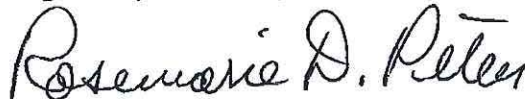
4. In both Model Judgments, Paragraphs 8 and 9 relate to reporting requirements for a guardian. The proposed form limits the time period for filing reports to either one year or a waiver whereas the current form allows a judge greater discretion by allowing filing in certain cases every other year or a different period. Is the intent to limit a judge's discretion in this regard to either annually or waiver?

5. In both Model Judgments, Paragraph 1 includes a statement that the incapacitated person does not retain the right to possess firearms. Who will have responsibility for providing this information to the appropriate authorities?

6. A common problem in attempting to get the appointed guardian to qualify is the failure of some attorneys to provide a copy of the Judgment to the guardian in a timely manner and to emphasize to them the need for them to qualify as soon as possible. It would be helpful to include in the Model Judgment language similar to that which appears in Paragraph 10 of the Model Judgment for a friendly settlement, stating that it is the responsibility of the attorney for the plaintiff to deliver a copy of the Judgment to the appointed guardian and to all parties within a given number of days.

We appreciate the opportunity to comment on these Proposed Revised and New Model Forms.

Respectfully submitted,

A handwritten signature in cursive script that reads "Rosemarie D. Peters". The signature is written in dark ink and is positioned above the printed name and title.

Rosemarie D. Peters, Esq.
Monmouth County Surrogate