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NEW JERSEY STATE BAR ASSOCIATION

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Honorable Glenn A. Grant, J.A.D.
Acting Administrative Director of the Courts
Comments on Proposed Background Screening Policy for Guardians of Incapacitated
Persons; Proposed Amendments to Rule 4:86
Hughes Justice Complex, P.O. Box 037
Trenton, NJ 08625-0037

Re: Proposed Background Screening Policy for Guardians of Incapacitated Persons;
Proposed Amendments to Rule 4:86

Dear Judge Grant:

The New Jersey State Bar Association (NJSBA) thanks the Court for the opportunity to comment on the proposed amendments to Rule 4:86 to implement a background screening policy for certain proposed guardians.

The NJSBA supports steps to ensure the protection of the vulnerable population of incapacitated adults from the risks of potential abuse, neglect, and financial exploitation by their guardians. We are concerned, however, that this proposal may have the unintended effect of discouraging certain qualified guardians from serving. In particular, we believe the certification and fingerprinting requirements will have a disparate impact on individuals with lower incomes. Moreover, we believe the requirement to disclose *all* civil and criminal judgments is overly broad and will result in proposed guardians having to disclose information that is not germane to a determination about their qualifications.

If the proposal is adopted, the NJSBA urges the Court to consider amending the proposal to address these concerns. There should be clear guidance about when fingerprinting would be required, as it may not be necessary in all cases. The information required to be disclosed should be limited to information that is likely to be relevant to a guardianship determination. For example, we suggest that disclosure be required only for judgments dating back a certain number of years, over a certain financial figure, or reflecting relevant underlying matters such as fraud, theft or domestic abuse. Finally, there should be clear guidance on how judges are to use the information obtained in their decision-making process.

Again, the NJSBA appreciates the opportunity to provide these comments to the Court, and stands ready to provide more information or to assist in further review if needed. We applaud the efforts to protect our state's vulnerable adults, but request that the concerns noted above be taken into consideration as the Court proceeds forward.

Very truly yours.

A handwritten signature in black ink, reading "Kimberly A. Yonta". The signature is written in a cursive style with a large, looping initial "K".

Kimberly A. Yonta, Esq.
President

/sab

cc: Domenick Carmagnola, Esq., NJSBA President-Elect
Angela C. Scheck, NJSBA Executive Director