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January 31, 2021

Via email: Comments.Mailbox@njcourts.gov

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

Dear Judge Grant:

On behalf of the Office of the Public Guardian of the State of New Jersey, kindly accept this letter as a comment to the proposed amendments to Rule 4:86. The Office of the Public Guardian supports safeguards to ensure the protection of New Jersey's elderly population against abuse, neglect and exploitation. However, we are also mindful of the rights and preferences of incapacitated people with respect to choice of guardian.

We believe that, while conviction of crimes involving dishonesty and violence are highly relevant, convictions less pertinent to service as guardian should not require disclosure. Especially in communities where access to justice may be at issue, disclosure and consideration of offenses not involving violence or dishonesty may result in potentially appropriate guardians not being appointed. Additionally, such disclosure requirements may inhibit family or friends from coming forward at all.

Letter to Honorable Glenn A. Grant, J.A.D.

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We also believe that the civil judgment history required by the proposed amendments may be redundant. If an incapacitated individual possesses assets, the guardian will be required to obtain a bond pursuant to R. 4:86(d)(2). Upon application, the surety will conduct civil judgment searches and credit checks that bring to light any financial issues affecting fitness to serve as guardian.

If the incapacitated person does not have assets, it is doubtful that the Court will require a bond. In such instances, however, the proposed guardian will still probably become representative payee for the incapacitated person's social security benefits, the likely only and most significant fiduciary responsibility. The Social Security Administration has a system of yearly reporting and periodic auditing that verifies that the representative payee is utilizing the benefits of the incapacitated person properly.

In sum, while the Office supports the screening measures set forth in the proposed rule amendments, we believe that the protective provisions can be more carefully tailored to maximize choice while still limiting risk. We thank you for the opportunity to comment.

Respectfully submitted,



Helen C. Dodick, Esq.
Acting Public Guardian for the Elderly