

NEW JERSEY STATE BAR ASSOCIATION



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Honorable Glenn A. Grant, J.A.D.
Administrative Director of the Courts
Proposal to Amend Rule 4:86-2(b)(3) and Guardian Background Screening Policy
Hughes Justice Complex, P.O. Box 037
Trenton, NJ 08625-0037

Re: Comments on Proposal to Amend Rule 4:86-2(b)(3) and
Guardian Background Screening Policy

Dear Judge Grant:

On behalf of the New Jersey State Bar Association (NJSBA), thank you for the opportunity to provide comments on proposed amendments to Rule 4:86-2(b)(3) and related updates to the Background Screening Policy for Proposed Guardians. The appointment of a guardian for an alleged incapacitated person places the alleged incapacitated person in a very vulnerable position and we appreciate the Judiciary's efforts to carefully consider the proper steps that should be taken before doing so.

The NJSBA supports the proposed clarifications outlined in the Notice to the Bar, particularly the confirmation that court-appointed attorneys are presumptively exempt from the background screening requirements. We believe the clarifications will help to ensure the background screening is implemented in the manner it was intended.

We note, though, that our members report numerous differences in the background screening process in each county. We recommend further modifications to the rules be considered to address these differences and provide more uniform application of background screening requirements throughout the state. To that end, the NJSBA recommends:

1. Clarification about the nature of a judgment search on potential guardians. Some counties run a search based on the proposed guardian's name only, resulting in significant results that are inapplicable to the proposed guardian.
2. Standard fingerprinting protocols. Some counties do not require fingerprinting if the proposed guardian resides out of state; others do. Some counties require individuals to get fingerprinted multiple times; others require fingerprinting only once. The same protocols should be applied in every county.

3. The rules should be amended to clearly delineate those individuals to whom the background screening certification is inapplicable and to make it clear to all involved in the process those individuals who do not need to complete the certification paperwork. This includes parents and spouses of alleged incapacitated individuals. This clarification is needed because there are counties requiring the certification regardless of the proposed guardian's relationship to the alleged incapacitated person.

4. The results of a background screening should be made available to the parties through a secure portal or secure email system. Some counties require individuals, including court-appointed attorneys, to physically visit the courthouse to review the results. This is unnecessary when technology exists to be able to share the results electronically in a secure manner.

Again, the NJSBA appreciates the opportunity to review the proposed amendments and submit these additional comments on the background screening process for proposed guardians. We commend the Judiciary for its efforts in developing a process to ensure the integrity of individuals appointed to act in the interest of alleged incapacitated persons, and we stand ready to assist in developing and implementing further recommendations to advance that goal.

Respectfully,



Jeralyn L. Lawrence, Esq.
President

cc: Timothy McGoughran, Esq., NJSBA President-Elect
Angela C. Scheck, NJSBA Executive Director