

NOTICE TO THE BAR

JUDICIARY WORKING GROUP ON ELDER JUSTICE – APPROVAL OF RECOMMENDATIONS; AMENDMENTS TO RULE 4:86

The Supreme Court has approved the Recommendations of the Judiciary Working Group on Elder Justice, including amendments to Rule 4:86 (“Action for Guardianship of an Incapacitated Person or for the Appointment of a Conservator”) to clarify procedures for restoration of rights of incapacitated adults.

The Court’s September 27, 2023 Order amending Rule 4:86 is attached. The amendments are effective January 1, 2024.

The recommendations, which are summarized in a [June 14, 2023 Notice to the Bar](#) and which will guide the Working Group’s ongoing efforts, include:

- Creation of an [Elder Justice web page](#) to provide information for the public and help connect people with statewide resources;
- Training programs to address elder justice issues, which may include programs for law enforcement, county adult protective services, health professionals, attorneys, judges and court staff, and court-appointed guardians;
- A streamlined criminal referral process and creation of an elder justice information line (currently using the [New Jersey Medicaid Fraud Control Unit's Elder Abuse, Neglect, and Financial Exploitation Tip Hotline](#));
- Attorney trust account monitoring for professionals who serve as fiduciaries;
- Development of a statewide guardianship mediation program;
- Recommended court rule amendments and potential statutory amendments for guardianship and protective arrangements, including the amendments to Rule 4:86-7 adopted in the Court’s September 27, 2023 Order, with potential additional amendments currently under review to adopt a bill of rights for persons subject to guardianship;
- Public information and outreach;
- Formation of multi-disciplinary teams (MDTs) to address adult maltreatment;

- A requirement that attorneys who accept court appointments to serve as guardians disclose to the court when the attorney has four or more appointments as guardian in active cases before accepting additional appointments; and
- Stakeholder review of fiduciary statutes and regulations.

Questions about this notice may be directed to the Civil Practice Division at (609) 815-2900 ext. 54900 or civilwebsites.mbx@njcourts.gov.



Glenn A. Grant
Administrative Director of the Courts

Dated: October 11, 2023

SUPREME COURT OF NEW JERSEY

It is ORDERED that the attached amendments to Rules 4:86-7 (“Rights of an Incapacitated Person; Proceedings for Review of Guardianship”) of the Rules Governing the Courts of the State of New Jersey are adopted to be effective January 1, 2024.

For the Court,



Chief Justice

Dated: September 27, 2023

4:86-7. Rights of an Incapacitated Person; Proceedings for Return to Capacity or Review of Guardianship

(a) Rights of an Incapacitated Person. ... no change to text

(b) Proceedings for Return to Capacity.

(1) An incapacitated person, [or] an interested person on [his or her] the incapacitated person's behalf, or the guardian may seek a return to full or partial capacity by commencing a separate summary action by verified complaint. The complaint shall be supported by [affidavits or certifications] at least one affidavit or certification as described in Rule 4:86-2(b)(2), and shall set forth facts evidencing that the previously incapacitated person no longer is incapacitated or has returned to partial capacity. The court in its discretion may require additional proofs as needed.

(2) The court shall, on notice to the persons who would be set forth in a complaint filed pursuant to Rule 4:86-2 [4:86-1], set a date for hearing, appoint counsel for the incapacitated person if the incapacitated person is not represented, and take oral testimony in open court with or without a jury. In addition, the court may appoint a guardian ad litem to evaluate the best interests of the incapacitated person and to present that evaluation to the court in accordance with Rule 4:86-4(d).

(3) On presentation of prima facie evidence for termination or modification of the guardianship, the court may order termination or modification pursuant to

subparagraph (4) if no party or interested person objects. Any party or interested person objecting to the termination or modification must provide clear and convincing evidence that a basis for continuation of the guardianship exists.

(4) The court may render judgment that the person no longer is fully or partially incapacitated, that his or her guardianship be modified or discharged subject to the duty to account, and that his or her person and estate be restored to his or her control, or may render judgment that the guardianship be modified but not terminated.

(c) Proceedings for Review of Guardianship. An incapacitated person, or an interested person on [his or her] the incapacitated person's behalf, may seek review of a guardian's conduct and/or review of a guardianship by filing a motion setting forth the basis for the relief requested. On the return date, the court shall inform the incapacitated person of their rights as set forth in paragraph (a) and of the procedures for return to capacity as set forth in paragraph (b).

Note: Source – R.R. 4:102-7; former R. 4:83-7 amended and rule redesignated June 29, 1990 to be effective September 4, 1990; caption and text amended July 12, 2002 to be effective September 3, 2002; caption and text amended July 9, 2008 to be effective September 1, 2008; caption and text of former rule deleted, new caption adopted, new paragraphs (a), (b), and (c) adopted August 1, 2016 to be effective September 1, 2016; caption amended, paragraph (a) caption added, paragraph (b) caption added and text amended, paragraph (c) caption added and text amended September 27, 2023 to be effective January 1, 2024.