

NOTICE TO THE BAR

GUARDIANSHIPS OF INCAPACITATED ADULTS – BACKGROUND SCREENING POLICY FOR CERTAIN PROPOSED GUARDIANS; AMENDMENTS TO RULE 4:86

The Supreme Court has amended Rules 4:86-2 (“Complaint; Accompanying Documents; Alternative Affidavits or Certifications”), 4:86-4 (“Order for Hearing”), and 4:86-6 (“Hearing; Judgment”) so as to establish a statewide policy for background screening of certain proposed guardians of incapacitated persons.

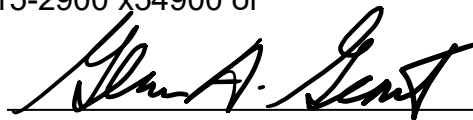
As set forth in the December 14, 2020 [notice](#) to the bar that requested comments on the proposed amendments, the background screening policy provides a method for the court to consider a proposed guardian’s civil and criminal judgment history in order to make a fully informed decision as to whether the individual is suitable for appointment. Certain categories of prospective guardians, including the parents and spouse of the incapacitated person, temporary guardians, qualified institutional guardians, and New Jersey attorneys in good standing, are presumptively exempted from the requirement. A negative history revealed during the background screening process will not automatically disqualify a potential guardian from being appointed. Rather, in those situations the individual will have an opportunity to be heard by the court, including to provide any additional or corrected information.

In adopting these rule amendments, the Court incorporated a number of suggestions submitted during the public comment process. The Court has refined the protocol to ensure that it is neither overbroad so as to have the unintended effect of deterring eligible individuals with negative judgment histories from applying or serving as guardian, nor under-inclusive, such that background screening would be categorically unavailable in certain situations. As provided in the amendments to Rule 4:86-2, the court (1) will consider a guardian’s relevant history, such that individuals with a distant or minor criminal or civil offense will not be even presumptively excluded from appointment; and (2) may require background screening of any proposed guardian, even those that fall within the presumptive categorical exemptions.

The Court’s March 15, 2021 Order is attached. The rule amendments are effective as of May 15, 2021. Proposed guardians in matters filed on or after the effective date will be subject to this new background screening policy.

Additional information, including the full background screening policy and new and revised court forms, will be posted on the Judiciary’s public website (njcourts.gov).

Questions about this notice may be directed to Assistant Director for Civil Practice Taironda E. Phoenix at (609) 815-2900 x54900 or Taironda.Phoenix@njcourts.gov.



Glenn A. Grant, J.A.D.
Acting Administrative Director of the Courts

Dated: March 17, 2021

SUPREME COURT OF NEW JERSEY

It is ORDERED that the attached amendments to Rules 4:86-2, 4:86-4, and 4:86-6 of the Rules Governing the Courts of the State of New Jersey are adopted to be effective May 15, 2021.

For the Court,



Chief Justice

Dated: March 15, 2021

4:86-2. Complaint; Accompanying Documents; Alternative Affidavits or Certifications

(a) ... no change

(b) Accompanying Documents. The complaint shall have annexed thereto:

(1) ... no change

(2) Affidavits or certifications of two physicians having qualifications set forth in *N.J.S.A.* 30:4-27.2t, or the affidavit or certification of one such physician and one licensed practicing psychologist as defined in *N.J.S.A.* 45:14B-2, in such form as promulgated by the Administrative Director of the Courts. Pursuant to *N.J.S.A.* 3B:12-24.1 (d), the affidavits or certifications may make disclosures about the alleged incapacitated person. If an alleged incapacitated person has been committed to a public institution and is confined therein, one of the affidavits or certifications shall be that of the chief executive officer, the medical director, or the chief of service providing that person is also the physician with overall responsibility for the professional program of care and treatment in the administrative unit of the institution. However, where an alleged incapacitated person is domiciled within this State but resident elsewhere, the affidavits or certifications required by this rule may be those of persons who are residents of the state or jurisdiction of the alleged incapacitated person's residence. Each affiant shall have made a personal examination of the alleged incapacitated person not more than 30 days prior to the

filing of the complaint, but said time period may be relaxed by the court on an *ex parte* showing of good cause. To support the complaint, each affiant shall state:

(A) ... no change

(B) ... no change

(C) ... no change

(D) ... no change

(E) ... no change

(F) ... no change

(G) ... no change

(H) an opinion on whether the alleged incapacitated person is capable of attending or otherwise participating in the hearing and, if not, the reasons for the individual's inability; [and]

(3) An affidavit or certification setting forth the criminal and civil judgment history of each proposed guardian, in such form as promulgated by the Administrative Director of the Courts. The certification may be supplemented at any time up to the time of qualification and acceptance of appointment. If no proposed guardian has been identified at the time of the filing of the complaint, the certification shall be filed no later than prior to the entry of the judgment of legal incapacity and appointment of guardian. The court will consider the relevant history as provided in the certification and through any background screening policy for

proposed guardians of incapacitated adults promulgated by the Administrative Director of the Courts, including but not limited to fingerprinting. Except as specifically ordered by the court pursuant to subparagraph (H), the following shall be exempt from this requirement:

(A) individuals who are the parents in a parent and child relationship with an alleged incapacitated person, as “parent and child relationship” is defined by the New Jersey Parentage Act, N.J.S.A. 9:17-39;

(B) individuals who are married to an alleged incapacitated person in accordance with N.J.S.A. 37:1-29 et seq., in a civil union with an alleged incapacitated person as defined by N.J.S.A. 37:1-29, or in a domestic partnership with an alleged incapacitated person as defined by N.J.S.A. 26:8A-3;

(C) pendente lite temporary guardians appointed pursuant to N.J.S.A. 3B:12-24.1(c);

(D) agencies authorized to act pursuant to P.L.1985, c. 298 (C.52:27G-20 et seq.), P.L.1985, c. 145 (C.30:6D-23 et seq.), P.L.1965, c. 59 (C.30:4-165.1 et seq.) and P.L.1970, c. 289 (C.30:4-165.7 et seq.);

(E) public officials appointed as limited guardians of the person for medical purposes for individuals in psychiatric facilities listed in R.S.30:1-7;

(F) banks, trust companies, credit unions, savings and loan associations, or other financial institutions duly licensed or authorized to conduct business under applicable state or federal laws;

(G) attorneys admitted to practice law and in good standing in the State of New Jersey; and

(H) notwithstanding subparagraphs (A) through (G), the court may require any proposed guardian to undergo background screening as a prerequisite to appointment based on the individual facts of the case, including but not limited to the value of the guardianship estate; and

(4) [(3)] A Case Information Statement in such form as promulgated by the Administrative Director of the Courts. Said Case Information Statement shall include the date of birth and Social Security number of the alleged incapacitated person.

(c) ... no change

Note: Source – R.R. 4:102-2; former R. 4:83-2 amended and rule redesignated June 29, 1990 to be effective September 4, 1990; paragraphs (b) and (c) amended July 14, 1992 to be effective September 1, 1992; paragraph (b) amended July 13, 1994 to be effective September 1, 1994; paragraphs (a), (b), and (c) amended July 12, 2002 to be effective September 3, 2002; paragraphs (b) and (c) amended July 28, 2004 to be effective September 1, 2004; paragraphs (a), (b) and (c) amended July 9, 2008 to be effective September 1, 2008; caption amended, and paragraphs (a), (b) and (c) amended and captions added August 1, 2016 to be effective September 1, 2016; new subparagraph (b)(3) added and former subparagraph (b)(3) redesignated as (b)(4) March 15, 2021 to be effective May 15, 2021.

4:86-4. Order for Hearing

(a) Contents of Order.

(1) ... no change

(2) ... no change

(3) ... no change

(4) ... no change

(5) ... no change

(6) ... no change

(7) The order for hearing shall require that any proposed guardian comply with any applicable background screening policy for proposed guardians of incapacitated adults as promulgated by the Administrative Director of the Courts, including but not limited to fingerprinting. A copy of the policy shall be provided with the order for hearing.

(8) [(7)] If the alleged incapacitated person is not represented by counsel, the order shall include the appointment by the court of counsel for the alleged incapacitated person.

(b) ... no change

(c) ... no change

(d) ... no change

(e) ... no change

Note: Source – R.R. 4:102-4(a)(b). Paragraph (b) amended July 16, 1979 to be effective September 10, 1979; paragraph (a) amended July 21, 1980 to be effective September 8, 1980; paragraph (a) amended July 16, 1981 to be effective September 14, 1981; caption of former R. 4:83-4 amended, caption and text of paragraph (a) amended and in part redesignated as paragraph (b) and former paragraph (b) redesignated as paragraph (c) and amended, and rule redesignated June 29, 1990 to be effective September 4, 1990; paragraph (b) amended July 13, 1994 to be effective September 1, 1994; paragraph (b) amended and paragraphs (d) and (e) added June 28, 1996 to be effective September 1, 1996; paragraphs (a), (b), (c), (d), and (e) amended July 12, 2002 to be effective September 3, 2002; paragraph (e) amended July 27, 2006 to be effective September 1, 2006; paragraphs (a), (b), (c), (d) and (e) amended July 9, 2008 to be effective September 1, 2008; paragraph (a) amended, subparagraphs enumerated and paragraphs (a)(6) and (a)(7) adopted, paragraph (b) amended and subparagraphs enumerated, and paragraph (c) amended August 1, 2016 to be effective September 1, 2016; new subparagraph (a)(7) added and former subparagraph (a)(7) redesignated as (a)(8) March 15, 2021 to be effective May 15, 2021.

4:86-6. Hearing; Judgment

(a) ... no change

(b) ... no change

(c) ... no change

(d) ... no change

(e) Duties of Guardian.

(1) Not later than 30 days after entry of the judgment of legal incapacity and appointment of guardian, the guardian shall qualify and accept the appointment in accordance with *R. 4:96-1*. The acceptance of appointment shall include an acknowledgment that the guardian has completed guardianship training as promulgated by the Administrative Director of the Courts in accordance with *R. 4:86-5(b)*. The acceptance of appointment shall also include an acknowledgment of compliance with any background screening policy for proposed guardians of incapacitated adults promulgated by the Administrative Director of the Courts, including but not limited to fingerprinting and disclosure of any changes to the guardian's criminal or civil judgment history through any required periodic reporting.

(2) ... no change

(3) ... no change

(4) ... no change

(5) ... no change

(6) ... no change

(7) ... no change

(f) ... no change

Note: Source – *R.R.* 4:102-6(a) (b) (c), 4:103-3 (second sentence). Paragraph (a) amended July 26, 1984 to be effective September 10, 1984; paragraph (a) amended November 5, 1986 to be effective January 1, 1987; paragraphs (a) and (c) of former *R.* 4:83-6 amended and rule redesignated June 29, 1990 to be effective September 4, 1990; paragraph (c) amended July 13, 1994 to be effective September 1, 1994; paragraphs (a) and (c) amended July 12, 2002 to be effective September 3, 2002; paragraph (a) amended July 28, 2004 to be effective September 1, 2004; paragraph (a) amended, text of paragraph (c) redesignated as paragraphs (c) and (d) and amended, paragraph (c) caption amended, and paragraph (d) caption adopted July 9, 2008 to be effective September 1, 2008; paragraphs (a) and (c) amended, new paragraph (d) added, former paragraph (d) amended and redesignated as paragraph (e), and new paragraph (f) added August 1, 2016 to be effective September 1, 2016; by order dated August 25, 2016 effective date of paragraph (f)(5) extended to March 1, 2017; subparagraphs (f)(4) and (f)(5)(B) amended July 31, 2020 to be effective September 1, 2020; subparagraph (e)(1) amended March 15, 2021 to be effective May 15, 2021.