

NOTICE TO THE BAR

RECOMMENDATIONS OF THE JUDICIARY WORKING GROUP ON ELDER JUSTICE – PUBLICATION FOR COMMENT

The Supreme Court invites written comments on the Recommendations of the Judiciary Working Group on Elder Justice, including proposed amendments to Rule 4:86 (“Action for Guardianship of an Incapacitated Person or for the Appointment of a Conservator”).

Background

In furtherance of the Supreme Court’s ongoing efforts to protect vulnerable members of society, the Judiciary in 2021 established a Working Group on Elder Justice. The Working Group brought together stakeholders -- including judges, attorneys, healthcare professionals, and advocates -- who work with older adults in various capacities. Informed by the diverse perspectives of those members, the Working Group reviewed existing court and other processes, identified existing gaps, and now recommends steps to improve protections and remedies for at-risk older adults in New Jersey.

Recommendations

The Working Group submitted 13 recommendations, as follows:

Recommendation 1. Create an Elder Justice web page to serve as a centralized location for stakeholders to post information, educate the public on elder justice issues, and connect people to statewide resources. A beta version of the site has been developed and posted on the Judiciary’s website at <https://www.njcourts.gov/public/elder-justice>.

Recommendation 2. Perform a gap analysis and, as needed, develop training programs to address identification of elder abuse, protection of vulnerable older adults, supported decision-making, guardianship, fiduciary responsibilities, fiduciary conflicts, and the rights of incapacitated older adults. Training programs may include, but are not limited to:

- Law Enforcement: Work with the New Jersey Attorney General's Office to create law enforcement training on fiduciary roles and their implications, elder abuse, and the rights of incapacitated older adults.
- County Adult Protective Services: Create training on less restrictive alternatives rather than pursuit of plenary guardianship by default. Develop a manual of resources available to assist with tasks (i.e., writing checks, establishing auto-pay alternatives, etc.).
- Community Hospital Liaisons: Create training on identification of elder abuse, as well as assisting older adult patients with supported decision-making and less restrictive alternatives.
- Long Term Care Community Stakeholders: Create training for staff on identification of elder abuse, supported decision-making, and less restrictive alternatives.
- Examining Physicians and Other Health Professionals: Create training on identification of elder abuse, supported decision-making, and less restrictive alternatives.
- Attorneys: Work with the New Jersey Institute for Continuing Legal Education to create coursework on identification and resolution of fiduciary conflicts; less restrictive alternatives; the duties of court-appointed attorneys in guardianship proceedings; and the restoration of rights process for incapacitated adults.
- Judges and Court Staff: Create training on the restoration of rights process for incapacitated adults, as well as less restrictive alternatives such as supported decision-making, protective arrangements to authorize protective services for a vulnerable adult, and limited guardianships. Provide cross-divisional training on elder abuse.
- Guardians: Review educational materials given to guardians and recommend improvements where appropriate.

Recommendation 3. Collaborate among state agencies to create a standardized pathway by which professionals and members of the public can report suspected criminal activity against the elderly, including but not limited

to the creation of an elder abuse reporting hotline. As an initial outcome, the [New Jersey Medicaid Fraud Control Unit's Elder Abuse, Neglect, and Financial Exploitation Tip Hotline](#) is being used for referrals of both criminal and non-criminal matters and for other outreach.

Recommendation 4. Through collaboration between the Administrative Office of the Courts Civil Practice Division and the Office of Attorney Ethics, explore and refine as appropriate the process and frequency of Attorney Trust Account auditing for professionals who serve as fiduciaries.

Recommendation 5. Develop a statewide guardianship mediation program and pursue an exemption from Madden requirements for attorneys who provide pro bono mediation services in guardianship matters.

Recommendation 6. Amend Court Rule 4:86-7 to clarify procedures for restoration of rights of incapacitated adults, as follows:

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.
- (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 a minimum of two affidavits or certifications 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.

(2) The court shall, on notice to the persons who would be set forth in a complaint filed pursuant to *Rule* [4:86-1] 4:86-2, 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).

Recommendation 7. Request the Legislature to consider potential amendments to New Jersey Statutes, including (1) N.J.S.A. 3B:12-28, to clarify the legal standards for restoration of rights of incapacitated adults, and (2) N.J.S.A. 3B:12-1 et seq. to clarify the legal standards for protective arrangements to authorize services for a vulnerable adult as an alternative to guardianship.

Recommendation 8. Create an elder justice information line to provide information, resources, and procedural guidance on non-criminal elder justice issues to guardians, family members, and the community. As a current approach, the [New Jersey Medicaid Fraud Control Unit's Elder Abuse, Neglect, and Financial Exploitation Tip Hotline](#) is being used for referrals of both criminal and non-criminal matters and for other outreach.

Recommendation 9. Develop public information and outreach materials to educate people involved with older adults -- especially those of diverse populations -- on elder abuse and elder justice matters.

Recommendation 10. Form multi-disciplinary teams (MDTs) to address adult maltreatment. These MDTs should include representatives from county Adult Protective Services, the Ombudsman for the Institutionalized Elderly, law enforcement, county prosecutors, and the courts. The MDTs should also consider whether a non-judicial CASA-like program should be created for adult maltreatment cases.

Recommendation 11. Require attorneys who accept court appointments to serve as guardians to self-disclose to the court when the attorney has four or more appointments in active cases, before accepting additional appointments.

Recommendation 12. Engage stakeholders in ongoing review of statutory and regulatory provisions concerning a range of fiduciary roles beyond guardianship. Such continuing efforts would focus on identification of tensions and development of possible solutions.

Recommendation 13. Adopt a New Jersey Bill of Rights to enhance the rights of persons subject to guardianship starting from (but not aligning exactly with) the model promulgated by the National Guardianship Network. In part, amendments to Rule 4:86 and certain court notices and judgments could advance this recommendation incrementally.

Request for Comment

Please send any comments to the above recommendations by **July 21, 2023** to:

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Comments may also be submitted via email at the following address:
Comments.Mailbox@njcourts.gov.

The Supreme Court will not consider comments submitted anonymously. Thus, those submitting comments by mail should include their name and

address, and those submitting comments by email should include their name and email address. Comments are subject to disclosure upon receipt.



Glenn A. Grant
Administrative Directors of the Courts

Dated: June 14, 2023