

NOTICE TO THE BAR

GUARDIANSHIP -- BACKGROUND SCREENING FOR PROPOSED GUARDIANS OF INCAPACITATED ADULTS -- UPDATED PROPOSED AMENDMENTS TO RULE 4:86-2(b)(3) AND RELATED POLICY – COMMENTS SOUGHT

The Supreme Court invites written comments on the attached proposed amendments to Rule 4:86-2(b)(3) (“Action for Guardianship of an Incapacitated Person or for the Appointment of a Conservator”) and related updates to the Background Screening Policy for Proposed Guardians.

Background

[Directive #11-21](#) (“Guardianships of Incapacitated Adults – Background Screening Policy for Proposed Guardians; New and Revised Court Forms”) promulgated a new background screening policy for proposed guardians of incapacitated adults. To implement the policy, the Court in early 2021 amended several provisions of Rule 4:86 (“Action for Guardianship of an Incapacitated Person or for the Appointment of a Conservator”), including Rule 4:86-2.

Pursuant to the policy and the related rule amendments, proposed guardians now are required to file of an affidavit or certification setting forth their criminal and civil judgment history. The background screening process also involves fingerprinting, criminal background checks, civil judgment reports, and a review of records in Judiciary systems. The rule and directive further provide that certain categories of proposed guardians are exempt from background screening requirements, unless specifically ordered by the court.

Proposed Amendments to Rule 4:86-2(b)(3)

Following up on a proposal announced in a [March 2, 2022 notice](#), the proposed amendments to Rule 4:86-2(b)(3) would provide that parents and spouses who are proposed as guardians must file an affidavit or certification setting forth their criminal and civil judgment history for the prior ten years, excluding expunged matters. In addition, the proposed amendments also would (1) expand the scope of individuals presumptively exempted from in-depth background screening to include people appointed by the court as guardian when the incapacitated person was a minor and (2) clarify that

attorneys are exempted from comprehensive background screening only if seeking appointment in a professional capacity.

Proposed Refinements to the Background Screening Policy

In conjunction with the proposed amendments to Rule 4:86, the Court seeks comments on refinements to the Background Screening Policy for Proposed Guardians promulgated by Directive #11-21.

The proposed updates would make clear that the policy does not apply to special medical guardianships. Consistent with the recommended amendments to the Court Rule, the policy would also reflect that proposed guardians who were appointed legal guardians when the alleged incapacitated person was a minor, or who are attorneys appointed by the court in their professional capacity, are presumptively exempt from background screening.

To support standardization and transparency in operations, the policy also would be updated to reflect the following:

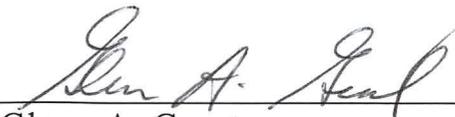
- The policy Acknowledgment Form must be returned with specified confidential personal identifiers within five business days of receipt, and shall be maintained as an administrative record under Rule 1:38-5(a);
- The Certification of Criminal and Civil Judgment History must be filed in accordance with the proposed amendments to Rule 4:86-2, and shall not disclose expunged criminal records;
- Fingerprint checks may be conducted in any New Jersey county, and must be conducted within 60 days of filing of the complaint;
- A certified judgment search may be ordered based on factors including but not limited to the value of guardianship estate (such as to clarify the civil judgment history of a proposed guardian with a common name);
- The Background Screening Authorization and Checklist form is to be maintained as an administrative record under Rule 1:38-5(a); and
- For good cause, judges may close the courtroom or seal the record of the guardian background screening hearing.

Please send any comments to the attached proposed amendments to Rule 4:86-2(b)(3) and the Background Screening Policy for Proposed Guardians in writing by **Friday, November 4, 2022** to:

Glenn A. Grant
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

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: September 29, 2022

Proposed Amendments to Rule 4:86-2(b)(3)

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) ...no change

(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 affidavit or 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 affidavit or 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 affidavit or 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] 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, or who were appointed legal guardians of an alleged incapacitated person prior to their reaching majority

pursuant to an order of the Superior Court, Chancery Division, Family Part;

(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; and

(G) attorneys admitted to practice law and in good standing in the State of New Jersey who are appointed by the court in their professional capacity; and

(H) notwithstanding subparagraphs (A) through (G), [the]

(i) Any proposed guardian who is exempt from background screening pursuant to subparagraph (A) or (B) shall file an affidavit or certification setting forth the proposed guardian's criminal and civil judgment history for the prior 10 years; and

(ii) The court may require any proposed guardian to file an affidavit or certification setting forth the proposed guardian's criminal and civil judgment history or 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) 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.