NOTICE TO THE BAR

GUARDIANSHIPS OF ADULT INCAPACITATED PERSONS – SUPREME COURT RELAXATION OF RULE 4:86 DURING COVID-19 CRISIS

The Supreme Court has approved temporary adjustments to the process for seeking an adjudication of incapacity of an adult and appointment of a guardian of the person and/or estate. The Court's April 8, 2020 Order is attached.

Based on current and continuing social distancing requirements, Rule 4:86 ("Action for Guardianship of an Incapacitated Person or for Appointment of a Conservator") is relaxed to permit examinations and interviews of the alleged incapacitated person by video or by phone. Since in-person court proceedings currently are suspended, the Court's order also provides that the alleged incapacitated person must be provided an opportunity to participate in the guardianship hearing by video or by phone. In addition, judges may deviate from the model form of judgment by authorizing the appointed guardian to act immediately if qualification cannot be timely completed and to postpone (but not waive) the requirement of posting a surety bond so long as any immediate authority over the guardianship estate is narrowly tailored to avoid immediate and irreparable harm to the incapacitated person or their property.

Questions should be directed to Assistant Director for Civil Practice Taironda Phoenix by email at Taironda.Phoenix@njcourts.gov or by phone at (609) 815-2900 x54900.

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

Dated: April 8, 2020

SUPREME COURT OF NEW JERSEY

In response to the ongoing COVID-19 coronavirus pandemic, the New Jersey Judiciary is implementing all available measures to apply social distancing in court operations, consistent with the recommendations of the New Jersey Department of Health and the Centers for Disease Control, including by transitioning on an emergent and temporary basis to conducting most if not all matters via video or telephone.

Notwithstanding the need to move to an entirely remote operation, the Judiciary must continue to meet our responsibilities to the people and the State of New Jersey, including those vulnerable persons alleged to be incapacitated and in need of the appointment of a guardian of the person and/or estate.

Accordingly, pursuant to N.J. Const., Art. VI, sec. 2, par. 3, it is ORDERED that effective immediately and until further order, Rule 4:86 of the Rules Governing the Courts of the State of New Jersey is relaxed and supplemented based on current social distancing requirements, as follows:

1. To permit affidavits in support of guardianship applications to be submitted by physicians or psychologists who have examined the alleged incapacitated person by video or by phone (Rule 4:86-2(b)(2));

2. To permit affidavits in support of guardianship applications to be submitted by persons who otherwise would be disqualified because of their affiliation with an institution having care or custody of the alleged incapacitated person (Rule 4:86-3);
3. To permit service of the verified complaint and notice to the alleged incapacitated person to be completed by alternative means, including certified mail or reading aloud the contents of the complaint (Rule 4:86-4(a)(2) and (5));
4. To permit court-appointed counsel and any guardian ad litem to interview the alleged incapacitated person by video or by phone (Rule 4:86-4(b)(1) and (d));
5. To provide that the alleged incapacitated person must be afforded the opportunity to participate in the guardianship hearing by video or by phone (Rule 4:86-5(a) and (c));
6. To provide that judgments of incapacity may authorize the guardian to act immediately if qualification cannot be timely completed, and that the requirement of posting a surety bond may be postponed (but not waived) so long as any immediate authority over the guardianship estate is narrowly tailored to avoid immediate and irreparable harm to

the incapacitated person or their property (Rule 4:86-6(d)(1) and (2)); and

7. To extend as necessary the timeframe for guardian qualification during the COVID-19 public health emergency (Rule 4:86-6(e)(1)).

For the Court,

Chief Justice

Dated: April 8, 2020