

## RETAIN THIS POLICY FOR YOUR RECORDS.

### New Jersey Judiciary Background Screening Policy for Proposed Guardians of Incapacitated Adults

#### I. Authority

N.J.S.A. 3B:12-25; R. 4:86; National Probate Court Standard 3.3.12;  
N.J.A.C. 13:59-1.1 et seq.; 28 C.F.R. part 20

#### II. Applicability

This policy is applicable to all proposed guardians of incapacitated adults in matters adjudicated in the New Jersey Superior Court, Chancery Division, Probate Part, except the following:

- 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; and

G. Attorneys admitted to practice law and in good standing in the State of New Jersey.

H. Notwithstanding the above provisions (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.

### III. Scope

These procedures establish guidelines governing screening of proposed permanent guardians, substitute guardians, and successor guardians of incapacitated adults in matters adjudicated in the New Jersey Superior Court, Chancery Division, Probate Part. These include proposed general and limited guardians of the person; of the estate; and of the person and estate.

### IV. Policy and Procedures

A. All proposed guardians who are subject to the policy will be provided with a copy of the Judiciary's Screening Policy for Proposed Guardians of Incapacitated Adults by the Surrogate. The proposed guardians must sign an acknowledgment of receipt of the policy no later than prior to the entry of the judgment of incapacity and appointment of guardian. This acknowledgment form shall be filed as part of the court record.

B. All proposed guardians must attach a Certification of Criminal and Civil Judgment History to their complaint. The Certification of Criminal and Civil Judgment History shall be 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 judgment of legal incapacity and appointment of guardian.

C. A criminal history background screening check will be performed upon all proposed guardians who are subject to the policy prior to qualification and acceptance of the appointment. The background

check will be in the form of a fingerprint check performed by the county sheriff's department for the vicinages.

- D. The fingerprint check should be conducted prior to the proposed guardian's qualification and acceptance of the appointment.
- E. In the event that a proposed guardian is not available to submit to a fingerprint in New Jersey because he/she resides outside of the State, a Computerized Criminal History (CCH) check will be used as a screening tool.
- F. Electronic Reception of the Fingerprint Reports
  - 1. The vicinage Human Resources Division Manager or his/her designee may receive the electronically transmitted copy of the fingerprint reports.
  - 2. Hard copies of the fingerprint reports may be made and confidentially shared with the Probate Part judge, the Surrogate, and/or his/her designee, as well as with counsel for the alleged incapacitated person.
  - 3. Hard copies of the fingerprint reports may also be made and confidentially shared with Counsel to the Administrative Director at the Administrative Office of the Courts and/or his/her designee.
  - 4. No electronic copies of fingerprint reports may be made and/or distributed.
  - 5. Pursuant to federal regulations, the Judiciary may **not** share the results of an individual's fingerprint report with that individual.
- G. Any questions or concerns regarding an item that appears on a fingerprint report or a CCH check shall be directed to Counsel to the Administrative Director at the Administrative Office of the Courts.

## H. Destruction of the Fingerprint Reports

1. All copies and the original of the fingerprint reports must be destroyed immediately upon decision-making.
2. Destruction of fingerprint reports shall be in the form of shredding.
3. The vicinage Human Resources Division Manager is responsible for ensuring that all such records are shredded.

I. All proposed guardians who are subject to the policy will also be screened using of the following Judiciary systems: (1) the Automated Traffic System (ATS), (2) Promis-Gavel, (3) the Judiciary's Children-in-Court (CIC) Documents Application, which will access limited areas of the Domestic Violence Central Registry through the Family Automated Case Tracking System (FACTS), Promis-Gavel, and the Automated Complaint System (ACS), and (4) the Civil Judgment and Order Docket (CJOD). No other internal Judiciary program may be searched. The Probate Part judge or his/her designee will conduct this prior court history search. If any adverse information is obtained by such search, the Probate Part judge or his/her designee will consult with the relevant Family/Criminal/Municipal Division Manager to ensure appropriate interpretation of the data. In addition, a Charles Jones search may be conducted for proposed guardians in the discretion of the Probate Part judge based on the value of the guardianship estate, with costs to be paid by the proposed guardian. Results of these database searches may be confidentially shared with counsel for the alleged incapacitated person.

1. If the proposed guardian's name appears on one of these database searches, the information will be reviewed by the Probate Part judge for a determination as to whether the person should be precluded from appointment as guardian.
2. Records from the CIC Document Search must be destroyed immediately upon decision-making. Destruction of the records shall be in the form of shredding. The Probate Part judge or his/her designee is responsible for ensuring that all such records are shredded.

## J. Evaluating Criminal History Background and Screening Information

1. The following factors may be considered in determining whether the criminal history background information and/or the screening information discovered through the search of Judiciary systems adversely relates to the proposed guardian's ability to perform the duties and responsibilities of guardianship in the best interests of the incapacitated person or estate:
  - a. The nature and seriousness of the offense or misconduct;
  - b. The circumstances under which the offense or misconduct occurred;
  - c. The date of the offense or misconduct and the age of the proposed guardian when the offense or misconduct was committed;
  - d. The disposition of the offense or misconduct;
  - e. Whether the offense or misconduct was an isolated event;
  - f. Evidence of rehabilitation;
  - g. Whether the offense or misconduct is relevant to the responsibilities of a guardian;
  - h. The vulnerability of the incapacitated person; and
  - i. Whether appointing the proposed guardian diminishes the public trust in the Judiciary.
2. All Probate Part judges and designees who review criminal history background and screening information need to be mindful of the presumption of innocence with respect to pending criminal charges. Review of pending criminal charges is a fact-sensitive exercise and will depend on the seriousness of the offense charged and the extent to which it touches upon the proposed guardian's prospective duties.
3. Review of data from criminal background checks and searches of Judiciary systems will be strictly limited to the Probate Part judge and/or his/her designee.
4. The decision to appoint or preclude appointment of a guardian based on criminal background check or screening data lies with the Probate Part judge.

5. A proposed guardian whose appointment may be precluded based on the results of a criminal background check or screening must be provided notice and an opportunity to be heard on the record as to why the conviction or search result would not adversely affect the proposed guardian's ability to perform the duties and responsibilities of guardianship in the best interests of the incapacitated person or estate before the court decides to appoint or preclude appointment of the guardian.
  - a. Proposed guardians who may be precluded from appointment based on data contained in a fingerprint report or screening data will be afforded an opportunity to challenge any alleged inaccuracy or incompleteness of the information within the report. Proposed guardians will be provided with an appropriate "Notice of Rights" in such form as attached to this policy. Pursuant to 28 C.F.R. 16.30-34, the "Notice of Rights (Fingerprinting)" sets forth the procedures that must be followed to challenge any alleged inaccuracies or incompleteness with a proposed guardian's fingerprint report. The proposed guardian shall be afforded a reasonable period of time to correct or complete any information contained in their fingerprint report.
- K. At qualification and acceptance of the appointment of guardianship, the guardian's acceptance shall include an acknowledgment of compliance with this policy.
- L. Guardians ordered to file periodic reports pursuant to N.J.S.A. 3B:12-42 shall have an ongoing duty to comply with this policy by disclosing any changes to their criminal or civil judgment history in such reports.