



## NEW JERSEY STATE BAR ASSOCIATION

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September 15, 2023

Hon. Glenn A. Grant  
Administrative Director of the Courts  
Comments on Recommendations of the  
Judiciary Working Group on Elder Justice  
Hughes Justice Complex / P.O. Box 037  
Trenton, NJ 08625-0037

RE: Comments on Recommendations of the Judiciary  
Working Group on Elder Justice

Dear Judge Grant:

Thank you for the opportunity for the New Jersey State Bar Association (NJSBA) to submit comments on the recommendations of the Judiciary Working Group on Elder Justice. We appreciate the additional time provided to allow for a thorough and thoughtful review of the proposal.

The NJSBA appreciates the dedication and effort of the members of the Working Group in discussing and debating the issues associated with elder justice. The recommendations present a comprehensive, well-reasoned approach to increasing awareness of New Jersey's elder abuse and ensuring vulnerable elder residents receive the attention, protection and access to justice they deserve.

The NJSBA supports the initiatives suggested by the Working Group to increase public awareness and allocate resources to investigate and prosecute elder abuse. We recognize that the state Attorney General and many county prosecutors already have outreach and training initiatives in place, and the NJSBA supports continuing and expanding those programs, as suggested.

There are clarifications the NJSBA recommends regarding some of the recommendations. These clarifications are offered with the hope that they will further the Working Group's laudable efforts to improve protections and remedies for at-risk older adults.

About recommendation 4, the NJSBA notes there is a reference to audits of attorney trust accounts, but not to audits of other fiduciaries. The NJSBA recommends exploration of the process and frequency of audits of *all* fiduciary accounts, not just attorney trust accounts. Attorneys acting as guardians do not often hold an incapacitated person's funds in their trust accounts, so expanding this recommendation to all fiduciaries would be important.

In recommendation 6, the NJSBA wholeheartedly agrees with the proposed amendments to R. 4:86-7 that require the appointment of counsel for an alleged incapacitated person (AIP) if they are not represented and allow, if necessary, the appointment of a *guardian ad litem* to evaluate the best interest of the AIP. These steps will ensure the rights and interests of the AIP are protected and presented to the court in the best possible manner before a final decision. The amendments, however, continue to require a minimum of two medical certifications from the AIP evidencing they are no longer incapacitated. The NJSBA believes this may be onerous and recommends consideration of requiring only one certification initially. Where there is any contest, additional proofs that the guardianship is still needed may be determined by the court.

Recommendation 7 refers to statutorily clarifying legal standards for restoration of rights of incapacitated adults and protective arrangements for vulnerable adults. While the NJSBA is supportive of that clarification, it is unclear what those legal standards would be. The Association respectfully requests an opportunity to be involved in developing proposed amendatory language.

Finally, recommendation 11 requires attorneys who accept court appointments to serve as guardians to disclose to the court if they have four or more appointments in active cases. The NJSBA suggests this recommendation be clarified to refer exclusively to plenary guardianship appointments and indicate it does not include temporary guardianship appointments.

Again, the NJSBA appreciates the efforts of the Working Group in making these recommendations, and the additional time provided to allow for the submission of these comments. The NJSBA hopes that these recommended clarifications are useful to the continued consideration of these important issues by the Working Group and the Judiciary.

Sincerely,

A handwritten signature in blue ink, appearing to read "Tim McGoughran". The signature is fluid and cursive, with a large, stylized "S" at the end.

Timothy F. McGoughran, Esq.  
President

cc: William H. Mergner Jr. Esq., NJSBA President-Elect  
Angela C. Scheck, NJSBA Executive Director