

STATE OF NEW HAMPSHIRE

PROBATE COURT

ADMINISTRATIVE ORDER 8

Background Checks In Guardianship Proceedings 463:5, VI (a) and (b), 464-A:4, V (a) and (c)

The probate court shall require a background check of all proposed guardians in minor and adult guardianships. In minor guardianships, the background check will include both a criminal records check conducted by the New Hampshire State Police and a search of the abuse and neglect registry maintained by the Division of Children, Youth and Families (DCYF). Background checks in adult guardianships will include both a criminal records check conducted by the State Police and a search of the Bureau of Elderly and Adult Services (BEAS) abuse, neglect or exploitation founded cases (BEAS State Registry). The court, in its discretion, may also order a search of DCYF's abuse and neglect registry. If the court has information that a proposed guardian of a minor or adult has lived in another state, the court may request a criminal records check and/or a search of any abuse and neglect registry in the other state.

To request a copy of an individual's criminal convictions, all courts shall use the "Criminal Record Release Authorization Form" produced by the State Police. The State Police have agreed to waive all fees in connection with these record requests. To request a search of the DCYF and BEAS registries, all courts shall use the "Department of Health & Human Services Record Release Authorization" form created by the probate court. DHHS has developed an internal process so that when the courts send in the form, both registries (DCYF and BEAS) will be checked. It is therefore only necessary to send in one form (NHJB-2171-FP) for each person whose background is being checked. Send the form to the appropriate agency related to the case.

The court shall require all proposed guardians to sign and file a "Criminal Record Release Authorization Form and a "Department of Health and Human Services Record Release Authorization." Persons living in the same household as minor and/or ward must also complete the same forms and file with the court. No court shall take any further action to process the guardianship petition until the required release(s) are signed and filed with the court by the petitioners, except for expedited hearings pursuant to RSA 464-A, and *ex parte* or temporary hearings pursuant to RSA 463.

All records and releases shall be maintained in the confidential portion of the file.

The court shall forward the appropriate release(s) to the state agency(ies) listed below:

New Hampshire Department of Safety
Division of State Police
Central Repository for Criminal Records
33 Hazen Drive
Concord, NH 03301

Dept. of Health & Human Services
Division of Children Youth & Families
Attn: DCYF Central Registry
129 Pleasant Street
Concord, NH 03301
Fax # 271-4729

Dept. of Health & Human Services
Bureau of Elderly and Adult Services
Attn: BEAS State Registry
40 Terrill Park Drive
Concord, NH 03301
Fax # 271-6875

Expedited, Ex Parte, or Temporary Guardianship Hearings

In the event of a request for an expedited hearing pursuant to RSA 464-A, or an ex parte hearing or temporary guardianship pursuant to RSA 463, the proposed guardian shall sign and file the releases prior to or at the hearing. The court shall conduct a judicial inquiry of the proposed guardian as described below. The Affidavit Relative to Background Check (NHJB-2520-P) may also be required for the proposed guardian(s) to complete.

The court may, in its discretion, grant the guardianship pending the results of the background checks. When a guardianship is granted prior to the court receiving the results of the releases, the court shall review the records upon receipt. If the records reveal convictions or findings of abuse or neglect not revealed by the proposed guardian at the initial hearing, the court shall immediately hold a hearing to address the fitness of the guardian.

Judicial Inquiry at Hearing

When a background check discloses information that has an adverse bearing on the proposed guardian's fitness to serve the ward, the court shall use this information to make further inquiry at a hearing. When the court conducts a guardianship hearing prior to receiving the results of the background checks, the court should inquire of each proposed guardian, as to the existence of any of the following matters:

- 1) State or federal criminal convictions (felony, misdemeanor or violation) not previously annulled, any pending criminal prosecutions, and any state or federal contempt proceedings or findings;

- 2) State or federal probation, parole or alternative criminal sentence release program;
- 3) Pending domestic violence proceedings or outstanding orders of protection, pending abuse or neglect proceedings, complaints or investigations and outstanding dispositional orders; and
- 4) Registration on any abuse, neglect or exploitation registry for adults and/or minors.

When a judicial inquiry is required, the Administrative Judge recommends the inquiry of the proposed guardian be on the record. If the inquiry is not on the record, the court should make a finding that these questions were asked of the proposed guardian and that no adverse responses were given.

When the ward and the proposed guardian will reside in the same home, the court should ask the proposed guardian about the existence of any of the above matters for all other adults living in the home.

David D. King
Administrative Judge of Probate Court

History

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