

**ADMINISTRATIVE ORDER OF THE
CHIEF ADMINISTRATIVE JUDGE OF THE COURTS**

Pursuant to the authority vested in me, and upon consultation with the Administrative Board of the Courts, I hereby promulgate, effective immediately, new Part 148 of the Rules of the Chief Administrator of the Courts, relating to a Relief from Federal Firearms Disabilities Program, to read as follows:

PART 148. RELIEF FROM FEDERAL FIREARMS DISABILITES PROGRAM

§ 148.1 Application

This rule establishes a relief from disabilities program, as required by federal law (Public Law 110-180, § 105 [2007]), for those individuals who have had guardians appointed for them and who would otherwise be prohibited from purchasing firearms because their names have been transmitted to the National Instant Criminal Background Check System database in accordance with state and federal law (L. 2008, ch. 49; 118 USC §§ 922(d)(4) and (g)(4)).

§ 148.2 Definitions.

(a) “Eligible individual” is a person who at any time has had a guardian appointed for him or her pursuant to any provision of state law, based on a determination that, as a result of marked subnormal intelligence, mental illness, incapacity, condition or disease, he or she lacks the mental capacity to contract or manage his or her own affairs.

(b) “Administrative judge” shall mean the administrative judge of each judicial district, or the administrative judge of Nassau County or Suffolk County.

§ 148.3 Petition.

(a) A petition for relief from firearms disabilities must be made by an eligible individual in writing to the administrative judge of the district or county where the court that appointed the guardian is located. It shall be made on notice to any person or entity as designated by the administrative judge, which may include the guardian appointed for

the eligible individual and the licensing officer responsible for issuing any license to possess a firearm in the appropriate jurisdiction.

(b) The request for relief shall include any relevant evidence that will assist in the determination of whether a certificate of relief from federal firearms disabilities should be issued, including, but not limited to:

- (1) Affidavits attesting to the character or reputation of the applicant;
- (2) Medical records detailing the applicant's mental health history;
- (3) A current psychiatric evaluation, unless waived by the person deciding the application;
- (4) A certified copy of the criminal history information of the eligible individual maintained on file at the New York State Division of Criminal Justice Services [DCJS], or a copy of a response from DCJS that there is no criminal history information;

§ 148.4 Proceeding.

- (a) The administrative judge shall designate a hearing officer to hear and report on the application.
- (b) The hearing officer may receive such evidence and testimony as necessary to make a report on the merits of the application.
- (c) Proceedings shall be recorded, either by electronic means or any other method designed to produce an accurate record or transcript of the proceedings.
- (d) In recommending whether to issue a certificate of relief from disabilities, the hearing officer must consider the following factors:
 - (1) The circumstances underlying the initial determination of mental disability;
 - (2) The eligible individual's mental health and criminal history records; and
 - (3) The reputation of the eligible individual as developed through character witness statements, testimony, or other character evidence.

§ 148.5 Report and Determination.

(a) The hearing officer shall issue a written report which shall include a recommendation on whether a certificate of relief from federal firearms disabilities

should be issued. The report shall provide the basis for the recommendation, including whether the person to whom the certificate is to be issued is an eligible individual who will not be likely to act in a manner dangerous to public safety, and whether the relief to be granted by the certificate is contrary to the public interest.

(b) The administrative judge, upon considering the report of the hearing officer, shall determine whether to issue the certificate of relief from federal firearms disabilities. Where the application is granted, the administrative judge shall notify the Division of Criminal Justice Services that the person to whom the certificate was issued should be removed from the database that the federal and state government maintains and uses in connection with the National Instant Criminal Background Check System. Where the application is denied, the judge shall advise the petitioner of the right to appeal the determination.

§ 148.6 Appeal.

Where a petition for relief from firearms disabilities is denied, the petitioner shall have the right to appeal the determination to a court for a *de novo* review of the denial of the petition under Article 78 of the Civil Practice Law and Rules.

Chief Administrative Judge of the Courts

Dated:

AO/ /09