

**SUPREME COURT OF PENNSYLVANIA
ORPHANS' COURT PROCEDURAL RULES COMMITTEE**

NOTICE OF PROPOSED RULEMAKING

Proposed Amendment of Pa. O.C. Rule 1.5, Proposed Rescission of Pa. O.C. Rules 14.1-14.5 and Orphans' Court Forms G-01 through G-04, Proposed Adoption of New Pa. O.C. Rules 14.1-14.14 and Orphans' Court Forms G-01 through G-06, and Proposed Amendment of the Appendix of Forms

The Orphans' Court Procedural Rules Committee is planning to propose to the Supreme Court of Pennsylvania the amendment of Pa. O.C. Rule 1.5, the rescission of Chapter XIV of the Pennsylvania Orphans' Court Rules, Pa. O.C. Rules 14.1-14.5, together with related forms, G-01 through G-04, to be replaced with the adoption of new Pa. O.C. Rules 14.1-14.14 and Orphans' Court Forms G-01 through G-06, and the amendment of the Appendix of Forms, for the reasons set forth in the accompanying explanatory report. Pursuant to Pa.R.J.A. No. 103(a)(1), the proposal is being published in the *Pennsylvania Bulletin* for comments, suggestions, or objections prior to submission to the Supreme Court.

The Committee invites all interested persons to submit comments, suggestions, or objections in writing to:

**Orphans' Court Procedural Rules Committee
Supreme Court of Pennsylvania
Pennsylvania Judicial Center
PO Box 62635
Harrisburg, PA 17106-2635
FAX: (717) 231-9551
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All communications in reference to the proposal should be received by **September 21, 2017**. E-mail is the preferred method for submitting comments, suggestions, or objections; any e-mailed submission need not be reproduced and resubmitted via mail. The Committee will acknowledge receipt of all submissions.

By the Orphans' Court Procedural Rules Committee,

JOHN F. MECK, ESQ.
Chair

**SUPREME COURT OF PENNSYLVANIA
ORPHANS' COURT PROCEDURAL RULES COMMITTEE**

REPUBLICATION REPORT

Proposed Amendment of Pa. O.C. Rule 1.5, Proposed Rescission of Pa. O.C. Rules 14.1-14.5 and Orphans' Court Forms G-01 through G-04, Proposed Adoption of New Pa. O.C. Rules 14.1-14.14 and Orphans' Court Forms G-01 through G-06, and Proposed Amendment of the Appendix of Forms

In 2014, the Elder Law Task Force delivered a comprehensive 284-page report detailing 130 specific recommendations to help lay the foundation for improvements in tackling elder law issues in the courts and by other government entities. The report recommended a number of amendments to the Pennsylvania Orphans' Court Rules. The report also suggested modification of current statewide guardianship forms and the addition of several new forms to assist in monitoring guardianships.

On December 27, 2016, the Orphans' Court Procedural Rules Committee published for comment a proposal that would rescind and replace Chapter XIV of the Pennsylvania Orphans' Court Rules, Pa. O.C. Rules 14.1-14.5, together with related forms. See 46 Pa.B. 7934 (December 27, 2016). The intention of that proposal was to respond to Elder Law Task Force recommendations and to provide more comprehensive statewide rules establishing uniformity and consistency for guardianship proceedings.

The Committee received seven comments raising an aggregate of 80 discrete points related to the Rules. All of the comments related to the Rules were reviewed and discussed by the Committee in the course of several meetings. These deliberations resulted in several revisions to the Rules, some of which were comprehensive. Accordingly, the Committee decided that the proposal should be re-published for additional comment on those revisions. What follows is further commentary to specific proposed rules and discussion of some of the more significant revisions.

Rule 1.5 Local Rules

Through amendment of Rule 1.5, the Committee intends to recommend that the Court vacate all local rules pertaining to guardianships on a date certain unless the local rules have been reviewed for inconsistency pursuant Pa.R.J.A. No. 103.

Similar to the more global amendments of the Pennsylvania Orphans' Court Rules, effective September 1, 2016, the Committee will recommend an effective date on

which all local guardianship rules will be vacated, providing however, sufficient time for the judicial districts to review their local rules and submit to the Committee for review any new rules or current local rules that they wish to retain. Submission of local rules will be subject to a deadline to allow the Committee time to review the proposed local rules for inconsistency.

This rule was not substantively revised for republication.

Rule 14.1 Guardianship Petition Practice and Pleading

A number of comments inquired as to the extent that the requirements in Chapter III of the Pennsylvania Orphans' Court Rules concerning petition practice and pleading requirements would apply to guardianship proceedings. Commenters suggested that the notice and timing requirements would cause delays and invite litigation. Further, some aspects of Chapter III appear impractical in a guardianship proceeding.

Rule 14.1 is designed to place different requirements on petitions for the adjudication of incapacity and appointment of a guardian on one hand and all other petitions on the other hand. Paragraph (a) incorporates by reference and applies specific aspects of Chapter III to petitions for adjudication and appointment. Paragraph (b) provides for the filing of responsive pleadings in these proceedings, but does so on a limited basis and subject to a shorter time frame than Chapter III. While the Committee does not believe that such pleadings are going to be used frequently, a procedural mechanism should exist for contested guardianship proceedings.

It should be noted that responsive pleadings under paragraph (b) are permissive and not required – there are no “default judgments” with respect to the adjudication of incapacity. Further, the paragraph is not intended to preclude the judge from hearing objections first raised at the adjudicatory hearing. Finally, the judge is to decide the objections at the adjudicatory hearing rather than delaying that hearing with another to determine objections.

For all other petitions, paragraph (c) operates to apply the Chapter III requirements to those pleading, subject to the modification of “interested party.” The Committee recognizes that Chapter III imposes more formal requirements on what are often informal proceedings. However, the provisions of Chapter III are designed to afford due process to all involved and the Committee believes that petition practice in guardianship matters require no less protection. As observed in the Explanatory Comment, the requirements are not intended to preclude a petitioner from seeking relief on an emergency or expedited basis when circumstance warrant departure from strict adherence to the Chapter III requirements. However, it will be a judge, and not the Rules, that determine when a departure is warranted.

Paragraph (d) is intended to provide a procedure for a person to seek permission to intervene in a proceeding. This mechanism was crafted as recognition that all those entitled to service pursuant to Rule 14.2(f) may not include all potentially aggrieved parties.

Rule 14.2 Petition for Adjudication of Incapacity and Appointment of a Guardian of the Person or Estate of an Incapacitated Person

The required content of a petition set forth in the Rule is intended to include those requisites set forth in 20 Pa.C.S. § 5511(c) as well as information to assist the court in determining capacity, the need for a guardian, the appointment of a guardian for the estate and/or the person, and the replacement of a guardian, as the case may be. An additional requirement is the identification of any person or persons who are to receive notice of the filing of reports. The Committee favored a naming procedure rather than a rule stating universally and categorically the classes of persons entitled to view reports.

Paragraph (a)(3) has been revised to require the petitioner to indicate whether intestate heirs are *sui juris*. The Committee received a comment about why the petition must be served on all persons entitled to an intestate share of the alleged incapacitated person's estate pursuant to paragraph (f)(2)(i), rather than only those residing in Pennsylvania, as stated in 20 Pa.C.S. § 5511(a). The Committee recognizes, particularly in counties bordering other states, that family members residing in other states may only be separated by a relatively short distance. Further, the Committee takes notice that people exhibit greater mobility now than in the past. Therefore, the Committee favored providing notice to those relatives regardless of residency within Pennsylvania.

Paragraph (b)(1) has been revised to require the petitioner to identify those individuals who will have direct responsibility for the alleged incapacitated person when the proposed guardian is an entity. This paragraph would also require the principal of the entity to be identified. The Committee acknowledges that designating those persons having direct responsibility may be challenging at this stage in a guardianship proceeding. However, the Committee believes it is important to do so for the purposes of the criminal record check requirement in paragraph (c)(2). For those entities using a team approach or rotating assignments, identification of all likely individuals would be necessary. The Committee also believes that the person having ultimate responsibility for the entity should be identified for purposes of the criminal record check.

Paragraph (b)(4) requires the petition to include whether the proposed guardian has completed any guardianship training. The Committee received several comments

regarding this paragraph and whether it was intended to create an expectation that training is a pre-requisite to appointment as a guardian. This paragraph was intended to require the inclusion of training information; it was not intended to create a training requirement.

Paragraph (b)(5) has been revised to include the number of active matters for the guardian. This quantification is intended to provide the court with information about the current caseload of the proposed guardian.

Paragraph (c)(2) has been revised, together with the addition of the Explanatory Comment, to incorporate a suggestion provided by a comment. With the PATCH System, a requestor can apply for a criminal background check with the Pennsylvania State Police. It is reported that 85% of the time that a “no record” certificate is returned immediately to the requestor. The fee for a request is \$8.00. As explained in the Explanatory Report, the response need not be notarized, thereby avoiding an additional \$5.00 fee. The Committee recognizes there is a cost for obtaining this information, but the value of this information to screen potential guardians and persons having direct responsibility for the incapacitated person justifies the expense.

Rule 14.3 Written Deposition

The Committee previously published for comment a proposed rule and form regarding written depositions to be used for the admission of expert testimony in lieu of live testimony. See 46 Pa.B. 2306 (May 7, 2016). That proposal represented a refinement of an earlier published version of the form. See 45 Pa.B. 1070 (March 7, 2015). The version submitted to the Court is set forth in the proposed rules to provide context for the remaining rules and forms. The Committee is not soliciting comment on this Rule.

Rule 14.4 Counsel

Based upon a comment, the Committee added new paragraph (a) to the Rule to set forth the statutory requirement that the petitioner inform the court whether the alleged incapacitated person has counsel. See 20 Pa.C.S. § 5511(a). Relatedly, the Committee received suggestions that the Rule require that counsel be appointed to represent the alleged incapacitated person in all cases. The statute provides that counsel may be appointed to represent the alleged incapacitated person “in appropriate cases.” The Committee read this provision to grant the judge discretion to appoint counsel and not as a requirement that counsel be appointed in all cases.

The language of paragraphs (b)-(d) has been retained from the previous proposal. As mentioned in the prior publication report, this Rule intended to provide for the memorialization of the scope of counsel's services before commencement of the proceedings in order to avoid confusion about the role of counsel. The Rule also requires private counsel to set forth information regarding fees in the engagement letter. The reasonableness of all fees incurred on behalf of the alleged incapacitated person, whether attributed to private counsel or appointed counsel, are subject to court review. The Committee did not accept a suggestion that the Rule contain a range of reasonable fees, believing that reasonableness remains a matter of local practice.

Rule 14.5 Waiver or Modification of Bond

As previously proposed, this Rule would have permitted the court to consider whether a consumer report or proof of insurance should be filed as assurance after a bond has been waived or modified. The Committee believed that these two documents may cause the Rule to be too narrowly applied because proof in paragraph (c) might operate to limit what constitutes proof of "good cause" in paragraph (b).

Aside from the statutory exception for corporate guardians, see 20 Pa.C.S. §§ 5121, 5122, bonding is generally going to be sought to be initially waived or reduced for one of the following: 1) the guardian is unable to be bonded; 2) a bond is unnecessary due to assets of guardian; 3) a bond is unnecessary because of insurance; 4) a bond is unnecessary because the guardian's character or relationship with the incapacitated person; or 5) the protection of a bond for smaller estates is outweighed by the cost. This Rule is premised on the guardian being bondable. With these examples, the existence of a consumer report or insurance policy may be relevant in some, but not all, instances. Further, a consumer report is practically meaningless if the basis for a subsequent bond modification is an increase or decrease in the size of the incapacitated person's estate.

Accordingly, the Committee favored providing examples of "good cause" in the Explanatory Comment and revising paragraph (c) to require the court to consider the necessity and means of how "good cause" can be demonstrated in the future to provide assurance that "good cause" continues to exist. The revision allows the court, rather than the Rule, to determine what evidence is necessary to assure "good cause."

Rule 14.6 Determination of Incapacity, Selection of Guardian

In response to a comment, the Committee revised paragraph (a) to require that the petitioner present the citation and proof of service at the adjudicatory hearing.

The omission of professional guardians from the list of eligible guardians was not intended to exclude them from consideration. Accordingly, “professional guardian” was added to paragraph (b)(1)(x) and the concluding sentence of paragraph (b)(2). This proposal does not define “professional guardian”; currently, that phrase will be subject to local interpretation. This matter remains under Committee study

A commenter suggested that a professional guardian be given greater consideration when selecting a guardian because the use of family members tends to lead to conflict. With regard to a guardian of the person, the Committee believed that family members are typically most knowledgeable of the incapacitated person’s preferences and values. Therefore, family members should be given higher preference than non-family members. Likewise for guardians of the estate, provided that the estate consists of minimal assets or the proposed guardian possesses the necessary skills and experience.

Rule 14.7 Order and Certificate

The Committee previously deliberated on whether to propose a form order adjudicating incapacity and appointing a guardian. The Committee initially concluded that the format and content of the order should be left to local practice subject to statutory requirements. However, the Committee received several comments regarding items that should be included in an order. After revisiting this issue, the Committee concluded that the format of orders should remain a matter of local practice. Further, the content of guardianship orders should be tailored to the needs of the incapacitated person. Mandating the use of a boilerplate form for individualized issues would either contain a kaleidoscope of options or vast sections of fillable blank text. The end result would be a “skeleton form” that achieves little uniformity other than format, which was not a pressing concern to the Committee.

To address comment concerns, the Committee created Rule 14.7 to set forth topics that all orders must address, see paragraph (a)(1), and language the order must contain, see paragraph (a)(2). Regarding guardianships of the estate, paragraph (b)(1) would require orders to address bonding requirements and the authority of the guardian to spend principal without prior court approval. Paragraph (b)(2) would require all orders for guardians of the estate to contain language substantially in the form provided. The model language in paragraph (b)(2) is intended to address a recurring issue with financial institutions not readily permitting access to the incapacitated person’s accounts and to conduct transactions on behalf of the incapacitated person. Given that a financial institution may have branches in multiple counties, the Committee believed that similar model language should be used in every order to provide for consistent recognition and uniform effect.

The Committee retained the concept of a certificate being issued by the clerk of the orphans' court to minimize the unnecessary disclosure of confidential matters involving the incapacitated person when dealing with third parties. However, the Committee reconsidered the previously proposed Certificate of Guardian form and its function. Questions arose whether the description of "plenary guardian" is of practical use in third party transactions. Further, the Committee learned that some orders contain the enumerated powers of a plenary guardian rather than specifying the type of guardianship. Additionally, the conditions placed on a limited guardian's authority may be extensive and detailed.

Aware of the burden that may be placed on clerks of the orphans' court having to interpret, identify, and transcribe into a certificate the guardian's authority set forth in the order of adjudication and appointment, the Committee elected to limit the scope of the Certificate of Guardianship to include only the model language in paragraph (b)(2). Moreover, the Committee's concern about disclosing the entirety of the order has been tempered by the requirement that final orders be publicly accessible. See *Public Access Policy of the Unified Judicial System of Pennsylvania: Case Records of the Appellate and Trial Courts*, § 9.0(B) (Eff. January 6, 2018).

Rule 14.8 Guardianship Reporting, Monitoring, Review, and Compliance

Based upon comments, the Committee considered whether the first report should be filed less than twelve months after the appointment, whether there should be shorter forms for estates of modest value, and whether the inventory should be filed within three months rather than ninety days. Further, the Committee considered whether reports should be as of the anniversary of the appointment or the month end of the month in which the anniversary occurs. Finally, the Committee considered whether the Rules provide sufficient time to complete and file a report before the report becomes delinquent.

Concerning the timing of the reports, the Committee favors adherence to the current practice of reports for the same period regardless of whether the report is for the first anniversary or the tenth anniversary. As for the concern that filing periods may end mid-month and make data collection necessary to complete the report difficult, the Committee believes that such challenges already exist and have been overcome. The Committee is not inclined to alter the current practice via rulemaking. Likewise, the Committee does not favor the development of a short form for estates of modest value because value is not perfectly correlated with complexity and guardians can simply indicate "N/A" for those parts of the forms that are inapplicable.

Upon reviewing paragraphs (f)(1) and (f)(2), the Committee concluded that the guardian has at least 40 days to complete and file a required report before the judge is

given notice. Accordingly, the Committee believes that 40 days was sufficient to perform this function.

Finally, the Committee is mindful that statute provides three months to file an inventory. See 20 Pa.C.S. § 5142. However, the Committee believes that an established number of days provides a more uniform approach than months of varying length.

In response to a comment, paragraph (a)(4) has been revised to additionally require the filing of a final report when an order has expired and no permanent order is entered. This revision is intended to address emergency orders in which no final order is entered.

The Committee considered a request to include a reference to the “Guardianship Tracking System” (GTS) in Rule 14.8. The GTS is an online system being developed by the Administrative Office of Pennsylvania Courts (AOPC) that will provide the means for guardians to file reports and update information online as opposed to the current paper process.

The GTS is intended to standardize reporting, prevent mistakes, and ensure complete reports. It will store and carryover information from year-to-year, which is intended to facilitate the filing of subsequent reports. Further, the GTS can track information and flag accounts where inputted data falls outside of established parameters, which is intended to enhance guardianship monitoring.

The AOPC expects to begin implementation sometime in mid-to-late 2018. Once the GTS is implemented, then the Rules will be amended to reflect to the availability of the system. However, until that time, the Committee believes that it would be premature for the Rules to reference a system that is not yet in statewide operation.

Rule 14.9 Review Hearing

No substantive revisions were made to Rule 14.9. The Committee received a comment suggesting that this Rule should be more expansively drafted to include other types of petitions. The Committee intended for this Rule to be applicable to review petitions and not to the exclusion of all other petitions. The Committee believes that the addition of Rule 14.1 will better inform readers that other petitions are permitted under the Rules and the procedures to follow can be found in Chapter III.

Rule 14.10 Proceedings Relating to Real Estate

No substantive revisions were made to Rule 14.10. The Committee received a comment about whether paragraph (b) should require the guardian to inform the court if there is a known objection from an interested party concerning the proposed transaction. The Committee believes that an interested party objecting to a transaction should file a responsive pleading. See *also* 20 Pa.C.S. § 5521(e) (concerning knowledge of incapacitated person's objection).

Rule 14.11 Transfer of Guardianship of the Person to Another State

A commenter questioned how the petitioner would be able to plead facts indicating that the guardianship will be accepted by other state's court. In response, the Committee revised paragraph (a)(4) to insert "likely" and add that likelihood may be established by evidence of the other state having procedures similar to Rule 14.13 (Acceptance of a Guardianship Transferred from Another State). Per the National Conference of Commissioners on Uniform State Laws' website, as of August 8, 2017, Florida, Texas, Michigan, Wisconsin, and Kansas have not enacted legislation based upon the Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act.

Other comments indicated that anyone should be able to raise an objection and questioned whether an answer is necessary to raise an objection. The Committee believes that permitting anyone to raise an objection would invoke issues of standing. Rather, if someone other than those entitled to service pursuant to Rule 14.2(f)(2) wishes to raise an objection, then that person should seek to intervene pursuant to Rule 14.1(d). Additionally, an answer may include new matter, see Pa. O.C. Rule 3.6(a), both of which may be used as vehicles to raise objections depending on the basis for the objection.

Rule 14.12 Transfer of Guardianship of the Estate to Another State

See the Committee's comments to Rule 14.11, *supra*.

Rule 14.13 Acceptance of a Guardianship Transferred from Another State

After further consideration by the Committee, paragraph (a)(3) was added to require the petition and order determining the initial incapacity be attached. The Committee believed this was important information for the receiving court to possess. Further, this information may be helpful in determining whether a modification hearing may be necessary.

As previously proposed, the Rule would have required the court to conduct a hearing within 90 days of the issuance of the final order. The Committee received several comments objecting to a rule-mandated hearing when the statute made such a hearing discretionary. The commenters contended that a hearing in every instance would be burdensome. The Committee agrees with these comments and deleted this requirement in its entirety, instead including a reference to the pertinent statute in the Explanatory Comment.

As previously proposed, the receiving court would enter an order “accepting jurisdiction” when it received the final order from the other state transferring the guardianship. A commenter questioned why the receiving court did not “accept the guardianship” rather than “accept jurisdiction.” The Committee agrees with this comment and has revised paragraph (e)(2) accordingly.

Rule 14.14 Forms

There are eight statewide forms associated with this Chapter, two of which (OC-03 and OC-04) are also associated with Pa. O.C. Rule 2.4 in Chapter II. Rule 14.12(e) & (f) are intended to incorporate those forms by reference. Likewise, Forms OC-3 and OC-04 are not replicated within the Appendix to Chapter XIV; rather, they are incorporated by reference. Those forms (OC-03 and OC-04), revised and repromulgated on September 1, 2016, are not being revised, rescinded, or replaced by this proposal.

No further revision is being proposed for the Citation with Notice (G-01) or the Notice of Filing (G-06) beyond that previously proposed at 46 Pa.B. 7934 (December 27, 2016).

The Report of the Guardian of the Estate (G-02), the Report of the Guardian of the Person (G-03), and the Inventory (G-04) forms were previously published for comment at 45 Pa.B. 1070 (March 7, 2015). The forms were republished at 46 Pa.B. 7934 (December 27, 2016). The comments related to these forms were shared with the Office of Elder Justice in the Courts for review and consideration by the Advisory Council on Elder Justice in the Courts. As such, these reports are not being republished for comment and, therefore, are not included in this proposal. Likewise, the Written Deposition form remains under review and is not included in this proposal.

After any necessary revisions and Supreme Court adoption, the forms will be posted permanently on the UJS website with the other Orphans’ Court forms.

The Committee invites all comments, concerns, and suggestions regarding this proposal.

Rule 1.5 Local Rules

(a) All previously promulgated local rules are hereby vacated, effective September 1, 2016, except for those local rules promulgated under Chapter ~~[14]~~ XIV regarding guardianship of incapacitated persons, Chapter ~~[15]~~ XV regarding adoptions, and Chapter ~~[16]~~ XVI regarding proceedings pursuant to section 3206 of the Abortion Control Act.

(b) All previously promulgated local rules under Chapter XIV regarding guardianship of incapacitated persons are hereby vacated, effective (TBD).

~~[(b)]~~ (c) The requirements for the promulgation and amendment of local procedural rules for orphans' court proceedings are set forth in Pennsylvania Rule of Judicial Administration 103(d).

~~[(c)]~~ (d) The local rules applicable to practice in the Civil or Trial Division of the local Court of Common Pleas shall not be applicable in the Orphans' Court Division unless so directed by these Rules or by local rule adopted by the court of the particular judicial district in accordance with Pa.R.J.A. No. 103.

Note: Effective August 1, 2016, Pennsylvania Rule of Judicial Administration 103 was amended to consolidate and include all local rulemaking requirements. Accordingly, the rulemaking requirements under Pa. O.C. Rule 1.5 for the promulgation and amendment of local procedural rules for orphans' court proceedings were rescinded and replaced.

PENNSYLVANIA ORPHANS' COURT RULES

CHAPTER I. PRELIMINARY RULES

- Rule 1.1. Short Title and Citation
- Rule 1.2. Construction and Application of Rules
- Rule 1.3. Definitions
- Rule 1.4. Extension of Time Limitations
- Rule 1.5. Local Rules
- Rule 1.6. Mediation by Agreement, Local Rule, or Court Order
- Rule 1.7. Entry and Withdrawal of Counsel
- Rule 1.8. Forms

CHAPTER XIV. GUARDIANSHIPS OF INCAPACITATED PERSONS

- [Rule 14.1. Rescinded
- Rule 14.2. Adjudication of Incapacity and Appointment of a Guardian of the Person and/or Estate of an Incapacitated Person
- Rule 14.3. Review Hearing
- Rule 14.4. Proceedings Relating to Real Estate
- Rule 14.5 Forms]

Rule 14.1 Guardianship Petition Practice and Pleading

Rule 14.2 Petition for Adjudication of Incapacity and Appointment of a Guardian of the Person or Estate of an Incapacitated Person

Rule 14.3 Written Deposition

Rule 14.4 Counsel

Rule 14.5 Waiver or Modification of Bond

Rule 14.6 Determination of Incapacity, Selection of Guardian

Rule 14.7 Order and Certificate

Rule 14.8 Guardianship Reporting, Monitoring, Review, and Compliance

Rule 14.9 Review Hearing

Rule 14.10 Proceedings Relating to Real Estate

Rule 14.11 Transfer of Guardianship of the Person to Another State

Rule 14.12 Transfer of Guardianship of the Estate to Another State

Rule 14.13 Acceptance of a Guardianship Transferred from Another State

Rule 14.14 Forms

[This is an entirely new chapter.]

CHAPTER XIV. GUARDIANSHIPS OF INCAPACITATED PERSONS

Rule 14.1 Guardianship Petition Practice and Pleading

(a) Proceedings for Adjudication of Incapacity and Appointment of a Guardian. The following petition practice and pleading requirements set forth in Chapter III (Petition Practice and Pleading) shall be applicable to proceedings for the adjudication of incapacity and appointment of a guardian:

- (1) Rule 3.2 (Headings; Captions);
- (2) Rule 3.3 (Contents of All Petitions; General and Specific Averments);
- (3) Rule 3.12 (Signing);
- (4) Rule 3.13 (Verification); and
- (5) Rule 3.14 (Amendment).

(b) Responsive Pleadings to a Petition for Adjudication of Incapacity and Appointment of a Guardian Filed Pursuant to Rule 14.2.

- (1) Responsive pleadings allowed after filing of a petition are limited to those identified in Rule 3.6 (Pleadings Allowed After Petition) and shall be subject to Rules 3.10 (Denials; Effect of Failure to Deny) and 3.11 (Answer with New Matter).
- (2) The alleged incapacitated person and any person or institution served pursuant to Rule 14.2(f)(2) may file a responsive pleading.
- (3) Any responsive pleading shall be filed with the clerk and served pursuant to Rule 4.3 (Service of Legal Paper Other than Citations or Notices) on all others entitled to file a responsive pleading pursuant to paragraph (b)(2).
- (4) All responsive pleading shall be filed and served no later than five (5) days prior to the hearing.
- (5) The court shall determine any objections at the adjudicatory hearing.

(6) The court, in the interest of justice, may waive strict adherence to this paragraph.

(c) All Other Petitions for Relief. Unless otherwise provided by Rule in this Chapter, the petition practice and pleading requirements set forth in Chapter III shall be applicable to proceedings other than a petition seeking the adjudication of incapacity and appointment of a guardian. “Interested party,” as used in Chapter III, shall include all those entitled to service pursuant to Rule 14.2(f).

(d) Intervention. A petition to intervene shall set forth the ground on which intervention is sought and a statement of the issue of law or question of fact the petitioner seeks to raise. The petitioner shall attach to the petition a copy of any pleading that the petitioner will file if permitted to intervene. A copy of the petition shall be served pursuant on all those entitled to service pursuant to Rule 14.2(f).

Explanatory Comment: This Rule is intended to specify the provisions of Chapter III that are applicable to proceedings under Chapter XIV and provide a procedure for intervention in such proceedings. Those provisions not specified are inapplicable to proceedings under Chapter XIV. For proceedings for the adjudication of incapacity and appointment of a guardian, responsive pleadings are permitted as a means of identifying contested legal issues and questions of fact prior the adjudicatory hearing. However, given the abbreviated window for filing a response relative to other proceedings, compare Pa. O.C. Rule 3.7(a), the failure to file a responsive pleading should not operate to preclude an issue or question from being raised and considered at the hearing. Paragraph (b)(6) is intended to permit the court to waive strict adherence with the time requirements for a responsive pleading. Such pleadings should not be filed as a means of delaying the hearing on the merits of the petition.

The practice for other petitions is to follow the requirements of Chapter III. Nothing in this Rule is intended to prevent relief being sought on an expedited basis, provided the petitioner is able to establish circumstances to the satisfaction of the court warranting disregard of procedural requirements. See Pa. O.C. Rule 1.2(a).

Notice should be taken that Rules within Chapter XIV may have specific pleading and practice requires. See, e.g., Pa. O.C. Rules 14.11-.13.

Rule 14.2 Petition for Adjudication of Incapacity and Appointment of a Guardian of the Person or Estate of an Incapacitated Person

(a) Petition Contents. A petition to adjudicate an individual as an incapacitated person shall state in plain language:

- (1) Name, age, address, and mailing address, if different, of the petitioner and the petitioner's relationship to the alleged incapacitated person;
- (2) Name, age, residence, and mailing address, if different, of the alleged incapacitated person;
- (3) Names and addresses of the spouse, parents, and presumptive intestate heirs of the alleged incapacitated person and whether they are *sui juris* or non *sui juris*;
- (4) Name and address of the person or institution providing residential services to the alleged incapacitated person;
- (5) Names and addresses of other service providers and nature of services being provided;
- (6) Reason(s) why guardianship is sought, including a description of functional limitations and the physical and mental condition of the alleged incapacitated person;
- (7) If not plenary, then specific areas of incapacity over which it is requested that the guardian be assigned powers;
- (8) The probability of whether the physical condition and mental condition of the alleged incapacitated person will improve;
- (9) Whether there is an executed health care power of attorney, and if so, the name of the person designated in the document to act as the health care agent;
- (10) Whether there is an executed power of attorney, and if so, the name of the person designated in the document to act as the agent;

- (11) Whether there has been a prior incapacity hearing concerning the alleged incapacitated person, and if so, the name of the court, the date of the hearing, and the determination of capacity;
- (12) Steps taken to find a less restrictive alternative than a guardianship;
- (13) If a guardian of the estate is sought, then the gross value of the estate and net income from all sources, to the extent known;
- (14) Whether there is a prepaid burial account, to the extent known;
- (15) Whether the alleged incapacitated person is a veteran of the United States Armed Services, and whether the alleged incapacitated person is receiving benefits from the United States Veterans' Administration on behalf of himself or herself or through a spouse; and
- (16) Name and address, if available, of any person proposed to receive a notice of filing pursuant to Rule 14.8(b).

(b) Nomination of Guardian. The petition for adjudication of incapacity shall also include:

- (1) The name, address, and mailing address, if different, of the proposed guardian whom the petitioner nominates to be appointed guardian and the nominee's relationship, if any, to the alleged incapacitated person. If the proposed guardian is an entity, then the name of the person or persons to have direct responsibility for the alleged incapacitated person and the principal of the entity;
- (2) Whether the proposed guardian has any adverse interest to the alleged incapacitated person;
- (3) Whether the proposed guardian is available and able to visit or confer with the alleged incapacitated person;
- (4) Whether the proposed guardian has completed any guardianship training, including the name of the training program, length of the training, and date of completion;
- (5) Whether the proposed guardian is or was a guardian in any other matters and, if so, the number of active matters; and

(6) If the petition nominates a different proposed guardian of the estate from the proposed guardian of the person, then the information required in subparagraphs (b)(1)-(b)(5) as to each nominee.

(c) Exhibits. The following exhibits shall be appended to the petition:

(1) All powers of attorney, if available;

(2) The certified response to a Pennsylvania State Police criminal record check, with Social Security Number redacted, for each proposed guardian issued within six months of the filing of the petition.

(i) If any proposed guardian has resided outside the Commonwealth and was 18 years of age or older at any time within the previous five-year period, then the petition shall include a criminal record check obtained from the statewide database, or its equivalent, in each state in which such proposed guardian has resided within the previous five-year period.

(ii) When any proposed guardian is an entity, the person or persons to have direct responsibility for the alleged incapacitated person and the principal of the entity shall comply with the requirements of subparagraph (c)(2); and

Note: For information on requesting a criminal record check from the Pennsylvania State Police, see <http://www.psp.pa.gov/Pages/Request-a-Criminal-History-Record.aspx>.

(3) Any proposed orders as required by Rule 3.4(b).

(4) Any consent or acknowledgement of a proposed guardian to serve.

(d) Emergency Guardian. A petition seeking the appointment of an emergency guardian shall aver with specificity the facts giving rise to the emergent circumstances and why the failure to make such an appointment will result in irreparable harm to the person or estate of the alleged incapacitated person.

Note: Limitations on emergency guardianships are prescribed by statute. See 20 Pa.C.S. § 5513.

(e) Separate Petitions. Separate petitions shall be filed for each alleged incapacitated person.

(f) Citation with Notice. A citation with notice using the form provided in the Appendix to these Rules shall be attached to and served with the petition and any preliminary order as follows:

- (1) Upon the alleged incapacitated person no less than 20 days prior to the hearing. Additionally, the content and terms of the petition shall be explained to the maximum extent possible in language and terms the alleged incapacitated person is most likely to understand.
- (2) In the manner pursuant to Rule 3.5(b) no less than 20 days prior to the hearing upon:
 - (i) All persons who would be entitled to an intestate share in the estate of the alleged incapacitated person;
 - (ii) The person or institution providing residential services to the alleged incapacitated person; and
 - (iii) Such other parties as the court may direct, including service providers.

Note: For notice to the United States Veterans' Bureau, see 20 Pa.C.S. § 8411.

- (3) For a petition seeking the appointment of an emergency guardian, the court may direct the manner of service as emergent circumstances warrant. Thereafter, notice shall be served in accordance with Rule 14.2(f)(2).

Explanatory Comment: Concerning the requirement of a criminal record check set forth in paragraph (c)(2), the Pennsylvania State Police has created the Pennsylvania Access to Criminal History ("PATCH") System to enable the public to obtain criminal history record checks via Internet request. The certified response from the Pennsylvania State Police criminal history record check need not be notarized to comply with the requirements of this rule. Any response other than "no record" may require supplementation at the discretion of the court.

Rule 14.3 Written Deposition

Evidence of incapacity may be admissible through a written deposition using the form provided in the Appendix to these rules under the following circumstances:

- (a)** The deponent is qualified by training and experience in evaluating individuals with incapacities for the type alleged in the petition;
- (b)** The deponent signs, dates, and verifies the responses set forth in the form;
and
- (c)** Incapacity is uncontested.

Explanatory Comment: This rule and referenced form are intended to permit the admission of expert testimony by written deposition rather than live testimony. See 20 Pa.C.S § 5518. The rule is permissive; whether a deposition is admitted in lieu of testimony is at the discretion of the court. Nothing in this rule is intended to preclude the court from requiring the deponent to appear or requiring supplementation if the court is not satisfied with the responses contained within the deposition. With the necessity of cross-examination, the use of a written deposition pursuant to this rule is not permitted when capacity is contested.

Rule 14.4 Counsel

(a) If counsel for the alleged incapacitated person has not been retained, the petitioner shall notify the court in writing at least seven days prior to the adjudicatory hearing that the alleged incapacitated person is unrepresented.

(b) Private Counsel. If the alleged incapacitated person has retained private counsel, counsel shall prepare a comprehensive engagement letter for the alleged incapacitated person to sign, setting forth when and how counsel was retained, the scope of counsel's services, whether those services include pursuing any appeal, if necessary, how counsel will bill for legal services and costs and the hourly rate, if applicable, who will be the party considered responsible for payment, whether any retainer is required, and if so, the amount of the retainer. Counsel shall provide a copy of the signed engagement letter to the court upon request.

(c) Appointed Counsel. The court may appoint counsel if deemed appropriate in the particular case. Any such order appointing counsel shall delineate the scope of counsel's services and whether those services include pursuing any appeal, if necessary.

(d) Other Counsel. Counsel for any other party shall enter an appearance in accordance with Rule 1.7(a).

Explanatory Comment: Reasonable counsel fees, when appropriate, should be paid from the estate of the alleged incapacitated person whenever possible. If the alleged incapacitated person is unable to pay for counsel, then the court may order counsel fees and costs to be paid by the county. See 20 Pa.C.S. § 5511(c). Any fee dispute should be resolved in a timely and efficient manner to preserve resources in order to maintain the best possible quality of life for the incapacitated person.

Rule 14.5 Waiver or Modification of Bond

(a) Request. A request for the court to waive or modify a bond requirement for a guardian of the estate may be raised within the petition for adjudication of incapacity or at any other time by petition.

(b) Waiver or Modification. The court may order the waiver or modification of a bond requirement for good cause.

(c) Assurance. If the court waives or modifies a bond requirement, then the court shall consider the necessity and means of periodic demonstration of continued good cause.

Explanatory Comment: Pursuant to 20 Pa.C.S. § 5515, the provisions of Sections 5121-5123 of Title 20 relating to bonding requirements are incorporated by reference into Chapter 55 proceedings. When property is held by the incapacitated person as fiduciary, see 20 Pa.C.S. § 5516. “Good cause” may include, but is not limited to, an estate of nominal value, fluctuation in the size of the estate, adequate insurance maintained by the guardian against risk of loss to the estate, the credit worthiness of the guardian, and assets of the guardian relative to the value of the estate.

Rule 14.6 Determination of Incapacity, Selection of Guardian

(a) Determination of Incapacity. The procedure for determining incapacity and for appointment of a guardian shall meet all requirements set forth at 20 Pa.C.S. §§ 5511, 5512, and 5512.1. In addition, the petitioner shall present the citation and proof of service at the hearing.

(b) Selection of Guardian. If guardianship services are needed, then the court shall appoint the person nominated as such in a power of attorney, except for good cause shown or disqualification. Otherwise, the court shall consider the eligibility of one or more persons to serve as guardian in the following order:

(1) Guardian of the Person:

- (i) The guardian of the estate;
- (ii) The spouse, unless estranged or an action for divorce is pending;
- (iii) An adult child;
- (iv) A parent;
- (v) The nominee of a deceased or living parent of an unmarried alleged incapacitated person;
- (vi) An adult sibling;
- (vii) An adult grandchild;
- (viii) Other adult family member;
- (ix) An adult who has knowledge of the alleged incapacitated person's preferences and values, including, but not limited to, religious and moral beliefs, and would be able to assess how the alleged incapacitated person would make decisions; or
- (x) Other qualified proposed guardian, including a professional guardian.

(2) Guardian of the Estate. When the estate of the incapacitated person consists of minimal assets or where the proposed guardian possesses the skills and experience necessary to manage the finances of the estate:

- (i) The guardian of the person;

- (ii) The spouse unless estranged or an action for divorce is pending;
- (iii) An adult child;
- (iv) A parent;
- (v) The nominee of a deceased or living parent of an unmarried alleged incapacitated person;
- (vi) An adult sibling;
- (vii) An adult grandchild;
- (viii) Other adult family member; or
- (ix) An adult who has knowledge of the alleged incapacitated person's preferences and values, including, but not limited to, religious and moral beliefs, and would be able to assess how the alleged incapacitated person would make decisions.

Where no individual listed in subparagraphs (i) – (ix) of paragraph (b)(2) possesses the skills and experience necessary to manage the finances of the estate, the guardian of the estate may be any qualified proposed guardian, including a professional guardian or corporate fiduciary.

Note: See *In re Peery*, 727 A.2d 539 (Pa. 1999) (holding a person does not require a guardian if there is no need for guardianship services). See also 20 Pa.C.S. § 5511(f) (who may be appointed guardian).

Rule 14.7 Order and Certificate

(a) Order Adjudicating Incapacity and Appointing Guardian.

(1) An order adjudicating incapacity and appointing a guardian shall address:

- (i) the type of guardianship being ordered and any limits, if applicable;
- (ii) the continued effectiveness of any previously executed powers of attorney and the authority of the agent;
- (iii) the necessity of filing reports pursuant to Rule 14.8(a); and
- (iv) person or persons entitled to receive a notice of filing pursuant to Rule 14.8(b).

(2) An order adjudicating incapacity and appointing a guardian shall contain a provision substantially in the following form:

[Incapacitated person] is hereby notified of the right to seek reconsideration of this Order pursuant to Rule 8.2 and the right to appeal this Order within thirty (30) days from the date of this Order by filing a Notice of Appeal with the Clerk of the Orphans' Court. [Incapacitated person] may also petition the court at any time to review, modify, or terminate the guardianship due to a change in circumstances. [Incapacitated person] has a right to be represented by an attorney to file an appeal or to seek modification or termination of this guardianship. If the assistance of counsel is needed and [Incapacitated person] cannot afford an attorney, an attorney will be appointed to represent [Incapacitated person] free of charge.

(b) Order Adjudicating Incapacity and Appointing Guardian of Estate.

(1) In addition to the requirements set forth in paragraph (a)(1), an order adjudicating incapacity and appointing a guardian of the estate shall address:

- (i) whether a bond is required and when the bond is to be filed; and
- (ii) whether the guardian can spend principal without prior court approval.

(2) In addition to the requirement set forth in paragraph (a)(2), an order adjudicating incapacity and appointing a guardian of the estate shall contain a provision substantially in the following form:

All financial institutions, including without limitation, banks, savings and loans, credit unions, and brokerages to grant access to the guardian of the incapacitated person's estate to any and all assets, records, accounts maintained for the benefit of the incapacitated person, and the guardian of the incapacitated person's estate shall be entitled to transfer, retitle, withdraw, or otherwise exercise dominion and control over any and all said assets. The failure of any financial institution to honor this order may lead to contempt proceedings and the imposition of sanctions.

(c) Certificate of Guardianship of Estate. Upon the request of the guardian of the estate, the clerk shall issue a certificate substantially in the following form:

(Caption)

I CERTIFY that on _____, after giving full consideration to the factors set forth in Chapter 55 of the Probate, Estate, and Fiduciaries Code, 20 Pa.C.S. § 5501, *et seq.*, in the above-captioned matter, the Court adjudged _____ an incapacitated person and appointed _____ as plenary guardian of the estate.

FURTHER, I CERTIFY the Court, *inter alia*, ordered:

All financial institutions, including without limitation, banks, savings and loans, credit unions, and brokerages to grant access to the guardian of [incapacitated person]'s estate to any and all assets, records, accounts maintained for the benefit of [incapacitated person], and the guardian of [incapacitated person]'s estate shall be entitled to transfer, retitle, withdraw, or otherwise exercise dominion and control over any and all said assets. The failure of any financial institution to honor this order may lead to contempt proceedings and the imposition of sanctions.

Witness my hand and seal of said Court this ___ day of _____, ____.

[seal]

CLERK OF ORPHANS' COURT

Explanatory Comment: The requirements of paragraph (a) are intended to apply to all final guardianship orders. The items addressed and contained in the order, as set forth in paragraphs (a) and (b), are not exhaustive. The court may fashion a guardianship of a person order to inform health care providers of the guardian's authority, including the authority to give informed consent to proposed treatment, to share information, and to make decisions for the incapacitated person. See also *In re DHL*, 2 A.3d 505 (Pa. 2010) (discussing whether guardian has authority concerning life-preserving care); 20 Pa.C.S. § 5460(a) (requiring the court to determine the extent of agent's authority under a health care power of attorney); 20 Pa.C.S. § 5604(c)(3) (requiring the court to determine the extent of agent's authority under a durable power of attorney).

Rule 14.8 Guardianship Reporting, Monitoring, Review, and Compliance

(a) Reporting. A guardian shall file the following reports with the clerk:

- (1) An inventory by the guardian of the estate within 90 days of such guardian's appointment;
- (2) An annual report by the guardian of the estate one year after appointment and annually thereafter;
- (3) An annual report by the guardian of the person one year after appointment and annually thereafter;
- (4) A final report by the guardian of the person and the guardian of the estate within 60 days of the death of the incapacitated person, an adjudication of capacity, a change of guardian, or the expiration of an order where no permanent order is entered; and
- (5) A final report from the guardian of the person and the guardian of the estate upon receipt of the provisional order from another state's court accepting transfer of a guardianship.

(b) Notice of Filing. If the order appointing the guardian identifies the person or persons entitled to receive notice of the filing of any report set forth in paragraph (a) pursuant to Rule 14.7(a)(1)(iv), the guardian shall serve a notice of filing within ten days of filing a report using the form provided in the Appendix to these rules. Service shall be in accordance with Rule 4.3.

(c) Design of Forms. The Court Administrator of Pennsylvania, in consultation with the Orphans' Court Procedural Rules Committee and the Office of Elder Justice in the Courts, shall design and publish forms necessary for the reporting requirements set forth in paragraph (a).

(d) Monitoring. The clerk or the court's designee shall monitor the guardianship docket to confirm the guardian's compliance with the reporting requirements set forth in paragraph (a).

(e) Review. The court or its designee shall review the filed reports.

(f) Compliance. To ensure compliance with these reporting requirements:

- (1) If any report is deemed incomplete or is more than 20 days delinquent, then the clerk or the court's designee shall serve notice on the guardian directing

compliance within 20 days, with a copy of the notice sent to the court and the guardian's counsel, if represented.

- (2) If the guardian fails to comply with the reporting requirements within 20 days of service of the notice, then the clerk or the court's designee shall file and transmit a notice of deficiency to the adjudicating judge and serve a notice of deficiency on those persons named in the court's order pursuant to Rule 14.7(a)(1)(iv) as entitled to receive a notice of filing.
- (3) The court may thereafter take such enforcement procedures as are necessary to ensure compliance.

Explanatory Comment: The reporting forms are available at TBD. This Rule is silent as to the manner of proceeding when reports are deficient or warrant further investigation, or when the guardian is recalcitrant after being given notice by the clerk or the court's designee. In its discretion, the court may order further documentation, conduct a review hearing, or take further action as may be deemed necessary, including, but not limited to, removal of the guardian or contempt proceedings.

Rule 14.9 Review Hearing

(a) Initiation. A review hearing may be requested by petition or ordered by the court.

(b) Petition. A petition for a review hearing shall set forth:

- (1) the name, age, address, and mailing address, if different, of the petitioner and the petitioner's relationship to the incapacitated person;
- (2) the date of the adjudication of incapacity;
- (3) the names and addresses of all guardians;
- (4) if the incapacitated person has been a patient in a mental health facility, the name of such facility, the date of admission, and the date of discharge;
- (5) the present address of the incapacitated person, and the name of the person with whom the incapacitated person is living;
- (6) the names and addresses of the presumptive adult intestate heirs of the incapacitated person; and
- (7) an averment that:
 - (A) there has been significant change in the incapacitated person's capacity and the nature of that change;
 - (B) there has been a change in the need for guardianship services and the nature of that change; or
 - (C) the guardian has failed to perform duties in accordance with the law or act in the best interest of the incapacitated person, and details as to the duties that the guardian has failed to perform or has performed but are allegedly not in the best interests of the incapacitated person.

(c) Service. The petition shall be served in accordance with Rule 4.3 upon the incapacitated person and those entitled to notice pursuant to Rule 14.2(f)(2).

(d) Hearing. The review hearing shall be conducted promptly after the filing of the petition with notice of the hearing served upon those served with the petition pursuant to paragraph (c).

Explanatory Comment: Nothing in this rule is intended to preclude the court from scheduling a review hearing upon its own initiative or in the order adjudicating

incapacity and appointing a guardian. For the court's disposition of a petition for a review hearing and evidentiary burden of proof, see 20 Pa.C.S. § 5512.2.

Rule 14.10 Proceedings Relating to Real Estate

(a) Applicable Rules. A petition for the public or private sale, exchange, lease, or mortgage of real estate of an incapacitated person or the grant of an option for the sale, exchange, or lease of the same shall conform as far as practicable to the requirements of these Rules for personal representatives, trustees and guardians of minors in a transaction of similar type.

(b) Objection. The guardian shall include in the petition an averment as to whether the guardian knows or has reason to know of any objection of the incapacitated person to the proposed transaction. The nature and circumstances of any such objection, including whether expressed before or after the adjudication of incapacity, shall be set forth in the petition.

Explanatory Comment: See Pa. O.C. Rule 5.10, 5.11, and 5.12.

Rule 14.11 Transfer of Guardianship of the Person to Another State

(a) Petition. A petition filed by a guardian appointed in Pennsylvania to transfer the guardianship of the person to another state must plead sufficient facts to demonstrate:

- (1) the incapacitated person is physically present in or is reasonably expected to move permanently to the other state;
- (2) plans for care and services for the incapacitated person in the other state are reasonable and sufficient;
- (3) the court to which the guardianship will be transferred; and
- (4) the guardianship will likely be accepted by the other state's court.

(b) Service. The guardian shall serve a copy of the petition in accordance with Rule 4.3 upon the incapacitated person and those entitled to service pursuant to Rule 14.2(f)(2).

(c) Objections. Any person entitled to service of the petition may file an answer with the clerk raising objections alleging that the transfer would be contrary to the interests of the incapacitated person.

(d) Hearing. If needed, the court shall conduct an evidentiary hearing on the petition.

(e) Orders. Upon finding that the allegations contained in the petition have been substantiated and the objections, if any, have not been substantiated, the court shall:

- (1) issue an order provisionally granting the petition to transfer the guardianship and directing the guardian to petition for acceptance of the guardianship in the other state; and
- (2) issue a final order confirming the transfer and relinquishing jurisdiction upon receipt of the provisional order from the other state's court accepting the transfer and the filing of the final report of the guardian.

Explanatory Comment: See Subchapter C of the Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act, 20 Pa.C.S. §§ 5921-5922. This petition may also include a request to transfer the guardianship of the estate to another state as provided in Rule 14.12. The likelihood that the guardianship may be accepted by the other state's court may be established by evidence of the state having procedures similar to Rule 14.13.

Rule 14.12 Transfer of Guardianship of the Estate to Another State

(a) Petition. A petition filed by a guardian appointed in Pennsylvania to transfer the guardianship of the estate must plead sufficient facts to demonstrate:

- (1) the incapacitated person is:
 - (A) physically present in the other state;
 - (B) reasonably expected to move permanently to the other state; or
 - (C) significantly connected to the other state.
- (2) adequate arrangements will be made for the management of the incapacitated person's estate;
- (3) the court to which the guardianship will be transferred; and
- (4) the guardianship will likely be accepted by the other state's court.

(b) Service. The guardian shall serve a copy of the petition in accordance with Rule 4.3 upon the incapacitated person and those entitled to service pursuant to Rule 14.2(f)(2).

(c) Objections. Any person entitled to service of the petition may file an answer with the clerk raising objections alleging that the transfer would be contrary to the interests of the incapacitated person.

(d) Hearing. If needed, the court shall conduct an evidentiary hearing on the petition.

(e) Orders. Upon finding that the allegations contained in the petition have been substantiated and the objections, if any, have not been substantiated, the court shall:

- (1) issue an order provisionally granting the petition to transfer the guardianship and directing the guardian to petition for acceptance of the guardianship in the other state; and
- (2) issue a final order confirming the transfer and relinquishing jurisdiction upon receipt of the provisional order from the other state's court accepting the transfer and the filing of the final report of the guardian.

Explanatory Comment: See Subchapter C of the Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act, 20 Pa.C.S. §§ 5921-5922. For factors used to

determine the significance of the incapacitated person's connection with the other state, see 20 Pa.C.S. § 5911(b). This petition may also include a request to transfer the guardianship of the person to another state as provided in Rule 14.11. The likelihood that the guardianship may be accepted by the other state's court may be established by evidence of the state having procedures similar to Rule 14.13.

Rule 14.13 Acceptance of a Guardianship Transferred from Another State

(a) A petition to confirm the transfer of a guardianship from another state to Pennsylvania shall:

- (1) plead sufficient facts to demonstrate:
 - (i) the eligibility of the guardian for appointment in Pennsylvania;
 - (ii) the proceeding in the other state approving the transfer was conducted in a manner similar to Rules 14.11 or 14.12 (concerning transfer of guardianship);
- (2) include a certified copy of the other state's provisional order approving the transfer; and
- (3) include a certified copy of the petition and order determining initial incapacity in the other state.

(b) Service. The guardian shall serve a copy of the petition in accordance with Rule 4.3 with notice in accordance with Rule 3.5(b) upon the incapacitated person and those entitled to service pursuant to Rule 14.2(f)(2).

(c) Objections. Any person entitled to notice of the petition may file an answer with the clerk raising objections alleging that the transfer would be contrary to the interests of the incapacitated person.

(d) Hearing. If needed, the court shall conduct an evidentiary hearing on the petition.

(e) Orders. Upon finding that the allegations contained in the petition have been substantiated and the objections, if any, have not been substantiated, the court shall:

- (1) issue an order provisionally granting the petition to confirm transfer of the guardianship; and
- (2) upon receiving a final order from the court transferring the guardianship, the court shall issue a final order accepting the guardianship, appointing the guardian appointed previously by the court of the other state as the guardian in Pennsylvania, and directing the guardian to comply with the reporting requirements of Rule 14.8.

Explanatory Comment: See Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act, 20 Pa.C.S. § 5922(f) (court's consideration of a modification of guardianship).

Rule 14.14 Forms

The following forms located in the Appendix shall be used exclusively:

- (a)** Important Notice – Citation with Notice (G-01);
- (b)** Report of Guardian of the Estate (G-02);
- (c)** Report of Guardian of the Person (G-03);
- (d)** Guardian’s Inventory (G-04);
- (e)** Guardianship of Incapacitated Person: Petition for Adjudication/Statement of Proposed Distribution Pursuant to Pa. O.C. Rule 2.4 (OC-03);
- (f)** Guardianship of Minor: Petition for Adjudication/Statement of Proposed Distribution Pursuant to Pa. O.C. Rule 2.4 (OC-04);
- (g)** Written Deposition (G-05); and
- (h)** Notice of Filing (G-06).

Explanatory Comment: In accordance with Rule 1.8, these forms must be used exclusively and cannot be replaced or supplanted by a local form.

**INDEX TO APPENDIX
ORPHANS' COURT AND REGISTER OF WILLS FORMS
ADOPTED BY SUPREME COURT
PURSUANT TO Pa. O.C. Rule 1.8**

**Available as Fill-in Forms on Website
of Administrative Office of Pennsylvania Courts**
<http://www.pacourts.us/Forms/OrphansCourtForms.htm>

Orphans' Court and Administration Forms

A. Audit and Administration Forms

1. Decedent's Estate: Petition for Adjudication /Statement of Proposed Distribution Pursuant to Pa. O.C. Rule 2.4OC-01
2. Trust: Petition for Adjudication /Statement of Proposed Distribution Pursuant to Pa. O.C. Rule 2.4OC-02
3. Guardianship of Incapacitated Person: Petition for Adjudication /Statement of Proposed Distribution Pursuant to Pa. O.C. Rule 2.4OC-03
4. Guardianship of Minor: Petition for Adjudication /Statement of Proposed Distribution Pursuant to Pa. O.C. Rule 2.4OC-04
5. Principal's Estate (Under Power of Attorney): Petition for Adjudication/Statement of Proposed Distribution Pursuant to Pa. O.C. Rule 2.4OC-05
6. Notice of Charitable Gift (In Accordance with Pa. O.C. Rule 4.4)OC-06
7. Notice of ClaimOC-07

B. Guardianship Forms

1. Important Notice - Citation with Notice (Pa. O.C. Rule **[14.5] 14.2**)..... G-01
2. **[Annual]** Report **[-] of** Guardian of Estate G-02
3. **[Annual]** Report **[-] of** Guardian of Person G-03
4. Guardian's Inventory G-04
5. Guardianship of Incapacitated Person: Petition for Adjudication/Statement of

Proposed Distribution Pursuant to Pa. O.C. Rule 2.4	OC-03*
6. Guardianship of Minor: Petition for Adjudication/Statement of Proposed Distribution Pursuant to Pa. O.C. Rule 2.4	OC-04**
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<u>8. Notice of Filing</u>	G-06
C. Abortion Control Act Forms	
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D. Register of Wills Forms	
1. Estate Information Sheet	RW-01 (Not adopted by Supreme Court; form promulgated by Department of Revenue and maintained with Register of Wills forms for convenience)
2. Petition for Grant of Letters.....	RW-02
3. Oath of Subscribing Witness(es)	RW-03
4. Oath of Non-subscribing Witness(es)	RW-04
5. Oath of Witness(es) to Will Executed by Mark.....	RW-05
6. Renunciation	RW-06
7. Notice of Estate Administration Pursuant to Pa. O.C. Rule 10.5	RW-07
8. Certification of Notice under Pa. O.C. Rule 10.5	RW-08
9. Inventory	RW-09
10. Pa. O.C. Rule 10.6 Status Report	RW-10
E. Model Forms of Account	

* Form OC-3 is not reprinted here and is located under Audit and Administration Forms at No. 3.

** Form OC-4 is not reprinted here and is located under Audit and Administration Forms at No. 4.

1. National Fiduciary Accounting Standards Project –
1983 Report of Fiduciary Accounting Standards Committee
2. Model Estate Account
3. Model Trust Account
4. Model Charitable Remainder Unitrust Account

F. Adoption Forms

1. Notice of Orphans' Court Proceedings to be Filed With Clerk in Dependency Proceeding by Solicitor of County Agency (Pa. O.C. Rule 15.6(b))
 - a. Praecipe to Clerk in Dependency Proceeding of Filing of a Petition to Terminate Parental Rights, Confirm Consent, or Adopt
 - b. Praecipe to Clerk in Dependency Proceeding of Entry of Decision Disposing of Petition
 - c. Praecipe to Clerk in Dependency Proceeding of Filing of Notice of Appeal
 - d. Praecipe to Clerk in Dependency Proceeding of Entry of Decision Disposing of Appeal
2. Foreign Adoption Forms
 - a. Form for Registration of Foreign Adoption Decree (Pa. O.C. Rule 15.8), including Instructions for Filing Petition, Petition to Register Foreign Adoption Decree, and Proposed Final Decree
 - b. Form Petition for Adoption of a Foreign Born Child (Pa. O.C. 15.9), including the Petition for Adoption of a Foreign Born Child, Report of the Intermediary, Verification of Translator, Preliminary Decree, and Final Decree

COURT OF COMMON PLEAS OF
ORPHANS' COURT DIVISION

To _____ :

**IMPORTANT NOTICE
CITATION WITH NOTICE**

A Petition has been filed with this Court to have you declared an Incapacitated Person. If the Court finds you to be an Incapacitated Person, your rights will be affected, including your right to manage money and property and to make decisions. A copy of the Petition which has been filed by is attached.

You are hereby ordered to appear at a hearing to be held in Courtroom No. _____, _____, Pennsylvania on _____, 20____ at _____ .m. to tell the Court why it should not find you to be an Incapacitated Person and appoint a Guardian to act on your behalf.

To be an Incapacitated Person means that you are not able to receive and effectively evaluate information and communicate decisions and that you are unable to manage your money and/or other property, or to make necessary decisions about where you will live, what medical care you will get, or how your money will be spent.

At the hearing, you have the right to appear, to be represented by an attorney, and to request a jury trial. If you do not have an attorney, you have the right to request the Court to appoint an attorney to represent you and to have the attorney's fees paid for you if you cannot afford to pay them yourself. You also have the right to request that the Court order that an independent evaluation be conducted as to your alleged incapacity.

If the Court decides that you are an Incapacitated Person, the Court may appoint a Guardian for you, based on the nature of any condition or disability and your capacity to make and communicate decisions. The Guardian will be of your person and/or your money and other property and will have either limited or full powers to act for you.

To: _____:

If the Court finds you are totally incapacitated, your legal rights will be affected and you will not be able to make a contract or gift of your money or other property. If the Court finds that you are partially incapacitated, your legal rights will also be limited as directed by the Court.

If you do not appear at the hearing (either in person or by an attorney representing you) the Court will still hold the hearing in your absence and may appoint the Guardian requested.

By: _____
Orphans' Court Clerk

COURT OF COMMON PLEAS OF

ORPHANS' COURT DIVISION

NOTICE OF FILING

ESTATE/GUARDIANSHIP OF _____,
AN INCAPACITATED PERSON

_____, GUARDIAN

No. _____

I certify that on _____ I filed the following documents:

- Inventory
- Amended Inventory
- Annual Report - Guardian of the Person
- Annual Report - Guardian of the Estate
- Final Report

A copy of this Notice of Filing is being served on the following person(s) designated by court order and in the following manner:

1. _____

- By mail
- By fax
- By personal delivery
- By e-mail if requested

2. _____

- By mail
- By fax
- By personal delivery
- By e-mail if requested

3. _____

- By mail
- By fax
- By personal delivery
- By e-mail if requested

4. _____

- By mail
- By fax
- By personal delivery
- By e-mail if requested

Submitted by:

_____ *Date*

_____ *Signature*

_____ *Name (print or type)*

_____ *Address*

_____ *City, State, Zip*

_____ *Telephone*

_____ *Email*

Instructions for Document Access

If you are one of the individuals noted above to who this notice of filing was sent, you may access and view the documents filed by presenting this notice of filing along with proper identification to the Clerk of the Orphans' Court in the county listed on the previous page.