

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

NOTICE OF PROPOSED RULEMAKING

**Proposed Amendment of Pa.R.O.C.P. 14.2 and 14.3
And Adoption of Pa.R.O.C.P. 14.15**

The Orphans' Court Procedural Rules Committee is considering proposing to the Supreme Court of Pennsylvania the amendment of Rules 14.2 and 14.3, and the adoption of Rule 14.15 of the Pennsylvania Rules of Orphans' Court Procedure for the reasons set forth in the accompanying Publication Report. Pursuant to Pa.R.J.A. 103(a)(1), the proposal is being published in the *Pennsylvania Bulletin* for comments, suggestions, or objections prior to submission to the Supreme Court.

Any report accompanying this proposal was prepared by the Committee to indicate the rationale for the proposed rulemaking. It will neither constitute a part of the rules nor be officially adopted by the Supreme Court.

Additions to the text of the proposal are bolded and underlined; deletions to the text are bolded and bracketed.

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

**Orphans' Court Procedural Rules Committee
Supreme Court of Pennsylvania
Pennsylvania Judicial Center
PO Box 62635
Harrisburg, PA 17106-2635
FAX: 717-231-9546
orphanscourtproceduralrules@pacourts.us**

All communications in reference to the proposal should be received by **October 30, 2026**. 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,

Hon. John J. McNally
Chair

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

- (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.] Rescinded.**
- (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) By personal service 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 a manner permitted by Pa.R.O.C.P. 4.3 no less than 20 days prior to the hearing upon:
 - (i) **[All] all** persons *sui juris* who would be entitled to an intestate share in the estate of the alleged incapacitated person;
 - (ii) **[The] the** person or institution providing residential services to the alleged incapacitated person;
 - (iii) **[Any] any** person named in subdivisions (a)(6)-(a)(9); and
 - (iv) **[Such] such** other entities and persons as the court may direct, including service providers.
 - [(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 Pa.R.O.C.P. 14.2(f)(2).] Rescinded.**

Comment:

...

An individual seeking appointment to a third active guardianship must be certified pursuant to Pa.R.O.C.P. 14.6(c) prior to the third guardianship appointment. See *also* 20 Pa.C.S. § 5511(f).

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

For notice to the United States Department of Veterans Affairs, see 20 Pa.C.S. § 8411.

Former subdivisions (d) and (f)(3), pertaining to emergency guardianships, were rescinded and relocated to Pa.R.O.C.P. 14.15(a)–(b), respectively. See *also* 20 Pa.C.S. 5513.

Rule 14.3. Alternative Proof of Incapacity: Expert Report in Lieu of In-Person or Deposition Testimony of Expert.

- (a) A petitioner may seek to offer into evidence an expert report for the determination of incapacity in lieu of testimony, in-person or by deposition, of an expert using the form provided in the Appendix to these rules. **[In an emergency guardianship proceeding, an expert report may be offered into evidence if specifically authorized by the court.]**

...

Comment: This rule is intended to permit the alleged incapacitated person to exercise the right to cross-examine testimony as to the capacity of the alleged incapacitated person. See 20 Pa.C.S. § 5518.1. Permitting the use of an expert report in compliance with this rule replaces the requirement of testimony, in-person or by deposition, of an expert. See 20 Pa.C.S. § 5518. “Deposition,” as used in this rule, is intended to be a deposition conducted in accordance with the Pennsylvania Rules of Civil Procedure. The rule is permissive; whether an expert report is admitted in lieu of testimony is in the sole discretion of the court. Nothing in this rule is intended to preclude the court from requiring testimony from the expert or otherwise requiring supplementation.

See Pa.R.O.C.P. 14.15(c) pertaining to the use of an expert report in a proceeding for the appointment of an emergency guardian.

—The following text is entirely new—

Rule 14.15. Petitions for Emergency Guardians; Service; Orders; Proceedings Pursuant to Pa.R.O.C.P. 14.2.

- (a) **Petition for Emergency Guardianship.** A petition seeking the appointment of an emergency guardian shall aver with specificity the facts giving rise to the emergent circumstances and the irreparable harm to the person or the estate of the alleged incapacitated person that would result if an emergency guardian is not appointed.
- (b) **Service.** The court may direct the manner of service as emergent circumstances warrant. Thereafter, notice shall be served in accordance with Pa.R.O.C.P. 14.2(f)(2).
- (c) **Expert Report.** An expert report may be offered into evidence if specifically authorized by the court.
- (d) **Emergency Guardianship Orders.** An order appointing an emergency guardian shall include the date on which the order expires unless a petition for appointment of a guardian pursuant to Pa.R.O.C.P. 14.2 is filed.
 - (1) **Emergency Guardianship of the Person.**
 - (i) **Order.** An order appointing an emergency guardian of the person shall remain in effect for up to 72 hours.
 - (ii) **Extension.** The court may grant a petition to extend the initial order appointing an emergency guardian of the person not to exceed 20 days from the expiration of the initial emergency order.
 - (2) **Emergency Guardianship of the Estate.** An order appointing an emergency guardian of the estate shall not exceed 30 days.
- (e) **Petition Pursuant to Pa.R.O.C.P. 14.2.**
 - (1) If a petition pursuant to Pa.R.O.C.P. 14.2 is filed prior to the expiration date of the order appointing an emergency guardian, then the court shall issue an amended order extending the emergency guardianship until the conclusion of the guardianship proceeding.

- (2) A guardianship proceeding initiated pursuant to subdivision (e)(1) shall be conducted within 120 days of the filing of the petition.
- (3) If the hearing on a petition filed pursuant to subdivision (e)(1) is not held within 120 days of the filing of the petition, the court shall either:
 - (i) vacate the emergency order; or
 - (ii) reschedule the hearing and extend the emergency order no longer than 180 days from the date the petition was filed.

Comment: See 20 Pa.C.S. § 5513 pertaining to appointment of emergency guardians.

Regarding subdivision (a), if required by emergent circumstances, the petitioner may file a separate emergency petition. In other circumstances, the petitioner may elect to file the petitions either concurrently or jointly.

Subdivision (e) is intended to ensure that the temporal limits on emergency guardianships are observed while also providing a mechanism to ensure that there is not an unintended and potentially harmful gap between the expiration of an emergency guardianship and the appointment of a guardian initiated by petition pursuant to Pa.R.O.C.P. 14.2.

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

PUBLICATION REPORT

**Proposed Amendment of Pa.R.O.C.P. 14.2 and 14.3
and Adoption of Pa.R.O.C.P. 14.15**

The Orphans' Court Procedural Rules Committee ("Committee") is considering proposing to the Supreme Court of Pennsylvania the amendment of Rules 14.2 and 14.3 and the adoption of Rule 14.15 of the Pennsylvania Rules of Orphans' Court Procedure. This proposal would consolidate all procedural rules pertaining to emergency guardianships in one rule and address the statutory limits on emergency guardianships set forth in 20 Pa.C.S. § 5513.

Background

An emergency guardian may be appointed, upon petition and hearing, when it appears that: (1) an alleged incapacitated person lacks capacity; (2) is in need of a guardian; and (3) a failure to make such appointment will result in irreparable harm to the person or estate of the alleged incapacitated person. See 20 Pa.C.S. § 5513. Among other things, time limits have been established by statute concerning the length of the emergency order. An emergency order appointing an emergency guardian of the person may be in effect for up to 72 hours. *Id.* If the emergency continues, then the emergency order may be extended for no more than 20 days from the expiration of the initial emergency order. *Id.* Likewise, an emergency order appointing an emergency guardian of the estate may not exceed 30 days. *Id.* After 30 days, a full guardianship proceeding must be initiated pursuant to 20 Pa.C.S. § 5511. *Id.*

The Committee observes that § 5513 uses the phrase "full guardianship," which is not a phrase used elsewhere in the rules. It appears that § 5513 uses "full guardianship" in contrast with "emergency guardianship." The Committee notes that some members of the bench and bar instead use the phrase "plenary guardianship." However, the phrase "plenary guardianship" is also used in Rule 14.7 in contrast with a "limited guardianship." Therefore, the Committee proposes replacing the statutory phrase "full guardianship" and instead referencing a petition for appointment of a guardian pursuant to Pa.R.O.C.P. 14.2 in the rule text. This variation will better characterize the guardianship sought following an emergency guardianship and avoid confusion with other terms.

The statutory time limits appear fixed and certain. However, it remains unclear whether an emergency guardianship terminates by operation of law or continues through the pendency of a proceeding for a full guardianship. Both scenarios are not without

concerns. If an emergency guardianship terminates by operation of law after 20 or 30 days, and before a full guardianship proceeding is held, the incapacitated person may be left without the protections of an emergency guardian not long after the court determined he or she was at risk of irreparable harm.

Conversely, in some instances, an emergency order is entered, a full guardianship is not pursued, and the parties and the courts continue under the emergency order indefinitely without having undergone the more rigorous examination required by 20 Pa.C.S. §§ 5511 and 5512.1, pertaining to the petition, hearing, and determination of incapacity. Even if a petition for a full guardianship is filed concurrently with the petition for an emergency order or during the pendency of the emergency guardianship, it can be difficult, if not impossible, to ensure the full guardianship hearing will be held before the expiration of the emergency order.

Noting procedural irregularities, the Court vacated a Superior Court decision that held, *sua sponte*, an emergency guardianship had terminated by operation of § 5513. See *Gavin v. Loeffelbeun*, 205 A.3d 1209, 1219 (Pa. 2019). The Court held that it was improper for the Superior Court to apply the termination provisions of § 5513 absent advocacy from the parties or an opinion by the trial court. *Id.* The Court further observed that the orphans' court is the proper forum for challenging the validity of a decree appointing an emergency guardian. *Id.*

Currently, there is no requirement that an emergency order identify the expiration date of the emergency guardianship. Given the extent of the fundamental rights removed from a person when found incapacitated, the Committee prioritized facilitating a more comprehensive review following an emergency guardianship proceeding in a timely and diligent manner. The Committee also recognized the need for certainty as to the ongoing validity of an emergency order, insofar as such orders are presented to persons and entities for services on the incapacitated person's behalf, such as financial institutions and health care providers. With these considerations in mind, the Committee examined how to provide more certainty regarding the duration of the emergency guardianship and discussed proposing the amendment of Pa.R.O.C.P. 14.7, pertaining to an order adjudicating capacity and appointing a guardian, to include the expiration date of the order.

Proposed Rule Changes

While initially considering amendments to Rule 14.7, the Committee identified provisions related to emergency guardianships in Rules 14.2 and 14.3. Rule 14.2, pertaining to the petition for determination of incapacity and appointment of a guardian, addresses both the contents and service of an emergency guardianship petition. See Pa.R.O.C.P. 14.2(d), (f)(3). Rule 14.3, pertaining to the use of an expert report in lieu of in-person or deposition testimony, provides that an expert report may be offered into

evidence at an emergency guardianship proceeding if authorized by the court. See Pa.R.O.C.P. 14.3(a). Rather than scattering provisions pertaining to emergency guardianship throughout the rules, the Committee proposes the rescission of those provisions pertaining to emergency guardianships and their relocation in a new standalone rule focusing on emergency guardianships, Pa.R.O.C.P. 14.15.

New Pa.R.O.C.P. 14.15 consolidates the relocated subdivisions pertaining to the emergency petition, service, and the use of expert reports. See Pa.R.O.C.P. 14.15(a)–(c). In addition, subdivision (d) addresses orders pertaining to an emergency guardianship of the person and an emergency guardianship of the estate. See Pa.R.O.C.P. 14.15(d)(1)–(d)(2). Subdivision (d) provides that the order appointing an emergency guardian shall include the date on which the order expires unless a petition for appointment of a guardian pursuant to Pa.R.O.C.P. 14.2 is filed. Subdivisions (d)(1)(i) and (d)(2) reflect the statutory time limits for emergency guardianships. Finally, subdivision (e) addresses the petition for appointment of a guardian pursuant to Pa.R.O.C.P. 14.2, directs the court to issue an updated order extending the guardianship until the conclusion of the guardianship proceeding, provides a timeline for holding the guardianship proceeding, and provides for the vacating of the emergency order or an additional extension if the proceeding will not be complete in the allotted time.

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