

**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 14.1-14.12 and Orphans' Court Forms G-01 through G-07, 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 14.1-14.12 and Orphans' Court Forms G-01 through G-07, 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
orphanscourtproceduralrules@pacourts.us**

All communications in reference to the proposal should be received by **February 27, 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

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 regarding guardianship of incapacitated persons, Chapter 15 regarding adoptions, and Chapter 16 regarding proceedings pursuant to section 3206 of the Abortion Control Act.

(b) All previously promulgated local rules under Chapter 14 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.

[This is an entirely new chapter.]

CHAPTER XIV. GUARDIANSHIPS OF INCAPACITATED PERSONS

Rule 14.1 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 adult intestate heirs of the alleged incapacitated person;
- (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 14.6(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;
- (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
- (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) A Pennsylvania State Police criminal history report for each proposed guardian issued within six months of the filing of the petition.
 - (A) 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 history report obtained from the statewide database, or its equivalent, in each state in which such proposed guardian has resided within the previous five-year period.
 - (B) When any proposed guardian is an entity, the person or persons to have direct responsibility for the alleged incapacitated person shall comply with the requirements of subparagraph (c)(2)(A); and

Note: For information on requesting a criminal history report 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 as follows:

- (1) Upon the alleged incapacitated person in the manner pursuant to Rule 3.5(a) no less than 20 days prior to the hearing in accordance with Rule 4.2(a). 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 by Rule 3.5(b) no less than 20 days prior to the hearing upon:
 - (A) All persons who are *sui juris* and would be entitled to an intestate share in the estate of the alleged incapacitated person;
 - (B) The person or institution providing residential services to the alleged incapacitated person; and
 - (C) Such other parties 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 Rule 14.1(f)(2).

Rule 14.2 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 14.3 Counsel

(a) 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.

(b) 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.

(c) 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 14.4 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 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 whether a consumer report or proof of insurance should be filed and the frequency thereof.

Note: See Fair Credit Reporting Act, 15 U.S.C. § 1681 *et seq.* for definition and availability of consumer reports.

Rule 14.5 Determination of Incapacity, Selection of Guardian, Order & Certificate

(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. §§ 551, 5512, and 5512.1.

(b) Selection of Guardian. If guardianship services are needed, then the court shall appoint the person nominated as such in a valid 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:

- (A) The guardian of the estate;
- (B) The spouse, unless estranged or an action for divorce is pending;
- (C) An adult child;
- (D) A parent;
- (E) The nominee of a deceased or living parent of an unmarried alleged incapacitated person;
- (F) An adult sibling;
- (G) An adult grandchild;
- (H) Other adult family member;
- (I) 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
- (J) Other qualified proposed 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:

- (A) The guardian of the person.

- (B) The spouse unless estranged or an action for divorce is pending;
- (C) An adult child;
- (D) A parent;
- (E) The nominee of a deceased or living parent of an unmarried alleged incapacitated person;
- (F) An adult sibling;
- (G) An adult grandchild;
- (H) Other adult family member;
- (I) An adult who has knowledge of the alleged incapacitated person's preferences and values, including, but not limited to, religious and moral beliefs, to assess how the alleged incapacitated person would make decisions; or

In all other instances, where no individual listed in subparagraphs (A) – (I) 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 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).

(c) Order and Certificate. The order and findings adjudicating incapacity and appointing the guardian shall be entered on the docket.

(1) Order Adjudicating Incapacity and Appointing Guardian. Any such order shall identify all persons entitled to receive a notice of filing pursuant to Rule 14.6(b) and advise the incapacitated person of:

- (A) The right to appeal the order within 30 days from the date of the order by filing a notice of appeal with the clerk.
- (B) The right to petition the court at any time to modify or terminate the

guardianship due to a change in circumstances.

(C) The right to be represented by counsel to file an appeal or to seek modification or termination of the guardianship.

(2) Certificate of Guardianship. Upon the request of the guardian, the clerk shall issue a certificate identifying the incapacitated person, the guardian, any limitations on the guardian's powers, and directives of the court in the form provided in the Appendix to these rules.

Explanatory Comment: The guardian may present a certificate of guardianship to a third-person (*e.g.*, financial institution) when exercising authority without unnecessarily disclosing details of the incapacitated person's impairment.

Rule 14.6 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 from 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 or a change of guardian; 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 includes the name of a person entitled to receive notice of the filing of any report set forth in paragraph (a) pursuant to Rule 14.5(c)(1), 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 14.5(c) 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 14.7 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 14.1(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 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 14.8 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 14.9 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 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 notice pursuant to Rule 14.1(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 14.10.

Rule 14.10 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 be accepted by the other state's court.

(b) Notice. The guardian shall serve a copy of the petition in accordance with Rule 4.3 upon the incapacitated person and those entitled to notice pursuant to Rule 14.1(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 14.9.

Rule 14.11 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:
 - (A) the eligibility of the guardian for appointment in Pennsylvania;
 - (B) the proceeding in the other state approving the transfer was conducted in a manner similar to Rules 14.9 or 14.10 (concerning transfer of guardianship); and
- (2) include a certified copy of the other state's provisional order approving the transfer.

(b) Notice. 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 notice pursuant to Rule 14.1(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 transfer the guardianship; and
- (2) upon receiving a final order from the court transferring the guardianship, the court shall issue a final order accepting jurisdiction, appointing the guardian appointed previously by the court of the other state as the guardian in Pennsylvania, and directing the guardian of the estate to file an inventory in conformance with Rule 14.6(a)(1).

(f) Review Hearing. Not later than 90 days from the issuance of the final order pursuant to paragraph (e)(2), the court shall conduct a review hearing to determine whether the guardianship may require modification.

Explanatory Comment: See Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act, 20 Pa.C.S. § 5922. The review hearing may address reporting requirements, bond requirements, any replacement of a guardian, and persons to receive a notice of filing pursuant to Rule 14.5(c)(1).

Rule 14.12 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);
- (h)** Notice of Filing (G-06); and
- (i)** Certificate of Guardianship (G-07).

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

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

EXPLANATORY 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 14.1-14.12 and Orphans' Court Forms G-01 through G-07, 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.

In order to respond to many of those recommendations and to provide more comprehensive statewide rules establishing uniformity and consistency for guardianship proceedings, the Orphans' Court Procedural Rules Committee proposes rescinding and replacing 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. In formulating this proposal, the Committee has been guided by several concepts endemic to guardianship proceedings.

Guardianship proceedings are intimate, personal matters involving the loss of autonomy and the delegation of care or control to another. The Committee is appreciative of the Elder Law Task Force's report serving as a catalyst for reexamining the procedural rules related to guardianships. The Committee is also mindful that guardianships serve not only the elderly, but a broader segment of our vulnerable population.

Guardianships vary widely in duration and type. Some guardianships may be uncontested; while others may be litigated as to capacity or choice of guardian or both. Given the individualized nature of these proceedings and the potential for variability in both procedure and relief, the Committee believes that procedural rules should both provide a degree of structure and preserve the flexibility of judicial discretion.

Additionally, the Committee recognizes the need for greater monitoring and oversight of guardianships after the adjudicatory process has concluded. Therefore, the proposed rules have expanded to accommodate this need by addressing reporting requirements and revising reporting forms. In doing so, the Committee acknowledges that there is a growing number of professional entities offering guardianship services;

but, the Committee has endeavored to construct rules applicable to all guardians rather than develop different rules based on the professionalism of the guardian.

Regarding the Elder Law Task Force's specific recommendations, they are reproduced below together with the Committee's responses. Please note that the Committee's responses do not possess the imprimatur of the Supreme Court; rather each represents the collective opinion of the Committee.

Recommendation 40: The Task Force recommends that, whenever possible, courts should favor the appointment of a family member as guardian of the person. Through amendment to the Orphans' Court Procedural Rules, the definition of "family member" should be expanded so as not to be limited to immediate family, but rather attempts to contact other relatives and friends should be encouraged. In addition, the Rules should be amended to encourage courts to look to the hierarchy in 20 Pa.C.S. § 5461(d)(1) for guidance.

Response: The Committee considered both the Health Care Agents and Representatives Act, 20 Pa.C.S. § 5451 *et seq.* and the *Guardianship Law: Proposed Amendments to the Probate, Estates and Fiduciaries Code*, at pp. 26-30, Report of the Advisory Committee on Decedents' Estates Laws, Joint State Government Commission (October 2012) when developing a hierarchy of individuals for guardian consideration. The Committee believes that the hierarchy set forth in proposed Rule 14.5(b) is stated so as not to exclude other friends or relatives from consideration provided they have knowledge of the incapacitated person's preferences and values.

Moreover, the Committee notes that, aside from persons nominated in a valid power of attorney, the court is only required to give consideration to nominees based upon the hierarchy; the court is not required to appoint a guardian based upon the hierarchy.

Recommendation 41: The Task Force recommends that, through amendment to the Orphans' Court Procedural Rules, courts may favor the appointment of a family member to serve as a guardian of the estate when the estate of the incapacitated person consists of minimal assets or where the proposed guardian of the estate has the skills and experience necessary to manage the estate and is able to obtain a bond or provide other assurance of financial responsibility.

Response: The proposed rules provide for family members to receive relatively higher consideration for appointment as guardian of the estate than non-family members provided that the estate consists of minimal assets or the proposed family member possesses the necessary skills.

Recommendation 42: The Task Force recommends that, through amendment to the Orphans' Court Procedural Rules, a list of individuals and agencies qualified to act as guardian of the person or estate to serve if family and friends are not viable options be mandated.

Response: The Committee agrees that a court maintained list of qualified and available guardians is a best practice. However, the responsibility for doing so, as well as other operational aspects, is a matter of judicial administration based upon resource availability. Absent a rule of judicial administration, whether local or statewide, the Committee believes this matter is best implemented if left to the discretion of the President Judge or Administrative Judge, as the case may be.

Recommendation 43: The Task Force recommends that, through amendment to the Orphans' Court Procedural Rules, training be mandated for all guardians. This training should include, but not be limited to matters of liability and ethics.

Response: The Committee acknowledges the salutary purpose that mandatory training would serve. However, the Committee believes that imposing a universal training requirement is a substantive matter for the General Assembly to address. Also, a training requirement opens a host of related issues such as availability, funding, timing, and curriculum, which are more policy than procedure.

Recommendation 44: The Task Force recommends that, through amendment to the Orphans' Court Procedural Rules, all individual guardians, family and professional, be required to undergo criminal background checks.

Response: Per Rule 14.1(c)(2), the Committee proposes that a Pennsylvania State Police report issued within six months be appended to the petition. The Committee considered requiring a more recent report, but concluded that such a requirement would become overly burdensome for professional guardians and others who serve as guardians on a frequent basis. Recognizing that a "criminal background check" likely is not available for an organization or entity, Rule 14.1(c)(2)(B) requires the person or persons who will have responsibility for the alleged incapacitated person to be the subject of the background check.

Recommendation 45: The Task Force recommends that the Orphans' Court Procedural Rules be amended to require that in all guardianship matters where the court does not require a bond, the proposed guardian be required to submit a current credit report. This requirement should be ongoing and, after appointment, the guardian should be required to supply a current credit report each year together with the annual report. The guardian's credit reports should be kept confidential and not be made publicly available. For good cause shown, the court may waive the requirement of a

credit report. If the court waives the requirement of a credit report, however, it should still require an assurance of financial responsibility as recommended in Section V.C.1.d.

Response: The Committee recognizes that the availability of a bond may be limited in certain circumstances and that premiums may be costly. Therefore, the Committee proposes Rule 14.4 permitting a guardian to seek court approval for either the waiver or modification of a bond requirement. The proposed rule allows the court to waive or modify the bond requirements only for “good cause” shown, but the Committee refrained from attempting to define “good cause.” Bonds are intended to protect the incapacitated person’s assets and any reduction or elimination of this protection must be determined on an individualized basis rather than by applying formulaic criteria. Further, the proposed rule leaves to the court’s discretion the necessity of filing assurances of a guardian’s creditworthiness or liability coverage.

Recommendation 46: The Task Force recommends that the Orphans’ Court Procedural Rules be amended to require that in addition to not having any interest adverse to the AIP, the proposed guardian should have the willingness and ability to visit with the AIP on a regular basis and be available at all times to confer with the AIP’s physicians, nurses, and other care providers. If the proposed guardian is not a family member, he or she should have some education and/or experience in guardianship or in providing services to elders and/or the disabled. In lieu of adopting specific requirements concerning minimum education and/or experience for all guardians, the Task Force believes that the goal of assuring that qualified guardians are appointed would similarly be met by mandating that all guardians undergo training before assuming their duties.

Response: The proposed rules require that the petition include information about the proposed guardian’s availability and training. Whether the individual’s or entity’s availability and training are sufficient to perform as a guardian is a matter to be evaluated and determined by the judge in a particular case.

Recommendation 47: The Task Force recommends that the Orphans’ Court Procedural Rules be amended to limit a potential guardian’s appointment to a guardianship of the person in appropriate circumstances to avoid potential intra-familial disagreements as well as any financial responsibility of a potential guardian.

Response: The Committee agrees with the merits of this recommendation, but when an outcome is based upon “appropriate circumstances” that are incapable of being defined by rule, then the matter is best left to the discretion of the judge. The Committee believes that judges will select the best suited guardian for the incapacitated person and will consider the potential for conflict when doing so.

Recommendation 48: The Task Force recommends that the Orphans' Court Procedural Rules be amended to require that in all cases where the AIP does not have private counsel, counsel should be appointed. Private counsel for an AIP should be required to enter his or her appearance as soon as possible to allow the court to quickly identify when counsel needs to be appointed. Counsel fees should be paid by the AIP whenever possible and, if resources are insufficient, then by the Commonwealth, as under the existing approach.

Response: Upon review of 20 Pa.C.S. § 5511(a), rather than a rule mandating counsel's appointment, the Committee favors a rule mirroring the statutory provision that counsel may be appointed if the court deems it appropriate. The Committee believes the remainder of the recommendation is reflected within proposed Rule 14.3.

Recommendation 49: The Task Force recommends that Clerks of the Orphans' Court have the capability to produce a standardized list of data items for each active guardianship (including Case Management and Caseload Reports). To ensure uniformity across all counties, this practice should be implemented through a statewide Orphans' Court Procedural Rule.

Response: The Committee believes that this capability and practice is a matter of judicial administration and not procedural. Therefore, any requirement should be located in the Rules of Judicial Administration, if necessary.

Recommendation 50: The Task Force recommends that the Orphans' Court Procedural Rules and/or Disciplinary Rules be amended to require attorneys serving as guardians to complete the same training and other requirements as professional guardians, unless the court specifically waives that obligation, and that CLE credit, including ethics credit, be made available to attorneys for this training.

Response: The Committee does not believe that the training requirements for professional guardians and attorneys serving as guardians should differ. Because the Committee believes that a training requirement for non-attorney guardians is a substantive matter, it follows that establishing training requirements for attorneys serving as guardians is premature.

Recommendation 51: The Task Force recommends that the Orphans' Court Procedural Rules and/or Disciplinary Rules be amended to require attorneys to clarify to the client, the court, and all other involved parties which role or roles counsel is assuming and to clarify those role(s) through a letter of engagement stating who is being represented and describing counsel's role. It should also be required that these role(s) be restated to the court when entering an appearance with the court.

Response: Proposed Rule 14.3(a) requires private counsel for the alleged incapacitated person to set forth the scope of employment within an engagement letter, which is producible to the court upon request. Likewise, proposed Rule 14.3(b) would require the court to delineate the scope of appointed counsel's role within the order of appointment. Furthermore, this proposed rule requires all counsel to enter their appearance. The duty to clarify these roles or avoid misperceptions is already covered by the Rules of Professional Conduct.

Recommendation 52: The Task Force recommends that the Orphans' Court Procedural Rules be amended to require that where the court appoints counsel to represent an AIP, the court indicate whether, except for pursuing rights of appeal, counsel for the AIP is discharged or is to continue representing the person now under guardianship in the event the petition is granted and a guardian is appointed.

Response: Proposed Rule 14.3(b) would require the court to delineate the scope of appointed counsel's role within the order of appointment.

Recommendation 53: The Task Force recommends that, through amendment to the Orphans' Court Procedural Rules, model language be developed pertaining to retention or discharge of counsel which can be inserted into a final decree of incapacity and appointment of a guardian.

Response: The Committee did not favor the creation of a statewide form order wherein such language may be inserted. The proposed rules do require the court to state within the order the right of the incapacitated person to be represented by an attorney in filing an appeal or seeking to modify or terminate the guardianship.

Recommendation 54: The Task Force recommends that, through amendment to the Orphans' Court Procedural Rules, guardians and IPs have access to legal counsel for consultation following adjudication.

Response: If counsel's services terminate upon the finality of the adjudication of incapacity and appointment of a guardian, as per the private engagement letter or order of appointment, then the guardian would need to obtain private counsel for himself or herself or for the incapacitated person to be paid from the estate of the incapacitated person. If the incapacitated person's estate is unable to pay for counsel, then the guardian should seek the appointment of counsel by the court.

Recommendation 55: The Task Force recommends that the Orphans' Court Procedural Rules be amended to require that the assets of the IP be used for the purpose of maintaining the best possible quality of life for the IP.

Response: This is not a procedural matter; rather it appears to be a qualitative and quantitative measure to be monitored through the evaluation of reports.

Recommendation 56: The Task Force recommends that the Orphans' Court Procedural Rules be amended to require that fee disputes be resolved in a timely, efficient manner.

Response: The Committee is cognizant that prolonged fee disputes drain assets that otherwise could be used for the incapacitated person's benefit. Therefore, the Committee inserted a statement to this effect in the Explanatory Comment to proposed Rule 14.3.

Recommendation 57: The Task Force recommends that the Orphans' Court Procedural Rules be amended to require that professional guardians, i.e., those guardians with more than two guardianships at the same time, should be certified by the professional guardian certification program referred to in §II.C.1.f.

Response: The Committee believes that certifications held, like completed training programs, relate to the qualifications of a prospective guardian, which should be evaluated by the court on an individual basis. To the extent that this recommendation suggests a statewide certification process, such a requirement is a substantive matter, rather than procedural, and would need to be addressed by the General Assembly.

Recommendation 58: The Task Force recommends that guardians be required, through amendment to the Orphans' Court Procedural Rules, to complete the inventory (as revised per Appendix C to the Guardianship Monitoring Committee Report) 90 days after appointment.

Response: Proposed Rule 14.6(a) implements this recommendation.

Recommendation 59: The Task Force recommends that guardians be required, through amendment to the Orphans' Court Procedural Rules, to complete the Annual Report of the Person (as revised per Appendix F to the Guardianship Monitoring Committee Report, and/or Annual Report of the Estate as revised per Appendix E to the Guardianship Monitoring Committee Report) one year after appointment.

Response: Proposed Rule 14.6 (a) implements this recommendation.

Recommendation 60: The Task Force recommends that guardians be required, through amendment to the Orphans' Court Procedural Rules, to complete a Firearms Search (Appendix D to the Guardianship Monitoring Committee Report) within 90 days of appointment.

Response: Courts already send to the Pennsylvania State Police a “notification of mental health commitment” pursuant to 18 Pa.C.S. § 6111.1(f).

The statutory basis cited to require the guardian to actively search and secure firearms and complete a “firearm search form” is 18 Pa.C.S. § 6105(c)(4), but that cited statute makes it a crime for an individual to possess a firearm if that person has been “adjudicated as an incompetent.” Undeniably there is merit in requiring a guardian to search and secure all weapons and other dangerous items when an incapacitated person is capable of harm to self or others. However, absent statute or precedent, the Committee does not favor using a firearms search form to extend criminal liability under Title 18 (“incompetent”) to a guardian appointed under Title 20 (“incapacitated”).

Recommendation 61: The Task Force recommends that guardians be required, through amendment to the Orphans’ Court Procedural Rules, to send a Certificate of Filing (Appendix G to the Guardianship Monitoring Committee Report), to the persons identified at the time of adjudication, within 10 days of filing each form with the Clerk of the Orphans’ Court.

Response: Proposed Rule 14.6(b) implements this recommendation.

Recommendation 62: The Task Force recommends that the imposition of filing fees for required annual reports by local court or administrative order should be prohibited through amendment to the Orphans’ Court Procedural Rules.

Response: The Committee is not aware of such fees being imposed and the purported basis for the imposition of such fees. The Committee will evaluate any information submitted in the form of a comment to this proposal to determine if further rulemaking is needed.

Recommendation 63: The Task Force recommends that the Supreme Court, through amendment to the Orphans’ Court Procedural Rules, require that Clerks of the Orphans’ Court be responsible for docketing and monitoring guardians’ compliance with submitting the inventory and annual reports by the required due dates.

Response: In Rule 14.6(d), the Committee is requiring either the clerk or the court’s designee to monitor the docket for compliance with reporting requirements. The ultimate responsibility is a matter of judicial administration and likely a function of local resources.

Recommendation 64: The Task Force recommends that the Clerks of the Orphans' Court, through amendment to the Orphans' Court Procedural Rules, be responsible for providing delinquency notices to guardians when required reports become past due.

Response: In Rule 14.6(f), the Committee is requiring either the clerk or the court's designee to notify the guardian and ultimately the court if any report is delinquent or incomplete. The ultimate responsibility is a matter of judicial administration and likely a function of local resources.

Recommendation 65: The Task Force recommends that the judge or judge's staff be required, through amendment to the Orphans' Court Procedural Rules, to review the content of all inventories and annual reports received by the court to identify areas requiring further scrutiny, additional documentation, or a review hearing.

Response: In Rule 14.6(e), the Committee has proposed that either the court or its designee review the filed reports. The logistics of reviewing is a matter of judicial administration.

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In addition to the above responses to the recommendations contained in the Elder Law Task Force's Report, the Committee wishes to supply further commentary to specific proposed rules:

Rule 1.5 Local Rules

Through amendment of Rule 1.5, the Committee intends to recommend that the Court vacate on 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.

Rule 14.1 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.

To the extent possible, the service and notice provisions for petitions have incorporated existing procedures.

Rule 14.2 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). After reviewing several comments and suggestions, the Committee made further revisions and intends to submit the rule and form to the Court with a recommendation for adoption.

The version being 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 either the written deposition rule or the form.

Rule 14.3 Counsel

This rule was crafted to establish the scope of counsel's services before commencement of the proceedings in order to avoid confusion about the role of counsel. While the rule 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.

As mentioned in the response to Recommendation 48, the rule leaves to the discretion of the court whether counsel should be appointed in a particular case.

Rule 14.4 Waiver or Modification of Bond

The Committee is cognizant that the availability of bonds may be limited for some otherwise qualified guardians and the cost of bonds may be significant and operate as a further drain on the estate. Of course, bonds serve to protect incapacitated persons' estates from the misdeeds of guardians. However, the Committee believes there may be other assurances available to indemnify the estate from loss attributed to the guardian. Therefore, with these competing interests, the Committee believes that

bonds should be subject to waiver and modification, but only pursuant to court order and for good cause shown.

The rule is silent as to what constitutes “good cause.” The Committee believes that good cause will depend on the facts and circumstances of individual cases.

This rule is not intended to encourage waiver or modification of bonds. Rather, it is intended to establish a procedure and standard for waiver and modification. Should the court grant a waiver or modification, then the court may require filing proof of the guardian’s creditworthiness or insurance. Nothing in this rule is intended to preclude the court from requiring such proof when initially determining “good cause” to modify or waive the bond requirement.

The “assurance” provision of Rule 14.4(c) is not intended to suggest that modifications are limited to downward adjustments. There may be instances where the value of an estate increases, which would require an upward modification of the bond. Further, modification of a bond requirement may include the procurement of a separate bond under circumstances where the incapacitated person has been serving as a fiduciary for another’s estate and the guardian(s) must account to those interested parties for the property held by the incapacitated person as fiduciary. See 20 Pa.C.S. § 5516.

Rule 14.5 Determination of Incapacity, Selection of Guardian, Order & Certificate

The Committee opted to incorporate by reference the statutory procedures for determining incapacity and appointing a guardian. This approach is consistent with current Pa. O.C. Rule 14.2. Within 20 Pa.C.S. § 5511 there are some provisions that could be replicated within the proposed rules, such as closed hearings, jury trial, seven-day notice if counsel has not been retained, and the authority of the court to order an independent evaluation. Likewise, 20 Pa.C.S. § 5512.1 sets forth required findings to be made by the court regarding incapacity and the need for a guardianship. However, the Committee believed that the proposed rules and Chapter 55 of Title 20 should be read in *pari materia* with each supplementing the other as to procedure. The Committee welcomes comment on whether the proposed rules should more fully reflect the statutory requirements.

The selection of a guardian and the hierarchy of eligibility is discussed in the Committee’s response to Recommendation 40. Proposed Rule 14.1(b)(2) requires the petitioner to state in the petition whether the proposed guardian has an adverse interest to the alleged incapacitated person. This information is intended to assist the court in assessing who may be appointed guardian pursuant to 20 Pa.C.S. § 5511(f). The Note to proposed Rule 14.5(b)(2), in addition to referencing Section 5511(f), also contains

reference to *In re Peery* as a reminder that a guardian is not required if the persons, albeit lacking capacity, does not need guardianship services.

The Committee deliberated on whether to propose a form order adjudicating incapacity and appointing a guardian. A form order would mandate captioning, format, and findings, including impairment, extent of impairment, need for services, type of guardianship, appointment of guardian, and specific limitations or responsibilities of the guardian. See 20 Pa.C.S. § 5512.1; see also 20 Pa.C.S. § 5513 (emergency guardian). Ultimately, the Committee concluded that the format of the order should be left to local practice and statutory requirements. The Committee may wish to reconsider this matter in the future should a particular form be identified as a best practice.

Section 5512.1(h) requires the court to advise the incapacitated person at the conclusion of the proceeding of the right to appeal or seek modification or termination of the guardianship. The Committee believes that these rights are best conveyed in the order itself and it should also be conveyed that the incapacitated person has the right to obtain private counsel or seek appointed counsel for the purpose of exercising these rights. See Rule 14.5(c)(1).

Additionally, Rule 14.5(c)(2) provides for the clerk to issue a “short certificate” or a certificate of guardianship to the guardian who may then present it to third parties when conducting matters on behalf of the incapacitated person in lieu of presenting the entire order, including details of impairment. This rule has a corresponding form in the Appendix. Within the form, the Committee proposes specific language directed toward financial institutions that may be included in the adjudication and appointment order for replication within the certification. This language is intended to address anecdotal reports of some financial institutions being reluctant to allow a court-authorized guardian access to the incapacity person’s accounts. The Committee welcomes suggestions for further refinement of this form.

Rule 14.6 Guardianship Reporting, Monitoring, Review, and Compliance

The requirement and timing of guardian reports and inventory required by statutes are reflected in Rule 14.6(a). See 20 Pa.C.S. §§ 5142, 5521(b), (c), 5921(f)(2). The forms to be used for reporting and inventory are set forth in the Appendix.

Once a guardian has filed a reporting form or inventory form with the clerk, Rule 14.6(b) requires the guardian to serve notice of the filing on all persons entitled to receive such notice, as identified in the court’s order. The notice of filing instructs the recipient that a copy of the notice along with proper identification will be required to access and view the filed documents.

In Rule 14.6(c), the Committee proposes that the Court Administrator assume responsibility for future form design, which would include future revisions, in consultation with the Committee and the Office of Elder Justice. The Committee deliberated on whether the reports and inventory referenced in Rule 14.6(a) and Rule 14.12(b), (c), and (d) should remain within the Appendix to the Orphans' Court Procedural Rules or whether those forms might be better located with the Administrative Office of Pennsylvania Courts, exclusive of the rulemaking requirements of Pa.R.J.A. No. 103(d). These deliberations remain ongoing.

The monitoring, review, and compliance requirements of Rule 14.6(d), (e), and (f) are discussed in the Committee's response to Recommendations 63-65.

Rule 14.7 Review Hearing

Proposed Rule 14.7 was drafted to permit the court to order a review hearing *sui sponte* or upon petition. When a review request is initiated by petition, the petitioner shall comply with the requirements of (b) and (c) relating to petition contents and service. Notice of the hearing, whether *sui sponte* ordered or prompted by petition, shall be served on those who are or would be entitled to service of the petition.

Rule 14.8 Proceedings Relating to Real Estate

Proposed Rule 14.8(a) is identical to existing Pa. O.C. Rule 14.4. Given the uniqueness, irreplaceability, and reliance that may be placed upon a sale, exchange, lease, or option of same, as well as a mortgage, of real estate, the Committee favored adding paragraph (b) as a means of bringing potential objections to the court's attention at the time of the petition.

Rule 14.9 Transfer of Guardianship of the Person to Another State

In 2012, the Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act, 20 Pa.C.S. §§ 5901-5992, was enacted to govern the interstate judicial coordination of guardianships. Within the Act, Subchapter C provides for the transfer of guardianships from and to Pennsylvania. Rule 14.9 is intended to establish procedural rules implementing 20 Pa.C.S. § 5921 as it relates to guardianships of the person. Rule 14.10 is intended to establish similar rules for guardianships of the estate.

As indicated in the Explanatory Comment, a petition under Rule 14.9 relating to the guardianship of the person may also include a transfer request as provided in Rule 14.10 relating to the guardianship of the estate. This ability to present both matters in one petition is intended to eliminate the need to file multiple petitions. However, this ability does not relieve the petitioner of pleading all the necessary facts required of each specific petition.

Rule 14.10 Transfer of Guardianship of the Estate to Another State

See the Committee's comment to Rule 14.9.

Rule 14.11 Acceptance of a Guardianship Transferred from Another State

Rule 14.11 is intended to provide a procedure for the transfer of a guardianship from another state to Pennsylvania. This rule is intended to implement 20 Pa.C.S. § 5922. Consistent with the reporting requirements applicable to guardianships commenced within Pennsylvania, a guardian of the transferred estate will be required to file an inventory within 90 days of the final order. Further, the court will be required to conduct a review hearing within 90 days of the final order accepting the transfer.

Rule 14.12 Forms

There are nine 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), recently revised and repromulgated on September 1, 2016, are not being revised, rescinded, or replaced by this proposal.

The Citation with Notice form is largely the same content as the current form with 14 point font to address the requirement of "large type." See 20 Pa.C.S. § 5511(a). As with all forms, the "footer date" on the form will reflect the effective date as established by Supreme Court order.

Regarding the Report of the Guardian of the Estate and the Report of the Guardian of the Person, these forms were previously published for comment at 45 Pa.B. 1070 (March 7, 2015). After reviewing the comments and suggestions, the Committee made further revisions to the reporting forms. The revised forms are being republished for comment.

Similarly, the Inventory was previously published for comment at 45 Pa.B. 1070 (March 7, 2015). The Committee received several comments with regard to this form, ranging from concerns that the form was overly burdensome to comments containing specific suggestions. The Committee seeks to republish this proposed form for further comment to be considered together with the previously submitted comments.

With the exception of OC-03 and OC-04, which have already been adopted, the remaining forms can be found on the Committee's webpage online at <http://www.pacourts.us/courts/supreme-court/committees/rules-committees/orphans-court-procedural-rules-committee> during the comment period where users may test their functionality. Aside from G-05 (Written Deposition), which is being submitted separately to the Court, the Committee invites comment regarding the forms.

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

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