

# **GUARDIANSHIP TRAINING GUIDE EXHIBITS**

## **Giving Families Legal Authority to Care for Incapacitated Loved Ones**

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# **EXHIBIT 1**

**DECEDENTS, ESTATES AND FIDUCIARIES (20 PA.C.S.) - PETITION AND HEARING AND INDEPENDENT EVALUATION, DETERMINATION OF INCAPACITY AND APPOINTMENT OF GUARDIAN AND REVIEW HEARING**

**Act of Dec. 14, 2023, P.L. 446, No. 61**

**Cl. 20**

Session of 2023  
No. 2023-61

SB 506

**AN ACT**

Amending Title 20 (Decedents, Estates and Fiduciaries) of the Pennsylvania Consolidated Statutes, in incapacitated persons, further providing for petition and hearing and independent evaluation, for determination of incapacity and appointment of guardian and for review hearing.

The General Assembly of the Commonwealth of Pennsylvania hereby enacts as follows:

Section 1. Section 5511(a), (e) and (f) of Title 20 of the Pennsylvania Consolidated Statutes are amended and the section is amended by adding a subsection to read:

**§ 5511. Petition and hearing; independent evaluation.**

(a) Resident.--The court, upon petition and hearing and upon the presentation of clear and convincing evidence, may find a person domiciled in the Commonwealth to be incapacitated and appoint a guardian or guardians of his person or estate. The petitioner may be any person interested in the alleged incapacitated person's welfare. The court may dismiss a proceeding where it determines that the proceeding has not been instituted to aid or benefit the alleged incapacitated person or that the petition is incomplete or fails to provide sufficient facts to proceed. Written notice of the petition and hearing shall be given in large type and in simple language to the alleged incapacitated person. The notice shall indicate the purpose and seriousness of the proceeding and the rights that can be lost as a result of the proceeding. It shall include the date, time and place of the hearing and an explanation of all rights[, including the right to request the appointment of counsel and to have counsel appointed if the court deems it appropriate and the right to have such counsel paid for if it cannot be afforded]. The Supreme Court shall establish a uniform citation for this purpose. A copy of the petition shall be attached. Personal service shall be made on the alleged incapacitated person, and the contents and terms of the petition shall be explained to the maximum extent possible in language and terms the individual is most likely to understand. Service shall be no less than 20 days in advance of the hearing. In addition, notice of the petition and hearing shall be given in such manner as the court shall direct to all persons residing within the Commonwealth who are *sui juris* and would be entitled to share in the estate of the alleged incapacitated person if he died intestate at that time, to the person or institution providing residential services to the alleged incapacitated person and to such other parties as the court may direct, including other service providers. The hearing may be closed to the public and without a jury unless the alleged incapacitated person or his counsel objects. The hearing shall be closed and with or without a jury if the person alleged to be incapacitated or his counsel so requests. The hearing may be held at the residence of the alleged

incapacitated person. The alleged incapacitated person shall be present at the hearing unless:

(1) the court is satisfied, upon the deposition or testimony of or sworn statement by a physician or licensed psychologist, that his physical or mental condition would be harmed by his presence; or

(2) it is impossible for him to be present because of his absence from the Commonwealth. It shall not be necessary for the alleged incapacitated person to be represented by a guardian ad litem in the proceeding.

[Petitioner shall be required to notify the court at least seven days prior to the hearing if counsel has not been retained by or on behalf of the alleged incapacitated person. In appropriate cases, counsel shall be appointed to represent the alleged incapacitated person in any matter for which counsel has not been retained by or on behalf of that individual.]

**(a.1) Appointment of counsel.--**

(1) If the petitioner under subsection (a) is aware that the alleged incapacitated person is represented by counsel, the petitioner shall advise the court that the alleged incapacitated person is represented by counsel at the time of filing the petition or as soon as the petitioner becomes aware of the representation.

(2) Regardless of the ability of the alleged incapacitated person to pay, the court shall appoint counsel to represent the alleged incapacitated person in any matter for which counsel has not been retained by the alleged incapacitated person, including in all proceedings under subsection (a) and in any subsequent proceedings to consider, modify or terminate a guardianship. Appointed counsel shall be qualified by experience or training and shall act without delay under the circumstances.

(3) Counsel for an alleged incapacitated person shall, as far as reasonably possible, maintain a normal client-attorney relationship with the client. Counsel shall advocate for the client's expressed wishes and consistent with the client's instructions, to the extent the client is able to express wishes and provide instructions. Counsel shall comply with the Rules of Professional Conduct governing the attorney-client relationship. Retained or appointed counsel may not act as guardian ad litem for the alleged incapacitated person. If the court determines that a guardian ad litem is necessary, the court shall make a separate appointment. Appointed counsel shall meet with the alleged incapacitated person as soon as reasonably possible after the appointment. Within five days of the meeting, appointed counsel shall file with the court a certification of the time and place that the meeting occurred.

\* \* \*

(e) Petition contents.--The petition, which shall be in plain language, shall include the name, age, residence and post office address of the alleged incapacitated person, the names and addresses of the spouse, parents and presumptive adult heirs of the alleged incapacitated person, the name and address of the person or institution providing residential services to the alleged incapacitated person, the names and addresses of other service providers, the name and address of the person or entity whom petitioner asks to be appointed guardian, an averment that the proposed guardian has no interest adverse to the alleged incapacitated person, the reasons why guardianship is sought, a description of the functional limitations and physical and mental condition of the alleged incapacitated person, the steps taken to find less restrictive alternatives, the specific areas of incapacity over which it is requested that the guardian be

assigned powers and the qualifications of the proposed guardian. **Petitions must allege specific facts demonstrating that less restrictive alternatives were considered or tried and why the alternatives are unavailable or insufficient.** If a limited or plenary guardian of the estate is sought, the petition shall also include the gross value of the estate and net income from all sources to the extent known.

(f) Who may be appointed guardian.--

(1) The court may appoint as guardian any qualified individual, a corporate fiduciary, a nonprofit corporation, a guardianship support agency under Subchapter F (relating to guardianship support) or a county agency. In the case of residents of State facilities, the court may also appoint, only as guardian of the estate, the guardian office at the appropriate State facility. The court shall not appoint a person or entity providing residential services for a fee to the incapacitated person or any other person whose interests conflict with those of the incapacitated person except where it is clearly demonstrated that no guardianship support agency or other alternative exists. Any family relationship to such individual shall not, by itself, be considered as an interest adverse to the alleged incapacitated person. If appropriate, the court shall give preference to a nominee of the incapacitated person.

(2) An individual seeking guardianship of three or more incapacitated persons must be certified as provided in this paragraph and provide proof of the certification to the court prior to a third guardianship appointment. The following provisions shall apply:

(i) The Supreme Court shall prescribe rules and forms necessary to effectuate the certification required under this paragraph, including rules regarding the expiration and renewal of certifications.

(ii) When the Supreme Court prescribes rules relating to requirements for certification:

(A) The Supreme Court shall provide opportunities for relevant stakeholders to provide input.

(B) The certification shall, at a minimum, require:

(I) Submission of education and employment history.

(II) Submission of Federal and State criminal history record information.

(III) Passage of a certification exam administered by a national nonprofit guardianship certification organization. The national nonprofit organization must provide a comprehensive certification program for guardians, including supervising a national certification process, developing certification exam content and maintaining a decertification process.

(3) The certification required under paragraph (2) may be waived by a court upon a petition demonstrating that a proposed guardian has such equivalent licenses or certifications as are necessary to ensure that the proposed guardian is capable of fully, faithfully and competently performing the obligations of a guardian. For purposes of this paragraph, a license to practice law shall not constitute an equivalent license or certification.

Section 2. Sections 5512.1(a) and 5512.2 of Title 20 are amended to read:

§ 5512.1. Determination of incapacity and appointment of guardian.

(a) Determination of incapacity.--In all cases, the court shall consider and make specific findings of fact concerning:

(1) The nature of any condition or disability which impairs the individual's capacity to make and communicate decisions.

(2) The extent of the individual's capacity to make and communicate decisions.

(3) The need for guardianship services, if any, in light of such factors as the availability of family, friends and other supports to assist the individual in making decisions and in light of the existence, if any, of [advance directives such as durable powers of attorney or trusts.] **less restrictive alternatives**. The court shall make specific findings of fact based on the evidentiary record of the absence of sufficient family, friends or other supports and of the insufficiency of each less restrictive alternative before ordering guardianship. Less restrictive alternatives include, but are not limited to:

(i) Advance directives such as durable power of attorney or trusts.

(ii) Living wills.

(iii) Health care powers of attorney.

(iv) Health care representatives.

(v) Financial powers of attorney.

(vi) Trusts, including special needs trusts.

(vii) Representative payees for individuals receiving Social Security benefits.

(viii) Pennsylvania Achieving a Better Life Experience accounts.

(ix) Mental health advance directives.

(4) The type of guardian, limited or plenary, of the person or estate needed based on the nature of any condition or disability and the capacity to make and communicate decisions.

(5) The duration of the guardianship.

(6) The court shall prefer **less restrictive alternatives** to guardianship and, if no **less restrictive alternatives** are available and sufficient, limited guardianship. The following apply:

(i) A determination of incapacity is separate from a determination of whether a guardian should be appointed.

(ii) The court may not use a determination of incapacity alone to justify a guardianship.

(iii) The court may not appoint a guardian if a lesser restrictive alternative exists that is sufficient to support the needs of an incapacitated person.

(iv) When entering an order denying a petition for guardianship in whole or in part, the court shall identify the less restrictive alternatives that are available and sufficient to enable the alleged incapacitated person to manage personal financial resources or to meet essential requirements of personal physical health and safety. An order may assist the respondent and any supportive and substitute decision makers involved to effectuate the respondent's decisions with third parties.

\* \* \*

## § 5512.2. Review hearing.

(a) [Time of hearing.--The court may set a date for a review hearing in its order establishing the guardianship or hold a review hearing at any time it shall direct. The court shall conduct a review hearing promptly if the incapacitated person, guardian or any interested party petitions the court for a hearing for reason of a significant change in the person's capacity, a change in the need for guardianship services or the guardian's failure to perform his duties in accordance with the law or to act

in the best interest of the incapacitated person. The court may dismiss a petition for review hearing if it determines that the petition is frivolous.] **Automatic review.--If the evidence presented during the guardianship proceeding indicates that the circumstances of the person's incapacity may change, the court shall hold a review hearing to determine whether the guardianship continues to be necessary.** The court shall set the date for a review hearing under this subsection in the court's order establishing guardianship. The review hearing under this subsection shall be held no later than one year from the date of the order establishing the guardianship. The hearing shall be conducted in the presence of the incapacitated person and the person's attorney, and the court shall adhere to the procedures and standards as outlined in section 5512.1(a) (relating to determination of incapacity and appointment of guardian). If, following the presentation of evidence and testimony from all parties, the court finds that guardianship continues to be necessary and that no less restrictive alternatives exist, the court may order that the guardianship continue. If the court finds that guardianship is no longer necessary or a less restrictive alternative exists, the court shall discharge the guardianship. In determining whether the circumstances of the person's incapacity may change, the court may consider any of the following:

- (1) whether the incapacity could be adequately managed by medication, rehabilitation or other means;
- (2) whether the potential exists for the incapacitated person to regain physical or cognitive capacity;
- (3) the opinion of a medical professional or other qualified expert who has personally examined the incapacitated person;
- (4) the circumstances of the incapacitated person's daily living, including, but not limited to, support from others; and
- (5) any other factor indicating that the incapacitated person's condition could improve at a future time.

(a.1) **Petition for review.--At any time following the issuance of the order establishing guardianship, any interested person may file a petition with the court to terminate or modify the guardianship.** The court shall promptly schedule a hearing or hold a review hearing at any time it shall direct. The hearing shall be held in the presence of the incapacitated person and the incapacitated person's attorney, and the court shall adhere to the procedures and standards as outlined in section 5512.1(a). If, following the presentation of evidence and testimony from all parties, the court finds that guardianship continues to be necessary and that no less restrictive alternatives exist, the court may order that the guardianship continue. If the court finds that guardianship is no longer necessary or a less restrictive alternative exists, the court shall discharge the guardianship.

(b) **Burden of proof and rights.--The incapacitated person shall have all of the rights enumerated in this chapter. Except when the hearing is held to appoint a successor guardian, the burden of proof, by clear and convincing evidence, shall be on the party advocating continuation of guardianship or expansion of areas of incapacity.**

Section 3. This act shall take effect in 180 days.

APPROVED--The 14th day of December, A.D. 2023.

JOSH SHAPIRO

## **EXHIBIT 2**

## **Pa. Sup. Orph. Ct. R. 14.1**

Pennsylvania State Court Rules reflect amendments received March 1, 2024

**PA - Pennsylvania Local, State & Federal Court Rules > SUPREME COURT ORPHANS' COURT RULES > CHAPTER XIV. GUARDIANSHIPS OF INCAPACITATED PERSONS**

### **Rule 14.1. Guardianship Petition Practice and Pleading**

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**(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) Permitted responsive pleadings to a petition seeking the adjudication of incapacity and appointment of a guardian 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 subparagraph (b)(2).

(4) All responsive pleadings shall be filed and served no later than five days prior to the hearing. The failure to file or timely file and serve a responsive pleading does not waive the right to raise an objection at the hearing.

(5) The court shall determine any objections at the adjudicatory hearing.

**(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 any proceeding under these Rules 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 and procedures of Chapter III that are applicable to proceedings under Chapter XIV. In proceedings for the adjudication of incapacity and appointment of a guardian, responsive pleadings are permitted as a means of identifying contested legal issues and

## Rule 14.1. Guardianship Petition Practice and Pleading

questions of fact prior to the adjudicatory hearing. However, given the abbreviated time for filing a responsive pleading relative to other proceedings (Compare *Pa. O.C. Rule 3.7(a)*), the failure to file a responsive pleading should not operate to prelude an issue or objection from being raised and considered at the hearing. 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 or respondent is able to establish circumstances to the satisfaction of the court warranting disregard of procedural requirements. See *Pa. O.C. Rule 1.2(a)*.

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## **Pa. Sup. Orph. Ct. R. 14.2**

Pennsylvania State Court Rules reflect amendments received March 1, 2024

**PA - Pennsylvania Local, State & Federal Court Rules > SUPREME COURT ORPHANS' COURT RULES > CHAPTER XIV. GUARDIANSHIPS OF INCAPACITATED PERSONS**

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

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(a) Petition Contents. A petition to adjudicate an individual as an incapacitated person and appoint a guardian 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, date of birth, 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) Whether there is an executed health care power of attorney or advance health care directive pursuant to Title 20, Chapter 54, and if so, the name and address of the person designated in the writing to act as the agent; Note: See 20 Pa.C.S. 5421 et seq. for health care power of attorney and advance health care directive (combination of a living will and health care power of attorney).
- (7) Whether there is an executed power of attorney pursuant to Title 20, Chapter 56, and if so, the name and address of the person designated in the writing to act as the agent; Note: See 20 Pa.C.S. 5601 et seq. for power of attorney.
- (8) Whether there is any other writing by the alleged incapacitated person pursuant to Title 20, Chapters 54 or 58 authorizing another to act on behalf of the alleged incapacitated person, and if so, the name and address of the person designated;

Note: See 20 Pa.C.S. 5441-5447 for Living Will Act; 20 Pa.C.S. 5451-5465 for Health Care Agents and Representatives Act; 20 Pa.C.S. 5821-5826 for Advance Directive for Mental Health Act; 20 Pa.C.S. 5831-5845 for Mental Health Care Agents Act.

- (9) Reason(s) why guardianship is sought, including a description of functional limitations and the physical and mental condition of the alleged incapacitated person;
- (10) If not plenary, then specific areas of incapacity over which it is requested that the guardian be assigned powers;
- (11) The probability of whether the physical condition and mental condition of the alleged incapacitated person will improve;
- (12) 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;
- (13) Steps taken to find a less restrictive alternative than a guardianship;

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

(14) If a guardian of the estate is sought:

- (i) the gross value of the estate and net income from all sources, to the extent known; and
- (ii) 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 that the petitioner proposes should receive notice of the filing of guardianship reports pursuant to Rule 14.8(b), which may include any person identified in paragraphs (a)(3)-(a)(8).

(b) Nomination of Guardian. The petition 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 name of 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 has any guardianship certification, the current status of the certification, and any disciplinary action related to the certification;

(6) Whether the proposed guardian is or was a guardian in any other matters and, if so, the number of active matters; and

(7) 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)(6) as to each nominee.

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

(1) All writings referenced in paragraphs (a)(6)-

(a)

(8) , 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 within the previous five-year period and was 18 years of age or older at any time during that 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).

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); and

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

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.

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) 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 Rule 4.3 no less than 20 days prior to the hearing upon:

(i) All persons *sui juris* 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;

(iii) Any person named in paragraphs (a)(6)-

(a)

(8) ; and

(iv) Such other entities and persons 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).

Annotations

## **Commentary**

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### **COMMENT**

EXPLANATORY 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.

## **Research References & Practice Aids**

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### **LexisNexis (R) Notes**

### **PENNSYLVANIA ADMINISTRATIVE CODE REFERENCES.**

1. 231 Pa. Code Part II, Art INDEX (2019), PART ORPHANS' COURT RULES.

### **LexisNexis (R) Notes**

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

**TREATISES AND ANALYTICAL MATERIALS**

1. 5A Remick's Pennsylvania Orphans' Court Practice § 37.01, CHAPTER XXXVII Guardians: Persons and Estates of Incompetents, Source of Jurisdiction.

2.

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*P.L.E. GUARDIAN AND WARD* § 6, Pennsylvania Law Encyclopedia, --Proceedings for Judicial Appointment, Copyright 2017, Matthew Bender & Company, Inc., a member of the LexisNexis Group.

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## **Pa. Sup. Orph. Ct. R. 14.3**

Pennsylvania State Court Rules reflect amendments received March 1, 2024

**PA - Pennsylvania Local, State & Federal Court Rules > SUPREME COURT ORPHANS' COURT RULES > CHAPTER XIV. GUARDIANSHIPS OF INCAPACITATED PERSONS**

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

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(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.

(b) Notice.

- (1) If a petitioner seeks to offer an expert report permitted under paragraph (a), the petitioner shall serve a copy of the completed report upon the alleged incapacitated person's counsel and all other counsel of record pursuant to Rule 4.3 or, if unrepresented, upon the alleged incapacitated person, pursuant to Pa.R.C.P. No. 402(a) by a competent adult no later than ten days prior to the hearing on the petition.
- (2) If a petitioner seeks to offer an expert report, as permitted under paragraph (a), the petitioner shall serve pursuant to Rule 4.3 a notice of that fact upon those entitled to notice of the petition and hearing no later than ten days prior to the hearing on the petition.
- (3) The petitioner shall file a certificate of service with the court as to paragraphs (b)(1) and (b)(2).

(c) Demand.

- (1) Within five days of service of the completed report provided in paragraph (b)(1), the alleged incapacitated person's counsel or, if unrepresented, the alleged incapacitated person, may file with the court and serve upon the petitioner pursuant to Rule 4.3 a demand for the testimony of the expert.
- (2) If a demand for testimony is filed and served as provided herein, then the expert report may not be admitted and an expert must provide testimony at the hearing, whether in-person or by deposition.

(d) Unless otherwise demanded pursuant to paragraph (c)(2), in the sole discretion of the court, incapacity may be established through the admission of an expert report prepared in compliance with the form provided in the Appendix to these rules. The expert must be qualified by training and experience in evaluating individuals with incapacities of the type alleged in the petition. The expert must sign, date, and verify the completed expert report.

(e) In the interest of justice, the court may excuse the notice and demand requirements set forth in paragraphs (b) and (c).

Annotations

### **Commentary**

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COMMENT

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

**EXPLANATORY** 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.

## **Research References & Practice Aids**

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### **LexisNexis (R) Notes**

#### **TREATISES AND ANALYTICAL MATERIALS**

1. 8 Dunlap-Hanna Pennsylvania Forms P 80.10, CHAPTER 80 Incapacitated Persons, Adjudication of Capacity or Modification of Existing Orders.
  
2. 26 P.L.E. GUARDIAN AND WARD § 10, Pennsylvania Law Encyclopedia, Duration and Termination of Guardianship, Copyright 2017, Matthew Bender & Company, Inc., a member of the LexisNexis Group.
  
3. 5A Remick's Pennsylvania Orphans' Court Practice § 37.03, CHAPTER XXXVII Guardians: Persons and Estates of Incompetents, Appointment of Guardian: Procedure.

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## **Pa. Sup. Orph. Ct. R. 14.4**

Pennsylvania State Court Rules reflect amendments received March 1, 2024

**PA - Pennsylvania Local, State & Federal Court Rules > SUPREME COURT ORPHANS' COURT RULES > CHAPTER XIV. GUARDIANSHIPS OF INCAPACITATED PERSONS**

### **Rule 14.4. Counsel**

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- (a) **Retention of Counsel.** 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 and also indicate whether the alleged incapacitated person has requested counsel.
- (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).

Annotations

### **Commentary**

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#### **COMMENT**

**EXPLANATORY** 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.

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End of Document

## **Pa. Sup. Orph. Ct. R. 14.5**

Pennsylvania State Court Rules reflect amendments received March 1, 2024

**PA - Pennsylvania Local, State & Federal Court Rules > SUPREME COURT ORPHANS' COURT RULES > CHAPTER XIV. GUARDIANSHIPS OF INCAPACITATED PERSONS**

### **Rule 14.5. Waiver or Modification of Bond**

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- (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.

Annotations

### **Commentary**

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#### **COMMENT**

**EXPLANATORY** 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 creditworthiness of the guardian, and assets of the guardian relative to the value of the estate.

### **Research References & Practice Aids**

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LexisNexis (R) Notes

#### **TREATISES AND ANALYTICAL MATERIALS**

1. 25  
P.L.E. EXECUTORS AND ADMINISTRATORS § 209, Pennsylvania Law Encyclopedia, Proceedings for Payment or Distribution, Copyright 2017, Matthew Bender & Company, Inc., a member of the LexisNexis Group.

## **Pa. Sup. Orph. Ct. R. 14.6**

Pennsylvania State Court Rules reflect amendments received March 1, 2024

**PA - Pennsylvania Local, State & Federal Court Rules > SUPREME COURT ORPHANS' COURT RULES > CHAPTER XIV. GUARDIANSHIPS OF INCAPACITATED PERSONS**

### **Notice**

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► Note: this section is effective June 1, 2019

### **Rule 14.6. Determination of Incapacity and Selection of Guardian**

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(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. 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).

(b) Selection of Guardian. If guardianship services are needed, then the court shall appoint the person nominated as such in a power of attorney, a health care power of attorney, an advance health care directive, a mental health care declaration, or mental health 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;

## Rule 14.6. Determination of Incapacity and Selection of Guardian

- (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.

Annotations

## **Commentary**

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### **COMMENT**

**EXPLANATORY** If a principal nominates a guardian pursuant to a power of attorney, a health care power of attorney, an advance health care directive, which is a combination of a living will and a health care power of attorney, a mental health care declaration, or mental health power of attorney, then court must appoint that person as guardian except for good cause or disqualification. See 20 Pa.C.S. 5604(c)(2) (power of attorney); 20 Pa.C.S. 5460(b) (health care power of attorney); 20 Pa.C.S. 5422 (defining "advance health care directive"); 20 Pa.C.S. 5823 (mental health declaration); 20 Pa.C.S. 5841(c) (mental health power of attorney); see also 20 Pa.C.S. 5511(f) (who may be appointed guardian).

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End of Document

## **Pa. Sup. Orph. Ct. R. 14.7**

Pennsylvania State Court Rules reflect amendments received March 1, 2024

**PA - Pennsylvania Local, State & Federal Court Rules > SUPREME COURT ORPHANS' COURT RULES > CHAPTER XIV. GUARDIANSHIPS OF INCAPACITATED PERSONS**

### **Notice**

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 Note: this section is effective June 1, 2019

### **Rule 14.7. Order and Certificate**

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**(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 or health care powers of attorney and the authority of such agent to act under the document;
  - (iii) the necessity of filing reports pursuant to Rule 14.8(a); and
  - (iv) the person or persons entitled to receive notice of the filing of such reports, 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 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 a motion for reconsideration, 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, shall grant to the guardian of [incapacitated person]'s estate access to any and all assets, records, and 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, records, and accounts. The failure of any financial institution to honor this order may lead to contempt proceedings and the imposition of sanctions.

## Rule 14.7. Order and Certificate

(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, Estates, 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 that: All financial institutions, including without limitation, banks, savings and loans, credit unions, and brokerages shall grant to the guardian of [incapacitated person]'s estate access to any and all assets, records, and 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, records, and accounts. 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**

Annotations

## **Commentary**

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### **COMMENT**

**EXPLANATORY** The requirements of paragraph (a) are intended to apply to all 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 DLH*, 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).

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End of Document

## **Pa. Sup. Orph. Ct. R. 14.8**

Pennsylvania State Court Rules reflect amendments received March 1, 2024

**PA - Pennsylvania Local, State & Federal Court Rules > SUPREME COURT ORPHANS' COURT RULES > CHAPTER XIV. GUARDIANSHIPS OF INCAPACITATED PERSONS**

### **Rule 14.8. Guardianship Reporting, Monitoring, Review, and Compliance**

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(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 of an incapacitated person 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 of limited duration; 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.

| <u>Note:</u>   | <u>See</u>    |
|--|---------------|
| <u>Pa.R.J.A. No. 510 governing the filing of inventories and annual reports online using the Guardianship Tracking</u> | <u>System</u> |

(b) Notice of Filing. If, pursuant to Rule 14.7(a)(1)(iv), 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), the guardian shall serve a notice of filing within ten days after 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 Advisory Council on 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 being entitled to receive a notice of filing.
- (3) The court may thereafter take such enforcement procedures as are necessary to ensure compliance.

Rule 14.8. Guardianship Reporting, Monitoring, Review, and Compliance

(4) After reasonable enforcement procedures by the court have been unsuccessful, the court shall enter an order that:

- (i) includes an explanation of the actions taken by the court to attempt enforcement of the filing requirements;
- (ii) includes clearly enumerated reasons why the guardian or former guardian has not been compelled to comply with any filing requirements; and either
  - (A) directs that a successor guardian or designee of the court file the delinquent filing with the clerk and it shall be docketed as such by the clerk; or
  - (B) directs the order issued by the court to be docketed by the clerk in lieu of the delinquent filing.

Annotations

## **Commentary**

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### **COMMENT**

**EXPLANATORY** The reporting forms are available at <http://www.pacourts.us/forms/for-the-public/orphans-court-forms>. 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.

## **Research References & Practice Aids**

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LexisNexis (R) Notes

### **PENNSYLVANIA ADMINISTRATIVE CODE REFERENCES.**

1. 201 Pa. Code Ch 5, Rule 510 (2019), CHAPTER ADMINISTRATIVE OFFICE OF PENNSYLVANIA COURTS.

LexisNexis (R) Notes

### **TREATISES AND ANALYTICAL MATERIALS**

1. 6 Remick's Pennsylvania Orphans' Court Practice Rule 16.12, Appendix 1 SUPREME COURT ORPHANS' COURT RULES, [Repealed.] Reserved.

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End of Document

## **Pa. Sup. Orph. Ct. R. 14.9**

Pennsylvania State Court Rules reflect amendments received March 1, 2024

**PA - Pennsylvania Local, State & Federal Court Rules > SUPREME COURT ORPHANS' COURT RULES > CHAPTER XIV. GUARDIANSHIPS OF INCAPACITATED PERSONS**

### **Notice**

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► Note: this section is effective June 1, 2019

### **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 intestate heirs of the incapacitated person and whether they are *sui juris* or *non sui juris*; and
  - (7) an averment that:
    - (i) there has been significant change in the incapacitated person's capacity and the nature of that change;
    - (ii) there has been a change in the need for guardianship services and the nature of that change; or
    - (iii) 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).

Annotations

### **Commentary**

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Rule 14.9. Review Hearing

**COMMENT**

**EXPLANATORY** 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.

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End of Document

## **Pa. Sup. Orph. Ct. R. 14.10**

Pennsylvania State Court Rules reflect amendments received March 1, 2024

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### **Notice**

---

 Note: this section is effective June 1, 2019

### **Rule 14.10. Proceedings Relating to Real Property**

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(a) Applicable Rules. A petition for the public or private sale, exchange, lease, or mortgage of real property 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, and whether expressed before or after the adjudication of incapacity.

Note: See Pa. O.C. Rules 5.10, 5.11, and 5.12.

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End of Document

## **Pa. Sup. Orph. Ct. R. 14.11**

Pennsylvania State Court Rules reflect amendments received March 1, 2024

**PA - Pennsylvania Local, State & Federal Court Rules > SUPREME COURT ORPHANS' COURT RULES > CHAPTER XIV. GUARDIANSHIPS OF INCAPACITATED PERSONS**

### **Notice**

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► Note: this section is effective June 1, 2019

### **Rule 14.11. Transfer of Guardianship of the Person to Another State**

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- (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.

Annotations

### **Commentary**

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#### **COMMENT**

**EXPLANATORY** 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

Rule 14.11. Transfer of Guardianship of the Person to Another State

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.

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End of Document

## **Pa. Sup. Orph. Ct. R. 14.12**

Pennsylvania State Court Rules reflect amendments received March 1, 2024

**PA - Pennsylvania Local, State & Federal Court Rules > SUPREME COURT ORPHANS' COURT RULES > CHAPTER XIV. GUARDIANSHIPS OF INCAPACITATED PERSONS**

### **Notice**

---

► Note: this section is effective June 1, 2019

### **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:
  - (i) physically present in the other state;
  - (ii) reasonably expected to move permanently to the other state; or
  - (iii) 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.

Annotations

### **Commentary**

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#### **COMMENT**

Rule 14.12. Transfer of Guardianship of the Estate to Another State

**EXPLANATORY** 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.

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End of Document

## **Pa. Sup. Orph. Ct. R. 14.13**

Pennsylvania State Court Rules reflect amendments received March 1, 2024

**PA - Pennsylvania Local, State & Federal Court Rules > SUPREME COURT ORPHANS' COURT RULES > CHAPTER XIV. GUARDIANSHIPS OF INCAPACITATED PERSONS**

### **Notice**

---

 Note: this section is effective June 1, 2019

### **Rule 14.13. Acceptance of a Guardianship Transferred from Another State**

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- (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 the manner and upon the incapacitated person and those entitled to service pursuant to Rule 14.2(f).
- (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.

Annotations

### **Commentary**

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#### **COMMENT**

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

Rule 14.13. Acceptance of a Guardianship Transferred from Another State

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End of Document

## **Pa. Sup. Orph. Ct. R. 14.14**

Pennsylvania State Court Rules reflect amendments received March 1, 2024

**PA - Pennsylvania Local, State & Federal Court Rules > SUPREME COURT ORPHANS' COURT RULES > CHAPTER XIV. GUARDIANSHIPS OF INCAPACITATED PERSONS**

### **Notice**

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► Note: this section is effective June 1, 2019

### **Rule 14.14. Forms**

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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 for a Minor (G-04);
- (e) Guardian's Inventory for an Incapacitated Person (G-05);
- (f) Guardianship of Incapacitated Person: Petition for Adjudication/Statement of Proposed Distribution Pursuant to *Pa. O.C. Rule 2.4 (OC-03)*;
- (g) Guardianship of Minor: Petition for Adjudication/Statement of Proposed Distribution Pursuant to *Pa. O.C. Rule 2.4 (OC-04)*;
- (h) Expert Report (G-06); and
- (i) Notice of Filing (G-07).

Annotations

### **Commentary**

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#### **COMMENT**

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

## **EXHIBIT 3**

First Judicial District of Pennsylvania  
Court of Common Pleas of Philadelphia County  
Orphans' Court Division



LOCAL RULES

Updated 06-01-19

**PHILADELPHIA COUNTY ORPHANS' COURT RULES**

|  |           |
|--|-----------|
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**APPENDIX**  
**PHILADELPHIA COUNTY ORPHANS' COURT FORMS**

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**Account Filing Checklist – Decedent's Estate**

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**Account Filing Checklist – Agent under Power of Attorney**

**Account Filing Checklist – Guardian of Minor**

**Account Filing Checklist – Guardian of Incapacitated Person**

**Account Filing Checklist – Special Needs Trust**

**Affidavit for Filing in Philadelphia County by Foreign Fiduciary**

**Appeal from Register of Wills**

**Excerpt from Schedule of Distribution**

**Subpoena**

## **CHAPTER XIV. GUARDIANSHIPS OF INCAPACITATED PERSONS**

*The Local Rules in this Chapter were adopted on May 1, 2019, effective June 1, 2019.*

### **Rule 14.1A. Guardianship Petition Practice and Pleading. Special Petitions.**

**(1) Small Estate of Incapacitated Persons.** If at a hearing the incapacity is established, and it appears that the gross estate does not exceed the statutory limitation, the Court may award the entire estate to the person or institution maintaining the incapacitated person, or make such order as may be appropriate under the circumstances. In such case, a decree in approved form, in lieu of the final decree appointing a guardian, shall be attached to the face of the petition.

**Probate Section Comment:** 20 Pa.C.S. § 5101 and § 5505 prescribe the statutory limitation for small estates.

**(2) Petition for Allowances.** Expenditures for the maintenance or support of an incapacitated person or for a dependent of the incapacitated person, or for payment of counsel fees, shall be governed by the appropriate provisions of Phila. O.C. Rule 5.6C(1) and (3) and as provided below.

**(a) Filing of Petition and Decrees.** A petition for allowance from the incapacitated person's estate, during incapacity, shall be filed, in accordance with Pa. O.C. Rule 4.7 and Phila. O.C. Rule 4.7A, with the Clerk by the guardian or any interested party. A proposed final decree shall be attached to the face of the petition. When the petitioner is not a guardian, a preliminary decree containing a provision for the time and place for hearing to be fixed by the Court shall also be attached to the face of the petition. Notice shall be given to the guardian, to all interested parties, and to such other persons as the Court may direct.

**(b) Contents of Petition.** The petition shall include:

- (i) the information listed in Pa. O.C. Rule 14.2(a)(1) through (5);
- (ii) the name(s) of the guardian(s), the date of his or her or appointment, the nature of the guardianship of the estate or person (limited or plenary) and the name of the Hearing Judge;
- (iii) the names and addresses of all interested parties;
- (iv) if the petitioner is not a guardian, his or her relationship to the incapacitated person, and, if not related, the nature of his or her interest;
- (v) a statement of all previous distributions allowed by the Court since the date of the last Court approved accounting, if any;
- (vi) an itemized statement of all claims of the incapacitated person's creditors known to petitioner;

- (vii) a statement of the requested distribution and the reasons therefor; and
- (viii) a prayer for the distribution requested. If the allowance requested will involve a matter which will require annual petitions for substantially similar relief, the petitioner may request the Court to make the grant of the allowance applicable to more than one (1) year, but not to exceed three (3) years, unless otherwise permitted by the Court.

**(c) Restrictions Governing Allowance:**

- (i) Except in cases of extreme emergency, requests for allowances will not be approved prior to the filing of the inventory or the last required annual report, as the case may be.
- (ii) Requests for allowances for fees of Court-appointed Counsel will not be approved prior to the filing of the Guardian Inventory. Whenever possible, reasonable counsel fees shall be ordered to be paid from the estate of the incapacitated person. If the incapacitated person is unable to pay for counsel, the Court may order counsel fees and costs to be paid by the county. See 20 Pa.C.S. § 5511(c).
- (iii) If any portion of the incapacitated person's estate is received from the United States Veterans' Administration or its successor, or any agency of the Commonwealth, notice of the request for allowance shall be given to such agency.

**(3) Other Petitions.** Any other petitions for relief may be filed consistent with the applicable statutes and rules. See 20 Pa.C.S. § 5501 *et seq.*, Pa. O.C. Rule 14.1(c).

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

**(1) Petition Contents.** When the petitioner avers, as required by Pa. O.C. Rule 14.2 (a) (6), (7) and (8), the existence of an executed health care power of attorney or advance health care directive, or an executed power of attorney, or any other writing by the alleged incapacitated person pursuant to Title 20, Chapters 54, 56 or 58, the petition shall state the position of the Petitioner as to the continuation of the duties of the agent identified under such document(s).

**(2) Exhibits.**

**(a)** A Preliminary Decree and a Final Decree, as set forth in the Appendix maintained pursuant to Phila. O.C. Rule 1.8(c), shall be attached to the face of a petition for adjudication of incapacity.

**(b) Consent of Proposed Guardian.** The signed written consent of the proposed guardian to act as guardian, as set forth in the Appendix maintained pursuant to Phila. O.C. Rule 1.8(c), shall be attached to the petition.

**(3) Emergency Guardians.**

**(a) Appointment.** The Court, upon petition and hearing at which clear and convincing evidence is shown, may appoint an emergency guardian or guardians of the person and the estate of an alleged incapacitated person when it appears that the person lacks capacity, is in need of a guardian and a failure to make such appointment would result in irreparable harm to the person or estate of the alleged incapacitated person. The Court may also appoint an emergency guardian of the person pursuant to 20 Pa.C.S. § 5513, for an alleged incapacitated person who is present in this Commonwealth but is domiciled outside the Commonwealth, regardless of whether he or she has property in this Commonwealth.

**(b) Applicability of Other Provisions.** The provisions of 20 Pa.C.S. § 5511, including those relating to counsel, shall be applicable to such proceedings, except when the Court has found such provisions to be impractical.

**(c) Duration of Emergency Guardianship.**

- (i) **Person.** An emergency order appointing an emergency guardian of the person may be in effect for up to seventy-two (72) hours. If the emergency continues, the emergency order may be extended for no more than twenty (20) days from the expiration of the initial emergency order, upon application to the Court.
- (ii) **Estate.** The duration of an emergency order appointing an emergency guardian of the estate shall not exceed thirty (30) days.
- (iii) If continuing guardianship of person or estate is necessary, a full guardianship proceeding must be instituted pursuant to 20 Pa.C.S. § 5511 during or after the expiration of the period of the emergency order or any extension.
- (iv) The use of an expert report or deposition testimony in lieu of live in-person testimony in emergency guardianship proceedings must be specifically authorized by the court. The use of telephonic live testimony is left to the discretion of the court.

**(4) Citation with Notice.**

**(a) Issuance of Citation.** Upon the issuance of a citation following the granting of a preliminary decree to a petition for adjudication of incapacity, Petitioner or their designee shall pick up the original citation from the Clerk in person, or contact the Clerk to request another arrangement. Such requests may or may not be honored, at the discretion of the Clerk.

**(b) Service.** If there are no known intestate heirs, notice shall also be given to the Attorney General at the Eastern Regional Office in Philadelphia.

**(c) Alias Citation.** If the original citation was not personally served on the alleged incapacitated person at least twenty (20) days prior to the scheduled hearing date, the Court upon request may issue an alias citation. The Alias Citation must be served on the alleged incapacitated person at least twenty (20) days prior to the newly scheduled hearing date, in the same manner as the original citation.

*Note: An Alias Citation is not required if the original citation has been timely served on the alleged incapacitated person and a continuance is requested from the originally scheduled hearing date.*

**Probate Section Comment:** 20 Pa.C.S. § 5512.1 elaborates the basis upon which the Court shall make a finding of incapacity. The description and the steps taken to find less restrictive alternatives must include sufficient information to satisfy the requirements of 20 Pa.C.S. § 5518. 20 Pa.C.S. § 5511 establishes that the Court may adjudicate an individual incapacitated and appoint a guardian only upon petition and hearing and upon the presentation of clear and convincing evidence. If the alleged incapacitated person is in a hospital, nursing home or other institution, service must be made upon an attorney or authorized personnel of the institution and notice of the hearing should be given to the director or other authorized official of such facility. If the alleged incapacitated person is a veteran, notice of the hearing must be given to the Veterans' Administration. A shorter time period for service may be permitted in connection with petitions for the appointment of an emergency guardian.

**14.6A. Determination of Incapacity and Selection of Guardian. Hearing Date.**

**(1) Proof of Service.** On the date of the hearing for determination of incapacity, the following shall be submitted:

(a) an affidavit of service of the petition and citation on the alleged incapacitated person, attached to or endorsed upon the original citation, reciting that the petition and citation were explained to the maximum extent possible in language likely to be understood by the alleged incapacitated person and that a copy of each was left with him or her; and

(b) an affidavit reciting the manner of giving notice of the hearing and identifying those persons to whom such notice was given as required in Pa. O.C. Rule 14.2(f)(2).

**(2) Attendance at Hearing.** The petitioner and the alleged incapacitated person shall be present at the hearing unless the Court is satisfied, upon the deposition or *notarized expert report* or testimony of or sworn statement by a physician or licensed psychologist, that the physical or mental condition of the alleged incapacitated person would be harmed by his or her presence.

**(3) Independent Evaluation:** If, pursuant to 20 Pa.C.S. § 5511(d), the Hearing Judge deems it necessary upon his or her own motion or on petition by the alleged incapacitated person for cause shown, he or she shall order an independent evaluation to meet the requirements of 20 Pa.C.S. §5518, and determine the appropriate charges and the persons responsible for payment.

**(4) Testamentary Writings.** A copy of all testamentary writings of the incapacitated person found by the guardian, or in the possession of any other person, certified to be true and correct, shall be submitted by the guardian or such other person to the Hearing Judge for inspection within thirty (30) days of such guardian's appointment, or within thirty (30) days when such testamentary writing(s) is subsequently discovered.

**Rule 14.8A. Guardianship Reporting, Monitoring, Review, and Compliance**

(1) Guardian shall file all inventories, annual reports, and final reports in accordance with 20 Pa. C.S. §5521(c), Pa. O.C. Rule 14.8, and Pa.R.J.A. No. 510(b). Reports and inventories may be filed in either an electronic format or a physical paper format. Reports and inventories filed in an electronic format shall use the Guardianship Tracking System.  
See <https://uisportal.pacourts.us/Guardianship.aspx>.

**Probate Section Comment:** The Clerk will provide a computer terminal in the Clerk's office and will assist those Guardians without a computer or internet access to file these legal papers through the Guardianship Tracking System.

(2) The Guardianship Tracking System is designated by the Court to provide the notices to the Guardian required by Pa. O.C. Rule 14.8(f).

## APPENDIX

*The Forms below were adopted or amended on May 1, 2019, effective June 1, 2019.*

### PHILADELPHIA COUNTY ORPHANS' COURT FORMS

#### **General Orphans' Court Forms:**

- \*Certificate of Compliance
- \*Orphans' Court Subpoena
- Orphans' Court Cover Sheet
- \*Entry of Appearance

#### **\*Decedent's Estate Proceeding Forms:**

- Account Filing Checklist – Decedent's Estate
- Appeal from Register of Wills
- Excerpt from Schedule of Distribution

#### **Incapacitated Person's Proceeding Forms:**

- Account Filing Checklist – Guardian of Incapacitated Person
- Consent of Guardian
- Final Decree
- Guardian Address Confirmation Form
- Preliminary Decree

#### **\*Minor's Proceedings Forms:**

- Account Filing Checklist - Guardian of Minor

#### **\*Minor's and Incapacitated Person's Compromises Forms:**

- Minors and Incapacitated Persons Checklist
- Affidavit of Compliance
- Petition to Settle Minor's Compromise

#### **\*Power of Attorney Proceedings Forms:**

- Account Filing Checklist – Agent under Power of Attorney

#### **\*Trust Proceeding Forms:**

- Account Filing Checklist – Special Needs Trust
- Account Filing Checklist – Trust (Testamentary/*Inter Vivos*)

#### **\*Wrongful Death and Survival Proceeding Forms:**

- Wrongful Death and Survival Actions Checklist
- Affidavit of Compliance
- Petition to Settle Wrongful Death and Survival Actions

#### **\*Register of Wills Forms:**

- Affidavit for Filing in Philadelphia County by Foreign Fiduciary

*\*The above-listed Forms are available on the Website of the  
First Judicial District of Pennsylvania at: [www.philacourts.us/forms](http://www.philacourts.us/forms)*

## Consent of Guardian Form

### COURT OF COMMON PLEAS OF PHILADELPHIA ORPHANS' COURT DIVISION

Estate of \_\_\_\_\_  
O.C. # \_\_\_\_\_ Control # \_\_\_\_\_

#### CONSENT OF GUARDIAN

I, \_\_\_\_\_ accept and confirm my appointment as Guardian of the Person / Estate (circle all that apply) of \_\_\_\_\_ ("Ward").

I understand that as Guardian:

1. I must always act in the best interests of my Ward;
2. I have a fiduciary responsibility to my Ward and the Court;
3. I must act with reasonable prudence in all matters relating to the Estate;
4. I must not engage in self-dealing;
5. I am forbidden from expending principal of the Estate without prior Court authorization;
6. I am forbidden from selling any real property owned by my Ward without prior Court authorization;
7. I must file a Guardian's Inventory within ninety (90) days of my appointment as Guardian of the Estate;
8. I must file an annual report as Guardian of the Person and an annual report as Guardian of the Estate every year on the anniversary date of my appointment as Guardian;
9. I understand the duties and responsibilities of being a Guardian, and have the knowledge, skills and expertise to be a Guardian; and
10. I understand and agree that as a Guardian, I must act in accordance with the laws governing guardians found in the statutes set forth in 20 Pa.C.S. §5501, et seq., and the Pennsylvania and Philadelphia Orphans' Court Rules concerning guardianships set forth in Chapter XIV, particularly Pa. O.C. Rule 14.8 and Phila. O.C. Rule 14.8.A.
11. The primary language of the alleged incapacitated person is \_\_\_\_\_. My primary language is \_\_\_\_\_.
12. My failure to abide by the above will result in my removal as Guardian, and may result in my being found in contempt of Court, surcharged for any losses to the Estate, fined, and/or otherwise sanctioned.

Further, subject to penalty of law under 18 Pa.C.S. § 4904, relating to unsworn falsification to authorities, I affirm that I have not been convicted of or pleaded guilty or no contest to any crime involving fraud, deceit, and/or financial misconduct.

---

Name of Guardian

---

Signature

---

Date

## Decree Appointing Guardian of the Estate

### COURT OF COMMON PLEAS OF PHILADELPHIA ORPHANS' COURT DIVISION

Estate of Ivan Smith,  
An Alleged Incapacitated Person  
O.C. No. XXX AI of 2019  
Control No. XXXX

#### FINAL DECREE

AND Now, this    day of June 2019, upon consideration of the Petition for Adjudication of Incapacity and Appointment of a Guardian and after a hearing held following due service of a copy of the Petition and Citation Notice upon Ivan Smith, this Court finds by clear and convincing evidence that:

1. Ivan Smith is 77 years old and is a domiciliary of the City and County of Philadelphia.
2. Ivan Smith suffers from vascular dementia with psychosis, schizophrenia, chronic obstructive pulmonary disease, and hypertension which totally impairs his capacity to receive or evaluate information effectively and to make and communicate decisions concerning management of his financial affairs.

Accordingly, it is hereby ORDERED and DECREED that Ivan Smith is adjudged a totally/partially incapacitated person and that \_\_\_\_\_ is appointed plenary/limited Guardian of the Estate of Ivan Smith, an incapacitated person.

The Guardian of the Estate shall enter security with a corporate surety in the amount of \$\_\_\_\_\_ within \_\_\_\_\_ days of this Decree.

The Guardian of the Estate is **NOT** permitted to expend the principal of the incapacitated person's estate without ADVANCE permission of the court in accordance with the provisions of 20 Pa.C.S. § 5536, however, income may be expended by the Guardian for the care of the incapacitated person without court approval.

All financial institutions, including without limitation, banks, savings and loans, credit unions, and brokerages, shall grant to the Guardian of the Estate access to any and all assets, records, and accounts maintained for the benefit of the incapacitated person, and the Guardian of the Estate shall be entitled to transfer, retitle, withdraw, or otherwise exercise dominion and control over any and all of these assets, records and accounts. The failure of any financial institution to honor this order may lead to contempt proceedings and the imposition of sanctions. Pa. O.C. Rule 14.7(b)(2).

The health care agent or the agent appointed under a durable power of attorney previously executed by the incapacitated person shall be accountable to the Guardian of the Estate of the incapacitated person as well as to the Principal (Ivan Smith). This agent's authority shall remain in effect to the extent approved by the Guardian of the Estate. **OR** Any previously executed powers of attorney or health care powers of attorney and the authority to act under these documents is null and void.

The Guardian of the Estate is directed to file an Inventory within ninety (90) days of the date of this Decree in accordance with the provisions of 20 Pa.C.S. § 5521(b) and § 5142. Pa. O.C. Rule 14.8(a)(1). The Guardian of the Estate shall file an Annual Report one year after appointment and annually thereafter in accordance with the provisions of 20 Pa.C.S. § 5521(c)(1)(i). A Final Report shall be filed by the Guardian of the Estate within sixty (60) days of the death of the incapacitated person, an adjudication of capacity, a change of guardian or the expiration of an order of limited duration pursuant to 20 Pa.C.S. § 5521(c)(2). A Final Report shall also be filed upon receipt of the provisional order from another state's court accepting transfer of a guardianship. Pa. O.C. Rule 14.8(a)(4) & (5). The Guardian shall serve a notice of the filing of any of these reports on all those persons, *sui juris*, who would be entitled to share in the estate of the incapacitated person if he/she died intestate, and the person or institution providing residential care services to the incapacitated person as well as to \_\_\_\_\_ within ten (10) days after filing a report using the attached form. Pa. O.C. Rule 14.8(b).

If the incapacitated person resides in a nursing facility and is the recipient of Medical Assistance, the Guardian of the Estate shall be compensated out of income at the rate of \$100 per month. In all circumstances, compensation out of income shall not prejudice the right of the Guardian to seek additional compensation by petition for allowance.

In the event the incapacitated person has a safe deposit box, an Official Examiner of this court shall be in attendance when the safe deposit box is opened by the Guardian of the Estate. The Certificate of the Official Examiner of his examination of the assets in the safe deposit box shall be submitted to the Court, and, when approved by the hearing judge, shall be filed with the record in this case. The amount and manner of compensation for these services of the Official Examiner shall be determined by the hearing judge.

All evidence received at the hearing concerning the present matter, including but not limited to medical depositions, expert reports, testimony and exhibits, shall be SEALED and not made available except upon further Decree of this Court.

Ivan Smith was/was not present at the hearing and was/was not represented by counsel. The court finds clear and convincing medical evidence that the physical and mental health of Ivan Smith would have been harmed by requiring his/her presence at the hearing. Counsel for the petitioner shall cause to be served upon and read to the incapacitated person a copy of this Decree and the following Statement of Rights:

**You, Ivan Smith, are hereby notified of your right to seek reconsideration of this Decree pursuant to Rule 8.2 and the right to appeal this Decree within 30 days from the date of this Decree by filing a Notice of Appeal with the Clerk of the Orphans'**

Court. You may also petition the court at any time to review, modify, or terminate the guardianship due to a change in circumstances. You have a right to be represented by an attorney to file a motion for reconsideration, an appeal, or to seek modification or termination of this guardianship. If the assistance of counsel is needed and You cannot afford an attorney, an attorney will be appointed to represent you free of charge. Pa. O.C. Rule 14.7(a)(2).

BY THE COURT:

---

, J.

Counsel

Guardian(s)

## Decree Appointing Guardian of the Person

### COURT OF COMMON PLEAS OF PHILADELPHIA ORPHANS' COURT DIVISION

Estate of Ivan Smith,  
An Alleged Incapacitated Person  
O.C. No. XXX AI of 2019  
Control No. XXXX

#### FINAL DECREE

AND Now, this day of June 2019, upon consideration of the Petition for Adjudication of Incapacity and Appointment of a Guardian and after a hearing held following due service of a copy of the Petition and Citation Notice upon Ivan Smith, this Court finds by clear and convincing evidence that:

1. Ivan Smith is 77 years old and is a domiciliary of the City and County of Philadelphia.
2. Ivan Smith suffers from vascular dementia with psychosis, schizophrenia, chronic obstructive pulmonary disease, and hypertension which totally impairs his capacity to receive or evaluate information effectively and to make and communicate decisions to meet the essential requirements for his physical health and safety.

Accordingly, it is hereby ORDERED and DECREED that Ivan Smith is adjudged a totally/partially incapacitated person and that \_\_\_\_\_ is appointed plenary/limited Guardian of the Person of Ivan Smith, an incapacitated person.

The health care agent or the agent appointed under a durable power of attorney previously executed by the incapacitated person shall be accountable to the Guardian of the Person of the incapacitated person as well as to the Principal (Ivan Smith). This agent's authority shall remain in effect to the extent approved by the Guardian of the Person. **OR** Any previously executed powers of attorney or health care powers of attorney and the authority to act under these documents is null and void.

The Guardian of the Person shall file an Annual Report one year after appointment and annually thereafter in accordance with the provisions of 20 Pa.C.S. § 5521(c)(1)(ii). Pa. O.C. Rule 14.8(a)(3). A Final Report shall be filed by the Guardian of the Person within sixty (60) days of the death of the incapacitated person, an adjudication of capacity, a change of guardian or the expiration of an order of limited duration pursuant to 20 Pa.C.S. § 5521(c)(2). A Final Report shall also be filed upon receipt of the provisional order from another state's court accepting transfer of a guardianship. Pa. O.C. Rule 14.8(a)(4) & (5). The Guardian shall serve a notice of the filing of any of these reports on all those persons, *sui juris*, who would be entitled to share in the estate of the incapacitated person if he/she died intestate, and the person or institution providing residential care services to the incapacitated person as well as to

\_\_\_\_\_ within ten (10) days after filing a report using the attached form. Pa. O.C. Rule 14.8(b).

The Guardian of the Person, unless authorized after a subsequent hearing, shall not have the power to:

1. Consent on behalf of the incapacitated person to psychosurgery, electroconvulsive therapy or removal of a healthy body organ;
2. Prohibit the marriage or consent to the divorce of the incapacitated person; or
3. Consent on behalf of the incapacitated person to the performance of any experimental biomedical or behavioral medical procedure or participation in any biomedical or behavioral experiment.

All evidence received at the hearing concerning the present matter, including but not limited to medical depositions, expert reports, testimony and exhibits, shall be SEALED and not made available except upon further Decree of this Court.

Ivan Smith was/was not present at the hearing and was/was not represented by counsel. The court finds clear and convincing medical evidence that the physical and mental health of Ivan Smith would have been harmed by requiring his/her presence at the hearing. Accordingly, counsel for the petitioner shall cause to be served upon and read to Ivan Smith a copy of this Decree and the following Statement of Rights:

**You, Ivan Smith, are hereby notified of your right to seek reconsideration of this Decree pursuant to Rule 8.2 and the right to appeal this Decree within 30 days from the date of this Decree by filing a Notice of Appeal with the Clerk of the Orphans' Court. You may also petition the court at any time to review, modify, or terminate the guardianship due to a change in circumstances. You have a right to be represented by an attorney to file a motion for reconsideration, an appeal, or to seek modification or termination of this guardianship. If the assistance of counsel is needed and You cannot afford an attorney, an attorney will be appointed to represent you free of charge. Pa. O.C. Rule 14.7(a)(2).**

BY THE COURT:

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, J.

Counsel

Guardian(s)

## Decree Appointing Guardian of the Estate and Person

### COURT OF COMMON PLEAS OF PHILADELPHIA ORPHANS' COURT DIVISION

Estate of Ivan Smith,  
An Alleged Incapacitated Person  
O.C. No. XXX AI of 2019  
Control No. XXXX

#### FINAL DECREE

AND Now, this day of June 2019, upon consideration of the Petition for Adjudication of Incapacity and Appointment of a Guardian and after a hearing held following due service of a copy of the Petition and Citation Notice upon Ivan Smith, this Court finds by clear and convincing evidence that:

1. Ivan Smith is 77 years old and is a domiciliary of the City and County of Philadelphia.
2. Ivan Smith suffers from vascular dementia with psychosis, schizophrenia, chronic obstructive pulmonary disease, and hypertension which totally impairs his capacity to receive or evaluate information effectively and to make and communicate decisions concerning management of his financial affairs or to meet essential requirement of his physical health and safety.

Accordingly, it is hereby ORDERED and DECREED that Ivan Smith is adjudged a totally/partially incapacitated person and that \_\_\_\_\_ is appointed plenary/limited Guardian of the Estate of Ivan Smith, an incapacitated person. \_\_\_\_\_ is appointed Guardian of the Person of Ivan Smith, an incapacitated person.

The Guardian of the Estate shall enter security with a corporate surety in the amount of \$ \_\_\_\_\_ within \_\_\_\_\_ days of this Decree.

The Guardian of the Estate is **NOT** permitted to expend the principal of the incapacitated person's estate without ADVANCE permission of the court in accordance with the provisions of 20 Pa.C.S. § 5536, however, income may be expended by the guardian for the care of the incapacitated person without court approval.

All financial institutions, including without limitation, banks, savings and loans, credit unions, and brokerages, shall grant to the Guardian of the Estate access to any and all assets, records, and accounts maintained for the benefit of the incapacitated person, and the Guardian of the Estate shall be entitled to transfer, retitle, withdraw, or otherwise exercise dominion and control over any and all of these assets, records and accounts. The failure of any financial institution to honor this order may lead to contempt proceedings and the imposition of sanctions. Pa.O.C .Rule 14.7(b)(2).

The health care agent or the agent appointed under a durable power of attorney previously executed by the incapacitated person shall be accountable to the Guardian of the Person and Estate of the incapacitated person as well as to the Principal (Ivan Smith). This agent's authority shall remain in effect to the extent approved by the Guardian of the Person and Estate. **OR** Any previously executed powers of attorney or health care powers of attorney and the authority to act under these documents is null and void.

The Guardian of the Estate is directed to file an Inventory within ninety (90) days of the date of this Decree in accordance with the provisions of 20 Pa.C.S. § 5521(b) and § 5142. Pa. O.C. Rule 14.8(a)(1). The Guardian of the Estate and Person shall each file an Annual Report one year after appointment and annually thereafter in accordance with the provisions of 20 Pa.C.S. § 5521(c)(1)(i) and (ii). Pa. O.C. Rule 14.8(a)((2) & (3)). Final Reports shall be filed by the Guardian of the Estate and Person within sixty (60) days of the death of the incapacitated person, an adjudication of capacity, a change of guardian or the expiration of an order of limited duration pursuant to 20 Pa.C.S. § 5521(c)(2). Final Reports shall also be filed upon receipt of the provisional order from another state's court accepting transfer of a guardianship. Pa. O.C. Rule 14.8(a)(4) & (5). The Guardian shall serve a notice of the filing of any of these reports on all those persons, *sui juris*, who would be entitled to share in the estate of the incapacitated person if he/she died intestate, and the person or institution providing residential care services to the incapacitated person as well as to \_\_\_\_\_ within ten (10) days after filing a report using the attached form. Pa. O.C. Rule 14.8(b).

If the incapacitated person resides in a nursing facility and is the recipient of Medical Assistance, the Guardian of the Estate shall be compensated out of income at the rate of \$100 per month. In all circumstances, compensation out of income shall not prejudice the right of the Guardian to seek additional compensation by petition for allowance.

In the event the incapacitated person has a safe deposit box, an Official Examiner of this court shall be in attendance when the safe deposit box is opened by the Guardian of the Estate. The Certificate of the Official Examiner of his examination of the assets in the safe deposit box shall be submitted to the Court, and, when approved by the hearing judge, shall be filed with the record in this case. The amount and manner of compensation for these services of the Official Examiner shall be determined by the hearing judge.

The Guardian of the Person, unless authorized after a subsequent hearing, shall not have the power to:

1. Consent on behalf of the incapacitated person to psychosurgery, electroconvulsive therapy or removal of a healthy body organ;
2. Prohibit the marriage or consent to the divorce of the incapacitated person; or
3. Consent on behalf of the incapacitated person to the performance of any experimental biomedical or behavioral medical procedure or participation in any biomedical or behavioral experiment.

Updated 6-01-19

All evidence received at the hearing concerning the present matter, including but not limited to medical depositions, expert reports, testimony and exhibits, shall be SEALED and not made available except upon further Decree of this Court.

Ivan Smith was/was not present at the hearing and was/was not represented by counsel. The court finds clear and convincing medical evidence that the physical and mental health of Ivan Smith would have been harmed by requiring his/her presence at the hearing. Counsel for the petitioner shall cause to be served upon and read to Ivan Smith a copy of this Decree and the following Statement of Rights:

**You, Ivan Smith, are hereby notified of your right to seek reconsideration of this Decree pursuant to Rule 8.2 and the right to appeal this Decree within 30 days from the date of this Decree by filing a Notice of Appeal with the Clerk of the Orphans' Court. You may also petition the court at any time to review, modify, or terminate the guardianship due to a change in circumstances. You have a right to be represented by an attorney to file a motion for reconsideration, an appeal, or to seek modification or termination of this guardianship. If the assistance of counsel is needed and You cannot afford an attorney, an attorney will be appointed to represent you free of charge. Pa. O.C. Rule 14.7(a)(2).**

BY THE COURT:

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, J.

Counsel

Guardian(s)

## Guardian Address Confirmation Form

COURT OF COMMON PLEAS OF  
PHILADELPHIA ORPHANS' COURT DIVISION

Estate of \_\_\_\_\_

O.C. # \_\_\_\_\_ Control # \_\_\_\_\_

### GUARDIAN ADDRESS CONFIRMATION FORM

I am the (check one):

- Guardian/Co-Guardian of Person and Estate
- Guardian/Co-Guardian of the Estate
- Guardian/Co-Guardian of Person

As the Guardian named in the above case, I affirm that my name, address, phone number, and email address should be recorded as follows:

Name (Please Print): \_\_\_\_\_

Address: \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_ Zip Code: \_\_\_\_\_

Home Phone # \_\_\_\_\_ Mobile Phone # \_\_\_\_\_

E-Mail: \_\_\_\_\_

Preferred contact method: (Phone, Mail or Email) \_\_\_\_\_

I understand that it is my responsibility to update the Court of my current contact information if any of it should change or become inaccurate, and I agree to do so immediately.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

## Preliminary Decree Awarding Citation for Guardianship Hearing

### COURT OF COMMON PLEAS OF PHILADELPHIA ORPHANS' COURT DIVISION

Estate of X,  
An Alleged Incapacitated Person  
O.C. No. X AI of 2018  
Control No. X

#### PRELIMINARY DECREE

AND NOW, this \_\_\_\_\_ day of \_\_\_\_\_ 2019, upon consideration of the Petition for Adjudication of Incapacity and the Appointment of Plenary Guardian of the Person and Estate, it is hereby ORDERED and DECREED that:

1. A citation is awarded, directed to X, to show cause why he should not be adjudged an incapacitated person and why a plenary guardian of his person and estate should not be appointed; the hearing thereon to be held in Courtroom 41, City Hall, Philadelphia, PA, 19107 on \_\_\_\_\_, 2019 at \_\_\_\_\_.
2. Petitioner shall cause to be served (by personal service) the Citation with Notice and Petition, pursuant to the provisions of 20 Pa.C.S. §5511(a) and Pa.O.C. Rule 14.2, upon the alleged incapacitated person at least twenty (20) days prior to the court hearing. The contents and terms of the Citation with Notice and Petition shall be read and explained to the maximum extent possible in language and terms the alleged incapacitated person is most likely to understand in accordance with the provisions of 20 Pa.C.S. §5511(a).
3. At least twenty (20) days prior notice of the court hearing, together with a copy of the petition and citation, shall be given personally or by certified mail in accordance with the provisions of 20 Pa.C.S. §5511(a) to all persons who are *sui juris* and who would be entitled to share in the estate of the alleged incapacitated person if he died intestate, and the Person or Institution providing residential services to the alleged incapacitated person, and to -----.

Notice shall also be given to the Commonwealth of Pennsylvania, Office of Attorney General, as a possible intestate heir to the estate of the alleged incapacitated person. (Include this section only when AIP has no next of kin). Notice shall also be given to the U.S. Department of Veterans Affairs as a result of the alleged incapacitated person receiving veteran's benefits (or survivor benefits). (Include this section only when AIP is a veteran or receives survivor benefits)

4. An affidavit of service containing specific averments as to the above requirements in the two preceding paragraphs shall be presented at the beginning of the court hearing.

5. Petitioner and/or counsel for the petitioner shall notify the court, in writing, at least seven (7) days prior to the court hearing if counsel has not been retained by or on behalf of the alleged incapacitated person in accordance with the provisions of 20 Pa.C.S. §5511(a). This notice shall also contain all pertinent information which would indicate to the court whether or not counsel should be appointed to represent the interests of the alleged incapacitated person.
6. In accordance with Pa. O.C. Rule 14.2(c)(2), unless previously attached to the Petition, Petitioner shall submit for each proposed guardian, at least seven (7) days prior to the court hearing, the response to the Pennsylvania State Police criminal record check, issued within six months of the date of filing of the Petition. If any proposed guardian resided outside the Commonwealth of PA within the previous five (5) year period and was 18 years of age or older at any time during that period, the criminal record check from each state in which the proposed guardian resided within the five year period shall be submitted.

For criminal history reports from PA, see <https://epatch.state.pa.us/Home.jsp>.

7. The alleged incapacitated person shall be present at the court hearing unless it is established by clear and convincing medical evidence that his physical or mental condition would be harmed by his presence in court in accordance with the provisions of 20 Pa.C.S. §5511(a).
8. In accordance with 20 Pa.C.S. §5518, at the hearing on this matter the Petitioner must present testimony, in person or by deposition, from a medical professional, who must be qualified by training and experience to evaluate individuals with incapacities of the type alleged by the Petitioner, that establishes the nature and extent of the alleged incapacitated person's incapacities and disabilities and his mental, emotional, and physical condition, and adaptive behavior and social skills. The absence of such testimony and/or depositions shall preclude a declaration of incapacity and appointment of a guardian. Alternatively, the use of an Expert Report in lieu of testimony in person or by deposition shall be in accordance with Pa. O.C. Rule 14.3.
9. The Consent of Guardian and Guardian Address Confirmation Form (substantially in the forms annexed to this Preliminary Decree) shall be completed by the proposed guardian and presented to the Court at the time of the hearing.

BY THE COURT:

X, Esquire

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, J.

## **EXHIBIT 4**

### **INSTRUCTIONS FOR SUBMITTING AN EXPERT REPORT**

To establish incapacity, the petitioner must present testimony from an individual qualified by training and experience in evaluating persons with incapacities of the type alleged by the petitioner. As an accommodation to such expert witnesses, the court may accept a complete and legible expert report in accordance with the attached form in lieu of expert testimony, whether in person or by deposition, unless otherwise required by rule or order of court.

COURT OF COMMON PLEAS OF  
\_\_\_\_\_ COUNTY PENNSYLVANIA  
ORPHANS' COURT DIVISION

**EXPERT REPORT**

RE: \_\_\_\_\_  
*An Alleged Incapacitated Person (AIP)*

No. \_\_\_\_\_

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**PART I: PROFESSIONAL BACKGROUND** (You may attach your curriculum vitae, if it provides answers to Questions 1 through 5. Please answer those questions not covered by curriculum vitae.)

1. Name: \_\_\_\_\_ Title: \_\_\_\_\_
2. Professional Address: \_\_\_\_\_
3. Complete education information:

|               | Name of Institution | Type of Degree Received | Date Completed |
|---------------|---------------------|-------------------------|----------------|
| Undergraduate |                     |                         |                |
| Graduate      |                     |                         |                |
| Post-Graduate |                     |                         |                |
|               |                     |                         |                |

4. Do you have any active professional licenses?  Yes  No  
If yes, indicate in what state or states you are licensed as well as the date(s) issued.  
\_\_\_\_\_  
\_\_\_\_\_

List any board certifications: \_\_\_\_\_

5. An Incapacitated Person is legally defined as: An adult whose ability to receive and evaluate information effectively and communicate decisions in any way is impaired to such a significant extent that he/she is partially or totally unable to manage his/her financial resources or to meet essential requirements for his/her physical health and safety.

Do you have experience evaluating whether or not an individual is incapacitated?  Yes  No  
If yes, indicate the basis of your experience:  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**PART II: ALLEGED INCAPACITATED PERSON (AIP)**

6. a. Have you treated, assessed, or evaluated the AIP?

Yes  No

b. Indicate the date(s) and location of any treatment, assessment, or evaluation you have provided or made over the last two (2) years:

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c. If 6a. is yes, what tests have you or others administered, e.g., mini mental status exam (MMSE), Montreal Cognitive Assessment (MOCA), St. Louis University Mental Status Exam (SLUMS), etc.? List dates administered and the score. (Attach test results, not just the score.)

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7. What is the present condition of the AIP? List all known medical and psychiatric diagnoses and current symptoms. (You may attach a list from your records.)

| <u>Diagnosis</u> | <u>Symptoms/Manifestations</u> |
|------------------|--------------------------------|
|                  |                                |
|                  |                                |
|                  |                                |
|                  |                                |
|                  |                                |
|                  |                                |
|                  |                                |

8. List all known medications, including over-the-counter, that the AIP is taking. For each known medication, indicate, if known, the prescribing physician and the diagnosis for which the medication was prescribed or the reason for taking. (You may attach a list from your records.)

| <u>Medication</u> | <u>Diagnosis/Reason Taken</u> | <u>Prescribing Physician</u> |
|-------------------|-------------------------------|------------------------------|
|                   |                               |                              |
|                   |                               |                              |
|                   |                               |                              |
|                   |                               |                              |
|                   |                               |                              |

9. Indicate the AIP's ability to perform the following functions:

|  | Unimpaired               | Needs Some Help<br>(Explain in #10) | Totally Impaired         | Not Assessed or Not Enough Information |
|--|--------------------------|-------------------------------------|--------------------------|--|
| Receiving and evaluating information effectively   | <input type="checkbox"/> | <input type="checkbox"/>            | <input type="checkbox"/> | <input type="checkbox"/>               |
| Communicating decisions  | <input type="checkbox"/> | <input type="checkbox"/>            | <input type="checkbox"/> | <input type="checkbox"/>               |
| Ability to give informed consent   | <input type="checkbox"/> | <input type="checkbox"/>            | <input type="checkbox"/> | <input type="checkbox"/>               |
| Short-term memory  | <input type="checkbox"/> | <input type="checkbox"/>            | <input type="checkbox"/> | <input type="checkbox"/>               |
| Long-term memory   | <input type="checkbox"/> | <input type="checkbox"/>            | <input type="checkbox"/> | <input type="checkbox"/>               |
| Activities of daily living   | <input type="checkbox"/> | <input type="checkbox"/>            | <input type="checkbox"/> | <input type="checkbox"/>               |
| Managing finances (including paying bills, making deposits, withdrawals and working with financial institutions) | <input type="checkbox"/> | <input type="checkbox"/>            | <input type="checkbox"/> | <input type="checkbox"/>               |
| Managing health care (including following doctor's orders and managing/taking medications)                       | <input type="checkbox"/> | <input type="checkbox"/>            | <input type="checkbox"/> | <input type="checkbox"/>               |
| Providing for physical safety  | <input type="checkbox"/> | <input type="checkbox"/>            | <input type="checkbox"/> | <input type="checkbox"/>               |
| Responding to emergency situations   | <input type="checkbox"/> | <input type="checkbox"/>            | <input type="checkbox"/> | <input type="checkbox"/>               |
| Ability to resist scams  | <input type="checkbox"/> | <input type="checkbox"/>            | <input type="checkbox"/> | <input type="checkbox"/>               |

10. For any response in Question 9 where the AIP "needs some help," please describe the type and extent of assistance needed.

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11. What recommendations have you made or would you make concerning services necessary to meet the essential requirements for the AIP's physical health and safety?

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12. What recommendations have you made or would you make concerning management of the AIP's finances?

---

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13. As indicated in Question 5, an Incapacitated Person is legally defined as: An adult whose ability to receive and evaluate information effectively and communicate decisions in any way is impaired to such a significant extent that he/she is partially or totally unable to manage his/her financial resources or to meet essential requirements for his/her physical health and safety.

In your expert opinion, within a reasonable degree of professional certainty and based on your knowledge, skills, experience, and education, is the AIP incapacitated?

Yes, totally impaired  Yes, partially impaired  No

14. In your opinion, the most appropriate, least restrictive living situation for the AIP is (check one):

The AIP can be left alone without supervision  
 Home ( with part-time home health aide or  24/7 assistance)  
 Independent living facility (room and board provided, emergency services readily available)  
 Assisted living facility (room and board provided, assistance with some activities of daily living)  
 Secure facility (Alzheimer's/Mental Health for safety and basic needs)  
 Skilled nursing facility

15. If your responses in Question 9 indicated that the AIP is totally impaired or "needs some help", do you expect the AIP's abilities in the next 6 months to (Check best estimate):

Stay the same  Improve  Decline

Please explain:

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### PART III: GUARDIANSHIP AND SERVICES

16. Are you aware of any circumstances, medical or otherwise, that create a need for the appointment of an emergency guardian for the AIP?

Yes  No

If yes, indicate reasons:

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17. The AIP is required to be at the hearing, absent circumstances that could cause harm to the AIP. Putting aside whether the court proceeding may be moderately upsetting to, confusing to or not understood by the AIP, do you believe that the AIP's presence at the hearing would cause harm to the AIP's physical or mental condition?

Yes

No

Indicate reason for response:

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18. Please provide any additional information that could assist the court in determining incapacity.

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I verify that the foregoing information is correct to the best of my knowledge, information and belief; and that this verification is subject to the penalties of 18 Pa.C.S. § 4904 relative to unsworn falsification to authorities.

*Date*

*Signature*

*Name (type or print)*

*Address*

*City, State, Zip*

*Telephone*

*Email*

SWORN TO AND SUBSCRIBED:  
BEFORE ME THIS \_\_\_\_\_ DAY  
OF \_\_\_\_\_, 20\_\_\_\_

NOTARY PUBLIC

## **EXHIBIT 5**

**Sample Preliminary Decree Awarding Citation for Guardianship Hearing**

IN THE COURT OF COMMON PLEAS OF PHILADELPHIA COUNTY, PENNSYLVANIA  
ORPHANS' COURT DIVISION

No. \_\_\_\_\_ AI of 2024

Control No. \_\_\_\_\_

\_\_\_\_\_, AN ALLEGED INCAPACITATED PERSON

**PRELIMINARY DECREE**

**AND NOW**, this \_\_\_\_\_ day of \_\_\_\_\_, 2024, upon consideration of the annexed Petition for Adjudication of Incapacity and the Appointment of Plenary Guardian of the Estate and Person, it is hereby **ORDERED** and **DECREED** that:

1. A Citation is awarded, directed to \_\_\_\_\_, to show cause why he should not be adjudged an incapacitated person and why a plenary guardian of his estate and person should not be appointed; the hearing thereon to be held on \_\_\_\_\_ at \_\_\_\_\_ .m., in Courtroom \_\_\_\_\_, City Hall, Philadelphia.

2. Petitioner shall cause to be served (by personal service) the Citation with Notice and Petition, pursuant to the provisions of 20 Pa.C.S.A. §5511(a) and Pa.O.C. Rule 14.2 upon the alleged incapacitated person at least twenty (20) days prior to the court hearing. The contents and terms of the Citation with Notice and Petition shall be read and explained to the maximum extent possible in language and terms the alleged incapacitated person is most likely to understand in accordance with the provisions of 20 Pa.C.S.A. §5511(a).

3. At least twenty (20) days' notice of the court hearing, together with a copy of the petition shall be given personally or by certified mail in accordance with the provisions of 20 Pa.C.S. §5511(a) to all persons who are *sui juris* and who would be entitled to share in the estate of the alleged incapacitated person if he died intestate, and to the person or institution (if any) providing residential services to the alleged incapacitated person, and to \_\_\_\_\_.

Notice shall also be given to the Commonwealth of Pennsylvania, Office of Attorney General, as a possible intestate heir to the estate of the alleged incapacitated person. (**Include this section only when AIP has no next of kin**). Notice shall also be given to the U.S. Department of Veterans Affairs as a result of the alleged incapacitated person receiving veteran's benefits (or survivor benefits). (**Include this section only when AIP is a veteran or receives survivor benefits**).

4. An affidavit of service containing specific averments as to the above requirements in the two preceding paragraphs shall be presented at the beginning of the court hearing.

5. In accordance with Pa. O.C. Rule 14.2(c)(2), unless previously attached to the Petition, Petitioner shall submit for each proposed guardian, at least seven (7) days prior to the court hearing, the response to the Pennsylvania State Police criminal record check, issued within six (6) months of the date of filing of the Petition. If any proposed guardian resided outside of the Commonwealth of Pennsylvania within the previous five (5) year period, and was eighteen (18) years of age or older at any time during that period, the criminal record check from each state in which the proposed guardian resided within the five (5) year period shall be submitted.

For criminal history reports from Pennsylvania, see <https://epatch.state.pa.us/Home.jsp>.

6. The alleged incapacitated person shall be present at the court hearing unless it is established by clear and convincing medical evidence that his physical or mental condition would be harmed by his presence in court in accordance with the provisions of 20 Pa.C.S.A. §5511(a)(1).

7. In accordance with 20 Pa.C.S. §5518, at the hearing on this matter, the Petitioner must present testimony, in person or by deposition, from a medical professional, who must be qualified by training and experience to evaluate individuals with incapacities of the type alleged by the Petitioner, that establishes the nature and extent of the alleged incapacitated person's incapacities and disabilities and his mental, emotional, and physical condition, and adaptive behavior and social skills. The absence of such testimony and/or depositions shall preclude a

declaration of incapacity and appointment of a guardian. Alternatively, the use of an Expert Report in lieu of testimony in person or by deposition shall be in accordance with Pa. O.C. Rule 14.3.

8. The Consent of Guardian and Guardian Address Confirmation Form (substantially in the forms annexed to this Preliminary Decree) shall be completed by the proposed guardian and presented to the Court at the time of the hearing.

BY THE COURT:

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J.

## **Sample Final Decree**

IN THE COURT OF COMMON PLEAS OF PHILADELPHIA COUNTY, PENNSYLVANIA  
ORPHANS' COURT DIVISION

O.C. No. \_\_\_\_\_ AI of 2024

Control No. \_\_\_\_\_

\_\_\_\_\_, AN ALLEGED INCAPACITATED PERSON

### **FINAL DECREE**

**AND NOW**, this \_\_\_\_\_ day of \_\_\_\_\_, 2024, this matter having come before the Court upon the Petition of \_\_\_\_\_ for Adjudication of Incapacity and for Appointment of a Guardian of the Estate and Person, and based upon the evidence received and the record created on \_\_\_\_\_, 2024, following due service of the Petition and Citation Notice upon \_\_\_\_\_, this Court finds by clear and convincing evidence that:

1. \_\_\_\_\_ was born on \_\_\_\_\_, and is currently \_\_\_\_\_ years old.

He currently resides at \_\_\_\_\_, and is a domiciliary of the City and County of \_\_\_\_\_.

2. \_\_\_\_\_ suffers from \_\_\_\_\_, which totally impairs his capacity to receive or evaluate information effectively and to make and communicate decisions concerning management of his financial affairs or to meet essential requirements of his physical health and safety.

3. No less restrictive alternative to guardianship exists in order for medical and financial decisions to be made on behalf of \_\_\_\_\_, and it is necessary under the circumstances to appoint a guardian to ensure that there is no question of the ability of

the Plenary Guardian of the Estate and Person (identified below) to make medical and financial decisions on behalf of \_\_\_\_\_ and to ensure that healthcare providers, banks, and other third parties will recognize and acknowledge the Guardian's authority as set forth in this Final Decree.

Accordingly, it is hereby **ORDERED** and **DECREED** that \_\_\_\_\_ is adjudged a totally/partially incapacitated and that \_\_\_\_\_ is appointed plenary/limited Guardian of the Estate of \_\_\_\_\_, an incapacitated person.

\_\_\_\_\_ is appointed plenary/limited Guardian of the Person of \_\_\_\_\_, an incapacitated person. in need of a plenary guardian of his estate and person.

Any previously executed powers of attorney or health care powers of attorney and the authority to act under those documents is null and void. /OR/ The health care agent or the agent appointed under a durable power of attorney previously executed by the incapacitated person shall be accountable to the Guardian of the Person and Estate of the incapacitated person as well as to the Principal (\_\_\_\_\_\_). This Agent's authority shall remain in effect to the extent approved by the Guardian of the Person and Estate.

The Guardian of the Estate shall enter security with a corporate surety in the amount of \$ \_\_\_\_\_ within \_\_\_\_\_ days of this Decree.

The Guardian of the Estate is **NOT** permitted to expend the principal of the incapacitated person's estate without **ADVANCE** permission of the court in accordance with the provisions of 20 Pa.C.S. § 5536, however, income may be expended by the guardian for the care of the incapacitated person without court approval.

All financial institutions, including without limitation, banks, savings and loans, credit unions, and brokerages, shall grant to the Guardian of the Estate access to any and all assets, records, and accounts maintained for the benefit of the incapacitated person, and the Guardian of the Estate shall be entitled to transfer, retitle, withdraw, or otherwise exercise dominion and control over any and all of these assets, records and accounts. The failure of any financial institution to honor this order may lead to contempt proceedings and the imposition of sanctions. Pa.O.C. Rule 14.7(b)(2).

The Guardian of the Estate is directed to file an Inventory within ninety (90) days of the date of this Order in accordance with the provisions of 20 Pa.C.S. §§ 5521(b) and 5142. Pa. O.C. Rule 14.8(a)(1). The Guardian of the Estate shall file an Annual Report one year after appointment and annually thereafter in accordance with the provisions of 20 Pa.C.S. § 5521(c)(1)(i). A Final Report shall be filed by the Guardian of the Estate within sixty (60) days of the death of the incapacitated person, an adjudication of capacity, a change of guardian or the expiration of an order of limited duration pursuant to 20 Pa.C.S. § 5521(c)(2). A Final Report shall also be filed upon receipt of the provisional order from another state's court accepting transfer of a guardianship. Pa. O.C. Rule 14.8(a)(4) & (5). The Guardian shall serve a notice of the filing of any of these reports on all those persons, *sui juris*, who would be entitled to share in the Estate of the incapacitated person if he died intestate, and the person of institution providing residential care services to the incapacitated person as well as to \_\_\_\_\_ within ten (10) days after filing a report using the attached form. Pa. O.C. Rule 14.8(b).

If the incapacitated person resides in a nursing facility and is the recipient of Medical Assistance, the Guardian of the Estate shall be compensated out of income at the rate of \$100 per

month. In all circumstances, compensation out of income shall not prejudice the right of the Guardian to seek additional compensation by petition for allowance.

In the event the incapacitated person has a safe deposit box, an Official Examiner of this Court shall be in attendance when the safe deposit box is opened by the Guardian of the Estate. The Certificate of the Official Examiner of his examination of the assets in the safe deposit box shall be submitted to the Court and, when approved by the hearing judge, shall be filed with the record in this case. The amount and manner of compensation for these services of the Official Examiner shall be determined by the hearing judge.

The Guardian of the Person shall have authority to act on behalf of \_\_\_\_\_ to provide for the general care, maintenance and custody of said incapacitated person. The plenary Guardian of the Person shall arrange for psychological and psychiatric services and social opportunities, as appropriate. The plenary Guardian of the Person shall assist said incapacitated person in the development of maximum self-reliance and independence. The plenary Guardian of the Person shall have authority to give consent for and to withhold surgical or medical treatment except that which is excluded by 20 Pa. C.S.A. § 5521(d).

The Guardian of the Person shall file an Annual Report one year after appointment and annually thereafter in accordance with the provisions of 20 Pa.C.S. § 5521(c)(1)(ii.). Pa. O.C. Rule 14.8(a)(3). A Final Report shall be filed by the Guardian of the Person within sixty (60) days of the death of the incapacitated person, an adjudication of capacity, a change of guardian or the expiration of an order of limited duration pursuant to 20 Pa. C.S. § 5521(c)(2). A Final Report shall also be filed upon receipt of the provisional order from another state's court accepting transfer of a guardianship. PA. O.C. Rule 14.8(a)(4) & (5). The Guardian shall serve a notice of the filing of any of these reports on all those persons, *sui juris*, who would be entitled

to share in the estate of the incapacitated person if he/she died intestate, and the person or institution providing residential care services to the incapacitated person as well as to

\_\_\_\_\_ within ten (10) days after filing a report using the attached form. Pa.  
O.C. Rule 14.8(b).

The Guardian of the Person, unless authorized after a subsequent hearing, shall not have the power to:

1. Consent on behalf of the incapacitated person to psychosurgery, electroconvulsive therapy, or removal of a healthy body organ;
2. Prohibit the marriage or consent to the divorce of the incapacitated person; or
3. Consent on behalf of the incapacitated person to the performance of any experimental biomedical or behavioral medical procedure or participation in any biomedical or behavioral experiment.

All evidence received at the hearing concerning the present matter, including but not limited to medical depositions, expert reports, testimony and exhibits, shall be **SEALED** and not made available except upon further Decree of this Court.

[CONTINUED ON NEXT PAGE]

\_\_\_\_\_ was/was not present at the hearing and was represented by counsel. This Court finds clear and convincing medical evidence that the physical and mental health of \_\_\_\_\_ would have been harmed by requiring his/her presence at the hearing. Counsel for the Petitioner shall cause to be served upon and read to the incapacitated person a copy of this Decree and the following Statement of Rights:

**You, [INSERT NAME OF INCAPACITATED PERSON], are hereby notified of your right to seek reconsideration of this Decree pursuant to Rule 8.2 and the right to appeal this Decree within 30 days from the date of this Decree by filing a Notice of Appeal with the Clerk of the Orphans' Court. You may also petition the court at any time to review, modify, or terminate the guardianship due to a change in circumstances. You have a right to be represented by an attorney to file a motion for reconsideration, an appeal, or to seek modification or termination of this guardianship. If the assistance of counsel is needed and You cannot afford an attorney, an attorney will be appointed to represent you free of charge. Pa. O.C. Rule 14.7(a)(2).**

**BY THE COURT:**

---

J.

Counsel

Guardian(s)

## SAMPLE GUARDIANSHIP PETITION

IN THE COURT OF COMMON PLEAS OF PHILADELPHIA COUNTY, PENNSYLVANIA  
ORPHANS' COURT DIVISION

No.

\_\_\_\_\_, AN ALLEGED INCAPACITATED PERSON

### **PETITION FOR CITATION TO SHOW CAUSE**

**WHY \_\_\_\_\_ SHOULD NOT BE ADJUDICATED A  
TOTALLY INCAPACITATED PERSON AND WHY \_\_\_\_\_ SHOULD  
NOT BE APPOINTED PLENARY GUARDIAN OF HIS/HER PERSON AND ESTATE**

Petitioner, \_\_\_\_\_, (insert relationship) of \_\_\_\_\_ (the "Alleged Incapacitated Person"), an Alleged Incapacitated Person, respectfully requests this Honorable Court to adjudicate \_\_\_\_\_ to be totally incapacitated and appoint \_\_\_\_\_ as the plenary guardian of his/her person and estate and in support thereof, avers as follows:

#### **I. JURISDICTION AND VENUE**

1. Petitioner is the [INSERT RELATIONSHIP] of \_\_\_\_\_ (the "Alleged Incapacitated Person").

2. The Alleged Incapacitated Person, [INSERT NAME], was born on [INSERT DATE], and is now [INSERT] years of age.

3. The Alleged Incapacitated Person lives with [INSERT] at [INSERT ADDRESS], and is domiciled in Philadelphia County.

4. Accordingly, pursuant to 20 Pa. C.S.A. §§ 711(10) and 5512(a), this Court has jurisdiction over and is the proper venue for the appointment of a plenary guardian of the estate and person of the Alleged Incapacitated Person.

5. No other court has ever assumed jurisdiction in any proceeding to determine the capacity of the Alleged Incapacitated Person, and no guardian has ever been appointed for the person or estate of the Alleged Incapacitated Person.

## II. INTERESTED PARTIES

6. INSERT PARAGRAPH REGARDING THE ALLEGED INCAPACITATED PERSON'S MARITAL STATUS AND WHETHER HE/SHE HAS EVER BEEN MARRIED.

7. The Alleged Incapacitated Person's next of kin and presumptive intestate heirs are:

| Name and Address        | Relationship   |
|-------------------------|--|
| INSERT NAME AND ADDRESS | The Alleged Incapacitated Person's [INSERT RELATIONSHIP] |
| INSERT NAME AND ADDRESS | The Alleged Incapacitated Person's [INSERT RELATIONSHIP] |

8. To the best of Petitioner's knowledge, information, and belief, \_\_\_\_\_ would be entitled to the Alleged Incapacitated Person's Estate if he/she died intestate at this time.

9. To the best of Petitioner's knowledge, information, and belief, there are no persons believed to be agents of the Alleged Incapacitated Person under any power of attorney or other writing. [PROVIDE NAMES AND ADDRESSES IF THERE ARE SUCH AGENTS UNDER POWER OF ATTORNEY, AND ATTACH ANY SUCH POWER OF ATTORNEY OR OTHER WRITING AS AN EXHIBIT].

10. Petitioner is unaware of any power of attorney executed by the Alleged Incapacitated Person. Petitioner also is not aware of any Advance Health Care Directive or Living Will currently in effect or executed by the Alleged Incapacitated Person.

11. The Alleged Incapacitated Person has no legal dependents at this time, no living siblings, and no other children. [INSERT THIS PARAGRAPH ONLY IF TRUE, AND ADJUST TO ACCOUNT FOR WHETHER THE ALLEGED INCAPACITATED PERSON HAS ANY LIVING SIBLINGS, CHILDREN, PARENTS, OR DEPENDENTS].

12. The Alleged Incapacitated Person is not now, and was never, a member of the Armed Services of the United States, and does not receive veteran's benefits.

13. Petitioner proposes that the persons identified in paragraph seven (7) above receive notice of the filing of this Petition and of Guardianship Reports pursuant to Rule 14.8(b).

### **III. FACTUAL BACKGROUND**

14. The Alleged Incapacitated Person is a [INSERT] year old who has lived at [INSERT] with [INSERT] for the past [INSERT] years.

15. The Alleged Incapacitated Person has been diagnosed with [INSERT ALL DIAGNOSES THAT AFFECT COGNITIVE ABILITY], which render him/her unable to cognitively provide her his/her own independent self care, and unable to make medical and financial decisions on his/her own behalf.

16. In addition to his/her diagnoses which affect his/her cognitive ability, the Alleged Incapacitated Person has also been diagnosed with [INSERT], and may encounter other medical issues about which medical decisions will need to be made on the Alleged Incapacitated Person's behalf.

17. Currently, there is no person legally authorized to make medical and financial decisions on behalf of the Alleged Incapacitated Person, who is unable to make such decisions herself for the reasons detailed below.

18. The Alleged Incapacitated Person does not have a durable agent under power of attorney or healthcare power of attorney, is unable to execute such documents, and is unable to make his/her own financial and medical decisions.

### **IV. MEDICAL EVIDENCE OF THE ALLEGED INCAPACITATED PERSON'S INCAPACITY- [THIS IS JUST AN EXAMPLE – ADJUST TO FIT YOUR EXPERT REPORT]**

19. The Alleged Incapacitated Person receives medical care from Jefferson Hospital, including from Catherine Kane, Ph.D., and at the Jefferson Hospital Memory Center.

20. Dr. Kane maintains a professional address at 1000 Walnut Street, Philadelphia, PA 19102.

21. Dr. Kane received her M.D. from Yale University in 1980, and is currently a Professor of Geriatric Neuropsychiatry at The University of Pennsylvania Medical School.

22. On April 1, 2024, Dr. Smith completed an Expert Report pursuant to 20 Pa. C.S. § 5518 (at times, “Dr. Kane’s Expert Report” or the “Report”). A true and correct copy of Dr. Kane’s Expert Report is attached hereto as Exhibit “A.”

23. In the Expert Report, Dr. Kane states that she treated and examined the Alleged Incapacitated Person and diagnosed the Alleged Incapacitated Person with, *inter alia*, Alzheimer’s Dementia and Coronary Artery Disease. *See* Exhibit “A” at p. 2.

24. Dr. Kane states in the Expert Report that the Alleged Incapacitated Person “confabulates,” asks “repetitive questions,” and “needs redirection.” *See* Exhibit “A” at p. 2.

25. The Alleged Incapacitated Person currently takes the medication Aricept for her Alzheimer’s Dementia diagnosis. *See* Exhibit “A” at p. 2.

26. Dr. Kane noted in the Expert Report that as a result of the Alleged Incapacitated Person’s Dementia, “she requires supervision or total assist[ance].” *See* Exhibit “A” at p. 3.

27. In the Expert Report, Dr. Kane notes that the Alleged Incapacitated Person is “totally impaired” in the categories of receiving and evaluating information effectively, communicating decisions, ability to give informed consent, activities of daily living, managing finances (including paying bills, making deposits, withdrawals and working with financial institutions), managing health care (including following doctor’s orders and managing/taking medications), providing for physical safety, responding to emergency situations, and ability to resist scams. *See* Exhibit “A” at p. 3.

28. Dr. Smith also stated in the Deposition that the Alleged Incapacitated Person “requires total support [with regard to managing her financial affairs],” and that “she does not have the capacity to manage her finances.” *See* Exhibit “A” at p. 3.

29. Dr. Kane noted that within a reasonable degree of professional certainty and based upon her knowledge, skills, experience, and education, the Alleged Incapacitated Person is incapacitated and totally impaired. *See Exhibit “A” at p. 4.*

30. Dr. Kane stated in the Deposition that in the next six (6) months, she expects the Alleged Incapacitated Person’s abilities to “Decline.” *See Exhibit “A” at p. 4.*

31. Dr. Kane further explained that she does not “anticipate a change in [the Alleged Incapacitated Person’s] capacity except for it to continue to decline.” *See Exhibit “A” at p. 4.*

32. Dr. Kane stated in the Deposition that the Alleged Incapacitated Person is “pleasantly demented, confabulates [and] has tangential communications but tolerates interactions well and is used to going out with her son.” *See Exhibit “A” at p. 4.*

33. Dr. Kane further stated that Petitioner, John Doe, “has demonstrated consistently to have his mother’s best interest at heart.” *See Exhibit “A” at p. 4.*

34. On April 1, 2014, Dr. Kane administered to the Alleged Incapacitated Person a Montreal Cognitive Assessment (the “MOCA”). *See Exhibit “A” at p. 6.*

35. The Alleged Incapacitated Person scored 2 out of 30 points on the MOCA, indicating severe dementia. *See Exhibit “A” at p. 6.*

36. The Alleged Incapacitated Person was unable to draw a clock, unable to copy a cube, unable to identify a lion and a rhinoceros, unable to repeat sentences, and scored zero points on the “Abstraction,” “Delayed Recall,” and “Language” sections of the MOCA. *See Exhibit “A” at p. 6.*

37. Also on April 1, 2017, Dr. Kane administered the Mini Mental Status Exam (the “MMSE”) to the Alleged Incapacitated Person. *See Exhibit “A” at p. 7.*

38. The Alleged Incapacitated Person scored 4 out of 30 points on the MMSE. *See Exhibit “A” at p. 7.*

39. During the MMSE, *inter alia*, the Alleged Incapacitated Person was unable to identify the year, season, date, day, and month, and was unable to count backward from 100 by intervals of seven, was unable to recall the three named objects, was unable to make up a sentence containing a noun and a verb, and was unable to copy the picture of the interlocking pentagons. *See Exhibit “A” at p. 7.*

40. Based upon Dr. Kane’s Expert Report, and because no person is acting with legal authority to make medical and financial decisions for the Alleged Incapacitated Person at this time, it is necessary for the Court to appoint a Plenary Guardian of the Alleged Incapacitated Person’s person and estate.

41. The Alleged Incapacitated Person is unquestionably incapacitated and in need of a plenary guardian of her estate and person under the terms of 20 Pa. C.S.A. §5511.

42. Because Dr. Kane’s Expert Report is attached to this Petition as Exhibit “A,” this Petition serves as Notice pursuant to Pennsylvania Orphans’ Court Rule 14.3(b)(2) to all interested parties identified above that Petitioner seeks to offer Dr. Kane’s Report into evidence in lieu of live medical testimony.

## **V. FINANCIAL INFORMATION**

43. The Alleged Incapacitated Person has no independent sources of income and owns no assets. Petitioner requests waiver of any bond requirement, ofr good cause, as the estate is of nominal value.

***Note: If AIP receives SSI (or any other income or grant of government benefits) then include that information here. Also include who the representative payee is for any benefit that the AIP receives.***

## **VI. NO LESS RESTRICTIVE ALTERNATIVE**

44. As noted above, upon information and belief, the Alleged Incapacitated Person has not executed a general durable power of attorney or a healthcare power of attorney.

45. Even if the Alleged Incapacitated Person did sign such a power of attorney document, he/she would still be susceptible to undue influence and to designing persons.

46. There are no less restrictive alternatives to the appointment of a guardian of the person and estate of the Alleged Incapacitated Person. The following alternatives to the appointment of a guardian of the person and estate have been considered: (a) power of attorney, (b) advance health care directive, (c) 20 Pa. C.S. § 5461(a), and (d) assistance provided by family members of the Alleged Incapacitated Person.

47. The Alleged Incapacitated Person lacks the requisite level of capacity to execute any legal documents, and the assistance of a “health care representative” pursuant to 20 Pa. C.S. § 5461(a) and the assistance of family members does not provide the comprehensive decision-making authority required in order to ensure that the Alleged Incapacitated Person is never left without a decision-maker.

48. To the extent that a person needed to obtain medical records on behalf of the Alleged Incapacitated Person, or needed to communicate medical decisions to a healthcare professional who is not a medical doctor qualified to assess capacity, the “less restrictive alternatives” identified above would fall short of allowing someone to make decisions and take actions on behalf of the Alleged Incapacitated Person.

49. None of the “less restrictive alternatives” would allow a person to file tax returns on behalf of the Alleged Incapacitated Person, nor would they allow a person to make decisions regarding where the Alleged Incapacitated Person will live. Further, there is risk that any given third party (in order to avoid violating HIPAA pursuant to their internal procedures) will require a person purporting to make medical decisions for the Alleged Incapacitated Person (who lacks any healthcare power of attorney, living will, and power of attorney) to be a Court-appointed Guardian with unquestionable authority to act on behalf of the Alleged Incapacitated Person.

50. In order to conduct all of the activities and business that he/she needs to conduct, the Alleged Incapacitated Person needs for \_\_\_\_\_ to stand in his/her shoes by serving as the plenary Guardian of the Estate. No less restrictive alternative will suffice under the circumstances.

51. In order to ensure that the Alleged Incapacitated Person is always able to receive the medical and health care services that he/she needs, with no risk of a health care provider questioning Petitioner's authority to act, and to ensure that the Alleged Incapacitated Person has Petitioner as his/her medical decision-maker in an emergency situation (as well as in the course of daily life), it is necessary that Petitioner stand in the Alleged Incapacitated Person's shoes by serving as the plenary Guardian of the Person. No less restrictive alternative will suffice under the circumstances.

## **VII. PLENARY GUARDIANSHIP REQUESTED**

52. The severity of the Alleged Incapacitated Person's mental condition and the lack of viable, less restrictive alternatives necessitates the appointment of a plenary guardian of her *person* to handle all issues relating to his person, including but not limited to:

- authorizing and withholding consent to medical treatment or medication and deciding where the Alleged Incapacitated Person will live, giving consideration to her lifestyle and her preferences, if known or determinable;
- arranging for nurses, aides or other personnel for the Alleged Incapacitated Person's care, as well as for physical and other therapy; and
- making decisions about social, recreational and other personal care matters.

53. The severity of the Alleged Incapacitated Person's mental and physical condition and the lack of viable, less restrictive alternatives also necessitates the appointment of a plenary guardian of the Alleged Incapacitated Person's *estate* to administer all of the Alleged Incapacitated Person's financial affairs, including:

- administering her cash, marketable securities, real estate and any other individually owned property;
- payment of medical and other bills incurred to provide her with proper medical care, insurance and maintenance of his lifestyle;
- payment of local, state and federal taxes;
- execution of documents and entering into contracts;

- handling claims made on behalf of or against her; and
- preparing and signing tax returns.

## **VIII. PROPOSED PLENARY GUARDIAN OF THE ESTATE AND PERSON**

54. Petitioner, [INSERT NAME], respectfully requests that this Honorable Court appoint him as the plenary Guardian of the Person and Estate of the Alleged Incapacitated Person.

55. INSERT PARAGRAPH ABOUT PETITIONER'S EDUCATIONAL BACKGROUND.

56. INSERT PARAGRAPH ABOUT PETITIONER'S WORK BACKGROUND.

57. Petitioner has provided extensive and loving care to the Alleged Incapacitated Person, and [INSERT INFORMATION ABOUT PETITIONER'S RELATIONSHIP WITH THE ALLEGED INCAPACITATED PERSON].

58. Petitioner has never served as a guardian in any other case.

59. Petitioner has not completed guardianship training, but is most familiar with the healthcare required by the Alleged Incapacitated Person as well as his/her financial needs, has read the Philadelphia Orphans' Court Manual for Guardians of Incapacitated Persons, and has worked with counsel to understand his/her fiduciary duties in that regard. [THIS IS SUGGESTED BEST PRACTICE].

60. Petitioner has no interest adverse to the Alleged Incapacitated Person.

61. Petitioner has never been charged or convicted of any crime in the Commonwealth of Pennsylvania or any other state in which he/she has resided within the previous five (5) year period. A true and correct copy of the Pennsylvania State Police certified criminal history record check for Petitioner is attached hereto as Exhibit "B," pursuant to Pennsylvania Orphans' Court Rule 14.2(c)(2).

62. Petitioner has not resided outside of the Commonwealth of Pennsylvania for the last five (5) years.

63. A true and correct copy of Petitioner's executed "Consent of Guardian" form is attached hereto as Exhibit "C," and Petitioner's original signed "Consent of Guardian" form will be presented to the Court during the Plenary Guardianship Hearing.

64. A true and correct copy of Petitioner's executed "Guardian Address Confirmation Form" is attached hereto as Exhibit "D," and Petitioner's original signed "Guardian Address Confirmation Form" will be presented to the Court during the Plenary Guardianship Hearing.

65. The Alleged Incapacitated Person is familiar with Petitioner and the care he provides, and Petitioner respectfully submits that he is the most appropriate and logical person to serve as the Plenary Guardian of the Alleged Incapacitated Person's Estate and Person.

66. The parties-in-interest are:

| <b>Name and Address</b> | <b>Relationship</b>                                      |
|-------------------------|--|
| INSERT NAME AND ADDRESS | The Alleged Incapacitated Person's [INSERT RELATIONSHIP] |
| INSERT NAME AND ADDRESS | The Alleged Incapacitated Person's [INSERT RELATIONSHIP] |

67. Upon this Honorable Court's issuance of a Preliminary Decree and Citations, Petitioner will serve this Petition, the Preliminary Decree and the Citations upon the Alleged Incapacitated Person and upon all other parties-in-interest.

[CONTINUED ON NEXT PAGE]

**WHEREFORE**, Petitioner respectfully requests that this Honorable Court issue a Citation directed to \_\_\_\_\_, the Alleged Incapacitated Person, to show cause why he/she should not be adjudicated a totally incapacitated person, and why Petitioner, [INSERT NAME], should not be appointed plenary Guardian of his/her Person and Estate.

Respectfully submitted,

Date: \_\_\_\_\_

\_\_\_\_\_  
Attorney Name  
\_\_\_\_\_  
Attorney I.D. No.  
\_\_\_\_\_  
Firm Name  
\_\_\_\_\_  
Firm Address  
\_\_\_\_\_  
Phone:  
\_\_\_\_\_  
Fax:  
\_\_\_\_\_  
E-mail:

## **VERIFICATION**

I, John Doe, Petitioner herein, hereby certify that the factual statements made in the foregoing Petition are true and correct to the best of my knowledge, information and belief. I understand that this verification is subject to the penalties of 18 Pa. C.S.A. §4904 relative to unsworn falsification to authorities.

Date: \_\_\_\_\_

John Doe

## **EXHIBIT 6**

## Intestate Heirs in Pennsylvania

Assets that would have passed under a will get passed on to the following relatives if no will has been signed. These assets do not include assets owned jointly with others, assets in living trusts, certain retirement accounts, life insurance proceeds, and accounts or securities that are “payable on death.” Assets owned jointly go to the surviving owner and the “payable on death” assets go to the intended beneficiary.

If the AIP dies intestate, the assets that would have passed under the will go as follows:

| If the AIP dies with:  | The assets go as follows:   |
|--|---|
| • children but no spouse   | • children inherit everything   |
| • spouse but no descendants or parents                               | • spouse inherits everything  |
| • spouse and descendants from AIP and that spouse                    | • spouse inherits the first \$30,000 of AIP’s intestate property, plus 1/2 of the balance<br>• AIP’s descendants inherit everything else    |
| • spouse and descendants from AIP and someone other than that spouse | • spouse inherits 1/2 of your intestate property<br>• descendants inherit everything else   |
| • spouse and parents   | • spouse inherits the first \$30,000 of AIP’s intestate property, plus 1/2 of the balance<br>• parents inherit remaining intestate property |
| • parents but no spouse or descendants***                            | • parents inherit everything***   |
| • siblings but no spouse, descendants, or parents                    | • siblings inherit everything   |

Adopted children inherit as biological children. “Half-Relatives” inherit as full relatives. Grandchildren inherit only if their parent (AIP’s child) has died. Other details not covered here include status of children placed by AIP for adoption and children born outside of marriage.

**In Petition, list only adult heirs not adjudged incapacitated.**

\*\*\*See highlighted category, which will generally apply.

## **EXHIBIT 7**

IN THE COURT OF COMMON PLEAS OF PHILADELPHIA COUNTY, PENNSYLVANIA  
ORPHANS' COURT DIVISION

No.

**INSERT NAME OF AIP, AN ALLEGED INCAPACITATED PERSON**

**CONSENT AND JOINDER OF (INSERT NAME)**

I, **INSERT NAME**, the (**describe relationship; sister/brother/mother/father/etc.**) of  
**(INSERT NAME OF AIP)**, the Alleged Incapacitated Person, and the (**describe relationship;**  
**sister/brother/mother/father/etc.**) of Petitioner, **(INSERT NAME OF YOUR CLIENT, THE**  
**PROPOSED GUARDIAN)**, hereby consent to and join in the Petition For Citation To Show  
Cause Why **(INSERT NAME OF AIP)** Should Not Be Adjudicated An Incapacitated Person,  
And To Appoint **(INSERT NAME OF PROPOSED GUARDIAN)** As The Plenary Guardian  
Of His/Her Person And Estate, and to the relief sought therein.

Date: \_\_\_\_\_

\_\_\_\_\_  
Name of Person Providing Consent

## **EXHIBIT 8**

**CERTIFICATE OF COMPLIANCE**

I, [INSERT], Esquire, certify that this filing complies with the provisions of the *Public Access Policy of the Unified Judicial System of Pennsylvania: Case Records of the Appellate and Trial Courts* that require filing confidential information and documents differently than non-confidential information and documents.

Date: \_\_\_\_\_

\_\_\_\_\_  
INSERT NAME

## EXHIBIT 9

# E-filing Guardianship Petition

Court of Common Pleas Orphans' Court Division

Dechert  
LLP

Step 1: Go to <https://fjdefile.phila.gov> and log in with your credentials



Username:

Password:

Pin:

#### Announcement and Advisories

Effective Thursday, February 19, 2018, the Office of Judicial Records will no longer offer the payment option of "Walk-in and Pay Over the Counter." All electronic filings that require the payment of a filing fee must be paid with a credit or debit card through the Electronic Filing System.

Posted: January 29, 2018

The Civil, Criminal and Orphans' Court E-Filing System will be modified to accommodate the UJS Public Access Policy's requirements effective January 6, 2018. Please review the policy [HERE](#) to become familiar with its requirements.

An overview of the E-Filing System changes can be accessed [HERE](#).

Some important points to consider:

1. Documents containing CONFIDENTIAL INFORMATION defined by the policy must be redacted and both the REDACTED and UNREDACTED versions of the document must be filed.
2. The policy defines certain documents as CONFIDENTIAL DOCUMENTS. These documents must be filed/uploaded separately from all other documents.
3. There is no need to file a CONFIDENTIAL DOCUMENT FORM as required by the policy. The E-Filing system will generate the required form after questions are answered on the file upload screen.
4. For Civil and Orphans' Court users: the E-Filing System will have an area for filing/uploading documents permitted to be filed UNDER SEAL pursuant to a docketed court order. Court approval is mandatory in order to file documents UNDER SEAL.

Posted: January 3, 2018

If you are not registered for an account with the Philadelphia Courts under the e-filing system, click this link and follow instructions to obtain a username.

Use of the Electronic Filing System constitutes an acknowledgment that the user has read the Electronic Filing Rules [Pa.O.C.R. 1.3 and 4.7](#) and [Pa.O.C.R. 4.7A](#), [Pa.R.C.P. 205.4](#), [Phila.R.C.P. 205.4](#) and [Phila.R.C.P. 204.1](#) and [Phila.R.Crim.P.576](#) and agrees to comply with same.

#### Need Help?

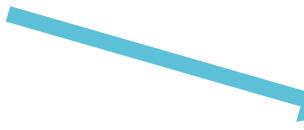
[Forgot your password? Click](#)

[FJD Civil Electronic Filing User Manual](#)  
[Orphans' Court Electronic Filing User Manual](#)

[To Apply for a User Name, click here](#)

[Criminal Electronic Filing Tutorial](#)  
PowerPoint required

**Step 2:** Click on Civil/Orphans' E-filing System and accept disclaimer.



Welcome

Username: [REDACTED]  
[Update Information](#)

TODAYS DATE: January 31, 2018

-  [Civil/Orphans' E-Filing System](#)
-  [Criminal E-Filing System](#)
-  [eSubpoena \(CP Civil\)](#)
-  [eDiscovery \(Criminal\)](#)
-  [Search Civil Dockets](#)
-  [Search Orphans' Court Dockets](#)

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### Step 3: Start a “New Case.”

January 31, 2018 01:35pm

Welcome!

[Update Information](#)

[New Case](#) (circled in red)

[Existing Case](#)

[Discovery Hearing](#)

[Motions](#)

[My Civil and Orphans' Court Cases](#)

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[Dockets](#)

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[CP Civil Help](#)

[Orphans' Help](#)

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**Electronic Filing History**

| E-File # | Court | Type | Case ID | Status  | Created  | Ref. No. |
|----------|-------|------|---------|---|----------|----------|
|          | OC    | SUBC |         | Filed, 01/30/18   | 01/29/18 |          |
|          | OC    | COMM |         | Filed, 12/07/17   | 12/07/17 |          |
|          | OC    | COMM |         | Filed, 12/07/17   | 12/07/17 |          |
|          | OC    | SUBC |         | Filed, 11/15/17   | 11/15/17 |          |
|          | OC    | COMM |         | Draft   | 11/13/17 |          |
|          | OC    | SUBC |         |         | 11/13/17 |          |
|          | OC    | COMM |         | Filed, 11/02/17   | 09/19/17 |          |
|          | CP    | SUBC |         | Filed, 08/08/16   | 08/08/16 |          |
|          | CP    | SUBC |         | Draft   | 07/27/16 |          |
|          | CP    | SUBC |         | Filed, 07/27/16   | 07/27/16 |          |
|          | CP    | COMM |         |         | 11/20/12 |          |
|          | CP    | SUBC |         | Draft   | 11/20/12 |          |
|          | CP    | SUBC |         |         | 11/12/12 |          |
|          | CP    | SUBC |         |         | 02/28/12 |          |
|          | CP    | SUBC |         |         | 10/25/11 |          |
|          | CP    | SUBC |         | Draft   | 10/24/11 |          |
|          | CP    | SUBC |         |         | 09/09/11 |          |
|          | CP    | SUBC |         | Filed, 08/03/11   | 08/03/11 |          |
|          | CP    | SUBC |         |     | 07/19/11 |          |
|          | CP    | SUBC |         |     | 07/19/11 |          |

Displayed: 1 to 20 [Next>](#) [Last>>](#)

**Step 4:** Select Orphans' Court.

January 31, 2018 01:36pm

Welcome!

Where do you want to file this case?

Orphans' Court

Trial Division - Civil

Main Menu

My Civil and Orphans' Court Cases

My Family Court Cases

Dockets

FJD Portal

eSubpoena (CP Civil)

CP Civil Help

Orphans' Help

Log Off

Continue >>

**Step 5:** Fill out Estate Information with the last name, and first name of the AIP. Select “Type of Estate” requested, and enter petitioner/client’s information under name of filing party. Select type of filing party, type of pleading filed, and answer whether or not an emergency. Click “continue”.

January 31, 2018 01:37pm

You are in Page 1

Welcome!

 [Main Menu](#)  
 [Orphans' Help](#)  
  
 [Log Off](#)

Court: OC

\* Required Field.

User Accepts/Agrees to [Rules/Agreement](#).

 [CONTACT US](#)



### Estate Information

\*Last Name  First Name  Middle  Suffix<sup>2</sup>

\*Entity Name, if applicable  
(if not an individual, maximum of 60 characters, abbreviate if necessary)

Is there an Alternative Name/A.K.A ?  Yes  No

Type of Estate

\*Name of Filing Party (Not Counsel for the Party)

Last Name  First Name  Middle  Suffix<sup>2</sup>

Entity Name, if applicable  
(if not an individual, maximum of 60 characters, abbreviate if necessary)

Is there an Alternative Name/A.K.A ?  Yes  No

Street Address  City  State  Zip Code

\*Select Filing Party Type

\*Is the Petition you are submitting an Emergency?  Yes  No

\*Pleading or Document Filed

<sup>2</sup>Suffix Name (Example: Jr, Sr, MD, III, PhD etc.)

**Continue >>**



**Step 6:** Complete forms as shown below for each interested party for the AIP. Interested parties to be served are any proposed co-Guardians, any adults who could be intestate heirs if the AIP died as of the time of filing, and any person or entity providing residential services to the AIP. When all interested parties have been added, click “continue”.

January 31, 2018 01:42pm

You are in Page 1 2 3 4 5 6 7 8 9

Welcome!

**Other Parties**

\*Last Name  First Name  Middle  Suffix<sup>2</sup>   
See training materials

\*Entity Name, if applicable

Click “Add” after each interested party is entered.

Is there an Alternative Name/A.K.A ?  Yes  No

**Count: OC**

\* Required Field.

User Accepts/Agrees to [Rules/Agreement](#)

CONTACT US



\*Party Type

\*Street Address

\*City   \*State   Zip Code

<sup>2</sup> Suffix Name (Example: Jr, Sr, MD, III, PhD etc.)

-- Number of Other Parties entered: 0 --



**Step 7:** Fill out the form as shown below. The Clerk's Office has informed us that notice is not required – just accept this. The information in the gray box is the information of your AIP. The Social Security Number should be listed in your intake packet from the referral organization.

January 31, 2018 01:46pm You are in Page 1 2 3 4 5 6 7 8

Welcome!

**\*Is notice required?**

No  
 Yes. Copy of notice attached to pleading  
Date of Notice:

Yes. All joinders are attached.

**\*If citation is requested:**

1. Was Citation against Respondent previously issued?  Yes  No  
2. If yes, date of service:

**\*Has another petition been decided in this case?**  Yes  No

**\*Is another petition pending?**  Yes  No  
If yes, identify the Judge: --- Select from List ---

**\*Required Field.**

User Accepts/Agrees to [Rules/Agreement](#).

**CONTACT US**



**If this is a new case, please enter the applicable information below**

Date of Birth  If Unknown, check here   
Date of Death   
Register of Wills Number  -  -   
Date of Deed of Trust   
SSN / EIN  Supply EIN if Deed of Trust

*The Filing Party must complete the information above. The information will only be used by the Clerk. The Clerk will not release this information to the general public*

**<< Back** **Continue >>**

Information in this box  
is that of the AIP's

**Step 8:** The information on the bottom of page should pre-populate. Click “kindly enter my appearance”.

Under on behalf of, check your client's (the petitioner's) name.

Welcome!

Update information

Main Menu  
Orphans' Help  
Log Off

Court: OC

\* Required Field.

User Accepts/Agrees to [Rules/Agreement](#)

CONTACT US



You are in Page 1 2 3 4 5 6 7 8 9

**'TO THE CLERK OF ORPHANS' COURT**

Kindly enter my appearance  I have entered my appearance

**on behalf of ( check all the names below that apply )**

AIP FIRST NAME AIP LAST NAME  
 PETITIONER FN PETITIONER LAST NAME (PETITIONER/RELATIVE)  
 SEE TRAINING MATERIALS (INTERESTED PARTY)

Electronic Service will be sent to email address listed below.  
To update any information, [click here](#).

|                                  |  |
|----------------------------------|--|
| Name of Filing Attorney or Party |  |
| Address                          |  |
| Phone Number                     |  |
| Fax Number                       |  |
| Supreme Court Identification No. |  |
| E-Mail Address                   |  |

Update Information

<< Back Continue >>



**Step 9:** Here, ensure that you have these five PDFs prior to moving onto the next step:

- PDF 1 – Exhibit Tab plus the (confidential) Medical Report
- PDF 2 –Redacted Petition Package (in this order: preliminary decree, final decree, statement of rights, petition, verification)
- PDF 3 – Redacted Petition Package (in same order)
- PDF 4 – Non-confidential exhibits (such as Consent & Joinder)
- PDF 5 – the IFP Affidavit

February 09, 2018 09:46am

You are in Page 1 | 2 | 3 | 4 | 5 | B | Z | 

Welcome!

**\*File Attachment**

**\*\*\* NOTICE \*\*\***

Please review the [UJS Public Access Policy](#). In accordance with the policy, please follow the instructions and answer all questions carefully.

If your filing contains **CONFIDENTIAL INFORMATION** as defined in Section 7.0 of the UJS Public Access Policy, you must upload a **Redacted Version** and an **Unredacted Version** of the filing in the **REDACTED DOCUMENTS FILE UPLOAD AREA** and the **UNREDACTED DOCUMENTS FILE UPLOAD AREA** respectively after answering the questions below.

If your filing includes **CONFIDENTIAL DOCUMENTS** or **EXHIBITS** as defined in Section 8.0 of the UJS Public Access Policy, you must upload those documents separately from all other documents in the **CONFIDENTIAL DOCUMENTS/EXHIBITS FILE UPLOAD AREA** after answering the questions below.

If your filing or any portion of your filing, is being filed **UNDER SEAL** pursuant to a docketed court order, those documents must be uploaded in the **DOCUMENTS FILED UNDER SEAL FILE UPLOAD AREA** separately from all other documents.

\* Required Field.

User Accepts/Agrees to [Rules/Agreement](#)

**CONTACT US**



Please respond accordingly below:

**\*Does your filing contain Confidential Information?**  Yes  No

*Note: If your filing contains Confidential Information, a Redacted Version and an Un-Redacted Version of your filing must be uploaded. Click [here](#) for a list of information considered confidential as defined by the UJS Public Access Policy.*

**\*Does your filing contain Confidential Documents/Exhibits?**  Yes  No

*Note: Click [here](#) for a list of documents considered confidential as defined by the UJS Public Access Policy.*

**\*Is any portion of your filing being filed UNDER SEAL pursuant to a court order?**  Yes  No

See next page for more guidance on this screen.

**Step 10:** Prior to uploading documents, select “Yes” for the first two questions asked below, “No” for the third, and then click on “Upload Documents”.

Welcome! \*File Attachment \*\*\* NOTICE \*\*\*

Please review the [UJS Public Access Policy](#). In accordance with the policy, please follow the instructions and answer all questions carefully.

If your filing contains **CONFIDENTIAL INFORMATION** as defined in [Section 7.0 of the UJS Public Access Policy](#), you must upload a **Redacted Version** and an **Unredacted Version** of the filing in the **REDACTED DOCUMENTS FILE UPLOAD AREA** and the **UNREDACTED DOCUMENTS FILE UPLOAD AREA** respectively after answering the questions below.

If your filing includes **CONFIDENTIAL DOCUMENTS or EXHIBITS** as defined in [Section 8.0 of the UJS Public Access Policy](#), you must upload those documents separately from all other documents in the **CONFIDENTIAL DOCUMENTS/EXHIBITS FILE UPLOAD AREA** after answering the questions below.

If your filing or any portion of your filing, is being filed **UNDER SEAL** pursuant to a docketed court order, those documents must be uploaded in the **DOCUMENTS FILED UNDER SEAL FILE UPLOAD AREA** separately from all other documents.

\* Required Field.

User Accepts/Agrees to [Rules/Agreement](#).

CONTACT US



Please respond accordingly below:

\*Does your filing contain Confidential Information?  Yes  No

Note: If your filing contains Confidential Information, a Redacted Version and an Un-Redacted Version of your filing must be uploaded. Click [here](#) for a list of information considered confidential as defined by the UJS Public Access Policy.

\*Does your filing contain Confidential Documents/Exhibits?  Yes  No

Note: Click [here](#) for a list of documents considered confidential as defined by the UJS Public Access Policy.

\*Is any portion of your filing being filed **UNDER SEAL** pursuant to a court order?  Yes  No

\*Select which Confidential Documents are included with your filing:

NOTE: You do not need to upload the Confidential Document Form required by the policy. The system will generate the form based on your selections below.

|  |   |  |
|--|---|--|
| <input type="checkbox"/> Tax Returns & Schedules   | <input type="checkbox"/> Check Registers                          | <input type="checkbox"/> Marital Property Inventory & Pre-Trial Statement as provided in Pa.R.C.P. No. 1920.33 |
| <input type="checkbox"/> W-2 forms & schedules including 1099 forms or similar documents | <input type="checkbox"/> Checks or equivalent                     | <input type="checkbox"/> Income & Expense Statement as provided in Pa.R.C.P. No. 1910.27(c)                    |
| <input type="checkbox"/> Wages Stubs, earnings statements, or other similar documents    | <input type="checkbox"/> Loan application documents               | <input type="checkbox"/> Agreements between the parties as used in 23 Pa.C.S. §3105                            |
| <input type="checkbox"/> Credit card statements  | <input type="checkbox"/> Minor's education records                |  |
| <input type="checkbox"/> Financial Institution Statements                                | <input checked="" type="checkbox"/> Medical/Psychological records |  |
|  | <input type="checkbox"/> Children & Youth Services' records       |  |

Click to open Upload Screen, ensure the block pop-up windows option is not checked

**Upload Documents**

**Step 11:** “Choose File”, select the first document you want to upload (Expert Report), open it and select “Add File Now”. After you select Add File Now, you should see the name of the document. Hit “Finish/Next”.

E-Filing System - File Upload Form - Google Chrome

[fjdefile.phila.gov/efsfjd/zk\\_fjd\\_prvt\\_efile\\_55.zp\\_upload\\_form?uid=44KtWMOL3dd5bi4C&o=RI...](http://fjdefile.phila.gov/efsfjd/zk_fjd_prvt_efile_55.zp_upload_form?uid=44KtWMOL3dd5bi4C&o=RI...)

## CONFIDENTIAL DOCUMENTS/EXHIBITS UPLOAD AREA

• Medical/Psychological records

In this area, upload only the files that you have identified as CONFIDENTIAL DOCUMENTS/EXHIBITS included with the filing.

**Please limit the maximum file size for each document to 50Mb and do not use these characters in the file name \* ? < > | # { } ~ : &**

**Choose a file to attach: (must be a PDF file)**

No file chosen

**Add file to the list:**

[Click here to estimate the file download time](#)

**Current File Attachments:**

|  | File Name | Size |
|---|-----------|------|
|---|-----------|------|

To delete an attachment, check the file you want deleted then click on the delete icon.

 A file format created by Adobe®

**Click the FINISH button after all CONFIDENTIAL DOCUMENTS/EXHIBITS have been uploaded.**

Note: These documents will be viewable by court personnel and case participants, but not the public.

Tax Returns & Schedules  Check Registers  
 W-2 forms & schedules including 1099 forms or similar documents  Checks or equivalent

**Step 12:** Hit “Choose File”, select the redacted petition you wish to upload (Redacted Petition Package), and then click “Open”. Select “Add File Now” and then hit “Finish”.

**REDACTED DOCUMENTS FILE UPLOAD AREA**

In this area, only upload all REDACTED versions of the documents from which all CONFIDENTIAL INFORMATION has been removed.

Please limit the maximum file size for each document to 50Mb and do not use these characters in the file name \* ? < > | # { } ~ : &

Choose a file to attach: (must be a PDF file)

No file chosen

Add file to the list:

[Click here to estimate the file download time](#)

**Current File Attachments:**

|  | File Name | Size |
|---|-----------|------|
|---|-----------|------|

To delete an attachment, check the file you want deleted then click on the delete icon.

 A file format created by Adobe®

**Click the FINISH button after all REDACTED files have been uploaded.**

Note: These documents will be viewable by the public.

Tax Returns & Schedules  Check Registers  
 W-2 forms & schedules including 1099 forms or similar documents  Checks or equivalent  
 Wages Stubs, earnings statements, or other similar documents  Loan application documents  
 Minor's education records

**Step 13:** After selecting “Choose File” and finding the Unredacted (confidential) Petition Packet you wish to upload, select “Open” and then “Add File Now”, Select “Finish/Next” once done with undredacted confidential documents.

E-Filing System - File Upload Form - Google Chrome

fjdefile.phila.gov/efsfjd/zk\_fjd\_prvt\_efile\_55.zp\_upload\_form?uid=44KtWMOL3dd5bi4C&o=Ri...

## UN-REDACTED DOCUMENTS CONTAINING CONFIDENTIAL INFORMATION FILE UPLOAD AREA

In this area, only Upload UN-REDACTED versions of documents containing CONFIDENTIAL INFORMATION.



*Please limit the maximum file size for each document to 50Mb  
and do not use these characters in the file name \* ? < > | # { } ~ : &*

Choose a file to attach: (must be a PDF file)

No file chosen

Add file to the list:

[Click here to estimate the file download time](#)

Current File Attachments:

|  | File Name | Size |
|---|-----------|------|
|---|-----------|------|

To delete an attachment, check the file you want deleted then click on the delete icon.

 A file format created by Adobe®

**Click the FINISH button after all UN-REDACTED documents have been uploaded.**

Note: These documents will be viewable by court personnel and case participants, but not the public.

**Step 14:** Repeat this procedure to find, open, and upload each public non-confidential documents (the Consent & Joinder and, if applicable, IFP Affidavit), adding one at a time. After adding all public documents, click “Finish”.

**PUBLIC DOCUMENTS CONTAINING NO CONFIDENTIAL INFORMATION FILE UPLOAD AREA**

In this area, only upload all documents that are neither considered CONFIDENTIAL nor contain CONFIDENTIAL INFORMATION.

Please limit the maximum file size for each document to 50Mb and do not use these characters in the file name \* ? < > | # { } ~ : &

Choose a file to attach: (must be a PDF file)

No file chosen

Add file to the list:

[Click here to estimate the file download time](#)

**Current File Attachments:**

|  | File Name | Size |
|--|-----------|------|
|  |           |      |

To delete an attachment, check the file you want deleted then click on the delete icon.

A file format created by Adobe®

Click the FINISH button after all PUBLIC DOCUMENTS CONTAINING NO CONFIDENTIAL INFORMATION files have been uploaded.

Note: These documents will be viewable by the public.

1099 forms or similar documents  Loan application documents  
 Wages Stubs, earnings statements, or other similar documents  Minor's education records  
 Credit card statements  Medical/Psychological records

Marital Property Statement  
 Pa.R.C.P. No  
 Income & Expenses provided in P 1910.27(c)  
 Agreements I

**Step 15:** Your screen should now look like the below after all categories of documents are uploaded to the system.

**Upload Documents**

| <b>Confidential Documents/Exhibits</b> |  |             |
|--|--|-------------|
|  | <b>File Name</b>                                     | <b>Size</b> |
|  | <a href="#">Confidential Expert Report w Tab.pdf</a> | 1,442 bytes |

| <b>Redacted Documents From Which Confidential Information Has Been Removed</b> |  |              |
|--|--|--------------|
|  | <b>File Name</b>                             | <b>Size</b>  |
|  | <a href="#">Redacted Petition Packet.pdf</a> | 20,332 bytes |

| <b>UN-Redacted Confidential Documents Which Contain Confidential Information</b> |  |              |
|--|--|--------------|
|  | <b>File Name</b>                               | <b>Size</b>  |
|  | <a href="#">Unredacted Petition Packet.pdf</a> | 22,186 bytes |

| <b>P Documents Which are Not Confidential and Which Do Not Contain Confidential Information</b> |  |              |
|---|--|--------------|
|   | <b>File Name</b>   | <b>Size</b>  |
|   | <a href="#">Nonconfidential exhibits such as Consent Joinder.pdf</a> | 17,113 bytes |
|   | <a href="#">the IFP Affidavit.pdf</a>                                | 14,266 bytes |

Total Documents Uplo

**Certification Regarding Compliance with UJS Public Access Policy:**

I certify that the filing complies with the provisions of the *Public Access Policy of the Unified Judicial System of Pennsylvania Case Records of the Appellate and Trial Courts* that require filing confidential information and documents differently than non-confidential information and documents.

**Click here to certify compliance with the UJS Public Access Policy**

---

**<< Back**    **Continue >>**

**Step 16:** Check off the box below, and click “Continue”.

**Certification Regarding Compliance with UJS Public Access Policy:**

I certify that the filing complies with the provisions of the *Public Access Policy of the Unified Judicial System of Pennsylvania Case Records of the Appellate and Trial Courts* that require filing confidential information and documents differently than non-confidential information and documents.

[Click here to certify compliance with the UJS Public Access Policy](#)

[<< Back](#) [Continue >>](#)

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**Step 17:** Select the IFP option, if applicable, and click “continue”.

February 09, 2018 09:51am

Welcome!

Total fee for this filing: \$ [REDACTED]

You are in Page 1 2 3 4 5 6 7 8

Credit Card Payment

Pay by Mail

Walk-in and pay over the counter

Are you filing In Forma Pauperis and without payment of filing fees?

In Forma Pauperis Pending or Previously Granted

2.3.5.5. *In Forma Pauperis (Subsequent Filings)* When *In Forma Pauperis* status has been previously granted for the entire case, you must attach a copy of the Decree granting the Status. Return to page 5 of the EFS and upload that Court Decree or Praecept to Proceed *In Forma Pauperis*.

2.3.5.5.1. Where *In Forma Pauperis* status has been previously granted for a single filing, including but not limited to Annual Reports and Inventories, a new *In Forma Pauperis* Petition and/or Rule 240 Attorney Praecept must be completed for the new filing.

Court Ordered Waiver of Filing Fee

CONTACT US



[<< Back](#) [Continue >>](#)

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Refresh this page

If you went back and made changes, it is important that you refresh this page.

Main Menu  
Orphans' Help  
  
Log Off

Court: OC  
Fee: \$ 0.00

\* Required Field.

User Accepts/Agrees to [Rules/Agreement](#)

CONTACT US



**SUMMARY**

|  |  |
|--|--|
| NAME OF ESTATE:<br><b>AIP FIRST NAME AIP LAST NAME, AN ALLEGED INC PER</b>   |  |
| TYPE OF ESTATE:<br><b>ALLEGED INCAPACITATED PERSONS</b>  |  |
| FILING PARTY'S RELATIONSHIP TO ESTATE:<br><b>PETITIONER/RELATIVE</b>   |  |
| PLEADING OR DOCUMENT FILED:<br><b>PET FOR APPT OF PLENARY ESTPER</b>   |  |
| NAME OF FILING PARTY<br>(NOT COUNSEL FOR THE PARTY):<br><b>PETITIONER FN PETITIONER LAST NAME</b>                        | ADDRESS:<br><b>PETITIONER ADDRESS<br/>XX</b>   |
| TO THE CLERK OF ORPHANS' COURT:<br><b>Kindly enter my appearance on behalf of<br/>PETITIONER FN PETITIONER LAST NAME</b> |  |
| OTHER PARTIES:<br><b>1. SEE TRAINING MATERIALS, INTERESTED PARTY ADDRESS, PHILADELPHIA PA 19104</b>                      |  |
| <b>Court Use Only Information</b>  |  |
| DATE OF BIRTH: <b>01/01/1997</b>   | IS NOTICE REQUIRED? <b>No</b>  |
| DATE OF DEATH: <b>none entered</b>   | IF CITATION IS REQUESTED:<br>WAS CITATION AGAINST RESPONDENT PREVIOUSLY<br>ISSUED? <b>No</b> |
| REGISTER OF WILLS NO.: <b>none entered</b>   | HAS ANOTHER PETITION BEEN DECIDED IN THIS CASE?<br><b>No</b>                                 |
| DATE OF DEED OF TRUST: <b>none entered</b>   | IS ANOTHER PETITION PENDING? <b>No</b>   |
| SSN / EIN: <b>123456878</b>  |  |
| <b>Documents</b>   |  |
| <a href="#">AIP Petition_IFP Letter.pdf</a> 79,111 bytes   |  |
| <a href="#">AIP Petition.pdf</a> 79,212 bytes  |  |
| <b>Payment Information</b>   |  |
| Counsel has filed a Praeclipe to Proceed In Forma Pauperis. Filing Fees are hereby waived.                               |  |

I have read the information supplied above and verify that subject to penalties relating to unsworn falsification to authorities, the above information is true and correct.

Check to acknowledge

**Step 18:** Look over the final confirmation page to ensure all details are accurate; check acknowledgement at bottom and click "submit".

## **EXHIBIT 10**

IN THE COURT OF COMMON PLEAS  
OF \_\_\_\_\_, PENNSYLVANIA  
ORPHANS' COURT DIVISION

File No. \_\_\_\_\_

ESTATE OF \_\_\_\_\_,  
AN ALLEGED INCAPACITATED PERSON

**AFFIDAVIT OF SERVICE**

STATE OF PENNSYLVANIA :  
: ss.  
COUNTY OF PHILADELPHIA :

I, \_\_\_\_\_, ESQUIRE, being duly sworn according to law, hereby depose and say as follows:

1. I am the attorney for Petitioners, \_\_\_\_\_, in the above-captioned matter.

2. As required by this Court's Preliminary Decree dated \_\_\_\_\_, I caused to be served (by personal service) the Citation with Notice, the Preliminary Decree, and the Petition upon \_\_\_\_\_, the alleged incapacitated person, on

\_\_\_\_\_. The contents and terms of the Citation with Notice and Petition were read and explained to the maximum extent possible in language and terms the alleged incapacitated person was most likely to understand in accordance with the provisions of 20 Pa. C.S.A. §5511(a).

3. On \_\_\_\_\_, I also provided notice of the hearing, together with a copy of the Petition and Preliminary Decree, by hand delivery to \_\_\_\_\_ and \_\_\_\_\_, who would be the persons entitled to share in

\_\_\_\_\_ estate if she died intestate at this time. A copy of the letter of notification dated \_\_\_\_\_ is attached as **Exhibit A.**

---

SWORN TO AND SUBSCRIBED:

BEFORE ME THIS                    DAY:  
OF                                   , 2019:

---

NOTARY PUBLIC

# **EXHIBIT A**

*Phone:* \_\_\_\_\_

*Fax:* \_\_\_\_\_

*Email:* \_\_\_\_\_

**HAND DELIVERY**

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Re: *Estate of* \_\_\_\_\_, *an Alleged Incapacitated Person*  
**County Orphans' Court No.**

To All Interested Parties:

Enclosed please find a copy of a Petition to Adjudge \_\_\_\_\_ to be  
Totally Incapacitated and to Appoint Guardians for Her Person and Estate, the original of which  
has been filed with the Court. Also enclosed is a copy of the Preliminary Decree entered by  
Judge \_\_\_\_\_ scheduling this Petition for hearing on \_\_\_\_\_, at  
\_\_\_\_\_, in Courtroom \_\_\_, \_\_\_\_\_ County Courthouse, \_\_\_\_\_.

Very truly yours,

\_\_\_\_\_  
Enclosures

cc:

## **EXHIBIT 11**

## SAMPLE HEARING OUTLINE

### CLIENT NAME

Introduce: \_\_\_\_\_, pro bono counsel to Petitioner \_\_\_\_\_, referral from \_\_\_\_\_

Petition to Appoint \_\_\_\_\_ Plenary Guardian of the Person and Estate of \_\_\_\_\_

Hand up – Certificate of Service of the Citation and, which was read to the AIP along with Petition and proposed decrees

Affidavit of Service of Petition showing service to all interested parties, including heirs at law

Deposition of regarding the AIP's medical condition and incapacity

### Deposition Testimony and CV (offer to summarize for Judge)

*Please note that the Judge may handle this himself after you put your witness on the stand. Amend this accordingly.*

### Medical Condition

Deposition dated \_\_\_\_\_ of XX, MD, who has treated the AIP since XX. Last visit on \_\_\_\_\_.

Qualifications: Education, Degree, Work History, How long?

Diagnoses: XX

### Conclusions:

XXX Quotes: [“Totally unable to manage his financial resources and cannot meet essential requirements for his physical health and safety.”]

[Dependent on the care and supervision of his mother, the Petitioner.]

[Care and supervision by Ms. \_\_\_\_ [“is the most appropriate and least restrictive environment for \_\_\_\_.”].

Testimony of Petitioner

Name, age, relationship to AIP ( \_\_\_\_\_ )

Address

Do you rent or own?

AIP lives with Petitioner in Philadelphia

No other person or company provides residential services?

Who else lives at the house? (husband, \_\_\_\_\_ . . .)

Do you Work? Where? What?

Primary Caretaker since birth

Help providing care:

AIP's income and assets: \$ 8,796, monthly Social Security benefits of \$ 733 per month

Did AIP serve in the armed forces? VA benefits?

[Other heirs (beyond AIP's ) ADULTS WHO WOULD INHERIT]

AIP signed any other papers appointing anyone to take care of him or make decisions for him?

Health care directives?

What you do to assist, given AIP's medical conditions, extent of capacity

XX.]

Medications

Eating

Bathing

Etc.

Buying clothing, Dressing

Others who help in his care? Company? Do you manage them?

Administrative

[Unable to keep properly medicated on his own.]

\_\_\_\_\_ needs assistance with personal care, dressing, meal preparation and medications, and needs to be constantly supervised to maintain his safety.

Needs help selecting clothing

Difficulty speaking, understanding; cannot go outside on his own

Totally unable to manage his financial affairs, property and business and to make and communicate responsible decisions

Other less restrictive ways of taking care of \_\_\_\_\_ instead of appointing guardianship?

No. He cannot take care of himself or make any decisions for himself.

Other people who could be better guardians? Would he be better off in an institution being cared for by other people?

[If father is absent;] Has he taken care of \_\_\_\_\_ at any time? Recently?  
Familiar \_\_\_\_\_ with his needs? [no support or care]

No better way, other than being at home under the care of his mother and his nursing staff, in the company of his sisters

Why did you file this Petition to become a Guardian? Be able to make decisions, doctors would not want to take instructions from me otherwise

Do you have any conflicting interests with the AIP?

RESPONSIBILITIES: Are you aware of requirements to file a report with the Court within 90 days after your appointment as Guardian? and to file annual reports within 12 months and every year after that?

Did you sign a consent to accept these duties? And that you are a US citizen who speaks, reads and writes English?

End of Petitioner Testimony

*Repeat this process if you have additional guardians, though you can ask Witness No. 2 whether she or he heard Witness No. 1's testimony and agrees with it (with regard to the facts in common).*

## Argument

Petition duly filed and appropriately served, read in person to AIP, and sent certified mail to all other interested parties including potential heirs at law.

AIP is a resident of Philadelphia.

[Petitioner's Testimony and Medical Doctor's Deposition: **AIP is incapacitated.** –

[A]n adult whose ability to receive and evaluate information effectively and communicate decisions in any way is impaired to such a significant extent that he is partially or totally unable to manage his financial resources or to meet essential requirements for his physical health and safety. **20 Pa. Cons. Stat. Ann. § 5501**

Based on Petitioner and Medical Expert testimony: **There are no less restrictive measures** available other than the appointment of the proposed Guardian. There is no better arrangement for the AIP other than being at home under the care of his mother and his nursing staff, in the company of his sisters.

**No other persons have been previously appointed** and no court has previously taken jurisdiction of this matter.

**Proposed Guardian is qualified to serve as guardian.**

\_\_\_\_\_ – mother, care-taker since birth, has the means to provide shelter and care, is knowledgeable of AIP's needs and experienced in working alongside the staff that assists him.

Any qualified individual, corporate fiduciary, non-profit corporation, or county agency may serve as guardian. **20 Pa. Cons. Stat. Ann. § 5511(f).**

**AIP has no assets, his sole income consists of disability payments**  
**and Proposed Guardian has no interest adverse to the AIP.**

**Request appointment of \_\_\_\_\_ as plenary guardian of \_\_\_\_\_'s–**

**estate** (specifically, but not limited to: all issues relating to cash, checks, bank savings, stocks, bonds, personal property, real property, insurance policies, government entitlements, taxes, execution of documents, entry in contracts and the payment of reasonable compensation for services provided to the person) and

**person** (specifically, living arrangements, medical and psychiatric care, administration of medication, employment and discharge of physicians, and other medical decisions as may be required)

## **EXHIBIT 12**

Phone: (215) 569-5711  
Fax: (215) 832-5711  
Email: [Ochroch@BlankRome.com](mailto:Ochroch@BlankRome.com)

[DATE]

**VIA HAND DELIVERY**

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Re: Guardianship of

Dear \_\_\_\_\_:

I am enclosing a copy of the Final Decree appointing you as Guardian of \_\_\_\_\_'s person and estate.

Please read the Decree to \_\_\_\_\_ and complete and return to me the enclosed Affidavit of Service. Also, please complete the Notification of Mental Health Commitment form and return to me.

Please note that this Decree states that you are "directed to file a report on the social, medical, and other relevant conditions at least once within the first twelve months of [your] appointment and at least annually thereafter as required by 20 Pa.C.S.A. § 5521(c)(1)(i) and (ii)." Also, within "ninety (90) days of the date of this Final Decree, [you] also shall file an inventory in accordance with the provisions of 20 Pa.C.S.A. § 5521(b) and § 5524." Finally, after \_\_\_\_\_'s death, you must file a "Final Report" with the Court pursuant to § 5521(c)(2).

To help you to understand your duties as Guardian, I have enclosed a document called "Duties of the Guardian of an Incapacitated Person." Please read this document carefully; it has been prepared by the Court as a "How To" guide for Guardians and should be helpful.

Additionally, I have enclosed the following forms for you: (1) the Guardian's Inventory; (2) the Annual Report of the Guardian of the Estate; and (3) the Annual Report of the Guardian

---

[DATE]

Page 2

of the Person. Please note that you must complete and file with the Court the Guardian's Inventory within ninety (90) days of the date of the Final Decree. In addition, you must complete and file the two Annual Reports of the Guardian of the Estate and Person within twelve (12) months of the date of the Final Decree, and at least annually thereafter. Because you must pay a fee to file these forms with the Court, I have also enclosed the Court's Fee Schedule.

As we discussed, you are responsible for completing and filing these forms. However, if you have any questions or need any assistance in completing the forms, please do not hesitate to contact me.

Now that you have been appointed as the Guardian of \_\_\_\_\_'s person and estate, this will bring our representation of you to a close. Do feel free to contact me if you need further assistance with the Guardianship paperwork and duties.

It has been a pleasure working with you.

Very truly yours,

KATHY E. OCHROCH

KEO:lft  
Enclosures

INSERT ATTORNEY HEADER

[DATE]

[CLIENT]  
[ADDRESS]

Re: Guardianship of [AIP's full name]

Dear \_\_\_\_\_:

I am enclosing for your records a copy of the Final Decree appointing you as Co-Guardians of [AIP's first name]'s person and estate.

You have previously read the Decree with Statement of Rights to [AIP's first name] and on that basis, I have filed the enclosed Affidavit of Service.

Please note that the Decree states that you must file a report for [AIP's first name] on his social, medical, and other relevant conditions at least once within the first twelve months of your appointment and at least annually thereafter. Also, within ninety (90) days after the date of the Final Decree, you must file an inventory. Finally, within 60 days after [AIP's first name]'s death, you must file a "Final Report" with the Court.

The Decree also provides some limitations on your powers and also contain provisions that would apply in case [AIP's first name] later lives in a nursing facility and receives Medical Assistance.

To help you to understand your duties as Co-Guardians, I have enclosed a document called "Incapacitated Persons – A Guardian's Manual." Please read this document carefully, it has been prepared by the Court as a "How To" guide for guardians and should be helpful.

The Manual also includes an example of the Guardian's Inventory; the Annual Report of the Guardian of the Estate; and the Annual Report of the Guardian of the Person. Please note that you must complete and file with the Court the Guardian's Inventory within ninety (90) days of the date of the Final Decree. In addition, you must complete and file the two Annual Reports, one as Co-Guardians of the Estate and one as Co-Guardians of the Person within twelve (12) months of the date of the Final Decree, and at least annually thereafter. Because you must pay a fee to file these forms with the Court, I have also enclosed the Court's Fee Schedule, currently \$20 for the Inventory and \$30 for Reports. When you go to City Hall to submit the filings, you may also request a waiver of these fees.

As we discussed, you are responsible for completing and filing these forms for [AIP's first name]. However, if you have any questions or need any assistance in completing the forms, please do not hesitate to contact Esther Miller at the Legal Clinic for the Disabled.

Now that you have been appointed as the Co-Guardians for [AIP's first name] person and estate, this will bring our representation of you to a close. That means that we are no longer your lawyers for this matter. I therefore also enclose our Withdrawal of Appearance, filed to make sure that the Court sends you any future notices directly. As mentioned above, if you have questions in the future about the reports or other issues, please feel free to contact the Legal Clinic for the Disabled.

It has been a pleasure working with you.

Sincerely,

[AUTHOR]

cc: **Esther Miller, Esq. (w/encls.)**  
Other participants

Enclosures: Final Decree with Statement of Rights  
Affidavit of Service of Decree  
Incapacitated Persons – A Guardian's Manual  
Court Fee Schedule  
Withdrawal of Appearance

## **EXHIBIT 13**

**First Judicial District of Pennsylvania**  
**Court of Common Pleas of Philadelphia County**  
**Orphans' Court Division**



**MANUAL FOR GUARDIANS OF  
INCAPACITATED PERSONS**

**Orphans' Court Division**

**Administrative Judge Matthew D. Carrafiello**

**Senior Judge John W. Herron**

**Judge George W. Overton**

**Revised November 2018**

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## FORWARD

Those who need to use this manual have undertaken a task which, except for the desire to seek to serve the best interest of someone not able to fully do the same for themselves, have no reward but instead great responsibility. In becoming a guardian, you have assumed the highest degree of care that the law exacts. Hopefully, this manual will provide information on the most common situations you shall encounter, but it does not replace the need for legal advice on complex questions. Contained herein are some possible resources for seeking that advice, but it is your responsibility to get the advice you need to comply with your duties.

We acknowledge the accomplishment of the Honorable Joseph D. O'Keefe, retired Administrative Judge of the Orphans' Court Division, in creating the first Guardian's Manual in 2009. Since that time, the number of guardianships in Philadelphia has grown exponentially, guardianship rules and forms have changed and a statewide guardianship tracking system has been instituted. This has made a new manual necessary.

Thanks must be given to Philadelphia Orphans' Court Judges, the Honorable John W. Herron and the Honorable George W. Overton, and their staff, for their commitment to sound and just guardianship practice.

Thanks is given to those of my chambers, including Patricia Friel, Maryanne Huha Finigan, Jordan Shapiro and Sarah Levin, who worked tirelessly on this project, not only re-creating the manual, but on so much of the new substance and content. In particular, special thanks to Maryanne Huha Finigan, who with Harold Palmer, Dominic J. Rossi, Caren Berger, Diane Patete, Donato Angelotti and Roy Caraan, were instrumental in the implementation of the Guardian Tracking System in Philadelphia County, and who, with members of the Rules and Practice Committee of the Probate and Trust Section of the Philadelphia Bar Association, are revising the Guardianship Rules for Philadelphia.

And thanks to those guardians who undertake a near impossible, thankless task for all the right reasons!

Honorable Matthew D. Carrafiello  
Administrative Judge, Orphans' Court Division  
First Judicial District of Pennsylvania  
November 2018

## **MANUAL FOR GUARDIANS OF INCAPACITATED PERSONS INTRODUCTION**

The goal of this Guardian's Manual is to assist the Guardian of the Person, the Estate, or both of an Incapacitated Person to exercise the basic duties required by your appointment. **You are a FIDUCIARY, appointed to act in and for the sole best interests of the incapacitated person.**

This Guardian's Manual is to be used as an aid but is not intended as a replacement of legal advice. As a fiduciary, the Guardian is obliged to know the law from which his or her authority is derived and controlled.

Guardians may not ask Court personnel or employees of the Clerk of the Orphans' Court for legal advice on specific legal issues as they are neither permitted nor qualified to do so. A list of agencies and sources for legal services is included at the end of this manual.

All proposed guardians must obtain and submit a Pennsylvania State Police Criminal History Report as well as a Criminal History Report from any other state in which the guardian has resided within the past five years. Additionally, you must inform the Court and disclose any charges or convictions of any crime in the reports you file annually.

As a Guardian, you have signed a Consent of Guardian by which you have agreed to abide by all the requirements listed therein.

This manual describes, in basic terms, the primary duties of the Guardian depending on the nature of the Guardian's appointment, and identifies the required forms which must be filed.

A guardianship may be for the person or for the estate of the incapacitated person. Further, the powers granted may be plenary or limited to certain activities. The law favors guardianships to be limited only to those areas that are absolutely necessary.

At any time, the Orphans' Court may review the guardianship on its own motion, or pursuant to a duly filed Petition which may request determination of whether the guardianship requires modification of the Court's Order and relief may include removal/appointment of guardians, an adjudication of partial or full capacity, or any other appropriate relief.

# **DUTIES OF A GUARDIAN OF THE ESTATE OF AN INCAPACITATED PERSON**

The Guardian of the Estate must manage the income, investments, real estate, and any other property owned by an Incapacitated Person. The Guardian of the Estate is authorized to spend income only, which includes monthly social security and pension payments, for the benefit of the incapacitated person. The Guardian of the Estate cannot sell real estate or use any of the principal for any purpose unless the Guardian files a Petition and obtains Court approval before doing so. Principal includes real estate and any funds or assets that belonged to the incapacitated person on the date that the Guardian of the Estate was appointed, including bank accounts, CD's, annuities, and other investments.

*As Guardian of the Estate of an Incapacitated Person your duties include:*

## **1. REVIEW FINAL DECREE APPOINTING YOU GUARDIAN OF THE ESTATE**

You must review the Final Decree (Court Order) which appoints you Guardian of the Estate of the Incapacitated Person. The Final Decree describes the extent of your authority: you may either be authorized to exercise certain limited powers or may be appointed Plenary Guardian of the Estate. If your appointment is subject to limitations, you cannot exceed those limitations. Sample Final Decrees are attached to this manual.

## **2. POSTING OF SECURITY (BOND)**

If you have been directed to post bond in the Final Decree appointing you as Guardian of the Estate of the Incapacitated Person, the bond may be purchased from any approved corporate surety (such as Fidelity and Deposit Company of Maryland, contact Willard MacDonnell Agency, [bonds@wmacdonnell.com](mailto:bonds@wmacdonnell.com), 100 S. Broad St., Philadelphia, PA. Phone: 215-563-1232) and must be filed with the Clerk of Orphans' Court before the Clerk will issue a Guardian's Certificate to you which is required before you may exercise any of your powers and duties as a Guardian. The cost of the Bond may be paid from the assets of the Incapacitated Person's Estate.

## **3. INQUIRY AND DISCOVERY OF ASSETS AND DEBTS**

You must make reasonable inquiry into the existence and whereabouts of all assets of the Incapacitated Person including the determination of the fair market value of those assets on the date of your appointment. This duty may require you to obtain appraisals of real estate and any personal property owned by the Incapacitated Person, including any antiques or jewelry. You are also obligated to obtain statements from banks/investment firms as to the value of those accounts. You must investigate and determine the existence of all debts, liabilities, and expenses of the Incapacitated Person.

#### **4. SAFEGUARDING AND MANAGEMENT OF ASSETS**

Once all assets have been discovered and their values determined, you are under a duty to provide reasonable safeguarding of those assets to protect them from being dissipated, lost, stolen, or destroyed. Your duties include investing and managing the assets as a prudent person would so those assets appreciate in value and produce income for the benefit of the Incapacitated Person.

#### **5. PAYMENT OF DEBTS, OBLIGATIONS AND EXPENSES**

You are authorized to use income received by the Incapacitated Person during the year to pay the reasonable debts, obligations, and expenses of the Incapacitated Person. This may include costs for support, caretaking, education, and medical expenses of the Incapacitated Person.

- You should establish a budget for the Incapacitated Person. If it appears that income alone will not meet the Incapacitated Person's needs, you must file a Petition requesting those necessary expenditures be paid from principal. Principal of the Incapacitated Person's Estate may not be used for any purpose unless you first file a Petition and obtain prior Court approval.

#### **6. INVENTORY**

You must prepare and file a document known as a Guardian's Inventory for an Incapacitated Person (Form G-05) with the Guardianship Tracking System (GTS) on the Unified Judicial System of Pennsylvania Web Portal: <https://ujsportal.pacourts.us/> within ninety (90) days of the date of the Decree appointing you as Guardian of the Estate.

The required Guardian's Inventory form for an Incapacitated Person (Form G-05) is included in this packet, and an electronic version of the form is available on the Unified Judicial System of Pennsylvania website at: <http://www.pacourts.us/forms/for-the-public/orphans-court-forms>.

Only a Guardian of the Estate need file an Inventory. The Inventory should contain, so far as you have been able to discover using reasonable efforts, a list of all real estate, personal property, bank accounts, securities, and any other assets belonging to the Incapacitated Person with values stated as of the date of your appointment. The Guardian's Inventory should also include all debts, liabilities, and expenses of the Incapacitated Person. The assets which appear on the Guardian's Inventory constitute the principal of the Incapacitated Person's Estate.

You are also required to search for and obtain legal documents pertaining to the Incapacitated Person including any will, trust, DNR (Do Not Resuscitate) order, health care power of attorney, or other healthcare directives such as a POLST (Physician Order for Life-Sustaining Treatment), living will, or mental health power of attorney.

Additionally, the Inventory requires that you provide information concerning the Incapacitated Person's personal care plan which includes where the Incapacitated Person is currently residing, whether the Incapacitated Person can remain where they are currently residing, and whether the Incapacitated Person will be moved into a supervised residential setting.

If you fail to timely file the Inventory, you will receive a notice. If you continue to fail to file the Inventory, you will receive a Decree from the Judge who appointed you as Guardian of the Estate. The Judge may order you to come into Court for a hearing to explain why you failed to file. Your duties as a guardian may be suspended, you may be fined, receive other sanctions, or you may be removed as the Guardian of the Estate.

## **7. ANNUAL REPORT**

In addition to the Inventory, a Guardian of the Estate is required to file an annual Report of Guardian of the Estate (Form G-02) on or before the first twelve (12) month anniversary of your appointment as Guardian. The annual report should describe in detail the current principal of the Incapacitated Person's Estate and how it is invested, all the income the Incapacitated Person received, and the expenditures made since the date of your last report. You must follow your first annual report with succeeding annual reports on the twelve (12) month anniversary of your appointment for each year thereafter that you continue to act as Guardian of the Estate of the Incapacitated Person.

If you fail to timely file the annual report, you will receive a notice. If you continue to fail to file the annual report, you will receive a Decree from the Judge who appointed you as Guardian of the Estate. The Judge may order you to come into Court for a hearing to explain why you failed to file. Your duties as a guardian may be suspended, you may be fined, receive other sanctions, or you may be removed as the Guardian of the Estate.

The required annual Report of Guardian of the Estate form (Form G-02) is provided in this packet, and an electronic version of the form is available on the Unified Judicial System of Pennsylvania website at: <http://www.pacourts.us/forms/for-the-public/orphans-court-forms>. The annual Report of Guardian of the Estate must be filed through the statewide Guardian Tracking System (GTS) which is available on the Unified Judicial System of Pennsylvania Web Portal at: <https://ujsportal.pacourts.us/>.

## **8. FINAL REPORT**

Within sixty (60) days of the death of the Incapacitated Person, you are required to file through GTS a final Report of Guardian of the Estate (Form G-02) indicating the date the Incapacitated Person died.

If the Incapacitated Person regains capacity and you are relieved of your duties as Guardian of the Estate upon Order of Court, you must file a final Report of Guardian of the Estate (Form G-02) through GTS.

If you have been removed as a Guardian of the Estate for any reason, you must file a final Report of Guardian of the Estate (Form G-02) through GTS.

## **9. FIDUCIARY DUTY GENERALLY**

As Guardian of the Estate of an Incapacitated Person, you are a fiduciary. You are like a "bank". You have consented to obey all the laws and rules governing guardians. The law governing guardians in Pennsylvania is found at 20 Pa.C.S. §5501 et seq, in addition to Pennsylvania and Philadelphia Orphans' Court Rules.

You are obligated to exercise prudent judgment in the management of the Estate of the Incapacitated Person for his/her benefit only, and to avoid conflicts of interest or decisions which may benefit yourself. You may not invest the Incapacitated Person's assets in businesses or corporations owned or controlled by you nor may you loan the Incapacitated Person's funds to yourself for such enterprises unless you have filed a petition and a Decree is issued specifically authorizing you to do so beforehand.

## **10. SUCCESSOR GUARDIAN**

If you are appointed as a Successor Guardian of the Estate, your duties are the same as the initial Guardian. You are required to file a Guardian's Inventory (Form G-05) through the GTS system within ninety (90) days of your appointment and an annual Report (Form G-02) through the GTS system within one year of your appointment, and annually every year after that.

## **11. CO-GUARDIAN**

If you are appointed as a Co-Guardian of the Estate, you must act together with your Co-Guardian in performing all the duties of a Guardian of the Estate. You and the Co-Guardian are required to file a Guardian's Inventory (Form G-05) through the GTS system within ninety (90) days of your appointment. You and the Co-Guardian must file an annual Report (Form G-02) through the GTS system within one year of your appointment and annually every year after that.

## **THE INFORMATION ABOVE IS A PARTIAL LIST ONLY**

This list of duties and responsibilities described is partial and is by no means complete. If you are the individual Guardian of an Incapacitated Person's Estate and there is no institutional or corporate Co-Guardian, it is highly recommended that you consult with a qualified attorney concerning additional duties and responsibilities which cannot, for reasons of space, be set forth here.

## **DUTIES OF A GUARDIAN OF THE PERSON**

### **OF AN INCAPACITATED PERSON**

The Guardian of the Person must make decisions to protect the health, safety, and welfare of the Incapacitated Person. The Guardian of the Person is not responsible for managing the Incapacitated Person's finances and unless you are also appointed as Guardian of the Estate, you have not been given control over the income, property, or finances of the Incapacitated Person.

*As Guardian of the Person of an Incapacitated Person your duties include:*

#### **1. REVIEW FINAL DECREE APPOINTING YOU GUARDIAN OF THE PERSON**

You must review the Final Decree (Court Order) which appoints you Guardian of the Person of the Incapacitated Person. The Final Decree describes the extent of your authority: you may either be authorized to exercise certain limited powers or may be appointed Plenary Guardian of the Person. If your appointment is subject to limitations, you cannot exceed those limitations. Sample Final Decrees are attached to this manual. You must obtain a Guardian's Certificate from the Clerk of Orphans' Court before you exercise any of your duties.

#### **2. GENERAL DUTIES AND POWERS OF A GUARDIAN OF THE PERSON**

A Guardian of the Person has the general responsibility for the care, maintenance and custody of the Incapacitated Person. Your attention to these duties may be limited by the terms of the Court's Decree and careful attention should be observed to ensure you do not exceed your authority in exercising these duties. As either a limited or plenary Guardian of the Person, you have a responsibility to act in the best interests of the Incapacitated Person at all times even in situations that may conflict with your personal beliefs or interests.

A Plenary Guardian of the Person is empowered to select a place in which the Incapacitated Person will reside and is authorized to give consents or approvals for various medical, surgical, psychological, or other treatment alternatives which may become available for the Incapacitated Person. You may not change the residence of the Incapacitated Person to outside the Commonwealth of Pennsylvania without prior permission of the Court.

You must be aware that no guardian has the authority or power to admit the Incapacitated Person to an inpatient psychiatric facility or State Center for the mentally retarded, nor to consent to the relinquishment of the rights of the Incapacitated Person as a Parent, without prior permission of the Court.

### **3. SUPPORTIVE SERVICES PLAN**

You should assist in the development of a plan for supportive services for the Incapacitated Person's care depending upon his/her individual needs and circumstances. This may include making arrangements for a personal care plan to provide for the Incapacitated Person's residence and/or to assist with activities of daily living such as bathing, dressing, cooking, eating, and taking medications. The personal care plan may also include arrangements to assist the Incapacitated Person with traveling, shopping, and doctor's appointments. Services may not be necessary in every case but should be examined upon the commencement of your duties.

### **4. RESPONSIBILITY FOR TRAINING, EDUCATION, MEDICAL AND PSYCHOLOGICAL SERVICES OF THE INCAPACITATED PERSON**

A Plenary Guardian of the Person is authorized to assist the Incapacitated Person in the development of maximum self-reliance and independence. You should refer to the Court Decree appointing you to see if the Court has given you specific responsibilities pertaining to training, education, medical/psychological services, or for the social and vocational opportunities to be offered to the Incapacitated Person. As always, your guiding principle is to act in the best interest of the Incapacitated Person.

### **5. ANNUAL REPORT**

In addition to the duties set forth above, you are required to file an annual Report of Guardian of the Person (Form G-03) on or before the first twelve (12) month anniversary of your appointment and annually thereafter.

The required annual Report of Guardian of the Person form (Form G-03) is provided in this packet, and an electronic version of the form is available on the Unified Judicial System of Pennsylvania website at: <http://www.pacourts.us/forms/for-the-public/orphans-court-forms>. The annual Report of Guardian of the Person must be filed through the statewide Guardian Tracking System (GTS) which is available on the Unified Judicial System of Pennsylvania Web Portal at: <https://ujsportal.pacourts.us/>.

If you fail to timely file the annual Report, you will receive a notice. If you continue to fail to file the annual report, you will receive a Decree from the Judge who appointed you as Guardian of the Person. The Judge may order you to come into Court for a hearing to explain why you failed to file. Your duties as a guardian may be suspended, you may be fined, receive other sanctions, or you may be removed as the Guardian of the Person.

### **6. FINAL REPORT**

Within sixty (60) days after the death of the Incapacitated Person, you are required to file a final Report of Guardian of the Person (Form G-03) through the statewide Guardian Tracking System (GTS) which is available on the Unified Judicial System of Pennsylvania Web Portal at: <https://ujsportal.pacourts.us/>.

If the Incapacitated Person regains capacity and you are relieved of your duties as Guardian of the Person upon Order of Court, you must file a final Report of Guardian of the Person (Form G-03) through GTS.

If you have been removed as a Guardian of the Person for any reason, you must file a final Report of Guardian of the Person (Form G-03) through GTS.

## **7. POWERS WHICH MAY ONLY BE GRANTED BY THE COURT**

Unless specifically included within your guardianship Decree, you shall not have the power to:

- (A) Consent, on behalf of the Incapacitated Person, to abortion, sterilization, psychosurgery, electroconvulsive therapy, or the removal of a healthy body organ.
- (B) Prohibit the marriage or consent to the divorce of the Incapacitated Person.
- (C) Consent, on behalf of the Incapacitated Person, to the performance of any experimental biomedical or behavioral medical procedure, or participation in any biomedical or behavioral experiment.

## **8. FIDUCIARY DUTY GENERALLY**

As Guardian of the Person of an Incapacitated Person, you are a fiduciary. You have consented to obey all the laws and rules governing guardians. The law governing guardians in Pennsylvania is found at 20 Pa.C.S. §5501 et seq, in addition to Pennsylvania and Philadelphia Orphans' Court Rules. You are obligated to exercise prudent judgment in the care of the Incapacitated Person for his/her benefit only, and to avoid conflicts of interest or decisions which may benefit yourself.

## **9. SUCCESSOR GUARDIAN**

If you are appointed as a Successor Guardian of the Person, your duties are the same as the initial guardian. You are required to file an annual Report (Form G-03) within one year of your appointment and annually every year after that.

## **10. CO-GUARDIAN**

If you are appointed as a Co-Guardian of the Person, you must act together with your Co-Guardian in performing all the duties of a Guardian of the Person. You and the Co-Guardian are each required to file an annual Report (Form G-03) within one year of your appointment and annually every year after that.

## **THE INFORMATION ABOVE IS A PARTIAL LIST ONLY**

This list of duties and responsibilities above is partial and is by no means complete. If you are the individual Guardian of the Person and there is no institutional or corporate Co-Guardian, it is highly recommended that you consult with a qualified attorney concerning additional duties and responsibilities which cannot, for reasons of space, be set forth here.

## **DUTIES OF THE EMERGENCY GUARDIAN OF THE PERSON OF AN INCAPACITATED PERSON**

### **REVIEW FINAL DECREE APPOINTING YOU**

You must review the Decree (Court Order) which appoints you as Emergency Guardian of the Person. A Decree appointing an Emergency Guardian of the Person is ordinarily entered due to an immediate medical condition of the alleged incapacitated person and the inability to secure informed consent from the alleged incapacitated person or a member of his/her family. The Decree describes in detail the extent of your authority as Emergency Guardian of the Person as well as the duration of the appointment (usually 72 hours or other limited time-period). The emergency guardianship may be extended for an additional twenty (20) days by filing a petition with the Court if the emergency continues.

A Petition for Appointment of Plenary Guardian of the Person should be filed if the individual continues to need guardianship.

## **DUTIES OF THE EMERGENCY GUARDIAN OF THE ESTATE OF AN INCAPACITATED PERSON**

### **REVIEW FINAL DECREE APPOINTING YOU**

You must review the Decree (Court Order) which appoints you as Emergency Guardian of the Estate. A Decree appointing an Emergency Guardian of the Estate is ordinarily entered due to an immediate financial issue of the alleged incapacitated person and the inability to prevent the loss of the alleged incapacitated person's assets. The Decree describes in detail the extent of your authority as Emergency Guardian of the Estate as well as the duration of the appointment which is up to thirty (30) days.

A Petition for Appointment of Plenary Guardian of the Estate should be filed if the individual continues to need guardianship past thirty days.

## **ENACTMENT OF THE GUARDIANSHIP TRACKING SYSTEM (GTS)**

The Administrative Office of Pennsylvania Courts (AOPC) has implemented a statewide Guardianship Tracking System (GTS) requiring a Guardian of the Person and/or Estate of an Incapacitated Person to file Inventories, annual Reports, and final Reports, as required by court rules.

Effective August 27, 2018 for Philadelphia County, the Guardian Inventory for an Incapacitated Person and all Reports must be filed electronically through the statewide GTS system which is available on the Unified Judicial System of Pennsylvania Web Portal at: <https://ujsportal.pacourts.us/>

**Please note however that GTS cannot accept any Reports that were due on or before August 26, 2018. Those reports must be filed through the Orphans' Court Electronic Filing System at: <https://fjdefile.phila.gov/>**

When you access GTS through the web portal for the first time, you will be required to establish a profile and will receive a unique password from the Clerk of the Orphans' Court before you can file any forms. You must contact the Clerk of Orphans' Court at 215-686-2230 if you do not receive a password.

Establishing your GTS profile requires that you have an email address. If you do not have an email address, you can sign up to attain one for free with any email service provider including Yahoo.com, Gmail.com, Hotmail.com, Aol.com, Msn.com, or any other service provider that you prefer by going to their website and clicking "sign up" or "create an account."

An overview of the UJS portal screens can be found at:

[www.courts.phila.gov/pdf/notices/2018/Overview of GTS UJS Portal Screens for Guardians-fo FJD Website.pdf](http://www.courts.phila.gov/pdf/notices/2018/Overview%20of%20GTS%20UJS%20Portal%20Screens%20for%20Guardians%20-%20FJD%20Website.pdf)

An overview of the GTS System with step-by-step guides can be found at:

<http://help.pacourts.us/gts/>

You must pay the required filing fees: \$20 for Inventories and \$30 for each annual Report of the Guardian of the Person/annual Report of the Guardian of the Estate/final Report of Guardian of the Person/final report of Guardian of the Estate. There is a \$2.75 convenience fee charged for each filing. The filing fees must be paid unless the Guardian first files a Petition to Proceed *In Forma Pauperis* through the First Judicial District E-filing system at: <https://fjdefile.phila.gov/> and receives Court approval.

# **IMPLEMENTATION OF NEW RULES AND OBLIGATIONS**

On June 1, 2018, the Pennsylvania Supreme Court entered Order No. 770 which implemented new guardianship forms and revisions to the Pennsylvania Orphans' Court Rules.

All Guardians of Incapacitated Persons must use the new inventory and reporting forms as of **July 1, 2018**. These new forms are attached in the section that follows and can be found online at: <http://www.pacourts.us/forms/for-the-public/orphans-court-forms>.

Guardians of Incapacitated Persons must file these forms through the statewide Guardian Tracking System (GTS) on the Unified Judicial System of Pennsylvania Web Portal at: <https://ujsportal.pacourts.us>.

The changes to Pennsylvania Orphans' Court Rules 1.5, 5.10 through 5.12, and 14.1 through 14.5 are effective **June 1, 2019**. Changes to local Philadelphia guardianship rules under Chapter 14 are effective **June 1, 2019**.

|  |                            |
|--|----------------------------|
| <b>IN THE SUPREME COURT OF PENNSYLVANIA</b>  |                            |
| IN RE:   | : NO. 770                  |
| ORDER RESCINDING AND REPLACING :   | SUPREME COURT RULES DOCKET |
| RULES 14.1 THROUGH 14.5 AND :  |                            |
| FORMS G-01 THROUGH G-04, AND :   |                            |
| AMENDING RULES 1.5, 5.10 THROUGH :   |                            |
| 5.12, AND INDEX TO APPENDIX OF THE :   |                            |
| PENNSYLVANIA ORPHANS' COURT :  |                            |
| RULES :  |                            |
| <b>ORDER</b>   |                            |
| <b>PER CURIAM</b>  |                            |
| <b>AND NOW</b> , this 1 <sup>st</sup> day of June, 2018, upon the recommendation of the Orphans' Court Procedural Rules Committee; the proposal having been published for public comments at 47 Pa.B. 4815 (August 19, 2017) and 47 Pa.B. 5930 (September 23, 2017): |                            |
| It is Ordered pursuant to Article V, Section 10 of the Constitution of Pennsylvania that:  |                            |
| 1) Rules 14.1 through 14.5 and Orphans' Court Forms G-01 through G-04 of the Pennsylvania Orphans' Court Rules are rescinded and replaced; and   |                            |
| 2) Rules 1.5, 5.10 through 5.12, and the Index to Appendix of the Pennsylvania Orphans' Court Rules are amended;   |                            |
| in the attached form. This Order shall be processed in accordance with Pa.R.J.A. No. 103(b). Forms G-02 through G-05 shall be effective July 1, 2018 for all new report filings as of that date. The remainder of this Order shall be effective June 1, 2019.        |                            |

## **Consent of Guardian Form and**

## **Address Confirmation Form**

By becoming a Guardian, you voluntarily assumed certain fiduciary duties. As the Court appointed Guardian, you should have already completed and signed the Consent of Guardian Form and Address Confirmation Form; samples of each form are provided in the next section.

The Consent of Guardian Form is a required affirmation that you know your legal responsibilities as a fiduciary and that you will faithfully perform those responsibilities. It is your duty to learn and understand the requirements to act as a Guardian.

The Address Confirmation Form is required so the Court may contact you if and when necessary. It is the Guardian's duty to immediately update the Court upon any changes in contact information.

**COURT OF COMMON PLEAS OF PHILADELPHIA  
ORPHANS' COURT DIVISION**

Estate of \_\_\_\_\_

O.C. # \_\_\_\_\_ Control # \_\_\_\_\_

**CONSENT OF GUARDIAN**

I, \_\_\_\_\_ accept and confirm my appointment as Guardian of the Person / Estate (circle all that apply) of \_\_\_\_\_ ("Ward").

I am a citizen of the United States and can speak, read, and write the English language.

I understand that as Guardian:

1. I must always act in the best interests of my Ward;
2. I have a fiduciary responsibility to my Ward;
3. I must act with reasonable prudence in all matters relating to the Estate;
4. I must not engage in self-dealing;
5. I am forbidden from expending principal of the Estate without prior Court authorization;
6. I am forbidden from selling any real property owned by my Ward without prior Court authorization;
7. I must file a Guardian's Inventory within ninety (90) days of my appointment as Guardian of the Estate;
8. I must file an annual report as Guardian of the Person and an annual report as Guardian of the Estate every year thereafter on the anniversary date of my appointment as Guardian;
9. I understand that as a Guardian I am obligated to know the requirements of the Guardian Tracking System (GTS) and agree to follow them, including making filings by means of online submission; and
10. My failure to abide by the above will result in my removal as Guardian, and may result in my being found in contempt of Court, surcharged for any losses to the Estate, fined, and/or otherwise sanctioned.

Further, subject to penalty of law under 18 Pa.C.S. § 4904, relating to unsworn falsification to authorities, I affirm that I have not been convicted of or pleaded guilty or no contest to any crime involving fraud, deceit, and/or financial misconduct.

---

Name of Guardian

---

Signature

---

Date

**COURT OF COMMON PLEAS OF PHILADELPHIA  
ORPHANS' COURT DIVISION**

Estate of \_\_\_\_\_

O.C. # \_\_\_\_\_ Control # \_\_\_\_\_

**GUARDIAN ADDRESS CONFIRMATION FORM**

I am the (check one):

Guardian/Co-Guardian of Person and Estate  
 Guardian/Co-Guardian of the Estate  
 Guardian/Co-Guardian of Person

As the Guardian named in the above case, I affirm that my name, address, phone number, and email address should be recorded as follows:

Name (Please Print): \_\_\_\_\_

Address: \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_ Zip Code: \_\_\_\_\_

Home Phone # \_\_\_\_\_ Mobile Phone # \_\_\_\_\_

E-Mail: \_\_\_\_\_

Preferred contact method: (Phone, Mail or Email) \_\_\_\_\_

I understand that it is my responsibility to update the Court of my current contact information if any of it should change or become inaccurate, and I agree to do so immediately.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

COURT OF COMMON PLEAS  
\_\_\_\_\_ COUNTY, PENNSYLVANIA  
ORPHANS' COURT DIVISION

## **GUARDIAN'S INVENTORY FOR AN INCAPACITATED PERSON**

Estate of: \_\_\_\_\_, an Incapacitated Person  
*Name of Incapacitated Person*

Case File No: \_\_\_\_\_

DATE COURT APPOINTED YOU AS GUARDIAN:

## PART I: INTRODUCTION

Inventory type:

Initial

Amended

## PART II: ASSETS (PRINCIPAL)

1. List all bank accounts, real estate, burial accounts, and other personal property below. If the property is owned by both the incapacitated person and others, indicate in the last column the name of the co-owner.

2. Is any property (specifically bank accounts or real estate) co-owned by the Incapacitated Person and the guardian?

Yes

No

If yes:

a. On what date was the property acquired? \_\_\_\_\_

b. On what date was the guardian's name added? \_\_\_\_\_

c. The guardian is:

an individual having access or control over the account

an owner of the account

3. Does the Incapacitated Person have a homeowners insurance policy for real property?

Yes (Copy of policy to be provided upon request)

No

If yes:

a. Carrier: \_\_\_\_\_

b. Coverage period: \_\_\_\_\_

4. Does the Incapacitated Person have an automobile insurance policy?

Yes (Copy of policy to be provided upon request)

No

If yes:

a. Carrier: \_\_\_\_\_

b. Coverage period: \_\_\_\_\_

5. Does the Incapacitated Person have a safe deposit box?

No

Yes, in sole name

Yes, in joint name(s). List the name(s) of joint owner(s): \_\_\_\_\_

If yes:

a. Location of safe deposit box: \_\_\_\_\_

b. Are there plans to inventory the contents?

Yes

No

**PART III: ANNUAL INCOME**

1. List all sources of income for the Incapacitated Person:

| Does the Incapacitated Person receive any of the following as income? | Specify Amount   |
|---|--|
| Alimony or Support  | <input type="checkbox"/> Yes <input type="checkbox"/> No |
| Annuity Payments  | <input type="checkbox"/> Yes <input type="checkbox"/> No |
| Dividends   | <input type="checkbox"/> Yes <input type="checkbox"/> No |
| Interest Income   | <input type="checkbox"/> Yes <input type="checkbox"/> No |
| IRA Distributions   | <input type="checkbox"/> Yes <input type="checkbox"/> No |
| Long Term Care Insurance Benefits                                     | <input type="checkbox"/> Yes <input type="checkbox"/> No |
| Pension/Retirement Benefits (for example: 401(k), 403(b), etc.)       | <input type="checkbox"/> Yes <input type="checkbox"/> No |
| Public Assistance   | <input type="checkbox"/> Yes <input type="checkbox"/> No |
| Rental Property Income  | <input type="checkbox"/> Yes <input type="checkbox"/> No |
| Royalties (including from mineral and land rights)                    | <input type="checkbox"/> Yes <input type="checkbox"/> No |
| Social Security Benefits (Retirement, Disability, SSI)                | <input type="checkbox"/> Yes <input type="checkbox"/> No |
| Tax Refund  | <input type="checkbox"/> Yes <input type="checkbox"/> No |
| Trust Income  | <input type="checkbox"/> Yes <input type="checkbox"/> No |
| Veterans Benefits (disability/pension/aid and attendance)             | <input type="checkbox"/> Yes <input type="checkbox"/> No |
| Wages   | <input type="checkbox"/> Yes <input type="checkbox"/> No |
| Workers' Compensation Benefits  | <input type="checkbox"/> Yes <input type="checkbox"/> No |
| Other   | <input type="checkbox"/> Yes <input type="checkbox"/> No |
|   | <b>TOTAL</b> \$ 0.00                                     |

**PART IV: LIABILITIES/DEBTS**

1. List all debts the Incapacitated Person owes, including mortgages, loans, credit card debt, etc.

| Liabilities/Debts   | Lender | Value          |
|---------------------|--------|----------------|
|                     |        |                |
|                     |        |                |
|                     |        |                |
|                     |        |                |
|                     |        |                |
|                     |        |                |
|                     |        |                |
| <b>TOTAL DEBTS:</b> |        | <b>\$ 0.00</b> |

**PART V: GUARDIAN COVERAGE**

1. Was a surety bond required by the decree appointing you as guardian?

Yes (Please attach a copy of the bond)  
 No

2. Are you a professional guardianship agency or an attorney serving as a guardian?

Yes  
 No

If yes, do you have professional liability coverage?

Yes (Please attach a copy of the insurance policy)  
 No

If no, explain: \_\_\_\_\_

## PART VI: PERSONAL CARE PLAN

1. Can the Incapacitated Person remain in his or her current residence with assistance, or in the home of a relative?

Yes

No

N/A - The Incapacitated Person is already in a supervised residential setting.

If yes:

a. List the name of the responsible family member:

---

b. What services does the Incapacitated Person require?

Services from local Area Agency on Aging

Private Companion/Assistance Service

Number of days per week: \_\_\_\_\_

Number of hours per week: \_\_\_\_\_

Assistance from family members

Will compensation be provided?

Yes

No

If yes, indicate compensation amount: \_\_\_\_\_

2. Will the Incapacitated Person be moved into a supervised residential setting?

Yes

No

N/A - The Incapacitated Person is already in a supervised residential setting.

If yes:

a. Indicate the type of supervised residential setting:

Domiciliary Care

Personal Care

Boarding Home / Group Home

Assisted Living Facility

Nursing Home

Other: \_\_\_\_\_

b. Describe the steps that are being taken to move the Incapacitated Person into a supervised residential setting.

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## PART VII: FINANCIAL PLAN

1. Complete the following table using initial inventory or most recent amended inventory.

a. Total Annual Income  
(Part III, Question 1) \$ 0.00

d. Total assets (principal)  
(Part II, Question 1) \$ 0.00

b. Annual  
estimated expenses \_\_\_\_\_

c. Net Income  
(a minus b) \$ 0.00

2. Is the net income listed above sufficient to care for the needs of the Incapacitated Person?

Yes

No, but assets (principal) are available if a court order approves expenditures

No, and assets (principal) are not available

3. Indicate any applications for government benefits that have been submitted:

| Application Type                            | Date of Submission |
|---|--------------------|
| Social Security Disability Insurance (SSDI) |                    |
| Supplemental Security Income (SSI)          |                    |
| Social Security Retirement Benefits         |                    |
| Veterans Benefits                           |                    |
| Medical assistance, long term care          |                    |
| Medical assistance, Home Waiver             |                    |
| Other (Explain: _____)                      |                    |

4. Describe all real estate included in the estate and how it will be maintained or sold:

5. Prior to the appointment of a guardian, has an agent under a Power of Attorney been serving?

Yes  
 No

If yes, has an accounting ever been requested or filed with the Orphans' Court?

Yes  
 No

If yes, was the agent the same person as the guardian?

Yes  
 No

#### PART VIII: MEDICAL INFORMATION

1. Is a "no-code" (Do Not Resuscitate) provision in place for the incapacitated person?

Yes  
 No

2. When still capacitated, did the Incapacitated Person execute a durable power of attorney for health care or some other health care directive (including, but not limited to, a POLST, a living will, or a mental health care power of attorney)?

Yes  
 No

If yes, identify the authorized agent for making health care decisions:

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3. Are you aware of any will or trust executed by the Incapacitated Person, or any funeral or burial wishes of the Incapacitated Person?

Yes  
 No

If yes, please explain:

---

---

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Has a burial account been established for the Incapacitated Person?

Yes  
 No

If yes, what is the value of the burial account? \_\_\_\_\_

I verify that the foregoing information is correct to the best of my knowledge, information and belief; and that this Verification is subject to the penalties of 18 Pa.C.S. §4904 relative to unsworn falsification to authorities.

Effective June 1, 2019, I further acknowledge the Notice of Filing must be served within 10 days of the filing of this report pursuant to Pa. O.C. Rule 14.8(b).

---

*Date*

---

*Signature of Guardian of the Estate*

---

*Name of Guardian of the Estate (type or print)*

---

*Address*

---

*City, State, Zip*

---

*Home Phone Number*

---

*Office Phone Number*

---

*Cell Phone Number*

---

*Email*

---

*Date*

---

*Signature of Co-Guardian of the Estate (if applicable)*

---

*Name of Co-Guardian of the Estate (type or print)*

---

*Address*

---

*City, State, Zip*

---

*Home Phone Number*

---

*Office Phone Number*

---

*Cell Phone Number*

---

*Email*

COURT OF COMMON PLEAS OF  
COUNTY, PENNSYLVANIA  
ORPHANS' COURT DIVISION

**NOTICE OF FILING**

ESTATE/GUARDIANSHIP OF \_\_\_\_\_,  
AN INCAPACITATED PERSON

\_\_\_\_\_, GUARDIAN

No. \_\_\_\_\_

I certify that on \_\_\_\_\_ I filed the following documents:

|   |   |
|---|---|
| <input type="checkbox"/> Inventory                              | <input type="checkbox"/> Amended Inventory                      |
| <input type="checkbox"/> Annual Report - Guardian of the Person | <input type="checkbox"/> Annual Report - Guardian of the Estate |
| <input type="checkbox"/> 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 email if requested

3. \_\_\_\_\_

By mail  By fax  By personal delivery  By email if requested

4. \_\_\_\_\_

By mail  By fax  By personal delivery  By email 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 whom 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.

COURT OF COMMON PLEAS  
\_\_\_\_\_ COUNTY, PENNSYLVANIA  
\_\_\_\_\_ ORPHANS' COURT DIVISION

**REPORT OF GUARDIAN OF THE ESTATE**

Estate of: \_\_\_\_\_, an Incapacitated Person  
*Name of Incapacitated Person*

Case File No: \_\_\_\_\_

DATE COURT APPOINTED YOU AS GUARDIAN: \_\_\_\_\_

**PART I. INTRODUCTION**

1. Name(s) of Guardian(s): \_\_\_\_\_

2. Is this a limited Guardianship?

Yes  
 No

3. Report Period

This is the **Report** for the period from \_\_\_\_\_ to \_\_\_\_\_ (the "Report Period"); or

This is the **Final Report** for the period from \_\_\_\_\_ to \_\_\_\_\_ (the "Report Period") and is filed for the following reason:

The death of the Incapacitated Person.

Date of Death: \_\_\_\_\_

Name of Executor/Administrator: \_\_\_\_\_

The Guardianship was terminated by a court order dated: \_\_\_\_\_

Transfer of Guardianship to: \_\_\_\_\_

Date of court order approving transfer: \_\_\_\_\_

**PART II. INCOME**

1. List all sources of income received during the **Report Period**:

| Did the Incapacitated Person receive any of the following?             |  | Amount During Report Period |
|--|--|-----------------------------|
| <b>Alimony or Support</b>  | <input type="checkbox"/> Yes <input type="checkbox"/> No |                             |
| <b>Annuity Payments</b>  | <input type="checkbox"/> Yes <input type="checkbox"/> No |                             |
| <b>Dividends</b>   | <input type="checkbox"/> Yes <input type="checkbox"/> No |                             |
| <b>Interest Income</b>   | <input type="checkbox"/> Yes <input type="checkbox"/> No |                             |
| <b>IRA Distributions</b>   | <input type="checkbox"/> Yes <input type="checkbox"/> No |                             |
| <b>Long Term Care Insurance Benefits</b>                               | <input type="checkbox"/> Yes <input type="checkbox"/> No |                             |
| <b>Pension/Retirement Benefits (for example: 401(k), 403(b), etc.)</b> | <input type="checkbox"/> Yes <input type="checkbox"/> No |                             |
| <b>Public Assistance</b>   | <input type="checkbox"/> Yes <input type="checkbox"/> No |                             |
| <b>Rental Property Income</b>  | <input type="checkbox"/> Yes <input type="checkbox"/> No |                             |
| <b>Royalties (including from mineral and land rights)</b>              | <input type="checkbox"/> Yes <input type="checkbox"/> No |                             |
| <b>Social Security Benefits (Retirement, Disability, SSI)</b>          | <input type="checkbox"/> Yes <input type="checkbox"/> No |                             |
| <b>Tax Refund</b>  | <input type="checkbox"/> Yes <input type="checkbox"/> No |                             |
| <b>Trust Income</b>  | <input type="checkbox"/> Yes <input type="checkbox"/> No |                             |
| <b>Veterans Benefits (disability/pension/aid and attendance)</b>       | <input type="checkbox"/> Yes <input type="checkbox"/> No |                             |
| <b>Wages</b>   | <input type="checkbox"/> Yes <input type="checkbox"/> No |                             |
| <b>Worker's Compensation Benefits</b>                                  | <input type="checkbox"/> Yes <input type="checkbox"/> No |                             |
| <b>Other</b>   | <input type="checkbox"/> Yes <input type="checkbox"/> No |                             |
|  | <b>TOTAL</b>   | \$ 0.00                     |

**PART III. ANNUAL EXPENSES**

1. List all payments made for the care and maintenance of the Incapacitated Person during the **Report Period**.

| Expense  | To Whom Was It Paid? | Total for Report Period |
|--|----------------------|-------------------------|
| <b>Auto Insurance</b>                                      |                      |                         |
| <b>Cable/Satellite/Internet</b>                            |                      |                         |
| <b>Child/Spousal Support/Alimony</b>                       |                      |                         |
| <b>Clothing</b>  |                      |                         |
| <b>Condo/Co-op Assessments</b>                             |                      |                         |
| <b>Debt (incurred prior to your appointment)</b>           |                      |                         |
| <b>Entertainment</b>                                       |                      |                         |
| <b>Fees/Costs Paid to Guardian</b>                         |                      |                         |
| <b>Food</b>  |                      |                         |
| <b>Gifts - Personal or Charitable</b>                      |                      |                         |
| <b>Home Health Care/Personal Aide</b>                      |                      |                         |
| <b>Homeowners Insurance</b>                                |                      |                         |
| <b>Home/Property Maintenance &amp; Repair</b>              |                      |                         |
| <b>Income Taxes</b>  |                      |                         |
| <b>Life Insurance Premiums</b>                             |                      |                         |
| <b>Medical Insurance Premiums</b>                          |                      |                         |
| <b>Medical Expenses</b>                                    |                      |                         |
| <b>Medicine</b>  |                      |                         |
| <b>Mortgage</b>  |                      |                         |
| <b>Nursing Home/Assisted Living/Institutionalized Care</b> |                      |                         |
| <b>Personal Expenses (including allowance)</b>             |                      |                         |
| <b>Phone/Cell Phone</b>                                    |                      |                         |
| <b>Real Estate Taxes</b>                                   |                      |                         |
| <b>Rent</b>  |                      |                         |
| <b>Utilities</b>   |                      |                         |
| <b>Other</b>   |                      |                         |
|  | <b>TOTAL</b>         | \$ 0.00                 |

2. Does the Incapacitated Person have a credit card(s)?  Yes  No  
 If yes, has it been used during this report period?  Yes  No

What is the current balance on the credit card(s)? \_\_\_\_\_

#### PART IV. COMPARING INCOME AND EXPENSES

1. Total Income (Part II, Question 1 TOTAL): \$ 0.00
2. Unspent Income from Previous Year (Part IV, Question 5 from Last Year's Report): \_\_\_\_\_
3. Add lines 1 and 2 together to calculate this year's TOTAL INCOME: \$ 0.00
4. Total Expense (Part III, Question 1 TOTAL): \$ 0.00
5. Subtract line 4 from line 3.  
 If amount is positive, enter it here to show UNSPENT INCOME, otherwise enter \$0: \$ 0.00
6. Subtract line 4 from line 3.  
 If amount is negative, enter it here to show PRINCIPAL SPENT, otherwise enter \$0: \$ 0.00
7. Is line 6, PRINCIPAL SPENT, greater than \$0?

Yes  
 No

If yes, was a court order obtained?

Yes - Date of Court Order: \_\_\_\_\_

No - Explain why court approval was not obtained:

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#### PART V. ASSETS

1. What was the value of the assets reported on the Inventory? \_\_\_\_\_
2. List any additional assets received during the **Report Period** (for example: gifts, inheritance, burial account, lawsuit recovery, etc.)

| Description/Source | Value at the end of Report Period |
|--------------------|-----------------------------------|
|                    |                                   |
|                    |                                   |
|                    |                                   |
|                    |                                   |
|                    |                                   |
|                    |                                   |
|                    |                                   |
| <b>TOTAL</b>       | \$ 0.00                           |

3. Where are all the assets deposited or held at the end of the **Report Period**?

| List of Assets: Type and Location | Co-Owners | Value at the end of Report Period |
|-----------------------------------|-----------|-----------------------------------|
|                                   |           |                                   |
|                                   |           |                                   |
|                                   |           |                                   |
|                                   |           |                                   |
|                                   |           |                                   |
|                                   |           |                                   |
|                                   |           |                                   |
|                                   |           |                                   |
| <b>TOTAL</b>                      |           | \$ 0.00                           |

4. Does the incapacitated person own a house/condo/co-op?

Yes - Answer Questions a - e       No

a. Address of property: \_\_\_\_\_

b. Does the Incapacitated Person live in the house/condo/co-op?       Yes     No

c. If purchased during the **Report Period**, what was the purchase price? \_\_\_\_\_

d. If real property was sold during the **Report Period**, what was the sale price? \_\_\_\_\_

e. Was a court order obtained if property was purchased or sold?

Yes - Date of Court Order: \_\_\_\_\_

No - Explain why court approval was not obtained:

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5. List any assets transferred to a third party such as a spouse or child.

| Asset | Transferred To | Relationship to IP | Amount | Order Date or Reason Not Approved |
|-------|----------------|--------------------|--------|-----------------------------------|
|       |                |                    |        |                                   |
|       |                |                    |        |                                   |
|       |                |                    |        |                                   |
|       |                |                    |        |                                   |

## PART VI. GUARDIAN'S COMPENSATION

1. Did the Guardian receive compensation during the **Report Period**?

Yes - Complete the table below     No - Skip to Question 3

| Amount | Guardian Name | Is Amount Based on Hourly, Monthly or Annual Fee? |
|--------|---------------|---|
|        |               |   |
|        |               |   |
|        |               |   |

2. Was the compensation approved by the court?

Yes - Date of Court Order: \_\_\_\_\_

No - Explain why court approval was not obtained:

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3. Have you maintained a log of your activities as guardian?

Yes - Attach a copy     No

## PART VII. ATTORNEY'S FEES

1. Were attorney's fees paid during the **Report Period**?

Yes - Complete the table below     No - Skip to Part VIII

| Amount | Name of Counsel | Hourly Rate | # of Hours | Order Date or Reason Not Approved |
|--------|-----------------|-------------|------------|-----------------------------------|
|        |                 |             |            |                                   |
|        |                 |             |            |                                   |
|        |                 |             |            |                                   |

## PART VIII. REPRESENTATIVE PAYEE

1a. Social Security Administration (SSA) Benefits

The Incapacitated Person does not receive SSA benefits.

The Guardian acts as the representative payee - attach a copy of the report provided to the SSA during this **Report Period**.

The Guardian is not the representative payee for SSA benefits. The payee is \_\_\_\_\_.

1b. Veterans Administration (VA) Benefits

- The Incapacitated Person does not receive VA benefits.
- The Guardian acts as the representative payee - attach a copy of the report provided to the VA during this **Report Period**.
- The Guardian is not the representative payee for VA benefits. The payee is \_\_\_\_\_.

**PART IX. SURETY INFORMATION**

1. Was a surety bond required?

- Yes - In what amount \_\_\_\_\_ - and then answer Questions a - b.
- No - The court waived a surety bond, skip to Question 2.

a. Is the surety bond still in effect?

- Yes
- No - Provide an explanation as to why not.

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b. Is the value of the estate at the end of the **Report Period** greater than the amount reported at the end of the prior report period?

- Yes
- No

If yes, has the amount of the surety bond been increased?

- Yes. To what amount: \_\_\_\_\_
- No

2. If you are a professional guardian, agency or an attorney serving as guardian, do you have professional/guardian liability insurance that covers theft?

- Yes - Answer Question a and b.
- No - Skip to Part X.
- N/A

a. Are the coverage limits greater than the assets (Part V, Question 3)?

- Yes
- No

b. Describe the deductible and any exclusions.

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## PART X. GUARDIAN INFORMATION

1. During this **Report Period**, did any guardian participate in guardianship training?

Yes  
 No

If yes, provide the following information:

| Guardian Name | Dates of Training<br>Starting | Ending | Provider | Training Description |
|---------------|-------------------------------|--------|----------|----------------------|
|               |                               |        |          |                      |
|               |                               |        |          |                      |
|               |                               |        |          |                      |
|               |                               |        |          |                      |

2. During this **Report Period**, have any judgments been filed against any guardian, or has any guardian filed for bankruptcy protection?

Yes - Please describe  No

*Guardian Name* \_\_\_\_\_ *Description* \_\_\_\_\_

3. During this **Report Period**, was any guardian charged with or convicted of a crime?

Yes - Please describe  No

*Guardian Name* \_\_\_\_\_ *Description* \_\_\_\_\_

4. Is there any reason any guardian cannot continue to serve as guardian?

Yes - Please describe  No

*Guardian Name* \_\_\_\_\_ *Description* \_\_\_\_\_

## PART XI. SUMMARY

|   |         |
|---|---------|
| 1. If this is the first annual report, state the value of the assets reported on the Inventory.<br>(Use amount from Part V, Question 1 of <i>this Report</i> .) (principal) |         |
| 2. If this is not the first annual report, state the Total Assets (principal) from the prior Report.<br>(Use TOTAL amount from Part V, Question 3 of <i>prior Report</i> .) |         |
| 3. What was the total income received during the <b>Report Period</b> ?<br>(Use the amount from Part IV, Question 3 of <i>this Report</i> .)                                | \$ 0.00 |
| 4. What is the total amount of Expenses paid during the <b>Report Period</b> ?<br>(Use the amount from Part III, Question 1 of <i>this Report</i> .)                        | \$ 0.00 |
| 5. What are the Total Assets remaining at the end of the <b>Report Period</b> ?<br>(Use the amount from Part V, Question 3 of <i>this Annual Report</i> .)                  | \$ 0.00 |
| 6. What is the Unspent Income at the end of the <b>Report Period</b> ?<br>(Use the amount from Part IV, Question 5 of <i>this Report</i> .)                                 | \$ 0.00 |

I verify that the foregoing information is correct to the best of my knowledge, information and belief; and that this verification is subject to the penalties of 18 Pa.C.S. §4904 relative to unsworn falsification to authorities.

Effective June 1, 2019, I further acknowledge the Notice of Filing must be served within 10 days of the filing of this report pursuant to Pa. O.C. Rule 14.8(b).

---

*Date*

---

*Signature of Guardian of the Estate*

---

*Name of Guardian of the Estate (type or print)*

---

*Address*

---

*City, State, Zip*

---

*Home Phone Number*

---

*Office Phone Number*

---

*Cell Phone Number*

---

*Email*

---

*Date*

---

*Signature of Co-Guardian of the Estate*

---

*Name of Co-Guardian of the Estate (type or print)*

---

*Address*

---

*City, State, Zip*

---

*Home Phone Number*

---

*Office Phone Number*

---

*Email*

COURT OF COMMON PLEAS  
\_\_\_\_\_ COUNTY, PENNSYLVANIA  
OPRPHANS' COURT DIVISION

**REPORT OF GUARDIAN OF THE PERSON**

Estate of: \_\_\_\_\_, an Incapacitated Person  
*Name of Incapacitated Person*

Case File No: \_\_\_\_\_

DATE COURT APPOINTED YOU AS GUARDIAN: \_\_\_\_\_

**PART I. INTRODUCTION**

1. Name(s) of Guardian(s): \_\_\_\_\_

2. Is this a limited Guardianship?  Yes  No

3. Report Period

This is the **Report** for the period from \_\_\_\_\_ to \_\_\_\_\_  
(the "**Report Period**"); or

This is the **Final Report** for the period from \_\_\_\_\_ to \_\_\_\_\_  
(the "**Report Period**") and is filed for the following reason:

The death of the Incapacitated Person.

Date of Death: \_\_\_\_\_

Name of Executor/Administrator: \_\_\_\_\_

The Guardianship was terminated by a court order dated: \_\_\_\_\_

Transfer of Guardianship to: \_\_\_\_\_

Date of court order approving transfer: \_\_\_\_\_

**IF THIS IS A FINAL REPORT, ONLY COMPLETE PARTS I AND V.**

## PART II. PERSONAL INFORMATION ABOUT THE INCAPACITATED PERSON

1. Incapacitated Person's date of birth: \_\_\_\_ / \_\_\_\_ / \_\_\_\_

2. Incapacitated Person's Current Residence:

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3. Residence of the Incapacitated Person

Incapacitated Person's home (  with part-time home health care aide or  24/7 assistance)

Your home

Relative's home

Relative's Name: \_\_\_\_\_ Relationship: \_\_\_\_\_

Domiciliary Care

Facility Name: \_\_\_\_\_

Personal Care Boarding Home

Facility Name: \_\_\_\_\_

Is this a Memory Support Facility?  Yes  No

Assisted Living Facility

Facility Name: \_\_\_\_\_

Is this a Memory Support Facility?  Yes  No

Nursing Home Facility

Facility Name: \_\_\_\_\_

Is this a Memory Support Facility?  Yes  No

Other:

\_\_\_\_\_

4. The Incapacitated Person has been in the residence noted in question 3 since: \_\_\_\_\_

5. Has the Incapacitated Person moved during the **Report Period**?

Yes

No

If yes, date of move: \_\_\_\_\_

If yes, please provide:

Reason for move: \_\_\_\_\_

Previous residence/address: \_\_\_\_\_

**PART III. MEDICAL INFORMATION**

1. List the medical professionals who have seen the Incapacitated Person during the **Report Period**:

**Medical Doctor**

| Name                                |  |
|-------------------------------------|--|
| <b>Dentist</b>                      |  |
| <b>Eye Doctor</b>                   |  |
| <b>Ear Doctor</b>                   |  |
| <b>Psychologist or Psychiatrist</b> |  |
| <b>Physical Therapist</b>           |  |
| <b>Occupational Therapist</b>       |  |
| <b>Social Worker</b>                |  |
| <b>Geriatric Caseworker</b>         |  |
| <b>Other</b>                        |  |

2. The major medical or psychiatric problems of the Incapacitated Person are as follows:

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3. Describe any social, medical, psychological and support services the Incapacitated Person is receiving:

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4. Has the Incapacitated Person been hospitalized during the **Report Period**?

 Yes No

If yes, date(s) of hospitalization: \_\_\_\_\_

5. Has the Incapacitated Person received a mental health assessment during the **Report Period**?

 Yes No

If yes, date(s) of evaluation: \_\_\_\_\_

#### **PART IV. GUARDIAN'S OPINION**

1. Should the guardianship be:

- Continued
- Continued with modifications
- Terminated

2. Provide the reasons for your opinion. List specific recommended modifications.

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3. Have you filed a petition for modification or termination?

- Yes
- No

#### **PART V. INFORMATION ABOUT THE GUARDIAN**

1. On average, how often did you visit the Incapacitated Person during the Report Period?

- I live with the Incapacitated Person
- None
- Quarterly
- Monthly
- Weekly
- Daily

2. What is the average length of a visit?

- Less than 15 minutes
- Between 15 minutes and 1 hour
- Between 1 and 2 hours
- More than 2 hours
- Not applicable

3. Have you maintained a log of your activities as guardian?

- Yes - Attach a copy
- No

4. During this **Report Period**, did any guardian participate in guardianship training?

Yes

No

If **yes**, provide the following information:

| Guardian Name | Dates of Training |        | Provider | Training Description |
|---------------|-------------------|--------|----------|----------------------|
|               | Starting          | Ending |          |                      |
|               |                   |        |          |                      |
|               |                   |        |          |                      |
|               |                   |        |          |                      |
|               |                   |        |          |                      |
|               |                   |        |          |                      |

5. During this **Report Period**, was any guardian charged with or convicted of a crime?

Yes - Please describe       No

*Guardian Name* \_\_\_\_\_ *Description* \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

6. During this **Report Period**, was a Protection from Abuse Order or Protection from Sexual Violence or Intimidation Order entered against any guardian?

Yes - Please describe       No

*Guardian Name* \_\_\_\_\_ *Description* \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

7. Is there any reason any guardian cannot continue to serve as guardian?

Yes - Please describe       No

*Guardian Name* \_\_\_\_\_ *Description* \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

I verify that the foregoing information is correct to the best of my knowledge, information and belief; and that this verification is subject to the penalties of 18 Pa.C.S. §4904 relative to unsworn falsification to authorities.

Effective June 1, 2019, I further acknowledge the Notice of Filing must be served within 10 days of the filing of this report pursuant to Pa. O.C. Rule 14.8(b).

---

*Date*

---

*Signature of Guardian of the Person*

---

*Name of Guardian of the Person (type or print)*

---

*Address*

---

*City, State, Zip*

---

*Home Phone Number*

---

*Office Phone Number*

---

*Cell Phone Number*

---

*Email*

---

*Date*

---

*Signature of Co-Guardian of the Person*

---

*Name of Co-Guardian of the Person (type or print)*

---

*Address*

---

*City, State, Zip*

---

*Home Phone Number*

---

*Office Phone Number*

---

*Cell Phone Number*

**SAMPLE FINAL DECREE:**  
**PLENARY GUARDIAN OF THE PERSON ONLY**

**IN THE COURT OF COMMON PLEAS OF PHILADELPHIA  
ORPHANS' COURT DIVISION**

**O.C. No. XXX AI of 2018  
Control No. XXXXXX**

**Estate of IVAN INCAPACITATED, an Alleged Incapacitated Person**

**FINAL DECREE**

AND NOW, this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, upon consideration of the Petition and after a hearing held following due service of a copy of the Petition and Citation with Notice as directed by the Court, this Court finds by clear and convincing evidence that:

1. Ivan Incapacitated was born on \_\_\_\_\_, is \_\_\_\_\_ years of age, and is domiciled in the City and County of Philadelphia.
2. Ivan Incapacitated suffers from \_\_\_\_\_.
3. Ivan Incapacitated's mental and physical disabilities so impair his capacity to receive and evaluate information effectively and to make and communicate decisions that he is totally unable to meet essential requirements for his physical health and safety.
4. Ivan Incapacitated is in need of guardianship services.

Accordingly, it is hereby **ORDERED and DECREED** that Ivan Incapacitated is adjudged a totally incapacitated person, and that Gary Guardian is appointed Plenary Guardian of the Person of Ivan Incapacitated, an incapacitated person.

The said Plenary Guardian shall file Annual Reports at least once within the first twelve months of the appointment and at least annually thereafter in accordance with the provisions of 20 Pa.C.S. §5521(c)(1)(i) and (c)(1)(ii).

Within sixty (60) days after the death of the incapacitated person or an adjudication of capacity, the Plenary Guardian of the Person shall file a Final Report with the Court pursuant to 20 Pa.C.S. §5521(c)(2).

The Plenary Guardian of the Person, unless authorized after a subsequent hearing, shall not have the power to:

1. Consent on behalf of the incapacitated person to psychosurgery, electroconvulsive therapy or removal of a healthy body organ;
2. Prohibit the marriage or consent to the divorce of the incapacitated person; or
3. Consent on behalf of the incapacitated person to the performance of any experimental biomedical or behavioral medical procedure or participation in any biomedical or behavioral experiment.

Ivan Incapacitated was/was not present at the hearing and was/was not represented by counsel. Petitioners shall cause to be read to Ivan Incapacitated a copy of this Decree and the Statement of Rights, a copy of which is attached to this Decree as Exhibit "A", and file proof of such service with the Court within ten (10) days.

All evidence received at the hearing concerning the present matter, including but not limited to medical depositions, all testimony and all exhibits, shall be SEALED and not made available except upon further Decree of this Court.

---

J.

**STATEMENT OF RIGHTS**

A FINAL DECREE HAS BEEN ENTERED WHEREBY YOU HAVE BEEN ADJUDICATED AN INCAPACITATED PERSON AND UNABLE TO CARE FOR YOURSELF AND TO MANAGE YOUR PERSONAL AND/OR FINANCIAL AFFAIRS.

YOU HAVE THE RIGHT TO FILE (1) A MOTION FOR RECONSIDERATION OF THIS FINAL DECREE BY THE ORPHANS' COURT WHICH ISSUED IT, AND/OR (2) AN APPEAL TO THE SUPERIOR COURT. THESE FILINGS MUST BE MADE PROMPTLY AND NO LATER THAN THIRTY (30) DAYS AFTER THE DATE OF THE FINAL DECREE. IF BOTH FILINGS ARE MADE AND THE ORPHANS' COURT GRANTS RECONSIDERATION WITHIN THOSE THIRTY (30) DAYS, THE APPEAL WILL BE STRICKEN, BUT MAY AGAIN BE FILED WITHIN THIRTY (30) DAYS AFTER THE DECISION IS RENDERED ON THE RECONSIDERATION.

IN ADDITION, AT ANY FUTURE TIME YOU MAY PETITION THE COURT TO REVIEW THE GUARDIANSHIP DECISION, INCLUDING TO REQUEST THE COURT TO MODIFY OR TO TERMINATE THE GUARDIANSHIP IF THERE IS A SIGNIFICANT CHANGE IN YOUR CAPACITY OR YOUR NEEDS OR IF YOUR GUARDIAN FAILS TO ACT IN YOUR BEST INTERESTS OR FAILS TO PERFORM THEIR DUTIES IN ACCORDANCE WITH THE COURT'S ORDER.

IF YOU WISH TO FILE A MOTION FOR RECONSIDERATION AND/OR AN APPEAL OF THE FINAL DECREE OF THE ORPHANS' COURT, OR TO PETITION THE COURT TO REVIEW THE GUARDIANSHIP DECISION, YOU MAY BE REPRESENTED BY AN ATTORNEY. IF YOU DO NOT HAVE AN ATTORNEY, YOU MAY REQUEST THAT THE COURT APPOINT ONE TO REPRESENT YOU AND TO HAVE THE ATTORNEY'S FEES PAID FOR YOU IF YOU CANNOT AFFORD TO PAY THEM YOURSELF.

**EXHIBIT "A"**

**SAMPLE FINAL DECREE:**  
**PLENARY GUARDIAN OF THE PERSON AND ESTATE**

**IN THE COURT OF COMMON PLEAS OF PHILADELPHIA  
ORPHANS' COURT DIVISION**

**O.C. No. XXX AI of 2018  
Control No. XXXXXX**

**Estate of IVAN INCAPACITATED, an Alleged Incapacitated Person**

**FINAL DECREE**

AND NOW, this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, upon consideration of the Petition and after a hearing held following due service of a copy of the Petition and Citation with Notice as directed by the Court, this Court finds by clear and convincing evidence that:

1. Ivan Incapacitated was born on \_\_\_\_\_, is \_\_\_\_\_ years of age, and is domiciled in the City and County of Philadelphia.
2. Ivan Incapacitated suffers from \_\_\_\_\_.
3. Ivan Incapacitated's mental and physical disabilities so impair his capacity to receive and evaluate information effectively and to make and communicate decisions that he is totally unable to meet essential requirements for his physical health and safety and to manage his finances.
4. Ivan Incapacitated is in need of guardianship services.

Accordingly, it is hereby **ORDERED and DECREED** that Ivan Incapacitated is adjudged a totally incapacitated person, and that Gary Guardian is appointed Plenary Guardian of the Person and Estate of Ivan Incapacitated, an incapacitated person.

The said Guardian shall enter security in the amount of: \$ \_\_\_\_\_

The said Plenary Guardian of the Estate is directed to file an Inventory within ninety (90) days of the date of this Decree in accordance with the provisions of 20 Pa.C.S. §5521(b) and §5142, and is not permitted to expend principal of the incapacitated person's estate without permission of the Court in accordance with the provisions of 20 Pa.C.S. §5536.

The said Plenary Guardian shall file Annual Reports at least once within the first twelve months of the appointment and at least annually thereafter in accordance with the provisions of 20 Pa.C.S. §5521(c)(1)(i) and (c)(1)(ii).

Within sixty (60) days after the death of the incapacitated person or an adjudication of capacity, the Plenary Guardian of the Person shall file a Final Report with the Court pursuant to 20 Pa.C.S. §5521(c)(2).

The Plenary Guardian of the Person, unless authorized after a subsequent hearing, shall not have the power to:

1. Consent on behalf of the incapacitated person to psychosurgery, electroconvulsive therapy or removal of a healthy body organ;
2. Prohibit the marriage or consent to the divorce of the incapacitated person; or
3. Consent on behalf of the incapacitated person to the performance of any experimental biomedical or behavioral medical procedure or participation in any biomedical or behavioral experiment.

An Official Examiner of this Court shall attend the opening of the safe deposit box. The Certificate of the Official Examiner of the examination of the assets of the safe deposit box shall be submitted to the Court and, when approved by the Hearing Judge, shall be filed with the record in this case. The amount and manner of the compensation for the services of the Official Examiner shall be determined by the Hearing Judge.

In the event that the incapacitated person shall reside in a nursing facility and be the recipient of Medical Assistance, the Guardian of the Estate shall be compensated out of income at the rate of \$100.00 per month. In all circumstances, compensation out of income shall not prejudice the right of the Guardian to seek additional compensation by petition for allowance.

Ivan Incapacitated was/was not present at the hearing and was/was not represented by counsel. Petitioners shall cause to be read to Ivan Incapacitated a copy of this Decree and the Statement of Rights, a copy of which is attached to this Decree as Exhibit "A", and file proof of such service with the Court within ten (10) days.

All evidence received at the hearing concerning the present matter, including but not limited to medical depositions, all testimony and all exhibits, shall be SEALED and not made available except upon further Decree of this Court.

---

J.

**STATEMENT OF RIGHTS**

A FINAL DECREE HAS BEEN ENTERED WHEREBY YOU HAVE BEEN ADJUDICATED AN INCAPACITATED PERSON AND UNABLE TO CARE FOR YOURSELF AND TO MANAGE YOUR PERSONAL AND/OR FINANCIAL AFFAIRS.

YOU HAVE THE RIGHT TO FILE (1) A MOTION FOR RECONSIDERATION OF THIS FINAL DECREE BY THE ORPHANS' COURT WHICH ISSUED IT, AND/OR (2) AN APPEAL TO THE SUPERIOR COURT. THESE FILINGS MUST BE MADE PROMPTLY AND NO LATER THAN THIRTY (30) DAYS AFTER THE DATE OF THE FINAL DECREE. IF BOTH FILINGS ARE MADE AND THE ORPHANS' COURT GRANTS RECONSIDERATION WITHIN THOSE THIRTY (30) DAYS, THE APPEAL WILL BE STRICKEN, BUT MAY AGAIN BE FILED WITHIN THIRTY (30) DAYS AFTER THE DECISION IS RENDERED ON THE RECONSIDERATION.

IN ADDITION, AT ANY FUTURE TIME YOU MAY PETITION THE COURT TO REVIEW THE GUARDIANSHIP DECISION, INCLUDING TO REQUEST THE COURT TO MODIFY OR TO TERMINATE THE GUARDIANSHIP IF THERE IS A SIGNIFICANT CHANGE IN YOUR CAPACITY OR YOUR NEEDS OR IF YOUR GUARDIAN FAILS TO ACT IN YOUR BEST INTERESTS OR FAILS TO PERFORM THEIR DUTIES IN ACCORDANCE WITH THE COURT'S ORDER.

IF YOU WISH TO FILE A MOTION FOR RECONSIDERATION AND/OR AN APPEAL OF THE FINAL DECREE OF THE ORPHANS' COURT, OR TO PETITION THE COURT TO REVIEW THE GUARDIANSHIP DECISION, YOU MAY BE REPRESENTED BY AN ATTORNEY. IF YOU DO NOT HAVE AN ATTORNEY, YOU MAY REQUEST THAT THE COURT APPOINT ONE TO REPRESENT YOU AND TO HAVE THE ATTORNEY'S FEES PAID FOR YOU IF YOU CANNOT AFFORD TO PAY THEM YOURSELF.

**EXHIBIT "A"**

**SAMPLE DECREE:**  
**EMERGENCY GUARDIAN OF THE PERSON ONLY**

**IN THE COURT OF COMMON PLEAS OF PHILADELPHIA  
ORPHANS' COURT DIVISION**

**O.C. No. XXX AI of 2018  
Control No. XXXXXX**

**Estate of IVAN INCAPACITATED, an Alleged Incapacitated Person**

**DECREE**

AND NOW, this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, upon consideration of the Petition and after a hearing held following due service of a copy of the Petition and Citation with Notice as directed by the Court, this Court finds by clear and convincing evidence that:

1. Ivan Incapacitated was born on \_\_\_\_\_, is \_\_\_\_\_ years of age, and is domiciled in the City and County of Philadelphia.
2. Ivan Incapacitated has recently been admitted to \_\_\_\_\_ Hospital for treatment of \_\_\_\_\_.
3. Ivan Incapacitated requires \_\_\_\_\_ to avoid irreparable harm and possible death.
4. Ivan Incapacitated lacks the capacity to provide consent for this necessary medical procedure and to otherwise handle his medical affairs as he cannot understand his illness or treatment options, and therefore unable to provide the necessary consents for the necessary procedure.

Accordingly, it is hereby **ORDERED and DECREED** that Gary Guardian is appointed temporary Emergency Guardian of the Person of Ivan Incapacitated, an alleged incapacitated person. Said guardian is authorized to consent to the medical treatment required and any subsequent treatment decisions which are necessary to prevent irreparable harm to the person of Ivan Incapacitated.

Said appointment of Gary Guardian as temporary Emergency Guardian of the Person shall expire in seventy-two (72) hours from the date of this Decree.

All evidence received at the hearing concerning the present matter, including but not limited to medical depositions, all testimony and all exhibits, shall be SEALED and not made available except upon further Decree of this Court.

---

J.

**SAMPLE DECREE:**  
**EMERGENCY GUARDIAN OF THE PERSON AND ESTATE**

**IN THE COURT OF COMMON PLEAS OF PHILADELPHIA  
ORPHANS' COURT DIVISION**

**O.C. No. XXX AI of 2018  
Control No. XXXXXX**

**Estate of IVAN INCAPACITATED, an Alleged Incapacitated Person**

**DECREE**

AND NOW, this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, upon consideration of the Petition and after a hearing held following due service of a copy of the Petition and Citation with Notice as directed by the Court, this Court finds by clear and convincing evidence that:

1. Ivan Incapacitated was born on \_\_\_\_\_, is \_\_\_\_ years of age, and is domiciled in the City and County of Philadelphia.
2. Ivan Incapacitated suffers from \_\_\_\_\_, which totally impair his capacity to receive and evaluate information effectively and to make and communicate decisions concerning management of his financials affairs and to meet the essential requirements for his physical health and safety
3. Ivan Incapacitated is in need of an Emergency Guardian of the Person and Estate and failure to make such an appointment will result in irreparable harm and/or death.

Accordingly, it is hereby **ORDERED and DECREED** that Gary Guardian is appointed Emergency Guardian of the Person and Estate of Ivan Incapacitated, an alleged incapacitated person, for the purpose of \_\_\_\_\_.

Said appointment of Gary Guardian as Emergency Guardian of the Person shall expire in seventy-two (72) hours from the date of this Decree.

Said appointment of Gary Guardian as Emergency Guardian of the Estate shall expire in thirty (30) days from the date of this Decree.

All evidence received at the hearing concerning the present matter, including but not limited to medical depositions, all testimony and all exhibits, shall be SEALED and not made available except upon further Decree of this Court.

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J.

## **SOURCES FOR LEGAL SERVICES**

The list below are the most common sources for individuals without attorneys, and/or with limited resources to obtain legal advice and representation. This is by no means a complete list and does not include individual attorneys who practice in this area and before this Court.

### **Center for Advocacy for the Rights and Interest of the Elderly (CARIE)**

1500 JFK Blvd., Suite 1500

(215) 545-5728

Website: [www.carie.org](http://www.carie.org)

### **Community Legal Services (CLS)**

1424 Chestnut Street: (215) 981-3700

1410 West Erie Avenue: (215) 227-2400

Website: [www.CLSPhila.org](http://www.CLSPhila.org)

### **Elder Justice & Civil Resource Center**

Room 278 City Hall: (215) 686-7027

Website: <http://www.courts.phila.gov/ejc/>

### **Homeless Advocacy Project (HAP)**

1429 Walnut Street, 15<sup>th</sup> Floor

(215) 523-9595

### **Legal Clinic for the Disabled Inc. (LCD)**

1513 Race Street: (215) 587-3350

Intake line open Wednesdays 9:30 am – 3:30 pm

Website: [www.lcdphila.org](http://www.lcdphila.org)

### **Philadelphia Bar Association Lawyer Referral and Information Service**

(Referral of private attorneys)

(215) 238-6333

Website: <https://iris.philadelphiabar.org>

**Philadelphia Corporation of Aging (PCA)**

642 North Broad Street  
(215) 765-9000/ (215) 765-9040  
Website: [www.pcacares.org](http://www.pcacares.org)

**Philadelphia Legal Assistance (PLA)**

718 Arch Street, Suite 300N: (215) 981-3800  
Website: [www.PhilaLegal.org](http://www.PhilaLegal.org)

**Senior Law Center**

Two Penn Center, 1500 John F. Kennedy Blvd. #1501  
(215) 215-988-1244

**Temple University Legal Aid Office:**

1719 North Broad Street  
(215) 204-1800

**Temple University Elderly Law Project:**

1719 North Broad Street  
(215) 204-6887

**University of Pennsylvania Gittis Center for Clinical Legal Studies**

3400 Chestnut Street  
(215) 898-8427

**Volunteers for the Indigent Program (VIP)**

(Referrals only thru PLA or CLS agencies)  
1500 Walnut Street, Suite 400: (215) 523-9550  
Website: [www.phillyvip.org](http://www.phillyvip.org)

## **EXHIBIT 14**

IN THE COURT OF COMMON PLEAS OF  
PHILADELPHIA COUNTY, PENNSYLVANIA  
ORPHANS' COURT DIVISION

O.C. NO. \_\_\_\_\_  
CONTROL NO: \_\_\_\_\_

ESTATE OF [INSERT AIP NAME],  
AN ALLEGED INCAPACITATED PERSON

**WITHDRAWAL OF APPEARANCE**

TO THE HONORABLE JUDGE OF SAID COURT:

The undersigned counsel hereby requests that the Court withdraw my appearance on behalf of [insert petitioner name], Petitioner in the above-captioned matter. I hereby certify that my representation is concluded in that I have completed all duties delineated in our engagement letter.

Respectfully submitted,

/[Insert attorney name]  
[Insert attorney name]  
[Insert firm name and address]

Dated: [insert date]

# **EXHIBIT 15**

556 Pa. 125  
Supreme Court of Pennsylvania.

In re Patricia Anne **PEERY**, an alleged  
incapacitated person.  
Appeal of Patricia Anne **Peery**.

Argued Nov. 18, 1998. | Decided March 25, 1999.

Brother filed petition for declaration of incapacity and appointment of guardian for his 60-year-old sister. The Court of Common Pleas, Centre County, Orphans Court Division, No. 14-94-0009, Charles C. Brown, Jr., President Judge, dismissed petition. Brother appealed. The Superior Court, No. 221 HBG 96, reversed and remanded. Sister appealed. The Supreme Court, No. 81 M.D. Appeal Docket 1998, Flaherty, C.J., held that trial court was not required to make separate findings as to incapacity and need for guardian.

Reversed.

A person cannot be deemed "incapacitated," as required to appoint guardian, if his impairment is counterbalanced by friends or family or other support. 20 Pa.C.S.A. § 5512.1(a).

2 Cases that cite this headnote

#### Attorneys and Law Firms

\*\*539 \*126 Carl J. Mollica, State College, for Patricia Anne Peery.

Thomas E. Coval, Willow Grove, for David B. Peery.

Before FLAHERTY, C.J., and ZAPPALA, CAPPY, CASTILLE, NIGRO, NEWMAN and SAYLOR, JJ.

#### OPINION OF THE COURT

FLAHERTY, Chief Justice.

This case arose from a petition for declaration of incapacity and appointment of a guardian. The trial court dismissed the petition, finding that, although appellant is mentally impaired, \*127 she is not in need of guardianship services. Superior Court reversed, holding that the trial court failed to distinguish between the two separate and discrete conclusions required by 20 P.S. § 5512.1 (the guardianship statute). Superior Court held that the trial court erred by failing to make separate findings as to the statutory issues: (1) appellant's incapacity and (2) appellant's need for a guardian. The court remanded to conduct another hearing limited to the issue of her need for a guardian. We reverse, holding that the proceedings in the trial court fulfilled the statutory requirements and that Superior Court's disposition unnecessarily elevated form over substance.

The factual background is as follows. David **Peery** (respondent) filed a petition to have his sixty-year-old sister, Patricia Ann **Peery**, declared incapacitated and in need of a guardian. After a hearing pursuant to the guardianship statute,<sup>1</sup> the trial judge found \*\*540 that appellant's low I.Q. did not render her incapable of

1 Cases that cite this headnote

[1] **Mental Health**  
Verdict and Findings

When denying brother's petition for declaration of incapacity and appointment of guardian for his 60-year-old sister, trial court was not required to make separate findings as to incapacity and need for a guardian; since it was found upon competent evidence that sister did not need guardianship services because of her strong network of caretakers, the trial court could not appoint a guardian, and it was immaterial whether sister was incapacitated. 20 Pa.C.S.A. § 5512.1.

self-care, but required her to depend on others in regard to her health, welfare, safety, and medical needs. The court also found that Miss Peery's needs were being met with the help of individuals already assisting her. The trial judge \*128 indicated that he was impressed with the support system which existed to assist Miss Peery, finding that her caretakers were extremely devoted and reliable. He also found that Miss Peery was satisfied with her living arrangements and that she does not wish to see her brother. Accordingly, the court determined that appellant did not need the guardianship services of respondent because the services already available to her meet the essential requirements for her physical health and safety and for managing her financial resources. The court dismissed the petition for adjudication of incapacity and appointment of a guardian. The trial court found:

This Court need not look to whether Ms. Peery can manage her personal financial resources or meet essential requirements for health and safety on her own. Rather, the proper inquiry is whether Ms. Peery has in place a circle of support to assist her in making rational decisions concerning her personal finances and to meet essential requirements of health and safety. This Court will not disturb Ms. Peery's wishes as long as her decisions are rational and result in no perceivable harm to her.

*Considering the evidence presented at the hearing, this Court is satisfied Ms. Peery does not require a guardian. The supports available to Ms. Peery assist her in making decisions and in meeting her essential needs. The evidence presented amply demonstrates the services available to Ms. Peery meet the essential requirements for her physical health and safety and of managing her financial resources.*

*In re Peery*, CCP of Centre County, no. 14-94-9, slip op. at 10, February 22, 1996 (emphasis added). The trial court clearly stated its finding that Miss Peery does not require a guardian. Moreover, the record of the hearing abundantly supports that finding.

On appeal, a divided panel of Superior Court reversed the order dismissing the petition and remanded for a hearing to determine whether Miss Peery needs to have a guardian appointed.

The standard of review is as follows:

\*129 [T]he Court is bound by the trial judge's findings of fact unless those findings are not based on competent evidence. Conclusions of law, however, are not binding on an appellate court whose duty it is to

determine whether there was a proper application of law to fact by the lower court. *Lawner v. Engelbach*, 433 Pa. 311, 249 A.2d 295 (1969).

*2401 Pennsylvania Avenue Corp. v. Federation of Jewish Agencies*, 507 Pa. 166, 489 A.2d 733, 736 (1985). Superior Court committed error by refusing to accept findings of fact by the trial court though the facts were amply supported by competent evidence in the record.

[1] It is clear from the record that the trial court decided the closely related issues of incapacity and Miss Peery's need for a guardian; however, the court inauspiciously referred to the dual issues of incapacity and the need for a guardian as "the issue of whether Ms. Peery needs a guardian," making no mention of incapacity as a separate issue. In remanding "for consideration of whether a guardian for Ms. Peery should be appointed," Superior Court appears to have overlooked the fact that the trial court had already decided that issue when it held that no guardian was necessary.

In addition, Superior Court interprets the guardianship statute to require trifurcation in this case—that is, the trial court should have first decided (1) whether Miss Peery is incapacitated, then (2) whether a guardian should be appointed, then (3) who the guardian \*\*541 should be. In essence, Superior Court would prohibit the integration of the first two elements—the issues of incapacity and the need for a guardian.

According to appellant, her ability to meet her needs without a guardian means, by definition, that she is not statutorily incapacitated. This is appellant's interpretation of the statutory section governing the determination of incapacity, 20 Pa.C.S. § 5512.1(a) (quoted *supra* at n. 1): "(a) Determination of incapacity.—In all cases, the court shall consider and make specific findings of fact concerning ... (3) The need for guardianship services, if any, in light of such factors as the \*130 availability of family, friends and other supports to assist the individual in making decisions...."

[2] The issue of incapacitation is complicated, however, by the statutory definition of "incapacitated person," which states: "'Incapacitated person' means an adult whose ability to receive and evaluate information effectively and communicate decisions in any way is impaired to such a significant extent that he is partially or totally unable to manage his financial resources or to meet essential requirements for his physical health and safety." The definition does not refer to the availability of the support

of kin or friends which enables an impaired person to care for himself without a guardian. It might therefore be said that a person might be incapacitated but not in need of a guardian. On the other hand, the statutory procedure for the determination of incapacity, 20 Pa.C.S. § 5512.1(a), *requires* the court, in determining incapacity, to weigh the available support of others. We have no difficulty concluding, therefore, that a person cannot be deemed incapacitated if his impairment is counterbalanced by friends or family or other support.

The critical fact is whether or not the alleged incapacitated person needs a guardian. If the court finds that a person does not need a guardian, it does not matter whether he is incapacitated-the court cannot proceed to the appointment of a guardian. A guardian is appointed only “[u]pon a finding that the person is partially incapacitated *and* in need of guardianship services,” 20 Pa.C.S. § 5512.1(b) (emphasis added), or “upon a finding that the person is totally incapacitated *and* in need of plenary guardianship services,” 20 Pa.C.S. § 5512.1(c) (emphasis added). It is quite clear from 20 Pa.C.S. §§

#### Footnotes

1 20 Pa.C.S. § 5512.1 states, in pertinent part:

(a) **Determination of incapacity.**-In all cases, the court shall consider and make specific findings of fact concerning:

- (1) The nature of any condition or disability which impairs the individual to make and communicate decisions.
- (2) The extent of the individual's capacity to make and communicate decisions.
- (3) *The need for guardianship services, if any, in light of such factors as the availability of family, friends and other supports to assist the individual in making decisions. ...*
- (4) The type of guardian, limited or plenary, of the person or estate needed based on the nature of any condition or disability and the capacity to make and communicate decisions....

...

(b) **Limited guardian of the person.**-Upon a finding that the person is partially incapacitated *and* in need of guardianship services, the court shall enter an order appointing a limited guardian of the person with powers consistent with the court's findings of limitations....

(c) **Plenary guardian of the person.**-The court may appoint a plenary guardian of the person only upon a finding that the person is totally incapacitated *and* in need of plenary guardianship services.

(Emphasis added).

5512.1(b) and (c) that appointment of a guardian must follow dual findings of incapacity *and* a need for guardianship services. In this context, therefore, whether or not Miss Peery was incapacitated was immaterial, since it was found upon competent evidence that she did not need guardianship services.

\*131 We will therefore vacate the order of the Superior Court and reinstate the order of the court of common pleas.

Order of Superior Court vacated and order of the court of common pleas reinstated.

#### All Citations

556 Pa. 125, 727 A.2d 539