

ORPHANS' COURT DIVISION RULE 14

RULE 14. INCAPACITATED PERSONS; GUARDIANS

Sec. 1. Petition Contents.

(a) A petition for the appointment of a guardian of the estate or person of an alleged incapacitated person shall set forth:

- (1) the name, age, residence and post office address of the alleged incapacitated person;
- (2) the names and addresses of the spouse, parents and presumptive adult heirs of the alleged incapacitated person;
- (3) the name and address of the person or institution providing residential services to the alleged incapacitated person;
- (4) the names and addresses of other service providers;
- (5) the name and address of the person or entity whom petitioner asks to be appointed guardian;
- (6) an averment that the proposed guardian has no interest adverse to the alleged incapacitated person;
- (7) the reasons why guardianship is sought;
- (8) a description of the functional limitations and physical and mental condition of the alleged incapacitated person;
- (9) the steps taken to find less restrictive alternatives;
- (10) the specific areas of incapacity over which it is requested that the guardian be assigned powers; and
- (11) the qualifications of the proposed guardian.
- (12) If a limited or plenary guardian of the estate is sought, the petition shall also include the gross value of the estate and the net income of the alleged incapacitated person from all sources to the extent known;
- (13) the potential for conflict with regard to the issue of who will be appointed as guardian and with regard to the issue of capacity;

(14) the current status of the alleged incapacitated person (i.e. unconscious, unable to communicate due to a stroke, combative, etc.); and

(15) If an emergency guardian is sought, the petition shall also include an indication as to whether or not the condition of the alleged incapacitated person is one that will or will not be remedied within the first 72 hours.

(b) A consent, signed by the proposed guardian, shall be attached to the petition in which the proposed guardian shall agree to act as guardian of the person or the estate of the alleged incapacitated person if appointed by the Court and shall state that the proposed guardian has no interest adverse to that of the alleged incapacitated person and is not a fiduciary of any estate, trust or similar fund in which the alleged incapacitated person has an interest.

(c) The petition shall conclude with a prayer for the appointment of a guardian of the estate or person or both of the alleged incapacitated person and for the award of a citation directed to the alleged incapacitated person to show cause why he should not be adjudged an incapacitated person and why a guardian should not be appointed.

Sec. 2. Preliminary Order; Notice; Service

(a) Upon presentation of a petition for the appointment of a guardian, the Court will enter a preliminary order awarding the citation prayed for. The form of the preliminary order shall be substantially as set out in the appendix to this Rule.

(b) Written notice of the petition and hearing, to which shall be attached the citation and a copy of the petition and preliminary order, shall be provided to the alleged incapacitated person. The written notice shall be in large type and in simple language and shall indicate the purpose and seriousness of the proceeding, the rights that can be lost as a result thereof, the date, time and place of the hearing, and that the alleged incapacitated person has the right to request the appointment of counsel, to have counsel appointed if the Court deems it appropriate, and to have such counsel paid for if it cannot be afforded. The form of written notice shall be substantially as set out in the appendix to this Rule.

(c) Personal service of the written notice, petition, citation and preliminary order shall be made on the alleged incapacitated person and the contents and terms of the petition shall be explained to such person 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. An Affidavit of Service shall be filed on or before the day of hearing.

Sec. 3. Notice of Retention of Counsel

(a) Counsel retained by the person alleged to be incapacitated in a petition under 20 Pa. C.S.A. §5511(A) shall enter an appearance and shall provide a copy thereof to the petitioner at least seven (7) days prior to the date set for hearing as set out in the appendix to this Rule.

(b) If petitioner does not receive notice under Sec. 3(a) that counsel has entered an appearance on behalf of the alleged incapacitated person, petitioner shall notify the Court in writing at least seven (7) days prior to the date set for hearing that the alleged incapacitated person is not represented by counsel as set out in the appendix to this Rule.

Sec. 4. Hearing

At the time fixed for the hearing on the petition, testimony shall be submitted in support of the petition (See 20 Pa. C.S.A. §§5512.1, 5518 and 5518.1). The alleged incapacitated person shall be present in court at such 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.

Sec. 5. Appointment of Guardian

(a) Findings. In all cases, the Court, upon presentation of proper proof, shall consider and make specific findings of fact as required by 20 Pa. C.S.A. §5512(A).

(b) Final Orders. The Court shall determine whether a plenary or limited guardian of the person or estate of the alleged incapacitated person is required. The forms of final orders for the appointment of plenary and limited guardians are set out in the appendix to this Rule.

Sec. 6. Emergency Guardians.

(a) Petition. A petition for the appointment of an emergency guardian of the person or estate of the alleged incapacitated person shall both set forth the information required in 20 Pa. C.S.A. §5511(E) and Sec. 1 of this

Rule and shall be subject to the provisions of 20 Pa. C.S.A. §5511 (including those relating to notification concerning the right to counsel and the appointment of such counsel for the alleged incapacitated person), unless the Court directs in its order setting the time of the emergency hearing that the preparation and inclusion of such information is not feasible under the circumstances. Such emergency petitions must, however, contain facts and information sufficient to enable the Court to determine that: 1) the person allegedly lacks capacity; 2) is in need of the appointment of an emergency guardian; and 3) the failure to make such appointment will result in irreparable harm to the person or estate of the alleged incapacitated person.

(b) Citation. Upon presentation of an appropriate petition for the appointment of an emergency guardian of the person or estate of an alleged incapacitated person, the Court will enter an order awarding a citation, subject to the provisions of 20 Pa. C.S.A. §5511(A), and will direct such notice as it shall determine to be feasible in the circumstances to persons appearing to be entitled to such notice. In addition to fixing a return day for the filing of a written answer to the petition (though such written answer shall not be mandatory), the order shall also fix a time and place for hearing on the petition. The citation, together with written notice of the Petition, to which shall be attached a copy of the petition and the order, shall be served personally upon the alleged incapacitated person prior to the hearing. The forms of orders for the setting of a hearing upon a petition for appointment of an emergency guardian of the person or the estate of an alleged incapacitated person shall be substantially as provided in the appendix to this Rule.

(c) Hearing. At the time fixed for hearing on the petition for appointment of an emergency guardian, testimony shall be submitted in support of the petition (See 20 Pa. C.S.A. §§5513 and 5518). The alleged incapacitated person shall be present at the hearing unless: 1) the Court is satisfied, upon the deposition, testimony 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.

(d) Appointment of Emergency Guardian. Upon proper proof, the Court shall make a finding of incapacity and appoint an emergency guardian of the person or estate, or both, pursuant to 20 Pa. C.S.A. §§5512.1 and 5513 and, if the petition is for the appointment of an emergency guardian of the estate, will fix the amount of the surety bond, if any, to be filed by the guardian. The required bond must be submitted to the Court for approval and filed in the Clerk's office before the order of appointment will be released by the Court. The emergency guardian of an alleged incapacitated person shall have only and be subject to such powers, duties, and liabilities and serve for such time as the Court in its order of appointment shall direct. The forms of orders of appointment

of an emergency guardian shall be substantially as provided in the appendix to this Rule.

Sec. 7. Inventory

Within three months after the real or personal property of the incapacitated person comes into his possession or as otherwise ordered by the Court, a guardian of the estate of an incapacitated person shall verify by oath and file with the Clerk an inventory and appraisal of personalty and a statement of real estate, and a statement of any real or personal property which the guardian expects to acquire thereafter.

Sec. 8. Reports Required of Guardian

(a) Each guardian of an incapacitated person shall file a report with the Court at least once within the first twelve (12) months of his appointment or such earlier time as may be set by the Court and at least annually thereafter.

(b) The annual report of a guardian of the estate of an incapacitated person shall include:

- (1) Assets held by the guardian and the current value thereof.
- (2) All receipts and disbursements of principal and income since the date of appointment of the guardian, or, if later, since the date of the last annual report. The report shall identify expenditures which have been made since the date of appointment or, if later, the date of the last annual report, pursuant to any order for an allowance under 20 Pa. C.S.A. §5536, or otherwise for the housing, maintenance, support medical expenses, rehabilitation, education and other needs of the incapacitated person.
- (3) The estimated annual income of the assets held by the guardian and from other sources.
- (4) Subject to the foregoing, an annual report may be in the form prescribed for Accounts of

Guardians of the Estates of Minors under
Orphans' Court Rule 6.

- (5) Notice of the filing of the annual report by the guardian of an estate shall be provided to the guardian's surety, the guardian of the person if someone other than the guardian of the estate, the incapacitated person and his or her counsel, if any, and such other interested parties as the Court may direct.

The form of the Report of a guardian of the estate shall be substantially as set out in the appendix to this Rule.

(c) Within sixty (60) days of the death of the incapacitated person or an adjudication of capacity and modification of existing orders, the guardian of the estate of such incapacitated person shall file a final report with the Court. The final report shall be in the form prescribed for accounts of guardians of the estates of minors under Rule 6 of this Court and shall cover the period from the date of the appointment of the guardian of the estate to the date of death of the incapacitated person or the adjudication of capacity. Such final report shall be filed as an account of the guardian in the office of the Clerk as provided by 20 Pa. C.S.A. §5532 and the practice and procedure concerning the filing and audit of such account, reviews, distribution and rights of distributees shall conform to the practice and procedure governing the account of a guardian of a minor as set forth in 20 Pa. C.S.A. §5533 and Rule 6 of this Court.

(d) The annual report of guardian of the person of an incapacitated person shall include:

- (1) Current address, type of placement and living arrangements of the incapacitated person, e.g.: private home, personal care facility, hospital, institution, etc.
- (2) Major medical or mental problems of the incapacitated person.
- (3) A brief description of the social, medical, psychological and other support services the incapacitated person is receiving.
- (4) The opinion of the guardian as to whether the guardianship should continue or be terminated or modified, and the reasons therefor.
- (5) The number and length of times the guardian visited the incapacitated person in the past year.

The form of the report of a guardian of the person shall be substantially as set out in the appendix to this Rule.

(e) Within sixty (60) days of the death of the incapacitated person or an adjudication of capacity and modification of existing orders, the guardian of the person shall file a final report with the Court, providing the address and type of placement of the incapacitated person as of the date of death or adjudication of capacity, number and length of times the guardian visited the incapacitated person since the last report, and the reason why the report is being filed. The form of the final report of the guardian of the person shall be substantially as set out in the appendix to this Rule.

Sec. 9. Petition for Allowance

A petition under 20 Pa. C.S.A. §5536 for an allowance from the incapacitated person's estate during incapacity, may be presented by the guardian or any interested party. The petition shall set forth:

- (a) the name of the guardian and the date of the guardian's appointment; if the petitioner is not the guardian, the petitioner's relationship to the incapacitated person or the nature of the petitioner's interest;
- (b) the nature and present value of the incapacitated person's estate and the net annual income therefrom;
- (c) the address of the incapacitated person;
- (d) the names and addresses of the incapacitated person's dependents, if any;
- (e) a statement of all claims of the incapacitated person's creditors known to the petitioner;
- (f) all previous allowances by decree; and
- (g) a prayer for the allowance requested.

No order for an allowance out of an incapacitated person's estate shall be made without prior notice to the incapacitated person's guardian, if any.

Sec. 10. Sales, Mortgages, Leases, Exchanges and Options

A petition for a sale, mortgage, lease, exchange or option of an incapacitated person's real or personal property shall comply with 20 Pa. C.S.A. §§3353, 5155, and 5521(B), and the applicable provisions of Rules 12.9, 12.10 and 12.11 of this Court.

Notice of a sale or other transaction under this section shall be given to all persons who are *sui juris* and would be entitled to share in the estate of the incapacitated person if the incapacitated person died intestate at the time the petition is presented.

Sec. 11. Small Estates

(a) When the entire real and personal estate, wherever located, of a resident or non-resident alleged incapacitated person has a gross value of \$25,000 or less, a petition to have him adjudged incapacitated shall be filed in the form prescribed in Sec. 1 of this Rule except that the appointment of a guardian of his estate shall not be requested. After the hearing on such a petition and upon presentation of the required evidence, the Court will make a finding of incapacity as to the alleged incapacitated person and may authorize the person or institution maintaining the person to receive and hold or dispose of the property of the person without the appointment of a guardian or the entry of security.

(b) Without the appointment of a guardian, any amount in cash of a resident or non-resident incapacitated person may be ordered by the Court to be deposited in one or more savings accounts in the name of the person in banks, building and loan associations or savings and loan associations insured by a federal government agency, provided that the amount deposited in any one such savings institution shall not exceed the amount to which accounts are thus insured. Every such order shall contain a provision that no withdrawal can be made from any such account except as authorized by order of Court.

Sec. 12. Foreign or Successor Guardian.

(a) A foreign guardian shall file an exemplification of the record of the foreign guardianship in the office of the Register of Wills and thereafter a petition with the Court requesting full faith and credit to be given to the foreign adjudication of incompetency. The Court will enter a preliminary order awarding a citation directed to the alleged incapacitated person and providing that at least twenty days' written notice of the proceeding be given to all persons appearing to be entitled to such notice. In addition to fixing a return day for the citation, the order shall also fix a time and place for hearing on the petition. The citation, together with a copy of the petition and order, shall be served personally on the alleged incapacitated person. Notice to other persons shall be given personally or by registered or certified mail. The forms of preliminary and final orders as approved by the Court are as provided in the appendix to these Rules.

(b) The Court, after such notice to parties in interest as it shall direct, may without a hearing appoint a succeeding guardian to fill a vacancy in the office of guardian or may appoint a co-guardian of the estate of an

incapacitated person. Where the vacating guardian was a parent who is now deceased, any testamentary nominee of the parent shall be given preference by the court.

Sec. 13. Distribution of Principal (Estate Plan)

In all petitions brought under 20 Pa. C.S.A. §5536(b), the Court will appoint a guardian ad litem to represent the interests of the incapacitated person at the hearing on the petition.

Alternate

In all petitions brought under 20 Pa. C.S.A. §5536(b), petitioner shall (1) request the Court to appoint a guardian ad litem to represent the interests of the incapacitated person in the proceedings, or (2) assert facts and circumstances as to why such guardian need not be appointed.