

THE COURTS

Title 231—RULES OF CIVIL PROCEDURE

PART I. GENERAL

[231 PA. CODE CHS. 400 AND 1000]

Order Amending Rules 410, 430 and 1065 and Adopting Rule 1064 of the Rules of Civil Procedure; No. 655 Civil Procedural Rules Doc.

Order

Per Curiam

And Now, this 29th day of November, 2016, upon the recommendation of the Civil Procedural Rules Committee; the proposal having been published for public comment at 45 Pa.B. 1249 (March 14, 2015):

It Is Ordered pursuant to Article V, Section 10 of the Constitution of Pennsylvania that Rules 410, 430, and 1065 of the Pennsylvania Rules of Civil Procedure are amended in the following form, and that Rule 1064 of the Pennsylvania Rules of Civil Procedure is adopted in the following form.

This *Order* shall be processed in accordance with Pa.R.J.A. No. 103(b), and shall be effective January 1, 2017.

Annex A

TITLE 231. RULES OF CIVIL PROCEDURE

PART I. GENERAL

CHAPTER 400. SERVICE OF ORIGINAL PROCESS

SERVICE IN PARTICULAR ACTIONS

Rule 410. Real Property Actions.

(a) In actions involving title to, interest in, possession of, or charges or liens upon real property, original process shall be served upon the defendant in the manner provided by Rule 400 *et seq.*

(b)(1) If in an action involving an interest in real property the relief sought is possession or mortgage foreclosure, original process also shall be served upon any person not named as a party who is found in possession of the property. The sheriff shall note the service in the return.

(2) If the relief sought is possession, the person so served shall thereupon become a defendant in the action. Upon praecipe of the plaintiff the prothonotary shall index the name of the person found in possession as a party to the action.

(3) If the relief sought is mortgage foreclosure, the person so served shall not thereby become a party to the action.

(c) If service is made pursuant to an order of court under Rule 430(a), the court shall direct one or more of the following methods of service:

- (1) publication as provided by Rule 430(b),

Official Note: See Rule 1064 for additional requirements for service of original process by publication for actions to quiet title involving subsurface mineral rights.

(2) posting a copy of the original process on the most public part of the property,

(3) registered mail to the defendant's last known address, and

(4) such other methods, if any, as the court deems appropriate to give notice to the defendant.

SERVICE PURSUANT TO SPECIAL ORDER OF COURT

Rule 430. Service Pursuant to Special Order of Court. Publication.

(a) If service cannot be made under the applicable rule the plaintiff may move the court for a special order directing the method of service. The motion shall be accompanied by an affidavit stating the nature and extent of the investigation which has been made to determine the whereabouts of the defendant and the reasons why service cannot be made.

Official Note: A sheriff's return of "not found" or the fact that a defendant has moved without leaving a new forwarding address is insufficient evidence of concealment. *Gonzales v. Polis*, [238 Pa. Super. 362,] 357 A.2d 580 (Pa. Super. 1976). Notice of intended adoption mailed to last known address requires a "good faith effort" to discover the correct address. *Adoption of Walker*, [468 Pa. 165,] 360 A.2d 603 (Pa. 1976).

An illustration of a good faith effort to locate the defendant includes (1) inquiries of postal authorities including inquiries pursuant to the Freedom of Information Act, 39 [CFR] C.F.R. Part 265, (2) inquiries of relatives, neighbors, friends, and employers of the defendant, [and] (3) examinations of local telephone directories, courthouse records, voter registration records, local tax records, and motor vehicle records, and (4) a reasonable internet search.

See Rule 1064 for additional requirements for service of original process by publication for actions to quiet title involving subsurface mineral rights.

(b)(1) If service of process by publication has been authorized by rule of civil procedure or order of court, the publication shall be by advertising a notice of the action once in the legal publication, if any, designated by the court for the publication of legal notices and in one newspaper of general circulation within the county. The publication shall contain the caption of the action and the names of the parties, state the nature of the action, and conclude with a notice substantially in the following form:

* * * * *

CHAPTER 1000. ACTIONS

Subchapter D. ACTION TO QUIET TITLE

Rule 1064. Service.

[(Rescinded)]

In actions involving subsurface mineral rights, if the plaintiff seeks to serve original process by publication pursuant to Rule 430 and obtains actual

knowledge of a last known address of the defendant outside the county in which the property is located, the plaintiff shall explain in the affidavit required by Rule 430(a) the search for the defendant in that locale.

Official Note: For service of original process, *see* Rule 410 governing service in actions involving real property. *See* Rule 430 for additional requirements for service of original process by publication.

Rule 1065. Specific Avertisments.

[The] (a) **Except as provided in subdivision (b), the plaintiff shall describe the land in the complaint.**

(b) **In an action to quiet title involving subsurface mineral rights, the complaint shall describe the land by attaching:**

(1) **a summary of the abstract of the mineral title, or the full abstract of the mineral title if the title documents are not available in the courthouse records, and**

(2) **a statement of acreage involved that includes a metes and bounds description, if available, or other description sufficient to identify the subject land.**

EXPLANATORY COMMENT

The Supreme Court of Pennsylvania has amended Rules 410, 430, and 1065 and reconstituted Rule 1064 to update the requirements for the service by publication authorized by special order of court for actions to quiet title of subsurface mineral rights. Currently, when a plaintiff is unable to serve original process on a defendant pursuant to Rules 400 *et seq.*, the Rules of Civil Procedure allow a plaintiff to serve original process by publication pursuant to Rule 430 governing service by special court order. For service by publication to be allowed, the plaintiff must file a motion with an affidavit describing the good faith efforts on the part of the plaintiff to locate the defendant. The note to Rule 430 currently provides illustrations of what constitutes a good faith effort to locate a defendant. The proposed amendment would expand the sources to be searched to include courthouse records and a reasonable internet search. By including these sources, the amendment is intended to update the rule to use modern technology in an effort to locate a defendant as well as records that are already available at the courthouse. In many instances, courthouse records are available on-line as well.

With regard to actions to quiet title of subsurface mineral rights, the amendment reconstitutes Rule 1064, which formerly governed service generally for actions to quiet title. The reconstituted rule requires a plaintiff, who seeks to serve original process pursuant to Rule 430 and obtains actual knowledge of a last known address of the defendant outside of the county in which the property at issue is located, to explain in the affidavit required by Rule 430(a) the search for the defendant in that locale.

The Court has also amended Rule 1065 governing the content of a complaint in actions to quiet title of subsurface mineral rights to require a verified land description in the complaint by attaching a summary of the abstract of the mineral title, or the full abstract of the mineral

title if documents to the property are not available in the courthouse records, and a statement of acreage involved with a metes and bounds description, if available or other description sufficient to identify the subject land.

Cross-references to reconstituted Rule 1064 have been provided in the notes to Rule 430(a) governing service by special order of court and Rule 410(c)(1) governing service in real property actions in order to aid the practitioner in finding the additional requirements set forth in that rule for service by publication in quiet title actions involving subsurface mineral rights.

*By the Civil Procedural
Rules Committee*

WILLIAM S. STICKMAN, IV,
Chair

[Pa.B. Doc. No. 16-2236. Filed for public inspection December 16, 2016, 9:00 a.m.]

**PART II. ORPHANS' COURT RULES
[231 PA. CODE PART II]**

Proposed Amendment of Pa. O.C. Rule 1.5, Proposed Rescission of Pa. O.C. Rules 14.1—14.5 and Orphans' Court Forms G-01—G-04, Proposed Adoption of New Pa. O.C. Rules 14.1—14.12 and Orphans' Court Forms G-01—G-07 and Proposed Amendment of the Appendix of Forms

The Orphans' Court Procedural Rules Committee is planning to propose to the Supreme Court of Pennsylvania the amendment of Pa. O.C. Rule 1.5, the rescission of Chapter XIV of the Pennsylvania Orphans' Court Rules, Pa. O.C. Rules 14.1—14.5, together with related forms, G-01 through G-04, to be replaced with the adoption of new Pa. O.C. Rules 14.1—14.12 and Orphans' Court Forms G-01 through G-07, and the amendment of the Appendix of Forms, for the reasons set forth in the accompanying explanatory report. Pursuant to Pa.R.J.A. No. 103(a)(1), the proposal is being published in the *Pennsylvania Bulletin* for comments, suggestions, or objections prior to submission to the Supreme Court.

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

Orphans' Court Procedural Rules Committee
Supreme Court of Pennsylvania
Pennsylvania Judicial Center
PO Box 62635
Harrisburg, PA 17106-2635
FAX: (717) 231-9551
orphanscourtproceduralrules@pacourts.us

All communications in reference to the proposal should be received by February 27, 2017. E-mail is the preferred method for submitting comments, suggestions, or objections; any e-mailed submission need not be reproduced and resubmitted via mail. The Committee will acknowledge receipt of all submissions.

*By the Orphans' Court
Procedural Rules Committee*

JOHN F. MECK, Esq.,
Chair

Annex A

TITLE 231. RULES OF CIVIL PROCEDURE

PART II. ORPHANS' COURT RULES

CHAPTER I. PRELIMINARY RULES

Rule 1.5. Local Rules.

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

(b) All previously promulgated local rules under Chapter 14 regarding guardianship of incapacitated persons are hereby vacated, effective (TBD).

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

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

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

(Editor's Note: As part of this proposed rulemaking, the Committee is proposing to rescind Chapter XIV, Rules 14-1—14-5, which appears in 231 Pa. Code pages 14-1 to 14-2, serial pages (382157) and (382158), and replace it with Chapter XIV as follows. This chapter is new and printed in regular type to enhance readability.)

**CHAPTER XIV. GUARDIANSHIPS OF
INCAPACITATED PERSONS**

Rule	
14.1.	Petition for Adjudication of Incapacity and Appointment of a Guardian of the Person or Estate of an Incapacitated Person.
14.2.	Written Deposition.
14.3.	Counsel.
14.4.	Waiver or Modification of Bond.
14.5.	Determination of Incapacity, Selection of Guardian, Order & Certificate.
14.6.	Guardianship Reporting, Monitoring, Review, and Compliance.
14.7.	Review Hearing.
14.8.	Proceedings Relating to Real Estate.
14.9.	Transfer of Guardianship of the Person to Another State.
14.10.	Transfer of Guardianship of the Estate to Another State.
14.11.	Acceptance of a Guardianship Transferred from Another State.
14.12.	Forms.

Rule 14.1. Petition for Adjudication of Incapacity and Appointment of a Guardian of the Person or Estate of an Incapacitated Person.

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

(1) Name, age, address, and mailing address, if different, of the petitioner and the petitioner's relationship to the alleged incapacitated person;

(2) Name, age, residence, and mailing address, if different, of the alleged incapacitated person;

(3) Names and addresses of the spouse, parents, and presumptive adult intestate heirs of the alleged incapacitated person;

(4) Name and address of the person or institution providing residential services to the alleged incapacitated person;

(5) Names and addresses of other service providers and nature of services being provided;

(6) Reason(s) why guardianship is sought, including a description of functional limitations and the physical and mental condition of the alleged incapacitated person;

(7) If not plenary, then specific areas of incapacity over which it is requested that the guardian be assigned powers;

(8) The probability of whether the physical condition and mental condition of the alleged incapacitated person will improve;

(9) Whether there is an executed health care power of attorney, and if so, the name of the person designated in the document to act as the health care agent;

(10) Whether there is an executed power of attorney, and if so, the name of the person designated in the document to act as the agent;

(11) Whether there has been a prior incapacity hearing concerning the alleged incapacitated person, and if so, the name of the court, the date of the hearing, and the determination of capacity;

(12) Steps taken to find a less restrictive alternative than a guardianship;

(13) If a guardian of the estate is sought, then the gross value of the estate and net income from all sources, to the extent known;

(14) Whether there is a prepaid burial account, to the extent known;

(15) Whether the alleged incapacitated person is a veteran of the United States Armed Services, and whether the alleged incapacitated person is receiving benefits from the United States Veterans' Administration on behalf of himself or herself or through a spouse; and

(16) Name and address, if available, of any person proposed to receive a notice of filing pursuant to Rule 14.6(b).

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

(1) The name, address, and mailing address, if different, of the proposed guardian whom the petitioner nominates to be appointed guardian and the nominee's relationship, if any, to the alleged incapacitated person;

(2) Whether the proposed guardian has any adverse interest to the alleged incapacitated person;

(3) Whether the proposed guardian is available and able to visit or confer with the alleged incapacitated person;

(4) Whether the proposed guardian has completed any guardianship training, including the name of the training program, length of the training, and date of completion;

(5) Whether the proposed guardian is or was a guardian in any other matters; and

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

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

(1) All powers of attorney, if available;

(2) A Pennsylvania State Police criminal history report for each proposed guardian issued within six months of the filing of the petition.

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

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

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

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

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

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

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

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

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

(1) Upon the alleged incapacitated person in the manner pursuant to Rule 3.5(a) no less than 20 days prior to the hearing in accordance with Rule 4.2(a). Additionally, the content and terms of the petition shall be explained to the maximum extent possible in language and terms the alleged incapacitated person is most likely to understand.

(2) In the manner pursuant to by Rule 3.5(b) no less than 20 days prior to the hearing upon:

(A) All persons who are *sui juris* and would be entitled to an intestate share in the estate of the alleged incapacitated person;

(B) The person or institution providing residential services to the alleged incapacitated person; and

(C) Such other parties as the court may direct, including service providers.

(3) For a petition seeking the appointment of an emergency guardian, the court may direct the manner of service as emergent circumstances warrant. Thereafter, notice shall be served in accordance with Rule 14.1(f)(2).

Rule 14.2. Written Deposition.

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

(a) The deponent is qualified by training and experience in evaluating individuals with incapacities for the type alleged in the petition;

(b) The deponent signs, dates, and verifies the responses set forth in the form; and

(c) Incapacity is uncontested.

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

Rule 14.3. Counsel.

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

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

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

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

Rule 14.4. Waiver or Modification of Bond.

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

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

(c) *Assurance.* If the court waives or modifies a bond requirement, then the court shall consider whether a consumer report or proof of insurance should be filed and the frequency thereof.

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

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

(a) *Determination of Incapacity.* The procedure for determining incapacity and for appointment of a guardian shall meet all requirements set forth at 20 Pa.C.S. §§ 551, 5512, and 5512.1.

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

(1) *Guardian of the Person:*

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

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

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

In all other instances, where no individual listed in subparagraphs (A)—(I) of paragraph (b)(2) possesses the skills and experience necessary to manage the finances of the estate, the guardian of the estate may be any qualified proposed guardian, including a corporate fiduciary.

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

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

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

(A) The right to appeal the order within 30 days from the date of the order by filing a notice of appeal with the clerk.

(B) The right to petition the court at any time to modify or terminate the guardianship due to a change in circumstances.

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

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

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

Rule 14.6. Guardianship Reporting, Monitoring, Review, and Compliance.

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

- (1) An inventory by the guardian of the estate within 90 days of such guardian's appointment;
- (2) An annual report by the guardian of the estate one year after appointment and annually thereafter;
- (3) An annual report by the guardian of the person one year after appointment and annually thereafter;
- (4) A final report from the guardian of the person and the guardian of the estate within 60 days of the death of the incapacitated person, an adjudication of capacity or a change of guardian; and
- (5) A final report from the guardian of the person and the guardian of the estate upon receipt of the provisional order from another state's court accepting transfer of a guardianship.

(b) *Notice of Filing.* If the order appointing the guardian includes the name of a person entitled to receive notice of the filing of any report set forth in paragraph (a) pursuant to Rule 14.5(c)(1), the guardian shall serve a notice of filing within ten days of filing a report using the form provided in the Appendix to these rules. Service shall be in accordance with Rule 4.3.

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

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

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

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

(1) If any report is deemed incomplete or is more than 20 days delinquent, then the clerk or the court's designee shall serve notice on the guardian directing compliance within 20 days, with a copy of the notice sent to the court and the guardian's counsel, if represented.

(2) If the guardian fails to comply with the reporting requirements within 20 days of service of the notice, then the clerk or the court's designee shall file and transmit a notice of deficiency to the adjudicating judge and serve a notice of deficiency on those persons named in the court's order pursuant to Rule 14.5(c) as entitled to receive a notice of filing.

(3) The court may thereafter take such enforcement procedures as are necessary to ensure compliance.

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

Rule 14.7. Review Hearing.

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

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

(1) the name, age, address, and mailing address, if different, of the petitioner and the petitioner's relationship to the incapacitated person;

(2) the date of the adjudication of incapacity;

(3) the names and addresses of all guardians;

(4) if the incapacitated person has been a patient in a mental health facility, the name of such facility, the date of admission, and the date of discharge;

(5) the present address of the incapacitated person, and the name of the person with whom the incapacitated person is living;

(6) the names and addresses of the presumptive adult intestate heirs of the incapacitated person; and

(7) an averment that:

(A) there has been significant change in the incapacitated person's capacity and the nature of that change;

(B) there has been a change in the need for guardianship services and the nature of that change; or

(C) the guardian has failed to perform duties in accordance with the law or act in the best interest of the incapacitated person, and details as to the duties that the guardian has failed to perform or has performed but are allegedly not in the best interests of the incapacitated person.

(c) *Service.* The petition shall be served in accordance with Rule 4.3 upon the incapacitated person and those entitled to notice pursuant to Rule 14.1(f)(2).

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

Explanatory Comment: Nothing in this rule is intended to preclude the court from scheduling a review hearing upon its own initiative or in the order adjudicating incapacity and appointing a guardian. For the court's disposition of a petition for a review hearing and evidentiary burden of proof, see 20 Pa.C.S. § 5512.2.

Rule 14.8. Proceedings Relating to Real Estate.

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

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

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

Rule 14.9. Transfer of Guardianship of the Person to Another State.

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

(1) the incapacitated person is physically present in or is reasonably expected to move permanently to the other state;

(2) plans for care and services for the incapacitated person in the other state are reasonable and sufficient;

(3) the court to which the guardianship will be transferred; and

(4) the guardianship will be accepted by the other state's court.

(b) *Service.* The guardian shall serve a copy of the petition in accordance with Rule 4.3 upon the incapacitated person and those entitled to notice pursuant to Rule 14.1(f)(2).

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

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

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

(1) issue an order provisionally granting the petition to transfer the guardianship and directing the guardian to petition for acceptance of the guardianship in the other state; and

(2) issue a final order confirming the transfer and relinquishing jurisdiction upon receipt of the provisional order from the other state's court accepting the transfer and the filing of the final report of the guardian.

Explanatory Comment: See Subchapter C of the Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act, 20 Pa.C.S. §§ 5921—5922. This petition

may also include a request to transfer the guardianship of the estate to another state as provided in Rule 14.10.

Rule 14.10. Transfer of Guardianship of the Estate to Another State.

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

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

(b) *Notice.* The guardian shall serve a copy of the petition in accordance with Rule 4.3 upon the incapacitated person and those entitled to notice pursuant to Rule 14.1(f)(2).

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

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

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

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

Explanatory Comment: See Subchapter C of the Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act, 20 Pa.C.S. §§ 5921—5922. For factors used to determine the significance of the incapacitated person's connection with the other state, see 20 Pa.C.S. § 5911(b). This petition may also include a request to transfer the guardianship of the person to another state as provided in Rule 14.9.

Rule 14.11. Acceptance of a Guardianship Transferred from Another State.

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

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

(b) *Notice.* The guardian shall serve a copy of the petition in accordance with Rule 4.3 with notice in accordance with Rule 3.5(b) upon the incapacitated person and those entitled to notice pursuant to Rule 14.1(f)(2).

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

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

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

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

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

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

Rule 14.12. Forms.

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

- (a) Important Notice—Citation with Notice (G-01);
- (b) Report of Guardian of the Estate (G-02);
- (c) Report of Guardian of the Person (G-03);
- (d) Guardian's Inventory (G-04);
- (e) Guardianship of Incapacitated Person: Petition for Adjudication/Statement of Proposed Distribution Pursuant to Pa. O.C. Rule 2.4 (OC-03);
- (f) Guardianship of Minor: Petition for Adjudication/Statement of Proposed Distribution Pursuant to Pa. O.C. Rule 2.4 (OC-04);
- (g) Written Deposition (G-05);
- (h) Notice of Filing (G-06); and
- (i) Certificate of Guardianship (G-07).

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

EXPLANATORY REPORT

Proposed Amendment of Pa. O.C. Rule 1.5, Proposed Rescission of Pa. O.C. Rules 14.1-14.5 and Orphans' Court Forms G-01 through G-04, Proposed Adoption of New Pa. O.C. Rules 14.1-14.12 and Orphans' Court Forms G-01 through G-07, and Proposed Amendment of the Appendix of Forms

In 2014, the Elder Law Task Force delivered a comprehensive 284-page report detailing 130 specific recommendations to help lay the foundation for improvements in

tackling elder law issues in the courts and by other government entities. The report recommended a number of amendments to the Pennsylvania Orphans' Court Rules. The report also suggested modification of current statewide guardianship forms and the addition of several new forms to assist in monitoring guardianships.

In order to respond to many of those recommendations and to provide more comprehensive statewide rules establishing uniformity and consistency for guardianship proceedings, the Orphans' Court Procedural Rules Committee proposes rescinding and replacing Chapter XIV of the Pennsylvania Orphans' Court Rules, Pa. O.C. Rules 14.1—14.5, together with related forms, G-01 through G-04. In formulating this proposal, the Committee has been guided by several concepts endemic to guardianship proceedings.

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

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

Additionally, the Committee recognizes the need for greater monitoring and oversight of guardianships after the adjudicatory process has concluded. Therefore, the proposed rules have expanded to accommodate this need by addressing reporting requirements and revising reporting forms. In doing so, the Committee acknowledges that there is a growing number of professional entities offering guardianship services; but, the Committee has endeavored to construct rules applicable to all guardians rather than develop different rules based on the professionalism of the guardian.

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

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

Response: The Committee considered both the Health Care Agents and Representatives Act, 20 Pa.C.S. § 5451 *et seq.* and the *Guardianship Law: Proposed Amendments to the Probate, Estates and Fiduciaries Code*, at pp. 26—30, Report of the Advisory Committee on Decedents' Estates Laws, Joint State Government Commission (October 2012) when developing a hierarchy of individuals for guardian consideration. The Committee believes that the

hierarchy set forth in proposed Rule 14.5(b) is stated so as not to exclude other friends or relatives from consideration provided they have knowledge of the incapacitated person's preferences and values.

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

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

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

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

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

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

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

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

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

Recommendation 45: The Task Force recommends that the Orphans' Court Procedural Rules be amended to require that in all guardianship matters where the court does not require a bond, the proposed guardian be required to submit a current credit report. This requirement should be ongoing and, after appointment, the guardian should be required to supply a current credit report each year together with the annual report. The guardian's credit reports should be kept confidential and not be made publicly available. For good cause shown, the court may waive the requirement of a credit report. If the court waives the requirement of a credit report, however, it should still require an assurance of financial responsibility as recommended in Section V.C.1.d.

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

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

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

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

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

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

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

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

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

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

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

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

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

Recommendation 52: The Task Force recommends that the Orphans' Court Procedural Rules be amended to require that where the court appoints counsel to represent an AIP, the court indicate whether, except for pursuing rights of appeal, counsel for the AIP is dis-

charged or is to continue representing the person now under guardianship in the event the petition is granted and a guardian is appointed.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Recommendation 64: The Task Force recommends that the Clerks of the Orphans' Court, through amendment to

the Orphans' Court Procedural Rules, be responsible for providing delinquency notices to guardians when required reports become past due.

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

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

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

* * *

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

Rule 1.5 Local Rules

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

Similar to the more global amendments of the Pennsylvania Orphans' Court Rules, effective September 1, 2016, the Committee will recommend an effective date on which all local guardianship rules will be vacated, providing however, sufficient time for the judicial districts to review their local rules and submit to the Committee for review any new rules or current local rules that they wish to retain. Submission of local rules will be subject to a deadline to allow the Committee time to review the proposed local rules for inconsistency.

Rule 14.1 Petition for Adjudication of Incapacity and Appointment of a Guardian of the Person or Estate of an Incapacitated Person

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

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

Rule 14.2 Written Deposition

The Committee previously published for comment a proposed rule and form regarding written depositions to be used for the admission of expert testimony in lieu of live testimony. See 46 Pa.B. 2306 (May 7, 2016). That proposal represented a refinement of an earlier published version of the form. See 45 Pa.B. 1070 (March 7, 2015). After reviewing several comments and suggestions, the

Committee made further revisions and intends to submit the rule and form to the Court with a recommendation for adoption.

The version being submitted to the Court is set forth in the proposed rules to provide context for the remaining rules and forms. The Committee is not soliciting comment on either the written deposition rule or the form.

Rule 14.3 Counsel

This rule was crafted to establish the scope of counsel's services before commencement of the proceedings in order to avoid confusion about the role of counsel. While the rule requires private counsel to set forth information regarding fees in the engagement letter, the reasonableness of all fees incurred on behalf of the alleged incapacitated person, whether attributed to private counsel or appointed counsel, are subject to court review.

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

Rule 14.4 Waiver or Modification of Bond

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

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

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

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

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

The Committee opted to incorporate by reference the statutory procedures for determining incapacity and appointing a guardian. This approach is consistent with current Pa. O.C. Rule 14.2. Within 20 Pa.C.S. § 5511 there are some provisions that could be replicated within the proposed rules, such as closed hearings, jury trial, seven-day notice if counsel has not been retained, and the authority of the court to order an independent evaluation. Likewise, 20 Pa.C.S. § 5512.1 sets forth required findings

to be made by the court regarding incapacity and the need for a guardianship. However, the Committee believed that the proposed rules and Chapter 55 of Title 20 should be read in *pari materia* with each supplementing the other as to procedure. The Committee welcomes comment on whether the proposed rules should more fully reflect the statutory requirements.

The selection of a guardian and the hierarchy of eligibility is discussed in the Committee's response to Recommendation 40. Proposed Rule 14.1(b)(2) requires the petitioner to state in the petition whether the proposed guardian has an adverse interest to the alleged incapacitated person. This information is intended to assist the court in assessing who may be appointed guardian pursuant to 20 Pa.C.S. § 5511(f). The Note to proposed Rule 14.5(b)(2), in addition to referencing Section 5511(f), also contains reference to *In re Peery* as a reminder that a guardian is not required if the persons, albeit lacking capacity, does not need guardianship services.

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

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

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

Rule 14.6 Guardianship Reporting, Monitoring, Review, and Compliance

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

Once a guardian has filed a reporting form or inventory form with the clerk, Rule 14.6(b) requires the guardian to serve notice of the filing on all persons entitled to receive such notice, as identified in the court's order. The notice

of filing instructs the recipient that a copy of the notice along with proper identification will be required to access and view the filed documents.

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

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

Rule 14.7 Review Hearing

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

Rule 14.8 Proceedings Relating to Real Estate

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

Rule 14.9 Transfer of Guardianship of the Person to Another State

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

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

Rule 14.10 Transfer of Guardianship of the Estate to Another State

See the Committee's comment to Rule 14.9.

Rule 14.11 Acceptance of a Guardianship Transferred from Another State

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

Further, the court will be required to conduct a review hearing within 90 days of the final order accepting the transfer.

Rule 14.12 Forms

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

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

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

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

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

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

* * *

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

Annex B

**TITLE 231. RULES OF CIVIL PROCEDURE
PART II. ORPHANS’ COURT RULES
INDEX TO APPENDIX**

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

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

* * * * *

B. Guardianship Forms

1. Important Notice—Citation with Notice
(Pa. O.C. Rule [14.5] 14.1)..... G-01

2. [**Annual Report—**] **Report of** Guardian of
Estate G-02

3. [**Annual Report—**] **Report of** Guardian of
Person G-03

4. Guardian’s Inventory G-04

5. Guardianship of Incapacitated Person: Petition
for Adjudication/Statement of Proposed Distribution
Pursuant to Pa. O.C. Rule 2.4 OC-03*

6. Guardianship of Minor: Petition for Adjudication/
Statement of Proposed Distribution Pursuant to Pa. O.C.
Rule 2.4..... OC-04**

7. Written Deposition..... G-05

8. Notice of Filing G-06

9. Certificate of Guardianship..... G-07

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

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

* * * * *

(Editor’s Note: As part of this proposed rulemaking, the Committee is proposing to rescind Forms G-01—G-04, which appear in 231 Pa. Code pages Appx-50 to Appx-62, serial pages (383198) to (383210), and replace them with Forms G-01—G-07 as follows. The proposed forms are printed in regular type to enhance readability.)

COURT OF COMMON PLEAS OF
ORPHANS' COURT DIVISION

To _____ :

**IMPORTANT NOTICE
CITATION WITH NOTICE**

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

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

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

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

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

To: _____:

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

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

By: _____
Orphans' Court Clerk

COURT OF COMMON PLEAS OF
ADAMS COUNTY PENNSYLVANIA
ORPHANS' COURT DIVISION

REPORT OF GUARDIAN OF THE ESTATE

Estate of _____, an Incapacitated Person
Name of Incapacitated Person

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: _____

4. Have you sent the Notice of Filing for the Report to those indicated in the court order appointing you as guardian? Yes No

PART II. INCOME

5. List all sources of income received during the **Report Period**:

Did the Incapacitated Person receive any of the following?		Amount During Report Period
Unspent Income from prior Report Period (from Prior Report, page 4, question 10)	<input type="checkbox"/> Yes <input type="checkbox"/> No	\$
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 (cash only)	<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 Disability Benefits	<input type="checkbox"/> Yes <input type="checkbox"/> No	\$
Social Security Retirement Benefits	<input type="checkbox"/> Yes <input type="checkbox"/> No	\$
Supplemental Security Insurance Benefits (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	\$
	TOTAL	\$

PART III. ANNUAL EXPENSES6. 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
Auto Insurance		\$
Cable/Satellite/Internet		\$
Child/Spousal Support/Alimony		\$
Clothing		\$
Condo/Co-op Assessments		\$
Debt (incurred prior to your appointment)		\$
Entertainment		\$
Fees/Costs Paid to Guardian		\$
Food		\$
Gifts - Personal or Charitable		\$
Home Health Care/Personal Aide		\$
Homeowners Insurance		\$
Home/Property Maintenance & Repair		\$
Income Taxes		\$
Life Insurance Premiums		\$
Medical Insurance Premiums		\$
Medical Expenses		\$
Medicine		\$
Mortgage		\$
Nursing Home/Assisted Living/Institutionalized Care		\$
Personal Expenses (including allowance)		\$
Phone/Cell Phone		\$
Real Estate Taxes		\$
Rent		\$
Utilities		\$
	TOTAL	\$

7. 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

8. Total Income (page 2, Question 5 TOTAL): \$ _____
 9. Total Expenses (page 3, Question 6 TOTAL): \$ _____
 10. Unspent Income: (subtract 9 from 8): \$ _____
 (If 9 is more than 8, enter zero)
 11. If Expenses exceed Income, was Court approval received for the use of the principal?
 Yes - Attach a copy of the Court Order
 No - Explain why court approval was not obtained:

PART V. ASSETS

12. What was the value of the assets reported on the Inventory? \$ _____
 13. List any additional assets received during the **Report Period**? (for example: gifts, inheritance, lawsuit recovery, etc.)

Description/Source	Value at the end of Report Period
TOTAL	

14. Where are the assets deposited or held at the end of the **Report Period**?

List of Assets: Type and Location	Value at the end of Report Period
TOTAL	

15. Does the incapacitated person own a house/condo/co-op?

- Yes - Answer Questions a - c 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? \$ _____

PART VI. GUARDIAN’S COMPENSATION

16. Did the Guardian receive compensation during the **Report Period**?

- Yes - Complete the table below No - Skip to Question 18

Amount	Method of Determination

17. Was the compensation approved by the court?

- Yes - Attach a copy of the court order.
 No - Explain why court approval was not obtained.

18. Have you maintained a log of your activities as guardian?

- Yes - Attach a copy No

Part VII. ATTORNEY’S FEES

19. Were attorney’s fees paid during the **Report Period**?

- Yes - Complete the table below No - Skip to Question 21

Amount	Name of Counsel

20. Was the attorney’s fee approved by the court?

Yes - Attach a copy of the court order.

If fee is based on an hourly rate, specify the rate and number of hours expended:

No - Explain why court approval was not obtained.

Part VIII. REPRESENTATIVE PAYEE

21. Does the Guardian act as the Incapacitated Person’s representative payee for the Social Security Administration (SSA) or Veterans Administration (VA)?

Yes - Attach copy of the report(s) provided to SSA or VA during this **Report Period**

No

Part IX. SURETY INFORMATION

22. 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 23

a. Is the surety bond still in effect?

Yes No - Provide an explanation as to why not.

b. Is the value of the estate at the end of the **Report Period** greater than the amount reported on the Inventory?

Yes (the amount on Question 14 TOTAL is greater than the amount on Question 12) No

If **yes**, has the amount of the surety bond been increased?

Yes. To what amount \$ _____ No

23. 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 Question 24

a. Are the coverage limits greater than the assets (Question 14 TOTAL)?

Yes No

b. Describe the deductible and any exclusions

Part X. GUARDIAN INFORMATION

24. During this **Report Period**, did you participate in guardianship training? Yes No

If yes, provide the following information:

Dates of Training	Provider	Training Description

25. During this **Report Period**, have any judgments been filed against you or have you filed for bankruptcy protection?

Yes - Please describe No

26. During this **Report Period**, were you charged or convicted of a crime?

Yes - Please describe No

27. Is there any reason you cannot continue to serve as guardian?

Part XI. SUMMARY

28. If this is the first annual report, state the value of the assets reported on the Inventory. (Use amount from Question 12 of <i>this</i> Report.) (Principal)	\$
29. If this is not the first Report, state the Total Assets (principal) from the prior Report. (Use TOTAL amount from Question 14 of <i>prior</i> Report.)	\$
30. What was the total amount of Income received during the Report Period ? (Use the amount from Question 5 of <i>this</i> Report.)	\$
31. What is the total amount of Expenses paid during the Report Period ? (Use the amount from Question 6 of <i>this</i> Report.)	\$
32. What are the Total Assets remaining at the end of the Report Period ? (Use the amount from Question 14 of <i>this</i> Annual Report.)	\$
33. What is the Unspent Income at the end of the Report Period ? (Use the amount from Question 10 of <i>this</i> Report.)	\$

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 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
ADAMS COUNTY PENNSYLVANIA
ORPHANS' COURT DIVISION

REPORT OF GUARDIAN OF THE PERSON

Estate of _____, an Incapacitated Person
Name of Incapacitated Person

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 court order dated: _____

Transfer of Guardianship to: _____
Date of court order approving transfer: _____

4. Have you sent the Notice of Filing for this Report to those indicated in the court order appointing you as guardian? Yes No

IF THIS IS A FINAL REPORT, ONLY COMPLETE SECTIONS I AND V.

PART II: PERSONAL INFORMATION ABOUT THE INCAPACITATED PERSON

1. Incapacitated Person’s date of birth: _____ / _____ / _____

2. Current address of the Incapacitated Person’s residence:

Facility Name, if any: _____

3. Residence of the Incapacitated Person

a. Type of Residence/Facility:

Incapacitated Person’s home (with part-time home health care aide *or* 24/7 assistance)

Your home

Relative’s home

Relative’s name _____ Relationship _____

Address: _____

Domiciliary Care

Personal Care Boarding Home

Assisted Living Facility

Nursing Home Facility

Other: _____

b. If in Personal Care Boarding Home, Assisted Living Facility or Nursing Home, is the incapacitated person in a Memory Support Facility? Yes No

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**:

	Name
Medical Doctor(s):	
Dentist:	
Eye Doctor:	
Ear Doctor:	
Psychologist or Psychiatrist:	
Physical Therapist:	
Occupational Therapist:	
Social Worker:	
Geriatric Caseworker:	
Other:	

2. The major medical or psychiatric problems of the Incapacitated Person are as follows:

3. Describe any social, medical, psychological and support services the Incapacitated Person is receiving:

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.

3. Have you filed a petition for modification or termination?

- Yes No

PART V: INFORMATION ABOUT THE GUARDIAN

1. If you do not live with the Incapacitated Person, how many times during the **Report Period** have you visited?

- 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 you participate in guardianship training? Yes No

If **yes**, provide the following information:

Dates of Participation	Provider	Training Description

5. During this **Report Period**, were you charged or convicted of a crime?

Yes - Please describe No

6. During this **Report Period**, was a Protection from Abuse Order and Protection from Sexual Violence or Intimidation Order entered against you?

Yes - Please describe No

7. Is there any reason you cannot continue to serve as guardian?

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 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 (if applicable)

Name of Co-Guardian of the Person (type or print)

Address

City, State, Zip

Home Phone Number

Office Phone Number

Cell Phone Number

Email

Form G-04. Guardian's Inventory
 COURT OF COMMON PLEAS OF

ORPHANS' COURT
 DIVISION **INVENTORY**

ESTATE/GUARDIANSHIP OF _____
 An Incapacitated Person

DOCKET NO. _____ DATE OF DECREE: _____

DUE DATE: _____ FILING FEE: _____

Inventory type: Initial Amended

PART I: ANNUAL INCOME

1. List all sources of income for the Incapacitated Person:

Does the Incapacitated Person receive any of the following as income?

Social Security Retirement benefits	<input type="checkbox"/> Yes	<input type="checkbox"/> No	\$
Social Security Disability benefits	<input type="checkbox"/> Yes	<input type="checkbox"/> No	\$
Supplemental Social Security Income benefits (SSI)	<input type="checkbox"/> Yes	<input type="checkbox"/> No	\$
Public Assistance	<input type="checkbox"/> Yes	<input type="checkbox"/> No	\$
Veterans Financial benefits	<input type="checkbox"/> Yes	<input type="checkbox"/> No	\$
Trust income	<input type="checkbox"/> Yes	<input type="checkbox"/> No	\$
Wages	<input type="checkbox"/> Yes	<input type="checkbox"/> No	\$
Workman's Compensation benefits	<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	\$
Tax refund	<input type="checkbox"/> Yes	<input type="checkbox"/> No	\$
Realized Gain on Other Asset	<input type="checkbox"/> Yes	<input type="checkbox"/> No	\$

Does the Incapacitated Person receive any of the following as income?			Amount
Rental Income	<input type="checkbox"/> Yes	<input type="checkbox"/> No	\$
Pension	<input type="checkbox"/> Yes	<input type="checkbox"/> No	\$
Annuity Income	<input type="checkbox"/> Yes	<input type="checkbox"/> No	\$
Other: _____	<input type="checkbox"/> Yes	<input type="checkbox"/> No	\$
TOTAL			\$ 0.00

PART II. ASSETS

2. List all personal and real 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.

Asset	Value	Name of Co-Owner
	\$	
	\$	
	\$	
	\$	
	\$	
	\$	
	\$	
	\$	
	\$	
	\$	
	\$	
	\$	
	\$	
	\$	
	\$	
TOTAL		\$ 0.00

3. Is any property co-owned by the Incapacitated Person and the guardian?

Yes

No

If yes:

3a. On what date was the property acquired? _____

3b. On what date was the guardian's name added? _____

3c. The guardian is:

an individual having access or control over the account

an owner of the account

4. Does the Incapacitated Person have a homeowners insurance policy for real property?

Yes

No

If yes:

4a. Carrier: _____

4b. Coverage period: _____

Attach a copy of insurance policy identifying coverage amounts

5. Does the Incapacitated Person have a homeowners insurance policy for personal property (jewelry, collectibles, etc.)?

Yes

No

If yes:

5a. Carrier: _____

5b. Coverage period: _____

Attach a copy of insurance policy identifying coverage amounts

6. Does the Incapacitated Person have an automobile insurance policy?

Yes

No

If yes:

6a. Carrier: _____

6b. Coverage period: _____

Attach a copy of insurance policy identifying coverage amounts

7. Does the incapacitated person have a safe deposit box?

No

Yes, in sole name

Yes, in joint names _____

If yes:

7a. Location of safe deposit box: _____

7b. Are there plans to inventory the contents?

Yes

No

PART III. LIABILITIES/DEBTS

8. List all debts the Incapacitated Person owes, including mortgages, loans, credit card debt, etc.

Liabilities/Debts	Lender	Value
		\$
		\$
		\$
		\$
		\$
		\$
		\$

TOTAL DEBTS: _____ \$ 0.00

PART IV. GUARDIAN COVERAGE

9. Was a surety bond required by the decree appointing you as guardian?

Yes

No

If **yes**, attach of copy of the bond

10. If you are a professional guardianship agency or an attorney serving as guardian, do you have professional liability coverage?

Yes

No

Not Applicable

If **yes**, attach copy of insurance policy

PART V. PERSONAL CARE PLAN

11. Reason for incapacity, as stated in the petition:

12. Can the Incapacitated Person remain in their current residence with assistance, or in the home of a relative?

Yes

No

If yes:

12a. List the name of the responsible family member:

12b. 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 day: _____

Assistance from family members

Will compensation be provided?

Yes

No

If yes, indicate compensation amount:

13. Will the Incapacitated Person be moved into a supervised residential setting?

Yes

No

If yes:

13a. Indicate the type of supervised residential setting:

Domiciliary Care

Personal Care

Boarding Home

Assisted Living Facility Nursing Home

Other: _____

13b. Describe the steps that are being taken to move the Incapacitated Person into a supervised residential setting?

PART VI. FINANCIAL PLAN

14. Complete the following table using initial inventory or most recent amended inventory.

14a. Total Annual Income (Question 1)	\$ 0.00	14b. Annual estimated expenses	
Net Income (14a minus 14b)	\$ 0.00	14c. Total assets (principal) (Question 2)	\$ 0.00

15. Is the net income listed above sufficient to care for the needs of the Incapacitated Person?

- Yes
- No, but assets (principal) are available based on petition to court requesting permission
- No, and assets (principal) are not available

16. Indicate any applications for government benefits that have been submitted:

Application type	Has an application been submitted?	Date of submission
Social Security Disability Insurance (SSDI)	<input type="checkbox"/> Yes <input type="checkbox"/> No	
Supplemental Security Income (SSI)	<input type="checkbox"/> Yes <input type="checkbox"/> No	
Social Security Retirement Benefits	<input type="checkbox"/> Yes <input type="checkbox"/> No	
Veteran's Benefits	<input type="checkbox"/> Yes <input type="checkbox"/> No	
Medical assistance, long term care	<input type="checkbox"/> Yes <input type="checkbox"/> No	
Medical assistance, Home Waiver	<input type="checkbox"/> Yes <input type="checkbox"/> No	
Other	<input type="checkbox"/> Yes <input type="checkbox"/> No	

PART VII: MEDICAL INFORMATION

19. Is a “no-code” (Do Not Resuscitate) provision in place for the incapacitated person?

Yes

No

20. 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 or a mental health care power of attorney)?

Yes

No

If **yes**, identify the authorized agent for making health care decisions:

21. Are you aware of any will or trust executed by the Incapacitated Person, and/or any funeral or burial wishes of the Incapacitated Person?

Yes

No

If **yes**, describe:

22. Is the Certificate of Filing attached?

Yes

No

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 of Guardian

Name of Guardian (type or print)

Address

Telephone

Date

Signature of Co-Guardian (if applicable)

Name of Co-Guardian (type or print)

Address

Telephone

**INSTRUCTIONS FOR SUBMITTING EXPERT TESTIMONY BY
ANSWERS TO WRITTEN DEPOSITION**

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, but only when incapacity is not being contested, the Court will accept such testimony by answers to written (legibly) deposition rather than require their testimony.

COURT OF COMMON PLEAS OF
ADAMS COUNTY PENNSYLVANIA
ORPHANS' COURT DIVISION

WRITTEN DEPOSITION

RE: _____
An Alleged Incapacitated Person (AIP)

No. _____

PART I: PROFESSIONAL BACKGROUND (You may attach 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 previously 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:

c. If 6a. is yes, what tests have you or others administered, 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.)

7. What is the present condition of the AIP? List all known medical and psychiatric diagnoses and current Conditions. (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 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 (Explain in #10)	Totally Impaired	Not Assessed or Not Enough Information
Receiving and evaluating information effectively				
Communicating decisions				
Ability to give informed consent				
Short-term memory				
Long-term memory				
Activities of daily living				
Managing finances (including paying bills, making deposits, withdrawals and working with other financial institutions)				
Managing health care (including following doctor’s orders and managing/taking medications)				
Providing for physical safety				
Responding to emergency situations				
Ability to resist scams				

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

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?

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

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 response 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:

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:

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:

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

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

COURT OF COMMON PLEAS OF

ORPHANS' COURT DIVISION

NOTICE OF FILING

ESTATE/GUARDIANSHIP OF _____,
AN INCAPACITATED PERSON

_____, GUARDIAN

No. _____

I certify that on _____ I filed the following documents:

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

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

1. _____

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

2. _____

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

3. _____

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

4. _____

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

Submitted by:

Date

Signature

Name (print or type)

Address

City, State, Zip

Telephone

Email

Instructions for Document Access

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

COURT OF COMMON PLEAS OF

ORPHANS' COURT DIVISION

CERTIFICATE OF GUARDIAN

RE: _____, an Incapacitated Person

No. _____

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

A. Plenary Guardian of the Estate

B. Limited Guardian of the Estate - with the following authority:

C. Plenary Guardian of Person

D. Limited Guardian of Person - with the following authority:

FURTHER, I CERTIFY the Court ordered:

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

The duration of such guardianship shall be: _____
(Date Certain)

- Until further order of Court.

The Guardian named herein has not been discharged or removed.

[seal]

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

CLERK OF ORPHANS’ COURT
