

Guardianship Practice and Procedure: Here's the Latest

Allegheny County
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Guardianship Practice and Procedure: Here's the Latest



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Foreword

This course addresses the new guardianship reporting forms and changes to the Pennsylvania Orphans' Court rules. In this interactive course, the faculty discuss the changes, their impact on those involved, potential conflicts of interest in guardianships and lessons we can learn from recent guardianship cases.

We thank our skilled faculty, **Thomas J. Dempsey, Jr.**, **David A. Jaskowiak** and **Katherine C. Pearson**, for their dedication and commitment to planning this course. We are honored to have each one of them involved in the project, and we thank them for generously volunteering their time and sharing their knowledge and experiences. Their biographical information can be found on the following pages.

Pennsylvania Bar Institute
Barbara K. Thornton, Program Manager

October 2019

Biographies

COURSE PLANNERS

Thomas J. Dempsey, Jr., Esq.

Mr. Dempsey is a Senior Associate with the firm of Jones, Gregg, Creehan & Gerace, LLP in Pittsburgh. He graduated from the Duquesne University School of Law in 1987 and is a member of the Allegheny County and Pennsylvania Bar Associations. Mr. Dempsey's practice is focused on litigation and appellate practice in the Orphans' Court Division of Allegheny County in the fields including guardianship, fiduciary defense and prosecution and probate litigation. He is one of the founding members of the Allegheny County Bar Association Elder Law Committee. He is also a member of the Allegheny County Bar Association Probate and Trust Section Council. Mr. Dempsey regularly presents educational seminars on behalf of the Pennsylvania Bar Institute. He is currently serving on the Pennsylvania Supreme Court Orphans' Court Procedural Rules Committee.

Prof. Katherine C. Pearson

Ms. Pearson is a Professor of Law and the Arthur L. and Sandra S. Piccone Faculty Scholar at Dickinson Law, Pennsylvania State University. Her scholarship focus is on laws and policies connected to aging, and she frequently includes age-related issues in her teaching of courses on contract law, conflicts of law and nonprofit organizations law. During the fall semester of 2018, she offered a new format for her elder law course, with individual modules permitting in-depth examination of selected financial planning, care planning, and comparative law issues. She is the author of articles and chapters on long-term care, financing and filial obligations, and is the co-author of a treatise, *The Law of Financial Abuse and Exploitation* (Bisel 2011). As a former U.S. Fulbright Scholar (U.K. in 2010), her work includes international, comparative analysis of laws affecting families, including work as an international consultant to promote better systems for safeguarding and adult social care. In July 2016, she was honored by the Pennsylvania Bar Association with the Elder Law Section's top award for "Excellence in Elder Law." She is currently working on a new book with the working title "Confessions of an Elder Law Attorney," and is a co-author for a forthcoming new edition of *Elder Law in a Nutshell*. She is writer and co-editor for the Elder Law Prof Blog, at http://lawprofessors.typepad.com/elder_law/.

FACULTY

David A. Jaskowiak, Esq.

Mr. Jaskowiak is a sole practitioner in Jenkintown, Pennsylvania who has been in practice since 1987. He received a Bachelor of Arts from La Salle College (now, University) in 1977, graduating *maxima cum laude*. After several years working as a licensed real estate broker

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Chapter One

Pennsylvania Orphans' Court – Rules for Guardianships of Incapacitated Persons

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These slides were originally prepared in 2018 by Hon. Emil Giordano (Ret.), Norris McLaughlin, P.A., Allentown.

PENNSYLVANIA ORPHANS' COURT RULES

GUARDIANSHIPS OF INCAPACITATED PERSONS

HON. LOIS E. MURPHY

THOMAS J. DEMPSEY, JR., ESQ.

We will discuss:

1. New Guardian Tracking System
2. New Rules, effective June 1, 2019
3. New forms
4. New court procedures
5. New notice requirements



RULES CHANGES

- Amendment of Pa. O.C Rules 1.5 & 5.10-5.12;
- Rescission of Pa. O.C. Rules 14.1-14.5 and
O.C. Forms G-01 through G-04;
- Adoption of New Pa. O.C. Rules 14.1-14.14 and
O.C. Forms G-01 through G-07;
- Amendment of the Appendix of Forms.

FOR MORE INFORMATION, PLEASE VISIT:

<http://www.pacourts.us/courts/supreme-court/committees/rules-committees/orphans-court-procedural-rules-committee/>

THE PURPOSE OF CHANGES:

- To provide comprehensive statewide rules establishing uniformity and consistency for guardianship proceedings.
- To provide structure while preserving flexibility.
- To improve statewide consistency between Orphans' Court and Civil Rules
- Effective dates: June 1, 2018 and June 1, 2019.

CHANGE #1

RESPONSIVE PLEADINGS

RULE 14.1 Guardianship Petition Practice and Pleading (b) Proceedings for Adjudication of Incapacity and Appointment of Guardian

Provides for the Filing of Responsive Pleadings:

- **ONLY** to identify **contested legal issues** and **questions of fact** prior to the hearing.
- Responsive pleadings are **permissive** but **not required** – There are no “default judgments.”
- Objections are decided at the adjudicatory hearing rather than delaying the hearing.

14.1(b)(4) – ALL responsive pleadings shall be filed and served no later than 5 days prior to the hearing. Failure to do so does not waive the right to raise an objection at the hearing.

14.1(d) – Allows a person to seek permission to intervene in a proceedings (Fiancé, best friend, business partner, etc.).

RULE 14.1(b) Proceedings for Adjudication of Incapacity and Appointment of a Guardian

- **No default judgment.**
- This differs from the Rules of Civil Procedure which have generally been adopted in Orphans’ court matters.
- Petitioner’s counsel must understand that the fact that the Alleged Incapacitated Person’s failure to respond does not mean they win or that *pro se* parties cannot oppose a finding of incapacity.
- The burden of proof by clear and convincing evidence remains with the petitioner, even if no answer filed.

CHANGE # 2

A PETITION FOR ADJUDICATION OF INCAPACITY AND GUARDIANSHIP REQUIRES ADDITIONAL AND SPECIFIC INFORMATION

RULE 14.2 -- PETITION CONTENTS

- **14.2(a)(2):** Requires **date of birth** instead of "Age".
- **14.2(a)(3):** Petition **must identify and serve** family members (spouse, parents and intestate heirs), **not limited to PA residents**, who will thereafter receive notice of the filing of inventory and reports
- **14.2(a)(4):** Petition **must identify and serve** any institution providing residential services to the alleged incapacitated person
- **14.2(a)(5):** Petition **must identify and serve** other service providers, such as social service agencies, and nature of services
- **14.2(a)(6):** Petition must indicate whether there is an executed health care POA or advance directive, and if so, the name and address of the agent
- **14.2(a)(7):** Petition must indicate whether there is an executed POA and if so the name and address of the agent

RULE 14.2 -- PETITION CONTENTS

Additional requirements of note:

14.2(a)(9): Reasons why guardianship is sought

14.2(a) (13): Steps taken to find a less restrictive alternative than guardianship

Note: If POA nominates a person to serve as a guardian, Court must appoint nominee as guardian, except for good cause or disqualification

Note: Notice required by rule to all heirs even if not Pennsylvania residents – differs from statute section 5511(a)

PETITION FOR ADJUDICATION OF INCAPACITY AND APPOINTMENT OF A GUARDIAN : REQUIRED AVERMENTS REGARDING PROPOSED GUARDIAN -- 14.2(b)

- **14.2(b)(2):** Any interest adverse to alleged incapacitated person
- **14.2(b)(3):** Guardian's availability to visit and see alleged incapacitated person
- **14.2(b) (4) and (5):** Guardian's training / certification information - (Not a requirement); and any disciplinary history
- **14.2(b)(6):** Guardian's current caseload of other guardianships (if any)
- **14.2 (b)(1):** If Proposed guardian is an entity or business, Petitioner must identify those individuals having direct responsibility for the AIP.
 - (For purposes of criminal record check).

CHANGE# 3

CLEARANCES ARE REQUIRED

- Requires criminal background checks for all proposed guardians
 - (Dated within 6 months).
- May use PATCH system for background check with PA State Police
 - \$8.00 Fee
- Statewide record is required from any other state if Guardian resided in another state within last five years
- Requires personal service of Citation upon the alleged incapacitated person.

For information on requesting a criminal record check from the PA State Police, see
<http://www.nsp.pa.gov/Pages/Request-a-Criminal-History-Record.aspx>

Pennsylvania State Police

1800 Elmerton Avenue
Harrisburg, Pennsylvania 17110

Response for Criminal Record Check

TELEPHONE

TO WHOM IT MAY CONCERN:

THE PENNSYLVANIA STATE POLICE DOES HEREBY CERTIFY THAT:

Name:
Date of Birth:
Social Security #: SS# ***-**-6789
Sex: F
Race: White
Date of Request: 9/23/2008 12:00:00AM
Purpose of Request: Employment

Maiden Name and/or Alias (1) (2)
(3) (4)

***** HAS NO CRIMINAL RECORD IN PENNSYLVANIA BASED ON A CHECK BASED ON THE ABOVE IDENTIFIERS - REFER TO CONTROL # *****

THIS RESPONSE IS BASED ON A COMPARISON OF DATA PROVIDED BY THE REQUESTER AGAINST INFORMATION CONTAINED IN THE FILES OF THE PENNSYLVANIA STATE POLICE CENTRAL REPOSITORY ONLY. PLEASE CONFIRM IDENTIFIERS PROVIDED. POSITIVE IDENTIFICATION CANNOT BE MADE WITHOUT FINGERPRINTS. THE PENNSYLVANIA STATE POLICE RESPONSE DOES NOT PRECLUDE THE EXISTENCE OF CRIMINAL RECORDS, WHICH MIGHT BE CONTAINED IN THE REPOSITORIES OF OTHER LOCAL, STATE, OR FEDERAL CRIMINAL JUSTICE AGENCIES.

() COMPARISON MADE WITH FINGERPRINTS

THIS INFORMATION ON THIS CERTIFICATION FORM CAN BE VALIDATED BY ACCESSING THE PENNSYLVANIA ACCESS TO CRIMINAL HISTORY (PATCH) RECORD CHECK STATUS SCREEN.

(<http://epatch.psp.state.pa.us/PATCH/RCStatusSearch.jsp>) AND SUBMITTING A STATUS CHECK REQUEST THAT CONTAINS THE FOLLOWING - SUBJECT'S NAME (EXACTLY AS INITIALLY ENTERED), CONTROL NUMBER AND DATE OF REQUEST. PATCH WILL FIND AND DISPLAY THE CORRESPONDING RECORD CHECK REQUEST. DETAILS ON THE REQUEST CAN BE VIEWED BY CLICKING ON THE CONTROL NUMBER. YOU WILL BE ABLE TO VERIFY IF THIS REQUEST WAS SENT OUT AS A NO RECORD OR RECORD RESPONSE BY THE

QUESTIONS CONCERNING THIS CRIMINAL RECORD CHECK SHOULD BE DIRECTED TO THE PSP HELP DESK AT TELEPHONE NUMBER 1-877-777-3375 FOR INSTATE CALLS OR 1-717-506-3187 OUT OF STATE CALLS.

CERTIFIED BY:

LT Michael F. Gillean

DISSEMINATED BY: 466550

09/30/2008

LIEUTENANT MICHAEL F. Gillean
DIRECTOR, CRIMINAL RECORDS AND IDENTIFICATION DIVISION
PENNSYLVANIA STATE POLICE

CHANGE # 4

EXHIBITS MUST BE ATTACHED

PETITION FOR ADJUDICATION OF INCAPACITY
AND APPOINTMENT OF A GUARDIAN

14.2(c) – Exhibits

The Following **SHALL** be appended to the petition:

- Proposed order Pursuant to Rule 3.4(b)
- Executed Health care/POA/living will
- Guardian’s criminal record check
 - Issued within 6 months
- Consent of the proposed guardian

- Do not attach originals of Wills, living wills, or trusts

All writings referenced in 14.2(a)(6)-(8) must also be attached.

CHANGE #5

EXPERT REPORTS
(Written Deposition)

RULE 14.3 ALTERNATIVE PROOF OF INCAPACITY:

EXPERT REPORT IN LIEU OF IN-PERSON OR DEPOSITION TESTIMONY OF EXPERT

Formerly known as "Written deposition"

Lists expert's experience, qualifications, education and basis of assessment regarding the incapacitated person.

Previously submitted to Court in Lieu of Testimony (not to AIP or his Counsel).



Now Called: "Expert report".

Form still requires expert's information and qualifications; **however:**

- Completed form **must** be provided to the alleged incapacitated person or his counsel.
- Requires 10 days notice prior to a hearing if petitioner seeks to offer an expert report in lieu of testimony

* Provides for a **5 day turnaround** for filing a demand for live testimony.

CHANGE # 6

COUNSEL

(Services – Fees – When required)

RULE 14.4– COUNSEL

This rule was created to:

- Establish the scope of Counsel’s services and reasonableness of fees before the proceedings.
- Allow Judges to appoint Counsel for the alleged Incapacitated person (AIP) when “appropriate,” but it is not required.
- Petitioner must notify the Court whether or not Counsel was appointed for the AIP.
- Requires private Counsel to **disclose fees** in the engagement letter and to provide a copy of the signed engagement letter to the court upon request of the court.



CHANGE # 7

BOND

(Requirement/Waiver)

RULE 14.5 - WAIVER OR MODIFICATION OF BOND

14.5(a) – Request: Either within the petition for adjudication of incapacity or at any other time by petition, a party may submit a request to the court to waive or modify a bond requirement for a guardian of the estate.

14.5(b) – Waiver or Modification: upon a showing of good cause, a court may waive or modify a bond requirement.

Good cause can be:

- The Guardian is adequately insured (but take care as to whether Insurance covers risk of theft);
- The Guardian's character or relationship with the AIP;
- The Protection of a bond for smaller estates is outweighed by the cost.

*Rule 14.5(c) –allows the Courts to determine what evidence is necessary to show "good cause" to waive or Modify the Bond Requirement.

CHANGE # 8

SELECTION OF GUARDIAN

Rule 14.6(b)(1)

Selection of Guardian Of the Person.

- The Court shall appoint the person nominated in a POA / Advance directive, **except for good cause shown** or disqualification.

Guardian eligibility is considered in the following order:

- Guardian of the Estate;
- Spouse (unless estranged) or pending divorce action;
- Adult child;
- Parent;
- The nominee of a deceased or living parent of an unmarried AIP
- An adult sibling;
- Other adult family member;
- An adult who has knowledge of IP's preferences and values;
- Other qualified proposed Guardian.

Rule 14.6(b)(2)

Selection of Guardian of the Estate.

When the estate consists of minimal assets or where the proposed guardian possesses the skills to manage the finances of the estate,

- The Guardian of the Person.
- Spouse (unless estranged) or an action for divorce is pending;
- An adult child;
- A parent;
- The nominee of a deceased or living parent of an unmarried alleged IP.
- An adult sibling;
- An adult grandchild
- Other adult family member OR
- An adult with knowledge of IP's preferences and values.
- If none of the above are able, a qualified guardian or corporate fiduciary.

CHANGE#9

ORDER AND CERTIFICATE

(Language required – Guardian Certificates)

Rule 14.7 -Order and Certificate

14.7 (a) Order Adjudicating Incapacity and Appointment of Guardian

- This Rule sets forth the language that **all orders must contain** to assure that the person is informed of the type of the appointment;
- notification to persons entitled to receive notice and;
- the right to appeal and to petition to modify or terminate the guardianship – the rule sets forth specific notice requirements.

14.7(b) Order Adjudicating Incapacity and Appointment of Guardian of Estate.

Regarding guardianships of the estate:

14.7 (b)(1) require orders to address bonding requirements **and** the authority of the guardian to spend principal without prior court approval.

14.7 (b)(2) require all orders for **guardian of the estate** to contain language substantially in the form provided advising of right to appeal or request reconsideration and right to counsel.

It is **suggested** that Clerks issue “Guardian Certificates” to minimize disclosure of confidential matters. This matter was left to local practice.

(c) Certificate of Guardianship of Estate. Upon the request of the guardian of the estate, the clerk shall issue a certificate substantially in the following form:

(Caption)

I **CERTIFY** that on _____, after giving full consideration to the factors set forth in Chapter 55 of the Probate, 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 plenary guardian of the estate.

FURTHER, I CERTIFY the Court, *inter alia*, ordered that:

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

CHANGE #10

REPORTING, MONITORING, REVIEW, COMPLIANCE

Rule 14.8(a)

Guardianship Reporting, Monitoring, Review, and Compliance

a) Reporting. A guardian shall file the following reports with the Clerk:

- 1) Inventory within 90 days
- 2) Annual reports of the guardian of the estate
- 3) Annual reports of the guardian of the person
- 4) A **final report within 60** days of the death of the incapacitated person, an adjudication of capacity, change of guardian, or the expiration of an order of limited duration.

5) NEW: 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.

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

Rule 14.8(b)-(f)
Guardianship Reporting, Monitoring, Review, and Compliance
NEW PROCEDURES

- Guardian must serve **notice** of the filed reports and inventory on all persons entitled to receive notice.
- Clerk or court's designee shall **monitor** reporting compliance.
- Clerk or court's designee shall **review** the filed reports.
- If a report is more than **20 days** delinquent, Clerk / designee shall **issue notice directing compliance within 20 days**.
- A copy of the **notice is sent to the Court** and the incapacitated person's counsel, if represented.
- Failure to comply with the filing will cause the Clerk / designee to transmit notice of deficiency to the Court 14.8(f)(2).
- The Court will then take the necessary procedures to enforce compliance (i.e.: conduct a review hearing, removal of guardian or contempt proceedings).

CHANGE #11

REVIEW HEARING

Rule 14.9 Review Hearing

14.9(b) Petition

- This rule permits the court to order a review hearing *sua sponte* (on its own motion) or upon petition (interested parties).
- the Petitioner must comply with the requirements of paragraphs 14.9(b) and 14.9(c) relating to **petition contents** and **service**.
- Notice must be served on those who are entitled to service of the guardianship petition.

CHANGE # 12

REAL PROPERTY
(Objections)

Rule 14.10 Proceedings Relating to Real Property

- Rule 14.10(a) is identical to the existing Pa. O.C. Rule 14.4.
- **Replaced** “real estate” with “**real property**” to make the Rule consistent with Rules 5.10-5.12.
- Paragraph **(b) was added** to ensure that any objections to the sale by the incapacitated person are brought immediately to the court’s attention in the petition.

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

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

CHANGE # 13

TRANSFER OF GUARDIANSHIPS
(Out of State or into Pennsylvania)

**INTERSTATE TRANSFER OF GUARDIAN OF THE PERSON (Rule 14.11)
OR ESTATE (Rule 14.12)**

- File Petition stating where the person is.
 - When is the person expected to move to the other state.
 - Arrangements made (Person & Estate)
 - Court where guardianship will be transferred
 - Likelihood of guardianship being accepted
 - A copy of the petition must be served upon interested parties (See 14.2(f)(2)).
 - Any person entitled to service may file objections
 - A hearing will be conducted
- **The Court will then:**
 - (1) issue a **provisional order** 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.

Rule 14.13

Acceptance of a Guardianship Transferred from Another State

Guardian files petition to confirm the transfer:

- Asserting Guardian's eligibility.
- Demonstrating approval of transfer by the other Court
 - Must include a **certified copy** of the "Provisional Order" accepting transfer must be included.
 - A **certified copy** of the PETITION AND ORDER determining incapacity in the other State.
- Guardian must serve interested parties 14.2(f).
- Any person entitled to service may file objections
- A hearing will be conducted

A court will then:

- (1) Issue a Provisional Order Granting Petition to confirm transfer.
- (2) **upon receiving a final order** from the court transferring the guardianship, the court shall issue a final Order:
 - accepting guardianship,
 - appointing the guardian previously appointed by the court of the other state as the guardian in PA.
 - Directing the guardian to comply with the annual reports (14.8.)

Rule 14.14 Forms

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

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

Chapter 1

Appendices

GUARDIANSHIPS OF INCAPACITATED PERSONS

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CHAPTER XIV. GUARDIANSHIPS OF INCAPACITATED PERSONS

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Source

This Rule 14 renamed Chapter XIV December 1, 2015, effective September 1, 2016, 45 Pa.B. 7098.

Rule 14.1. [Rescinded].

Note: See Rule 1.5.

Source

The provisions of this Rule 14.1 amended December 23, 1999, effective January 1, 1999, 29 Pa.B. 7098; reserved June 1, 2018, effective June 1, 2019, 48 Pa.B. 3524. Immediately preceding text appears at serial page (392703).

Rule 14.2. [Rescinded].**Source**

The provisions of this Rule 14.2 amended December 23, 1998, effective January 1, 1999, 29 Pa.B. 329; amended October 16, 2006, effective 30 days from the date of entry of this order, 36 Pa.B. 6760; amended December 1, 2015, effective September 1, 2016, 45 Pa.B. 7098; reserved June 1, 2018, effective June 1, 2019, 48 Pa.B. 3524. Immediately preceding text appears at serial page (392703).

Rule 14.3. [Rescinded].**Source**

The provisions of this Rule 14.3 amended December 23, 1998, effective January 1, 1999, 29 Pa.B. 329; amended December 1, 2015, effective September 1, 2016, 45 Pa.B. 7098; reserved June 1, 2018, effective June 1, 2019, 48 Pa.B. 3524. Immediately preceding text appears at serial pages (392703) to (392704).

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(396083) No. 535 Jun. 19

Rule 14.4. [Rescinded].**Source**

The provisions of this Rule 14.4 amended December 23, 1998, effective January 1, 1999, 29 Pa.B. 329; amended December 1, 2015, effective September 1, 2016, 45 Pa.B. 7098; reserved June 1, 2018, effective June 1, 2019, 48 Pa.B. 3524. Immediately preceding text appears at serial page (392704).

Rule 14.5. [Rescinded].**Source**

The provisions of this Rule 14.5 adopted June 12, 1995, effective August 5, 1995, 25 Pa.B. 2594; amended June 29, 2001, effective July 1, 2001, 31 Pa.B. 3872; amended October 16, 2006, effective 30 days from the date of entry of this order, 36 Pa.B. 6760; reserved December 1, 2015, effective September 1, 2016, 45 Pa.B. 7098; reserved June 1, 2018, effective June 1, 2019, 48 Pa.B. 3524. Immediately preceding text appears at serial page (392704).

Rule 14.1. Guardianship Petition Practice and Pleading.

(a) *Proceedings for Adjudication of Incapacity and Appointment of a Guardian.* The following petition practice and pleading requirements set forth in Chapter III (Petition Practice and Pleading) shall be applicable to proceedings for the adjudication of incapacity and appointment of a guardian:

- (1) Rule 3.2 (Headings; Captions);
- (2) Rule 3.3 (Contents of All Petitions; General and Specific Averments);
- (3) Rule 3.12 (Signing);
- (4) Rule 3.13 (Verification); and
- (5) Rule 3.14 (Amendment).

(b) *Responsive Pleadings to a Petition for Adjudication of Incapacity and Appointment of a Guardian Filed Pursuant to Rule 14.2.*

(1) Permitted responsive pleadings to a petition seeking the adjudication of incapacity and appointment of a guardian are limited to those identified in Rule 3.6 (Pleadings Allowed After Petition) and shall be subject to Rules 3.10 (Denials; Effect of Failure to Deny) and 3.11 (Answer with New Matter).

(2) The alleged incapacitated person and any person or institution served pursuant to Rule 14.2(f)(2) may file a responsive pleading.

(3) Any responsive pleading shall be filed with the clerk and served pursuant to Rule 4.3 (Service of Legal Paper Other than Citations or Notices) on all others entitled to file a responsive pleading pursuant to subparagraph (b)(2).

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

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

(c) *All Other Petitions for Relief.* Unless otherwise provided by Rule in this Chapter, the petition practice and pleading requirements set forth in Chapter III shall be applicable to any proceeding under these Rules other than a petition

seeking the adjudication of incapacity and appointment of a guardian. “Interested party” as used in Chapter III shall include all those entitled to service pursuant to Rule 14.2(f).

(d) *Intervention.* A petition to intervene shall set forth the ground on which intervention is sought and a statement of the issue of law or question of fact the petitioner seeks to raise. The petitioner shall attach to the petition a copy of any pleading that the petitioner will file if permitted to intervene. A copy of the petition shall be served pursuant on all those entitled to service pursuant to Rule 14.2(f).

Explanatory Comment

This Rule is intended to specify the provisions and procedures of Chapter III that are applicable to proceedings under Chapter XIV. In proceedings for the adjudication of incapacity and appointment of a guardian, responsive pleadings are permitted as a means of identifying contested legal issues and questions of fact prior to the adjudicatory hearing. However, given the abbreviated time for filing a responsive pleading relative to other proceedings (*Compare* Pa. O.C. Rule 3.7(a)), the failure to file a responsive pleading should not operate to preclude an issue or objection from being raised and considered at the hearing. Such pleadings should not be filed as a means of delaying the hearing on the merits of the petition.

The practice for other petitions is to follow the requirements of Chapter III. Nothing in this Rule is intended to prevent relief being sought on an expedited basis, provided the petitioner or respondent is able to establish circumstances to the satisfaction of the court warranting disregard of procedural requirements. *See* Pa. O.C. Rule 1.2(a).

Source

The provisions of this Rule 14.1 adopted June 1, 2018, effective June 1, 2019, 48 Pa.B. 3524.

Rule 14.2. 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 and appoint a guardian shall state in plain language:

- (1) Name, age, address, and mailing address, if different, of the petitioner and the petitioner’s relationship to the alleged incapacitated person;
- (2) Name, date of birth, residence, and mailing address, if different, of the alleged incapacitated person;
- (3) Names and addresses of the spouse, parents, and presumptive intestate heirs of the alleged incapacitated person and whether they are *sui juris* or non *sui juris*;
- (4) Name and address of the person or institution providing residential services to the alleged incapacitated person;
- (5) Names and addresses of other service providers and nature of services being provided;

(6) Whether there is an executed health care power of attorney or advance health care directive pursuant to Title 20, Chapter 54, and if so, the name and address of the person designated in the writing to act as the agent;

Note: See 20 Pa.C.S. §§ 5421 *et seq.* for health care power of attorney and advance health care directive (combination of a living will and health care power of attorney).

(7) Whether there is an executed power of attorney pursuant to Title 20, Chapter 56, and if so, the name and address of the person designated in the writing to act as the agent;

Note: See 20 Pa.C.S. §§ 5601 *et seq.* for power of attorney.

(8) Whether there is any other writing by the alleged incapacitated person pursuant to Title 20, Chapters 54 or 58 authorizing another to act on behalf of the alleged incapacitated person, and if so, the name and address of the person designated;

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

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

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

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

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

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

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

(i) the gross value of the estate and net income from all sources, to the extent known; and

(ii) whether there is a prepaid burial account, to the extent known;

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

(16) Name and address, if available, of any person that the petitioner proposes should receive notice of the filing of guardianship reports pursuant to Rule 14.8(b), which may include any person identified in paragraphs (a)(3)—(a)(8).

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

(1) The name, address, and mailing address, if different, of the proposed guardian whom the petitioner nominates to be appointed guardian and the nominee's relationship, if any, to the alleged incapacitated person. If the proposed guardian is an entity, then the name of the person or persons to have direct responsibility for the alleged incapacitated person and the name of the principal of the entity;

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

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

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

(5) Whether the proposed guardian has any guardianship certification, the current status of the certification, and any disciplinary action related to the certification;

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

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

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

(1) All writings referenced in paragraphs (a)(6)—(a)(8), if available;

(2) The certified response to a Pennsylvania State Police criminal record check, with Social Security Number redacted, for each proposed guardian issued within six months of the filing of the petition;

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

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

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

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

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

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

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

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

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

(1) By personal service upon the alleged incapacitated person no less than 20 days prior to the hearing. Additionally, the content and terms of the petition shall be explained to the maximum extent possible in language and terms the alleged incapacitated person is most likely to understand.

(2) In a manner permitted by Rule 4.3 no less than 20 days prior to the hearing upon:

- (i) All persons *sui juris* who would be entitled to an intestate share in the estate of the alleged incapacitated person;
- (ii) The person or institution providing residential services to the alleged incapacitated person;
- (iii) Any person named in paragraphs (a)(6)—(a)(8); and
- (iv) Such other entities and persons as the court may direct, including service providers.

Note: For notice to the United States Veterans' Bureau, see 20 Pa.C.S. § 8411.

(3) For a petition seeking the appointment of an emergency guardian, the court may direct the manner of service as emergent circumstances warrant. Thereafter, notice shall be served in accordance with Rule 14.2(f)(2).

Explanatory Comment

Concerning the requirement of a criminal record check set forth in paragraph (c)(2), the Pennsylvania State Police has created the Pennsylvania Access to Criminal History ("PATCH") System to enable the public to obtain criminal history record checks via Internet request. The certified response from the Pennsylvania State Police criminal history record check need not be notarized to comply with the requirements of this rule. Any response other than "no record" may require supplementation at the discretion of the court.

Source

The provisions of this Rule 14.2 adopted June 1, 2018, effective June 1, 2019, 48 Pa.B. 3524.

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

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

(b) *Notice.*

(1) If a petitioner seeks to offer an expert report permitted under paragraph (a), the petitioner shall serve a copy of the completed report upon the alleged incapacitated person's counsel and all other counsel of record pursuant to Rule 4.3 or, if unrepresented, upon the alleged incapacitated person, pursuant to Pa.R.C.P. No. 402(a) by a competent adult no later than ten days prior to the hearing on the petition.

(2) If a petitioner seeks to offer an expert report, as permitted under paragraph (a), the petitioner shall serve pursuant to Rule 4.3 a notice of that fact upon those entitled to notice of the petition and hearing no later than ten days prior to the hearing on the petition.

(3) The petitioner shall file a certificate of service with the court as to paragraphs (b)(1) and (b)(2).

(c) *Demand.*

(1) Within five days of service of the completed report provided in paragraph (b)(1), the alleged incapacitated person's counsel or, if unrepresented, the alleged incapacitated person, may file with the court and serve upon the petitioner pursuant to Rule 4.3 a demand for the testimony of the expert.

(2) If a demand for testimony is filed and served as provided herein, then the expert report may not be admitted and an expert must provide testimony at the hearing, whether in-person or by deposition.

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

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

Explanatory Comment

This Rule is intended to permit the alleged incapacitated person to exercise the right to cross-examine testimony as to the capacity of the alleged incapacitated person. *See* 20 Pa.C.S. § 5518.1. Permitting the use of an expert report in compliance with this Rule replaces the requirement of testimony, in-person or by deposition, of an expert. *See* 20 Pa.C.S. § 5518. "Deposition," as used in this

Rule is intended to be a deposition conducted in accordance with the Pennsylvania Rules of Civil Procedure. The Rule is permissive; whether an expert report is admitted in lieu of testimony is in the sole discretion of the court. Nothing in this Rule is intended to preclude the court from requiring testimony from the expert or otherwise requiring supplementation.

Source

The provisions of this Rule 14.3 adopted June 1, 2018, effective June 1, 2019, 48 Pa.B. 3524.

Rule 14.4. Counsel.

(a) *Retention of Counsel.* If counsel for the alleged incapacitated person has not been retained, the petitioner shall notify the court in writing at least seven days prior to the adjudicatory hearing that the alleged incapacitated person is unrepresented and also indicate whether the alleged incapacitated person has requested counsel.

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

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

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

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.

Source

The provisions of this Rule 14.4 adopted June 1, 2018, effective June 1, 2019, 48 Pa.B. 3524.

Rule 14.5. 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 of incapacity or at any other time by petition.

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

(c) *Assurance.* If the court waives or modifies a bond requirement, then the court shall consider the necessity and means of periodic demonstration of continued good cause.

Explanatory Comment

Pursuant to 20 Pa.C.S. § 5515, the provisions of Sections 5121—5123 of Title 20 relating to bonding requirements are incorporated by reference into Chapter 55 proceedings. When property is held by the incapacitated person as fiduciary, see 20 Pa.C.S. § 5516. “Good cause” may include, but is not limited to, an estate of nominal value, fluctuation in the size of the estate, adequate insurance maintained by the guardian against risk of loss to the estate, the creditworthiness of the guardian, and assets of the guardian relative to the value of the estate.

Source

The provisions of this Rule 14.5 adopted June 1, 2018, effective June 1, 2019, 48 Pa.B. 3524.

Rule 14.6. Determination of Incapacity and Selection of Guardian.

(a) *Determination of Incapacity.* The procedure for determining incapacity and for appointment of a guardian shall meet all requirements set forth at 20 Pa.C.S. §§ 5511, 5512, and 5512.1. In addition, the petitioner shall present the citation and proof of service at the hearing.

Note: See *In re Peery*, 727 A.2d 539 (Pa. 1999) (holding a person does not require a guardian if there is no need for guardianship services).

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

(1) *Guardian of the Person:*

- (i) The guardian of the estate;
- (ii) The spouse, unless estranged or an action for divorce is pending;
- (iii) An adult child;
- (iv) A parent;
- (v) The nominee of a deceased or living parent of an unmarried alleged incapacitated person;
- (vi) An adult sibling;
- (vii) An adult grandchild;
- (viii) Other adult family member;
- (ix) An adult who has knowledge of the alleged incapacitated person’s preferences and values, including, but not limited to religious and moral beliefs, and would be able to assess how the alleged incapacitated person would make decisions; or
- (x) Other qualified proposed guardian, including a professional guardian.

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

- (i) The guardian of the person;
- (ii) The spouse unless estranged or an action for divorce is pending;
- (iii) An adult child;
- (iv) A parent;
- (v) The nominee of a deceased or living parent of an unmarried alleged incapacitated person;
- (vi) An adult sibling;
- (vii) An adult grandchild;
- (viii) Other adult family member; or
- (ix) An adult who has knowledge of the alleged incapacitated person's preferences and values, including, but not limited to religious and moral beliefs, and would be able to assess how the alleged incapacitated person would make decisions.

Where no individual listed in subparagraphs (i)—(ix) of paragraph (b)(2) possesses the skills and experience necessary to manage the finances of the estate, the guardian of the estate may be any qualified proposed guardian, including a professional guardian or corporate fiduciary.

Explanatory Comment

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

Source

The provisions of this Rule 14.6 adopted June 1, 2018, effective June 1, 2019, 48 Pa.B. 3524.

Rule 14.7. Order and Certificate.

(a) *Order Adjudicating Incapacity and Appointing Guardian.*

(1) An order adjudicating incapacity and appointing a guardian shall address:

- (i) the type of guardianship being ordered and any limits, if applicable;
- (ii) the continued effectiveness of any previously executed powers of attorney or health care powers of attorney and the authority of such agent to act under the document;
- (iii) the necessity of filing reports pursuant to Rule 14.8(a); and

(iv) the person or persons entitled to receive notice of the filing of such reports, pursuant to Rule 14.8(b).

(2) An order adjudicating incapacity and appointing a guardian shall contain a provision substantially in the following form:

[Incapacitated person] is hereby notified of the right to seek reconsideration of this Order pursuant to Rule 8.2 and the right to appeal this Order within 30 days from the date of this Order by filing a Notice of Appeal with the Clerk of the Orphans' Court. [Incapacitated person] may also petition the court at any time to review, modify, or terminate the guardianship due to a change in circumstances. [Incapacitated person] has a right to be represented by an attorney to file a motion for reconsideration, an appeal, or to seek modification or termination of this guardianship. If the assistance of counsel is needed and [incapacitated person] cannot afford an attorney, an attorney will be appointed to represent [incapacitated person] free of charge.

(b) *Order Adjudicating Incapacity and Appointing Guardian of Estate.*

(1) In addition to the requirements set forth in paragraph (a)(1), an order adjudicating incapacity and appointing a guardian of the estate shall address:

- (i) whether a bond is required and when the bond is to be filed; and
- (ii) whether the guardian can spend principal without prior court approval.

(2) In addition to the requirement set forth in paragraph (a)(2), an order adjudicating incapacity and appointing a guardian of the estate shall contain a provision substantially in the following form:

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

(c) *Certificate of Guardianship of Estate.* Upon the request of the guardian of the estate, the clerk shall issue a certificate substantially in the following form:

(Caption)

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

FURTHER, I CERTIFY the Court, *inter alia*, ordered that:

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

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

[seal]

CLERK OF ORPHANS' COURT

Explanatory Comment

The requirements of paragraph (a) are intended to apply to all guardianship orders. The items addressed and contained in the order, as set forth in paragraphs (a) and (b), are not exhaustive. The court may fashion a guardianship of a person order to inform health care providers of the guardian's authority, including the authority to give informed consent to proposed treatment, to share information, and to make decisions for the incapacitated person. *See also In re DLH*, 2 A.3d 505 (Pa. 2010) (discussing whether guardian has authority concerning life-preserving care); 20 Pa.C.S. § 5460(a) (requiring the court to determine the extent of agent's authority under a health care power of attorney); 20 Pa.C.S. § 5604(c)(3) (requiring the court to determine the extent of agent's authority under a durable power of attorney).

Source

The provisions of this Rule 14.7 adopted June 1, 2018, effective June 1, 2019, 48 Pa.B. 3524.

Rule 14.8. 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 of an incapacitated person one year after appointment and annually thereafter;
 - (3) An annual report by the guardian of the person one year after appointment and annually thereafter;
 - (4) A final report by the guardian of the person and the guardian of the estate within 60 days of the death of the incapacitated person, an adjudication of capacity, a change of guardian, or the expiration of an order of limited duration; and
 - (5) A final report from the guardian of the person and the guardian of the estate upon receipt of the provisional order from another state's court accepting transfer of a guardianship.

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(b) *Notice of Filing.* If, pursuant to Rule 14.7(a)(1)(iv), the order appointing the guardian identifies the person or persons entitled to receive notice of the filing of any report set forth in paragraph (a), the guardian shall serve a notice of filing within ten days after filing a report using the form provided in the Appendix to these Rules. Service shall be in accordance with Rule 4.3.

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

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

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

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

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

(2) If the guardian fails to comply with the reporting requirements within 20 days of service of the notice, then the clerk or the court's designee shall file and transmit a notice of deficiency to the adjudicating judge and serve a notice of deficiency on those persons named in the court's order pursuant to Rule 14.7(a)(1)(iv) as being entitled to receive a notice of filing.

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

Explanatory Comment

The reporting forms are available at <http://www.pacourts.us/forms/for-the-public/orphans-court-forms>. This Rule is silent as to the manner of proceeding when reports are deficient or warrant further investigation, or when the guardian is recalcitrant after being given notice by the clerk or the court's designee. In its discretion, the court may order further documentation, conduct a review hearing, or take further action as may be deemed necessary, including, but not limited to, removal of the guardian or contempt proceedings.

Source

The provisions of this Rule 14.8 adopted June 1, 2018, effective June 1, 2019, 48 Pa.B. 3524.

Rule 14.9. Review Hearing.

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

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

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

- (2) the date of the adjudication of incapacity;
- (3) the names and addresses of all guardians;
- (4) if the incapacitated person has been a patient in a mental health facility, the name of such facility, the date of admission, and the date of discharge;
- (5) the present address of the incapacitated person, and the name of the person with whom the incapacitated person is living;
- (6) the names and addresses of the presumptive intestate heirs of the incapacitated person and whether they are *sui juris* or non *sui juris*; and
- (7) an averment that:
 - (i) there has been significant change in the incapacitated person's capacity and the nature of that change;
 - (ii) there has been a change in the need for guardianship services and the nature of that change; or
 - (iii) the guardian has failed to perform duties in accordance with the law or act in the best interest of the incapacitated person, and details as to the duties that the guardian has failed to perform or has performed but are allegedly not in the best interests of the incapacitated person.
- (c) *Service.* The petition shall be served in accordance with Rule 4.3 upon the incapacitated person and those entitled to notice pursuant to Rule 14.2(f)(2).
- (d) *Hearing.* The review hearing shall be conducted promptly after the filing of the petition with notice of the hearing served upon those served with the petition pursuant to paragraph (c).

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.

Source

The provisions of this Rule 14.9 adopted June 1, 2018, effective June 1, 2019, 48 Pa.B. 3524.

Rule 14.10. Proceedings Relating to Real Property.

- (a) *Applicable Rules.* A petition for the public or private sale, exchange, lease, or mortgage of real property of an incapacitated person or the grant of an option for the sale, exchange, or lease of the same shall conform as far as practicable to the requirements of these Rules for personal representatives, trustees, and guardians of minors in a transaction of similar type.
- (b) *Objection.* The guardian shall include in the petition an averment as to whether the guardian knows or has reason to know of any objection of the incapacitated person to the proposed transaction, the nature and circumstances of any such objection, and whether expressed before or after the adjudication of incapacity.

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

Source

The provisions of this Rule 14.10 adopted June 1, 2018, effective June 1, 2019, 48 Pa.B. 3524.

Rule 14.11. 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 likely be accepted by the other state's court.

(b) *Service.* The guardian shall serve a copy of the petition in accordance with Rule 4.3 upon the incapacitated person and those entitled to service pursuant to Rule 14.2(f)(2).

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

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

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

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

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 14.12. The likelihood that the guardianship may be accepted by the other state's court may be established by evidence of the state having procedures similar to Rule 14.13.

Source

The provisions of this Rule 14.11 adopted June 1, 2018, effective June 1, 2019, 48 Pa.B. 3524.

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

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

- (1) the incapacitated person is:
 - (i) physically present in the other state;
 - (ii) reasonably expected to move permanently to the other state; or
 - (iii) significantly connected to the other state.
 - (2) adequate arrangements will be made for the management of the incapacitated person's estate;
 - (3) the court to which the guardianship will be transferred; and
 - (4) the guardianship will likely be accepted by the other state's court.
- (b) *Service.* The guardian shall serve a copy of the petition in accordance with Rule 4.3 upon the incapacitated person and those entitled to service pursuant to Rule 14.2(f)(2).
- (c) *Objections.* Any person entitled to service of the petition may file an answer with the clerk raising objections alleging that the transfer would be contrary to the interests of the incapacitated person.
- (d) *Hearing.* If needed, the court shall conduct an evidentiary hearing on the petition.
- (e) *Orders.* Upon finding that the allegations contained in the petition have been substantiated and the objections, if any, have not been substantiated, the court shall:
- (1) issue an order provisionally granting the petition to transfer the guardianship and directing the guardian to petition for acceptance of the guardianship in the other state; and
 - (2) issue a final order confirming the transfer and relinquishing jurisdiction upon receipt of the provisional order from the other state's court accepting the transfer and the filing of the final report of the guardian.

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 14.11. The likelihood that the guardianship may be accepted by the other state's court may be established by evidence of the state having procedures similar to Rule 14.13.

Source

The provisions of this Rule 14.12 adopted June 1, 2018, effective June 1, 2019, 48 Pa.B. 3524.

Rule 14.13. 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:
 - (i) the eligibility of the guardian for appointment in Pennsylvania;

- (ii) the proceeding in the other state approving the transfer was conducted in a manner similar to Rules 14.11 or 14.12 (concerning transfer of guardianship);
- (2) include a certified copy of the other state's provisional order approving the transfer; and
- (3) include a certified copy of the petition and order determining initial incapacity in the other state.
- (b) *Service.* The guardian shall serve a copy of the petition in the manner and upon the incapacitated person and those entitled to service pursuant to Rule 14.2(f).
- (c) *Objections.* Any person entitled to notice of the petition may file an answer with the clerk raising objections alleging that the transfer would be contrary to the interests of the incapacitated person.
- (d) *Hearing.* If needed, the court shall conduct an evidentiary hearing on the petition.
- (e) *Orders.* Upon finding that the allegations contained in the petition have been substantiated and the objections, if any, have not been substantiated, the court shall:
- (1) issue an order provisionally granting the petition to confirm transfer of the guardianship; and
- (2) upon receiving a final order from the court transferring the guardianship, the court shall issue a final order accepting the guardianship, appointing the guardian appointed previously by the court of the other state as the guardian in Pennsylvania, and directing the guardian to comply with the reporting requirements of Rule 14.8.

Explanatory Comment

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

Source

The provisions of this Rule 14.13 adopted June 1, 2018, effective June 1, 2019, 48 Pa.B. 3524.

Rule 14.14. 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 for a Minor (G-04);
- (e) Guardian's Inventory for an Incapacitated Person (G-05);
- (f) Guardianship of Incapacitated Person: Petition for Adjudication/Statement of Proposed Distribution Pursuant to Pa. O.C. Rule 2.4 (OC-03);

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- (g) Guardianship of Minor: Petition for Adjudication/Statement of Proposed Distribution Pursuant to Pa. O.C. Rule 2.4 (OC-04);
- (h) Expert Report (G-06); and
- (i) Notice of Filing (G-07).

Explanatory Comment

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

Source

The provisions of this Rule 14.14 adopted June 1, 2018, effective June 1, 2019, 48 Pa.B. 3524.

[Next page is 15-1.]

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Link to the Orphans' Court Forms

The following link includes PDFs of 7 specific Guardianship forms, G-01 through G-07.

<http://www.pacourts.us/forms/for-the-public/orphans-court-forms>

Chapter Two

Representing the Alleged Incapacitated Person

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**“TOP TEN” QUESTIONS ABOUT COUNSEL
FOR THE “AIP” (ALLEGED INCAPACITATED PERSON)**

- **Does the AIP have a right to counsel?**
- **Can the Court appoint counsel for the AIP?**
- **Why should the Court appoint counsel for the AIP?**
- **Can the AIP hire his/her own counsel?**
- **Can family members or friends hire counsel for the AIP?**
- **How do you represent an allegedly impaired person?**
- **What should counsel’s investigation look like?**
- **What if counsel thinks the AIP’s wishes are ill-advised and against his/her best interests?**
- **How long should counsel remain involved after guardianship?**
- **How does AIP’s counsel get paid?**

1. DOES THE AIP HAVE THE RIGHT TO COUNSEL?

The AIP’s right to have counsel appointed is guaranteed by 20 Pa. C.S. 5511:

*“Written notice of the petition and hearing shall be given in large type and in simple language to the alleged incapacitated person. The notice shall indicate the purpose and seriousness of the proceeding and the rights that can be lost as a result of the proceeding. It shall include the date, time and place of the hearing and an explanation of all rights, **including the right to request the appointment of counsel and to have counsel appointed if the court deems it appropriate and the right to have such counsel paid for if it cannot be afforded.**” (Emphasis added).*

While guardianship proceedings are not criminal in nature, a fact which often must be explained to AIP’s who are scared and bewildered by what is for most of them

their first encounter with the judicial system, counsel is imperative because the effect of the proceedings, if successful, can potentially impact, if not take away altogether, many of the rights that each of us otherwise take for granted every day. That includes signing contracts, handling one's own finances, deciding where to live and deciding what medical treatments to receive. For some AIP's who own firearms, that will also include relinquishing their firearms because a completed "Notification of Mental Health Commitment" must be filed once a guardianship is established to prevent the AIP from purchasing or possessing firearms. For those reasons, the selection of counsel is a very important step in ensuring that the rights of the AIP are protected.

Another consideration is that the AIP is not required to testify. Again, guardianship proceedings are not criminal in nature, but the level of protection is essentially the same because the potential loss of liberty and right to make one's own decisions are at stake. A common misunderstanding by Petitioners is that the AIP's testimony can be used to prove the case that guardianship is needed. However, the Petitioner is not allowed to call the AIP to testify. Even the Court cannot require the AIP's testimony and no adverse inferences can be taken by the failure to testify. It is the AIP's decision alone, in consultation with counsel.

For all of these reasons, it is often in the AIP's best interests to have counsel, who is better able to understand and navigate the process, to advocate for the AIP, to advance his/her wishes---including taking an appeal from the Final Decree if requested by the AIP/IP.

Note: As will be discussed later in Section 10, *infra*, the failure of the AIP to afford counsel should not be a consideration since 20 Pa. C.S. §5511 (c) allows for the County to incur those costs if counsel is needed.

2. CAN THE COURT APPOINT COUNSEL FOR THE AIP?

There is no question that the Court has the authority to appoint counsel for the AIP under 20 Pa. C.S. 5511:

"In appropriate cases, counsel shall be appointed to represent the alleged incapacitated person in any matter for which counsel has not been retained by or on behalf of that individual."

The initial issue is whether the AIP already has a pre-existing relationship with legal counsel and whether that counsel is adequately equipped to represent the AIP in the guardianship proceeding. Some of the pertinent questions may include:

- When did the AIP's lawyer last represent him/her?

- What types of matters did the lawyer handle for the AIP?
- How extensive was the representation?
- Did the prior representation end amicably?
- Is the lawyer sufficiently familiar with Orphans' Court procedure or does he/she have the capacity to become familiar with the process?
- Will the lawyer adequately investigate the allegations set forth in the Petition?
- Are there any conflicts of interest (such as representation of other family members connected with the guardianship proceeding) which preclude the attorney's involvement?
- Does the lawyer even want to represent the AIP?

These considerations are important because the Court cannot simply presume that prior representation forms a basis for proper representation in the future. If the attorney was someone who represented the AIP in a personal injury lawsuit or the sale of real estate five years ago, he/she may have had no contact with the AIP since. The attorney may also lack the skill set or the availability which is necessary to step in and represent the AIP. The issue of the "chemistry" between the attorney and the AIP could also be a significant factor, especially if the client was less than satisfied with the attorney's services in the past.

NOTE: New Rule Change—14.4(c):

Effective June 1, 2019, Rule 14.4(c) further confirms the Court's authority to appoint counsel for the AIP "if deemed appropriate" but contains a new requirement. The Court is now required to delineate the scope of counsel's services and whether those services include pursuing an appeal, if necessary.

Editorial Comment: The scope of counsel's services should probably be determined by the potential issues which can be anticipated. In many cases, there will be an ongoing need to protect interests of an incapacitated person, even with the Court's determination that a guardian is needed. Possible need of counsel for the AIP/IP involvement in post-adjudication proceedings might include:

- Resolution of pre-guardianship financial issues such as compelling accounting from prior POAs.
- Subsequent Petitions for Review where actions of guardians, payment of professional fees, and/or needs and wishes of AIP are at issue after guardianship.
- Sale of AIP/IP's real estate---*See*, 20 Pa. C. S. §5521 and §5155(1). *See also, In Re Rosengarten*, 871 A. 2d 1249 (Pa. Super. 2005).

- “End of Life” petitions. Court involvement is required where no healthcare POA, advanced health directive or living will exists. If the AIP/IP does not have counsel, one should be appointed. *See, In Re: DLH, 606 Pa. 550, 2 A. 3d 505 (2010).*
- Petitions to Terminate Guardianship. The burden of proof in such proceedings is not on the IP to prove capacity. Rather, it is on the person seeking to continue the guardianship to prove ongoing incapacity. This proceeding is especially common where the incapacity has been caused by an alcohol or drug-induced disability where, with treatment and detoxification, the IP can sometimes resume control of his/her affairs. Counsel can prove helpful in granting an IP’s desire to terminate guardianship.

It is the duty of the Petitioner under 20 Pa. C.S. 5511 to notify Court within seven (7) days of hearing of need for counsel:

“Petitioner shall be required to notify the court at least seven days prior to the hearing if counsel has not been retained by or on behalf of the alleged incapacitated person.”

While the existing rule seems limited in the obligations which it imposes, best practices should include giving the Court some brief background in assisting it to come to a decision to appoint counsel. First, the Court should be advised if the matter is contested. The notice should also include whether, to Petitioner’s knowledge, the AIP has had counsel in the past and, if so, for what. As a practical matter, it is also best to notify the Court as soon as possible after the Petition is filed, since proper investigation often includes court-appointed counsel’s analysis of the AIP’s living situation and the dynamics of the request for guardianship. A more in-depth of the range of responsibilities of AIP’s counsel is included as Part 7, *infra*.

NOTE: New Rule Change—14.4(a):

Effective June 1, 2019, Rule 14.4(a) imposes new duties on the Petitioner with respect to whether or not the AIP has counsel. Whereas existing 20 Pa. C.S. §5511 (a) merely asks whether the AIP “has” counsel, Rule 14.4(a) also requires advising the Court whether or not the AIP has requested counsel. This would appear to impose an affirmative obligation on the Petitioner to ask the AIP specifically whether he/she wants a lawyer.

Query: *Does that obligation also include indicating some of the considerations why counsel might be advisable or necessary? Remember, the Petitioner must tell the AIP that the County will pay for counsel if the AIP cannot afford it.*

3. WHY SHOULD THE COURT APPOINT COUNSEL FOR THE AIP?

In addition to the concerns about the need for counsel which have already been raised in Part 2, *supra*, many guardianship proceedings involve allegations or suspicions of abuse and financial exploitation. There are times when these allegations have been investigated by the Aging and Adult Protective Services department within the county, but guardianship petitions can also be filed by family members, nursing home facilities, or other interested parties (such as a neighbor or friend) who are looking to protect the AIP. Unfortunately, guardianships are also sometimes sought by individuals who have malicious intent or who are seeking to battle for the control of the AIP (and his/her money) in order to protect his/her own financial interests (such as protecting his/her perceived inheritance).

Whether or not counsel should be appointed will likely depend on a myriad of potential issues raised by the allegations in the Petition. Those relevant issues may include:

1. The AIP contests that he/she is incapacitated
2. Disagreements between family members about the best interests of AIP
3. Allegations/evidence of financial exploitation and scams
4. Allegations/evidence of self-neglect by AIP
5. Allegations/evidence of possible lack of cooperation of AIP
6. Allegations/evidence of unpaid bills, especially care-related
7. Power of attorney issues (including revocations of POAs)
8. Medicaid spend-down concerns
9. End-of-life issues
10. More generally, the need for someone to be AIP's "voice"

4. CAN THE AIP HIRE HIS/HER OWN COUNSEL?

The question of whether an AIP can hire his/her own counsel goes to the very heart of the central issue in a guardianship hearing. If someone is cognitively, intellectually, or mentally compromised, does he/she even have the requisite capacity to hire counsel to protect his/her interests? Can the AIP enter into a binding contract for legal services and fully appreciate the significance of what the attorney will be providing to him/her? Are they able to negotiate a fair and reasonable fee for those

services, having a full understanding of his/her financial resources and how that representation might impact him/her?

The short answer to this question is that AIP/IP's right to hire counsel, and the attorney's right to be paid for services, depends on circumstances. The seminal case is perhaps the Superior Court's decision in *In Re Rosengarten*, 871 A. 2d 1249 (Pa. Super. 2005). Although that case dealt with the issue of a person who had already been adjudicated as incapacitated, the issue is really the same. In *Rosengarten*, the Court determined that the incapacitated person had the right to counsel of her own choosing to contest the disposition of her assets by her guardian, especially where IP had alleged that she is no longer incapacitated. This comports with the Superior Court's prior decision in *Fulkroad v. Ofak*, 317 Pa. Super. 200, 463 A. 2d 1155 (1983), where the Court stated that 20 Pa. C. S. §5524 is construed to mean that an adjudication of incapacity raises a rebuttable presumption of incapacity.

NOTE: New Rule Changes—14.4(b):

Effective June 1, 2019, Rule 14.4(b) requires that if the AIP has retained private counsel, that “counsel shall prepare a comprehensive engagement letter for the 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 the legal services and costs and the hourly rate, if applicable, who will be the party considered responsible to payment, whether any retained is required, and if so, the amount of the retainer.” The Rule further provides that “Counsel shall provide a copy of the signed engagement letter to the Court upon request.”

Even under the existing rules, the decision by private counsel to represent an AIP faces the risk of non-payment for services, reduction of the bill for services, or even disqualification as counsel for the AIP. In this respect, the changes to the Rules are merely an outgrowth of prior case law which required sufficient indicia of capacity by an AIP to retain an attorney. Those cases include:

Estate of Gregory, 27 Fid. Rep. 2d 273 (2005) (Retainer agreement executed at a time when a person had suffered memory loss and impaired judgment. Appropriateness of fees is based on quantum meruit. A non-refundable retainer of \$10,000 was “clearly excessive and unconscionable”).

Weightman’s Estate, 126 Pa. 221, 190 A. 2d 552 (1937) (Legal fees incurred by a mental patient who sought to bring a habeus corpus

action as to the propriety of his detention in a mental institution were based on quantum meruit, not on contract).

Feeley Estate, 173 Pa. Super. 441, 98 A. 2d 738 (1953) (*Contracts for legal representation entered into by AIP before adjudication of incapacity are voidable if person was in fact incompetent at the time of the execution of the contract).*

Carver Estate, 5 Pa. D & C 3d 743 (Adams County O.C., 1977) (*Legal contract which was entered into one month prior to the adjudication of incapacity was unenforceable where testimony had been presented that the client lacked the capacity to enter into such a contract).*

Snyder Estate, 14 Fid. Rep. 2d 338 (1993) (*Court disqualified second attorney who became involved in pending guardianship proceeding and then transferred AIP's home for nominal consideration after Court had already appointed counsel for AIP. Second attorney was disqualified under Rule 3.7 (Attorney as witness) because real estate transfer would be one of the issues that the Court would use in determining the need for a guardian).*

5. CAN FAMILY OR FRIENDS HIRE COUNSEL FOR THE AIP?

This is an issue which can be especially problematic, especially in those cases where there are competing interests between family members and the possibility of “hidden agendas” in the selection of counsel. A fair question is, who does counsel really represent---the AIP or the person who hired him/her? In those situations, it would appear that the decision whether private counsel is appropriate is best left to the Court. In any event, the new changes to the Rules which become effective on July 1, 2019 will ensure a greater amount of transparency in the selection process of counsel for the AIP, especially when that counsel is chosen by anyone other than the Court.

6. HOW DO YOU REPRESENT AN ALLEGEDLY IMPAIRED PERSON?

A. Obligations to the client:

There are both statutory and ethical obligations for counsel to take into consideration when representing the AIP. The statute guiding AIP's counsel is found generally in 20 Pa. C.S. §5501 *et seq.* and more specifically in 20 Pa. C.S. 5502. Section 5502 sets forth the purpose of the guardianship statute as to “establish a system which permits incapacitated persons to participate as

fully as possible in all decisions which affect them.” The obvious problem is that a person, if incapacitated, may be unable to identify his/her needs and/or to articulate his/her wishes.

20 Pa. C.S. §5501 defines an incapacitated person as follows:

“Incapacitated person” means an adult whose ability to receive and evaluate information effectively and communicate decisions in any way is impaired to such an extent that he is partially or totally unable to manage his financial resources or to meet the essential requirements for his physical health and safety.

The obvious challenge for counsel is how to maintain a normal client lawyer relationship and ascertain what the client wants given the fact that the central allegation of a guardianship action is that the client is unable to do so.

It is in this context that counsel for the AIP must look to the Code of Professional Responsibility, Rules 1.14 and 1.6. *See, Appendix, attached.* Rule 1.14 and its Explanatory Comments sets forth the necessary guidance for dealing with a client with diminished capacity. That Rule and its Comments make clear that a client, although perhaps unable to make legally binding decisions, may still be able to understand, deliberate upon, and reach conclusions about matters that affect his/her well-being. An attorney representing an AIP should at all times strive to treat the client with respect and attention. The attorney must keep the client’s interests foremost at all times and must look to the client, and not to family, to make decisions on the client’s behalf. Rule 1.6 requires that the AIP’s counsel take steps to protect the confidences of the client, subject to the limitations of a normal attorney client relationship. It is through this prism that counsel must carry out his/her duties.

B. **“Full Court Press” is NOT reasonable or in AIP’s best interests.**

Willis, Incompetent, 17 Fid. Rep. 2d 12 (1996) (Fees of \$50,000 for a “full court press” to defend an AIP in guardianship proceedings was not in AIP’s best interests. Court also stated that fees should be on the “most moderate scale” and disapproved overlapping of effort by multiple attorneys in the same firm).

C. **Court-Appoint Counsel’s Responsibilities to the Court:**

While the primary goal of counsel is to protect the AIP’s interests, the Court generally will look to court-appointed counsel to assist in the process of determining whether guardianship is necessary and, if so, under what conditions. Some examples of where counsel might assist the Court include the following:

1. **Are there circumstances which exist that may require the appointment of emergency guardians?**

There are times when, in the course of court-appointed counsel’s due diligence, information is uncovered which shouts that the AIP is in physical danger or is at significant risk of financial exploitation. If counsel reasonably believes that there are such exigent circumstances, he/she should bring the information to the Court’s attention promptly and request a hearing to appoint an emergency guardian.

2. **Is an independent medical examination needed? If so, who should the evaluator be?**

§5511(d) allows the Court upon its own motion or upon petition by the AIP for cause shown to order an independent examination to assist the Court in making its determination of whether incapacity exists. §5511(d) further provides that “the Court shall give due consideration to the appointment of an evaluator nominated by the AIP.”

However, the choice of AIP and/or counsel of the IME physician is not without its limits. The recent case of *Estate of Rosa Simmons*, 8 Fid. Rep. 3rd 271 (Phila. 2018) demonstrates that the Court is within its power to overrule the AIP’s choice of IME doctor where AIP’s choice does not provide the necessary information to the Court. In *Simmons*, the Court initially appointed counsel, and then allowed that counsel to be replaced with counsel of the AIP’s choosing. That second counsel then requested an IME, which was granted by the Court. However, when the report indicated that only a general neuropsychological exam had been done rather than a full capacity evaluation, the Court ordered a second IME.

3. **Is there an urgency which requires the need for resolution and a prompt hearing?**

See, Fox, Incapacitated Person, 1 Fid. Rep. 3rd 153, 155 (Montg. 2011) (Where the Court discussed the role of independent counsel in

assisting the Court and stated: “Furthermore, where, as here, independent counsel has been appointed to represent the AIP the Court is assured that if an urgent matter requires resolution and a prompt hearing, that matter will be brought to the attention of the Court by the independent counsel or by counsel representing another party”).

4. Assuming incapacity, who should be appointed guardian?

This is an especially important role, given the substantial changes in the selection of guardians and the additional oversight which has been added by the recent changes in the Rules.

See, Reich, Incapacitated Person, 27 Fid. Rep. 2d 269 (Montg. 2006) (*Noting the role of independent counsel in making recommendations to the Court regarding the choice of guardians*).

5. Should proceedings be opened or closed to the public? Jury or non-jury?

In Re: Tose, 21 Fid. Rep. 1st 562 (1971) (*“The Respondent in an incompetency proceeding, whoever he may be, or by whatever dubious code he may live, is entitled to protection from needless harm while the delicate question of competency is being determined”).*

In light of the prevalence and widespread use of social media, AIP’s counsel might want to consider requesting entry of Court Order preventing disclosure of AIP’s personal information or the subject of the proceedings beyond the courtroom. If necessary, request that every “interested party” in the courtroom be identified on the record and be required to acknowledge that a “gag” order is in effect.

6. Can the AIP be compelled to testify?

Taylor, Incapacitated Person, 21 Fid. Rep. 2d 205 (Montg. 2001) (*Petitioner has the initial burden of making a prima facie case for incapacity with AIP’s own testimony. If that initial showing is made, AIP will be subject to questions from the bench by interview rather than by direct or cross. There will be no questions by counsel unless AIP (or his counsel) acquiesces*).

Wismer Estate, 15 Fid. Rep. 1st 308 (Montg. 1965) (*Court has the right to refuse Petitioner’s request to call an alleged incompetent as a witness. An incompetency matter is not an adversary proceeding and does not in any way affect the Petitioner’s own legal rights*).

7. **Should AIP be allowed to testify or address the Court?**

Generally, it is in the AIP's best interest not to testify. First, the proceeding is not intended to be adversarial. The potential of subjecting an AIP to the psychological trauma of cross-examination, especially if that individual is at all compromised, is generally not in the best interests of the client. However, as in a criminal proceeding, the decision is ultimately the client's, not the lawyer's, and the lawyer is compelled by the Rules of Professional Responsibility, particularly Rule 1.14, to allow the client to testify if he/she insists upon it.

The recent case of *Estate of Rose Phillips*, 8 Fid. Rep. 3rd 327 (Phila. 2018) demonstrates the importance of knowing your client and knowing the weaknesses in the Petitioner's case. Incapacity should not just be viewed as a foregone conclusion. In *Phillips*, the AIP testified on her own behalf. The Court specifically noted in its findings that the AIP gave a "compelling recitation" in support of her wish not to have a guardian. The AIP and her counsel were able to demonstrate that there was adequate family support and that a plan was in place for the protection of the AIP. The Court also denied the petition because it found that the expert's testimony was lacking. The expert had not reviewed all of the necessary medical information and, according to the Court, lacked a sufficient understanding of the AIP's circumstances.

8. **Is discovery needed? Does Counsel need an Order to obtain the client's medical or financial information? Is a protective Order required to protect the AIP's privacy?**

Discovery is not allowed unless specifically authorized by the Court. However, it may be necessary for AIP's counsel to obtain medical records or bank statements which allow for the full review of his client's situation. Depending on the circumstances, these records may contain information about which the client has no knowledge. Generally, the Court will entertain a reasonable request for records if needed for the proper defense of the AIP. If necessary, counsel should make such a request to the Court. Where a simple request with an Order attached does not obtain results, a request for the issuance of a subpoena may be in order.

Counsel for the AIP also needs to be vigilant to protect AIP's privacy, especially from release of information on social media. Inappropriate attachments to the pleadings which disclose protected information may require a separate Court Order limiting the dissemination of that information and a caution to the party otherwise seeking to use it.

9. **Is there a less restrictive alternative such as a power of attorney or support system?**

In Re: Peery, 272 A. 2d 539 (Pa Super. 1999) (where the Court was satisfied that the AIP did not need a guardian, and stated that: “This Court need not look to whether Ms. Peery can manage her personal financial resources or meet essential requirements for health and safety on her own. Rather, the proper inquiry is whether Ms. Peery has in place a circle of support to assist her in making rational decisions concerning her personal finances and to meet essential requirements of health and safety. This Court will not disturb Ms. Peery’s wishes as long as her decisions are rational and result in no perceivable harm to her”).

7. **WHAT SHOULD COUNSEL’S INVESTIGATION LOOK LIKE?**¹

There are a number of steps that counsel can take, depending on what is appropriate under the circumstances. The essence of a thorough investigation should allow counsel to become familiar with all of the necessary facts, including those about which the AIP may not know, which assist in assessing the situation and assisting the client.

A. **Talk to the AIP.** Do it separately, without caretakers and family members present and, if possible, out of the residence. Make sure that there are no “monitors” which will allow your conversations to be overheard.

- a. What are the AIP’s perceptions of his/her situation? Of family and those around him/her?
- b. Has there been a recent decline in the AIP’s physical health or cognitive abilities that can be linked to a specific, treatable medical condition?
- c. Has there been a change in the AIP’s living condition—i.e., a house that was always meticulous in the past is now messy, neglected? Mail is piling up, and bills are unpaid?
- d. Is AIP inappropriately dressed and/or lacking basic hygiene?
- e. Is AIP unusually quiet, withdrawn and not eating properly?

B. **Inspect the AIP’s home.**

- a. What is the condition inside and outside the house? Any safety hazards?
- b. Is there food in the refrigerator? Past expiration dates?

¹ Special thanks to Diane M. Zabowski, Esquire, of Montgomery County whose insights and advocacy on behalf of AIP’s have contributed to the protocol set forth in this section.

- c. Does the AIP have all of their medications (and are they taking them)? How are the medications dispensed and by whom?
 - d. What is going on with the AIP's mail? Any changes of addresses? Are bills being paid or are they just piling up? Any shut-offs of utility service recently?
- C. **Establish what the family dynamics are.** Interview interested parties. Be certain to advise them that you represent the AIP and not them.
- a. Spouse
 1. Supportive of AIP's needs? Position on guardianship?
 2. Has there been any consideration of divorce? Has a divorce action been filed?
 3. Who controls AIP's finances? Joint accounts?
 - b. Children
 1. Are there are rifts between AIP and children? Between siblings?
 2. Have any children controlled finances or acted as agent under POA?
 3. Any potential hidden agendas
- D. **Examine financial records and contact financial institutions.** (*Note:* You may need a HIPAA authorization or special court order). *Important events to look for:*
- Requests for powers of attorney, especially from family members or third parties who only recently became involved in elder's care and decision-making
 - Sudden involvement of new attorneys and/or new financial advisors
 - Revocation of existing powers of attorneys in favor of new ones
 - Preparation of new wills and trusts and/or changes to existing wills trusts (especially of long-standing duration)
 - Changes in beneficiaries in wills, especially where prior beneficiaries are family members who are now cut out in favor of third parties

- Transfer of bank accounts from one financial institution to another for no apparent reason
- Addition of names onto bank account and financial instruments as joint owners or with ITF or TTE designations
- Additional signatories on bank account
- Caretakers with financial problems and/or bankruptcies
- Changes to the usual patterns of elder's past gift-giving
- New deeds prepared and/or filed
- New mortgages or reverse mortgage created
- AIP's assets have been transferred into annuities
- New credit cards and/or new debit cards
- The AIP is always talking about the need to save money

Note: Clearly, not all financial transactions are suspect. Many occur as a matter of typical estate planning and/or Medicaid Planning. However, the timing of, and reasons, for the changes in an AIP's estate must always be evaluated.

- E. **Interview any caregivers or friends of the AIP.** Generally, they will have a more objective perspective about the AIP's situation.
- F. **Consider whether to conduct deed, lien and judgment searches.**
- G. **Obtain medical records and/or speak to AIP's physicians.** (**Note:** You may need a special Court Order if medical providers insist on a HIPAA authorization).
- H. **Consider independent geriatric assessment.** Determine lack of capacity as opposed to undue influence.
- I. **Conduct background searches on caretakers and POA's.** Check for:
 1. Prior employment history—check out references
 2. Failed businesses
 3. Prior bankruptcies, tax liens, judgments

4. Criminal record. Try to obtain prior addresses so that you can check the county and local district court criminal records for each known past address.
 5. Civil Dockets. Check for prior litigation history and/or judgments.
- J. **Examine AIP’s computer, email, phone records, and social media.** Consider requesting permission to hire a private forensic examiner or investigator if necessary.
- K. **Be alert to whether or not your client is still the victim of a scam artist who may have sensitive information about and/or may still be in direct contact with him/her.** Elder scamming is one of the most baffling and troubling developments with alleged incapacitated persons. It is baffling because a client may appear perfectly normal in all respects *except* for one very big blind spot when it comes to understanding that a scam artist has put him/her at tremendous risk. It is troubling because it is often very difficult to stop. The perpetrators are difficult to track down and may not even be in this country. It is also not unusual for highly educated, sophisticated clients, including those with doctorates, engineering degrees, or even financial backgrounds, to fall prey to scamming schemes. Counsel for the AIP should take note of possible access points for your client such as computers and smart phones. Scammers make contact with clients through emails, internet sites, and over the phone, often warning the elder client not to tell anyone or risk harm to his/her person or finances. For a recent, in-depth article on this phenomena, check out the following link for an article in *The Intelligencer*, a Bucks County newspaper, on March 8, 2019: <https://www.theintell.com/news/20190308/imposter-scams-bilking-consumers-of-millions>

8. **WHAT IF COUNSEL THINKS THE AIP’S WISHES ARE ILL-ADVISED AND AGAINST HIS/HER BEST INTERESTS?**

A. **“Best Interests” of the AIP v. What the AIP Wants**

In Re: Michael Sabatino, 2016 WL 6995384. This is an unreported, but nonetheless important, case that is very instructive on the dual issues of the AIP’s ability to hire counsel and the court-appointed counsel’s role under multiple provisions of the Code of Professional Ethics. The case was appealed to the Superior Court by an advocacy group (“AG”) which had sought to interpose itself as AIP’s counsel in place of court-appointed counsel. AG alleged that the Court denied AIP counsel of his own choosing and improperly appointed counsel

for him. The Superior Court disagreed, distinguishing *Rosengarten* because (1) AG had approached the AIP about representing him, not the other way around, (2) AG was still allowed to participate fully in the proceedings, (3) AG forcefully advocated against guardianship on AIP's behalf presenting witnesses and conducting direct and cross examination and (4) AG's disqualification as his counsel was at most harmless error because AG was allowed to participate as advocate for the AIP.

AG also alleged that court-appointed counsel failed to act as adversarial counsel as AIP had wished and asserted a violation of Rule 1.2 (*A lawyer shall abide by a client's decisions concerning the objectives of litigation*), Rule 1.6 (*Disclosure of client confidences*), and Rule 1.7 (*Undivided loyalty to a client*). The Superior Court disagreed, citing both 20 Pa. C.S. 5501 and Rule 1.14 (*Representing a person with diminished capacity*). The Court also noted that AIP's court-appointed counsel had reason, upon receiving the expert IME report, to believe that the AIP was at risk of substantial physical, financial or other harm and that it was appropriate to seek the appointment of a guardian. Court-appointed counsel also represented AIP's best interests by presenting him as a witness, by cross-examining the IME doctor and by presenting AIP's position to the Court. Also noting AG's advocacy, the Superior Court stated, "The desired balance between zealous advocacy and best interests was achieved throughout the proceedings."

B. When Should the Court Consider Appointing a Guardian *Ad Litem*?

20 Pa. C.S. §5511 (a) allows the Court to appoint counsel for the AIP; it does not specifically authorize the Court to appoint a guardian ad litem ("GAL"). However, 20 Pa. C.S. §751 (5) grants the Court authority on petition or on its own motion to appoint a GAL to "represent the interest, not already represented by a fiduciary of...a person not *sui juris*." Thus, a Court clearly can appoint a GAL in a guardianship action where the basic allegation is that the AIP is not "*sui juris*" or "of legal capacity."

Rule 1.14 also clearly establishes that the attorney representing an individual with diminished capacity (whether privately retained or court-appointed) can seek the appointment of a GAL. Explanatory Comment #7 states that "if a legal representative has not been appointed, the lawyer should consider whether appointment of a guardian *ad litem*, conservator or guardian is necessary to protect the client's interests." The involvement of both counsel and a GAL may be important to protect the client's interest, especially where counsel is in conflict with a client who wants to take a course of action which is ill-advised. In that circumstance, the GAL can advocate that position which is in the client's

best interests, even if it is not what the client wants, because the GAL's role is different, and he/she is not constrained by the attorney client relationship.

Query: In cases where both court-appointed counsel and a GAL are appropriate, who pays for the GAL if resources are insufficient? There is no specific statutory authority for the payment of the GAL. *Cf.* 20 Pa. C.S. §5511 (c), which allows for the payment of fees for the court-appointed counsel, but is silent on fees for a GAL. There are provisions in Pa. R. Civ. P. 2064 for the payment of GAL fees out of a fund which has been created for the AIP, but there is no specific mention about payment of GAL fees when no fund has been created. Nonetheless, it would appear that the Court's authority is implied throughout to take any action which is deemed to be in the AIP's best interests and thus GAL fees paid by the County would also appear to be appropriate.

9. **HOW LONG SHOULD COUNSEL REMAIN INVOLVED AFTER GUARDIANSHIP?**

While this issue has traditionally been handled differently from county to county, new Rule 14.4 (c) is expected to clarify the issue because the Court will now be required to delineate the scope of counsel's services when making an appointment.

Practice tip: If, during the course of court-appointed counsel's due diligence investigation, it becomes apparent that issues will still exist after guardianship which may require counsel's continued involvement, counsel should make that request to the Court, preferably by the time of the plenary hearing. Examples might include a client who is more involved (less impaired?) and/or a client whose incapacity may be temporary. Other examples are matters where funds have been taken by an agent under POA and an accounting will be sought. *See, Part 2, supra.*

10. **HOW DOES COUNSEL FOR THE AIP GET PAID?**

Whether counsel is court-appointed or privately retained, payment of all fees in a guardianship action should be court approved. *See, 20 Pa. C.S. §5536.* That would also include payments from a retainer paid by the AIP to private counsel before the actual adjudication of guardianship. Private counsel is strongly advised to adhere to the mandates of new Rule 14.4 (b) which requires the preparation of a "comprehensive engagement letter" which includes the scope of services and at what rate those services will be billed. It is clear that the Court retains the prerogative to adjust counsel's fees if they are deemed to be excessive. In that respect, the new Rule 14.4 (b) merely enhances existing case law which allowed the Court to adjust fees and award them on the basis of "*quantum meruit.*" *See, Part 5, supra.*

Chapter 2

Appendices

Rule 1.14

- (a) When a client's capacity to make adequately considered decisions in connection with a representation is diminished, whether because of minority, mental impairment or for some other reason, the lawyer shall, as far as reasonably possible, maintain a normal client-lawyer relationship with the client.
- (b) When the lawyer reasonably believes that the client has diminished capacity, is at risk of substantial physical, financial or other harm unless action is taken and cannot adequately act in the client's own interest, the lawyer may take reasonably necessary protective action, including consulting with individuals or entities that have the ability to take action to protect the client and, in appropriate cases, seeking the appointment of a guardian ad litem, conservator or guardian.
- (c) Information relating to the representation of a client with diminished capacity is protected by [Rule 1.6](#). When taking protective action pursuant to paragraph (b), the lawyer is impliedly authorized under [Rule 1.6\(a\)](#) to reveal information about the client, but only to the extent reasonably necessary to protect the client's interests.

Explanatory Comment to Rule 1.14

[1] The normal client-lawyer relationship is based on the assumption that the client, when properly advised and assisted, is capable of making decisions about important matters. When the client is a minor or suffers from a diminished mental capacity, however, maintaining the ordinary client-lawyer relationship may not be possible in all respects. In particular, **a severely incapacitated person may have no power to make legally binding decisions. Nevertheless, a client with diminished capacity often has the ability to understand, deliberate upon, and reach conclusions about matters affecting the client's own well-being.** For example, children as young as five or six years of age, and certainly those of ten or twelve, are regarded as having opinions that are entitled to weight in legal proceedings concerning their custody. So also, it is recognized that some persons of advanced age can be quite capable of handling routine financial matters while needing special legal protection concerning major transactions.

[2] **The fact that a client suffers a diminished capacity does not diminish the lawyer's obligation to treat the client with attention and respect.** Even if the person has a legal representative, the lawyer should as far as possible accord the represented person the status of client, particularly in maintaining communication.

[3] The client may wish to have family members or other persons participate in discussions with the lawyer. When necessary to assist in the

representation, the presence of such persons generally does not affect the applicability of the attorney-client evidentiary privilege. Nevertheless, **the lawyer must keep the client's interests foremost and, except for protective action authorized under paragraph (b), must look to the client, and not family members, to make decisions on the client's behalf.**

[4] If a legal representative has already been appointed for the client, the lawyer should ordinarily look to the representative for decisions on behalf of the client. In matters involving a minor, whether the lawyer should look to the parents as natural guardians may depend on the type of proceeding or matter in which the lawyer is representing the minor. If the lawyer represents the guardian as distinct from the ward, and is aware that the guardian is acting adversely to the ward's interest, the lawyer may have an obligation to prevent or rectify the guardian's misconduct. See [Rule 1.2\(d\)](#).

Taking Protective Action

[5] **If a lawyer reasonably believes that a client is at risk of substantial physical, financial or other harm unless action is taken, and that a normal client-lawyer relationship cannot be maintained as provided in paragraph (a) because the client lacks sufficient capacity to communicate or to make adequately considered decisions in connection with the representation, then paragraph (b) permits the lawyer to take protective measures deemed necessary.** Such measures could include: consulting with family members, using a reconsideration period to permit clarification or improvement of circumstances, using voluntary surrogate decision-making tools such as durable powers of attorney or consulting with support groups, professional services, adult-protective agencies or other individuals or entities that have the ability to protect the client. In taking any protective action, the lawyer should be guided by such factors as the wishes and values of the client to the extent known, the client's best interests and the goals of intruding into the client's decision-making autonomy to the least extent feasible, maximizing client capacities and respecting the client's family and social connections

[6] In determining the extent of the client's diminished capacity, the lawyer should consider and balance such factors as: the client's ability to articulate reasoning leading to a decision, variability of state of mind and ability to appreciate consequences of a decision; the substantive fairness of a decision; and the consistency of a decision with the known long-term commitments and values of the client. **In appropriate circumstances, the lawyer may seek guidance from an appropriate diagnostician.**

[7] **If a legal representative has not been appointed, the lawyer should consider whether appointment of a guardian ad litem, conservator or guardian is necessary to protect the client's interests.** Thus, if a client with diminished capacity has substantial property that should be sold for the client's benefit, effective completion of

the transaction may require appointment of a legal representative. In addition, rules of procedure in litigation sometimes provide that minors or persons with diminished capacity must be represented by a guardian or next friend if they do not have a general guardian. In many circumstances, however, appointment of a legal representative may be more expensive or traumatic for the client than circumstances in fact require. Evaluation of such circumstances is a matter entrusted to the professional judgment of the lawyer. In considering alternatives, however, the lawyer should be aware of any law that requires the lawyer to advocate the least restrictive action on behalf of the client.

Disclosure of the Client's Condition

[8] **Disclosure of the client's diminished capacity could adversely affect the client's interests.** For example, raising the question of diminished capacity could, in some circumstances, lead to proceedings for involuntary commitment. **Information relating to the representation is protected by [Rule 1.6](#). Therefore, unless authorized to do so, the lawyer may not disclose such information. When taking protective action pursuant to paragraph (b), the lawyer is impliedly authorized to make the necessary disclosures, even when the client directs the lawyer to the contrary.** Nevertheless, given the risks of disclosure, paragraph (c) limits what the lawyer may disclose in consulting with other individuals or entities or seeking the appointment of a legal representative. At the very least, the lawyer should determine whether it is likely that the person or entity consulted with will act adversely to the client's interests before discussing matters related to the client. The lawyer's position in such cases is an unavoidably difficult one.

Emergency Legal Assistance

[9] **In an emergency** where the health, safety or a financial interest of a person with seriously diminished capacity is threatened with imminent and irreparable harm, **a lawyer may take legal action on behalf of such a person even though the person is unable to establish a client-lawyer relationship or to make or express considered judgments about the matter, when the person or another acting in good faith on that person's behalf has consulted with the lawyer. Even in such an emergency, however, the lawyer should not act unless the lawyer reasonably believes that the person has no other lawyer, agent or other representative available.** The lawyer should take legal action on behalf of the person only to the extent reasonably necessary to maintain the status quo or otherwise avoid imminent and irreparable harm. A lawyer who undertakes to represent a person in such an exigent situation has the same duties under these Rules as the lawyer would with respect to a client.

[10] **A lawyer who acts on behalf of a person with seriously diminished capacity in an emergency should keep the confidences of the person as if dealing with a client, disclosing them only to the**

extent necessary to accomplish the intended protective action. The lawyer should disclose to any tribunal involved and to any other counsel involved the nature of his or her relationship with the person. The lawyer should take steps to regularize the relationship or implement other protective solutions as soon as possible. Normally, a lawyer would not seek compensation for such emergency actions taken. (*Emphasis added*)

Rule 1.6

- a) A lawyer shall not reveal information relating to representation of a client unless the client gives informed consent, except for disclosures that are impliedly authorized in order to carry out the representation, and except as stated in paragraphs (b) and (c).
- b) A lawyer shall reveal such information if necessary to comply with the duties stated in [Rule 3.3](#).
- c) A lawyer may reveal such information to the extent that the lawyer reasonably believes necessary:
- (1) To prevent reasonably certain death or substantial bodily harm;
 - (2) To prevent the client from committing a criminal act that the lawyer believes is likely to result in substantial injury to the financial interests or property of another;
 - (3) To prevent, mitigate or rectify the consequences of a client's criminal or fraudulent act in the commission of which the lawyer's services are being used or had been used; or
 - (4) To establish a claim or defense on behalf of the lawyer in a controversy between the lawyer and the client, to establish a defense to a criminal charge or civil claim or disciplinary proceeding against the lawyer based upon the conduct in the client was involved, or to respond to the allegations in any proceeding concerning the lawyer's representation of the client; or
 - (5) To secure legal advice about the lawyer's compliance with these rules
 - (6) *[Omitted---not relevant]*
 - (7) *[Omitted---not relevant]*
- d) A lawyer shall make reasonable efforts to prevent the inadvertent or unauthorized disclosure of, or unauthorized access to, information relating to the representation of a client.
- e) The duty not to reveal information pertaining to representation of a client continues after the client-lawyer relationship has terminated.

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	July–Sept.	168.00	134.00
	Oct.–Dec.	84.00	67.00
9/20/15 thru 9/19/16	Nov.–March	\$268.00	\$215.00
	April–June	201.00	162.00
	July–Sept.	134.00	108.00
	Oct.–Dec.	67.00	54.00
9/20/16 thru 9/19/17	Nov.–March	\$201.00	\$161.00
	April–June	151.00	121.00
	July–Sept.	101.00	81.00
	Oct.–Dec.	51.00	41.00
9/20/17 thru 9/19/18	Nov.–March	\$134.00	\$108.00
	April–June	101.00	81.00
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Civility is a virtue, not a shortcoming. Willingness to temper zeal with respect for society's interest in preserving responsible judicial process will help to preserve it.

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1 Treat with civility the lawyers, clients, opposing parties, the Court, and all the officials with whom we work. Professional courtesy is compatible with vigorous advocacy and zealous representation.

2 Communications are lifelines. Keep the lines open. Telephone calls and correspondence are a two-way channel; respond to them promptly.

3 Respect other lawyers' schedules as your own. Seek agreement on meetings, depositions, hearings and trial dates. A reasonable request for a scheduling accommodation should never be unreasonably refused.

4 Be punctual in appointments, communications and in honoring scheduled appearances. Neglect and tardiness are demeaning to others and the judicial system.

5 Procedural rules are necessary to judicial order and decorum. Be mindful that pleadings, discovery processes and motions cost time and money. They should not be heedlessly used. If an adversary is entitled to something, provide it without unnecessary formalities.

6 Grant extensions of time when they are reasonable and when they will not have a material, adverse effect on your client's interest.

7 Resolve differences through negotiation, expeditiously and without needless expense.

8 Enjoy what you are doing and the company you keep. You and the world will be better for it.

Beyond all this, the respect of our peers and the society which we serve is the ultimate measure of responsible professional conduct.