

DEFINITION OF INCAPACITATION

The state's definition is actually age discrimination. Everybody forgets, does not understand various issues (law, auto mechanics, medical terminology, etc) or does things that are not logical out of carelessness (drunk driving, forgetting to lock a door, losing their wallet or cell phone, over spending on their credit cards, etc).

Those quack psychologists use (and admit) their so called "tests" they give to people to determine incapacitation have no independent proof of accuracy. The tests are on the internet and free. The real tests they should be giving to determine incapacitation is whether the person knows right from wrong and do they have common sense. I knew that and I gave Mother 20 different questions, 2 different times with those type of questions without telling her in advance what those questions would be. She answered everyone correctly. She took those tests after she was put into her prison at manatawny manor.

[Amended December 23, 1998, 29 Pa.B. 329, effective January 1, 1999.]

Pa. O.C. Rule 14.4. Proceedings Relating to Real Estate.

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

[Adopted January 26, 1968, effective February 1, 1968. Amended December 23, 1998, 29 Pa.B. 329, effective January 1, 1999.]

[Committee Comment: Section 443 of the Incompetents' Estates Act of 1955, 50 P.S. § 3443, substantially adopts the provisions of the Fiduciaries Act of 1949 governing transactions of this type by personal representatives, trustees and guardians of minors. It seems appropriate, therefore, to ask that guardians of incompetents conform to the practice applicable to the others.

The disclosure provisions are an adaptation of rules presently in effect in Philadelphia and Montgomery Counties. Act #477 approved Dec. 22, 1965 amending Section 14 of the Wills Act, 10 P.S. §180.14, only partially ameliorates the harshness of the ademption rule, which so often distorts or defeats the testamentary scheme of the incompetent. In any event, the suggested disclosure should in most cases prevent an unintentional ademption or permit the court to preserve the testamentary scheme as equitably and closely as possible. The limited disclosure, being solely to further the objectives of the incompetent, should not offend the sensibilities of those who honor the sanctity of testamentary writings. Nor does it apprise the next of kin of either the existence or contents of the will which might otherwise embarrass one who subsequently regains his competency.]

Pa. O.C. Rule 14.5. Form of Citation and Notice

The citation and notice to be attached to and served with a petition for adjudication of incapacity and appointment of guardian shall be substantially in the following form:

COURT OF COMMON PLEAS
OF _____ COUNTY,
PENNSYLVANIA
ORPHANS' COURT DIVISION
TO _____

IMPORTANT NOTICE
CITATION WITH NOTICE

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

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

 **To be an Incapacitated Person means** that you are not able to receive and effectively evaluate information and communicate decisions and that you are unable to manage your money and/or



property, or to make necessary decisions about where you will live, what medical care you will get, or how your money will be spent.



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

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

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

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

By: _____
Clerk, Orphans' Court

[Adopted June 12, 1995, effective August 5, 1995.]

[Official Note: Proposed Rule 14.5 prescribes the form of the uniform citation and notice to be served with a petition for adjudication of incapacity and appointment of guardian as required by Section 5511 of the Probate, Estates and Fiduciaries Code, 20 Pa.C.S. § 5511.

The proposed rule is part of an ongoing process by which all existing subdivisions of Rule 14 are being revised to reflect current requirements.]

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The Pennsylvania Estate and Trust Cybrary

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