

PENNSYLVANIA RULES FOR THE PETITION FOR GUARDIANSHIP

Pennsylvania Statutes Title 20 Pa.C.S.A. Decedents, Estates and Fiduciaries § 5511. Petition and hearing; independent evaluation

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

- ➔ (1) the court is satisfied, upon the deposition or testimony of or sworn statement by a physician or licensed psychologist, that his physical or mental condition would be harmed by his presence; or
- ➔ (2) it is impossible for him to be present because of his absence from the Commonwealth. It



shall not be necessary for the alleged incapacitated person to be represented by a guardian ad litem in the proceeding.

(a.1) Appointment of counsel.--

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

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

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

(b) Nonresident.--The court may find a person not domiciled in the Commonwealth, having property in the Commonwealth, to be incapacitated and may appoint a guardian of his estate. The appointment may be made after petition, hearing and notice, as in the case of a person domiciled in the Commonwealth, or upon the submission of an exemplified copy of a decree establishing his incapacity in another jurisdiction. The court shall give preference in its appointment to the foreign guardian of the nonresident incapacitated person, unless it finds that such appointment will not be for the best interests of the incapacitated person.

(c) Payment of certain costs.--If the alleged incapacitated person is unable to pay for counsel or for the evaluation, the court shall order the estate to pay those costs. Those costs shall be



or for the evaluation, the court shall order the county to pay these costs. These costs shall be reimbursed by the Commonwealth in the following fiscal year.

→ **(d) Independent evaluation.**--The court, upon its own motion or upon petition by the alleged incapacitated person for cause shown, shall order an independent evaluation which shall meet the requirements of section 5518 (relating to evidence of incapacity). The court shall give due consideration to the appointment of an evaluator nominated by the alleged incapacitated person.

→ **(e) Petition contents.**--The petition, which shall be in plain language, shall include the name, age, residence and post office address of the alleged incapacitated person, the names and addresses of the spouse, parents and presumptive adult heirs of the alleged incapacitated person, the name and address of the person or institution providing residential services to the alleged incapacitated person, the names and addresses of other service providers, the name and address of the person or entity whom petitioner asks to be appointed guardian, an averment that the proposed guardian has no interest adverse to the alleged incapacitated person, the reasons why guardianship is sought, a description of the functional limitations and physical and mental condition of the alleged incapacitated person, the steps taken to find less restrictive alternatives, the specific areas of incapacity over which it is requested that the guardian be assigned powers and the qualifications of the proposed guardian. Petitions must allege specific facts demonstrating that less restrictive alternatives were considered or tried and why the alternatives are unavailable or insufficient. If a limited or plenary guardian of the estate is sought, the petition shall also include the gross value of the estate and net income from all sources to the extent known.

(f) Who may be appointed guardian.--

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

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

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

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

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

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

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

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

(I) Submission of education and employment history.

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

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

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

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