

AIP'S ARE ALLOWED JURY TRIALS IN PA TO DETERMINE INCAPACITATION

Almost no one knows that in PA, the AIP can demand a jury trial instead of having only a judge, who may be corrupt, to decide if a person is incapacitated. A jury cannot be bribed, unlike a judge. The judges in orphans court are often part of a organized group of corrupt guardians, corrupt lawyers and others who hire their friends to be guardians of person and estate only to steal from the AIP by faking billing hours worked. This guardian mafia will sell the AIP's house to a friend at a extremely low price then resells the house at full value without the AIP family knowing it was resold at its full retail value. This "guardian mafia" keeps the profit for themselves.

in montgomery county pa, can a jury be used at trial to determine incapacitation and examine the Pennsylvania law that was actually in effect on August 6, 2021 and determine (1) exactly • what jury rights your mother had then, (2) what her court-appointed lawyer was required to tell her about those rights, and (3) whether failure to advise her of the jury right or request a jury could provide grounds for attacking the 2021 incapacity adjudication.

Worked for 12s

Yes. **On August 6, 2021, Pennsylvania law gave your mother a statutory right to have a jury determine the issue of her incapacity.** That right applied in Montgomery County Orphans' Court just as elsewhere in Pennsylvania.

There is an important qualification: Pennsylvania also required the jury demand to be made **in writing at least 10 days before the initial hearing**, and the statute said the jury right was waived if a timely written demand was not made. [PA General Asse...](#) +1

The harder question in your mother's situation is therefore not whether the jury right existed—it clearly did—but **whether her court-appointed attorney's alleged failure to tell her about that right and obtain an informed decision about exercising it can undermine the purported waiver and ultimately the August 6, 2021 adjudication.**

1. Your mother's jury right on August 6, 2021

The controlling statute was 20 Pa.C.S. § 777(b). It provided:

“Any person against whom proceedings have been instituted to establish his incapacity shall be entitled to a trial of such issue by a jury.”

The jury's verdict had the same effect as a jury verdict in an ordinary case at law. [PA General Asse...](#)

That provision is unusually strong. This was not merely authority allowing the Orphans' Court judge, in the judge's discretion, to use an advisory jury. Section 777(c) separately provided for discretionary advisory juries in other Orphans' Court matters. **In an incapacity determination, §777(b) created an actual statutory entitlement.** [PA General Asse...](#)

Section 5511(a) reinforced that right. It provided that an incapacity hearing could proceed without a jury **unless the alleged incapacitated person or her counsel objected**, and contemplated a hearing “with or without a jury” at the person's or counsel's request. [PA General Asse...](#) +1

And Pennsylvania's statewide guardianship rules confirm what the jury was supposed to do: where the alleged incapacitated person requested a jury under §777(b), the jury was to make the factual findings required by §5512.1(a). ⊕ Pennsylvania Co...

So, yes: a jury could have decided whether your mother was incapacitated.

But the demand had a deadline

Section 777(d) stated that the person desiring a jury had to demand one:

in writing, at least 10 days before the initial Orphans' Court hearing.

It then expressly provided:

"The right to trial by jury is waived if such demand is not so made...." ⊕ PA General Asse...

That requirement existed in 2021.

This makes the conduct of your mother's attorney particularly important.

2. Pennsylvania had already enforced this jury right before your mother's case

A very important case for your situation is *In re Steele*, 177 A.3d 328 (Pa. Super. 2017), decided approximately four years before your mother's August 2021 adjudication.

The Pennsylvania Superior Court emphasized that guardianship proceedings threaten significant liberty interests and described §777(b)'s jury guarantee as an "important protection" that courts should not lightly deem waived.

The court concluded that Steele had timely exercised the jury right and **reversed the incapacity/guardianship order because the Orphans' Court improperly denied the jury.** ⊕ Justia Law

That is highly significant.

This was therefore not an obscure theoretical right buried in an old statute. By August 2021, Pennsylvania appellate authority had expressly enforced the right in an incapacity proceeding.

3. Your mother was also supposed to receive written notice of the jury right

This may be especially important when you examine the Montgomery County file.

Section 5511(a) required written notice of the guardianship petition and hearing to be given to the alleged incapacitated person in **large type and simple language**. The notice had to explain the seriousness of the proceeding, the rights that could be lost, and provide “**an explanation of all rights.**” ⊕ PA General Asse...

Pennsylvania's statewide **Citation With Notice, Form G-01**, effective June 1, 2019—and therefore applicable by August 2021—expressly told the alleged incapacitated person:

“At the hearing, you have the right to appear, to be represented by an attorney, and to request a jury trial.” ⊕ forms.weareattic... +1

Therefore, one of the documents I would consider extremely important in your mother's original Montgomery County guardianship file is the **actual Citation With Notice served upon her, together with the proof/affidavit of service.**

You would want to determine:

- whether Form G-01 was actually served;
- when it was served;
- whether the jury-trial language appeared on it;
- whether the petition was attached;
- who personally served your mother;
- whether the contents and terms were actually explained to her in understandable language as §5511 required; and
- whether her appointed lawyer ever discussed the jury option with her.

That factual record matters considerably.

4. What was your mother's court-appointed attorney required to tell her?

This requires some precision because Pennsylvania substantially strengthened guardianship counsel requirements **after 2021**.

We should **not retroactively apply the 2024 amendments** to your mother's lawyer.

In 2021, Pa.R.O.C.P. 14.4 provided that the court could appoint counsel when appropriate and required the appointment order to delineate the scope of counsel's services. Pennsylvania changed that regime following Act 61; mandatory appointment and the explicit statutory requirement that counsel advocate the client's expressed wishes are later provisions. ⊕ Pennsylvania Co... +1

But that does **not** mean a lawyer appointed in 2021 could simply make important litigation decisions without communicating with the client.

The Pennsylvania Rules of Professional Conduct applied.

Most importantly, **Pa.R.P.C. 1.4(b)** provides:

"A lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation."

Rule 1.4 also requires reasonable consultation with the client concerning the means by which the client's objectives will be accomplished and keeping the client reasonably informed. ⊕ Pennsylvania Co...

That creates a substantial argument in your mother's circumstances.

A decision between:

a judge alone deciding whether your mother was incapacitated

and

a jury deciding whether your mother was incapacitated

is plainly a major procedural decision affecting how the central issue in the case would be tried.

Accordingly, **there is a substantial basis to argue that competent representation required counsel to explain the existence of §777's jury right sufficiently for your mother to make an informed decision about whether she wanted counsel to demand one.**

I would be cautious about stating that Pennsylvania appellate courts had already held by August 2021 that *failure specifically to advise an AIP about §777 automatically invalidates the guardianship*. I have not found authority establishing such an automatic rule.

Those are two different propositions:

Strong proposition: the jury right unquestionably existed.

More difficult proposition: counsel's failure to explain it automatically makes the resulting adjudication void. •

The first is established by statute. The second requires additional legal analysis concerning waiver, attorney duties, preservation, due process, and the procedural mechanism now available to attack a 2021 final decree.

5. This becomes more significant if your mother was never permitted to attend the hearing

This connects directly to the circumstances you have described.

Section 5511(a) did not merely give the alleged incapacitated person a theoretical opportunity to attend.

It provided that the alleged incapacitated person “**shall be present at the hearing**” unless one of two statutory exceptions existed:

1. the court was satisfied through the deposition, testimony, or sworn statement of a physician or licensed psychologist that the person's physical or mental condition **would be harmed by her presence**; or
2. it was impossible for the person to attend because she was outside Pennsylvania. ⊕ PA General Asse...

You have described something potentially important: that the psychologist allegedly indicated your mother **would not suffer emotional problems from attending court**, yet she was not allowed to attend.

If the actual 2021 record confirms that, it creates an issue separate from the jury question.

You could potentially have **multiple procedural defects operating together**:

no personal appearance + no jury consultation/demand + no opportunity for your mother personally to tell the court what she wanted.

That is materially different from simply saying, “Her lawyer forgot to request a jury.”

6. The Pennsylvania Supreme Court had also made the substantive guardianship standard clear

Another important case already controlling in 2021 was In re Peery.

The Pennsylvania Supreme Court emphasized that incapacity and the need for guardianship cannot simply be assumed from impairment. The court emphasized the significance of family, friends, and other existing support and held that guardianship cannot properly be imposed merely because some impairment exists when adequate support makes guardianship unnecessary.  Justia Law

That is potentially relevant to the evidence you have described concerning your mother's physicians, investment professionals, CPA/accounting assistance, household assistance, hairdresser, family, and other people who regularly interacted with her.

The 2021 version of §5512.1 required specific findings concerning the person's condition, capacity to make and communicate decisions, need for guardianship considering available family/friends/supports, and whether a limited or plenary guardian was necessary. The 2023 amendments later expanded the statute, so care must again be taken not to apply those newer provisions retroactively.

 PA General Asse... +1

7. Could failure to tell your mother about the jury right invalidate the August 6, 2021 adjudication?

Potentially it can be part of an attack, but I would not characterize it by itself as automatically making the decree void ab initio.

There are three levels of argument here.

First, if your mother or her attorney **actually made a timely written jury demand and the judge denied it**, that is the strongest situation. *Steele* directly supports reversal for erroneous denial of the statutory jury right.  Justia Law

Second, if no demand was made **because appointed counsel never told your mother that she possessed the right**, there is a serious attorney-performance/informed-decision argument under Rule 1.4, particularly when combined with §5511's requirement that the person receive an explanation of her rights. But §777(d) expressly says failure to make the written demand constitutes waiver, so you would need to overcome that statutory waiver rather than simply ignore it.  PA General Asse... +1

Third, if your mother was **neither properly informed of the jury right nor allowed to attend the hearing**, despite no qualifying medical evidence establishing that her presence would harm her, the cumulative due-process/statutory argument becomes substantially more important.

8. The major obstacle now: collateral attack

There is another statute that needs to be confronted directly: **20 Pa.C.S. §5523**.

It provides that a guardianship decree is not subject to collateral attack for an irregularity if **the court that entered it had jurisdiction**. [doczz.net](https://www.doczz.net)

That means the legal strategy matters enormously.

Simply identifying procedural errors from 2021 does not necessarily permit someone years later to declare the entire guardianship nonexistent.

The crucial distinction becomes whether what occurred was:

an ordinary procedural/legal error committed by a court possessing jurisdiction, which ordinarily should have been attacked directly through reconsideration/appeal,

or something sufficiently fundamental to establish lack of jurisdiction, denial of due process, fraud affecting the proceeding, or another recognized basis for opening/vacating the decree.

That distinction is particularly important now that your mother has died.

My conclusion concerning August 6, 2021

Based on the Pennsylvania law actually applicable at that time:

1. Yes — your mother had a statutory right to a jury determination of incapacity.

20 Pa.C.S. §777(b) expressly provided it. [PA General Asse...](#)

2. The jury would have been deciding the actual incapacity issue—not merely serving as an advisory jury. Its verdict had the effect of an ordinary jury verdict. [PA General Asse...](#)

3. A written jury demand ordinarily had to be made at least ten days before the initial hearing.

Failure to make that demand constituted statutory waiver under §777(d). [PA General Asse...](#)

4. Your mother should have received the Pennsylvania Citation With Notice expressly informing her that she had the right to request a jury trial.  Pennsylvania Co... +1

5. Her lawyer had professional obligations to communicate sufficiently for her to make informed decisions concerning the representation. That supplies a substantial basis for questioning what happened if the lawyer never discussed the jury option with her.  Pennsylvania Co...

6. Pennsylvania appellate authority existing before August 2021 treated the §777 jury right as an important protection and reversed where an alleged incapacitated person's timely jury demand was improperly denied. *In re Steele* is particularly useful authority.  Justia Law

7. But failure of counsel to request a jury does not, standing alone, clearly establish that the 2021 decree is automatically void from inception. Section 777(d)'s waiver provision and §5523's restriction on collateral attacks have to be addressed.

Most importantly, I would not analyze the jury issue in isolation in your mother's case. If the record really establishes that (a) she wasn't permitted to attend, (b) the psychologist did not say attendance would harm her, (c) nobody explained the jury right to her, (d) counsel did not ask whether she wanted a jury, and (e) counsel nevertheless permitted the judge alone to adjudicate her totally incapacitated, those facts together present a much more substantial procedural challenge than the omitted jury demand by itself.

If you can attach the August 6, 2021 adjudication/order, the guardianship petition, the Citation With Notice/proof of service, the psychologist's report or deposition, and the transcript of the incapacity hearing, I can examine those documents against the exact statutes and Pennsylvania rules effective on August 6, 2021 and identify, provision by provision, what appears to have been complied with and what appears not to have been complied with.