

***Practice and Procedure in Philadelphia County
for
Petitions for Adjudication of Incapacity (20 Pa.C.S. § 5511 et. seq.)***

I. Preliminary Guardianship Issues

A. Person vs. Estate

1. “Person” allows control over the actual individual and decisions concerning the welfare and health of the individual.
2. “Estate” allows control over the finances and assets of the individual.

B. Limited vs. Plenary Guardianship

1. Emergency guardianship will generally be for the limited purpose of immediate medical care. It cannot be modified or extended beyond the statutory limit without further Court approval. 20 Pa.C.S. § 5513.
2. Normal limited guardianship suggests that person maintains some capacity to make certain decisions. The limited purpose must be stated in the petition in detail. 20 Pa.C.S. § 5512.1(b), (d).
3. Normal plenary guardianship suggests full incapacity and allows the guardian full discretion to make a range of decisions depending on the scope of the guardianship. 20 Pa.C.S. § 5512.1(c), (e).

C. Emergency Guardianship

1. Emergency must be a true emergency -- delay in filing does not constitute grounds for an emergency.
2. Emergency Decree is valid for up to 72 hours. Any further authorization to act as Emergency Guardian requires Court approval. 20 Pa.C.S. § 5513.

D. Proposed Guardian

1. The Court is not responsible for selecting a guardian.
2. The proposed guardian must be selected before the filing of the petition and the consent of the guardian must be attached to the petition as an exhibit.

II. The Petition

A. Contents (20 Pa.C.S. § 5511(e))

1. Petition should be similar to the samples provided.
2. Key elements of the petition:
 - a. Name of alleged incapacitated person.

- b. Reasons why alleged incapacitated person requires a guardian.
 - c. Reasons for the type and scope of proposed guardianship.
 - d. Notice to all potential interested parties. For example, next-of-kin.
- 3. Proposed Preliminary Decree should be similar to the samples provided.
- 4. Proposed Final Decree should be similar to the samples provided.
- B. Exhibits
 - 1. Statement of Rights (provided, or available at the Clerk of the Orphans' Court and online at <http://courts.phila.gov>)
 - 2. Consent(s) of guardian or co-guardians
 - 3. Verifications as may be needed
 - 4. Affidavits as may be needed -- NOTE: affidavits of medical doctors do not satisfy the statutory requirements of 20 Pa.C.S. § 5518. A doctor must either be deposed prior to or appear in person at the hearing.

III. Before The Hearing

A. Citation Issued (Scheduling the Hearing)

- 1. Once the Judge signs the Preliminary Decree, it must be properly served pursuant to the instructions contained in the Preliminary Decree.

B. Proof of Service

- 1. Proof of proper service upon alleged incapacitated person must be reflected in an Affidavit on the reverse side of the original citation that was issued by the Clerk of the Orphans' Court.
- 2. Proof of proper service upon all other interested parties consists of an Affidavit drafted by counsel and signed by whomever made the service. The Affidavit should identify the parties who were served and the method of service (e.g. a letter sent by certified mail).
 - a. Attached to the affidavit should be a copy of the notice letter.
 - b. The notice letter should include a copy of the petition.

III. The Hearing (Establish Incapacity Pursuant to 20 Pa.C.S. § 5518)

A. Medical Witness -- should provide curriculum vitae to Court.

- 1. The last time doctor examined AIP.
- 2. Opinion on main issue before the Court.

- a. Ability of AIP to receive, evaluate and effectively communicate decisions.
 - b. Ability of AIP to manage financial resources and meet essential requirements for physical health and safety.
3. If medical witness is unable to attend and deposition testimony is presented, it must be introduced and utilized as if medical witness was present. 20 Pa.C.S. § 5518. Deposition testimony can be presented in the form of the Written Deposition (found on Orphans' Court Web Site) in uncontested proceedings.
- B. AIP -- Present or Not Present?
 1. If not present, medical witness must state that physical or mental condition of AIP did not allow presence.
 2. If AIP is present, counsel and Court will lead person through short examination so Court can get a sense of person's capacity.
- C. Petitioner (usually the Proposed Guardian)
 1. Petitioner must verify facts from petition in order to make out a case for the finding of incapacity and the need for the appointment of a guardian.
 2. Testimony of petitioner must touch on family members, living conditions, known assets, plans on utilizing the assets, existence of a will, etc.
- D. Proposed Guardian (if not the same as Petitioner)
 1. Knowledge of the condition of the AIP.
 2. Understanding of the nature of responsibilities associated with proposed guardianship.
 3. Is proposed guardian ready and willing to act as guardian?

IV. Post Hearing

- A. A decree will usually be issued shortly after the conclusion of the hearing.
- B. The Statement of Rights must be read to the individual who was adjudicated incapacitated by the Court and a copy of Final Decree must be served upon individual. Proof of compliance must be filed within the designated time. 20 Pa.C.S. § 5512.1(h).
- C. Any other requirements as established by the Final Decree must be met and proof of compliance must be filed within the designated time.
- D. The Court will take appropriate action if proof of compliance is not filed with the Clerk of the Orphans' Court within the time established in the Final Decree.

V. Miscellaneous Information

- A. Court statistics demonstrate a sharp and continuous rise in these filings within the last three to four years and the trend suggests that the rise will Expertise in this field is becoming more and more important.
- B. Following the proper procedures and using the correct forms will speed up the process significantly.
- C. The individual Judges will all follow the general procedures outlined here but they all have slight nuances in actual practice. If there are questions concerning practice, it is recommended that judicial chambers be contacted prior to the Hearing date.
- D. Keep up to date on legislative developments affecting this area of practice.

VI. Samples Forms and Other Relevant Materials

- A. Sample 1 -- Emergency Petition
- B. Sample 2 -- Emergency Preliminary Decree
- C. Sample 3 -- Emergency Final Decree
- D. Sample 4 -- Normal Petition to Act as Plenary Guardian of Estate and Person
- E. Sample 5 -- Normal Preliminary Decree
- F. Sample 6 -- Normal Final Decree adjudging individual incapacitated and appointing Plenary Guardian of Estate and Person
- G. Statement of Rights

