

Rule 1.8. Forms.

- (a) The forms approved by the Supreme Court for statewide practice and procedure before the Registers and courts shall be used exclusively and accepted for filing by all Registers and clerks; provided, however, versions of a Supreme Court-approved form shall be acceptable for filing if identical in content and sequential ordering.
- (b) The forms approved by the Supreme Court for statewide practice are set forth in an Appendix to these **[Rules] rules**. The forms may be revised and supplemented from time to time. The forms shall also be maintained for public access at the official website of the Administrative Office of Pennsylvania Courts.
- (c) **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 prescribe forms necessary to implement Pa.R.O.C.P. 14.8(a).**
- (d) A court may require a legal paper to be accompanied by a cover sheet or checklist. A court that imposes such requirements must promulgate a local rule, numbered **[Local Rule 1.8(c)] Local Rule 1.8(d)**, stating the requirements and setting forth the form of the cover sheet or checklist.

[Note: Rule 1.8 is substantively similar to former Rule 1.3, but with some modifications.]

[Explanatory] Comment: Pa.R.O.C.P. 1.8 is substantively similar to former Pa.R.O.C.P. 1.3, but with some modifications. The statewide forms are set forth in the Appendix **[attached hereto] to these rules**. The current website for electronic access to the forms is found at **[www.pacourts.us/forms under the For-the-Public category]. <https://www.pacourts.us/forms/for-the-public/orphans-court-forms>.** The forms posted on the website are capable of on-line completion.

In 2019, **[Rule 1.8] Pa.R.O.C.P. 1.8** was revised to permit versions of Supreme Court forms to be accepted for filing, provided the replication was identical in content. This revision was intended to permit forms to differ stylistically as to format if content requirements do not differ. This revision was not intended to permit the re-ordering of content required by a form.

Rule 2.4. Petition for Adjudication/Statement of Proposed Distribution; Virtual Representation.

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[Note:] Comment: Although substantially modified, **[Rule 2.4] Pa.R.O.C.P. 2.4** is derived from former **[Rule 6.9] Pa.R.O.C.P. 6.9**. One modification is to require averments for virtual representation under 20 Pa.C.S. § 751(6) generally and representation in “trust matters” pursuant to 20 Pa.C.S. §§ 7721 *et seq.* Another substantial modification is the addition of **[subparagraph (e)] subdivision (e)** that requires counsel to sign the petition for adjudication/statement of distribution attesting that the submitted petition for adjudication/statement of distribution accurately replicates the Model Form and subjects counsel to rules and sanctions as provided in **[Pa.R.C.P. Nos. 1023.1 through 1023.4] Pa.R.Civ.P. 1023.1–1023.4**. (See **[Rule 3.12] Pa.R.O.C.P. 3.12**.)

See **[Rule 5.50] Pa.R.O.C.P. 5.50** for procedures governing petitions for the settlement of small estates filed pursuant to 20 Pa.C.S. § 3102.

The filings required by this rule are subject to the *Case Records Public Access Policy of the Unified Judicial System of Pennsylvania*. See **[Rule 1.99] Pa.R.O.C.P. 1.99**.

[Explanatory Comment:] The Supreme Court has adopted form petitions for adjudication/statements of proposed distribution of a decedent's estate, trust, guardian of an incapacitated person's estate, guardian of a minor's estate, and the estate of a principal stated by an agent under a power of attorney. These form petitions for adjudication/statements of proposed distribution are the exclusive forms for adjudicating an Account, and consequently, the local court and clerk must accept these statewide forms and may not accept or allow any other forms previously permitted under local rules. The exclusive statewide form petitions for adjudication/statements of proposed distribution appear in the Appendix **to these rules** and are available electronically at **[www.pacourts.us/forms under the For-the-Public category] <https://www.pacourts.us/forms/for-the-public/orphans-court-forms>**.

Cover sheets or checklists may be required by local rule as permitted by **[Rule 1.8(c)] Pa.R.O.C.P. 1.8(d)**.

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) **Whether the alleged incapacitated person is represented by counsel and, if so, the name and address of counsel;**

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

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

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

[(12)](13) 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)](14) [Steps taken to find a less restrictive alternative than a guardianship] **What less restrictive alternatives to a guardianship were considered or tried, and why the alternatives are unavailable or insufficient;**

[(14)](15) 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)](16) Whether the alleged incapacitated person is a veteran of the United States Armed Services **or the spouse or dependent of a veteran of the United States Armed Services**, and whether the alleged incapacitated person is receiving benefits from the United States **[Veterans' Administration] Department of Veterans Affairs** on behalf of himself or herself or through **another person, including** a spouse; and

~~[(16)]~~**(17)** 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)] Pa.R.O.C.P. 14.8(b)**, which may include any person identified in **[paragraphs (a)(3)-(a)(8)] subdivisions (a)(3)–(a)(9)**.

(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, or seeks to be** a guardian in any other matters and, if so, the number of active matters **and the judicial districts where the active matters were filed;** **[and]**
- (7) **If the proposed guardian is an individual seeking to serve in a third active guardianship and is not currently certified by a national certification organization as defined in 20 Pa.C.S. § 5511(f)(2)(ii)(B)(III), then how the proposed guardian intends to satisfy the certification requirement prescribed in Pa.R.O.C.P. 14.6(c); and**
- (8)** 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)] subdivisions (b)(1)-(b)(7)** 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)] subdivisions (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] If** 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)] subdivision (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)] Pa.R.O.C.P. 3.4(b); [and]**
- (4) Any consent or acknowledgement of a proposed guardian to serve[.]; **and**
- (5) Certification. If the proposed guardian is an individual required to be certified pursuant to 20 Pa.C.S. § 5511(f)(2) because he or she is seeking appointment to a third active guardianship, then either:**
 - (i) proof of a currently valid national certification pursuant to Pa.R.O.C.P. 14.6(c)(2); or**

(ii) a concurrent petition for waiver of the certification requirement pursuant to Pa.R.O.C.P. 14.6(c)(3) accompanied by written proof of equivalent licenses or certifications to ensure the capability of the proposed guardian.

(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] 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] Pa.R.O.C.P. 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)] subdivisions (a)(6)-(a)(9)**; 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)] Pa.R.O.C.P. 14.2(f)(2)**.

[Explanatory] Comment: See 20 Pa.C.S. §§ 5421 et seq. for health care power of attorney and advance health care directive, which includes a combination of a living will and a health care power of attorney. See 20 Pa.C.S. §§ 5601 et seq. for power of attorney. 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.

See 20 Pa.C.S. § 5511(a.1)(1) pertaining to the petitioner's obligation to inform the court if the petitioner learns the alleged incapacitated person is represented by counsel.

As used in subdivision (a)(14), less restrictive alternatives to a guardianship include, but are not limited to, an advance directive, such as a durable power of attorney or trust, a living will, a health care power of attorney, a health care representative, a financial power of attorney, trusts, including special needs trusts, representative payees for individuals receiving Social Security benefits, and mental health advance directives. See 20 Pa.C.S. § 5512.1(a)(3).

Petitioner's counsel should consider the Rules of Professional Conduct pertaining to confidentiality and conflicts if he or she has consulted with the alleged incapacitated person regarding the less restrictive alternatives to guardianship set forth in 20 Pa.C.S. § 5512.1(a)(3). See Pa.R.P.C. 1.6 and 1.7; see also Pa.R.P.C. 1.14.

Concerning the requirement of a criminal record check set forth in **[paragraph (c)(2)] subdivision (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. **For information on requesting a criminal record check from the Pennsylvania State Police, see <https://epatch.pa.gov/home>.** 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.

An individual seeking appointment to a third active guardianship must be certified pursuant to Pa.R.O.C.P. 14.6(c) prior to the third guardianship appointment. See also 20 Pa.C.S. § 5511(f).

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

For notice to the United States Department of Veterans Affairs, see 20 Pa.C.S. § 8411.

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)] subdivision (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] Pa.R.O.C.P. 4.3** 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)] subdivision (a)**, the petitioner shall serve pursuant to **[Rule 4.3] Pa.R.O.C.P. 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)] subdivisions (b)(1) and (b)(2)**.

- (c) **Demand.**
 - (1) Within five days of service of the completed report provided in **[paragraph (b)(1)] subdivision (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] Pa.R.O.C.P. 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)] subdivision (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)] subdivisions (b) and (c)**.

[Explanatory] Comment: This **[Rule] 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] 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] rule**, is intended to be a deposition conducted in accordance with the Pennsylvania Rules of Civil Procedure. The **[Rule] 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] rule** is intended to preclude the court from requiring testimony from the expert or otherwise requiring supplementation.

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.]
- (1) Except as provided in subdivision (a)(3) and if not set forth in the petition filed pursuant to Pa.R.O.C.P. 14.2 or 14.9(c), the petitioner shall file a written notice with the court containing the name and contact information of retained counsel as soon as the petitioner becomes aware that the alleged incapacitated person has retained counsel.
 - (2) The notice shall include the name and contact information of retained counsel.
 - (3) If retained counsel has filed an entry of appearance pursuant to Pa.R.O.C.P. 1.7(a), the petitioner is not required to file the notice in subdivision (a)(1).
- (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.]
- (1) Generally. If the alleged incapacitated person has not retained counsel, the court shall appoint counsel to represent the alleged incapacitated person in any matter initiated by a petition filed pursuant to Pa.R.O.C.P. 14.2 and in any proceeding to review, modify, or terminate a guardianship. The appointment

required by this subdivision shall be made without regard to the ability of the alleged incapacitated person to pay.

(2) Qualifications of Appointed Counsel. Prior to appointing counsel to represent an alleged incapacitated person, the court shall inquire as to the experience and training of counsel to ensure adequate representation of the alleged incapacitated person.

(3) Initial Meeting; Certification by Counsel.

(i) Appointed counsel shall meet with the alleged incapacitated person as soon as reasonably possible after the appointment.

(ii) Within five days of the initial meeting between appointed counsel and the alleged incapacitated person, appointed counsel shall file a certification with the court setting forth the time and place of the meeting.

(d) Other Counsel. Counsel for any other party shall enter an appearance in accordance with **[Rule 1.7(a)] Pa.R.O.C.P. 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.

An order adjudicating incapacity and appointing a guardian will identify the scope of representation of court-appointed counsel. See Pa.R.O.C.P. 14.7(a)(1)(v).

See Pa.R.P.C. 1.14 pertaining to the responsibilities of counsel to a client with diminished capacity.

Rule 14.6. Determination of Incapacity and the Need for Guardianship; Selection of Guardian; Certification of Certain Guardians.

- (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] an entity as provided in 20 Pa.C.S. § 5511(f)(1).**

(2) **Guardian of the Estate.** **[When] if** 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~~].~~; **or**

(x) **[Where] if** no individual listed in **[subparagraphs (i)--(ix) of paragraph (b)(2)] subdivisions (b)(2)(i)–(b)(2)(ix)** possesses the skills and experience necessary to manage the finances of the estate, **then** the guardian of the estate may be any qualified proposed guardian, including **[a professional guardian or corporate fiduciary.] an entity as provided in 20 Pa.C.S. § 5511(f)(1).**

(c) Certification.

(1) Generally. An individual shall be certified or receive waiver of certification pursuant to this subdivision prior to appointment to a third active guardianship.

(2) Certification by a National Organization.

(i) An individual seeking to serve as a guardian in a third active guardianship shall satisfy the certification requirement in 20 Pa.C.S. § 5511(f)(2) by being certified by a national nonprofit organization that provides a comprehensive certification program for guardians that:

(A) requires submission of education and employment history;

(B) requires submission of Federal and State criminal history record information;

(C) requires passage of a certification exam; and

(D) administers and monitors a compliance and decertification process for certified guardians.

(ii) Continuing duty. A guardian certified by a national organization defined in subdivision (c)(2)(i) shall:

(A) maintain the certification in good standing; and

(B) file with the court:

(I) proof of recertification prior to the expiration date of the current certification; and

(II) written notice of any certification lapse, suspension, termination, or disciplinary action within seven days of such action.

(3) Petition for Waiver of Certification.

(i) Generally.

(A) The certification required by subdivision (c)(2) may be waived by the court in an individual court case

following the grant of 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.

(B) The equivalent licenses or certifications shall be relevant to the form of guardianship sought in the petition.

(C) The petition shall include an averment identifying each judicial district where he or she has been granted a certification waiver and the number of active waivers.

(ii) Prohibition. A license to practice law alone is not an equivalent license or certification for purposes of subdivision (c)(3)(i).

[Explanatory] Comment: The procedure for determining incapacity and for appointment of a guardian includes, among other things, the consideration of and factual findings as to the insufficiency of supports and less restrictive alternatives to guardianship. See 20 Pa.C.S. § 5512.1(a)(3); see also *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). Less restrictive alternatives include, but are not limited to, an advance directive, such as a durable power of attorney or trust, a living will, a health care power of attorney, a health care representative, a financial power of attorney, trusts, including special needs trusts, representative payees for individuals receiving Social Security benefits, and mental health advance directives. See 20 Pa.C.S. § 5512.1(a)(3). The findings of fact required by § 5512.1(a)(3) are not publicly available unless included in the order adjudicating a person as incapacitated. See *Case Records Public Access Policy of the United Judicial System of Pennsylvania*, § 9.0B, 204 Pa. Code § 213.81.

If the alleged incapacitated person has requested a jury trial pursuant to 20 Pa.C.S. § 777(b), then the findings of fact required by 20 Pa.C.S. § 5512.1(a) shall be made by the jury.

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] includes** 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 **the** 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).

For guardianship certification and waiver pursuant to subdivision (c), see 20 Pa.C.S. § 5511(f). The Center for Guardianship Certification is an example of an organization that meets the criteria of § 5511(f).

See Pa.R.O.C.P. 14.2(c)(5) pertaining to exhibits to the petition for appointment of guardian to demonstrate compliance with subdivision (c) and 20 Pa.C.S. § 5511(f).

Examples of relevant licenses or certifications for a proposed guardian of the person may include, but are not limited to, health care, nursing, social work, psychology, or care management. Examples of relevant licenses or certifications for a proposed guardian of the estate may include, but are not limited to, accounting, financial management, or retirement income planning.

A license to practice law alone is not an equivalent license or certification for purposes of seeking waiver of certification. 20 Pa.C.S. § 5511(f)(3).

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)] Pa.R.O.C.P. 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).] Pa.R.O.C.P. 14.8(b); and**
 - (v) the continued scope of representation of court-appointed counsel.**
- (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] Pa.R.O.C.P. 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] counsel** 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.] If he or she is unrepresented, the court will appoint counsel to represent [incapacitated person]. The court may order that the representation is free of charge if it is determined that [incapacitated person] cannot afford to pay for counsel.**

(3) Scheduled Review Hearing. If the court finds that evidence presented during the guardianship proceeding indicates that the circumstances of the incapacitated person's incapacity may change, the order shall include the date for a review hearing no later than one year from the date of the order establishing the guardianship.

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

(1) In addition to the requirements set forth in **[paragraph (a)(1)] subdivision (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)] subdivision (a)(2)**, an order adjudicating incapacity and appointing a guardian of the estate shall contain a provision **[substantially in the following form] reflecting the authority of the guardian:**

(i) Plenary Guardian. An order appointing a plenary guardian shall contain a provision in substantially 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.

(ii) Limited Guardian. An order appointing a limited guardian shall specify the portion of assets or income over which the guardian of the estate is assigned powers and duties.

(c) **Certificate of Guardianship of Estate.**

(1) Certificate of Plenary Guardianship of Estate. Upon the request of the **plenary** 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. **At the time of this certification, there is no record of modification of the appointment order on the docket.**

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

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

(Caption)

I CERTIFY that on _____, the Court adjudged _____ an **incapacitated person and appointed _____ as limited guardian of the estate. At the time of this certification, there is no record of modification of the appointment order on the docket.**

This is a limited certification of guardianship. The order appointing the limited guardian shall determine the extent of the guardian's authority.

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

[seal]

CLERK OF ORPHANS' COURT

- (d) **Order Adjudicating Incapacity and Denying Appointment of a Guardian in Whole or in Part. An order denying the appointment of a guardian in whole or in part shall identify the less restrictive alternatives that are available and sufficient to enable the alleged incapacitated person to manage personal financial resources or to meet essential requirements of personal physical health and safety.**

[Explanatory] Comment: The requirements of **[paragraph (a)] subdivision (a)** are intended to apply to all guardianship orders.

See 20 Pa.C.S. § 5512.2(a) and Pa.R.O.C.P. 14.9 pertaining to grounds and procedures for scheduled review hearings, respectively.

The items addressed and contained in the order, as set forth in **[paragraphs (a) and (b)] subdivisions (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).

The incapacitated person and any substitute decision maker may be assisted by the information in subdivision (d) to communicate instructions to third parties. See 20 Pa.C.S. § 5512.1(a)(6)(iv).

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.
- (b) **Notice of Filing.** If, pursuant to **[Rule 14.7(a)(1)(iv)] Pa.R.O.C.P. 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 subdivision (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] Pa.R.O.C.P. 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 subdivision (a).] Rescinded.**
- (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 subdivision (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)] Pa.R.O.C.P. 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.
- (4) After reasonable enforcement procedures by the court have been unsuccessful, the court shall enter an order that:
 - (i) includes an explanation of the actions taken by the court to attempt enforcement of the filing requirements;
 - (ii) includes clearly enumerated reasons why the guardian or former guardian has not been compelled to comply with any filing requirements; and either
 - (A) directs that a successor guardian or designee of the court file the delinquent filing with the clerk and it shall be docketed as such by the clerk; or
 - (B) directs the order issued by the court to be docketed by the clerk in lieu of the delinquent filing.

Comment: See Pa.R.J.A. 510 governing the filing of inventories and annual reports online using the Guardianship Tracking System.

Provisions of former subdivision (c), pertaining to reporting forms, were moved to Pa.R.O.C.P. 1.8(c). The reporting forms are available at **[<http://www.pacourts.us/forms/for-the-public/orphans-court-forms>]** **[<https://www.pacourts.us/forms/for-the-public/orphans-court-forms>]**. This **[Rule]** **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. If those efforts are unsuccessful, the court shall proceed as set forth in subdivision (f)(4).

As used in subdivision (f)(4)(ii)(A), a “designee of the court” is an individual who is: (1) knowledgeable about the incapacitated person and the contents of the report; and (2) appointed by the court for the sole purpose of filing the delinquent report that the guardian or successor guardian is unable or unwilling to file. An attorney, accountant, or agent of the guardian or former guardian may have the requisite knowledge to serve in this capacity.

Rule 14.9. Review Hearing.

(a) **Initiation.** A review hearing may be requested by petition [or], ordered by the court upon its own initiative, or set forth in the order adjudicating incapacity and appointing a guardian. The procedure for conducting a review hearing shall meet all requirements set forth at 20 Pa.C.S. § 5512.2.

(b) **Counsel.** If an incapacitated person is unrepresented by counsel prior to the review hearing, then the court shall appoint counsel to represent the incapacitated person prior to the review hearing. An order ruling on the merits of the review hearing shall address the continued scope of representation of court-appointed counsel.

(c) Petition.

(1) A petition for a review hearing shall set forth:

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

[(2)](ii) the date of the adjudication of incapacity;

[(3)](iii) the names and addresses of all guardians;

[(4)](iv) 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)](v) the present address of the incapacitated person, and the name of the person with whom the incapacitated person is living;

[(6)](vi) 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)](vii) whether the incapacitated person is represented by counsel and, if so, the name and address of counsel; and

(viii) [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.]

averments setting forth why the guardianship should be terminated or modified, including averments pertaining to the findings required by 20 Pa.C.S. § 5512.1(a)(1)-(a)(4).

[(c)](2) Service. The petition shall be served in accordance with **[Rule 4.3] Pa.R.O.C.P. 4.3** upon the incapacitated person, **his or her counsel,** and those entitled to notice pursuant to **[Rule 14.2(f)(2)] Pa.R.O.C.P. 14.2(f)(2).**

[(d)](3) 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 (b)(2)] subdivision (c)(2).**

(d) Scheduled Review Hearing. If the court orders a review hearing on its own initiative or in the order establishing the guardianship pursuant to Pa.R.O.C.P. 14.7(a)(3), then:

(1) the court shall give notice of the hearing to the incapacitated person, his or her counsel, and those entitled to notice pursuant to Pa.R.O.C.P. 14.2(f)(2) at least 20 days prior to the date of the hearing; and

(2) the hearing notice shall be served in compliance with Pa.R.O.C.P. 4.3.

[Explanatory] Comment: Nothing in this **[Rule] 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] of** a review hearing and evidentiary burden of proof, see 20 Pa.C.S. § 5512.2.

See Pa.R.O.C.P. 14.4(c) pertaining to responsibilities of appointed counsel.

Rule 14.14. Forms.

The following forms located in the Appendix **to these rules** shall be used exclusively:

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

[Explanatory] Comment: In accordance with **[Rule 1.8] Pa.R.O.C.P. 1.8**, these forms **[must] shall** be used exclusively and cannot be replaced or supplanted by a local form.

Subdivisions (b), (c), and (e), pertaining to reports required by Pa.R.O.C.P. 14.8, were rescinded. Although rescinded from the Appendix to these rules, the reporting forms are available at <https://www.pacourts.us/forms/for-the-public/orphans-court-forms> and shall be used exclusively. See Pa.R.O.C.P. 14.8(a) and 1.8(c).