

**SUPREME COURT OF PENNSYLVANIA
ORPHANS' COURT PROCEDURAL RULES COMMITTEE**

NOTICE OF PROPOSED RULEMAKING

Proposed Amendment of Pa.R.O.C.P. 14.2, 14.3, 14.4, 14.6, 14.7, 14.8, and 14.9

The Orphans' Court Procedural Rules Committee is considering proposing to the Supreme Court of Pennsylvania the amendment of Rules 14.2, 14.3, 14.4, 14.6, 14.7, 14.8, and 14.9 of the Pennsylvania Rules of Orphans' Court Procedure for the reasons set forth in the accompanying Publication Report. Pursuant to Pa.R.J.A. 103(a)(1), the proposal is being published in the *Pennsylvania Bulletin* for comments, suggestions, or objections prior to submission to the Supreme Court.

Any report accompanying this proposal was prepared by the Committee to indicate the rationale for the proposed rulemaking. It will neither constitute a part of the rules nor be officially adopted by the Supreme Court.

Additions to the text of the proposal are bolded and underlined; deletions to the text are bolded and bracketed.

The Committee invites all interested persons to submit comments, suggestions, or objections in writing to:

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All communications in reference to the proposal should be received by **May 1, 2024**. E-mail is the preferred method for submitting comments, suggestions, or objections; any e-mailed submission need not be reproduced and resubmitted via mail. The Committee will acknowledge receipt of all submissions.

By the Orphans' Court
Procedural Rules Committee,

Kendra D. McGuire, Esq., Chair

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, and whether the alleged incapacitated person is receiving benefits from the United States Veterans' Administration on behalf of himself or herself or through 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]**
- (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 required to be certified pursuant to 20 Pa.C.S. § 5511(f) because he or she is seeking appointment to a third active guardianship, then either:**
 - (i) proof of national certification pursuant to Pa.R.O.C.P. 14.6(c)(2);**
 - (ii) proof of current certification by a court of competent jurisdiction; or**
 - (iii) a concurrent petition for waiver of the certification requirement 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 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 (combination of a living will and 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.

For information on requesting a criminal record check from the Pennsylvania State Police, see <https://www.psp.pa.gov/Pages/Request-a-Criminal-History-Record.aspx>. 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. 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 Veterans' Bureau, 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.] If not set forth in the petition for adjudication of incapacity and appointment of a guardian, the petitioner shall advise the court in writing as soon as the petitioner becomes aware that the alleged incapacitated person has retained counsel.
- (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. 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 initiated by a petition filed pursuant to Pa.R.O.C.P. 14.2 and in any proceedings to review, modify, or terminate a guardianship.
- (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.

- (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.

The 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(b)(1)(v).

See 20 Pa.C.S. § 5511(a.1)(3) pertaining to appointed counsel's representation of an alleged incapacitated person. See also Pa.R.P.C. 1.14 (responsibilities of counsel to a client with diminished capacity).

Retained or appointed counsel may not serve as guardian *ad litem* for the alleged incapacitated person. See 20 Pa.C.S. §5511(a.1)(3).

Rule 14.6. Determination of Incapacity and 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.

(2) **Guardian of the Estate.** When 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.

[Where] If no individual listed in **[subparagraphs (i)--(ix) of paragraph (b)(2)] subdivisions (b)(2)(i)–(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.

(c) Certification of Guardian.

(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 may satisfy the certification requirement of 20 Pa.C.S. § 5511(f)(2) by being certified by a national nonprofit organization that provides a certification program for guardians requiring:

(A) submission of education and employment history;

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

(C) passage of a certification exam by the organization; and

(D) administration of a comprehensive certification program for guardians that includes 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;

(B) annually file a written verification with the court confirming that the certification is in good standing; and

(C) notify the court in writing of any certification lapse, suspension, termination, or disciplinary action within seven days of such action.

(3) Waiver by equivalent license or certification.

(i) Generally. The certification required by subdivision (c)(1) may be waived by the court 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. The equivalent licenses or

certifications shall be relevant to the type of guardianship being established.

- (ii) Judicial Notice. A court shall take judicial notice of a guardianship certification granted by a court of competent jurisdiction.**
- (iii) Prohibition. A license to practice law is not an equivalent license or certifications for purposes of subdivision (c)(3)(i).**

[Explanatory] Comment: 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).

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 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 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, social work, or psychology. 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 is not an equivalent license or certification for purposes of seeking waiver of certification pursuant to 20 Pa.C.S. § 5511(f)(3).

Rule 14.7. Order and Certificate.

- (a) **Findings of Fact. The court shall make specific findings of fact concerning:**
- (1) **The nature of any condition or disability that impairs the incapacitated person's capability to make and communicate decisions;**
 - (2) **The extent of the incapacitated person's capacity to make and communicate decisions;**
 - (3) **The need for guardianship services, if any, based upon but not limited to:**
 - (i) **the ability of family, friends, and other supports to assist the incapacitated person in making decisions; and**
 - (ii) **less restrictive alternatives; and**
 - (4) **The absence of sufficient family, friends, or other supports and of the insufficiency of each less restrictive alternative before ordering guardianship.**
- (b) **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 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 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.

- (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)](c) Order Adjudicating Incapacity and Appointing Guardian of Estate.

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

[(c)](d)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

- (e) 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 resources or to meet essential requirements of personal physical health and safety.

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

The findings of fact required by subdivision (a) is not a publicly available document unless included in the order adjudicating incapacity. See Case Records Public Access Policy of the United Judicial System of Pennsylvania, § 9.0B, 204 Pa. Code § 213.81. Less restrictive alternatives include, but are not limited to, an advance directive, such as a durable power of attorney or trust, a living will, health care power of attorney, health care representative, 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. § 5512.2(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 (b) and (c)**, 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 (e) 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.

- (b) **Notice of Filing.** If, pursuant to **[Rule 14.7(a)(1)(iv)] Pa.R.O.C.P. 14.7(b)(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] rules**. Service shall be in accordance with **[Rule 4.3] Pa.R.O.C.P. 4.3**.

- (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(b)(1)(iv)** as being entitled to receive a notice of filing.

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.**

(b) **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) an averment that:

[(i)](A) there has been significant change in the incapacitated person's capacity and the nature of that change;

[(ii)](B) there has been a change in the need for guardianship services and the nature of that change; or

[(iii)](C) 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.

[(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 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 subdivision (b)(2).

(c) 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(b)(3), then:

- (1) the court shall give notice of the hearing to the incapacitated person 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.

**SUPREME COURT OF PENNSYLVANIA
ORPHANS' COURT PROCEDURAL RULES COMMITTEE**

PUBLICATION REPORT

Proposed Amendment of Pa.R.O.C.P. 14.2, 14.3, 14.4, 14.6, 14.7, 14.8, and 14.9

The Orphans' Court Procedural Rules Committee is considering proposing to the Supreme Court of Pennsylvania the amendment of Rules 14.2, 14.3, 14.4, 14.6, 14.7, 14.8, and 14.9 of the Pennsylvania Rules of Orphans' Court Procedure. This proposal would update procedural rules in guardianship matters pursuant to a recent statutory enactment. See Act of December 14, 2023, P.L. 446, No. 61 ("Act 61").

Act 61 includes guardianship reforms in the areas of mandatory appointment of counsel, certification of guardians, consideration of less restrictive alternatives before appointing a guardian, and scheduling review hearings within one year when there may be a change in capacity. While Act 61 largely contains substantive matters that are self-executing, amendment of the procedural rules governing guardianship matters appears warranted.

Mandatory Appointment of Counsel

Currently, appointment of counsel in a guardianship case is at the discretion of the court. "In appropriate cases, counsel shall be appointed to represent the alleged incapacitated person in any matter for which counsel has not been retained by or on behalf of that individual." 20 Pa.C.S. § 5511(a) (effective through June 10, 2024). Act 61 eliminates the court's discretionary appointment power and makes appointment of counsel mandatory in all circumstances when the alleged incapacitated person has not retained counsel. "[T]he 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 [a guardianship proceeding] and in any subsequent proceedings to consider, modify[,] or terminate a guardianship." 20 Pa.C.S. § 5511(a.1)(2) (effective June 11, 2024). The appointment is to be made without regard to the alleged incapacitated person's ability to pay. 20 Pa.C.S. § 5511(c). New § 5511(a.1)(2) also provides that "[a]ppointed counsel shall be qualified by experience or training and shall act without delay under the circumstances." 20 Pa.C.S. § 5511(a.1)(2).

In order to facilitate appointment of counsel, the petitioner is required to notify the court if he or she knows that the alleged incapacitated person is represented by counsel. See 20 Pa.C.S. § 5511(a.1)(1). The petitioner must give notice to the court in the petition or as soon as the petitioner becomes aware of the representation. *Id.*

Section 5511(a.1) also contains directives pertaining to the relationship between appointed counsel and the alleged incapacitated person. Appointed counsel for the alleged incapacitated person is required to “maintain a normal client-attorney relationship with the client”, “advocate for the client’s expressed wishes and consistent with the client’s instructions” to the extent possible, and “comply with the Rules of Professional Conduct governing the attorney-client relationship.” 20 Pa.C.S. § 5511(a.1)(3). New § 5511(a.1)(3) also requires appointed counsel to “meet with the incapacitated person as soon as reasonably possible after the appointment” and file a certification of the meeting with the court within five days. *Id.* Finally, there is an express prohibition on retained or appointed counsel serving as guardian *ad litem* for the alleged incapacitated person. *Id.*

Proposed Rules Changes: Incorporating the mandatory appointment requirements will require amendments to Pa.R.O.C.P. 14.2 and 14.4. First, a new petition averment is added to Pa.R.O.C.P. 14.2(a) for the petitioner to notify the court whether the alleged incapacitated person is represented by counsel and counsel’s name and address if known. See proposed Pa.R.O.C.P. 14.2(a)(9). If counsel for the alleged incapacitated person is identified in the petition, proposed Pa.R.O.C.P. 14.2(f)(2)(iii) requires the petitioner to serve the petition on retained counsel identified in subdivision (a)(9).

Pa.R.O.C.P. 14.4 governs retention and appointment of counsel. Proposed Pa.R.O.C.P. 14.4(a) requires the petitioner to notify the court in writing as soon as the petitioner becomes aware of representation if not indicated in the petition due to a lack of knowledge at the time of filing. Currently, the petitioner is required to advise the court in writing at least seven days prior to the hearing that the alleged incapacitated person has not retained counsel. See Pa.R.O.C.P. 14.4. The Committee has been informed that many courts will wish to appoint counsel at the time the petition is filed if retained counsel has not been identified. On the other hand, there may be overlap between appointed and retained counsel if the alleged incapacitated person retains counsel upon or following receipt of the petition for adjudication and before the appointment of a guardian. The Committee anticipates that courts will navigate these timing issues as they arise.

Proposed Pa.R.O.C.P. 14.4(c) sets forth the new requirements for appointed counsel. Subdivision (c)(1) addresses the general requirement that the court shall appoint counsel to represent the alleged incapacitated person in any matter for which counsel has not been retained. To the extent the statute limits court-appointed counsel to the alleged incapacitated person, subdivision (c)(1) will eliminate any ambiguity as to whether counsel can be appointed for the petitioner.

Proposed Pa.R.O.C.P. 14.4(c)(2) addresses qualifications of appointed counsel. As previously discussed, appointed counsel is required to be “qualified by experience or training”. 20 Pa.C.S. § 5511(a.1)(2) (effective June 11, 2024). The Committee believes the judge making the appointment is suited to ensure qualified representation of an alleged incapacitated person. That said, there may be an argument for establishing

minimum standards for appointed counsel in guardianship matters. Currently, satisfaction of minimum qualifications is required for parent coordinators and counsel in capital cases. See Pa.R.Civ.P. 1915.11-1(b), Pa.R.Crim.P. 801. While the goal of statewide minimum standards for appointed counsel in guardianship matters is laudatory, the Committee has reservations insofar as such requirements could reduce the number of attorneys willing to take such appointments, especially in smaller counties. The Committee specifically invites comments on whether appointed counsel in guardianship matters should meet certain minimum standards in experience or training, and what those minimum standards should be.

Proposed Pa.R.O.C.P. 14.4(c)(3) addresses the new statutory requirement that appointed counsel meet with the alleged incapacitated person “as soon as reasonably possible” after the appointment and file a certification with the court relaying the time and place the meeting occurred within five days of the meeting. See 20 Pa.C.S. § 5511(a.1)(3) (effective June 11, 2024).

With regard to new statutory provisions relating to the relationship between appointed counsel and an alleged incapacitated person, the Committee notes that counsel is already bound by the Pennsylvania Rules of Professional Conduct, including Pa.R.P.C. 1.14 (responsibilities of counsel to a client with diminished capacity). Thus, the Committee was not inclined to repeat these requirements in proposed Pa.R.O.C.P. 14.4 and, instead, added a cross-reference to § 5511(a.1)(3) and Pa.R.P.C. 1.14, pertaining to the conduct of counsel representing a client with diminished capacity, to the comment.

The Comment to proposed Pa.R.O.C.P. 14.4 was further revised to cross-reference proposed Pa.R.O.C.P. 14.7(b)(1)(v), pertaining to a requirement for the guardianship order to identify the scope of representation of court-appointed counsel in order to eliminate uncertainty and the need to file a withdrawal petition if scope is not defined at the commencement of representation. A reference to § 5511(a.1)(3), pertaining to the prohibition on appointed counsel serving as guardian *ad litem* was also added to the comment. Finally, references to an alleged incapacitated person unrepresented by counsel were eliminated from proposed Pa.R.O.C.P. 14.3, pertaining to alternative proof incapacity and expert reports.

Certification of Guardians

Act 61 adds a new certification requirement for individuals proposed as guardians prior to appointment to a third active guardianship. See 20 Pa.C.S. § 5511(f)(2). The Committee considered the list of appointees referenced in § 5511(f)(1), which included but was not limited to a “qualified individuals.” The Committee has interpreted § 5511(f)(2) as applying only to individuals seeking guardianship of three or more incapacitated persons. It is noteworthy that the legislation does not define or reference “professional

guardians,” but instead, applies to “an individual seeking guardianship of three or more incapacitated persons ... prior to a third guardianship appointment.” 20 Pa.C.S. § 5511(f)(2).

The General Assembly directed the Court to “prescribe rules and forms necessary to effectuate the certification required under this paragraph, including rules regarding the expiration and renewal of certifications.” 20 Pa.C.S. § 5511(f)(2)(i). The certification must require, at a minimum, submission of education and employment history, submission of federal and state criminal history information, and passage of a certification exam administered by a national nonprofit guardianship certification organization. See 20 Pa.C.S. § 5511(f)(2)(ii)(B). The “national nonprofit guardianship certification organization” must provide a “comprehensive certification program for guardians, including supervising a national certification process, developing certification exam content and maintaining a decertification process.” *Id.* At this time, the Center for Guardianship Compliance qualifies as a national certification organization as set forth in the statute. It is unknown to the Committee whether there are other organizations that would satisfy the requirements of § 5511(f)(2)(ii)(B) or if such other organization may be formed in the future.

Alternatively, the certification can be waived by the court upon a petition “demonstrating that a proposed guardian has such equivalent licenses or certifications as are necessary” to ensure the guardian is capable of performing the obligations of a guardian. 20 Pa.C.S. § 5511(f)(3). Notably, a law license is not an equivalent license or certification. See *id.*

Proposed Rules Changes: The Committee proposes amending Pa.R.O.C.P. 14.6, pertaining to selection of the guardian, to reflect the certification requirement for an individual seeking appointment as a guardian prior to the third active guardianship. See Pa.R.O.C.P. 14.6(c)(1)(i). The Committee located the certification requirement in Pa.R.O.C.P. 14.6 because that rule addresses preferences and eligibility to serve as a guardian.

Proposed Pa.R.O.C.P. 14.6(c)(2) addresses certification by a national organization and tracks the express language of § 5511(f)(2). The Committee also included a provision relating to the guardian’s continuing duties to maintain the certification in good standing, file an annual verification that the certification is in good standing, and notify the court of any negative actions against the certification within seven days of such action. See Pa.R.O.C.P. 14.6(c)(2)(ii).

The Committee considered developing requirements for a standalone certification but found it impractical at present given the effective date of Act 61. Moreover, the Committee was uncertain as to the availability of a certification exam administered by a national nonprofit guardianship certification organization for purposes other than pursuing

certification through the organization. The Committee is aware of four states issuing guardianship certifications – Arizona, Florida, Texas, and Washington. For example, Washington has a Certified Professional Guardianship and Conservation Board, which is responsible for establishing the standards and criteria for the certification of professional guardians and conservators. See Wa.R.Gen. 23.

Act 61 permits waiver of the certification requirement upon a petition demonstrating that a proposed guardian has “such equivalent licenses or certifications as are necessary” to ensure the suitability of the proposed guardian. 20 Pa.C.S. § 5511(f)(3). The Committee added this requirement to proposed Pa.R.O.C.P. 14.6(c)(3)(i). The Committee also added a requirement that the equivalent licenses or certifications be relevant to the type of guardianship that is established. *Id.* Examples of relevant equivalencies are included in the Comment. Proposed Pa.R.O.C.P. 14.6(c)(3)(iii) provides that a law license is not an equivalent license or certification for waiver purposes. *Id.*

The certification requirements of new § 5511(f) will also require changes to the guardianship petition. First, the petition will need to contain averments intended to advise the court whether the proposed guardian is required to be certified. Proposed Pa.R.O.C.P. 14.2(b)(6) requires an averment as to whether the proposed guardian is, was, or is seeking to be a guardian in any other matters, as well as the number of active guardianships. Similarly, proposed subdivision (b)(7) is an averment intended to determine how the proposed guardian will satisfy the certification requirement, if required. Current subdivisions (b)(4)–(5) relate to any completed guardianship training and certifications that the proposed guardian holds. See Pa.R.O.C.P. 14.2(b)(4)–(5). With respect to petition exhibits, the Committee proposes amending Pa.R.O.C.P. 14.2(c) to require attachment of proof of guardianship certification, certification by a court of competent jurisdiction, or a petition for waiver of the certification. See proposed Pa.R.O.C.P. 14.2(c)(5).

Less Restrictive Alternatives

Another new statutory requirement compels the court to consider less restrictive alternatives before appointing a guardian. “In all cases, the court shall consider and make specific findings of fact concerning: ... (3) The need for guardianship services, ... in light of the existence, if any, of less restrictive alternatives.” 20 Pa.C.S. § 5512.1 (effective June 11, 2024). 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). Currently, Pa.R.O.C.P. 14.2(a)(13) requires the petitioner to aver “steps taken to find a less restrictive alternative than a guardianship.” However, the statutory amendments require the petition to contain an averment alleging “specific facts demonstrating that less restrictive alternatives were considered or tried and why the alternatives are unavailable or insufficient.” 20 Pa.C.S. § 5511(e).

There is also a new requirement for the court to make specific findings of fact regarding less restrictive alternatives to guardianship, including supportive resources, as well as alternatives such as advance directives, living wills, health care representatives, powers of attorney, etc. See 20 Pa.C.S. § 5512.1(a)(3). The current rules do not have an analogous requirement.

Finally, there is a new requirement that an order denying a guardianship petition in whole or in part shall identify the less restrictive alternatives that will enable the alleged incapacitated person to manage their finances or attend to their physical health and safety. See 20 Pa.C.S. § 5512.1(a)(6)(iv). The statute indicates that the order “may assist the respondent and any supportive and substitute decision makers involved to effectuate the respondent’s decisions with third parties.” *Id.*

Proposed Rules Changes: A new averment was added to the guardianship petition to identify the less restrictive alternatives than a guardianship that were considered or tried and why the alternatives are unavailable or insufficient. See proposed Pa.R.O.C.P. 14.2(a)(14). This change is consistent with § 5511(e).

Next, the Committee proposes adding a new subdivision to Pa.R.O.C.P. 14.7 relating to the findings of fact by the court required by § 5512.1(a) relating to the finding of incapacity and consideration of less restrictive alternatives. See proposed Pa.R.O.C.P. 14.7(a). The Committee considered the extent to which the findings of fact would be available to the public. Case records in incapacity proceedings are not available to the public, except for the docket and any final decree 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. The Committee believes there are varying viewpoints on the question of whether to incorporate this sensitive information in the final decree adjudicating incapacity. One view is that including information relating to less restrictive alternatives will assist a guardian or any supportive and substitute decision maker, e.g., health care representative, power of attorney, or representative payee, in their duties. Alternatively, there was a concern that inclusion of such information in a publicly available document could put an incapacitated person at risk of exploitation if the information if obtained by individuals with unscrupulous motives. The Committee specifically invites comments on this aspect of the proposal.

The Committee also proposes changes to Pa.R.O.C.P. 14.7 to address § 5512.1(a)(6)(iv), pertaining to an order denying a petition in whole or in part. Specifically, subdivision (e) would require an order denying a guardianship petition in whole or in part to identify the less restrictive alternatives that will enable the alleged incapacitated person to manage their finances or attend to their physical health and safety. See Pa.R.O.C.P. 14.7(e). The comment to the rule includes examples of less restrictive alternatives. See Pa.R.O.C.P. 14.7, cmt.

While drafting amendments to Pa.R.O.C.P. 14.7, the Committee incorporated proposed amendments relating to a separate issue it has been reviewing. The Committee was asked to consider whether the certification of guardianship of the estate in Pa.R.O.C.P. 14.7(c) should be amended to require the clerk of court to certify that the guardian is still serving at the time of issuance. The Committee understood the rationale for the request, but found that a certification by the clerk that the guardian is still serving would be a finding of fact and beyond the scope of the clerk's authority. It was seen as preferable to have the clerk certify that no record of modification of the appointment order was on the docket at the time of the certification. A statement was added to the certification that "at the time of the certification, there is no record of modification of the appointment order on the docket." See Pa.R.O.C.P. 14.7(d)(1). Similarly, the Committee found that the statement in the certification that the guardianship appointment was made by the court in full consideration of Chapter 55 of the PEF Code should be deleted insofar as the clerk has no factual basis to make this statement. *Id.*

The Committee also thought the certification of guardianship would benefit from a distinction between a plenary and limited guardianship of the estate. Proposed subdivision (d)(2) provide for a new limited guardianship certification. The Committee recommended cross-referencing the limited guardianship order in the certification to determine the extent of the limited authority rather than relying on the clerk to incorporate it in the certificate. See Pa.R.O.C.P. 14.7(d)(2).

Scheduled Review Hearing

Act 61 directs the court to schedule a review hearing in the incapacity and guardianship order if evidence presented at the hearing indicates that there may be a change in the person's capacity. See 20 Pa.C.S. § 5512.2(a). The scheduled review hearing is to be held within one year from the date of the order establishing the guardianship. *Id.* The amendments also authorize any interested party to file a petition with the court to terminate or modify the guardianship at any time. See 20 Pa.C.S. § 5512.2(a.1). This is consistent with current Pa.R.O.C.P. 14.9(b).

Proposed Rule Changes: First, Pa.R.O.C.P. 14.7, pertaining to the order, is amended to require the scheduling of a review hearing within one year if evidence presented at the hearing indicates that the person's capacity may change. See Pa.R.O.C.P. 14.7(b)(3). Specifically, the court shall include the date for a review hearing in the order. See *id.*

Second, Pa.R.O.C.P. 14.9 is restructured to address petitions for review hearings and scheduled review hearings. Subdivision (a) will reflect that the review hearing can be initiated by petition, ordered by the court upon its own initiative, or in the order adjudicating incapacity and appointing a guardian. Subdivision (b) provides the

procedure for filing a petition for a review hearing. Proposed subdivision (c) is new and relates to notice of a scheduled review hearing, whether scheduled by the court on its own initiative or in the guardianship order. The court must give notice of a scheduled review hearing to the incapacitated person and those entitled to notice of a petition filing pursuant to Pa.R.O.C.P. 14.2(f)(2) at least 20 days prior to the hearing date. See proposed Pa.R.O.C.P. 14.9(c)(1). Finally, service of the hearing notice shall be served in compliance with Pa.R.O.C.P. 4.3.

The Committee invites all comments, concerns, and suggestions regarding this proposal.