

Rule 13.3-1 *Report by Fiduciary, Form, Time and Place for Filing.*

(a) The report by a fiduciary required by Rule 13.3 shall be properly captioned, shall set forth in separate paragraphs the facts relevant to each separate inquiry in chronological order, shall be signed at the end by the fiduciary and shall be under oath.

(b) The report required by Rule 13.3 shall be attached as an exhibit to the petition for adjudication and distribution and shall be filed with the Clerk, unless otherwise directed by special order of the Court.

Rule 14

Incompetents' Estates

Rule 14.1. *Local Rules.*

The practice and procedure with respect to incompetents' estates shall be as prescribed by local rules, which shall not be inconsistent with Rules 2 and 3 hereof.

Rule 14.2. *Adjudication of Incompetency and Appointment of a Guardian of the Estate of an Incompetent.*

(a) A petition to adjudicate a person incompetent and to appoint a guardian of his estate shall set forth

(1) the name and relationship of the petitioner to the alleged incompetent; if not related, the nature of his interest;

(2) the age, marital status, and domicile of the alleged incompetent; whether he is a patient in a mental hospital; if so, the name and address of the hospital, the date of his admission, and whether it is a state-owned mental hospital or a Veterans Administration hospital;

(3) the names and addresses of the next of kin of the alleged incompetent;

(4) the gross value of the alleged incompetent's estate, and his net income from all sources, to the extent that this information is known by petitioner;

(5) whether the alleged incompetent was ever a member of the armed services of the United States, or is receiving any benefits from the United States Veterans Administration or its successor;

(6) a general averment of incompetency as defined in Chapter 55 of the Probate, Estates and Fiduciaries Code;

(7) the name and address of the proposed guardian, and what, if any, relationship he bears to the alleged incompetent;

(8) an averment that the proposed guardian has no interest adverse to the alleged incompetent;

(9) whether any other Court has ever assumed jurisdiction in any proceeding to determine the competency of the alleged incompetent;

(10) that the alleged incompetent has no guardian already appointed; and

(11) a prayer for a citation, directed to the alleged incompetent, with notice thereof to his next of kin and to such other persons as the Court may direct, to show cause why he should not be adjudged an incompetent and a guardian of his estate appointed.

Rule 14.2-1 *Petitioner. Identity.*

(a) The petitioner in a petition to adjudicate a person incompetent shall be a natural person over the age of eighteen (18) years. A corporation, an unincorporated association or other type of organization may not be a petitioner.

(b) A petitioner need not be related to the alleged incompetent, but must have knowledge that the respondent is incompetent within the definition contained in the Probate, Estates and Fiduciaries Code or reasonable grounds for believing the same and the petitioner's interest must be the welfare and best interests of the alleged incompetent.

Rule 14.2-2 *Acceptance of Proposed Guardian.*

There shall be appended as an exhibit to every petition a written statement signed by the proposed guardian stating that he, she or it agrees to act as guardian of the estate of the alleged incompetent if appointed by the Court, that he, she or it has no interest adverse to that of the alleged incompetent, and that he, she or it is not a fiduciary in any estate in which the alleged incompetent has an interest.

Rule 14.2-3 *Petition. Prayer.*

Every petition to adjudicate a person incompetent shall conclude with a prayer conforming to Form A appended to this rule.

Rule 14.2-4 *Preliminary Order.*

There shall be appended to the front of every petition to adjudicate a person incompetent a preliminary order conforming to Form B appended to this rule.

Rule 14.2-5 *Citation. Service.*

Following the presentation of the petition to the Court for the entry of a preliminary order as herein provided and the entry of such an order, counsel for the petitioner shall file the petition and preliminary order with the Clerk who shall thereupon prepare a citation conforming to Form C appended to this rule. Counsel for the petitioner shall thereafter be responsible for proper service of the petition, preliminary order and citation.

Rule 14.2-6 *Hearing. Notice. Evidence.*

(a) When the return day of the citation has expired without an answer to the petition having been filed, or when the pleadings have closed, and after proof has been filed that the preliminary order of the Court respecting service of the petition, preliminary order and citation has been satisfied, the matter may be placed upon any regular hearing list by praecipe filed with the Clerk.

(b) Ten (10) days written notice of the placing of the case upon a hearing list shall be given to the alleged incompetent by personal service and to all parties who were served pursuant to the preliminary order of Court by personal service or by registered or certified United States mail. Proof of such notice shall be filed with the Court on or before the day set for hearing.

Rule 14.2-7 *Hearings to be Private.*

Unless specifically requested by the alleged incompetent or his or her counsel all hearings pursuant to Section 5511 and 5517 of the Code, other than contested cases shall be private.

Rule 14.2-8 *Final Decree.*

(a) At the conclusion of the hearing counsel shall, except as provided in Rule 14.2-12, *infra*, submit to the Court a final decree which shall conform to Form D appended to this rule.

(b) The final decree may be appended to the front of the petition when the petition is presented to the Court for the entry of a preliminary order, in which event it shall precede the latter form.

Note:

See Rule 14.2-12 *infra*, re Small Estates.

Rule 14.2-9 *Guardians. Bond.*

(a) Individuals as Guardians

Except in special circumstances, the Court will not appoint an individual as a guardian of the estate of an incompetent. (Exceptions may include situations where a corporate guardian cannot be secured or the only asset of the incompetent is a regular benefit payment such as pension, Social Security, Veterans' Administration, Public Assistance, Railroad Retirement payments.)

(b) Non-residents as Guardians

Except in special circumstances, the Court will not appoint a non-resident of Lehigh County, individual or corporate, as a guardian of the estate of an incompetent residing in said county.

(c) Corporate Guardians

Unless there be compelling reasons to the contrary, it shall be the firm policy of this Court in appointing corporate guardians to select that banking institution with which the ward did business prior to being adjudicated an incompetent, or, if several institutions are involved, to select that institution with which the ward conducted the major portion of his or her banking business prior to being adjudicated incompetent.

(d) Bond. Individual Guardian.

(1) In lieu of the entry of security, an individual guardian may be authorized to

(i) deposit the funds comprising the incompetent's estate in an insured interest-bearing account; or

(ii) invest in a building and loan association or Federal savings and loan association

subject to the express restriction, to be noted on the records of the institution, that no withdrawals shall be made therefrom without prior order of Court, and with a further requirement that evidence of

the deposit or investment, marked to indicate the restriction, shall be promptly filed with the Clerk.

(2) Whenever an individual guardian has been appointed, the Court will, except in special circumstances, require a bond with corporate surety authorized to do business in Pennsylvania and approved by the Court to act as surety on bonds. All such bonds shall be approved by the Court before filing.

Rule 14.2-10 *Inventories. Additional Assets.*

(a) *Inventory. Filing.*

Every guardian shall be required to file an inventory in the office of the Clerk in accordance with the provisions of Sections 5521 and 5142 of the Code, upon forms which have been approved by the Court and will be supplied by the Clerk.

(b) *Additional Assets. Bond.*

If, upon the filing of an inventory, it appears that the value of the personal estate which has, or is about to, come into the possession of the guardian exceeds the amount set forth in the original petition, the Clerk shall direct the attention of Court to this fact in order that adequate security may be ordered and entered.

Rule 14.2-11 *Testamentary Writings.*

(a) All testamentary writings of the incompetent found by the guardian, or in the possession of any other person, whether executed and published before or after the adjudication of incompetency, shall, at the time of the filing of the inventory, or as soon thereafter as the writings are discovered, or executed and published, be submitted by the guardian or such other person to the Court for inspection. At the same time the Court shall be furnished with an accurate and clear photographic reproduction of the original writing or writings. The Court shall examine each original writing, compare it with the photographic reproduction, note on the original as well as upon the reproduction the fact and date of the inspection, and direct the original to be delivered to the guardian for safekeeping. The photographic copy shall be placed in a separate file maintained in the office of the Clerk which file is herewith impounded. No one shall be permitted to inspect the contents of said file without an express written order from this Court.

(b) When an incompetent is adjudged competent the final decree of court shall contain a direction to the Clerk to deliver all copies of testamentary writings on file with the Clerk to the former incompetent. When an incompetent dies that fact shall be brought to the attention of the Court whereupon an order will be entered directing the Clerk to deliver all copies of testamentary writings of the deceased incompetent to the latter's personal representative or other proper person. Whenever copies of testamentary writings are delivered by the Clerk in any of the situations hereinbefore mentioned the recipient of said copies shall execute and deliver to the Clerk a written receipt acknowledging receipt of the document and the date thereof. Such receipts shall be filed by the Clerk.

(c) The Clerk shall establish a separate file in which all photographic copies of testamentary writings inspected by the Court shall be held. The Clerk shall also establish and maintain an index to said file wherein he shall index in alphabetical order according to the family name of the incompetent all testamentary writings deposited in said file together with the date of inspection by the Court, the date of deposit, the date any documents are released from said file and the name of the recipient. The deposit and date of deposit of all copies of testamentary writings placed in the Clerk's file shall be noted in the docket entries pertaining to the incompetent's estate.

Rule 14.2-12 *Certificates of Appointment.*

In addition to issuing certified copies of the decree of appointment of a guardian, the Clerk will issue a "Guardian's Certificate" when the guardian has duly qualified.

Rule 14.2-13 *Small Estates.*

Whenever the value of the entire real and personal estate, wherever located, of a resident incompetent, or the value of the entire real and personal estate situated in Pennsylvania of a non-resident incompetent does not exceed the amount set forth in Sections 5505 (1) and 5101 of the Code or any future amendments thereto, a petition shall be filed in the form prescribed in Rule 14.2 except that the averments and exhibits relating to the appointment of a proposed guardian shall be omitted. The prayer of such a petition shall also omit any reference to the appointment of a guardian of the alleged incompetent's estate but shall contain a prayer

consonant with the objective sought. Thereafter, if at a hearing the incompetency is established, and it also appears that the gross estate of the incompetent does not exceed the statutory limitation, the Court may award the entire estate to the person or institution maintaining the incompetent to receive and hold or dispose of said property without the appointment of a guardian or the entry of security, or make such other order as may be appropriate under the circumstances. In such case, a suggested final decree shall be attached to the face of the petition or be submitted to the Court upon the conclusion of the hearing.

Rule 14.2-14 *Special Petitions.*

(a) Generally

(1) All such petitions may be presented on any regular Motion Day by the guardian or any interested party.

(2) When the petitioner is not the guardian the prayer of the petition shall be for a citation upon the guardian to show cause why the prayer of the petition should not be granted with notice to such other persons as the Court may direct.

(3) An appropriate preliminary order and/or an appropriate final decree shall be affixed to the face of the petition.

(b) Allowances. Contents of Petition

(1) A petition for the expenditure of funds from an incompetent's estate shall set forth

(i) the name of the guardian, the date of his appointment, and if the petitioner is not the guardian, his relationship to the incompetent, and, if not related, the nature of his interest;

(ii) a summary of the inventory and supplemental inventories, the dates they were filed, and the nature and present value of the estate;

(iii) a statement of net annual income; the amount of monthly Social Security, Railroad Retirement, Veterans Administration, and other benefits received or receivable by or on behalf of the alleged incompetent, together with the name, address, and relationship to the incompetent of the person actually receiving such benefits.

(iv) the address and the occupation, if any, of the incompetent;

(v) the names and addresses of the incompetent's dependents, if any;

(vi) a statement of all claims of the incompetent's creditors known to petitioner;

(vii) a statement of the requested distribution and the reasons therefor including an itemization of all actual or estimated expenses for which the allowance is sought; a statement of all previous distributions allowed by the Court; and

(viii) a prayer for the distribution requested.

(2) Restrictions on Granting Allowances

(i) Requests for allowances will not be approved prior to the filing of the inventory, except in cases of extreme emergency.

(ii) If any portion of the incompetent's estate is received from the United States Veterans' Administration or its successor, notice of the request for allowance shall be given this agency.

(c) Sales, Mortgages, Leases, Exchanges and Options.

(1) The procedure with respect to a petition to sell, mortgage, lease, exchange or grant an option on real estate by the guardian of an incompetent shall be governed by the appropriate provisions of the rules governing similar transactions under the Code by personal representatives, trustees and guardians of minors, as far as practicable. (See Rules 12.10 through 12.12.) *

(2) All such petitions shall refer to the existence of any testamentary documents known to or in the possession of the petitioner without disclosing the contents thereof. If the writing is not on file with the Clerk as provided in Rule 14.2-10 hereof, the writing shall be made available immediately to the Court for inspection and processing in accordance with the provisions of Rule 14.2-10.

(3) Notice of sales and other transactions under this section shall be given to all persons who are sui juris and would be entitled to share in the estate if the incompetent died intestate at the time the petition is presented.

(d) Representation of Incompetent. Petition. Notice. Order.

(1) An attorney who undertakes to represent an individual who has been adjudged an incompetent without prior approval of Court, and regardless of whether or not the attorney has knowledge that the individual has been adjudged an incompetent, shall not, except in

cases of extreme emergency, be compensated for services rendered to the incompetent from the funds of the incompetent's estate, and no guardian of the estate of an incompetent shall expend funds from the incompetent's estate in payment of any such claim for services rendered without prior approval of the Court.

(2) A petition requesting leave for an attorney to represent an incompetent shall set forth—

(i) the averments required by the rules governing petitions for allowances, to wit, (b) (1) (i, iii, iv) above;

(ii) the reason for the request together with such additional averments of fact as may be necessary to enable the Court to pass judgment upon the petition.

(3) Unless the guardian of the estate of the incompetent is the petitioner or has consented to or joined in the prayer of the petition, written notice of intention to present the petition, accompanied by a copy of the petition and proposed order, shall be given to the guardian of the estate of the incompetent at least ten (10) days prior to the presentation of the petition and proof of such notice shall be filed with the petition.

(4) If the Court is satisfied as to the need for allowing the request, it will, absent objection, enter an order accordingly. Such an order shall also include, when necessary, a direction to file a petition to perpetuate testimony. (See Rules 3.6-3 and 3.6-4.)

Rule 14.2-15 *Resignation. Guardian of the Estate or Person of an Incompetent.*

(a) Court Approval

No guardian of the estate or person of an incompetent shall resign without prior approval of the Court pursuant to a petition as hereinafter provided.

(b) Petition. Contents.

(1) Averments

A guardian of the estate or person of an incompetent who desires to resign shall present a petition to the Court setting forth

(i) the nature of the guardianship;

(ii) the date and a reference to the record of the appointment and the names of the sureties, if any;

(iii) a list of all accounts previously filed, the dates thereof, that they have been confirmed absolutely and the dates of confirmation. If any account has not been confirmed absolutely the status of that account shall be set forth;

(iv) itemized list of the kind and value of property currently in the hands of the petitioner;

(v) that an account has been or will be filed;

(vi) the reason or reasons for the resignation;

(vii) the names of all parties in interest who have consented to the resignation and names of those who have not consented with the reason for their failure so to do;

(viii) the name and address of a successor, if any, and that the successor will accept the appointment if approved by the Court;

(ix) a prayer for an order accepting the resignation, appointing a successor, directing the payment and transfer of the property in the hands of the guardian to the successor, directing the filing of an account by the resigning guardian and discharging the latter and the sureties, if any, upon final confirmation of the account.

(2) Exhibits

(i) Consents, duly acknowledged.

(ii) Written consent of successor guardian.

Rule 14.2-16 *Resignation. Petition. Disposition.*

The Court may, with or without notice to the non-consenting parties and with or without a hearing, enter an order in accordance with the prayer of the petition.

Rule 14.2-17 *Successor Guardian. Duties.*

A successor guardian appointed by the Court shall examine the assets of the estate and the account filed by the resigning guardian and, when necessary, file objections.

Rule 14.3. *Adjudication of Competency.*

A petition to adjudicate that a person previously adjudged incompetent has become competent shall set forth

- (1) the date of the adjudication of incompetency;**
- (2) the name and address of the guardian;**
- (3) if the incompetent has been a patient in a mental hospital, the name of such institution, the date of his admission, and the date of discharge;**
- (4) the present address of the incompetent, and the name of the person with whom he is living;**
- (5) the names and addresses of the next of kin of the incompetent; and**
- (6) an averment that the mental health of the incompetent has been restored.**

Rule 14.3-1 *Petitioner. Identity.*

(a) The petitioner in a petition to adjudicate competent a person previously adjudicated incompetent shall be a natural person over the age of eighteen (18) years. A corporation, unincorporated association or other type of organization may not be a petitioner.

(b) The petitioner may be the person previously adjudicated incompetent.

Rule 14.3-2 *Adjudication of Competency. Prayer of Petition.*

A petition to adjudicate an incompetent competent shall conclude with a prayer that the incompetent be adjudged competent, that the guardian be directed to file an account, that all testamentary writings and copies thereof be delivered to the former incompetent and such other relief as the circumstances may require.

Rule 14.3-3 *Preliminary Decree. Notice.*

Upon presentation of a petition to have an incompetent adjudged competent the Court will enter a preliminary decree directing that the

petition be filed, that the matter be heard at a designated time and place and that a copy of the petition and preliminary decree be served upon the guardian, if the guardian is not the petitioner and upon all of those who would receive similar notice were the petition one to adjudicate an individual incompetent. Proof of such notice shall be filed on or before the date set for the hearing.

Rule 14.3-4 *Final Decree.*

A final decree shall be submitted to the Court at the conclusion of the hearing.

Rule 14.3-5 *Accounts and Distribution.*

The practice and procedure with respect to the form, filing and audit of accounts, as well as with respect to the distribution of the assets comprising the estate, shall conform to the practice and procedure applicable to accounts of guardians of minors as provided in these rules.

Rule 14.3-6 *Notice. United States Veterans' Administration.*

In all proceedings under the Code affecting the estate of any incompetent veteran or incompetent dependent of a veteran, either of whom may be receiving or entitled to receive benefits, compensation, insurance payments or other gratuity from the United States Veterans' Administration, at least ten days' written notice of the proceeding shall be given to the Chief Attorney of the Regional Office of the United States Veterans' Administration at Philadelphia, Pennsylvania.

Rule 14.3-7 *Perpetuation of Testimony of Testamentary Capacity. Procedure.*

(a) Whenever a person who has been adjudged an incompetent thereafter executes and publishes a testamentary writing and it is desired to perpetuate testimony as to the testamentary capacity of the incompetent at the time the testamentary writing was executed and published the practice and procedure shall conform as nearly as may be with the rules of Sections 3.6-3 and 3.6-4 hereof subject to the following provisions:

(b) Petitioner

The petitioner may be presented by the guardian of the estate of the incompetent, the incompetent's spouse, a relative, or any person interested in the welfare of the incompetent, provided that the interest of the petitioner shall be set forth specifically in the petition unless the same clearly appears by reference to other averments in the petition.

(c) Petition. Contents

(1) The petition shall set forth the name and address of the incompetent; the date of the court order adjudging him incompetent; and the name and address of the guardian of the incompetent's estate;

(2) The petition shall conclude with a prayer that a citation be awarded by the Court, directed to the guardian of the incompetent's estate, if the guardian is not a party to the petition, and to all parties residing within the Commonwealth who would be entitled to share in the estate of the incompetent if the latter died intestate at the time of the presentation of the petition, or to the fiduciaries or representatives of such parties who are not sui juris or who are absentees, and such others as the Court may direct, to show cause why the testimony of witnesses, including the incompetent, should not be taken for the purpose of showing the testamentary capacity of the incompetent at the time the testamentary writing was executed and published, and why such testimony should not be reduced to writing and filed among the records of this Court in perpetuum rei memoriam so that the testimony will be available in the future to all parties in interest and those claiming under them at such times and for such purposes as shall be deemed proper, and for the appointment of such guardians or trustees ad litem as may be necessary to represent the interests of persons who are not sui juris or who are absentees, and with notice of the petition, preliminary order, and citation to all parties residing outside the Commonwealth of Pennsylvania who would be entitled to share in the estate of the incompetent if he died intestate as aforesaid, or to the fiduciaries or representatives of any such parties who are not sui juris or who are absentees, and to such others as the Court may direct.

(d) Disposition of Testamentary Writings Executed and Published by an Incompetent. (See Rule 14.2-10.)

Rule 14.4 *Proceedings Relating to Real Estate.*

A petition for the public or private sale, exchange, lease, or mortgage of real estate of an incompetent or the grant of an option for the sale, exchange or lease of the same shall conform as far as practicable to the requirements of these rules for personal representatives, trustees and guardians of minors in a transaction of similar type.

FORMS

FORM A

Prayer of Petition

WHEREFORE, your petitioner prays your Honorable Court to award a citation directed to the alleged incompetent to show cause, if any (he) (she) has, why (he) (she) should not be adjudged incompetent and a guardian of (his) (her) estate appointed to receive and to manage the assets of said estate and to direct notice of this proceeding to each of (his) (her) next of kin who are residents of the Commonwealth of Pennsylvania and sui juris, and to such other persons as the Court may direct.

FORM B

Preliminary Order Awarding Citation

IN THE COURT OF COMMON PLEAS OF LEHIGH COUNTY,
PENNSYLVANIA
ORPHANS' COURT DIVISION

In re: _____

File No. _____

PRELIMINARY ORDER AWARDING CITATION

AND NOW, this _____ day of _____, 19____, upon consideration of the attached petition, IT IS ORDERED AND DECREED that a citation be awarded, directed to _____ the alleged incompetent, to show cause why (he) (she) should not be adjudged incompetent and a guardian of (his) (her) estate appointed for the purpose of receiving and managing the assets of said estate; that said citation together with a true and correct copy of this order of court and the annexed petition be served personally upon the alleged incompetent and the contents thereof made known to (him) (her); that a true and correct copy of this order of court and the annexed petition be served personally, or by registered or certified United States mail, return receipt requested, upon each of the following:

(Here list the names and addresses of all persons who are residents of Pennsylvania, sui juris, and would be entitled to share in the estate of the alleged incompetent if he died intestate as of the date of the petition.)

and that proof of service as aforesaid be filed with the Clerk of this Court.

By the Court,

Presiding J.

FORM C

Citation

COMMONWEALTH OF PENNSYLVANIA }
COUNTY OF LEHIGH } ss:

To: (Name _____, Respondent.
Address _____)

Sur Petition of _____ to Adjudicate
Incompetence and to Appoint a Guardian of the Estate.

GREETING:

WE COMMAND YOU, THAT, laying aside all business and ex-
cuses whatsoever, you be and appear before the Orphans' Court Divison
of the Court of Common Pleas to be holden at Allentown, in and for the
said county, on Thursday, the _____ day of _____,
19____, at nine-thirty o'clock in the forenoon, then and there to file a full
and complete answer, under oath, to each and every of the averments of
the petition of _____ which is attached
hereto and show cause why the prayer of said petition should not be
granted, and further to abide the order of said Court in the premises.

If you fail hereof, the petition may be taken pro confesso and a de-
cree entered against you.

WITNESS the Honorable _____, Presiding
Judge of the Orphans' Court Division of the Court of Common Pleas of
Lehigh County, at Allentown, Pennsylvania, this _____ day of
_____, 19_____.

(Orphans' Court Divison Seal)

(Asst) Clerk of Orphans' Court Division

Attorney for Petitioner

Address