

ORPHANS' COURT ACTIONS

L.R. No. 1.6

All interested parties in a matter may use mediation to resolve issues pending before the Court, and upon either partial or complete resolution, may petition the Court to approve the agreement of all interested parties as an order or decree of the Court.

- A. The interested parties may engage the services of a mediator, either prior to or after any party in interest has filed a Pleading before the Court, including an Account filed by a fiduciary.
- B. Upon the filing of a Pleading before the Court, including an Account filed by a fiduciary, the Clerk shall provide the filing party with generic information regarding availability of mediation for the resolution of disputes prior to adjudication by the Court.
- C. The filing party shall provide such information to other interested parties. The information, which does not bind the Court, and which may be in the form of a standard brochure, should include:
 1. A brief description of the mediation process;
 2. The anticipated benefits of mediation for litigants and associated professionals; and
 3. Contact information to initiate mediation.
- D. All interested parties in a matter docketed before the Court may request to engage in mediation at any time during the pendency of the matter.
- E. In such request for mediation, all interested parties shall identify:
 1. The proposed mediator and the proposed source of payment of fees and costs of the mediator;
 2. Names and contact information of all interested parties and any counsel who shall participate in the mediation;
 3. Names and information regarding any interested parties having diminished capacity or a legal disability, whose interests must be adequately protected; and
 4. The scheduled date for the initial mediation conference.
- F. All interested parties shall execute an agreement for confidential mediation, which is not inconsistent with this local rule, and which shall remain confidential.
- G. Mediation shall not delay the required filing of any Pleading or ordered return dates, or the scheduling of Court Hearings, unless specifically requested by joinder of the interested parties and so ordered by the Court.
- H. The Court will respect the confidentiality of the mediation process and of the mediator's obligation of confidentiality.
- I. Upon completion of mediation, all interested parties shall sign a memorandum of principal terms, which either shall acknowledge that no resolution was reached, or shall embody the resolutions attained. This memorandum of principal terms shall

include a list of unresolved issues to be determined by the Court. Where appropriate, the principal terms could provide for future review in light of changed circumstances or a change in the operative facts. The memorandum of principal terms agreed upon, or the statement of no resolution, shall be filed with the Court.

- J. In no event shall the terms agreed upon depart from or violate any provisions of applicable law, specifically including the Older Adults Protective Services Act, the Act of Dec. 18, 1996, P.L. 1125, No. 169 (35 P.S. § § 10225.101 – 10225.5102), as may be amended.
- K. The interested parties may request that the Court approve the final mediated agreement, which embodies the principal terms agreed upon in the memorandum referenced above. The Court may grant approval in an order or decree. Alternatively, the Court may recommend any changes that the Court deems appropriate for approval. The parties to the mediation may accept the Court's recommendations, in which event the terms agreed upon, as modified, shall be approved, or the parties may decline to accept the Court's recommendations, in which event the matter is deemed not to have resulted in an agreement.

AUDITORS

L.R. No. 9.1 AUDITORS – APPOINTMENT AND NOTICE OF HEARING

All auditors shall be selected and appointed by the Court. They shall be members of the Bar, not in any case holding the Offices of the Register of Wills or Clerk of the Orphans' Court.

L.R. No. 9.2(a) AUDITORS – NOTICE OF COMPLETED REPORT AND CONFIRMATION NISI

Every Auditor shall give at least five (5) days written notice to the parties appearing of record or their counsel, that his Report has been completed, is in his/her office, and may be examined by the parties in interest or their counsel: said notice shall also contain the date the Auditor proposes to file his Report with the court. Upon filing, said Auditor's Report shall be confirmed nisi by the Court and marked filed by the Clerk, and unless Exceptions are filed within 20 (twenty) days after such confirmation nisi, the Clerk shall enter the same confirmed absolutely.

L.R. No. 9.2(c) AUDITORS – EXCEPTIONS

If Exceptions are filed to a report of an Auditor, simultaneously therewith, the party filing said Exceptions shall file a Praeceptum for Argument.

GUARDIANSHIPS OF INCAPACITATED PERSONS

L.R. No. 14.2 (a) CONTENTS OF PETITION

Each Petition for the appointment of a guardian shall conform to PA Orphans' Court Rules, Chapter III (Petitions, Practices, and Pleadings), shall be in plain language, and shall include the following information:

1. The name and address of the Petitioner, along with a statement of the Petitioner's relationship, if any, to the alleged incapacitated person.
2. The name, date of birth, age, and post office address of the alleged incapacitated person.
3. The names and addresses of the spouse, parents, and presumptive adult heirs of the alleged incapacitated person. (Presumptive adult heirs are those individuals having attained the age of majority who would inherit the alleged incapacitated person's estate as intestate heirs, had the alleged incapacitated person deceased on the date of the filing of the Petition.)
4. The name and address of the person or institution providing professional residential services to the alleged incapacitated person.
5. The names and addresses of all other professional service providers covering the six (6) month period preceding the filing of the petition.
6. Each location at which the alleged incapacitated person has resided for the preceding three (3) year period.
7. The names and addresses of each person who at any time during the preceding (3) years is known to have administered any of the financial affairs of the alleged incapacitated person. If a power of attorney exists and is in effect, a copy of the power of attorney is to be attached to the petition as an exhibit, if available to the Petitioner.
8. A statement of whether the alleged incapacitated person is known to have a will and whether a copy of any known will is available for production at the time of hearing.
9. The name and address of the person or entity whom Petitioner asks to be appointed guardian and the qualifications of the proposed guardian.
10. An averment that the proposed guardian has no interest adverse to the alleged incapacitated person.
11. Concise factual averments as to why the appointment of a guardian is requested, including:

a. A description of the functional limitations and physical and mental condition of the alleged incapacitated person.

b. The steps taken to find a less restrictive alternative.

c. The specific areas of incapacity over which it is requested that a guardian be assigned powers.

12. If a limited or plenary guardian of the estate of the alleged incapacitated person is sought, an inventory of the assets of the alleged incapacitated person, including estimated or known values thereof, and the net income from all sources to the extent known.

13. A proposed Order of Court, to be appended on top of the petition, is to specify the precise scope of authority requested for the guardian and the specific areas as to which the guardian will be assigned powers.

14.2 (b) FORM OF PETITION FOR ADJUDICATION OF INCAPACITATED PERSON.

Petitions for adjudications of incapacity shall be substantially in the following form:

PETITION FOR APPOINTMENT OF GUARDIAN

OF THE

(ESTATE) AND/OR (PERSON) OF _____

1. The Petitioner is _____, residing at _____, _____,
(Street) (City)

_____, _____, _____.
(County) (State) (Zip)

2. The Respondent, an alleged incapacitated person, is _____, who is _____
years of age (DOB _____) and who resides at _____,
_____.

(Street) (City) (County)

_____, _____.
(State) (Zip)

3. The names and addresses of the spouse, parents, and presumptive adult heirs of the alleged incapacitated person are as follows:

| Name | Relationship | Address |
|-------|--------------|---------|
| _____ | _____ | _____ |
| _____ | _____ | _____ |
| _____ | _____ | _____ |
| _____ | _____ | _____ |

4. The names and addresses of the persons or institution providing professional residential services for the alleged incapacitated person are as follows:

5. The names and addresses of all other professional service providers during the last six (6) months are as follows: _____

6. During the last three (3) years, the alleged incapacitated person has resided at the following addresses (list all addresses):

| Addresses | Date |
|-----------|-------|
| _____ | _____ |
| _____ | _____ |

7. During the past three (3) years, the following persons are known to have administered all or part of the financial affairs of the alleged incapacitated person:

| Names | Addresses |
|-------|-----------|
| _____ | _____ |
| _____ | _____ |

8. A Power of Attorney (is/is not) in effect. If available, a copy of the Power of Attorney in effect is attached hereto and incorporated herein by reference as Exhibit A. The name and address of the person or entity acting as attorney-in-fact for the alleged incapacitated person is:

9. The alleged incapacitated person (is/is not) known to have a will. A copy of which (will/will not) be available for product at the time of the hearing.

10. The Guardian proposed is _____ (residing at) _____
(with offices located at) _____ (Street) _____ (City)
_____ (County) _____ (State) _____ (Zip).

11. The proposed guardian has no interest adverse to the alleged incapacitated person.

12. Your Petitioner believes and avers that the following steps were taken in order to find a less restrictive alternative to Guardianship: _____

13. Your Petitioner requests that a Guardianship be assigned powers over the person (and/or) estate of the alleged incapacitated person.

14. An inventory of the known assets of the alleged incapacitated person including estimates as to values thereof and the net income of the incapacitated person from all sources in attached hereto and incorporated herein by reference as Exhibit B. (This paragraph is required for all petition seeking powers over the estate of the alleged incapacitated person.)

15. The alleged incapacitated person has the following functional limitations and physical and mental conditions which cause (him/her) to be an incapacitated person as defined by law: _____ (Add subparagraphs as necessary)

16. The best interest and welfare of the alleged incapacitated person will be served by granting the Guardianship requested because: (Set forth facts showing that the granting of the Guardianship will be in the best interest and welfare of the allegedly incapacitated person.)

WHEREFORE, your Petitioner requests that the Court appoint _____,
Guardian of the person (and/or) estate of _____.

Attorney for Petitioner

I verify that the statements made in this Petition are true and correct. I understand that false statements herein are made subject to the penalties of 18 Pa.C.S§4904 relating to unsworn falsifications to authorities.

Signature of Petitioner

14.2 (c) SERVICE ON ALLEGED INCAPACITATED PERSON

Each Petition seeking appointment of a guardian shall be served upon the alleged incapacitated person by personal service. The contents and terms of the Petition shall be explained to the maximum extent possible in language and terms the individual is most likely to understand. Form G-01, a citation and notice in the form approved by the Supreme Court, shall be attached to and served with the petition on the alleged incapacitated person. A copy of the Petition shall be left with the alleged incapacitated person. Service shall be no less than twenty (20) days in advance of the scheduled hearing and shall be made by a person trained and experienced in evaluating individuals with incapacities of the type alleged in the Petition.

14.2 (d) NOTICE TO OTHERS

In addition to service upon the alleged incapacitated person, notice of the scheduling of the hearing shall be given to the following by United States Postal Service, certified mail, return receipt requested, to the last known address of:

i. All persons residing within the Commonwealth who are sui juris and would be entitled to share in the estate of the alleged incapacitated person if he or she died intestate at that time.

ii. The person or institution providing professional residential services to the alleged incapacitated person.

iii. To each person known to have a power of attorney who at the time of the filing of the petition was acting pursuant to the power of attorney on behalf of the alleged incapacitated person.

iv. To such other persons as the Court shall direct.

14.2 (e) AFFIDAVITS

Affidavits of Service of a Petition filed pursuant to these Rules upon an alleged incapacitated person shall be substantially in the following form:

(Caption)

AFFIDAVIT OF SERVICE

I, _____, an adult individual residing at _____, hereby verify and state as follows:

1. I am a person trained and experienced in evaluating persons with incapacities of the type alleged in the petition filed to the above term and number.

2. On _____, 20____, at _____m. I personally served a true and correct copy of the said petition and required citation and notice pursuant to O.C. Rules 1.8(a) and 14.5, upon the alleged incapacitated person at _____ (State place of service).

3. At the time of service of the petition, I left a true and correct copy of the petition and required citation and notice pursuant to O.C. Rules 1.8(a) and 14.5, with the alleged incapacitated person. In addition, I explained the contents and terms of the petition to the maximum extent possible in language and terms the alleged incapacitated person is most likely to understand.

4. I verify that the statements made in this Affidavit are true and correct. I understand that false statements herein are made subject to the penalties of 18Pa.C.S§4904 relating to unsworn falsifications to authorities.

(Signature)

14.2 (f) PROOF OF NOTICE

Proof of notice as required under these Rules shall be substantially in the following form:

(Caption)

PROOF OF NOTICE

I, _____, attorney for Petitioner in the above incapacity proceeding, certify that on _____, 20____, I served notice of the hearing scheduled in the above captioned matter seeking an adjudication of incapacity by mailing a true and correct copy of the petition with order for hearing appended thereto by certified mail, return receipt requested, postage prepaid, to the following persons and/or institutions at the addresses indicated below:

| Name | Address |
|-------|---------|
| _____ | _____ |
| _____ | _____ |
| _____ | _____ |

Attached to this Proof of Notice are return receipt cards evidencing said service of notice.

Attorney for Petitioner

14.2 (g) No responsive pleading shall be required to a Petition filed seeking an adjudication of incapacity. All averments in such a Petition shall be deemed denied.

14.2 (h) Upon the filing of a petition seeking an adjudication of incapacity, the Court shall appoint interim counsel to represent the interests of the alleged incapacitated person in the incapacity proceeding. Such counsel shall act as legal counsel for the alleged incapacitated person in the proceeding until such time as other legal counsel shall have entered a written appearance on behalf of the alleged incapacitated person in accordance with these Rules.

14.2 (i) Proceedings for appointment of an emergency guardian shall be conducted in accordance with 20 Pa. C.S.A. §5513. A petition for the appointment of an emergency guardian is expected to be in substantially the form provided under these Rules. To the extent that compliance is not possible, the Petitioner shall aver the reason for the noncompliance, such as the lack of opportunity to ascertain the required information. In addition, the Petitioner shall aver in concise and summary form those factual averments upon which Petitioner relies in requesting the appointment of an emergency guardian.

14.2 (j) Service of Petition and Citation. The Petition and Citation seeking the appointment of an emergency guardian shall be served upon the alleged incapacitated person promptly and so as to facilitate the opportunity for the incapacitated person to appear at the hearing on the petition. In addition, notice of the proceeding to be given to such other persons as required under these Rules or in such other manner as the Court shall direct, unless the Court shall determine such notice is not feasible in the circumstances.

14.2 (k) CONDUCT OF HEARING/TRIAL

(k)(1) Timing of Depositions. Any Petitioner intending to present testimony by deposition of individuals qualified by training and experience in evaluating individuals with incapacities of the type alleged shall not schedule any such deposition at a date sooner than twenty (20) days following the service of the Petition upon the alleged incapacitated person.

(k)(2) Presence of Alleged incapacitated Person. The alleged incapacitated person shall be present at the hearing unless:

(k)(2)(a) The Court is satisfied, upon deposition or testimony of, or sworn statement by a physician or licensed psychologist, that the physical or mental condition of the alleged incapacitated person would be harmed by his presence and further that such person is unable to appreciate the subject matter of the petition and nature of the proceeding seeking an adjudication of incapacity; or

(k)(2)(b) It is impossible for the alleged incapacitated person to be present because of his earlier absence from the Commonwealth.

(k)(3) Request for Hearing at Residence. A request for the hearing to be held at the residence of the alleged incapacitated person shall be presented to the Court by Motion no later than ten (10) days prior to the scheduled date of the hearing. Such Motion shall set forth the basis upon which the location of the hearing shall be changed. Included in the motion shall be the consent of all persons or entities to whom notice of hearing shall have been given. If a consent cannot be obtained because a person or entity objects to the change of location or for some other valid reason such as lack of capacity, the Moving Party shall note in the Motion that such consent could not be obtained and specify the reason therefore. Notice of the filing of the Motion shall be given to the alleged incapacitated person and to all persons and entities who received notice of the scheduling of the hearing.

(k)(4) Notification Regarding Counsel. The Court shall appoint counsel to represent the alleged incapacitated person in any matter for which counsel has not been retained by or on behalf of that individual. If counsel has been retained for the alleged incapacitated person, counsel shall enter a written appearance prior to the scheduled hearing. At the time of hearing the Court shall determine the alleged incapacitated person's ability to pay for counsel. If the Court finds such person is unable to make such payment, the costs of appointment of counsel shall be paid by the County.

(k)(5) Closure of Hearing; Non-Jury Nature. The hearing shall be closed to the public unless the alleged incapacitated person or his counsel objects. The hearing shall be without a jury unless written request for a jury trial is filed by the alleged incapacitated or their counsel, no later than twenty (20) days following service of the Petition upon the alleged incapacitated person.

(k)(6) Evidentiary Standard. No person shall be found to be incapacitated in the absence of the presentation of clear and convincing evidence.

(k)(7) Grounds for Dismissal. If the Court determines that the proceeding has not been instituted to aid or benefit the alleged incapacitated person, or that the Petition is incomplete or fails to provide sufficient facts to proceed, the proceeding may be dismissed.

(k)(8) Production of Will. The alleged incapacitated person's last known will shall be produced by the Petitioner at the time of hearing, if the same is available. In the event that Court makes a determination of incapacity, the Court shall receive a copy of said will and direct that the same be made part of the record under seal of the Court, unless the Court finds in its discretion that the nature of the incapacity does not warrant incorporation of a copy of the will into the record. The Court may further order a guardian to present a copy of any will of a person adjudicated incapacitated if located subsequent to the hearing, regardless of whether such will predates or postdates a will previously made part of the record.

14.2 (l) SUBMISSION OF PROPOSED FINDINGS OF FACT

On the date of the scheduled guardianship hearing, counsel for each party participating therein shall present to the Court proposed specific findings of fact concerning:

1. The nature of any condition or disability which impairs the individual's capacity to make and communicate decisions.
2. The extent of the individual's capacity to make and communicate decisions.
3. The need for guardianship services, if any, in light of such facts as the availability of family, friends, and other supports to assist the individual in making decisions, and in light of the existence, if any, of advance directives such as durable powers of attorney or trusts.
4. The type of guardian, limited or plenary, of the person or estate, needed based on the nature of any condition or disability and the capacity to make and communicate decisions.
5. The proposed duration of the guardianship.

14.2 (m) PROPOSED FINAL ORDER

The proposed final order, which has been appended to the petition under Local Rule 14.2(A)(13) shall specify the precise scope of authority requested for the guardian and the specific areas to which the guardian shall be assigned powers.

14.2 (n) NOTICE OF POST-TRIAL RIGHTS

At the conclusion of a proceeding in which the person has been adjudicated incapacitated, the Court shall inform the person of his right to appeal and to petition to modify or terminate the guardianship. A review hearing may be set at such time in the discretion of the Court.

14.2 (o) PRODUCTION OF WILL FOLLOWING HEARING

Following an adjudication of incapacity in which the Court shall have ordered the production of any will of the incapacitated person, upon locating any will of the incapacitated person, the guardian shall present a Motion directly to the Court requesting that copies of such will or wills be made a part of the record under seal. Such Motion shall contain an Order directing the filing of the copy or copies of the incapacitated person's will as part of the record under seal of the Court.

ADOPTIONS

L.R. No. 15.1 ADOPTIONS – NOTICE OF INTENT TO ADOPT

(a) Whenever a Notice of Intent to Adopt is filed within the 26th Judicial District, a copy thereof shall promptly be filed with the Clerk of Columbia or Montour County, as applicable, who shall in turn transmit said copy to the Director of Columbia or Montour County Office of Children's Services, as applicable. Said agency shall forthwith conduct a home investigation for

each proposed adoption and shall present a report thereof to the Court prior to the scheduled date of the adoption proceeding.

(b) No such additional filing fee will be required when the proposed adopting parent or parents are among the persons exempt from filing a Report of Intention to Adopt under 23 Pa.C.S.A. § 2531(c).

(c) No such additional filing fee will be required when the intermediary is a public or voluntary child care agency other than Columbia County or Montour County Office of Children and Youth Services in which case the investigative report will be prepared by the child care agency as intermediary.