

**ADMINISTRATIVE OFFICE OF THE COURTS
STATE OF NEW JERSEY**

**PHILIP S. CARCHMAN, P.J.A.D.
ACTING ADMINISTRATIVE
DIRECTOR OF THE COURTS**



**RICHARD J. HUGHES
JUSTICE COMPLEX
P.O. Box 037
TRENTON, NEW JERSEY 08625-0037**

Directive # 10-08

**To: Assignment Judges
Probate Part Judges
Surrogates**

[Questions or comments may
be directed to 609-292-8470.]

From: Philip S. Carchman, P.J.A.D.

**Subj: Civil – Model Order for Scheduling Hearing for Guardianship
of Alleged Incapacitated Person**

Date: May 20, 2008

This Directive promulgates a model form of order for scheduling a hearing for the guardianship of an alleged incapacitated person. The Judicial Council approved this form order at its February 27, 2008 meeting.

The purpose of the order for hearing is to schedule and give notice of the guardianship hearing to interested persons and to provide formal notice of the hearing to the alleged incapacitated person (AIP). R. 4:86-4. Orders for hearing are required because use of an order to show cause would be inconsistent with the underlying allegations of a guardianship action, namely, that the alleged incapacitated person is under a disability and is unable to manage his or her personal and business affairs. A summary action order to show cause also is inconsistent with the alleged incapacitated person's right to a jury trial. R. 4:86-4; N.J.S.A. 3B:12-24.

This model order provides guidance in drafting acceptable orders for guardianship hearings and is preformatted to comply with the Rules of Court. Use of the model order is encouraged but not mandatory; however, any variations from the model must nonetheless conform to the requirements of the Rules of Court and any applicable Administrative Directives.

Attachment

cc: Chief Justice Stuart Rabner
Hon. Glenn A. Grant, Acting Admin. Director Designate
Christina P. Higgins, Acting Deputy Administrative Director
AOC Directors and Assistant Directors
Trial Court Administrators
Civil Division Managers
Kevin M. Wolfe, Chief
Steven D. Bonville, Special Assistant
Francis W. Hoeber, Special Assistant

Model Order for Scheduling Hearing for Guardianship
of Alleged Incapacitated Person (Rule 4:86-4) –
Promulgated by Directive #10-08

SUPERIOR COURT OF NEW JERSEY
CHANCERY DIVISION _____ COUNTY
PROBATE PART

In the Matter of _____, an
Alleged Incapacitated Person

Docket No.:

CIVIL ACTION
ORDER FIXING GUARDIANSHIP
HEARING DATE AND APPOINTING
ATTORNEY FOR ALLEGED
INCAPACITATED PERSON

This matter having been opened to the Court by _____, attorney for the plaintiff, _____ for a judgment declaring _____ an incapacitated person and appointing a guardian pursuant to *N.J.S.A. 3B:12-24.1* and *Rules 4:86-1 to 8* and for such other relief as the Court may deem just, and the Court having read and considered the verified complaint, the supporting certifications or affidavits, and all other papers and pleadings filed in this matter, and for good cause shown:

IT IS on this _____ day of _____, 20____, ORDERED that:

1. This matter be set down for hearing before this Court at the _____ County Court House, _____, New Jersey, on the _____ day of _____, 20____, at _____ o'clock in the _____ noon, or as soon thereafter as plaintiff may be heard, to determine the issues of incapacity of _____ and the appointment of a guardian.

2. A copy of the verified complaint, supporting affidavits or certifications and this Order, shall be served on _____, the alleged incapacitated person, by personally serving the same at least 20 days prior to the date scheduled for the hearing.

3. A separate notice shall be personally served on the alleged incapacitated person stating that if he/she desires to oppose the action he/she may appear either in person or by attorney and may demand a trial by jury.

4. A copy of the verified complaint, supporting affidavits or certifications and this Order shall also be served on all the next-of-kin and other parties-in-interest identified in the verified

complaint by certified mail, return receipt requested at least 20 days prior to the date scheduled for the hearing.

5. _____, Esquire, whose address is: _____ and telephone number is: _____ be and hereby is appointed as attorney for the alleged incapacitated person. Said attorney shall personally interview the alleged incapacitated person, examine the medical records, make inquiry of persons having knowledge of the alleged incapacitated person's circumstances, his/her physical and mental state and his/her property, make reasonable inquiries to locate any Will, powers of attorney or health care directives previously executed by the alleged incapacitated person, or to discover any interests the alleged incapacitated person may have as a beneficiary of a will or trust. Said attorney shall prepare a written report of findings and recommendations and an affidavit of services to be filed with the Court and with the plaintiff's attorney and other parties who have filed a written response at least ____ days prior to the hearing.

6. A copy of the verified complaint, supporting affidavits or certifications and this Order shall be immediately served on the attorney for the alleged incapacitated person by personal service or certified mail, return receipt requested.

7. The attorney above appointed to represent the alleged incapacitated person is hereby regarded as a HIPAA (Health Insurance Portability and Accountability Act) representative for the alleged incapacitated person and shall have the right and power to examine records, including medical and psychiatric records, pertaining to the alleged incapacitated person and to visit and confer with the alleged incapacitated person.

8. The plaintiff shall file with the Surrogate of _____ County a proof of service of the pleadings required by this order to be served on the alleged incapacitated person and the parties in interest no later than ____ (__) days before the date this matter is scheduled to be heard.

9. Any next-of-kin and other party-in-interest who wishes to be heard with respect to any of the relief requested in the verified complaint shall file with the Surrogate of _____ County at [*insert address of Surrogate in the County where the action is being brought*] together with the applicable filing fee and serve upon the attorney for the plaintiff and the attorney for the alleged incapacitated person at the address set forth above, a written answer, an answering affidavit ,

a motion returnable on the date this matter is scheduled to be heard or other written response _____
days before the date this matter is scheduled to be heard.

J. S. C.