

Comments to Proposed Forms for Guardianship of Incapacitated Adults

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I am the long-time attorney for the Bergen County Board of Social Services, the county agency that administers the Adult Protective Services unit. In that capacity, I have filed hundreds of adult guardianship complaints and am familiar with these proceedings.

Guardianships are not cookie-cutter cases; they fact-sensitive matters. I take great pride in the preparation of certifications, especially those prepared for the agency social workers. I appreciate that the forms are most-likely geared toward *pro se* litigants. But, by forcing forms on attorneys, you tie their hands and their creativity.

An overall observation is that the attorney information at the top left of the first page of the pleadings, orders, etc., is designed for solo practitioners. There should be extra line for the attorney's law firm (e.g. Lowenstein Sandler) or the agency that the attorney represents (e.g. hospital, care facility, Adult Protective Services provider.)

1. Case Information Statement: Most of the information in the CIS is in the Complaint for Guardianship. The Court Rules, particularly R. 4:86-2 (effective 9/1/16), dictate what is required in the Complaint. Requiring the filing of an extra document containing repetitive information merely results in the plaintiff having to dole out more money in attorney fees. Additionally, the certification language at the bottom of the form is repetitive to the language that is required as part of the complaint. Moreover, the form is designed for completion by an individual plaintiff rather than an agency-plaintiff (such as a hospital, care facility, Adult Protective Services provider.)

2. Certification of Assets: I include income and asset information in the social worker certification, which also contains the background of the case and the justification for filing. Why do you need a separate form? Is the submission of a two-page form necessary if there are no assets? The reality is that in many of the cases, the plaintiff has little or no knowledge of the individual assets and has to rely on the words of a person alleged to be mentally incapacitated.

3. Certification of Physician or Psychologist: In my experience, the physician or psychologist drafts a detailed report and executes a certification incorporating the report. Most of the physicians and psychologists have a template on their own computers. As long as their submissions contain all the necessary provisions, is it really necessary to require all the

submissions to look alike? They are doctors—We are lucky just to receive the submissions in a timely fashion. This is a case of form over substance. There is no reason to change the way they do business.

4. Order Fixing Hearing Date: Needs the provisions concerning the pre-appointment training that is now required of a guardian.

5. The Judgments: It appears that the form judgments are for submission by *pro se* litigants. Be that as it may:

a) A line is needed for the appearance of the plaintiff's attorney in the prefatory language.

b) Attorneys should be able to submit proposed judgments without check boxes. The judgment of guardianship is one of the most important documents, and what is checked or not checked may cause confusion.

c) The "report" in paragraph 10 of the Person and Estate Judgment and in paragraph 8 should be clarified with the words "in the preceding section".

d) The section concerning Counsel for the Incapacitated Person is too wordy. It merely needs to state that the court-appointed attorney for the alleged incapacitated person is relieved with the court's appreciation. Then there should be a following paragraph, "The court-appointed attorney, _____, is hereby awarded \$ _____ for counsel fees and costs incurred in this matter.

e) A paragraph needs to be added awarding the plaintiff's attorney or the plaintiff-agency counsel fees and costs.

f) A provision should be added, "All fees and costs awarded herein are to be paid from the Estate of the incapacitated person, and are reduced to judgment against the incapacitated person."

It would also assist if the AOC would state that attorneys may submit their own pleadings, orders and judgments and are to be guided by the wording of the form pleadings, orders and judgments. This would alleviate some of the issues raised in these Comments.