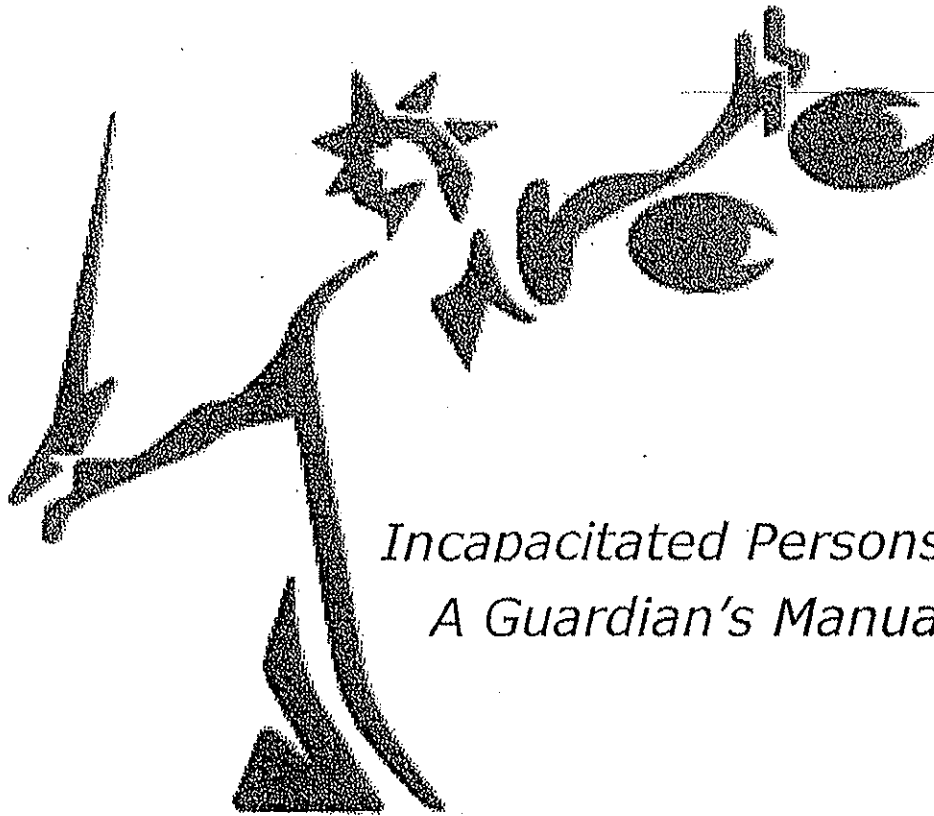


MCKEAN COUNTY COURT OF COMMON PLEAS



*Incapacitated Persons  
A Guardian's Manual*

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Register of Wills  
And Clerk of the Orphans Court**

**COURT OF COMMON PLEAS  
MCKEAN COUNTY  
FORTY- EIGHTH JUDICIAL DISTRICT SMETHPORT, PENNSYLVANIA**

**Honorable John H. Pavlock,  
President Judge**

**Honorable Christopher G. Hauser,  
Judge**

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## Table of Contents

|  |    |
|--|----|
| INTRODUCTION.....  | 3  |
| DUTIES OF THE GUARDIAN OF THE.....   | 4  |
| ESTATE OF AN INCAPACITATED PERSON .....  | 4  |
| 1. REVIEW FINAL DECREE APPOINTING YOU and POSTING OF SECURITY.....                 | 4  |
| 2. INQUIRY AND DISCOVERY OF ASSETS.....  | 4  |
| 3. SAFEGUARDING OF ASSETS.....   | 4  |
| 4. MANAGEMENT OF ASSETS .....  | 5  |
| 5. PAYMENT OF DEBTS, OBLIGATIONS AND EXPENSES.....                                 | 5  |
| 6. INVENTORY .....   | 5  |
| 7. ANNUAL REPORT .....   | 5  |
| 8. FINAL REPORT.....   | 6  |
| 9. FIDUCIARY DUTY GENERALLY .....  | 6  |
| 10. ESTATE PLANNING.....   | 7  |
| 11. PARTIAL LIST.....  | 7  |
| 1. REVIEW FINAL DECREE APPOINTING YOU.....   | 7  |
| 2. GENERAL DUTY OF GUARDIAN OF THE PERSON.....                                     | 8  |
| 3. PLAN OF SUPPORTIVE SERVICE.....   | 8  |
| 4. ENCOURAGEMENT OF INCAPACITATED PERSON TO PARTICIPATE.....                       | 8  |
| IN DE.....   | 8  |
| 5. GENERAL CARE, MAINTENANCE and CUSTODY OF THE INCAPACITATED<br>PERSON .....      | 8  |
| 6. PLACE FOR INCAPACITATED PERSON TO LIVE.....                                     | 9  |
| 7. RESPONSIBILITY FOR TRAINING, EDUCATION, MEDICAL and.....                        | 9  |
| PSYCHOLOGICAL SERVICES OF INCAPACITATED .....                                      | 9  |
| 8. CONSENTS / APPROVALS FOR INCAPACITATED PERSON .....                             | 9  |
| 9. ANNUAL REPORT.....  | 9  |
| 10. FINAL REPORT.....  | 10 |
| 11. POWERS WHICH MAY ONLY BE GRANTED BY COURT .....                                | 10 |
| 12. PARTIAL LIST.....  | 10 |
| DUTIES OF THE EMERGENCY GUARDIAN OF THE PERSON OF AN INCAPACITATED<br>PERSON ..... | 10 |
| REVIEW FINAL DECREE APPOINTING YOU .....   | 11 |
| FREQUENTLY ASKED QUESTIONS.....  | 11 |
| APPENDIX.....  | 21 |

1. Sample Annual Report of Guardian of the Person
2. Sample Annual Report of the Guardian of the Estate
3. Sample Court Order/Decree
4. Sample Guardian's Inventory

## INTRODUCTION

The goal of the Guardian's Manual is to assist the Court-appointed Guardian of the Person, Guardian of the Estate, or Guardian of both the Person and Estate of an Incapacitated Person to exercise the Guardian's basic duties in connection with the Guardian's appointment.

The Manual describes, in basic terms, the primary duties of the Guardian – depending on the nature of the Guardian's appointment, and identifies the required forms which must be filed: The Inventory and Annual – Final Report (if appointed as Guardian of the Estate of the Incapacitated Person) and the Annual – Final Report (if appointed as Guardian of the Person of the Incapacitated Person). The Emergency Guardian of an Incapacitated Person ordinarily does not need to file either an Inventory or Annual Report.

**This Manual is not designed to provide a comprehensive legal or authoritative guide to Guardians, and is not intended to be taken as legal advice. It is strongly suggested that legal and other assistance be obtained by the Guardian as necessary. Guardians are also requested to not ask Court personnel or employees of the Clerk of the Orphans' Court to give legal advice on specific issues as they are neither permitted nor qualified to do so.**

Finally, while a Final Decree may appoint one individual as Guardian of both the Person and Estate of the Incapacitated Person, the powers and duties of the two different types of Guardianship are addressed separately. A Guardian appointed as both Guardian of the Person and Guardian of the Estate of the Incapacitated Person must comply with both sections and must file the Inventory and Annual – Final Reports for both the Person and Estate of the Incapacitated Person.

**DUTIES OF THE GUARDIAN OF THE  
ESTATE OF AN INCAPACITATED PERSON**

The Guardian of the Estate must manage the income, investments, real estate, and any other property owned by an Incapacitated Person. The Guardian of the Estate is authorized to spend income for the benefit of the incapacitated person. However, the Guardian of the Estate cannot sell real estate, or, use any of the principal (funds or assets that belonged to the incapacitated person on the date that the Guardian of the Estate was appointed, including bank accounts, CD's, annuities, and other investments) for any purpose unless the Guardian files a Petition and obtains Court approval before doing so.

*As Guardian of the Estate of an Incapacitated Person your duties include:*

**1. REVIEW FINAL DECREE APPOINTING YOU and POSTING OF SECURITY**

You must review the Final Decree (Court Order) which appoints you Guardian of the Estate of the Incapacitated Person. The Final Decree describes the extent of your authority: you may either be authorized to exercise certain limited powers or may be appointed "plenary" (general) Guardian of the Estate. If your appointment is subject to limitations, you cannot exceed those limitations. Sample Final Decrees are reproduced below.

If you have been directed to post security (Bond) with a corporate surety, the Bond may be purchased from any approved corporate surety and must be filed with the Clerk before the Clerk will issue to you a Guardian's Certificate which you need before you can exercise any of your duties. The cost of the Bond can be paid from the assets of the Incapacitated Person.

**2. INQUIRY AND DISCOVERY OF ASSETS**

You must make reasonable inquiry into the existence and whereabouts of all valuable assets of the Incapacitated Person, including the determination of their fair market value on the date of your appointment, which may require appraisals of real estate and personal property, as well as statements

from banks or securities firms as to values of accounts and securities, or appraisals of antiques or jewelry.

### **3. SAFEGUARDING OF ASSETS**

Once the assets have been discovered and values determined, you are under a duty to provide for reasonable safeguarding of the assets to protect them from being dissipated, lost, stolen, or destroyed.

### **4. MANAGEMENT OF ASSETS**

You also must invest and manage the assets as a prudent person would so that they will appreciate in value and/or produce income for the benefit of the Incapacitated Person. However, be advised that certain investments are not permitted and may not be made without a prior Court Decree which Decree must be obtained by filing a Petition.

### **5. PAYMENT OF DEBTS, OBLIGATIONS AND EXPENSES**

You are authorized, generally, to use income to pay the reasonable debts, obligations and expenses of the Incapacitated Person, and in particular the support, medical expenses and maintenance of the Incapacitated Person which may include education where appropriate. Principal may not be used for any purpose unless you file a Petition and obtain Court Approval before doing so. You should establish a budget for the Incapacitated Person and, if it appears that income alone will not meet his or her needs, then you must file a Petition seeking Court Approval of necessary expenditures from principal. The Court often approves expenditures from principal for a stated period of time, such as one year; two years; etc.

### **6. INVENTORY**

You must prepare and file a document known as a **Guardian's Inventory** with the Clerk of Orphans' Court within three (3) months of the date of your appointment. The Guardian's Inventory should contain, so far as you have been able to discover using reasonable efforts, a list of all real estate, personal property, bank accounts, securities, and any and all other valuable assets belonging to the Incapacitated Person with values stated as of the date of your appointment. The Guardian's Inventory should also include a statement of any real or personal assets which you reasonably expect to acquire

on behalf of the Incapacitated Person after the date of filing of the inventory. The assets which appear on the Guardian's Inventory constitute the principal of the Incapacitated Person's Estate.

The Court approved Guardian's Inventory Form is included below, and an electronic version of the form is available at: <http://www.pacourts.us/forms/for-the-public/orphans-court-forms>. The Guardian's Inventory must be filed in person or by mail with the Office of the Clerk of Orphans' Court, McKean County Courthouse, 500 West Main Street, Smethport, PA 16749.

#### **7. ANNUAL REPORT**

In addition to the Inventory, you also are required to file an **Annual Report** on or before the first 12 month anniversary of your appointment describing in detail the current principal of the Estate and how it is invested, the current income of the Estate, the expenditures of principal and/or income since the date of appointment, and the needs of the Incapacitated Person for which you have provided financially since the date of your appointment. You must follow your first Annual Report with succeeding reports on the twelve- (12) month anniversary of your appointment for each year thereafter that you continue to act as Guardian of the Estate of the Incapacitated Person. You also must, within sixty (60) days of the death of the Incapacitated Person, file a Final Report.

The Court approved Annual Report form is attached below, and an electronic version of the form is available at <http://www.pacourts.us/forms/for-the-public/orphans-court-forms>. The Annual Report must be filed in person or by mail with the Office of the Clerk of Orphans' Court, McKean County Courthouse, 500 West Main Street, Smethport, PA 16749.

#### **8. FINAL REPORT**

Within sixty (60) days of the death of the Incapacitated Person, you are required to file a **Final Report** with the Court.

The same form which is used to file the Annual Report is used to file the Final Report. The Final Report must be filed in person or by mail with the Office of the Clerk of Orphans' Court, McKean County Courthouse, 500 West Main Street, Smethport, PA 16749.

## 9. FIDUCIARY DUTY GENERALLY

As Guardian of the Estate of an Incapacitated Person you are a "fiduciary." Legally you are obligated to exercise prudent judgment in the management of the Estate of the Incapacitated Person for her/his benefit only, and to avoid conflicts of interest or decisions which may benefit yourself. You may not invest the Incapacitated Person's assets in businesses or corporations owned or controlled by you nor may you loan the Incapacitated Person's funds to yourself for such enterprises unless you have filed a petition and an order is issued specifically authorizing you to do so beforehand. However, you also should not allow the Incapacitated Person's assets to remain idle. Any idle assets which fall into your management should, with prudence, be placed into productive form. Two simple examples are that cash in a checking account should be transferred to a savings or money market account so that income is produced. Vacant residential or commercial property should be leased to produce income, where practicable, for a term not exceeding 5 years.

As fiduciary you are also authorized, within reason, to hire experts for advice including accountants, investment advisers, and attorneys to assist you in proper management of the assets of the Incapacitated Person. The reasonable fees and commissions for these experts are properly chargeable to the Estate of the Incapacitated Person. Remember, however, that you may not expend principal unless and until you file a Petition and obtain prior Court Approval to do so.

## 10. ESTATE PLANNING

If the assets of the Incapacitated Person for whom you are Guardian are substantial, you may file a Petition requesting the Court to authorize estate planning on behalf of the Incapacitated Person which may include establishing a trust, making gifts, disclaiming interests in property or powers of appointment, all of which may be needed to manage and properly dispose of the Incapacitated Person's assets. In such an effort, the advice of a qualified attorney, investment adviser, and/or CPA will be very helpful, if not essential.

## 11. PARTIAL LIST

This list of duties and responsibilities is partial and is by no means complete. If you are the individual Guardian of an Incapacitated Person's Estate and there is no institutional or corporate Co-Guardian, it

is highly recommended that you consult with a qualified attorney concerning additional duties and responsibilities which cannot, for reasons of space, be set forth here.

## **DUTIES OF THE GUARDIAN OF THE PERSON OF AN INCAPACITATED PERSON**

The Guardian of the Person must make decisions to protect the health, safety, and welfare of the Incapacitated Person. The Guardian of the Person is not responsible for managing the Incapacitated Person's finances and, unless the same individual is also appointed as Guardian of the Estate, *the Guardian of the Person should not have control over the income, property, or finances of the Incapacitated Person.* As Guardian of the Person of an Incapacitated Person your duties include:

### **1. REVIEW FINAL DECREE APPOINTING YOU**

You must review the Final Decree (Court Order) which appoints you Guardian of the Person of the Incapacitated Person. The Final Decree describes the extent of your authority: you may either be authorized to exercise certain limited powers or may be appointed "plenary" (general) Guardian of the Person. If your appointment is subject to limitations, you cannot exceed those limitations. Sample Final Decrees are reproduced after this section.

You must obtain a Guardian's Certificate (\$10 cost) from the Clerk before you can exercise any of your duties.

### **2. GENERAL DUTY OF GUARDIAN OF THE PERSON**

As either limited or "plenary" (general) Guardian of the Person, you have a general responsibility to assert the rights and the best interests of the Incapacitated Person. In doing so, the expressed wishes and preferences of the Incapacitated Person shall be respected to the greatest possible extent. If these expressed wishes and preferences, however, conflict with your independent judgment of what is in the best interests of the Incapacitated Person, then you should follow your independent judgment, but only to the extent necessary to pursue the best interests of the Incapacitated Person.



### **3. PLAN OF SUPPORTIVE SERVICE**

Where appropriate, you should assist in the development of a plan for supportive services for the Incapacitated Person, which will explain how these services will be obtained. This may not be necessary in every case, depending upon the circumstances of the Incapacitated Person as you find them upon the commencement of your duties.

### **4. ENCOURAGEMENT OF INCAPACITATED PERSON TO PARTICIPATE IN DECISIONS**

You must encourage the Incapacitated Person to participate in making decisions to the maximum extent feasible within the limitations of his or her ability. You should further encourage the Incapacitated Person to act on his or her own behalf whenever he or she may be able to do so. You should further encourage the Incapacitated Person to develop or regain his or her capacity to manage his or her personal affairs insofar as is possible under the circumstances.

### **5. GENERAL CARE, MAINTENANCE and CUSTODY OF THE INCAPACITATED PERSON**

A "plenary" (general) Guardian of the Person has general responsibility for the care, maintenance and custody of the Incapacitated Person. Your attention to these duties may be limited by the terms of the Court Order, so in exercising these duties you must not exceed that authority. Your primary guiding principle should be to follow what is in the best interests of the Incapacitated Person, even in situations that may conflict with your personal beliefs or your personal interest. If the best interests of the Incapacitated Person conflict irrevocably with your strongly held personal beliefs or personal interests, you may, and should, apply to the Court for guidance or for relief from your duties and transfer those duties to another person. You must avoid any conflict of interest, or even the appearance of a conflict of interest, in your pursuit of the best interests of the Incapacitated Person.

### **6. PLACE FOR INCAPACITATED PERSON TO LIVE**

A "plenary" (general) Guardian of the Person is empowered to select a place in which the Incapacitated Person will reside. Again, you must follow the standard of what is in the best interests of the Incapacitated Person, using your own independent judgment. You should attempt to discern the preferences as expressed by the Incapacitated Person and members of his or her family and to

accommodate these with respect to the place in which the Incapacitated Person will be living, except in those instances where your independent judgment determines that this would conflict with the best interests of the Incapacitated Person.

#### **7. RESPONSIBILITY FOR TRAINING, EDUCATION, MEDICAL and PSYCHOLOGICAL SERVICES OF INCAPACITATED PERSON**

A "plenary" (general) Guardian of the Person is authorized to assist the Incapacitated Person in the development of maximum self-reliance and independence. You should refer to the Court Decree appointing you to see if the Court has given you specific responsibilities pertaining to training, education, medical and psychological services, or for the social and vocational opportunities to be offered to the Incapacitated Person. Again, your guiding principle should be what is in the best interests of the Incapacitated Person and consideration of expressed wishes of the Incapacitated Person or family members would be appropriate where it does not conflict with this principle.

#### **8. CONSENTS / APPROVALS FOR INCAPACITATED PERSON**

A "plenary" (general) Guardian of the Person is generally authorized to give consents or approvals for various medical, surgical, psychological, or other treatment alternatives which may become available for the Incapacitated Person. **However, please note that no Guardian has the authority or power to admit the Incapacitated Person to an inpatient psychiatric facility or State Center for the mentally disabled, or to consent to the relinquishment of the rights of the Incapacitated Person as a Parent.** As before, you should endeavor to follow the express wishes of the Incapacitated Person and family members to the extent that these do not conflict with the overriding principle of what is in the best interests of the Incapacitated Person. However, your independent judgment on these issues should not be overridden by family wishes.

#### **9. ANNUAL REPORT**

In addition to the overall duties set forth above, you are required to file an Annual Report on or before the first 12 month anniversary of your appointment and annually thereafter in which you describe the following in detail:

- (A) The current address and type of placement of the Incapacitated Person.
- (B) The major medical or mental problems of the Incapacitated Person.

(C) A brief description of the Incapacitated Person's living arrangements, social, medical, psychological and other support services he or she is receiving.

(D) Your opinion as to whether or not the guardianship of the Person should continue, be terminated, or modified, and your reason for this opinion.

(E) The number and length of times in which you have visited the Incapacitated Person, during the last year.

#### **10. FINAL REPORT**

Within sixty (60) days of the death of the Incapacitated Person, you are required to file a **Final Report** with the Court. The same form which is used to file the Annual Report is used to file the **Final Report**. The **Final Report** must be filed in person or by mail with the Office of the Clerk of Orphans' Court, McKean County Courthouse, 500 West Main Street, Smethport, PA 16749.

#### **11. POWERS WHICH MAY ONLY BE GRANTED BY COURT**

Unless specifically included within your guardianship Order, you shall not have power to:

(A) Consent, on behalf of the Incapacitated Person, to abortion, sterilization, psychosurgery, electroconvulsive therapy, or the removal of a healthy body organ.

(B) Prohibit the marriage or consent to the divorce of the Incapacitated Person.

(C) Consent, on behalf of the Incapacitated Person, to the performance of any experimental, biomedical or behavioral medical procedure, or participation in any biomedical or behavioral experiment.

#### **12. PARTIAL LIST**

This list of duties and responsibilities is partial and is by no means complete. If you are the individual Guardian of the Person and there is no institutional or corporate Co-Guardian, it is highly recommended that you consult with a qualified attorney concerning additional duties and responsibilities which cannot, for reasons of space, be set forth here.

## **DUTIES OF THE EMERGENCY GUARDIAN OF THE PERSON OF AN INCAPACITATED PERSON**

### **REVIEW FINAL DECREE APPOINTING YOU**

You must review the Final Decree (Court Order) which appoints you as Emergency Guardian of the Person of the Incapacitated Person. A Decree appointing an Emergency Guardian is ordinarily entered due to an immediate medical condition of the alleged incapacitated person and the inability to secure required informed consent from the alleged incapacitated person or a member of his or her family. The Final Decree describes in detail the extent of your authority as Emergency Guardian of the Person as well as the duration of the appointment (usually 72 hours or some such limited time period).

### **SAMPLE DECREES AND FORMS**

See the samples of Court Decrees and Forms which are annexed to this Guardian's Manual.

### **FREQUENTLY ASKED QUESTIONS**

The following series of questions and answers is designed to highlight the primary steps for the appointment of a guardian for an incapacitated person. The procedures described are those which apply when a guardian is needed for a person who is an adult and is unable to look after his or her own affairs.

**1. WHEN SHOULD THE APPOINTMENT OF A GUARDIAN FOR AN INCAPACITATED PERSON BE CONSIDERED?** Whenever a person is thought to be incapacitated, it is appropriate to consider whether the appointment of a guardian is necessary or desirable. Pennsylvania law defines an incapacitated person as follows: *Adults whose abilities to*

*receive and evaluate information effectively and communicate decisions in any way are impaired to such a significant extent that they are partially or totally unable to manage their financial resources or to meet essential requirements for their physical health and safety.'*

2. **WHO MAY ASK THAT A GUARDIAN BE APPOINTED?** Any person interested in the welfare of an incapacitated person may seek the appointment of a guardian for that person.

3. **WHO HAS AUTHORITY TO APPOINT A GUARDIAN?** A guardian may be appointed only by a judge of the Court of Common Pleas of the county where the incapacitated person resides. In certain cases, the Court may appoint a guardian for an incapacitated person who lives outside the county if the person owns property in the county. A court hearing is always required.

4. **WHO MAY BE APPOINTED GUARDIAN?** The Court, after a hearing, may appoint as guardian any qualified individual, a corporate fiduciary (i.e., a bank), a non-profit corporation, a guardianship support agency or a county agency. In the case of a person who is a patient in a state facility, the Court may also appoint, only as guardian of the estate, the guardian officer of the appropriate state facility. The Court will not appoint a person or entity providing residential services for a fee (i.e., a nursing home) to the incapacitated person or any other person whose interests conflict with those of the incapacitated person except where it is clearly demonstrated that no other alternative exists. If appropriate, the Court will give preference to someone named by the incapacitated person.

5. **ARE CO-GUARDIANS PERMISSIBLE?** It is possible to have the Court appoint a co-guardian of the estate or person should the Court, in its discretion, deem such an appointment advisable.

6. **WHO WILL THE COURT APPOINT AS A GUARDIAN WHEN NO PROPER PERSON IS AVAILABLE FOR APPOINTMENT?** Guardianship support agencies approved by the Court may be appointed as the guardian of the estate or person, or both, when no qualified person or corporate fiduciary is willing to serve. In certain instances, those agencies may be available to assist petitioners or individual guardians. Although those receiving guardian services from guardian agencies will be charged for services they provide, the charges will be adjusted to meet the ability of

the incapacitated person to pay them and guardian support agencies are required to provide their services at minimal cost.

**7. WHAT CAN BE DONE TO ASSIST AN INCAPACITATED PERSON IN AN EMERGENCY SITUATION?** The Court may appoint an emergency guardian of the person or estate when it finds, upon clear and convincing evidence, that the person is incapacitated and that failure to make an emergency appointment will result in irreparable harm to the person or estate. The Court will follow the same petition and hearing requirements of a permanent guardianship except if it finds, due to the emergency, that notice and hearing are not practical. An emergency guardianship of the person remains in effect for up to seventy-two (72) hours, but may be extended for an additional twenty (20) days. The emergency guardianship powers will be determined by the Court according to the needs of the incapacitated person. For example, an emergency guardianship may be obtained if a person is in need of immediate medical care. An emergency guardianship of the estate remains in effect for up to thirty (30) days.

**8. WHAT TYPES OF GUARDIANSHIPS ARE AVAILABLE?** The Court may appoint a guardian of the person or a guardian of the estate or a guardian for both person and estate. Each type of guardianship may be plenary, that is, unlimited, or limited to just those specific powers necessary to meet the ward's needs. (An individual who has been determined by the Court to be incapacitated is referred to as the "ward" of the Court and of the guardian.)

**9. WHAT MUST A GUARDIAN OF THE PERSON DO?** A plenary guardian of the person has the authority to make all decisions necessary for the personal well being of the incapacitated person. For example, the guardian may place the ward in a nursing home or make medical decisions, including life or death choices. A limited guardian of the person has only those powers specifically set forth in the Court's Decree. When considering a guardianship, it is important to know the current and expected needs of the incapacitated person and the present ability of that individual to meet those needs.

**10. ARE THERE LIMITS TO THE POWERS OF THE GUARDIAN OF THE PERSON?**  
Yes. Unless specifically approved by Court Order, a guardian of the person cannot consent on behalf

of the ward to an abortion, sterilization, psychosurgery, electric shock treatment, removal of a healthy body part, or consent to medical experimentation. A guardian may not block the marriage of the ward or refuse to consent to a divorce. The Court may not give a guardian permission to admit the ward to a mental unit or to consent to the relinquishment of parental rights.

**11. ARE THERE DIFFERENT TYPES OF GUARDIANS OF THE ESTATE?** Yes. There are two types of guardians of the estate. Limited Guardian of the Estate: Upon a finding that the person is incapacitated and in need of some guardianship services, the Court will appoint a Limited Guardian of the Estate and will specifically define the powers and authority of the Limited Guardian. Plenary Guardian of the Estate: If the Court finds that the person is totally incapacitated, the judge will appoint a Plenary Guardian of the Estate. A Plenary Guardian manages all of the incapacitated person's assets and financial affairs.

**12. WHAT MAY A GUARDIAN OF THE ESTATE DO?** The Guardian of the Estate gathers the assets of the incapacitated person, preserves them and invests them in interest bearing accounts and low-risk income producing securities. The Guardian of the Estate also pays the bills for the incapacitated person from the ward's funds. Generally speaking, a Plenary Guardian of the Estate has the authority to handle all of the financial affairs of the ward, including such things as:

- (a) Buy and sell assets, investments and real estate (subject to certain limitations);
- (b) Operate a business which is part of the estate;
- (c) Incorporate a business which is part of the estate;
- (d) Vote any stocks which are held by the estate;
- (e) Accept a deed in lieu of foreclosure;
- (f) Compromise or settle controversies (with Court approval);
- (g) Purchase liability insurance;
- (h) Lease property of the estate, collect income and rents; and
- (i) Make reasonable expenditures to preserve property of the estate;

A Limited Guardian of the Estate has only those powers specifically set forth in the Court's Decree.

**13. HOW IS THE NEED FOR A GUARDIAN PRESENTED TO THE COURT?** A petition must be filed with the Court of Common Pleas. In most cases, the petition is prepared by an attorney hired by the person who asks for the appointment of a guardian. The petition must contain certain information. The following is a summary of that information:

- (a) The name, age, residence and post office address of the alleged incapacitated person;
- (b) The names and addresses of the husband or wife, parents and adult heirs of the alleged incapacitated person;
- (c) The name and address of the person or institution providing residential services to the alleged incapacitated person;
- (d) The names and addresses of other service providers;
- (e) The name and address of the person or entity whom the petitioner asks to be appointed guardian;
- (f) A statement that the proposed guardian has no interest opposed to the alleged incapacitated person;
- (g) The reason why guardianship is requested;
- (h) A description of the physical and mental limitations of the alleged incapacitated person;
- (i) The steps taken to find other alternatives;
- (j) The specific areas of incapacity over which it is requested that the guardian be given authority;
- (k) The qualifications of the proposed guardian.

**14. WHO MUST BE NOTIFIED WHEN THE PETITION IS FILED WITH THE COURT?**

The following individuals must be notified:

- (a) The alleged incapacitated person for whom the appointment of guardian is requested.
- (b) All persons within Pennsylvania who are 18 years old or older and who would share in the property of the alleged incapacitated person if that person died without a will.
- (c) All persons or institutions providing residential services to the alleged incapacitated person.
- (d) Such other persons as the Court may direct.



**15. WHAT TYPE OF NOTICE IS REQUIRED?** Written notice must be given in large type and in simple language explaining the purpose and seriousness of the guardianship hearing and the rights that can be lost as a result. The date, time and place of the hearing on the petition and an explanation of all rights, including the right to a free attorney must be stated. The Court will provide the notice. This notice must be served personally on the alleged incapacitated person with a copy of the Petition, and it may also be served upon other persons in any manner the Court directs.

**16. WHEN WILL THE HEARING TAKE PLACE?** The time and the place of the hearing will be assigned by the Court when the petition is presented. The hearing must be no earlier than twenty (20) days after the petition is served upon the alleged incapacitated person. In an emergency, the Court may appoint a Guardian of the Person, without notice, for up to seventy-two (72) hours and may continue that appointment for up to twenty (20) days after expiration of the initial emergency order. An emergency Guardian of the Estate may be appointed for up to thirty (30) days.

**17. WHERE WILL THE HEARING TAKE PLACE?** In most instances, the hearing will take place in the courtroom of the judge who will hear the petition at the County courthouse. The law permits the hearing to be conducted at the residence of the person who is alleged to be incapacitated, but such hearings are relatively rare and a specific reason would have to be given.

**18. WHO ATTENDS THE HEARING?** The following individuals must attend: (a) The petitioner, as the person initiating the guardianship proceeding, is generally expected to attend. In certain cases, the petitioner need not attend if the petitioner is not expected to offer any testimony.

(b) The alleged incapacitated person is required to be present at the hearing unless the Court is satisfied that the physical or mental condition of the alleged incapacitated person would be harmed by being present, or if it is impossible because the person is not in Pennsylvania. If the incapacitated person cannot appear at the hearing, the testimony, affidavit, or deposition of a physician or licensed psychologist must be presented with a statement indicating that it would be against sound medical advice for the incapacitated person to attend.

(c) The proposed guardian.

(d) The attorney for the petitioner.

(e) Witnesses with testimony or other evidence to offer.

- (f) The attorney for the alleged incapacitated person.
- (g) Any interested person to whom notice of the proceeding was given and who desires to be present.

A person alleged to be incapacitated or his or her attorney may request that the hearing be closed to the public. In that event, only persons entitled to present evidence such as the petitioner, the alleged incapacitated person and their counsel would be present at the hearing with the judge and the court officers.

**19. WHAT PART DOES THE ALLEGED INCAPACITATED PERSON HAVE IN THE HEARING?** Allegedly incapacitated persons have the right to present evidence concerning their capacity. They have the right to be represented by a lawyer and to have court-appointed counsel if they cannot afford their own. Alleged incapacitated persons have the right to contest the averments of incapacity or the appointment of a specific guardian. They have the right to seek the appointment of a physician by the Court to determine their capacity. Alleged incapacitated persons have the right to cross-examine witnesses and to demand that the facts be heard by a Jury.

**20. WHAT FACTS MUST BE ESTABLISHED AT THE HEARING?** The Court will consider evidence at the hearing concerning:

- (a) The nature of any condition or disability which limits the individual's ability to make and express decisions.
- (b) The extent of the individual's ability to make and express decisions.
- (c) The need for guardianship services, if any, in light of the availability of family, friends and other support services 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,
- (d) The type of guardian, limited or plenary, of the person or estate, needed, based on the nature of any condition or disability or ability to make and express decisions.
- (e) The length of time the guardianship may last.

**21. HOW IS THE EVIDENCE PRESENTED?** Generally, evidence is offered under oath and in the courtroom. To establish incapacity, the petitioner must present testimony in person or by

deposition from individuals qualified by training and experience in evaluating individuals with an incapacity of the type alleged by the petitioner. The testimony should establish the nature and extent of the alleged incapacities and disabilities and the person's mental, emotional and physical condition, adaptive behavior and social skills. The petitioner must also present evidence regarding the services being utilized to meet essential requirements for the alleged incapacitated person's physical health and safety; the services being utilized to manage the person's financial resources or to develop or regain the person's abilities; evidence regarding the types of assistance required by the person and why less restrictive alternatives would be inappropriate; and evidence regarding the probability that the person's incapacities may significantly lessen or change.

**22. WHAT CAN THE COURT DECIDE?** (a) The Court can determine that the proceeding has not been instituted to aid or benefit the alleged incapacitated person or that it does not have jurisdiction over the petition in question. In both these instances, the proceedings would be dismissed. (b) The Court can determine that the alleged incapacitated person is able to receive and evaluate information effectively; is able to communicate decisions and that a guardian is not necessary. (c) When the Court is satisfied upon the presentation of clear and convincing evidence that the person about whom the petition has been filed is incapacitated, the Court will appoint a guardian who may be (1) a limited or plenary guardian of the person; (2) a limited or plenary guardian of the estate; or (3) some combination of both.

**23. WHO PAYS THE EXPENSES ASSOCIATED WITH THE APPOINTMENT OF A GUARDIAN?** Generally, if the alleged incapacitated person has property sufficient to pay the expenses of the proceeding, those expenses would be paid from the incapacitated person's property by the guardian after appointment. If the petitioner was unsuccessful in securing the appointment of a guardian, the petitioner pays the expenses. In those instances where the alleged incapacitated person does not have sufficient assets to pay the expenses, the petitioner may request the Court to excuse the payment of filing fees and may also ask the Court to appoint a physician to review the alleged incapacitated person's capacity. The Court may order the county to pay for an attorney or evaluation expenses when an alleged incapacitated person cannot pay.

24. **WHAT ARE THE LEGAL RESPONSIBILITIES OF GUARDIANS?** All guardians have a legal duty to protect the rights and property of the incapacitated person. A guardian may be held personally liable by the Court for mismanagement of the ward's affairs. This is called a "*fiduciary duty*."

25. **WHAT IS AN INVENTORY?** Within ninety (90) days of appointment, the guardian of the estate, whether plenary or limited, must file an Inventory with the Court itemizing the financial assets of the ward. Subject to any limits set by the court, the guardian must take control of those assets and open a separate account with a financial institution in the name of the guardian, on behalf of the ward. The Inventory is an itemized list of all real and personal property owned by the ward, and the value of the property. This includes personal property, vehicles, bank accounts, and other assets. The inventory must also include money which the ward may expect to acquire and a statement of his or her income.

26. **WHAT IS A BOND?** At the hearing, the Court will determine if it will be necessary for the guardian to file a bond and, if so, its amount. The premium for the bond can be paid from the assets of the ward. A bond is a type of insurance policy that guarantees the guardian's faithful performance of all duties. If the guardian misappropriates property of the ward's estate and is unable to repay, the bonding company will pay the value of the property to the incapacitated person's estate. The bonding company may then have a legal claim against the guardian for the value of the property which was taken.

27. **WHAT RIGHTS DOES THE WARD HAVE?** To the extent of their ability, incapacitated persons have the right to participate in decisions affecting their quality of life. The guardian must allow the ward to take an active role in planning support services and the ward has the right to petition the Court for a review of the guardianship at any time.

28. **WHAT DOES A GUARDIAN DO IF THE WARD OBJECTS TO A PARTICULAR PROGRAM?** The guardian must report to the Court if the incapacitated person has a known objection to a specific act or omission. The Court can then determine if the guardian is correct in the assessment of the needs of the ward.

**29. CAN THE WARD EXECUTE A WILL OR REVISE AN ESTATE PLAN AFTER BEING DETERMINED TO BE INCAPACITATED?** No. An incapacitated person cannot execute a Will or revise his estate plan during any period in which he has been determined to be incapacitated by the Court. However, the Court, upon Petition and with notice to all interested parties, may permit incapacitated persons, through their guardians, to: make gifts, disclaim interests in property, exercise powers of appointments, enter into contracts, create trusts, change beneficiaries on life insurance policies, make certain elections relative to inheriting property, change domicile and make other estate planning type arrangements.

**30. CAN THE WARD'S ASSETS BE USED FOR THE GUARDIAN'S OWN PURPOSES?** Absolutely not. The guardian must preserve the assets of the incapacitated person and must make reasonable expenditures of those assets only for the benefit of the ward. If a Guardian of the Estate misappropriates the ward's property for his own benefit, the Court will require the guardian to pay the property back to the estate of the incapacitated person and may appoint a new Guardian of the Estate at that time. Misappropriation of the ward's property may also result in criminal charges being brought against a guardian. However, the Guardian of the Estate may be entitled to reimbursement for out-of-pocket costs which are incurred as a result of the guardianship. The guardian should also apply for court approval before taking a fee for services.

**31. WHO CAN ASSIST THE GUARDIAN?** An attorney can assist guardians in filing reports, providing information on permissible investments and otherwise fulfilling their duties. Guardianship support agencies may also be available to assist guardians in these areas.

**32. MUST THE GUARDIAN OF THE PERSON REPORT TO THE COURT?** Yes. At least once within the first twelve (12) months of the appointment and annually thereafter, the Guardian of the person, whether plenary or limited, must file a report with the Court outlining the guardian's performance. The guardian must state the current residence of the ward and the type of placement. The guardian must also indicate the ward's health and mental condition, living arrangements, and support programs. The guardian must list the number of visits with the ward, the length of each visit,

and give an opinion as to whether the guardianship should be continued. A final report must be filed within sixty (60) days after the death of the incapacitated person.

**33. MUST THE GUARDIAN OF THE ESTATE REPORT TO THE COURT?** Yes. In addition to the Inventory which must be filed within ninety (90) days of appointment, the Guardian of the Estate must also file annual reports. The report must specify the income received on behalf of the ward by the guardian, and the expenditures made. The inventory should include an appraisal of personal property; a statement of real estate owned by the ward; and a statement of any property which the guardian expects to acquire thereafter. Thereafter, at least once within the first twelve (12) months of the appointment and annually thereafter, the Guardian of the Estate must file a report with the Court specifying the income received on behalf of the ward by the guardian and the expenditures made by the guardian on behalf of the ward. The Court may require that the report be filed more frequently. A final report must be filed within sixty (60) days after the death of the ward. The annual report should include the following information:

- (a) Current principal and how it is invested;
- (b) Current income;
- (c) Expenditures of Principal and Income since the last report; and
- (d) Needs of the incapacitated person for which the guardian has provided since the last report.

**34. WHAT RECORDS SHOULD A GUARDIAN KEEP?** All receipts for expenditures paid on behalf of the incapacitated person should be kept until the annual report is approved by the Court. Bank statements and information regarding assets, investments, and insurance should also be kept until the annual report is approved by the Court.

**35. WHEN ARE REPORTS DUE?** Generally, the annual reports are due one year from the date of the guardian's appointment and every year thereafter. The exact date will be specified in the Court's order.

**36. WHERE IS THE REPORT FILED?** The reports should be filed with the Clerk of the Orphans' Court.

37. **WHAT HAPPENS AFTER THE REPORT IS FILED?** The report will be reviewed and placed in the Court's file. A Court representative may contact you when the report is approved or if additional information is required.

38. **HOW LONG DOES A GUARDIAN REMAIN IN OFFICE?** Generally, a guardian's appointment is permanent. Absent a circumstance where the condition of the incapacitated person is subject to change by reason of elapsed time, an appointment will be for an indefinite period. Guardianships are terminated if the ward regains the ability to make rational decisions; guardianships may be modified in scope if the ward regains some of that capacity. If a guardian is unable to carry out the duties and responsibilities of the guardianship, the guardian should notify the Court in writing and the Court will appoint a new guardian.

39. **WHAT HAPPENS IF THE GUARDIAN DIES OR WANTS TO RESIGN?** The Court, after notice to the parties, may appoint a succeeding guardian to fill a vacancy in the guardianship.

40. **WHAT IF THERE IS A CHANGE IN THE WARD'S CONDITION?** In the case of a change of condition, the Court will hold a hearing to determine the current condition of the ward. If individuals are no longer incapacitated, the Court will find that they have regained their capacity and will terminate the guardianship. On the other hand, if there had been a limited guardianship initially and the ward has become worse in condition, the Court may increase the powers of the guardianship.

41. **WHAT ABOUT REPORTS WHERE THE GUARDIANSHIP IS NO LONGER NEEDED, AS IN THE DEATH OF THE WARD, OR THE REGAINING OF CAPACITY?** The guardian, on completion of duties, is required to prepare an accounting for all activities by the guardian during the time of the service from the last filed account to the date of the ward's death or court order finding a resumption of capacity. An Account and Audit is prepared for the Court's review reflecting the original assets of the ward, the income that was earned for the guardianship, the expenses that were paid on behalf of the ward, the resulting funds available for distribution, and a suggested schedule of distribution for the Court's review. If the ward has died, notice and a copy of the Account are given to all of the heirs of the ward so that they may review the document and submit

any questions they may have about the administration of the ward's estate to the Court. If the ward has regained capacity, notice and a copy of the Account are given to the ward for the same reason. After review of the account by interested parties and the Court, if all is satisfactory, the Court approves the account and the guardian is discharged.

#### APPENDIX

1. Sample Annual Report of Guardian of the Person
2. Sample Annual Report of the Guardian of the Estate
3. Sample Court Order/Decree
4. Sample Guardian's Inventory



**ANNUAL REPORT OF  
GUARDIAN OF THE PERSON**

COURT OF COMMON PLEAS OF  
\_\_\_\_\_ COUNTY, PENNSYLVANIA  
ORPHANS' COURT DIVISION

Estate of \_\_\_\_\_, an Incapacitated Person

No. \_\_\_\_\_

**I. INTRODUCTION**

\_\_\_\_\_, was appointed

Plenary  Limited Guardian of the Person by Decree of \_\_\_\_\_, J.,  
dated \_\_\_\_\_.

A. This is the **Annual Report** for the period from \_\_\_\_\_,  
to \_\_\_\_\_ (the "Report Period"); *or*

B. This is the **Final Report** for the period from \_\_\_\_\_,  
to \_\_\_\_\_ (the "Report Period"), and is filed

for the following reason:

1. The death of the Incapacitated Person. Date of death: \_\_\_\_\_

2. The Guardianship was terminated by the Court by Decree of

\_\_\_\_\_ J., dated \_\_\_\_\_.

*For a Final Report, omit Sections II through IV.*

Estate of \_\_\_\_\_, an Incapacitated Person

**II. PERSONAL DATA**

Age of the Incapacitated Person: \_\_\_\_\_ Date of Birth: \_\_\_\_\_

**III. LIVING ARRANGEMENTS**

A. Current address of the Incapacitated Person:

B. The Incapacitated Person's residence is:

- own home / apartment
- nursing home
- boarding home / personal care home
- Guardian's home / apartment
- hospital or medical facility
- relative's home (name, relationship and address)

other:

C. The Incapacitated Person has been in the present residence since \_\_\_\_\_

\_\_\_\_\_. If the Incapacitated Person has moved within the  
past year, state prior residence and reason(s) for move:

Estate of \_\_\_\_\_, an Incapacitated Person

D. Name and address of the Incapacitated Person's primary caregiver:

**IV. MEDICAL INFORMATION**

A. The major medical or mental problems of the Incapacitated Person are as follows:

B. Specify what, if any, social, medical, psychological and support services the Incapacitated Person is receiving:

**V. GUARDIAN'S OPINION**

A. It is the opinion of the Guardian of the Person that the guardianship should:

continue

be modified

be terminated

Estate of \_\_\_\_\_, an Incapacitated Person

The reasons for the foregoing opinion are:

B. During the past year, the Guardian of the Person has visited the Incapacitated Person \_\_\_\_\_ times with the average visit lasting \_\_\_\_\_ hours, \_\_\_\_\_ minutes.

*The report of a social service organization employed by the Guardian to oversee and coordinate the care of the Incapacitated Person for the period covered by this Report may be attached to supplement this Report.*

I verify that the foregoing information is correct to the best of my knowledge, information and belief; and that this Verification is subject to the penalties of 18 Pa. C.S.A. § 4904 relative to unsworn falsification to authorities.

\_\_\_\_\_  
*Date*

\_\_\_\_\_  
*Signature of Guardian of the Person*

\_\_\_\_\_  
*Name of Guardian of the Person (type or print)*

\_\_\_\_\_  
*Address*

\_\_\_\_\_  
*City, State, Zip*

\_\_\_\_\_  
*Telephone*

**ANNUAL REPORT OF  
GUARDIAN OF THE ESTATE**

COURT OF COMMON PLEAS OF  
\_\_\_\_\_ COUNTY, PENNSYLVANIA  
ORPHANS' COURT DIVISION

Estate of \_\_\_\_\_, an Incapacitated Person

No. \_\_\_\_\_

**I. INTRODUCTION**

\_\_\_\_\_, was appointed  
 Plenary  Limited Guardian of the Estate by Decree of \_\_\_\_\_, J.,  
dated \_\_\_\_\_.

A. This is the **Annual Report** for the period from \_\_\_\_\_, \_\_\_\_\_  
to \_\_\_\_\_, \_\_\_\_\_ (the "Report Period"); *or*

B. This is the **Final Report** for the period from \_\_\_\_\_, \_\_\_\_\_  
to \_\_\_\_\_, \_\_\_\_\_ (the "Report Period"), and is filed

for the following reason:

1. The death of the Incapacitated Person. Date of death: \_\_\_\_\_  
Name of Personal Representative: \_\_\_\_\_

2. The Guardianship was terminated by the Court by Decree of  
\_\_\_\_\_ J., dated \_\_\_\_\_

Estate of \_\_\_\_\_, An Incapacitated Person

**II. SUMMARY**

- A. State the value of the estate reported on the Inventory \$ \_\_\_\_\_
- B. State the value(s) of principal assets at the beginning of the Report Period. (Same as Inventory if first Report, otherwise, ending balance from last Report.) \$ \_\_\_\_\_
- C. What is the total amount of income earned during the Report Period? \$ \_\_\_\_\_
- D. What is the total amount of income and principal spent for all purposes during the Report Period? \$ \_\_\_\_\_
- E. What are the balances remaining at the end of the Report Period?
  - 1. Principal \$ \_\_\_\_\_
  - 2. Income \$ \_\_\_\_\_
  - 3. Total of Principal and Income \$ \_\_\_\_\_ 0.00

**III. ADDITIONAL INFORMATION**

*(If more space is needed, please attach additional pages.)*

**A. Principal**

- 1. How is the principal balance listed above currently invested? (Please specify, e.g., real estate, certificates of deposit, restricted bank accounts, etc.):
  
  
  
  
  
  
  
  
  
  
- 2. Have there been any expenditures from the principal during the Report Period? .....  Yes  No
- If yes:
  - a. Have all expenditures from the principal been for the sole benefit of the Incapacitated Person? .....  Yes  No

Estate of \_\_\_\_\_, An Incapacitated Person

b. List purpose and amount of expenditures:

|       |          |
|-------|----------|
| _____ | \$ _____ |
| _____ | \$ _____ |
| _____ | \$ _____ |
| _____ | \$ _____ |

c. Was Court approval received prior to expending the principal? .....  Yes  No

3. Were additional principal assets received during the Report Period which were not included in the Inventory or a prior Report filed for the Estate? .....  Yes  No

If yes:

a. Was Court approval requested prior to receiving the additional principal? .....  Yes  No

b. State the sources and amounts of the additional principal received:

|       |          |
|-------|----------|
| _____ | \$ _____ |
| _____ | \$ _____ |
| _____ | \$ _____ |
| _____ | \$ _____ |
| _____ | \$ _____ |

**B. Income**

1. State sources and amounts of income received during the Report Period (e.g., Social Security, pension, rents, etc.):

|       |          |
|-------|----------|
| _____ | \$ _____ |
| _____ | \$ _____ |
| _____ | \$ _____ |
| _____ | \$ _____ |
| _____ | \$ _____ |
| _____ | \$ _____ |

Total income received during Report Period: \$ \_\_\_\_\_ 0.00

Estate of \_\_\_\_\_, An Incapacitated Person

2. How is income currently invested? (Please specify, e.g., restricted bank accounts, client care account, etc.):

**C. Expenses for Care and Maintenance**

Specify what expenditures were made from the principal and income for the care and maintenance of the Incapacitated Person (e.g., clothing, nursing home, medicine, support, etc.):

**D. Other Expenditures**

Specify what other expenditures were made during the Report Period. (Do not include any items stated in response to question C above.)

**E. Guardian's Commissions**

List amounts of compensation paid as Guardian's commission and state how amount was determined:

| <i>Amount</i> | <i>Method of Determination</i> | <i>Court Approval Obtained</i>                           |
|---------------|--------------------------------|--|
| _____         | _____                          | <input type="checkbox"/> Yes <input type="checkbox"/> No |
| _____         | _____                          | <input type="checkbox"/> Yes <input type="checkbox"/> No |



Estate of \_\_\_\_\_, An Incapacitated Person

**F. Counsel Fee**

List amounts paid as counsel fee, and indicate whether Court approval was obtained.

| <i>Amount</i> | <i>Court<br/>Approval Obtained</i>                       |
|---------------|--|
| _____         | <input type="checkbox"/> Yes <input type="checkbox"/> No |
| _____         | <input type="checkbox"/> Yes <input type="checkbox"/> No |

I verify that the foregoing information is correct to the best of my knowledge, information and belief; and that this Verification is subject to the penalties of 18 Pa.C.S. § 4904 relative to unsworn falsification to authorities.

\_\_\_\_\_  
*Date*

\_\_\_\_\_  
*Signature of Guardian of the Estate*

\_\_\_\_\_  
*Name of Guardian of the Estate (type or print)*

\_\_\_\_\_  
*Address*

\_\_\_\_\_  
*City, State, Zip*

\_\_\_\_\_  
*Telephone*

## Sample Decree

IN RE:

ESTATE OF IVAN INCAPACITATED,  
An Alleged Incapacitated Person

IN THE COURT OF COMMON PLEAS OF

McKEAN COUNTY, PENNSYLVANIA

ORPHANS' COURT DIVISION

DOCKET NO.

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### DECREE

AND NOW, this \_\_\_ day of \_\_\_\_\_, 20\_\_\_, upon consideration of the petition and after hearing held following due service of the Citation with Notice and a copy of the petition upon Ivan Incapacitated, this court finds by clear and convincing evidence that:

1. Ivan Incapacitated is 75 years of age and is a domiciliary of the City of Bradford and County of McKean.

2. Ivan Incapacitated suffers from dementia which totally impairs his capacity to receive and evaluate information effectively and to make and communicate decisions concerning management of her financial affairs or to meet essential requirements for her physical health and safety.

3. He is totally dependent upon others for assistance in her daily activities. Accordingly, it is hereby ORDERED and DECREED that Ivan Incapacitated is adjudged a totally incapacitated person and that Gary Guardian is appointed plenary guardian of the estate and person of Ivan Incapacitated, an incapacitated person. The said guardian shall enter security, with corporate surety, in the amount of \$ \_\_\_\_\_. The said guardian is directed to file an inventory within ninety (90) days of the date of this Decree in accordance with the provisions of 20 Pa. C.S.A. §5521(b) and §5142. Furthermore, the said guardian shall file a Report at least once within the first twelve months of his/her appointment and at least annually thereafter in accordance with the provisions of 20 Pa. C.S.A. §5521(c)(1)(i) and (ii). Within sixty (60) days after the death of the incapacitated person or an adjudication of capacity, the guardians shall file a Final Report with the court pursuant to 20 Pa. C.S.A. §5521(c)(2)

Ivan Incapacitated was not present at the hearing and was not represented by counsel. The court finds from clear and convincing medical evidence that Ivan Incapacitated's physical and mental health would have been harmed by requiring her presence at the hearing. Accordingly, counsel for the petitioner shall cause to be served upon and read to Ivan Incapacitated a copy of this Decree and the Statement of Rights, a copy of which is attached to this Decree as Exhibit "A", and file proof of such service with the Clerk of the Orphans' Court within ten (10) days.

The filing of exceptions or appeals from this Decree is governed by Pa. O. C. Rule 7.1, as amended, and by Pa. R.A.P. 902 and 903.

