

Rule 175. Petition for appointment of guardian for adult with an alleged disability.

(a) Form of petition. -- A petition for the appointment of a guardian for the person or property, or both, of an adult person with an alleged disability, as defined in 12 Del.C. § 3901(a)(2)-(3), shall be verified. The information in the petition shall be provided to the best of petitioner's knowledge. If petitioner cannot ascertain particular information after exercising due diligence, the petition shall state that fact. The petition shall contain at a minimum the following items of information:

(1) The name of the person with an alleged disability, the name and address of petitioner and the relationship of petitioner to the person with an alleged disability or, if not related, the nature of petitioner's interest in the person or property of the person with an alleged disability.

(2) The age, marital status, domicile and place of present residence of the person with an alleged disability; whether such person is a patient or otherwise a resident of any hospital or institution of any type whatsoever and, if so, the name and address of such institution and the date and circumstances surrounding the admission or entry into such institution of the person with an alleged disability.

(3) The names and addresses of any potentially interested party. If the petitioner does not know and cannot learn the address of an interested party required to receive notice, the petitioner shall submit an affidavit describing petitioner's efforts to locate the interested party. Efforts may include performing an internet search, speaking to mutual acquaintances, and attempting to contact the interested party through any known means including electronic means. The term "interested party" shall include:

(A) The spouse and next of kin of the person with an alleged disability. Next of kin means those individuals who would be entitled to inherit through the estate of the person with an alleged disability if that person died intestate. If the interested party is a minor, the petition shall state the minor's approximate age and identify the minor's parent or other appropriate individual to contact.

(B) Any person acting for or named by the person with an alleged disability as a fiduciary, executor, or beneficiary in a power of attorney or testamentary instrument, or named as an agent in an ~~advanced~~advance health care agreement or other health care proxy.

(C) Any person primarily responsible in the past six months for the care of the person or finances of the person with an alleged disability.

~~(D) The administrator of any care facility or hospital where the person with an alleged disability is located when the petition is filed. Petitioner shall give notice of the petition to the administrator, but no further notice of the guardianship proceeding will be required after the petition for appointment is filed.~~

(4) Any information concerning the existence and location of any estate planning or healthcare document, including any will or any power of attorney, or advance healthcare agreement, directive, or proxy executed by the person with an alleged disability and the identity of any attorney-in-fact or agent named in such power of attorney ~~or healthcare agreement, directive, or proxy.~~

(5) A listing of the assets of the person with an alleged disability and the probable value thereof, the estimated income that the person with an alleged disability receives from all sources, the obligations and liabilities of the person with an alleged disability, and any information concerning other arrangement for paying the expenses of the person with an alleged disability.

(6) Whether the person with an alleged disability was ever a member of the armed services of the United States.

(7) Whether the person with an alleged disability has been represented by a Delaware attorney within the past two years and, if so, the name of such attorney.

(8) A general allegation that the person with an alleged disability is unable properly to manage his or her person or property because of a disability, and as a consequence is in danger of dissipating his or her property or becoming the victim of designing persons and, if an interim guardian is sought, specific allegations demonstrating that the person with an alleged disability is in danger of incurring imminent serious physical harm or substantial economic loss or expense, which may occur before a hearing for the appointment of a guardian may be held.

(9) Whether the person with an alleged disability has a guardian to take charge of and manage his or her person or property.

~~(10) Whether, in the opinion of petitioner, the giving of notice pursuant to Rule 176 is likely to result in any harm to the person with an alleged disability.~~

(11) A request that the Court appoint a guardian, and an interim guardian where necessary, to take charge of and manage the person or property, or both, of the person with an alleged disability.

(b) Request for specific authority. -- If the petitioner seeks specific authority as guardian to use the person with an alleged disability's property for reasons other than the support, care, protection, welfare, and rehabilitation of the person with an alleged disability, to borrow money for the benefit of the person with an alleged disability, or to prepay burial expenses, then the petition shall specify the nature of

the authority requested and why the petitioner believes the expenditure would be in the best interests of the person with an alleged disability. The form of such request shall follow Rule 178 so far as applicable.

(c) Exhibits to the petition. -- The petition shall attach the following items as exhibits:

(1) A form of preliminary order setting the matter down for hearing and providing for the giving of the required notice.

(2) A form of final order that includes, as applicable:

(A) A paragraph stating that an order from the Court of Chancery is required to authorize the opening of any safe deposit box of the person with a disability and to sell or encumber any real property of the person with a disability.

(B) If an attorney ad litem or guardian ad litem was appointed, a paragraph discharging the attorney ad litem or guardian ad litem from further service on behalf of the person with a disability.

(C) If an attorney filed the petition on behalf of the guardian, a paragraph stating that the attorney is responsible for ensuring that any guardianship bank account required by the final order is properly opened and that the proof of compliance and inventory are filed within thirty (30) days.

(D) If bond is required, a paragraph stating that the bond shall be executed, ~~notarized~~, and filed within seven (7) days of the entry of the order and that no copy of the final order, whether certified or not, will be released until the bond is filed.

(E) A paragraph requiring the guardian to notify the Court of Chancery of the death of the person with a disability within ten (10) days of the death.

(3) An affidavit filed by the attorney stating that he has explained to the proposed guardian the fiduciary duties and responsibilities of a guardian. This requirement shall not apply where the proposed guardian is a fee-for-service guardian or the Office of the Public Guardian.

(4) A physician's affidavit, executed by a medical or osteopathic doctor authorized to practice medicine, ~~that (i) gives particulars as to the alleged disabilities, (ii) states the date of the doctor's last examination of the person with an alleged disability, and (iii) states the doctor's opinion as to whether the person has a disability that interferes with the ability to make responsible decisions regarding activities of daily living, including health care, food, clothing, shelter, or finances, and whether the person has sufficient mental capacity to understand the nature of guardianship in order to consent to the appointment of a guardian. using the Court's most recent form, available on the Court's website.~~

(5) Affidavits detailing the proposed guardian's history and personal information in the forms provided for by the Court.

(d) Withdrawal by attorney of record. -- An attorney of record who has appeared in connection with a petition to appoint a guardian may withdraw without filing a formal motion to withdraw if (1) the form of final order appointing a guardian states the attorney shall be discharged upon the entry of the order and filing of any bond or proof of compliance and inventory required by the order and (2) the attorney files a notice of withdrawal that includes a ~~notarized~~ consent to the withdrawal executed by the guardian or petitioner.

Rule 178 is amended as follows:

Rule 178. Petition to exercise powers not granted by Subchapter II of Chapter 39 of Title 12 of the Delaware Code or by the Court.

(a) Petition needed. -- If the guardian desires authority to exercise powers not granted by Subchapter II of Chapter 39 of Title 12 of the Delaware Code or by the Court (such as the power to expend principal of the estate of the person with a disability for reasons other than the support, care, protection, welfare, clothing and rehabilitation of that person, the power to sell real property belonging to that person, the power to borrow money for that person's benefit or the power to prepay burial expenses), the guardian shall make application therefor to the Court by a petition.

~~(b) Proposed order annexed. -- A form of order shall be filed with the petition.~~

~~(c) Contents of petition. -- The petition shall be verified and shall set forth:~~

~~(1) The name of the guardian, the date of the guardian's appointment, the amount of any bond and the name of the guardian's surety, if any;~~

~~(2) If the petition concerns the property of the person with a disability, a summary of the guardianship assets; ~~and,~~~~

~~(3) A list of all interested parties entitled to receive notice of the petition in accordance with Rule 175(a)(3), and~~

~~(4) A request for leave to take the requested actions.~~

~~(c) Proposed order annexed. -- A form of order shall be filed with the petition.~~

~~(d) Notice period. -- Unless otherwise ordered by the Court, notice of all petitions filed pursuant to Rule 178(a) must be served on all interested parties, and the~~

petition shall be held for a period of at least thirteen (13) days to allow interested parties to respond.