

**IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE**

**IN RE: AMENDMENT TO COURT OF CHANCERY GUARDIANSHIP RULES**

This 23<sup>rd</sup> day of April, 2018, IT IS HEREBY ORDERED that the Court of Chancery Rules shall be amended, effective July 1, 2018, as follows:

1. The Court of Chancery Rules have been globally amended to replace the term “disabled person” with the term “a person with a disability.”
2. Section XVII, Rules 175-178, 178-A, 180, 180-C and 180-D, are amended as set forth below.

**XVII. GUARDIANS FOR PERSONS WITH DISABILITIES.**

**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 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 will or any power of attorney executed by the person with an alleged disability and the identity of any attorney-in-fact named in such power of attorney.

(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.

(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 176. Appointment of attorney ad litem upon petition for appointment of guardian; service and notice of hearing.**

(a) Appointment and duties of attorney ad litem. — Upon the filing of a petition for appointment of a guardian of an adult person with an alleged disability, the Court shall appoint a member of the Delaware Bar to represent the person with an alleged disability if such person is not otherwise represented by counsel, to receive notice on behalf of such person and to give actual notice to such person, explain his or her rights, and explain the nature of the proceeding. The attorney ad litem shall represent the best interests of the person with an alleged disability and shall conduct a reasonable investigation into the allegations of the petition, the fitness of the proposed guardian, and all pertinent facts. If the attorney ad litem determines the wishes of the person alleged to be disabled diverge from his or her best interests, the attorney ad litem shall advise the Court. The Court may appoint a second attorney to represent the person with an alleged disability as if engaged by such person and may hold a hearing to determine whether a guardian should be appointed. The Court, in its discretion, may appoint an attorney ad litem to represent a minor.

(b) Appointment of fact finder. — The Court may appoint an impartial fact finder to report to the Court concerning the matter.

(c) Report and fees of attorney ad litem or fact finder. — In all cases in which the Court has appointed an attorney ad litem or fact finder under this rule, the attorney shall file a report and recommendation with the Court as directed in the Order of the Court. The attorney shall also file an affidavit of time expended on the matter and a request for a fee and costs. The fee and costs shall not exceed \$750 unless the attorney requests and supports a greater fee and the Court finds that payment of a fee greater than \$750 is in the best interest of the person with an alleged

disability. In all cases, the petitioner shall pay the fee and costs associated with the attorney ad litem or fact finder within thirty (30) days of the appointment of the guardian, unless the Court finds that such fee and costs should be paid by the person with an alleged disability.

(d) Service on person with an alleged disability. — The attorney ad litem shall provide actual notice of the petition and hearing to the person with an alleged disability at least ten (10) days before the hearing unless, for cause shown, the Court shortens the time.

(e) Notice to others. — Notice by registered or certified mail, return receipt requested, of the time, place and purpose of the hearing shall be given by or on behalf of the petitioner to the attorney-in-fact of the person with an alleged disability, to any attorney identified in Rule 175(a)(7), and to all interested parties as defined by Rule 175(a)(3) unless, for cause shown, the Court concludes that any such notice is likely to result in harm to the person with an alleged disability. Notice need not be given to any interested party who has consented in writing to the granting of the petition or has waived such notice.

(f) Proof of service and notice. — Proof of service and of notice shall be filed with the Register in Chancery prior to the hearing.

**Rule 177. Hearing upon petition for appointment of guardian.**

The Court shall hold a hearing upon the petition for the appointment of a guardian for a person with an alleged disability, unless all interested parties as defined in Rule 175(a)(3) provide written consent to the petition prior to the hearing and the petitioner is represented by counsel. The Court, in its discretion, may require that the person with an alleged disability be produced at the time of such hearing. If there is no objection to the petition at the hearing, the Court may grant it without requiring the petitioner to present other evidence. If there is objection to the petition, the Court will receive evidence at the hearing or, for good cause, adjourn the hearing to another date for the reception of evidence.

**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 request for leave to take the requested actions.

**Rule 178-A. Petition for instructions regarding life-sustaining procedures.**

(a) A petition to change or provide life-sustaining procedure instructions for a person with a disability who does not have a qualifying condition as defined by 16 Del.C. § 2501(r) shall be filed in the Court of Chancery and shall include:

- (1) The facts and circumstances requiring the change or provision of life sustaining procedure instructions;
- (2) Two physician's affidavits outlining the medical requirements and needs supporting the instructions;
- (3) Notice that any objection or response shall be filed in writing with the Court of Chancery within twenty (20) days of the date of the petition unless the Court expedites the matter; and
- (4) A form of order implementing the change of status.

(b) The petition shall be served by certified mail, return receipt requested, upon interested parties as defined in Rule 175(a)(3). If no responsive pleading is received by the Court within twenty (20) days, the Court may act on the petition without further proceedings. The Court may expedite consideration of the petition for good cause shown.

**Rule 180. Guardian of property of a minor.**

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(e) Contents of petition. — A petition filed in the Court of Chancery for the appointment of a guardian of the property of a minor shall be verified and shall set forth:

- (1) The name and age of the minor for whom guardianship is sought, including the date on which the minor will reach the age of majority;
- (2) The name and address of the petitioner and the petitioner's relationship to the minor child;
- (3) The names and addresses of all interested parties, which shall include the minor child's natural or adoptive parents, grandparent(s) if any parent(s) are deceased, any court-appointed guardian, any attorney who has represented the minor child within the last two years, and any siblings who have reached the age of majority. 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;

(4) The value and source of the property to be received by the minor, including any supporting documentation regarding the value and source of the property;

(5) The petitioner's consent to the appointment of the Register in Chancery as her agent for the acceptance of service of process on behalf of the petitioner as to any claim arising out of the guardianship if, by reason of the guardian's absence from the state, she cannot personally be served; and

(6) The petitioner's acknowledgement that the minor's funds may not be expended without order of the Court.

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#### **Rule 180-C. Termination of guardianship.**

(a) Petition to terminate guardianship. — The guardian, the person for whom a guardian has been appointed, or any interested party may file a petition alleging a sufficient reason why guardianship is no longer necessary, and requesting its termination. The Court may make an order for the ascertainment of the truth of the allegation, whether by an examination in open Court, or otherwise. If a hearing is to be held, notice thereof shall be given to the guardian and any interested party as that term is defined in Rule 175(a)(3).

(b) Termination of guardianship. —

(1) If the Court finds that a guardian no longer is necessary due to recovery of capacity of the person with a disability, the Court will make an order terminating the guardianship, restoring to the person with a former disability the care of his or her person or restoring to him or her the property and estate in the custody, possession and control of the guardian, or both, providing for the payment of costs and expenses incurred during the guardianship, and requiring a full accounting from the former guardian of the property of the person with a former disability.

(2) If the Court finds that guardianship is no longer necessary due to availability of other measures and such measures are in the best interest of the person with a disability, the matter may be administratively closed without prejudice. An affidavit shall be filed with the Court specifying the means of substitute decision making to be used, and the consent of the individual responsible for utilizing it.

(3) Upon termination, the Court may provide for the payment of costs and expenses incurred during the guardianship.

(c) Restoration of property of minor upon attaining majority. — If the only allegation of disability in the petition for appointment of a guardian was that the person was a minor, the guardianship shall terminate automatically in accordance

with 12 Del. C. § 3909 when the minor attains the age of 18 years. The automatic termination of the guardianship of the property shall not relieve the guardian of the duty to account to the Court.

(d) Final accounting. — Under 12 Del. C. § 3941(a), upon removal or resignation of a guardian or upon termination of a guardianship, the guardian shall render a final accounting within thirty days of the removal, resignation, or termination of the guardianship, unless otherwise ordered by the Court. This Rule shall not apply if accountings have been waived, unless otherwise ordered by the Court.

#### **Rule 180-D. Guardianship monitoring program of the Office of the Public Guardian.**

(a) Guardianship Monitoring Program of the Office of the Public Guardian. — The Guardianship Monitoring Program of the Office of the Public Guardian shall, in addition to responsibilities assigned by the Office of the Public Guardian, be responsible for monitoring the Court’s guardianship docket. This monitoring shall take the following forms:

(1) Routine audit of active cases. — The Guardianship Monitoring Program may perform routine audits of active guardianship cases, without further order of the Court, other than those cases in which the Office of the Public Guardian serves as an appointed guardian. Such audits shall be conducted randomly on an annual basis. The Guardianship Monitoring Program shall have the discretion to determine the number of cases selected for routine audit based on staff availability and other parameters established by the Office of the Public Guardian.

(2) Review and investigation upon Court referral. — The Court may, on its own initiative or upon request, refer any guardianship case to the Guardianship Monitoring Program of the Office of the Public Guardian for review or investigation. The Court order referring the case to the Guardianship Monitoring Program of the Office of the Public Guardian shall specify the issues or concerns to be investigated.

(b) Access to records. — The Office of the Public Guardian shall have access to the docket in any active guardianship case without further order of the Court. Except as otherwise noted in the order of referral, any referral of a case to the Guardianship Monitoring Program under Rule 180-D(a)(2) also shall confer upon the Office of the Public Guardian access to all financial records, accounts, banking documents, insurance records and other financial information of a person with a disability, as well as access to all medical records, treatment providers, clinical information, and other healthcare information of the person with a disability.

(c) Reports and referrals by the Office of the Public Guardian. —

(1) If, upon either a routine audit or Court-ordered review of a guardianship case, the Office of the Public Guardian concludes that there is a reasonable basis to suspect that the person with a disability has been the victim of abuse or neglect, the



Office of the Public Guardian shall refer the guardianship case to the appropriate state or local agency or agencies for investigation. If, upon either a routine audit or Court-ordered review of a guardianship case, the Office of the Public Guardian concludes that there is a reasonable basis to suspect that the person with a disability has been the victim of financial exploitation, the Office of the Public Guardian shall refer the case to the appropriate state or local agency or agencies for investigation.

(2) Whenever the Guardianship Monitoring Program completes a routine audit of a guardianship case, a report summarizing such review shall be filed with the Court. When the Court refers a case to the Guardianship Monitoring Program for review, the referral order shall specify the date on which a written report shall be filed. Such report shall contain a detailed summary of the investigation conducted by the Guardianship Monitoring Program, any facts obtained through such investigation, any referral(s) made to another agency for further investigation, and any recommendation for immediate action by the Court. Reports of the Guardianship Monitoring Program are confidential and interested parties will not receive copies of the report except by approval of the Court.

(d) Testimony. — A representative of the Guardianship Monitoring Program shall be available upon request of the Court or any interested party to testify regarding the review or investigation conducted by the Guardianship Monitoring Program.