

**GUARDIANSHIP REVIEW HEARINGS
FOLLOWING ACT 61:
A NEW COMMITMENT AND RESULTS**

PRESENTERS

The Honorable Shawn D. Meyers

Anthony V. Fernando, Esquire

Brady B. Johnson, IV, Esquire

ACT 61 REVIEW

- **New Pleading Requirements**
- **Appointment of Counsel for all AIPs/IPs**
- **Certification of Professional Guardians**
- **Alternatives to Guardianship**
- **Required Review Hearings if evidence is presented during the Guardianship Proceeding indicating an AIP's/IP's circumstances may improve**

REVIEW HEARINGS BENEFITS/COSTS

- **DO NO HARM**
- **THOUGHTFUL ENGAGEMENT**
- **RIGHT SIZING GUARDIANSHIP**
- **AFFIRMATION OF ROLES**
- **TIME IN COURT/ATTORNEYS FEES**
- **ANXIETY/FEAR OF THE UNKNOWN**

REVIEW HEARINGS FROM THE ATTORNEY REVIEWER'S PERSPECTIVE

REASONS FOR SEEKING A REVIEW HEARING:

- FAILURE TO FILE REPORTS**
- INCONSISTENT INFORMATION INVENTORY & REPORTS**
- LACK OF ENGAGEMENT BY GUARDIAN**
- REQUEST FOR REVIEW BY GUARDIAN**

REVIEW HEARINGS FROM THE COURT APPOINTED COUNSEL'S PERSPECTIVE

- **INITIAL REVIEW**
- **INITIAL CONTACT**
- **GOALS**
- **ADVOCACY**
- **RESOLUTIONS**

REVIEW HEARINGS FROM THE PERSPECTIVE OF THE ORPHANS' COURT JUDGE

- **ENGAGEMENT**
- **DUE PROCESS**
- **CHANGE FOR CHANGE'S SAKE?**
- **STATUS QUO**
- **IMPROVED GUARDIAN EXPERIENCE/RELIEVE ANXIETY**
- **IMPROVE EXPERIENCE FOR IP**

STATISTICS

- **140 Review Hearings (thus far)**
- **81 - Guardians of the Estate Terminated**
- **48 - No Changes**
- **1 - New Guardian Appointed for the Person and the Estate**
- **1 - Guardian of the Estate and Person Terminated**
- **2 - Continued Generally**
- **2 - Additional Review Hearings**
- **2 - Appointed Limited Guardians of the Estates**
- **1 - Limited Guardian of the Estate Appointed, but Plenary Guardian of the Person Remains the Same**
- **2 - Transferred to Another County**

TAKEAWAYS

- **ENGAGEMENT ISN'T A NEGATIVE**
- **THOUGHTFUL REVIEW CAN LEAD TO BETTER OUTCOMES**
- **ADVOCACY REMAINS VITAL TO THE PROCESS**
- **RIGHTSIZING GUARDIANSHIP ALLOWS FOR A BETTER FOCUS ON THE REPORTING PROCESS**

20 PA.C.S.A. § 5511

(a.1) Appointment of counsel.--

(1) If the petitioner under subsection (a) is aware that the alleged incapacitated person is represented by counsel, the petitioner shall advise the court that the alleged incapacitated person is represented by counsel at the time of filing the petition or as soon as the petitioner becomes aware of the representation.

(2) Regardless of the ability of the alleged incapacitated person to pay, the court shall appoint counsel to represent the alleged incapacitated person in any matter for which counsel has not been retained by the alleged incapacitated person, including in all proceedings under subsection (a) and in any subsequent proceedings to consider, modify or terminate a guardianship. Appointed counsel shall be qualified by experience or training and shall act without delay under the circumstances.

(3) Counsel for an alleged incapacitated person shall, as far as reasonably possible, maintain a normal client - attorney relationship with the client. Counsel shall advocate for the client's expressed wishes and consistent with the client's instructions, to the extent the client is able to express wishes and provide instructions. Counsel shall comply with the Rules of Professional Conduct governing the attorney -client relationship. Retained or appointed counsel may not act as guardian ad litem for the alleged incapacitated person. If the court determines that a guardian ad litem is necessary, the court shall make a separate appointment. Appointed counsel shall meet with the alleged incapacitated person as soon as reasonably possible after the appointment. Within five days of the meeting, appointed counsel shall file with the court a certification of the time and place that the meeting occurred.

20 PA.C.S.A. § 5512.1 DETERMINATION OF INCAPACITY AND APPOINTMENT OF GUARDIAN

(a) Determination of incapacity.--In all cases, the court shall consider and make specific findings of fact concerning:

- (1) The nature of any condition or disability which impairs the individual's capacity to make and communicate decisions.
- (2) The extent of the individual's capacity to make and communicate decisions.
- (3) The need for guardianship services, if any, in light of such factors as the availability of family, friends and other supports to assist the individual in making decisions and in light of the existence, if any, of less restrictive alternatives. . . .
 - (i) Advance directives such as durable power of attorney or trusts.
 - (ii) Living wills.
 - (iii) Health care powers of attorney.
 - (iv) Health care representatives.
 - (v) Financial powers of attorney.
 - (vi) Trusts, including special needs trusts.
 - (vii) Representative payees for individuals receiving Social Security benefits.
 - (viii) Pennsylvania Achieving a Better Life Experience accounts.
 - (ix) Mental health advance directives.

20 PA.C.S.A. § 5502 PURPOSE OF CHAPTER

- **Recognizing that every individual has unique needs and differing abilities, it is the purpose of this chapter to promote the general welfare of all citizens by establishing a system which permits incapacitated persons to participate as fully as possible in all decisions which affect them, which assists these persons in meeting the essential requirements for their physical health and safety, protecting their rights, managing their financial resources and developing or regaining their abilities to the maximum extent possible and which accomplishes these objectives through the use of the least restrictive alternative; and recognizing further that when guardianship services are necessary, it is important to facilitate the finding of suitable individuals or entities willing to serve as guardians.**