

FIRST JUDICIAL DISTRICT OF PENNSYLVANIA

JOINT GENERAL COURT REGULATION
COURT OF COMMON PLEAS
TRIAL AND ORPHANS' COURT DIVISIONS
No. 2000-02

Procedure for the Appointment of a Guardian and Obtaining Approval to Provide Medical Treatment for Alleged Incapacitated Persons and Minors Subject to the Jurisdiction of the Orphans' Court Division

Emergency requests for court authorization to perform medical procedures on alleged incapacitated persons, and in some cases involving minors, are being made with increasing frequency. In order to protect the rights of all parties involved, and to clarify the procedure to be utilized in seeking judicial intervention, the Court has adopted the policy set forth hereunder.

1. **Necessity for Court Intervention.** A minor is not sui juris, and thus may not provide informed consent. A parent or guardian must provide the requisite consent to authorize the performance of any medical procedures on the minor. Conversely, an adult is deemed to be competent to authorize any medical procedure. Only where the competency of an adult is at issue must the appointment of a guardian be sought.

(a) **Adults.** The jurisdiction of the court of common pleas over the adjudications of incompetency and the appointment of guardians **must** be exercised through the Orphans' Court Division. *See* 20 Pa.C.S. § 711. In Philadelphia County, the Orphans' Court Division is the only appropriate Division through which the appointment, control and removal of the guardian of the person of any incapacitated person may be exercised. *See* 20 Pa.C.S. § 712(2). Thus, requests for leave to perform medical treatment, if necessary due to the individuals' inability to give informed consent, must be filed in the Orphans' Court, in conjunction with the request to appoint a guardian for the person.

(b) **Minors.** Minors may be subject to the jurisdiction of the Family Court Division as well as the Orphans' Court Division. The within Joint General Court Regulation only controls those instances where the request to appoint a guardian is filed in the Orphans' Court Division. The current practice in the Family Court Division is not changed.

2. **Place to File the Request.**

(a) **During Court Hours.** All Petitions for the purposes set forth herein shall be filed in the Orphans' Court Division, through the Clerk of Orphans' Court, 415 City Hall, Philadelphia, PA.

(b) **After Normal Court Hours.** In the event of an unforeseen emergency occurring after normal court hours, a petition may be filed with the weekly emergency Common Pleas Court Judge, appointed by the President Judge of the Court of Common Pleas, by contacting the City Hall Operator at (215)686-5665 and asking for the Common Pleas Court Emergency Judge. The Emergency Judge **shall** be advised by the petitioner, counsel or the caller whether proceedings involving the adult or minor were commenced or are pending in any Court, **and** whether the request raised with the Emergency Judge has been addressed in any tribunal. If the petition is accepted by the Emergency Judge, a hearing must be held by the Emergency Judge before an order or decree may be issued.

3. **Petition Requirements.**

(a) **During Court Hours.** The petition shall be filed in compliance with the Pennsylvania Orphans' Court Rules, the Philadelphia County Orphans' Court Rules, and the applicable provisions of the Probate, Estates and Fiduciaries Code, 20 Pa.C.S. 101 et seq. At Petitioner's request, the Orphans' Court may appoint a limited or plenary guardian as authorized by 20 Pa.C.S. § 5512.1, or an emergency guardian, as authorized by 20 Pa.C.S. § 5513.

(b) **During Non-Court Hours.** The weekly Emergency Judge, exercising the jurisdiction of the Orphans' Court Division, may appoint an emergency guardian as provided by 20 Pa.C.S. § 5513 provided that: the request is made after non-court hours; a petition, substantially as required in section (3) (a), is filed with the Emergency Judge; a hearing is held; and a determination is made that clear and convincing evidence exists which establishes that the person lacks capacity, is in need of an emergency guardian and the failure to appoint an emergency guardian will result in irreparable harm to the alleged incapacitated person. Any such appointment will be in effect until the next court day, and the petition and Decree issued by the Emergency Judge must be filed with the Clerk of the Orphans' Court, together with any other appropriate petition to extend the appointment, if necessary.

4. **Decree Appointing Guardian.** The Decree appointing the guardian shall set forth the guardian's powers, duties and liabilities.

5. **Effective Date.** This Joint General Court Regulation shall become effective thirty (30) days after publication in the *Pennsylvania Bulletin* . Any Petition hereafter filed in the Trial Division seeking the relief set forth herein shall be administratively transferred to the Orphans' Court Division by the Prothonotary, or Civil Administration Clerks, and a notation shall be entered on the dockets that such transfer has been accomplished at the direction of the President Judge of the Court of Common Pleas as provided in this Regulation.

This General Court Regulation is promulgated in accordance with 20 Pa.C.S. §§ 711, 712(2), Pa. O.C. Rule 1.2 and Pa.R.Civ.P. No. 239. The original Joint General Court Regulation shall be filed with the Prothonotary in a docket maintained for General Court Regulations issued by the President Judge of the Court of Common Pleas, and certified copies shall be submitted to the Clerk of Orphans' Court, the Civil Procedural Rules Committee, the Orphans' Court Procedural Rules Committee, the Administrative Office of Pennsylvania Courts, and the Legislative Reference Bureau. Copies of the Regulation shall also be submitted to American Lawyer Media, The Legal Intelligencer, Jenkins Memorial Law Library and the Law Library for the First Judicial District. The Joint General Court Regulation will also be posted on the First Judicial District's website at <http://courts.phila.gov>.

JOHN W. HERRON
ADMINISTRATIVE JUDGE
TRIAL DIVISION

Date: March 9, 2000

PETRESE B. TUCKER
ADMINISTRATIVE JUDGE
ORPHANS' COURT DIVISION

Date: March 9, 2000

ALEX BONAVIDACOLA
PRESIDENT JUDGE
COURT OF COMMON PLEAS

Date: March 9, 2000