

SUPREME COURT OF PENNSYLVANIA
Orphans' Court Procedural Rules Committee

NOTICE OF PROPOSED RULEMAKING

Proposed Amendment of Pa.R.O.C.P. 14.8

The Orphans' Court Procedural Rules Committee is considering proposing to the Supreme Court of Pennsylvania the amendment of Pa.R.O.C.P. 14.8 governing guardianship reporting. Pursuant to Pa.R.J.A. 103(a)(1), the proposal is being published in the *Pennsylvania Bulletin* for comments, suggestions, or objections prior to submission to the Supreme Court.

Any report accompanying this proposal was prepared by the Committee to include the rationale for the proposed rulemaking. It will neither constitute a part of the rules nor be officially adopted by the Supreme Court.

Additions to the text of the proposal are bolded and underlined; deletions to the text are bolded and bracketed.

The Committee invites all interested persons to submit comments, suggestions, or objections in writing to:

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All communications in reference to the proposal should be received by **October 11, 2022**. E-mail is the preferred method for submitting comments, suggestions, or objections; any e-mailed submission need not be reproduced and resubmitted via mail. The Committee will acknowledge receipt of all submissions.

By the Orphans' Court Procedural Rules Committee,

Hon. Emil A. Giordano (ret.)
Chair

Rule 14.8. Guardianship Reporting, Monitoring, Review, and Compliance.

- (a) **Reporting.** A guardian shall file the following reports with the clerk:
- (1) An inventory by the guardian of the estate within 90 days of such guardian's appointment;
 - (2) An annual report by the guardian of the estate of an incapacitated person one year after appointment and annually thereafter;
 - (3) An annual report by the guardian of the person one year after appointment and annually thereafter;
 - (4) A final report by the guardian of the person and the guardian of the estate within 60 days of the death of the incapacitated person, an adjudication of capacity, a change of guardian, or the expiration of an order of limited duration; and
 - (5) A final report from the guardian of the person and the guardian of the estate upon receipt of the provisional order from another state's court accepting transfer of a guardianship.

[Note: See Pa.R.J.A. No. 510 governing the filing of inventories and annual reports online using the Guardianship Tracking System.]

- (b) **Notice of Filing.** If, pursuant to Rule 14.7(a)(1)(iv), the order appointing the guardian identifies the person or persons entitled to receive notice of the filing of any report set forth in **[paragraph (a) subdivision (a)]**, the guardian shall serve a notice of filing within ten days after filing a report using the form provided in the Appendix to these **[Rules] rules**. Service shall be in accordance with Rule 4.3.
- (c) **Design of Forms.** The Court Administrator of Pennsylvania, in consultation with the Orphans' Court Procedural Rules Committee and the Advisory Council on Elder Justice in the Courts, shall design and publish forms necessary for the reporting requirements set forth in **[paragraph (a) subdivision (a)]**.
- (d) **Monitoring.** The clerk or the court's designee shall monitor the guardianship docket to confirm the guardian's compliance with the reporting requirements set forth in **[paragraph (a) subdivision (a)]**.
- (e) **Review.** The court or its designee shall review the filed reports.

- (f) **Compliance.** To ensure compliance with these reporting requirements:
- (1) If any report is deemed incomplete or is more than 20 days delinquent, then the clerk or the court's designee shall serve notice on the guardian directing compliance within 20 days, with a copy of the notice sent to the court and the guardian's counsel, if represented.
 - (2) If the guardian fails to comply with the reporting requirements within 20 days of service of the notice, then the clerk or the court's designee shall file and transmit a notice of deficiency to the adjudicating judge and serve a notice of deficiency on those persons named in the court's order pursuant to Rule 14.7(a)(1)(iv) as being entitled to receive a notice of filing.
 - (3) The court may thereafter take such enforcement procedures as are necessary to ensure compliance.
 - (4) After reasonable enforcement procedures have been completed by the court, the court shall enter an order that:**
 - (i) includes clearly enumerated reasons that the guardian or former guardian cannot be compelled to comply with any filing requirements;**
 - (ii) includes an explanation of the actions taken by the court to attempt enforcement of the filing requirements; and**
 - (iii) directs that a successor guardian or designee of the court may file the delinquent filing with the clerk and it shall be recorded as such by the clerk; or**
 - (iv) directs the order issued by the court will be filed by the clerk in lieu of the delinquent filing and recorded as such by the clerk.**

[Explanatory] Comment: See Pa.R.J.A. 510 governing the filing of inventories and annual reports online using the Guardianship Tracking System. The reporting forms are available at <http://www.pacourts.us/forms/for-the-public/orphans-court-forms>.

[This Rule is silent] Subdivision (f)(3) provides the court with broad discretion as to the manner of proceeding when reports are deficient or warrant further

investigation, or when the guardian is recalcitrant after being given notice by the clerk or the court's designee. **[In its discretion, the] The** court may order further documentation, conduct a review hearing, or take further action as may be deemed necessary, including, but not limited to, removal of the guardian, or contempt proceedings. **If enforcement measures taken pursuant to subdivision (f)(3) are unsuccessful, the court shall enter the order prescribed by subdivision (f)(4). Reasons for finding the guardian or former guardian cannot be compelled to comply with any filing requirements include, but are not limited to, the guardian or former guardian cannot be located, is located outside the Commonwealth, is deceased, or remains unresponsive to enforcement measures.**

SUPREME COURT OF PENNSYLVANIA
Orphans' Court Procedural Rules Committee

PUBLICATION REPORT

Proposed Amendment of Pa.R.O.C.P. 14.8

The Orphans' Court Procedural Rules Committee ("Committee") is considering proposing to the Supreme Court of Pennsylvania the amendment of Pa.R.O.C.P. 14.8 governing guardianship reporting. This proposal would create a mechanism for a court to enter an order relating to a delinquent annual or final report when the court has determined through enforcement procedures that the responsible guardian cannot be compelled to comply with any filing requirements.

Background

Pa.R.O.C.P. 14.8, relating to guardianship reporting, monitoring, review, and compliance, reflects the statutory requirements of 20 Pa.C.S. §§ 5142, 5521, and 5921. These requirements include: (1) the filing of an annual report by the guardian of the estate and the guardian of the person one year after appointment and annually thereafter; and (2) a final report by the guardian of the estate and the guardian of the person following certain events. See 20 Pa.C.S. § 5521(c); Pa.R.O.C.P. 14.8(a).

The clerk of the orphans' court, or the court's designee, is required to monitor the guardianship docket to ensure compliance with reporting requirements for annual and final reports. See 20 Pa.C.S. § 5521(c)(1)–(2); Pa.R.O.C.P. 14.8(d). If a report is deficient or not timely filed, the guardian receives notice to comply with the reporting requirements. See Pa.R.O.C.P. 14.8(f)(1). If the guardian continues to fail to comply, a notice of deficiency is transmitted to the judge. See 20 Pa.C.S. § 5521(c)(3); Pa.R.O.C.P. 14.8(f)(2). "The court *may* thereafter take such enforcement procedures as are necessary to ensure compliance." Pa.R.O.C.P. 14.8(f)(3) (emphasis added), *compare* 20 Pa.C.S. § 5521(c)(3) ("The court *shall* take appropriate enforcement action against such guardians.") (emphasis added). Such actions could include, in the court's discretion, ordering further documentation, conducting a review hearing, removing the guardian, or initiating contempt proceedings. Pa.R.O.C.P. 14.8, Comment.

Proposal

The Committee received a request from the Advisory Council on Elder Justice in the Courts ("Council") relating to delinquent annual or final reports and available compliance measures under Pa.R.O.C.P. 14.8(f). Specifically, the Council observed there are situations when enforcement actions are unable to compel a guardian responsible for filing a report to comply with that requirement or enforcement actions are

unsuccessful. For example, the guardian may be deceased, incapacitated, beyond the court's jurisdiction, or otherwise unavailable. There also may be circumstances when the guardian is unwilling to comply despite the imposition of the court's contempt power. With this latter illustration, the guardian may be family member of the incapacitated person and escalating or extending sanctions against the guardian may not be in the best interest of the incapacitated person. Please note that, notwithstanding the absence of a report, a recalcitrant guardian may still be subject to criminal prosecution or surcharge through other proceedings.

When the court appoints a successor guardian, the successor may be unable to complete and verify the required report because of incomplete record keeping by the prior guardian. However, the successor guardian of an estate would be required to file an inventory within 90 days of appointment so there is assurance that the status of current estate will be known and subject to comparison with prior reports.

Current subdivision (f) is silent on what is to occur if a required report cannot be filed for the covered period. The Council offered revised rule text to add subdivision (f)(4) to authorize the court to enter an order citing the reasons a guardian or former guardian cannot be compelled to comply with any filing requirements and either directing a successor guardian or designee of the court to file the report or entering the order in lieu of the delinquent report.

The Committee observes the statutory reporting requirements, as reflected in Pa.R.O.C.P. 14.8(a), are mandatory. Yet, 20 Pa.C.S. § 5521, which requires the court "to take appropriate enforcement action" obviously contemplates non-compliance with those requirements. What neither the statute nor the rules contemplate is when enforcement action does not yield compliance due to inability or unwillingness of the recalcitrant guardian. The Council's proposed subdivision (f)(4) attempts to address this void.

The Committee anticipates that the subdivision (f)(4)'s "order in lieu of report" will be used sparingly given efforts to appoint qualified guardians and to educate guardians as to their responsibilities. The Committee is receptive to other procedural proposals to attempt to detect recalcitrant guardians and facilitate substitution earlier in the guardianship.

The Committee invites all comments, concerns, and suggestions regarding this proposal.