

NOTICE TO THE BAR

PROPOSED REVISED AND NEW MODEL FORMS - GUARDIANSHIP OF INCAPACITATED ADULTS – PUBLICATION FOR COMMENT

The Supreme Court invites written comments on proposed revised and new model forms for use in matters related to guardianship of incapacitated adults published with this notice. The proposed model forms have been created or revised in support of, and as an adjunct to, proposed amendments to the New Jersey Rules of Court related to guardianship of incapacitated adults. Those proposed amended court rules were published in the 2014-2016 Report of the Supreme Court Civil Practice Committee, which is available at <http://www.judiciary.state.nj.us/reports2016/index.htm>.

The proposed model forms, which are here published for comment, are as follows:

- (1) Adult Guardianship Case Information Statement (new);**
- (2) Certification of Assets (new);**
- (3) Certification of Physician or Psychologist (new);**
- (4) Order Fixing Guardianship Hearing Date and Appointing Attorney for Alleged Incapacitated Person (revised);**
- (5) Judgment of Incapacity and Appointment of Guardian(s) of the Person and Estate (revised);**
- (6) Judgment of Incapacity and Appointment of Guardian(s) of the Person (new); and**
- (7) Motion Kit for Self-Represented Litigants (new).**


Please send any comments on the proposed model forms in writing by **Friday, August 26, 2016** to:

Glenn A. Grant, J.A.D.
Acting Administrative Director of the Courts
Rules Comments – Guardianship Forms
Hughes Justice Complex; P.O. Box 037
Trenton, New Jersey 08625-0037

Comments on the proposed model forms may also be submitted via Internet e-mail to the following address: Comments.Mailbox@njcourts.gov.

The Supreme Court will not consider comments submitted anonymously. Thus, those submitting comments by mail should include their name and address (and those submitting comments by e-mail should include their name and e-mail address.) Comments are subject to public disclosure upon receipt.

After the close of the comment period these forms would be promulgated to coincide with or follow the September 1, 2016 effective date of the related proposed amended court rules.



Glenn A. Grant, J.A.D.
Acting Administrative Director of the Courts

Dated: July 26, 2016

Filing Attorney Information or Pro Se Litigant:

Name _____
NJ Attorney ID Number _____
Address _____
Telephone Number _____

**Superior Court of New Jersey
Chancery Division - Probate Part**

County _____
Docket Number _____

In the Matter of,

Name of Alleged Incapacitated Person (AIP)
an Alleged Incapacitated Person

**Civil Action
Certification of Assets**

I, _____, of full age, hereby certify as follows:

This certification is made by me in support of an application for a declaration of incapacity for _____ (Check one)

The alleged incapacitated person, _____, possesses no property, or possesses only Social Security benefits and/or funds held in trust for his/her benefit. (Note: If you select this option, check "None" in the following schedules)

OR

The following schedules contain a complete and accurate statement and valuation of all real and personal property and income of _____, based upon my diligent inquiry.

Schedule A: Real Property.

None

All interests in real property including real property held in common or jointly with other(s) and, if held jointly, describe the interest.

#	Description: Address (include county and state)	Municipal Tax Assessed Value	Market Value
1.		\$	\$
2.		\$	\$
Total Schedule A			\$

Schedule B: Stocks, Bonds, Mutual Funds, Securities and Investment Accounts.

None

Include all interests in stocks, bonds, mutual funds, securities and investment accounts including interests held in common or jointly with other(s) and, if held jointly, describe the interest.

#	Description (include name of financial institution, account type, number of shares or last four digits of account and date value fixed)	Face Value	Market Value
1.		\$	\$
2.		\$	\$
Total Schedule B			\$

Schedule C: Money on Hand.

None

Checking and savings accounts and certificates of deposit in banks and notes or other indebtedness due the alleged incapacitated person.

#	Description (include name of financial institution, account type, last four digits of account and date value fixed)	Value
1.		\$
2.		\$
Total Schedule C		\$

Schedule D: Pensions, retirement accounts

None

IRA's, 401(k), annuities, profit sharing plans, etc. Include last four digits of account.

#	Description (include name of financial institution, account type, last four digits of account and date value fixed)	Value
1.		\$
2.		\$
Total Schedule D		\$

Schedule E: Miscellaneous Personal Property.

None

Tangible personal property, motor vehicles, recreation vehicles, employment bonus or award, interest in a partnership or unincorporated business, articles or collections have either artistic or intrinsic value, etc.

#	Description	Value
1.		\$
2.		\$
Total Schedule E		\$

Schedule F: Liabilities/Encumbrances.

None

If any asset listed in this certification has a secured associated debt, such as a mortgage or a car loan, indicate below. List all other debts.

#	Description	Encumbrance Amount
1.		\$
2.		\$
Total Schedule F		\$

Schedule G: Sources of Monthly Income.

None

#	Description	Value
1.		\$
2.		\$
Total Schedule G		\$

I hereby certify and say that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.

Date

Signature

Print Name

Filing Attorney Information or Pro Se Litigant:

Name _____

NJ Attorney ID Number _____

Address _____

Telephone Number _____

**Superior Court of New Jersey
Chancery Division - Probate Part**

County _____

Docket Number _____

In the Matter of,

_____,
Name of Alleged Incapacitated Person (AIP)

an Alleged Incapacitated Person

Civil Action

**Certification of
Physician or Psychologist**

I, _____, (check one) M.D., D.O., Ph.D., Psy.D., of full age,
hereby certify as follows:

1. This certification is made by me in support of an application for a declaration of incapacity for _____, an alleged incapacitated person.
2. _____ was born on _____. S/He is ____ years old. S/He weighs _____ pounds and is approximately _____ in height. S/He has _____ hair and _____ eyes.
3. I am a (check one) physician psychologist licensed to practice in the State of New Jersey. I currently maintain an office at _____. I am, and have been, in the actual practice of _____ for ____ years.
4. I earned a degree in _____, from _____ in _____. I received my license to practice in the State of New Jersey in _____. My area of specialty is _____.
5. I examined _____, on _____. This examination took place at _____.
6. Select one:
 I have been treating _____ for _____, since _____.

OR

- I am not treating _____ for _____, but have merely examined her/him for the purpose of evaluating her/his mental capacity.

7. During my examination, I observed that s/he was (describe findings)

8. As a result of my examination and a review of her/his history, my diagnosis is _____.
The prognosis for recovery is _____.

9. In my opinion, _____ is:
 unfit and unable to govern herself/himself and to manage her/his affairs in **all** areas.

OR

unfit and unable to govern herself/himself and to manage her/his affairs in **some** areas but **does have capacity** in the areas listed below (select all that apply):

medical decision making legal decision making residential decision making

educational decision making vocational decision making

other (please describe) _____

10. My opinion is based upon the examination of _____, and the history of her/his condition. The factual basis for my diagnosis and prognosis, and my opinion as to any areas in which the individual retains capacity, is:

11. It is my opinion that the alleged incapacitated person (check one) is is not capable of attending the court hearing in this matter. If the alleged incapacitated person is not capable of attending the court hearing the following are the reasons for the individual's inability:

12. I am not related either through blood or marriage, to _____, the alleged incapacitated person, nor to a proprietor, director or chief executive officer of any institution for the care and treatment of the mentally ill in which the said _____, is living or in which it is proposed to place her/him; nor am I professionally employed by the management thereof as a resident physician or psychologist; nor am I financially interested therein.

I hereby certify and say that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.

Date

Signature

Print Name

Filing Attorney Information or Pro Se Litigant:

Name _____

NJ Attorney ID Number _____

Address _____

Telephone Number _____

In the Matter of,

an Alleged Incapacitated Person

**Superior Court of New Jersey
Chancery Division - Probate Part**

County _____

Docket Number _____

Civil Action

**Order Fixing Guardianship Hearing
Date and Appointing Attorney for
Alleged Incapacitated Person**

THIS MATTER having been opened to the court by _____, plaintiff(s), for a judgment declaring _____, an incapacitated person and appointing a guardian of the person and/or estate (property) pursuant to applicable New Jersey statutes and Rules of Court, and for such other relief as the court may deem just, and the court having read and considered the verified complaint, the supporting certifications or affidavits, and all other papers and pleadings filed in this matter, and for good cause shown:

IT IS on this _____ day of _____, 20____, **ORDERED** that:

1. This matter be set down for hearing before this court at the _____ County Court House, _____, New Jersey on the _____ day of _____, 20____, at _____ a.m. p.m. or as soon thereafter as plaintiff may be heard, to determine the issues of incapacity of _____ and the appointment of a guardian.

2. A copy of the verified complaint, supporting affidavits or certifications and this Order, shall be served on the alleged incapacitated person, by personally serving the same at least 20 days prior to the date scheduled for the hearing.

3. A separate notice shall be personally served on the alleged incapacitated person stating that if he/she desires to oppose the action he/she may appear either in person or by attorney and may demand a trial by jury.

4. A copy of the verified complaint, supporting affidavits or certifications and this Order shall also be served on all the next-of-kin and other parties-in-interest identified in the verified complaint by certified mail, return receipt requested at least 20 days prior to the date scheduled for the hearing. If applicable, a copy of the verified complaint, supporting affidavits or certifications and this Order shall be served on the County Adjuster and the Regional Administrator for the Division of Developmental Disabilities.

5. _____, Esquire be and hereby is appointed as attorney for the alleged incapacitated person. Said attorney shall personally interview the alleged incapacitated person, examine the medical records, make inquiry of persons having knowledge of the alleged incapacitated person's circumstances, his/her physical and mental state and his/her property, make reasonable

inquiries to locate any Will, powers of attorney or health care directives previously executed by the alleged incapacitated person, or to discover any interests the alleged incapacitated person may have as a beneficiary of a will or trust. Said attorney shall prepare a written report of findings and recommendations (and, if applicable, an affidavit of services) to be filed with the Court and with the plaintiff(s) and other parties who have filed a written response at least ten (10) days prior to the hearing.

SELECT ONE:

- The attorney appointed to represent the alleged incapacitated person is appointed *pro bono* (without cost);

OR

- The attorney appointed to represent the alleged incapacitated person is to be paid. Pursuant to R. 4:86-4(d), the court may direct that counsel be paid from the assets of the alleged incapacitated person, or if such assets are insufficient, then from the party seeking guardianship or otherwise.

6. If the alleged incapacitated person obtains counsel other than that appointed by the above paragraph, such counsel shall notify the court and appointed counsel at least ten (10) days prior to the hearing date.

7. A copy of the verified complaint, supporting affidavits or certifications and this Order shall be immediately served on the attorney for the alleged incapacitated person by personal service, certified mail, return receipt requested. If acceptable to the court-appointed attorney, service may be via facsimile, by regular mail, and/or by email.

8. The attorney above appointed to represent the alleged incapacitated person is hereby regarded as a HIPAA (Health Insurance Portability and Accountability Act) representative for the alleged incapacitated person and shall have the right and power to examine records, including medical and psychiatric records, pertaining to the alleged incapacitated person and to visit and confer with the alleged incapacitated person.

9. The plaintiff shall file with the County Surrogate a proof of service of the pleadings required by this order to be served on the alleged incapacitated person and the parties in interest no later than ten (10) days before the date this matter is scheduled to be heard.

10. Any next-of-kin and other party-in-interest who wishes to be heard with respect to any of the relief requested in the verified complaint shall file with the Surrogate of _____ County at the following location: _____, together with the applicable filing fee and serve upon the attorney for the plaintiff and the attorney for the alleged incapacitated person at the address set forth above, a written answer, an answering affidavit, a motion returnable on the date this matter is scheduled to be heard or other written response ten (10) days before the date this matter is scheduled to be heard.

11. Any proposed guardian shall complete guardianship training as promulgated by the Administrative Director of the Courts, by viewing or otherwise reviewing the Court Appointed Guardian Tutorial posted on the Judiciary's website at njcourts.gov/guardianship and receiving copies of the relevant guardianship training guide(s).

J.S.C.

Plaintiff Information:

Name _____

Address _____

Telephone Number _____

In the Matter of the Estate of,

_____,

an Incapacitated Person

Superior Court of New Jersey
Chancery Division _____ County

Probate Part

Docket No. _____

Civil Action

**Judgment of Incapacity and Appointment of
Guardian(s) of the Person and Estate**

THIS MATTER being opened to the Court by _____, plaintiff(s), in the presence of _____, attorney for the then alleged incapacitated person, and _____, the then alleged incapacitated person, and no demand having been made for a jury trial, and the Court sitting without a jury having found from the report of counsel together with the report of the examining physician or psychologist and other supporting document and proofs given that _____ is an incapacitated person who lacks sufficient capacity to govern himself/herself or to manage his/her affairs, and it further appearing that _____ consents to serve as Guardian(s) of the Person and Estate (Property) of _____, and for good cause shown:

IT IS on this _____ day of _____, 20____, *ORDERED AND ADJUDGED* that:

1. GUARDIANSHIP TYPE: _____ is an incapacitated person and is unfit and unable to govern himself/herself and manage his/her affairs. This is a guardianship:

As to the Person General Limited
As to the Estate General Limited

Limited Guardianship: _____ is able at this time to govern himself/herself and manage his/her own affairs with respect to the following areas:

Check if applicable:

The subject of this guardianship is incapacitated as a result of developmental disability.

Firearms: Pursuant to 18 U.S.C. 922(g)(4), the incapacitated person does not retain the right to possess firearms.

2. GUARDIAN APPOINTMENT: _____ be and hereby is/are appointed Guardian(s) of the Person and Estate of _____ and that Letters of Guardianship of the Person and Estate be issued upon his/her/their (a) qualifying according to law, (b) acknowledging to the Surrogate completion of guardianship training and receipt of the guardianship training guides, and (c) unless waived for extraordinary reasons, entering into a surety bond unto the Superior Court of New Jersey in the amount of \$ _____, which bond shall contain the conditions set forth in *N.J.S.A.*

3B:15-7 and

R. 1:13-3. The court shall approve the bond as to form and sufficiency.

3. Upon qualifying, the Surrogate shall issue Letters of Guardianship of the Person and Estate to _____ and thereupon _____ be and hereby is/are authorized to perform all the functions and duties of a Guardian of the Person and Estate as allowed by law, except as limited herein or in areas where the incapacitated person retains decision making rights.

4. In exercising the authority conferred by this Judgment, the guardian(s) shall:

- Ascertain and consider those characteristics of the incapacitated person which define his/her uniqueness and individuality, including but not limited to likes, dislikes, hopes, aspirations, and fears;
- Encourage the incapacitated person to express preferences and participate in decision-making;
- Give appropriate deference to the expressed wishes of the incapacitated person;
- Protect the incapacitated person from injury, exploitation, undue influence, and abuse;
- Promote the incapacitated person's right to privacy, dignity, respect, and self-determination; and
- Make reasonable efforts to maximize opportunities and individual skills to enhance self-direction.

5. GUARDIAN LIMITATIONS: The authority of the guardian(s) is limited as follows, and all limitations shall be stated in the Letters of Guardianship.

The Guardian(s) of the Estate may not alienate, mortgage, transfer or otherwise encumber or dispose of real property without court approval.

6. The guardian(s) appointed hereunder shall be considered the personal representatives under the Standards for Privacy of Individually Identifiable Health Information ("Privacy Rule") issued pursuant to the Health Insurance Portability and Accountability Act of 1996 ("HIPAA"), and shall have full and complete access to all records of _____.

7. INVENTORY: The Guardian(s) shall file with the Court within 90 days, an inventory of all of the incapacitated person's property and income. Said inventory shall be available for inspection by any party in interest in this guardianship action, upon request to the Surrogate's Court to review the inventory.

8. REPORTING AS TO PERSON:

_____, as Guardian(s) of the Person, is/are hereby directed to file annually a report of the well-being of _____, along with a Report of Guardian Cover Page.

OR

The filing of a report of well-being is hereby waived for the reasons stated on the record.

9. REPORTING AS TO ESTATE (PROPERTY):

_____, as Guardian(s) of the Estate, is/are directed to file annually, along with a Report of Guardian Cover Page.

Formal accounting (presumptive if guardianship estate valued over \$5,000,000);

Comprehensive accounting (presumptive if guardianship estate valued \$1,000,000 - \$5,000,000);

- EZ accounting (presumptive if guardianship estate valued under \$1,000,000); or
- Copy of the Social Security Representative Payee Report (presumptive if guardian is also representative payee for Social Security benefits and incapacitated person has no other assets or income);

OR

- The filing of a Periodic Accounting is hereby waived for the reasons stated on the record.

If an informal accounting is ordered, said Periodic Accounting does not replace or satisfy the duty to file and bring on for approval a formal accounting as required by law or as ordered by the court.

10. The report(s) is/are to be filed not later than fourteen (14) days after the anniversary date of this judgment with the County Surrogate. The report(s) to be filed by the guardian(s) shall be filed by the Surrogate and shall be made available by the Surrogate to any party in interest entitled to review pursuant to R. 1:38-3(e), as well as to the following parties or persons: _____, and the reference in this Judgment shall constitute a showing of a special interest as required by R. 1:38-3(e).
 11. The Guardian(s) of the Person and Estate is/are hereby directed to advise the County Surrogate within ten (10) days of any changes in the address or telephone number of himself or herself or the incapacitated person or within thirty (30) days of the incapacitated person's death or of any major change in status or health. If the incapacitated person dies during the guardianship, the Guardian(s) will notify the Surrogate in writing and forward a copy of the death certificate upon receipt.
 12. The Guardian(s) of the Person and Estate is/are agent(s) of the court and shall cooperate fully with any court staff, Surrogate staff, or volunteers until the guardianship is terminated by the death or return to capacity of _____, or the Guardian's death, removal or discharge.
 13. COUNSEL FOR INCAPACITATED PERSON:
 - The court-appointed attorney for the alleged incapacitated person, having reported to the court and advocated on behalf of the incapacitated person, is hereby discharged with the appreciation of the court for his or her *pro bono* services, with no further obligation to act as attorney for the incapacitated person
- OR**
- The court having reviewed the affidavit or certification of services of _____, Esquire, previously filed with the court, the Guardian of the Person shall pay _____, Esquire, court-appointed attorney for the then alleged incapacitated person, a fee of \$_____ for professional services rendered and \$_____ for expenses incurred, which disbursements are hereby approved. Court-appointed counsel, having reported to the court and advocated on behalf of the incapacitated person, be and hereby is discharged with no further obligation to act as attorney for the incapacitated person.
14. Any power of attorney previously executed by _____ be and hereby is revoked. Any advance directive for healthcare previously executed by _____ is voided as to proxy designation, but the guardian(s) shall be guided by the preferences expressed in such advance directive.
 15. Plaintiff(s) shall serve a Judgment upon all interested parties and attorneys of record within seven (7) days of receipt

J.S.C.

Plaintiff Information:

Name _____

Address _____

Telephone Number _____

In the Matter of the Estate of,
_____,
an Incapacitated Person

Superior Court of New Jersey
Chancery Division _____ County

Probate Part

Docket No. _____

Civil Action

**Judgment of Incapacity and Appointment of
Guardian(s) of the Person**

THIS MATTER being opened to the Court by _____, plaintiff(s), in the presence of _____, attorney for the then alleged incapacitated person, and _____, the then alleged incapacitated person, and no demand having been made for a jury trial, and the Court sitting without a jury having found from the report of counsel together with the report of the examining physician or psychologist and other supporting document and proofs given that _____ is an incapacitated person who lacks sufficient capacity to govern himself/herself, and it further appearing that _____ consents to serve as Guardian(s) of the Person of _____, and for good cause shown:

IT IS on this _____ day of _____, 20____, *ORDERED AND ADJUDGED* that:

1. **GENERAL (FULL) GUARDIANSHIP:** _____, is an incapacitated person and is unfit and unable to govern himself/herself and manage his/her affairs in all areas.

OR

LIMITED GUARDIANSHIP: _____, is an incapacitated person and is unfit and unable to govern himself/herself and manage his/her affairs in all areas except that _____ is fully able at this time to govern himself/herself and manage his/her own affairs with respect to the following areas:

Check if applicable:

The subject of this guardianship is incapacitated as a result of developmental disability.

Firearms: Pursuant to 18 U.S.C. 922(g)(4), the incapacitated person **does not** retain the right to possess firearms.

2. **GUARDIAN APPOINTMENT:** _____ be and hereby is/are appointed Guardian(s) of the Person of _____ and that Letters of Guardianship of the Person be issued upon his/her/their (a) qualifying according to law, (b) acknowledging to the Surrogate completion of guardianship training and receipt of the guardianship training guides.

3. Upon qualifying, the Surrogate shall issue Letters of Guardianship of the Person to _____ and thereupon _____ be and hereby is/are authorized to perform all the functions and duties of a Guardian of the Person as allowed by law, except as limited herein or in areas where the incapacitated person retains decision making rights.

4. In exercising the authority conferred by this Judgment, the guardian(s) shall:

- Ascertain and consider those characteristics of the incapacitated person which define his/her uniqueness and individuality, including but not limited to likes, dislikes, hopes, aspirations, and fears;
- Encourage the incapacitated person to express preferences and participate in decision-making;
- Give appropriate deference to the expressed wishes of the incapacitated person;
- Protect the incapacitated person from injury, exploitation, undue influence, and abuse;
- Promote the incapacitated person's right to privacy, dignity, respect, and self-determination; and
- Make reasonable efforts to maximize opportunities and individual skills to enhance self-direction.

5. **GUARDIAN LIMITATIONS: If applicable:** the authority of the guardian(s) is limited as follows, and all limitations shall be stated in the Letters of Guardianship.

6. The guardian(s) appointed hereunder shall be considered the personal representatives under the Standards for Privacy of Individually Identifiable Health Information ("Privacy Rule") issued pursuant to the Health Insurance Portability and Accountability Act of 1996 ("HIPAA"), and shall have full and complete access to all records of _____.

7. REPORTING:

_____, as Guardian(s) of the Person, is/are hereby directed to file annually a report of the well-being of _____, along with a Report of Guardian Cover Page.

OR

The filing of a report of well-being is hereby waived for the reasons stated on the record.

8. The report is to be filed not later than fourteen (14) days after the anniversary date of this judgment with the County Surrogate. The report to be filed by the guardian(s) shall be filed by the Surrogate and shall be made available by the Surrogate to any party in interest entitled to review pursuant to R. 1:38-3(e), as well as to the following parties or persons: _____, and the reference in this Judgment shall constitute a showing of a special interest as required by R. 1:38-3(e).

9. The Guardian(s) of the Person is/are hereby directed to advise the County Surrogate within ten (10) days of any changes in the address or telephone number of himself or herself or the incapacitated person or within thirty (30) days of the incapacitated person's death or of any major change in status or health. If the incapacitated person dies during the guardianship, the Guardian(s) will notify the Surrogate in writing and forward a copy of the death certificate upon receipt.

10. The Guardian(s) of the Person is/are agent(s) of the court and shall cooperate fully with any court staff, Surrogate staff, or volunteers until the guardianship is terminated by the death or return to capacity of _____, or the Guardian's death, removal or discharge.

11. COUNSEL FOR INCAPACITATED PERSON:

- The court-appointed attorney for the alleged incapacitated person, having reported to the court and advocated on behalf of the incapacitated person, is hereby discharged with the appreciation of the court for his or her *pro bono* services, with no further obligation to act as attorney for the incapacitated person

OR

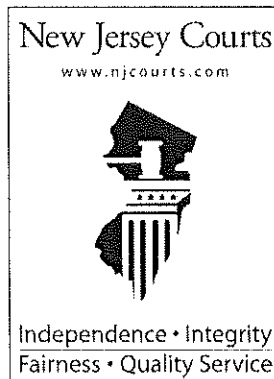
- The court having reviewed the affidavit or certification of services of _____, Esquire, previously filed with the court, the Guardian of the Person shall pay _____, Esquire, court-appointed attorney for the then alleged incapacitated person, a fee of \$_____ for professional services rendered and \$_____ for expenses incurred, which disbursements are hereby approved. Court-appointed counsel, having reported to the court and advocated on behalf of the incapacitated person, be and hereby is discharged with no further obligation to act as attorney for the incapacitated person.

12. Any power of attorney previously executed by _____ be and hereby is revoked. Any advance directive for healthcare previously executed by _____ is voided as to proxy designation, but the guardian(s) shall be guided by the preferences expressed in such advance directive.

13. Plaintiff(s) shall serve a Judgment upon all interested parties and attorneys of record within seven (7) days of receipt

J.S.C.

DRAFT



How to File a Motion in a Guardianship Case **(Superior Court of New Jersey - Chancery Division - Probate Part)**

Who Should Use This Packet?

You should use this packet if you want to ask the judge for a specific ruling or order after a guardianship is established. Any party or party-in-interest to a guardianship, including an incapacitated person or someone on his or her behalf, may bring a motion. The person bringing the motion is called the moving party. **Examples of motions in guardianship cases include:**

- Motion to modify guardianship protection (example – to reduce the amount of bond).
- Motion to modify guardian reporting requirements.
- Motion for review of a guardian’s conduct.
- Motion to review a guardianship.

Caution: Some guardianship cases are very complex and you should consider getting a lawyer. See information on page 2 entitled “Try to Get a Lawyer”.

Note: These materials have been prepared by the New Jersey Administrative Office of the Courts for use by self-represented litigants. The guides, instructions, and forms will be periodically updated as necessary to reflect current New Jersey statutes and court rules. The most recent version of the forms will be available at the county courthouse, the Surrogate’s Office, or at njcourts.gov. However, you are ultimately responsible for the content of your court papers. With limited exceptions, any paper filed with the court can be looked at by the public.

Completed forms are to be submitted to the Surrogate’s Office in the county where the guardianship case is filed. A list of Surrogate’s Offices is provided at njcourts.gov/guardianship.

Things to Think About Before You Represent Yourself in Court

Try to Get a Lawyer

The court system can be confusing and it is a good idea to get a lawyer if you can. The law, the proofs necessary to present your case, and the procedural rules governing cases in the Chancery Division, Probate Part are complex. Since the civil rights, well-being or financial security of an alleged or adjudicated incapacitated person may be at stake, many litigants appearing in the Chancery Division, Probate Part have a lawyer. It is recommended that you make every effort to obtain the assistance of a lawyer. If you cannot afford a lawyer, you may contact the legal services program in your county to see if you qualify for free legal services. Their telephone number can be found online or in your local yellow pages under "Legal Aid" or "Legal Services."

If you do not qualify for free legal services and need help in locating an attorney, you can contact the bar association in your county. That number can also be found in your local yellow pages. Most county bar associations have a Lawyer Referral Service. The County Bar Lawyer Referral Service can supply you with the names of attorneys in your area willing to handle your particular type of case and will sometimes consult with you at a reduced fee.

There are also a variety of organizations of minority lawyers throughout New Jersey, as well as organizations of lawyers who handle specialized types of cases. Ask your county court staff for a list of lawyer referral services that include these organizations.

If you decide to proceed without an attorney, these materials explain the procedures that must be followed to have your papers properly filed and considered by the court. These materials do not provide information nor other procedural and evidentiary rules governing guardianship matters.

What You Should Expect If You Represent Yourself

While you have the right to represent yourself in court, you should not expect special treatment, help or attention from the court. The following is a list of some things court staff can and cannot do for you. Please read it carefully before asking court staff for help.

- We *can* explain and answer questions about how the court works.
- We *can* tell you what the requirements are to have your case considered by the court.
- We *can* give you some information from your case file.
- We *can* provide you with samples of court forms that are available.
- We *can* provide you with guidance on how to fill out forms.
- We *can* usually answer questions about court deadlines.
- We *cannot* give you legal advice. Only your lawyer can give you legal advice.
- We *cannot* tell you whether or not you should bring your case to court.
- We *cannot* give you an opinion about what will happen if you bring your case to court.
- We *cannot* recommend a lawyer, but we can provide you with the telephone number of a local lawyer referral service.
- We *cannot* talk to the judge for you about what will happen in your case.
- We *cannot* let you talk to the judge outside of court.
- We *cannot* change an order issued by a judge.

Keep Copies of All Papers

Make and keep copies of all completed forms and documents related to your case.

Definitions of Words Used in This Packet

Certification - A *certification* is a written statement you make when you file your papers with the court in which you state that all the information contained in the papers is true to the best of your knowledge.

Docket Number - The *docket number* is the number the court assigns to your case so that it may be identified and located easily. Once you have a docket number, you must include it on all your communications with the court.

Guardian - A *guardian* is an individual appointed by the court with authority over the person and/or the estate of a person who has been legally declared incapacitated. A guardian may have general or limited authority.

Incapacitated person - An *incapacitated person* is an individual legally declared by the court as unable to govern himself or herself and/or unable to manage his or her affairs. Also known as a protected person; formerly called an incompetent or a ward.

Interested party(ies) - *Interested party(ies)* refers to a person or agency that has an involvement with the incapacitated person who is the subject of the guardianship. They are typically the same individuals entitled to notice of the initial complaint for guardianship - i.e., the incapacitated person's spouse, parent, adult child, etc.

Judgment - A *judgment* is the official decision of a court in a case; in a guardianship matter, Judgment refers to the Judgment of Incapacity and Guardian Appointment, also known as the Judgment of Incapacity and Order Appointing Guardian.

Motion - A *motion* is an application to the court for a specific order or ruling to be made in favor of the person making the motion (the movant).

Probate Day - Courts hear guardianship matters on specified days (usually Fridays) on the court calendar called *probate days*. A schedule of the court's probate days may be obtained from the Surrogate's Office staff.

Movant or moving party - The person who is bringing the motion is called the *moving party* (or movant).

Notice of Motion - The *Notice of Motion* is the form used to inform the court and all opposing and interested parties that the moving party is seeking a specific ruling or order from the court.

Oral argument - An *oral argument* is the appearance in court by the parties to present their positions to the judge in person. Either side may request oral argument, but the decision on whether there will be oral argument is up to the judge.

Pro Se - *Pro se* means by oneself. A *pro se* litigant represents him or herself in court without the aid of counsel.

Definitions of Words Used in This Packet (continued)

Proof of Mailing (Certification of Service) – A *proof of mailing (certification of service)* is the form in which you provide the dates and the method you used to give the other parties copies of the papers that you filed in court.

Proposed Form of Order - A *proposed form of order* is a form that the judge can use to either grant or deny the relief sought in the motion. Every motion must be accompanied by a proposed form of order.

Return date - The *return date* is the date on which the court will consider the motion. If you request oral argument, you must appear before the judge. If no oral argument is requested, the matter may be decided “on the papers.” That is, the judge may decide the motion on what has been submitted in the moving papers and in the opposition papers, without having anyone appear in court.

Service – *Service* refers to the delivery of papers in a legally appropriate way according to the New Jersey Rules of Court.

Superior Court Judge – The *Superior Court Judge* is the judge of the Superior Court, Chancery Division, Probate Part, who conducts any hearing(s) and makes substantive decisions about a guardianship, and signs the Judgment and/or orders.

Surrogate’s Office – A county office headed by the County Surrogate that may be in the same location as the Superior Court or may be in a different location. Guardianship actions and motions are filed with the *Surrogate’s Office*.

The numbered steps listed below tell you what forms you will need to fill out and what to do with them. Each form should be typed or printed clearly on 8 ½ "x 11" white paper only. Forms may not be filed on a different size or color paper.

Steps to File a Motion

STEP 1: Complete the *Notice of Motion* (Form A).

In the *Notice of Motion*, you inform the court and all parties that you have asked for a specific ruling or order and you specify the type of ruling you want. Motions are heard in court on specified days. You should obtain the motion schedule from the County Surrogate's Office.

You should pick a motion day at least 3 weeks from the date you mail your motion papers in order to give your adversary the 16 days before the return date as required by the court rules.

You must indicate whether you want to waive oral argument and let the judge decide the motion on the papers or not. You can ask the court for oral argument only if your adversary opposes the motion or you can ask for oral argument on your own. If you request oral argument you must tell the court why you think it is necessary.

Note: The judge makes the decision on whether there should be oral argument. The judge may request it even if neither party asked for it. Similarly, the judge may deny the request for oral argument.

You must also indicate on the *Notice of Motion* any dates that have been set by the court for conferences, hearing, or trial.

Note: If this is the first paper you are filing in this case, (i.e., you have not already filed an answer to the complaint), you **must** certify that you have redacted (blacked out) any personal identifiers (Social Security numbers, driver's license numbers, vehicle plate numbers, insurance policy numbers, active financial account numbers, or active credit card numbers) from any paper filed with the court, unless any such personal identifier is required to be included by statute, rule, administrative directive or court order. If an active financial account is the subject of your case and cannot otherwise be identified, you may use the last four digits of the account to identify it.

Do not redact (black out) this information in the original papers that you are keeping (such as medical records or financial statements) since you may have to show them to the court at some point.

STEP 2: Complete the *Certification in Support of the Motion and the Certification of Service* (Form B).

The *Certification in Support of the Motion* tells the court the reasons why you want the ruling you have requested and the reasons why the court should grant your request. You must also complete the *Certification of Service* which tells the court the date on which you mailed the copies of the documents to your adversary.

STEP 3: Complete the Proposed Form of Order (Form C).

Fill in the information up to the line for the date of the *Order*. Leave that and the rest of the form blank. The terms of the *Order* will be completed by the judge when the motion is decided.

STEP 4: Attach the Filing Fee.

The fee for filing a motion in the Surrogate's Office is \$15.00. Write a check in that amount payable to the *Surrogate of the county* in which the motion is filed.

STEP 5: Check your completed forms and make copies.

Check your forms to make sure that they are complete and that you have signed them in the appropriate places. Make copies of the completed forms so you can serve them on all other parties.

Checklist - You must have the following items:

- The original and the appropriate number of copies of the *Notice of Motion* (Form A), *Certification in Support of the Motion* and the *Certification of Service* (Form B), and the proposed form of *Order* (Form C).
- The filing fee. It must be a check or money order made payable to the Surrogate of the county in which the motion is filed in the amount of \$15.00.
- A stamped, self-addressed envelope if you wish the court to return to you a copy stamped “filed”.

STEP 6: Mail copies of the completed forms to all parties.

You must serve all other parties no later than 16 days before the specified return date on your notice of motion. Mail or deliver one copy of all the forms to each party:

Notice of Motion (Form A), *Certification in Support of the Motion* and the *Certification of Service* (Form B), and the proposed form of *Order* (Form C).

While the court rules do not require you to use certified mail, it is suggested that you send your motion and supporting papers by regular and certified mail, return receipt requested. You will then have the green card when it is returned to you as proof of service.

STEP 7: Mail or deliver the forms to the court.

You may deliver your papers to the Surrogate’s Office in person or you may mail them. The addresses of the Surrogate’s Office for each county are available on line at njcourts.gov/guardianship/. If you mail the papers, we recommend that you use certified mail, return receipt requested.

If you wish the court to send you back a copy of these papers stamped “filed,” you **must** include an additional copy and a self-addressed, stamped envelope.

Keep copies of all papers you provide to the court or any other party. Make and keep for yourself if copies of all completed forms and any canceled checks, money orders; receipts, bills, contract estimates, letters, leases, photographs and other important papers that relate to your case.

Filing Attorney Information or Pro Se Litigant:

Name _____

NJ Attorney ID Number _____

Address _____

Telephone Number _____

In the Matter of,

_____,
An Incapacitated Person

**Superior Court of New Jersey
Chancery Division - Probate Part**

County _____

Docket Number _____

Civil Action

Notice of Motion

To:

TAKE NOTICE that the undersigned will apply to the above named court, located at:

on _____, for an **Order** to (describe relief requested):

I will rely on the attached certification which contains the grounds for the relief sought.

Pursuant to R. 1:6-2(d), the undersigned: (check one)

- Waives oral argument and consents to disposition on the papers.
- Requests oral argument if this matter is contested.
- Requests oral argument for the following reasons:

A proposed form of Order is attached.

Court Dates

No conference, hearing or trial date has been set except as follows: (If any dates have been scheduled, note them here; otherwise state "none")

I certify that the above statements made by me are true and that if any of the statements are willfully false, I am subject to punishment.

Date _____

Signature

Print Name

If this is the first paper you are filing in this case, you must sign the following certification.

I certify that confidential personal identifiers have been redacted from documents now submitted to the court, and will be redacted from all documents submitted in the future in accordance with *Rule 1:38-7(b)*.

Date _____

Signature

Print Name

DRAFT

Filing Attorney Information or Pro Se Litigant:

Name _____

NJ Attorney ID Number _____

Address _____

Telephone Number _____

In the Matter of,

_____,
An Incapacitated Person

**Superior Court of New Jersey
Chancery Division - Probate Part**

County _____

Docket Number _____

Civil Action

Certification in Support of Motion

I, _____, am the (check one):

guardian

incapacitated person

an interested party

in the above-captioned matter. I make this certification in support of my motion to (state what you want the court to do)

This motion should be granted because: (state the basis for your motion and why it should be granted. Use extra paper if necessary)

I certify that the above statements made by me are true and that if any of the statements are willfully false, I am subject to punishment.

Date _____

Signature

Print Name

Certification of Service

I certify that on _____, I sent a copy of the Notice of Motion, Certification, and proposed form of Order to the following parties by: (Check which mailing method you chose. If you sent it by both regular and certified mail, return receipt requested, check both)

- regular mail certified mail, return receipt requested

List each party and/or interested party; use the attorney's name and address if the party and/or interested party is represented by counsel.

Name _____ Name _____

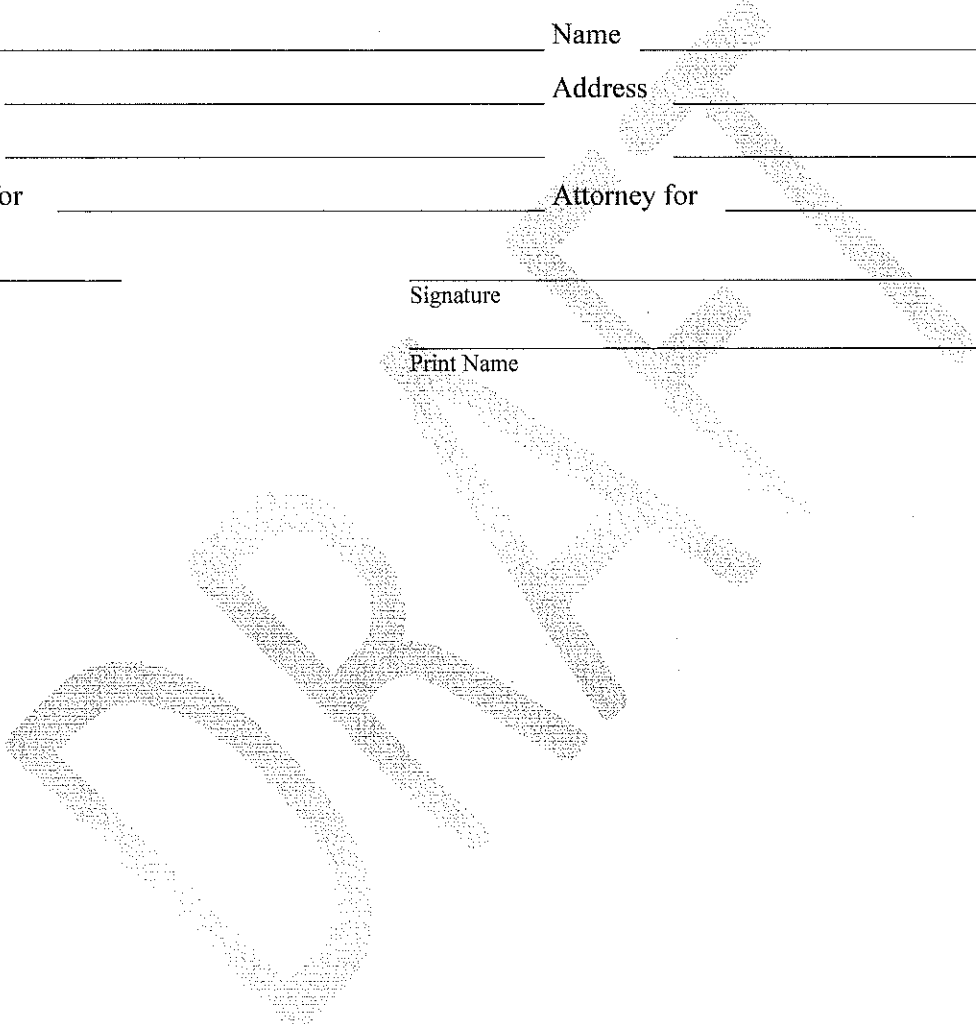
Address _____ Address _____

Attorney for _____ Attorney for _____

Date _____

Signature _____

Print Name _____



Filing Attorney Information or Pro Se Litigant:

Name _____

NJ Attorney ID Number _____

Address _____

Telephone Number _____

In the Matter of,

_____,
An Incapacitated Person

**Superior Court of New Jersey
Chancery Division - Probate Part**

County _____

Docket Number _____

**Civil Action
Order**

This matter having been brought before the Court on Motion of (check one):

guardian

incapacitated person

an interested party

for an **ORDER** (describe relief requested)

and the Court having considered the matter and for good cause appearing,

(Do not write below this line, For Court Use Only)

It is on this _____ day of _____, 20____, **ORDERED** as follows::

It is **FURTHER ORDERED** that a copy of this Order be served by the moving party upon all other parties or their attorneys, if any, within _____ days of the date listed above.

_____, J.S.C.

- Opposed**
- Unopposed**