

## Tax Law Changes

### Secure Act 2.0-IRA Distribution Rules-

#### Inherited IRA After Jan.1 2020:

Generally, a designated beneficiary is required to liquidate the account by the end of the 10th year following the year of death of the IRA owner (this is known as the 10-year rule). An RMD may be required in years 1-9 when the decedent had already begun taking RMDs. There are exceptions for certain eligible designated beneficiaries, defined by the IRS, as someone who is either:

The IRA owners' spouse, the IRA owner's minor child, an individual who is not more than 10 years younger than the IRA owner, Disabled or Chronically ill.

Once a minor child reaches the age of majority, they'll become subject to the 10-year rule.

A surviving spouse has more options. A spouse can rollover into their own retirement plan and take as an inherited account with RMD's based on their life expectancy. Other options depending upon the type of account and whether the decedent started taking RMD's.

For more information, see IRS Publication 590-B.

**Age to start taking RMD-You generally must start taking withdrawals from your traditional IRA, SEP IRA, SIMPLE IRA, and retirement plan accounts when you reach age 72 (73 if you reach age 72 after Dec. 31, 2022). Age 75 starting in 2033.**

The penalty for not taking an RMD is now reduced from 50% to 25%, and in some cases to 10%. Beginning in 2024, the RMD requirement for Roth 401(k) accounts during a participant's lifetime will be eliminated.

Catch up provision. Currently, participants aged 50 and older can contribute an extra \$7,500 annually to their 401(k) account. This amount will increase to \$10,000 (or 150% of the regular limit on catch up contributions, if higher) per year starting in 2025 for participants ages 60 to 63.

Catch-up provisions will be indexed for inflation. Lastly, effective January 1, 2026, all catch-up contributions for participants earning more than \$145,000 will have to be made on a Roth basis.

## Estate Tax

December 31, 2025-Sunset of the 14 million exemption that reverts back to \$5 million indexed for inflation. A use it or lose it proposition. Want to take advantage of it for high net worth clients before it sunsets. Not sure if it will be extended as any change will be determined by the next election.

## Proposed Legislation

### 529 Plans

HB 2204-Inheritance Tax Exemption Statewide

HB 2119-Tax-Free Rollovers from PA-529 Account to Roth IRA

Senate Bill 1143/House Bill 1745-An Act amending the act of March 4, 1971 (P.L.6, No.2), known as the Tax Reform Code of 1971, in personal income tax, further providing for classes of income; and providing for 529 savings account employer contribution tax credit.

## THE GENERAL ASSEMBLY OF PENNSYLVANIA

## SENATE BILL

No. 506 Session of  
2023

INTRODUCED BY BAKER, HAYWOOD, KEARNEY, COLLETT, KANE, SCHWANK,  
MILLER, BREWSTER, COSTA, COMMITTA, DILLON AND SANTARSIERO,  
MARCH 7, 2023

SENATOR BAKER, JUDICIARY, AS AMENDED, JUNE 6, 2023

## AN ACT

1 Amending Title 20 (Decedents, Estates and Fiduciaries) of the  
2 Pennsylvania Consolidated Statutes, in incapacitated persons,  
3 further providing for petition and hearing and independent  
4 evaluation ~~and~~, for determination of incapacity and      <--  
5 appointment of guardian AND FOR REVIEW HEARING.      <--

6 The General Assembly of the Commonwealth of Pennsylvania  
7 hereby enacts as follows:

8 Section 1. Section 5511(a), (e) and (f) of Title 20 of the  
9 Pennsylvania Consolidated Statutes are amended and the section  
10 is amended by adding a subsection to read:

11 § 5511. Petition and hearing; independent evaluation.

12 (a) Resident.--The court, upon petition and hearing and upon  
13 the presentation of clear and convincing evidence, may find a  
14 person domiciled in the Commonwealth to be incapacitated and  
15 appoint a guardian or guardians of his person or estate. The  
16 petitioner may be any person interested in the alleged  
17 incapacitated person's welfare. The court may dismiss a  
18 proceeding where it determines that the proceeding has not been  
19 instituted to aid or benefit the alleged incapacitated person or

1 that the petition is incomplete or fails to provide sufficient  
2 facts to proceed. Written notice of the petition and hearing  
3 shall be given in large type and in simple language to the  
4 alleged incapacitated person. The notice shall indicate the  
5 purpose and seriousness of the proceeding and the rights that  
6 can be lost as a result of the proceeding. It shall include the  
7 date, time and place of the hearing and an explanation of all  
8 rights[, including the right to request the appointment of  
9 counsel and to have counsel appointed if the court deems it  
10 appropriate and the right to have such counsel paid for if it  
11 cannot be afforded]. The Supreme Court shall establish a uniform  
12 citation for this purpose. A copy of the petition shall be  
13 attached. Personal service shall be made on the alleged  
14 incapacitated person, and the contents and terms of the petition  
15 shall be explained to the maximum extent possible in language  
16 and terms the individual is most likely to understand. Service  
17 shall be no less than 20 days in advance of the hearing. In  
18 addition, notice of the petition and hearing shall be given in  
19 such manner as the court shall direct to all persons residing  
20 within the Commonwealth who are sui juris and would be entitled  
21 to share in the estate of the alleged incapacitated person if he  
22 died intestate at that time, to the person or institution  
23 providing residential services to the alleged incapacitated  
24 person and to such other parties as the court may direct,  
25 including other service providers. The hearing may be closed to  
26 the public and without a jury unless the alleged incapacitated  
27 person or his counsel objects. The hearing shall be closed and  
28 with or without a jury if the person alleged to be incapacitated  
29 or his counsel so requests. The hearing may be held at the  
30 residence of the alleged incapacitated person. The alleged

1 incapacitated person shall be present at the hearing unless:

2 (1) the court is satisfied, upon the deposition or  
3 testimony of or sworn statement by a physician or licensed  
4 psychologist, that his physical or mental condition would be  
5 harmed by his presence; or

6 (2) it is impossible for him to be present because of  
7 his absence from the Commonwealth. It shall not be necessary  
8 for the alleged incapacitated person to be represented by a  
9 guardian ad litem in the proceeding.

10 [Petitioner shall be required to notify the court at least seven  
11 days prior to the hearing if counsel has not been retained by or  
12 on behalf of the alleged incapacitated person. In appropriate  
13 cases, counsel shall be appointed to represent the alleged  
14 incapacitated person in any matter for which counsel has not  
15 been retained by or on behalf of that individual.]

16 (a.1) Appointment of counsel.--

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

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

1 delay under the circumstances.

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

18 \* \* \*

19 (e) Petition contents.--The petition, which shall be in  
20 plain language, shall include the name, age, residence and post  
21 office address of the alleged incapacitated person, the names  
22 and addresses of the spouse, parents and presumptive adult heirs  
23 of the alleged incapacitated person, the name and address of the  
24 person or institution providing residential services to the  
25 alleged incapacitated person, the names and addresses of other  
26 service providers, the name and address of the person or entity  
27 whom petitioner asks to be appointed guardian, an averment that  
28 the proposed guardian has no interest adverse to the alleged  
29 incapacitated person, the reasons why guardianship is sought, a  
30 description of the functional limitations and physical and

1 mental condition of the alleged incapacitated person, the steps  
2 taken to find less restrictive alternatives, the specific areas  
3 of incapacity over which it is requested that the guardian be  
4 assigned powers and the qualifications of the proposed guardian.  
5 Petitions must allege specific facts demonstrating that less  
6 restrictive alternatives were considered or tried and why the  
7 alternatives are unavailable or insufficient. If a limited or  
8 plenary guardian of the estate is sought, the petition shall  
9 also include the gross value of the estate and net income from  
10 all sources to the extent known.

11 (f) Who may be appointed guardian.--

12 (1) The court may appoint as guardian any qualified  
13 individual, a corporate fiduciary, a nonprofit corporation, a  
14 guardianship support agency under Subchapter F (relating to  
15 guardianship support) or a county agency. In the case of  
16 residents of State facilities, the court may also appoint,  
17 only as guardian of the estate, the guardian office at the  
18 appropriate State facility. The court shall not appoint a  
19 person or entity providing residential services for a fee to  
20 the incapacitated person or any other person whose interests  
21 conflict with those of the incapacitated person except where  
22 it is clearly demonstrated that no guardianship support  
23 agency or other alternative exists. Any family relationship  
24 to such individual shall not, by itself, be considered as an  
25 interest adverse to the alleged incapacitated person. If  
26 appropriate, the court shall give preference to a nominee of  
27 the incapacitated person.

28 (2) An individual seeking guardianship of three or more  
29 incapacitated persons must be certified as provided in this  
30 paragraph and provide proof of the certification to the court

1 prior to a third guardianship appointment. The following  
2 provisions shall apply:

3 (i) The Supreme Court shall prescribe rules and  
4 forms necessary to effectuate the certification required  
5 under this paragraph, including rules regarding the  
6 expiration and renewal of certifications.

7 (ii) When the Supreme Court prescribes rules  
8 relating to requirements for certification:

9 (A) The Supreme Court shall provide  
10 opportunities for relevant stakeholders to provide  
11 input.

12 (B) The certification shall, at a minimum,  
13 require:

14 (I) Submission of education and employment  
15 history.

16 (II) Submission of Federal and State  
17 criminal history record information.

18 (III) Passage of a certification exam  
19 administered by a national nonprofit guardianship  
20 certification organization. The national  
21 nonprofit organization must provide a  
22 comprehensive certification program for  
23 guardians, including supervising a national  
24 certification process, developing certification  
25 exam content and maintaining a decertification  
26 process.

27 (3) The certification required under paragraph (2) may  
28 be waived by a court upon a petition demonstrating that a  
29 proposed guardian has such equivalent licenses or  
30 certifications as are necessary to ensure that the proposed



1 guardian is capable of fully, faithfully and competently  
2 performing the obligations of a guardian. FOR PURPOSES OF <--  
3 THIS PARAGRAPH, A LICENSE TO PRACTICE LAW SHALL NOT  
4 CONSTITUTE AN EQUIVALENT LICENSE OR CERTIFICATION.

5 ~~Section 2. Section 5512.1(a) of Title 20 is amended to read:~~ <--

6 SECTION 2. SECTIONS 5512.1(A) AND 5512.2 OF TITLE 20 ARE <--  
7 AMENDED TO READ:

8 § 5512.1. Determination of incapacity and appointment of  
9 guardian.

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

12 (1) The nature of any condition or disability which  
13 impairs the individual's capacity to make and communicate  
14 decisions.

15 (2) The extent of the individual's capacity to make and  
16 communicate decisions.

17 (3) The need for guardianship services, if any, in light  
18 of such factors as the availability of family, friends and  
19 other supports to assist the individual in making decisions  
20 and in light of the existence, if any, of [advance directives  
21 such as durable powers of attorney or trusts.] less  
22 restrictive alternatives. The court shall make specific  
23 findings of fact based on the evidentiary record of the  
24 absence of sufficient family, friends or other supports and  
25 of the insufficiency of each less restrictive alternative  
26 before ordering guardianship. Less restrictive alternatives  
27 include, but are not limited to:

28 (i) Advance directives such as durable power of  
29 attorney or trusts.

30 (ii) Living wills.

1           (iii) Health care powers of attorney.

2           (iv) Health care representatives.

3           (v) Financial powers of attorney.

4           (vi) Trusts, including special needs trusts.

5           (vii) Representative payees for individuals  
6 receiving Social Security benefits.

7           (viii) Pennsylvania Achieving a Better Life  
8 Experience accounts.

9           (ix) Mental health advance directives.

10          (4) The type of guardian, limited or plenary, of the  
11 person or estate needed based on the nature of any condition  
12 or disability and the capacity to make and communicate  
13 decisions.

14          (5) The duration of the guardianship.

15          (6) The court shall prefer less restrictive alternatives  
16 to guardianship and, if no less restrictive alternatives are  
17 available and sufficient, limited guardianship. The following  
18 apply:

19           (i) A determination of incapacity is separate from a  
20 determination of whether a guardian should be appointed.

21           (ii) The court may not use a determination of  
22 incapacity alone to justify a guardianship.

23           (iii) The court may not appoint a guardian if a  
24 lesser restrictive alternative exists that is sufficient  
25 to support the needs of an incapacitated person.

26           (iv) When entering an order denying a petition for  
27 guardianship in whole or in part, the court shall  
28 identify the less restrictive alternatives that are  
29 available and sufficient to enable the alleged  
30 incapacitated person to manage personal financial

1 resources or to meet essential requirements of personal  
2 physical health and safety. An order may assist the  
3 respondent and any supportive and substitute decision  
4 makers involved to effectuate the respondent's decisions  
5 with third parties.

6 \* \* \*

7 § 5512.2. REVIEW HEARING. <--

8 (A) [TIME OF HEARING.--THE COURT MAY SET A DATE FOR A REVIEW  
9 HEARING IN ITS ORDER ESTABLISHING THE GUARDIANSHIP OR HOLD A  
10 REVIEW HEARING AT ANY TIME IT SHALL DIRECT. THE COURT SHALL  
11 CONDUCT A REVIEW HEARING PROMPTLY IF THE INCAPACITATED PERSON,  
12 GUARDIAN OR ANY INTERESTED PARTY PETITIONS THE COURT FOR A  
13 HEARING FOR REASON OF A SIGNIFICANT CHANGE IN THE PERSON'S  
14 CAPACITY, A CHANGE IN THE NEED FOR GUARDIANSHIP SERVICES OR THE  
15 GUARDIAN'S FAILURE TO PERFORM HIS DUTIES IN ACCORDANCE WITH THE  
16 LAW OR TO ACT IN THE BEST INTEREST OF THE INCAPACITATED PERSON.  
17 THE COURT MAY DISMISS A PETITION FOR REVIEW HEARING IF IT  
18 DETERMINES THAT THE PETITION IS FRIVOLOUS.] AUTOMATIC REVIEW.--  
19 IF THE EVIDENCE PRESENTED DURING THE GUARDIANSHIP PROCEEDING  
20 INDICATES THAT THE CIRCUMSTANCES OF THE PERSON'S INCAPACITY MAY  
21 CHANGE, THE COURT SHALL HOLD A REVIEW HEARING TO DETERMINE  
22 WHETHER THE GUARDIANSHIP CONTINUES TO BE NECESSARY. THE COURT  
23 SHALL SET THE DATE FOR A REVIEW HEARING UNDER THIS SUBSECTION IN  
24 THE COURT'S ORDER ESTABLISHING GUARDIANSHIP. THE REVIEW HEARING  
25 UNDER THIS SUBSECTION SHALL BE HELD NO LATER THAN ONE YEAR FROM  
26 THE DATE OF THE ORDER ESTABLISHING THE GUARDIANSHIP. THE HEARING  
27 SHALL BE CONDUCTED IN THE PRESENCE OF THE INCAPACITATED PERSON  
28 AND THE PERSON'S ATTORNEY, AND THE COURT SHALL ADHERE TO THE  
29 PROCEDURES AND STANDARDS AS OUTLINED IN SECTION 5512.1(A). IF,  
30 FOLLOWING THE PRESENTATION OF EVIDENCE AND TESTIMONY FROM ALL

1 PARTIES, THE COURT FINDS THAT GUARDIANSHIP CONTINUES TO BE  
2 NECESSARY AND THAT NO LESS RESTRICTIVE ALTERNATIVES EXIST, THE  
3 COURT MAY ORDER THAT THE GUARDIANSHIP CONTINUE. IF THE COURT  
4 FINDS THAT GUARDIANSHIP IS NO LONGER NECESSARY OR A LESS  
5 RESTRICTIVE ALTERNATIVE EXISTS, THE COURT SHALL DISCHARGE THE  
6 GUARDIANSHIP. IN DETERMINING WHETHER THE CIRCUMSTANCES OF THE  
7 PERSON'S INCAPACITY MAY CHANGE, THE COURT MAY CONSIDER ANY OF  
8 THE FOLLOWING:

9 (1) WHETHER THE INCAPACITY COULD BE ADEQUATELY MANAGED  
10 BY MEDICATION, REHABILITATION OR OTHER MEANS;

11 (2) WHETHER THE POTENTIAL EXISTS FOR THE INCAPACITATED  
12 PERSON TO REGAIN PHYSICAL OR COGNITIVE CAPACITY;

13 (3) THE OPINION OF A MEDICAL PROFESSIONAL OR OTHER  
14 QUALIFIED EXPERT WHO HAS PERSONALLY EXAMINED THE  
15 INCAPACITATED PERSON;

16 (4) THE CIRCUMSTANCES OF THE INCAPACITATED PERSON'S  
17 DAILY LIVING, INCLUDING, BUT NOT LIMITED TO, SUPPORT FROM  
18 OTHERS; AND

19 (5) ANY OTHER FACTOR INDICATING THAT THE INCAPACITATED  
20 PERSON'S CONDITION COULD IMPROVE AT A FUTURE TIME.

21 (A.1) PETITION FOR REVIEW.--AT ANY TIME FOLLOWING THE  
22 ISSUANCE OF THE ORDER ESTABLISHING GUARDIANSHIP, ANY INTERESTED  
23 PERSON MAY FILE A PETITION WITH THE COURT TO TERMINATE OR MODIFY  
24 THE GUARDIANSHIP. THE COURT SHALL PROMPTLY SCHEDULE A HEARING OR  
25 HOLD A REVIEW HEARING AT ANY TIME IT SHALL DIRECT. THE HEARING  
26 SHALL BE HELD IN THE PRESENCE OF THE INCAPACITATED PERSON AND  
27 THE INCAPACITATED PERSON'S ATTORNEY, AND THE COURT SHALL ADHERE  
28 TO THE PROCEDURES AND STANDARDS AS OUTLINED IN SECTION  
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1 CONTINUES TO BE NECESSARY AND THAT NO LESS RESTRICTIVE  
2 ALTERNATIVES EXIST, THE COURT MAY ORDER THAT THE GUARDIANSHIP  
3 CONTINUE. IF THE COURT FINDS THAT GUARDIANSHIP IS NO LONGER  
4 NECESSARY OR A LESS RESTRICTIVE ALTERNATIVE EXISTS, THE COURT  
5 SHALL DISCHARGE THE GUARDIANSHIP.

6 (B) BURDEN OF PROOF AND RIGHTS.--THE INCAPACITATED PERSON  
7 SHALL HAVE ALL OF THE RIGHTS ENUMERATED IN THIS CHAPTER. EXCEPT  
8 WHEN THE HEARING IS HELD TO APPOINT A SUCCESSOR GUARDIAN, THE  
9 BURDEN OF PROOF, BY CLEAR AND CONVINCING EVIDENCE, SHALL BE ON  
10 THE PARTY ADVOCATING CONTINUATION OF GUARDIANSHIP OR EXPANSION  
11 OF AREAS OF INCAPACITY.

12 Section 3. This act shall take effect in 180 days.

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THE GENERAL ASSEMBLY OF PENNSYLVANIA

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SENATE BILL

No. 506 Session of  
2023

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INTRODUCED BY BAKER, HAYWOOD, KEARNEY, COLLETT, KANE, SCHWANK,  
MILLER, BREWSTER, COSTA, COMITTA AND DILLON, MARCH 7, 2023

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REFERRED TO JUDICIARY, MARCH 7, 2023

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1 Amending Title 20 (Decedents, Estates and Fiduciaries) of the  
2 Pennsylvania Consolidated Statutes, in incapacitated persons,  
3 further providing for petition and hearing and independent  
4 evaluation and for determination of incapacity and  
5 appointment of guardian.

6 The General Assembly of the Commonwealth of Pennsylvania  
7 hereby enacts as follows:

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14 person domiciled in the Commonwealth to be incapacitated and  
15 appoint a guardian or guardians of his person or estate. The  
16 petitioner may be any person interested in the alleged  
17 incapacitated person's welfare. The court may dismiss a  
18 proceeding where it determines that the proceeding has not been  
19 instituted to aid or benefit the alleged incapacitated person or

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2 facts to proceed. Written notice of the petition and hearing  
3 shall be given in large type and in simple language to the  
4 alleged incapacitated person. The notice shall indicate the  
5 purpose and seriousness of the proceeding and the rights that  
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7 date, time and place of the hearing and an explanation of all  
8 rights[, including the right to request the appointment of  
9 counsel and to have counsel appointed if the court deems it  
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11 cannot be afforded]. The Supreme Court shall establish a uniform  
12 citation for this purpose. A copy of the petition shall be  
13 attached. Personal service shall be made on the alleged  
14 incapacitated person, and the contents and terms of the petition  
15 shall be explained to the maximum extent possible in language  
16 and terms the individual is most likely to understand. Service  
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18 addition, notice of the petition and hearing shall be given in  
19 such manner as the court shall direct to all persons residing  
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27 person or his counsel objects. The hearing shall be closed and  
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29 or his counsel so requests. The hearing may be held at the  
30 residence of the alleged incapacitated person. The alleged

1 incapacitated person shall be present at the hearing unless:

2 (1) the court is satisfied, upon the deposition or  
3 testimony of or sworn statement by a physician or licensed  
4 psychologist, that his physical or mental condition would be  
5 harmed by his presence; or

6 (2) it is impossible for him to be present because of  
7 his absence from the Commonwealth. It shall not be necessary  
8 for the alleged incapacitated person to be represented by a  
9 guardian ad litem in the proceeding.

10 [Petitioner shall be required to notify the court at least seven  
11 days prior to the hearing if counsel has not been retained by or  
12 on behalf of the alleged incapacitated person. In appropriate  
13 cases, counsel shall be appointed to represent the alleged  
14 incapacitated person in any matter for which counsel has not  
15 been retained by or on behalf of that individual.]

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22 aware of the representation.

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24 incapacitated person to pay, the court shall appoint counsel  
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21 office address of the alleged incapacitated person, the names  
22 and addresses of the spouse, parents and presumptive adult heirs  
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9 impairs the individual's capacity to make and communicate  
10 decisions.

11 (2) The extent of the individual's capacity to make and  
12 communicate decisions.

13 (3) The need for guardianship services, if any, in light  
14 of such factors as the availability of family, friends and  
15 other supports to assist the individual in making decisions  
16 and in light of the existence, if any, of [advance directives  
17 such as durable powers of attorney or trusts.] less  
18 restrictive alternatives. The court shall make specific  
19 findings of fact based on the evidentiary record of the  
20 absence of sufficient family, friends or other supports and  
21 of the insufficiency of each less restrictive alternative  
22 before ordering guardianship. Less restrictive alternatives  
23 include, but are not limited to:

24 (i) Advance directives such as durable power of  
25 attorney or trusts.

26 (ii) Living wills.

27 (iii) Health care powers of attorney.

28 (iv) Health care representatives.

29 (v) Financial powers of attorney.

30 (vi) Trusts, including special needs trusts.

1           (vii) Representative payees for individuals  
2           receiving Social Security benefits.

3           (viii) Pennsylvania Achieving a Better Life  
4           Experience accounts.

5           (ix) Mental health advance directives.

6           (4) The type of guardian, limited or plenary, of the  
7 person or estate needed based on the nature of any condition  
8 or disability and the capacity to make and communicate  
9 decisions.

10          (5) The duration of the guardianship.

11          (6) The court shall prefer less restrictive alternatives  
12 to guardianship and, if no less restrictive alternatives are  
13 available and sufficient, limited guardianship. The following  
14 apply:

15           (i) A determination of incapacity is separate from a  
16 determination of whether a guardian should be appointed.

17           (ii) The court may not use a determination of  
18 incapacity alone to justify a guardianship.

19           (iii) The court may not appoint a guardian if a  
20 lesser restrictive alternative exists that is sufficient  
21 to support the needs of an incapacitated person.

22           (iv) When entering an order denying a petition for  
23 guardianship in whole or in part, the court shall  
24 identify the less restrictive alternatives that are  
25 available and sufficient to enable the alleged  
26 incapacitated person to manage personal financial  
27 resources or to meet essential requirements of personal  
28 physical health and safety. An order may assist the  
29 respondent and any supportive and substitute decision  
30 makers involved to effectuate the respondent's decisions

1           with third parties.

2           \* \* \*

3           Section 3. This act shall take effect in 180 days.

## EXPLANATION TO FACILITATE READING OF LEGISLATIVE BILLS

[Light face brackets] are used only in bills amending an existing law. They indicate that anything enclosed thereby appears in the existing law, but that it is proposed to omit it from the law as amended. The brackets and anything enclosed by them are carried along into the pamphlet law version of the bill, if the bill is finally enacted; thus, the reader of the pamphlet law can tell the exact date that the bracketed material was removed from Pennsylvania law. All bracketed language is **shaded** so the reader knows that the language has been marked to be removed from law.

Underscoring is used only in bills amending an existing law. It indicates that the underscored matter does not appear in the existing law, but that it is proposed to insert it in the law as amended. The underscored matter will be carried into the law if the bill is finally enacted.

Ellipses (\* \* \*) are used only in bills amending an existing law. They indicate omitted law which is not proposed to be changed in the bill.

[Dark] face brackets are used only in bills that have been amended, either in committee or on the floor of either House. They indicate brackets inserted by such amendment and have the same effect as light face brackets.

~~Strike-out type~~ is used only in bills that have been amended either in committee or on the floor of either House. They indicate that anything so printed appeared in a previous print of the bill but is to be deleted, and will not appear in the text of the law if the bill is finally enacted. ~~Strike-out type~~ is also used to remove language in an original enactment that is not yet law.

CAPITAL LETTERS are used only in bills that have been amended, either in committee or on the floor of either House. They indicate that the matter in capital letters did not appear in the original print of the bill, but was inserted into the bill by amendment in either House. The matter in capital letters will be carried into the law, if the bill is finally enacted in ordinary print, unless it is also underscored, in which case it will be printed in italics.

~~Strike-out type~~ and CAPITAL LETTERS indicate only the amendments made to the bill at the last previous state of passage. All prior ~~strike-out amendments~~ are dropped entirely from the new print and all insert amendments previously shown in CAPITAL LETTERS are reset in lower case type. The one exception to this rule is a House bill amended more than once in the Senate or a Senate bill amended more than once in the House will, on the second and subsequent printings cumulate all amendments made in the latter House, so that all amendments in which concurrence by the House of origin is required will stand out.

The line immediately preceding the title of the bill shows the stage of passage at which the amendments appearing on that print were made. All preceding printer's numbers of each bill are shown in consecutive order in a line at the top of the first page of each bill.



# HOUSE COMMITTEE ON APPROPRIATIONS

## FISCAL NOTE

SENATE BILL NO. 506

PRINTER'S NO. 843

PRIME SPONSOR: Baker

### COST / (SAVINGS)

FUND	FY 2023/24	FY 2024/25
General Fund	\$0	\$0

### SUMMARY:

Senate Bill 506, Printer's Number 843 amends Title 20 of the Pennsylvania Consolidated Statutes to add requirements for a review hearing when the court has appointed a guardian for an incapacitated person.

### ANALYSIS:

This legislation adds new requirements to Title 20 (Probate, Estates and Fiduciaries Code) of the Pennsylvania Consolidated Statutes, Section 5511, which will allow for:

- The incapacitated person to be represented by counsel at the time a petition for guardianship of an alleged incapacitated person or as soon as the petitioner becomes aware of the representation. Regardless of the incapacitated person's ability to pay, the court will appoint counsel to represent the alleged incapacitated person when that person has not retained their own counsel.
- If the court determines that there is a need for a person who will look after and protect the interests of the alleged incapacitated person, known as a guardian ad litem, the retained counsel may not act as that person's guardian ad litem, and the court will make a separate appointment.
- For an individual seeking guardianship of three or more incapacitated persons, that individual must be certified as required by the rules established by the Pennsylvania Supreme Court and provide proof of this certification to the Court.
- Petitions to the Court must allege the specific facts that demonstrate less restrictive alternatives to guardianship were considered or tried and why those alternatives are unavailable or insufficient. The Court will consider the availability of family, friends, and other supports, as well as available less restrictive alternatives, when making a decision regarding the incapacitated person's need for guardianship. Less restrictive alternatives include:
  - Advanced directives;
  - Living wills;
  - Health care power of attorney;
  - Health care representatives;
  - Financial powers of attorney;
  - Trusts;
  - Representative payees for individuals receiving Social Security benefits;
  - Pennsylvania Achieving a Better Life Experience accounts; and
  - Mental Health advance directives.



- The Court will prefer the less restrictive alternatives, and the Court may not appoint a guardian if a less restrictive alternative exists that is sufficient to support the needs of the incapacitated person.
- When entering an order that denies the petition for guardianship in whole or in part, the Court will identify the available less restrictive alternatives to allow the alleged incapacitated person to manage personal finances or their personal health and safety needs.
- If there is evidence presented during the guardianship proceeding that indicates that the person's incapacity may change, then the Court will hold a review hearing to determine whether the guardianship continues to be necessary for that person. This review hearing will be held no later than one year from the date on the Court's order establishing the guardianship.
- At any time following the issuance of the Court order that established the guardianship, any interested person may file a petition to terminate or modify the guardianship. The court will promptly schedule a hearing or hold a review hearing.

**FISCAL IMPACT:**

This legislation may result in an increased number of review hearings due to the automatic review required by this legislation when evidence is presented during the guardianship proceeding that indicates that the person's incapacity may change. The increase in review hearings is not anticipated to result in increased costs to the Court, so the enactment of this legislation is not expected to have an adverse fiscal impact to the Commonwealth.

**PREPARED BY:** Mara Perez  
House Appropriations Committee (D)

**DATE:** December 13, 2023

*Estimates are calculated using the best information available. Actual costs and revenue impact incurred may vary from estimates.*

# SENATE APPROPRIATIONS COMMITTEE FISCAL NOTE

**BILL NO.** Senate Bill 506

**PRINTER NO.** 843

**AMOUNT**

No Fiscal Impact

**FUND**

General Fund

**DATE INTRODUCED**

March 7, 2023

**PRIME SPONSOR**

Senator Baker

**DESCRIPTION**

Senate Bill 506 amends Section 5511 of Title 20 (Probate, Estates and Fiduciaries) to require that counsel be appointed to represent an unrepresented alleged incapacitated person and to provide for the certification of any guardian that represents three or more incapacitated persons. In addition, the bill amends Section 5512.1 of Title 20 to require certain findings regarding less restrictive alternatives to guardianship and section 5512.2 to update review hearing procedures.

The bill amends Section 5511 of Title 20 to provide that a petitioner must notify the court if the petitioner learns that the alleged incapacitated person is represented.

The bill also provides that if counsel has not been retained in a hearing to determine if an individual is incapacitated, or in any subsequent hearing to consider, modify or terminate a guardianship, the court shall appoint counsel regardless of the alleged incapacitated person's ability to pay. Appointed counsel must be qualified by experience or training and must act without delay. Counsel must meet with the alleged incapacitated person as soon as possible and must notify the court of the meeting within five days after the meeting.

The bill requires that counsel for an alleged incapacitated person shall:

- As far as reasonably possible maintain a client-attorney relationship;
- Advocate for the client's expressed wishes to the extent the client is able to express wishes and provide instructions;
- Comply with the Rules of Professional Conduct; and
- Not act as guardian ad litem for the alleged incapacitated person.

In addition to existing requirements for a petition seeking to have an individual declared incompetent and to appoint a guardian of the person or estate, the petition must also allege specific facts indicating that less restrictive alternatives to guardianship were considered but that those alternatives were unavailable or insufficient.

Senate Bill 506 also amends Section 5511 by adding provisions relating to guardians that seek to be appointed for three or more incapacitated persons. Such guardians must provide certification by the Pennsylvania Supreme Court or another qualified

## **SENATE APPROPRIATIONS COMMITTEE FISCAL NOTE**

entity as determined by the Supreme Court prior to the third appointment. The Supreme Court will prescribe rules and forms necessary to effectuate certification and must provide opportunities for stakeholders to provide input. Certification must include:

- Submission of education and employment history;
- Submission of federal and state criminal history record information; and
- Passage of a certification examination administered by a national non-profit organization.

Certification may be waived if an individual has equivalent licenses or certifications sufficient to ensure that they can perform the duties as a guardian fully, fairly and competently. For purposes of this paragraph, a license to practice law shall not constitute an equivalent license or certification.

Senate Bill 506 amends Section 5512.1 to provide that a court must consider less restrictive alternatives in determining the appointment of a guardian. In doing so, the court shall make specific findings of fact on the record of the absence of sufficient family, friends or other supports and of each less restrictive alternative before ordering guardianship. Less restrictive alternatives include:

- Advance directives;
- Living wills;
- Health care powers of attorney;
- Health care representatives;
- Financial powers of attorney;
- Trusts, including special needs trusts;
- Representative payees for individuals receiving Social Security benefits;
- Pennsylvania Achieving a Better Life Experience accounts; and
- Mental health directives.

Courts are specifically directed to prefer less restrictive alternatives and limited guardianships.

In addition, the following shall apply:

- A determination of incapacity is specifically stated to be separate from a determination of whether a guardian should be appointed;
- The court may not use a determination of incapacity alone to justify a guardianship;
- The court may not appoint a guardian if a sufficient lesser alternative exists; and
- When entering an order denying a petition for guardianship, the court shall identify the less restrictive alternatives that are available and sufficient. An order may assist the alleged incapacitated person and any supportive and

## **SENATE APPROPRIATIONS COMMITTEE FISCAL NOTE**

- substitute decision makers involved to effectuate the alleged incapacitated person's decisions with third parties.

Section 5512.2 (relating to review hearing) is amended to update review hearing procedures as follows:

- Provides if evidence is presented during the guardianship proceedings that the person's incapacity may change, the court shall hold a review hearing to determine if the guardianship continues to be necessary;
- The court shall set the date for a review hearing no later than one year from the date of establishing the guardianship;
- The hearing shall be conducted in the presence of the incapacitated person and their attorney;
- If the court finds that guardianship continues to be necessary, the court may order the guardianship to continue;
- If the court finds that guardianship is no longer necessary, the court shall discharge the guardianship;
- In determining whether the circumstances of the person's incapacity may change, the court may consider any of the following:
  - 1) Whether the incapacity could be adequately managed by medication, rehabilitation or other means;
  - 2) Whether the potential exists for the incapacitated person to regain physical or cognitive capacity;
  - 3) Opinion of a medical professional or other qualified expert who has personally examined the incapacitated person;
  - 4) Circumstances of the incapacitated person's daily living, including support from others; and
  - 5) Any other factor indicating that the incapacitated person's condition could improve at a future time.
- Any interested person may file a petition with the court to terminate or modify the guardianship;
- The court shall promptly schedule a hearing or hold a review hearing;
- The hearing shall be conducted in the presence of the incapacitated person and their attorney;
- If the court finds that guardianship continues to be necessary, the court may order the guardianship to continue;
- If the court finds that guardianship is no longer necessary, the court shall discharge the guardianship;
- The incapacitated person shall have all the rights enumerated in Chapter 55 of Title 21; and

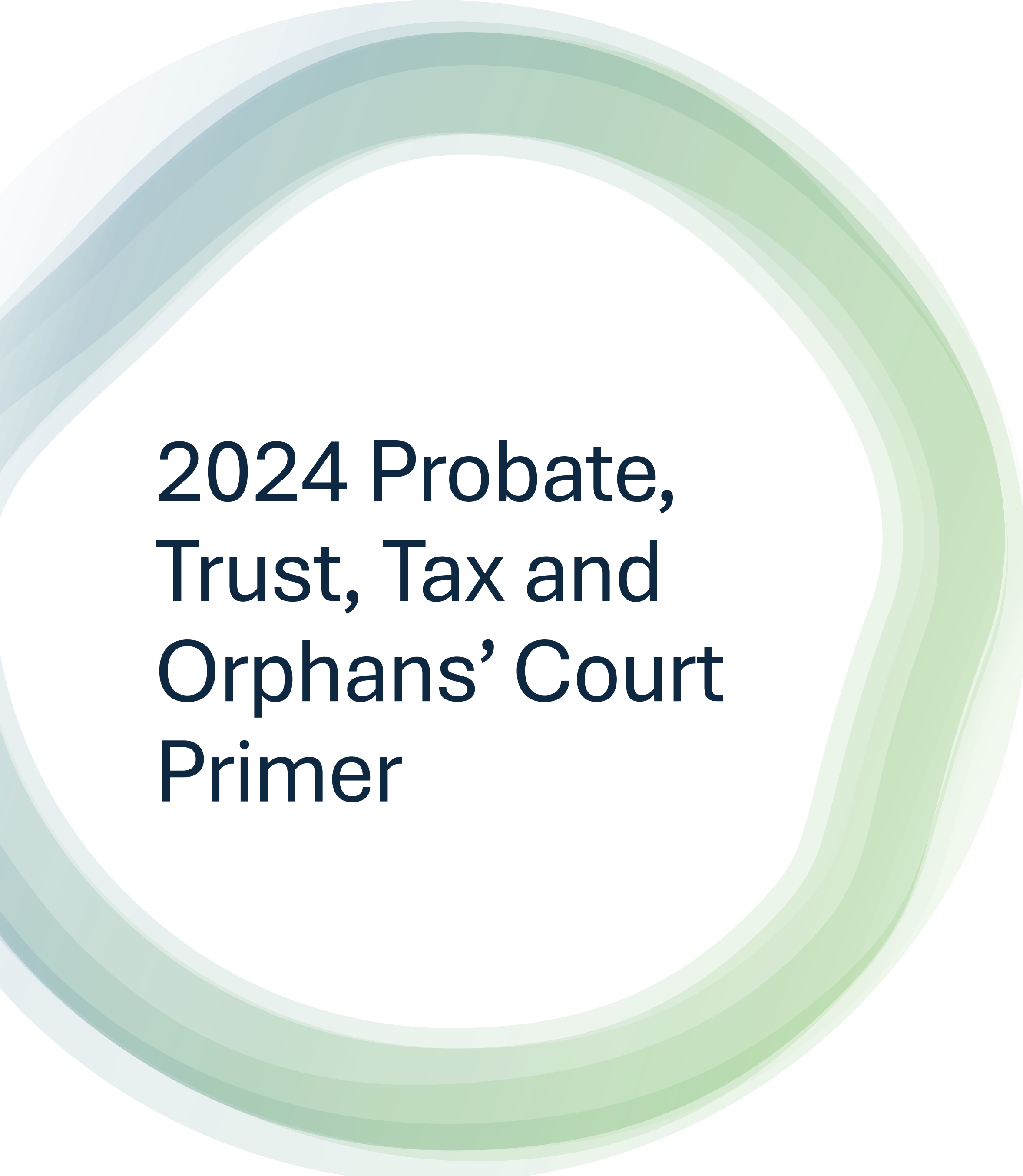
## **SENATE APPROPRIATIONS COMMITTEE FISCAL NOTE**

- Except when the hearing is held to appoint a successor guardian, the burden of proof, by clear and convincing evidence, shall be on the party advocating continuation of guardianship or expansion of areas of incapacity.

This act shall take effect in 180 days.

### **FISCAL IMPACT:**

According to the Administrative Office of Pennsylvania Courts, Senate Bill 560 will have no fiscal impact to the Commonwealth.



# 2024 Probate, Trust, Tax and Orphans' Court Primer

Moderator: Judge Michael McCarthy (Allegheny County Orphans' Court Division)

Speakers:

- Michelle Ross (Leech Tishman)
- Samantha Gagliardo (Dentons)
- Todd Jordan (Williams Coulson)
- Dan Seibel (Citron Alex)
- Carol Sikov-Gross (Sikov and Love)



# Recent Changes Affecting Grantor Trusts

Samantha J. Gagliardo,  
Esquire



# Today's Topics

1. Overview of the Grantor Trust Rules
2. Pennsylvania Adopts Federal Grantor Trust Rules
3. Revenue Ruling 2023-2
4. Chief Counsel Advice 202352018





# Overview of the Grantor Trust Rules

# What is a Grantor Trust?

- With a grantor trust, if certain provisions are included in the trust agreement, the grantor is treated as the owner for income tax purposes. See I.R.C. §671\*.
- The rules for grantor trust treatment can be found in I.R.C. §§ 671-679.
- The grantor simply reports the trust's income on his or her own personal income tax return.
- Even if a party is not truly the “grantor” of the trust, the party can be considered the owner of the trust for grantor trust purposes.

\*All statutory reference are to the Internal Revenue Code of 1986, as amended from time to time, and applicable Treasury Regulations

# Advantages of Grantor Trust Treatment

## Lower Taxes

For grantors in the lower to middle tax brackets, they will likely pay the tax on the trust at a lower rate than if it was taxed at the trust's rate.

## More for Beneficiary

The trust assets can continue to be invested and grow if they are not needed to pay taxes, leaving more assets available for the trust's beneficiaries.

## Reduce Estate

Grantor trust treatment allows grantors to reduce their estate by paying the taxes for the trust without using any of their gift and estate tax exemption.

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Pennsylvania Adopts Federal Grantor  
Trust Rules



## Prior Pennsylvania Law

- Previously, Pennsylvania was the only state that had not incorporated the grantor trust rules for irrevocable trusts into state law.
- This means that, technically, each irrevocable trust would be required to file its own Form PA-41 instead of allowing the grantor to report the income on his or her own Form PA-40.



# **Revenue Ruling 2023-2**






## Issue Addressed by Rev. Rul. 2023-2

- Revenue Ruling 2023-2 addresses whether an irrevocable grantor trust that is not included in the grantor's estate at his or her death can receive a basis adjustment as of the grantor's date of death.
  - Three Factors for Application of this Ruling:
    - Irrevocable Trust;
    - Grantor Trust; and
    - Assets not included in the decedent's estate.

# Basis Adjustment under I.R.C. §1014

- Pursuant to I.R.C. §1014(a), in most situations, assets received by a beneficiary from a decedent as a result of his or her death will receive a basis adjustment to the fair market value as of the decedent's date of death.
- Commonly referred to as a “step up” in basis.





# Property Must be Acquired from Decedent

- I.R.C. §1014 (b) provides a list of property that is considered to have been acquired from a decedent.
- Most types of property included in §1014 (b) would not apply in the context of an irrevocable grantor trust.
- The type of property most relevant to irrevocable grantor trusts can be found in §1014 (b)(9), which describes, *inter alia*, that the basis of property that is included in the grantor's gross estate at his or her death should be adjusted to date of death value (with a few exceptions).

# Summary of Revenue Ruling 2023-2

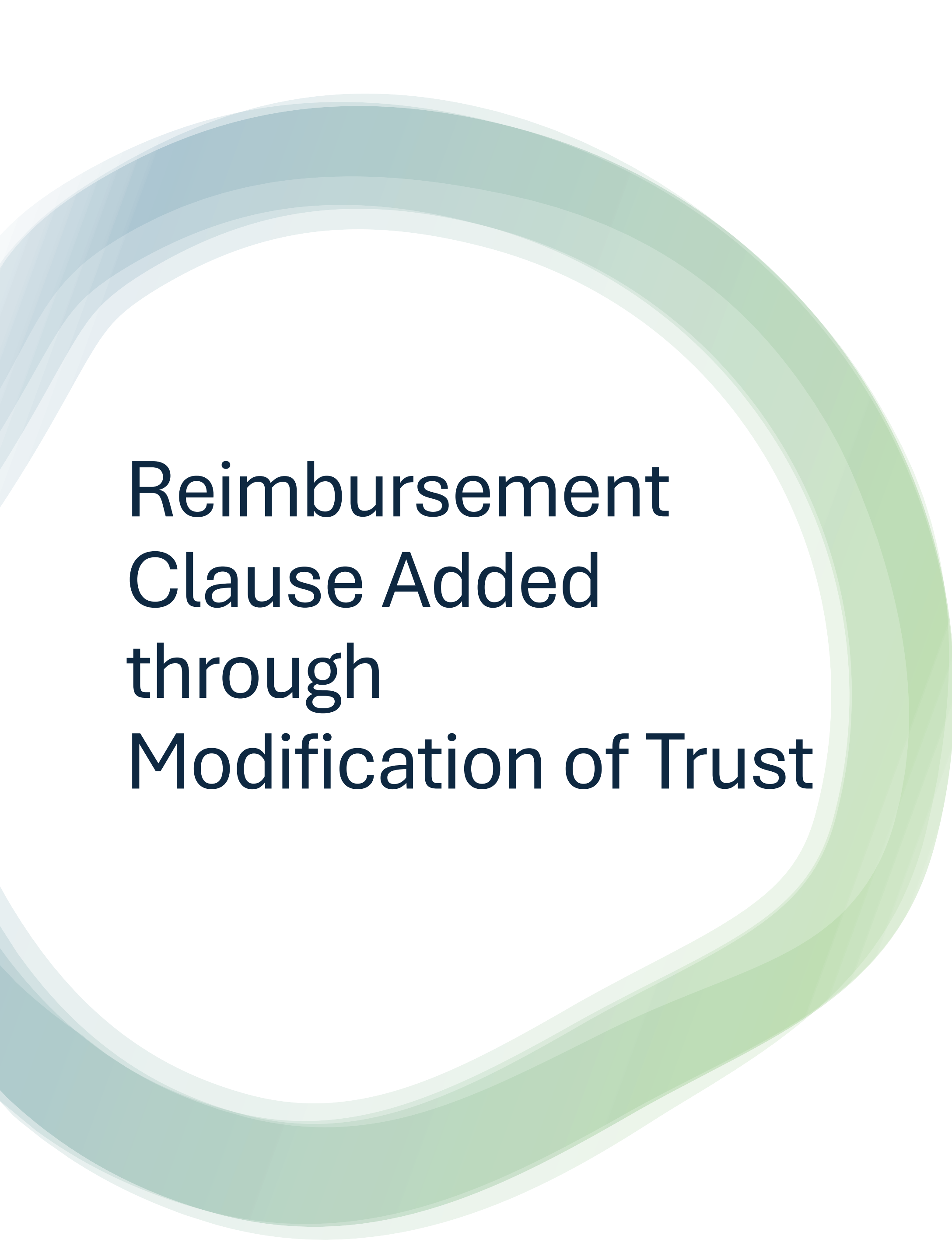
- In the context of an irrevocable grantor trust, the trust property likely will not receive a basis adjustment unless it is included in the grantor's estate.
- The mere fact that the grantor is considered as the "owner" of the trust is not enough to allow the property to receive a basis adjustment.



# Chief Counsel Advice 202352018

# Trustee's Power to Reimburse Grantor for Taxes

- Rev. Rul. 2004-64 describes an independent trustee's ability to reimburse the grantor for income tax paid.
  - In one example, pursuant to the governing document, the trustee was required to reimburse the grantor for the taxes paid, while in another, the trustee had the discretion to reimburse the grantor for the taxes paid.
  - The IRS found each of these two situations acceptable and concluded that the inclusion of these types of reimbursement provisions did not constitute a gift by the beneficiaries.



# Reimbursement Clause Added through Modification of Trust

- Pennsylvania law allows the trustee and beneficiaries of a trust to modify the trust in two different ways:
  - Court approval with the consent of at least some of the beneficiaries pursuant to 20 Pa. C.S.A. § 7740.1
  - Nonjudicial Settlement Agreement signed by the trustee and all of the beneficiaries, provided that the modification does not result in a change to a material purpose of the trust, pursuant to 20 Pa. C.S.A. § 7710.1





# Modification Treated as Gift

- CCA 2023352018 determined that modifying an existing grantor trust to add a reimbursement clause constituted a gift made by the beneficiaries and that this scenario is factually distinguishable from the facts of Rev. Rul. 2004-64.
- In the scenario examined by CCA 2023352018, the beneficiaries had an interest to the trust property at the time of the creation of the trust. By modifying the trust, they gave up a portion of their interest in favor of the grantor, who then became entitled to a discretionary distribution of income and/or principal in the amount of the tax.
- This constituted a transfer of an interest from the beneficiaries to the grantor.
- The IRS relied on Treas. Reg. § 25.2511-1(e) and Treas. Reg. § 25.2511-2(b) in reaching this conclusion.

# Tax Law Updates and Proposed Legislation

Todd Jordan, Esquire



# **Guardianship Procedures based on Act 61 of 2023**

Carol Sikov-Gross, CELA




## Section 5511(A.1) AMENDMENT on APPOINTMENT OF COUNSEL

- (1) If petitioner is aware that AIP is represented by counsel, petitioner shall advise court at time of filing petition or as soon as petitioner becomes aware
- (2) Regardless of AIP's ability to pay, court shall appoint counsel in all proceedings and in subsequent proceedings to consider, modify or terminate guardianship. Appointed counsel shall be qualified by experience or training and shall act without delay.
- (3) Counsel for AIP shall, as far as reasonably possible, maintain a normal client-attorney relationship with client. [Other requirements for counsel set forth.]

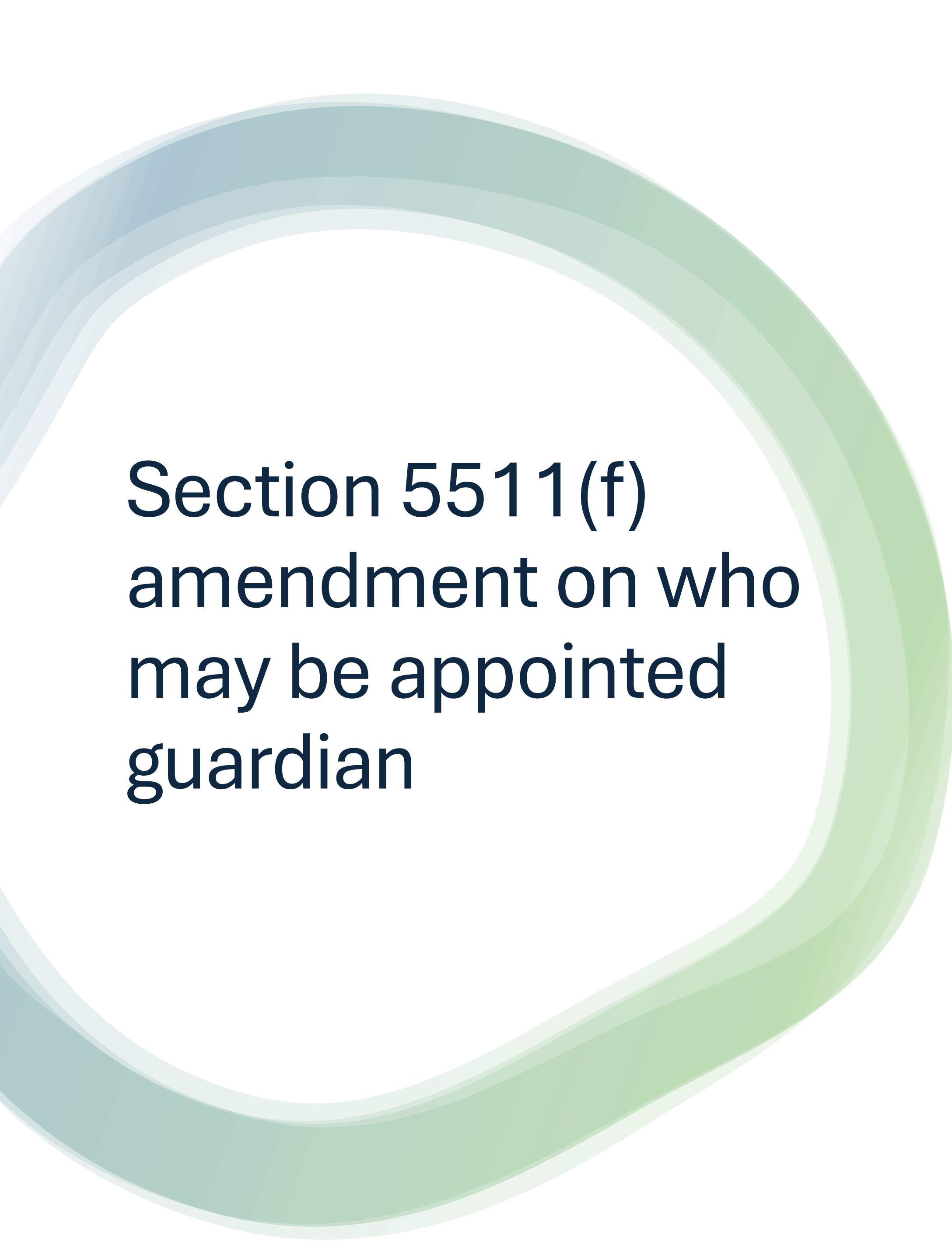
# Section 5511(A.1) AMENDMENT on APPOINTMENT OF COUNSEL

- Proposed rules want meeting between appointed counsel and AIP as soon as reasonably possible and prompt notification (certification) with court about time and place of meeting. Proposed time frame is 5 days. May want to be clear that certification is filed before hearing.
- Proposed rules may set forth specific qualifications for appointed counsel, such as attorney in good standing with Disciplinary Board, understanding of guardianship law and OCR and procedures and understanding of PA Rules of Professional Conduct, such as Rule 1.14
- Proposed rules may ask court to determine scope of representation of appointed counsel following adjudication of incapacity, such as appeal or review hearing, when it ends, etc.




## Section 5511(e) amendment on petition contents

- Petitions must allege specific facts demonstrating that less restrictive alternatives were considered or tried and why the alternation are unavailable or insufficient.



## Section 5511(f) amendment on who may be appointed guardian


- (2) Individuals seeking guardianship of 3 or more IP must be certified and provide proof of certification to court prior to 3<sup>rd</sup> appointment. PA Supreme Court is to prescribe rules and forms necessary to effectuate certification.
- (3) Certification required by Paragraph (2) may be waived by court upon petition under certain conditions; but license to practice law shall **not** constitute “equivalent license or certification”



## Section 5511(f) amendment on who may be appointed guardian – Certification for #3

- Requirements:
- Proof of national certification (only 1 entity now certifying)
- Proof of current certification by court of competent jurisdiction
- Concurrent petition for waiver of certification requirement accompanied by written proof of equivalent licenses or certifications to ensure capability of proposed guardian (filed in each case)





# Section 5512.1(a)(3) amendment on determination of incapacity

- Court shall make specific findings of fact based on evidentiary record of absence of sufficient family, friends or other supports and of insufficiency of each less restrictive alternative before ordering guardianship
- Less restrictive alternatives include, but are not limited to, - advance directives such as durable POAs or trusts, living wills, health care POAs, health care representatives, Financial POAs, trusts including SNTs, Rep payees for SS, PA ABLE accounts and mental health advance directives


# Section 5512.1(a)(3) amendment on determination of incapacity

- Proposed rules may ask Petitioner to state what alternatives to guardianship have been tried, whether they were or were not sufficient and why
- Examples: Health care representative may be enough for person who cannot sign health care POA or if person only has SS income, Rep Payee may work

## Section 5512.1(A)(6) amendment on less restrictive alternatives


- Court shall prefer less restrictive alternatives and, if no less restrictive alternatives are available and sufficient, limited guardianship.
- (i) Determination of incapacity is separate from determination of whether guardian should be appointed.
- (ii) Court may not use determination of incapacity alone to justify guardianship
- (iii) Court may not appoint guardian if lesser restrictive alternative exists that is sufficient to support IP needs





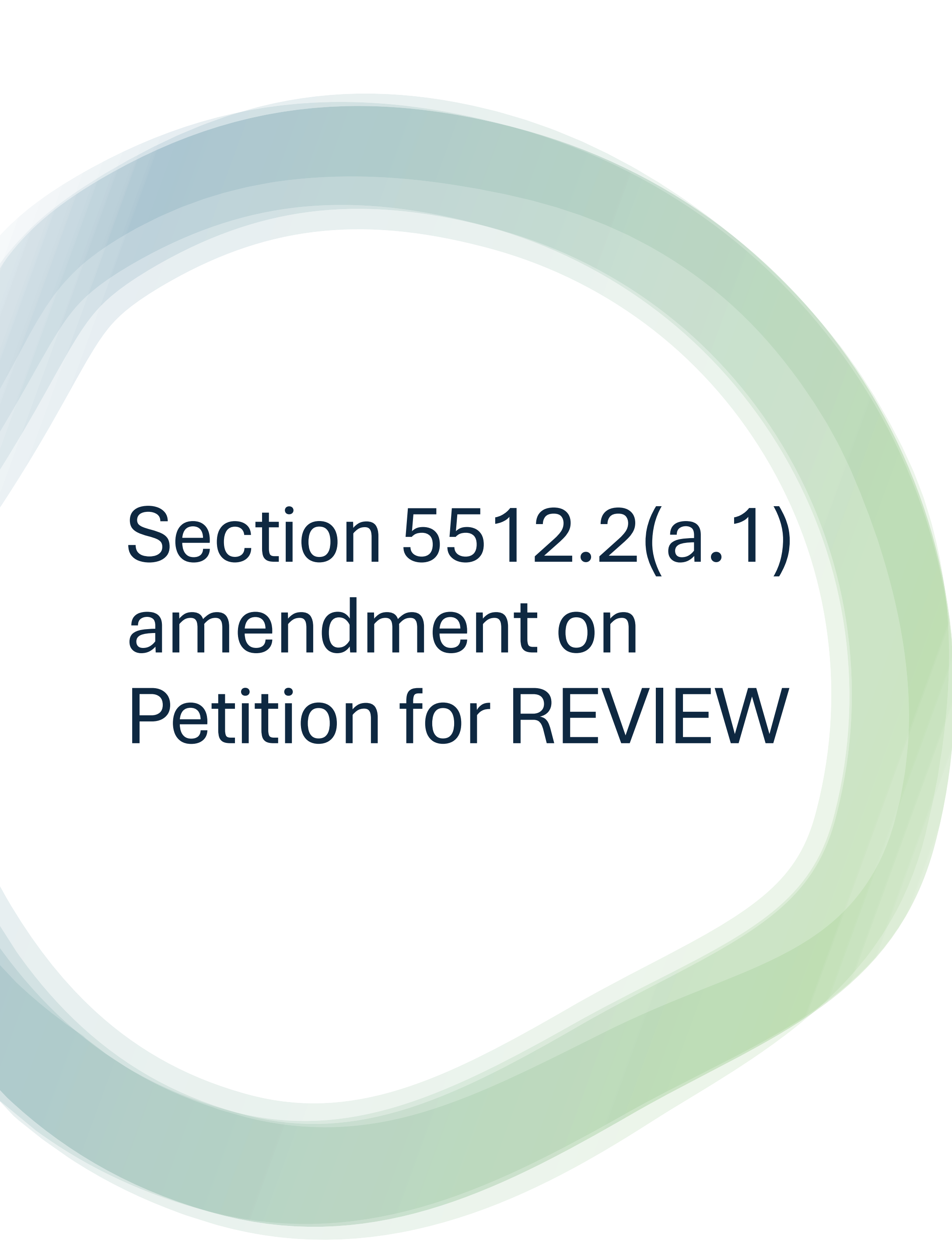
## Section 5512.1(A)(6) amendment on less restrictive alternatives

- (iv) When entering an order denying petition in whole or in part, court shall identify less restrictive alternatives that are available and sufficient to enable AIP to manage personal finances or to meet essential requirements of personal physical health and safety.
- Order may assist Respondent and any supportive and substitute decision makers involved to effectively Respondent's decisions with 3<sup>rd</sup> parties.



# Section 5512.2(a) amendment on REVIEW HEARING

- Automatic Review – Evidence at hearing indicates person’s incapacity may change; review hearing to determine if guardianship still needed; no later than 1 year from date of order with IP and their attorney



**Section 5512.2(a.1)  
amendment on  
Petition for REVIEW**

- Any interested party may file petition to terminate or modify guardianship
- Court shall promptly have review hearing with IP and their attorney

# Proposed Rulemaking for Amendments to guardianship statute

- Proposed Rulemaking published
- Comments have been received
- Review by Orphans' Court Rules Committee
- Given to Supreme Court of Pennsylvania

# Guardianship Updates

Michelle Ross, Esquire



# Introduction

In Pennsylvania, when an individual lacks the capacity to make their own decisions regarding their health care and/or finances, the Orphans' Court may appoint a guardian to assist them.

- **Effective June 11, 2024**, the 4 major changes to the guardianship laws will affect those currently serving as someone's guardian or planning to become a guardian in 2024.



# Mandatory Legal Representation

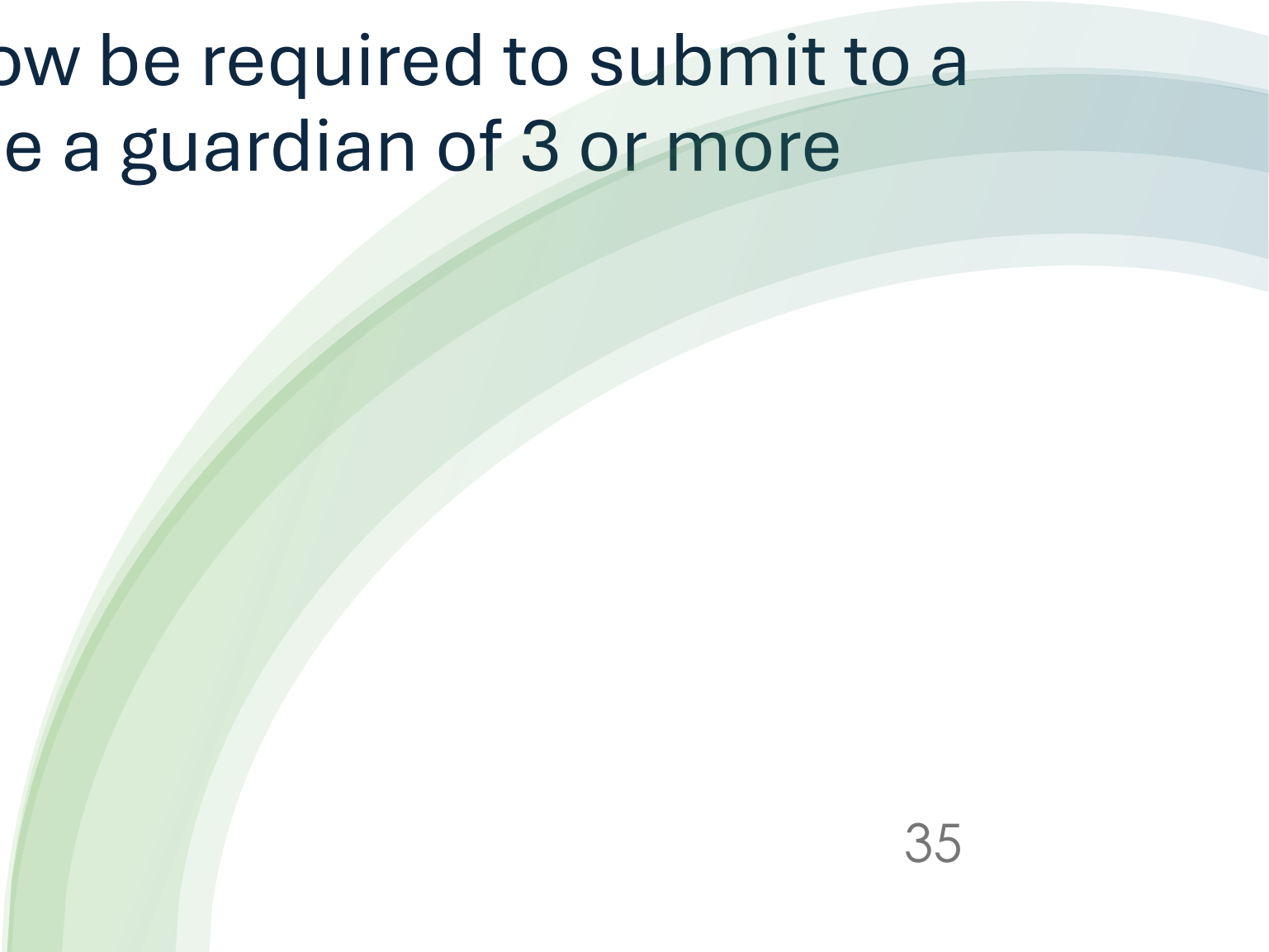
Where it had previously been optional and thus inconsistently handled from county to county, all PA Orphans' Courts will now be required to appoint an attorney to represent the alleged incapacitated person's (AIP) expressed wishes and instructions in all stages of the guardianship proceedings, from petition and initial adjudication hearing through the modification or termination of guardianship.

- **Takeaway:** A guardianship proceeding will no longer take place without at least 1, possibly 2, lawyers (whose fees will most likely be paid by the county at a reduced rate) to represent the AIP.



# Certification Requirements for Guardians

Those seeking to become the guardian of 3 or more individuals will now need to first become certified and provide proof of compliance with the certification requirements to the court. The Supreme Court has not yet prescribed the rules and forms necessary to effectuate the required certification process.

- **Takeaway:** An individual will now be required to submit to a certification process to become a guardian of 3 or more individuals.
- 





## Greater Emphasis on Less Restrictive Alternatives

Greater emphasis will now be placed on the court's requirement to consider and favor "less restrictive alternatives" to the appointment of a guardian.

- **Takeaway:** To justify a guardianship appointment, Courts must first find the existence of insufficient family support and the absence of sufficient alternative measures such as advance directives or financial powers of attorney.

# Mandatory Review Hearings

If the evidence presented during the guardianship hearing indicates that the circumstances of the person's incapacity may change in the future, it will now be mandatory for the court to hold a review hearing no later than a year from the date of the initial guardianship appointment. At that time, the parties will be expected to present evidence from lay persons or opinions from medical professionals or other qualified experts regarding:

1. Whether the incapacity could be adequately managed by medication or rehabilitation;
2. Whether the potential exists for the incapacitated person to regain physical and/or cognitive capacity and;
3. The circumstances of the incapacitated person's daily living and support from others.

Upon the court's consideration of the evidence and testimony presented, the continuance, modification, or termination of the guardianship will then be ordered.

- **Takeaway:** Mandatory review hearings will be conducted for cases in which the court determines that circumstances have the potential to change.

# Orphans' Court Procedures

Daniel Seibel, Esquire

# Petition? Motion? What's the Difference?

## Pa. O.C. Rule 1.3 has the answer

### Petitions

- A “Petition” is the Orphans’ Court equivalent to the Civil Division’s Complaint: It is what begins an action.
- Petitions aver facts giving rise to a cause of action and initiate the exercise of the Court’s jurisdiction over the parties.
- Petitions must be signed and verified by the “Petitioner.”

### Motions

- Motions are **NOT** Pleadings.
- Generally, motions do not plead facts not of record.
- Must be signed, but not verified.
- Request relief in relation to the pending matter pled in the Petition.

Generally, Motions are presented to the court in person, whereas Petitions are not, unless they are uncontested not requiring the issuance of a Citation or Rule.

# Petitions for Citation/Rule to Show Cause

## Petitions for Citation

- Petitions for Citation are necessary to begin an action where the Court does not possess personal jurisdiction over the respondent.
- In such circumstances, the Petition will aver all necessary facts giving rise to the cause of action and request that the court “issue a citation directed to” or otherwise “cite” the respondent “to show cause why” the relief requested in the Petition should not be granted by the Court.
- The Court will then issue a citation and set a return date.
- The Petitioner must then serve the Petition and Citation on the Respondent at least 20 days prior to the return date in the same manner as that required by the Rules of Civil Procedure for service of original process.
- Proof of such service must then be “returned” or filed of record, typically by filing an “Affidavit of Service” attaching the signed returned receipt.

## Petitions for a Rule

- Petitions for a Rule are necessary to begin an action where the Court *already* possesses personal jurisdiction over the respondent or is not required (e.g. Executors, Insurance Companies, and other persons/entities subject to personal jurisdiction by statute).
- In such circumstances, the Petition will aver all necessary facts giving rise to the cause of action and request that the court “issue a rule directed to” the respondent “to show cause why” the relief requested in the Petition should not be granted by the Court.
- The Court will then issue a Rule and set a return date.
- The Petitioner must then serve the Petition and Rule on the Respondent at least 20 days prior to the return date, but in this case, may do so by regular mail.





# Notice Practice

Where personal jurisdiction is already obtained or is not required, the Petitioner may skip the entire process of obtaining a Rule to Show Cause by affixing a Notice to Plead on the cover sheet, signed by counsel, and directed to the Respondent.

- **Local Tip 1:** You may still wind up getting a Rule issued by the Court, directing a return date for service.

# Motions Preparation

# Required Formatting

Every motion must begin with a cover sheet substantially in the form provided by Allegheny O.C. Rule 1.8

Motions must be double spaced, with no smaller than 12 pt font, on one-sided white paper – Pa. O.C. Rule 4.1

Motions must be directed to the judge assigned to the matter as noted on the Citation or Rule – Allegheny O.C. Rule 3.1(g)

**Local Tip 2:** There are four Judges in the Orphans' Court division that hear regular motions. Each judge holds motions court for one week in each month. Try to file your motion so that it can be presented during your assigned Judge's motions week. If that's not possible, your motion may get rescheduled, or it will get "referred back" to the assigned judge for presentation after general motions court is over.



# Required Attachments

Every motion should include a proposed Order.

Motions must include a Certificate of Service and Notice of Presentation – Allegheny O.C. Rule 3.1(c) (also, don't forget your Certificate of Compliance).

Notices of Presentation: Note that Allegheny O.C. Rule 3.1(b) requires 10-day notice to the opposing party “absent an emergency or consent by the opposing party.”

**Local Tip 3:** Be very careful about what you aver as an “emergency.” Generally, a genuine belief based on supporting facts that property will be stolen or destroyed, or that a right of your client will be lost absent immediate court intervention, will suffice as an emergency. Wanting to present a motion 4 days after filing it because you have a vacation planned and waited until the last minute to do your work, is not an emergency.

# Style Suggestions

- Be clear and concise. Stick to one or two sentences per numbered paragraph.
- Use defined terms. Get party terms out of the way in the introductory paragraph (e.g. “Executor”, “Respondent”, “Decedent”, etc.).
- If the Court is well-acquainted with the factual background of the case, there is no need to repeat the factual or procedural history.
- Make use of argument headings in bold, caps, and/or underlined font.
- Parallel citations are unnecessary and make motions longer, so it’s best to omit them: citing the Atlantic Reporter is plenty.
- **Local Tip 4:** Brevity is an art, but it’s also a cardinal virtue in the Orphans’ Court division. Try to avoid wordiness, run-on sentences, and most importantly, unnecessary exhibits. If your exhibits also contain exhibits which are duplicative, when defining the document in your motion as “Exhibit \_\_”, just add a parenthetical stating (exhibits omitted).

# How to File Motions

# Where and What to File

## City-County Building

- First, motions must be filed with the clerk of the Department of Court Records, Wills/Orphans' Court Division located on the first floor of the City-County Building (414 Grant Street) directly to your left upon entrance. – Allegheny O.C. Rule 3.1(a)
- Motions can also be e-filed.
- The clerk will need the original motion. If new facts are averred, then a new, original, verification must also be appended to the motion and filed.
- **Local Tip 5:** The best practice is to make one copy of your signed original (after it's been scanned) and one cover sheet. Bring all three to get time-stamped by the clerk. The clerk will keep the original and return your cover sheet.

# Who to Serve and When

## The Frick Building

- The Motions Coordinator (Hugh Mulvey) must be provided with a copy of the motion at least one (1) day in advance of presentation! Allegheny O.C. Rule 3.1(f).
- The Orphans' Court Division is located directly across the street from the City-County Building on the 17th floor of the Frick Building (437 Grant Street).
- E-filing your motion **does not** relieve you of the obligation to provide the Motions Coordinator with a copy of the motion at least one (1) day in advance of presentation. If Hugh hasn't received a copy of your motion, it will not appear on the judge's slate for motions court, and most likely, will not be heard by the Court.
- **Local Tip 6:** Do not forget your Notice of Presentation. If the notice is not attached to the copy provided to the Motions Coordinator, how is the Court going to know when you intend to present your motion? Also, do not forget to attach your exhibits!

# Presentation





# Formalities: Manners Matter

- Wait for your case to be called before going to counsel table.
- As you approach counsel table, remember to greet the Court with a “Good morning Your Honor” and/or “May it please the Court.”
- Don’t forget to introduce yourself and state who you represent!
- The movant goes first, if you are responding to a motion, you will be given the opportunity to defend, but please wait your turn.
- Do not forget to say “Thank you Your Honor” after argument has ended, even if you didn’t get what you wanted!
- **Local Tip 7:** The local Orphans’ Court bar prides itself on its heightened level of civility. This is not the Civil Division, there is no “v.” in caption for a reason. The Orphans’ Court Division is primarily a Court of equity. Interruptions, over-zealousness, and a hostile demeanor will get you no where. Be polite, professional, and cordial to opposing counsel, even if they refuse to return the favor.

# Argument

- After introductions are over, the first thing out of your mouth should be your request for relief (e.g. “Your Honor, my client is asking that the Court appoint an additional fiduciary because...”)
- Provide the Court with the necessary background for why you are asking for the requested relief and provide the applicable law as outlined in your motion.
- Get to the point as quickly as possible and be prepared for questions from the Court. It should go without saying, but don’t interrupt the Judge.
- Allow the other side their time for response, making mental note of each point of contention with which you disagree, and mentally prepare your reply.
- Make your reply to the Court, finishing your argument with repeating your request for relief.
- **Local Tip 8:** The Court may forget to allow you a moment to reply to the opposing party’s response. If that happens, feel free to request “if I may have just a moment to reply to that Your Honor” and the request will usually be granted.





# Important Considerations

- If feasible, bring your entire file, not just the motion and any response.
- Research, Research, Research: Know the Applicable Law.
- Above all: **BE PREPARED**
- **Local Tip 9:** Fiduciary litigation can often be tricky. Do not rely on your instincts. The black-letter law in this area will often surprise you, especially if you are primarily a civil litigator. Many participants often play the roles of both fiduciary and beneficiary. Practitioners must be vigilant and always on the look out for conflicting interests.



# Peeking Over the Bench



# Important Considerations

- Know what needs to be presented, and what doesn't.
  - Generally, motions and uncontested petitions need to be presented in motions court. – Allegheny O.C. Rule 3.1(e)
- Don't mail/fax motions to the Judge – they need to be filed.
- Can you present your motion by phone? NO!



# Orphans' Court Division Custody of Exhibits in Court Proceedings



## Rule 5102.2

The Rules Committee has implemented rules in many of the Court's divisions regarding exhibits used at trial and the persons responsible for retaining such.

- **Rule 5102.2:** Describes that at the outset of all court proceeding, parties will now be required to identify by name, on the record, an individual who will be required to serve as that party's custodian of exhibits.
- If the party is *pro se* and the Court determines that he/she is unable to perform the duties of a custodian, the Court will assume the duties of that party during the trial.



# Custodian Duties – During and Throughout the Court Proceedings

- Secure and maintain all documentary exhibits, photographs, and photographs of non-documentary exhibits.
- Includes during breaks and recesses.



## Custodian Duties – After the Court Proceedings

- Take custody and retain all documentary exhibits, photographs, and photographs of non-documentary exhibits offered into evidence, whether admitted or not admitted during the court proceedings.
- File all documentary exhibits, photographs, and photographs of non-documentary exhibits with the Department of Court Records within five business days of the conclusion of the Court Proceedings unless otherwise directed by the Court.



# Custodian Duties – After the Court Proceedings

- Maintain all non-documentary exhibits as directed by the Court, or as agreed by the parties.
- The Court custodian must confirm that the custodian designated by each party has complied with filing requirements.
  - If the designated custodian fails to comply, the Court custodian will notify the Court, who may impose sanctions.



# Considerations

A good practice may be to have court staff, either the tip staff or court reporter, hold the exhibits during the trial to avoid confusion and confrontation. This is particularly important as many times the court reporter utilizes information contained in the exhibits for spelling of names or other data, in the event that a transcript would need to be produced.



# Questions?

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