

The Court of Chancery Amends Guardianship Rules and Rules 28, 153, and 170

The Court of Chancery's administration of guardianships is detailed in Court of Chancery Rules 109 through 133, 174 through 179, and 180-A through 180-D. After extensive review by the Court, members of the bar, and other stakeholders, many of these Rules are amended to refine and streamline guardianship procedures for protecting the rights, estates, and well-being of persons with disabilities. Many amendments reflect practices already in place. These amendments are **effective July 1, 2018**.

- **Rule 175. Petition for appointment of guardian for adult with an alleged disability.** The changes require an affidavit of unknown address when a petitioner does not know the address of an interested party; require the petition to include the name of an appropriate adult if an interested party is a minor; and limit notice to care facilities to notice of only the petition for appointment, and only to the facility where the person with an alleged disability resides at the time of filing.
- **Rule 176. Appointment of attorney ad litem upon petition for appointment of guardian; service and notice of hearing.** The amended Rule clarifies the attorney ad litem's duty to represent the best interests of the person with an alleged disability, and reflects the Court's practice of appointing a second attorney ad litem to represent the wishes of the person with an alleged disability where the best interests and wishes diverge. The changes also reflect that notice to a person with an alleged disability is provided by the attorney ad litem within a certain time frame.
- **Rule 177. Hearing upon petition for appointment of guardian.** The changes reflect the current practice of considering petitions for the appointment of a guardian without a hearing where all interested parties have consented and the petitioner is represented by counsel.
- **Rule 178. Petition to exercise powers not granted by Subchapter II of Chapter 39 of Title 12 of the Delaware Code or by the Court.** The changes reflect the current disclosure requirements regarding guardianship property for petitions to exercise additional powers.
- **Rule 178-A. Petition for instructions regarding life-sustaining procedures.** This new Rule details the information needed and notice requirements for petitions regarding life-sustaining procedures.
- **Rule 180. Guardian of property of a minor.** The changes require an affidavit of unknown address when a petitioner seeking guardianship of a minor's property does not know the address of an interested party, and require notice to the minor's grandparents.

- **Rule 180-C. Termination of guardianship.** The change allows any person to file to terminate guardianship not only in the event of recovery or death, but also in favor of a less restrictive alternative to guardianship. Absent such a change, guardianship may only be terminated upon death or recovery. This amendment is intended to permit those under existing guardianships to benefit from the recently enacted Supported Decision-Making Act, 16 *Del. C.* § 9401A *et seq.*
- **Rule 180-D. Guardianship monitoring program of the Office of the Public Guardian.** The changes designate Guardianship Monitoring Program reports as confidential unless the Court approves sharing a report with interested parties.

Finally, the guardianship Rules have been updated to mirror language used in Title 12 of the Delaware Code, referring to “a person with a disability” instead of “a disabled person.” *Pro se* forms and the physician’s affidavit have been updated to reflect the above changes.

The following amendments to other Court of Chancery Rules will also be **effective July 1, 2018:**

- **Rule 28. Persons before whom depositions may be taken.** The change requires citation to the applicable statute if a filer contends that a commission to take an out-of-state deposition is unnecessary.
- **Rule 153. Receiver to notify creditors.** The changes reflect the current procedure, under which the receiver is responsible for sending notice to creditors of an entity under receivership.
- **Rule 170. Attorneys.** The changes reference the Statement of Principles of Lawyer Conduct to the Principles of Professionalism for Delaware Lawyers.