

CHAPTER 2050. INCAPACITATED PERSONS AS PARTIES

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Rule 2051. Definitions.

As used in this chapter

“action” means any civil action or proceeding brought in or appealed to any court of record which is subject to these rules;

“guardian,” except where the context otherwise indicates, means the guardian or other fiduciary appointed by a court of competent jurisdiction for the person or estate of an incapacitated person;

“incapacitated person” means an adult whose ability to receive and evaluate information effectively and communicate decisions in any way is impaired to such a significant extent that the person is partially or totally unable to manage financial resources or to meet the essential requirements for physical health and safety;

“confined” means legally committed or voluntarily or involuntarily restrained because of incapacity.

Source

The provisions of this Rule 2051 adopted June 2, 1941, effective February 2, 1942; amended June 23, 1975, effective immediately, 5 Pa.B. 1817; amended June 3, 1994, effective July 1, 1994, 24 Pa.B. 3019; amended December 16, 2003, effective July 1, 2004, 34 Pa.B. 9. Immediately preceding text appears at serial page (256293).

Rule 2052. [Rescinded].**Source**

The provisions of this Rule 2052 adopted June 2, 1941, effective February 2, 1942; rescinded June 3, 1994, effective July 1, 1994, 24 Pa.B. 3019. Immediately preceding text appears at serial page (159492).

Rule 2053. Guardian to Represent Incapacitated Person.

(a) A plaintiff who is an incapacitated person shall be represented by a guardian or by a guardian ad litem who shall supervise and control the conduct of the action in the plaintiff's behalf.

(b) A defendant who is an incapacitated person shall be represented by a guardian. If the defendant has no guardian, or if the guardian is not served with process in this Commonwealth and does not voluntarily appear in the action, the defendant shall be represented by a guardian ad litem. The guardian or guardian ad litem shall supervise and control the conduct of the action in the defendant's behalf.

Official Note: See Rules 2056(a) and 2057, as to the procedure and effect of an action brought by an incapacitated plaintiff who is not represented by a guardian or a guardian ad litem.

Source

The provisions of this Rule 2053 adopted June 2, 1941, effective February 2, 1942; amended April 18, 1975, effective immediately, 5 Pa.B. 1820; amended June 3, 1994, effective July 1, 1994, 24 Pa.B. 3019. Immediately preceding text appears at serial page (159492).

Rule 2054. Actions By and Against Incapacitated Persons. Averments in Plaintiff's Pleadings.

(a) An action in which a plaintiff is incapacitated shall be entitled "A, An Incapacitated Person, by B, Guardian," against the defendant.

Official Note: See Rules 2056(a) and 2057, as to the procedure and effect of an action brought by an incapacitated plaintiff who is not represented by a guardian or a guardian ad litem.

(b) The initial pleading filed in behalf of a plaintiff who is incapacitated shall state the name and address of the plaintiff's guardian, if any, the nature of the guardianship and a reference to the record of the guardian's appointment.

(c) An action in which a defendant is an incapacitated person shall be commenced against the defendant by name in the manner in which a like action is commenced against an adult who is not incapacitated.

Source

The provisions of this Rule 2054 adopted June 2, 1941, effective February 2, 1942; amended April 18, 1975, effective immediately, 5 Pa.B. 1820; amended June 3, 1994, effective July 1, 1994, 24 Pa.B. 3019; amended May 14, 1999, effective July 1, 1999, 29 Pa.B. 2767. Immediately preceding text appears at serial page (220908).

Rule 2055. Service on Incompetents.

[Rescinded].

Official Note: For service of original process when the defendant is an incapacitated person, see Rule 421. For service of other legal papers, see Rule 441(b).

Source

The provisions of this Rule 2055 rescinded June 20, 1985, effective January 1, 1986, 15 Pa.B. 2452; note amended June 3, 1994, effective July 1, 1994, 24 Pa.B. 3019. Immediately preceding text appears at serial page (159493).

Rule 2056. Procedure When Incapacity of a Party is Ascertained.

(a) If, at any time during the pendency of the action, the court shall find that the plaintiff is an incapacitated person, who is not represented in the action by a guardian or a guardian ad litem, the court shall either

- (1) forthwith appoint a guardian ad litem; or
- (2) stay all proceedings and enter an order directing that the plaintiff be represented in the action by a guardian within such reasonable time as the court shall direct. Notice of such order shall be given to such persons and in such manner as the court may direct. If a guardian is not appointed within the specified time, the court shall appoint a guardian ad litem.

(b) If, at any time before trial, the court shall find that the defendant is an incapacitated person who is not represented in the action by a guardian or guardian ad litem the plaintiff shall forthwith give notice, by registered mail or in such other manner as the court by local rule or special order shall direct, of the pendency, subject matter and number of the action. Such notice shall be given to the guardian of the defendant appointed by a court of competent jurisdiction within this Commonwealth. If the defendant has no such guardian the plaintiff shall petition the court in which the action is pending for the appointment of a guardian ad litem and the notice, together with any additional notice of the application for the appointment of a guardian ad litem, shall be given in like manner to

- (1) the guardian of the defendant appointed by a court of competent jurisdiction outside this Commonwealth, or, if he has no such guardian, then
- (2) the person in charge for the time being of the institution either within or without this Commonwealth in which the defendant is confined or, if not confined, then
- (3) an adult next of kin or the person with whom the defendant resides, and to
- (4) such other person, if any, as the court may direct.

(c) If, at any time during the trial of an action, the court shall find that the defendant is an incapacitated person who is not represented in the action by a guardian or guardian ad litem, the court shall either

- (1) forthwith appoint a guardian ad litem, or

(2) stay all proceedings until the defendant is represented in the action by a guardian. If the defendant has a guardian, the guardian shall be given notice of the pendency of the action in the manner provided by subdivision (b) of this rule. If the defendant is not represented by a guardian in the action within such reasonable time as the court shall direct, the court shall appoint a guardian ad litem for the defendant.

(d) If, at any time after the conclusion of the trial, or after the entry of a finding, verdict or judgment against a party from whom relief is sought, the court shall find that such party was incapacitated at the time of the entry of such finding, verdict or judgment and was not represented in the action by a guardian or a guardian ad litem, the court may vacate the finding, verdict or judgment and may enter an order in the nature of a procedendo.

(e) A finding of incapacity shall be based either on evidence presented to the court in which the action is pending, or on an adjudication of incapacity entered by a court of competent jurisdiction.

Source

The provisions of this Rule 2056 adopted June 2, 1941, effective February 2, 1942; amended April 18, 1975, effective immediately, 5 Pa.B. 1820; amended November 14, 1978, 8 Pa.B. 3410; amended June 3, 1994, effective July 1, 1994, 24 Pa.B. 3019. Immediately preceding text appears at serial pages (159493) to (159494).

Rule 2057. Nonsuit. Directed Verdict. Judgment Notwithstanding the Verdict. New Trial.

The non-representation of a plaintiff who is incapacitated may not be assigned by a defendant as a ground for a nonsuit, directed verdict, or judgment in favor of any party, but may be assigned on behalf of the incapacitated plaintiff as ground for a new trial when a setoff or counterclaim has been successfully asserted against the incapacitated plaintiff.

Source

The provisions of this Rule 2057 adopted June 2, 1941, effective February 2, 1942; amended through October 19, 1983, effective January 1, 1984, 13 Pa.B. 3629; amended June 3, 1994, effective July 1, 1994, 24 Pa.B. 3019. Immediately preceding text appears at serial pages (159494) to (159495).

Rule 2058. Setoffs and Counterclaims.

In an action brought by or against an incapacitated person the defendant may assert any setoff or counterclaim against the plaintiff.

Source

The provisions of this Rule 2058 adopted June 2, 1941, effective February 2, 1942; amended June 3, 1994, effective July 1, 1994, 24 Pa.B. 3019. Immediately preceding text appears at serial page (159495).

Rule 2059. Form of Application for a Guardian Ad Litem.

A petition for the appointment of a guardian ad litem shall state the name and address of the person proposed, and the person's relationship, if any, to the subject matter of the action or to any of the parties thereto. It shall contain also an averment that to the best of petitioner's information and belief the incapacitated person has no guardian, or that the guardian cannot be served with process in this Commonwealth.

Source

The provisions of this Rule 2059 adopted June 2, 1941, effective February 2, 1942; amended June 3, 1994, effective July 1, 1994, 24 Pa.B. 3019. Immediately preceding text appears at serial page (159495).

Rule 2060. Removal of Guardian Ad Litem and Appointment of Substitute.

(a) The court, on its own motion or upon the petition of any party in interest, may remove the guardian ad litem of an incapacitated party and substitute the person's guardian or another guardian ad litem.

(b) The petition shall state the name and address of the person proposed, and the person's relationship, if any, to the subject matter of the action or to any of the parties thereto. In case the person proposed is the guardian of the incapacitated person the petition shall contain a reference to the record of the appointment.

Official Note: A guardian does not automatically supersede a guardian ad litem appointed by the court. The court may find it undesirable to transfer the control of the litigation.

Source

The provisions of this Rule 2060 adopted June 2, 1941, effective February 2, 1942; amended April 18, 1975, effective immediately, 5 Pa.B. 1820; amended June 3, 1994, effective July 1, 1994, 24 Pa.B. 3019. Immediately preceding text appears at serial page (159495).

Rule 2061. Affidavits.

Affidavits which are required to be made by a party to an action, including affidavits to the pleadings, shall not be made by an incapacitated party, but may be made on the party's behalf by the party's guardian or any competent person, if the guardian or other competent person has knowledge or information as to the facts averred therein, and shall state the nature of the party's incapacity.

Source

The provisions of this Rule 2061 adopted June 2, 1941, effective February 2, 1942; amended June 3, 1994, effective July 1, 1994, 24 Pa.B. 3019. Immediately preceding text appears at serial page (159496).

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Rule 2062. Incapacitated Person Judicially Determined to Have Capacity During Pendency of Action.

If during the pendency of an action an incapacitated party (1) is judicially determined to have capacity by the court which appointed the party's guardian or (2) if the party has no guardian, is ascertained to have capacity by the court in which the action is pending, the record shall be amended to remove the guardian or guardian ad litem.

Source

The provisions of this Rule 2062 adopted June 2, 1941, effective February 2, 1942; amended June 3, 1994, effective July 1, 1994, 24 Pa.B. 3019. Immediately preceding text appears at serial page (159496).

Rule 2063. Judgment and Costs.

A judgment entered in an action against an incapacitated person shall be the obligation of the incapacitated person only. A guardian or a guardian ad litem shall not be individually liable for the payment of any judgment entered against the incapacitated person or for the costs of the action.

Source

The provisions of this Rule 2063 adopted June 2, 1941, effective February 2, 1942; amended June 3, 1994, effective July 1, 1994, 24 Pa.B. 3019. Immediately preceding text appears at serial page (159496).

Rule 2064. Compromise, Settlement, Discontinuance and Distribution.

(a) No action to which an incapacitated person is a party shall be compromised, settled, or discontinued except after approval by the court pursuant to a petition presented by any party in interest.

(b) When a compromise or settlement has been approved by the court, or when a judgment has been entered upon a verdict or by agreement, the court, upon petition by the guardian or the guardian ad litem or any party to the action, shall make an order approving or disapproving any agreement entered into by the guardian or the guardian ad litem for the payment of counsel fees and other expenses out of the fund created by the compromise, settlement or judgment; or the court may make such order as it deems proper fixing counsel fees and other proper expenses. The balance of the fund shall be paid to the guardian of the estate of the incapacitated person qualified to receive the fund, if there is one or one is to be appointed. The balance of the fund payable to the guardian of the estate may include a structured settlement underwritten by a financially responsible entity that assumes responsibility for future payments or a trust as described in subdivision (b)(4) of this rule. If the incapacitated person has no such guardian, and none is to be appointed, the court may order:

(1) an amount not more than twenty-five thousand dollars (\$25,000.00) to be paid for the benefit of the incapacitated person to the guardian of the person or to the person or agency by whom the incapacitated person is maintained;

Official Note: The amount payable under subparagraph (1) conforms to the amount set forth in Section 5101 of the Probate, Estates and Fiduciaries Code, 20 Pa.C.S. § 5101, relating to when a guardian is unnecessary, incorporated by reference into Section 5505 of the Code, 20 Pa.C.S. § 5505.

(2) any amount in cash of a resident or non-resident incapacitated person to be deposited in one or more savings accounts in the name of the incapacitated person in banks, buildings and loan associations, savings and loan associations or credit unions, deposits in which are insured by a Federal governmental agency, provided that the amount deposited in any one such savings institution shall not exceed the amount to which accounts are thus insured, or in one or more accounts in the name of the incapacitated person investing only in securities guaranteed by the United States government or a Federal governmental agency managed by responsible financial institutions. Every such order shall contain a provision that no withdrawal can be made from any such account unless the incapacitated person is adjudicated to have capacity, except as authorized by a prior order of the court. Proof of the deposit shall be promptly filed of record;

Official Note: The order should provide for deposits in more than one savings institution if future accrued interest may reasonably be expected to increase a single deposit beyond the insured limit.

For the definition of savings account, see Rule 76.

The rule contemplates the deposit of money in an account investing in federally guaranteed securities, withdrawals from which may be blocked, and not the direct investment in a particular security.

(3) an agreement be executed providing for a structured settlement underwritten by a financially responsible entity that assumes responsibility for future payments. All moneys paid from the structured settlement during incapacity shall be paid into a restricted account as provided by subdivision (b)(2) of this rule;

(4) a trust agreement be executed with a corporate fiduciary which is independent from the incapacitated person and anyone acting on the incapacitated person's behalf and is lawfully authorized to engage in trust business in Pennsylvania or the state of the incapacitated person's domicile, which trust

- (i) is designated to receive the fund;
- (ii) contains such terms for investment, disbursement and distribution of the fund as the court deems proper; and
- (iii) expressly provides that it is subject to the court's continuing jurisdiction, including the court's right to modify or terminate, for cause shown, although the trust may be otherwise irrevocable.

Official Note: This rule permits the use of a trust, including a special needs trust.

(c) When a judgment has been entered in favor of an incapacitated plaintiff and no petition has been filed under the provisions of subdivision (b) of this rule, the amount of the judgment or any part thereof shall be paid only to a guardian of the estate of the plaintiff qualified to receive the fund, unless the court, on its own motion or on petition of a person, not a party to the action, representing the interest of the plaintiff, enters an order under subdivision (b) of this rule.

(d) Nothing contained in this rule shall prevent the payment into court of any money by the defendant.

Source

The provisions of this Rule 2064 adopted June 2, 1941, effective February 2, 1942; amended May 17, 1950; amended September 25, 1956, effective forthwith; amended September 1, 1958, effective forthwith; amended, effective July 22, 1970; amended June 23, 1975, effective immediately, 5 Pa.B. 1817; amended June 3, 1994, effective July 1, 1994, 24 Pa.B. 3019; amended October 3, 1996, effective January 1, 1997, 26 Pa.B. 4985. Immediately preceding text appears at serial pages (190565) to (190566).

Rule 2074. Effective Date. Pending Actions.

These rules shall become effective on the second day of February, 1942, and shall apply to actions pending at that time.

Source

The provisions of this Rule 2074 adopted June 2, 1941, effective February 2, 1942.

Rule 2075. [Rescinded].

Source

The provisions of this Rule 2075 adopted June 2, 1941, effective February 2, 1942; rescinded June 3, 1994, effective July 1, 1994, 24 Pa.B. 3010. Immediately preceding text appears at serial pages (159498) to (159499).

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