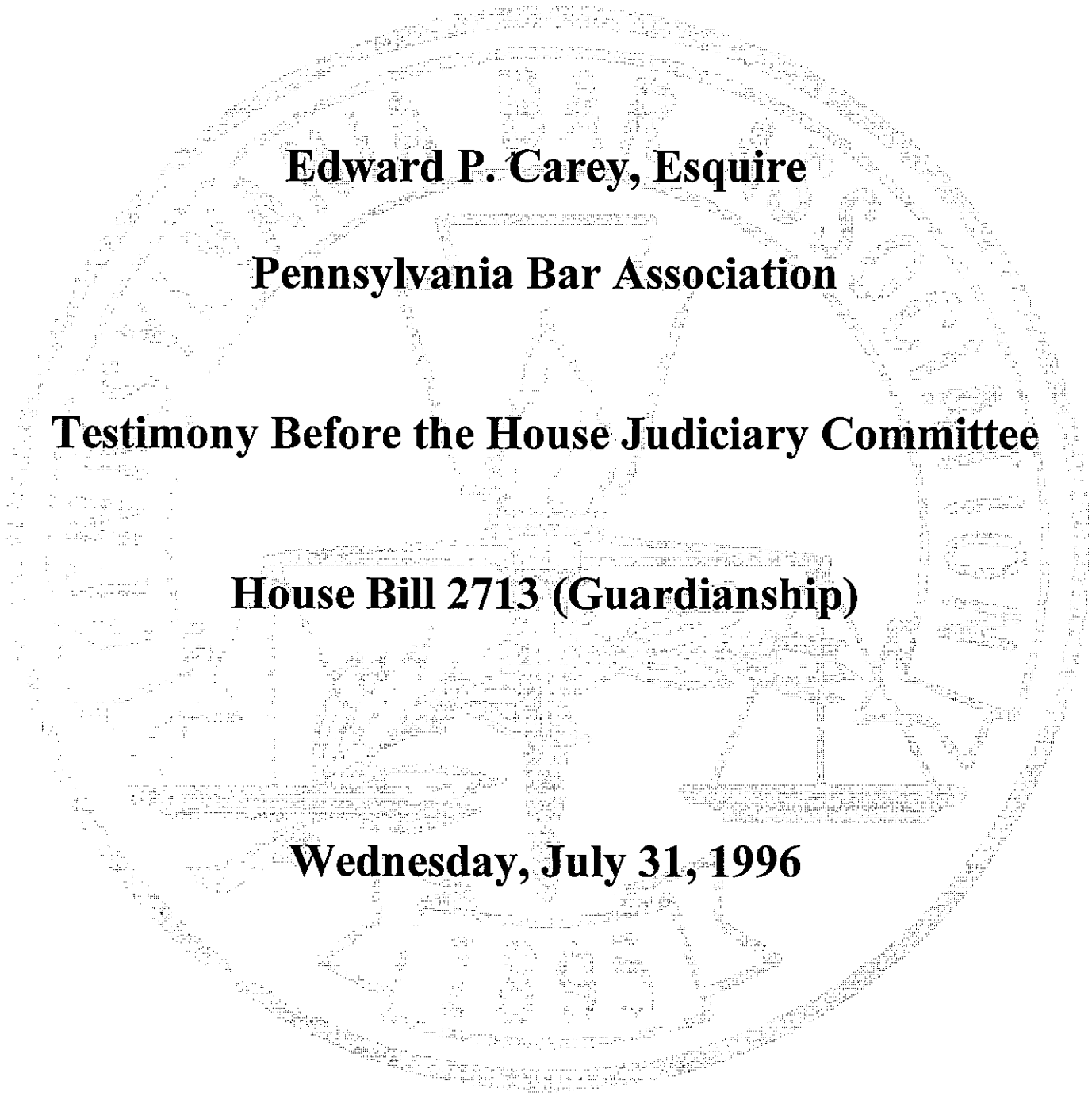

Edward P. Carey, Esquire

Pennsylvania Bar Association

Testimony Before the House Judiciary Committee

House Bill 2713 (Guardianship)

Wednesday, July 31, 1996

HOUSE JUDICIARY COMMITTEE
PUBLIC HEARING, WEDNESDAY, JULY 31, 1996

Good morning Chairman Gannon, Special Committee Chairman Wogan and other members of the Judiciary Committee. My name is Ed Carey and I am an attorney from Allegheny County. For 18 years I was an Assistant Counsel for the Department of Public Welfare. When I joined the Department in 1977, the *Vecchione* case was about to be settled by a Stipulation of Counsel. The Department agreed not to accept appointment as Representative Payee for patients/residents unless the Department also became Guardian for the patients/residents.

My first assignment in 1977 was to do what the Department had agreed to do, i.e., get guardians. Because of the Act, DPW could not get itself appointed but had to assign an individual the Guardian Officer. Over the next 18 years, I got Guardian Officers appointed guardians of the estate in more than 3000 cases. I also did "guardian of the person" cases, got the Guardian Officers discharged and, because the guardians were appointed as individuals, I did thousands of "successor guardianship" hearings whenever a Guardian Officer died, retired, or got promoted.

In 1981, I joined the Fiduciary Services for the Aged Committee of the Real Property, Probate, Trust and Estate Law Section of the Pennsylvania Bar Association. I now serve as Chairman of this Committee. For four or five years Len Cooper (former chairman) and I represented the Section on an Ad Hoc Committee advising the Joint State Government Commission on guardianship reform. Len and I were usually outvoted and were not happy with the 1992 Act. However, some of the proposed amendments contained in HB 2713 will, I think, make the Act more practical.

There are two 1992 changes that I can take credit for: 1. The Guardian Office can be appointed, rather than the individual Guardian Officer. This means no bond (in 18 years DPW never made a claim to the insurance company), and no need to get successor guardians whenever the Guardian Officer changed; and 2. The jurisdiction of the petition is in the county where the state facility is located, and that the hearing can be held at the facility where the alleged incapacitated person resides. As a result of this change, Judges began to come to the facilities once or twice a year and take care of all guardianship issues.

At the Real Property, Probate and Trust Law Section Retreat in March of 1996 Carol S. Gross, Esquire and I made a presentation to the Section concerning Guardianship Reform. The presentation centered around a questionnaire we sent to 67 President Judges. Enclosed along with my testimony are the results from the 38 returned questionnaires. I would encourage you to review it. I believe the Judges will support the changes embodied in these Amendments.

With that being said, I would now like to address the amendments contained in HB 2713. Please understand, unless noted, I am speaking on my own behalf and not on behalf of the Pennsylvania Bar Association.

THE AMENDMENTS:

SECTION 5511 (a) -- (p. 3, L. 25-26) - Extends the Notice requirement to heirs living outside of Pennsylvania. I always did this. My experience was that frequently, relatives outside of PA were the ones that were most interested in the welfare of the alleged incapacitated person.

SECTION 5511 (a)(1) -- (p. 4, L. 11-12) - Allows that if the alleged incapacitated person cannot understand or participate in the hearing the Petitioner need not bring him or her to the hearing. In 1978, I asked Judge Bowe, Orphans' Court Judge in Schuylkill County, what the old standard, "welfare will not be promoted" meant. He told me not to bring the alleged incompetent unless he or she would take the stand. For 14 years I followed this advice, unless the attorney representing the client wanted the patient/resident in Court, I did not require the State Hospital/Center to bring him. After June 1992, in cases where the Judge did not come to the facility, the Commonwealth brought the patient/resident to Court by ambulance, in wheelchairs, and on gurneys. When the Judge did come to the facility, the client was usually brought to the hearing room. At Mayview, Judge Kelly usually asked the patient if he had anything to say. Seldom did a patient claim to be capacitated; rather the patient usually asked the Judge to order the Hospital to give the person more money for cigarettes. At Mental Retardation Centers, we usually wheeled the resident into the room and after the Judge said hello, allowed the resident to leave. At the State Nursing Home at Mayview (guardian of the person), the hearings were held in an office outside the ward. The Judge was invited to come into the ward, but he left it up to the appointed attorney, who never required the Judge to actually visit the patients. Obviously, I believe that making the Petitioners bring the alleged incapacitated person to the hearing is costly, especially in staff time, and frequently serves no purpose and is sometimes disrespectful of the dignity of the client.

The only problem with the amendment is "how do you decide before the hearing that the person will not understand or be able to participate?" My answer, not the Bar's, is to appoint an attorney in every case. After visiting the client the attorney could notify the Petitioner to bring or not bring the client.

SECTION 5511 (c) - No current amendment, but there must be a better way to pay the appointed attorney. Under current cases in July 1996, the attorney must get an Order of Court for his fees. Then he or she must take it to the County Commissioners who will eventually get around to paying. The Commissioners then must wait until July 1997 to submit the bill to the State. Eventually (before June 30, 1998) the State will reimburse the County.

SECTION 5511 (f) -- (p. 5, L. 9-14) - Follow wishes of parents, or of the alleged incapacitated person, if such is known, when appointing the guardian. My experiences with families have not been good. But the amendment gives the Judge an out - "Except for good cause or disqualification." Question 42 of our survey shows that many Judges are not happy with attorneys-in-fact.

SECTION 5512 -- (p. 6, L. 5) - No real change. But, the fact is that many Judges do not prefer "Limited" over "Plenary" Guardians.

SECTION 5512 (c) and (e) -- (p.6 L. 7-15) - Both amendments do make it easier to appoint plenary guardians. In estate cases the guardian does not want to have control over one source of money, but not another. In "Guardian of the Person" cases, the guardian needs to have authority over all aspects of the case. To be required to return to Court in the middle of a problem to get more authority, will frequently make the problem that much more difficult.

SECTION 5513 -- (p. 7, L. 9-14) - Emergency Guardians.
Of the Person - May be continued beyond 23 days IF the Petitioner files for permanent guardianship. There is no question that the 3-day and 20-day rule do not work. Allegheny County appoints the Emergency Guardian until the Court can schedule the permanent hearing (this could be as long as six weeks). I agree with allowing the Judge to extent the emergency guardianship, but I do not like the idea of making the filing of the Permanent Petition optional. Most people do not want to take on the permanent responsibility of guardianship. They will; however, agree to be guardian for 23 days to solve an immediate problem. But what happens when a new problem develops on the 24th or 25th day? One Judge told me that he did not want to appoint a guardian to amputate the left leg and go through the whole process next year to give permission to amputate the right leg. If the person is permanently incapacitated -- appoint a permanent guardian.

Of the Estate - 30 days - the same as above.

SECTION 5518 and 5518.1 -- (p. 8, L. 7-10, p. 8, L. 20-21) - Live Witnesses. Prior to June 1992, I would bring a medical doctor or psychologist only if there were three or more cases for him to testify about. For one or two cases I just submitted affidavits. Since 1992, I have used live testimony unless the client's attorney waived his right to cross-exam. Over the years, in only approximately 1 percent of my cases did the attorney cross-exam. In most cases live testimony is not needed. But in a case where there is no attorney, retained or appointed, how does the Petitioner know before the hearing that the case will not be contested?

For the last four years I have felt that the 7-day rule was nonsense, just extra work for the Petitioner. Judges who intend to appoint counsel for the alleged incapacitated person will do so when the Petition is filed, not seven days before the hearing. Perhaps; however, the 7-day rule can serve some purpose. If seven days before the hearing the Respondent has not retained counsel, the Court and the Petitioner can assume that the Petition will not be contested and the Petitioner will not have to bring live witnesses to the hearing.

SECTION 5521 (c)(1) -- (p. 8, L. 27) - Reports. This amendment would give Judges more discretion in regards to reporting requirements. At the aforementioned workshop that Carol S. Gross and I presented in March, we had three Judges talk on aspects of the Act. Judge Lewis, Philadelphia, stated that reports were a good idea, but unless money was provided to hire staff to read the reports, there was no use forcing the guardians to file them. Some counties do have

a staff person read the reports and bring any problems to the Judges' attention. I hate to see the reports become optional, but if they cannot be read and followed up on, why make the incapacitated person's estate pay for them?

SECTION 5521 (c)(1)(I)(D) -- (p. 9, L. 8-9) - This bill removes this section. I agree with this as "D" is practically already contained in A, B, C.

SECTION 5521 (c)(2) -- (p. 9, L. 24-28) - This section simply requires that if there is no annual report, the guardian needs to inform the Orphans' Court of the death of the incapacitated person within 60 days. If there is no annual report, this seems necessary and appropriate.

SECTION 5522 -- (p. 10, L. 3) - I agree with this change. This simply gives the Court more discretion, when necessary, in ordering the length a guardian can lease the incapacitated person's property.

SECTION 5531 -- (p. 10, L. 7-8) - Assuming there was no annual report, this bill allows the guardian to file reports "at any time" with the court. A guardian must be allowed to do this in order to safeguard themselves. For example, if the guardian gets permission to sell real estate, the guardian will want to report to the Court, but also to all interested parties what was done with the proceeds of the sale.

SECTION 711 (22) -- (p. 2, L. 3-9) - Granting mandatory Orphans' Court jurisdiction over Guardianship Support Agencies. In our survey, only one Judge out of 30 said that he or she had certified a Guardianship Support Agency. I asked Judge Kelly, Allegheny County, to explain why he has not recognized the two outstanding agencies in Pittsburgh. His answer was that the Court does not have any control over the agencies as such but only in cases where they have been appointed guardian. This amendment would give the control that Judge Kelly and others believe is necessary.

SECTION 711 (23) -- (p.2 L. 10-13) - Grants mandatory Orphans' Court jurisdiction over Attorneys in fact.

As some of you may already know, another bill was previously introduced and considered by this Committee which addressed attorneys in fact. HB 2197, essentially gives the Department of Aging standing to petition the court for discovery (without filing a suit) regarding the actions of an attorney in fact. The Pennsylvania Bar Association stands in opposition to that bill (HB 2197). It is our opinion that by establishing this new "discovery system" an attorney in fact could become the victim of some unfounded and baseless complaints from a disgruntled party. Sadly enough, it is typically a member of the individual's family who has not been involved in the principal's family for many years but reappears seeking to establish an economic interest once incapacity occurs. We cannot overlook the fact that there has been instances where an attorney in fact steals or misappropriates a principal's property which appears to be the impetus for HB 2197. We feel, however, that if an attorney in fact acts fraudulently in regards to a principal's property, they should be prosecuted under the Criminal Code just as a trustee or court-appointed

guardian would be prosecuted. The PBA feels that attorneys in fact acting under a power of attorney are just as much a fiduciary as a trustee or guardian and are therefore subject to the supervision of the orphan's court. The language proposed in HB 2197 would severely reduce the effectiveness and usefulness of an attorney in fact.

The bill we are discussing today, HB 2713, would simply grant the orphan's court mandatory jurisdiction over attorneys in fact. By outlining it in the statute and clearly identifying the orphans' court as having authority, we have a clear avenue to address attorneys in fact without eliminating the means that make it a useful estate tool. Therefore, the PBA supports this specific provision contained in HB 2713.

Thank you for allowing me the opportunity to present testimony to this distinguished committee. I would be happy to answer any questions you may have.

Judges Speak Out on the 1992 Reforms to the Incapacitated Persons Act

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JUDGES SPEAK OUT ON THE 1992 REFORMS TO THE INCAPACITATED PERSONS ACT

Introduction to Survey of the Incapacitated Persons Act, Chapter 55 of the Probate, Estates and Fiduciary Code

In the fall of 1995, the Joint State Government Committee indicated to the Committee on Fiduciary Services for the Aged and Infirm that changes were being contemplated in the Incapacitated Person's Act, this Act having last been amended in 1992. In order to determine what changes might best be made to this Act, the Committee decided to survey the Judges in the 60 counties of the Commonwealth of Pennsylvania to determine their views on the workability of the amended Act. To that end, a survey made up of 82 questions was forwarded to the president judge in each of the 60 counties for completion by the judge/judges handling orphans' court work.

Thirty-six (36) responses to the survey were received, which information is compiled in these materials. The views of the judges on the 1992 amendments to the Incapacitated Person's Act reflect their personal experiences. Some results from the survey indicate that plenary guardians are still being appointed more often than limited guardians, that more than 72 hours are needed when appointing an emergency guardian for an alleged incapacitated person and that, while live testimony is valuable, it is often being limited due to constraints of time and money. In addition to the results of the survey, copies of the annual report forms that were submitted from Schuylkill, Lackawanna, Chester, Montgomery and Allegheny Counties are attached. These forms may be of use in modifying and/or creating forms for your own county.

The survey results will be presented to the Joint State Government Committee to assist the legislature in further amending the Incapacitated Person's Act and will also be sent to all of the president judges for their own use.

Hopefully, this information will assist you in dealing with the Courts, other attorneys and guardians in guardianship proceedings and in taking a position with regard to any recommended/proposed changes to the Incapacitated Person's Act.

SURVEY ON THE INCAPACITATED PERSONS' ACT
CHAPTER 55 OF THE PROBATE, ESTATES AND FIDUCIARY CODE

This survey will cover the 1992 amendments to the Probate, Estates and Fiduciary Code having to deal with incapacitated persons, formerly known as incompetents.

Emergency Guardian of the Person:

Q-1: Is the time period -- 72 hours -- for the initial appointment of an emergency guardian of the person sufficient?

Yes 18 No 17

Q-2: How many emergency guardians of the person do you appoint each month?

0 - 2	29	13 - 18	0
3 - 5	5	18 or more	0
6 - 8	0	Other	1-2/yr, 3-5/yr
9 - 12	1		

Q-3: How frequently does the appointment of the emergency guardian of the person extend for more than 72 hours?

Every Case	6
Frequently	20
As Needed	5
Infrequently	3
Never	1

Q-4: Have any emergency guardians of the person served as such for more than 20 days?

Yes 20 No 14

If so, how many times has this occurred?

0 - 2	11
3 - 5	4
6 - 8	3
9 - 12	0
13 - 18	0
18 or more	3

Q-5: For how long does the emergency guardian of the person usually continue to serve?

Varies from 72 hours as per the statute up to 6 months with answers stating 3 - 10 days, 30 - 45 days and 4 - 6 weeks. Several responses indicated that the length of time was 10, 20 or 30 days. Some surveys indicated that the emergency guardian of the person serves until a permanent guardian is appointed. (State amount of time)

Q-6: Do you find the time limit with regard to the appointment of an emergency guardian of the person to be too restrictive?

Yes 19 No 13

Q-7: Do you find the time limits for the appointment of an emergency guardian of the person sufficient?

Yes 12 No 16

(No, it should continue until the permanent hearing)

Q-8: Should the time limits be changed? 18 Or left alone? 11

Emergency Guardian of the Estate

Q-9: Is the time period -- 30 days -- for the initial appointment of an emergency guardian of the estate sufficient?

Yes 29 No 4

Q-10: How many emergency guardians of the estate do you appoint each month?

0 - 2	29
3 - 5	3
6 - 8	0
9 - 12	0
13 - 18	1
18 or more	0
Other	3 - 5/yr

Q-11: Have any emergency guardians of the estate served as such for more than 30 days?

Yes 16 No 16

If so, how many times has this occurred?

0 - 2	11
3 - 5	1
6 - 8	1
9 - 12	0
13 - 18	0
18 or more	1

Q-12: For how long does the emergency guardian of the estate usually continue to serve?

30 days was the most frequent answer, as per the statute. Other answers were 10 days, 20 days, 45 days, up to 6 months.(State amount of time)

Q-13: Do you find the time limit with regard to the appointment of an emergency guardian of the estate to be too restrictive?

Yes 9 No 22

(Sometimes need to see if only an emergency guardian is required because person regains capacity)

Q-14: Do you find the time limits for the appointment of an emergency guardian of the estate sufficient?

Yes 20 No 11

Q-15: Should the time limits be changed? 8 Or left alone? 20

Appointment of a Mental Health or Mental Retardation Expert Witness

Q-16: How often do you, on your own initiative, appoint a mental health or mental retardation expert to evaluate the alleged incapacitated person?

Every case	0
Frequently	2
Occasionally	4
Infrequently	18
Never	10

Q-17: How often does the alleged incapacitated person ask for the appointment of a mental health or mental retardation expert to evaluate him/herself?

Every case	0
Frequently	0
Occasionally	2
Infrequently	18
Never	15

Q-18: If such a request is made by the alleged incapacitated person, or someone acting on his/her behalf, do you grant it?

Yes 29 No 0

Q-19: Even though the Statute does not provide for it, are there ever cases in which the petitioner should be allowed to request a court-appointed mental health or mental retardation expert perform an evaluation of the alleged incapacitated person?

Yes 25 No 8

(Court should not supply experts to fight each other. If there is a question, County Agency on Aging should file a petition.)

If yes, under what circumstances should the petitioner's request for a court-appointed evaluator be granted?

Most judges stated that they would appoint an evaluator when the circumstances indicated that one was needed giving a variety of reasons.

1. If there is question as to the impartiality or the motives of the petitioner, the parties or the experts.
2. If warranted or when the experts disagree.
3. If petitioner is pro se or lacks sufficient knowledge, resources or access to medical records to proceed.
4. If the petitioner is an agency intervening under the Older Adult Protective Services Act.
5. If the medical reports or depositions are inconclusive.
6. If the petitioner is an agency, may allow the appointment, otherwise the court should not supply experts to fight each other. The court should have the situation reviewed by a court investigator and a mental health professional.

Live Testimony

Q-20: How frequently do you have a mental health or mental retardation expert witness testify live at a guardianship hearing?

Every case	2	
Frequently	8	(The expert is expected to appear unless other arrange-
As needed	13	ments are made. If the Petition is from the Dept. of
Infrequently	13	Aging or if the matter is uncontested, one can
Never	1	usually proceed by deposition. Consideration is given to the nature of the alleged incapacity, scheduling problems, cost and other factors.)

Q-21: If you have a mental health or mental retardation expert witness testify live in a majority of your cases, how do you assess the value of such testimony versus using some other means of obtaining the necessary information?

The responses were split pretty evenly between judges who felt live testimony was very valuable and those who felt they could just as well rely on phone conferences or depositions. In uncontested cases, some judges even felt that reports or affidavits were sufficient.

1. Live testimony is more valuable to better asses credibility of an expert, to cross examine a witness or to get up-to-date information on the alleged incapacitated person.
2. Live testimony is often not practical and is no more helpful than an interactive phone call.
3. In contested cases, live testimony and observation provides the best evidence.
4. With live testimony, the court can get familiar with the doctors and the people from the nursing home.
5. No differences in assessing credibility between live or deposition testimony.

Q-22: How often do you go to the facility where the alleged incapacitated person is to obtain live testimony from a mental health or mental retardation expert witness with regard to the appointment of a guardian?

Every case	0	
Frequently	1	
As needed	8	
Infrequently	6	(Only at the request of the AIP)
Never	19	(It is dangerous)

Q-23: Is it worthwhile to bring the mental health or mental retardation expert witness to court? Why?

Responses were mixed. Some judges felt there was no benefit to bringing the expert to court. A speaker phone conversation was thought to be just as valuable. Other judges felt live testimony was essential to assess credibility, ask for up-to-date information and to allow for cross-examination.

1. In contested cases, live testimony is best. Can get a fuller explanation of the alleged incapacitated person's condition. Can review expert report with questions.
2. Easier to rely on expert reports and depositions. Takes less time and costs less money.
3. Phone conferences are sufficient.

Q-24: Who pays the cost of the mental health or mental retardation expert witness appearing in court?

The cost of the expert appearing in court is paid either by the estate, the party requesting the expert to appear, all the parties split it, or the petitioner. One judge indicated that usually the petitioner has to pay the expert to appear so that the judge uses deposition testimony in clear cases. Sometimes, the County Agency on Aging, the Mental Health/Mental Retardation Agency or the County itself will pay the cost of the expert.

Q-25: If you do not insist on live testimony in a majority of your cases, how do you meet the standards established in the statute?

By Affidavit	8	
By Telephone Conference	13	(only in an emergency)
By Deposition	19	
Other:	3	

(Usually I do live testimony, limiting it to 1/2 hour. I will permit phone conference if necessary.)

Q-26: How frequently do you require the alleged incapacitated person to appear in court?

Every case	8	(unless excused as harmful; or meet statutory req'ts to not have alleged incapacitated person in court)
Frequently	1	
As needed	9	
Infrequently	7	
Never	17	

Q-27: If you do not require the alleged incapacitated person to appear in court, how are you satisfied that the physical or mental condition of the alleged incapacitated person would be harmed by his/her presence?

In uncontested cases, most judges are satisfied by a statement, an affidavit or a deposition. In other cases, judges frequently relied on either a doctor's deposition or testimony, representations by court-appointed counsel or by an attorney who was observed the alleged incapacitated person or a telephone conference with a treating doctor. A few judges stated that it was not harmful for the person to appear, so that he or she should be present at the hearing under most circumstances.

Q-28: How often do you go to the place where the alleged incapacitated person is residing to see him/her or to obtain his/her testimony?

Every case	0	
Frequently	1	
As needed	9	(for emergency petition where AIP is in hospital)
Infrequently	7	
Never	18	

Q-29: What, if any, benefits are there from having the alleged incapacitated person present at the hearing?

Many judges stated that observing and questioning the person was helpful for determining the extent of capacity/incapacity, to give the person the feeling of participation in the process, to assess the person subjectively or make their own impressions. Some judges felt that the person's presence was required to safeguard his/her rights. Other judges indicated that there was little, if no, benefit to the person's presence or that it was unnecessary unless the case was contested. One judge indicated that it was often hard to justify to the family the expense and hardship of bringing the person to court.

Q-30: Does the presence of the alleged incapacitated person at the hearing help you to make the decision about his/her capacity?

Yes 28	No 6
(in certain cases)	(no benefit unless the person is marginal or the case is close)
	(no benefit if person in a coma or suffers from certain diseases)

Q-31: If so, how does his/her presence help you?

Judges liked being able to form their own opinions about the person and to question him/her. Other judges felt that the person's presence was only helpful in rare cases.

Q-32: How often do you have a dispute about capacity with regard to the appointment of a guardian of the person?

Every case	0	Frequently	0
Occasionally	9	Infrequently	26
Never	1		

Q-33: How often do you have a dispute about capacity at a hearing with regard to the appointment of a guardian of the estate?

Every case	0	Frequently	0
Occasionally	12	Infrequently	22
Never	2		

Q-34: How often do you have a dispute about the selection of the guardian of the person?

Every case	0	Frequently	0
Occasionally	16	Infrequently	19
Never	0		

Q-35: How often do you have a dispute about the selection of the guardian of the estate?

Every case	0	Frequently	0
Occasionally	19	Infrequently	16
Never	0		

(disputes more frequently arose about who would handle the money)

Types of Guardians

Q-36: How frequently to you appoint limited guardians of the person?

Every case	0	Frequently	3
As needed	17	Infrequently	16
Never	0		

Q-37: How frequently do you appoint plenary guardians of the person?

Every case	2	Frequently	22
As needed	11	Infrequently	0
Never	0		

(1 judge indicated that this occurs more frequently than appointing a limited guardian)

Q-38: How frequently do you appoint limited guardians of the estate?

Every case	0	Frequently	3
As needed	16	Infrequently	17
Never	0		

Q-39: How frequently do you appoint plenary guardians of the estate?

Every case	2	Frequently	22
As needed	10	Infrequently	1
Never	0		

(1 judge indicated that this occurs more frequently than appointing a limited guardian)

Q-40: When you are appointing a guardian of the person, how do you decide whether the guardianship should be limited or plenary?

The type of guardian appointed depended on the view of the judge after reviewing the medical testimony, the length of the guardianship and the needs of the incapacitated person considering his/her family situation. Several judges indicated that they favored limited guardianships as the least restrictive alternative but that the statute was not clear as to how limits should be set and how to deal with improvement or decline of the person. Other practical problems in drafting the order.

Q-41: When appointing a guardian of the estate, how do you decide on whether the guardianship should be limited or plenary?

Evaluate the whole situation and consider the size of the estate. limited guardianships should be preferred but order should state what person is allowed to do rather than what he/she is not allowed to do. However, more plenary guardians seem to be appointed when the need is readily apparent. Usually easier to frame limited guardianship of the estate, especially with respect to disposition of real estate.

Q-42: If an alleged incapacitated person has an existing power of attorney, do you:

6	a. Not appoint a guardian and rely on the power of attorney.(if durable)
6	b. Appoint only a limited guardian of the estate.
3	c. Appoint only a limited guardian of the person.
9	d. Rely on the power of attorney for the designation of who should be the guardian of the estate.
11	e. Rely on the power of attorney for the designation of who should be the guardian of the person.
9	f. Ignore the power of attorney.
6	g. None of the above

Comments:

1. Depends on whether there is evidence of abuse of the POA or allegations of improper execution
2. Consider the person designated as a potential guardian if appropriate
3. Ignore POA if it will cause disadvantages to the AIP
4. If person given the POA is okay, appoint as guardian; if person given the POA is questionable, consider the AIP's choice as a possible guardian
5. Consider contents of POA to see if it will be accepted by health care institutions
6. Prefer person named in POA as guardian of the person and estate
7. Check to see how well the person named in the POA is doing the job
8. More and more nursing homes won't admit without appointment of a guardian

Notice

Q-43: How often do you require the petitioner to give notice to non-next of kin (interested parties)?

Every case	15
Frequently	2
As needed	5
Infrequently	6 (if there is info that needs to be considered)
Never	7

Q-44: What type of notice do you require?

Certified mail; detailed explanation with factual allegations; written notice; citation; personal service; emergency hearing by phone otherwise by certified mail

Rehearing

Q-45: How often since June 15, 1992 have you held a rehearing with regard to an incapacitated person?

0 - 2	26
3 - 5	5
6 - 8	0
9 - 12	0
13 - 18	0
18 or more	4

Q-46: Who has requested the rehearing?

Incapacitated person	7
Guardian of the Person	8
Guardian of the Estate	9
Family Members	6
Other interested parties	4
Other	4

(including the judge on his own, the judge based on the annual reports, appointed counsel, caregivers or County Agency on Aging)

Q-47: If a rehearing has been requested since June 15, 1992, for what purpose was the rehearing requested?

Finding of Capacity	12
Removal of Guardian of the person	10
Removal of Guardian of the estate	12
Other:	4

(case review, adding a guardian, judge feels conditions of person expected to change in a short time, modify order from plenary to limited)

Q-48: Since June 15, 1992 how many times have you reversed an adjudication of incapacity and found the person to have regained capacity when you had appointed a limited guardian of the estate?

0 - 2	30
3 - 5	1
6 - 8	0
9 - 12	0
13 - 18	1
18 or more	0

Q-49: Since June 15, 1992 how many times have you reversed an adjudication of incapacity and found the person to have regained capacity when you had appointed a limited guardian of the person?

0 - 2	30
3 - 5	1
6 - 8	0
9 - 12	1
13 - 18	0
18 or more	0

Q-50: Since June 15, 1992 how many times have you reversed an adjudication of incapacity and found the person to have regained capacity when you had appointed a plenary guardian of the estate?

0 - 2	28
3 - 5	1
6 - 8	1
9 - 12	1
13 - 18	0
18 or more	0

Q-51: Since June 15, 1992 how many times have you reversed an adjudication of incapacity and found the person to have regained capacity when you had appointed a plenary guardian of the person?

0 - 2	29
3 - 5	1
6 - 8	2
9 - 12	0
13 - 18	0
18 or more	0

Annual Reports

Q-52: Is the annual report of the guardian of the person being filed on a yearly basis?

Yes 25 No 7

Some counties are just starting to take steps to remedy filing problems. Others indicate a need for funds and staff to monitor and assist with compliance requirements.

If this report is not being filed annually, what steps do you take to get the report filed?

1. A letter with a warning is sent to attorney and/or guardian
2. Party desiring the reports files a Rule to Show Cause
3. Court orders report to be done or the guardian will be removed
4. Contact the guardian and request that a report be done
5. Send a notice and a citation
6. No reports are filed because there is no Orphan's Court or no computer system to keep track of reports
7. Letter notice followed by a Rule to Show Cause
8. Varies from case to case

Q-53: Is the annual report of the guardian of the estate being filed on a yearly basis?

Yes 26 No 5 Sometimes

If this report is not being filed annually, what steps do you take to get the report filed?

Same as Q-52.

Q-54: Are you satisfied with the quality of reporting for the guardian of the estate?

Yes 25 No 5

If no, why are you not satisfied?

Not enough detail; Reports often reveal problems with guardians understanding of req'ts of Section 5536 with respect to use of income & principal; without monitoring to see if the report is accurate, satisfaction is tenuous at best

Q-55: Are you satisfied with the quality of reporting for the guardian of the person?

Yes 26 No 5

If no, why are you not satisfied?

No way to check; We are setting up an AARP visitation program to follow-up;

Q-56: Is there a standard form for the annual report for the guardian of the person?

Yes 11 No 21

If so, please attach a copy.

Q-57: Is there a standard form for the annual report for the guardian of the estate?

Yes 11 No 21

(where principal is spent with prior approval, request more information and a petition for allowance nunc pro tunc)

If so, please attach a copy.

Appointment of Counsel

Q-58: How frequently do you appoint a counsel for the incapacitated person at the time of the filing of the petition?

Every case	11
Frequently	4
As needed	13
Infrequently	7
Never	1

Q-59: How often do you receive the 7-day notice letter advising you that the alleged incapacitated person has not retained counsel?

Every case	5	Frequently	7	(Notice usually gives no
Occasionally	10	Infrequently	4	indication whether counsel
Never	7			should be appointed so sometimes causes delays)

Q-60: If you do not appoint counsel at the time of the filing of the petition, what effect does the seven (7) day notice provision have on your decision to appoint counsel when you receive notice that no counsel has been retained by or on behalf of the alleged incapacitated person?

Little or no significant effect; causes scheduling/notice problems; have our staff person check; require filing party to say is counsel is needed for AIP and why to help avoid delays

Q-61: Does the rule that the County Commissioners pay for counsel if an alleged incapacitated person is indigent work?

Yes 30 No 2

Q-62: If so, describe the mechanism by which the County Commissioners pay said counsel.

After receiving a bill, the most common practice is for an order of court to be signed and forwarded for payment to the County Commissioners, the Court Administrator or the County Controller/Treasurer.

Q-63: If this rule does not work, indicate what steps you have taken to get counsel paid.

Direct payment from the estate
It works!

Q-64: In what percentage of cases in your county does the alleged incapacitated person retain counsel on his/her own?

0 - 20%	29
21 - 40%	1
41 - 60%	3
61 - 80%	0
81 - 100%	1

Q-65: In what percentage of cases do you appoint counsel?

0 - 20%	19	
21 - 40%	1	(Central PA Legal Services provides counsel if petition is filed by Office of Aging)
41 - 60%	1	
61 - 80%	2	
81 - 100%	11	

Q-66: If you are appointing counsel, is it hard to find attorneys willing to serve?

Yes 8 No 26
(if they know they will be paid)

Q-67: Is there a set fee for appointed counsel?

Yes 17 No 14

Q-68: If so, what is the amount of that set fee?

Fees: $35/hr;
$40/hr
$40/hr for the county, otherwise prevailing rate;
$45/hr
$50/hr;
$25/hr for out-of-court time and $35/hr for in-court time;
$500 total, which may go up if case is protracted
$40/hr out of court and $50/hr in court
$35/hr out of court, $50/hr in court but if hearing is held at the courthouse, a flat fee of $125

Q-69: If after you appoint counsel the alleged incapacitated person retains his/her own counsel, what is the role of appointed counsel and is such counsel paid anything?

Attorney withdraws or is removed. Some courts allow payment for time spent while others do not.

Q-70: Is the payment of appointed counsel difficult or unwieldy because the County Commissioners have to pay the attorney and must wait until the following fiscal year for reimbursement?

Yes 6 No 19
(not sure since this is the 1st year we are seeking reimbursement)
(don't know as this is not a concern of the court)

Q-71: Would it be simpler if the State just paid appointed counsel directly?

Yes 14 No 13
(if timely paid) " It is never simpler with the State involved "
(County would like this) Not unless payment was quicker

Q-72: Would it be simpler if the money to pay the guardian came out of the incapacitated person's resources or income?

Yes 24 No 5
(if adequate and available)

Non-Profit Groups

Q-73: Are there any recognized non-profit groups doing guardianship work in your county?

Yes 19 No 17
County Agency on Aging only; AARP volunteers to monitor

If so, in which percentage of cases?

0 - 20% 12
21 - 40% 2
41 - 60% 3
61 - 80% 3
81 - 100% 0

Q-74: Who pays the non-profit group if it is appointed as guardian?

Court	0	
County Commissioners	4	
County Agencies	6	
Incapacitated Person's Estate	11	(if money available)
Other:	0	

Q-75: How are the non-profit groups or agencies supported?

By their fees, grants, contributions or donations.
By the county, state or federal funds.
United Way
Some judges were not sure of how these agencies were supported.

Q-76: If there are no non-profit groups or agencies in your county, who do you appoint if you need a guardian and no one volunteers?

1. County Agency on Aging has assisted such as the Westmoreland County AAA
2 Appoint a young attorney or some volunteer attorney
3. Appoint the director of the County home
4. Twist banks' arms until someone volunteers
5. No one so this is a serious problem

Q-77: How would such a guardian get paid?

State 4 Court Funds 2
Volunteer 3 Other 11

Q-78: Have you certified any non-profit groups as guardian support agencies?

Yes 1 No 28

Q-79: If you do not have a non-profit group or agency available to be appointed as guardian, would you support the establishment of one in your county?

Yes 21 No 1

Special Powers

Q-80: How frequently do you get petitions pursuant to Section 5155(D) with regard to special powers such as for abortion, sterilization, psychosurgery, electroconvulsive therapy, etc?

Frequently	0	Occasionally	3
Infrequently	17	Never	15

Q-81: If there is going to be a series of medical treatments would you grant general authority to the guardian of the person to consent to such treatment or must the guardian come to court before each individual treatment is rendered?

General	21	Each Time	4

Q-82: What is your opinion on the following:

	Strongly Agree	Agree	Neutral	Disagree	Strongly Disagree
New statute works better	3	8	12	6	4
New statute is more complicated	10	16	5	3	1
New statute is less efficient	5	8	9	8	2
Protects the incapacitated person better	5	13	8	5	2
It is harder to have a guardian appointed for the person	2	11	7	12	2
It is harder to have a guardian appointed for the estate	3	10	6	13	2
Reduces the pool of guardians	2	5	15	11	1
Reduces the number of persons who are willing to become guardians	3	7	15	9	1
Discourages lawyers from agreeing to be appointed as counsel	2	4	14	13	1

Comment: The best & most efficient way to protect an AIP's rights and to be sure that the system works is to fund a staff position for someone who would look into the situation both before and after appointment and act as the Court's eyes and ears.