INSTRUCTIONS FOR COMPLETING THE CLINICAL TEAM REPORT FOR GUARDIANSHIP AND/OR CONSERVATORSHIP

INTRODUCTION

The Clinical Team Report is a Probate and Family Court document that is used to recommend guardianship for incapacitated persons and/or conservatorship for persons to be protected concerning the management of property or business affairs. It is used where an individual is alleged to have an intellectual disability. Court orders that remove a person's authority to make life decisions will be limited to the extent necessary to protect the person from harm.

The Clinical Team Report has been developed to provide comprehensive and detailed information to the Court by identifying areas in which the individual is able to make informed decisions and areas in which he or she is not. Other information the Report is designed to provide includes: information on the severity of the disability, other conditions influencing decision-making ability, intrusive interventions prescribed or proposed, risks to the individual, social networks that may assist in decision-making and the individual's ability to attend the court hearing.

The following documents on the site may be particularly helpful to clinicians preparing the Clinical Team Report:

- General Information regarding Guardianship/ Conservatorship MPC190
- Limitations to Guardianship and Conservatorship for Clinicians MPC 903a
- Clinical Team Report MPC 402

What is the legal standard for guardianship?

> Under the new Uniform Probate Code, a guardian may be appointed for an incapacitated person who, for reasons other than advanced age or minority, has a clinically diagnosed condition that results in an inability to receive and evaluate information or make or communicate decisions to such an extent that the individual lacks the ability to meet essential requirements for physical health, safety, or self-care, even with appropriate technological assistance.

UPC Article V, Part 1, section 5-101(9)

What is the legal standard for conservatorship?

> Appointment of a conservator or other protective order may be made in relation to the estate and affairs of a person who is disabled for reasons other than minority if the court determines that:
> 1) the person is unable to manage property and business affairs because of a clinically diagnosed impairment in the ability to receive and evaluate information or is unable to make or communicate decisions, even with the use of appropriate technological assistance or because the individual is detained or otherwise unable to return to the United States and,
> 2) the person has property that will be wasted or dissipated unless management is provided or, money is needed for the support, care and welfare of the person or those entitled to the person's support, and that protection is necessary or desirable to obtain or provide said money.

UPC Article V, Part 4, section 5-401

GENERAL INSTRUCTIONS:

- The Clinical Team Report must be completed by a licensed psychologist, physician and social worker, each of whom is experienced in the evaluation of persons with intellectual disabilities.
- It is expected that clinicians will review psychological assessments, test reports and other relevant psychological evaluations prior to the examination.
- Clinicians should include interview(s) of care providers most knowledgeable with the Incapacitated Person.
- All sections of the Clinical Team Report must be completed by the clinicians. Use brief, relevant statements. Sections must not be left blank. Write "Not Applicable" if appropriate.
- Completion of the form electronically allows for the expansion of narrative sections.
- The examination must have taken place within 180 days of the filing of the petition. §5-306 (b)(5).
- Completed Clinical Team Reports should be printed on quality bond paper such as Southworth, Fine Linen Paper #564C (ivory).

IDENTIFYING INFORMATION:

- Accurate full name (including middle name) and address are required by the court. Clinicians may wish to add date of birth.
- Prior to completion of the evaluation, the individual must be informed of the purpose of the evaluation and the potential that the evaluation will be used to form a legal finding of incapacity, removing the individual's rights

to make personal or financial decisions in whole or part. The process of disclosure and the person's understanding of it should be documented in the clinical record. If you did not provide this disclosure to the individual for clinical reason (e.g., the person is in a coma), check "No" and provide the reason.

SECTION 1: CERTIFICATION OF METHODS OF EVALUATION:

How do the clinicians document the sources of information used to complete the Clinical Team Report?

- Clinicians should utilize records of intellectual, adaptive and other previously completed relevant assessments.
- Clinicians should interview the individual and persons who know him/her well.
- Check the appropriate boxes to indicate the type of information, e.g., assessment and/or interviews.
- In the spaces provided, state identifying information concerning persons interviewed and test reports.
- State Intellectual Quotient(s) (IQs) found in the test reports.

SECTION 2: CLINICALLY DIAGNOSED CONDITION(S) THAT MAY RESULT IN INCAPACITY:

Does the person have an Intellectual Disability? Does the person have other relevant diagnoses that may affect decision making ability?

A. A diagnosis of Intellectual Disability, formerly referred to as Mental Retardation, must be demonstrated to consider recommendations for guardianship or conservatorship. Intellectual Disability is characterized by significant limitations both in intellectual functioning and in adaptive functioning which occurred before age 18. If the diagnosis of Intellectual Disability has been demonstrated, place a check mark in the appropriate box. In the space provided identify the level of intellectual disability and comment on its impact on capacity to make informed decisions.

B. You are being asked to comment *only* on concurrent diagnoses that appear to affect decision-making ability. For example, schizophrenia or other severe mental illnesses may substantially impact ability to make informed decisions. If there are no concurrent diagnoses or diagnoses that do not affect decision-making, write "not applicable".

C. You are being asked to list *only* those medications that influence decision-making ability – whether positively or negatively. For example: Side-effects of some medications include confusion and problems with concentration. If that is the case, state how the side-effects make decision-making challenging for

this individual. On the other hand, if a person carries a diagnosis of bipolar disorder, but it is well-controlled with medication, indicate something like "as long as the person is medication compliant, she/he is capable of making considered decisions." If there is no medication or no medication that affects decision-making ability (positively or negatively), write "not applicable".

D. Information should be provided on factors such as recent trauma, lack of life experience or lack of education that currently impair decision-making but that may improve or be mitigated through appropriate treatment.

SECTION 3: INTRUSIVE TREATMENTS PRESCRIBED/PROPOSED

"Substituted Judgment"

Is the person being prescribed an extraordinary treatment that may have significant risk of dangerous side effects? If so, is the person incapable of making an informed decision with respect to this treatment? If yes, then a substituted judgment by the Court may be necessary.

Some guardianships are limited to decisions regarding treatment of a person with mental illness with antipsychotic medications. These are commonly referred to as "Rogers' Orders." [1]

When answering the question in sub-section A., i.e., "In your opinion is the individual capable of giving informed consent to treatment with antipsychotic medication?", the only consideration for competency should be whether or not the individual is able to make or communicate informed decisions regarding antipsychotic medications. This is not the place for an opinion regarding whether the individual needs antipsychotic medication.

Other areas where substituted judgment might be necessary are identified in sub-section B. Several examples of intrusive interventions and some extraordinary medical treatments are listed. These and other interventions, which have "profound implications", require substituted judgment by the Court. Again, it must be determined whether the individual can make an informed decision regarding the specific procedure(s) being recommended.

---

[1] So-called "Rogers" orders came out of a 1983 Massachusetts Supreme Judicial Court case which affirmed the right of hospitalized psychiatric patients to refuse antipsychotic medications in non-emergency situations. The Court stated that a"...patient is competent and has the right to make treatment decisions until adjudicated incompetent by a judge." And the court must then determine, using the substituted judgment standard, that s/he would consent to the use of antipsychotic medication. RUBIE ROGERS vs. COMM. OF THE DEPARTMENT OF MENTAL HEALTH 390 Mass. 489.

SECTION 4: SOCIAL NETWORKS TO ASSIST IN DECISION MAKING

Does the person have friends or family members who typically help them to understand and make decisions?

When answering this question, keep in mind that natural support is among the less restrictive options to guardianship for individuals with intellectual disabilities. Consider if the person appears clearly able to, or has a history of being able to:

Identify areas where s/he needs assistance with important life issues

AND

Identify and contact specific individuals to get needed help

AND

Has a history of seeking then regularly rejecting such support.

SECTION 5: RISK OF HARM TO SELF OR OTHERS

Would failure to appoint a guardian create an unreasonable risk to physical health, safety or self-care? If so, what are those risks and how severe and likely are they to occur?

History, especially recent history, can be a helpful guide in considering risk of harm. Has risk of harm been affected over time by treatment (e.g. mental health services) or supports (such as supervision) and will that treatment or support be maintained?

It is possible that there may be multiple risks to consider. If so, please explain in the narrative section. In some cases you may want to answer sections 5 A, B, and C as an aggregate rather than separately.

.

SECTIONS 6.1 AND 6.2: RECOMMENDATION ON GUARDIANSHIP/CONSERVATORSHIP

Does the person have Intellectual Disability to the extent that they are unable to make informed decisions and may be at substantial risk to physical health, safety, self-care or property without the appointment of a guardian or conservator?

A. In each of sections 6.1A for guardianship and 6.2A for conservatorship clinicians are asked to identify areas in which the individual is <u>able</u> to make informed decisions. The document entitled “Limitations to Guardianship and

Conservatorship for Clinicians MPC 903a" located on the website and noted in the Introduction, can be helpful in identifying factors to consider for this section.

B. In each of sections 6.1B and 6.2B clinicians are asked to identify areas in which the individual is unable to make informed decisions. Again the ("Limitations") document on the website may be a helpful resource.
C. Clinicians are asked to complete 6.1C and/or 6.2C with their recommendations as to whether the individual is unable to make any informed decisions for him or herself with respect to physical health, safety and self-care, i.e., guardianship.

AND/OR

Is unable to make any informed decisions to manage property or business affairs effectively, i.e., conservatorship.

SECTION 7: ATTENDANCE AT HEARING

Would attendance at a court hearing place the individual at substantial risk of physical or emotional harm?

The Probate and Family Court expects that individuals will attend guardianship and conservatorship hearings unless medically or psychologically harmful. For example, the person would suffer severe anxiety that would be exacerbated having to wait for long periods of time or having to be in a crowded or unfamiliar situation, such as a courtroom. Another example is someone who has a serious medical condition requiring constant medical attention.

Clinicians are asked to describe accommodations that would enable the person to participate in court. Examples of reasonable accommodations include presence of trusted people, scheduling when the courtroom and halls are not likely to be crowded and minimal time in the courtroom.

SECTION 8: SIGNATURES OF CLINICIANS WHO COMPLETED THIS FORM

Complete this section as indicated by the labels below each line. The form does not need to be notarized. The "Date" of signature does not need to be the same as the "Date of Examination". In most cases it is expected the signatures will be completed after the examination date.

As each signatory has provided responses to those questions which relate to his or her experience with and knowledge of the incapacitated person, once all questions have been answered, the information can be merged to create one comprehensive Clinical Team Report.

The final version can then be presented to each signatory separately, probably electronically, for review. Each signatory can sign the same signature page or, the signatures may be in counterpart. If signed in counterpart, the separate signature pages should be appended to the Clinical Team Report for submission to the Court.