



How to File a Motion in a Guardianship Case (Superior Court of New Jersey - Chancery Division - Probate Part)

Who Should Use This Packet?

You should use this packet if you want to ask the judge for a specific ruling or order after a guardianship is established. Any party or party-in-interest to a guardianship, including an incapacitated person or someone on his or her behalf, may bring a motion. The person bringing the motion is called the moving party. **Examples of motions in guardianship cases include:**

- Motion to modify guardianship protection (example – to reduce the amount of bond).
- Motion to modify guardian reporting requirements.
- Motion for review of a guardian’s conduct.
- Motion to review a guardianship.

Caution: Some guardianship cases are very complex and you should consider getting a lawyer. See information on page 2 entitled “Try to Get a Lawyer.”

Note: These materials have been prepared by the New Jersey Administrative Office of the Courts for use by self-represented litigants. The guides, instructions, and forms will be periodically updated as necessary to reflect current New Jersey statutes and court rules. The most recent version of the forms will be available at the county courthouse, the Surrogate’s Office, or at njcourts.gov. However, you are ultimately responsible for the content of your court papers. With limited exceptions, any paper filed with the court can be looked at by the public.

Completed forms are to be submitted to the Surrogate’s Office in the county where you are filing your case. A list of Surrogates’ Offices is provided at njcourts.gov.

Things to Think About Before You Represent Yourself in Court

Try to Get a Lawyer

The court system can be confusing and it is a good idea to get a lawyer if you can. The law, the proofs necessary to present your case, and the procedural rules governing cases in the Chancery Division, Probate Part are complex. Since the civil rights, well-being or financial security of an alleged or adjudicated incapacitated person may be at stake, many litigants appearing in the Chancery Division, Probate Part have a lawyer. It is recommended that you make every effort to obtain the assistance of a lawyer. If you cannot afford a lawyer, you may contact the legal services program in your county to see if you qualify for free legal services. Their telephone number can be found online or in your local yellow pages under “Legal Aid” or “[Legal Services](#).”

If you do not qualify for free legal services and need help in locating an attorney, you can contact the bar association in your county. That number can also be found in your local yellow pages. Most county bar associations have a [Lawyer Referral Service](#). The County Bar Lawyer Referral Service can supply you with the names of attorneys in your area willing to handle your particular type of case and will sometimes consult with you at a reduced fee.

There are also a variety of organizations of minority lawyers throughout New Jersey, as well as organizations of lawyers who handle specialized types of cases. Ask your county court staff for a list of lawyer referral services that include these organizations.

If you decide to proceed without an attorney, these materials explain the procedures that must be followed to have your papers properly filed and considered by the court. These materials do not provide information nor other procedural and evidentiary rules governing guardianship matters.

What You Should Expect If You Represent Yourself

While you have the right to represent yourself in court, you should not expect special treatment, help or attention from the court. The following is a list of some things court staff can and cannot do for you. Please read it carefully before asking court staff for help.

- We *can* explain and answer questions about how the court works.
- We *can* tell you what the requirements are to have your case considered by the court.
- We *can* give you some information from your case file.
- We *can* provide you with samples of court forms that are available.
- We *can* provide you with guidance on how to fill out forms.
- We *can* usually answer questions about court deadlines.
- We *cannot* give you legal advice. Only your lawyer can give you legal advice.
- We *cannot* tell you whether or not you should bring your case to court.
- We *cannot* give you an opinion about what will happen if you bring your case to court.
- We *cannot* recommend a lawyer, but we can provide you with the telephone number of a local lawyer referral service.
- We *cannot* talk to the judge for you about what will happen in your case.
- We *cannot* let you talk to the judge outside of court.
- We *cannot* change an order issued by a judge.

Keep Copies of All Papers

Make and keep copies of all completed forms and documents related to your case.

Definitions of Words Used in This Packet

Certification - A *certification* is a written statement you make when you file your papers with the court in which you state that all the information contained in the papers is true to the best of your knowledge.

Docket Number - The *docket number* is the number the court assigns to your case so that it may be identified and located easily. Once you have a docket number, you must include it on all your communications with the court.

Guardian – A *guardian* is an individual appointed by the court with authority over the person and/or the estate of a person who has been legally declared incapacitated. A guardian may have general or limited authority.

Incapacitated person – An *incapacitated person* is an individual legally declared by the court as unable to govern himself or herself and/or unable to manage his or her affairs. Also known as a protected person or ward; formerly called an incompetent.

Interested party(ies) – *Interested party(ies)* refers to a person or agency that has an involvement with the incapacitated person who is the subject of the guardianship. They are typically the same individuals entitled to notice of the initial complaint for guardianship – i.e., the incapacitated person’s spouse, parent, adult child, etc.

Judgment – A *judgment* is the official decision of a court in a case; in a guardianship matter, Judgment refers to the Judgment of Incapacity and Guardian Appointment, also known as the Judgment of Incapacity and Order Appointing Guardian.

Motion – A *motion* is an application to the court for a specific order or ruling to be made in favor of the person making the motion (the movant).

Probate Day - Courts hear guardianship matters on specified days (usually Fridays) on the court calendar called *probate days*. A schedule of the court’s probate days may be obtained from the Surrogate’s Office staff.

Movant or moving party - The person who is bringing the motion is called the *moving party* (or movant).

Notice of Motion - The *Notice of Motion* is the form used to inform the court and all opposing and interested parties that the moving party is seeking a specific ruling or order from the court.

Oral argument – An *oral argument* is the appearance in court by the parties to present their positions to the judge in person. Either side may request oral argument, but the decision on whether there will be oral argument is up to the judge.

Pro Se - *Pro se* means by oneself. A *pro se* litigant represents him or herself in court without the aid of counsel.

Definitions of Words Used in This Packet (continued)

Proof of Mailing (Certification of Service) – A *proof of mailing (certification of service)* is the form in which you provide the dates and the method you used to give the other parties copies of the papers that you filed in court.

Proposed Form of Order - A *proposed form of order* is a form that the judge can use to either grant or deny the relief sought in the motion. Every motion must be accompanied by a proposed form of order.

Return date - The *return date* is the date on which the court will consider the motion. If you request oral argument, you must appear before the judge. If no oral argument is requested, the matter may be decided “on the papers.” That is, the judge may decide the motion on what has been submitted in the moving papers and in the opposition papers, without having anyone appear in court.

Service – *Service* refers to the delivery of papers in a legally appropriate way according to the New Jersey Rules of Court.

Superior Court Judge – The *Superior Court Judge* is the judge of the Superior Court, Chancery Division, Probate Part, who conducts any hearing(s) and makes substantive decisions about a guardianship, and signs the Judgment and/or orders.

Surrogate’s Office – A county office headed by the County Surrogate that may be in the same location as the Superior Court or may be in a different location. Guardianship actions and motions are filed with the *Surrogate’s Office*.

The numbered steps listed below tell you what forms you will need to fill out and what to do with them. Each form should be typed or printed clearly on 8 ½ “x 11” white paper only. Forms may not be filed on a different size or color paper.

Steps to File a Motion

STEP 1: Complete the *Notice of Motion* (Form A).

In the *Notice of Motion*, you inform the court and all parties that you have asked for a specific ruling or order and you specify the type of ruling you want. Motions are heard in court on specified days. You should obtain the motion schedule from the County Surrogate’s Office.

You should pick a motion day at least 3 weeks from the date you mail your motion papers in order to give your adversary the 16 days before the return date as required by the court rules.

You must indicate how you would like your motion to be decided. You can ask the court for oral argument. You can also ask the court for oral argument only if your adversary opposes the motion. You may also waive oral argument and let the judge decide the motion on the papers. If you request oral argument, you must tell the court why you think it is necessary.

Note: The judge makes the decision on whether there should be oral argument. The judge may request it even if neither party asked for it. Similarly, the judge may deny the request for oral argument.

You must also indicate on the *Notice of Motion* any dates that have been set by the court for conferences, hearing, or trial.

Note: If this is the first paper you are filing in this case, (i.e., you have not already filed an answer to the complaint), you **must** certify that you have redacted (blacked out) any personal identifiers (Social Security numbers, driver’s license numbers, vehicle plate numbers, insurance policy numbers, active financial account numbers, or active credit card numbers) from any paper filed with the court, unless any such personal identifier is required to be included by statute, rule, administrative directive or court order. If an active financial account is the subject of your case and cannot otherwise be identified, you may use the last four digits of the account to identify it.

Do not redact (black out) this information in the **original papers** that you are keeping (such as medical records or financial statements) since you may have to show them to the court at some point.

STEP 2: Complete the *Certification in Support of the Motion* (Form B-1) and the *Certification of Service* (Form B-2).

The *Certification in Support of the Motion* tells the court the reasons why you want the ruling you have requested and the reasons why the court should grant your request. You must also complete the *Certification of Service*, which tells the court the date on which you mailed the copies of the documents to your adversary.

STEP 3: Complete the Proposed Form of *Order* (Form C).

The *Order* is the document that grants or denies what you are asking for in the motion. Fill in the information up to the line for the date of the *Order*. Leave that and the rest of the form blank. The terms of the *Order* will be completed by the judge when the motion is decided.

STEP 4: Attach the Filing Fee.

The fee for filing a motion in the Surrogate’s Office is \$15.00. Write a check in that amount payable to the *Surrogate of the county* in which the motion is filed.

STEP 5: Check your completed forms and make copies.

Check your forms to make sure that they are complete and that you have signed them in the appropriate places. Make copies of the completed forms so you can serve them on all other parties.

Checklist - You must have the following items:

- The original and the appropriate number of copies of the *Notice of Motion* (Form A), *Certification in Support of the Motion* (Form B-1), *Certification of Service* (Form B-2), and the proposed form of *Order* (Form C).
- The filing fee. It must be a check or money order made payable to the **Surrogate** of the county in which the motion is filed in the amount of \$15.00.
- A stamped, self-addressed envelope if you wish the court to return to you a copy stamped “filed”.

STEP 6: Mail copies of the completed forms to all parties.

You must serve all other parties no later than 16 days before the specified return date on your notice of motion. Mail or deliver one copy of all the forms to each party:

Notice of Motion (Form A), *Certification in Support of the Motion* (Form B-1), the *Certification of Service* (Form B-2), and the proposed form of *Order* (Form C).

While the court rules do not require you to use certified mail, it is suggested that you send your motion and supporting papers by regular and certified mail, return receipt requested. You will then have the green card when it is returned to you as proof of service.

STEP 7: Mail or deliver the forms to the court.

You may deliver your papers to the Surrogate’s Office in person or you may mail them. The addresses of the Surrogate’s Office for each county are available online at njcourts.gov. If you mail the papers, we recommend that you use certified mail, return receipt requested.

If you wish the court to send you back a copy of these papers stamped “filed,” you **must** include an additional copy and a self-addressed, stamped envelope.

Keep copies of all papers you provide to the court or any other party. Make and keep for yourself copies of all completed forms and any canceled checks, money orders, receipts, bills, contract estimates, letters, leases, photographs and other important papers that relate to your case.

Instructions for Form A - Notice of Motion

In the *Notice of Motion*, you inform the court and all parties that you have asked for a specific ruling or order and you specify the type of ruling you want.

1. Fill in the contact information for your attorney or yourself if you are proceeding without an attorney (“Pro Se Litigant”). Fill in the full legal name of the incapacitated person for whom a guardianship has been established.
 2. Select the County in which the action is filed.
 3. Fill in the Docket Number.
 4. In the space next to “To:” fill in the name and mailing address of the party(ies) to whom the motion is directed.
 5. In the first blank space after the “TAKE NOTICE” paragraph, fill in the address of the Superior Court where the motion will be heard.
 6. In the second blank space, fill in the proposed date of the Motion hearing. Motions are heard in court on specified days. You should obtain the motion schedule from the County Surrogate’s Office. You should pick a motion day at least 3 weeks from the date you mail your motion papers in order to give your adversary notice 16 days before the return date as required by the court rules.
 7. Describe in detail the relief requested by your Motion in the space provided. For example, if you are asking the court to change the reporting period for a guardianship, you would indicate the proposed change in this area.
 8. Check a box to indicate how you would like your motion to be decided. You can ask the court for oral argument. You can also ask the court for oral argument only if your adversary opposes the motion. You may also waive oral argument and let the judge decide the motion on the papers. If you request oral argument, you must tell the court why you think it is necessary in the space next to the selection.
- Note: The judge makes the decision on whether there should be oral argument. The judge may request it even if neither party asked for it. Similarly, the judge may deny the request for oral argument.*
9. Under “Court Dates,” indicate any dates that have been set by the court for conferences, hearings, or trial.
 10. **Fill out the certification at the bottom of the first page.**

If this is the first paper you are filing in this case, you **must** also fill out the certification on the second page, certifying that you have redacted (blacked out) any personal identifiers (Social Security numbers, driver’s license numbers, vehicle plate numbers, insurance policy numbers, active financial account numbers, or active credit card numbers) from any paper filed with the court, unless any such personal identifier is required to be included by statute, rule, administrative directive or court order. If an active financial account is the subject of your case and cannot otherwise be identified, you may use the last four digits of the account to identify it.

Do not redact (black out) this information in the **original papers** that you are keeping (such as medical records or financial statements) since you may have to show them to the court at some point.

Form A

Filing Attorney Information or Pro Se Litigant:

Name _____

NJ Attorney ID Number _____

Address _____

Telephone Number _____

In the Matter of,

_____,
An Incapacitated Person

**Superior Court of New Jersey
Chancery Division - Probate Part**

County _____

Docket Number _____

Civil Action

Notice of Motion

To:

TAKE NOTICE that the undersigned will apply to the above named court, located at:

_____ on _____, for an **Order** to (describe relief requested):

I will rely on the attached certification which contains the grounds for the relief sought.

Pursuant to R. 1:6-2(d), the undersigned: (check one)

- Waives oral argument and consents to disposition on the papers.
- Requests oral argument if this matter is contested.
- Requests oral argument for the following reasons:

A proposed form of Order is attached.

Court Dates

No conference, hearing or trial date has been set except as follows: (If any dates have been scheduled, note them here; otherwise state "none")

I certify that the above statements made by me are true and that if any of the statements are willfully false, I am subject to punishment.

Date _____

Signature

Print Name

Form A

If this is the first paper you are filing in this case, you must sign the following certification.

I certify that confidential personal identifiers have been redacted from documents now submitted to the court, and will be redacted from all documents submitted in the future in accordance with *Rule 1:38-7(b)*.

Date _____

Signature

Print Name

Instructions for Form B-1 - Certification in Support of Motion

The *Certification in Support of the Motion* tells the court the reasons why you want the ruling you have requested and the reasons why the court should grant your request.

1. Fill in the contact information for your attorney or yourself if you are proceeding without an attorney (“Pro Se Litigant”). Fill in the full legal name of the incapacitated person for whom a guardianship has been established.
2. Select the County in which the action is filed.
3. Fill in the Docket Number.
4. Fill in your full legal name and indicate whether you are the guardian(s), the incapacitated person or an interested party.
5. Describe with specificity the relief requested in your Motion in the space provided. For example, if you are asking the court to change the reporting period for a guardianship, you would indicate the proposed change in this area.
6. Describe with specificity the factual and legal reasons why you believe your motion should be granted in the space provided. You may attach additional paper if more space is necessary.
7. Fill out the certification at the bottom of the page.

Form B-1

Filing Attorney Information or Pro Se Litigant:

Name _____

NJ Attorney ID Number _____

Address _____

Telephone Number _____

In the Matter of,

_____,
An Incapacitated Person

**Superior Court of New Jersey
Chancery Division - Probate Part**

County _____

Docket Number _____

Civil Action

Certification in Support of Motion

I, _____, am (check one):

the guardian(s)

the incapacitated person

an interested party

in the above-captioned matter. I make this certification in support of my motion to (state what you want the court to do)

This motion should be granted because: (state the basis for your motion and why it should be granted. Use extra paper if necessary)

I certify that the above statements made by me are true and that if any of the statements are willfully false, I am subject to punishment.

Date _____

Signature

Print Name

Instructions for Form B-2 - Certification of Service

The *Certification of Service* tells the court the date on which you mailed copies of the Motion documents to your adversary(ies).

1. Fill in the date on which you sent a copy of the Motion documents (Notice of Motion, Certifications and proposed form of Order) to all parties.
2. Check the box to indicate which type of mail service was utilized.
3. List the name and mailing address at which each party and/or interested party was served. Use the attorney's name and address if the party and/or interested party is represented by counsel.
4. Sign and date the Certification.

Form B-2

Certification of Service

I certify that on _____, I sent a copy of the Notice of Motion, Certification, and proposed form of Order to the following parties by: (Check which mailing method you chose. If you sent it by both regular and certified mail, return receipt requested, check both)

regular mail certified mail, return receipt requested

List each party and/or interested party; use the attorney's name and address if the party and/or interested party is represented by counsel.

Name _____ Name _____

Address _____ Address _____

Attorney for _____ Attorney for _____

Date _____

Signature

Print Name

Instructions for Form C - Order

The Order is the document that grants or denies what you are asking for in the motion.

1. Fill in the contact information for your attorney or yourself if you are proceeding without an attorney (“Pro Se Litigant”).
2. Fill in the full legal name of the incapacitated person for whom a guardianship has been established.
3. Select the County in which the action is filed.
4. Fill in the Docket Number.
5. Check the appropriate box to indicate whether you are the guardian(s), the incapacitated person or an interested party.
6. Describe with specificity the relief requested in your Motion in the space provided. For example, if you are asking the court to change the reporting period for a guardianship, you would indicate the proposed change in this area.
7. Leave the remainder of the form blank. The terms of the Order will be completed by the judge when the motion is decided.

Form C

Filing Attorney Information or Pro Se Litigant:

Name _____

NJ Attorney ID Number _____

Address _____

Telephone Number _____

In the Matter of,

_____,
An Incapacitated Person

**Superior Court of New Jersey
Chancery Division - Probate Part**

County _____

Docket Number _____

Civil Action

Order

This matter having been brought before the Court on Motion of (check one):

the guardian(s)

the incapacitated person

an interested party

for an **ORDER** (describe relief requested)

and the Court having considered the matter and for good cause appearing,

(Do not write below this line, For Court Use Only)

It is on this ____ day of _____, 20____, **ORDERED** as follows::

It is **FURTHER ORDERED** that a copy of this Order be served by the moving party upon all other parties or their attorneys, if any, within ____ days of the date listed above.

_____, J.S.C.

Opposed

Unopposed