

PRACTICE STANDARD 5-B

EXAMINER

COMMENT

The Examiner is a person qualified in the diagnosis, care, or treatment of causes and conditions giving rise to the subject's alleged incapacity, such as a gerontologist, psychiatrist, or qualified mental retardation professional.

STANDARD 5-B.1: The Examiner shall examine the individual alleged to be incapacitated and make findings indicating whether the individual's ability to receive and evaluate information is impaired to such an extent that he or she lacks the capacity:

(1) to take those actions necessary to obtain, administer, and dispose of real and personal property, intangible property, business property, benefits, and income;

(2) to take those actions necessary to provide health care, food, shelter, clothing, personal hygiene, and other care for him or herself so that serious physical illness is not more likely to occur; or

(3) to meet all or some essential requirements for his or her habilitation or therapeutic needs.

Authority: D.C. Code § 21-2041; § 21-2054; and SCR-PD 326

PRACTICE SUGGESTIONS:

- Make arrangements to conduct an examination of the allegedly incapacitated subject to timely comply with the court rule that requires that the examiner's report be filed at least 10 days before the scheduled hearing. (SCR-PD 326)
- Review reasonably available records and/or other materials that may have a bearing on the subject's present capacity, including but not limited to medical records; recent letters written by the subject; and available legal documents, e.g., powers of attorney, recent wills and/or trusts, and personal business records.
- List the names and relationships of other persons interviewed in connection with the examination of the subject, including but not limited to treating health care professionals, e.g., physicians and mental health care providers; persons living in the same residence as the subject; and relatives or friends in close contact with the subject.
- Describe the specific nature of the subject's impairment and the basis for this assessment.

- List any facts that may support a contrary assessment.
- Indicate whether the subject has the potential for regaining some or all of his or her capacity and the basis for this conclusion.
- Indicate whether the subject's incapacity arises out of mental retardation.
- In a case involving mental retardation, indicate in the written report whether the Examiner is a qualified mental retardation professional who can give a complete social, psychological, and medical evaluation of the individual. D. C. Code § 20-2011(24)(A) – (G) sets out the requirements for a qualified mental retardation professional.
- File a written report at least 10 days prior to the intervention hearing and mail a copy to all persons listed on the order of appointment.
- Unless excused by the Court, attend the intervention hearing. Bring notes, test results, and other materials and be prepared to testify regarding the subject's capacity.
- Maintain complete records of any services provided and record time spent using tenths of an hour.
- Prepare a fee petition upon completion of services and state the basis for the rate of compensation requested. File the fee petition either by mail or in person and send a copy to all interested persons and persons granted permission to participate, including any person listed in the Court's findings of fact, conclusions of law, and order.

Note: The Examiner does not serve as an advocate. The Examiner should not include in the report a recommendation regarding who the Guardian and/or Conservator should be. This does not preclude the Examiner from including in the report facts that may bear on characteristics of a Guardian that might be beneficial or detrimental to the ward. The Examiner's appointment terminates upon disposition of the matter unless otherwise directed by the Court.