

# Guardianship

Following are *pro se* forms to submit to the Cumberland County Surrogate's Office when filing for guardianship. There are two types of forms for the COMPLAINT, one for *Incapacitation since Birth* and one for *Incapacitation in Adulthood*. Please note that *incapacitation in adulthood* encompasses any incapacitation that occurred at a time other than at birth. You will file only ONE of these forms, either "*since Birth*" or "*in Adulthood*" depending on which fits your situation. The ORDER FOR HEARING will be the same regardless of which incapacitation form you file.

When using the forms you will see words italicized and underlined and blank spaces. Anywhere you see these they are for you to fill in order to make the Complaint personal to your situation and to what you are filing for. Please remove the italicized words and insert your specifics there.

If you have any questions regarding the filling in or filing of these forms, feel free to contact the Cumberland County Surrogate's Office at (856) 453-4800.

## Rule 4:86-1. Complaint

The following information must appear in the complaint for guardianship. A sample Complaint follows.

<u>Plaintiff (P)</u>	<u>A.M.I.P.*</u>	<u>A.M.I.P.'s Spouse (if any)</u>
Name	Name	Name
Age	Age	Age
Domicile (home)	Domicile	Domicile
<ul style="list-style-type: none"> <li>➤ P's relationship to A.M.I.P.</li> <li>➤ P's interest in Action</li> <li>➤ Names, addresses &amp; ages of A.M.I.P.'s children, if any</li> <li>➤ Name(s) &amp; address of person(s) or institution having the care of the A.M.I.P.               <ul style="list-style-type: none"> <li>➤ If lived in institution:                   <ul style="list-style-type: none"> <li>➤ Period(s) of time A.M.I.P. has lived there</li> <li>➤ Date of commitment or confinement</li> <li>➤ By what authority committed or confined</li> </ul> </li> </ul> </li> <li>➤ Name &amp; address of any person named as attorney-in-fact in any power of attorney executed by the A.M.I.P.</li> <li>➤ Name &amp; address of any person named as health care representative in any health care directive executed by the A.M.I.P.</li> <li>➤ Name &amp; address of any person acting as trustee under a trust for the benefit of the A.M.I.P.</li> </ul>		

***INCAPACITATION SINCE BIRTH***  
**SAMPLE COMPLAINT FOR GUARDIANSHIP**

LARRY LAWYER, ESQUIRE  
 123 Main Street  
 Anytown, USA 12345  
 (555) 123-4567  
 Attorney for Plaintiffs

\_\_\_\_\_  
 IN THE MATTER OF *INCAPACITATED'S NAME*, : SUPERIOR COURT OF NEW JERSEY  
 : CHANCERY DIVISION-PROBATE PART  
 AN ALLEGED : CUMBERLAND COUNTY  
 :  
 INCAPACITATED PERSON : DOCKET NO. *COURT FILLS IN*  
 : CIVIL ACTION  
 :  
 \_\_\_\_\_: COMPLAINT

Plaintiff(s), Plaintiff(s)' Name(s), the Petitioner(s) in the above action, reside at  
Plaintiff(s)' Address(es), in the City of \_\_\_\_\_, County of \_\_\_\_\_, State of  
 \_\_\_\_\_.

1. Plaintiff, Plaintiff's Name, is \_\_\_\_\_ years of age and Plaintiff, Plaintiff's Name  
 \_\_\_\_\_, is \_\_\_\_\_ years of age. They are domiciled and have their address at Plaintiffs'  
Address, City of \_\_\_\_\_, County of \_\_\_\_\_, State of \_\_\_\_\_.

2. Plaintiffs are the relationship to Incapacitated, of Name of Incapacitated  
 \_\_\_\_\_, who was born on Incapacitated's Date of Birth, who is domiciled  
 [Incapacitated's residence and the duration lived there].

3. The closest heir and next of kin of Incapacitated's Name are state the  
relationship to incapacitated, names of next of kin and their addresses. {For Example: The  
 closest heir and next of kin of John Doe are his parents, the Plaintiffs in this matter. The Plaintiffs have  
 two other children together. They are Jane Doe, age 15, and James Doe, age 13, who reside with the  
 Plaintiffs.}

1. {In Paragraph 4 state the reason(s) for incapacity. For Example: Said John Doe suffers  
 from Primary Autism and Severe Mental Retardation and is mentally incompetent as a result of  
 unsoundness of mind as appears from the Affidavits of the Physicians attached hereto. John Doe has been



I hereby certify, pursuant to R. 4:5-1, that the matter in controversy in the within action is not the subject of any other action pending in any court or of any arbitration proceeding and that no other action or arbitration proceeding is contemplated. I further certify that there is no other party who should be joined in this action.

Signature  
*(Name of Petitioner)*

Dated:



By a Notary Public.

**INCAPACITATION IN ADULTHOOD  
SAMPLE COMPLAINT FOR GUARDIANSHIP**

LARRY LAWYER, ESQUIRE  
123 Main Street  
Anytown, USA 12345  
(555) 123-4567  
Attorney for Plaintiffs

\_\_\_\_\_  
IN THE MATTER OF *INCAPACITATED'S NAME*, : SUPERIOR COURT OF NEW JERSEY  
: CHANCERY DIVISION-PROBATE PART  
AN ALLEGED : CUMBERLAND COUNTY  
: DOCKET NO. *COURT FILLS IN*  
INCAPACITATED PERSON : CIVIL ACTION  
: COMPLAINT  
\_\_\_\_\_:

Plaintiff(s), Plaintiff(s)' Name(s), the Petitioner(s) in the above action, reside at  
Plaintiff(s)' Address(es), in the City of \_\_\_\_\_, County of \_\_\_\_\_, State of  
\_\_\_\_\_.

1. Plaintiff, Plaintiff's Name, is \_\_\_\_\_ years of age and Plaintiff, Plaintiff's Name  
\_\_\_\_\_, is \_\_\_\_\_ years of age. They are domiciled and have their address at Plaintiffs'  
Address \_\_\_\_\_, City of \_\_\_\_\_, County of \_\_\_\_\_, State of \_\_\_\_\_  
\_\_\_\_\_.

2. Plaintiffs are the relationship to Incapacitated, of Name of Incapacitated  
\_\_\_\_\_, who was born on Incapacitated's Date of Birth, who is domiciled  
[ Incapacitated's residence and the duration lived there ]

3. The closest heir and next of kin of Incapacitated's Name are state the  
relationship to incapacitated, names of next of kin and their addresses. {For Example: The  
closest heir and next of kin of John Doe are his brothers, James Doe, who resides at 15 North Road,  
Anytown, USA and Justin Doe, who resides at 25 South Street, Anytown, USA.}

2. {In Paragraph 4 state the reason(s) for incapacity. For Example: Said John Doe suffers  
from dementia and is mentally incompetent as a result of unsoundness of mind as appears from the  
Affidavits of the Physicians attached hereto. John Doe has been unable to govern himself and/or manage  
his affairs for the last five years.}







4.           Incapacitated's Name          , alleged mentally incapacitated person, is the recipient of the following income: *For Example: Monthly Social Security Income in the amount of \$1,000.00 (here you may wish to attach a copy of a Social Security check or statement as Exhibit C).*

5.           Incapacitated's Name          , alleged mentally incapacitated person, is possessed of the following items of personal property:

*{For Example: A. Anytown Express Financial Account, Client # 0123 4567 890, with an account balance as of June 30, 2006 in the amount of \$5,000.00 (attach account statement as Exhibit D).*

*A. Merrill Stanley, Inc., Individual Investor Account #998 76543, with an account balance as of June 30, 2006 in the amount of \$75,000.00 (attach account statement as Exhibit E).*

*B. Rampant Financial Account Contract # 99-888-777 Balance Unknown, total dividend accumulation for 2005 through October 31, 2005 is \$3,000.00 (attach account statement as Exhibit F).*

*C. Alpha Corporation, 100 shares common stock, Account #123456789, with a value as of June 30, 2006 in the amount of \$1,500.00 (attach stock account statement as Exhibit G).*

*D. Beta Communications, Inc., 2,500 shares of common stock, Account #01234-56789 with a value as of June 30, 2006 in the amount of \$5,775.00 (attach stock statement as Exhibit H).*

*E. Gamma Financial fixed annuity, Contract # 11-2222-333333 with a value as of June 30, 2006 in the amount of \$4,000.00 (attach annuity statement as Exhibit I).*

*F. Bank Accounts:*

*1. Omega Regional Bank Savings Account #987776543210 with a balance as of June 30, 2006 in the amount of \$2,000.00 (attach bank statement as Exhibit J); and*

*2. Omega Regional Bank Checking Account #0123456789 with a balance as of June 30, 2006 in the amount of \$10,000.00 (attach bank statement as Exhibit K).*

*{The Following two numbered paragraphs are additional examples for things you may need to include in your Affidavit of Assets.*

*6. John Doe is the sole beneficiary of the Estate of his wife, Jane Doe, who died on August 8, 1988 however, the majority of assets owned by John and Jane Doe were owned jointly and are listed herein. Two motor vehicles were owned exclusively by Jane Doe to wit:*

*A. 2002 Ford Focus;*

B. 1997 Honda Civic.

7. John Doe is the sole intestate beneficiary of his sister, Julia Doe Smith. The estimated value of the Doe Smith Estate is \$1,000,000.00.}

8. I know of no other property in which \_\_\_\_\_ INCAPACITATED'S NAME \_\_\_\_\_ has an interest presently or in the future.

\_\_\_\_\_  
*Signature*  
\_\_\_\_\_  
(Plaintiff/Filer's Name)

Sworn and subscribed to  
Before me this \_\_\_\_\_ day  
Of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
*This document must be notarized  
By a Notary Public.*

\*A.M.I.P. → Alleged Mentally Incapacitated Person  
\*\* G.a.l. → Guardian ad litem

**Rule 4:86-2 (b). Accompanying Affidavits**

The Accompanying Affidavits should come from two different physicians. No example appears here. The affidavits must meet the following requirements per New Jersey statute.

- The date & place of examination
- Whether the affiant (in this case, the physician) has treated or merely examined the A.M.I.P.
- Whether the affiant is disqualified under **R. 4:86-3**.
- The diagnosis & prognosis & factual basis therefore
- Physical description of person examined (A.M.I.P.), including but not limited to sex, age & weight
- Affiant's opinion that the A.M.I.P. is unfit & unable to govern himself or herself & to manage his or her affairs & shall set forth with particularity the circumstances & conduct of the A.M.I.P. upon which this opinion is based, including history of the A.M.I.P.'s condition
- Affiant's opinion whether the A.M.I.P. is capable of attending the hearing & if not, the reasons for the individual's inability

**Rule 4:86-3. Disqualification of Affiant**

As referenced above in **R. 4:86-2(b)**.

- No affidavit shall be submitted by a physician, psychologist, or chief executive officer of an institution who is related, either by blood or marriage, to the A.M.I.P., OR who is financially interested therein

**Rule 4:86-4(a). Order for Hearing**

A sample Order follows.

- At least 20 days notice to A.M.I.P., any attorney-in-fact, any health care representative & any trustee, A.M.I.P.'s spouse, children 18 years & over, parents, person having custody of A.M.I.P., attorney appointed pursuant to **4:86-4(b)**[G.a.l.\*\*], & such other persons as the Court directs
- Notice is effected by:
  - Service of a copy of the Order, Complaint & supporting affidavits upon A.M.I.P. & any other in the manner the Court directs
  - Court may allow shorter notice or dispense with notice
    - Order shall recite the ground for the shorter notice
    - Proof must be submitted at the hearing that that ground still exist
  - Separate notice served personally on the A.M.I.P. stating that if he/she desires to oppose the action he/she may appear either in person or by attorney & may demand a trial by jury

**Rule 4:86-4(b). Appointment & Duties of Counsel**

The order shall include the appointment by the court of counsel for the alleged mentally incapacitated person. Counsel shall:

- Personally interview the A.M.I.P.
- Make inquire of persons having knowledge of the A.M.I.P.'s circumstances, his or her physical & mental state & his or her property
- Make reasonable inquiry to locate any will, powers of attorney, or health care directives previously executed by the A.M.I.P. or to discover any interests the A.M.I.P. may have as beneficiary of a will or trust
- Three days prior to the hearing counsel will file a report with the court & serve a copy on P's attorney & other parties who have formally appeared in the matter

**Rule 4:86-4(e). Compensation**

- Compensation of the appointed counsel and the guardian ad litem, if any, may be fixed by the court to be paid out of the estate of the A.M.I.P. or in such other manner as the court shall direct.

**SAMPLE ORDER FOR HEARING**

*LARRY LAWYER, ESQUIRE*  
*123 Main Street*  
*Anytown, USA 12345*  
*(555) 123-4567*  
*Attorney for Plaintiffs*

\_\_\_\_\_  
 IN THE MATTER OF *INCAPACITATED'S NAME*, : SUPERIOR COURT OF NEW JERSEY  
 : CHANCERY DIVISION-PROBATE PART  
 : CUMBERLAND COUNTY  
 AN ALLEGED :  
 INCAPACITATED PERSON : DOCKET NO. *COURT FILLS IN*  
 : CIVIL ACTION  
 \_\_\_\_\_ : ORDER FOR HEARING

This matter being opened to the Court by     *Name of person filing*     for Plaintiff(s)  
    *Plaintiff(s)' Name(s)*    , and the Court having read the Verified Complaint and Certifications  
 attached thereto and being satisfied with the sufficiency thereof and that further proceedings should be  
 heard thereon:

It is on this     *court fills in*     day of     *court fills in*    , 20     , ORDERED that  
 this matter be set for hearing before the Superior Court of New Jersey, Probate Part, Cumberland County  
 Court House, Bridgeton, New Jersey, on the     *court fills in*     day of     *court fills in*      
    , 20     , at     :     am/pm, or as soon thereafter as counsel may be heard, to determine  
 why the relief sought in the Verified Complaint should not be granted, to wit, a declaration:

ADJUDGING     *Name of Incapacitated*     incapacitated and ordering that     *Plaintiff(s)'*  
    *Names*     be appointed (co-)guardian(s) of *his/her* person and property, and that no bond be required; and it  
 is

FURTHER ORDERED that     *court fills in*    , Esq. is appointed as counsel to  
 represent     *Name of Incapacitated*    , and it is

FURTHER ORDERED that counsel appointed above shall have the authority to examine records  
 pertaining to the alleged incapacitated person and to visit and confer with the alleged incapacitated person;  
 and it is

FURTHER ORDERED that counsel appointed above shall provide a written report to the Court and forward a copy to Plaintiffs' attorney at least  court fills in  days prior to the scheduled hearing date; and it is

FURTHER ORDERED that reasonable counsel fees and expenses of said attorney, which shall be fixed by this Court, shall be paid out of the estate of the alleged incapacitated person or by the Plaintiff herein or as directly by the Court; and it is

FURTHER ORDERED that a copy of this Order and of the Verified Complaint and Certifications annexed be served personally upon  Incapacitated's Name  and by certified mail, return receipt requested, upon counsel appointed above and the Cumberland County Adjuster within  court fills in  days; and it is

FURTHER ORDERED that, pursuant to  N.J.S.A. 30:4-165.13 , the aforementioned hearing shall be dispensed with and relief summarily granted if the attorney for the alleged incapacitated person does not dispute the need for guardianship or the fitness of the proposed guardian, and no hearing is requested.

This Order shall serve as notice to  Incapacitated's Name  that *he/she* may oppose this matter in person or by way of counsel of her own choosing and request a jury trial.

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*Leave blank for Judge's Signature*

**SAMPLE PROOF OF SERVICE**

*LARRY LAWYER, ESQUIRE*  
*123 Main Street*  
*Anytown, USA 12345*  
*(555) 123-4567*  
*Attorney for Plaintiffs*

_____	:	SUPERIOR COURT OF NEW JERSEY
IN THE MATTER OF <i>INCAPACITATED'S NAME</i> ,	:	CHANCERY DIVISION-PROBATE PART
	:	CUMBERLAND COUNTY
AN ALLEGED	:	
INCAPACITATED PERSON	:	DOCKET NO. <i>COURT FILLS IN</i>
	:	CIVIL ACTION
_____	:	PROOF OF SERVICE

On \_\_\_\_\_, 20 \_\_\_\_, the following “filed” documents were served by certified mail, return receipt requested and regular mail, upon the interested parties per the attached list.

1. Verified Complaint
2. Affidavit of Assets
3. Affidavits of Physicians
4. Order for Hearing

The original green certified return receipt cards are attached hereto.

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

Date: \_\_\_\_\_

\_\_\_\_\_  
*Signature*  
(Your Name)

\*A.M.I.P. → Alleged Mentally Incapacitated Person  
\*\* G.a.l. → Guardian ad litem

**SAMPLE JUDGMENT OF INCAPACITY & ORDER APPOINTING GUARDIAN**

*LARRY LAWYER, ESQUIRE*  
*123 Main Street*  
*Anytown, USA 12345*  
*(555) 123-4567*  
*Attorney for Plaintiffs*

	:	SUPERIOR COURT OF NEW JERSEY
IN THE MATTER OF <i>INCAPACITATED'S NAME</i> ,	:	CHANCERY DIVISION-PROBATE PART
	:	CUMBERLAND COUNTY
AN ALLEGED	:	
	:	DOCKET NO. <i>COURT FILLS IN</i>
INCAPACITATED PERSON	:	
	:	CIVIL ACTION
	:	
	:	JUDGMENT OF INCAPACITY AND ORDER APPOINTING GUARDIAN

THIS MATTER having been opened to the Court by           *Filer's Name*          , and no demand  
 Having been made for a jury and the alleged incapacitated person having been represented in this action by  
          *COURT FILLS IN*          , Esquire and the Court having read the papers, reviewed the  
 evidence, heard the argument of counsel and the Court sitting without a jury having found that the said  
          *Incapacitated's Name*          , is an incapacitated person as the result of           *(list reasoning for*  
          *person's incapacitation [for example: unsoundness of mind]*           and is incapable of governing his/herself  
 and managing his/her affairs;

It is on the \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, ORDERED AND ADJUDGED as follows:

1. The aforesaid           *Incapacitated's Name*           is an incapacitated person as a result of           *fill in*  
          *same reasoning as above*           and is incapable of governing his/herself and managing his/her affairs and  
 unable to consent to medical treatment;
2. That           *Guardian's Name*           is appointed as guardian of the person and property of the  
 aforesaid           *Incapacitated's Name*           as an adult and that Letters of Guardianship be issued to her  
 upon her filing and acceptance and duly qualifying with the Surrogate of Cumberland County;
3. That           *Guardian's Name*           enters into a personal / corporate surety bond unto the  
 Superior Court of New Jersey in the amount of \$\_\_\_\_\_.\_\_\_\_\_, which bond shall contain the  
 conditions set forth in *N.J.S.A.3B:15-7*. The court shall approve the bond as to form and sufficiency.

\*A.M.I.P. → Alleged Mentally Incapacitated Person  
 \*\* G.a.l. → Guardian ad litem

4. That \_\_\_\_\_ *Guardian's Name* \_\_\_\_\_ shall have the authority to make any and all medical decisions regarding \_\_\_\_\_ *Incapacitated's Name* \_\_\_\_\_ including but not limited to the authority to consent or withhold consent to surgical procedures and such other procedures reasonably attendant thereto and any decisions concerning withdrawal or denial of life support shall be exercised in full compliance with existing statutory and case law:

5. That \_\_\_\_\_ *Guardian's Name* \_\_\_\_\_ shall have all the powers vested in the Court under *N.J.S.A.* 3B:12-49 and this Judgment will serve as authorization for immediate access and powers over all assets of \_\_\_\_\_ *Incapacitated's Name* \_\_\_\_\_;

6. That \_\_\_\_\_ *Guardian's Name* \_\_\_\_\_ may not alienate, mortgage, transfer or otherwise encumber or dispose of real property without court approval. Said limitation shall be stated in the Letters of Guardianship.

7. \_\_\_\_\_ *Guardian's Name* \_\_\_\_\_ is hereby directed to advise the Surrogate of Cumberland County within ten (10) days of any changes in the address or telephone number or him/herself or the incapacitated person or within thirty (30) days of the incapacitated person's death or of any major change in status or health.

8. That \_\_\_\_\_ *COURT FILLS IN (attorney representing the Incapacitated Person)* \_\_\_\_\_, Esq. be paid \$\_\_\_\_\_.\_\_\_\_\_, for services rendered and costs incurred in connection with this matter;

9. That any and all costs and fees contained in this Judgment shall be paid out of the estate of the incapacitated person;

10. That this Order shall be effective Nunc Pro Tunc (*legal term for retroactive*) to the date of the actual hearing and finding of incapacity.

\_\_\_\_\_  
 \_\_\_\_\_  
*Leave blank for Judge's Signature*

**New Jersey Statutes** applicable/referenced in the Judgment

**3B:12-49. Powers conferred upon the court**

The court has, for the benefit of the Incapacitated Person, the Incapacitated Person's dependents and members of his/her household, all the powers over the Incapacitated Person's estate and affairs which he/she could exercise, if present and not under disability, except the power to make a will, **and may confer those powers on a guardian of the estate.**

These powers include, but are not limited to:

- Power to convey or release the Incapacitated Person's present and contingent and expectant interests in real and personal property
- To exercise or release the Incapacitated Person's powers as trustee, personal representative, custodian for minor, guardian or donee of a power of appointment
- To enter into contracts
- To create revocable or irrevocable trusts of property of the estate which may extend beyond the Incapacitated Person's disability or life
- To exercise the Incapacitated Person's options to purchase securities or other property
- To exercise the Incapacitated Person's rights to elect options and change beneficiaries under insurance annuity policies and to surrender the policies for their cash value
- To exercise the Incapacitated Person's right to an elective share in the estate of the Incapacitated Person's deceased spouse or domestic partner (*as defined in section 3 of P.L.2003 c. 246 [C.26:8a-3]*) to the extent permitted by law
- To renounce any interest by testate or intestate succession or by inter vivos transfer
- To engage in planning utilizing public assistance programs consistent with current law

**3B:15-7. Conditions of bonds of guardians of minors and mental incompetents.**

The bond required of a guardian of a minor or mental incompetent shall be conditional substantially as follows:

- a. To well and truly administer the Incapacitated Person's estate, and to take proper care of the Incapacitated Person if the guardian is the guardian of the Incapacitated Person's person;
- b. To make a just and true account of his/her administration of the guardianship, and, if required by the court, to settle his/her accounts therein within the time so required.

**3B:12-37. Letters of guardianship to state any limitations at the time of appointment or later**

If the court limits any power conferred on the guardian, the limitation shall be so stated in certificates of letters of guardianship thereafter issued.