



SUPREME COURT
277 MAIN STREET
GIBRALTAR
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CIRCULAR TO ALL CHAMBERS

23 December 2014

Circ. 11 of 2014

Court of Protection Practice Direction

The Chief Justice has issued a Practice Direction relating to the filing of applications in the Court of Protection. The Practice Direction is attached hereto.

You should also note that the following fees, as provided for by the UK Court of Protection Fees Order 2007 (as read with rule 49 of the Supreme Court Rules), will apply to applications:

Application fee on filing of COP1:	£400
Hearing fee (if required):	£500


Liam Yeats
Registrar

IN THE SUPREME COURT OF GIBRALTAR

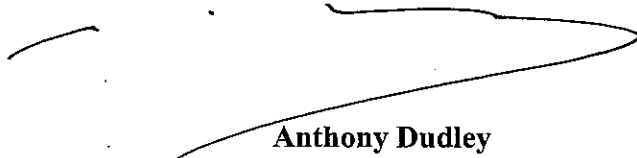
COURT OF PROTECTION

Practice Direction 1 of 2014

This Practice Direction supplements Part IV of the Mental Health Act (the Act) Management of Property and Affairs of Patients and provides guidance in respect of applications for the appointment of a guardian, under the inherent jurisdiction of the court, for the purposes of making personal welfare decisions on behalf of a patient.

1. Section 57(3) of the Act provides that in the absence of rules of procedure made under Part IV the practice and procedure shall be regulated by the rules for the time being in force in England in relation to the Court of Protection.
2. Applications for the appointment of a person as receiver and/or guardian for a patient should be instituted using Form COP 1.
3. COP 1 should be accompanied by an Affidavit sworn by the applicant/s setting out the information as may be applicable to the circumstances of Gibraltar as contained in:
 - (i) COP 1A – (Annex A Supporting Information for Property and Affairs Applications); and / or
 - (ii) COP 1B – (Annex B Supporting Information for Personal Welfare Applications); and
 - (iii) COP 4 (Deputy's Declaration) including the undertakings and reasons why the applicant/s wishes to be appointed receiver/guardian.

4. The Affidavit should exhibit a report by a medical practitioner (for example a GP or psychiatrist) containing the matters required to be addressed by a medical practitioner in Part B of COP 3.
5. If the individuals to be served with the application consent to the making of the order such consent should be exhibited.
6. Applicants will not normally be required to provide security for their actions as receivers.
7. Applicants should file a draft order based on the Model Order A or Model B in the Schedule to this practice direction with such amendments as may be required by the particular circumstances of the case. If both appointments are sought the orders should be combined.



Anthony Dudley
CHIEF JUSTICE
23rd December 2014

SCHEDULE

MODEL ORDER A

IN THE SUPREME COURT OF GIBRALTAR

Court of Protection

CP/xxx/20xx

IN THE MATTER OF AN APPLICATION UNDER PART IV OF THE MENTAL
HEALTH ACT

AND

IN THE MATTER OF [P]

ORDER

Before Mr/Mrs Justice xxx Chief Justice / [Acting Chief Justice]

[Date]

Upon the Application of [xxx], Solicitors for the Applicant And Upon Reading the
Affidavit of [xxx] And Upon the Undertakings contained therein IT IS ORDERED that:

1. [xxx] of [address] is appointed as receiver to make decisions on behalf of [xxx]
("the Patient") that he/she is unable to make for himself /herself in relation to
his/her property and affairs to secure the doing of all such things as are necessary
or expedient:
 - (a) for the maintenance or other benefit of the Patient;
 - (b) for the maintenance or other benefit of members of the Patient's family;

- (c) for making provision for other persons or purposes for whom or which the Patient might be expected to provide if he were not mentally disordered; or
- (d) otherwise for administering the Patient's affairs.
- (e)...[any further specific power or authority].

and for such purposes the receiver may execute or sign any necessary deeds or documents on behalf of the Patient.

2. The receiver shall keep statements, vouchers, receipts and other financial records of dealings and transactions taken on behalf of the Patient and shall submit an annual account to the Court.
3. The appointment of [xxx] as receiver will last until further order.
4. This order shall cease to have effect on the death of the Patient.
5. The Patient, any party to the proceedings, any person who is affected by this order and any person who is properly interested in the Patient's welfare may apply to the Court at any time for its reconsideration, variation or discharge.
6. The costs of this application shall be paid from the estate of the Patient.

REGISTRAR

MODEL ORDER B

IN THE SUPREME COURT OF GIBRALTAR

Court of Protection

CP/xxx/20xx

IN THE MATTER OF THE INHERENT JURISDICTION OF THE COURT

AND

IN THE MATTER OF [P]

ORDER

Before Mr/Mrs Justice xxx Chief Justice / [Acting Chief Justice]

[Date]

Upon the Application of [xxx], Solicitors for the Applicant And Upon Reading the Affidavit of [xxx] And Upon the Undertakings contained therein IT IS ORDERED that:

1. Appointment of Guardian

(a) [xxx] of [xxx] is appointed guardian to make personal welfare decisions on behalf of [P] (“the Patient”) that he/she is unable to make for himself/herself subject to any conditions or restrictions set out in this order.

(b) The appointment will last until further order.

2. Authority of the Guardian

(a) The Court confers general authority on the guardian to make the following decisions on behalf of the Patient:

- (i) where he/she should live;
- (ii) decisions on day to day care including diet and dress;
- (iii) consenting to medical or dental examinations and treatment, including where necessary operative surgery on his/her behalf;
- (iv) arranging for the provision of care services;
- (v) whether he/she should take part in particular occupational, leisure and social activities and
- (vi) complaints about his/her care and treatment

- (a) For the purpose of giving effect to any of these decisions the guardian may execute or sign any necessary deeds or documents;
- (b) The guardian does not have authority to make a decision on behalf of the Patient in relation to a matter if the guardian knows or has reasonable grounds for believing that he/she has capacity in relation to the matter.

3 Reports

- (a) The guardians is required to keep a record of any decisions made or acts done pursuant to this order and the reason for making or doing them.

4. The Patient, any party to the proceedings, any person who is affected by this order and any person who is properly interested in the Patient's welfare may apply to the Court at any time for its reconsideration, variation or discharge.

REGISTRAR