

RE: PROPOSED RULE ON GUARDIANSHIP OF MINORS

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R E S O L U T I O N Acting on the letter of the Chairman of the Committee on Revision of the Rules of Court submitting for this Court's consideration and approval the Proposed Rule on Guardianship of Minors, the Court Resolved to APPROVE the same. The Rule shall take effect on May 1, 2003 following its publication in a newspaper of general circulation not later than April 15, 2003. April 1, 2003. I>Davide, Jr. C.J., Bellosillo, Puno, Vitug, Mendoza, Panganiban, Quisumbing, Ynares-Santiago, Sandoval-Gutierrez, Carpio, Austria-Martinez, Corona, Carpio-Morales, Callejo Sr., Azcuna, JJ., concur **RULE ON GUARDIANSHIP OF MINORS** Section 1. Applicability of the Rule. – This Rule shall apply to petitions for guardianship over the person or property, or both, of a minor. The father and the mother shall jointly exercise legal guardianship over the person and property of their unemancipated common child without the necessity of a court appointment. In such case, this Rule shall be suppletory to the provisions of the Family Code on guardianship. Sec. 2. Who may petition for appointment of guardian. – On grounds authorized by law, any relative or other person on behalf of a minor, or the minor himself if fourteen years of age or over, may petition the Family Court for the appointment of a general guardian over the person or property, or both, of such minor. The petition may also be filed by the Secretary of Social Welfare and Development and by the Secretary of Health in the case of an insane minor who needs to be hospitalized. Sec. 3. Where to file petition. – A petition for guardianship over the person or property, or both, of a minor may be filed in the Family Court of the province or city where the minor actually resides. If he resides in a foreign country, the petition shall be filed with the Family Court of the province or city where his property or any part thereof is situated. Sec. 4. Grounds of petition. – The grounds for the appointment of a guardian over the person or property, or both, of a minor are the following:

- (a) death, continued absence, or incapacity of his parents; (b) suspension, deprivation or termination of parental authority; (c) remarriage of his surviving parent, if the latter is found unsuitable to exercise parental authority; or (d) when the best interests of the minor so require.

Sec. 5. Qualifications of guardians. – In appointing a guardian, the court shall consider the guardian's:

- (a) moral character; (b) physical, mental and psychological condition; (c) financial status; (d) relationship of trust with the minor; (e) availability to exercise the powers and duties of a guardian for the full period of the guardianship; (f) lack of conflict of interest with the minor; and (g) ability to manage the property of the minor.

Sec. 6. Who may be appointed guardian of the person or property, or both, of a minor. – In default of parents or a court-appointed guardian, the court may appoint a guardian of the person or property, or both, of a minor, observing as far as practicable, the following order of preference:

- (a) the surviving grandparent and In case several grandparents survive, the court shall select any of them taking into account all relevant considerations; (b) the oldest brother or sister of the minor over twenty-one years of age, unless unfit or disqualified; (c) the actual custodian of the minor over twenty-one years of age, unless unfit or disqualified; and (d) any other person, who in the sound discretion of the court, would serve the best interests of the minor.

Sec. 7. Contents of petition. – A petition for the appointment of a general guardian must allege the following:

- (a) The jurisdictional facts; (b) The name, age and residence of the prospective ward; (c) The ground rendering the appointment necessary or convenient; (d) The death of the parents of the minor or the termination, deprivation or suspension of their parental authority; (e) The remarriage of the minor's surviving parent; (f) The names, ages, and residences of relatives within the 4th civil degree of the minor, and of persons having him in their care and custody; (g) The probable value, character and location of the property of the minor; and (h) The name, age and residence of the person for whom letters of guardianship are prayed.

The petition shall be verified and accompanied by a certification against forum shopping. However, no defect in the petition or verification shall render void the issuance of letters of guardianship. Sec. 8. Time and notice of hearing. – When a petition for the appointment of a general guardian is filed, the court shall fix a time and place for its hearing, and shall cause reasonable notice to be given to the persons mentioned in the petition, including the minor if he is fourteen years of age or over, and may direct other general or special notice to be given. Sec. 9. Case study report. – The court shall order a social worker to conduct a case study of the minor and all the prospective guardians and submit his report and recommendation to the court for its guidance before the scheduled hearing. The social worker may intervene on behalf of the minor if he finds that the petition for guardianship should be denied. Sec. 10. Opposition to petition. – Any interested person may contest the petition by filing a written opposition based on such grounds as the majority of the minor or the unsuitability of the person for whom letters are prayed, and pray that the petition be denied, or that letters of guardianship issue to himself, or to any suitable person named in the opposition. Sec. 11. Hearing and order for letters to issue. – At the hearing of the petition, it must be shown that the requirement of notice has been complied with. The prospective ward shall be presented to the court. The court shall hear the evidence of the parties in support of their respective allegations. If warranted, the court shall appoint a suitable guardian of the person or property, or both, of the minor. At the discretion of the court, the hearing on guardianship may be closed to the public and the records of the case shall not be released without its approval. Sec. 12. When and how a guardian of the property for non-resident minor is appointed; notice. – When the minor resides outside the Philippines but has property in the Philippines, any relative or friend of such minor, or any one interested in his property, in expectancy or otherwise, may petition the Family Court for the appointment of a guardian over the property. Notice of hearing of the petition shall be given to the minor by publication or any other means as the court may deem proper. The court may dispense with the presence of the non-resident minor. If after hearing the court is satisfied that such non-resident is a minor and a guardian is necessary or convenient, it may appoint a guardian over his property. Sec. 13. Service of final and executory judgment or order. – The final and executory judgment or order shall be served upon the Local Civil Registrar of the municipality or city where the minor resides and the Register of Deeds of the place where his property or part thereof is situated shall annotate the same in the corresponding title, and report to the court his compliance within fifteen days from receipt of the order. Sec. 14. Bond of guardian; amount; conditions.-Before he enters upon the execution of his trust, or letters of guardianship issue, an appointed guardian may be required to post a bond in such sum as the court shall determine and conditioned as follows: (a) To make and return to the court, within three months after the issuance of his letters of guardianship, a true and complete Inventory of all the property, real and personal, of his ward which shall come to his possession or knowledge or to the possession or knowledge of any other person in his behalf; (b) To faithfully execute the duties of his trust, to manage and dispose of the property according to this rule for the best interests of the ward, and to provide for his proper care, custody and education; (c) To render a true and Just account of all the property of the ward in his hands, and of all proceeds or interest derived therefrom, and of the management and disposition of the same, at the time designated by this rule and such other times as the court directs; and at the expiration of his trust, to settle his accounts with the court and deliver and pay over all the property, effects, and monies remaining in his hands, or due from him on such settlement, to the person lawfully entitled thereto; and (d) To perform all orders of the court and such other duties as may be required by law. Sec. 15. Where to file the bond; action thereon. – The bond posted by a

guardian shall be filed in the Family Court and, In case of breach of any of its conditions, the guardian may be prosecuted in the same proceeding for the benefit of the ward or of any other person legally interested in the property. Whenever necessary, the court may require the guardian to post a new bond and may discharge from further liability the sureties on the old bond after due notice to interested persons, if no injury may result therefrom to those interested in the property. Sec. 16. Bond of parents as guardians of property of minor. – If the market value of the property or the annual Income of the child exceeds P50,000.00, the parent concerned shall furnish a bond In such amount as the court may determine, but in no case less than ten per centum of the value of such property or annual income, to guarantee the performance of the obligations prescribed for general guardians. A verified petition for approval of the bond shall be filed in the Family Court of the place where the child resides or, if the child resides in a foreign country, in the Family Court of the place where the property or any part thereof is situated. The petition shall be docketed as a summary special proceeding In which all incidents and issues regarding the performance of the obligations of a general guardian shall be heard and resolved. Sec. 17. General duties of guardian. – A guardian shall have the care and custody of the person of his ward and the management of his property, or only the management of his property. The guardian of the property of a nonresident minor shall have the management of all his property within the Philippines. A guardian shall perform the following duties:

(a) To pay the just debts of the ward out of the personal property and the income of the real property of the ward, If the same is sufficient; otherwise, out of the real property of the ward upon obtaining an order for its sale or encumbrance; (b) To settle all accounts of his ward, and demand, sue for, receive all debts due him, or may, with the approval of the court, compound for the same and give discharges to the debtor on receiving a fair and just dividend of the property and effects; and to appear for and represent the ward in all actions and special proceedings, unless another person is appointed for that purpose; (c) To manage the property of the ward frugally and without waste, and apply the income and profits thereon, insofar as may be necessary, to the comfortable and suitable maintenance of the ward; and if such income and profits be insufficient for that purpose, to sell or encumber the real or personal property, upon being authorized by the court to do so; (d) To consent to a partition of real or personal property owned by the ward jointly or in common with others upon authority granted by the court after hearing, notice to relatives of the ward, and a careful investigation as to the necessity and propriety of the proposed action; (e) To submit to the court a verified inventory of the property of his ward within three months after his appointment, and annually thereafter, the rendition of which may be required upon the application of an interested person; (f) To report to the court any property of the ward not included in the inventory which is discovered, or succeeded to, or acquired by the ward within three months after such discovery, succession, or acquisition; and (g) To render to the court for its approval an accounting of the property one year from his appointment, and every year thereafter or as often as may be required.

Sec. 18. Power and duty of the court – The court may:

(a) Request the assistance of one or more commissioners in the appraisal of the property of the ward reported in the initial and subsequent inventories; (b) Authorize reimbursement to the guardian, other than a parent, of reasonable expenses incurred in the execution of his trust, and allow payment of compensation for his services as the court may deem just, not exceeding ten per centum of the net income of the ward, if any; otherwise, in such amount the court determines to be a reasonable compensation for his services; and (c) Upon complaint of the guardian or ward, or of any person having actual or prospective interest in the property at the ward, require any person suspected of having embezzled, concealed, or disposed of any money, goods or interest, or a written instrument belonging to the ward or his property to appear for examination concerning any thereof and issue such orders as would secure the property against such embezzlement, concealment or conveyance.

Sec. 19. Petition to sell or encumber property.—When the income of a property under guardianship is insufficient to maintain and educate the ward, or when it is for his benefit that his personal or real property or any part thereof be sold, mortgaged or otherwise encumbered, and the proceeds invested in safe and productive security, or in the improvement or security of other real property, the guardian may file a verified petition setting forth such facts,

and praying that an order issue authorizing the sale or encumbrance of the property. Sec. 20. Order to show cause. – If the sale or encumbrance is necessary or would be beneficial to the ward, the court shall order his next of kin and all person/s interested in the property to appear at a reasonable time and place therein specified and show cause why the petition should not be granted. Sec. 21. Hearing on return of order; costs. – At the time and place designated in the order to show cause, the court shall hear the allegations and evidence of the petitioner and next of kin, and other persons interested, together with their witnesses, and grant or deny the petition as the best interests of the ward may require. Sec. 22. Contents of order for sale or encumbrance and its duration; bond. – If, after full examination, it is necessary, or would be beneficial to the ward, to sell or encumber the property, or some portion of it, the court shall order such sale or encumbrance the proceeds of which shall be expended for the maintenance or the education of the ward, or invested as the circumstances may require. The order shall specify the grounds for the sale or encumbrance and may direct that the property ordered sold be disposed of at public sale, subject to such conditions as to the time and manner of payment, and security where a part of the payment is deferred. The original bond of the guardian shall stand as security for the proper appropriation of the proceeds of the sale or encumbrance, but the court may, if deemed expedient, require an additional bond as a condition for the sale or encumbrance. The authority to sell or encumber shall not extend beyond one year, unless renewed by the court. Sec. 23. Court may order investment of proceeds and direct management of property. – The court may authorize and require the guardian to invest the proceeds of sales or encumbrances, and any other money of his ward in his hands, in real or personal property, for the best interests of the ward, and may make such other orders for the management, investment, and disposition of the property and effects, as circumstances may warrant. Sec. 24. Grounds for removal or resignation of guardian. – When a guardian becomes insane or otherwise incapable of discharging his trust or is found thereafter to be unsuitable, or has wasted or mismanaged the property of the ward, or has failed to render an account or make a return for thirty days after it is due, the court may, upon reasonable notice to the guardian, remove him as such and require him to surrender the property of the ward to the person found to be lawfully entitled thereto. The court may allow the guardian to resign for justifiable causes. Upon the removal or resignation of the guardian, the court shall appoint a new one. No motion for removal or resignation shall be granted unless the guardian has submitted the proper accounting of the property of the ward and the court has approved the same. Sec. 25. Ground for termination of guardianship. – The court *motu proprio* or upon verified motion of any person allowed to file a petition for guardianship may terminate the guardianship on the ground that the ward has come of age or has died. The guardian shall notify the court of such fact within ten days of its occurrence. Sec. 26. Service of final and executory judgment or order. – The final and executory judgment or order shall be served upon the Local Civil Registrar of the municipality or city where the minor resides and the Register of Deeds of the province or city where his property or any part thereof is situated. Both the Local Civil Registrar and the Register of Deeds shall enter the final and executory judgment or order in the appropriate books in their offices. Sec. 27. Effect of the rule. – This Rule amends Rules 92 to 97 inclusive of the Rules of Court on guardianship of minors. Guardianship of incompetents who are not minors shall continue to be under the jurisdiction of the regular courts and governed by the Rules of Court. Sec. 28. Effectivity. – This Rule shall take effect on May 1, 2003 following its publication in a newspaper of general circulation not later than April 15, 2003.

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