

91 INF-40

Protective Services for Adults:
Clarification of Article 77 of the
Mental Hygiene Law Relating to the
Powers of Conservators to Make
Placement Decisions (In the Matter
of Grinker v. Rose, State of New
York Court of Appeals

NEW YORK STATE
DEPARTMENT OF SOCIAL SERVICES
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 CESAR A. PERALES
 Commissioner



INFORMATIONAL LETTER

TRANSMITTAL NO: 91 INF-040

Division: Adult Services

DATE: August 19, 1991

TO: Commissioners of Social Services

SUBJECT: Protective Services for Adults: Clarification of Article 77 of the Mental Hygiene Law Relating to the Powers of Conservators to Make Placement Decisions (In the Matter of Grinker v. Rose, State of New York Court of Appeals)

SUGGESTED DISTRIBUTION: Directors of Services
 Adult Services Staff
 Agency Attorneys
 Staff Development Coordinators

CONTACT PERSON: Any questions concerning this release should be directed to your district's Adult Services Representative at 1-800-342-3715 as follows:

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ATTACHMENTS: None

FILING REFERENCES

Previous ADMs/INFs	Releases Cancelled	Department Regs.	Soc. Serv. Law & Other Legal Ref.	Bulletin/Chapter Ref.	Misc. Ref.
88 ADM-23		457	473 Articles 77 and 78 of the Mental Hygiene Law		

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The purpose of this transmittal is to advise local social services districts of a recent decision by the State of New York Court of Appeals which affects the powers of conservators appointed under Article 77 of the Mental Hygiene Law (MHL) to make placement decisions on behalf of conservatees.

Article 77 of the MHL sets forth the provisions for the designation of a conservator for the property of a person who has not been declared incompetent by a court but who "by reason of advanced age, illness, infirmity, mental weakness, alcohol abuse, addiction to drugs, or other cause has suffered impairment of his ability to care for his property or has become unable to provide for himself or others dependent upon him for support." The primary duties of a conservator are to preserve, maintain and care for the proposed conservatee's income and assets. In accordance with Section 77.19 of the MHL, the court must, however, approve a plan for the conservator to provide for the conservatee's well-being, including the provision of necessary personal and social protective services to the conservatee. A number of courts have broadly interpreted this section of Article 77 and have granted additional powers to a conservator, including the right to make placement decisions on behalf of a conservatee.

In a recent decision, *In the Matter of Grinker v. Rose*, the State of New York Court of Appeals concluded that Article 77 of the MHL was enacted to preserve the property of persons who are unable to manage their own affairs. The court concluded that Section 77.19 of the MHL was intended to authorize a grant of limited power over a conservatee's person incidentally related to the primary power over property. The court unanimously ruled that Article 77 of the MHL cannot be utilized to make placement decisions for conservatees. The court concluded that Section 77.19 "clearly does not authorize the potent personal transformation of involuntary commitment of a conservatee to a nursing home.... The availability of such a significant involuntary displacement of personal liberty should be confined to a Mental Hygiene Law article 78 incompetency proceeding, with its full panoply of procedural due process safeguards...."

Based on the Court of Appeals decision, any local social services district which seeks authority for the appointment of a guardian empowered to make placement decisions for a mentally impaired person will no longer be able to utilize Article 77 of the MHL. Instead, the local district will have to initiate incompetency proceedings under Article 78 of the MHL.

William E. Gould
Acting Deputy Commissioner
Division of Adult Services