

**Title 11.88 RCW  
Guardianship  
GUARDIAN AD LITEM *HANDBOOK*  
2018 EDITION**

**For Washington State Superior Courts, 11.88 Guardians ad Litem and  
11.88 GAL Training Providers**



Written and produced by the  
**Guardianship & Elder Law Section of the King County Bar Association**  
With Oversight and Editorial Support Provided by  
**Department of Social and Health Services**, as well as  
**King and Pierce County Superior Courts**,  
Consistent with the Goals of the  
**Title 11 Guardian ad Litem Training Advisory Committee**  
Established in 1997



**The Title 11 RCW**

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Aging and Adult Services Administration  
Department of Social and health Services  
Olympia, Washington 98504

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If you need legal advice, please seek a qualified attorney.

This handbook is also available on-line at: <http://www.kcba.org/CLE/T11Handbook/>

Please also note that suggestions for improvement of the *Handbook* are highly encouraged and most welcome. If you have any comments, questions or feedback, please contact the King County Bar Association.

**Preface**  
**The Title 11 RCW**  
**Guardian ad Litem *Handbook***

Guardianship has traditionally been considered an extension of the *parens patriae* authority of the state. The presumption has been that the extension of authority in guardianship (or guardian ad litem) proceedings would be paternalistically and benevolently exercised. Unfortunately this presumption has not always proven true.

In 1975, the Washington State Legislature enacted several amendments to existing guardianship statutes to provide more protections for the alleged incapacitated person.

The legislature acknowledged that a full guardianship is not appropriate in every case. The amendments authorized limited guardianships in situations in which a full guardianship is not needed. Washington was the first state to authorize limited guardianships.

The guardianship statutes were further amended in 1977 and 1996 to expand notice requirements; to define the role of counsel; to allow psychologists to participate in the determination of capacity; to create a guardian ad litem registry system; to detail the duties of guardians; to specifically evaluate an alleged incapacitated person's ability to vote; to allow interested persons to participate in the selection of a guardian; and to restrict guardians from placing an incapacitated person in a nursing home or treatment facility against the person's will.

The 1996 amendments were adopted to require courts to give greater consideration to the use of alternatives to guardianship; to require courts generally to be objective in the appointment of guardians ad litem by establishing a rotating appointment method; to allow the alleged incapacitated person to participate in the selection of the medical professional who evaluates his or her capacities; to allow temporary injunctive relief to protect from abuse, neglect, abandonment or exploitation or to address other emergencies pending the determination of the guardianship petition; to clarify that the alleged incapacitated person has the right to be represented by willing counsel of his or her choice and to testify and present evidence at trial (bench or jury); to provide new timelines and extension procedures for the guardians ad litem; and to further define the requirements guardians ad litem must satisfy to be placed on the guardian ad litem registry in their county.

Amendments in 1999 and 2000 authorize the court to order mediation in disputed guardianships; place limits on fees charged by the guardian ad litem; direct each superior court to develop rules governing grievances made by or against guardians ad litem, and prohibit *ex parte* communication between the guardian ad litem and any judicial officer involved in the guardianship proceeding. The legislature also made provisions for certification of professional guardians. The Washington State Supreme Court adopted Rules of Court governing the conduct of guardians ad litem.

The development of legislation over the years demonstrates the critical need for fully educated and truly skilled guardians ad litem. As legislation and case law continue to develop and mold the obligations of guardians ad litem, the need for education continues. In 1996 the Washington State Legislature enacted a directive for the Department of Social and Health Services to convene an advisory group consisting of "representatives from consumer advocacy and

professional groups knowledgeable in developmental disabilities, neurological impairment, physical disabilities, mental illness, aging, legal [issues], court administration, [including] the Washington State Bar Association, and other interested parties." DSHS and an Advisory Group were to develop a Model Guardian ad Litem Training Program to be self-enforced by the Superior Courts to ensure that candidates applying for registration as a qualified guardian ad litem shall have satisfactorily completed training to attain these minimum qualifications to act as a guardian ad litem. To that end, representatives of the below-listed mandated organizations and agencies worked with DSHS to develop the Title 11 RCW Model Guardian Ad Litem *Training Program* and *Handbook* detailed on the following pages.

We must recognize and appreciate all of the representatives who diligently participated in the Advisory Group(s), and the organizations listed below that enabled them to participate.

- Adult Protective Services, Aging and Adult Services Administration
- Alzheimer's Association of Central and Western Washington
- American Association of Retired Persons
- Association of Area Agencies on Aging
- Association of Washington Superior Court Administrators
- Columbia Legal Services
- Council on Aging
- Developmental Disabilities Council
- Developmental Disabilities Services, DSHS
- King County Bar Association
- King County Self Advocates Program
- King County Superior Court
- National Association of Elder Law Attorneys
- Office of the Attorney General
- Pierce County Bar Association
- Senior Citizen Lobby
- The Arc of Washington State
- Washington Advocates for the Mentally III (WAMI)
- Washington Assembly for Citizens with Disabilities
- Washington Health Care Association
- Washington Protection and Advocacy System
- Washington State Association of Professional Guardians
- Washington State Bar Association Guardianship Study Group

The work of improving guardianship and guardian ad litem services for those vulnerable persons in need continues. Appreciation and recognition is due those who have provided leadership, time and effort in providing quality on-going education, resources and support for the 39 county registries since 1996. Additionally, please join us this year in thanking those individuals who have dedicated countless hours writing, editing, re-writing and re-editing a new, more condensed version of the *Handbook* as requested by an overwhelming majority of guardians ad litem. (And *thank you* for your comments and feedback. It was your comments that enabled us to show a need for a new manual!)

# **The Title 11 RCW Guardianship Guardian ad Litem *Handbook***

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**The Title 11 RCW  
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# **2018 TITLE 11.88 RCW GUARDIANSHIP GUARDIAN AD LITEM HANDBOOK**

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*In re Guardianship of Ingram*, 102 Wn.2d 827, 689 P.2d 1363 (1984)

*In re Guardianship of Way*, 79 Wn. App. 184, 901 P.2d 349 (1995)

*Barr v. Day*, 124 Wn.2d 318, 879 P.2d 912 (1994)

*In re Guardianship of Karan*, 110 Wn. App. 76, 38 P.3d 396 (2002)

*Estate of Treadwell*, 115 Wn. App. 238, 61 P.3d 1214 (2003)

*In re Guardianship of Stamm*, 121 Wn. App. 830, 91 P.3d 126 (2004)

*In re Guardianship of Beecher*, 130 Wn. App. 66, 121 P.3d 743 (2005)

*In re Marriage of Bobbit*, 135 Wn. App. 8, 144 P.3d 306 (2006)

*Endicott v. Saul*, 142 Wn. App. 899, 176 P.3d 560 (2008)

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A Review of the Training Program for Title 11 Guardianship Guardians Ad Litem

Prepared by the Advisory Committee to the Washington Department of Social & Health Services

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The following is a list of other useful statutes or codes for the GAL.  
To find the complete text of the statute or code, go to  
<http://www.findlaw.com>

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## **CHAPTER I OVERVIEW AND DUE PROCESS**

### **A. OVERVIEW**

Welcome to the Title 11.88 Guardian ad Litem training. Thank you for your interest in helping the court protect and assist persons who may be fully or partially incapacitated.

The attendees at this training have an interest in guardianship law for a variety of reasons and will approach this training from a variety of viewpoints. Some attendees are lawyers or social workers, others are professional guardians. Some are experienced in the guardianship field. Others have come to this training because they have developed an interest in helping persons with limited abilities.

This “Basics” handbook presumes the attendees have minimal knowledge of guardianship law. It is designed to be a basic reference tool. The editors hope you will find this handbook useful in your arsenal of guardianship tools long after you become an experienced Title 11 Guardian ad Litem (“GAL”).

This introduction serves as a brief overview to this Title 11.88 Guardian ad Litem Handbook. Matters discussed briefly will be covered in greater detail in the chapters that follow. The first nine chapters of this book are organized chronologically, to follow the sequence of a GAL’s duties as set forth in the typical *Order Appointing Guardian ad Litem*. Practical information for GALs, such as courtroom demeanor, petitions for instructions, and procedures for payment of the GAL can be found in Chapter X. Additional training material will be provided to GALs each year at the second day training session and individual guardianship legal education seminars occur throughout the year in various parts of Washington which can help you increase your GAL knowledge.

#### **What is the Statutory Process By Which the Court Appoints a Guardian?**

Guardianship has traditionally been considered an extension of the *parens patriae* authority of the state. The state, in protecting its quasi-sovereign interests in the health, comfort, and welfare of its people, must provide care for those who cannot care for themselves. *Black’s Law Dictionary, Sixth Edition*. Beginning in 1975, the Washington State Legislature enacted laws to provide more protection for the rights of the Alleged Incapacitated Person (“AIP”).

The intent of the guardianship statute, RCW Title 11.88, is to protect the liberty and autonomy of all people of this state, and to enable them to exercise their rights under the law to the maximum extent, consistent with the capacity of each person. RCW 11.88.005. The statute explicitly limits the court’s right to exercise its legal authority over a citizen’s life:

The legislature recognizes that people with incapacities have unique abilities and needs, and that some people with incapacities cannot exercise their rights or provide for their basic needs without the help of a guardian. However, their liberty and autonomy should be restricted through the guardianship process only to the *minimum extent necessary* to adequately provide for their own health and safety, or to adequately manage their financial affairs.

*Id.* (Emphasis added). *Incapacity must never be assumed.* A person is presumed to have capacity until a court enters findings of fact and conclusions of law determining that the person lacks capacity and is therefore adjudicated to be an incapacitated person (“IP”).

**Briefly, What is the GAL’s Role in the Guardianship Process?** A guardianship action is commenced when a petition (a legal pleading) is filed by a petitioner seeking to have a guardian appointed for a person who is alleged to be incapacitated (the Alleged Incapacitated Person or AIP). The petitioner can be a person (*e.g.*, a friend or relative) or an entity (*e.g.*, governmental agency, hospital, or nursing home) who is concerned about the welfare of the person who is alleged to be incapacitated. A petition may be filed by an attorney on behalf of the petitioner or by a petitioner *pro se* (acting without an attorney).

RCW 11.88.090(3) necessitates the appointment of a GAL: “Upon receipt of a petition for appointment of guardian or limited guardian...the court shall appoint a Guardian ad Litem to represent the best interests of the alleged incapacitated person.” (Emphasis added). The court must appoint a GAL from that county’s registry of qualified individuals. The GAL’s duties are limited to those set forth in the *Order Appointing Guardian ad Litem*, which are based upon the statutory duties of a GAL as enumerated in RCW 11.88.090. In addition, the role of a GAL is governed by court rules, *i.e.*, Guardian ad Litem Rules (GALR), as follows:

Consistent with the responsibilities set forth in Title 11. . .of the Revised Code of Washington and other applicable statutes and rules of court, in every case in which a Guardian ad Litem is appointed, the Guardian ad Litem shall perform the responsibilities set forth below....

GALR Rule 2. The full text of RCW 11.88 and the GALR can be found in Appendix A to this handbook. Since statutes may be amended from time to time, every GAL should be familiar with the current statutory requirements and have access to updates. The fulltext of the guardianship statute can be found online, see, *e.g.*, <http://apps.leg.wa.gov/RCW/>

The Guardian ad Litem Rules (GALR) can be found at

[http://www.courts.wa.gov/court\\_rules/?fa=court\\_rules.rulesPDF&groupName=sup&setName=GALR&pdf=1](http://www.courts.wa.gov/court_rules/?fa=court_rules.rulesPDF&groupName=sup&setName=GALR&pdf=1).

Once notified of appointment, the GAL must file and serve a Statement of Qualifications. *See* Chapter II. The GAL then conducts an investigation, starting by meeting with the AIP. *See* Chapter III.

The GAL must select a qualified professional to prepare a medical or psychological report and see that the report is prepared by the selected professional in a timely manner. *See* Chapter IV. (No medical report is required if the sole reason for guardianship is minority (under the age of 18).) The GAL should meet with family members, care providers and others who may have relevant knowledge about the AIP. In order for the GAL to evaluate the proposed guardian, the GAL must be familiar with the statutory duties and limitations of a guardian contained in RCW 11.92. The GAL must speak with the proposed guardian to evaluate how he or she will meet the AIP's needs. *See* Chapter V and *see* Appendix A for a copy of RCW 11.92. The GAL must take special care in circumstances in which the AIP may have been subject to abuse by others and is a "vulnerable adult". *See* Chapter VI.A. The role of the GAL and the requirements may also be different if the guardianship action involves a minor. *See* Chapter VI.B. The GAL must determine whether there are any effective alternatives to guardianship available to protect the AIP that are less restrictive than a guardianship. *See* Chapter VII.

After the GAL's investigation is completed and the medical report is obtained, the GAL must prepare two written reports: one sealed, one public. *See* Chapter VIII. The GAL report synthesizes the findings of the GAL's investigation. 1) Is the AIP at risk as to his or her person and/or estate? 2) To what extent? 3) Are less restrictive alternatives currently in place; if so, are they working, and if not, why not? 4) Are there other less restrictive alternatives that might work? 5) If a guardianship is needed, should the scope be limited (full/limited person/estate)? 6) What is the GAL's evaluation of the guardian-nominee? If the GAL does not believe the guardian-nominee is suitable, the GAL should make a recommendation to the court about an alternate appointee. When a guardianship of the estate is sought, the GAL must make a recommendation to the court regarding protection of the AIP's assets, e.g., bonding and/or blocking. *See* Chapter V.

The GAL reports must be served and filed no later than 15 days before the hearing on the underlying Petition, unless a request is made to "shorten" time or an extension is granted. *See* Timelines at the end of this Chapter and *see* Chapter VIII. The medical/psychological report may be filed and served at the same time as the GAL report. The GAL must be familiar with GR15, 22, and 31 regarding what information may be included in a record filed for public viewing and what documents must be filed under seal. *See* Chapters IV, VIII and X.

If an AIP is opposed to the guardianship and requests an attorney, the GAL must ask the court to appoint an attorney. The GAL may also seek appointment of an attorney in other circumstances. *See* Chapter IX. If the opposition to the guardianship is initiated by anyone other than the AIP, that party usually hires independent counsel. The Petitioner and other parties to the proceeding may seek to have their attorney's fees and costs paid from the estate of the AIP or may seek to have these allocated against each other under RCW 11.96A.150. The court may award fees from the estate of an Incapacitated Person



when it determines that the actions have conferred a benefit upon that person or his estate.

Either the AIP or the GAL may ask the court to sent the parties to mediation upon a showing that the AIP's estate could benefit from mediation and such mediation would likely result in overall reduced costs to the estate. RCW 11.88.090(2). RCW 11.88.090(2). Alternatively, the court may set a trial date. Basic information concerning contested guardianships and the GAL's role therein is provided in Chapters IX and X. The AIP has the right to trial on the issue of capacity and may request a jury decide that issue. RCW 11.88.045(3). Other parties to the guardianship (Petitioner, Counter-Petitioner) may also seek a trial on issues such as the guardian-designee.

In uncontested cases, after the GAL report is served and filed, there is a hearing before a judge or court commissioner who may then enter an order on the guardianship petition. That order may adopt the recommendations of the GAL, but is not required to do so.

**What is the Definition of a Guardian ad Litem?** The GAL is a qualified individual whose name is obtained from a registry maintained by each county. The GAL is appointed by the court to 1) conduct a thorough investigation regarding the allegation of incapacity and 2) make a recommendation to the court regarding the need for a guardianship and the suitability of the proposed guardian.

The GAL should report to the court what the GAL believes is in “the best interests of the person [AIP or IP] for whom he or she is appointed.” GALR 2(a); RCW 11.88.090(3). The GAL's conclusion regarding the “best interests may be inconsistent with the *wishes*” of the AIP. *Id.* (Emphasis added).

**What is the Difference Between a Guardian ad Litem and a Guardian?** The GAL investigates, interviews, evaluates, and makes recommendations to the court regarding the necessity of appointing a guardian, the scope of a guardianship, and the identity of a guardian. The duties of the GAL are limited to those outlined in the *Order Appointing Guardian ad Litem*. GALR 4. Except for the power to authorize emergency *life saving* procedures, the authority of the GAL to act on behalf of the AIP is strictly limited. At the appointment of the guardian, the role of the GAL is concluded unless the court orders that the Guardian ad Litem remain active in the case. By contrast, once appointed, the *Guardian* is granted authority -- limited or sometimes nearly unlimited -- to *act on behalf* of the Incapacitated Person into the future.

**What is the Role of the Attorney for the Alleged Incapacitated Person?** The duties of an attorney appointed to represent an AIP are set out at RCW 11.88.045(1)(b) (emphasis added), as follows:

Counsel for an alleged incapacitated individual shall act as an advocate for the client and shall not substitute counsel's own judgment for that of the client on the subject of what may be in the client's best interests. Counsel's role shall be distinct from that of the guardian ad litem, who is expected to promote the *best*

*interest* of the alleged incapacitated individual, rather than the alleged incapacitated individual's *expressed preferences*.

In contrast, the Guardian ad Litem Rule 2(a) states:

The guardian ad litem shall not advocate on behalf of or advise any party so as to create in the mind of a reasonable person the appearance of representing that person as an attorney.

**What are the Alternatives to Guardianship?** The specific legislative intent of the guardianship statute is to restrict the liberty and autonomy of an incapacitated person “only to the minimum extent necessary to adequately provide for” the health, safety or adequate management of the financial affairs of the AIP. A GAL must always be cognizant of the need to seek a resolution of the guardianship petition that recognizes and appropriately deals with risks to the AIP, but which least restricts that individual's liberty and autonomy. As a result, the scope of a guardianship should be crafted to permit the least possible intrusion upon the independence of the AIP. Chapter V deals with limitations on guardianships. Chapter VII addresses alternatives to guardianship.

The guardianship statute recognizes that some persons may be partially or fully incapacitated only with respect to handling their financial affairs. Other individuals may be fully or partially incapacitated with respect to management of personal care but have capacity to manage their financial affairs. Therefore the statute provides that the court may appoint a full or limited guardian of the estate and/or a full or limited guardian of the person. The Guardian of the Estate and Guardian of the Person may be the same person or entity or not, depending on the needs of the AIP, the recommendations of the GAL, and the court's final determination. *See* Chapter V.

## **B. DUE PROCESS RIGHTS OF THE ALLEGED INCAPACITATED PERSON**

Throughout the guardianship proceeding, the GAL must be alert to the protection of the Alleged Incapacitated Person's right to fundamental due process of law. A person should not be deprived of the significant rights at stake in a guardianship without due process of law. The duty to assert these rights lies with counsel for the AIP, if one has been appointed. Since it is the duty of the GAL to represent the best interests of the AIP, however, the GAL must report to the court any concerns the GAL has about fundamental due process that affect the AIP.

The GAL's investigation, especially in cases in which the AIP is not represented by counsel, should include a determination that the court has jurisdiction to hear the guardianship, that the venue is appropriate, and that all steps have been taken to ensure the rights of the AIP.

## Venue and Jurisdictional Requirements

**Jurisdiction.** The court must have subject matter jurisdiction and also jurisdiction over the person. Subject matter jurisdiction is authorized under RCW 11.88.010(1). It grants the superior court “power to appoint guardians for the persons and/or estates of incapacitated persons, and guardians for the estate of nonresidents of the state who have property in the county needing care and attention.”

**Service of Petition and Notice.** Notice that a guardianship proceeding has been brought and a copy of the petition *must be personally served* on the Alleged Incapacitated Person and the Guardian ad Litem **within 5 court days after the petition has been filed.**

RCW 11.88.030(5)(a). Without proper service of the petition and notice on the AIP the court lacks jurisdiction to hear the case. Because the GAL is a party to the case, it is improper for the GAL to personally serve the AIP with notice of the proceeding or a copy of the petition.

**Venue.** The guardianship petition must be brought in the proper county. RCW 11.88.010(3). The petition may be brought in any of the following counties: i) where the AIP lives; or ii) where the facility is located, when the AIP resides at a facility; or iii) where the AIP lived prior to stay at the facility; or iv) where a parent, or spouse, or registered domestic partner of the AIP lives. If the AIP’s residency changed within the year prior to the filing of the petition, a request to change venue to the last place of residency over one year may be made by any interested person.

## Other Procedural Due Process Requirements Under Title 11.88

- a. Petitions must be heard within 60 days unless an extension is granted for good cause shown. The request for the extension must occur before the 60 days has expired. RCW 11.88.030 (6).
- b. At least ten (10) days prior to any hearing, notice of the hearing must be given by registered or certified mail, return receipt requested or by personal service to:

Alleged incapacitated person, or minor, if under 14 years of age;  
Parent, if Alleged Incapacitated Person is a minor;  
All known children not residing with a notified person;  
Spouse or registered domestic partner of Alleged Incapacitated Person;  
Guardian or limited guardian; and  
Person with whom the Alleged Incapacitated Person resides.

Note: Notice does not need to be given to a parent, child, spouse, registered domestic partner, guardian, limited guardian, or person with whom the AIP resides if that person has signed the petition or has waived notice of the hearing. RCW 11.88.040.

## **Statutory Due Process Rights of the Alleged Incapacitated Person**

The AIP has the following rights under RCW 11.88:

- a. To be represented by a lawyer of his or her own choosing or to have the court appoint an attorney if payment would result in a substantial hardship. RCW 11.88.045(1)(a).
- b. To have a jury decide capacity. RCW 11.88.045(3).
- c. To be present in court and testify when the guardianship hearing is held. If the AIP cannot come to court, the court may remove itself to the residence of the AIP. RCW 11.88.040.
- d. To have the GAL replaced. RCW 11.88.090(3)(b).
- e. To select the health care professional to prepare the required medical report. RCW 11.88.045(4).
- f. To have the GAL present at all hearings on the petition unless all parties provide a written waiver of the requirement to appear. RCW 11.88.090(12).
- g. To have special assistance if disabled under the Americans with Disability Act. 42 USC 12101. GR 33
- h. To expect freedom from discrimination based on a disability. RCW 49.60 and the Americans with Disability Act.

**Due Process Rights re: Decision Making During the Pendency of the Guardianship.** The GAL has statutory authority to act in certain circumstances for the AIP. The GAL is not a temporary guardian. The GAL cannot make decisions for the AIP unless the GAL has clear authority.

1. The GAL has the authority to consent to *emergency life-saving* medical services when the AIP is unable to consent. RCW 11.88.090(8).
2. The GAL has the authority to move for temporary relief under RCW 7.40 to protect the AIP from abuse, neglect, abandonment or exploitation. RCW 11.88.090(9).
3. The GAL has the authority to address emergency needs of the AIP. RCW 11.88.090(9).

If the GAL has any concern regarding his or her authority to act, the GAL should seek instruction from the court. *See* Chapter X. Note: Expediting the guardianship hearing is often a good solution when the AIP will need a series of decisions made urgently.

Another possibility is to locate someone with authority under the informed consent statute to provide consent for the incapacitated person. RCW 7.70.065. *See* Chapter VII.

**What is Substantive Due Process?** The intent of the legislature is to protect the liberty and autonomy of all people of this state and to enable them to exercise their rights under the law to the maximum extent consistent with the capacity of each person.

RCW 11.88.005. Substantive due process requires the following:

1. A person may be deemed incapacitated as to person **when the court determines** the individual has a significant risk of personal harm based upon a demonstrated inability to adequately provide for nutrition, health, housing, or physical safety. RCW 11.88.010(1)(a).
2. A person may be deemed incapacitated as to estate **when the court determines** the individual has a significant risk of financial harm based upon a demonstrated inability to adequately manage property or financial affairs. RCW 11.88.010(1)(b).
3. The court must be presented with a medical report. RCW 11.88.045(4). It must also be presented with a written GAL report. RCW 11.88.090(5)(f). A copy of the medical report must be filed unless the basis of the guardianship is minority. RCW 11.88.045(4)(i). A determination of incapacity, however, is a legal not a medical decision. Age, eccentricity, poverty, or medical diagnosis alone is not enough to justify a finding of incapacity. RCW 11.88.010(1)(c).
4. In a contested case, the petitioner must prove by clear, cogent, and convincing evidence that the person is at risk of harm to person and/or estate. RCW 11.88.045(3).
5. The court may find that an incapacitated person has some ability to manage in certain specific areas and the court may appoint a limited guardian. The court shall impose only such specific limitations and restrictions on an incapacitated person as the court finds necessary for the person's protection and assistance. RCW 11.88.010(2).
6. The court must state the period of time for which a limited guardianship is applicable. RCW 11.88.010(2).
7. Persons who are developmentally disabled, impaired by chronic alcoholism or drug abuse, or suffering from dementia shall not be detained for evaluation and treatment or judicially committed unless such condition causes a person to be gravely disabled or there is the likelihood of serious harm. RCW 71.05.040.

## **TIMELINE SUMMARY FOR GUARDIANS AD LITEM**

1. Within five (5) days after notice of appointment, the GAL shall serve on the parties and file with the court a Statement of Qualifications. RCW 11.88.090 (3)(b).
2. Within three (3) days of the later of service or filing of the GAL statement, any party may set a hearing and file and serve a motion to show cause why the GAL should be removed. *Id.*
3. The GAL should meet and consult with the AIP as soon as practicable after being appointed. RCW 11.88.090(5)(a).
4. Within five (5) court days after meeting the AIP, the GAL shall advise the court of the need to appoint an attorney for the AIP. RCW 11.88.090(5)(g).
5. As soon as possible after appointment, the GAL should select a professional to prepare the required medical/psychological report, RCW 11.88.090(5)(b); meet with the proposed guardian, RCW 11.88.090(5)(c); interview and consult others, as needed, RCW 11.88.090(5)(d), GALR (g); and investigate alternatives to guardianship. RCW 11.88.090(5)(e).
6. Forty-five (45) days after notice of commencement of the guardianship proceeding and at least fifteen (15) days before hearing on the underlying petition, the GAL must file his or her report. Exception: The foregoing applies unless an extension or reduction of time has been granted by the court for good cause. RCW 11.88.090(5)(f).
7. If the hearing does not occur within sixty (60) days of filing the petition, the GAL should file an interim report. If the interim report contains confidential information, it should be filed under seal. Thereafter, the GAL should file an interim report each month until the hearing on the petition takes place. *Id.*

## CHAPTER II

### GUARDIAN AD LITEM STATEMENT OF QUALIFICATIONS

RCW 11.88.090(4)(a) requires each county to develop and maintain a registry of persons who are willing and qualified to serve as Guardians ad Litem in guardianship matters. (Applications for the Guardianship Guardian ad Litem registry for King County and a listing of addresses for other counties are included at the back of the manual). In order to be eligible for a Guardian ad Litem Registry a person must present a written statement outlining his or her background and qualifications. RCW 11.88.090(4)(b)(i). This statement is referred to as a “Statement of Qualifications” and by law must be updated on an annual basis.

This statement must include, but is not limited to, the following information:

- (A) Level of formal education;
- (B) Training related to the GAL’s duties;
- (C) Number of years’ experience as a GAL;
- (D) Number of appointments as a GAL and the county or counties of appointment;
- (E) Criminal history, as defined in RCW 9.94A.030:

(13) “Criminal history” means a list of a defendant’s prior convictions and juvenile adjudications, whether in this state, in federal court, or elsewhere.

(a) The history shall include, where known, for each conviction (i) whether the defendant has been placed on probation and the length and terms thereof; and (ii) whether the defendant has been incarcerated and the length of incarceration.

Note: Convictions include juvenile offenses for sex offenses and shall also include other prior convictions in juvenile court if the conviction was for an offense which is a felony or a serious traffic offense; the crime occurred at age fifteen or older; and, in juvenile class B and C felonies or serious traffic offenses, the crime was committed when less than twenty-three years of age for which a sentence was imposed.

- (F) Evidence of the GAL’s knowledge, training, and experience in each of the following: needs of impaired elderly people, physical disabilities, mental illness, developmental disabilities, and other areas relevant to the needs of incapacitated persons, legal procedures, and the requirements of Chapters 11.88 and 11.92 RCW.

In addition, the Statement of Qualifications must include the names of any counties in which the person was removed from a Guardian ad Litem Registry pursuant to a grievance action, and the name of the court and the case number of any case in which the court has removed the person for cause.

The statutory requirement that the GAL “present” his or her written Statement of Qualifications has led to some confusion as to when and to whom this Statement must be presented. A GAL must submit a Statement of Qualifications along with other required documents when applying to the GAL Registry in each county in which the GAL wishes to serve. This is done on an annual basis. In addition, many GALs use their Statement of Qualifications, or a modified version thereof, when meeting the requirement of RCW 11.88.090(3)(b), which states, in part (emphasis added):

The guardian ad litem shall within five days of receipt of notice of appointment file with the court and serve, either personally or by certified mail with return receipt, each party with a *statement* including: His or her training related to the duties as a guardian ad litem; his or her criminal history as defined in RCW 9.94A.030 for the period covering ten years prior to the appointment; his or her hourly rate, if compensated; whether the guardian ad litem has had any contact with a party to the proceedings prior to his or her appointment and whether he or she has an apparent conflict of interest.

Note: A “party” upon whom the GAL must serve his or her GAL statement would include: the petitioner (or, if represented by counsel, Petitioner’s attorney); the AIP; any counter-petitioner, that is, a person or entity who formally becomes a party; a person who filed a Request for Special Notice of Proceedings; and the Veterans’ Administration if the AIP is a veteran.

The information required in the “Guardian ad Litem statement” provided to parties is different, in part, from that of the Statement of Qualifications, which is required for inclusion in the Guardian ad Litem Registry. Many GALs simply add a page to their GAL Registry Statement of Qualifications on which they include the additional required information, such as a fee schedule and conflict of interest statement, and use this combination as the GAL statement sent to the parties and filed in each matter where appointed. Others modify their Statement of Qualifications to meet the specifics of each appointment.

An example of a Statement of Qualifications and other forms useful for the GAL may be found at <https://www.kingcounty.gov/~media/courts/superior-court/docs/ex-parte-probate/guardianship-forms/47-gal-statement-of-qualifications-pdf.ashx?la=en>  
The forms on this site are for illustrative purpose only and not to be construed as the mandatory forms to use unless so stated.



Note: A GAL should be familiar with local court rules. Some jurisdictions may have additional requirements of the GAL. Local court rules cover, in part, timetables and instructions regarding filing of and distribution of documents. Many counties have websites on which they post the local rules. The local rules for many of the counties can be found at [http://www.courts.wa.gov/court\\_rules/](http://www.courts.wa.gov/court_rules/)

## **PRACTICE TIPS**

1. Only DO what you are ordered to do in the Order Appointing the Guardian ad Litem.
2. When the petitioner's attorney first contacts you, always ask for the phone number of the proposed Guardian and the AIP and find out whether the attorney knows the AIP'S medical doctor's name and number.
3. Place a copy of the Timeline Summary for Guardian ad Litem on the front of your case folder.
4. Do not skimp on the Statement of Qualifications. Complete it in full.
5. Never serve the guardianship petition on the Alleged Incapacitated Person.
6. After you have been appointed, call immediately to set up a meeting date with the Alleged Incapacitated Person.
7. Do not let other parties or attorneys persuade you as to the selection of the doctor to examine the Alleged Incapacitated Person and to complete the medical report.
8. Send the medical form early to the doctor with a self-addressed, return-stamped envelope or with instructions for return via email or facsimile. Make it as effortless as possible for the physician to comply.
9. For each case think if there are any alternatives to guardianship. Recommend the least restrictive alternative which will protect the best interests of the AIP.
10. Do not record every "he said/she said" statement that you have heard in your report. Include the most important in your sealed report.
11. When you file the Guardian ad Litem Report, always file a working copy for the Court Commissioner in Ex Parte or Judge who will conduct the hearing on the petition in accordance with applicable court rules.
12. Keep good notes and an organized file. Expect that your file will be viewed by others if the case goes to trial.
13. At the hearing, speak only when the Judge/Commissioner asks you to speak.
14. Review the Order Appointing Guardian before the hearing and be sure it has a section regarding the payment of your Guardian ad Litem fees and your discharge.
15. Obtain a court order for emergency life-saving medical services in applicable circumstances.

## **CHAPTER III**

### **INTERVIEWING THE ALLEGED INCAPACITATED PERSON AND UNDERSTANDING IMPAIRMENTS**

#### **A. INTERVIEWING THE ALLEGED INCAPACITATED PERSON**

As soon as practicable after appointment, the GAL is required to meet and consult with the AIP. The GAL must provide certain information to the AIP about the person's rights in the guardianship proceeding. There is also information that the GAL should provide to the AIP so that the AIP understands the process better. Finally, the GAL needs to obtain information from the AIP.

##### **1. Information that *must* be shared with the Alleged Incapacitated Person**

- a. The GAL must inform the AIP of his/her rights and determine which, if any, the AIP chooses to exercise. Those rights are listed in the Notice of Guardianship Proceeding. The GAL must inform the AIP of the substance of the petition and the following rights: to contest the petition, to be represented by a lawyer of the AIP's own choosing at public expense if the AIP cannot afford one or it would be a financial hardship, to request a jury to decide whether the AIP needs a guardian, to be present in court and to testify at any hearing regarding the guardianship petition, and to request that the court replace the GAL.
- b. The GAL must ascertain and report the AIP's reaction to the petition, to the specific guardian-nominee, to the right to a jury trial, to the right to independent counsel.
- c. The GAL must be prepared to discuss the rights that an AIP might lose. Many of these are stated in the Notice of Guardianship Petition. An AIP may lose the right to:

- Marry or divorce or enter into or terminate a registered domestic partnership;
- Vote or hold elected office;
- Enter into a contract;
- Make or revoke a will;
- Appoint someone to act on the behalf of the incapacitated person;
- Sue or be sued other than through the guardian;
- Possess a license to drive;
- Buy, sell, own, mortgage or lease property;
- Consent to or refuse medical treatment;
- Decide who shall provide care and assistance;
- Make decisions regarding social aspects of the incapacitated person's life.

- d. The GAL must be prepared to discuss less restrictive alternatives to guardianship. These are covered in Chapter VII.

## **2. Information that *should* be shared with the Alleged Incapacitated Person**

- a. The GAL should be able to explain the role of the GAL, *i.e.*, to investigate, evaluate, and make a recommendation to the court about what is in the AIP's best interests. The GAL should explain that there is no guarantee of confidentiality between the GAL and the AIP or any party. The GAL should explain that any information imparted to the GAL that will assist the Commissioner or Judge in making a ruling may be included in the GAL's report. The GAL should explain that the Commissioner or Judge is the final decision-maker. This is often a good place to start the interview. (Note: The AIP's right to contest the guardianship and have a jury determine the issue of capacity should be discussed later in the interview.)
- b. The GAL should be able to explain the guardianship process to the AIP. Be prepared to describe the steps of a guardianship proceeding: the petition, appointment of GAL and GAL responsibilities--interviewing the AIP, obtaining a medical report, interviewing others, interviewing the nominee guardian, researching less restrictive alternatives, writing a report; and finally the hearing or trial.
- c. The GAL should be prepared to describe what will happen in the courtroom. The AIP may never have been in court before. Any information the GAL can provide will make the AIP more comfortable with the process. Be able to describe a "hearing" and the difference between a commissioner and a judge and explain the meaning of "*ex parte*", etc.

## **3. Information to be obtained from the Alleged Incapacitated Person**

- a. The GAL needs to be able to inform the court of the AIP's ability to manage in the areas of health, physical safety, nutrition, housing, and finances. The GAL should ask questions that will elicit this information, always being mindful of how intrusive the investigation may appear to the AIP. The GAL can also obtain information by observing the AIP and the AIP's residence and by reviewing records in the AIP's possession.

The following sample questions may assist in the GAL's efforts to collect information, but are not a comprehensive list:

Health: How is your health? Who are your health care providers? When were you last seen by them? Do you take any medications? What are they for?

Physical Safety: What would you do if there were a fire? Do you know the telephone number to call in an emergency? Have you had any recent accidents or falls? Have you been involved with the police?

Nutrition: Are you able to make your own meals? What did you eat for breakfast today? How do you make your favorite food? Are you able to do your own grocery shopping?

Housing: How long have you lived here? What is your monthly rent or mortgage payment? Are you able to maintain it on your own?

Finances: Do you receive any regular monthly income? What are the sources? How much is it? Is it direct deposited in the bank? What bank do you use? Do you own stocks, bonds, property? What are your monthly bills? Do you have any unpaid bills?

Driving: Do you have a current driver's license? Do you drive or intend to drive in the future? Do you have access to a motor vehicle? Do you have motor vehicle insurance?

- b. The GAL should ask questions to determine if the AIP is oriented as to person, place and time.
- c. The GAL should find out if the AIP is a Veteran. The Department of Veterans Affairs must be notified of all guardianship proceedings involving veterans.
- d. The GAL should find out if the AIP has any immediate family and any friends or other family who might be contacted in the guardianship investigation.
- e. The GAL should find out if the AIP has made alternative arrangements for assistance, such as durable powers of attorneys or trusts.
- f. The GAL should ask the AIP if he or she has a preference for who may serve as guardian and should ask about the AIP's relationship with the proposed guardian.
- g. The GAL should ask the AIP if he or she votes and when he or she last voted.

#### **4. Potential Barriers to Comprehension**

- a. **“Legalese.”** The GAL needs to explain the AIP's rights, the court procedures, etc. in language that the person can reasonably be expected to understand. RCW 11.88.090(5)(a). Avoid “legalese.” Be prepared to explain or give examples. Language used by the GAL should be tailored to the person's age and abilities. See Part B of this chapter, Knowledge of Impairments, for more information.

- b. **English as a second language.** The AIP may not speak English as his/her first language or may not speak English at all. In some cases, a family member or friend may be able to translate. There are reasons, however, for your interview to be private and free of potential influence. One solution may be to use a professional interpreter. Most counties will have an Office of Interpreter Services as part of the court. Court interpreters are able to provide free translation services when there is a financial hardship. Note: Interpreters in certain languages must be court certified, so using a family member to translate may not be possible at the guardianship hearing. When a court interpreter is needed, the GAL should petition the court for instruction regarding payment of the interpreter's fee. *See Chapter X.*
- c. **Slang and idiom.** Even among native English speakers, there are different ways to express an idea. A GAL should avoid slang and idiom whenever possible. If the GAL is unsure about a word or phrase used by the AIP, ask clarifying questions to confirm the interpretation.
- d. **Inability to communicate verbally.** Some AIPs will be unable to communicate verbally. If the AIP is able to use sign language, an interpreter may be necessary. Some AIPs are able to communicate in writing. Some AIPs may have cards or boards that enable them to respond to questions.

A GAL should recognize the importance of and read nonverbal communication. Look for the AIP to nod his/her head, to follow with the eyes, to sit forward in his/her seat, etc. Sometimes the GAL can have the AIP respond to questions by squeezing the GAL's hand or blinking his/her eyes. Often caregivers can give the GAL background on interpretation of nonverbal communication.

- e. **Inability to hear or see.** Sometimes communication is hampered by the AIP's poor hearing. If the AIP is speaking loudly, this may be an indication of partial deafness. Ask whether the AIP uses a hearing aid and whether it is in. If the AIP's vision is poor, he or she may not have been able to read any of the guardianship documents, and the GAL may have to start by explaining what is in the documents. Sometimes people living in nursing homes have lost or damaged their hearing aids or glasses and have not had them replaced.
- f. **Diversity issues.** Even the most conscientious GAL must take special care to avoid making decisions that are influenced by cultural bias or by personal values. In completing an objective investigation and making appropriate recommendations, a GAL must recognize his or her own biases, which can be based on race, ethnicity, religion, lifestyle, socioeconomic standing, subculture, gender, age, disability, and education, among others. These biases can impair or skew the GAL's objective assessment.

The following are some examples of cultural and value based perspectives:

Example 1. *Cultural background.* A disabled Native American man for whom a guardianship is proposed has recently given away a number of his possessions as well as a settlement he received from an auto accident. If a GAL is unaware of the significance of the potlatch tradition in certain Pacific Northwest Native American tribes, the GAL will not be able to assess the meaning of the man's actions as they relate to determining whether he needs a guardian.

Example 2. *Cultural Background.* A guardianship is proposed for a pregnant, non-English-speaking, allegedly mentally ill Arab-American woman who has been abandoned by her husband. She became distraught and physically violent when a male physician attempted to perform a physical examination. If the GAL is unaware of the privacy and modesty requirements of this woman's culture, the GAL may mistakenly interpret this reaction as evidence of incapacity.

Example 3. *Values Perspective.* A woman in her 90's with a severe hearing impairment is the subject of a guardianship. She has gone from her home, where she lived alone, to a nursing home to recover from a broken hip. She is diagnosed with advanced dementia after a physician assigned to duties at the nursing home evaluated her and found her unresponsive and uncommunicative. She consistently ignored what she considered to be impertinent and insulting questions from someone she did not know. The GAL needs to be aware of the woman's hearing impairment and that the woman strongly values her privacy. The GAL should be sensitive to the fact that effective communications will require formal introductions and loud, distinct communications or written communications. When the appropriate communication approach is achieved, it is clear that her mental and intellectual capacities are intact.

Example 4. *Values Perspective.* A man over age 80 is the subject of a guardianship petition. He keeps large piles of junk in and around his property. He has been cited by the city repeatedly. His neighbors are furious and believe the condition of his property lowers the values of all their property. The GAL learns that the man understands and is unperturbed by the lowered values and greatly values his lifelong collection of unusual objects, and enjoys annoying his neighbors, whom he dislikes. He understands the consequences and potential fines and is prepared to pay them. Unless the GAL understands this man's values and beliefs, the GAL risks mistaking eccentricity for incapacity.

Example 5. *Values Perspective.* A single young man is severely injured in a motorcycle accident. Although young, he has signed a living will. A guardianship is sought because he has no relatives to make medical care decisions. As a result of certain strong religious beliefs, the proposed guardian believes that the provisions of the living will are immoral and would not take steps to enforce them. In assessing the appropriateness of this guardian, the GAL would find such a person unable to exercise ethical substitute decision making (See Chapter V) for this man.

Example 6. *Values Perspective.* An elderly widow begins a relationship with her younger male caregiver. She gives him expensive gifts. Her children file a petition for guardianship on the basis that she is no longer able to make sound financial decisions. The GAL learns that the woman is able to afford to pay all of her bills and is able to afford to give the gifts to the young man. The GAL learns that the woman's children have not been involved in her life and the young man has been her caregiver for 5 years. The GAL learns that the woman believes that "family" is not solely limited to someone who is biologically related and that she can create her own family. Unless the GAL understands the woman's values and belief, the GAL risks mistaking the woman's choice for incapacity.

**Interview Notes.** In the sealed GAL report, the GAL provides the court with a summary of the interview with the AIP. The court values direct quotes of the AIP. Some GALs are able to remember the substance of their conversation with the AIP without taking notes during the interview and believe that note taking interferes with communication. Other GALs prefer to take notes and refer back to their notes when writing the report. (Remember that all notes of the GAL are discoverable.) Another option is to tape the interview, if the AIP consents. However, consider whether the AIP is competent to consent, would feel uncomfortable denying consent, or would feel uncomfortable during a taped interview.

## **B. UNDERSTANDING COMMON CAUSES OF IMPAIRED CAPACITY**

When communicating with the AIP, the GAL may encounter a person affected by one or sometimes by an array of circumstances, including physical, mental, and emotional disabilities. The GAL must try to objectively assess the impact of these disabilities on the AIP's ability to function.

The following is intended to provide a non-exhaustive overview of some of the most common impairments the GAL may encounter. It is important to remember that most of these disorders do not occur independently or in isolation. The majority of the cases involve persons who have multiple medical/health problems, psychological/mental health problems and complicated psychosocial situations that affect their functions. Socioeconomic status, education, prior life experience, current support system, and many other factors can have a significant impact on the functioning of the AIP.

These brief descriptions are intended to familiarize the GAL with the *general* characteristics, *general* residual capabilities, and *general* limitations relative to certain impairments. Several in-depth resources are available that provide extensive clinical descriptions of physical and mental conditions. Two commonly used resources are The Diagnostic and Statistical Manual of Mental Disorders (DSM-5), American Psychiatric Association, and The Merck Manual of Diagnosis and Therapy, Merck Sharp and Dohme Research Laboratories.

## Neurocognitive Disorders

**Neurocognitive Disorders** is a term used to describe a cluster of symptoms, not a disease that causes those symptoms. Symptoms always include memory impairment accompanied by additional loss of cognitive function that is severe enough to interfere with normal activities of living. Other terms used earlier, but no longer useful, include “organic brain syndrome,” “senility,” or “chronic brain syndrome.”

Reversible neurocognitive disorders are caused by such conditions as anemia, hyperthyroidism, tumors, metabolic disorders, depression, and the effects of medication.

Irreversible Neurocognitive Disorders can also be caused by a variety of conditions, including Alzheimer’s Disease, stroke (multi-infarct dementia), AIDS, alcoholism, long term chemical dependency (substance abuse), and Parkinson’s Disease.

A good medical evaluation is necessary to determine the cause of a dementing illness.

**Communication with an Individual with neurocognitive disorders.** Many times people with **neurocognitive disorders** become angry or agitated because they do not understand what is expected of them. At other times they may be frustrated with their inability to make themselves understood.

In the early stages of a dementing illness, people may have trouble finding the words to express thoughts or may be unable to remember the meaning of simple words or phrases, but these problems are usually minor inconveniences or frustrations. The later stages of illness may be much more difficult with language skills impaired, resulting in nonsensical, garbled statements and great difficulty in understanding.

**Plan of Care for an Individual with a Neurocognitive Disorder.** A plan of care must include the patient and significant others (family, friends, church affiliations, etc.) when available. Other aspects of a plan of care would include the following:

1. Medical and psychological evaluations for diagnostic purposes.
2. Supervision as needed for assistance with activities of daily living.
3. Meaningful activities for patient: adult day care, health centers, support groups, education.
4. Environmental adaptations to support functioning.
5. Referral to community resources for assistance with management of difficult behaviors and planning of long term care needs; ongoing medical and mental health care; respite for caregivers is essential.



## **Mental Illness/Mental Disorders**

Mental disorders are defined in RCW 71.05.020(22), the involuntary commitment statute as:

Any organic, mental, or emotional impairment which has substantial adverse effects on an individual's cognitive or volitional functions.

The mental disorders described below constitute syndromes that most frequently lead to guardianship proceedings. Some of these disorders are chronic in nature and result in frequent or lengthy psychiatric hospitalizations and/or require long term treatment and support to maintain stability in the community.

Mental health professionals, such as psychiatrists, licensed psychologists, and psychiatric social workers should be consulted if additional diagnostic and treatment information is required. Many people with mental illness successfully manage their own affairs.

The GAL should not assume that an individual needs a guardianship based solely on diagnosis. The use of a Mental Health Care Directive, a less restrictive alternative to guardianship discussed in Chapter VII, should be analyzed in situations where recurrent episodes of mental illness create the need for intervention.

**Anxiety Disorders.** Some of the more frequently encountered anxiety disorders are as follows:

**Panic Disorder:** This disorder is characterized by recurrent, unexpected panic attacks, which are brief episodes of intense fear with symptoms such as racing pulse, shortness of breath, and trembling.

**Post Traumatic Stress Disorder:** Individuals who have been diagnosed with post traumatic stress disorder find themselves re-experiencing an extremely traumatic event to which they have been exposed either directly (e.g., war-time combat) or indirectly (e.g., witnessing a murder). In the aftermath, the affected individual avoids situations or people that may trigger unwanted memories. Additional symptoms may include insomnia, angry outbursts, and impaired concentration.

**Obsessive-Compulsive Disorder:** This disorder is identified by obsessions, which focus on recurrent, persistent thoughts and impulses, and compulsions, which are repetitive behaviors resulting from these obsessions. Hoarding behaviors, or pathological collecting, such as accumulating stacks of old newspapers that almost fill an entire room in the house or saving innumerable jars and cans so that access to the household is nearly blocked, can be evidence of an obsessive compulsive disorder.

Plan of Care Issues for Anxiety Disorders. Compliance with a medication regime may be problematic for the individual with an anxiety disorder; consistent follow-up in monitoring the progress of the treatment plan is advised. Capabilities will vary depending on the severity of the disorder and the individual's access and receptivity to treatment. Typically, individuals affected by anxiety disorders will be able to function independently, unless they are further impaired by substance abuse or other mental disorders.

**Bipolar Disorder.** Bipolar disorder is a condition in which the patient experiences cyclic symptoms of depression and mania. The manic mental state is characterized by rapid speech, free flow, flight of ideas, grandiosity, loose association of thoughts, hyperactivity, boundless energy, severe insomnia, occasional weight loss, and exhaustion. Between episodes of mania the patient may be normal or depressed. Some individuals with this condition may be highly productive during mild manic episodes but may lose an objective perspective for decision making as the manic state increases in severity. Thinking can become psychotic with delusions and hallucinations. Psychotic patients generally are hospitalized involuntarily because they lack the judgment to make logical decisions about their care.

**Depression.** Depression is a disorder that is characterized by the following:

Mood Impairment: Patients describe feeling low, blue, uninterested in previously enjoyed activities, hopelessness, helplessness, apathy. They may exhibit poor self-care, poor work performance with alcohol and/or drug abuse for purposes of self-medication.

Thinking Impairment: Includes confusion, decreased concentration and memory, rumination, poor problem solving, recurrent thoughts of death or suicide.

Physical Impairment: Change in appetite, increased or decreased sleep, low energy and fatigue, agitation or reduced motor activity, increased physical complaints.

Depression is never a normal state for the elderly (or persons of any age). It causes marked morbidity and occasionally death from suicide. Occasionally depression is associated with medical disorders that also need careful evaluation.

**Schizophrenia and Schizoaffective Disorder.** People with schizophrenia typically have phases of acute onsets of the disease and periods of stability. The acutely psychotic phase, when the person may have lost touch with reality, is a time of great turmoil for him or her and for family, friends, and support providers. In the stable phase, when the person is not psychotic and is in touch with reality, he or she can live a relatively normal, fulfilling life. However, the person in the stable phase still has limitations and unrealistic expectations that can be a source of stress. The fact that despite the illness an individual is coping with daily life does not necessarily mean the person can hold a full-time job or get along without support services.

Minor to moderate amounts of stress can lead to severe anxiety or loss of contact with reality. There is difficulty with interpersonal relationships and a tendency towards withdrawal, excessive dependency, lack of motivation, energy, and coping skills. A propensity, when stressed, is to lose touch with reality and to develop symptoms of delusions – people may believe that they are controlled by the television or that they are famous historical or religious figures. Other characteristic symptoms include hallucinations, disorganized speech, and flat or inappropriate affect. Schizoaffective disorder is similar, but is remarkable in the inclusion of depressive or manic symptoms in addition to the above.

Treatment and support services for people with chronic mental illness are closely related to the phases of the illness. When people are acutely psychotic, an increase in the level of supervision and support services may be necessary. This may include the need for an increase in the level of medication. In some cases, hospitalization will be needed. In many cases, a strong community support program can deliver necessary support even in the acute phase of the illness, avoiding disruption in living arrangements, activities, and relationships. People who are in the non-acute phase of the illness can effectively be helped to maintain stability through medications and community support programs. The need for long-term institutional care can be avoided with a good community program that provides necessary support. However, good community support must be thought of as a long-term program, not a “cure.” Although schizophrenia was once thought of as uniformly producing deterioration, many people who have had good support to retain skills and to hold their lives together show significant improvement as they grow older. Medication, sheltered living if needed, supervised day treatment and life skills training programs if needed, and psychiatric treatment, counseling, and case management are often beneficial to the ongoing care and treatment of the person.

**Developmental Disabilities.** Developmental disability is defined in RCW 71A.10.020(3) as:

A disability attributable to mental retardation, cerebral palsy, epilepsy, autism, or another neurological or other condition of an individual found by the secretary [of the Department of Social and Health Services] to be closely related to mental retardation or to require treatment similar to that required for individuals with mental retardation, which disability originates before the individual attains age

eighteen, which has continued or can be expected to continue indefinitely, and which constitutes a substantial handicap to the individual.

The categorical nature of this definition as defined by the statute makes it *exclusive* rather than *inclusive*. For example, in Washington, persons with traumatic brain injury, cystic fibrosis, spina bifida, narcolepsy, tuberous sclerosis, and numerous other disabling conditions are ineligible for services developed for persons with developmental disabilities unless they also happen to have one of the disabilities included in the statutory definition provided above.

#### Common Developmental Disabilities Include:

**Autism.** Autism refers to a condition in which a person exhibits some or all of the following characteristics from an early age: extreme withdrawal, communication problems (delayed or absent speech, unusual speech rhythms), unusual way of relating to surrounding people and things, and repetitive movements (hand twisting, prolonged rocking, spinning or head banging). Autism is often associated with mental retardation, but not all autistic persons are mentally retarded. In fact, some have unusual talents in music, math, or activities involving spatial relationships such as puzzles.

**Cerebral Palsy.** Cerebral Palsy refers to a group of disabling conditions caused by damage to the central nervous system. “Cerebral” refers to the brain, while “palsy” describes lack of muscle control that is often (but not always) a nervous system symptom. It may be caused by problems during gestation or birth, or it may occur from an accident, lead poison, illness, or other factors. Four main descriptions of cerebral palsy are:

- (a) Spastic, the most common type, which results in tense, contracted muscles
- (b) Athetoid, which is characterized by constant uncontrolled movements.
- (c) Ataxic, which is typified by poor sense of balance and depth perception.
- (d) A combination of the above.

The effects of cerebral palsy depend on the extent and location of the brain damage. One or more of the following conditions may occur: seizures; problems in vision, hearing, or speech; abnormal sensation or perception; mental retardation; and/or impairments in arm and leg movement. Cerebral palsy may be mild or severe, thus the range of capabilities varies widely depending on the particular individual’s condition.

**Epilepsy Seizure Disorder.** Epilepsy is a condition that is the result of sudden disturbances of brain function that *may* be manifested as episodic impairment or loss of consciousness. Epilepsy is typically controlled with medication and is not necessarily a debilitating condition. Seizures become problematic and can impair an individual’s ability to function when medication therapy does not control the seizures.

**Mental Retardation.** Mental retardation refers to significantly subaverage general intellectual functioning, existing concurrently with deficits in adaptive behavior, manifested from childhood or early adolescence. Although mentally retarded persons are

capable of learning and growing, they are likely to learn more slowly than other people. Mentally retarded people may need to have even simple tasks, such as putting on a shirt, broken down into steps and taught one at a time. They may have greater difficulty retaining and recalling information and may need special cues or reminders about when to do a particular activity. They may lack judgment and insight and may require advice and guidance (or a substitute decision maker) when making complex choices. Because of poor communication and social skills, isolation, and negative stereotypes, people with mental retardation are likely to need special support to develop and maintain positive relationships with other people. In some cases they may need long term supervision and support to carry out daily living activities and to engage in productive work. However, there is overwhelming evidence that a program of habilitation can work and that everyone, no matter the degree of severity of retardation, is capable of growth and development if given adequate and suitable treatment.

**Other Impairments.** There are varying and numerous physical and mental conditions that can lead to impaired functioning. The following impairments are representative of some of the more common conditions that may lead to guardianship proceedings:

**Multiple Sclerosis.** A chronic neurological disease in which the myelin sheath, the coating or insulation around the message-carrying nerve fibers in the brain and spinal cord, is attacked. Where myelin has been destroyed, it is replaced by plaques of hardened tissue (sclerosis); this occurs in multiple places within the nervous system. When any part of the myelin insulation is destroyed, nerve impulses to the brain are interrupted and distorted. Symptoms vary greatly depending upon where in the central nervous system (brain and spinal cord) the sclerosed patches are formed. Persons with severe physical disability caused by MS may retain intact intellectual functioning.

**Parkinson's .** A slowly progressive disorder without a known cause. It relates to physical function, but in older persons is often associated with mental decline. Manifestations of the disease may include: tremors (mainly at rest), slowness of movements, gait disturbance, and stiffness of neck and extremities. Depression is frequently observed in Parkinson's disease.

**Stroke.** Stroke is a generic term used to include cerebral vascular accidents ("CVA's") caused by thrombosis, cerebral hemorrhage, embolism to the brain and aneurysm. "Stroke survivor" is the appropriate term to use when referring to this population. Stroke occurs when there is an interruption of the blood flow to the brain causing temporary or permanent damage to brain cells. Generally only one side of the brain is damaged and functioning on the opposite side of the body may be affected. Impairment can range from minor difficulties such as limb weakness to total paralysis, speech difficulties, poor judgment, seizures, and short term memory, among other deficits.

**Traumatic Brain Injury.** Traumatic brain injury ("TBI") refers to a sudden insult or damage to the brain or its coverings that results when the head is hit, strikes a stationary object, or is shaken violently (as in some whiplash injuries), i.e., the injury is

caused by an external physical force. The brain itself may or may not be penetrated from the outside. When the brain is penetrated from the outside (e.g., a bullet wound), the injury is called an open head injury (“OHI”). Closed head injury (“CHI”) usually results when the brain itself is not penetrated but is violently shaken within the skull. The injury may result in temporary or permanent impairment.

TBI can produce symptoms that vary greatly depending upon the extent and location of the brain injury. OHI are usually located at a focal point in the brain, resulting in specific problems. For example, the person may have trouble forming speech, but have no problem writing those words on paper. CHI causes damage to nerve fibers in the brain stem (the part that connects the spinal cord to the brain) through which all messages to and from the body are sent. Consequently, CHI may cause multiple problems physically, intellectually, socially, emotionally, and vocationally.

TBI impairments are grouped into three major categories:

Physical, such as speech, vision, hearing, and other sensory impairments; headaches; lack of coordination; spasticity of muscles; paralysis of one or both sides; and seizure disorders. The two most common are the potential for seizures and decreased tolerance for alcohol and drugs.

Cognitive, such as memory deficits, short and long term; concentration; slowness of thinking; attention; perception; diminished communication, reading and writing skills, planning; sequencing; and judgment. Cognitive deficits are more troublesome than physical deficits in rehabilitation.

Psycho-Social-Behavioral-Emotion, such as fatigue, mood swings, denial, self-centeredness, anxiety, depression, lowered self-esteem, sexual dysfunction, restlessness, lack of motivation, inability to self-monitor, difficulty with emotional control, inability to cope, agitation, excessive laughing or crying, and difficulty relating to others. A combination of psychosocial impairments reflects a changed personality. Impairments can occur in any combination of the categories listed above and with varying degrees of severity, which makes TBI a very pervasive problem.

### **Suggested Ways to Communicate with an Individual with TBI**

People with TBI frequently complain that others perceive them as “retarded.” They are generally intellectually intact adults and children who have problems with memory, attention, etc. Therefore, communicating with them in a manner that respects their individuality and competence is critical. However, because of difficulties with memory and information processing speed, it is best to always check to make sure that what you’re saying is what the person is perceiving and understanding. You may also suggest that information that has to be remembered be written down, or you can summarize your meetings in a follow-up letter.

**Chemical Dependence.** Chemical dependency is a disease. It is characterized by dependency on alcohol or other psychoactive chemicals; loss of control over the amount and circumstances of use; symptoms of tolerance, physiological or psychological withdrawal or both, if use is reduced or discontinued; and impairment of health or disruption of social or economic functioning. Chemical dependency generally is a progressive disorder. If not treated, chemical dependency progresses from an early stage with relatively minor signs and symptoms to chronic late stage problems that can, and quite often do, result in death.

Prevention, early intervention, and treatment for chemical dependency is available and if applied can interrupt the negative consequences of active addictive disease. Treatment works. Addicts that have undergone treatment and continue in recovery are able to live normal lives with few or no special needs. Following treatment, most recovering addicts need to stay involved with a self-help recovery group such as Alcoholics Anonymous or Narcotics Anonymous (commonly known as AA or NA) to assist them in staying clean and sober. Recovering opiate addicts may need to continue in an opiate dependency treatment program for an extended period of time to take methadone or a similar drug to maintain their recovery.

**Multiple Impairments.** People who have multiple disabilities present a special challenge to the human services system. Disabilities come in all combinations. For example:

Mental retardation is often associated with other conditions of the brain or central nervous system that result in hearing or visual impairments or impairments of physical coordination such as cerebral palsy.

People may have a “dual diagnosis,” which typically refers to a diagnosis of mental illness and substance abuse, but which also may refer to a diagnosis of mental retardation and emotional disability or mental illness, or of mental retardation accompanied by challenging behaviors.

Traumatic injuries, strokes, and Parkinson’s disease may produce sensory and physical disabilities as well as mental disabilities.

Schizophrenia may occur in a person who also happens to be deaf, blind, physically handicapped, or mentally retarded.

People with multiple disabilities are challenging to the service system not only because they have multiple needs but because services are often designed to serve people with a particular disability. Group care homes for people with mental illness may not have staff and residents with sign language ability, for example, so that a deaf resident would be effectively isolated. Services for the person’s conditions may have to come from several different systems. Individualized service planning and strong case management are therefore particularly critical.

**Transient Incapacity.** The GAL should remember that capacity is not necessarily static. A change in the environment may affect capacity, or the individual's skill may improve with treatment, with training, and with greater exposure to a particular type of situation or with the passage of time.

Capacity is also an interactive concept influenced by the demands of the environment as well as the skills of the individual. For example, two persons may possess the same level of ability, but the living arrangements of one may require more self-reliance or his/her finances may be more difficult to manage. The presence or absence of sources of social support such as relatives, friends, or supportive agencies may enhance or frustrate the individual's ability to function and create greater or lesser demand for self-management skills. Thus, one person may meet the standard of "able to care for self," or "able to care for property," while another person with the same level of ability may not meet the standard<sup>1</sup>.

Reversible symptoms of incapacity may be caused by dehydration, infection, or by adverse reactions to medications. Relatively benign drugs may have adverse effects in some elderly patients. A helpful and informative booklet entitled *Medication Awareness Handbook for Older Adults* has been published by the Northwest Regional Council, Northwest Washington's Area Agency on Aging, in Bellingham. Requests for the publication can be made at [www.nwrcwa.org](http://www.nwrcwa.org) or by calling (360) 676-6749 or 1-800-585-6749.

<sup>1</sup> Stephen J. Anserer, *Determining Competency in Guardianship Proceedings*, American Bar Association Division for Public Services 23 (1990). Reprinted with permission.





## CHAPTER IV THE MEDICAL REPORT

**Filing of a medical report: A Prerequisite to Appointment of Guardian.** In most cases, RCW 11.88.045 and .090 require the GAL to obtain a written report (“medical report”) about the AIP from a licensed physician, a licensed or certified psychologist, or an advanced registered nurse practitioner (“ARNP”). RCW 11.88.045 does not include Physicians’ Assistants in the list of health care providers permitted to sign the medical report. Care should be taken to verify that the provider signing the report has the required credentials. A GAL is not required to obtain a Medical report when the sole basis for the petition is minority. A GAL also may not be required to obtain a medical report if appointed for a person who has already been adjudicated as incapacitated.

**Mandatory Topics for Medical Report.** RCW 11.88.045(4) identifies the following issues or topics that the medical report must address:

- a) The name and address of the examining physician, psychologist or advanced registered nurse practitioner;
- b) The education and experience of the physician, psychologist or advanced registered nurse practitioner pertinent to the case;
- c) The dates of examinations of the alleged incapacitated person;
- d) A summary of the relevant medical, functional, neurological or mental health history of the alleged incapacitated person as known to the examining physician, psychologist, or advanced registered nurse practitioner;
- e) The findings of the examining physician, psychologist, or advanced registered nurse practitioner as to the condition of the alleged incapacitated person;
- f) Current medications;
- g) The effect of current medications on the alleged incapacitated person’s ability to understand or participate in the guardianship proceedings;
- h) Opinions on the specific assistance the alleged incapacitated person needs;
- i) Identification of persons with whom the physician, psychologist, or advanced registered nurse practitioner has met or spoken regarding the alleged incapacitated person.

**No Patient/Client Privilege in Guardianship Proceeding.** An AIP may object to the release of records or information on the basis of the physician/patient privilege. However, the guardianship statutes, and specifically RCW 11.88.045 and .090, create an exception to the physician/patient privilege. *In re Guardianship of Atkins*, 57 Wn. App. 771, 775, 790 P.2d 210 (1990).

In *Atkins*, 57 Wn. App. at 777, the court stated:

[T]he purpose of the guardianship statute is to benefit and protect the life and property of the alleged incompetent. It would be perverse to construe the statute in a way that would prevent the court from having full information required to decide whether protection is needed.

Many GALs include in his or her initial letter to the examiner a copy of the *Atkins* decision or a reference to it. Hopefully, reference to this decision will address any concerns about the privilege the examiner may have. It is also useful to quote the definition of incapacity found in RCW 11.88.010, and specifying that incapacity is a legal determination to be made by the Court, and that the provider is not being asked to offer an opinion about capacity.

In addition, the health care provider may be hesitant to release medical information to the GAL because of the fear of violation of the federal law governing confidentiality of medical records. Health Insurance Portability and Accountability Act, 45 CFR Part 160 and 164, otherwise known as HIPAA. The order appointing the GAL should specifically waive any HIPAA restrictions. If that order does not contain the appropriate language, the GAL may need to obtain such an order before proceeding. See Chapter V, Health Records.

**Time Frame for Report.** The examining physician, psychologist, or ARNP who prepares the medical report must have personally examined and interviewed the AIP within 30 days of the date of the Report. RCW 11.88.045(4). If this requirement is not satisfied, the court will reject the medical report and the hearing on the Petition seeking the appointment of a guardian may be delayed. Upon receipt of a medical report, the GAL should always check to confirm that the Report meets this important statutory requirement.

**Including the Examiner's Curriculum Vitae.** The most efficient way to secure information about the examiner's background and experience is to request that he or she include with the medical report a copy of his or her curriculum vitae or resume.

**Level of Detail of Report.** It is important for the GAL to consider whether the Report as furnished contains all the mandated information and will be of assistance to the court and parties. If the Report is not sufficiently detailed or informative, it is very appropriate for the GAL to ask the examiner to supplement the Report.

Among other things, it is helpful that the Report specify whether the examiner is the AIP's treating physician and to summarize the history of the relationship between the physician and patient. It is also helpful for the examiner to include references to or copies of the opinions provided by any specialists (such as psychiatrists, physical or occupational therapists, etc.) who have treated the AIP.

An effective medical report should identify the diagnosed conditions, diseases, or disabilities that affect the AIP. The Report should also contain a wealth of information about the AIP's symptoms sufficient to answer basic questions that the court and parties may have, including:

- What are the symptoms manifested by the AIP and when did those symptoms first appear?
- Was there a single precipitating event, or have the symptoms progressively worsened?
- Are the symptoms present constantly or do they appear on a sporadic basis?
- To what extent are the symptoms of cognitive decline caused by reversible factors, such as:

Medication (or a lack of medication or a need to adjust medication).

Some medications can cause lethargy, confusion, forgetfulness, uncontrollable body movements, and other symptoms. In some cases, the AIP may not have been complying with his or her medication regime, resulting in a reappearance or exacerbation of symptoms. In other cases, medications may simply need to be adjusted. Sometimes a change in the medication regime may result in a marked improvement in the AIP's symptoms and ability to function.

Inadequate Nutrition and/or Hydration. Inadequate nutrition and malnutrition can cause confusion, forgetfulness, hair loss, agitation, impaired reasoning and other symptoms. A lack of vitamins or certain minerals can cause severe cognitive and memory impairment or lead to symptoms that may resemble severe apathy and depression. When balance is restored, cognitive functioning may improve.

Mental Illness. For example, depression can cause insomnia, psychomotor agitation, fatigue, diminished ability to think or concentrate, indecisiveness, and other symptoms.

Socio/Economic Factors, Abuse and Abandonment. Abuse, physical, sexual, or emotional, can cause a person to act fearfully, become withdrawn, non-verbal, indecisive, dependent, and passive. In addition to physical abuse, abuse can include withholding medication or overmedicating an individual, isolating an individual, or depriving him or her of opportunities to socialize and have human contact.

The report should also discuss the prognosis for the AIP and answer questions such as:

- What is the projected or anticipated duration of the disability or disorder?
- Are the symptoms expected to remain constant over time?
- Is the disability or disorder likely to become progressively worse? If so, what are the anticipated rate and the projected long-term impact on the individual's functional capacity?
- In the alternative, is the disability or disorder likely to improve over time? If so, what are the anticipated rate and the projected long-term impact on the individual's functional capacity?
- What is the anticipated course of future treatment?

**PRACTICE TIP:** If a recent chart note or specialist report contains a thorough patient history and detailed medical summary, it can be helpful to attach the chart notes as an exhibit to the medical report. This applies to printed medication lists as well. In such cases, the provider can simply write “see chart note” on the relevant sections of the report form. In many cases, this will result in more details and context than short handwritten replies on the form.

**Securing the Report in a Timely Manner.** There are times when the physician, psychologist, or ARNP fails to provide the medical report in a timely manner. In order to avoid this situation, the GAL should:

- Immediately after appointment, ensure that care providers, family members, or others make arrangements for the AIP to visit with the examining physician, psychologist, or ARNP.
- Promptly send the physician, psychologist, or ARNP a respectful letter describing the guardianship process, stressing the critical importance of the medical report and requesting the professional to prepare the Report.
- Provide a deadline for furnishing the Report well in advance of the scheduled hearing, since the GAL report should be circulated and filed at least 14 days prior to the hearing on the Petition seeking appointment of a guardian.
- Send a form for the health care provider to fill out so that the report will cover each of the topics necessary. Model Medical/Psychological Reports are available online and can be downloaded and printed with the caption for the guardianship and sent to the health care provider.  
The model form for King County:  
<https://www.kingcounty.gov/courts/superior-court/ex-parte-probate/guardianship-forms.aspx>
- Check in with the physician’s nurse or administrative assistant before sending the letter and medical report form and maintain contact with staff at the physician’s office.

**Flexibility in Arranging for Examination.** There are also occasions when the AIP is unable or unwilling to leave his or her home or to visit the physician's office. Under these circumstances, the GAL may contact any number of clinics and agencies that offer programs through which a physician, psychiatrist, or ARNP actually visits the AIP at their home or at locations other than a medical office or clinic.

**Payment for Examinations.** At times (particularly when the examination is not covered by insurance) the examining professional may request payment for conducting the examination. The GAL should very clearly inform the examining professional that the GAL is not personally responsible for the costs of the examination. Arrangements for payment can either be made by others (including a care facility or family member) or the GAL can raise the issue with the court through a properly filed and served petition for instructions. *See* Chapter X.

**Compelling the AIP to Attend the Examination.** Occasionally, an AIP may refuse to attend an examination arranged by the GAL for the purpose of securing the medical report. If this should happen, the GAL may seek a court order compelling the individual to attend the examination. Under these circumstances, best practice may require seeking the appointment of counsel for the resisting AIP.

RCW 11.88.045 and .090 (which require the GAL to secure a written medical report, specify the issues to be covered in that Report, and preclude entry of an order appointing a guardian in the absence of a medical report) provide authority for compelling the examination. In addition, Civil Rule (CR) 35 (a)(1) provides in pertinent part that:

When the mental or physical condition . . . of a party . . . is in controversy, the court in which the action is pending may order the party to submit to a physical examination by a physician, or mental examination by a physician or psychologist. . . The order may be made only on motion for good cause shown and upon notice to the person to be examined and to all parties and shall specify the time, place, manner, conditions, and scope of the examination and the person or persons by whom it is to be made.

**Sealing the Report to Protect Privacy.** The medical report may contain highly sensitive and sometimes embarrassing information. Guardianship files are open and available to the public (both at the courthouse and increasingly through remote, electronic means). GR 22(f) states that the medical report will be treated as a "Personal Health Care Record" and be automatically sealed by the clerk when filed with a cover sheet. (The cover sheets are available at each local Clerks' Office.) GR 22(b)(3) defines "Personal Health Care Record" as any record or correspondence that contains health care information that...relates to the past, present, or future physical or mental health condition of an individual. Only the cover page will be available for public viewing. (In addition, GR 31 requires that certain financial and other types of information be redacted from court filings unless necessary or otherwise ordered by the Court.) The parties to the guardianship action will have access to the sealed medical report, but the general public

will not. Different counties may use a variety of methods for filing documents under seal. The GAL must check the relevant county's local rules and procedures for filing sealed documents.

**Representative at Examination.** There is case law holding that an individual subject to a medical examination as a result of involvement in legal proceedings has the right to record the examination and to have his or her attorney present during the examination. *Tietjen v. Department of Labor & Industries*, 13 Wn. App. 86, 534 P.2d 151 (1975). *See also* CR 35(a)(2) (“The party being examined may have a representative present at the examination, who may observe but not interfere with or obstruct the examination.”)

## **CHAPTER V FURTHER INVESTIGATION**

To become informed about the case, the GAL “shall make reasonable efforts” to interview persons in addition to the AIP to decide whether a full or limited guardianship is in the AIP’s best interests and to evaluate “the appropriateness of the guardian or limited guardian whose appointment is sought.” Also, GALR 2 (g). The GAL must also describe “the steps the proposed guardian has taken or intends to take to identify and meet current and emerging needs of the incapacitated person.” *Id.*

This chapter covers the following:

1. Basic information about the qualifications and duties of a guardian and the factors that determine the “suitability” of any guardian;
2. Guidance on interviewing the proposed guardian, the Petitioner, and other involved persons to evaluate the need for a guardianship for the AIP and the suitability of the proposed guardian for that AIP;
3. A discussion of the extent to which a GAL may, or should review the AIP’s health and/or financial records;
4. An overview of the criteria and procedures for certification and discipline of Certified Professional Guardians.

During the GAL’s investigation, the GAL must be mindful of the Guardian ad Litem Rules (GALRs). It is important for the GAL to inform all individuals contacted what the role of the GAL is and advise them that any information obtained may become part of the court record. GALR 2(k). GALR 2(c-f) requires that the GAL treat all individuals with respect, courtesy, fairness and good faith; maintain independence, objectivity and the appearance of fairness; and avoid any conflict of interest or even the appearance of a conflict of interest.

### **1. Qualifications, Duties, Suitability of a Guardian.**

**Statutory Qualifications of a Guardian.** RCW 11.88.020 lists the qualifications:

- A “suitable” person over the age of 18 years, or a parent under the age of 18 years
- A person who is not “of unsound mind”
- A person who has not been convicted of a felony or a misdemeanor involving moral turpitude
- A resident of this state, or a nonresident who has appointed a resident agent to accept service of process and filed the appointment with the court



- A corporation authorized to act as a fiduciary, guardian or limited guardian in this state
- A person whom the court finds suitable to act as guardian.

**Duties of a Guardian.** In general, the duties of a guardian are set forth in RCW Title 11.92. The duties of the guardian in a particular case are those set forth in the order appointing the guardian. The court in appointing a guardian must limit the duties and the power of the guardian so that the liberty and autonomy of the incapacitated person are “restricted through the guardianship process only to the minimum extent necessary to adequately provide for [the AIP’s] own health or safety, or to adequately manage their financial affairs.” RCW 11.88.005.

If the AIP is fully incapacitated, the authority of a guardian may encompass all of the areas of protection of the person and estate as permitted by law. To the extent that the AIP has capabilities, the power and duties of the guardian should be limited. RCW 11.88.010(2). One of the most important functions of the GAL is to recommend to the court not only whether a guardian is needed, but also whether the guardianship should be limited. The goal is to protect the liberty and autonomy of the AIP to the maximum extent while still empowering the guardian to protect the incapacitated individual’s person and estate to the extent needed.

**Guardian of the Person.** The guardian of the person acts on behalf of the incapacitated person (“IP”) regarding personal care, including medical decisions to the extent authorized by the order appointing the guardian. The guardian of the person must assess the IP’s physical, mental, and emotional needs and the person’s ability to perform or assist in activities of daily living and then develop and file with the court a personal care plan for meeting the identified and emerging personal care needs of the IP. RCW 11.92.043(1). The care plan must be updated to reflect any substantial change in circumstances of the IP or if they have an address change. RCW 11.92.043(c). There are other specific instances, the court requires updates to be given. For example,

RCW 11.92.043(d), requires guardians to:

To inform any person entitled to special notice of proceedings under RCW 11.92.150 and any other person designated by the incapacitated person as soon as possible, but in no case more than five business days, after the incapacitated person:

- Makes a change in residence that is intended or likely to last more than fourteen calendar days;
- Has been admitted to a medical facility for acute care in response to a life-threatening injury or medical condition that requires inpatient care;
- Has been treated in an emergency room setting or kept for hospital observation for more than twenty-four hours; or
- Dies, in which case the notification must be made in person, by telephone, or by certified mail.

And, RCW 11.92.195, incapacitated persons have a right to associate with persons of their choosing, unless the right is restricted in the initial or subsequent modification order

appointing a guardian. This statute is detailed in identifying how a guardian should evaluate this right when the AIP cannot meaningfully communicate and explicitly identifies what a guardian must do if they believe social interactions should be restricted.

**Guardian of the Estate.** A guardian of the estate handles the financial affairs of the IP to the extent authorized in the order appointing the guardian. The duties of the guardian of the estate are generally set forth in RCW 11.92.040 and include filing with the court an inventory of the IP's assets, providing the court with a proposed budget and periodic reports stating the income and expenses of the estate and showing the investment plan.

The guardian of the estate is a fiduciary within the meaning of RCW 11.100, the law governing the investment of trust funds. Thus, in addition to duties specific to guardians, a guardian of the estate has similar duties as a trustee. A trustee must apply the **prudent person standard** to the management of a trust estate, meaning that the trustee must manage the trust assets in the same manner as a prudent person would manage his or her own assets. Professional Trustees are held to a higher standard. RCW 11.100.020(1); *Fred Hutchinson Cancer Research Center v. Holman*, 107 Wn.2d 693 (1987). Trustees must act in the utmost good faith and are liable for losses resulting from improper management. *In re Petrie*, 105 Wn. App. 268 (2001). Likewise a guardian can be held to these same standards.

A guardian, however, is more than a mere fiduciary. A guardianship has been described as “a trust relation of the most sacred character.” *In re Guardianship of Eisenberg*, 43 Wn. App. 761 (1986). In an early case involving guardianship of minors, the court stated: “The courts require a more jealous guarding of the interests of such helpless persons than those of other beneficiaries of trusts.” *In re Guardianship of Frances Carlson*, 162 Wash. 20 (1931).

While a guardian must apply the **prudent person standard** under the guardian's fiduciary obligation, the guardian must also consider the “**substituted judgment standard**” in carrying out guardianship duties. In applying a substituted judgment standard, a guardian must make the decision the incapacitated person would have made if that person were able to make that decision for himself or herself.

The guardian of the estate has to balance the substituted judgment standard with the prudent person standard and make financial decisions that are (a) prudent and based on the best interests of the IP and, (b) at the same time, to the extent possible, in accordance with the expressed wishes of the IP. CPG Standards of Practice Regulations 405.1 & 405.2; (Found <http://www.courts.wa.gov/content/guardianRules/regulations/reg400/405%20General%20Decision%20Standards.pdf>) and *In re Guardianship of Stamm*, 121 Wn. App. 830 (2004).

**Evaluating Suitability of a Guardian.** The AIP, while competent, may have nominated the proposed guardian in estate planning documents such as a power of attorney. RCW

11.125.080. The court must appoint the guardian so proposed by the AIP except for good cause or disqualification. RCW 11.88.010(4).

**“Suitable” Guardian of the Person.** Many individuals have the misconception that a guardianship gives the guardian the power to place the AIP in whatever type of residential facility that the guardian chooses. This is not the case. An AIP cannot be detained in a residential care treatment facility that provides nursing or other care against his or her will, except in certain circumstances, and then only with due process of law. RCW 71.05.040. The GAL should ensure that the proposed or nominated guardian understands this important limitation. A suitable guardian of the person must be willing to respect the express desires of the AIP with respect to housing, medical treatment, and personal decision-making to the extent possible. The Guardian should only substitute his or her own judgment when the express desires of the AIP place the AIP at risk. A suitable guardian of the person should understand the significance of the court’s restriction of only certain rights and should appreciate that, except to the extent revoked, an incapacitated person retains all of his or her civil rights.

**“Suitable” Guardian of the Estate** The GAL should determine whether the proposed guardian of the estate is capable of managing the assets of the guardianship estate, either alone or with the assistance of experts. This determination will depend upon the size and nature of the estate and the sophistication and degree of knowledge of the proposed guardian of the estate.

A suitable guardian of the estate is one who can be bonded, to the extent required by the statute and court orders. If the guardian is required by court order to be bonded, RCW 11.88.100 requires that the guardian file a bond prior to obtaining letters of guardianship. The bond should be sufficient to cover the value of the AIP’s liquid estate, plus anticipated growth until the next reporting period, usually one year from the date of the guardian’s appointment. If someone must be bonded, but are not bondable, they may not be suitable. The court may waive the bond if the petition alleges that the AIP’s total assets amount to less than \$3000. The court may also waive bond if the financial institution(s) where funds belonging to the IP are on deposit agrees to “block” the account and allow withdrawals only after obtaining the appropriate court order. RCW 11.88.105. If the attorney representing the guardian fails to ensure that the bond is issued, and/or the accounts are blocked, that attorney may be liable to the IP or heirs of the IP for damages. See *In re Guardianship of Karan*, 110 Wn. App.76 (2002); *Estate of Treadwell v. Wright*, 115 Wn. App. 238 (2003). See Appendix B.

A bonding company’s unwillingness to issue a bond covering the proposed guardian’s activities makes that person “unsuitable.” Trust companies and banks acting as guardians are exempt from the bonding requirement. RCW 11.88.100 and RCW 11.88.107.

The GAL must make a recommendation to the court regarding the security of all assets of the AIP. The GAL may recommend that the guardian file a bond in the appropriate amount, place the guardianship funds in a blocked brokerage or bank account, or a combination of bonding and blocking. In some circumstances the GAL might

recommend that a trust be created for the IP and that the assets be protected by bonding and/or blocking. *See* page 72.

**Lay Guardians.** Lay guardians, that is, guardians who are not professionals, are often family members, partners, or friends of the AIP who have a relationship with the AIP and knowledge of his or her needs. In evaluating a proposed lay guardian, the GAL should consider that this individual's knowledge of the AIP will be essential in meeting the AIP's ongoing and emerging physical, psychological, financial, residential, and medical needs. The GAL must be alert to family disputes, old resentments, and negative feelings that are discovered in the investigation. These conflicts can impede the smooth functioning of a guardianship and create enormous cost, hostility, and unhappiness. Such struggles detract from attention to the real needs of the AIP. Where family tension may harm the ability of the guardian to function in the AIP's best interests, the GAL may consider recommending the appointment of a certified professional guardian.

Lay guardians are required to participate in a standardized video or web-cast training through the Office of Administrative Courts. The training is supposed to be completed at the time the petition is filed. The court can defer the training in specific situations for up to 90 days after appointment RCW 11.88.020(3). The training is accessed here: [https://www.courts.wa.gov/programs\\_orgs/guardian/?fa=guardian.layGuardianship&type=training](https://www.courts.wa.gov/programs_orgs/guardian/?fa=guardian.layGuardianship&type=training)

Lay guardians also file a proposed declaration of guardian identifying their qualifications and sign the declaration attesting to their suitability. Many courts run a JIS (Judicial Information System) check on lay guardians at the court hearing on their appointment. If the lay guardian has misrepresented themselves in the proposed declaration, this will be brought up by the court.

**Professional Guardians.** Professional guardians are certified by the Washington State Supreme Court. RCW 11.88.008 defines a "professional guardian" as "a guardian appointed under this chapter who is not a member of the incapacitated person's family and who charges fees for carrying out the duties of court-appointed guardian of three or more incapacitated persons." *See* page 48 *et seq.*

Professional guardians have a clear and immediate conflict of interest in nominating themselves to be appointed guardian and to be paid from the estate of the Incapacitated Person. A certified professional guardian should avoid whenever possible initiating a petition for appointment of oneself as guardian.

The limited and qualified initiation of a guardianship petition by a certified professional guardian is acceptable under certain circumstances: Specifically, if the certified professional guardian determines (a) a guardianship is in the interests of the AIP; (b) there are no less restrictive alternatives; and (c) there is no other person willing to act as petitioner. This is called self-petitioning. Usually the attorney representing the professional guardian as the petitioner will continue to

represent the guardian if appointed. It is acceptable and necessary for the GAL to evaluate this situation.

**“Suitability” as a Function of the AIP’s Needs.** In determining the suitability of a guardian, the GAL should start by evaluating the needs of the AIP.

Even if the AIP is able to communicate with the GAL, the evaluation of the AIP’s needs requires that the GAL interview other individuals who may have information about the AIP as well as the proposed guardian. Interviews with the petitioner, health care providers, financial advisors, other professionals, friends, neighbors, and relatives should be conducted as needed. In all interviews, the GAL should elicit information to answer the following:

- In which areas can the AIP retain his or her autonomy? Does the AIP have the ability to participate in some or all decisions?
- Will the AIP be willing or able to cooperate with the guardian-nominee on residential placement, care, and medical issues?
- If a prior relationship exists between the AIP and guardian-nominee, how will their relationship change once the guardian has been appointed?

The GAL must recommend that the AIP retain as much autonomy as possible and therefore that the powers of the guardian be limited only to the extent necessary to meet the needs of the AIP.

### **1. Interviewing Potential Witnesses.**

In many cases, it is useful to interview various people who can provide information about the AIP before interviewing the proposed guardian. To provide an adequate basis for the recommendations made in the GAL report regarding the need for appointment of a guardian, the suitability of a proposed guardian-nominee, and the limitations of the guardianship, the GAL must learn as much as possible, taking into account the specific situation at issue, about the AIP. In addition to the AIP, other people who may figure prominently in the AIP’s life and may be able to provide pertinent information These include the following:

- Spouse, registered domestic partner, other relatives, friends and neighbors
- Caregivers
- Case managers
- Therapists: occupational, speech, physical and mental health professionals
- Chore workers
- Social workers
- Financial resources: banks, investment brokers, etc.
- Clergy and
- Financial advisors

After conversations with the AIP, the GAL may be able to identify relevant individuals such as those suggested above. If the AIP is unable to communicate the identity of relevant people, such information might be found in the medical or care facility records of the AIP.

A letter of introduction from the GAL to the interested parties, potential witnesses, and family members that explains the role of the GAL in the guardianship process and seeks cooperation in the investigation is sometimes helpful. These contacts are likely to provide insight into the lifestyle, abilities, and needs of the AIP, as well as the nature of the AIP's relationship with the proposed guardian and the proposed guardian's suitability. It is important to emphasize to the individuals interviewed the significance of the guardianship proceeding and the potential effects on the AIP.

Sometimes dynamics exist where one parent of a younger AIP seeks guardianship without wanting the other parent to know. Guardianship is neither family law nor a method to create a parenting plan. It is appropriate for the GAL's investigation to explore this situation and both parents should be interviewed. There are situations where one parent may not be involved in the young adult's life or has limited involvement. Accordingly, the GAL is to consult as necessary to complete the investigation and report with those known relatives, friends, or other persons the guardian ad litem determines have had a significant, continuing interest in the welfare of the alleged incapacitated person. RCW 11.88.090(5)(d).

#### **Sample Questions for interested persons and contacts:**

- What is your relationship to the AIP?
- How long have you known the AIP?
- What is the AIP like as a person; historically and in the present; have you noted any significant changes?
- Describe the AIP's interests, preferences, personality.
- Are you familiar with the allegations in the petition? Do you agree/disagree with the allegations in the petition?
- What is your opinion as to the AIP's mental capacity? How does the alleged incapacity affect the AIP's ability to manage personal and property decisions?
- What level of assistance, if any, do you think the AIP needs?
- Are there any other contacts that the GAL should make?
- Are you familiar with the proposed guardian? If so, do you have any concerns about that person's suitability to serve as the AIP's guardian and act on behalf of the AIP?

It is helpful for the GAL to begin drafting the GAL report as soon as each part of the investigation is completed, rather than waiting until the investigation is complete/

The GAL should be alert to issues of family conflict. Family members who serve as contacts and sources of background information may have a personal agenda or a conflict of interest with respect to the AIP or the proposed guardian. These conflicts and other

issues must be assessed objectively so they do not adversely affect the resolution of the guardianship petition.

*It is vital to remember that the Guardian ad Litem must remain objective and must at all times focus on the best interests of the Alleged Incapacitated Person. GALR 2(a).*

**The Guardian ad Litem may not promise confidentiality.** It is essential that the GAL inform all persons interviewed that the GAL's entire file is discoverable (may be requested by other parties). Any report, financial information, and notes regarding interviews may become available to the court and parties. The GAL may be called as a witness at trial in a contested guardianship case and may be asked questions about any statements made by any of the persons the GAL has interviewed or any documents the GAL has reviewed. GALR 2(k).

Establishing procedures to maintain the confidentiality of the file in the GAL's custody preserves any confidentiality that the court may wish to protect by sealing all or part of a file. GALR 2(n).

**Interviewing the Petitioner.** The GAL should interview the Petitioner to gain an understanding of the facts and circumstances that led to the filing of the petition. RCW 11.88.030(1) provides that no liability for filing a petition for guardianship or limited guardianship shall attach to a petitioner acting in good faith and upon reasonable basis. Typically, a petitioner's fees and costs in bringing a petition are reimbursed to the petitioner from the assets of the AIP's estate. RCW 11.88.090(10) provides for the potential allocation of fees and assessing the GAL fee to the petitioner if the petition is found to be frivolous and/or brought in bad faith. If the GAL believes that the petitioner was not acting in good faith or upon a reasonable basis in bringing the petition, the GAL may recommend that fees and costs of the petition be allocated to (awarded against) the petitioner.

Questions for the petitioner:

- What was the precipitating issue or issues that led to the filing of the guardianship petition?
- Are there any alternatives to guardianship currently in place (durable powers of attorney, trusts, etc.)
- If there is an alternative in place, what is it and why was the guardianship nonetheless filed?
- Did the petitioner consider any less restrictive alternatives before filing the petition? If so, what happened, or if not, why not?
- If petitioner has proposed themselves as guardian, why?
- If petitioner has proposed someone other than themselves, why?
- If an alternative is in place, and petitioner has proposed someone other than the already named individual, why?
- Does the petitioner feel a full guardianship is necessary, or a limited one? Is guardianship of both person and estate necessary?

- If a limited guardianship is being proposed, what limitations on the guardianship are appropriate? What rights, if any, does petitioner believe that the AIP should retain.

### **3. Interviewing the Proposed Guardian**

Once the GAL has gathered background information and made a determination that 1) a guardianship is needed and 2) there are no less restrictive alternatives to a guardianship, the GAL should interview the proposed guardian to determine if the proposed guardian is qualified to perform the tasks and address the challenges that the GAL expects will be involved in this guardianship.

Some guardians are best suited in a care management role, whereas others are best suited to act as financial managers. Family members, or individual certified professional guardians, may be called upon to act as guardians of both person and estate. The GAL must determine whether a proposed individual guardian is suited to fill either or both roles, whether co-guardianship is advisable, and in which areas, if any, the guardianship should be limited so that the AIP retains as much autonomy as possible. The GAL should determine:

- Does the proposed guardian seem to understand the role and duties of a guardian for this AIP?
- Is the proposed guardian aware of the statutory limitations of a guardian's authority and the particular limitations to the guardian's authority that may be imposed in this case?
- Does the proposed guardian have the skills to address the complicated issues of this case?
- Can the proposed guardian differentiate his or her values from those of the AIP?
- Is the proposed guardian willing to maximize the AIP's autonomy?
- Is the proposed guardian willing to be directed by the court and to meet the reporting requirements?
- Does the proposed guardian meet the basic statutory qualifications under RCW 11.88?
- If proposed as a guardian of the estate, and where the estate is in excess of \$3,000, will the proposed guardian be able to secure a bond?
- If the proposed guardian is a lay guardian, has he or she completed the required on-line lay guardianship training?

**Evaluating the Proposed Guardians and Alternates:** The GAL must evaluate what is in the best interests of the AIP. The GAL is under no obligation to recommend appointment of the guardian nominated in the petition. As indicated in Section 1 above, if the AIP has previously designated someone else to serve as guardian, as, for example, in a power of attorney, the GAL must give preferential consideration to that person to be recommended as guardian. If the GAL concludes that a guardian other than the one proposed in the petition would best serve the needs, interests, and desires of the AIP, the report should include an explanation of the reasons for not recommending the guardian



proposed in the petition. RCW 11.88.010(4); 11.88.090(5)(f)(iii)-(iv). The GAL must then make an alternate recommendation. The GAL should provide the court with the analysis of the needs of the AIP and how/why those needs are best met by the alternate guardian recommended by the GAL.

Sometimes a GAL is faced with a situation in which no person or agency has been nominated to serve as guardian. In that case, the GAL should recommend a guardian and provide the court with the GAL's analysis of the needs of the AIP and how/why they are best met by the guardian proposed by the GAL. If no one familiar to the alleged incapacitated person is willing or qualified to serve as guardian for the AIP, the GAL can look for a professional guardian. The Certified Professional Guardian ("CPG") registry maintains a list of all available CPGs and can be found at [http://www.courts.wa.gov/programs\\_orgs/guardian/](http://www.courts.wa.gov/programs_orgs/guardian/)

### **Practice Tip**

If you aren't sure whether the proposed guardian is the best choice, call a more experienced GAL and ask for some input. Explain the fact pattern and outline your concerns. Many GALs have handled hundreds of cases and can be invaluable resources for developing solutions to difficult situations. Estate planning attorneys can be helpful when looking at less restrictive alternatives; elder law attorneys can advise you on Medicaid and long-term care issues. If you are a new GAL, make use of a mentor from the list provided at the training.

The process of finding a suitable guardian to recommend can be challenging for the GAL, particularly if the AIP has little or no assets or income, difficult family dynamics exist, or the AIP has challenging behaviors. It may be necessary to look at charitable service organizations, nonprofit agencies, and groups in which the incapacitated person was previously involved. It may also become necessary to call professional guardians and guardianship agencies and request that they take the case without charging. Most agencies have established a level of charitable work they can provide to the industry. If no suitable guardian that is willing to serve can be found, notify the court of the dilemma and request instructions.

The GAL also has the option of seeking the appointment of a public guardian for the AIP. However, the Office of the Public Guardian may or may not be accepting new cases depending upon the funding of the office by the state legislature at any given time. Only GALs can recommend the OPG as proposed guardian; the GAL must fill out the form: <http://www.courts.wa.gov/guardianportal/index.cfm?fa=guardianportal.opg&content=request>

If, after investigation, the GAL concludes that the AIP would be best served by the appointment of a professional guardian with whom the GAL has had previous dealings the GAL should disclose this information to the court and parties. Any conflicts of

interest or facts that may appear to a party as a potential conflict of interest that the GAL may have as well as any actual conflicts of interest which were called to the attention of and waived by the parties. *See* GALR 2(b).

**Special Situation: Appointment as GAL for a Married Couple or Registered Domestic Partners – Petition for a Single Guardian for a Married Couple or Registered Domestic Partners.** Guardianship petitions for married couples or domestic partners, may sometimes be filed simultaneously and the court may appoint one GAL to serve for both individuals. Petitions may also ask that a single guardian, often a family member, be appointed as guardian for both of the spouses or domestic partners.

The GAL should consider the conflicts of interest that may exist or may arise between spouses or between domestic partners and the ability of one guardian to advocate for competing interests.

Factors a GAL must always consider ~~is~~ are the cost of any arrangement, the availability of resources to pay for the services of a guardian and the financial impact such payment will have on the AIP, and how a single guardian would act if a serious conflict did arise. The Certified Professional Guardian Board issued the Ethics Advisory Opinion 2002-03, which is summarized by the Board as follows:

The appointment of the same Guardian to act simultaneously in the best interests of both spouses in a marital relationship, domestic partners, or persons in a meretricious relationship presents, at a minimum, the appearance of a potential conflict of interest, and should only be done with great caution by a Guardian. If the parties are not married, appellate case decisions have implied and applied certain community property principles to such relationships and legal presumptions may apply. The issues are complex and the circumstances dynamic. Often, actual conflicts may not become apparent until it is too late to seek instruction from the court or for the Guardian to take remedial action. The advice of counsel should be sought prior to accepting such an appointment.

While a court may consider a well-supported petition for a dual Guardian, endorsed by the GAL for one or each of the AIPs, the circumstances upon which the decision was based could change quickly or unknowingly and present a conflict of interest necessitating the removal of the dual guardian from both cases and two new independent Guardians being appointed. The latter action would foreseeably result in significant additional costs to the estate of the incapacitated person and potentially to the retiring Guardian as well. Only in well-justified cases and after a hearing supported by recommendations of the Guardians ad Litem for each of the AIPs alleged incapacitated persons, and assurance that there would be only de minimus conflicts if any, should a Guardian accept such an appointment consider accepting appointment to represent both spouses.

The CPG Board's analysis of the conflicts of interest issue provides a list of considerations for the GAL to consider when making his or her recommendations. The GAL should be familiar with the Board's analysis and use it to address the court potential areas of concern. Again, the GAL's job is to recognize all conflicts, whether actual, perceived or potential, and factor them into an evaluation and a recommendation.

**Co-Guardians.** Ultimately, the GAL may decide that the appointment of co-guardians would serve the AIP's best interests.

Different guardians of person and estate: An individual may be an excellent caretaker, but not particularly versed in financial management. Separate guardians of the person and estate, either professional or a lay guardian, may be named.

Lay Co-Guardians of person and estate: In some cases a combination of two individuals, either relatives or friends of the AIP, may best serve the needs of the AIP: The AIP may have expressed a desire to have the two people serve as co-guardians; no single person may be able or suitable to act as sole guardian, but two individuals may be able to act together, to complement each other; or each of the individuals may be capable of serving as the sole guardian, but neither wishes to serve alone.

Professional and Lay Co-Guardians: In some cases, professional expertise is needed in providing resources for health care and financial management, but a family member is needed to facilitate the operation of a guardianship (and sometimes also to reduce the cost). The professional guardian can provide the professional expertise, and the lay guardian can provide the understanding of the AIP's needs in the context of a close, positive relationship.

There are situations in which the GAL and/or the parties to a guardianship propose the sharing of authority between a lay guardian and a professional. This can be a good solution to resolve a controversy, or when the family member lacks certain skills or cannot for some reason be bonded. Sometimes the tenure of the Professional Guardian is intended to be temporary. Most often such division of authority takes the form of a professional acting as Guardian of the Estate and the family member acting as Guardian of the Person. It may also be that the lay person and the professional act as co-guardians of the person or estate. In the latter event, it is very important that the roles of the guardians be well defined in order to avoid duplication of effort or controversy.

These arrangements should not be recommended unless there is good reason to believe that the professional and lay guardians will be able to act cooperatively, agree with the arrangement and will work together in good faith. The lay person chosen to act as co-guardians should be informed that there are many Professional Guardians and should be given the opportunity to interview candidates and participate in the choice of professionals. These arrangements tend to be among the more complicated

and challenging cases, and the choice of the Professional Guardian should be made carefully.

The GAL should advise a hesitant lay guardian that the lay guardian may obtain court authorization to hire a professional to provide expert advice to the lay guardian as needed. If the GAL still believes that co-guardianship is warranted, it is essential that each co-guardian have a clear understanding of the duties of each and each is willing to work cooperatively. It is recommended that the prospective co-guardians and the GAL meet to identify issues and discuss management of the guardianship. Clear guidelines for communications between the co-guardians should be developed and incorporated into the GAL report and the court order appointing the co-guardians.

#### **4. Review of the AIP's health and financial records.**

**Health Records.** In some cases, a determination of a guardian's suitability will require a greater focus on personal issues such as housing, nutrition, mental health issues, case management, and care needs. In these cases, the GAL may feel it is necessary to review the AIP's medical records, or to have them reviewed by professional third parties, such as mental health professionals or physicians. The GAL should obtain court approval for a third-party review, particularly if a charge is anticipated for such a review. If the AIP is a resident or patient in a care facility, it is often useful for the GAL to review other records, such as the social file, patient log or care facility notes maintained in the AIP's chart. Information related to health care is now strictly governed by the Health Insurance Portability and Accountability Act, 45 CFR Part 160 and 164, otherwise known as HIPAA. Some health care providers are interpreting the law very strictly and refusing to provide information absent court order. Some court orders appointing Guardians ad Litem contain HIPAA language. If the GAL encounters problems accessing records or other health care information that the GAL believes is essential to the completion of a thorough investigation, a specific court order may be necessary. Such an order could be obtained after a Petition for Instructions with notice to all parties. *See* Chapter X.

**Financial Records.** It is the duty of a guardian to marshal the assets of an IP, once a guardianship is established. Until such time, the AIP is deemed competent, and it is advisable for the GAL to be mindful of potential intrusion on the AIP's privacy.

RCW 11.88.090(5), which sets forth the GAL's duties, does not require the GAL to review financial records, or to report to the court on the exact nature and extent of the AIP's estate. In considering potential guardians and in recommending the way in which the AIP's assets should be protected in the guardianship order (*i.e.*, bonding, blocking, creating a trust) the GAL should try to learn the general nature and extent of the AIP's estate. Further, in order to appoint a guardian for an AIP's, the court must have sufficient evidence that there is a "significant risk of financial harm based upon a demonstrated inability to adequately manage property or financial affairs." (Emphasis added). Therefore, the GAL must have access to sufficient information to report to the court on this issue. In some cases, such information is readily available because of the facts alleged in the petition.

In some cases, particularly where allegations of financial exploitation or breach of fiduciary duty have been made, the GAL may believe it is necessary, perhaps even urgent, to investigate the financial situation of the AIP in more detail. However it is not the Guardian ad Litem's responsibility to conduct a forensic accounting of the AIP's assets.

Where feasible, the GAL may seek the AIP's permission to examine any financial records, beginning with records that may be located in the home, such as checkbooks, bills or bank statements. The AIP may also willingly give permission to the GAL to examine bank records, although the GAL should take care to ensure that the AIP's permission is given freely and with full understanding of what is being divulged. If the AIP is unwilling or unable to give permission to the GAL to obtain and examine financial records, or if the GAL has any doubt that the AIP's permission may not be knowingly given, and the GAL believes it is necessary to review the records, the GAL should seek instruction from the court. The court may order the issuance of a subpoena for such records, if the GAL's request for instructions shows sufficient cause for access to the records. The GAL should also be mindful of the time and costs involved to review financial records and be sure that it is appropriate to the issues in the case.

On occasion, a financial institution will provide information and/or records to a GAL upon presentation of a certified copy of the order appointing the GAL. This order rarely gives the GAL authority to examine financial records, however. Financial institutions are not specifically included in the list of persons or agencies required by GALR 4(f) to provide records to a GAL, nor are they excluded.

### **Checklist of questions to ask potential guardians**

#### **A. General questions.**

1. Have you had any prior contact with the AIP?
2. Based on your prior contact, how would you propose to meet the needs of the AIP?
3. What other issues do you believe need to be addressed?
4. Do you believe that you are the right guardian for this AIP? If not, is there someone else you would recommend?
5. If the GAL does not recommend that a guardian be appointed, is there another less restrictive role that you could fill to meet the needs of the AIP? (Attorney-in-fact, companion, representative payee, trustee.)
6. If you do not feel that you are qualified to act as guardian of both the person and estate of the AIP, can you fill one role?
7. If you are only qualified to fill one of these roles but the GAL recommends that a guardian of both the person and estate should be appointed, who should fill the other role? How would you work with that person?
8. How would you involve the AIP in decision making?
9. What would be your recourse if you believed a particular decision was essential, but the AIP refused to accept your decision?

**B. Additional questions specifically for individual (non-certified) guardians**

1. If you were named in the petition, why were you named? (Be sure the individual understands that the GAL is under no obligation to recommend the proposed guardian, even if he or she is the petitioner.)
2. Do you agree with the summary of the AIP's needs as compiled by the GAL?
3. Are you familiar with the duties of a guardian (RCW 11.92)?
4. Are you prepared to make a personal care plan, and a financial plan, and to follow through on them and report to the court on a regular basis for as long as you are the guardian?
5. What steps would you take to ensure the decisions you make are independent decisions, free of influence from family members and friends or other "well-meaning" persons?
6. Do you understand that a guardian does not have the authority to decide where a ward lives? (*i.e.*, you can't put grandma in a nursing home if she doesn't want to go there.)
7. Do you have special skills or expertise that would be useful in meeting the needs of the AIP in your role as guardian? (*i.e.*, nursing skills, social work, accounting skills.)
8. Do you know what the "substituted judgment standard" is? (GAL may have to explain, see Section 1 above.) Can you make choices for the AIP using the substituted judgment standard rather than on the basis of your own values, even if your values are in conflict with the standard?
9. Do you have the energy and resources to meet the needs of the AIP?
10. Do you expect to be paid for your services? How much?
11. Are you the AIP's caregiver? Have you considered caregiver burnout? How would you meet the AIP's needs if you burn out?
12. Have you ever been convicted of a crime?
13. Have you ever applied for a bond and been refused? Do you reside in, own property in, and/or have an agent in Washington State?
14. Have you ever filed for bankruptcy?
15. Have you ever been sued for breach of a fiduciary duty?
16. Have you taken the required on-line training or watched the video regarding training for lay guardians?
17. Do you understand that a guardian does not have the authority to spend the ward's money without the authorization of the court?

**C. Additional Questions Specifically for Certified Professional Guardians**

1. Does your agency have a general philosophy that you apply in acting as guardian? If so, how would that philosophy apply to this AIP?
2. Is your staff sufficient to meet the needs of this AIP?
3. What is the structure of your organization?
4. How would you be contacted in event of an emergency?

5. What is the company's fee schedule? What is the estimate of the fees you would charge during the first 90 days, the first year, and in subsequent years for this guardianship?
6. If called upon to work with family members as co-guardians, how should the court order define the duties and obligations of each co-guardian?
7. Is your certification current and have you ever had a disciplinary action filed against you?
8. How often are reports of transactions sent out?
9. How do you assist individuals who need help finding resources for medical, therapeutic, educational, personal care, or other services related to disabilities?
10. For a beneficiary with limited family involvement, what is your practice for staying in touch with the client?
11. If there is a need to pay for home care: How would you find a worker? What is it likely to cost? How do you arrange to pay the person? Are there government programs for this?
12. How do you manage cases that are, say, 50 miles from your office? 100 miles? In another State? What geographical areas do you serve? How would you communicate with the ward? Are you in close enough proximity to meet with the AIP at least monthly?
13. What is your knowledge of: Disabilities, Medicare, Medicaid, and SSI?
14. Who represents you in court? Are you audited? If so, is the audit performed by an independent auditor?
15. If the AIP's family or friends are dissatisfied with how the guardianship is being handled, who would they contact? What if they remain dissatisfied? If they ask you to resign, what will you do?
16. What services other than managing guardianships does your organization provide?
17. Are you required by the CPG Board to carry errors and omissions insurance?
18. Do you have errors and omissions insurance? If so, what are the limits of the insurance policy?

## **5. Certified Professional Guardians: Certification and Discipline.**

Any person who: 1) receives a fee to act as guardian, 2) for more than two individuals to whom she or he is not related must be State certified and is required to meet requirements created by the Washington Supreme Court and General Rule 23. General Rule (GR) 23 created the Certified Professional Guardian Board (the Board) to implement and oversee the requirements of Certified Professional Guardians (CPGs). The Board has implemented continuing education requirements, standards of practice and disciplinary rules, and a certification training program for new Professional Guardians. All persons and representatives of agencies who seek to be certified as professional guardians in Washington State must complete the University of Washington Extension Office (UWEO) Guardianship Certificate Program as the mandatory training.

Anyone practicing in this field should review the information on the Certification Board website, [http://www.courts.wa.gov/programs\\_orgs/guardian/](http://www.courts.wa.gov/programs_orgs/guardian/) "certified professional guardian." See link at Appendix E.

There are two types of Professional Guardian Certification: "Individual" certification and "Agency" certification. The website has two separate lists, one for individual persons who are Certified Professional Guardians (CPGs) and one for organizations that are Certified Professional Guardian Agencies (CPGAs). Be aware that some guardians who are certified as individuals use business names for marketing and other purposes but are certified as individuals only. The important distinction is the name that goes on the Order Appointing Guardian and the Letters of Guardianship.

At a minimum, a GAL should check to be sure that a nominated ("Proposed") professional guardian is a Certified Professional Guardian in good standing. This can be done through the Certified Professional Guardian website which contains a listing of any disciplinary records under the guardian's basic information. The Board conducts on average 15 to 20 discipline proceedings per year. See: <http://www.courts.wa.gov/guardianportal/index.cfm?fa=guardianportal.cpg&content=discipline&guardiantype=a>

A disciplinary record becomes public when a complaint has been filed with the Administrator of the Courts by counsel representing the CPG Board. The complaint and all subsequent pleadings filed in the disciplinary action are open to public access, as are agreements regarding discipline. Requests for information concerning disciplinary actions should be directed to the Public Information Officer of the Administrator of the Courts as a Public Records Request. Further information as to how to proceed may be obtained by contacting Administrative Office of the Courts, Office of Guardianship and Elder Services.

The question of what disciplinary records are available to the public (including those of Guardians ad Litem) is, of course, delicate and has been evolving in the direction of greater disclosure. The GAL should be aware that the fact of a grievance is not necessarily indicative of anything about the guardian's qualifications and does not necessarily disqualify them from serving. Many grievances are found to be without merit. Finally, the explicit goal of the discipline process is to assist guardians to correct problem areas in their practice. If a CPG has gone through the discipline process and taken adequate steps to correct problems in his or her practice, this should be recognized.

Currently, a CPG must maintain \$500,000 minimum insurance unless they manage less than \$500,000 total countable guardianship assets **and** less than 25 guardianships or qualify for a waiver. The GAL should check the CPG website for the current E&O requirements for CPGs. The GAL should determine whether the proposed guardian is in compliance with those requirements. Even if the CPG Board does not require E&O insurance for the proposed guardian, the GAL should inquire about whether the proposed guardian carries errors and omissions insurance, and if so, the limits of such coverage, because such coverage, if available, provides additional protection for the IP.



Occasionally, a GAL is appointed to review the work of a Certified Professional Guardian. If the GAL in that case concludes that the CPG has violated court orders, a statute, or the Standards of Practice for CPGs, the GAL should first get a court order finding such misconduct and then consider whether to file a grievance with the Certified Professional Guardian Board. GR 23(a) provides that: "This rule does not duplicate the statutory process by which the courts supervise guardians nor is it a mechanism to appeal a court decision regarding the appointment or conduct of a guardian." The Certification Board's discipline rule provides in most cases for processing of grievances only after receiving documentation that a court exercising jurisdiction has reviewed the matter and issued findings or orders confirming that the guardian has committed some violation.

The Board closely reviews all grievances that originate from a judicial officer. Upon receiving compelling information that suggests it is necessary, the Certification Board can expand its review of a CPG's general practices, and does not necessarily confine its *inquiry* to a particular case.

## CHAPTER VI SPECIAL SITUATIONS: MINORS AND VULNERABLE ADULTS

### A. THE PROTECTION OF VULNERABLE ADULTS

**Statutory Framework.** RCW 11.88.090(9) provides in part:

The court-appointed guardian ad litem shall have the authority to move for temporary relief under chapter 7.40 RCW to protect the alleged incapacitated person from abuse, neglect, abandonment, or exploitation, as those terms are defined in RCW 74.34.020, or to address any other emergency needs of the alleged incapacitated person.

Thus, a GAL must be familiar with RCW 74.34, the **Vulnerable Adult Statute** which provides special protection for vulnerable adults.

The need for this statute was based upon the legislature's finding in RCW 74.34.005 that:

- Vulnerable adults may be subjected to abuse, neglect, financial exploitation, or abandonment;
- Vulnerable adults may be homebound or otherwise unable to represent themselves or to obtain the relief available through the courts;
- Vulnerable adults may lack the ability to obtain necessary services due to lack of capacity to consent;
- Vulnerable adults may have health problems that place them in a dependent position.

A Vulnerable Adult is defined in RCW 74.34.020(22) as a person who is:

- Sixty years of age or older who has the functional, mental, or physical inability to care for himself or herself; **or**
- Found incapacitated under RCW 11.88; **or**
- Who has a developmental disability as defined under RCW 71A.10.020; **or**
- Admitted to any facility; **or**
- Receiving services from home health, hospice, or home care agencies licensed or required to be licensed under RCW 70.127; **or**
- Receiving services from an individual provider, or
- Who self-directs his or her own care and receives services from a personal aide under chapter 74.39 RCW

A Petition for Protection of a Vulnerable Adult must be filed as a separate cause of action, but it can be filed simultaneously with a guardianship petition. After the GAL begins his or her guardianship investigation, the GAL may see the need for a Vulnerable Adult Protection Order (VAPO). A VAPO action may lead to a guardianship petition, if one has not been previously commenced.

**Practice Tip #1**

When there is a guardianship action as well as a Vulnerable Adult action, put the guardianship cause number on the VAPO pleadings and the VAPO cause number on the guardianship pleadings, so that they are cross referenced.

The 2007 amendments to RCW 74.34 require the use of the Vulnerable Adult Protection Order mandatory forms found at: [www.courts.wa.gov](http://www.courts.wa.gov). (RCW 74.34.115)

**Practice Tip #2**

Unless the Petitioner in either the VAPO or the Guardianship proceeding has included language that authorizes GAL investigation into, or participation in, the VAPO proceeding, DO NOT presume GAL has any authorization in the VAPO proceeding, such as billing for time for investigating the allegations or attending the VAPO hearing. If the GAL believes they need to be involved, the GAL may present an order requesting that authority.

**Petition.** RCW 74.34.210 provides that a petition for an order for protection may be brought by the vulnerable adult, the vulnerable adult's guardian or legal fiduciary, the department, or any interested person as defined in RCW 74.34.020. The 2007 amendments to RCW 74.34 added a class of petitioners known as “interested persons”. RCW 74.34.020(12). There are three requirements a petitioner must meet in order to fit the definition of an “interested person.” The petitioner must:

1. Be interested in the welfare of the vulnerable adult; and
2. Have a good faith belief that the court’s intervention is necessary; and
3. Allege facts showing that the vulnerable adult is unable to protect his or her own interests by reason of incapacity, undue influence or duress at the time the petition is filed. (This may require a separate evidentiary hearing)

RCW 74.34.110, .120 and .130 set forth the requirements and procedure for a Petition for Order of Protection of a Vulnerable Adult. The petition shall allege abandonment, abuse, financial exploitation, neglect, or the threat thereof. The court must find that the person was a vulnerable adult at the time the allegation of abandonment, abuse, financial exploitation, neglect, or the threat thereof occurred. *In re the Guardianship of Emma Endicott v. Saul*, Div I, docket No. 58435-9, (2008).

**Practice Tip**

Include in the petition allegations of how the person fits the definition of a vulnerable adult, because you must prove that the person was a vulnerable adult at the time they were exploited, abused, abandoned or neglected.

**Service.** Upon making a prima facie case for the entry of a temporary order of protection, the court may restrain a respondent from acting in certain ways. The court then orders a hearing on the petition to be held within fourteen days, at which time the court may enter final orders of relief, for up to five years. The 2007 amendments to the Vulnerable Adult Act require the use of mandatory forms for Vulnerable Adult Protection Orders. These forms are found at [www.courts.wa.gov](http://www.courts.wa.gov).

The 2007 amendments authorize service on the respondent by mail or publication if reasonable efforts to personally serve are unsuccessful. RCW 74.34.120(2)(3). Requirements for service on the vulnerable adult are contained in RCW 74.34.120(3). The 2007 amendments also abolish filing fees. RCW 74.34.110(9).

**Bond.** If temporary relief is sought, the court must decide whether the petitioner should be required to post a bond. RCW 7.40.080 requires that the court set the required surety bond in an amount sufficient to cover all damages and costs that the party being restrained or enjoined may incur as a result of the injunction or restraining order. However, the statute also provides that “the court in its sound discretion may waive the required bond in situations in which a person's health or life would be jeopardized.”

While bond may be waived if the vulnerable adult/AIP's health or life is in jeopardy, if it is only alleged that the vulnerable adult/AIP's finances are in jeopardy, bond is required.

#### **Practice Tip**

If the vulnerable adult/AIP is being financially exploited, consider utilizing other means of protection. For example, recording the guardianship petition and note for hearing with the county auditor provides notice to third parties that the vulnerable adult/AIP's capacity is in question and that the guardianship hearing will be held on a given date. RCW 30A.22.210 may also prove helpful if the GAL can demonstrate to the financial institution that there is uncertainty as to who is entitled to the funds in the account. Be realistic, however. If you freeze the vulnerable adult/AIP's bank account, consider how his or her bills will be paid pending the hearing. A less formal approach might be to write a letter to the person who appears to be making unauthorized withdrawals.

**Relief.** Typical temporary and/or “permanent” (five-year maximum) relief includes:

- Restraining respondent from committing acts of abandonment, abuse, neglect, or financial exploitation;
- Excluding respondent from petitioner's residence for a specified period or until further order of court;
- Prohibiting contact by respondent, including third party contact on respondent's behalf, including keeping a certain distance (500 ft. max);

- Requiring an accounting by respondent of disposition of petitioner's income or resources;
- Restraining the transfer of property for a specified period not to exceed ninety days;
- Requiring respondent to pay filing fee and court costs, including service fees, and to reimburse the petitioner for costs incurred in bringing the action, including a reasonable attorney's fee.
- Restraining respondent from exercising authority under a Power of Attorney or Health Care Directive.

A GAL appointed in a guardianship proceeding in which a petition for protection of a vulnerable adult is filed must proceed carefully. There is no provision in RCW 74.34 for the appointment of a GAL. If the GAL is also appointed in the VAPO action, it should be by separate order under the VAPO cause number. If no VAPO action is pending, the guardianship GAL should get court authorization to petition for a VAPO. If the guardianship GAL does petition for a VAPO, it is advisable for the GAL to keep separate billing records for each matter as the court may order the respondent, through the relief granted under RCW 74.34, to pay all the fees and costs related to the VAPO action, including the GAL fees.

Because the Vulnerable Adult statute not only allows entry of restraints against a third party, but may also have the effect of interfering with the alleged vulnerable adult's rights (such as the right to associate with the restrained person or to spend money), the GAL should proceed cautiously. If the alleged vulnerable adult has not yet been determined to be incapacitated and is not joining in the request for relief, the GAL should consider proposing that any relief afforded in the Vulnerable Adult action be reviewed by the court at the final hearing on guardianship protection.

**AIP/Vulnerable Adult Disagrees.** The 2007 amendments to RCW 74.34 provide specific guidance for the situation in which the vulnerable adult/AIP disagrees with the relief requested. RCW 74.34.135(4) provides:

If the court determines that the vulnerable adult is capable of protecting his or her person or estate in connection with the issues raised in the petition, and the individual continues to object to the protection order, the court shall dismiss the order or may modify the order if agreed to by the vulnerable adult. If the court determines that the vulnerable adult is not capable of protecting his or her person or estate in connection with the issues raised in the petition or order, and that the individual continues to need protection, the court shall order relief consistent with RCW 74.34.130 as it deems necessary for the protection of the vulnerable adult. In the entry of any order that is inconsistent with the expressed wishes of the vulnerable adult, the court's order shall be governed by the legislative findings contained in RCW 74.34.005.

When the vulnerable adult opposes the issuance of a vulnerable adult protection order, the standard of proof is clear, cogent and convincing evidence, because the order implicates the vulnerable adult's due process rights. *In re the Matter of Dagmar O. Knight*, 178 Wash. App. 929, 937, 317 P. 3d 1068 (2014).

The guardianship proceeding may have a different disposition than the vulnerable adult action. For example, a durable power of attorney may be executed in settlement of the issues that led to the guardianship proceeding, and thus the guardianship petition can be dismissed. However, the issues that led to the filing of the vulnerable adult petition may be ongoing, such as alleged financial exploitation. This situation might require a continuing investigation by the GAL. If the GAL has not been specifically appointed in the Vulnerable Adult action, the GAL should obtain court approval prior to continuing the investigation.

Finally, the death of the vulnerable person does not deprive the court of jurisdiction to seek restitution or other relief from a respondent. Upon petition, the right to initiate or maintain an action on behalf of a vulnerable adult is transferred to the Personal Representative of the deceased person's estate. However, if the Personal Representative of the deceased person's estate is also the respondent in the VAPO, the court should order that the original petitioner should continue in that role and the Slayer's Statute provisions under RCW 11.84 should be reviewed.

**Adult Protective Services/Attorney General.** Adult Protective Services (APS) is the branch of Department of Social and Health Services (DSHS) that investigates allegations of vulnerable adult abuse and neglect, abandonment and financial exploitations. Some persons who deal with vulnerable adults are required to report suspected abuse. RCW 74.34.020(14), .035. A guardian ad litem is a "permissive reporter", i.e., a person who is not required to report abuse. *Id.* However, the King County Guardian ad Litem Registry Code of Conduct provides that the GAL "shall report" any child abuse or neglect or adult abuse as found by the GAL. To report suspected child or vulnerable adult abuse, call 1-866-ENDHARM. After an initial intake of a complaint, an investigator may be assigned. The investigation may result in the filing of a guardianship petition or action for other relief. Thus, the petitioner in some guardianship and vulnerable adult protection order proceedings may be the State of Washington. When the petitioner in a guardianship or vulnerable adult protection proceeding is DSHS, an Assistant Attorney General will represent DSHS as the client.

### **GAL Safety**

If the GAL is uncomfortable visiting the home of the AIP for any security reasons, and if it is known that APS is involved in the case, an APS investigator may be willing to introduce the AIP and stay nearby. If there are more serious security concerns, a GAL should request law enforcement assistance.

### **APS Records**

Adult Protective Services reports and investigative notes are confidential but often contain vitally important information. If the GAL wants to review APS records or speak with the APS investigator about the case, the GAL may obtain the APS records by

contacting the local APS office Public Disclosure Officer. Sending APS the Order Appointing GAL will assist APS in responding to the request. Any records received by the GAL from DSHS may not be disseminated to anyone without court order.

## **B. GUARDIANSHIP OF MINORS**

This section will address the **differences** or **additional** requirements a GAL may face when dealing with a guardianship for a minor. It does not cover minor settlements: settlement guardians ad litem are appointed from a separate registry and minor settlements are the subject of a separate training seminar.

**Mere fact of minority.** RCW 26.28.010 defines the age of majority as eighteen. A person under eighteen married to a person of full age is considered of full age as well. RCW 26.28.020. RCW 11.88.010(l)(d) provides that a person may “be determined incapacitated if he or she is under the age of majority as defined in RCW 26.28.010.” Therefore, for purposes of guardianship, marriage to a person of full age may not avoid a finding of incapacity due to minority. RCW 11.92.010 also establishes the age of majority for the purposes of RCW Chapters 11.88 and 11.92 at 18 years.

Although a guardian may be appointed for a minor in a guardianship action pursuant to RCW 11.88, nothing in that statute confers upon the guardian the right of custody contrary to the interests of the child’s parents. See *Marshall v. Pitt*, 46 Wn. App. 339, 731 P.2d 5 (1986). RCW 26.10 governing Nonparental Actions for Child Custody provides a detailed and complete remedy for the permanent custody and support of children as well as provision for visitation orders in the child’s best interests.

Recent amendments to RCW 26.10 require the court to review the Judicial Information System any time a custody order is being considered. Furthermore, the court is required to obtain criminal background information on the proposed custodians and a report on them from Washington Child Protective Services before any final nonparental custody order is entered. When the AIP is a minor, some counties are also requiring the same screening information for the proposed guardian of the person before the final guardianship order is entered. Given that the GAL is required to make a determination of the appropriateness of the proposed guardian, the GAL may wish to obtain this information even if the court does not require it. Some counties also require the custodians to attend a parent seminar as a prerequisite to entry of a final custody order. It is unknown whether any counties will have the same prerequisite for proposed guardians.

If minority is the sole basis for incapacity, the GAL need not obtain a medical/psychological report. RCW 11.88.045(4). If, however, there is an additional basis (other than minority) upon which the court could find incapacity that would extend beyond the age of majority, for example, developmental disability or traumatic brain injury, the GAL should arrange for and file the medical report required by RCW 11.88.045(4).

**Notice Requirements.** If the minor is over fourteen years of age, the minor must be personally served with the Notice of Hearing. RCW 11.88.040. If the minor is under fourteen, personal service or service by registered/certified mail with return receipt requested to the minor, his or her parent, or his or her guardian or limited guardian is required. That notice is waived if the minor fourteen years old or over provides written consent to the guardianship or if the petition is by a parent. *Id.* Caution: Although the statute does not explicitly require notice to the other parent, common sense would dictate that both parents have the right to notice and an opportunity to be heard concerning the welfare of their children.

**Native American.** Special circumstances arise if the minor is an “Indian Child”, under the Indian Child Welfare Act (ICWA), 25 USC 1900, *et seq*, particularly 25 USC 1912 and the petition seeks to ratify or permit placement/custody of a child (i.e. guardianship of the person). The Tribe has party status in the proceedings and special requirements beyond the scope of these materials apply as to notice, evidence, procedure, and jurisdiction. The GAL will also want to bring this information to the attention of the court immediately.

**Guardians for Minor Children Nominated by Will or Durable Power of Attorney.** RCW 11.88.080 provides a procedure by which a parent may nominate a guardian(s) of the person and/or estate of his or her minor child(ren) in the parent's last will or durable power of attorney. The court must confirm the guardian designated by the parent to serve as the guardian upon the parent's death or incapacity unless the court finds that the individual designated in the parent's last will or durable power of attorney is not qualified to serve. If after investigation, the GAL believes that there is evidence to suggest that the nominated guardian is not appropriate, the GAL should not only state the reasons why in the report, but also be prepared to prove those facts if there is a contested hearing.

**No GAL Needed in Certain Circumstances.** RCW 11.88.090(3)(b) provides in part that, "No guardian ad litem need be appointed when a parent is petitioning for a guardian or a limited guardian to be appointed for his or her minor child *and the minority of the child, as defined by RCW 11.92.010, is the sole basis of the petition.*" (Emphasis added). It is unlikely that a GAL would be appointed under those circumstances. However, if a GAL is appointed, she or he may consider petitioning the court for instructions before expending substantial time on an investigation.

In probate proceedings, if a minor is interested in the estate in which the surviving spouse or surviving registered domestic partner, who is the minor's parent, is the sole beneficiary under the will, the court may grant a motion by the personal representative to waive the appointment of a GAL for the minor child. RCW 11.76.080. The court may prefer, however to appoint a GAL for the minor child to investigate the issues and report to the court, particularly if the child is the beneficiary of nonprobate assets. The GAL who is appointed in that situation is usually from the separate Settlement Guardian ad Litem (SGAL) registry, at least in King County, but the SGAL may recommend a guardianship of the estate of the minor, in which case a guardianship GAL would be appointed.



RCW 11.92.043(4) imposes an additional duty on the guardian of a minor "to see that the incapacitated person receives appropriate training and education and that the incapacitated person has the opportunity to learn a trade, occupation, or profession." Most parents genuinely desire to provide for their children. The obligation of a parent to support a child is imposed by common law and by statute. *In re Hudson*, 13 Wn.2d 673, 26 P.2d 765 (1942); *State v. Wood*, 89 Wn.2d 97, 569 P.2d 1148 (1977). This obligation also falls upon the stepparent pursuant to RCW 26.16.205. Our courts are reluctant to allow expenditures from a minor's estate for the support of the minor or the minor's family. This policy was expressed in the case of *In re Rudonick*, 76 Wn.2d 117, 125, 456 P.2d 96 (1969) as follows:

We have repeatedly stated that it is the duty of parents to support their children, and courts should allow expenditures from a child's estate for its support only in extreme cases when the parents are unable to provide support.

citing, *In re Rohn*, 157 Wash. 62, 288 P. 269 (1930); *In re Deming*, 192 Wash. 190, 73 P.2d 764 (1937); *In re Ivarsson*, 60 Wn.2d 733, 375 P.2d 509 (1962).

The courts may allow such expenditures when there has been an adequate showing that the parents are unable to adequately provide for the support and education of the minor. *In re Rohn, supra*; *In re Deming, supra*. If the GAL determines that there is a likelihood that a parent, if appointed as guardian of the estate of his or her minor child, will be tempted to request to use the child's funds frequently, it is appropriate to address the potential conflict of interest in the parent, as guardian, petitioning the court for authority to spend the child's money to pay for items falling within the parent's duty to provide as part of the general support obligation. In such a case, a disinterested third person acting as guardian or co-guardian of the estate might provide a more balanced approach.

## CHAPTER VII ALTERNATIVES TO GUARDIANSHIP

Use of alternatives to guardianship is preferred in this state. This chapter describes various means by which every competent person can minimize the circumstances in which a guardian will need to be appointed for his or her protection. Sometimes one of the alternatives to guardianship can be executed by the AIP during the pendency of a guardianship proceeding, thereby eliminating the need for appointment of a guardian or at least allowing the guardianship to be substantially limited.

**Legislative Intent and Statutory Mandate.** Since 1990, the formal statement of legislative intent concerning guardianship and its restrictions on liberty and autonomy has been:

to protect the liberty and autonomy of all people of this state, and to enable them to exercise their rights under the law to the maximum extent, consistent with the capacity of each person. The legislature recognizes that people with incapacities have unique abilities and needs, and that some people with incapacities cannot exercise their rights or provide for their basic needs without the help of a guardian. However, their liberty and autonomy should be restricted through the guardianship process only to the minimum extent necessary to adequately provide for their own health or safety, or to adequately manage their financial affairs.

RCW 11.88.005.

A guardianship should be established only when it is determined that the risks to a person or his estate cannot otherwise be satisfactorily abated without the imposition of a guardianship. Even a limited guardianship, as discussed in Chapter V, is less preferable than an alternative to guardianship.

Since 1996, the guardianship statute has required that alternatives to guardianship be considered and used. For example, RCW 11.88.030(1)(i) requires the guardianship petition to include:

A description of any alternate arrangements previously made by the alleged incapacitated person, such as trusts or powers of attorney, including identifying any guardianship nominations contained in a power of attorney, and why a guardianship is nevertheless necessary.

While a limited guardianship restricts the specific powers and duties of a guardian, alternatives to guardianship are arrangements made by the AIP while competent to provide for assistance or are ordered by the court *instead* of guardianship. Even a complete loss of functional capacity does not require a guardianship of a person whose needs are being met. For example, a person in a comatose state is clearly incapacitated,

but that person does not need a guardian if he or she has previously signed a durable power of attorney appointing an attorney in fact to manage his or her affairs and his/her affairs are being effectively managed.

Note, however, that some alternatives may not fully address all of the needs of an incapacitated person. Some alternatives, like a durable power of attorney, stand alone in most circumstances; other alternatives to guardianship may be useful in some situations only *in conjunction with* a limited guardianship.

RCW 11.88.090(5)(e) provides that the GAL has the duty to:

investigate alternate arrangements made, or which might be created, by or on behalf of the alleged incapacitated person, such as revocable or irrevocable trusts, durable powers of attorney, or blocked accounts; whether good cause exists for any such arrangements to be discontinued; and why such arrangements should not be continued or created in lieu of a guardianship.

Pursuant to RCW 11.88.090(5)(f)(iv), the GAL report must include:

A description of any alternative arrangements previously made by the alleged incapacitated person or which could be made, and whether and to what extent such alternatives should be used in lieu of a guardianship, and if the guardian ad litem is recommending discontinuation of any such arrangements, specific findings as to why such arrangements are contrary to the best interest of the alleged incapacitated person.

The GAL should analyze all of the available alternatives to guardianship. It is considered good practice to incorporate this analysis into the GAL report as a way of bolstering the GAL's position for or against a guardianship. To competently analyze the alternatives to a guardianship, the GAL must understand the scope and limitations of authority conferred by many of the commonly used estate planning documents—health care and general powers of attorneys and living trusts---and optional methods for holding title to property.

**Powers of Attorney.** A power of attorney is a written delegation by one person, known as the principal, to another person or entity, known as the attorney in fact, of limited or general authority, to act on behalf of the principal. The power can be for a specific one-time purpose--for instance, to sign a deed for the sale of real estate while the principal is out of the country. In that case, the power of attorney is called a special and limited power of attorney. On the opposite extreme, the power of attorney can be general and encompass the authority to act on behalf of the principal at all times in all matters permitted by law. A power of attorney document must be signed and dated by the principal, and the signature must be either acknowledged before a notary public or attested by two or more witnesses. RCW 11.125.050 (1). A durable power of attorney intended to confer authority over real property must be notarized.

Under the common law, a power of attorney terminated automatically upon the legal incapacity of the principal, since he or she could no longer monitor the faithful performance of the agent. Most states, however, have enacted laws that permit powers of attorney to be made “durable,” meaning that they will continue in force notwithstanding the incapacity of the principal. In Washington, to be durable, a power of attorney must state that it is not affected by the disability of the principal or that it will only take effect upon disability or use similar language. RCW 11.125.040. When the durable power of attorney states it will become effective only upon the finding of incapacity of the principal or other such language, it is called a “springing” power of attorney because it springs into effect only in the circumstance described in the document.

A durable power of attorney can be a viable, less restrictive alternative to a guardianship where the AIP has previously executed, or is willing to execute, such a document and is believed to have sufficient capacity to do so. The standard of capacity to execute a durable power of attorney is the subject of some debate. Generally, the AIP should have some knowledge of the person being named as the attorney in fact and understand that he or she is entering into a fiduciary relationship with that person regarding the powers granted to the attorney in fact. Under Washington law, a person of legal age is presumed to possess full legal capacity to enter into a power of attorney until adjudged incapacitated.

#### ADVANTAGES

- Allows the AIP to maintain autonomy and privacy by personally selecting a friend or family member to act as his or her fiduciary.
- The principal retains all right and authority to continue to act.
- The principal retains the power to revoke the power of attorney at any time as long as he or she is not incapacitated.

#### DISADVANTAGES

- The attorney in fact may have difficulty getting third parties to recognize the validity of the document.
- The attorney in fact may not act in concert with the principal.
- The attorney in fact may be unavailable or become incapacitated.
- Because the principal remains able to act on his or her own behalf, e.g., to contract, the principal may be vulnerable to abuse by and/or the undue influence of others.
- Because the principal can revoke the power of attorney at will, it may not be a viable long term alternative to avoid guardianship in some cases.

**General Durable Powers of Attorney.** A general durable power of attorney usually grants to the attorney in fact the power to act for the principal in a myriad of matters. Generic durable powers of attorney are available at stationery stores and on the internet and grant very broad powers. Durable powers of attorney that are specifically drafted by or for the principal can be specifically tailored to reflect specific wishes of the principal.

Note: A general power of attorney does not permit the attorney in fact to make health care decisions unless it *specifically* grants to the attorney in fact the power to make health care decisions for the principal. See RCW 11.125.400. In addition, RCW 11.125.400 (3) excludes certain persons from acting as attorneys in fact for health care matters for a principal.

**Separate Health Care Powers of Attorney and Financial Powers of Attorney.**

Some people want to give very specific instructions to their attorney in fact regarding health care. Since a copy of a power of attorney is usually kept in the medical chart, many attorneys recommend that a separate durable power of attorney for health care be executed. Separate durable powers of attorney for health care and financial matters also allow the principal to name different attorneys in fact for each function.

**Resolution of Problems Involving Powers of Attorney.** Some guardianship petitions are brought because there is a conflict involving the exercise of a durable power of attorney for the benefit of an AIP. All guardianship GALs should be familiar with RCW 11.125.160, which provides for the filing of a petition to resolve matters regarding the application and use of powers of attorney. The petition is filed in court seeking an order regarding the actions of the attorney in fact. The persons who have standing to file such a petition are enumerated in RCW 11.125.160 (1). The GAL who is appointed in a guardianship case involving an AIP who previously executed a durable power of attorney is not one of those persons specifically authorized to file an RCW 11.125.160, but the GAL would qualify as an “interested person” under RCW 11.125.160 (1)(d). However, if there is a question about the attorney in fact’s acts or management of assets, a GAL could probably file a motion for instructions seeking an order for an accounting in the guardianship proceeding citing RCW 11.125.160 for the basis for the GAL’s request.

If a durable power of attorney document exists, but there are certain issues or concerns to be addressed for the durable power of attorney to be effective. Such proposals can be made by the GAL to the court citing the court’s authority under RCW 11.125.160 (2) and RCW 11.96A.020 (1)(a).

Regardless of who has been nominated to serve as a guardian in the guardianship petition, the person designated by the AIP in his or her most recent power of attorney document as guardian has to be considered ahead of the nominee named in the petition. RCW 11.88.010(4) states that:

a principal may nominate, by a durable power of attorney, the guardian or limited guardian of his or her estate or person for consideration by the court if protective proceedings for the principal’s person or estate are thereafter commenced. The court shall make its appointment in accordance with the principal’s most recent nomination in a durable power of attorney except for good cause or disqualification.

*See also*, RCW 11.94.010 (1). This statutory preference for nominees for guardian made during capacity by the AIP is reflected as well in RCW 11.88.090 (5)(e), which directs the GAL to investigate:

alternate arrangements made, or which might be created, by or on behalf of the alleged incapacitated person, such as revocable or irrevocable trusts, durable powers of attorney, or blocked accounts; whether good cause exists for any such arrangements to be discontinued; and why such arrangements should not be continued or created in lieu of a guardianship.

**Practice Tip**

If the reason that the petition for guardianship has been filed is because an otherwise valid power of attorney is not being honored by a bank, a title company, or other financial institution, the Guardian ad Litem may make a recommendation to the court that steps be taken under RCW 11.125 94 to establish the validity of the power of attorney.

Alternate arrangements established before a guardianship petition is filed remain in effect during the proceeding unless the court orders otherwise after following procedures intended to afford due process to the AIP and the other parties affected by the arrangement. *See* RCW 11.88.045(5) and 11.88.090(9).

**Informed Consent Statute.** Occasionally a guardianship is sought by health care providers or third parties who believe that the patient lacks the legal capacity to give informed consent to proposed health care procedures and therefore needs a guardian. Guardianship, however, is not always needed to give consent to health care.

The informed consent to treatment of a patient who is not legally competent to give it may be given by another person if no guardian has yet been appointed. RCW 7.70.065. A statutory hierarchy of persons who can grant consent is set forth in section (1)(a) of that statute:

- (i) The appointed guardian of the patient, if any;
- (ii). The individual, if any, to whom the patient has given a durable power of attorney that encompasses the authority to make health care decisions;
- (iii) The patient's spouse or state registered domestic partner;
- (iv). Children of the patient who are at least eighteen (18) years of age;
- (v) Parents of the patient; and
- (vi) Adult brothers and sisters of the patient.

Difficulties may arise if members of the class of persons (*e.g.*, the children) disagree on a course of treatment. If agreement cannot be reached, a guardianship petition may be needed. If a court appoints a guardian of the person for one who has an existing medical power of attorney, however, then the court must make a specific finding of fact regarding the continued validity of the medical power of attorney. *See* RCW 11.88.095 (5).

Health care agents, like guardians, cannot—without court order—consent to convulsive therapy, psychosurgery, physical restraints, or restrictions on the statutory rights of institutionalized patients. *See* RCW 11.94.010 (3), 11.92.043 (5).

#### ADVANTAGES

- Health care providers view the Informed Consent Statute as clear and concise in providing direction. It alleviates confusion in the event of a medical emergency.
- No document or forethought on the part of the AIP may be required if the AIP has family who is able to provide informed consent.

#### DISADVANTAGES

- Health care providers may seek court direction when there is conflict among the classes of persons and no consensus is reached.
- The AIP's wishes may not be considered.
- Medical decisions are frequently made in emergency situations; the emotional reaction to the situation may interfere with the ability of others to make informed consent.

**Health Care Directives (Living Will).** When a petition for guardianship of the person is filed, particularly when the AIP has a critical or chronic illness, the willingness of a guardian-nominee to honor the wishes contained within a Health Care Directive is vital information for the GAL to have.

The Washington Natural Death Act permits persons to direct whether life-sustaining treatment and artificial nutrition and hydration should be withdrawn or withheld *in the event they are in a terminal condition or permanent unconscious condition*. *See* RCW 70.122. The statute provides a model Health Care Directive form, which can be used as is or with changes. *See* RCW 70.122.030.

Health care providers that receive Medicare and Medicaid funds are required by the federal Patient Self-Determination Act (42 CFR § 489.102) to inform individuals of their right to make choices about health care in advance. This law applies to hospitals, rural primary care hospitals, nursing homes, hospices, home health agencies, personal care programs, health maintenance organizations (HMOs), and residential rehabilitation centers that are licensed in Washington. However, an individual is *not* mandated to make such an advance directive and may not be required to do so as a precondition to admission into a facility or as a precondition to the receipt of services.

If a person has executed a Health Care Directive pursuant to RCW 70.122.030, then no appointment of a guardian should be necessary to effectuate the individual's desire to withhold or withdraw life-sustaining treatment in the event he or she is in a terminal or permanent unconscious condition and the mandatory physician verification has taken place. Even if the person has failed to execute a Health Care Directive or similar writing, the Washington Supreme Court has stated that "a guardian need not be appointed to make the decision to withhold life-sustaining treatment if the incompetent patient's immediate

family members all agree that such treatment should be withheld.” *In re Grant*, 109 Wn.2d 545, 566 n.4 (1987), citing *In re Hamlin*, 102 Wn.2d 810 (1984).

**Practice Tip**

Health Care Directives are subject to revocation (oral, written, or destruction of the document) by the declarer regardless of the declarer’s mental state or competency. Review RCW 70.122.040(1).

**Mental Health Advance Directive.** If an AIP suffers from debilitating psychological or psychiatric disorders, a Mental Health Advance Directive may be a suitable alternative to a guardianship of the person. Created by the Washington legislature in 2003, a mental health advance directive describes what a person wants to happen if he or she becomes so incapacitated by mental illness that his or her judgment is impaired and/or he or she becomes unable to communicate effectively. See RCW 71.32. Similar to a health care directive, the mental health advance directive informs others about what treatment may or may not be permissible and identifies a substitute decision maker for the principal. Using this advance directive, a person who suffers from mental health disorders that are periodically incapacitating may make decisions in advance about mental health treatment, including medications, short-term admission to inpatient treatment, and electroconvulsive therapy.

A person identified as an agent for mental health decisions must be notified of this appointment. Upon accepting appointment, this agent must act in a manner that is consistent with the principal’s wishes. If the agent does not know what the principal’s wishes are, he or she must act in the principal’s best interests. The agent can withdraw from the appointment at any time. In addition, a mental health advance directive may be withdrawn by the principal in writing at any time.

Washington law requires mental health providers to respect a properly executed mental health advance directive, but they are not mandated to follow the directives in all cases. Directives may be disregarded if following express instructions or preferences would be against hospital policy, would violate state or federal law, or would create a risk of harm to third parties. Also, if a person is involuntarily hospitalized under the Involuntary Treatment Act or incarcerated in jail, mental health advance directives may not be fully honored. RCW 71.32150.

In view of the limitations of authority of a guardian of the person, a mental health advance directive may be an appropriate alternative to a guardianship of the person where the primary risk is created by mental health disorders.

**Trusts.** As an alternative to a guardianship of the estate, a GAL may recommend that a trust be created or continued for the benefit of an AIP. The court can require court supervision of a trust for the benefit of an incapacitated person. When there is a pre-existing trust, an alternative to a guardianship could include recommending a change of



trustees; requiring an accounting to resolve specific questions, and using the trust instead of a guardianship but requiring the trustee to submit to some degree of court supervision.

A trust is an arrangement whereby a person (called the trustor or settlor) transfers money or property to another person or entity (called the trustee) to be managed and used as directed in the trust document for the benefit of some party (called the beneficiary). If the trustor creates the trust while alive, it is called a “living trust”; if the trust is created by the trustor’s last will, it is called a “testamentary trust.” The same person can be the trustor, trustee and beneficiary of a living trust.

The trust document typically directs the trustees to spend the trust funds as may be necessary for the care and support of the beneficiary. It may identify one or more successor individuals to act as the successor trustee if the original trustee becomes incapacitated, dies, or is otherwise unable to continue acting as trustee.

Trustees (including successor trustees in the context of typical living trusts) are recognized as fiduciaries under the law and must act always in good faith and with honest judgment. See Chapter V. While Washington has a substantial body of statutory laws that place various duties (including accounting requirements), restrictions, and liabilities upon trustees, RCW 11.97.010 permits trustors, in a trust document, to relieve their trustees from those provisions.

The court has inherent equity power to sanction or remove trustees if they breach their fundamental fiduciary responsibilities, responsibilities under the trust document, or statutory responsibilities that have not been waived by the trustor. The problem, however, is that, other than court created trusts, few trusts are subjected to scrutiny by the courts except when an interested party commences litigation or other judicial proceeding.

If a person has set up a living trust arrangement for the management of his or her financial affairs in the event of his or her incapacity, his or her wishes in that regard should be respected in most cases by guardians ad litem and the courts. If a particular trustee is found to have breached his or her fiduciary responsibilities, courts have ample power to remedy the breach by sanctions or by replacing the trustee with another.

#### ADVANTAGES

- Allows a person’s estate to be managed by the person he or she has chosen and in the manner he or she has chosen.
- Can be less expensive to administer than a guardianship.

#### DISADVANTAGES

- May not have the same safeguards as a guardianship, i.e., bond, accounting, regular court scrutiny, etc.
- Arrangement may no longer be appropriate for the management of the person’s estate.

**Driver's License Re-Examinations.** A guardianship proceeding may be started primarily to restrict an AIP's right to drive a motor vehicle. The Washington Department of Licensing (DOL) form titled "Recommendation for Driver Re-examination" may be submitted by any person with personal knowledge of a driver who has physical or mental disabilities that could affect his or her safe driving. The form is available online at <http://www.dol.wa.gov/forms/500008.pdf>. Upon receipt of the recommendation, the Department of Licensing acts to reassess driver competency. The DOL may require a full written and driving re-examination and certification of the driver's fitness by a physician or approved medical professional. A driver's license may be revoked, restricted, or renewed by the Department of Licensing. RCW 46.20.305 and 46.20.041.

#### ADVANTAGES

- Safety concerns for driving can be resolved in a less restrictive alternative to guardianship.
- The AIP may be more amenable to accepting services in the home if his or her right to drive is removed.

#### DISADVANTAGES

- A copy of the Recommendation for Driver Re-examination is provided to the driver if he or she requests it. The form includes the signature of the petitioning party. This may create additional conflict.
- Removal of the AIP's right to drive may not deter the AIP from driving without a license.
- The AIP may need protection in other areas that are not addressed by the Department of Motor Vehicle action.

#### **Practice Tip**

While a guardianship is not needed if the sole purpose is to deal with driver's license issues, every GAL should be aware that the licensing statute, RCW 46.20.031(4), provides that a driver's license may not be issued to anyone who has been adjudged to be "mentally ill, insane, or incompetent" due to mental disability or disease. A driver's license may be issued, however, if the person "(a) has been restored to competency by the methods provided by law; or (b) The superior court finds the person able to operate a motor vehicle with safety upon the highways during such incompetency." *Id.* The GAL should consider including in the report information about whether the AIP drives or intends to drive, has access to a car, has a current driver's license, and has auto insurance.

**Care/Case Management Services.** Whether the recommendation by the GAL calls for the appointment of a guardian, limited guardian, or continuance of management of the AIP's affairs under a durable power of attorney or trustee, the GAL may recommend that the family contract with a professional care manager to develop a plan of care to be followed by a health care agent who will then routinely report to the family. Sometimes

the personal and medical needs of an impaired individual can be met through care or case management services alone so that the individual can continue functioning with autonomy, but with the supervision that is needed to ensure the safety of the AIP. A case or care manager is usually a private pay solution and is therefore only available in cases in which the AIP has the funds to pay for the manager.

Care/case management involves assessing an individual's needs and developing and implementing a plan to meet those needs. The manager maintains ongoing contact with the impaired individual to enable prompt response to needs or changes in condition. The care/case management contract requires the impaired individual's acceptance and agreement with the plan of care and the payment agreements. An agent acting under a power of attorney can generally sign agreements for these services on behalf of the principal. A GAL can identify potential care/case management providers through online searches or seek recommendations from professional guardianship agencies, governmental agencies or charitable groups established for the particular impairment from which the AIP suffers, *e.g.*, The Alzheimer's Association.

It should be noted that the success of care/case management services as an alternative to a guardianship of the person will vary. The degree and extent of care/case management services varies widely. Fees for such services are affected by the nature and degree of incapacity and the AIP's willingness to accept services.

#### ADVANTAGES

- The AIP maintains his or her autonomy.
- Appropriate services are secured.
- May enable the AIP to remain at home.

#### DISADVANTAGES

- The AIP may not fully understand the contract for services or may resist signing an agreement.
- Services may be too expensive.
- The AIP may terminate the care/case manager's services at any time.
- The care/case manager may terminate the services at any time.
- The care/case manager may be unwilling to contract with the AIP without an agreement with the attorney-in-fact or the surrogate decision maker.

#### **Practice Tip**

1. Be aware that there are professional associations and certification credentials for care/case managers: apply consumer safeguards.
2. If the AIP is already receiving case management services through the Department of Social and Health Services (DSHS), additional services should not be duplicative.

**Authority of Spouse or Registered Domestic Partner to Manage Community Property.** RCW 26.16.030 grants to each spouse or registered domestic partner the power, acting alone, to manage the couple's community property, with certain exceptions. So, in the event of the incapacity of a spouse or domestic partner, the other may have statutory authority, due to the marriage or registration of their domestic partnership and the community character of their property, to manage the incapacitated spouse's or domestic partner's property without the necessity for appointment of a guardian of the estate.

#### ADVANTAGES

- There is no cost.

#### DISADVANTAGE

- This statute applies only to community property and does not give the spouse or domestic partner the authority to manage the incapacitated spouse's or partner's separate property, if any.

**Joint and Agency Bank Accounts.** The name of an adult child or trusted friend may be added to an AIP's bank account as an authorized signer as a less restrictive means of providing assistance with the AIP's financial affairs. Accounts may be held in joint tenancy (each "tenant" has full rights to access over the funds) or account holders may also be designated "Joint Tenants with Rights of Survivorship" ("JTWROS"). Under a JTWROS designation, each party has full rights to access over the funds, and the account automatically becomes the property of the survivor at the first party's death. *See* RCW 30.22. Creation of a joint account with right of survivorship may be contrary to the AIP's overall estate plan, however, since JTWROS designations take precedence over the provisions of a will.

Joint tenancies can be useful administrative tools, but the rights of access and lack of accounting requirements and supervision can create an opportunity for financial exploitation of the AIP. These less restrictive alternatives should be considered, but used with care.

#### ADVANTAGES

- A trusted family member or friend can assist in management of funds by paying bills.
- The client technically retains full access and decision-making power over the funds.
- JTWROS accounts may avoid probate if there are no other significant assets.
- Can be used in conjunction with financial and health care durable powers of attorney as an alternative to guardianship.

## DISADVANTAGES

- May leave AIP vulnerable to financial exploitation.
- May interfere with the intentions of the AIP regarding overall estate distribution.
- No explicit written agreements outlining the intentions of the parties are required.

**Bill Paying Services.** Professional bill paying services can be used in lieu of a guardian of the estate; some financial institutions also offer bill paying services.

## ADVANTAGES

- Client maintains autonomy and privacy.
- Services are limited to contracted functions, which can include paying of bills, handling insurance matters and Medicare claims, and preparation and filing of annual tax returns. (Bill paying services may be available through volunteer, non-profit organizations; bill payers should be licensed and bonded to ensure security of assets.)

## DISADVANTAGES

- May be costly. Typically, bill paying services will be a cost to the AIP.
- May be dependent upon the AIP's capacity to provide consent.
- Success of this as an alternative may be affected by other factors, such as the AIP's ability to adhere to the agreed upon budget.

**Representative Payee.** At least five federal agencies that disburse entitlement payments are empowered to utilize a representative payee to receive the entitlement payment for a beneficiary who is unable to manage these funds due to a medical or physical disability. The agencies currently permitting representative payee arrangements are: Social Security Administration, Department of Veterans Affairs, Department of Defense, Railroad Retirement Board, and the Office of Personnel Management (for Federal employee retirement benefits). Those federal agencies, without involvement by state, judicial, or other officials, make their own determinations regarding the beneficiary's money management disability and who should be designated as the representative payee.

### **Practice Tip**

The Federal Finance and Accounting Services (FFAS) requires a letter from the AIP's physician indicating that the AIP is capable of managing his or her finances; otherwise, the agency stops sending payments or benefit checks.

On the other hand, the Social Security Administration requires a letter from the client's physician indicating the AIP is not capable of handling his or her finances.

A representative payee, like a trustee, must manage and disburse the funds received for the use and benefit of the beneficiary. Periodic accountings to the payor agency are required. Individual representative payees may not charge for their services, but under current Social Security Administration rules, certain organizational representative payees are permitted to assess a small charge.

A similar program—payment to “protective payees”—exists under Washington law for persons entitled to state-provided public assistance. *See* RCW 74.12.250, RCW 74.08.280, and WAC 388.460. In certain cases, a protective payeeship may serve as an alternative to a guardianship of the estate.

### **Practice Tip**

The guardian ad litem should be aware that recommending a representative payee as an alternative to guardianship is effective if 1) the incapacitated person’s estate consists mainly of receiving and managing income from the federal agencies and 2) there is no controversy regarding who should be selected as representative payee. Since the federal agencies may not be able to determine whether the payee is carrying out his or her duties appropriately, however, this recommendation should be made with caution.

### **ADVANTAGES**

- Federal agencies establish representative payee without court adjudication.
- Rudimentary annual accountings are required of the substitute payees.
- Can be granted upon request.
- Some non-profit agencies offer representative payee services.
- Avoids a more restrictive legal guardianship for those who need only basic money management.

### **DISADVANTAGES**

- Generally not well monitored.
- Vulnerable or frail individuals can be financially exploited.
- Misused funds are often difficult to recover.
- A representative payee is given the authority to manage only the income received from the agency for which he or she has been appointed payee. An incapacitated person who received income from several sources or who has assets that require management will not be well served by this limited alternative.

**Special Needs Trust.** In limited circumstances the GAL may recommend that a special needs trust be established for the benefit of the AIP with or without the appointment of a guardian. The special needs trust really has only one central purpose: to preserve ongoing Medicaid and SSI benefits for a disabled person who will need both Medicaid and perhaps SSI, as well as the resources of the trust. At death, the State is repaid for Medicaid benefits received. There is no SSI repayment requirement. If the GAL makes

this recommendation, a further recommendation should be made regarding who should serve as trustee and who should draft the trust document. The GAL should not recommend himself or herself as a trust drafter; this represents a conflict of interest and is specifically prohibited under the GAL Rules.

A court-created special needs trust may be appropriate when the intended beneficiary is disabled as defined by Social Security law, is under 65 years of age, is on or is eligible to receive SSI, SSDI and/or Medicaid, and the disabled person is about to receive settlement proceeds from a personal injury case, inheritance, or some other source and the court determines that such benefits should be protected, and funds received are not sufficient to meet the needs of the disabled person over his or her expected lifetime. If receipt of funds would result in a loss of SSI and Medicaid benefits, a determination should be made that placing the funds into a guardianship (with resultant loss of benefits) would be harmful to the intended beneficiary--more harmful than locking them up in a trust.

If the disabled person is not on benefits, or the disabled person's costs of care are well under control, it may be appropriate to keep the assets in a guardianship instead of a trust and take a wait and see approach. The special needs trust may be created at any time prior to the disabled person's 65th birthday, even after receipt of funds. Once created, public benefits are protected. There is no penalty attached to this approach at this time.

The Social Security Administration has recently elected to challenge SSI and/or Medicaid eligibility for persons for whom a trust was created without a finding that the disabled person would be unable to handle the funds in the trust. Some challenges by Social Security to special needs trusts have been based upon the failure to appoint a GAL, and to have the GAL determine some level of functional incapacity vis-à-vis handling funds. The jurisdictional provisions of the law only require the person to be SSI or SSDI qualified, which can happen with physical impairment only, so theoretically, a disabled person could ask a court to create a special needs trust for them, and a judge could do so. Social Security has decided that, absent a GAL, the Settlor under these circumstances is actually the disabled person, and not the court, which is essentially a rubber stamp for the person. In the absence of a GAL, SSA may consider the funding defective, and "count" the trust among the disabled person's assets so as to disqualify him or her from receiving some benefits. To avoid problems with the Social Security Administration, if a court-ordered special needs trust is to be created, a GAL should be appointed, and the GAL report should indicate that the special needs trust is needed because of the individual's inability to handle the assets that would be owned by them individually, absent the trust. See *Estate of Berto v. DSHS*, 195 Wn. App. 128, 379 P.3d 146 (2016).

Special needs trusts are terribly complex, both from a disability and tax standpoint, and must be drafted or amended by experienced special needs trust counsel, usually not the personal injury or estate lawyer, unless that person has experience creating trusts of this nature and stays right on top of the developing law related to their use. The court, guardians, and Guardians ad Litem should insist on using an independent, qualified special needs trust drafter. If the drafter is either conflicted or unknown to the parties, the GAL should seek court approval to retain an experienced independent counsel to review

the trust and make recommendations relative to approval. It is also often recommended that trust counsel be appointed by the court and, as part of that appointment, counsel's duties should be outlined in the Order. This clarifies the work to be performed, the responsibilities of the various parties, and fee ranges, and ensures trust counsel will be paid for the work performed and that the report or testimony of counsel will be considered by the court.

If a GAL is involved in matters involving the approval, amendment, administration, or reformation of a special needs trust and does not feel qualified to handle these issues, the GAL should approach the court and ask that a more experienced GAL be appointed or that trust counsel be appointed to assist the GAL.

**Trusts for Non-Disabled Minors.** In specific cases, a trust for a minor under Special Proceedings Rule (SPR) 98.16W (found in the Washington Court Rules published by West) (see also King County Local Civil Rule 98.16) may avoid the need for a court supervised guardianship of a minor's estate. If the minor is not disabled, such a trust is not a special needs trust.

In any case in which the GAL recommends formation of a trust for an incapacitated person to avoid guardianship, or as part of a guardianship, the GAL must see that unlimited discretion is not granted to the trustee without bonding or accounting requirements. Often, it is up to the GAL to make sure the proposed trust meets its intended purpose and protects the actual beneficiary in a meaningful way.



## CHAPTER VIII THE GUARDIAN AD LITEM REPORT

The goal of this chapter is to assist the GAL in creating a report that is readable and useful to the parties and the court.

**Sealing of Reports.** Because court records in many counties may be available online as well as for review in the courthouse, a rule has been adopted by the Supreme Court to assure that certain private or sensitive information is not made public. GR 22.

GR 22(e)(2) requires that certain reports be filed as two separate documents, one public and one sealed as follows:

- (A) Public Document. The public portion of any report shall include a simple listing of:
  - (i) Materials or information reviewed;
  - (ii) Individuals contacted;
  - (iii) Tests conducted or reviewed; and
  - (iv) Conclusions and recommendations.
- (B) Sealed Document. The sealed portion of the report shall be filed with a coversheet designated: “Sealed Confidential Report.” The material filed with this coversheet shall include:
  - (i) Detailed descriptions of material or information gathered or reviewed;
  - (ii) Detailed descriptions of all statements reviewed or taken;
  - (iii) Detailed descriptions of tests conducted or reviewed; and
  - (iv) Any analysis to support the conclusions and recommendations.

The GAL should exercise care to insert in the Public Report only that information which is required by GR 22 and avoid setting forth any information that is of a private or confidential nature. Such information as is intended by the Rule to be kept from public viewing should be placed in the Sealed Report. A GAL should be familiar with the local rules in his or her county regarding the sealing of the full GAL Public Report and the medical report.

See also GALR 2(n) which states as follows:

[http://www.courts.wa.gov/court\\_rules/?fa=court\\_rules.rulesPDF&groupName=sup&setName=GALR&pdf=1](http://www.courts.wa.gov/court_rules/?fa=court_rules.rulesPDF&groupName=sup&setName=GALR&pdf=1)

Maintain privacy of parties. As an officer of the court, a guardian ad litem shall make no disclosures about the case or the investigation except in reports to the court or as necessary to perform the duties of a guardian ad litem. A guardian ad litem shall maintain the confidential nature of identifiers or addresses where there are allegations of domestic violence or risk to a party’s or child’s safety. The guardian ad litem may recommend that the court seal the report or a portion of the report of the guardian ad litem to preserve the privacy, confidentiality, or safety of the parties or the person for

whom the guardian ad litem was appointed. The court may, upon application, and under such conditions as may be necessary to protect the witnesses from potential harm, order disclosure or discovery that addresses the need to challenge the truth of the information received from the confidential source.

GR 22(e)(3) further provides that the sealed portion of the report may not be placed in the court file or used as an attachment or exhibit to any other document except under seal.

**The Sealed Guardian ad Litem Report must contain certain statutorily required information.** The statute sets forth the elements of the guardianship GAL Report. RCW 11.88.090(5)(f) requires that the GAL report include:

- (i) A description of the nature, cause, and degree of incapacity, and the basis upon which this judgment was made;
- (ii) A description of the needs of the incapacitated person for care and treatment, the probable residential requirements of the alleged incapacitated person and the basis upon which these findings were made;
- (iii) An evaluation of the appropriateness of the guardian or limited guardian whose appointment is sought and a description of the steps the proposed guardian has taken or intends to take to identify and meet current and emerging needs of the incapacitated person;
- (iv) A description of any alternative arrangements previously made by the alleged incapacitated person or which could be made, and whether and to what extent such alternatives should be used in lieu of a guardianship, and if the guardian ad litem is recommending discontinuation of any such arrangements, specific findings as to why such arrangements are contrary to the best interest of the alleged incapacitated person;
- (v) A description of the abilities of the alleged incapacitated person and a recommendation as to whether a guardian or limited guardian should be appointed. If appointment of a limited guardian is recommended, the guardian ad litem shall recommend the specific areas of authority the limited guardian should have and the limitations and disabilities to be placed on the incapacitated person;
- (vi) An evaluation of the person's mental ability to rationally exercise the right to vote and the basis upon which the evaluation is made;
- (vii) Any expression of approval or disapproval made by the alleged incapacitated person concerning the proposed guardian or limited guardian or guardianship or limited guardianship;
- (viii) Identification of persons with significant interest in the welfare of the alleged incapacitated person who should be advised of their right to request

special notice of proceedings pursuant to RCW 11.92.150; and

(ix) Unless independent counsel has appeared for the alleged incapacitated person, an explanation of how the alleged incapacitated person responded to the advice of the right to jury trial, to independent counsel and to be present at the hearing on the petition.

**Practice Tip**

If there is not a standard form for use in your county, a good practice tip is to communicate with an experienced guardian ad litem in your county to obtain a template or sample form you can adopt for your use. A sample of some forms in use, including some redacted actual GAL reports, are also provided in the Appendix. The sample forms provide only a suggested format although the forms are not themselves required by the statute.

It can be very useful to put the required information about people contacted in the course of the investigation in a word table. This makes it easy to cut and paste the list into your redacted report from the confidential report.

Some GALs find it helpful to create a “table” with the required topics of investigation in one column and the narrative answers in the next column. This makes the topics of investigation clear to the Court and ensures that no sections are omitted.

The GAL should carefully review the statute and use that as the basic template for the report. That way the GAL will not miss any required information. Then the parties and the court can also more easily verify that all required information is contained in the written record.

The GAL should note in the report whether any issues or allegations of exploitation or abuse exist, and whether the AIP is a vulnerable adult. Other topics to cover include whether the AIP is a member of a Native American or Native Alaskan tribe (which can trigger other investigations), and whether the AIP is a veteran. Useful information to include are the AIP’s birthdate, birthplace and mother’s maiden name so that the guardian can refer to that information if needed. If a standby guardian has been identified, provide the standby guardian’s name and contact information (address, phone, email) so that if the guardian needs to be replaced, a future GAL or the Court will be able to contact the standby guardian.

The GAL report should make a recommendation whether the alleged incapacitated person (AIP) should retain the right to vote. If a guardianship is imposed on an AIP, the incapacitated person does not lose the right to vote unless the court makes a

determination that the incapacitated person (IP) cannot rationally exercise the right because the IP “lacks the capacity to understand the nature and effect of voting such that she or he cannot make an individual choice.” RCW 11.88.010(5). The order on guardianship must specify whether the IP retains the right to vote. If the order states that the IP cannot rationally exercise the right to vote, the court must notify the appropriate county auditor so the IP can be removed from the voting rolls. **Note:** In some counties, the local rule requires that the GAL or the Guardian notify the county auditor about removal of the IP from the list of registered voters.

In some counties, the guardian ad litem is also expected to review the rights that are set forth in the Notice of Petition for Appointment of Guardian with the alleged incapacitated person and report to the court the AIP’s understanding of how these rights could be affected by a guardianship. Likewise, it may be a local practice that the GAL is expected to make recommendations regarding these rights in the GAL’s report. Many GALs will also report the AIP’s opinion about attending the hearing, and appointment of counsel.

#### **Practice Tip**

At the beginning of the report, set out a *brief summary* of your recommendations to include: the nature and extent of guardianship, if any, reasons supporting guardianship and the identity of nominee guardian(s).

**Provide basic information at the beginning of the report.** Identify significant parties and representatives, state the residential location and age of AIP and outline the presenting reason(s) why the petition was filed. This background summary should also include marital status, any issues of exploitation or abuse, and whether the AIP lives with other people, or the level of care the AIP currently needs or has.

**Use topic sentences.** Use basic writing composition techniques to identify the subject of the information contained in each area of your report. Edit your report so that you will avoid rambling compilations of information collected in your investigation. Use the information from your investigation to support the general points you are trying to make. (Note: A chronological rendition of your investigation is **not** helpful to an understanding of the many issues and causes the reader to wonder what relevance the particular recitation has to the subject of the guardianship proceeding.) Formatting the topics of investigation in a table helps to keep the topics organized and succinct.

**Write your report to show that you have made a complete investigation.** Make sure that you actually collect information on the issues required by the statute and any other relevant information necessary to support your recommendations.

Example: when considering whether to recommend a professional guardian, do not assume that a Certified Professional Guardian is appropriate simply on the basis of certification. Other factors may affect the CPG’s ability to serve in the particular case. Review the questions that can be addressed to the professional guardian set forth in

## Chapter V, C. Additional Questions Specifically for Certified Professional Guardians.

**Be respectful.** Be respectful of how you express your opinions and in how you summarize information learned in your investigation. Even though your Confidential Report is sealed, it will still be read by the court, the AIP, and other parties. Give the court information to support your recommendations, but be mindful of how you present it. For example, do not say, “The sisters hate each other’s guts because of an incident where one sister stole money from the other sister and can’t put their feelings aside to take care of mom.” Say instead, “The family is unable to put aside personal disputes and work together for the best interest of their mother.” While it is important to give the Court an accurate picture of the AIP’s situation, it is not always necessary to include details of family conflict which are peripheral and which would only serve to upset family members or parties.

**Review your work.** Leave enough time before the report is due to ensure that you have collected all information necessary to assist the court in resolving all issues. Failure to adequately investigate and present the information may cause a continuance and a denial of fees you otherwise would have earned. GAL fees may be denied where proof of investigation of best interest has not occurred. *Marriage of Swanson*, 88 Wn. App. 128, 944 P.2d 6 (1997). Worse yet, if a party unnecessarily causes increased costs to other parties, the court could assess that increase against the offending party. RCW 11.88.090(10); RCW 11.96A.150.

**Be brief and to the point.** Take extra time to edit your report to correct errors and to make the report as readable as possible. Remove any information that does not explain or support your recommendations. One failing that many reports have is the tendency to reflect *everything* the GAL has learned in the investigation so that the report serves as a record. The notes that the GAL has compiled will serve to make the record while the report is solely designed to support the GAL’s recommendation.

**Serve the Confidential Report and Public Report.** You should serve the Confidential GAL Report and Public Report (and Medical/Psychological Report) on the AIP (or AIP’s attorney), the court, and any other parties (those who have filed a Notice of Appearance.) If there are other people interested in the case (family members or friends), you may want to send them a copy of the Public Report. The proposed Guardian is not a party until appointed, but be prepared to give them a copy of the Confidential Report and Medical Report at the time of the hearing.

**File the report on time.** The statute and local rules, if any, require the timely filing and service of the GAL report on those parties entitled to receive it. The GAL report must be filed and served 15 days prior to the hearing date and within 45 days following appointment, unless an extension or reduction of time has been granted by the Court for good cause. RCW 11.88.090(5)(f)(ix). The report must contain all of the information required in RCW 11.88.090(5)(f)(i)-(ix). In some counties, local rules require that the GAL provide a working copy to the judge or courtroom where the matter will be heard so

that the judicial officer can be fully prepared. Even if a copy is not required, it is good practice to provide to the court an advance copy of the GAL report. A GAL can find the Local Rules for each county compiled by West Publishing Company in one annually issued volume. Also, the court administrator or court clerk in each county will have a copy of the current local rules. Some counties have posted them on the court's website as well. See [www.courts.wa.gov/court\\_rules/](http://www.courts.wa.gov/court_rules/).

See also GALR 2(i) which provides that a guardian ad litem shall file a written report with the court and the parties as required by law or court order or in any event not later than 10 days prior to a hearing for which a report is required. The report shall be accompanied by a written list of documents considered or called to the attention of the guardian ad litem and persons interviewed during the course of the investigation.

**Practice Tip**

If you are certain that your report will not be filed on time and you have a good reason for the late filing, seek agreement from all the statutory parties to a reduced period for filing the report or attempt to obtain an agreement from all parties for a continuance of the hearing. If the GAL needs additional time to finalize the report, then the GAL must petition the court for a postponement of the hearing or, with the consent of all other parties, an extension or reduction in time for filing the report. RCW 11.88.090(5)(f). If the hearing does not occur within sixty days of filing the petition for guardianship, then upon the two-month anniversary and every month on that date thereafter the GAL must file interim reports summarizing the GAL activities during that period.

## CHAPTER IX

### ALLEGED INCAPACITATED PERSON'S RIGHT TO COUNSEL

**The Right to Counsel.** The AIP has the right to be represented by willing counsel at any stage of the guardianship proceedings. RCW 11.88.045(1)(a). Thus, even though an AIP may initially decline to be represented, the AIP may change his or her mind later and request that an attorney be appointed. As soon as practicable after the GAL learns that the AIP wants or needs representation, the GAL should take steps to ensure that counsel of the AIP's or the court's choosing, whichever is appropriate, is appointed.

Counsel for an Alleged Incapacitated Person ("AIP counsel") must have adequate time for consultation with the AIP and preparation prior to the final hearing. Absent a convincing showing in the record to the contrary, a period of less than three weeks prior to the final hearing is presumed to be inadequate time for AIP's counsel to consult with the AIP and prepare for the hearing. RCW 11.88.045(1)(a).

**Who can serve as the AIP's attorney?** An attorney for the AIP *must* be appointed by the court. RCW 11.88.045(2) states in part as follows:

During the pendency of any guardianship, any attorney purporting to represent a person alleged or adjudicated to be incapacitated shall petition to be appointed to represent the incapacitated person or alleged incapacitated person.

**When is the AIP's attorney appointed?** Since the guardianship petition under RCW 11.88.030 is filed *ex parte*, the appointment of an attorney for the AIP will occur after the commencement of the guardianship action. As soon as practicable following appointment, the GAL should meet with the AIP and inform the AIP of his or her right to independent legal counsel. RCW 11.88.090(5)(a). If the AIP objects to the guardianship proceeding or requests legal counsel, the GAL has the duty to inform the court of the need for appointment of counsel for the AIP within five court days unless any of the following have occurred: 1) counsel has appeared; 2) the AIP has affirmatively communicated his or her wish to not be represented by counsel after being advised of the right to representation and the conditions under which court-provided counsel may be available; or 3) the AIP was "unable to communicate at all on the subject," and the GAL is satisfied that the AIP "does not affirmatively desire to be represented by counsel." RCW 11.88.090(5)(g). Representative forms for petitioning the court for appointment of counsel are available on some county websites.

When the AIP affirmatively states that he or she does not wish to be represented by counsel, but the GAL believes it to be in the AIP's best interest to have an attorney appointed, the GAL should petition the court for instructions. It is very important for the GAL to be aware that *ex parte* communications are grounds for the GAL's removal. RCW 11.88.093. Thus, if the GAL intends to seek appointment of an attorney for the AIP or instructions from the court, the GAL must inform the petitioner and any other party of the GAL's intentions. The GAL should be prepared to inform the court that

notice requirements have been complied with and/or approved by the court and of any objections to the appointment of counsel if a party who objects is not present at the hearing.

The AIP may inform the GAL that he or she already has an attorney and wishes to be represented by him or her. If the AIP is unable to ascertain the name of the attorney, the GAL should consult with the petitioner, friends, and family regarding the name of the attorney. The GAL should contact the attorney to inquire as to whether or not he or she would be willing to represent the GAL in the guardianship action. The attorney may decline to serve if the representation is beyond the attorney's expertise or would pose a conflict of interest.

The attorney designated by the AIP may seek his or her own appointment. If he or she is unable to do so within five court days after the GALs initial meeting with the AIP, the GAL should offer to seek the appointment on behalf of the attorney so that the GAL complies with his or her statutory duty and does not duplicate efforts and expense.

If the GAL is ever contacted at any point during the guardianship action by an individual claiming to be the attorney for the AIP, the GAL should politely inform such individual that he or she must be appointed by the court before he or she can act on behalf of the AIP in the guardianship action.

When the AIP does not request a specific attorney, the court chooses the attorney who will represent the AIP. How the court selects the counsel may vary from county to county. It is not unusual for the court to appoint the next attorney on the Guardian ad Litem Registry. If the GAL believes the situation warrants appointment of counsel with special expertise, the GAL should inform the court of that fact. There are situations in which it is in the best interest of the AIP to have a court-appointed attorney who is not necessarily on the GAL Registry. Should the GAL seek the appointment of a specific attorney due to the complexities of the guardianship, it is important for the GAL to first contact that attorney to determine whether the attorney is willing to serve, what fees the attorney would charge, and to confirm there are no conflicts of interest.

**Under what circumstances may the court appoint counsel for the AIP on its own motion?** The court may, on its own motion, appoint an attorney for the AIP or IP at any time during the guardianship proceeding if it determines in its opinion that the rights and interests of an AIP or IP cannot "otherwise be adequately protected and represented". RCW 11.88.045(1)(a).

**How is the court-appointed counsel for the AIP compensated?** Counsel is paid by the county: 1) if the AIP is unable to afford counsel; 2) the expense of counsel would result in substantial hardship to the AIP; or 3) the AIP does not have practical access to funds with which to pay counsel. If the AIP can afford counsel but lacks practical access to funds, the court will provide for the attorney to be compensated at public expense and may impose a reimbursement requirement as part of the final order. RCW 11.88.045 (1)(a). In all other cases, court-appointed counsel will be compensated from the estate of



the AIP. The statute regarding attorney fees for the representative of an AIP (RCW 11.88.045(2)) incorporates the fee review provisions of RCW 11.92.180, which governs payment of guardian's fees. This has recently been interpreted to mean that the fees of an attorney for an AIP who is presumed competent or who has a competent attorney in fact are subject to court review only if a guardian is ultimately appointed for the AIP. In the event a guardian is not appointed for the AIP, [the AIP] has the same autonomy and rights as any other person. Thus, if there is no adjudication of incapacity, the AIP's attorney fees are not subject to court review. *In re Guardianship of Beecher*, 130 Wn. App. 66 (2005).

**What if the AIP refuses to communicate with his or her court-appointed counsel?**

Although the court may determine it to be in the best interest of the AIP to be represented by counsel, if an alleged incapacitated does not communicate with counsel making, counsel may ask the court for leave to withdraw for that reason. An attorney can't provide legal counsel to someone who cannot or will not give the attorney direction. If satisfied, after affording the alleged incapacitated person an opportunity for a hearing, that the request is justified, the court may grant the request and allow the case to proceed with the alleged incapacitated person unrepresented. RCW 11.88.045(1)(c).

**What are the duties of the court-appointed counsel for the AIP?** The attorney for the AIP must advocate the expressed preferences of the AIP, regardless of whether the attorney believes those preferences are in the AIP's best interest. RCW 11.88.045(1)(b). The AIP's attorney has the ethical duty to provide competent counsel to the AIP and must not substitute his or her own judgment for that of the AIP. The role of the attorney for the AIP is distinguished from the GAL's role in that the GAL makes recommendations based upon the perceived best interests of the AIP, and not on the basis of the AIP's expressed preferences.

In addition to advocating the AIP's expressed preferences, the AIP's counsel should ensure compliance by all parties and the GAL with procedural and substantive requirements of the statute. Although it is not uncommon for the parties, including the guardian ad litem, to agree to be flexible with some of the deadlines, only the court appointed attorney for the AIP can agree on behalf of the AIP. In an case, AIP's counsel should confirm that the following have occurred during the course of the guardianship action:

1. Personal service of the petition and notice of a guardianship proceeding upon the AIP and GAL within five court days of filing the petition (RCW 11.88.030(5)(a)); the petition and notice must contain all of the information required by RCW 11.88.030(1)(a) through (l) and RCW 11.88.030(5)(b).
2. Personal service of notice of the hearing upon the AIP and the GAL at least ten days prior to the hearing (RCW 11.88.040); and conduct a hearing on the petition within 60 days of the filing of the petition, unless extended by the court at the request of one of the parties for good cause. RCW 11.88.030(6).

3. The GAL report must be filed and served 15 days prior to the hearing date and within 45 days following appointment, unless an extension or reduction of time has been granted by the court for good cause, (RCW 11.88.090(5)(f)), and contain all of the information required in RCW 11.88.090(5)(f)(i)-(ix). The GAL must file a public report and a confidential report as required by GR 22.
4. The medical report must be prepared by a physician, psychologist or ARNP who has been chosen by the GAL or the AIP and who has expertise in the type of disorder or incapacity that the AIP is alleged to have. RCW 11.88.045(4). *See* Chapter IV. The report must be prepared within 30 days of the physician's, psychologist's, or ARNP's examination of the AIP and must contain all of the information described in RCW 11.88.045(4)(a)-(i). **Except in cases of minor guardianships, the court does not have jurisdiction to appoint a guardian unless a medical or psychological report meeting the statutory requirements has been filed.** RCW 11.88.045(4).
5. Once counsel for the AIP is appointed, when the GAL seeks contact with the AIP, the GAL shall notify the attorney in advance of such contact. The GAL's contact with the AIP shall be permitted by the AIP's attorney, unless otherwise ordered by the court, pursuant to GALR4(a).
6. GALR 2(p) requires the GAL to maintain documentation to substantiate recommendations and conclusions. The GAL's file shall be made available for review upon the written request of a party or the court on request, pursuant to GALR 2(p).

**When is the court-appointed counsel for the AIP discharged?** In most cases, the court-appointed attorney for the AIP is discharged by the court at the hearing. In some cases, there is good cause for the attorney to continue to represent the IP for some period of time; for example, until the initial personal care plan and inventory prepared by the guardian are filed, and in some cases, approved by the court. In certain cases, the IP or the Guardian may request the appointment of the attorney to last indefinitely. In such cases, the attorney may request his or her discharge should the IP become no longer able to express his or her preferences.

## **CHAPTER X**

### **FINAL WORDS OF WISDOM**

#### **Court Hearings**

**Attendance at Legal Proceedings.** The GAL shall appear in person at all hearings unless all parties provide a written waiver of the requirement to appear. RCW 11.88.090(12). GALR 2(1). Guardian ad Litem Rule (GALR) 2(1) requires the attendance of all GAL's at **all** hearings unless excused by court order.

The AIP shall be present in court at the final hearing on the petition. The requirement may be waived at the discretion of the court for good cause shown in the GAL report. RCW 11.88.040(4). The AIP cannot be forced to attend the hearing and may simply choose not to. The GAL should always ask the AIP if the AIP wishes to attend the hearing and include the AIP's response in the GAL report.

The presence of the AIP is of such importance that the statute provides that the court may "remove itself" to the residence of the AIP and conduct the hearing in the presence of the AIP if the AIP wishes to attend the hearing but is unable to do so. RCW 11.88.040(4).

The proposed guardian is normally personally present at the hearing on the petition for guardianship. The proposed guardian is usually required to provide testimony stating that he or she is willing and qualified to act as guardian. The testimony of the out-of-state proposed guardian may be taken via telephone in the courtroom or via affidavit. The proposed guardian will be required to file an oath of guardian, and when the proposed guardian is out of state, the proposed guardian must also file a designation of appointment of a resident of this state to receive service of process. RCW 11.88.020(1)(d).

The attorney for the AIP, if any, should also be present.

#### **Courtroom Demeanor.**

The GAL should be aware of and adhere to certain basic rules with regard to courtroom demeanor. If the AIP is unable to arrange for transportation to the hearing, the GAL can assist with making arrangements to have a third party assist the AIP so that the AIP attend the hearing if this is necessary. However, it is not recommended that the GAL transport the AIP to the hearing. This issue has been raised by Commissioners who have concerns about creating an impression that the GAL is serving in a representative capacity for the AIP, rather than a neutral party who is advocating for the AIP's best interests. For the same reasons, the GAL should maintain an appearance of impartiality by not sitting next to the Petitioner or the AIP, or otherwise give the impression that the GAL favors one party (the Petitioner, the AIP, other family members) over the other.

The GAL should maintain his or her dignity and decorum.

The GAL should dress in a manner that shows respect for the process and the parties.

The GAL should be aware of and obey posted rules such as no food or drink in the courtroom; no chewing gum in the courtroom; and turning off pagers and cell phones before entering the courtroom.

If the hearing is contested in anyway the GAL should not show favoritism to one party by socializing with that party or his or her attorney. When the GAL enters the courtroom area, the GAL should greet the parties, introduce him-/herself to any parties or attorneys that the GAL has not met, resolve any issues related to the proposed order that need to be resolved before the hearing and avoid sitting with one of the parties if possible. Although individuals involved in the process know that with whom the GAL sits is not an indication of favoritism, the lay individuals involved in this process may see this in a very different manner.

The court will give each party an opportunity to speak. The GAL, when given the opportunity to address the court, should explain his or her point of view and be prepared to respond to any questions that the court may have. The GAL should present a clear and concise account of the facts and his or her recommendations. Normally referencing the report and summarizing recommendations is sufficient, but if the GAL has received additional information after completion of the report, it is appropriate to mention this information and indicate whether this information has any impact on the recommendations contained in the report.

Emotions can run high in a guardianship proceeding. The GAL should not inflame the situation by arguing with the other parties, their counsel, or the court. Throughout the process it is critical that the GAL take all precautions to maintain an appearance of neutrality including in the GAL report and in any court appearance. In addition, the GAL should be mindful of the impact of words on an often difficult situation. The GAL should avoid over-generalizations and the inclusion of inflammatory statements. Occasionally, however, repeating a negative statement or description of a person's conduct is relevant and necessary to support the GAL's recommendation. Usually in a bench hearing on the petition, the Court will have read the full GAL report prior to the hearing. Consequently, the GAL should keep any comments in open court brief and directly responsive to any of the Court's questions.

A King County Commissioner has recommended that when presenting his or her Report to the Court, the GAL should explain not just the facts and recommendations, but a brief summary of the bases for the GAL's recommendations. The supporting facts, to a limited degree, should be made a part of the oral record. The GAL should also be careful how the recommendations are stated to the court: The GAL should not expressly state or otherwise suggest that he or she is "advocating" for the AIP's interests, such as levels of care, but rather making recommendations based on concerns that are present due to the AIP's health or behavioral conduct.

**Working or Bench Copies.** The GAL should review the local rules for each county on which the GAL’s name appears on the Guardian ad Litem Registry. The local rules will inform the GAL of the “working paper” or “bench copy” requirements for each county. If a local rule does not exist stating the “working copy” or “bench copy” procedure, the GAL should ask the attorneys involved in the case.

If a hearing is continued, the GAL should not assume that the working papers will be automatically moved to the next hearing date. Unless the GAL can request and receive confirmation that the working copies have been moved to the continued hearing date, it is best to forward a second set.

**Ex Parte Communication.** “A GAL shall not engage in *ex parte* communication with any judicial officer involved in the matter for which he or she is appointed during the pendency of the proceeding, except as permitted by court rule or statute for *ex parte* [communications].” RCW 11.88.093. GALR 2(m).

*Ex parte* communication occurs when a judicial officer is contacted by one party to a proceeding and the other party or parties to the proceeding are not present and not provided notice. Certain *ex parte* contact is permitted, for example in cases of extreme emergency or when injunctions or orders of protection are needed. A GAL should evaluate the situation very carefully and determine if another alternative exists that will serve the best interests of the AIP before engaging in *ex parte* communication with the court. Unless the GAL is convinced that advance notice to the parties would harm the AIP the GAL should always give advance notice to all parties (consistent with court rules) or obtain a written waiver of notice from all the parties in the case.

All communication with judicial officers about a proceeding should be in open court and on the record.

If the AIP requests and/or the GAL recommends the appointment of an attorney for the AIP, the GAL should seek the appointment expeditiously. RCW 11.88.045(1)(a) if there is an objection to the proposed order appointing an attorney for the AIP, a hearing must be noted with notice to all parties as required by local rules. In most cases no one will be objecting to the proposed order, in which case the GAL may be able to walk the proposed order into Ex Parte without the need to note a hearing.

#### **Practice Tip**

If the GAL receives an email from a party or attorney authorizing the GAL to sign the proposed order, it is best practice to attach a copy of the email to the order.

### **Temporary Relief and Petitions for Instruction**

**Temporary Relief.** It may become necessary to seek court direction and orders prior to establishment of a guardianship. RCW 11.88.090(9) provides, in part:

The court-appointed guardian ad litem shall have the authority to move for temporary relief under Chapter 7.40 RCW to protect the alleged incapacitated person from abuse, neglect, abandonment, or exploitation, as these terms are defined in RCW 74.34.020, or to address any other emergency needs of the alleged incapacitated person.

The Vulnerable Adult Statute, RCW 74.34, is discussed in greater detail in Chapter VI.

#### **Practice Tip**

Sometimes a Vulnerable Adult Protection Order under RCW 74.34 is obtained by the petitioner at the same time as the Order Appointing the GAL in the guardianship matter. Unless the GAL is appointed in the Vulnerable Adult action as well as the guardianship action, the GAL is not a party to the Vulnerable Adult matter and has no authority in that matter. If the GAL feels that to protect the interests of the AIP it is necessary to attend the hearing on the VAPO, before the hearing proceeds the GAL should advise the court that he/she has not been appointed for the VAPO matter and request the court's direction as to whether the GAL may appear in that matter. In order to have authority in a Vulnerable Adult matter, a GAL must be appointed by the court under that cause number. The VAPO order appointing GAL should include duties and fee authority separate from the guardianship matter. The GAL must then keep track of his/her time for each action separately since there may be different parties responsible for the fees of the GAL in each action.

**Petitions for Instruction.** The authority of a GAL is limited by the guardianship statutes and the order appointing GAL. GALR2(j). Occasionally a GAL believes an action is necessary that is beyond the scope of RCW 11.88.090 or the order of appointment. Before taking any unauthorized action, the GAL should petition the court for instruction.

The petition for instruction is a useful tool. Use it sparingly, however. The GAL should first be thoroughly familiar with his or her statutory duties and powers and the order appointing the GAL before seeking specific direction from the court. The GAL should not seek an order authorizing what the GAL is already permitted or directed to do. Before petitioning for instructions, it is wise to discuss the situation with another experienced GAL. Because of limited judicial resources, many counties do not encourage petitions for instructions. If a petition for instructions is brought, the petition should suggest possible alternative courses of action, and the proposed order should reflect those alternatives. It is also a good idea to leave room on the proposed order so the Court can insert its own instructions if the ruling does not agree with any of the GAL's proposals. The GAL should not become too invested in any one possible course of action.

Notice should be provided to any persons or entities interested in the motion even if they are not technically parties to the action. At a minimum, the petitioner, the AIP or his or her attorney need notice. Other persons who have filed a notice of appearance or request for special notice of proceedings should also receive a copy of the GAL's petition for instructions and notice of any hearing on the petition.

Third parties who deal with the AIP, such as banks, care facilities, and care providers may need to receive notice. Consider potential interests of the State (DSHS) or the Department of Veterans' Affairs.

Common areas for petitions for instruction include problems in getting a medical evaluation, emergency housing or financial needs, and non-emergency medical issues. The petition for instructions should be supported with a declaration made under penalty of perjury and any other documents, if needed.

## Privacy Issues

**Private vs. Public Information.** There is an inherent conflict between the public's right to know and the individual's right to privacy. There is a presumption that all cases are and should be open to the public. Wash. Const. art. I, § 10; *Dreiling v. Jain*, 151 Wn.2d 900, 909, 93 P.3d 861 (2004). The public's right to know may be limited to protect other significant and fundamental rights. *Id.* at 909. Specific findings by the court must support the decision to close hearings and seal documents or entire files. *Id.* at 907-908. GR 22 requires the sealing of confidential medical records, financial records and detailed GAL reports in guardianship as well as family law cases.

GR 22(e)(2) requires that a GAL in a guardianship case file one simple report for public viewing and another detailed report under seal. The report for public eyes should merely state the materials or information reviewed, persons contacted, tests conducted or reviewed and summary conclusions and recommendations. The sealed report will contain detailed discussion of the matters investigated by the GAL and the reasons for the conclusions and recommendations. The coversheet of the sealed report should state that it is a Sealed Confidential Report.

GR 22(g)(1) similarly provides for sealing of health care and financial records. Forms for use as coversheets for sealing reports filed in King County are available online through the King County Superior Court at <http://www.kingcounty.gov/courts/scforms/guardianship.aspx>. If the matter is in another county the GAL will want to use the approved forms for that county. Many guardianship forms are also available along with all of the state court forms at [www.courts.wa.gov/forms](http://www.courts.wa.gov/forms). The GAL should check with other practitioners in the county in which the action is filed to determine if there is a preference as to use of the state forms or local forms. Generally if local forms are available, it is better to use the local forms for the county in which the guardianship is filed.

**GR 31.** Courts have or are in the process of making most court records available via internet to any individual with a computer. At the same time, guardianship, by its very nature, deals with confidential information, which could easily be misused. Internet access to personal information contained in court records could make such abuse easier.

While the court in a guardianship action must be aware of the nature and extent of the AIP's estate, there should never be enough identifying information in unsealed files to provide the public access to financial accounts.

GR 31 provides:

### (e) Personal Identifiers Omitted or Redacted from Court Records

- (1) Except as otherwise provided in GR 22, parties shall not include, and if present shall redact, the following personal identifiers from all documents filed with the court, whether filed electronically or in paper, unless necessary or otherwise ordered by the Court.



- (A) Social Security Numbers. If the Social Security Number of an individual must be included in a document, only the last four digits of that number shall be used.
- (B) Financial Account Numbers. If financial account numbers are relevant, only the last four digits shall be recited in the document.
- (C) Driver's License Numbers.

It is the GAL's responsibility to be sure these rules are followed. Do not expect the court to assume responsibility for applying these rules. The GAL should consult GR 31 as well as GR 22 and the local rules for each court on which his or her name appears on the Guardian ad Litem Registry. The GAL should also be familiar with GR 15, "Destruction and Sealing of Court Records".

### **Guardian ad Litem Fees**

**Amount Allowed.** At the time of appointment of the GAL or at the earliest date that the court is able to determine the appropriate hourly rate and fees prior to the GAL billing for services, the court must specify the hourly rate of the GAL and the maximum amount that may be charged by the GAL without prior court review and approval. RCW 11.88.097.

If the order appointing GAL does not establish the maximum fee for the GAL, the GAL should, before proceeding further, present the court with a petition and order on instruction establishing the hourly rate and the maximum amount that the GAL may charge.

Should the GAL determine that the maximum amount of GAL fees set forth in the order appointing GAL will not be sufficient for the GAL to fulfill his or her duties the GAL should seek court approval for additional time *before* working the additional time. Failure to secure court approval for additional time may result in the GAL not receiving payment for services provided over the maximum amount allowed by court order.

**To Whom Charged.** Typically the GAL fee will be charged to the estate of the AIP. RCW 11.88.090(10). If the court finds that such payment would result in substantial hardship upon such person, the county will be responsible for payment of the GAL fee. RCW 11.88.090(10). In the event that no guardian or limited guardian is appointed, the court may charge the GAL fee to the petitioner, the AIP, any person appearing in the guardianship action, or may allocate the fee as the court deems just. RCW 11.88.090(10). The court also has discretion to allocate attorney fees — that is, charge them to any party. RCW 11.96A.150.

If GAL fees will be paid by the county in which the GAL practices, the GAL should become familiar with the procedure that the county uses to review and approve fees. Each county has different procedures and it is recommended that the GAL determine the county pay procedure in each county on which registry the GAL's name appears. In

regard to GAL Fees to be paid at public expense in King County, the Commissioners will not approve specific amounts in public pay cases and will revise the section in any order establishing a guardianship re: GAL fees to state merely that the GAL shall be paid at public expense. GALs should provide a motion, fee statement and proposed order to the Ex Parte Coordinator in order to process their fees and costs incurred and to obtain payment.

**Petition or Declaration for Fees.** The GAL must keep accurate and legible time and expense records. The GAL must submit his or her time records to the court as part of a petition or declaration for fees along with a fee statement. A petition or declaration for fees is a sworn statement by the GAL attesting to the services provided, the time expended, estimated time to be expended, the hourly rate, and costs, if any, incurred. The GAL fees are usually approved as part of the order appointing guardian. The GAL should file and serve on all parties a declaration and statement as to fees and costs, setting out the services provided, time charges and actual costs incurred in service as a GAL. If the GAL fees are not included in the guardianship order, the GAL will need to submit a separate order for fees, with advance notice to all parties, and have a separate hearing. That results in extra time, effort and expense which is, with a little planning, usually avoidable.

The petition or declaration for fees should be filed with the court and working papers provided for the bench prior to any hearing seeking approval of GAL fees and costs. The petition or declaration for fees should be filed at the same time that the GAL files his or her report. A copy of the petition or declaration for fees should be provided to all parties to the guardianship action prior to the hearing. The fee declaration can include an estimate of the time it will take to conclude the GAL's investigation and attend the court hearing. As long as that time is reasonable, and does not exceed the time previously authorized by the court, the fees will likely be approved.

If fees are to be paid by the county, local rules may require that the declaration for fees and the request for fees follow a different procedure and may not need to be presented at the time of entry of the Order Appointing the Guardian.

**Guardian ad Litem Authority.** The duties of a GAL are set forth in the order appointing the Guardian ad Litem. RCW 11.88.090(5).

The GAL acts under the supervision and control of the court. So long as the GAL acts as directed by the court, the GAL will have "quasi judicial immunity" from any claim for damages arising out of the performance of his or her duties. *Barr v. Day*, 124 Wn.2d 318, 332, 879 P.2d 912 (1994). Should a GAL take any action outside the authority granted to him or her by the court, the GAL could lose immunity and be personally liable for damages that arise out of the unauthorized conduct.

If the GAL believes he or she needs to take certain action not specifically authorized in the order appointing the GAL and in applicable statutes, the GAL must bring the situation

to the attention of the court. The GAL brings matters to the attention of the court by filing a petition for instruction.

The GAL has statutory authority to make *emergency life-saving* medical decisions on behalf of the AIP if the AIP is unable to give informed consent due to incapacity prior to the appointment of a guardian. RCW 11.88.090(8). The GAL, before consenting to any emergency life-saving medical services, should first determine whether or not the AIP has granted authority to someone else to make medical decision for the AIP. *See* Chapter VII for discussion of health care powers of attorney and the informed consent statute. In reality, it is a rare case in which a GAL is called upon to make life-saving medical decisions on behalf of the AIP. In practice, if it is a true emergency, it is likely the hospital will take action without obtaining informed consent. Informed consent is presumed in true emergencies.

The GAL has no authority to make any other medical decisions or to terminate the care for the AIP. If a health care provider asks a GAL to make medical decisions or to terminate the care for the AIP, the GAL must first advise the requester of the GAL's limited authority and if the situation requires action, the GAL must file a petition for instruction and get the court's order for any action to be taken.

**Expediting the Guardianship Matter.** RCW 11.88.040(4) provides that the court for good cause may reduce the number of days of notice for the final hearing, "but in every case, at least three days' notice shall be given." If a medical report has been prepared, it is possible to have a final hearing three days after filing and providing notice to the AIP. However, if counsel is appointed to represent the AIP at the time of the final hearing, a continuance of the hearing may be required. RCW 11.88.045(1)(a). Absent a convincing showing to the contrary, a period of less than three weeks shall be presumed to be an inadequate time for a newly-appointed attorney to consult with the AIP.

**Temporary or DeFacto Guardians.** There is no current statutory authority for appointment of a "temporary" guardian in Washington State. There are cases discussing temporary guardians: *Mayer v. Rice*, 113 Wash. 144, 193 P. 723 (1920); *In re Freitas*, 53 Wn.2d 722, 366 P.2d 865 (1959), which provides that the court has the power to appoint a "temporary guardian" where an emergency exists. The continued viability of these cases is doubtful, however, since the current guardianship statute does not provide for temporary guardians. Under the current law, if an emergency exists, the hearing on the guardianship can be expedited, or, if that is not possible and there is no other person with authority to make the emergency decision, the GAL can seek instructions to get court authorization to act on behalf of the AIP in the emergency.

Someone who acts as a guardian without court approval or without proper appointment becomes a "guardian de facto" and has the same duties and liabilities of a properly appointed guardian. *King v. Sells*, 193 Wash. 294, 75 P.2d 130 (1938); *In re Bouchart*, 11 Wn.App. 369, 522 P.2d 1168 (1974). A GAL should not exceed his or her statutory duties or the duties set forth in the order appointing the GAL or any order on a petition

for instructions. If the GAL exceeds such duties the GAL would become a “guardian de facto” for the AIP and lose any quasi judicial immunity.

### **Practice Tip**

Hospitals should know that the GAL has limited authority, but it is not unusual for a GAL to receive a request to authorize the release of the AIP to a skilled nursing home or other care facility. The GAL should clearly advise the individual making the request that the GAL does not have authority to make this decision. (Making this decision frequently involves signing paperwork that the GAL will be financially responsible for the care of the AIP.) The choice of care facility may impact the AIP for many months into the future so making this decisions is better left to the guardian after his/her appointment. It is often preferable to expedite the hearing for appointment of the guardian; contact the attorney for the Petitioner about shortening time on the hearing. If the Petitioner objects, it may be necessary to file a Petition for Instructions.

The filing of the guardianship matter in and of itself does not divest the AIP of authority to act on his/her own behalf, but other parties may be reluctant to deal directly with the AIP when the guardianship matter is pending. In some situations, obtaining authority from the court through the use of a Petition for Instructions, giving the AIP specific authority to handle a matter on his/her own behalf is a possible solution in some cases. For example, if a home sale is pending and must be closed before the guardianship hearing is held and everyone is in agreement that the sale is in the best interest of the AIP, an order that authorizes the AIP to sign the final papers with a requirement that the proceeds be held in escrow until the guardianship issues are resolved could benefit the AIP and satisfy the title company.

**Trial on Guardianship Petition.** RCW 11.88.045(3) provides “[t]he alleged incapacitated person is ... entitled to testify and present evidence and, upon request, entitled to a jury trial on the issues of his or her alleged incapacity.” Consequently, the GAL should conduct every investigation as if the GAL will be called to testify at a trial.

The role of the GAL has been generally discussed elsewhere in this manual. The role of the GAL as a witness is addressed in *In re Guardianship of Stamm*, 121 Wn. App. 830, 91 P.3d 126 (2004). The GAL may be permitted by the court to give opinion evidence as an expert witness if the court so allows.

Generally a petition for guardianship is not automatically noted for trial. In King County a court commissioner must certify the matter for trial. Most cases are resolved in the initial, less formal hearing on the petition for guardianship. If the guardianship is contested and a trial is sought, often mediation is helpful. RCW 11.88.090(2) permits the GAL or a party, or any interested person, to request that the court order mediation.

If mediation or trial is likely and the Order Appointing the GAL has a fixed time limit, the GAL will likely need to petition, prior to incurring the additional time, for authorization to expend more time.

It has been said elsewhere, but deserves repeating that the GAL must keep accurate notes during the course of the investigation and be prepared to produce those notes in response to discovery requests.

### **Practice Tip**

In contested matters, if there are situations which require the GAL to communicate with a party, the communication should be done in writing with copies provided to all parties so there is not an appearance of impropriety. If a call is made to the GAL, the GAL can easily refuse to take the call and immediately respond with a simple email stating that the GAL will address necessary matters by email only with all parties copied on every email.

Attorneys are familiar with this practice since this is the manner in which most courts insist on communicating with parties, but the initial email explanation can be made to educate any pro se parties as well. Since the GAL's file is open for inspection by all parties, it is useful to establish this method of communication early in the process to make pro se parties fully aware that communications with the GAL are not confidential.

Once the investigation has been completed and the GAL report has been filed, if the matter is contested, the GAL may need to restrict contact in order to maintain the appearance of impartiality. The GAL may then require that all parties be present or represented during any further contact between the GAL and any other party or counsel. This may oblige the GAL to refuse to speak with any party or counsel until the time of deposition.

Prior to discussing the investigation and recommendations, the GAL should always review his or her notes taken during the investigation. The GAL should resist making statements based on memory unless the GAL's memory is clear on the question. When in doubt, the GAL should refer to his or her notes. If the answer is not in the notes, and the GAL is not sure, then it is better to acknowledge such than to speculate.

In a contested case, it is likely that one or more of the parties (or more likely their attorneys) will dispute all or a portion of the GAL report. The GAL should always remember the attorneys have a job to do. In many cases the attorney's job will be to show why the GAL's recommendations should not be followed by the judge or the jury. The GAL should not take this effort personally.

At trial, the GAL should speak clearly, professionally, and politely, and always address the jury (or judge, if it is a bench trial) directly.

### **Miscellaneous Practical Concerns**

**Address of AIP.** Although the address contained in the Petition for the AIP should be correct, it is wise to verify the address in advance of driving to the location. The GAL should not rely on the AIP to give the GAL directions to his/her home, especially if the AIP has gotten lost driving or is no longer driving. New addresses are not always on GPS. Sometimes in larger facilities, there is a specific entrance that should be used, or in city locations there may be parking restrictions. If possible try to talk to a responsible person and verify the address and any unique factors to consider in reaching the address.

**AIP in Prison or Other Limited Access Facility.** If an AIP is in jail, at Western State Hospital or in another restricted access facility, before meeting with the AIP, the GAL should make certain that he/she understands any limitations on access with the AIP.

1. Call the facility in advance and ask about any rules that might apply to meeting with the AIP.
2. If ID is required determine what ID is acceptable. Some facilities require only a driver's license, while others may require proof of the professional status of the GAL, such as an attorney identification card.
3. Find out where in the facility the individual is located. (Western State has many buildings and knowing the building number and where the building is located in advance can save a great deal of time once the GAL arrives at Western State.)
4. Find out if any equipment (such as a cell phone or computer) is permitted in the facility.

Sometimes a facility will require an officer to be present to protect the GAL and prevent the AIP from escaping. While this is not ideal, unless there is some sort of unique issue involved, having an officer present is not critical to the case, but the presence of the third party must be mentioned in the GAL's report

**Dress for the Situation.** While it is important when appearing in court to dress professionally, this may not be the best way to meet with an AIP in his/her home since an AIP may not be open to an individual in a suit. A sweater with the same shirt or blouse and pants can be more welcoming attire. The role of the GAL is to obtain meaningful information from the AIP and if that means sitting on the floor and playing with a young adult who functions at the age of a young child, then the GAL should be prepared to do that. Some homes may be very cluttered and contain things such as bed bugs that could present problems to the AIP. While the GAL cannot avoid entering these homes since the condition of the home is a factor that the GAL must consider, sitting on a wood or metal chair is safer in some places than a stuffed cushion.

**Use of Technology.** While most GAL's rely on e-mails and possibly text messages in the personal and professional life, many AIP's, especially older people, are not able to use this technology affectively. Some will not admit this, so even if an older person says they know how to use email, if the AIP does not respond in a reasonable time, use the telephone for contact and do not criticize the individual for not responding. (Even if the AIP knows how to use the technology, it is not uncommon for an AIP to avoid responding to the GAL if the AIP does not want a guardian and believes by not responding to the GAL the process can be avoided. It is important that the GAL use whatever method is necessary to reach the AIP.

## GLOSSARY\*

### A

**accounting:** In guardianship, a prepared income and expenditures statement and a balance sheet of the incapacitated person's assets furnished by a guardian to the Superior Court (usually required annually). RCW 11.92.040(2)

**acknowledgment:** A statement sworn to before a public official (ordinarily a notary public) that a written statement signifying a legal act is signed freely and that any statements in the instrument are accurately set forth. Advance directives such as living wills and durable powers of attorney may require an acknowledgment.

**action:** As in "cause of action": a lawsuit. A petition for guardianship creates a cause of action.

**administrator/administratrix of estate:** See personal representative.

**affidavit:** A written statement of facts known to a person, e.g., personally observed, and signed under penalty of perjury in the presence of a notary. For example, an affidavit may be presented to a Judge or Commissioner as the basis for granting a motion. Ordinarily, it cannot be used as evidence at trial.

**agent:** The person or organization designated to act for the principal. A power of attorney is a document in which a principal appoints an agent. An agent is also referred to as an attorney-in-fact. The agent has whatever power the principal authorizes, and can act to benefit or bind the principal to the extent of that authority. The agent owes a fiduciary duty to the principal.

**allegation:** A charge or claim of fact made in a petition or other pleading. One of the purposes of a trial or hearing is to determine whether allegations made are credible and supported by the evidence.

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\*We would like to thank Caroline D. Davis, Executive Director/Attorney, Family Law CASA, Seattle, Washington, for the origin of this glossary.



**alleged:** Stated but not proven; asserted; stated; charged. Not yet decided by a court. In guardianship, an alleged incapacitated person is the subject of the guardianship lawsuit.

**appeal:** A request to a higher court (usually the Court of Appeals or the Supreme Court) that a lower court's decision be overturned, because the decision by the lower court was in error under the law. The higher court (sometimes referred to as the appellate court) will review the record created at the first trial; new testimony will not be taken.

**assistive technology:** Any item or device or piece of equipment or system used to increase, maintain, or improve the functional capabilities of individuals with disabilities. Such devices can include computerized communication boards, automated readers, augmentative hearing devices, toys with adapted switches, modified household gadgets, wheelchairs, and computer-based devices that give enhanced images to people with visual impairments or that translate voice input into writing for people with hearing impairments.

**attachment:** The act or process of taking, by virtue of a judicial order, a person or property into the custody of a court. It is not an arrest.

**authority:** The right to exercise powers. By virtue of a power of attorney, an agent has authority to bind the principal to carry out decisions of the agent.

## B

**blocked account:** A bank account or investment from which withdrawals can only be made pursuant to a court order.

**bond:** An insurance policy designed to make the estate whole if the insured steals from the estate. The guardian of an estate is often bonded. If the insurance or bonding company is required to pay on the bond, then it will attempt to obtain repayment from the bonded individual.

**burden of proof:** The requirement that a party prove a claim or allegation by admissible and credible evidence in order to prevail at the time of hearing or trial. The burden of proof is usually on the party asking for relief. Once the moving party's burden is met that party should prevail, unless the other party presents evidence sufficient to disprove the initial proof. In some civil actions, the burden of proof standard may be the "preponderance of the evidence," that is, evidence which makes it more likely than not that allegations are true. In other cases, the more stringent standard of "clear and convincing evidence" applies.

## C

**calendar:** A listing of the hearings scheduled to be heard on a given day, at a given time and in a given courtroom. The listing includes the names of the parties and attorneys. In King County Superior Court, the probate and guardianship calendar is heard daily at 10:30 a.m. in the ex parte department in Seattle and in Kent. In many other counties, guardianship and probate matters are heard by a superior court judge only one day per week.

**caption:** The information at the top of the first page of each pleading. This information includes the name of the Court (Example: In the Superior Court of the State of Washington, In and For the County of King); and, in the case of a guardianship, the name of the AIP, the cause number (No. 07-4-12345-4), the court's area designation (SEA for Seattle and KNT for Kent), and the description of the document (Example: Petition for Appointment of a Guardian of Person and Estate).

**care plan:** A plan of treatment, therapy, and care necessary to meet the identified personal needs of an individual. The Washington guardianship statute requires the guardian of the person to file a Personal Care Plan within three months of being appointed as guardian. *See* RCW 11.92.043(1)(a) and (b).

**cause:** An action, or lawsuit.

**certified copy:** A copy of a document or record, signed and certified as a true copy by an official to whose custody the original is entrusted.

**citation:** Either the legal reference, such as *In re the Matter of Jones*, 100 Wn.2d 234, 186 P.2d 456 (1987), or an order to appear and explain something to the court in a probate or guardianship action. In Washington State, an order to show cause is often used instead of a citation.

**civil action:** A lawsuit that is not criminal in nature. A court action brought to enforce a right or obtain remuneration for a wrong, or, as in guardianships, to determine the status of an individual and, where indicated, to provide for his or her care and the management of his or her finances, as opposed to government action brought to punish a person for committing a crime.

**comity:** The practice by which one court follows the decision of another court on a similar question, though not bound by the law of precedents to do so.

**competency:** In the law of evidence, a witness's ability to observe, recall and relate facts under oath. The court may determine whether a person is competent to testify, e.g., a three-year-old may not be a competent witness. Usually, competent witnesses are over the age of 18 years.

**conservator:** The term used in some jurisdictions to describe a court-appointed surrogate decision maker for property decisions. Generally synonymous with the term "guardian of the estate" in Washington.

**contempt:** (1) An affront to the court tribunal in question;  
(2) An obstruction of court's work;  
(3) Disobedience of a Judge's command, order or decree.

**continuance:** A postponement of legal event such as a hearing or trial until a later time.

**counsel:** Attorney or lawyer.

**court administrator:** Manager of administrative, non-judicial affairs of the court.

**court clerk:** An officer of the court who files motions, judgments, issues processes, and keeps records of court proceedings. Functions and duties of court clerks are usually specified by statute or court rules.

**court Commissioner:** A judicial officer who hears and decides issues in the Ex-Parte Department, on the Family Law Motions Calendar, or in Juvenile Court.

**court file:** The official legal file, which contains all of the original legal papers which have been filed with the court. (The King County Superior Court has moved

to an electronic filing system designated ECR, for electronic court records, so that in the future no paper file will exist at the courthouse).

**courtesy copies:** Also called “working copies”: copies for the Judge or Commissioner’s use of papers which have been prepared for a hearing or trial. Working papers have generally been filed in the court file. In some counties, parties are required by local court rules to provide courtesy copies directly to the Judge or Commissioner who will hear a matter, to ensure materials are available for his or her review prior to a hearing.

## D

**declaration:** A written statement made by someone who is providing information to the court. These statements are dated, signed by the person making the statement, and sworn under penalty of perjury. They may be used for any purpose, but are rarely relied on as evidence at trial. Declarations are similar to affidavits, but do not need to be notarized provided they are in the proper form.

**deposition:** A method by which one party to an action can formally question another party or a witness prior to trial. The answers to the questions are given under oath, and are recorded. The deposition can be used to gain information needed to prepare for trial, as a substitute for live testimony at trial, or to identify inconsistencies between the testimony at deposition and testimony at the trial.

**disabled person:** An individual who is in need of protection and assistance by reason of mental illness, developmental disability, dementia, habitual drunkenness, excessive use of drugs, or other mental incapacity, but who cannot be found to be fully incompetent. The term disabled person as used in the RCW is interpreted to mean incapacitated person for the purpose of RCW 11.88.

**discovery:** The formal or informal process of finding out facts. Formal discovery, provided for by the Rules of Evidence, involves depositions, interrogatories, motions to produce, requests for production of documents and requests for admissions of fact. Informal discovery usually involves talking to people.

**discharge or dismissal (of a GAL):** The entry of a court order terminating the appointment of a GAL. This usually occurs following the hearing or trial on the petition for appointment of a guardian.

**dismissal:** An action by the Judge or Commissioner that removes a given case from the court's active calendar.

**With Prejudice:** There will be no further court action unless a new court action is filed with different allegations.

**Without Prejudice:** There will be no further court action unless a new court action is filed. The same allegations as in the dismissed action may be used in the new action.

**donee:** The recipient of a gift.

**donor:** The giver of a gift. For example, a person who contributes funds to a joint account with survivorship rights which that person holds with another is the donor; the other account holder is the donee.

**due process:** The constitutionally guaranteed right of persons to be treated by the law with fundamental fairness. For example, in guardianship proceedings, the parties have the right to counsel, the right to confront and cross-examine witnesses, and the right to refuse to give self-incriminating testimony. The Alleged Incapacitated Person has the right to a jury trial on the issue of his or her incapacity.

## E

**entered:** In legal terms, this refers to the entry of an order, or judgment or decree, which means the court (a Judge or Commissioner) has signed the order, judgment, or decree, and it is filed with the Clerk's office at the Superior Court.

**evidence:**

**direct:** First-hand evidence, usually of a witness who saw an act committed. For example, testimony of a witness that he/she observed an Alleged Incapacitated Person signing a check would be direct evidence.

**hearsay:** An out-of-court act or statement not made under oath and not subject to cross-examination, offered as evidence of a fact asserted. Hearsay evidence is often not allowed at trial or hearings.

**opinion:** Evidence provided by a witness qualified as an expert in a particular field by the court, based on certain facts which have led to a conclusion. GAL's are usually allowed to give their opinions to the court in the form of recommendations, in order to fulfill their role. Opinion evidence provided by expert witnesses contrasts with evidence provided by witnesses who are not experts, who are normally required to confine their testimony to statements of fact.

**ex-parte:** The Superior Court department where Commissioners and Judges sign agreed orders (that is, orders agreed to and signed by both attorneys) and hear matters where only one party appears. Probate and guardianship hearings are held in the ex-parte department in King County.

**ex-parte contact:** Contact by only one party with a Judge or Court Commissioner outside the courtroom, regarding a pending case. Ex-parte contact with a Judge or Commissioner is strongly discouraged as potentially prejudicial to the fair and impartial hearing of a case.

**ex-parte courtroom:** The courtroom where Court Commissioners and Judges sit to hear matters brought to them by only one attorney or party and other matters that can be disposed of in relatively short order. Motions for temporary restraining orders, orders to show cause, various temporary and final agreed orders, guardianship accountings and personal care plans submitted for approval, and wills sought to be admitted to probate are among the matters heard in the ex-parte courtroom. In King County, the ex-parte courtrooms are Room W363 of the King County Courthouse and Room 1J of the Regional Justice Center,

**executor:** A person appointed by the maker of a will, and approved by the court, to carry out the directions and requests of the will and to dispose of the property according to the testamentary provisions.

**extraordinary care:** As defined by the President's Commission for the Study of Ethical Problems in Medicine and Biomedical and Behavioral Research: unusual as opposed to common care; complex, elaborate, artificial, expensive as opposed to simple care; and care that is relatively useful as opposed to care that is burdensome for the patient. The definition is the result of attempts that have been made to distinguish between types of care by reason of the complexity of decision making concerning artificial life support systems. Some persons argue that only extraordinary care can be refused, either by a competent person or a surrogate decision maker. However, the President's Commission has concluded that the

distinction between extraordinary and ordinary has become so confused that it has lost value for purposes of public policy decisions.

# F

**family consent:** A medical decision made by a family member when a patient is unable to make such decision. The most common and traditional method of surrogate decision making. This practice has been legalized by case law or statutes in some jurisdictions. See RCW 7.70.065.

**fiduciary capacity:** The status of being responsible for the assets of others.

For example, one is said to act in a “fiduciary capacity” or to receive money or contract a debt in a “fiduciary capacity” when the business which he transacts, or the money or property which he handles, is not his own or for his own benefit, but for the benefit of another person, as to whom he stands in a relation implying and necessitating great confidence and trust on the one part and a high degree of good faith on the other part. The term is not restricted to technical or express trusts, but includes also such offices or relations as those of an attorney at law, a guardian, an executor, a broker, a director of a corporation, and a public officer.

**file:** To cause (a document or object) to be delivered to the court Clerk to be placed in the court file where it is stamped with the date and time of filing. Legal documents are generally filed by being given to the court clerk. Copies should be conformed by having them dated and file stamped.

# G

**guardian:** A person having the legal right and duty to care for the interests of another (the ward) because the latter is incapable of doing so him or herself. The term “ward” refers to those whom the court has determined are incapacitated, or who are deemed incapacitated because of age (under 18 years), (See RCW 11.88.010)

**guardian ad litem (GAL):** A person appointed by the court to represent the best interests of an Alleged Incapacitated Person for a finite time period (usually 60 – 90 days), within the terms of the court order appointing the GAL. A GAL is not a guardian. See RCW 11.88.090. (The phrase means “Guardian at Law”).

# H

**hearing:** A proceeding of relative formality, in which facts and documents are presented and testimony is taken, resulting in an order being signed by a Judge or Commissioner. Trials are hearings of some duration and generally a greater degree of formality.

**hearsay:** See under **evidence**.

# I

**in camera:** Literally, “in chambers,” a hearing or judicial proceeding conducted in the Judge’s or court Commissioner’s chambers or privately. Usually refers to reviewing documents, interviewing children, or hearing especially sensitive evidence.

**in forma pauperis:** Literally, “in the manner of a pauper”: the status that provides that a person is relieved of the obligation to pay filing and other court fees by reason of inability to pay such fees.

**incapacitated as to person:** A status defined by statute which, when determined to exist by the Superior Court, may result in the nomination of a guardian of the person. In making such determination, the Superior Court must find that an Alleged Incapacitated Person is at significant risk of personal harm based upon a demonstrated inability to adequately provide for nutrition, health, housing, or physical safety. A person may also be determined incapacitated if he or she is under the age of majority as defined in RCW 26.28.010. See RCW 11.88.010(a). The terms disabled and incompetent are no longer used in the Washington guardianship statutes (for exception, see incompetent person).

**incapacitated as to the person’s estate:** A status defined by statute which, when determined to exist by the Superior Court, may result in the nomination of a guardian of the estate. In making such determination, the Superior Court must find that an Alleged Incapacitated Person is at significant risk of financial harm based upon a demonstrated inability to adequately manage property or financial affairs. See RCW 11.88.010 (b).

**incest:** The crime of a sexual act between two individuals who are so closely related that they would not legally be allowed to marry.



**incompetent person:** (a) For the purposes of giving informed consent for health care pursuant to RCW 7.70.050 and RCW 7.70.065, a person who is (i) incompetent by reason of mental illness, developmental disability, senility, habitual drunkenness, excessive use of drugs, or other mental incapacity, of either managing his or her property or caring for himself or herself or both, or (ii) incapacitated as defined in RCW 11.88.010(a), (b), or (d).  
(b) For purposes of exercising the right to vote, a person who has been determined by the court as incompetent for purposes of rationally exercising the franchise. RCW 11.88.010(5).

**informed consent:** A reasoned and informed judgment concerning a proposed course of treatment. Health care providers have a legal duty to disclose sufficient information to allow the patient to make such a judgment. Such information must convey the risks, alternatives, and potential outcomes of the various modes of treatment available under the circumstances. A health care provider's failure to obtain informed consent may subject the provider to legal action.

***in re:*** In the affair; in the matter of; concerning; regarding.

***inter vivos:*** "Between the living." This term is characterizes a transfer of property, or other transaction, which occurs between living persons, as opposed to a transfer which occurs after the death of one of the parties.

**intestate:** Without making a will. A person who has died without making a will.

**inventory:** A detailed list of assets. In a guardianship, a list of the assets of the incapacitated person.

## J

**joint tenants:** A form of ownership whereby two or more persons share an interest in property.

**joint tenants with right of survivorship:** A form of joint tenancy where each joint owner holds an undivided interest in the property. Upon the death of a co-owner, the surviving co-owner(s) take(s) immediate title to the property. Property held in joint tenancy with right of survivorship passes to the survivor(s) outside of probate and is not governed by the decedent's will. A common form of ownership of bank and other financial accounts.

**judge:** A judicial officer who hears and decides issues at trial. The Judge may also hear issues on the motion calendar.

**jurisdiction:** (1) The power of a particular court to hear cases involving certain categories of persons or allegations. (2) A geographical area served by a particular court.

## L

**least restrictive alternative:** The level of substituted decision making that least infringes on the personal autonomy of an individual with diminished capacity. Washington statutes require that such substituted decision making, whether public or private, should intrude upon personal autonomy only to the extent necessitated by the person's actual impairments and the decisions actually required. See RCW 11.88.010(2)

**letters of guardianship:** A document issued by the court Clerk certifying that a guardianship is in existence for a particular individual, naming the guardian and indicating any limits which may have been placed on the authority of the guardian.

**life-sustaining treatment:** Medical intervention without which the patient would die.

**limited guardian:** A guardian who has special or limited power and duties with respect to the incapacitated person, as defined by the court.

## M

**majority:** In Washington, age eighteen (18). Persons under the age of majority are presumed to be incompetent. See RCW 11.88.010(1)(d).

**moral turpitude:** Anything done contrary to justice, honesty, modesty, or good morals. It is also commonly defined as an act of baseness, vileness or depravity in the private and social duties which an individual owes to another person or to society in general, contrary to the accepted and customary rule of right and duty between persons. Application of this term varies widely as there is no statute which provides a specific definition.

**motion:** A request that the Judge or Commissioner in a trial or hearing take some action.

# N

**notice:** The process of informing. Legal notice may be actual or implied knowledge of the existence of a fact or state of affairs. Also, a legal document that informs a person of some activity, such as a hearing, scheduled to occur in court. Without legal notice, there is no due process and actions taken by a court are void, and without effect.

# O

**order:** Either oral or written; the court's decision or the parties' agreement that takes the form of an order signed by a Judge or Commissioner. Orders can be modified either by agreement, reduced to writing and signed by a Judge or Commissioner, or by further court action.

**overpayment:** A payment of funds in excess of a recipient's entitlement. Either the recipient or his representative payee may be liable for reimbursement of the overpayment. Reimbursement of an overpayment of government program funds may be waived in certain circumstances.

# P

***parens patriae:*** The sovereign power of the state to provide for incapacitated citizens. Guardianship, adult protective services, juvenile court services, and some aspects of civil commitment statutes are based on the notion of benevolent state intervention to protect and preserve the lives of incapacitated or needy citizens.

**personal property:** Generally refers to movable property – anything other than land or houses.

**personal representative:** The individual or organization charged with the duty of administering the estate of a deceased person. Includes executor, administrator, successor personal representative, special administrator, and persons who perform substantially the same function under the law governing their status. The term may be used in a broader sense, to include heirs, next of kin, descendants, assignees, grantees, receivers, and trustees in insolvency.

“General personal representative” excludes special administrator.

**petition:** A civil pleading filed to initiate a matter in court, setting forth the alleged grounds for the court to take jurisdiction of the case and asking the court to do so and intervene.

**petitioner:** The person who files a petition.

**pleading:** A legal document prepared for a lawsuit.

**power of attorney:** An instrument authorizing another to act as one's agent or attorney-in-fact to transact business. Such power may be either general (covering all aspects of the grantor's business) or special (limited to specific powers stated in the power of attorney).

**prima facie:** Literally, "on first appearance"; evidence which on its face supports the necessary elements of the allegation, and which will suffice to establish the allegations as true until it is contradicted and overcome by other evidence.

**principal:** The person who legally authorizes another to act on his or her behalf as in a power of attorney.

**privileged communications:** Confidential communications to certain persons who are protected by law against forced disclosure. For example, communications between lawyer and client, physician and patient, psychotherapist and patient, priest, minister or rabbi and penitent, are typically privileged. Absent specific legal authorization, privileged communications cannot be disclosed in court over the objection of the holder of the privilege. (The holder of the privilege is usually the patient, client, or other person receiving care, rather than the provider of that care).

**pro bono:** Literally, "for the good;" Activities of attorneys that are undertaken on a volunteer basis.

**pro se:** Literally, "for himself"; a person who handles a court action himself, without the benefit of an attorney.

**pro tem:** Literally, "for the time," i.e., a Judge or Commissioner who is not regularly appointed, but who sits "temporarily."

**proposed guardian:** One who is suggested to the court to be the guardian.

**protection order:** An order that sets out restraining orders. This is a civil action that is separate from a guardianship or other action, and often started by a party who is Pro Se, who seeks immediate court assistance.

**proxy consent:** Authorization of a third party to consent on behalf of an incapacitated person. Normally synonymous with agent or limited agent or the written limited consent to do something, such as to vote stock at a meeting of shareholders.

**public guardian:** In the broadest sense, appointment of any public entity, such as a public official, institution, or agency, as guardian of an incapacitated person. Several states have public guardians who are court or agency employees much as are the U.S. Bankruptcy Trustees. Washington State does not have or use public guardians but is in the process of implementing this as a study in a few locations.

## R

**RCW/RCWA:** Revised Code of Washington: a revised, consolidated, and codified form and arrangement of all the laws of the state of a general and permanent nature. RCWA is the Revised Code of Washington with case annotations.

**real property:** Land and things fixed to the land, but Washington law may not include crops or trees, and may include mobile homes even if not fixed, or may not include mobile homes even if fixed to the land.

**recordation:** Filing of a document, such as a deed, in the auditor's office or the recorder's office in some counties.

**reporting statute:** State law requiring certain designated persons (physicians, nurses, teachers and the like) to report to proper authorities suspected cases of vulnerable adult or child abuse and injuries inflicted by unlawful means.

**representative payee:** A person delegated by the Social Security Administration, the Washington State Department of Social and Health Services, or other governmental agency to receive the income of another person. Involves no court proceeding.

**respondent:** The person who answers a petition.

**response:** A legal document that answers a petition.

**restraining order:** An order prohibiting one or both parties from the conduct specified in the order.

**revision:** An order in which a judge reviews and revises the order of a commissioner.

## S

**sealed file:** A court file and legal action that is closed to the public. Some files are by their nature sealed, such as paternity actions. Files may also be sealed if the court so orders, such as where allegations of sexual abuse are made. Sealed files are highly sensitive and confidential. Because of a desire to have the actions of the court open to public review to the greatest extent possible, orders to seal a file or a document are granted only under limited circumstances.

**service:** A legal term meaning that a party is given notice. Service may be required to be made personally, meaning that a suitable person must hand papers to the party or to someone who lives with the party; by mail, meaning papers can be sent to the party's last known address, or by other means specified.

**settlement conference:** A process where all parties to a case meet with a judge or lawyer who tries to assist the parties in reaching a settlement in the case prior to trial. Offers made during this process may not be raised at trial in the event the case does not settle.

**settlor:** The person who establishes and funds a trust.

**spend-down:** The process by which an applicant for Medicaid becomes eligible by obligating financial resources for medical care and related costs.

**standard of proof:** There are varying requirements of proof in different kinds of judicial proceedings. In criminal cases, the offense must be proven beyond a reasonable doubt in order for a defendant to be convicted. In guardianship proceedings, the standard of proof is by a preponderance of the evidence, which requires that the Judge believe that it is more likely than not, on the evidence presented, that abuse or neglect occurred. For a vulnerable adult action, the standard of proof is by clear and convincing evidence, a standard more stringent

than preponderance of the evidence and less demanding than beyond a reasonable doubt.

**standby guardian:** A successor guardian who becomes empowered upon the death or legal incapacity of the previous guardian without further court proceedings (See RCW 11.88.125)

**statute:** A law enacted by a state legislature or the U.S. Congress.

**stipulation:** An agreement between the attorneys or parties in a case that allows a certain fact to be established in evidence without the necessity for further proof. Usually this agreement is reduced to writing and signed by the parties or their counsel or is recorded “on the record” before a court reporter.

**subpoena duces tecum:** Literally, “bring with you under punishment,” a subpoena served upon the person who has custody of records, commanding that such custodian bring the specified records to court on the stated day and time.

**subpoena:** A legal document that requires the person named to be at a specific place on the stated date and time.

**substituted-judgment test:** A decisional standard for a surrogate decision maker which attempts to replicate the decision that the incapacitated person would make under the circumstances. It is a subjective test, since the decision maker attempts to make whatever decision the incapacitated person would have made, given his or her lifestyle, values, and outlook.

**summons:** A legal document notifying the named person that a lawsuit has been filed against or involves him or her, and notifying the person of any dates set for hearings and deadlines for responding to the complaint or petition. The purpose of a summons is to notify the persons concerned. It does not require court attendance by any person.

**surety:** The company that provides a bond for guardians.

**surrogate decision maker:** A person or organization authorized by law, custom, or practice to make a decision on behalf of an incapacitated person.

# T

**temporary order:** An order entered after the case is filed but before a final trial or hearing. It may be entered by agreement of the parties or by the order of the court following a hearing and remains in effect until it is changed or until the final decree is entered.

**testator:** One who makes or has made a will.

**testimony:** A statement or declaration made to establish a fact or facts and given under oath.

# U

**U.D.P.A.:** The Uniform Durable Power of Attorney Act. A model statute proposed by the National Conference of Commissions on Uniform State Laws. It supersedes Part 5 of Article V of the Uniform Probate Code. Not used in Washington State. For equivalent act, see RCW 11.94.

**U.G.M.A.:** The Uniform Gift to Minors Act. A model statute promulgated by the National Conference of Commissioners on Uniform State Laws. See RCW 11.93.

**U.G.P.P.A.:** The Uniform Guardianship and Protective Proceedings Act is a model statute promulgated by the National Conference of Commissioners on Uniform State Laws. It replaces the guardianship and protective proceedings provision of Article V of the Uniform Probate Code and features the concept of limited guardianship and conservatorship. Not used in Washington State. For equivalent, see RCW 11.88 and 11.92.

**UFC, or unified family court:** UFC combines court actions and hearings for matters involving the same family and allows for coordination of evaluations and social services. This service exists in Seattle (UFS) and Kent (UFK).

**U.P.C.:** The Uniform Probate Code, a model statute promulgated by the National Conference of Commissioners on Uniform State Laws. Article V of the U.P.C. is a model guardianship and protective proceedings statute. The current formulation of Article V is the U.G.P.P.A. Article V, Part 5, contains provisions authorizing durable powers of attorney. The Uniform Durable Power of Attorney Act has replaced Article V, Part 5, as a free-standing model statute. See 8 U.L.A. 511 (1983 & Supp. 1986). Article VI contains sections concerning multiple party



accounts. The Washington State legislature has not incorporated the U.P.C. or any part of it into Washington's statutes. See Title 11 RCW.

**U.R.T.I.A.:** The Uniform Rights of the Terminally Ill Act. A model living will statute promulgated by the National Conference of Commissioners on Uniform State Laws. The Washington State statute deviates from the U.R.T.I.A. See RCW 70.122.

**U.V.GA.:** The Uniform Veterans' Guardianship Act. A model statute promulgated by the National Conference of Commissioners on Uniform State Laws. See RCW 73.36.

## V

**visitor:** Equivalent to a guardian ad litem in Washington State.

**voir dire:** A preliminary examination that the court may make of someone presented as a witness or juror, for the purpose of gaining information with respect to the background or competency of that witness or juror.

## W

**waiver:** The understanding and voluntary relinquishment of a known right, such as the right to counsel or the right to remain silent during police questioning.

**ward:** A person placed under the care of a guardian. The situation is known as a guardianship.

**will:** A document, revocable during the person's lifetime, which disposes of a person's property at death.

**working papers:** See "courtesy copies" above.

## **ABBREVIATIONS**

The following are some of the commonly used abbreviations.

<b>AAG</b>	Assistant Attorney General
<b>ADATSA</b>	Alcoholism and Drug Addiction Treatment and Support Act
<b>AGO</b>	Attorney General's Office
<b>AIP</b>	Alleged Incapacitated Person
<b>AOC</b>	Administrative Office of the Courts
<b>APS</b>	Adult Protective Services
<b>ARP</b>	Alternative Residential Placement (replaced by ARY)
<b>ARY</b>	At Risk Youth (replaces ARP)
<b>CASA</b>	Court Appointed Special Advocate
<b>CHDD</b>	Center for Human Development and Disability (University of Washington)
<b>CHINS</b>	Child In Need of Services
<b>CH</b>	Children's Hospital
<b>CPS</b>	Children's Protective Services
<b>CWS</b>	Children's Welfare Service
<b>DDD</b>	Division of Developmental Disabilities
<b>DISCIS</b>	District Court Information System
<b>DOC</b>	Department of Corrections
<b>DPA</b>	Deputy Prosecuting Attorney

<b>DSHS</b>	Department of Social and Health Services
<b>DV</b>	Domestic Violence
<b>DYS</b>	Department of Youth Services
<b>ECR</b>	Electronic Court Records
<b>FAE</b>	Fetal Alcohol Effect
<b>FAS</b>	Fetal Alcohol Syndrome
<b>FCS</b>	Family Court Services
<b>FRS</b>	Family Reconciliation Services
<b>GAL</b>	Guardian ad Litem
<b>GALR</b>	Guardian ad Litem Rules of the Court
<b>HCSATS</b>	See SAC below.
<b>IP</b>	Incapacitated Person
<b>JABS</b>	Judicial Access Browser System (similar to JIS)
<b>JIS</b>	Judicial Information System (Washington criminal records)
<b>KCLR</b>	King County Local Rules
<b>MSC</b>	Motion to Show Cause
<b>OSC</b>	Order to Show Cause
<b>PA</b>	Prosecuting Attorney
<b>PD</b>	Public Defender
<b>RJC</b>	Regional Justice Center

<b>ROI</b>	Release of Information
<b>RCW</b>	Revised Code of Washington
<b>SAC</b>	Sexual Assault Center (Harborview Medical Center), also Harborview Center for Sexual Assault and Traumatic Stress.
<b>SCOMIS</b>	Superior Court Information System
<b>SIC</b>	Seattle Indian Center
<b>SMHI</b>	Seattle Mental Health Institute
<b>TANF</b>	Temporary Aid to Needy Families
<b>TRO</b>	Temporary Restraining Orders
<b>UFC</b>	Unified Family Court (UFK in Kent) and (UFS in Seattle)
<b>VAPO</b>	Vulnerable Adult Protection Order
<b>WSBA</b>	Washington State Bar Association

**Chapter 11.88 RCW****GUARDIANSHIP—APPOINTMENT, QUALIFICATION, REMOVAL OF GUARDIANS****Chapter Listing | RCW Dispositions****Sections**

<b>11.88.005</b>	Legislative intent.
<b>11.88.008</b>	"Professional guardian" defined.
<b>11.88.010</b>	Authority to appoint guardians—Definitions—Venue—Nomination by principal.
<b>11.88.020</b>	Qualifications.
<b>11.88.030</b>	Petition—Contents—Hearing.
<b>11.88.040</b>	Notice and hearing, when required—Service—Procedure.
<b>11.88.045</b>	Legal counsel and jury trial—Proof—Medical report—Examinations—Waiver.
<b>11.88.080</b>	Guardians nominated by will or durable power of attorney.
<b>11.88.090</b>	Guardian ad litem—Mediation—Appointment—Qualifications—Notice of and statement by guardian ad litem—Hearing and notice—Attorneys' fees and costs—Registry—Duties—Report—Responses—Fee.
<b>11.88.093</b>	Ex parte communications—Removal.
<b>11.88.095</b>	Disposition of guardianship petition.
<b>11.88.097</b>	Guardian ad litem—Fees.
<b>11.88.100</b>	Oath and bond of guardian or limited guardian.
<b>11.88.105</b>	Reduction in amount of bond.
<b>11.88.107</b>	When bond not required.
<b>11.88.110</b>	Law on executors' and administrators' bonds applicable.
<b>11.88.115</b>	Notice to department of revenue.
<b>11.88.120</b>	Modification or termination of guardianship—Procedure.
<b>11.88.125</b>	Standby limited guardian or limited guardian.
<b>11.88.127</b>	Guardianship—Incapacitated person—Letters of guardianship.
<b>11.88.130</b>	Transfer of jurisdiction and venue.
<b>11.88.140</b>	Termination of guardianship or limited guardianship.
<b>11.88.150</b>	Administration of deceased incapacitated person's estate.
<b>11.88.160</b>	Guardianships involving veterans.
<b>11.88.170</b>	Guardianship courthouse facilitator program.
<b>11.88.900</b>	Construction—Chapter applicable to state registered domestic partnerships—2009 c 521.

**NOTES:****Rules of court: Guardians**

*capacity to sue: CR 17.*

*judgment for and settlement of claims of minors: SPR 98.16W.*

*probate proceedings, application for fee, notice: SPR 98.12W.*

*suit in own name: CR 17.*

*Allowing child to work without permit, penalty: RCW 26.28.060.*

*Bank soliciting appointment as guardian, penalty: RCW 30A.04.260.*

*Costs against guardian of infant plaintiff:* RCW **4.84.140**.

*Declaratory judgments:* Chapter **7.24** RCW.

*Embezzlement by guardian:* RCW **9A.56.010**(23)(b).

*Eminent domain*

*by corporations, service on guardian of minors, idiots, lunatics or distracted persons:* RCW **8.20.020**.

*by state, service of notice on guardian:* RCW **8.04.020**.

*Excise taxes, liability for, notice to department of revenue:* RCW **82.32.240**.

*Guardian may sue in own name:* **Rules of court:** CR 17.

*Habeas corpus, granting of writ to guardian:* RCW **7.36.020**.

*Incapacitated person, appearance by guardian:* RCW **4.08.060**.

*Industrial insurance benefits, appointment of guardian to manage:* RCW **51.04.070**.

*Investments, authorized*

*housing authority bonds:* RCW **35.82.220**.

*United States corporation bonds:* RCW **39.60.010**.

*Jurors, challenge of, guardian and ward relationship ground for implied bias:* RCW **4.44.180**.

*Lawful use of force:* RCW **9A.16.020**.

*Limitation of actions by ward against guardian, recovery of real estate sold by guardian:* RCW **4.16.070**.

*Mental illness, proceedings:* Chapter **71.05** RCW.

*Minor's personal service contracts, recovery by guardian barred:* RCW **26.28.050**.

*Motor vehicle financial responsibility, release by injured minor executed by guardian:* RCW **46.29.120**.

*Name, action for change of—Fees:* RCW **4.24.130**.

*Partition:* Chapter **7.52** RCW.

*Public assistance grants, appointment of guardian to receive:* RCW **74.08.280**, **74.12.250**.

*Real estate licenses, guardian exemption:* RCW **18.85.151**.

*Savings and loan association, guardian may be member of:* RCW **33.20.060**.

*Seduction, action for seduction of ward:* RCW **4.24.020**.

*State hospital patients, superintendent custodian of estate:* RCW **72.23.230**.

*Support and care of dependent child, liability of guardian, procedure, judgment: RCW 13.34.160, 13.34.161.*

*Uniform veterans' guardianship act: Chapter 73.36 RCW.*

*Veterans: RCW 73.04.140.*

*Volunteer firefighters' relief, appointment of guardian for firefighter: RCW 41.24.140.*

*Washington uniform transfers to minors act: Chapter 11.114 RCW.*

*Witness, guardian as: RCW 5.60.030.*

## 11.88.005

### Legislative intent.

It is the intent of the legislature to protect the liberty and autonomy of all people of this state, and to enable them to exercise their rights under the law to the maximum extent, consistent with the capacity of each person. The legislature recognizes that people with incapacities have unique abilities and needs, and that some people with incapacities cannot exercise their rights or provide for their basic needs without the help of a guardian. However, their liberty and autonomy should be restricted through the guardianship process only to the minimum extent necessary to adequately provide for their own health or safety, or to adequately manage their financial affairs.

[ 1990 c 122 § 1; 1977 ex.s. c 309 § 1; 1975 1st ex.s. c 95 § 1.]

### NOTES:

**Effective date**—1990 c 122: "This act shall take effect on July 1, 1991." [ 1990 c 122 § 38.]

**Severability**—1977 ex.s. c 309: "If any provision of this 1977 amendatory act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected." [ 1977 ex.s. c 309 § 18.]

## 11.88.008

### "Professional guardian" defined.

As used in this chapter, "professional guardian" means a guardian appointed under this chapter who is not a member of the incapacitated person's family and who charges fees for carrying out the duties of court-appointed guardian of three or more incapacitated persons.

[ 1997 c 312 § 2.]

**NOTES:**

**Effective date—1997 c 312:** See note following RCW [11.88.020](#).

**11.88.010****Authority to appoint guardians—Definitions—Venue—Nomination by principal.**

(1) The superior court of each county shall have power to appoint guardians for the persons and/or estates of incapacitated persons, and guardians for the estates of nonresidents of the state who have property in the county needing care and attention.

(a) For purposes of this chapter, a person may be deemed incapacitated as to person when the superior court determines the individual has a significant risk of personal harm based upon a demonstrated inability to adequately provide for nutrition, health, housing, or physical safety.

(b) For purposes of this chapter, a person may be deemed incapacitated as to the person's estate when the superior court determines the individual is at significant risk of financial harm based upon a demonstrated inability to adequately manage property or financial affairs.

(c) A determination of incapacity is a legal not a medical decision, based upon a demonstration of management insufficiencies over time in the area of person or estate. Age, eccentricity, poverty, or medical diagnosis alone shall not be sufficient to justify a finding of incapacity.

(d) A person may also be determined incapacitated if he or she is under the age of majority as defined in RCW [26.28.010](#).

(e) For purposes of giving informed consent for health care pursuant to RCW [7.70.050](#) and [7.70.065](#), an "incompetent" person is any person who is (i) incompetent by reason of mental illness, developmental disability, senility, habitual drunkenness, excessive use of drugs, or other mental incapacity, of either managing his or her property or caring for himself or herself, or both, or (ii) incapacitated as defined in (a), (b), or (d) of this subsection.

(f) For purposes of the terms "incompetent," "disabled," or "not legally competent," as those terms are used in the Revised Code of Washington to apply to persons incapacitated under this chapter, those terms shall be interpreted to mean "incapacitated" persons for purposes of this chapter.

(2) The superior court for each county shall have power to appoint limited guardians for the persons and estates, or either thereof, of incapacitated persons, who by reason of their incapacity have need for protection and assistance, but who are capable of managing some of their personal and financial affairs. After considering all evidence presented as a result of such investigation, the court shall impose, by order, only such specific limitations and restrictions on an incapacitated person to be placed under a limited guardianship as the court finds necessary for such person's protection and assistance. A person shall not be presumed to be incapacitated nor shall a person lose any legal rights or suffer any legal disabilities as the result of being placed under a limited guardianship, except as to those rights and disabilities specifically set forth in the court order establishing such a limited guardianship. In addition, the court order shall state the period of time for which it shall be applicable.



(3) Venue for petitions for guardianship or limited guardianship shall lie in the county wherein the alleged incapacitated person is domiciled, or if such person resides in a facility supported in whole or in part by local, state, or federal funding sources, in either the county where the facility is located, the county of domicile prior to residence in the supported facility, or the county where a parent or spouse or domestic partner of the alleged incapacitated person is domiciled.

If the alleged incapacitated person's residency has changed within one year of the filing of the petition, any interested person may move for a change of venue for any proceedings seeking the appointment of a guardian or a limited guardian under this chapter to the county of the alleged incapacitated person's last place of residence of one year or more. The motion shall be granted when it appears to the court that such venue would be in the best interests of the alleged incapacitated person and would promote more complete consideration of all relevant matters.

(4) Under RCW **11.125.080**, a principal may nominate, by a durable power of attorney, the guardian or limited guardian of his or her estate or person for consideration by the court if guardianship proceedings for the principal's person or estate are thereafter commenced. The court shall make its appointment in accordance with the principal's most recent nomination in a durable power of attorney except for good cause or disqualification.

(5) Imposition of a guardianship for an incapacitated person shall not result in the loss of the right to vote unless the court determines that the person is incompetent for purposes of rationally exercising the franchise in that the individual lacks the capacity to understand the nature and effect of voting such that she or he cannot make an individual choice. The court order establishing guardianship shall specify whether or not the individual retains voting rights. When a court determines that the person is incompetent for the purpose of rationally exercising the right to vote, the court shall notify the appropriate county auditor.

[ **2016 c 209 § 403**; **2008 c 6 § 802**; **2005 c 236 § 3**; (2005 c 236 § 2 expired January 1, 2006); **2004 c 267 § 139**; **1991 c 289 § 1**; **1990 c 122 § 2**; **1984 c 149 § 176**; **1977 ex.s. c 309 § 2**; **1975 1st ex.s. c 95 § 2**; **1965 c 145 § 11.88.010**. Prior: **1917 c 156 § 195**; RRS § 1565; prior: Code 1881 § 1604; **1873 p 314 § 299**; **1855 p 15 § 1**.]

## NOTES:

**Short title—Application—Uniformity—Federal law application—Federal electronic signatures in global and national commerce act—Application—Dates—Effective date—2016 c 209:** See RCW **11.125.010** and **11.125.900** through **11.125.903**.

**Part headings not law—Severability—2008 c 6:** See RCW **26.60.900** and **26.60.901**.

**Effective date—2005 c 236 § 3:** "Section 3 of this act takes effect January 1, 2006." [ **2005 c 236 § 5**.]

**Expiration date—2005 c 236 § 2:** "Section 2 of this act expires January 1, 2006." [ **2005 c 236 § 4**.]

**Findings—2005 c 236:** "The legislature finds that the right to vote is a fundamental liberty and that this liberty should not be confiscated without due process. When the state chooses to use guardianship proceedings as the basis for the denial of a fundamental liberty, an individual is entitled to basic procedural protections that will ensure fundamental fairness. These basic procedural protections should include clear notice and a meaningful opportunity to be heard. The legislature further finds that the state has a compelling interest in ensuring that those who cast a ballot understand the nature and effect of voting is an individual decision, and that any restriction of voting rights imposed through guardianship proceedings should be narrowly tailored to meet this compelling interest." [ [2005 c 236 § 1.](#)]

**Effective dates—2004 c 267:** See note following RCW [29A.08.010](#).

**Effective date—1990 c 122:** See note following RCW [11.88.005](#).

**Severability—Effective dates—1984 c 149:** See notes following RCW [11.02.005](#).

**Severability—1977 ex.s. c 309:** See note following RCW [11.88.005](#).

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## 11.88.020

### Qualifications.

(1) Any suitable person over the age of eighteen years, or any parent under the age of eighteen years or, if the petition is for appointment of a professional guardian, any individual or guardianship service that meets any certification requirements established by the administrator for the courts, may, if not otherwise disqualified, be appointed guardian or limited guardian of the person and/or the estate of an incapacitated person. A financial institution subject to the jurisdiction of the department of financial institutions and authorized to exercise trust powers, and a federally chartered financial institution when authorized to do so, may act as a guardian of the estate of an incapacitated person without having to meet the certification requirements established by the administrator for the courts. No person is qualified to serve as a guardian who is

- (a) under eighteen years of age except as otherwise provided herein;
- (b) of unsound mind;
- (c) convicted of a felony or of a misdemeanor involving moral turpitude;
- (d) a nonresident of this state who has not appointed a resident agent to accept service of process in all actions or proceedings with respect to the estate and caused such appointment to be filed with the court;
- (e) a corporation not authorized to act as a fiduciary, guardian, or limited guardian in the state;
- (f) a person whom the court finds unsuitable.

(2) The professional guardian certification requirements required under this section shall not apply to a testamentary guardian appointed under RCW [11.88.080](#).

(3) If a guardian or limited guardian is not a certified professional guardian or financial institution authorized under this section, the guardian or limited guardian shall complete any standardized training video or web cast for lay guardians made available by the administrative office of the courts and the superior court where the petition is filed unless granted a waiver by

the court under RCW **11.92.043** or **11.92.040**. The training video or web cast must be provided at no cost to the guardian or limited guardian.

(a) If a petitioner requests the appointment of a specific individual to act as a guardian or limited guardian, the petition for guardianship or limited guardianship shall include evidence of the successful completion of the required training video or web cast by the proposed guardian or limited guardian. The superior court may defer the completion of the training requirement to a date no later than ninety days after appointment if the petitioner requests expedited appointment due to emergent circumstances.

(b) If no person is identified to be appointed guardian or limited guardian at the time the petition is filed, then the court shall require the completion of the required training video or web cast by a date no later than ninety days after the appointment.

[ **2011 c 329 § 1**; **1997 c 312 § 1**; **1990 c 122 § 3**; **1975 1st ex.s. c 95 § 3**; **1971 c 28 § 4**; **1965 c 145 § 11.88.020**. Prior: **1917 c 156 § 196**; RRS § 1566.]

#### NOTES:

**Effective date—1997 c 312:** "Sections 1 and 2 of this act take effect January 1, 1999." [ **1997 c 312 § 4**.]

**Effective date—1990 c 122:** See note following RCW **11.88.005**.

*ks and trust companies may act as guardian: RCW **11.36.010**.*

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### 11.88.030

#### Petition—Contents—Hearing.

(1) Any person or entity may petition for the appointment of a qualified person, certified professional guardian, or financial institution authorized in RCW **11.88.020** as the guardian or limited guardian of an incapacitated person. No liability for filing a petition for guardianship or limited guardianship shall attach to a petitioner acting in good faith and upon reasonable basis. A petition for guardianship or limited guardianship shall state:

- (a) The name, age, residence, and post office address of the alleged incapacitated person;
- (b) The nature of the alleged incapacity in accordance with RCW **11.88.010**;
- (c) The approximate value and description of property, including any compensation, pension, insurance, or allowance, to which the alleged incapacitated person may be entitled;
- (d) Whether there is, in any state, a guardian or limited guardian, or pending guardianship action for the person or estate of the alleged incapacitated person;
- (e) The residence and post office address of the person whom petitioner asks to be appointed guardian or limited guardian;
- (f) The names and addresses, and nature of the relationship, so far as known or can be reasonably ascertained, of the persons most closely related by blood, marriage, or state registered domestic partnership to the alleged incapacitated person;
- (g) The name and address of the person or facility having the care and custody of the alleged incapacitated person;

(h) The reason why the appointment of a guardian or limited guardian is sought and the interest of the petitioner in the appointment, and whether the appointment is sought as guardian or limited guardian of the person, the estate, or both;

(i) A description of any alternate arrangements previously made by the alleged incapacitated person, such as trusts or powers of attorney, including identifying any guardianship nominations contained in a power of attorney, and why a guardianship is nevertheless necessary;

(j) The nature and degree of the alleged incapacity and the specific areas of protection and assistance requested and the limitation of rights requested to be included in the court's order of appointment;

(k) The requested term of the limited guardianship to be included in the court's order of appointment; and

(l) Whether the petitioner is proposing a specific individual to act as guardian ad litem and, if so, the individual's knowledge of or relationship to any of the parties, and why the individual is proposed.

(2) The petition shall include evidence of successful completion of any training required under RCW **11.88.020** by the proposed guardian or limited guardian unless the petitioner requests expedited appointment due to emergent circumstances.

(3)(a) The attorney general may petition for the appointment of a guardian or limited guardian in any case in which there is cause to believe that a guardianship is necessary and no private party is able and willing to petition.

(b) Prepayment of a filing fee shall not be required in any guardianship or limited guardianship brought by the attorney general. Payment of the filing fee shall be ordered from the estate of the incapacitated person at the hearing on the merits of the petition, unless in the judgment of the court, such payment would impose a hardship upon the incapacitated person, in which case the filing shall be waived.

(4) No filing fee shall be charged by the court for filing either a petition for guardianship or a petition for limited guardianship if the petition alleges that the alleged incapacitated person has total assets of a value of less than three thousand dollars.

(5)(a) Notice that a guardianship proceeding has been commenced shall be personally served upon the alleged incapacitated person and the guardian ad litem along with a copy of the petition for appointment of a guardian. Such notice shall be served not more than five court days after the petition has been filed.

(b) Notice under this subsection shall include a clear and easily readable statement of the legal rights of the alleged incapacitated person that could be restricted or transferred to a guardian by a guardianship order as well as the right to counsel of choice and to a jury trial on the issue of incapacity. Such notice shall be in substantially the following form and shall be in capital letters, double-spaced, and in a type size not smaller than ten-point type:

**IMPORTANT NOTICE  
PLEASE READ CAREFULLY**

A PETITION TO HAVE A GUARDIAN APPOINTED FOR YOU HAS BEEN FILED IN THE . . . . . COUNTY SUPERIOR COURT BY . . . . . IF A GUARDIAN IS APPOINTED, YOU COULD LOSE ONE OR MORE OF THE FOLLOWING RIGHTS:

(1) TO MARRY, DIVORCE, OR ENTER INTO OR END A STATE REGISTERED DOMESTIC PARTNERSHIP;

(2) TO VOTE OR HOLD AN ELECTED OFFICE;

(3) TO ENTER INTO A CONTRACT OR MAKE OR REVOKE A WILL;

- (4) TO APPOINT SOMEONE TO ACT ON YOUR BEHALF;
- (5) TO SUE AND BE SUED OTHER THAN THROUGH A GUARDIAN;
- (6) TO POSSESS A LICENSE TO DRIVE;
- (7) TO BUY, SELL, OWN, MORTGAGE, OR LEASE PROPERTY;
- (8) TO CONSENT TO OR REFUSE MEDICAL TREATMENT;
- (9) TO DECIDE WHO SHALL PROVIDE CARE AND ASSISTANCE;
- (10) TO MAKE DECISIONS REGARDING SOCIAL ASPECTS OF YOUR LIFE.

UNDER THE LAW, YOU HAVE CERTAIN RIGHTS.

YOU HAVE THE RIGHT TO BE REPRESENTED BY A LAWYER OF YOUR OWN CHOOSING. THE COURT WILL APPOINT A LAWYER TO REPRESENT YOU IF YOU ARE UNABLE TO PAY OR PAYMENT WOULD RESULT IN A SUBSTANTIAL HARDSHIP TO YOU.

YOU HAVE THE RIGHT TO ASK FOR A JURY TO DECIDE WHETHER OR NOT YOU NEED A GUARDIAN TO HELP YOU.

YOU HAVE THE RIGHT TO BE PRESENT IN COURT AND TESTIFY WHEN THE HEARING IS HELD TO DECIDE WHETHER OR NOT YOU NEED A GUARDIAN. IF A GUARDIAN AD LITEM IS APPOINTED, YOU HAVE THE RIGHT TO REQUEST THE COURT TO REPLACE THAT PERSON.

(6) All petitions filed under the provisions of this section shall be heard within sixty days unless an extension of time is requested by a party or the guardian ad litem within such sixty day period and granted for good cause shown. If an extension is granted, the court shall set a new hearing date.

[ 2011 c 329 § 2; 2009 c 521 § 36; 1996 c 249 § 8; 1995 c 297 § 1; 1991 c 289 § 2; 1990 c 122 § 4; 1977 ex.s. c 309 § 3; 1975 1st ex.s. c 95 § 4; 1965 c 145 § 11.88.030. Prior: 1927 c 170 § 1; 1917 c 156 § 197; RRS § 1567; prior: 1909 c 118 § 1; 1903 c 130 § 1.]

#### NOTES:

**Intent—1996 c 249:** See note following RCW 2.56.030.

**Effective date—1990 c 122:** See note following RCW 11.88.005.

**Severability—1977 ex.s. c 309:** See note following RCW 11.88.005.

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## 11.88.040

### Notice and hearing, when required—Service—Procedure.

Before appointing a guardian or a limited guardian, notice of a hearing, to be held not less than ten days after service thereof, shall be served personally upon the alleged incapacitated person, if over fourteen years of age, and served upon the guardian ad litem.

Before appointing a guardian or a limited guardian, notice of a hearing, to be held not less than ten days after service thereof, shall be given by registered or certified mail to the last known address requesting a return receipt signed by the addressee or an agent appointed by

the addressee, or by personal service in the manner provided for services of summons, to the following:

- (1) The alleged incapacitated person, or minor, if under fourteen years of age;
- (2) A parent, if the alleged incapacitated person is a minor, all known children not residing with a notified person, and the spouse or domestic partner of the alleged incapacitated person if any;
- (3) Any other person who has been appointed as guardian or limited guardian, or the person with whom the alleged incapacitated person resides. No notice need be given to those persons named in subsections (2) and (3) of this section if they have signed the petition for the appointment of the guardian or limited guardian or have waived notice of the hearing.
- (4) If the petition is by a parent asking for appointment as guardian or limited guardian of a minor child under the age of fourteen years, or if the petition is accompanied by the written consent of a minor of the age of fourteen years or upward, who consents to the appointment of the guardian or limited guardian asked for, or if the petition is by a nonresident guardian of any minor or incapacitated person, then the court may appoint the guardian without notice of the hearing. The court for good cause may reduce the number of days of notice, but in every case, at least three days notice shall be given.

The alleged incapacitated person shall be present in court at the final hearing on the petition: PROVIDED, That this requirement may be waived at the discretion of the court for good cause other than mere inconvenience shown in the report to be provided by the guardian ad litem pursuant to RCW **11.88.090** as now or hereafter amended, or if no guardian ad litem is required to be appointed pursuant to RCW **11.88.090**, as now or hereafter amended, at the discretion of the court for good cause shown by a party. Alternatively, the court may remove itself to the place of residence of the alleged incapacitated person and conduct the final hearing in the presence of the alleged incapacitated person. Final hearings on the petition may be held in closed court without admittance of any person other than those necessary to the action or proceeding.

If presence of the alleged incapacitated person is waived and the court does not remove itself to the place of residence of such person, the guardian ad litem shall appear in person at the final hearing on the petition.

[ **2008 c 6 § 803; 1995 c 297 § 2; 1991 c 289 § 3; 1990 c 122 § 5; 1984 c 149 § 177; 1977 ex.s. c 309 § 4; 1975 1st ex.s. c 95 § 5; 1969 c 70 § 1; 1965 c 145 § 11.88.040.** Prior: **1927 c 170 § 2; 1923 c 142 § 4; 1917 c 156 § 198; RRS § 1568; prior: 1909 c 118 § 2; 1903 c 130 §§ 2, 3.**]

#### NOTES:

**Part headings not law—Severability—2008 c 6:** See RCW **26.60.900** and **26.60.901**.

**Effective date—1990 c 122:** See note following RCW **11.88.005**.

**Severability—Effective dates—1984 c 149:** See notes following RCW **11.02.005**.

**Severability—1977 ex.s. c 309:** See note following RCW **11.88.005**.



**11.88.045****Legal counsel and jury trial—Proof—Medical report—Examinations—Waiver.**

(1)(a) Alleged incapacitated individuals shall have the right to be represented by willing counsel of their choosing at any stage in guardianship proceedings. The court shall provide counsel to represent any alleged incapacitated person at public expense when either: (i) The individual is unable to afford counsel, or (ii) the expense of counsel would result in substantial hardship to the individual, or (iii) the individual does not have practical access to funds with which to pay counsel. If the individual can afford counsel but lacks practical access to funds, the court shall provide counsel and may impose a reimbursement requirement as part of a final order. When, in the opinion of the court, the rights and interests of an alleged or adjudicated incapacitated person cannot otherwise be adequately protected and represented, the court on its own motion shall appoint an attorney at any time to represent such person. Counsel shall be provided as soon as practicable after a petition is filed and long enough before any final hearing to allow adequate time for consultation and preparation. Absent a convincing showing in the record to the contrary, a period of less than three weeks shall be presumed by a reviewing court to be inadequate time for consultation and preparation.

(b) Counsel for an alleged incapacitated individual shall act as an advocate for the client and shall not substitute counsel's own judgment for that of the client on the subject of what may be in the client's best interests. Counsel's role shall be distinct from that of the guardian ad litem, who is expected to promote the best interest of the alleged incapacitated individual, rather than the alleged incapacitated individual's expressed preferences.

(c) If an alleged incapacitated person is represented by counsel and does not communicate with counsel, counsel may ask the court for leave to withdraw for that reason. If satisfied, after affording the alleged incapacitated person an opportunity for a hearing, that the request is justified, the court may grant the request and allow the case to proceed with the alleged incapacitated person unrepresented.

(2) During the pendency of any guardianship, any attorney purporting to represent a person alleged or adjudicated to be incapacitated shall petition to be appointed to represent the incapacitated or alleged incapacitated person. Fees for representation described in this section shall be subject to approval by the court pursuant to the provisions of RCW **11.92.180**.

(3) The alleged incapacitated person is further entitled to testify and present evidence and, upon request, entitled to a jury trial on the issues of his or her alleged incapacity. The standard of proof to be applied in a contested case, whether before a jury or the court, shall be that of clear, cogent, and convincing evidence.

(4) In all proceedings for appointment of a guardian or limited guardian, the court must be presented with a written report from a physician licensed to practice under chapter **18.71** or **18.57** RCW, psychologist licensed under chapter **18.83** RCW, or advanced registered nurse practitioner licensed under chapter **18.79** RCW, selected by the guardian ad litem. If the alleged incapacitated person opposes the health care professional selected by the guardian ad litem to prepare the medical report, then the guardian ad litem shall use the health care professional selected by the alleged incapacitated person. The guardian ad litem may also obtain a supplemental examination. The physician, psychologist, or advanced registered nurse practitioner shall have personally examined and interviewed the alleged incapacitated person within thirty days of preparation of the report to the court and shall have expertise in the type of disorder or incapacity the alleged incapacitated person is believed to have. The

report shall contain the following information and shall be set forth in substantially the following format:

- (a) The name and address of the examining physician, psychologist, or advanced registered nurse practitioner;
- (b) The education and experience of the physician, psychologist, or advanced registered nurse practitioner pertinent to the case;
- (c) The dates of examinations of the alleged incapacitated person;
- (d) A summary of the relevant medical, functional, neurological, or mental health history of the alleged incapacitated person as known to the examining physician, psychologist, or advanced registered nurse practitioner;
- (e) The findings of the examining physician, psychologist, or advanced registered nurse practitioner as to the condition of the alleged incapacitated person;
- (f) Current medications;
- (g) The effect of current medications on the alleged incapacitated person's ability to understand or participate in guardianship proceedings;
- (h) Opinions on the specific assistance the alleged incapacitated person needs;
- (i) Identification of persons with whom the physician, psychologist, or advanced registered nurse practitioner has met or spoken regarding the alleged incapacitated person.

The court shall not enter an order appointing a guardian or limited guardian until a medical or mental status report meeting the above requirements is filed.

The requirement of filing a medical report is waived if the basis of the guardianship is minority.

(5) During the pendency of an action to establish a guardianship, a petitioner or any person may move for temporary relief under chapter 7.40 RCW, to protect the alleged incapacitated person from abuse, neglect, abandonment, or exploitation, as those terms are defined in RCW 74.34.020, or to address any other emergency needs of the alleged incapacitated person. Any alternative arrangement executed before filing the petition for guardianship shall remain effective unless the court grants the relief requested under chapter 7.40 RCW, or unless, following notice and a hearing at which all parties directly affected by the arrangement are present, the court finds that the alternative arrangement should not remain effective.

[ 2001 c 148 § 1; 1996 c 249 § 9; 1995 c 297 § 3; 1991 c 289 § 4; 1990 c 122 § 6; 1977 ex.s. c 309 § 5; 1975 1st ex.s. c 95 § 7.]

#### NOTES:

**Intent—1996 c 249:** See note following RCW 2.56.030.

**Effective date—1990 c 122:** See note following RCW 11.88.005.

**Severability—1977 ex.s. c 309:** See note following RCW 11.88.005.

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## 11.88.080

### Guardians nominated by will or durable power of attorney.



When either parent is deceased, the surviving parent of any minor child or a sole parent of a minor child, may by last will or durable power of attorney nominate a guardian or guardians of the person, or of the estate or both, of a minor child, whether born at the time of executing the instrument or afterwards, to continue during the minority of such child or for any less time. This nomination shall be effective in the event of the death or incapacity of such parent. Every guardian of the estate of a child shall give bond in like manner and with like conditions as required by RCW **11.88.100** and **11.88.110**, and he or she shall have the same powers and perform the same duties with regard to the person and estate of the minor as a guardian appointed under this chapter. The court shall confirm the parent's nomination unless the court finds, based upon evidence presented at a hearing on the matter, that the individual nominated in the surviving parent's will or durable power of attorney is not qualified to serve. In the event of a conflict between the provisions of a will nominating a testamentary guardian under the authority of this section and the nomination of a guardian under RCW **11.125.410**, the most recent designation shall control. This section applies to actions commenced under RCW **11.125.160**.

[ **2016 c 209 § 401**; **2005 c 97 § 11**; **1990 c 122 § 7**; **1965 c 145 § 11.88.080**. Prior: **1917 c 156 § 210**; RRS § 1580; prior: Code 1881 § 1618; **1860 p 228 § 335**.]

#### NOTES:

**Short title—Application—Uniformity—Federal law application—Federal electronic signatures in global and national commerce act—Application—Dates—Effective date—2016 c 209:** See RCW **11.125.010** and **11.125.900** through **11.125.903**.

**Effective date—1990 c 122:** See note following RCW **11.88.005**.

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### **11.88.090**

**Guardian ad litem—Mediation—Appointment—Qualifications—Notice of and statement by guardian ad litem—Hearing and notice—Attorneys' fees and costs—Registry—Duties—Report—Responses—Fee.**

(1) Nothing contained in RCW **11.88.080** through **11.88.120**, **11.92.010** through **11.92.040**, **11.92.060** through **11.92.120**, **11.92.170**, and **11.92.180** shall affect or impair the power of any court to appoint a guardian ad litem to defend the interests of any incapacitated person interested in any suit or matter pending therein, or to commence and prosecute any suit in his or her behalf.

(2) Prior to the appointment of a guardian or a limited guardian, whenever it appears that the incapacitated person or incapacitated person's estate could benefit from mediation and such mediation would likely result in overall reduced costs to the estate, upon the motion of the alleged incapacitated person or the guardian ad litem, or subsequent to such appointment, whenever it appears that the incapacitated person or incapacitated person's estate could benefit from mediation and such mediation would likely result in overall reduced costs to the estate, upon the motion of any interested person, the court may:

(a) Require any party or other person subject to the jurisdiction of the court to participate in mediation;

(b) Establish the terms of the mediation; and

(c) Allocate the cost of the mediation pursuant to \*RCW 11.96.140.

(3) Upon receipt of a petition for appointment of guardian or limited guardian, except as provided herein, the court shall appoint a guardian ad litem to represent the best interests of the alleged incapacitated person, who shall be a person found or known by the court to:

(a) Be free of influence from anyone interested in the result of the proceeding; and

(b) Have the requisite knowledge, training, or expertise to perform the duties required by this section.

The guardian ad litem shall within five days of receipt of notice of appointment file with the court and serve, either personally or by certified mail with return receipt, each party with a statement including: His or her training relating to the duties as a guardian ad litem; his or her criminal history as defined in RCW 9.94A.030 for the period covering ten years prior to the appointment; his or her hourly rate, if compensated; whether the guardian ad litem has had any contact with a party to the proceeding prior to his or her appointment; and whether he or she has an apparent conflict of interest. Within three days of the later of the actual service or filing of the guardian ad litem's statement, any party may set a hearing and file and serve a motion for an order to show cause why the guardian ad litem should not be removed for one of the following three reasons: (i) Lack of expertise necessary for the proceeding; (ii) an hourly rate higher than what is reasonable for the particular proceeding; or (iii) a conflict of interest. Notice of the hearing shall be provided to the guardian ad litem and all parties. If, after a hearing, the court enters an order replacing the guardian ad litem, findings shall be included, expressly stating the reasons for the removal. If the guardian ad litem is not removed, the court has the authority to assess to the moving party, attorneys' fees and costs related to the motion. The court shall assess attorneys' fees and costs for frivolous motions.

No guardian ad litem need be appointed when a parent is petitioning for a guardian or a limited guardian to be appointed for his or her minor child and the minority of the child, as defined by RCW 11.92.010, is the sole basis of the petition. The order appointing the guardian ad litem shall recite the duties set forth in subsection (5) of this section. The appointment of a guardian ad litem shall have no effect on the legal competency of the alleged incapacitated person and shall not overcome the presumption of competency or full legal and civil rights of the alleged incapacitated person.

(4)(a) The superior court of each county shall develop and maintain a registry of persons who are willing and qualified to serve as guardians ad litem in guardianship matters. The court shall choose as guardian ad litem a person whose name appears on the registry in a system of consistent rotation, except in extraordinary circumstances such as the need for particular expertise. The court shall develop procedures for periodic review of the persons on the registry and for probation, suspension, or removal of persons on the registry for failure to perform properly their duties as guardian ad litem. In the event the court does not select the person next on the list, it shall include in the order of appointment a written reason for its decision.

(b) To be eligible for the registry a person shall:

(i) Present a written statement outlining his or her background and qualifications. The background statement shall include, but is not limited to, the following information:

(A) Level of formal education;

(B) Training related to the guardian ad litem's duties;

(C) Number of years' experience as a guardian ad litem;

(D) Number of appointments as a guardian ad litem and the county or counties of appointment;

(E) Criminal history, as defined in RCW **9.94A.030**; and

(F) Evidence of the person's knowledge, training, and experience in each of the following: Needs of impaired elderly people, physical disabilities, mental illness, developmental disabilities, and other areas relevant to the needs of incapacitated persons, legal procedure, and the requirements of chapters **11.88** and **11.92** RCW.

The written statement of qualifications shall include the names of any counties in which the person was removed from a guardian ad litem registry pursuant to a grievance action, and the name of the court and the cause number of any case in which the court has removed the person for cause; and

(ii) Complete the training as described in (e) of this subsection. The training is not applicable to guardians ad litem appointed pursuant to special proceeding Rule 98.16W.

(c) Superior court shall remove any person from the guardian ad litem registry who misrepresents his or her qualifications pursuant to a grievance procedure established by the court.

(d) The background and qualification information shall be updated annually.

(e) The department of social and health services shall convene an advisory group to develop a model guardian ad litem training program and shall update the program biennially. The advisory group shall consist of representatives from consumer, advocacy, and professional groups knowledgeable in developmental disabilities, neurological impairment, physical disabilities, mental illness, domestic violence, aging, legal, court administration, the Washington state bar association, and other interested parties.

(f) The superior court shall require utilization of the model program developed by the advisory group as described in (e) of this subsection, to assure that candidates applying for registration as a qualified guardian ad litem shall have satisfactorily completed training to attain these essential minimum qualifications to act as guardian ad litem.

(5) The guardian ad litem appointed pursuant to this section shall have the following duties:

(a) To meet and consult with the alleged incapacitated person as soon as practicable following appointment and explain, in language which such person can reasonably be expected to understand, the substance of the petition, the nature of the resultant proceedings, the person's right to contest the petition, the identification of the proposed guardian or limited guardian, the right to a jury trial on the issue of his or her alleged incapacity, the right to independent legal counsel as provided by RCW **11.88.045**, and the right to be present in court at the hearing on the petition;

(b) To obtain a written report according to RCW **11.88.045**; and such other written or oral reports from other qualified professionals as are necessary to permit the guardian ad litem to complete the report required by this section;

(c) To meet with the person whose appointment is sought as guardian or limited guardian and ascertain:

(i) The proposed guardian's knowledge of the duties, requirements, and limitations of a guardian; and

(ii) The steps the proposed guardian intends to take or has taken to identify and meet the needs of the alleged incapacitated person;

(d) To consult as necessary to complete the investigation and report required by this section with those known relatives, friends, or other persons the guardian ad litem determines have had a significant, continuing interest in the welfare of the alleged incapacitated person;

(e) To investigate alternate arrangements made, or which might be created, by or on behalf of the alleged incapacitated person, such as revocable or irrevocable trusts, durable powers of attorney, or blocked accounts; whether good cause exists for any such arrangements to be discontinued; and why such arrangements should not be continued or created in lieu of a guardianship;

(f) To provide the court with a written report which shall include the following:

(i) A description of the nature, cause, and degree of incapacity, and the basis upon which this judgment was made;

(ii) A description of the needs of the incapacitated person for care and treatment, the probable residential requirements of the alleged incapacitated person and the basis upon which these findings were made;

(iii) An evaluation of the appropriateness of the guardian or limited guardian whose appointment is sought and a description of the steps the proposed guardian has taken or intends to take to identify and meet current and emerging needs of the incapacitated person;

(iv) A description of any alternative arrangements previously made by the alleged incapacitated person or which could be made, and whether and to what extent such alternatives should be used in lieu of a guardianship, and if the guardian ad litem is recommending discontinuation of any such arrangements, specific findings as to why such arrangements are contrary to the best interest of the alleged incapacitated person;

(v) A description of the abilities of the alleged incapacitated person and a recommendation as to whether a guardian or limited guardian should be appointed. If appointment of a limited guardian is recommended, the guardian ad litem shall recommend the specific areas of authority the limited guardian should have and the limitations and disabilities to be placed on the incapacitated person;

(vi) An evaluation of the person's mental ability to rationally exercise the right to vote and the basis upon which the evaluation is made;

(vii) Any expression of approval or disapproval made by the alleged incapacitated person concerning the proposed guardian or limited guardian or guardianship or limited guardianship;

(viii) Identification of persons with significant interest in the welfare of the alleged incapacitated person who should be advised of their right to request special notice of proceedings pursuant to RCW 11.92.150; and

(ix) Unless independent counsel has appeared for the alleged incapacitated person, an explanation of how the alleged incapacitated person responded to the advice of the right to jury trial, to independent counsel and to be present at the hearing on the petition.

Within forty-five days after notice of commencement of the guardianship proceeding has been served upon the guardian ad litem, and at least fifteen days before the hearing on the petition, unless an extension or reduction of time has been granted by the court for good cause, the guardian ad litem shall file its report and send a copy to the alleged incapacitated person and his or her counsel, spouse or domestic partner, all children not residing with a notified person, those persons described in (f)(viii) of this subsection, and persons who have filed a request for special notice pursuant to RCW 11.92.150. If the guardian ad litem needs additional time to finalize his or her report, then the guardian ad litem shall petition the court for a postponement of the hearing or, with the consent of all other parties, an extension or reduction of time for filing the report. If the hearing does not occur within sixty days of filing the

petition, then upon the two-month anniversary of filing the petition and on or before the same day of each following month until the hearing, the guardian ad litem shall file interim reports summarizing his or her activities on the proceeding during that time period as well as fees and costs incurred;

(g) To advise the court of the need for appointment of counsel for the alleged incapacitated person within five court days after the meeting described in (a) of this subsection unless (i) counsel has appeared, (ii) the alleged incapacitated person affirmatively communicated a wish not to be represented by counsel after being advised of the right to representation and of the conditions under which court-provided counsel may be available, or (iii) the alleged incapacitated person was unable to communicate at all on the subject, and the guardian ad litem is satisfied that the alleged incapacitated person does not affirmatively desire to be represented by counsel.

(6) If the petition is brought by an interested person or entity requesting the appointment of some other qualified person or entity and a prospective guardian or limited guardian cannot be found, the court shall order the guardian ad litem to investigate the availability of a possible guardian or limited guardian and to include the findings in a report to the court pursuant to subsection (5)(f) of this section.

(7) The parties to the proceeding may file responses to the guardian ad litem report with the court and deliver such responses to the other parties and the guardian ad litem at any time up to the second day prior to the hearing. If a guardian ad litem fails to file his or her report in a timely manner, the hearing shall be continued to give the court and the parties at least fifteen days before the hearing to review the report. At any time during the proceeding upon motion of any party or on the court's own motion, the court may remove the guardian ad litem for failure to perform his or her duties as specified in this chapter, provided that the guardian ad litem shall have five days' notice of any motion to remove before the court enters such order. In addition, the court in its discretion may reduce a guardian ad litem's fee for failure to carry out his or her duties.

(8) The court appointed guardian ad litem shall have the authority, in the event that the alleged incapacitated person is in need of emergency lifesaving medical services, and is unable to consent to such medical services due to incapacity pending the hearing on the petition to give consent for such emergency lifesaving medical services on behalf of the alleged incapacitated person.

(9) The court-appointed guardian ad litem shall have the authority to move for temporary relief under chapter 7.40 RCW to protect the alleged incapacitated person from abuse, neglect, abandonment, or exploitation, as those terms are defined in RCW 74.34.020, or to address any other emergency needs of the alleged incapacitated person. Any alternative arrangement executed before filing the petition for guardianship shall remain effective unless the court grants the relief requested under chapter 7.40 RCW, or unless, following notice and a hearing at which all parties directly affected by the arrangement are present, the court finds that the alternative arrangement should not remain effective.

(10) The guardian ad litem shall receive a fee determined by the court. The fee shall be charged to the alleged incapacitated person unless the court finds that such payment would result in substantial hardship upon such person, in which case the county shall be responsible for such costs: PROVIDED, That the court may charge such fee to the petitioner, the alleged incapacitated person, or any person who has appeared in the action; or may allocate the fee, as it deems just. If the petition is found to be frivolous or not brought in good faith, the

guardian ad litem fee shall be charged to the petitioner. The court shall not be required to provide for the payment of a fee to any salaried employee of a public agency.

(11) Upon the presentation of the guardian ad litem report and the entry of an order either dismissing the petition for appointment of guardian or limited guardian or appointing a guardian or limited guardian, the guardian ad litem shall be dismissed and shall have no further duties or obligations unless otherwise ordered by the court. If the court orders the guardian ad litem to perform further duties or obligations, they shall not be performed at county expense.

(12) The guardian ad litem shall appear in person at all hearings on the petition unless all parties provide a written waiver of the requirement to appear.

(13) At any hearing the court may consider whether any person who makes decisions regarding the alleged incapacitated person or estate has breached a statutory or fiduciary duty.

[ 2008 c 6 § 804; 2000 c 124 § 1; 1999 c 360 § 1; 1996 c 249 § 10; 1995 c 297 § 4; 1991 c 289 § 5; 1990 c 122 § 8; 1977 ex.s. c 309 § 6; 1975 1st ex.s. c 95 § 9; 1965 c 145 § 11.88.090. Prior: 1917 c 156 § 211; RRS § 1581; prior: Code 1881 § 1619; 1873 p 318 § 314; 1860 p 228 § 336.]

## NOTES:

*es of court: Judgment for and settlement of claims of minors: SPR 98.16W.*

**\*Reviser's note:** RCW 11.96.140 was repealed by 1999 c 42 § 637, effective January 1, 2000.

**Part headings not law—Severability—2008 c 6:** See RCW 26.60.900 and 26.60.901.

**Grievance rules—2000 c 124:** "Each superior court shall adopt rules establishing and governing procedures for filing, investigating, and adjudicating grievances made by or against guardians ad litem under Titles 11, 13, and 26 RCW." [ 2000 c 124 § 16.]

**Intent—1996 c 249:** See note following RCW 2.56.030.

**Effective date—1990 c 122:** See note following RCW 11.88.005.

**Severability—1977 ex.s. c 309:** See note following RCW 11.88.005.

*sts against guardian of infant plaintiff: RCW 4.84.140.*

*strict judge, guardian ad litem if defendant minor, appointment of: RCW 12.04.150.*

*ecution against for costs against infant plaintiff: RCW 4.84.140.*

*apacitated persons*

*pearance in civil action: RCW 4.08.060.*

*ointment for civil actions: RCW 4.08.060.*

*bility for costs against infant plaintiffs: RCW 4.84.140.*



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pearance in civil actions: RCW **4.08.050**.

appointment for civil actions: RCW **4.08.050**.

strict court proceedings: RCW **12.04.150**.

registration of land titles, appointment for minors: RCW **65.12.145**.

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## 11.88.093

### Ex parte communications—Removal.

A guardian ad litem shall not engage in ex parte communications with any judicial officer involved in the matter for which he or she is appointed during the pendency of the proceeding, except as permitted by court rule or statute for ex parte motions. Ex parte motions shall be heard in open court on the record. The record may be preserved in a manner deemed appropriate by the county where the matter is heard. The court, upon its own motion, or upon the motion of a party, may consider the removal of any guardian ad litem who violates this section from any pending case or from any court-authorized registry, and if so removed may require forfeiture of any fees for professional services on the pending case.

[ **2000 c 124 § 10.**]

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## 11.88.095

### Disposition of guardianship petition.

(1) In determining the disposition of a petition for guardianship, the court's order shall be based upon findings as to the capacities, condition, and needs of the alleged incapacitated person, and shall not be based solely upon agreements made by the parties.

(2) Every order appointing a full or limited guardian of the person or estate shall include:

(a) Findings as to the capacities, condition, and needs of the alleged incapacitated person;

(b) The amount of the bond, if any, or a bond review period;

(c) The date the account or report shall be filed. The date of filing an account or report shall be within ninety days after the anniversary date of the appointment;

(d) A date for the court to review the account or report and enter its order. The court shall conduct the review within one hundred twenty days after the anniversary date of the appointment and follow the provisions of RCW **11.92.050**. The court may review and approve an account or report without conducting a hearing;

(e) A directive to the clerk of court to issue letters of guardianship as specified in RCW **11.88.127**;

(f) Whether the guardian ad litem shall continue acting as guardian ad litem;

(g) Whether a review hearing shall be required upon the filing of the inventory;

(h) Whether a review hearing is required upon filing the initial personal care plan;

(i) The authority of the guardian, if any, for investment and expenditure of the ward's estate;

(j) Names and addresses of those persons described in RCW **11.88.090**(5)(d), if any, whom the court believes should receive copies of further pleadings filed by the guardian with respect to the guardianship. The guardian, within ninety days from the date of the appointment, shall, in writing, notify the persons identified by the court of their right to request special notice of proceedings as described in RCW **11.92.150**; and

(k) A guardianship summary placed directly below the case caption or on a separate cover page in the following form, or a substantially similar form, containing the following information:

### GUARDIANSHIP SUMMARY

Date Guardian Appointed: . . . .

Due Date for Report and Accounting: . . . .

Date of Next Review: . . . .

Letters Expire On: . . . .

Bond Amount: \$. . . .

Restricted Account Agreements Required: . . . .

Due Date for Inventory: . . . .

Due Date for Care Plan: . . . .

Incapacitated Person (IP)	Guardian of: [ ] Estate [ ] Person
Name:	Name:
Address:	Address:
Phone:	Phone:
Facsimile:	Facsimile:

Interested Parties	Address	Relation to IP



(3) If the court determines that a limited guardian should be appointed, the order shall specifically set forth the limits by either stating exceptions to the otherwise full authority of the guardian or by stating the specific authority of the guardian.

(4) In determining the disposition of a petition for appointment of a guardian or limited guardian of the estate only, the court shall consider whether the alleged incapacitated person is capable of giving informed medical consent or of making other personal decisions and, if not, whether a guardian or limited guardian of the person of the alleged incapacitated person should be appointed for that purpose.

(5) Unless otherwise ordered, any powers of attorney or durable powers of attorney shall be revoked upon appointment of a guardian or limited guardian of the estate.

If there is an existing medical power of attorney, the court must make a specific finding of fact regarding the continued validity of that medical power of attorney before appointing a guardian or limited guardian for the person.

[ 2011 c 329 § 4; 1995 c 297 § 5; 1991 c 289 § 6; 1990 c 122 § 9.]

#### NOTES:

**Effective date—1990 c 122:** See note following RCW 11.88.005.

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### 11.88.097

#### **Guardian ad litem—Fees.**

The court shall specify the hourly rate the guardian ad litem may charge for his or her services, and shall specify the maximum amount the guardian ad litem may charge without additional court review and approval. The court shall specify rates and fees in the order of appointment or at the earliest date the court is able to determine the appropriate rates and fees and prior to the guardian ad litem billing for his or her services. This section shall apply except as provided by local court rule.

[ 2000 c 124 § 13.]

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### 11.88.100

#### **Oath and bond of guardian or limited guardian.**

Before letters of guardianship are issued, each guardian or limited guardian shall take and subscribe an oath and, unless dispensed with by order of the court as provided in RCW 11.88.105, file a bond, with sureties to be approved by the court, payable to the state, in such sum as the court may fix, taking into account the character of the assets on hand or anticipated and the income to be received and disbursements to be made, and such bond shall be conditioned substantially as follows:

The condition of this obligation is such, that if the above bound A.B., who has been appointed guardian or limited guardian for C.D., shall faithfully discharge the office and trust of such guardian or limited guardian according to law and shall render a fair and just account of

his or her guardianship or limited guardianship to the superior court of the county of . . . . ., from time to time as he or she shall thereto be required by such court, and comply with all orders of the court, lawfully made, relative to the goods, chattels, moneys, care, management, and education of such incapacitated person, or his or her property, and render and pay to such incapacitated person all moneys, goods, chattels, title papers, and effects which may come into the hands or possession of such guardian or limited guardian, at such time and in such manner as the court may order, then this obligation shall be void, otherwise it shall remain in effect.

The bond shall be for the use of the incapacitated person, and shall not become void upon the first recovery, but may be put in suit from time to time against all or any one of the obligors, in the name and for the use and benefit of any person entitled by the breach thereof, until the whole penalty is recovered thereon. The court may require an additional bond whenever for any reason it appears to the court that an additional bond should be given.

In all guardianships or limited guardianships of the person, and in all guardianship or limited guardianships of the estate, in which the petition alleges that the alleged incapacitated person has total assets of a value of less than three thousand dollars, the court may dispense with the requirement of a bond pending filing of an inventory confirming that the estate has total assets of less than three thousand dollars: PROVIDED, That the guardian or limited guardian shall swear to report to the court any changes in the total assets of the incapacitated person increasing their value to over three thousand dollars: PROVIDED FURTHER, That the guardian or limited guardian shall file a yearly statement showing the monthly income of the incapacitated person if said monthly income, excluding moneys from state or federal benefits, is over the sum of five hundred dollars per month for any three consecutive months.

[ 2010 c 8 § 2088; 1990 c 122 § 10; 1983 c 271 § 1; 1977 ex.s. c 309 § 7; 1975 1st ex.s. c 95 § 10; 1965 c 145 § 11.88.100. Prior: 1961 c 155 § 1; 1951 c 242 § 1; 1947 c 145 § 1; 1945 c 41 § 1; 1917 c 156 § 203; Rem. Supp. 1947 § 1573; prior: 1905 c 17 § 1; Code 1881 § 1612; 1860 p 226 § 329.]

## NOTES:

**Effective date—1990 c 122:** See note following RCW 11.88.005.

**Severability—1977 ex.s. c 309:** See note following RCW 11.88.005.

*ation of surety on bond:* RCW 11.92.056.

*etyship:* Chapter 19.72 RCW.

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## 11.88.105

### Reduction in amount of bond.

In cases where all or a portion of the estate consisting of cash or securities has been placed in possession of savings and loan associations or banks, trust companies, escrow corporations, or other corporations approved by the court and if a verified receipt signed by the custodian of the funds is filed by the guardian or limited guardian in court stating that such

corporations hold the cash or securities subject to order of court, the court may in its discretion dispense with the bond or reduce the amount of the bond by the amount of such deposits.

[ 1990 c 122 § 11; 1975 1st ex.s. c 95 § 11; 1965 c 145 § 11.88.105.]

#### NOTES:

**Effective date—1990 c 122:** See note following RCW 11.88.005.

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### 11.88.107

#### When bond not required.

In all cases where a bank or trust company, authorized to act as guardian or limited guardian, or where a nonprofit corporation is authorized under its articles of incorporation to act as guardian or limited guardian, is appointed as guardian or limited guardian, or acts as guardian or limited guardian under an appointment as such heretofore made, no bond shall be required: PROVIDED, That in the case of appointment of a nonprofit corporation court approval shall be required before any bond requirement of this chapter may be waived.

[ 1990 c 122 § 12; 1977 ex.s. c 309 § 8; 1975 1st ex.s. c 95 § 12; 1965 c 145 § 11.88.107.]

#### NOTES:

**Effective date—1990 c 122:** See note following RCW 11.88.005.

**Severability—1977 ex.s. c 309:** See note following RCW 11.88.005.

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### 11.88.110

#### Law on executors' and administrators' bonds applicable.

All the provisions of this title relative to bonds given by executors and administrators shall apply to bonds given by guardians or limited guardians.

[ 1975 1st ex.s. c 95 § 13; 1965 c 145 § 11.88.110. Prior: 1917 c 156 § 204; RRS § 1574; prior: Code 1881 § 1617; 1860 p 228 § 334.]

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### 11.88.115

#### Notice to department of revenue.

Duty of guardian to notify department of revenue; personal liability for taxes upon failure to give notice: See RCW 82.32.240.

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**11.88.120****Modification or termination of guardianship—Procedure.**

(1)(a) At any time after establishment of a guardianship or appointment of a guardian, the court may, upon the death of the guardian or limited guardian, or, for other good reason, modify or terminate the guardianship or replace the guardian or limited guardian or modify the authority of a guardian or limited guardian. Such action may be taken based on the court's own motion, based on a motion by an attorney for a person or entity, based on a motion of a person or entity representing themselves, or based on a written complaint, as described in this section. The court may grant relief under this section as it deems just and in the best interest of the incapacitated person. For any hearing to modify or terminate a guardianship, the incapacitated person shall be given reasonable notice of the hearing and of the incapacitated person's right to be represented at the hearing by counsel of his or her own choosing.

(b) The court must modify or terminate a guardianship when a less restrictive alternative, such as a power of attorney or a trust, will adequately provide for the needs of the incapacitated person. In any motion to modify or terminate a guardianship with a less restrictive alternative, the court should consider any recent medical reports; whether a condition is reversible; testimony of the incapacitated person; testimony of persons most closely related by blood, marriage, or state registered domestic partnership to the incapacitated person; testimony of persons entitled to notice of special proceedings under RCW **11.92.150**; and other needs of the incapacitated person that are not adequately served in a guardianship or limited guardianship that may be better served with a less restrictive alternative. All motions under the provisions of this subsection (1)(b) must be heard within sixty days unless an extension of time is requested by a party or a guardian ad litem within such sixty-day period and granted for good cause shown. An extension granted for good cause should not exceed an additional sixty days from the date of the request of the extension, and the court must set a new hearing date.

(2)(a) An unrepresented person or entity may submit a complaint to the court. Complaints must be addressed to one of the following designees of the court: The clerk of the court having jurisdiction in the guardianship, the court administrator, or the guardianship monitoring program, and must identify the complainant and the incapacitated person who is the subject of the guardianship. The complaint must also provide the complainant's address, the case number (if available), and the address of the incapacitated person (if available). The complaint must state facts to support the claim.

(b) By the next judicial day after receipt of a complaint from an unrepresented person, the court's designee must ensure the original complaint is filed and deliver the complaint to the court.

(c) Within fourteen days of being presented with a complaint, the court must enter an order to do one or more of the following actions:

(i) To show cause, with fourteen days' notice, directing the guardian to appear at a hearing set by the court in order to respond to the complaint;

(ii) To appoint a guardian ad litem to investigate the issues raised by the complaint or to take any emergency action the court deems necessary to protect the incapacitated person until a hearing can be held;

(iii) To dismiss the complaint without scheduling a hearing, if it appears to the court that the complaint: Is without merit on its face; is filed in other than good faith; is filed for an improper purpose; regards issues that have already been adjudicated; or is frivolous. In making a determination, the court may review the matter and consider previous behavior of the complainant that is documented in the guardianship record;

(iv) To direct the guardian to provide, in not less than fourteen days, a written report to the court on the issues raised in the complaint;

(v) To defer consideration of the complaint until the next regularly scheduled hearing in the guardianship, if the date of that hearing is within the next three months, provided that there is no indication that the incapacitated person will suffer physical, emotional, financial, or other harm as a result of the court's deferral of consideration;

(vi) To order other action, in the court's discretion, in addition to doing one or more of the actions set out in this subsection.

(d) If after consideration of the complaint, the court believes that the complaint is made without justification or for reason to harass or delay or with malice or other bad faith, the court has the power to levy necessary sanctions, including but not limited to the imposition of reasonable attorney fees, costs, fees, striking pleadings, or other appropriate relief.

(3) The court may order persons who have been removed as guardians to deliver any property or records belonging to the incapacitated person in accordance with the court's order. Similarly, when guardians have died or been removed and property or records of an incapacitated person are being held by any other person, the court may order that person to deliver it in accordance with the court's order. Disobedience of an order to deliver is punishable as contempt of court.

(4) The administrative office of the courts must develop and prepare, in consultation with interested persons, a model form for the complaint described in subsection (2)(a) of this section and a model form for the order that must be issued by the court under subsection (2)(c) of this section.

(5) The board may send a grievance it has received regarding an active guardian case to the court's designee with a request that the court review the grievance and take any action the court deems necessary. This type of request from the board must be treated as a complaint under this section and the person who sent the complaint must be treated as the complainant. The court must direct the clerk to transmit a copy of its order to the board. The board must consider the court order when taking any further action and note the court order in any final determination.

(6) In any court action under this section that involves a professional guardian, the court must direct the clerk of the court to send a copy of the order entered under this section to the board.

(7) The definitions in this subsection apply throughout this section unless the context clearly requires otherwise.

(a) "Board" means the certified professional guardianship board.

(b) "Complaint" means a written submission by an unrepresented person or entity, who is referred to as the complainant.

[ 2017 c 271 § 2; 2015 c 293 § 1; 1991 c 289 § 7; 1990 c 122 § 14; 1977 ex.s. c 309 § 9; 1975 1st ex.s. c 95 § 14; 1965 c 145 § 11.88.120. Prior: 1917 c 156 § 209; RRS § 1579; prior: Code 1881 § 1616; 1860 p 227 § 333; 1855 p 17 § 11.]

**NOTES:**

**Findings—2017 c 271:** "The legislature finds that an incapacitated person should retain basic rights enjoyed by the public, including the freedom of associating with family and friends. A court or guardian should not remove or restrict the rights of an incapacitated person under a guardianship except when absolutely necessary to protect the incapacitated person. The legislature finds that less restrictive alternatives are preferred to guardianships and limited guardianships when they provide adequate support for an incapacitated person's needs. The legislature also recognizes that less restrictive alternatives are typically less expensive to administer than a guardianship, thereby preserving state resources, court resources, and the incapacitated person's estate. A less restrictive alternative may be in the form of a power of attorney, or a trust, or other legal, financial, or medical directives that allow an incapacitated person to enjoy a greater degree of individual liberty and decision making than for persons under a guardianship." [ **2017 c 271 § 1.**]

**Effective date—1990 c 122:** See note following RCW **11.88.005**.

**Severability—1977 ex.s. c 309:** See note following RCW **11.88.005**.

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**11.88.125****Standby limited guardian or limited guardian.**

(1) Any individual or professional guardian appointed by the court as either guardian or limited guardian of the person and/or estate of an incapacitated person shall file in writing with the court, within ninety days from the date of appointment, a notice designating a standby guardian or standby limited guardian to serve as guardian or limited guardian at the death, legal incapacity, or planned absence of the court-appointed guardian or limited guardian. The notice shall state the name, address, zip code, and telephone number of the designated standby guardian or standby limited guardian. Notice of the guardian's designation of the standby guardian or standby limited guardian shall be given to the standby guardian or standby limited guardian, the incapacitated person and his or her spouse or domestic partner and adult children, any facility in which the incapacitated person resides, and any person who requested special notice under RCW **11.92.150**.

(2)(a) If the regularly appointed guardian or limited guardian dies or becomes incapacitated, then the standby guardian or standby limited guardian shall have all the powers, duties, and obligations of the regularly appointed guardian or limited guardian and in addition shall, within a period of thirty days from the death or adjudication of incapacity of the regularly appointed guardian or limited guardian, file with the superior court in the county in which the guardianship or limited guardianship is then being administered, a petition for appointment of a substitute guardian or limited guardian. Upon the court's appointment of a new, substitute guardian or limited guardian, the standby guardian or standby limited guardian shall make an accounting and report to be approved by the court, and upon approval of the court, the standby guardian or standby limited guardian shall be released from all duties and obligations arising from or out of the guardianship or limited guardianship.

(b) Letters of guardianship shall be issued to the standby guardian or standby limited guardian upon filing an oath and posting a bond as required by RCW **11.88.100**. The oath



may be filed prior to the regularly appointed guardian's or limited guardian's death or incapacity. The standby guardian or standby limited guardian shall provide notice of such appointment to the incapacitated person and his or her spouse or domestic partner and adult children, any facility in which the incapacitated person resides, and any person who requested special notice under RCW **11.92.150**.

(c) The provisions of RCW **11.88.100** through **11.88.110** shall apply to standby guardians and standby limited guardians.

(3)(a) A standby guardian or standby limited guardian may assume some or all of the duties, responsibilities, and powers of the guardian or limited guardian during the guardian's or limited guardian's planned absence. Prior to the commencement of the guardian's or limited guardian's planned absence and prior to the standby guardian or standby limited guardian assuming any duties, responsibilities, and powers of the guardian or limited guardian, the guardian or limited guardian shall file a petition in the superior court where the guardianship or limited guardianship is being administered stating the dates of the planned absence and the duties, responsibilities, and powers the standby guardian or standby limited guardian should assume. The guardian or limited guardian shall give notice of the planned absence petition to the standby guardian or standby limited guardian, the incapacitated person and his or her spouse or domestic partner and adult children, any facility in which the incapacitated person resides, and any person who requested special notice under RCW **11.92.150**.

(b) Upon the conclusion of the hearing on the planned absence petition, and a determination by the court that the standby guardian or standby limited guardian meets the requirements of RCW **11.88.020**, the court shall issue an order specifying: (i) The amount of bond as required by RCW **11.88.100** through **11.88.110** to be filed by the standby guardian or standby limited guardian; (ii) the duties, responsibilities, and powers the standby guardian or standby limited guardian will assume during the planned absence; (iii) the duration the standby guardian or standby limited guardian will be acting; and (iv) the expiration date of the letters of guardianship to be issued to the standby guardian or standby limited guardian.

(c) Letters of guardianship consistent with the court's determination under (b) of this subsection shall be issued to the standby guardian or standby limited guardian upon filing an oath and posting a bond as required by RCW **11.88.100**. The standby guardian or standby limited guardian shall give notice of such appointment to the incapacitated person and his or her spouse or domestic partner and adult children, any facility in which the incapacitated person resides, and any person who requested special notice under RCW **11.92.150**.

(d) The provisions of RCW **11.88.100** through **11.88.110** shall apply to standby guardians and standby limited guardians.

(4) In addition to the powers of a standby guardian or standby limited guardian as noted in this section, the standby guardian or standby limited guardian shall have the authority to provide timely, informed consent to necessary medical procedures, as authorized in RCW **11.92.043**, if the guardian or limited guardian cannot be located within four hours after the need for such consent arises.

[ **2013 c 304 § 1**; **2011 c 329 § 5**; **2008 c 6 § 805**; **1991 c 289 § 8**; **1990 c 122 § 15**; **1979 c 32 § 1**; **1977 ex.s. c 309 § 10**; **1975 1st ex.s. c 95 § 6**.]

#### NOTES:

**Part headings not law—Severability—2008 c 6:** See RCW **26.60.900** and **26.60.901**.

**Effective date—1990 c 122:** See note following RCW **11.88.005**.

**Severability—1977 ex.s. c 309:** See note following RCW **11.88.005**.

## **11.88.127**

### **Guardianship—Incapacitated person—Letters of guardianship.**

(1) A guardian or limited guardian may not act on behalf of the incapacitated person without valid letters of guardianship. Upon appointment and fulfilling all legal requirements to serve, as set forth in the court's order, the clerk shall issue letters of guardianship to a guardian or limited guardian appointed by the court. All letters of guardianship must be in the following form, or a substantially similar form:

IN THE SUPERIOR COURT OF THE  
STATE OF WASHINGTON IN AND FOR THE  
COUNTY OF .....

IN THE MATTER OF THE  
GUARDIANSHIP OF

Guardianship Cause No. ....

.....  
Incapacitated Person

LETTERS OF  
GUARDIANSHIP OR LIMITED GUARDIANSHIP

Date letters expire .....

THESE LETTERS OF GUARDIANSHIP PROVIDE OFFICIAL VERIFICATION OF THE  
FOLLOWING:

On the ..... day of ....., 20 .... the Court appointed ..... to serve as:

☐ Guardian of the Person ☐ Full ☐ Limited

☐ Guardian of the Estate ☐ Full ☐ Limited

for ....., the incapacitated person, in the above referenced matter.

The Guardian has fulfilled all legal requirements to serve, including, but not limited to:  
Taking and filing the oath; filing any bond consistent with the court's order; filing any  
blocked account agreement consistent with the court's order; and appointing a resident  
agent for a nonresident guardian.



The Court, having found the Guardian duly qualified, now makes it known . . . . . is authorized as the Guardian for . . . . . designated in the Court's order as referenced above.

The next filing and reporting deadline in this matter is on the . . . day of . . . . ., . . . . .

THESE LETTERS ARE NO LONGER VALID ON . . . . .

These letters can only be renewed by a new court order. If the court grants an extension, new letters will be issued.

This matter is before the Honorable . . . . . of Superior Court, the seal of the Court being affixed  
this . . . . of . . . . .

State of Washington)

) ss.

County of . . . . .)

I, . . . . ., Clerk of the Superior Court of said County and State, certify that this document represents true and correct Letters of Guardianship in the above entitled case, entered upon the record on this . . . . . day of . . . . ., . . . . .

These Letters remain in full force and effect until the date of expiration set forth above.

The seal of Superior Court has been affixed and witnessed by my hand this . . . . . day of . . . . ., . . . . .

. . . . ., Clerk of Superior Court

By . . . . ., Deputy

. . . . .  
(Signature of Deputy)

(2) The court shall order the clerk to issue letters of guardianship that are valid for a period of up to five years from the anniversary date of the appointment. When determining the time period for which the letters will be valid, the court must consider: The length of time the guardian has been serving the incapacitated person; whether the guardian has timely filed all required reports with the court; whether the guardian is monitored by other state or local agencies; and whether there have been any allegations of abuse, neglect, or a breach of fiduciary duty against the guardian.

[ 2011 c 329 § 6.]

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**11.88.130****Transfer of jurisdiction and venue.**

The court of any county having jurisdiction of any guardianship or limited guardianship proceeding is authorized to transfer jurisdiction and venue of the guardianship or limited guardianship proceeding to the court of any other county of the state upon application of the guardian, limited guardian, or incapacitated person and such notice to an alleged incapacitated person or other interested party as the court may require. Such transfers of guardianship or limited guardianship proceedings shall be made to the court of a county wherein either the guardian or limited guardian or alleged incapacitated person resides, as the court may deem appropriate, at the time of making application for such transfer. The original order providing for any such transfer shall be retained as a permanent record by the clerk of the court in which such order is entered, and a certified copy thereof together with the original file in such guardianship or limited guardianship proceeding and a certified transcript of all record entries up to and including the order for such change shall be transmitted to the clerk of the court to which such proceeding is transferred.

[ 1990 c 122 § 16; 1975 1st ex.s. c 95 § 15; 1965 c 145 § 11.88.130. Prior: 1955 c 45 § 1.]

**NOTES:**

**Effective date—1990 c 122:** See note following RCW 11.88.005.

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**11.88.140****Termination of guardianship or limited guardianship.**

(1) TERMINATION WITHOUT COURT ORDER. A guardianship or limited guardianship is terminated:

- (a) Upon the attainment of full and legal age, as defined in RCW 26.28.010 as now or hereafter amended, of any person defined as an incapacitated person pursuant to RCW 11.88.010 as now or hereafter amended solely by reason of youth, RCW 26.28.020 to the contrary notwithstanding, subject to subsection (2) of this section;
- (b) By an adjudication of capacity or an adjudication of termination of incapacity;
- (c) By the death of the incapacitated person;
- (d) By expiration of the term of limited guardianship specified in the order appointing the limited guardian, unless prior to such expiration a petition has been filed and served, as provided in RCW 11.88.040 as now or hereafter amended, seeking an extension of such term.

(2) TERMINATION OF GUARDIANSHIP FOR A MINOR BY DECLARATION OF COMPLETION. A guardianship for the benefit of a minor may be terminated upon the minor's attainment of legal age, as defined in RCW 26.28.010 as now or hereafter amended, by the guardian filing a declaration that states:

- (a) The date the minor attained legal age;

(b) That the guardian has paid all of the minor's funds in the guardian's possession to the minor, who has signed a receipt for the funds, and that the receipt has been filed with the court;

(c) That the guardian has completed the administration of the minor's estate and the guardianship is ready to be closed; and

(d) The amount of fees paid or to be paid to each of the following: (i) The guardian, (ii) lawyer or lawyers, (iii) accountant or accountants; and that the guardian believes the fees are reasonable and does not intend to obtain court approval of the amount of the fees or to submit a guardianship accounting to the court for approval. Subject to the requirement of notice as provided in this section, unless the minor petitions the court either for an order requiring the guardian to obtain court approval of the amount of fees paid or to be paid to the guardian, lawyers, or accountants, or for an order requiring an accounting, or both, within thirty days from the filing of the declaration of completion of guardianship, the guardian shall be automatically discharged without further order of the court. The guardian's powers will cease thirty days after filing the declaration of completion of guardianship. The declaration of completion of guardianship shall, at the time, be the equivalent of an entry of a decree terminating the guardianship, distributing the assets, and discharging the guardian for all legal intents and purposes.

Within five days of the date of filing the declaration of completion of guardianship, the guardian or the guardian's lawyer shall mail a copy of the declaration of completion to the minor together with a notice that shall be substantially as follows:

#### CAPTION OF CASE

#### NOTICE OF FILING A DECLARATION OF COMPLETION OF GUARDIANSHIP

NOTICE IS GIVEN that the attached Declaration of Completion of Guardianship was filed by the undersigned in the above-entitled court on the . . . . . day of . . . . ., (year) . . . .; unless you file a petition in the above-entitled court requesting the court to review the reasonableness of the fees, or for an accounting, or both, and serve a copy of the petition on the guardian or the guardian's lawyer, within thirty days after the filing date, the amount of fees paid or to be paid will be deemed reasonable, the acts of the guardian will be deemed approved, the guardian will be automatically discharged without further order of the court and the Declaration of Completion of Guardianship will be final and deemed the equivalent of an order terminating the guardianship, discharging the guardian and decreeing the distribution of the guardianship assets.

If you file and serve a petition within the period specified, the undersigned will request the court to fix a time and place for the hearing of your petition, and you will be notified of the time and place of the hearing, by mail, or by personal service, not less than ten days before the hearing on the petition.

DATED this . . . . . day of . . . . ., (year) . . . .

. . . .  
Guardian

If the minor, after reaching legal age, waives in writing the notice required by this section, the guardian will be automatically discharged without further order of the court and the declaration of completion of guardianship will be effective as an order terminating the guardianship without an accounting upon filing the declaration. If the guardian has been required to furnish a bond, and a declaration of completion of guardianship is filed according

to this section, any bond furnished by the guardian shall be automatically discharged upon the discharge of the guardian.

(3) **TERMINATION ON COURT ORDER.** A guardianship or limited guardianship may be terminated by court order after such notice as the court may require if the guardianship or limited guardianship is no longer necessary.

The guardian or limited guardian shall, within ninety days of the date of termination of the guardianship, unless the court orders a different deadline for good cause, prepare and file with the court a final verified account of administration. The final verified account of administration shall contain the same information as required for (a) an intermediate verified account of administration of the estate under RCW **11.92.040**(2) and (b) an intermediate personal care status report under \*RCW **11.92.043**(2).

(4) **EFFECT OF TERMINATION.** When a guardianship or limited guardianship terminates other than by the death of the incapacitated person, the powers of the guardian or limited guardian cease, except that a guardian or limited guardian of the estate may make disbursements for claims that are or may be allowed by the court, for liabilities already properly incurred for the estate or for the incapacitated person, and for expenses of administration. When a guardianship or limited guardianship terminates by death of the incapacitated person, the guardian or limited guardian of the estate may proceed under RCW **11.88.150** as now or hereafter amended, but the rights of all creditors against the incapacitated person's estate shall be determined by the law of decedents' estates.

[ **2016 c 202 § 9**; **2011 c 329 § 7**; **1991 c 289 § 9**; **1990 c 122 § 17**; **1977 ex.s. c 309 § 11**; **1975 1st ex.s. c 95 § 16**; **1965 c 145 § 11.88.140**.]

#### NOTES:

**\*Reviser's note:** RCW **11.92.043** was amended by 2017 c 268 § 3, changing subsection (2) to subsection (1)(b).

**Effective date—1990 c 122:** See note following RCW **11.88.005**.

**Severability—1977 ex.s. c 309:** See note following RCW **11.88.005**.

*cedure on removal or death of guardian or limited guardian:* RCW **11.88.120**.

*tlement of estate upon termination:* RCW **11.92.053**.

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## 11.88.150

### **Administration of deceased incapacitated person's estate.**

(1) Upon the death of an incapacitated person, a guardian or limited guardian of the estate shall have authority to disburse or commit those funds under the control of the guardian or limited guardian as are prudent and within the means of the estate for the disposition of the deceased incapacitated person's remains. Consent for such arrangement shall be secured according to RCW **68.50.160**. If no person authorized by \*RCW **68.50.150** accepts responsibility for giving consent, the guardian or limited guardian of the estate may consent, subject to the provisions of this section and to the known directives of the deceased

incapacitated person. Reasonable financial commitments made by a guardian or limited guardian pursuant to this section shall be binding against the estate of the deceased incapacitated person.

(2) Upon the death of an incapacitated person intestate the guardian or limited guardian of his or her estate has power under the letters issued to him or her and subject to the direction of the court to administer the estate as the estate of the deceased incapacitated person without further letters unless within forty days after death of the incapacitated person a petition is filed for letters of administration or for letters testamentary and the petition is granted. If the guardian or limited guardian elects to administer the estate under his or her letters of guardianship or limited guardianship, he or she shall petition the court for an order transferring the guardianship or limited guardianship proceeding to a probate proceeding, and upon court approval, the clerk of the court shall re-index the cause as a decedent's estate, using the same file number which was assigned to the guardianship or limited guardianship proceeding. The guardian or limited guardian shall then be authorized to continue administration of the estate without the necessity for any further petition or hearing. Notice to creditors and other persons interested in the estate shall be published and may be combined with the notice of the guardian's or limited guardian's final account. This notice shall be given and published in the manner provided in chapter 11.40 RCW. Upon the hearing, the account may be allowed and the balance distributed to the persons entitled thereto, after the payment of such claims as may be allowed. Liability on the guardian's or limited guardian's bond shall continue until exonerated on settlement of his or her account, and may apply to the complete administration of the estate of the deceased incapacitated person with the consent of the surety. If letters of administration are granted upon petition filed within forty days after the death of the incapacitated person, the personal representative shall supersede the guardian or limited guardian in the administration of the estate and the estate shall be administered as a decedent's estate as provided in this title, including the publication of notice to creditors and other interested persons and the barring of creditors claims.

[ 2010 c 8 § 2089; 1990 c 122 § 18; 1977 ex.s. c 309 § 12; 1975 1st ex.s. c 95 § 17; 1965 c 145 § 11.88.150.]

#### NOTES:

**\*Reviser's note:** The reference to RCW 68.50.150 appears to be erroneous. RCW 68.50.160 was apparently intended. RCW 68.50.150 was subsequently repealed by 2005 c 365 § 161.

**Effective date—1990 c 122:** See note following RCW 11.88.005.

**Severability—1977 ex.s. c 309:** See note following RCW 11.88.005.

*tlement of estate upon termination: RCW 11.92.053.*

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## 11.88.160

### Guardianships involving veterans.

For guardianships involving veterans see chapter 73.36 RCW.

[ 1990 c 122 § 13.]

## NOTES:

**Effective date—1990 c 122:** See note following RCW **11.88.005**.

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### 11.88.170

#### **Guardianship courthouse facilitator program.**

A county may create a guardianship courthouse facilitator program to provide basic services to pro se litigants in guardianship cases. The legislative authority of any county may impose user fees or may impose a surcharge of up to twenty dollars, or both, on superior court cases filed under chapters **11.88**, 11.90, 11.92, and **73.36** RCW to pay for the expenses of the guardianship courthouse facilitator program. Fees collected under this section shall be collected and deposited in the same manner as other county funds are collected and deposited, and shall be maintained in a separate guardianship courthouse facilitator account to be used as provided in this section.

[ 2015 c 295 § 1.]

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### 11.88.900

#### **Construction—Chapter applicable to state registered domestic partnerships—2009 c 521.**

For the purposes of this chapter, the terms spouse, marriage, marital, husband, wife, widow, widower, next of kin, and family shall be interpreted as applying equally to state registered domestic partnerships or individuals in state registered domestic partnerships as well as to marital relationships and married persons, and references to dissolution of marriage shall apply equally to state registered domestic partnerships that have been terminated, dissolved, or invalidated, to the extent that such interpretation does not conflict with federal law. Where necessary to implement chapter 521, Laws of 2009, gender-specific terms such as husband and wife used in any statute, rule, or other law shall be construed to be gender neutral, and applicable to individuals in state registered domestic partnerships.

[ 2009 c 521 § 35.]

**Chapter 11.92 RCW****GUARDIANSHIP—POWERS AND DUTIES OF GUARDIAN OR LIMITED GUARDIAN****Chapter Listing | RCW Dispositions****Sections**

- 11.92.010** Guardians or limited guardians under court control—Legal age.
- 11.92.035** Claims.
- 11.92.040** Duties of guardian or limited guardian in general.
- 11.92.043** Additional duties.
- 11.92.050** Intermediate accounts or reports—Hearing—Order.
- 11.92.053** Settlement of estate upon termination.
- 11.92.056** Citation of surety on bond.
- 11.92.060** Guardian to represent incapacitated person—Compromise of claims—Service of process.
- 11.92.090** Sale, exchange, lease, or mortgage of property.
- 11.92.096** Guardian access to certain held assets.
- 11.92.100** Petition—Contents.
- 11.92.110** Sale of real estate.
- 11.92.115** Return and confirmation of sale.
- 11.92.120** Confirmation conclusive.
- 11.92.125** Broker's fee and closing expenses—Sale, exchange, mortgage, or lease of real estate.
- 11.92.130** Performance of contracts.
- 11.92.140** Court authorization for actions regarding guardianship funds.
- 11.92.150** Request for special notice of proceedings.
- 11.92.160** Citation for failure to file account or report.
- 11.92.170** Removal of property of nonresident incapacitated person.
- 11.92.180** Compensation and expenses of guardian or limited guardian—Attorney's fees—Department of social and health services clients paying part of costs—Rules.
- 11.92.185** Concealed or embezzled property.
- 11.92.190** Detention of person in residential placement facility against will prohibited—Effect of court order—Service of notice of residential placement.
- 11.92.195** Incapacitated persons—Right to associate with persons of their choosing.

**NOTES:**

*Veterans: RCW **73.04.140**.*

**11.92.010****Guardians or limited guardians under court control—Legal age.**

Guardians or limited guardians herein provided for shall at all times be under the general direction and control of the court making the appointment. For the purposes of chapters **11.88**

and **11.92** RCW, all persons shall be of full and legal age when they shall be eighteen years old.

[ **1975 1st ex.s. c 95 § 18; 1971 c 28 § 5; 1965 c 145 § 11.92.010**. Prior: **1923 c 72 § 1; 1917 c 156 § 202**; RRS § 1572. Formerly RCW **11.92.010** and **11.92.020**.]

#### NOTES:

*Age of majority: RCW **26.28.010**.*

*Married persons deemed to be of full age: RCW **26.28.020**.*

*Termination of guardianship or limited guardianship upon attainment of legal age: RCW **11.88.140**.*

*Transfer of jurisdiction and venue: RCW **11.88.130**.*

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### **11.92.035**

#### **Claims.**

(1) DUTY OF GUARDIAN TO PAY. A guardian of the estate is under a duty to pay from the estate all just claims against the estate of the incapacitated person, whether they constitute liabilities of the incapacitated person which arose prior to the guardianship or liabilities properly incurred by the guardian for the benefit of the incapacitated person or his or her estate and whether arising in contract or in tort or otherwise, upon allowance of the claim by the court or upon approval of the court in a settlement of the guardian's accounts. The duty of the guardian to pay from the estate shall not preclude the guardian's personal liability for his or her own contracts and acts made and performed on behalf of the estate as it exists according to the common law. If it appears that the estate is likely to be exhausted before all existing claims are paid, preference shall be given to (a) the expenses of administration including guardian's fees, attorneys' fees, and court costs; (b) prior claims for the care, maintenance and education of the incapacitated person and of the person's dependents over other claims. Subject to court orders limiting such powers, a limited guardian of an estate shall have the same authority to pay claims.

(2) CLAIMS MAY BE PRESENTED. Any person having a claim against the estate of an incapacitated person, or against the guardian of his or her estate as such, may file a written claim with the court for determination at any time before it is barred by the statute of limitations. After ten days' notice to a guardian or limited guardian, a hearing on the claim shall be held, at which upon proof thereof and after consideration of any defenses or objections by the guardian, the court may enter an order for its allowance and payment from the estate. Any action against the guardian of the estate as such shall be deemed a claim duly filed.

[ **1990 c 122 § 19; 1975 1st ex.s. c 95 § 19; 1965 c 145 § 11.92.035**.]

#### NOTES:



**Effective date—1990 c 122:** See note following RCW **11.88.005**.

*ions against guardian:* RCW **11.92.060**.

*ims against estate of deceased incompetent person or individual with a disability:* RCW **11.88.150**.

*bursement for claims on termination of guardianship or limited guardianship:* RCW **11.88.140**.

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## **11.92.040**

### **Duties of guardian or limited guardian in general.**

It shall be the duty of the guardian or limited guardian of an estate:

(1) To file within three months after the guardian's appointment a verified inventory of all the property of the incapacitated person which comes into the guardian's possession or knowledge, including a statement of all encumbrances, liens, and other secured charges on any item;

(2) To file annually, within ninety days after the anniversary date of the guardian's or limited guardian's appointment, and also within ninety days after termination of the appointment, unless the court for good cause orders a different deadline to file following termination, a written verified account of the administration for court approval, which account shall contain at least the following information:

(a) Identification of property of the guardianship estate as of the date of the last account or, in the case of the initial account, as of the date of inventory;

(b) Identification of all additional property received into the guardianship, including income by source;

(c) Identification of all expenditures made during the account period by major categories;

(d) Any adjustments to the guardianship estate required to establish its present fair market value, including gains or losses on sale or other disposition and any mortgages, deeds of trust or other encumbrances against the guardianship estate; and

(e) Identification of all property held in the guardianship estate as of the date of account, the assessed value of any real property and the guardian's estimate of the present fair market values of other property (including the basis on which such estimate is made), and the total net fair market value of the guardianship estate. In addition, immediately following such statement of present fair market value, the account shall set forth a statement of current amount of the guardian's bond and any other court-ordered protection for the security of the guardianship assets;

(3) The court in its discretion may allow reports at intervals of up to thirty-six months for estates with assets (exclusive of real property) having a value of not more than twice the homestead exemption. Notwithstanding contrary provisions of this section, the guardian or limited guardian of an estate need not file an annual report with the court if the funds of the guardianship are held for the benefit of a minor in a blocked account unless the guardian requests a withdrawal from such account, in which case the guardian shall provide a written verified account of the administration of the guardianship estate along with the guardian's petition for the withdrawal. The guardian or limited guardian shall report any substantial

change in income or assets of the guardianship estate within thirty days of the occurrence of the change. A hearing shall be scheduled for court review and determination of provision for increased bond or other provision in accordance with RCW **11.88.100**;

(4) All court orders approving accounts or reports filed by a guardian or limited guardian must contain a guardianship summary placed directly below the case caption or on a separate cover page in the following form, or a substantially similar form, containing the following information:

### GUARDIANSHIP SUMMARY

Date Guardian Appointed: . . . .

Due Date for Report and Accounting: . . . .

Date of Next Review: . . . .

Letters Expire On: . . . .

Bond Amount: \$. . . .

Restricted Account Agreements Required: . . . .

Incapacitated Person (IP)      Guardian of: ☐ Estate ☐ Person

Name:	Name:
Address:	Address:
Phone:	Phone:
Facsimile:	Facsimile:

Standby Guardian	Address	Relation to IP
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Interested Parties	Address	Relation to IP
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(5) To protect and preserve the guardianship estate, to apply it as provided in this chapter, to account for it faithfully, to perform all of the duties required by law, and at the termination of the guardianship or limited guardianship, to deliver the assets of the incapacitated person to the persons entitled thereto. Except as provided to the contrary herein, the court may authorize a guardian or limited guardian to do anything that a trustee can do under the provisions of RCW **11.98.070** for a period not exceeding one year from the date of the order

or for a period corresponding to the interval in which the guardian's or limited guardian's report is required to be filed by the court pursuant to subsection (2) of this section, whichever period is longer;

(6) To invest and reinvest the property of the incapacitated person in accordance with the rules applicable to investment of trust estates by trustees as provided in chapter **11.100** RCW, except that:

(a) No investments shall be made without prior order of the court in any property other than unconditional interest bearing obligations of this state or of the United States and in obligations the interest and principal of which are unconditionally guaranteed by the United States, and in share accounts or deposits which are insured by an agency of the United States government. Such prior order of the court may authorize specific investments, or, in the discretion of the court, may authorize the guardian or limited guardian to invest and reinvest as provided in chapter **11.100** RCW without further order of the court;

(b) If it is for the best interests of the incapacitated person that a specific property be used by the incapacitated person rather than sold and the proceeds invested, the court may so order;

(7) To apply to the court no later than the filing of the inventory for an order authorizing disbursements on behalf of the incapacitated person. However, the guardian or limited guardian of the estate, or the person, department, bureau, agency, or charitable organization having the care and custody of an incapacitated person, may apply to the court for an order directing the guardian or limited guardian of the estate to pay to the person, department, bureau, agency, or charitable organization having the care and custody of an incapacitated person, or if the guardian or limited guardian of the estate has the care and custody of the incapacitated person, directing the guardian or limited guardian of the estate to apply an amount weekly, monthly, quarterly, semi-annually, or annually, as the court may direct, to be expended in the care, maintenance, and education of the incapacitated person and of his or her dependents. In proper cases, the court may order payment of amounts directly to the incapacitated person for his or her maintenance or incidental expenses. The amounts authorized under this section may be decreased or increased from time to time by direction of the court. If payments are made to another under an order of the court, the guardian or limited guardian of the estate is not bound to see to the application thereof;

(8) To provide evidence of the guardian or limited guardian's successful completion of any standardized training video or web cast for guardians or limited guardians made available by the administrative office of the courts and the superior court when the guardian or limited guardian: (a) Was appointed prior to July 22, 2011; (b) is not a certified professional guardian or financial institution authorized under RCW **11.88.020**; and (c) has not previously completed the requirements of RCW **11.88.020**(3). The training video or web cast must be provided at no cost to the guardian or limited guardian. The superior court may, upon (i) petition by the guardian or limited guardian; or (ii) any other method as provided by local court rule: (A) For good cause, waive this requirement for guardians appointed prior to July 22, 2011. Good cause shall require evidence that the guardian already possesses the requisite knowledge to serve as a guardian without completing the training. When determining whether there is good cause to waive the training requirement, the court shall consider, among other facts, the length of time the guardian has been serving the incapacitated person; whether the guardian has timely filed all required reports with the court; whether the guardian is monitored by other state or local agencies; and whether there have been any allegations of abuse, neglect, or a

breach of fiduciary duty against the guardian; or (B) extend the time period for completion of the training requirement for ninety days; and

(9) To provide evidence of the guardian or limited guardian's successful completion of any additional or updated training video or web cast offered by the administrative office of the courts and the superior court as is required at the discretion of the superior court unless the guardian or limited guardian is a certified professional guardian or financial institution authorized under RCW **11.88.020**. The training video or web cast must be provided at no cost to the guardian or limited guardian.

[ **2011 c 329 § 9**; **1991 c 289 § 10**; **1990 c 122 § 20**; **1985 c 30 § 9**. Prior: **1984 c 149 § 12**; **1979 c 32 § 2**; **1977 ex.s. c 309 § 13**; **1975 1st ex.s. c 95 § 20**; **1965 c 145 § 11.92.040**; prior: **1957 c 64 § 1**; **1955 c 205 § 15**; **1941 c 83 § 1**; **1917 c 156 § 205**; Rem. Supp. 1941 § 1575; prior: **1895 c 42 § 1**; Code 1881 § 1614.]

## NOTES:

**Effective date—1990 c 122:** See note following RCW **11.88.005**.

**Short title—Application—Purpose—Severability—1985 c 30:** See RCW **11.02.900** through **11.02.903**.

**Severability—Effective dates—1984 c 149:** See notes following RCW **11.02.005**.

**Severability—1977 ex.s. c 309:** See note following RCW **11.88.005**.

*mpulsory school attendance law, duty to comply with:* RCW **28A.225.010**.

*abled person, defined:* RCW **11.88.010**.

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## 11.92.043

### Additional duties.

(1) It is the duty of the guardian or limited guardian of the person:

(a) To file within three months after appointment a personal care plan for the incapacitated person, which must include (i) an assessment of the incapacitated person's physical, mental, and emotional needs and of such person's ability to perform or assist in activities of daily living, and (ii) the guardian's specific plan for meeting the identified and emerging personal care needs of the incapacitated person.

(b) To file annually or, where a guardian of the estate has been appointed, at the time an account is required to be filed under RCW **11.92.040**, a report on the status of the incapacitated person, which shall include:

(i) The address and name of the incapacitated person and all residential changes during the period;

(ii) The services or programs that the incapacitated person receives;

(iii) The medical status of the incapacitated person;

(iv) The mental status of the incapacitated person, including reports from mental health professionals on the status of the incapacitated person, if any exist;

- (v) Changes in the functional abilities of the incapacitated person;
- (vi) Activities of the guardian for the period;
- (vii) Any recommended changes in the scope of the authority of the guardian;
- (viii) The identity of any professionals who have assisted the incapacitated person during the period;

(ix)(A) Evidence of the guardian or limited guardian's successful completion of any standardized training video or web cast for guardians or limited guardians made available by the administrative office of the courts and the superior court when the guardian or limited guardian: (I) Was appointed prior to July 22, 2011; (II) is not a certified professional guardian or financial institution authorized under RCW **11.88.020**; and (III) has not previously completed the requirements of RCW **11.88.020**(3). The training video or web cast must be provided at no cost to the guardian or limited guardian.

(B) The superior court may, upon petition by the guardian or limited guardian or any other method as provided by local court rule:

(I) For good cause, waive this requirement for guardians appointed prior to July 22, 2011. Good cause requires evidence that the guardian already possesses the requisite knowledge to serve as a guardian without completing the training. When determining whether there is good cause to waive the training requirement, the court must consider, among other facts, the length of time the guardian has been serving the incapacitated person; whether the guardian has timely filed all required reports with the court; whether the guardian is monitored by other state or local agencies; and whether there have been any allegations of abuse, neglect, or a breach of fiduciary duty against the guardian; or

(II) Extend the time period for completion of the training requirement for ninety days; and

(x) Evidence of the guardian or limited guardian's successful completion of any additional or updated training video or web cast offered by the administrative office of the courts and the superior court as is required at the discretion of the superior court unless the guardian or limited guardian is a certified professional guardian or financial institution authorized under RCW **11.88.020**. The training video or web cast must be provided at no cost to the guardian or limited guardian.

(c) To report to the court within thirty days any substantial change in the incapacitated person's condition, or any changes in residence of the incapacitated person.

(d) To inform any person entitled to special notice of proceedings under RCW **11.92.150** and any other person designated by the incapacitated person as soon as possible, but in no case more than five business days, after the incapacitated person:

(i) Makes a change in residence that is intended or likely to last more than fourteen calendar days;

(ii) Has been admitted to a medical facility for acute care in response to a life-threatening injury or medical condition that requires inpatient care;

(iii) Has been treated in an emergency room setting or kept for hospital observation for more than twenty-four hours; or

(iv) Dies, in which case the notification must be made in person, by telephone, or by certified mail.

(e) Consistent with the powers granted by the court, to care for and maintain the incapacitated person in the setting least restrictive to the incapacitated person's freedom and appropriate to the incapacitated person's personal care needs, assert the incapacitated person's rights and best interests, and if the incapacitated person is a minor or where otherwise appropriate, to see that the incapacitated person receives appropriate training and

education and that the incapacitated person has the opportunity to learn a trade, occupation, or profession.

(f) Consistent with RCW **7.70.065**, to provide timely, informed consent for health care of the incapacitated person, except in the case of a limited guardian where such power is not expressly provided for in the order of appointment or subsequent modifying order as provided in RCW **11.88.125** as now or hereafter amended, the standby guardian or standby limited guardian may provide timely, informed consent to necessary medical procedures if the guardian or limited guardian cannot be located within four hours after the need for such consent arises. No guardian, limited guardian, or standby guardian may involuntarily commit for mental health treatment, observation, or evaluation an alleged incapacitated person who is unable or unwilling to give informed consent to such commitment unless the procedures for involuntary commitment set forth in chapter **71.05** or **72.23** RCW are followed. Nothing in this section may be construed to allow a guardian, limited guardian, or standby guardian to consent to:

- (i) Therapy or other procedure which induces convulsion;
- (ii) Surgery solely for the purpose of psychosurgery;
- (iii) Other psychiatric or mental health procedures that restrict physical freedom of movement, or the rights set forth in RCW **71.05.217**.

(2) A guardian, limited guardian, or standby guardian who believes these procedures are necessary for the proper care and maintenance of the incapacitated person shall petition the court for an order unless the court has previously approved the procedure within the past thirty days. The court may order the procedure only after an attorney is appointed in accordance with RCW **11.88.045** if no attorney has previously appeared, notice is given, and a hearing is held in accordance with RCW **11.88.040**.

[ **2017 c 268 § 3**; **2011 c 329 § 3**; **1991 c 289 § 11**; **1990 c 122 § 21**.]

## NOTES:

**Effective date—1990 c 122:** See note following RCW **11.88.005**.

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## 11.92.050

### Intermediate accounts or reports—Hearing—Order.

(1) Upon the filing of any intermediate guardianship or limited guardianship account or report required by statute, or of any intermediate account or report required by court rule or order, the court shall enter an order settling the guardianship account or report with regard to any receipts, expenditures, and investments made and acts done by the guardian or limited guardian to the date of the interim report.

(2) Upon such account or report being filed, the court may, in its discretion, set a date for the hearing and require the service of the guardian's report or account and a notice of the hearing as provided in RCW **11.88.040** as now or hereafter amended or as specified by the court; and, in the event a hearing is ordered, the court may also appoint a guardian ad litem, whose duty it shall be to investigate the account or report of the guardian or limited guardian of the estate and to advise the court thereon at the hearing, in writing.



(3) At the hearing on or upon the court's review of the account or report of the guardian or limited guardian, if the court is satisfied that the actions of the guardian or limited guardian have been proper, and that the guardian or limited guardian has in all respects discharged his or her trust with relation to the receipts, expenditures, investments, and acts, then, in such event, the court shall enter an order approving such account or report.

(4) If a guardian or limited guardian fails to file the account or report or fails to appear at the hearing, the court shall enter an order for one or more of the following actions:

(a) Entering an order to show cause and requiring the guardian to appear at a show cause hearing. At the hearing the court may take action to protect the incapacitated person, including, but not limited to, removing the guardian or limited guardian pursuant to RCW **11.88.120** and appointing a successor;

(b) Directing the clerk to extend the letters, for good cause shown, for no more than ninety days, to permit the guardian to file his or her account or report;

(c) Requiring the completion of any approved guardianship training made available to the guardian by the court;

(d) Appointing a guardian ad litem subject to the requirements in RCW **11.88.090**;

(e) Providing other and further relief the court deems just and equitable.

(5) If the court has appointed a guardian ad litem, the order shall be final and binding upon the incapacitated person, subject only to the right of appeal as upon a final order; provided that at the time of final account of said guardian or limited guardian or within one year after the incapacitated person attains his or her majority any such interim account may be challenged by the incapacitated person on the ground of fraud.

(6) The procedure established in this section for financial accounts by guardians or limited guardians of the estate shall apply to personal care reports filed by guardians or limited guardians of the person under RCW **11.92.043**.

[ **2011 c 329 § 10**; **1995 c 297 § 6**; **1990 c 122 s 23**; **1975 1st ex.s. c 95 s 21**; **1965 c 145 s 11.92.050**. Prior: **1943 c 29 s 1**; Rem. Supp. 1943 s 1575-1.]

## NOTES:

**Effective date—1990 c 122:** See note following RCW **11.88.005**.

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### **11.92.053**

#### **Settlement of estate upon termination.**

Within ninety days, unless the court orders a different deadline for good cause, after the termination of a guardianship for any reason, the guardian or limited guardian of the estate shall petition the court for an order settling his or her account as filed in accordance with RCW **11.92.040**(2) with regard to any receipts, expenditures, and investments made and acts done by the guardian to the date of the termination. Upon the filing of the petition, the court shall set a date for the hearing of the petition after notice has been given in accordance with RCW **11.88.040**. Any person interested may file objections to the petition or may appear at the time and place fixed for the hearing thereof and present his or her objections thereto. The court may take such testimony as it deems proper or necessary to determine whether an order

settling the account should be issued and the transactions of the guardian be approved, and the court may appoint a guardian ad litem to review the report.

At the hearing on the petition of the guardian or limited guardian, if the court is satisfied that the actions of the guardian or limited guardian have been proper, and that the guardian has in all respects discharged his or her trust with relation to the receipts, expenditures, investments, and acts, then, in such event, the court shall enter an order approving the account, and the order shall be final and binding upon the incapacitated person, subject only to the right of appeal as upon a final order. However, within one year after the incompetent attains his or her majority any such account may be challenged by the incapacitated person on the ground of fraud.

[ 2011 c 329 § 8; 1995 c 297 § 7; 1990 c 122 § 24; 1965 c 145 § 11.92.053.]

#### NOTES:

**Effective date—1990 c 122:** See note following RCW 11.88.005.

*nistration of deceased incompetent's estate:* RCW 11.88.150.

*cedure on removal or death of guardian—Delivery of estate to successor:* RCW 11.88.120.

*mination of guardianship:* RCW 11.88.140.

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## 11.92.056

### Citation of surety on bond.

If, at any hearing upon a petition to settle the account of any guardian or limited guardian, it shall appear to the court that said guardian or limited guardian has not fully accounted or that said account should not be settled, the court may continue said hearing to a day certain and may cite the surety or sureties upon the bond of said guardian or limited guardian to appear upon the date fixed in said citation and show cause why the account should not be disapproved and judgment entered for any deficiency against said guardian or limited guardian and the surety or sureties upon his or her bond. Said citation shall be personally served upon said surety or sureties in the manner provided by law for the service of summons in civil actions and shall be served not less than twenty days previous to said hearing. At said hearing any interested party, including the surety so cited, shall have the right to introduce any evidence which shall be material to the matter before the court. If, at said hearing, the final account of said guardian or limited guardian shall not be approved and the court shall find that said guardian or limited guardian is indebted to the incapacitated person in any amount, said court may thereupon enter final judgment against said guardian or limited guardian and the surety or sureties upon his or her bond, which judgment shall be enforceable in the same manner and to the same extent as judgments in ordinary civil actions.

[ 1990 c 122 § 25; 1975 1st ex.s. c 95 § 22; 1965 c 145 § 11.92.056.]

#### NOTES:



**Effective date—1990 c 122:** See note following RCW **11.88.005**.

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## **11.92.060**

### **Guardian to represent incapacitated person—Compromise of claims—Service of process.**

(1) **GUARDIAN MAY SUE AND BE SUED.** When there is a guardian of the estate, all actions between the incapacitated person or the guardian and third persons in which it is sought to charge or benefit the estate of the incapacitated person shall be prosecuted by or against the guardian of the estate as such. The guardian shall represent the interests of the incapacitated person in the action and all process shall be served on him or her. A guardian or limited guardian of the estate shall report to the court any action commenced against the incapacitated person and shall secure court approval prior to initiating any legal action in the name of the incapacitated person.

(2) **JOINDER, AMENDMENT AND SUBSTITUTION.** When the guardian of the estate is under personal liability for his or her own contracts and acts made and performed on behalf of the estate the guardian may be sued both as guardian and in his or her personal capacity in the same action. Misnomer or the bringing of the action by or against the incapacitated person shall not be grounds for dismissal of the action and leave to amend or substitute shall be freely granted. If an action was commenced by or against the incapacitated person before the appointment of a guardian of his or her estate, such guardian when appointed may be substituted as a party for the incapacitated person. If the appointment of the guardian of the estate is terminated, his or her successor may be substituted; if the incapacitated person dies, his or her personal representative may be substituted; if the incapacitated person is no longer incapacitated the person may be substituted.

(3) **GARNISHMENT, ATTACHMENT AND EXECUTION.** When there is a guardian of the estate, the property and rights of action of the incapacitated person shall not be subject to garnishment or attachment, except for the foreclosure of a mortgage or other lien, and execution shall not issue to obtain satisfaction of any judgment against the incapacitated person or the guardian of the person's estate as such.

(4) **COMPROMISE BY GUARDIAN.** Whenever it is proposed to compromise or settle any claim by or against the incapacitated person or the guardian as such, whether arising as a result of personal injury or otherwise, and whether arising before or after appointment of a guardian, the court on petition of the guardian of the estate, if satisfied that such compromise or settlement will be for the best interests of the incapacitated person, may enter an order authorizing the settlement or compromise be made.

(5) **LIMITED GUARDIAN.** Limited guardians may serve and be served with process or actions on behalf of the incapacitated person, but only to the extent provided for in the court order appointing a limited guardian.

[ **1990 c 122 § 26**; **1975 1st ex.s. c 95 § 23**; **1965 c 145 § 11.92.060**. Prior: **1917 c 156 § 206**; RRS § 1576; prior: **1903 c 100 § 1**; Code 1881 § 1611; **1860 p 226 § 328**.]

#### **NOTES:**

*es of court: SPR 98.08W, 98.10W, 98.16W.*

**Effective date—1990 c 122:** See note following RCW **11.88.005**.

*ion against guardian deemed claim: RCW 11.92.035.*

## **11.92.090**

### **Sale, exchange, lease, or mortgage of property.**

Whenever it shall appear to the satisfaction of a court by the petition of any guardian or limited guardian, that it is necessary or proper to sell, exchange, lease, mortgage, or grant an easement, license or similar interest in any of the real or personal property of the estate of the incapacitated person for the purpose of paying debts or for the care, support and education of the incapacitated person, or to redeem any property of the incapacitated person's estate covered by mortgage or other lien, or for the purpose of making any investments, or for any other purpose which to the court may seem right and proper, the court may make an order directing such sale, exchange, lease, mortgage, or grant of easement, license or similar interest of such part or parts of the real or personal property as shall to the court seem proper.

[ **1990 c 122 § 27; 1975 1st ex.s. c 95 § 24; 1965 c 145 § 11.92.090**. Prior: **1917 c 156 § 212**; RRS § 1582; prior: Code 1881 § 1620; **1855 p 17 § 14.**]

#### **NOTES:**

**Effective date—1990 c 122:** See note following RCW **11.88.005**.

## **11.92.096**

### **Guardian access to certain held assets.**

(1) All financial institutions as defined in \*RCW **30.22.040**(12), all insurance companies holding a certificate of authority under chapter **48.05** RCW, or any agent who constitutes a salesperson or broker-dealer of securities under the definitions of RCW **21.20.005** (hereafter individually and collectively referenced as "institution") shall provide the guardian access and control over the asset(s) described in (a)(vii) of this subsection, including but not limited to delivery of the asset to the guardian, upon receipt of the following:

(a) An affidavit containing as an attachment a true and correct copy of the guardian's letters of guardianship and stating:

(i) That as of the date of the affidavit, the affiant is a duly appointed guardian with authority over assets held by the institution but owned or subject to withdrawal or delivery to a client or depositor of the institution;

(ii) The cause number of the guardianship;

(iii) The name of the incapacitated person and the name of the client or depositor (which names shall be the same);

(iv) The account or the safety deposit box number or numbers;

- (v) The address of the client or depositor;
- (vi) The name and address of the affiant-guardian being provided assets or access to assets;
- (vii) A description of and the value of the asset or assets, or, where the value cannot be readily ascertained, a reasonable estimate thereof, and a statement that the guardian receives delivery or control of each asset solely in its capacity as guardian;
- (viii) The date the guardian assumed control over the assets; and
- (ix) That a true and correct copy of the letters of guardianship duly issued by a court to the guardian is attached to the affidavit; and
- (b) An envelope, with postage prepaid, addressed to the clerk of the court issuing the letters of guardianship.

The affidavit shall be sent in the envelope by the institution to the clerk of the court together with a statement signed by an agent of the institution that the description of the asset set forth in the affidavit appears to be accurate, and confirming in the case of cash assets, the value of the asset.

(2) Any guardian provided with access to a safe deposit box pursuant to subsection (1) of this section shall make an inventory of the contents of the box and attach this inventory to the affidavit before the affidavit is sent to the clerk of the court and before the contents of the box are released to the guardian. Any inventory shall be prepared in the presence of an employee of the institution and the statement of the institution required under subsection (1) of this section shall include a statement executed by the employee that the inventory appears to be accurate. The institution may require payment by the guardian of any fees or charges then due in connection with the asset or account and of a reasonable fee for witnessing preparation of the inventory and preparing the statement required by this subsection or subsection (1) of this section.

(3) Any institution to which an affidavit complying with subsection (1) of this section is submitted may rely on the affidavit without inquiry and shall not be subject to any liability of any nature whatsoever to any person whatsoever, including but not limited to the institution's client or depositor or any other person with an ownership or other interest in or right to the asset, for the reliance or for providing the guardian access and control over the asset, including but not limited to delivery of the asset to the guardian.

[ 1991 c 289 § 13.]

#### NOTES:

**\*Reviser's note:** RCW 30.22.040 was alphabetized pursuant to RCW 1.08.015(2)(k), changing subsection (12) to subsection (8). RCW 30.22.040 was recodified as RCW 30A.22.040 pursuant to 2014 c 37 § 4, effective January 5, 2015.

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## 11.92.100

### Petition—Contents.

Such application shall be by petition, verified by the oath of the guardian or limited guardian, and shall substantially set forth:

- (1) The value and character of all personal estate belonging to the incapacitated person that has come to the knowledge or possession of such guardian or limited guardian.
- (2) The disposition of such personal estate.
- (3) The amount and condition of the incapacitated person's personal estate, if any, dependent upon the settlement of any estate, or the execution of any trust.
- (4) The annual income of the real estate of the incapacitated person.
- (5) The amount of rent received and the application thereof.
- (6) The proposed manner of reinvesting the proceeds of the sale, if asked for that purpose.
- (7) Each item of indebtedness, or the amount and character of the lien, if the sale is requested for the liquidation thereof.
- (8) The age of the incapacitated person, where and with whom residing.
- (9) All other facts connected with the estate and condition of the incapacitated person necessary to enable the court to fully understand the same. If there is no personal estate belonging to the incapacitated person in possession or expectancy, and none has come into the hands of such guardian or limited guardian, and no rents have been received, the fact shall be stated in the application.

[ **1990 c 122 § 28; 1975 1st ex.s. c 95 § 25; 1965 c 145 § 11.92.100.** Prior: **1917 c 156 § 213**; RRS § 1583; prior: Code 1881 § 1621; **1860 p 228 § 338; 1855 p 17 § 15.**]

#### NOTES:

**Effective date—1990 c 122:** See note following RCW **11.88.005**.

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### 11.92.110

#### **Sale of real estate.**

The order directing the sale of any of the real property of the estate of the incapacitated person shall specify the particular property affected and the method, whether by public or private sale or by negotiation, and terms thereof, and with regard to the procedure and notices to be employed in conducting such sale, the provisions of RCW **11.56.060**, **11.56.070**, **11.56.080**, and **11.56.110** shall be followed unless the court otherwise directs.

[ **1990 c 122 § 29; 1975 1st ex.s. c 95 § 26; 1965 c 145 § 11.92.110.** Prior: **1917 c 156 § 214**; RRS § 1524; prior: Code 1881 § 1623; **1860 p 229 § 340.**]

#### NOTES:

**Effective date—1990 c 122:** See note following RCW **11.88.005**.

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### 11.92.115

#### **Return and confirmation of sale.**

The guardian or limited guardian making any sale of real estate, either at public or private sale or sale by negotiation, shall within ten days after making such sale file with the clerk of the court his or her return of such sale, the same being duly verified. At any time after the expiration of ten days from the filing of such return, the court may, without notice, approve and confirm such sale and direct proper instruments of transfer to be executed and delivered. Upon the confirmation of any such sale, the court shall direct the guardian or limited guardian to make, execute and deliver instruments conveying the title to the person to whom such property may be sold and such instruments of conveyance shall be deemed to convey all the estate, rights and interest of the incapacitated person and of the person's estate. In the case of a sale by negotiation the guardians or limited guardians shall publish a notice in one issue of a legal newspaper published in the county in which the estate is being administered; the substance of such notice shall include the legal description of the property sold, the selling price and the date after which the sale may be confirmed: PROVIDED, That such confirmation date shall be at least ten days after such notice is published.

[ 2010 c 8 § 2090; 1990 c 122 § 30; 1975 1st ex.s. c 95 § 27; 1965 c 145 § 11.92.115.]

#### NOTES:

**Effective date—1990 c 122:** See note following RCW 11.88.005.

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### 11.92.120

#### Confirmation conclusive.

No sale by any guardian or limited guardian of real or personal property shall be void or be set aside or be attacked because of any irregularities whatsoever, and none of the steps leading up to such sale or the confirmation thereof shall be jurisdictional, and the confirmation by the court of any such sale shall be conclusive as to the regularity and legality of such sale or sales, and the passing of title after confirmation by the court shall vest an absolute title in the purchaser, and such instrument of transfer may not be attacked for any purpose or any reason, except for fraud.

[ 1975 1st ex.s. c 95 § 28; 1965 c 145 § 11.92.120. Prior: 1917 c 156 § 215; RRS § 1585; prior: Code 1881 § 1625; 1860 p 229 § 343.]

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### 11.92.125

#### Broker's fee and closing expenses—Sale, exchange, mortgage, or lease of real estate.

In connection with the sale, exchange, mortgage, lease, or grant of easement or license in any property, the court may authorize the guardian or limited guardian to pay, out of the proceeds realized therefrom or out of the estate, the customary and reasonable auctioneer's and broker's fees and any necessary expenses for abstracting title insurance, survey, revenue stamps, and other necessary costs and expenses in connection therewith.

[ 1977 ex.s. c 309 § 15; 1965 c 145 § 11.92.125.]

#### NOTES:

**Severability—1977 ex.s. c 309:** See note following RCW 11.88.005.

### 11.92.130

#### Performance of contracts.

If any person who is bound by contract in writing to perform shall become incapacitated before making the performance, the court having jurisdiction of the guardianship or limited guardianship of such property may, upon application of the guardian or limited guardian of the incapacitated person, or upon application of the person claiming to be entitled to the performance, make an order authorizing and directing the guardian or limited guardian to perform such contract. The application and the proceedings, shall, as nearly as may be, be the same as provided in chapter 11.60 RCW.

[ 1990 c 122 § 31; 1975 1st ex.s. c 95 § 29; 1965 c 145 § 11.92.130. Prior: 1923 c 142 § 5; RRS § 1585a.]

#### NOTES:

**Effective date—1990 c 122:** See note following RCW 11.88.005.

### 11.92.140

#### Court authorization for actions regarding guardianship funds.

The court, upon the petition of a guardian of the estate of an incapacitated person other than the guardian of a minor, and after such notice as the court directs and other notice to all persons interested as required by chapter 11.96A RCW, may authorize the guardian to take any action, or to apply funds not required for the incapacitated person's own maintenance and support, in any fashion the court approves as being in keeping with the incapacitated person's wishes so far as they can be ascertained and as designed to minimize insofar as possible current or prospective state or federal income and estate taxes, permit entitlement under otherwise available federal or state medical or other assistance programs, and to provide for gifts to such charities, relatives, and friends as would be likely recipients of donations from the incapacitated person.

The action or application of funds may include but shall not be limited to the making of gifts, to the conveyance or release of the incapacitated person's contingent and expectant interests in property including marital or domestic partnership property rights and any right of survivorship incident to joint tenancy or tenancy by the entirety, to the exercise or release of the incapacitated person's powers as donee of a power of appointment, the making of contracts, the creation of revocable or irrevocable trusts of property of the incapacitated

person's estate which may extend beyond the incapacitated person's disability or life, the establishment of custodianships for the benefit of a minor under chapter **11.114** RCW, the Washington uniform transfers to minors act, the exercise of options of the incapacitated person to purchase securities or other property, the exercise of the incapacitated person's right to elect options and to change beneficiaries under insurance and annuity policies and the surrendering of policies for their cash value, the exercise of the incapacitated person's right to any elective share in the estate of the incapacitated person's deceased spouse or deceased domestic partner, and the renunciation or disclaimer of any interest acquired by testate or intestate succession or by inter vivos transfer.

The guardian in the petition shall briefly outline the action or application of funds for which approval is sought, the results expected to be accomplished thereby and the savings expected to accrue. The proposed action or application of funds may include gifts of the incapacitated person's personal or real property. Gifts may be for the benefit of prospective legatees, devisees, or heirs apparent of the incapacitated person, or may be made to individuals or charities in which the incapacitated person is believed to have an interest. Gifts may or may not, in the discretion of the court, be treated as advancements to donees who would otherwise inherit property from the incapacitated person under the incapacitated person's will or under the laws of descent and distribution. The guardian shall also indicate in the petition that any planned disposition is consistent with the intentions of the incapacitated person insofar as the intentions can be ascertained, and if the incapacitated person's intentions cannot be ascertained, the incapacitated person will be presumed to favor reduction in the incidence of the various forms of taxation and the partial distribution of the incapacitated person's estate as provided in this section. The guardian shall not, however, be required to include as a beneficiary any person whom there is reason to believe would be excluded by the incapacitated person. No guardian may be required to file a petition as provided in this section, and a failure or refusal to so petition the court does not constitute a breach of the guardian's fiduciary duties.

[ **2008 c 6 § 807**; **1999 c 42 § 616**; **1991 c 193 § 32**; **1990 c 122 § 32**; **1985 c 30 § 10**. Prior: **1984 c 149 § 13**.]

#### NOTES:

**Part headings not law—Severability—2008 c 6:** See RCW **26.60.900** and **26.60.901**.

**Effective date—1999 c 42:** See RCW **11.96A.902**.

**Effective date—1991 c 193:** See RCW **11.114.903**.

**Effective date—1990 c 122:** See note following RCW **11.88.005**.

**Short title—Application—Purpose—Severability—1985 c 30:** See RCW **11.02.900** through **11.02.903**.

**Severability—Effective dates—1984 c 149:** See notes following RCW **11.02.005**.



**11.92.150****Request for special notice of proceedings.**

At any time after the issuance of letters of guardianship in the estate of any person and/or incapacitated person, any person interested in the estate, or in the incapacitated person, or any relative of the incapacitated person, or any authorized representative of any agency, bureau, or department of the United States government from or through which any compensation, insurance, pension or other benefit is being paid, or is payable, may serve upon the guardian or limited guardian, or upon the attorney for the guardian or limited guardian, and file with the clerk of the court where the guardianship or limited guardianship of the person and/or estate is pending, a written request stating the specific actions of which the applicant requests advance notice. Where the notice does not specify matters for which notice is requested, the guardian or limited guardian shall provide copies of all documents filed with the court and advance notice of his or her application for court approval of any action in the guardianship.

The request for special written notice shall designate the name, address and post office address of the person upon whom the notice is to be served and no service shall be required under this section and RCW **11.92.160** as now or hereafter amended other than in accordance with the designation unless and until a new designation has been made.

When any account, report, petition, or proceeding is filed in the estate of which special written notice is requested, the court shall fix a time for hearing which shall allow at least ten days for service of the notice before the hearing; and notice of the hearing shall be served upon the person designated in the written request at least ten days before the date fixed for the hearing. The service may be made by leaving a copy with the person designated, or that person's authorized representative, or by mailing through the United States mail, with postage prepaid to the person and place designated.

[ **1990 c 122 § 33**; **1985 c 30 § 11**. Prior: **1984 c 149 § 14**; **1975 1st ex.s. c 95 § 30**; **1969 c 18 § 1**; **1965 c 145 § 11.92.150**; prior: **1925 ex.s. c 104 § 1**; RRS § 1586-1.]

**NOTES:**

**Effective date—1990 c 122:** See note following RCW **11.88.005**.

**Short title—Application—Purpose—Severability—1985 c 30:** See RCW **11.02.900** through **11.02.903**.

**Severability—Effective dates—1984 c 149:** See notes following RCW **11.02.005**.

**11.92.160****Citation for failure to file account or report.**

Whenever any request for special written notice is served as provided in this section and RCW **11.92.150** as now or hereafter amended, the person making such request may, upon failure of any guardian or limited guardian for any incapacitated person, to file any account or report required by law, petition the court administering such estate for a citation requiring such



guardian or limited guardian to file such report or account, or to show cause for failure to do so, and thereupon the court shall issue such citation and hold a hearing thereon and enter such order as is required by the law and the facts.

[ **1990 c 122 § 34**; **1975 1st ex.s. c 95 § 31**; **1965 c 145 § 11.92.160**. Prior: **1925 ex.s. c 104 § 2**; RRS § 1586-2.]

#### NOTES:

**Effective date—1990 c 122:** See note following RCW **11.88.005**.

*Attorney's fee to contestant of erroneous account or report:* RCW **11.76.070**.

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### 11.92.170

#### **Removal of property of nonresident incapacitated person.**

Whenever it is made to appear that it would be in the best interests of the incapacitated person, the court may order the transfer of property in this state to a guardian or limited guardian of the estate of the incapacitated person appointed in another jurisdiction, or to a person or institution having similar authority with respect to the incapacitated person.

[ **1990 c 122 § 35**; **1977 ex.s. c 309 § 16**; **1975 1st ex.s. c 95 § 32**; **1965 c 145 § 11.92.170**. Prior: **1917 c 156 § 217**; RRS § 1587; prior: Code 1881 § 1628; **1873 p 320 § 323**.]

#### NOTES:

**Effective date—1990 c 122:** See note following RCW **11.88.005**.

**Severability—1977 ex.s. c 309:** See note following RCW **11.88.005**.

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### 11.92.180

#### **Compensation and expenses of guardian or limited guardian—Attorney's fees—Department of social and health services clients paying part of costs—Rules.**

A guardian or limited guardian shall be allowed such compensation for his or her services as guardian or limited guardian as the court shall deem just and reasonable. Guardians and limited guardians shall not be compensated at county or state expense. Additional compensation may be allowed for other administrative costs, including services of an attorney and for other services not provided by the guardian or limited guardian. Where a guardian or limited guardian is an attorney, the guardian or limited guardian shall separately account for time for which compensation is requested for services as a guardian or limited guardian as contrasted to time for which compensation for legal services provided to the guardianship is requested. In all cases, compensation of the guardian or limited guardian and his or her

expenses including attorney's fees shall be fixed by the court and may be allowed at any annual or final accounting; but at any time during the administration of the estate, the guardian or limited guardian or his or her attorney may apply to the court for an allowance upon the compensation or necessary expenses of the guardian or limited guardian and for attorney's fees for services already performed. If the court finds that the guardian or limited guardian has failed to discharge his or her duties as such in any respect, it may deny the guardian any compensation whatsoever or may reduce the compensation which would otherwise be allowed. Where the incapacitated person is a department of social and health services client residing in a nursing facility or in a residential or home setting and is required by the department of social and health services to contribute a portion of their income towards the cost of residential or supportive services then the department shall be entitled to notice of proceedings as described in RCW **11.92.150**. The amount of guardianship fees and additional compensation for administrative costs shall not exceed the amount allowed by the department of social and health services by rule.

[ **1995 c 297 § 8; 1994 c 68 § 1; 1991 c 289 § 12; 1990 c 122 § 36; 1975 1st ex.s. c 95 § 33; 1965 c 145 § 11.92.180**. Prior: **1917 c 156 § 216**; RRS § 1586; prior: Code 1881 § 1627; **1855 p 19 § 25**.]

#### NOTES:

*Decisions of court: SPR 98.12W.*

**Effective date—1990 c 122:** See note following RCW **11.88.005**.

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### **11.92.185**

#### **Concealed or embezzled property.**

The court shall have authority to bring before it, in the manner prescribed by RCW **11.48.070**, any person or persons suspected of having in his or her possession or having concealed, embezzled, conveyed or disposed of any of the property of the estate of incapacitated persons subject to administration under this title.

[ **1990 c 122 § 37; 1975 1st ex.s. c 95 § 34; 1965 c 145 § 11.92.185**.]

#### NOTES:

**Effective date—1990 c 122:** See note following RCW **11.88.005**.

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### **11.92.190**

#### **Detention of person in residential placement facility against will prohibited—Effect of court order—Service of notice of residential placement. (*Effective until April 1, 2018.*)**

No residential treatment facility which provides nursing or other care may detain a person within such facility against their will. Any court order, other than an order issued in accordance with the involuntary treatment provisions of chapters **10.77**, 71.05, and **72.23** RCW, which purports to authorize such involuntary detention or purports to authorize a guardian or limited guardian to consent to such involuntary detention on behalf of an incapacitated person shall be void and of no force or effect. This section does not apply to the detention of a minor as provided in chapter **70.96A** or **71.34** RCW.

Nothing in this section shall be construed to require a court order authorizing placement of an incapacitated person in a residential treatment facility if such order is not otherwise required by law: PROVIDED, That notice of any residential placement of an incapacitated person shall be served, either before or after placement, by the guardian or limited guardian on such person, the guardian ad litem of record, and any attorney of record.

[ **1996 c 249 § 11**; **1977 ex.s. c 309 § 14**.]

#### NOTES:

**Intent—1996 c 249:** See note following RCW **2.56.030**.

**Severability—1977 ex.s. c 309:** See note following RCW **11.88.005**.

#### **11.92.190**

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Nothing in this section shall be construed to require a court order authorizing placement of an incapacitated person in a residential treatment facility if such order is not otherwise required by law: PROVIDED, That notice of any residential placement of an incapacitated person shall be served, either before or after placement, by the guardian or limited guardian on such person, the guardian ad litem of record, and any attorney of record.

[ **2016 sp.s. c 29 § 412**; **1996 c 249 § 11**; **1977 ex.s. c 309 § 14**.]

#### NOTES:

**Effective dates—2016 sp.s. c 29:** See note following RCW **71.05.760**.

**Short title—Right of action—2016 sp.s. c 29:** See notes following RCW **71.05.010**.

**Intent—1996 c 249:** See note following RCW **2.56.030**.

**Severability—1977 ex.s. c 309:** See note following RCW **11.88.005**.

**11.92.195****Incapacitated persons—Right to associate with persons of their choosing.**

(1) Except as otherwise provided in this section, an incapacitated person retains the right to associate with persons of the incapacitated person's choosing. This right includes, but is not limited to, the right to freely communicate and interact with other persons, whether through in-person visits, telephone calls, electronic communication, personal mail, or other means. If the incapacitated person is unable to express consent for communication, visitation, or interaction with another person, or is otherwise unable to make a decision regarding association with another person, a guardian of the incapacitated person, whether full or limited, must:

(a) Personally inform the incapacitated person of the decision under consideration, using plain language, in a manner calculated to maximize the understanding of the incapacitated person;

(b) Maximize the incapacitated person's participation in the decision-making process to the greatest extent possible, consistent with the incapacitated person's abilities; and

(c) Give substantial weight to the incapacitated person's preferences, both expressed and historical.

(2) A guardian or limited guardian may not restrict an incapacitated person's right to communicate, visit, interact, or otherwise associate with persons of the incapacitated person's choosing, unless:

(a) The restriction is specifically authorized by the guardianship court in the court order establishing or modifying the guardianship or limited guardianship under chapter **11.88** RCW;

(b) The restriction is pursuant to a protection order issued under chapter **74.34** RCW, chapter **26.50** RCW, or other law, that limits contact between the incapacitated person and other persons; or

(c)(i) The guardian or limited guardian has good cause to believe that there is an immediate need to restrict an incapacitated person's right to communicate, visit, interact, or otherwise associate with persons of the incapacitated person's choosing in order to protect the incapacitated person from abuse, neglect, abandonment, or financial exploitation, as those terms are defined in RCW **74.34.020**, or to protect the incapacitated person from activities that unnecessarily impose significant distress on the incapacitated person; and

(ii) Within fourteen calendar days of imposing the restriction under (c)(i) of this subsection, the guardian or limited guardian files a petition for a protection order under chapter **74.34** RCW. The immediate need restriction may remain in place until the court has heard and issued an order or decision on the petition.

(3) A protection order under chapter **74.34** RCW issued to protect an incapacitated person as described in subsection (2)(c)(ii) of this section:

(a) Must include written findings of fact and conclusions of law;

(b) May not be more restrictive than necessary to protect the incapacitated person from abuse, neglect, abandonment, or financial exploitation as those terms are defined in RCW **74.34.020**; and

(c) May not deny communication, visitation, interaction, or other association between the incapacitated person and another person unless the court finds that placing reasonable time, place, or manner restrictions is unlikely to sufficiently protect the incapacitated person from

abuse, neglect, abandonment, or financial exploitation as those terms are defined in RCW  
**74.34.020.**

[ **2017 c 268 § 1.**]

**Chapter 74.34 RCW****ABUSE OF VULNERABLE ADULTS****Chapter Listing | RCW Dispositions****Sections**

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<b>74.34.215</b>	Financial exploitation of vulnerable adults.
<b>74.34.220</b>	Financial exploitation of vulnerable adults—Training—Reporting.
<b>74.34.300</b>	Vulnerable adult fatality reviews.

- 74.34.305** Statement to vulnerable adults.
- 74.34.310** Service of process or filing fees prohibited—Certified copies.
- 74.34.320** Written protocol—Counties encouraged to develop for handling criminal cases involving vulnerable adults—Vulnerable adult advocacy teams—Confidentiality—Disclosure of information.
- 74.34.902** Construction—Chapter applicable to state registered domestic partnerships—2009 c 521.

#### NOTES:

*Domestic violence prevention, authority of department of social and health services to seek relief on behalf of vulnerable adults: RCW **26.50.021**.*

*Patients in nursing homes and hospitals, abuse: Chapter **70.124** RCW.*

## 74.34.005

### Findings.

The legislature finds and declares that:

- (1) Some adults are vulnerable and may be subjected to abuse, neglect, financial exploitation, or abandonment by a family member, care provider, or other person who has a relationship with the vulnerable adult;
- (2) A vulnerable adult may be home bound or otherwise unable to represent himself or herself in court or to retain legal counsel in order to obtain the relief available under this chapter or other protections offered through the courts;
- (3) A vulnerable adult may lack the ability to perform or obtain those services necessary to maintain his or her well-being because he or she lacks the capacity for consent;
- (4) A vulnerable adult may have health problems that place him or her in a dependent position;
- (5) The department and appropriate agencies must be prepared to receive reports of abandonment, abuse, financial exploitation, or neglect of vulnerable adults;
- (6) The department must provide protective services in the least restrictive environment appropriate and available to the vulnerable adult.

[ **1999 c 176 § 2.**]

#### NOTES:

**Findings—Purpose—1999 c 176:** "The legislature finds that the provisions for the protection of vulnerable adults found in chapters **26.44**, **70.124**, and **74.34** RCW contain different definitions for abandonment, abuse, exploitation, and neglect. The legislature finds that combining the sections of these chapters that pertain to the protection of vulnerable adults would better serve this state's population of vulnerable adults. The purpose of chapter **74.34** RCW is to provide the department and law enforcement agencies with the authority to investigate complaints of abandonment, abuse, financial exploitation, or neglect of vulnerable adults and to provide protective services and legal remedies to protect these vulnerable adults." [ **1999 c 176 § 1.**]



**Severability—1999 c 176:** "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [ 1999 c 176 § 36.]

**Conflict with federal requirements—1999 c 176:** "If any part of this act is found to be in conflict with federal requirements that are a prescribed condition to the allocation of federal funds to the state, the conflicting part of this act is inoperative solely to the extent of the conflict and with respect to the agencies directly affected, and this finding does not affect the operation of the remainder of this act in its application to the agencies concerned. Rules adopted under this act must meet federal requirements that are a necessary condition to the receipt of federal funds by the state." [ 1999 c 176 § 37.]

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## 74.34.020

### Definitions.

\*\*\* CHANGE IN 2018 \*\*\* (SEE 1388-S.SL) \*\*\*

The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Abandonment" means action or inaction by a person or entity with a duty of care for a vulnerable adult that leaves the vulnerable person without the means or ability to obtain necessary food, clothing, shelter, or health care.

(2) "Abuse" means the willful action or inaction that inflicts injury, unreasonable confinement, intimidation, or punishment on a vulnerable adult. In instances of abuse of a vulnerable adult who is unable to express or demonstrate physical harm, pain, or mental anguish, the abuse is presumed to cause physical harm, pain, or mental anguish. Abuse includes sexual abuse, mental abuse, physical abuse, and personal exploitation of a vulnerable adult, and improper use of restraint against a vulnerable adult which have the following meanings:

(a) "Sexual abuse" means any form of nonconsensual sexual conduct, including but not limited to unwanted or inappropriate touching, rape, sodomy, sexual coercion, sexually explicit photographing, and sexual harassment. Sexual abuse also includes any sexual conduct between a staff person, who is not also a resident or client, of a facility or a staff person of a program authorized under chapter 71A.12 RCW, and a vulnerable adult living in that facility or receiving service from a program authorized under chapter 71A.12 RCW, whether or not it is consensual.

(b) "Physical abuse" means the willful action of inflicting bodily injury or physical mistreatment. Physical abuse includes, but is not limited to, striking with or without an object, slapping, pinching, choking, kicking, shoving, or prodding.

(c) "Mental abuse" means a willful verbal or nonverbal action that threatens, humiliates, harasses, coerces, intimidates, isolates, unreasonably confines, or punishes a vulnerable adult. Mental abuse may include ridiculing, yelling, or swearing.

(d) "Personal exploitation" means an act of forcing, compelling, or exerting undue influence over a vulnerable adult causing the vulnerable adult to act in a way that is



inconsistent with relevant past behavior, or causing the vulnerable adult to perform services for the benefit of another.

(e) "Improper use of restraint" means the inappropriate use of chemical, physical, or mechanical restraints for convenience or discipline or in a manner that: (i) is inconsistent with federal or state licensing or certification requirements for facilities, hospitals, or programs authorized under chapter **71A.12** RCW; (ii) is not medically authorized; or (iii) otherwise constitutes abuse under this section.

(3) "Chemical restraint" means the administration of any drug to manage a vulnerable adult's behavior in a way that reduces the safety risk to the vulnerable adult or others, has the temporary effect of restricting the vulnerable adult's freedom of movement, and is not standard treatment for the vulnerable adult's medical or psychiatric condition.

(4) "Consent" means express written consent granted after the vulnerable adult or his or her legal representative has been fully informed of the nature of the services to be offered and that the receipt of services is voluntary.

(5) "Department" means the department of social and health services.

(6) "Facility" means a residence licensed or required to be licensed under chapter **18.20** RCW, assisted living facilities; chapter **18.51** RCW, nursing homes; chapter **70.128** RCW, adult family homes; chapter **72.36** RCW, soldiers' homes; or chapter **71A.20** RCW, residential habilitation centers; or any other facility licensed or certified by the department.

(7) "Financial exploitation" means the illegal or improper use, control over, or withholding of the property, income, resources, or trust funds of the vulnerable adult by any person or entity for any person's or entity's profit or advantage other than for the vulnerable adult's profit or advantage. "Financial exploitation" includes, but is not limited to:

(a) The use of deception, intimidation, or undue influence by a person or entity in a position of trust and confidence with a vulnerable adult to obtain or use the property, income, resources, or trust funds of the vulnerable adult for the benefit of a person or entity other than the vulnerable adult;

(b) The breach of a fiduciary duty, including, but not limited to, the misuse of a power of attorney, trust, or a guardianship appointment, that results in the unauthorized appropriation, sale, or transfer of the property, income, resources, or trust funds of the vulnerable adult for the benefit of a person or entity other than the vulnerable adult; or

(c) Obtaining or using a vulnerable adult's property, income, resources, or trust funds without lawful authority, by a person or entity who knows or clearly should know that the vulnerable adult lacks the capacity to consent to the release or use of his or her property, income, resources, or trust funds.

(8) "Financial institution" has the same meaning as in RCW **30A.22.040** and **30A.22.041**. For purposes of this chapter only, "financial institution" also means a "broker-dealer" or "investment adviser" as defined in RCW **21.20.005**.

(9) "Hospital" means a facility licensed under chapter **70.41**, **71.12**, or **72.23** RCW and any employee, agent, officer, director, or independent contractor thereof.

(10) "Incapacitated person" means a person who is at a significant risk of personal or financial harm under RCW **11.88.010**(1) (a), (b), (c), or (d).

(11) "Individual provider" means a person under contract with the department to provide services in the home under chapter **74.09** or **74.39A** RCW.

(12) "Interested person" means a person who demonstrates to the court's satisfaction that the person is interested in the welfare of the vulnerable adult, that the person has a good faith belief that the court's intervention is necessary, and that the vulnerable adult is unable, due to

incapacity, undue influence, or duress at the time the petition is filed, to protect his or her own interests.

(13)(a) "Isolate" or "isolation" means to restrict a vulnerable adult's ability to communicate, visit, interact, or otherwise associate with persons of his or her choosing. Isolation may be evidenced by acts including but not limited to:

(i) Acts that prevent a vulnerable adult from sending, making, or receiving his or her personal mail, electronic communications, or telephone calls; or

(ii) Acts that prevent or obstruct the vulnerable adult from meeting with others, such as telling a prospective visitor or caller that a vulnerable adult is not present, or does not wish contact, where the statement is contrary to the express wishes of the vulnerable adult.

(b) The term "isolate" or "isolation" may not be construed in a manner that prevents a guardian or limited guardian from performing his or her fiduciary obligations under chapter **11.92** RCW or prevents a hospital or facility from providing treatment consistent with the standard of care for delivery of health services.

(14) "Mandated reporter" is an employee of the department; law enforcement officer; social worker; professional school personnel; individual provider; an employee of a facility; an operator of a facility; an employee of a social service, welfare, mental health, adult day health, adult day care, home health, home care, or hospice agency; county coroner or medical examiner; Christian Science practitioner; or health care provider subject to chapter **18.130** RCW.

(15) "Mechanical restraint" means any device attached or adjacent to the vulnerable adult's body that he or she cannot easily remove that restricts freedom of movement or normal access to his or her body. "Mechanical restraint" does not include the use of devices, materials, or equipment that are (a) medically authorized, as required, and (b) used in a manner that is consistent with federal or state licensing or certification requirements for facilities, hospitals, or programs authorized under chapter **71A.12** RCW.

(16) "Neglect" means (a) a pattern of conduct or inaction by a person or entity with a duty of care that fails to provide the goods and services that maintain physical or mental health of a vulnerable adult, or that fails to avoid or prevent physical or mental harm or pain to a vulnerable adult; or (b) an act or omission by a person or entity with a duty of care that demonstrates a serious disregard of consequences of such a magnitude as to constitute a clear and present danger to the vulnerable adult's health, welfare, or safety, including but not limited to conduct prohibited under RCW **9A.42.100**.

(17) "Permissive reporter" means any person, including, but not limited to, an employee of a financial institution, attorney, or volunteer in a facility or program providing services for vulnerable adults.

(18) "Physical restraint" means the application of physical force without the use of any device, for the purpose of restraining the free movement of a vulnerable adult's body. "Physical restraint" does not include (a) briefly holding without undue force a vulnerable adult in order to calm or comfort him or her, or (b) holding a vulnerable adult's hand to safely escort him or her from one area to another.

(19) "Protective services" means any services provided by the department to a vulnerable adult with the consent of the vulnerable adult, or the legal representative of the vulnerable adult, who has been abandoned, abused, financially exploited, neglected, or in a state of self-neglect. These services may include, but are not limited to case management, social casework, home care, placement, arranging for medical evaluations, psychological evaluations, day care, or referral for legal assistance.

(20) "Self-neglect" means the failure of a vulnerable adult, not living in a facility, to provide for himself or herself the goods and services necessary for the vulnerable adult's physical or mental health, and the absence of which impairs or threatens the vulnerable adult's well-being. This definition may include a vulnerable adult who is receiving services through home health, hospice, or a home care agency, or an individual provider when the neglect is not a result of inaction by that agency or individual provider.

(21) "Social worker" means:

(a) A social worker as defined in RCW 18.320.010(2); or

(b) Anyone engaged in a professional capacity during the regular course of employment in encouraging or promoting the health, welfare, support, or education of vulnerable adults, or providing social services to vulnerable adults, whether in an individual capacity or as an employee or agent of any public or private organization or institution.

(22) "Vulnerable adult" includes a person:

(a) Sixty years of age or older who has the functional, mental, or physical inability to care for himself or herself; or

(b) Found incapacitated under chapter 11.88 RCW; or

(c) Who has a developmental disability as defined under RCW 71A.10.020; or

(d) Admitted to any facility; or

(e) Receiving services from home health, hospice, or home care agencies licensed or required to be licensed under chapter 70.127 RCW; or

(f) Receiving services from an individual provider; or

(g) Who self-directs his or her own care and receives services from a personal aide under chapter 74.39 RCW.

(23) "Vulnerable adult advocacy team" means a team of three or more persons who coordinate a multidisciplinary process, in compliance with chapter 266, Laws of 2017 and the protocol governed by RCW 74.34.320, for preventing, identifying, investigating, prosecuting, and providing services related to abuse, neglect, or financial exploitation of vulnerable adults.

[ 2017 c 268 § 2; 2017 c 266 § 12; 2015 c 268 § 1; 2013 c 263 § 1; 2012 c 10 § 62. Prior: 2011 c 170 § 1; 2011 c 89 § 18; 2010 c 133 § 2; 2007 c 312 § 1; 2006 c 339 § 109; 2003 c 230 § 1; 1999 c 176 § 3; 1997 c 392 § 523; 1995 1st sp.s. c 18 § 84; 1984 c 97 § 8.]

## NOTES:

**Reviser's note:** This section was amended by 2017 c 266 § 12 and by 2017 c 268 § 2, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

**Finding—Intent—2017 c 266:** See note following RCW 9A.42.020.

**Application—2012 c 10:** See note following RCW 18.20.010.

**Effective date—2011 c 89:** See note following RCW 18.320.005.

**Findings—2011 c 89:** See RCW 18.320.005.

**Intent—2006 c 339:** "It is the intent of the legislature to provide assistance for jurisdictions enforcing illegal drug laws that have historically been underserved by federally

funded state narcotics task forces and are considered to be major transport areas of narcotics traffickers." [ [2006 c 339 § 103](#).]

**Part headings not law—2006 c 339:** "Part headings used in this act are no part of the law." [ [2006 c 339 § 401](#).]

**Effective date—2003 c 230:** "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [May 12, 2003]." [ [2003 c 230 § 3](#).]

**Findings—Purpose—Severability—Conflict with federal requirements—1999 c 176:** See notes following RCW [74.34.005](#).

**Short title—Findings—Construction—Conflict with federal requirements—Part headings and captions not law—1997 c 392:** See notes following RCW [74.39A.009](#).

**Conflict with federal requirements—Severability—Effective date—1995 1st sp.s. c 18:** See notes following RCW [74.39A.030](#).

## 74.34.025

### **Limitation on recovery for protective services and benefits.**

The cost of benefits and services provided to a vulnerable adult under this chapter with state funds only does not constitute an obligation or lien and is not recoverable from the recipient of the services or from the recipient's estate, whether by lien, adjustment, or any other means of recovery.

[ [1999 c 176 § 4](#); [1997 c 392 § 304](#).]

#### **NOTES:**

**Findings—Purpose—Severability—Conflict with federal requirements—1999 c 176:** See notes following RCW [74.34.005](#).

**Short title—Findings—Construction—Conflict with federal requirements—Part headings and captions not law—1997 c 392:** See notes following RCW [74.39A.009](#).

## 74.34.035

### **Reports—Mandated and permissive—Contents—Confidentiality.**

(1) When there is reasonable cause to believe that abandonment, abuse, financial exploitation, or neglect of a vulnerable adult has occurred, mandated reporters shall immediately report to the department.

(2) When there is reason to suspect that sexual assault has occurred, mandated reporters shall immediately report to the appropriate law enforcement agency and to the department.

(3) When there is reason to suspect that physical assault has occurred or there is reasonable cause to believe that an act has caused fear of imminent harm:

(a) Mandated reporters shall immediately report to the department; and

(b) Mandated reporters shall immediately report to the appropriate law enforcement agency, except as provided in subsection (4) of this section.

(4) A mandated reporter is not required to report to a law enforcement agency, unless requested by the injured vulnerable adult or his or her legal representative or family member, an incident of physical assault between vulnerable adults that causes minor bodily injury and does not require more than basic first aid, unless:

(a) The injury appears on the back, face, head, neck, chest, breasts, groin, inner thigh, buttock, genital, or anal area;

(b) There is a fracture;

(c) There is a pattern of physical assault between the same vulnerable adults or involving the same vulnerable adults; or

(d) There is an attempt to choke a vulnerable adult.

(5) When there is reason to suspect that the death of a vulnerable adult was caused by abuse, neglect, or abandonment by another person, mandated reporters shall, pursuant to RCW 68.50.020, report the death to the medical examiner or coroner having jurisdiction, as well as the department and local law enforcement, in the most expeditious manner possible. A mandated reporter is not relieved from the reporting requirement provisions of this subsection by the existence of a previously signed death certificate. If abuse, neglect, or abandonment caused or contributed to the death of a vulnerable adult, the death is a death caused by unnatural or unlawful means, and the body shall be the jurisdiction of the coroner or medical examiner pursuant to RCW 68.50.010.

(6) Permissive reporters may report to the department or a law enforcement agency when there is reasonable cause to believe that a vulnerable adult is being or has been abandoned, abused, financially exploited, or neglected.

(7) No facility, as defined by this chapter, agency licensed or required to be licensed under chapter 70.127 RCW, or facility or agency under contract with the department to provide care for vulnerable adults may develop policies or procedures that interfere with the reporting requirements of this chapter.

(8) Each report, oral or written, must contain as much as possible of the following information:

(a) The name and address of the person making the report;

(b) The name and address of the vulnerable adult and the name of the facility or agency providing care for the vulnerable adult;

(c) The name and address of the legal guardian or alternate decision maker;

(d) The nature and extent of the abandonment, abuse, financial exploitation, neglect, or self-neglect;

(e) Any history of previous abandonment, abuse, financial exploitation, neglect, or self-neglect;

(f) The identity of the alleged perpetrator, if known; and

(g) Other information that may be helpful in establishing the extent of abandonment, abuse, financial exploitation, neglect, or the cause of death of the deceased vulnerable adult.

(9) Unless there is a judicial proceeding or the person consents, the identity of the person making the report under this section is confidential.

(10) In conducting an investigation of abandonment, abuse, financial exploitation, self-neglect, or neglect, the department or law enforcement, upon request, must have access to all relevant records related to the vulnerable adult that are in the possession of mandated reporters and their employees, unless otherwise prohibited by law. Records maintained under RCW [4.24.250](#), [18.20.390](#), [43.70.510](#), [70.41.200](#), [70.230.080](#), and [74.42.640](#) shall not be subject to the requirements of this subsection. Providing access to records relevant to an investigation by the department or law enforcement under this provision may not be deemed a violation of any confidential communication privilege. Access to any records that would violate attorney-client privilege shall not be provided without a court order unless otherwise required by court rule or caselaw.

[ [2013 c 263 § 2](#); [2010 c 133 § 4](#); [2003 c 230 § 2](#); [1999 c 176 § 5](#).]

#### NOTES:

**Effective date—2003 c 230:** See note following RCW [74.34.020](#).

**Findings—Purpose—Severability—Conflict with federal requirements—1999 c 176:** See notes following RCW [74.34.005](#).

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### 74.34.040

#### **Reports—Contents—Identity confidential.**

The reports made under \*RCW [74.34.030](#) shall contain the following information if known:

- (1) Identification of the vulnerable adult;
- (2) The nature and extent of the suspected abuse, neglect, exploitation, or abandonment;
- (3) Evidence of previous abuse, neglect, exploitation, or abandonment;
- (4) The name and address of the person making the report; and
- (5) Any other helpful information.

Unless there is a judicial proceeding or the person consents, the identity of the person making the report is confidential.

[ [1986 c 187 § 2](#); [1984 c 97 § 10](#).]

#### NOTES:

**\*Reviser's note:** RCW [74.34.030](#) was repealed by [1999 c 176 § 35](#).

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### 74.34.050

#### **Immunity from liability.**

(1) A person participating in good faith in making a report under this chapter or testifying about alleged abuse, neglect, abandonment, financial exploitation, or self-neglect of a vulnerable adult in a judicial or administrative proceeding under this chapter is immune from



liability resulting from the report or testimony. The making of permissive reports as allowed in this chapter does not create any duty to report and no civil liability shall attach for any failure to make a permissive report as allowed under this chapter.

(2) Conduct conforming with the reporting and testifying provisions of this chapter shall not be deemed a violation of any confidential communication privilege. Nothing in this chapter shall be construed as superseding or abridging remedies provided in chapter 4.92 RCW.

[ 1999 c 176 § 6; 1997 c 386 § 34; 1986 c 187 § 3; 1984 c 97 § 11.]

#### NOTES:

**Findings—Purpose—Severability—Conflict with federal requirements—1999 c 176:** See notes following RCW 74.34.005.

**Application—Effective date—1997 c 386:** See notes following RCW 13.50.010.

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### 74.34.053

#### **Failure to report—False reports—Penalties.**

(1) A person who is required to make a report under this chapter and who knowingly fails to make the report is guilty of a gross misdemeanor.

(2) A person who intentionally, maliciously, or in bad faith makes a false report of alleged abandonment, abuse, financial exploitation, or neglect of a vulnerable adult is guilty of a misdemeanor.

[ 1999 c 176 § 7.]

#### NOTES:

**Findings—Purpose—Severability—Conflict with federal requirements—1999 c 176:** See notes following RCW 74.34.005.

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### 74.34.063

#### **Response to reports—Timing—Reports to law enforcement agencies—Notification to licensing authority. (*Effective until July 1, 2018.*)**

(1) The department shall initiate a response to a report, no later than twenty-four hours after knowledge of the report, of suspected abandonment, abuse, financial exploitation, neglect, or self-neglect of a vulnerable adult.

(2) When the initial report or investigation by the department indicates that the alleged abandonment, abuse, financial exploitation, or neglect may be criminal, the department shall make an immediate report to the appropriate law enforcement agency. The department and law enforcement will coordinate in investigating reports made under this chapter. The department may provide protective services and other remedies as specified in this chapter.

(3) The law enforcement agency or the department shall report the incident in writing to the proper county prosecutor or city attorney for appropriate action whenever the investigation reveals that a crime may have been committed.

(4) The department and law enforcement may share information contained in reports and findings of abandonment, abuse, financial exploitation, and neglect of vulnerable adults, consistent with RCW 74.04.060, chapter 42.56 RCW, and other applicable confidentiality laws.

(5) The department shall notify the proper licensing authority concerning any report received under this chapter that alleges that a person who is professionally licensed, certified, or registered under Title 18 RCW has abandoned, abused, financially exploited, or neglected a vulnerable adult.

[ 2005 c 274 § 354; 1999 c 176 § 8.]

#### NOTES:

**Findings—Purpose—Severability—Conflict with federal requirements—1999 c 176:** See notes following RCW 74.34.005.

#### 74.34.063

**Response to reports—Timing—Reports to law enforcement agencies—Notification to licensing authority. (*Effective July 1, 2018.*)**

(1) The department shall initiate a response to a report, no later than twenty-four hours after knowledge of the report, of suspected abandonment, abuse, financial exploitation, neglect, or self-neglect of a vulnerable adult.

(2) When the initial report or investigation by the department indicates that the alleged abandonment, abuse, financial exploitation, or neglect may be criminal, the department shall make an immediate report to the appropriate law enforcement agency. The department and law enforcement will coordinate in investigating reports made under this chapter. The department may provide protective services and other remedies as specified in this chapter.

(3) The law enforcement agency or the department shall report the incident in writing to the proper county prosecutor or city attorney for appropriate action whenever the investigation reveals that a crime may have been committed.

(4) The department and law enforcement may share information contained in reports and findings of abandonment, abuse, financial exploitation, and neglect of vulnerable adults, consistent with RCW 74.04.060, chapter 42.56 RCW, and other applicable confidentiality laws.

(5) Unless prohibited by federal law, the department of social and health services may share with the department of children, youth, and families information contained in reports and findings of abandonment, abuse, financial exploitation, and neglect of vulnerable adults.

(6) The department shall notify the proper licensing authority concerning any report received under this chapter that alleges that a person who is professionally licensed, certified, or registered under Title 18 RCW has abandoned, abused, financially exploited, or neglected a vulnerable adult.

[ 2017 3rd sp.s. c 6 § 818; 2005 c 274 § 354; 1999 c 176 § 8.]



**NOTES:**

**Effective date—2017 3rd sp.s. c 6 §§ 102, 104-115, 201-227, 301-337, 401-419, 501-513, 801-803, and 805-822:** See note following RCW [43.216.025](#).

**Conflict with federal requirements—2017 3rd sp.s. c 6:** See RCW [43.216.908](#).

**Findings—Purpose—Severability—Conflict with federal requirements—1999 c 176:** See notes following RCW [74.34.005](#).

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**74.34.067****Investigations—Interviews—Ongoing case planning—Agreements with tribes—Conclusion of investigation.**

(1) Where appropriate, an investigation by the department may include a private interview with the vulnerable adult regarding the alleged abandonment, abuse, financial exploitation, neglect, or self-neglect.

(2) In conducting the investigation, the department shall interview the complainant, unless anonymous, and shall use its best efforts to interview the vulnerable adult or adults harmed, and, consistent with the protection of the vulnerable adult shall interview facility staff, any available independent sources of relevant information, including if appropriate the family members of the vulnerable adult.

(3) The department may conduct ongoing case planning and consultation with: (a) Those persons or agencies required to report under this chapter or submit a report under this chapter; (b) consultants designated by the department; and (c) designated representatives of Washington Indian tribes if client information exchanged is pertinent to cases under investigation or the provision of protective services. Information considered privileged by statute and not directly related to reports required by this chapter must not be divulged without a valid written waiver of the privilege.

(4) The department shall prepare and keep on file a report of each investigation conducted by the department for a period of time in accordance with policies established by the department.

(5) If the department has reason to believe that the vulnerable adult has suffered from abandonment, abuse, financial exploitation, neglect, or self-neglect, and lacks the ability or capacity to consent, and needs the protection of a guardian, the department may bring a guardianship action under chapter [11.88](#) RCW.

(6) For purposes consistent with this chapter, the department, the certified professional guardian board, and the office of public guardianship may share information contained in reports and investigations of the abuse, abandonment, neglect, self-neglect, and financial exploitation of vulnerable adults. This information may be used solely for (a) recruiting or appointing appropriate guardians and (b) monitoring, or when appropriate, disciplining certified professional or public guardians. Reports of abuse, abandonment, neglect, self-neglect, and financial exploitation are confidential under RCW [74.34.095](#) and other laws, and secondary disclosure of information shared under this section is prohibited.

(7) When the investigation is completed and the department determines that an incident of abandonment, abuse, financial exploitation, neglect, or self-neglect has occurred, the

department shall inform the vulnerable adult of their right to refuse protective services, and ensure that, if necessary, appropriate protective services are provided to the vulnerable adult, with the consent of the vulnerable adult. The vulnerable adult has the right to withdraw or refuse protective services.

(8) The department's adult protective services division may enter into agreements with federally recognized tribes to investigate reports of abandonment, abuse, financial exploitation, neglect, or self-neglect of vulnerable adults on property over which a federally recognized tribe has exclusive jurisdiction. If the department has information that abandonment, abuse, financial exploitation, or neglect is criminal or is placing a vulnerable adult on tribal property at potential risk of personal or financial harm, the department may notify tribal law enforcement or another tribal representative specified by the tribe. Upon receipt of the notification, the tribe may assume jurisdiction of the matter. Neither the department nor its employees may participate in the investigation after the tribe assumes jurisdiction. The department, its officers, and its employees are not liable for any action or inaction of the tribe or for any harm to the alleged victim, the person against whom the allegations were made, or other parties that occurs after the tribe assumes jurisdiction. Nothing in this section limits the department's jurisdiction and authority over facilities or entities that the department licenses or certifies under federal or state law.

(9) The department may photograph a vulnerable adult or their environment for the purpose of providing documentary evidence of the physical condition of the vulnerable adult or his or her environment. When photographing the vulnerable adult, the department shall obtain permission from the vulnerable adult or his or her legal representative unless immediate photographing is necessary to preserve evidence. However, if the legal representative is alleged to have abused, neglected, abandoned, or exploited the vulnerable adult, consent from the legal representative is not necessary. No such consent is necessary when photographing the physical environment.

(10) When the investigation is complete and the department determines that the incident of abandonment, abuse, financial exploitation, or neglect has occurred, the department shall inform the facility in which the incident occurred, consistent with confidentiality requirements concerning the vulnerable adult, witnesses, and complainants.

[ 2013 c 263 § 3; 2011 c 170 § 2; 2007 c 312 § 2; 1999 c 176 § 9.]

## NOTES:

**Findings—Purpose—Severability—Conflict with federal requirements—1999 c 176:** See notes following RCW 74.34.005.

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## 74.34.068

### Investigation results—Report—Rules.

(1) After the investigation is complete, the department may provide a written report of the outcome of the investigation to an agency or program described in this subsection when the department determines from its investigation that an incident of abuse, abandonment, financial exploitation, or neglect occurred. Agencies or programs that may be provided this report are home health, hospice, or home care agencies, or after January 1, 2002, any in-

home services agency licensed under chapter **70.127** RCW, a program authorized under chapter **71A.12** RCW, an adult day care or day health program, behavioral health organizations authorized under chapter **71.24** RCW, or other agencies. The report may contain the name of the vulnerable adult and the alleged perpetrator. The report shall not disclose the identity of the person who made the report or any witness without the written permission of the reporter or witness. The department shall notify the alleged perpetrator regarding the outcome of the investigation. The name of the vulnerable adult must not be disclosed during this notification.

(2) The department may also refer a report or outcome of an investigation to appropriate state or local governmental authorities responsible for licensing or certification of the agencies or programs listed in subsection (1) of this section.

(3) The department shall adopt rules necessary to implement this section.

[ **2014 c 225 § 103; 2001 c 233 § 2.**]

#### NOTES:

**Effective date—2014 c 225:** See note following RCW **71.24.016**.

**Finding—2001 c 233:** "The legislature recognizes that vulnerable adults, while living in their own homes, may be abused, neglected, financially exploited, or abandoned by individuals entrusted to provide care for them. The individuals who abuse, neglect, financially exploit, or abandon vulnerable adults may be employed by, under contract with, or volunteering for an agency or program providing care for vulnerable adults. The legislature has given the department of social and health services the responsibility to investigate complaints of abandonment, abuse, financial exploitation, or neglect of vulnerable adults and to provide protective services and other legal remedies to protect these vulnerable adults. The legislature finds that in order to continue to protect vulnerable adults, the department of social and health services be given the authority to release report information and to release the results of an investigation to the agency or program with which the individual investigated is employed, contracted, or engaged as a volunteer." [ **2001 c 233 § 1.**]

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## 74.34.070

### Cooperative agreements for services.

The department may develop cooperative agreements with community-based agencies providing services for vulnerable adults. The agreements shall cover: (1) The appropriate roles and responsibilities of the department and community-based agencies in identifying and responding to reports of alleged abuse; (2) the provision of case-management services; (3) standardized data collection procedures; and (4) related coordination activities.

[ **1999 c 176 § 10; 1997 c 386 § 35; 1995 1st sp.s. c 18 § 87; 1984 c 97 § 13.**]

#### NOTES:

**Findings—Purpose—Severability—Conflict with federal requirements—1999 c 176:** See notes following RCW [74.34.005](#).

**Conflict with federal requirements—Severability—Effective date—1995 1st sp.s. c 18:** See notes following RCW [74.39A.030](#).

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## **74.34.080**

### **Injunctions.**

If access is denied to an employee of the department seeking to investigate an allegation of abandonment, abuse, financial exploitation, or neglect of a vulnerable adult by an individual, the department may seek an injunction to prevent interference with the investigation. The court shall issue the injunction if the department shows that:

(1) There is reasonable cause to believe that the person is a vulnerable adult and is or has been abandoned, abused, financially exploited, or neglected; and

(2) The employee of the department seeking to investigate the report has been denied access.

[ [1999 c 176 § 11](#); [1984 c 97 § 14](#).]

#### **NOTES:**

**Findings—Purpose—Severability—Conflict with federal requirements—1999 c 176:** See notes following RCW [74.34.005](#).

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## **74.34.090**

### **Data collection system—Confidentiality.**

The department shall maintain a system for statistical data collection, accessible for bona fide research only as the department by rule prescribes. The identity of any person is strictly confidential.

[ [1984 c 97 § 15](#).]

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## **74.34.095**

### **Confidential information—Disclosure.**

(1) The following information is confidential and not subject to disclosure, except as provided in this section:

(a) A report of abandonment, abuse, financial exploitation, or neglect made under this chapter;

(b) The identity of the person making the report; and

(c) All files, reports, records, communications, and working papers used or developed in the investigation or provision of protective services.

(2) Information considered confidential may be disclosed only for a purpose consistent with this chapter or as authorized by chapter 18.20, 18.51, or 74.39A RCW, or as authorized by the long-term care ombuds programs under federal law or state law, chapter 43.190 RCW.

(3) A court or presiding officer in an administrative proceeding may order disclosure of confidential information only if the court, or presiding officer in an administrative proceeding, determines that disclosure is essential to the administration of justice and will not endanger the life or safety of the vulnerable adult or individual who made the report. The court or presiding officer in an administrative hearing may place restrictions on such disclosure as the court or presiding officer deems proper.

[ 2013 c 23 § 218; 2000 c 87 § 4; 1999 c 176 § 17.]

## NOTES:

**Findings—Purpose—Severability—Conflict with federal requirements—1999 c 176:** See notes following RCW 74.34.005.

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## 74.34.110

### Protection of vulnerable adults—Petition for protective order.

An action known as a petition for an order for protection of a vulnerable adult in cases of abandonment, abuse, financial exploitation, or neglect is created.

(1) A vulnerable adult, or interested person on behalf of the vulnerable adult, may seek relief from abandonment, abuse, financial exploitation, or neglect, or the threat thereof, by filing a petition for an order for protection in superior court.

(2) A petition shall allege that the petitioner, or person on whose behalf the petition is brought, is a vulnerable adult and that the petitioner, or person on whose behalf the petition is brought, has been abandoned, abused, financially exploited, or neglected, or is threatened with abandonment, abuse, financial exploitation, or neglect by respondent.

(3) A petition shall be accompanied by affidavit made under oath, or a declaration signed under penalty of perjury, stating the specific facts and circumstances which demonstrate the need for the relief sought. If the petition is filed by an interested person, the affidavit or declaration must also include a statement of why the petitioner qualifies as an interested person.

(4) A petition for an order may be made whether or not there is a pending lawsuit, complaint, petition, or other action pending that relates to the issues presented in the petition for an order for protection.

(5) Within ninety days of receipt of the master copy from the administrative office of the courts, all court clerk's offices shall make available the standardized forms and instructions required by RCW 74.34.115.

(6) Any assistance or information provided by any person, including, but not limited to, court clerks, employees of the department, and other court facilitators, to another to complete the forms provided by the court in subsection (5) of this section does not constitute the practice of law.

(7) A petitioner is not required to post bond to obtain relief in any proceeding under this section.

(8) An action under this section shall be filed in the county where the vulnerable adult resides; except that if the vulnerable adult has left or been removed from the residence as a result of abandonment, abuse, financial exploitation, or neglect, or in order to avoid abandonment, abuse, financial exploitation, or neglect, the petitioner may bring an action in the county of either the vulnerable adult's previous or new residence.

(9) No filing fee may be charged to the petitioner for proceedings under this section. Standard forms and written instructions shall be provided free of charge.

[ 2007 c 312 § 3; 1999 c 176 § 12; 1986 c 187 § 5.]

#### NOTES:

**Findings—Purpose—Severability—Conflict with federal requirements—1999 c 176:** See notes following RCW 74.34.005.

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### 74.34.115

#### **Protection of vulnerable adults—Administrative office of the courts—Standard petition—Order for protection—Standard notice—Court staff handbook.**

(1) The administrative office of the courts shall develop and prepare standard petition, temporary order for protection, and permanent order for protection forms, a standard notice form to provide notice to the vulnerable adult if the vulnerable adult is not the petitioner, instructions, and a court staff handbook on the protection order process. The standard petition and order for protection forms must be used after October 1, 2007, for all petitions filed and orders issued under this chapter. The administrative office of the courts, in preparing the instructions, forms, notice, and handbook, may consult with attorneys from the elder law section of the Washington state bar association, judges, the department, the Washington protection and advocacy system, and law enforcement personnel.

(a) The instructions shall be designed to assist petitioners in completing the petition, and shall include a sample of the standard petition and order for protection forms.

(b) The order for protection form shall include, in a conspicuous location, notice of criminal penalties resulting from violation of the order.

(c) The standard notice form shall be designed to explain to the vulnerable adult in clear, plain language the purpose and nature of the petition and that the vulnerable adult has the right to participate in the hearing and to either support or object to the petition.

(2) The administrative office of the courts shall distribute a master copy of the standard forms, instructions, and court staff handbook to all court clerks and shall distribute a master copy of the standard forms to all superior, district, and municipal courts.

(3) The administrative office of the courts shall determine the significant non-English-speaking or limited-English-speaking populations in the state. The administrator shall then arrange for translation of the instructions required by this section, which shall contain a sample of the standard forms, into the languages spoken by those significant non-English-

speaking populations, and shall distribute a master copy of the translated instructions to all court clerks by December 31, 2007.

(4) The administrative office of the courts shall update the instructions, standard forms, and court staff handbook when changes in the law make an update necessary. The updates may be made in consultation with the persons and entities specified in subsection (1) of this section.

(5) For purposes of this section, "court clerks" means court administrators in courts of limited jurisdiction and elected court clerks.

[ 2007 c 312 § 4.]

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## 74.34.120

### Protection of vulnerable adults—Hearing.

(1) The court shall order a hearing on a petition under RCW 74.34.110 not later than fourteen days from the date of filing the petition.

(2) Personal service shall be made upon the respondent not less than six court days before the hearing. When good faith attempts to personally serve the respondent have been unsuccessful, the court shall permit service by mail or by publication.

(3) When a petition under RCW 74.34.110 is filed by someone other than the vulnerable adult, notice of the petition and hearing must be personally served upon the vulnerable adult not less than six court days before the hearing. In addition to copies of all pleadings filed by the petitioner, the petitioner shall provide a written notice to the vulnerable adult using the standard notice form developed under RCW 74.34.115. When good faith attempts to personally serve the vulnerable adult have been unsuccessful, the court shall permit service by mail, or by publication if the court determines that personal service and service by mail cannot be obtained.

(4) If timely service under subsections (2) and (3) of this section cannot be made, the court shall continue the hearing date until the substitute service approved by the court has been satisfied.

(5)(a) A petitioner may move for temporary relief under chapter 7.40 RCW. The court may continue any temporary order for protection granted under chapter 7.40 RCW until the hearing on a petition under RCW 74.34.110 is held.

(b) Written notice of the request for temporary relief must be provided to the respondent, and to the vulnerable adult if someone other than the vulnerable adult filed the petition. A temporary protection order may be granted without written notice to the respondent and vulnerable adult if it clearly appears from specific facts shown by affidavit or declaration that immediate and irreparable injury, loss, or damage would result to the vulnerable adult before the respondent and vulnerable adult can be served and heard, or that show the respondent and vulnerable adult cannot be served with notice, the efforts made to serve them, and the reasons why prior notice should not be required.

[ 2007 c 312 § 5; 1986 c 187 § 6.]



**74.34.130****Protection of vulnerable adults—Judicial relief.**

The court may order relief as it deems necessary for the protection of the vulnerable adult, including, but not limited to the following:

- (1) Restraining respondent from committing acts of abandonment, abuse, neglect, or financial exploitation against the vulnerable adult;
- (2) Excluding the respondent from the vulnerable adult's residence for a specified period or until further order of the court;
- (3) Prohibiting contact with the vulnerable adult by respondent for a specified period or until further order of the court;
- (4) Prohibiting the respondent from knowingly coming within, or knowingly remaining within, a specified distance from a specified location;
- (5) Requiring an accounting by respondent of the disposition of the vulnerable adult's income or other resources;
- (6) Restraining the transfer of the respondent's and/or vulnerable adult's property for a specified period not exceeding ninety days; and
- (7) Requiring the respondent to pay a filing fee and court costs, including service fees, and to reimburse the petitioner for costs incurred in bringing the action, including a reasonable attorney's fee.

Any relief granted by an order for protection, other than a judgment for costs, shall be for a fixed period not to exceed five years. The clerk of the court shall enter any order for protection issued under this section into the judicial information system.

[ **2007 c 312 § 6**. Prior: **2000 c 119 § 27**; **2000 c 51 § 2**; **1999 c 176 § 13**; **1986 c 187 § 7**.]

**NOTES:**

**Application—2000 c 119:** See note following RCW **26.50.021**.

**Findings—Purpose—Severability—Conflict with federal requirements—1999 c 176:** See notes following RCW **74.34.005**.

**74.34.135****Protection of vulnerable adults—Filings by others—Dismissal of petition or order—Testimony or evidence—Additional evidentiary hearings—Temporary order.**

(1) When a petition for protection under RCW **74.34.110** is filed by someone other than the vulnerable adult or the vulnerable adult's full guardian over either the person or the estate, or both, and the vulnerable adult for whom protection is sought advises the court at the hearing that he or she does not want all or part of the protection sought in the petition, then the court may dismiss the petition or the provisions that the vulnerable adult objects to and any protection order issued under RCW **74.34.120** or **74.34.130**, or the court may take additional testimony or evidence, or order additional evidentiary hearings to determine whether the vulnerable adult is unable, due to incapacity, undue influence, or duress, to protect his or her



person or estate in connection with the issues raised in the petition or order. If an additional evidentiary hearing is ordered and the court determines that there is reason to believe that there is a genuine issue about whether the vulnerable adult is unable to protect his or her person or estate in connection with the issues raised in the petition or order, the court may issue a temporary order for protection of the vulnerable adult pending a decision after the evidentiary hearing.

(2) An evidentiary hearing on the issue of whether the vulnerable adult is unable, due to incapacity, undue influence, or duress, to protect his or her person or estate in connection with the issues raised in the petition or order, shall be held within fourteen days of entry of the temporary order for protection under subsection (1) of this section. If the court did not enter a temporary order for protection, the evidentiary hearing shall be held within fourteen days of the prior hearing on the petition. Notice of the time and place of the evidentiary hearing shall be personally served upon the vulnerable adult and the respondent not less than six court days before the hearing. When good faith attempts to personally serve the vulnerable adult and the respondent have been unsuccessful, the court shall permit service by mail, or by publication if the court determines that personal service and service by mail cannot be obtained. If timely service cannot be made, the court may set a new hearing date. A hearing under this subsection is not necessary if the vulnerable adult has been determined to be fully incapacitated over either the person or the estate, or both, under the guardianship laws, chapter 11.88 RCW. If a hearing is scheduled under this subsection, the protection order shall remain in effect pending the court's decision at the subsequent hearing.

(3) At the hearing scheduled by the court, the court shall give the vulnerable adult, the respondent, the petitioner, and in the court's discretion other interested persons, the opportunity to testify and submit relevant evidence.

(4) If the court determines that the vulnerable adult is capable of protecting his or her person or estate in connection with the issues raised in the petition, and the individual continues to object to the protection order, the court shall dismiss the order or may modify the order if agreed to by the vulnerable adult. If the court determines that the vulnerable adult is not capable of protecting his or her person or estate in connection with the issues raised in the petition or order, and that the individual continues to need protection, the court shall order relief consistent with RCW 74.34.130 as it deems necessary for the protection of the vulnerable adult. In the entry of any order that is inconsistent with the expressed wishes of the vulnerable adult, the court's order shall be governed by the legislative findings contained in RCW 74.34.005.

[ 2007 c 312 § 9.]

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## 74.34.140

### Protection of vulnerable adults—Execution of protective order.

When an order for protection under RCW 74.34.130 is issued upon request of the petitioner, the court may order a peace officer to assist in the execution of the order of protection. A public agency may not charge a fee for service of process to petitioners seeking relief under this chapter. Petitioners must be provided the necessary number of certified copies at no cost.

[ 2012 c 156 § 2; 1986 c 187 § 8.]

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#### **74.34.145**

#### **Protection of vulnerable adults—Notice of criminal penalties for violation—Enforcement under RCW 26.50.110.**

(1) An order for protection of a vulnerable adult issued under this chapter which restrains the respondent or another person from committing acts of abuse, prohibits contact with the vulnerable adult, excludes the person from any specified location, or prohibits the person from coming within a specified distance from a location, shall prominently bear on the front page of the order the legend: VIOLATION OF THIS ORDER WITH ACTUAL NOTICE OF ITS TERMS IS A CRIMINAL OFFENSE UNDER CHAPTER 26.50 RCW AND WILL SUBJECT A VIOLATOR TO ARREST.

(2) Whenever an order for protection of a vulnerable adult is issued under this chapter, and the respondent or person to be restrained knows of the order, a violation of a provision restraining the person from committing acts of abuse, prohibiting contact with the vulnerable adult, excluding the person from any specified location, or prohibiting the person from coming within a specified distance of a location, shall be punishable under RCW 26.50.110, regardless of whether the person is a family or household member as defined in RCW 26.50.010.

[ 2007 c 312 § 7; 2000 c 119 § 2.]

#### **NOTES:**

**Application—2000 c 119:** See note following RCW 26.50.021.

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#### **74.34.150**

#### **Protection of vulnerable adults—Department may seek relief.**

The department of social and health services, in its discretion, may seek relief under RCW 74.34.110 through 74.34.140 on behalf of and with the consent of any vulnerable adult. When the department has reason to believe a vulnerable adult lacks the ability or capacity to consent, the department, in its discretion, may seek relief under RCW 74.34.110 through 74.34.140 on behalf of the vulnerable adult. Neither the department of social and health services nor the state of Washington shall be liable for seeking or failing to seek relief on behalf of any persons under this section.

[ 2007 c 312 § 8; 1986 c 187 § 9.]

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**74.34.160****Protection of vulnerable adults—Proceedings are supplemental.**

Any proceeding under RCW **74.34.110** through **74.34.150** is in addition to any other civil or criminal remedies.

[ **1986 c 187 § 11.**]

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**74.34.163****Application to modify or vacate order.**

Any vulnerable adult who has not been adjudicated fully incapacitated under chapter **11.88** RCW, or the vulnerable adult's guardian, at any time subsequent to entry of a permanent protection order under this chapter, may apply to the court for an order to modify or vacate the order. In a hearing on an application to dismiss or modify the protection order, the court shall grant such relief consistent with RCW **74.34.110** as it deems necessary for the protection of the vulnerable adult, including dismissal or modification of the protection order.

[ **2007 c 312 § 10.**]

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**74.34.165****Rules.**

The department may adopt rules relating to the reporting, investigation, and provision of protective services in in-home settings, consistent with the objectives of this chapter.

[ **1999 c 176 § 18.**]

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**NOTES:**

**Findings—Purpose—Severability—Conflict with federal requirements—1999 c 176:** See notes following RCW **74.34.005**.

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**74.34.170****Services of department discretionary—Funding.**

The provision of services under RCW \* **74.34.030**, **74.34.040**, **74.34.050**, and \*\* **74.34.100** through **74.34.160** are discretionary and the department shall not be required to expend additional funds beyond those appropriated.

[ **1986 c 187 § 10.**]

**NOTES:**

**Reviser's note:** \*(1) RCW **74.34.030** was repealed by **1999 c 176 § 35**.

\*\* (2) RCW **74.34.100** was recodified as RCW **74.34.015** pursuant to 1995 1st sp.s. c 18 § 89, effective July 1, 1995. RCW **74.34.015** was subsequently repealed by **1999 c 176 § 35**.

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**74.34.180****Retaliation against whistleblowers and residents—Remedies—Rules.**

(1) An employee or contractor who is a whistleblower and who as a result of being a whistleblower has been subjected to workplace reprisal or retaliatory action, has the remedies provided under chapter **49.60** RCW. RCW **4.24.500** through **4.24.520**, providing certain protection to persons who communicate to government agencies, apply to complaints made under this section. The identity of a whistleblower who complains, in good faith, to the department or the department of health about suspected abandonment, abuse, financial exploitation, or neglect by any person in a facility, licensed or required to be licensed, or care provided in a facility or in a home setting, by any person associated with a hospice, home care, or home health agency licensed under chapter **70.127** RCW or other in-home provider, may remain confidential if requested. The identity of the whistleblower shall subsequently remain confidential unless the department determines that the complaint was not made in good faith.

(2)(a) An attempt to expel a resident from a facility, or any type of discriminatory treatment of a resident who is a consumer of hospice, home health, home care services, or other in-home services by whom, or upon whose behalf, a complaint substantiated by the department or the department of health has been submitted to the department or the department of health or any proceeding instituted under or related to this chapter within one year of the filing of the complaint or the institution of the action, raises a rebuttable presumption that the action was in retaliation for the filing of the complaint.

(b) The presumption is rebutted by credible evidence establishing the alleged retaliatory action was initiated prior to the complaint.

(c) The presumption is rebutted by a review conducted by the department that shows that the resident or consumer's needs cannot be met by the reasonable accommodations of the facility due to the increased needs of the resident.

(3) For the purposes of this section:

(a) "Whistleblower" means a resident or a person with a mandatory duty to report under this chapter, or any person licensed under Title **18** RCW, who in good faith reports alleged abandonment, abuse, financial exploitation, or neglect to the department, or the department of health, or to a law enforcement agency;

(b) "Workplace reprisal or retaliatory action" means, but is not limited to: Denial of adequate staff to perform duties; frequent staff changes; frequent and undesirable office changes; refusal to assign meaningful work; unwarranted and unsubstantiated report of misconduct under Title **18** RCW; letters of reprimand or unsatisfactory performance evaluations; demotion; denial of employment; or a supervisor or superior encouraging coworkers to behave in a hostile manner toward the whistleblower. The protections provided to whistleblowers under this chapter shall not prevent a facility or an agency licensed under

chapter **70.127** RCW from: (i) Terminating, suspending, or disciplining a whistleblower for other lawful purposes; or (ii) for facilities licensed under chapter **70.128** RCW, reducing the hours of employment or terminating employment as a result of the demonstrated inability to meet payroll requirements. The department shall determine if the facility cannot meet payroll in cases in which a whistleblower has been terminated or had hours of employment reduced because of the inability of a facility to meet payroll; and

(c) "Reasonable accommodation" by a facility to the needs of a prospective or current resident has the meaning given to this term under the federal Americans with disabilities act of 1990, 42 U.S.C. Sec. 12101 et seq. and other applicable federal or state antidiscrimination laws and regulations.

(4) This section does not prohibit a facility or an agency licensed under chapter **70.127** RCW from exercising its authority to terminate, suspend, or discipline any employee who engages in workplace reprisal or retaliatory action against a whistleblower.

(5) The department shall adopt rules to implement procedures for filing, investigation, and resolution of whistleblower complaints that are integrated with complaint procedures under this chapter.

(6)(a) Any vulnerable adult who relies upon and is being provided spiritual treatment in lieu of medical treatment in accordance with the tenets and practices of a well-recognized religious denomination may not for that reason alone be considered abandoned, abused, or neglected.

(b) Any vulnerable adult may not be considered abandoned, abused, or neglected under this chapter by any health care provider, facility, facility employee, agency, agency employee, or individual provider who participates in good faith in the withholding or withdrawing of life-sustaining treatment from a vulnerable adult under chapter **70.122** RCW, or who acts in accordance with chapter **7.70** RCW or other state laws to withhold or withdraw treatment, goods, or services.

(7) The department, and the department of health for facilities, agencies, or individuals it regulates, shall adopt rules designed to discourage whistleblower complaints made in bad faith or for retaliatory purposes.

[ **1999 c 176 § 14; 1997 c 392 § 202.**]

## NOTES:

**Findings—Purpose—Severability—Conflict with federal requirements—1999 c 176:** See notes following RCW **74.34.005**.

**Short title—Findings—Construction—Conflict with federal requirements—Part headings and captions not law—1997 c 392:** See notes following RCW **74.39A.009**.

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## 74.34.200

### **Abandonment, abuse, financial exploitation, or neglect of a vulnerable adult—Cause of action for damages—Legislative intent.**

(1) In addition to other remedies available under the law, a vulnerable adult who has been subjected to abandonment, abuse, financial exploitation, or neglect either while residing in a facility or in the case of a person residing at home who receives care from a home health,

hospice, or home care agency, or an individual provider, shall have a cause of action for damages on account of his or her injuries, pain and suffering, and loss of property sustained thereby. This action shall be available where the defendant is or was a corporation, trust, unincorporated association, partnership, administrator, employee, agent, officer, partner, or director of a facility, or of a home health, hospice, or home care agency licensed or required to be licensed under chapter 70.127 RCW, as now or subsequently designated, or an individual provider.

(2) It is the intent of the legislature, however, that where there is a dispute about the care or treatment of a vulnerable adult, the parties should use the least formal means available to try to resolve the dispute. Where feasible, parties are encouraged but not mandated to employ direct discussion with the health care provider, use of the long-term care ombuds or other intermediaries, and, when necessary, recourse through licensing or other regulatory authorities.

(3) In an action brought under this section, a prevailing plaintiff shall be awarded his or her actual damages, together with the costs of the suit, including a reasonable attorneys' fee. The term "costs" includes, but is not limited to, the reasonable fees for a guardian, guardian ad litem, and experts, if any, that may be necessary to the litigation of a claim brought under this section.

[ 2013 c 23 § 219; 1999 c 176 § 15; 1995 1st sp.s. c 18 § 85.]

#### NOTES:

**Findings—Purpose—Severability—Conflict with federal requirements—1999 c 176:** See notes following RCW 74.34.005.

**Conflict with federal requirements—Severability—Effective date—1995 1st sp.s. c 18:** See notes following RCW 74.39A.030.

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## 74.34.205

### Abandonment, abuse, or neglect—Exceptions.

(1) Any vulnerable adult who relies upon and is being provided spiritual treatment in lieu of medical treatment in accordance with the tenets and practices of a well-recognized religious denomination may not for that reason alone be considered abandoned, abused, or neglected.

(2) Any vulnerable adult may not be considered abandoned, abused, or neglected under this chapter by any health care provider, facility, facility employee, agency, agency employee, or individual provider who participates in good faith in the withholding or withdrawing of life-sustaining treatment from a vulnerable adult under chapter 70.122 RCW, or who acts in accordance with chapter 7.70 RCW or other state laws to withhold or withdraw treatment, goods, or services.

[ 1999 c 176 § 16.]

#### NOTES:

**Findings—Purpose—Severability—Conflict with federal requirements—1999 c 176:** See notes following RCW [74.34.005](#).

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## **74.34.210**

### **Order for protection or action for damages—Standing—Jurisdiction.**

A petition for an order for protection may be brought by the vulnerable adult, the vulnerable adult's guardian or legal fiduciary, the department, or any interested person as defined in RCW [74.34.020](#). An action for damages under this chapter may be brought by the vulnerable adult, or where necessary, by his or her family members and/or guardian or legal fiduciary. The death of the vulnerable adult shall not deprive the court of jurisdiction over a petition or claim brought under this chapter. Upon petition, after the death of the vulnerable adult, the right to initiate or maintain the action shall be transferred to the executor or administrator of the deceased, for recovery of all damages for the benefit of the deceased person's beneficiaries set forth in chapter [4.20](#) RCW or if there are no beneficiaries, then for recovery of all economic losses sustained by the deceased person's estate.

[ [2007 c 312 § 11](#); [1995 1st sp.s. c 18 § 86](#).]

#### **NOTES:**

**Conflict with federal requirements—Severability—Effective date—1995 1st sp.s. c 18:** See notes following RCW [74.39A.030](#).

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## **74.34.215**

### **Financial exploitation of vulnerable adults.**

(1) Pending an investigation by the financial institution, the department, or law enforcement, if a financial institution reasonably believes that financial exploitation of a vulnerable adult may have occurred, may have been attempted, or is being attempted, the financial institution may, but is not required to, refuse a transaction requiring disbursement of funds contained in the account:

- (a) Of the vulnerable adult;
  - (b) On which the vulnerable adult is a beneficiary, including a trust or guardianship account; or
  - (c) Of a person suspected of perpetrating financial exploitation of a vulnerable adult.
- (2) A financial institution may also refuse to disburse funds under this section if the department, law enforcement, or the prosecuting attorney's office provides information to the financial institution demonstrating that it is reasonable to believe that financial exploitation of a vulnerable adult may have occurred, may have been attempted, or is being attempted.
- (3) A financial institution is not required to refuse to disburse funds when provided with information alleging that financial exploitation may have occurred, may have been attempted, or is being attempted, but may use its discretion to determine whether or not to refuse to disburse funds based on the information available to the financial institution.



(4) A financial institution that refuses to disburse funds based on a reasonable belief that financial exploitation of a vulnerable adult may have occurred, may have been attempted, or is being attempted shall:

(a) Make a reasonable effort to notify all parties authorized to transact business on the account orally or in writing; and

(b) Report the incident to the adult protective services division of the department and local law enforcement.

(5) Any refusal to disburse funds as authorized by this section based on the reasonable belief of a financial institution that financial exploitation of a vulnerable adult may have occurred, may have been attempted, or is being attempted will expire upon the sooner of:

(a) Ten business days after the date on which the financial institution first refused to disburse the funds if the transaction involved the sale of a security or offer to sell a security, as defined in RCW **21.20.005**, unless sooner terminated by an order of a court of competent jurisdiction;

(b) Five business days after the date on which the financial institution first refused to disburse the funds if the transaction did not involve the sale of a security or offer to sell a security, as defined in RCW **21.20.005**, unless sooner terminated by an order of a court of competent jurisdiction; or

(c) The time when the financial institution is satisfied that the disbursement will not result in financial exploitation of a vulnerable adult.

(6) A court of competent jurisdiction may enter an order extending the refusal by the financial institution to disburse funds based on a reasonable belief that financial exploitation of a vulnerable adult may have occurred, may have been attempted, or is being attempted. A court of competent jurisdiction may also order other protective relief as authorized by RCW **7.40.010** and **74.34.130**.

(7) A financial institution or an employee of a financial institution is immune from criminal, civil, and administrative liability for refusing to disburse funds or disbursing funds under this section and for actions taken in furtherance of that determination if the determination of whether or not to disburse funds was made in good faith.

[ **2010 c 133 § 3.**]

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## **74.34.220**

### **Financial exploitation of vulnerable adults—Training—Reporting.**

(1) A financial institution shall provide training concerning the financial exploitation of vulnerable adults to the employees specified in subsection (2) of this section within one year of June 10, 2010, and shall thereafter provide such training to the new employees specified in subsection (2) of this section within the first three months of their employment.

(2) A financial institution that is a broker-dealer or investment adviser as defined in RCW **21.20.005** shall provide training concerning the financial exploitation of vulnerable adults to employees who are required to be registered in the state of Washington as salespersons or investment adviser representatives under RCW **21.20.040** and who have contact with customers and access to account information on a regular basis and as part of their job. All other financial institutions shall provide training concerning the financial exploitation of



vulnerable adults to employees who have contact with customers and access to account information on a regular basis and as part of their job.

(3) The training must include recognition of indicators of financial exploitation of a vulnerable adult, the manner in which employees may report suspected financial exploitation to the department and law enforcement as permissive reporters, and steps employees may take to prevent suspected financial exploitation of a vulnerable adult as authorized by law or agreements between the financial institution and customers of the financial institution. The office of the attorney general and the department shall develop a standardized training that financial institutions may offer, or the financial institution may develop its own training.

(4) A financial institution may provide access to or copies of records that are relevant to suspected financial exploitation or attempted financial exploitation of a vulnerable adult to the department, law enforcement, or the prosecuting attorney's office, either as part of a referral to the department, law enforcement, or the prosecuting attorney's office, or upon request of the department, law enforcement, or the prosecuting attorney's office pursuant to an investigation. The records may include historical records as well as records relating to the most recent transaction or transactions that may comprise financial exploitation.

(5) A financial institution or employee of a financial institution participating in good faith in making a report or providing documentation or access to information to the department, law enforcement, or the prosecuting attorney's office under this chapter shall be immune from criminal, civil, or administrative liability.

[ 2010 c 133 § 5.]

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### 74.34.300

#### **Vulnerable adult fatality reviews.**

(1) The department shall conduct a vulnerable adult fatality review in the event of a death of a vulnerable adult when the department has reason to believe that the death of the vulnerable adult may be related to the abuse, abandonment, exploitation, or neglect of the vulnerable adult, or may be related to the vulnerable adult's self-neglect, and the vulnerable adult was:

(a) Receiving home and community-based services in his or her own home or licensed or certified settings, described under chapters 74.39, 74.39A, 18.20, 70.128, and 71A.12 RCW, within sixty days preceding his or her death; or

(b) Living in his or her own home or licensed or certified settings described under chapters 74.39, 74.39A, 18.20, 70.128, and 71A.12 RCW and was the subject of a report under this chapter received by the department within twelve months preceding his or her death.

(2) When conducting a vulnerable adult fatality review of a person who had been receiving hospice care services before the person's death, the review shall provide particular consideration to the similarities between the signs and symptoms of abuse and those of many patients receiving hospice care services.

(3) All files, reports, records, communications, and working papers used or developed for purposes of a fatality review are confidential and not subject to disclosure pursuant to RCW 74.34.095.

(4) The department may adopt rules to implement this section.

[ 2016 c 172 § 4; 2008 c 146 § 10.]

#### NOTES:

**Finding—2016 c 172:** See note following RCW **43.382.005**.

**Findings—Intent—Severability—2008 c 146:** See notes following RCW **74.41.040**.

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### 74.34.305

#### Statement to vulnerable adults.

(1) When the department opens an investigation of a report of abandonment, abuse, financial exploitation, or neglect of a vulnerable adult, the department shall, at the time of the interview of the vulnerable adult who is an alleged victim, provide a written statement of the rights afforded under this chapter and other applicable law to alleged victims or legal guardians. This statement must include the department's name, address, and telephone number and may include other appropriate referrals. The statement must be substantially in the following form:

"You are entitled to be free from abandonment, abuse, financial exploitation, and neglect. If there is a reason to believe that you have experienced abandonment, abuse, financial exploitation, or neglect, you have the right to:

(a) Make a report to the department of social and health services and law enforcement and share any information you believe could be relevant to the investigation, and identify any persons you believe could have relevant information.

(b) Be free from retaliation for reporting or causing a report of abandonment, abuse, financial exploitation, or neglect.

(c) Be treated with dignity and addressed with respectful language.

(d) Reasonable accommodation for your disability when reporting, and during investigations and administrative proceedings.

(e) Request an order that prohibits anyone who has abandoned, abused, financially exploited, or neglected you from remaining in your home, having contact with you, or accessing your money or property.

(f) Receive from the department of social and health services information and appropriate referrals to other agencies that can advocate, investigate, or take action.

(g) Be informed of the status of investigations, proceedings, court actions, and outcomes by the agency that is handling any case in which you are a victim.

(h) Request referrals for advocacy or legal assistance to help with safety planning, investigations, and hearings.

(i) Complain to the department of social and health services, formally or informally, about investigations or proceedings, and receive a prompt response."

(2) This section shall not be construed to create any new cause of action or limit any existing remedy.

[ 2011 c 170 § 3.]

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**74.34.310****Service of process or filing fees prohibited—Certified copies.**

A public agency may not charge a fee for filing or service of process to petitioners seeking relief under this chapter. Petitioners must be provided the necessary number of certified copies at no cost.

[ 2012 c 156 § 1.]

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**74.34.320****Written protocol—Counties encouraged to develop for handling criminal cases involving vulnerable adults—Vulnerable adult advocacy teams—Confidentiality—Disclosure of information.**

(1) Each county is encouraged to develop a written protocol for handling criminal cases involving vulnerable adults. The protocol shall:

(a) Address the coordination of vulnerable adult mistreatment investigations among the following groups as appropriate and when available: The prosecutor's office; law enforcement; adult protective services; vulnerable adult advocacy centers; local advocacy groups; community victim advocacy programs; professional guardians; medical examiners or coroners; financial analysts or forensic accountants; social workers with experience or training related to the mistreatment of vulnerable adults; medical personnel; the state long-term care ombuds or a regional long-term care ombuds specifically designated by the state long-term care ombuds; developmental disabilities ombuds; the attorney general's office; and any other local agency involved in the criminal investigation of vulnerable adult mistreatment;

(b) Be developed by the prosecuting attorney with the assistance of the agencies referenced in this subsection;

(c) Provide that participation as a member of the vulnerable adult advocacy team is voluntary;

(d) Include a brief statement provided by the state long-term care ombuds, without alteration, that describes the confidentiality laws and policies governing the state long-term care ombuds program, and includes citations to relevant federal and state laws;

(e) Require the development and use of a confidentiality agreement, in compliance with this section, that includes, but is not limited to, terms governing the type of information that must be shared, and the means by which it is shared; the existing confidentiality obligations of team members; and the circumstances under which team members may disclose information outside of the team;

(f) Require the vulnerable adult advocacy team to make a good faith effort to obtain the participation of the state long-term care ombuds prior to addressing any issue related to abuse, neglect, or financial exploitation of a vulnerable adult residing in a long-term care facility during the relevant time period.

(2) Members of a vulnerable adult advocacy team must disclose to each other confidential or sensitive information and records, if the team member disclosing the information or records

reasonably believes the disclosure is relevant to the duties of the vulnerable adult advocacy team. The disclosure and receipt of confidential information between vulnerable adult advocacy team members shall be governed by the requirements of this section, and by the county protocol developed pursuant to this section.

(3) Prior to participation, each member of the vulnerable adult advocacy team must sign a confidentiality agreement that requires compliance with all governing federal and state confidentiality laws.

(4) The information or records obtained shall be maintained in a manner that ensures the maximum protection of privacy and confidentiality rights.

(5) Information and records communicated or provided to vulnerable adult advocacy team members, as well as information and records created in the course of an investigation, shall be deemed private and confidential and shall be protected from discovery and disclosure by all applicable statutory and common law protections. The disclosed information may not be further disclosed except by law or by court order.

[ 2017 c 266 § 13.]

#### NOTES:

**Finding—Intent—2017 c 266:** See note following RCW [9A.42.020](#).

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#### 74.34.902

#### **Construction—Chapter applicable to state registered domestic partnerships—2009 c 521.**

For the purposes of this chapter, the terms spouse, marriage, marital, husband, wife, widow, widower, next of kin, and family shall be interpreted as applying equally to state registered domestic partnerships or individuals in state registered domestic partnerships as well as to marital relationships and married persons, and references to dissolution of marriage shall apply equally to state registered domestic partnerships that have been terminated, dissolved, or invalidated, to the extent that such interpretation does not conflict with federal law. Where necessary to implement chapter 521, Laws of 2009, gender-specific terms such as husband and wife used in any statute, rule, or other law shall be construed to be gender neutral, and applicable to individuals in state registered domestic partnerships.

[ 2009 c 521 § 181.]

**GALR's:**

**Superior Court Guardian ad Litem Rules**





**Courts Home|Court Rules**

**<http://www.courts.wa.gov/>**

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## **GUARDIAN AD LITEM RULE 1:**

### **SCOPE AND DEFINITIONS**

(a) Statement of Purpose and Scope of Rule. The purpose of these rules is to establish a minimum set of standards applicable to all superior court cases where the court appoints a guardian ad litem or any person to represent the best interest of a child, an alleged incapacitated person, or an adjudicated incapacitated person pursuant to Title 11, 13 or 26 RCW.

These rules shall also apply to guardians ad litem appointed pursuant to RCW 4.08.050 and RCW 4.08.060, if the appointment is under the procedures of Titles 11, 13 or 26 RCW.

These rules shall not be applicable to guardians ad litem appointed pursuant to Special Proceedings Rule (SPR) 98.16W and chapter 11.96A RCW.

(b) Definitions. As used in this rule, the following terms have these meanings:

(1) Court. Court shall mean any superior court in the state of Washington and all divisions thereof.

(2) Guardian ad Litem. Guardian ad litem shall mean any person or program appointed in a Title 11, 13, or 26 RCW action under the Revised Code of Washington to represent the best interest of a child, an alleged incapacitated person, or an adjudicated incapacitated person. The term guardian ad litem shall not include an attorney appointed to represent a party.

(3) Judge. Judge shall mean a judicial officer of the superior court, including commissioners and judges pro tempore.

(4) Registry. Registry shall mean the list of people authorized by the court to serve as guardians ad litem or CASA programs authorized by RCW 26.12.175.

[Adopted effective November 27, 2001.]

## **GUARDIAN AD LITEM RULE 2:**

### **GENERAL RESPONSIBILITIES OF GUARDIAN AD LITEM**

Consistent with the responsibilities set forth in Titles 11, 13, and 26 of the Revised Code of Washington and other applicable statutes and rules of court, in every case in which a guardian ad litem is appointed, the guardian ad litem shall perform the responsibilities set forth below. For purposes of these rules, a guardian ad litem is any person who is appointed by the court to represent the best interest of the child(ren), an adjudicated incapacitated person, or an alleged incapacitated person or to assist the court in determining the best interest of the child(ren), an adjudicated incapacitated person, or an alleged incapacitated person, regardless of that person's title, except a person appointed pursuant to rule 6.

(a) Represent best interests. A guardian ad litem shall represent the best interests of the person for whom he or she is appointed. Representation of best interests may be inconsistent with the wishes of the person whose interest the guardian ad litem represents. The guardian ad litem shall not advocate on behalf of or advise any party so as to create in the mind of a reasonable person the appearance of representing that party as an attorney.

(b) Maintain independence. A guardian ad litem shall maintain independence, objectivity and the appearance of fairness in dealings with parties and professionals, both in and out of the courtroom.

(c) Professional conduct. A guardian ad litem shall maintain the ethical principles of the rules of conduct set forth in these rules and is subject to discipline under local rules established pursuant to rule 7 for violation.

(d) Remain qualified for the registry. Unless excepted by statute or court rule, a guardian ad litem shall satisfy all training requirements and continuing education requirements developed for Titles 13 and 26 RCW guardians ad litem by the administrator of the courts and for Title 11 RCW guardians ad litem as required by statute and maintain qualifications to serve as guardian ad litem in every county where the guardian ad litem is listed on the registry for that county and in which the guardian ad litem serves and shall promptly advise each such court of any grounds for disqualification or unavailability to serve.

(e) Avoid conflicts of interests. A guardian ad litem shall avoid any actual or apparent conflict of interest or impropriety in the performance of guardian ad litem responsibilities. A guardian ad litem shall avoid self-dealing or association from which a guardian ad litem might directly or indirectly benefit, other than for compensation as guardian ad litem. A guardian ad litem shall take action immediately to resolve any potential conflict or impropriety. A guardian ad litem shall advise the court and the parties of action taken, resign from the matter, or seek court direction as may be necessary to resolve the conflict or impropriety. A guardian ad litem shall not accept or maintain appointment if the performance of the duties of guardian ad litem may be

materially limited by the guardian ad litem's responsibilities to another client or a third person, or by the guardian ad litem's own interests.

(f) Treat parties with respect. A guardian ad litem is an officer of the court and as such shall at all times treat the parties with respect, courtesy, fairness and good faith.

(g) Become informed about case. A guardian ad litem shall make reasonable efforts to become informed about the facts of the case and to contact all parties. A guardian ad litem shall examine material information and sources of information, taking into account the positions of the parties.

(h) Make requests for evaluations to court. A guardian ad litem shall not require any evaluations or tests of the parties except as authorized by statute or court order issued following notice and opportunity to be heard.

(i) Timely inform the court of relevant information. A guardian ad litem shall file a written report with the court and the parties as required by law or court order or in any event not later than 10 days prior to a hearing for which a report is required. The report shall be accompanied by a written list of documents considered or called to the attention of the guardian ad litem and persons interviewed during the course of the investigation.

(j) Limit duties to those ordered by court. A guardian ad litem shall comply with the court's instructions as set out in the order appointing a guardian ad litem, and shall not provide or require services beyond the scope of the court's instruction unless by motion and on adequate notice to the parties, a guardian ad litem obtains additional instruction, clarification or expansion of the scope of such appointment.

(k) Inform individuals about role in case. A guardian ad litem shall identify himself or herself as a guardian ad litem when contacting individuals in the course of a particular case and inform individuals contacted in a particular case about the role of a guardian ad litem in the case at the earliest practicable time. A guardian ad litem shall advise information sources that the documents and information obtained may become part of court proceedings.

(l) Appear at hearings. The guardian ad litem shall be given notice of all hearings and proceedings. A guardian ad litem shall appear at any hearing for which the duties of a guardian ad litem or any issues substantially within a guardian ad litem's duties and scope of appointment are to be addressed. In Title 11 RCW proceedings, the guardian ad litem shall appear at all hearings unless excused by court order.

(m) Ex parte communication. A guardian ad litem shall not have ex parte communications concerning the case with the judge(s) and commissioner(s) involved in the matter except as permitted by court rule or by statute.

(n) Maintain privacy of parties. As an officer of the court, a guardian ad litem shall make no disclosures about the case or the investigation except in reports to the court or as necessary to perform the duties of a guardian ad litem. A guardian ad litem shall maintain the confidential nature of identifiers or addresses where there are allegations of domestic violence or risk to a party's or child's safety. The guardian ad litem may recommend that the court seal the report or a portion of the report of the guardian ad litem to preserve the privacy, confidentiality, or safety of the parties or the person for whom the guardian ad litem was appointed. The court may, upon application, and under such conditions as may be necessary to protect the witnesses from potential harm, order disclosure or discovery that addresses the need to challenge the truth of the information received from the confidential source.

(o) Perform duties in timely manner. A guardian ad litem shall perform responsibilities in a prompt and timely manner, and, if necessary, request timely court reviews and judicial intervention in writing with notice to parties or affected agencies.

(p) Maintain documentation. A guardian ad litem shall maintain documentation to substantiate recommendations and conclusions and shall keep records of actions taken by the guardian ad litem. Except as prohibited or protected by law, and consistent with rule 2(n), this information shall be made available for review on written request of a party or the court on request. Costs may be imposed for such requests.

(q) Keep records of time and expenses. A guardian ad litem shall keep accurate records of the time spent, services rendered, and expenses incurred in each case and file an itemized statement and accounting with the court and provide a copy to each party or other entity responsible for payment. The court shall make provisions for fees and expenses pursuant to statute in the Order Appointing Guardian ad Litem or in any subsequent order.

[Adopted effective November 27, 2001.]

### **GUARDIAN AD LITEM RULE 3:**

#### **ROLES AND RESPONSIBILITIES OF GUARDIAN AD LITEM IN TITLE 13 RCW JUVENILE COURT PROCEEDINGS**

In addition to the roles and responsibilities enumerated in rule 2, a guardian ad litem in Title 13 RCW juvenile court proceedings shall have the following responsibilities:

(a) Role. Unless otherwise specified in the order of appointment, the roles and responsibilities of a guardian ad litem are those roles and responsibilities specified in RCW 13.34.105 and applicable court rules.

(b) Explore concurrent planning. A guardian ad litem shall explore concurrent planning and make a timely recommendation to the court for a permanent plan for the child.

[Adopted effective November 27, 2001.]

## **GUARDIAN AD LITEM RULE 4**

### **AUTHORITY OF GUARDIAN AD LITEM**

As an officer of the court, a guardian ad litem has only such authority conferred by the order of appointment. Consistent with the roles and responsibilities set forth in rules 2 and 3, and the grievance procedures set forth in rules 5 and 6, a guardian ad litem shall have the following authority:

(a) Access to party. Unless circumstances warrant otherwise, a guardian ad litem shall have access to the persons for whom a guardian ad litem is appointed and to all information relevant to the issues for which a guardian ad litem was appointed. The access of a guardian ad litem to the child or alleged incapacitated person and all relevant information shall not be unduly restricted by any person or agency. When the guardian ad litem seeks contact with a party who is represented by an attorney, the guardian ad litem shall notify the attorney in advance of such contact. The guardian ad litem's contact with the represented party shall be as permitted by the party's attorney, unless otherwise ordered by the court.

(b) Timely receipt of case documents. Until discharged by court order a guardian ad litem shall be timely furnished copies of all relevant pleadings, documents, and reports by the party which served or submitted them.

(c) Timely notification. A guardian ad litem shall be timely notified of all court hearings, administrative reviews, staffings, investigations, dispositions, and other proceedings concerning the case by the person or agency scheduling the proceeding.

(d) Notice of proposed agreements. A guardian ad litem shall be given notice of, and an opportunity to indicate his or her agreement or objection to any proposed agreed order of the parties governing issues substantially related to the duties of a guardian ad litem.

(e) Participate in all proceedings. Consistent with rule 2(l), a guardian ad litem shall participate in court hearings through submission of written and supplemental oral reports and as otherwise authorized by statute and court rule.

(f) Access to records. Except as limited by law or unless good cause is shown to the court, upon receiving a copy of the order appointing a guardian ad litem, any person or agency, including but not limited to any hospital, school, child care provider, organization, department of social and health services, doctor, health care provider, mental health provider, chemical health program, psychologist, psychiatrist, or law enforcement agency, shall permit a guardian ad litem to inspect and copy any and all records and interview personnel relating to the proceeding for which a guardian ad litem is appointed.

(g) Access to court files. Within the scope of appointment, a guardian ad litem shall have access to all superior court and all juvenile court files. Access to sealed or confidential files shall be by separate order. A guardian ad litem's report shall inform the court and parties if the report contains information from sealed or confidential files. The clerk of court shall provide certified copies of the order of appointment to a guardian ad litem upon request and without charge.

(h) Additional rights and powers under RCW 13.34 or RCW 26.26. In every case in which a guardian ad litem is a party to the case pursuant to RCW 13.34 or RCW 26.26, a guardian ad litem shall have the rights and powers set forth below. These rights and powers are subject to all applicable statutes and court rules.

(1) File documents and respond to discovery. A guardian ad litem shall have the right to file pleadings, motions, notices memoranda, briefs, and other documents, and may, subject to the trial court's discretion engage in and respond to discovery.

(2) Note motions and request hearings. A guardian ad litem shall have the right to note motions and request hearings before the court as appropriate to the best interests of the person(s) for whom a guardian ad litem was appointed.

(3) Introduce exhibits, examine witnesses, and appeal. A guardian ad litem shall have the right, subject to the trial court's discretion, to introduce exhibits, subpoena witnesses, and conduct direct and cross examination of witnesses.

(4) Oral argument and submission of reports. A guardian ad litem shall have the right to fully participate in the proceedings through submission of written reports, and, may with the consent of the trial court present oral argument.

(i) Additional rights and powers in other cases. For good cause shown, a guardian ad litem may petition the court for additional authority as set forth in rule 2(j).

(j) Additional training requirements. The Administrative Office of the Courts shall amend the current guardian ad litem mandatory training so that Titles 13 and 26 RCW guardians ad litem are prepared to carry out the additional requirements of this rule.

[Adopted effective November 27, 2001.]

## **GUARDIAN AD LITEM RULE 5:**

### **APPOINTMENTS OF GUARDIAN AD LITEM**

(a) Equitable distribution of workload. Each court shall promulgate local rules providing a system of appointing and reasonably compensating guardians ad litem which ensures an equitable distribution of the work load among the guardians ad litem on the registry.

(b) Procedure to address complaints. The local rules shall provide a procedure to timely address complaints made by any guardian ad litem regarding registry or appointment matters.

[Adopted effective November 27, 2001.]



## **GUARDIAN AD LITEM RULE 6:**

### **LIMITED APPOINTMENTS**

There may be situations where the court wishes to appoint a person in addition to, or instead of, a guardian ad litem to fulfill very limited roles. This will help avoid conflict of interest situations for guardians ad litem serving in a case and will limit the time and expense spent on cases which do not require a guardian ad litem. A person appointed pursuant to this rule is strictly limited to the duties of the role below selected by the court. If the order of appointment does not specifically designate a limited appointment as listed below, the person appointed is presumed to be a guardian ad litem, subject to the Guardian ad Litem Rules. The court may make the following limited appointments:

(a) Mediator. The court may either appoint or refer to a person or agency whose role is to assist the parties in reaching an agreement about any or all contested issues in the case.

(b) Evaluator. The court may appoint or refer to a person or agency for evaluation and findings regarding a specific issue or issues including but not limited to mental health, substance abuse, issues of abuse or neglect, cultural factors, and sexual deviancy.

(c) Visitation supervisor. The court may appoint or refer to a person or agency to supervise visits and report findings to the court.

(d) Settlement of minors' claims. The court may appoint a person for the limited purpose described in Special Proceedings Rules (SPR) 98.16W.

(e) Other. Under exceptional circumstances, upon good cause shown, the court may make other limited appointments as it deems necessary.

[Adopted effective November 27, 2001.]

## **GUARDIAN AD LITEM RULE 7:**

### **GRIEVANCE PROCEDURES**

Each court shall promulgate rules that set out or refer to policies and procedures establishing and governing the filing, investigating, and adjudicating grievances made by or against guardians ad litem under Titles, 11, 13, and 26 RCW. The rules shall, at a minimum, comply with and address the following:

(a) Clear and concise. The rules shall be clear, and concise and easily understood by both attorneys and non-attorneys.

(b) Separate procedures. The rules shall establish separate procedures addressing grievances or complaints filed during the pendency of a case, and grievances or complaints filed subsequent to the conclusion of a case.

(c) Fair treatment of grievances. The rules shall establish procedures providing for fair treatment of grievances including appearance-of-fairness and conflict issues.

(d) CASA grievance procedures. Where applicable, local rules shall accommodate the grievance procedures of Court Appointed Special Advocate(s) (CASA) or other volunteer program(s).

(e) Confidentiality. The rules shall provide for confidentiality of complaints until merit has been found.

(f) Response to complaint. The rules shall provide a procedure for any guardian ad litem who is the subject of a complaint to respond to the complaint.

(g) Complaint resolution time standards. The rules shall include a time limit during which a complaint must be resolved. The limit shall not be longer than 25 days for complaints filed while a case is pending or 60 days for complaints filed subsequent to the conclusion of a case.

(h) Records of grievances. For its own reference purposes, the court shall maintain a record of grievances filed and of any sanctions issued pursuant to local court grievance procedure.

(i) Removal from registry. When a guardian ad litem is removed from a county's registry pursuant to the disposition of a grievance, the court of that county shall send notice of such removal to the Office of the Administrator of the Courts, who shall on a regular basis, but not less than biannually, forward the information to the superior courts of each county in the state of Washington.

(j) Implementation. Local court rules establishing a grievance procedure shall be filed in the manner provided in GR 7.

[Adopted effective November 27, 2001.]

## **GR 15**

### **DESTRUCTION, SEALING, AND REDACTION OF COURT RECORDS**

(a) Purpose and Scope of the Rule. This rule sets forth a uniform procedure for the destruction, sealing, and redaction of court records. This rule applies to all court records, regardless of the physical form of the court record, the method of recording the court record, or the method of storage of the court record.

(b) Definitions.

(1) "Court file" means the pleadings, orders, and other papers filed with the clerk of the court under a single or consolidated cause number(s).

(2) "Court record" is defined in GR 31(c)(4).

(3) Destroy. To destroy means to obliterate a court record or file in such a way as to make it permanently irretrievable. A motion or order to expunge shall be treated as a motion or order to destroy.

(4) Seal. To seal means to protect from examination by the public and unauthorized court personnel. A motion or order to delete, purge, remove, excise, or erase, or redact shall be treated as a motion or order to seal.

(5) Redact. To redact means to protect from examination by the public and unauthorized court personnel a portion or portions of a specified court record.

(6) Restricted Personal Identifiers are defined in GR 22(b)(6).

(7) Strike. A motion or order to strike is not a motion or order to seal or destroy.

(8) Vacate. To vacate means to nullify or cancel.

(c) Sealing or Redacting Court Records.

(1) In a civil case, the court or any party may request a hearing to seal or redact the court records. In

a criminal case or juvenile proceeding, the court, any party, or any interested person may request a hearing to seal or redact the court records. Reasonable notice of a hearing to seal must be given to all parties in the case.

In a criminal case, reasonable notice of a hearing to seal or redact must also be given to the victim, if ascertainable, and the person or agency having probationary, custodial, community placement, or community supervision over the affected adult or juvenile. No such notice is required for motions to seal documents entered pursuant to CrR 3.1(f) or CrRLJ 3.1(f).

(2) After the hearing, the court may order the court files and records in the proceeding, or any part thereof, to be sealed or redacted if the court makes and enters written findings that the specific sealing or redaction is justified by identified compelling privacy or safety concerns that outweigh the public interest in access to the court record. Agreement of the parties alone does not constitute a sufficient basis for the sealing or redaction of court records. Sufficient privacy or safety concerns that may be weighed against the public interest include findings that:

(A) The sealing or redaction is permitted by statute; or

(B) The sealing or redaction furthers an order entered under CR 12(f) or a protective order entered under CR 26(c); or

(C) A conviction has been vacated; or

(D) The sealing or redaction furthers an order entered pursuant to RCW 4.24.611; or

(E) The redaction includes only restricted personal identifiers contained in the court record; or

(F) Another identified compelling circumstance exists that requires the sealing or redaction.

(3) A court record shall not be sealed under this section when redaction will adequately resolve the issues before the court pursuant to subsection (2) above.

(4) Sealing of Entire Court File. When the clerk receives a court order to seal the entire court file,

the clerk shall seal the court file and secure it from public access. All court records filed thereafter shall also be sealed unless otherwise ordered. The existence of a court file sealed in its entirety, unless protected by statute, is available for viewing by the public on court indices. The information on the court indices is limited to the case number, names of the parties, the notation "case sealed," the case type and cause of action in civil cases and the cause of action or charge in criminal cases, except where the conviction in a criminal case has been vacated, section (d) shall apply. The order to seal and written findings supporting the order to seal shall also remain accessible to the public, unless protected by statute.

(5) Sealing of Specified Court Records. When the clerk receives a court order to seal specified court records the clerk shall:

(A) On the docket, preserve the docket code, document title, document or subdocument number and date of the original court records;

(B) Remove the specified court records, seal them, and return them to the file under seal or store separately. The clerk shall substitute a filler sheet for the removed sealed court record. If the court record ordered sealed exists in a microfilm, microfiche or other storage medium form other than paper, the clerk shall restrict access to the alternate storage medium so as to prevent unauthorized viewing of the sealed court record; and

(C) File the order to seal and the written findings supporting the order to seal. Both shall be accessible to the public.

(D) Before a court file is made available for examination, the clerk shall prevent access to the sealed court records.

(6) Procedures for Redacted Court Records. When a court record is redacted pursuant to a court order, the original court record shall be replaced in the public court file by the redacted copy. The redacted copy shall be provided by the moving party. The original unredacted court record shall be sealed following the procedures set forth in (c)(5).

(d) Procedures for Vacated Criminal Convictions. In cases where a criminal conviction has been vacated and an order to seal entered, the information in the public court indices shall be limited to the case number, case type with the notification "DV" if the case involved domestic violence, the adult or juvenile's name, and the notation "vacated."

(e) Grounds and Procedure for Requesting the Unsealing of Sealed Records.

(1) Sealed court records may be examined by the public only after the court records have been ordered unsealed pursuant to this section or after entry of a court order allowing access to a sealed court record.

(2) Criminal Cases. A sealed court record in a criminal case shall be ordered unsealed only upon proof of compelling circumstances, unless otherwise provided by statute, and only upon motion and written notice to the persons entitled to notice under subsection (c)(1) of this rule except:

(A) If a new criminal charge is filed and the existence of the conviction contained in a sealed record is an element of the new offense, or would constitute a statutory sentencing enhancement, or provide the basis for an exceptional sentence, upon application of the prosecuting attorney the court shall nullify the sealing order in the prior sealed case(s).

(B) If a petition is filed alleging that a person is a sexually violent predator, upon application of the prosecuting attorney the court shall nullify the sealing order as to all prior criminal records of that individual.

(3) Civil Cases. A sealed court record in a civil case shall be ordered unsealed only upon stipulation of all parties or upon motion and written notice to all parties and proof that identified compelling circumstances for continued sealing no longer exist, or pursuant to RCW 4.24 or CR 26(j). If the person seeking access cannot locate a party to provide the notice required by this rule, after making a good faith reasonable effort to provide such notice as required by the Superior Court Rules, an affidavit may be filed with the court setting

forth the efforts to locate the party and requesting waiver of the notice provision of this rule. The court may waive the notice requirement of this rule if the court finds that further good faith efforts to locate the party are not likely to be successful.

(4) Juvenile Proceedings. Inspection of a sealed juvenile court record is permitted only by order of the court upon motion made by the person who is the subject of the record, except as otherwise provided in RCW 13.50.010(8) and 13.50.050(23). Any adjudication of a juvenile offense or a crime subsequent to sealing has the effect of nullifying the sealing order, pursuant to RCW 13.50.050(16).

(f) Maintenance of Sealed Court Records. Sealed court records are subject to the provisions of RCW 36.23.065 and can be maintained in mediums other than paper.

(g) Use of Sealed Records on Appeal. A court record or any portion of it, sealed in the trial court shall be made available to the appellate court in the event of an appeal. Court records sealed in the trial court shall be sealed from public access in the appellate court subject to further order of the appellate court.

(h) Destruction of Court Records.

(1) The court shall not order the destruction of any court record unless expressly permitted by statute. The court shall enter written findings that cite the statutory authority for the destruction of the court record.

(2) In a civil case, the court or any party may request a hearing to destroy court records only if there is express statutory authority permitting the destruction of the court records. In a criminal case or juvenile proceeding, the court, any party, or any interested person may request a hearing to destroy the court records only if there is express statutory authority permitting the destruction of the court records. Reasonable notice of the hearing to destroy must be given to all parties in the case. In a criminal case, reasonable notice of the hearing must also be given to the victim, if ascertainable, and the person or agency having probationary, custodial, community placement, or community supervision over the affected adult or juvenile.



(3) When the clerk receives a court order to destroy the entire court file the clerk shall:

(A) Remove all references to the court records from any applicable information systems maintained for or by the clerk except for accounting records, the order to destroy, and the written findings. The order to destroy and the supporting written findings shall be filed and available for viewing by the public.

(B) The accounting records shall be sealed.

(4) When the clerk receives a court order to destroy specified court records the clerk shall;

(A) On the automated docket, destroy any docket code information except any document or sub-document number previously assigned to the court record destroyed, and enter "Order Destroyed" for the docket entry;

(B) Destroy the appropriate court records, substituting, when applicable, a printed or other reference to the order to destroy, including the date, location, and document number of the order to destroy; and

(C) File the order to destroy and the written findings supporting the order to destroy. Both the order and the findings shall be publicly accessible.

(5) This subsection shall not prevent the routine destruction of court records pursuant to applicable preservation and retention schedules.

(i) Trial Exhibits. Notwithstanding any other provision of this rule, trial exhibits may be destroyed or returned to the parties if all parties so stipulate in writing and the court so orders.

(j) Effect on Other Statutes. Nothing in this rule is intended to restrict or to expand the authority of clerks under existing statutes, nor is anything in this rule intended to restrict or expand the authority of any public auditor, or the Commission on Judicial Conduct in the exercise of duties conferred by statute.

[Adopted effective September 22, 1989; amended effective September 1, 1995; June 4, 1997; June 16, 1998; September 1, 2000; October 1, 2002; July 1, 2006; April 28, 2015.]

GR 31  
ACCESS TO COURT RECORDS

- (a) Policy and Purpose. It is the policy of the courts to facilitate access to court records as provided by Article I, Section 10 of the Washington State Constitution. Access to court records is not absolute and shall be consistent with reasonable expectations of personal privacy as provided by article 1, Section 7 of the Washington State Constitution and shall not unduly burden the business of the courts.
- (b) Scope. This rule applies to all court records, regardless of the physical form of the court record, the method of recording the court record or the method of storage of the court record. Administrative records are not within the scope of this rule. Court records are further governed by GR 22.

(c) Definitions.

- (1) "Access" means the ability to view or obtain a copy of a court record.
- (2) "Administrative record" means any record pertaining to the management, supervision or administration of the judicial branch, including any court, board, or committee appointed by or under the direction of any court or other entity within the judicial branch, or the office of any county clerk.
- (3) "Bulk distribution" means distribution of all, or a significant subset, of the information in court records, as is and without modification.
- (4) "Court record" includes, but is not limited to: (i) Any document, information, exhibit, or other thing that is maintained by a court in connection with a judicial proceeding, and (ii) Any index, calendar, docket, register of actions, official record of the proceedings, order, decree, judgment, minute, and any information in a case management system created or prepared by the court that is related to a judicial proceeding. Court record does not include data maintained by or for a judge pertaining to a particular case or party, such as personal notes and communications, memoranda, drafts, or other working

papers; or information gathered, maintained, or stored by a government agency or other entity to which the court has access but which is not entered into the record.

- (5) "Criminal justice agencies" are government agencies that perform criminal justice functions pursuant to statute or executive order and that allocate a substantial part of their annual budget to those functions.
- (6) "Dissemination contract" means an agreement between a court record provider and any person or entity, except a Washington State court (Supreme Court, court of appeals, superior court, district court or municipal court), that is provided court records. The essential elements of a dissemination contract shall be promulgated by the JIS Committee.
- (7) "Judicial Information System (JIS) Committee" is the committee with oversight of the statewide judicial information system. The judicial information system is the automated, centralized, statewide information system that serves the state courts.
- (8) "Judge" means a judicial officer as defined in the Code of Judicial Conduct (CJC) Application of the Code of Judicial Conduct Section (A).
- (9) "Public" includes an individual, partnership, joint venture, public or private corporation, association, federal, state, or local governmental entity or agency, however constituted, or any other organization or group of persons, however organized.
- (10) "Public purpose agency" means governmental agencies included in the definition of "agency" in RCW 42.17.020 and other non-profit organizations whose principal function is to provide services to the public.
- (d) Access.
- (1) The public shall have access to all court records except as restricted by federal law, state law, court rule, court order, or case law.
- (2) Each court by action of a majority of the judges may from time to time make and amend local rules governing access to court records not inconsistent with this rule.

(3) A fee may not be charged to view court records at the courthouse.

(e) Personal Identifiers Omitted or Redacted from Court Records

(1) Except as otherwise provided in GR 22, parties shall not include, and if present shall redact, the following personal identifiers from all documents filed with the court, whether filed electronically or in paper, unless necessary or otherwise ordered by the Court.

(A) Social Security Numbers. If the Social Security Number of an individual must be included in a document, only the last four digits of that number shall be used.

(B) Financial Account Numbers. If financial account numbers are relevant, only the last four digits shall be recited in the document.

(C) Driver's License Numbers.

(2) The responsibility for redacting these personal identifiers rests solely with counsel and the parties. The Court or the Clerk will not review each pleading for compliance with this rule. If a pleading is filed without redaction, the opposing party or identified person may move the Court to order redaction. The court may award the prevailing party reasonable expenses, including attorney fees and court costs, incurred in making or opposing the motion.

COMMENT

This rule does not require any party, attorney, clerk, or judicial officer to redact information from a court record that was filed prior to the adoption of this rule.

(f) Distribution of Court Records Not Publicly Accessible

(1) A public purpose agency may request court records not publicly accessible for scholarly, governmental, or research purposes where the identification of specific individuals is ancillary to the purpose of the inquiry. In order to grant such

requests, the court or the Administrator for the Courts must:

- (A) Consider: (i) the extent to which access will result in efficiencies in the operation of the judiciary; (ii) the extent to which access will fulfill a legislative mandate; (iii) the extent to which access will result in efficiencies in other parts of the justice system; and (iv) the risks created by permitting the access.
  - (B) Determine, in its discretion, that filling the request will not violate this rule.
  - (C) Determine the minimum access to restricted court records necessary for the purpose is provided to the requestor.
  - (D) Assure that prior to the release of court records under section (f) (1), the requestor has executed a dissemination contract that includes terms and conditions which: (i) require the requester to specify provisions for the secure protection of any data that is confidential; (ii) prohibit the disclosure of data in any form which identifies an individual; (iii) prohibit the copying, duplication, or dissemination of information or data provided other than for the stated purpose; and (iv) maintain a log of any distribution of court records which will be open and available for audit by the court or the Administrator of the Courts. Any audit should verify that the court records are being appropriately used and in a manner consistent with this rule.
- (2) Courts, court employees, clerks and clerk employees, and the Commission on Judicial Conduct may access and use court records only for the purpose of conducting official court business.
  - (3) Criminal justice agencies may request court records not publicly accessible.
    - (A) The provider of court records shall approve the access level and permitted use for classes of criminal justice agencies including, but not limited to, law enforcement, prosecutors, and corrections. An agency that is not included in a

class may request access.

- (B) Agencies requesting access under this section of the rule shall identify the court records requested and the proposed use for the court records.
- (C) Access by criminal justice agencies shall be governed by a dissemination contract. The contract shall: (i) specify the data to which access is granted; (ii) specify the uses which the agency will make of the data; and (iii) include the agency's agreement that its employees will access the data only for the uses specified.

(g) Bulk Distribution of Court Records

(1) A dissemination contract and disclaimer approved by the JIS Committee for JIS records or a dissemination contract and disclaimer approved by the court clerk for local records must accompany all bulk distribution of court records.

(2) A request for bulk distribution of court records may be denied if providing the information will create an undue burden on court or court clerk operations because of the amount of equipment, materials, staff time, computer time or other resources required to satisfy the request.

(3) The use of court records, distributed in bulk form, for the purpose of commercial solicitation of individuals named in the court records is prohibited.

(h) Appeals. Appeals of denials of access to JIS records maintained at state level shall be governed by the rules and policies established by the JIS Committee.

(i) Notice. The Administrator for the Courts shall develop a method to notify the public of access to court records and the restrictions on access.

(j) Access to Juror Information. Individual juror information,

other than name, is presumed to be private. After the conclusion of a jury trial, the attorney for a party, or party pro se, or member of the public, may petition the trial court for access to individual juror information under the control of court. Upon a showing of good cause, the court may permit the petitioner to have access to relevant information. The court may require that juror information not be disclosed to other persons.

- (k) Access to Master Jury Source List. Master jury source list information, other than name and address, is presumed to be private. Upon a showing of good cause, the court may permit a petitioner to have access to relevant information from the list. The court may require that the information not be disclosed to other persons.

[Adopted effective October 26, 2004; amended effective January 3, 2006.]

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# **Appendix B**

## **Caselaw**

In re Guardianship of Atkins, 57 Wn. App. 771, 790 P.2d 210 (1990)

In re Guardianship of Ingram, 102 Wn.2d 827, 689 P.2d 1363 (1984)

In re Guardianship of Way, 79 Wn. App. 184, 901 P.2d 349 (1995)

Barr v. Day, 124 Wn.2d 318, 879 P.2d 912 (1994)

In re Guardianship of Karan, 110 Wn. App. 76, 38 P.3d 396 (2002)

Estate of Treadwell, 115 Wn. App. 238, 61 P.3d 1214 (2003)

In re Guardianship of Stamm, 121 Wn. App. 830, 91 P.3d 126 (2004)

In re Guardianship of Beecher, 130 Wn. App. 66, 121 P.3d 743 (2005)

In re Marriage of Bobbit, 135 Wn. App. 8, 144 P.3d 306 (2006)

Endicott v. Saul, 142 Wn. App. 899, 176 P.3d 560 (2008)



## IMPORTANT CASELAW FOR ALL GUARDIANS AD LITEM

*In re Guardianship of Atkins*, 57 Wn. App. 771, 790 P.2d 210 (1990)

**Physician-patient privilege does not apply to information the guardian ad litem is required by law to present to the court in a guardianship proceeding; if fees to a court-appointed professional are to be capped, the professional must be given notice of the cap and specific notice that *prior* approval must be obtained before the fee cap is exceeded.**

**Facts.** A hospital sought appointment of a guardian for an AIP. The AIP opposed the guardianship. An attorney was appointed for the AIP and advised that fees at \$45 per hour up to \$1000 would be paid by the court and any excess fees had to be submitted for approval. A jury trial was held at which the guardian ad litem testified that a guardian was needed and also submitted the required medical report from the AIP's physician. The jury found the AIP incapacitated.

On appeal, the AIP contended, among other alleged errors, that the medical information was protected by physician-patient privilege. The court appointed attorney also argued that his fees in excess of the \$1000 cap should have been approved.

**Holding:** Medical records obtained by the GAL per the statutory duty to investigate and submit a report are not privileged. The physician-patient privilege is in derogation of common law and must be strictly construed. If the court wishes to require that a GAL get prior approval before incurring fees in excess of the ordered cap, the court must give notice to the GAL that *prior* approval is required.

*In re guardianship of Ingram, 102 Wn.2d 827, 689 P.2d 1363 (1984).*

**An incapacitated person may still be able to choose or refuse medical treatments so long as the person can understand the medical problem and the possible treatments.**

**Facts.** The ward had lung and larynx cancer. Maximum survival odds and preferred medical treatment was surgical removal of the voice box. Mere radiation treatment would not be nearly as effective. The guardian ad litem testified that the ward made it clear that she did not want to lose her ability to speak. The court found that removal of the voice box was an amputation of a sort and that a guardian could not force the ward to undergo such a procedure against her will.

**Holding:** This case was decided under the former guardianship statute that imposed all or nothing capacity standards. The court held that in any proceeding involving medical treatment for an incompetent, weight should be given to the preference expressed by the ward, based upon the extent to which the ward understands the medical condition and the various possible treatments.

***In re Guardianship of Way*, 79 Wn. App. 184, 901 P.2d 349 (1995)**

**Right to a jury trial; right to have the least restrictive means of protection imposed; ability to introduce post trial changes in circumstances in appeal of guardianship judgment.**

**Facts:** DSHS sought appointment of a guardian for the person and estate of an elderly woman who was bedridden and living in deplorable and invested conditions while in the care of an elderly friend who had dementia problems and was an obsessive compulsive hoarder. A guardian ad litem was appointed to investigate the situation. The court was advised that the woman wanted an attorney and a jury trial.

A trial was held. The GAL testified. The jury found the AIP incapacitated both as to her person and her estate. In a special verdict form, the jury was asked which rights, if any, the AIP should retain. As to her estate, the jury found that the AIP was fully incapacitated, *i.e.*, she was unable to exercise the rights to: (1) enter into a contract or make or revoke a will; (2) sue and be sued other than through a guardian; (3) possess a license to drive; (4) buy, sell, own, mortgage, or lease property; and (5) make decisions about her personal property. With regard to her person, however, the jury determined that she should retain the rights to: (1) give informed consent to medical treatment; (2) determine where she will live; (3) marry or divorce; (4) vote or hold an elected office; (5) decide who shall provide care and assistance; and (6) make decisions regarding social aspects of her life.

In an order partially granting a motion by DSHS for judgment notwithstanding the verdict, the trial judge ruled that the AIP's right to decide who shall provide care and assistance for her should be restricted. DSHS appealed.

**Holding:** The appellate court held that under the 1975 amendments to the guardianship statute, the right to a jury trial means not only that the jury can determine the issue of capacity, but also the extent of incapacity, if any. The jury may determine whether the guardianship should be full or limited and if limited, specifically what rights the AIP should lose under the limited guardianship. If the evidence does not clearly support the verdict or any part thereof, as with any trial by jury, the trial judge may rule notwithstanding the verdict. Since situations involving incapacitated persons are fluid and ever changing, on appeal of a judgment in a guardianship case, the appellate court may review new evidence of changes in the AIP's circumstances after entry of the judgment.

***Barr v. Day*, 124 Wn.2d 318, 879 P.2d 912 (1994)**

**A GAL has quasi-judicial immunity from civil liability.**

**Facts:** A GAL was appointed to review a personal injury settlement for an adult who had sustained a severe head injury and was thus incapacitated. The settlement called in part for an annuity. The GAL recommended approval of the settlement and also of the fees requested by the personal injury lawyer. After the injured man died, the payments under the life annuity were terminated and the surviving wife sued the personal injury attorney and the GAL alleging that the attorney's fees were excessive and that the GAL was negligent in approving the settlement and the fees.

**Holding:** The Supreme Court held that the GAL appointed to investigate a proposed settlement for an incapacitated person is serving as an arm of the court and therefore is entitled to quasi-judicial immunity. This holding may apply by analogy to the services of a GAL appointed to investigate and report to the court in any guardianship proceeding. The GAL should be sure that his or her conduct adheres to the Superior Court Guardian ad Litem Rules (GALR's) to ensure that his or her activities fall within the scope of conduct that qualifies for quasi-judicial immunity.

***Guardianship of Karan, 110 Wn. App. 76 (2002)***

**An attorney who represents the successful petitioner in an action to establish a guardianship of an alleged incapacitated person's estate owes that AIP a duty to see that the assets are protected, e.g. by a guardianship bond or blocked account.**

**Facts:** Upon the death of a minor's father, his mother hired an attorney to have the mother appointed as guardian of the minor's estate to receive the proceeds of the father's life insurance payable to the minor. The order establishing the guardianship of the estate did not require a bond or blocked account to protect the minor's assets. The mother depleted the guardianship funds. A guardian ad litem was appointed for the child and a new guardian of the estate was appointed. The successor guardian sued the mother for breach of fiduciary duties. When the judgment against the mother could not be collected, the attorney who represented the mother in establishing the guardianship was sued for malpractice.

**Holding:** Since the minor was the intended beneficiary of the guardianship, the attorney who handled the creation of the guardianship had a duty to the minor to see that RCW 11.88.100, .105 were followed. Therefore, the attorney had a duty to see that the order appointed a guardian of the estate required that the guardianship assets were protected by a bond or blocked account.

**Note:** No guardian ad litem was likely appointed for the minor initially because RCW 11.88.090(3)(b) does not require appointment of a guardian ad litem for a minor when a parent is petitioning for guardianship and the sole incapacity is minority. If a GAL had been involved at that time, it would have been part of the GAL's duties to recommend to the court that bond or blocking be ordered and to point out to the court that the proposed order did not contain any provision for bonding or blocking.

***Estate of Treadwell, 115 Wn. App. 238 (2003)***

**The attorney for a guardian of an incapacitated adult may be liable to the heirs of the IP if the guardian does not block the assets of the guardianship estate as ordered by the court.**

**Facts:** A guardianship of the person and estate of an incapacitated 90 year old woman was established. The estate was valued at approximately \$225,000. The guardian ad litem recommended a bond in the amount of \$30,000 and blocking of all assets in excess of that amount. The order appointing the guardian required a bond of \$30,000 and blocking of the remaining funds. The court clerk issued letters of guardianship with a special instruction sheet for the guardian. The guardian's attorney forwarded the letters and instruction sheet to the guardian along with a form receipt for blocked account. The guardian was not responsive, however. A year and a half later the IP died and the personal representative of her estate was unable to recover the estate assets from the guardian and commenced a malpractice action against the attorney for the estate.

**Holding:** The obligation to see that the assets of an incapacitated person are protected by filing a bond or blocking accounts may be imposed upon the attorney representing the guardian, in part because a direct action against the guardian who depletes the incapacitated person's estate is "likely to be an empty remedy absent a bond. The remedy would have been secured by the statutorily required bond, or rendered unnecessary by a properly blocked account."

While in *Karan* the alleged malpractice was the failure to provide any protection for the guardianship estate assets, the alleged malpractice in this case was "the failure to provide for adequate bond and/or blocked accounts before issuing the order appointing the guardian." In both cases, the guardian's attorney violated the requirements of RCW 11.88.100 and .105.

An attorney for a guardian owes an incompetent ward a duty to establish the guardianship consistent with the requirements of RCW 11.88.100 and .105. The purpose of those statutes is to protect the IP's property. Before the guardianship is effective and before the letters of guardianship are issued, adequate bond must be in place unless the estate is under \$3,000 or if the bond is reduced by blocking of cash and security accounts, to be released only upon court order. Blocking is a substitute for bond where it is the basis for reduction of the amount of the bond. Therefore it must be in place before the reduced bond may be executed. Letters of guardianship must not be issued until the assets of the IP are fully protected by bonding and/or blocking.



***In re Guardianship of Stamm*, 121 Wn. App. 830 (2004)**

**In a jury trial, a GAL may testify as to the GAL's opinions formed in the investigation, but may not testify that the GAL is "the eyes and ears of the court" because that may cause the jury to give undue weight to the GAL's testimony.**

**Facts:** A guardianship action was commenced to appoint a guardian of the person and estate of a widower whose children were concerned about his ability to make decisions after he became involved with another woman and was drinking a lot. The widower objected to the guardianship and demanded a jury trial. At trial the GAL gave testimony about her opinions and recommendations which included hearsay and furthermore characterized her role as "the eyes and ears of the court." The jury found that the widower was incapacitated and the widower appealed.

**Holding:** The GAL may testify at trial. The guardianship statute indicated that the legislature intended that the trier of fact, the judge in a bench trial or the jury in a jury trial, have the benefit of the GAL's investigation and recommendations, including the GAL's opinions regarding the capacity of the alleged incapacitated person and the AIP's needs and circumstances.

The trial court has discretion under ER 402 to permit the GAL to testify about the GAL's opinions if the court believes that testimony will assist the trier of fact. The GAL testimony so permitted may include the basis of the opinions and recommendations, even if the GAL relies on hearsay. The GAL testimony, however, "is circumscribed by the parameters of the duties assigned by the statute [RCW 11.88]." The court may decide whether the information relied on by the GAL was of the type contemplated by the statute and whether it "was reasonably relied upon by the GAL."

The GAL's subjective assessment of credibility of persons interviewed is irrelevant in testimony before a jury. Only the trier of fact may determine credibility and weight to be given to evidence. The jury must know that it is not bound by the opinions of the GAL and may ignore them. Because the GAL is just a witness, the GAL may not give any appearance that her views are those of the court. Therefore, for the GAL to tell the jury that she is the eyes and ears of the court is reversible error.

***In re Guardianship of Beecher*, 130 Wn. App. 66 (2005)**

**This case held that RCW 11.88.045(2) subjects the fees for the representation of an AIP to approval by the court under the provisions of RCW 11.92.180, which governs payment of guardian's fees. Under the court's reasoning, fees of an attorney for an AIP are subject to court review only if a finding that AIP is incapacitated has been made. In the event a guardian is not appointed for the AIP, the fees and costs for the AIP's attorney might not be reviewable for reasonableness by the court, if the AIP had capacity to enter into a fee agreement with the attorney. [Excerpts from the opinion appear below.]**

**Facts:** Loretta Beecher, an alleged incapacitated person (AIP), hired attorney Watson B. Blair to represent her in the guardianship proceedings her stepson initiated against her. After four months, during which Blair filed several motions disputing various aspects of the proceedings, the petitioner and guardian ad litem (GAL) brought a motion disputing Blair's fees and costs. The trial court ultimately cut Blair's fees by almost half. Blair appeals, arguing that the court did not have authority to review his fees because Beecher was never adjudicated to be an incapacitated person and neither Beecher nor her attorneys-in-fact disputed his fees. We agree.

Because RCW 11.88.045(2) incorporates the fee review provisions of RCW 11.92.180 that govern guardian fees, and guardians are appointed only after a finding of incapacity, the court can review fees and costs under the guardianship statute only after an adjudication of incapacity. Until then, an alleged incapacitated person retains the right everyone else has to hire and pay the attorneys of her choice. No court ever found Beecher was incapacitated, so the trial court did not have authority to review Blair's fees. We reverse and remand to vacate the judgment against Blair.

**Holding:** . . . The legislative intent of the guardianship statute is "to protect the liberty and autonomy of all people of this state, and to enable them to exercise their rights under the law to the maximum extent, consistent with the capacity of each person." Beecher had the right to be represented during the guardianship proceedings by counsel of her choosing. She chose Blair, an attorney with whom she was familiar from his previous work on her behalf. He provided a detailed contract stating his hourly rate and warning of the potential for high costs inherent in Beecher's litigious approach to defending her autonomy. Beecher and her attorneys-in-fact approved. Since Beecher never lost her capacity to contract, there was no basis on which or reason to invalidate her contract with Blair.

In addition, Beecher and her attorneys-in-fact approved the fees Blair charged during the proceedings. Even after the court commissioner's ruling on October 10, 2003, Beecher wished to retain Blair and pay his fees, stating that Blair had served her well in the guardianship proceedings and that she had "no objections to the fees that [Blair] has billed me and that I have paid to date." Petitioner and the GAL did not have standing to initiate the fee dispute unless and until Beecher was found to be incapacitated by a court.

Only Beecher or her attorneys-in-fact could dispute Blair's fees.«13» Even if they had disputed Blair's fees, the Rules of Professional Conduct, specifically RPC 1.5, not the guardianship statute, provided the remedy.

### **Reversed and Remanded**

***Bobbit v. Bobbit*, 135 Wn. App. 8 (2006)**

**This case involved a GAL appointed in a family law matter. By failing to interview all interested parties, and being “complicit in a parent’s attempt to conceal information,” the GAL failed to maintain an appearance of fairness, thus violating GALR 2.**

**Facts:** In post-dissolution proceedings, former wife filed petition to modify parenting plan and moved for permission to sell real property that had been awarded to former husband as his separate property in the dissolution decree. Former husband moved to remove the guardian ad litem (GAL). The Superior Court, Pierce County, [John A. McCarthy](#), [Frank Cuthbertson](#), and [Brian Tollefson](#), JJ., granted former wife permission to sell the property, refused to remove the GAL, modified the parenting plan so that former wife was the primary residential parent, and entered judgment against former husband for GAL fees. Former husband appealed.

**Holdings:**

[\(1\)](#) trial court's order authorizing sale of property effected improper modification of property division in dissolution decree;

[\(2\)](#) GAL's failure to comply with rule setting forth general responsibilities of GAL did not require removal of GAL;

[\(3\)](#) attorney fees awarded to former wife were based on insufficient information and insufficient findings; and

[\(4\)](#) trial court retains discretion to evaluate the GAL’s proposed fees and costs, and was not bound by parties' stipulation regarding GAL fees.

**Reversed and Remanded**

***In re the Guardianship of Emma Endicott*, Slip Opinion 58435-9, Court of Appeals, Division 1, February 4, 2008**

**This is an appeal from orders establishing a limited guardianship of the estate pursuant to RCW 11.88 and a protecting a vulnerable adult from financial abuse, pursuant to RCW 74.34.**

Mrs. Endicott owned various real estate parcels on Whidbey Island which she sold for less than fair market value to two women who were friends and neighbors, and who were also licensed real estate agents. One of the purchasers was also attorney in fact for Mrs. Endicott. Petitions for guardianship and an order for protection of a vulnerable adult were filed by two of Mrs. Endicott's four sons, alleging that their mother was not competent to handle her property and financial affairs and also alleging that their mother was a vulnerable adult who had been subjected to financial abuse and undue influence by the realtors. Mrs. Endicott opposed the guardianship and vulnerable adult petitions, as did the realtors.

The guardian ad litem investigated the situation and reported to the court that Mrs. Endicott was competent and did not need a guardian. The psychologist who examined Mrs. Endicott also reported that she was competent. Both had met with Mrs. Endicott while she was living with one of her non-petitioning sons after being released from the hospital after a fall. Prior to trial, she returned home and was living alone and her condition deteriorated. After a bench trial of approximately 10 days over a period of three months, the court issued the guardianship and protection orders, contrary to the recommendations of the GAL and psychologist.

At trial the GAL admitted that she had formed her opinion prior to interviewing one of Mrs. Endicott's four sons and two of her neighbors. The psychologist admitted that she did not know some of the facts about Mrs. Endicott that came to light at trial. The trial court found by clear, cogent and convincing evidence that Mrs. Endicott was incapacitated as to person and property and appointed one of the non-petitioning sons as limited guardian of her person and estate. The court also entered a vulnerable adult order enjoining the realtors from encumbering the property that they had purchased from Mrs. Endicott in the year before entry of the order. The appellate court affirmed and reviewed at length the burden of proof in guardianship and vulnerable adult actions and also noted that the trier of fact is the only court to judge the credibility of witnesses and to determine whether the evidence met the clear, cogent and convincing level. The appellate court could only review whether the record showed substantial evidence and whether the law was interpreted correctly.

# **APPENDIX C**

## **The Title 11 RCW MODEL GUARDIAN AD LITEM**

**&**

### **2011 Report: A Review of the Training Program For Title 11 Guardianship Guardians Ad Litem**

**Prepared by the Advisory Committee to the  
Washington Department of Social & Health Services**



# ***TRAINING PROGRAM***

For Superior Courts, Guardians Ad Litem, and Training Providers

Developed and produced by the  
Guardian Ad Litem Training Project Advisory Group and the  
Aging and Adult Services Administration  
Department of Social and Health Services  
Olympia, Washington 98504

July 1997 [notated 2005]





Aging and Adult Services Administration  
Department of Social and Health Services  
Olympia, Washington 98504

July 1997 [notated 2005]

The Title 11 MODEL **TRAINING PROGRAM** [outlining the curriculum guidelines and topics] does not have a copyright. It is public property. The **TRAINING PROGRAM** has been developed with the assistance of the Model Guardian Ad Litem Training Project Advisory Group and [produced] at state expense.

All materials contained herein [the *Training Program*] are available for [full and accurate] reproduction and use by the Washington State Superior Courts, guardians ad litem, non-profit guardian ad litem training providers, and members of the general public.

Aging and Adult Services Administration will accept written comments regarding the Training Program and its component parts including the *Handbook*. These comments will be retained in a designated file and held for future consideration. In the absence of a funded staff position, this will occur no earlier than at the time of the next statutorily required revision. Address comments to:

Office Chief, State Unit on Aging  
Re: Guardian ad Litem Training Project, Future Revision File  
Aging and Adult Services Administration  
Post Office Box 45600  
Olympia, Washington 98504-5600

July 1997 [notated 2005]

[Note that since 1997, DSHS has contracted with King County Bar Association to coordinate the production of the *Handbook*. King County Bar Association provides uniform copies of the Handbook and/or update inserts to training providers at cost of printing/shipping and welcomes suggestions and comments for improvement of the **Handbook**. Contact the CLE Department at [cle@kcba.org](mailto:cle@kcba.org) or CLE Department of KCBA 1200 Fifth Ave., Suite 600 Seattle, WA 98101. ]

THE TITLE 11 MODEL GUARDIAN AD LITEM  
*TRAINING PROGRAM*

## PREFACE

In the 1996 legislative session, the Washington State Legislature enacted changes to the guardianship statutes. These changes included a directive for the Department of Social and Health Services to convene an advisory group consisting of "representatives from consumer, advocacy, and professional groups knowledgeable in developmental disabilities, neurological impairment, physical disabilities, mental illness, aging, legal, court administration, the Washington state bar association, and other interested parties." The department and the advisory group were to develop a model guardian ad litem training program to be utilized by the Superior Courts to ensure that candidates applying for registration as a qualified guardian ad litem shall have satisfactorily completed training to attain these minimum qualifications to act as a guardian ad litem. To that end, representatives of the above mandated organizations and agencies worked with the department to develop the Title 11 RCW Model Guardian Ad Litem *Training Program* detailed on the following pages.

The department extends thanks to all of the representatives who diligently participated in the Advisory Group, and to the organizations and agencies listed below which enabled them to participate.

- Adult Protective Services, Aging and Adult Services Administration
- Alzheimer's Association of Central and Western Washington
- American Association of Retired Persons
- Association of Area Agencies on Aging
- Association of Washington Superior Court Administrators
- Columbia Legal Services
- Council on Aging
- Developmental Disabilities Council
- Developmental Disabilities Services, DSHS
- King County Bar Association
- King County Self Advocates Program
- King County Superior Court
- National Association of Elder Law Attorneys
- Office of the Attorney General
- Pierce County Bar Association
- Senior Citizen Lobby
- The Arc of Washington State
- Washington Advocates for the Mentally III (WAMI)
- Washington Assembly for Citizens with Disabilities
- Washington Health Care Association
- Washington Protection and Advocacy System
- Washington State Association of Professional Guardians
- Washington State Bar Association Guardianship Study Group

The Title 11 RCW  
MODEL GUARDIAN AD LITEM  
*TRAINING PROGRAM*

**DESCRIPTION**

***TRAINING PROGRAM PURPOSE***

The Washington State Legislature enacted changes to the guardianship law in 1996 which required the development of a Model Guardian Ad Litem *Training Program* to be utilized by the superior courts.

The *Training Program* has been developed to assist the courts, the training providers, and the training participants to conform with the Title 11 RCW requirement that all candidates applying for registration as qualified guardians ad litem shall have satisfactorily completed training to attain essential minimum qualifications to act as guardians ad litem.

The Model Guardian Ad Litem *Training Program*, developed by the Department of Social and Health Services and the Advisory Group convened under RCW 11.88.090(3)(d), is comprised of a program of instruction based on the following components:

- *Training Program* Standards
- *Training Program* Summary of Statutory Requirements of Guardians Ad Litem
- *Training Program* Goals and Objectives
- The written Guardian Ad Litem *Handbook* [a core component for both the basic and advanced units, *infra.*]

***TRAINING PROGRAM STANDARDS***

As important as is the training content, the training must be offered in conformity with the *Training Program* Standards to ensure both the quality of the presentation and the education of the attendees.

Since it is the ultimate responsibility of the Superior Court to see that the training is offered and to maintain a Guardian Ad Litem Registry, the authors also formulated and included in the *Training Program* Standards recommendations to the courts which will maximize the benefit of the entire Model Guardian Ad Litem *Training Program*.

## **TRAINING PROGRAM CONTENT AND METHODS**

The Program Training goal is to provide participants with a learning experience that will assist them to develop their knowledge, skills, and abilities. The training participants' learn may be demonstrated by their:

- Understanding, comprehending, and application of information;
- Evaluation of information against their past experience and similar experiences in like situations; and
- Exercise of judgment in making competent decisions.

To this end, the Guardian Ad Litem *Handbook* covers a range of topics essential to an understanding of the guardianship statute, the role and duties of the guardian ad litem, and the roles of other parties to guardianship proceedings. The *Handbook* material is designed to provide the guardian ad litem the knowledge needed for proficient practice, such as understanding the guardianship law.

Qualified faculty will further assist the Program Training participants in acquiring skills required to complete the duties of the guardian ad litem, such as interviewing and report writing; and abilities necessary to perform complex decision making, such as adhering to ethical standards and engaging in self-evaluation. For example, a training participant may acquire significant knowledge from a manual or a lecture. It is unlikely, however, that the training participant will acquire skill in this way. Building skill requires guided or supervised practice. That is the purpose of the interactive problem-solving exercises in Unit Two, the program's advanced training unit.

The learning goals and objectives provide a structure for both the training provider and the participants to evaluate the teaching methods and the learning process and outcomes.

## **ON-GOING EDUCATION**

The *Training Program* Standards require that any person seeking appointment as a guardian ad litem shall attend Unit Two, the *Training Program's* advanced unit, annually. The purpose of the on-going training is to:

- Connect new information to the information the guardian ad litem already has; and
- Ensure that each guardian ad litem is aware of the current legislative issues and changes and the current status of local services/resources.

The superior courts and training providers are encouraged to provide additional training materials as they deem appropriate. These materials should supplement the *Training Program* materials, but should not be inconsistent with nor be offered as a substitute for the Model Program materials. [The *Handbook* - or its current update inserts - is a core component of both the basic and advanced units.]

## ***TRAINING PROGRAM***

### **STANDARDS**

#### **I. REQUIREMENTS OF THE MODEL GUARDIAN AD LITEM *TRAINING PROGRAM***

##### **A. General Training Standards**

1. The Model Guardian Ad Litem *Training Program* shall be open to those persons with an interest in guardian ad litem qualifications and duties as well as to those persons intending to apply to serve as guardians ad litem pursuant to RCW 11.88.
2. Facilities for conducting the Model Guardian Ad Litem *Training Program* shall be accessible to all persons and in compliance with all laws pertaining to persons with disabilities.

##### **B. Training Hours and Scope**

1. The Model Guardian Ad Litem *Training Program* shall be provided in two units, each unit to be comprised, at a minimum, of six to seven and one-half hours each to ensure comprehensive coverage of pertinent subject matter, [consistent with the *Handbook* and/or its update inserts]
2. **Unit One**, the Model Guardian Ad Litem *Training Program's* basic unit, shall include at a minimum:
  - The roles, duties, and limits of authority of the guardian ad litem as defined by Washington State Law under RCW 11.88;
  - The consideration of alternatives to guardianship;
  - The determination of functional capacity in accord with the guardianship statutes;
  - Due process and the rights of the alleged incapacitated person;
  - Information about impairments, local services and resources; and
  - Terminology
3. **Unit Two**, the Model Guardian Ad Litem *Training Program's* advanced unit, shall include:
  - Expanded information about Impairments, available local resources, and community resources;
  - A review of changes in the law;
  - Interactive problem-solving exercises where the attendees learn by doing; and

- Other relevant topics, such as:
  - ▶ Discussion of diversity issues  
Relevant locally selected issues which facilitate and foster awareness of and sensitivity to local area socio-economic, ethnic, cultural and religious differences and the role of the cultural norms in decision making.
  - ▶ Local court procedures  
[Examples: Use of court approved forms, complex trial issues, payment issues, court calendars, guardian ad litem qualifications, appointments and notice, court registry policies and procedures]
  - ▶ Advanced communication skill building  
[Example: Conducting effective guardian ad litem interviews with persons who are non-verbal, hearing impaired, developmentally disabled, or who have thinking impairments]
- 4. Any person seeking appointment as a guardian ad litem shall attend the advanced model training unit annually, [and receive the most current edition of the *Handbook* or its update inserts].

### **C. Faculty Qualifications**

1. The faculty shall have a minimum of five years' experience in their particular fields (e.g., attorney, social worker, psychiatrist, guardian ad litem) and be in good standing with their respective professional organization, if any, and/or the appropriate guardian ad litem registry.
2. Experience shall be in areas relevant to guardianship: that is, for an attorney, a practice involving estate planning, guardianship, probate and trust, elder law, or related areas; for a social worker, experience working with disabled persons, the elderly, etc.
3. The faculty shall have had prior experience or training in the fundamentals of adult education.
4. The faculty shall have had prior experience as effective public speakers.
5. The faculty shall be composed of persons who:
  - Are familiar with the duties of a guardian ad litem; or
  - Have had actual experience as a guardian ad litem; or
  - Are persons with a disability or have experience in dealing with people with disabilities and have knowledge of, and experience in advocating for, local community resources.



#### **D. Program Training Offered by Videotape**

1. If the superior court approves a videotape of a live model training program as an acceptable training alternative, the videotape presentation shall be shown in a group setting.
2. One or more moderators who meet faculty qualifications shall be present to answer questions and facilitate group interactive exercises. Among those moderators present, at least one shall have knowledge of local resources. Other faculty qualifications shall be met by those qualified individuals who present the model *Training Program* on the videotape.
3. Attendees shall participate in the interactive components of the program.
4. Video presentations shall be of high quality in order to re-create as closely as possible the live training experience.
5. The videotape being used shall be reviewed each year and updated regularly as necessary to ensure dissemination of current legal, social, and health care information.

#### **E. Objective Demonstration of Acquired Skills**

As an integral part of the training, all attendees shall participate in one or more interactive problem-solving group exercises designed to demonstrate their acquisition of skills, knowledge, and proficiency pertaining to the Model Guardian Ad Litem *Training Program's* Units One and Two topics and the model training program's teaming objectives.

#### **F. Attendance Verification**

Training providers shall establish sign-in [and] sign-out procedures for all of the training sessions that will record accurately the time of the attendees' participation. Attendance records shall be maintained by training providers for a period of three years.

### **II. RECOMMENDATIONS TO THE SUPERIOR COURT**

- A. The superior courts should require attendance at the Model Guardian ad Litem *Training Program* pursuant to law and in accord with these recommendations.
- B. Both Model Guardian ad Litem *Training Program* units should be completed by an individual within a ninety-day period.
- C. All persons should complete both Model Guardian ad Litem *Training Program* units prior to their appointment as guardians ad litem.

D. Attendance at the Model Guardian Ad Litem *Training Program's* basic unit may be waived when a person has previously completed the Model *Training Program's* basic unit in this or another county, which training has been approved by the superior court of the county in which the person will be serving as a guardian ad litem. Completion of the current Model Guardian Ad Litem *Training Program's* advanced unit shall be required of any person seeking guardian ad litem appointment in a new county for the first time.

E. It is recommended that each guardian ad litem shall take the program's advanced unit annually to ensure that each individual is aware of legislative issues and changes and current status of local services/resources.

F. The superior courts and training providers are encouraged to provide additional training materials as they deem appropriate, which shall supplement but shall not be inconsistent with nor substitute for the model *Training Program* herein described.

## ***TRAINING PROGRAM***

### **SUMMARY OF STATUTORY REQUIREMENTS OF GUARDIANS AD LITEM**

This section is intended as an abstract or outline of the statutory requirements of guardians ad litem. Reading this material is not a substitute for review of the actual statutory language. Material in cited sections not specifically related to the guardian ad litem's duties has not been included.

#### **I. QUALIFICATIONS OF THE GUARDIAN AD LITEM**

- A. The guardian ad litem shall be free of influence from anyone interested in the proceeding; [RCW11.88.090(3)(a)]
- B. The guardian ad litem shall have the requisite knowledge, training, or expertise to perform the duties required of a guardian as outlined in [RCW11.88.090(3)(b)]
- C. The guardian ad litem shall have completed the model guardian ad litem training; and [RCW 11.88.090 4(b)(ii)]
- D. The guardian ad litem shall be eligible *for* and *on* the Superior Court registry for the county in which the person is appointed as guardian ad litem. To be eligible for registry the guardian ad litem must meet the following requirements:
  - 1. Present a written statement outlining his or her background and qualifications. The background statement shall include, but is not limited to, the following information:
    - a) Level of formal education.
    - b) Training related to guardian ad litem's duties.
    - c) Number of years experience as a guardian ad litem.
    - d) Number of appointments as a guardian ad litem and the county or counties of appointment.
    - e) Criminal history which means a list of prior convictions, whether in this state, in federal court, or elsewhere. The history shall include, where known, for each conviction:
      - (1) Whether probation was ordered and the length and terms thereof; and
      - (2) Whether incarceration occurred and the length of incarceration. Convictions include juvenile offenses for sex offenses and shall also include other prior convictions in juvenile court if:

- (i) The conviction was for an offense which is a felony or a serious traffic offense;
  - (ii) The crime occurred at age fifteen or older; and
  - (iii) With respect to prior juvenile class B and C felonies or serious traffic offenses, the crime was committed when less than twenty-three years of age for which a sentence was imposed.
- f) Evidence of the person's knowledge, training, and experience in each of the following: needs of impaired elderly people, physical disabilities, mental illness, developmental disabilities, and other areas relevant to the needs of incapacitated persons, legal procedure, and the requirements of RCW 11.88 and RCW 11.92.
- g) Written statement of qualifications shall include the names of any counties in which the person was removed from a guardian ad litem registry pursuant to a grievance action, and the name of the court and the case number of any case in which the court has removed the person for cause. [RCW11.88.090(4)(b)]
2. The guardian ad litem shall update his or her written statement of background and qualifications for the registry on an annual basis. [RCW 11.88.090(4)(d)]

## **II. DUTIES OF THE GUARDIAN AD LITEM FOLLOWING APPOINTMENT**

A. The guardian ad litem shall meet with the alleged incapacitated person as soon as practicable following appointment and explain, in language which such person can reasonably be expected to understand:

- 1. The substance of the petition;
- 2. The nature of the resultant proceedings;
- 3. The person's right to contest the petition;
- 4. The identification of the proposed guardian or limited guardian;
- 5. The person's right to a jury trial on the issue of his or her alleged capacity;
- 6. The person's right independent counsel (*willing counsel of their choosing who will be provided at public expense if the alleged incapacitated person cannot afford counsel, the expense of counsel would result in substantial hardship, or the individual does not have practical access to funds with which to pay counsel immediately, but may be required to reimburse the court later*); and
- 7. The person's right to be present at the hearing on the petition. [RCW11.88.090(5)(a)]

B. The guardian ad litem is required to obtain medical and other reports provide to the court:

1. The guardian ad litem is required to obtain a written report from a licensed physician or a licensed or certified psychologist or an advanced registered nurse practitioner. The only exception in which a medical report is not needed is if the basis of the guardianship is that the alleged incapacitated person is a minor. [RCW11.88.045(4)]

If the alleged incapacitated person opposes the health care professional selected by the guardian ad litem to preare the medical report, then the guardian ad litem shall use the health care professional selected by the alleged incapacitated person.  
[RCW 11.88.045(4)]

2. If the alleged incapacitated person opposes the health care professional selected by the guardian ad litem to prepare the medical report, then the guardian ad litem shall use the health care professional selected by the alleged incapacitated person.  
[RCW 11.88.045(4)]

a) If the alleged incapacitated person wishes to select his or her own health care professional, the guardian ad litem may also obtain a supplemental evaluation. [RCW 11.88.045(4)]

b) Prerequisites for the preparation of the report by physician, psychologist or an advanced registered nurse practitioner are that he/she:

(1) Shall have personally interviewed the alleged incapacitated person within thirty days of preparation of the report.

(2) Shall have expertise in the type of disorder or incapacity the alleged incapacitated person is believed to have. [RCW 11.88.045(4)]

c) The contents of the report shall contain the following information and shall be set forth in substantially the following format:

(1) The name and address of the examining physician, psychologist or advanced registered nurse practitioner;

(2) The education and experience of the physician, psychologist or advanced registered nurse practitioner pertinent to the case;

(3) The dates of examinations of the alleged incapacitated person;

(4) A summary of the relevant medical, functional, neurological or mental health history of the alleged incapacitated person as known to the examining physician, psychologist or advanced registered nurse practitioner;

(5) The findings of the examining physician, psychologist or advanced registered nurse practitioner as to the condition of the alleged incapacitated person;

(6) Current medications;

(7) The effect of current medications on alleged incapacitated person's ability to understand or participate in the guardianship proceedings;

(8) Opinions on the specific assistance the alleged incapacitated person needs; and

(9) Identification of persons with whom the physician, psychologist or advanced registered nurse practitioner has met or spoken with regarding the alleged incapacitated person.

[RCW11.88.045(4)]

C. The guardian ad litem is required to meet with the person whose appointment is sought as guardian or limited guardian and ascertain:

1. The proposed guardian's knowledge of the duties, requirements, and limitations of a guardian;
2. The steps the proposed guardian intends to take or has taken to identify and meet the needs of the alleged incapacitated person. [RCW11.88.090(5)(c)]

D. The guardian ad litem is required to consult as necessary to complete the investigation and report required by this section with those known relatives, friends, or other persons the guardian ad litem determines have had a significant, continuing interest in the welfare of the alleged incapacitated person; [RCW11.88.090(5)(d)]

E. The guardian ad litem is required to investigate alternate arrangements which have been made or might be created, by or on behalf of the alleged incapacitated person, such as revocable or irrevocable trusts, or durable powers of attorney or blocked accounts; whether good cause exists for any such arrangements to be discontinued; and why such arrangements should not be continued or created in lieu of a guardianship. [RCW11.88.090(5)(e)]

F. The guardian ad litem is required to provide the court with a written report which shall include the following:

1. A description of the nature, cause, and degree of the alleged incapacity, and the basis upon which the judgment was made.
2. A description of the needs of the alleged incapacitated person for the care and treatment, the probable residential requirements of the alleged incapacitated person, and the basis upon which these findings were made.

3. An evaluation of the appropriateness of the guardian or limited guardian whose appointment is sought and a description of the steps the proposed guardian has taken or intends to take to identify and meet current and emerging needs of the incapacitated person.
4. A description of any alternative arrangements previously made by the alleged incapacitated person or arrangements which could be made; and whether and to what extent such alternatives should be used in lieu of a guardianship; and, if the guardian ad litem is recommending discontinuation of any such arrangements, specific findings as to why such arrangements are contrary to the best interest of the alleged incapacitated person.
5. A description of the abilities of the alleged incapacitated person and a recommendation as to whether a guardian or limited guardian should be appointed.
  - a) If appointment of a limited guardian is recommended, the guardian ad litem shall recommend the specific areas of authority the limited guardian should have and the limitations and disabilities to be placed on the incapacitated person.
  - b) The following list is not all inclusive, but some areas which may be limited include:
    - (1) right to marry or divorce;
    - (2) right to vote or hold elected office;
    - (3) right to enter into a contract or make or revoke a will;
    - (4) right to appoint someone to act on your behalf;
    - (5) right to sue and be sued other than through a guardian;
    - (6) right to possess a license to drive;
    - (7) right to buy, sell, own, mortgage, or lease property;
    - (8) right to consent to or refuse medical treatment;
    - (9) right to decide who shall provide care and assistance; and
    - (10) right to make decisions regarding social aspects of life.
6. An evaluation of the person's mental ability to rationally exercise the right to vote and the basis upon which the evaluation is made.

7. Any expression of approval or disapproval made by the alleged incapacitated person concerning the proposed guardian or limited guardian or guardianship or limited guardianship.

8. Identification of persons with significant interest in the welfare of the alleged incapacitated person who should be advised of their right to request special notice of proceedings; *Request for special notice of proceedings is a process allowed by RCW 11.92.150 which allows persons and specific agencies to provide a written request so that they may receive advance notice of legal proceedings related to the guardianship action. The written request must be placed in the court file and must include the name, address, and post office address of the person who wishes to receive advance notice of the proceedings.*

9. An explanation of how the alleged incapacitated person responded to the advice of the right to jury trial, to independent counsel, and to be present at the trial *unless* individual counsel has appeared for the alleged incapacitated person.

[RCW 11.88.090(5)(f)]

G. The guardian ad litem is required to advise the court of the need for appointment of counsel for the alleged incapacitated person within five court days after the required initial meeting with the incapacitated person unless:

1. Counsel has appeared on behalf of the incapacitated person;
2. The alleged incapacitated person affirmatively communicated a wish not to be represented by counsel after being advised of the right to representation and of the conditions under which court-provided counsel may be available; or
3. The alleged incapacitated person was unable to communicate at all on the subject, and the guardian ad litem is satisfied that the alleged incapacitated person does not affirmatively desire to be represented by counsel.

[RCW 11.88.090(5)(g)]

H. The guardian ad litem may be required by court order to investigate the availability of a possible guardian or limited guardian, if the petitioner is requesting the appointment of some other qualified person or entity, or if a prospective guardian or limited guardian cannot be found. The guardian ad litem shall include his or her findings in regard to the availability of a guardian or limited guardian in his or her report. [RCW 11.88.090(6)]

I. The guardian ad litem has the authority to provide informed medical consent in the event the alleged incapacitated person is in need of *emergency life-saving medical services*, and said person is unable to consent to such medical services due to incapacity pending the hearing on the petition to give consent for such emergency life-saving medical services on behalf of the alleged incapacitated person. [RCW 11.88.090(8)]



J. The guardian ad litem shall have the authority to move for temporary relief under RCW 7.40 (*which includes judicial relief in the form of injunctions and restraining orders*) to protect the alleged incapacitated person from abuse, neglect, abandonment, or exploitation, as those terms are defined in RCW 74.34.020, or to address any other emergency needs of the alleged incapacitated person. [RCW 11.88.090(9)]

K. The guardian ad litem is required to appear at all hearings on the guardianship petition unless all parties provide a written waiver of the requirement to appear. [RCW 11.88.090(12)]

L. The guardian ad litem shall receive a fee for his or her services as determined by the court. The fee shall be charged to the alleged incapacitated person unless the court finds that such payment would result in substantial hardship upon such person, in which case the county shall be responsible for such costs: PROVIDED, the court may charge such fee to the petitioner, the alleged incapacitated person, or any person who appears in the action, or may allocate the fee, as it deems just; and if the petition is found to be frivolous or not brought in good faith, the guardian ad litem fee shall be charged to the petitioner. The court shall not be required to provide for the payment of a fee to any salaried employee of a public agency. [RCW 11.88.090(10)]

M. The guardian ad litem shall be dismissed upon the presentation of the guardian ad litem report and the entry of an order either dismissing the petition for appointment of guardian or limited guardian or appointing a guardian or limited guardian and shall have no further duties or obligations unless otherwise ordered by the court. If the court orders the guardian ad litem to perform further duties or obligations, they shall not be performed at county expense. [RCW 11.88.090(11)]

### **III. REQUIREMENTS FOR THE COURT TO ISSUE A FINDING OF INCAPACITY**

A. Incapacity as to the Person - Individual is at significant risk of personal harm based upon a demonstrated inability to adequately provide for nutrition, health, housing, or physical safety. [RCW 11.88.010(1)(a)]

B. Incapacity as to the Person's Estate - Individual is at significant risk of financial harm based upon a demonstrated inability to adequately manage property or financial affairs. [RCW 11.88.010(1)(b)]

C. Incapacity is a legal, not a medical decision, based upon a demonstration of management insufficiencies over time in the area of person or estate. Age, eccentricity, poverty, or medical diagnosis alone shall not be sufficient to justify a finding of incapacity. [RCW 11.88.010(1)(c)]

D. Incapacity due to Minority -- A person may also be determined incapacitated if he or she is under the age of majority as defined in RCW 26.28.010. [RCW 11.88.010(1)(d)]

#### **IV. TIMELINES FOR GUARDIAN AD LITEM**

- A. As soon as practicable following appointment the guardian ad litem shall meet with the alleged incapacitated person. [RCW11.88.090(5)(a)]
- B. Within five court days after meeting the alleged incapacitated person the guardian ad litem shall advise the court of the need or lack of need to appoint an attorney for the alleged incapacitated person. [RCW11.88.090(5)(g)]
- C. Five days after notice of appointment the guardian ad litem shall file with the court and serve personally or by certified mail with return receipt, each party with the required background and qualifications statement. [RCW 11.88.090(3)(b)]
- D. Forty-five days after notice of commencement of the guardianship proceeding and at least fifteen days before hearing the guardian ad litem must file report. Exception: unless an extension or reduction of time has been granted by the court for good cause. [RCW11.88.090(5)(f)]
- E. Sixty days after notice of appointment, if a hearing has not been held, the guardian ad litem shall file an interim report summarizing his or her activities on the proceeding during that time period as well as fees and costs incurred. A report shall be due each month thereafter until a hearing is held. [RCW 11.88.090(5)(f)]

#### **V. UNDERSTANDING THE ROLE OF THE GUARDIAN**

- A. Required Qualifications for an Individual Guardian [RCW 11.88.020]
  - 1. Must be age 18 or more; or if under age 18 must be parent of the incapacitated person;
  - 2. Must be of sound mind;
  - 3. Shall not be convicted of a felony or of a misdemeanor involving moral turpitude;
  - 4. Must be a resident of the state unless resident agent has been appointed to accept service of process in all actions or proceedings with respect to the estate and caused such appointment to be filed with the court.
  - 5. Must be found suitable by the court.
- B. Required Qualifications of an Entity Serving as Guardian
  - 1. Must meet certification requirements established by administrator of courts (unless a testamentary appointment under RCW 11.88.080); and
  - 2. Must be found suitable by court.

### C. Alternative Qualifications of an Entity Serving as Guardian of Estate

1. The financial institution subject to the jurisdiction of the department of financial institutions and authorized to exercise trust powers, and a federally chartered financial institution when authorized to do so, may serve as guardian of the estate without having met certification requirements established by administrator for the courts.
  - a) An assessment of the incapacitated person's physical, mental, and emotional needs and of such person's ability to perform or assist in activities of daily living; and
  - b) The guardian's specific plan for meeting the identified and emerging personal care needs of the incapacitated person.
2. To file annually or, where a guardian of the estate has been appointed, at the time an account is required to be filed under RCW 11.92.040, a report on the status of the incapacitated person, which shall include:
  - a) The address and name of the incapacitated person and all residential changes during the period;
  - b) The services of programs which the incapacitated person receives;
  - c) The medical status of the incapacitated person;
  - d) The mental status of the incapacitated person;
  - e) Changes in the functional abilities of the incapacitated person;
  - f) Activities of the guardian for the period;
  - g) Any recommended changes in the scope of the authority of the guardian; and
  - h) The identity of any professionals who have assisted the incapacitated person during the period.
3. To report to the court within thirty days any substantial change in the incapacitated person's condition, or any changes in residence of the incapacitated person.
4. Consistent with powers granted by the court, to care for and maintain the incapacitated person in the setting least restrictive to the incapacitated person's freedom and appropriate to the incapacitated person's personal care needs, to assert the incapacitated person's rights and best Interests, and if the incapacitated person is a minor or where otherwise appropriate, to see that the incapacitated person receives appropriate training and education and that the incapacitated person has the opportunity to learn a trade, occupation, or profession.

5. Consistent with RCW 7.70.065, to provide timely, informed consent for health care of the incapacitated person, except in the case of a limited guardian where such power is not expressly provided for by court order. The standby guardian or standby limited guardian may provide timely, informed consent to necessary medical procedures if the guardian or limited guardian cannot be located within four hours after the need for such consent arises. No guardian, limited guardian, or standby guardian may involuntarily commit for mental health treatment, observation, or evaluation an alleged incapacitated person who is unable or unwilling to give informed consent to such commitment unless the procedures set for involuntary commitment set forth in RCW 71.05 or 72.23 are followed. The guardian, limited guardian, or standby guardian shall not consent to:

- a) Therapy or other procedure which induces convulsion;
- b) Surgery solely for the purpose of psychosurgery; and
- c) Other psychiatric or mental health procedures that restrict physical freedom or movement, or the rights set forth in RCW 71.05.370.<sup>1</sup>

A guardian, limited guardian, or standby guardian who believes these procedures are necessary for the proper care and maintenance of the incapacitated person shall petition the court for an order unless the court has previously approved the procedure within the past thirty days. The court may order the procedure only after an attorney is appointed in accordance with RCW 11.88.045. If no attorney has previously appeared, notice is given, and a hearing is held in accordance with RCW 11.88.040.

6. To observe the prohibition in RCW 11.92.190 against consenting on behalf of and against the will of the incapacitated person to the person's involuntary detention in a residential treatment facility which provides nursing or other care.

#### D. Responsibilities of Guardian of Estate

1. Within three months after appointment provide the court with a verified inventory of all of the property of the incapacitated person, including a statement of all encumbrances, liens and other secured charges on any item. [RCW 11.92.040(1)]

2. Unless another interval is ordered by the court, or unless the guardianship is for a minor with all assets held in a blocked account, to file annually a written verified account of the incapacitated person's property, which account shall contain at least the following information:

- a) Identification of the property of the guardianship estate as of the date of the last account or inventory;
- b) Identification of all additional property received into the guardianship, including income by source;

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<sup>1</sup> See Title 11 Guardian Ad Litem *Handbook*, Washington State Guardianship Statutes

c) Identification of all expenditures made during the account period by major categories;

d) Any adjustments to the guardianship estate required to establish its present fair market value, including gains or losses on sale or other disposition, and any mortgages, deeds of trust or other encumbrances against the guardianship estate; and

e) Identification of all property held in the guardianship estate as of the date of the account, the assessed value of any real property and the guardian's estimate of the present fair market values of other property (*including the basis on which such estimate is made*), and the total net fair market value of the guardianship estate. In addition, immediately following such statement of present fair market value, the account shall set forth a statement of current amount of the guardian's bond and any other court-ordered protection for the security of the guardianship assets.

[RCW 11.92.040(2)and(3)]

3. The guardian or limited guardian shall report any substantial change in income or assets of the guardianship estate within thirty days of the occurrence of the change. A hearing shall be scheduled for court review and determination of provision for increased bond or other provisions. [RCW 11.92.040(3)]

4. The guardian or limited guardian has the duty to protect and preserve the guardianship estate, account for it faithfully, and perform all duties required by law, and at the termination of the guardianship or limited guardianship to deliver the assets of the incapacitated person to the persons entitled thereto. The guardian or limited guardian may be authorized by the court to perform the duties of a trustee for a period not exceeding one year. [RCW 11.92.040(4)]

5. To invest and reinvest the property of the incapacitated person in accordance with rules applicable to investment of trust estates by trustees as provided in RCW 11.100, except that:

a) No investments shall be made without prior order of the court in any property other than unconditional interest-bearing obligations of this state or of the United States and in obligations the interest and principal of which are unconditionally guaranteed by the United States, and in share accounts or deposits which are insured by an agency of the United States Government. Such prior order of the court may authorize specific investments, or, in the discretion of the court, may authorize the guardian or limited guardian to invest and reinvest as provided in RCW 11.100 without further order of the court; and

b) if it is in the best interest of the incapacitated person that a specific property be used by the incapacitated person rather than sold and the proceeds invested, the court may so order. [RCW 11.92.040(5)]

6. To apply to the court, at a date no later than the filing of the inventory, for an order authorizing disbursements on behalf of the incapacitated person. In appropriate cases, the court may order payments of amounts directly to the incapacitated person for his or her maintenance or incidental expenses. The amounts authorized under this section may be decreased or increased from time to time by discretion of the court. If payments are made to another person under an order of the court, the guardian or limited guardian of the estate is not bound to see the application thereof. [RCW 11.92.040(6)]

7. Within ninety days after the termination of a guardianship for any reason other than the death of the incapacitated person intestate, the guardian or limited guardian of the estate shall petition the court for an order settling his account as filed in accordance with RCW 11.92.040(2) with regard to any and all receipts, expenditures, and investments made and acts done by the guardian to the date of said termination. Upon such petition being filed, the court shall set a date for the hearing of such petition after notice has been given in accordance with RCW 11.88.040. Any person interested may file objections to such petition or may appear at the scheduled hearing and present objections. The court may take testimony if appropriate and necessary to determine whether an order settling the account should be issued and the transactions of the guardian be approved. At such hearing, if the court is satisfied that the actions of the guardian have been proper, and that the guardian has in all respects discharged his or her trust with relation to such receipts, expenditures, investments, and acts, then, in such event, the court shall enter an order approving such account, and such order shall be final and binding upon the incapacitated person, subject only to the right of appeal as upon a final order. [RCW 11.92.053]

8. Guardian to represent incapacitated person in legal proceeding/actions:

a) **GUARDIAN MAY SUE AND BE SUED.** When there is a guardian of the estate, all actions between the incapacitated person or the guardian and third persons in which it is sought to charge or benefit the estate of the incapacitated person shall be prosecuted by or against the guardian of the estate as such. The guardian shall represent the interests of the incapacitated person in the action and all process shall be served on him or her. A guardian or limited guardian of the estate shall report to the court any action commenced against the incapacitated person and shall secure court approval prior to initiating any legal action in the name of the incapacitated person.

b) **JOINDER, AMENDMENT, AND SUBSTITUTION.** When the guardian of the estate is under personal liability for his or her own contracts and acts made and performed on behalf of the estate, the guardian may be sued both as guardian and in his or her personal capacity in the same action. If an action was commenced by or against the incapacitated person before the appointment of a guardian of his or her estate, such guardian when appointed may be substituted as a party for the incapacitated person.

c) **GARNISHMENT, ATTACHMENT, AND EXECUTION.** When there is a guardian of the estate, the property and rights of action of the incapacitated person shall not be subject to garnishment or attachment, except for the foreclosure of a

mortgage or other lien, and execution shall not issue to obtain satisfaction of any judgment against the incapacitated person or the guardian of the person's estate as such.

d) **COMPROMISE BY GUARDIAN.** Whenever it is proposed to compromise or settle any claim by or against the incapacitated person or the guardian as such, whether arising as a result of personal injury or otherwise, and whether arising before or after appointment of a guardian, the court on petition of the guardian of the estate, if satisfied that such compromise or settlement will be for the best interests of the incapacitated person, may enter an order authorizing the settlement or compromise be made.

e) **LIMITED GUARDIAN.** Limited guardians may serve and be served with process or actions on behalf of the incapacitated person, but only to the extent provided for in the court order appointing a limited guardian. [RCW 11.92.060]

9. Whenever it shall appear to the satisfaction of a court by the petition of any guardian or limited guardian that it is necessary or proper to sell, exchange, lease, mortgage, or grant an easement, license, or similar interest in any of the real or personal property of the estate of the incapacitated person for the purpose of paying debts or for the care, support, and education of the incapacitated person, or to redeem any property of the incapacitated person's estate covered by mortgage or other lien, or for the purpose of making any investments, or for any other purpose which to the court may seem right and proper, the court may make an order directing such sale, exchange, lease, mortgage, or grant of easement, license, or similar interest of such part or parts of the real or personal property as shall to the court seem proper. (See below regarding requirement(s) for sale of real property.) [RCW 11.92.090 and 11.92.100]

10. Guardian's access to certain held assets:

a) All financial institutions as defined in RCW 30.22.040(12), all insurance companies holding a certificate of authority under RCW 48.05, or any agent who constitutes a salesperson or broker-dealer of securities under the definitions of RCW 21.20.005 (*hereafter individually and collectively referenced as "institution"*) shall provide the guardian access and control over the asset(s) described in a)(1)(vii) of this subsection, including but not limited to delivery of the asset to the guardian, upon receipt of the following:

(1) An affidavit containing as an attachment a true and correct copy of the guardian's letters of guardianship and stating:

(i) That as of the date of the affidavit, the affiant is a duly appointed guardian with authority over assets held by the institution but owned or subject to withdrawal or delivery to a client or depositor of the institution;

(ii) The cause number of the guardianship;

- (iii) The name of the incapacitated person and the name of the client or depositor (*which names shall be the same*);
- (iv) The account or the safety deposit box number or numbers;
- (v) The address of the client or depositor;
- (vi) The name and address of the affiant-guardian being provided assets or access to assets;
- (vii) A description of and the value of the asset or assets, or, where the value cannot be readily ascertained, a reasonable estimate thereof, and a statement that the guardian receives delivery or control of each asset solely in its capacity as guardian;
- (viii) The date the guardian assumed control over the assets;
- (ix) That a true and correct copy of the letters of guardianship duly issued by a court to the guardian is attached to the affidavit; and
- (x) An envelope, with postage prepaid, addressed to the clerk of the court issuing the letters of guardianship. The affidavit shall be sent in the envelope by the institution to the clerk of the court together with a statement signed by an agent of the institution that the description of the asset set forth in the affidavit appears to be accurate, and confirming in the case of cash assets, the value of the asset.

b) Any guardian provided with access to a safe deposit box pursuant to subsection (1) of this section shall make an inventory of the contents of the box and attach this inventory to the affidavit before the affidavit is sent to the clerk of the court and before the contents of the box are released to the guardian. Any inventory shall be prepared in the presence of an employee of the institution and the statement of the institution required under subsection (1) of this section shall include a statement executed by the employee that the inventory appears to be accurate. The institution may require payment by the guardian of any fees or charges then due in connection with the asset or account and of a reasonable fee for witnessing preparation of the inventory and preparing the statement required by this subsection or subsection (1) of this section. [RCW 11.92.096]

11. Sale of real property. The order directing the sale of any of the real property of the estate of the incapacitated person shall specify the particular property affected and the method, whether by public or private sale or by negotiation, and terms thereof, and with regard to the procedure and notices to be employed in conducting such sale, the provisions of RCW 11.56.060; 11.56.070; 11.56.080, and 11.56.110 shall be followed unless the court otherwise directs. [RCW 11.92.100, 115 and 120]

12. Performance of contracts. If any person who is bound by contract in writing to perform shall become incapacitated before making the performance, the court having jurisdiction of the guardianship or limited guardianship of such property may, upon application of the guardian or limited guardian of the incapacitated person, or upon



application of the person claiming to be entitled to the performance, make an order authorizing and directing the guardian or limited guardian to perform such contract. The application and the proceedings, shall, as nearly as may be, be the same as provided in RCW 11.60. [RCW 11.92.130]

13. The court, upon the petition of a guardian of the estate of an incapacitated person other than the guardian of a minor, and after such notice as the court directs and other notice to all persons interested as required by RCW 11.96, may authorize the guardian to take any action, or to apply funds not required for the incapacitated person's own maintenance and support, in any fashion the court approves as being in keeping with the incapacitated person's wishes so far as they can be ascertained and as designed to minimize insofar as possible current or prospective state or federal income and estate taxes, permit entitlement under otherwise available federal or state medical or other assistance programs, and to provide for gifts to such charities, relatives, and friends as would be likely recipients of donations from the incapacitated person.

The action or application of funds may include but shall not be limited to the making of gifts, to the conveyance or release of the incapacitated person's contingent and expectant interests in property including marital property rights and any right of survivorship incident to joint tenancy or tenancy by the entirety, to the exercise or release of the incapacitated person's powers as donee of a power of appointment, the making of contracts, the creation of revocable or irrevocable trusts of property of the incapacitated person's estate which may extend beyond the incapacitated person's disability or life, the establishment of custodianship for the benefit of a minor under RCW 11.114, the Washington uniform transfers to minors act, the exercise of options of the incapacitated person to purchase securities or other property, the exercise of the incapacitated person's right to elect options and to change beneficiaries under insurance and annuity policies and the surrendering of policies for their cash value, the exercise of the incapacitated person's right to any elective share in the estate of the incapacitated person's deceased spouse or deceased registered domestic partner, and the renunciation or disclaimer of any interest acquired by testate or intestate succession or by inter vivos transfer.

The guardian in the petition shall briefly outline the action or application of funds for which approval is sought, the results expected to be accomplished thereby, and the savings expected to accrue. The proposed action or application of funds may include gifts of the incapacitated person's personal or real property. Gifts may be for the benefit of prospective legatees, devisees, or heirs apparent of the incapacitated person, or may be made to individuals or charities in which the incapacitated person is believed to have an interest. Gifts may or may not, in the discretion of the court, be treated as advancements to donees who would otherwise inherit property from the incapacitated person under the incapacitated person's will or under the laws of descent and distribution. The guardian shall also indicate in the petition that any planned disposition is consistent with the intentions of the incapacitated person insofar as the intentions can be ascertained, and if the incapacitated person's intentions cannot be ascertained, the incapacitated person will be presumed to favor reduction in the incidence of the various forms of taxation and the partial distribution of the incapacitated person's estate as provided in this

section. The guardian shall not, however, be required to include as a beneficiary any person whom there is reason to believe would be excluded by the incapacitated person. No guardian may be required to file a petition as provided in this section, and a failure or refusal to so petition to the court does not constitute a breach of the guardian's fiduciary duties. [RCW 11.92.140]

# A REVIEW OF THE TRAINING PROGRAM FOR TITLE 11 GUARDIANSHIP GUARDIANS AD LITEM

Prepared by the  
Advisory Committee  
to the  
Washington Department of Social and Health Services

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# A REVIEW OF THE TRAINING PROGRAM FOR TITLE 11 RCW GUARDIANSHIP GUARDIANS AD LITEM

## Executive Summary

Between 400 and 500 Guardians ad Litem (GALs) assist the Superior Courts of the State of Washington in evaluating whether and to what extent guardians should be appointed for Washington residents alleged to be incapacitated, as that term is defined by our statutes.<sup>2</sup> Because the appointment of a guardian can significantly limit an individual's ability to exercise his or her rights and autonomy, the Court is under an obligation to give careful consideration to the disposition of a petition for appointment of a guardian.<sup>3</sup> The role of the GAL is crucial in providing the Court with evidence upon which to base its determination.

Incapacitated or alleged incapacitated persons may be persons with developmental disabilities, dementia or mental illness, minors or seniors with significant disabilities. They may be injured victims of a crime or accident. In evaluating their circumstances, GALs must be able to call on a broad range of knowledge and skills, varying from case to case.

The central importance of the GAL's role in the lives of the State of Washington's most vulnerable residents suggests the need for great care in the training of those who will be filling the role. To that end, the Legislature has called for periodic review of the training provided to GALs pursuant to RCW 11.88.090(4)(b). This report has been prepared by an Advisory Committee composed of a cross-section of interested

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<sup>2</sup> RCW 11.88.010 grants to the Superior Courts the authority to appoint guardians for persons demonstrated to be incapacitated as to their persons or estates, as follows: "(a) For purposes of this chapter, a person may be deemed incapacitated as to person when the superior court determines the individual has a significant risk of personal harm based upon a demonstrated inability to adequately provide for nutrition, health, housing, or physical safety.

"(b) For purposes of this chapter, a person may be deemed incapacitated as to the person's estate when the superior court determines the individual is at significant risk of financial harm based upon a demonstrated inability to adequately manage property or financial affairs."

<sup>3</sup> RCW 11.88.005 states: "It is the intent of the legislature to protect the liberty and autonomy of all people of this state, and to enable them to exercise their rights under the law to the maximum extent, consistent with the capacity of each person. The legislature recognizes that people with incapacities have unique abilities and needs, and that some people with incapacities cannot exercise their rights or provide for their basic needs without the help of a guardian. However, their liberty and autonomy should be restricted through the guardianship process only to the minimum extent necessary to adequately provide for their own health or safety, or to adequately manage their financial affairs."

populations, including representatives from affected consumer, advocacy, and professional groups, assembled by the Department of Social and Health Services in accordance with the statute.

The Committee's review included input from a range of interested parties. Analysis of this input reveals that, while the current GAL Training Program is, in some ways, adequate, there is dissatisfaction on many fronts with the form and content of training, particularly for GALs seeking recertification, and with the ability of GALs to address many of the issues encountered by GALs in the cases to which they are assigned.

Generally, the Committee concluded that the shortcomings reported in the Sections below can and should be addressed by a combination of changes to the existing Training Program and modifications of the manner in which the program operates, both as to the training itself and administratively within the Courts. Implementation of some recommendations will require only modification of the existing program. Others will require changes in underlying rules and guidelines. A few may require statutory or regulatory changes.

Section III identifies three major issues which summarize the input the Committee received. Section IV sets forth the Committee's specific recommendations. Generally, the Committee's recommendations were arrived at by consensus. Not all Committee members agreed on all points, however. Points of significant disagreement and alternative ideas are identified in Section IV.

## I. Background

In 1990, the Washington Legislature enacted RCW 11.88, which provides for the appointment, qualification and removal of guardians, and updated RCW 11.92, which sets forth the powers and duties of guardians and limited guardians. These statutes establish the procedure for creating and monitoring guardianships, and give the Superior Courts authority over all guardianships.

RCW 11.88.090(3) provides for appointment of a GAL “to represent the best interests of the alleged incapacitated person . . .” whenever a petition for guardianship is filed.<sup>4</sup> In ongoing guardianships, the Superior Court from time to time appoints GALs to investigate or perform specific tasks. Such cases may arise where an emergent situation is called to the court’s attention, or in case of a dispute affecting an incapacitated person, where the Court would benefit from an independent recommendation. RCW 11.88.090 sets forth the duties of the GAL on appointment in the case of a new petition, and the qualifications an individual must have in order to be listed on the Court’s registry of certified GALs. Training is specifically provided for: GALs must “[h]ave the requisite knowledge, training, or expertise to perform the duties required by this section.” RCW 11.88.090(3)(b).

The Department of Social and Health Services (“DSHS”) is responsible for establishing and keeping current a program for training GALs.<sup>5</sup> Training has been available for GALs pursuant to a training program known as the *Title 11 RCW Model Guardian ad Litem Training Program* (the “Training Program”) that was developed in 1997 by the Guardian Ad Litem Training Project Advisory Group and the Aging and Adult Services Administration of DSHS.<sup>6</sup>

In 2009, DSHS contracted with the King County Bar Association (“KCBA”) for the creation of an Advisory Committee to review the Training Program, and to make recommendations with respect to updating it.<sup>7</sup> KCBA provided for formation of the present Advisory Committee (the “Committee”) to carry out this task. As provided for in the statutes and in the contract, members of the Committee are drawn from consumer, advocacy and professional groups, and are knowledgeable in the range of fields generally affected by guardianships. In constituting the Committee, KCBA solicited individuals from across the state.<sup>8</sup>

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<sup>4</sup> The statute provides for an exception: “No guardian ad litem need be appointed when a parent is petitioning for a guardian or a limited guardian to be appointed for his or her minor child and the minority of the child, as defined by RCW 11.92.010, is the sole basis of the petition.” RCW 11.88.090 (3)

<sup>5</sup> RCW 11.88.090 (4) (b) (ii) (e) requires that DSHS shall “develop a model guardian ad litem training program and shall update the program biennially.” The full text of RCW 11.88.090 is attached to this report as [Appendix A](#) for convenience.

<sup>6</sup> The full text of the Training Program appears at [Appendix B](#).

<sup>7</sup> That portion of the contract between DSHS and KCBA titled “Statement of Work” is included with this report as [Appendix C](#).

<sup>8</sup> “The advisory group shall consist of representatives from consumer, advocacy, and professional groups knowledgeable in developmental disabilities, neurological impairment, physical

The Committee initiated its process by gathering data with a view to reviewing and evaluating the Training Program as it has been operating by:

- Compiling information from county registrars as to the geographic distribution and profile of GALs, and how training is carried out in the various counties around the state.
- Reviewing input from as many sources as possible regarding the effectiveness of current training. Formal input included seminar evaluations by GALs following training sessions in King, Whatcom and Spokane counties, and questionnaires completed by GALs; online surveys of professional guardians and social workers in skilled nursing facilities; questionnaires completed by lay guardians; and informal input from others involved in the legal process. Input was solicited and received from judicial officers and from attorneys practicing in the area of guardianship. Committee members interviewed individuals in the mental health and developmental disability fields, including a representative of a specifically cross-cultural group, as well as other individuals from consumer, professional and advocacy groups.
- Exchanging ideas and input from each member of the Committee, from his and her own perspective as a practitioner and/or a representative of an organization or a profession that works in the guardianship field or a related field.<sup>9</sup>

In analyzing the input received, the Committee recognizes some inherent contradictions, some of which are grounded in the economics of the way the program operates, and some of which go beyond pure cost/benefit factors to the substance of what a GAL does.

- Because of the range and diversity of individuals to be served, there is a large body of knowledge, data, procedure and skills, much of it in one or more specialized fields, to be assimilated and applied by a GAL, but appointments often are infrequent enough that GALs do not have the opportunity to build an experience base in substantive areas and legal procedures.
- The fact that costs are generally charged either to the county or to the alleged incapacitated person makes it imperative that the GAL's work be accomplished efficiently, to keep costs to a minimum. Serving as a GAL is not likely to be a lucrative part of a professional practice, yet, by their nature, many cases are complex and difficult, posing a serious challenge to the need for cost and time savings.

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disabilities, mental illness, domestic violence, aging, legal, court administration, the Washington state bar association, and other interested parties.” RCW 11.88.090 (4)(b)(ii) (e). A list of the members of the Committee with their biographical information appears at [Appendix D](#).

<sup>9</sup> The surveys returned by the various groups canvassed are attached as [Appendix E](#).



These points are reflected in the fact that much of the input the Committee received concerned GAL performance and the operation of the GAL program rather than specifics of training. Many suggestions and recommendations called for measures already available under the current Training Program. In some instances, the question is not whether the Training Program provides for training in a particular area, but rather how effectively that training is provided and the lessons applied. Because input on many of these points was so consistent, the report identifies them specifically, for the use of those who plan for training and administration of the program.

The Committee's discussions frequently reverted to talk of cost, budgets, and the feasibility "in the current climate" of recommendations under consideration. However, the Committee does not view its mission to include an evaluation of the economic feasibility of its recommendations, but rather to make recommendations for improving the effectiveness of training.

Having analyzed the data and identified issues raised, the Committee submits its recommendations with this report.

## II. The Current Situation

### 1. Profile of Guardians ad Litem in Washington State

RCW 11.88.090 (4) (a) provides the framework for the appointment and qualification of GALs:

The superior court of each county shall develop and maintain a registry of persons who are willing and qualified to serve as guardians ad litem in guardianship matters. The court shall choose as guardian ad litem a person whose name appears on the registry in a system of consistent rotation, except in extraordinary circumstances such as the need for particular expertise. The court shall develop procedures for periodic review of the persons on the registry and for probation, suspension, or removal of persons on the registry for failure to perform properly their duties as guardian ad litem. In the event the court does not select the person next on the list, it shall include in the order of appointment a written reason for its decision.

The Committee surveyed all 39 counties in the state to determine the current status of GAL registries. The Registrars of 25 of the counties responded, reporting as outlined below.<sup>10</sup> From the responses received, as it appears there is no tracking in any reporting county of numbers and types of cases assigned to GALs, the statistical information reported to the Committee in these areas is estimated.

There are 438 GALs on the registries of 24 of the counties reporting. One county, Adams, uses 3 GALs registered in other counties. Not all counties provided specific data as to how many of their GALs are attorneys. Generally, based on the responses, the Committee estimates that approximately 365, or 80% of GALs are attorneys. County by county, the proportion of attorneys to non-attorneys ranges from 100% attorneys (Spokane, Asotin, Clallam, Columbia-Garfield) to a preponderance of non-attorneys (Cowlitz, Island, Skagit, Whatcom). Non-attorney GALs have qualifications in social work, mental health, medical professions and other areas.

Most counties reported that GALs are appointed on a rotational basis except in special circumstances, as the statute requires. In at least one small county, the parties must agree on the appointment of a GAL. In at least one county, some GALs refuse to take county paid cases, whereas in another GALs are required to take two county paid cases per year as a condition of remaining on the registry. In most counties, a GAL can expect to receive only one to two appointments per year (one county, which does not make appointments on a rotational basis, reported that GALs receive “one or less” [sic] appointments per year). On the other hand, especially in some smaller counties, the number of appointments may be as many as ten.

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<sup>10</sup> A list of the counties reporting appears at [Appendix E](#). The questionnaires are available [here](#).

Recourse to special qualifications or competencies of GALs that could be useful in particular cases appears to be inconsistent, and based on the personal knowledge of parties or court personnel rather than by reference to a systematic data base.

## **2. Discipline and Removal**

Most, but not all, counties reporting have in place a system for discipline and removal of GALs. Although registry managers did not report specific discipline problems or the removal of GALs, a consistent complaint from many of the sources reviewed was that GALs were not performing as well as the complainant thought they should. Further, the Committee was informed that family members and other interested parties were not aware of the avenues for complaint, or that complaints had been discouraged. While RCW 11.88.090(3) sets forth the process for seeking the removal of a Guardian Ad Litem and GAL rules provide for filing complaints and grievances about Guardians Ad Litem, the Committee received feedback that interested parties are not well-informed about these procedures and that some courts do not act on a timely or thorough basis on complaints filed about Guardians Ad Litem.

## **3. Compensation of GALs**

RCW 11.88.090 provides in part that a GAL's fee shall be specified by the court and "shall be charged to the alleged incapacitated person unless the court finds that such payment would result in substantial hardship upon such person, in which case the county shall be responsible for such costs." The court may also, in its discretion, order payment by others: (i) the petitioner, or (ii) "any other person who has appeared in the action."<sup>11</sup>

In the absence of a computerized tracking system, some county registrars state that they are unable to report to the Committee as to the number of cases where GALs are privately paid as opposed to the number of cases paid by the county, without a manual count. A number of registrars stated the allocation was "50/50." One county reported that 67% of its total appointments were county paid. No attempt was made to discover the source of payment for privately paid cases.

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<sup>11</sup> "The court shall specify the hourly rate the guardian ad litem may charge for his or her services, and shall specify the maximum amount the guardian ad litem may charge without additional court review and approval. The court shall specify rates and fees in the order of appointment or at the earliest date the court is able to determine the appropriate rates and fees and prior to the guardian ad litem billing for his or her services. This section shall apply except as provided by local court rule." RCW 11.88.097.

"The guardian ad litem shall receive a fee determined by the court. The fee shall be charged to the alleged incapacitated person unless the court finds that such payment would result in substantial hardship upon such person, in which case the county shall be responsible for such costs: PROVIDED, That the court may charge such fee to the petitioner, the alleged incapacitated person, or any person who has appeared in the action; or may allocate the fee, as it deems just. If the petition is found to be frivolous or not brought in good faith, the guardian ad litem fee shall be charged to the petitioner. The court shall not be required to provide for the payment of a fee to any salaried employee of a public agency." RCW 11.88.090(10).

Current guidelines provide, and it stands to reason, that training must prepare GALs to be efficient in the performance of their duties, and to inform those with whom they interact as to the limits of their authority in every case. The Committee heard that, in some cases, GALs appeared to lack sufficient time to perform a thorough investigation. One interviewee identified the cases where this occurred as “county paid cases.”

County rates of pay are very low compared to the prevailing hourly rates charged by the attorneys and other professionals who are GALs. For example, in King County, the hourly rate is \$45. Current practice is for the court to set a maximum of \$300 per case in most cases in the initial order, excluding costs, unless the court approves additional fees prior to the hearing on the petition.<sup>12</sup> In Pierce County, the rate is \$75, with a maximum of \$750 per case, including all costs. Snohomish, Chelan and Kitsap Counties all allow hourly rates of \$50. Snohomish County allows a maximum of \$600 per case; Kitsap sets the maximum at \$500.

GALs applying for recertification consistently complain that the cost of a full day of refresher training is not justified by the compensation they receive for the work they are appointed to do, given that there are generally so few appointments, with up to half of them county paid.

#### **4. Current Model Guardian ad Litem Training Program**

The guidelines under which the program presently operates were established in 1997 as the Title 11 RCW Model Guardian ad Litem Training Program (the “Training Program”). The Training Program’s components are [\(i\) Training Program Standards; \(ii\) Training Program Summary of Statutory Requirements of Guardians ad Litem, \(iii\) Training Program Goals and Objectives; and \(iv\) the written Guardian ad Litem Handbook \(the “Handbook”\).](#)

Although the statute calls for an advisory committee to be convened every two years to review the Training Program, no such review has been done until now. The Handbook has been reviewed and revised over the years in the context of annual training made available by the King County Bar Association. The most recent version of the Handbook is the *Title 11.88 RCW Guardianship Guardian ad Litem Handbook, May 2010 Edition*, available through the King County Bar Association.

A summary of the program follows.

##### **1. Purpose:**

*The purpose of the Training Program is to “assist the courts, the training providers, and the training participants to conform with the Title 11 RCW requirement that all candidates applying for registration as qualified guardians ad litem shall have*

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<sup>12</sup> King County has a full time GAL on staff to handle county paid cases. Nonetheless, the caseload is such that GALs are regularly appointed from the registry for these cases as well. Recognizing the court’s statutory mandate to set a maximum rate of compensation in the initial order (RCW 11.88.097), GALs interviewed point out that the cost of presenting a motion for an increase of fees in advance of the hearing, which cannot be charged, is a disincentive from requesting the increase, effectively limiting their income.

*satisfactorily completed training to attain essential minimum qualifications to act as guardians ad litem.”*

## **2. Curriculum:**

*The Training Program provides for two “units”, each to consist of at least 6 to 7 and one-half hours of instruction.<sup>13</sup> Unit One is intended as initial instruction for individuals who have no previous experience as GALs. The curriculum for Unit One is to include, at a minimum:*

- *The roles, duties, and limits of authority of the guardian ad litem as defined by Washington State Law (RCW 11.88);*
- *The consideration of alternatives to guardianship;*
- *The determination of functional capacity in accordance with the guardianship statutes;*
- *Due process and the rights of the alleged incapacitated person;*
- *Information about impairments, local services and resources; and*
- *Terminology*

*Unit Two, the “advanced unit”, is intended as both a continuation of the initial instruction for first-time guardians ad litem, and as an annual update for GALs who wish to be recertified to continue to serve. The curriculum for Unit Two is to include:*

- *Expanded information about impairments, available local resources, and community resources;*
- *A review of changes in the law;*
- *Interactive problem-solving exercises where the attendees learn by doing; and*
- *Other relevant topics, such as:*
  1. *Discussion of diversity issues: relevant locally selected issues which facilitate and foster awareness of and sensitivity to local area socio-economic, ethnic, cultural and religious differences and the role of cultural norms in decision making.*
  2. *Local court procedures [Examples: Use of court approved forms, complex trial issues, payment issues, court calendars, GAL qualifications, appointments and notice, court registry policies and procedures]*
  3. *Advanced communication skill building [Example: Conducting effective interviews with persons who are non-verbal and persons who have developmental disabilities, deafness or other hearing impairment.].*

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<sup>13</sup> Complete goals and objectives to be reflected in the Handbook appear at pages 25-34 of the Training Program.

*Participation in interactive problem-solving group exercises is required of all attendees.*

*The Training Program provides that training may be offered by videotape, provided that the videotape is presented in a group setting and that there are qualified moderators present to facilitate interactive exercises. If used, any videotape is to be updated as needed to ensure the training remains current.*

*Sign-in/sign-out procedures are provided for, to verify attendees' participation in training.*

3. *Faculty:*

*The Training Program provides that faculty shall have a minimum of five years' experience and that their experience shall be relevant to guardianship and adult education, that they be effective public speakers, and that they be familiar with the duties of GALs, have experience as GALs, or be persons with disabilities or who have experience working with people with disabilities.*

5. **Description of current practices**

A two-day program is presented each year in Seattle by the King County Bar Association. King County's program is the only one that offers both Unit One and Unit Two training. The 2010 program was attended by GALs and aspiring GALs from 20 counties. Attendees at the Unit Two training are both first-time applicants and experienced GALs intending to apply for re-certification.

The King County Bar Association updates the Handbook every other year and distributes the Handbook. Unit Two attendees receive an electronic version of the updated Handbook. In addition, materials provided by Unit Two speakers are provided to attendees in the counties where the programs are presented.

The Unit Two requirement may be satisfied by annual recertification, or "refresher" courses in Spokane, Whatcom, Benton and Kitsap Counties. The fact that training is not more broadly available is a source of irritation and even hardship, for some GALs, and may be discouraging experienced GALs from continuing to serve. The Committee received numerous requests for less frequent recertification training (every other year), reduced hours of refresher training (one-half day instead of a full day), and especially for the availability of video training, particularly for the Unit Two component, coupled with a flexible time period for viewing the video.<sup>14</sup>

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<sup>14</sup> As noted, although the Training Program allows for video presentations, the requirement is that they be presented in a group setting, with instructors present. The Committee was not advised that any such programs presently exist.

At least one small county reported that its GALs do not receive annual re-certification training, or that the reporting party in the county was not aware of whether they received such training, in spite of the requirement of the Training Program that GALs receive annual training and that they be re-admitted each year.

No county reported a substantive evaluation process other than completion of the training requirements prior to certification of a GAL.

### III. Summary of Findings and Issues from Data Analysis

1. **Issue: Is the current format of two ays (units) for initial training, one day (unit) of refresher training sufficient and effective?**

Input from existing GALs and representatives of consumer groups strongly indicates that there is a need for more variety in the practical aspects of attending both the initial training and the annual refresher training. Some experienced GALs find training repetitive and not useful. They express frustration with the amount of time taken from their daily work vis-à-vis the benefit of the training when they get few appointments, some of which are low-pay.

Other input indicates that there is a need for more in-depth training in specific areas. Among these are legal procedures (for non-lawyers), working across cultures, investigative techniques, the duties of guardians, the organization and operations of DSHS, mental health and the civil commitment process, the nature of Alzheimer's, the abuse and exploitation of vulnerable adults, and the ability to identify and isolate areas of capacity and incapacity in individuals with developmental disabilities. Feedback was received that GALs need additional training in how to determine incapacity, including the ability to identify residual capacities that could lend themselves to less restrictive alternatives and a broader range of less restrictive alternatives.

Input from judicial officers indicates report writing skills could be improved. Some GALs interviewed informally expressed their view that they would benefit from more formal training in investigative techniques. Input from advocates who work with persons with disabilities and with individuals in multicultural communities, reflecting interviews with clients, indicates that GALs the clients have encountered sometimes (i) do not know how to work through interpreters, (ii) do not want to work on cases involving cultural issues in addition to the presenting disability issues because the public pay scale does not sufficiently compensate them, and (iii) are not aware of questions affecting communication or attitudes that interfere with the GAL's ability to get the information needed.

Experienced GALs expressed a strong desire to be able to meet recertification requirements by attending less frequent trainings, attending other continuing education seminars in relevant areas, or participating in trainings via webinars or by viewing videotaped trainings.

The Committee concluded that a restructuring of training for GALs seeking recertification was advisable.

2. **Issue: Is the current training adequately accessible to Guardians Ad Litem across the state?**

Input received from GALs and County Registry Managers reflects the need for greater accessibility to training for interested applicants in rural or smaller counties. The Committee received feedback that applicants interested in the training find it prohibitively expensive to travel to King County to attend a two day training, due to travel costs and time apart from business or family obligations. The Committee received many requests for a video option for training, especially from GALs in smaller counties or in counties where no refresher course is



offered. There is also a need for training to reflect the unique needs and practices of individual counties.

The current Training Program provides for video training in an interactive group setting only. The Committee's recommendation responds to the concerns expressed by eliminating the requirement of a group setting, although not all members favored this measure.

3. **Issue: Should non-attorneys be excluded from qualifying as Title 11 Guardians Ad Litem?**

The Committee received input from experienced attorney GALs that non-attorney GALs are not adequately trained or skilled in legal procedures. Non-attorney GALs also expressed the need for more training in legal procedures and issues. These needs impact the content and format of the training provided, as some attorney GALs express frustration that presentations regarding legal issues aimed at non-attorneys during refresher courses are too basic. Moreover, in some complex cases or cases that proceed to trial, non-attorney GALs might require representation by an attorney, resulting in increased costs to the proceeding. On the other hand, eliminating non-attorneys from qualification as GALs would exclude the expertise other professionals bring to the court in evaluating incapacity or addressing cultural issues. Moreover, such exclusion would adversely impact some smaller counties that lack a pool of attorney GALs.

In the light of these considerations, the Committee discussed at length a proposal that non-attorneys be barred from being certified as GALs. Ultimately almost all members agreed that the advantages of the diverse backgrounds of non-attorney GALs in areas that are relevant to the practice outweigh the disadvantages of not having legal training, which can be met by (a) additional training, and (b) appointment of attorney GALs in cases where it appears likely from the outset that specific legal expertise will be needed.

Therefore, the consensus of the Committee is that non-attorneys should not be excluded from qualifying as Title 11 Guardians Ad Litem, but that additional training in legal procedures specifically related to guardianships be required of non-attorneys, and that non-attorneys be encouraged to decline appointments in cases where it is evident from the petition that legal procedures such as restraining orders, or trial, will be involved.

In King County, current procedures for presenting a petition or motion requesting appointment of a GAL make it impractical to consult with a prospective GAL in a timely manner as to the suitability of appointing that GAL, prior to appointment. As a result, unless court personnel are personally familiar with the next GAL on the rotation, non-attorney GALs may be just as likely as attorney GALs to be appointed in cases requiring legal expertise.

## IV. Recommendations

After the information gathering in which the Committee members engaged, the Committee met seven times across approximately six and one-half months, in person, telephonically, and via teleconferencing to discuss and come to agreement on the following recommendations:

**1. The existing Two Unit format should be retained and identified as Initial Training of first-time Guardians Ad Litem**

- a. To meet the concerns expressed to the Committee, the Initial Training should include more in-depth teaching about the investigation process, multicultural values and norms, including working with interpreters, and the types of incapacitating conditions that are encountered.
- b. The second day of the two-day format for Initial Training should include breakout sessions focusing on specialized areas, such as legal procedure (for non-attorneys or attorneys who are new to guardianships), an expanded definition of less restrictive alternatives, in particular with respect to persons with disabilities, trust and financial issues, investigative techniques, the mental health treatment and commitment processes, issues related to the prevention, identification and response to abuse and exploitation of vulnerable adults . It should also include an interactive program on application of the material presented during breakout sessions as well as legislative and case law updates.
- c. The effectiveness of the Initial Training should be evaluated using a self-evaluation tool that GALs seeking certification should complete within a specified time period following the training. GALs should be required to report the results of the evaluation as part of the application to be certified. \*
- d. Additional training solely in legal procedures specifically related to guardianships (6 hours) should be required of new, non-attorney GALs, beyond the two-day Initial Training. \*
- e. Basic uniform training materials for the Initial Training should be available statewide. The Guardianship Manual and any updated materials should be available on-line and in hard copy. Training also should include information regarding local rules, practices and resources.
- f. All levels of training and mentoring of GALs should emphasize (i) the need for a common sense approach to a GALs work and (ii) best practices, including knowing when to decline an appointment. Court procedures need to be designed to facilitate the opportunity for a GAL to decline an appointment in a case that calls for specialization such as legal or other expertise that he or she does not have.
- g. Training should emphasize making information regarding resources that may be useful to GALs more readily available. Resource referral information should be available on a single website, with links to resources, where possible. Referrals should include resources such as DSHS' AAA agencies and the Certified Professional Guardians' website.

h. Since attorneys for alleged incapacitated persons are appointed from the GAL list in many counties, GAL training should include a breakout session available to attorneys during Unit Two of the Initial Training, focusing on guardianship advocacy, and the difference between representing an AIP's best interests as GAL and representing the AIP's wishes as an advocate. \*

i. GALs who do not qualify as "Experienced GALs" (see below) should attend Unit Two of the Initial Training in order to be re-certified, as is the current practice.

**2. In order to be recertified, Experienced GALs should be required to attend either (i) an advanced training course (a "Recertification Course"), which should be held annually, or (ii) Unit Two of the Initial Training, or (iii) 7 hours of relevant continuing education courses to provide training in specialized areas.**

a. GALs with at least 5 years' experience and at least 10 completed appointments (cumulative, not annual) ("Experienced GALs") should qualify for these options. If feasible or desirable, each county could design and present its own Recertification Course. In all cases, recertification training should include legislative and case law updates relevant to guardianship proceedings.

b. "Continuing education" could include CLEs for attorneys as well as continuing professional education in other areas where GAL knowledge is needed, such as mental health, particular disabilities and conditions (Alzheimer's, developmental disabilities), additional information on alternatives to guardianship, prevention, identification and response to abuse and exploitation of vulnerable adults, and trainings for Certified Professional Guardians. A mechanism for selecting the courses and monitoring attendance needs to be provided. The Standing Committee recommended in Section 3(b) below could fill this function.

c. Unit Two of Initial Training should be available to Experienced GALs in an interactive statewide format via webinar or video streaming for accessibility and uniformity. Updates of local rules and practice specific to each county should be provided to attendees from those counties through written materials to supplement this format, if they are not addressed in the sessions being transmitted. \*

**3. Administration of the GAL program should be revised, to increase the effectiveness of the services provided to the Courts by Guardians ad litem.**

a. A state-wide Guardian Ad Litem Registry Manager position should be established to certify new GALs and to monitor the recertification of existing GALs. \*

b. A Standing Committee, including members representing a diversity of disciplines and perspectives, should be established for the purpose of making periodic reviews and recommendations regarding the initial training and recertification process, and to identify and develop additional training modules. This committee should include, and/or

consult with, individuals with diverse perspectives and from diverse disciplines in doing their work.

c. A statewide data base of GALs should be created to track appointments and cases, characterizing cases (public vs. private pay, vulnerable adult, trial or not, dismissal or appointment of guardian or limited guardian) and training. The data base should be designed to identify any special skills (language, financial, medical, legal etc.) a GAL possesses. \*

d. Greater consideration should be given to the appointment of the appropriate GAL in a particular case. Petitioners should advise the Court of any unique issues in a case and the Court should give consideration to the skills required of the GAL, based on the allegations in the petition, including the appointment of attorney GALs in cases where litigation or other procedures appear likely. Judicial officers should have the data base recommended above available to assist in making appointments of appropriately qualified GALs.

e. A mentoring program should be established or reinforced for new GALs to access information and suggestions from experienced GALs. This could include development of a statewide listserv for exchange of information and expertise.

f. Information should be provided to parties and interested others in guardianship proceedings regarding how to file complaints or grievances about GALs. County Registry Managers are strongly encouraged to publish local GAL grievance procedures broadly, using brochures, web pages and other accessible media to ensure that grievance procedures are simply, concisely, and understandably articulated

g. The training should include a panel of people living with disabilities who could discuss issues related to guardianship from the perspective of individuals with disabilities. The panel would help raise awareness of bias and stereotypes regarding disability and incapacity. The existing Certified Professional Guardian training curriculum already includes such a panel that could serve as a model for this training panel.

## V. Conclusion

Making the system better serve our state's residents is a task of the highest priority. In an ever-evolving and challenging justice system within an equally evolving society, Washington's statutory scheme not only allows, but actually requires periodic review of the rules, guidelines, and system for training GALs.

With the Advisory Committee's recommendations, informed by the review the Committee has undertaken, Washington will be able to address the training of current and prospective GALs more efficiently and effectively to ensure that GALs are more prepared for the important role they serve in identifying the strengths and needs, protecting the rights, and advancing the best interests of some of our most vulnerable residents.

# **Appendix D**

## **Sample Documents**



Guardianship Forms:

<https://www.kingcounty.gov/courts/superior-court/ex-parte-probate/guardianship-forms.aspx>





IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON  
IN AND FOR THE COUNTY OF KING

In the Guardianship of: \_\_\_\_\_ ) Case No.:  
 )  
 ) GUARDIAN AD LITEM'S  
 ) STATEMENT OF  
 ) QUALIFICATIONS  
 ) RCW 11.88.090(3)  
 )  
 ) (ST)  
An Alleged Incapacitated Person.

## GUARDIAN AD LITEM STATEMENT OF QUALIFICATIONS

This statement is presented as required by RCW 11.88.090(3):

A. Requisite areas of background, knowledge, training, and experience are detailed below:

1. Level of formal education: \_\_\_\_\_
2. Training related to Guardian ad Litem duties: \_\_\_\_\_
3. Number of years' experience as Guardian ad Litem: \_\_\_\_\_
4. Number of prior appointments as Guardian ad Litem (*as of today's date*):
  - (a) This County: \_\_\_\_\_
  - (b) Other Counties: \_\_\_\_\_
5. Criminal history (as defined in RCW 9.94.A.030): \_\_\_\_\_
6. Knowledge or experience in needs of:
  - (a) Impaired elderly: \_\_\_\_\_
  - (b) Persons with physical disabilities: \_\_\_\_\_
  - (c) Persons with mental illness: \_\_\_\_\_
  - (d) Persons with developmental disabilities: \_\_\_\_\_
  - (e) Other incapacitated persons: \_\_\_\_\_
7. Familiarity and experience with legal procedures involving Guardianships:  
\_\_\_\_\_

8. Familiarity and experience in dealing with the provisions of Chapter(s) 11.88 and 11.92 RCW: \_\_\_\_\_

B. I have been removed as a Guardian ad Litem:

1. ☐ Yes

☐ No

2. If yes, please explain each instance on a page attached hereto.

C. I have successfully completed the model Guardian ad Litem training program of this County on \_\_\_\_\_[month/day], \_\_\_\_\_[year] at \_\_\_\_\_.

I DECLARE UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF WASHINGTON THAT THE FOREGOING IS TRUE AND CORRECT.

Signed at \_\_\_\_\_, Washington, \_\_\_\_\_, \_\_\_\_200\_\_.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Address

\_\_\_\_\_  
Telephone/Fax Number

\_\_\_\_\_  
City, State, Zip Code

\_\_\_\_\_  
Email Address

## **GUARDIAN AD LITEM FEE SCHEDULE**

**November, 2004.**

## **GUARDIAN AD LITEM FEE SCHEDULE**

I am an attorney, in practice in the area of Elder Law since 1993.

My usual hourly rate is \$200.00;

I have reduced my fees in the past on a sliding scale, depending upon the situation and circumstances facing my client.

I reduce my fee to \$45.00 per hour in county paid Guardian ad Litem cases.

### **Professional complaints.**

There have been no professional complaints, investigations, or disciplinary actions, lawsuits or professional liability claims taken against me, and I have not been removed as Guardian ad Litem in any case.

### **Claims/litigation**

There have been no claims nor litigation commenced involving allegations of improper fee charges, charges of fraud, theft, or other forms of dishonesty or professional malpractice or misconduct against me.

**Conflict of interest: \* (I change the information in this category for each appointment; this is an example of one I have frequently used in the past.)**

Prior contact: the proposed guardian is a professional guardian of whom I have knowledge and who I have recommended to serve as guardian in a prior guardianship matter. I have had no prior contact with the Alleged Incapacitated Person or their family.

**Signed this the \_\_\_\_ day of November, 200\_\_\_\_ in Seattle, Washington.**

---

**Jane Doe**  
**WSBA#**



IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON  
IN AND FOR THE COUNTY OF KING

In the Guardianship of: \_\_\_\_\_, ) Case No.:  
 )  
 ) VERIFIED PETITION TO APPOINT  
 ) ATTORNEY FOR ALLEGED  
 ) INCAPACITATED PERSON  
 ) (PT)  
An Alleged Incapacitated Person. )

COMES NOW \_\_\_\_\_, and petitions the Court as follows:

- 1. Relief Requested.** Entry of an order appointing \_\_\_\_\_ as the attorney for the Alleged Incapacitated Person in the above-entitled action.
- 2. Statement of Facts.** \_\_\_\_\_ is the Guardian ad Litem in this matter. \_\_\_\_\_ is an attorney licensed to practice law in the State of Washington. The Alleged Incapacitated Person has requested that the Court appoint \_\_\_\_\_ to represent him/her in this Guardianship action. In the event the assets of the Alleged Incapacitated Person are not sufficient, the attorney should be paid at County expense pursuant to court order, presented in ex-parte to a court commissioner or judge, prior to incurring expenses and fees.
- 3. Evidence Relied Upon.** The statements contained in this Petition and the entire record and file in this matter.

**4. Authority.** RCW 11.88.045.

I DECLARE UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE  
STATE OF WASHINGTON THAT THE FOREGOING IS TRUE AND CORRECT.

Signed at \_\_\_\_\_, Washington, \_\_\_\_\_, \_\_\_\_200\_\_.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Address

\_\_\_\_\_  
Telephone/Fax Number

\_\_\_\_\_  
City, State, Zip Code

\_\_\_\_\_  
Email Address

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON  
IN AND FOR THE COUNTY OF KING

In the Guardianship of:

\_\_\_\_\_ ,

) Case No.:

)

) MEDICAL/PSYCHOLOGICAL  
) REPORT

)

(MDR)

An Alleged Incapacitated Person.

**This form is required by Washington state law for all Guardianships. Your assistance in completing this form on or before \_\_\_\_\_ is appreciated.**

**(Please type or print clearly.)**

I have been chosen by the Guardian ad Litem in the above matter to examine and interview \_\_\_\_\_, and I submit the following report:

My name, title, address, telephone number are as follows:

\_\_\_\_\_.

**A.** My education and experiences that are pertinent to the type of disorder or incapacity involved in this case: *(a resume/curriculum vitae may be attached.)*.

**B.** Date of most recent examination of the Alleged Incapacitated Person (most recent exam must be within 30 days of date of this request): \_\_\_\_\_

**C.** A summary of the relevant medical functional, neurological, psychological, or psychiatric history of the Alleged Incapacitated Person as known to me:



**D.** My findings regarding the Alleged Incapacitated Person's capacity to manage personal or financial matters are: \_\_\_\_\_.

**E.** The following medication(s) are currently prescribed to the Alleged Incapacitated Person for the following condition(s).

Medication: \_\_\_\_\_ Condition: \_\_\_\_\_

Medication: \_\_\_\_\_ Condition: \_\_\_\_\_

Medication: \_\_\_\_\_ Condition: \_\_\_\_\_

**F.** The effect of these current medications on the Alleged Incapacitated Person's ability to understand or participate in the Guardianship proceedings is:

\_\_\_\_\_.

**G.** My opinion as to the specific assistance the Alleged Incapacitated Person needs *(including items such as household chores, managing finances)*:

\_\_\_\_\_.

**H.** I have also met or spoken with the following individuals regarding the Alleged Incapacitated Person: \_\_\_\_\_.

I DECLARE UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF WASHINGTON THAT THE FOREGOING IS TRUE AND CORRECT.

Signed at \_\_\_\_\_, Washington, \_\_\_\_\_, \_\_\_\_200\_\_.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Address

\_\_\_\_\_  
Telephone/Fax Number

\_\_\_\_\_  
City, State, Zip Code

\_\_\_\_\_  
Email Address



## THURSTON SAMPLE OF PUBLIC GAL REPORT

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON  
IN AND FOR THE COUNTY OF THURSTON

In the Guardianship of: \_\_\_\_\_ ) Case No.: \_\_\_\_\_  
 \_\_\_\_\_ )  
 \_\_\_\_\_ , \_\_\_\_\_ ) REDACTED REPORT OF  
 \_\_\_\_\_ ) GUARDIAN AD LITEM  
 \_\_\_\_\_ )  
 An Alleged Incapacitated Person. \_\_\_\_\_ )

## RECOMMENDATIONS

**I (do not) recommend that the Court appoint \_\_\_\_\_, as the (limited) guardian of the person and (limited) guardian of the estate of the AIP.**

**I (do not) recommend a bond or blocked account because the assets of the AIP are**

**I recommend that reports be filed on a \_\_\_\_\_ basis.**

**I recommend that the AIP retains (does not retain) the right to vote.**

### 1. Appointment:

Date of Appointment:

Date of Service of Copy of Petition on Guardian ad Litem:

Date Guardian ad Litem's Statement of Qualifications was filed & served:

Date of Service of Notice of Guardianship Petition on AIP:

I attest that I am free from influence by anyone interested in the results of these proceedings and that I have the requisite knowledge, training, and expertise to perform the duties required by statute. My Statement of Qualifications is on file with the Court. I attest that I am on the Guardian ad Litem Registry for Thurston County and am qualified to serve as Guardian ad Litem in guardianship matters.

**2. Precipitating Issues:**

**3. Personal Information Regarding Alleged Incapacitated Person:**

Age:

Current Residence:

**4. Medical/Psychological Report:** I obtained a Medical/Psychological Report from \_\_\_\_\_ on \_\_\_\_\_.

**INVESTIGATION**

**5. Written Material Reviewed:** I have reviewed the Medical/Psychological Report, \_\_\_\_\_, and the pleadings and records on file.

**6. Individuals Interviewed:** During the course of my investigation, I interviewed the following person(s):

<u>Name</u>	<u>Date(s) of Contact</u>	<u>Relationship to AIP</u>
-------------	---------------------------	----------------------------

**7. Evaluation of Proposed Guardian:**

Dates of Contact Between GAL and Proposed Guardian:

Identity and Contact Information of the Proposed Guardian:

Name:

Mailing Address:

Telephone Number: (CPG's only)

Fax Number:

Email Address:

If Guardian is Certified,  
Provide Certification No.:

**8. Alternatives to Guardianship:**

**9. Recommendation as to Appointment of Guardian: .**

**10. Duration and Limitations:**

**11. Recommendation Regarding AIP's Right to Vote:**

**12. Recommendation Regarding Right to Jury Trial:**

**13. Recommendation Regarding Appointment of Independent Counsel:**

**14. Recommendation Regarding Bond/Annual Reports:**

☐ The Court should set bond in the amount of \$\_\_\_\_\_.

☐ The Court should block or restrict access to the following assets:

\_\_\_\_\_.

☐ The Guardian should file reports

☐ every year

☐ every other year

☐ every third year

☐ an annual report for the first year and then every third year

**15. Recommendation Regarding Presence of AIP at Hearing:**

The presence of the Alleged Incapacitated Person

☐ should

☐ should not

be waived. \_\_\_\_\_ is

☐ able

☐ unable

to attend the hearing.

**16. Other Recommendations:**

**17. Recommendation as to Guardian ad Litem's Continuing Involvement in Future Proceedings:**

I recommend that the Guardian ad Litem

☐ be

☐ not be

involved in future proceedings in this matter.

**18. Individuals Who Should Be Advised of Their Right to Request Special Notice of Proceedings Pursuant to RCW 11.92.150:**

Name, Title and Address

Relationship to Alleged Incapacitated  
Person

**19. Guardian ad Litem Compensation:**

I DECLARE UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE  
STATE OF WASHINGTON THAT THE FOREGOING IS TRUE AND CORRECT.

Signed at \_\_\_\_\_, Washington, \_\_\_\_\_, 200 \_\_\_\_.

---

Signature of Guardian ad Litem

---

Printed Name of Guardian ad Litem

---

Address

---

Telephone/Fax Number

---

City, State, Zip Code

---

Email Address

THURSTON: SAMPLE OF SEALED GAL REPORT

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON  
IN AND FOR THE COUNTY OF THURSTON

In the Guardianship of:

\_\_\_\_\_

An Alleged Incapacitated Person.

) Case No.:

)

) REPORT OF GUARDIAN AD  
) LITEM

)

) (RTGAL)

### **RECOMENDATIONS**

**I (do not ) recommend that the Court appoint \_\_\_\_\_, as the (limited) guardian of the person and (limited) guardian of the estate of the AIP.**

**I (do not) recommend a bond or blocked account because the assets of the AIP are \_\_\_\_\_.**

**I recommend that reports be filed on a \_\_\_\_\_ basis.**

**I recommend that the AIP retains (does not retain) the right to vote.**

#### **1. Appointment:**

Date of Appointment:

Date of Service of Copy of Petition on Guardian ad Litem:

Date Guardian ad Litem's Statement of Qualifications was filed & served:

Date of Service of Notice of Guardianship Petition on AIP:

I attest that I am free from influence by anyone interested in the results of these proceedings and that I have the requisite knowledge, training, and expertise to perform the duties required by statute. My Statement of Qualifications is on file with the Court. I attest that I am on the Guardian ad Litem Registry for King County and am qualified to serve as Guardian ad Litem in guardianship matters.

#### **2. Precipitating Issues:**

#### **3. Personal Information Regarding Alleged Incapacitated Person:**

Date of Birth (*optional*):

Age:

Current Residence:

Phone Number:

**4. Medical/Psychological Report:** I obtained a Medical/Psychological Report from \_\_\_\_\_ on \_\_\_\_\_, 200\_\_. (*NOTICE: The Medical/Psychological Report should be filed separately with the Court under seal, NOT as an Exhibit to this Report.*)

## 5. Meeting with AIP:

Date(s) of Meetings with Alleged Incapacitated Person	Location of Meeting	Other Persons Present ( <i>GAL must meet alone at least once with AIP.</i> )

Agreement or objection to appointment of a Guardian:

Reaction to the proposed Guardian:

Right to counsel:

Preferences regarding choice of counsel:

Right to a jury trial:

*(Notes from the interview.)*

## INVESTIGATION

**6. Written Material Reviewed:** I have reviewed the Medical/Psychological Report, \_\_\_\_\_, \_\_\_\_\_, and the pleadings and records on file.

**7. Individuals Interviewed:** During the course of my investigation, I interviewed the following person(s):

<u>Name</u>	<u>Date(s) of Contact</u>	<u>Relationship to AIP</u>
-------------	---------------------------	----------------------------

Investigation re the AIP's ability to manage health, safety, nutrition and housing.

Health: *(Notes from interviews)*

Housing: *(Notes from interviews)*

Nutrition: *(Notes from interviews)*

Safety: *(Notes from interviews)*

Investigation re: the AIP's ability to manage finances: *(Notes from interviews)*

Investigation re: who is the appropriate guardian for the AIP: *(Notes from interviews)*

**8. Nature, Cause and Degree of Incapacity - Functional Limitations:** The following



is a description of the nature, cause, and degree of incapacity, and the basis upon which this judgment is made:

Medical Diagnosis and Cause:

Degree of Incapacity:

**9. Evaluation of Proposed Guardian(s):**

Dates of Contact Between GAL and Proposed Guardian(s):

Identity and Contact Information of the Proposed Guardian(s):

Name:

Mailing Address:

Telephone Number:

Fax Number:

Email Address:

If Guardian is Certified,  
Provide Certification No.:

Description of Steps Proposed Guardian Has, or Intends, to Take to Meet the Needs of the AIP:

**10. Alternatives to Guardianship:**

**11. Degree of Assistance Required:**

**12. Recommendation as to Appointment of Guardian:**

**13. Duration and Limitations:**

**14. Recommendation Regarding AIP's Right to Vote:**

**15. Recommendation Regarding Right to Jury Trial:**

**16. Recommendation Regarding Appointment of Independent Counsel:**

**17. Estimate of Estate.** The assets, funds, and income of AIP are as follows:

	<u><b>Value (\$)</b></u>
Real property	\$
Stocks, Mutual Funds and Bonds	\$
Mortgages and Notes	\$
Bank Accounts	\$

Furniture and Household Goods	\$
Other Personal Property	\$ _____
<b>Total Approx. Value of Assets</b>	<b>\$</b>
 Social Security Benefits	 \$
Washington State Assistance	\$
Other	\$ _____
<b>Total Approx. Monthly Income</b>	<b>\$</b>

**18. Recommendation Regarding Bond/Annual Reports:**

☐ The Court should set bond in the amount of \$ \_\_\_\_\_.

☐ The Court should block or restrict access to the following assets:

\_\_\_\_\_.

☐ The Guardian should file reports

☐ every year

☐ every other year

☐ every third year

☐ an annual report for the first year and then every third year

///

///

**19. Recommendation Regarding Presence of AIP at Hearing:**

The presence of the Alleged Incapacitated Person

☐ should

☐ should not

be waived. \_\_\_\_\_ is

☐ able

☐ unable

to attend the hearing. *(If unable to attend, please explain the reason(s)):*

\_\_\_\_\_.

The following special arrangements should be made for the hearing (*i.e., removal of hearing site to residence of Alleged Incapacitated Person, provision for hearing assistive devices, etc.*).

**20. Other Recommendations:**

**21. Recommendation as to Guardian ad Litem's Continuing Involvement in Future**

**Proceedings:**

I recommend that the Guardian ad Litem

[    ] be

[    ] not be

involved in future proceedings in this matter.

**22. Individuals Who Should Be Advised of Their Right to Request Special Notice of Proceedings Pursuant to RCW 11.92.150:**

Name, Title and Address

Relationship to Alleged Incapacitated  
Person

///

///

///

**23. Guardian ad Litem Compensation:**

I DECLARE UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE  
STATE OF WASHINGTON THAT THE FOREGOING IS TRUE AND CORRECT.

Signed at \_\_\_\_\_, Washington, \_\_\_\_\_, \_\_\_\_ 200 \_\_\_\_.

---

Signature of Guardian ad Litem

---

Printed Name of Guardian ad Litem, WSBA#

---

Address

---

Telephone/Fax Number

---

City, State, Zip Code

Email Address

WHATCOM COUNTY: SAMPLE PUBLIC GAL REPORT

**SUPERIOR COURT OF THE STATE OF WASHINGTON  
FOR WHATCOM COUNTY**

---

In re Matter of the Guardianship of: JANE DOE, Alleged Incapacitated Person.	No.  <b>GUARDIAN AD LITEM REPORT RCW 11.88.090</b>
--	--

---

I was appointed as the Guardian ad Litem in the above matter on the \_\_\_\_ day of \_\_\_\_\_, 200\_\_\_\_ and I received notice of my appointment on the \_\_\_\_ day of \_\_\_\_\_, 200\_\_\_\_. I submit my Report to the Court pursuant to RCW 11.88.090 as follows:

**1. Background:** I attest to the Court that I am free from influence from anyone interested in the result of these proceedings and that I have the requisite knowledge, training, or expertise to perform the duties required by the statute. A copy of my Statement of Qualifications as required by the statute is on file in this matter. I attest that I am on the Guardian ad Litem Registry for Whatcom County and am qualified to serve as Guardian ad Litem in guardianship matters.

**2. Investigation.**

**A. Materials or Information Reviewed:** As part of my investigation, I obtained or reviewed the following:

*(e.g., Court File, APS records, BPD records, SJH nursing notes, etc.)*

**B. Individuals Contacted:** As part of my investigation, I contacted the following individuals, either personally or by telephone:

*(names of collateral contacts)*

**C. Tests Conducted or Reviewed:** I have obtained a written report according to RCW 11.88.045 from **John Smith, M.D.**, In addition, I have obtained or reviewed the following:

*(e.g., Neuropsychological Report from Dr. Sigmund Freud, Chemical Dependency Evaluation by Dr. Tim Leary, etc.)*

**D. Capacity/Incapacity:** Specific areas of capacity and incapacity are included in sealed record.

**3. Conclusions and Recommendations:** Based upon the foregoing investigation, I submit this public written Report to the Court pursuant to RCW 11.88.090(5)(e):

*(e.g., The AIP is in need of a(full/limited) guardianship of the( person and/or estate), and Mary Poppins of Poppins and Hyde, Certified Professional Guardians, Inc. is a proper person to serve as such –*

*The AIP is not in need of a guardianship at this time.*

**4. Appointment of Counsel:** Within five days after meeting with the alleged incapacitated person, I (did not advise/advised) the court of the need for appointment of counsel *and give rationale. If counsel was appointed, then say so and give name.*)

**5. Guardian ad Litem Fee:** I respectfully ask the Court to approve a Guardian ad Litem reimbursement in the sum of \$\_\_\_\_\_, representing fees, based upon the attached billing.

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 200\_\_.

---

**Name of GAL**  
Guardian ad Litem for  
**Name of AIP**

WHATCOM COUNTY: SAMPLE SEALED GAL REPORT

**SUPERIOR COURT OF THE STATE OF WASHINGTON  
FOR WHATCOM COUNTY**

---

---

In re Matter of the Guardianship of:

**JANE DOE,**  
Alleged Incapacitated Person.

**No. 03-4-00408-5**

**GUARDIAN AD LITEM REPORT**

---

---

I was appointed as the Guardian ad Litem in the above matter on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ and I received notice of my appointment on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_. I submit my Report to the Court pursuant to RCW 11.88.090 as follows:

1. Background: I attest to the Court that I am free from influence from anyone interested in the result of these proceedings and that I have the requisite knowledge, training, or expertise to perform the duties required by the statute. A copy of my Statement of Qualifications as required by the statute is on file in this matter. I attest that I am on the Guardian ad Litem Registry for Whatcom County and am qualified to serve as Guardian ad Litem in guardianship matters.
2. Investigation: I initially met and consulted with the alleged incapacitated person on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_, and explained in language that I believed she could reasonably be expected to understand, the substance of the Petition, the nature of these proceedings, her right to contest the Petition, the identification of the proposed guardians or limited guardian, the right to a jury trial on the issue of alleged incapacity, the right to independent legal counsel as provided by RCW 11.88.045, and the right to be present in Court at the hearing on the Petition. (need to describe here if the AIP was able to meaningfully communicate on the

subject, and if she had any input. May need to say that she objected to the guardianship and expressed an affirmative desire to be represented by counsel, or that she would benefit by representation of counsel, or that she was unable to meaningfully communicate at all on any of these subjects. It is my recommendation that she (not be/be) present at the hearing on the Petition.

I have also obtained a written report according to RCW 11.88.045 from John Smith, M.D., which has been filed in this proceeding. I have obtained the following additional oral or written reports from other qualified professionals which I deem necessary to permit me to complete this Report: Here list all other professionals involved, i.e. special ed teacher, DDD worker, etc.

I met with the persons whose appointments are sought as guardians or limited guardians in order to ascertain their knowledge of the duties, requirements and limitations of a guardian, and the steps the proposed guardians intend to take or have taken to identify and meet the needs of the alleged incapacitated person. Name(s) of proposed guardian(s) understood the responsibilities as set forth in RCW 11.92.040 and 11.92.043.

#### Brief Synopsis of History of Placements

Here describe the history of the AIP, including birth info if relevant, family info, residences, and all services provided to date. Also describe income and its basis.

3. Written Report: Based upon the foregoing investigation, I submit this written Report to the Court pursuant to RCW 11.88.090(5)(e):
  - A. The following is a description of the nature, cause, and degree of incapacity, and the basis upon which this judgment is made:
  - B. The following is a description of the needs of the alleged incapacitated person for care and treatment, the probable residential requirements of the alleged incapacitated person, and the basis upon which the findings are made:
  - C. The following is an evaluation of the appropriateness of the guardian or limited guardian whose appointment is sought and a description of the steps the proposed guardian has taken

or intends to take to identify and meet current and emerging needs of the alleged incapacitated person:

- D. The following is a description of the abilities of the alleged incapacitated person and a recommendation as to whether a guardian or limited guardian should be appointed:
  - E. The following is an evaluation of the alleged incapacitated person's mental ability to rationally exercise the right to vote and the basis upon which this evaluation is made:
  - F. The alleged incapacitated person expressed the following approval concerning the proposed guardian or limited guardian, or guardianship or limited guardianship:
  - G. The following are those persons with significant interest in the welfare of the alleged incapacitated person who should be advised of their right to request special notice of proceeding pursuant to RCW 11.92.150:
  - H. The alleged incapacitated person gave the following responses to my advice of the right to jury trial, to independent counsel, and to be present at the hearing on the Petition:
4. Appointment of Counsel: Within five days after meeting with the alleged incapacitated person, I (did not advise/advised) the court of the need for appointment of counsel and give rationale.
5. Guardian ad Litem Fee: I respectfully ask the Court to approve a Guardian ad Litem reimbursement in the sum of \$\_\_\_\_\_, representing fees, based upon the attached billing.

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
Name of GAL  
Guardian ad Litem for  
Name of AIP

<<date>>>



To: FAMILY LIST

*RE: Guardianship of \*\*\*AIP\*\*\*, COUNTY Cause No. \*\*\*Cause Number\*\*\**

Greetings,

I have been appointed by the Superior Court of \*COUNTY\* County to serve as the Guardian ad Litem for \*\*\*AIP\*\*\*. \*\*\*Petitioner\*\*\* have petitioned the Court to appoint a guardian of the **person and estate** for \*\*\*Mr Ms AIP\*\*\*. The Court is required by statute to appoint a neutral third party to serve as Guardian ad Litem, to represent \*\*\*Mr Ms AIP\*\*\*'s best interests, and to report findings to the court.

I am tasked with investigating whether a Guardianship is appropriate; if a Guardianship is necessary, who should serve as Guardian; whether a full or limited Guardianship is appropriate; and whether there are viable alternatives to Guardianship, among other issues, and with reporting my findings to the Court. **I am not \*\*\*Mr Ms AIP\*\*\*'s "guardian" and absent further court order, cannot make medical decisions or sign paperwork on \*\*\*AIP his her\*\*\* behalf, access funds or otherwise arrange for financial transactions.**

As Guardian ad Litem, I will interview \*\*\*Mr Ms AIP\*\*\*, \*\*\*AIP his her\*\*\* health care providers, the family members listed in the petition, and others I may identify after investigation. \*SUMMARY OF GAL'S EXPERIENCE\*. Please expect a phone call from me in the next week or so. If you have any questions, please do not hesitate to contact my office by phone, fax or email.

Truly Yours,

**YOUR NAME**

# SEALED

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON  
IN AND FOR THE COUNTY OF \*\*COUNTY\*\*

In the Guardianship of:

Case No.: \*\*\*Cause Number\*\*\*

\*\*\*AIP\*\*\*

An Alleged Incapacitated Person.

## REPORT OF GUARDIAN AD LITEM

### RECOMMENDATIONS

1. I DO/DO NOT recommend that the Court appoint \_\_ GUARDIAN \_\_ as the full guardian of the estate of the AIP.
2. I DO/DO NOT recommend that the Court appoint \_\_ GUARDIAN \_\_ as the full guardian of the person of the AIP.
3. I DO/DO NOT recommend a bond or blocked account, as the assets of the AIP are valued to be MORE/LESS than \$3,000.00.
4. I recommend that reports be filed every ONE/THREE years.
5. I DO/DO NOT recommend that the AIP retain the right to vote.

#### 1. Appointment:

Date of Appointment: \*\*\*Date of Appointment\*\*\*

Date of Service of Copy of Petition on Guardian ad Litem: \*\*\*Date GAL Served\*\*\*

Date Guardian ad Litem's Statement of Qualifications was filed & served: \*\*\*Date Statement of Qualifications Served\*\*\*

Date of Service of Notice of Guardianship Petition on AIP: as set forth in the declaration of service filed herein.

I attest that I am free from influence by anyone interested in the results of these proceedings and that I have the requisite knowledge, training, and expertise to perform the duties required by statute. My Statement of Qualifications is on file with the Court. I attest that I am on the Guardian ad Litem Registry for \*\*\*COUNTY\*\*\* County and am

qualified to serve as Guardian ad Litem in guardianship matters.

I have previously served as Guardian ad Litem in cases where the Petitioner's attorney represented a party. I do not believe that a conflict of interest exists, and I will serve with the required impartiality in this case.

## **2. Precipitating Issues/Background:**

### **3. Personal Information Regarding Alleged Incapacitated Person:**

Age/DOB	
Permanent Residence	
Current Residence	

**4. Medical/Psychological Report:** I have received a medical report from DOCTOR and will file the report under seal and serve it upon the parties.

### **5. Meeting with AIP:**

Date(s) of Meetings with Alleged Incapacitated Person	Location of Meeting	Other Persons Present

TOPIC OF INVESTIGATION	OBSERVATIONS
Agreement or objection to appointment of a Guardian	
Reaction to the proposed Guardian	
Right to counsel	
Preferences regarding choice of counsel	
Right to a jury trial	
Rights	
Attendance at	

<b>Hearing</b>	
<b>Voting</b>	
<b>Driving</b>	
<b>Health</b>	
<b>Nutrition</b>	
<b>Housing</b>	
<b>Finances</b>	
<b>Orientation/Mental Status</b>	
<b>Education/ Employment</b>	
<b>Activities of Daily Living</b>	
<b>Alternatives to Guardianship</b>	
<b>Vulnerability to Exploitation</b>	
<b>Veteran?</b>	
<b>Native American or Native Alaskan?</b>	
<b>Standby Guardian Nominee</b>	
<b>Identification Info (Aliases, Mother's Maiden Name, Place of Birth, etc.)</b>	

<i><b>Other Interviews</b></i>
--------------------------------

**6. Written Material Reviewed:** I have reviewed the pleadings and records on file.

**7. Individuals Interviewed:** During the course of my investigation, I interviewed the following person(s):

Name	Date of Contact	Relationship to AIP	Phone/Email

**8. Statutory Topics of Investigation**

<i><b>Investigation re the AIP's ability to manage health, safety, nutrition and housing.</b></i>
---

\*\*\*AIP\*\*\* is/is not able to manage \*\*\*AIP his her\*\*\* health care and

medications without assistance. \*\*\*AIP he she\*\*\* needs complete assistance with managing \*\*\*AIP his her\*\*\* finances and legal affairs. \*\*\*AIP he she\*\*\* is able to independently manage some activities of daily living, but needs help with transportation, bill paying, medication management and assistance with remembering events and information.

***Investigation re: who is the appropriate guardian for the AIP:***

**9. Nature, Cause and Degree of Incapacity - Functional Limitations:** The following is a description of the nature, cause, and degree of incapacity, and the basis upon which this judgment is made:

<b><i>Medical Diagnosis and Cause:</i></b>	
<b><i>Degree of Incapacity:</i></b>	

**10. Evaluation of Proposed Guardian(s):**

Dates of Contact Between GAL and Proposed Guardian(s):

--

***Identity and Contact Information of the Proposed Guardian(s):***

Proposed Guardian of	Estate	Person
Name		
Address		
Phone		

Proposed STANDBY Guardian of	Estate	Person
Name		
Address		
Phone		

***Description of Steps Proposed Guardian Has, or Intends, to Take to Meet the Needs of the AIP:***

**11. Alternatives to Guardianship:** None exist.

**12. Degree of Assistance Required:** complete assistance with finances and legal matters, significant assistance with medical decision making, complete assistance with medication management, some assistance with activities of daily living.

**13. Recommendation as to Appointment of Guardian:**

**GUARDIAN** should be appointed as full guardian of the person and estate for

\*\*\*AIP\*\*\*.

**14. Duration and Limitations:** The guardianship should be in place for the remainder of \*\*\*AIP\*\*\*'s life. I recommend a full guardian of the person. As much as it is reasonable, \*\*\*AIP\*\*\* should be informed of and involved in major medical, financial and social decisions, but the guardians should have the final authority to make decisions.

Furthermore, the guardian of the person should not have the right to forbid or limit reasonable visits from \*\*\*AIP\*\*\*'s family members without court order.

**15. Recommendation Regarding AIP's Right to Vote:** \*\*\*AIP\*\*\* **SHOULD**  
**SHOULD NOT** retain \*\*\*AIP his her\*\*\* right to vote because \*\*\*AIP he she\*\*\*is/ is  
not currently able to meaningfully participate in voting.

**16. Recommendation Regarding Right to Jury Trial:**

**17. Recommendation Regarding Appointment of Independent Counsel:**

**18. Estimate of Estate.** The assets, funds, and income of AIP are as follows, as estimated by the Petitioner and based upon statements obtained by the GAL.

ASSET	VALUE
Real Property	
Mortgages & Notes	
Furniture & Household Goods	
Checking Account	
Total Approximate Value of Assets	

SOURCE OF INCOME	MONTHLY PAYMENT AMOUNT
Social Security Benefits	
Total Approximate Monthly Income	

**19. Recommendation Regarding Bond/Annual Reports:**

I DO NOT recommend that the court order bond or blocked accounts because \*\*\*AIP\*\*\*  
**DOES/DOES NOT HAVE** significant liquid assets. Reports should be filed  
**TRI/ANNUALLY.**

**20. Recommendation Regarding Presence of AIP at Hearing:**

The presence of the Alleged Incapacitated Person

	Should not be waived
	Should be waived because:

The following special arrangements should be made for the hearing (*i.e., removal of hearing site to residence of Alleged Incapacitated Person, provision for hearing assistive devices, etc.*): n/a

**21. Other Recommendations:**

**22. Recommendation as to Guardian ad Litem's Continuing Involvement in Future Proceedings:**

I recommend that the Guardian ad Litem

<input type="checkbox"/>	Be involved in future proceedings if necessary
<input type="checkbox"/>	Not Be involved in future proceedings

**23. Individuals Who Should Be Advised of Their Right to Request Special Notice of Proceedings Pursuant to RCW 11.92.150:**

NAME, TITLE AND ADDRESS	RELATIONSHIP TO ALLEGED INCAPACITATED PERSON

**24. Guardian ad Litem Compensation:** The Guardian ad Litem was authorized to charge \$\*\*\*Fee Rate\*\*\* per hour, to a maximum of \*\*\*Total GAL Hours\*\*\* hours. The Guardian ad Litem is to be paid at \*\*\*public or private pay\*\*\* expense, per the order of appointment. The Guardian ad Litem's fees and costs are stated with greater particularity in the Declaration in Support of GAL fees filed herein.

I DECLARE UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF WASHINGTON THAT THE FOREGOING IS TRUE AND CORRECT.

Signed at CITY, Washington, on the \_\_\_\_ day of \*\*\*Month Year\*\*\*.

\_\_\_\_\_  
Your Name

Guardian ad Litem



<<>>

<<PROVIDER & ADDRESS>>

RE: AIP, DOB xx/xx/xxxx

Dear Provider,

A petition for the appointment of a guardian for your patient AIP has been filed with the \*COUNTY\* County Superior Court. I have been appointed by the Court to serve as Guardian ad Litem for AIP. My duties include interviewing AIP, her family, and her medical providers, and advising the court as to whether I believe AIP is legally incapacitated and in need of a guardian.

Washington law (RCW 11.88.010) states that a person may be deemed incapacitated as to person when the superior court determines the individual has a significant risk of personal or financial harm based upon a demonstrated inability to adequately provide for nutrition, health, housing, or physical safety. A person may be deemed incapacitated as to the person's estate when the superior court determines the individual is at significant risk of financial harm based upon a demonstrated inability to adequately manage property or financial affairs. A determination of incapacity is a legal not a medical decision, based upon a demonstration of management insufficiencies over time in the area of person or estate. Age, eccentricity, poverty, or medical diagnosis alone are not sufficient to justify a finding of incapacity.

A key part of my investigation is the medical and psychological condition of AIP. Enclosed with this letter is a Medical/Psychological Report required by the court. The report must be signed by a Physician, Psychologist or ARNP. Please complete the form and fax or mail it to me at your earliest convenience, preferably before \*\*\*Med report due date\*\*\*.

The form will be provided to AIP, parties to the guardianship, and the Court, but will be filed under seal so that the public will not have access to the report. As such, please do not hesitate to include sensitive information in the report, as I will **need a complete understanding of AIP's** medical and psychological condition in order to advise the court of the appropriateness of a guardianship. Thank you very much for your assistance in this matter. Please feel free to contact me with any questions or concerns.

Truly Yours,

GAL

Enclosure: Medical/Psychological Report, Copy of Order Appointing GAL

XXX

Attorney at Law

Address

Voice: 206-xxx-xxxx; Fax: 206-xxx-xxxx

XXXXX

RE: Guardianship of AIP  
Cause #xx-x-xxxxx-xx SEA

Dear Dr. :

A Petition for Guardianship has been filed in the King County Superior Court asking that a guardianship of the person and estate be established over AIP. I have been appointed by the Court as the Guardian ad Litem to investigate the basis of the Petition, the appropriateness of the proposed guardian and to file a report with the Court to assist it in its making a fair and accurate determination of the need for or extent of protection which AIP, known and referred to as the "Alleged Incapacitated Person," may require. Enclosed please find a conformed copy of the Order Appointing me as Guardian ad Litem.

Washington law (RCW 11.88.010) states that a person may be deemed incapacitated as to their person when the superior court determines the individual has a significant risk of personal or financial harm based upon a demonstrated inability to adequately provide for nutrition, health, housing, or physical safety. A person may be deemed incapacitated as to the person's estate when the superior court determines the individual is at significant risk of financial harm based upon a demonstrated inability to adequately manage property or financial affairs. **A determination of incapacity is a legal not a medical decision**, based upon a demonstration of management insufficiencies over time in the area of person or estate. Age, eccentricity, poverty, or medical diagnosis alone are not sufficient to justify a finding of incapacity.

As Guardian ad Litem, **the statute requires me to obtain a medical/psychological report from a physician** licensed to practice under Chapter 18.71 or 18.57 RCW or a licensed or certified psychologist or an advanced registered nurse practitioner licensed under chapter 18.79 RCW. The guardianship statutes, and specifically RCW 11.88.045 and .090, create an exception to the physician/patient privilege. *In re Atkins*, 57 Wn. App. 771, 775, 790 P.2d 210 (1990):

[T]he purpose of the guardianship statute is to benefit and protect the life and property of the alleged incompetent. It would be perverse to construe

the statute in a way that would prevent the court from having full information required to decide whether protection is needed.

The outcome of the guardianship process may have a significant impact on the Alleged Incapacitated Person's right to legally control assets or make personal decisions related to health or other matters. However, the court is prohibited from entering an order appointing a guardian or limited guardian until a medical or psychological report has been filed addressing each of the issues listed in the statute.

I am also required by statute to make a recommendation regarding the feasibility of alternatives such as a Durable Power of Attorney or a Trust, which are deemed to be less restrictive alternatives to a guardianship.

**The physician or psychologist or ARNP who exams the Alleged Incapacitated Person must have personally examined and interviewed the AIP within thirty (30) days of the report** and should have the expertise in the type of disorder or incapacity the alleged incapacitated person is believed to have.

It is my understanding that you do have the expertise in the type of disorder Ms. AIP is believed to have and that you have examined or will be examining her within thirty (30) days of the date of your report.

I have attached a form report for you to complete which contains the issues the statute requires be addressed. I would ask that you please complete the report in as much detail as possible and that you attach a copy of your resume or curriculum vitae. The report may be legibly hand-written if you prefer.

The hearing on the matter is currently set for xxxx. My report with the Medical Report attached must be submitted to the Court **at least fifteen (15) days prior to the hearing date.**

**I would appreciate having your report in hand no later xxxxx.** Please let me know if the will be a problem. I would also appreciate it if you would provide me with your bill, if any, for the evaluation and report, as I will be including the amount in my report.

If there is any problem with the completion of the Medical Report by the date set forth above, or in the event you have any other questions, please do not hesitate to contact me.

Respectfully,

XXX  
Guardian ad Litem for AIP

# **Appendix E**

## **Website Resources**



## LEGAL

Administrative Office of the Courts (AOC) acts as the arm of the Supreme Court, which administers guardianship policies and guardianship procedures.

[http://www.courts.wa.gov/programs\\_orgs/guardian/](http://www.courts.wa.gov/programs_orgs/guardian/)

King County Superior Court: Model forms available at this site.

<https://www.kingcounty.gov/courts/clerk/forms.aspx>

Spokane County Superior Court: Model forms available at this site.

<https://www.spokanecounty.org/1275/Court-Forms>

Directory of all County Superior Courts: Check your county for model forms and helpful information.

[http://www.courts.wa.gov/court\\_dir/?fa=court\\_dir.county](http://www.courts.wa.gov/court_dir/?fa=court_dir.county)

King County Law Library: for online legal research.

<http://www.kcll.org/>

LegalWA.org is a highly recommended legal research website

[www.legalwa.org](http://www.legalwa.org)

Columbia Legal Services and the Northwest Justice Project: provides free civil (not criminal) legal services to people who are low-income or have special legal needs throughout Washington State. <http://www.columbialegal.org/>

Washington State Bar Association Elder Law Section: An association of elder law attorneys.

<https://www.wsba.org/legal-community/sections/elder-law-section>

King County Bar Association Guardianship and Elder Law Section: An association of attorneys, guardians and guardians ad litem.

<https://www.kcba.org/kcba/Membership/Sections/geld/>

National Academy of Elder Law Attorneys (NAELA): provides general information for lawyers and non-lawyers working with older clients.

<http://www.naela.org/>

## **Government Agencies**

Social Security & Medicare: official website provides information about Social Security Benefits, Medicare, SSI and more.

<http://www.ssa.gov/>

Department of Social and Health Services- Aging and Adult Services (DSHS): offers many services for aging, incapacitated and/or vulnerable persons.

<http://www.aasa.dshs.wa.gov/>

Medicaid: provides information about Washington Medicaid benefits.

[www.adsa.dshs.wa.gov/pubinfo/benefits/medicaid.htm](http://www.adsa.dshs.wa.gov/pubinfo/benefits/medicaid.htm)

Washington State Health Care Authority: provides information about Washington's subsidized Health Insurance Option.

<http://www.basichealth.hca.wa.gov/>

Access Washington: State Services Directory provides information regarding more than 22 agencies and organizations listed by service type. Click on the information button for listings.

<https://access.wa.gov/topics/government/stateemployees.html#>

## **Disabilities/Illness**

Alzheimer's Disease Association (national): provides resources related to Alzheimer's Disease.

[www.alz.org](http://www.alz.org)

American Stroke Association: for information about issues related to stroke.

[www.strokeassociation.org](http://www.strokeassociation.org)

ARC of Washington State provides chapters across the state that focus on serving people with developmental disabilities.

<http://www.arcwa.org/>

Assisted Living Federation of America: provides education, research and publications about Assisted living issues.

<http://www.alfa.org>

Autism Society of Washington: provides resources related to Autism.

[www.autismsocietyofwa.org](http://www.autismsocietyofwa.org)

Center for Human Development and Disability (CHDD), University of Washington: provides resources related to child development.

[www.depts.washington.edu/chdd](http://www.depts.washington.edu/chdd)

DisabilityResources.Org has a regional directory of the available resources throughout Washington State with many hyperlinks.  
<http://www.disabilityresources.org/>.

Easter Seals (local): provides a variety of services for a variety of disabilities.  
[www.seals.org](http://www.seals.org)

Hospice: provides information about end of life issues.  
<http://www.hospicefoundation.org/>

Long Term Care Ombudsman: provides information and advocacy related to long term care decisions.  
<http://www.ltcop.org>

Long Term Care Link: general information about long term care.  
<http://www.longtermcarelink.net/>

Nursing Home Rating Service: provides information about inspections and reports of nursing homes. Click on the county and then on the nursing home of your choice to pull up a report.  
<http://www.nursing-homes-ratings.com/WA/index.html>

Disability Rights Washington.  
[www.DisabilityRightsWA.org](http://www.DisabilityRightsWA.org)

Washington PAVE: provides resources for parents of children with disabilities.  
[www.washingtonpave.org](http://www.washingtonpave.org)

Washington State Brain Injury Foundation: information and support services related to brain injury.  
[www.biawa.org](http://www.biawa.org)

## **Senior Citizen & Children's Organizations**

Senior Services of Seattle/King County provides many resource listing as well as links to senior services in other areas of the State of Washington.  
[www.soundgenerations.org](http://www.soundgenerations.org)

American Association of Retired Persons: provides a variety of consumer advocacy and care resources.  
[www.aarp.org](http://www.aarp.org)

Children's Alliance of Washington: provides child advocacy information.  
<http://www.childrensalliance.org/>



## **Other Organizations**

Aging Life Care Association formerly The National Association of Geriatric Care Managers 1504 N. Country Club Road Tucson, Arizona 85716 (520) 881-8008 provides membership, resource information and publishes a quarterly newsletter listing many resources as well as a quarterly journal and conferences.

[www.aginglifecare.org](http://www.aginglifecare.org)

The National Guardianship Association 1504 N. Country Club Road Tucson, Arizona 85716 (520) 881-6561 provides membership, resource information, quarterly publications and conferences.

[www.guardianship.org](http://www.guardianship.org)

Washington Law Help. Information and support services related to Medicaid and other legal areas.

[www.washingtonlawhelp.org](http://www.washingtonlawhelp.org)

**Appendix F**

**Certified Professional  
Guardian Board**

**Ethics Advisory Opinions**



## **Ethics Advisory Opinions**

[http://www.courts.wa.gov/programs\\_orgs/guardian/?fa=guardian.Ethics](http://www.courts.wa.gov/programs_orgs/guardian/?fa=guardian.Ethics)

2007

Opinion 2007-003 Notice - Change in Guardian Appointment

2005

Opinion 2005-004 - Retention of Records

Opinion 2005-003 Preappointment Conduct

Revised Opinion 2005-001 Professional Guardian Petitioning for Appointment

2002

Opinion 2002-0003 - Simultaneous Appointment as Guardian for Both Spouses or Domestic Partners

Opinion 2002-0001 - Fee Surcharges

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## Opinion 2002-0001 - Fee Surcharges

### **CERTIFIED PROFESSIONAL GUARDIAN BOARD ETHICS ADVISORY OPINION**

**Ethics Advisory Opinion:     #2002-0001 (Fee surcharges)**  
**Date Approved:               May 12, 2003**

Brief restatement of question(s) posed:

1. May the CPG charge a mark up of a contractor's charge, for the CPG's own fee for contract administration?
2. Does it make any difference if the markup is disclosed in a fee schedule or the fee declaration of the CPG?

A contractor's charge is the amount billed to the guardian by a third party for goods or services provided to the guardianship or on the guardian or ward's behalf.

Directly applicable SOP's, statutes and other law or standards:

RCW 11.92.180

A guardian or limited guardian shall be allowed such compensation for his or her services as guardian or limited guardian as the court shall deem just and reasonable.

In all cases, compensation of the guardian or limited guardian and his or her expenses including attorney's fees shall be fixed by the court..."

Case Law: Estate of Larsen, In re Larsen, 103 Wash. 2d 517, 694 P.2d 1051 (1985)

Standards of Practice:

3.1 The guardian shall avoid self dealing, conflict of interest, and the appearance of a conflict of interest. Self dealing or conflict of interest arise when the guardian has some personal, family, or agency interest from which a personal benefit would be derived. Any potential conflict shall be disclosed to the court immediately.

3.2 All expenses paid or incurred on behalf of the incapacitated person by the guardian shall be documented, reasonable in amount, and incurred for the incapacitated person's welfare.

3.3 All compensation for the services of the guardian shall be documented, reasonable in amount, and incurred for the incapacitated person's welfare. The guardian shall not pay or advance himself/herself fees or expenses except as approved by the court.

3.4 Provision of compensated services other than guardianship services to an incapacitated person by the guardian shall be considered a potential conflict of interest, which must be fully disclosed.

3.6 The guardian shall disclose to the court and interested parties all compensation, fees and expenses requested, charged, or received in a guardianship case.

6.9 There shall be no self interest in the management of the estate by the guardian; the guardian shall exercise caution to avoid even the appearance of self interest.

Analysis:

Any arrangement that provides compensation to a professional guardian that is not approved in advance by the court is contrary to law and SOPs. Undisclosed fees are forbidden.

There is no distinction between a markup as described and any other fee for service. The requirement that compensation be reasonable in amount includes the expectation that there be a connection between the amount charged and the work required.

A professional guardian charging hourly fees, or asset management fees would be double billing by charging an additional markup. Although in theory, the professional guardian could maintain billing practices that avoid double billing, in practical terms it is very unlikely that such practices would have sufficient transparency.

In adding on to bills for services rendered the professional guardian would create a conflict of interest. The guardian would have an incentive to provide unnecessary services and to use vendors because their billing forms or practices are amenable to the guardians markup practices.

The use of private contractors to provide financial and personal assistance typically and properly billed as guardianship services is certainly permissible. Such arrangements can not be used to evade employer taxes or other requirements.

Opinion:

In general, the practice as described fails in many ways to meet the cited standards. Primarily, the evasion of disclosure requirements, court supervision of activities and court approval of fees, and the maintenance of a close correlation between services provided, costs of those services and benefit to the estate.

It may be argued that these problems can be cured by disclosing all markups of contractor fees and seeking approval from the court. This argument fails as described below.

Once the practice of marking up bills for contracted services is established, it is likely to lead to abuse. Guardians commonly hire professionals for all manner of services from pharmacy deliveries to care provision to home re-modeling. The practice of adding a surcharge to all such bills would result in undue amounts of compensation to the GPG.

CPG's Charge fees based on billable hours, flat asset management fees or transactional fees. Combining this practice with a surcharge arrangement creates a high likelihood of double billing and imposes an unnecessary burden on the court in sorting out the billing methods in evaluating the reasonableness of fees.

A CPG who receives a markup has an actual conflict of interest that would be virtually impossible to cure. That is, the GPG has a financial incentive to choose more expensive contractors, and to order more work. Additionally, the CPG would be limited to contractors willing to participate in the arrangement. Again, the court would not be able to fully evaluate whether or not this was occurring without imposing additional expense on the estate, as by appointing a GAL.

Summary of opinion:

The practice of "marking up" contracted services to recover expenses of administration is not permissible. Professional Guardian can recover fees for such services as effectively, more transparently, and without conflicts of interest by posting the time involved and billing hourly.

There \_\_\_ is \_X\_ is not a Minority Report

**CERTIFIED PROFESSIONAL GUARDIAN BOARD  
ETHICS ADVISORY OPINION #2002-03**

**Ethics Advisory Opinion: #2002-03:**

**Simultaneous Appointment as Guardian for Both Spouses or Domestic Partners**

**Date Approved by the Certified Professional Guardian Board: April 12, 2004**

Statement of Questions Posed:

1. May a Certified Professional Guardian or Agency (Guardian) be appointed to provide concurrent, dual or joint representation on behalf of both spouses, domestic partners or persons living in a meretricious relationship? If so, under what circumstances is this appropriate?
2. What criteria should a Guardian apply in determining whether the Guardian should accept a dual appointment; or if already appointed, should the Guardian continue to act on behalf of both persons in a relationship as described above?
3. What procedural steps ought to be followed if the Guardian believes that dual representation is appropriate under the facts of the case, or in order to continue serving when in such a relationship and an actual, apparent or potential conflict of interest arises?

Summary of Opinion: The appointment of the same Guardian to act simultaneously in the best interests of both spouses in a marital relationship, domestic partners, or persons in a meretricious relationship presents, at a minimum, the appearance of a potential conflict of interest, and *should only be done with great caution by a Guardian*. Even if the parties are not married, appellate case decisions have implied and applied certain community property principles to such relationships and legal presumptions may apply. The issues are complex and the circumstances dynamic. Often, actual conflicts may not become apparent until it is too late to seek instruction from the court or for the Guardian to take remedial action. The advice of counsel should be sought prior to accepting such an appointment.

While a court may consider a well supported petition for a dual Guardian, endorsed by the Guardian ad Litem for one or each of the alleged incapacitated persons, the circumstances upon which the decision was based could change quickly or unknowingly and present a conflict of interest necessitating the removal of the dual guardian from both cases and two new independent Guardians being appointed. The latter action would foreseeably result in significant additional costs to the estate of the incapacitated person and potentially to the retiring Guardian as well. Only in well-justified cases and after a hearing supported by recommendations of the Guardians ad Litem for each of the alleged incapacitated persons, and assurance that there would be only *de minimus* conflicts should a Guardian accept such an appointment.

ANALYSIS:

A guardian, in any case, has a fiduciary duty to the adjudicated incapacitated person (IP) to manage the personal affairs and/or estate of the IP for the benefit of the IP. On its face, an appointment of a guardian for both spouses creates a divided loyalty in the duties of the guardian in that he/she must manage the community and separate estates of both IPs for their individual benefit. While such an arrangement may potentially or financially benefit both spouses or partners, the appearance of potential conflict, and the likelihood of an eventual conflict of interest is substantial.

The court at any hearing to appoint a single guardian for a married couple or for domestic partners will likely initially view the petition with concern. The reason for the court's skepticism is that in any guardianship appointment, the court is delegating its duty and authority to oversee the personal and



financial matters of individual, vulnerable incapacitated persons to a guardian. Lawyers, judges and court commissioners are by training and experience, highly sensitized to conflict of interest situations and to the appearance of such conflicts.

At the hearing on the petition, the court will review the guardian ad litem (GAL) report and the petition. It will ensure that full disclosure of all known conflicts has occurred and that consents/waivers have been addressed as appropriate. The court will engage the parties named above in colloquy on the record to ensure that all interests are identified and balanced. As in nearly all guardianship hearings, the court will weigh the GAL's report and recommendations on all issues, including the appropriateness of the proposed guardian. While the issues will be similar to those conflict issues arising as to spouses, domestic partners will not necessarily have the same legal presumptions afforded married couples. A Guardian should obtain the advice of counsel when considering these issues prior to accepting such an appointment.

Below is a nonexclusive list of examples and circumstances that present an appearance of potential or actual conflicts of interest for a guardian considering such an appointment.

- 1) One or both spouses or partners having children from prior relationships.
- 2) Lack of stability and length of the marriage/relationship.
- 3) The presence of or lack of an estate plan made by the couple while both members were still competent.
- 4) Separate property owned by the spouses or partners or the expectancy of inheritance by either.
- 5) Presence or lack of a community property or other written agreement or of a marital relationship.
- 6) Eligibility for benefits, such as Medicaid and spend-down/gifting issues.
- 7) Residential decisions and the source of funds to pay home mortgage and upkeep costs, assisted living, or long term care costs.
- 8) Guardian billing and accountings submitted to the court.
- 9) End-of-life decisions in the absence of competently and jointly executed health care directives.

Nonexclusive examples of circumstances where the court may consider a single guardian for a couple may be when:

- 1) There is a competently and mutually executed pre-guardianship estate plan that contemplates the eventual incapacity of one or both spouses or partners that provides resolution to possible conflicts.
- 2) There is a long-term marriage with both spouses or partners in a care facility and the parties have little or no estate and have competently executed health care directives.

Again, remember that the issues for married couples will likely differ in some respects from those of domestic partners due primarily to the existence of a marital relationship.

In any circumstances where the same guardian serves both spouses or partners, there is always the possibility of a conflict going unrealized until it is too late and something like the death of one of the spouses or registered domestic partners obviates the issue. Such circumstances can place the guardian and the incapacitated persons in an unworkable

situation ethically and practically, often resulting in expensive litigation naming the guardian personally as a defendant or other party.

The guardian in any case should not wait after sensing a possible conflict of interest. Counsel should be consulted immediately and a filed request for instructions from the court can assist in identifying, disclosing, and resolving conflict of interest issues at a hearing with all concerned parties present. Such issues will be decided on a case-by-case basis, and the guardian's vigilance and anticipation of potential conflicts will be expected by the court.

## APPENDIX A-1

### References:

*Estate of Sullivan v Brashear*, 2003 Wn.App. LEXIS 509 (March 31, 2003), (Unpublished opinion, Petition for Review filed November 10, 2003.)

*In re Mignerey*, 11 Wn.2d 42, 118 P.2d 440 (1941.)

*In re Denisson*, 197 Wash. 265, 84 P.2d 1024 (1938.)

Chapter 11.88, Revised Code of Washington

Chapter 11.92, Revised Code of Washington

Rules of Professional Conduct (for attorneys), RPC 1.7

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\* \* \* \* \*

American College of Trust and Estate Counsel, *Engagement Letters: A Guide for Practitioners Conduct* (March 1999)

Cassasanto, M. D., Simian, M. and Roman, J, *A Model Code of Ethics for Guardians*, National Guardianship Association, [www.guardianship.org](http://www.guardianship.org) (2003)

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National Guardianship Association, *Standards of Practice* (2000)

Treacy Jr., Gerald B., *Washington Guardianship Law Summary, Summary of Washington Guardianship Decisions* (treatise of LEXIS 2002)

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## APPENDIX A-2

400 Standards of Practice:

401. GENERAL A guardian shall exercise care and diligence when making a decision on behalf of an Incapacitated Person. The civil rights and liberties of the Incapacitated Person shall be protected. The independence and self-reliance of the Incapacitated Person shall be maximized to the greatest extent consistent with their protection and safety.

401.5 The guardian shall protect the personal and economic interests of the Incapacitated Person and foster growth, independence, and self-reliance.

401.7 Whenever feasible a guardian shall consult with the Incapacitated Person, and shall treat with respect, the feelings, values, and opinions of the Incapacitated Person. Wherever possible, the guardian shall acknowledge the residual capacity of the Incapacitated Person to participate in or make some decisions.

401.8 When the guardian has limited authority, the guardian shall work cooperatively with the Incapacitated Person or with others who have authority in other areas for the benefit of the Incapacitated Person.

401.9 The guardian shall cooperate with and carefully consider the views and opinions of professionals, relatives, and friends who are knowledgeable about the Incapacitated Person.

401.12 When possible, the guardian will defer to an Incapacitated Person's autonomous capacity to make decisions.

#### 402 Decision Standards:

All decisions and activities of the guardian shall be made according to the applicable decision standard.

402.1 The primary standard is the Substituted Judgment Standard. This means that the guardian shall make reasonable efforts to ascertain the Incapacitated Person's historic preferences and shall give significant weight to such preferences. Competent preferences may be inferred from past statements or actions of the Incapacitated Person.

402.2 When the competent preferences of an Incapacitated Person cannot be ascertained, the guardian is responsible for making decisions which are in the best interest of the Incapacitated Person. A determination of the best interest of the Incapacitated Person shall include consideration of the stated preferences of the Incapacitated Person.

#### 403 Ethics:

403.8 The guardian shall protect the Incapacitated Person's rights and best interests against infringement by third parties.

#### 406 Financial Management:

406.3 The guardian shall manage the estate with the primary goal of providing for the needs of the Incapacitated Person.

406.4 In certain cases, the guardian shall consider the needs of the Incapacitated Person's Dependents for support or maintenance, provided appropriate authority for such support is obtained in advance. The wishes of the Incapacitated Person as well as past behavior can be considered, bearing in mind both foreseeable financial requirements of the Incapacitated Person and the advantages and disadvantages to the Incapacitated Person of such support or maintenance.\

406.8 When it is likely that the Incapacitated Person's estate will be exhausted, the guardian shall, as appropriate, make plans and take necessary steps to acquire public benefits on behalf of the Incapacitated Person. When implementing necessary changes in the Incapacitated Person's lifestyle, the guardian shall seek to minimize the stress of any transition.

**CERTIFIED PROFESSIONAL GUARDIAN BOARD  
ETHICS ADVISORY OPINION**

**Opinion 2005-003 Preappointment Conduct**

**PREAPPOINTMENT CONDUCT**

**OPINION NUMBER # 2005- 003**

**Date: November 13, 2006**

**Brief Restatement of Question(s) posed:**

Should a certified professional guardian (CPG) provide services to an alleged incapacitated person (AIP) after a petition for the appointment of a guardian has been filed, or immediately prior to the filing of such a petition, prior to a determination of incapacity by the court, where no contractual or legal relationship existed between the certified professional guardian and the AIP prior to the filing of a guardianship petition, and the guardian expects to be compensated for those services?

**Directly applicable standards of practice (SOP's), statutes, and other law or standards:**

401.4 The guardian shall not act outside of the authority granted by the court.

403.1 The guardian shall avoid self-dealing, conflict of interest and the appearance of a conflict of interest. Self-dealing or conflict of interest arise when the guardian has some personal, family, or agency interest from which a personal benefit would be derived. Any potential conflict shall be disclosed to the court immediately.

401.1 The guardian shall at all times be thoroughly familiar with RCW 11.88, RCW 11.92, General Rule (GR) 23, and any other regulations or statutes which govern the conduct of the guardian in the management of affairs of an incapacitated person.

RCW 11.88.005 Legislative intent: It is the intent of the legislature to protect the liberty and autonomy of all people of this state, and to enable them to exercise their rights under the law to the maximum extent, consistent with the capacity of each person. The legislature recognizes that people with incapacities have unique abilities and needs, and that some people with incapacities cannot exercise their rights or provide for their basic needs without the help of a guardian. However, their liberty and autonomy should be restricted through the guardianship process only to the minimum extent necessary to adequately provide for their own health or safety, or to adequately manage their financial affairs.

RCW 11.88.030 (1): A petition for guardianship or limited guardianship shall state:.....(i) A description of any alternate arrangements previously made by the alleged incapacitated person, such as trusts or powers of attorney, including identifying any guardianship nominations contained in a power of attorney, and why a guardianship is nevertheless necessary.

RCW 11.88.045(5) During the pendency of an action to establish a guardianship, a petitioner or any person may move for temporary relief under chapter 7.40 RCW, to protect the alleged incapacitated person from abuse, neglect, abandonment, or exploitation, as those terms are defined in RCW 74.34.020, or to address any other emergency needs of the alleged incapacitated person.....

RCW 11.88.090 [ The Guardian ad litem shall have the following duties..][to ascertain]

(5)(c)(ii) The steps the proposed guardian intends to take or has taken to identify and meet the needs of the alleged incapacitated person;

(5)(e) to investigate alternate arrangements made or which might be created, by or on behalf of the alleged incapacitated person, such as revocable or irrevocable trusts, durable powers of attorney, or blocked accounts; whether good cause exists for any such arrangements to be discontinued; and why such arrangements should not be continued or created in lieu of a guardianship;

(5)(f) To provide the court with a written report which shall include the following:

(iv) a description of any alternative arrangements previously made by the alleged incapacitated person or which could be made, and whether and to what extent such alternatives should be used in lieu of a guardianship, and if the guardian ad litem is recommending discontinuation of any such arrangements, specific findings as to why such arrangements are contrary to the best interest of the alleged incapacitated person;

(9) The court appointed guardian ad litem shall have the authority to move for temporary relief under chapter 7.40 RCW to protect the alleged incapacitated person from abuse, neglect, abandonment, or exploitation, as those terms are defined in RCW 74.34.020m or to address any other emergency needs of the alleged incapacitated person. Any alternative arrangement executed before filing the petition for guardianship shall remain effective unless the court grants the relief requested under chapter 7.40RCW, or unless, following notice and a hearing at which all parties directly affected by the arrangement are present, the court finds that the alternative arrangement should not remain effective.

#### RCW 74.34 Abuse of Vulnerable Adults

.005(1) Some adults are vulnerable and may be subjected to abuse, neglect, financial exploitation, or abandonment by a family member, care provider, or other person who has a relationship with the vulnerable adult;

.005(6) The department must provide protective services in the least restrictive environment appropriate and available to the vulnerable adult.

#### **Analysis**

Guardianships are commonly sought in situations in which there is an immediate problem affecting a principal prior to the decision by a Court as to whether or not the person is, in fact, incapacitated. Certified Professional Guardians are often asked to develop and implement a plan of care in such situations which precede a decision by the Court as to the need for the establishment of a guardianship.

Certified professional guardians commonly offer a spectrum of services which are recognized by statute as less restrictive alternatives to guardianships. Some of these services require the written consent of the principal, such as powers of attorney, creation of a Trust, signatures on consent forms relating to health care, and signatures and agreements in regards to contracts and financial service agreements.

Some less restrictive alternatives may not necessarily require the written agreement of the principal. Situations in which such agreement(s) commonly occur include competent acceptance by the principal of the provision of care management and in-home assistance services.

## Opinion

At any time, including the period immediately preceding or subsequent to the filing of a petition for the appointment of a guardian, certified professional guardians (CPG) are encouraged to provide forms of assistance that are least restrictive and that have the potential to avoid the need for a guardianship when that assistance is consented to by the principal, provided that the principal has the requisite capacity to consent and, if needed, access to legal counsel. Forms of assistance often needed include arranging for in-home care, home maintenance, and assistance in organizing and paying bills.

When a CPG is entering into a formal legal relationship with a principal, such as a living trust or power of attorney, the CPG should assure that the principal has the benefit of independent legal counsel before entering the relationship. A CPG who is also an attorney should not prepare or assist in the preparation of power-of-attorney, living trust, a Will, or similar legal documents which appoint themselves to a fiduciary relationship with the principal.

During the period immediately preceding or subsequent to the filing of a petition for the appointment of a guardian there is a conflict of interest or the appearance of a conflict of interest and self dealing when any person enters into an agreement for services with an alleged incapacitated person that requires consent. While recognizing that the alleged incapacitated person has the legal capacity to enter into contracts until a guardian is appointed or otherwise restricted at the time a guardianship is established, the certified professional guardian should exercise caution when entering into any arrangement with the alleged incapacitated person immediately preceding or subsequent to the filing of a guardianship petition.

During the period immediately preceding to or subsequent to the filing of a petition for the appointment of a guardian, the CPG may be asked by family or friends of the principal, or may contract with family or friends of the principal, to provide case management assistance such as help with living arrangements and in-home care, or assistance with immediate financial matters such as the payment of rent or utility bills, during the period immediately preceding or subsequent to the filing of a guardianship petition. The CPG should decline to provide such services unless the principal has the capacity to consent to the services or the court has authorized the guardian to provide services. In such a circumstance, the principal's acceptance and/or cooperation with services can be reflective of the principal's consent.

Any fees that are charged by the certified professional guardian should be carefully documented. No fees should be accepted from the funds of the principal subsequent to the filing a petition for the appointment of a guardian unless approved by the court in the same manner as guardian fees.

The certified professional guardian should avoid the appearance of assuming the formal duties of a guardian in advance of appointment. The certified professional guardian should not marshal assets, become a signatory to financial accounts, make medical decisions or financial commitments, or otherwise engage in the activities commonly associated with the powers of a guardian for an alleged incapacitated person subsequent to the filing of a petition for the appointment of a guardian or during the period immediately preceding the filing of such petition.

**CERTIFIED PROFESSIONAL GUARDIAN BOARD  
ETHICS ADVISORY OPINION**

**Opinion 2005-004 - Retention of Records**

**RETENTION OF RECORDS**

**OPINION # 2005-004**

**Date: September 11, 2006**

**Brief restatement of question(s) posed:**

How long should a certified professional guardian retain client records?

**Directly applicable Standards of Practice, statutes, and/or other law or standards:**

A guardian who has been discharged in a guardianship matter is expected to transfer assets and information to the successor guardian or personal representative in good order. Subsequent to discharge and transfer of assets and information, the retention of records benefits the incapacitated person and may protect the guardian against future allegations of misconduct or to explain the general management of the guardianship, such as in a probate proceeding or tax audit.

No specific standards of practice have been adopted by the Certified Professional Guardian Board to guide guardians in their decisions as to the retention of client records subsequent to their discharge as guardians. However, the premature destruction of records has the risk of complicating the management of a guardianship practice. Records which support decisions made by the guardian may be needed long after the conclusion of a guardianship and the discharge of the guardian. Consequently, retention of essential records either electronically or as paper in a secured and safe storage area for an indefinite time period is a matter to be determined, after consultation with an attorney, by the individual guardian.



**Opinion 2007-003 Notice - Change in Guardian Appointment**

**CERTIFIED PROFESSIONAL GUARDIAN BOARD**

**ETHICS ADVISORY OPINION**

OPINION # 2007-003

**Date:** September 15, 2008

**Brief restatement of question posed:**

Who, if anyone, should be given notice when a professional guardian petitions for the appointment of a co-guardian to assist the existing guardian or to be discharged and have a standby or successor guardian appointed?

**Applicable Statutes:**

**RCW 11.88.120**

(1) At any time after establishment of a guardianship or appointment of a guardian, the court may, upon the death of the guardian or limited guardian, or, for any other reason, modify or terminate the guardianship or replace the guardian or limited guardian.

(2) Any person...may apply to the court for an order to modify or terminate a guardianship or to replace a guardian. If applicants are represented by counsel, counsel shall move for an order to show cause why the relief requested should not be granted. If applicants are not represented by counsel, they may move for an order to show cause, or they may deliver a written request to the clerk of the court.

(3) By the next judicial day after receipt of an unrepresented person's request to modify or terminate a guardianship order, or to replace a guardian..., the clerk shall deliver the request to the court. The court may (a) direct the clerk to schedule a hearing (b) appoint a guardian ad litem..., or (c) deny the application without scheduling a hearing, if it appears ...that the application is frivolous. ..A copy of the order shall be mailed by the clerk to the applicant, to the guardian, and to any other person entitled to receive notice of proceedings in this matter. Unless within thirty days after receiving the request from the clerk the court directs otherwise, the clerk shall schedule a hearing on the request and mail notice to the guardian, the incapacitated person, the applicant, all counsel of record, and any other person entitled to notice of proceedings in the matter.

#### RCW 11.88.125

“(1) The ...guardian..shall file ...a notice designating a standby....guardian. Notice of the guardian’s designation of the standby guardian shall be given to the standby guardian, the incapacitated person and his or her spouse or registered domestic partner and adult children, any facility in which the incapacitated person resides, and any person entitled to special notice under RCW 11.92.150 or any person entitled to receive pleadings pursuant to RCW 11.88.095(2)(g). Such standby guardian...shall have all the powers...of the regularly appointed guardian...and in addition, shall, within a period of thirty days from the death or adjudication of incapacity of the regularly appointed guardian, file ...a petition for appointment of substitute guardian or limited guardian.”

(2) Letters of guardianship shall be issued to the standby guardian...upon filing an oath and posting a bond as required by RCW 11.88.100...The oath may be filed prior to the appointed guardian or limited guardian’s death. Notice of such appointment shall be provided to the standby guardian, the incapacitated person, and any facility in which the incapacitated person resides. The provisions of RCW 11.88.100 shall apply to standby guardians and limited guardians.

#### RCW 11.92.150

....Any person interested in the estate, or in the incapacitated person, ...may serve ..a written request stating the specific actions of which the applicant requests advance notice. Where the notice does not specify matters for which notice is requested, the guardian or limited guardian shall provide ....advance notice of his or her application for court approval of any action in the guardianship.

#### Case law

Upon removal of the guardian under Rem. Comp. Stat Sec. 1579 (the precursor to RCW 11.88.125), notice and other statutory requirements for appointment of original guardian are unnecessary for appointment of successor. Mathieu v United States, Fid. and Guar. Co., 158 Wash. 396 (1930) ) (Construing prior statute). An incapacitated person’s petition to revoke guardianship is deemed to be a continuation of original guardianship proceedings. In re Michelson, 8 Wn. 2d 327 (1941) (Construing prior statute). Substantial compliance with the statute required. Teeters, 173 Wash. 138 (1933) (Construing prior statute).

#### Court rules

Each court has its own local rules that govern how motions are set and heard in that court. Consult with counsel to determine whether local rules require any specific type of notice.

### Standards of Practice

**403.10** Unless otherwise directed by the Court, the guardian shall provide copies of all material filed with the court and notice of all hearings in the guardianship to the incapacitated person.

**408** The guardian shall perform duties and discharge obligations in accordance with current Washington law governing the certification of guardian. In each guardianship, the guardian shall comply with the requirements of the court that made the appointment.

### Summary of Opinion

Notice must always be provided to any “interested persons” who have requested special notice of proceedings, absent a court order to the contrary. RCW 11.92.150. Unless otherwise directed by the court, the Standards of Practice also require notice to the incapacitated person.

If the proposed successor or co-guardian would be managing community assets for both an incapacitated person and their spouse who had not been adjudged to be incapacitated, due process may require notice to the spouse even if that spouse has not requested special notice. (This is also true for registered domestic partners.) If the proposed successor or co-guardian is not a certified guardian or was proposed but objected to in the initial proceedings, the court may wish to give notice to persons who might be likely to be able to provide information on the suitability of the proposed guardian or might wish to appoint a guardian ad litem to investigate the proposed guardian’s suitability. The professional guardian should seek instructions or consult with counsel as to whether the court’s local practice and rules require additional notice or steps to be taken.

## Ethics Advisory Opinions

Revised Opinion 2005-001 Professional Guardian Petitioning for Appointment

### CERTIFIED PROFESSIONAL GUARDIAN BOARD ETHICS ADVISORY OPINION Professional Guardian Petitioning for Appointment

OPINION #: 2005-001

Date March 13, 2006, Revised January 11, 2010

Brief restatement of question(s) posed:

When may a Certified Professional Guardian petition for appointment of oneself as guardian?

Directly applicable SOP's, statutes and other law or standards:

- 403.1 The guardian shall avoid self-dealing, conflict of interest, and the appearance of a conflict of interest. Self-dealing or conflicts of interest arise when the guardian has some personal, family, or agency interest from which a personal benefit would be derived. Any potential conflict shall be disclosed to the court immediately.
- RCW 11.88.030 (1) Any person or entity may petition for the appointment of a qualified person, trust company, national bank, or nonprofit corporation authorized in RCW 11.88.020 as the guardian or limited guardian of an incapacitated person. No liability for filing a petition for guardianship or limited guardianship shall attach to a petitioner acting in good faith and upon reasonable basis.
- The facts alleged in a petition for guardianship are ordinarily verified under penalty of perjury by the petitioner.
- GR 24 (a)(1) Practice of law defined as "Giving advice or counsel to others as to their legal rights or the legal rights or responsibilities of others for fees or other consideration."

Analogous standards and values (e.g. legal, medical):

The practice of nominating oneself as guardian automatically raises the appearance of self-dealing.

Comments:

The Certification Board recognizes that there are two public policy objectives underlying this opinion. The first is the public policy need to assure that individuals in need of a guardian have access to that service. The second public policy objective is to assure that the practice of the profession by certified professional guardians results in conduct which is not self-dealing and does not involve the actual or appearance of a conflict of interest. This ethical opinion is intended to recognize the inherent tension between these

two public policy objectives and to reconcile those tensions in a manner that provides for the highest ethical practices while making available guardian services to those who need them.

The intent of this opinion is not to discourage the filing of the petitions in good faith. It is the intent of this opinion however, to assure the transparency of the proceedings to the extent that any conflicts or appearances of conflict which a certified professional guardian may have are disclosed and that steps are taken to negate both the real and appearance of self-serving.

Professional guardians have a clear and immediate conflict of interest in nominating themselves to be appointed guardian and to be paid from the estate of the Incapacitated Person. A certified professional guardian should avoid whenever possible initiating a petition for appointment of oneself as guardian.

Ordinarily the facts necessary to complete a petition for guardianship are not available at first hand to a certified professional guardian but are provided by professionals interested in having a guardian appointed.

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In many situations, and in particular in the case of alleged incapacitated persons who have limited or no estate, there is no other person with sufficient expertise and interest in the alleged incapacitated person to file a petition for guardianship. Referral sources such as facility staff or government employees who are able to identify the need for guardianship may have institutional limitations on their ability to become formally involved as a petitioner for the guardianship.

There are circumstances in which a care provider or other entity with whom the certified professional guardian has a close personal or professional relationship files a petition for guardianship using an attorney provided by the certified professional guardian, or files a petition for guardianship with the active assistance of the certified professional guardian, with the intention that the certified professional guardian will become guardian at the conclusion of the proceeding. In such circumstances, the certified professional guardian has an obligation to disclose to the Court by Affidavit or Declaration the nature of that relationship.

This opinion acknowledges that the Court with local jurisdiction is the final arbiter as to the need for a guardianship and the appointment of the guardian. The petitioning certified professional guardian should be aware of the Court's ability to require the petitioner to pay any or all fees and costs of proceedings at the Court's discretion, including the fees of the guardian ad litem.

Opinion: The following are considered to be best practices for Certified Professional Guardians:

The certified professional guardian should inform referral sources as to how guardianships are processed and should offer to refer interested parties to counsel if

necessary. However, petitioners for individuals with no close family or friends, limited assets, living in long term care environments, and/or with complicated care needs are often not available. As a result, the practical reality of the care environment is such that the availability of petitioners for those in need of a guardian is limited or non-existent. Therefore, the limited and qualified initiation of a guardianship petition by a certified professional guardian is acceptable under certain circumstances.

Specifically, if the certified professional guardian determines (a) a guardianship is in the interests of the Alleged Incapacitated Person; (b) there are no less restrictive alternatives; and (c) there is no other person willing to act as petitioner; then the certified professional guardian may act as petitioner in a guardianship.

In initiating such petition the certified professional guardian shall,

1. Consistent with state statute, engage in an investigation and document that investigation in an Affidavit or Declaration to the court the following pre-filing efforts:
  - a. identifying any alternative nominees and providing information as to why alternate nominees who are available are not suitable or able to serve;
  - b. providing a written request from the party requesting the guardianship which identifies the basis for the request and the basis for the decision by that party not to petition;
  - c. providing documentation from third parties of the facts set out in the petition. Such documentation can include statements from care providers, family members, friends, or others with knowledge of the circumstances of the incapacitated person.
  - d. providing documentation that the certified professional guardian has met with the alleged incapacitated person, the results of that meeting, and an opinion by the certified professional guardian of the capacity issues faced by the alleged incapacitated person.
2. Disclose in the Affidavit or Declaration to the court any relationship the certified professional guardian may have with a care facility and any practice the care facility may have involving the referral of residents to the certified professional guardian.

## **Opinion 2007-003 Notice - Change in Guardian Appointment**

### **CERTIFIED PROFESSIONAL GUARDIAN BOARD**

#### **ETHICS ADVISORY OPINION**

OPINION # 2007-003

**Date:** September 15, 2008

#### **Brief restatement of question posed:**

Who, if anyone, should be given notice when a professional guardian petitions for the appointment of a co-guardian to assist the existing guardian or to be discharged and have a standby or successor guardian appointed?

#### **Applicable Statutes:**

##### **RCW 11.88.120**

(1) At any time after establishment of a guardianship or appointment of a guardian, the court may, upon the death of the guardian or limited guardian, or, for any other reason, modify or terminate the guardianship or replace the guardian or limited guardian.

(2) Any person...may apply to the court for an order to modify or terminate a guardianship or to replace a guardian. If applicants are represented by counsel, counsel shall move for an order to show cause why the relief requested should not be granted. If applicants are not represented by counsel, they may move for an order to show cause, or they may deliver a written request to the clerk of the court.

(3) By the next judicial day after receipt of an unrepresented person's request to modify or terminate a guardianship order, or to replace a guardian..., the clerk shall deliver the request to the court. The court may (a) direct the clerk to schedule a hearing (b) appoint a guardian ad litem..., or (c) deny the application without scheduling a hearing, if it appears ...that the application is frivolous. ..A copy of the order shall be mailed by the clerk to the applicant, to the guardian, and to any other person entitled to receive notice of proceedings in this matter. Unless within thirty days after receiving the request from the clerk the court directs

otherwise, the clerk shall schedule a hearing on the request and mail notice to the guardian, the incapacitated person, the applicant, all counsel of record, and any other person entitled to notice of proceedings in the matter.

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(1)The ...guardian..shall file ...a notice designating a standby....guardian. Notice of the guardian's designation of the standby guardian shall be given to the standby guardian, the incapacitated person and his or her spouse and adult children, any facility in which the incapacitated person resides, and any person entitled to special notice under RCW 11.92.150 or any person entitled to receive pleadings pursuant to RCW 11.88.095(2)(g). Such standby guardian...shall have all the powers...of the regularly appointed guardian...and in addition, shall, within a period of thirty days from the death or adjudication of incapacity of the regularly appointed guardian, file ...a petition for appointment of substitute guardian or limited guardian.

(2) Letters of guardianship shall be issued to the standby guardian...upon filing an oath and posting a bond as required by RCW 11.88.100...The oath may be filed prior to the appointed guardian or limited guardian's death. Notice of such appointment shall be provided to the standby guardian, the incapacitated person, and any facility in which the incapacitated person resides. The provisions of RCW 11.88.100 shall apply to standby guardians and limited guardians.

#### RCW 11.92.150

....Any person interested in the estate, or in the incapacitated person, ...may serve ..a written request stating the specific actions of which the applicant requests advance notice. Where the notice does not specify matters for which notice is requested, the guardian or limited guardian shall provide ....advance notice of his or her application for court approval of any action in the guardianship.

#### Case law:

Upon removal of the guardian under Rem. Comp. Stat Sec. 1579 (the precursor to RCW 11.88.125), notice and other statutory requirements for appointment of original guardian are unnecessary for appointment of successor. Mathieu v United States, Fid. and Guar. Co., 158 Wash. 396 (1930) ) (Construing prior statute). An incapacitated person's petition to revoke guardianship is deemed to be a continuation of original guardianship proceedings. In re Michelson, 8 Wn. 2d 327 (1941) (Construing prior statute). Substantial compliance with the statute required. Teeters, 173 Wash. 138 (1933) (Construing prior statute).



### Court rules

Each court has its own local rules that govern how motions are set and heard in that court. Consult with counsel to determine whether local rules require any specific type of notice.

### Standards of Practice

**403.10** Unless otherwise directed by the Court, the guardian shall provide copies of all material filed with the court and notice of all hearings in the guardianship to the incapacitated person.

**408** The guardian shall perform duties and discharge obligations in accordance with current Washington law governing the certification of guardian. In each guardianship, the guardian shall comply with the requirements of the court that made the appointment.

### Summary of Opinion:

Notice must always be provided to any “interested persons” who have requested special notice of proceedings, absent a court order to the contrary. RCW 11.92.150. Unless otherwise directed by the court, the Standards of Practice also require notice to the incapacitated person.

If the proposed successor or co-guardian would be managing community assets for both an incapacitated person and their spouse who had not been adjudged to be incapacitated, due process may require notice to the spouse even if that spouse has not requested special notice. If the proposed successor or co-guardian is not a certified guardian or was proposed but objected to in the initial proceedings, the court may wish to give notice to persons who might be likely to be able to provide information on the suitability of the proposed guardian or might wish to appoint a guardian ad litem to investigate the proposed guardian’s suitability. The professional guardian should seek instructions or consult with counsel as to whether the court’s local practice and rules require additional notice or steps to be taken.

## Appendix G

### Chapter 26.60 RCW

### State Registered Domestic Partnerships



## **Chapter 26.60 RCW**

### **STATE REGISTERED DOMESTIC PARTNERSHIPS**

[Chapter Listing](#) | [RCW Dispositions](#)

#### **Sections**

<a href="#">26.60.010</a>	Finding.
<a href="#">26.60.015</a>	Intent.
<a href="#">26.60.020</a>	Definitions.
<a href="#">26.60.025</a>	Definition—Domestic partnership.
<a href="#">26.60.030</a>	Requirements.
<a href="#">26.60.040</a>	Registration—Records—Fees.
<a href="#">26.60.060</a>	Domestic partnerships created by subdivisions of the state.
<a href="#">26.60.070</a>	Patient visitation.
<a href="#">26.60.080</a>	Community property rights—Date of application.
<a href="#">26.60.090</a>	Reciprocity.
<a href="#">26.60.100</a>	Application for marriage—Dissolution of partnership by marriage—Automatic merger of partnership into marriage—Legal date of marriage.
<a href="#">26.60.900</a>	Part headings not law—2008 c 6.
<a href="#">26.60.901</a>	Severability—2008 c 6.

Notes:

Certificate of death -- Domestic partnership information: RCW [70.58.175](#).

Domestic partnership registry -- Forms -- Rules: RCW [43.07.400](#).

Public employees -- Same sex domestic partner benefits: RCW [41.05.066](#).

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26.60.010

Legislative findings.

\*\*\* CHANGE IN 2012 \*\*\* (SEE [6239-S.SL](#)) \*\*\*

Many Washingtonians are in intimate, committed, and exclusive relationships with another person to whom they are not legally married. These relationships are important to the individuals involved and their families; they also benefit the public by providing a private source of mutual support for the financial, physical, and emotional health of those individuals and their families. The public has an interest in providing a legal framework for such mutually supportive relationships, whether the partners are of the same or different sexes, and irrespective of their sexual orientation.

The legislature finds that same sex couples, because they cannot marry in this state, do not automatically have the same access that married couples have to certain rights and benefits, such as those associated with hospital visitation, health care decision-making, organ donation decisions, and other issues related to illness, incapacity, and death. Although many of these rights and benefits may be secured by private agreement, doing so often is costly and complex.

The legislature also finds that the public interest would be served by extending rights and benefits to different sex couples in which either or both of the partners is at least sixty-two years of age. While these couples are entitled to marry under the state's marriage statutes, some social security and pension laws nevertheless make it impractical for these couples to marry. For this reason, chapter 156, Laws of 2007 specifically allows couples to enter into a state registered domestic partnership if one of the persons is at least sixty-two years of age, the age at which many people choose to retire and are eligible to begin collecting social security and pension benefits.

The rights granted to state registered domestic partners in chapter 156, Laws of 2007 will further Washington's interest in promoting family relationships and protecting family members during life crises. Chapter 156, Laws of 2007 does not affect marriage or any other ways in which legal rights and responsibilities between two adults may be created, recognized, or given effect in Washington.

[2007 c 156 § 1.]

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26.60.015

Intent.

It is the intent of the legislature that for all purposes under state law, state registered domestic partners shall be treated the same as married spouses. Any privilege, immunity, right, benefit, or responsibility granted or imposed by statute, administrative or court rule, policy, common law or any other law to an individual because the individual is or was a spouse, or because the individual is or was an in-law in a specified way to another individual, is granted on equivalent terms, substantive and procedural, to an individual because the individual is or was in a state registered domestic partnership or because the individual is or was, based on a state registered domestic partnership, related in a specified way to another individual. The provisions of

chapter 521, Laws of 2009 shall be liberally construed to achieve equal treatment, to the extent not in conflict with federal law, of state registered domestic partners and married spouses.

[2009 c 521 § 1.]

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#### 26.60.020

##### Definitions.

The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "State registered domestic partners" means two adults who meet the requirements for a valid state registered domestic partnership as established by RCW [26.60.030](#) and who have been issued a certificate of state registered domestic partnership by the secretary.

(2) "Secretary" means the secretary of state's office.

(3) "Share a common residence" means inhabit the same residence. Two persons shall be considered to share a common residence even if:

(a) Only one of the domestic partners has legal ownership of the common residence;

(b) One or both domestic partners have additional residences not shared with the other domestic partner;  
or

(c) One domestic partner leaves the common residence with the intent to return.

[2007 c 156 § 2.]

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#### 26.60.025

##### Definition — Domestic partnership.

Whenever the term "domestic partnership" is used in the Revised Code of Washington it shall be defined to mean "state registered domestic partnership" and whenever the term "domestic partner" is used in the Revised Code of Washington it shall be defined to mean "state registered domestic partner."

[2008 c 6 § 1201.]

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#### 26.60.030

##### Requirements.

\*\*\* CHANGE IN 2012 \*\*\* (SEE [6239-S.SL](#)) \*\*\*

To enter into a state registered domestic partnership the two persons involved must meet the following requirements:

- (1) Both persons share a common residence;
- (2) Both persons are at least eighteen years of age;
- (3) Neither person is married to someone other than the party to the domestic partnership and neither person is in a state registered domestic partnership with another person;
- (4) Both persons are capable of consenting to the domestic partnership;
- (5) Both of the following are true:
  - (a) The persons are not nearer of kin to each other than second cousins, whether of the whole or half blood computing by the rules of the civil law; and
  - (b) Neither person is a sibling, child, grandchild, aunt, uncle, niece, or nephew to the other person; and
- (6) Either (a) both persons are members of the same sex; or (b) at least one of the persons is sixty-two years of age or older.

[2007 c 156 § 4.]

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#### 26.60.040

##### Registration — Records — Fees.

- (1) Two persons desiring to become state registered domestic partners who meet the requirements of RCW [26.60.030](#) may register their domestic partnership by filing a declaration of state registered domestic partnership with the secretary and paying the filing fee established pursuant to subsection (4) of this section. The declaration must be signed by both parties and notarized.
- (2) Upon receipt of a signed, notarized declaration and the filing fee, the secretary shall register the declaration and provide a certificate of state registered domestic partnership to each party named on the declaration.
- (3) The secretary shall permanently maintain a record of each declaration of state registered domestic partnership filed with the secretary. The secretary has the authority to update the records to reflect changes in the status of a state registered domestic partnership, such as a change of address, name, dissolution, or death. The secretary shall provide the state registrar of vital statistics with records of declarations of state registered domestic partnerships.
- (4) The secretary shall set by rule and collect a reasonable fee for filing the declaration, calculated to cover the secretary's costs, but not to exceed fifty dollars. Fees collected under this section are expressly designated for deposit in the secretary of state's revolving fund established under RCW [43.07.130](#).

[2009 c 521 § 71; 2007 c 156 § 5.]

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#### 26.60.060

##### Domestic partnerships created by subdivisions of the state.

- (1)(a) A domestic partnership created by a subdivision of the state is not a state registered domestic partnership for the purposes of a state registered domestic partnership under this chapter. Those persons desiring to become state registered domestic partners under this chapter must register pursuant to RCW

#### 26.60.040.

(b) A subdivision of the state that provides benefits to the domestic partners of its employees and chooses to use the definition of state registered domestic partner as set forth in RCW 26.60.020 must allow the certificate issued by the secretary of state to satisfy any registration requirements of the subdivision. A subdivision that uses the definition of state registered domestic partner as set forth in RCW 26.60.020 shall notify the secretary of state. The secretary of state shall compile and maintain a list of all subdivisions that have filed such notice. The secretary of state shall post this list on the secretary's web page and provide a copy of the list to each person that receives a certificate of state registered domestic partnership under RCW 26.60.040(2).

(c) Nothing in this section shall affect domestic partnerships created by any public entity.

(2) Nothing in chapter 156, Laws of 2007 affects any remedy available in common law.

[2007 c 156 § 7.]

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#### 26.60.070

##### Patient visitation.

A patient's state registered domestic partner shall have the same rights as a spouse with respect to visitation of the patient in a health care facility as defined in RCW 48.43.005.

[2007 c 156 § 8.]

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#### 26.60.080

##### Community property rights — Date of application.

Any community property rights of domestic partners established by chapter 6, Laws of 2008 shall apply from the date of the initial registration of the domestic partnership or June 12, 2008, whichever is later.

[2008 c 6 § 601.]

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#### 26.60.090

##### Reciprocity.

\*\*\* CHANGE IN 2012 \*\*\* (SEE 6239-S.SL) \*\*\*

A legal union of two persons of the same sex that was validly formed in another jurisdiction, and that is substantially equivalent to a domestic partnership under this chapter, shall be recognized as a valid domestic partnership in this state and shall be treated the same as a domestic partnership registered in this state regardless of whether it bears the name domestic partnership.

[2011 c 9 § 1; 2009 c 521 § 72; 2008 c 6 § 1101.]



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26.60.900

Part headings not law — 2008 c 6.

Part headings used in this act are not any part of the law.

[2008 c 6 § 1301.]

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26.60.901

Severability — 2008 c 6.

If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected.

[2008 c 6 § 1302.]

## **APPENDIX H**

### **GUARDIANSHIP OF THE PERSON (TITLE 11) VS NON-PARENTAL CUSTODY (TITLE 26)**



## **GUARDIANSHIP OF THE PERSON (TITLE 11) VS NON-PARENTAL CUSTODY (TITLE 26)**

### **I. Unique Purpose of Guardianship and Non-parental custody Statutes**

Many people look at non-parental custody under RCW Title 26 and Guardianship under RCW Title 11 as interchangeable.<sup>1</sup> While in some situations either guardianship or non-parental custody may be a workable solution, in many cases, that is not true. The two actions fill different and unique roles and are designed for different purposes.

The purpose of a guardianship action is set forth in RCW 11.88.005 in the legislative intent which states:

It is the intent of the legislature to protect the liberty and autonomy of all people in this state, and to enable them to exercise their rights under the law to the maximum extent, consistent with the capacity of each person. The legislature recognized that people with incapacities have unique abilities and needs, and that some people with incapacities cannot exercise their rights or provide for their basic needs with the help of a guardian. However, the liberty and autonomy should be restricted through the guardianship process only to the minimum extent necessary to adequately provide for their own health or safety, or to adequately manage their financial affairs.

The guardianship action is initiated to provide the guardian (who may or may not be the petitioner) with the right to “substitute decision making” for the alleged incapacitated person only to the extent that the alleged incapacitated person is unable to do so. In many situations the guardian and the incapacitated person are not living in the same residence. The role of the guardian is to manage both the finances and the care of an incapacitated person, but not actually provide the care himself/herself.

In contrast, RCW 26.10.005 states the following as the intent of the legislature:

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<sup>1</sup> There is also a guardianship authorized by RCW 13.36, but it is used in connection with dependency cases. This type of guardianship is not addressed in these materials.

It is the intent of the legislature to reenact and continue the law relating to third-party actions involving custody of minor children in order to distinguish that body of law from the 1987 parenting act amendments to chapter 26.09 RCW, which previously contained these provisions.

The petitioner in a non-parental custody action is requesting rights as a custodial parent. It is similar to other parenting actions under RCW Title 26, such as actions in dissolution or parentage cases. The end result is an order providing the third party with custody of the child, but in most cases, other parties (normally, but not necessarily the parents) are provided with traditional “visitation” and child support may also be provided.

## **II. Jurisdiction and Venue**

A guardianship action can be brought in the county where the incapacitated person is domiciled or it can be brought in the county where a parent or spouse of the incapacitated person lives. [RCW 11.88.010 (3)]. If there are plans to move a child to a different state, depending on the urgency of the situation, waiting until the child is in the final state to file the guardianship action may be appropriate because guardianship orders are generally transferred to the new jurisdiction when the incapacitated person moves.

In the Guardianship of Marshall, 46 Wn. App. 339, 731 P.2d 5 (1986) the court made it clear that the guardianship statute cannot be used to terminate or interfere with parental rights.

Marshall, supra at 343 and 344 states the following:

We agree with the Marshalls that guardianship is an improper proceeding to terminate a parent's right to custody of his or her children. . . . Similarly, a guardianship proceeding is an improper proceeding in which to adjudicate visitation rights. . . . "A guardian is a creature of statute, and has only those powers that are prescribed by statute." . . . Accordingly, the mere appointment of a guardian does not necessarily extinguish the rights of the parents to the custody of a child . . . Nothing in RCW 11.88.010 et. seq confers the right of custody upon a guardian. . . Any aspect of the order directed to custody or visitation is invalid.

There are situations where a guardian of the estate is required to manage a child's assets, but this is an entirely different purpose than obtaining an order providing that a third party is a guardian of the person. If the goal is to provide the individual with custodial or parental rights, the court does not have the right to grant such rights under the guardianship statute if one or both of the parents is alive.

In a non-parental custody action there are a number of factors to consider in addressing jurisdiction and venue. The first factor that must be considered is the impact of the Uniform Child Custody Jurisdiction and Enforcement Act on the proceeding. (UCCJEA or RCW 26.27) Even if this is the first time the third party is requesting custody of a child, if a prior custody order was entered in another state, in most cases that state has continuing jurisdiction and unless that state waives jurisdiction, the case must be brought where the prior custody order was entered. If there is not a need to file in another jurisdiction under the UCCJEA then RCW 26.10.030 (1) controls and states that the action can be filed in the county in the county where the child is permanently resident or where the child is found, but only if the child is not in the physical custody of one of the parents. If juvenile court is involved, they have primary jurisdiction and the case cannot move forward until juvenile court provides the superior court with concurrent jurisdiction.<sup>2</sup> Proper investigation of these jurisdictional issues before filing is critical to avoid delays in the process which are frequently being addressed at a very emotional time for the parties.

Non-parental custody actions require that the mandatory forms be used (RCW 26.10.015), but mandatory forms are not required in guardianship actions. Model forms have been in existence since about 2000 for guardianship cases and are available on the Washington State Court website. ([www.courts.wa.gov/forms/](http://www.courts.wa.gov/forms/)) In addition to the state model forms, some counties have their own

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<sup>2</sup> If juvenile court is involved, the guardianship under RCW Title 13 may be the better choice.

local forms<sup>3</sup> so if you are not familiar with procedures in your county it is wise to check whether there are forms unique to your county. Since there are no mandatory forms, any forms can be used, but the courts prefer the model forms to the extent there is a form appropriate to meet the needs of the issues being presented.

### **III. Emergency Relief**

In most circumstances temporary orders are not entered in guardianship cases and there is limited ability to enter temporary orders. Since all cases are supposed to be resolved within sixty (60) days there is less need for temporary relief than in a non-parental custody case where the case could continue for a year or longer. RCW 11.88.045 (5) provides that a petitioner or any person may move for temporary relief under Chapter RCW 7.40 (injunctions) to protect the alleged incapacitated person from abuse, neglect abandonment, or exploitation. The standards required by RCW 7.40 are very stringent and normally require that a bond be placed if there is a question as to another party being injured by the injunction. Emergency restraining orders are possible, but there are significant limitations on the issuance of such orders. (RCW 7.40.050.) Domestic Violence Protection Orders under RCW 26.50 or Vulnerable Adult Protection Orders under RCW 74.34 may also be possibilities, but these are beyond the scope of the guardianship statute. RCW 11.88.090 (8) and (9) provide the guardian ad litem the authority to make emergency decisions to obtain emergency life-saving medical services and to obtain a temporary injunction under RCW 7.40. When there are contested issues concerning care of a child, the guardianship statutes are really not designed to provide the relief required to give the petitioner temporary custody or stabilize the status quo.

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<sup>3</sup> There are some situations in guardianship practice that are not addressed completely by the forms, but in most cases they at least provide a place to begin drafting even if the actual form is not present. It is also wise to check to see if there are any guidelines for your courts. King County has its own set of forms, so it is useful to determine if there is a difference between the state and county forms for your jurisdiction.

The non-parental custody statute provides authority for temporary relief in much the same way that other statutes in RCW 26 do. RCW 26.10.110 makes provision for an award of temporary custody. RCW 26.10.115 provides for entry of temporary restraining orders similar to those in a dissolution or parentage action, but do not provide for protection of financial assets. (In the area of financial relief to control a child's assets, the guardianship statute provides better remedies.) Since many non-parental custody cases may take several months to resolve, temporary relief such as temporary custody, visitation and child support can be provided after a hearing. (RCW 26.10.110 and .115). In general maintaining the status quo or protecting the child from abuse or neglect during the pendency of the action is far easier under the non-parental custody statutes than through the guardianship statutes.

#### **IV. Legal Standards**

Unlike the non-parental custody statutes that are designed to address claims to traditional "custody rights" of a parent or third party, the guardianship statute was designed to address the needs of individuals who are incapacitated. In general these people have some life experiences and may not believe they are "incapacitated". The statute focuses on preserving the rights of incapacitated individuals, by requiring the least restrictive alternative to assist the incapacitated person possible. The court cannot enter an order of guardianship, unless the court determines that the alleged incapacitated person is incapacitated as required by statute. Pursuant to RCW 11.88.010 (d), a child under the age of eighteen (18) is determined to be incapacitated, however it is helpful to understand the standard that is used by the court in determining incapacity in other cases. RCW 11.88.010 (1)(a) and (b) provides these definitions:

- (a) For purposes of this chapter, a person may be deemed incapacitated as to the person when the superior court determines the individual has a significant risk of personal harm based on upon a demonstrated inability to adequately provide for nutrition, health, housing, or physical safety.



- (b) For purposes of this chapter, a person may be deemed incapacitated as to the person's estate when the superior court determines the individual is at significant risk of financial harm based upon a demonstrated inability to adequately manage property or financial affairs.

The determination of incapacity is a legal determination, not a medical determination and requires a demonstration of management incapacities in the area of the person or estate. [RCW 11.88.010

(1)(c). Although these standards may not appear relevant when the custody or guardianship of a child is considered, it is not unusual to be appointed as a guardian ad litem in a case under Title 11 for a minor child after the death of one or both parents and it is the responsibility of the guardian ad litem to apply the standards to the best of his/her ability, but also point out the fact that a Title 26 action would be more appropriate.

Although RCW 26.10.100 states that the basis for an award of custody is the best interests of a child, the case law has limited that determination in a number of ways. The jurisdictional basis to filing a petition requires that the petitioner allege that the child is not in the physical custody of either parent or that neither parent is a suitable custodian. [RCW 26.10.030 (1)]. Unless there is a showing of parental unfitness or for other exceptional reasons, custody cannot be granted to a third party even if the third party would be a better custodian than the parent. [(See Marriage of Allen, 28 Wn. App. 637, 626 P.2d (1976) and In re Custody of Stell, 56 Wn. App. 356, 783 P.2d 615 (1989).] It is possible to enter a non-parental custody order without a finding of parental unfitness with agreement of a living parent, but these orders can more easily be modified to place the living parent back in the role as custodian. (See Section XII below.)

## **V. Qualifications of a Guardian or Non-Parental Custodian**

The guardianship statute requires that the guardian must meet specific standards to be appointed as guardian. [RCW 11.88.020 (1)] Most of these requirements are fairly straight

forward, but some can present problems in some situations. The guardian must be over the age of eighteen (18) and be of sound mind. The guardian cannot be convicted of a felony or a misdemeanor involving moral turpitude at any time during their life. If the proposed guardian has one conviction resulting from making a poor decision at age eighteen (18) or nineteen (19), that individual cannot serve as guardian even if their life after that has been without any fault. The guardian is also required to complete a training that addresses the role and duties of a guardian. [RCW 11.88.020 (3) and RCW 11.88.030 (2).] Careful discussions with the proposed guardian before filing the action, as well as a check of the client's criminal record before proceeding with a guardianship action is critical.

Although having problems in one's past background does not preclude one from obtaining custody of a child in a non-parental custody action, the information must be provided to the court. RCW 26.10.160 incorporates the standard "191" restrictions so these apply in addition to the other unique requirements imposed for non-parental custody action. RCW 26.10.135 requires the court to inquire into the background of the proposed custodian. It states:

- (1) Before granting any order regarding the custody of a child under this chapter, the court shall consult the judicial information system, if available, to determine the existence of any information and proceedings that are relevant to the placement of the child.
- (2) Before entering a final order, the court shall:
  - (a) Direct the department of social and health services to release information as provided under RCW 13.35.100; and
  - (b) Require the petitioner to provide the results of an examination of state and national criminal identification data provided by the Washington state patrol criminal identification system as described in chapter 43.43 RCW for the petitioner and adult members of the petitioner's household.

Although this statute does not seem to require the review of department of social and health services records for other adult members of the Petitioner's household, my experience has been that both

the criminal and department of social and health services records are required for every member of the household of the proposed custodian before a final non-parental custody order is entered. There is no prohibition in awarding custody to a person with either a criminal record or prior issues with the department of social and health services or if someone in the household has these problems, however in most situations the courts will require a complete explanation of any criminal record or any past history of abuse or neglect of a child in reaching the legal conclusions that the best interests of the child will be met in the home of the proposed custodian.

Looking at the background of the person who is requesting custody of a child, either via a guardianship or non-parental custody action, before anything is filed is critical to determine whether the method chosen will be able to provide the results being sought.

## **VI. Role of Guardian and Custodian**

In a series of sections in Chapter 11.92 RCW, beginning with RCW 11.92.035 the statutes set forth the specific duties of the guardian. A large portion of RCW 11.92 addresses duties to handle financial obligations. The only portion of RCW 11.92 that address duties to address the personal needs of the incapacitated person is RCW 11.92.043. Subsection (4) sets out the specific duties of the guardian as to the person. It states:

Consistent with the powers granted by the court, to care for and maintained the incapacitated person in the setting least restrictive to the incapacitated person's freedom and appropriate to the incapacitated person's personal care needs, assert the incapacitated persons rights and best interests, and if the incapacitated person is a minor where otherwise appropriate, to see that the incapacitated person receives appropriate training and education and that the incapacitated person has the opportunity to learn a trade, occupation or profession.

Subsection 5 of RCW 11.92.043 places restrictions on the powers of the guardian to authorize certain invasive procedures. While the statute does address specific responsibilities to a minor in some ways the responsibilities of a parent are inconsistent with the authority granted to a guardian.

One would wonder if a guardian appointed for a teenager, would be required to place that teenager in the “least restrictive environment” for such a child. Clearly that is not the case, but it points out one the reasons that the guardianship statutes do not always meet the needs of a child. RCW 11.92.040 (6) addresses payment of funds to care for an incapacitated person to a third party or even directly to an incapacitated person. One of the most significant differences between the guardianship statutes and the non-parental custody statutes is that the guardian is not always expected to be providing the day to day care for the incapacitated person, but be monitoring that care by a third party.

The powers and duties of the custodian in a non-parental custody cases are specifically stated in RCW 26.10.170 which states:

Except as otherwise agreed by the parties in writing at the time of the custody decree, the custodian may determine the child’s upbringing, including education, health care, and religious training, unless the court after hearing, finds upon motion by the noncustodial parent, that in the absence of a specific limitation of the custodian’s authority, the child’s physical, mental or emotional health would be endangered.

RCW 26.09.170 goes on to indicate that the court may order an appropriate agency to supervise to make certain that custodial and visitation terms of the decree are carried out. Nothing is mentioned about finances or payment for the costs of the care. The focus is on providing care to the child and does not place any limitations on what the custodian is permitted to do unless there is concern about the physical, mental or emotional health of the child.

## **VII. Investigation by Guardian ad Litem or Other Impartial Third Party**

In Title 11 guardianship actions the role of the guardian ad litem and even the contents of the report are specifically spelled out in RCW 11.88.090. RCW 11.88.090 (5) spells out the majority of the duties of the guardian ad litem which include the following:

- A. Meet with the alleged incapacitated person and discuss specific rights the AIP is given by the guardianship action and rights that the alleged incapacitated person would lose if the order of guardianship is entered. RCW 11.88.090 (5)(a).
- B. Obtain a written medical or psychological report to verify the basis for the alleged incapacity. RCW 11.88.090 (5)(b).
- C. Meet with the proposed guardian and discuss a specific list of issues. RCW 11.88.090 (5)(c).
- D. Consult with others who have had a significant, continuing interest in the alleged incapacitated person. RCW 11.88.090 (5)(d).
- E. Investigate alternate arrangements that would meet the alleged incapacitated person's needs that would be less restrictive than a guardianship. RCW 11.88.090 (5)(e).

After doing the investigation, the guardian ad litem is required to provide a report at least fifteen (15) days before the hearing that includes nine specific requirements, many of which are related to the level of incapacity and the needs of the alleged incapacitated person. [RCW 11.88.090 (5)(f).] When a guardianship action is filed for a minor, many of the requirements of RCW 11.88.090 have little to do with the needs of a child, therefore the report, if done as required by the statute may not have the information that is really needed to determine the needs of the child.

RCW 26.10.130 provides the authority to appoint a guardian ad litem or other investigator in a non-parental custody case. RCW 26.10.130 (2) provides a list of things that the guardian ad litem may do, but there is no requirement that the guardian ad litem do any specific things, unless the guardian ad litem is ordered to do so by the court in the order of appointment. The report of the guardian ad litem must be filed at least ten (10) days before the hearing or trial. [RCW 26.10.130 (3).] The role of the guardian ad litem varies depending on the circumstances and the needs of the case.

## **VIII. Rights of Child**

There are a number of rights guaranteed to the alleged incapacitated person in guardianship cases that make little sense when the incapacitated person is a child. The alleged incapacitated person is guaranteed an attorney and one of the duties of the guardian ad litem is to advise the alleged incapacitated person of his/her right to an attorney. If the alleged incapacitated person requests an attorney, the court is required to appoint an attorney for the alleged Incapacitated Person. If the alleged incapacitated person is unable to pay for an attorney, the attorney is appointed at public expense. [RCW 11.88.045 (1)] If the alleged incapacitated person selects his/her own attorney, that attorney must petition the court to permit his/her representation of the alleged incapacitated person. [RCW 11.88.045 (2)]. The alleged incapacitated person has the right to present evidence at the hearing and is entitled to a jury trial on the issue of incompetence. The entire process must be completed within sixty (60) unless there is good cause to cause for a delay. [RCW 11.88.030 (6).] The primary focus is on determining whether the individual is incapacitated and only if that determination is made does the court address appointing a proposed guardian. While the appropriateness of the proposed guardian is an issue and the guardian must meet specific criteria to be appointed, it is frequently secondary to the determination of incompetence and the need for any third party to assist the alleged incapacitated person.

While one might argue that the rights of the child are considered throughout a non-parental custody case, since the best interests of the child is the focus, the child's ability to express his/her concerns in the judicial forum are very limited. RCW 26.10.170 addresses the appointment of an attorney for the child with respect to custody, support and visitation. The appointment of an attorney is discretionary with the court and in practice is rarely utilized, but the involvement of a child in a custody proceeding is normally not recommended and, if done, is highly criticized. If the child is a teenager with strong feelings about his/her custodian, then an attorney for the child

should be appointed because, unlike the guardian who must focus on the best interests of the child, that attorney must advocate for the wishes of the child.

## **IX. Child Support and Visitation**

### **A. Child Support**

There is nothing in the guardianship statutes that specifically provides for an award of child support, against a living parent, however if the child support orders in effect at the time of death of the parents provide for the payment of ongoing support after the death of the parent, it would follow that the guardian of the estate of the child would have a right to enforce the claim for support against the estate of the deceased parent for the benefit of the child.

The non-parental custody statute specifically provides for the award of child support. RCW 26.10.115(1) states that the support can be requested with an affidavit setting forth the factual basis for the support and the amount requested. RCW 26.10.045 states that the child support determination should be based on the child support schedule. If one is seeking child support from a living parent, the non-parental custody approach is the only legal vehicle that could be used since Marshall, supra indicates that the guardianship statutes cannot be utilized to assign any parental rights to third parties if one or both parents is still alive.

### **B. Visitation**

Guardianship statutes anticipate the appointment normally of one (1) guardian who will manage the affairs of the incapacitated person. There is no provision in the guardianship statutes to provide for visitation by any third party as indicated in Marshall, supra. Although the guardianship statutes do not provide for visitation, in both contested and non-contested cases, the courts will enter orders that specifically provide for visitation to protect the interests of the incapacitated person. This happens frequently in cases of divorced parents who have a high level

of conflict and have a child who is beyond the age of eighteen. These are cases where a guardian ad litem is frequently asked to investigate, both at the time the guardianship is initially established when the child reaches the age of eighteen (18) if the parents are already divorced, or at a later time if the parents are joint guardians and later separate and divorce.

If there are individuals wanting contact with a child, visitation can be provided in a non-parental custody case, just as it can be provided in any family law matter. This is specifically authorized by RCW 26.10.040 (1)(a). If parents died in difficult circumstances (such as a suicide-murder), the family of the murdered victim may want to restrict contact with the perpetrator's family. The statute requires the court to "consider, approve or make provision for" visitation, however the constitutional rights of any living parent would need to be considered in a non-parental custody case, but visitation for others will depend on the best interests of the child.

## **X. Management of Assets**

Chapter 11.92 RCW focuses on the rights and duties, especially the financial duties of the guardian. Issues such as sale of real estate, mortgage of property, representation in other court actions, routine payment of debts and management of bank accounts are addressed. Management of the financial needs of an incapacitated person is one of the primary reasons for the creation of a Title 11 guardianship.

In contrast there is nothing said anywhere in RCW 26.10 about management of financial assets of a child. There are multiple references to child support in RCW 26.10.040, .045, and 050. Health insurance is mentioned in RCW 26.10.060. That is the extent to which financial issues are addressed in the non-parental custody statutes, so if a child has significant assets that need to be managed, it will have to be done through the guardianship statutes.

## **XI. Time to Reach Resolution**



The guardianship statutes have specific deadlines as to the maximum time to complete the matter. The resolution of these cases within sixty (60) days is mandatory pursuant to RCW 11.88.030 (6) unless an extension of time is requested within the sixty (60) day time period and can be granted for good cause shown. If the extension is granted, a new hearing date must be set. If an alleged incapacitated person requests of jury trial or if there are other issues that cannot be resolved quickly the matter will be set on the trial calendar, but normally the trial is no more than sixty (60) or ninety (90) days later. The goal is to resolve the issues as quickly as possible so that the status of the incapacitated person is in question for the shortest period possible.

Normally non-parental custody cases follow the same time pattern as any other family law matter. RCW 26.10.140 provides that custody cases have priority in being set for trial, however there is not a definite deadline for completion of a non-parental custody actions, as is in guardianship cases and they are not provided the expedited resolution as is provided for relocation cases.<sup>4</sup> Since procedures are not consistent between counties the length of time it takes to resolve a case will vary based on the trial setting procedures of each county.

## **XII. Permanency of Orders**

When a guardianship order is entered, it is entered for a limited period of time, normally from one (1) to three (3) years. The order on its face has a date of expiration, usually four (4) months after the anniversary date of the original order. [RCW 11.88.095 (2) and RCW 11.92.040]. The court maintains a role monitoring guardianship cases throughout their existence. If the report requirement is not met, the original order will terminate and the role the guardian is thereby terminated. After the reports are filed a hearing is set to review the reports. If the reports were prepared properly and filed in a timely manner, a new order is entered, new Letters are prepared

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<sup>4</sup> If a non-parental custody case involved a relocation, whether the accelerated schedule provided for relocation cases would apply would probably depend on whether the case was filed as a relocation case or as a new custody case.

with a new expiration date and the guardianship will continue for another specific period of time. There are exceptions to the need for review, such as funds being held in a blocked account and not removed from the account, except by court order. (RCW 11.88.100 and .105.) All guardianship orders are subject to modification and/or termination if the court deems changes are just and in the best interest of an incapacitated person. (RCW 11.88.120.) Modifications do not require the high showing of change of circumstances and detriment to the child that is required for custody and parenting orders. Change typically occur in cases where the condition of the incapacitated person either improves or worsens or for some reason the original guardian is not able to continue to act as guardian or has failed to handle the guardianship duties properly. Because reviews of guardianship are scheduled periodically, the orders are never “permanent”.

The non-parental custody statute references the dissolution statute as a basis for modification of a parenting plan. (RCW 26.10.190) This would normally require a showing that the home of the original custodian was detrimental to the child, however the court has determined that the non-parental custody statute is unconstitutional when applied between a parent and a non-parent if the original order was entered without a finding of unfitness of the parent. In re the Custody of T.L., 165 Wn.App. 268, 268 P.3d 963 (2011). In these cases the standard is best interests of the child, not detriment in the home of the prior custodian. Once a child is placed in the custody of a third party, that order remains as written until modified by a subsequent court order and there are no reporting requirements as is required in the guardianship.

### **XIII. Attorney Fees and Litigation Costs**

There are a number of provisions within the guardianship statute that guarantee rights and put the responsibility for payment of the costs on the county in certain situations. RCW 11.88.030 (4) provides that no filing fee is required if the alleged incapacitated person has assets valued at

less than \$3,000.00. The county is required to pay the costs for the attorney for the alleged incapacitated person if 1) the individual is unable to afford counsel, or 2) the expense of an attorney would result in substantial hardship to the alleged incapacitated person or 3) the alleged incapacitated person does not have practical access to funds to pay an attorney, however reimbursement may be ordered if an attorney is provided at public expense due to the third variable.

The guardian ad litem fees are paid by the alleged incapacitated person unless such payment would result in substantial hardship, in which case the county is generally required to pay the guardian ad litem fees. The court has the authority to later allocate the guardian ad litem fees to the petitioner, the incapacitated person or any other person involved in the proceeding. As is true of other parenting proceedings, if it is found that the petition was filed in bad faith, the petitioner is required to pay all costs for the guardian ad litem. [RCW 11.88.050(10)]

RCW 11.92.180 provides for compensation of guardians as well as attorney fees incurred by the guardian. In most cases the attorney fees incurred by the Petitioner are paid from the estate of the alleged incompetent person, unless there is a finding that the alleged incapacitated person is not incapacitated.

The non-parental custody statutes provide for an award of attorney fees, other professional fees or costs in a manner very similar to dissolution actions. This is provided by RCW 26.10.080. RCW 26.10.070 provides for payment of attorney fees for a child by any of the parties. Although it is rarely used, there is a provision requiring the county to pay for an attorney for the child if all parties are indigent, not just the child as is true in the guardianship statutes. There is not a specific provision requiring fees of the guardian ad litem or other evaluator to be paid, except RCW 26.10.080 which addresses attorney fees and costs for all parties. Other than in the very limited

situation where the court appoints an attorney for the child and all parties are indigent, all fees and costs must be borne by the parties and are not paid by the county.<sup>5</sup>

#### **XIV. Conclusion**

While some cases could be resolved by either the non-parental custody statute or the guardianship statute a careful review of the needs and goals of the family should be considered before moving forward. In most cases non-parental custody is a better procedure when the welfare of a child is considered because it permits more flexibility in obtaining temporary order, allows for visitation and is more permanent. It does not require regular court reports which can be costly for the guardian to complete, even if they are done only every three (3) years. If the child is inheriting money and there is not a trust that can manage the money, the only alternative is a guardianship of the estate, but if the money is not needed, it can be placed in blocked accounts, limiting the need to provide reports to the court during the child's minority. While these may be general rules, there are always exceptions, so the needs and goals of the family must be the first priority.

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<sup>5</sup> There are many references to fees being paid by the county. Fees paid by the county are strictly controlled. In King County the maximum fee in most cases is \$3,000.00 at the rate of \$45.00 per hour.