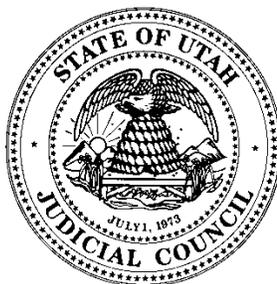




Utah State Courts

Ad hoc Committee on Probate Law and Procedure



Final Report to the Utah Judicial Council
February 23, 2009

**The mission of the Utah judiciary is to provide the people an open, fair, efficient,
and independent system for the advancement of justice under the law.**

Ad hoc Committee on Probate Law and Procedure
Final Report to the Judicial Council
February 23, 2009

Prepared by
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Seventh District Court

George M. Harmond, Jr.
District Judge

February 23, 2009

Douglas B. Thomas
District Judge

The Honorable Christine M. Durham
Chief Justice, Utah Supreme Court
Presiding Officer, Utah Judicial Council
P.O. Box 140210
Salt Lake City, Utah 84114-0210

Dear Chief Justice Durham:

On behalf of the Judicial Council's ad hoc Committee on Probate Law and Procedure, I am pleased to submit this final report with recommendations.

The Judicial Council's charge to the committee was very broad, encompassing nearly any part of probate policy that we decided needs attention. We focused immediately on protective proceedings in the district court. Yet, as narrowly as we have focused our attention, the topic is complex enough to have required all of our time. So the work on the probate code and the needs of the elderly remains unfinished.

We offer extensive recommendations in the area of guardianships and conservatorships. This package combines necessary changes to statutes and rules, improved forms and education, and nothing less than a cultural shift in the way we think of guardianships and conservatorships.

The appointment of a guardian or a conservator removes from a person a large part of what it means to be an adult: the ability to make decisions for oneself. The appointment often comes later in one's life, but not always. Younger adults incapacitated by accident, disease or developmental limitations also are affected. We terminate this fundamental and basic right with all the procedural rigor of processing a traffic ticket.

- The definition of incapacity is essentially the same as it was 100 years ago.
- The respondent is sometimes not represented.
- The respondent is sometimes represented by a lawyer recruited by the petitioner's lawyer.
- The respondent's lawyer sometimes acts as *guardian ad litem* rather than advocate.
- There is little or no procedure to elicit and challenge evidence.
- The evidence itself is cursory.
- Once appointed, guardians are often given the authority of a conservator whether or not that authority is warranted by the respondent's circumstances.
- Statutes claim to prefer limited authority for guardians and conservators, but fail to describe less restrictive alternatives.

- Plenary appointments are common with little evidence to support the need.
- There is no planning to help the respondent live life as independently as possible.
- There is no regulation of professional guardians.
- There is little education or assistance for family guardians.
- There is little training for judges and clerks.

The *Deseret News* recently reported that when it “went to court to watch guardianship proceedings, it was startling how quickly someone could be stripped of all decisionmaking rights. Once the paperwork is in order, ‘hearings’ average seconds, not minutes.”

Utah is not unique. Quite the contrary. Most states have let slip this important area of the law.

We classify guardianships and conservatorships as probate cases, but they have more in common with family law cases than with the intergenerational transfer of property. They share many of the emotional and financial issues of a divorce. The court defines future family relationships. We offer our recommendations with this idea in mind.

Our recommendations retain the basic concept of the Uniform Guardianship and Protective Proceedings Act to avoid contested litigation whenever possible. But uncontested does not mean automatic. We recommend a much more fully developed process to better protect the respondent and to present better evidence on which to make a measured intervention.

We have three recommendations that require public money:

- attorney fees and expenses of indigent respondents;
- interpreting guardianship and conservatorship proceedings and translating forms and materials for non-English speaking respondents; and
- a coordinator to recruit and train volunteers to serve as court visitors.

We recognize that the significant decline in state revenue means there will be no general fund appropriation for programs such as these. Nevertheless, we make the recommendations hoping that funding may someday be available. In the meantime, we recommend that the courts and the Bar pursue funds that might be available through *and Justice for All*, the Utah Bar Foundation, grants, and other sources. And we recommend that the Utah Access to Justice Council and the Utah State Bar organize and support a panel of trained, pro bono attorneys.

Beyond these funds, we recognize that our recommendations require a particularized inquiry into the respondent’s circumstances. The inquiry replaces traditional subjective judgments about the reasonableness of the respondent’s behavior with a more focused decision about the respondent’s capabilities and limitations. And all of that translates into more time.

We recommend that this report be presented to judges, lawyers, guardians, conservators, health care providers, service providers and other stakeholders for critical analysis which can be integrated into legislation and rules for 2010.

The Honorable Christine M. Durham
February 23, 2009
Page Three

I want to thank the committee members and staff for their dedicated time and attention to the grand concepts and the many, many details of a program of this scope. We were well served.

Finally, I want to thank Judge Sheila McCleve for her work as the first chair of the committee. Circumstances meant that she was not able to remain as chair, but her initial guidance showed us the way.

Sincerely,

A handwritten signature in cursive script that reads "George M. Harmond". The signature is written in dark ink and is positioned above the printed name.

George M. Harmond
Committee Chair

(1) Table of Contents

(1) Table of Contents.....	1
(2) Summary of recommendations	4
(3) Introduction	5
(4) Definition of “incapacity”	7
(a) Inadequacy of current definition	7
(b) Recommended definition	9
(c) Factors	10
(5) Evidence of incapacity	11
(a) Inadequacy of current evidence	11
(b) Recommendation	12
(6) Respondent’s lawyer	13
(a) Current availability of lawyers	13
(b) Recommendation	14
(i) Conservatorships.....	14
(ii) Roster	15
(iii) Money	16
(iv) Role of respondent’s lawyer.....	16
(7) Petitioner’s lawyer	17
(8) Court process.....	18
(a) The hearing.....	18
(b) Mediation	19
(i) Capacity of respondent to mediate	19
(ii) Power imbalance among the parties.....	20
(iii) Mediator training	21
(c) Probate commissioner	21
(d) Access to records	22
(9) Fiduciary authority	23
(a) Less restrictive alternatives to guardianship or conservatorship	23
(i) Alternatives for financial decisionmaking.....	23
(ii) Alternatives for health care decisionmaking.....	24
(iii) Crisis intervention	24
(iv) Organizations willing to help	25

(b) Fiduciary’s limited authority.....	25
(i) Guardian or Conservator?	26
(ii) Retained rights – Restrictions on authority	27
(iii) Maximizing respondent’s independence – Decisionmaking standard	28
(iv) Respondent’s values, preferences and patterns.....	28
(10) Emergency appointments	29
(11) “School guardianships”	30
(12) Appointments by will or signed writing	31
(13) Monitoring guardians and conservators	32
(a) Planning.....	32
(b) Annual reports.....	33
(c) Volunteer court visitors.....	33
(d) Regulating guardians and conservators.....	35
(i) Professional conservators	35
(ii) Professional guardians	35
(iii) Private fiduciaries.....	37
(14) Conservators	37
(15) Training for judges, lawyers, court personnel and volunteers	38
(16) Outreach and assistance for the public.....	39
(17) Information gathering	40
(18) Committee members and staff.....	40
(19) Utah Protective Proceedings Act	41
(20) Court Rules.....	102
(a) Rule 14-808. Lawyer qualified to represent a respondent in a protective proceeding.....	102
(b) URCP 150. Petition to appoint a guardian for a minor.	103
(c) URCP 151. Petition to appoint a guardian for an adult.....	103
(d) URCP 152. Petition to appoint a conservator or enter a protective order.	104
(a) URCP 153. Service in a protective proceeding.....	105
(b) URCP 154. Manner of service.	106
(c) URCP 155. Appointment of lawyer to represent a respondent in a protective proceeding.....	107
(d) URCP 156. Court visitor.....	108
(e) URCP 157. Evaluation of respondent.	109
(f) URCP 158. Presence and rights at hearing	110

(g) URCP 159. Minimum qualifications before appointment.....	110
(h) URCP 160. Guardian's management plan.....	110
(i) URCP 161. Conservator's management plan.	111
(j) URCP 162. Guardian's annual report.....	112
(k) URCP 163. Conservator's annual report.....	113
(l) Rule 6-501. Reporting requirements for guardians and conservators. (Repeal)	114
(21) Report on Clinical Evaluation of Respondent.....	118
(22) Report on Social Evaluation of Respondent	131

(2) Summary of recommendations

- Modernize the definition of incapacity to focus on functional limitations. Require proof of incapacity (among other grounds) to appoint a conservator or a guardian.
- Enforce the requirement to prove incapacity by clear and convincing evidence.
- Consider in every case ordering that the respondent be evaluated by a physician or psychiatrist and by a court visitor. Adopt uniform forms on which to report the results of a clinical and social evaluation.
- Appoint a lawyer to represent the respondent in conservatorship cases, as is now done in guardianship cases.
- Require the respondent's lawyer to be from a roster of qualified lawyers maintained by the Utah State Bar. Establish minimum qualifications for the roster. Appropriate funds to pay the respondent's lawyer if the respondent cannot afford a lawyer and does not qualify for existing programs.
- Respondent's lawyer should be an independent and zealous advocate, rather than a *guardian ad litem*.
- If the court determines that a petition resulted in an order beneficial to the respondent, and if funds are available in the estate, permit the court or conservator to pay the reasonable and necessary expenses, costs and attorney fees from the estate.
- Require the respondent to attend all hearings unless the respondent waives that right or unless the court finds that attending the hearing would harm the respondent. Take steps to accommodate the special needs of respondents at court hearings.
- Appoint a certified court interpreter if the respondent does not understand English.
- Refer protective proceedings to mediation. The mediation community should develop training for mediating protective proceedings, including especially the skills and accommodations necessary when mediating with a person of potentially diminished capacity.
- Consider appointing a commissioner to hear probate matters, including guardianship and conservatorship cases, in districts with sufficient caseload.
- With a few exceptions, classify guardianship and conservatorship records as private.
- Require the petitioner to show that alternatives less restrictive than appointing a fiduciary have failed or that they would not be effective. Presume, rather than favor, limited guardianships. Adopt laws, procedures and forms that make limited guardianships a realistic option.
- Require the fiduciary to use the "substituted judgment" standard for decisionmaking on behalf of the respondent except in those limited circumstances in which the "best interest" standard may be used.

- Adopt special procedures for temporary emergency appointments.
- Eliminate “school guardianships.”
- Permit a person to nominate, rather than appoint, a guardian for self, a child or a spouse, and to petition to confirm the nomination during one’s lifetime.
- Require the fiduciary to write a management plan and file it with the court.
- Appoint a coordinator to develop a program of volunteer court visitors.
- Regulate the profession of guardian through the Division of Occupational and Professional Licensing. Require private guardians and conservators to disclose any criminal convictions that have not been expunged.
- Develop training for lawyers, judges and court staff. Develop outreach and assistance to guardians, conservators, respondents and the public.
- Unify the laws regulating guardians and conservators except where there is sound policy to differentiate them.

(3) Introduction

The general state of guardianships and conservatorships may depend upon whom one talks to. Although a bit dated, one court group, while recognizing that abuses occur, notes that, “the great majority of guardianships ... are initiated by people of goodwill who are in good faith seeking to assist and protect the respondent. ... Furthermore, in the great majority of guardianship proceedings, the outcome serves the best interests of the respondent and an appointed guardian acts in the respondent's best interests.”¹ On

Appointing a guardian or conservator legally changes an adult into a child once more, and, as with a child, someone else decides those questions.

the other side of the coin, empirical researchers from a similar time period, while noting the benefits of guardianships, report that “guardianship ... often benefit[s] the guardian more than the ward and [can] hasten institutionalization for the protected person. ... [H]earings [are] extremely brief, [do] not rely upon medical testimony, and often [result] in plenary orders
....”²

The committee members’ experience supports both views. Many of the conclusions we reach are based on our observations and experience. We have no statistics to offer because, like most jurisdictions, other than the number of petitions filed, we record little in a systematic way. In how many cases is the respondent excused from the trial? In how many cases is the respondent not represented by counsel? Not evaluated by a physician or psychiatrist? By a court visitor? In the end, we do not know. Based on our

¹ National Probate Court Standards, Commission on National Probate Court Standards and Advisory Committee on Interstate Guardianships, Section 3.3 (1993). Hereafter cited as National Probate Court Standards.

² Clinical Evidence in Guardianship of Older Adults Is Inadequate: Findings From a Tri-State Study, *The Gerontologist* Vol. 47, No. 5 (2007) by Jennifer Moye, PhD, Stacey Wood, PhD, Barry Edelstein, PhD, Jorge C. Armesto, PhD, Emily H. Bower, MS, Julie A. Harrison, MA, and Erica Wood, JD. pp 604–605, citing earlier studies. Hereafter cited as “Moye.”

experience we know which observations in the national literature and in the committee testimony ring true.

Appointing a guardian or a conservator is one the most significant interventions by a court into a person's life. Like a prison sentence or commitment to a mental health facility, the appointment takes from that person the freedom to decide for oneself many, and often times all, of the large and small issues we face every day. Appointing a guardian or conservator legally changes an adult into a child once more, and, as with a child, someone else decides those questions.³

Ideally, "procedural protections work to ensure that putative wards are fully informed, properly evaluated, zealously defended, that the issues are fully developed and heard, and that an intervention is finely tuned to the needs and preferences of individuals."⁴ Yet those protections are applied inconsistently at best.

The law requires that the respondent be represented, but that does not always happen. If the respondent is represented, the attorney might have been recruited by the petitioner's attorney. Or might fulfill the role of a *guardian ad litem* rather than advocate. The standard to declare someone incapacitated is clear and convincing evidence, but clinical evidence is usually modest. Procedures are cursory. The *Deseret News* reports that "'hearings' average seconds, not minutes."⁵

The guardian is usually granted plenary authority over the respondent with little or no exploration of the respondent's capabilities and in the face of laws that prefer limited authority. Annual reports by guardians and conservators have been required for many years, but only recently has the district court enforced the requirement. The court has

This is what we hope to achieve:

- ♦ a deliberate inquiry into the limitations and needs of the respondent;
- ♦ a measured intervention based on those limitations and needs; and
- ♦ oversight to protect the quality of life of a respected individual.

no way to verify the truth of those reports, except by objections from the respondent's family, which might be uninterested or perhaps does not exist.

Press reports and official investigations in other states have revealed ruined lives and have sent fiduciaries to prison.⁶ Although Utah has so far avoided the scandalous headlines in which a fiduciary abuses, neglects or defrauds the person s/he is responsible for, there is no reason

to believe that guardians and conservators in Utah are any less prone to abuse or fraud than those in other states whose malfeasance and negligence have been discovered.

³ Indeed, under current Utah law, "Absent a specific limitation . . . , the guardian has the same powers, rights, and duties respecting the ward that a parent has respecting the parent's unemancipated minor child. . . ." Utah Code Section 75-5-312(2).

⁴ Charles P. Sabatino, *Competency: Refining Our Legal Fictions, Older Adults' Decision making and the Law* 1, 2 (Michael Smyer, K. Warner Schaie & Marshall B. Kapp eds., Springer Publg. 1996), pp 20-21.

⁵ <http://deseretnews.com/article/1,5143,705265008,00.html?pg=2> *Deseret News*, November 24, 2008. Who should make choices for the elderly? By Elaine Jarvik and Lois M. Collins.

⁶ See e.g., stories linked at: http://www.citibay.com/cgi-bin/directory.pl?etype=odp&passurl=/Society/Issues/Violence_and_Abuse/Elder/Guardianships/.

Most petitions are filed in good faith to appoint a person of goodwill who will serve in the best interests of the protected person, but we rely primarily on good faith and goodwill to achieve that result. Good intentions and lack of oversight have, over time, led to summary proceedings that presume to protect the respondent from others and from self, but that offer little real protection from the process itself or from those we put in charge of the respondent's life. And even one case in which the fiduciary takes advantage of the person s/he is supposed to take care of is one too many. Summary proceedings and trust in the capability and goodwill of guardians and conservators are easy, but they deny many respondents the level of independence they may be capable of.

To be sure, there are cases in which the respondent is so clearly incapacitated that substantial medical evidence would be costly and without purpose. There are cases in which the respondent is so fully incapacitated that plenary control over that person is the most appropriate arrangement. But not in all cases. Many cases present nuances that need to be explored and capacities that need to be protected.

In Utah, as in most states and in national standards, guardianships and conservatorships are classified as probate cases, yet today they have more in common with family law than with probate law. Those who need protection or help are often seniors but not always. The family faces the same emotional and financial drain faced in divorce. Although we do not intend to reclassify an entire area of the law, we recommend significant changes to many statutes and rules with the dynamics of family relationships in mind.

This is an area that is ripe for collective action. There are roles here for all three branches of government, the Bar, the health care community, and even the larger public community. This is what we hope to achieve:

- a deliberate inquiry into the limitations and needs of the respondent;
- a measured intervention based on those limitations and needs; and
- oversight to protect the quality of life of a respected individual.

(4) Definition of “incapacity”

(a) Inadequacy of current definition

Merely defining the term “incapacity” is a complex matter. Is it a legal standard or medical? Is it cognitive or functional? What factors are relevant? Can a person lack capacity for some purposes and have capacity for others? Yet we must agree on a definition because the appointment of a guardian or conservator⁷ rests upon the finding that a person is incapacitated.

The keystone to the entire protective arch is not that much different from the definition at the time of statehood.

⁷ Current Utah law permits the appointment of a conservator if the respondent “is unable to manage the person's property and affairs effectively for reasons such as mental illness, mental deficiency, physical illness or disability, chronic use of drugs, chronic intoxication, confinement, detention by a foreign power, or disappearance....” Utah Code Section 75-5-401(2). Except for confinement, detention and disappearance as reasons to appoint a conservator, this definition is essentially the same as incapacity

The current statutes governing guardians and conservators were enacted in 1975 and are based on the Uniform Guardianship and Protective Proceedings Act of 1968. Medical care for and everyday functioning of people well into later life has improved a lot in 40 years, but our definition of “incapacity,” the keystone to the entire protective arch, is not that much different from the definition at the time of statehood.

Utah law defines an incapacitated person as:

any person who is impaired by reason of mental illness, mental deficiency, physical illness or disability, chronic use of drugs, chronic intoxication, or other cause, except minority, to the extent of lacking sufficient understanding or capacity to make or communicate responsible decisions.

Utah Code Section 75-1-201(22).

Although the statute has never been amended to reflect the decision, our Supreme Court has added that the lack of understanding or capacity to make or communicate decisions must be so impaired that the person is unable to care for personal needs or safety to such an extent that illness or harm may occur.

We hold that ... a determination that an adult cannot make ‘responsible decisions concerning his person’ and is therefore incompetent, may be made only if the putative protected person’s decisionmaking process is so impaired that he is unable to care for his personal safety or unable to attend to and provide for such necessities as food, shelter, clothing, and medical care, without which physical illness or harm may occur.

In re Boyer, 636 P.2d 1085, 1089 (Utah 1981).

In other words, poor choices alone – even choices that a reasonable person would describe as irresponsible – do not make one incapacitated.

The Uniform Guardianship and Protective Proceedings Act of 1997 moves away from the traditional “physical illness” and “mental illness” found in the 1968 Uniform Act to focus on the ability to receive and evaluate information or to make or communicate decisions.⁸

Many states and the National Probate Court Standards have moved away from cognition and decisionmaking to focus on functional limitations: What can the respondent do and not do? In this approach, cognition and executive functioning remain important, perhaps more important than most other functioning, but, in the end, they are simply functions in which the respondent may face limitations. This definition inherently answers the question: Can a person lack capacity for some purposes and retain capacity for others? At least potentially, the answer is “yes,” depending on the nature of the functional limitations.

This approach requires a particularized inquiry into the respondent’s circumstances, which necessarily is more difficult and time-consuming. The inquiry replaces traditional

for the appointment of a guardian. Later in this report, we recommend using one standard for both appointments.

⁸ Uniform Guardianship and Protective Proceedings Act of 1997, Section 102(5). Hereafter cited as 1997 Uniform Act.

subjective judgments about the reasonableness of the respondent’s behavior with a more focused decision about the respondent’s capabilities and limitations.⁹

Whether the determination of incapacity is a medical or legal decision is more easily concluded. Given the consequences of the decision, it has to be a legal decision judicially made. The decision might be heavily influenced by medical evidence and opinions, but the decision itself remains a legal consequence.

Poor choices alone – even choices that a reasonable person would describe as irresponsible – do not make one incapacitated.

Choices that are linked with lifetime values are rational for an individual even if outside the norm.

(b) Recommended definition

By evaluating our current statute and case law, the definitions in other states and those recommended in national standards, and by considering similar concepts from Utah law in other applications, we recommend the following definition of incapacity for the appointment of either a guardian or a conservator:

“Incapacity” means a judicial determination that an adult’s ability, even with assistance, to

- (a) receive and evaluate information,
- (b) make and communicate decisions,
- (c) provide for necessities such as food, shelter, clothing, health care or safety,
- (d) carry out the activities of daily living, or
- (e) manage his or her property

is so impaired that illness or physical or financial harm may occur. Incapacity is a judicial decision, not a medical decision, and is measured by functional limitations.

Although not mentioned in the *Boyer* holding, we recommend adding “financial harm” to the definition of “incapacity” so that one definition can serve as the grounds for appointing a guardian or a conservator, rather than the separate but similar definitions we have now. The importance of this small change can be lost in the enormity of the project. Historically, appointment of a conservator has not been a determination of the respondent’s incapacity.¹⁰ With this change, a conservator cannot be appointed unless the respondent is incapacitated.

The grounds for appointing a conservator should also include that the respondent is missing, detained, or unable to return to the United States, and the person to be protected should be able to voluntarily request the appointment. But the definition of

⁹ Judicial Determination of Capacity of Older Adults in Guardianship Proceedings, American Bar Association Commission on Law and Aging – American Psychological Association (2006). Hereafter cited as Judicial Determination of Capacity.

¹⁰ Utah Code Section 75-5-408(2); 1997 Uniform Act Section 409(d).

incapacity as grounds to appoint a guardian or conservator should be the same for both offices.

(c) Factors

We propose several factors that the judge might consider when determining the respondent's capacity. Most will be familiar to those experienced in protective proceedings.

(1) whether the respondent's condition, limitations and level of functioning leave the respondent at risk of:

(a) his or her property being dissipated;

(b) being unable to provide for his or her support, or for the support of individuals who are entitled to the respondent's support;

(c) being financially exploited;

(d) being abused or neglected, including self injurious behavior; or

(e) having his or her rights violated;

(2) whether the respondent has a physical or mental illness, disability, condition, or syndrome and the prognosis;

(3) whether the respondent is able to evaluate the consequences of alternative decisions;

(4) whether the respondent can manage the activities of daily living through training, education, support services, mental and physical health care, medication, therapy, assistants, assistive devices, or other means that the respondent will accept;

(5) the nature and extent of the demands placed on the respondent by the need for care;

(6) the nature and extent of the demands placed on the respondent by his or her property;

(7) the consistency of the respondent's behavior with his or her long-standing values, preferences and patterns of behavior, and

(8) other relevant factors.

We want to focus on one factor in particular: the respondent's values, preferences and patterns of behavior. Although it comes late in the list, it is perhaps one of the more important factors. Two brief quotes from the benchbook *Judicial Determination of Capacity of Older Adults in Guardianship Proceedings* by the ABA indicate why.

Capacity reflects the consistency of choices with the individual's life patterns, expressed values, and preferences. Choices that are linked with lifetime values are rational for an individual even if outside the norm."¹¹

Each of the above factors must be weighed in view of the individual's history of choices and expressed values and preferences. Do not mistake

¹¹ Judicial Determination of Capacity, p 5.

eccentricity for diminished capacity. Actions that may appear to stem from cognitive problems may in fact be rational if based on lifetime beliefs or values. Long-held choices must be respected, yet weighed in view of new medical information that could increase risk, such as a diagnosis of dementia.¹²

(5) Evidence of incapacity

(a) Inadequacy of current evidence

On what basis should the court decide whether a person is incapacitated? Although the statute requires only that the judge be “satisfied”¹³ that the respondent is incapacitated, the actual standard – clear and convincing evidence – is well settled. This is the law from the Utah Supreme Court¹⁴, and it is in keeping with the 1997 Uniform Act.¹⁵

Yet from the experience of committee members, it often does not require very much evidence to satisfy that high standard. In an empirical study of guardianship cases in Colorado, Massachusetts, and Pennsylvania,¹⁶ researchers found:

The danger of relying exclusively on an evaluation arranged by the petitioner is shown by physicians’ disagreement about determining capacity.

In other words, physicians consistently diagnosed the obvious subjects at either end of the spectrum and disagreed about the subjects in the middle for whom the diagnosis was a closer question.

- Written evaluations were filed in all but one case in Massachusetts and Colorado, and in 75% of the cases in Pennsylvania.
- Evaluations were submitted by physicians in 98% of the Massachusetts cases and in 88% of the Pennsylvania cases. In Colorado, clinical reports were submitted by physicians (57%), psychologists (27%), other professionals (9%), or a multidisciplinary team (6%) consistent with the 1997 Uniform Act.
- The average length of clinical reports in Colorado as 781 words, 244 words in Pennsylvania and 83 words in Massachusetts.
- 75% of the Massachusetts reports were hand written, and 65% of these had at least some portion that was illegible. In Pennsylvania and Colorado, reports were almost always typed.

That 83 words, some of which are illegible, might be offered as clear and convincing evidence is beyond belief.

A judge should never rely exclusively on a clinical evaluation secured by the petitioner. “A clinical evaluation secured by the petitioner is for the purpose of supporting the petition and may lack attention to the individual’s areas of strength, a

¹² Judicial Determination of Capacity. p 12.

¹³ Utah Code Section 75-5-304(1).

¹⁴ *In re Boyer*, 636 P.2d 1085, 1092 (Utah 1981).

¹⁵ 1997 Uniform Act, Sections 311 and 401.

¹⁶ Moye, p 608.

prognosis for improvement, or important situational factors. An independent assessment can flesh out skeletal or purely one-sided information.”¹⁷

The danger of relying exclusively on an evaluation arranged by the petitioner is shown by physicians’ disagreement about determining capacity. In a study reported in 1997,¹⁸ “physicians experienced in competency assessment showed ... virtually unanimous judgment agreement [98%] for older normal controls but dramatically lower ... agreement [56%] for patients with mild [Alzheimer’s disease].” “Overall pairwise physician ratings showed excellent percentage judgment agreement for the control and a severely demented AD patient but lower percentage agreement for patients with mild to moderate [Alzheimer’s disease].” In other words, physicians consistently diagnosed the obvious subjects at either end of the spectrum and disagreed about the subjects in the middle for whom the diagnosis was a closer question.

(b) Recommendation

The American Bar Association Commission on Law and Aging, in conjunction with the American Psychological Association and the National College of Probate Judges, has prepared a template for a clinical evaluation of the respondent.¹⁹

A fuller picture of the respondent – gained through more complete evidence – is desperately needed.

We have studied it and expanded upon it with suggestions from other sources. It is extensive. Parts of it may not be relevant in some cases, and we recommend that those be excised. The judge should not be required to order the respondent to submit to a clinical evaluation, but we recommend its consideration in every case.

Although Utah Rule of Civil Procedure 35 governs the examination of a party when the party’s “mental or physical condition ... is in controversy,” we recommend that a special rule govern the respondent’s examination in protective proceedings. Rule 35 was written for personal injury cases and contains provisions inappropriate to these circumstances.

The Wingspan Conference recommends that “the pre-hearing process include a separate court investigator or visitor, who must identify the respondent’s wants, needs, and values.”²⁰ The 1997 Uniform Act also recommends that a court visitor be required.²¹ Utah law provides that the court may appoint a visitor to interview the respondent, but there is no requirement to do so, unless the petitioner proposes that the respondent be excluded from the hearing. By omitting this step, the court denies itself critical independent information with which to assess the respondent’s functional abilities and limitations, values and history, all of which affect the fiduciary’s appointment and authority.

¹⁷ Judicial Determination of Capacity, p 8.

¹⁸ Journal of the American Geriatrics Society - Volume 45, Issue 4, pages 453-457 (April 1997).

¹⁹ Judicial Determination of Capacity, pp 25-32.

²⁰ Wingspan - The Second National Guardianship Conference, Recommendations, Recommendation 30, 31 Stetson L. Rev. 595, 601 (2002). Hereafter cited as Wingspan Conference.

²¹ 1997 Uniform Act Section 305.

An evaluation by a multidisciplinary team, as in Colorado, may be beyond the means of nearly all families, but we recommend at least the perspective of a court visitor in addition to that of the clinician. Evaluation by a medical professional will probably occur in a clinical setting, but evaluation by the court visitor should, whenever possible, be in the respondent's usual environment and with all due consideration for his or her privacy and dignity.²²

Evidence from family, friends, colleagues, religious ministers, care providers and others will provide the judge with information about who this respondent is, and will enable the judge to decide, not just the respondent's capacity, but also the details of the guardianship plan. A fuller picture of the respondent – gained through more complete evidence – is desperately needed.

(6) Respondent's lawyer

Under Utah law, the court must appoint a lawyer to represent a respondent in a guardianship proceeding²³ and may do so in a conservatorship proceeding²⁴ unless the respondent has a lawyer of his or her own choice. Given the importance of the proceedings, it is critical that the respondent have a lawyer.

(a) Current availability of lawyers

Legal Aid Society of Salt Lake and Utah Legal Services are the primary free legal service providers in Utah. Legal Aid Society of Salt Lake is limited to Salt Lake County. Utah Legal Services represents clients throughout the state. Both represent clients in a variety of cases for which the client must income qualify or meet other eligibility requirements.

Given the importance of the proceedings, it is critical that the respondent have a lawyer.

With intermittent grant funding, the Legal Aid Society of Salt Lake represents for free the respondent in a guardianship petition in Salt Lake County if the respondent meets the income guidelines. There is no age restriction.

Utah Legal Services, by contract with many of the counties under the Older Americans Act,²⁵ represents for free the respondent in a guardianship petition if the respondent is 60 or older and if there is sufficient funding through the local Area Agency on Aging. There is no income-qualification under the Older Americans Act, but resources are limited, so the local Area Agencies on Aging find legitimate ways to prioritize services. If there is not sufficient funding through the local Area Agency on Aging, Utah Legal Services tries to recruit a lawyer to represent the respondent for free. If the respondent is under 60, Utah Legal Services tries to recruit a lawyer to represent the respondent for free, but the respondent must meet income guidelines.

²² Guardianship, An Agenda for Reform: Recommendations of the National Guardianship Symposium and Policy of the American Bar Association. Recommendation III-B. 13 Mental & Physical Disability L. Rep. 271, 289 (1989). Hereafter cited as the Wingspread Conference.

²³ Utah Code Section 75-5-303(2).

²⁴ Utah Code Section 75-5-407(1).

²⁵ Utah Legal Services is not the exclusive provider. Some counties contract with individual lawyers.

Sometimes a respondent will have a lawyer who has represented her or him in another matter. The respondent – or perhaps the petitioner on the respondent's behalf – will seek representation by that lawyer. Sometimes that lawyer may be the “family” lawyer, whose interests may be divided between the respondent and the family members who are trying to do their best by the respondent. In some cases the petitioner’s lawyer might recruit a lawyer to represent the respondent.

We focus on the need for representation of an indigent respondent because that is where the need is most acute. But the private bar is doing its share. Private attorneys represent respondents and are paid by the respondent in very traditional arrangements. Lawyers represent respondents for free or for a reduced charge when recruited by the Office of Public Guardian, Utah Legal Services or Legal Aid Society of Salt Lake.

However, some respondents simply will be missed by the conditional and informal arrangements for free legal representation, yet they cannot afford to hire a lawyer.

Regardless who represents the respondent, the question “Who pays?” is equally critical. Utah law provides that if the petition is “without merit,” the petitioner pays court costs and the respondent’s lawyer. Otherwise, the respondent must pay for representation, but the respondent often cannot afford an attorney even though s/he may not qualify for one of the free Utah programs.

Finally, how qualified is the lawyer? Lawyers from Legal Aid Society of Salt Lake and Utah Legal Services are highly qualified and overworked. Their pro bono recruitment efforts usually produce a lawyer qualified for the case, which may run from well-qualified for a complex case to well-qualified for simpler, uncontested cases. In the experience of committee members, however, and from testimony by lawyers experienced in this area, there are many cases in which the respondent’s lawyer lacks the qualifications to present the respondent’s case for capacity or for less restrictive alternatives.

(b) Recommendation

The Wingspread Conference recommends that “courts should help develop an ongoing system that will ensure effective legal representation of respondents.”²⁶ We recommend an ambitious program to give real effect to that policy: to ensure in a systemic way that respondents are represented by qualified attorneys.

(i) Conservatorships

We begin by recommending legislation to require representation for the respondent in petitions to appoint a conservator as well as in petitions to appoint a guardian. Utah law currently requires representation in the latter case and permits it in the former. The reason for the distinction usually involves the explanation that a conservator controls only the respondent’s property, while a guardian controls the respondent’s person. But in our society, a person who loses the right to decide how to invest and spend money and how to manage property has lost just as much as the person who loses the right to vote or to make health care decisions. Representation in conservatorships is just as

²⁶ Wingspread Conference. Recommendation IV-D.2. 13 Mental & Physical Disability L. Rep. 271, 295 (1989).

necessary as in guardianships. Mandatory representation in both types of appointments is recommended by the National Probate Court Standards.²⁷

(ii) Roster

The Wingspread Conference recommends that “training should be ... required for attorneys who wish to be appointed as counsel in guardianship cases....”²⁸ To better ensure the qualifications of the lawyer representing the respondent, we recommend that, unless the respondent has the lawyer of his or her own choosing, the district court appoint a lawyer from a roster of lawyers maintained by the Utah State Bar under the authority of the Supreme Court. There should be minimum requirements for training, observation, mentoring and continuing education to qualify for the roster. We recommend an appropriation to pay for some of the appointments, but all appointments should be from the roster, unless the respondent has retained his or her own lawyer.

The appointment would be, essentially, a rotation: When a petition in a protective proceeding is filed, the clerk would offer the appointment to the first lawyer in order on the roster willing to accept assignments in that county. The lawyer would review the case for conflicts of interest and other factors that might impede the lawyer from independent and zealous representation of the respondent. If the lawyer declines the appointment, the clerk would offer the appointment to the next lawyer on the roster. Upon accepting the appointment, the judge would enter an order appointing the lawyer, and the clerk would move the lawyer’s name to the bottom of the roster.

Training should be required for attorneys who wish to be appointed as counsel.

The executive director of the Utah State Bar would maintain and publish a roster of lawyers qualified to represent respondents in protective proceedings. A lawyer would be added to the list in the order in which s/he certifies to meeting the minimum requirements. To qualify for the roster, a lawyer would have to:

- acquire at least four hours of MCLE or four hours of accredited law school education in the law and procedures of protective proceedings;
- observe, serve as co-counsel, and serve as lead counsel with a mentor representing at least one respondent, which may be satisfied under Rule 14-807, Law student assistance; and
- be recommended by one’s mentors.

To be retained on the roster the lawyer would biannually certify to have:

- acquired at least two hours of MCLE in the law and procedures of protective proceedings; and
- represented at least two indigent respondents.

Minimum education requirements would be part of and not in addition to existing mandatory continuing legal education requirements. If there are not at least two indigent respondents to be represented, that requirement would be waived. The executive

²⁷ National Probate Court Standards. Standards 3.3.5 and 3.4.5.

²⁸ Wingspread Conference. Recommendation II-D(2). 13 Mental & Physical Disability L. Rep. 271, 286 (1989).

director should be able to waive the initial or continuing requirements that show competence if the lawyer demonstrates by education and experience proficiency in the law and procedures of protective proceedings.

Even if the respondent has retained a lawyer, the court should have the discretion to evaluate the lawyer's qualifications and, if they are found lacking, to appoint someone from the roster.

(iii) Money

The Wingspan Conference recommends that “innovative and creative ways be developed by which funding sources are categorically directed to guardianship.”²⁹ Finding the money to pay lawyers willing to take assignments is the most difficult part of this program. Until the significant recession and the decline in state revenue, we were prepared to recommend using public funds to pay lawyers to represent indigent respondents who do not qualify for other free programs. Under current economic conditions, it would be futile and irresponsible to pursue that objective, but we continue to believe the objective is sound. So we describe our proposal but include no implementing legislation. We do, however, recommend that the courts and the Bar pursue funds that might be available through *and Justice for All*, the Utah Bar Foundation, grants, and other sources. And we recommend that the Utah Access to Justice Council and the Utah State Bar organize and support a panel of trained, pro bono attorneys.

The needs of the most indigent are being met – as well as they can be met – through Legal Aid Society of Salt Lake and Utah Legal Services. We mean not to interfere with those services. Utah Legal Services can serve clients whose income is below 200% of the federal poverty guideline, so we start our program where they leave off.

We recommend that a lawyer appointed from the roster be paid \$50 per hour if the respondent's income is between 200% and 300% of the federal poverty guidelines or the respondent does not have sufficient income, assets, credit, or other means to pay the expenses of legal services without depriving the respondent or the respondent's family of food, shelter, clothing, and other necessities. In future years, the \$50 per hour wage would be adjusted for inflation. Respondents who do not meet this test would pay for representation from their estates, based on the ability to pay.

(iv) Role of respondent's lawyer

Currently, Utah law distinguishes between the role of the respondent's lawyer in guardianship and conservatorship cases. If the petition is to appoint a guardian, the lawyer has the traditional duty to “represent” the respondent.³⁰ If the petition is to appoint a conservator, the lawyer “has the powers and duties of a *guardian ad litem*.”³¹ Under the 1997 Uniform Act, the court appoints a lawyer to “represent” the respondent in guardianship and conservatorship cases.³² The National Probate Court Standards

²⁹ Wingspan Conference. Recommendation 7, 31 Stetson L. Rev. 595, 596 (2002).

³⁰ Utah Code Section 75-5-303(2).

³¹ Utah Code Section 75-5-407(2).

³² 1997 Uniform Act, Section 406

recommend that the role of counsel is to advocate for his or her client.³³ The Wingspread Conference³⁴ and the Wingspan Conference³⁵ recommend zealous advocacy by the respondent's lawyer.

We concur that the lawyer's role is to represent the respondent independently and zealously, just as in any other attorney-client relationship. If the court sees a need for an independent voice to represent the respondent's best interests, the court can appoint a *guardian ad litem*. Rule of Professional Conduct 1.14 already advises the lawyer on representing a person of diminished capacity,³⁶ and that rule has recently been revised, in keeping with the ABA Ethics 2000 Commission and the recommendations of the Wingspan Conference,³⁷ to allow the lawyer greater flexibility to take protective action. The Probate Code should not interfere with that relationship.

(7) Petitioner's lawyer

Utah law does not contain any provisions for petitioner's representation in a guardianship proceeding, but permits the petitioner in a conservatorship proceeding to charge the cost of his or her lawyer to the respondent's estate.³⁸ There is no sound reason to distinguish the two.

Public policy should encourage family members to serve as guardians as well as conservators. Family members know and love the respondent better than anyone. Without family members willing to serve, the role falls to the Office of Public Guardian, which will increase the cost to the state. The tasks of a guardian and conservator are already difficult and time-consuming. The recommendations in this report, although they will improve the process, also will increase the cost.

If a protective proceeding is legally necessary to benefit the respondent, and if the respondent's estate is ample enough to provide for the respondent and still pay the expense of that process, then the court or conservator should be permitted to pay reasonable and necessary fees and expenses from the estate. This is the conclusion of the 1997 Uniform Act.³⁹

If a petition is brought in good faith with the goal of protecting the respondent, and the court appoints a guardian or conservator, or enters some other protective order, then the petitioner's costs should be paid, if possible, by the respondent's estate. This will encourage family members who may hesitate to file a protective proceeding because of their own lack of funds. It is far better to expend the estate to protect the respondent than to preserve it for the heirs.

There should be restrictions. The petition should be found to have been brought in good faith and prosecuted responsibly. The costs and fees should be reasonable and

³³ National Probate Court Standards. Standards 3.3.5 and 3.4.5.

³⁴ Wingspread Conference. Recommendation II-C. 13 Mental & Physical Disability L. Rep. 271, 285 (1989)

³⁵ Wingspan Conference. Recommendation 28. 31 Stetson L. Rev. 595, 601 (2002).

³⁶ Rule of Professional Conduct 1.14. See also RPC 1.6, also amended as part of the Ethics 2000 project to allow disclosure of some information.

³⁷ Wingspan Conference. Recommendation 59. 31 Stetson L. Rev. 595, 607 (2002).

³⁸ Utah Code Sections 75-5-414 and 75-5-424(3)(w).

³⁹ 1997 Uniform Act, Section 417.

necessary. The petition should result in the appointment of a guardian or conservator or in another order that benefits the respondent. And the respondent's estate must be able to afford the expense.

The Legislature rejected a similar policy in the 2005 General Session,⁴⁰ but we believe it to be a sound policy, and urge the Legislature to reconsider.

(8) Court process

(a) The hearing

Although called a "hearing" by statute, it has all of the trappings of a trial. The respondent has the right to be present and to be represented by a lawyer. The respondent has the right to present evidence and cross-examine witnesses. The respondent in a guardianship proceeding has the right to a trial by jury,⁴¹ although that right is seldom exercised, and is not included in the 1997 Uniform Act. Much more concerning than the infrequency of trial by jury is the frequency with which the respondent is absent from the hearing. The statute establishes the respondent's right to be present, but in our experience, the respondent often is not.

There is no inadequacy in due process rights. Rather, the inadequacy is in practicing what the law requires or permits.

The due process hearing rights that are uniformly recommended⁴² are all recognized by Utah law. There is no inadequacy in that regard. Rather, the inadequacy is in practicing what the law requires or permits.

Beyond ensuring the rights already established, we recommend that, if possible, the court conduct the hearing in a setting that is accessible by and comforting to the respondent. This would include ADA accommodations, but also:

- holding the hearing later in the morning, rather than first thing;
- more open space in the hearing room to accommodate wheelchairs;
- holding the hearing in chambers or other less intimidating surroundings; and
- slowing the frenetic pace of too many hearings in too short a time.

We began this report by likening the effect of appointing a guardian or conservator to a criminal sentence or commitment to a mental health facility. The deprivation of civil liberties is almost as great. Therefore, just as in a criminal or commitment proceeding, we recommend that the judge appoint a certified interpreter at state expense if the respondent does not adequately speak or understand English. The forms and other public information and instructions recommended later in this report should be translated into Spanish. We recommend that Rule 3-306 be amended to add protective proceedings to the list of casetypes requiring a court-appointed certified interpreter.

⁴⁰ See HB 167, Elder Protection Provisions by Rep. Patricia Jones.

⁴¹ Utah Code Section 75-5-303(4).

⁴² National Probate Court Standards, Standard 3.3.8; 1997 Uniform Act, Section 308. Wingspan Conference. Recommendation 27, 31 Stetson L. Rev. 595, 601 (2002); Wingspread Conference. Recommendation II-B(2); 13 Mental & Physical Disability L. Rep. 271, 283 (1989).

(b) Mediation

Mediation would seem to be particularly suitable for adult guardianship cases for a number of reasons. These cases usually 1) involve ongoing family relationships and the inevitably-attendant emotional issues; 2) include sensitive information that the participants would prefer to keep private; 3) sometimes require flexible and creative resolutions; and 4) often involve parties who cannot afford protracted litigation. Yet the use of mediation in adult guardianship cases raises a host of questions. ... An adult guardianship case, by its very nature, centers on an individual whose capacity is in question. Guardianship adjudications are designed to offer maximum protection to that individual because he or she may not be capable of protecting himself or herself. Mediation, on the other hand, is grounded in the principle of self-determination and presumes that the parties are capable of participating in the process and bargaining for their own interests. Can these two concepts be reconciled?

Is the Use of Mediation Appropriate in Adult Guardianship Cases? Mary F. Radford, 31 Stetson L. Rev. 611, 639-640 (2002), hereafter cited as "Radford."

Although mediation of guardianship and conservatorship proceedings is not without its critics,⁴³ many organizations and individuals recommend that mediation be an integral part of those cases,⁴⁴ and we concur.

Mediation would seem to be particularly suitable for adult guardianship cases for a number of reasons.

Professor Radford concludes, after a thorough analysis from which we draw liberally, that mediation is appropriate in guardianship and conservatorship cases, but that these cases present several issues that must be carefully considered by the mediator and the judge.

(i) Capacity of respondent to mediate

The ADA Mediation Guidelines recommend special factors for the mediator to consider when mediating with a person of potentially diminished capacity:

1. The mediator should ascertain that a party understands the nature of the mediation process, who the parties are, the role of the mediator, the parties' relationship to the mediator, and the issues at hand. The mediator should determine whether the party can assess options and make and keep an agreement.
2. If a party appears to have diminished capacity or if a party's capacity to mediate is unclear, the ... mediator should determine whether a disability

⁴³ See e.g., Winsor C. Schmidt, Jr., What is Known and not Known about the State of the Guardianship and Public Guardianship System Thirteen Years After the Wingspread National Guardianship Symposium. 31 Stetson L. Rev. 1027, 1032-1033 (2002).

⁴⁴ See e.g., National Probate Court Standards, Standard 2.5.1. Wingspan Conference. Recommendation 24, 31 Stetson L. Rev. 595, 600 (2002) The Center for Social Gerontology, <http://www.tcsq.org/>. Professor Mary F. Radford, 31 Stetson L. Rev. 611, 685 (2002).

is interfering with the capacity to mediate and whether an accommodation will enable the party to participate effectively.

3. The ... mediator should also determine whether the party can mediate with support.

ADA Mediation Guidelines, Guideline I.D.⁴⁵

Even if the respondent lacks capacity to participate, the ADA Guidelines permit mediation if s/he is present and a surrogate represents the respondent's interests, values and preferences and makes decisions for the respondent.⁴⁶

[The Center for Social Gerontology's] Adult Guardianship Mediation Manual also offers mediators a set of guidelines for determining whether the adult has capacity to participate in the mediation. These guidelines appear in the form of eight questions:

- 1) Can the respondent understand what is being discussed?
- 2) Does he or she understand who the parties are?
- 3) Can the respondent understand the role of the mediator?
- 4) Can the respondent listen to and comprehend the story of the other party?
- 5) Can he or she generate options for a solution?
- 6) Can he or she assess options?
- 7) Is the respondent expressing a consistent opinion?
- 8) Can he or she make and keep an agreement?

Radford, 31 Stetson L. Rev. 611, 650 (2002), citing The Center for Social Gerontology's Adult Guardianship Mediation Manual.

(ii) Power imbalance among the parties

The mediator must remain alert to power imbalances among the parties and take appropriate measures to neutralize them, such as:

- ensuring that the respondent is adequately represented;
- structuring presentations so that the respondent is allowed to speak first;
- ensuring the neutrality of the mediation site;
- encouraging experts to convey information in an understandable manner; and
- intervening to clear up confusion and assuage the respondent's fears.⁴⁷

The more subtle obstacle to self-determination by an adult ... is the tendency of family members, attorneys, judges, and perhaps even mediators to want to structure a framework that is protective of the adult but that may not necessarily protect the adult's fundamental right to autonomy. ... The mediator, as guardian of the principle of self-determination, must remain alert to the distinct possibility that the other, "saner," parties to the mediation are asserting their own values rather than reflecting the values of the adult.

⁴⁵ <http://www.cojcr.org/ada.html>

⁴⁶ ADA Mediation Guidelines, Guideline I.D.4.

⁴⁷ Radford, 31 Stetson L. Rev. 611, 652 (2002).

Radford, 31 Stetson L. Rev. 611, 653-654 (2002).

(iii) Mediator training

The Wingspan Conference recommends that “standards and training for mediators be developed in conjunction with the Alternative Dispute Resolution community to address mediation in guardianship related matters.”⁴⁸ We concur.

Mediation of protective proceedings requires training and experience that the Utah community may not yet have. Because mediation of protective proceedings has a relatively short history in Utah, because the only specialized training of court-annexed ADR providers focuses on family law disputes,⁴⁹ and because of the special risks of mediating protective proceedings, we encourage the mediation community to develop training classes and materials along the lines recommended by the Wingspread Conference:

Standards and training for mediators should be developed in conjunction with the Alternative Dispute Resolution community.

- (a) the rights and procedures applicable in guardianship proceedings;
- (b) the aging process and disability conditions, and the myths and stereotypes concerning older and disabled persons;
- (c) the skills required to effectively communicate with disabled and elderly persons;
- (d) the applicable medical and mental health terminology and the possible effects of various medications on the respondent; and
- (e) services and programs available in the community for elderly and/or disabled persons.⁵⁰

The Center for Social Gerontology also offers a substantial curriculum for mediation training in guardianship proceedings.⁵¹

(c) Probate commissioner

The Wingspan Conference recommends judicial specialization in guardianships,⁵² however, we do not. We recommend extensive judicial education and training, but we do not recommend appointing a specialized probate judge. Training for all will have to serve the objectives of specialization by a few.

Although the clerks’ office in some districts has a recognizable probate department, the district court has favored the general assignment of cases among its judges for many years. The same factors that make specialization in probate attractive – small caseload, specialized procedures, and expansive geography – also work against

⁴⁸ Wingspan Conference. Recommendation 22. 31 Stetson L. Rev. 595, 599 (2002).

⁴⁹ CJA 4-510(3)(C).

⁵⁰ Wingspread Conference. Recommendation II-D. 13 Mental & Physical Disability L. Rep. 271, 286 (1989).

⁵¹ <http://www.tcsg.org/mediation/manual.htm>.

⁵² Wingspan Conference. Recommendation 56. 31 Stetson L. Rev. 595, 606 (2002).

specialization. At some point, there may be sufficient caseload to merit an arrangement similar to the district court's "tax court," a handful of judges from around the state, who are assigned the regular variety of cases from their home district and who are assigned probate cases from all of the districts when a case is contested.

The district courts should consider appointing commissioners to specialize in probate law much as they have done in family law.

We do recommend that the district courts consider appointing commissioners to specialize in probate law much as they have done in family law. In the Third District, instead of adding a judge when growth

warrants it, consider appointing a probate commissioner – not a guardianship specialist, but a probate specialist. In the other urban districts – Districts Two, Four and Five – there may be sufficient caseload between family and probate cases to warrant a commissioner.

(d) Access to records

Public	Private
Arizona	Alaska
Arkansas	California
Connecticut	Colorado
Illinois	Delaware
Indiana	Florida
Iowa	Georgia
Kansas	Idaho
Louisiana	Kentucky
Nebraska	New Mexico
Nevada	South Dakota
Oregon	Hawaii - Guardian
Washington	
Wyoming	
Hawaii - Conservator	

During our study, the Judicial Council asked for our recommendations on public access to guardianship and conservatorship records. We recommended that, except for the appointment order and letters, which must be public, guardianship and conservatorship records be classified as "private": available to the court and to the parties, but not to the public. Rule 4-202.02 has since been amended accordingly.

Our research showed that, of the states that make an express classification, about half allow public access and half do not.⁵³

As we noted in our earlier recommendation: guardianship and conservatorship records and hearings historically have been public not because of any deliberate decision, but because no one seems to have asked whether

they should be private. Hearings should remain public. Public scrutiny controls abuse and assures people that the authority granted by the court is appropriate. Public records serve this important goal just as much as public hearings, but court records contain significant medical information, financial information, living situation, and personal identifying information about the respondent. The respondent, almost by definition, is

⁵³ The 1997 Uniform Act also recommends that guardianship and conservatorship records be confidential. Sections 307 and 407.

vulnerable to being victimized and the court records provide the information with which to do so. The combination of public hearings and private records, while not common, has precedent in juvenile court cases and adoption cases.

There are records that can safely remain public. The appointment order and letters have been mentioned. These are necessarily public because they need to be shared on a regular basis with people not associated with the case; sometimes even recorded as part of public land records. The existence of the case (case name and number) and the register of actions or docket should also be public. The latter of these was swept in with our earlier recommendation because of the district court case management system's inability to differentiate the docket from the rest of the case. But there is no privacy or security interest to be protected, and the administrative office of the courts is working to sequester the documents filed in a guardianship or conservatorship case while allowing public access to the record of the document having been filed.

(9) Fiduciary authority

(a) Less restrictive alternatives to guardianship or conservatorship

Currently, in order to appoint a guardian with plenary authority, the court must make a finding that nothing less is "adequate."⁵⁴ We believe that the petition should review the alternatives to appointing a guardian or conservator and explain why none are appropriate.⁵⁵ The hearing should include evidence to support that conclusion.

Less restrictive alternatives may go unexplored simply because of unfamiliarity, so we describe some here. The following options are some alternatives to guardianship or conservatorship (There may be others.) that may meet the respondent's needs.⁵⁶ All require the respondent's cooperation. Some require the respondent's capacity.

(i) Alternatives for financial decisionmaking

Representative payee. Some federal agencies, such as the Social Security Administration, can appoint a person to receive benefits on behalf of a beneficiary who is unable to administer his or her finances. A representative payee maintains control over the benefits, signs all checks drawn on the benefits, and spends the benefit money to meet the needs of the beneficiary. A person applying to an agency to be a representative payee does not first need to be appointed as a guardian or conservator.

Trust. Trusts can be useful planning tools for incapacity because they can be established and controlled by a competent person and continue if that person later becomes incapacitated. The trustee holds legal title to the property transferred to the trust and has the duty to use the property as provided in the trust agreement which can be for the benefit of the trustor during his or her lifetime. Trusts are regulated by statute and should be drafted by a lawyer.

⁵⁴ Utah Code Section 75-5-304(2).

⁵⁵ Wingspan Conference. Recommendation 20. 31 Stetson L. Rev. 595, 598 (2002). Wingspread Conference. Recommendation I-A. 13 Mental & Physical Disability L. Rep. 271, 277 (1989).

⁵⁶ Borrowed liberally from *Alternatives to Guardianship and Conservatorship for Adults in Iowa*, The Iowa Department of Elder Affairs and the Iowa Governor's Developmental Disabilities Council, pp 6-13 (2001).

Power of attorney. Power of attorney is a document in which a person authorizes an agent to act when the person cannot. The power of attorney can be for a specified time or until the person cancels it. The power of attorney can grant a specific authority or grant more general authority to act in financial transactions. Some common powers of attorney:

- Open, maintain or close bank accounts or brokerage accounts
- Sell, lease or maintain real estate
- Access safe deposit boxes
- Make financial investments
- Borrow money, mortgage property, or renew debts
- Prepare and file income tax returns
- Vote at corporate meetings
- Purchase insurance for the principal's benefit
- Defend, prosecute, or settle a lawsuit
- Start or carry on a business
- Employ professional assistants, such as lawyers, accountants, and real estate agents
- Apply for benefits and participate in governmental programs
- Transfer property to a trustee
- Disclaim an inheritance

Joint bank account. In a joint bank account a trusted friend or family member co-owns the account with the person. Both have ownership of and access to the account, so great caution should be taken.

Automatic banking. A person might retain control of his or her own affairs with the help of automatic deposits and automatic bill payments.

Trusted help. A person may be able to manage his or her own financial affairs simply with help, either by a trusted family member or friend or by a professional. Such an assistant could help organize a budget, write checks for the person's signature, assist with related paperwork, and propose and explain investments. Be watchful for undue influence by the person providing help.

(ii) Alternatives for health care decisionmaking

Advance health care directive. Advance directives are instructions a person gives to health care providers and family to make sure his or her wishes regarding health care are followed.

Power of attorney. Power of attorney can also be used for health care decisions. The agent is required to make health care decisions according to directions provided by the principal.

(iii) Crisis intervention

Mediation, counseling, and respite support services. Counseling may be helpful if a person does not lack capacity, but is unwilling to agree to reasonable requests. A mediator may be able to help reach a compromise. Respite care provides temporary relief to the caregiver if the caregiver – or the person cared for – is aged 60 or older.

The respite may be brief, 2-3 hours, or longer than 24 hours, and the care may take place at the individual's residence or elsewhere.

(iv) Organizations willing to help

Area Agencies on Aging administer programs for those aged 60 and over such as:

- Access to other services: transportation, outreach, information and referral;
- Community services: congregate meals, legal services, case management, and continuing education;
- In-home services: respite care, home health, homemaker, home-delivered meals and chore maintenance; and
- Services to residents of care-providing facilities.

Community based services. There are free and low-cost services offered by government agencies, religious organizations and others, such as home nursing, home health aides, homemakers, home delivered meals, mental health services, and transportation.

(b) Fiduciary's limited authority

If the respondent is incapacitated and a guardian is needed, plenary authority, except when the respondent is completely incapacitated, is universally condemned.⁵⁷ Although plenary appointments are relatively common under our current statutes, even current law directs the judge to "prefer" limited authority over plenary appointments.⁵⁸ Unfortunately, after that brief admonishment, the statute does nothing to support the result, other than require a finding that nothing else will do.

The order should be tailored to the respondent's particular limitations.

The guardian's authority should be presumed limited to the authority expressly stated in the order.

The respondent should retain all rights, power, authority and discretion not expressly granted to the guardian by statute or court order.

We believe that the "petition and order should include detailed statements of the respondent's functional capabilities and limitations".⁵⁹ The hearing should include evidence of the same. The order should be tailored to the respondent's particular limitations. In our proposed statutes, rather than presuming full authority and requiring an express limitation of it, as the Code does now,⁶⁰ the guardian's authority should be presumed limited to the authority expressly stated in the order. Only by listing all available authority would the court be able to make a plenary appointment, which should require

⁵⁷ Wingspread Conference. Recommendations III-D and IV-B. 13 Mental & Physical Disability L. Rep. 271, 290 and 292 (1989). Wingspan Conference. Recommendations 38 and 39. 31 Stetson L. Rev. 595, 602-603 (2002). National Probate Court Standards, Standard 3.3.10. 1997 Uniform Act, Section 314. Judicial Determination of Capacity, p 2.

⁵⁸ Utah Code Section 75-5-304(2).

⁵⁹ Wingspread Conference. Recommendation IV-B. 13 Mental & Physical Disability L. Rep. 271, 293 (1989).

⁶⁰ Utah Code Section 75-5-312(2).

findings supported by clear and convincing evidence that such a result is necessary.⁶¹

There is no simple formula that will help judges make the determination. The following broad classification could serve as an initial schema:

If minimal or no incapacities, petition not granted, use less restrictive alternative.

If severely diminished capacities in all areas or if less restrictive interventions have failed, use plenary guardianship.

If mixed strengths and weaknesses, use limited guardianship.

The cases in which there are “mixed areas” of strengths and weaknesses present the greatest challenge – and the greatest opportunity – for the “judge as craftsman” to tailor a limited order to the specific needs and abilities of the individual.

Judicial Determination of Capacity, p 13.

(i) Guardian or Conservator?

In determining the appropriate authority, the judge should decide whether the respondent’s limitations require a guardian, a conservator or both. And this ultimate decision should be reflected in the petition that starts the case. Practice over the years has degenerated to the point that many, probably most, petitioners request appointment to both offices, when one or the other alone might do. Petitioners, who know only the basic idea that a conservator is responsible for the respondent’s estate and a guardian is responsible for the respondent’s care and well-being, may not realize the significant additional fiscal responsibility that comes with being a conservator.

Currently, guardians have some modest authority over the respondent’s estate.⁶² We propose delineating the guardian’s authority for many everyday property transactions, reserved to a conservator if one is appointed, that may reduce the need for a conservator. Only if the petitioner requests authority beyond these transactions and the judge agrees that it is needed should a conservator be appointed.

Under current law, a guardian may receive the respondent’s money and property and has a duty to “conserve any excess for the ward’s needs,”⁶³ a simple standard met by a simple savings account. A conservator, on the other hand, must meet the much higher standards of a trustee,⁶⁴ exercising reasonable care, skill, and caution as would a prudent investor⁶⁵ and making reasonable efforts to verify facts⁶⁶ while investing and reinvesting the respondent’s estate.⁶⁷ Family guardians probably do not have that acumen, do not need that authority, and would do well to leave the responsibility to a

⁶¹ Wingspan Conference. Recommendation 39. 31 Stetson L. Rev. 595, 603 (2002).

⁶² Utah Code Section 75-5-312(2)(b) (commence protective proceedings); (2)(d)(i) (initiate proceedings to compel support); (2)(d)(ii) ((receive money and property deliverable to the respondent).

⁶³ Utah Code Section 75-5-312(2)(d)(ii).

⁶⁴ Utah Code Section 75-5-417(1); Utah Code Section 75-5-424(1).

⁶⁵ Utah Code Section 75-7-902(1).

⁶⁶ Utah Code Section 75-7-902(4).

⁶⁷ Utah Code Section 75-5-424(2).

professional conservator or seek professional advice in carrying out a conservator's duties.

(ii) Retained rights – Restrictions on authority

The respondent should retain all rights, power, authority and discretion not expressly granted to the guardian by statute or court order.

The right of the respondent to vote in governmental elections is particularly difficult. The right cannot be assigned to the guardian in any event, but when is it properly denied to the respondent? We propose the standard recommended by the ABA. The respondent retains the right to vote in governmental elections unless "the court finds [by clear and convincing evidence] that the person cannot communicate, with or without accommodations, a specific desire to participate in the voting process."⁶⁸ It would be helpful if further statutory and practical changes were implemented to accommodate voting by respondents determined to be incapacitated, but that is beyond the scope of this report.

The guardian should not be able to:

- consent to commitment of the respondent to a mental retardation facility (The guardian should petition the court for an order under Title 62A, Chapter 5, Part 3, Admission to Mental Retardation Facility.);
- consent to commitment of the respondent to a mental health authority (The guardian should petition the court for an order under Title 62A, Chapter 15, Part 6, Utah State Hospital and Other Mental Health Facilities.);
- consent to sterilization of the respondent; (The guardian should petition the court for an order under Title 62A, Chapter 6, Sterilization of Handicapped Person.); or
- consent to termination of the parental rights in the respondent or of the respondent's parental rights in another. (The guardian should petition the juvenile court for an order to terminate parental rights under Title 78A, Chapter 6, Part 5, Termination of Parental Rights Act.)

Unless permitted by the court, the guardian should not be able to:

- consent to the admission of the respondent to a psychiatric hospital or other mental health care facility;
- consent to participation in medical research, electroconvulsive therapy or other shock treatment, experimental treatment, forced medication with psychotropic drugs, abortion, psychosurgery, a procedure that restricts the respondent's rights, or to be a living organ donor;
- consent to termination of life-sustaining treatment if the respondent has never had health care decisionmaking capacity;
- consent to name change, adoption, marriage, annulment or divorce of the respondent;
- prosecute, defend and settle legal actions, including administrative proceedings, on behalf of the respondent;
- establish or move the respondent's dwelling place outside of Utah; or

⁶⁸ Resolution of the ABA House of Delegates approved on August 13, 2007.

- restrict the respondent's physical liberty, communications or social activities more than reasonably necessary to protect the respondent or others from harm.

(iii) Maximizing respondent's independence – Decisionmaking standard

Our Supreme Court requires that when appointing a guardian, the court "must consider the interest of the ward in retaining as broad a power of self-determination as is consistent with the reason for appointing a guardian of the person."⁶⁹ Further, "the court's order should require the guardian to attempt to maximize self-reliance, autonomy and independence...."⁷⁰ Reacquiring capacity is legally and practically possible, and the guardian should take reasonable steps to that end.

Regardless whether the respondent might reacquire capacity, maximizing independence includes applying the "substituted judgment" standard when making decisions on the respondent's behalf. When the guardian or conservator uses the substituted judgment standard s/he makes the decision that the respondent would have made when competent. The fiduciary therefore has a duty to learn the respondent's values, preferences and patterns of behavior that form the basis of what respondent would have done. Substituted judgment is the decisionmaking standard used in all circumstances except those that permit the "best interest" standard to be used.

If the court and the fiduciary are to give any realistic meaning to the standard of "substituted judgment," it is critical to learn the respondent's values, preferences and patterns of behavior that form the basis of what the respondent would have done.

The fiduciary may use the best interest decisionmaking standard when:

- (a) following the respondent's wishes would cause her or him harm;
- (b) the guardian or conservator cannot determine the respondent's wishes; or
- (c) the respondent has never had capacity.

When the guardian or conservator uses the best interest standard, s/he makes the decision that is the least intrusive, least restrictive, and most normalizing course of action to accommodate the respondent's particular functional limitations.

(iv) Respondent's values, preferences and patterns

The respondent's values, preferences and patterns of behavior should play a big role in shaping the outcome of a petition to appoint a guardian or conservator. Not only are they important in determining capacity, as discussed in Section (4) (c), but also in determining who the fiduciary should be, the fiduciary's authority, and even in some of the fiduciary's decisions, such as medical and financial decisions and living arrangements.⁷¹ If the court and the fiduciary are to give any realistic meaning to the

⁶⁹ *In re Boyer*, 636 P.2d 1085, 1090-1091 (Utah 1981).

⁷⁰ Wingspread Conference. Recommendation IV-B. 13 Mental & Physical Disability L. Rep. 271, 293 (1989).

⁷¹ Judicial Determination of Capacity, p 5.

standard of “substituted judgment,” it is critical to learn what those values, preferences and patterns are. The respondent may have something to say. The clinician and court visitor should include the respondent’s values, preferences and patterns of behavior as part of their investigation. Family, friends, colleagues, religious ministers, care providers and others also may have useful evidence.

(10) Emergency appointments

Current Utah law permits the emergency appointment of a temporary guardian,⁷² but there is no similar provision for a temporary conservator. Emergency appointments are sometimes necessary, but our current statute provides less protection to the respondent than the Rules of Civil Procedure provide to a defendant for a temporary restraining order.⁷³ The 1997 Uniform Act addresses these shortcomings and we have integrated many of its features into our proposed legislation. We have also integrated the features of a temporary restraining order and preliminary injunction, procedures lawyers and judges are familiar with.

The authorities differ on whether a regular petition should be filed with the emergency petition. Standard 3.3.6(a)(2) of the National Probate Court Standards recommends it. The 1997 Uniform Act Section 312 recommends against it. The Wingspan Conference also seems to recommend that a regular petition be required.⁷⁴ The commentary to the 1997 Uniform Act argues that requiring a petition “lends an air of inevitability that a permanent guardian should be appointed;” that respondent’s need for a guardian might be temporary and his or her long-term needs might be met by other mechanisms.

Our current Utah statute is silent on the question, and usually courts do not require a regular petition. We endorse that model, for the reasons explained in the 1997 Uniform Act, and simply because requiring a regular petition, especially the more detailed petition we envision, in the midst of an emergency is unrealistic. On the other hand, the court must guard against the emergency appointment becoming *de facto* permanent because of the failure to monitor the appointment.

Our proposal requires a hearing on the emergency petition and notice to the respondent unless the respondent would be harmed before a hearing could be held. Only in the latter case, may the judge consider evidence of the emergency *ex parte*. The guardian’s authority would be limited to what is justified by the emergency and expressly stated in the order. A hearing on the emergency appointment must be held within 5 days after the appointment and notice of the appointment and hearing given

⁷² Utah Code Section 75-5-310.

⁷³ Utah Rule of Civil Procedure 65A. Injunctions. Our current statute regulating emergency petitions does not require appointment of counsel for the respondent, even though counsel is required for regular petitions.

⁷⁴ Wingspan Conference. Recommendation 34. 31 Stetson L. Rev. 595, 602 (2002). Although not stating directly that a regular petition should be required, the Conference recommends that the emergency appointment require “a hearing on the permanent guardianship as promptly as possible....”

within 2 days. An emergency order without hearing and notice would expire after 5 days. An emergency order with hearing and notice would expire after 60 days.⁷⁵

(11) “School guardianships”

In 1985, the Legislature attempted to create bifurcated authority to appoint a guardian for a child who resides outside of Utah, giving the authority to the district court and local school boards. In the vernacular, these appointments have become known as “school guardianships.” Their primary purpose appears to be to prevent a non-resident from avoiding non-resident tuition. Using the law of guardianship to answer such a simple question is poor policy. These appointments simply do not fit the generally accepted model for appointing a guardian for a minor, and we recommend that they be eliminated.

Schools need the authority to distinguish resident from non-resident, and the child needs a guardian to make myriad decisions about schooling. Our recommendations do not interfere with these objectives, but the general laws of residency and guardianship are sufficient to reach these objectives. There is no need for a special process that was so poorly drafted over two decades ago that it removes from the district court the authority to enter the orders the schools rely upon.

The Legislature intended to give the district court jurisdiction to appoint a “school guardian,” but the statutes’ plain language fails to do so. “A person becomes a guardian of a minor by acceptance of a testamentary appointment, through appointment by a

Under current law, a school board may permit a non-resident minor to attend school in Utah and may treat a non-resident minor as a Utah resident, even without the appointment of a guardian.

local school board under Section 53A-2-202, or upon appointment by the court.”⁷⁶

“The court may appoint a guardian for an unemancipated minor if all parental rights of custody have been terminated or suspended by circumstances or prior court order.”⁷⁷ Since the parents’ custodial rights

have not been terminated or suspended, the court has no authority to appoint a guardian. Although the district courts have been handling these appointments for many years, they have not had jurisdiction.

For school tuition purposes, a minor is treated as a Utah resident, even though the minor’s parent or guardian is not, if “the child lives with a resident of the district who is a responsible adult and whom the district agrees to designate as the child’s legal guardian under Section 53A-2-202....”⁷⁸ Section 53A-2-202 clearly gives the local school boards the authority to “designate” someone as a child’s legal guardian and just as clearly gives the local school boards the discretion to opt out of that authority. Most of the local boards have opted out. Thus, there is a right to have a guardian appointed, but

⁷⁵ Sixty days conforms to the 1997 Uniform Act, Section 312, but it is twice as long as current Utah law. We believe that by imposing a more rigorous process on the emergency appointment, it is safe to extend the time in which to conduct the medical and social evaluations and prepare evidence for the regular hearing.

⁷⁶ Utah Code Section 75-5-201.

⁷⁷ Utah Code Section 75-5-204.

⁷⁸ Section 53A-2-201(2)(b).

technically no forum in which to do so. The district court does not have the authority, and the school boards have opted out.

The petitioner must file the parents' affidavit as evidence of the parents' consent to the termination of parental rights, the appointment of the guardian and the minor's intent to reside in Utah. If the parent is not available to swear out the affidavit, the proposed guardian may do so on the parents' behalf.⁷⁹ The Legislature has since passed laws imposing significantly more protections and requirements for relinquishing parental rights.⁸⁰ Those laws certainly do not permit anyone other than the parent to waive the parent's rights.

The judge may deny the petition to appoint a guardian if the school proves that the primary purpose of the guardianship is to attend a Utah public school⁸¹ or to avoid paying non-resident tuition.⁸² Having the purpose of attending a public school or avoiding non-resident tuition may be reasons to charge non-resident tuition, but they are not sufficient reasons to deny the guardianship.

There are numerous other difficulties with the statutes regulating school guardianships. There is no need for this elaborate process. A school board may permit a non-resident minor to attend school in Utah under current law, even without the appointment of a guardian.⁸³ A school board may treat a non-resident minor as a Utah resident under current law, even without the appointment of a guardian.⁸⁴ A child may need a guardian for a variety of purposes, including school-related purposes. If there are grounds to appoint a guardian, the court should make that appointment. That appointment may affect the minor's residency, which in turn may affect the child's tuition, but that is governed by other Utah law.⁸⁵ In all respects, the regular law of guardianships should apply.

(12) Appointments by will or signed writing

This is one of our more technical recommendations, and one in which we move away from current Utah law and the 1997 Uniform Act. Currently, Utah allows a person to appoint a guardian for a minor child or an incapacitated adult child or spouse by will or signed writing.⁸⁶ A person may also nominate a guardian for a spouse or child, but the difference between a nominee and an appointee is not entirely clear.⁸⁷ A person may nominate, but not appoint, a conservator for a spouse or child.⁸⁸ Other designated people may nominate a guardian or conservator to replace them in the priority list of appointees.⁸⁹

⁷⁹ Utah Code Section 53A-2-202(2)(d).

⁸⁰ Utah Code Section 78A-6-514.

⁸¹ Utah Code Section 53A-2-202(2)(a)(i).

⁸² Utah Code Section 75-5-206(3)(b).

⁸³ Utah Code Section 53A-2-205.

⁸⁴ Utah Code Section 53A-2-201(2)(c).

⁸⁵ Utah Code Section 53A-2-201(1)(a).

⁸⁶ Utah Code Sections 75-5-202.5 and 75-5-301.

⁸⁷ Compare Utah Code Section 75-5-311 with 75-5-301.

⁸⁸ Utah Code Section 75-5-410.

⁸⁹ Utah Code Sections 75-5-311 and 75-5-410.

The 1997 Uniform Act clarifies some points, but not others. The 1997 Uniform Act continues the distinction between appointing a guardian and nominating a conservator. It permits the appointing parent or spouse to petition the court to confirm the appointment before the parent's or spouse's death or incapacity but not to confirm a nomination. It permits a respondent to nominate a guardian or conservator while s/he still has capacity to do so, but it does not permit a respondent to confirm the nomination. The respondent's nominee has top priority, but that is always subject to the court's authority to appoint in a different order.

The 1997 Uniform Act requires the appointee, whether confirmed beforehand or not, to file an acceptance of appointment, and if not confirmed beforehand, to file a petition to confirm the appointment. The 1997 Uniform Act makes the appointment effective upon acceptance by the appointee, without ever determining that the respondent is incapacitated.⁹⁰

There is no need for such complexity. There is need for more protection.

We propose a simpler model applicable to guardians and conservators, minors and adults that better protects the respondent's rights. We begin with the premise that, if a guardian or conservator is to act under judicial approval, the court should make the appointment, not the parent or spouse.

A person should be able to nominate a guardian or a conservator for oneself, for one's child or for one's spouse. And that person should be able to petition the court to confirm the nomination and cut off the rights of others to object. It is, in effect, a contingent appointment, subject to later determining the respondent's incapacity and determining that the appointment remains in the respondent's best interest.

We endorse this new feature of the 1997 Uniform Act, but couch it in terms of nomination rather than appointment. A person who anticipates incapacity should be able to take comfort in the knowledge that his or her preference of guardian or conservator will be appointed at some future date; similarly for the spouse of an incapacitated person or parent of an incapacitated or minor child. Confirmation does not determine incapacity; only who will be the fiduciary. Upon the death or incapacity of the nominating person, the court would still determine the respondent's incapacity and the limits of the fiduciary's authority. If the nomination is not confirmed beforehand, the nominee would have his or her designated priority for appointment, subject to the usual court authority to appoint in a different order.

Our recommended approach creates a simple, uniform process for all combinations of guardians and conservators, minors and adults. And it ensures that a court will determine the nature and extent of the respondent's incapacity and the limits of the fiduciary's authority.

(13) Monitoring guardians and conservators

(a) Planning

⁹⁰ 1997 Uniform Act Sections 202, 302, 303, 310, and 413.

Oversight of guardians and conservators begins with the fiduciary's assurance to the court that s/he recognizes his or her authority, its limits and how it will be exercised. We recommend that guardians and conservators develop a plan for how they will implement the authority given them and that the plan be filed with the court. Some states require a new plan annually, but we do not. Once filed, the plan should be sufficient until there is a significant change in circumstances.

The law should allow modest deviation from the plan. Circumstances are never entirely stable, and filing a new plan for every change, no matter how slight, merely increases the burden on the fiduciary without protecting the respondent. But the law should impose liability on the fiduciary for significant deviations from the plan, and whether the deviation is slight or significant may have to be decided by the judge after the fact.

Oversight of guardians and conservators begins with the fiduciary's assurance to the court that s/he recognizes his or her authority, its limits and how it will be exercised.

The plan will provide a baseline against which to evaluate the guardian's or conservator's actions, but the primary purpose of planning is not to trap the fiduciary. Rather, the purpose is to assure the court that the fiduciary knows how s/he will help manage the respondent's life before undertaking to do so. We recommend that a form for the fiduciary's plan be developed by the court and Bar.

(b) Annual reports

The Judicial Council and the district courts have already taken the important step of monitoring and enforcing the annual reporting requirements for guardians and conservators, and the administrative office of the courts has developed forms and an interactive web interview to guide the fiduciaries through that process. We recommend that the district court continue these essential efforts.

If the protected person's parent is the guardian or conservator, current Utah law exempts the parent from annually reporting the protected person's condition or estate.⁹¹ The 1997 Uniform Act does not contain this exception, and we recommend that it be eliminated. A protected person is no better off for having been abused or defrauded by a parent. We recommend that annual reports be required of all guardians and conservators.

(c) Volunteer court visitors

Annual reporting about the respondent's well-being and estate are a necessary first step to protect the respondent's personal and financial health and safety. But unless someone reviews those reports and follows up as necessary, they are of little value. Current Utah law relies for protection on objections by family members. If anyone objects, the court will conduct proceedings to decide the competing claims. If no one objects, the court is left on its own, which usually means the report will be approved.

Giving those interested in the respondent standing to object is a necessary second step, but it is inadequate. Mistreatment of the respondent or misappropriation of money,

⁹¹ Utah Code Sections 75-5-312(2)(e)(vi) and 75-5-417(5).

whether with intent or through neglect, may occur without it being obvious in the reports. Those who are interested in the respondent may themselves participate to harm or defraud. Perhaps the respondent is without family. We recommend, therefore, as does the 1997 Uniform Act,⁹² that the court select reports to be reviewed for errors or fraud and to follow up based on the results. We recommend that the court appoint visitors periodically to review records and interview respondents, fiduciaries and others after the appointment.

Other jurisdictions have successfully established volunteer programs to monitor appointments more closely.⁹³ The model is very similar to the Court Appointed Special Advocate (CASA) program in the juvenile court, which has been so successful at helping children whose parents are accused of abuse. The courts would hire a coordinator whose job is to recruit and train volunteers to perform the duties of a court visitor. The results can be invaluable to the court.

The model is very similar to the CASA program in the juvenile court, which has been so successful at helping children whose parents are accused of abuse.

The model came to light as we investigated methods of monitoring guardians and conservators after appointment, but court visitors should be used in the initial investigation of incapacity as well. An organized volunteer program such as this offers the best hope of also serving that need. The courts can create a volunteer program only over time, but eventually, in a fully developed volunteer program, a court visitor might:

- Before appointment
 - Interview the respondent and proposed fiduciary
 - Interview family members and others as appropriate
 - Visit the respondent's current and proposed residences
 - Report to the court
- After appointment
 - Review inventories, management plans, annual reports and other records of guardians and conservators
 - Interview the respondent, fiduciary, family members and others as appropriate
 - Report to the court

The role of the coordinator is to build and support the program.

- Develop partnerships (AARP, CPAs, Lawyers, Law students, Law enforcement, social workers, etc.)
- Recruit volunteers from among partners
- Develop training materials
- Develop and conduct training classes for volunteers (initial and continuing)

⁹² 1997 Uniform Act Sections 317 and 420

⁹³ Volunteer Guardianship Monitoring Programs: A Win-Win Solution, Ellen M. Klem, American Bar Association Commission on Law and Aging (2007); Guarding the Guardians: Promising Practices for Court Monitoring, Naomi Karp and Erica Wood, AARP Public Policy Institute (2007); Guardianship Monitoring: A Demographic Imperative, Hon. Steve M. King, <http://www.ncpj.org/guardianship%20monitoring.htm>.

- Develop and conduct training classes for judges and court staff
- Supervise and recognize volunteers
- Reimburse expenses
- Troubleshoot problems
- Develop checklists, forms, & other aids
- Record and report outcomes

We recommend that the Judicial Council hire a coordinator to build and support a volunteer court visitor program.

(d) Regulating guardians and conservators.

(i) Professional conservators

By a series of statutes, only a handful of financial institutions under permit from the Commissioner of Financial Institutions may be appointed as professional conservators.⁹⁴ Professional conservators, therefore, are already highly regulated and nothing further should be needed.

(ii) Professional guardians

Professional guardians are regulated by virtue of their credentials in other regulated professions, but they are not regulated as guardians, and they should be. Like most states, Utah lists the priority of a person or institution to be appointed guardian. Last on that list is “a specialized care professional.”⁹⁵ A specialized care professional is defined as a person who:

- (i) has been certified or designated as a provider of guardianship services by a nationally recognized guardianship accrediting organization;
- (ii) is licensed by or registered with the Division of Occupational and Professional Licensing as a health care provider including, but not limited to, a registered nurse licensed under Section 58-31b-301, a social service worker, certified social worker, or clinical social worker licensed under Section 58-60-205, a marriage and family therapist licensed under Section 58-60-305, a physician licensed under Title 58, Chapter 67, or a psychologist licensed under Title 58, Chapter 61; or

⁹⁴ “Trust business” means ... a business in which one acts in any agency or fiduciary capacity, including that of ... conservator ...” Utah Code Section 7-5-1(1)(b). “Only a trust company may engage in the trust business in this state.” Utah Code Section 7-5-1(2). “Trust company” means an institution authorized to engage in the trust business under this chapter. Only the following may be a trust company....” Utah Code Section 7-5-1(1)(d) (naming four types of depository institutions and any corporation continuously engaged in trust business since 1981). “No trust company shall accept any appointment to act in any agency or fiduciary capacity, such as ... conservator... under order or judgment of any court ... unless and until it has obtained from the commissioner a permit to act under this chapter.” Utah Code Section 7-5-2(1).

Under special circumstances (administration of the estate is supervised by the court and no trust company is willing to act as conservator after notice of the proceedings is given to every trust company doing business in Utah) the court may appoint a certified public accountant (or other listed financial professional) as conservator. Utah Code Section 7-5-1(1)(c)(viii).

⁹⁵ Utah Code Section 75-5-311(4)(g).

(iii) has been approved by the court as one with specialized training and experience in the care of incapacitated persons.

Utah Code Section 75-5-311(1)(a).

So, Utah law leaves designation as a professional guardian to (1) unnamed organizations with unknown standards; (2) licensure or registration with DOPL as a health care provider, which includes unnamed professions; and (3) the judge on a case-by-case basis with no standards by which to decide.

The most prominent “nationally recognized guardianship accrediting organization” is the National Guardianship Association. According to the National Guardianship Association, “Certification entitles the guardian to represent to the courts and the public that he or she is eligible to be appointed, is not disqualified by prior conduct, agrees to abide by universal ethical standards governing a person with fiduciary responsibilities, submits to a disciplinary process, and can demonstrate through a written test an understanding of basic guardianship principles and laws.”

Certification as either a Registered Guardian or a Master Guardian is administered through the Center for Guardianship Certification (CGC), an “allied foundation” of the National Guardianship Association. According to the Center “CGC has developed a two-tiered certification process, certifying Registered Guardians (RG) at the entry level and Master Guardians (MG) with a higher level of experience and responsibility. The eligibility standards, as well as content and level of difficulty of the core competencies tested, for the Master Guardian certification are much higher. Nevertheless, both the RG and MG must affirm they will abide by the NGA Model Code of Ethics and maintain a high level of conduct to be re-certified. The same process is used to determine if either certificate should be withheld or revoked.”

Professional guardians are regulated by virtue of their credentials in other regulated professions, but they are not regulated as guardians, and they should be.

The health care providers listed in the Code as potential professional guardians are not exclusive.⁹⁶ A quick review of the DOPL website shows any number of licensed professions that might be considered health care providers:

- Acupuncture
- Athletic Trainer
- Audiology
- Certified Dietitian
- Certified Medication Aide
- Certified Nurse Midwifery
- Chiropractic
- Dentistry
- Direct-Entry Midwifery
- Genetic Counseling
- Health Facility Administration
- Occupational Therapy
- Optometry
- Osteopathy
- Pharmacy
- Physical Therapy
- Physician and Surgeon
- Physician Assistant
- Podiatry
- Professional Counseling
- Psychology
- Radiology

⁹⁶ Utah Code Section 75-5-311(1)(a)(ii).

- Hearing Instrument
- Marriage and Family Therapy
- Massage Therapy
- Nursing
- Recreation Therapy
- Respiratory Care
- Speech Language Pathology
- Substance Abuse Counseling

All are valuable professions, and many might assist the respondent with his or her incapacity, but none are qualified professional guardians merely because of their other licensure, including those in the more traditional health care professions.

We recommend that the administrative office of the courts begin discussions with the Division of Occupational and Professional Licensing and professional guardians in Utah to draft legislation according to the DOPL model to regulate the professional guardian industry as it does other professions. We recommend that under that legislation only a guardian licensed by DOPL be permitted to be appointed as a professional guardian. Until then, we recommend that only someone certified by the National Guardianship Association be permitted to be appointed as a professional guardian.

(iii) Private fiduciaries

We recommend that before a person is appointed guardian or conservator, s/he be required to disclose convictions that have not been expunged. We recommend no automatic disqualifications, but it is important that the judge know the background of the respondent's fiduciary, and whether an alternative might be more appropriate.

(14) Conservators

Some states have abandoned the distinctions between a guardian and conservator. If the respondent is incapacitated, the court appoints one or more fiduciaries and grants authority, which may be authority traditionally held by a guardian, authority traditionally held by a conservator, or some combination of the two. We do not recommend going so far.

However, we recommend combining the laws common to both offices in order to isolate and emphasize the laws that create differences. Many of the standards for both officers are or should be the same. Many of the procedures are or should be the same. Many of the policies are or should be the same.

But there are important differences.

- The law should continue to permit protective orders short of appointing a conservator.
- The grounds for appointing a conservator should include because the respondent is missing, detained, or unable to return to the United States.
- The reasons for a conservator or protective order should continue to include because funds are needed for the support, care, and welfare of a person entitled to be supported by the respondent.⁹⁷
- If the reason for a protective proceeding is because the respondent is missing, detained, or unable to return to the United States or the respondent's request, there should be no need for an evaluation or a finding of incapacity.

⁹⁷ Utah Code Section 75-5-401(2)(a)

- The authority of a conservator provided by statute is extremely detailed, listing almost 50 permitted acts.⁹⁸ So, unlike a guardian's authority, which should be specified in the appointment order, the statutes should continue to identify the conservator's authority which flows to the conservator by reason of being appointed. The court might then expressly limit the statutory authority.

(15) Training for judges, lawyers, court personnel and volunteers

Although they can be improved, we have found that Utah statutes currently provide reasonable due process protections.⁹⁹ What seems to be lacking is the sense that this matters. Perhaps the law itself too easily permits its avoidance. Perhaps courts are pressed by contested cases and pay less attention to these in which the parties seem to agree. Perhaps it is a well-meaning but misplaced notion of doing what is thought to be in the respondent's best interest. Whatever the reason, too many short cuts are being taken.

Education programs would seem to be the proverbial "no brainer." For judicial training at least, some of the work is already done. The American Bar Association Commission on Law and Aging in conjunction with the American Psychological Association and the National College of Probate Judges has prepared a manual entitled *Judicial Determination of Capacity of Older Adults in Guardianship Proceedings*. It serves as a wonderful benchbook, and the administrative office of the courts has already included it on the court's website among the benchbooks available to district court judges.¹⁰⁰ But it is of little value unless it is used. We recommend it to the Judicial Institute as an outline on which to build a curriculum for district court conferences.

Utah statutes currently provide reasonable due process protections. What seems to be lacking is the sense that this matters.

The Utah State Bar's Committee on Law and Aging and Estate Planning Section sponsor CLE programs on protective proceedings, and we recommend they continue that important effort focusing on the recommendations in this report.

We recommend that the Judicial Institute develop training programs for clerks and other court personnel on the new concepts, laws and procedures of guardianships and conservatorships and on the special importance of cases in which the court shares responsibility for the care and well being of a person with diminished capacity.

We recommend that the volunteer coordinator work with the Judicial Institute to develop training programs for people who volunteer as court visitors:

- How to draw out evidence of the respondent's capabilities and limitations.
- How to draw out evidence of the respondent's values, preferences and patterns of behavior.
- How to evaluate the respondent's circumstances during a guardianship or conservatorship.

⁹⁸ Utah Code Sections 75-5-408 and 424.

⁹⁹ Appointment of counsel, medical examination, court visitor, presence at hearing, limits on emergency appointments, and others.

¹⁰⁰ http://www.utcourts.gov/intranet/dist/docs/guardianship_proceedings.pdf

- How to evaluate the guardianship or conservatorship plan and annual reports.
- How to recognize evidence of fraud and abuse.
- Other matters on which the court visitor acts as the judge's surrogate.

(16) Outreach and assistance for the public

We urge the lawyer who represents the fiduciary to advise his or her client of a fiduciary's responsibilities and good practice standards.¹⁰¹ Sometimes the fiduciary does not have a lawyer, but often the petitioner, who is more probably represented, will be the fiduciary. A lawyer's representation of the petitioner may end with the appointment, but the lawyer's counseling on the fiduciary's continuing responsibilities is probably the single best opportunity to impress upon the guardian or conservator that s/he is responsible for someone else's life and that the law imposes many requirements.

The Wingspan Conference recommends that "all guardians receive training and technical assistance in carrying out their duties."¹⁰² We recommend that the Committee on Resources for Self-represented Parties work with the Committee on Law and Aging of the Utah State Bar to develop web-based information and resources about guardianships, conservatorships, and less restrictive alternatives. The manual entitled *Basic Guidelines for Court-Appointed Guardians and Conservators*,¹⁰³ developed by the administrative office of the courts and the Bar committee is a start, but more thorough information is needed.

All guardians should receive training and technical assistance in carrying out their duties.

We developed forms for an extensive clinical and social evaluation. Additional forms and information need to be developed. We again recommend that the Committee on Resources for Self-represented Parties work with the Committee on Law and Aging to continue this important work. We suggest to them that the following forms, as well as others that they may identify, be developed for the court's website:

- Acceptance of appointment
- Estimated estate value worksheet
- Findings of fact and conclusions of law
- Letters of guardianship (conservatorship)
- Management plan for guardian (conservator)
- Motion and order directing services for respondent
- Motion and order to appoint a lawyer to represent a respondent
- Motion and order to appoint a court visitor
- Motion and order to evaluate respondent
- Motion and order to withdraw money from a court-guarded account
- Notice of petition and hearing
- Order appointing a guardian (conservator)
- Petition (and subsequent pleadings) to Accept Transfer of Guardianship or Conservatorship

¹⁰¹ Wingspan Conference. Recommendation 66. 31 Stetson L. Rev. 595, 608 (2002).

¹⁰² Wingspan Conference. Recommendation 9. 31 Stetson L. Rev. 595, 597 (2002).

¹⁰³ <http://www.utcourts.gov/howto/seniors/BasicGuidelines-2007.pdf>.

- Petition to appoint a guardian (conservator)
- Petition to confirm nomination
- Proof of service
- Report on clinical evaluation of respondent
- Report on social evaluation of respondent
- Special versions of forms adapted for use in protective proceedings for a minor

(17) Information gathering

As noted in the introduction, Utah, like most states, does not systematically record very much information about guardianships and conservatorships. We believe it would be helpful to distinguish the appointment of a guardian from that of a conservator, to distinguish an appointment for a minor from an appointment for an adult. It would have been helpful in our study to know how many respondents were not represented, were not interviewed by a visitor, not examined by a physician, or not present at the hearing. We recommend that the administrative office of the courts evaluate processing of these casetypes and determine what operational information and management information would help improve processing and help evaluate the success of our recommendations. We also recommend that the courts monitor how many annual reports and accountings result in findings of abuse, termination, or other modification. Such data would be groundbreaking.

(18) Committee members and staff

Kent Alderman, Attorney at Law

Kerry Charlson, Disability Law Center

Mary Jane Ciccarello, Self Help Center
Attorney

Reese Hansen, J. Reuben Clark Law
School

George Harmond, Seventh District
Court Judge, Chair

Maureen Henry, Commission on Aging

Richard Howe, Public Representative

Stephen Mikita, Assistant Attorney
General

Julie Rigby, Third District Court Clerk

Kathy Thyfault, Second District Court
Clerk

Gary Stott, Fourth District Court Judge

Committee Staff

Marianne O'Brien, Program Manager

Diana Pollock, Administrative Assistant

Timothy Shea, Staff Attorney

To review the Committee's briefing materials and minutes of discussions, go to:

<http://www.utcourts.gov/committees/adhocprobate/>

(19) Utah Protective Proceedings Act

We used as our drafting model the Uniform Guardianship and Protective Proceedings Act of 1997. Although already more than a decade old, it is the most recent work of the National Conference of Commissioners on Uniform State Laws, and it is a significant improvement over the 1968 Uniform Act, which Utah adopted in 1975.

We have supplemented the Uniform Act with provisions of our own, often influenced by national authorities and the laws of other states. In some of these areas, the Uniform Act is silent. In others, we believe that other sources reflect better policy.

We have not included any of the jurisdictional provisions of the 1997 Uniform Act. Subject matter jurisdiction is granted to the district court under Article VIII, Section 5 of the Utah Constitution and Utah Code Section 78A-5-102. Personal jurisdiction is governed by the Title 75, Chapter 5b, Uniform Adult Guardianship and Protective Proceedings Act, which the Legislature adopted in the 2008 General Session and which did not exist when the Commission approved the 1997 Uniform Act.

We did not include some of the procedural parts of the 1997 Uniform Act because the subjects are sufficiently governed by the Utah Rules of Civil Procedure. We drafted other procedural parts of the 1997 Uniform Act as rules because in Utah the Supreme Court governs court procedure by rule.

Finally, we substantially reorganized the sections of the 1997 Uniform Act. On several topics, the 1997 Uniform Act includes the same or similar provisions for guardianship of a minor, guardianship of an adult, and conservatorship. We have redrafted these sections within the “general provisions” of the proposed legislation so that a single statement of the law applies to all three types of cases.

1 **UTAH PROTECTIVE PROCEEDINGS ACT**

2 2010 GENERAL SESSION

3 STATE OF UTAH

4 **Chief Sponsor:** _____

5 Sponsor: _____

6
7 **LONG TITLE**

8 **General Description:**

9 This bill establishes the authority of the court to appoint and regulate guardians and
10 conservators for minors and incapacitated adults and other people in need of protection.

11 **Highlighted Provisions:**

12 This bill:

- 13 ▶ eliminates designation of guardians by local school boards;
- 14 ▶ defines “incapacity” and other terms;
- 15 ▶ conforms definitions of the Utah Uniform Probate Code and the Uniform Adult
16 Guardianship and Protective Proceedings Jurisdiction Act;
- 17 ▶ permits notice of hearings on the internet;
- 18 ▶ creates a system for appointing a guardian or conservator to protect a minor because
19 of his or her legal incapacity;
- 20 ▶ creates a system for appointing a guardian or conservator to protect an incapacitated
21 adult because of his or her functional limitations;
- 22 ▶ eliminates expedited guardianship proceedings for residents of the Utah State
23 Developmental Center; and
- 24 ▶ makes technical changes.

25 **Monies Appropriated in this Bill:**

26 None

27 **Other Special Clauses:**

28 This bill takes effect on July 1, 2010.

29 **Utah Code Sections Affected:**

30 AMENDS:

31 **53A-2-201,**

- 32 **53A-2-203.5,**
- 33 **75-1-201,**
- 34 **75-1-401,**
- 35 **75-5-501,**
- 36 **75-5b-102,**
- 37 **75-5b-302,**
- 38 **78B-5-804,**

39 ENACTS:

- 40 **75-5c-101,** Utah Code Annotated 1953
- 41 **75-5c-102,** Utah Code Annotated 1953
- 42 **75-5c-103,** Utah Code Annotated 1953
- 43 **75-5c-104,** Utah Code Annotated 1953
- 44 **75-5c-105,** Utah Code Annotated 1953
- 45 **75-5c-106,** Utah Code Annotated 1953
- 46 **75-5c-107,** Utah Code Annotated 1953
- 47 **75-5c-108,** Utah Code Annotated 1953
- 48 **75-5c-109,** Utah Code Annotated 1953
- 49 **75-5c-110,** Utah Code Annotated 1953
- 50 **75-5c-111,** Utah Code Annotated 1953
- 51 **75-5c-112,** Utah Code Annotated 1953
- 52 **75-5c-113,** Utah Code Annotated 1953
- 53 **75-5c-114,** Utah Code Annotated 1953
- 54 **75-5c-115,** Utah Code Annotated 1953
- 55 **75-5c-116,** Utah Code Annotated 1953
- 56 **75-5c-117,** Utah Code Annotated 1953
- 57 **75-5c-118,** Utah Code Annotated 1953
- 58 **75-5c-119,** Utah Code Annotated 1953
- 59 **75-5c-120,** Utah Code Annotated 1953
- 60 **75-5c-121,** Utah Code Annotated 1953
- 61 **75-5c-122,** Utah Code Annotated 1953
- 62 **75-5c-123,** Utah Code Annotated 1953

63 **75-5c-124**, Utah Code Annotated 1953
64 **75-5c-125**, Utah Code Annotated 1953
65 **75-5c-201**, Utah Code Annotated 1953
66 **75-5c-202**, Utah Code Annotated 1953
67 **75-5c-203**, Utah Code Annotated 1953
68 **75-5c-204**, Utah Code Annotated 1953
69 **75-5c-301**, Utah Code Annotated 1953
70 **75-5c-302**, Utah Code Annotated 1953
71 **75-5c-303**, Utah Code Annotated 1953
72 **75-5c-304**, Utah Code Annotated 1953
73 **75-5c-305**, Utah Code Annotated 1953
74 **75-5c-306**, Utah Code Annotated 1953
75 **75-5c-307**, Utah Code Annotated 1953
76 **75-5c-308**, Utah Code Annotated 1953
77 **75-5c-401**, Utah Code Annotated 1953
78 **75-5c-402**, Utah Code Annotated 1953
79 **75-5c-403**, Utah Code Annotated 1953
80 **75-5c-404**, Utah Code Annotated 1953
81 **75-5c-405**, Utah Code Annotated 1953
82 **75-5c-406**, Utah Code Annotated 1953
83 **75-5c-407**, Utah Code Annotated 1953
84 **75-5c-408**, Utah Code Annotated 1953
85 **75-5c-409**, Utah Code Annotated 1953
86 **75-5c-410**, Utah Code Annotated 1953
87 **75-5c-411**, Utah Code Annotated 1953
88 **75-5c-412**, Utah Code Annotated 1953
89 **75-5c-413**, Utah Code Annotated 1953
90 **75-5c-414**, Utah Code Annotated 1953
91 **75-5c-415**, Utah Code Annotated 1953
92 **75-5c-416**, Utah Code Annotated 1953
93 **75-5c-417**, Utah Code Annotated 1953

94 **75-5c-418**, Utah Code Annotated 1953

95 **75-5c-419**, Utah Code Annotated 1953

96 **75-5c-420**, Utah Code Annotated 1953

97 RENUMBERS AND AMENDS:

98 **75-5c-309**,

99 **75-5c-310**,

100 REPEALS:

101 **53A-2-202**,

102 **75-5-101**,

103 **75-5-102**,

104 **75-5-103**,

105 **75-5-104**,

106 **75-5-105**,

107 **75-5-201**,

108 **75-5-202**,

109 **75-5-202.5**,

110 **75-5-203**,

111 **75-5-204**,

112 **75-5-205**,

113 **75-5-206**,

114 **75-5-207**,

115 **75-5-208**,

116 **75-5-209**,

117 **75-5-210**,

118 **75-5-211**,

119 **75-5-212**,

120 **75-5-301**,

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- 164 75-5-431,
- 165 75-5-432,
- 166 75-5-433,

167 *Be it enacted by the Legislature of the state of Utah:*

168 Section 1. Section **53A-2-201** is amended to read:

169 **53A-2-201. Child's school district of residence -- Determination -- Responsibility for**
170 **providing educational services.**

171 (1) The school district of residence of a minor child whose custodial parent or legal guardian
172 resides within Utah is:

173 (a) the school district in which the custodial parent or legal guardian resides; or

174 (b) the school district in which the child resides:

175 (i) while in the custody or under the supervision of a Utah state agency;

176 (ii) while under the supervision of a private or public agency which is in compliance with
177 Section 62A-4a-606 and is authorized to provide child placement services by the state;

178 (iii) while living with a responsible adult resident of the district, if a determination has been
179 made in accordance with rules of the district board of education that:

180 (A) the child's physical, mental, moral, or emotional health would best be served by
181 considering the child to be a resident for school purposes;

182 (B) exigent circumstances exist which would not permit the case to be appropriately
183 addressed under Section 53A-2-207; and

184 (C) considering the child to be a resident of the district under this subsection would not
185 violate any other law or rule of the State Board of Education; or
186

187 (iv) if the child is married or has been determined to be an emancipated minor by a court of
188 law or by a state administrative agency authorized to make that determination.

189 (2) A minor child whose custodial parent or legal guardian does not reside in the state is
190 considered to be a resident of the district in which the child lives, unless that designation violates
191 any other law or rule of the State Board of Education, if:

192 (a) the child is married or an emancipated minor under Subsection (1)(b)(iv); or

193 ~~(b) the child lives with a resident of the district who is a responsible adult and whom the~~
194 ~~district agrees to designate as the child's legal guardian under Section 53A-2-202; or~~

195 ~~(e)(b)~~ if permissible under policies adopted by the local school board, it is established to the
196 satisfaction of the local school board that:

197 (i) the child lives with a responsible adult who is a resident of the district and is the child's
198 noncustodial parent, grandparent, brother, sister, uncle, ~~or aunt,~~ or other responsible adult;

199 (ii) the child's presence in the district is not for the primary purpose of attending the public
200 schools;

201 (iii) the child's physical, mental, moral, or emotional health would best be served by
202 considering the child to be a resident for school purposes; and

203 (iv) the child is prepared to abide by the rules and policies of the school and school district in
204 which attendance is sought.

205 (3) (a) If admission is sought under Subsection (1)(b)(iii), or (2)~~(e)(b)~~, then the district may
206 require the person with whom the child lives to be designated as the child's custodian in a
207 durable power of attorney, issued by the party who has legal custody of the child, granting the
208 custodian full authority to take any appropriate action, including authorization for educational or
209 medical services, in the interests of the child.

210 (b) Both the party granting and the party empowered by the power of attorney shall agree to:

211 (i) assume responsibility for any fees or other charges relating to the child's education in the
212 district; and

213 (ii) if eligibility for fee waivers is claimed under Section 53A-12-103, provide the school
214 district with all financial information requested by the district for purposes of determining
215 eligibility for fee waivers.

216 (c) Notwithstanding Section 75-5-103, a power of attorney meeting the requirements of this
217 section and accepted by the school district shall remain in force until the earliest of the following
218 occurs:

219 (i) the child reaches the age of 18, marries, or becomes emancipated;

220 (ii) the expiration date stated in the document; or

221 (iii) the power of attorney is revoked or rendered inoperative by the grantor or grantee, or by
222 order of a court of competent jurisdiction.

223 (4) A power of attorney does not confer legal guardianship.

224 (5) Each school district is responsible for providing educational services for all children of
225 school age who are residents of the district.

226 (6) Students who were enrolled in a Utah public school by October 1, 1992, and would, but
227 for this part, have been allowed to attend public schools without payment of tuition shall be
228 permitted to continue their attendance until graduation or termination of enrollment on the same
229 basis as Utah resident students.

230 Section 2. Section **53A-2-203.5** is amended to read:

231 **53A-2-203.5. Recognition of guardianship.**

232 (1) A document issued by other than a court of law which purports to award guardianship to
233 a person who is not a legal resident of the jurisdiction in which the guardianship is awarded is
234 not valid in the state of Utah until reviewed and approved by a Utah court.

235 (2) The procedure for obtaining approval under Subsection (1) is the procedure required
236 under Title 75, Chapter 5c, Part 2, ~~for obtaining a court appointment of a guardian~~ [Appointment](#)
237 [of a Guardian for a Minor](#).

238 Section 3. Section **75-1-201** is amended to read:

239 **75-1-201. General definitions.**

240 Subject to additional definitions contained in the subsequent chapters that are applicable to
241 specific chapters, parts, or sections, and unless the context otherwise requires, in this code:

242 (1) "Agent" includes an attorney-in-fact under a durable or nondurable power of attorney, an
243 individual authorized to make decisions concerning another's health care, and an individual
244 authorized to make decisions for another under a natural death act.

245 (2) "Application" means a written request to the registrar for an order of informal probate or
246 appointment under Title 75, Chapter 3, Part 3, Informal Probate and Appointment Proceedings.

247 (3) "Beneficiary," as it relates to trust beneficiaries, includes a person who has any present or
248 future interest, vested or contingent, and also includes the owner of an interest by assignment or
249 other transfer; as it relates to a charitable trust, includes any person entitled to enforce the trust;
250 as it relates to a "beneficiary of a beneficiary designation," refers to a beneficiary of an insurance
251 or annuity policy, of an account with POD designation, of a security registered in beneficiary
252 form (TOD), or of a pension, profit-sharing, retirement, or similar benefit plan, or other
253 nonprobate transfer at death; and, as it relates to a "beneficiary designated in a governing
254 instrument," includes a grantee of a deed, a devisee, a trust beneficiary, a beneficiary of a
255 beneficiary designation, a donee, appointee, or taker in default of a power of appointment, and a
256 person in whose favor a power of attorney or a power held in any individual, fiduciary, or
257 representative capacity is exercised.

258 (4) "Beneficiary designation" refers to a governing instrument naming a beneficiary of an
259 insurance or annuity policy, of an account with POD designation, of a security registered in
260 beneficiary form (TOD), or of a pension, profit-sharing, retirement, or similar benefit plan, or
261 other nonprobate transfer at death.

262 (5) "Child" includes any individual entitled to take as a child under this code by intestate
263 succession from the parent whose relationship is involved and excludes any person who is only a
264 stepchild, a foster child, a grandchild, or any more remote descendant.

265 (6) "Claims," in respect to estates of decedents and protected persons, includes liabilities of
266 the decedent or protected person, whether arising in contract, in tort, or otherwise, and liabilities
267 of the estate which arise at or after the death of the decedent or after the appointment of a
268 conservator, including funeral expenses and expenses of administration. "Claims" does not
269 include estate or inheritance taxes, or demands or disputes regarding title of a decedent or
270 protected person to specific assets alleged to be included in the estate.

271 (7) "Conservator" means a person ~~who is~~ appointed by a court to manage the estate of a
272 protected person.

273 (8) "Court" means any of the courts of record in ~~this state~~Utah having jurisdiction in matters
274 relating to the affairs of decedents.

275 (9) "Descendant" of an individual means all of his descendants of all generations, with the
276 relationship of parent and child at each generation being determined by the definition of child
277 and parent contained in this title.

278 (10) "Devise," when used as a noun, means a testamentary disposition of real or personal
279 property and, when used as a verb, means to dispose of real or personal property by will.

280 (11) "Devisee" means any person designated in a will to receive a devise. For the purposes of
281 Title 75, Chapter 3, Probate of Wills and Administration, in the case of a devise to an existing
282 trust or trustee, or to a trustee in trust described by will, the trust or trustee is the devisee, and the
283 beneficiaries are not devisees.

284 ~~(12) "Disability" means cause for a protective order as described by Section 75-5-401.~~

285 ~~(13)~~(12) "Distributee" means any person who has received property of a decedent from his
286 personal representative other than as a creditor or purchaser. A testamentary trustee is a
287 distributee only to the extent of distributed assets or increment thereto remaining in his hands. A
288 beneficiary of a testamentary trust to whom the trustee has distributed property received from a
289 personal representative is a distributee of the personal representative. For purposes of this
290 provision, "testamentary trustee" includes a trustee to whom assets are transferred by will, to the
291 extent of the devised assets.

292 ~~(14)~~(13) "Estate" includes the property of the decedent, trust, or other person whose affairs
293 are subject to this title as originally constituted and as it exists from time to time during
294 administration.

295 ~~(15)~~(14) "Exempt property" means that property of a decedent's estate which is described in
296 Section 75-2-403.

297 ~~(16)~~(15) "Fiduciary" includes a personal representative, guardian, conservator, and trustee.

298 ~~(17)~~(16) "Foreign personal representative" means a personal representative of another
299 jurisdiction.

300 ~~(18)~~(17) "Formal proceedings" means proceedings conducted before a judge with notice to
301 interested persons.

302 ~~(19)~~(18) "Governing instrument" means a deed, will, trust, insurance or annuity policy,
303 account with POD designation, security registered in beneficiary form (TOD), pension, profit-
304 sharing, retirement, or similar benefit plan, instrument creating or exercising a power of
305 appointment or a power of attorney, or a dispositive, appointive, or nominative instrument of any
306 similar type.

307 ~~(20)~~(19) "Guardian" means a person who has ~~qualified as a guardian of a minor or~~
308 ~~incapacitated person pursuant to testamentary or court-accepted an~~ appointment, ~~or by written~~

309 ~~instrument as provided in Section 75-5-202.5 as guardian~~, but excludes one who is merely a
310 guardian ad litem.

311 ~~(21)-(20)~~ "Heirs," except as controlled by Section 75-2-711, means persons, including the
312 surviving spouse and state, who are entitled under the statutes of intestate succession to the
313 property of a decedent.

314 ~~(22) "Incapacitated person" means any person who is impaired by reason of mental illness,~~
315 ~~mental deficiency, physical illness or disability, chronic use of drugs, chronic intoxication, or~~
316 ~~other cause, except minority, to the extent of lacking sufficient understanding or capacity to~~
317 ~~make or communicate responsible decisions.~~ (21) "Incapacity" has the same meaning as in
318 Section 75-5c-103.

319 ~~(23)-(22)~~ "Informal proceedings" mean those conducted without notice to interested persons
320 by an officer of the court acting as a registrar for probate of a will or appointment of a personal
321 representative.

322 ~~(24)-(23)~~ "Interested person" includes heirs, devisees, children, spouses, creditors,
323 beneficiaries, and any others having a property right in or claim against a trust estate or the estate
324 of a decedent, ~~ward,~~ or protected person. It also includes persons having priority for appointment
325 as personal representative, other fiduciaries representing interested persons, a settlor of a trust, if
326 living, or the settlor's legal representative, if any, if the settlor is living but incapacitated. The
327 meaning as it relates to particular persons may vary from time to time and shall be determined
328 according to the particular purposes of, and matter involved in, any proceeding.

329 ~~(25)-(24)~~ "Issue" of a person means descendant as defined in Subsection (9).

330 ~~(26)-(25)~~ "Joint tenants with the right of survivorship" and "community property with the
331 right of survivorship" includes coowners of property held under circumstances that entitle one or
332 more to the whole of the property on the death of the other or others, but excludes forms of
333 coownership registration in which the underlying ownership of each party is in proportion to that
334 party's contribution.

335 ~~(27)-(26)~~ "Lease" includes an oil, gas, or other mineral lease.

336 ~~(28)-(27)~~ "Letters" includes letters testamentary, letters of guardianship, letters of
337 administration, and letters of conservatorship.

338 ~~(29)-(28)~~ "Minor" means a person who is under 18 years of age.

339 ~~(30)~~(29) "Mortgage" means any conveyance, agreement, or arrangement in which property
340 is used as security.

341 ~~(31)~~(30) "Nonresident decedent" means a decedent who was domiciled in another
342 jurisdiction at the time of his death.

343 ~~(32)~~(31) "Organization" includes a corporation, limited liability company, business trust,
344 estate, trust, partnership, joint venture, association, government or governmental subdivision or
345 agency, or any other legal or commercial entity.

346 ~~(33)~~(32) "Parent" includes any person entitled to take, or who would be entitled to take if the
347 child died without a will, as a parent under this code by intestate succession from the child whose
348 relationship is in question and excludes any person who is only a stepparent, foster parent, or
349 grandparent.

350 ~~(34)~~(33) "Payor" means a trustee, insurer, business entity, employer, government,
351 governmental agency or subdivision, or any other person authorized or obligated by law or a
352 governing instrument to make payments.

353 ~~(35)~~(34) "Person" means an individual or an organization.

354 ~~(36)~~(35)(a) "Personal representative" includes executor, administrator, successor personal
355 representative, special administrator, and persons who perform substantially the same function
356 under the law governing their status.

357 (b) "General personal representative" excludes special administrator.

358 ~~(37)~~(36) "Petition" means a written request to the court for an order after notice.

359 ~~(38)~~(37) "Proceeding" includes action at law and suit in equity.

360 ~~(39)~~(38) "Property" includes both real and personal property or any interest therein and
361 means anything that may be the subject of ownership.

362 ~~(40)~~(39) "Protected person" means a person for whom a guardian or a conservator has been
363 appointed or a protective order entered, including a minor. ~~A "minor protected person" means a~~
364 ~~minor for whom a conservator has been appointed because of minority.~~

365 ~~(41)~~(40) "Protective proceeding" means a proceeding ~~described in Section 75-5-401 under~~
366 Title 75, Chapter 5c, Utah Protective Proceedings Act.

367 ~~(42)~~(41) "Registrar" refers to the official of the court designated to perform the functions of
368 registrar as provided in Section 75-1-307.

369 ~~(43)~~~~(42)~~ "Security" includes any note, stock, treasury stock, bond, debenture, evidence of
370 indebtedness, certificate of interest, or participation in an oil, gas, or mining title or lease or in
371 payments out of production under such a title or lease, collateral trust certificate, transferable
372 share, voting trust certificate, and, in general, any interest or instrument commonly known as a
373 security, or any certificate of interest or participation, any temporary or interim certificate,
374 receipt, or certificate of deposit for, or any warrant or right to subscribe to or purchase, any of the
375 foregoing.

376 ~~(44)~~~~(43)~~ "Settlement," in reference to a decedent's estate, includes the full process of
377 administration, distribution, and closing.

378 ~~(45)~~~~(44)~~ "Special administrator" means a personal representative as described in Sections
379 75-3-614 through 75-3-618.

380 ~~(46)~~~~(45)~~ "State" means a state of the United States, the District of Columbia, the
381 Commonwealth of Puerto Rico, any territory or insular possession subject to the jurisdiction of
382 the United States, or a Native American tribe or band recognized by federal law or formally
383 acknowledged by a state.

384 ~~(47)~~~~(46)~~ "Successor personal representative" means a personal representative, other than a
385 special administrator, who is appointed to succeed a previously appointed personal
386 representative.

387 ~~(48)~~~~(47)~~ "Successors" means persons, other than creditors, who are entitled to property of a
388 decedent under the decedent's will or this title.

389 ~~(49)~~~~(48)~~ "Supervised administration" refers to the proceedings described in Title 75, Chapter
390 3, Part 5, Supervised Administration.

391 ~~(50)~~~~(49)~~ "Survive," except for purposes of Part 3 of Article VI, Uniform TOD Security
392 Registration Act, means that an individual has neither predeceased an event, including the death
393 of another individual, nor is considered to have predeceased an event under Section 75-2-104 or
394 75-2-702. The term includes its derivatives, such as "survives," "survived," "survivor," and
395 "surviving."

396 ~~(51)~~~~(50)~~ "Testacy proceeding" means a proceeding to establish a will or determine intestacy.

397 ~~(52)~~~~(51)~~ "Testator" includes an individual of either sex.

398 ~~(53)~~~~(52)~~ "Trust" includes any express trust, private or charitable, with additions thereto,
399 wherever and however created. The term also includes a trust created or determined by judgment

400 or decree under which the trust is to be administered in the manner of an express trust. The term
401 excludes other constructive trusts, and it excludes resulting trusts, conservatorships, personal
402 representatives, trust accounts as defined in Title 75, Chapter 6, Nonprobate Transfers, custodial
403 arrangements pursuant to any Uniform Transfers To Minors Act, business trusts providing for
404 certificates to be issued to beneficiaries, common trust funds, voting trusts, preneed funeral plans
405 under Title 58, Chapter 9, Funeral Services Licensing Act, security arrangements, liquidation
406 trusts, and trusts for the primary purpose of paying debts, dividends, interest, salaries, wages,
407 profits, pensions, or employee benefits of any kind, and any arrangement under which a person is
408 nominee or escrowee for another.

409 ~~(54)~~ (53) "Trustee" includes an original, additional, and successor trustee, and cotrustee,
410 whether or not appointed or confirmed by the court.

411 ~~(55) "Ward" means a person for whom a guardian has been appointed. A "minor ward" is a~~
412 ~~minor for whom a guardian has been appointed solely because of minority.~~

413 ~~(56)~~ (54) "Will" includes codicil and any testamentary instrument which merely appoints an
414 executor, revokes or revises another will, nominates a guardian or conservator, or expressly
415 excludes or limits the right of an individual or class to succeed to property of the decedent
416 passing by intestate succession.

417 Section 4. Section **75-1-401** is amended to read:

418 **75-1-401. Notice -- Method and time of giving.**

419 (1) If notice of a hearing on any petition is required and except for specific notice
420 requirements as otherwise provided, the petitioner shall cause notice of the time and place of
421 hearing of any petition to be given to any interested person or his attorney if he has appeared by
422 attorney or requested that notice be sent to his attorney. Notice shall be given by the clerk
423 posting a copy of the notice for the ten consecutive days immediately preceding the time set for
424 the hearing in at least three public places in the county, one of which must be at the courthouse
425 of the county and one of which may be on the court website; and

426 (a) By the clerk mailing a copy thereof at least ten days before the time set for the hearing by
427 certified, registered, or ordinary first class mail addressed to the person being notified at the post-
428 office address given in his demand for notice, if any, or at his office or place of residence, if
429 known; or

430 (b) By delivering a copy thereof to the person being notified personally at least ten days
431 before the time set for the hearing; and

432 (c) If the address, or identity of any person is not known and cannot be ascertained with
433 reasonable diligence, by publishing at least once a week for three consecutive weeks a copy
434 thereof in a newspaper having general circulation in the county where the hearing is to be held,
435 the last publication of which is to be at least ten days before the time set for the hearing.

436 (2) The court for good cause shown may provide for a different method or time of giving
437 notice for any hearing.

438 (3) Proof of the giving of notice shall be made on or before the hearing and filed in the
439 proceeding.

440 Section 5. Section **75-5-501** is amended to read:

441 **75-5-501. Power of attorney not affected by disability or lapse of time -- Agent**
442 **responsibilities.**

443 (1) Whenever a principal designates another his attorney-in-fact or agent by a power of
444 attorney in writing and the writing contains the words "This power of attorney shall not be
445 affected by disability of the principal," or "This power of attorney shall become effective upon
446 the disability of the principal," or similar words showing the intent of the principal that the
447 authority conferred shall be exercisable notwithstanding his disability, the authority of the
448 attorney-in-fact or agent is exercisable by him as provided in the power on behalf of the principal
449 notwithstanding:

450 (a) later disability or incapacity of the principal at law or later uncertainty as to whether the
451 principal is dead or alive; or

452 (b) the lapse of time since the execution of the instrument, unless the instrument states a time
453 of termination.

454 (2) If an attorney-in-fact or agent determines that the principal has become incapacitated or
455 disabled and the power of attorney by its terms remains in effect or becomes effective as a result
456 of a principal's incapacity or disability, the attorney-in-fact or agent shall:

457 (a) notify all interested persons of his status as the power of attorney holder within 30 days of
458 the principal's incapacitation, and provide them with his name and address;

459 (b) provide to any interested persons upon written request, a copy of the power of attorney;

460 (c) provide to any interested persons upon written request, an annual accounting of the assets
461 to which the power of attorney applies, unless the power of attorney specifically directs that the
462 attorney-in-fact or agent is not required to do so; and

463 (d) notify all interested persons upon the death of the principal.

464 (3) All interested persons shall be notified within ten days if the attorney-in-fact or agent
465 changes. The notification shall be made by the new attorney-in-fact or agent who shall then be
466 accountable to the interested persons in accordance with Subsection (2).

467 (4) All acts done by the attorney-in-fact or agent pursuant to the power during any period of
468 disability or incompetence or uncertainty as to whether the principal is dead or alive have the
469 same effect and inure to the benefit of and bind the principal or his heirs, devisees, and personal
470 representative as if the principal were alive, competent, and not disabled, except as provided in
471 Section 75-5-503.

472 (5) A conservator may be appointed for a principal even though the principal has a valid
473 power of attorney in place. If a conservator thereafter is appointed for the principal, the attorney-
474 in-fact or agent, during the continuance of the appointment, shall account to the conservator
475 rather than the principal. The conservator, pursuant to court order ~~as provided in Subsection 75-~~
476 ~~5-408(1)(d)~~, has the same power the principal would have had if he were not disabled or
477 incompetent to revoke, suspend, or terminate all or any part of the power of attorney or agency.

478 (6) For the purposes of this section, "interested person" means any person entitled to a part of
479 the principal's estate from the principal's will or through the intestacy laws, whichever is
480 applicable.

481 Section 6. Section **75-5b-102** is amended to read:

482 **75-5b-102. Definitions.**

483 In this chapter:

484 (1) "Adult" means an individual who has attained 18 years of age.

485 ~~(2) "Conservator" means a person appointed by the court to administer the property of an~~
486 ~~adult, including a person appointed under Title 75, Chapter 5, Part 4, Protection of Property of~~
487 ~~Persons Under Disability and Minors.~~

488 ~~(3)~~(2) "Emergency" means circumstances that likely will result in substantial harm to a
489 respondent's health, safety, estate, or welfare, and in which the appointment of a guardian is

490 necessary because no other person has authority to and is willing to act on the respondent's
491 behalf.

492 ~~(4) "Guardian" means a person appointed by the court to make decisions regarding the person~~
493 ~~of an adult, including a person appointed under Title 75, Chapter 5, Part 3, Guardians of~~
494 ~~Incapacitated Persons.~~

495 ~~(5)(3)~~ "Guardianship order" means an order appointing a guardian.

496 ~~(6)(4)~~ "Guardianship proceeding" means a proceeding in which an order for the appointment
497 of a guardian is sought or has been issued.

498 ~~(7)(5)~~ "Home state" means the state in which the respondent was physically present for at
499 least six consecutive months immediately before the filing of a petition for the appointment of a
500 guardian or protective order. A period of temporary absence counts as part of the six-month
501 period.

502 ~~(8) "Incapacitated person" means an adult for whom a guardian has been appointed.~~

503 ~~(9)(6)~~ "Party" means the respondent, petitioner, guardian, conservator, or any other person
504 allowed by the court to participate in a guardianship or protective proceeding.

505 ~~(10)(7)~~ "Person," except in the terms "incapacitated person" or "protected person," means an
506 individual, corporation, business trust, estate, trust, partnership, limited liability company,
507 association, joint venture, government or governmental subdivision, agency or instrumentality,
508 public corporation, or any other legal or commercial entity.

509 ~~(11) "Protected person" means an adult for whom a protective order has been made.~~

510 ~~(12)(8)~~ "Protective order" means an order appointing a conservator or another court order
511 related to management of an adult's property.

512 ~~(13) "Protective proceeding" means a judicial proceeding in which a protective order is~~
513 ~~sought or has been issued.~~

514 ~~(14)(9)~~ "Record" means information that is inscribed on a tangible medium or that is stored
515 in an electronic or other medium and is retrievable in perceivable form.

516 ~~(15)(10)~~ "Respondent" means an adult for whom a protective order or the appointment of a
517 guardian or conservator is sought.

518 ~~(16)(11)~~ "Significant-connection state" means a state, other than the home state, with which
519 a respondent has a significant connection other than mere physical presence and in which
520 substantial evidence concerning the respondent is available.

521 ~~(17)~~(12) "State" means a state of the United States, the District of Columbia, Puerto Rico,
522 the United States Virgin Islands, a federally recognized Indian tribe, or any territory or insular
523 possession subject to the jurisdiction of the United States.

524 Section 7. Section **75-5b-302** is amended to read:

525 **75-5b-302. Accepting guardianship or conservatorship transferred from another state.**

526 (1) To confirm transfer of a guardianship or conservatorship transferred to this state under
527 provisions similar to Section 75-5b-301, the guardian or conservator shall petition the court in
528 this state to accept the guardianship or conservatorship. The petition shall include a certified
529 copy of the other state's provisional order of transfer.

530 (2) Notice of a petition under Subsection (1) shall be given by the petitioner to those persons
531 who would be entitled to notice if the petition were a petition for the appointment of a guardian
532 or issuance of a protective order in both the transferring state and this state. The notice shall be
533 given in the same manner as notice is given in this state.

534 (3) On the court's own motion or on request of the incapacitated or protected person, or other
535 person required to be notified of the proceeding, the court shall hold a hearing on a petition filed
536 pursuant to Subsection (1).

537 (4) The court shall issue an order provisionally granting a petition filed under Subsection (1)
538 unless:

539 (a) an objection is made and the objector establishes that transfer of the proceeding would be
540 contrary to the interests of the incapacitated or protected person; or

541 (b) the guardian or conservator is ineligible for appointment in this state.

542 (5) The court shall issue a final order accepting the proceeding and appointing the guardian
543 or conservator as guardian or conservator in this state upon its receipt from the court from which
544 the proceeding is being transferred of a final order issued under provisions similar to Section 75-
545 5b-301 transferring the proceeding to this state.

546 (6) Not later than 90 days after issuance of a final order accepting transfer of a guardianship
547 or conservatorship, the court shall determine whether the guardianship or conservatorship needs
548 to be modified to conform to the law of this state.

549 (7) In granting a petition under this section, the court shall recognize a guardianship or
550 conservatorship order from the other state, including the determination of the incapacitated or
551 protected person's incapacity and the appointment of the guardian or conservator.

552 (8) The denial by a court of this state of a petition to accept a guardianship or conservatorship
553 transferred from another state does not affect the ability of the guardian or conservator to seek
554 appointment as guardian or conservator in this state under Title 75, Chapter 5c, Part 3, Guardians
555 of Incapacitated Persons Utah Protective Proceedings Act, if the court has jurisdiction to make
556 an appointment other than by reason of the provisional order of transfer.

557 Section 8. Section **75-5c-101** is enacted to read:

558 **CHAPTER 5c. UTAH PROTECTIVE PROCEEDINGS ACT**

559 **Part 1. General Provisions.**

560 **75-5c-101. Title – Severability.**

561 (1) This Chapter is known as the “Utah Protective Proceedings Act.”

562 (2) If any provision of this Chapter or its application to any person or circumstance is held
563 invalid, the invalidity does not affect other provisions or applications which can be given effect
564 without the invalid provision or application, and to this end the provisions of this Chapter are
565 severable.

566 Section 9. Section **75-5c-102** is enacted to read:

567 **75-5c-102. Definitions.**

568 As used in this Chapter:

569 (1) “Best interest decisionmaking standard” means the guardian or conservator, after
570 considering the protected person’s expressed wishes, makes the decision that is the least
571 intrusive, least restrictive, and most normalizing course of action to accommodate the protected
572 person’s particular functional limitations. Best interest is the standard used when:

573 (a) following the protected person’s wishes would cause the person harm;

574 (b) the guardian or conservator cannot determine the protected person’s wishes; or

575 (c) the protected person has never had capacity.

576 (2) “Court” means the district court.

577 (3) “Health care” and “health care decisions” mean the same as in Section 75-2a-103.

578 (4) “Legal representative” includes a guardian or conservator acting for a protected person in
579 Utah or elsewhere, a trustee or custodian of a trust or custodianship of which the protected
580 person is a beneficiary, a lawyer, guardian ad litem, representative payee, and an agent
581 designated under a power of attorney in which the protected person is the principal.

582 (5) “Professional conservator” means a trust company permitted by the commissioner of
583 financial institutions under Subsection 7-5-2(1) to accept an appointment to act in an agency or
584 fiduciary capacity;

585 (6) "Professional guardian" means a person who has been certified as a Registered Guardian
586 or Master Guardian by the National Guardianship Association;

587 (7) “Respondent” means an individual for whom a guardian, conservator, or protective order
588 is sought.

589 (8) “Substituted judgment decisionmaking standard” means the guardian or conservator
590 makes the decision that the protected person would have made when competent. Substituted
591 judgment is the standard used in all circumstances except those that permit the best interest
592 decisionmaking standard to be used.

593 Section 10. Section **75-5c-103** is enacted to read:

594 **75-5c-103. Incapacity – Definition – Findings – Factors.**

595 (1) As used in Title 75, Utah Uniform Probate Code, “incapacity” means a judicial
596 determination that an adult’s ability, even with assistance, to

597 (a) receive and evaluate information,

598 (b) make and communicate decisions,

599 (c) provide for necessities such as food, shelter, clothing, health care or safety,

600 (d) carry out the activities of daily living, or

601 (e) manage property

602 is so impaired that illness or physical or financial harm may occur. Incapacity is a judicial
603 decision, not a medical decision, and is measured by functional limitations. Incapacity must be
604 proved by clear and convincing evidence.

605 (2) The court shall enter findings in which the court identifies the functional limitations that
606 cause the respondent to be incapacitated. In deciding whether the respondent is incapacitated, the
607 court should consider and weigh, as appropriate:

608 (a) whether the respondent’s condition, limitations and level of functioning leave the
609 respondent at risk of:

610 (i) his or her property being dissipated;

611 (ii) being unable to provide for his or her support, or for the support of individuals entitled to
612 the respondent’s support;

- 613 (iii) being financially exploited;
- 614 (iv) being abused or neglected, including self-injurious behavior or self-neglect; or
- 615 (v) having his or her rights violated;
- 616 (b) whether the respondent has a physical or mental illness, disability, condition, or syndrome
617 and the prognosis;
- 618 (c) whether the respondent is able to evaluate the consequences of alternative decisions;
- 619 (d) whether the respondent can manage the activities of daily living through training,
620 education, support services, mental and physical health care, medication, therapy, assistants,
621 assistive devices, or other means that the respondent will accept;
- 622 (e) the nature and extent of the demands placed on the respondent by the need for care;
- 623 (f) the nature and extent of the demands placed on the respondent by his or her property;
- 624 (g) the consistency of the respondent's behavior with his or her long-standing values,
625 preferences and patterns of behavior, and
- 626 (h) other relevant factors.

627 Section 11. Section **75-5c-104** is enacted to read:

628 **75-5c-104. Transfer of property to or on behalf of a minor.**

629 (1) Unless the person knows that a conservator has been appointed for a minor or that a
630 proceeding to appoint a conservator is pending, a person required to transfer money or personal
631 property to a minor may transfer up to \$100,000 per year to:

- 632 (a) the minor, if the minor is married or emancipated or if payment to the minor is authorized
633 by statute;
- 634 (b) the minor's guardian;
- 635 (c) the minor's custodian under Title 75, Chapter 5a, Uniform Transfers To Minors Act; or
- 636 (d) a person responsible for the minor's care and custody with whom the minor resides;
- 637 (e) a financial institution for deposit in an interest-bearing account or certificate in the
638 minor's sole name and giving notice of the deposit to the minor.

639 (2) A person who transfers money or property in compliance with this Section is not
640 responsible for its proper application.

641 (3) A custodian, guardian, or a person responsible for the minor's care and custody who
642 receives money or property for a minor must apply it to the minor's support, care, education,
643 health, and welfare and may not derive a personal financial benefit, except for reimbursement for

644 necessary expenses. Any excess must be preserved for the minor's future support, care,
645 education, health, and welfare. Any balance must be transferred to the minor upon emancipation
646 or majority.

647 Section 12. Section **75-5c-105** is enacted to read:

648 **75-5c-105. Delegation of authority by parent or guardian.**

649 A parent or guardian of a minor or protected person may delegate to another person any
650 authority regarding care, custody, or property of the minor or protected person except the
651 authority to consent to marriage or adoption. The delegation must be by a properly-executed
652 power of attorney and may not exceed six months.

653 Section 13. Section **75-5c-106** is enacted to read:

654 **75-5c-106. Venue -- Transfer of venue.**

655 (1) Venue for a proceeding under this Chapter is:

656 (a) in the county in which the respondent resides or is present at the time the proceeding is
657 commenced;

658 (b) in the county in which the will is or could be probated, if the guardian or conservator is
659 nominated by will;

660 (c) in the county of the court that committed the respondent under Title 62A, Chapter 5, Part
661 3, Admission to Mental Retardation Facility or under Title 62A, Chapter 15, Part 6, Utah State
662 Hospital and Other Mental Health Facilities; or

663 (d) in the county in which property of the respondent is located, if the petition is to appoint a
664 conservator or for a protective order and the respondent does not reside in Utah.

665 (2) If a proceeding is brought in more than one county, the court of the county in which the
666 proceeding is first brought has the exclusive right to proceed unless that court determines that
667 venue is proper in another county and that the interests of justice require that the proceeding be
668 transferred.

669 (3) The court that appoints a guardian or conservator or enters a protective order retains
670 venue for proceedings after the appointment or order unless that court determines that venue is
671 proper in another county and that the interests of justice require that the proceeding be
672 transferred.

673 Section 14. Section **75-5c-107** is enacted to read:

674 **75-5c-107. Appointment and status of guardian or conservator.**

675 (1) A person becomes guardian or a conservator upon acceptance of a court appointment.

676 (2) A guardianship, conservatorship or entry of a protective order continues until terminated
677 by court order.

678 (3) Acceptance of a testamentary appointment as guardian under a will probated in the state
679 of the testator's domicile is effective in Utah.

680 Section 15. Section **75-5c-110** is enacted to read:

681 **75-5c-110. Acceptance of appointment.**

682 (1) The guardian or conservator has authority to act upon filing an acceptance of
683 appointment. A guardian or conservator shall file an acceptance of appointment within 30 days
684 after the later of:

685 (a) entry of the order of appointment; or

686 (b) the occurrence of a future event designated in the appointment order.

687 (2) By accepting appointment, a guardian or conservator submits personally to the
688 jurisdiction of the court in any proceeding relating to the guardianship or conservatorship.

689 (3) If a person nominated by will or signed writing timely complies with Section 75-5c-201,
690 Section 75-5c-301 or Section 75-5c-401, the nominee's acts before acceptance of the
691 appointment that are beneficial to the respondent have the same effect as those that occur after
692 acceptance.

693 Section 16. Section **75-5c-111** is enacted to read:

694 **75-5c-111. Letters of office.**

695 (1) The court shall issue appropriate letters of office to the guardian or conservator. The
696 letters shall state the authority of the guardian or conservator and the property subject to the
697 guardian's or conservator's possession, ownership or control.

698 (2) Letters of office are evidence of title to the protected person's property and may be filed
699 or recorded to give notice of title.

700 Section 17. Section **75-5c-112** is enacted to read:

701 **Section 75-5c-112. Nominating a guardian or conservator.**

702 (1) A person 14 years of age or older may nominate a person to be appointed as guardian or
703 conservator for oneself, for one's spouse, or for one's child whom the parent has or may have in
704 the future by will, durable power of attorney, or other signed writing that:

705 (a) identifies the nominee and the office for which the nominee is nominated; and

706 (b) shows that the person is of sound mind and not acting under duress, fraud, or undue
707 influence.

708 (2) The respondent may nominate someone orally at the hearing if the respondent is 14 years
709 of age or older and has sufficient capacity to express a preference.

710 (3) The nomination may specify desired limitations on the authority to be given to the
711 guardian or conservator.

712 (4) The person may revoke or amend the nomination before it is confirmed by the court.

713 Section 18. Section **75-5c-113** is enacted to read:

714 **75-5c-113. Petition to confirm nomination – Notice -- Authority to act.**

715 (1) A person who nominates someone to be appointed as guardian or conservator may
716 petition to confirm the nomination if the nominator will likely become incapacitated or unable to
717 care for the respondent within two years.

718 (2) If no objection is filed within the time permitted or if an objection is filed and withdrawn,
719 the court shall confirm the nomination and cut off the right of others to object if it finds that the
720 nomination is in the respondent's best interest and the nominator will likely become
721 incapacitated or unable to care for the respondent within two years.

722 (3) If an objection is filed, the court shall conduct proceedings to hear and determine the
723 priority of appointment under Section 75-5c-114. An objection does not preclude confirmation of
724 the nominee.

725 (4) An order under this Section appoints a contingent guardian or conservator but does not
726 determine the respondent's incapacity.

727 Section 19. Section **75-5c-114** is enacted to read:

728 **75-5c-114. Who may be guardian or conservator -- Priority.**

729 (1) The court may appoint as guardian or conservator any person whose appointment would
730 be in the respondent's best interest.

731 (2) In appointing a guardian or conservator, the court shall consider qualified persons in the
732 following order of priority, unless the court finds the appointment would be contrary to the
733 respondent's best interest:

734 (a) a guardian or conservator, other than a substitute or emergency guardian or conservator,
735 currently acting for the respondent in Utah or elsewhere or a person nominated by that person;

736 (b) respondent's nominee, if the respondent is 14 years of age or older and at the time of the
737 nomination the respondent had sufficient capacity to express a preference;

738 (c) respondent's agent appointed under Title 75, Chapter 2a, Advance Health Care Directive
739 Act or Title 75, Chapter 5, Part 5, Powers of Attorney;

740 (d) respondent's spouse or a person nominated by a deceased spouse;

741 (e) respondent's adult child or a person nominated by a deceased adult child;

742 (f) respondent's parent or a person nominated by a deceased parent;

743 (g) an adult with whom the respondent has resided for more than six months;

744 (h) an adult who has shown special care and concern for the respondent; and

745 (i) a professional guardian or conservator.

746 (3) If a person nominates more than one guardian or conservator, the most recent nomination
747 controls.

748 (4) If two or more people who have equal priority to nominate a guardian or conservator are
749 dead or incapacitated, the most recent nomination by the last person to die or to be adjudicated
750 incapacitated has priority.

751 (5) If two or more people have equal priority, the court may select the one most qualified. In
752 the best interest of the respondent, the court may decline to appoint a person having a higher
753 priority and appoint a person having a lower priority or no priority.

754 (6) An owner, operator, or employee of a long-term-care institution at which the respondent
755 is receiving care may not be appointed guardian or conservator unless related to the respondent
756 by blood, marriage, or adoption.

757 (7) The nomination of a guardian or conservator by a parent does not supersede the parental
758 rights of either parent.

759 Section 20. Section **75-5c-115** is enacted to read:

760 **75-5c-115. Successor, additional or contingent guardian or conservator.**

761 The court may appoint more than one guardian or conservator. The court may appoint a
762 guardian or conservator to serve immediately or upon the occurrence of some future designated
763 event. The court may appoint a successor guardian or conservator to serve in the event of a
764 vacancy. Unless otherwise stated, a successor succeeds to the predecessor's duties, authority, and
765 title to property.

766 Section 21 Section **75-5c-116** is enacted to read:

767 **75-5c-116. Termination, resignation, or removal.**

768 (1) A guardianship or conservatorship terminates upon court order.

769 (2) The court may accept the resignation or order the removal of the guardian or conservator
770 upon finding that resignation or removal would be in the protected person's best interest.

771 (3) The court may terminate the guardianship, conservatorship or protective order upon
772 sufficient evidence that:

773 (a) the protected person has died;

774 (b) the minor protected person has been adopted, is emancipated, or has attained majority; or

775 (c) the protected person no longer needs the assistance or protection of a guardian,
776 conservator or protective order.

777 (4) Upon presentation of evidence establishing a prima facie case for termination, the court
778 shall order termination, unless it is proven by clear and convincing evidence that continuation of
779 the guardianship or conservatorship is in the protected person's best interest.

780 (5) Termination of the guardianship or conservatorship or death, incapacity, resignation or
781 removal of the guardian or conservator does not affect the liability of a guardian or conservator
782 for previous acts or the obligation to account for the protected person's property.

783 (6) Upon termination of the guardianship or conservatorship, title to the protected person's
784 property passes to the person or to his or her successors. An order terminating the guardianship
785 or conservatorship may be filed or recorded to give notice of title to the property. The order
786 terminating the guardianship or conservatorship must provide for expenses of administration and
787 direct the guardian or conservator to execute appropriate instruments to evidence transfer of title,
788 to confirm a distribution previously made, and to file a final report.

789 (7) The court shall enter a final discharge order upon the approval of the final report and
790 satisfaction of any other conditions ordered by the court.

791 Section 22. Section **75-5c-117** is enacted to read:

792 **Section 75-5c-117. Emergency appointment.**

793 (1) The court may appoint an emergency guardian or conservator if the court finds that:

794 (a) following the procedures of this Chapter would likely result in substantial harm to the
795 respondent's health, safety, or welfare;

796 (b) no other person appears to have authority to act;

797 (c) the welfare of the respondent requires immediate action; and

798 (d) the appointment would be in the respondent's best interest.

799 (2) The court may appoint an emergency guardian or conservator ex parte if it finds that the
800 respondent will be substantially harmed before a hearing can be held. Unless the respondent is
801 represented by a lawyer, the court shall appoint a lawyer to represent the respondent.

802 (3) The petition and notice of the hearing must be served using the method most likely to
803 give prompt actual notice. If an emergency guardian or conservator is appointed without notice
804 and hearing, notice of the appointment must be served within 2 days after the appointment and a
805 hearing on the appropriateness of the appointment must be held within 5 days after the
806 appointment.

807 (4) Appointment of an emergency guardian or conservator is not a determination of the
808 respondent's incapacity.

809 (5) After hearing, the court may appoint an emergency guardian or conservator for a
810 specified period not to exceed 60 days, and the court may remove an emergency guardian or
811 conservator at any time. The appointment terminates on the date specified by the court.

812 (6) The court may order only the authority justified by the emergency. The emergency
813 guardian or conservator may exercise only the authority specified in the order. The emergency
814 guardian or conservator shall make any report the court requires. The provisions of this Chapter
815 concerning guardians or conservators apply to an emergency guardian or conservator.

816 Section 23. Section **75-5c-118** is enacted to read:

817 **Section 75-5c-118. Substitute appointment.**

818 (1) The court may appoint a substitute guardian or conservator if it finds that:

819 (a) the guardian or conservator is not effectively exercising authority or performing duties;

820 (b) the protected person's welfare requires immediate action; and

821 (c) the appointment would be in the protected person's best interests.

822 (2) The court may appoint a substitute guardian or conservator ex parte if it finds that the
823 respondent will be substantially harmed before a hearing can be held. Unless the respondent is
824 represented by a lawyer, the court shall appoint a lawyer to represent the respondent.

825 (3) The petition and notice of the hearing must be served using the method most likely to
826 give prompt actual notice. If a substitute guardian or conservator is appointed without notice and
827 hearing, notice of the appointment must be served within 2 days after the appointment and a

828 hearing on the appropriateness of the appointment must be held within 5 days after the
829 appointment.

830 (4) After hearing, the court may appoint a substitute guardian or conservator for a specified
831 period not to exceed 6 months, and the court may remove a substitute guardian or conservator at
832 any time.

833 (5) Except as ordered by the court, a substitute guardian or conservator has the authority and
834 duties in the previous order of appointment. The authority of a previously appointed guardian or
835 conservator is suspended as long as a substitute guardian or conservator has authority.

836 (6) A substitute guardian or conservator shall make any report the court requires. The
837 provisions of this Chapter concerning guardians and conservators apply to a substitute guardian
838 or conservator.

839 Section 24. Section **75-5c-119** is enacted to read:

840 **75-5c-119. Proceedings after appointment.**

841 (1) After appointing a guardian or conservator or entering a protective order, the court may:

842 (a) require, increase, or decrease a bond or collateral;

843 (b) require a report from the guardian or conservator;

844 (c) direct distribution;

845 (d) instruct the guardian or conservator concerning a fiduciary responsibility;

846 (e) modify the authority of the guardian or conservator because authority previously granted
847 is excessive or insufficient or because of a change in the protected person's incapacity;

848 (f) permit or deny the guardian or conservator to exercise authority requiring a court order;

849 (g) terminate the guardianship or conservatorship;

850 (h) remove a guardian or conservator;

851 (i) accept the resignation of a guardian or conservator;

852 (j) appoint a substitute guardian or conservator;

853 (k) appoint a successor or additional guardian or conservator;

854 (l) find the guardian or conservator in contempt for:

855 (i) violating a fiduciary responsibility imposed by statute, rule or court order; or

856 (ii) decisions or acts by the guardian or conservator that the court finds to be substantially
857 contrary to the management plan;

858 (m) approve a management plan; or

859 (n) grant other appropriate relief.

860 (3) A protected person or person interested in the welfare of the protected person may file a
861 petition or a motion under the Utah Rules of Civil Procedure for an order under this Section.

862 (4) A protected person is entitled to the same rights and procedures in proceedings under this
863 Section as in an original proceeding, including the appointment of an attorney.

864 (5) Sanctions for contempt of court include removal of the guardian or conservator and
865 imposing on the guardian or conservator personal responsibility for any financial loss caused by
866 the guardian's or conservator's wrongful conduct.

867 Section 25. Section **75-5c-120** is enacted to read:

868 **75-5c-120. Guardian ad litem.**

869 At any stage of a protective proceeding, a court may appoint a guardian ad litem if the court
870 determines that representation of the interests of the respondent or protected person is
871 inadequate. If not precluded by a conflict of interest, a guardian ad litem may be appointed to
872 represent several individuals. The court shall state on the record the duties of the guardian ad
873 litem and its reasons for the appointment.

874 Section 26. Section **75-5c-121** enacted to read:

875 **75-5c-121. Bonds.**

876 (1) Subject to the provisions of Title 7, Financial Institutions Act, relating to the bonding
877 requirements for corporate fiduciaries, the court may require a guardian or conservator to furnish
878 a bond with sureties as it may specify conditioned upon faithful discharge of all fiduciary
879 responsibilities.

880 (2) Unless otherwise directed, the bond must be in the amount of:

881 (a) the aggregate capital value of the protected person's property subject to the guardian's or
882 conservator's possession, ownership or control; plus

883 (b) one year's estimated income; minus

884 (c) the value of assets deposited under arrangements requiring a court order for removal and
885 the value of any real property that the guardian or conservator, by express limitation, lacks
886 authority to sell or convey without court authorization.

887 (3) The court may dispense with the bond for good cause. Instead of sureties, the court may
888 accept collateral for the performance of the bond, including a pledge of securities or a mortgage
889 of real property.

890 (4) Unless otherwise provided by the terms of the bond, the sureties and the guardian or
891 conservator are jointly and severally liable.

892 (5) By executing the bond, the surety consents to the jurisdiction of the court in any
893 proceeding about the guardian's or conservator's fiduciary responsibilities in which the surety is
894 named as a party. Notice of the proceeding and a copy of any petition, motion or other paper
895 shall be served on the surety under Utah Rule of Civil Procedure 5 at the address shown in the
896 court records and at any other address known to the petitioner.

897 (6) If a proceeding against the primary obligor is not barred, a proceeding may be brought by
898 a conservator, successor conservator or any interested person against a surety for breach of the
899 obligation of the bond. The bond may be proceeded against until liability under the bond is
900 exhausted.

901 Section 27. Section **75-5c-122** is enacted to read:

902 **75-5c-122. Compensation for services and reimbursement of expenses.**

903 (1) If not otherwise paid and if payment does not deprive the protected person or individuals
904 entitled to the protected person's support of food, shelter, clothing, and other necessities, the
905 following are entitled to reasonable payment from the estate for services and expenses:

906 (a) the respondent's or protected person's lawyer, guardian ad litem, guardian and
907 conservator;

908 (b) the petitioner's lawyer, if the petition results in the appointment of a guardian or
909 conservator, the entry of a protective order, or the entry of any other order that benefits the
910 protected person; and

911 (c) any person appointed by the court.

912 (2) To qualify for payment, the petition or service must benefit the respondent or protected
913 person, and the petition must be filed or the service provided in good faith, must be reasonable
914 and necessary, and must be conducted responsibly.

915 (3) Claims for compensation and reimbursement must be presented to the conservator, if one
916 has been appointed. If there is no conservator or if the conservator is the person to be paid,
917 someone affiliated with the person to be paid, or someone within the third degree of relationship
918 to the person to be paid, the compensation or reimbursement may be approved by the court. In
919 allowing the claim, the conservator or court may consider the complexity of the service, the
920 provider's experience, and any other relevant factor.

921 (4) If the court finds the petition is without merit, the petitioner shall pay for the services and
922 expenses in Subsection (1).

923 (5) If the court determines that the payments are excessive or inappropriate, the excessive or
924 inappropriate amount must be repaid to the estate.

925 Section 28. Section **75-5c-123** is enacted to read:

926 **75-5c-123. Fiduciary's personal funds.**

927 A guardian or conservator has no legal obligation to use the guardian's or conservator's
928 personal funds for the protected person's expenses solely by reason of the guardianship or
929 conservatorship.

930 Section 29 Section **75-5c-124** is enacted to read:

931 **75-5c-124. Monitoring appointments.**

932 The court shall establish a system for monitoring guardians and conservators, including their
933 reports. The court may appoint a visitor to review records of or any report filed by a guardian or
934 conservator. The court may appoint a visitor to interview the protected person, the guardian or
935 the conservator and to make any other investigation the court directs. The court may order a
936 guardian or conservator to submit the assets subject to the guardian's or conservator's
937 possession, ownership or control to an examination made in a manner the court directs.

938 Section 30. Section **75-5c-125** is enacted to read:

939 **75-5c-125. Liability on reported matters.**

940 An order, after notice, approving an intermediate report of a guardian or conservator
941 adjudicates liabilities concerning matters adequately disclosed in the report. An order, after
942 notice, approving a final report adjudicates all previously unsettled liabilities relating to the
943 guardianship or conservatorship adequately disclosed in the report.

944 Section 31. Section **75-5c-201** is enacted to read:

945 **Part 2. Appointment of a Guardian for a Minor**

946 **75-5c-201. Petition to appoint a guardian for a minor -- Findings -- Procedures.**

947 (1) A minor or a person interested in the minor's welfare may file a verified petition to
948 appoint a guardian. If the petitioner is nominated by will or signed writing, the petitioner shall
949 file the petition and a copy of the will or signed writing within 30 days after:

950 (a) the nominator's death;

951 (b) the nominator's adjudicated incapacity; or

952 (c) a written determination by a physician who has examined the nominator that the
953 nominator is no longer able to care for the minor.

954 (2) Upon receipt of a petition to appoint a guardian, the court shall schedule a hearing on the
955 petition.

956 (3) The court shall appoint a guardian if it finds that:

957 (a) the appointment is in the respondent's best interests;

958 (b) a qualified person seeks appointment;

959 (c) the court has jurisdiction and venue is proper;

960 (d) the required notices have been given; and

961 (e)(i) the parents consent to the appointment; or

962 (ii) all parental rights have been terminated; or

963 (iii) the parents are unwilling or unable to exercise their parental rights.

964 (4) The court may appoint a guardian for a specified time not to exceed the respondent's 18th
965 birthday.

966 (5) In other cases, the court may dismiss the petition or make any other disposition that will
967 serve the respondent's best interests.

968 (6) If the court determines that the respondent's best interests are or may be inadequately
969 represented, it may appoint a lawyer to represent the respondent, giving consideration to the
970 respondent's choice if the respondent is 14 years of age or older.

971 Section 32. Section **75-5c-202** is enacted to read:

972 **75-5c-202. Guardian's authority.**

973 (1) Except as otherwise limited by the court, a guardian has the authority of a parent
974 regarding the protected person's support, care, education, health, and welfare.

975 (2) A guardian may:

976 (a) take custody of the protected person and establish his or her dwelling place, but may
977 establish or move the protected person's dwelling place outside of Utah only if approved by
978 court order;

979 (b) consent to medical or other care, treatment, or service for the protected person;

980 (c) consent to the protected person's marriage;

981 (d) if a conservator has not been appointed, apply for, start proceedings for, receive and
982 compel delivery of property due the protected person or benefits to which the protected person
983 may be entitled, up to \$100,000 per year; and

984 (e) if a conservator has not been appointed, commence a proceeding, including an
985 administrative proceeding, or take other appropriate action to compel a person to support the
986 protected person or to pay money for the protected person's benefit.

987 (3) The court may expressly authorize the guardian to consent to adoption of the protected
988 person.

989 Section 33. Section **75-5c-203** is enacted to read:

990 **75-5c-203. Guardian's duties.**

991 (1) Except as otherwise limited by the court, the guardian has the duties and responsibilities
992 of a parent regarding the protected person's support, care, education, health, and welfare.

993 (2) The guardian must:

994 (a) within 14 days after appointment, serve on the protected person and all other people
995 entitled to notice of the petition a copy of the appointment order and notice of the right to request
996 termination or modification;

997 (b) within 90 days after appointment, file and serve a management plan as required by court
998 rule or court order, describing the strategies that will be used to implement the court order;

999 (c) file and serve a report on the protected person's condition to the satisfaction of the court
1000 annually, upon resignation or removal, upon termination, and as required by court rule or court
1001 order;

1002 (d) file a final report and petition to terminate the guardianship within 30 days after the
1003 protected person dies or reaches majority;

1004 (e) immediately notify the court if the protected person or guardian changes dwelling place;

1005 (f) if reasonable under the circumstances, encourage the protected person to participate in
1006 decisions and act on his or her own behalf;

1007 (g) if reasonable under the circumstances, delegate to the protected person responsibility for
1008 decisions affecting his or her welfare;

1009 (h) become and remain personally acquainted with the protected person and maintain
1010 sufficient contact with the protected person to know of his or her preferences, values,
1011 capabilities, limitations, needs, opportunities, and physical and mental health;

- 1012 (i) when acting on behalf of the protected person, exercise the degree of care, diligence and
1013 good faith that an ordinarily careful person exercises in his or her own affairs;
- 1014 (j) exhibit the utmost trustworthiness, loyalty and fidelity to the protected person;
- 1015 (k) take reasonable care of the protected person’s personal effects, and if necessary to protect
1016 the protected person’s property, petition for the appointment of a conservator or for a protective
1017 order under Title 75, Chapter 5c, Part 4, Appointment of a Conservator and Other Protective
1018 Orders;
- 1019 (l) expend the protected person’s money for his or her current needs for support, care,
1020 education, health and welfare;
- 1021 (m) conserve for the protected person’s future needs any of the estate that exceeds the
1022 protected person’s current needs or, if a conservator has been appointed, pay the excess to the
1023 conservator at least annually;
- 1024 (n) keep the protected person’s estate separate from the guardian’s money and property;
- 1025 (o) keep contemporaneous records and make them available for inspection as directed by the
1026 court;
- 1027 (p) at termination, deliver any of the estate subject to the guardian’s possession, ownership or
1028 control and any records as directed by the court;
- 1029 (q) if a conservator has been appointed, account at least annually to the conservator for the
1030 protected person’s income and expenses and for any of the estate subject to the guardian’s
1031 possession, ownership or control; and
- 1032 (r) if a conservator has not been appointed:
- 1033 (i) file and serve within 90 days after appointment a management plan as required by court
1034 rule or court order describing the strategies that will be used to implement the court order;
- 1035 (ii) file and serve within 90 days after appointment a detailed inventory of the estate subject
1036 to the guardian’s possession, ownership or control under an oath or affirmation that the inventory
1037 is believed to be complete and accurate as far as information permits; and
- 1038 (iii) file and serve a report about the administration of the protected person’s estate to the
1039 satisfaction of the court annually, upon resignation or removal, upon termination, and as required
1040 by court rule or court order.
- 1041 (3) If a protected person’s parent consents to the protected person’s adoption, the guardian is
1042 entitled to:

- 1043 (a) receive notice of and intervene in the adoption proceeding; and
- 1044 (b) present evidence relevant to the protected person's best interests.
- 1045 (4) A parent of a protected person retains residual parental rights and duties as defined in
- 1046 Section 78A-6-105.

1047 Section 34. Section **75-5c-204** is enacted to read:

1048 **75-5c-204. Guardian's personal liability.**

1049 (1) A guardian is not liable to third persons for the protected person's acts solely by reason of

1050 the guardianship.

1051 (2) If the guardian performs fiduciary responsibilities with the degree of care, diligence, and

1052 good faith that an ordinarily careful person exercises in his or her own affairs, the guardian is not

1053 liable for acts or omissions in performing the fiduciary responsibilities.

1054 (3) If the guardian selects a third person to perform a service for the protected person with

1055 the degree of care, diligence, and good faith that an ordinarily careful person exercises in his or

1056 her own affairs, the guardian is not liable for injury resulting from the wrongful conduct of the

1057 third person.

1058 Section 35. Section **75-5c-301** is enacted to read:

1059 **Part 3. Appointment of a Guardian for an Adult**

1060 **75-5c-301. Petition to appoint a guardian for an adult.**

1061 The person to be protected or any person interested in the respondent's welfare may file a

1062 verified petition to appoint a guardian. If the petitioner is nominated by will or signed writing,

1063 the petitioner shall file the petition and a copy of the will or signed writing within 30 days after:

- 1064 (1) the nominator's death;
- 1065 (2) the nominator's adjudicated incapacity; or
- 1066 (3) a written determination by a physician who has examined the nominator that the
- 1067 nominator is no longer able to care for the respondent.

1068 Section 36. Section **75-5c-302** is enacted to read:

1069 **75-5c-302. Procedures before hearing.**

1070 (1) Upon receipt of a petition to appoint a guardian, the court shall schedule a hearing on the

1071 petition.

1072 (2) Unless the respondent is represented by a lawyer, the court shall appoint a lawyer to

1073 represent the respondent.

1074 Section 37. Section **75-5c-303** is enacted to read:

1075 **75-5c-303. Appointment of guardian – Standard of evidence – Petition for protective**
1076 **order.**

1077 (1) The court may appoint a guardian only if the court finds, based on clear and convincing
1078 evidence, that:

1079 (a) the person to be protected has knowingly and voluntarily petitioned the court to appoint a
1080 guardian; or

1081 (b) the respondent is incapacitated and the respondent’s particular functional limitations
1082 cannot be met by less restrictive means.

1083 (2) With appropriate findings, the court may treat the petition as one for a protective order
1084 and enter an appropriate protective order.

1085 (3) If petitioner does not prove the elements of the petition, the court shall dismiss the
1086 petition.

1087 (4) Appointment of a guardian based on a request by the person to be protected is not a
1088 determination of that person’s incapacity.

1089 Section 38. Section **75-5c-304** is enacted to read:

1090 **75-5c-304. Least restrictive order -- Factors.**

1091 The court shall enter the least restrictive order consistent with its findings to accommodate
1092 the respondent’s particular functional limitations and demonstrated needs, including appointive
1093 and other orders that will encourage the respondent to develop maximum self-reliance and
1094 independence. The court should consider and weigh, as appropriate:

1095 (1) whether the protected person can manage the activities of daily living through training,
1096 education, support services, mental and physical health care, medication, therapy, assistants,
1097 assistive devices or other means that the person will accept;

1098 (2) whether the protected person has planned for health care and financial decisionmaking,
1099 such as an advance health care directive, a power of attorney, a trust or jointly held account, and
1100 whether the less restrictive alternatives to a guardianship are meeting the respondent's needs;

1101 (3) whether the incapacity is likely to be temporary;

1102 (4) the protected person’s long-standing values, preferences and patterns of behavior; and

1103 (5) other relevant factors.

1104 Section 39. Section **75-5c-305** is enacted to read:

1105 75-5c-305. Guardian's authority limited to court order.

1106 (1) The protected person retains all rights, power, authority and discretion not expressly
1107 granted to the guardian by statute or court order. The protected person retains the right to vote in
1108 governmental elections unless the court finds by clear and convincing evidence that the protected
1109 person is unable to communicate, with or without accommodation, the specific desire to
1110 participate in the voting process. The court may not grant to the guardian the authority to vote on
1111 the protected person's behalf.

1112 (2) The guardian has the duties specified by statute or court order. The guardian has only the
1113 authority specified by court order. The order shall limit the guardian's authority to what is
1114 necessary to accommodate the protected person's particular functional limitations.

1115 (3) If supported by the findings, and except as provided in Section 75-5c-306, the court may
1116 grant to the guardian the authority to:

1117 (a) make health care decisions;

1118 (b) consent to admission of the protected person to a licensed health care facility for short
1119 term placement for the purpose of assessment, rehabilitative care or respite care;

1120 (c) admit the protected person to a licensed health care facility for long-term custodial
1121 placement;

1122 (d) make arrangements for the protected person's support, care, comfort, education and
1123 welfare;

1124 (e) take custody of the protected person and make arrangements for a dwelling place;

1125 (f) take reasonable care of the protected person's personal effects; and

1126 (g) make other decisions and give other consents on behalf of the protected person as
1127 specified in the order and as necessary to accommodate the protected person's particular
1128 functional limitations.

1129 (4) If the court does not appoint a conservator, and if supported by the findings, the order
1130 may grant to the guardian the authority to:

1131 (a) take control of and manage a savings account or checking account;

1132 (b) apply for, start proceedings for, receive and compel delivery of property due the protected
1133 person or benefits to which the protected person may be entitled, up to \$100,000 per year;

1134 (c) commence a proceeding, including an administrative proceeding, or take other
1135 appropriate action to compel a person to support the protected person or to pay money for the
1136 protected person's benefit;

1137 (d) prosecute, defend and settle legal actions, including administrative proceedings, on behalf
1138 of the protected person;

1139 (e) obtain legal advice and representation on behalf of the protected person;

1140 (f) pay the protected person's debts;

1141 (g) give gifts, donations or contributions on behalf of the protected person within the limits of
1142 Section 75-5c-409;

1143 (h) file tax returns on behalf of the protected person and pay taxes owed by the protected
1144 person; and

1145 (i) provide for the support, care, comfort, education and welfare of individuals entitled to the
1146 protected person's support.

1147 Section 40. Section **75-5c-306** is enacted to read:

1148 **75-5c-306. Restrictions on the guardian's authority.**

1149 (1) The guardian cannot:

1150 (a) consent to commitment of the protected person to a mental retardation facility, but must
1151 petition the court for an order under Title 62A, Chapter 5, Part 3, Admission to Mental
1152 Retardation Facility;

1153 (b) consent to commitment of the protected person to a local mental health authority, but
1154 must petition the court for an order under Title 62A, Chapter 15, Part 6, Utah State Hospital and
1155 Other Mental Health Facilities;

1156 (c) consent to sterilization of the protected person, but must petition the court for an order
1157 under Title 62A, Chapter 6, Sterilization of Handicapped Person;

1158 (d) consent to termination of the parental rights in the protected person or of the protected
1159 person's parental rights in another, but must petition the juvenile court for an order to terminate
1160 parental rights under Title 78A, Chapter 6, Part 5, Termination of Parental Rights Act; or

1161 (e) except as provided in Subsection 75-5c-305(5), exercise the duties or authority of a
1162 conservator unless appointed as a conservator.

1163 (2) Unless permitted by the court, the guardian cannot:

1164 (a) consent to the admission of the protected person to a psychiatric hospital or other mental
1165 health care facility;

1166 (b) consent to participation in medical research, electroconvulsive therapy or other shock
1167 treatment, experimental treatment, forced medication with psychotropic drugs, abortion,
1168 psychosurgery, a procedure that restricts the protected person's rights, or to be a living organ
1169 donor;

1170 (c) consent to termination of life-sustaining treatment if the protected person has never had
1171 health care decisionmaking capacity;

1172 (d) consent to name change, adoption, marriage, annulment or divorce of the protected
1173 person;

1174 (e) establish or move the protected person's dwelling place outside of Utah; or

1175 (f) restrict the protected person's physical liberty, communications or social activities more
1176 than reasonably necessary to protect the protected person or others from harm.

1177 (3)(a) The guardian, someone affiliated with the guardian, or someone within the third degree
1178 of relationship to the guardian cannot purchase the protected person's property unless permitted
1179 by the conservator, or

1180 (b) if there is no conservator or if the conservator is the guardian, someone affiliated with the
1181 guardian, or someone within the third degree of relationship to the guardian, unless permitted by
1182 the court.

1183 Section 41. Section **75-5c-307** is enacted to read:

1184 **75-5c-307. Guardian's duties.**

1185 The guardian must:

1186 (1) within 14 days after appointment, serve on the protected person and all other people
1187 entitled to notice of the petition a copy of the appointment order and notice of the right to request
1188 termination or modification;

1189 (2) within 90 days after appointment, file and serve a management plan as required by court
1190 rule or court order, describing the strategies that will be used to implement the court order;

1191 (3) file and serve a report on the protected person's condition to the satisfaction of the court
1192 annually, upon resignation or removal, upon termination, and as required by court rule or court
1193 order;

- 1194 (4) file a final report and petition to terminate the guardianship within 30 days after the
1195 protected person dies;
- 1196 (5) file a petition to terminate or modify the guardianship within 30 days after the protected
1197 person becomes capable of exercising rights previously removed;
- 1198 (6) immediately notify the court if the protected person or guardian changes dwelling place;
- 1199 (7) exercise duties and authority authorized by statute and court order as necessary to
1200 accommodate the protected person’s particular functional limitations;
- 1201 (8) if reasonable under the circumstances, encourage the protected person to:
- 1202 (a) participate in decisions;
- 1203 (b) act on his or her own behalf; and
- 1204 (c) overcome the functional limitations that resulted in the protected person’s incapacity;
- 1205 (9) if reasonable under the circumstances, delegate to the protected person responsibility for
1206 decisions affecting his or her welfare;
- 1207 (10) make decisions using the substituted judgment decisionmaking standard or the best
1208 interest decisionmaking standard, whichever applies in the circumstances;
- 1209 (11) become and remain personally acquainted with the protected person and maintain
1210 sufficient contact with the protected person to know of his or her preferences, values,
1211 capabilities, limitations, needs, opportunities, and physical and mental health;
- 1212 (12) when acting on behalf of the protected person, exercise the degree of care, diligence and
1213 good faith that an ordinarily careful person exercises in his or her own affairs;
- 1214 (13) exhibit the utmost trustworthiness, loyalty, and fidelity to the protected person;
- 1215 (14) if necessary to protect the protected person’s property, petition for the appointment of a
1216 conservator or for a protective order under Title 75, Chapter 5c, Part 4, Appointment of a
1217 Conservator and Other Protective Orders;
- 1218 (15) expend the protected person’s money for his or her current needs for support, care,
1219 education, health and welfare;
- 1220 (16) conserve for the protected person’s future needs any of the estate that exceeds the
1221 person’s current needs or, if a conservator has been appointed, pay the excess to the conservator
1222 at least annually;
- 1223 (17) keep the protected person’s estate separate from the guardian’s money and property;

1224 (18) keep contemporaneous records and make them available for examination as directed by
1225 the court;

1226 (19) at termination, deliver any of the estate subject to the guardian's possession, ownership
1227 or control and any records as directed by law or the court;

1228 (20) if a conservator has been appointed, account at least annually to the conservator for the
1229 protected person's income and expenses and for any of the estate subject to the guardian's
1230 possession, ownership or control; and

1231 (21) if a conservator has not been appointed:

1232 (a) file and serve within 90 days after appointment a management plan as required by court
1233 rule or court order describing the strategies that will be used to implement the court order;

1234 (b) file and serve within 90 days after appointment a detailed inventory of the estate subject
1235 to the guardian's possession, ownership or control under an oath or affirmation that the inventory
1236 is believed to be complete and accurate as far as information permits; and

1237 (c) file and serve a report about the administration of the protected person's estate to the
1238 satisfaction of the court annually, upon resignation or removal, upon termination, and as required
1239 by court rule or court order.

1240 Section 42. Section **75-5c-308** is enacted to read:

1241 **75-5c-308. Guardian's personal liability.**

1242 (1) A guardian is not liable to third persons for the protected person's acts solely by reason of
1243 the guardianship.

1244 (2) If the guardian performs fiduciary responsibilities with the degree of care, diligence, and
1245 good faith that an ordinarily careful person exercises in his or her own affairs, the guardian is not
1246 liable for acts or omissions in performing the fiduciary responsibilities.

1247 (3) If the guardian selects a third person to perform a service for the protected person with
1248 the degree of care, diligence, and good faith that an ordinarily careful person exercises in his or
1249 her own affairs, the guardian is not liable for injury resulting from the wrongful conduct of the
1250 third person.

1251 Section 43. Section **75-5-314** is renumbered and amended to read:

1252 **75-5-314. 75-5c-309. Mentally incompetent veteran -- Evidence of necessity for**
1253 **appointment of guardian.**

1254 ~~Where a petition is filed for the appointment of a guardian for a mentally incompetent ward,~~
1255 ~~a~~ certificate of the administrator or ~~his~~ a duly authorized representative; that ~~such person the~~
1256 ~~respondent~~ has been rated incompetent by the veterans administration on examination ~~in~~
1257 ~~accordance with~~ ~~under the veterans administration~~ laws and regulations ~~governing such veterans~~
1258 ~~administration~~ and that the appointment of a guardian is a condition precedent to the payment of
1259 any ~~moneys~~ money due ~~such ward the respondent~~ by the veterans administration, ~~shall be prima~~
1260 ~~faeie~~ is evidence of the necessity for such appointment.

1261 Section 44. Section ~~75-5-315~~ is renumbered and amended to read:

1262 **75-5-315. 75-5c-310. Copies of public records furnished to veterans administration.**

1263 ~~When~~ If a copy of ~~any~~ a public record is required by the veterans administration to ~~be used in~~
1264 ~~determining~~ determine the eligibility of ~~any person an applicant~~ to participate in veterans
1265 administration benefits ~~made available by the veterans administration~~, the ~~official~~ custodian of
1266 ~~such the~~ public record shall without charge provide a certified copy of the record to the applicant
1267 ~~for such benefits~~ or any person acting on behalf of the ~~authorized representative of the~~ veterans
1268 administration ~~with a certified copy of such record.~~

1269 Section 45. Section ~~75-5c-401~~ is enacted to read:

1270 **Part 4. Appointment of a Conservator and Other Protective Orders**

1271 **75-5c-401. Petition to appoint a conservator or enter a protective order.**

1272 (1) The following may file a verified petition to appoint a conservator or to enter a protective
1273 order:

1274 (a) the person to be protected;

1275 (b) an individual interested in the respondent's estate, affairs, or welfare; or

1276 (c) a person who would be adversely affected by lack of effective management of the
1277 respondent's property and business affairs.

1278 (2) If the petitioner is nominated by will or signed writing, the petitioner shall file the petition
1279 and a copy of the will or signed writing within 30 days after:

1280 (a) the nominator's death;

1281 (b) the nominator's adjudicated incapacity; or

1282 (c) a written determination by a physician who has examined the nominator that the
1283 nominator is no longer able to care for the respondent.

1284 Section 46. Section ~~75-5c-402~~ is enacted to read:

1285 **75-5c-402. Jurisdiction over business affairs of respondent.**

1286 Until termination, the court in which the petition is filed has:

1287 (1) exclusive jurisdiction to determine the need for a conservatorship or protective order;

1288 (2) exclusive jurisdiction to determine how the respondent's estate that is subject to Utah
1289 laws will be managed, expended, or distributed to or for the use of the respondent, individuals
1290 entitled to the respondent's support, or other claimants; and

1291 (3) concurrent jurisdiction to determine the validity of claims against the respondent or the
1292 respondent's estate and questions of title concerning estate assets.

1293 Section 47. Section **75-5c-403** is enacted to read:

1294 **75-5c-403. Petition to appoint a conservator or enter a protective order – Preliminary**
1295 **application of property – Appointment of counsel.**

1296 (1) Upon receipt of a petition to appoint a conservator or enter a protective order, the court
1297 shall schedule a hearing on the petition.

1298 (2) After preliminary hearing and without notice, the court may issue orders to preserve and
1299 apply the respondent's property as may be required for the support of the respondent or of
1300 individuals entitled to the respondent's support. The court may appoint a master to assist in the
1301 task.

1302 (3) Unless an adult respondent is represented by a lawyer, the court shall appoint a lawyer to
1303 represent the respondent.

1304 (4) If the court determines that a minor respondent's best interests are inadequately
1305 represented, it may appoint a lawyer to represent the respondent, giving consideration to the
1306 respondent's choice if the respondent is 14 years of age or older.

1307 Section 48. Section **75-5c-404** is enacted to read:

1308 **75-5c-404. Petition to appoint a conservator or enter a protective order for a minor –**
1309 **Findings.**

1310 (1) The court shall appoint a conservator or enter a protective order for a minor if it finds
1311 that:

1312 (a) the order is in the respondent's best interests;

1313 (b) a qualified person seeks appointment;

1314 (c) the court has jurisdiction and venue is proper;

1315 (d) the required notices have been given; and

1316 (e) the respondent:
1317 (i) owns money or property requiring management or protection that cannot otherwise be
1318 provided; or
1319 (ii) has or may have business affairs that may be put at risk or prevented because of the
1320 respondent's age; or
1321 (iii) has property that will be wasted or dissipated unless management is provided; or
1322 (iv) needs money for the support, care, education, health, and welfare of the respondent or of
1323 individuals who are entitled to the respondent's support and that protection is necessary or
1324 desirable to obtain or provide the money.

1325 (2) The court may appoint a conservator for a specified time not to exceed the respondent's
1326 18th birthday. In other cases, the court may dismiss the proceeding or make any other disposition
1327 that will serve the respondent's best interests.

1328 Section 49. Section **75-5c-405** is enacted to read:

1329 **75-5c-405. Petition to appoint a conservator or enter a protective order for an adult –**
1330 **Findings.**

1331 (1) The court shall appoint a conservator or enter a protective order for an adult if it finds:

1332 (a) based on clear and convincing evidence, that the person to be protected has knowingly
1333 and voluntarily petitioned the court to appoint a conservator or enter a protective order; or:

1334 (b)(i) based on clear and convincing evidence, that the respondent is unable to manage
1335 property and business affairs because the respondent is incapacitated, missing, detained, or
1336 unable to return to the United States; and

1337 (b)(ii) by a preponderance of evidence, that the respondent:

1338 (A) has property that will be wasted or dissipated unless management is provided; or

1339 (B) needs money for the support, care, education, health, and welfare of the respondent or of
1340 individuals who are entitled to the respondent's support and that protection is necessary or
1341 desirable to obtain or provide the money.

1342 (2) Appointment of a conservator or entry of a protective order based on a request by the
1343 person to be protected or because the respondent is missing, detained, or unable to return to the
1344 United States is not a determination of that person's incapacity.

1345 (3) Appointment of a conservator or entry of a protective order may not be denied solely
1346 because the respondent has a valid power of attorney.

1347 Section 50. Section **75-5c-406** is enacted to read:

1348 **75-5c-406. Least restrictive order -- Factors.**

1349 The court shall enter the least restrictive order consistent with its findings to accommodate
1350 the respondent's particular functional limitations and demonstrated needs, including appointive
1351 and other orders that will encourage the respondent to develop maximum self-reliance and
1352 independence. The court should consider and weigh, as appropriate:

1353 (1) whether the protected person can manage the activities of daily living through training,
1354 education, support services, mental and physical health care, medication, therapy, assistants,
1355 assistive devices or other means that the person will accept;

1356 (2) whether the protected person has planned for financial decisionmaking, such as a power
1357 of attorney, a trust or jointly held account, and whether the less restrictive alternatives to a
1358 conservatorship are meeting the respondent's needs;

1359 (3) whether the incapacity is likely to be temporary;

1360 (4) the protected person's long-standing values, preferences and patterns of behavior; and

1361 (5) other relevant factors.

1362 Section 51. Section **75-5c-407** is enacted to read:

1363 **75-5c-407. Authority of court.**

1364 (1) Upon determining that a basis exists for a conservatorship or protective order, the court
1365 has the following authority, which may be exercised directly or through a conservator.

1366 (a) The court has all the authority over the estate and business affairs of a minor protected
1367 person which may be necessary for the best interest of the protected person and members of the
1368 protected person's immediate family.

1369 (b) The court has all the authority over the estate and business affairs of an adult protected
1370 person for the benefit of the protected person and individuals entitled to the protected person's
1371 support that the protected person could exercise if present and not under conservatorship or
1372 protective order.

1373 (2) The court may limit authority otherwise conferred on a conservator and may remove or
1374 modify any limitation at any time.

1375 Section 52. Section **75-5c-408** is enacted to read:

1376 **75-5c-408. Protective arrangements and single transactions.**

1377 (1) Upon determining that a basis exists for a protective order, the court, without appointing a
1378 conservator, may:

1379 (a) authorize, direct, or ratify any transaction necessary or desirable to achieve any
1380 arrangement for security, service or care meeting the foreseeable needs of the protected person,
1381 including:

1382 (i) payment, delivery, deposit or retention of funds or property;

1383 (ii) sale, mortgage, lease or other transfer of property;

1384 (iii) purchase of an annuity;

1385 (iv) making a contract for life care, deposit contract, or contract for training and education; or

1386 (v) addition to or establishment of a suitable trust; and

1387 (b) authorize, direct, or ratify any other contract, trust, will, or transaction relating to the
1388 protected person's property and business affairs, including settlement of a claim, upon
1389 determining that it is in the protected person's best interest.

1390 (2) In deciding whether to approve a protective arrangement or other transaction under this
1391 Section, the court shall consider the factors described in Subsection 75-5c-409(3).

1392 (3) The court may appoint a master to assist in any transaction or protective arrangement
1393 authorized under this Section. The master has the authority conferred by the order and shall serve
1394 until discharged after reporting to the court.

1395 Section 53. Section **75-5c-409** is enacted to read:

1396 **75-5c-409. Action requiring court approval.**

1397 (1) After notice to interested persons and upon express authorization of the court, a
1398 conservator may:

1399 (a) if an estate is ample to provide for the distributions authorized by Section 75-5c-417, a
1400 conservator for a protected person other than a minor may give gifts, donations and contributions
1401 that the protected person might have been expected to give, in amounts that do not exceed in the
1402 aggregate for any calendar year 20 percent of the estate income in that year;

1403 (b) convey, release or disclaim contingent and expectant interests in property, including
1404 marital property rights and any right of survivorship incident to joint tenancy or tenancy by the
1405 entireties;

1406 (c) exercise or release a power of appointment;

1407 (d) create a revocable or irrevocable trust of estate property, whether or not the trust extends
1408 beyond the duration of the conservatorship, or revoke or amend a trust revocable by the protected
1409 person;

1410 (e) exercise rights to elect options and change beneficiaries under insurance policies and
1411 annuities or surrender the policies and annuities for their cash value;

1412 (f) exercise any right to an elective share in the estate of the protected person's deceased
1413 spouse and to renounce or disclaim any interest by testate or intestate succession or by transfer
1414 inter vivos; and

1415 (g) make, amend, or revoke the protected person's will.

1416 (2) A conservator, in making, amending, or revoking the protected person's will, must
1417 comply with Title 75, Chapter 2, Part 5, Wills.

1418 (3) In exercising or in approving a conservator's exercise of the authority listed in Subsection
1419 (1), the court shall use the substituted judgment decisionmaking standard, unless the best interest
1420 decisionmaking standard is permitted by law. The court shall also consider:

1421 (a) the financial needs of the protected person, the needs of individuals entitled to the
1422 protected person's support and the interest of creditors;

1423 (b) possible reduction of tax liabilities;

1424 (c) eligibility for governmental assistance;

1425 (d) the protected person's previous pattern of giving or level of support;

1426 (e) the existing estate plan;

1427 (f) the protected person's life expectancy and the probability that the conservatorship will
1428 terminate before the protected person's death; and

1429 (g) any other relevant factors.

1430 (4) A conservator may revoke or amend a durable power of attorney of which the protected
1431 person is the principal. If a durable power of attorney is in effect, a decision of the conservator
1432 takes precedence over that of the agent unless the court orders otherwise.

1433 Section 54. Section **75-5c-410** is enacted to read:

1434 **75-5c-410. Conservator's duties.**

1435 The conservator must:

- 1436 (1) within 14 days after appointment, serve on the protected person and all other people
1437 entitled to notice of the petition a copy of the appointment order and notice of the right to request
1438 termination or modification;
- 1439 (2) within 90 days after appointment, file and serve a management plan as required by court
1440 rule or court order describing the strategies that will be used to implement the court order;
- 1441 (3) within 90 days after appointment, file and serve a detailed inventory of the estate subject
1442 to the conservator's possession, ownership or control under an oath or affirmation that the
1443 inventory is believed to be complete and accurate as far as information permits; and
- 1444 (4) file and serve a report about the administration of the protected person's estate to the
1445 satisfaction of the court annually, upon resignation or removal, upon termination, and as required
1446 by court rule or court order;
- 1447 (5) comply with Section 75-5c-418 if the protected person dies;
- 1448 (6) file a petition to terminate or modify the conservatorship within 30 days after the
1449 protected person becomes capable of exercising rights previously removed;
- 1450 (7) if the appointment is for a minor protected person, file a final report and petition to
1451 terminate the conservatorship within 30 days after the protected person reaches majority;
- 1452 (8) immediately notify the court if the protected person or conservator changes dwelling
1453 place;
- 1454 (9) exercise duties and authority authorized by statute and court order as necessary to
1455 accommodate the protected person's particular functional limitations;
- 1456 (10) if reasonable under the circumstances, encourage the protected person to:
- 1457 (a) participate in decisions;
- 1458 (b) act on his or her own behalf; and
- 1459 (c) overcome the functional limitations that resulted in the protected person's incapacity;
- 1460 (11) if reasonable under the circumstances, delegate to the protected person responsibility for
1461 decisions affecting his or her welfare;
- 1462 (12) act as a fiduciary and observe the standard of care of a trustee under Title 75, Chapter 7,
1463 Part 9, Utah Uniform Prudent Investor Act;
- 1464 (13) keep contemporaneous records of the administration of the estate and make them
1465 available for examination as directed by the court;

1466 (14) take into account any estate plan of the protected person known to the conservator and
1467 may examine the will and any other donative, nominative, or other appointive instrument of the
1468 protected person in investing the estate, selecting assets of the estate for distribution, and
1469 invoking power of revocation or withdrawal available for the use and benefit of the protected
1470 person and exercisable by the conservator; and

1471 (15) at termination, deliver any of the estate subject to the conservator's possession,
1472 ownership or control and any records as directed by law or the court.

1473 Section 55. Section **75-5c-411** is enacted to read:

1474 **75-5c-411. Title by appointment.**

1475 The appointment of a conservator vests title in the conservator as trustee to all property of the
1476 protected person, or to the part specified in the order, held at the time of appointment or later
1477 acquired. An order vesting title in the conservator to only part of the property of the protected
1478 person creates a conservatorship limited to assets specified in the order.

1479 Section 56. Section **75-5c-412** is enacted to read:

1480 **75-5c-412. Protected person's interest inalienable.**

1481 (1) Except as otherwise provided in subsections (3) and (4), the interest of a protected person
1482 in property vested in a conservator is not transferable or assignable by the protected person. An
1483 attempted transfer or assignment by the protected person, although ineffective to affect property
1484 rights, may give rise to a claim against the protected person for restitution or damages which
1485 may be presented to the conservator.

1486 (2) Property vested in a conservator by appointment and the interest of the protected person
1487 in that property are not subject to levy, garnishment, or similar process for claims against the
1488 protected person unless allowed after presentation.

1489 (3) A person without knowledge of the conservatorship who in good faith and for security or
1490 substantially equivalent value receives delivery of tangible personal property normally
1491 transferred by delivery is protected as if the protected person or transferee had valid title.

1492 (4) A third party who deals with the protected person with respect to property vested in a
1493 conservator is entitled to any protection provided in other law.

1494 Section 57. Section **75-5c-413** is enacted to read:

1495 **75-5c-413. Sale, encumbrance, or other transaction involving conflict of interest.**

1496 Any transaction affected by a substantial conflict between the conservator's fiduciary and
1497 personal interests is voidable unless the transaction is expressly authorized by the court after
1498 notice to interested persons. A transaction affected by a substantial conflict between fiduciary
1499 and personal interests includes any sale, encumbrance, or other transaction involving the estate
1500 entered into by the conservator, the spouse, descendant, agent, or lawyer of a conservator, or a
1501 corporation or other enterprise in which the conservator has a substantial beneficial interest.

1502 Section 58. Section **75-5c-414** is enacted to read:

1503 **75-5c-414. Protection of person dealing with conservator.**

1504 (1) A person who assists or deals with a conservator in good faith and for value in any
1505 transaction other than one requiring a court order is protected as though the conservator properly
1506 exercised the authority. That a person knowingly assists or deals with a conservator does not
1507 alone require the person to inquire into the conservator's authority or the propriety of its
1508 exercise, but restrictions on the conservator's authority endorsed on letters of office are effective
1509 as to third persons. A person who pays or delivers assets to a conservator is not responsible for
1510 their proper application.

1511 (2) Protection provided by this Section extends to any procedural irregularity or jurisdictional
1512 defect that occurred in the proceedings leading to the issuance of letters and is not a substitute for
1513 protection provided to persons assisting or dealing with a conservator by comparable provisions
1514 in other law relating to commercial transactions or to simplifying transfers of securities by
1515 fiduciaries.

1516 Section 59. Section **75-5c-415** is enacted to read:

1517 **75-5c-415. Authority of conservator in administration.**

1518 (1) Except as otherwise restricted in the appointment order and endorsed on the letters of
1519 office, a conservator has all of the authority granted in this Section and any additional authority
1520 granted by law to a trustee.

1521 (2) A conservator, acting reasonably and in an effort to accomplish the purpose of the
1522 appointment, and without court authorization, may:

1523 (a) collect, hold, and retain estate assets, including assets in which the conservator has a
1524 personal interest and real property in another state, until the conservator considers that
1525 disposition of an asset should be made;

1526 (b) receive additions to the estate;

- 1527 (c) continue or participate in the operation of a business or other enterprise;
1528 (d) acquire an undivided interest in an estate asset in which the conservator, in a fiduciary
1529 capacity, holds an undivided interest;
1530 (e) invest estate assets as though the conservator were a trustee;
1531 (f) deposit estate money in a financial institution, including one operated by the conservator;
1532 (g) acquire or dispose of an estate asset, including real property in another state, for cash or
1533 on credit, at public or private sale, and manage, develop, improve, exchange, partition, change
1534 the character of, or abandon an estate asset;
1535 (h) make ordinary or extraordinary repairs or alterations in buildings or other structures,
1536 demolish any improvements, and raze existing or erect new party walls or buildings;
1537 (i) subdivide, develop, or dedicate land to public use, make or obtain the vacation of plats
1538 and adjust boundaries, adjust differences in valuation or exchange or partition by giving or
1539 receiving considerations, and dedicate easements to public use without consideration;
1540 (j) enter for any purpose into a lease as lessor or lessee, with or without option to purchase or
1541 renew, for a term within or extending beyond the term of the conservatorship;
1542 (k) enter into a lease or arrangement for exploration and removal of minerals or other natural
1543 resources or enter into a pooling or unitization agreement;
1544 (l) grant an option involving disposition of an estate asset and take an option for the
1545 acquisition of any asset;
1546 (m) vote a security, in person or by general or limited proxy;
1547 (n) pay calls, assessments, and any other sums chargeable or accruing against or on account
1548 of securities;
1549 (o) sell or exercise stock subscription or conversion rights;
1550 (p) consent, directly or through a committee or other agent, to the reorganization,
1551 consolidation, merger, dissolution, or liquidation of a corporation or other business enterprise;
1552 (q) hold a security in the name of a nominee or in other form without disclosure of the
1553 conservatorship so that title to the security may pass by delivery;
1554 (r) insure estate assets against damage or loss and the conservator against liability with
1555 respect to a third person;
1556 (s) borrow money on behalf of the protected person, with or without security, to be repaid
1557 from the estate or otherwise and advance money for the protection of the estate or the protected

1558 person and for all expenses, losses, and liability sustained in the administration of the estate or
1559 because of the holding or ownership of any assets, for which the conservator has a lien on the
1560 estate as against the protected person for advances so made;

1561 (t) pay or contest any claim, settle a claim by or against the estate or the protected person by
1562 compromise, arbitration, or otherwise, and release, in whole or in part, any claim belonging to
1563 the estate to the extent the claim is uncollectible;

1564 (u) pay taxes, assessments, compensation of the conservator and any guardian, and other
1565 expenses incurred in the collection, care, administration, and protection of the estate;

1566 (v) allocate items of income or expense to income or principal of the estate, as provided by
1567 other law, including creation of reserves out of income for depreciation, obsolescence, or
1568 amortization or for depletion of minerals or other natural resources;

1569 (w) pay any sum distributable to a protected person or to individuals entitled to the protected
1570 person's support by paying the sum to the distributee or by paying the sum for the use of the
1571 distributee:

1572 (i) to the distributee's guardian or custodian under Title 75, Chapter 5a, Uniform Transfers to
1573 Protected persons Act; or

1574 (ii) if there is no guardian or custodian, to a relative or other person having physical custody
1575 of the distributee;

1576 (x) prosecute or defend actions, claims, or proceedings in any jurisdiction for the protection
1577 of estate assets and of the conservator in the performance of fiduciary duties; and

1578 (y) execute and deliver all instruments that will accomplish or facilitate the exercise of the
1579 conservator's authority.

1580 Section 60. Section **75-5c-416** is enacted to read:

1581 **75-5c-416. Delegation.**

1582 (1) A conservator may not delegate to an agent or another conservator the entire
1583 administration of the estate, but a conservator may delegate the performance of functions that a
1584 prudent trustee of comparable skills may delegate under similar circumstances.

1585 (2) The conservator shall exercise reasonable care, skill, and caution in:

1586 (a) selecting an agent;

1587 (b) establishing the scope and terms of a delegation, consistent with the purposes and terms
1588 of the conservatorship;

1589 (c) periodically reviewing an agent’s overall performance and compliance with the terms of
1590 the delegation; and

1591 (d) redressing an action or decision of an agent which would constitute a breach of trust if
1592 performed by the conservator.

1593 (3) A conservator who complies with subsections (1) and (2) is not liable to the protected
1594 person or to the estate for the decisions or actions of the agent to whom a function was delegated.

1595 (4) In performing a delegated function, an agent shall exercise reasonable care to comply
1596 with the terms of the delegation.

1597 (5) By accepting a delegation from a conservator subject to Utah law, an agent submits to the
1598 jurisdiction of the Utah courts.

1599 Section 61. Section **75-5c-417** is enacted to read:

1600 **75-5c-417. Principles of distribution by conservator.**

1601 Unless otherwise specified in the appointment order and endorsed on the letters of office or
1602 contrary to the management plan, a conservator may, without further court authorization or
1603 confirmation, expend or distribute income or principal of the estate for the support, care,
1604 education, health, and welfare of the protected person and individuals entitled to the protected
1605 person’s support, including the payment of child support or spousal support, under the following
1606 rules:

1607 (1) A conservator shall consider a guardian’s recommendations about the appropriate
1608 standard of support, care, education, health, and welfare for the protected person or individuals
1609 entitled to the protected person’s support. If the protected person is a protected person, the
1610 conservator shall consider a parent’s recommendations.

1611 (2) A conservator may not be surcharged for money paid to persons furnishing support, care,
1612 education, or benefits to a protected person or individuals entitled to the protected person’s
1613 support under the recommendations of the protected person’s parent or guardian, unless the
1614 conservator knows that the parent or guardian derives a personal financial benefit, including
1615 relief from any personal duty of support, or the recommendations are not in the best interest of
1616 the protected person.

1617 (3) In making distributions under this Subsection, the conservator shall consider:

1618 (a) the size of the estate, the estimated duration of the conservatorship, and the likelihood that
1619 the protected person, at some future time, may be fully self-sufficient and able to manage
1620 business affairs and the estate;

1621 (b) the accustomed standard of living of the protected person and individuals entitled to the
1622 protected person's support; and

1623 (c) other money or sources used for the support of the protected person and individuals
1624 entitled to the protected person's support.

1625 (4) Money expended under this Subsection may be paid by the conservator to any person,
1626 including the protected person, as reimbursement for expenditures that the conservator might
1627 have made, or in advance for services to be rendered to the protected person if it is reasonable to
1628 expect the services will be performed and advance payments are customary or reasonably
1629 necessary under the circumstances.

1630 Section 62. Section **75-5c-418** is enacted to read:

1631 **75-5c-418. Death of protected person.**

1632 (1) Upon the death of a protected person, the conservator shall deliver to the court for
1633 safekeeping any will of the protected person which may have come into the conservator's
1634 possession, inform the personal representative or beneficiary named in the will of the delivery,
1635 and retain the estate for delivery to the decedent's personal representative or to another person
1636 entitled to it.

1637 (2) Upon the death of a protected person, the conservator shall conclude the administration of
1638 the estate by distribution to the protected person's successors. The conservator shall file a final
1639 report and petition for to terminate the conservatorship within 30 days after distribution.

1640 Section 63. Section **75-5c-419** is enacted to read:

1641 **75-5c-419. Presentation and allowance of claims.**

1642 (1) A conservator may pay, or secure by encumbering estate assets, claims against the estate
1643 or against the protected person arising before or during the conservatorship upon their
1644 presentation and allowance under the priorities stated in Subsection (5). A claimant may present
1645 a claim by:

1646 (a) sending or delivering to the conservator a written statement of the claim, indicating its
1647 basis, the name and address of the claimant, and the amount claimed; or

1648 (b) filing a written statement of the claim, in a form acceptable to the court, with the court
1649 clerk and sending or delivering a copy of the statement to the conservator.

1650 (2) A claim is deemed presented on receipt of the written statement of claim by the
1651 conservator or the filing of the claim with the court clerk, whichever occurs first.

1652 (3) A presented claim is allowed if it is not disallowed by written statement sent or delivered
1653 by the conservator to the claimant within 60 days after its presentation. Before payment, the
1654 conservator may change an allowance to a disallowance in whole or in part, but not after
1655 allowance under a court order or judgment or an order directing payment of the claim. The
1656 presentation of a claim tolls the running of any statute of limitations relating to the claim until 30
1657 days after its disallowance.

1658 (4) A claimant whose claim has not been paid may petition the court for determination of the
1659 claim at any time before it is barred by a statute of limitations and, upon proof, procure an order
1660 for its allowance, payment, or security by encumbering estate assets. If a proceeding is pending
1661 against a protected person at the time of the conservator's appointment or is later initiated against
1662 the protected person, the moving party shall give to the conservator notice of any proceeding that
1663 could result in creating a claim against the estate.

1664 (5) If it appears that the estate is likely to be exhausted before all existing claims are paid, the
1665 conservator shall distribute the estate in money or in kind in payment of claims in the following
1666 order:

1667 (a) costs and expenses of administration;

1668 (b) claims of the federal or state government having priority under other law;

1669 (c) claims incurred by the conservator for support, care, education, health, and welfare
1670 previously provided to the protected person or individuals entitled to the protected person's
1671 support;

1672 (d) claims arising before the conservatorship; and

1673 (e) all other claims.

1674 (6) Preference may not be given in the payment of a claim over any other claim of the same
1675 class, and a claim due and payable may not be preferred over a claim not due.

1676 (7) If assets of the conservatorship are adequate to meet all existing claims, the court, acting
1677 in the best interest of the protected person, may order the conservator to grant a security interest
1678 in the estate for the payment of any or all claims at a future date.

1679 Section 64. Section **75-5c-420** is enacted to read:

1680 **75-5c-420. Personal liability of conservator.**

1681 (1) Except as otherwise agreed, a conservator is not personally liable on a contract properly
1682 entered into in a fiduciary capacity in the course of administration of the estate unless the
1683 conservator fails to reveal in the contract the representative capacity and identify the estate.

1684 (2) A conservator is not personally liable for obligations arising from possession, ownership
1685 or control of estate property or for other acts or omissions occurring in the course of
1686 administration of the estate unless the conservator is personally at fault.

1687 (3) Regardless whether the conservator is personally liable, claims based on contracts entered
1688 into by a conservator in a fiduciary capacity, obligations arising from possession, ownership or
1689 control of the estate, and claims based on torts committed in the course of administration of the
1690 estate may be asserted against the estate by proceeding against the conservator in a fiduciary
1691 capacity.

1692 (4) A question of liability between the estate and the conservator personally may be
1693 determined in a proceeding for accounting, surcharge, or indemnification, or in another
1694 appropriate proceeding or action.

1695 (5) A conservator is not personally liable for any environmental condition on or injury
1696 resulting from any environmental condition on land solely by reason of acquisition of title under
1697 Section 75-5c-411.

1698 Section 65. Section **75-5c-421** is enacted to read:

1699 **75-5c-421. Payment of debt and delivery of property to foreign conservator without**
1700 **local proceeding.**

1701 (1) A person who is indebted to or has the possession of tangible or intangible property of a
1702 protected person may pay the debt or deliver the property to a foreign conservator, guardian of
1703 the estate, or other court-appointed fiduciary of the state in which a protected person resides.

1704 (2) Payment or delivery may be made only upon proof of appointment and presentation of an
1705 affidavit made by or on behalf of the fiduciary stating that a protective proceeding relating to the
1706 protected person is not pending in Utah and the foreign fiduciary is entitled to payment or to
1707 receive delivery.

1708 (3) Payment or delivery under Subsection (1) discharges the debtor or possessor, absent
1709 knowledge of a protective proceeding pending in Utah.

1710 Section 66. Section **78B-5-804** is amended to read:

1711 **78B-5-804. Money deposited in court.**

1712 (1)(a) Any person depositing money in court, to be held in trust, shall pay it to the court
1713 clerk.

1714 (b) The clerk shall deposit the money in a court trust fund or with the county treasurer or city
1715 recorder to be held subject to the order of the court.

1716 (2) The Judicial Council shall adopt rules governing the maintenance of court trust funds and
1717 the disposition of interest earnings on those trust funds.

1718 (3)(a) Any interest earned on trust funds in the courts of record that is not required to accrue
1719 to the litigants by Judicial Council rule or court order shall be deposited in a restricted account.
1720 Any interest earned on trust funds in the courts not of record that is not required to accrue to the
1721 litigants by Judicial Council rule or court order shall be deposited in the general fund of the
1722 county or municipality.

1723 (b) The Legislature shall appropriate funds from the restricted account of the courts of record
1724 to the Judicial Council to:

1725 (i) offset costs to the courts for collection and maintenance of court trust funds; ~~and~~

1726 (ii) provide accounting and auditing of all court revenue and trust accounts and

1727 (iii) review or audit annual reports and accountings of guardians and conservators and recruit
1728 court visitors in guardianship and conservatorship proceedings.

1729 Section 67. **Repealer.**

1730 This bill repeals:

1731 Section **53A-2-202, Guardianship for residency purposes by responsible adult --**

1732 **Procedure to obtain -- Termination.**

1733 Section **75-5-101, Jurisdiction of subject matter -- Consolidation of proceedings.**

1734 Section **75-5-102, Facility of payment or delivery.**

1735 Section **75-5-103, Delegation of powers by parent or guardian.**

1736 Section **75-5-104, Power of court to appoint guardian ad litem not affected.**

1737 Section **75-5-105, Bond of guardian.**

1738 Section **75-5-201, Status of guardian of minor -- General.**

1739 Section **75-5-202, Appointment of guardian of minor.**

1740 Section **75-5-202.5, Appointment of guardian by written instrument.**

- 1741 Section **75-5-203, Objection to appointment.**
- 1742 Section **75-5-204, Court appointment of guardian of minor -- Conditions for**
1743 **appointment.**
- 1744 Section **75-5-205, Court appointment of guardian of minor -- Venue.**
- 1745 Section **75-5-206, Court appointment of guardian of minor -- Qualifications -- Priority**
1746 **of minor's nominee.**
- 1747 Section **75-5-207, Court appointment of guardian of minor -- Procedure.**
- 1748 Section **75-5-208, Consent to service by acceptance of appointment -- Notice.**
- 1749 Section **75-5-209, Powers and duties of guardian of minor -- Residual parental rights**
1750 **and duties -- Adoption of a ward.**
- 1751 Section **75-5-210, Termination of appointment of guardian -- General.**
- 1752 Section **75-5-211, Proceedings subsequent to appointment -- Venue.**
- 1753 Section **75-5-212, Resignation or removal proceedings.**
- 1754 Section **75-5-301, Appointment of guardian for incapacitated person.**
- 1755 Section **75-5-302, Venue.**
- 1756 Section **75-5-303, Procedure for court appointment of a guardian of an incapacitated**
1757 **person.**
- 1758 Section **75-5-304, Findings -- Limited guardianship preferred -- Order of appointment.**
- 1759 Section **75-5-305, Acceptance of appointment -- Consent to jurisdiction.**
- 1760 Section **75-5-306, Termination of guardianship for incapacitated person.**
- 1761 Section **75-5-307, Removal or resignation of guardian -- Termination of incapacity.**
- 1762 Section **75-5-308, Visitor in guardianship proceeding.**
- 1763 Section **75-5-309, Notices in guardianship proceedings.**
- 1764 Section **75-5-310, Temporary guardians.**
- 1765 Section **75-5-311, Who may be guardian -- Priorities.**
- 1766 Section **75-5-312, General powers and duties of guardian -- Penalties.**
- 1767 Section **75-5-313, Proceedings subsequent to appointment -- Venue.**
- 1768 Section **75-5-316, Expedited guardianship proceedings.**
- 1769 Section **75-5-401, Protective proceedings.**
- 1770 Section **75-5-402, Protective proceedings -- Jurisdiction of affairs of protected persons.**
- 1771 Section **75-5-403, Venue.**

- 1772 Section **75-5-404, Original petition for appointment or protective order.**
- 1773 Section **75-5-405, Notice.**
- 1774 Section **75-5-406, Protective proceedings -- Request for notice -- Interested person.**
- 1775 Section **75-5-407, Procedure concerning hearing and order on original petition.**
- 1776 Section **75-5-408, Permissible court orders.**
- 1777 Section **75-5-409, Protective arrangements and single transactions authorized.**
- 1778 Section **75-5-410, Who may be appointed conservator -- Priorities.**
- 1779 Section **75-5-411, Bond.**
- 1780 Section **75-5-412, Terms and requirements of bonds.**
- 1781 Section **75-5-413, Acceptance of appointment -- Consent to jurisdiction.**
- 1782 Section **75-5-414, Compensation and expenses.**
- 1783 Section **75-5-415, Death, resignation or removal of conservator.**
- 1784 Section **75-5-416, Petitions for orders subsequent to appointment.**
- 1785 Section **75-5-417, General duty of conservator.**
- 1786 Section **75-5-418, Inventory and records.**
- 1787 Section **75-5-419, Accounts.**
- 1788 Section **75-5-420, Conservators -- Title by appointment.**
- 1789 Section **75-5-421, Recording of conservator's letters.**
- 1790 Section **75-5-422, Sale, encumbrance or transaction involving conflict of interest --**
- 1791 **Voidable -- Exceptions.**
- 1792 Section **75-5-423, Persons dealing with conservators -- Protection.**
- 1793 Section **75-5-424, Powers of conservator in administration.**
- 1794 Section **75-5-425, Distributive duties and powers of conservator.**
- 1795 Section **75-5-426, Enlargement or limitation of powers of conservator.**
- 1796 Section **75-5-427, Preservation of estate plan.**
- 1797 Section **75-5-428, Claims against protected person -- Enforcement.**
- 1798 Section **75-5-429, Individual liability of conservator.**
- 1799 Section **75-5-430, Termination of proceeding.**
- 1800 Section **75-5-431, Payment of debt and delivery of property to foreign conservator**
- 1801 **without local proceedings.**
- 1802 Section **75-5-432, Foreign conservator -- Proof of authority -- Bond -- Powers.**

1803 Section **75-5-433, Embezzlement of protected person's estate -- Citation to person**
1804 **suspected.**

1805 Section 68. **Effective date.**

1806 This bill takes effect on July 1, 2010.

(20) Court Rules

(a) Rule 14-808. Lawyer qualified to represent a respondent in a protective proceeding.

(a) The executive director shall maintain and publish a roster of lawyers qualified to represent a respondent in a protective proceeding. The roster shall provide the lawyer's name, business address, phone, fax and email, and the counties in which the lawyer will undertake representation, and other information as may be needed. A lawyer will be added to the roster in the order in which he or she certifies to meeting the minimum requirements.

(b) To qualify for the roster, a lawyer must:

(b)(1) have acquired at least four hours of MCLE or four hours of accredited law school education in the law and procedures of protective proceedings;

(b)(2) have observed a mentor representing at least one respondent, which may be satisfied under Rule 14-807, Law student assistance;

(b)(3) have served as co-counsel with a mentor representing at least one respondent, which may be satisfied under Rule 14-807, Law student assistance;

(b)(4) have served as lead counsel with a mentor representing at least one respondent; and

(b)(5) be recommended by one's mentors.

(c) To be retained on the roster, the lawyer shall identify in the lawyer's MCLE compliance report or separately:

(c)(1) at least two hours of MCLE in the law and procedures of protective proceedings; and

(c)(2) representation of at least two respondents without charge or at a reduced charge based on the respondent's ability to pay;

(d) The executive director may waive any initial or continuing requirement if the lawyer demonstrates by education and experience proficiency in the law and procedures of protective proceedings. The executive director may waive (c)(2) if there were not at least two respondents to be represented.

(e) The executive director shall develop and publish forms to implement this rule.

(f) A mentor may charge for the service.

(g) A lawyer may be removed or suspended from the roster as part of a sanction under Article 5, Lawyer Discipline and Disability.

30 **(b) URCP 150. Petition to appoint a guardian for a minor.**

31 To appoint a guardian for a minor, the petitioner must file a verified petition that identifies:

32 (a) the petitioner, the petitioner's relationship to and interest in the respondent;

33 (b) the respondent;

34 (c) in the order of priority, the people for whom there is a priority for appointment;

35 (d) the proposed guardian and the qualifications of the proposed guardian to exercise the
36 authority requested;

37 (e) the reasons why appointment of a guardian is necessary;

38 (f) whether:

39 (f)(1) the parents consent to the appointment; or

40 (f)(2) all parental rights have been terminated; or

41 (f)(3) the parents are unwilling or unable to exercise their parental rights; and

42 (g) the relief requested.

43 **(c) URCP 151. Petition to appoint a guardian for an adult.**

44 To appoint a guardian for an adult, the petitioner must file a verified petition that identifies:

45 (a) the petitioner, the petitioner's relationship to and interest in the respondent;

46 (b) the respondent;

47 (c) in the order of priority, the people for whom there is a priority for appointment;

48 (d) the proposed guardian and the qualifications of the proposed guardian to exercise the
49 authority requested;

50 (e) the reasons why appointment of a guardian is necessary;

51 (f) if the person to be protected is requesting the court to appoint a guardian, that the
52 petitioner is making the request knowingly and voluntarily;

53 (g) the nature and extent of the respondent's alleged incapacity and functional limitations;

54 (h) the alternatives less restrictive than a guardianship that have been tried or why it would be
55 futile to try them;

56 (i) a general description of the respondent's property and an estimate of its value;

57 (j) the relief requested; and

58 (k) the authority to be granted to the guardian.

59 **(d) URCP 152. Petition to appoint a conservator or enter a protective order.**

60 To appoint a conservator or enter a protective order, the petitioner must file a verified
61 petition that identifies:

62 (a) the petitioner, the petitioner's relationship to and interest in the respondent;

63 (b) the respondent;

64 (c) in the order of priority, the people for whom there is a priority for appointment;

65 (d) the proposed conservator and the qualifications of the proposed conservator to exercise
66 the authority requested;

67 (e) the reasons why appointment of a conservator or entry of a protective order is necessary;

68 (f) if the reason for the conservator or protective order is the respondent's minority,

69 (f)(1) the minor's money or property that requires management or protection that cannot
70 otherwise be provided, or

71 (f)(2) the minor's business affairs that may be put at risk or prevented because of the minor's
72 age, or

73 (f)(3) the protection that is necessary or desirable to obtain or provide money for the support,
74 care, education, health, and welfare of the minor or of individuals entitled to the minor's support;

75 (g) if the person to be protected is requesting the court to appoint a conservator or enter a
76 protective order, that the petitioner is making the request knowingly and voluntarily;

77 (h) if the reason for a conservator or protective order is other than the respondent's minority
78 or request, the property and business affairs that the respondent is unable to manage, and

79 (h)(1) the property that will be wasted or dissipated unless management is provided, or

80 (h)(2) the protection that is necessary or desirable to obtain or provide money that is needed
81 for the support, care, education, health, and welfare of the respondent or of individuals entitled to
82 the respondent's support;

83 (i) if the reason for a conservator or protective order is the respondent's incapacity, the nature
84 and extent of the alleged incapacity and functional limitations;

85 (j) if the reason for a conservator or protective order is the respondent is missing, detained, or
86 unable to return to the United States, the relevant circumstances, including the time and nature of
87 the disappearance or detention and a description of any search or inquiry concerning the
88 respondent's whereabouts;

89 (k) the alternatives less restrictive than a conservatorship or protective order that have been
90 tried or why it would be futile to try them;

91 (l) a general description of the respondent's property and an estimate of its value;

92 (m) the relief requested; and

93 (n) the authority to be granted to the conservator.

94 **(a) URCP 153. Service in a protective proceeding**

95 (a) Any petition or notice of hearing in a protective proceeding must be served on:

96 (a)(1) the respondent or protected person who is 14 years of age or older;

97 (a)(2) the spouse, the adult children, the parents and adult siblings of the respondent or
98 protected person and any adult with whom the respondent or protected person has resided for
99 more than six months, or, if none can be found, an adult who has shown special care and concern
100 for the respondent;

101 (a)(3) any proposed guardian or conservator;

102 (a)(4) any person nominated as guardian or conservator by:

103 (a)(4)(A) the respondent, if the respondent is 14 years of age or older;

104 (a)(4)(B) the respondent's deceased spouse; and

105 (a)(4)(C) the respondent's deceased parent;

106 (a)(5) any legal representative of the respondent or protected person;

107 (a)(6) the person who has had the principal care and custody of the respondent or protected
108 person during the 60 days before the petition is filed;

109 (a)(7) any interested person who has requested notice under subdivision (c) or as the court
110 may direct; and

111 (a)(8) if the petition is to appoint a guardian under Title 75, Chapter 5c, Part 2, Appointment
112 of a Guardian for a Minor, the school district in which the guardian resides.

113 (b) A respondent or protected person may not waive notice. A person other than the
114 respondent or protected person may waive notice by a writing signed by the person or the
115 person's attorney and filed with the court.

116 (c) An interested person not otherwise entitled to notice who desires to be notified before an
117 order is entered may file a request for notice with the court. The court clerk shall send a copy of
118 the request to the guardian and to the conservator if one has been appointed. A request is not
119 effective unless it contains a statement showing the interest of the person making it and the

120 address of that person or a lawyer to whom notice is to be sent. The request is effective only for
121 proceedings conducted after the request is filed. A governmental agency paying or planning to
122 pay benefits to the respondent or protected person is an interested person.

123 (c) Pleadings and other papers, including the estate inventory, management plan, annual
124 reports and objections must be served as provided in subdivision (a). Service must include notice
125 of the hearing if one has been scheduled and must include notice of the right to object if there is
126 such a right.

127 (d) A person required to be served may object to:

128 (d)(1) nomination of a guardian or conservator;

129 (d)(2) priority of appointment, unless the nomination was previously confirmed;

130 (d)(3) the estate inventory;

131 (d)(4) the management plan; and

132 (d)(5) the annual or other reports of a guardian or conservator.

133 (e) An objection must be filed and served within 30 days after service and must specify in
134 writing the entries to which the person objects and state the reasons for the objection. If an
135 objection is filed, the judge shall conduct a hearing. The judge may conduct a hearing even
136 though no objection is filed. If the judge finds that the nomination, priority, inventory,
137 management plan, or annual report is in order, the judge shall enter an appropriate order.

138 **(b) URCP 154. Manner of service.**

139 (a) If Rule 153 requires that a person be served, the person must be served in the following
140 manner.

141 (b)(1) The initial petition and notice of hearing must be served personally on the respondent
142 or protected person in accordance with Rule 4 at least 14 days before the hearing.

143 (b)(2) The notice must state in plain language the date, time and location of the hearing,
144 require the respondent or protected person to be present at the hearing unless excused by the
145 court, inform the respondent or protected person of his or her rights, and include a description of
146 the nature, purpose, and consequences of an order granting the petition. The notice must be in
147 plain language and large type. If English is not the primary language of the respondent or
148 protected person, the notice must be in English and in the primary language.

149 (b)(3) If a lawyer represents the respondent, pleadings and papers after the petition must be
150 served on the lawyer, rather than the respondent, in accordance with Rule 5.

151 (b)(4) If the respondent or protected person is not served in a manner substantially complying
152 with this rule, the court may not grant the petition.

153 (b)(5) If the petition is to appoint a conservator or enter a protective order, and if the
154 respondent's whereabouts are unknown or personal service cannot be made, service on the
155 respondent must be made by substituted service under Rule 4.

156 (c) A petition and notice of hearing must be served on any person other than the respondent
157 in accordance with Rule 5 at least 14 days before the hearing.

158 (d) Pleadings, and other papers, including the estate inventory, management plan, annual
159 reports and objections must be served within 14 days after filing.

160 **(c) URCP 155. Appointment of lawyer to represent a respondent in a protective**
161 **proceeding.**

162 (a) If an adult respondent in a protective proceeding is not represented by a lawyer of the
163 respondent's own choice, the court shall appoint a lawyer to represent the respondent from the
164 roster maintained by the executive director of the Utah State Bar.

165 (b) When a petition in a protective proceeding is filed, the clerk will offer the appointment to
166 the first lawyer in order on the roster willing to accept appointments in that county. If the
167 proceeding is after an original proceeding, the clerk should offer the appointment to the lawyer
168 who represented the respondent in the original proceeding.

169 (c) The lawyer will review the case for conflicts of interest and any other factor that might
170 impede the lawyer from independent and zealous representation of the respondent. If the lawyer
171 declines the appointment, the clerk will offer the appointment to the next lawyer on the roster.
172 Upon accepting the appointment, the judge will enter an order appointing the lawyer, and the
173 clerk will move the lawyer's name to the bottom of the roster. If the lawyer represents the
174 respondent without charge or at a reduced charge based on the respondent's ability to pay, the
175 judge will acknowledge this in the appointment order. The judge can remove a lawyer from a
176 case.

177 (d) Upon motion of a party or upon the court's own motion, the court may determine whether
178 the lawyer representing the respondent is a qualified independent advocate. In making the
179 finding, the judge should consider whether:

180 (d)(1) the lawyer has demonstrated by education and experience proficiency in the law and
181 procedures of protective proceedings, especially in relation to the complexity of the case;

182 (d)(2) the lawyer has the knowledge, skill, thoroughness and preparation necessary to
183 candidly advise and zealously represent the respondent with undivided loyalty under the Rules of
184 Professional Conduct, including Rule 1.14, Client with Diminished Capacity;

185 (d)(3) any other relevant factors.

186 (e) Unless the court orders otherwise, the lawyer's obligation to represent the respondent
187 ends when the court enters a final order or decree.

188 **(d) URCP 156. Court visitor.**

189 (a) If a petition to appoint a guardian or conservator or enter a protective order claims that the
190 respondent is incapacitated, the court may appoint a visitor, with or without a request by a party
191 or interested person. The visitor must be an individual qualified to evaluate the respondent's
192 alleged incapacity and functional limitations and must have no conflict of interest. The visitor
193 must interview the respondent in person. If the visitor does not speak and understand the
194 respondent's primary language, the court must appoint an interpreter. To the extent that the
195 respondent is able to understand, the visitor must:

196 (a)(1) explain to the respondent the substance of the petition, the nature, purpose, and effect
197 of the proceeding, the respondent's rights at the hearing, the duties of a guardian or conservator,
198 and the authority that has been requested;

199 (a)(2) determine the respondent's views about the proposed guardian, conservator, or
200 protective order, the proposed authority and duties of the guardian or conservator, and the scope
201 and duration of the appointment or protective order;

202 (a)(3) inform the respondent of the right to employ and consult with a lawyer and the right to
203 a court-appointed lawyer; and

204 (a)(4) inform the respondent that all costs, attorney fees and expenses of the proceeding will
205 be paid from the respondent's estate.

206 (b) Unless otherwise directed by the court, the visitor must:

207 (b)(1) interview the petitioner and the proposed guardian;

208 (b)(2) visit the respondent's present dwelling and any dwelling in which the respondent will
209 live if the appointment is made;

210 (b)(3) obtain information from any physician or other person who is known to have treated,
211 advised, or assessed the respondent's relevant physical or mental condition; and

212 (b)(4) make any other investigation the court directs.

213 (c) The visitor must promptly file a report in writing with the court. Unless otherwise
214 directed by the court, the report must include:

215 (c)(1) a summary of functions the respondent cannot manage, can manage without assistance,
216 and can manage with the assistance of supportive services or benefits, including appropriate
217 technological assistance;

218 (c)(2) recommendations regarding the appropriateness of an appointment or protective order,
219 including whether less restrictive means of intervention are available, and the authority to be
220 granted to the guardian or conservator;

221 (c)(3) a statement of the qualifications of the proposed guardian or conservator;

222 (c)(4) a statement of the respondent's views about the proposed guardian, conservator, or
223 protective order, the proposed authority and duties of the guardian or conservator, and the scope
224 and duration of the appointment or protective order;

225 (c)(5) a statement about whether the proposed dwelling meets the respondent's needs;

226 (c)(6) a recommendation about whether a professional evaluation or further evaluation is
227 necessary; and

228 (c)(7) any other matters the court directs.

229 **(e) URCP 157. Evaluation of respondent.**

230 (a) If a petition to appoint a guardian or conservator or enter a protective order claims that the
231 respondent is incapacitated, the court may order a professional evaluation of the respondent and
232 must order the evaluation if requested by the respondent. The court should order an evaluation if
233 it is not clear, based on the court's own assessment or on the visitor's report, that the respondent
234 is incapacitated.

235 (b) If the court orders the evaluation, the respondent must be examined by a physician,
236 psychiatrist, or other individual appointed by the court who is qualified to evaluate the
237 respondent's alleged incapacity and functional limitations.

238 (c) The examiner shall promptly file a written report with the court. Unless otherwise
239 directed by the court, the report must contain:

240 (c)(1) a description of the nature, type, and extent of the respondent's cognitive and
241 functional limitations;

242 (c)(2) an evaluation of the respondent's mental and physical condition and, if appropriate,
243 educational potential, adaptive behavior, and social skills;

244 (c)(3) a prognosis for improvement and a recommendation about the appropriate treatment or
245 habilitation plan;

246 (c)(4) the date of the examination upon which the report is based; and

247 (c)(5) any other matters the court directs.

248 **(f) URCP 158. Presence and rights at hearing**

249 (a) In a protective proceeding, the respondent and the proposed guardian or conservator shall
250 attend the hearing unless excused by the court for good cause.

251 (b) The respondent may present evidence, subpoena witnesses and documents, examine
252 witnesses, including the visitor and any court-appointed evaluator, and otherwise participate in
253 the hearing. The hearing may be held in a location convenient to the respondent and may be
254 closed upon the request of the respondent and a showing of good cause.

255 (c) Any person may request permission to participate in the proceeding. The court may grant
256 the request, with or without hearing, upon determining that the respondent's best interest will be
257 served. The court may attach appropriate conditions to participation.

258 **(g) URCP 159. Minimum qualifications before appointment.**

259 (a) Before an order appointing a guardian or conservator is entered, the proposed guardian or
260 conservator must disclose any felony or misdemeanor convictions in Utah or elsewhere.

261 (b) Before an order appointing a guardian or conservator is entered, the proposed guardian or
262 conservator must file a statement showing satisfactory completion of a court-approved
263 examination on the responsibilities of a guardian or conservator.

264 (c) This rule does not apply to a professional guardian, professional conservator, the Office
265 of Public Guardian, or an emergency appointment.

266 **(h) URCP 160. Guardian's management plan.**

267 (a) Within 90 days after appointment, the guardian shall file a management plan describing
268 the strategies that will be used to implement the court order. The guardian shall, to the extent
269 reasonable, involve the protected person in developing the plan. Even if legal consent is not
270 possible, the opinions of the protected person should be sought.

271 (b) The management plan shall describe:

272 (b)(1) how the rights retained by the protected person will be ensured;

273 (2)(2) the protected person's religious, moral, conscientious, or cultural values that will guide
274 decisions;

275 (b)(3) how the guardian will implement any restrictions permitted by court order on the
276 protected person's physical liberty, communications or social activities;

277 (b)(4) the protected person's dwelling and any recommended changes;

278 (b)(5) the health care, personal care, social, vocational, educational and related services for
279 the protected person;

280 (b)(6) any physical or mental examinations necessary to determine the protected person's
281 health care needs;

282 (b)(7) the insurance and any other benefits to which the protected person may be entitled to
283 meet the costs of health care, personal care, social, vocational, educational and related services;

284 (b)(8) steps to develop the protected person's capacity;

285 (b)(9) the estimated duration of the guardianship;

286 (b)(10) short term and long term goals;

287 (b)(11) any issues, concerns or unmet needs; and

288 (b)(12) if a conservator or health care agent has been appointed, the planned nature and
289 frequency of communications and the method to be used for resolving disputes.

290 (c) If there is no conservator, the guardian shall include the management plan required of a
291 conservator in the guardianship management plan or file it separately.

292 (d) The management plan must contain a certificate of whether the guardian consulted the
293 protected person in developing the plan. The management plan must contain a certificate that the
294 guardian will exercise the substituted judgment decisionmaking standard for all circumstances
295 except where the best interest decisionmaking standard is permitted by law.

296 (e) A management plan must be based on the court order. A management plan takes effect
297 when approved by the court and continues until the court approves a replacement plan. A
298 management plan may allow for minor changes without court approval, but the guardian must
299 request court approval of a substantial change.

300 **(i) URCP 161. Conservator's management plan.**

301 (a) Within 90 days after appointment, the conservator, and if there is no conservator, the
302 guardian, shall file a management plan describing the strategies that will be used to implement
303 the court order. The conservator shall, to the extent reasonable, involve the protected person in

304 developing the plan. Even if legal consent is not possible, the opinions of the protected person
305 should be sought.

306 (b) The management plan shall describe:

307 (b)(1) current and future expenses and resources;

308 (b)(2) how to meet the protected person's financial needs;

309 (b)(3) how to protect, manage, expend, and distribute the estate assets;

310 (b)(4) whether assets will need to be sold;

311 (b)(5) the estimated duration of the conservatorship;

312 (b)(6) short term and long term goals;

313 (b)(7) any issues, concerns or unmet needs; and

314 (b)(8) if a guardian or health care agent has been appointed, the planned nature and frequency
315 of communications and the method to be used for resolving disputes.

316 (c) The management plan must contain a certificate of whether the conservator consulted the
317 protected person in developing the plan. The management plan must contain a certificate that the
318 conservator will exercise the substituted judgment decisionmaking standard for all circumstances
319 except where the best interest decisionmaking standard is permitted by law.

320 (d) A management plan must be based on the court order. A management plan takes effect
321 when approved by the court and continues until the court approves a replacement plan. A
322 management plan may allow for minor changes without court approval, but the conservator must
323 request court approval of a substantial change.

324 **(j) URCP 162. Guardian's annual report.**

325 (a) A guardian shall report about the protected person's conditions no later than 60 days after
326 each anniversary of the appointment. The report shall be filed with the court that made the
327 appointment unless that court orders a change in venue. The reporting period is yearly from the
328 appointment date unless the court changes the reporting period. The report may not be filed
329 before the close of the reporting period. For good cause the court may extend the time for filing
330 the report, but a late filing does not change the reporting period.

331 (b) The report shall contain sufficient information to put interested persons on notice of all
332 significant events and transactions during the reporting period. Forms substantially conforming
333 to the forms produced by the Utah court website are acceptable for content and format. The court
334 may direct that a report contain information it deems necessary.

335 (c) A report must describe for the reporting period:

336 (c)(1) the guardian's visits with the protected person and activities on the protected person's
337 behalf;

338 (c)(2) the protected person's living arrangements and the guardian's opinion of the living
339 arrangements and reasons for change;

340 (c)(3) the protected person's mental and physical condition and educational, vocational, and
341 social activities or services;

342 (c)(4) the protected person's health care treatment and the guardian's opinion of the health
343 care and reasons for change;

344 (c)(5) the protected person's cognitive, emotional and everyday functioning and limitations;

345 (c)(6) the protected person's participation in decisionmaking;

346 (c)(7) the guardian's opinion of the need to continue the guardianship or to change the
347 management plan; and

348 (c)(8) plans for future care.

349 **(k) URCP 163. Conservator's annual report.**

350 (a) A conservator, and if there is no conservator the guardian, shall report about the protected
351 person's estate no later than 60 days after each anniversary of the appointment. The report shall
352 be filed with the court that made the appointment unless that court orders a change in venue. The
353 reporting period is yearly from the appointment date unless the court changes the reporting
354 period. The report may not be filed before the close of the reporting period. For good cause the
355 court may extend the time for filing the report, but a late filing does not change the reporting
356 period.

357 (a) The report shall contain sufficient information to put interested persons on notice of all
358 significant events and transactions during the reporting period. Forms substantially conforming
359 to the forms produced by the Utah court website are acceptable for content and format. A
360 professional conservator may file its internal accounting. If the protected person's estate is
361 limited to a federal or state program requiring an annual accounting, the conservator may file a
362 copy of that accounting. The court may direct that a report contain information it deems
363 necessary.

364 (b) A report must describe for the reporting period:

365 (b)(1) the conservator's visits with the protected person;

- 366 (b)(2) the protected person’s participation in decisionmaking;
- 367 (b)(3) the estate assets under the conservator’s control and the receipts, disbursements, and
- 368 distributions; and
- 369 (b)(4) the conservator’s opinion of the need to continue the conservatorship or to change the
- 370 management plan.

371 **(I) Rule 6-501. Reporting requirements for guardians and conservators.**
372 **(Repeal)**

373 Intent:

374 To establish the requirements sufficient to satisfy the Utah Uniform Probate Code.

375 Applicability:

376 This rule applies to guardians and conservators with the following exceptions:

377 This rule does not apply if the guardian or conservator is the parent of the ward.

378 Paragraph (1) does not apply to the guardian of a minor if the guardianship is limited to the
379 purpose of attending school.

380 Paragraph (1) does not apply to a conservator licensed under the Title 7, Chapter 5, Trust
381 Business, to a guardian licensed under §75-5-311(1)(a), or to the Office of Public Guardian.

382 Paragraphs (6)(A), (6)(B) and (6)(C) do not apply to the guardian of a minor if the
383 guardianship is limited to the purpose of attending school. A person interested in the minor may
384 request a report under Utah Code Section 75-5-209.

385 Paragraph (6)(D) does not apply to the guardian of a minor if the minor’s estate is deposited
386 in an account requiring judicial approval for withdrawal or if there is no estate. A person
387 interested in the minor may request an accounting under Utah Code Section 75-5-209.

388 Statement of the Rule:

389 (1) Before entering an order appointing a guardian or conservator, the court shall require the
390 guardian or conservator to file a verified statement showing satisfactory completion of a court-
391 approved examination on the responsibilities of a guardian or conservator.

392 (2) The guardian shall keep contemporaneous records of significant events in the life of the
393 ward and produce them if requested by the court. The conservator shall keep contemporaneous
394 receipts, vouchers or other evidence of income and expenses and produce them if requested by
395 the court. The guardian and conservator shall maintain the records until the appointment is

396 terminated and then deliver them to the ward, if there is no successor, to the successor guardian
397 or conservator, or to the personal representative of the ward's estate.

398 (3) Definitions:

399 (3)(A) "Accounting" means the annual accounting required by Utah Code Section 75-5-312
400 and Section 75-5-417 and the final accounting required by Utah Code Section 75-5-419.

401 (3)(B) "Interested persons" means the ward, if he or she is of an appropriate age and mental
402 capacity to understand the proceedings, the ward's guardian and conservator, the ward's spouse,
403 adult children, parents and siblings and anyone requesting notice under Utah Code Section 75-5-
404 406. If no person is an interested person, then interested person includes at least one of the
405 ward's closest adult relatives, if any can be found.

406 (3)(C) "Inventory" means the inventory required by Utah Code Section 75-5-418.

407 (3)(D) "Serve" means any manner of service permitted by Utah Rule of Civil Procedure 5.

408 (3)(E) "Report" means the annual report on the status of the ward required by Utah Code
409 Section 75-5-209 and Section 75-5-312.

410 (3)(F) "Ward" means a minor or an incapacitated person for whom the court appoints a
411 guardian or a protected person for whom the court appoints a conservator.

412 (4) Subject to the requirements of Paragraph (5):

413 (4)(A) forms substantially conforming to the forms produced by the Utah court website are
414 acceptable for content and format for the report and accounting filed under the Utah Uniform
415 Probate Code;

416 (4)(B) a corporate fiduciary may file its internal report or accounting; and

417 (4)(C) if the ward's estate is limited to a federal or state program requiring an annual
418 accounting, the fiduciary may file a copy of that accounting.

419 (5) The report, inventory and accounting shall contain sufficient information to put interested
420 persons on notice of all significant events and transactions during the reporting period.

421 Compliance with Paragraph (4) is presumed sufficient, but the court may direct that a report or
422 accounting be prepared with content and format as it deems necessary.

423 (6)(A) The guardian shall file with the appointing court a report on the status of the ward no
424 later than 60 days after the anniversary of the appointment. The guardian shall file the report
425 with the court that appointed the guardian unless that court orders a change in venue under Utah
426 Code Section 75-5-313. The reporting period is yearly from the appointment date unless the

427 ~~court changes the reporting period on motion of the guardian. The guardian may not file the~~
428 ~~report before the close of the reporting period. For good cause the court may extend the time for~~
429 ~~filing the report, but a late filing does not change the reporting period.~~

430 ~~(6)(B) The guardian shall serve a copy of the report on all interested persons with notice that~~
431 ~~the person may object within 30 days after the notice was served.~~

432 ~~(6)(C) If an interested person objects, the person shall specify in writing the entries to which~~
433 ~~the person objects and state the reasons for the objection. The person shall file the objection with~~
434 ~~the court and serve a copy on all interested persons. If an objection is filed, the judge shall~~
435 ~~conduct a hearing. The judge may conduct a hearing even though no objection is filed. If the~~
436 ~~judge finds that the report is in order, the judge shall approve it.~~

437 ~~(6)(D) If there is no conservator, the guardian shall file the inventory and accounting required~~
438 ~~of a conservator.~~

439 ~~(7)(A) Within 90 days after the appointment, the conservator shall file with the appointing~~
440 ~~court the inventory required by Utah Code Section 75-5-418. For good cause the court may~~
441 ~~extend the time for filing the inventory.~~

442 ~~(7)(B) The conservator shall serve a copy of the inventory on all interested persons with~~
443 ~~notice that the person may object within 30 days after the notice was served.~~

444 ~~(7)(C) If an interested person objects, the person shall specify in writing the entries to which~~
445 ~~the person objects and state the reasons for the objection. The person shall file the objection with~~
446 ~~the court and serve a copy on all interested persons. If an objection is filed, the judge shall~~
447 ~~conduct a hearing. The judge may conduct a hearing even though no objection is filed. If the~~
448 ~~judge finds that the inventory is in order, the judge shall approve it.~~

449 ~~(8)(A) The conservator shall file with the appointing court an accounting of the estate of the~~
450 ~~ward no later than 60 days after the anniversary of the appointment. The conservator shall file~~
451 ~~the accounting with the court that appointed the conservator unless that court orders a change in~~
452 ~~venue under Utah Code Section 75-5-403. The reporting period is yearly from the appointment~~
453 ~~date unless the court changes the reporting period on motion of the conservator. The conservator~~
454 ~~may not file the accounting before the close of the reporting period. For good cause the court~~
455 ~~may extend the time for filing the accounting, but a late filing does not change the reporting~~
456 ~~period.~~

457 ~~(8)(B) The conservator shall serve a copy of the accounting on all interested persons with~~
458 ~~notice that the person may object within 30 days after the notice was served.~~

459 ~~(8)(C) If an interested person objects, the person shall specify in writing the entries to which~~
460 ~~the person objects and state the reasons for the objection. The person shall file the objection with~~
461 ~~the court and serve a copy on all interested persons. If an objection is filed, the judge shall~~
462 ~~conduct a hearing. The judge may conduct a hearing even though no objection is filed. If the~~
463 ~~judge finds that the accounting is in order, the judge shall approve it.~~

464 ~~(9)(A) The conservator shall file with the court a final accounting of the estate of the ward~~
465 ~~with the motion to terminate the appointment.~~

466 ~~(9)(B) The conservator shall serve a copy of the accounting on all interested persons with~~
467 ~~notice that the person may object within 30 days after the notice was served.~~

468 ~~(9)(C) If an interested person objects, the person shall specify in writing the entries to which~~
469 ~~the person objects and state the reasons for the objection. The person shall file the objection with~~
470 ~~the court and serve a copy on all interested persons. If an objection is filed, the judge shall~~
471 ~~conduct a hearing. The judge may conduct a hearing even though no objection is filed. If the~~
472 ~~judge finds that the accounting is in order, the judge shall approve it.~~

473

My Name _____
Address _____
City, State, Zip _____
Phone _____
E-mail _____

In the District Court of Utah

_____ Judicial District _____ County

Court Address _____

In the matter of

(Respondent)

**(21) Report on Clinical
Evaluation of Respondent**

Case Number _____

Judge _____

(This is a private record. CJA 4-202.02.)

I am a:

- Physician Psychologist Other
 Psychiatrist Nurse _____
 licensed to practice in the state of _____.

(1) Sources of Information

Note from the court to the evaluator: You may not be able to answer every question within the scope of your evaluation. Answer the questions for which you have information based on your personal observations, based on statements by the Respondent, or based on a source on which you commonly rely in your professional capacity.

(1)(A) My answers in this report are based on the following sources of information.

My examination of Respondent on _____ (date) for the purpose of assessing capacity. On that date I spent approximately _____ minutes with Respondent.

My general knowledge of Respondent, who I last saw on _____
(date). On that date I spent approximately _____ minutes with Respondent.

Review of Respondent's medical records mental health records.

Discussions with Respondent.

Discussions with healthcare professionals involved in Respondent's care.

Discussions with Respondent's family, friends or caregivers.

Tests that I conducted. Tests the results of which I am familiar.

Describe Test	Date Conducted

Other Source (describe)

(1)(B) Respondent should be re-evaluated in _____ days.

(2) Physical Condition

(2)(A) Respondent's overall physical health is

Excellent Good Fair Poor

(2)(B) List your physical diagnoses.

(2)(C) Respondent's Physicians

Name	Purpose	Phone Number	Address

(3) Mental Condition

(3)(A) Respondent's overall mental health is

Excellent Good Fair Poor

(3)(B) Respondent's overall mental health will

Improve Be Stable Decline Uncertain

(3)(C) List your mental diagnoses under the Diagnostic and Statistical Manual of Mental Disorders (DSM).

(3)(D) Have temporary reversible causes of mental impairment been evaluated and treated? (e.g., physical or emotional abuse, depression, malnutrition, dehydration, transfer trauma, polypharmacy, alcohol or drug use, etc.) Yes No Uncertain

Comments

(3)(E) Are there mitigating factors that cause Respondent to appear incapacitated and that could improve with time, treatment or assistive devices? (e.g., hearing, vision or speech impairment, bereavement, family discord, etc.) Yes No Uncertain

Comments

(4) History. Focusing on the diagnoses most affecting functioning, describe Respondent's relevant history. (e.g., When did the problem start? Have there been any recent medical or social events? What treatments and services have been tried? What is the family history?)

(5) Medication

Name	Dosage	Schedule	May Impair Mental Functioning		
			<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> Uncertain
			<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> Uncertain
			<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> Uncertain
			<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> Uncertain
			<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> Uncertain
			<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> Uncertain
			<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> Uncertain

Overall Impairment					(6) Cognitive Functioning			
None	Mild	Moderate	Severe	Not Evaluated		Do symptoms vary in frequency, severity or duration?		
						Yes	No	Uncertain
<input type="checkbox"/>	(6)(A) Sensory acuity (detection of visual, auditory, tactile stimuli)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>				
<input type="checkbox"/>	(6)(B) Motor activity and skills (active, agitated, slowed, gross and fine motor skills)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>				
<input type="checkbox"/>	(6)(C) Attention (attend to a stimulus; concentrate on a stimulus over short time periods)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>				
<input type="checkbox"/>	(6)(D) Working memory (attend to verbal or visual material over short time periods; hold more than 2 ideas in mind)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>				
<input type="checkbox"/>	(6)(E) Short term memory and learning (ability to encode, store, and retrieve information)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>				
<input type="checkbox"/>	(6)(F) Long term memory (remember information from the past)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>				
<input type="checkbox"/>	(6)(G) Understanding (“receptive language”; comprehend written, spoken, or visual information)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>				
<input type="checkbox"/>	(6)(H) Communication (“expressive language”; express self in words, writing, signs; indicate choices)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>				
<input type="checkbox"/>	(6)(I) Arithmetic (understand basic quantities; make simple calculations)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>				
<input type="checkbox"/>	(6)(J) Verbal reasoning (compare two choices and reason logically about outcomes)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>				
<input type="checkbox"/>	(6)(K) Visual-spacial and Visual-constructional reasoning (visual-spatial perception, visual problem solving)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>				
<input type="checkbox"/>	(6)(L) Executive functioning (plan for the future, demonstrate judgment, inhibit inappropriate responses)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>				

Comments

Overall Impairment					(7) Emotional and Psychiatric Functioning			
None	Mild	Moderate	Severe	Not Evaluated		Do symptoms vary in frequency, severity or duration?		
						Yes	No	Uncertain
<input type="checkbox"/>	(7)(A) Disorganized thinking (rambling thoughts, nonsensical, incoherent thinking)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>				
<input type="checkbox"/>	(7)(B) Hallucinations (seeing, hearing, smelling things that are not there)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>				
<input type="checkbox"/>	(7)(C) Delusions (extreme suspiciousness; believing things that are not true against reason or evidence)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>				
<input type="checkbox"/>	(7)(D) Anxiety (uncontrollable worry, fear, thoughts, or behaviors)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>				
<input type="checkbox"/>	(7)(E) Mania (very high mood, disinhibition, sleeplessness, high energy)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>				
<input type="checkbox"/>	(7)(F) Depressed mood (sad or irritable mood)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>				
<input type="checkbox"/>	(7)(G) Insight (ability to acknowledge illness and accept help)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>				
<input type="checkbox"/>	(7)(H) Impulsivity (acting without considering the consequences of behavior)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>				
<input type="checkbox"/>	(7)(I) Aggression (acting with hostility, anger or violence)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>				
<input type="checkbox"/>	(7)(J) Noncompliance (refuses to accept help)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>				
<input type="checkbox"/>	(7)(K) Personality changes	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>				
<input type="checkbox"/>	(7)(L) Sexual inappropriateness	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>				
<input type="checkbox"/>	(7)(M) Wandering	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>				

Comments

Level of Functioning					(8) Daily Functioning
Independent	Needs Support	Need Assistance	Needs Total Care	Not Evaluated	
					(8)(A) Care for Self
<input type="checkbox"/>	Maintain adequate hygiene, including bathing, dressing, toileting, dental				
<input type="checkbox"/>	Prepare meals and eat for adequate nutrition				
<input type="checkbox"/>	Get adequate exercise				
<input type="checkbox"/>	Employ assistants or caregivers				
<input type="checkbox"/>	Avoid environmental dangers such as stove, poisons, etc.				
<input type="checkbox"/>	Be left alone without danger				
<input type="checkbox"/>	Contact help if ill or in an emergency				
<input type="checkbox"/>	Identify abuse or neglect and protect self from harm				
<input type="checkbox"/>	Resist exploitation, coercion, undue influence				
<input type="checkbox"/>	Other:				
					(8)(B) Care for Personal Finances
<input type="checkbox"/>	Protect and spend small amounts of cash				
<input type="checkbox"/>	Manage and use checks				
<input type="checkbox"/>	Establish and use credit				
<input type="checkbox"/>	Give gifts and donations				
<input type="checkbox"/>	Deposit, withdraw, dispose, invest money				
<input type="checkbox"/>	Employ financial advisers				
<input type="checkbox"/>	Other:				
					(8)(C) Medical Decision Making
<input type="checkbox"/>	Give or withhold medical consent				
<input type="checkbox"/>	Make a health care decision				
<input type="checkbox"/>	Select and admit self to health facility				
<input type="checkbox"/>	Direct caregivers				
<input type="checkbox"/>	Manage medications				
<input type="checkbox"/>	Other:				
					(8)(D) Home and Community Life
<input type="checkbox"/>	Choose and establish residence				
<input type="checkbox"/>	Maintain safe and clean residence				

Level of Functioning					(8) Daily Functioning
Independent	Needs Support	Need Assistance	Needs Total Care	Not Evaluated	
<input type="checkbox"/>	Drive or use public transportation				
<input type="checkbox"/>	Make and communicate choice about roommates				
<input type="checkbox"/>	Initiate and follow a schedule of daily and leisure activities				
<input type="checkbox"/>	Travel				
<input type="checkbox"/>	Establish and maintain personal relationships				
<input type="checkbox"/>	Determine degree of participation in religious activities				
<input type="checkbox"/>	Use telephone				
<input type="checkbox"/>	Use mail				
<input type="checkbox"/>	Other:				
					(8)(E) Business, Civil and Legal
<input type="checkbox"/>	Vote				
<input type="checkbox"/>	Retain legal counsel				
<input type="checkbox"/>	Make decisions about legal documents				
<input type="checkbox"/>	Make or change a will				
<input type="checkbox"/>	Appoint a health care agent				
<input type="checkbox"/>	Pay, settle, prosecute, or defend a claim				
<input type="checkbox"/>	Enter into a contract, financial commitment, or lease				
<input type="checkbox"/>	Participate in the operation of a business				
<input type="checkbox"/>	Buy or sell real property				
<input type="checkbox"/>	Other:				

Comments

(9) Values, Preferences and Patterns

(9)(A) What is Respondent's understanding of the concept of a guardianship?

(9)(B) Does Respondent want a guardian? Yes No

(9)(C) If yes, who does Respondent want to be guardian?

(9)(D) Does Respondent prefer that decisions be made alone or with others? With whom?

(9)(E) Where does Respondent want to live? With whom?

(9)(F) What is important to Respondent in a home environment?

(9)(G) What makes life meaningful for Respondent?

(9)(H) What have been Respondent's most valued relationships?

(9)(I) What over-arching concerns drive Respondent's decisions? (e.g., concern for family, desire to live near family, preserve finances, worries about pain, maintaining privacy, living as long as possible, living with dignity, etc.)

(9)(J) What are Respondent's important religious beliefs or cultural traditions?

(9)(K) What are Respondent's strong likes, dislikes, hopes, and fears?

(9)(L) What specific preferences has Respondent expressed regarding decisions about personal care, financial, medical, or living situation?

(9)(M) What have been Respondent's most valued relations with family and friends? Are they still involved in Respondent's life?

(9)(N) How do Respondent's social skills, adaptive behavior, and potential for education increase or decrease current or future functioning?

(9)(O) What have been Respondent's most valued work, activities, interests and hobbies? Is s/he still doing them?

(10) Risk of Harm and Level of Supervision Needed

(10)(A) Is there a risk of serious harm to or by Respondent?

Yes No Uncertain

(10)(B) Has Respondent been the victim of abuse or neglect?

Yes No Uncertain

(10)(C) Describe the significant risks that Respondent faces and whether these risks are due to Respondent's condition and/or to another person harming or exploiting him/her.

(10)(D) Describe the social factors that decrease or increase the risk. (e.g., people, supports, environment, etc.)

(10)(E) How severe is the risk of harm to self or others?

None Mild Moderate Severe

(10)(F) How likely is the risk of harm to self or others?

- None Mild Moderate Severe

(11) Means to Enhance Capacity (Elements of Guardianship Plan)

Would Respondent benefit from	No	Yes	Person is willing to accept	Service is in Place Now
Education, training or rehabilitation?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Mental health treatment?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Occupational, physical or other therapy?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Homemaker services or social services?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Assistants or assistive devices?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Medical treatment or procedure?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Medication assistance?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Assistance preparing food?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Transportation assistance?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Other?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Comments				

(12) Would attending the hearing cause Respondent undue distress?

- Yes No Uncertain

If no, how much will Respondent understand and what accommodations are necessary to help participation? If yes, describe the supporting facts.

This Report on Clinical Evaluation of Respondent is complete and accurate to the best of my information and belief. I am qualified to testify regarding information in this report. If directed to do so, I am prepared to present to the court, by affidavit or testimony, my qualifications and my evidence.

Date _____ Sign here ► _____

Typed or printed name _____

License type, number and date _____

Certificate of Service			
I certify that I served a copy of this Report on Clinical Evaluation of Respondent on the following people.			
Person's Name	Method of Service	Served at this Address	Served on this Date
(Petitioner or Attorney)	<input type="checkbox"/> Mail <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Fax (Person agreed to service by fax.) <input type="checkbox"/> Email (Person agreed to service by email.) <input type="checkbox"/> Left at business (With person in charge or in receptacle for deliveries.) <input type="checkbox"/> Left at home (With person of suitable age and discretion residing there.)		
(Respondent or Attorney)	<input type="checkbox"/> Mail <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Fax (Person agreed to service by fax.) <input type="checkbox"/> Email (Person agreed to service by email.) <input type="checkbox"/> Left at business (With person in charge or in receptacle for deliveries.) <input type="checkbox"/> Left at home (With person of suitable age and discretion residing there.)		
(Interested Party or Attorney)	<input type="checkbox"/> Mail <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Fax (Person agreed to service by fax.) <input type="checkbox"/> Email (Person agreed to service by email.) <input type="checkbox"/> Left at business (With person in charge or in receptacle for deliveries.) <input type="checkbox"/> Left at home (With person of suitable age and discretion residing there.)		
(Clerk of Court)	<input type="checkbox"/> Mail <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Electronic File		

Date _____ Sign here ► _____

Typed or printed name _____

My Name _____
Address _____
City, State, Zip _____
Phone _____
E-mail _____

In the District Court of Utah

_____ Judicial District _____ County

Court Address _____

In the matter of

(Respondent)

**(22) Report on Social
Evaluation of Respondent**

Case Number _____

Judge _____

(This is a private record. CJA 4-202.02)

I am a:

- Nurse Court Visitor
- Social Worker Other _____
- licensed to practice in the state of _____.

(1) Sources of Information

Note from the court to the evaluator: This is an omnibus form that might be completed by different professionals. You likely will not be able to answer every question within the scope of your evaluation. Answer the questions for which you have information based on your personal observations, based on statements by the Respondent, or based on a source on which you commonly rely in your professional capacity.

(1)(A) My answers in this report are based on the following sources of information.

My interview of Respondent on _____
(dates) for the purpose of assessing capacity. On those date(s) I spent a total of
approximately _____ hours with Respondent.

Reports by

Respondent

Family Member

Office of Public Guardian

Proposed Guardian

Healthcare Professional

Discussions with healthcare professionals involved in Respondent's care.

Discussions with Respondent's family or friends.

Tests that I conducted. Tests the results of which I am familiar.

Describe Test	Date Conducted

Other Source (describe)

(1)(B) Respondent should be re-evaluated in _____ days.

(2) Information from the Respondent (Values, Preferences and Patterns)

(2)(A) What is Respondent's understanding of the concept of a guardianship?

(2)(B) Does Respondent want a guardian? Yes No

(2)(C) If yes, who does Respondent want to be guardian?

(2)(D) Does Respondent prefer that decisions be made alone or with others? With whom?

(2)(E) Where does Respondent want to live? With whom?

(2)(F) What is important to Respondent in a home environment?

(2)(G) What makes life meaningful for Respondent?

(2)(H) What have been Respondent's most valued relationships?

(2)(I) What over-arching concerns drive Respondent's decisions? (e.g., concern for family, desire to live near family, preserve finances, worries about pain, maintaining privacy, living as long as possible, living with dignity, etc.)

(2)(J) What are Respondent's important religious beliefs or cultural traditions?

(2)(K) What are Respondent's strong likes, dislikes, hopes, and fears?

(2)(L) What specific preferences has Respondent expressed regarding decisions about personal care, financial, medical, or living situation?

(2)(M) What have been Respondent's most valued relations with family and friends? Are they still involved in Respondent's life?

(2)(N) How do Respondent's social skills, adaptive behavior, and potential for education increase or decrease current or future functioning?

(2)(O) What have been Respondent's most valued work, activities, interests and hobbies? Is s/he still doing them?

(3) Information from the Proposed Guardian

(3)(A) What are the Respondent's current circumstances, lifestyle, level of functioning, and abilities?

(3)(B) What were the Respondent's historical circumstances, lifestyle, level of functioning, and abilities?

(3)(C) What does the Respondent think of the proposed guardianship?

(3)(D) What, if anything, has the Respondent said about developments or scenarios similar to the present one?

(3)(E) What is the proposed guardian's opinion about the Respondent's risk of harm and level of supervision needed?

(3)(F) What is the proposed guardian's opinion about means to enhance the Respondent's capacity?

(4) Evaluator's Observations About the Respondent

(4)(A) Describe the nature and extent of Respondent's disabilities or declining abilities.

(4)(B) Describe any significant or sudden changes in baseline functioning.

(4)(C) Describe Respondent's housing circumstances.

(4)(D) Describe the assistance that Respondent has available.

(4)(E) For each contact with Respondent, where and under what circumstances did you meet?

(4)(F) How easy or difficult was it to arrange each meeting?

(4)(G) What did you observe (see, hear, smell, feel) about Respondent's appearance and environment.

(4)(H) If you administered the Multi-Axial Assessment, describe the results.

Axis 1. Disorders and conditions that may be a focus of clinical attention.

Axis 2. Personality disorder, mental retardation (chronic and persistent conditions).

Axis 3. General medical condition and problems.

Axis 4. Psychosocial and environmental problems.

Axis 5. Current Global Assessment of Functioning Scale.

(4)(I) Describe the results of any other tests you administered.

(5) Physical Condition

(5)(A) Respondent's overall physical health is

Excellent Good Fair Poor

(5)(B) Respondent's Physicians

Name	Purpose	Phone Number	Address

(6) Mental Condition

(6)(A) Respondent's overall mental health is

Excellent Good Fair Poor

(6)(B) Have temporary reversible causes of mental impairment been evaluated and treated? (e.g., physical or emotional abuse, depression, malnutrition, dehydration, transfer trauma, polypharmacy, alcohol or drug use, etc.) Yes No Uncertain

Comments

(6)(C) Are there mitigating factors that cause Respondent to appear incapacitated and that could improve with time, treatment or assistive devices? (e.g., hearing, vision or speech impairment, bereavement, family discord, etc.) Yes No Uncertain

Comments

(7) History. Focusing on the diagnoses most affecting functioning, describe Respondent's relevant history. (e.g., When did the problem start? Have there been any recent medical or social events? What treatments and services have been tried? What is the family history?)

(8) Medication

Name	Dosage	Schedule	May Impair Mental Functioning
			<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Uncertain
			<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Uncertain
			<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Uncertain
			<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Uncertain
			<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Uncertain

Overall Impairment					(9) Cognitive Functioning			
None	Mild	Moderate	Severe	Not Evaluated		Do symptoms vary in frequency, severity or duration?		
						Yes	No	Uncertain
<input type="checkbox"/>	(9)(A) Sensory acuity (detection of visual, auditory, tactile stimuli)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>				
<input type="checkbox"/>	(9)(B) Motor activity and skills (active, agitated, slowed, gross and fine motor skills)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>				
<input type="checkbox"/>	(9)(C) Attention (attend to a stimulus; concentrate on a stimulus over short time periods)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>				
<input type="checkbox"/>	(9)(D) Working memory (attend to verbal or visual material over short time periods; hold more than 2 ideas in mind)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>				
<input type="checkbox"/>	(9)(E) Short term memory and learning (ability to encode, store, and retrieve information)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>				
<input type="checkbox"/>	(9)(F) Long term memory (remember information from the past)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>				
<input type="checkbox"/>	(9)(G) Understanding (“receptive language”; comprehend written, spoken, or visual information)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>				
<input type="checkbox"/>	(9)(H) Communication (“expressive language”; express self in words, writing, signs; indicate choices)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>				
<input type="checkbox"/>	(9)(I) Arithmetic (understand basic quantities; make simple calculations)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>				
<input type="checkbox"/>	(9)(J) Verbal reasoning (compare two choices and reason logically about outcomes)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>				
<input type="checkbox"/>	(9)(K) Visual-spacial and Visual-constructional reasoning (visual-spatial perception, visual problem solving)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>				
<input type="checkbox"/>	(9)(L) Executive functioning (plan for the future, demonstrate judgment, inhibit inappropriate responses)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>				

Comments

Overall Impairment					(10) Emotional and Psychiatric Functioning			
None	Mild	Moderate	Severe	Not Evaluated		Do symptoms vary in frequency, severity or duration?		
						Yes	No	Uncertain
<input type="checkbox"/>	(10)(A) Disorganized thinking (rambling thoughts, nonsensical, incoherent thinking)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>				
<input type="checkbox"/>	(10)(B) Hallucinations (seeing, hearing, smelling things that are not there)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>				
<input type="checkbox"/>	(10)(C) Delusions (extreme suspiciousness; believing things that are not true against reason or evidence)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>				
<input type="checkbox"/>	(10)(D) Anxiety (uncontrollable worry, fear, thoughts, or behaviors)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>				
<input type="checkbox"/>	(10)(E) Mania (very high mood, dis-inhibition, sleeplessness, high energy)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>				
<input type="checkbox"/>	(10)(F) Depressed mood (sad or irritable mood)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>				
<input type="checkbox"/>	(10)(G) Insight (ability to acknowledge illness and accept help)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>				
<input type="checkbox"/>	(10)(H) Impulsivity (acting without considering the consequences of behavior)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>				
<input type="checkbox"/>	(10)(I) Aggression (acting with hostility, anger or violence)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>				
<input type="checkbox"/>	(10)(J) Noncompliance (refuses to accept help)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>				
<input type="checkbox"/>	(10)(K) Personality changes	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>				
<input type="checkbox"/>	(10)(L) Sexual inappropriateness	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>				
<input type="checkbox"/>	(10)(M) Wandering	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>				

Comments

Level of Functioning					(11) Daily Functioning
Independent	Needs Support	Need Assistance	Needs Total Care	Not Evaluated	
					(11)(A) Care for Self
<input type="checkbox"/>	Maintain adequate hygiene, including bathing, dressing, toileting, dental				
<input type="checkbox"/>	Prepare meals and eat for adequate nutrition				
<input type="checkbox"/>	Get adequate exercise				
<input type="checkbox"/>	Employ assistants or caregivers				
<input type="checkbox"/>	Avoid environmental dangers such as stove, poisons, etc.				
<input type="checkbox"/>	Be left alone without danger				
<input type="checkbox"/>	Contact help if ill or in an emergency				
<input type="checkbox"/>	Identify abuse or neglect and protect self from harm				
<input type="checkbox"/>	Resist exploitation, coercion, undue influence				
<input type="checkbox"/>	Other:				
					(11)(B) Care for Personal Finances
<input type="checkbox"/>	Protect and spend small amounts of cash				
<input type="checkbox"/>	Manage and use checks				
<input type="checkbox"/>	Establish and use credit				
<input type="checkbox"/>	Give gifts and donations				
<input type="checkbox"/>	Deposit, withdraw, dispose, invest money				
<input type="checkbox"/>	Employ financial advisers				
<input type="checkbox"/>	Other:				
					(11)(C) Medical Decision Making
<input type="checkbox"/>	Give or withhold medical consent				
<input type="checkbox"/>	Make a health care decision				
<input type="checkbox"/>	Select and admit self to health facility				
<input type="checkbox"/>	Direct caregivers				
<input type="checkbox"/>	Manage medications				
<input type="checkbox"/>	Other:				
					(11)(D) Home and Community Life
<input type="checkbox"/>	Choose and establish residence				
<input type="checkbox"/>	Maintain safe and clean residence				
<input type="checkbox"/>	Transportation (Drive or use public transportation)				
<input type="checkbox"/>	Make and communicate choice about roommates				

Level of Functioning					(11) Daily Functioning
Independent	Needs Support	Need Assistance	Needs Total Care	Not Evaluated	
<input type="checkbox"/>	Initiate and follow a schedule of daily and leisure activities				
<input type="checkbox"/>	Travel				
<input type="checkbox"/>	Establish and maintain personal relationships				
<input type="checkbox"/>	Determine degree of participation in religious activities				
<input type="checkbox"/>	Use telephone				
<input type="checkbox"/>	Use mail				
<input type="checkbox"/>	Other:				
					(11)(E) Business, Civil and Legal
<input type="checkbox"/>	Vote				
<input type="checkbox"/>	Retain legal counsel				
<input type="checkbox"/>	Make decisions about legal documents				
<input type="checkbox"/>	Make or change a will				
<input type="checkbox"/>	Appoint a health care agent				
<input type="checkbox"/>	Pay, settle, prosecute, or defend a claim				
<input type="checkbox"/>	Enter into a contract, financial commitment, or lease				
<input type="checkbox"/>	Participate in the operation of a business				
<input type="checkbox"/>	Buy or sell real property				
<input type="checkbox"/>	Other:				

Comments

(12) Financial and Legal Summary

(12)(A) Respondent is

- Financially secure.
- Managing, but there is little or no money for extras.
- Struggling to pay expenses.
- Unable to meet expenses.

(12)(B) Has Respondent arranged:	Yes	No
Power of Attorney?	<input type="checkbox"/>	<input type="checkbox"/>
Durable Power of Attorney?	<input type="checkbox"/>	<input type="checkbox"/>
Health Care Agent?	<input type="checkbox"/>	<input type="checkbox"/>
Advance Healthcare Directive?	<input type="checkbox"/>	<input type="checkbox"/>
Physician's Order for Life Sustaining Treatment?	<input type="checkbox"/>	<input type="checkbox"/>
Other: _____	<input type="checkbox"/>	<input type="checkbox"/>
Other: _____	<input type="checkbox"/>	<input type="checkbox"/>

(13) Risk of Harm and Level of Supervision Needed

(13)(A) Is there a risk of substantial harm to or by the Respondent?

- Yes No Uncertain

(13)(B) Has Respondent been the victim of abuse, neglect or exploitation?

- Yes No Uncertain

(13)(C) Describe the significant risks that Respondent faces and whether these risks are due to Respondent's condition and/or to another person harming or exploiting him/her.

(13)(D) Describe the social factors that decrease or increase the risk.(e.g., people, supports, environment, social isolation, etc.)

(13)(E) How severe is the risk of harm to self or others?

- None Mild Moderate Severe

(13)(F) How likely is the risk of harm to self or others?

- None Mild Moderate Severe

(14) Means to Enhance Capacity (Elements of Guardianship Plan)

(14)(A) Would Respondent benefit from	No	Yes	Person is Willing to Accept	Service is in Place Now
Education, training or rehabilitation?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Mental health treatment?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Occupational, physical or other therapy?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Homemaker services or social services?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Assistants or assistive devices?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Medical treatment or procedure?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Medication assistance?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Assistance preparing food?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Transportation assistance?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Other?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Comments				

(14)(B) Based on your knowledge of case, what goals (desired end-states) do you recommend?

(14)(C) Based on your knowledge of case, what objectives (behaviorally specific, time specific, action orientated, measurable) do you recommend?

(14)(D) Based on your knowledge of case, what responsibilities (who, what, where, how, when, by when, how long, how will we know) do you recommend?

(15) Would attending the hearing cause Respondent undue distress?

Yes No Uncertain

If no, how much will Respondent understand and what accommodations are necessary to help participation? If yes, describe the supporting facts.

This Report on Social Evaluation of Respondent is complete and accurate to the best of my information and belief. I am qualified to testify regarding information in this report. If directed to do so, I am prepared to present to the court, by affidavit or testimony, my qualifications and my evidence.

Date _____ Sign here ► _____

Typed or printed name _____

License type, number and date _____

Certificate of Service			
I certify that I served a copy of this Report on Social Evaluation of Respondent on the following people.			
Person's Name	Method of Service	Served at this Address	Served on this Date
(Petitioner or Attorney)	<input type="checkbox"/> Mail <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Fax (Person agreed to service by fax.) <input type="checkbox"/> Email (Person agreed to service by email.) <input type="checkbox"/> Left at business (With person in charge or in receptacle for deliveries.) <input type="checkbox"/> Left at home (With person of suitable age and discretion residing there.)		
(Respondent or Attorney)	<input type="checkbox"/> Mail <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Fax (Person agreed to service by fax.) <input type="checkbox"/> Email (Person agreed to service by email.) <input type="checkbox"/> Left at business (With person in charge or in receptacle for deliveries.) <input type="checkbox"/> Left at home (With person of suitable age and discretion residing there.)		
(Interested Party or Attorney)	<input type="checkbox"/> Mail <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Fax (Person agreed to service by fax.) <input type="checkbox"/> Email (Person agreed to service by email.) <input type="checkbox"/> Left at business (With person in charge or in receptacle for deliveries.) <input type="checkbox"/> Left at home (With person of suitable age and discretion residing there.)		
(Clerk of Court)	<input type="checkbox"/> Mail <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Electronic File		

Date _____ Sign here ► _____

Typed or printed name _____