

# Agenda

## Ad Hoc Committee on Probate Law and Procedure

January 30, 2009  
12:00 to 2:00 p.m.

Administrative Office of the Courts  
Scott M. Matheson Courthouse  
450 South State Street  
Executive Dining Room

Approval of minutes	Tab 1	Judge George Harmond
Draft Report	Tab 2	Tim Shea

**Committee Web Page:** <http://www.utcourts.gov/committees/adhocprobate/>

# Tab 1

## MINUTES

### Ad Hoc Committee on Probate Law and Procedure

Administrative Office of the Courts  
450 South State Street  
Salt Lake City, Utah 84114-0241  
December 19, 2008 - 12:00p.m.

#### ATTENDEES

Kent Alderman  
Kerry Chlarson  
Mary Jane Cicarello  
Judge George Harmond  
Maureen Henry  
Justice Richard Howe  
Julie Rigby

#### EXCUSED

Judge Hansen  
Steve Mikita  
Judge Gary Stott  
Kathy Thyfault

#### STAFF

Marianne O'Brien  
Diana Pollock  
Tim Shea

### I. WELCOME AND APPROVAL OF MINUTES

Judge Harmond welcomed the committee members to the meeting. Mary Jane Cicarello made a motion to accept the minutes of the November, 2008 meeting. Kent Alderman seconded the motion. The motion carried unanimously.

### II. DRAFT REPORT

Tim Shea stated that the plan is to deliver the report to the Judicial Council on January 26, 2009. Committee members are welcome to attend.

Tim Shea anticipates that the Judicial Council will accept the report, but that decisions on the statutes and rules will be deferred to the legislative and rulemaking procedures. Mr. Shea stated that over the course of the next several months the report will be taken to various groups, and their input also will be considered. The target for legislation is the 2010 general session.

Mary Jane Cicarello sent Tim Shea several proposed changes to the report and Mr. Shea has incorporated them. Mr. Shea reported that any requests for appropriations will not be approved, so these items have been noted in the report, but not included in the implementing legislation. If the opportunity arises to put money back into the legislation, then it will be pursued. Ms. Cicarello suggested adding a recommendation that the Utah Access to Justice Council and the Bar organize and train pro bono attorneys.

Mr. Shea included a paragraph in the report recommending data gathering as part of case processing, including how many times monitoring finds evidence of abuse, neglect, or other inappropriate conduct.

Maureen Henry suggested including the point that physicians often disagree about a person's capacity. Ms. Henry will send the research to Mr. Shea.

## **Statutes**

### **“Petition” or “motion.”**

The committee asked Mr. Shea to include language in the statute that states petitions are a request for a court order in an uncontested proceeding. While a motion is a request for a court order in a contested proceeding. Mr. Shea will try to differentiate “motions” from “petitions” in the statutes and rules.

### **Residents of the Developmental Center.**

Mr. Shea stated that the existing statute results not in an expedited process but in a guardian with limited authority. The statute governing the expedited process uses different language than the regular statutes, but it describes the same rights and procedures. Mr. Shea asked whether we need this section since, under our proposal, all appointments will be limited to the face of the order. Ms. Ciccarello observed that the process for appointing a guardian for a resident of the Developmental Center should be a full process, because the guardian is more involved with the ward than the statute reflects. Mr. Alderman noted that the proposed emergency process should permit a quick appointment if one is needed. The committee asked Mr. Shea to contact the Fourth District Court and Steve Mikita to see how frequently the current statute is being used.

## **Borrowing**

Tim Shea reported that he had misinterpreted the Uniform Act at the last meeting. The Uniform Act probably intends to permit the conservator to borrow money on behalf of the estate rather than from the estate. The committee agreed that borrowing on behalf of the estate is the correct interpretation and that words to that effect should be added to the statute. After discussion, the committee decided that the conservator should not need special court approval to exercise this authority.

## **Definitions**

Kent Alderman suggested adding financial harm as within the scope of an emergency. Mr. Shea will make that change.

## **Letters of Office**

Kent Alderman stated that the draft statute mentions only the acceptance of office and bond as being conditions for issuing letters. The statute does not mention the test required for letters to be issued. Mr. Shea suggested striking the “Upon filing” clause and say only that “the court shall issue appropriate letters.” The rule and other statutes will regulate what conditions have to be met.

## **Rules**

Tim Shea stated the Bar rule would establish the roster and the minimum requirements for a lawyer to represent a respondent in a guardianship or conservatorship case. He said that the rule regulating the appointment process could be placed in the “attorney” section of the Rules of Civil Procedure or in the proposed “probate” section. Kerry Chlarson made the suggestion to put it in the “probate” section because of its limited application.

Mr. Shea stated that the proposed Rules of Civil Procedure would implement the procedural parts of the Uniform Act. He noted that in Utah the Supreme Court has the authority to adopt rules of procedure. Mr. Shea took the procedural provisions from the Uniform Act and developed them as a series of rules for the Supreme Court to consider.

Mary Jane Ciccarello observed that in the draft of Rule 150, the petition does not track the findings for the cause of action. Mr. Shea proposed that he return to the statute and take the elements from the cause of action and insert them into the requirements for the petition. Beyond what is minimally sufficient to state a case, the petition can serve to pass information to the court, the respondent and interested persons.

## **School guardianships.**

Mr. Shea included a lot of information regarding school guardianships in the petition because they are so highly specialized. The Department of Education’s concern seems to be that someone will attempt to avoid out-of-state tuition. The committee decided to eliminate this cumbersome process and rely on the traditional guardianship principles. School boards have a way to determine whether to charge non-resident tuition under current law.

## **Petition to appoint a conservator.**

Mr. Shea stated that the rule regulating the petition to appoint a conservator is more extensive than for a guardian because there is one set of requirements for a minor respondent and another set for an adult respondent.

## **Service in a protective proceeding.**

Mary Jane Ciccarello suggested striking the language “at least one adult nearest in kinship to the respondent.” Ms. Ciccarello said that if you are at that point, the person who has principle care of the respondent is probably sufficient.

Mr. Shea explained his approach in drafting the service rules. There is little uniformity in the Uniform Act regulating who to serve. Interested persons are to be served and that is a case-by-case determination. Mr. Shea has tried to identify a more uniform set of people to be served. He has described these in a hierarchical fashion, so that if someone higher up the line is identified and served, those farther down the line do not need to be served unless they request it. He observed that this would be the service list for all pleadings from the petition to the annual reports.

The committee agreed that a uniform approach made it simpler for everyone to decide who to serve. After discussion, the committee concluded that serving someone higher up the line should not cut off the others. All of the people listed should be served. The committee also decided to use the language from the Advanced Healthcare Directive Act to serve a person who has shown particular care or concern for the respondent.

#### **Manner of service.**

Tim Shea stated that a petition and notice of hearing must be served personally on the respondent or protected person in accordance with Rule 4 at least 14 days before the hearing. Personal service does not mean only personal delivery, but can include leaving the petition and notice with a person of suitable age and discretion residing in the respondent’s home. Once the respondent is found to be incapacitated, Rule 4 contains special service requirements. People other than the respondent would be served under Rule 5, which includes service by mail. The rule will require serving the petition itself and notice of the hearing.

#### **Next meeting**

The committee decided to meet again in January to discuss the further changes made in the report. This will delay the report to the Council until February 23.

The committee adjourned at 3:00 p.m.



# Tab 2



# Administrative Office of the Courts

Chief Justice Christine M. Durham  
Utah Supreme Court  
Chair, Utah Judicial Council

## MEMORANDUM

Daniel J. Becker  
State Court Administrator  
Myron K. March  
Deputy Court Administrator

**To:** Probate Committee  
**From:** Tim Shea *TS*  
**Date:** January 20, 2009  
**Re:** Report

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I have attached the next draft with the changes from the last meeting.

### Report

Page 29. Section (10) on school guardianships. This section is new. I have also added it to the summary on page 5.

Page 36. Section (iii) on private fiduciaries. I have limited disclosure to unexpunged criminal convictions, rather than a background check.

### Statutes

I have added sections 75-5-316 and 53A-2-202 to the list of statutes to be repealed.

Page 48, Lines 193-194 and 198. I have proposed amendments to 53A-2-201 to treat an out-of-state child the same as an in-state child for the purpose of determining residency for school. Essentially, in-state residency for a child will be a consequence of appointing a guardian, not a reason for appointing a guardian. The school boards will still be able to proceed on their own without a guardian, as they can under the current law. This can be done, at the board's discretion, with or without delegation of parental authority by power of attorney.

Page 70, Lines 861-862. I have tried to distinguish motions from petitions.

Page 86, Lines 1397-1399. I found a phrase from the 1997 Uniform Act that is essentially the same as the "substituted judgment" decisionmaking standard. Since that phrase is a defined term in our draft, I suggest using it. The text from the Uniform Act is stricken and the whole section is highlighted in yellow.

### Rules

URCP 150, Page 102. I have removed all of the "school guardianship" provisions from the earlier draft. In Rule 153, I have left the school district as a party to be served. Page 105, Lines 124-125.

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.

Page 104, URCP 153, Lines 110-113. I have removed the service “hierarchy” of the last draft, which meant not serving someone farther removed from the respondent, if someone closer to the respondent is served. This draft would require service on all of the people listed. I have added the “special care and concern” language from the Healthcare Directive Act.

Page 106, URCP 154, Lines 173-174. I have redrafted the method of service to be under URCP 5 for everyone except the respondent. The only real deviation from the 1997 Uniform Act is service on the respondent’s spouse or parents, which under the Uniform Act has to be personal service.

### **Forms**

You approved the clinical and social evaluation report forms several months ago, but this is the first time I have included them in the report. They are referred to on pages 11 – 12 of the report. They add several pages to the overall length, but I think it might be helpful for the reader to know how extensive an evaluation might be.

Encl. Draft report

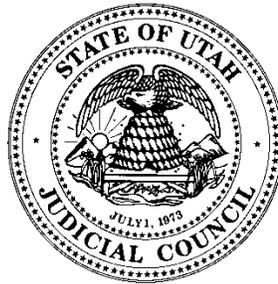


# Utah State Courts

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## Ad hoc Committee on Probate Law and Procedure

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Final Report to the Utah Judicial Council  
February 23, 2009

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**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.**

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

Prepared by  
Administrative Office of the Courts  
POB 140241  
450 S State St  
Salt Lake City, UT 84114-0241  
[www.utcourts.gov](http://www.utcourts.gov)

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February 23, 2009

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 conservator, 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.

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,

George M. Harmond  
Committee Chair

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## (1) 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.

## **(2) 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.”<sup>1</sup> On 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 ....”<sup>2</sup>

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 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

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<sup>1</sup> 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.

<sup>2</sup> 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.”

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.<sup>3</sup>

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.”<sup>4</sup> 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.”<sup>5</sup>

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 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.<sup>6</sup> 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.

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

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<sup>3</sup> 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).

<sup>4</sup> 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.

<sup>5</sup> <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.

<sup>6</sup> See e.g., stories linked at: [http://www.citibay.com/cgi-bin/directory.pl?etype=odp&passurl=/Society/Issues/Violence\\_and\\_Abuse/Elder/Guardianships/](http://www.citibay.com/cgi-bin/directory.pl?etype=odp&passurl=/Society/Issues/Violence_and_Abuse/Elder/Guardianships/).

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.

### **(3) 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 conservator<sup>7</sup> rests upon the finding that a person is incapacitated.

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

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<sup>7</sup> 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 for the appointment of a guardian. Later in this report, we recommend using one standard for both appointments.

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.<sup>8</sup>

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 subjective judgments about the reasonableness of the respondent's behavior with a more focused decision about the respondent's capabilities and limitations.<sup>9</sup>

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.

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

<sup>9</sup> 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.

### **(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.<sup>10</sup> 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 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

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

- (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."<sup>11</sup>

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 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.<sup>12</sup>

#### **(4) 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"<sup>13</sup> that the respondent is incapacitated, the actual standard – clear and convincing evidence – is well settled. This

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<sup>11</sup> Judicial Determination of Capacity, p 5.

<sup>12</sup> Judicial Determination of Capacity. p 12.

<sup>13</sup> Utah Code Section 75-5-304(1).

is the law from the Utah Supreme Court<sup>14</sup>, and it is in keeping with the 1997 Uniform Act.<sup>15</sup>

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,<sup>16</sup> researchers found:

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

[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<sup>18</sup>, “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.<sup>19</sup> We have studied it

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

<sup>15</sup> 1997 Uniform Act, Sections 311 and 401.

<sup>16</sup> Moye, p 608.

<sup>17</sup> Judicial Determination of Capacity, p 8.

<sup>18</sup> [Journal of the American Geriatrics Society - Volume 45, Issue 4, pages 453-457 \(April 1997\).](#)

<sup>19</sup> Judicial Determination of Capacity, pp 25-32.

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."<sup>20</sup> The 1997 Uniform Act also recommends that a court visitor be required.<sup>21</sup> 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.

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.<sup>22</sup>

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.

## **(5) Respondent's lawyer**

Under Utah law, the court must appoint a lawyer to represent a respondent in a guardianship proceeding<sup>23</sup> and may do so in a conservatorship proceeding<sup>24</sup> 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.

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

<sup>21</sup> 1997 Uniform Act Section 305.

<sup>22</sup> 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.

<sup>23</sup> Utah Code Section 75-5-303(2).

<sup>24</sup> Utah Code Section 75-5-407(1).

### **(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.

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,<sup>25</sup> 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.

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,

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

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."<sup>26</sup> 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 necessary as in guardianships. Mandatory representation in both types of appointments is recommended by the National Probate Court Standards.<sup>27</sup>

#### **(ii) Roster**

The Wingspread Conference recommends that "training should be ... required for attorneys who wish to be appointed as counsel in guardianship cases...."<sup>28</sup> 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.

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

<sup>27</sup> National Probate Court Standards. Standards 3.3.5 and 3.4.5.

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

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;
- be recommended by one's mentors;
- agree to represent indigent respondents for attorney fees approved by the court; and
- agree to represent respondents who are not indigent based on the person's ability to pay.

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 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."<sup>29</sup> 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.

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

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.<sup>30</sup> If the petition is to appoint a conservator, the lawyer "has the powers and duties of a *guardian ad litem*."<sup>31</sup> Under the 1997 Uniform Act, the court appoints a lawyer to "represent" the respondent in guardianship and conservatorship cases.<sup>32</sup> The National Probate Court Standards recommend that the role of counsel is to advocate for his or her client.<sup>33</sup> The Wingspread Conference<sup>34</sup> and the Wingspan Conference<sup>35</sup> recommend zealous advocacy by the respondent's lawyer.

We concur that the lawyer's role is to represent the respondent (not the respondent's best interests) independently and zealously, just as in any other attorney-client relationship. Rule of Professional Conduct 1.14 already advises the lawyer on representing a person of diminished capacity,<sup>36</sup> and that rule has recently been revised, in keeping with the ABA Ethics 2000 Commission and the recommendations of the Wingspan Conference,<sup>37</sup> to allow the lawyer greater flexibility to take protective action. The Probate Code should not interfere with that relationship.

#### **(6) 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

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<sup>30</sup> Utah Code Section 75-5-303(2).

<sup>31</sup> Utah Code Section 75-5-407(2).

<sup>32</sup> 1997 Uniform Act, Section 406

<sup>33</sup> National Probate Court Standards. Standards 3.3.5 and 3.4.5.

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

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

<sup>36</sup> 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.

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

charge the cost of his or her lawyer to the respondent's estate.<sup>38</sup> 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.<sup>39</sup>

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 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,<sup>40</sup> but we believe it to be a sound policy, and urge the Legislature to reconsider.

## **(7) 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,<sup>41</sup> 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.

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<sup>38</sup> Utah Code Sections 75-5-414 and 75-5-424(3)(w).

<sup>39</sup> 1997 Uniform Act, Section 417.

<sup>40</sup> See HB 167, Elder Protection Provisions by Rep. Patricia Jones.

<sup>41</sup> Utah Code Section 75-5-303(4).

The due process hearing rights that are uniformly recommended<sup>42</sup> 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.

### **(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,<sup>43</sup> many organizations and individuals recommend that mediation be an integral part of those cases,<sup>44</sup> and we concur.

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<sup>42</sup> 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).

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 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.<sup>45</sup>

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.<sup>46</sup>

[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?

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<sup>43</sup> 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).

<sup>44</sup> 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).

<sup>45</sup> <http://www.cojcr.org/ada.html>

<sup>46</sup> ADA Mediation Guidelines, Guideline I.D.4.

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.<sup>47</sup>

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.

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."<sup>48</sup> 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,<sup>49</sup> 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:

- (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

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<sup>47</sup> Radford, 31 Stetson L. Rev. 611, 652 (2002).

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

<sup>49</sup> CJA 4-510(3)(C).

(e) services and programs available in the community for elderly and/or disabled persons.<sup>50</sup>

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

### **(c) Probate commissioner**

The Wingspan Conference recommends judicial specialization in guardianships,<sup>52</sup> 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 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.

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.

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

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

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

**(d) Access to records**

<b>Public</b>	<b>Private</b>
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.<sup>53</sup>

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 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

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

sequester the documents filed in a guardianship or conservatorship case while allowing public access to the record of the document having been filed.

## **(8) 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.”<sup>54</sup> We believe that the petition should review the alternatives to appointing a guardian or conservator and explain why none are appropriate.<sup>55</sup> 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.<sup>56</sup> 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.

**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

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<sup>54</sup> Utah Code Section 75-5-304(2).

<sup>55</sup> 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).

<sup>56</sup> 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).

- 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.<sup>57</sup> Although plenary appointments are relatively common under our current statutes, even current law directs the judge to “prefer” limited authority over plenary appointments.<sup>58</sup> Unfortunately, after that brief admonishment, the statute does nothing to support the result, other than require a finding that nothing else will do.

We believe that the “petition and order should include detailed statements of the respondent’s functional capabilities and limitations”.<sup>59</sup> 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,<sup>60</sup> the authority of the guardian would 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 findings supported by clear and convincing evidence that such a result is necessary.<sup>61</sup>

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.

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<sup>57</sup> 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.

<sup>58</sup> Utah Code Section 75-5-304(2).

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

<sup>60</sup> Utah Code Section 75-5-312(2).

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

### **(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.<sup>62</sup> 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,"<sup>63</sup> a simple standard met by a simple savings account. A conservator, on the other hand, must meet the much higher standards of a trustee,<sup>64</sup> exercising reasonable care, skill, and caution as would a prudent investor<sup>65</sup> and making reasonable efforts to verify facts<sup>66</sup> while investing and reinvesting the respondent's estate.<sup>67</sup> Family guardians probably do not have that acumen, do not need that authority, and would do well to leave the responsibility to a 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."<sup>68</sup> 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:

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<sup>62</sup> 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).

<sup>63</sup> Utah Code Section 75-5-312(2)(d)(ii).

<sup>64</sup> Utah Code Section 75-5-417(1); Utah Code Section 75-5-424(1).

<sup>65</sup> Utah Code Section 75-7-902(1).

<sup>66</sup> Utah Code Section 75-7-902(4).

<sup>67</sup> Utah Code Section 75-5-424(2).

<sup>68</sup> Resolution of the ABA House of Delegates approved on August 13, 2007.

- 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 care institution (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
- 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."<sup>69</sup> Further, "the court's order should require the guardian to attempt to maximize self-reliance, autonomy and independence...."<sup>70</sup> 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

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

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

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.

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 (3)(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.<sup>71</sup> If the court and the fiduciary are to give any realistic meaning to the 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.

### **(9) Emergency appointments**

Current Utah law permits the emergency appointment of a temporary guardian,<sup>72</sup> 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.<sup>73</sup> 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.<sup>74</sup>

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<sup>71</sup> Judicial Determination of Capacity, p 5.

<sup>72</sup> Utah Code Section 75-5-310.

<sup>73</sup> 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.

<sup>74</sup> 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....”

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 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.<sup>75</sup>

#### **(10) “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 local school board under Section 53A-2-202, or upon appointment by the court.”<sup>76</sup> “The court may appoint a guardian for an unemancipated minor if all parental rights of

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<sup>75</sup> 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.

<sup>76</sup> Utah Code Section 75-5-201.

custody have been terminated or suspended by circumstances or prior court order.<sup>77</sup> 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...."<sup>78</sup> 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. All of the local boards have opted out. Thus, there is a right to have a guardian appointed, but 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.<sup>79</sup> The Legislature has since passed laws imposing significantly more protections and requirements for relinquishing parental rights.<sup>80</sup> 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 school<sup>81</sup> or to avoid paying non-resident tuition.<sup>82</sup> Having the purpose of attending a public school or avoiding non-resident tuition may be reasons to charge non-resident tuition, but it is not a sufficient reason 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.<sup>83</sup> A school board may treat a non-resident minor as a Utah resident under current law, even without the appointment of a guardian.<sup>84</sup> 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.<sup>85</sup> In all respects, the regular law of guardianships should apply.

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<sup>77</sup> Utah Code Section 75-5-204.

<sup>78</sup> Section 53A-2-201(2)(b).

<sup>79</sup> Utah Code Section 53A-2-202(2)(d).

<sup>80</sup> Utah Code Section 78A-6-514.

<sup>81</sup> Utah Code Section 53A-2-202(2)(a)(i).

<sup>82</sup> Utah Code Section 75-5-206(3)(b).

<sup>83</sup> Utah Code Section 53A-2-205.

<sup>84</sup> Utah Code Section 53A-2-201(2)(c).

<sup>85</sup> Utah Code Section 53A-2-201(1)(a).

## **(11) 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.<sup>86</sup> 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.<sup>87</sup> A person may nominate, but not appoint, a conservator for a spouse or child.<sup>88</sup> Other designated people may nominate a guardian or conservator to replace them in the priority list of appointees.<sup>89</sup>

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.<sup>90</sup>

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

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<sup>86</sup> Utah Code Sections 75-5-202.5 and 75-5-301.

<sup>87</sup> Compare Utah Code Section 75-5-311 with 75-5-301.

<sup>88</sup> Utah Code Section 75-5-410.

<sup>89</sup> Utah Code Sections 75-5-311 and 75-5-410.

<sup>90</sup> 1997 Uniform Act Sections 202, 302, 303, 310, and 413.

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.

## **(12) Monitoring guardians and conservators**

### **(a) Planning**

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.

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.<sup>91</sup> 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.

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

### **(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, 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,<sup>92</sup> 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.<sup>93</sup> 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 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

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<sup>92</sup> 1997 Uniform Act Sections 317 and 420

<sup>93</sup> 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>.

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)
- 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.<sup>94</sup> 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.”<sup>95</sup> 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;

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<sup>94</sup> “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).

<sup>95</sup> Utah Code Section 75-5-311(4)(g).

(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

(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.”

The health care providers listed in the Code as potential professional guardians are not exclusive.<sup>96</sup> 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
- Occupational Therapy
- Optometry
- Osteopathy
- Pharmacy
- Physical Therapy
- Physician and Surgeon
- Physician Assistant
- Podiatry

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<sup>96</sup> Utah Code Section 75-5-311(1)(a)(ii).

- Direct-Entry Midwifery
- Genetic Counseling
- Health Facility Administration
- Hearing Instrument
- Marriage and Family Therapy
- Massage Therapy
- Nursing
- Professional Counseling
- Psychology
- Radiology
- 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.

## **(13) 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.<sup>97</sup>

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<sup>97</sup> Utah Code Section 75-5-401(2)(a)

- 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.
- The authority of a conservator provided by statute is extremely detailed, listing almost 50 permitted acts.<sup>98</sup> 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.

#### **(14) Training for judges, lawyers, court personnel and volunteers**

Although they can be improved, we have found that the Utah statutes currently provide reasonable due process protections.<sup>99</sup> 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.<sup>100</sup> 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.

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.

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<sup>98</sup> Utah Code Sections 75-5-408 and 424.

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

<sup>100</sup> [http://www.utcourts.gov/intranet/dist/docs/guardianship\\_proceedings.pdf](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.

### **(15) 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.<sup>101</sup> 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."<sup>102</sup> 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*,<sup>103</sup> developed by the administrative office of the courts and the Bar committee is a start, but more thorough information is needed.

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
- Petition to appoint a guardian (conservator)
- Petition to confirm nomination

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

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

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

- 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

### **(16) 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.

### **(17) Committee members and staff**

**Kent Alderman**, Attorney at Law

**Kerry Chlarson**, 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/>



## **(18) 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: \_\_\_\_\_

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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,** as enacted by Laws of Utah 2008, Chapter #  
37           **75-5b-302,** as enacted by Laws of Utah 2008, Chapter #  
38           **78B-5-804,** as renumbered by Laws of Utah 2008, Chapter #

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**, (Renumbered from 75-5-314, as enacted by Laws of Utah #####, Chapter ##)

99           **75-5c-310**, (Renumbered from 75-5-315, as enacted by Laws of Utah #####, Chapter ##)

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

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

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

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

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

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

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

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

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

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

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

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

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

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 **75-5-302** 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 (3) Acceptance of a testamentary appointment as guardian under a will probated in the state  
678 of the testator's domicile is effective in Utah.

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

680 **75-5c-110. Acceptance of appointment.**

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

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

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

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

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

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

693 **75-5c-111. Letters of office.**

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

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

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

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

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

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

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

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

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

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

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

713 **75-5c-113. Petition to confirm nomination – Notice -- Authority to act.**

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

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

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

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

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

727 **75-5c-114. Who may be guardian or conservator -- Priority.**

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

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

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

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

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

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

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

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

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

743 (h) a professional guardian or conservator.

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

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

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

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

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

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

758 **75-5c-115. Successor, additional or contingent guardian or conservator.**

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

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

765 **75-5c-116. Termination, resignation, or removal.**

766 (1) A guardianship or conservatorship terminates upon the protected person's death or upon  
767 court order.

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

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

772 (a) the protected person has died;

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

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

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

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

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

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

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

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

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

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

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

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

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

798 (2) The court shall hold a hearing on the petition before appointing an emergency guardian or  
799 conservator unless it finds that the respondent will be substantially harmed before a hearing can  
800 be held. Unless the respondent is represented by a lawyer, the court shall appoint a lawyer to  
801 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 shall hold a hearing before appointing a substitute guardian or conservator  
823 unless it finds that the protected person will be substantially harmed before a hearing can be  
824 held. Unless the protected person is represented by a lawyer, the court shall appoint a lawyer to  
825 represent the protected person.

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

828 hearing, notice of the appointment must be served within 2 days after the appointment and a  
829 hearing on the appropriateness of the appointment must be held within 5 days after the  
830 appointment.

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

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

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

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

841 **75-5c-119. Proceedings after appointment.**

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

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

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

845 (c) direct distribution;

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

847 (e) modify the authority of the guardian or conservator because authority previously granted

848 is excessive or insufficient or because of a change in the protected person's incapacity;

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

850 (g) terminate the guardianship or conservatorship;

851 (h) remove a guardian or conservator;

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

853 (j) appoint a substitute guardian or conservator;

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

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

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

857 (ii) decisions or acts by the guardian or conservator that the court finds to be substantially

858 contrary to the management plan;

859 (m) approve a management plan; or

860 (n) grant other appropriate relief.

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

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

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

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

869 **75-5c-120. Guardian ad litem.**

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

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

876 **75-5c-121. Bonds.**

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

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

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

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

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

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

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

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

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

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

903 **75-5c-122. Compensation for services and reimbursement of expenses.**

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

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

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

912 (c) any person appointed by the court.

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

916 (3) Claims for compensation and reimbursement must be presented to the conservator, if one  
917 has been appointed. If there is no conservator or if the conservator is the person to be paid,  
918 someone affiliated with the person to be paid, or someone within the third degree of relationship

919 to the person to be paid, the compensation or reimbursement may be approved by the court. In  
920 allowing the claim, the conservator or court may consider the complexity of the service, the  
921 provider's experience, and any other relevant factor.

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

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

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

927 **75-5c-123. Fiduciary's personal funds.**

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

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

932 **75-5c-124. Monitoring appointments.**

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

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

940 **75-5c-125. Liability on reported matters.**

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

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

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

947 **75-5c-201. Petition to appoint a guardian for a minor -- Findings -- Procedures.**

948 (1) A minor or a person interested in the minor's welfare may file a verified petition to  
949 appoint a guardian in the minor's best interests. If the petitioner is nominated by will or signed

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

952 (a) the nominator's death;

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

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

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

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

959 (a) the appointment is in the minor's best interests;

960 (b) a qualified person seeks appointment;

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

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

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

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

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

966 (4) The court may appoint a guardian for a specified time not to exceed the minor's 18<sup>th</sup>  
967 birthday.

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

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

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

974 **75-5c-202. Guardian's authority.**

975 (1) Except as otherwise limited by the court, a minor's guardian has the authority of a parent  
976 regarding the minor's support, care, education, health, and welfare.

977 (2) A guardian may:

978 (a) take custody of the minor and establish the minor's dwelling place, but may establish or  
979 move the minor's dwelling place outside of Utah only if approved by court order;

980 (b) consent to medical or other care, treatment, or service for the minor;

- 981 (c) consent to the minor’s marriage;  
982 (d) if reasonable under the circumstances, delegate to the minor responsibility for decisions  
983 affecting the minor’s welfare;  
984 (e) if a conservator has not been appointed, apply for, start proceedings for, receive and  
985 compel delivery of property due the protected person or benefits to which the protected person  
986 may be entitled, up to \$100,000 per year; and  
987 (f) if a conservator has not been appointed, commence a proceeding, including an  
988 administrative proceeding, or take other appropriate action to compel a person to support the  
989 minor or to pay money for the minor’s benefit.

990 (3) The court may expressly authorize the guardian to consent to adoption of the minor.

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

992 **75-5c-203. Guardian’s duties.**

993 (1) Except as otherwise limited by the court, the minor’s guardian has the duties and  
994 responsibilities of a parent regarding the minor’s support, care, education, health, and welfare.

995 (2) The guardian must:

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

999 (b) within 90 days after appointment, file and serve a management plan as required by court  
1000 rule or court order, describing the strategies that will be used to implement the court order;

1001 (c) file and serve a report on the minor’s condition to the satisfaction of the court annually,  
1002 upon resignation or removal, upon termination, and as required by court rule or court order;

1003 (d) file a final report and petition to terminate the guardianship within 30 days after the minor  
1004 dies or reaches majority;

1005 (e) immediately notify the court if the minor or guardian changes dwelling place;

1006 (f) if reasonable under the circumstances, encourage the minor to participate in decisions and  
1007 to act on the minor’s own behalf;

1008 (g) become and remain personally acquainted with the minor and maintain sufficient contact  
1009 with the minor to know of the minor’s preferences, values, capabilities, limitations, needs,  
1010 opportunities, and physical and mental health;

1011 (h) when acting on behalf of the minor, exercise the degree of care, diligence and good faith  
1012 that an ordinarily careful person exercises in his or her own affairs;

1013 (i) exhibit the utmost trustworthiness, loyalty and fidelity to the minor;

1014 (j) take reasonable care of the minor's personal effects, and if necessary to protect the  
1015 minor's property, petition for the appointment of a conservator or for a protective order under  
1016 Title 75, Chapter 5c, Part 4, Appointment of a Conservator and Other Protective Orders;

1017 (k) expend the minor's money for the minor's current needs for support, care, education,  
1018 health and welfare;

1019 (l) conserve for the minor's future needs any of the estate that exceeds the minor's current  
1020 needs or, if a conservator has been appointed, pay the excess to the conservator at least annually;

1021 (m) keep the minor's estate separate from the guardian's money and property;

1022 (n) keep contemporaneous records and make them available for inspection as directed by the  
1023 court;

1024 (o) at termination, deliver any of the estate subject to the guardian's possession, ownership or  
1025 control and any records as directed by the court;

1026 (p) if a conservator has been appointed, account to the conservator for the minor's income  
1027 and expenses and for any of the estate subject to the guardian's possession, ownership or control;  
1028 and

1029 (q) if a conservator has not been appointed:

1030 (i) within 90 days after appointment, file and serve a management plan as required by court  
1031 rule or court order describing the strategies that will be used to implement the court order;

1032 (ii) within 90 days after appointment, file and serve a detailed inventory of the estate subject  
1033 to the guardian's possession, ownership or control under an oath or affirmation that the inventory  
1034 is believed to be complete and accurate as far as information permits; and

1035 (iii) file and serve a report about the administration of the minor's estate to the satisfaction of  
1036 the court annually, upon resignation or removal, upon termination, and as required by court rule  
1037 or court order.

1038 (3) If a minor's parent consents to the minor's adoption, the guardian is entitled to:

1039 (a) receive notice of and intervene in the adoption proceeding; and

1040 (b) present evidence relevant to the minor's best interests.

1041 (4) A parent of a minor retains residual parental rights and duties as defined in Section 78A-  
1042 6-105.

1043 Section 34. Section **75-5c-204** is enacted to read:

1044 **75-5c-204. Guardian's personal liability.**

1045 (1) A guardian is not liable to third persons for the minor's acts solely by reason of the  
1046 guardianship.

1047 (2) If the guardian performs fiduciary responsibilities with the degree of care, diligence, and  
1048 good faith that an ordinarily careful person exercises in his or her own affairs, the guardian is not  
1049 liable for acts or omissions in performing the fiduciary responsibilities.

1050 (3) If the guardian selects a third person to perform a service for the minor with the degree of  
1051 care, diligence, and good faith that an ordinarily careful person exercises in his or her own  
1052 affairs, the guardian is not liable for injury resulting from the wrongful conduct of the third  
1053 person.

1054 Section 35. Section **75-5c-301** is enacted to read:

1055 **Part 3. Appointment of a Guardian for an Adult**

1056 **75-5c-301. Petition to appoint a guardian for an adult.**

1057 The person to be protected or any person interested in the respondent's welfare may file a  
1058 verified petition to appoint a guardian. If the petitioner is nominated by will or signed writing,  
1059 the petitioner shall file the petition and a copy of the will or signed writing within 30 days after:

1060 (1) the nominator's death;

1061 (2) the nominator's adjudicated incapacity; or

1062 (3) a written determination by a physician who has examined the nominator that the  
1063 nominator is no longer able to care for the respondent.

1064 Section 36. Section **75-5c-302** is enacted to read:

1065 **75-5c-302. Procedures before hearing.**

1066 (1) Upon receipt of a petition to appoint a guardian, the court shall schedule a hearing on the  
1067 petition.

1068 (2) Unless the respondent is represented by a lawyer, the court shall appoint a lawyer to  
1069 represent the respondent.

1070 Section 37. Section **75-5c-303** is enacted to read:

1071 **75-5c-303. Appointment of guardian – Standard of evidence – Petition for protective**  
1072 **order.**

1073 (1) The court may appoint a guardian only if the court finds, based on clear and convincing  
1074 evidence, that:

1075 (a) the person to be protected has knowingly and voluntarily petitioned the court to appoint a  
1076 guardian; or

1077 (b) the respondent is incapacitated and the respondent’s particular functional limitations  
1078 cannot be met by less restrictive means.

1079 (2) With appropriate findings, the court may treat the petition as one for a protective order  
1080 and enter an appropriate protective order.

1081 (3) If petitioner does not prove the elements of the petition, the court shall dismiss the  
1082 petition.

1083 (4) Appointment of a guardian based on a request by the person to be protected is not a  
1084 determination of that person’s incapacity.

1085 Section 38. Section **75-5c-304** is enacted to read:

1086 **75-5-304. Finding of need for guardian -- Factors.**

1087 The court shall make findings in which the court determines whether appointment of a  
1088 guardian is the least restrictive means of providing for the protected person’s incapacity. In  
1089 deciding whether to appoint a guardian, the court should consider and weigh, as appropriate:

1090 (1) whether the protected person can manage the activities of daily living through training,  
1091 education, support services, mental and physical health care, medication, therapy, assistants,  
1092 assistive devices or other means that the person will accept;

1093 (2) whether the protected person has planned for health care and financial decisionmaking,  
1094 such as an advance health care directive, a power of attorney, a trust or jointly held account, and  
1095 whether the less restrictive alternatives to a guardianship are meeting the respondent's needs;

1096 (3) whether the incapacity is likely to be temporary;

1097 (4) the protected person’s long-standing values, preferences and patterns of behavior; and

1098 (5) other relevant factors.

1099 Section 39. Section **75-5c-305** is enacted to read:

1100 **75-5c-305. Guardian’s authority limited to court order.**

1101 (1) The protected person retains all rights, power, authority and discretion not expressly  
1102 granted to the guardian by statute or court order. The protected person retains the right to vote in  
1103 governmental elections unless the court finds by clear and convincing evidence that the protected  
1104 person is unable to communicate, with or without accommodation, the specific desire to  
1105 participate in the voting process. The court may not grant to the guardian the authority to vote on  
1106 the protected person's behalf.

1107 (2) The court shall enter findings that the guardian's authority is the least restrictive means of  
1108 accommodating the protected person's particular functional limitations.

1109 (3) The guardian has the duties specified by statute or court order. The guardian has only the  
1110 authority specified by court order. The order shall limit the guardian's authority to what is  
1111 necessary to accommodate the protected person's particular functional limitations.

1112 (4) If supported by the findings, the court may grant to the guardian the authority to:

1113 (a) make health care decisions, except as provided in **Section 75-5c-306**;

1114 (b) consent to admission of the protected person to a licensed health care facility for short  
1115 term placement for the purpose of assessment, rehabilitative care or respite care;

1116 (c) admit the protected person to a licensed health care facility for long-term custodial  
1117 placement;

1118 (d) make arrangements for the protected person's support, care, comfort, education and  
1119 welfare;

1120 (e) take custody of the protected person and make arrangements for a dwelling place;

1121 (f) take reasonable care of the protected person's personal effects;

1122 (g) file an action for the appointment of a conservator or entry of a protective order; and

1123 (h) make other decisions and give other consents on behalf of the protected person as  
1124 specified in the order and as necessary to accommodate the protected person's particular  
1125 functional limitations.

1126 (5) If the court does not appoint a conservator, and if supported by the findings, the order  
1127 may grant to the guardian the authority to:

1128 (a) take control of and manage a savings account or checking account;

1129 (b) apply for, start proceedings for, receive and compel delivery of property due the protected  
1130 person or benefits to which the protected person may be entitled, up to \$100,000 per year;

1131 (c) commence a proceeding, including an administrative proceeding, or take other  
1132 appropriate action to compel a person to support the protected person or to pay money for the  
1133 protected person's benefit;  
1134 (d) prosecute, defend and settle legal actions, including administrative proceedings, on behalf  
1135 of the protected person;  
1136 (e) obtain legal advice and representation on behalf of the protected person;  
1137 (f) pay the protected person's debts;  
1138 (g) give gifts, donations or contributions on behalf of the protected person within the limits of  
1139 Section **75-5c-408**;  
1140 (h) file tax returns on behalf of the protected person and pay taxes owed by the protected  
1141 person; and  
1142 (i) provide for the support, care, comfort, education and welfare of individuals entitled to the  
1143 protected person's support.  
1144 Section 40. Section **75-5c-306** is enacted to read:  
1145 **75-5c-306. Restrictions on the guardian's authority.**  
1146 **(1) The guardian cannot:**  
1147 (a) consent to commitment of the protected person to a mental retardation facility, but must  
1148 petition the court for an order under Title 62A, Chapter 5, Part 3, Admission to Mental  
1149 Retardation Facility;  
1150 (b) consent to commitment of the protected person to a mental health care institution, but  
1151 must petition the court for an order under Title 62A, Chapter 15, Part 6, Utah State Hospital and  
1152 Other Mental Health Facilities;  
1153 (c) consent to sterilization of the protected person, but must petition the court for an order  
1154 under Title 62A, Chapter 6, Sterilization of Handicapped Person;  
1155 (d) consent to termination of the parental rights in the protected person or of the protected  
1156 person's parental rights in another, but must petition the juvenile court for an order to terminate  
1157 parental rights under Title 78A, Chapter 6, Part 5, Termination of Parental Rights Act; or  
1158 (e) except as provided in Subsection **75-5c-305(5)**, exercise the duties or authority of a  
1159 conservator unless appointed as a conservator.  
1160 **(2) Unless permitted by the court, the guardian cannot:**

1161 (a) consent to the admission of the protected person to a psychiatric hospital or other mental  
1162 health care facility;

1163 (b) consent to participation in medical research, electroconvulsive therapy or other shock  
1164 treatment, experimental treatment, forced medication with psychotropic drugs, abortion,  
1165 psychosurgery, a procedure that restricts the protected person's rights, or to be a living organ  
1166 donor;

1167 (c) consent to termination of life-sustaining treatment if the protected person has never had  
1168 health care decisionmaking capacity;

1169 (d) consent to name change, adoption, marriage, annulment or divorce of the protected  
1170 person;

1171 (e) establish or move the protected person's dwelling place outside of Utah; or

1172 (f) restrict the protected person's physical liberty, communications or social activities more  
1173 than reasonably necessary to protect the protected person or others from harm.

1174 (3)(a) The guardian, someone affiliated with the guardian, or someone within the third degree  
1175 of relationship to the guardian cannot purchase the protected person's property unless permitted  
1176 by the conservator, or

1177 (b) if there is no conservator or if the conservator is the guardian, someone affiliated with the  
1178 guardian, or someone within the third degree of relationship to the guardian, unless permitted by  
1179 the court.

1180 Section 41. Section **75-5c-307** is enacted to read:

1181 **75-5c-307. Guardian's duties.**

1182 The guardian must:

1183 (1) within 14 days after appointment, serve on the protected person and all other people  
1184 entitled to notice of the petition a copy of the appointment order and notice of the right to request  
1185 termination or modification;

1186 (2) within 90 days after appointment, file and serve a management plan as required by court  
1187 rule or court order, describing the strategies that will be used to implement the court order;

1188 (3) file and serve a report on the protected person's condition to the satisfaction of the court  
1189 annually, upon resignation or removal, upon termination, and as required by court rule or court  
1190 order;

1191 (4) file a final report and petition to terminate the guardianship within 30 days after the  
1192 protected person dies;

1193 (5) file a petition to terminate or modify the guardianship within 30 days after the protected  
1194 person becomes capable of exercising rights previously removed;

1195 (6) immediately notify the court if the protected person or guardian changes dwelling place;

1196 (7) exercise duties and authority authorized by statute and court order as necessary to  
1197 accommodate the protected person's particular functional limitations;

1198 (8) if reasonable under the circumstances, encourage the protected person to participate in  
1199 decisions, to act on the protected person's own behalf, and to overcome the functional limitations  
1200 that resulted in the protected person's incapacity;

1201 (9) make decisions using the substituted judgment decisionmaking standard or the best  
1202 interest decisionmaking standard, whichever applies in the circumstances;

1203 (10) become and remain personally acquainted with the protected person and maintain  
1204 sufficient contact with the protected person to know of the person's preferences, values,  
1205 capabilities, limitations, needs, opportunities, and physical and mental health;

1206 (11) when acting on behalf of the protected person, exercise the degree of care, diligence and  
1207 good faith that an ordinarily careful person exercises in his or her own affairs;

1208 (12) exhibit the utmost trustworthiness, loyalty, and fidelity to the protected person;

1209 (13) petition for the appointment of a conservator or for a protective order if necessary to  
1210 protect the protected person's property;

1211 (14) conserve for the protected person's future needs any of the estate that exceeds the  
1212 person's current needs or, if a conservator has been appointed, pay the excess to the conservator  
1213 at least annually;

1214 (15) keep the protected person's estate separate from the guardian's money and property;

1215 (16) keep contemporaneous records and make them available for examination as directed by  
1216 the court;

1217 (17) at termination, deliver any of the estate subject to the guardian's possession, ownership  
1218 or control and any records as directed by law or the court;

1219 (18) if a conservator has been appointed, account to the conservator for the protected  
1220 person's income and expenses and for any of the estate subject to the guardian's possession,  
1221 ownership or control; and

1222 (19) if a conservator has not been appointed:  
1223 (a) within 90 days after appointment, file and serve a management plan as required by court  
1224 rule or court order describing the strategies that will be used to implement the court order;  
1225 (b) within 90 days after appointment, file and serve a detailed inventory of the estate subject  
1226 to the guardian's possession, ownership or control under an oath or affirmation that the inventory  
1227 is believed to be complete and accurate as far as information permits; and  
1228 (c) file and serve a report about the administration of the protected person's estate to the  
1229 satisfaction of the court annually, upon resignation or removal, upon termination, and as required  
1230 by court rule or court order.

1231 Section 42. Section **75-5c-308** is enacted to read:

1232 **75-5c-308. Guardian's personal liability.**

1233 (1) A guardian is not liable to third persons for the protected person's acts solely by reason of  
1234 the guardianship.

1235 (2) If the guardian performs fiduciary responsibilities with the degree of care, diligence, and  
1236 good faith that an ordinarily careful person exercises in his or her own affairs, the guardian is not  
1237 liable for acts or omissions in performing the fiduciary responsibilities.

1238 (3) If the guardian selects a third person to perform a service for the protected person with  
1239 the degree of care, diligence, and good faith that an ordinarily careful person exercises in his or  
1240 her own affairs, the guardian is not liable for injury resulting from the wrongful conduct of the  
1241 third person.

1242 Section 43. Section **75-5-314** is renumbered and amended to read:

1243 **75-5-314. 75-5c-309. Mentally incompetent veteran -- Evidence of necessity for**  
1244 **appointment of guardian.**

1245 ~~Where a petition is filed for the appointment of a guardian for a mentally incompetent ward,~~  
1246 ~~a~~A certificate of the administrator or ~~his~~a duly authorized representative; that ~~such person~~the  
1247 respondent has been rated incompetent by the veterans administration on examination ~~in~~  
1248 ~~accordance with~~under the veterans administration laws and regulations ~~governing such veterans~~  
1249 ~~administration~~ and that the appointment of a guardian is a condition precedent to the payment of  
1250 any ~~moneys~~money due ~~such ward~~the respondent by the veterans administration, ~~shall be prima~~  
1251 ~~faeie~~ is evidence of the necessity for such appointment.

1252 Section 44. Section **75-5-315** is renumbered and amended to read:

1253 **75-5-315-75-5c-310. Copies of public records furnished to veterans administration.**  
1254 ~~When If~~ a copy of ~~any a~~ public record is required by the veterans administration to ~~be used in~~  
1255 ~~determining determine~~ the eligibility of ~~any person an applicant~~ to participate in ~~veterans~~  
1256 ~~administration~~ benefits ~~made available by the veterans administration~~, the ~~official~~ custodian of  
1257 ~~such the~~ public record shall without charge provide a certified copy of the record to the applicant  
1258 ~~for such benefits~~ or any person acting on behalf of the ~~authorized representative of the~~ veterans  
1259 administration ~~with a certified copy of such record.~~

1260 Section 45. Section **75-5c-401** is enacted to read:

1261 **Part 4. Appointment of a Conservator and Other Protective Orders**

1262 **75-5c-401. Petition to appoint a conservator or enter a protective order.**

1263 (1) The following may file a verified petition to appoint a conservator or to enter a protective  
1264 order:

1265 (a) the person to be protected;

1266 (b) an individual interested in the respondent's estate, affairs, or welfare; or

1267 (c) a person who would be adversely affected by lack of effective management of the  
1268 respondent's property and business affairs.

1269 (2) If the petitioner is nominated by will or signed writing, the petitioner shall file the petition  
1270 and a copy of the will or signed writing within 30 days after:

1271 (a) the nominator's death;

1272 (b) the nominator's adjudicated incapacity; or

1273 (c) a written determination by a physician who has examined the nominator that the  
1274 nominator is no longer able to care for the respondent.

1275 Section 46. Section **75-5c-402** is enacted to read:

1276 **75-5c-402. Jurisdiction over business affairs of respondent.**

1277 Until termination, the court in which the petition is filed has:

1278 (1) exclusive jurisdiction to determine the need for a conservatorship or protective order;

1279 (2) exclusive jurisdiction to determine how the respondent's estate that is subject to Utah  
1280 laws will be managed, expended, or distributed to or for the use of the respondent, individuals  
1281 entitled to the respondent's support, or other claimants; and

1282 (3) concurrent jurisdiction to determine the validity of claims against the respondent or the  
1283 respondent's estate and questions of title concerning estate assets.

1284 Section 47. Section **75-5c-403** is enacted to read:

1285 **75-5c-403. Petition to appoint a conservator or enter a protective order – Preliminary**  
1286 **application of property – Appointment of counsel.**

1287 (1) Upon receipt of a petition to appoint a conservator or enter a protective order for an adult,  
1288 the court shall schedule a hearing on the petition.

1289 (2) After preliminary hearing and without notice, the court may issue orders to preserve and  
1290 apply the respondent's property as may be required for the support of the respondent or of  
1291 individuals entitled to the respondent's support. The court may appoint a master to assist in the  
1292 task.

1293 (3) Unless the adult respondent is represented by a lawyer, the court shall appoint a lawyer to  
1294 represent the respondent.

1295 (4) If the court determines that the minor's best interests are inadequately represented, it may  
1296 appoint a lawyer to represent the minor, giving consideration to the minor's choice if the minor  
1297 is 14 years of age or older.

1298 Section 48. Section **75-5c-404** is enacted to read:

1299 **75-5c-404. Petition to appoint a conservator or enter a protective order for a minor –**  
1300 **Findings – Orders.**

1301 (1) The court shall appoint a conservator or enter a protective order for a minor if it finds  
1302 that:

1303 (a) the order is in the minor's best interests;

1304 (b) a qualified person seeks appointment;

1305 (c) the court has jurisdiction and venue is proper;

1306 (d) the required notices have been given; and

1307 (e) the minor:

1308 (i) owns money or property requiring management or protection that cannot otherwise be  
1309 provided; or

1310 (ii) has or may have business affairs that may be put at risk or prevented because of the  
1311 minor's age; or

1312 (iii) has property that will be wasted or dissipated unless management is provided; or

1313 (iv) needs money for the support, care, education, health, and welfare of the minor or of  
1314 individuals who are entitled to the minor's support and that protection is necessary or desirable  
1315 to obtain or provide the money.

1316 (2) The court may appoint a conservator for a specified time not to exceed the minor's 18<sup>th</sup>  
1317 birthday. In other cases, the court may dismiss the proceeding or make any other disposition that  
1318 will serve the best minor's interests.

1319 Section 49. Section **75-5c-405** is enacted to read:

1320 **75-5c-405. Petition to appoint a conservator or enter a protective order for an adult –**  
1321 **Findings – Orders.**

1322 (1) The court shall appoint a conservator or enter a protective order for an adult if it finds:

1323 (a) based on clear and convincing evidence, that the person to be protected has knowingly  
1324 and voluntarily petitioned the court to appoint a conservator or enter a protective order; or:

1325 (b)(i) based on clear and convincing evidence, that the respondent is unable to manage  
1326 property and business affairs because the respondent is incapacitated, missing, detained, or  
1327 unable to return to the United States; and

1328 (b)(ii) by a preponderance of evidence, that the respondent:

1329 (A) has property that will be wasted or dissipated unless management is provided; or

1330 (B) needs money for the support, care, education, health, and welfare of the respondent or of  
1331 individuals who are entitled to the respondent's support and that protection is necessary or  
1332 desirable to obtain or provide the money.

1333 (2) The court shall make the least restrictive order consistent with its findings necessitated by  
1334 the respondent's limitations and demonstrated needs, including appointive and other orders that  
1335 will encourage the development of maximum self-reliance and independence of the respondent.

1336 (3) Appointment of a conservator or entry of a protective order based on a request by the  
1337 person to be protected or because the respondent is missing, detained, or unable to return to the  
1338 United States is not a determination of that person's incapacity.

1339 (4) Appointment of a conservator or entry of a protective order may not be denied solely  
1340 because the respondent has a valid power of attorney.

1341 Section 50. Section **75-5c-406** is enacted to read:

1342 **75-5c-406. Authority of court.**

1343 (1) Upon determining that a basis exists for a conservatorship or protective order, the court  
1344 has the following authority, which may be exercised directly or through a conservator.

1345 (a) The court has all the authority over the estate and business affairs of a minor which may  
1346 be necessary for the best interest of the minor and members of the minor's immediate family.

1347 (b) The court has all the authority over the estate and business affairs of an adult protected  
1348 person, for the benefit of the protected person and individuals entitled to the protected person's  
1349 support that the protected person could exercise if present and not under conservatorship or  
1350 protective order.

1351 (2) The court may limit authority otherwise conferred on a conservator and may remove or  
1352 modify any limitation at any time.

1353 Section 51. Section **75-5c-407** is enacted to read:

1354 **75-5c-407. Protective arrangements and single transactions.**

1355 (1) Upon determining that a basis exists for a protective order, the court, without appointing a  
1356 conservator, may:

1357 (a) authorize, direct, or ratify any transaction necessary or desirable to achieve any  
1358 arrangement for security, service or care meeting the foreseeable needs of the protected person,  
1359 including:

1360 (i) payment, delivery, deposit or retention of funds or property;

1361 (ii) sale, mortgage, lease or other transfer of property;

1362 (iii) purchase of an annuity;

1363 (iv) making a contract for life care, deposit contract, or contract for training and education; or

1364 (v) addition to or establishment of a suitable trust; and

1365 (b) authorize, direct, or ratify any other contract, trust, will, or transaction relating to the  
1366 protected person's property and business affairs, including settlement of a claim, upon  
1367 determining that it is in the protected person's best interest.

1368 (2) In deciding whether to approve a protective arrangement or other transaction under this  
1369 Section, the court shall consider the factors described in **Subsection 75-5c-408(3)**.

1370 (3) The court may appoint a master to assist in any transaction or protective arrangement  
1371 authorized under this Section. The master has the authority conferred by the order and shall serve  
1372 until discharged after reporting to the court.

1373 Section 52. Section **75-5c-408** is enacted to read:

1374 **75-5c-408. Action requiring court approval.**

1375 (1) After notice to interested persons and upon express authorization of the court, a

1376 conservator may:

1377 (a) if an estate is ample to provide for the distributions authorized by Section 75-5c-416, a

1378 conservator for a protected person other than a minor may give gifts, donations and contributions

1379 that the protected person might have been expected to give, in amounts that do not exceed in the

1380 aggregate for any calendar year 20 percent of the estate income in that year;

1381 (b) convey, release or disclaim contingent and expectant interests in property, including

1382 marital property rights and any right of survivorship incident to joint tenancy or tenancy by the

1383 entireties;

1384 (c) exercise or release a power of appointment;

1385 (d) create a revocable or irrevocable trust of estate property, whether or not the trust extends

1386 beyond the duration of the conservatorship, or revoke or amend a trust revocable by the protected

1387 person;

1388 (e) exercise rights to elect options and change beneficiaries under insurance policies and

1389 annuities or surrender the policies and annuities for their cash value;

1390 (f) exercise any right to an elective share in the estate of the protected person's deceased

1391 spouse and to renounce or disclaim any interest by testate or intestate succession or by transfer

1392 inter vivos; and

1393 (g) make, amend, or revoke the protected person's will.

1394 (2) A conservator, in making, amending, or revoking the protected person's will, must

1395 comply with Title 75, Chapter 2, Part 5, Wills.

1396 (3) In exercising or in approving a conservator's exercise of the authority listed in Subsection

1397 (1), the court shall ~~consider primarily the decision that the protected person would have made, to~~

1398 ~~the extent that the decision can be ascertained~~ use the substituted judgment decisionmaking

1399 standard, unless the best interest decisionmaking standard is permitted by law. The court shall

1400 also consider:

1401 (a) the financial needs of the protected person, the needs of individuals entitled to the

1402 protected person's support and the interest of creditors;

1403 (b) possible reduction of tax liabilities;

1404 (c) eligibility for governmental assistance;

1405 (d) the protected person’s previous pattern of giving or level of support;  
1406 (e) the existing estate plan;  
1407 (f) the protected person’s life expectancy and the probability that the conservatorship will  
1408 terminate before the protected person’s death; and  
1409 (g) any other relevant factors.  
1410 (4) A conservator may revoke or amend a durable power of attorney of which the protected  
1411 person is the principal. If a durable power of attorney is in effect, a decision of the conservator  
1412 takes precedence over that of the agent unless the court orders otherwise.  
1413 Section 53. Section **75-5c-409** is enacted to read:  
1414 **75-5c-409. Conservator’s duties.**  
1415 The conservator must:  
1416 (1) within 14 days after appointment, serve on the protected person and all other people  
1417 entitled to notice of the petition a copy of the appointment order and notice of the right to request  
1418 termination or modification;  
1419 (2) within 90 days after appointment, file and serve a management plan as required by court  
1420 rule or court order describing the strategies that will be used to implement the court order;  
1421 (3) within 90 days after appointment, file and serve a detailed inventory of the estate subject  
1422 to the conservator’s possession, ownership or control under an oath or affirmation that the  
1423 inventory is believed to be complete and accurate as far as information permits; and  
1424 (4) file and serve a report about the administration of the protected person’s estate to the  
1425 satisfaction of the court annually, upon resignation or removal, upon termination, and as required  
1426 by court rule or court order;  
1427 (5) comply with Section 75-5c-417 if the protected person dies;  
1428 (6) file a petition to terminate or modify the conservatorship within 30 days after the  
1429 protected person becomes capable of exercising rights previously removed;  
1430 (7) immediately notify the court if the protected person or conservator changes dwelling  
1431 place;  
1432 (8) exercise duties and authority authorized by statute and court order as necessary to  
1433 accommodate the protected person’s particular functional limitations;

1434 (9) if reasonable under the circumstances, encourage the protected person to participate in  
1435 decisions, to act on the protected person’s own behalf, and to overcome the functional limitations  
1436 that resulted in the protected person’s incapacity;

1437 (10) act as a fiduciary and observe the standard of care of a trustee under Title 75, Chapter 7,  
1438 Part 9, Utah Uniform Prudent Investor Act;

1439 (11) keep contemporaneous records of the administration of the estate and make them  
1440 available for examination as directed by the court;

1441 (12) take into account any estate plan of the protected person known to the conservator and  
1442 may examine the will and any other donative, nominative, or other appointive instrument of the  
1443 protected person in investing the estate, selecting assets of the estate for distribution, and  
1444 invoking power of revocation or withdrawal available for the use and benefit of the protected  
1445 person and exercisable by the conservator; and

1446 (13) at termination, deliver any of the estate subject to the conservator’s possession,  
1447 ownership or control and any records as directed by law or the court.

1448 Section 54. Section **75-5c-410** is enacted to read:

1449 **75-5c-410. Title by appointment.**

1450 The appointment of a conservator vests title in the conservator as trustee to all property of the  
1451 protected person, or to the part specified in the order, held at the time of appointment or later  
1452 acquired. An order vesting title in the conservator to only part of the property of the protected  
1453 person creates a conservatorship limited to assets specified in the order.

1454 Section 55. Section **75-5c-411** is enacted to read:

1455 **75-5c-411. Protected person’s interest inalienable.**

1456 (1) Except as otherwise provided in subsections (3) and (4), the interest of a protected person  
1457 in property vested in a conservator is not transferable or assignable by the protected person. An  
1458 attempted transfer or assignment by the protected person, although ineffective to affect property  
1459 rights, may give rise to a claim against the protected person for restitution or damages which  
1460 may be presented to the conservator.

1461 (2) Property vested in a conservator by appointment and the interest of the protected person  
1462 in that property are not subject to levy, garnishment, or similar process for claims against the  
1463 protected person unless allowed after presentation.

1464 (3) A person without knowledge of the conservatorship who in good faith and for security or  
1465 substantially equivalent value receives delivery of tangible personal property normally  
1466 transferred by delivery is protected as if the protected person or transferee had valid title.

1467 (4) A third party who deals with the protected person with respect to property vested in a  
1468 conservator is entitled to any protection provided in other law.

1469 Section 56. Section **75-5c-412** is enacted to read:

1470 **75-5c-412. Sale, encumbrance, or other transaction involving conflict of interest.**

1471 Any transaction affected by a substantial conflict between the conservator's fiduciary and  
1472 personal interests is voidable unless the transaction is expressly authorized by the court after  
1473 notice to interested persons. A transaction affected by a substantial conflict between fiduciary  
1474 and personal interests includes any sale, encumbrance, or other transaction involving the estate  
1475 entered into by the conservator, the spouse, descendant, agent, or lawyer of a conservator, or a  
1476 corporation or other enterprise in which the conservator has a substantial beneficial interest.

1477 Section 57. Section **75-5c-413** is enacted to read:

1478 **75-5c-413. Protection of person dealing with conservator.**

1479 (1) A person who assists or deals with a conservator in good faith and for value in any  
1480 transaction other than one requiring a court order is protected as though the conservator properly  
1481 exercised the authority. That a person knowingly assists or deals with a conservator does not  
1482 alone require the person to inquire into the conservator's authority or the propriety of its  
1483 exercise, but restrictions on the conservator's authority endorsed on letters of office are effective  
1484 as to third persons. A person who pays or delivers assets to a conservator is not responsible for  
1485 their proper application.

1486 (2) Protection provided by this Section extends to any procedural irregularity or jurisdictional  
1487 defect that occurred in the proceedings leading to the issuance of letters and is not a substitute for  
1488 protection provided to persons assisting or dealing with a conservator by comparable provisions  
1489 in other law relating to commercial transactions or to simplifying transfers of securities by  
1490 fiduciaries.

1491 Section 58. Section **75-5c-414** is enacted to read:

1492 **75-5c-414. Authority of conservator in administration.**

1493 (1) Except as otherwise restricted in the appointment order and endorsed on the letters of  
1494 office, a conservator has all of the authority granted in this Section and any additional authority  
1495 granted by law to a trustee.

1496 (2) A conservator, acting reasonably and in an effort to accomplish the purpose of the  
1497 appointment, and without court authorization, may:

1498 (a) collect, hold, and retain estate assets, including assets in which the conservator has a  
1499 personal interest and real property in another state, until the conservator considers that  
1500 disposition of an asset should be made;

1501 (b) receive additions to the estate;

1502 (c) continue or participate in the operation of a business or other enterprise;

1503 (d) acquire an undivided interest in an estate asset in which the conservator, in a fiduciary  
1504 capacity, holds an undivided interest;

1505 (e) invest estate assets as though the conservator were a trustee;

1506 (f) deposit estate money in a financial institution, including one operated by the conservator;

1507 (g) acquire or dispose of an estate asset, including real property in another state, for cash or  
1508 on credit, at public or private sale, and manage, develop, improve, exchange, partition, change  
1509 the character of, or abandon an estate asset;

1510 (h) make ordinary or extraordinary repairs or alterations in buildings or other structures,  
1511 demolish any improvements, and raze existing or erect new party walls or buildings;

1512 (i) subdivide, develop, or dedicate land to public use, make or obtain the vacation of plats  
1513 and adjust boundaries, adjust differences in valuation or exchange or partition by giving or  
1514 receiving considerations, and dedicate easements to public use without consideration;

1515 (j) enter for any purpose into a lease as lessor or lessee, with or without option to purchase or  
1516 renew, for a term within or extending beyond the term of the conservatorship;

1517 (k) enter into a lease or arrangement for exploration and removal of minerals or other natural  
1518 resources or enter into a pooling or unitization agreement;

1519 (l) grant an option involving disposition of an estate asset and take an option for the  
1520 acquisition of any asset;

1521 (m) vote a security, in person or by general or limited proxy;

1522 (n) pay calls, assessments, and any other sums chargeable or accruing against or on account  
1523 of securities;

1524 (o) sell or exercise stock subscription or conversion rights;  
1525 (p) consent, directly or through a committee or other agent, to the reorganization,  
1526 consolidation, merger, dissolution, or liquidation of a corporation or other business enterprise;  
1527 (q) hold a security in the name of a nominee or in other form without disclosure of the  
1528 conservatorship so that title to the security may pass by delivery;  
1529 (r) insure estate assets against damage or loss and the conservator against liability with  
1530 respect to a third person;  
1531 (s) borrow money on behalf of the protected person, with or without security, to be repaid  
1532 from the estate or otherwise and advance money for the protection of the estate or the protected  
1533 person and for all expenses, losses, and liability sustained in the administration of the estate or  
1534 because of the holding or ownership of any assets, for which the conservator has a lien on the  
1535 estate as against the protected person for advances so made;  
1536 (t) pay or contest any claim, settle a claim by or against the estate or the protected person by  
1537 compromise, arbitration, or otherwise, and release, in whole or in part, any claim belonging to  
1538 the estate to the extent the claim is uncollectible;  
1539 (u) pay taxes, assessments, compensation of the conservator and any guardian, and other  
1540 expenses incurred in the collection, care, administration, and protection of the estate;  
1541 (v) allocate items of income or expense to income or principal of the estate, as provided by  
1542 other law, including creation of reserves out of income for depreciation, obsolescence, or  
1543 amortization or for depletion of minerals or other natural resources;  
1544 (w) pay any sum distributable to a protected person or to individuals entitled to the protected  
1545 person's support by paying the sum to the distributee or by paying the sum for the use of the  
1546 distributee:  
1547 (i) to the distributee's guardian or custodian under Title 75, Chapter 5a, Uniform Transfers to  
1548 Minors Act; or  
1549 (ii) if there is no guardian or custodian, to a relative or other person having physical custody  
1550 of the distributee;  
1551 (x) prosecute or defend actions, claims, or proceedings in any jurisdiction for the protection  
1552 of estate assets and of the conservator in the performance of fiduciary duties; and  
1553 (y) execute and deliver all instruments that will accomplish or facilitate the exercise of the  
1554 conservator's authority.

1555 Section 59. Section **75-5c-415** is enacted to read:

1556 **75-5c-415. Delegation.**

1557 (1) A conservator may not delegate to an agent or another conservator the entire  
1558 administration of the estate, but a conservator may delegate the performance of functions that a  
1559 prudent trustee of comparable skills may delegate under similar circumstances.

1560 (2) The conservator shall exercise reasonable care, skill, and caution in:

1561 (a) selecting an agent;

1562 (b) establishing the scope and terms of a delegation, consistent with the purposes and terms  
1563 of the conservatorship;

1564 (c) periodically reviewing an agent's overall performance and compliance with the terms of  
1565 the delegation; and

1566 (d) redressing an action or decision of an agent which would constitute a breach of trust if  
1567 performed by the conservator.

1568 (3) A conservator who complies with subsections (1) and (2) is not liable to the protected  
1569 person or to the estate for the decisions or actions of the agent to whom a function was delegated.

1570 (4) In performing a delegated function, an agent shall exercise reasonable care to comply  
1571 with the terms of the delegation.

1572 (5) By accepting a delegation from a conservator subject to Utah law, an agent submits to the  
1573 jurisdiction of the Utah courts.

1574 Section 60. Section **75-5c-416** is enacted to read:

1575 **75-5c-416. Principles of distribution by conservator.**

1576 Unless otherwise specified in the appointment order and endorsed on the letters of office or  
1577 contrary to the management plan, a conservator may, without further court authorization or  
1578 confirmation, expend or distribute income or principal of the estate for the support, care,  
1579 education, health, and welfare of the protected person and individuals entitled to the protected  
1580 person's support, including the payment of child support or spousal support, under the following  
1581 rules:

1582 (1) A conservator shall consider a guardian's recommendations about the appropriate  
1583 standard of support, care, education, health, and welfare for the protected person or individuals  
1584 entitled to the protected person's support. If the protected person is a minor, the conservator shall  
1585 consider a parent's recommendations.

1586 (2) A conservator may not be surcharged for money paid to persons furnishing support, care,  
1587 education, or benefits to a protected person or individuals entitled to the protected person's  
1588 support under the recommendations of the protected person's parent or guardian, unless the  
1589 conservator knows that the parent or guardian derives a personal financial benefit, including  
1590 relief from any personal duty of support, or the recommendations are not in the best interest of  
1591 the protected person.

1592 (3) In making distributions under this Subsection, the conservator shall consider:

1593 (a) the size of the estate, the estimated duration of the conservatorship, and the likelihood that  
1594 the protected person, at some future time, may be fully self-sufficient and able to manage  
1595 business affairs and the estate;

1596 (b) the accustomed standard of living of the protected person and individuals entitled to the  
1597 protected person's support; and

1598 (c) other money or sources used for the support of the protected person and individuals  
1599 entitled to the protected person's support.

1600 (4) Money expended under this Subsection may be paid by the conservator to any person,  
1601 including the protected person, as reimbursement for expenditures that the conservator might  
1602 have made, or in advance for services to be rendered to the protected person if it is reasonable to  
1603 expect the services will be performed and advance payments are customary or reasonably  
1604 necessary under the circumstances.

1605 Section 61. Section **75-5c-417** is enacted to read:

1606 **75-5c-417. Death of protected person.**

1607 (1) Upon the death of a protected person, the conservator shall deliver to the court for  
1608 safekeeping any will of the protected person which may have come into the conservator's  
1609 possession, inform the personal representative or beneficiary named in the will of the delivery,  
1610 and retain the estate for delivery to the decedent's personal representative or to another person  
1611 entitled to it.

1612 (2) Upon the death of a protected person, the conservator shall conclude the administration of  
1613 the estate by distribution to the protected person's successors. The conservator shall file a final  
1614 report and petition for to terminate the conservatorship within 30 days after distribution.

1615 Section 62. Section **75-5c-418** is enacted to read:

1616 **75-5c-418. Presentation and allowance of claims.**

1617 (1) A conservator may pay, or secure by encumbering estate assets, claims against the estate  
1618 or against the protected person arising before or during the conservatorship upon their  
1619 presentation and allowance under the priorities stated in Subsection (5). A claimant may present  
1620 a claim by:

1621 (a) sending or delivering to the conservator a written statement of the claim, indicating its  
1622 basis, the name and address of the claimant, and the amount claimed; or

1623 (b) filing a written statement of the claim, in a form acceptable to the court, with the court  
1624 clerk and sending or delivering a copy of the statement to the conservator.

1625 (2) A claim is deemed presented on receipt of the written statement of claim by the  
1626 conservator or the filing of the claim with the court clerk, whichever occurs first.

1627 (3) A presented claim is allowed if it is not disallowed by written statement sent or delivered  
1628 by the conservator to the claimant within 60 days after its presentation. Before payment, the  
1629 conservator may change an allowance to a disallowance in whole or in part, but not after  
1630 allowance under a court order or judgment or an order directing payment of the claim. The  
1631 presentation of a claim tolls the running of any statute of limitations relating to the claim until 30  
1632 days after its disallowance.

1633 (4) A claimant whose claim has not been paid may petition the court for determination of the  
1634 claim at any time before it is barred by a statute of limitations and, upon proof, procure an order  
1635 for its allowance, payment, or security by encumbering estate assets. If a proceeding is pending  
1636 against a protected person at the time of the conservator's appointment or is later initiated against  
1637 the protected person, the moving party shall give to the conservator notice of any proceeding that  
1638 could result in creating a claim against the estate.

1639 (5) If it appears that the estate is likely to be exhausted before all existing claims are paid, the  
1640 conservator shall distribute the estate in money or in kind in payment of claims in the following  
1641 order:

1642 (a) costs and expenses of administration;

1643 (b) claims of the federal or state government having priority under other law;

1644 (c) claims incurred by the conservator for support, care, education, health, and welfare  
1645 previously provided to the protected person or individuals entitled to the protected person's  
1646 support;

1647 (d) claims arising before the conservatorship; and

1648 (e) all other claims.  
1649 (6) Preference may not be given in the payment of a claim over any other claim of the same  
1650 class, and a claim due and payable may not be preferred over a claim not due.  
1651 (7) If assets of the conservatorship are adequate to meet all existing claims, the court, acting  
1652 in the best interest of the protected person, may order the conservator to grant a security interest  
1653 in the estate for the payment of any or all claims at a future date.

1654 Section 63. Section **75-5c-419** is enacted to read:

1655 **75-5c-419. Personal liability of conservator.**

1656 (1) Except as otherwise agreed, a conservator is not personally liable on a contract properly  
1657 entered into in a fiduciary capacity in the course of administration of the estate unless the  
1658 conservator fails to reveal in the contract the representative capacity and identify the estate.

1659 (2) A conservator is not personally liable for obligations arising from possession, ownership  
1660 or control of estate property or for other acts or omissions occurring in the course of  
1661 administration of the estate unless the conservator is personally at fault.

1662 (3) Regardless whether the conservator is personally liable, claims based on contracts entered  
1663 into by a conservator in a fiduciary capacity, obligations arising from possession, ownership or  
1664 control of the estate, and claims based on torts committed in the course of administration of the  
1665 estate may be asserted against the estate by proceeding against the conservator in a fiduciary  
1666 capacity.

1667 (4) A question of liability between the estate and the conservator personally may be  
1668 determined in a proceeding for accounting, surcharge, or indemnification, or in another  
1669 appropriate proceeding or action.

1670 (5) A conservator is not personally liable for any environmental condition on or injury  
1671 resulting from any environmental condition on land solely by reason of acquisition of title under  
1672 Section 75-5c-410.

1673 Section 64. Section **75-5c-420** is enacted to read:

1674 **75-5c-420. Payment of debt and delivery of property to foreign conservator without**  
1675 **local proceeding.**

1676 (1) A person who is indebted to or has the possession of tangible or intangible property of a  
1677 protected person may pay the debt or deliver the property to a foreign conservator, guardian of  
1678 the estate, or other court-appointed fiduciary of the state in which a protected person resides.

1679 (2) Payment or delivery may be made only upon proof of appointment and presentation of an  
1680 affidavit made by or on behalf of the fiduciary stating that a protective proceeding relating to the  
1681 protected person is not pending in Utah and the foreign fiduciary is entitled to payment or to  
1682 receive delivery.

1683 (3) Payment or delivery under Subsection (1) discharges the debtor or possessor, absent  
1684 knowledge of a protective proceeding pending in Utah.

1685 Section 65. Section **78B-5-804** is amended to read:

1686 **78B-5-804. Money deposited in court.**

1687 (1)(a) Any person depositing money in court, to be held in trust, shall pay it to the court  
1688 clerk.

1689 (b) The clerk shall deposit the money in a court trust fund or with the county treasurer or city  
1690 recorder to be held subject to the order of the court.

1691 (2) The Judicial Council shall adopt rules governing the maintenance of court trust funds and  
1692 the disposition of interest earnings on those trust funds.

1693 (3)(a) Any interest earned on trust funds in the courts of record that is not required to accrue  
1694 to the litigants by Judicial Council rule or court order shall be deposited in a restricted account.  
1695 Any interest earned on trust funds in the courts not of record that is not required to accrue to the  
1696 litigants by Judicial Council rule or court order shall be deposited in the general fund of the  
1697 county or municipality.

1698 (b) The Legislature shall appropriate funds from the restricted account of the courts of record  
1699 to the Judicial Council to:

1700 (i) offset costs to the courts for collection and maintenance of court trust funds; ~~and~~

1701 (ii) provide accounting and auditing of all court revenue and trust accounts and

1702 (iii) review or audit annual reports and accountings of guardians and conservators and recruit  
1703 court visitors in guardianship and conservatorship proceedings.

1704 Section 66. **Repealer.**

1705 This bill repeals:

1706 Section **53A-2-202, Guardianship for residency purposes by responsible adult --**

1707 **Procedure to obtain -- Termination.**

1708 Section **75-5-101, Jurisdiction of subject matter -- Consolidation of proceedings.**

1709 Section **75-5-102, Facility of payment or delivery.**

- 1710 Section **75-5-103, Delegation of powers by parent or guardian.**
- 1711 Section **75-5-104, Power of court to appoint guardian ad litem not affected.**
- 1712 Section **75-5-105, Bond of guardian.**
- 1713 Section **75-5-201, Status of guardian of minor -- General.**
- 1714 Section **75-5-202, Appointment of guardian of minor.**
- 1715 Section **75-5-202.5, Appointment of guardian by written instrument.**
- 1716 Section **75-5-203, Objection to appointment.**
- 1717 Section **75-5-204, Court appointment of guardian of minor -- Conditions for**
- 1718 **appointment.**
- 1719 Section **75-5-205, Court appointment of guardian of minor -- Venue.**
- 1720 Section **75-5-206, Court appointment of guardian of minor -- Qualifications -- Priority**
- 1721 **of minor's nominee.**
- 1722 Section **75-5-207, Court appointment of guardian of minor -- Procedure.**
- 1723 Section **75-5-208, Consent to service by acceptance of appointment -- Notice.**
- 1724 Section **75-5-209, Powers and duties of guardian of minor -- Residual parental rights**
- 1725 **and duties -- Adoption of a ward.**
- 1726 Section **75-5-210, Termination of appointment of guardian -- General.**
- 1727 Section **75-5-211, Proceedings subsequent to appointment -- Venue.**
- 1728 Section **75-5-212, Resignation or removal proceedings.**
- 1729 Section **75-5-301, Appointment of guardian for incapacitated person.**
- 1730 Section **75-5-302, Venue.**
- 1731 Section **75-5-303, Procedure for court appointment of a guardian of an incapacitated**
- 1732 **person.**
- 1733 Section **75-5-304, Findings -- Limited guardianship preferred -- Order of appointment.**
- 1734 Section **75-5-305, Acceptance of appointment -- Consent to jurisdiction.**
- 1735 Section **75-5-306, Termination of guardianship for incapacitated person.**
- 1736 Section **75-5-307, Removal or resignation of guardian -- Termination of incapacity.**
- 1737 Section **75-5-308, Visitor in guardianship proceeding.**
- 1738 Section **75-5-309, Notices in guardianship proceedings.**
- 1739 Section **75-5-310, Temporary guardians.**
- 1740 Section **75-5-311, Who may be guardian -- Priorities.**

1741 Section **75-5-312, General powers and duties of guardian -- Penalties.**  
1742 Section **75-5-313, Proceedings subsequent to appointment -- Venue.**  
1743 Section **75-5-316, Expedited guardianship proceedings.**  
1744 Section **75-5-401, Protective proceedings.**  
1745 Section **75-5-402, Protective proceedings -- Jurisdiction of affairs of protected persons.**  
1746 Section **75-5-403, Venue.**  
1747 Section **75-5-404, Original petition for appointment or protective order.**  
1748 Section **75-5-405, Notice.**  
1749 Section **75-5-406, Protective proceedings -- Request for notice -- Interested person.**  
1750 Section **75-5-407, Procedure concerning hearing and order on original petition.**  
1751 Section **75-5-408, Permissible court orders.**  
1752 Section **75-5-409, Protective arrangements and single transactions authorized.**  
1753 Section **75-5-410, Who may be appointed conservator -- Priorities.**  
1754 Section **75-5-411, Bond.**  
1755 Section **75-5-412, Terms and requirements of bonds.**  
1756 Section **75-5-413, Acceptance of appointment -- Consent to jurisdiction.**  
1757 Section **75-5-414, Compensation and expenses.**  
1758 Section **75-5-415, Death, resignation or removal of conservator.**  
1759 Section **75-5-416, Petitions for orders subsequent to appointment.**  
1760 Section **75-5-417, General duty of conservator.**  
1761 Section **75-5-418, Inventory and records.**  
1762 Section **75-5-419, Accounts.**  
1763 Section **75-5-420, Conservators -- Title by appointment.**  
1764 Section **75-5-421, Recording of conservator's letters.**  
1765 Section **75-5-422, Sale, encumbrance or transaction involving conflict of interest --**  
1766 **Voidable -- Exceptions.**  
1767 Section **75-5-423, Persons dealing with conservators -- Protection.**  
1768 Section **75-5-424, Powers of conservator in administration.**  
1769 Section **75-5-425, Distributive duties and powers of conservator.**  
1770 Section **75-5-426, Enlargement or limitation of powers of conservator.**  
1771 Section **75-5-427, Preservation of estate plan.**

1772 Section **75-5-428, Claims against protected person -- Enforcement.**  
1773 Section **75-5-429, Individual liability of conservator.**  
1774 Section **75-5-430, Termination of proceeding.**  
1775 Section **75-5-431, Payment of debt and delivery of property to foreign conservator**  
1776 **without local proceedings.**  
1777 Section **75-5-432, Foreign conservator -- Proof of authority -- Bond -- Powers.**  
1778 Section **75-5-433, Embezzlement of protected person's estate -- Citation to person**  
1779 **suspected.**  
1780 Section **67. Effective date.**  
1781 This bill takes effect on July 1, 2010.  
1782

## (19) 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.

31 (g) A lawyer may be removed or suspended from the roster as part of a sanction  
32 under Article 5, Lawyer Discipline and Disability.

33 **(b) URCP 150. Petition to appoint a guardian for a minor.**

34 To appoint a guardian for a minor, the petitioner must file a verified petition that  
35 identifies:

36 (a) the petitioner, the petitioner's relationship to and interest in the respondent;

37 (b) the respondent;

38 (c) in the order of priority, the people for whom there is a priority for appointment;

39 (d) the proposed guardian and the qualifications of the proposed guardian to  
40 exercise the authority requested;

41 (e) the reasons why appointment of a guardian is necessary;

42 (f) whether

43 (f)(i) the parents consent to the appointment; or

44 (f)(ii) all parental rights have been terminated; or

45 (f)(iii) the parents are unwilling or unable to exercise their parental rights; and

46 (g) the relief requested.

47 **(c) URCP 151. Petition to appoint a guardian for an adult.**

48 To appoint a guardian for an adult, the petitioner must file a verified petition that  
49 identifies:

50 (a) the petitioner, the petitioner's relationship to and interest in the respondent;

51 (b) the respondent;

52 (c) in the order of priority, the people for whom there is a priority for appointment;

53 (d) the proposed guardian and the qualifications of the proposed guardian to  
54 exercise the authority requested;

55 (e) the reasons why appointment of a guardian is necessary;

56 (f) the nature and extent of the respondent's alleged incapacity and functional  
57 limitations;

58 (g) the alternatives less restrictive than a guardianship that have been tried or why it  
59 would be futile to try them;

60 (h) a general description of the respondent's property and an estimate of its value;

61 (i) the relief requested;

62 (j) if unlimited authority is requested, the reason why a limited authority is  
63 inappropriate; and

64 (k) if limited authority is requested, the authority to be granted to the guardian.

65 **(d) URCP 152. Petition to appoint a conservator or enter a protective order.**

66 To appoint a conservator or enter a protective order, the petitioner must file a  
67 verified petition that identifies:

68 (a) the petitioner, the petitioner's relationship to and interest in the respondent;

69 (b) the respondent;

70 (c) in the order of priority, the people for whom there is a priority for appointment;

71 (d) the proposed conservator and the qualifications of the proposed conservator to  
72 exercise the authority requested;

73 (e) the reason why appointment of a conservator or entry of a protective order is  
74 necessary;

75 (f) if the reason for the conservator or protective order is the respondent's minority,

76 (f)(1) the minor's money or property that requires management or protection that  
77 cannot otherwise be provided, or

78 (f)(2) the minor's business affairs that may be put at risk or prevented because of the  
79 minor's age, or

80 (f)(3) the protection that is necessary or desirable to obtain or provide money for the  
81 support, care, education, health, and welfare of the minor or of individuals entitled to the  
82 minor's support;

83 (g) if the petitioner is requesting the court to appoint a conservator or enter a  
84 protective order, the reasons for the appointment or order and that the petitioner is  
85 making the request knowingly and voluntarily.

86 (h) if the reason for a conservator or protective order is other than the respondent's  
87 minority or request, the property and business affairs that the respondent is unable to  
88 manage, and

89 (h)(1) the property that will be wasted or dissipated unless management is provided,  
90 or

91 (h)(2) the protection that is necessary or desirable to obtain or provide money that is  
92 needed for the support, care, education, health, and welfare of the respondent or of  
93 individuals entitled to the respondent's support;

94 (i) if the reason for a conservator or protective order is the respondent's incapacity,  
95 the nature and extent of the alleged incapacity and functional limitations;

96 (j) if the reason for a conservator or protective order is the respondent is missing,  
97 detained, or unable to return to the United States, the relevant circumstances, including  
98 the time and nature of the disappearance or detention and a description of any search  
99 or inquiry concerning the respondent's whereabouts;

100 (k) the alternatives less restrictive than a conservatorship or protective order that  
101 have been tried or why it would be futile to try them;

102 (l) a general description of the respondent's property and an estimate of its value;

103 (m) the relief requested;

104 (n) if unlimited authority is requested, the reason why limited authority is  
105 inappropriate; and

106 (o) if limited authority is requested, the authority to be granted to the conservator.

107 **(a) URCP 153. Service in a protective proceeding**

108 (a) Any petition or notice of hearing in a protective proceeding must be served on:

109 (a)(1) the respondent or protected person who is 14 years of age or older;

110 (a)(2) the spouse, the adult children, the parents and adult siblings of the respondent  
111 or protected person and any adult with whom the respondent or protected person has  
112 resided for more than six months, or, if none can be found, a person who is 18 years of  
113 age or older who has shown special care and concern for the respondent;

114 (a)(3) any proposed guardian or conservator;

115 (a)(4) any person nominated as guardian or conservator by:

116 (a)(4)(A) the respondent, if the respondent is 14 years of age or older;

117 (a)(4)(B) the respondent's deceased spouse; and

118 (a)(4)(C) the respondent's deceased parent;

119 (a)(5) any legal representative of the respondent or protected person;

120 (a)(6) the person who has had the principal care and custody of the respondent or  
121 protected person during the 60 days before the petition is filed;

122 (a)(7) any interested person who has requested notice under subdivision (c) or as  
123 the court may direct; and

124 (a)(8) if the petition is to appoint a guardian under Title 75, Chapter 5c, Part 2,  
125 Appointment of a Guardian for a Minor, the school district in which the guardian resides.

126 (b) A respondent or protected person may not waive notice. A person other than the  
127 respondent or protected person may waive notice by a writing signed by the person or  
128 the person's attorney and filed with the court.

129 (c) An interested person not otherwise entitled to notice who desires to be notified  
130 before an order is entered may file a request for notice with the court. The court clerk  
131 shall send a copy of the request to the guardian and to the conservator if one has been  
132 appointed. A request is not effective unless it contains a statement showing the interest  
133 of the person making it and the address of that person or a lawyer to whom notice is to  
134 be sent. The request is effective only for proceedings conducted after the request is  
135 filed. A governmental agency paying or planning to pay benefits to the respondent or  
136 protected person is an interested person.

137 (c) Pleadings, and other papers, including the estate inventory, management plan,  
138 annual reports and objections must be served as provided in subdivision (a). Service  
139 must include notice of the hearing if one has been scheduled and must include notice of  
140 the right to object if there is such a right.

141 (d) A person required to be served may object to:

142 (d)(1) nomination of a guardian or conservator;

143 (d)(2) priority of appointment, unless the nomination was previously confirmed;

144 (d)(3) the estate inventory;

145 (d)(4) the management plan; and

146 (d)(5) the annual or other reports of a guardian or conservator.

147 (e) An objection must be filed and served within 30 days after service and must  
148 specify in writing the entries to which the person objects and state the reasons for the  
149 objection. If an objection is filed, the judge shall conduct a hearing. The judge may  
150 conduct a hearing even though no objection is filed. If the judge finds that the  
151 nomination, priority, inventory, management plan, or annual report is in order, the judge  
152 shall enter an appropriate order.

153 **(b) URCP 154. Manner of service.**

154 (a) If Rule 153 requires that a person be served, the person must be served in the  
155 following manner.

156 (b)(1) The initial petition and notice of hearing must be served personally on the  
157 respondent or protected person in accordance with Rule 4 at least 14 days before the  
158 hearing.

159 (b)(2) The notice must state in plain language the date, time and location of the  
160 hearing, require the respondent or protected person to be present at the hearing unless  
161 excused by the court, inform the respondent or protected person of his or her rights, and  
162 include a description of the nature, purpose, and consequences of an order granting the  
163 petition. The notice must be in plain language and large type. If English is not the  
164 primary language of the respondent or protected person, the notice must be in English  
165 and in the primary language.

166 (b)(3) If a lawyer represents the respondent, pleadings and papers after the petition  
167 must be served on the lawyer, rather than the respondent, in accordance with Rule 5.

168 (b)(4) If the respondent or protected person is not served in a manner substantially  
169 complying with this rule, the court may not grant the petition.

170 (b)(5) If the petition is to appoint a conservator or enter a protective order, and if the  
171 respondent's whereabouts are unknown or personal service cannot be made, service  
172 on the respondent must be made by substituted service under Rule 4.

173 (c) A petition and notice of hearing must be served on any person other than the  
174 respondent in accordance with Rule 5 at least 14 days before the hearing.

175 (d) Pleadings, and other papers, including the estate inventory, management plan,  
176 annual reports and objections must be served within 14 days after filing.

177 **(c) URCP 155. Appointment of lawyer to represent a respondent in a protective**  
178 **proceeding.**

179 (a) If an adult respondent in a protective proceeding is not represented by a lawyer  
180 of the respondent's own choice, the court shall appoint a lawyer to represent the  
181 respondent from the roster maintained by the executive director of the Utah State Bar.

182 (b) When a petition in a protective proceeding is filed, the clerk will offer the  
183 appointment to the first lawyer in order on the roster willing to accept appointments in

184 that county. If the proceeding is after an original proceeding, the clerk should offer the  
185 appointment to the lawyer who represented the respondent in the original proceeding.

186 (c) The lawyer will review the case for conflicts of interest and any other factor that  
187 might impede the lawyer from independent and zealous representation of the  
188 respondent. If the lawyer declines the appointment, the clerk will offer the appointment  
189 to the next lawyer on the roster. Upon accepting the appointment, the judge will enter an  
190 order appointing the lawyer, and the clerk will move the lawyer's name to the bottom of  
191 the roster. If the lawyer represents the respondent without charge or at a reduced  
192 charge based on the respondent's ability to pay, the judge will acknowledge this in the  
193 appointment order. The judge can remove a lawyer from a case.

194 (d) Upon motion of a party or upon the court's own motion, the court may determine  
195 whether the lawyer representing the respondent is a qualified independent advocate. In  
196 making the finding, the judge should consider whether:

197 (d)(1) the lawyer has demonstrated by education and experience proficiency in the  
198 law and procedures of protective proceedings, especially in relation to the complexity of  
199 the case;

200 (d)(2) the lawyer has the knowledge, skill, thoroughness and preparation necessary  
201 to candidly advise and zealously represent the respondent with undivided loyalty under  
202 the Rules of Professional Conduct, including Rule 1.14, Client with Diminished  
203 Capacity;

204 (d)(3) any other relevant factors.

205 **(d) URCP 156. Court visitor.**

206 (a) If a petition to appoint a guardian or conservator or enter a protective order  
207 claims that the respondent is incapacitated, the court may appoint a visitor, with or  
208 without a request by a party or interested person. The visitor must be an individual  
209 qualified to evaluate the respondent's alleged incapacity and functional limitations and  
210 must have no conflict of interest. The visitor must interview the respondent in person. If  
211 the visitor does not speak and understand the respondent's primary language, the court  
212 must appoint an interpreter. To the extent that the respondent is able to understand, the  
213 visitor must:

214 (a)(1) explain to the respondent the substance of the petition, the nature, purpose,  
215 and effect of the proceeding, the respondent's rights at the hearing, the duties of a  
216 guardian or conservator, and the authority that has been requested;

217 (a)(2) determine the respondent's views about the proposed guardian, conservator,  
218 or protective order, the proposed authority and duties of the guardian or conservator,  
219 and the scope and duration of the appointment or protective order;

220 (a)(3) inform the respondent of the right to employ and consult with a lawyer and the  
221 right to a court-appointed lawyer; and

222 (a)(4) inform the respondent that all costs, attorney fees and expenses of the  
223 proceeding will be paid from the respondent's estate.

224 (b) Unless otherwise directed by the court, the visitor must:

225 (b)(1) interview the petitioner and the proposed guardian;

226 (b)(2) visit the respondent's present dwelling and any dwelling in which the  
227 respondent will live if the appointment is made;

228 (b)(3) obtain information from any physician or other person who is known to have  
229 treated, advised, or assessed the respondent's relevant physical or mental condition;  
230 and

231 (b)(4) make any other investigation the court directs.

232 (c) The visitor must promptly file a report in writing with the court. Unless otherwise  
233 directed by the court, the report must include:

234 (c)(1) a summary of functions the respondent cannot manage, can manage without  
235 assistance, and can manage with the assistance of supportive services or benefits,  
236 including appropriate technological assistance;

237 (c)(2) recommendations regarding the appropriateness of an appointment or  
238 protective order, including whether less restrictive means of intervention are available,  
239 and the authority to be granted to the guardian or conservator;

240 (c)(3) a statement of the qualifications of the proposed guardian or conservator;

241 (c)(4) a statement of the respondent's views about the proposed guardian,  
242 conservator, or protective order, the proposed authority and duties of the guardian or  
243 conservator, and the scope and duration of the appointment or protective order;

244 (c)(5) a statement about whether the proposed dwelling meets the respondent's  
245 needs;

246 (c)(6) a recommendation about whether a professional evaluation or further  
247 evaluation is necessary; and

248 (c)(7) any other matters the court directs.

249 **(e) URCP 157. Evaluation of respondent.**

250 (a) If a petition to appoint a guardian or conservator or enter a protective order  
251 claims that the respondent is incapacitated, the court may order a professional  
252 evaluation of the respondent and must order the evaluation if requested by the  
253 respondent. The court should order an evaluation if it is not clear, based on the court's  
254 own assessment or on the visitor's report, that the respondent is incapacitated.

255 (b) If the court orders the evaluation, the respondent must be examined by a  
256 physician, psychiatrist, or other individual appointed by the court who is qualified to  
257 evaluate the respondent's alleged incapacity and functional limitations.

258 (c) The examiner shall promptly file a written report with the court. Unless otherwise  
259 directed by the court, the report must contain:

260 (c)(1) a description of the nature, type, and extent of the respondent's cognitive and  
261 functional limitations;

262 (c)(2) an evaluation of the respondent's mental and physical condition and, if  
263 appropriate, educational potential, adaptive behavior, and social skills;

264 (c)(3) a prognosis for improvement and a recommendation about the appropriate  
265 treatment or habilitation plan;

266 (c)(4) the date of the examination upon which the report is based; and

267 (c)(5) any other matters the court directs.

268 **(f) URCP 158. Presence and rights at hearing**

269 (a) In a protective proceeding, the respondent and the proposed guardian or  
270 conservator shall attend the hearing unless excused by the court for good cause.

271 (b) The respondent may present evidence, subpoena witnesses and documents,  
272 examine witnesses, including the visitor and any court-appointed evaluator, and  
273 otherwise participate in the hearing. The hearing may be held in a location convenient to

274 the respondent and may be closed upon the request of the respondent and a showing  
275 of good cause.

276 (c) Any person may request permission to participate in the proceeding. The court  
277 may grant the request, with or without hearing, upon determining that the respondent's  
278 best interest will be served. The court may attach appropriate conditions to participation.

279 **(g) URCP 159. Minimum qualifications before appointment.**

280 (a) Before an order appointing a guardian or conservator is entered, the proposed  
281 guardian or conservator must disclose any felony or misdemeanor convictions in Utah  
282 or elsewhere.

283 (b) Before an order appointing a guardian or conservator is entered, the proposed  
284 guardian or conservator must file a statement showing satisfactory completion of a  
285 court-approved examination on the responsibilities of a guardian or conservator.

286 (c) This rule does not apply to a professional guardian, professional conservator, the  
287 Office of Public Guardian, or an emergency appointment.

288 **(h) URCP 160. Guardian's management plan.**

289 (a) Within 90 days after appointment, the guardian shall file a management plan  
290 describing the strategies that will be used to implement the court order. The guardian  
291 shall, to the extent reasonable, involve the protected person in developing the plan.  
292 Even if legal consent is not possible, the opinions of the protected person should be  
293 sought.

294 (b) The management plan shall describe:

295 (b)(1) how the rights retained by the protected person will be ensured;

296 (2)(2) the protected person's religious, moral, conscientious, or cultural values that  
297 will guide decisions;

298 (b)(3) how the guardian will implement any restrictions permitted by court order on  
299 the protected person's physical liberty, communications or social activities;

300 (b)(4) the protected person's dwelling and any recommended changes;

301 (b)(5) the health care, personal care, social, vocational, educational and related  
302 services for the protected person;

303 (b)(6) any physical or mental examinations necessary to determine the protected  
304 person's health care needs;

305 (b)(7) the insurance and any other benefits to which the protected person may be  
306 entitled to meet the costs of health care, personal care, social, vocational, educational  
307 and related services;

308 (b)(8) steps to develop the protected person's capacity;

309 (b)(9) the estimated duration of the guardianship;

310 (b)(10) short term and long term goals;

311 (b)(11) any issues, concerns or unmet needs; and

312 (b)(12) if a conservator or health care agent has been appointed, the planned nature  
313 and frequency of communications and the method to be used for resolving disputes.

314 (c) If there is no conservator, the guardian shall include the management plan  
315 required of a conservator in the guardianship management plan or file it separately.

316 (d) The management plan must contain a certificate of whether the guardian  
317 consulted the protected person in developing the plan. The management plan must  
318 contain a certificate that the guardian will exercise the substituted judgment  
319 decisionmaking standard for all circumstances except where the best interest  
320 decisionmaking standard is permitted by law.

321 (e) A management plan must be based on the court order. A management plan  
322 takes effect when approved by the court and continues until the court approves a  
323 replacement plan. A management plan may allow for minor changes without court  
324 approval, but the guardian must request court approval of a substantial change.

325 **(i) URCP 161. Conservator's management plan.**

326 (a) Within 90 days after appointment, the conservator, and if there is no conservator,  
327 the guardian, shall file a management plan describing the strategies that will be used to  
328 implement the court order. The conservator shall, to the extent reasonable, involve the  
329 protected person in developing the plan. Even if legal consent is not possible, the  
330 opinions of the protected person should be sought.

331 (b) The management plan shall describe:

332 (b)(1) current and future expenses and resources;

333 (b)(2) how to meet the protected person's financial needs;

334 (b)(3) how to protect, manage, expend, and distribute the estate assets;  
335 (b)(4) whether assets will need to be sold;  
336 (b)(5) the estimated duration of the conservatorship;  
337 (b)(6) short term and long term goals;  
338 (b)(7) any issues, concerns or unmet needs; and  
339 (b)(8) if a guardian or health care agent has been appointed, the planned nature and  
340 frequency of communications and the method to be used for resolving disputes.

341 (c) The management plan must contain a certificate of whether the conservator  
342 consulted the protected person in developing the plan. The management plan must  
343 contain a certificate that the conservator will exercise the substituted judgment  
344 decisionmaking standard for all circumstances except where the best interest  
345 decisionmaking standard is permitted by law.

346 (d) A management plan must be based on the court order. A management plan  
347 takes effect when approved by the court and continues until the court approves a  
348 replacement plan. A management plan may allow for minor changes without court  
349 approval, but the conservator must request court approval of a substantial change.

350 **(j) URCP 162. Guardian's annual report.**

351 (a) A guardian shall report about the protected person's conditions no later than 60  
352 days after each anniversary of the appointment. The report shall be filed with the court  
353 that made the appointment unless that court orders a change in venue. The reporting  
354 period is yearly from the appointment date unless the court changes the reporting  
355 period. The report may not be filed before the close of the reporting period. For good  
356 cause the court may extend the time for filing the report, but a late filing does not  
357 change the reporting period.

358 (b) The report shall contain sufficient information to put interested persons on notice  
359 of all significant events and transactions during the reporting period. Forms substantially  
360 conforming to the forms produced by the Utah court website are acceptable for content  
361 and format. The court may direct that a report contain information it deems necessary.

362 (c) A report must describe for the reporting period:

363 (c)(1) the guardian's visits with the protected person and activities on the protected  
364 person's behalf;

365 (c)(2) the protected person's living arrangements and the guardian's opinion of the  
366 living arrangements and reasons for change;

367 (c)(3) the protected person's mental and physical condition and educational,  
368 vocational, and social activities or services;

369 (c)(4) the protected person's health care treatment and the guardian's opinion of the  
370 health care and reasons for change;

371 (c)(5) the protected person's cognitive, emotional and everyday functioning and  
372 limitations;

373 (c)(6) the protected person's participation in decisionmaking;

374 (c)(7) the guardian's opinion of the need to continue the guardianship or to change  
375 the management plan; and

376 (c)(8) plans for future care.

377 **(k) URCP 163. Conservator's annual report.**

378 (a) A conservator, and if there is no conservator the guardian, shall report about the  
379 protected person's estate no later than 60 days after each anniversary of the  
380 appointment. The report shall be filed with the court that made the appointment unless  
381 that court orders a change in venue. The reporting period is yearly from the appointment  
382 date unless the court changes the reporting period. The report may not be filed before  
383 the close of the reporting period. For good cause the court may extend the time for filing  
384 the report, but a late filing does not change the reporting period.

385 (a) The report shall contain sufficient information to put interested persons on notice  
386 of all significant events and transactions during the reporting period. Forms substantially  
387 conforming to the forms produced by the Utah court website are acceptable for content  
388 and format. A professional conservator may file its internal accounting. If the protected  
389 person's estate is limited to a federal or state program requiring an annual accounting,  
390 the conservator may file a copy of that accounting. The court may direct that a report  
391 contain information it deems necessary.

392 (b) A report must describe for the reporting period:

393 (b)(1) the conservator's visits with the protected person;

394 (b)(2) the protected person's participation in decisionmaking;

395 (b)(3) the estate assets under the conservator's control and the receipts,  
396 disbursements, and distributions; and

397 (b)(4) the conservator's opinion of the need to continue the conservatorship or to  
398 change the management plan.

399 **(I) Rule 6-501. Reporting requirements for guardians and conservators.**  
400 **(Repeal)**

401 Intent:

402 To establish the requirements sufficient to satisfy the Utah Uniform Probate Code.

403 Applicability:

404 This rule applies to guardians and conservators with the following exceptions:

405 This rule does not apply if the guardian or conservator is the parent of the ward.

406 Paragraph (1) does not apply to the guardian of a minor if the guardianship is limited  
407 to the purpose of attending school.

408 Paragraph (1) does not apply to a conservator licensed under the Title 7, Chapter 5,  
409 Trust Business, to a guardian licensed under §75-5-311(1)(a), or to the Office of Public  
410 Guardian.

411 Paragraphs (6)(A), (6)(B) and (6)(C) do not apply to the guardian of a minor if the  
412 guardianship is limited to the purpose of attending school. A person interested in the  
413 minor may request a report under Utah Code Section 75-5-209.

414 Paragraph (6)(D) does not apply to the guardian of a minor if the minor's estate is  
415 deposited in an account requiring judicial approval for withdrawal or if there is no estate.  
416 A person interested in the minor may request an accounting under Utah Code Section  
417 75-5-209.

418 Statement of the Rule:

419 (1) Before entering an order appointing a guardian or conservator, the court shall  
420 require the guardian or conservator to file a verified statement showing satisfactory  
421 completion of a court-approved examination on the responsibilities of a guardian or  
422 conservator.

423 (2) The guardian shall keep contemporaneous records of significant events in the life  
424 of the ward and produce them if requested by the court. The conservator shall keep  
425 contemporaneous receipts, vouchers or other evidence of income and expenses and

426 produce them if requested by the court. The guardian and conservator shall maintain  
427 the records until the appointment is terminated and then deliver them to the ward, if  
428 there is no successor, to the successor guardian or conservator, or to the personal  
429 representative of the ward's estate.

430 (3) Definitions.

431 (3)(A) "Accounting" means the annual accounting required by Utah Code Section 75-  
432 5-312 and Section 75-5-417 and the final accounting required by Utah Code Section 75-  
433 5-419.

434 (3)(B) "Interested persons" means the ward, if he or she is of an appropriate age and  
435 mental capacity to understand the proceedings, the ward's guardian and conservator,  
436 the ward's spouse, adult children, parents and siblings and anyone requesting notice  
437 under Utah Code Section 75-5-406. If no person is an interested person, then interested  
438 person includes at least one of the ward's closest adult relatives, if any can be found.

439 (3)(C) "Inventory" means the inventory required by Utah Code Section 75-5-418.

440 (3)(D) "Serve" means any manner of service permitted by Utah Rule of Civil  
441 Procedure 5.

442 (3)(E) "Report" means the annual report on the status of the ward required by Utah  
443 Code Section 75-5-209 and Section 75-5-312.

444 (3)(F) "Ward" means a minor or an incapacitated person for whom the court appoints  
445 a guardian or a protected person for whom the court appoints a conservator.

446 (4) Subject to the requirements of Paragraph (5):

447 (4)(A) forms substantially conforming to the forms produced by the Utah court  
448 website are acceptable for content and format for the report and accounting filed under  
449 the Utah Uniform Probate Code;

450 (4)(B) a corporate fiduciary may file its internal report or accounting; and

451 (4)(C) if the ward's estate is limited to a federal or state program requiring an annual  
452 accounting, the fiduciary may file a copy of that accounting.

453 (5) The report, inventory and accounting shall contain sufficient information to put  
454 interested persons on notice of all significant events and transactions during the  
455 reporting period. Compliance with Paragraph (4) is presumed sufficient, but the court

456 may direct that a report or accounting be prepared with content and format as it deems  
457 necessary.

458 ~~(6)(A) The guardian shall file with the appointing court a report on the status of the~~  
459 ~~ward no later than 60 days after the anniversary of the appointment. The guardian shall~~  
460 ~~file the report with the court that appointed the guardian unless that court orders a~~  
461 ~~change in venue under Utah Code Section 75-5-313. The reporting period is yearly from~~  
462 ~~the appointment date unless the court changes the reporting period on motion of the~~  
463 ~~guardian. The guardian may not file the report before the close of the reporting period.~~  
464 ~~For good cause the court may extend the time for filing the report, but a late filing does~~  
465 ~~not change the reporting period.~~

466 ~~(6)(B) The guardian shall serve a copy of the report on all interested persons with~~  
467 ~~notice that the person may object within 30 days after the notice was served.~~

468 ~~(6)(C) If an interested person objects, the person shall specify in writing the entries~~  
469 ~~to which the person objects and state the reasons for the objection. The person shall file~~  
470 ~~the objection with the court and serve a copy on all interested persons. If an objection is~~  
471 ~~filed, the judge shall conduct a hearing. The judge may conduct a hearing even though~~  
472 ~~no objection is filed. If the judge finds that the report is in order, the judge shall approve~~  
473 ~~it.~~

474 ~~(6)(D) If there is no conservator, the guardian shall file the inventory and accounting~~  
475 ~~required of a conservator.~~

476 ~~(7)(A) Within 90 days after the appointment, the conservator shall file with the~~  
477 ~~appointing court the inventory required by Utah Code Section 75-5-418. For good cause~~  
478 ~~the court may extend the time for filing the inventory.~~

479 ~~(7)(B) The conservator shall serve a copy of the inventory on all interested persons~~  
480 ~~with notice that the person may object within 30 days after the notice was served.~~

481 ~~(7)(C) If an interested person objects, the person shall specify in writing the entries~~  
482 ~~to which the person objects and state the reasons for the objection. The person shall file~~  
483 ~~the objection with the court and serve a copy on all interested persons. If an objection is~~  
484 ~~filed, the judge shall conduct a hearing. The judge may conduct a hearing even though~~  
485 ~~no objection is filed. If the judge finds that the inventory is in order, the judge shall~~  
486 ~~approve it.~~

487 ~~(8)(A) The conservator shall file with the appointing court an accounting of the estate~~  
488 ~~of the ward no later than 60 days after the anniversary of the appointment. The~~  
489 ~~conservator shall file the accounting with the court that appointed the conservator~~  
490 ~~unless that court orders a change in venue under Utah Code Section 75-5-403. The~~  
491 ~~reporting period is yearly from the appointment date unless the court changes the~~  
492 ~~reporting period on motion of the conservator. The conservator may not file the~~  
493 ~~accounting before the close of the reporting period. For good cause the court may~~  
494 ~~extend the time for filing the accounting, but a late filing does not change the reporting~~  
495 ~~period.~~

496 ~~(8)(B) The conservator shall serve a copy of the accounting on all interested persons~~  
497 ~~with notice that the person may object within 30 days after the notice was served.~~

498 ~~(8)(C) If an interested person objects, the person shall specify in writing the entries~~  
499 ~~to which the person objects and state the reasons for the objection. The person shall file~~  
500 ~~the objection with the court and serve a copy on all interested persons. If an objection is~~  
501 ~~filed, the judge shall conduct a hearing. The judge may conduct a hearing even though~~  
502 ~~no objection is filed. If the judge finds that the accounting is in order, the judge shall~~  
503 ~~approve it.~~

504 ~~(9)(A) The conservator shall file with the court a final accounting of the estate of the~~  
505 ~~ward with the motion to terminate the appointment.~~

506 ~~(9)(B) The conservator shall serve a copy of the accounting on all interested persons~~  
507 ~~with notice that the person may object within 30 days after the notice was served.~~

508 ~~(9)(C) If an interested person objects, the person shall specify in writing the entries~~  
509 ~~to which the person objects and state the reasons for the objection. The person shall file~~  
510 ~~the objection with the court and serve a copy on all interested persons. If an objection is~~  
511 ~~filed, the judge shall conduct a hearing. The judge may conduct a hearing even though~~  
512 ~~no objection is filed. If the judge finds that the accounting is in order, the judge shall~~  
513 ~~approve it.~~

## **(20) Evaluation Report Forms**

My Name \_\_\_\_\_  
Address \_\_\_\_\_  
City, State, Zip \_\_\_\_\_  
Phone \_\_\_\_\_  
E-mail \_\_\_\_\_

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In the District Court of Utah

\_\_\_\_\_ Judicial District \_\_\_\_\_ County

Court Address \_\_\_\_\_

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In the matter of  
\_\_\_\_\_  
(Respondent)

**Report on Clinical Evaluation of Respondent**

Case Number \_\_\_\_\_

Judge \_\_\_\_\_

(This is a private record. CJA 4-202.02.)

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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 this person on \_\_\_\_\_ (date) for the purpose of assessing capacity. On that date I spent approximately \_\_\_\_\_ minutes with this person.

My general knowledge of this person, who I last saw on \_\_\_\_\_ (date). On that date I spent approximately \_\_\_\_\_ minutes with this person.

Review of this person's  medical records  mental health records.

Discussions with this person.

Discussions with healthcare professionals involved in this person's care.

Discussions with this person's family, friends or caregivers.

Tests that I conducted.  Tests the results of which I am familiar.

Describe Test	Date Conducted

Other Source (describe)

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(1)(B) This person should be re-evaluated in \_\_\_\_\_ days.

**(2) Physical Condition**

(2)(A) This person's overall physical health is

Excellent  Good  Fair  Poor

(2)(B) List your physical diagnoses.

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(2)(C) Respondent's Physicians

Name	Purpose	Phone Number	Address

**(3) Mental Condition**

(3)(A) This person's overall mental health is

Excellent  Good  Fair  Poor

(3)(B) This person'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).

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(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

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(3)(E) Are there mitigating factors that cause this person 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

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**(4) History.** Focusing on the diagnoses most affecting functioning, describe this person'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?)

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**(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					<b>(6) Cognitive Functioning</b>			
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-spatial 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

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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

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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				



**(9) Values, Preferences and Patterns**

(9)(A) What is this person's understanding of the concept of a guardianship?

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(9)(B) Does this person want a guardian?  Yes  No

(9)(C) If yes, who does this person want to be guardian?

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(9)(D) Does this person prefer that decisions be made alone or with others? With whom?

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(9)(E) Where does this person want to live? With whom?

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(9)(F) What is important to this person in a home environment?

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(9)(G) What makes life meaningful for this person?

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(9)(H) What have been this person's most valued relationships?

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(9)(I) What over-arching concerns drive this person'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.)

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(9)(J) What are this person's important religious beliefs or cultural traditions?

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(9)(K) What are this person's strong likes, dislikes, hopes, and fears?

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(9)(L) What specific preferences has this person expressed regarding decisions about personal care, financial, medical, or living situation?

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(9)(M) What have been this person's most valued relations with family and friends? Are they still involved in this person's life?

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(9)(N) How do this person's social skills, adaptive behavior, and potential for education increase or decrease current or future functioning?

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(9)(O) What have been this person's most valued work, activities, interests and hobbies? Is s/he still doing them?

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**(10) Risk of Harm and Level of Supervision Needed**

(10)(A) Is there a risk of serious harm to or by this person?

Yes  No  Uncertain

(10)(B) Has this person been the victim of abuse or neglect?

Yes  No  Uncertain

(10)(C) Describe the significant risks that this person faces and whether these risks are due to this person's condition and/or to another person harming or exploiting him/her.

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(10)(D) Describe the social factors that decrease or increase the risk. (e.g., people, supports, environment, etc.)

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(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 this person 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 this person undue distress?**

Yes  No  Uncertain

If no, how much will this person understand and what accommodations are necessary to help participation? If yes, describe the supporting facts.

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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 \_\_\_\_\_

<b>Certificate of Service</b>			
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)

**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 this person on \_\_\_\_\_ (dates) for the purpose of assessing capacity. On those date(s) I spent a total of approximately \_\_\_\_\_ hours with this person.

Reports by

Respondent

Office of Public Guardian

Healthcare Professional

Family Member

Proposed Guardian

Discussions with healthcare professionals involved in this person's care.

Discussions with this person'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) This person should be re-evaluated in \_\_\_\_\_ days.

**(2) Information from the Respondent (Values, Preferences and Patterns)**

(2)(A) What is this person's understanding of the concept of a guardianship?

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(2)(B) Does this person want a guardian?  Yes  No

(2)(C) If yes, who does this person want to be guardian?

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(2)(D) Does this person prefer that decisions be made alone or with others? With whom?

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(2)(E) Where does this person want to live? With whom?

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(2)(F) What is important to this person in a home environment?

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(2)(G) What makes life meaningful for this person?

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(2)(H) What have been this person's most valued relationships?

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(2)(I) What over-arching concerns drive this person'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.)

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(2)(J) What are this person's important religious beliefs or cultural traditions?

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(2)(K) What are this person's strong likes, dislikes, hopes, and fears?

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(2)(L) What specific preferences has this person expressed regarding decisions about personal care, financial, medical, or living situation?

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(2)(M) What have been this person's most valued relations with family and friends? Are they still involved in this person's life?

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(2)(N) How do this person's social skills, adaptive behavior, and potential for education increase or decrease current or future functioning?

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(2)(O) What have been this person's most valued work, activities, interests and hobbies? Is s/he still doing them?

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**(3) Information from the Proposed Guardian**

(3)(A) What are the Respondent's current circumstances, lifestyle, level of functioning, and abilities?

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(3)(B) What were the Respondent's historical circumstances, lifestyle, level of functioning, and abilities?

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(3)(C) What does the Respondent think of the proposed guardianship?

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(3)(D) What, if anything, has the Respondent said about developments or scenarios similar to the present one?

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(3)(E) What is the proposed guardian's opinion about the Respondent's risk of harm and level of supervision needed?

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(3)(F) What is the proposed guardian's opinion about means to enhance the Respondent's capacity?

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**(4) Evaluator's Observations About the Respondent**

(4)(A) Describe the nature and extent of this person's disabilities or declining abilities.

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(4)(B) Describe any significant or sudden changes in baseline functioning.

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(4)(C) Describe this person's housing circumstances.

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(4)(D) Describe the assistance that this person has available.

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(4)(E) For each contact with this person, where and under what circumstances did you meet?

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(4)(F) How easy or difficult was it to arrange each meeting?

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(4)(G) What did you observe (see, hear, smell, feel) about this person's appearance and environment.

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(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.

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Axis 2. Personality disorder, mental retardation (chronic and persistent conditions).

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Axis 3. General medical condition and problems.

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Axis 4. Psychosocial and environmental problems.

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Axis 5. Current Global Assessment of Functioning Scale.

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(4)(I) Describe the results of any other tests you administered.

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**(5) Physical Condition**

(5)(A) This person's overall physical health is

Excellent  Good  Fair  Poor

(5)(B) Respondent's Physicians

Name	Purpose	Phone Number	Address

**(6) Mental Condition**

(6)(A) This person'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

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(6)(C) Are there mitigating factors that cause this person 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

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**(7) History.** Focusing on the diagnoses most affecting functioning, describe this person'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?)

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**(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					<b>(9) Cognitive Functioning</b>			
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-spatial 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

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Overall Impairment					<b>(10) Emotional and Psychiatric Functioning</b>			
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

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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				



**(12) Financial and Legal Summary**

(12)(A) This person is

- Financially secure.
- Managing, but there is little or no money for extras.
- Struggling to pay expenses.
- Unable to meet expenses.

(12)(B) Has this person 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 this person been the victim of abuse, neglect or exploitation?

- Yes    No    Uncertain

(13)(C) Describe the significant risks that this person faces and whether these risks are due to this person's condition and/or to another person harming or exploiting him/her.

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(13)(D) Describe the social factors that decrease or increase the risk.(e.g., people, supports, environment, social isolation, etc.)

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(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 this person 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?

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(14)(C) Based on your knowledge of case, what objectives (behaviorally specific, time specific, action orientated, measurable) do you recommend?

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(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?

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**(15) Would attending the hearing cause this person undue distress?**

Yes  No  Uncertain

If no, how much will this person understand and what accommodations are necessary to help participation? If yes, describe the supporting facts.

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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 \_\_\_\_\_