Title 11.88 RCW
Guardianship

GUARDIAN AD LITEM *HANDBOOK*

2012 EDITION

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

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

The Title 11 RCW

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

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

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

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

Preface to 2012 Edition of
The Title 11 RCW
Guardian ad Litem *Handbook*

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

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

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

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

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

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

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

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

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

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

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

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CHAPTER I
OVERVIEW AND DUE PROCESS

A. OVERVIEW

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

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

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

This introduction serves as a brief overview to this Title 11.88 Guardian ad Litem Handbook. Matters discussed briefly will be covered in greater detail in the chapters that follow. The first nine chapters of this book are organized chronologically, to follow the sequence of a GAL's duties as set forth in the typical *Order Appointing Guardian ad Litem*. General, important, practical information for GALs, such as courtroom demeanor, petitions for instructions, and procedures for payment of the GAL can be found in Chapter X. Additional training material will be provided to GALs each year at the second day training session.

What is the Statutory Process By Which the Court Appoints a Guardian?
Guardianship has traditionally been considered an extension of the *parens patriae* authority of the state. The state, in protecting its quasi-sovereign interests in the health, comfort, and welfare of its people, must provide care for those who cannot care for themselves. *Black's Law Dictionary, Sixth Edition*. Beginning in 1975, the Washington State Legislature enacted laws to provide more protection for the rights of the Alleged Incapacitated Person ("AIP").

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

> The legislature recognizes that people with incapacities have unique abilities and needs, and that some people with incapacities cannot exercise their rights or provide for their basic needs without the help of a guardian. However, their

> liberty and autonomy should be restricted through the guardianship process only to the *minimum extent necessary* to adequately provide for their own health and safety, or to adequately manage their financial affairs.

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

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

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

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

GALR Rule 2. The full text of RCW 11.88 and the GALR can be found in Appendix A to this handbook. Since statutes may be amended from time to time, every GAL should be familiar with the current statutory requirements and have access to updates. The full text of the guardianship statute can be found online, see, *e.g.*, www.legalwa.org. The Guardian ad Litem Rules (GALR) can be found at www.courts.wa.gov/court_rules/, selecting rules for superior court then selecting GALR.

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

The GAL must select a qualified professional to prepare a medical or psychological report and see that the report is prepared by the selected professional in a timely manner. *See* Chapter IV. (No medical report is required if the sole reason for guardianship is minority.) The GAL should meet with the proposed guardian and others who may have relevant knowledge about the AIP. In order for the GAL to evaluate the proposed guardian, the GAL must be familiar with the statutory duties and limitations of a guardian

contained in RCW 11.92. *See* Chapter V and *see* Appendix A for a copy of RCW 11.92. The GAL must take special care in circumstances in which the AIP may have been subject to abuse by others and is a "vulnerable adult". *See* Chapter VI.A. The role of the GAL and the requirements may also be different if the guardianship action involves a minor. *See* Chapter VI.B. The GAL must determine whether there are any alternatives to guardianship available to protect the AIP that are less restrictive than a guardianship. *See* Chapter VII.

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

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

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

If there is a contest to the petition or to the GAL's recommendations, the GAL may ask the court to send the parties to mediation. RCW 11.88.090(2). Alternatively, the court may set a trial date. Basic information concerning contested guardianships and the GAL's role therein is provided in Chapters IX and X. The AIP has the right to trial on the issue of capacity and may request a jury decide that issue. Other parties to the guardianship (Petitioner, Counter-Petitioner) may also seek a trial on issues such as the guardian-designee. If a trial is conducted, the GAL will likely be called as a witness.

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

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

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

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

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

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

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

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

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

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

B. DUE PROCESS RIGHTS OF THE ALLEGED INCAPACITATED PERSON

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

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

Venue and Jurisdictional Requirements

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

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

11.88.030(4). Without proper service of the petition and notice on the AIP the court lacks jurisdiction to hear the case.

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

Other Procedural Due Process Requirements Under Title 11.88

a. Petitions must be heard within 60 days unless an extension is granted for good cause shown. The request for the extension must occur before the 60 days has expired. RCW 11.88.030 (5).

b. At least ten (10) days prior to any hearing, notice of the hearing must be given by registered or certified mail, return receipt requested or by personal service to:

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

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

Statutory Due Process Rights of the Alleged Incapacitated Person

The AIP has the following rights under RCW 11.88:

a. To be represented by a lawyer of his or her own choosing or to have the court appoint an attorney if payment would result in a substantial hardship. RCW 11.88.045(1)(a).

b. To have a jury decide whether or not the AIP needs a guardian. RCW 11.88.045(3).

c. To be present in court and testify when the guardianship hearing is held. If the AIP cannot come to court, the court may remove itself to the residence of the AIP. RCW 11.88.040.

d. To have the GAL replaced. RCW 11.88.090(3)(b).

e. To select the health care professional to prepare the required medical report. RCW 11.88.045(4).

f. To have the GAL present at all hearings on the petition unless all parties provide a written waiver of the requirement to appear. RCW 11.88.090(12).

g. To have special assistance if disabled under the Americans with Disability Act. 42 USC 12101.

h. To expect freedom from discrimination based on a disability. RCW 49.60 and the Americans with Disability Act.

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

1. The GAL has the authority to consent to *emergency life-saving* medical services when the AIP is unable to consent. RCW 11.88.090(8).

2. The GAL has the authority to move for temporary relief under RCW 7.40 to protect the AIP from abuse, neglect, abandonment or exploitation. RCW 11.88.090(9).

3. The GAL has the authority to address emergency needs of the AIP. RCW 11.88.090(9).

If the GAL has any concern regarding his or her authority to act, the GAL should seek instruction from the court. *See* Chapter X. Note: Expediting the guardianship hearing is often a good solution when the AIP will need a series of decisions made urgently. Another possibility is to locate someone with authority under the informed consent statute to provide consent for the incapacitated person. RCW 7.70.065. *See* Chapter VII.

What is Substantive Due Process? The intent of the legislature is to protect the liberty and autonomy of all people of this state and to enable them to exercise their rights under the law to the maximum extent consistent with the capacity of each person. RCW 11.88.005. Substantive due process requires the following:

1. A person may be deemed incapacitated as to person **when the court determine**s the individual has a significant risk of personal harm based upon a demonstrated inability to adequately provide for nutrition, health, housing, or physical safety. RCW 11.88.010(1)(a).

2. A person may be deemed incapacitated as to estate **when the court determines** the individual has a significant risk of financial harm based upon a demonstrated

inability to adequately manage property or financial affairs.
RCW 11.88.010(1)(b).

3. The court must be presented with a medical report. RCW 11.88.045(4). A copy of the medical report must be filed unless the basis of the guardianship is minority. RCW 11.88.045(4)(i). A determination of incapacity, however, is a legal not a medical decision. Age, eccentricity, poverty, or medical diagnosis alone is not enough to justify a finding of incapacity. RCW 11.88.010(1)(c).

4. In a contested case, the petitioner must prove by clear, cogent, and convincing evidence that the person is at risk of harm to person and/or estate.
RCW 11.88.045(3).

5. The court may find that an incapacitated person has some ability to manage in certain specific areas and the court may appoint a limited guardian. **The court shall impose only such specific limitations and restrictions on an incapacitated person as the court finds necessary for the person's protection and assistance. RCW 11.88.010(2).**

6. The court must state the period of time for which a limited guardianship is applicable. RCW 11.88.010(2).

7. Persons who are developmentally disabled, impaired by chronic alcoholism or drug abuse, or suffering from dementia shall not be detained for evaluation and treatment or judicially committed unless such condition causes a person to be gravely disabled or there is the likelihood of serious harm. RCW 71.05.040.

TIMELINE SUMMARY FOR GUARDIANS AD LITEM

1. Within five (5) days after notice of appointment, the GAL shall serve on the parties and file with the court a Statement of Qualifications. RCW 11.88.090 (3)(b).

2. Within three (3) days of the later of service or filing of the GAL statement, any party may set a hearing and file and serve a motion to show cause why the GAL should be removed. *Id.*

3. The GAL should meet and consult with the AIP as soon as practicable after being appointed. RCW 11.88.090(5)(a).

4. Within five (5) court days after meeting the AIP, the GAL shall advise the court of the need to appoint an attorney for the AIP. RCW 11.88.090(5)(g).

5. As soon as possible after appointment, the GAL should select a professional to prepare the required medical/psychological report, RCW 11.88.090(5)(b); meet with the proposed guardian, RCW 11.88.090(5)(c); interview and consult others, as needed, RCW 11.88.090(5)(d), GALR (g); and investigate alternatives to guardianship. RCW 11.88.090(5)(e).

6. Forty-five (45) days after notice of commencement of the guardianship proceeding and at least fifteen (15) days before hearing on the underlying petition, the GAL must file his or her report. Exception: The foregoing applies unless an extension or reduction of time has been granted by the court for good cause. RCW 11.88.090(5)(f).

7. If the hearing does not occur within sixty (60) days of filing the petition, the GAL should file an interim report. If the interim report contains confidential information, it should be filed under seal. Thereafter, the GAL should file an interim report each month until the hearing on the petition takes place. *Id.*

CHAPTER II
GUARDIAN AD LITEM STATEMENT OF QUALIFICATIONS

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

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

(A) Level of formal education;

(B) Training related to the GAL's duties;

(C) Number of years' experience as a GAL;

(D) Number of appointments as a GAL and the county or counties of appointment;

(E) Criminal history, as defined in RCW 9.94A.030:

> (13) "Criminal history" means a list of a defendant's prior convictions and juvenile adjudications, whether in this state, in federal court, or elsewhere.
>
> (a) The history shall include, where known, for each conviction (i) whether the defendant has been placed on probation and the length and terms thereof; and (ii) whether the defendant has been incarcerated and the length of incarceration.
>
> Note: Convictions include juvenile offenses for sex offenses and shall also include other prior convictions in juvenile court if the conviction was for an offense which is a felony or a serious traffic offense; the crime occurred at age fifteen or older; and, in juvenile class B and C felonies or serious traffic offenses, the crime was committed when less than twenty-three years of age for which a sentence was imposed.

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

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

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

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

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

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

An example of a Statement of Qualifications and other forms useful for the GAL may be found at http://www.kingcounty.gov/courts/scforms/guardianship.aspx. The forms on this site are for illustrative purpose only and not to be construed as the mandatory forms to use unless so stated.

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

PRACTICE TIPS

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

CHAPTER III
INTERVIEWING THE ALLEGED INCAPACITATED PERSON AND UNDERSTANDING IMPAIRMENTS

A. INTERVIEWING THE ALLEGED INCAPACITATED PERSON

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

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

a. The GAL must inform the AIP of his/her rights and determine which, if any, the AIP chooses to exercise. Those rights are listed in the Notice of Guardianship Proceeding. The GAL must inform the AIP of the substance of the petition and the following rights: to contest the petition, to be represented by a lawyer of the AIP's own choosing at public expense if the AIP cannot afford one or it would be a financial hardship, to request a jury to decide whether the AIP needs a guardian, to be present in court and to testify at any hearing regarding the guardianship petition, and to request that the court replace the GAL.

b. The GAL must ascertain and report the AIP's reaction to the petition, to the specific guardian-nominee, to the right to a jury trial, to the right to independent counsel.

c. The GAL must be prepared to discuss the rights that an AIP might lose. Many of these are stated in the Notice of Guardianship Petition. An AIP may lose the right to:

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

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

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

a. The GAL should be able to explain the role of the GAL, *i.e.*, to investigate, evaluate, and make a recommendation to the court about what is in the AIP's best interests. The GAL should explain that there is no guarantee of confidentiality between the GAL and the AIP or any party. The GAL should explain that any information imparted to the GAL that will assist the Commissioner or Judge in making a ruling may be included in the GAL's report. The GAL should explain that the Commissioner or Judge is the final decision-maker. This is often a good place to start the interview. (Note: The AIP's right to contest the guardianship and have a jury determine the issue of capacity should be discussed later in the interview.)

b. The GAL should be able to explain the guardianship process to the AIP. Be prepared to describe the steps of a guardianship proceeding: the petition, appointment of GAL and GAL responsibilities--interviewing the AIP, obtaining a medical report, interviewing others, interviewing the nominee guardian, researching less restrictive alternatives, writing a report; and finally the hearing or trial.

c. The GAL should be prepared to describe what will happen in the courtroom. The AIP may never have been in court before. Any information the GAL can provide will make the AIP more comfortable with the process. Be able to describe a "hearing" and the difference between a commissioner and a judge and explain the meaning of "*ex parte*", etc.

3. Information to be obtained from the Alleged Incapacitated Person

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

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

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

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

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

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

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

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

b. The GAL should ask questions to determine if the AIP is oriented as to person, place and time.

c. The GAL should find out if the AIP is a Veteran. The Department of Veterans Affairs must be notified of all guardianship proceedings involving veterans.

d. The GAL should find out if the AIP has any immediate family and any friends or other family who might be contacted in the guardianship investigation.

e. The GAL should find out if the AIP has made alternative arrangements for assistance, such as durable powers of attorneys or trusts.

f. The GAL should ask the AIP if he or she has a preference for who may serve as guardian and should ask about the AIP's relationship with the proposed guardian.

g. The GAL should ask the AIP if he or she votes and when he or she last voted.

4. Potential Barriers to Comprehension

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

b. **English as a second language.** The AIP may not speak English as his/her first language or may not speak English at all. In some cases, a family member or friend may be able to translate. There are reasons, however, for your interview to be private and free of potential influence. One solution may be to use a professional interpreter. Most counties will have an Office of Interpreter Services as part of the court. Court interpreters are able to provide free translation services when there is a financial hardship. Note: Interpreters in certain languages must be court certified, so using a family member to translate may not be possible at the guardianship hearing. When a court interpreter is needed, the GAL should petition the court for instruction regarding payment of the interpreter's fee. *See* Chapter X.

c. **Slang and idiom.** Even among native English speakers, there are different ways to express an idea. A GAL should avoid slang and idiom whenever possible. If the GAL is unsure about a word or phrase used by the AIP, ask clarifying questions to confirm the interpretation.

d. **Inability to communicate verbally.** Some AIPs will be unable to communicate verbally. If the AIP is able to use sign language, an interpreter may be necessary. Some AIPs are able to communicate in writing. Some AIPs may have cards or boards that enable them to respond to questions.

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

e. **Inability to hear or see.** Sometimes communication is hampered by the AIP's poor hearing. If the AIP is speaking loudly, this may be an indication of partial deafness. Ask whether the AIP uses a hearing aid and whether it is in. If the AIP's vision is poor, he or she may not have been able to read any of the guardianship documents, and the GAL may have to start by explaining what is in the documents. Sometimes people living in nursing homes have lost or damaged their hearing aids or glasses and have not had them replaced.

f. **Diversity issues**. Even the most conscientious GAL must take special care to avoid making decisions that are influenced by cultural bias or by personal values. In completing an objective investigation and making appropriate recommendations, a GAL must recognize his or her own biases, which can be based on race, ethnicity, religion, lifestyle, socioeconomic standing, subculture, gender, age, disability, and education, among others. These biases can impair or skew the GAL's objective assessment.

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

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

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

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

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

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

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

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

B. UNDERSTANDING COMMON CAUSES OF IMPAIRED CAPACITY

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

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

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

Dementia

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

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

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

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

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

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

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

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

Mental Illness/Mental Disorders

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

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

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

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

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

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

> **Panic Disorder**: This disorder is characterized by recurrent, unexpected panic attacks, which are brief episodes of intense fear with symptoms such as racing pulse, shortness of breath, and trembling.
>
> **Post Traumatic Stress Disorder**: Individuals who have been diagnosed with post traumatic stress disorder find themselves re-experiencing an extremely traumatic event to which they have been exposed either directly (e.g., war-time combat) or indirectly (e.g., witnessing a murder). In the aftermath, the affected individual avoids situations or people that may trigger unwanted memories. Additional symptoms may include insomnia, angry outbursts, and impaired concentration.
>
> **Obsessive-Compulsive Disorder**: This disorder is identified by obsessions, which focus on recurrent, persistent thoughts and impulses, and compulsions, which are repetitive behaviors resulting from these obsessions. Hoarding behaviors, or pathological collecting, such as accumulating stacks of old newspapers that almost fill an entire room in the house or saving innumerable jars and cans so that access to the household is nearly blocked, can be evidence of an obsessive compulsive disorder.

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

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

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

> Mood Impairment: Patients describe feeling low, blue, uninterested in previously enjoyed activities, hopelessness, helplessness, apathy. They may exhibit poor self-care, poor work performance with alcohol and/or drug abuse for purposes of self-medication.
>
> Thinking Impairment: Includes confusion, decreased concentration and memory, rumination, poor problem solving, recurrent thoughts of death or suicide.
>
> Physical Impairment: Change in appetite, increased or decreased sleep, low energy and fatigue, agitation or reduced motor activity, increased physical complaints.

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

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

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

disorder is similar, but is remarkable in the inclusion of depressive or manic symptoms in addition to the above.

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

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

> A disability attributable to mental retardation, cerebral palsy, epilepsy, autism, or another neurological or other condition of an individual found by the secretary [of the Department of Social and Health Services] to be closely related to mental retardation or to require treatment similar to that required for individuals with mental retardation, which disability originates before the individual attains age eighteen, which has continued or can be expected to continue indefinitely, and which constitutes a substantial handicap to the individual.

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

Common Developmental Disabilities Include:

Autism. Autism refers to a condition in which a person exhibits some or all of the following characteristics from an early age: extreme withdrawal, communication problems (delayed or absent speech, unusual speech rhythms), unusual way of relating to surrounding people and things, and repetitive movements (hand twisting, prolonged rocking, spinning or head banging). Autism is often associated with mental retardation,

but not all autistic persons are mentally retarded. In fact, some have unusual talents in music, math, or activities involving spatial relationships such as puzzles.

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

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

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

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

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

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

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

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

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

Traumatic Brain Injury. Traumatic brain injury ("TBI") refers to a sudden insult or damage to the brain or its coverings that results when the head is hit, strikes a stationary object, or is shaken violently (as in some whiplash injuries), i.e., the injury is caused by an external physical force. The brain itself may or may not be penetrated from the outside. When the brain is penetrated from the outside (e.g., a bullet wound), the injury is called an open head injury ("OHI"). Closed head injury ("CHI") usually results when the brain itself is not penetrated but is violently shaken within the skull. The injury may result in temporary or permanent impairment.

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

TBI impairments are grouped into three major categories:

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

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

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

Suggested Ways to Communicate with an Individual with TBI

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

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

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

and sober. Recovering opiate addicts may need to continue in an opiate dependency treatment program for an extended period of time to take methadone or a similar drug to maintain their recovery.

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

> Mental retardation is often associated with other conditions of the brain or central nervous system that result in hearing or visual impairments or impairments of physical coordination such as cerebral palsy.
>
> People may have a "dual diagnosis," which typically refers to a diagnosis of mental illness and substance abuse, but which also may refer to a diagnosis of mental retardation and emotional disability or mental illness, or of mental retardation accompanied by challenging behaviors.
>
> Traumatic injuries, strokes, and Parkinson's disease may produce sensory and physical disabilities as well as mental disabilities.
>
> Schizophrenia may occur in a person who also happens to be deaf, blind, physically handicapped, or mentally retarded.

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

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

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

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

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

CHAPTER IV
THE MEDICAL REPORT

Filing of a medical report: A Prerequisite to Appointment of Guardian. In most cases, RCW 11.88.045 and .090 require the GAL to obtain a written report ("medical report") about the AIP from a licensed physician, a licensed or certified psychologist, or an advanced registered nurse practitioner ("ARNP"). A GAL is not required to obtain a Medical report when the sole basis for the petition is minority. A GAL also may not be required to obtain a medical report if appointed for a person who has already been adjudicated as incapacitated.

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

a) The name and address of the examining physician, psychologist or advanced registered nurse practitioner;

b) The education and experience of the physician, psychologist or advanced registered nurse practitioner pertinent to the case;

c) The dates of examinations of the alleged incapacitated person;

d) A summary of the relevant medical, functional, neurological or mental health history of the alleged incapacitated person as known to the examining physician, psychologist, or advanced registered nurse practitioner;

e) The findings of the examining physician, psychologist, or advanced registered nurse practitioner as to the condition of the alleged incapacitated person;

f) Current medications;

g) The effect of current medications on the alleged incapacitated person's ability to understand or participate in the guardianship proceedings;

h) Opinions on the specific assistance the alleged incapacitated person needs;

i) Identification of persons with whom the physician, psychologist, or advanced registered nurse practitioner has met or spoken regarding the alleged incapacitated person.

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

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

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

It is helpful for the GAL to include in his or her initial letter to the examiner a copy of the *Atkins* decision or a reference to it. Hopefully, reference to this decision will address any concerns about the privilege the examiner may have.

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

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

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

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

Among other things, it is helpful that the Report specify whether the examiner is the AIP's treating physician and to summarize the history of the relationship between the physician and patient. It is also helpful for the examiner to include references to or

copies of the opinions provided by any specialists (such as psychiatrists, physical or occupational therapists, etc.) who have treated the AIP.

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

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

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

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

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

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

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

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

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

- Immediately after appointment, ensure that care providers, family members, or others make arrangements for the AIP to visit with the examining physician, psychologist, or ARNP.
- Promptly send the physician, psychologist, or ARNP a respectful letter describing the guardianship process, stressing the critical importance of the medical report and requesting the professional to prepare the Report.
- Provide a deadline for furnishing the Report well in advance of the scheduled hearing, since the GAL report should be circulated and filed at least 14 days prior to the hearing on the Petition seeking appointment of a guardian.
- Send a form for the health care provider to fill out so that the report will cover each of the topics necessary. Model Medical/Psychological Reports are available online and can be downloaded and printed with the caption for the guardianship and sent to the health care provider.
  The model form for King County is at:
  http://www.kingcounty.gov/courts/scforms/guardianship.aspx
  and the one for Spokane County is at:
  http://www.spokanecounty.org/superiorcourt/content.aspx?c=1132
- Check in with the physician's nurse or administrative assistant before sending the letter and medical report form and maintain contact with staff at the physician's office.

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

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

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

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

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

Sealing the Report to Protect Privacy. The medical report may contain highly sensitive and sometimes embarrassing information. Guardianship files are open and available to the public (both at the courthouse and increasingly through remote, electronic means). GR 22(f) states that the medical report will be treated as a "Personal Health Care Record" and be automatically sealed by the clerk when filed with a cover sheet. (The cover sheets are available at each local Clerks' Office.) GR 22(b)(3) defines "Personal Health Care Record" as any record or correspondence that contains health care information that…relates to the past, present, or future physical or mental health condition of an individual. Only the cover page will be available for public viewing. (In addition, GR 31 requires that certain financial and other types of information, including names of minor children, be redacted from court filings unless necessary or otherwise ordered by the Court.) The parties to the guardianship action will have access to the sealed medical report, but the general public will not. Different counties may use a variety of methods for filing documents under seal. The GAL must check the relevant county's local rules and procedures for filing sealed documents.

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

CHAPTER V
FURTHER INVESTIGATION

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

This chapter covers the following:

1. Basic information about the qualifications and duties of a guardian and the factors that determine the "suitability" of any guardian;

2. Guidance on interviewing the proposed guardian, the Petitioner, and other involved persons to evaluate the need for a guardianship for the AIP and the suitability of the proposed guardian for that AIP;

3. A discussion of the extent to which a GAL may, or should review the AIP's health and financial records;

4. An overview of the criteria and procedures for certification and discipline of Certified Professional Guardians.

During all parts of the GAL's investigation and other activities, the GAL must be mindful of the Guardian ad Litem Rules (GALRs) in general. It is important for the GAL to inform all individuals contacted of the role of the GAL in the case and advise that any information obtained may become part of the court record. GALR 2(k). Subsections of GALR 2 also require that the GAL treat all individuals with respect, courtesy, fairness and good faith; maintain independence, objectivity and the appearance of fairness; and avoid any conflict of interest or even the appearance of a conflict of interest.

1. Qualifications, Duties, Suitability of a Guardian.

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

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

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

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

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

Guardian of the Person. The guardian of the person acts on behalf of the incapacitated person ("IP") regarding personal care, including medical decisions to the extent authorized by the order appointing the guardian. The guardian of the person must assess the IP's physical, mental, and emotional needs and the person's ability to perform or assist in activities of daily living and then develop and file with the court a personal care plan for meeting the identified and emerging personal care needs of the IP. RCW 11.92.043(1). The care plan must be updated (i) to reflect any substantial change in circumstances of the IP and (ii) periodically as required by the court. RCW 11.92.043(3).

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

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

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

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

The guardian of the estate has to balance the substituted judgment standard with the prudent person standard and make financial decisions that are (a) prudent and based on the best interests of the IP and, (b) at the same time, to the extent possible, in accordance with the expressed wishes of the IP. CPG Standards of Practice Regulations 402.1 & 402.2; (Found at http://www.courts.wa.gov/committee/?fa=committee.child&child_id=30&committee_id=117); *In re Guardianship of Stamm*, Docket 53334-7-I, CA, Div I, 2005 (Unpublished Opinion). (Note, while unpublished opinions may not be cited to the court, there is language in this unpublished opinion which the GAL will find useful in understanding the standards that govern the guardian's duties. This unpublished opinion may be found using the www.legalwa.org search site.)

Evaluating Suitability of a Guardian. The AIP, while competent, may have nominated the proposed guardian in estate planning documents such as a power of attorney. RCW 11.94.010. The court must appoint the guardian so proposed by the AIP except for good cause or disqualification. RCW 11.88.010(4).

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

"Suitable" Guardian of the Estate The GAL should determine whether the proposed guardian of the estate is capable of managing the assets of the guardianship estate, either

alone or with the assistance of experts. This determination will depend upon the size and nature of the estate and the sophistication and degree of knowledge of the proposed guardian of the estate.

A suitable guardian of the estate is one who can be bonded, to the extent required by the statute and court orders. RCW 11.88.100 requires that a guardian file a bond prior to obtaining letters of guardianship. The bond should be sufficient to cover the value of the AIP's liquid estate, plus anticipated growth until the next reporting period, usually one year from the date of the guardian's appointment. The court may waive the bond if the petition alleges that the AIP's total assets amount to less than $3000. The court may also waive bond if the financial institution(s) where funds belonging to the AIP are on deposit agrees to "block" the account, and allow withdrawals only on court order. RCW 11.88.105. If the attorney representing the guardian fails to see that the bond is issued and/or the accounts are blocked, that attorney may be liable to the IP or heirs of the IP for damages. See *In re Guardianship of Karan*, 110 Wn. App.76 (2002); *Estate of Treadwell v. Wright*, 115 Wn. App. 238 (2003). *See* Appendix B.

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

The GAL must make a recommendation to the court regarding the security of all assets of the AIP. The GAL may recommend that the guardian file a bond in the appropriate amount, place the guardianship funds in a blocked brokerage or bank account, or a combination of bonding and blocking. In some circumstances the GAL might recommend that a trust be created for the IP and that the assets be protected by bonding and/or blocking. *See* page 72.

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

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

> Professional guardians have a clear and immediate conflict of interest in nominating themselves to be appointed guardian and to be paid from the estate of the Incapacitated Person. A certified professional guardian should avoid whenever possible initiating a petition for appointment of oneself as guardian. …
>
> [T]he limited and qualified initiation of a guardianship petition by a certified professional guardian is acceptable under certain circumstances.
>
> Specifically, if the certified professional guardian determines (a) a guardianship is in the interests of the Alleged Incapacitated Person; (b) there are no less restrictive alternatives; and (c) there is no other person willing to act as petitioner; than the certified professional guardian may act as petitioner in a guardianship.

http://www.courts.wa.gov/committee/?fa=committee.display&item_id=1210&committee_id=127.

"Suitability" as a Function of the AIP's Needs. In determining the suitability of a guardian, the GAL should start by evaluating the needs of the AIP.

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

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

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

2. Interviewing Potential Witnesses.

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

- Spouse, registered domestic partner, other relatives, friends and neighbors

- Caregivers
- Case managers
- Therapists: occupational, speech, physical and mental health
- Chore workers
- Social workers
- Financial resources: banks, investment brokers, etc.
- Clergy
- Financial advisors

The GAL may have already identified most of the relevant persons named above if the AIP was able to communicate them. If not, the names of many of those persons with information may be found in the medical records or care facility records for the AIP.

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

Sample Questions for interested persons and contacts:

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

It is helpful for the GAL to begin preparing the GAL report as soon as each part of the investigation is completed, rather than waiting until the investigation is complete to begin drafting. The GAL can print out an edited segment of the report as a summary of the facts and issues of the case. That information can be useful in subsequent interviews to make sure that all of the facts are verified and is also helpful when interviewing the proposed guardian about the guardian's plans to meet the needs of the AIP.

The GAL should be alert to and clarify issues of family conflict. Family members who serve as contacts and sources of background information may have a personal agenda or a conflict of interest with respect to the AIP or the guardian-nominee. These conflicts and other issues must be identified and assessed objectively so they do not adversely affect the resolution of the guardianship petition.

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

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

Even though the GAL's file is discoverable, however, it is important for the GAL to keep in mind the often sensitive nature of the information in the file. Establishing procedures to maintain the confidentiality of the file in the GAL's custody preserves any confidentiality that the court may wish to protect by sealing all or part of a file. GALR 2(n).

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

Questions for the petitioner:

- Why was the guardianship filed?
- What alternatives to guardianship are currently in place (durable powers of attorney, trusts, etc.)
- If there is an alternative in place, what problems led to the filing of the petition?
- Did the petitioner consider any less restrictive alternatives before filing the petition? If so, what happened, or if not, why not? Why were those options not considered appropriate?
- If petitioner has proposed themselves as guardian, why?
- If petitioner has proposed someone other than themselves, why?

- If an alternative is in place, and petitioner has proposed someone other than the already named individual, why?
- Does the petitioner feel a full guardianship is necessary, or a limited one? Is guardianship of both person and estate necessary?

3. Interviewing the Proposed Guardian

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

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

- Does the proposed guardian seem to understand the role and duties of a guardian for this AIP?
- Is the proposed guardian aware of the statutory limitations of a guardian's authority and the particular limitations to the guardian's authority that may be imposed in this case?
- Does the proposed guardian have the skills to address the complicated issues of this case?
- Can the proposed guardian differentiate his or her values from those of the AIP?
- Is the proposed guardian willing to maximize the AIP's autonomy?
- Is the proposed guardian willing to be directed by the court and to meet the reporting requirements?
- Does the proposed guardian meet the basic statutory qualifications under RCW 11.88?
- If proposed as a guardian of estate, will the proposed guardian be able to secure a bond?

Evaluating the Proposed Guardians and Alternates: The GAL must evaluate what is in the best interests of the AIP. The GAL is under no obligation to recommend appointment of the guardian nominated in the petition. As indicated in Section 1 above, if the AIP has previously designated someone else to serve as guardian, as, for example, in a power of attorney, the GAL must give preferential consideration to that person to be recommended as guardian. If the GAL concludes that a guardian other than the one proposed in the petition would best serve the needs, interests, and desires of the AIP, the report should include an explanation of the reasons for not recommending the guardian proposed in the petition. RCW 11.88.010(4); 11.88.090(5)(f)(iii)-(iv). The GAL must

then make an alternate recommendation. The GAL should provide the court with the analysis of the needs of the AIP and how/why those needs are best met by the alternate guardian recommended by the GAL.

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

Practice Tip

If you aren't sure whether the proposed guardian is the best choice, call a more experienced GAL and ask for some input. Explain the fact pattern and outline your concerns. Many GALs have handled hundreds of cases and can be invaluable resources for developing solutions to difficult situations. Estate planning attorneys can be helpful when looking at less restrictive alternatives; elder law attorneys can advise you on Medicaid and long-term care issues. Some counties have developed GAL mentor lists, which will help you find someone to assist you.

The process of recommending a guardian can be challenging if the IP has little or no assets or income. It may be necessary to look at charitable service organizations, nonprofit agencies, and groups in which the incapacitated person was previously involved. It may also become necessary to call professional guardians and guardianship agencies and request that they take the case without charging. Most agencies have established a level of charitable work they can provide to the industry.

Occasionally, after investigation, the GAL may conclude that the AIP would be best served by appointment of a professional guardian with whom the GAL has had previous dealings. In making a recommendation to the court, the GAL should disclose any conflicts of interest or facts that may appear to a party as a potential conflict of interest that the GAL may have as well as any actual conflicts of interest which were called to the attention of and waived by the parties. *See* GALR 2(b).

Special Situation: Appointment as GAL for a Married Couple or Registered Domestic Partners – Petition for a Single Guardian for a Married Couple or Registered Domestic Partners. Guardianship petitions for a wife and her husband or since 2008, domestic partners, may sometimes be filed simultaneously and the court may appoint one GAL to serve for both spouses or domestic partners. Petitions may also ask that a single guardian, often a family member, be appointed as guardian for each of the spouses or domestic partners.

Washington courts used to view the ownership interests of domestic partners as partnerships in a business sense, creating an inherent conflict of interest between the parties. That conflict may, but did not always, exist in a married relationship. Effective in 2008, property of registered domestic partners is treated under the same community property laws as property of spouses. Thus, if a single guardian has been nominated to serve for both spouses or domestic partners, the GAL should consider the conflicts of interest that may exist or may arise between spouses or between domestic partners and the ability of one guardian to advocate for competing interests.

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

> The appointment of the same Guardian to act simultaneously in the best interests of both spouses in a marital relationship, domestic partners, or persons in a meretricious relationship presents, at a minimum, the appearance of a potential conflict of interest, and should only be done with great caution by a Guardian [sic]. If the parties are not married, appellate case decisions have implied and applied certain community property principles to such relationships and legal presumptions may apply. The issues are complex and the circumstances dynamic. Often, actual conflicts may not become apparent until it is too late to seek instruction from the court or for the Guardian to take remedial action. The advice of counsel should be sought prior to accepting such an appointment.
>
> While a court may consider a well supported petition for a dual Guardian, endorsed by the GAL for one or each of the AIPs, the circumstances upon which the decision was based could change quickly or unknowingly and present a conflict of interest necessitating the removal of the dual guardian from both cases and two new independent Guardians being appointed. The latter action would foreseeably result in significant additional costs to the estate of the incapacitated person and potentially to the retiring Guardian as well. Only in well-justified cases and after a hearing supported by recommendations of the Guardians ad Litem for each of the AIPs alleged incapacitated persons, and assurance that there would be only de minimus conflicts if any, should a Guardian accept such an appointment consider accepting appointment to represent both spouses.

The CPG Board's analysis of the conflicts of interest issue provides a list of considerations for the GAL to factor into its recommendations. The GAL should be familiar with the Board's analysis and use it to address to the court potential areas of concern. Again, the GAL's job is to recognize the conflicts that are actual and those that are potential, and factor them into an evaluation and a recommendation.

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

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

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

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

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

These arrangements should not be recommended unless there is good reason to believe that the professional and lay guardians will be able to act cooperatively and in good faith. The lay person chosen to act as guardian should be informed that there are many Professional Guardians and should be given the opportunity to interview candidates and participate in the choice of professionals. These arrangements tend to be among the more complicated and challenging cases, and the choice of Professional Guardian should be made accordingly.

The GAL should advise a hesitant lay guardian that the lay guardian may obtain court authorization to hire a professional to provide expert advice to the lay guardian as needed. If the GAL still believes that co-guardianship is warranted, it is essential that each co-guardian have a clear understanding of the duties of each and be willing to work cooperatively. It is recommended that the prospective co-guardians and the

GAL meet to identify issues and discuss management of the guardianship. Clear guidelines for communications between the co-guardians should be developed and incorporated into the GAL report and the court order appointing the co-guardians.

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

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

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

RCW 11.88.090(5), which sets forth the GAL's duties, does not require the GAL to review financial records, or to report to the court on the exact nature and extent of the AIP's estate. In considering potential guardians and in recommending the way in which the AIP's assets should be protected in the guardianship order (*i.e.*, bonding, blocking, creating a trust) the GAL should learn the general nature and extent of the AIP's estate. Further, if a determination that the AIP is incapacitated with respect to his or her estate within the terms of RCW 11.88.010(1)(b) is to be made by the court, the court must have sufficient evidence that there is a "significant risk of financial harm based upon a demonstrated inability to adequately manage property or financial affairs." (Emphasis added). The GAL must have access to sufficient information to report to the court on this issue. In some cases, such information is readily available because of the facts that precipitated the petition.

In some cases, particularly where allegations of financial exploitation or breach of fiduciary duty have been made, the GAL may believe it is necessary, perhaps even urgent, to investigate the financial situation of the AIP in more detail.

Where feasible, the GAL may seek the AIP's permission to examine any financial records, beginning with records that may be located in the home, such as checkbooks,

bills or bank statements. The AIP may also willingly give permission to the GAL to examine bank records, although the GAL should take care to ensure that the AIP's permission is given freely and with full understanding of what is being divulged. If the AIP is unwilling or unable to give permission to the GAL to obtain and examine financial records, or if the GAL has any doubt that the AIP's permission may not be knowingly given, the GAL should seek instruction from the court. The court may order the issuance of a subpoena for such records, if the GAL's request for instructions shows sufficient cause for access to the records. To protect the privacy of the AIP detailed financial information should be filed under seal, *see* GR 15, 22 and any information in a public record should comply with GR 31. *See* Chapter X re privacy issues; *See also* GALR 2(n).

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

Checklist of questions to ask potential guardians

A. General questions.

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

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

1. If you were named in the petition, why were you named? (Be sure the individual understands that the GAL is under no obligation to recommend the proposed guardian, even if he or she is the petitioner.)

2. Do you agree with the summary of the AIP's needs that the GAL has compiled?
3. Are you familiar with the duties of a guardian (RCW 11.92)?
4. Are you prepared to make a personal care plan, and a financial plan, and to follow through on them and report to the court on a regular basis for as long as you are the guardian?
5. What steps would you take to ensure the decisions you make are independent decisions, free of influence from family members and friends or other "well-meaning" persons?
6. Do you understand that a guardian does not have the authority to decide where a ward lives? (*i.e.*, you can't put grandma in a nursing home if she doesn't want to go there.)
7. Do you have special skills or expertise that would be useful in meeting the needs of the AIP in your role as guardian? (*i.e.*, nursing skills, social work, accounting skills.)
8. Do you know what the "substituted judgment standard" is? (GAL may have to explain, see Section 1 above.) Can you make choices for the AIP using the substituted judgment standard rather than on the basis of your own values, even if your values are in conflict with the standard?
9. Do you have the energy and resources to meet the needs of the AIP?
10. Do you expect to be paid for your services? How much?
11. Are you the AIP's caregiver? Have you considered caregiver burnout? How would you meet the AIP's needs if you burn out?
12. Have you ever been convicted of a crime?
13. Have you ever applied for a bond and been refused? Do you reside in, own property in, and/or have an agent in Washington State?
14. Have you ever filed for bankruptcy?
15. Have you ever been sued for breach of a fiduciary duty?
16. Do you understand or are you willing to learn about the duties of a person who manages money for another person?
17. Do you understand that a guardian does not have the authority to spend the ward's money without the authorization of the court?

C. Additional Questions Specifically for Certified Professional Guardians

1. Does your agency have a general philosophy that you apply in acting as guardian? If so, how would that philosophy apply to this AIP?
2. Is your staff sufficient to meet the needs of this AIP?
3. What is the structure of your organization?
4. How would you be contacted in event of an emergency?
5. (Ask for a copy of the company's fee schedule.) What is the estimate of the fees you would charge during the first 90 days, the first year, and in subsequent years for this guardianship?
6. If called upon to work with family members as co-guardians, how should the court order define the duties and obligations of each co-guardian?

7. Is your certification current and have you ever had a disciplinary action filed against you?
8. (Ask to see a routine ledger report such as is sent to clients. Is it understandable?) How often are reports of transactions sent out?
9. How do you assist individuals who need help finding resources for medical, therapeutic, educational, personal care, or other services related to disabilities?
10. For a beneficiary with limited family involvement, what is your practice for staying in touch with the client?
11. If there is a need to pay for home care: How would you find a worker? What is it likely to cost? How do you arrange to pay the person? Are there government programs for this?
12. How do you manage cases that are, say, 50 miles from your office? 100 miles? In another State? What geographical areas do you serve? How would you communicate with the ward?
13. What is your knowledge of: Disabilities, Medicare, Medicaid, and SSI?
14. Who represents you in court? Are you audited? If so, is the audit performed by an independent auditor?
15. If the AIP's family or friends are dissatisfied with how the guardianship is being handled, who would they contact? What if they remain dissatisfied? If they ask you to resign, what will you do?
16. What services other than managing guardianships does your organization provide?
17. Are you required by the CPG Board to carry errors and omissions insurance?
18. Do you have errors and omissions insurance? If so, what are the limits of the insurance policy?

5. Certified Professional Guardians: Certification, Discipline.

Any person who: 1) receives a fee to act as guardian, 2) for more than two individuals to whom she or he is not related must be State certified and is required to meet requirements created by the Washington Supreme Court and General Rule 23. General Rule (GR) 23 created the Certified Professional Guardian Board (the Board) to implement and oversee the requirements of Certified Professional Guardians (CPGs). The Board has implemented continuing education requirements, standards of practice and disciplinary rules, and a certification training program for new Professional Guardians. The Board reviews on average 15 to 20 discipline proceedings per year.

Anyone practicing in this field should review the information on the Certification Board website, http://www.courts.wa.gov/programs_orgs/guardian/ "certified professional guardian" into Google. See link at Appendix E.

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

certified as individuals only. The important distinction is the name that goes on the Order Appointing Guardian and the Letters of Guardianship.

At a minimum, a GAL should check to be sure that a nominated ("Proposed") professional guardian is a Certified Professional Guardian in good standing. There is a simple search feature at the Certified Professional Guardian website--you can type in the county, whether the proposed guardian is an "individual" or "agency", and the name of the proposed guardian. Once you have found the particular guardian, the following information will be available: the guardian's address, phone number, fax number, and e-mail address. There will also be a listing of any disciplinary records under the guardian's basic information.

A disciplinary record becomes public when a complaint has been filed with the Administrator of the Courts by counsel representing the CPG Board. The complaint and all subsequent pleadings filed in the disciplinary action are open to public access, as are agreements regarding discipline. Requests for information concerning disciplinary actions should be directed to the Public Information Officer of the Administrator of the Courts as a Public Records Request. Further information as to how to proceed may be obtained by contacting the AOC Liaison to the Board, with a current e-mail contact address of: Deborah.Jameson@courts.wa.gov.

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

The CPG Board has adopted requirements regarding errors and omissions ("E&O") insurance effective January 31, 2008. As of that date, a CPG must maintain $500,000 minimum insurance unless they manage less than $500,000 total countable guardianship assets **and** less than 25 guardianships or qualify for other waiver. The GAL should check the CPG website for the current E&O requirements for CPGs. The GAL should determine whether the proposed guardian is in compliance with those requirements. Even if the CPG Board does not require E&O insurance for the proposed guardian, the GAL should inquire about whether the proposed guardian carries errors and omissions insurance, and if so, the limits of such coverage, because such coverage, if available, provides additional protection for the IP.

Occasionally, a GAL is appointed to review the work of a Certified Professional Guardian. If the GAL in that case concludes that the CPG has violated court orders, a statute, or the Standards of Practice for CPGs, the GAL should first get a court order finding such misconduct and then consider whether to file a grievance with the Certified Professional Guardian Board. GR 23(a) provides that: "This rule does not duplicate the

statutory process by which the courts supervise guardians nor is it a mechanism to appeal a court decision regarding the appointment or conduct of a guardian." The Certification Board's discipline rule provides in most cases for processing of grievances only after receiving documentation that a court exercising jurisdiction has reviewed the matter and issued findings or orders confirming that the guardian has committed some violation.

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

CHAPTER VI
SPECIAL SITUATIONS: MINORS AND VULNERABLE ADULTS

A. THE PROTECTION OF VULNERABLE ADULTS

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

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

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

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

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

A Vulnerable Adult is defined in RCW 74.34.020(13), and RCW 74.34.021 as a person who is:

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

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

Practice Tip

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

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

Petition. RCW 74.34.210 provides that a petition for an order for protection may be brought by the vulnerable adult, the vulnerable adult's guardian or legal fiduciary, the department, or any interested person as defined in RCW 74.34.020. The 2007 amendments to RCW 74.34 added a class of petitioners known as "interested persons". RCW 74.34.020(9). There are three requirements a petitioner must meet in order to fit the definition of an "interested person." The petitioner must:

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

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

Practice Tip

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

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

The 2007 amendments authorize service by mail or publication if reasonable efforts to personally serve are unsuccessful. RCW 74.34.120(2), (3). The 2007 amendments also abolish filing fees. RCW 74.34.110(9).

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

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

Practice Tip

If the vulnerable adult/AIP is being financially exploited, consider utilizing other means of protection. For example, recording the guardianship petition and note for hearing with the county auditor provides notice to third parties that the vulnerable adult/AIP's capacity is in question and that the guardianship hearing will be held on a given date. RCW 30.22.210 may also prove helpful if the GAL can demonstrate to the financial institution that there is uncertainty as to who is entitled to the funds in the account. Be realistic, however. If you freeze the vulnerable adult/AIP's bank account, consider how his or her bills will be paid pending the hearing. A less formal approach might be to write a letter to the person who appears to be making unauthorized withdrawals.

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

- Restraining respondent from committing acts of abandonment, abuse, neglect, or financial exploitation;
- Excluding respondent from petitioner's residence for a specified period or until further order of court;
- Prohibiting contact by respondent, including keeping a certain distance;
- Requiring an accounting by respondent of disposition of petitioner's income or resources;
- Restraining the transfer of property for a specified period not to exceed ninety days;
- Requiring respondent to pay filing fee and court costs, including service fees, and to reimburse the petitioner for costs incurred in bringing the action, including a reasonable attorney's fee.
- Restraining respondent from exercising authority under a Power of Attorney.

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

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

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

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

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

Finally, the death of the vulnerable person does not deprive the court of jurisdiction to seek restitution or other relief from a respondent. Upon petition, the right to initiate or

maintain an action on behalf of a vulnerable adult is transferred to the Personal Representative of the deceased person's estate.

Adult Protective Services/Attorney General. Adult Protective Services (APS) is the branch of Department of Social and Health Services (DSHS) that investigates allegations of vulnerable adult abuse and neglect, abandonment and financial exploitations. Some persons who deal with vulnerable adults are required to report suspected abuse. RCW 74.34.020(10), .035. A guardian ad litem is a "permissive reporter", i.e., a person who is not required to report abuse. *Id.* However, the King County Guardian ad Litem Registry Code of Conduct provides that the GAL "shall report" any child abuse or neglect or adult abuse as found by the GAL. To report suspected child or vulnerable adult abuse, call 1-866-ENDHARM. After an initial intake of a complaint, an investigator may be assigned. The investigation may result in the filing of a guardianship petition or action for other relief. Thus, the petitioner in some guardianship and vulnerable adult protection order proceedings may be the State of Washington. When the petitioner in a guardianship or vulnerable adult protection proceeding is DSHS, an Assistant Attorney General will represent DSHS as the client.

GAL Safety

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

APS Records

Adult Protective Services reports and investigative notes are confidential but often contain vitally important information. If the GAL wants to review APS records, the GAL may obtain the APS records by contacting the local APS office Public Disclosure Officer. Sending APS the Order Appointing GAL will assist APS in responding to the request. Any records received by the GAL from DSHS may not be disseminated to anyone without court order.

B. GUARDIANSHIP OF MINORS

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

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

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

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

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

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

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

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

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

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

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

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

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

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

CHAPTER VII
ALTERNATIVES TO GUARDIANSHIP

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

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

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

RCW 11.88.005. A guardianship should be established only when it is determined that the risks to a person or his estate cannot otherwise be satisfactorily abated. Even a limited guardianship, as discussed in Chapter V, is less preferable than an alternative to guardianship.

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

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

While a limited guardianship restricts the specific powers and duties of a guardian, alternatives to guardianship are arrangements made by the AIP while competent to provide for assistance *instead* of guardianship. Even a complete loss of functional capacity does not require a guardianship of a person whose needs are being met. For example, a person in a comatose state is clearly incapacitated, but he does not need a guardian if he has previously signed a durable power of attorney appointing an attorney in fact to manage his affairs.

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

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

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

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

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

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

Powers of Attorney. A power of attorney is a written delegation by one person, known as the principal, to another person or entity, known as the attorney in fact, of limited or general authority, to act on behalf of the principal. The power can be for a specific one-time purpose--for instance, to sign a deed for the sale of real estate while the principal is out of the country. In that case, the power of attorney is called a special and limited power of attorney. On the opposite extreme, the power of attorney can be general and encompass the authority to act on behalf of the principal at all times in all matters permitted by law. While powers of attorney generally are signed and acknowledged before a notary, they only need to be notarized to confer upon the agent authority to execute documents, such as deeds, which themselves require an acknowledgment. Powers of attorney do not require witnesses.

Under the common law, a power of attorney terminated automatically upon the legal incapacity of the principal, since he or she could no longer monitor the faithful performance of the agent. Most states, however, have enacted laws that permit powers of

attorney to be made "durable," meaning that they will continue in force notwithstanding the incapacity of the principal. In Washington, to be durable, a power of attorney must state that it is not affected by the disability of the principal or that it will only take effect upon disability or use similar language. RCW 11.94.010(1). When the durable power of attorney states it will become effective only upon the finding of incapacity of the principal or other such language, it is called a "springing" power of attorney because it springs into effect only in the circumstance described in the document.

A durable power of attorney can be a viable, less restrictive alternative to a guardianship where the AIP has previously executed, or is willing to execute, such a document and is believed to have sufficient capacity to do so. The standard of capacity to execute a durable power of attorney is the subject of some debate. Generally, the AIP should have some knowledge of the person being named as the attorney in fact and understand that he or she is entering into a fiduciary relationship with that person regarding the powers granted to the attorney in fact. Under Washington law, a person of legal age is presumed to possess full legal capacity to enter into a power of attorney until adjudged incapacitated. *See* RCW 11.88.090(3).

ADVANTAGES

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

DISADVANTAGES

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

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

Note: A general power of attorney does not permit the attorney in fact to make health care decisions unless it *specifically* grants to the attorney in fact the power to make health care decisions for the principal. RCW 11.94.010(3)(a); RCW 11.94.046. In addition,

RCW 11.94.010(3)(b) excludes certain persons from acting as attorneys in fact for health care matters for a principal.

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

Resolution of Problems Involving Powers of Attorney. Some guardianship petitions are brought because there is a conflict involving the exercise of a durable power of attorney for the benefit of an AIP. All guardianship GALs should be familiar with RCW 11.94.090, which provides for the filing of a petition to resolve matters regarding the application and use of powers of attorney. The petition is filed in court seeking an order regarding the actions of the attorney in fact. The persons who have standing to file such a petition are enumerated in RCW 11.94.100. The GAL who is appointed in a guardianship case involving an AIP who previously executed a durable power of attorney is not one of those persons specifically authorized to file an RCW 11.94.090 petition, but the principal himself may file. Therefore it would make sense that the GAL, acting on behalf of the best interests of the principal, would have the authority to ask the court to consider resolving the power of attorney issues within the guardianship matter. The GAL could recommend to the court that the court use its power under RCW 11.94.090-.110 to modify the power of attorney, restrain or expand the authority of the agent, compel an accounting, or compel a third party to do or refrain from doing virtually anything with respect to the use of this delegated authority. The court would then order relief, considering "the best interests of the principal." RCW 11.94.110.

The court must "order relief that is the least restrictive to the exercise of the power of attorney while still adequate in the court's view to serve the principal's best interests." *Id.* The court's oversight of the attorney in fact's actions and of the operation of the power of attorney would end after entry of the order on the petition brought pursuant to RCW 11.94.090, unless the order specified further court involvement necessary for a resolution of the issues raised in the petition. *Id*.

Using RCW 11.94.090-.110 to resolve an issue or issues involving a power of attorney allows the court to hear a limited set of facts and make a ruling on a specific petition for relief, rather than have continuing oversight as it would with a guardianship. This limited intervention by the court makes the use of the power of attorney statute a valuable, less restrictive alternative.

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

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

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

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

Practice Tip

If the reason that the petition for guardianship has been filed is because an otherwise valid power of attorney is not being honored by a bank, a title company, or other financial institution, the Guardian ad Litem may make a recommendation to the court that steps be taken under RCW 11.94 to establish the validity of the power of attorney.

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

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

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

a. The appointed guardian of the patient, if any;
b. The individual, if any, to whom the patient has given a durable power of attorney that encompasses the authority to make health care decisions;
c. The patient's spouse or state registered domestic partner;
d. Children of the patient who are at least eighteen (18) years of age;
e. Parents of the patient; and

f. Adult brothers and sisters of the patient.

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

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

ADVANTAGES

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

DISADVANTAGES

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

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

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

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

If a person has executed a Health Care Directive pursuant to RCW 70.122.030, then no appointment of a guardian should be necessary to effectuate the individual's desire to withhold or withdraw life-sustaining treatment in the event he or she is in a terminal or permanent unconscious condition and the mandatory physician verification has taken place. Even if the person has failed to execute a Health Care Directive or similar writing, the Washington Supreme Court has stated that "a guardian need not be appointed to make the decision to withhold life-sustaining treatment if the incompetent patient's immediate family members all agree that such treatment should be withheld." *In re Grant*, 109 Wn.2d 545, 566 n.4 (1987), citing *In re Hamlin*, 102 Wn.2d 810 (1984).

Practice Tip

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

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

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

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

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

Trusts. As an alternative to a guardianship of the estate, a GAL may recommend that a trust be created or continued for the benefit of an AIP. The court can require court supervision of a trust for the benefit of an incapacitated person. When there is a pre-existing trust, an alternative to a guardianship could include recommending a change of trustees; requiring an accounting to resolve specific questions, and using the trust instead of a guardianship but requiring the trustee to submit to some degree of court supervision.

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

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

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

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

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

ADVANTAGES

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

DISADVANTAGES

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

Driver's License Re-Examinations. A guardianship proceeding may be started primarily to restrict an AIP's right to drive a motor vehicle. The Washington Department of Licensing (DOL) form titled "Recommendation for Driver Re-examination" may be submitted by any person with personal knowledge of a driver who has physical or mental disabilities that could affect his or her safe driving. The form is available online at www.dol.wa.gov/forms/520005.html. Upon receipt of the recommendation, the Department of Licensing acts to reassess driver competency. The DOL may require a full written and driving re-examination and certification of the driver's fitness by a physician or approved medical professional. A driver's license may be revoked, restricted, or renewed by the Department of Licensing. RCW 46.20.305 and 46.20.041.

ADVANTAGES

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

DISADVANTAGES

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

Practice Tip

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

Care/Case Management Services. Whether the recommendation by the GAL calls for the appointment of a guardian, limited guardian, or continuance of management of the AIP's affairs under a durable power of attorney or trustee, the GAL may recommend that the family contract with a professional care manager to develop a plan of care to be followed by a health care agent who will then routinely report to the family. Sometimes the personal and medical needs of an impaired individual can be met through care or case management services alone so that the individual can continue functioning with autonomy, but with the supervision that is needed to ensure the safety of the AIP. A case or care manager is usually a private pay solution and is therefore only available in cases in which the AIP has the funds to pay for the manager.

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

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

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ADVANTAGES

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

DISADVANTAGES

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

Practice Tip

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

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

DISADVANTAGE

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

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

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

ADVANTAGES

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

DISADVANTAGES

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

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

ADVANTAGES

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

DISADVANTAGES

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

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

Practice Tip

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

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

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

A similar program—payment to "protective payees"—exists under Washington law for persons entitled to state-provided public assistance. *See* RCW 74.12.250, RCW 74.08.280, and WAC 388.101. In certain cases, a protective payeeship may serve as an alternative to a guardianship of the estate.

Practice Tip

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

ADVANTAGES

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

DISADVANTAGES

- Generally not well monitored.
- Vulnerable or frail individuals can be financially exploited.

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

Special Needs Trust. In limited circumstances the GAL may recommend that a special needs trust be established for the benefit of the AIP with or without the appointment of a guardian. The special needs trust really has only one central purpose: to preserve ongoing Medicaid and SSI benefits for a disabled person who will need both Medicaid and perhaps SSI, as well as the resources of the trust. At death, the State is repaid for Medicaid benefits received. There is no SSI repayment requirement. If the GAL makes this recommendation, a further recommendation should be made regarding who should serve as trustee and who should draft the trust document. The GAL should not recommend himself or herself as a trust drafter; this represents a conflict of interest and is specifically prohibited under the GAL Rules.

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

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

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

ordered special needs trust is to be created, a GAL should be appointed, and the GAL report should indicate that the special needs trust is needed because of the individual's inability to handle the assets that would be owned by them individually, absent the trust.

Special needs trusts are terribly complex, both from a disability and tax standpoint, and must be drafted or amended by experienced special needs trust counsel, usually not the personal injury or estate lawyer, unless that person has experience creating trusts of this nature and stays right on top of the developing law related to their use. The court, guardians, and Guardians ad Litem should insist on using an independent, qualified special needs trust drafter. If the drafter is either conflicted or unknown to the parties, the GAL should seek court approval to retain an experienced independent counsel to review the trust and make recommendations relative to approval. It is also often recommended that trust counsel be appointed by the court and, as part of that appointment, counsel's duties should be outlined in the Order. This clarifies the work to be performed, the responsibilities of the various parties, and fee ranges, and ensures trust counsel will be paid for the work performed and that the report or testimony of counsel will be considered by the court.

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

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

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

CHAPTER VIII
THE GUARDIAN AD LITEM REPORT

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

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

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

(A) Public Document. The public portion of any report shall include a simple listing of:
- (i) Materials or information reviewed;
- (ii) Individuals contacted;
- (iii) Tests conducted or reviewed; and
- (iv) Conclusions and recommendations.

(B) Sealed Document. The sealed portion of the report shall be filed with a coversheet designated: "Sealed Confidential Report." The material filed with this coversheet shall include:
- (i) Detailed descriptions of material or information gathered or reviewed;
- (ii) Detailed descriptions of all statements reviewed or taken;
- (iii) Detailed descriptions of tests conducted or reviewed; and
- (iv) Any analysis to support the conclusions and recommendations.

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

See also GALR 2(n) which states as follows:
n) Maintain privacy of parties. As an officer of the court, a guardian ad litem shall make no disclosures about the case or the investigation except in reports to the court or as necessary to perform the duties of a guardian ad litem. A guardian ad litem shall maintain the confidential nature of identifiers or addresses where there are allegations of domestic violence or risk to a party's or child's safety. The guardian ad litem may recommend that the court seal the report or a portion of the report of the guardian ad litem to preserve the privacy, confidentiality, or safety of the parties or the person for whom the guardian ad litem was appointed. The court may, upon application, and under such conditions as may be necessary to protect the witnesses from potential harm, order disclosure or discovery that addresses the need to challenge the truth of the information received from the confidential source.

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

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

> (i) A description of the nature, cause, and degree of incapacity, and the basis upon which this judgment was made;
>
> (ii) A description of the needs of the incapacitated person for care and treatment, the probable residential requirements of the alleged incapacitated person and the basis upon which these findings were made;
>
> (iii) An evaluation of the appropriateness of the guardian or limited guardian whose appointment is sought and a description of the steps the proposed guardian has taken or intends to take to identify and meet current and emerging needs of the incapacitated person;
>
> (iv) A description of any alternative arrangements previously made by the alleged incapacitated person or which could be made, and whether and to what extent such alternatives should be used in lieu of a guardianship, and if the guardian ad litem is recommending discontinuation of any such arrangements, specific findings as to why such arrangements are contrary to the best interest of the alleged incapacitated person;
>
> (v) A description of the abilities of the alleged incapacitated person and a recommendation as to whether a guardian or limited guardian should be appointed. If appointment of a limited guardian is recommended, the guardian ad litem shall recommend the specific areas of authority the limited guardian should have and the limitations and disabilities to be placed on the incapacitated person;
>
> (vi) An evaluation of the person's mental ability to rationally exercise the right to vote and the basis upon which the evaluation is made;
>
> (vii) Any expression of approval or disapproval made by the alleged incapacitated person concerning the proposed guardian or limited guardian or guardianship or limited guardianship;
>
> (viii) Identification of persons with significant interest in the welfare of the alleged incapacitated person who should be advised of their right to request special notice of proceedings pursuant to RCW 11.92.150; and
>
> (ix) Unless independent counsel has appeared for the alleged incapacitated person, an explanation of how the alleged incapacitated person responded to the

advice of the right to jury trial, to independent counsel and to be present at the hearing on the petition.

Practice Tip

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

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

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

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

Practice Tip

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

Provide basic information at the beginning of the report. Identify significant parties and representatives, state the residential location and age of AIP and outline the presenting reason(s) why the petition was filed.

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

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

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

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

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

File the report on time. The statute and local rules, if any, require the timely filing and service of the GAL report on those parties entitled to receive it. The GAL report must be filed and served 15 days prior to the hearing date and within 45 days following appointment, unless an extension or reduction of time has been granted by the Court for good cause. RCW 11.88.090(5)(f)(ix). The report must contain all of the information required in RCW 11.88.090(5)(f)(i)-(ix). In some counties, local rules require that the GAL provide a working copy to the judge or courtroom where the matter will be heard so that the judicial officer can be fully prepared. Even if a copy is not required, it is good

practice to provide to the court an advance copy of the GAL report. A GAL can find the Local Rules for each county compiled by West Publishing Company in one annually issued volume. Also, the court administrator or court clerk in each county will have a copy of the current local rules. Some counties have posted them on the court's website as well. See **www.courts.wa.gov/court_rules/**.

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

Practice Tip

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

CHAPTER IX
ALLEGED INCAPACITATED PERSON'S RIGHT TO COUNSEL

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

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

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

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

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

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

objections to the appointment of counsel if a party who objects is not present at the hearing.

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

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

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

When the AIP does not request a specific attorney, the court chooses the attorney who will represent the AIP. How the court selects the counsel may vary from county to county. It is not unusual for the court to appoint the next attorney on the Guardian ad Litem Registry. If the GAL believes the situation warrants appointment of counsel with special expertise, the GAL should inform the court of that fact. There are situations in which it is in the best interest of the AIP to have a court-appointed attorney who is not necessarily on the GAL Registry. Should the GAL seek the appointment of a specific attorney due to the complexities of the guardianship, it is important for the GAL to first contact that attorney to determine whether the attorney is willing to serve and does not have a conflict should he or she be appointed.

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

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

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

What if the AIP refuses to communicate with his or her court-appointed counsel? Although the court may determine it to be in the best interest of the AIP to be represented by counsel, the AIP may refuse to cooperate with his or her court-appointed counsel. In that situation, it is impossible for the court-appointed counsel to advocate the AIP's expressed preferences. The attorney cannot then effectively represent the AIP and may ask the court for permission to withdraw. RCW 11.88.045(1)(c). If court-appointed counsel seeks to withdraw, the AIP must be given an opportunity for a hearing. The court may grant the request of the AIP's counsel to withdraw and then select new counsel for the AIP, the Court may order counsel to continue his or her representation of the AIP, or the court may allow the guardianship proceedings to continue with the AIP unrepresented by counsel.

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

In addition to advocating the AIP's expressed preferences, the AIP's counsel should ensure compliance by all parties and the GAL with procedural and substantive requirements of the statute. The AIP's counsel should confirm that the following have occurred during the course of the guardianship action:

1. Personal service of the petition and notice of a guardianship proceeding upon the AIP and GAL within five court days of filing the petition. RCW 11.88.030(4)(a); the petition and notice must contain all of the information required by RCW 11.88.030(1) (a) through (l) and RCW 11.88.030(4) (b).

2. Personal service of notice of the hearing upon the AIP and the GAL at least ten days prior to the hearing. RCW 11.88.040; and the hearing date within 60 days of the filing of the petition, unless extended by the court at the request of one of the parties for good cause. RCW 11.88.030(6).

3. The GAL report must be filed and served 15 days prior to the hearing date and within 45 days following appointment, unless an extension or reduction of time has been granted by the court for good cause, RCW 11.88.090(5)(f)(ix)(5)(f))(ix), and contain all of the information required in RCW 11.88.090(5)(f)(i)-(ix). The GAL must file a public report and a confidential report as required by GR 22.

4. The medical report must be prepared by a physician, psychologist or ARNP who has been chosen by the GAL or the AIP and who has expertise in the type of disorder or incapacity that the AIP is alleged to have. RCW 11.88.045(4). *See* Chapter IV. The report must be prepared within 30 days of the physician's, psychologist's, or ARNP's examination of the AIP and must contain all of the information described in RCW 11.88.045(4)(a)-(i). **Except in cases of minor guardianships, the court does not have jurisdiction to appoint a guardian unless a medical or psychological report meeting the statutory requirements has been filed.** RCW 11.88.045(4).

5. Once counsel for the AIP is appointed, when the GAL seeks contact with the AIP, the GAL shall notify the attorney in advance of such contact. The GAL's contact with the AIP shall be permitted by the AIP's attorney, unless otherwise ordered by the court, pursuant to GALR4(a).

6. GALR 2(p) requires the GAL to maintain documentation to substantiate recommendations and conclusions. The GAL's file shall be made available for review upon the written request of a party or the court on request, pursuant to GALR 2(p).

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

CHAPTER X
FINAL WORDS OF WISDOM

Court Hearings

Attendance at Legal Proceedings. The GAL shall appear in person at all hearings unless all parties provide a written waiver of the requirement to appear. RCW 11.88.090(12). GALR 2(1).

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

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

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

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

Courtroom Demeanor.

The GAL should be aware of and adhere to certain basic rules with regard to courtroom demeanor.

The GAL should maintain his or her dignity and decorum.

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

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

The court will give each party an opportunity to speak. The GAL, when given the opportunity to address the court, should explain his or her point of view and be prepared to respond to any questions that the court may have. The GAL should present a clear and concise account of the facts and his or her recommendations.

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

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

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

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

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

Temporary Relief and Petitions for Instruction

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

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

The Vulnerable Adult Statute, RCW 73.34, is discussed in greater detail in Chapter VI.

Petitions for Instruction. The authority of a GAL is limited by the guardianship statutes and the order appointing GAL. GALR2(j). Occasionally a GAL believes an action is necessary that is beyond the scope of RCW 11.88.090 or the order of appointment. Before taking any unauthorized action, the GAL should petition the court for instruction. The petition for instruction is a useful tool. Use it sparingly, however. The GAL should first be thoroughly familiar with his or her statutory duties and powers and the order appointing the GAL before seeking specific direction from the court. The GAL should not seek an order authorizing what the GAL is already permitted or directed to do. Before petitioning for instructions, it is wise to discuss the situation with another experienced GAL. Because of limited judicial resources, many counties do not encourage petitions for instructions. If a petition for instructions is brought, the petition should suggest possible alternative courses of action, and the proposed order should reflect those alternatives. It is also a good idea to leave room on the proposed order so the Court can insert its own instructions if the ruling on the petition does not agree with any of the GAL's proposals. The GAL should not become too invested in any one possible course of action.

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

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

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

Privacy Issues

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

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

GR 22(f) similarly provides for sealing of health care and financial records. Forms for use as coversheets for sealing reports filed in King County are available online through the King County Superior Court at http://www.kingcounty.gov/courts/scforms/guardianship.aspx. If the matter is in another county the GAL will want to use the approved forms for that county.

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

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

GR 31 provides:

(e) Personal Identifiers Omitted or Redacted from Court Records

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

(A) Social Security Numbers. If the Social Security Number of an individual must be included in a document, only the last four digits of that number shall be used.

(B) Financial Account Numbers. If financial account numbers are relevant, only the last four digits shall be recited in the document.

(C) Driver's License Numbers.

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

Guardian ad Litem Fees

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

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

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

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

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

Petition or Declaration for Fees. The GAL must keep accurate and legible time and expense records. The GAL must submit his or her time records to the court as part of a petition or declaration for fees along with a fee statement. A petition or declaration for fees is a sworn statement by the GAL attesting to the services provided, the time expended, estimated time to be expended, the hourly rate, and costs, if any, incurred. The GAL fees are usually approved as part of the order appointing guardian. The GAL

should file and serve on all parties a declaration and statement as to fees and costs, setting out the services provided, time charges and actual costs incurred in service as a GAL. If the GAL fees are not included in the guardianship order, the GAL will need to submit a separate order for fees, with advance notice to all parties, and have a separate hearing. That results in extra time, effort and expense which is, with a little planning, usually avoidable.

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

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

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

If the GAL believes he or she needs to take certain action not specifically authorized in the order appointing the GAL and in applicable statutes the GAL must bring the situation to the attention of the court. The GAL brings matters to the attention of the court by filing a petition for instruction.

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

The GAL has no authority to make any other medical decisions or to terminate the care for the AIP. If a health care provider asks a GAL to make medical decisions or to terminate the care for the AIP, the GAL must first advise the requester of the GAL's

limited authority and if the situation requires action, the GAL must file a petition for instruction and get the court's order for any action to be taken.

Expediting the Guardianship Matter. RCW 11.88.040(4) provides that the court for good cause may reduce the number of days of notice for the final hearing, "but in every case, at least three days notice shall be given." If a medical report has been prepared, it is possible to have a final hearing three days after filing and providing notice to the AIP. However, if counsel is appointed to represent the AIP at the time of the final hearing, a continuance of the hearing will be required. RCW 11.88.045(1)(a).

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

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

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

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

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

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

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

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

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

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

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

GLOSSARY*

A

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

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

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

administrator/administratrix of estate: See personal representative.

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

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

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

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

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

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

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

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

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

B

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

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

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

C

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

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

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

cause: An action, or lawsuit.

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

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

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

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

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

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

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

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

counsel: Attorney or lawyer.

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

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

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

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

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

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

D

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

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

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

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

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

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

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

donee: The recipient of a gift.

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

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

E

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

evidence:

> **direct:** First-hand evidence, usually of a witness who saw an act committed. For example, testimony of a witness that he/she observed an Alleged Incapacitated Person signing a check would be direct evidence.
>
> **hearsay:** An out-of-court act or statement not made under oath and not subject to cross-examination, offered as evidence of a fact asserted. Hearsay evidence is often not allowed at trial or hearings.

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

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

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

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

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

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

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

F

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

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

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

G

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

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

H

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

hearsay: See under **evidence**.

I

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

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

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

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

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

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

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

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

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

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

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

J

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

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

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

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

L

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

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

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

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

M

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

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

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

N

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

O

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

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

P

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

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

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

"General personal representative" excludes special administrator.

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

petitioner: The person who files a petition.

pleading: A legal document prepared for a lawsuit.

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

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

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

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

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

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

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

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

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

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

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

R

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

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

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

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

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

respondent: The person who answers a petition.

response: A legal document that answers a petition.

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

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

S

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

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

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

settlor: The person who establishes and funds a trust.

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

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

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

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

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

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

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

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

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

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

surety: The company that provides a bond for guardians.

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

T

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

testator: One who makes or has made a will.

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

U

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

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

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

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

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

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

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

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

V

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

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

W

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

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

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

working papers: See "courtesy copies" above.

ABBREVIATIONS

The following are some of the commonly used abbreviations.

AAG Assistant Attorney General

ADATSA Alcoholism and Drug Addiction Treatment and Support Act

AGO Attorney General's Office

AIP Alleged Incapacitated Person

AOC Administrative Office of the Courts

APS Adult Protective Services

ARP Alternative Residential Placement (replaced by ARY)

ARY At Risk Youth (replaces ARP)

CASA Court Appointed Special Advocate

CHDD Center for Human Development and Disability (University of Washington)

CHINS Child In Need of Services

CH Children's Hospital

CPS Children's Protective Services

CWS Children's Welfare Service

DDD Division of Developmental Disabilities

DISCIS District Court Information System

DOC Department of Corrections

DPA Deputy Prosecuting Attorney

DSHS Department of Social and Health Services

DV Domestic Violence

DYS Department of Youth Services

ECR Electronic Court Records

FAE Fetal Alcohol Effect

FAS Fetal Alcohol Syndrome

FCS Family Court Services

FRS Family Reconciliation Services

GAL Guardian ad Litem

GALR Guardian ad Litem Rules of the Court

HCSATS See SAC below.

IP Incapacitated Person

JABS Judicial Access Browser System (similar to JIS)

JIS Judicial Information System (Washington criminal records)

KCLR King County Local Rules

MSC Motion to Show Cause

OSC Order to Show Cause

PA Prosecuting Attorney

PD Public Defender

RJC Regional Justice Center

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

APPENDICES

APPENDICES

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Statutes/Court Rules

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Barr v. Day, 124 Wn.2d 318, 879 P.2d 912 (1994) B5
Guardianship of Karan, 110 Wn. App. 76 (2002) B6
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In re Guardianship of Stamm, 121 Wn. App. 830 (2004) B8
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A Review of the Training Program for Title 11 Guardianship Guardians Ad Litem
Prepared by the Advisory Committee to the Washington Department of Social & Health Services

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The following is a list of other useful statutes or codes for the GAL.
To find the complete text of the statute or code, go to

http://www.legalwa.com
or
http://www.findlaw.com

RCW 11.96A	Trust and Estate Dispute Resolution (TEDRA)
RCW 11.94	Power of Attorney
RCW 74.34	Vulnerable Adult Act
RCW 7.40	Injunctions
RCW 7.70.065	Informed Consent—Persons authorized to provide for patients who are not competent—priority
RCW 71.05	Mental Illness (Involuntary commitment standards)
RCW 70.02	Medical records — health care information access and disclosure
RCW 70.122	Natural death act
WAC 388-71	Home and community services and programs
WAC 388-79	Guardianship fees for clients of the department
25 USC 1912(a)	Indian Child Welfare Act

Appendix A

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Chapter 11.88 RCW

Guardianship —
appointment,
qualification,
removal of guardians

Appendix A2

Chapter 11.88 RCW
Guardianship — appointment, qualification, removal of guardians

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11.88.008 "Professional guardian" defined.

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11.88.100 Oath and bond of guardian or limited guardian.

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11.88.110 Law on executors' and administrators' bonds applicable.

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11.88.150 Administration of deceased incapacitated person's estate.

11.88.160 Guardianships involving veterans.

11.88.900 Construction -- Chapter applicable to state registered domestic partnerships -- 2009 c 521.

Notes:

Rules of court: **Guardians**
capacity to sue: CR 17.
judgment for and settlement of claims of minors: SPR 98.16W.
probate proceedings, application for fee, notice: SPR 98.12W.
suit in own name: CR 17.

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

Bank soliciting appointment as guardian, penalty: RCW 30.04.260.

Costs against guardian of infant plaintiff: RCW 4.84.140.

Declaratory judgments: Chapter 7.24 RCW.

Embezzlement by guardian: RCW 9A.56.010(19)(b).

Eminent domain
by corporations, service on guardian of minors, idiots, lunatics or distracted persons: RCW 8.20.020.
by state, service of notice on guardian: RCW 8.04.020.

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

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

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

Incapacitated person, appearance by guardian: RCW 4.08.060.

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

Investment of trust funds, guardians subject to chapter 30.24 RCW: RCW 11.100.015.

Investments, authorized
generally: Chapter 30.24 RCW.
housing authority bonds: RCW 35.82.220.
United States corporation bonds: RCW 39.60.010.

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

Lawful use of force: RCW 9A.16.020.

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

Mental illness, proceedings: Chapter 71.05 RCW.

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

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

Name, action for change of -- Fees: RCW 4.24.130.

Partition: Chapter 7.52 RCW.

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

Real estate licenses, guardian exemption: RCW 18.85.110.

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

Seduction, action for seduction of ward: RCW 4.24.020.

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

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

Uniform veterans' guardianship act: Chapter 73.36 RCW.

Veterans: RCW 73.04.140.

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

Washington uniform transfers to minors act: Chapter 11.114 RCW.

Witness, guardian as: RCW 5.60.030.

11.88.005
Legislative intent.

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

[1990 c 122 § 1; 1977 ex.s. c 309 § 1; 1975 1st ex.s. c 95 § 1.]

Notes:

Effective date -- 1990 c 122: **"This act shall take effect on July 1, 1991." [1990 c 122 § 38.]**

Severability -- 1977 ex.s. c 309: "If any provision of this 1977 amendatory act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected." [1977 ex.s. c 309 § 18.]

11.88.008
"Professional guardian" defined.

As used in this chapter, "professional guardian" means a guardian appointed under this chapter who is not a member of the incapacitated person's family and who charges fees for carrying out the duties of court-appointed guardian of three or more incapacitated persons.

[1997 c 312 § 2.]

Notes:

Effective date -- 1997 c 312: **See note following RCW 11.88.020.**

11.88.010
Authority to appoint guardians — Definitions — Venue — Nomination by principal.

(1) The superior court of each county shall have power to appoint guardians for the persons and/or estates of incapacitated persons, and guardians for the estates of nonresidents of the state who have property in the county needing care and attention.

(a) For purposes of this chapter, a person may be deemed incapacitated as to person when the superior court determines the individual has a significant risk of personal harm based upon a demonstrated inability to adequately provide for nutrition, health, housing, or physical safety.

(b) For purposes of this chapter, a person may be deemed incapacitated as to the person's estate when the superior court determines the individual is at significant risk of financial harm based upon a demonstrated inability to adequately manage property or financial affairs.

(c) A determination of incapacity is a legal not a medical decision, based upon a demonstration of management insufficiencies over time in the area of person or estate. Age, eccentricity, poverty, or medical diagnosis alone shall not be sufficient to justify a finding of incapacity.

(d) A person may also be determined incapacitated if he or she is under the age of majority as defined in RCW 26.28.010.

(e) For purposes of giving informed consent for health care pursuant to RCW 7.70.050 and 7.70.065, an "incompetent" person is any person who is (i) incompetent by reason of mental illness, developmental disability, senility, habitual drunkenness, excessive use of drugs, or other mental incapacity, of either managing his or her property or caring for himself or herself, or both, or (ii) incapacitated as defined in (a), (b), or (d) of this subsection.

(f) For purposes of the terms "incompetent," "disabled," or "not legally competent," as those terms are used in the Revised Code of Washington to apply to persons incapacitated under this chapter, those terms shall be interpreted to mean "incapacitated" persons for purposes of this chapter.

(2) The superior court for each county shall have power to appoint limited guardians for the persons and estates, or either thereof, of incapacitated persons, who by reason of their incapacity have need for protection and assistance, but who are capable of managing some of their personal and financial affairs. After considering all evidence presented as a result of such investigation, the court shall impose, by order, only such specific limitations and restrictions on an incapacitated person to be placed under a limited guardianship as the court finds necessary for such person's protection and assistance. A person shall not be presumed to be incapacitated nor shall a person lose any legal rights or suffer any legal disabilities as the result of being placed under a limited guardianship, except as to those rights and disabilities specifically set forth in the court order establishing such a limited guardianship. In addition, the court order shall state the period of time for which it shall be applicable.

(3) Venue for petitions for guardianship or limited guardianship shall lie in the county wherein the alleged incapacitated person is domiciled, or if such person resides in a facility supported in whole or in part by local,

state, or federal funding sources, in either the county where the facility is located, the county of domicile prior to residence in the supported facility, or the county where a parent or spouse or domestic partner of the alleged incapacitated person is domiciled.

If the alleged incapacitated person's residency has changed within one year of the filing of the petition, any interested person may move for a change of venue for any proceedings seeking the appointment of a guardian or a limited guardian under this chapter to the county of the alleged incapacitated person's last place of residence of one year or more. The motion shall be granted when it appears to the court that such venue would be in the best interests of the alleged incapacitated person and would promote more complete consideration of all relevant matters.

(4) Under RCW 11.94.010, a principal may nominate, by a durable power of attorney, the guardian or limited guardian of his or her estate or person for consideration by the court if guardianship proceedings for the principal's person or estate are thereafter commenced. The court shall make its appointment in accordance with the principal's most recent nomination in a durable power of attorney except for good cause or disqualification.

(5) Imposition of a guardianship for an incapacitated person shall not result in the loss of the right to vote unless the court determines that the person is incompetent for purposes of rationally exercising the franchise in that the individual lacks the capacity to understand the nature and effect of voting such that she or he cannot make an individual choice. The court order establishing guardianship shall specify whether or not the individual retains voting rights. When a court determines that the person is incompetent for the purpose of rationally exercising the right to vote, the court shall notify the appropriate county auditor.

[2008 c 6 § 802; 2005 c 236 § 3; (2005 c 236 § 2 expired January 1, 2006); 2004 c 267 § 139; 1991 c 289 § 1; 1990 c 122 § 2; 1984 c 149 § 176; 1977 ex.s. c 309 § 2; 1975 1st ex.s. c 95 § 2; 1965 c 145 § 11.88.010. Prior: 1917 c 156 § 195; RRS § 1565; prior: Code 1881 § 1604; 1873 p 314 § 299; 1855 p 15 § 1.]

Notes:

Part headings not law -- Severability -- 2008 c 6: **See RCW 26.60.900 and 26.60.901.**

Effective date -- 2005 c 236 § 3: "Section 3 of this act takes effect January 1, 2006." [2005 c 236 § 5.]

Expiration date -- 2005 c 236 § 2: "Section 2 of this act expires January 1, 2006." [2005 c 236 § 4.]

Findings -- 2005 c 236: "The legislature finds that the right to vote is a fundamental liberty and that this liberty should not be confiscated without due process. When the state chooses to use guardianship proceedings as the basis for the denial of a fundamental liberty, an individual is entitled to basic procedural protections that will ensure fundamental fairness. These basic procedural protections should include clear notice and a meaningful opportunity to be heard. The legislature further finds that the state has a compelling interest in ensuring that those who cast a ballot understand the nature and effect of voting is an individual decision, and that any restriction of voting rights imposed through guardianship proceedings should be narrowly tailored to meet this compelling interest." [2005 c 236 § 1.]

Effective dates -- 2004 c 267: See note following RCW 29A.08.010.

Effective date -- 1990 c 122: See note following RCW 11.88.005.

Severability -- Effective dates -- 1984 c 149: See notes following RCW 11.02.005.

Severability -- 1977 ex.s. c 309: See note following RCW 11.88.005.

11.88.020
Qualifications.

(1) Any suitable person over the age of eighteen years, or any parent under the age of eighteen years or, if the petition is for appointment of a professional guardian, any individual or guardianship service that meets any certification requirements established by the administrator for the courts, may, if not otherwise disqualified, be appointed guardian or limited guardian of the person and/or the estate of an incapacitated person. A financial institution subject to the jurisdiction of the department of financial institutions and authorized to exercise trust powers, and a federally chartered financial institution when authorized to do so, may act as a guardian of the estate of an incapacitated person without having to meet the certification requirements established by the administrator for the courts. No person is qualified to serve as a guardian who is

(a) under eighteen years of age except as otherwise provided herein;

(b) of unsound mind;

(c) convicted of a felony or of a misdemeanor involving moral turpitude;

(d) a nonresident of this state who has not appointed a resident agent to accept service of process in all actions or proceedings with respect to the estate and caused such appointment to be filed with the court;

(e) a corporation not authorized to act as a fiduciary, guardian, or limited guardian in the state;

(f) a person whom the court finds unsuitable.

(2) The professional guardian certification requirements required under this section shall not apply to a testamentary guardian appointed under RCW 11.88.080.

[1997 c 312 § 1; 1990 c 122 § 3; 1975 1st ex.s. c 95 § 3; 1971 c 28 § 4; 1965 c 145 § 11.88.020. Prior: 1917 c 156 § 196; RRS § 1566.]

Notes:

Effective date -- 1997 c 312: **"Sections 1 and 2 of this act take effect January 1, 1999." [1997 c 312 § 4.]**

Effective date -- 1990 c 122: See note following RCW 11.88.005.

Banks and trust companies may act as guardian: RCW 11.36.010.

11.88.030
Petition — Contents — Hearing.

(1) Any person or *entity may petition for the appointment of a qualified person, trust company, national bank, or nonprofit corporation authorized in RCW 11.88.020 as the guardian or limited guardian of an incapacitated person. No liability for filing a petition for guardianship or limited guardianship shall attach to a petitioner acting in good faith and upon reasonable basis. A petition for guardianship or limited guardianship shall state:

(a) The name, age, residence, and post office address of the alleged incapacitated person;

(b) The nature of the alleged incapacity in accordance with RCW 11.88.010;

(c) The approximate value and description of property, including any compensation, pension, insurance, or allowance, to which the alleged incapacitated person may be entitled;

(d) Whether there is, in any state, a guardian or limited guardian, or pending guardianship action for the person or estate of the alleged incapacitated person;

(e) The residence and post office address of the person whom petitioner asks to be appointed guardian or limited guardian;

(f) The names and addresses, and nature of the relationship, so far as known or can be reasonably ascertained, of the persons most closely related by blood, marriage, or state registered domestic partnership to the alleged incapacitated person;

(g) The name and address of the person or facility having the care and custody of the alleged incapacitated person;

(h) The reason why the appointment of a guardian or limited guardian is sought and the interest of the petitioner in the appointment, and whether the appointment is sought as guardian or limited guardian of the person, the estate, or both;

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

(j) The nature and degree of the alleged incapacity and the specific areas of protection and assistance requested and the limitation of rights requested to be included in the court's order of appointment;

(k) The requested term of the limited guardianship to be included in the court's order of appointment;

(l) Whether the petitioner is proposing a specific individual to act as guardian ad litem and, if so, the individual's knowledge of or relationship to any of the parties, and why the individual is proposed.

(2)(a) The attorney general may petition for the appointment of a guardian or limited guardian in any case in which there is cause to believe that a guardianship is necessary and no private party is able and willing to petition.

(b) Prepayment of a filing fee shall not be required in any guardianship or limited guardianship brought by the attorney general. Payment of the filing fee shall be ordered from the estate of the incapacitated person at the hearing on the merits of the petition, unless in the judgment of the court, such payment would impose a hardship upon the incapacitated person, in which case the filing shall be waived.

(3) No filing fee shall be charged by the court for filing either a petition for guardianship or a petition for limited guardianship if the petition alleges that the alleged incapacitated person has total assets of a value of less than three thousand dollars.

(4)(a) Notice that a guardianship proceeding has been commenced shall be personally served upon the alleged incapacitated person and the guardian ad litem along with a copy of the petition for appointment of a guardian. Such notice shall be served not more than five court days after the petition has been filed.

(b) Notice under this subsection shall include a clear and easily readable statement of the legal rights of the alleged incapacitated person that could be restricted or transferred to a guardian by a guardianship order as well as the right to counsel of choice and to a jury trial on the issue of incapacity. Such notice shall be in substantially the following form and shall be in capital letters, double-spaced, and in a type size not smaller than ten-point type:

IMPORTANT NOTICE PLEASE READ CAREFULLY

A PETITION TO HAVE A GUARDIAN APPOINTED FOR YOU HAS BEEN FILED IN THE . . . . . COUNTY SUPERIOR COURT BY . . . . . IF A GUARDIAN IS APPOINTED, YOU COULD LOSE ONE OR MORE OF

THE FOLLOWING RIGHTS:

(1) TO MARRY, DIVORCE, OR ENTER INTO OR END A STATE REGISTERED DOMESTIC PARTNERSHIP;

(2) TO VOTE OR HOLD AN ELECTED OFFICE;

(3) TO ENTER INTO A CONTRACT OR MAKE OR REVOKE A WILL;

(4) TO APPOINT SOMEONE TO ACT ON YOUR BEHALF;

(5) TO SUE AND BE SUED OTHER THAN THROUGH A GUARDIAN;

(6) TO POSSESS A LICENSE TO DRIVE;

(7) TO BUY, SELL, OWN, MORTGAGE, OR LEASE PROPERTY;

(8) TO CONSENT TO OR REFUSE MEDICAL TREATMENT;

(9) TO DECIDE WHO SHALL PROVIDE CARE AND ASSISTANCE;

(10) TO MAKE DECISIONS REGARDING SOCIAL ASPECTS OF YOUR LIFE.

UNDER THE LAW, YOU HAVE CERTAIN RIGHTS.

YOU HAVE THE RIGHT TO BE REPRESENTED BY A LAWYER OF YOUR OWN CHOOSING. THE COURT WILL APPOINT A LAWYER TO REPRESENT YOU IF YOU ARE UNABLE TO PAY OR PAYMENT WOULD RESULT IN A SUBSTANTIAL HARDSHIP TO YOU.

YOU HAVE THE RIGHT TO ASK FOR A JURY TO DECIDE WHETHER OR NOT YOU NEED A GUARDIAN TO HELP YOU.

YOU HAVE THE RIGHT TO BE PRESENT IN COURT AND TESTIFY WHEN THE HEARING IS HELD TO DECIDE WHETHER OR NOT YOU NEED A GUARDIAN. IF A GUARDIAN AD LITEM IS APPOINTED, YOU HAVE THE RIGHT TO REQUEST THE COURT TO REPLACE THAT PERSON.

(5) All petitions filed under the provisions of this section shall be heard within sixty days unless an extension of time is requested by a party or the guardian ad litem within such sixty day period and granted for good cause shown. If an extension is granted, the court shall set a new hearing date.

[2009 c 521 § 36; 1996 c 249 § 8; 1995 c 297 § 1; 1991 c 289 § 2; 1990 c 122 § 4; 1977 ex.s. c 309 § 3; 1975 1st ex.s. c 95 § 4; 1965 c 145 §11.88.030 . Prior: 1927 c 170 § 1; 1917 c 156 § 197; RRS § 1567; prior: 1909 c 118 § 1; 1903 c 130 § 1.]

Notes:

*Reviser's note: **Trust companies, national banks, and nonprofit corporations are no longer referred to in RCW 11.88.020, as amended by 1997 c 312 § 1.**

Intent -- 1996 c 249: See note following RCW 2.56.030.

Effective date -- 1990 c 122: See note following RCW 11.88.005.

Severability -- 1977 ex.s. c 309: See note following RCW 11.88.005.

Appendix A10

11.88.040
Notice and hearing, when required — Service — Procedure.

Before appointing a guardian or a limited guardian, notice of a hearing, to be held not less than ten days after service thereof, shall be served personally upon the alleged incapacitated person, if over fourteen years of age, and served upon the guardian ad litem.

Before appointing a guardian or a limited guardian, notice of a hearing, to be held not less than ten days after service thereof, shall be given by registered or certified mail to the last known address requesting a return receipt signed by the addressee or an agent appointed by the addressee, or by personal service in the manner provided for services of summons, to the following:

(1) The alleged incapacitated person, or minor, if under fourteen years of age;

(2) A parent, if the alleged incapacitated person is a minor, all known children not residing with a notified person, and the spouse or domestic partner of the alleged incapacitated person if any;

(3) Any other person who has been appointed as guardian or limited guardian, or the person with whom the alleged incapacitated person resides. No notice need be given to those persons named in subsections (2) and (3) of this section if they have signed the petition for the appointment of the guardian or limited guardian or have waived notice of the hearing.

(4) If the petition is by a parent asking for appointment as guardian or limited guardian of a minor child under the age of fourteen years, or if the petition is accompanied by the written consent of a minor of the age of fourteen years or upward, who consents to the appointment of the guardian or limited guardian asked for, or if the petition is by a nonresident guardian of any minor or incapacitated person, then the court may appoint the guardian without notice of the hearing. The court for good cause may reduce the number of days of notice, but in every case, at least three days notice shall be given.

The alleged incapacitated person shall be present in court at the final hearing on the petition: PROVIDED, That this requirement may be waived at the discretion of the court for good cause other than mere inconvenience shown in the report to be provided by the guardian ad litem pursuant to RCW 11.88.090 as now or hereafter amended, or if no guardian ad litem is required to be appointed pursuant to RCW 11.88.090, as now or hereafter amended, at the discretion of the court for good cause shown by a party. Alternatively, the court may remove itself to the place of residence of the alleged incapacitated person and conduct the final hearing in the presence of the alleged incapacitated person. Final hearings on the petition may be held in closed court without admittance of any person other than those necessary to the action or proceeding.

If presence of the alleged incapacitated person is waived and the court does not remove itself to the place of residence of such person, the guardian ad litem shall appear in person at the final hearing on the petition.

[2008 c 6 § 803; 1995 c 297 § 2; 1991 c 289 § 3; 1990 c 122 § 5; 1984 c 149 § 177; 1977 ex.s. c 309 § 4; 1975 1st ex.s. c 95 § 5; 1969 c 70 § 1; 1965 c 145 §11.88.040 . Prior: 1927 c 170 § 2; 1923 c 142 § 4; 1917 c 156 § 198; RRS § 1568; prior: 1909 c 118 § 2; 1903 c 130 §§ 2, 3.]

Notes:

Part headings not law -- Severability -- 2008 c 6: **See RCW 26.60.900 and 26.60.901.**

Effective date -- 1990 c 122: See note following RCW 11.88.005.

Severability -- Effective dates -- 1984 c 149: See notes following RCW 11.02.005.

Severability -- 1977 ex.s. c 309: See note following RCW 11.88.005.

11.88.045
Legal counsel and jury trial — Proof — Medical report — Examinations — Waiver.

(1)(a) Alleged incapacitated individuals shall have the right to be represented by willing counsel of their choosing at any stage in guardianship proceedings. The court shall provide counsel to represent any alleged incapacitated person at public expense when either: (i) The individual is unable to afford counsel, or (ii) the expense of counsel would result in substantial hardship to the individual, or (iii) the individual does not have practical access to funds with which to pay counsel. If the individual can afford counsel but lacks practical access to funds, the court shall provide counsel and may impose a reimbursement requirement as part of a final order. When, in the opinion of the court, the rights and interests of an alleged or adjudicated incapacitated person cannot otherwise be adequately protected and represented, the court on its own motion shall appoint an attorney at any time to represent such person. Counsel shall be provided as soon as practicable after a petition is filed and long enough before any final hearing to allow adequate time for consultation and preparation. Absent a convincing showing in the record to the contrary, a period of less than three weeks shall be presumed by a reviewing court to be inadequate time for consultation and preparation.

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

(c) If an alleged incapacitated person is represented by counsel and does not communicate with counsel, counsel may ask the court for leave to withdraw for that reason. If satisfied, after affording the alleged incapacitated person an opportunity for a hearing, that the request is justified, the court may grant the request and allow the case to proceed with the alleged incapacitated person unrepresented.

(2) During the pendency of any guardianship, any attorney purporting to represent a person alleged or adjudicated to be incapacitated shall petition to be appointed to represent the incapacitated or alleged incapacitated person. Fees for representation described in this section shall be subject to approval by the court pursuant to the provisions of RCW 11.92.180.

(3) The alleged incapacitated person is further entitled to testify and present evidence and, upon request, entitled to a jury trial on the issues of his or her alleged incapacity. The standard of proof to be applied in a contested case, whether before a jury or the court, shall be that of clear, cogent, and convincing evidence.

(4) In all proceedings for appointment of a guardian or limited guardian, the court must be presented with a written report from a physician licensed to practice under chapter 18.71 or 18.57 RCW, psychologist licensed under chapter 18.83 RCW, or advanced registered nurse practitioner licensed under chapter 18.79 RCW, selected by the guardian ad litem. If the alleged incapacitated person opposes the health care professional selected by the guardian ad litem to prepare the medical report, then the guardian ad litem shall use the health care professional selected by the alleged incapacitated person. The guardian ad litem may also obtain a supplemental examination. The physician, psychologist, or advanced registered nurse practitioner shall have personally examined and interviewed the alleged incapacitated person within thirty days of preparation of the report to the court and shall have expertise in the type of disorder or incapacity the alleged incapacitated person is believed to have. The report shall contain the following information and shall be set forth in substantially the following format:

(a) The name and address of the examining physician, psychologist, or advanced registered nurse practitioner;

(b) The education and experience of the physician, psychologist, or advanced registered nurse practitioner pertinent to the case;

(c) The dates of examinations of the alleged incapacitated person;

(d) A summary of the relevant medical, functional, neurological, or mental health history of the alleged incapacitated person as known to the examining physician, psychologist, or advanced registered nurse practitioner;

(e) The findings of the examining physician, psychologist, or advanced registered nurse practitioner as to the condition of the alleged incapacitated person;

(f) Current medications;

(g) The effect of current medications on the alleged incapacitated person's ability to understand or participate in guardianship proceedings;

(h) Opinions on the specific assistance the alleged incapacitated person needs;

(i) Identification of persons with whom the physician, psychologist, or advanced registered nurse practitioner has met or spoken regarding the alleged incapacitated person.

The court shall not enter an order appointing a guardian or limited guardian until a medical or mental status report meeting the above requirements is filed.

The requirement of filing a medical report is waived if the basis of the guardianship is minority.

(5) During the pendency of an action to establish a guardianship, a petitioner or any person may move for temporary relief under chapter 7.40 RCW, to protect the alleged incapacitated person from abuse, neglect, abandonment, or exploitation, as those terms are defined in RCW 74.34.020, or to address any other emergency needs of the alleged incapacitated person. Any alternative arrangement executed before filing the petition for guardianship shall remain effective unless the court grants the relief requested under chapter 7.40 RCW, or unless, following notice and a hearing at which all parties directly affected by the arrangement are present, the court finds that the alternative arrangement should not remain effective.

[2001 c 148 § 1; 1996 c 249 § 9; 1995 c 297 § 3; 1991 c 289 § 4; 1990 c 122 § 6; 1977 ex.s. c 309 § 5; 1975 1st ex.s. c 95 § 7.]

Notes:

Intent -- 1996 c 249: **See note following RCW 2.56.030.**

Effective date -- 1990 c 122: See note following RCW 11.88.005.

Severability -- 1977 ex.s. c 309: See note following RCW 11.88.005.

11.88.080
Guardians nominated by will or durable power of attorney.

When either parent is deceased, the surviving parent of any minor child or a sole parent of a minor child, may by last will or durable power of attorney nominate a guardian or guardians of the person, or of the estate or both, of a minor child, whether born at the time of executing the instrument or afterwards, to continue during the minority of such child or for any less time. This nomination shall be effective in the event

of the death or incapacity of such parent. Every guardian of the estate of a child shall give bond in like manner and with like conditions as required by RCW 11.88.100 and 11.88.110, and he or she shall have the same powers and perform the same duties with regard to the person and estate of the minor as a guardian appointed under this chapter. The court shall confirm the parent's nomination unless the court finds, based upon evidence presented at a hearing on the matter, that the individual nominated in the surviving parent's will or durable power of attorney is not qualified to serve.

[2005 c 97 § 11; 1990 c 122 § 7; 1965 c 145 § 11.88.080. Prior: 1917 c 156 § 210; RRS § 1580; prior: Code 1881 § 1618; 1860 p 228 § 335.]

Notes:

Effective date -- 1990 c 122: **See note following RCW 11.88.005.**

11.88.090
Guardian ad litem — Mediation — Appointment — Qualifications — Notice of and statement by guardian ad litem — Hearing and notice — Attorneys' fees and costs — Registry — Duties — Report — Responses — Fee.

(1) Nothing contained in RCW 11.88.080 through 11.88.120, 11.92.010 through 11.92.040, 11.92.060 through 11.92.120, 11.92.170, and11.92.180 shall affect or impair the power of any court to appoint a guardian ad litem to defend the interests of any incapacitated person interested in any suit or matter pending therein, or to commence and prosecute any suit in his or her behalf.

(2) Prior to the appointment of a guardian or a limited guardian, whenever it appears that the incapacitated person or incapacitated person's estate could benefit from mediation and such mediation would likely result in overall reduced costs to the estate, upon the motion of the alleged incapacitated person or the guardian ad litem, or subsequent to such appointment, whenever it appears that the incapacitated person or incapacitated person's estate could benefit from mediation and such mediation would likely result in overall reduced costs to the estate, upon the motion of any interested person, the court may:

(a) Require any party or other person subject to the jurisdiction of the court to participate in mediation;

(b) Establish the terms of the mediation; and

(c) Allocate the cost of the mediation pursuant to *RCW 11.96.140.

(3) Upon receipt of a petition for appointment of guardian or limited guardian, except as provided herein, the court shall appoint a guardian ad litem to represent the best interests of the alleged incapacitated person, who shall be a person found or known by the court to:

(a) Be free of influence from anyone interested in the result of the proceeding; and

(b) Have the requisite knowledge, training, or expertise to perform the duties required by this section.

The guardian ad litem shall within five days of receipt of notice of appointment file with the court and serve, either personally or by certified mail with return receipt, each party with a statement including: His or her training relating to the duties as a guardian ad litem; his or her criminal history as defined in RCW 9.94A.030 for the period covering ten years prior to the appointment; his or her hourly rate, if compensated; whether the guardian ad litem has had any contact with a party to the proceeding prior to his or her appointment; and whether he or she has an apparent conflict of interest. Within three days of the later of the actual service or filing of the guardian ad litem's statement, any party may set a hearing and file and serve a motion for an order to show cause why the guardian ad litem should not be removed for one of the following three reasons: (i) Lack of expertise necessary for the proceeding; (ii) an hourly rate higher than what is reasonable for the particular proceeding; or (iii) a conflict of interest. Notice of the hearing shall be provided

to the guardian ad litem and all parties. If, after a hearing, the court enters an order replacing the guardian ad litem, findings shall be included, expressly stating the reasons for the removal. If the guardian ad litem is not removed, the court has the authority to assess to the moving party, attorneys' fees and costs related to the motion. The court shall assess attorneys' fees and costs for frivolous motions.

No guardian ad litem need be appointed when a parent is petitioning for a guardian or a limited guardian to be appointed for his or her minor child and the minority of the child, as defined by RCW 11.92.010, is the sole basis of the petition. The order appointing the guardian ad litem shall recite the duties set forth in subsection (5) of this section. The appointment of a guardian ad litem shall have no effect on the legal competency of the alleged incapacitated person and shall not overcome the presumption of competency or full legal and civil rights of the alleged incapacitated person.

(4)(a) The superior court of each county shall develop and maintain a registry of persons who are willing and qualified to serve as guardians ad litem in guardianship matters. The court shall choose as guardian ad litem a person whose name appears on the registry in a system of consistent rotation, except in extraordinary circumstances such as the need for particular expertise. The court shall develop procedures for periodic review of the persons on the registry and for probation, suspension, or removal of persons on the registry for failure to perform properly their duties as guardian ad litem. In the event the court does not select the person next on the list, it shall include in the order of appointment a written reason for its decision.

(b) To be eligible for the registry a person shall:

(i) Present a written statement outlining his or her background and qualifications. The background statement shall include, but is not limited to, the following information:

(A) Level of formal education;

(B) Training related to the guardian ad litem's duties;

(C) Number of years' experience as a guardian ad litem;

(D) Number of appointments as a guardian ad litem and the county or counties of appointment;

(E) Criminal history, as defined in RCW 9.94A.030; and

(F) Evidence of the person's knowledge, training, and experience in each of the following: Needs of impaired elderly people, physical disabilities, mental illness, developmental disabilities, and other areas relevant to the needs of incapacitated persons, legal procedure, and the requirements of chapters 11.88 and 11.92 RCW.

The written statement of qualifications shall include the names of any counties in which the person was removed from a guardian ad litem registry pursuant to a grievance action, and the name of the court and the cause number of any case in which the court has removed the person for cause; and

(ii) Complete the training as described in (e) of this subsection. The training is not applicable to guardians ad litem appointed pursuant to special proceeding Rule 98.16W.

(c) Superior court shall remove any person from the guardian ad litem registry who misrepresents his or her qualifications pursuant to a grievance procedure established by the court.

(d) The background and qualification information shall be updated annually.

(e) The department of social and health services shall convene an advisory group to develop a model guardian ad litem training program and shall update the program biennially. The advisory group shall consist of representatives from consumer, advocacy, and professional groups knowledgeable in developmental disabilities, neurological impairment, physical disabilities, mental illness, domestic violence, aging, legal, court administration, the Washington state bar association, and other interested parties.

(f) The superior court shall require utilization of the model program developed by the advisory group as described in (e) of this subsection, to assure that candidates applying for registration as a qualified guardian ad litem shall have satisfactorily completed training to attain these essential minimum qualifications to act as guardian ad litem.

(5) The guardian ad litem appointed pursuant to this section shall have the following duties:

(a) To meet and consult with the alleged incapacitated person as soon as practicable following appointment and explain, in language which such person can reasonably be expected to understand, the substance of the petition, the nature of the resultant proceedings, the person's right to contest the petition, the identification of the proposed guardian or limited guardian, the right to a jury trial on the issue of his or her alleged incapacity, the right to independent legal counsel as provided by RCW 11.88.045, and the right to be present in court at the hearing on the petition;

(b) To obtain a written report according to RCW 11.88.045; and such other written or oral reports from other qualified professionals as are necessary to permit the guardian ad litem to complete the report required by this section;

(c) To meet with the person whose appointment is sought as guardian or limited guardian and ascertain:

(i) The proposed guardian's knowledge of the duties, requirements, and limitations of a guardian; and

(ii) The steps the proposed guardian intends to take or has taken to identify and meet the needs of the alleged incapacitated person;

(d) To consult as necessary to complete the investigation and report required by this section with those known relatives, friends, or other persons the guardian ad litem determines have had a significant, continuing interest in the welfare of the alleged incapacitated person;

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

(f) To provide the court with a written report which shall include the following:

(i) A description of the nature, cause, and degree of incapacity, and the basis upon which this judgment was made;

(ii) A description of the needs of the incapacitated person for care and treatment, the probable residential requirements of the alleged incapacitated person and the basis upon which these findings were made;

(iii) An evaluation of the appropriateness of the guardian or limited guardian whose appointment is sought and a description of the steps the proposed guardian has taken or intends to take to identify and meet current and emerging needs of the incapacitated person;

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

(v) A description of the abilities of the alleged incapacitated person and a recommendation as to whether a guardian or limited guardian should be appointed. If appointment of a limited guardian is recommended, the guardian ad litem shall recommend the specific areas of authority the limited guardian should have and the limitations and disabilities to be placed on the incapacitated person;

(vi) An evaluation of the person's mental ability to rationally exercise the right to vote and the basis upon which the evaluation is made;

(vii) Any expression of approval or disapproval made by the alleged incapacitated person concerning the proposed guardian or limited guardian or guardianship or limited guardianship;

(viii) Identification of persons with significant interest in the welfare of the alleged incapacitated person who should be advised of their right to request special notice of proceedings pursuant to RCW 11.92.150; and

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

Within forty-five days after notice of commencement of the guardianship proceeding has been served upon the guardian ad litem, and at least fifteen days before the hearing on the petition, unless an extension or reduction of time has been granted by the court for good cause, the guardian ad litem shall file its report and send a copy to the alleged incapacitated person and his or her counsel, spouse or domestic partner, all children not residing with a notified person, those persons described in (f)(viii) of this subsection, and persons who have filed a request for special notice pursuant to RCW 11.92.150. If the guardian ad litem needs additional time to finalize his or her report, then the guardian ad litem shall petition the court for a postponement of the hearing or, with the consent of all other parties, an extension or reduction of time for filing the report. If the hearing does not occur within sixty days of filing the petition, then upon the two-month anniversary of filing the petition and on or before the same day of each following month until the hearing, the guardian ad litem shall file interim reports summarizing his or her activities on the proceeding during that time period as well as fees and costs incurred;

(g) To advise the court of the need for appointment of counsel for the alleged incapacitated person within five court days after the meeting described in (a) of this subsection unless (i) counsel has appeared, (ii) the alleged incapacitated person affirmatively communicated a wish not to be represented by counsel after being advised of the right to representation and of the conditions under which court-provided counsel may be available, or (iii) the alleged incapacitated person was unable to communicate at all on the subject, and the guardian ad litem is satisfied that the alleged incapacitated person does not affirmatively desire to be represented by counsel.

(6) If the petition is brought by an interested person or entity requesting the appointment of some other qualified person or entity and a prospective guardian or limited guardian cannot be found, the court shall order the guardian ad litem to investigate the availability of a possible guardian or limited guardian and to include the findings in a report to the court pursuant to subsection (5)(f) of this section.

(7) The parties to the proceeding may file responses to the guardian ad litem report with the court and deliver such responses to the other parties and the guardian ad litem at any time up to the second day prior to the hearing. If a guardian ad litem fails to file his or her report in a timely manner, the hearing shall be continued to give the court and the parties at least fifteen days before the hearing to review the report. At any time during the proceeding upon motion of any party or on the court's own motion, the court may remove the guardian ad litem for failure to perform his or her duties as specified in this chapter, provided that the guardian ad litem shall have five days' notice of any motion to remove before the court enters such order. In addition, the court in its discretion may reduce a guardian ad litem's fee for failure to carry out his or her duties.

(8) The court appointed guardian ad litem shall have the authority, in the event that the alleged incapacitated person is in need of emergency life-saving medical services, and is unable to consent to such medical services due to incapacity pending the hearing on the petition to give consent for such emergency life-saving medical services on behalf of the alleged incapacitated person.

(9) The court-appointed guardian ad litem shall have the authority to move for temporary relief under chapter 7.40 RCW to protect the alleged incapacitated person from abuse, neglect, abandonment, or exploitation, as those terms are defined in RCW 74.34.020, or to address any other emergency needs of the alleged incapacitated person. Any alternative arrangement executed before filing the petition for guardianship shall remain effective unless the court grants the relief requested under chapter 7.40 RCW, or unless, following notice and a hearing at which all parties directly affected by the arrangement are present, the court finds that the alternative arrangement should not remain effective.

(10) The guardian ad litem shall receive a fee determined by the court. The fee shall be charged to the alleged incapacitated person unless the court finds that such payment would result in substantial hardship upon such person, in which case the county shall be responsible for such costs: PROVIDED, That the court may charge such fee to the petitioner, the alleged incapacitated person, or any person who has appeared in the action; or may allocate the fee, as it deems just. If the petition is found to be frivolous or not brought in good faith, the guardian ad litem fee shall be charged to the petitioner. The court shall not be required to provide for the payment of a fee to any salaried employee of a public agency.

(11) Upon the presentation of the guardian ad litem report and the entry of an order either dismissing the petition for appointment of guardian or limited guardian or appointing a guardian or limited guardian, the guardian ad litem shall be dismissed and shall have no further duties or obligations unless otherwise ordered by the court. If the court orders the guardian ad litem to perform further duties or obligations, they shall not be performed at county expense.

(12) The guardian ad litem shall appear in person at all hearings on the petition unless all parties provide a written waiver of the requirement to appear.

(13) At any hearing the court may consider whether any person who makes decisions regarding the alleged incapacitated person or estate has breached a statutory or fiduciary duty.

[2008 c 6 § 804; 2000 c 124 § 1; 1999 c 360 § 1; 1996 c 249 § 10; 1995 c 297 § 4; 1991 c 289 § 5; 1990 c 122 § 8; 1977 ex.s. c 309 § 6; 1975 1st ex.s. c 95 § 9; 1965 c 145 § 11.88.090. Prior: 1917 c 156 § 211; RRS § 1581; prior: Code 1881 § 1619; 1873 p 318 § 314; 1860 p 228 § 336.]

Notes:

Rules of court: **Judgment for and settlement of claims of minors: SPR 98.16W.**

***Reviser's note:** RCW 11.96.140 was repealed by 1999 c 42 § 637, effective January 1, 2000.

Part headings not law -- Severability -- 2008 c 6: See RCW 26.60.900 and 26.60.901.

Grievance rules -- 2000 c 124: "Each superior court shall adopt rules establishing and governing procedures for filing, investigating, and adjudicating grievances made by or against guardians ad litem under Titles 11, 13, and 26 RCW." [2000 c 124 § 16.]

Intent -- 1996 c 249: See note following RCW 2.56.030.

Effective date -- 1990 c 122: See note following RCW 11.88.005.

Severability -- 1977 ex.s. c 309: See note following RCW 11.88.005.

Costs against guardian of infant plaintiff: RCW 4.84.140.

District judge, guardian ad litem if defendant minor, appointment of: RCW 12.04.150.

Execution against for costs against infant plaintiff: RCW 4.84.140.

Incapacitated persons
  appearance in civil action: RCW 4.08.060.
  appointment for civil actions: RCW 4.08.060.

Liability for costs against infant plaintiffs: RCW 4.84.140.

Minors, for
  appearance in civil actions: RCW 4.08.050.
  appointment for civil actions: RCW 4.08.050.
  district court proceedings: RCW 12.04.150.

Registration of land titles, appointment for minors: RCW 65.12.145.

11.88.093
Ex parte communications — Removal.

A guardian ad litem shall not engage in ex parte communications with any judicial officer involved in the matter for which he or she is appointed during the pendency of the proceeding, except as permitted by court rule or statute for ex parte motions. Ex parte motions shall be heard in open court on the record. The record may be preserved in a manner deemed appropriate by the county where the matter is heard. The court, upon its own motion, or upon the motion of a party, may consider the removal of any guardian ad litem who violates this section from any pending case or from any court-authorized registry, and if so removed may require forfeiture of any fees for professional services on the pending case.

[2000 c 124 § 10.]

11.88.095
Disposition of guardianship petition.

(1) In determining the disposition of a petition for guardianship, the court's order shall be based upon findings as to the capacities, condition, and needs of the alleged incapacitated person, and shall not be based solely upon agreements made by the parties.

(2) Every order appointing a full or limited guardian of the person or estate shall include:

(a) Findings as to the capacities, condition, and needs of the alleged incapacitated person;

(b) The amount of the bond, if any, or a bond review period;

(c) When the next report of the guardian is due;

(d) Whether the guardian ad litem shall continue acting as guardian ad litem;

(e) Whether a review hearing shall be required upon the filing of the inventory;

(f) The authority of the guardian, if any, for investment and expenditure of the ward's estate; and

(g) Names and addresses of those persons described in RCW 11.88.090(5)(d), if any, whom the court believes should receive copies of further pleadings filed by the guardian with respect to the guardianship.

(3) If the court determines that a limited guardian should be appointed, the order shall specifically set forth the limits by either stating exceptions to the otherwise full authority of the guardian or by stating the specific authority of the guardian.

(4) In determining the disposition of a petition for appointment of a guardian or limited guardian of the estate only, the court shall consider whether the alleged incapacitated person is capable of giving informed medical consent or of making other personal decisions and, if not, whether a guardian or limited guardian of the person of the alleged incapacitated person should be appointed for that purpose.

(5) Unless otherwise ordered, any powers of attorney or durable powers of attorney shall be revoked upon appointment of a guardian or limited guardian of the estate.

If there is an existing medical power of attorney, the court must make a specific finding of fact regarding the continued validity of that medical power of attorney before appointing a guardian or limited guardian for the person.

[1995 c 297 § 5; 1991 c 289 § 6; 1990 c 122 § 9.]

Notes:

Effective date -- 1990 c 122: **See note following RCW 11.88.005.**

11.88.097
Guardian ad litem — Fees.

The court shall specify the hourly rate the guardian ad litem may charge for his or her services, and shall specify the maximum amount the guardian ad litem may charge without additional court review and approval. The court shall specify rates and fees in the order of appointment or at the earliest date the court is able to determine the appropriate rates and fees and prior to the guardian ad litem billing for his or her services. This section shall apply except as provided by local court rule.

[2000 c 124 § 13.]

11.88.100
Oath and bond of guardian or limited guardian.

***** CHANGE IN 2010 *** (SEE 6239-S.SL) *****

Before letters of guardianship are issued, each guardian or limited guardian shall take and subscribe an oath and, unless dispensed with by order of the court as provided in RCW 11.88.105, file a bond, with sureties to be approved by the court, payable to the state, in such sum as the court may fix, taking into account the character of the assets on hand or anticipated and the income to be received and disbursements to be made, and such bond shall be conditioned substantially as follows:

The condition of this obligation is such, that if the above bound A.B., who has been appointed guardian or limited guardian for C.D., shall faithfully discharge the office and trust of such guardian or limited guardian according to law and shall render a fair and just account of his guardianship or limited guardianship to the superior court of the county of . . . . . ., from time to time as he shall thereto be required by such court, and comply with all orders of the court, lawfully made, relative to the goods, chattels, moneys, care, management, and education of such incapacitated person, or his or her property, and render and pay to such incapacitated person all moneys, goods, chattels, title papers, and effects which may come into the hands or possession of such guardian or limited guardian, at such time and in such manner as the court may order, then this obligation shall be void, otherwise it shall remain in effect.

The bond shall be for the use of the incapacitated person, and shall not become void upon the first recovery, but may be put in suit from time to time against all or any one of the obligors, in the name and for the use and benefit of any person entitled by the breach thereof, until the whole penalty is recovered thereon. The court may require an additional bond whenever for any reason it appears to the court that an additional bond should be given.

In all guardianships or limited guardianships of the person, and in all guardianship or limited guardianships of the estate, in which the petition alleges that the alleged incapacitated person has total assets of a value of less than three thousand dollars, the court may dispense with the requirement of a bond pending filing of an inventory confirming that the estate has total assets of less than three thousand dollars: PROVIDED, That the guardian or limited guardian shall swear to report to the court any changes in the total assets of the incapacitated person increasing their value to over three thousand dollars: PROVIDED FURTHER, That the guardian or limited guardian shall file a yearly statement showing the monthly income

of the incapacitated person if said monthly income, excluding moneys from state or federal benefits, is over the sum of five hundred dollars per month for any three consecutive months.

[1990 c 122 § 10; 1983 c 271 § 1; 1977 ex.s. c 309 § 7; 1975 1st ex.s. c 95 § 10; 1965 c 145 § 11.88.100. Prior: 1961 c 155 § 1; 1951 c 242 § 1; 1947 c 145 § 1; 1945 c 41 § 1; 1917 c 156 § 203; Rem. Supp. 1947 § 1573; prior: 1905 c 17 § 1; Code 1881 § 1612; 1860 p 226 § 329.]

Notes:

Effective date -- 1990 c 122: **See note following RCW 11.88.005.**

Severability -- 1977 ex.s. c 309: See note following RCW 11.88.005.

Citation of surety on bond: RCW 11.92.056.

Suretyship: Chapter 19.72 RCW.

11.88.105
Reduction in amount of bond.

In cases where all or a portion of the estate consisting of cash or securities has been placed in possession of savings and loan associations or banks, trust companies, escrow corporations, or other corporations approved by the court and if a verified receipt signed by the custodian of the funds is filed by the guardian or limited guardian in court stating that such corporations hold the cash or securities subject to order of court, the court may in its discretion dispense with the bond or reduce the amount of the bond by the amount of such deposits.

[1990 c 122 § 11; 1975 1st ex.s. c 95 § 11; 1965 c 145 § 11.88.105.]

Notes:

Effective date -- 1990 c 122: **See note following RCW 11.88.005.**

11.88.107
When bond not required.

In all cases where a bank or trust company, authorized to act as guardian or limited guardian, or where a nonprofit corporation is authorized under its articles of incorporation to act as guardian or limited guardian, is appointed as guardian or limited guardian, or acts as guardian or limited guardian under an appointment as such heretofore made, no bond shall be required: PROVIDED, That in the case of appointment of a nonprofit corporation court approval shall be required before any bond requirement of this chapter may be waived.

[1990 c 122 § 12; 1977 ex.s. c 309 § 8; 1975 1st ex.s. c 95 § 12; 1965 c 145 § 11.88.107.]

Notes:

Effective date -- 1990 c 122: **See note following RCW 11.88.005.**

Severability -- 1977 ex.s. c 309: See note following RCW 11.88.005.

11.88.110
Law on executors' and administrators' bonds applicable.

All the provisions of this title relative to bonds given by executors and administrators shall apply to bonds given by guardians or limited guardians.

[1975 1st ex.s. c 95 § 13; 1965 c 145 § 11.88.110. Prior: 1917 c 156 § 204; RRS § 1574; prior: Code 1881 § 1617; 1860 p 228 § 334.]

11.88.115
Notice to department of revenue.

Duty of guardian to notify department of revenue; personal liability for taxes upon failure to give notice: See RCW 82.32.240.

11.88.120
Modification or termination of guardianship — Procedure.

(1) At any time after establishment of a guardianship or appointment of a guardian, the court may, upon the death of the guardian or limited guardian, or, for other good reason, modify or terminate the guardianship or replace the guardian or limited guardian.

(2) Any person, including an incapacitated person, may apply to the court for an order to modify or terminate a guardianship or to replace a guardian or limited guardian. If applicants are represented by counsel, counsel shall move for an order to show cause why the relief requested should not be granted. If applicants are not represented by counsel, they may move for an order to show cause, or they may deliver a written request to the clerk of the court.

(3) By the next judicial day after receipt of an unrepresented person's request to modify or terminate a guardianship order, or to replace a guardian or limited guardian, the clerk shall deliver the request to the court. The court may (a) direct the clerk to schedule a hearing, (b) appoint a guardian ad litem to investigate the issues raised by the application or to take any emergency action the court deems necessary to protect the incapacitated person until a hearing can be held, or (c) deny the application without scheduling a hearing, if it appears based on documents in the court file that the application is frivolous. Any denial of an application without a hearing shall be in writing with the reasons for the denial explained. A copy of the order shall be mailed by the clerk to the applicant, to the guardian, and to any other person entitled to receive notice of proceedings in the matter. Unless within thirty days after receiving the request from the clerk the

court directs otherwise, the clerk shall schedule a hearing on the request and mail notice to the guardian, the incapacitated person, the applicant, all counsel of record, and any other person entitled to receive notice of proceedings in the matter.

(4) In a hearing on an application to modify or terminate a guardianship, or to replace a guardian or limited guardian, the court may grant such relief as it deems just and in the best interest of the incapacitated person.

(5) The court may order persons who have been removed as guardians to deliver any property or records belonging to the incapacitated person in accordance with the court's order. Similarly, when guardians have died or been removed and property or records of an incapacitated person are being held by any other person, the court may order that person to deliver it in accordance with the court's order. Disobedience of an order to deliver shall be punishable as contempt of court.

[1991 c 289 § 7; 1990 c 122 § 14; 1977 ex.s. c 309 § 9; 1975 1st ex.s. c 95 § 14; 1965 c 145 § 11.88.120. Prior: 1917 c 156 § 209; RRS § 1579; prior: Code 1881 § 1616; 1860 p 227 § 333; 1855 p 17 § 11.]

Notes:

Effective date -- 1990 c 122: **See note following RCW 11.88.005.**

Severability -- 1977 ex.s. c 309: See note following RCW 11.88.005.

11.88.125
Standby limited guardian or limited guardian.

(1) The person appointed by the court as either guardian or limited guardian of the person and/or estate of an incapacitated person, shall file in writing with the court, a notice designating a standby limited guardian or guardian to serve as limited guardian or guardian at the death or legal incapacity of the court-appointed guardian or limited guardian. The notice shall state the name, address, zip code, and telephone number of the designated standby or limited guardian. Notice of the guardian's designation of the standby guardian shall be given to the standby guardian, the incapacitated person and his or her spouse or domestic partner and adult children, any facility in which the incapacitated person resides, and any person entitled to special notice under RCW 11.92.150 or any person entitled to receive pleadings pursuant to RCW 11.88.095(2)(g). Such standby guardian or limited guardian shall have all the powers, duties, and obligations of the regularly appointed guardian or limited guardian and in addition shall, within a period of thirty days from the death or adjudication of incapacity of the regularly appointed guardian or limited guardian, file with the superior court in the county in which the guardianship or limited guardianship is then being administered, a petition for appointment of a substitute guardian or limited guardian. Upon the court's appointment of a new, substitute guardian or limited guardian, the standby guardian or limited guardian shall make an accounting and report to be approved by the court, and upon approval of the court, the standby guardian or limited guardian shall be released from all duties and obligations arising from or out of the guardianship or limited guardianship.

(2) Letters of guardianship shall be issued to the standby guardian or limited guardian upon filing an oath and posting a bond as required by RCW 11.88.100 as now or hereafter amended. The oath may be filed prior to the appointed guardian or limited guardian's death. Notice of such appointment shall be provided to the standby guardian, the incapacitated person, and any facility in which the incapacitated person resides. The provisions of RCW 11.88.100 through 11.88.110 as now or hereafter amended shall apply to standby guardians and limited guardians.

(3) In addition to the powers of a standby limited guardian or guardian as noted in subsection (1) of this section, the standby limited guardian or guardian shall have the authority to provide timely, informed consent to necessary medical procedures, as authorized in RCW 11.92.040 as now or hereafter amended, if the guardian or limited guardian cannot be located within four hours after the need for such consent arises.

[2008 c 6 § 805; 1991 c 289 § 8; 1990 c 122 § 15; 1979 c 32 § 1; 1977 ex.s. c 309 § 10; 1975 1st ex.s. c 95 § 6.]

Notes:

Part headings not law -- Severability -- 2008 c 6: **See RCW 26.60.900 and 26.60.901.**

Effective date -- 1990 c 122: See note following RCW 11.88.005.

Severability -- 1977 ex.s. c 309: See note following RCW 11.88.005.

11.88.130
Transfer of jurisdiction and venue.

The court of any county having jurisdiction of any guardianship or limited guardianship proceeding is authorized to transfer jurisdiction and venue of the guardianship or limited guardianship proceeding to the court of any other county of the state upon application of the guardian, limited guardian, or incapacitated person and such notice to an alleged incapacitated person or other interested party as the court may require. Such transfers of guardianship or limited guardianship proceedings shall be made to the court of a county wherein either the guardian or limited guardian or alleged incapacitated person resides, as the court may deem appropriate, at the time of making application for such transfer. The original order providing for any such transfer shall be retained as a permanent record by the clerk of the court in which such order is entered, and a certified copy thereof together with the original file in such guardianship or limited guardianship proceeding and a certified transcript of all record entries up to and including the order for such change shall be transmitted to the clerk of the court to which such proceeding is transferred.

[1990 c 122 § 16; 1975 1st ex.s. c 95 § 15; 1965 c 145 § 11.88.130. Prior: 1955 c 45 § 1.]

Notes:

Effective date -- 1990 c 122: **See note following RCW 11.88.005.**

11.88.140
Termination of guardianship or limited guardianship.

(1) TERMINATION WITHOUT COURT ORDER. A guardianship or limited guardianship is terminated:

(a) Upon the attainment of full and legal age, as defined in RCW 26.28.010 as now or hereafter amended, of any person defined as an incapacitated person pursuant to RCW 11.88.010 as now or hereafter amended solely by reason of youth, RCW 26.28.020 to the contrary notwithstanding, subject to subsection (2) of this section;

(b) By an adjudication of capacity or an adjudication of termination of incapacity;

(c) By the death of the incapacitated person;

(d) By expiration of the term of limited guardianship specified in the order appointing the limited guardian,

unless prior to such expiration a petition has been filed and served, as provided in RCW 11.88.040 as now or hereafter amended, seeking an extension of such term.

(2) TERMINATION OF GUARDIANSHIP FOR A MINOR BY DECLARATION OF COMPLETION. A guardianship for the benefit of a minor may be terminated upon the minor's attainment of legal age, as defined in RCW 26.28.010 as now or hereafter amended, by the guardian filing a declaration that states:

(a) The date the minor attained legal age;

(b) That the guardian has paid all of the minor's funds in the guardian's possession to the minor, who has signed a receipt for the funds, and that the receipt has been filed with the court;

(c) That the guardian has completed the administration of the minor's estate and the guardianship is ready to be closed; and

(d) The amount of fees paid or to be paid to each of the following: (i) The guardian, (ii) lawyer or lawyers, (iii) accountant or accountants; and that the guardian believes the fees are reasonable and does not intend to obtain court approval of the amount of the fees or to submit a guardianship accounting to the court for approval. Subject to the requirement of notice as provided in this section, unless the minor petitions the court either for an order requiring the guardian to obtain court approval of the amount of fees paid or to be paid to the guardian, lawyers, or accountants, or for an order requiring an accounting, or both, within thirty days from the filing of the declaration of completion of guardianship, the guardian shall be automatically discharged without further order of the court. The guardian's powers will cease thirty days after filing the declaration of completion of guardianship. The declaration of completion of guardianship shall, at the time, be the equivalent of an entry of a decree terminating the guardianship, distributing the assets, and discharging the guardian for all legal intents and purposes.

Within five days of the date of filing the declaration of completion of guardianship, the guardian or the guardian's lawyer shall mail a copy of the declaration of completion to the minor together with a notice that shall be substantially as follows:

CAPTION OF CASE **NOTICE OF FILING A DECLARATION OF COMPLETION OF GUARDIANSHIP**

NOTICE IS GIVEN that the attached Declaration of Completion of Guardianship was filed by the undersigned in the above-entitled court on the . . . . . day of . . . . . , 19. . . ; unless you file a petition in the above-entitled court requesting the court to review the reasonableness of the fees, or for an accounting, or both, and serve a copy of the petition on the guardian or the guardian's lawyer, within thirty days after the filing date, the amount of fees paid or to be paid will be deemed reasonable, the acts of the guardian will be deemed approved, the guardian will be automatically discharged without further order of the court and the Declaration of Completion of Guardianship will be final and deemed the equivalent of an order terminating the guardianship, discharging the guardian and decreeing the distribution of the guardianship assets.

If you file and serve a petition within the period specified, the undersigned will request the court to fix a time and place for the hearing of your petition, and you will be notified of the time and place of the hearing, by mail, or by personal service, not less than ten days before the hearing on the petition.

DATED this . . . . . day of . . . . . , 19. . .

. . . . . .

If the minor, after reaching legal age, waives in writing the notice required by this section, the guardian will be automatically discharged without further order of the court and the declaration of completion of guardianship will be effective as an order terminating the guardianship without an accounting upon filing the declaration. If the guardian has been required to furnish a bond, and a declaration of completion of guardianship is filed according to this section, any bond furnished by the guardian shall be automatically discharged upon the discharge of the guardian.

(3) TERMINATION ON COURT ORDER. A guardianship or limited guardianship may be terminated by court order after such notice as the court may require if the guardianship or limited guardianship is no longer necessary.

The guardian or limited guardian shall, within thirty days of the date of termination, unless the court orders a different deadline for good cause, prepare and file with the court a final verified account of administration. The final verified account of administration shall contain the same information as required for (a) an intermediate verified account of administration of the estate under RCW 11.92.040(2) and (b) an intermediate personal care status report under RCW 11.92.043(2).

(4) EFFECT OF TERMINATION. When a guardianship or limited guardianship terminates other than by the death of the incapacitated person, the powers of the guardian or limited guardian cease, except that a guardian or limited guardian of the estate may make disbursements for claims that are or may be allowed by the court, for liabilities already properly incurred for the estate or for the incapacitated person, and for expenses of administration. When a guardianship or limited guardianship terminates by death of the incapacitated person, the guardian or limited guardian of the estate may proceed under RCW 11.88.150 as now or hereafter amended, but the rights of all creditors against the incapacitated person's estate shall be determined by the law of decedents' estates.

[1991 c 289 § 9; 1990 c 122 § 17; 1977 ex.s. c 309 § 11; 1975 1st ex.s. c 95 § 16; 1965 c 145 § 11.88.140.]

Notes:

Effective date -- 1990 c 122: **See note following RCW 11.88.005.**

Severability -- 1977 ex.s. c 309: See note following RCW 11.88.005.

Procedure on removal or death of guardian or limited guardian: RCW 11.88.120.

Settlement of estate upon termination: RCW 11.92.053.

11.88.150
Administration of deceased incapacitated person's estate.

***** CHANGE IN 2010 *** (SEE 6239-S.SL) *****

(1) Upon the death of an incapacitated person, a guardian or limited guardian of the estate shall have authority to disburse or commit those funds under the control of the guardian or limited guardian as are prudent and within the means of the estate for the disposition of the deceased incapacitated person's remains. Consent for such arrangement shall be secured according to RCW 68.50.160. If no person authorized by *RCW 68.50.150 accepts responsibility for giving consent, the guardian or limited guardian of the estate may consent, subject to the provisions of this section and to the known directives of the deceased

incapacitated person. Reasonable financial commitments made by a guardian or limited guardian pursuant to this section shall be binding against the estate of the deceased incapacitated person.

(2) Upon the death of an incapacitated person intestate the guardian or limited guardian of his estate has power under the letters issued to him and subject to the direction of the court to administer the estate as the estate of the deceased incapacitated person without further letters unless within forty days after death of the incapacitated person a petition is filed for letters of administration or for letters testamentary and the petition is granted. If the guardian or limited guardian elects to administer the estate under his letters of guardianship or limited guardianship, he shall petition the court for an order transferring the guardianship or limited guardianship proceeding to a probate proceeding, and upon court approval, the clerk of the court shall re-index the cause as a decedent's estate, using the same file number which was assigned to the guardianship or limited guardianship proceeding. The guardian or limited guardian shall then be authorized to continue administration of the estate without the necessity for any further petition or hearing. Notice to creditors and other persons interested in the estate shall be published and may be combined with the notice of the guardian's or limited guardian's final account. This notice shall be given and published in the manner provided in chapter 11.40 RCW. Upon the hearing, the account may be allowed and the balance distributed to the persons entitled thereto, after the payment of such claims as may be allowed. Liability on the guardian's or limited guardian's bond shall continue until exonerated on settlement of his account, and may apply to the complete administration of the estate of the deceased incapacitated person with the consent of the surety. If letters of administration are granted upon petition filed within forty days after the death of the incapacitated person, the personal representative shall supersede the guardian or limited guardian in the administration of the estate and the estate shall be administered as a decedent's estate as provided in this title, including the publication of notice to creditors and other interested persons and the barring of creditors claims.

[1990 c 122 § 18; 1977 ex.s. c 309 § 12; 1975 1st ex.s. c 95 § 17; 1965 c 145 § 11.88.150.]

Notes:

*Reviser's note: **The reference to RCW 68.50.150 appears to be erroneous. RCW 68.50.160 was apparently intended. RCW 68.50.150 was subsequently repealed by 2005 c 365 § 161.**

Effective date -- 1990 c 122: See note following RCW 11.88.005.

Severability -- 1977 ex.s. c 309: See note following RCW 11.88.005.

Settlement of estate upon termination: RCW 11.92.053.

11.88.160
Guardianships involving veterans.

For guardianships involving veterans see chapter 73.36 RCW.

[1990 c 122 § 13.]

Notes:

Effective date -- 1990 c 122: **See note following RCW 11.88.005.**

11.88.900
Construction — Chapter applicable to state registered domestic partnerships — 2009 c 521.

For the purposes of this chapter, the terms spouse, marriage, marital, husband, wife, widow, widower, next of kin, and family shall be interpreted as applying equally to state registered domestic partnerships or individuals in state registered domestic partnerships as well as to marital relationships and married persons, and references to dissolution of marriage shall apply equally to state registered domestic partnerships that have been terminated, dissolved, or invalidated, to the extent that such interpretation does not conflict with federal law. Where necessary to implement chapter 521, Laws of 2009, gender-specific terms such as husband and wife used in any statute, rule, or other law shall be construed to be gender neutral, and applicable to individuals in state registered domestic partnerships.

[2009 c 521 § 35.]

Chapter 11.92 RCW

Guardianship — powers and duties of guardian or limited guardian

Appendix A30

Chapter 11.92 RCW
Guardianship — powers and duties of guardian or limited guardian

RCW Sections

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11.92.035 Claims.

11.92.040 Duties of guardian or limited guardian in general.

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11.92.170 Removal of property of nonresident incapacitated person.

11.92.180 Compensation and expenses of guardian or limited guardian -- Attorney's fees -- Department of social and health services clients paying part of costs -- Rules.

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Notes:

Veterans: RCW 73.04.140.

11.92.010
Guardians or limited guardians under court control — Legal age.

Guardians or limited guardians herein provided for shall at all times be under the general direction and control of the court making the appointment. For the purposes of chapters 11.88 and 11.92 RCW, all persons shall be of full and legal age when they shall be eighteen years old.

[1975 1st ex.s. c 95 § 18; 1971 c 28 § 5; 1965 c 145 § 11.92.010. Prior: 1923 c 72 § 1; 1917 c 156 § 202; RRS § 1572. Formerly RCW 11.92.010 and 11.92.020.]

Notes:

Age of majority: RCW 26.28.010.

Married persons deemed to be of full age: RCW 26.28.020.

Termination of guardianship or limited guardianship upon attainment of legal age: RCW 11.88.140.

Transfer of jurisdiction and venue: RCW 11.88.130.

11.92.035
Claims.

(1) DUTY OF GUARDIAN TO PAY. A guardian of the estate is under a duty to pay from the estate all just claims against the estate of the incapacitated person, whether they constitute liabilities of the incapacitated person which arose prior to the guardianship or liabilities properly incurred by the guardian for the benefit of the incapacitated person or his or her estate and whether arising in contract or in tort or otherwise, upon allowance of the claim by the court or upon approval of the court in a settlement of the guardian's accounts. The duty of the guardian to pay from the estate shall not preclude the guardian's personal liability for his or her own contracts and acts made and performed on behalf of the estate as it exists according to the common law. If it appears that the estate is likely to be exhausted before all existing claims are paid, preference shall be given to (a) the expenses of administration including guardian's fees, attorneys' fees, and court costs; (b) prior claims for the care, maintenance and education of the incapacitated person and of the person's dependents over other claims. Subject to court orders limiting such powers, a limited guardian of an estate shall have the same authority to pay claims.

(2) CLAIMS MAY BE PRESENTED. Any person having a claim against the estate of an incapacitated person, or against the guardian of his or her estate as such, may file a written claim with the court for determination at any time before it is barred by the statute of limitations. After ten days' notice to a guardian or limited guardian, a hearing on the claim shall be held, at which upon proof thereof and after consideration of any defenses or objections by the guardian, the court may enter an order for its allowance and payment from the estate. Any action against the guardian of the estate as such shall be deemed a claim duly filed.

[1990 c 122 § 19; 1975 1st ex.s. c 95 § 19; 1965 c 145 § 11.92.035.]

Notes:

Effective date -- 1990 c 122: **See note following RCW 11.88.005.**

Actions against guardian: RCW 11.92.060.

Claims against estate of deceased incompetent person or individual with a disability: RCW 11.88.150.

Disbursement for claims on termination of guardianship or limited guardianship: RCW 11.88.140.

11.92.040
Duties of guardian or limited guardian in general.

It shall be the duty of the guardian or limited guardian of an estate:

(1) To file within three months after the guardian's appointment a verified inventory of all the property of the incapacitated person which comes into the guardian's possession or knowledge, including a statement of all encumbrances, liens, and other secured charges on any item;

(2) To file annually, within ninety days after the anniversary date of the guardian's or limited guardian's appointment, and also within thirty days after termination of the appointment, unless the court for good cause orders a different deadline to file following termination, a written verified account of the administration, which account shall contain at least the following information:

(a) Identification of property of the guardianship estate as of the date of the last account or, in the case of the initial account, as of the date of inventory;

(b) Identification of all additional property received into the guardianship, including income by source;

(c) Identification of all expenditures made during the account period by major categories;

(d) Any adjustments to the guardianship estate required to establish its present fair market value, including gains or losses on sale or other disposition and any mortgages, deeds of trust or other encumbrances against the guardianship estate; and

(e) Identification of all property held in the guardianship estate as of the date of account, the assessed value of any real property and the guardian's estimate of the present fair market values of other property (including the basis on which such estimate is made), and the total net fair market value of the guardianship estate. In addition, immediately following such statement of present fair market value, the account shall set forth a statement of current amount of the guardian's bond and any other court-ordered protection for the security of the guardianship assets;

(3) The court in its discretion may allow reports at intervals of up to thirty-six months for estates with assets (exclusive of real property) having a value of not more than twice the homestead exemption. Notwithstanding contrary provisions of this section, the guardian or limited guardian of an estate need not file an annual report with the court if the funds of the guardianship are held for the benefit of a minor in a blocked account unless the guardian requests a withdrawal from such account, in which case the guardian shall provide a written verified account of the administration of the guardianship estate along with the

guardian's petition for the withdrawal. The guardian or limited guardian shall report any substantial change in income or assets of the guardianship estate within thirty days of the occurrence of the change. A hearing shall be scheduled for court review and determination of provision for increased bond or other provision in accordance with RCW 11.88.100;

(4) To protect and preserve the guardianship estate, to apply it as provided in this chapter, to account for it faithfully, to perform all of the duties required by law, and at the termination of the guardianship or limited guardianship, to deliver the assets of the incapacitated person to the persons entitled thereto. Except as provided to the contrary herein, the court may authorize a guardian or limited guardian to do anything that a trustee can do under the provisions of RCW 11.98.070 for a period not exceeding one year from the date of the order or for a period corresponding to the interval in which the guardian's or limited guardian's report is required to be filed by the court pursuant to subsection (2) of this section, whichever period is longer;

(5) To invest and reinvest the property of the incapacitated person in accordance with the rules applicable to investment of trust estates by trustees as provided in chapter 11.100 RCW, except that:

(a) No investments shall be made without prior order of the court in any property other than unconditional interest bearing obligations of this state or of the United States and in obligations the interest and principal of which are unconditionally guaranteed by the United States, and in share accounts or deposits which are insured by an agency of the United States government. Such prior order of the court may authorize specific investments, or, in the discretion of the court, may authorize the guardian or limited guardian to invest and reinvest as provided in chapter 11.100 RCW without further order of the court;

(b) If it is for the best interests of the incapacitated person that a specific property be used by the incapacitated person rather than sold and the proceeds invested, the court may so order;

(6) To apply to the court no later than the filing of the inventory for an order authorizing disbursements on behalf of the incapacitated person: PROVIDED, HOWEVER, That the guardian or limited guardian of the estate, or the person, department, bureau, agency, or charitable organization having the care and custody of an incapacitated person, may apply to the court for an order directing the guardian or limited guardian of the estate to pay to the person, department, bureau, agency, or charitable organization having the care and custody of an incapacitated person, or if the guardian or limited guardian of the estate has the care and custody of the incapacitated person, directing the guardian or limited guardian of the estate to apply an amount weekly, monthly, quarterly, semi-annually, or annually, as the court may direct, to be expended in the care, maintenance, and education of the incapacitated person and of his or her dependents. In proper cases, the court may order payment of amounts directly to the incapacitated person for his or her maintenance or incidental expenses. The amounts authorized under this section may be decreased or increased from time to time by direction of the court. If payments are made to another under an order of the court, the guardian or limited guardian of the estate is not bound to see to the application thereof.

[1991 c 289 § 10; 1990 c 122 § 20; 1985 c 30 § 9. Prior: 1984 c 149 § 12; 1979 c 32 § 2; 1977 ex.s. c 309 § 13; 1975 1st ex.s. c 95 § 20; 1965 c 145 § 11.92.040; prior: 1957 c 64 § 1; 1955 c 205 § 15; 1941 c 83 § 1; 1917 c 156 § 205; Rem. Supp. 1941 § 1575; prior: 1895 c 42 § 1; Code 1881 § 1614.]

Notes:

Effective date -- 1990 c 122: **See note following RCW 11.88.005.**

Short title -- Application -- Purpose -- Severability -- 1985 c 30: See RCW 11.02.900 through 11.02.903.

Severability -- Effective dates -- 1984 c 149: See notes following RCW 11.02.005.

Severability -- 1977 ex.s. c 309: See note following RCW 11.88.005.

Compulsory school attendance law, duty to comply with: RCW 28A.225.010.

Disabled person, defined: RCW 11.88.010.

11.92.043
Additional duties.

It shall be the duty of the guardian or limited guardian of the person:

(1) To file within three months after appointment a personal care plan for the incapacitated person which shall include (a) an assessment of the incapacitated person's physical, mental, and emotional needs and of such person's ability to perform or assist in activities of daily living, and (b) the guardian's specific plan for meeting the identified and emerging personal care needs of the incapacitated person.

(2) To file annually or, where a guardian of the estate has been appointed, at the time an account is required to be filed under RCW 11.92.040, a report on the status of the incapacitated person, which shall include:

(a) The address and name of the incapacitated person and all residential changes during the period;

(b) The services or programs which the incapacitated person receives;

(c) The medical status of the incapacitated person;

(d) The mental status of the incapacitated person;

(e) Changes in the functional abilities of the incapacitated person;

(f) Activities of the guardian for the period;

(g) Any recommended changes in the scope of the authority of the guardian;

(h) The identity of any professionals who have assisted the incapacitated person during the period.

(3) To report to the court within thirty days any substantial change in the incapacitated person's condition, or any changes in residence of the incapacitated person.

(4) Consistent with the powers granted by the court, to care for and maintain the incapacitated person in the setting least restrictive to the incapacitated person's freedom and appropriate to the incapacitated person's personal care needs, assert the incapacitated person's rights and best interests, and if the incapacitated person is a minor or where otherwise appropriate, to see that the incapacitated person receives appropriate training and education and that the incapacitated person has the opportunity to learn a trade, occupation, or profession.

(5) Consistent with RCW 7.70.065, to provide timely, informed consent for health care of the incapacitated person, except in the case of a limited guardian where such power is not expressly provided for in the order of appointment or subsequent modifying order as provided in RCW 11.88.125 as now or hereafter amended, the standby guardian or standby limited guardian may provide timely, informed consent to necessary medical procedures if the guardian or limited guardian cannot be located within four hours after the need for such consent arises. No guardian, limited guardian, or standby guardian may involuntarily commit for mental health treatment, observation, or evaluation an alleged incapacitated person who is unable or unwilling to give informed consent to such commitment unless the procedures for involuntary commitment set forth in chapter 71.05 or 72.23 RCW are followed. Nothing in this section shall be construed to allow a guardian, limited guardian, or standby guardian to consent to:

(a) Therapy or other procedure which induces convulsion;

(b) Surgery solely for the purpose of psychosurgery;

(c) Other psychiatric or mental health procedures that restrict physical freedom of movement, or the rights set forth in *RCW 71.05.370.

A guardian, limited guardian, or standby guardian who believes these procedures are necessary for the proper care and maintenance of the incapacitated person shall petition the court for an order unless the court has previously approved the procedure within the past thirty days. The court may order the procedure only after an attorney is appointed in accordance with RCW 11.88.045 if no attorney has previously appeared, notice is given, and a hearing is held in accordance with RCW 11.88.040.

[1991 c 289 § 11; 1990 c 122 § 21.]

Notes:

*Reviser's note: **RCW 71.05.370 was recodified as RCW 71.05.217 pursuant to 2005 c 504 § 108, effective July 1, 2005.**

Effective date -- 1990 c 122: See note following RCW 11.88.005.

11.92.050
Intermediate accounts — Hearing — Order.

(1) Upon the filing of any intermediate guardianship or limited guardianship account required by statute, or of any intermediate account required by court rule or order, the guardian or limited guardian may petition the court for an order settling his or her account with regard to any receipts, expenditures, and investments made and acts done by the guardian or limited guardian to the date of the interim report. Upon such petition being filed, the court may in its discretion, where the size or condition of the estate warrants it, set a date for the hearing of the petition and require the service of the petition and a notice of the hearing as provided in RCW 11.88.040 as now or hereafter amended; and, in the event a hearing is ordered, the court may also appoint a guardian ad litem, whose duty it shall be to investigate the report of the guardian or limited guardian of the estate and to advise the court thereon at the hearing, in writing. At the hearing on the report of the guardian or limited guardian, if the court is satisfied that the actions of the guardian or limited guardian have been proper, and that the guardian or limited guardian has in all respects discharged his or her trust with relation to the receipts, expenditures, investments, and acts, then, in such event, the court shall enter an order approving such account. If the court has appointed a guardian ad litem, the order shall be final and binding upon the incapacitated person, subject only to the right of appeal as upon a final order; provided that at the time of final account of said guardian or limited guardian or within one year after the incapacitated person attains his or her majority any such interim account may be challenged by the incapacitated person on the ground of fraud.

(2) The procedure established in subsection (1) of this section for financial accounts by guardians or limited guardians of the estate shall apply to personal care reports filed by guardians or limited guardians of the person under RCW 11.92.043.

[1995 c 297 § 6; 1990 c 122 s 23; 1975 1st ex.s. c 95 s 21; 1965 c 145 s 11.92.050. Prior: 1943 c 29 s 1; Rem. Supp. 1943 s 1575-1.]

Notes:

Effective date -- 1990 c 122: **See note following RCW 11.88.005.**

11.92.053
Settlement of estate upon termination.

Within ninety days after the termination of a guardianship for any reason, the guardian or limited guardian of the estate shall petition the court for an order settling his or her account as filed in accordance with RCW 11.92.040(2) with regard to any receipts, expenditures, and investments made and acts done by the guardian to the date of the termination. Upon the filing of the petition, the court shall set a date for the hearing of the petition after notice has been given in accordance with RCW 11.88.040. Any person interested may file objections to the petition or may appear at the time and place fixed for the hearing thereof and present his or her objections thereto. The court may take such testimony as it deems proper or necessary to determine whether an order settling the account should be issued and the transactions of the guardian be approved, and the court may appoint a guardian ad litem to review the report.

At the hearing on the petition of the guardian or limited guardian, if the court is satisfied that the actions of the guardian or limited guardian have been proper, and that the guardian has in all respects discharged his or her trust with relation to the receipts, expenditures, investments, and acts, then, in such event, the court shall enter an order approving the account, and the order shall be final and binding upon the incapacitated person, subject only to the right of appeal as upon a final order. However, within one year after the incompetent attains his or her majority any such account may be challenged by the incapacitated person on the ground of fraud.

[1995 c 297 § 7; 1990 c 122 § 24; 1965 c 145 § 11.92.053.]

Notes:

Effective date -- 1990 c 122: **See note following RCW 11.88.005.**

Administration of deceased incompetent's estate: RCW 11.88.150.

Procedure on removal or death of guardian -- Delivery of estate to successor: RCW 11.88.120.

Termination of guardianship: RCW 11.88.140.

11.92.056
Citation of surety on bond.

If, at any hearing upon a petition to settle the account of any guardian or limited guardian, it shall appear to the court that said guardian or limited guardian has not fully accounted or that said account should not be settled, the court may continue said hearing to a day certain and may cite the surety or sureties upon the bond of said guardian or limited guardian to appear upon the date fixed in said citation and show cause why the account should not be disapproved and judgment entered for any deficiency against said guardian or limited guardian and the surety or sureties upon his or her bond. Said citation shall be personally served

upon said surety or sureties in the manner provided by law for the service of summons in civil actions and shall be served not less than twenty days previous to said hearing. At said hearing any interested party, including the surety so cited, shall have the right to introduce any evidence which shall be material to the matter before the court. If, at said hearing, the final account of said guardian or limited guardian shall not be approved and the court shall find that said guardian or limited guardian is indebted to the incapacitated person in any amount, said court may thereupon enter final judgment against said guardian or limited guardian and the surety or sureties upon his or her bond, which judgment shall be enforceable in the same manner and to the same extent as judgments in ordinary civil actions.

[1990 c 122 § 25; 1975 1st ex.s. c 95 § 22; 1965 c 145 § 11.92.056.]

Notes:

Effective date -- 1990 c 122: **See note following RCW 11.88.005.**

11.92.060
Guardian to represent incapacitated person — Compromise of claims — Service of process.

(1) GUARDIAN MAY SUE AND BE SUED. When there is a guardian of the estate, all actions between the incapacitated person or the guardian and third persons in which it is sought to charge or benefit the estate of the incapacitated person shall be prosecuted by or against the guardian of the estate as such. The guardian shall represent the interests of the incapacitated person in the action and all process shall be served on him or her. A guardian or limited guardian of the estate shall report to the court any action commenced against the incapacitated person and shall secure court approval prior to initiating any legal action in the name of the incapacitated person.

(2) JOINDER, AMENDMENT AND SUBSTITUTION. When the guardian of the estate is under personal liability for his or her own contracts and acts made and performed on behalf of the estate the guardian may be sued both as guardian and in his or her personal capacity in the same action. Misnomer or the bringing of the action by or against the incapacitated person shall not be grounds for dismissal of the action and leave to amend or substitute shall be freely granted. If an action was commenced by or against the incapacitated person before the appointment of a guardian of his or her estate, such guardian when appointed may be substituted as a party for the incapacitated person. If the appointment of the guardian of the estate is terminated, his or her successor may be substituted; if the incapacitated person dies, his or her personal representative may be substituted; if the incapacitated person is no longer incapacitated the person may be substituted.

(3) GARNISHMENT, ATTACHMENT AND EXECUTION. When there is a guardian of the estate, the property and rights of action of the incapacitated person shall not be subject to garnishment or attachment, except for the foreclosure of a mortgage or other lien, and execution shall not issue to obtain satisfaction of any judgment against the incapacitated person or the guardian of the person's estate as such.

(4) COMPROMISE BY GUARDIAN. Whenever it is proposed to compromise or settle any claim by or against the incapacitated person or the guardian as such, whether arising as a result of personal injury or otherwise, and whether arising before or after appointment of a guardian, the court on petition of the guardian of the estate, if satisfied that such compromise or settlement will be for the best interests of the incapacitated person, may enter an order authorizing the settlement or compromise be made.

(5) LIMITED GUARDIAN. Limited guardians may serve and be served with process or actions on behalf of the incapacitated person, but only to the extent provided for in the court order appointing a limited guardian.

[1990 c 122 § 26; 1975 1st ex.s. c 95 § 23; 1965 c 145 § 11.92.060. Prior: 1917 c 156 § 206; RRS § 1576; prior: 1903 c 100 § 1; Code 1881 § 1611; 1860 p 226 § 328.]

Notes:

Rules of court: **SPR 98.08W, 98.10W, 98.16W.**

Effective date -- 1990 c 122: See note following RCW 11.88.005.

Action against guardian deemed claim: RCW 11.92.035.

11.92.090
Sale, exchange, lease, or mortgage of property.

Whenever it shall appear to the satisfaction of a court by the petition of any guardian or limited guardian, that it is necessary or proper to sell, exchange, lease, mortgage, or grant an easement, license or similar interest in any of the real or personal property of the estate of the incapacitated person for the purpose of paying debts or for the care, support and education of the incapacitated person, or to redeem any property of the incapacitated person's estate covered by mortgage or other lien, or for the purpose of making any investments, or for any other purpose which to the court may seem right and proper, the court may make an order directing such sale, exchange, lease, mortgage, or grant of easement, license or similar interest of such part or parts of the real or personal property as shall to the court seem proper.

[1990 c 122 § 27; 1975 1st ex.s. c 95 § 24; 1965 c 145 § 11.92.090. Prior: 1917 c 156 § 212; RRS § 1582; prior: Code 1881 § 1620; 1855 p 17 § 14.]

Notes:

Effective date -- 1990 c 122: **See note following RCW 11.88.005.**

11.92.096
Guardian access to certain held assets.

(1) All financial institutions as defined in RCW 30.22.040(12), all insurance companies holding a certificate of authority under chapter 48.05 RCW, or any agent who constitutes a salesperson or broker-dealer of securities under the definitions of RCW 21.20.005 (hereafter individually and collectively referenced as "institution") shall provide the guardian access and control over the asset(s) described in (a)(vii) of this subsection, including but not limited to delivery of the asset to the guardian, upon receipt of the following:

(a) An affidavit containing as an attachment a true and correct copy of the guardian's letters of guardianship and stating:

(i) That as of the date of the affidavit, the affiant is a duly appointed guardian with authority over assets held by the institution but owned or subject to withdrawal or delivery to a client or depositor of the institution;

(ii) The cause number of the guardianship;

(iii) The name of the incapacitated person and the name of the client or depositor (which names shall be the same);

(iv) The account or the safety deposit box number or numbers;

(v) The address of the client or depositor;

(vi) The name and address of the affiant-guardian being provided assets or access to assets;

(vii) A description of and the value of the asset or assets, or, where the value cannot be readily ascertained, a reasonable estimate thereof, and a statement that the guardian receives delivery or control of each asset solely in its capacity as guardian;

(viii) The date the guardian assumed control over the assets; and

(ix) That a true and correct copy of the letters of guardianship duly issued by a court to the guardian is attached to the affidavit; and

(b) An envelope, with postage prepaid, addressed to the clerk of the court issuing the letters of guardianship.

The affidavit shall be sent in the envelope by the institution to the clerk of the court together with a statement signed by an agent of the institution that the description of the asset set forth in the affidavit appears to be accurate, and confirming in the case of cash assets, the value of the asset.

(2) Any guardian provided with access to a safe deposit box pursuant to subsection (1) of this section shall make an inventory of the contents of the box and attach this inventory to the affidavit before the affidavit is sent to the clerk of the court and before the contents of the box are released to the guardian. Any inventory shall be prepared in the presence of an employee of the institution and the statement of the institution required under subsection (1) of this section shall include a statement executed by the employee that the inventory appears to be accurate. The institution may require payment by the guardian of any fees or charges then due in connection with the asset or account and of a reasonable fee for witnessing preparation of the inventory and preparing the statement required by this subsection or subsection (1) of this section.

(3) Any institution to which an affidavit complying with subsection (1) of this section is submitted may rely on the affidavit without inquiry and shall not be subject to any liability of any nature whatsoever to any person whatsoever, including but not limited to the institution's client or depositor or any other person with an ownership or other interest in or right to the asset, for the reliance or for providing the guardian access and control over the asset, including but not limited to delivery of the asset to the guardian.

[1991 c 289 § 13.]

11.92.100
Petition — Contents.

Such application shall be by petition, verified by the oath of the guardian or limited guardian, and shall substantially set forth:

(1) The value and character of all personal estate belonging to the incapacitated person that has come to the knowledge or possession of such guardian or limited guardian.

(2) The disposition of such personal estate.

(3) The amount and condition of the incapacitated person's personal estate, if any, dependent upon the settlement of any estate, or the execution of any trust.

(4) The annual income of the real estate of the incapacitated person.

(5) The amount of rent received and the application thereof.

(6) The proposed manner of reinvesting the proceeds of the sale, if asked for that purpose.

(7) Each item of indebtedness, or the amount and character of the lien, if the sale is requested for the liquidation thereof.

(8) The age of the incapacitated person, where and with whom residing.

(9) All other facts connected with the estate and condition of the incapacitated person necessary to enable the court to fully understand the same. If there is no personal estate belonging to the incapacitated person in possession or expectancy, and none has come into the hands of such guardian or limited guardian, and no rents have been received, the fact shall be stated in the application.

[1990 c 122 § 28; 1975 1st ex.s. c 95 § 25; 1965 c 145 § 11.92.100. Prior: 1917 c 156 § 213; RRS § 1583; prior: Code 1881 § 1621; 1860 p 228 § 338; 1855 p 17 § 15.]

Notes:

Effective date -- 1990 c 122: **See note following RCW 11.88.005.**

11.92.110
Sale of real estate.

The order directing the sale of any of the real property of the estate of the incapacitated person shall specify the particular property affected and the method, whether by public or private sale or by negotiation, and terms thereof, and with regard to the procedure and notices to be employed in conducting such sale, the provisions of RCW 11.56.060, 11.56.070, 11.56.080, and 11.56.110 shall be followed unless the court otherwise directs.

[1990 c 122 § 29; 1975 1st ex.s. c 95 § 26; 1965 c 145 § 11.92.110. Prior: 1917 c 156 § 214; RRS § 1524; prior: Code 1881 § 1623; 1860 p 229 § 340.]

Notes:

Effective date -- 1990 c 122: **See note following RCW 11.88.005.**

11.92.115
Return and confirmation of sale.

***** CHANGE IN 2010 *** (SEE 6239-S.SL) *****

The guardian or limited guardian making any sale of real estate, either at public or private sale or sale by negotiation, shall within ten days after making such sale file with the clerk of the court his return of such sale, the same being duly verified. At any time after the expiration of ten days from the filing of such return, the court may, without notice, approve and confirm such sale and direct proper instruments of transfer to be

executed and delivered. Upon the confirmation of any such sale, the court shall direct the guardian or limited guardian to make, execute and deliver instruments conveying the title to the person to whom such property may be sold and such instruments of conveyance shall be deemed to convey all the estate, rights and interest of the incapacitated person and of the person's estate. In the case of a sale by negotiation the guardians or limited guardians shall publish a notice in one issue of a legal newspaper published in the county in which the estate is being administered; the substance of such notice shall include the legal description of the property sold, the selling price and the date after which the sale may be confirmed: PROVIDED, That such confirmation date shall be at least ten days after such notice is published.

[1990 c 122 § 30; 1975 1st ex.s. c 95 § 27; 1965 c 145 § 11.92.115.]

Notes:

Effective date -- 1990 c 122: **See note following RCW 11.88.005.**

11.92.120
Confirmation conclusive.

No sale by any guardian or limited guardian of real or personal property shall be void or be set aside or be attacked because of any irregularities whatsoever, and none of the steps leading up to such sale or the confirmation thereof shall be jurisdictional, and the confirmation by the court of any such sale shall be conclusive as to the regularity and legality of such sale or sales, and the passing of title after confirmation by the court shall vest an absolute title in the purchaser, and such instrument of transfer may not be attacked for any purpose or any reason, except for fraud.

[1975 1st ex.s. c 95 § 28; 1965 c 145 § 11.92.120. Prior: 1917 c 156 § 215; RRS § 1585; prior: Code 1881 § 1625; 1860 p 229 § 343.]

11.92.125
Broker's fee and closing expenses — Sale, exchange, mortgage, or lease of real estate.

In connection with the sale, exchange, mortgage, lease, or grant of easement or license in any property, the court may authorize the guardian or limited guardian to pay, out of the proceeds realized therefrom or out of the estate, the customary and reasonable auctioneer's and broker's fees and any necessary expenses for abstracting title insurance, survey, revenue stamps, and other necessary costs and expenses in connection therewith.

[1977 ex.s. c 309 § 15; 1965 c 145 § 11.92.125.]

Notes:

Severability -- 1977 ex.s. c 309: **See note following RCW 11.88.005.**

11.92.130
Performance of contracts.

If any person who is bound by contract in writing to perform shall become incapacitated before making the performance, the court having jurisdiction of the guardianship or limited guardianship of such property may, upon application of the guardian or limited guardian of the incapacitated person, or upon application of the person claiming to be entitled to the performance, make an order authorizing and directing the guardian or limited guardian to perform such contract. The application and the proceedings, shall, as nearly as may be, be the same as provided in chapter 11.60 RCW.

[1990 c 122 § 31; 1975 1st ex.s. c 95 § 29; 1965 c 145 § 11.92.130. Prior: 1923 c 142 § 5; RRS § 1585a.]

Notes:

Effective date -- 1990 c 122: **See note following RCW 11.88.005.**

11.92.140
Court authorization for actions regarding guardianship funds.

The court, upon the petition of a guardian of the estate of an incapacitated person other than the guardian of a minor, and after such notice as the court directs and other notice to all persons interested as required by chapter 11.96A RCW, may authorize the guardian to take any action, or to apply funds not required for the incapacitated person's own maintenance and support, in any fashion the court approves as being in keeping with the incapacitated person's wishes so far as they can be ascertained and as designed to minimize insofar as possible current or prospective state or federal income and estate taxes, permit entitlement under otherwise available federal or state medical or other assistance programs, and to provide for gifts to such charities, relatives, and friends as would be likely recipients of donations from the incapacitated person.

The action or application of funds may include but shall not be limited to the making of gifts, to the conveyance or release of the incapacitated person's contingent and expectant interests in property including marital or domestic partnership property rights and any right of survivorship incident to joint tenancy or tenancy by the entirety, to the exercise or release of the incapacitated person's powers as donee of a power of appointment, the making of contracts, the creation of revocable or irrevocable trusts of property of the incapacitated person's estate which may extend beyond the incapacitated person's disability or life, the establishment of custodianships for the benefit of a minor under chapter 11.114 RCW, the Washington uniform transfers to minors act, the exercise of options of the incapacitated person to purchase securities or other property, the exercise of the incapacitated person's right to elect options and to change beneficiaries under insurance and annuity policies and the surrendering of policies for their cash value, the exercise of the incapacitated person's right to any elective share in the estate of the incapacitated person's deceased spouse or deceased domestic partner, and the renunciation or disclaimer of any interest acquired by testate or intestate succession or by inter vivos transfer.

The guardian in the petition shall briefly outline the action or application of funds for which approval is sought, the results expected to be accomplished thereby and the savings expected to accrue. The proposed action or application of funds may include gifts of the incapacitated person's personal or real property. Gifts may be for the benefit of prospective legatees, devisees, or heirs apparent of the incapacitated person, or may be made to individuals or charities in which the incapacitated person is believed to have an interest. Gifts may or may not, in the discretion of the court, be treated as advancements to donees who would otherwise inherit property from the incapacitated person under the incapacitated person's will or under the laws of descent and distribution. The guardian shall also indicate in the petition that any planned disposition is consistent with the intentions of the incapacitated person insofar as the intentions can be ascertained, and if the incapacitated person's intentions cannot be ascertained, the incapacitated person will be presumed to favor reduction in the incidence of the various forms of taxation and the partial distribution of the incapacitated person's estate as provided in this section. The guardian shall not, however, be required to

include as a beneficiary any person whom there is reason to believe would be excluded by the incapacitated person. No guardian may be required to file a petition as provided in this section, and a failure or refusal to so petition the court does not constitute a breach of the guardian's fiduciary duties.

[2008 c 6 § 807; 1999 c 42 § 616; 1991 c 193 § 32; 1990 c 122 § 32; 1985 c 30 § 10. Prior: 1984 c 149 § 13.]

Notes:

Part headings not law -- Severability -- 2008 c 6: **See RCW 26.60.900 and 26.60.901.**

Part headings and captions not law -- Effective date -- 1999 c 42: See RCW 11.96A.901 and 11.96A.902.

Effective date -- Severability -- 1991 c 193: See RCW 11.114.903 and 11.114.904.

Effective date -- 1990 c 122: See note following RCW 11.88.005.

Short title -- Application -- Purpose -- Severability -- 1985 c 30: See RCW 11.02.900 through 11.02.903.

Severability -- Effective dates -- 1984 c 149: See notes following RCW 11.02.005.

11.92.150
Request for special notice of proceedings.

At any time after the issuance of letters of guardianship in the estate of any person and/or incapacitated person, any person interested in the estate, or in the incapacitated person, or any relative of the incapacitated person, or any authorized representative of any agency, bureau, or department of the United States government from or through which any compensation, insurance, pension or other benefit is being paid, or is payable, may serve upon the guardian or limited guardian, or upon the attorney for the guardian or limited guardian, and file with the clerk of the court where the guardianship or limited guardianship of the person and/or estate is pending, a written request stating the specific actions of which the applicant requests advance notice. Where the notice does not specify matters for which notice is requested, the guardian or limited guardian shall provide copies of all documents filed with the court and advance notice of his or her application for court approval of any action in the guardianship.

The request for special written notice shall designate the name, address and post office address of the person upon whom the notice is to be served and no service shall be required under this section and RCW 11.92.160 as now or hereafter amended other than in accordance with the designation unless and until a new designation has been made.

When any account, report, petition, or proceeding is filed in the estate of which special written notice is requested, the court shall fix a time for hearing which shall allow at least ten days for service of the notice before the hearing; and notice of the hearing shall be served upon the person designated in the written request at least ten days before the date fixed for the hearing. The service may be made by leaving a copy

with the person designated, or that person's authorized representative, or by mailing through the United States mail, with postage prepaid to the person and place designated.

[1990 c 122 § 33; 1985 c 30 § 11. Prior: 1984 c 149 § 14; 1975 1st ex.s. c 95 § 30; 1969 c 18 § 1; 1965 c 145 § 11.92.150; prior: 1925 ex.s. c 104 § 1; RRS § 1586-1.]

Notes:

Effective date -- 1990 c 122: **See note following RCW 11.88.005.**

Short title -- Application -- Purpose -- Severability -- 1985 c 30: See RCW 11.02.900 through 11.02.903.

Severability -- Effective dates -- 1984 c 149: See notes following RCW 11.02.005.

11.92.160
Citation for failure to file account or report.

Whenever any request for special written notice is served as provided in this section and RCW 11.92.150 as now or hereafter amended, the person making such request may, upon failure of any guardian or limited guardian for any incapacitated person, to file any account or report required by law, petition the court administering such estate for a citation requiring such guardian or limited guardian to file such report or account, or to show cause for failure to do so, and thereupon the court shall issue such citation and hold a hearing thereon and enter such order as is required by the law and the facts.

[1990 c 122 § 34; 1975 1st ex.s. c 95 § 31; 1965 c 145 § 11.92.160. Prior: 1925 ex.s. c 104 § 2; RRS § 1586-2.]

Notes:

Effective date -- 1990 c 122: **See note following RCW 11.88.005.**

Attorney's fee to contestant of erroneous account or report: RCW 11.76.070.

11.92.170
Removal of property of nonresident incapacitated person.

Whenever it is made to appear that it would be in the best interests of the incapacitated person, the court may order the transfer of property in this state to a guardian or limited guardian of the estate of the incapacitated person appointed in another jurisdiction, or to a person or institution having similar authority with respect to the incapacitated person.

[1990 c 122 § 35; 1977 ex.s. c 309 § 16; 1975 1st ex.s. c 95 § 32; 1965 c 145 § 11.92.170. Prior: 1917 c 156 § 217; RRS § 1587; prior: Code 1881 § 1628; 1873 p 320 § 323.]

Notes:

Effective date -- 1990 c 122: **See note following RCW 11.88.005.**

Severability -- 1977 ex.s. c 309: See note following RCW 11.88.005.

11.92.180
Compensation and expenses of guardian or limited guardian — Attorney's fees — Department of social and health services clients paying part of costs — Rules.

A guardian or limited guardian shall be allowed such compensation for his or her services as guardian or limited guardian as the court shall deem just and reasonable. Guardians and limited guardians shall not be compensated at county or state expense. Additional compensation may be allowed for other administrative costs, including services of an attorney and for other services not provided by the guardian or limited guardian. Where a guardian or limited guardian is an attorney, the guardian or limited guardian shall separately account for time for which compensation is requested for services as a guardian or limited guardian as contrasted to time for which compensation for legal services provided to the guardianship is requested. In all cases, compensation of the guardian or limited guardian and his or her expenses including attorney's fees shall be fixed by the court and may be allowed at any annual or final accounting; but at any time during the administration of the estate, the guardian or limited guardian or his or her attorney may apply to the court for an allowance upon the compensation or necessary expenses of the guardian or limited guardian and for attorney's fees for services already performed. If the court finds that the guardian or limited guardian has failed to discharge his or her duties as such in any respect, it may deny the guardian any compensation whatsoever or may reduce the compensation which would otherwise be allowed. Where the incapacitated person is a department of social and health services client residing in a nursing facility or in a residential or home setting and is required by the department of social and health services to contribute a portion of their income towards the cost of residential or supportive services then the department shall be entitled to notice of proceedings as described in RCW 11.92.150. The amount of guardianship fees and additional compensation for administrative costs shall not exceed the amount allowed by the department of social and health services by rule.

[1995 c 297 § 8; 1994 c 68 § 1; 1991 c 289 § 12; 1990 c 122 § 36; 1975 1st ex.s. c 95 § 33; 1965 c 145 § 11.92.180. Prior: 1917 c 156 § 216; RRS § 1586; prior: Code 1881 § 1627; 1855 p 19 § 25.]

Notes:

Rules of court: **SPR 98.12W.**

Effective date -- 1990 c 122: See note following RCW 11.88.005.

11.92.185
Concealed or embezzled property.

The court shall have authority to bring before it, in the manner prescribed by RCW 11.48.070, any person or persons suspected of having in his or her possession or having concealed, embezzled, conveyed or

disposed of any of the property of the estate of incapacitated persons subject to administration under this title.

[1990 c 122 § 37; 1975 1st ex.s. c 95 § 34; 1965 c 145 § 11.92.185.]

Notes:

Effective date -- 1990 c 122: **See note following RCW 11.88.005.**

11.92.190
Detention of person in residential placement facility against will prohibited — Effect of court order — Service of notice of residential placement.

No residential treatment facility which provides nursing or other care may detain a person within such facility against their will. Any court order, other than an order issued in accordance with the involuntary treatment provisions of chapters 10.77, 71.05, and 72.23 RCW, which purports to authorize such involuntary detention or purports to authorize a guardian or limited guardian to consent to such involuntary detention on behalf of an incapacitated person shall be void and of no force or effect. This section does not apply to the detention of a minor as provided in chapter 70.96A or 71.34 RCW.

Nothing in this section shall be construed to require a court order authorizing placement of an incapacitated person in a residential treatment facility if such order is not otherwise required by law: PROVIDED, That notice of any residential placement of an incapacitated person shall be served, either before or after placement, by the guardian or limited guardian on such person, the guardian ad litem of record, and any attorney of record.

[1996 c 249 § 11; 1977 ex.s. c 309 § 14.]

Notes:

Intent -- 1996 c 249: **See note following RCW 2.56.030.**

Severability -- 1977 ex.s. c 309: See note following RCW 11.88.005.

GALR's:

Superior Court Guardian ad Litem Rules

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7 Grievance Procedures

GUARDIAN AD LITEM RULE 1:

SCOPE AND DEFINITIONS

(a) Statement of Purpose and Scope of Rule. The purpose of these rules is to establish a minimum set of standards applicable to all superior court cases where the court appoints a guardian ad litem or any person to represent the best interest of a child, an alleged incapacitated person, or an adjudicated incapacitated person pursuant to Title 11, 13 or 26 RCW.

These rules shall also apply to guardians ad litem appointed pursuant to RCW 4.08.050 and RCW 4.08.060, if the appointment is under the procedures of Titles 11, 13 or 26 RCW.

These rules shall not be applicable to guardians ad litem

appointed pursuant to Special Proceedings Rule (SPR) 98.16W and chapter 11.96A RCW.

(b) Definitions. As used in this rule, the following terms have these meanings:

(1) Court. Court shall mean any superior court in the state of Washington and all divisions thereof.

(2) Guardian ad Litem. Guardian ad litem shall mean any person or program appointed in a Title 11, 13, or 26 RCW action under the Revised Code of Washington to represent the best interest of a child, an alleged incapacitated person, or an adjudicated incapacitated person. The term guardian ad litem shall not include an attorney appointed to represent a party.

(3) Judge. Judge shall mean a judicial officer of the superior court, including commissioners and judges pro tempore.

(4) Registry. Registry shall mean the list of people authorized by the court to serve as guardians ad litem or CASA programs authorized by RCW 26.12.175.

[Adopted effective November 27, 2001.]

GUARDIAN AD LITEM RULE 2:

GENERAL RESPONSIBILITIES OF GUARDIAN AD LITEM

Consistent with the responsibilities set forth in Titles 11, 13, and 26 of the Revised Code of Washington and other applicable statutes and rules of court, in every case in which a guardian ad litem is appointed, the guardian ad litem shall perform the responsibilities set forth below. For purposes of these rules, a guardian ad litem is any person who is appointed by the court to represent the best interest of the child(ren), an adjudicated incapacitated person, or an alleged incapacitated person or to assist the court in determining the best interest of the child(ren), an adjudicated incapacitated person, or an alleged incapacitated person, regardless of that person's title, except a person appointed pursuant to rule 6.

(a) Represent best interests. A guardian ad litem shall represent the best interests of the person for whom he or she is appointed. Representation of best interests may be inconsistent with the wishes of the person whose interest the guardian ad litem represents. The guardian ad litem shall not advocate on behalf of or advise any party so as to create in the mind of a reasonable person the appearance of representing that party as an attorney.

(b) Maintain independence. A guardian ad litem shall maintain independence, objectivity and the appearance of fairness in dealings with parties and professionals, both in and out of the courtroom.

(c) Professional conduct. A guardian ad litem shall maintain the ethical principles of the rules of conduct set forth in these rules and is subject to discipline under local rules established pursuant to rule 7 for violation.

(d) Remain qualified for the registry. Unless excepted by statute or court rule, a guardian ad litem shall satisfy all training requirements and continuing education requirements developed for Titles13 and 26 RCW guardians ad litem by the administrator of the courts and for Title 11 RCW guardians ad litem as required by statute and maintain qualifications to serve as guardian ad litem in every county where the guardian ad litem is listed on the registry for that county and in which the guardian ad litem serves and shall promptly advise each such court of any grounds for disqualification or unavailability to serve.

(e) Avoid conflicts of interests. A guardian ad litem shall avoid any actual or apparent conflict of interest or impropriety in the performance of guardian ad litem responsibilities. A guardian ad litem shall avoid self-dealing or association from which a guardian ad litem might directly or indirectly benefit, other than for compensation as guardian ad litem. A guardian ad litem shall take action immediately to resolve any potential conflict or impropriety. A guardian ad litem shall advise the court and the parties of action taken, resign from the matter, or seek court direction as may be necessary to resolve the conflict or impropriety. A guardian ad litem shall not accept or maintain appointment if the performance of the duties of guardian ad litem may be

materially limited by the guardian ad litem's responsibilities to another client or a third person, or by the guardian ad litem's own interests.

(f) Treat parties with respect. A guardian ad litem is an officer of the court and as such shall at all times treat the parties with respect, courtesy, fairness and good faith.

(g) Become informed about case. A guardian ad litem shall make reasonable efforts to become informed about the facts of the case and to contact all parties. A guardian ad litem shall examine material information and sources of information, taking into account the positions of the parties.

(h) Make requests for evaluations to court. A guardian ad litem shall not require any evaluations or tests of the parties except as authorized by statute or court order issued following notice and opportunity to be heard.

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

(j) Limit duties to those ordered by court. A guardian ad litem shall comply with the court's instructions as set out in the order appointing a guardian ad litem, and shall not provide or require services beyond the scope of the court's instruction unless by motion and on adequate notice to the parties, a guardian ad litem obtains additional instruction, clarification or expansion of the scope of such appointment.

(k) Inform individuals about role in case. A guardian ad litem shall identify himself or herself as a guardian ad litem when contacting individuals in the course of a particular case and inform individuals contacted in a particular case about the role of a guardian ad litem in the case at the earliest practicable time. A guardian ad litem shall advise information sources that the documents and information obtained may become part of court proceedings.

(l) Appear at hearings. The guardian ad litem shall be given notice of all hearings and proceedings. A guardian ad litem shall appear at any hearing for which the duties of a guardian ad litem or any issues substantially within a guardian ad litem's duties and scope of appointment are to be addressed. In Title 11 RCW proceedings , the guardian ad litem shall appear at all hearings unless excused by court order.

(m) Ex parte communication. A guardian ad litem shall not have ex parte communications concerning the case with the judge(s) and commissioner(s) involved in the matter except as permitted by court rule or by statute.

(n) Maintain privacy of parties. As an officer of the court, a guardian ad litem shall make no disclosures about the case or the investigation except in reports to the court or as necessary to perform the duties of a guardian ad litem. A guardian ad litem shall maintain the confidential nature of identifiers or addresses where there are allegations of domestic
violence or risk to a party's or child's safety. The guardian ad litem may recommend that the court seal the report or a portion of the report of the guardian ad litem to preserve the privacy, confidentiality, or safety of the parties or the person for whom the guardian ad litem was appointed. The court may, upon application, and under such conditions as may be necessary to protect the witnesses from potential harm, order disclosure or discovery that addresses the need to challenge the truth of the information received from the confidential source.

(o) Perform duties in timely manner. A guardian ad litem shall perform responsibilities in a prompt and timely manner, and, if necessary, request timely court reviews and judicial intervention in writing with notice to parties or affected agencies.

(p) Maintain documentation. A guardian ad litem shall maintain documentation to substantiate recommendations and conclusions and shall keep records of actions taken by the guardian ad litem. Except as prohibited or protected by law, and consistent with rule 2(n), this information shall be made available for review on written request of a party or the court on request. Costs may be imposed for such requests.

(q) Keep records of time and expenses. A guardian ad litem shall keep accurate records of the time spent, services rendered, and expenses incurred in each case and file an itemized statement and accounting with the court and provide a copy to each party or other entity responsible for payment. The court shall make provisions for fees and expenses pursuant to statute in the Order Appointing Guardian ad Litem or in any subsequent order.

[Adopted effective November 27, 2001.]

GUARDIAN AD LITEM RULE 3:

ROLES AND RESPONSIBILITIES OF GUARDIAN AD LITEM IN TITLE 13 RCW JUVENILE COURT PROCEEDINGS

In addition to the roles and responsibilities enumerated in rule 2, a guardian ad litem in Title 13 RCW juvenile court proceedings shall have the following responsibilities:

(a) Role. Unless otherwise specified in the order of appointment, the roles and responsibilities of a guardian ad litem are those roles and responsibilities specified in RCW 13.34.105 and applicable court rules.

(b) Explore concurrent planning. A guardian ad litem shall explore concurrent planning and make a timely recommendation to the court for a permanent plan for the child.

[Adopted effective November 27, 2001.]

GUARDIAN AD LITEM RULE 4

AUTHORITY OF GUARDIAN AD LITEM

As an officer of the court, a guardian ad litem has only such authority conferred by the order of appointment. Consistent with the roles and responsibilities set forth in rules 2 and 3, and the grievance procedures set forth in rules 5 and 6, a guardian ad litem shall have the following authority:

(a) Access to party. Unless circumstances warrant otherwise, a guardian ad litem shall have access to the persons for whom a guardian ad litem is appointed and to all information relevant to the issues for which a guardian ad litem was appointed. The access of a guardian ad litem to the child or alleged incapacitated person and all relevant information shall not be unduly restricted by any person or agency. When the guardian ad litem seeks contact with a party who is represented by an attorney, the guardian ad litem shall notify the attorney in advance of such contact. The guardian ad litem's contact with the represented party shall be as permitted by the party's attorney, unless otherwise ordered by the court.

(b) Timely receipt of case documents. Until discharged by court order a guardian ad litem shall be timely furnished copies of all relevant pleadings, documents, and reports by the party which served or submitted them.

(c) Timely notification. A guardian ad litem shall be timely notified of all court hearings, administrative reviews, staffings, investigations, dispositions, and other proceedings concerning the case by the person or agency scheduling the proceeding.

(d) Notice of proposed agreements. A guardian ad litem shall be given notice of, and an opportunity to indicate his or her agreement or objection to any proposed agreed order of the parties governing issues substantially related to the duties of a guardian ad litem.

(e) Participate in all proceedings. Consistent with rule 2(l), a guardian ad litem shall participate in court hearings through submission of written and supplemental oral reports and as otherwise authorized by statute and court rule.

(f) Access to records. Except as limited by law or unless good cause is shown to the court, upon receiving a copy of the order appointing a guardian ad litem, any person or agency, including but not limited to any hospital, school, child care provider, organization, department of social and health services, doctor, health care provider, mental health provider, chemical health program, psychologist, psychiatrist, or law enforcement agency, shall permit a guardian ad litem to inspect and copy any and all records and interview personnel relating to the proceeding for which a guardian ad litem is appointed.

(g) Access to court files. Within the scope of appointment, a guardian ad litem shall have access to all superior court and all juvenile court files. Access to sealed or confidential files shall be by separate order. A guardian ad litem's report shall

inform the court and parties if the report contains information from sealed or confidential files. The clerk of court shall provide certified copies of the order of appointment to a guardian ad litem upon request and without charge.

(h) Additional rights and powers under RCW 13.34 or RCW 26.26. In every case in which a guardian ad litem is a party to the case pursuant to RCW 13.34 or RCW 26.26, a guardian ad litem shall have the rights and powers set forth below. These rights and powers are subject to all applicable statutes and court rules.

(1) File documents and respond to discovery. A guardian ad litem shall have the right to file pleadings, motions, notices memoranda, briefs, and other documents, and may, subject to the trial court's discretion engage in and respond to discovery.

(2) Note motions and request hearings. A guardian ad litem shall have the right to note motions and request hearings before the court as appropriate to the best interests of the person(s) for whom a guardian ad litem was appointed.

(3) Introduce exhibits, examine witnesses, and appeal. A guardian ad litem shall have the right, subject to the trial court's discretion, to introduce exhibits, subpoena witnesses, and conduct direct and cross examination of witnesses.

(4) Oral argument and submission of reports. A guardian ad litem shall have the right to fully participate in the proceedings through submission of written reports, and, may with the consent of the trial court present oral argument.

(i) Additional rights and powers in other cases. For good cause shown, a guardian ad litem may petition the court for additional authority as set forth in rule 2(j).

(j) Additional training requirements. The Administrative Office of the Courts shall amend the current guardian ad litem mandatory training so that Titles 13 and 26 RCW guardians ad litem are prepared to carry out the additional requirements of this rule.

[Adopted effective November 27, 2001.]

GUARDIAN AD LITEM RULE 5:

APPOINTMENTS OF GUARDIAN AD LITEM

(a) Equitable distribution of workload. Each court shall promulgate local rules providing a system of appointing and reasonably compensating guardians ad litem which ensures an equitable distribution of the work load among the guardians ad litem on the registry.

(b) Procedure to address complaints. The local rules shall provide a procedure to timely address complaints made by any guardian ad litem regarding registry or appointment matters.

[Adopted effective November 27, 2001.]

GUARDIAN AD LITEM RULE 6:

LIMITED APPOINTMENTS

There may be situations where the court wishes to appoint a person in addition to, or instead of, a guardian ad litem to fulfill very limited roles. This will help avoid conflict of interest situations for guardians ad litem serving in a case and will limit the time and expense spent on cases which do not require a guardian ad litem. A person appointed pursuant to this rule is strictly limited to the duties of the role below selected by the court. If the order of appointment does not specifically designate a limited appointment as listed below, the person appointed is presumed to be a guardian ad litem, subject to the Guardian ad Litem Rules. The court may make the following limited appointments:

(a) Mediator. The court may either appoint or refer to a person or agency whose role is to assist the parties in reaching an agreement about any or all contested issues in the case.

(b) Evaluator. The court may appoint or refer to a person or agency for evaluation and findings regarding a specific issue or issues including but not limited to mental health, substance abuse, issues of abuse or neglect, cultural factors, and sexual deviancy.

(c) Visitation supervisor. The court may appoint or refer to a person or agency to supervise visits and report findings to the court.

(d) Settlement of minors' claims. The court may appoint a person for the limited purpose described in Special Proceedings Rules (SPR) 98.16W.

(e) Other. Under exceptional circumstances, upon good cause shown, the court may make other limited appointments as it deems necessary.

[Adopted effective November 27, 2001.]

GUARDIAN AD LITEM RULE 7:

GRIEVANCE PROCEDURES

Each court shall promulgate rules that set out or refer to policies and procedures establishing and governing the filing, investigating, and adjudicating grievances made by or against guardians ad litem under Titles, 11, 13, and 26 RCW. The rules shall, at a minimum, comply with and address the following:

(a) Clear and concise. The rules shall be clear, and concise and easily understood by both attorneys and non-attorneys.

(b) Separate procedures. The rules shall establish separate procedures addressing grievances or complaints filed during the pendency of a case, and grievances or complaints filed subsequent to the conclusion of a case.

(c) Fair treatment of grievances. The rules shall establish procedures providing for fair treatment of grievances including appearance-of-fairness and conflict issues.

(d) CASA grievance procedures. Where applicable, local rules shall accommodate the grievance procedures of Court Appointed Special Advocate(s) (CASA) or other volunteer program(s).

(e) Confidentiality. The rules shall provide for confidentiality of complaints until merit has been found.

(f) Response to complaint. The rules shall provide a procedure for any guardian ad litem who is the subject of a complaint to respond to the complaint.

(g) Complaint resolution time standards. The rules shall include a time limit during which a complaint must be resolved. The limit shall not be longer than 25 days for complaints filed while a case is pending or 60 days for complaints filed subsequent to the conclusion of a case.

(h) Records of grievances. For its own reference purposes, the court shall maintain a record of grievances filed and of any sanctions issued pursuant to local court grievance procedure.

(i) Removal from registry. When a guardian ad litem is removed from a county's registry pursuant to the disposition of a grievance, the court of that county shall send notice of such removal to the Office of the Administrator of the Courts, who shall on a regular basis, but not less than biannually, forward the information to the superior courts of each county in the state of Washington.

(j) Implementation. Local court rules establishing a grievance procedure shall be filed in the manner provided in GR 7.

[Adopted effective November 27, 2001.

GR 15

DESTRUCTION, SEALING, AND REDACTION OF COURT RECORDS

GR 15
DESTRUCTION, SEALING, AND REDACTION OF COURT RECORDS

(a) Purpose and Scope of the Rule. This rule sets forth a uniform procedure for the destruction, sealing, and redaction of court records. This rule applies to all court records, regardless of the physical form of the court record, the method of recording the court record, or the method of storage of the court record.

(b) Definitions.

(1) "Court file" means the pleadings, orders, and other papers filed with the clerk of the court under a single or consolidated cause number(s).

(2) "Court record" is defined in GR 31(c)(4).

(3) Destroy. To destroy means to obliterate a court record r file in such a way as to make it permanently irretrievable. A motion or order to expunge shall be treated as a motion or order to destroy.

(4) Seal. To seal means to protect from examination by the public and unauthorized court personnel. A motion or to delete, purge, remove, excise, or erase, or shall be treated as a motion or order to seal.

(5) Redact. To redact means to protect from examination by the public and unauthorized court personnel a portion or portions of a specified court record.

(6) Restricted Personal Identifiers are defined in GR 22(b)(6).

(7) Strike. A motion or order to strike is not a motion or order to seal or destroy.

(8) Vacate. To vacate means to nullify or cancel.

(c) Sealing or Redacting Court Records.

(1) In a civil case, the court or any party may request a hearing to seal or redact the court records. In a criminal case or juvenile proceedings, the court, any party, or any interested person may request a hearing to seal or redact the court records. Reasonable notice of a hearing to seal must be given to all parties in the case. In a criminal case, reasonable notice of a hearing to seal or redact must also be given to the victim, if ascertainable, and the person or agency having probationary, custodial, community placement, or community supervision over the affected adult or juvenile. No such notice is required for motions to seal documents entered pursuant to CrR 3.1(f) or CrRLJ 3.1(f).

(2) After the hearing, the court may order the court files and records in the proceeding, or any part thereof, to be sealed or redacted if the court makes and enters written findings that the specific sealing or redaction is justified by identified compelling privacy or safety concerns that outweigh the public interest in access to the court record. Agreement of the parties alone does not constitute a sufficient basis for the sealing or redaction of court records. Sufficient privacy or safety concerns that may be weighed against the public interest include findings that:

(A) The sealing or redaction is permitted by statute; or

(B) The sealing or redaction furthers an order entered under CR 12(f) or a protective order entered under CR 26(c); or

(C) A conviction has been vacated; or

(D) The sealing or redaction furthers an order entered pursuant to RCW 4.24.611; or

(E) The redaction includes only restricted personal identifiers contained in the court record; or

(F) Another identified compelling circumstance exists that requires the sealing or redaction.

(3) A court record shall not be sealed under this section when redaction will adequately resolve the issues before the court pursuant to subsection (2) above.

(4) Sealing of Entire Court File. When the clerk receives a court order to seal the entire court file, the clerk shall seal the court file and secure it from public access. All court records filed thereafter shall also be sealed unless otherwise ordered. The existence of a court file sealed in its entirety, unless protected by statute, is available for viewing by the public on court indices. The information on the court indices is limited to the case number, names of the parties, the notation "case sealed," the case type and cause of action in civil cases and the cause of action or charge in criminal cases, except where the conviction in a criminal case has been vacated, section (d) shall apply. The order to seal and written findings supporting the order to seal shall also remain accessible to the public, unless protected by statute.

(5) Sealing of Specified Court Records. When the clerk receives a court order to seal specified court records the clerk shall:

(A) On the docket, preserve the docket code, document title, document or subdocument number and date of the original court records;

(B) Remove the specified court records, seal them, and return them to the file under seal or store separately. The clerk shall substitute a filler sheet for the removed sealed court record. If the court record ordered sealed exists in a microfilm, microfiche or other storage medium form other than paper, the clerk shall restrict access to the alternate storage medium so as to prevent unauthorized viewing of the sealed court record; and

(C) File the order to seal and the written findings supporting the order to seal. Both shall be accessible to the public.

(D) Before a court file is made available for examination, the clerk shall prevent access to the sealed court records.

(6) Procedures for Redacted Court Records. When a court record is redacted pursuant to a court order, the original court record shall be replaced in the public court file by the redacted copy. The redacted copy shall be provided by the moving party. The original unredacted court record shall be sealed following the procedures set forth in (c)(5).

(d) Procedures for Vacated Criminal Convictions. In cases where a criminal conviction has been vacated and an order to seal entered, the information in the public court indices shall be limited to the case number, case type with the notification "DV" if the case involved domestic violence, he adult or juvenile's name, and the notation "vacated."

(e) Grounds and Procedure for Requesting the Unsealing of Sealed Records.

(1) Sealed court records may be examined by the public only after the court records have been ordered unsealed pursuant to this section or after entry of a court order allowing access to a sealed court record.

(2) Criminal Cases. A sealed court record in a criminal case shall be ordered unsealed only upon proof of compelling circumstances, unless otherwise provided by statute, and only upon motion and written notice to the persons entitled to notice under subsection (c)(1) of this rule except:

(A) If a new criminal charge is filed and the existence of the conviction contained in a sealed record is an element of the new offense, or would constitute a statutory sentencing enhancement, or provide the basis for an exceptional sentence, upon application of the prosecuting attorney the court shall nullify the sealing order in the prior sealed case(s).

(B) If a petition is filed alleging that a person is a sexually violent predator, upon application of the prosecuting attorney the court shall nullify the sealing order as to all prior criminal records of that individual.

(3) Civil Cases. A sealed court record in a civil case shall be ordered unsealed only upon stipulation of all parties or upon motion and written notice to all parties and proof that identified compelling circumstances for continued sealing no longer exist, or pursuant to RCW 4.24 or CR 26(j). If the person seeking access cannot locate a party to provide the notice required by this rule, after making a good faith reasonable effort to provide such notice as required by the Superior Court Rules, an affidavit may be filed with the court setting forth the efforts to locate the party and requesting waiver of the notice provision of this rule. The court may waive the notice requirement of this rule if the court finds that further good faith efforts to locate the party are not likely to be successful.

(4) Juvenile Proceedings. Inspection of a sealed juvenile court record is permitted only by order of the court upon motion made by the person who is the subject of the record, except as otherwise provided in RCW 13.50.010(8) and 13.50.050(23). Any adjudication of a juvenile offense or a crime subsequent to sealing has the effect of nullifying the sealing order, pursuant to RCW 13.50.050(16).

(f) Maintenance of Sealed Court Records. Sealed court records are subject to the provisions of RCW 36.23.065 and can be maintained in mediums other than paper.

(g) Use of Sealed Records on Appeal. A court record or any portion of it, sealed in the trial court shall be made available to the appellate court in the event of an appeal. Court records sealed in the trial court shall be sealed from public access in the appellate court subject to further order of the appellate court.

(h) Destruction of Court Records.

(1) The court shall not order the destruction of any court record unless expressly permitted by statute. The court shall enter written findings that cite the statutory authority for the destruction of the court record.

(2) In a civil case, the court or any party may request a hearing to destroy court records only if there is express statutory authority permitting the destruction of the court records. In a criminal case or juvenile proceeding, the court, any party, or any interested person may request a hearing to destroy the court records only if there is express statutory authority permitting the destruction of the court records. Reasonable notice of the hearing to destroy must be given to all parties in the case. In a criminal case, reasonable notice of the hearing must also be given to the victim, if ascertainable, and the person or agency having probationary, custodial, community placement, or community supervision over the affected adult or juvenile.

(3) When the clerk receives a court order to destroy the entire court file the clerk shall:

(A) Remove all references to the court records from any applicable information systems maintained for or by the clerk except for accounting records, the order to destroy, and the written findings. The order to destroy and the supporting written findings shall be filed and available for viewing by the public.

(B) The accounting records shall be sealed.

(4) When the clerk receives a court order to destroy specified court records the clerk shall;

(A) On the automated docket, destroy any docket code information except any document or sub-document number previously assigned to the court record destroyed, and enter "Order Destroyed" for the docket entry;

(B) Destroy the appropriate court records, substituting, when applicable, a printed or other reference to the order to destroy, including the date, location, and document number of the order to destroy; and

(C) File the order to destroy and the written findings supporting the order to destroy. Both the order and the findings shall be publicly accessible.

(5) This subsection shall not prevent the routine destruction of court records pursuant to applicable preservation and retention schedules.

(i) Trial Exhibits. Notwithstanding any other provision of this rule, trial exhibits may be destroyed or returned to the arties if all parties so stipulate in writing and the court so orders.

(j) Effect on Other Statutes. Nothing in this rule is intended to restrict or to expand the authority of clerks under existing statutes, nor is anything in this rule intended to restrict or expand the authority of any public auditor in he exercise of duties conferred by statute.

[Adopted effective September 22, 1989; amended effective September 1, 1995; June 4, 1997; June 16, 1998; September 1, 2000; amended effective October 1, 2002; amended effective July 1, 2006.]

GR 22

ACCESS TO FAMILY LAW AND GUARDIANSHIP COURT RECORDS

GR 22 ACCESS TO FAMILY LAW AND GUARDIANSHIP COURT RECORDS

(a) Purpose and Scope of this Rule. This rule governs access to family law and guardianship court records, whether the records are maintained in paper or electronic form. The policy of the courts is to facilitate public access to court records, provided that such access will not present an unreasonable invasion of personal privacy, will not permit access to records or information defined by law or court rule as confidential, sealed, exempted from disclosure, or otherwise restricted from public access, and will not be unduly burdensome to the ongoing business of the courts.

(b) Definition and Construction of Terms.

(1) "Court record" is defined in GR 31 (c)(4).

(2) "Family law case or guardianship case" means any case filed under Chapters 11.88, 11.92, 26.09, 26.10, 26.12, 26.18, 26.21, 26.23, 26.26, 26.27, 26.50, 26.52, 73.36 and 74.34 RCW.

(3) "Personal Health Care Record" means any record or correspondence that contains health information that: (1) relates to the past, present, or future physical or mental health condition of an individual including past, present,or future payments for health care; or (2) involves genetic parentage testing.

(4) "Personal Privacy" is unreasonably invaded only if disclosure of information about the person or the family (a) would be highly offensive to a reasonable person and (b) is not of legitimate concern to the public.

(5) "Public access" means unrestricted access to view or copy a requested court record.

(6) "Restricted personal identifiers" means a party's social security number, a party's driver's license number, a party's telephone number, financial account numbers, social security number of a minor child and date of birth of a minor child.

COMMENT

A party is not required to provide a residence address. Petitioners or counsel to a family law case will provide a service or contact address in accordance with CR 4.1 that will be publicly available and all parties and counsel should provide a contact address if otherwise required. Pattern forms shall be modified, as necessary, to reflect the intent of this rule.

(7) "Retirement plan order" means a supplemental order entered for the sole

purpose of implementing a property division that is already set forth in a separate order or decree in a family law case. A retirement plan order may not grant substantive relief other that what is set forth in a separate order. Examples of retirement plan orders are orders that implement a division of retirement, pension, insurance, military, or similar benefits as already defined in a decree of dissolution of marriage.

(8) "Sealed financial source documents" means income tax returns, W-2s and schedules, wage stubs, credit card statements, financial institution statements, checks or the equivalent, check registers, loan application documents, retirement plan orders, as well as other financial information sealed by court order.

(c) Access to Family Law or Guardianship Court Records.

(1) General Policy. Except as provided in RCW 26.26.610(2) and subsections (c)(2) and (c)(3) below, all court records shall be open to the public for inspection and copying upon request. The Clerk of the court may assess fees, as may be authorized by law, for the production of such records.

(2) Restricted Access. The Confidential Information Form, Sealed Financial Source Documents, Domestic Violence Information Form, Notice of Intent to Relocate required by R.C.W. 26.09.440, Sealed Personal Health Care Record, Retirement Plan Order, Confidential Reports as defined in (e)(2)(B), copies of any unredacted Judicial Information System (JIS) database information considered by the court for parenting plan approval as set forth in (f) of this rule, and any Personal Information Sheet necessary for Judicial Information System purposes shall only be accessible as provided in sections (h) and (i) herein.

(3) Excluded Records. This section (c) does not apply to court records that are sealed as provided in GR 15, or to which access is otherwise restricted by law.

(d) Restricted Personal Identifiers Not Required - Except. Parties to a family law case or the protected person in a guardianship case shall not be required to provide restricted personal identifiers in any document filed with the court or required to be provided upon filing a family law or guardianship case, except:

(1) "Sealed financial source documents" filed in accordance with (g)(1).

(2) The following forms: Confidential Information Form, Domestic Violence Information Form, Notice of Intent to Relocate required by R.C.W. 26.09.440, Vital Statistics Form, Law Enforcement Information Form, Foreign Protection Order Information Form, and any Personal Information Sheet necessary for Judicial Information System purposes.

(3) Court requested documents that contain restricted personal identifiers,

which may be submitted by a party as financial source documents under the provisions of section (g) of this rule.

COMMENT

Court records not meeting the definition of "Sealed Financial Source Documents", "Personal Health Care Records", Retirement Plan Orders, Confidential Reports or court records that otherwise meet the definition but have not been submitted in accordance with (g)(1) are not automatically sealed. Section (3) provides authority for the court to seal court records containing restricted personal identifiers upon motion of a party, or on the court's own motion during a hearing or trial.

(e) Filing of Reports in Family Law and Guardianship cases - Cover Sheet.

(1) This section applies to documents that are intended as reports to the court in Family law and Guardianship cases including, but not limited to, the following:

(A) Parenting evaluations;

(B) Domestic Violence Assessment Reports created by Family Court Services or a qualified expert appointed by the court;

(C) Risk Assessment Reports created by Family Court Services or a qualified expert;

(D) CPS Summary Reports created by Family Court Services or supplied directly by Children's Protective Services;

(E) Sexual abuse evaluations; and

(F) Reports of a guardian ad litem or Court Appointed Special Advocate.

(2) Reports shall be filed as two separate documents, one public and one sealed.

(A) Public Document. The public portion of any report shall include a simple listing of:

(i) Materials or information reviewed;

(ii) Individuals contacted;

(iii) Tests conducted or reviewed; and

(iv) Conclusions and recommendations.

(B) Sealed Document. The sealed portion of the report shall be filed with a coversheet designated: "Sealed Confidential Report." The material filed with this coversheet shall include:

(i) Detailed descriptions of material or information gathered or reviewed;

(ii) Detailed descriptions of all statements reviewed or taken;

(iii) Detailed descriptions of tests conducted or reviewed; and

(iv) Any analysis to support the conclusions and recommendations.

(3) The sealed portion may not be placed in the court file or used as an attachment or exhibit to any other document except under seal.

(f) Information Obtained from JIS Databases with Regard to Approval of a Parenting Plan.

When a judicial officer proposes to consider information from a JIS database relevant to the placement of a child in a parenting plan, the judicial officer shall either orally disclose on the record or disclose the relevant information in written form to each party present at the hearing, and, on timely request, provide any party an opportunity to be heard regarding that information. The judicial officer has discretion not to disclose information that he or she does not propose to consider. The judicial officer may restrict secondary dissemination of written unredacted JIS database information not available to the public.

(g) Sealing Financial Source Documents, Personal Health Care Records, and Sealed Confidential Reports in Family Law and Guardianship cases - Cover Sheet.

(1) Financial source documents, personal health care records, confidential reports as defined in (e)(2)(B) of this rule, and copies of unredacted JIS database records considered by the court for parenting plan approval as set forth in (f) of this rule, shall be submitted to the clerk under a cover sheet designated "SEALED FINANCIAL SOURCE DOCUMENTS", "SEALED PERSONAL HEALTH CARE
RECORDS", "SEALED CONFIDENTIAL REPORT" or "JUDICIAL INFORMATION SYSTEM DATABASE
RECORDS" for filing in the court record of family law or guardianship cases.

(2) All financial source documents, personal health care records, confidential reports, or judicial information system database records so submitted shall be automatically sealed by the clerk. The cover sheet or a copy thereof shall remain part of the public court file.

(3) The court may order that any financial source documents containing restricted personal identifiers, personal health care records, any report containing information described in (e)(2)(B), or copies of unredacted JIS database records considered by the court for parenting plan approval as described in (f) be sealed, if they have not previously automatically been sealed pursuant to this rule.

(4) These coversheets may not be used for any documents except as provided in this rule. Sanctions may be imposed upon any party or attorney who violates this rule.

COMMENT

See comment to (d)(3) above.

(h) Access by Courts, Agencies, and Parties to Restricted Documents.

(1) Unless otherwise provided by statute or court order, the following persons shall have access to all records in family law or guardianship cases:

(A) Judges, commissioners, other court personnel, the Commission on Judicial Conduct, and the Certified Professional Guardian Board may access and use restricted court records only for the purpose of conducting official business of the court, Commission, or Board.

(B) Any state administrative agency of any state that administers programs under Title IV-A, IV-D, IV-E, or XIX of the federal Social Security Act.

(2) Except as otherwise provided by statute or court order, the following persons shall have access to all documents filed in a family law or guardianship case, except the Personal Information Sheet, Vital Statistics Form, Confidential Information Form, Domestic Violence Information Form, Law Enforcement Information Form, and Foreign Protection Order Form.

(A) Parties of record as to their case.

(B) Attorneys as to cases where they are attorneys of record.

(C) Court appointed Title 11 guardians ad litem as to cases where they are actively involved.

(i) Access to Court Records Restricted Under This Rule.

(1) The parties may stipulate in writing to allow public access to any court records otherwise restricted under section (c)(2) above.

(2) Any person may file a motion, supported by an affidavit showing good cause, for access to any court record otherwise restricted under section (c)(2) above, or to be granted access to such court records with specified information deleted. Written notice of the motion shall be provided to all parties in the manner required by the Superior Court Civil Rules. If the person seeking access cannot locate a party to provide the notice required by this rule, after making a good faith reasonable effort to provide such notice as required by the Superior Court Rules, an affidavit may be filed with the court setting forth the efforts to locate the party and requesting waiver of the notice provision of this rule. The court may waive the notice requirement of this rule if the court finds that further good faith efforts to locate the party are not likely to be successful, or if the motion requests access to redacted JIS database records.

(A) The court shall allow access to court records restricted under this rule, or relevant portions of court records restricted under this rule, if the court finds that the public interests in granting access or the personal interest of the person seeking access outweigh the privacy and safety interests of the parties or dependent children.

(B) Upon receipt of a motion requesting access, the court may provide access to JIS database records described in (f) after the court has reviewed the JIS database records and redacted pursuant to GR 15 (c), any data which is confidential or restricted by statute or court rule.

(C) If the court grants access to restricted court records, the court may enter such orders necessary to balance the personal privacy and safety interests of the parties or dependent children with the public interest or the personal interest of the party seeking access, consistent with this rule.

[Adopted effective October 1, 2001; amended effective July 1, 2006; amended effective August 11, 2009.]

GR 24

DEFINITION OF THE PRACTICE OF LAW

1

GR 24

DEFINITION OF THE PRACTICE OF LAW

(a) General Definition: The practice of law is the application of legal principles and judgment with regard to the circumstances or objectives of another entity or person(s) which require the knowledge and skill of a person trained in the law. This includes but is not limited to:

(1) Giving advice or counsel to others as to their legal rights or the legal rights or responsibilities of others for fees or other consideration.

(2) Selection, drafting, or completion of legal documents or agreements which affect the legal rights of an entity or person(s).

(3) Representation of another entity or person(s) in a court, or in a formal administrative adjudicative proceeding or other formal dispute resolution process or in an administrative adjudicative proceeding in which legal pleadings are filed or a record is established as the basis for judicial review.

(4) Negotiation of legal rights or responsibilities on behalf of another entity or person(s).

(b) Exceptions and Exclusions: Whether or not they constitute the practice of law, the following are permitted:

(1) Practicing law authorized by a limited license to practice pursuant to Admission to Practice Rules 8 (special admission for: a particular purpose or action; indigent representation; educational purposes; emeritus membership; house counsel), 9 (legal interns), 12 (limited practice for closing officers), or 14 (limited practice for foreign law consultants).

(2) Serving as a courthouse facilitator pursuant to court rule.

(3) Acting as a lay representative authorized by administrative agencies or tribunals.

(4) Serving in a neutral capacity as a mediator, arbitrator, conciliator, or facilitator.

(5) Participation in labor negotiations, arbitrations or conciliations arising under collective bargaining rights or agreements.

(6) Providing assistance to another to complete a form provided by a court for protection under RCW chapters 10.14 (harassment) or 26.50 (domestic violence prevention) when no fee is charged to do so.

(7) Acting as a legislative lobbyist.

(8) Sale of legal forms in any format.

(9) Activities which are preempted by Federal law.

(10) Serving in a neutral capacity as a clerk or court employee providing information to the public pursuant to Supreme Court Order.

(11) Such other activities that the Supreme Court has determined by published opinion do not constitute the unlicensed or unauthorized practice of law or that have been permitted under a regulatory system established by the Supreme Court.

(c) Non-lawyer Assistants: Nothing in this rule shall affect the ability of non-lawyer assistants to act under the supervision of a lawyer in compliance with Rule 5.3 of the Rules of Professional Conduct.

(d) General Information: Nothing in this rule shall affect the ability of a person or entity to provide information of a general nature about the law and legal procedures to members of the public.

(e)Governmental agencies: Nothing in this rule shall affect the ability of a governmental agency to carry out responsibilities provided by law.

(f) Professional Standards: Nothing in this rule shall be taken to define or affect standards for civil liability or professional responsibility.

[Adopted effective September 1, 2001;
amended effective April 30, 2002.]

GR 31

ACCESS TO COURT RECORDS

1

GR 31

ACCESS TO COURT RECORDS

(a) Policy and Purpose. It is the policy of the courts to facilitate access to court records as provided by Article I, Section 10 of the Washington State Constitution. Access to court records is not absolute and shall be consistent with reasonable expectations of personal privacy as provided by article 1, Section 7 of the Washington State Constitution and shall not unduly burden the business of the courts.

(b) Scope. This rule applies to all court records, regardless of the physical form of the court record, the method of recording the court record or the method of storage of the court record. Administrative records are not within the scope of this rule. Court records are further governed by GR 22.

(c) Definitions.

(1) "Access" means the ability to view or obtain a copy of a court record.

(2) "Administrative record" means any record pertaining to the management, supervision or administration of the judicial branch, including any court, board, or committee appointed by or under the direction of any court or other entity within the judicial branch, or the office of any county clerk.

(3) "Bulk distribution" means distribution of all, or a significant subset, of the information in court records, as is and without modification.

(4) "Court record" includes, but is not limited to: (i) Any document, information, exhibit, or other thing that is maintained by a court in connection with a judicial proceeding, and (ii) Any index, calendar, docket, register of actions, official record of the proceedings, order, decree, judgment, minute, and any information in a case management system created or prepared by the court that is related to a judicial proceeding. Court record does not include data maintained by or for a judge pertaining to a particular case or party, such as personal notes and communications, memoranda, drafts, or other working papers; or information gathered, maintained, or stored by a government agency or other entity to which the court has access but which is not entered into the record.

(5) "Criminal justice agencies" are government agencies that perform criminal justice functions pursuant to statute or executive order and that allocate a substantial part of their annual budget to those functions.

(6) "Dissemination contract" means an agreement between a court record provider and any person or entity, except a Washington State court (Supreme Court, court of appeals, superior court, district court or municipal court), that is provided court records.

The essential elements of a dissemination contract shall be promulgated by the JIS Committee.

(7) "Judicial Information System (JIS) Committee" is the committee with oversight of the statewide judicial information system. The judicial information system is the automated, centralized, statewide information system that serves the state courts.

(8) "Judge" means a judicial officer as defined in the Code of Judicial Conduct (CJC) Application of the Code of Judicial Conduct Section (A).

(9) "Public" includes an individual, partnership, joint venture, public or private corporation, association, federal, state, or local governmental entity or agency, however constituted, or any other organization or group of persons, however organized.

(10) "Public purpose agency" means governmental agencies included in the definition of "agency" in RCW 42.17.020 and other non-profit organizations whose principal function is to provide services to the public.

(d) Access.

(1) The public shall have access to all court records except as restricted by federal law, state law, court rule, court order, or case law.

(2) Each court by action of a majority of the judges may fom time to time make and amend local rules governing access to court records not inconsistent with this rule.

(3) A fee may not be charged to view court records at the courthouse.

(e) Personal Identifiers Omitted or Redacted from Court Records

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

(A) Social Security Numbers. If the Social Security Number of an individual must be included in a document, only the last four digits of that number shall be used.

(B) Financial Account Numbers. If financial account numbers are relevant, only the last four digits shall be recited in the document.

(C) Driver’s License Numbers.

(2) The responsibility for redacting these personal identifiers rests solely with counsel and the parties. The Court or the Clerk will not review each pleading for compliance with this rule. If a pleading is filed without redaction, the opposing party or identified

person may move the Court to order redaction. The court may award the prevailing party reasonable expenses, including attorney fees and court costs, incurred in making or opposing the motion.

COMMENT

This rule does not require any party, attorney, clerk, or judicial officer to redact information from a court reord that was filed prior to the adoption of this rule.

(f) Distribution of Court Records Not Publicly Accessible

(1) A public purpose agency may request court records not publicly accessible for scholarly, governmental, or research purposes where the identification of specific individuals is ancillary to the purpose of the inquiry. In order to grant such requests, the court or the Administrator for the Courts must:

(A) Consider: (i) the extent to which access will result in efficiencies in the operation of the judiciary; (ii) the extent to which access will fulfill a legislative mandate; (iii) the extent to which access will result in efficiencies in other parts of the justice system; and (iv) the risks created by permitting the access.

(B) Determine, in its discretion, that filling the request will not violate this rule.

(C) Determine the minimum access to restricted court records necessary for the purpose is provided to the requestor.

(D) Assure that prior to the release of court records under section (f) (1), the requestor has executed a dissemination contract that includes terms and conditions which: (i) require the requester to specify provisions for the secure protection of any data that is confidential; (ii) prohibit the disclosure of data in any form which identifies an individual; (iii) prohibit the copying, duplication, or dissemination of information or data provided other than for the stated purpose; and (iv) maintain a log of any distribution of court records which will be open and available for audit by the court or the Administrator of the Courts. Any audit should verify that the court records are being appropriately used and in a manner consistent with this rule.

(2) Courts, court employees, clerks and clerk employees, and the Commission on Judicial Conduct may access and use court records only for the purpose of conducting official court business.

(3) Criminal justice agencies may request court records not publicly accessible.

(A) The provider of court records shall approve the access level and permitted use for classes of criminal justice agencies including, but not limited to, law enforcement,

prosecutors, and corrections. An agency that is not included in a class may request access.

(B) Agencies requesting access under this section of the rule shall identify the court records requested and the proposed use for the court records.

(C) Access by criminal justice agencies shall be governed by a dissemination contract. The contract shall: (i) specify the data to which access is granted; (ii) specify the uses which the agency will make of the data; and (iii) include the agency's agreement that its employees will access the data only for the uses specified.

(g) Bulk Distribution of Court Records

(1) A dissemination contract and disclaimer approved by the IS Committee for JIS records or a dissemination contract and disclaimer approved by the court clerk for local records must accompany all bulk distribution of court records.

(2) A request for bulk distribution of court records may be denied if providing the information will create an undue burden on court or court clerk operations because of the amount of equipment, materials, staff time, computer time or other resources required to satisfy the request.

(3) The use of court records, distributed in bulk form, for the purpose of commercial solicitation of individuals named in the court records is prohibited.

(h) Appeals. Appeals of denials of access to JIS records maintained at state level shall be governed by the rules and policies established by the JIS Committee.

(i) Notice. The Administrator for the Courts shall develop a method to notify the public of access to court records and the restrictions on access.

(j) Access to Juror Information. Individual juror information, other than name, is presumed to be private. After the conclusion of a jury trial, the attorney for a party, or party pro se, or member of the public, may petition the trial court for access to individual juror information under the control of court. Upon a showing of good cause, the court may permit the petitioner to have access to relevant information. The court may require that juror information not be disclosed to other persons.

(k) Access to Master Jury Source List. Master jury source list information, other than name and address, is presumed to be private. Upon a showing of good cause, the court may permit a petitioner to have access to relevant information from the list. The court may require that the information not be disclosed to other persons.

[Amended effective October 26, 2004; amended effective January 3, 2006.]

[SUGGESTED NEW RULE]

From the Board for Judicial Administration

General Court Rule 31A

ACCESS TO ADMINISTRATIVE RECORDS

(a) Policy and Purpose. It is the policy of the judiciary to facilitate access to administrative records. Access to administrative records is not absolute and shall be consistent with reasonable expectations of personal privacy as provided by article 1, section 7 of the Washington State Constitution, restrictions in statutes, restrictions in court rules, and as required for the integrity of judicial decision-making. Access shall not unduly burden the business of the judiciary.

(b) Scope.

This rule governs the right of public access to administrative judicial records. This rule applies to all administrative records, regardless of the physical form of the record, the method of recording the record, or the method of storage of the record. Access to court records is governed by GR 15, 22, and 31.

COMMENT: "Court records" is a term of art, defined in GR 31 as meaning case files and related documents.

(c) Application of Rule.

(1) This rule applies to the Supreme Court, the Court of Appeals, the superior courts, the district and municipal courts, and the following judicial branch agencies:

(A) All judicial entities that are overseen by a court, including entities that are designated as agencies, departments, committees, boards, commissions, task forces, and similar groups;

(B) The Superior Court Judges' Association, the District and Municipal Court Judges' Association, and similar associations of judicial officers and employees; and

(C) All subgroups of the entities listed in this section (1).

COMMENT: The elected court clerks and their staff are not included in this rule because (1) they are covered by the Public Records Act and (2) they do not generally maintain the judiciary's administrative records that are covered by this rule.

(2) This rule does not apply to the Commission on Judicial Conduct. The Commission is encouraged to incorporate any of the provisions in this rule as it deems appropriate.

COMMENT: The Commission on Judicial Conduct is not governed by a court. The commission has a heightened need for maintaining independence from courts. It would be inappropriate to dictate to the commission its policies on public records.

(3) This rule does not apply to the Washington State Bar Association. Public access to the Bar Association's records is governed by GR 12.4.

COMMENT: This paragraph (3) presumes that the Bar Association's proposed rule 12.4 (currently being drafted) is adopted.

(4) This rule does not apply to the Certified Professional Guardian Board. Public access to the board's records is governed by GR 23.

(5) A judicial officer is not a court or judicial agency.

COMMENT: This provision protects judges and court commissioners from having to respond personally to public records requests. Records requests would instead go to the court's public records officer.

(6) An attorney or entity appointed by a court or judicial agency to provide legal representation to a litigant in a judicial or administrative proceeding does not become a judicial agency by virtue of that appointment.

COMMENT: The Washington Association of Criminal Defense Lawyers (WACDL) expressed a concern that appointed criminal defense attorneys and their agencies not be covered by this rule by virtue of their appointment. Paragraph (6) removes them from the scope of this rule.

(7) A person or agency entrusted by a judicial officer, court, or judicial agency with the storage and maintenance of its public records, whether part of a judicial agency or a third party, is not a judicial agency. Such person or agency may not respond to a request for access to administrative records, absent express written authority from the court or judicial agency or separate authority in court rule to grant access to the documents.

COMMENT: Judicial e-mails and other documents sometimes reside on IT servers, some are in off-site physical storage facilities. This provision prohibits an entity that operates the IT server from disclosing judicial records. The entity is merely a bailee, holding the records on behalf of a court or judicial agency, rather than an owner of the records having independent authority to release them. Similarly, if a court or judicial agency puts its paper records in storage with another entity, the other entity cannot disclose the records. In either instance, it is the court or judicial agency that needs to make the decision as to

releasing the records. The records request needs to be addressed by the court's or judicial agency's public records officer, not by the person or entity having control over the IT server or the storage area. On the other hand, if a court or judicial agency archives its records with the state archivist, relinquishing by contract its own authority as to disposition of the records, the archivist would have separate authority to disclose the records.

Because of the broad definition of "public record" appearing later in this rule, this paragraph (6) would apply to electronic records, such as e-mails (and their meta-data) and telephone records, among a wide range of other records.

(d) Definitions.

(1) "Access" means the ability to view or obtain a copy of an administrative record.

(2) "Administrative record" means a public record created by or maintained by a court or judicial agency and related to the management, supervision, or administration of the court or judicial agency.

COMMENT: The work group has developed a list of categories of records maintained by courts and judicial agencies. The list is annotated with the work group's expectation of whether such records are subject to disclosure. The list is found as an appendix to the work group's report. It is intended for illustrative purposes only.

The term "administrative record" does not include any of the following: (1) "court records" as defined in GR 31; (2) chambers records as set forth later in this rule; or (3) an attorney's client files that would otherwise be covered by the attorney-client privilege or the attorney work product privilege.

(3) "Court record" is defined in GR 31.

(4) (A) "Chambers record" means any writing that is created by or maintained by any judicial officer or chambers staff, and is maintained under chambers control, whether directly related to an official judicial proceeding, the management of the court, or other chambers activities. "Chambers staff" means a judicial officer's law clerk and any other staff when providing support directly to the judicial officer at chambers.

COMMENT: Some judicial employees, particularly in small jurisdictions, split their time between performing chambers duties and performing other court duties. An employee may be "chambers staff" as to certain functions, but not as to others. Whether certain records are subject to disclosure may depend on

whether the employee was acting in a chambers staff function or an administrative staff function with respect to that record.

(B) Chambers records are not public records. Court records and administrative records do not become chambers records merely because they are in the possession or custody of a judicial officer or chambers staff.

COMMENT: Access to chambers records could necessitate a judicial officer having to review all records to protect against disclosing case sensitive information or other information that would intrude on the independence of judicial decision-making. This would effectively make the judicial officer a de facto public records officer and could greatly interfere with judicial functions. Records may remain under chambers control even though they are physically stored elsewhere. For example, records relating to chambers activities that are stored on a judge's personally owned or workplace-assigned computer, laptop computer, cell phone, and similar electronic devices would still be chambers records. However, records that are otherwise subject to disclosure should not be allowed to be moved into chambers control as a means of avoiding disclosure.

Chambers records do not change in character by virtue of being accessible to another chambers. For example, a data base that is shared by multiple judges and their chambers staff is a "chambers record" for purposes of this rule, as long as the data base is only being used by judges and their chambers staff.

(5) "Judge" means a judicial officer as defined in the Code of Judicial Conduct (CJC) Application of the Code of Judicial Conduct Section (A).

(6) "Public" includes an individual, partnership, joint venture, public or private corporation, association, federal, state, or local governmental entity or agency, however constituted, or any other organization or group of persons, however organized.

(7) "Public record" includes any writing, except chambers records and court records, containing information relating to the conduct of government or the performance of any governmental or proprietary function prepared, owned, used, or retained by any court or judicial agency regardless of physical form or characteristics. "Public record" also includes meta-data for electronic administrative records.

COMMENT: The definition in paragraph (7) is adapted from the Public Records Act. The work group added the exception for chambers records, for consistency with other parts of the proposed rule.

(8) "Writing" means handwriting, typewriting, printing, photostating, photographing, and every other means of recording any form of communication or representation including, but not limited to, letters, words, pictures, sounds, or symbols, or combination thereof, and all papers, maps, magnetic or paper tapes, photographic films and prints, motion picture, film and video recordings, magnetic or punched cards, discs, drums, diskettes, sound recordings, and other documents including existing data compilations from which information may be obtained or translated.

COMMENT: The definition in paragraph (8) is taken from the Public Records Act. E-mails and telephone records are included in this broad definition of "writing."

(e) Administrative Records.

(1) Administrative Records—Right of Access.

(A) The public has a right of access to court and judicial agency administrative records unless access is exempted or prohibited under this rule, other court rules, federal statutes, state statutes, court orders, or case law. To the extent that records access would be exempt or prohibited under the Public Records Act, Chapter 42.56 RCW, access is also exempt or prohibited under this rule. In addition, to the extent required to prevent a significant risk to individual privacy or safety interests, a court or judicial agency shall delete identifying details in a manner consistent with this rule when it makes available or publishes any public record; however, in each instance, the justification for the deletion shall be provided fully in writing.

COMMENT: The paragraph states that administrative records are open to public access unless an exemption or prohibition applies. The paragraph's final sentence allows agencies to redact information from documents based on significant risks to privacy or safety.

Any public-access exemptions or prohibitions from the Public Records Act and from other statutes or court rules would also apply to the judiciary's administrative records. For example, GR 33(b) provides that certain medical records relating to ADA issues are to be sealed; the sealed records would not be subject to access under this proposed GR 31A.

(B) In addition to exemptions referred to in paragraph (A) above, the following categories of administrative records are exempt from public access:

(1) Requests for judicial ethics opinions;

COMMENT: This exemption was requested by the Judicial Ethics Advisory Committee.

(2) Identity of writing assignment judges in the appellate courts prior to issuance of the opinion;

COMMENT: This exemption was suggested by Judge Quinn Brintnall at a BJA meeting.

(3) Minutes of meetings held by judges within a court and staff products prepared for judicial discussion or decision-making during the meeting;

COMMENT: Minutes of the deliberations at judges' meetings are exempt. Records produced by staff for consideration in judges' meetings and identified in the minutes would be exempt under this section. The preliminary recommendations continue to be protected under the next subsection, after final decision. However, final decisions on administrative matters and the documents embodying them are not exempt from disclosure.

(4) Preliminary drafts, notes, recommendations, and intra-agency memorandums in which opinions are expressed or policies formulated or recommended are exempt under this rule, except that a specific record is not exempt when publicly cited by a court or agency in connection with any court or agency action. This exemption applies both before and after a final decision is made on the opinion or policy;

COMMENT: The first sentence of paragraph (4) is the "deliberative process" exemption from the Public Records Act, RCW 42.56.280.

Unlike the Public Records Act, in which the deliberative process exemption expires once the decision is made (see Progressive Animal Welfare Soc'y v. University of Wash., 125 Wn.2d 243, 257, 884 P.2d 592 (1994)), this rule provides a continuing exemption.

(5) Evaluations and recommendations for candidates seeking appointment or employment within a court or judicial agency;

COMMENT: Paragraph (5) is intended to encompass documents such as those of the Supreme Court's Capital Counsel Committee, which evaluates attorneys for potential inclusion on a list of attorneys who are specially qualified to represent clients in capital cases.

(6) Personal identifying information, including individuals' home contact information, birth dates, Social Security numbers, driver's license numbers, and identification/security photographs;

COMMENT: The exemption was requested by staff for the Office of Public Defense. The work group considered including private financial information in this provision, but ultimately concluded that financial information is already addressed in the Public Records Act's exemptions.

(7) An attorney's request to a court or judicial agency for a trial or appellate court defense expert, investigator, or social worker, any report or findings submitted to the attorney or court or judicial agency by the expert, investigator, or social worker, and the invoicing and payment of the expert, investigator or social worker;

COMMENT: The exemption was requested by the Office of Public Defense.

(8) Documents, records, files, investigative notes and reports, including the complaint and the identity of the complainant, associated with a court's or judicial agency's internal investigation of a complaint against the court or judicial agency or its contractors during the course of the investigation. The outcome of the court's or judicial agency's investigation is not exempt;

COMMENT: The exemption was requested by the Office of Public Defense.

(9) Family court evaluation and domestic violence files when no action is legally pending;

(10) Family court mediation files; and

(11) Juvenile court probation's social files.

COMMENT: The three preceding paragraphs create exemptions for files that are already covered, at least in part, by exemptions in state statutes or elsewhere. These paragraphs are included here to make sure that there is no doubt about their exempt status. The inclusion of these three paragraphs should not be interpreted as excluding other statutory (or rule) exemptions that are not expressly listed here. Per section (e)(1)(A) above, exemptions existing in other rules, statutes, and other authorities apply to records under this rule, even if they are not expressly stated here.

FURTHER COMMENT: Additional express exemptions were also requested. Some were not included in the rule because it is currently believed that the items were already exempt from disclosure under other laws. These items include:

- *Private financial information, including financial account numbers;*

- *Dockets/index information for protected case types; and*
- *Testing/screening materials/results.*

Other items were not included for other reasons, including when insufficient information was available to evaluate the items, such as information about the implications of excluding an item and about the variety of practices used by courts and judicial agencies. These items include:

- *Investigative records of regulatory or disciplinary agencies;*
- *Copyrighted information; and*
- *Performance measures for evaluating court processes. (Some of this subject matter is taken care of with the deliberative process exemption, above.)*

(2) Chambers Records. Chambers records are not subject to disclosure.

(3) Administrative Records—Process for Access.

(A) Administrative Records—Procedures for Records Requests.

(1) AGENCIES TO ADOPT PROCEDURES. Each court and judicial agency must adopt a policy implementing this rule and setting forth its procedures for accepting and responding to administrative records requests. The policy must include the designation of a public records officer and must require that requests for access be submitted in writing to the designated public records officer. Best practices for handling administrative records requests shall be developed under the authority of the Board for Judicial Administration.

(2) PUBLICATION OF PROCEDURES FOR REQUESTING ADMINISTRATIVE RECORDS. Each court and judicial agency must prominently publish the procedures for requesting access to its administrative records. If the court or judicial agency has a website, the procedures must be included there. The publication shall include the public records officer's work mailing address, telephone number, fax number, and e-mail address.

(3) INITIAL RESPONSE. Each court and judicial agency must initially respond to a written request for access to an administrative record within five working days of its receipt. The response shall acknowledge receipt of the request and include a good-faith estimate of the time needed to respond to the request. The estimate may be later revised, if necessary. For purposes of this provision, "working days" mean days that the court or judicial agency, including a part-time municipal court, is open.

(4) COMMUNICATION WITH REQUESTER. Each court and judicial agency must communicate with the requester as necessary to clarify the records being requested. The court or judicial agency may also communicate with the requester in an effort to determine if the requester's need would be better served with a response other than the one actually requested.

(5) SUBSTANTIVE RESPONSE. Each court and judicial agency must respond to the substance of the records request within the timeframe specified in the court's or judicial agency's initial response to the request. If the court or judicial agency is unable to fully comply in this timeframe, then the court or judicial agency should comply to the extent practicable and provide a new good faith estimate for responding to the remainder of the request. If the court or judicial agency does not fully satisfy the records request in the manner requested, the court or judicial agency must justify in writing any deviation from the terms of the request.

(6) EXTRAORDINARY REQUESTS LIMITED BY RESOURCE CONSTRAINTS. If a particular request is of a magnitude that the court or judicial agency cannot fully comply within a reasonable time due to constraints on the court's or judicial agency's time, resources, and personnel, the court or judicial agency shall communicate this information to the requester. The court or judicial agency must attempt to reach agreement with the requester as to narrowing the request to a more manageable scope and as to a timeframe for the court's or judicial agency's response, which may include a schedule of installment responses. If the court or judicial agency and requester are unable to reach agreement, then the court or judicial agency shall respond to the extent practicable and inform the requester that the court or judicial agency has completed its response.

(7) LIMITATIONS ON INMATE REQUESTS.

(i) The inspection or production of any nonexempt public record by persons incarcerated in federal, state, local, or privately operated correctional facilities may be enjoined pursuant to this section. The request shall be made by motion and shall be a summary proceeding based on affidavits or declarations, unless the court orders otherwise.

(ii) The injunction may be requested by a court or judicial agency which is the recipient of the records request or its representative, or by a person to whom the records

request specifically pertains or his or her representative. The injunction request must be filed in the superior court in which the court or judicial agency which is the recipient of the records request is located. If the injunction request is filed by a superior court the decision on the injunction must be made by a visiting judicial officer.

(iii) The court may enjoin all or any part of a request or requests. In order to issue an injunction, the court must find by a preponderance of the evidence that: the request was made to harass or intimidate the court or judicial agency or its employees; fulfilling the request would likely threaten the security of the court or judicial agency; fulfilling the request would likely threaten the safety or security of staff, family members of staff, or any other person; or fulfilling the request may assist criminal activity. Based on the evidence, the court may also enjoin, for a period of time the court deems reasonable, future requests by the same requestor or an entity owned or controlled in whole or in part by the same requestor.

(iv) In deciding whether to enjoin a records request the court may consider all relevant factors including, but not limited to: other requests by the requestor; the type of record or records sought; statements offered by the requestor concerning the purpose for the request; whether disclosure of the requested records would likely harm any person or vital government interest; whether the request seeks a significant and burdensome number of documents; the impact of disclosure on the court's or judicial agency's security and order, the safety or security of court or judicial agency staff, families, or others; and the potential deterrence of criminal activity.

(v) The court or judicial agency shall not be liable for any attorney fees, costs, civil penalties, or fines under (e)(3)(B)(6) for any period during which an order under this section is in effect, including during an appeal of an order under this section, regardless of the outcome of the appeal.

(B) Administrative Records—Review of Public Records Officer's Response.

(1) NOTICE OF REVIEW PROCEDURES. The public records officer's response to a public records request shall include a written summary of the procedures under which the requesting party may seek further review.

(2) TIMELINE FOR SEEKING REVIEW. The timelines set forth in section (e)(3)(A) shall apply likewise to requests for review of the public records officer's response.

(3) FURTHER REVIEW WITHIN COURT OR AGENCY. Each court and judicial agency shall provide a method for review by the judicial agency's director, presiding judge, or judge designated by the presiding judge. For a judicial agency, the presiding judge shall be the presiding judge of the court that oversees the agency. The court or judicial agency may also establish intermediate levels of review. The court or judicial agency shall make publicly available the applicable forms. The review proceeding is informal and summary. The review proceeding shall be held within five working days. If that is not reasonably possible, then within five working days the review shall be scheduled for the earliest practical date.

(4) ALTERNATIVE REVIEW. As an alternative to review under section (e)(3)(B)(3), a requesting person may seek review by a person outside the court or judicial agency. If the requesting person seeks review of a decision made by a court or made by a judicial agency that is directly reportable to a court, the outside review shall be by a visiting judicial officer. If the requesting person seeks review of a decision made by a judicial agency that is not directly reportable to a court, the outside review shall be by a person agreed upon by the requesting person and the judicial agency. In the event the requesting person and the judicial agency cannot agree upon a person, the presiding superior court judge in the county in which the judicial agency is located shall either conduct the review or appoint a person to conduct the review. The review proceeding shall be informal and summary. In order to choose this option, the requesting person must sign a written waiver of any further review of the decision by the person outside the court or judicial agency. The decision by the person outside the court or judicial agency is final and not appealable. Attorney fees and costs are not available under this option.

COMMENT: The bifurcated procedures for review are intended to provide flexible, prompt, informal, and final procedures for review of public records decisions. The option for a visiting judge allows a requester to have the review heard by an outside decision-maker; in the interest of obtaining prompt,

final decisions, a requester selecting this option would be required to waive further review. If the Legislature creates a new entity to review public records decisions made by agencies of the executive branch, then the work group recommends that the BJA consider using this entity for review of judicial records decisions as well.

(5) REVIEW IN SUPERIOR COURT.

(i) A requester may seek review of a decision under section (e)(3)(B)(3) by commencing an action in superior court. The burden of proof shall be on the court or judicial agency that made the public records decision to establish that refusal to permit public inspection and copying is in accordance with section (e)(1) which exempts or prohibits disclosure in whole or in part of specific information or records. Judicial review of all court or judicial agency actions shall be de novo. The superior court shall apply section (e)(1) of this rule in determining the accessibility of the requested documents. Any ambiguity in the application of section (e)(1) to the requested documents shall be resolved by analyzing access under the common law's public-access balancing test.

COMMENT: A civil proceeding to review a denial may be brought in superior court in the same manner as under the Public Records Act. The common law's balancing test is addressed in detail in Cowles Publishing v. Murphy, 96 Wn.2d 584 (1981), and Beuhler v. Small, 115 Wn.App. 914 (2003). The interest in disclosure is balanced against the extent to which disclosure poses a significant risk to individual privacy or safety.

(ii) The right of de novo review is not available to a requester who sought review under the alternative process set forth in section (e)(3)(B)(4).

COMMENT: The Supreme Court may wish to clarify any period of limitation on the bringing of an action for judicial review under this section, expressly or by reference to the limitations on such actions under the Public Records Act.

(6) MONETARY SANCTIONS.

(i) In the de novo review proceeding under section (e)(3)(B)(5), the superior court may in its discretion award reasonable attorney fees and costs to a requesting party if the court finds that (1) the court's or judicial agency's response was deficient, (2) the requester specified the particular deficiency

to the court or judicial agency, and (3) the court or judicial agency did not cure the deficiency.

(ii) Sanctions may be imposed against either party under CR 11, if warranted.

(iii) Except as provided in sections (e)(3)(B)(6)(i) and (ii), a court or judicial agency may not be required to pay attorney fees, costs, civil penalties, or fines.

COMMENT: Monetary penalties for failure to produce records available under the Public Records Act are not available under this rule.

(iv) No individual judicial officers or court or judicial agency employees may be assessed a monetary sanction under this section (6).

COMMENT: Only a court or judicial agency may be assessed monetary sanctions, not an individual. This is consistent with the approach of the Public Records Act. The monetary sanctions would be payable from state/city/county funds, absent some insurance or risk pool availability.

(f) Administrative Records—Court and Judicial Agency Rules. Each court by action of a majority of the judges may from time to time make and amend local rules governing access to administrative records not inconsistent with this rule. Each judicial agency may from time to time make and amend agency rules governing access to its administrative records not inconsistent with this rule.

(g) Judicial Records—Charging of Fees.

(1) A fee may not be charged to view administrative records.

(2) A fee may be charged for the photocopying or scanning of judicial records. If another court rule or statute specifies the amount of the fee for a particular type of record, that rule or statute shall control. Otherwise, the amount of the fee may not exceed the amount that is authorized in the Public Records Act, Chapter 42.56 RCW.

(3) The court or judicial agency may require a deposit in an amount not to exceed ten percent of the estimated cost of providing copies for a request. If a court or judicial agency makes a request available on a partial or installment basis, the court or judicial agency may charge for each part of the request as it is provided. If an installment of a records request is not claimed or reviewed within 30 days, the court or judicial agency is not obligated to fulfill the balance of the request.

COMMENT: Paragraph (3) incorporates a modified version of the Public Records Act's "deposit and installments" language.]

(4) A fee not to exceed $30 per hour may be charged for research services required to fulfill a request taking longer than one hour. The fee shall be assessed from the second hour onward.

COMMENT: The authority to charge for research services is discretionary, allowing courts to balance the competing interests between recovering the costs of their response and ensuring the open administration of justice. The fee should not exceed the actual costs of response. It is anticipated that a best-practices group will consider further guidelines in this area, including fee waivers.

(h) Best Practices. Best practice guidelines adopted by the Supreme Court may be relied upon in acting upon public requests for documents.

COMMENT: A new work group is contemplated to recommend best practices to guide courts and judicial agencies in implementing this rule's necessarily broad, general standards. Courts and judicial agencies would benefit greatly from further work in applying the general principles to the specific types of documents and requests that are most likely to arise. For example, best practices could include designating more specific lists of records that are presumptively characterized as "chambers records" or as being within other categories of records under this rule. The BJA's first work group prepared some documents to assist a new best-practices group in this regard. The best-practices group could also recommend the best methods and resources for training judges and staff.

(i) Effective Date of Rule.

(1) This rule goes into effect on July 1, 2012, and applies to records that are created on or after that date.

COMMENT: A delayed implementation date is used to allow time for development of best practices, training, and implementation.

(2) Public access to records that are created before that date are to be analyzed according to other court rules, applicable statutes, and the common law balancing test. The Public Records Act, Chapter 42.56 RCW, does not apply to judicial records, but it may be used for non-binding guidance.

GR 33
REQUESTS FOR ACCOMMODATION BY PERSONS WITH DISABILITIES
1

1

GR 33

Requests for Accommodation by Persons with Disabilities

(a) Definitions. The following definitions shall apply under this rule:

(1) "Accommodation" means measures to make each court service, program, or activity, when viewed in its entirety, readily accessible to and usable by a person with a disability, and may include but is not limited to:

(A) making reasonable modifications in policies, practices, and procedures;

(B) furnishing, at no charge, auxiliary aids and services, including but not limited to equipment, devices, materials in alternative formats, qualified interpreters, or readers; and

(C) as to otherwise unrepresented parties to the proceedings, representation by counsel, as appropriate or necessary to making each service, program, or activity, when viewed in its entirety, readily accessible to and usable by a person with a disability.

(2) "Person with a disability" means a person with a sensory, mental or physical disability as defined by the Americans with Disabilities Act of 1990 (42 U.S.C. §§12101-12213), the Washington Law Against Discrimination (RCW 49.60 et seq.), or other similar local, state, or federal laws.

(3) "Proceedings Applicant" means any lawyer, party, witness, juror, or any other individual who is participating in any proceeding before any court.

(4) "Public Applicant" means any other person seeking accommodation.

(b) Process for Requesting Accommodation.

(1) Persons seeking accommodation may proceed under this rule. Local procedures not inconsistent with this rule may be adopted by courts to supplement the requirements of this rule. A disputed or denied request for accommodation is automatically subject to review under the procedures set out in subsections (d) and (e) of this rule.

(2) An application requesting accommodation may be presented ex parte in writing, or orally and reduced to writing, on a form approved by the Administrative Office of the Courts, to the presiding judge or officer of the court or his or her designee.

(3) An application for accommodation shall include a description of the accommodation sought, along with a statement of the disability necessitating

the accommodation. The court may require the applicant to provide additional information about the qualifying disability to help assess the appropriate accommodation. Medical and other health information shall be submitted under a cover sheet created by the Administrative Office of the Courts for use by applicants designated "SEALED MEDICAL AND HEALTH INFORMATION" and such information shall be sealed automatically. The court may order that such information be sealed if it has not previously automatically been sealed.

(4) An application for accommodation should be made as far in advance as practical.

(c) Consideration. A request for accommodation shall be considered and acted upon as follows:

(1) In determining whether to grant an accommodation and what accommodation to grant, the court shall:

(A) consider, but not be limited by, the provisions of the Americans with Disabilities Act of 1990 (§ 42 U.S.C. 12101 et seq.), RCW 49.60 et seq., and other similar local, state, and federal laws;

(B) give primary consideration to the accommodation requested by the applicant; and

(C) make its decision on an individual- and case-specific basis with due regard to the nature of the applicant's disability and the feasibility of the requested accommodation.

(2) If an application for accommodation by a proceedings applicant is submitted five (5) or more court days prior to the scheduled date of the proceeding for which the accommodation is sought, and if the applicant otherwise is entitled under this rule to the accommodation requested, the accommodation shall be provided unless:

(A) it is impossible for the court to provide the requested accommodation on the date of the proceeding; and

(B) the proceeding cannot be continued without prejudice to a party to the proceeding.

(3) If an application for accommodation by a proceedings applicant is submitted fewer than five (5) court days prior to the scheduled date of the proceeding for which the accommodation is requested, and if the applicant otherwise is entitled under this rule to the accommodation requested, the accommodation shall be provided unless:

(A) it is impractical for the court to provide the requested accommodation on the date of the proceeding; and

(B) the proceeding cannot be continued without prejudice to a party to the proceeding.

(4) If a requested accommodation is not provided by the court under subsection (c)(2) or (c)(3) of this rule, the court must offer the applicant an alternative accommodation.

(d) Denial: Proceedings Applicants. Except as otherwise set forth in subsection (c)(2) or (c)(3) of this rule, an application for accommodation by a proceedings applicant may be denied only if the court finds that:

(1) the applicant has failed to satisfy the substantive requirements of this rule;

(2) the requested accommodation would create an undue financial or administrative burden;

(3) the requested accommodation would fundamentally alter the nature of the court service, program, or activity; or

(4) permitting the applicant to participate in the proceeding with the requested accommodation would create a direct threat to the health or safety or well being of the applicant or others.

(e) Decision: Proceedings Applicants. The court shall, in writing or on the record, inform the applicant and the court personnel responsible for implementing accommodations that the request for accommodation has been granted or denied, in whole or in part, and the nature and scope of the accommodation to be provided, if any. The decision shall be entered in the proceedings file, if any, or in the court's administrative files. If the court denies a requested accommodation pursuant to subsection (d) of this rule, the decision shall specify the reasons for the denial. If a requested accommodation is not provided by the court under subsection (c)(2) or (c)(3) of this rule, the court shall state:

(1) the facts and/or circumstances that make the accommodation impossible under subsection (c)(2) or impractical under subsection (c)(3); and

(2) the reasons why the proceeding cannot be continued without prejudicing a party to the proceeding.

(f) Decision: Public Applicants. A public applicant should be accommodated consistent with the Americans with Disabilities Act of 1990 (42 USC §§12101-12213) and the Washington Law Against Discrimination (RCW 49.60 et seq). The applicant shall, orally or in writing, be informed that the request for accommodation has been granted or denied. If requested, a written statement of reasons for denial shall be provided.

Comment

[1] Access to justice for all persons is a fundamental right. It is the policy of the courts of this state to assure that persons with disabilities have equal and meaningful access to the judicial system. Nothing in this rule shall be construed to limit or invalidate the remedies, rights, and procedures accorded to any person with a disability under local, state, or federal law.

[2] Supplemental informal procedures for handling accommodation requests may be less onerous for both applicants and court administration. Courts are strongly encouraged to adopt an informal grievance process for public applicants whose requested accommodation is denied.

[Adopted effective September 1, 2007; amended effective December 28, 2010.]

Appendix B

Caselaw

Appendix B2

IMPORTANT CASELAW FOR ALL GUARDIANS AD LITEM

***In re Guardianship of Atkins,* 57 Wn. App. 771, 790 P.2d 210 (1990)**

Physician-patient privilege does not apply to information the guardian ad litem is required by law to present to the court in a guardianship proceeding; if fees to a court-appointed professional are to be capped, the professional must be given notice of the cap and specific notice that *prior* approval must be obtained before the fee cap is exceeded.

Facts. A hospital sought appointment of a guardian for an AIP. The AIP opposed the guardianship. An attorney was appointed for the AIP and advised that fees at $45 per hour up to $1000 would be paid by the court and any excess fees had to be submitted for approval. A jury trial was held at which the guardian ad litem testified that a guardian was needed and also submitted the required medical report from the AIP's physician. The jury found the AIP incapacitated.

On appeal, the AIP contended, among other alleged errors, that the medical information was protected by physician-patient privilege. The court appointed attorney also argued that his fees in excess of the $1000 cap should have been approved.

Holding: Medical records obtained by the GAL per the statutory duty to investigate and submit a report are not privileged. The physician-patient privilege is in derogation of common law and must be strictly construed. If the court wishes to require that a GAL get prior approval before incurring fees in excess of the ordered cap, the court must give notice to the GAL that *prior* approval is required.

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

An incapacitated person may still be able to choose or refuse medical treatments so long as the person can understand the medical problem and the possible treatments.

Facts. The ward had lung and larynx cancer. Maximum survival odds and preferred medical treatment was surgical removal of the voice box. Mere radiation treatment would not be nearly as effective. The guardian ad litem testified that the ward made it clear that she did not want to lose her ability to speak. The court found that removal of the voice box was an amputation of a sort and that a guardian could not force the ward to undergo such a procedure against her will.

Holding: This case was decided under the former guardianship statute that imposed all or nothing capacity standards. The court held that in any proceeding involving medical treatment for an incompetent, weight should be given to the preference expressed by the ward, based upon the extent to which the ward understands the medical condition and the various possible treatments.

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

Right to a jury trial; right to have the least restrictive means of protection imposed; ability to introduce post trial changes in circumstances in appeal of guardianship judgment.

Facts: DSHS sought appointment of a guardian for the person and estate of an elderly woman who was bedridden and living in deplorable rat invested conditions while in the care of an elderly friend who had dementia problems and was an obsessive compulsive hoarder. A guardian ad litem was appointed to investigate the situation. The court was advised that the woman wanted an attorney and a jury trial.

A trial was held. The GAL testified. The jury found the AIP incapacitated both as to her person and her estate. In a special verdict form, the jury was asked which rights, if any, the AIP should retain. As to her estate, the jury found that the AIP was fully incapacitated, *i.e.*, she was unable to exercise the rights to: (1) enter into a contract or make or revoke a will; (2) sue and be sued other than through a guardian; (3) possess a license to drive; (4) buy, sell, own, mortgage, or lease property; and (5) make decisions about her personal property. With regard to her person, however, the jury determined that she should retain the rights to: (1) give informed consent to medical treatment; (2) determine where she will live; (3) marry or divorce; (4) vote or hold an elected office; (5) decide who shall provide care and assistance; and (6) make decisions regarding social aspects of her life.

In an order partially granting a motion by DSHS for judgment notwithstanding the verdict, the trial judge ruled that the AIP's right to decide who shall provide care and assistance for her should be restricted. DSHS appealed.

Holding: The appellate court held that under the 1975 amendments to the guardianship statute, the right to a jury trial means not only that the jury can determine the issue of capacity, but also the extent of incapacity, if any. The jury may determine whether the guardianship should be full or limited and if limited, specifically what rights the AIP should lose under the limited guardianship. If the evidence does not clearly support the verdict or any part thereof, as with any trial by jury, the trial judge may rule notwithstanding the verdict. Since situations involving incapacitated persons are fluid and ever changing, on appeal of a judgment in a guardianship case, the appellate court may review new evidence of changes in the AIP's circumstances after entry of the judgment.

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

A GAL has quasi-judicial immunity from civil liability.

Facts: A GAL was appointed to review a personal injury settlement for an adult who had sustained a severe head injury and was thus incapacitated. The settlement called in part for an annuity. The GAL recommended approval of the settlement and also of the fees requested by the personal injury lawyer. After the injured man died, the payments under the life annuity were terminated and the surviving wife sued the personal injury attorney and the GAL alleging that the attorney's fees were excessive and that the GAL was negligent in approving the settlement and the fees.

Holding: The Supreme Court held that the GAL appointed to investigate a proposed settlement for an incapacitated person is serving as an arm of the court and therefore is entitled to quasi-judicial immunity. This holding may apply by analogy to the services of a GAL appointed to investigate and report to the court in any guardianship proceeding. The GAL should be sure that his or her conduct adheres to the Superior Court Guardian ad Litem Rules (GALR's) to ensure that his or her activities fall within the scope of conduct that qualifies for quasi-judicial immunity.

***Guardianship of Karan,* 110 Wn. App. 76 (2002)**

An attorney who represents the successful petitioner in an action to establish a guardianship of an alleged incapacitated person's estate owes that AIP a duty to see that the assets are protected, *e.g.* by a guardianship bond or blocked account.

Facts: Upon the death of a minor's father, his mother hired an attorney to have the mother appointed as guardian of the minor's estate to receive the proceeds of the father's life insurance payable to the minor. The order establishing the guardianship of the estate did not require a bond or blocked account to protect the minor's assets. The mother depleted the guardianship funds. A guardian ad litem was appointed for the child and a new guardian of the estate was appointed. The successor guardian sued the mother for breach of fiduciary duties. When the judgment against the mother could not be collected, the attorney who represented the mother in establishing the guardianship was sued for malpractice.

Holding: Since the minor was the intended beneficiary of the guardianship, the attorney who handled the creation of the guardianship had a duty to the minor to see that RCW 11.88.100, .105 were followed. Therefore, the attorney had a duty to see that the order appointed a guardian of the estate required that the guardianship assets were protected by a bond or blocked account.

Note: No guardian ad litem was likely appointed for the minor initially because RCW 11.88.090(3)(b) does not require appointment of a guardian ad litem for a minor when a parent is petitioning for guardianship and the sole incapacity is minority. If a GAL had been involved at that time, it would have been part of the GAL's duties to recommend to the court that bond or blocking be ordered and to point out to the court that the proposed order did not contain any provision for bonding or blocking.

***Estate of Treadwell,* 115 Wn. App. 238 (2003)**

The attorney for a guardian of an incapacitated adult may be liable to the heirs of the IP if the guardian does not block the assets of the guardianship estate as ordered by the court.

Facts: A guardianship of the person and estate of an incapacitated 90 year old woman was established. The estate was valued at approximately $225,000. The guardian ad litem recommended a bond in the amount of $30,000 and blocking of all assets in excess of that amount. The order appointing the guardian required a bond of $30,000 and blocking of the remaining funds. The court clerk issued letters of guardianship with a special instruction sheet for the guardian. The guardian's attorney forwarded the letters and instruction sheet to the guardian along with a form receipt for blocked account. The guardian was not responsive, however. A year and a half later the IP died and the personal representative of her estate was unable to recover the estate assets from the guardian and commenced a malpractice action against the attorney for the estate.

Holding: The obligation to see that the assets of an incapacitated person are protected by filing a bond or blocking accounts may be imposed upon the attorney representing the guardian, in part because a direct action against the guardian who depletes the incapacitated person's estate is "likely to be an empty remedy absent a bond. The remedy would have been secured by the statutorily required bond, or rendered unnecessary by a properly blocked account."

While in *Karan* the alleged malpractice was the failure to provide any protection for the guardianship estate assets, the alleged malpractice in this case was "the failure to provide for adequate bond and/or blocked accounts before issuing the order appointing the guardian." In both cases, the guardian's attorney violated the requirements of RCW 11.88.100 and .105.

An attorney for a guardian owes an incompetent ward a duty to establish the guardianship consistent with the requirements of RCW 11.88.100 and .105. The purpose of those statutes is to protect the IP's property. Before the guardianship is effective and before the letters of guardianship are issued, adequate bond must be in place unless the estate is under $3,000 or if the bond is reduced by blocking of cash and security accounts, to be released only upon court order. Blocking is a substitute for bond where it is the basis for reduction of the amount of the bond. Therefore it must be in place before the reduced bond may be executed. Letters of guardianship must not be issued until the assets of the IP are fully protected by bonding and/or blocking.

***In re Guardianship of Stamm,* 121 Wn. App. 830 (2004)**

In a jury trial, a GAL may testify as to the GAL's opinions formed in the investigation, but may not testify that the GAL is "the eyes and ears of the court" because that may cause the jury to give undue weight to the GAL's testimony.

Facts: A guardianship action was commenced to appoint a guardian of the person and estate of a widower whose children were concerned about his ability to make decisions after he became involved with another woman and was drinking a lot. The widower objected to the guardianship and demanded a jury trial. At trial the GAL gave testimony about her opinions and recommendations which included hearsay and furthermore characterized her role as "the eyes and ears of the court." The jury found that the widower was incapacitated and the widower appealed.

Holding: The GAL may testify at trial. The guardianship statute indicated that the legislature intended that the trier of fact, the judge in a bench trial or the jury in a jury trial, have the benefit of the GAL's investigation and recommendations, including the GAL's opinions regarding the capacity of the alleged incapacitated person and the AIP's needs and circumstances.

The trial court has discretion under ER 402 to permit the GAL to testify about the GAL's opinions if the court believes that testimony will assist the trier of fact. The GAL testimony so permitted may include the basis of the opinions and recommendations, even if the GAL relies on hearsay. The GAL testimony, however, "is circumscribed by the parameters of the duties assigned by the statute [RCW 11.88]." The court may decide whether the information relied on by the GAL was of the type contemplated by the statute and whether it "was reasonably relied upon by the GAL."

The GAL's subjective assessment of credibility of persons interviewed is irrelevant in testimony before a jury. Only the trier of fact may determine credibility and weight to be given to evidence. The jury must know that it is not bound by the opinions of the GAL and may ignore them. Because the GAL is just a witness, the GAL may not give any appearance that her views are those of the court. Therefore, for the GAL to tell the jury that she is the eyes and ears of the court is reversible error.

***In re Guardianship of Beecher,* 130 Wn. App. 66 (2005)**

This case held that RCW 11.88.045(2) subjects the fees for the representation of an AIP to approval by the court under the provisions of RCW 11.92.180, which governs payment of guardian's fees. Under the court's reasoning, fees of an attorney for an AIP are subject to court review only if a finding that AIP is incapacitated has been made. In the event a guardian is not appointed for the AIP, the fees and costs for the AIP's attorney might not be reviewable for reasonableness by the court, if the AIP had capacity to enter into a fee agreement with the attorney. [Excerpts from the opinion appear below.]

Facts: Loretta Beecher, an alleged incapacitated person (AIP), hired attorney Watson B. Blair to represent her in the guardianship proceedings her stepson initiated against her. After four months, during which Blair filed several motions disputing various aspects of the proceedings, the petitioner and guardian ad litem (GAL) brought a motion disputing Blair's fees and costs. The trial court ultimately cut Blair's fees by almost half. Blair appeals, arguing that the court did not have authority to review his fees because Beecher was never adjudicated to be an incapacitated person and neither Beecher nor her attorneys-in-fact disputed his fees. We agree.

Because RCW 11.88.045(2) incorporates the fee review provisions of RCW 11.92.180 that govern guardian fees, and guardians are appointed only after a finding of incapacity, the court can review fees and costs under the guardianship statute only after an adjudication of incapacity. Until then, an alleged incapacitated person retains the right everyone else has to hire and pay the attorneys of her choice. No court ever found Beecher was incapacitated, so the trial court did not have authority to review Blair's fees. We reverse and remand to vacate the judgment against Blair.

Holding: . . . The legislative intent of the guardianship statute is "to protect the liberty and autonomy of all people of this state, and to enable them to exercise their rights under the law to the maximum extent, consistent with the capacity of each person." Beecher had the right to be represented during the guardianship proceedings by counsel of her choosing. She chose Blair, an attorney with whom she was familiar from his previous work on her behalf. He provided a detailed contract stating his hourly rate and warning of the potential for high costs inherent in Beecher's litigious approach to defending her autonomy. Beecher and her attorneys-in-fact approved. Since Beecher never lost her capacity to contract, there was no basis on which or reason to invalidate her contract with Blair.

In addition, Beecher and her attorneys-in-fact approved the fees Blair charged during the proceedings. Even after the court commissioner's ruling on October 10, 2003, Beecher wished to retain Blair and pay his fees, stating that Blair had served her well in the guardianship proceedings and that she had "no objections to the fees that [Blair] has billed me and that I have paid to date." Petitioner and the GAL did not have standing to initiate the fee dispute unless and until Beecher was found to be incapacitated by a court.

Only Beecher or her attorneys-in-fact could dispute Blair's fees.«13» Even if they had disputed Blair's fees, the Rules of Professional Conduct, specifically RPC 1.5, not the guardianship statute, provided the remedy.

Reversed and Remanded

***Bobbit v. Bobbit,* 135 Wn. App. 8 (2006)**

This case involved a GAL appointed in a family law matter. By failing to interview all interested parties, and being "complicit in a parent's attempt to conceal information," the GAL failed to maintain an appearance of fairness, thus violating GALR 2.

Facts: In post-dissolution proceedings, former wife filed petition to modify parenting plan and moved for permission to sell real property that had been awarded to former husband as his separate property in the dissolution decree. Former husband moved to remove the guardian ad litem (GAL). The Superior Court, Pierce County, John A. McCarthy, Frank Cuthbertson, and Brian Tollefson, JJ., granted former wife permission to sell the property, refused to remove the GAL, modified the parenting plan so that former wife was the primary residential parent, and entered judgment against former husband for GAL fees. Former husband appealed.

Holdings:
(1) trial court's order authorizing sale of property effected improper modification of property division in dissolution decree;

(2) GAL's failure to comply with rule setting forth general responsibilities of GAL did not require removal of GAL;

(3) attorney fees awarded to former wife were based on insufficient information and insufficient findings; and

(4) trial court retains discretion to evaluate the GAL's proposed fees and costs, and was not bound by parties' stipulation regarding GAL fees.

Reversed and Remanded

***In re the Guardianship of Emma Endicott*, Slip Opinion 58435-9, Court of Appeals, Division 1, February 4, 2008**

This is an appeal from orders establishing a limited guardianship of the estate pursuant to RCW 11.88 and a protecting a vulnerable adult from financial abuse, pursuant to RCW 74.34.

Mrs. Endicott owned various real estate parcels on Whidbey Island which she sold for less than fair market value to two women who were friends and neighbors, and who were also licensed real estate agents. One of the purchasers was also attorney in fact for Mrs. Endicott. Petitions for guardianship and an order for protection of a vulnerable adult were filed by two of Mrs. Endicott's four sons, alleging that their mother was not competent to handle her property and financial affairs and also alleging that their mother was a vulnerable adult who had been subjected to financial abuse and undue influence by the realtors. Mrs. Endicott opposed the guardianship and vulnerable adult petitions, as did the realtors.

The guardian ad litem investigated the situation and reported to the court that Mrs. Endicott was competent and did not need a guardian. The psychologist who examined Mrs. Endicott also reported that she was competent. Both had met with Mrs. Endicott while she was living with one of her non-petitioning sons after being released from the hospital after a fall. Prior to trial, she returned home and was living alone and her condition deteriorated. After a bench trial of approximately 10 days over a period of three months, the court issued the guardianship and protection orders, contrary to the recommendations of the GAL and psychologist.

At trial the GAL admitted that she had formed her opinion prior to interviewing one of Mrs. Endicott's four sons and two of her neighbors. The psychologist admitted that she did not know some of the facts about Mrs. Endicott that came to light at trial. The trial court found by clear, cogent and convincing evidence that Mrs. Endicott was incapacitated as to person and property and appointed one of the non-petitioning sons as limited guardian of her person and estate. The court also entered a vulnerable adult order enjoining the realtors from encumbering the property that they had purchased from Mrs. Endicott in the year before entry of the order. The appellate court affirmed and reviewed at length the burden of proof in guardianship and vulnerable adult actions and also noted that the trier of fact is the only court to judge the credibility of witnesses and to determine whether the evidence met the clear, cogent and convincing level. The appellate court could only review whether the record showed substantial evidence and whether the law was interpreted correctly.

APPENDIX C

The Title 11 RCW
MODEL GUARDIAN AD LITEM

&

2011 Report:
A Review of the Training Program
For Title 11 Guardianship Guardians Ad Litem

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

Appendix C2

TRAINING PROGRAM

For Superior Courts, Guardians Ad Litem, and Training Providers

Developed and produced by the
Guardian Ad Litem Training Project Advisory Group and the
Aging and Adult Services Administration
Department of Social and Health Services
Olympia, Washington 98504

July 1997 [notated 2005]

Appendix C4

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

July 1997 [notated 2005]

The Title 11 MODEL ***TRAINING PROGRAM*** [outlining the curriculum guidelines and topics] does not have a copyright. It is public property. The ***TRAINING PROGRAM*** has been developed with the assistance of the Model Guardian Ad Litem Training Project Advisory Group and [produced] at state expense.

All materials contained herein [the *Training Program*] are available for [full and accurate] reproduction and use by the Washington State Superior Courts, guardians ad litem, non-profit guardian ad litem training providers, and members of the general public.

Aging and Adult Services Administration will accept written comments regarding the Training Program and its component parts including the *Handbook*. These comments will be retained in a designated file and held for future consideration. In the absence of a funded staff position, this will occur no earlier than at the time of the next statutorily required revision. Address comments to:
Office Chief, State Unit on Aging
Re: Guardian ad Litem Training Project, Future Revision File
Aging and Adult Services Administration
Post Office Box 45600
Olympia, Washington 98504-5600

July 1997 [notated 2005]

[Note that since 1997, DSHS has contracted with King County Bar Association to coordinate the production of the *Handbook*. King County Bar Association provides uniform copies of the Handbook and/or update inserts to training providers at cost of printing/shiping and welcomes suggestions and comments for improvement of the ***Handbook***. Contact the CLE Department at cle@kcba.org or CLE Department of KCBA 1200 Fifth Ave., Suite 600 Seattle, WA 98101.]

THE TITLE 11 MODEL GUARDIAN AD LITEM
TRAINING PROGRAM

PREFACE

In the 1996 legislative session, the Washington State Legislature enacted changes to the guardianship statutes. These changes included a directive for the Department of Social and Health Services to convene an advisory group consisting of "representatives from consumer, advocacy, and professional groups knowledgeable in developmental disabilities, neurological impairment, physical disabilities, mental illness, aging, legal, court administration, the Washington state bar association, and other interested parties." The department and the advisory group were to develop a model guardian ad litem training program to be utilized by the Superior Courts to ensure that candidates applying for registration as a qualified guardian ad litem shall have satisfactorily completed training to attain these minimum qualifications to act as a guardian ad litem. To that end, representatives of the above mandated organizations and agencies worked with the department to develop the Title 11 RCW Model Guardian Ad Litem *Training Program* detailed on the following pages.

The department extends thanks to all of the representatives who diligently participated in the Advisory Group, and to the organizations and agencies listed below which enabled them to participate.

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

The Title 11 RCW

MODEL GUARDIAN AD LITEM

TRAINING PROGRAM

DESCRIPTION

TRAINING PROGRAM PURPOSE

The Washington State Legislature enacted changes to the guardianship law in 1996 which required the development of a Model Guardian Ad Litem *Training Program* to be utilized by the superior courts.

The *Training Program* has been developed to assist the courts, the training providers, and the training participants to conform with the Title 11 RCW requirement that all candidates applying for registration as qualified guardians ad litem shall have satisfactorily completed training to attain essential minimum qualifications to act as guardians ad litem.

The Model Guardian Ad Litem *Training Program*, developed by the Department of Social and Health Services and the Advisory Group convened under RCW 11.88.090(3)(d), is comprised of a program of instruction based on the following components:

- *Training Program* Standards
- *Training Program* Summary of Statutory Requirements of Guardians Ad Litem
- *Training Program* Goals and Objectives
- The written Guardian Ad Litem *Handbook* [a core component for both the basic and advanced units, *infra*.]

TRAINING PROGRAM STANDARDS

As important as is the training content, the training must be offered in conformity with the *Training Program* Standards to ensure both the quality of the presentation and the education of the attendees.

Since it is the ultimate responsibility of the Superior Court to see that the training is offered and to maintain a Guardian Ad Litem Registry, the authors also formulated and included in the *Training Program* Standards recommendations to the courts which will maximize the benefit of the entire Model Guardian Ad Litem *Training Program*.

TRAINING PROGRAM CONTENT AND METHODS

The Program Training goal is to provide participants with a learning experience that will assist them to develop their knowledge, skills, and abilities. The training participants' learn may be demonstrated by their:

- Understanding, comprehending, and application of information;
- Evaluation of information against their past experience and similar experiences in like situations; and
- Exercise of judgment in making competent decisions.

To this end, the Guardian Ad Litem *Handbook* covers a range of topics essential to an understanding of the guardianship statute, the role and duties of the guardian ad litem, and the roles of other parties to guardianship proceedings. The *Handbook* material is designed to provide the guardian ad litem the knowledge needed for proficient practice, such as understanding the guardianship law.

Qualified faculty will further assist the Program Training participants in acquiring skills required to complete the duties of the guardian ad litem, such as interviewing and report writing; and abilities necessary to perform complex decision making, such as adhering to ethical standards and engaging in self-evaluation. For example, a training participant may acquire significant knowledge from a manual or a lecture. It is unlikely, however, that the training participant will acquire skill in this way. Building skill requires guided or supervised practice. That is the purpose of the interactive problem-solving exercises in Unit Two, the program's advanced training unit.

The learning goals and objectives provide a structure for both the training provider and the participants to evaluate the teaching methods and the learning process and outcomes.

ON-GOING EDUCATION

The *Training Program* Standards require that any person seeking appointment as a guardian ad litem shall attend Unit Two, the *Training Program*'s advanced unit, annually. The purpose of the on-going training is to:

- Connect new information to the information the guardian ad litem already has; and
- Ensure that each guardian ad litem is aware of the current legislative issues and changes and the current status of local services/resources.

The superior courts and training providers are encouraged to provide additional training materials as they deem appropriate. These materials should supplement the *Training Program* materials, but should not be inconsistent with nor be offered as a substitute for the Model Program materials. [The *Handbook* - or its current update inserts - is a core component of both the basic and advanced units.]

TRAINING PROGRAM

STANDARDS

I. REQUIREMENTS OF THE MODEL GUARDIAN AD LITEM *TRAINING PROGRAM*

A. General Training Standards

1. The Model Guardian Ad Litem *Training Program* shall be open to those persons with an interest in guardian ad litem qualifications and duties as well as to those persons intending to apply to serve as guardians ad litem pursuant to RCW 11.88.

2. Facilities for conducting the Model Guardian Ad Litem *Training Program* shall be accessible to all persons and in compliance with all laws pertaining to persons with disabilities.

B. Training Hours and Scope

1. The Model Guardian Ad Litem *Training Program* shall be provided in two units, each unit to be comprised, at a minimum, of six to seven and one-half hours each to ensure comprehensive coverage of pertinent subject matter, [consistent with the *Handbook* and/or its update inserts]

2. **Unit One**, the Model Guardian Ad Litem *Training Program*'s basic unit, shall include at a minimum:

- The roles, duties, and limits of authority of the guardian ad litem as defined by Washington State Law under RCW 11.88;
- The consideration of alternatives to guardianship;
- The determination of functional capacity in accord with the guardianship statutes;
- Due process and the rights of the alleged incapacitated person;
- Information about impairments, local services and resources; and
- Terminology

3. **Unit Two**, the Model Guardian Ad Litem *Training Program*'s advanced unit, shall include:

- Expanded information about Impairments, available local resources, and community resources;
- A review of changes in the law;
- Interactive problem-solving exercises where the attendees learn by doing; and

- Other relevant topics, such as:

  ►Discussion of diversity issues
  Relevant locally selected issues which facilitate and foster awareness of and sensitivity to local area socio-economic, ethnic, cultural and religious differences and the role of the cultural norms in decision making.

  ►Local court procedures
  [Examples: Use of court approved forms, complex trial issues, payment issues, court calendars, guardian ad litem qualifications, appointments and notice, court registry policies and procedures]

  ►Advanced communication skill building
  [Example: Conducting effective guardian ad litem interviews with persons who are non-verbal, hearing impaired, developmentally disabled, or who have thinking impairments]

4. Any person seeking appointment as a guardian ad litem shall attend the advanced model training unit annually, [and receive the most current edition of the *Handbook* or its update inserts].

C. Faculty Qualifications

1. The faculty shall have a minimum of five years' experience in their particular fields (e.g., attorney, social worker, psychiatrist, guardian ad litem) and be in good standing with their respective professional organization, if any, and/or the appropriate guardian ad litem registry.

2. Experience shall be in areas relevant to guardianship: that is, for an attorney, a practice involving estate planning, guardianship, probate and trust, elder law, or related areas; for a social worker, experience working with disabled persons, the elderly, etc.

3. The faculty shall have had prior experience or training in the fundamentals of adult education.

4. The faculty shall have had prior experience as effective public speakers.

5. The faculty shall be composed of persons who:
   - Are familiar with the duties of a guardian ad litem; or
   - Have had actual experience as a guardian ad litem; or
   - Are persons with a disability or have experience in dealing with people with disabilities and have knowledge of, and experience in advocating for, local community resources.

D. Program Training Offered by Videotape

1. If the superior court approves a videotape of a live model training program as an acceptable training alternative, the videotape presentation shall be shown in a group setting.

2. One or more moderators who meet faculty qualifications shall be present to answer questions and facilitate group interactive exercises. Among those moderators present, at least one shall have knowledge of local resources. Other faculty qualifications shall be met by those qualified individuals who present the model *Training Program* on the videotape.

3. Attendees shall participate in the interactive components of the program.

4. Video presentations shall be of high quality in order to re-create as closely as possible the live training experience.

5. The videotape being used shall be reviewed each year and updated regularly as necessary to ensure dissemination of current legal, social, and health care information.

E. Objective Demonstration of Acquired Skills

As an integral part of the training, all attendees shall participate in one or more interactive problem-solving group exercises designed to demonstrate their acquisition of skills, knowledge, and proficiency pertaining to the Model Guardian Ad Litem *Training Program*'s Units One and Two topics and the model training program's teaming objectives.

F. Attendance Verification

Training providers shall establish sign-in [and] sign-out procedures for all of the training sessions that will record accurately the time of the attendees' participation. Attendance records shall be maintained by training providers for a period of three years.

II. RECOMMENDATIONS TO THE SUPERIOR COURT

A. The superior courts should require attendance at the Model Guardian ad Litem *Training Program* pursuant to law and in accord with these recommendations.

B. Both Model Guardian ad Litem *Training Program* units should be completed by an individual within a ninety-day period.

C. All persons should complete both Model Guardian ad Litem *Training Program* units prior to their appointment as guardians ad litem.

D. Attendance at the Model Guardian Ad Litem *Training Program*'s basic unit may be waived when a person has previously completed the Model *Training Program*'s basic unit in this or another county, which training has been approved by the superior court of the county in which the person will be serving as a guardian ad litem. Completion of the current Model Guardian Ad Litem *Training Program*'s advanced unit shall be required of any person seeking guardian ad litem appointment in a new county for the first time.

E. It is recommended that each guardian ad litem shall take the program's advanced unit annually to ensure that each individual is aware of legislative issues and changes and current status of local services/resources.

F. The superior courts and training providers are encouraged to provide additional training materials as they deem appropriate, which shall supplement but shall not be inconsistent with nor substitute for the model *Training Program* herein described.

TRAINING PROGRAM

SUMMARY OF STATUTORY REQUIREMENTS OF GUARDIANS AD LITEM

This section is intended as an abstract or outline of the statutory requirements of guardians ad litem. Reading this material is not a substitute for review of the actual statutory language. Material in cited sections not specifically related to the guardian ad litem's duties has not been included.

I. QUALIFICATIONS OF THE GUARDIAN AD LITEM

A. The guardian ad litem shall be free of influence from anyone interested in the proceeding; [RCW11.88.090(3)(a)]

B. The guardian ad litem shall have the requisite knowledge, training, or expertise to perform the duties required of a guardian as outlined in [RCW11.88.090(3)(b)]

C. The guardian ad litem shall have completed the model guardian ad litem training; and [RCW 11.88.090 4(b)(ii)]

D. The guardian ad litem shall be eligible *for* and *on* the Superior Court registry for the county in which the person is appointed as guardian ad litem. To be eligible for registry the guardian ad litem must meet the following requirements:

1. Present a written statement outlining his or her background and qualifications. The background statement shall include, but is not limited to, the following information:

a) Level of formal education.

b) Training related to guardian ad litem's duties.

c) Number of years experience as a guardian ad litem.

d) Number of appointments as a guardian ad litem and the county or counties of appointment.

e) Criminal history which means a list of prior convictions, whether in this state, in federal court, or elsewhere. The history shall include, where known, for each conviction:

(1) Whether probation was ordered and the length and terms thereof; and

(2) Whether incarceration occurred and the length of incarceration. Convictions include juvenile offenses for sex offenses and shall also include other prior convictions in juvenile court if:

(i) The conviction was for an offense which is a felony or a serious traffic offense;

(ii) The crime occurred at age fifteen or older; and

(iii) With respect to prior juvenile class B and C felonies or serious traffic offenses, the crime was committed when less than twenty-three years of age for which a sentence was imposed.

f) Evidence of the person's knowledge, training, and experience in each of the following: needs of impaired elderly people, physical disabilities, mental illness, developmental disabilities, and other areas relevant to the needs of incapacitated persons, legal procedure, and the requirements of RCW 11.88 and RCW 11.92.

g) Written statement of qualifications shall include the names of any counties in which the person was removed from a guardian ad litem registry pursuant to a grievance action, and the name of the court and the case number of any case in which the court has removed the person for cause. [RCW11.88.090(4)(b]

2. The guardian ad litem shall update his or her written statement of background and qualifications for the registry on an annual basis. [RCW 11.88.090(4)(d)]

II. DUTIES OF THE GUARDIAN AD LITEM FOLLOWING APPOINTMENT

A. The guardian ad litem shall meet with the alleged incapacitated person as soon as practicable following appointment and explain, in language which such person can reasonably be expected to understand:

1. The substance of the petition;

2. The nature of the resultant proceedings;

3. The person's right to contest the petition;

4. The identification of the proposed guardian or limited guardian;

5. The person’s right to a jury trial on the issue of his or her alleged capacity;

6. The person’s right independent counsel *(willing counsel of their choosing who will be provided at public expense if the alleged incapacitated person cannot afford counsel, the expense of counsel would result in substantial hardship, or the individual does not have practical access to funds with which to pay counsel immediately, but may be required to reimburse the court later)*; and

7. The person's right to be present at the hearing on the petition. [RCW11.88.090(5)(a)]

B. The guardian ad Item is required to obtain medical and other reports provide to the court:

1. The guardian ad litem is required to obtain a written report from a licensed physician or a licensed or certified psychologist or an advanced registered nurse practitioner. The only exception in which a medical report is not needed is if the basis of the guardianship is that the alleged incapacitated person is a minor. [RCW11.88.045(4)]

If the alleged incapacitated person opposes the health care professional selected by the guardian ad litem to preare the medical report, then the guardian ad litem shall use the health care professional selected by the alleged incapacitated person.
[RCW 11.88.045(4)]

2. If the alleged incapacitated person opposes the health care professional selected by the guardian ad litem to prepare the medical report, then the guardian ad litem shall use the health care professional selected by the alleged incapacitated person.
[RCW 11.88.045(4)]

a) If the alleged incapacitated person wishes to select his or her own health care professional, the guardian ad litem may also obtain a supplemental evaluation. [RCW 11.88.045(4)]

b) Prerequisites for the preparation of the report by physician, psychologist or an advanced registered nurse practitioner are that he/she:

(1) Shall have personally interviewed the alleged incapacitated person within thirty days of preparation of the report.

(2) Shall have expertise in the type of disorder or incapacity the alleged incapacitated person is believed to have. [RCW 11.88.045(4)]

c) The contents of the report shall contain the following information and shall be set forth in substantially the following format:

(1) The name and address of the examining physician, psychologist or advanced registered nurse practitioner;

(2) The education and experience of the physician, psychologist or advanced registered nurse practitioner pertinent to the case;

(3) The dates of examinations of the alleged incapacitated person;

(4) A summary of the relevant medical, functional, neurological or mental health history of the alleged incapacitated person as known to the examining physician, psychologist or advanced registered nurse practitioner;

(5) The findings of the examining physician, psychologist or advanced registered nurse practitioner as to the condition of the alleged incapacitated person;

(6) Current medications;

(7) The effect of current medications on alleged incapacitated person's ability to understand or participate in the guardianship proceedings;

(8) Opinions on the specific assistance the alleged incapacitated person needs; and

(9) Identification of persons with whom the physician, psychologist or advanced registered nurse practitioner has met or spoken with regarding the alleged incapacitated person.

[RCW11.88.045(4)]

C. The guardian ad litem is required to meet with the person whose appointment is sought as guardian or limited guardian and ascertain:

1. The proposed guardian's knowledge of the duties, requirements, and limitations of a guardian;

2. The steps the proposed guardian intends to take or has taken to identify and meet the needs of the alleged incapacitated person. [RCW11.88.090(5)(c)]

D. The guardian ad litem is required to consult as necessary to complete the investigation and report required by this section with those known relatives, friends, or other persons the guardian ad litem determines have had a significant, continuing interest in the welfare of the alleged incapacitated person; [RCW11.88.090(5)(d)]

E. The guardian ad litem is required to investigate alternate arrangements which have been made or might be created, by or on behalf of the alleged incapacitated person, such as revocable or irrevocable trusts, or durable powers of attorney or blocked accounts; whether good cause exists for any such arrangements to be discontinued; and why such arrangements should not be continued or created in lieu of a guardianship. [RCW11.88.090(5)(e)]

F. The guardian ad litem is required to provide the court with a written report which shall include the following:

1. A description of the nature, cause, and degree of the alleged incapacity, and the basis upon which the judgment was made.

2. A description of the needs of the alleged incapacitated person for the care and treatment, the probable residential requirements of the alleged incapacitated person, and the basis upon which these findings were made.

3. An evaluation of the appropriateness of the guardian or limited guardian whose appointment is sought and a description of the steps the proposed guardian has taken or intends to take to identify and meet current and emerging needs of the incapacitated person.

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

5. A description of the abilities of the alleged incapacitated person and a recommendation as to whether a guardian or limited guardian should be appointed.

a) If appointment of a limited guardian is recommended, the guardian ad litem shall recommend the specific areas of authority the limited guardian should have and the limitations and disabilities to be placed on the incapacitated person.

b) The following list is not all inclusive, but some areas which may be limited include:

(1) right to marry or divorce;

(2) right to vote or hold elected office;

(3) right to enter into a contract or make or revoke a will;

(4) right to appoint someone to act on your behalf;

(5) right to sue and be sued other than through a guardian;

(6) right to possess a license to drive;

(7) right to buy, sell, own, mortgage, or lease property;

(8) right to consent to or refuse medical treatment;

(9) right to decide who shall provide care and assistance; and

(10) right to make decisions regarding social aspects of life.

6. An evaluation of the person's mental ability to rationally exercise the right to vote and the basis upon which the evaluation is made.

7. Any expression of approval or disapproval made by the alleged incapacitated person concerning the proposed guardian or limited guardian or guardianship or limited guardianship.

8. Identification of persons with significant interest in the welfare of the alleged incapacitated person who should be advised of their right to request special notice of proceedings; *Request for special notice of proceedings is a process allowed by RCW 11.92.150 which allows persons and specific agencies to provide a written request so that they may receive advance notice of legal proceedings related to the guardianship action. The written request must be placed in the court file and must include the name, address, and post office address of the person who wishes to receive advance notice of the proceedings.*

9. An explanation of how the alleged incapacitated person responded to the advice of the right to jury trial, to independent counsel, and to be present at the trial *unless* individual counsel has appeared for the alleged incapacitated person.

[RCW11.88.090(5)(f)]

G. The guardian ad litem is required to advise the court of the need for appointment of counsel for the alleged incapacitated person within five court days after the required initial meeting with the incapacitated person unless:

1. Counsel has appeared on behalf of the incapacitated person;

2. The alleged incapacitated person affirmatively communicated a wish not to be represented by counsel after being advised of the right to representation and of the conditions under which court-provided counsel may be available; or

3. The alleged incapacitated person was unable to communicate at all on the subject, and the guardian ad litem is satisfied that the alleged incapacitated person does not affirmatively desire to be represented by counsel.

[RCW 11.88.090(5)(g)]

H. The guardian ad litem may be required by court order to investigate the availability of a possible guardian or limited guardian, if the petitioner is requesting the appointment of some other qualified person or entity, or if a prospective guardian or limited guardian cannot be found. The guardian ad litem shall include his or her findings in regard to the availability of a guardian or limited guardian in his or her report. [RCW 11.88.090(6)]

I. The guardian ad litem has the authority to provide informed medical consent in the event the alleged incapacitated person is in need of *emergency life-saving medical services,* and said person is unable to consent to such medical services due to incapacity pending the hearing on the petition to give consent for such emergency life-saving medical services on behalf of the alleged incapacitated person. [RCW 11.88.090(8)]

J. The guardian ad litem shall have the authority to move for temporary relief under RCW 7.40 (*which includes judicial relief in the form of injunctions and restraining orders*) to protect the alleged incapacitated person from abuse, neglect, abandonment, or exploitation, as those terms are defined in RCW 74.34.020, or to address any other emergency needs of the alleged incapacitated person. [RCW 11.88.090(9)]

K. The guardian ad litem is required to appear at all hearings on the guardianship petition unless all parties provide a written waiver of the requirement to appear. [RCW 11.88.090(12)]

L. The guardian ad litem shall receive a fee for his or her services as determined by the court. The fee shall be charged to the alleged incapacitated person unless the court finds that such payment would result in substantial hardship upon such person, in which case the county shall be responsible for such costs: PROVIDED, the court may charge such fee to the petitioner, the alleged incapacitated person, or any person who appears in the action, or may allocate the fee, as it deems just; and if the petition is found to be frivolous or not brought in good faith, the guardian ad litem fee shall be charged to the petitioner. The court shall not be required to provide for the payment of a fee to any salaried employee of a public agency. [RCW 11.88.090(10)]

M. The guardian ad litem shall be dismissed upon the presentation of the guardian ad litem report and the entry of an order either dismissing the petition for appointment of guardian or limited guardian or appointing a guardian or limited guardian and shall have no further duties or obligations unless otherwise ordered by the court. If the court orders the guardian ad litem to perform further duties or obligations, they shall not be performed at county expense. [RCW 11.88.090(11)]

III. REQUIREMENTS FOR THE COURT TO ISSUE A FINDING OF INCAPACITY

A. Incapacity as to the Person - Individual is at significant risk of personal harm based upon a demonstrated inability to adequately provide for nutrition, health, housing, or physical safety. [RCW 11.88.010(1)(a)]

B. Incapacity as to the Person's Estate - Individual is at significant risk of financial harm based upon a demonstrated inability to adequately manage property or financial affairs. [RCW 11.88.010(1)(b)]

C. Incapacity is a legal, not a medical decision, based upon a demonstration of management insufficiencies over time in the area of person or estate. Age, eccentricity, poverty, or medical diagnosis alone shall not be sufficient to justify a finding of incapacity. [RCW11.88.010(1)(c)]

D. Incapacity due to Minority -- A person may also be determined incapacitated if he or she is under the age of majority as defined in RCW 26.28.010. [RCW 11.88.010(1)(d)]

IV. TIMELINES FOR GUARDIAN AD LITEM

A. As soon as practicable following appointment the guardian ad litem shall meet with the alleged incapacitated person. [RCW11.88.090(5)(a)]

B. Within five court days after meeting the alleged incapacitated person the guardian ad litem shall advise the court of the need or lack of need to appoint an attorney for the alleged incapacitated person. [RCW11.88.090(5)(g)]

C. Five days after notice of appointment the guardian ad litem shall file with the court and serve personally or by certified mail with return receipt, each party with the required background and qualifications statement. [RCW 11.88.090(3)(b)]

D. Forty-five days after notice of commencement of the guardianship proceeding and at least fifteen days before hearing the guardian ad litem must file report. Exception: unless an extension or reduction of time has been granted by the court for good cause. [RCW11.88.090(5)(f)]

E. Sixty days after notice of appointment, if a hearing has not been held, the guardian ad litem shall file an interim report summarizing his or her activities on the proceeding during that time period as well as fees and costs incurred. A report shall be due each month thereafter until a hearing is held. [RCW 11.88.090(5)(f)]

V. UNDERSTANDING THE ROLE OF THE GUARDIAN

A. Required Qualifications for an Individual Guardian [RCW 11.88.020]

1. Must be age 18 or more; or if under age 18 must be parent of the incapacitated person;

2. Must be of sound mind;

3. Shall not be convicted of a felony or of a misdemeanor involving moral turpitude;

4. Must be a resident of the state unless resident agent has been appointed to accept service of process in all actions or proceedings with respect to the estate and caused such appointment to be filed with the court.

5. Must be found suitable by the court.

B. Required Qualifications of an Entity Serving as Guardian

1. Must meet certification requirements established by administrator of courts (unless a testamentary appointment under RCW 11.88.080); and

2. Must be found suitable by court.

C. Alternative Qualifications of an Entity Serving as Guardian of Estate

1. The financial institution subject to the jurisdiction of the department of financial institutions and authorized to exercise trust powers, and a federally chartered financial institution when authorized to do so, may serve as guardian of the estate without having met certification requirements established by administrator for the courts.

a) An assessment of the incapacitated person's physical, mental, and emotional needs and of such person's ability to perform or assist in activities of daily living; and

b) The guardian's specific plan for meeting the identified and emerging personal care needs of the incapacitated person.

2. To file annually or, where a guardian of the estate has been appointed, at the time an account is required to be filed under RCW 11.92.040, a report on the status of the incapacitated person, which shall include:

a) The address and name of the incapacitated person and all residential changes during the period;

b) The services of programs which the incapacitated person receives;

c) The medical status of the incapacitated person;

d) The mental status of the incapacitated person;

e) Changes in the functional abilities of the incapacitated person;

f) Activities of the guardian for the period;

g) Any recommended changes in the scope of the authority of the guardian; and

h) The identity of any professionals who have assisted the incapacitated person during the period.

3. To report to the court within thirty days any substantial change in the incapacitated person's condition, or any changes in residence of the incapacitated person.

4. Consistent with powers granted by the court, to care for and maintain the incapacitated person in the setting least restrictive to the incapacitated person's freedom and appropriate to the incapacitated person's personal care needs, to assert the incapacitated person's rights and best Interests, and if the incapacitated person is a minor or where otherwise appropriate, to see that the incapacitated person receives appropriate training and education and that the incapacitated person has the opportunity to learn a trade, occupation, or profession.

5. Consistent with RCW 7.70.065, to provide timely, informed consent for health care of the incapacitated person, except in the case of a limited guardian where such power is not expressly provided for by court order. The standby guardian or standby limited guardian may provide timely, informed consent to necessary medical procedures if the guardian or limited guardian cannot be located within four hours after the need for such consent arises. No guardian, limited guardian, or standby guardian may involuntarily commit for mental health treatment, observation, or evaluation an alleged incapacitated person who is unable or unwilling to give informed consent to such commitment unless the procedures set for involuntary commitment set forth in RCW 71.05 or 72.23 are followed. The guardian, limited guardian, or standby guardian shall not consent to:

a) Therapy or other procedure which induces convulsion;
b) Surgery solely for the purpose of psychosurgery; and
c) Other psychiatric or mental health procedures that restrict physical freedom or movement, or the rights set forth in RCW 71.05.370.1[1]

A guardian, limited guardian, or standby guardian who believes these procedures are necessary for the proper care and maintenance of the incapacitated person shall petition the court for an order unless the court has previously approved the procedure within the past thirty days. The court may order the procedure only after an attorney is appointed in accordance with RCW 11.88.045. If no attorney has previously appeared, notice is given, and a hearing is held in accordance with RCW 11.88.040.

6. To observe the prohibition in RCW 11.92.190 against consenting on behalf of and against the will of the incapacitated person to the person's involuntary detention in a residential treatment facility which provides nursing or other care.

D. Responsibilities of Guardian of Estate

1. Within three months after appointment provide the court with a verified inventory of all of the property of the incapacitated person, including a statement of all encumbrances, liens and other secured charges on any item. [RCW 11.92.040(1)]

2. Unless another interval is ordered by the court, or unless the guardianship is for a minor with all assets held in a blocked account, to file annually a written verified account of the incapacitated person's property, which account shall contain at least the following information:

a) Identification of the property of the guardianship estate as of the date of the last account or inventory;

b) Identification of all additional property received into the guardianship, including income by source;

[1] See Title 11 Guardian Ad Litem *Handbook*, Washington State Guardianship Statutes

c) Identification of all expenditures made during the account period by major categories;

d) Any adjustments to the guardianship estate required to establish its present fair market value, including gains or losses on sale or other disposition, and any mortgages, deeds of trust or other encumbrances against the guardianship estate; and

e) Identification of all property held in the guardianship estate as of the date of the account, the assessed value of any real property and the guardian's estimate of the present fair market values of other property (*including the basis on which such estimate is made*), and the total net fair market value of the guardianship estate. In addition, immediately following such statement of present fair market value, the account shall set forth a statement of current amount of the guardian's bond and any other court-ordered protection for the security of the guardianship assets. [RCW 11.92.040(2)and(3)]

3. The guardian or limited guardian shall report any substantial change in income or assets of the guardianship estate within thirty days of the occurrence of the change. A hearing shall be scheduled for court review and determination of provision for increased bond or other previsions. [RCW 11.92.040(3)]

4. The guardian or limited guardian has the duty to protect and preserve the guardianship estate, account for it faithfully, and perform all duties required by law, and at the termination of the guardianship or limited guardianship to deliver the assets of the incapacitated person to the persons entitled thereto. The guardian or limited guardian may be authorized by the court to perform the duties of a trustee for a period not exceeding one year. [RCW 11.92.040(4)]

5. To invest and reinvest the property of the incapacitated person in accordance with rules applicable to investment of trust estates by trustees as provided in RCW 11.100, except that:

a) No investments shall be made without prior order of the court in any property other than unconditional interest-bearing obligations of this state or of the United States and in obligations the interest and principal of which are unconditionally guaranteed by the United States, and in share accounts or deposits which are insured by an agency of the United States Government. Such prior order of the court may authorize specific investments, or, in the discretion of the court, may authorize the guardian or limited guardian to invest and reinvest as provided in RCW 11.100 without further order of the court; and

b) if it is in the best interest of the incapacitated person that a specific property be used by the incapacitated person rather than sold and the proceeds invested, the court may so order. [RCW 11.92.040(5)]

6. To apply to the court, at a date no later than the filing of the inventory, for an order authorizing disbursements on behalf of the incapacitated person. In appropriate cases, the court may order payments of amounts directly to the incapacitated person for his or her maintenance or incidental expenses. The amounts authorized under this section may be decreased or increased from time to time by discretion of the court. If payments are made to another person under an order of the court, the guardian or limited guardian of the estate is not bound to see the application thereof. [RCW 11.92.040(6)]

7. Within ninety days after the termination of a guardianship for any reason other than the death of the incapacitated person intestate, the guardian or limited guardian of the estate shall petition the court for an order settling his account as filed in accordance with RCW 11.92.040(2) with regard to any and all receipts, expenditures, and investments made and acts done by the guardian to the date of said termination. Upon such petition being filed, the court shall set a date for the hearing of such petition after notice has been given in accordance with RCW 11.88.040. Any person interested may file objections to such petition or may appear at the scheduled hearing and present objections. The court may take testimony if appropriate and necessary to determine whether an order settling the account should be issued and the transactions of the guardian be approved. At such hearing, if the court is satisfied that the actions of the guardian have been proper, and that the guardian has in all respects discharged his or her trust with relation to such receipts, expenditures, investments, and acts, then, in such event, the court shall enter an order approving such account, and such order shall be final and binding upon the incapacitated person, subject only to the right of appeal as upon a final order. [RCW 11.92.053]

8. Guardian to represent incapacitated person in legal proceeding/actions:

a) GUARDIAN MAY SUE AND BE SUED. When there is a guardian of the estate, all actions between the incapacitated person or the guardian and third persons in which it is sought to charge or benefit the estate of the incapacitated person shall be prosecuted by or against the guardian of the estate as such. The guardian shall represent the interests of the incapacitated person in the action and all process shall be served on him or her. A guardian or limited guardian of the estate shall report to the court any action commenced against the incapacitated person and shall secure court approval prior to initiating any legal action in the name of the incapacitated person.

b) JOINDER, AMENDMENT, AND SUBSTITUTION. When the guardian of the estate is under personal liability for his or her own contracts and acts made and performed on behalf of the estate, the guardian may be sued both as guardian and in his or her personal capacity in the same action. If an action was commenced by or against the incapacitated person before the appointment of a guardian of his or her estate, such guardian when appointed may be substituted as a party for the incapacitated person.

c) GARNISHMENT, ATTACHMENT, AND EXECUTION. When there is a guardian of the estate, the property and rights of action of the incapacitated person shall not be subject to garnishment or attachment, except for the foreclosure of a

mortgage or other lien, and execution shall not issue to obtain satisfaction of any judgment against the incapacitated person or the guardian of the person's estate as such.

d) COMPROMISE BY GUARDIAN. Whenever it is proposed to compromise or settle any claim by or against the incapacitated person or the guardian as such, whether arising as a result of personal injury or otherwise, and whether arising before or after appointment of a guardian, the court on petition of the guardian of the estate, if satisfied that such compromise or settlement will be for the best interests of the incapacitated person, may enter an order authorizing the settlement or compromise be made.

e) LIMITED GUARDIAN. Limited guardians may serve and be served with process or actions on behalf of the incapacitated person, but only to the extent provided for in the court order appointing a limited guardian. [RCW 11.92.060]

9. Whenever it shall appear to the satisfaction of a court by the petition of any guardian or limited guardian that it is necessary or proper to sell, exchange, lease, mortgage, or grant an easement, license, or similar interest in any of the real or personal property of the estate of the incapacitated person for the purpose of paying debts or for the care, support, and education of the incapacitated person, or to redeem any property of the incapacitated person's estate covered by mortgage or other lien, or for the purpose of making any investments, or for any other purpose which to the court may seem right and proper, the court may make an order directing such sale, exchange, lease, mortgage, or grant of easement, license, or similar interest of such part or parts of the real or personal property as shall to the court seem proper. (See below regarding requirement(s) for sale of real property.) [RCW 11.92.090 and 11.92.100]

10. Guardian's access to certain held assets:

a) All financial institutions as defined in RCW 30.22.040(12), all insurance companies holding a certificate of authority under RCW 48.05, or any agent who constitutes a salesperson or broker-dealer of securities under the definitions of RCW 21.20.005 (*hereafter individually and collectively referenced as "institution"*) shall provide the guardian access and control over the asset(s) described in a)(1)(vii) of this subsection, including but not limited to delivery of the asset to the guardian, upon receipt of the following:

(1) An affidavit containing as an attachment a true and correct copy of the guardian's letters of guardianship and stating:

(i) That as of the date of the affidavit, the affiant is a duly appointed guardian with authority over assets held by the institution but owned or subject to withdrawal or delivery to a client or depositor of the institution;

(ii) The cause number of the guardianship;

(iii) The name of the incapacitated person and the name of the client or depositor (*which names shall be the same*);

(iv) The account or the safety deposit box number or numbers;

(v) The address of the client or depositor;

(vi) The name and address of the affiant-guardian being provided assets or access to assets;

(vii) A description of and the value of the asset or assets, or, where the value cannot be readily ascertained, a reasonable estimate thereof, and a statement that the guardian receives delivery or control of each asset solely in its capacity as guardian;

(viii) The date the guardian assumed control over the assets;

(ix) That a true and correct copy of the letters of guardianship duly issued by a court to the guardian is attached to the affidavit; and

(x) An envelope, with postage prepaid, addressed to the clerk of the court issuing the letters of guardianship. The affidavit shall be sent in the envelope by the institution to the clerk of the court together with a statement signed by an agent of the institution that the description of the asset set forth in the affidavit appears to be accurate, and confirming in the case of cash assets, the value of the asset.

b) Any guardian provided with access to a safe deposit box pursuant to subsection (1) of this section shall make an inventory of the contents of the box and attach this inventory to the affidavit before the affidavit is sent to the clerk of the court and before the contents of the box are released to the guardian. Any inventory shall be prepared in the presence of an employee of the institution and the statement of the institution required under subsection (1) of this section shall include a statement executed by the employee that the inventory appears to be accurate. The institution may require payment by the guardian of any fees or charges then due in connection with the asset or account and of a reasonable fee for witnessing preparation of the inventory and preparing the statement required by this subsection or subsection (1) of this section. [RCW 11.92.096]

11. Sale of real property. The order directing the sale of any of the real property of the estate of the incapacitated person shall specify the particular property affected and the method, whether by public or private sale or by negotiation, and terms thereof, and with regard to the procedure and notices to be employed in conducting such sale, the provisions of RCW 11.56.060; 11.56.070; 11.56.080, and 11.56.110 shall be followed unless the court otherwise directs. [RCW 11.92.100, 115 and 120]

12. Performance of contracts. If any person who is bound by contract in writing to perform shall become incapacitated before making the performance, the court having jurisdiction of the guardianship or limited guardianship of such property may, upon application of the guardian or limited guardian of the incapacitated person, or upon

application of the person claiming to be entitled to the performance, make an order authorizing and directing the guardian or limited guardian to perform such contract. The application and the proceedings, shall, as nearly as may be, be the same as provided in RCW 11.60. [RCW 11.92.130]

13. The court, upon the petition of a guardian of the estate of an incapacitated person other than the guardian of a minor, and after such notice as the court directs and other notice to all persons interested as required by RCW 11.96, may authorize the guardian to take any action, or to apply funds not required for the incapacitated person's own maintenance and support, in any fashion the court approves as being in keeping with the incapacitated person's wishes so far as they can be ascertained and as designed to minimize insofar as possible current or prospective state or federal income and estate taxes, permit entitlement under otherwise available federal or state medical or other assistance programs, and to provide for gifts to such charities, relatives, and friends as would be likely recipients of donations from the incapacitated person.

The action or application of funds may include but shall not be limited to the making of gifts, to the conveyance or release of the incapacitated person's contingent and expectant interests in property including marital property rights and any right of survivorship incident to joint tenancy or tenancy by the entirety, to the exercise or release of the incapacitated person's powers as donee of a power of appointment, the making of contracts, the creation of revocable or irrevocable trusts of property of the incapacitated person's estate which may extend beyond the incapacitated person's disability or life, the establishment of custodianship for the benefit of a minor under RCW 11.114, the Washington uniform transfers to minors act, the exercise of options of the incapacitated person to purchase securities or other property, the exercise of the incapacitated person's right to elect options and to change beneficiaries under insurance and annuity policies and the surrendering of policies for their cash value, the exercise of the incapacitated person's right to any elective share in the estate of the incapacitated person's deceased spouse or deceased registered domestic partner, and the renunciation or disclaimer of any interest acquired by testate or intestate succession or by inter vivos transfer.

The guardian in the petition shall briefly outline the action or application of funds for which approval is sought, the results expected to be accomplished thereby, and the savings expected to accrue. The proposed action or application of funds may include gifts of the incapacitated person's personal or real property. Gifts may be for the benefit of prospective legatees, devisees, or heirs apparent of the incapacitated person, or may be made to individuals or charities in which the incapacitated person is believed to have an interest. Gifts may or may not, in the discretion of the court, be treated as advancements to donees who would otherwise inherit property from the incapacitated person under the incapacitated person's will or under the laws of descent and distribution. The guardian shall also indicate in the petition that any planned disposition is consistent with the intentions of the incapacitated person insofar as the intentions can be ascertained, and if the incapacitated person's intentions cannot be ascertained, the incapacitated person will be presumed to favor reduction in the incidence of the various forms of taxation and the partial distribution of the incapacitated person's estate as provided in this

section. The guardian shall not, however, be required to include as a beneficiary any person whom there is reason to believe would be excluded by the incapacitated person. No guardian may be required to file a petition as provided in this section, and a failure or refusal to so petition to the court does not constitute a breach of the guardian's fiduciary duties. [RCW 11.92.140]

A REVIEW OF THE TRAINING PROGRAM FOR TITLE 11 GUARDIANSHIP GUARDIANS AD LITEM

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

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A REVIEW OF THE TRAINING PROGRAM FOR TITLE 11 RCW GUARDIANSHIP GUARDIANS AD LITEM

Executive Summary

Between 400 and 500 Guardians ad Litem (GALs) assist the Superior Courts of the State of Washington in evaluating whether and to what extent guardians should be appointed for Washington residents alleged to be incapacitated, as that term is defined by our statutes.[2] Because the appointment of a guardian can significantly limit an individual's ability to exercise his or her rights and autonomy, the Court is under an obligation to give careful consideration to the disposition of a petition for appointment of a guardian.[3] The role of the GAL is crucial in providing the Court with evidence upon which to base its determination.

Incapacitated or alleged incapacitated persons may be persons with developmental disabilities, dementia or mental illness, minors or seniors with significant disabilities. They may be injured victims of a crime or accident. In evaluating their circumstances, GALs must be able to call on a broad range of knowledge and skills, varying from case to case.

The central importance of the GAL's role in the lives of the State of Washington's most vulnerable residents suggests the need for great care in the training of those who will be filling the role. To that end, the Legislature has called for periodic review of the training provided to GALs pursuant to RCW 11.88.090(4)(b). This report has been prepared by an Advisory Committee composed of a cross-section of interested

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[2] RCW 11.88.010 grants to the Superior Courts the authority to appoint guardians for persons demonstrated to be incapacitated as to their persons or estates, as follows: "(a) For purposes of this chapter, a person may be deemed incapacitated as to person when the superior court determines the individual has a significant risk of personal harm based upon a demonstrated inability to adequately provide for nutrition, health, housing, or physical safety.
"(b) For purposes of this chapter, a person may be deemed incapacitated as to the person's estate when the superior court determines the individual is at significant risk of financial harm based upon a demonstrated inability to adequately manage property or financial affairs."

[3] RCW 11.88.005 states: "It is the intent of the legislature to protect the liberty and autonomy of all people of this state, and to enable them to exercise their rights under the law to the maximum extent, consistent with the capacity of each person. The legislature recognizes that people with incapacities have unique abilities and needs, and that some people with incapacities cannot exercise their rights or provide for their basic needs without the help of a guardian. However, their liberty and autonomy should be restricted through the guardianship process only to the minimum extent necessary to adequately provide for their own health or safety, or to adequately manage their financial affairs."

populations, including representatives from affected consumer, advocacy, and professional groups, assembled by the Department of Social and Health Services in accordance with the statute.

The Committee's review included input from a range of interested parties. Analysis of this input reveals that, while the current GAL Training Program is, in some ways, adequate, there is dissatisfaction on many fronts with the form and content of training, particularly for GALs seeking recertification, and with the ability of GALs to address many of the issues encountered by GALs in the cases to which they are assigned.

Generally, the Committee concluded that the shortcomings reported in the Sections below can and should be addressed by a combination of changes to the existing Training Program and modifications of the manner in which the program operates, both as to the training itself and administratively within the Courts. Implementation of some recommendations will require only modification of the existing program. Others will require changes in underlying rules and guidelines. A few may require statutory or regulatory changes.

Section III identifies three major issues which summarize the input the Committee received. Section IV sets forth the Committee's specific recommendations. Generally, the Committee's recommendations were arrived at by consensus. Not all Committee members agreed on all points, however. Points of significant disagreement and alternative ideas are identified in Section IV.

I. Background

In 1990, the Washington Legislature enacted RCW 11.88, which provides for the appointment, qualification and removal of guardians, and updated RCW 11.92, which sets forth the powers and duties of guardians and limited guardians. These statutes establish the procedure for creating and monitoring guardianships, and give the Superior Courts authority over all guardianships.

RCW 11.88.090(3) provides for appointment of a GAL "to represent the best interests of the alleged incapacitated person . . ." whenever a petition for guardianship is filed.[4] In ongoing guardianships, the Superior Court from time to time appoints GALs to investigate or perform specific tasks. Such cases may arise where an emergent situation is called to the court's attention, or in case of a dispute affecting an incapacitated person, where the Court would benefit from an independent recommendation. RCW 11.88.090 sets forth the duties of the GAL on appointment in the case of a new petition, and the qualifications an individual must have in order to be listed on the Court's registry of certified GALs. Training is specifically provided for: GALs must "[h]ave the requisite knowledge, training, or expertise to perform the duties required by this section." RCW 11.88.090(3)(b).

The Department of Social and Health Services ("DSHS") is responsible for establishing and keeping current a program for training GALs.[5] Training has been available for GALs pursuant to a training program known as the *Title 11 RCW Model Guardian ad Litem Training Program* (the "Training Program") that was developed in 1997 by the Guardian Ad Litem Training Project Advisory Group and the Aging and Adult Services Administration of DSHS.[6]

In 2009, DSHS contracted with the King County Bar Association ("KCBA") for the creation of an Advisory Committee to review the Training Program, and to make recommendations with respect to updating it.[7] KCBA provided for formation of the present Advisory Committee (the "Committee") to carry out this task. As provided for in the statutes and in the contract, members of the Committee are drawn from consumer, advocacy and professional groups, and are knowledgeable in the range of fields generally affected by guardianships. In constituting the Committee, KCBA solicited individuals from across the state.[8]

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[4] The statute provides for an exception: "No guardian ad litem need be appointed when a parent is petitioning for a guardian or a limited guardian to be appointed for his or her minor child and the minority of the child, as defined by RCW 11.92.010, is the sole basis of the petition." RCW 11.88.090 (3)

[5] RCW 11.88.090 (4) (b) (ii) (e) requires that DSHS shall "develop a model guardian ad litem training program and shall update the program biennially." The full text of RCW 11.88.090 is attached to this report as Appendix A for convenience.

[6] The full text of the Training Program appears at Appendix B.

[7] That portion of the contract between DSHS and KCBA titled "Statement of Work" is included with this report as Appendix C.

[8] "The advisory group shall consist of representatives from consumer, advocacy, and professional groups knowledgeable in developmental disabilities, neurological impairment, physical

The Committee initiated its process by gathering data with a view to reviewing and evaluating the Training Program as it has been operating by:

- Compiling information from county registrars as to the geographic distribution and profile of GALs, and how training is carried out in the various counties around the state.
- Reviewing input from as many sources as possible regarding the effectiveness of current training. Formal input included seminar evaluations by GALs following training sessions in King, Whatcom and Spokane counties, and questionnaires completed by GALs; online surveys of professional guardians and social workers in skilled nursing facilities; questionnaires completed by lay guardians; and informal input from others involved in the legal process. Input was solicited and received from judicial officers and from attorneys practicing in the area of guardianship. Committee members interviewed individuals in the mental health and developmental disability fields, including a representative of a specifically cross-cultural group, as well as other individuals from consumer, professional and advocacy groups.
- Exchanging ideas and input from each member of the Committee, from his and her own perspective as a practitioner and/or a representative of an organization or a profession that works in the guardianship field or a related field.[9]

In analyzing the input received, the Committee recognizes some inherent contradictions, some of which are grounded in the economics of the way the program operates, and some of which go beyond pure cost/benefit factors to the substance of what a GAL does.

- Because of the range and diversity of individuals to be served, there is a large body of knowledge, data, procedure and skills, much of it in one or more specialized fields, to be assimilated and applied by a GAL, but appointments often are infrequent enough that GALs do not have the opportunity to build an experience base in substantive areas and legal procedures.

- The fact that costs are generally charged either to the county or to the alleged incapacitated person makes it imperative that the GAL's work be accomplished efficiently, to keep costs to a minimum. Serving as a GAL is not likely to be a lucrative part of a professional practice, yet, by their nature, many cases are complex and difficult, posing a serious challenge to the need for cost and time savings.

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disabilities, mental illness, domestic violence, aging, legal, court administration, the Washington state bar association, and other interested parties." RCW 11.88.090 (4)(b)(ii) (e). A list of the members of the Committee with their biographical information appears at Appendix D.

[9] The surveys returned by the various groups canvassed are attached as Appendix F.

These points are reflected in the fact that much of the input the Committee received concerned GAL performance and the operation of the GAL program rather than specifics of training. Many suggestions and recommendations called for measures already available under the current Training Program. In some instances, the question is not whether the Training Program provides for training in a particular area, but rather how effectively that training is provided and the lessons applied. Because input on many of these points was so consistent, the report identifies them specifically, for the use of those who plan for training and administration of the program.

The Committee's discussions frequently reverted to talk of cost, budgets, and the feasibility "in the current climate" of recommendations under consideration. However, the Committee does not view its mission to include an evaluation of the economic feasibility of its recommendations, but rather to make recommendations for improving the effectiveness of training.

Having analyzed the data and identified issues raised, the Committee submits its recommendations with this report.

II. The Current Situation

1. Profile of Guardians ad Litem in Washington State

RCW 11.88.090 (4) (a) provides the framework for the appointment and qualification of GALs:

> The superior court of each county shall develop and maintain a registry of persons who are willing and qualified to serve as guardians ad litem in guardianship matters. The court shall choose as guardian ad litem a person whose name appears on the registry in a system of consistent rotation, except in extraordinary circumstances such as the need for particular expertise. The court shall develop procedures for periodic review of the persons on the registry and for probation, suspension, or removal of persons on the registry for failure to perform properly their duties as guardian ad litem. In the event the court does not select the person next on the list, it shall include in the order of appointment a written reason for its decision.

The Committee surveyed all 39 counties in the state to determine the current status of GAL registries. The Registrars of 25 of the counties responded, reporting as outlined below.[10] From the responses received, as it appears there is no tracking in any reporting county of numbers and types of cases assigned to GALs, the statistical information reported to the Committee in these areas is estimated.

There are 438 GALs on the registries of 24 of the counties reporting. One county, Adams, uses 3 GALs registered in other counties. Not all counties provided specific data as to how many of their GALs are attorneys. Generally, based on the responses, the Committee estimates that approximately 365, or 80% of GALs are attorneys. County by county, the proportion of attorneys to non-attorneys ranges from 100% attorneys (Spokane, Asotin, Clallam, Columbia-Garfield) to a preponderance of non-attorneys (Cowlitz, Island, Skagit, Whatcom). Non-attorney GALs have qualifications in social work, mental health, medical professions and other areas.

Most counties reported that GALs are appointed on a rotational basis except in special circumstances, as the statute requires. In at least one small county, the parties must agree on the appointment of a GAL. In at least one county, some GALs refuse to take county paid cases, whereas in another GALs are required to take two county paid cases per year as a condition of remaining on the registry. In most counties, a GAL can expect to receive only one to two appointments per year (one county, which does not make appointments on a rotational basis, reported that GALs receive "one or less" *[sic]* appointments per year). On the other hand, especially in some smaller counties, the number of appointments may be as many as ten.

[10] A list of the counties reporting appears at Appendix E. The questionnaires are available here.

Recourse to special qualifications or competencies of GALs that could be useful in particular cases appears to be inconsistent, and based on the personal knowledge of parties or court personnel rather than by reference to a systematic data base.

2. Discipline and Removal

Most, but not all, counties reporting have in place a system for discipline and removal of GALs. Although registry managers did not report specific discipline problems or the removal of GALs, a consistent complaint from many of the sources reviewed was that GALs were not performing as well as the complainant thought they should. Further, the Committee was informed that family members and other interested parties were not aware of the avenues for complaint, or that complaints had been discouraged. While RCW 11.88.090(3) sets forth the process for seeking the removal of a Guardian Ad Litem and GAL rules provide for filing complaints and grievances about Guardians Ad Litem, the Committee received feedback that interested parties are not well-informed about these procedures and that some courts do not act on a timely or thorough basis on complaints filed about Guardians Ad Litem.

3. Compensation of GALs

RCW 11.88.090 provides in part that a GAL's fee shall be specified by the court and "shall be charged to the alleged incapacitated person unless the court finds that such payment would result in substantial hardship upon such person, in which case the county shall be responsible for such costs." The court may also, in its discretion, order payment by others: (i) the petitioner, or (ii) "any other person who has appeared in the action."[11]

In the absence of a computerized tracking system, some county registrars state that they are unable to report to the Committee as to the number of cases where GALs are privately paid as opposed to the number of cases paid by the county, without a manual count. A number of registrars stated the allocation was "50/50." One county reported that 67% of its total appointments were county paid. No attempt was made to discover the source of payment for privately paid cases.

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[11] "The court shall specify the hourly rate the guardian ad litem may charge for his or her services, and shall specify the maximum amount the guardian ad litem may charge without additional court review and approval. The court shall specify rates and fees in the order of appointment or at the earliest date the court is able to determine the appropriate rates and fees and prior to the guardian ad litem billing for his or her services. This section shall apply except as provided by local court rule." RCW 11.88.097.

"The guardian ad litem shall receive a fee determined by the court. The fee shall be charged to the alleged incapacitated person unless the court finds that such payment would result in substantial hardship upon such person, in which case the county shall be responsible for such costs: PROVIDED, That the court may charge such fee to the petitioner, the alleged incapacitated person, or any person who has appeared in the action; or may allocate the fee, as it deems just. If the petition is found to be frivolous or not brought in good faith, the guardian ad litem fee shall be charged to the petitioner. The court shall not be required to provide for the payment of a fee to any salaried employee of a public agency." RCW 11.88.090(10).

Current guidelines provide, and it stands to reason, that training must prepare GALs to be efficient in the performance of their duties, and to inform those with whom they interact as to the limits of their authority in every case. The Committee heard that, in some cases, GALs appeared to lack sufficient time to perform a thorough investigation. One interviewee identified the cases where this occurred as "county paid cases."

County rates of pay are very low compared to the prevailing hourly rates charged by the attorneys and other professionals who are GALs. For example, in King County, the hourly rate is $45. Current practice is for the court to set a maximum of $300 per case in most cases in the initial order, excluding costs, unless the court approves additional fees prior to the hearing on the petition.[12] In Pierce County, the rate is $75, with a maximum of $750 per case, including all costs. Snohomish, Chelan and Kitsap Counties all allow hourly rates of $50. Snohomish County allows a maximum of $600 per case; Kitsap sets the maximum at $500.

GALs applying for recertification consistently complain that the cost of a full day of refresher training is not justified by the compensation they receive for the work they are appointed to do, given that there are generally so few appointments, with up to half of them county paid.

4. Current Model Guardian ad Litem Training Program

The guidelines under which the program presently operates were established in 1997 as the Title 11 RCW Model Guardian ad Litem Training Program (the "Training Program"). The Training Program's components are (i) Training Program Standards; (ii) Training Program Summary of Statutory Requirements of Guardians ad Litem, (iii) Training Program Goals and Objectives; and (iv) the written Guardian ad Litem Handbook (the "Handbook").

Although the statute calls for an advisory committee to be convened every two years to review the Training Program, no such review has been done until now. The Handbook has been reviewed and revised over the years in the context of annual training made available by the King County Bar Association. The most recent version of the Handbook is the *Title 11.88 RCW Guardianship Guardian ad Litem Handbook, May 2010 Edition,* available through the King County Bar Association.

A summary of the program follows.

1. Purpose:

The purpose of the Training Program is to "assist the courts, the training providers, and the training participants to conform with the Title 11 RCW requirement that all candidates applying for registration as qualified guardians ad litem shall have

[12] King County has a full time GAL on staff to handle county paid cases. Nonetheless, the caseload is such that GALs are regularly appointed from the registry for these cases as well. Recognizing the court's statutory mandate to set a maximum rate of compensation in the initial order (RCW 11.88.097), GALs interviewed point out that the cost of presenting a motion for an increase of fees in advance of the hearing, which cannot be charged, is a disincentive from requesting the increase, effectively limiting their income.

satisfactorily completed training to attain essential minimum qualifications to act as guardians ad litem."

2. Curriculum:

The Training Program provides for two "units", each to consist of at least 6 to 7 and one-half hours of instruction.[13] Unit One is intended as initial instruction for individuals who have no previous experience as GALs. The curriculum for Unit One is to include, at a minimum:

- *The roles, duties, and limits of authority of the guardian ad litem as defined by Washington State Law (RCW 11.88);*
- *The consideration of alternatives to guardianship;*
- *The determination of functional capacity in accordance with the guardianship statutes;*
- *Due process and the rights of the alleged incapacitated person;*
- *Information about impairments, local services and resources; and*
- *Terminology*

Unit Two, the "advanced unit", is intended as both a continuation of the initial instruction for first-time guardians ad litem, and as an annual update for GALs who wish to be recertified to continue to serve. The curriculum for Unit Two is to include:

- *Expanded information about impairments, available local resources, and community resources;*
- *A review of changes in the law;*
- *Interactive problem-solving exercises where the attendees learn by doing; and*
- *Other relevant topics, such as:*

    1. *Discussion of diversity issues: relevant locally selected issues which facilitate and foster awareness of and sensitivity to local area socio-economic, ethnic, cultural and religious differences and the role of cultural norms in decision making.*
    2. *Local court procedures [Examples: Use of court approved forms, complex trial issues, payment issues, court calendars, GAL qualifications, appointments and notice, court registry policies and procedures]*
    3. *Advanced communication skill building [Example: Conducting effective interviews with persons who are non-verbal and persons who have developmental disabilities, deafness or other hearing impairment.].*

[13] Complete goals and objectives to be reflected in the Handbook appear at pages 25-34 of the Training Program.

Participation in interactive problem-solving group exercises is required of all attendees.

The Training Program provides that training may be offered by videotape, provided that the videotape is presented in a group setting and that there are qualified moderators present to facilitate interactive exercises. If used, any videotape is to be updated as needed to ensure the training remains current.

Sign-in/sign-out procedures are provided for, to verify attendees' participation in training.

3. Faculty:

The Training Program provides that faculty shall have a minimum of five years' experience and that their experience shall be relevant to guardianship and adult education, that they be effective public speakers, and that they be familiar with the duties of GALs, have experience as GALs, or be persons with disabilities or who have experience working with people with disabilities.

5. Description of current practices

A two-day program is presented each year in Seattle by the King County Bar Association. King County's program is the only one that offers both Unit One and Unit Two training. The 2010 program was attended by GALs and aspiring GALs from 20 counties. Attendees at the Unit Two training are both first-time applicants and experienced GALs intending to apply for re-certification.

The King County Bar Association updates the Handbook every other year and distributes the Handbook. Unit Two attendees receive an electronic version of the updated Handbook. In addition, materials provided by Unit Two speakers are provided to attendees in the counties where the programs are presented.

The Unit Two requirement may be satisfied by annual recertification, or "refresher" courses in Spokane, Whatcom, Benton and Kitsap Counties. The fact that training is not more broadly available is a source of irritation and even hardship, for some GALs, and may be discouraging experienced GALs from continuing to serve. The Committee received numerous requests for less frequent recertification training (every other year), reduced hours of refresher training (one-half day instead of a full day), and especially for the availability of video training, particularly for the Unit Two component, coupled with a flexible time period for viewing the video.[14]

[14] As noted, although the Training Program allows for video presentations, the requirement is that they be presented in a group setting, with instructors present. The Committee was not advised that any such programs presently exist.

At least one small county reported that its GALs do not receive annual re-certification training, or that the reporting party in the county was not aware of whether they received such training, in spite of the requirement of the Training Program that GALs receive annual training and that they be re-admitted each year.

No county reported a substantive evaluation process other than completion of the training requirements prior to certification of a GAL.

III. Summary of Findings and Issues from Data Analysis

1. Issue: Is the current format of two ays (units) for initial training, one day (unit) of refresher training sufficient and effective?

Input from existing GALs and representatives of consumer groups strongly indicates that there is a need for more variety in the practical aspects of attending both the initial training and the annual refresher training. Some experienced GALs find training repetitive and not useful. They express frustration with the amount of time taken from their daily work vis-à-vis the benefit of the training when they get few appointments, some of which are low-pay.

Other input indicates that there is a need for more in-depth training in specific areas. Among these are legal procedures (for non-lawyers), working across cultures, investigative techniques, the duties of guardians, the organization and operations of DSHS, mental health and the civil commitment process, the nature of Alzheimer's, the abuse and exploitation of vulnerable adults, and the ability to identify and isolate areas of capacity and incapacity in individuals with developmental disabilities. Feedback was received that GALs need additional training in how to determine incapacity, including the ability to identify residual capacities that could lend themselves to less restrictive alternatives and a broader range of less restrictive alternatives.

Input from judicial officers indicates report writing skills could be improved. Some GALs interviewed informally expressed their view that they would benefit from more formal training in investigative techniques. Input from advocates who work with persons with disabilities and with individuals in multicultural communities, reflecting interviews with clients, indicates that GALs the clients have encountered sometimes (i) do not know how to work through interpreters, (ii) do not want to work on cases involving cultural issues in addition to the presenting disability issues because the public pay scale does not sufficiently compensate them, and (iii) are not aware of questions affecting communication or attitudes that interfere with the GAL's ability to get the information needed.

Experienced GALs expressed a strong desire to be able to meet recertification requirements by attending less frequent trainings, attending other continuing education seminars in relevant areas, or participating in trainings via webinars or by viewing videotaped trainings.

The Committee concluded that a restructuring of training for GALs seeking recertification was advisable.

2. Issue: Is the current training adequately accessible to Guardians Ad Litem across the state?

Input received from GALs and County Registry Managers reflects the need for greater accessibility to training for interested applicants in rural or smaller counties. The Committee received feedback that applicants interested in the training find it prohibitively expensive to travel to King County to attend a two day training, due to travel costs and time apart from business or family obligations. The Committee received many requests for a video option for training, especially from GALs in smaller counties or in counties where no refresher course is

offered. There is also a need for training to reflect the unique needs and practices of individual counties.

The current Training Program provides for video training in an interactive group setting only. The Committee's recommendation responds to the concerns expressed by eliminating the requirement of a group setting, although not all members favored this measure.

3. ***Issue: Should non-attorneys be excluded from qualifying as Title 11 Guardians Ad Litem?***

The Committee received input from experienced attorney GALs that non-attorney GALs are not adequately trained or skilled in legal procedures. Non-attorney GALs also expressed the need for more training in legal procedures and issues. These needs impact the content and format of the training provided, as some attorney GALs express frustration that presentations regarding legal issues aimed at non-attorneys during refresher courses are too basic. Moreover, in some complex cases or cases that proceed to trial, non-attorney GALs might require representation by an attorney, resulting in increased costs to the proceeding. On the other hand, eliminating non-attorneys from qualification as GALs would exclude the expertise other professionals bring to the court in evaluating incapacity or addressing cultural issues. Moreover, such exclusion would adversely impact some smaller counties that lack a pool of attorney GALs.

In the light of these considerations, the Committee discussed at length a proposal that non-attorneys be barred from being certified as GALs. Ultimately almost all members agreed that the advantages of the diverse backgrounds of non-attorney GALs in areas that are relevant to the practice outweigh the disadvantages of not having legal training, which can be met by (a) additional training, and (b) appointment of attorney GALs in cases where it appears likely from the outset that specific legal expertise will be needed.

Therefore, the consensus of the Committee is that non-attorneys should not be excluded from qualifying as Title 11 Guardians Ad Litem, but that additional training in legal procedures specifically related to guardianships be required of non-attorneys, and that non-attorneys be encouraged to decline appointments in cases where it is evident from the petition that legal procedures such as restraining orders, or trial, will be involved.

In King County, current procedures for presenting a petition or motion requesting appointment of a GAL make it impractical to consult with a prospective GAL in a timely manner as to the suitability of appointing that GAL, prior to appointment. As a result, unless court personnel are personally familiar with the next GAL on the rotation, non-attorney GALs may be just as likely as attorney GALs to be appointed in cases requiring legal expertise.

IV. Recommendations

After the information gathering in which the Committee members engaged, the Committee met seven times across approximately six and one-half months, in person, telephonically, and via teleconferencing to discuss and come to agreement on the following recommendations:

1. The existing Two Unit format should be retained and identified as Initial Training of first-time Guardians Ad Litem

a. To meet the concerns expressed to the Committee, the Initial Training should include more in-depth teaching about the investigation process, multicultural values and norms, including working with interpreters, and the types of incapacitating conditions that are encountered.

b. The second day of the two-day format for Initial Training should include breakout sessions focusing on specialized areas, such as legal procedure (for non-attorneys or attorneys who are new to guardianships), an expanded definition of less restrictive alternatives, in particular with respect to persons with disabilities, trust and financial issues, investigative techniques, the mental health treatment and commitment processes, issues related to the prevention, identification and response to abuse and exploitation of vulnerable adults . It should also include an interactive program on application of the material presented during breakout sessions as well as legislative and case law updates.

c. The effectiveness of the Initial Training should be evaluated using a self-evaluation tool that GALs seeking certification should complete within a specified time period following the training. GALs should be required to report the results of the evaluation as part of the application to be certified. *

d. Additional training solely in legal procedures specifically related to guardianships (6 hours) should be required of new, non-attorney GALs, beyond the two-day Initial Training. *

e. Basic uniform training materials for the Initial Training should be available statewide. The Guardianship Manual and any updated materials should be available on-line and in hard copy. Training also should include information regarding local rules, practices and resources.

f. All levels of training and mentoring of GALs should emphasize (i) the need for a common sense approach to a GALs work and (ii) best practices, including knowing when to decline an appointment. Court procedures need to be designed to facilitate the opportunity for a GAL to decline an appointment in a case that calls for specialization such as legal or other expertise that he or she does not have.

g. Training should emphasize making information regarding resources that may be useful to GALs more readily available. Resource referral information should be available on a single website, with links to resources, where possible. Referrals should include resources such as DSHS' AAA agencies and the Certified Professional Guardians' website.

h. Since attorneys for alleged incapacitated persons are appointed from the GAL list in many counties, GAL training should include a breakout session available to attorneys during Unit Two of the Initial Training, focusing on guardianship advocacy, and the difference between representing an AIP's best interests as GAL and representing the AIP's wishes as an advocate. *

i. GALs who do not qualify as "Experienced GALs" (see below) should attend Unit Two of the Initial Training in order to be re-certified, as is the current practice.

2. In order to be recertified, Experienced GALs should be required to attend either (i) an advanced training course (a "Recertification Course"), which should be held annually, or (ii) Unit Two of the Initial Training, or (iii) 7 hours of relevant continuing education courses to provide training in specialized areas.

a. GALs with at least 5 years' experience and at least 10 completed appointments (cumulative, not annual) ("Experienced GALs") should qualify for these options. If feasible or desirable, each county could design and present its own Recertification Course. In all cases, recertification training should include legislative and case law updates relevant to guardianship proceedings.

b. "Continuing education" could include CLEs for attorneys as well as continuing professional education in other areas where GAL knowledge is needed, such as mental health, particular disabilities and conditions (Alzheimer's, developmental disabilities), additional information on alternatives to guardianship, prevention, identification and response to abuse and exploitation of vulnerable adults, and trainings for Certified Professional Guardians. A mechanism for selecting the courses and monitoring attendance needs to be provided. The Standing Committee recommended in Section 3(b) below could fill this function.

c. Unit Two of Initial Training should be available to Experienced GALs in an interactive statewide format via webinar or video streaming for accessibility and uniformity. Updates of local rules and practice specific to each county should be provided to attendees from those counties through written materials to supplement this format, if they are not addressed in the sessions being transmitted. *

3. Administration of the GAL program should be revised, to increase the effectiveness of the services provided to the Courts by Guardians ad litem.

a. A state-wide Guardian Ad Litem Registry Manager position should be established to certify new GALs and to monitor the recertification of existing GALs. *

b. A Standing Committee, including members representing a diversity of disciplines and perspectives, should be established for the purpose of making periodic reviews and recommendations regarding the initial training and recertification process, and to identify and develop additional training modules. This committee should include, and/or

consult with, individuals with diverse perspectives and from diverse disciplines in doing their work.

c. A statewide data base of GALs should be created to track appointments and cases, characterizing cases (public vs. private pay, vulnerable adult, trial or not, dismissal or appointment of guardian or limited guardian) and training. The data base should be designed to identify any special skills (language, financial, medical, legal etc.) a GAL possesses. *

d. Greater consideration should be given to the appointment of the appropriate GAL in a particular case. Petitioners should advise the Court of any unique issues in a case and the Court should give consideration to the skills required of the GAL, based on the allegations in the petition, including the appointment of attorney GALs in cases where litigation or other procedures appear likely. Judicial officers should have the data base recommended above available to assist in making appointments of appropriately qualified GALs.

e. A mentoring program should be established or reinforced for new GALs to access information and suggestions from experienced GALs. This could include development of a statewide listserv for exchange of information and expertise.

f. Information should be provided to parties and interested others in guardianship proceedings regarding how to file complaints or grievances about GALs. County Registry Managers are strongly encouraged to publish local GAL grievance procedures broadly, using brochures, web pages and other accessible media to ensure that grievance procedures are simply, concisely, and understandably articulated

g. The training should include a panel of people living with disabilities who could discuss issues related to guardianship from the perspective of individuals with disabilities. The panel would help raise awareness of bias and stereotypes regarding disability and incapacity. The existing Certified Professional Guardian training curriculum already includes such a panel that could serve as a model for this training panel.

V. Conclusion

Making the system better serve our state's residents is a task of the highest priority. In an ever-evolving and challenging justice system within an equally evolving society, Washington's statutory scheme not only allows, but actually requires periodic review of the rules, guidelines, and system for training GALs.

With the Advisory Committee's recommendations, informed by the review the Committee has undertaken, Washington will be able to address the training of current and prospective GALs more efficiently and effectively to ensure that GALs are more prepared for the important role they serve in identifying the strengths and needs, protecting the rights, and advancing the best interests of some of our most vulnerable residents.

Appendix D

Sample Documents

Appendix D2

Guardian ad Litem Statement of Qualifications

Guardian ad Litem Fee Schedule

Verified Petition to Appoint Attorney

Medical/Psychological Report

NOTE: Except for the Fee Schedule and the sample GAL Reports, these documents are printed as they appear on the web site of the King County Superior Court Clerk:

http://www.kingcounty.gov/courts/scforms/guardianship.aspx

Appendix D4

King County Superior Court Forms

CAUTION: If you choose to use one of these forms as provided here in Word 6.0/95 format, please be advised that the appearance, page breaks, margins, fonts, and other aspects of the document that you prepare based on the form will be affected and may be altered by the version of Word or another word processor you use and by the printer you use. Please be sure that the completed document conforms with all rules governing acceptable document formats, particularly those stated in General Rule (GR) 14.

Establishing A Guardianship

Form #	Forms	MS Word	PDF
n/a	Guardianship and Trust Chart (cheat sheet)		
1	Petition for Guardianship for Person and/or Estate		
2	Order Appointing Guardian ad Litem and Notice of Hearing		
3	Notice of Guardianship Petition		
4	Declaration of Service		
5	Order Appointing Guardian of Person and/or Estate		
6	Oath of Guardian		
7	Declaration of Proposed Guardian (Non-Certified)		
8	Declaration of Proposed Guardian (Certified)		
9	Designation of In-State Agent		
10	Notice of Loss of Voting Rights		

Guardian Reporting Forms Due Within 90 Days of Appointment

Form #	Form	MS Word	PDF
11	Personal Care Plan		
12	Guardianship Inventory		

13	Designation of Standby Guardian		

Guardian Reporting Forms for Annual, Biennial, and Triennial Reports

Form #	Form	MS Word	PDF
14	Notice of Right to Request Special Notice		
15	Request for Special Notice of Proceedings		
16	Declaration of Guardian: Assets Held in Financial Institutions		
17	Notice of Hearing and Declaration of Mailing		
18	Guardian's Report and Accounting (Estates Under $80,000)		
19	Guardian's Report and Accounting (Estates Over $80,000)		
20	Order Modifying Reporting Period		
21	Order Approving Guardian's Report, Accounting, Personal Care Plan, and Budget		

Ending Guardianship Forms

Form #	Form	MS Word	PDF
22	Notice of Guardian's Intent to Resign and Petition to Appoint Successor Guardian		
23	Notice of Death of Incapacitated Person		
24	Petition for Order Approving Guardian's Activities and Final Report		
25	Order Approving Guardian's Final Report		
26	Petition for Order Closing Guardianship and Discharging Guardian		

27	Order Closing Guardianship, Discharging Guardian, and Exonerating Bond		
28	Declaration of Service		

Forms to File Within 30 Days of Change

Form #	Form	MS Word	PDF
29	Notice of Change of Address		
30	Notice of Change in Circumstances		

Miscellaneous Guardian Forms

Form #	Form	MS Word	PDF
31	Petition for Approval of Budget and Disbursements		
32	Order Approving Budget and Disbursements		
33	Receipt for Payment of Attorney's Fees		
34	Creditor's Receipt		
35	Receipt of Funds into Blocked Financial Account		
36	Petition for Instructions		
37	Order on Petition for Instructions		
38	Petition for Order Extending Time		
39	Order Extending Time		
40	Petition to Continue Hearing		
41	Order for Continuing Hearing		
42	Petition and Declaration for Withdrawal from Blocked Financial Account		
43	Order for Withdrawal from Blocked Account		

Minor Guardianship Forms

Form #	Form	MS Word	PDF
44	Consent of Parent to Appointment of Guardian		
45	Consent of Minor to Appointment of Guardian		
46	Declaration of Completion of Guardianship of Minor		

Forms for Guardian ad Litem

Form #	Form	MS Word	PDF
47	Guardian ad Litem Statement of Qualifications		
48	Verified Petition to Appoint Attorney for Alleged Incapacitated Person		
49	Medical/Psychological Report		
50	Motion, Declaration, and Order Sealing Guardianship Medical Records		
51	Guardian ad Litem Report		

Updated: April 30, 2010

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF KING

In the Guardianship of:	)	Case No.:
	)	
	)	GUARDIAN AD LITEM'S
	)	STATEMENT OF
_____,	)	QUALIFICATIONS
	)	RCW 11.88.090(3)
	)	
	)	(ST)

An Alleged Incapacitated Person.

GUARDIAN AD LITEM STATEMENT OF QUALIFICATIONS

This statement is presented as required by RCW 11.88.090(3):

A. Requisite areas of background, knowledge, training, and experience are detailed below:

1. Level of formal education: _____
2. Training related to Guardian ad Litem duties: _____
3. Number of years' experience as Guardian ad Litem: _____
4. Number of prior appointments as Guardian ad Litem (*as of today's date*):
   (a) This County: _____
   (b) Other Counties: _____
5. Criminal history (as defined in RCW 9.94.A.030):
6. Knowledge or experience in needs of:
   (a) Impaired elderly: _____
   (b) Persons with physical disabilities: _____
   (c) Persons with mental illness: _____
   (d) Persons with developmental disabilities: _____
   (e) Other incapacitated persons: _____

7. Familiarity and experience with legal procedures involving Guardianships:

   _____

8. Familiarity and experience in dealing with the provisions of Chapter(s) 11.88 and 11.92 RCW: _____

B. I have been removed as a Guardian ad Litem:

1. [ ] Yes

   [ ] No

2. If yes, please explain each instance on a page attached hereto.

C. I have successfully completed the model Guardian ad Litem training program of this County on _____[month/day], _____[year] at _____.

I DECLARE UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF WASHINGTON THAT THE FOREGOING IS TRUE AND CORRECT.

Signed at _____, Washington, _____, ____200__.

Signature	Printed Name
Address	Telephone/Fax Number
City, State, Zip Code	Email Address

GUARDIAN AD LITEM FEE SCHEDULE

November, 2004.

GUARDIAN AD LITEM FEE SCHEDULE

I am an attorney, in practice in the area of Elder Law since 1993.

My usual hourly rate is $200.00;
I have reduced my fees in the past on a sliding scale, depending upon the situation and circumstances facing my client.

I reduce my fee to $45.00 per hour in county paid Guardian ad Litem cases.

Professional complaints.

There have been no professional complaints, investigations, or disciplinary actions, lawsuits or professional liability claims taken against me, and I have not been removed as Guardian ad Litem in any case.

Claims/litigation

There have been no claims nor litigation commenced involving allegations of improper fee charges, charges of fraud, theft, or other forms of dishonesty or professional malpractice or misconduct against me.

Conflict of interest: * (I change the information in this category for each appointment; this is an example of one I have frequently used in the past.)

Prior contact: the proposed guardian is a professional guardian of whom I have knowledge and who I have recommended to serve as guardian in a prior guardianship matter. I have had no prior contact with the Alleged Incapacitated Person or their family.

Signed this the ____ day of November, 200_____ in Seattle, Washington.

_____

Jane Doe
WSBA#

Appendix D12

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF KING

In the Guardianship of:	)	Case No.:
	)	
	)	VERIFIED PETITION TO APPOINT
_____,	)	ATTORNEY FOR ALLEGED
	)	INCAPACITATED PERSON
	)	(PT)
An Alleged Incapacitated Person.	)	

COMES NOW _____, and petitions the Court as follows:

1. **Relief Requested**. Entry of an order appointing _____ as the attorney for the Alleged Incapacitated Person in the above-entitled action.

2. **Statement of Facts**. _____ is the Guardian ad Litem in this matter. _____ is an attorney licensed to practice law in the State of Washington. The Alleged Incapacitated Person has requested that the Court appoint _____ to represent him/her in this Guardianship action. In the event the assets of the Alleged Incapacitated Person are not sufficient, the attorney should be paid at County expense pursuant to court order, presented in ex-parte to a court commissioner or judge, prior to incurring expenses and fees.

3. Evidence Relied Upon. The statements contained in this Petition and the entire record and file in this matter.

4. Authority. RCW 11.88.045.

I DECLARE UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF WASHINGTON THAT THE FOREGOING IS TRUE AND CORRECT.

Signed at _____, Washington, _____, ____200__.

Signature	Printed Name
Address	Telephone/Fax Number
City, State, Zip Code	Email Address

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF KING

In the Guardianship of:	)	Case No.:
	)	
_____,	)	MEDICAL/PSYCHOLOGICAL
	)	REPORT
	)	
		(MDR)

An Alleged Incapacitated Person.

This form is required by Washington state law for all Guardianships. Your assistance in completing this form on or before _____ is appreciated.

(Please type or print clearly.)

I have been chosen by the Guardian ad Litem in the above matter to examine and interview _____, and I submit the following report:

My name, title, address, telephone number are as follows:

_____.

A. My education and experiences that are pertinent to the type of disorder or incapacity involved in this case: (*a resume/curriculum vitae may be attached*.).

_____

B. Date of most recent examination of the Alleged Incapacitated Person (most recent exam must be within 30 days of date of this request): _____

C. A summary of the relevant medical functional, neurological, psychological, or psychiatric history of the Alleged Incapacitated Person as known to me:

D. My findings regarding the Alleged Incapacitated Person's capacity to manage personal or financial matters are: _____.

E. The following medication(s) are currently prescribed to the Alleged Incapacitated Person for the following condition(s).

Medication: _____ Condition: _____

Medication: _____ Condition: _____

Medication: _____ Condition: _____

F. The effect of these current medications on the Alleged Incapacitated Person's ability to understand or participate in the Guardianship proceedings is:

_____.

G. My opinion as to the specific assistance the Alleged Incapacitated Person needs (*including items such as household chores, managing finances*):

_____.

H. I have also met or spoken with the following individuals regarding the Alleged Incapacitated Person: _____.

I DECLARE UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF WASHINGTON THAT THE FOREGOING IS TRUE AND CORRECT.

Signed at _____, Washington, _____, ____200__.

Signature	Printed Name
Address	Telephone/Fax Number
City, State, Zip Code	Email Address

SAMPLE GAL REPORTS

THURSTON SAMPLE OF PUBLIC GAL REPORT

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF THURSTON

In the Guardianship of:	)	Case No.:
	)	
	)	REDACTED REPORT OF
,	)	GUARDIAN AD LITEM
	)	
	)	
An Alleged Incapacitated Person.		

RECOMMENDATIONS

I (do not) recommend that the Court appoint _____, as the (limited) guardian

of the person and (limited) guardian of the estate of the AIP.

I (do not) recommend a bond or blocked account because the assets of the AIP are

_____.

I recommend that reports be filed on a _____ basis.

I recommend that the AIP retains (does not retain) the right to vote.

1. Appointment:

Date of Appointment:

Date of Service of Copy of Petition on Guardian ad Litem:

Date Guardian ad Litem's Statement of Qualifications was filed & served:

Date of Service of Notice of Guardianship Petition on AIP:

I attest that I am free from influence by anyone interested in the results of these proceedings and that I have the requisite knowledge, training, and expertise to perform the duties required by statute. My Statement of Qualifications is on file with the Court. I attest that I am on the Guardian ad Litem Registry for Thurston County and am qualified to serve as Guardian ad Litem in guardianship matters.

2. Precipitating Issues:
3. Personal Information Regarding Alleged Incapacitated Person:
Age:

Current Residence:

4. Medical/Psychological Report: I obtained a Medical/Psychological Report from _____on _____.

INVESTIGATION

5. Written Material Reviewed: I have reviewed the Medical/Psychological Report, _____, and the pleadings and records on file.

6. Individuals Interviewed: During the course of my investigation, I interviewed the following person(s):

Name	Date(s) of Contact	Relationship to AIP

7. Evaluation of Proposed Guardian:

Dates of Contact Between GAL and Proposed Guardian:

Identity and Contact Information of the Proposed Guardian:
Name:

Mailing Address:

Telephone Number: (CPG's only)

Fax Number:

Email Address:

If Guardian is Certified,

Provide Certification No.:

8. Alternatives to Guardianship:

9. Recommendation as to Appointment of Guardian: .

10. Duration and Limitations:

11. Recommendation Regarding AIP's Right to Vote:

12. Recommendation Regarding Right to Jury Trial:

13. Recommendation Regarding Appointment of Independent Counsel:

14. Recommendation Regarding Bond/Annual Reports:

[ ] The Court should set bond in the amount of $____.

[ ] The Court should block or restrict access to the following assets:

_____.

[ ] The Guardian should file reports

[ ] every year

[ ] every other year

[ ] every third year

[ ] an annual report for the first year and then every third year

15. Recommendation Regarding Presence of AIP at Hearing:
The presence of the Alleged Incapacitated Person

[ ] should

[ ] should not

be waived. _____ is

[ ] able

[ ] unable

to attend the hearing.

16. Other Recommendations:

17. Recommendation as to Guardian ad Litem's Continuing Involvement in Future Proceedings:

I recommend that the Guardian ad Litem

[ ] be

[ ] not be

involved in future proceedings in this matter.

18. Individuals Who Should Be Advised of Their Right to Request Special Notice of Proceedings Pursuant to RCW 11.92.150:

Name, Title and Address	Relationship to Alleged Incapacitated Person

19. Guardian ad Litem Compensation:

I DECLARE UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF WASHINGTON THAT THE FOREGOING IS TRUE AND CORRECT.

Signed at _____, Washington, _____, 200____.

Signature of Guardian ad Litem	Printed Name of Guardian ad Litem
Address	Telephone/Fax Number
City, State, Zip Code	Email Address

THURSTON: SAMPLE OF SEALED GAL REPORT

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF THURSTON

In the Guardianship of:	)	Case No.:
	)	
_____,	)	REPORT OF GUARDIAN AD LITEM
	)	
	)	(RTGAL)
An Alleged Incapacitated Person.		

RECOMENDATIONS

I (do not) recommend that the Court appoint _____, as the (limited) guardian of the person and (limited) guardian of the estate of the AIP.

I (do not) recommend a bond or blocked account because the assets of the AIP are _____.

I recommend that reports be filed on a _____basis.

I recommend that the AIP retains (does not retain) the right to vote.

1. Appointment:

Date of Appointment:

Date of Service of Copy of Petition on Guardian ad Litem:

Date Guardian ad Litem's Statement of Qualifications was filed & served:

Date of Service of Notice of Guardianship Petition on AIP:

I attest that I am free from influence by anyone interested in the results of these proceedings and that I have the requisite knowledge, training, and expertise to perform the duties required by statute. My Statement of Qualifications is on file with the Court. I attest that I am on the Guardian ad Litem Registry for King County and am qualified to serve as Guardian ad Litem in guardianship matters.

2. Precipitating Issues:

3. Personal Information Regarding Alleged Incapacitated Person:
Date of Birth (*optional*):

Age:

Current Residence:

Phone Number:

4. Medical/Psychological Report: I obtained a Medical/Psychological Report from _____ on _____,___ 200__. *(NOTICE: The Medical/Psychological Report should be filed separately with the Court under seal, NOT as an Exhibit to this Report.)*

5. Meeting with AIP:

Date(s) of Meetings with Alleged Incapacitated Person	Location of Meeting	Other Persons Present *(GAL must meet alone at least once with AIP.)*

Agreement or objection to appointment of a Guardian:

Reaction to the proposed Guardian:

Right to counsel:

Preferences regarding choice of counsel:

Right to a jury trial:

(Notes from the interview.)

INVESTIGATION

6. Written Material Reviewed: I have reviewed the Medical/Psychological Report, _____, _____, and the pleadings and records on file.

7. Individuals Interviewed: During the course of my investigation, I interviewed the following person(s):

Name	Date(s) of Contact	Relationship to AIP

Investigation re the AIP's ability to manage health, safety, nutrition and housing.
Health: (*Notes from interviews)*

Housing: (*Notes from interviews)*

Nutrition: (*Notes from interviews)*

Safety: (*Notes from interviews)*

Investigation re: the AIP's ability to manage finances: *(Notes from interviews)*

Investigation re: who is the appropriate guardian for the AIP: (*Notes from interviews)*

8. Nature, Cause and Degree of Incapacity - Functional Limitations: The following is a description of the nature, cause, and degree of incapacity, and the basis upon which this judgment is made:

Medical Diagnosis and Cause:

Degree of Incapacity:

9. Evaluation of Proposed Guardian(s):

Dates of Contact Between GAL and Proposed Guardian(s):

Identity and Contact Information of the Proposed Guardian(s):

Name:

Mailing Address:

Telephone Number:

Fax Number:

Email Address:

If Guardian is Certified,
Provide Certification No.:

Description of Steps Proposed Guardian Has, or Intends, to Take to Meet the Needs of the AIP:

10. Alternatives to Guardianship:

11. Degree of Assistance Required:

12. Recommendation as to Appointment of Guardian:

13. Duration and Limitations:

14. Recommendation Regarding AIP's Right to Vote:

15. Recommendation Regarding Right to Jury Trial:

16. Recommendation Regarding Appointment of Independent Counsel:

17. Estimate of Estate. The assets, funds, and income of AIP are as follows:

	Value ($)
Real property	$
Stocks, Mutual Funds and Bonds	$
Mortgages and Notes	$
Bank Accounts	$
Furniture and Household Goods	$
Other Personal Property	$_____
Total Approx. Value of Assets	**$**
Social Security Benefits	$
Washington State Assistance	$
Other	$_____
Total Approx. Monthly Income	**$**

18. Recommendation Regarding Bond/Annual Reports:

[ ] The Court should set bond in the amount of $_____.

[ ] The Court should block or restrict access to the following assets:

_____.

[ ] The Guardian should file reports

[ ] every year

[ ] every other year

[ ] every third year

[ ] an annual report for the first year and then every third year

///

///

19. Recommendation Regarding Presence of AIP at Hearing:
The presence of the Alleged Incapacitated Person

[ ] should

[ ] should not

be waived. _____ is

[ ] able

[ ] unable

to attend the hearing. *(If unable to attend, please explain the reason(s))*:
_____.

The following special arrangements should be made for the hearing *(i.e., removal of hearing site to residence of Alleged Incapacitated Person, provision for hearing assistive devices, etc*.).

20. Other Recommendations:

21. Recommendation as to Guardian ad Litem's Continuing Involvement in Future Proceedings:
I recommend that the Guardian ad Litem

[ ] be

[ ] not be

involved in future proceedings in this matter.

22. Individuals Who Should Be Advised of Their Right to Request Special Notice of

Proceedings Pursuant to RCW 11.92.150:

Name, Title and Address	Relationship to Alleged Incapacitated Person

///
///
///

23. Guardian ad Litem Compensation:

I DECLARE UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF WASHINGTON THAT THE FOREGOING IS TRUE AND CORRECT.

Signed at _____, Washington, _____, ____200__.

Signature of Guardian ad Litem	Printed Name of Guardian ad Litem, WSBA#
Address	Telephone/Fax Number
City, State, Zip Code	Email Address

SUPERIOR COURT OF THE STATE OF WASHINGTON
FOR WHATCOM COUNTY

In re Matter of the Guardianship of: JANE DOE, Alleged Incapacitated Person.	**No.** **GUARDIAN AD LITEM REPORT** **RCW 11.88.090**

I was appointed as the Guardian ad Litem in the above matter on the __ day of _____, 200____ and I received notice of my appointment on the _____ day of _____, 200__. I submit my Report to the Court pursuant to RCW 11.88.090 as follows:

1. Background: I attest to the Court that I am free from influence from anyone interested in the result of these proceedings and that I have the requisite knowledge, training, or expertise to perform the duties required by the statute. A copy of my Statement of Qualifications as required by the statute is on file in this matter. I attest that I am on the Guardian ad Litem Registry for Whatcom County and am qualified to serve as Guardian ad Litem in guardianship matters.

2. Investigation.

A. Materials or Information Reviewed: As part of my investigation, I obtained or reviewed the following:

(e.g., Court File, APS records, BPD records, SJH nursing notes, etc.)

B. Individuals Contacted: As part of my investigation, I contacted the following individuals, either personally or by telephone:

(names of collateral contacts)

C. Tests Conducted or Reviewed: I have obtained a written report according to RCW 11.88.045 from **John Smith, M.D.,** In addition, I have obtained or reviewed the following:

(e.g., Neuropsychological Report from Dr. Sigmund Freud, Chemical Dependency Evaluation by Dr. Tim Leary, etc.)

D. Capacity/Incapacity: Specific areas of capacity and incapacity are included in sealed record.

3. Conclusions and Recommendations: Based upon the foregoing investigation, I submit this public written Report to the Court pursuant to RCW 11.88.090(5)(e):

(e.g., *The AIP is in need of a(full/limited) guardianship of the(person and/or estate), and Mary Poppins of Poppins and Hyde, Certified Professional Guardians, Inc. is a proper person to serve as such –*

The AIP is not in need of a guardianship at this time.

4. Appointment of Counsel: Within five days after meeting with the alleged incapacitated person, I (did not advise/advised) the court of the need for appointment of counsel *and give rationale. If counsel was appointed, then say so and give name.)*

5. Guardian ad Litem Fee: I respectfully ask the Court to approve a Guardian ad Litem reimbursement in the sum of $_____, representing fees, based upon the attached billing.

DATED this _____ day of _____, 200__.

_____
Name of GAL
Guardian ad Litem for
Name of AIP

SUPERIOR COURT OF THE STATE OF WASHINGTON FOR WHATCOM COUNTY

In re Matter of the Guardianship of: **JANE DOE**, Alleged Incapacitated Person.	**No. 03-4-00408-5** **GUARDIAN AD LITEM REPORT**

I was appointed as the Guardian ad Litem in the above matter on the _____ day of _____, 20____ and I received notice of my appointment on the _____ day of _____, 20__. I submit my Report to the Court pursuant to RCW 11.88.090 as follows:

1. Background: I attest to the Court that I am free from influence from anyone interested in the result of these proceedings and that I have the requisite knowledge, training, or expertise to perform the duties required by the statute. A copy of my Statement of Qualifications as required by the statute is on file in this matter. I attest that I am on the Guardian ad Litem Registry for Whatcom County and am qualified to serve as Guardian ad Litem in guardianship matters.
2. Investigation: I initially met and consulted with the alleged incapacitated person on the _____ day of _____, 20__, and explained in language that I believed she could reasonably be expected to understand, the substance of the Petition, the nature of these proceedings, her right to contest the Petition, the identification of the proposed guardians or limited guardian,

the right to a jury trial on the issue of alleged incapacity, the right to independent legal counsel as provided by RCW 11.88.045, and the right to be present in Court at the hearing on the Petition. (need to describe here if the AIP was able to meaningfully communicate on the subject, and if she had any input. May need to say that she objected to the guardianship and expressed an affirmative desire to be represented by counsel, or that she would benefit by representation of counsel, or that she was unable to meaningfully communicate at all on any of these subjects. It is my recommendation that she (not be/be) present at the hearing on the Petition.

I have also obtained a written report according to RCW 11.88.045 from John Smith, M.D., which has been filed in this proceeding. I have obtained the following additional oral or written reports from other qualified professionals which I deem necessary to permit me to complete this Report: Here list all other professionals involved, i.e. special ed teacher, DDD worker, etc.

I met with the persons whose appointments are sought as guardians or limited guardians in order to ascertain their knowledge of the duties, requirements and limitations of a guardian, and the steps the proposed guardians intend to take or have taken to identify and meet the needs of the alleged incapacitated person. Name(s) of proposed guardian(s)understood the responsibilities as set forth in RCW 11.92.040 and 11.92.043.

Brief Synopsis of History of Placements

Here describe the history of the AIP, including birth info if relevant, family info, residences, and all services provided to date. Also describe income and its basis.

3. Written Report: Based upon the foregoing investigation, I submit this written Report to the Court pursuant to RCW 11.88.090(5)(e):

A. The following is a description of the nature, cause, and degree of incapacity, and the basis upon which this judgment is made:

B. The following is a description of the needs of the alleged incapacitated person for care and treatment, the probable residential requirements of the alleged incapacitated person, and the basis upon which the findings are made:

C. The following is an evaluation of the appropriateness of the guardian or limited guardian whose appointment is sought and a description of the steps the proposed guardian has taken or intends to take to identify and meet current and emerging needs of the alleged incapacitated person:

D. The following is a description of the abilities of the alleged incapacitated person and a recommendation as to whether a guardian or limited guardian should be appointed:

E. The following is an evaluation of the alleged incapacitated person's mental ability to rationally exercise the right to vote and the basis upon which this evaluation is made:

F. The alleged incapacitated person expressed the following approval concerning the proposed guardian or limited guardian, or guardianship or limited guardianship:

G. The following are those persons with significant interest in the welfare of the alleged incapacitated person who should be advised of their right to request special notice of proceeding pursuant to RCW 11.92.150:

H. The alleged incapacitated person gave the following responses to my advice of the right to jury trial, to independent counsel, and to be present at the hearing on the Petition:

4. Appointment of Counsel: Within five days after meeting with the alleged incapacitated person, I (did not advise/advised) the court of the need for appointment of counsel and give rationale.

5. Guardian ad Litem Fee: I respectfully ask the Court to approve a Guardian ad Litem reimbursement in the sum of $_____, representing fees, based upon the attached billing.

DATED this _____ day of _____, 20__.

_____
Name of GAL
Guardian ad Litem for
Name of AIP

Appendix E

Website Resources

LEGAL

Administrative Office of the Courts (AOC) acts as the arm of the Supreme Court, which administers guardianship policies and guardianship procedures.
http://www.courts.wa.gov/programs_orgs/guardian/

King County Superior Court: Model forms available at this site.
http://www.kingcounty.gov/courts/scforms.aspx

Spokane County Superior Court: Model forms available at this site.
http://www.spokanecounty.org/superiorcourt/content.aspx?c=2521

Directory of all County Superior Courts: Check your county for model forms and helpful information.
http://www.courts.wa.gov/court_dir/?fa=court_dir.county

King County Law Library: for online legal research.
http://www.kcll.org/

LegalWA.org is a highly recommended legal research website
www.legalwa.org

Columbia Legal Services and the Northwest Justice Project: provides free civil (not criminal) legal services to people who are low-income or have special legal needs throughout Washington State. http://www.columbialegal.org/

Washington State Bar Association Elder Law Section: An association of elder law attorneys. http://www.wsba.org/lawyers/

King County Bar Association Guardianship and Elder Law Section: An association of attorneys, guardians and guardians ad litem.
http://www.kcba.org/ScriptContent/KCBA/membership/sections/GEL/index.cfm

National Academy of Elder Law Attorneys (NAELA): provides general information for lawyers and non-lawyers working with older clients.
http://www.naela.com/

Government Agencies

Social Security & Medicare: official website provides information about Social Security Benefits, Medicare, SSI and more.
http://www.ssa.gov/

Department of Social and Health Services- Aging and Adult Services (DSHS): offers many services for aging, incapacitated and/or vulnerable persons.
http://www.aasa.dshs.wa.gov/

Medicaid: provides information about Washington Medicaid benefits.
www.adsa.dshs.wa.gov/pubinfo/benefits/medicaid.htm

Washington State Health Care Authority: provides information about Washington's subsidized Health Insurance Option.
http://www.basichealth.hca.wa.gov/

Access Washington: State Services Directory provides information regarding more than 22 agencies and organizations listed by service type. Click on the information button for listings.http://access.wa.gov/services/services.aspx

Disabilities/Illness

Alzheimer's Disease Association (national): provides resources related to Alzheimer's Disease.
www.alz.org

American Stroke Association: for information about issues related to stroke.
www.strokeassociation.org

ARC of Washington State provides chapters across the state that focus on serving people with developmental disabilities.
http://www.arcwa.org/

Assisted Living Federation of America: provides education, research and publications about Assisted living issues.
http://www.alfa.org

Autism Society of Washington: provides resources related to Autism.
www.autismsocietyofwa.org

Center for Human Development and Disability (CHDD), University of Washington: provides resources related to child development.
www.depts.washington.edu/chdd

DisabilityResources.Org has a regional directory of the available resources throughout Washington State with many hyperlinks.
http://www.disabilityresources.org/WASHINGTON.html.

Easter Seals (local): provides a variety of services for a variety of disabilities.
www.seals.org

Hospice: provides information about end of life issues.
http://www.hospicefoundation.org/

Long Term Care Ombudsman: provides information and advocacy related to long term care decisions.
http://www.ltcop.org

Long Term Care Link: general information about long term care.
http://www.longtermcarelink.net/

Nursing Home Rating Service: provides information about inspections and reports of nursing homes. Click on the county and then on the nursing home of your choice to pull up a report.
http://www.nursing-homes-ratings.com/WA/index.html

Disability Rights Washington.
www.DisabilityRightsWA.org

Washington PAVE: provides resources for parents of children with disabilities.
www.washingtonpave.org

Washington State Brain Injury Foundation: information and support services related to brain injury.
www.biawa.org

Senior Citizen & Children's Organizations

Senior Services of Seattle/King County provides many resource listing as well as links to senior services in other areas of the State of Washington.
www.seniorservices.org

American Association of Retired Persons: provides a variety of consumer advocacy and care resources.
www.aarp.org

Children's Alliance of Washington: provides child advocacy information.
http://www.childrensalliance.org/

Other Organizations

The National Association of Geriatric Care Managers 1504 N. Country Club Road Tucson, Arizona 85716 (520) 881-8008 provides membership, resource information and publishes a quarterly newsletter listing many resources as well as a quarterly journal and conferences.
www.caremanager.org

The National Guardianship Association 1504 N. Country Club Road Tucson, Arizona 85716 (520) 881-6561 provides membership, resource information, quarterly publications and conferences.
www.guardianship.org

Washington Law Help. Information and support services related to Medicaid and other legal areas.
www.washingtonlawhelp.org

Appendix F

Certified Professional Guardian Board

Ethics Advisory Opinions

and

Certified Professional Guardian Standards of Practice

Appendix F2

Ethics Advisory Opinions

http://www.courts.wa.gov/programs_orgs/guardian/?fa=guardian.Ethics

2010
March 13, 2006, Revised January 11, 2010

Opinion #: 2005-001 - Professional Guardian Petitioning for Appointment

2007

Opinion 2007-003 Notice - Change in Guardian Appointment

2005

Opinion 2005-004 - Retention of Records
Opinion 2005-003 Preappointment Conduct
Revised Opinion 2005-001 Professional Guardian Petitioning for Appointment

2002

Opinion 2002-0003 - Simultaneous Appointment as Guardian for Both Spouses or Domestic Partners
Opinion 2002-0001 - Fee Surcharges

Appendix F4

Opinion 2002-0001 - Fee Surcharges

CERTIFIED PROFESSIONAL GUARDIAN BOARD
ETHICS ADVISORY OPINION

Ethics Advisory Opinion:	**#2002-0001 (Fee surcharges)**
Date Approved:	**May 12, 2003**

Brief restatement of question(s) posed:

1. May the CPG charge a mark up of a contractor's charge, for the CPG's own fee for contract administration?
2. Does it make any difference if the markup is disclosed in a fee schedule or the fee declaration of the CPG?

A contractor's charge is the amount billed to the guardian by a third party for goods or services provided to the guardianship or on the guardian or ward's behalf.
Directly applicable SOP's, statutes and other law or standards:
RCW 11.92.180
A guardian or limited guardian shall be allowed such compensation for his or her services as guardian or limited guardian as the court shall deem just and reasonable.
In all cases, compensation of the guardian or limited guardian and his or her expenses including attorney's fees shall be fixed by the court..."
Case Law: Estate of Larsen, In re Larsen, 103 Wash. 2d 517, 694 P.2d 1051 (1985)
Standards of Practice:

3.1 The guardian shall avoid self dealing, conflict of interest, and the appearance of a conflict of interest. Self dealing or conflict of interest arise when the guardian has some personal, family, or agency interest from which a personal benefit would be derived. Any potential conflict shall be disclosed to the court immediately.

3.2 All expenses paid or incurred on behalf of the incapacitated person by the guardian shall be documented, reasonable in amount, and incurred for the incapacitated person's welfare.

3.3 All compensation for the services of the guardian shall be documented, reasonable in amount, and incurred for the incapacitated person's welfare. The guardian shall not pay or advance himself/herself fees or expenses except as approved by the court.

3.4 Provision of compensated services other than guardianship services to an incapacitated person by the guardian shall be considered a potential conflict of interest, which must be fully disclosed.

3.6 The guardian shall disclose to the court and interested parties all compensation, fees and expenses requested, charged, or received in a guardianship case.

6.9 There shall be no self interest in the management of the estate by the guardian; the guardian shall exercise caution to avoid even the appearance of self interest.

Analysis:

Any arrangement that provides compensation to a professional guardian that is not approved in advance by the court is contrary to law and SOPs. Undisclosed fees are forbidden.

There is no distinction between a markup as described and any other fee for service. The requirement that compensation be reasonable in amount includes the expectation that there be a connection between the amount charged and the work required.
A professional guardian charging hourly fees, or asset management fees would be double billing by charging an additional markup. Although in theory, the professional guardian could maintain billing practices that avoid double billing, in practical terms it is very unlikely that such practices would have sufficient transparency.
In adding on to bills for services rendered the professional guardian would create a conflict of interest. The guardian would have an incentive to provide unnecessary services and to use vendors because their billing forms or practices are amenable to the guardians markup practices.

The use of private contractors to provide financial and personal assistance typically and properly billed as guardianship services is certainly permissible. Such arrangements can not be used to evade employer taxes or other requirements.

Opinion:

In general, the practice as described fails in many ways to meet the cited standards. Primarily, the evasion of disclosure requirements, court supervision of activities and court approval of fees, and the maintenance of a close correlation between services provided, costs of those services and benefit to the estate.

It may be argued that these problems can be cured by disclosing all markups of contractor fees and seeking approval from the court. This argument fails as described below.
Once the practice of marking up bills for contracted services is established, it is likely to lead to abuse. Guardians commonly hire professionals for all manner of services from pharmacy deliveries to care provision to home re-modeling. The practice of adding a surcharge to all such bills would result in undue amounts of compensation to the GPG.
CPG's Charge fees based on billable hours, flat asset management fees or transactional fees. Combining this practice with a surcharge arrangement creates a high likelihood of double billing and imposes an unnecessary burden on the court in sorting out the billing methods in evaluating the reasonableness of fees.

A CPG who receives a markup has an actual conflict of interest that would be virtually impossible to cure. That is, the GPG has a financial incentive to choose more expensive contractors, and to order more work. Additionally, the CPG would be limited to contractors willing to participate in the arrangement. Again, the court would not be able to fully evaluate whether or not this was occurring without imposing additional expense on the estate, as by appointing a GAL.
Summary of opinion:

The practice of "marking up" contracted services to recover expenses of administration is not permissible. Professional Guardian can recover fees for such services as effectively, more transparently, and without conflicts of interest by posting the time involved and billing hourly.

There __ is _X_ is not a Minority Report

CERTIFIED PROFESSIONAL GUARDIAN BOARD
ETHICS ADVISORY OPINION #2002-03

Ethics Advisory Opinion: #2002-03:

Simultaneous Appointment as Guardian for Both Spouses or Domestic Partners

Date Approved by the Certified Professional Guardian Board: April 12, 2004

Statement of Questions Posed:

1. May a Certified Professional Guardian or Agency (Guardian) be appointed to provide concurrent, dual or joint representation on behalf of both spouses, domestic partners or persons living in a meretricious relationship? If so, under what circumstances is this appropriate?
2. What criteria should a Guardian apply in determining whether the Guardian should accept a dual appointment; or if already appointed, should the Guardian continue to act on behalf of both persons in a relationship as described above?
3. What procedural steps ought to be followed if the Guardian believes that dual representation is appropriate under the facts of the case, or in order to continue serving when in such a relationship and an actual, apparent or potential conflict of interest arises?

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

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

ANALYSIS:

A guardian, in any case, has a fiduciary duty to the adjudicated incapacitated person (IP) to manage the personal affairs and/or estate of the IP for the benefit of the IP. On its face, an appointment of a guardian for both spouses creates a divided loyalty in the duties of the guardian in that he/she must manage the community and separate estates of both IPs for their individual benefit. While such an arrangement may potentially or financially benefit both spouses or partners, the appearance of potential conflict, and the likelihood of an eventual conflict of interest is substantial.

The court at any hearing to appoint a single guardian for a married couple or for domestic partners will likely initially view the petition with concern. The reason for the court's skepticism is that in any guardianship appointment, the court is delegating its duty and authority to oversee the personal and

financial matters of individual, vulnerable incapacitated persons to a guardian. Lawyers, judges and court commissioners are by training and experience, highly sensitized to conflict of interest situations and to the appearance of such conflicts.

At the hearing on the petition, the court will review the guardian ad litem (GAL) report and the petition. It will ensure that full disclosure of all known conflicts has occurred and that consents/waivers have been addressed as appropriate. The court will engage the parties named above in colloquy on the record to ensure that all interests are identified and balanced. As in nearly all guardianship hearings, the court will weigh the GAL's report and recommendations on all issues, including the appropriateness of the proposed guardian. While the issues will be similar to those conflict issues arising as to spouses, domestic partners will not necessarily have the same legal presumptions afforded married couples. A Guardian should obtain the advice of counsel when considering these issues prior to accepting such an appointment.

Below is a nonexclusive list of examples and circumstances that present an appearance of potential or actual conflicts of interest for a guardian considering such an appointment.

1) One or both spouses or partners having children from prior relationships.

2) Lack of stability and length of the marriage/relationship.

3) The presence of or lack of an estate plan made by the couple while both members were still competent.

4) Separate property owned by the spouses or partners or the expectancy of inheritance by either.

5) Presence or lack of a community property or other written agreement or of a marital relationship.

6) Eligibility for benefits, such as Medicaid and spend-down/gifting issues.

7) Residential decisions and the source of funds to pay home mortgage and upkeep costs, assisted living, or long term care costs.

8) Guardian billing and accountings submitted to the court.

9) End-of-life decisions in the absence of competently and jointly executed health care directives.

Nonexclusive examples of circumstances where the court may consider a single guardian for a couple may be when:

> 1) There is a competently and mutually executed pre-guardianship estate plan that contemplates the eventual incapacity of one or both spouses or partners that provides resolution to possible conflicts.
>
> 2) There is a long-term marriage with both spouses or partners in a care facility and the parties have little or no estate and have competently executed health care directives.

Again, remember that the issues for married couples will likely differ in some respects from those of domestic partners due primarily to the existence of a marital relationship.

In any circumstances where the same guardian serves both spouses or partners, there is always the possibility of a conflict going unrealized until it is too late and something like the death of one of the spouses or registered domestic partners obviates the issue. Such circumstances can place the guardian and the incapacitated persons in an unworkable

situation ethically and practically, often resulting in expensive litigation naming the guardian personally as a defendant or other party.

The guardian in any case should not wait after sensing a possible conflict of interest. Counsel should be consulted immediately and a filed request for instructions from the court can assist in identifying, disclosing, and resolving conflict of interest issues at a hearing with all concerned parties present. Such issues will be decided on a case-by-case basis, and the guardian's vigilance and anticipation of potential conflicts will be expected by the court.

APPENDIX A-1

References:

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APPENDIX A-2

400 Standards of Practice:

401. GENERAL A guardian shall exercise care and diligence when making a decision on behalf of an Incapacitated Person. The civil rights and liberties of the Incapacitated Person shall be protected. The independence and self-reliance of the Incapacitated Person shall be maximized to the greatest extent consistent with their protection and safety.

401.5 The guardian shall protect the personal and economic interests of the Incapacitated Person and foster growth, independence, and self-reliance.

401.7 Whenever feasible a guardian shall consult with the Incapacitated Person, and shall treat with respect, the feelings, values, and opinions of the Incapacitated Person. Wherever possible, the guardian shall acknowledge the residual capacity of the Incapacitated Person to participate in or make some decisions.

401.8 When the guardian has limited authority, the guardian shall work cooperatively with the Incapacitated Person or with others who have authority in other areas for the benefit of the Incapacitated Person.

401.9 The guardian shall cooperate with and carefully consider the views and opinions of professionals, relatives, and friends who are knowledgeable about the Incapacitated Person.

401.12 When possible, the guardian will defer to an Incapacitated Person's autonomous capacity to make decisions.

402 Decision Standards:

All decisions and activities of the guardian shall be made according to the applicable decision standard.

402.1 The primary standard is the Substituted Judgment Standard. This means that the guardian shall make reasonable efforts to ascertain the Incapacitated Person's historic preferences and shall give significant weight to such preferences. Competent preferences may be inferred from past statements or actions of the Incapacitated Person.

402.2 When the competent preferences of an Incapacitated Person cannot be ascertained, the guardian is responsible for making decisions which are in the best interest of the Incapacitated Person. A determination of the best interest of the Incapacitated Person shall include consideration of the stated preferences of the Incapacitated Person.

403 Ethics:

403.8 The guardian shall protect the Incapacitated Person's rights and best interests against infringement by third parties.

406 Financial Management:

406.3 The guardian shall manage the estate with the primary goal of providing for the needs of the Incapacitated Person.

406.4 In certain cases, the guardian shall consider the needs of the Incapacitated Person's Dependents for support or maintenance, provided appropriate authority for such support is obtained in advance. The wishes of the Incapacitated Person as well as past behavior can be considered, bearing in mind both foreseeable financial requirements of the Incapacitated Person and the advantages and disadvantages to the Incapacitated Person of such support or maintenance.\

406.8 When it is likely that the Incapacitated Person's estate will be exhausted, the guardian shall, as appropriate, make plans and take necessary steps to acquire public benefits on behalf of the Incapacitated Person. When implementing necessary changes in the Incapacitated Person's lifestyle, the guardian shall seek to minimize the stress of any transition.

CERTIFIED PROFESSIONAL GUARDIAN BOARD
ETHICS ADVISORY OPINION

Opinion 2005-003 Preappointment Conduct

PREAPPOINTMENT CONDUCT

OPINION NUMBER # 2005- 003

Date: November 13, 2006

Brief Restatement of Question(s) posed:

Should a certified professional guardian (CPG) provide services to an alleged incapacitated person (AIP) after a petition for the appointment of a guardian has been filed, or immediately prior to the filing of such a petition, prior to a determination of incapacity by the court, where no contractual or legal relationship existed between the certified professional guardian and the AIP prior to the filing of a guardianship petition, and the guardian expects to be compensated for those services?

Directly applicable standards of practice (SOP's), statutes, and other law or standards:

401.4 The guardian shall not act outside of the authority granted by the court.

403.1 The guardian shall avoid self-dealing, conflict of interest and the appearance of a conflict of interest. Self-dealing or conflict of interest arise when the guardian has some personal, family, or agency interest from which a personal benefit would be derived. Any potential conflict shall be disclosed to the court immediately.

401.1 The guardian shall at all times be thoroughly familiar with RCW 11.88, RCW 11.92, General Rule (GR) 23, and any other regulations or statutes which govern the conduct of the guardian in the management of affairs of an incapacitated person.

RCW 11.88.005 Legislative intent: It is the intent of the legislature to protect the liberty and autonomy of all people of this state, and to enable them to exercise their rights under the law to the maximum extent, consistent with the capacity of each person. The legislature recognizes that people with incapacities have unique abilities and needs, and that some people with incapacities cannot exercise their rights or provide for their basic needs without the help of a guardian. However, their liberty and autonomy should be restricted through the guardianship process only to the minimum extent necessary to adequately provide for their own health or safety, or to adequately manage their financial affairs.

RCW 11.88.030 (1): A petition for guardianship or limited guardianship shall state:…….(i) A description of any alternate arrangements previously made by the alleged incapacitated person, such as trusts or powers of attorney, including identifying any guardianship nominations contained in a power of attorney, and why a guardianship is nevertheless necessary.

RCW 11.88.045(5) During the pendency of an action to establish a guardianship, a petitioner or any person may move for temporary relief under chapter 7.40 RCW, to protect the alleged incapacitated person from abuse, neglect, abandonment, or exploitation, as those terms are defined in RCW 74.34.020, or to address any other emergency needs of the alleged incapacitated person…..

RCW 11.88.090 [The Guardian ad litem shall have the following duties..][to ascertain]

(5)(c)(ii) The steps the proposed guardian intends to take or has taken to identify and meet the needs of the alleged incapacitated person;

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

(5)(f) To provide the court with a written report which shall include the following:

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

(9) The court appointed guardian ad litem shall have the authority to move for temporary relief under chapter 7.40 RCW to protect the alleged incapacitated person from abuse, neglect, abandonment, or exploitation, as those terms are defined in RCW 74.34.020m or to address any other emergency needs of the alleged incapacitated person. Any alternative arrangement executed before filing the petition for guardianship shall remain effective unless the court grants the relief requested under chapter 7.40RCW, or unless, following notice and a hearing at which all parties directly affected by the arrangement are present, the court finds that the alternative arrangement should not remain effective.

RCW 74.34 Abuse of Vulnerable Adults

.005(1) Some adults are vulnerable and may be subjected to abuse, neglect, financial exploitation, or abandonment by a family member, care provider, or other person who has a relationship with the vulnerable adult;

.005(6) The department must provide protective services in the least restrictive environment appropriate and available to the vulnerable adult.

Analysis

Guardianships are commonly sought in situations in which there is an immediate problem affecting a principal prior to the decision by a Court as to whether or not the person is, in fact, incapacitated. Certified Professional Guardians are often asked to develop and implement a plan of care in such situations which precede a decision by the Court as to the need for the establishment of a guardianship.

Certified professional guardians commonly offer a spectrum of services which are recognized by statute as less restrictive alternatives to guardianships. Some of these services require the written consent of the principal, such as powers of attorney, creation of a Trust, signatures on consent forms relating to health care, and signatures and agreements in regards to contracts and financial service agreements.

Some less restrictive alternatives may not necessarily require the written agreement of the principal. Situations in which such agreement(s) commonly occur include competent acceptance by the principal of the provision of care management and in-home assistance services.

Opinion

At any time, including the period immediately preceding or subsequent to the filing of a petition for the appointment of a guardian, certified professional guardians (CPG) are encouraged to provide forms of assistance that are least restrictive and that have the potential to avoid the need for a guardianship when that assistance is consented to by the principal, provided that the principal has the requisite capacity to consent and, if needed, access to legal counsel. Forms of assistance often needed include arranging for in-home care, home maintenance, and assistance in organizing and paying bills.

When a CPG is entering into a formal legal relationship with a principal, such as a living trust or power of attorney, the CPG should assure that the principal has the benefit of independent legal counsel before entering the relationship. A CPG who is also an attorney should not prepare or assist in the preparation of power-of-attorney, living trust, a Will, or similar legal documents which appoint themselves to a fiduciary relationship with the principal.

During the period immediately preceding or subsequent to the filing of a petition for the appointment of a guardian there is a conflict of interest or the appearance of a conflict of interest and self dealing when any person enters into an agreement for services with an alleged incapacitated person that requires consent. While recognizing that the alleged incapacitated person has the legal capacity to enter into contracts until a guardian is appointed or otherwise restricted at the time a guardianship is established, the certified professional guardian should exercise caution when entering into any arrangement with the alleged incapacitated person immediately preceding or subsequent to the filing of a guardianship petition.

During the period immediately preceding to or subsequent to the filing of a petition for the appointment of a guardian, the CPG may be asked by family or friends of the principal, or may contract with family or friends of the principal, to provide case management assistance such as help with living arrangements and in-home care, or assistance with immediate financial matters such as the payment of rent or utility bills, during the period immediately preceding or subsequent to the filing of a guardianship petition. The CPG should decline to provide such services unless the principal has the capacity to consent to the services or the court has authorized the guardian to provide services. In such a circumstance, the principal's acceptance and/or cooperation with services can be reflective of the principal's consent.

Any fees that are charged by the certified professional guardian should be carefully documented. No fees should be accepted from the funds of the principal subsequent to the filing a petition for the appointment of a guardian unless approved by the court in the same manner as guardian fees.

The certified professional guardian should avoid the appearance of assuming the formal duties of a guardian in advance of appointment. The certified professional guardian should not marshal assets, become a signature to financial accounts, make medical decisions or financial commitments, or otherwise engage in the activities commonly associated with the powers of a guardian for an alleged incapacitated person subsequent to the filing of a petition for the appointment of a guardian or during the period immediately preceding the filing of such petition.

CERTIFIED PROFESSIONAL GUARDIAN BOARD
ETHICS ADVISORY OPINION

Opinion 2005-004 - Retention of Records

RETENTION OF RECORDS

OPINION # 2005-004

Date: September 11, 2006

Brief restatement of question(s) posed:

How long should a certified professional guardian retain client records?

Directly applicable Standards of Practice, statutes, and/or other law or standards:

A guardian who has been discharged in a guardianship matter is expected to transfer assets and information to the successor guardian or personal representative in good order. Subsequent to discharge and transfer of assets and information, the retention of records benefits the incapacitated person and may protect the guardian against future allegations of misconduct or to explain the general management of the guardianship, such as in a probate proceeding or tax audit.

No specific standards of practice have been adopted by the Certified Professional Guardian Board to guide guardians in their decisions as to the retention of client records subsequent to their discharge as guardians. However, the premature destruction of records has the risk of complicating the management of a guardianship practice. Records which support decisions made by the guardian may be needed long after the conclusion of a guardianship and the discharge of the guardian. Consequently, retention of essential records either electronically or as paper in a secured and safe storage area for an indefinite time period is a matter to be determined, after consultation with an attorney, by the individual guardian.

Ethics Advisory Opinions

Opinion 2007-003 Notice - Change in Guardian Appointment

CERTIFIED PROFESSIONAL GUARDIAN BOARD

ETHICS ADVISORY OPINION

OPINION # 2007-003

Date: September 15, 2008

Brief restatement of question posed:

Who, if anyone, should be given notice when a professional guardian petitions for the appointment of a co-guardian to assist the existing guardian or to be discharged and have a standby or successor guardian appointed?

Applicable Statutes:

RCW 11.88.120

(1) At any time after establishment of a guardianship or appointment of a guardian, the court may, upon the death of the guardian or limited guardian, or, for any other reason, modify or terminate the guardianship or replace the guardian or limited guardian.

(2) Any person...may apply to the court for an order to modify or terminate a guardianship or to replace a guardian. If applicants are represented by counsel, counsel shall move for an order to show cause why the relief requested should not be granted. If applicants are not represented by counsel, they may move for an order to show cause, or they may deliver a written request to the clerk of the court.

(3) By the next judicial day after receipt of an unrepresented person's request to modify or terminate a guardianship order, or to replace a guardian.., the clerk shall deliver the request to the court. The court may (a) direct the clerk to schedule a hearing (b) appoint a guardian ad litem…., or (c) deny the application without scheduling a hearing, if it appears …that the application is frivolous. ..A copy of the order shall be mailed by the clerk to the applicant, to the guardian, and to any other person entitled to receive notice of proceedings in this matter. Unless within thirty days after receiving the request from the

clerk the court directs otherwise, the clerk shall schedule a hearing on the request and mail notice to the guardian, the incapacitated person, the applicant, all counsel of record, and any other person entitled to notice of proceedings in the matter.

RCW 11.88.125

"(1) The …guardian..shall file ...a notice designating a standby….guardian. Notice of the guardian's designation of the standby guardian shall be given to the standby guardian, the incapacitated person and his or her spouse or registered domestic partner and adult children, any facility in which the incapacitated person resides, and any person entitled to special notice under RCW 11.92.150 or any person entitled to receive pleadings pursuant to RCW 11.88.095(2)(g). Such standby guardian…shall have all the powers…of the regularly appointed guardian…and in addition, shall, within a period of thirty days from the death or adjudication of incapacity of the regularly appointed guardian, file …a petition for appointment of substitute guardian or limited guardian."

(2) Letters of guardianship shall be issued to the standby guardian…upon filing an oath and posting a bond as required by RCW 11.88.100…The oath may be filed prior to the appointed guardian or limited guardian's death. Notice of such appointment shall be provided to the standby guardian, the incapacitated person, and any facility in which the incapacitated person resides. The provisions of RCW 11.88.100 shall apply to standby guardians and limited guardians.

RCW 11.92.150

….Any person interested in the estate, or in the incapacitated person, …may serve ..a written request stating the specific actions of which the applicant requests advance notice. Where the notice does not specify matters for which notice is requested, the guardian or limited guardian shall provide ….advance notice of his or her application for court approval of any action in the guardianship.

Case law

Upon removal of the guardian under Rem. Comp. Stat Sec. 1579 (the precursor to RCW 11.88.125), notice and other statutory requirements for appointment of original guardian are unnecessary for appointment of successor. Mathieu v United States, Fid. and Guar. Co, 158 Wash. 396 (1930)) (Construing prior statute). An incapacitated person's petition to revoke guardianship is deemed to be a continuation of original guardianship proceedings. In re Michelson, 8 Wn. 2d 327 (1941) (Construing prior statute). Substantial compliance with the statute required. Teeters, 173 Wash. 138 (1933) (Construing prior statute).

Court rules

Each court has its own local rules that govern how motions are set and heard in that court. Consult with counsel to determine whether local rules require any specific type of notice.

Standards of Practice

403.10 Unless otherwise directed by the Court, the guardian shall provide copies of all material filed with the court and notice of all hearings in the guardianship to the incapacitated person.

408 The guardian shall perform duties and discharge obligations in accordance with current Washington law governing the certification of guardian. In each guardianship, the guardian shall comply with the requirements of the court that made the appointment.

Summary of Opinion

Notice must always be provided to any "interested persons" who have requested special notice of proceedings, absent a court order to the contrary. RCW 11.92.150. Unless otherwise directed by the court, the Standards of Practice also require notice to the incapacitated person.

If the proposed successor or co-guardian would be managing community assets for both an incapacitated person and their spouse who had not been adjudged to be incapacitated, due process may require notice to the spouse even if that spouse has not requested special notice. (This is also true for registered domestic partners.) If the proposed successor or co-guardian is not a certified guardian or was proposed but objected to in the initial proceedings, the court may wish to give notice to persons who might be likely to be able to provide information on the suitability of the proposed guardian or might wish to appoint a guardian ad litem to investigate the proposed guardian's suitability. The professional guardian should seek instructions or consult with counsel as to whether the court's local practice and rules require additional notice or steps to be taken.

Ethics Advisory Opinions

Revised Opinion 2005-001 Professional Guardian Petitioning for Appointment

CERTIFIED PROFESSIONAL GUARDIAN BOARD
ETHICS ADVISORY OPINION
Professional Guardian Petitioning for Appointment

OPINION #: 2005-001
Date March 13, 2006, Revised January 11, 2010

Brief restatement of question(s) posed:
When may a Certified Professional Guardian petition for appointment of oneself as guardian?

Directly applicable SOP's, statutes and other law or standards:

- 403.1 The guardian shall avoid self-dealing, conflict of interest, and the appearance of a conflict of interest. Self-dealing or conflicts of interest arise when the guardian has some personal, family, or agency interest from which a personal benefit would be derived. Any potential conflict shall be disclosed to the court immediately.

- RCW 11.88.030 (1) Any person or entity may petition for the appointment of a qualified person, trust company, national bank, or nonprofit corporation authorized in RCW 11.88.020 as the guardian or limited guardian of an incapacitated person. No liability for filing a petition for guardianship or limited guardianship shall attach to a petitioner acting in good faith and upon reasonable basis.

- The facts alleged in a petition for guardianship are ordinarily verified under penalty of perjury by the petitioner.

- GR 24 (a)(1) Practice of law defined as "Giving advice or counsel to others as to their legal rights or the legal rights or responsibilities of others for fees or other consideration."

Analogous standards and values (e.g. legal, medical):
The practice of nominating oneself as guardian automatically raises the appearance of self-dealing.

Comments:
The Certification Board recognizes that there are two public policy objectives underlying this opinion. The first is the public policy need to assure that individuals in need of a guardian have access to that service. The second public policy objective is to assure that the practice of the profession by certified professional guardians results in conduct which is not self-dealing and does not involve the actual or appearance of a conflict of interest. This ethical opinion is intended to recognize the inherent tension between these

two public policy objectives and to reconcile those tensions in a manner that provides for the highest ethical practices while making available guardian services to those who need them.

The intent of this opinion is not to discourage the filing of the petitions in good faith. It is the intent of this opinion however, to assure the transparency of the proceedings to the extent that any conflicts or appearances of conflict which a certified professional guardian may have are disclosed and that steps are taken to negate both the real and appearance of self-serving.

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

Ordinarily the facts necessary to complete a petition for guardianship are not available at first hand to a certified professional guardian but are provided by professionals interested in having a guardian appointed.

In many situations, and in particular in the case of alleged incapacitated persons who have limited or no estate, there is no other person with sufficient expertise and interest in the alleged incapacitated person to file a petition for guardianship. Referral sources such as facility staff or government employees who are able to identify the need for guardianship may have institutional limitations on their ability to become formally involved as a petitioner for the guardianship.

There are circumstances in which a care provider or other entity with whom the certified professional guardian has a close personal or professional relationship files a petition for guardianship using an attorney provided by the certified professional guardian, or files a petition for guardianship with the active assistance of the certified professional guardian, with the intention that the certified professional guardian will become guardian at the conclusion of the proceeding. In such circumstances, the certified professional guardian has an obligation to disclose to the Court by Affidavit or Declaration the nature of that relationship.

This opinion acknowledges that the Court with local jurisdiction is the final arbiter as to the need for a guardianship and the appointment of the guardian. The petitioning certified professional guardian should be aware of the Court's ability to require the petitioner to pay any or all fees and costs of proceedings at the Court's discretion, including the fees of the guardian ad litem.

Opinion: The following are considered to be best practices for Certified Professional Guardians:

The certified professional guardian should inform referral sources as to how guardianships are processed and should offer to refer interested parties to counsel if

necessary. However, petitioners for individuals with no close family or friends, limited assets, living in long term care environments, and/or with complicated care needs are often not available. As a result, the practical reality of the care environment is such that the availability of petitioners for those in need of a guardian is limited or non-existent. Therefore, the limited and qualified initiation of a guardianship petition by a certified professional guardian is acceptable under certain circumstances.

Specifically, if the certified professional guardian determines (a) a guardianship is in the interests of the Alleged Incapacitated Person; (b) there are no less restrictive alternatives; and (c) there is no other person willing to act as petitioner; then the certified professional guardian may act as petitioner in a guardianship.

In initiating such petition the certified professional guardian shall,

1. Consistent with state statute, engage in an investigation and document that investigation in an Affidavit or Declaration to the court the following pre-filing efforts:

   a. identifying any alternative nominees and providing information as to why alternate nominees who are available are not suitable or able to serve;

   b. providing a written request from the party requesting the guardianship which identifies the basis for the request and the basis for the decision by that party not to petition;

   c. providing documentation from third parties of the facts set out in the petition. Such documentation can include statements from care providers, family members, friends, or others with knowledge of the circumstances of the incapacitated person.

   d. providing documentation that the certified professional guardian has met with the alleged incapacitated person, the results of that meeting, and an opinion by the certified professional guardian of the capacity issues faced by the alleged incapacitated person.

2. Disclose in the Affidavit or Declaration to the court any relationship the certified professional guardian may have with a care facility and any practice the care facility may have involving the referral of residents to the certified professional guardian.

Standards of Practice Regulation (400)

400 Standards of Practice

The following standards apply to all Certified Professional Guardians (Guardian). Standards apply only to the degree that the court has granted the authority contemplated in a given standard.

401 General

A guardian shall exercise care and diligence when making decisions on behalf of an incapacitated person. The civil rights and liberties of the incapacitated person shall be protected. The independence and self-reliance of the incapacitated person shall be maximized to the greatest extent consistent with their protection and safety.

401.1 The guardian shall at all times be thoroughly familiar with RCW 11.88, RCW 11.92, GR 23, these standards, and any other regulations or statutes which govern the conduct of the guardian in the management of affairs of an incapacitated person. When a question exists between the standards and a statute, timely direction shall be sought from the court. If a guardian is aware of a court order of the court in a specific case which may lead to a conflict with these regulations, the guardian shall disclose this to the court.

401.2 The guardian shall seek legal advice as necessary to know how the law applies to specific decisions.

401.3 The guardian shall provide reports and accountings that are timely, complete, accurate, understandable, and in a form acceptable to the court.

401.4 The guardian shall not act outside of the authority granted by the court.

401.5 The guardian shall protect the personal and economic interests of the incapacitated person and foster growth, independence, and self-reliance.

401.6 The guardian must know and acknowledge personal limits of knowledge and expertise and shall assure that qualified persons provide services to the incapacitated person.

401.7 Whenever feasible a guardian shall consult with the incapacitated person, and shall treat with respect, the feelings, values, and opinions of the incapacitated person. Wherever possible, the guardian shall acknowledge the residual capacity of the incapacitated person to participate in or make some decisions.

401.8 When the guardian has limited authority the guardian shall work cooperatively with the incapacitated person or with others who have

authority in other areas for the benefit of the incapacitated person.

401.9 The guardian shall cooperate with and carefully consider the views and opinions of professionals, relatives, and friends who are knowledgeable about the incapacitated person.

401.10 The guardian shall seek independent professional evaluations, assessments, and opinions when necessary to identify the incapacitated person's needs and best interests.

401.11 The guardian shall recognize that his or her decisions are open to the scrutiny of other interested parties and, consequently, to criticism and challenge. Nonetheless, subject to orders of the court, the guardian alone is ultimately responsible for decisions made on behalf of the incapacitated person.

401.12 When possible, the guardian will defer to an incapacitated person's autonomous capacity to make decisions.

401.13 A guardian shall not disclose personal or other sensitive information about the incapacitated person to third parties except when necessary and appropriate to the needs of the incapacitated person.

401.14 The duties of a guardian to an incapacitated person are not conditioned upon the person's ability to compensate the guardian.

401.15 Guardians of the Person shall have meaningful in-person contact with their clients as needed and shall maintain telephone contact with care providers, medical staff, and others who manage aspects of care as needed and appropriate. Meaningful in-person contact shall provide the opportunity to observe the incapacitated person's circumstances and interactions with care givers.

401.16 Guardians of the Estate only shall maintain meaningful in-person contact with their clients as necessary to verify the individual's condition and status and that financial arrangements are appropriate.

401.17 All certified professional guardians and guardian agencies have a duty by statute to appoint a standby guardian. In appointing a standby guardian it is the best practice to appoint a certified professional guardian unless otherwise authorized by the local court with jurisdiction. (Amended January 9, 2006).

402 Decision Standards

All decisions and activities of the guardian shall be made according to the applicable decision standard.

402.1 The primary standard is the Substituted Judgment Standard. This means that the guardian shall make reasonable efforts to ascertain the

incapacitated person's historic preferences and shall give significant weight to such preferences. Competent preferences may be inferred from past statements or actions of the incapacitated person.

402.2 When the competent preferences of an incapacitated person cannot be ascertained, the guardian is responsible for making decisions which are in the best interests of the incapacitated person. A determination of the best interests of the incapacitated person shall include consideration of the stated preferences of the incapacitated person.

403 Ethics

The guardian shall exhibit the highest degree of trust, loyalty, attentiveness, and fidelity in relation to the incapacitated person.

403.1 The guardian shall avoid self-dealing, conflict of interest, and the appearance of a conflict of interest. Self-dealing or conflict of interest arise when the guardian has some personal, family, or agency interest from which a personal benefit would be derived. Any potential conflict shall be disclosed to the court immediately.

403.2 All expenses paid or incurred on behalf of the incapacitated person by the guardian shall be documented, reasonable in amount, and incurred for the incapacitated person's welfare.

403.3 All compensation for the services of the guardian shall be documented, reasonable in amount, and incurred for the incapacitated person's welfare. The guardian shall not pay or advance himself/herself fees or expenses except as approved by the court.

403.4 Provision of compensated services other than guardianship services to an incapacitated person by the guardian shall be considered a potential conflict of interest, which must be fully disclosed.

403.5 An organization whose primary activities are provision of therapeutic, clinical, residential, or medical services shall not act as guardian for one of its patients or clients. Employees, agents, or components of such an organization shall not act as guardian for one of its patients or clients.

403.6 The guardian shall disclose to the court and interested parties all compensation, fees and expenses requested, charged, or received in a guardianship case.

403.7 Payment of fees or other compensation for guardianship services by a party other than the incapacitated person is a potential conflict of interest which shall be fully disclosed.

403.8 The guardian shall protect the incapacitated person's rights and best interests against infringement by third parties.

403.9 The guardian shall, whenever possible, provide requested information

to the incapacitated person unless the guardian is reasonably certain that substantial harm will result from providing such information. This information shall include, but not be limited to, regular reports on the status of investments and operating accounts, and on the costs and disbursements necessary to manage the incapacitated person's estate, medical and other personal information related to the care of the incapacitated person.

403.10 Unless otherwise directed by the court, the guardian shall provide copies of all material filed with the court and notice of all hearings in the guardianship to the incapacitated person.

404 Residential Decisions

The guardian shall ensure that the incapacitated person resides in the least restrictive environment that is appropriate and available.

404.1 The guardian shall acknowledge the need to allow all persons the opportunity to engage in activities and live in conditions which are culturally and socially acceptable within the context of the incapacitated person's cultural and life values; or, when cultural and life values cannot be determined, conditions which are culturally and socially acceptable.

404.2 The guardian shall take reasonable measures to effectuate the incapacitated person's residential preferences.

404.3 The guardian shall know the current state of the law regarding limits on the guardian's authority as to residential decisions.

404.4 The guardian shall not remove the incapacitated person from his or her home or separate the incapacitated person from family and friends unless such removal is necessary to prevent significant harm or because of financial constraints. The guardian shall make reasonable efforts to ensure the incapacitated person resides at the incapacitated person's home or in a community setting.

404.5 The guardian shall, to the extent possible, select residential placements which enhance the quality of life of the incapacitated person, provide the opportunity to maximize the independence of the incapacitated person, and provide for physical comfort and safety.

404.6 A relocation should include consultation with professionals actively involved in the care of the incapacitated person, the incapacitated person, objective third parties and, whenever possible, appropriately involved family and friends of the incapacitated person.

404.7 The guardian shall, as necessary, thoroughly research and evaluate the incapacitated person's residential alternatives.

404.8 The guardian shall regularly monitor the incapacitated person's residential placement to ensure appropriateness and that such placement is the least restrictive alternative. The guardian shall consent to changes, as

they become necessary, advantageous, or otherwise in the incapacitated person's best interests. The guardian shall consider that even changes within an existing residential facility have an impact on the quality of life of the incapacitated person.

404.9 Should the only available placement not be the most appropriate or least restrictive, the guardian shall regularly review alternatives to the placement and shall make reasonable efforts to arrange an appropriate and least restrictive residence.

405 Medical Decisions

The guardian shall provide informed consent on behalf of the incapacitated person for the provision of care, treatment and services and shall ensure that such care, treatment and services represents the least restrictive form of intervention that is appropriate and available.

405.1 The guardian shall monitor the care, treatment, and services the incapacitated person is receiving to ensure that it is appropriate. The guardian shall consent to changes in service as necessary, advantageous, or in the best interests of the incapacitated person.

405.2 The guardian shall actively promote the health of the incapacitated person by arranging for regular preventive care including but not limited to dental care, diagnostic testing, and routine medical examinations.

405.3 The guardian shall be available at all times to respond to urgent need for medical decisions. The guardian shall provide directives regarding treatment or non-treatment to be followed by medical staff in emergencies.

405.4 In the event the only available treatment, care or services are not the most appropriate and least restrictive, the guardian shall advocate for the incapacitated person's right to appropriate and least restrictive treatment, care or services.

405.5 The guardian shall be fully informed as to risks and benefits to the incapacitated person prior to seeking advance court authorization for medical treatment when law requires such authorization.

405.6 The guardian shall be familiar with the law regarding the withholding or withdrawal of life-sustaining treatment.

406 Financial Management

The guardian shall assure competent management of the property and income of the estate. In the discharge of this duty, the guardian shall exercise the highest level of fiduciary responsibility, intelligence, prudence, and diligence and avoid any self-interest.

406.1 The guardian shall know and obey the law related to managing an incapacitated person's estate. Such knowledge shall include statues relating

to the investment of assets, restrictions imposed on investing and expenditures by RCW 11.88 and 11.92, and laws relating to employment, income, and taxes. The guardian shall hire competent professionals as appropriate to assure compliance with all statues and regulations relating to the management of funds.

406.2 The guardian shall maintain all bonding, blocking, and insurance requirements as may be required by the court.

406.3 The guardian shall manage the estate with the primary goal of providing for the needs of the incapacitated person.

406.4 In certain cases, guardian shall consider the needs of the incapacitated person's Dependents for support or maintenance, provided appropriate authority for such support is obtained in advance. The wishes of the incapacitated person as well as past behavior can be considered, bearing in mind both foreseeable financial requirements of the incapacitated person and the advantages and disadvantages to the incapacitated person of such support or maintenance.

406.5 The guardian shall exercise prudence in investment, shall periodically review the incapacitated person's situation and assets, and make recommendations regarding appropriate investments. In the exercise of prudence the guardian shall:

406.5.1 Not allow assets to sit idle except for good reasons.

406.5.2 Consider the tax consequences of decisions.

406.5.3 Consider the incapacitated person's long term ability to sustain costs of arrangements made by the guardian.

406.5.4 Consider the incapacitated person's ability to gain the benefits of specific decisions.

406.5.5 Consider the costs incurred in managing investments, including the costs of the guardian, those specialists hired by the guardian, and the costs of the investment vehicles.

406.5.6 Consider the incapacitated person's historical investment pattern and tolerance for risk, lifestyle needs, care and medical needs, estate considerations, tax consequences, and life expectancy.

406.6 When the available estate of the incapacitated person is sufficient, the guardian may petition the court for authority to make such gifts as are consistent with the wishes or past behavior of the incapacitated person, bearing in mind both foreseeable requirements of the incapacitated person and the advantages and disadvantages to the incapacitated person of such gifts, including tax consequences.

406.7 A guardian shall not accept a gift from an incapacitated person or

their estate other than ordinary social hospitality.

406.8 When it is likely that the incapacitated person's estate will be exhausted, the guardian shall, as appropriate, make plans and take necessary steps to acquire public benefits on behalf of the incapacitated person. When implementing necessary changes in the incapacitated person's lifestyle, the guardian shall seek to minimize the stress of any transition.

406.9 There shall be no self-interest in the management of the estate by the guardian; the guardian shall exercise caution to avoid even the appearance of self-interest.

406.10 A guardian shall not commingle the funds of an incapacitated person with funds of the guardian or the funds of staff. A guardian may consolidate client accounts, using appropriate accounting software and procedures, including pro-rata assignment of interest earned and fees paid and accurate individual accounting for each client's funds, provided the guardian has received specific authority from the court to do so. Each payment from a consolidated account shall be from funds held in the account on behalf of the individual for whom the payment is made.

406.11 The guardian shall not borrow from an incapacitated person. A guardian shall not lend funds at interest to an incapacitated person.

406.12 The responsibility to protect and preserve the guardianship estate rests with the certified guardian appointed by the court. When the guardian is an agency, this responsibility is that of the agency and the certified guardians identified with the Certified Professional Guardian Board as the responsible guardians for the agency. While it may be appropriate and necessary to retain and reasonably rely upon the services of knowledgeable individuals or entities to assist in the performance of duties, it is the responsibility of the guardian to provide appropriate oversight and review, in order to preserve the guardianship estate. (Amended September 11, 2006).

407 Changes of Circumstances

The guardian has an affirmative obligation to be alert to changes in the incapacitated person's condition or circumstances and report to the court when an increase or reduction in the authority of the guardian should be considered.

407.1 The guardian shall seek out information that will provide a basis for termination or limitation of the guardianship.

407.2 Upon indication that termination or limitation of the guardianship order is warranted, the guardian shall request court action.

407.3 The guardian shall assist the incapacitated person to terminate or limit the guardianship and arrange for independent representation for the incapacitated person when necessary.

407.4 If the guardianship is a limited guardianship, the guardian shall report

to the court when there are circumstances in which the incapacitated person appears to require assistance which exceeds the authority of the guardian.

407.5 If the guardianship is of the person only, the guardian shall report to the court when protection of the incapacitated person's estate may be necessary.

407.6 If the guardianship is of the estate only, the guardian shall report to the court when protection of the person may be necessary.

408 Applicable Law

The guardian shall perform duties and discharge obligations in accordance with current Washington law governing the certification of guardian. In each guardianship, the guardian shall comply with the requirements of the court that made the appointment.

Appendix G

Washington Courts
GAL Information

Appendix G2

Guardian ad Litem (GAL)

Guardian ad Litem Information

A *guardian ad litem* (GAL) is an individual appointed by the court to represent the best interests of a child or incapacitated person involved in a case in superior court.

GAL is different from a *certified professional guardian* (CPG). A CPG is an individual or agency who serves as the legal guardian of at least three individuals and provides this service as a profession.

- **Training Opportunities**
- **Introduction**
- **Duties and Responsibilities**
- **Grievance Procedures**
- **Education and Training**
- **Registry Application Procedure**

Introduction

A guardian ad litem (GAL) is an adult who is appointed by the court to represent the best interests of an individual for a specific purpose for a specific period of time. Under the direction of the court, a GAL performs an investigation and prepares a report for the court of the GAL's findings and recommendations. To become a GAL, an individual must complete an approved training program, provide background information to the court(s) in which the GAL wishes to serve, and meet all eligibility requirements set by local court rule or policy.

GALs are often appointed to represent the best interests of minor children in Title 26 domestic relations (family law) cases, dependent children in Title 13 dependency actions, or incapacitated persons in Title 11 guardianships. They can be paid for their services, or serve as volunteer GALs. Paid GALs can be employed by a county (perhaps family court services) but more often are individuals who do GAL work as part- or full-time self-employment. Most volunteer GALs serve as court appointed special advocates (CASA) in dependency actions.

Statutes govern appointment of GALs (links to GAL laws are provided above). Each superior court maintains a list, or registry, of individuals who are qualified to serve as GALs. Appointments are made by agreement or by rotation from the GAL registry. The GAL's responsibilities and duties are set forth by statute, court rule, and the order appointing the GAL. Each superior court has a procedure for filing a grievance against a GAL.

Duties and Responsibilities

The primary duty of a guardian ad litem (GAL) is to represent the best interests of the person for whom the GAL is appointed. Sometimes the person's wishes conflict with what is in the person's best interests. A GAL is an officer of the court and must maintain independence, conduct herself or himself professionally, avoid conflicts of interest, treat parties with respect, become informed about the case, timely inform the court of relevant information, limit duties to those ordered by the court, inform individuals about her or his role in the case, maintain the parties' privacy, perform duties in a timely manner, maintain documentation, and keep records of time and expenses. These requirements set forth ethical conduct standards, violation of which may subject the GAL to discipline. The duties and responsibilities of GALs are provided by court order, court rules, and statutes. Governing statutes are found in RCW 2.56, RCW 11.88, RCW 13.34, RCW 26.12. Local court rules may be obtained from each superior court. Some local rules are available online.

Grievance Procedures

If a party has a complaint about a guardian ad litem (GAL), the party may file a grievance in superior court. Generally, if the case is still active, the party may file a motion to bring the grievance to the court's attention. If the case has been completed, the written grievance is addressed to the GAL Program Manager or Court Administrator. Often it is a good idea to discuss concerns with the GAL as they arise, before they become difficult to resolve. Attorneys can provide advice regarding a GAL's involvement and whether a grievance is appropriate.

Grievance procedures vary by county and are usually included in the superior court local rules.. If the local court rules do not yet include GAL grievance procedures, contact that court's GAL Program Manager for information on how to file a grievance.

Education and Training

In 1997, minimum training requirements were established for GALs in Washington. Links to statutes governing training are provided below. Training curricula were developed for Title 11 guardianships, Title 13 dependencies and Title 26 domestic relations. In addition, local courts may have additional requirements, such as minimum education (BA, MA, etc.). A GAL will be required to provide information such as related training, criminal history, experience and previous appointments as a GAL, and whether the GAL was removed from a registry because of a grievance. For GAL eligibility requirements, contact the GAL Program Manager for that court.

- Governing statutes are found in RCW 2.56, RCW 11.88, RCW 13.34, RCW 26.12
- If you want to become a volunteer guardian ad litem or CASA for dependencies, you can contact Washington State CASA at www.washingtonstatecasa.org.
- If you are interested in becoming a certified professional guardian for Title 11 guardianships, you can check the courts' website for more information at www.courts.wa.gov/programs_orgs/pos_guardian/.

Registry Application Procedure

Application must be made to each superior court in which you wish to serve as a guardian ad litem. Completion of GAL training does not automatically place your name on a county's GAL registry. Information about a county's GAL registry application procedure can be obtained from the county's Guardian ad Litem Program Manager.

Appendix H

Chapter 26.60 RCW
State Registered Domestic Partnerships

Chapter 26.60 RCW

State registered domestic partnerships

Chapter Listing | RCW Dispositions

RCW Sections

26.60.010 Legislative findings.
26.60.015 Intent.
26.60.020 Definitions.
26.60.025 Definition -- Domestic partnership.
26.60.030 Requirements.
26.60.040 Registration -- Records -- Fees.
26.60.060 Domestic partnerships created by subdivisions of the state.
26.60.070 Patient visitation.
26.60.080 Community property rights -- Date of application.
26.60.090 Reciprocity.
26.60.900 Part headings not law -- 2008 c 6.
26.60.901 Severability -- 2008 c 6.

Notes:

Certificate of death -- Domestic partnership information: RCW 70.58.175.

Domestic partnership registry -- Forms -- Rules: RCW 43.07.400.

Public employees -- Same sex domestic partner benefits: RCW 41.05.066.

26.60.010
Legislative findings.

*** CHANGE IN 2012 *** (SEE 6239-S.SL) ***

Many Washingtonians are in intimate, committed, and exclusive relationships with another person to whom they are not legally married. These relationships are important to the individuals involved and their families; they also benefit the public by providing a private source of mutual support for the financial, physical, and emotional health of those individuals and their families. The public has an interest in providing a legal framework for such mutually supportive relationships, whether the partners are of the same or different sexes, and irrespective of their sexual orientation.

The legislature finds that same sex couples, because they cannot marry in this state, do not automatically have the same access that married couples have to certain rights and benefits, such as those associated with hospital visitation, health care decision-making, organ donation decisions, and other issues related to illness, incapacity, and death. Although many of these rights and benefits may be secured by private agreement, doing so often is costly and complex.

The legislature also finds that the public interest would be served by extending rights and benefits to different sex couples in which either or both of the partners is at least sixty-two years of age. While these couples are entitled to marry under the state's marriage statutes, some social security and pension laws nevertheless make it impractical for these couples to marry. For this reason, chapter 156, Laws of 2007 specifically allows couples to enter into a state registered domestic partnership if one of the persons is at least sixty-two years of age, the age at which many people choose to retire and are eligible to begin collecting social security and pension benefits.

The rights granted to state registered domestic partners in chapter 156, Laws of 2007 will further Washington's interest in promoting family relationships and protecting family members during life crises. Chapter 156, Laws of 2007 does not affect marriage or any other ways in which legal rights and responsibilities between two adults may be created, recognized, or given effect in Washington.

[2007 c 156 § 1.]

26.60.015
Intent.

It is the intent of the legislature that for all purposes under state law, state registered domestic partners shall be treated the same as married spouses. Any privilege, immunity, right, benefit, or responsibility granted or imposed by statute, administrative or court rule, policy, common law or any other law to an individual because the individual is or was a spouse, or because the individual is or was an in-law in a specified way to another individual, is granted on equivalent terms, substantive and procedural, to an individual because the individual is or was in a state registered domestic partnership or because the individual is or was, based on a state registered domestic partnership, related in a specified way to another individual. The provisions of

chapter 521, Laws of 2009 shall be liberally construed to achieve equal treatment, to the extent not in conflict with federal law, of state registered domestic partners and married spouses.

[2009 c 521 § 1.]

26.60.020
Definitions.

The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "State registered domestic partners" means two adults who meet the requirements for a valid state registered domestic partnership as established by RCW 26.60.030 and who have been issued a certificate of state registered domestic partnership by the secretary.

(2) "Secretary" means the secretary of state's office.

(3) "Share a common residence" means inhabit the same residence. Two persons shall be considered to share a common residence even if:

(a) Only one of the domestic partners has legal ownership of the common residence;

(b) One or both domestic partners have additional residences not shared with the other domestic partner; or

(c) One domestic partner leaves the common residence with the intent to return.

[2007 c 156 § 2.]

26.60.025
Definition — Domestic partnership.

Whenever the term "domestic partnership" is used in the Revised Code of Washington it shall be defined to mean "state registered domestic partnership" and whenever the term "domestic partner" is used in the Revised Code of Washington it shall be defined to mean "state registered domestic partner."

[2008 c 6 § 1201.]

26.60.030
Requirements.

*** CHANGE IN 2012 *** (SEE 6239-S.SL) ***

To enter into a state registered domestic partnership the two persons involved must meet the following requirements:

(1) Both persons share a common residence;

(2) Both persons are at least eighteen years of age;

(3) Neither person is married to someone other than the party to the domestic partnership and neither person is in a state registered domestic partnership with another person;

(4) Both persons are capable of consenting to the domestic partnership;

(5) Both of the following are true:

(a) The persons are not nearer of kin to each other than second cousins, whether of the whole or half blood computing by the rules of the civil law; and

(b) Neither person is a sibling, child, grandchild, aunt, uncle, niece, or nephew to the other person; and

(6) Either (a) both persons are members of the same sex; or (b) at least one of the persons is sixty-two years of age or older.

[2007 c 156 § 4.]

26.60.040
Registration — Records — Fees.

(1) Two persons desiring to become state registered domestic partners who meet the requirements of RCW 26.60.030 may register their domestic partnership by filing a declaration of state registered domestic partnership with the secretary and paying the filing fee established pursuant to subsection (4) of this section. The declaration must be signed by both parties and notarized.

(2) Upon receipt of a signed, notarized declaration and the filing fee, the secretary shall register the declaration and provide a certificate of state registered domestic partnership to each party named on the declaration.

(3) The secretary shall permanently maintain a record of each declaration of state registered domestic partnership filed with the secretary. The secretary has the authority to update the records to reflect changes in the status of a state registered domestic partnership, such as a change of address, name, dissolution, or death. The secretary shall provide the state registrar of vital statistics with records of declarations of state registered domestic partnerships.

(4) The secretary shall set by rule and collect a reasonable fee for filing the declaration, calculated to cover the secretary's costs, but not to exceed fifty dollars. Fees collected under this section are expressly designated for deposit in the secretary of state's revolving fund established under RCW 43.07.130.

[2009 c 521 § 71; 2007 c 156 § 5.]

26.60.060
Domestic partnerships created by subdivisions of the state.

(1)(a) A domestic partnership created by a subdivision of the state is not a state registered domestic partnership for the purposes of a state registered domestic partnership under this chapter. Those persons desiring to become state registered domestic partners under this chapter must register pursuant to RCW

26.60.040.

(b) A subdivision of the state that provides benefits to the domestic partners of its employees and chooses to use the definition of state registered domestic partner as set forth in RCW 26.60.020 must allow the certificate issued by the secretary of state to satisfy any registration requirements of the subdivision. A subdivision that uses the definition of state registered domestic partner as set forth in RCW 26.60.020 shall notify the secretary of state. The secretary of state shall compile and maintain a list of all subdivisions that have filed such notice. The secretary of state shall post this list on the secretary's web page and provide a copy of the list to each person that receives a certificate of state registered domestic partnership under RCW 26.60.040(2).

(c) Nothing in this section shall affect domestic partnerships created by any public entity.

(2) Nothing in chapter 156, Laws of 2007 affects any remedy available in common law.

[2007 c 156 § 7.]

26.60.070
Patient visitation.

A patient's state registered domestic partner shall have the same rights as a spouse with respect to visitation of the patient in a health care facility as defined in RCW 48.43.005.

[2007 c 156 § 8.]

26.60.080
Community property rights — Date of application.

Any community property rights of domestic partners established by chapter 6, Laws of 2008 shall apply from the date of the initial registration of the domestic partnership or June 12, 2008, whichever is later.

[2008 c 6 § 601.]

26.60.090
Reciprocity.

*** CHANGE IN 2012 *** (SEE 6239-S.SL) ***

A legal union of two persons of the same sex that was validly formed in another jurisdiction, and that is substantially equivalent to a domestic partnership under this chapter, shall be recognized as a valid domestic partnership in this state and shall be treated the same as a domestic partnership registered in this state regardless of whether it bears the name domestic partnership.

[2011 c 9 § 1; 2009 c 521 § 72; 2008 c 6 § 1101.]

26.60.900
Part headings not law — 2008 c 6.

Part headings used in this act are not any part of the law.

[2008 c 6 § 1301.]

26.60.901
Severability — 2008 c 6.

If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected.

[2008 c 6 § 1302.]