From: Jennifer Shaler
To: Virginia McClerkin; Joe O"Leary; Anthony Pereira; Meghan Dill-Meinzer
Cc: allen, bryce; Marco Chayet; steve
Subject: MVL/CLE Materials for Guardianship Essentials
Date: Tuesday, March 4, 2025 2:21:00 PM
Attachments:
JDF 705 - Probate Case Information Sheet.docx
JDF823 Instructions for Appointment of Guardian for a Minor.pdf
JDF840 Instructions for Appointment of Guardian for Adult.pdf
FormalEthicsOpinion_131.pdf
FormalEthicsOpinion_126.pdf
C.R.S. § 15-14-319 Right to a Lawyer Post-Adjudication.pdf
JDF 800 SC Acknowledgment of Responsibilities (GuardianConservator).docx
JDF 850 SC Guardian"s Report (of an adult).docx
JDF 824 SC Petition to Appoint a Guardian (of a minor).docx
JDF 841 SC Petition to Appoint a Guardian (of an adult).docx
JDF 848 SC Order Appointing Guardian for Adult.docx
JDF 849 SC Letters of Guardianship (of an adult).docx
JDF830.docx
JDF834 Guardian"s Report - Minor.docx
JDF 812 SC Notice of Appointment (guardianconservator).docx
JDF 850 SC Guardian"s Report (of an adult).docx
JDF827 Order GDN Minor.docx
PROCEDURAL ORDERS FOR CONTESTED GUARDIANSHIP AND_OR CONSERVATORSHIP HEARING.pdf
JDF823 Instructions for Appointment of Guardian for a Minor.pdf
JDF 800 SC Acknowledgment of Responsibilities (GuardianConservator).docx
JDF826 Consent or Nomination of Minor.docx
FINAL - Flowchart for Appointment of a Guardian - Minor 6-19.pdf
JDF840QG Quick Guide to Appointment of Guardian for Adult.pdf
So now you are a guardian_web.pdf
PPM Contact List 8_5_24.pdf
JDF 852 clean.docx
JDF835 Petition for Termination of Guardianship Minor.docx
JeffCo Case Management Order.pdf
Neher as published.pdf
Estate of Milstein v Ayers.pdf
In re Estate of Runyon.pdf
20250304 Guardianship Essentials CLE Materials Terms and Definitions (003).docx

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Here are our proposed materials. We are not planning to put together a slide deck, instead envision screen sharing instructions/forms/resource
materials as they are being discussed, but are open to suggestion if another approach makes more sense.

WHAT IS A GUARDIANSHIP:

Guardianship Essentials Material Terms and Definitions: attached

Formal Ethics Opinion 126 - Representing the Adult Client With Diminished Capacity

Formal Ethics Opinion 131 - Representing Clients With Diminished Capacity Where the Subject of the Representation is the Client's Diminished Capacity

Interest of Neher, 402 P.3d 1030 (Colo.App. 2015)
In re Estate of Runyon, 343 P.3d 1072 (Colo. App. 2014)
Estate of Milstein v. Ayers, 955 P.2d 78 (Colo. App. 1998)

FILING FOR GUARDIANSHIP:

The JDF Forms and Instructions
Venue
Completing the Petition:
    Instructions for Appointment of Guardian – Adult JDF 840 – attached

Instructions for Appointment of Guardian – Minor JDF 823 – attached

Probate Case Information Sheet: JDF 705 – attached
Consent or Nomination of Minor: JDF 826 -- attached
Acknowledgement of Responsibilities: JDF 800 -- attached
Document Requirements: Driver's License/State ID, CBI check, Credit Report, CAPS authorization

Quick Guide to Appointment of a Guardian – Minor -- Attached
https://www.coloradojudicial.gov/sites/default/files/2023-07/FINAL%20-%20Flowchart%20for%20Appointment%20of%20a%20Guardian%20-%20Minor%206-19.pdf

Quick Guide to Appointment of a Guardian – Adult
https://www.coloradojudicial.gov/sites/default/files/2023-07/JDF840QG.pdf

https://www.coloradojudicial.gov/scorm/protective-proceedings-minor-sp/index.html
SPANISH

Emergency
Document Requirement (see instructions)
Navigating Case Management Orders (aka "Know Your Judicial Officer"): Court CMOs (see attached from JeffCo for initial case management order and trial management order for contested hearings)

GUARDIANSHIP HEARING BASICS:

AFTER THE HEARING:
Order of Appointment
Adult: JDF 848
Minor: JDF 827

Letters of Guardianship
Adult: JDF 849
Minor: JDF 830

Notice of Appointment: JDF 812

Reporting Requirements:
Adult: JDF 850
Minor: JDF 834

Guardian's Manual
https://www.coloradojudicial.gov/sites/default/files/2023-07/Guardian%20Manual%20%28Forms%20removed%29%2012-01-2015.pdf

So Now You Are a Guardian – COBAR pamphlet advising of duties – attached
https://www.cobar.org/Portals/COBAR/Repository/publicDocs/So%20now%20you%20are%

20a%20guardian_web.pdf?ver=nJp0Zp3iJ2LAP2WcQ-fJLQ%3d%3d

PPM Contact List: List of Protective Proceeding Monitors – attached
https://www.coloradojudicial.gov/sites/default/files/2024-08/PPM%20Contact%20List%208_5_24.pdf

Post-Adjudication Right to Counsel C.R.S. § 15-14-319 – *Statute attached*

The presumption is that a ward has the right to hire a private attorney in the following hearings:

- Request for a change/termination of a guardianship/conservatorship
- Review of fiduciary conduct
- Appellate review
- Other petitions for help from the court.

The court has the right to appoint a lawyer when it deems necessary.

Termination

Adult: JDF 852 – attached
Adult Statute: C.R.S. § § 15-14-318

Minor: JDF 835 – attached
Minor Statute: C.R.S. §15-14-210

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VIEW OUR WEBSITES AT: www.ColoradoElderLaw.com **and** www.ColoradoProbateLitigation.com

GUARDIANSHIP ESSENTIALS

2025

PRESENTED BY:
MAGISTRATE BRYCE ALLEN
MARCO D. CHAYET, ESQ.
JENNIFER E. SHALER, ESQ.

Table of Contents

Guardianships In Colorado

DEFINITIONS IN PROTECTIVE PROCEEDINGS

A. **Guardian**: A person appointed by the court to make decisions concerning the person of an incapacitated person.

B. **Incapacitated Person**: A person, other than a minor, who is unable to effectively receive or evaluate information or both or make or communicate decisions to such an extent that the individual lacks the ability to satisfy essential requirements for physical health, safety, or self-care, even with appropriate and reasonably available technological assistance.

C. **Ward**: A person for whom a guardian has been appointed.

D. **Conservator**: A person appointed by the court to make decisions concerning the estate of a protected person.

E. **Protected Person**: A person for whom a conservator has been appointed.

F. **Petitioner**: The person who petitions, or asks, the court for the appointment of a guardian or conservator.

G. **Respondent**: The person for whom the appointment of a guardian or conservator is sought.

H. **Guardianship**: The court procedure for the appointment of a guardian.

I. **Conservatorship**: The court procedure for the appointment of a conservator.

THE DISTINCTION BETWEEN A GUARDIANSHIP OF AN INCAPACITATED PERSON AND A CONSERVATORSHIP

A. A guardianship involves making personal decisions about the incapacitated person, such as where the individual will live, what kind of medical treatment, care and assistance the individual will receive, how the individual will be protected, what kind of supervision the individual will receive, etc. In order to appoint a guardian for an adult, the court must find that the person is incapacitated.

B. A conservatorship involves making financial decisions for, and managing the estate and financial affairs of, a person who is unable to manage property and business affairs effectively because he or she is unable to effectively receive or evaluate information, or both, or to make or communicate decisions, even with the use of appropriate and reasonably available technological assistance, or because the individual is missing, detained, or unable to return to the United States; and the individual has property that

will be wasted or dissipated unless management is provided or money is needed for the support, care, education, health, and welfare of the individual or of individuals who are entitled to the individual's support and that protection is necessary or desirable to obtain or provide money.

THE DUTIES, POWERS, RIGHTS, IMMUNITIES AND LIMITATIONS OF A GUARDIAN

A. A **guardian** has the following **duties** with respect to his or her ward:

1. To make decisions regarding the ward's support, care, education, health, and welfare;

2. To exercise authority only as necessitated by the ward's limitations and, to the extent possible, to encourage the ward to participate in decisions;

3. To act on the ward's own behalf;

4. To help the ward to develop, or to regain, the capacity to manage his or her personal affairs;

5. To become, or to remain, personally acquainted with the ward, and to maintain sufficient contact with the ward to know of the ward's capacities, limitations, needs, opportunities, and physical and mental health;

6. To take reasonable care of the ward's personal effects, and to bring protective proceedings, if necessary, to protect the ward's property;

7. To expend the s money received by the guardian on behalf of the ward for the ward's current needs for support, care, education, health, and welfare;

8. To conserve any excess money of the ward for the ward's future needs, but, if a conservator has been appointed, to pay the money to the conservator;

9. To immediately notify the court should the ward's condition change;

10. To inform the court of any change in the ward's custodial dwelling or address;

11. To immediately notify the court in writing of the ward's death; and

12. **In making decisions, a guardian *shall* consider the expressed desires and personal values of the ward to the extent known to the guardian. At all times, a guardian *shall* act in the ward's best interest and exercise reasonable care, diligence, and prudence.**

B. Unless limited by the court, a **guardian** has the following **powers** with respect to his or her ward:

1. To apply for and receive money payable to the ward;

2. To take custody of the ward, or to establish the ward's place of custodial dwelling within Colorado (the guardian must obtain court approval prior to relocating the ward out of state);

3. If a conservator has not been appointed, and under appropriate circumstances, to commence a proceeding to compel a person to support the ward or to pay money for the benefit of the ward;

4. To consent to medical and/or other care, treatment or service for the ward;

5. If reasonable under all of the circumstances, to delegate to the ward certain responsibilities for the ward's well-being;

6. To consent to the adoption or marriage of the ward, subject to court approval; and

7. The guardian may petition the court for authority to pursue a dissolution of marriage or legal separation on behalf of the ward.

C. A **guardian** has the following **rights** and **immunities** with respect to his ward:

1. To receive reasonable compensation for services as guardian, but only as approved by order of the court unless a conservator, who is not also the guardian, has been appointed;

2. To reimbursement for room and board provided to the ward by the guardian or by one who is affiliated with the guardian, but only as approved by order of the court unless a conservator, who is not also the guardian, has been appointed;

3. A guardian need not use the guardian's personal funds for the ward's expenses;

4. A guardian is not liable to a third person for acts of the ward solely by reason of the relationship;

5. A guardian who exercises reasonable care in choosing a medical provider for the ward is not liable for injury to the ward resulting from the negligent or wrongful conduct of the medical provider.

D. A **guardian** is subject to the following **limitations** with respect to his ward:

1. Without authorization of the court, a guardian may not revoke the ward's medical durable power of attorney. Moreover, if a medical durable power of attorney is in

effect, and absent a court order to the contrary, a health-care decision of the agent takes precedence over that of a guardian.

2. A guardian may not initiate commitment of a ward to a mental health-care institution for involuntary civil commitment, may not seek hospital or institutional care and treatment for mental illness, may not obtain care and treatment from an approved service agency for a ward with developmental disabilities, and may not obtain care and treatment for alcoholism or substance abuse using the guardianship. In each of these circumstances, the guardian must comply with the Colorado law which governs these medical conditions.

THE LIMITS TO THE ROLES OF THE GUARDIAN

A. A guardian is subject to the following limitations and restrictions:

1. The court **shall** consider less restrictive alternative means of providing the necessary protective services for the ward.

2. The court **shall** consider the wishes of the respondent concerning his care, counsel, treatment, service and supervision. The court **shall** also consider such person's views concerning the selection of the guardian, the duties of the guardian, the scope and duration of the guardianship and any limitations or restrictions which should be imposed on the powers of the guardian.

3 The court may set forth limitations or restrictions of the guardian's powers or duties, thereby creating a **limited guardianship**, including the scope and duration of the guardianship and including the extent to which a guardian shall be permitted to give any consents or approvals that may be necessary to enable the ward to receive medical or other professional care, etc.

4. The guardian is not required to provide from his own funds for the incapacitated person and is not liable to third persons for acts of the ward solely by reason of the parental relationship except as provided by law.

5. The guardian cannot use the guardianship case to obtain hospital or institutional care and treatment for mental illness of a ward, to obtain care and treatment from an approved service agency for a ward with developmental disabilities, or to obtain care and treatment for alcoholism. Rather, these services must be secured under different sections of Colorado law. Additionally, the guardian shall not have the authority to consent to any such care or treatment against the will of the ward.

6. The guardian or the ward or any person concerned with the care, counsel, treatment or service of the ward may petition the court at any time for instructions with regard to any such care, counsel, treatment or service.

THE STATE'S STANDARD FOR IMPOSING A GUARDIANSHIP

A. The burden of proof refers to how much evidence must be presented in order to prevail in a case. In a guardianship, the petitioner must prove by **clear and convincing evidence** that a person needs a guardian. *Sabrosky v. Denver Department of Social Services*, 781 P.2d 106 (Colo. App. 1990). Compare this to a criminal case, in which the burden of proof is beyond a reasonable doubt, and a civil case, in which the burden of proof is by a preponderance of the evidence.

B. When the court finds that a person is incapacitated, it must set forth its findings of fact concerning the nature and degree of incapacity and shall determine the nature and extent of the care, assistance, protection or supervision which is necessary or desirable under all of the circumstances, including consideration of less restrictive alternatives.

DETERMINING WHERE TO FILE FOR GUARDIANSHIP--THE INTERSTATE GUARDIANSHIP ACT

A. Colorado has adopted the Interstate Guardianship Act. It is located in the Colorado Statues §15-14.5-101 to 15-14.5-503. This act is the source for all the statutes relating to determining which state and county a person can file for guardianship in. The rules on where you can file for a guardianship changer depending on whether you are filing for an emergency guardianship or a permanent guardianship.

B. The Interstate Guardianship Act explains how to transfer a guardianship from one state to another and how to register the guardianship in the new state. If a guardianship is established, a ward cannot be moved from one state to another without court approval.

THE GUARDIANSHIP PROCESS

A. A guardianship case is started by the filing of a Petition for the Appointment of a Guardian for an Incapacitated Person by the petitioner.

B. Venue for a guardianship case is in the place where the incapacitated person resides or is present, or, if the incapacitated person is admitted to an institution pursuant to order of a court of competent jurisdiction, venue is also in the county in which that court sits.

C. Once a petition is filed, the court will set a date for a hearing on the appointment of a guardian.

D. If an incapacitated person has no guardian, and an emergency exists, the court itself may exercise the power of a guardian, or may appoint an emergency (temporary) guardian without notice or a hearing. In such cases, the petitioner must set forth the allegation of an emergency and the need for a temporary guardian in the petition. The emergency guardian's authority cannot exceed 60 days.

E. Once a guardianship petition is filed, unless the respondent has an attorney of his own choice, the court **shall** appoint a court visitor, by entering an Order Appointing Visitor for Incapacitated Person, who, among other duties, must interview the respondent; interview the person seeking to become guardian; visit or obtain information about where the respondent lives; interview any physician or other person who has provided care, counsel, treatment or service to the respondent in the recent past; and provide the court with a written report on the form provided, called Visitor's Report -- Guardianship Proceedings. The court visitor is "the eyes and ears of the court."

F. The court may appoint a guardian *ad litem* or an attorney to represent the respondent.

G. A physician's letter, setting forth the respondent's medical circumstances and the need for a guardianship, is required before the court will appoint a guardian. If the petitioner cannot procure a physician's letter, the court has the authority to order an evaluation of the respondent.

H. In a guardianship case, a Notice of Hearing and a copy of the petition must be provided as follows:

1. To the respondent, a separate form, in large type, by personal service. The respondent cannot waive notice unless he attends the hearing, or his waiver of notice is confirmed in an interview with the court visitor;

2. To the respondent's spouse, parents and adult children;

3. To any person who is serving as his guardian or conservator, or who has his or her care and custody;

4. In the event that no other person is available to receive notification as set forth above, to at least one of his or her closest adult relatives, if any can be found; and

5. To other persons as the court may direct.

I. A Return of Service, indicating that the respondent has been personally served with notice and the petition, and a Certificate of Mailing, indicating that the other appropriate individuals have received notice, must be filed with the court prior to the hearing.

J. Once the hearing has been held and the court has determined that the appointment of a guardian is appropriate, an Order Appointing Guardian is signed by the judge and the probate registrar issues Letters of Guardianship. If there are any limitations or restrictions on the guardian, they are noted on the Order and the Letters. The Letters are the documents used by the guardian to evidence his or her authority to act on behalf of the ward and protected person.

K. The guardian must sign a document called an Acceptance of Office, indicating that he or she is willing to assume the duties and obligations of a guardian and submitting, personally to the jurisdiction of the court in any proceeding relating to the guardianship that may be instituted by any interested person. The submission of a credit report and a criminal background check is required.

L. If the guardian lives outside of the State of Colorado, he must sign an Irrevocable Power of Attorney Designating Clerk of Court as Agent for Service of Process, in which he designates the clerk of the court to accept service of all notices and process issued by a court or tribunal in the State of Colorado in relation to any suit, matter, cause, hearing, or thing, affecting or pertaining to the guardianship case.

M. The guardian must file an Initial Report of Guardian within 60 days of appointment and must also file a Report of the Guardian at least once a year, or more frequently if required by the court.

WHO MAY SERVE AS GUARDIAN

A. If there are competing requests for appointment as a guardian, the court must consider persons qualified in order of **priority**.

B. In a guardianship proceeding, the following persons have priority for appointment:

1. A guardian, other than a temporary or emergency guardian, currently acting for the respondent in this state or elsewhere;

2. A person nominated as guardian by the respondent at a time when the respondent had sufficient capacity, including the respondent's specific nomination of a guardian made in a durable power of attorney;

3. An agent appointed by respondent under a medical durable power of attorney;

4. The spouse of the respondent or a person nominated by will or other signed writing of a deceased spouse;

5. An adult child of the respondent;

6. A parent of the respondent or a person nominated by will or other signed writing of

a deceased parent; and

7. An adult with whom the respondent has resided for more than six months immediately before the filing of the petition.

C. Restrictions on professionals

1. Unless the court makes specific findings for good cause shown, the same professional may not act as an incapacitated person's or protected person's:

a. Guardian and conservator;

b. Guardian and direct service provider; or

c. Conservator and direct service provider.

(1) In addition, a guardian and conservator may not employ the same person to act as both care manager and direct service provider for the incapacitated person or protected person.

THE RIGHTS OF THE RESPONDENT

A. The respondent is entitled to be present at any court proceeding and to see or hear all evidence presented. He is entitled to be represented by counsel, to present evidence, to cross-examine witnesses, including the court visitor.

B. The court **may** appoint a physician to examine the respondent, who shall submit a written report to the court.

C. In a guardianship case, the court **shall** appoint an attorney for the respondent if he does not have one and if he requests an attorney or expresses a desire to object to the appointment of a guardian. The court **shall** appoint an attorney for the respondent if an emergency guardianship is established. Additionally, if the court believes that the rights and interests of the respondent cannot otherwise be adequately protected or represented, the court **shall** appoint an attorney to represent the person.

D. In a guardianship case, the court **may** appoint a guardian *ad litem* for the respondent. A guardian *ad litem* is a special fiduciary with the responsibility to represent and protect the best interests the person in the guardianship proceeding. In a guardianship case, the respondent is entitled to have the court consider less restrictive alternatives of providing the necessary protective services for him.

E. In a guardianship case, the respondent is entitled to have the court consider his wishes concerning his care, counsel, treatment, service and supervision.

F. In a guardianship case, the respondent is entitled to have the court consider his views concerning the selection of the guardian, the duties of the guardian, the scope and duration of the guardianship and any limitations or restrictions which should be imposed on the powers of the guardian, thereby creating a **limited guardianship**.

   a. Once a guardianship has been established, the incapacitated person has the right to petition the court to terminate the guardianship on the grounds that the person is no longer incapacitated. He or she may also ask for the removal of a guardian and the appointment of a successor guardian.

   b. If the guardianship is no longer necessary, the guardian must petition the court to be released from his or her appointment.

HOW THE COURT MONITORS A GUARDIANSHIP AND ITS ENFORCEMENT POWERS

A. As indicated above, the court requires the guardian to file an Annual Report of Guardian.

B. If the required documents are not filed, the court may issue a Delay Prevention Order requiring the guardian/conservator to file the report by a certain date. Should the guardian fail to comply with the Delay Prevention Order, he or she will be ordered to come before the probate court to show cause why the guardian should not be held in contempt of court for failure to comply with the statutes, or to be removed as the guardian.

C. Every judicial district in Colorado has access or employs a Protective Proceedings Monitor who monitors and oversees required reporting of a guardian.

Oversight of the fiduciaries "in charge of" incapacitated adults is vital to the protection of our most vulnerable clients. A fiduciary includes an agent, administrator, custodian, guardian, conservator, trustee, and personal representative. **The Fiduciary Oversight, Removal, Sanctions and Contempt Act at C.R.S. § 15-10-501 et. seq. allows for a streamlined and defined manner in which a court can maintain the degree of supervision necessary to ensure the timely and proper administration of estates by fiduciaries over whom the court has obtained jurisdiction in both emergency and non-emergency situations.** Remedies can include court ordered investigation of the actions of the fiduciary, temporary restraint on powers, suspension, removal as well as surcharge, sanctions and contempt proceedings if necessary.

Another hot topic facing the clientele of an Elder Law attorney includes the payment from an estate for the reasonable compensation (fees) and costs stemming from the work performed by attorneys, professionals, fiduciaries, and others. This component of law was completely redone by the implementation of the **Compensation and Cost Recovery Act C.R.S. § 15-10-601 et. seq**. This Act repealed all prior statutes regarding the manner in which fees can be paid out of a person's estate. It delineates between those people who are entitled to be paid from an estate and those who must demonstrate that the services rendered bestowed benefit upon the estate from which they are seeking compensation. Most importantly, regardless of whether someone is entitled to fees or they must meet the benefit bestowed standard, ALL fees and costs must be reasonable. This Act very specifically defines the many factors that must be considered in determining the reasonableness of compensation and costs to be paid by an estate and it is stated that the court *"shall consider all of the factors"* listed in C.R.S. § 15-10-603. This statute should be carefully reviewed by all practitioners to better understand the standard that is now in place for the judiciary to review the reasonableness of professional fees and costs.

It is no surprise that there has been a proportional increase in the amount of elder law litigation, mediation, and arbitration under our probate code. A few varied tips to keep in mind: These elder law matters mostly fall under our probate code. Probate courts generally have jurisdiction over decedent estates; incapacitated and disabled adults and their estates, trusts, mental health issues (under jurisdiction of a probate court but with its own mental health code); and also issues involving minors as minors "lack capacity" for many decisions by virtue of age or special needs. **There are unique, and ever changing, Rules of Probate Procedure to be aware of including a rule covering discovery in probate cases (C.R.P.P. 40) and a revised rule regarding the court approval of settlement of claims of persons under disability (old rule C.R.P.P 16 is now new rule C.R.P.P. 62).**

Elder law litigation runs the gamut of life issues facing our clients and their loved ones including the disposition of last remains. While not a pleasant topic, there is litigation that ensues regarding the rights to decide the disposition of a body or last remains. Colorado has a comprehensive, yet not well known, statute governing the rights to disposition of last remains. **The Disposition of Last Remains Act can be found at C.R.S. § 15-19-101-109.** Under this statute, individuals have the right to make a written statement regarding their personal choices on disposition. This document is as binding as a Will when it comes to post mortem wishes. Unfortunately, many individuals do not make final arrangements of any sort. Therefore, the

statute fills this gap by enumerating the list of priority for decision-m making on disposition of remains.

Finally, from an ethical and professional perspective, the practice of Elder Law is not for the faint of heart. On a daily basis you are dealing with family crisis, death, dying, and disability. Often you are tasked with making very serious ethical determinations for your client who may have some degree of diminished capacity. **To get a flavor of the specific requirements (and potential liability) of attorneys in dealing with clients with diminished capacity, we must be intimately familiar with Colorado Rule of Professional Conduct 1.14, Client with Diminished Capacity, Formal Ethics Opinion 126 and 131 as well as the cases of *In Re Sorensen*, 166 P.3d 254 (Colo. App. 2007), *Estate of Milstein v. Ayers*, 955 P.2d 78 (Colo. App 1998), *Interests of Neher,* 402 P.3d 1030 (Colo. App. 2015), and *In re Estate of Runyon,* 343 P.3d 1072 (Colo. App. 2014).**

126

Representing the Adult Client With Diminished Capacity

Adopted May 6, 2015

Scope

This opinion addresses ethical issues that arise when a lawyer believes that an adult client's ability to make adequately considered decisions is diminished. Although Rule 1.14 of the Colorado Rules of Professional Conduct (Colo. RPC or Rules) also addresses a client's diminished capacity due to minority, this opinion is limited to the consideration of ethical issues that arise by reason of the diminished capacity of a client due to reasons other than the client's minority. This opinion does not address representation in adult protective proceedings.[0]

Syllabus

At times, a lawyer may need to consider whether an adult client's capacity to make adequately considered decisions relating to the representation is diminished. If the lawyer reasonably concludes that the client's capacity is diminished in such a manner as to impair the client's ability to make adequately considered decisions regarding the representation, including whether to give informed consent to a course of conduct by the lawyer when required, the lawyer must nevertheless maintain a normal client–lawyer relationship with the client so far as is reasonably possible. If the lawyer reasonably believes that the client's diminished capacity places the client at risk of substantial physical, financial, or other harm unless action is taken and that the client cannot adequately act in the client's own interests, the lawyer should consider whether to take reasonable protective action necessary to protect the client's interests. In taking such protective action, the lawyer should be guided by the wishes and values of the client and the client's best interests, and any protective action taken should intrude into the client's decision-making authority to the least extent feasible. When taking such protective action, the lawyer is impliedly authorized to disclose information relating to the representation which Colo. RPC 1.6 would otherwise prohibit, but the implied authorization is only to the extent reasonably necessary to protect the client's interests. The lawyer should take care to ensure that information thus disclosed will not be used against the client's interests. Differences may arise between the lawyer and client regarding whether or to what extent the client's capacity is diminished, whether the lawyer should disclose information regarding the client's condition despite the

client's lack of consent to such disclosure, or whether the lawyer should take any action to protect the client. These differences may present conflicts between the client's and the lawyer's respective interests, and the lawyer must assess whether those conflicts will materially limit the representation of the client.

Summary of Opinion

Introduction

A lawyer's effective and efficient representation of a client's interests depends substantially upon the client's ability to receive, analyze, and process information and advice received from the lawyer and to accurately inform the lawyer regarding information relevant to the representation. Generally, the client has the right to determine the objectives of the lawyer's representation and to be consulted by the lawyer as to the means by which such objectives are to be pursued. Colo. RPC 1.2(a).

Moreover, many actions that the lawyer takes in the course of representing the client require the client's informed consent, which the Rules define as the client's agreement to a proposed course of conduct after the client has been provided by the lawyer with adequate information and explanation about the material risks of and reasonably available alternatives to the proposed course of conduct. Colo. RPC 1.0(e). Thus, the client–lawyer relationship substantially depends upon the capacity of the client to make the adequately considered decisions that are required in connection with the representation.

Diminished capacity issues can arise in virtually any setting, involving any area of law, where a client–lawyer relationship exists. To illustrate different ethical issues, this opinion uses one transactional and one litigation hypothetical.

1. Transactional scenario—elderly client. A longtime, elderly client meets with you to prepare her estate plan. The client is accompanied by her son. The client directs that the bulk of her estate be left to her son and only a nominal portion be left to her daughter. You draft a will in accordance with those instructions and give it to the client to review. Days later, the client returns, this time accompanied by her daughter. The client explains that, having spoken with her daughter, she now wishes to leave the bulk of the estate to the daughter. You suspect that your longtime client is evidencing signs of dementia and that her two children are taking advantage of her mental state and attempting to unduly influence her testamentary decisions.

2. Litigation scenario—divorce. You represent a wife in a proceeding for dissolution of marriage. After the wife separated from her husband, she was diagnosed with a psychological disorder that interferes with her ability to understand and make decisions based upon your advice. She has instructed you to tell no one about this diagnosis. Your client has no separate assets, and there is a substantial marital estate. Your client tells you that she wants to settle the

proceeding in a manner where she receives no assets or maintenance. You believe that a court would never enter such an order after trial or approve such a settlement upon conscionability review, but if the court did so the result would be the impoverishment of your client.

Maintaining a Normal Client Relationship

Colo. RPC Rule 1.14 contains only one mandatory obligation: "When a client's capacity to make adequately considered decisions in connection with a representation is diminished, whether because of minority, mental impairment, or for some other reason, the lawyer shall, as far as reasonably possible, maintain a normal client–lawyer relationship with the client." Colo. RPC 1.14(a); *accord* Restatement (Third) of the Law Governing Lawyers § 24(1) (2000) (Restatement).

Unlike the discretionary actions permitted under Rule 1.14(b), once the lawyer forms a reasonable belief that the client has diminished capacity, Rule 1.14(a) requires that the lawyer maintain a normal relationship with the client insofar as reasonably possible notwithstanding the client's diminished capacity. The fact that the client suffers from a lack of capacity does not lessen the lawyer's obligation to treat the client with attention and respect. Colo. RPC 1.14, cmt. [2]. This is so even if a guardian or other representative has been appointed for the client and the guardian or other representative is the legal decision-maker with regard to the representation. The lawyer representing a client with diminished capacity should continue to accord the client attention and respect; attempt to communicate and discuss relevant matters with the client; and continue, as far as reasonably possible, to take action consistent with the client's directions and decisions. *See, e.g.*, American Bar Ass'n (ABA) Comm. on Ethics and Prof. Resp. Formal Op. 96-404, "Client Under a Disability" (1996) (ABA Op. 96-404); Or. State Bar Formal Ethics Op. 2005-159, "Competence and Diligence: Requesting a Guardian Ad Litem in a Juvenile Dependency Case" (2005) (Or. Op. 2005-159) (although a client who has become incompetent to handle his own affairs can be difficult to represent, a lawyer must maintain as regular a lawyer-client relationship as possible and must adjust the representation to accommodate the client's limited capacity); *In re Flack*, 272 Kan. 465, 33 P.3d 1281, (2001) (lawyer who knew that client was impaired had a duty to maintain a normal client–lawyer relationship with client, including a duty to abide by her estate planning objectives as far as reasonably possible).

Rule 1.14 recognizes that (a) "the normal client–lawyer relationship is based on the assumption that the client, when properly advised and assisted, is capable of making decisions about important matters," (b) when the client suffers from a diminished mental capacity, maintaining the normal client–lawyer relationship may not be possible "in all respects," and (c) that a client suffering from diminished capacity "often has the ability to understand and deliberate upon, and reach conclusions about matters affecting the client's own well-being."

Colo. RPC 1.14, cmt. [1]. Although Rule 1.14(b) creates a narrow exception to the normal responsibilities of a lawyer to his or her client—permitting the lawyer to take action that by its very nature could be regarded as "adverse" to the client—it does not otherwise diminish the lawyer's responsibilities to the client and certainly does not abrogate the client–lawyer relationship. *See, e.g.*, *In re Laprath*, 2003 S.D. 114, 670 N.W.2d 41 (2003) (Rule 1.14 did not authorize lawyer to represent third party in seeking to have court appoint guardian for his client). The duty to maintain a normal client–lawyer relationship precludes a lawyer from acting solely as an arm of the court, using the lawyer's assessment of the "best interests" of the client to justify waiving the client's rights without consultation, divulging the client's confidences, disregarding the client's wishes, or presenting evidence against the client. *E.g.*, *In Re Lee*, 132 Md. App. 696, 754 A.2d 426 (2000)*; In re Guardianship of Henderson*, 150 N.H. 349, 838 A.2d 1277 (2003*)* (the duty to maintain a normal client–lawyer relationship with the client requires lawyer to represent and advocate the client's interests and avoid assuming the role of guardian *ad litem*).

Assessing the Client's Capacity

Colo. RPC 1.14 does not define "capacity," but, in the context of stating a lawyer's ethical duties in representing a client with diminished capacity, Rule 1.14(a) refers to the pertinent capacity as the client's "capacity to make adequately considered decisions in connection with a representation." Thus, the lawyer should not confuse what may appear to be a client's imprudent or ill-considered decisions with decisions made by the client *because* of a diminished capacity. A client's poor judgment does not warrant protective action under Rule 1.14(b). ABA Op. 96-404 ("Rule 1.14(b) does not authorize the lawyer to take protective action because the client is not acting in what the lawyer believes to be the client's best interest"); Rest. § 24 cmt. [c] (lawyer should not construe as proof of disability a client's insistence upon view of client's welfare that lawyer considers unwise or at variance with lawyer's views). In the transactional scenario described above, where the lawyer is concerned about the client's mental state—about her capacity to make adequately considered decisions about her estate—the lawyer can discuss those concerns with the client alone and away from the client's children. The lawyer also can recommend that the client obtain a doctor's written opinion about her mental abilities, which the lawyer can retain in the client's file as evidence of the client's capacity at or near the time of her execution of estate planning documents.

A client may have the capacity to make adequately considered decisions about some aspects of the representation yet have a diminished capacity to do so with respect to other aspects. The degree of capacity required of the client to make adequately considered decisions concerning the scope and objectives of the representation, including giving informed consent to

proposed actions, necessarily will depend upon the complexity of the factual and legal issues involved in those decisions. Consequently, the lawyer should assess the capacity of the client, and determine if the client suffers from diminished capacity, in the context of those complexities. In the litigation scenario described above, the lawyer already is aware that the client has a diagnosis of a psychiatric disorder but should still apply his or her best judgment about the extent to which the client can continue to participate in the decisions that must be made in the course of her representation. If the lawyer reasonably believes that the client is unable to act in her own interests, the lawyer should consider seeking the appointment of a guardian *ad litem*. *See In re Marriage of Sorensen*, 166 P. 3d 254 (Colo. App. 2007) (Rule 1.14 permits attorney to seek appointment of guardian *ad litem* when attorney reasonably believes the client is unable to act in his or her own interests).

The lawyer's assessment of a client's capacity also is important when the lawyer initiates representation of the client. A client–lawyer relationship is a matter of contract, and the client's capacity to contract is a legal issue. If the lawyer becomes aware during the first meeting with a prospective client that the prospective client may not have the capacity to enter into an agreement to form the client–lawyer relationship, the lawyer may consider other alternatives, including speaking to other appropriate persons. In that circumstance, the lawyer should consider the duties to a prospective client described in Rule 1.18 Colo. RPC. If the lawyer concludes that the prospective client lacks the capacity to enter into the client–lawyer relationship, the lawyer may wish to consider and discuss with the prospective client the establishment of a conservatorship or guardianship by a close relative or person whose interests are aligned with the prospective client in order to protect the prospective client's interests and facilitate representation of the prospective client.

In every situation where the client's capacity to participate in the decision-making process may be diminished, the lawyer must nonetheless endeavor, as far as reasonably possible, to maintain a normal client–lawyer relationship, including communicating and consulting with the client with regard to matters and issues involved in the representation. This may entail special efforts on the part of the lawyer to communicate in a manner that will allow the client to make those decisions concerning the representation that the client's capacity permits. A lawyer is not excused from the duty to communicate with the client simply because the client may suffer from diminished capacity. *See e.g.*, *State ex. rel. Nebraska State Bar Ass'n v. Walsh*, 206 Neb. 737, 294 N.W.2d 873 (1980) (lawyer disciplined for failure to sufficiently explain to deaf mute client the nature of workman's compensation claim and proceedings and necessity of appeal); *In re Brantley*, 260 Kan. 605, 920 P.2d 433 (1996) (lawyer disciplined for failure to adequately communicate with client believed to have diminished capacity); Or. Op. 2005-159

(lawyer should "examine whether the client can give direction on decisions that the lawyer must ethically defer to the client").

Rule 1.14 does not attempt to identify or enumerate the causes or conditions that may result in a client's diminished capacity, other than to explain that the diminishment may be because of "minority [or] mental impairment" or may be "for some other reason." Thus, the lawyer should consider and evaluate any condition that limits or interferes with the client's decision-making capacity, in order to determine whether the condition is such that the client lacks the capacity to make adequately considered decisions regarding the representation within the meaning of the rule.

Comment [6] to Rule 1.14 enumerates several factors the lawyer should consider in assessing the diminishment of a client's capacity:

> the client's ability to articulate reasoning leading to a decision, variability of state of mind and ability to appreciate consequences of a decision; the substantive fairness of a decision; and the consistency of a decision with the known long-term commitments and values of the client.

Comment [6] adds that "[i]n appropriate circumstances, the lawyer may seek guidance from an appropriate diagnostician."[1] ABA Opinion 96-404 observes:

> If a lawyer is unable to assess his client's ability to act or if the lawyer has doubts about the client's ability, Comment [5] [now Comment [6]] to Rule 1.14 suggests it is appropriate for the lawyer to seek guidance from an appropriate diagnostician, particularly when a disclosure of the client's condition to the court or opposing parties could have adverse consequences for the client. Such discussion of a client's condition with a diagnostician does not violate Rule 1.6 (Confidentiality of Information), insofar as it is necessary to carry out the representation. See ABA Informal Opinion 89-1530. For instance, if the client is in the midst of litigation, the lawyer should be able to disclose such information as is necessary to obtain an assessment of the client's capacity in order to determine whether the representation can continue in its present fashion.

The ABA opinion cautions, however, that the lawyer must be careful to limit the disclosure to information that is pertinent to the assessment of the client's capacity and determination of the appropriate protective action, noting that "this narrow exception in Rule 1.6 does not permit the lawyer to disclose generally information relating to the representation."

Thus, if necessary, the lawyer may seek information and assistance from others, such as the client's family members or appropriate diagnosticians, in assessing the client's capacity to make decisions relating to the representation. *See also* N. Y. City Bar Ass'n Formal Op. 1997-2

(1997) (in forming conclusions about the client's capacity, lawyer must take into account not only information and impressions derived from lawyer's communications with client, but also other relevant information that may reasonably be obtained from other sources, and lawyer also may seek guidance from other professionals and concerned parties); State Bar of N.D. Ethics Comm. Op. 00-06 (2000) (lawyer who believes that divorce client will accept offer contrary to her best interests to avoid disclosing her substance abuse problem must determine if client is able to consider her decision adequately; lawyer may consult with professional to determine nature and extent of client's disability); Pa. Bar Ass'n Legal Ethics and Prof. Resp. Comm., Formal Op. 87-214 (1988) (lawyer who reasonably believes that client cannot handle her financial affairs and health care needs may seek court appointment of physician to report to court on threshold issue of client's competence); *see generally*, *Assessment of Older Adults with Diminished Capacity: A Handbook for Lawyers* (ABA Comm'n on Law and Aging and the Am. Psycholog. Ass'n 2005).

The lawyer must take care to ensure that any information that the lawyer discloses in the process of assessing the client's capacity will not be used in a manner that is adverse to the client's best interests. Thus, the lawyer should not disclose client information to persons whose interests are adverse or potentially adverse to those of the client.

Taking Protective Action

As indicated above, Rule 1.14(b) leaves to the lawyer's discretion whether or not to take protective action to protect the client's interests. However, the Rule establishes three predicates for such protective action. The lawyer must "reasonably believe" that the client (1) has diminished capacity, (2) is at risk of substantial physical, financial or other harm unless protective action is taken, and (3) cannot adequately act in the client's own interest.

Under Rule 1.0(i), a "reasonable belief" means that the lawyer "believes the matter in question" and that "the circumstances are such that the belief is reasonable." Thus, while leaving to the lawyer's discretion whether or not to take protective action, Rule 1.14(b) establishes the three conditions precedent enumerated above, to taking protective action, and each of those preconditions must satisfy the objective standard of "reasonable belief" by the lawyer.

In addition to the lawyer's obligation under Rule 1.14(a) to endeavor to maintain a normal client–lawyer relationship with the client suffering from diminished capacity, and the requirements of Rule 1.14(b) for undertaking any protective action, the lawyer should consult with and inform the client with regard to the nature and extent of any protective action the lawyer intends to undertake, providing the client with the lawyer's considerations and reasoning in deciding to take that action. In doing so, the lawyer should consider and respect the client's

desires and values and should attempt to obtain the client's understanding of the need for the contemplated protective action to protect the client's interests. In the litigation scenario, for instance, the lawyer may have to advise the client that the lawyer believes the symptoms relating to her diagnosis may affect her decision-making and that the lawyer is considering alternatives relating to that situation. Those alternatives might include the appointment of a guardian *ad litem* to protect the client's interests in the marital estate and to participate in other decisions arising in the course of the proceedings. In such event, before taking such action, the lawyer should explain and discuss with the client the lawyer's reasons and considerations in proposing such action and describe and explain what steps would be taken in effecting such action. If the client opposes or objects to the proposed protective action and such opposition and objections cannot be resolved, the lawyer should consider whether withdrawal from representation is required.

Reasonably Necessary Action

Under Rule 1.14(b), protective action taken by the lawyer must be "reasonably" necessary to protect the client's interests. The nature and extent of the protective action depends upon the nature and extent of the client's diminished capacity to make adequately considered decisions and the complexity of the decisions needed to be made. The lawyer should be guided by "the client's best interests and the goals of intruding into the client's decision making autonomy to the least extent feasible, maximizing client capacities and respecting the client's family and social connections." Colo. RPC 1.14, cmt. [5]; *see also* ABA Op. 96-404; Vt. Bar Ass'n Advisory Ethics Op. 2006-1 (2006); Conn. Bar Ass'n Prof. Ethics Comm. Informal Op. 04-10 (2004).

If the client's diminished capacity appears to be mild and the client is merely tentative or hesitant in making decisions, the lawyer should provide advice in the simplest terms possible, and, if necessary, in repetitive fashion, providing the client the time to review and digest the advice and the suggested alternatives. In the transactional scenario, for instance, the lawyer may want to advise the client that changing her estate planning documents so quickly depending on which child brought her to the lawyer's office lays a foundation for costly litigation between her children down the road. The lawyer may want to discuss with the client the alternative of resolving family issues about the family's estate through mediation. Providing the client with written advice and alternatives may assist the client in reaching appropriate decisions.

The principle of informed consent that underlies client autonomy normally requires the lawyer to refrain from overly suggestive advice which, due to the lawyer's perceived superior status, may encroach on client autonomy and could lead to a paternalistic relationship. *See* Paul R. Tremblay *On Persuasion and Paternalism: Lawyer Decisionmaking and the Questionably*

Competent Client, 1987 *Utah L.Rev.* 515, 527 (1987). But the client may simply not possess the mental dexterity to make quick decisions, particularly while under a degree of pressure. In such cases the lawyer should provide the client with an opportunity and time to reconsider decisions that were initially made on short notice, preserving the client's autonomy in reaching the final decisions.

When the client needs assistance in making adequately considered decisions regarding the representation, the lawyer may find it useful and appropriate to involve persons whose natural interests are congruent with those of the client, such as trusted family members who may be in a position to help the client make decisions. In the litigation scenario, the lawyer may confer with the client, who is concerned about disclosure of her diagnosis of a psychological disorder, to determine whether there may be trusted friends or family members, perhaps those who are already helping her in other ways, who could also help her make decisions in the divorce litigation.

If another person becomes involved to assist the client in making the necessary decisions, then, to protect the attorney–client privilege, the lawyer's consultation with that person should preferably take place out of the client's presence, with the lawyer keeping the client separately informed about the consultation. However, the client may wish to have family members or other persons participate in discussions with the lawyer. When necessary to assist in the representation, the presence of such persons might not vitiate the attorney–client privilege but the lawyer should take care to avoid an unintended waiver of the privilege.

The application and impairment of the attorney–client privilege is beyond the scope of this opinion. However, Comment [3] to Rule 1.14 states: "The client may wish to have family members or other persons participate in discussions with the lawyer. When necessary to assist in the representation, the presence of such persons generally does not affect the applicability of the attorney–client evidentiary privilege." *See also Rest.* § 70 (the evidentiary privilege is retained when a "person's participation is reasonably necessary to facilitate the client's communication with a lawyer, and if the client reasonably believes that the person will hold the communication in confidence").

The lawyer may consider a client's previously executed power of attorney or other grant of agency, which appointed an individual as an agent for the client with authority to make decisions for the client in areas relating to the representation. Before the lawyer relies on decisions of the agent under the client's previous grant of agency, the lawyer must be satisfied that the client had the ability to understand the import of that grant at the time the client made it.

The lawyer for the client with diminished capacity should become familiar with social agencies or support groups that may be able to provide assistance to the client in making

decisions with respect to matters within their areas of service, and should be prepared to advise the client regarding their services.

In more severe cases of diminishment, the lawyer should consider and advise the client regarding the appointment of a guardian *ad litem* who may have special knowledge and experience in the subject matter involved in the representation to act on behalf of the client in certain areas of the decision-making process, such as determining or changing the objectives of representation or settlement. The appointment of a conservator or special conservator with authority to deal with the client's property to the extent needed in the representation may be proper and may be required by other parties to the transaction or litigation under the circumstances. Under Rule 1.14(b), the lawyer for a client with diminished capacity may seek the appointment of a guardian to protect the client's interests if there is no less drastic alternative. ABA Op. 96-104 (appointment of guardian is a "serious deprivation of the client's rights and ought not to be undertaken if other, less drastic, solutions are available"); Or. Op. 2005-159 (lawyers should seek appointment of guardians only when client "consistently demonstrates lack of capacity to act in his or her own interests and is unlikely to assist in the proceedings").

A lawyer should not seek to be appointed as the client's guardian, "except in the most exigent of circumstances, that is, where immediate and irreparable harm will result from the slightest delay, and even then, only on a temporary basis." ABA Op. 96-404; *accord, In re Laprath*, 670 N.W. 2d at 51. Moreover, the lawyer should not represent a third party petitioning for the appointment of a guardian for the lawyer's client. ABA Op. 96-404; *accord*, *In re Wyatt* 982 A.2d 396 (N.H. 2009); Mass Bar Ass'n Ethics Op. 05-5 (2005) (lawyer may not represent client's son seeking appointment as client's guardian); Va. Legal Ethics Op. 1769 (2003) (legal aid lawyer may not represent daughter seeking appointment of guardian for elderly mother represented by same office in unrelated matter but may seek appointment of guardian if warranted under Rule 1.14); *see also* S.C. Bar Ethics Advisory Op. 06-06 (2006) (law firm may petition court for appointment of conservator and/or guardian for impaired client, but may not represent client's daughter in proceeding to have daughter named as such unless she is already acting as client's representative); *but see* R.I. Supreme Court Ethics Advisory Panel Op. 2004-1 (2004) (lawyer may represent party seeking appointment as guardian over elderly client if lawyer "reasonably believes that a guardianship is in the elderly client's best interest").

Disclosure of Client Information

Rule 1.14(c) is discretionary. It permits the lawyer, when taking protective action pursuant to Rule 1.14(b), to disclose information relating to the representation that Rule 1.6

would require be maintained in confidence absent the client's informed consent to disclosure: "When taking protective action pursuant to paragraph (b), the lawyer is impliedly authorized under Rule 1.6(a) to reveal information about the client, but only to the extent reasonably necessary to protect the client's interests." Correspondingly, Rule 1.6(a) provides: "A lawyer shall not reveal information relating to the representation of a client unless the client gives informed consent, *the disclosure is impliedly authorized in order to carry out the representation,* or the disclosure is permitted by [Rule 1.6(b)]." (Emphasis supplied).

Thus, while Rule 1.14(b) provides that reasonably necessary protective action may include "consulting with individuals or entities that have the ability to take action to protect the client . . .," Rule 1.14(c) limits such a disclosure to what is reasonably necessary to protect the client's interests.

Comment [8] to Rule 1.14 observes that disclosure of the client's diminished capacity could itself adversely affect the client's interests, including, at its extreme, by resulting in proceedings for involuntary commitment of the client. The lawyer must take care to ensure that information disclosed for the purpose of protecting the client's interests is not used against the client's interests. This is particularly tricky in the litigation scenario, where the client's diagnosed psychiatric disorder interferes with her ability to understand the lawyer's advice and disclosure of information concerning the diagnosis could be used to the client's detriment in other issues in the divorce proceedings.

The lawyer must consider whether persons to whom disclosure is proposed have potential conflicting interests with the client's interests that might lead to further disclosure or to use of the information to the client's detriment. The lawyer may wish to consider whether to require confidentiality agreements or similar commitments, or the lawyer's written consent to further disclosure, before making the lawyer's disclosure.

In disclosing information relating to a client with diminished capacity, the lawyer needs to be keenly aware of the limitations. The disclosure must be required in taking reasonably necessary protective action and reasonably necessary to protect the client's interests. Rule 1.0(h) defines the terms "reasonable" and "reasonably," "when used in relation to conduct by a lawyer" in the Rules, as "denot[ing] the conduct of a reasonably prudent and competent lawyer."

Accordingly, a lawyer taking protective action must exercise the care that a reasonably prudent and competent lawyer would exercise with regard to what information is disclosed, to whom it is disclosed, and the possible uses of the information by persons to whom it is disclosed or by others who may learn of it.

The lawyer for the client with diminished capacity should first seek the client's informed consent to disclosure of information in the course of protective action and should explain to the client the information to be disclosed and the lawyer's reasons for seeking

permission to disclose such information. If the client refuses to consent to disclosure or objects to disclosure, the lawyer should give respect and consideration to the client's objections and should make reasonable efforts to assuage the client's concerns in order to obtain the client's informed consent.

This opinion has suggested that the lawyer, acting reasonably prudently and competently, might consider seeking the appointment of a guardian *ad litem* or other fiduciary to protect the interests of the client with a diminished capacity, although the lawyer should avoid seeking such an appointment if less drastic action will suffice. Comment [8] to Rule 1.14 states, in part: "When taking protective action pursuant to paragraph (b), the lawyer is impliedly authorized to make the necessary disclosures, *even when the client directs the lawyer to the contrary*." (Emphasis supplied.) As previously noted, both Rule 1.6(a) and Rule 1.14(c) refer to the lawyer's implied authority to disclose information relating to the representation.

Normally, the law of agency dictates that an agent's implied authority terminates when it is expressly withdrawn or terminated by the principal. Restatement (Third) of Agency, § 3.06. Consequently, when the lawyer takes protective action pursuant to Rule 1.14(b) over the client's objections, the lawyer should exercise his or her authority to disclose information relating to the representation of the client with an especially high degree of care and caution. *See, e.g., Sturdza v. United Arab Emirates*, 644 F.Supp. 2d 50 (D.D.C. 2009) (lawyer sought the appointment of a guardian *ad litem* over the objections of client). If the court finds the client competent to register an objection to the lawyer's conduct, the client's objections might be found to constitute an effective termination of the lawyer's representation.

Termination of Representation

When a client with a diminished capacity to make adequately considered decisions about the representation objects to the lawyer's disclosure of information that the lawyer believes to be necessary in order to protect the client's interests, the lawyer must assess whether an irreconcilable difference impairs the client–lawyer relationship, preventing the lawyer from effectively and competently representing the client. In such an instance, the lawyer must assess whether continued representation of the client would present a conflict requiring the lawyer's withdrawal pursuant to Rule 1.7(a)(2), precluding a representation if there is a significant risk that the representation will be materially limited by the lawyer's personal interest, in combination with Rule 1.16(a), requiring termination of a representation if continuation would result in violation of the Rules of Professional Conduct, *i.e.*, in this case, Rule 1.7(a)(2).

If the lawyer seeks protective action contrary to the directions of the client, then the lawyer's interests are probably adverse to those of the client, and the lawyer cannot represent the

client in the protective proceedings—and possibly not thereafter in the underlying representation. The lawyer may be required to withdraw from representation. Rule 1.14 may thus place the lawyer in the dual positions of having to encroach on client autonomy while also having to withdraw, leaving the client unrepresented at a critical time. If the client is incapacitated (as opposed to suffering diminished capacity), the client may even be unable to form a client–lawyer relationship with a new lawyer to take over the underlying representation. The lawyer should consider such impacts and consequences prior to seeking the protective action that may engender them. The lawyer should be acutely aware of the potential consequences of taking protective action over the client's objections.

In the litigation scenario, for instance, if the lawyer believes protective action is necessary to protect the client's best interests and that the client cannot adequately act in her own best interests or otherwise participate in the litigation, the lawyer may have a conflict of interest with the client, if the client has stated that she does not want her psychiatric disorder disclosed. In that circumstance, the lawyer may have no choice other than to withdraw due to the lawyer's inability to adequately represent the client's interests. Such a dilemma, combined with the other issues of limits on disclosure and whether withdrawal would leave the client in jeopardy of substantial financial harm, render difficult the determination as to a proper course of action under Rule 1.14, when the lawyer reasonably perceives a diminished capacity in the client.

The lawyer should be aware that withdrawal from representation due to taking actions adverse to the client's perceived interest or in contradiction of the client's direction can be a two-edged sword. While the rules may dictate withdrawal, the lawyer also may be leaving a client with diminished capacity without effective representation from the lawyer most likely to have knowledge of the client's positions, intentions, and interests, while leaving the client unable to retain new legal counsel due to the client's diminished capacity. The lawyer may consider petitioning the court for appointment of a guardian *ad litem* under such circumstances.

Disagreements between the lawyer and a client with diminished capacity about disclosure of information relating to the client's mental or physical condition that contributes to or causes the client's diminished capacity or about the nature or extent of protective action to be taken by the lawyer may lead to the client's discharge of the lawyer from the representation. Rule 1.16(a)(3) provides that a lawyer shall not represent a client after the client has discharged the lawyer. Comment [6] to Rule 1.16 notes that a client with severely diminished capacity "may lack the legal capacity" to discharge the lawyer and points out that the lawyer's discharge may be "seriously adverse" to the client's interests. Comment [6] suggests that in such case the lawyer should "make special effort to help the client consider the consequences" and that the lawyer may take reasonably necessary protective action as provided in Rule 1.14. Moreover,

Comment [4] to Colo. RPC Rule 1.2, dealing with the allocation of authority between client and lawyer, states, "In a case in which the client appears to be suffering diminished capacity, the lawyer's duty to abide by the client's decisions is to be guided by reference to Rule 1.14." Thus, the considerations discussed above relating to the client's capacity to make adequately considered decisions relating to the representation, and whether the lawyer should take reasonable action necessary to protect the client from substantial physical, financial or other harm, apply equally to the client's decision to discharge the lawyer.

Notes

[1]. "Protective proceedings" refers generally to guardianship and conservatorship actions. The term stems from the title of the Uniform Guardianship and Protective Proceedings Act, C.R.S. §§ 15-14-101, *et seq.* The term also appears in the Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act, C.R.S. §§ 15-14.5-101, *et seq.* The latter Act defines "protective proceedings" as "a judicial proceeding in which a protective order is sought or has been issued." CRS § 15-14.5-102 (11).

[2]. *See In re Brantley*, 920 P.2d 433 (lawyer violated Rule 1.14 when he failed to personally meet with client to assess her state of mind or understanding of financial affairs prior to filing a petition to establish a voluntary conservatorship for client); *see also* Ind. Ethics Op. 2-2001 (2001) (failure to ascertain client's physical and mental condition and evaluate client's capacity violates Rule 1.14); Or. Op. 2005-159 lawyer should "examine whether the client can give directions that the lawyer must ethically defer to the client").

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REPRESENTING CLIENTS WITH DIMINISHED CAPACITY WHERE THE SUBJECT OF THE REPRESENTATION IS THE CLIENT'S DIMINISHED CAPACITY

Adopted September 13, 2017

Scope

This opinion addresses the representation of clients where the subject of the representation is an adult protective proceeding (guardianship and conservatorship). It also encompasses ethical issues when the lawyer is acting as a *guardian ad litem* in an adult protective proceeding or when the lawyer represents an allegedly incapacitated person. While lawyers are appointed as *guardians ad litem* in the majority of adult protective proceedings, non-lawyers may also be appointed.

The Colorado Bar Association (CBA) has issued a separate formal ethics opinion that addresses representing clients with diminished capacity where the presence of diminished capacity is incidental to the lawyer's representation. *See* CBA Formal Op. 126, "Representing the Adult Client With Diminished Capacity" (2015). This opinion does not cover representation of individuals who are minors or who may have a mental incapacity in addition to their incapacity due to their minority.

Syllabus

A lawyer may become involved in adult protective proceedings in a variety of ways. The lawyer may have a long-term lawyer-client relationship with a client who, over the course of the representation, develops diminished capacity and becomes the

subject of an adult protective proceeding. Perhaps more commonly, the lawyer may become involved in the adult protective proceeding because the individual alleged to have diminished capacity, or an adult child of the allegedly incapacitated person, retains the lawyer for the purpose of representing the allegedly incapacitated person in the adult protective proceeding. In another common scenario, the lawyer may be appointed by the court as counsel for the allegedly incapacitated person. Still other lawyers may be appointed by the court as *guardians ad litem* in the adult protective proceeding.

Whether the lawyer acting as counsel in an adult protective proceeding had a preexisting lawyer-client relationship with the allegedly incapacitated person, is retained to represent that person for the first time as a result of a protective proceeding, or is court-appointed counsel, the controlling ethical rule is Rule 1.14 of the Colorado Rules of Professional Conduct (Colo. RPC or the Rules).

However, Rule 1.14's application to the lawyer in an adult protective proceeding differs from the application of Rule 1.14 when the discovery of diminished capacity is incidental to the legal representation. The lawyer representing the allegedly incapacitated person in an adult protective proceeding is subject to the same considerations relative to lawyer-client privilege and confidentiality under Rule 1.6 that apply to any other lawyer.

If the allegedly incapacitated person's alleged incapacity is so severe that the lawyer cannot form or continue a lawyer-client relationship, the lawyer should decline or withdraw from representation, and if the lawyer has entered an appearance in the protective proceeding, he or she should seek to withdraw from the representation. If

there is no *guardian ad litem* in the protective proceeding when the lawyer seeks to withdraw, the withdrawing lawyer should inform the court of the lawyer's inability to form or continue the lawyer-client relationship and should request the appointment of a *guardian ad litem*. Colo. RPC 1.14, cmt. [7]; see also C.R.S. § 15-14-305 (preliminaries to hearing), C.R.S. § 15-14-309 (right to a lawyer post-adjudication).

Guardians Ad Litem

A lawyer serving as a *guardian ad litem* in an adult protective proceeding has certain different responsibilities and ethical issues. In *People v. Gabriesheski*, 262 P.3d 653 (Colo. 2011), the Colorado Supreme Court ruled that a *guardian ad litem* is an independent officer of the court and the minor is not the *guardian ad litem's* client.[1] *Gabriesheski* involved a minor, not an adult protective proceeding. But, to the extent the role of the *guardian ad litem* for a minor may be similar to the role of the *guardian ad litem* in an adult protective proceeding, *Gabriesheski* may provide some insight. In a dependency and neglect case, the *guardian ad litem* is tasked with investigating, reporting, and representing the child's best interest. As there is no lawyer-client relationship in the traditional sense, the child has no expectation of privacy for communications with the *guardian ad litem*. This part of *Gabriesheski* is the traditional

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[1] In *L.A.N. v. L.M.B*, 292 P.3d, 942 (Colo. 2013) the Colorado Supreme Court ruled that the "GAL's 'client' is the 'best interest of the child,'" *id.* at 949 (citing C.R.S. § 19-3-203(3) (a section of the Colorado Children's Code), & Chief Justice Directive 04-06, "Court Appointments Through the Office of the Child's Representative"). The cited authorities apply only to *guardians ad litem* representing minors. To date, no Colorado

interpretation of the role of a *guardian ad litem* in adult protective proceedings, and is the generally accepted interpretation of how *Gabriesheski* applies in adult protective proceedings.

As an independent actor in protective proceedings, the *guardian ad litem* has no client, and therefore, except to the extent that the Rules apply to all Colorado lawyers, Rule 1.14 and Rule 1.6 are not directly implicated. Rather, because the allegedly incapacitated person is not the *guardian ad litem's* client, the *guardian ad litem* also has no lawyer-client privilege with regard to any information he or she obtains, concerning the allegedly incapacitated person, including information from that person.

Maintaining a Normal Lawyer-client Relationship

The lawyer's effective and efficient representation of any client depends on the client's ability to receive, analyze, and process information and advice received from the lawyer, and to accurately inform the lawyer regarding information relevant to the representation. CBA Formal Op. 126. When the lawyer represents an allegedly incapacitated person, this ability is compromised. The question becomes to what extent the ability to form and maintain a lawyer-client relationship is compromised. Colo. RPC 1.14(a) is implicated in representation of an allegedly incapacitated person. Rule 1.14(a) mandates that the lawyer, "as far as reasonably possible, maintain a normal lawyer–client relationship with the client." Despite the client's diminished capacity, the client retains the right to determine the goals and objectives of the representation and to

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appellate court has opined on the question of who is the *guardian ad litem's* client in an adult protective proceeding

consult with the lawyer concerning the means by which the objectives are obtained. Colo. RPC 1.2(a). Thus, the lawyer must consult with the client and respect and be guided by the client's assessment and direction. Colo. RPC 1.14, cmt. [1]. Still, the lawyer should remain cognizant of the client's limited capacity and how that impacts the client's ability to effectively communicate his or her true intentions.

However, because the lawyer representing the allegedly incapacitated person begins the representation knowing of the alleged incapacity, Rule 1.14(b) applies only in a limited way to permit the lawyer to seek professional assistance in determining how to communicate with the allegedly incapacitated person. In this circumstance, Rule 1.14 would not appear to extend to steps the lawyer would normally take, including "consulting with individuals or entities that have the ability to take actions to protect the client," since the very situation that led to the representation is the incapacity, which the lawyer was aware of at the outset. The first sentence of Rule 1.14(c) applies in that situation, and the lawyer is subject to Rule 1.6. However, the implied exception of the second sentence of Rule 1.14(c) does not apply to the lawyer for the allegedly incapacitated person in an adult protective proceeding, as the lawyer representing the allegedly incapacitated person in such a proceeding represents the client's interests as expressed to the lawyer by the client. The protective proceeding permitted under Rule 1.14(b) is already in progress, and therefore the lawyer may not reveal confidential information, as the reason for this sentence (the right to reveal information so as to pursue appropriate protective proceedings) has already occurred.

Absent a lawyer-client relationship, the *guardian ad litem* should be guided by the

Rules but need not follow the goals and objectives of the allegedly incapacitated person. Rather, the *guardian ad litem* should be guided by what he or she believes, in his or her professional opinion, is in the best interests of the allegedly incapacitated person. The *guardian ad litem* is appointed by the court and is directed by the court to advise the court and act in the best interests of the allegedly incapacitated person, regardless of whether the advice and actions of the *guardian ad litem* are consistent with the goals and objectives of the allegedly incapacitated person.[2]

The primary difference between representing a fully competent client and an allegedly incapacitated client concerns communication. A lawyer representing an allegedly incapacitated person, should adjust his or her interview and communication style so that the allegedly incapacitated client can understand the information provided by the lawyer to the fullest extent possible. This may require the lawyer to modify and simplify language so that the client can understand and internalize it in order to make an informed decision. See Roberta K. Flowers & Rebecca C. Morgan, "Ethics in the Practice of Elder Law," Am. Bar Ass'n, 2013. Such a modification in communication style is similar to the adjustment in language a lawyer might use with a less educated client, compared to the language the lawyer might use with a highly educated client or

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[2] For guardians (as distinguished from *guardians ad litem*), the standard under Colorado law is known as "substituted judgment," C.R.S. § 15-14-314(1)**;** "best interests" is the standard only if the desires and personal values of the allegedly incapacitated person

one who has expertise in the subject matter of the litigation.

The lawyer also may adjust his or her communication technique by accepting the assistance of a third party who enjoys the special confidence of the allegedly incapacitated person. Such person is typically an adult child or other relative of the allegedly incapacitated person, but may be any person in whom the allegedly incapacitated person places special confidence.

While normally the presence of a third party destroys the lawyer-client privilege, this is generally not so if the presence of the third party is necessary to assist in the representation. Colo. RPC 1.14 cmt. [3]. However, the lawyer should be cognizant that in all circumstances, the lawyer's duty is to follow the client's objectives and goals, not to defer to the goals or objectives of the third party assisting the client in communicating with the lawyer. Colo. RPC 1.14, cmt [3].

The lawyer also may communicate with an allegedly incapacitated person using written memoranda to summarize conversations or requesting the client to explain what the lawyer has just stated. This type of interaction between lawyer and client may enable the lawyer to gain a better sense of the client's capacity to grasp, interpret, and retain information.

Another step the lawyer should consider in his or her attempt to maintain a normal lawyer-client relationship includes scheduling meetings with the client at a time of day when the client has the greatest level of capacity, such as early in the day,

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cannot be established. *Id.* By contrast, the "best interests" standard always applies to *guardians ad litem*. *See* C.R.S. § 15-14-314.

immediately after the client has eaten, or after the client has rested.

Requests for Representation by Others Seeking Protective Proceedings

Where the lawyer has had a prior lawyer-client relationship with the allegedly incapacitated person, and an adult relative (typically an adult child or other trusted relative) or others approach the lawyer to commence a protective proceeding against the former client, the lawyer must decline the representation. Colo. RPC 1.9. In the typical situation, the lawyer will have created an estate plan for the allegedly incapacitated person, including creating powers of attorney naming the relative who has approached the lawyer as an agent under the power of attorney, and that agent now wishes the lawyer to commence a protective proceeding against the client. In this situation, the lawyer most likely has obtained confidential information concerning the allegedly incapacitated person that may directly or indirectly impact any protective proceeding. The lawyer may recommend to the agent or relative other lawyers qualified in protective proceedings who might represent the agent or relative, but the lawyer cannot provide information to the referred lawyer concerning the reason for the referral. Colo. RPC 1.6. Note also that the lawyer must not provide referrals to other lawyers in his or her law firm, since all members of the firm are disqualified from accepting representation if one member is disqualified. *Liebnow v. Boston Enterprises, Inc*., 2013 CO 8, 296 P. 3d 108, 118; *see also* Colo. RPC 1.10(a).

Most available guidance for *guardians ad litem* is written in terms of, and applies to appointments in dependency and neglect cases, in which the *guardian ad litem* must act in the minor's best interests. The only existing guidance for *guardians ad litem* in

adult protective proceedings is Chief Justice Directive 04-05, Section VII, "Duties of *Guardians Ad Litem* and Court Visitors Appointed on Behalf of Wards or Impaired Persons." Under that directive, the court appointing the *guardian ad litem* determines the scope of the *guardian ad litem's* duties. The *guardian ad litem* should request clarification of the court's appointing directive as necessary for the *guardian ad litem* to accomplish his or her role in the protective proceeding.

Confusion Among Roles Between Counsel for Allegedly Incapacitated Persons and Guardians *Ad Litem*

Ethical issues frequently arise when a lawyer for an allegedly incapacitated person or a *guardian ad litem* loses sight of his or her role in the legal process. This often occurs when the lawyer continues to represent a client whose capacity has decreased to the point where it is impossible to maintain a meaningful lawyer-client relationship. If the lawyer reasonably believes the client is unable to act in his or her own interests, the lawyer should consider seeking appointment of a *guardian ad litem*. *See In re Sorensen*, 166 P.3d 254 (Colo. App. 2007); Colo. RPC 1.14; CBA Formal Op. 126. If the lawyer determines that the client or potential client cannot form a lawyer-client relationship, the lawyer may take steps to withdraw from the representation or the lawyer may petition the court to convert the lawyer's court appointment to appointment as a *guardian ad litem*. *See* Restatement (Third) of Agency § 1.01 (Agency Defined); § 3.04 (Capacity to Act as Principal); § 3.06(3) (Termination of Actual Authority - in General); § 3.08(1) (Loss of Capacity); *see also* Restatement (Third) of the Law Governing Lawyers § 20 (A Lawyer's Duty to Inform and Consult with a Client); § 31

(Termination of a Lawyer's Authority). If the lawyer seeks appointment as a *guardian ad litem*, the lawyer should remain diligent in protecting confidential or privileged information obtained from the client while the lawyer served in the capacity of lawyer for the allegedly incapacitated person. *See* Colo. RPC 1.6. Before requesting the court to change the lawyer's role from lawyer to *guardian ad litem*, the lawyer should consider whether such a shift in roles might create a conflict of interest, which might not be waivable by the now-incapacitated client.

However, the lawyer may not continue to act on behalf of a client with whom the lawyer can no longer maintain a lawyer-client relationship. Colo. RPC 1.2 requires the lawyer to act in consultation with the client and to abide by the decision of the client. If the client can no longer provide such guidance or consult with the lawyer, the lawyer may not act on behalf of the client. The obverse problem exists for the *guardian ad litem*, whose role is to act and make recommendations in the best interests of the client. The *guardian ad litem* has the duty to consider, but to act independently of, the desires of the allegedly incapacitated person. When the *guardian ad litem* loses sight of this mandate and falls back into the more familiar role of advocate for the allegedly incapacitated person, the lawyer abdicates his or her role as independent advisor to the court, and becomes a self-appointed counsel for the allegedly incapacitated person, contrary to the appointment order.

Conclusion

Adult protective proceedings are an important and growing area of legal representation. However, there is little ethics guidance on representing a client with

diminished capacity in such proceedings, and even less with regard to the role of the *guardian ad litem*.

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402 P.3d 1030 (Colo.App.Div. 4 2015)

2015 COA 103

In the Interest of Galen L. Neher, Protected Person, Appellant,

v.

Christopher L. Neher, Petitioner-Appellee,

and

Ronald W. Servis, Special Conservator, Attorney-Appellee

Court of Appeals No. 13CA1710

Court of Appeals of Colorado, Fourth Division

July 30, 2015

Jefferson County District Court No. 12PR542. Honorable Stephen M. Munsinger, Judge.

Solem Mack & Steinhoff, P.C., R. Eric Solem, Lance E. McKinley, Englewood, Colorado, for Appellant.

Robert A. Lees and Associates, Robert A. Lees, Greenwood Village, Colorado, for Petitioner-Appellee and Attorney-Appellee.

Graham and Terry, JJ., concur.

OPINION

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WEBB, JUDGE.

[¶1] A conservatorship destroys the protected person's autonomy. Not surprisingly, then, even if a person's property " will be wasted or dissipated unless management is provided," Colorado statutes limit the circumstances in which a court can appoint a conservator. § 15-14-401(1)(b)(II), C.R.S. 2014. This appeal centers on the requirement that clear and convincing evidence must show the person is unable to manage his or her property or business affairs *because* the person is " unable to effectively receive or evaluate information." § 15-14-401(1)(b)(I).

[¶2] But should this statute be interpreted -- as respondent/protected person Galen L. Neher (Father) argues -- to also require that the evidence include medical testimony of the inability? We answer this novel question " no," and conclude that although the only medical evidence presented indicated that a conservatorship was not required, the trial

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court's order appointing a permanent conservator was not clearly erroneous. We reject Father's other contentions and affirm that order.

I. Background

[¶3] After receiving several unsolicited e-mails asking for money, Father sent almost $500,000 to anonymous offshore bank accounts in transfers ranging from $1000 to $155,000. Suspecting fraud, his son, Christopher L. Neher (Son), petitioned the court to appoint a special conservator over Father's financial affairs.

[¶4] The same day that Son petitioned, the court appointed him as special conservator and set a hearing. Then Son moved to cancel the hearing and rescind the conservatorship, but if the court decided to continue the special conservatorship, to appoint a third party as conservator. The court denied the motion to rescind and appointed Deputy Public Administrator, Ronald W. Servis, as special conservator. The court also appointed counsel to assist Father in opposing the petition.

[¶5] At the first hearing, the parties agreed that Father would undergo a psychological evaluation. The hearing was continued until September. Dr. Stuart Kutz evaluated Father, but he neither prepared a report nor testified.

[¶6] At the September hearing, Father offered to present evaluations from his primary care physician and his long-term therapist. The court declined to proceed with the hearing on this basis. It granted Son's motion for a psychological evaluation of Father by Dr. Kathryn Kaye and reset the hearing.

[¶7] On January 4, 2013, the court called the matter up for hearing. But before receiving any testimony, the court invited counsel into chambers, without the parties present, for an off-the-record discussion. According to an affidavit from Father's counsel, the court discussed the apparent need for a protective order.

[¶8] When the court resumed the hearing, Dr. Kaye testified and affirmed the conclusion in her filed report that Father did not meet the standards for appointing a conservator. At that point, the parties entered into an oral stipulation, which counsel were to reduce to writing. The stipulation provided

that although Father would retake control of his affairs in February, for one year he would remain under an accounting firm's " monitoring" and Servis's oversight. The stipulation also forbade Father from transferring funds offshore during that time and provided that if he violated any of its restrictions, either Son or Servis could approach the court. However, the parties did not explain exactly what " monitoring" meant.

[¶9] Later, the parties disagreed over the terms to be included in a written stipulation. Because of this disagreement, Servis did not return control of Father's estate to him, and Father moved to enforce the oral stipulation. The court directed the parties to set another hearing, which was scheduled for April.

[¶10] Before that hearing began, the court again invited counsel for both parties to discuss the case in chambers, off the record, and without the parties present. According to the affidavit of Father's counsel, he revealed that Father had attempted to create an offshore trust in the Cook Islands, for the purpose of removing all of his assets from Colorado.

[¶11] On the record, the court heard argument concerning the stipulation but did not receive any evidence. It denied Father's motion to enforce the stipulation, granted Son's request for a second psychological evaluation, and reset the hearing for May.

[¶12] The second psychological evaluation did not occur. Mid-afternoon on the day before the May hearing, Son disclosed Gregory Taylor, a certified public accountant (CPA), as an expert witness. Father's counsel immediately filed a motion to strike the disclosure as untimely and incomplete. He did not request a continuance.

[¶13] Father renewed his objection at the hearing, but again failed to request a continuance. The court allowed Taylor to testify as an expert. After hearing testimony from other experts and Father, the court " continue[d] Mr. Servis' position as the conservator."

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[¶14] Later, the court entered a written order finding by " clear and convincing evidence, pursuant to C.R.S. § 15-14-401(1)(b)(I), that the Respondent [wa]s unable to manage his property and business affairs because he [could not] effectively receive and evaluate information related to the same." The court also found that under section 15-14-401(1)(b)(II), " the Respondent ha[d] property that w[ould] be wasted or dissipated unless management [wa]s provided and that protection [wa]s necessary to protect the Respondent's Estate."

[¶15] Father moved for a new trial under C.R.C.P. 59(a). He also requested the trial judge to recuse, primarily asserting that because the judge " [i]ndicat[ed] an intent to enter a protective order before evidence of any impairment was entered into the record," he had a " bent of mind." The court declined to recuse and denied the motion.

[¶16] Father appeals, primarily on the ground that no medical evidence supported the petition.

II. A Court Can Appoint a Conservator Without Medical Evidence Concerning the Respondent.

[¶17] Father contends the conservatorship statute " clearly requires medical evidence before a court can properly make a determination of whether an individual is impaired." Because the current statute does not include such a requirement and the prior statute was amended to remove language that might have suggested it, we reject this contention.

A. Preservation and Standard of Review

[¶18] We assume, without deciding, that this issue is preserved based on Son's concession that Father preserved this issue by raising it in his written new trial motion, on which the trial court ruled.

[¶19] Questions of statutory interpretation are reviewed de novo. *Colo. Water Conservation Bd. v. Upper Gunnison River Water Conservancy Dist.*, 109 P.3d 585, 593 (Colo. 2005). Because a court's primary duty is to give full effect to the General Assembly's intent as expressed by the language it chose, interpretation begins by examining the statute's plain language within the context of the statute as a whole. *Bd. of Cnty. Comm'rs v. Hygiene Fire Prot. Dist.*, 221 P.3d 1063, 1066 (Colo. 2009). " Words and phrases should be given effect according to their plain and ordinary meaning . . . ." *Farmers Grp., Inc. v. Williams*, 805 P.2d 419, 422 (Colo. 1991). If the statute is " clear and unambiguous on its face," then the court applies it as written. *Wells Fargo Bank, Nat'l Ass'n v. Kopfman*, 226 P.3d 1068, 1072 (Colo. 2010).

B. Law

[¶20] A court may appoint a conservator of an adult if it determines:

(I) By clear and convincing evidence, the individual is unable to manage property and business affairs because the individual is unable to effectively receive or evaluate information or both or to make or communicate decisions, even with the use of appropriate and reasonably available technological assistance, or because the individual is missing, detained, or unable to return to the United States; and

(II) By a preponderance of evidence, the individual has property that will be wasted or dissipated unless management is provided or money is needed for the support, care, education, health, and welfare of the individual or of individuals who are entitled to the individual's support and that protection is necessary or desirable to obtain or provide money

§ 15-14-401(1)(b).

C. Application

[¶21] Father concedes that because " there ha[d] been dissipation of his estate" under section 15-14-401(1)(b)(II), the second prong of the statute was met. Still, he argues that because the statute requires medical evidence to satisfy the " clear and convincing" standard in the first prong, Son did not meet this burden.

[¶22] For the following reasons, we decline to interpret section 15-14-401(1)(b)(I) as requiring medical evidence concerning a respondent.

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[¶23] A statute may expressly require expert testimony. *See, e.g.*, § 16-13-303(6)(b)(III), C.R.S. 2014 (" Traces of a controlled substance were discovered on the currency or an animal trained in the olfactory detection of controlled substances indicated the presence of the odor of a controlled substance on the currency as testified to by an expert witness."). Although the General Assembly knew how to require such evidence, its failure to do so in the conservatorship statute indicates purposeful omission. *SeeShelter Mut. Ins. Co. v. Mid-Century Ins. Co.*, 246 P.3d 651, 662 (Colo. 2011) (" Based on these statutes that designated primary insurers, had the General Assembly wanted to identify an owner's insurer as primary, it knew how to do so."); *see alsoSpecialty Rests. Corp. v. Nelson*, 231 P.3d 393, 397 (Colo. 2010) (" [T]he General Assembly's failure to include particular language is a statement of legislative intent.").

[¶24] Nor does the current statute require the petitioner to show the cause of the respondent's inability to " effectively receive or evaluate information or both or to make or communicate decisions." § 15-14-401(1)(b)(I). The 2000 amendment removed the phrase " mental illness," which might have required medical evidence. *SeeEstate of Hickle v. Carney*, 748 P.2d 360, 361 (Colo.App. 1987) (" Section 15-14-401(3), C.R.S., authorizes the appointment of a conservator only if 'the court determines that the person is unable to manage [her] property and affairs effectively for reasons such as mental illness . . . .'" (quoting previous conservatorship statute)). And " [t]he deletion of statutory language by the legislature renders the language inoperative and indicates that the legislature has admitted a different intent." *Grover v. Indus. Comm'n of Colo.*, 759 P.2d 705, 710 (Colo. 1988) (internal quotation marks omitted).

[¶25] Our interpretation is consistent with other statutes relating to conservatorship proceedings. Under section 15-14-406.5(1), C.R.S. 2014, " the court *may* order a professional evaluation of the respondent," but " *shall* order the evaluation *if* the respondent so demands." (Emphasis added.) Thus, either side or both sides may elect to proceed without medical evidence. And under section 15-14-408(1), C.R.S. 2014, respondents may subpoena an examiner; otherwise, the examiner is not required to testify.

[¶26] Comparing Colorado's statute to the Uniform Probate Code illuminates legislative intent. The Colorado Probate Code " is modeled on the Uniform Law Commissioners' Uniform Probate Code ('UPC'), which Colorado originally adopted in 1974." *Beren v. Beren*, 2015 CO 29, ¶ 13, 349 P.3d 233. Section 15-14-401(1)(b)(I) parallels its UPC counterpart, with one significant exception. The UPC analog requires clear and convincing evidence that " the individual is unable to manage property and business affairs because of *an impairment* in the ability to receive and evaluate information or make decisions." Unif. Probate Code § 5-401(2)(A) (amended 2010) (emphasis added). But the current Colorado statute does not mention the term " impairment," which could have a medical connotation implicating expert testimony.

[¶27] Father's remaining arguments do not support a different outcome:

o Although Colorado's Petition for Appointment of Conservator for Adult form (JDF 876) includes a box to be checked affirming attachment of a physician's letter, the form does not mandate medical evidence; instead, the box merely directs the respondent's and the court's attention to any medical evidence the petitioner has chosen to attach, which could shape further proceedings.

o Likewise, C.R.P.P. 27.1 does not mandate medical evidence; rather, it only sets out the required contents of " [a]ny physician's letter or professional evaluation," should the court demand an evaluation or any of the parties chooses to proceed with one.

o Father's argument that because " medical evidence is almost certainly required for a Protected Person to successfully seek to *terminate* a conservatorship," the same requirement applies to imposing a conservatorship, also fails. Section 15-14-431(3)-(4), C.R.S. 2014, does not include any such requirement. To the contrary, section 15-14-431(4.5)(a)(II)

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makes clear that a conservator " *may* file a motion for instructions concerning" whether " any further investigation or professional evaluation of the protected person should be conducted." (Emphasis added.)

o Father's citation to out-of-state authority is unpersuasive. In *Whitnum-Baker v. Appeal from Probate*, No. FSTCV125013979S, 2013 WL 4734887, at *10 (Conn. Super. Ct. Aug. 12, 2013), the court relied on a statute that explicitly required medical evidence. In *Matter of Guardianship & Conservatorship of Teeter*, 537 N.W.2d 808, 810 (Iowa Ct.App. 1995), the court concluded that " [t]he fact [respondent] may spend money foolishly or give money to a child [wa]s not in itself sufficient to find she [wa]s not competent." Although the court noted the absence of medical evidence, it did not hold that such evidence was required. And in *In re Conservatorship of Trout*, No. W200801530COAR3CV, 2009 WL 3321337, at *15 (Tenn. Ct.App. Oct. 15, 2009), the court made no mention of a medical evidence requirement.

[¶28] Therefore, we conclude that section 15-14-401 does not require medical evidence. To the extent Father asserts alternatively that Son's evidence was otherwise insufficient to satisfy the " clear and convincing" standard, we address and reject that argument below in Part IV.

III. The Trial Court Did Not Commit Reversible Error by Denying Father's Motion to Enforce the Stipulation

A. Additional Background

[¶29] Recall that during the April hearing, the trial court denied Father's motion to enforce the oral stipulation. But the court considered only Father's motion, Son's written opposition, and further argument from counsel. It did not receive any evidence.

[¶30] Son's counsel brought up conduct by Father at odds with the stipulation. This conduct included using electronic transfers that could not be monitored by the accounting firm, as contemplated by the oral stipulation, and setting up at least one bank account without involving that firm, which the oral stipulation required. Father's counsel did not dispute these assertions or seek to elicit testimony from Father to rebut them.

[¶31] The court did not make any findings concerning material terms on which either the parties had failed to agree or the parties had agreed but were ambiguous. Still, it ruled, " [w]e don't have a stipulation or order yet."

B. Preservation and Standard of Review

[¶32] Father preserved this issue in his motion to enforce the stipulation.

[¶33] Whether parties have entered into a settlement agreement is generally a factual determination, *DiFrancesco v. Particle Interconnect Corp.*, 39 P.3d 1243, 1247 (Colo.App. 2001), which will be upheld if supported by competent evidence. *City of Boulder v. Farmer's Reservoir & Irrigation Co.*, 214 P.3d 563, 569 (Colo.App. 2009). But where " the parties relied solely on the transcript memorializing the settlement discussions, and their dispute was centered not on underlying facts, but on the conclusions to be drawn from that document," because " the trial court's ruling necessarily was based on its interpretation of the written transcript," appellate review is de novo. *DiFrancesco*, 39 P.3d at 1247. An appellate court can affirm a trial court's ruling for any reason supported by the record, even if that reason was not argued to, or addressed by, the trial court. *SeeRoque v. Allstate Ins. Co.*, 2012 COA 10, ¶ 7, 318 P.3d 1.

C. Law

[¶34] " We interpret a settlement agreement using common law contract principles." *Draper v. DeFrenchi-Gordineer*, 282 P.3d 489, 493 (Colo.App. 2011). Thus, " for a settlement to be binding and enforceable, there must be a meeting of the minds as to the terms and conditions of the compromise and settlement." *H. W. Houston Constr. Co. v. Dist. Court*, 632 P.2d 563, 565 (Colo. 1981) (internal quotation marks omitted). If a court finds that the parties intended

to create a binding settlement agreement, the court must then consider whether the parties agreed on all essential terms. *DiFrancesco*, 39 P.3d at 1248 (No binding agreement exists " if it appears that further negotiations are required to work out important and essential terms."). Whether a term is essential is determined by the parties' intent, " as disclosed upon consideration of all surrounding facts and circumstances." *Am. Min. Co. v. Himrod-Kimball Mines Co.*, 124 Colo. 186, 190, 235 P.2d 804, 807 (1951).

D. Application

[¶35] Father contends the trial court erred when it refused to enforce the oral stipulation. Son responds that because " the parties were in disagreement of an essential term of the [s]tipulation," the trial court did not abuse its discretion. We agree with the trial court, but for a different reason.

[¶36] As for the " terms of the stipulation as dictated into the record," the parties now take predictably opposing views of whether, as of the January hearing, those terms were " clear and unambiguous." *Royal v. Colo. State Pers. Bd.*, 690 P.2d 253, 255 (Colo.App. 1984). Still, " [t]he parties' disagreement over the meaning does not in and of

itself create an ambiguity in the contract." *Hamill v. Cheley Colo. Camps, Inc.*, 262 P.3d 945, 950 (Colo.App. 2011). We need not decide whether the parties failed to agree on one or more material terms, which would be a question of fact, or agreed on such terms that were fatally ambiguous, which would be a question of law.

[¶37] At the April hearing, both counsel provided the court with indications that Father had already acted contrary to the terms discussed at the January hearing. Even if the parties had agreed on all material terms, and terms such as " monitor" were unambiguous, in January the parties recognized that if Father acted contrary to the restrictions, either Son or Servis could bring Father before the court during the year covered by the stipulation.

[¶38] Therefore, even assuming that the court should have found the oral stipulation enforceable, the court still proceeded consistent with that stipulation by holding a hearing on whether to make the conservatorship permanent.

IV. The Trial Court Did Not Err by Denying Father's Motion for a New Trial

[¶39] Father contends the trial court abused its discretion when it denied his motion for a new trial. On appeal, Father points out that his motion " set[] forth multiple irregularities in the proceedings." But because he provides argument only about the " in camera discussions required by the court" and the court's decision " permitting last minute testimony from a CPA rather than requiring further medical evidence," we decline to address any other alleged irregularities. *SeeExtreme Constr. Co. v. RCG Glenwood, LLC*, 2012 COA 220, ¶ 26, 310 P.3d 246 (declining to review where party " provides no supporting argument or authority for [a] specific assertion"). As to these issues, we conclude that the trial court did not abuse its discretion.

A. Preservation and Standard of Review

[¶40] Father preserved the untimely expert designation issue by moving to strike Taylor, objecting to Taylor's testimony at the May hearing, and renewing this issue in moving for a new trial.

[¶41] Appellate review of " a trial court's decision on a motion for a new trial under C.R.C.P. 59 [is] for abuse of discretion." *Antolovich v. Brown Grp. Retail, Inc.*, 183 P.3d 582, 608 (Colo.App. 2007). The abuse of discretion standard also applies to rulings on expert witness disclosures. *SeeWarden v. Exempla, Inc.*, 2012 CO 74, ¶ 30, 291 P.3d 30. Thus, our standard of review is the same whether we address the court's initial ruling allowing Taylor to testify or its denial of the new trial motion as to this issue.

[¶42] Whether Father preserved any issue concerning the discussions in chambers outside of his presence raises a closer question. The earliest objection appears in the new trial motion. *SeeDenny Constr., Inc. v. City & Cnty. of Denver*, 170 P.3d 733, 740 (Colo.App. 2007) (Because defendant did not object at trial or otherwise " raise the issue until

after judgment, when it filed a motion for an amendment of the judgment pursuant to C.R.C.P. 59," it waived issue on appeal.), *rev'd on other grounds*, 199 P.3d 742 (Colo. 2009). Still, because Son does not dispute preservation and error, if any, was harmless, we elect to treat the issue as preserved.

B. In Chambers Conferences

[¶43] At both the January and April hearings, the court stopped the proceedings and directed counsel into chambers for discussion, without the parties present. Father argues that doing so was improper and this irregularity denied him a fair trial. As to exactly why, however, his arguments lack clarity.

[¶44] In his opening brief, Father refers to his motion to recuse the trial judge and the supporting argument. In his reply brief, Father argues more specifically that because the judge told the parties at the January hearing that he believed a protective order was necessary before having heard any evidence, the judge " had to [have] some degree prejudged the case." According to Father, " [w]hatever evidence [he] and his counsel presented, the outcome would not be in [his] favor because some form of control over [his] affairs was already contemplated by the trial court."

[¶45] But to the extent the court's comments presented a ground for recusal, Father should have moved immediately under C.R.C.P. 97. *SeeAaberg v. Dist. Court*, 136 Colo. 525, 529, 319 P.2d 491, 494 (1957) (" [I]f grounds for disqualification are known at the time the suit is filed . . ., a motion to disqualify should be filed prior to taking any other steps in the case. Failure to promptly assert known grounds of disqualification . . . may well constitute a waiver thereof."). Instead, he participated in the ongoing proceedings before this judge and sought recusal only after a permanent conservator had been appointed. *SeePeople in Interest of A.G.*, 262 P.3d 646, 652 (Colo. 2011) (" In particular, Colorado courts have held that when a party knows of grounds for disqualification but waits to file a motion until after an adverse judgment has been issued, the motion is barred by waiver.").

[¶46] To the extent Father argues that his absence from the discussions in chambers denied him a fair trial, this argument fails for the following reasons:

o Father's counsel did not object to the court conferring with both counsel in chambers.

o Father's counsel did not request that Father be present.

o Because both counsel were present throughout the conferences, no improper ex parte communications occurred.[1] Therefore, we discern no ground for reversal.

C. Expert Testimony

[¶47] Father contends that allowing Taylor to testify as an expert, " in lieu of input from a psychologist" and despite the conservatorship statute's " requirement of medical evidence," constituted both an irregularity in the proceeding and an error of law warranting a new trial. Our conclusion that the conservatorship statute does not require medical evidence also forecloses this argument.

[¶48] Alternatively, Father contends that the " last-minute" nature of Taylor's disclosure " deprived [him] of the right to offer counter evidence, and came as a total surprise in that the requirement of medical evidence was now suddenly ignored." Also, Father argues that " disclosure of Mr. Taylor as an expert witness on the eve of trial violated C.R.C.P. 26(a)(2)."

[¶49] To begin, we do not condone the late endorsement of witnesses. *SeeDaniels v. Rapco Foam, Inc.*, 762 P.2d 717, 719 (Colo. App. 1988).

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And the trial court's allowing Taylor to testify, without making findings concerning either any excuse for Son's untimely disclosure or prejudice to Father, as required under *Todd v. Bear Valley Village Apartments*, 980 P.2d 973, 978 (Colo. 1999), is troubling. Still, these irregularities do not require reversal because Father's counsel failed to request a continuance.

[¶50] The failure to disclose an expert witness " in a timely fashion" may prejudice the opposing party " by denying that party an adequate opportunity to defend against the evidence."

[¶51]*Id.* at 979. Prejudice was more likely here because, based on the trial court's prior order, Father's counsel may have been expecting expert testimony from a psychologist but had no reason to anticipate such testimony from a CPA.

[¶52] Even so, " [a]bsent a request for an extension or continuance, we find no prejudice and no error." *Newell v. Engel*, 899 P.2d 273, 277 (Colo.App. 1994). Thus, because Father did not request a continuance, either when moving to strike the witness or at the hearing, the decision allowing Taylor to testify -- even if erroneous -- does not warrant reversal. *Id.* [2]

D. Insufficient Evidence

[¶53] Finally, we consider Father's argument that Son did not meet his burden of producing " clear and convincing evidence" that Father was " unable to effectively receive or evaluate information or both or to make or communicate decisions." But we view his argument through the lens of our conclusions that the conservatorship statute does not require medical evidence and the trial court did not reversibly err by admitting Taylor's testimony.

1. Standard of Review

[¶54] " It is the responsibility of the trier of fact to determine the credibility of the witnesses, the weight, probative effect and sufficiency of the evidence." *Wright Farms, Inc. v. Weninger*, 669 P.2d 1054, 1056 (Colo.App. 1983). Thus, " [o]n appeal, the factual findings of the trial court sitting without a jury are not to be disturbed unless clearly erroneous and not supported by the record." *In re Marriage of Hoffman*, 650 P.2d 1344, 1345 (Colo.App. 1982). In such cases, appellate courts are " obligated to search the record for evidence to support the findings of fact." *Bockstiegel v. Bd. of Cnty. Comm'rs*, 97 P.3d 324, 328 (Colo.App. 2004).

2. Law

[¶55] As discussed above, the conservatorship statute required Son to show by " clear and convincing evidence" that Father was " unable to manage property and business affairs because [he] [wa]s unable to effectively receive or evaluate information or both or to make or communicate decisions." § 15-14-401(1)(b)(I).

3. Application

[¶56] The trial court heard testimony from Taylor, Dr. Kaye, and Father.

[¶57] Taylor's admission that he lacked medical expertise is potentially problematic. Under section 15-14-406.5(1), " [i]f the court orders [an] evaluation, the respondent must be examined by a physician, psychologist, *orother individual* appointed by the court who is qualified to evaluate the respondent's alleged impairment." (Emphasis added.)

[¶58] According to the " well-worn canon of statutory construction *noscitur a sociis*, a word may be known by the company it keeps." *St. Vrain Valley Sch. Dist. RE-1J v. A.R.L.*, 2014 CO 33, ¶ 22, 325 P.3d 1014 (internal quotation marks omitted). This canon suggests that any such " other individual" should have had medical expertise. In any event, contrary to the requirements of section 15-14-406.5,

Taylor never met with

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Father. For these reasons, we give little weight to Taylor's testimony.

[¶59] The primary medical expert evidence came from Dr. Kaye, who testified that Father did not meet the standard for appointment of a conservator. However, Dr. Kaye testified that she was not aware of the details surrounding Father's offshore transactions -- because she was not asked to review documents describing the alleged e-mail scams. Thus, the court could have concluded that her opinion lacked a sufficient factual basis. Also, because her report used the term " incapacitated," rather than the applicable standard under the conservatorship statute, the court may have concluded that her opinion lacked credibility, despite her testimony that she actually applied the correct standard.

[¶60] The trial court accepted a letter that Father offered from Sandra Chelist, a therapist who, over several years, had treated him for depression and anxiety. She wrote that " [a]t no time during his treatment did he present as incapacitated in any manner," and that she " would consider his ability to communicate his thoughts and process abstract emotional material as excellent." She testified to Father's " high degree of cognitive functioning through the course of his treatment and therapy," and she " had no concerns" leading her " to think the conservatorship or guardianship were in order." However, when questioned whether he " ever discuss[ed] how he was managing his property or his business affairs," she responded, " [o]nly in passing," explaining that " [i]t was not something that [they] discussed at length." Thus, like Dr. Kaye, the court could have discounted her opinion because she did not consider Father's financial management.

[¶61] But even if all of the properly admitted expert testimony favored Father, the trial court was not bound to accept expert testimony. *Cooper Inv. v. Conger*, 775 P.2d 76, 81 (Colo.App. 1989) (trial court not bound to accept expert testimony about fair market value of collateral " even though it was undisputed"). Therefore, we turn to other evidence before the court, and conclude that this evidence shows the court's findings supporting its appointment of a receiver were not clearly erroneous.

[¶62] Son presented uncontroverted evidence of the offshore transfers, totaling almost $500,000. In a letter to the court, Father explained that he had " involvement in several international alternative energy research settings." He added that " $155,000 went directly to research expenses," and " $302,000 went not to scams, but to international funding activities that were initiated by others because of interest in [his] research." Yet, at the May hearing, he asserted his Fifth Amendment privilege and refused to discuss his " international work."

[¶63] To be sure, section 15-14-401 precludes imposing a conservatorship on the sole basis of imprudent investments. But the court could have concluded that Father had fallen prey to obvious fraud.[3] And from Father's repeated participation in similarly suspicious transactions, the court could have reasonably inferred that Father was " unable to manage property and business affairs because [he] [wa]s unable to effectively receive or evaluate information or both." § 15-14-401(1)(b)(I).

[¶64] Father's letter to the court strengthens this inference because he did not explain why he continued taking out loans and wiring money to bank accounts that Taylor described as " nameless" and " faceless," based on unsolicited proposals from sources that he had done nothing to verify by determining the transferee's identity, finding out exactly how the money would be used, or otherwise evaluating the validity of the proposed transaction. As well, in a civil case, the finder of fact may draw an adverse inference from assertion of the Fifth Amendment privilege. *SeeAsplin v. Mueller*, 687 P.2d 1329, 1332 (Colo.App. 1984) (collecting cases); *see alsoMatter of Estate of Trogdon*, 330 N.C. 143, 409 S.E.2d 897, 902 (N.C. 1991) (" [T]he finder of fact in a civil cause may use a

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witness' invocation of his fifth amendment privilege against self-incrimination to infer that his truthful testimony would have been unfavorable to him."); *Flournoy v. Wilz*, 201 S.W.3d 833, 838 (Tex. Ct.App. 2006) (" Rather, as civil litigants, the Flournoys' assertions of the Fifth Amendment and refusals to testify gave rise to the adverse inference, or presumption, that they sought to conceal unfavorable evidence."), *rev'd on other grounds*, 228 S.W.3d 674 (Tex. 2007).

[¶65] Therefore, because " [o]ur review of the record here reveals sufficient evidence to support the trial court's determination," we will not disturb the court's ruling. *Wright Farms*, 669 P.2d at 1056.

E. Cumulative Error

[¶66] Father cites no authority applying the cumulative error doctrine in a civil case. Although the doctrine finds frequent mention in criminal decisions of our supreme court and divisions of this court, we decline to extend it to civil cases. *CompareBaxter v. Archie Cochrane Motors, Inc.*, 271 Mont. 286, 895 P.2d 631, 633 (Mont. 1995) (" To date, this Court has applied the doctrine of cumulative error exclusively in criminal cases. We decline to extend it to civil cases based on the facts of this case."), *withEstis*

Trucking Co., Inc. v. Hammond, 387 So.2d 768, 773 (Ala. 1980) (" Although the cumulative error doctrine announced in Blue was there applied in a criminal case, it is equally applicable in civil cases."). Such a significant expansion of precedent -- which very few jurisdictions have done -- is more properly the province of our supreme court. *SeeState v. Byers*, 554 N.W.2d 744, 749 (Minn.Ct.App. 1996) (" We decline the invitation to extend the existing law, while recognizing that there may be merit to the suggestion, because we consider it more appropriately the province of the supreme court.").

V. Conclusion

[¶67] The orders appointing a permanent conservator over Father's estate and denying his motion for a new trial are affirmed.

JUDGE GRAHAM and JUDGE TERRY concur.

Notes:

[1]Even if Father's absence from the conferences in chambers could have due process implications, because he does not raise this argument on appeal, we decline to address it. *SeeMountain States Beet Growers' Mktg. Ass'n v. Monroe*, 84 Colo. 300, 308, 269 P. 886, 888 (1928) (" It is the general rule and practice, both in the federal and state courts, not to pass upon constitutional questions, unless it is essential to the disposition of the pending cause."). But avoiding discussions of the merits in chambers that are both off the record and in the parties' absence would eliminate due process and other challenges to the decision based on a party's absence.

[2]Father correctly points out that a continuance would have disadvantaged him by extending the special conservatorship pending further proceedings. But because numerous criminal cases -- where continued incarceration makes the consequences much more severe -- turn on failure to have sought a continuance, we conclude that the rule applies here with equal force. *See, e.g.,Gorum v. People*, 137 Colo. 1, 2-3, 320 P.2d 340, 341 (1958); *People v. Kraemer*, 795 P.2d 1371, 1375 (Colo.App. 1990).

[3]For example, one of the alleged scams involved someone who claimed he knew a person from Afghanistan who had over $20 million in a bank account but had died in a roadside bombing. The solicitor told Father that he could recover the money if Father transferred a significantly smaller sum of money overseas and claimed a relationship to the decedent.

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343 P.3d 1072
Colorado Court of Appeals, Division IV.

IN RE the ESTATE OF Sidney L. RUNYON, Protected Person.
Department of Veterans Affairs, Interested Non–Party Respondent,
and
Elizabeth Knight and Gladys Runyon, Petitioners–Appellants,
v.
BOKF, N.A., d/b/a Colorado State Bank and Trust, Appellee.

Court of Appeals No. 14CA0261
|
Announced December 31, 2014

Synopsis

Background: Bank, which was the payee of recipient's Department of Veterans Affairs (VA) benefits, petitioned for appointment of guardian for recipient. The District Court, Arapahoe County, James F. Macrum, J., appointed guardian, conservator, and Uniform Veterans' Guardianship Act guardian for recipient. Recipient's mother and sister appealed.

Holdings: The Court of Appeals, Navarro, J., held that:

[1] status of recipient's mother and sister as designated payees of recipient's Social Security Administration (SSA) and Veterans Affairs (VA) benefits did not render mother and sister current guardians or conservators of recipient, as could entitle mother and sister to statutory priority in trial court's determination of who to appoint as guardian, and

[2] trial court was required to make finding that recipient had sufficient capacity to express a nomination preference at time of nominations for guardian and conservator, prior to court accepting recipient's preferences as to which guardians and conservator should be appointed.

Remanded with directions.

Procedural Posture(s): On Appeal.

West Headnotes (6)

[1] **Mental Health** Scope of review in general and trial de novo

An appellate court reviews the trial court's appointment of a guardian or conservator for an abuse of discretion.

4 Cases that cite this headnote

[2] **Mental Health** Authority, duties, and liability of guardians in general

A guardianship under the Uniform Veterans' Guardianship Act is of limited effect and relates primarily to the receipt of veterans' benefits. Colo. Rev. Stat. Ann. §§ 28-5-202(6), 206(1).

[3] **Mental Health** Persons Who May Be Appointed

The Uniform Veterans' Guardianship Act (UVGA) does not preclude a court from considering the order of priority set forth in the general conservatorship or guardianship statute when deciding whom to appoint as a UVGA guardian. Colo. Rev. Stat. Ann. §§ 28-5-202(6), 206(1), 15-14-120, 15-14-310(1).

2 Cases that cite this headnote

[4] **Mental Health** Heirs, next of kin, and relatives in general

Status of recipient's mother and sister as designated payees of recipient's Social Security Administration (SSA) and Veterans Affairs (VA) benefits did not render mother and sister current guardians or conservators of recipient, as could entitle mother and sister to statutory priority in trial court's determination of who to appoint as guardian of recipient; with regard to such benefits, a federal agency, not a court, generally

selected the representative payee. Colo. Rev. Stat. Ann. §§ 15-14-310(1), 15-14-413(1); 20 C.F.R. § 416.621(a)(1); 38 C.F.R. §§ 13.55, 13.58.

[5] **Mental Health** Persons Who May Be Appointed

Trial court was required to make finding that subject of guardianship proceeding had sufficient capacity to express a nomination preference at time of nominations for guardian and conservator, prior to court accepting subject's preferences as to which guardians and conservator should be appointed, where subject did not testify at hearing, subject's sister called into question subject's mental capacity to nominate, and no medical or other testimony was presented supporting subject's capacity to nominate. Colo. Rev. Stat. Ann. §§ 15-14-310(2), 15-14-413(2).

1 Cases that cite this headnote

[6] **Mental Health** Persons Who May Be Appointed

An incapacitated person may still be able to express an intelligent view as to his choice of guardian, which view is entitled to consideration by the court. Colo. Rev. Stat. Ann. §§ 15-14-310(2), 15-14-413(2).

***1073** Arapahoe County District Court No. 13PR717, Honorable James F. Macrum, Judge

Attorneys and Law Firms

Elizabeth Knight and Gladys Runyon, Pro Se

Mona S. Goodwin, Denver, Colorado, for Appellee BOKF, N.A.

Opinion

Opinion by JUDGE NAVARRO

¶ 1 Gladys Runyon and Elizabeth Knight appeal the trial court's orders appointing a guardian, conservator, and Uniform Veterans' Guardianship Act guardian for their relative, Sidney L. Runyon. We remand with directions.

I. Background

¶ 2 Gladys Runyon (Mother) was the authorized payee for Sidney Runyon's Department of Veterans Affairs (VA) benefits until August 2011, when Elizabeth Knight (Sister) became the payee. In February 2012, the VA designated the Colorado State Bank and Trust (Bank) as payee.

¶ 3 The Bank petitioned for appointment as Runyon's guardian under the Uniform Veterans' Guardianship Act (UVGA), §§ 28–5–201 to –223, C.R.S.2014, in Denver Probate ***1074** Court. The Bank also filed a petition nominating Jeanette Goodwin as Runyon's guardian under the probate code. The Denver Probate Court concluded that the Bank's petitions were not filed in the proper venue. But it appointed Goodwin as emergency guardian. That appointment expired in August 2012.

¶ 4 Ten months after the expiration of the emergency guardianship, Mother and Sister sought appointment as co-guardians and conservators in Arapahoe County. The trial court appointed a visitor to interview Runyon, Mother, and Sister. Runyon advised the visitor that he did not want Mother and Sister appointed as his conservators and guardians. Based on the visitor's report, the court appointed counsel for Runyon.

¶ 5 The Bank then entered an appearance, sought appointment as conservator and UVGA guardian, and nominated Goodwin as guardian.

¶ 6 At the appointment hearing in December 2013, it was uncontested that Runyon was an incapacitated person who needed both a guardian and a conservator. Runyon's attorney explained that he had met with Runyon and had learned Runyon's preferences as to who should be appointed guardian

and conservator. The attorney told the trial court that Runyon preferred the Bank and Goodwin, rather than Mother and Sister. Although present, Runyon did not address the court. Still, relying on Runyon's preferences, the court appointed the Bank as conservator/UVGA guardian and Goodwin as guardian under the probate code.

II. Appointment of Goodwin and the Bank

¶ 7 Mother and Sister contend that the trial court erred in appointing Goodwin and the Bank, rather than them, to manage Runyon's affairs. Specifically, Mother and Sister assert that (1) their purported status as designated payees for Runyon's VA and Social Security Administration (SSA) benefits entitled them to be appointed as co-conservators and co-guardians and (2) the court should not have given effect to Runyon's preferences. We disagree with the first point but remand for further proceedings on the second point.

A. Standard of Review

¶ 8 "The grounds for appeal from an order appointing a guardian [or conservator] are limited." A. Kimberley Dayton et al., *Advising the Elderly Client* § 34:40 (2014). Trial courts are in a "better position to judge the character, and appropriateness of those who would be guardian or conservator" because they preside over the appointment hearing. *Id.* Thus, " 'much must be left to the sound discretion of the trial judge.' " *In re Mitchell,* 914 S.W.2d 844, 848 (Mo.Ct.App.1996) (quoting *In re Gollaher,* 724 S.W.2d 597, 600 (Mo.Ct.App.1986)); *see also id.* at 848–49 ("[T]he decision of whom to appoint lies within the sound discretion of the trial court."); *In re Guardianship of Kowalski,* 478 N.W.2d 790, 792 (Minn.Ct.App.1991) ("The appointment of a guardian is a matter peculiarly within the discretion of the probate court.").

[1] ¶ 9 As a result, an appellate court reviews the trial court's appointment of a guardian or conservator for an abuse of discretion. *See Koshenina v. Buvens,* 130 So.3d 276, 280 (Fla.Dist.Ct.App.2014); *In re Moses,* 273 Ga.App. 501, 615 S.E.2d 573, 575 (Ga.Ct.App.2005); *In re Estate of Johnson,* 303 Ill.App.3d 696, 236 Ill.Dec. 880, 708 N.E.2d 466, 472 (1999); *Kowalski,* 478 N.W.2d at 792; *In re Conservatorship of Lundgaard,* 453 N.W.2d 58, 63 (Minn.Ct.App.1990); *Keyser v. Keyser,* 81 S.W.3d 164, 168 (Mo.Ct.App.2002); *In re Estate of Haertsch,* 437 Pa.Super. 187, 649 A.2d 719, 720–21 (1994); *In re Conservatorship of Gaaskjolen,* 844 N.W.2d 99, 101 (S.D.2014); *In re Guardianship of Blare,* 589 N.W.2d 211, 213 (S.D.1999); *In re Tyler,* 408 S.W.3d 491, 495 (Tex.App.2013). A trial court abuses its discretion if its decision is manifestly arbitrary, unreasonable, or unfair. *Freedom Colo. Info., Inc. v. El Paso Cnty. Sheriff's Dep't,* 196 P.3d 892, 899 (Colo.2008); *see also Mitchell,* 914 S.W.2d at 848 (In reviewing a decision on whom to appoint as guardian or conservator, " 'appellate courts should defer to [the trial judge's] discretion unless the ruling is against the circumstances, underlying policies, [statutory] preferences of appointment, ... or against the weight of the evidence to support the judgment.' " (quoting ***1075** *Gollaher,* 724 S.W.2d at 600)). An abuse of discretion also occurs if a court misapplies the law. *Freedom Colo. Info.,* 196 P.3d at 899.

B. General Principles

1. Appointment of Guardians

¶ 10 A "guardian" is "an individual at least twenty-one years of age, resident or non-resident, who has qualified as a guardian of a minor or incapacitated person pursuant to appointment by a parent or by the court." § 15–14–102(4), C.R.S.2014. When appointing a guardian, a trial court must find by clear and convincing evidence that the respondent [1] is an incapacitated person whose needs cannot be met by less restrictive means. § 15–14–311(1)(a), C.R.S.2014; *see also In re Estate of Morgan,* 160 P.3d 356, 358 (Colo.App.2007). An "[i]ncapacitated person" is a person, other than a minor, "who is unable to effectively receive or evaluate information or both or make or communicate decisions to such an extent that the individual lacks the ability to satisfy essential requirements for physical health, safety, or self-care, even with appropriate and reasonably available technological assistance." § 15–14–102(5).

¶ 11 The probate code sets forth the "order of priority" a court shall consider when selecting a guardian. § 15–14–310(1), C.R.S.2014. The first two priorities are relevant here:

> (a) A guardian, other than a temporary or emergency guardian, currently acting for the respondent in this state or elsewhere; [and]
>
> (b) A person[2] nominated as guardian by the respondent, including the respondent's specific nomination of a guardian made in a durable power of attorney or given priority to be a guardian in a designated beneficiary agreement made pursuant to article 22 of this title.

Id. But a respondent's nomination of a guardian creates a priority for that nominee only if the respondent had "sufficient capacity to express a preference" at the time of the nomination. § 15–14310(2).

¶ 12 The comment to section 15–14–310 makes clear that the respondent may nominate a guardian orally at the appointment hearing. § 15–14–310 cmt.; *see* § 2–5–102(1)(c), C.R.S.2014 (revisor of statutes may add such editorial notes and other matter as deemed appropriate by the committee on legal services). Although this comment is not a part of the statute, we find it persuasive because it is identical to the comment to section 5–310 of the Uniform Guardianship and Protective Proceedings Act, on which section 15–14–310 is based. *See* § 15–14–101, C.R.S.2014; Unif. Guardianship & Protective Proceedings Act § 5–310 cmt. (amended 1997/1998), 8 Pt. III U.L.A. 70–71 (2014); *see also* § 15–14–121, C.R.S.2014 ("In applying and construing this uniform act, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it."); *Copper Mountain, Inc. v. Poma of Am., Inc.*, 890 P.2d 100, 106 (Colo.1995) ("Without more, we accept the intent of the drafters of the uniform law as that of our own General Assembly by its verbatim enactment of the uniform act provision.").

¶ 13 Finally, "for good cause shown," a court may decline to appoint a person having statutory priority and, instead, appoint a person "having a lower priority or no priority." § 15–14–310(3).

2. Appointment of Conservators

¶ 14 A "conservator" is "a person at least twenty-one years of age, resident or non-resident, who is appointed by a court to manage the estate of a protected person." § 15–14–102(2). As relevant here, a court may appoint a conservator in relation to the estate and affairs of an individual if the court finds:

> ***1076** (I) By clear and convincing evidence, the individual is unable to manage property and business affairs because the individual is unable to effectively receive or evaluate information or both or to make or communicate decisions, even with the use of appropriate and reasonably available technological assistance, or because the individual is missing, detained, or unable to return to the United States; and
>
> (II) By a preponderance of evidence, the individual has property that will be wasted or dissipated unless management is provided or money is needed for the support, care, education, health, and welfare of the individual or of individuals who are entitled to the individual's support and that protection is necessary or desirable to obtain or provide money.

§ 15–14–401(1)(b), C.R.S.2014.

¶ 15 The order of priority relevant to selecting a conservator is similar to that applicable to a guardian. Once again, the first and second priorities are pertinent here:

> (a) A conservator, guardian of the estate, or other like fiduciary appointed or recognized by an appropriate court of any other jurisdiction in which the protected person resides; [and]
>
> (b) A person nominated as conservator by the respondent, including the respondent's specific nomination of a conservator made in a durable power of attorney or given priority to be a conservator in a designated beneficiary agreement made pursuant to article 22 of this title, if the respondent has attained twelve years of age.

§ 15–14–413(1), C.R.S.2014.

¶ 16 As with the selection of a guardian, a respondent's nomination of a conservator creates a priority if the

respondent had "sufficient capacity to express a preference" at the time of the nomination. § 15–14–413(2). The respondent may nominate a conservator orally at the appointment hearing. § 15–14–413 cmt.; Unif. Guardianship & Protective Proceedings Act § 5–413 cmt. (amended 1997/1998), 8 Pt. III U.L.A. at 102–03.

¶ 17 A court may decline to appoint as conservator a person having priority and instead appoint a person having "a lower priority or no priority," provided there is good cause to do so. § 15–14–413(4).

3. Appointment of UVGA Guardians

[2] **[3]** ¶ 18 A trial court may appoint a UVGA guardian to receive the VA benefits of a ward [3] when, for example, the ward has been rated mentally incompetent by the VA. §§ 28–5–204, –202(2), C.R.S.2014. An individual, partnership, or corporation may file a petition for appointment as a UVGA guardian. §§ 28–5–202(6), –206(1), C.R.S.2014. A UVGA guardianship "is of limited effect and relates primarily to the receipt of veterans' benefits." *In re Estate of Roosa,* 753 P.2d 1028, 1037 (Wyo.1988). VA documentation that the ward is incompetent "shall be prima facie evidence of the necessity" to appoint a UVGA guardian. § 28–5–208, C.R.S.2014. The UVGA does not prescribe an order of priority for appointment if there are competing petitions. *See Roosa,* 753 P.2d at 1036–37. Thus, the UVGA does not preclude a court from considering the order of priority set forth in the general conservatorship or guardianship statute when deciding whom to appoint as a UVGA guardian. *Cf.* § 15–14–120, C.R.S.2014 (stating that the UVGA prevails over any *inconsistent* provision of the general guardianship and conservatorship statutes).

C. Further Proceedings Are Necessary to Determine Whether the Trial Court Acted Within Its Discretion

¶ 19 Because the statutory provisions are similar, we engage in a single analysis of the trial court's appointment of a guardian, conservator, and UVGA guardian for Runyon.

1. Mother and Sister Were Not Current Guardians or Conservators

[4] ¶ 20 Neither Mother nor Sister fell within the first statutory priority for appointment because neither was a current guardian or conservator. *See* §§ 15–14–310(1)(a), –413(1)(a). With respect to an adult ward, a guardian is a person who has qualified as a guardian "pursuant to appointment ... by ***1077** the court." § 15–14–102(4); *see also* § 15–14–301, C.R.S.2014 ("A person becomes a guardian of an incapacitated person upon appointment by the court."). Becoming a conservator also requires appointment by a court. § 15–14102(2). There was no evidence that a court had appointed Mother or Sister to any role.

¶ 21 Moreover, standing alone, Mother and Sister's purported appointments as designated payees of Runyon's SSA and VA benefits did not qualify them as current guardians or conservators. The SSA's first priority for appointment as representative payee for an SSA beneficiary is a "legal guardian, spouse (or other relative) who has custody of the beneficiary or who demonstrates a strong concern for the personal welfare of the beneficiary." 20 C.F.R. § 416.621(a)(1) (2014). Under this regulation, the SSA may select a person as a representative payee even if that person has not been appointed by a court as a fiduciary. Similarly, the VA's selection of an authorized payee of a ward's benefits is not limited to those who have been appointed by a court. *See* 38 C.F.R. §§ 13.55, 13.58 (2014). In both instances, the federal agency—not a court—generally selects the representative payee.

¶ 22 Furthermore, as to Runyon's VA benefits, Mother and Sister were *removed* as payees by 2012—before the proceedings at issue here.

¶ 23 Accordingly, neither Mother nor Sister qualified under the first statutory priority for appointment as guardian or conservator. [4]

2. The Trial Court Did Not Determine Whether Runyon Had Sufficient Capacity to Nominate

[5] ¶ 24 The second statutory priority for appointment is a person nominated by the respondent. §§ 15–14–310(1)(b), –413(1)(b). Through his attorney at the hearing, Runyon nominated the Bank as conservator/UVGA guardian and Goodwin as guardian. The trial court accepted those nominations.

¶ 25 Mother and Sister argue that the court could not accept Runyon's preferences expressed at the hearing because he was an incapacitated person who needed a guardian and a conservator to manage his affairs. To the extent Mother and Sister contend that an incapacitated person's nomination can never create priority for the nominee, we disagree. Because, however, the record does not show that the trial court found that Runyon had sufficient capacity to express a preference at the time of the nominations, a remand is necessary.

[6] ¶ 26 As noted, a respondent's nomination creates priority for the nominee only if, at the time of the nomination, "the respondent had sufficient capacity to express a preference." §§ 15–14–310(2), –413(2). But a finding that the respondent is an "incapacitated person" within the terms of the statute does not necessarily mean that the respondent lacks sufficient capacity to express a preference as to a guardian or conservator. Neither the definition of incapacitated person nor the criteria for appointment of a conservator automatically exclude the ability to make a rational choice as to the selection of a guardian or conservator. *See* §§ 1514–102(5), –401(1)(b). Therefore, an incapacitated person may "still be able to express an intelligent view as to his choice of guardian, which view is entitled to consideration by the court." *In re Guardianship of Macak,* 377 N.J.Super. 167, 871 A.2d 767, 772 (App.Div.2005).

¶ 27 Indeed, by explaining that a respondent may nominate a guardian or conservator orally at the appointment hearing itself, the drafters of the uniform law recognized that an incapacitated person may possess sufficient capacity to express such a preference. *See* §§ 15–14–310 cmt., –413 cmt.; *cf.* *Copper Mountain,* 890 P.2d at 106 (giving deference to the intent of the drafters of the uniform law). In other words, the statutory scheme permits a trial court to find that the respondent both needs protection and has ***1078** sufficient capacity to nominate a guardian or conservator. *See Moses,* 615 S.E.2d at 575 (affirming trial court's order that respondent needed a guardian but had sufficient capacity to nominate a guardian); *Kowalski,* 478 N.W.2d at 793 (holding that the trial court abused its discretion when it found that the incapacitated person did not have the capacity to express a preference because the medical testimony indicated that she had the capacity to do so); *see also In re Estate of Romero,* 126 P.3d 228, 231 (Colo.App.2005) ("The appointment of a conservator or guardian is not a determination of testamentary incapacity of the protected person.").

¶ 28 Even so, the trial court made no finding as to Runyon's capacity to nominate at the hearing. The court's explanation for giving effect to Runyon's preferences for guardian and conservator was as follows:

> [T]he Court's heard the evidence in this case and has reviewed the file. The Court in both the guardianship proceeding pursuant to CRS 15–14–310 in considering priority of nomination must consider a person nominated as guardian, includ[ing] the Respondent's specific nomination of a guardian.
>
> With respect to a conservator under CRS 1514–413 [the Court] must consider a person nominated as conservator by the Respondent. In both cases the Respondent, Mr. Sidney Runyon, has requested that the Bank and Ms. Goodwin be appointed in their respective positions. The Court finds that this is the wish of Sidney Runyon and the Court will abide by his wishes.

¶ 29 The absence of a finding on Runyon's capacity to nominate is troubling in light of the following circumstances:

- Runyon did not testify at the hearing, and his preferences were expressed only through his court-appointed attorney.
- Although Runyon's counsel cited Rule of Professional Conduct 1.14 and represented that Runyon could "guide me and direct me with regard to his opinion and what he wants to have happen in his own affairs," his counsel did not explicitly affirm that Runyon had sufficient mental capacity to express a preference as to his guardian or conservator. *Cf.* Colo. RPC 1.14 cmt. 1 (A "severely incapacitated person may have no power to make legally binding decisions.").
- At the hearing, Sister called into question Runyon's capacity to nominate when she claimed that he had

nominated the Bank and Goodwin only because "he is not altogether there," due to his mental illness.

- Although Runyon had told the court visitor that he did not want Mother and Sister to serve as guardian and conservator, he had also told the visitor that he wanted his "wife" to serve in both capacities. There is no evidence that Runyon was married, and it appears that he may have been referring to one of his caregivers.

- No medical or other testimony was presented supporting Runyon's capacity to nominate. *Cf.* *Kowalski,* 478 N.W.2d at 793 (testimony of medical experts showed that respondent had the capacity to nominate).

- In its order appointing Goodwin as guardian, the trial court found that Runyon "is a 100% service-connected disabled veteran suffering from a severe and persistent mental illness.... He has little or no insight into his mental illness and demonstrates impaired judgment."

For these reasons, we cannot affirm the trial court's decision to give effect to Runyon's preferences.

¶ 30 Although the trial court—upon a showing of good cause—had the authority to appoint the Bank and Goodwin regardless of the validity of Runyon's nominations, the court did not make any findings relevant to good cause. See §§ 15–14–310(3), –413(4).

¶ 31 Accordingly, the record does not adequately support the trial court's selection of Runyon's guardian and conservator/UVGA guardian.

III. Remand Order

¶ 32 We remand to the trial court with directions to hold an evidentiary hearing to ***1079** determine whether Runyon had sufficient capacity to nominate the Bank and Goodwin when he nominated them in December 2013. If the court finds that he had such capacity, the court should reaffirm the appointments of the Bank and Goodwin. If the court does not find that Runyon had sufficient capacity to nominate a conservator or guardian, the court should consider whether in December 2013 another person had statutory priority and whether good cause existed to appoint the Bank, Goodwin, or another person notwithstanding any statutory priority. The Bank shall remain as conservator/UVGA guardian and Goodwin as guardian until further order of the trial court.

JUDGE WEBB and JUDGE KAPELKE * concur.

All Citations

343 P.3d 1072, 2014 COA 181

Footnotes

1 "Respondent" means an "individual for whom the appointment of a guardian or conservator ... is sought." § 15–14–102(12), C.R.S.2014.

2 "Person" means an "individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, government, governmental subdivision, agency, or instrumentality, or any other legal or commercial entity." § 15–14102(10).

3 A "ward" under the UVGA is a "beneficiary of the [VA]." § 28–5202(8), C.R.S.2014.

4 Runyon appointed Mother as an agent under a durable power of attorney for health care in 2010. Such an agent has the third statutory priority for appointment as guardian and has no priority for appointment as conservator. See § 15–14–310(1)(c), C.R.S.2014. Hence, as will be discussed, Runyon's nomination of Goodwin and the Bank created the highest priorities for appointment available to the court.

* Sitting by assignment of the Chief Justice under provisions of Colo. Const. art. VI, § 5(3), and § 24–51–1105, C.R.S.2014.

In re Estate of Runyon, 343 P.3d 1072 (2014)

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KeyCite Yellow Flag - Negative Treatment
Declined to Extend by Mann v. Boatright, 10th Cir.(Colo.), February 15, 2007

955 P.2d 78
Colorado Court of Appeals,
Div. V.

In the Matter of the ESTATE OF Letty MILSTEIN, an incapacitated person,
and
John Milstein, an Interested Person, Appellants,
v.
Patricia AYERS, Guardian–Appellee.

No. 97CA1150.
|
Feb. 5, 1998.

Daughter filed involuntary petition to have guardian and conservator appointed for allegedly incapacitated person (AIP). After the Probate Court, City and County of Denver, C. Jean Stewart, J., entered order finding AIP incapacitated and appointing permanent guardian and conservator, AIP and her son, as interested person, appealed. The Court of Appeals, Rothenberg, J., held that: (1) son had third-party standing to raise issues involving deprivations of AIP's rights; (2) AIP had unequivocal statutory right to attend all hearings; (3) AIP had right to retain private counsel and to have counsel present at hearings; (4) court did not have authority to conduct ex parte and uncounselled in-home interview with AIP; (4) all orders determining AIP's mental capacity and authorizing expenditures from her estate were invalidated by deprivation of AIP's right to counsel.

Order reversed and cause remanded with directions.

West Headnotes (19)

[1] Mental Health
Nature and Grounds

257A Mental Health
257AIII Guardianship and Property of Estate
257AIII(A) Guardianship in General
257Ak101 Nature and Grounds

Because guardianship proceeding involves potential deprivation of fundamental rights and liberties, it implicates constitutional issues.

1 Cases that cite this headnote

[2] Mental Health
Parties

257A Mental Health
257AIII Guardianship and Property of Estate
257AIII(A) Guardianship in General
257Ak124 Parties

Third party standing is available in guardianship proceeding as proceeding involves potential deprivation of fundamental rights and liberties.

Cases that cite this headnote

[3] Action
Persons Entitled to Sue

13 Action
13I Grounds and Conditions Precedent
13k13 Persons Entitled to Sue

To have standing to assert right of third party not before court, party before court must demonstrate injury to himself or herself sufficient to guarantee concrete adverseness.

Cases that cite this headnote

[4] Action
Persons Entitled to Sue

13 Action
13I Grounds and Conditions Precedent
13k13 Persons Entitled to Sue

To assert third-party standing, at least one of following factors must be present: (1) substantial relationship between party before court and third party; (2) difficulty or improbability that person who has suffered deprivation of his or her rights will be able to assert it; or (3) need to avoid dilution of third party's rights in event standing is not permitted.

Cases that cite this headnote

[5] **Mental Health**
Parties

257A Mental Health
257AIII Guardianship and Property of Estate
257AIII(A) Guardianship in General
257Ak124 Parties

Son had third-party standing to raise on appeal deprivations of his mother's rights as allegedly incapacitated person (AIP) in probate court; appointment of guardian abridged son's contacts with mother in satisfaction of injury-in-fact requirement, relationship between AIP and party asserting her rights was substantial, opposing parties' challenges to AIP's standing severely impaired her ability to assert her rights, and AIP's rights might be diluted in absence of son's participation.

1 Cases that cite this headnote

[6] **Mental Health**
Presence of Disordered Person

257A Mental Health
257AIII Guardianship and Property of Estate
257AIII(A) Guardianship in General
257Ak137 Hearing and Determination
257Ak138 Presence of Disordered Person

Allegedly incapacitated person (AIP) has unequivocal statutory right to attend in person any court proceedings bearing upon her condition. West's C.R.S.A. § 15–14–303(4).

Cases that cite this headnote

[7] **Mental Health**
Presence of Disordered Person

257A Mental Health
257AIII Guardianship and Property of Estate
257AIII(A) Guardianship in General
257Ak137 Hearing and Determination
257Ak138 Presence of Disordered Person

Probate court had no discretion to bar allegedly incapacitated person (AIP) from permanent orders hearing on basis of prehearing statement taken by probate court "in lieu of testimony" in ex parte and uncounselled in-home interview, even assuming that interview was otherwise proper. West's C.R.S.A. § 15–14–303(4).

Cases that cite this headnote

[8] **Mental Health**
Appearance and Representation by Attorney; Guardian Ad Litem

257A Mental Health
257AIII Guardianship and Property of Estate
257AIII(A) Guardianship in General
257Ak133 Appearance and Representation by Attorney; Guardian Ad Litem
(Formerly 257Ak137.1)

Allegedly incapacitated person (AIP) has right to retain counsel to represent her in guardianship proceedings. West's C.R.S.A. § 15–14–303(4).

Cases that cite this headnote

[9] **Mental Health**
Appearance and Representation by Attorney; Guardian Ad Litem

257A Mental Health
257AIII Guardianship and Property of Estate
257AIII(A) Guardianship in General
257Ak133 Appearance and Representation by Attorney; Guardian Ad Litem

Probate court erred in dismissing allegedly incapacitated person's (AIP's) counsel upon appointment of guardian ad litem (GAL), as appointment of GAL, who represented different interests than counsel, did not substitute for counsel. West's C.R.S.A. § 15–14–303(4).

Cases that cite this headnote

[10] **Mental Health**
Appearance and Representation by Attorney; Guardian Ad Litem

257A Mental Health
257AIII Guardianship and Property of Estate
257AIII(A) Guardianship in General
257Ak133 Appearance and Representation by Attorney; Guardian Ad Litem

Guardian ad litem (GAL) acts as special fiduciary and makes informed decisions for

allegedly incapacitated person (AIP), whereas counsel is advocate for and represents legal interests of the AIP.

1 Cases that cite this headnote

[11] Mental Health
Appearance and Representation by Attorney; Guardian Ad Litem

257A Mental Health
257AIII Guardianship and Property of Estate
257AIII(A) Guardianship in General
257Ak133 Appearance and Representation by Attorney; Guardian Ad Litem

Probate Code does not confer discretion on court to deny counsel if allegedly incapacitated person (AIP) has chosen to be represented by counsel. West's C.R.S.A. § 15–14–303(4).

Cases that cite this headnote

[12] Mental Health
Personal Examination

257A Mental Health
257AIII Guardianship and Property of Estate
257AIII(A) Guardianship in General
257Ak137 Hearing and Determination
257Ak142 Personal Examination

Probate court did not have authority to conduct ex parte in-home interview with allegedly incapacitated person (AIP). West's C.R.S.A. § 15–10–101 et seq.

Cases that cite this headnote

[13] Mental Health
Personal Examination

257A Mental Health
257AIII Guardianship and Property of Estate
257AIII(A) Guardianship in General
257Ak137 Hearing and Determination
257Ak142 Personal Examination

Information obtained by probate judge in conducting unauthorized ex parte in-home interview with allegedly incapacitated person (AIP) could not be used to support findings that AIP lacked legal capacity to retain her own counsel. West's C.R.S.A. § 15–14–303(4).

Cases that cite this headnote

[14] Mental Health
Evidence

257A Mental Health
257AIII Guardianship and Property of Estate
257AIII(A) Guardianship in General
257Ak135 Evidence

Evidence adduced at permanent orders hearing from which allegedly incapacitated person (AIP) and her attorney were barred in violation of her statutory rights could not be used to support finding that AIP lacked legal capacity to retain private counsel. West's C.R.S.A. § 15–14–303(4)

Cases that cite this headnote

[15] Courts
Review and Vacation of Proceedings

106 Courts
106V Courts of Probate Jurisdiction
106k202 Procedure in General
106k202(5) Review and Vacation of Proceedings

Issue of whether probate judge erred in denying interested person's motion for recusal in guardianship proceedings was mooted when judge elected to recuse herself on her own motion while appeal was pending.

Cases that cite this headnote

[16] Courts
Operation and Effect in General

106 Courts
106II Establishment, Organization, and Procedure
106II(K) Opinions
106k107 Operation and Effect in General

Supreme Court's refusal to issue rule to show cause and to exercise original jurisdiction upon petition for extraordinary writ has no substantive significance; it indicates neither approval nor disapproval of trial court ruling upon which original proceeding is brought.

1 Cases that cite this headnote

[17] Costs

Nature and Form of Judgment, Action, or Proceedings for Review

102 Costs
102X On Appeal or Error
102k259 Damages and Penalties for Frivolous Appeal and Delay
102k260 Right and Grounds
102k260(5) Nature and Form of Judgment, Action, or Proceedings for Review

Argument that Supreme Court's prior denial of extraordinary relief constituted decision on merits of issues raised on later appeal from probate court orders was substantially frivolous, and thus opposing party was entitled to award of reasonable and necessary fees incurred in responding to proponent's argument. West's C.R.S.A. § 13–17–102.

Cases that cite this headnote

[18] Mental Health

Determination and Disposition

257A Mental Health
257AIII Guardianship and Property of Estate
257AIII(A) Guardianship in General
257Ak148 Review
257Ak157 Determination and Disposition

On remand from appeal reversing all orders determining allegedly incapacitated person's (AIP's) mental capacity or authorizing expenditures from her estate because of deprivation of AIP's right to counsel, probate court would be directed expeditiously to conduct hearing on appropriateness of expenditures and to determine whether all or part of court-ordered fees and costs awarded fiduciaries and attorneys should be disgorged.

Cases that cite this headnote

[19] Mental Health

Attorney Fees

257A Mental Health
257AIII Guardianship and Property of Estate
257AIII(A) Guardianship in General
257Ak158 Costs
257Ak159 Attorney Fees

Guardian, guardian ad litem (GAL) and their attorneys were not entitled to reimbursement from allegedly incapacitated person's (AIP's) estate for costs and fees incurred in making substantially frivolous argument on appeal. West's C.R.S.A. § 13–17–102.

Cases that cite this headnote

Attorneys and Law Firms

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Opinion

Opinion by Judge ROTHENBERG.

In this involuntary guardianship proceeding, Letty Milstein, an allegedly incapacitated person (AIP), and John Milstein, an interested person and the AIP's son (son), appeal the comprehensive protective order entered by the probate court. We reverse and remand for a new hearing.

In April 1996, the AIP's daughter filed an involuntary petition to have a guardian and conservator appointed for the AIP. Appearing through counsel, the AIP contested the petition, but the court issued orders appointing a temporary and limited guardian and a temporary and limited conservator for the AIP.

In January 1997, the probate court issued an order that dismissed the AIP's attorney from the case and appointed a guardian ad litem (GAL) "in lieu of legal counsel."

A permanent orders hearing to resolve the issue of the AIP's incapacity was set for June 3, 1997. Several weeks before the permanent orders hearing, two attorneys claiming they had been retained by the AIP attempted to enter their appearance as her new counsel. However, shortly before the permanent orders hearing, the probate court issued several orders in which it found the AIP

incompetent and lacking legal capacity to engage counsel. It therefore excluded both the AIP and her purported counsel from appearing at the permanent orders hearing. The court's orders were based largely upon an interview of the AIP conducted at the AIP's home by the probate judge on her own motion.

After the permanent orders hearing, the probate court entered an order finding the AIP incapacitated and it appointed a permanent guardian and conservator in addition to the guardian ad litem.

I.

Son's Appeal

The AIP's son contends that the probate court erred in excluding the AIP from the ***81** permanent orders hearing and in denying her the right to counsel. We agree with both contentions.

A. Standing

As a threshold matter, we address and reject the guardian's contention that the son lacks standing to raise these issues.

[1] **[2]** Because a guardianship proceeding involves a potential deprivation of fundamental rights and liberties, it implicates constitutional issues. *See Sabrosky v. Denver Department of Social Services,* 781 P.2d 106 (Colo.App.1989). Accordingly, we conclude that the concept of third party standing, as it has been applied in other cases involving alleged deprivations of constitutional rights, applies to these circumstances. *Cf. State Board for Community Colleges v. Olson,* 687 P.2d 429 (Colo.1984) (third-party standing available in action alleging violation of constitutional rights).

[3] **[4]** To have standing to assert the right of a third party not before the court, the party before the court must demonstrate an injury to himself or herself sufficient to guarantee concrete adverseness. *People v. Rosburg,* 805 P.2d 432 (Colo.1991). In addition, at least one of the following factors must be present: (1) a substantial relationship between the party before the court and the third party; (2) the difficulty or improbability that the person who has suffered deprivation of his or her rights will be able to assert it; or (3) the need to avoid dilution of the third party's rights in the event standing is not permitted. *Augustin v. Barnes,* 626 P.2d 625 (Colo.1981).

[5] Here, the son has suffered injury in fact to himself because the probate court's order significantly abridged his ability to have contact with his mother. Further, under the Colorado Probate Code, § 15–10–101, et seq., C.R.S. 1997, the son is an interested person. *See* § 15–10–201(27), C.R.S.1997. As such, the Probate Code also provides him with other statutory rights to participate in the court's proceedings. *See* § 15–14–304(4), C.R.S. 1997 (an interested person may move to limit powers of guardian); § 15–14–307(1), C.R.S. 1997 (an interested person may petition to remove guardian); and § 15–14–307(2), C.R.S. 1997 (an interested person may petition for adjudication that ward no longer is incapacitated). Thus, the son has met the first requirement for standing.

We further conclude the son has satisfied all of the three alternative factors required for standing.

The relationship of mother and son is sufficiently substantial to meet the first of the three alternative factors. Nor can we overlook the fact that, although the AIP is a named party who normally would be able to assert her own rights, both the guardian and GAL have moved to dismiss her appeal for lack of standing, claiming that she lacks the capacity to retain her own counsel to pursue this appeal on her behalf, and that only the guardian or GAL may represent her interests. These challenges to the AIP's standing severely impair her ability to assert for herself the alleged deprivation of her rights, therefore satisfying the second alternative factor. If standing is not conferred upon the son and the AIP were denied standing to bring this appeal, the alleged deprivation of the AIP's rights would go unexamined, thus satisfying the third alternative factor.

Accordingly, we conclude that the son has standing to raise on appeal the alleged deprivation of the AIP's rights in the probate court.

B. AIP's Right to Attend Hearing

On May 27, 1997, the probate court on its own motion and without prior notice issued an order excluding the AIP

from attending the permanent orders hearing, apparently based upon its own assessment of her condition. The order stated that: "On Friday, May 23, 1997, the Court met with [the AIP] in her home and took her statement in lieu of testimony." The interview by the probate court was conducted in the presence of a court reporter, the guardian ad litem, and a medical expert, but without prior notice to all interested parties including the AIP's adult children. Hence, it was *ex parte.*

[6] Section 15–14–303(4), C.R.S.1997, of the Probate Code provides, in pertinent part that:

> ***82** The person alleged to be incapacitated *is entitled to be present at any court proceeding in person* and to see or hear all evidence bearing upon his condition. He is entitled to be present by counsel, to present evidence, [and] to cross-examine witnesses, including ... any court-appointed physician .... (emphasis added)

Thus, the statute unequivocally entitles the AIP to attend in person any court proceedings bearing upon her condition. To construe the statute as providing anything less would implicate constitutional concerns because a potential deprivation of fundamental rights and liberties is involved. *Cf. Sabrosky v. Denver Department of Social Services, supra* (because finding of incapacity deprives person of basic liberties and raises constitutional concerns, standard of proof of incapacity must be by clear and convincing evidence).

Contrary to the guardian's contention, the statute does not leave the AIP's right to attend her competency hearing to the probate court's discretion. It unambiguously entitles the AIP to attend. *Cf. In re A. W.,* 637 P.2d 366 (Colo.1981) (absent statutory direction, question of non-consensual sterilization of retarded minor is within discretion of district court). Nor have we been directed to authority suggesting that the taking of a pre-hearing statement "in lieu of testimony," assuming the taking of such a statement is otherwise proper, bars the AIP from personally attending other court proceedings bearing upon her condition.

[7] We thus conclude that the AIP was entitled to attend the permanent orders hearing and that the probate court erred in ruling otherwise. Because the AIP was excluded, the matter must be remanded for a new hearing.

In view of our conclusion that the AIP's statutory right to attend the permanent orders hearing was violated, we need not consider whether her state and federal constitutional rights also were violated.

C. AIP's Right to Retain Counsel

The son next contends the probate court erred in refusing to allow the AIP to have her own counsel at the permanent orders hearing. We conclude she was entitled to have private counsel at all stages of the proceedings, including those determining the amount of fees and costs, if any, that should have been paid from her estate.

[8] As noted above, § 15–14–303(4) states that a person alleged to be incapacitated "is entitled to be present by counsel." A necessary inference from this express right is that the AIP has the right to retain counsel. *See also* § 15–14–303(5), C.R.S. 1997 (authorizing court to appoint counsel for allegedly incapacitated person).

Nevertheless, the guardian asserts four arguments why the probate court here was justified in denying counsel to the AIP. We reject each in turn.

1.

[9] The guardian maintains that because a GAL was appointed for the AIP "in lieu of legal counsel," she was not denied legal representation. We disagree.

It is undisputed that, at the outset of these proceedings in April 1996, the AIP was represented by her own counsel. However, when her physical and mental condition deteriorated in January 1997, her counsel filed a petition entitled "Protected Person's Counsel's Petition for Guidance," expressing concern regarding the AIP's ability to participate meaningfully in her representation. Her attorney requested guidance from the probate court regarding his continuing role in representing the AIP, especially as to fee matters then pending. He advised the court that there were several matters pending before it

including the AIP's objections to the financial plan. The AIP contended that the financial plan authorized:

> [T]he total consumption of [her] resources long before her life expectancy, thereby making her a ward of the state....

Counsel also noted the AIP's objection to a request by the temporary guardian that over $50,000 be paid to that guardian for case management and attorney fees allegedly incurred during the five months between April and September, 1996.

***83** Nowhere in his petition did counsel explicitly seek to withdraw, nor was the petition accompanied by the prerequisites to withdrawal required either by C.R.C.P. 121, § 1–1 or by C.R.P.P. 14(a). Importantly, in the petition, counsel re-affirmed the AIP's opposition to the proceedings and her desire to be represented by counsel.

On January 17, 1997, in response to counsel's submission, the probate court *sua sponte* and without a hearing or prior notice appointed a GAL "in lieu of legal counsel to represent the best interests" of the AIP. The order did not state that the AIP's counsel had resigned, nor did it find that the AIP was incapacitated at that stage of the proceeding. *See* § 15–10–403(5), C.R.S.1997 (requiring court to set out its reasons for appointing a GAL). However, by that order, the probate court effectively dismissed counsel from the case.

In a later order on May 29, 1997, which denied the AIP's request for a continuance, the court stated that "[h]er legal counsel has resigned with the approval of the court." And, again, in its comprehensive order entered June 6, 1997, the probate court recounted the history of its January 1997 order by stating that the AIP's counsel had "resigned ... with the Court's permission after [counsel] concluded ... [the AIP] lacked capacity to work with counsel." However, these findings are not supported by the record.

[10] A GAL and counsel represent differing interests. Whereas the GAL acts as a special fiduciary and makes informed decisions for the AIP, counsel is an advocate for and represents the legal interests of the AIP. *See Department of Institutions v. Carothers,* 821 P.2d 891 (Colo.App.1991), *aff'd on other grounds,* 845 P.2d 1179 (Colo.1993); *see also* §§ 15–14–303(5)(a), 15–14–303(5)(b), and 15–14–303(5)(c), C.R.S.1997 (Probate Code contemplates both counsel and GAL simultaneously appearing on behalf of an AIP); *cf. People in Interest of M.M.,* 726 P.2d 1108 (Colo.1986) (discussing differing roles of counsel and GAL in parental rights termination proceeding); *compare* § 15–14–314, C.R.S.1997 (stating powers and duties of GAL) *with* Colorado Rules of Professional Conduct Preamble and Rule 1.14 (discussing lawyer's responsibilities as zealous advocate for client under disability).

Further, the probate court's guidelines state that the GAL "is not the disabled person's attorney." Appointment Guidelines for Guardians ad Litem in the Denver Probate Court, at Roles and Responsibilities, Fifth. We also note that neither the guardian, who is a party to this action, nor the GAL, who participated by filing a motion to dismiss the AIP's appeal, were represented by counsel at the oral argument before this court.

We therefore conclude that, because a GAL and counsel represent different interests, appointment of a GAL for the AIP did not substitute for counsel. Accordingly, the probate court erred in dismissing counsel in January 1997. Insofar as the GAL asserts otherwise in her motion to dismiss, we also reject such argument.

2.

We similarly reject the guardian's next assertion that, because the probate court in two pre-hearing orders found the AIP incompetent and lacking legal capacity to retain counsel, it acted within its discretion in barring counsel from the permanent orders hearing.

As previously noted, on May 23, 1997, the judge on her own initiative went to the AIP's home and conducted an *ex parte* interview with the AIP. The GAL, a court-appointed psychiatric expert witness, and a court reporter were present but prior notice was not given to all interested parties.

On May 28th and May 29th, new counsel purporting to represent the AIP sought to enter their appearance on her behalf and moved for a continuance of the permanent orders hearing. The probate court issued a written order on May 29th denying the AIP's motion for a continuance stating that:

> This Court has previously found and ruled that [the AIP] lacks legal capacity at the present time to employ legal counsel. Her legal counsel has resigned with the approval of the Court and a guardian-ad-litem has ***84** been appointed by the Court to represent her interests in these proceedings.

On June 2, 1997, again without a hearing, the probate court issued another written order summarily denying new counsel permission to enter their appearance and stating that the AIP "is incompetent to engage counsel at this time and the Guardian ad Litem represents her interests in these proceedings." At the permanent orders hearing on the following day, the probate court refused to permit the attorneys who purported to represent the AIP from entering the courtroom and from attending the proceedings.

[11] We have not been directed to any statutory or case law authority giving the probate court discretion to deny an AIP the right to retain private counsel. Although the Probate Code vests broad authority to appoint counsel to an unrepresented AIP, *see Department of Institutions v. Carothers, supra,* it does not confer discretion on the court to deny counsel if an AIP has chosen to be represented by counsel.

3.

[12] In a related assertion, the guardian claims and the GAL similarly argues in her motion to dismiss, that the probate court found in its pre-hearing orders the AIP lacked the mental capacity to retain counsel.

Again, however, the findings contained in these orders were based upon the probate judge's in-home interview of the AIP which was conducted without the procedural safeguards of a hearing, prior notice, and the right to counsel afforded by the Probate Code. We also cannot determine from the pre-hearing orders whether the probate court based its findings upon clear and convincing evidence, *see Sabrosky v. Denver Department of Social Services, supra,* and there is additional confusion because the court's May 29, 1997, order refers to previous findings and rulings. Yet the record is devoid of any such prior findings or rulings.

We recognize that the probate judge was motivated to conduct such an interview by her concern for the AIP's welfare, by the AIP's deteriorated physical and mental condition, and by the court's desire to evaluate the AIP without the undue influence of third parties. Nevertheless, we are unaware of any authority in the Probate Code allowing an interview under such circumstances. *Cf. S.S. v. Wakefield,* 764 P.2d 70 (Colo.1988) (disapproving judge's *ex parte* communication with mother in dependency and neglect proceeding).

Importantly, the information obtained during the probate court's interview of the AIP related directly to the AIP's alleged incapacity, which was the ultimate issue later to be determined at the permanent orders hearing.

[13] We therefore reject the contention that information obtained during the probate judges's interview with the AIP may serve as justification for denying the AIP the right to retain her own counsel.

4.

[14] The guardian next maintains that the comprehensive protective order itself contains findings of incapacity which support the probate court's decision to exclude counsel. However, the permanent orders hearing was conducted for the purpose of determining the AIP's mental capacity, and we have concluded the AIP was entitled to attend in person and to have her counsel present. Because she was denied these rights, findings or conclusions based on the permanent orders hearing cannot stand.

For the same reason, we reject the guardian's contention that any inadequacy in the probate court's pre-hearing orders may be shored up by the evidence adduced at the permanent orders hearing.

In sum, we conclude that the AIP was entitled to have counsel represent her with respect to all proceedings commencing in April 1996 including the permanent orders hearing. On remand, she shall be entitled to have counsel appear on her behalf.

In so ruling, however, we express no opinion about which counsel should represent her in future proceedings or whether the AIP in fact retained the counsel who attempted to enter their appearance before the June 1997 hearing and who purport to represent her on ***85** appeal. These are questions of fact for the probate court to determine on remand.

D. Motion to Recuse Judge

[15] The son's last assertion in his appeal is that the probate judge erred in denying his motion for recusal and that all proceedings following that motion should be set aside. However, the record reflects that the probate judge recused herself on her own motion while this appeal was pending. Accordingly, this issue is moot.

II. AIP's Appeal

Because the same issues raised by the AIP on appeal were raised by her son and have now been resolved, we need not separately consider her contentions. Also moot is the guardian's and GAL's contention, made in their motions to dismiss, that the AIP's appeal should be dismissed because the attorneys filing on her behalf could not have been retained by the AIP due to her incapacity.

However, insofar as the guardian and the GAL also contend in their motions to dismiss that the supreme court's denial of the AIP's extraordinary writ constituted a determination of the merits of this appeal adverse to the AIP, we disagree.

Here, after entry of the probate court's June 1997 order, the attorneys purporting to represent the AIP petitioned the supreme court on her behalf for a writ of prohibition or mandamus pursuant to C.A.R. 21. The petition, which raised essentially the same issues raised on appeal, was denied by the supreme court.

[16] The supreme court's refusal to issue a rule to show cause and to exercise original jurisdiction upon a petition for an extraordinary writ has no substantive significance. It indicates neither approval nor disapproval of the trial court ruling upon which the original proceeding is brought. *Atlantic Richfield Co. v. District Court,* 794 P.2d 253 (Colo.1990); *People v. McGraine,* 679 P.2d 1084 (Colo.1984); *see also Allison v. Industrial Claim Appeals Office,* 884 P.2d 1113 (Colo.1994) (denial of certiorari does not determine merits of case); *Martin v. District Court,* 191 Colo. 107, 550 P.2d 864 (1976) (denial of certiorari indicates neither approval nor disapproval of court of appeal's opinion); C.A.R. 35(f).

[17] Hence, we conclude the guardian's and GAL's contention that denial of a C.A.R. 21 petition constitutes a decision on the merits of the issues raised on appeal is erroneous as a matter of law. *See Bell v. Simpson,* 918 P.2d 1123 (Colo.1996).

In her response to the motions to dismiss, the AIP maintains that this particular argument was frivolous and, therefore, that she is entitled to sanctions under either § 13–17–101, et seq., C.R.S.1997, or C.R.C.P. 11. Based on the authority set forth above, we agree and conclude that this aspect of the guardian's and GAL's motions to dismiss was substantially frivolous under § 13–17–102, C.R.S.1997. *See Western United Realty, Inc. v. Isaacs,* 679 P.2d 1063 (Colo.1984) (a claim is frivolous if the proponent can present no rational argument based on the evidence or law in support of the claim).

III.

Because we have concluded that the AIP was deprived of her right to counsel, *all orders* after January 17, 1997, either making determinations about the AIP's mental capacity or authorizing expenditures from the AIP's estate, must be set aside, and a new permanent orders hearing is required.

As to the financial expenditures, the record contains, *inter alia,* a submission entitled "Conservator's Emergency Status Report and Recommendations" filed in August 1997 in which the conservator described the financial condition of the AIP's estate at that time "at a crisis point." The report indicated that court-approved expenditures *not involving the actual support and physical care of the AIP* during the 14 months between April 1996 and August 1997 had substantially depleted the estate.

According to the report, as of August 1997, fees and costs sought or already paid included: (1) management fees of $45,705 requested by the first temporary guardian for

services from April 4, 1996, to September 18, 1996, and the temporary guardian's attorney ***86** fees of $8,710 for the same period; (2) the GAL's requested fees of $26,375 and costs of $4,868 for services from January 17, 1997, to June 8, 1997; (3) another temporary guardian's requested fees of $4,756 for services from June 3–30, 1997; (4) $850 per month for the conservator's management fees which commenced April 1996; and (5) fees of $6,376 requested by or already paid to a psychiatric expert and family dynamics experts hired at the request of the GAL. As noted, these multiple expenditures requested from the AIP's estate were *in addition to $8,700 per month* that the court had approved to provide 24–hour care for the AIP.

The conservator's report did not detail other amounts that may have been paid or still may be owed to the numerous experts who have been hired to perform physical, psychiatric, and family examinations and evaluations. Nor did it state what payments, if any, had been made to the two co-temporary guardians who were appointed on September 18, 1996, one of whom served until June 3, 1997, when a permanent guardian was appointed; the special master appointed by the court on January 15, 1997, to determine fees; the AIP's counsel who represented her from April 1996 until dismissed by the court on January 17, 1997; and other attorneys representing the multiple fiduciaries.

IV. Conclusion

The orders of the probate court entered after January 17, 1997, are reversed to the extent that they determined the mental state of the AIP or they authorized any expenditures from the AIP's estate. On remand, the probate court shall conduct a hearing as soon as practicable and reconsider all such court orders authorizing any expenditures after January 17, 1997, including the order appointing a master.

[18] To the extent the AIP's estate has already paid such court-ordered fees and costs to fiduciaries and attorneys, we further direct the probate court on remand to determine whether all or part of such fees and costs should be disgorged. It shall also conduct a new permanent orders hearing and such other proceedings as it deems necessary consistent with the views expressed in this opinion.

[19] That portion of the motions to dismiss filed by the guardian and GAL not rendered moot by reason of the son's appeal is denied. On remand, the AIP should be reimbursed for costs and reasonable and necessary attorney fees, if any, that were actually incurred in responding to the argument by the guardian, GAL, and their attorneys which we have held to be substantially frivolous. No reimbursement from the estate shall be made to the guardian, GAL, or their attorneys for any costs or attorney's fees incurred by them in making the argument deemed frivolous.

NEY and ERICKSON,[*] JJ., concur.

All Citations

955 P.2d 78, 98 CJ C.A.R. 604

Footnotes

* Sitting by assignment of the Chief Justice under provisions of the Colo. Const. art. VI, Sec. 5(3), and 24-51-1105, C.R.S.1997.

INSTRUCTIONS FOR APPOINTMENT OF A GUARDIAN - ADULT

These standard instructions are for informational purposes only and do not constitute legal advice about your case. If you choose to represent yourself, you are bound by the same rules and procedures as you would be if you were an attorney.

GENERAL INFORMATION

- You may file your Petition in the county where the Respondent resides. If the Respondent has been admitted to an institution pursuant to a court order, you may file your Petition in the county where the court that issued the order is located.
- If you are asking for an emergency guardianship or for a temporary substitute guardian, you may file your Petition in the county where the Respondent is present.
- A person interested in the welfare of the Respondent may file the case.
- A name-based criminal history record check from the Colorado Bureau of Investigation (CBI) and a current credit report of the proposed guardian (the nominee) must be filed with the Court along with JDF 805 – Acceptance of Office.
- A Colorado Adult Protective Services (CAPS) – CAPS Check Written Authorization form **must** be complete and signed by the proposed guardian (the nominee) and **filed with the Court**. That form can be found on the Colorado Department of Humans Services website or by clicking this link: CAPS_Check_Written_Authorization_Form

  NOTE: Do **NOT** attempt to register an account with CAPS or Request a CAPS Check yourself. Simply download the Written Authorization Form, **complete it and file it with the court.** The court is responsible for processing the CAPS Check with the Colorado Adult Protective Services (CAPS). If you have questions, please contact the court directly.
- The Court may appoint a guardian for an adult with or without restrictions when the Respondent is determined to be incapacitated.
- An incapacitated adult is defined as one who is unable to effectively receive or evaluate information or both or make or communicate decisions to such an extent that the individual lacks the ability to satisfy essential requirements for physical health, safety, or self-care, even with appropriate and reasonably available technological assistance.
- For additional information, please review §15-14-301 through §15-14-318, C.R.S.
- If you have a disability and need a reasonable accommodation to access the courts, please contact your local ADA Coordinator. Contact information can be obtained from the following website:

  http://www.courts.state.co.us/Administration/HR/ADA/Coordinator_List.cfm

COMMON TERMS

⌦ Petitioner:	A person who files a Petition for the Appointment of a Guardian.
⌦ Guardian:	A person at least 21, resident or non-resident, who has qualified as a Guardian of a minor or incapacitated person based on an appointment by the Court. The guardianship may be permanent or emergency.
⌦ Interested Persons:	Persons identified by Colorado Law who must be given notice of a guardianship proceeding.
⌦ Letters:	A formal notice identifying the authority of the Guardian.

☒ Guardian Nominee:	A person named in the petition to serve as the Guardian.
☒ Respondent:	A person for whom the appointment of a Guardian is required.
☒ Ward:	A person for whom a Guardian has been appointed.
☒ Court Visitor:	A person who will interview the Respondent in person who will explain his/her rights and make recommendations to the Court.
☒ Order:	Official document identifying the authority of the Guardian and his/her responsibilities during the Guardianship.

If you do not understand this information, please contact an attorney.

FEES

A filing fee of $199.00 is required. If you are unable to pay, you must complete the Motion to File without Payment and Supporting Financial Affidavit (JDF 205) and submit it to the Court. Once you submit the completed JDF 205 form and a blank Order (JDF 206), the Court will decide whether you need to pay the filing fee.

Other fees that a party to the case may encounter are as follows:

- ☐ Certification of Orders $ 20.00
- ☐ Service Fees Varies
- ☐ Copy of Documents $ .75 per page
- ☐ The Court must appoint a Court Visitor to investigate and report back to the Court, for the purpose of determining if the Guardianship is in the best interest of the Respondent.
- ☐ The Court may also appoint an attorney for the Respondent to serve as an advocate for the Respondent.
- ☐ The Petitioner or Respondent may be required to pay the hourly fee of the Court Visitor or Respondent's Counsel.

FORMS

To access a form online go to **www.courts.state.co.us** and click on the **"Forms"** tab. The packet/forms are available in PDF or WORD by selecting **Guardianship & Conservatorship - New Case - Guardianship - Adult**. You may complete a form online and print it or you may print it and type or print legibly in black ink.

Read these instructions carefully to determine what forms you may need, as you may need all or some of the listed forms. Check with the Court where you plan to file your case to determine if they have any special requirements.

- ☐ JDF 705 Probate Case Information Sheet
- ☐ JDF 714 Affidavit Regarding Due Diligence and Proof of Publication
- ☐ JDF 716 Notice of Hearing by Publication
- ☐ JDF 719 Waiver of Notice
- ☐ JDF 721 Irrevocable Power of Attorney
- ☐ JDF 800 Acknowledgment of Responsibilities
- ☐ JDF 805 Acceptance of Office
- ☐ JDF 806 Notice of Hearing to Interested Persons
- ☐ JDF 807 Notice of Hearing to Respondent (Adult or Minor)
- ☐ JDF 812 Notice of Appointment of Guardian and/or Conservator
- ☐ JDF 841 Petition for Appointment of Guardian for Adult
- ☐ JDF 849 Letters of Guardianship - Adult

☐ JDF 850 Guardian's Report – Adult

- A Colorado Adult Protective Services (CAPS) – CAPS Check Written Authorization form **must** be completed and signed by the proposed guardian (the nominee) and **filed with the Court**. That form can be found on the Colorado Department of Humans Services website or by clicking this link: CAPS_Check_Written_Authorization_Form

  NOTE: Do **NOT** attempt to register an account with CAPS or Request a CAPS Check yourself. Simply download the Written Authorization Form, **complete it and file it with the court**. The court is responsible for processing the CAPS Check with the Colorado Adult Protective Services (CAPS). If you have questions, please contact the court directly.

You will also need a proposed order depending on what type of guardianship you are requesting.

☐ JDF 843 Order Appointing Emergency Guardian – Adult

☐ JDF 848 Order Appointing Guardian for Adult

STEPS TO FILING YOUR CASE

Step 1: Complete Forms.

Selecting these instructions indicates that you are planning on filing for a Guardianship for an Adult. **Make sure that you make a copy of all the forms you file with the Court for your own records.**

❑ **Petition for Appointment of Guardian for Adult (JDF 841)**

- ❑ The Petitioner must complete **all** applicable sections on the form.
- ❑ Attach a copy of a physician's letter or professional evaluation by a qualified person. (§15-14-306, C.R.S.)
- ❑ The Petitioner must sign this form.

❑ **Acceptance of Office (JDF 805).**

- ❑ Complete all applicable sections on the form and attach the name-based criminal history check and a current credit report for the proposed guardian.
  - ❑ Attach a legible copy of the proposed guardian's driver's license, passport or other government-issued identification. Redact (strike-out) the driver's license number or other identification number.
  - ❑ Obtain and attach a name-based criminal history record check from Colorado Bureau of Investigation (CBI). To obtain a name-based criminal history check, contact CBI at 690 Kipling Street Denver, CO 80215, (303) 239-4300, or at **https://cbi.colorado.gov/** and click on CBI Records Check.
  - ❑ Obtain a current credit report of the proposed guardian. Below are a few credit reporting agencies:
    - Equifax, Inc., P.O. Box 740241, Atlanta, GA 30374, 1-800-685-1111, or at **www.equifax.com**
    - Experian, P.O. Box 2002, Allen, TX 75013, 1-888-397-3742, or at **www.experian.com**
    - TransUnion, P.O. Box 2000, Chester, PA 19022, 1-800-916-8800, or at **www.transunion.com**
  - ❑ Redact (strike-out) all social security numbers identified on the criminal history check and the credit report as well as all financial account numbers.
  - ❑ The costs for all criminal history checks and credit reports must be paid by the proposed guardian.
- ❑ The proposed guardian must sign the Acceptance of Office.

❑ **Waiver of Notice (JDF 719).**

- ❑ This form can be completed and signed by any interested person (except the Respondent) who wishes to

waive notice of any hearings or matters before the Court.

- ❑ This form cannot be completed by the Respondent. See Notice requirements in **Step 4.**

❑ **Irrevocable Power of Attorney (JDF 721).**

- ❑ This form is required **only** if the proposed guardian lives out-of-state.
- ❑ The proposed out-of-state guardian must complete this form and sign it before a Court Clerk or Notary Public.

❑ **CAPS Check Written Authorization Form**

- ❑ A Colorado Adult Protective Services (CAPS) – CAPS Check Written Authorization form **must** be completed and signed by the proposed guardian (the nominee) and **filed with the Court**. That form can be found on the Colorado Department of Humans Services website or by clicking this link: CAPS_Check_Written_Authorization_Form

  NOTE: Do **NOT** attempt to register an account with CAPS or Request a CAPS Check yourself. Simply download the Written Authorization Form, **complete it and file it with the court**. The court is responsible for processing the CAPS Check with the Colorado Adult Protective Services (CAPS). If you have questions, please contact the court directly.

❑ **Letters of Guardianship – Adult (JDF 849).**

- ❑ Only complete the caption on the form.
- ❑ The Court will complete the remainder of the form and sign it following the appointment of the Guardian.

❑ **Proposed Order (JDF 843 or JDF 848)**

- ❑ Select the appropriate Order based on the type of guardianship you are requesting. The proposed order should match your selection from number 1 on the Petition – **JDF 841**.
- ❑ Complete only the caption on the form.

Step 2: You are Ready to File your Papers with the Court.

Provide the Court with the documents completed as described in Step 1 above and pay the filing fee. You will need to make copies of the documents for each of the following persons. **Check the list below to determine the "interested persons" applicable to your circumstances.**

1. The spouse of the incapacitated person, if married.
2. The partner of the incapacitated person in a civil union, if the civil union is not dissolved.
3. The parents of the incapacitated person, if any.
4. The adult children of the incapacitated person, if any.
5. Any Guardian or Conservator currently acting for the incapacitated person.
6. Any person who has care and custody of the incapacitated person, including the Respondent's treating physician.
7. Any adult with whom the Respondent has resided for more than six months within one year before the filing of the Petition, §15-14-304(2)(b)(I)(A)
8. Any adult relative nearest of kin, if there is no spouse, partner in a civil union, parent, or adult children.
9. Any legal representative of the Respondent
10. Any nominated person as guardian by the Respondent.

You may receive a hearing date from the clerk at the time of the filing your paperwork or you may need to contact the clerk later to obtain the hearing date. The date and time of this hearing is important, as you will need it to complete the Notice of Hearing or publication forms described in **Step 3 and Step 4.**

The Court shall appoint a Court Visitor who shall interview the Respondent in person, per §15-14-305(3)(4)(5), C.R.S. The duties and reporting requirements of the Court Visitor are limited to the relief requested in the petition.

Step 3: Notice to Interested Persons. (By Mail or Publication)

All persons listed in Step 2 must be given notice of the upcoming hearing.

❑ Service by Mail.

- ❑ **If you know the address of the person to whom you are giving notice,** complete the Notice of Hearing to Interested Persons (JDF 806).
- ❑ Mail copies of **all** documents filed with the Court (including the Petition for Guardianship) **and** completed Notice of Hearing to Interested Persons (JDF 806), at least 14 days before the hearing.
- ❑ Complete the Certificate of Service portion on the form, listing the names and addresses of all persons to whom you sent the notice and the date you sent it and file the form with the Court at or before your hearing.
- ❑ If the address of any interested person is unknown, you **must** publish the notice of the hearing in the newspaper. See Service by Publication instructions below.

❑ Service by Publication.

If you do not have a current address for an interested person, or if their identity is not known and cannot be ascertained with reasonable diligence, you must publish the notice of hearing in the newspaper. Before doing this you may wish to search the Internet, contact prior employers, friends, etc. to locate a current address.

- ❑ **Notice of Hearing by Publication (JDF 716).**
  - ❑ Complete this form and have it published in a newspaper of general circulation in the county where the hearing is to be held.
  - ❑ The notice must be published once a week for three consecutive weeks, with the last date of publication being at least 14 days before the hearing date.
- ❑ The Petitioner must request a publisher's affidavit from the newspaper after publication is completed. This publisher's affidavit, prepared by the newspaper, will serve as proof that the Notice of Hearing by Publication (JDF 716) was published. This publisher's affidavit must be attached to the Affidavit Regarding Due Diligence and Proof of Publication (JDF 714). See form identified below.
- ❑ **Affidavit Regarding Due Diligence and Proof of Publication (JDF 714).**
  - ❑ Complete all sections on this form. The purpose of this form is to describe to the Court your efforts to locate the individuals listed in the Notice of Hearing by Publication (JDF 716).
  - ❑ The Petitioner must sign this form.

Step 4: Notice of Hearing to Respondent with Personal Service Affidavit.

You must personally serve the Respondent at least 14 days prior to the hearing. **Helpful Hints to complete personal service:**

- ❑ Select the Sheriff's Department, a private process server, or someone you know who is 18 years or order, who is not involved in the case, and who knows the rules of service.
- ❑ Request the sheriff, private process server, or other person serving the documents to deliver personally to the Respondent the Notice of Hearing (JDF 807) and copies of all documents filed with the Court.
- ❑ Request that the sheriff, private process server, or other person serving the documents complete the Personal Service Affidavit on the second page of the Notice of Hearing (JDF 807) and return it to the Petitioner.

❑ The Petitioner should then file with the Court, the Notice of Hearing to Respondent (Adult or Minor) (JDF 807) with the completed Personal Service Affidavit.

Step 5: Hearing.

❑ The Petitioner and Respondent must appear at the hearing, unless excused by the Court for good cause.

❑ If the Respondent cannot attend the hearing for medical or other reasons, the Petitioner must file a Motion to Excuse the Respondent and attach appropriate documentation to support the motion, such as a physician's letter.

❑ The Respondent may participate in the hearing to present evidence regarding his or her incapacitation.

❑ The Petitioner should be prepared to present evidence as to why this Guardianship is necessary and that the interested persons are aware of the proceedings and that they consent to the Guardianship.

❑ If the Court appoints a Guardian, the Court will issue Letters (JDF 849) as a formal notice of the appointment and provide you with a copy of the Order Appointing Guardian.

- ❑ You may need certified copies of the Letters and Order. The number needed will vary, depending on your circumstances.
- ❑ Copies of the Order must be provided to all interested persons identified in the Order.

Step 6: Requirements after the Court Appoints a Guardian.

❑ Complete, sign, and file the Acknowledgment of Responsibilities (JDF 800) with the court. Letters of Appointment will not be issued until this form is filed.

❑ Complete, sign, and file the Probate Case Information Sheet (JDF 705) with the court, if you've not already done so. Letters of Appointment will not be issued until this form is filed.

❑ Refer to the Order Appointing Guardian for Adult to determine when the care plan and annual guardian report is due. The annual report is generally due within 60 days after appointment or as otherwise directed by the court. The purpose of the annual report is to report to the Court and interested persons the well-being of the Ward. The Guardian's Report must be provided to the persons listed in the Order of Appointment.

❑ Refer to the Order Appointing Guardian for Adult regarding completing the Notice of Appointment of Guardian and/or Conservator (JDF 812). The purpose of this form is to notify the Ward and persons given notice of the Petition that they have the right to request termination or modification of the Guardianship.

❑ The Ward may not move outside the State of Colorado without an Order from the Court.

Note: A Guardian's Manual is available to assist the newly appointed Guardian. This manual identifies general responsibilities and important Guardianship issues, along with completed sample forms to assist the preparer.

The responsibilities of the Guardian terminate upon the death of the Ward or upon order of the Court. The Court may terminate the Guardianship if the Ward no longer meets the standard for establishing the Guardianship.

❑District Court ❑Denver Probate Court _____ County, Colorado Court Address: **In the Interest of:** **Respondent**	**COURT USE ONLY**
Attorney or Party Without Attorney (Name and Address): Phone Number: E-mail: FAX Number: Atty. Reg. #.:	Case Number: Division Courtroom

PETITION FOR APPOINTMENT OF GUARDIAN FOR ADULT

1. ❑No court proceeding is pending in this state or elsewhere concerning the respondent.

❑The following proceeding(s) concern(s) the respondent. Identify name of court, case number, state, date, and type of proceeding if any.

Name of Court	Case Number	State	Date of Proceeding	Type of Proceeding

2. The petitioner is:

❑a person interested in the welfare of the respondent.

or

❑the respondent.

This is a petition for appointment of a(n):

❑Permanent Guardian. (§ 15-14-304(1) and (2), C.R.S.)

❑Emergency Guardian. (not to exceed 60 days). (§ 15-14-312, C.R.S.)

3. Information about the petitioner:

Name: _____ List all names used (also known as, formerly known as, etc.): _____

Relationship to Respondent: _____

Street Address:_____

City: _____ State: _____ Zip Code: _____

Mailing Address, if different: _____

City:_____ State:_____ Zip Code:_____

Primary phone: _____ Alternate phone: _____

Email Address:_____

Does petitioner need an interpreter? ❑No ❑Yes (Language:_____)

4. **Information about the respondent:**

Name (REQUIRED):_____ Age:_____ **Date of Birth (REQUIRED):**_____

Sex (REQUIRED): _____

Street address:_____

City: _____ State: _____ Zip Code: _____

Mailing address, if different: _____

City:_____ State:_____ Zip Code:_____County of Residence: _____

Primary phone: _____ Alternate phone: _____

Email address: _____

Does respondent need an interpreter? ❑No ❑Yes (Language:_____)

❑If this appointment is made, the respondent's residence will change to:

_____

5. **Information about the respondent's spouse, partner in a civil union, or adult who has resided with the respondent for more than six months in the last year:**

Name: _____ Relationship to Respondent: _____

Street Address:_____

City: _____ State: _____ Zip Code: _____

Mailing Address, if different: _____

City:_____ State:_____ Zip Code:_____

Primary phone: _____ Alternate phone: _____

Email address:_____

Does this person need an interpreter? ❑No ❑Yes (Language:_____)

6. Venue for this proceeding is proper because the respondent

❑resides in this county.

❑is present in this county. (**Check this box only** if requesting an Emergency Guardian.) (§ 15-14-108(2), C.R.S.)

❑is admitted to an institution pursuant to an order of a court of competent jurisdiction sitting in this county. **(Attach copy of the Order to the Petition.)**

7. ❑An appointment of a guardian for the respondent has been previously made. **(Attach copy of the Order to the Petition.)**

8. ❑A Power of Attorney exists for financial or medical matters. **(Attach a copy of the Power of Attorney to the Petition.)** The agent's name and mailing address is:

_____

_____

9. ❑A valid designated beneficiary agreement exists. **(Attach a copy of the agreement to the petition.)** The designated beneficiary's name and mailing address is:

_____

_____

10. The respondent is unable to effectively receive or evaluate information or both or make or communicate decisions to such an extent that he or she lacks the ability to satisfy essential requirements for physical health, safety, or self-care, even with appropriate and reasonably available technological assistance. (§ 15-14-102(5), C.R.S.)

11. The respondent's identified needs cannot be met by less restrictive means, including use of appropriate and reasonably available technological assistance.

12. Guardianship is necessary due to the following disabilities or impairments: ❑Physician's letter attached.

_____

_____

_____

_____

13. Petitioner requests the powers and duties to be ❑unlimited or unrestricted or ❑limited or with restrictions. The requested limitations or restrictions on the guardian's powers and duties, if any, are as follows:

_____

_____

_____

_____

_____

14. ❑Petitioner is 21 years of age or older, nominates himself or herself and requests to be appointed as guardian.

or

❑Petitioner nominates the following person, who is 21 years of age or older, to be appointed as guardian.

Name: _____ List all names used (also known as, formerly known as, etc.): _____

Street address: _____

City: _____ State: _____ Zip Code: _____

Mailing address, if different: _____

City: _____ State: _____ Zip Code: _____

Primary phone: _____ Alternate phone: _____

Email Address: _____ Does this person need an interpreter? ❑No ❑Yes (Language: _____)

15. The nominated guardian has priority for appointment because he or she is: (§ 15-14-310, C.R.S.)

❑a guardian currently acting for the respondent in Colorado or elsewhere.

❑nominated in writing by respondent, including nomination in a durable power of attorney or designated beneficiary agreement.

❑an agent under a medical power of attorney.

❑an agent under a general durable power of attorney.

❑the spouse or partner in a civil union of the respondent.

❑the parent of the respondent.

❑an adult child of the respondent.

❑an adult with whom respondent has resided for more than six months immediately before the filing of this petition.

❑other: _____

16. ❑The respondent nominated the following person as guardian, but the petitioner does not seek that person's appointment for the following reason:

_____

_____

Name: _____ List all names used (also known as, formerly known as, etc.): _____

Relationship to Respondent: _____

Street address: _____

City: _____ State: _____ Zip Code: _____

Mailing address, if different: _____

City: _____ State: _____ Zip Code: _____

Primary phone: _____ Alternate phone: _____

Email address: _____

17. ❑It is necessary to appoint an **Emergency Guardian** for the respondent because complying with the normal procedures for the appointment of a guardian will likely result in substantial harm to the respondent's health, safety, or welfare and no other person appears to have authority and willingness to act in the circumstances. (§ 15-14-312, C.R.S.) The nature of the emergency is as follows:

_____

_____

_____

_____

18. Information about respondent's adult children and parents. ❑**None** (If none, list an adult relative that can be found with reasonable efforts, such as a brother, sister, aunt, uncle, etc.)

Name: _____ Relationship to Respondent: _____

Street address: _____

City: _____ State: _____ Zip Code: _____

Mailing address, if different: _____

City: _____ State: _____ Zip Code: _____

Primary phone: _____ Alternate phone: _____

Email address: _____

Does this person need an interpreter? ❑No ❑Yes (Language: _____)

Name: _____ Relationship to Respondent: _____

Street address: _____

City: _____ State: _____ Zip Code: _____

Mailing address, if different: _____

City:_____ State:_____ Zip Code:_____

Primary phone: _____ Alternate phone: _____

Email address:_____

Does this person need an interpreter? ❑No ❑Yes (Language:_____)

Name: _____ Relationship to Respondent: _____

Street address:_____

City: _____ State: _____ Zip Code: _____

Mailing address, if different: _____

City:_____ State:_____ Zip Code:_____

Primary phone: _____ Alternate phone: _____

Email address:_____

Does this person need an interpreter? ❑No ❑Yes (Language:_____)

19. Information about each person currently responsible for primary care and custody of the respondent, including the respondent's treating physician: ❑None

Name of Treating Physician: _____ Phone #:_____

Street Address:_____

City: _____ State: _____ Zip Code: _____

Mailing Address, if different: _____

City:_____ State:_____ Zip Code:_____

Email Address:_____

Name of Caregiver: _____ Phone #:_____

Street Address:_____

City:_____ State:_____ Zip Code:_____

Mailing Address, if different: _____

City:_____ State:_____ Zip Code:_____

Email Address:_____

20. ❑The following person is the legal representative for the respondent not otherwise designated above. (Representative payee, trustee, custodian of a trust, etc. § 15-14-102(6), C.R.S.)

Name: _____ Type of Legal Representative: _____

Phone #: _____ Email Address:_____

Mailing Address:_____

City:_____ State:_____ Zip Code:_____

21. The guardian may receive compensation.

❑The hourly rates to be charged, any amounts to be charged pursuant to a published fee schedule, including the rates and basis for charging fees for any extraordinary services, and any other bases upon which a fee charged to the estate will be calculated, are as stated below or in an attachment to this petition. *

_____

_____

_____

❑The basis of compensation has not yet been determined.

* There is a continuing obligation to disclose any material changes to the basis for charging fees. (§ 15-10-602, C.R.S.)

22. The guardian may compensate his, her or its counsel.

❑The hourly rates to be charged, any amounts to be charged pursuant to a published fee schedule, including the rates and basis for charging fees for any extraordinary services, and any other bases upon which a fee charged to the estate will be calculated, are as stated below or in an attachment to this petition. *

_____

_____

_____

❑The basis of compensation has not yet been determined.

* There is a continuing obligation to disclose any material changes to the basis for charging fees. (§ 15-10-602, C.R.S.)

23. The respondent's assets are:

Description of Assets (e.g. bank accounts, insurance, pensions, property) ❑**None**	**Estimated Value**
	$
	$
Total	**$**

24. The respondent's income is:

Description of Income (e.g. social security, pension) ❑**None**	**Estimated Amount of Income**
	$
	$
Total	**$**

25. The petitioner requests that an appointment of a guardian be made after notice and hearing.

❑**In addition, the petitioner requests the following:**

❑ By checking this box, I am acknowledging I am filling in the blanks and not changing anything else on the form.

❑ By checking this box, I am acknowledging that I have made a change to the original content of this form.

VERIFICATION

I declare under penalty of perjury under the law of Colorado that the foregoing is true and correct.

Executed on the _____ day of
(date)

_____, _____,
(month) (year)

at _____
(city or other location, and state OR country)

_____
(printed name)

_____
(Signature of Petitioner)

_____
Attorney Signature, (if any)

Executed on the _____ day of
(date)

_____, _____,
(month) (year)

at _____
(city or other location, and state OR country)

_____
(printed name)

_____
(Signature of Co-Petitioner, if any)

_____
Date

INSTRUCTIONS FOR APPOINTMENT OF A GUARDIAN - MINOR

These standard instructions are for informational purposes only and do not constitute legal advice about your case. If you choose to represent yourself, you are bound by the same rules and procedures as an attorney.

GENERAL INFORMATION

- The Minor child must be a resident or be present at the time of the commencement of the proceeding in the county in which you are filing the petition.
- The Minor or a person interested in the welfare of the Minor may file the case.
- A name-based criminal history record check from the Colorado Bureau of Investigation (CBI) and a current credit report of the proposed guardian must be filed with the Court.
- If the Minor has income, such as Supplemental Security Income (SSI) or other significant income, or owns assets, such as real estate or stocks, you may need to file for conservatorship in order to manage the money or assets.
- The Court may appoint a Guardian for a Minor, if the Court finds the appointment would be in the best interest of the Minor and one of these four statements applies:
  1. The parents' consent to the appointment.
  2. The parents' parental rights have been terminated by a court order.
  3. The parents are unwilling or unable to exercise their parental rights. For example, the parents are deceased, or they have abandoned the child.
  4. Guardianship of a child has previously been granted to a third party and the third party has subsequently died or become incapacitated and the guardian has not made an appointment of a guardian either by will or written instrument.
- For additional information, please review §15-14-201 through §15-14-210, C.R.S.
- If you have a disability and need a reasonable accommodation to access the courts, please contact your local ADA Coordinator. Contact information can be obtained from the following website: http://www.courts.state.co.us/Administration/HR/ADA/Coordinator_List.cfm

COMMON TERMS

⌦ Petitioner:	A person who files a Petition for the Appointment of a Guardian.
⌦ Guardian:	A person at least 21 years of age, resident or non-resident, who has qualified as a guardian of a Minor based on an appointment by the Court.
⌦ Interested Person:	Persons identified by Colorado Law who must be given notice of a court proceeding. **See Step 3 for a complete list.**
⌦ Letters:	Formal notice identifying the authority of the Guardian.
⌦ Minor:	An unemancipated person who is under the age of 18.
⌦ Guardian Nominee:	A person named in the petition to serve as the Guardian.
⌦ Ward:	A Minor for whom a Guardian has been appointed.
⌦ Order:	Official document identifying the authority of the Guardian and his/her responsibilities during the Guardianship.

If you do not understand this information, please contact an attorney.

FEES

A filing fee of $199.00 is required. If you have a family situation that requires you to file a guardianship for more than one child, only one filing fee is required, if the Petitions are filed on the same day. If you are unable to pay, you must complete the Motion to File without Payment and Supporting Financial Affidavit (JDF 205) and submit it to the Court. Once you submit the completed JDF 205 form and a blank Order (JDF 206), the Court will decide whether you need to pay the filing fee.

Other fees that a party to the case may encounter are as follows (also see JDF 1):

- ❑ Certification of Orders and Letters $20.00
- ❑ Service Fees Varies
- ❑ Copy of Documents $ .75 per page

The Court may appoint a Guardian ad Litem (GAL) to investigate and report back to the Court, for the purpose of determining if the Guardianship is in the best interest of the Minor.

FORMS

To access a form online go to **www.courts.state.co.us/Forms**. The packet/forms are available in PDF or WORD by selecting **Probate - Protective Proceedings - New Case - Guardianship - Minor.**You may complete a form online and print or you may print it and type or print legibly in black ink.

Read these instructions carefully to determine what forms you may need, as you may need all or some of the listed forms. Check with the Court where you plan to file your case to determine if they have any special requirements.

- ❑ JDF 705 Probate Case Information Sheet
- ❑ JDF 714 Affidavit Regarding Due Diligence and Proof of Publication
- ❑ JDF 716 Notice of Hearing by Publication
- ❑ JDF 719 Waiver of Notice
- ❑ JDF 721 Irrevocable Power of Attorney
- ❑ JDF 800 Acknowledgment of Responsibilities
- ❑ JDF 805 Acceptance of Office
- ❑ JDF 806 Notice of Hearing to Interested Persons
- ❑ JDF 812 Notice of Appointment of Guardian and/or Conservator
- ❑ JDF 824 Petition for Appointment of Guardian - Minor
- ❑ JDF 825 Consent of Parent
- ❑ JDF 826 Consent or Nomination of Minor
- ❑ JDF 830 Letters of Guardianship – Minor

Indian Child Welfare Act (ICWA) Forms

Depending on your answer to the ICWA question in the Petition (JDF 824), and Consent (JDF 825) if filed, also file:

- ❑ JDF 1350 ICWA Assessment (Domestic, Probate, Adoption)
- ❑ JDF 1351 ICWA Declaration of Non-Indian Heritage (Domestic & Probate)

Proposed Orders

You will also need to file one or more of the following proposed orders depending on what type of guardianshipyou are requesting.

- ❑ JDF 827 Order Appointing Guardian - Minor
- ❑ JDF 828 Order Appointing Temporary Guardian - Minor
- ❑ JDF 829 Order Appointing Emergency Guardian – Minor

STEPS TO FILING YOUR CASE

Step 1: Complete Forms.

Selecting these instructions indicates that you are planning on filing for a Guardianship for a Minor. If you have a family situation that requires you to file a guardianship for more than one child, you will be required to prepare the appropriate forms for each child. Each child will have his or her own case for confidentiality purposes. The $199.00 filing fee is per Petitioner(s) seeking the guardianship(s) and not per case. The Petitions must be filed on the same day. The caption below needs to be completed on all forms filed. **Make sure that you make a copy of all the forms you file with the Court for your own records.**

District Court Denver Probate Court _____County, Colorado Court Address:	
In the Interest of: **Minor**	**▲ COURT USE ONLY ▲**
Attorney or Party Without Attorney (Name and Address): Phone Number: Email: FAX Number: Atty. Reg. #:	Case Number:
	Division: Courtroom:
NAME OF FORM	

- ❑ **Petition for Appointment of Guardian for Minor (JDF 824).**
  - ❑ The Petitioner must complete **all** applicable sections on the form.
  - ❑ If the child's father is not known (no name appears on the birth certificate), then a copy of the birth certificate of the child should be attached to the Petition. If the parental rights have been terminated or the parents are deceased, copies of the termination papers or the death certificates should be attached to the Petition.
  - ❑ The Petitioner must sign this form.

- ❑ **Acceptance of Office (JDF 805).**
  - ❑ Complete all applicable sections on the form and attach the name-based criminal history check and current credit report for the proposed guardian.
    - ❑ Attach a legible copy of the proposed guardian's driver's license, passport or other government-issued identification.
    - ❑ Obtain and attach a name-based criminal history record check for the proposed guardian from Colorado Bureau of Investigation (CBI). To obtain a name-based criminal history check, contact CBI at 690 Kipling Street Denver, CO 80215, (303) 239-4300, or at **www.cbi.state.co.us** and click on CBI Records Check.
    - ❑ Obtain a current credit report of the proposed guardian. Below are a few credit reporting agencies:
      - ◆ Equifax, Inc., P.O. Box 740241, Atlanta, GA 30374, 1-800-685-1111, or at **www.equifax.com**
      - ◆ Experian, P.O. Box 2002, Allen, TX 75013, 1-888-397-3742, or at **www.experian.com**
      - ◆ TransUnion, P.O. Box 2000, Chester, PA 19022, 1-800-916-8800, or at **www.transunion.com**
    - ❑ Redact (strikeout) all social security numbers identified on the credit report and all but the last four digits of account numbers.
    - ❑ The cost for all criminal history checks and credit reports must be paid by the proposed guardian.
  - ❑ The proposed guardian must sign the Acceptance of Office.

- ❑ **Waiver of Notice (JDF 719).**
  - ❑ This form can be completed and signed by any interested person (except the Minor), who wishes to waive notice of any hearings or matters before the Court.
  - ❑ This form cannot be completed by the Minor. See Notice requirements in **Step 4.**

- ❑ **Irrevocable Power of Attorney (JDF 721).**
  - ❑ This form is required **only** if the proposed guardian lives out-of-state.
  - ❑ The proposed out-of-state guardian must complete this form and sign it before a Court Clerk or Notary Public.

- ❑ **Consent or Nomination of Minor (JDF 826)**
  - ❑ The Minor who is the subject of the appointment, if 12 years of age or older, has the right to consent or refuse to consent to an appointment of a guardian. JDF 826 can be completed and signed by the Minor to indicate his/her consent to or refusal of the appointment.

The Court will consider the Minor's wishes, but refusal to consent does not guarantee that the Court will not appoint the proposed guardian.

Note: This is not a substitute for personal service. Step 4 - Notice of Hearing to Minor must still be completed.

- ❑ **Consent of Parent (JDF 825).**
  - ❑ The Minor's parent **can consent** to the appointment by completing JDF 825.

- ❑ **Indian Child Welfare Act (ICWA) – Refer to answers provided in the Petition (JDF 824), and Consent (JDF 825) if filed.**
  - ❑ ICWA Assessment (Domestic, Probate, Adoption) (JDF 1350)
  - ❑ ICWA Declaration of Non-Indian Heritage (Domestic & Probate) (JDF 1351)

- ❑ **Letters of Guardianship - Minor (JDF 830).**
  - ❑ Complete only the caption on the form.
  - ❑ The Court will complete the remainder of the form and sign it following the appointment of the Guardian.

- ❑ **Proposed Order (JDF 827, JDF 828 or JDF 829).**
  - ❑ Select the appropriate Order based on the type of guardianship you are requesting. The proposed order should match your selection from number 1 on the Petition – JDF 824.
  - ❑ Complete the caption and any sections on page one that applies to your case.

Step 2: You are Ready to File your Papers with the Court.

Provide the Court with the documents completed as described in Step 1 above and pay the filing fee. You may receive a hearing date from the clerk at the time of filing your paperwork or you may need to contact the clerk later to obtain the hearing date. The date and time of this hearing is important, as you will need it to complete the Notice of Hearing or publication forms described in **Step 3 and Step 4.**

Step 3: Notice to Interested Persons. (By Mail or Publication)

After the Petition for Appointment of Guardian for Minor is filed and a hearing is set, you (the Petitioner) must give notice of the time and place of the hearing along with a copy of the Petition to the following people:

1. The minor, if the minor is 12 years old or older
2. Any person alleged to have had the primary care and custody of the minor during the 60 days before the filing of the Petition
3. Each living parent of the minor or, if there is none, the adult nearest kinship that can be found
4. Any person nominated as guardian by the minor if the minor is at least 12 years old
5. Any appointee of a parent or guardian whose appointment has not been prevented or terminated under §15-14-203(1), C.R.S. or whose appointment was consented to under §15-14-203(2)
6. Any guardian or conservator currently acting for the minor in this state or elsewhere

❑ Service by Mail.

- ❑ **If you know the address of the person to whom you are giving notice,** complete the Notice of Hearing to Interested Persons (JDF 806).
- ❑ Mail copies of **all** documents filed with the Court (including the Petition for Guardianship) **and** the completed Notice of Hearing to Interested Persons (JDF 806), at least 14 days before the time set for the hearing.
- ❑ Complete the Certificate of Service portion on the form, listing the names and addresses of all persons to whom you sent the notice and the date you sent it and file the form with the Court at or before your hearing.
- ❑ If the address of any interested person is unknown, you **must** publish the notice of the hearing in the newspaper. See Service by Publication instructions below.

❑ Service by Publication.

If you do not have a current address for the interested persons, or if their identity is not known and cannot be ascertained with reasonable diligence, you must publish the notice of hearing in the newspaper.

Before doing this you may wish to search the Internet, contact prior employers, friends, etc. to locate a current address.

- ❑ **Notice of Hearing by Publication (JDF 716).**
  - ❑ Complete this form and have it published in a newspaper of general circulation in the county where the hearing is to be held.
  - ❑ The notice must be published once a week for three consecutive weeks, with the last date of publication being at least 14 days before the hearing date.
- ❑ The Petitioner must request a publisher's affidavit from the newspaper after publication is completed. This publisher's affidavit, prepared by the newspaper, will serve as proof that the Notice of Hearing by Publication (JDF 716) was published. This publisher's affidavit must be attached to the Affidavit Regarding Due Diligence and Proof of Publication (JDF 714). See form identified below.

- ❑ **Affidavit Regarding Due Diligence and Proof of Publication (JDF 714).**
  - ❑ Complete all sections on this form. The purpose of this form is to describe to the Court your efforts to locate the individuals listed in the Notice of Hearing by Publication (JDF 716).
  - ❑ The Petitioner must sign this form.

Step 4: Hearing.

The Petitioner must appear at the hearing and should be prepared to present evidence as to why the Guardianship is in the child's best interest.

- ❑ Be prepared to present evidence showing that the parents are aware of the proceedings and that they consent to the Guardianship. If the Petitioner cannot prove that the parents' consent to the Guardianship, then he/she must be prepared to present evidence showing that the parents are either unwilling or unable to take care of the child or that their parental rights have been terminated.

- ❑ If the Court appoints a Guardian, the Court will issue Letters (JDF 830) as a formal notice of the appointment and provide you with a copy of the Order Appointing Guardian.
  You may need certified copies of the Letters and Order. The number needed will vary, depending on your circumstances.
  Copies of the Order must be provided to all interested persons identified in the Order.

Step 5: Requirements after the Court Appoints a Guardian.

- ❑ Complete, sign, and file the Acknowledgment of Responsibilities (JDF 800) with the court. Letters of Appointment will not be issued until this form is filed.
- ❑ Complete, sign, and file the Probate Case Information Sheet (JDF 705) with the court, if you've not already done so. Letters of Appointment will not be issued until this form is filed.
- ❑ Refer to the Order Appointing Guardian for a Minor to determine if/when the annual report is due. The purpose of the annual report is to report to the Court and interested persons as to the wellbeing of the Minor. The Guardian's Report must be provided to the persons listed in the Order of Appointment. A guardian shall give notice of the filing of the guardian's report, together with a copy of the report to those listed in the Order of Appointment within ten days of filing the report with the court.
- ❑ Refer to the Order Appointing Guardian for Minor regarding completing the Notice of Appointment of Guardian and/or Conservator (JDF 812). The purpose of this form is to notify the Minor, if 12 years or older, and persons given notice of the Petition that they have the right to request termination or modification of the Guardianship.
- ❑ The Minor may not move outside the State of Colorado without an Order from the Court.

Note:
A Guardian's Manual is available to assist the newly appointed Guardian. This manual identifies general responsibilities and important Guardianship issues, along with completed sample forms to assist the preparer.

The responsibilities of the guardian terminate upon the death, resignation, or removal of the guardian or upon the Minor's death, adoption, marriage, or attainment of majority. Resignation of a guardian does not terminate the guardianship until approved by the Court.

❑District Court ❑Denver Probate Court _____ County, Colorado Court Address: **In the Interest of:** **Minor**	▲ **COURT USE ONLY** ▲
Attorney or Party Without Attorney (Name and Address): Phone Number: E-mail: FAX Number: Atty. Reg. #:	Case Number: Division Courtroom

PETITION FOR APPOINTMENT OF GUARDIAN FOR MINOR

1. ❑No court proceeding is pending in this state or elsewhere concerning the respondent.
Or
❑The following proceeding(s) concern(s) the respondent. Identify name of court, case number, state, date, and type of proceeding if any.

Name of Court	Case Number	State	Date of Proceeding	Type of Proceeding

2. Regarding the Indian Child Welfare Act (ICWA):
❑I am aware of the child or child's relatives having American Indian/Native American or Alaska Native heritage.

Name of tribe(s) _____

NOTE: If you checked that you are aware of the child or child's relatives having any American Indian/Native American or Alaska Native heritage, you must complete and file with the court, JDF 1350 – Indian Child Welfare Act (ICWA) Assessment Form.

❑I am not aware of the child or child's relatives having any American Indian/Native American or Alaska Native heritage.

NOTE: If you checked that you are not aware of the child or child's relatives having any American Indian/Native American or Alaska Native heritage, you must complete and file JDF 1351 – American Indian/Alaska Native Indian Child Welfare Act (ICWA) Declaration of Non-Indian Heritage.

3. The petitioner is:
❑a person interested in the welfare of the minor.
or
❑the minor and is 12 years of age or older.

This is a petition for appointment of a(n):
❑Guardian. (NOTE: The appointment will expire on the minor's 18th birthday, unless otherwise ordered by the court.)

❑Guardian with a request for findings establishing the Minor's eligibility for classification as a special immigrant juvenile under federal law pursuant to § 15-14-204(2.5)(b), C.R.S. (NOTE: The appointment will expire on the minor's 21st birthday, unless otherwise ordered by the court.)

❑Temporary Guardian (not to exceed 6months). (§ 15-14-204(4), C.R.S.)

❑Emergency Guardian (not to exceed 60 days). (§ 15-14-204(5), C.R.S.)

4. Information about the petitioner:

Name: _____ List all names used (also known as, formerly known as, etc.): _____

Relationship to minor: _____

Street Address: _____

City:_____ State:_____ Zip Code:_____

Mailing Address, if different: _____

City:_____ State:_____ Zip Code:_____

Primary Phone:_____ Alternate Phone:_____

Email Address:_____

Does Petitioner need an interpreter? ❑No ❑Yes (Language: _____)

5. Information about the minor:

Name:_____ Current age:___ Date of Birth: _____

Street Address:_____

City:_____ State:_____ Zip Code:_____

Mailing Address, if different: _____

City:_____ State:_____ Zip Code:_____

Primary Phone:_____ Alternate Phone:_____

Email Address:_____

Does the minor need an interpreter? ❑No ❑Yes (Language_____)

6. Information about the parents:

Parent's Name:_____ ❑Deceased ❑Unknown (attach Birth Certificate)

Street Address:_____

City: _____ State: _____ Zip Code: _____

Mailing Address, if different: _____

City:_____ State:_____ Zip Code:_____

Primary Phone:_____ Alternate Phone:_____

Email Address:_____

Does this person need an interpreter? ❑No ❑Yes (Language: _____)

Parent's Name: _____ ❑Deceased ❑Unknown (attach Birth Certificate)

Street Address: _____

City: _____ State: _____ Zip Code: _____

Mailing Address, if different: _____

City:_____ State:_____ Zip Code:_____

Primary Phone:_____Alternate Phone:_____

Email Address:_____

Does this person need an interpreter? ❑No ❑Yes (Language: _____)

7. The parent or guardian ❑has nominated ❑has not nominated a guardian by will or other writing. (Attach copy of document, if applicable.)

8. Venue for this proceeding is proper in this county because the minor:
❑resides in this county.
❑is present in this county at the time the proceeding is commenced.

9. The best interest of the minor will be served by the appointment of a guardian.

10. The minor is unmarried and:
❑the parent(s) consent(s) to the appointment of a guardian. (Attach Consent of Parent - JDF 825).
❑all parental rights have been terminated by
❑prior court order. (Attach a copy of the court order to this petition.)
❑death. (If available, attach a copy of the death certificate to this petition.)
❑parents are unwilling or unable to exercise their parental rights. (Briefly explain.)

_____

_____

_____

_____

❑guardianship has previously been granted to a third party who has died or become incapacitated and the guardian has not appointed a successor guardian by will or written instrument.
(Describe and attach order or any relevant documents.)

_____

_____

_____

_____

11. ❑Petitioner is 21 years of age or older, nominates himself or herself and requests to be appointed as guardian.
or
❑Petitioner nominates the following person, who is 21 years of age or older, to be appointed as guardian. (§15-14-206, C.R.S.)

Name: _____ List all names used (also known as, formerly known as, etc.): _____

Relationship to Minor: _____

Street Address: _____

City: _____ State: _____ Zip Code: _____

Mailing Address, if different: _____

City: _____ State: _____ Zip Code: _____

Primary phone: _____ Alternate phone: _____

Email Address: _____

Does this person need an interpreter? ❑No ❑Yes (Language: _____)

12. ❑The minor, who is 12 years of age or older, has nominated a guardian. (Attach Consent or Nomination of Minor - JDF 826).

13. ❑It is necessary to appoint a temporary guardian (may not exceed six months) for the minor until a hearing can be held on this petition because an immediate need exists, and the appointment of a temporary guardian is in the best interest of the minor. (§15-14-204(4), C.R.S.)

(Describe the immediate need.) _____

_____

_____

_____

_____

_____

_____

_____

14. ❑It is necessary to appoint an **emergency guardian** (may not exceed 60 days) for the minor, because of the likelihood of substantial harm to the minor's health or safety, an emergency exists, and no other person appears to have authority to act in the circumstances. (§ 15-14-204(5) C.R.S.)

(Describe the nature of the emergency.) _____

_____

_____

_____

_____

_____

15. The following person had the primary care and custody of the minor during the 60 days prior to the filing of this petition:

Name: _____ Relationship to Minor: _____

Street Address: _____

City: _____ State: _____ Zip Code: _____

Mailing Address, if different: _____

City: _____ State: _____ Zip Code: _____

Primary Phone:_____ Alternate Phone:_____

Email Address: _____

Dates of Care: _____

Does this person need an interpreter? ❑No ❑Yes (Language: _____)

16. ❑The parents are both deceased. The following person is the adult relative nearest in kinship that can be found:

Name: _____ Relationship to Minor: _____

Street Address: _____

City: _____ State: _____ Zip Code: _____

Mailing Address, if different: _____

City: _____ State: _____ Zip Code: _____

Primary phone: _____Alternate phone: _____

Email Address: _____

Does Petitioner need an interpreter? ❑No ❑Yes (Language: _____)

17. ❑The following person is currently acting as guardian or conservator for the minor in Colorado or elsewhere:

Name: _____ Relationship to Minor: _____

Street Address: _____

City: _____ State: _____ Zip Code: _____

Mailing address, if different: _____

City: _____ State: _____ Zip Code: _____

Primary Phone:_____ Alternate Phone:_____

Email Address: _____

Does Petitioner need an interpreter? ❑No ❑Yes (Language: _____)

18. The guardian may receive compensation.

❑The hourly rates to be charged, any amounts to be charged pursuant to a published fee schedule, including the rates and basis for charging fees for any extraordinary services, and any other bases upon which a fee charged to the estate will be calculated, are as stated below or in an attachment to this petition. *

_____

_____

_____

❑The basis of compensation has not yet been determined.

* There is a continuing obligation to disclose any material changes to the basis for charging fees. (§ 15-10-602, C.R.S.)

19. Counsel for the guardian may be compensated.

❑The hourly rates to be charged, any amounts to be charged pursuant to a published fee schedule, including the rates and basis for charging fees for any extraordinary services, and any other bases upon which a fee charged to the estate will be calculated, are as stated below or in an attachment to this petition. *

_____

_____

_____

❑The basis of compensation has not yet been determined.

* There is a continuing obligation to disclose any material changes to the basis for charging fees. (§ 15-10-602, C.R.S.)

20. The minor's assets are:

Description of Assets (e.g. bank accounts, property) ❑**None**	**Estimated Value**
	$
	$
Total	**$**

21. The minor's income is:

Description of Income (e.g. social security, insurance) ❑**None**	**Estimated Amount of Income**
	$
	$
Total	**$**

22. The petitioner requests that an appointment of a guardian be made after notice and hearing.

❑**In addition, petitioner requests the following:**

_____

_____

❑ By checking this box, I am acknowledging I am filling in the blanks and not changing anything else on the form.
❑ By checking this box, I am acknowledging that I have made a change to the original content of this form.

VERIFICATION

I declare under penalty of perjury under the law of Colorado that the foregoing is true and correct.

Executed on the _____ day of
(date)

_____, _____,
(month) (year)

at _____
(city or other location, and state OR country)

_____
(printed name)

_____
(Signature of Petitioner)

_____
Attorney Signature, (if any)

Executed on the _____ day of
(date)

_____, _____,
(month) (year)

at _____
(city or other location, and state OR country)

_____
(printed name)

_____
(Signature of Co-Petitioner, if any)

_____
Date

❑District Court ❑Denver Probate Court _____ County, Colorado Court Address: **In the Interest of:** **Ward/Protected Person**	▲ **COURT USE ONLY** ▲
Attorney or Party Without Attorney (Name and Address): Phone Number: E-mail: FAX Number: Atty. Reg.#:	Case Number: Division: Courtroom:

PROBATE CASE INFORMATION SHEET

Full name of respondent/minor (ward/protected person): _____

Date of birth: _____ Social Security Number (last 4 digits only): _____

Full name of guardian/conservator: _____

Date of birth: _____ Social Security Number (last 4 digits only): _____

❑By checking this box, I am acknowledging I am filling in the blanks and not changing anything else on the form.

☑By checking this box, I am acknowledging that I have made a change to the original content of this form.

VERIFICATION

I declare under penalty of perjury under the law of Colorado that the foregoing is true and correct.

Executed on the _____ day of _____, 2024 at _____, _____

_____
(insert name)

Date:_____, 2024

/s/ *Original Signature on File*
(insert attorney names)
CHAYET & DANZO, LLC
650 S. Cherry St., Ste. 710
Denver, CO 80246

❑District Court ❑Denver Probate Court _____ County, Colorado Court Address: **In the Interest of:** **Minor**	▲ **COURT USE ONLY** ▲
Attorney or Party Without Attorney (Name and Address): Phone Number: E-mail: FAX Number: Atty. Reg. #:	Case Number: Division Courtroom
CONSENT OR NOMINATION OF MINOR	

I,_____ (minor), am 12 years of age or older and I:

1. ❑**Consent** to the appointment of _____ (name) as my guardian.

2. ❑**Do not consent** to the appointment of _____ (name) as my guardian.

3. ❑**Nominate** _____ (name), who is 21 years of age or older, as my ❑guardian ❑conservator. (Optional)

4. Regarding the Indian Child Welfare Act (ICWA):
   ❑I am aware that I or my relatives have American Indian/Native American or Alaska Native heritage.

   Name of tribe(s) _____

   ❑I am not aware that I or my relatives have any American Indian/Native American or Alaska Native heritage.

❑ By checking this box, I am acknowledging I am filling in the blanks and not changing anything else on the form.
❑ By checking this box, I am acknowledging that I have made a change to the original content of this form.

VERIFICATION

I declare under penalty of perjury under the law of Colorado that the foregoing is true and correct.

Executed on the _____ day of _____, _____,
(date) (month) (year)

at _____
(city or other location, and state OR country)

_____
(printed name)

_____
(signature)

❑District Court ❑Denver Probate Court _____ County, Colorado Court Address: _____ **In the Interest of:** **Protected Person**	▲ ▲ **COURT USE ONLY** Case Number: Division: Courtroom:
ACKNOWLEDGMENT OF RESPONSIBILITIES **❑CONSERVATOR AND/OR ❑GUARDIAN**	

I, _____ (name), acknowledge that I was appointed as the conservator and/or guardian for _____ (ward or protected person) on _____ (date) and I understand that Letters of Guardianship/Conservatorship will not be issued until this form is signed and provided to the court. I agree to comply with statutory and court requirements and understand that I am responsible for preparing and filing reports and/or plans with the court and providing copies to all interested persons as identified in the Order of Appointment.

I have received the following information to review regarding my responsibilities.

❑User's Manual for Guardians ❑User's Manual for Conservators

❑Viewed Informational Modules/DVD/Video ❑Pamphlets

❑Attendance at mandatory training session on _____ (date).

❑Other: _____

Acknowledgment of Responsibilities:

1. I am responsible for promptly providing the court with any changes to my mailing address, email address, and telephone number by filing a Notice of Change Regarding Contact Information (JDF 725)**.**

2. I am responsible for maintaining supporting documentation for all receipts into the accounts and all disbursements out of the accounts under my control during the duration of my appointment. Supporting documentation includes bank statements and check copies, credit card statements and receipts, sales receipts, and other such forms of proof that support my reports. I understand that the court or any interested persons may request copies at any time.

3. If funds must be placed in a restricted account, I understand that any withdrawals require a court order.
   ❑The Acknowledgment of Deposit of Funds to Restricted Account (JDF 867) must be returned to the court as documentation that the funds were deposited, within 45 days or by _____ (date).
   ❑All requests for withdrawal must be in writing by submitting a Motion to Withdraw Funds (JDF 868).
   ❑The Restricted Account Report (JDF 896) is due on _____ (date) and every year thereafter on such day and month, unless I am notified by the court.

4. I understand that the following reports and/or plans are due on _____ (date).
   ❑Initial Guardian's Report/Care Plan - Adult (JDF 850)
   ❑Conservator's Financial Plan with Inventory and Motion for Approval (JDF 882)

5. I understand that the following reports are due on _____ (date) and every year thereafter on such day and month, unless I am notified by the court:
   ❑Guardian's Report - Minor (JDF 834)
   ❑Guardian's Report - Adult (JDF 850) ❑Conservator's Report (JDF 885)

6. I understand that as a court-appointed guardian and/or conservator, I am required by law to report any known or suspected abuse, neglect, or exploitation of any at-risk elder (a person 70 years of age or older) to law enforcement. I understand that criminal penalties may result from failure to comply with this law. Please refer to § 18-6.5-108, C.R.S. for additional information.

7. I understand that all reports must be filed on the most current version of the form and that the forms are available on the state court website: http://www.courts.state.co.us

❑ By checking this box, I am acknowledging I am filling in the blanks and not changing anything else on the form.

❑ By checking this box, I am acknowledging that I have made a change to the original content of this form.

My signature below indicates that I have read and understand my responsibilities as a newly appointed guardian and/or conservator.

VERIFICATION

I declare under penalty of perjury under the law of Colorado that the foregoing is true and correct.

Executed on the _____ day of
(date)

_____, _____,
(month) (year)

at _____
(city or other location, and state OR country)

_____
(printed name)

_____
(Signature of Guardian/Conservator/Successor)

Executed on the _____ day of
(date)

_____, _____,
(month) (year)

at _____
(city or other location, and state OR country)

_____
(printed name)

_____
(Signature of Co-Guardian/Co-Conservator/Successor, if any)

Quick Guide to Appointment of a Guardian – Minor

◆Child must be a resident in the county in which you are filing the petition or is present at the time the proceeding is commenced.

VERY IMPORTANT: Read the Instructions thoroughly (JDF 823). Review the Guardian's Manual and the Guardianship & Conservatorship Video for Minors found on the Colorado Judicial Branch website at **www.courts.state.co.us**

◆ Prepare Your Initiating Paperwork and File with the Court

1. **Petition for Appointment of Guardian for Minor (JDF 824)** and any other required papers per the Instructions.
2. **Acceptance of Office (JDF 805)** – Including: CBI Report, Credit Report & Copy of Drivers' License or Government Issued ID for each Petitioner/Nominated Person (Unless as otherwise stated in §15-14-110, C.R.S.).
3. **Notice of Hearing (JDF 806 and JDF 807).**
4. **Irrevocable Power of Attorney (JDF 721)** if applicable (nonresident).
5. **Consent or Nomination of Minor (JDF 826)** if the Minor is 12 or older.
6. **Consent of Parent (JDF 825)** if applicable.
7. ***Proposed* Letters of Guardianship – Minor (JDF 830).**
8. ***Proposed* Order Appointing (Guardian JDF 827, and/or Temporary JDF 828 - Emergency Guardian JDF 829).**

◆ **Make copies of all paperwork for yourself and copies to serve on all "Interested Persons".**

◆ **File the original papers with the court and pay the filing fee.**

Please Note: The Court May Appoint a Guardian ad Litem.

◆ Complete Service – to All Interested Persons in the Case

◆ If the Minor is 12 years or older, they must be personally served through the Sheriff or private process server at least 14 days prior to the hearing with a copy of the Petition (JDF 824) and Notice of Hearing (JDF 807). File completed JDF 807 with the court, showing the Minor has been served.

◆ A copy of the Petition (JDF 824) and Notice of Hearing (JDF 806) must be given to all Interested Persons at least 14 days prior to the hearing. File completed JDF 806 with the court, showing all parties have been served.

◆ Attend Appointment Hearing

◆ Be prepared to provide proof through documentation and testimony of any statements made in the Petition and proof that all persons named in the Petition were properly served.

◆ Petitioner(s), Nominated Person(s) and the Minor if 12 or older, must appear for the hearing unless excused by the court (*this would require filing a motion, along with a physician's letter and/or any other supporting documentation with the court).*

◆ Additional Required Documents and Reporting Requirements

1. **Acknowledgment of Responsibilities (JDF 800)** – File with the court immediately after appointment (Letters of Appointment will not be issued until this is submitted).
2. **Probate Case Information Sheet (JDF 705)**. (Letters of Appointment will not be issued until this is filed.
3. **Notice of Appointment (JDF 812)** – Within 30 days of appointment, you must provide a copy of the Order of Appointment (JDF 827, 828 and/or 829) as well as JDF 812 to the Minor if 12 or older and to all Interested Persons who received a copy of the Petition and Notice, and identified in the Order of Appointment.
4. **Annual Guardian's Report (JDF 834)** – File annually or as ordered by the judge. You must provide a copy of this report to the Minor if 12 or older and to all Interested Person identified in the Order of Appointment.

Quick Guide to Appointment of a Guardian – Adult

◆ Respondent must be a resident of Colorado. Please refer to the Instructions and/or Colorado Revised Statute §15-14-108 for details as to where the petition should be filed.

VERY IMPORTANT: Read the Instructions thoroughly (JDF 840). Review the "Guardian's Manual" on the Colorado Judicial Branch website at **www.courts.state.co.us**

◆ Prepare Your Initiating Paperwork and File with the Court

1. **Petition for Appointment of Guardian for Adult (JDF 841).**
2. **Acceptance of Office (JDF 805)** – Including: CBI Report, Credit Report & Copy of Drivers' License or Government Issued ID for each Petitioner/Nominated Person (Unless as otherwise stated in §15-14-110, C.R.S.).
3. **Notice of Hearing (JDF 806 and JDF 807).**
4. **Irrevocable Power of Attorney (JDF 721)** if applicable (non-resident nominated fiduciary).
5. **CAPS Check Written Authorization Form** - obtained by clicking here: CAPS_Check_Written_Authorization_Form
6. ***Proposed* Letters of Guardianship – Adult (JDF 849).**
7. ***Proposed* Order Appointing (Guardian - JDF 848 and/or Emergency Guardian - JDF 843).**

◆ **Make copies of all paperwork for yourself and copies to serve on all "Interested Persons".**

◆ **File the original papers with the court and pay the filing fee.**

Please Note: The Court Must Appoint a Court Visitor and May Appoint a Guardian ad Litem and/or Respondent Counsel.

◆ Complete Service – to All Interested Persons in the Case

◆ Respondent must be personally served through the Sheriff or private process server at least 14 days prior to the hearing with a copy of the Petition (JDF 841) and Notice of Hearing (JDF 807). File completed JDF 807 with the court, showing the Respondent has been served.

◆ A copy of the Petition (JDF 841) and Notice of Hearing (JDF 806) must be given to all Interested Persons at least 14 days prior to the hearing. File completed JDF 806 with the court, showing all parties have been served.

◆ Attend Appointment Hearing

◆ Be prepared to provide proof through documentation and testimony of any statements made in the Petition and proof that all persons named in the Petition were properly served.

◆ Petitioner(s), Nominated Person(s) and Respondent must appear for the hearing unless excused by the court (*this would require filing a motion, along with a physician's letter and/or any other supporting documentation with the court*).

◆ Additional Required Documents and Reporting Requirements

1. **Acknowledgment of Responsibilities (JDF 800)** – File with the court immediately after appointment (Letters of Appointment will not be issued until this is filed).
2. **Probate Case Information Sheet (JDF 705).** (Letters of Appointment will not be issued until this is filed.)
3. **Notice of Appointment (JDF 812)** – Within 30 days of appointment, you must provide a copy of the Order of Appointment (JDF 848 and/or JDF 843) as well as JDF 812 to all Interested Persons who received the Petition and Notice, and identified in the Order of Appointment, including the Ward.
4. **Initial Report/Care Plan (JDF 850)** – Complete within 60 days of appointment and file with the court. Copies of this Report and the Annual Report (JDF 850) must be provided to the Ward and all Interested Persons identified in the Order of Appointment.
5. Annual Guardian's Report (JDF 850) – File annually or as ordered by the judge.

DISTRICT COURT, JEFFERSON COUNTY, COLORADO Court Address: 100 JEFFERSON COUNTY PARKWAY, GOLDEN, CO, 80401-6002	
In the Matter of	⚠ **COURT USE ONLY** ⚠ Case Number: Courtroom:
GUARDIAN/CONSERVATOR CASE MANAGEMENT ORDER	

The Court has received your Petition for Guardianship and/or Petition for Conservatorship.

1) Please carefully **follow the instructions** for your case that are available online at https://www.coloradojudicial.gov/self-help-forms Judicial Department Forms (JDF)

o Instructions for Appointment of Guardian-Adult (JDF 840)
o Instructions for Appointment of Guardian-Minor (JDF 823)
o Instructions for Appointment of Conservator-Adult (JDF 875)
o Instructions for Appointment of Conservator-Minor (JDF 860)

2) Parties without attorneys must follow the same procedures.

3) **Within 45 days of the date of filing,** Petitioner must contact the Division L Clerk by phone at 720-772-2468 or by email at 01DivisionL@judicial.state.co.us to schedule a hearing. You must have all necessary documents filed with the Court before scheduling a hearing. The proposed Guardian/Conservator is responsible for the costs of the reports.

o Probate Case Information Sheet (JDF 705)
o Acceptance of Office (JDF 805)
o Proposed Guardian/Conservator Nominee's Driver License
o Criminal History Report for Guardian/Conservator Nominees
o Credit Report for Guardian/Conservator Nominees

If you have not filed the documents and scheduled a hearing within 45 days, the case may be dismissed.

4) Additional Documents for Adult Guardianships/Conservatorships.

o A Written Authorization to Request a CAPS Check. *See* Instructions JDF 840/875.
o A Physician's Evaluation. *See* Colorado Rule of Probate Procedure 60.

5) The Petitioner, proposed Guardian and/or Conservator, and Respondent must appear at the hearing unless a Court order has been issued prior to the hearing which permits the absence.

6) Unless otherwise ordered by the Court in advance, all contested Guardianship/Conservatorship hearings will be heard in-person at the Jefferson County Courthouse. (If an interpreter or ADA accommodation is needed, counsel and/or Petitioner must notify the Court when setting the hearing.)

7) **Notice is important.** *See* JDF 806 & 807. The failure to properly serve Respondent and to notify all interested persons may result in the Court's inability to hear the case. Without notice, the case may be continued or dismissed. Refer to Instructions. A Respondent, Ward, or Protected Person cannot waive notice. A Respondent who is a minor age 12 and older must be served. JDF 806 must be completed by Petitioner and filed with the Court.

8) In adult cases, the Court is required to appoint a person called a Visitor, who will interview Respondent and other parties to the case. Petitioner is responsible for paying the fee directly to the Visitor.

9) The Respondent, adult or minor, may be represented by a court-appointed attorney or one of their own choosing. Depending on the circumstances, a court-appointed attorney for a child is usually paid by the State of Colorado, but a court-appointed attorney for an adult Respondent is usually paid by Respondent unless indigent.

10) A guardian *ad litem* (GAL) may also be appointed for the benefit of Respondent. The GAL will investigate and make recommendations in the Respondent's best interests that may differ from a Visitor or Respondent's attorney. A GAL must be paid by Respondent's estate unless Respondent is indigent.

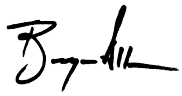
11) Letters of Guardianship/Conservatorship will not issue until all named Guardians/Conservators have completed and filed the Acknowledgement of Responsibilities (JDF 800).

All interested persons are urged to obtain legal advice and/or hire an attorney for these complicated cases. The staff at the Probate Clerk's Window on the first floor of the Jefferson County Courthouse, as well as at the Court Resource Center, can assist with general questions, with JDF forms, and with court procedures, but cannot provide legal advice on your case.

COURT RESOURCE CENTER LOCATION: Jefferson County Court & Administration Building, Suite 2040; 100 Jefferson County Parkway, Golden, CO 80401. PHONE: 720-772-2501. EMAIL: 01selfhelp@judicial.state.co.us

Petitioner is ordered to provide a copy of this Case Management Order to all self-represented parties and Interested Persons in the case within 10 days.

Issue Date:



BRYCE DAVID ALLEN
Magistrate

DISTRICT COURT, JEFFERSON COUNTY, COLORADO Court Address: 100 JEFFERSON COUNTY PARKWAY, GOLDEN, CO, 80401-6002	
In the Matter of:	⚠ **COURT USE ONLY** ⚠
	Case Number: Division: L Courtroom:

PROCEDURAL ORDERS FOR CONTESTED GUARDIANSHIP AND/OR CONSERVATORSHIP HEARING

PROCEDURAL ORDERS FOR CONTESTED GUARDIANSHIP AND/OR CONSERVATORSHIP HEARING

YOU MUST READ AND CAREFULLY FOLLOW THE ORDERS BELOW. FAILURE TO DO SO MAY RESULT IN EXCLUSION OF EVIDENCE OR WITNESSES.

1) Parties MUST comply with all notice, service, and filing requirements. Failure to do so may result in dismissal of one or more petitions. The Court encourages the parties to review all information on the Court's website at https://www.coloradojudicial.gov/taxonomy/term/450?resource_type=450

2) The parties shall exchange their witness lists and exhibit lists at least 7 days prior to the hearing.

3) Any exhibits a party intends to offer into evidence during the hearing must be labeled as discussed below and served on the opposing parties at least 7 days prior to the hearing.

4) All exhibits must be labeled prior to filing. Petitioners will use numbers (for example, "Anderson-1," "Anderson-2," "Zamora-1," "Zamora-2"), any objecting party will use letters (for example, "Herrera-A," "Herrera-B"), and Respondent and GAL will also use letters (for example, "Respondent-A," "Respondent-B." "GAL-A," "GAL-B"). Exhibits with multiple pages must include page designations so that the specific pages can be referenced during the proceeding to easily direct the witness and the court.

5) Parties must provide the Court and other parties any audio or video recording that may be offered into evidence in advance of the hearing in a format that can be played without proprietary software. Any audio or video recording must be provided either via a flash drive directly to the Division L Clerk.

6) **In advance of the hearing, parties are invited (but not required) to electronically file all documents listed above. Parties shall bring notebooks containing a witness list, an exhibit list, and all proposed exhibits to the hearing for a) *each* party and Interested Person, b) the Court, and c) the witness stand.**

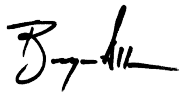
7) All parties, counsel, participants, professionals, and witnesses shall appear in-person unless a motion has been filed and virtual appearance authorized via Court Order in advance of the hearing.

ORDER to Serve this Case Management Order on all Parties and Interested Persons

Petitioner is ORDERED to immediately provide a copy of this Order

to all counsel, self-represented parties, and Interested Persons in this case.

Issue Date:



BRYCE DAVID ALLEN
Magistrate

❑District Court ❑Denver Probate Court _____ County, Colorado Court Address: **In the Interest of:** **Respondent/Ward**	▲ **COURT USE ONLY** ▲ Case Number: Division Courtroom

ORDER APPOINTING GUARDIAN FOR ADULT

Upon consideration of the Petition for Appointment of Guardian for the above respondent and hearing on _____ (date),

The court has considered any express wishes of the respondent concerning the selection of the guardian. The court has considered the powers and duties of the guardian, the scope of the guardianship, and the priority and qualifications of the nominee.

The court finds, determines and orders:

1. Venue is proper and required notices have been given or waived.

2. The evidence is clear and convincing that the respondent is an incapacitated person and the respondent's needs cannot be met by less restrictive means, including the use of appropriate and reasonably available technological assistance.

3. The nature and extent of the respondent's incapacity is as follows:

   _____

   _____

   _____

4. **The court appoints the following person as guardian for the ward:**

   Name:_____

   Street address:_____

   City:_____ State:_____ Zip code:_____

   Mailing address, if different: _____

   City: _____ State: _____ Zip code: _____

   Primary phone: _____ Alternate phone: _____

   Email address: _____

5. The guardian must promptly notify the court if the guardian's street address, email address, or phone number changes or of any change of address for the ward.

6. The guardian may not establish or move the ward's custodial dwelling outside the State of Colorado without a court order.

7. Within 30 days of appointment, the guardian must provide a copy of this Order Appointing Guardian for Adult to the ward and persons given notice of the petition and must advise those persons using Notice of Appointment of Guardian and/or Conservator (JDF 812) that they have the right to request termination or modification of the guardianship.

8. The guardian must file the initial Guardian's Report - Adult (JDF 850) by _____ (date 60 days from appointment) and must file annual Guardian's Report - Adult (JDF 850) by each _____ (date) beginning in _____ (year), for the duration of the guardianship.

9. ❑ The guardian must manage the day-to-day finances for the support, care, education, health and welfare of the ward. The guardian is required to maintain supporting documentation for all receipts and all disbursements during the duration of this appointment. The court further orders the following:

_____

_____

10. ❑ Medical powers of attorney, whether executed prior to or following the entry of this order, are terminated, except as follows:

_____

_____

11. Copies of all future court filings must be provided to the following interested persons:

Name	**Relationship to the Ward**
	Ward
	Guardian
	Spouse or Partner in a civil union
	Parent
	Adult Child

12. The guardian is authorized to access the ward's medical records and information. The guardian is deemed to be ward's personal representative for all purposes relating to ward's protected health information, as provided in HIPAA, Section 45 CFR 164.502(g)(2).

13. The guardian does not have the authority to obtain hospital or institutional care and treatment for mental illness, developmental disability, alcoholism or substance abuse against the will of the ward.

14. If the ward is an "at risk elder" or "at risk adult with an intellectual and developmental disability," and if the guardian has reasonable cause to believe that the ward has been abused or exploited or is at imminent risk of abuse or exploitation, the guardian is required to make a report to law enforcement within 24 hours after the observation or discovery pursuant to C.R.S. § 18-6.5-108(1)(b)(XII).

15. Letters of Guardianship will be issued.

❑ The powers and duties of the guardian are unrestricted.

❑ The powers and duties of the guardian are limited by the following restrictions:

_____

_____

16. The court further orders:

_____

_____

Date: _____ _____

❑Judge ❑Magistrate

❑District Court ❑Denver Probate Court _____ County, Colorado Court Address: **In the Interest of:** **Minor**	▲ **COURT USE ONLY** ▲ Case Number: Division Courtroom

ORDER APPOINTING GUARDIAN FOR MINOR

Upon consideration of the Petition for Appointment of Guardian for the above minor and hearing on _____ _____ (date),

The court has considered any expressed wishes of the minor concerning the selection of the guardian. The court has considered the powers and duties of the guardian, the scope of the guardianship, and the priority and qualifications of the nominee.

The court finds, determines and orders:

1. Venue is proper and required notices have been given or waived.

2. The minor was born on _____ (date).

3. An interested person seeks appointment of a guardian.

4. The minor's best interest will be served by the appointment of a guardian.

5. ❑The minor's parents' consent to the appointment of a guardian.
❑The minor's parents' parental rights have been terminated by prior court order.
❑The minor's parents are deceased.
❑The minor's parents are unwilling or unable to exercise their parental rights.
❑Guardianship has previously been granted to a third party who has died or become incapacitated and the guardian has not appointed a successor guardian by will or written instrument.

6. ❑The court finds it has no reason to know that the minor is an Indian Child as defined by the Indian Child Welfare Act under 25 U.S.C. § 1901 et seq.

OR

❑A separate Order regarding the court's findings pursuant to the Indian Child Welfare Act under 25 U.S.C. § 1901 et seq. was issued.

7. The court appoints the following person as guardian for the minor:
Name:_____

Street address:_____

City:_____ State:_____ Zip Code:_____

Mailing Address, if different: _____

City: _____ State: _____ Zip Code: _____

Primary Phone:_____ Alternate Phone: _____
Email Address: _____

8. The guardian must promptly notify the court if the guardian's street address, email address, or phone number changes and of any change of address for the minor.

9. The guardian may not establish or move the minor's custodial dwelling outside the State of Colorado without a court order.

10. Within 30 days of appointment, the guardian must provide a copy of this Order Appointing Guardian for Minor to the minor if 12 years or older and persons given notice of the petition and must advise those persons using Notice of Appointment of Guardian and/or Conservator (JDF 812) that they have the right to request termination or modification of the guardianship.

11. ❑The guardian must file the annual Guardian's Report - Minor (JDF 834) with the court each year by ❑the minor's birthday or ❑by _____ (date).

12. Copies of all future court filings must be provided to the following interested persons:

Name	**Relationship to Minor**
	The minor if 12 years or older at the time of mailing
	Parent or adult nearest in kinship
	Parent or adult nearest in kinship
	Guardian

13. The guardian is authorized to access the minor's medical records and information. The guardian is deemed to be the minor's personal representative for all purposes relating to the minor's protected health information, as provided in HIPAA, Section 45 CFR 164.502(g)(2).

14. Letters of Guardianship will be issued. The Letters will expire on the minor's 18th birthday, _____ _____ (date), unless otherwise ordered by the court.

❑The powers and duties of the guardian are unrestricted.
❑The powers and duties of the guardian are limited by the following restrictions:

_____
_____
_____
_____
_____

OR

The appointment is pursuant to § 15-14-204(2.5)(b), C.R.S. Letters of Guardianship will be issued. The Letters will expire on the minor's 21st birthday, _____(date), unless otherwise ordered by the court.

❑The powers and duties of the guardian are unrestricted.
❑The powers and duties of the guardian are limited by the following restrictions:

_____
_____

_____

_____

_____

❑A separate Order regarding the court's findings establishing the minor's eligibility for classification as a special immigrant juvenile was issued.

15. Per § 15-14-208(1), C.R.S. the guardian has the powers of a parent regarding the ward's support, care, education, health and welfare. The guardian shall maintain physical custody of the minor and shall determine the minor's place of residence and all visitation absent specific orders from the Court.

16. The court further orders:

_____

_____

_____

_____

Date: _____ _____

❑Judge ❑Magistrate

❑District Court ❑Denver Probate Court _____ County, Colorado Court Address:	
In the Interest of: **Respondent/Ward**	▲ **COURT USE ONLY** ▲ Case Number: Division Courtroom

LETTERS OF GUARDIANSHIP – ADULT

_____ (guardian) was appointed by court order on _____ (date) as:

❑Guardian pursuant to § 15-14-311, C.R.S.

❑Emergency Guardian pursuant to § 15-14-312(1), C.R.S. These letters will expire on _____ (a date not to exceed 60 days from the date of appointment). The guardian's powers are specified in the order.

❑Temporary Substitute Guardian pursuant to § 15-14-313, C.R.S. These letters will expire on _____ (a date not to exceed 6months from the date of appointment). The guardian's powers are specified in the previous Order of Appointment.

The guardian must have access to respondent's/ward's medical records and information to the same extent that the respondent/ward is entitled. The guardian must be deemed to be the respondent's /ward's personal representative for all purposes relating to his or her protected health information, as provided in HIPAA, Section 45 CFR 164.502(g)(2).

These Letters of Guardianship are proof of the guardian's full authority to act, except for the following restrictions:

The guardian does not have the authority to obtain hospital or institutional care and treatment for mental illness, developmental disability, or alcoholism against the will of the respondent/ward pursuant to § 15-14-316(4), C.R.S.

The respondent /ward's place of residence must not be changed from the State of Colorado without an order of the court pursuant to § 15-14-315(1)(b), C.R.S.

❑Other limitations:

_____

_____

Date: _____ _____

Probate Registrar /(Deputy)Clerk of Court

CERTIFICATION

Certified to be a true copy of the original in my custody and to be in full force and effect as of _____ (date).

_____

Probate Registrar/(Deputy)Clerk of Court

❑District Court ❑Denver Probate Court _____ County, Colorado Court Address: **In the Interest of:** **Minor**	▲ **COURT USE ONLY** ▲ Case Number: Division Courtroom

LETTERS OF GUARDIANSHIP - MINOR

_____ (name of guardian) was appointed or confirmed by the court on _____ (date) as:

❑Guardian pursuant to §§ 15-14-202 or 204, C.R.S. These letters will expire on _____, the minor's 18th birthday, unless otherwise ordered by the court.

❑Guardian pursuant to § 15-14-204(2.5), C.R.S. These letters will expire on _____, the minor's 21st birthday, unless otherwise ordered by the court.

❑Emergency Guardian pursuant to § 15-14-204(5), C.R.S. These letters will expire on _____ (a date not to exceed 60 days from the date of appointment). The guardian's powers are specified in the Order.

❑Temporary Guardian pursuant to § 15-14-204(4), C.R.S. These letters will expire on _____ (a date not to exceed six months from the date of appointment).

The guardian is authorized to access the minor's medical records and information. The guardian is deemed to be the minor's personal representative for all purposes relating to the minor's protected health information, as provided in HIPAA, Section 45 CFR 164.502(g)(2).

These Letters of Guardianship for the minor whose date of birth is _____ , are proof of the guardian's full authority to act pursuant to § 15-14-207, C.R.S., except for the following restrictions:

The minor's place of residence must not be changed from the State of Colorado without an order of the court pursuant to § 15-14-208(2)(b), C.R.S.

❑Other limitations: _____

_____

_____

Date: _____ _____

Probate Registrar /(Deputy)Clerk of Court

CERTIFICATION

Certified to be a true copy of the original in my custody and to be in full force and effect as of _____ (date).

_____

Probate Registrar /(Deputy)Clerk of Court

❑District Court ❑Denver Probate Court _____ County, Colorado Court Address: **In the Interest of:** **Ward/Protected Person**	**COURT USE ONLY**
Attorney or Party Without Attorney (Name and Address): Phone Number: E-mail: FAX Number: Atty. Reg. #:	Case Number: Division Courtroom

NOTICE OF APPOINTMENT OF GUARDIAN AND/OR CONSERVATOR

Instructions: Within 30 days after appointment of the guardian and/or conservator, this notice, along with a copy of the Order Appointing Guardian and/or Order Appointing Conservator, must be given to all persons given notice of the petition for appointment, and as required by such order, including the ward or protected person, if he or she is 12 years of age or older. (§§ 15-14-311, C.R.S. and 15-14-409, C.R.S.)

Check the boxes that apply:

❑The court appointed a guardian for the above-named ward. Details of the appointment are included in the attached order.

❑The court appointed a conservator for the above-named protected person. Details of the appointment are included in the attached order.

You may have the right to request termination or modification of the guardianship and/or conservatorship.

❑ By checking this box, I am acknowledging I am filling in the blanks and not changing anything else on the form.

❑ By checking this box, I am acknowledging that I have made a change to the original content of this form.

VERIFICATION

I declare under penalty of perjury under the law of Colorado that the foregoing is true and correct.

Executed on the _____ day of _____, _____,
(date) (month) (year)

at _____
(city or other location, and state OR country)

_____
(printed name)

_____
(Signature of Person Giving Notice or Attorney for Person Giving Notice)

CERTIFICATE OF SERVICE

I certify that on _____ (date), a copy of this _____ (name of document) was served as follows on each of the following:

Name and Address	Relationship to Decedent, Ward, or Protected Person	Manner of Service*

*Insert one of the following: hand delivery, first-class mail, certified mail, e-service, or fax.

_____
Signature

Note

- A copy of this Notice must be promptly filed with the Court. Do not attach copies of the Order Appointing Guardian or Order Appointing Conservator when filing this Notice with the Court.

❑District Court ❑Denver Probate Court _____ County, Colorado Court Address: **In the Interest of:** **Ward**	▲ **COURT USE ONLY** ▲
Attorney or Party Without Attorney (Name and Address): Phone Number: E-mail: FAX Number: Atty. Reg. #:	Case Number: Division Courtroom

GUARDIAN'S REPORT – ADULT

❑INITIAL REPORT/CARE PLAN ❑ANNUAL REPORT

Current Reporting Period From _____To _____
(MM/DD/YYYY) (MM/DD/YYYY)

(REPORTING DATES MUST BE FOR THE PAST YEAR AND MAY NOT REPORT INTO THE FUTURE.)

Instructions to Guardian:

Colorado law requires that every guardian of an adult complete a Guardian's Report every year. When answering the questions in this report, you are required to provide details. Answers such as "same as last report/year" and "no change since last report" are not acceptable answers. Your report may be rejected with those answers.

COLORADO LAW REQUIRES THAT ANY GUARDIAN WANTING TO REMOVE THE ADULT FROM THE STATE OF COLORADO MUST OBTAIN COURT PERMISSION. You must file the necessary forms to make this request and obtain Court permission.

CONTACT INFORMATION

Ward's Information: ❑ **Check if Updated Information from last report (Annual Report ONLY)**

❑ **Check if Residency is Temporary (Care Plan ONLY)**

Name: _____Age:_____

Sex:_____

Street Address: _____
(Include Name of Living Center or Nursing Home)

City:_____ State:_____ Zip Code:_____

Mailing Address, if different: _____

City: _____ State: _____ Zip Code: _____

Primary Phone: _____ Alternate Phone: _____

Guardian's Information: ❑Check if Updated Information from last report

Name: _____Age: _____ Occupation:

_____ Your Relationship to Ward: _____

Street Address: _____

City: _____ State: _____ Zip Code: _____

Mailing Address, if different: _____

City: _____ State: _____ Zip Code: _____

Primary Phone: _____ Alternate Phone: __ _____

Email Address: _____

Have you had any criminal charges filed against you or convictions entered since the last report? ❑Yes ❑ No

If Yes, explain: _____

Co-Guardian's Information (if applicable)**:** ❑**Check if updated information from last report**

Name: _____Age: _____

Occupation: _____ Your Relationship to Ward: _____

Street Address: _____

City: _____ State: ____ Zip Code: _____

Mailing Address, if different: _____

City: _____ State: _____ Zip Code: _____

Primary Phone: _____Alternate Phone: _____

Email Address: _____

Have you had any criminal charges filed against you or convictions entered since the last report? ❑Yes ❑ No

If Yes, explain: _____

I. PLACEMENT AND CARE SUPERVISION

A. Who currently supervises the ward's care and treatment on a daily basis?

Name: _____
Primary Phone: _____ Alternate Phone: _____

B. If the ward has moved since the last reporting period, identify the date of the move, address of residence, type of residence, and reason for the change.

Date of Move	Name of Facility and Address	Type of Residence	Reason for Change

II. STATUS INFORMATION

	Yes	No
A. Do you recommend that the guardianship continue? If **No**, explain: _____	❑	❑
B. Do you recommend any changes to the guardianship? If **Yes**, explain: _____	❑	❑

C. Do you wish to remain guardian? ❑ ❑
If **No**, explain: _____

Note: If you wish to terminate this guardianship or modify by replacing the current guardian or adding a co-guardian, you must file a separate petition with the Court.

III. CURRENT CONDITION OF THE WARD

Please describe in detail the current **mental** condition of the ward. _____

Please describe in detail the current **physical** condition of the ward. _____

Please describe in detail the current **social** condition of the ward. _____

IV. PERSONAL CARE AND OTHER ISSUES

	Yes	No
A. Has the ward's physical and medical condition (illness/injuries) changed since the last report? If **Yes**, explain: _____	❑	❑
B. Has the ward been hospitalized since the last report? If **Yes**, explain: _____	❑	❑
C. Have there been any medical, social or psychological evaluations of the ward performed? Please explain: _____	❑	❑
D. Is there a need for further medical, social or psychological evaluations of the ward? Please explain: _____	❑	❑

E. Describe the medical, educational, vocational and other services provided to the ward:

Please describe in detail any **medical** services provided to the ward. If none were provided, state "none".

Please list any **medications** provided to the ward. If none were provided, state "none".

Please describe in detail any **educational** services provided to the ward. If none were provided, state "none".

Please describe in detail any **vocational** services provided to ward. If none were provided, state "none".

Please describe in detail any **other** services provided to ward. If none were provided, state "none".

F. How often do you contact the ward's medical provider?

❑Daily ❑Weekly ❑Monthly ❑Other:

How do you contact the ward's medical provider (phone, email, etc.)?

G. Do you believe the current plan for care, treatment and/or rehabilitation is in the ward's best interest?
❑**Yes** ❑**No** If **No**, describe what changes would be appropriate.

H. The ward's care and living situation is ❑**Very Good** ❑**Good** ❑**Adequate** ❑**Poor**

I. Describe your plans for the ward's future care, including any recommended changes.

V. VISITATION OF WARD

Colorado law requires that a guardian maintain sufficient contact with the ward.

A. How often do you visit the ward? ❑Daily ❑Weekly ❑Monthly ❑Other:_____

B. How often do you contact the ward or the ward's care provider?

❑Daily ❑Weekly ❑Monthly ❑Other: _____

C. When was the last time you saw the ward in person? _____ (date)

D. Indicate how long your visits are and summarize your activities with and on behalf of the ward.

_____

_____

_____

_____

E. Does the ward participate in decision-making? ❑**Yes** ❑**No** Briefly describe.

_____

_____

_____

_____

VI. FINANCIAL MATTERS

Complete this section <u>only</u> if the guardian has custody of funds.

A. Are there sufficient financial resources to take care of the ward? ❑**Yes** ❑**No**
If **No,** what do you believe is the best way to handle this problem?_____

_____

_____

_____

B. Do you have control of the ward's income? ❑**Yes** ❑**No**
If **Yes**, describe: _____

_____

_____

C. If applicable, identify the representative payee for Social Security and other income benefits.
Name:_____ Phone Number:_____

D. Have any fees been paid to you in your role as guardian? ❑**Yes** ❑**No**
If **Yes,** describe: _____

_____

E. Have any fees been paid to others for the care of the ward or his/her property? ❑**Yes** ❑**No**
If **Yes**, describe and identify name of person: _____

_____

Please indicate whether you have possession or control of the following:

❑**Bank Account(s):** Name of financial institution(s) and last four numbers of account(s):_____

_____

Estimated Value:_____

❑**Investment Account(s):** Name of financial institution(s) and last four numbers of account(s):_____

_____

Estimated Value:_____

❑**Real Estate:** Address:_____

Estimated Value:_____

❑**Personal Property (i.e. jewelry, collectibles, vehicles…)** Description:_____

_____

Estimated Value:_____

❑**Liabilities/Debts:** Creditor(s):_____

Estimated Amount:_____

SUMMARY OF FINANCIAL ACTIVITY DURING REPORTING PERIOD		
Beginning balance of bank accounts (savings, checking, etc.)	$	
Plus money received (Social Security, SSI, pension, disability, interest, etc.) from any source on behalf of the Ward	+$	
Less total fees to care providers	-$	
Less total monies paid to the Ward, e.g. personal needs	-$	
Less total fees paid to guardian	-$	
Less any other expenses, e.g. housing, insurance, maintenance	-$	
Ending balance of bank accounts	$	

You are required to maintain supporting documentation for all receipts and all disbursements under your control during the duration of this appointment. The court or any interested persons as identified in the Order Appointing Guardian may request copies at any time.

❑ By checking this box, I am acknowledging I am filling in the blanks and not changing anything else on the form.
❑ By checking this box, I am acknowledging that I have made a change to the original content of this form.

VERIFICATION

I declare under penalty of perjury under the law of Colorado that the foregoing is true and correct.

Executed on the _____ day of
(date)

_____, _____,
(month) (year)

at _____
(city or other location, and state OR country)

_____
(printed name)

_____
(Signature of Guardian)

_____
Attorney Signature, (if any)

Executed on the _____ day of
(date)

_____, _____,
(month) (year)

at _____
(city or other location, and state OR country)

_____
(printed name)

_____
(Signature of Co-Guardian, if any)

_____
Date

IMPORTANT
THIS SECTION MUST BE COMPLETED CORRECTLY AND SIGNED OR THE REPORT MAY BE REJECTED.

Colorado Law **REQUIRES** that the Guardian's Report be served on the **WARD AND INTERESTED PERSONS** pursuant to Order Appointing Guardian and § 15-14-309(4), C.R.S. In the space below under the Certificate of Service, list the names, addresses, and method of delivery for each party listed on the Order Appointing Guardian and provide each party with a copy of this report.

NOTE: If you wish to change the persons entitled to receive copies of reports or other documents filed, you must file a separate motion with the court.

CERTIFICATE OF SERVICE

I certify that on _____ (date), a copy of this _____ (name of document) was served as follows on each of the following:

Name and Address	Relationship to Decedent, Ward, or Protected Person	Manner of Service*

*Insert one of the following: hand delivery, first-class mail, certified mail, e-service, or fax.

_____
Signature

❑District Court ❑Denver Probate Court _____ County, Colorado Court Address: **In the Interest of:** **Minor**	▲ **COURT USE ONLY** ▲
Attorney or Party Without Attorney (Name and Address): Phone Number: E-mail: FAX Number: Atty. Reg. #:	Case Number: Division Courtroom
GUARDIAN'S REPORT – MINOR	

Current Reporting Period From _____To _____
(MM/DD/YYYY) (MM/DD/YYYY)
(REPORTING DATES MUST BE FOR THE PAST YEAR AND MAY NOT REPORT INTO THE FUTURE.)

Instructions to guardian:
You have been ordered to complete a Guardian's Report every year on behalf of the minor. When answering the questions in this report, you are required to provide details. Answers such as "same as last year" or "no change since last report" are not acceptable answers. Your report may be rejected with those answers.

COLORADO LAW REQUIRES THAT ANY GUARDIAN WANTING TO REMOVE THE MINOR CHILD FROM THE STATE OF COLORADO MUST OBTAIN COURT PERMISSION. You must file the necessary forms to make this request and obtain court permission.

CONTACT INFORMATION

Minor's Information: ❑ **Check if Updated Information from last Report**

Name: _____**Age:** _____

Street Address:_____

(Include Name of Living Center or Nursing Home)

City:_____ State:_____ Zip Code:_____

Mailing Address, if different: _____

City: _____ State: _____ Zip Code: _____

Primary Phone :_____ Alternate Phone:_____

Guardian's Information: ❑ **Check if Updated Information from last Report**

Name: _____**Age:** _____

Occupation: _____ Your Relationship to Minor: _____

Street Address: _____

City: _____ State: _____ Zip Code: _____

Mailing Address, if different: _____

City: _____ State: _____ Zip Code: _____ E-Mail Address: _____

Primary Phone: _____ Alternate Phone:_____

Have you had any criminal charges filed against you or convictions entered since the last report? ❑Yes ❑ No

If Yes, explain: _____

Co-Guardian's Information: (if applicable) ❑ **Check if Updated Information from last Report**

Name: _____ **Age:** _____

Occupation: _____ Your Relationship to Minor: _____

Street Address: _____

City: _____ State: _____ Zip Code: _____

Mailing Address, if different: _____

City: _____ State: _____ Zip Code: _____

E-Mail Address: _____

Primary Phone:_____ Alternate Phone:_____

Have you had any criminal charges filed against you or convictions entered since the last report? ❑Yes ❑ No

If Yes, explain: _____

I. STATUS INFORMATION

		Yes	No
A.	Do you recommend that the guardianship continue? If **No**, explain: _____	❑	❑
B.	Do you recommend any changes to the guardianship? If **Yes**, explain: _____	❑	❑
C.	Do you wish to remain guardian? If **No**, explain: _____	❑	❑

Note: If you wish to terminate this guardianship or modify by replacing the current guardian or adding a co-guardian, you must file a separate petition with the court.

D. The minor's care and living situation is: ❑**Very Good** ❑**Good** ❑**Adequate** ❑**Poor**

E. Do you believe the current plan for care is in the minor's best interest? ❑**Yes** ❑**No**
If **No,** describe your recommended changes:

_____

_____

_____

_____

F. Who currently provides the majority of the minor's supervision or care and treatment on a daily basis?

Name_____

Primary Phone: _____

Alternate Phone: _____

G. Has the minor's residence changed since the last report? ❑**Yes** ❑**No**
If **Yes**, identify the date of the move, address of residence, type of residence and reason for the change.

Date of Move	Address of Residence	Type of Residence	Reason for Change

II. PERSONAL CARE AND OTHER ISSUES

A. Date of the minor's last medical exam: _____ Dental exam: _____

B. Are the Minor's immunizations current? ❑**Yes** ❑**No**

If **No**, explain: _____

_____

C. Is the minor covered under health or dental insurance? ❑**Yes** ❑**No**
If **Yes**, describe coverage. If **No**, explain efforts to obtain coverage.

_____

_____

_____

D. Describe any counseling services provided to the minor. If none were provided, state "none".

_____

_____

_____

E. Describe any other services provided to the minor. If none were provided, state "none".

_____

_____

_____

F. Describe any medical services provided to the minor. If none were provided, state "none".

_____

_____

_____

G. Identify any special needs of the minor during this reporting period. If none were identified, state "none".

_____

_____

_____

H. Has the minor's physical and medical condition changed since the last report? ❑**Yes** ❑**No** If **Yes,** explain:

_____

_____

_____

I. Identify any significant events involving the minor since the last report e.g. special awards or recognition. If none were identified, state "none".

_____

_____

_____

_____

J. Has the minor been involved in a juvenile delinquency case or any other type of court action? ❑**Yes** ❑**No** If **Yes**, in which County? _____

K. Does the minor have any behavioral issues? ❑**Yes** ❑**No**
Describe the nature of the behavioral issues and any treatment the minor is receiving to help with the issues._____

_____

_____

_____

L. If the minor child is not of school age, identify the stages of development for the minor child. This would include but is not limited to, if the child developed his or her motor skills (crawling, walking, etc.), learned to talk, and learned colors, shapes and numbers at age appropriate times. Include if the child is on track developmentally for his or her age and if not on track, explain why not and the steps taken to help the child. Does the child's doctor have any concerns?

_____

_____

_____

_____

_____

M. Does the minor have any contact with the parents or other family members? ❑**Yes** ❑**No**
Briefly describe the visits: Name of person visiting, frequency and length of visits and date of the last visit. If no visits, briefly describe why not.

III. EDUCATION AND EXTRACURRICULAR ACTIVITIES

A. Is the minor attending school: ❑**Yes** ❑**No**

If **Yes,** complete the information below: If **No,** please be sure to answer question L on page 4, Part II.

Name of School:_____ Current Grade Level: _____

Address: _____

Phone Number: _____ Minor's grades are: ❑Excellent ❑Average ❑Below Average

If **below average** explain why.

B. If the minor is old enough, does he or she have a job? ❑**Yes** ❑**No** Describe.

C. Describe the educational services provided to the minor.

D. Identify a few of the minor's goals, accomplishments, and any extracurricular activities during this reporting period.

IV. FINANCIAL MATTERS

Complete this section only if there is no conservatorship and the guardian has custody of funds.

A. Does the minor own any property? ❑**Yes** ❑**No**

B. Do you have possession or control of the minor's assets, e.g. property (real estate and personal property items), financial accounts? ❑**Yes** ❑**No**
If **Yes**, describe the type of property and approximate value of the property: _____

_____

_____

C. Do you have control of the minor's Income? ❑**Yes** ❑**No**

D. If **Yes**, describe: _____

_____

_____Do you or the minor receive any financial support from the biological parents or other family members? ❑**Yes** ❑**No** If there is a current child support order, provide the name of the court, case number, date of most recent order, and status of the payments.

Name of Court	Case Number	State	Date of Current Order	Amount	Payment Status e.g. on time, late

E. If applicable, identify the representative payee for Social Security and other income benefits.
Name: _____Phone Number: _____

F. Have any fees been paid to you in your role as guardian? ❑**Yes** ❑**No**
If **Yes**, describe:

_____

_____

G. Have any fees been paid to others for the care of the minor or his or her property? ❑**Yes** ❑**No**
If **Yes**, describe: _____

_____

_____

_____

SUMMARY OF FINANCIAL ACTIVITY DURING REPORTING PERIOD		
Beginning balance of bank accounts (savings, checking, etc.)	$	
Plus monies received (social security, pension beneficiary, child support, interest, etc.) from any source on behalf of the person	+$	
Less total fees to care providers	-$	
Less total monies paid to the Minor, e.g. personal needs	-$	
Less total fees paid to guardian	-$	
Less any other expenses, e.g. housing, insurance, maintenance	-$	
Ending balance of bank accounts	$	

You are required to maintain supporting documentation for all receipts and all disbursements under your control during the duration of this appointment. The court or any interested persons as identified in the Order Appointing Guardian may request copies at any time.

❑ By checking this box, I am acknowledging I am filling in the blanks and not changing anything else on the form.

❑ By checking this box, I am acknowledging that I have made a change to the original content of this form.

VERIFICATION

I declare under penalty of perjury under the law of Colorado that the foregoing is true and correct.

Executed on the _____ day of
(date)

_____, _____,
(month) (year)

at _____
(city or other location, and state OR country)

_____
(printed name)

_____
(Signature of Guardian)

_____
Attorney Signature, (if any)

Executed on the _____ day of
(date)

_____, _____,
(month) (year)

at _____
(city or other location, and state OR country)

_____
(printed name)

_____
(Signature of Co-Guardian, if any)

_____
Date

IMPORTANT
THIS SECTION MUST BE COMPLETED CORRECTLY AND SIGNED OR THE REPORT MAY BE REJECTED.

The Guardian's Report must be served on the **WARD AND INTERESTED PERSONS** pursuant to Order Appointing Guardian (see § 15-14-207(2)(e), C.R.S.), including minors 12 years of age or older. In the space below under the Certificate of Service, list the names, addresses, and method of delivery for each party listed on the Order Appointing Guardian and provide each party with a copy of this report.

NOTE: If you wish to change the persons entitled to receive copies of reports or other documents filed, you must file a separate motion with the court.

CERTIFICATE OF SERVICE

I certify that on _____ (date), a copy of this _____ (name of document) was served as follows on each of the following:

Name and Address	Relationship to Decedent, Ward, or Protected Person	Manner of Service*

*Insert one of the following: hand delivery, first-class mail, certified mail, e-service, or fax.

_____
Signature

to carry out your duties, unless otherwise specified by the Court,

Administrative Duties

- **Required Reports to File with the Court and Interested Persons.** You must submit an initial care plan and annual reports that require a thorough description of the ward's wellbeing, growth, health needs, financial resources available for care, any changes in your life or ward's life, and the need for the guardianship to continue. The required form is JDF 850 and is available at www.courts.state.co.us. The due date for the reports will be identified within the Order and also on the Acknowledgment form. It is very important that you file the reports on or before the due date to the Court and send a copy to all interested persons as identified in the original Order of Appointment and/or any subsequent orders.
- **Accounting.** If there are not enough assets to appoint a conservator, you are given the authority over the ward's assets and must set up and keep complete financial records. You will need to report the financial activity in the annual report and detail all income, disbursements, and liabilities, and should show the opening and closing balances for all accounts for the reporting period. You should maintain all supporting documentation in the event that the Court or interested persons request to review the financial activity.
- **Taxes.** If a conservator is not appointed, you are managing all or most of the ward's affairs, and you required to file any required tax returns on the ward's behalf.
- **Distributions to ward or on ward's behalf.** You may make distributions to the ward for their care and expenses or to third parties directly who provide a service to the ward. The terms under which distributions must or may be made can be restricted by the Court, or may be made mandatory for the ward's health, education, and maintenance. Under certain circumstances you may be personally liable for improper distributions, and may be compelled by a Court to make a distribution at the ward's or interested person's request.

Personal Liability

You may be personally liable to the ward or a third party in certain circumstances, including when the relationship is not disclosed, you are directly at fault, grossly negligent, or acted criminally. In some situations, you may be personally liable even though their improper actions were not intentional or negligent, and for that reason, some guardians secure Errors and Omissions insurance.

Compensation and Expenses

You are entitled to reasonable compensation and reimbursement of out-of pocket expenses from the guardianship estate for acts on behalf of the ward during the guardianship. Reasonable compensation is determined on a case-by-case basis, and good record keeping and accounting is absolutely necessary. Any compensation is considered income to you, and as such, is generally taken as a tax deduction by the ward. In addition to your own fee, you may hire professionals, including an attorney, accountant, etc. as you manage the guardianship.

(Updated January 2012) This pamphlet is published as a public service by the Colorado Bar Association. Its purpose is to inform citizens of their legal rights and obligations and to provide information regarding the legal profession and how it may best serve the community. Changes may have occurred in the law since the time of publication. Before relying on this information, consult an attorney about your individual case. For further information visit www.courts.state.co.us or Coloradolegalservices.org.

So Now You Are A Guardian

CBA
COLORADO BAR ASSOCIATION
Established in 1897

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SO NOW YOU ARE A GUARDIAN

If you are reading this brochure, you are likely either considering accepting appointment as a guardian or you have recently been appointed by a Court. Guardians have many responsibilities, and in addition to carrying out any specific Court orders, are responsible for the ward's general welfare and care. Guardians are usually given the authority over where the ward resides, their educational and/or vocational development, and medical decisions after the Court finds that, due to mental or physical incapacity the ward is unable to do so for his or her self.

Under Colorado law, a guardian is deemed to be a fiduciary, and as such, held to a very high standard of care. A guardian is accountable to the ward, interested persons, and the Court, and is expected to act prudently and in the best interests of the ward at all times. .

This brochure is intended to give general information to guardians regarding their duties and responsibilities, and is not intended to be legal advice specific to your situation. Given the very serious risks of harm to the ward and personal liability, if you are uncertain about any of your responsibilities, rights, or powers as a guardian, you are strongly encouraged to consult with an attorney.

Guardianship v. Conservatorship

Generally, guardianships and conservatorships are both legal proceedings that are initiated to establish an individual's inability to manage their personal and financial affairs, and result in the taking of that individual's rights.

- Conservatorship is a legal proceeding where the Court takes away the protected person's rights and appoints a conservator to manage and protect the assets of the protected person.
- Guardianship is a legal proceeding where an individual's civil liberties are taken away and given to a guardian to make decisions regarding the health and welfare of the ward.

There are many instances when a guardianship and conservatorship are requested at the same time by the petitioner. If a petition is filed requesting both, the actions may be consolidated and only one hearing is required to address both petitions. In some situations, if there are not enough assets to warrant the appointment of a conservator, the guardian may be given authority to manage the ward's assets. One person may serve as both a guardian and conservator, but if not, both are expected to work together in the best interests of the ward/protected person.

What is your authority?

Your authority is evidenced by two documents: "Letters of Guardianship" and the "Order Appointing Guardian." The guardianship may be limited in duration, scope, level of Court involvement, and usually involves the filing of an Initial Guardian's Report/Care Plan and an Annual Guardian's Report.

The Court's direction is given with the intent to maximize the ward's independence and involvement, and may require specific actions to achieve this standard. It is important that you read the Court's Order thoroughly and comply with the terms of the order of appointment.

Upon appointment, you will be asked to review and sign an Acknowledgment form that summarizes your appointment and responsibilities and outlines specific due dates for reports to file with the Court. It is very important that any reports requested by the Court are filed on or before the due date.

Once appointed, you will usually have the authority to make most or all decisions related to the ward's health, education, and welfare. You may usually sign legal documents on behalf of the ward, choose an appropriate living situation for the ward, and grant, withhold, and withdraw consent to medical treatment. In most situations it is necessary to disclose the guardian/ward relationship.

A guardianship may end for several reasons, including the ward regaining capacity to manage their personal affairs, upon the death of the ward, the resignation, removal, or death of the guardian, or a date set by the Court. A guardian's duties to the ward continue until a successor guardian is appointed or otherwise directed by the Court.

Your duties as guardian— Ethical and Administrative

Ethical Duties

- Generally speaking, a guardian owes a fiduciary duty to the ward, meaning that the guardian must always act in the best interest of and with undivided loyalty to the ward, avoid transactions that cause a conflict of interest, and make all decisions with care and prudence.
- You have a fiduciary duty to the ward, meaning that you must always act in the best interest of and with undivided loyalty to the ward, avoid transactions that cause a conflict of interest, and to make all decisions with care and prudence.
- You must always act in the best interest of the ward, and you must make efforts to include the ward in all decisions and encourage self-sufficiency.
- You are expected to consider the ward's known and reasonable desires and personal values when making decisions on behalf of the ward, and must become and/or remain personally acquainted with the ward.
- You may make decisions and manage any of the ward's assets. If so, such decisions must be made as a prudent person would in similar circumstances. You are ultimately accountable and may employ the use of professionals and other agents in order

Judicial District/County	Protective Proceedings Monitor	Phone Number
1st – Jefferson County	Jennifer Bulmer	720-772-2532
1st – Jefferson County	Lauren LeVaughn	720-772-2569
1st – Gilpin County	Terri Meredith	303-582-5522 ext 22760
2nd - Denver Probate	Abigail Budzien	303-606-2494
2nd – Denver Probate	Gina Paz	303-606-2483
3rd – Huerfano and Las Animas County	Susanne van der Meer	719-497-8229
4th – El Paso County	Anastacia Moffit	719-452-5398
4th – El Paso County	Shilo Raimer	719-452-5396
5th – Eagle, Lake, Summit and Clear Creek County	Becky Gray	970-328-8547
6th – Archuleta, La Plata, and San Juan County	Jerry Hoytt Boles	970-385-6027
7th – Delta, Gunnison, Hinsdale, Ouray, Montrose, and San Miguel County	Sharon Meath	970-252-4328
8th – Larimer and Jackson County	Kristi Lankford	970-494-3507
9th – Garfield, Pitkin, and Rio Blanco County	Timothy Dillow	970-928-3059
10th – Pueblo County	Teresa Vigil	719-404-8909
11th – Freemont, Custer, Chafee, and Park	Robyn McPherson	719-204-2237
12th – Saguache, Mineral, Alamosa, Rio Grande, Conejos, and Costilla County	Brooke Valdez	719-376-5465 ext 0
13th – Logan, Sedgwick, Phillips, Morgan, Washington, Yuma, and Kit Carson County	Meredith Sparks	970-526-3958
14th – Moffat, Routt, and Grand County	Linda Manguso	970-725-3357 ext 4
15th – Cheyenne Kiowa, Prowers, and Baca County	Kimberly Varner	719-336-8943
16th – Crowley, Otero, and Bent County	Laren Proctor	719-383-7127
17th – Adams County	Danielle Arellano	303-654-3562
17th – Broomfield County	Ryan McGrenaghan	303-464-5051
18th – Arapahoe County	Stephanie Swanson	303-645-6863
18th – Arapahoe County	Sammantha Ramirez	303-645-6835
18th - Douglas, Elbert, and Lincoln County	Camy Barraza	720-437-6280
19th – Weld County	Sandra Fields	970-475-2506
20th – Boulder County	Hayden Hollis	720-664-1524
21st – Mesa County	Dusty Curfman	970-257-3676
22nd – Dolores and Montezuma County	Kelly Wallace	970-565-1313
Updated 7/2024		

ID vLex: 1063763904
http://us.vlex.com/vid/c-r-s--1063763904

C.R.S. § 15-14-319 Right to a Lawyer Post-Adjudication

Library: Colorado Statutes

Edition: 2025

Currency: Current through 11/5/2024 election

Citation: C.R.S. § 15-14-319

Year: 2025

(1) An adult ward has the right post-adjudication to be represented by a lawyer of the ward's choosing at the expense of the ward's estate unless the court finds by clear and convincing evidence that the ward lacks sufficient capacity to provide informed consent for representation by a lawyer. Upon such a finding, the court shall appoint a guardian ad litem, and the adult ward retains the right to a lawyer of the adult ward's choosing for the limited purpose of interlocutory appeal of the court's decision as to the right to a lawyer.

(2) The right to a lawyer described in subsection (1) of this section applies to a ward participating in proceedings or seeking any remedy under parts 1 to 4 of this article, including change or termination of a guardianship, judicial review of fiduciary conduct, appellate relief, and any other petition for relief from the court.

(3) Subject to subsection (1) of this section, the court shall appoint a lawyer to represent any adult ward in any proceedings pursuant to parts 1 to 4 of this article if the ward is not represented by a lawyer and the court determines the ward needs such representation.

(4) A lawyer for the ward, on presentation of proof of representation, must be given access to all information pertinent to proceedings under this title, including immediate access to medical records and information.

History: *Added by 2016 Ch. 286, § 3, eff. 8/10/2016.L. 2016: Entire section added, (SB 16-131), ch. 286, p. 1165, § 3, effective August 10.*

❑District Court ❑Denver Probate Court _____ County, Colorado Court Address: **In the Interest of:** **Ward**	**COURT USE ONLY**
Attorney or Party Without Attorney (Name and Address): Phone Number: E-mail: FAX Number: Atty. Reg. #.:	Case Number: Division Courtroom

PETITION FOR TERMINATION OF GUARDIANSHIP – ADULT PURSUANT TO § 15-14-318, C.R.S.

1. Petitioner(s), _____ (full name(s))

Street Address:_____

City: _____ State: _____ Zip Code: _____

Mailing Address, if different:_____

City: _____ State: _____ Zip: _____

Primary Phone :_____ Alternate Phone: _____

Email Address:_____

❑is the guardian

❑is the ward

❑is a person interested in the welfare of the ward (State nature of interest)?

_____

2. The guardian was appointed on_____ (date).

3. The Petitioner requests that the guardianship be terminated because the ward no longer meets the standard for establishing the guardianship for the following reasons:

_____

_____

_____

_____

_____

_____

_____

❑Physician's letter or professional evaluation by qualified person is attached, if appropriate in compliance with C.R.P.P. 60 (§ 15-14-306, C.R.S.)

4. The court, in its Order Appointing Guardian, ordered that notice of all proceedings be given to the following person(s):

Full Name	Address	Relationship

The people listed above will be given notice of the time and place for hearing on this petition, pursuant to § 15-14-309(3), C.R.S.

5. The petitioner requests that the court appoint (check all that apply):

- ❑ Court Visitor
- ❑ Guardian ad Litem (GAL)
- ❑ Attorney
- ❑ Other:_____
- ❑ None.

6. The ward is required to be present at the hearing, unless excused by the court for good cause.

❑ The petitioner requests that the ward be excused from attending the hearing for the following reasons:

_____

_____

_____

_____

❑ By checking this box, I am acknowledging I am filling in the blanks and not changing anything else on the form.

❑ By checking this box, I am acknowledging that I have made a change to the original content of this form.

VERIFICATION

I declare under penalty of perjury under the law of Colorado that the foregoing is true and correct.

Executed on the _____ day of
(date)

_____, _____,
(month) (year)

at _____
(city or other location, and state OR country)

_____
(printed name)

_____
(Signature of Petitioner)

_____
Attorney Signature, (if any)

Executed on the _____ day of
(date)

_____, _____,
(month) (year)

at _____
(city or other location, and state OR country)

_____
(printed name)

_____
(Signature of Co-Petitioner, if any)

_____
Date

CERTIFICATE OF SERVICE

I certify that on _____ (date), a copy of this _____ (name of document) was served as follows on each of the following:

Name and Address	Relationship to Decedent, Ward, or Protected Person	Manner of Service*

*Insert one of the following: hand delivery, first-class mail, certified mail, e-service, or fax.

_____
Signature

Note:

- The petitioner must contact the court to set a date and time for a hearing.

❑District Court ❑Denver Probate Court _____ County, Colorado Court Address: **In the Interest of:** **Minor**	▲ **COURT USE ONLY** ▲
Attorney or Party Without Attorney (name and address): Phone Number: E-mail: FAX Number: Atty. Reg. #:	Case Number: Division Courtroom
PETITION FOR TERMINATION OF GUARDIANSHIP – MINOR	

NOTE: This form is to be used only when Guardianship is to be terminated prior to the Minor's 18th birthday OR 21st birthday when appointment was made pursuant to § 15-14-204(2.5), C.R.S.

1. **The petitioner is:**
   - ❑the mother.
   - ❑the father.
   - ❑the guardian.
   - ❑the minor.
   - ❑another person interested in the welfare of the minor. (State nature of interest.)

   _____

   _____

2. **Information about petitioner:**

   Name: _____

   Street address: _____

   City: _____ State: _____ Zip Code: _____

   Mailing Address, if different: _____

   City: _____ State: _____ Zip Code: _____

   Primary phone: _____ Alternate phone: _____

   E-mail address: _____

3. **Petitioner requests that this guardianship be terminated for the following reason:**

   ❑The parent(s) can reassume parental responsibilities. (Explain circumstances.)

   Parent(s) Name: _____

   _____

   _____

   _____

   ❑The minor can be reunified with one or both parents (appointment made pursuant to pursuant to § 15-14-204(2.5), C.R.S., special immigrant juvenile classification). (Explain circumstances.)

Parent(s) Name: _____

_____

_____

_____

☐ The minor was adopted on or about _____ (date). ☐ Certified copy of Final Decree of Adoption is attached.

☐ The minor is emancipated. (Explain circumstances.)

_____

_____

_____

☐ The death of the minor.

☐ Other: (Attach additional sheets, if necessary.)

_____

_____

_____

_____

4. The minor (if 12 years of age or older), guardian, and the following persons designated by the court in the Order Appointing Guardian, are required by law to be given notice of the time and place of hearing on this Petition, if a hearing is deemed necessary by the Court:

Name	**Address**	**Relationship to Minor**

☐ By checking this box, I am acknowledging I am filling in the blanks and not changing anything else on the form.

☐ By checking this box, I am acknowledging that I have made a change to the original content of this form.

VERIFICATION

I declare under penalty of perjury under the law of Colorado that the foregoing is true and correct.

Executed on the _____ day of
(date)

_____, _____,
(month) (year)

at _____
(city or other location, and state OR country)

_____
(printed name)

Executed on the _____ day of
(date)

_____, _____,
(month) (year)

at _____
(city or other location, and state OR country)

_____
(printed name)

_____ _____

(Signature of Petitioner) (Signature of Co-Petitioner, if any)

_____ _____

Attorney Signature, (if any) Date

CERTIFICATE OF SERVICE

I certify that on _____ (date), a copy of this _____ (name of document) was served as follows on each of the following:

Name and Address	Relationship to Decedent, Ward, or Protected Person	Manner of Service*

*Insert one of the following: hand delivery, first-class mail, certified mail, e-service, or fax.

_____

Signature

Note:

- The Petitioner must contact the court to set a date and time for a hearing.