

GLOSSARY OF TERMS

Adjudication

The formal giving or pronouncing a judgment or decree in a cause; also the judgment given. The entry of a decree by a court in respect to the parties in a case.

Administrator/Executor

A person appointed by the court to administer (i.e., manage or take charge of) the assets and liabilities of a decedent. If the person performing these services is named by the decedent's will, he is designated as the executor of the estate.

Advance Directives

Written instructions, such as a living will or durable power of attorney for health care, which guides care when an individual is terminally ill or incapacitated and unable to communicate his/her desires.

Advocate

One who assists, defends, or pleads for another. One who renders legal advice and aid and pleads the cause of another before a court or a tribunal, a counselor.

Alleged Incapacitated Person or Person at Risk

Individual for whom a guardianship proceeding has been initiated.

Arms Length Relationship

A relationship between two agencies or organizations, or two divisions or departments within one agency, which ensures independent decision making on the part of both.

Attorney at law

A person admitted to practice law in his/her respective state and authorized to perform both civil and criminal legal functions for clients, including drafting of legal documents, giving of legal advice, and representing such before courts, administrative agencies, boards, etc.

Attorney for the Alleged Incapacitated Person

An attorney who represents the alleged incapacitated person. Such attorney shall represent the expressed wishes of the alleged incapacitated person.

Best Interest

That course of action, which maximizes what is best for a ward and which, includes consideration of the least intrusive, most normalizing, and least restrictive course of action possible given the needs of the ward.

Capacity

Legal qualification, competency, power or fitness. Ability to understand the nature and effects of one's acts.

Clerk of Court

Officer of the court who files pleadings, motions, judgments, etc., issues process, and keeps records of court proceedings. Functions and duties of clerks of court are usually specified by statute or court rules.

Competent

Duly qualified; answering all requirements; having sufficient ability or authority; possessing the requisite natural or legal qualifications; able; adequate; suitable; sufficient; capable; legally fit.

Conflict of Interest

Situations in which an individual may receive financial or material gain or business advantage from a decision made on behalf of another or from information gained through responsibilities. Situations which create a public perception of a conflict of interest should be handled in the same manner as situations in which an actual conflict of interest exists. Full disclosure to interested parties may permit the individual to act in these matters.

Conservator/Conservatee

See Guardian.

Counsel

See Attorney.

Court

An organ of the government, belonging to the judicial department, whose function is the application of the laws to controversies brought before it and the public administration of justice.

Court Order

A legal document issued by the court and signed by a judge. Examples include appointment of a guardian; spelling out directions for the care of the ward and the estate; and authorization or denial of requests for action.

Court Required Reports

Reports which the guardian is required by statute or court order to submit to the court relative to the guardianship.

Court Visitor, Monitor, Investigator

A person appointed by the court to provide the court with information concerning a ward or a guardian.

Decisional Capacity

The ability to understand and appreciate the nature and consequences of a decision and to reach and communicate an informed decision in the matter.

Dementia

A category of disorders characterized by the development of multiple cognitive deficits (including memory impairment) that are due to the direct physiological effects of a general medical condition, to the persisting effects of a substance or to multiple etiologies (e.g., the combined effects of cerebrovascular disease and Alzheimer's disease). (DSM-IV)

Developmental Disability

A severe, chronic disability of an individual 5 years of age or older that:

A. is attributable to a mental or physical impairment or combination of mental and physical impairments;

B. is manifested before the individual attains age 22;

C. is likely to continue indefinitely;

D. results in substantial functional limitations in three or more of the following areas of major life activity

1. self-care;

2. receptive and expressive language;

3. learning;

4. mobility;

5. self-direction;

6. capacity for independent living; and

7. economic self-sufficiency; and

E. reflects the individual's need for a combination and sequence of events of special, interdisciplinary, or generic services, supports, or other assistance that is of lifelong or extended duration and is individually planned and coordinated.

Direct Services

Includes medical and nursing care, speech therapy, occupational therapy, physical therapy, psychological therapy, counseling, residential services, legal representation, job training and other similar services.

Disabled Person

A person 18 years of age or older deemed by the Court to be lacking sufficient understanding or capacity to make or communicate responsible decisions concerning the care of his person or financial affairs. See also Ward.

Estate

Both real and personal, tangible and intangible, and includes anything that may be the subject of ownership.

Extraordinary Medical Situations

Include abortion, removal of life support, sterilization, experimental treatment and other controversial medical issues.

Fiduciary

An individual, agency or organization that has agreed to undertake for another a special obligation of trust and confidence, having the duty to act primarily for another's benefit and subject to the standard of care imposed by law or contract.

Free Standing Entity

An agency or organization which is independent from all other agencies or organizations.

Functional Assessment

A diagnostic tool that measures the overall well-being of an individual and provides a picture of how well the person is able to function in a variety of multidimensional situations.

Guardian

An individual or organization named by order of the court to exercise any or all powers and rights over the person and/or the estate of an individual. Utilized here to include "Conservator".

Guardian

Guardian Ad Litem

A person appointed by the Court to make an impartial inquiry into a situation and report to the Court.

Corporate Guardian

A corporation authorized to exercise fiduciary or guardianship powers and includes a non-profit corporate guardian.

Designation of Guardian

A formal means of nominating a guardian prior to the time when a guardian is needed. Also Pre-need Guardian.

Emergency Guardian

See Temporary Guardian

Guardian of the Estate

A guardian who possesses any or all powers and rights with regard to the property of the individual.

Foreign Guardian

A guardian appointed within another state or country.

Limited Guardian

A guardian who has been appointed by the court to exercise the legal rights and powers specifically designated by court order entered after the court has found that the ward lacks capacity to do some, but not all, of the tasks necessary to care for his person or property, or after the person voluntarily petitioned for appointment of a limited guardian. Also Partial Guardian.

Partial Guardian

A guardian who possesses fewer than all of the legal rights and powers of a plenary guardian.

Guardian of the Person

A guardian who possesses any or all powers and rights with regard to the personal affairs of the individual, including placement, medical, educational, rehabilitation, and social aspects of the care of the person.

Plenary Guardian

A person who has been appointed by the court to exercise all delegable legal rights and powers of the ward after the court has found the ward lacks the capacity to perform all of the tasks necessary to care for his person or property.

Professional Guardian

An individual, agency, or organization that provides guardianship services to two (2) or more individuals and receives funding or compensation, other than reimbursement for out-of-pocket costs incurred in providing services, or acts at the direction of an entity that receives funding or compensation for services provided as a guardian.

Public Guardian

A guardian appointed by the court, who is deemed to be an officer of the court. This person may be appointed to guardianship over many incompetent or incapacitated persons. The appointee may be paid for services from public funds or from assets of the incapacitated person of concern, if such funds are available.

Stand-By Guardian

A person, agency or organization whose appointment as guardian shall become effective without further proceedings immediately upon the death, incapacity, resignation, or temporary absence or unavailability of the initially appointed guardian.

State Guardian

A branch of the government of the state which is appointed when no one else is willing or able to act as guardian for incapacitated residents of the state.

Successor Guardian

A guardian who is appointed to act upon the death or resignation of a previous guardian.

Temporary Guardian

A guardian whose authority is temporary and usually only appointed in an emergency.

Incapacitated Person

Any person who is impaired by reason of mental illness, mental deficiency, physical illness or disability, advanced age, chronic use of drugs, chronic intoxication, or other cause to the extent that he lacks sufficient understanding or capacity to make or communicate responsible decisions concerning his person. Also Incompetent Person.

Incapacity or Incompetency

A person's inability to make and then act upon personal and/or property decisions on his or her own behalf.

Indigent

One who is needy and poor, or one who has not sufficient property to furnish him a living nor anyone to support him to whom he is entitled to look for support.

Informed Consent

A person's agreement to allow something to happen that is based on a full disclosure of facts needed to make the decision intelligently; i.e., knowledge of risks involved, alternatives, etc.

Interested Person

Individuals who, according to state statute, have a right to notice regarding a guardianship cause of action. This may include parents, siblings, spouse, and residential provider.

Least Intrusive

A mechanism, course of action, or situation which allows the ward the greatest opportunity for autonomy with a minimum of intervention.

Least Restrictive

A mechanism, course of action, or environment which allows the ward to live, learn, and work in a setting which places as few limits as possible on the ward's rights and personal freedoms as is appropriate to meet the needs of the ward.

Letters of Office

Formal document issued by the court containing or attesting the grant of some power authority or right. Also Letters of Guardianship.

Notice of Motion

A notice in writing, related to a specific case, stating that on a certain day, a motion will be made to the court for the purpose or object stated.

Oath of Office

A legal document signed by the guardian in which she/he pledges to carry out his/her legal obligations to the ward in a proper manner.

Parens Patriae

A legal principle meaning that the state or the government can act to determine what is in the best interests of an individual, even if the individual disagrees, on the basis of evidence of incapacitation or charges of personal or serious property mismanagement. Literally, the "father of the country".

Petition

A formal, written application to a court requesting judicial action on a certain matter. For example, relative to guardianship, the document filed to initiate the process for adjudication of disability and appointment of a guardian.

Physician's Report

A report required, in some states, in relationship to a guardianship proceeding which substantiates the need for a substitute decision maker. Also Examining Committee Report.

Prudent Person

A person who acts cautiously in the handling of assets. See Prudent Man Rule.

Prudent Man Rule

An investment standard. In some states, the law requires that a fiduciary, such as a trustee, may invest the trust's or fund's money only in a list of securities designated by the state. In other states, the trustee may invest in a security if it is one, which a prudent man of discretion and intelligence, who is seeking a reasonable income and preservation of capital, would buy.

Psychotropic Medications

Any medication prescribed for the management of behavior.

Representative Payee

An individual, agency, or organization named by a governmental agency to receive government benefits on behalf of, and for the benefit of, the beneficiary entitled to such benefits.

Social Services

Services provided to meet social needs, such as representative payee, case management, money management services and other similar services.

Substituted Judgment

The principle of decision-making which requires implementation of the course of action which comports with the individual ward's or beneficiary's known wishes expressed prior to the appointment of the guardian or representative payee, provided the individual was once capable of developing views relevant to the matter at issue and reliable evidence of these views remains. Current opinions and desires of the ward or beneficiary shall be examined and are relevant to a determination of the ward's or beneficiary's views prior to appointment of the guardian or representative payee.

Surety Bond

Obligation of a guarantor to pay a second party upon default by a third party in the performance the third party owes to the second party.

Trustee

The person appointed, or required by law, to execute a trust, one in whom an estate, interest, or power is vested, under an express or implied agreement to administer or exercise it for the benefit or to the use of another.

Ward

A person for whom a guardian has been appointed. Utilized here to include Conservatee, Disabled Person and Protected Person.