

SO – You think you want to serve as GAL?
What you might need to know to serve as court-appointed counsel in Guardianship and Conservatorship proceedings under Chapter 475

Boone County Probate Committee
Boone County Courthouse - Jury Assembly Room
June 28, 2013
12:00 PM – 1:00 PM
1.2 Hours CLE

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1. Definitions – RSMo §475.010
 - a. Guardian
 - b. Conservator
 - c. Incapacity
 - d. Disability
 - e. Least Restrictive Environment
 - f. Ward
 - g. Protectee
2. Nature of appointment as a fiduciary
3. Signing up to serve as appointed counsel
 - a. Probate Clerk’s Office
4. Requirements of the Petition
 - a. RSMo §475.060
5. Jurisdiction & Venue
 - a. Has case been filed in proper venue – RSMo §475.035
 - b. Service
 - c. Emergency Petitions - RSMo §475.075.11
6. Qualifications to Serve
 - a. Generally – RSMo §475.055
 - b. Local fingerprint requirement
 - c. Priority for appointment - RSMo §475.050
7. Receiving your appointment – Best practices with your investigation:
 - a. Conflict check & Opening file
 - b. Review of File
 - i. Family Members
 - ii. Trusts, POA, Assets

- iii. Diagnosis/Prognosis
 - iv. Full or Limited powers
 - v. Guardianship, Conservatorship, or both
 - vi. Least restrictive environment
 - vii. Medical Affidavit
 - viii. Prior nomination of guardian/conservator
 - (1) Nomination within 5 years
 - (2) Nomination at hearing
 - (3) Competing petitions
 - ix. Witness list – who are they
 - c. Meet with the Respondent early in process
 - d. Contact Attorney for Petitioner
 - i. If petition is uncontested or expected to be contested
 - (1) Respondent
 - (2) Other family members/interested parties
 - ii. Family issues; and
 - iii. Permission to contact and discuss case with Petitioner
 - iv. Interview with proposed fiduciary
 - (1) Understanding of fiduciary obligations
 - (2) Expectations of Court
 - (3) Providing medical consents
 - (4) Admission to mental health facility
 - e. Money matters
 - f. Accessing medical records and contact with medical professionals
 - i. Provide your appointment letter
 - ii. Possible records costs
 - g. Time frame & avoiding continuances
 - i. Send letter to other family members
 - (1) Request their opinion
 - (a) Whether the Guardianship, Conservatorship, or both necessary?
 - (b) Whether the person requesting to be appointed is appropriate?
 - (2) Establishes notice
8. Hearing
- a. Notice to client - No Notice, No jurisdiction
 - i. What constitutes notice
 - ii. Can you waive
 - b. Client rights under RSMo §475.075
 - c. Best practices in the courtroom:
 - i. Rights at the hearing – RSMo §475.075.7 & §475.075.8
 - (1) Appearance
 - (2) Jury trial
 - (3) Closed hearing
 - (4) Cross examination
 - (5) Right to testify

- (6) Burden of proof on Petitioner
 - ii. Note on evidence
 - (1) Physician's Affidavit
 - (2) Hearsay, leading questions & objections generally
 - iii. Report to Court
 - (1) Note on substituted judgment
 - (2) Appointment of Fiduciary
 - (3) Full versus limited powers
 - (4) Bond
 - (5) Least restrictive environment
 - (6) Getting paid – Expectations
 - (a) Track your time
 - (b) Expenses
 - d. Effect of Adjudication – RSMo §475.078
 - i. Presumptions
 - ii. Driving rights
 - iii. Voting rights
 - iv. Gun ownership
 - v. Ability to contract
 - vi. Marriage
 - vii. Testamentary capacity
9. Trouble shooting/Special Considerations
 - a. Independent Evaluations under RSMo §475.075
 - i. When they might be useful
 - ii. Procedure for obtaining
 - b. Least restrictive environment
 - i. Residential setting
 - ii. Assisted Living Facility
 - iii. Residential Care Facility
 - iv. Independent Assessments
 - c. Motion to post fees - when and why to use
 - d. Your client hates you and wants to fire you
 - i. How to handle disagreements with the Respondent
 - ii. Substitute appointed counsel
 - e. Public Administrator as an option
 - f. Contemporaneous or recent Mental Health proceedings
 - g. Emergency Hearings under RSMo §475.075.11
 - i. What constitutes an emergency
 - ii. Service requirements
 - iii. Notice of hearing
 - iv. Length of appointment
 - v. Scope of powers