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ADVANCED ADULT GUARDIANSHIPS

July 23-24, 2020

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ADVANCED ADULT GUARDIANSHIPS

Agenda



July 23, 2020

2:00 P.M. Program Begins – Hoosier A Room

CASE STUDIES AND PROJECT PLANNING

Discussion Leaders, Ken Bennett and Sara McClammer will take specific case examples from CARE's experiences (and from Bennett & McClammer's experience) to highlight issues in the practice of adult guardianship law. Participants will be given the opportunity to "project plan" around the cases presented, identifying issues that will need to be addressed. This will be done privately by each participant using a formatted tool they will be provided. After some individual work, a project plan will be constructed as a group following discussion. Ken and Sara will present information to educate on the key issues and lessons learned from the actual cases by CARE and B&M. The goal of these case studies is not so much to provide concrete answers to the issues as it is to help attorneys develop a project plan for the case that can guide their thinking and the course of their representation.

3:30 P.M. Refreshment Break

5:15 P.M. Adjourn Day One

5:30 P.M. Hosted Reception

7:30 P.M. Free Time

July 23-24, 2020

ADVANCED ADULT GUARDIANSHIPS

Agenda Continued



July 24, 2020

8:30 A.M. Continental Breakfast

**9:00 A.M. Program Resumes
BEST PRACTICES FORUM**

Ken and Sara will identify common conundrums in the practice of guardianship law, separate into groups with the participants, and have the groups come up with recommendations for “best practices” in how to deal with it. In order to help identify common conundrums, we will solicit proposed issues from the participants on the first day and combine them with suggestions previously received from the Indiana State Guardianship Association and the NAELA Indiana Chapter. Prior to the conclusion of the first day, we will have people “vote” for the top four conundrums for us to work on.

10:30 A.M. Coffee Break

12:15 P.M. Adjourn

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ADVANCED ADULT GUARDIANSHIPS

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July 23-24, 2020

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2020 Indiana Guardianship Handbook

H. Kennard Bennett & Sara McClammer

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H. Kennard (“Ken”) Bennett graduated from Wabash College in 1979 and the Indiana University McKinney School of Law in 1982. He is a partner in the elder law firm of Bennett & McClammer LLP. He founded and serves as Executive Director and Senior Counsel to the Center for At-Risk Elders, Inc., a public interest law firm that, among other things, operates the CARE Volunteer Advocates Program, providing guardianship services to low-income, unbefriended incapacitated adults. Most recently, he co-founded Scout Advocacy LLC, a private fiduciary company providing guardianship, health care representative, and power of attorney services.

Ken also serves in a leadership role with the Indiana State Guardianship Association. He is currently the Chairman of the Central Indiana Senior Fund Advisory Board, which is a fund of the Central Indiana Community Foundation.

He is a past president of the Alzheimer’s Association, Indiana Chapter and has served in leadership roles with the National Academy of Elder Law Attorneys, United Senior Action Foundation, and other groups focused on the well-being of incapacitated adults.

Sara McClammer

Sara McClammer graduated from the University of North Dakota in 2008 and the Indiana University McKinney School of Law in 2011. Sara is a partner in the law firm of Bennett & McClammer LLP where she focuses on guardianship and elder law issues. She also co-founded Scout Advocacy LLC. Sara is a nationally certified guardian.

Sara is active in the Indianapolis and Indiana State Bar Associations. She is also a trained Volunteer Advocate with the Center for At-Risk Elders, Inc.

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INTRODUCTION.

The work of guardian is a solemn responsibility.

In its purest form, guardianship represents an exercise of the state's *parens patriae* authority to protect individuals who are incapable of making decisions for themselves. In theory, the concept of guardianship is rooted in the moral duty of beneficence. Under this theory, individuals subject to guardianship are entitled to enhanced protection from the state. That is, since the imposition of guardianship involves the removal of fundamental rights from the individual ward, the guardian is required to exercise the highest degree of trust, loyalty and fidelity in making decisions on behalf of the ward. Indeed, these requirements can be viewed as a kind of *quid pro quo* due the ward for such a fundamental imposition on his or her liberty and autonomy.¹

Representing court-appointed guardians is (or should be) a unique attorney-client relationship, beginning with the lead up to a guardianship appointment, including the actual court proceedings that establish the guardianship, and continuing after the guardian is appointed. This helps to ensure that the guardian is able to perform his or her important responsibilities - sometimes for years to come. In many ways, this is an attorney-client relationship akin to that of the corporate attorney representing a business on an ongoing basis.

It's worth noting, too, that many of the legal principles associated with representing a guardian apply equally to representing attorneys-in-fact appointed in powers of attorneys, health care representatives appointed in health care declarations, or natural surrogate decision makers recognized under Indiana's Health Care Consent law. Regardless of how the surrogate decision maker receives their legal authority to act, they are acting as fiduciaries, bound by fiduciary principles of fidelity and prudence to their principal. Consequently, some parts of this manual will be useful to the attorney practitioner representing personal fiduciaries, whether or not they are appointed by a court.

¹ M. Casassanto, M. Simon, J. Roman, *A Model Code of Ethics for Guardians*. Adopted by the National Guardianship Association, Preamble (1988).

PART 1: CASE LAW AND STATUTORY UPDATES

I. 2019 Statutory Updates.

SEA 380: Indiana Senate Enrolled Act No. 380 (“SEA 380”) was signed into law with an effective date of July 1, 2019. A copy of SEA 380 is attached at Appendix 1. This Act included new sections and changes to Indiana’s guardianship code found at I.C. § 29-3 et seq., all of which are designed to promote lesser restrictive alternatives to guardianship, including “supported decision making agreements” (“SDMA”). The changes follow a nationwide effort to promote the use of SDMA’s in lieu of guardianships. For more about SDMA’s, see page 25.

II. 2019 Caselaw Updates

In re Gabriel, 120 N.E.3d 189 (Ind. April 11, 2019)

Gabriel left a prosecutorial position in California to come to Indiana to take care of her father. She was granted guardianship over her father’s person and estate. She spent a lot of her own money on her father’s care and a certain point faced her own health issues resulting in a lot of medical debt. Gabriel also struggled to maintain her practice as an attorney in Indiana and was inconsistent in finding work. Eventually, Gabriel had depleted her funds and was living on friend’s couches and in her car. Around that time, her father’s estate received \$40,000 for the sale of his marital home. Shortly after the estate received the money, Gabriel made dozens of payments and withdrawals from the estate to herself without obtaining the requisite court approval and in violation of a restraining order that had been issued by the guardianship court. Further she failed to file an accounting as required and ignored multiple court orders to do so. The guardianship court held Gabriel in contempt, appointed a successor guardian, and again ordered Gabriel to provide an accounting. She did not do so and was held in contempt again.

The Commission charged Gabriel with having violated Indiana Professional Conduct Rule 3.4(c) and Rule 8.4(b). The hearing officer found a 3.4(c) violation but not an 8.4(b). The Commission appealed. The Indiana Supreme Court, after having reviewed the hearing officers findings held: (1) The disciplinary commission failed to establish by clear and convincing evidence that the attorney was guilty of criminal conversion, Ind. Code § 35-43-4-3, because even if her control over the funds was unauthorized, she reasonably

believed under the circumstances that her actions were authorized; (2) The Commission failed to establish criminal exploitation, Ind. Code § 35-46-1-12, because, she had used the funds to reimburse herself for advanced expenses; (3) The Supreme Court found in Gabriel's favor on the Ind. R. Prof. Conduct 8.4 violation because her actions were not criminal, but held she did violate Ind. R. Prof. Conduct 3.4 because she had knowingly disobeyed the guardianship court's orders. The Indiana Supreme Court imposed a 90-day suspension with automatic reinstatement and ordered Gabriel to pay costs.

***Moore v. Pruitt*, No. 18A-GU-2804, 2019 WL 1344415 (Ind. Ct. App. March 26, 2019)**

Pruitt filed for guardianship of Jeanie, in Jasper County, and provided a consent to guardianship signed by Jeanie's son, Moore. Jeanie lived in Boone County at a nursing home. Six months after Pruitt filed for guardianship, Moore filed an appearance as an interested party in the guardianship case. He filed a petition to remove Pruitt as guardian and withdrawal his consent to guardianship. He also filed a motion to transfer venue of the guardianship proceeding to Jennie's county of residence, Boone County. The Jasper court denied the motion to transfer venue. Moore requested a second time and a second time it was denied. Moore brought an interlocutory appeal of the denial of his motion to transfer venue to Boone County. The Court of Appeals held that the issue of jurisdiction was governed clearly under Indiana Code Section 29-3-2-2(a)(1)(A) and the proper venue was where Jeannie resides. Concluding that the trial court had abused its discretion in declining to transfer venue of the proceeding to Boone County, the Court of Appeals reversed and remanded with instructions to transfer.

***Fox v. Fox*, No. 18A-SC-1055, WL 6055363 (Ind. Ct. App. November 20, 2018)**

Charles suffered from schizophrenia and before his father's death, his father created a trust fund for Charles' care with \$150,00. Charles' brother Thomas was named guardian of Charles due to his mental illness, but Charles regained capacity with the help of medication. Thomas, as guardian, disbursed some of the funds to first pay for an apartment for Charles and then to buy him a condo. When the guardianship ended, Thomas did not file a final accounting and when Charles asked that the rest of the trust be disbursed to him, Thomas declined. Charles then requested that the guardianship be reopened to try and get Thomas to file the final accounting. The probate court reopened the case and Thomas did file a final accounting. Charles argued that the accounting was vague and inadequate, but the probate court approved the final accounting after review.

Charles then filed a Petition for Clarification to try to ascertain if he was within the one-year statute of limitations to bring a claim against Thomas.

He believed that Thomas had embezzled from his trust, though he wasn't sure how much. The court directed Charles to get an attorney to determine his ability to bring suit but indicated that it had been 15 months since the termination of guardianship and that Charles had likely missed the window. Charles then decided to file a small claims action against his brother for the embezzlement and decided on the amount of \$6,000 because that was how much he believed his brother to have available. The trial court after reviewing the probate court decision dismissed the claim because they felt that the issue had already been litigated. On appeal, Charles raised three issues, 1) whether Charles's small claims action was properly dismissed under the collateral estoppel doctrine; 2) whether the small claims action was an impermissible collateral attack on the guardianship; and, 3) whether the trial court had subject matter jurisdiction over the embezzlement claim. The court of appeals affirmed the trial court's ruling and held that the trial court had necessarily already litigated the claim so the collateral estoppel doctrine applied, that the small claims action was an impermissible collateral attack on the guardianship adjudication, and that the probate court had exclusive jurisdiction over the matter.

***Johnson v. Oswalt (In re Johnson)*, No. 18A-GU-816, WL 6441622 (Ind. Ct. App. December 10, 2018)**

Adult Zach suffers from Autism Spectrum Disorder, depression, anxiety, ADHD, and Smith Lemli Opitz Syndrome. Adam became guardian of his adult child Zach, moved to North Carolina without permission from the trial court or consulting Sarah, Zach's mother. The move hindered Sarah's ability to communicate with Zach and further, Adam did not procure services for Zach. Sarah filed a petition to remove Adam as guardian and the trial court ordered on a temporary basis that Adam facilitate communication with Sarah, plus mediation which could be over the phone. Adam failed to facilitate communication, nor did he attend mediation. The court had also ordered that Zach be evaluated, which Adam also did not complete.

On an emergent basis the trial court granted Sarah temporary guardianship. She drove to North Carolina and began arranging services for Zach on their drive back. Ultimately the trial court appointed Sarah as successor guardian at a hearing where they heard evidence from providers who reported that Sarah was the better guardian for Zach. Adam appealed, arguing abuse of discretion. The Court of Appeals reviewed and held that it was not an abuse of discretion because Adam defied a court order, undermined Sarah's contact with Zach, and failed to perform duties imposed by law.

PART 2: LEGAL CONCEPTS

I. Navigating Indiana's Confusing Guardianship Code.

Guardianships proceedings in Indiana, as in all other states, are governed by statutes or codes that set forth the rules that must be followed in deciding whether a guardianship is necessary, if so who that guardian should be, what powers the guardian should have, and what duties the guardian should perform. In Indiana our “guardianship code” is found at Indiana Code § 29-3 et seq.

An annotated copy of the 2018 Guardianship Code can be found at Appendix 2.

Attorneys representing clients seeking to become guardian for an incapacitated adult know that most guardianship proceedings tend to be low-key, uncontested affairs. Most often, the nature of the ward's incapacity is obvious – mental illness or Alzheimer's disease, for instance – as is the choice of guardian. The “hearing,” lasts maybe fifteen minutes to a half-hour, the order of appointment is issued, the clerk issues the Letters of Guardianship, and from many lawyer's perspective, the process is over. Thereafter, for the most part, the remaining issues in the case from most lawyers' perspective seem to involve money and assets – the filing of the inventory and then the accountings that follow.

With the exception of intra-family squabbles that give rise to contested guardianship proceedings, most guardianships follow a rote pattern for both judges and attorneys. Therein lies the danger. Many aspects of the guardianship code are simply ignored, both by judges and attorneys, and as a result by guardians themselves, making scofflaws of most of us. Indiana's guardianship code is mistreated, but why?

To some degree, the code's abuse can be attributed to the fact that it is trying to lay down strict rules for what is in reality an equitable proceeding. But there are more specific reasons why we don't always follow the code:

- The code is written in a confusing fashion. In several places there are cross-references to the probate code; sometimes sections apply to both guardianships of a minor and of an incapacitated adult; sometimes the organization of the statute is puzzling, with “powers” and “responsibilities” mixed up.

- There is a dearth of case law interpreting Indiana’s guardianship code, thus little in the way of judicial guidance on the questions of interpretation that arise.
- Sometimes, in practical terms, following the letter of the law is impractical or inconvenient, involving expense that will most likely be paid from the assets of the protected person or, if the protected person has insufficient assets, out of the pocket of the family member taking on the potentially difficult job of guardianship – essentially paying for the privilege of trying to do the right thing.

This section shall discuss several confusing and/or ignored parts of Indiana’s guardianship code and attempt to provide tools for better navigation of the guardianship code itself.

A. The Guardianship Code’s Peculiar Structure.

Several things about Indiana’s guardianship code’s structure can be maddening to the practitioner. First, the guardianship code (I.C. § 29-3) frequently incorporates by reference language in the probate code (I.C. § 29-1) requiring a back-and-forth reading of certain sections and serving more to confuse than clarify. (If you want a display of byzantine legislation, see I.C. § 29-3-2-6.) Second, the code mixes references to minors and incapacitated adults, sometimes in ways that leaves the reader shaking their head. Third, the organization of the code sections themselves is bewildering, as will be shown in further detail below.

Advocates have been pressing for a recodification of the guardianship code. The last one was completed in the 1980’s. Since then, as with other sections of Indiana’s code, various tweaks and amendments have resulted in a cumbersome structure.

B. Terminology Traps.

The guardianship code provides twenty-two definitions in I.C. § 29-3-1, only a few of which are particularly helpful to the practitioner attempting to understand the meaning of the rest of the guardianship code:

- “Catalogue of electronic communication” – I.C. § 29-3-1-1.6
- “Claim” – I.C. § 29-3-1-2
- “Conduct a criminal background check” – I.C. § 29-3-1-2.5
- “Content of an electronic communication” – I.C. § 29-3-1-2.7
- “Court” – I.C. § 29-3-1-3

- “De facto custodian” – I.C. § 29-3-1-3.5
- “Digital asset” – I.C. § 29-3-1-4.1
- “Durable power of attorney” – I.C. § 29-3-1-5
- “Guardian” – I.C. § 29-3-1-6
- “Guardianship property” – I.C. § 29-3-1-7
- “Incapacitated person” – I.C. § 29-3-1-7.5
- “Letters” – I.C. § 29-3-1-9
- “Minor” – I.C. § 29-3-1-10
- “Parent” – I.C. § 29-3-1-11
- “Person” – I.C. § 29-3-1-12
- “Protected person” – I.C. § 29-3-1-13
- “Protective proceeding” – I.C. § 29-3-1-14
- “Support” – I.C. § 29-3-1-15
- “Volunteer advocate for incapacitated adults” – I.C. § 29-3-1-15.5
- “Volunteer advocate for seniors” – I.C. § 29-3-1-16
- “Volunteer advocate for incapacitated adults program” – I.C. § 29-3-1-17
- “Volunteer advocate for seniors program” – I.C. § 29-3-1-18

In the normal practice of guardianship law, only a few of these definitions are important. Among them is the definition of “incapacitated person.” Only “incapacitated persons” and “minors” are subject to guardianship appointment, so this definition helps us to understand what conditions of a person form the basis for establishing a guardianship.

What’s noteworthy among these statutory definitions is what terms are *not* defined, yet which play an important role in the practice of guardianship law in Indiana. How does a “guardian of the person” differ from a “guardian of the estate”? What is the defined role, exactly, of a “guardian ad litem”? The lack of definitional clarity for many of these commonly used terms is a trap for the attorney and guardian alike.

a) Powers and Responsibilities of a Guardian.

Lawyers, judges and professional guardians so frequently use the terms guardian of the person and guardian of the estate that people are surprised to learn that there is no clear meaning to the terms. Rather, these are short-cut terms used to group a set of guardianship powers identified in the code. In a broad sense, of course, guardianship of the person tends to be the term we use to describe the powers associated with health care decision-making, living arrangements, etc. Guardianship of the estate we think of as the term associated with asset and income management, paying the bills, etc.

Most believe that the phrase guardian of the person in Indiana means those powers set forth in I.C. § 29-3-8-2(a), subsections (2), (3) and (4); and the

phrase guardian of the estate means those powers set forth in I.C. § 29-3-8-4 subsections (1) through (8). Primarily because these are the powers listed on our customary form Letters of Guardianship describing the two sets of powers which are used routinely by the courts and practitioners over and over again, year after year.

This traditional itemization of powers should be updated, by the way – that is if the intent is to truly grant the guardian of the person plenary powers. A guardian of the person’s powers should include I.C. § 29-3-8-2(a), subsections (2), (3), (4), **and (5), and (6)**. This would embrace the powers of the guardian of the person to consent to the marriage or adoption of the incapacitated person (subsection (5)), and the power to delegate certain responsibilities to the incapacitated person “for decisions affecting the minor’s business affairs and well-being” (subsection (6)). Also, it would seem logically to vest the guardian of the person with the power under **I.C. § 29-3-8-4 subsection (12)**: to be the one to petition the court for the dissolution of marriage, legal separation or annulment of the protected person’s marriage under I.C. § 29-3-9-12.2.

Likewise, if the intent is to vest the guardian of the estate with truly plenary powers over the protected person’s business affairs, then those powers should include not only the references to I.C. § 29-3-8-4 subsections (1) through (8), but should also **subsections (9), (10), and (11)**. This would empower the guardian of the estate to conduct transactions on behalf of the protected person (subsection (9)), the same powers as personal representatives and trustees, except for the power to sell property without court order (subsection (10)), and the power to execute tax returns, provide certain consents, etc. (subsection (11)). Also, a guardian of the estate’s plenary powers should include **I.C. § 29-3-8-2(a) subsections (1), (6), (7), (8), and (9)**.

A sample of plenary Letters of Guardianship, as described above, is included at Appendix 3.

Why are the phrases “guardianship of the person” and “guardianship of the estate” used in the first place? Two reasons come to mind. First, it is not uncommon to split the powers of a guardian between two people, with one being in charge of the health matters and the other with the finances. Second, many courts will administer their guardianship case files and monitor the guardian differently depending upon the powers bestowed. With a “guardianship of the estate” comes the implicit need to file accountings with the court, and for the court in theory to review such accountings, adjust bond requirements, and otherwise ensure no financial mischief is occurring. On the other hand, if there is only left a guardian of the person, the court (rightly or wrongly) takes a much less active role in supervising the guardian’s actions and may even send the file to their closed-file status.

The casual use of these short-term phrases belie a general misunderstanding of the responsibilities and powers of guardians in Indiana. In the broadest sense, the guardian of an adult is “responsible for the incapacitated person's care and custody and for the preservation of the incapacitated person's property to the extent ordered by the court.” I.C. § 29-3-8-1(b). Two things to note here. First, the role of *guardian* should never be confused with the role of *caregiver*. Certainly, in some cases the guardian is in fact the primary caregiver for the ward if the ward is living with the guardian. But usually the ward is living elsewhere – in a group home, or a nursing facility, etc. The guardian is responsible for ensuring that the ward is receiving proper care, but not responsible in the law’s eyes for actually providing that hands-on care themselves.² Second, the phrase “...to the extent ordered by the court” is rarely relevant because the court rarely articulates the guardian’s powers in its order of appointment; rather, the court usually just cites the code sections we are about to discuss.

Beyond this fairly sweeping statement of the guardian’s responsibilities, what is it the guardian shall do, may do, and shall *not* do? The law talks in terms of “responsibilities” and “powers.” Let’s think of responsibilities as what the law demands as outcomes it expects of the guardian, and the powers as the tools it affords the guardian to achieve the outcomes.

It can be confusing to look at the code itself for answers to questions about the guardian’s responsibilities and powers. Consider that these are the titles of the relevant sections, in “order”:

- I.C. § 29-3-8-1 Enumerated responsibilities of guardian.
- I.C. § 29-3-8-2 Powers which guardian may exercise.
- I.C. § 29-3-8-3 Mandatory responsibilities of guardian.
- I.C. § 29-3-8-4 Exercise of powers to perform responsibilities;
enumeration

One is hard pressed to explain why these “responsibilities” and “powers” are organized in this fashion. There is no discernable reason for doing so.

Though mindful of the fact that the phrases guardian of the person and guardian of the estate are nowhere defined, let’s nevertheless attempt to organize these responsibilities and powers using those descriptors:

² Indeed, a topic for another day perhaps is whether there is an inherent conflict of interest for someone serving both as guardian and caregiver.

b) Guardian's Responsibilities.

Responsibility ³	Guardian of Person	Guardian of Estate
The guardian (other than a temporary guardian) of an incapacitated person is responsible for the incapacitated person's care and custody... I.C. § 29-3-8-1(b).	X	
The guardian (other than a temporary guardian) of an incapacitated person is responsible for ... the preservation of the incapacitated person's property to the extent ordered by the court. I.C. § 29-3-8-1(b).		X
[M]ust be or shall become sufficiently acquainted with the [incapacitated person] and maintain sufficient contact with the [incapacitated person] to know of the [incapacitated person's] capabilities, disabilities, limitations, needs, opportunities, and physical and mental health. I.C. § 29-3-8-1(a)(1).	X	
[S]hall apply the guardianship income and, to the extent the guardianship income is insufficient, the principal of the guardianship property to the [incapacitated person's] current needs for support, and protect and conserve that portion of the [incapacitated person's] property that is in excess of the [incapacitated person's] current needs. I.C. § 29-3-8-1(a)(3).		X
[S]hall report the physical and mental condition of the [incapacitated person] to the court as ordered by the court; I.C. § 29-3-8-1(a)(4).	X	
[S]hall, upon termination of the guardianship comply with the applicable provisions of I.C. § 29-3-12. ("Termination of Guardianships and Protective Proceedings.") I.C. § 29-3-8-1(b)(2).	X	X

³ As defined in the cited code section, modified to account for incorporating language and in some cases with noted deletions where the context would imply.

[A]ny other responsibilities that the court may order. I.C. § 29-3-8-1(b)(3).	X	X
Act as a guardian with respect to the guardianship property and observe the standards of care and conduct applicable to trustees. I.C. § 29-3-8-3(1).		X
Protect and preserve the property of the protected person subject to guardianship and secure the protective orders or other orders that are required to protect any other property of the protected person. I.C. § 29-3-8-3(2).		X
Conserve any property of the protected person in excess of the protected person's current needs. I.C. § 29-3-8-3(3).		X
Encourage self-reliance and independence of the protected person. I.C. § 29-3-8-3(4).	X	X
Consider recommendations relating to the appropriate standard of support, care, education, and training for the protected person or the protected person's dependent made by the protected person's parent. I.C. § 29-3-8-3(5).	X	X

c) Guardian's Powers.

As an overarching definition of a guardian's powers, note that the code specifically provides that, "[t]he guardian (other than a temporary guardian) of an incapacitated person has all of the powers to perform the guardian's responsibilities..." I.C. § 29-3-8-2(b). Having said that, the code provides that these powers *include* the following:

Power ⁴	Guardian of Person	Guardian of Estate
The power to receive property payable to the [incapacitated person] or the [incapacitated person's] parent, guardian, or custodian from any source, including any statutory benefit, insurance system, or private contract, devise, trust, or custodianship. I.C. § 29-3-8-2(a)(1).		X
The power to take custody of the [incapacitated person] and establish the [incapacitated person's] place of abode within or without Indiana if in accordance with I.C. § 29-3-9-2. (Meaning with court approval, after hearing and notice). I.C. § 29-3-8-2(a)(2).	X	
The power to institute proceedings or take other appropriate action to compel the performance by any person of a duty to support the [incapacitated person] or to pay for the [incapacitated person's] education, health, or welfare. I.C. § 29-3-8-2(a)(3).	X	X
The power to consent to medical or other professional care and treatment for the [incapacitated person's] health and welfare. I.C. § 29-3-8-2(a)(4).	X	
The power to consent to the marriage or adoption of the [incapacitated person]. I.C. § 29-3-8-2(a)(5).	X	

⁴ As defined in the cited code section, modified to account for incorporating language and in some cases with noted deletions where the context would imply.

If reasonable, the power to delegate to the [incapacitated person] certain responsibilities for decisions affecting the [incapacitated person]'s business affairs and well-being. I.C. § 29-3-8-2(a)(6).	X	X
The power to purchase a home for the [incapacitated person] or the [incapacitated person's] dependents, to protect the [incapacitated person's] existing home, or to protect the [incapacitated person's] interest in any real estate in which the [incapacitated person] may have an interest, contractual or otherwise, or to purchase any other interest in real property where the court finds the purchase to be in the [incapacitated person]'s best interest. I.C. § 29-3-8-2(a)(7).		X
The powers with respect to the guardianship property as are granted to a guardian under section 4 of this chapter with respect to guardianship property. (See below.) I.C. § 29-3-8-2(a)(8).		X
The power to bind all or any part of the guardianship property in a transaction for the benefit of the [incapacitated person] unless the third party dealing with the guardian is acting in bad faith. I.C. § 29-3-8-2(a)(9).		X
To receive and issue a receipt for property payable to the protected person or the protected person's parent, guardian, or custodian from any source, including any statutory benefit, insurance system, or any private contract, devise, trust, guardianship, or custodianship. I.C. § 29-3-8-4(1).		X
If reasonable, to delegate to the protected person certain responsibilities for decisions affecting the protected person's business affairs and well-being. I.C. § 29-3-8-4(2).	X	X

To invest and reinvest the property of the protected person in accordance with powers vested in, and according to the standards imposed upon, trustees under IC 30-4-3-3(c). I.C. § 29-3-8-4(3).		X
To secure the appointment of a guardian or co-guardian in any other state, when needed, with respect to any part or all of the guardianship property located in another state, to confer upon the appointed guardian any or all of the guardian's powers as guardian with respect to the property. I.C. § 29-3-8-4(4).		X
To continue any business of the protected person, whether in corporate, partnership, or proprietorship form, according to the rules for continuing the business of a decedent specified in I.C. § 29-1-13-11. I.C. § 29-3-8-4(5).		X
To pay to the person, guardian, department, bureau, or agency having care and custody of the protected person, or to the protected person if at least fourteen (14) years of age, a reasonable amount to be expended for the support of the protected person and the protected person's dependents, with due regard to the following: (A) The size of the guardianship property, the probable duration of the guardianship, and the extent to which the protected person in the future may be self-sufficient and able to manage the protected person's financial affairs and property. (B) The accustomed standard of living of the protected person and the protected person's dependents. (C) Other funds or sources used for the support of the protected person and the protected person's dependents. I.C. § 29-3-8-4(6).		X

<p>To distribute income and discretionary amounts of principal in one (1) or more of the following ways as the guardian believes to be in the best interests of the protected person:</p> <p>(A) Directly to the protected person.</p> <p>(B) To a guardian of the protected person appointed in another state.</p> <p>(C) To a custodian for the protected person under I.C. § 30-2-8.5.</p> <p>(D) To an adult relative of the protected person.</p> <p>(E) By expending the money or using the property directly for the benefit of the protected person.</p> <p>I.C. § 29-3-8-4(7).</p>		X
<p>To apply the guardianship property to or for the benefit of any person, including the protected person, in reimbursement for reasonable expenditures made in good faith on behalf of the protected person that the guardian might have made, or in advance for services to be rendered to the protected person if it is reasonable to expect that the services will be performed and advance payments are reasonably necessary under the circumstances.</p> <p>I.C. § 29-3-8-4(8).</p>		X
<p>To bind all or any part of the guardianship property in a transaction for the benefit of the protected person, unless the third party dealing with the guardian is acting in bad faith.</p> <p>I.C. § 29-3-8-4(9).</p>		X
<p>Except as provided in I.C. § 29-3-2-6(d), powers conferred upon trustees and personal representatives respectively by I.C. § 30-4-3-3 and I.C. § 29-1-7.5-3. However, if there is a conflict, the broader power controls.</p> <p>I.C. § 29-3-8-4(10).</p>		X
<p>To exercise on behalf of the protected person powers that are the same as those granted to the parent of a minor under I.C. § 29-3-3-3.</p> <p>I.C. § 29-3-8-4(11).</p>	X	X

To petition the court to request the authority to petition for dissolution of marriage, legal separation, or annulment of marriage on behalf of the protected person, if the protected person is an incapacitated person, as provided under I.C. § 29-3-9-12.2. I.C. § 29-3-8-4(12).	X	
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C. Relationship to Local Court Rules.

The guardianship code bestows significant discretionary power upon the court having jurisdiction over a guardianship. For example, consider that the court may bestow any responsibility on the guardian. I.C. § 29-3-8-1(b)(3). Moreover, there is a “super statute” found at I.C. § 29-3-2-4(a): “All findings, orders, or other proceedings under this article shall be in the discretion of the court unless otherwise provided in this article.”

Many courts adopt local rules that apply to guardians. Usually such local rules do not specifically grant or remove powers of guardians under the code, but they do sometimes impose added responsibilities, such as special reporting requirements, the imposition of bond requirements, rules for court proceedings, special evidentiary requirements such as the physician’s report form required by Marion County probate court, responsibilities of attorneys in the event of non-compliance by the guardian client, etc.

Local court rules can significantly add to the responsibilities of a guardian and the guardian’s attorney. Such rules should always be considered, especially when counseling a guardian client.

II. Principles and Ethics of Surrogate Decision-Making.

Whether a client holds decision-making power via a health care declaration or letters of guardianship, their function is the same – that of a surrogate decision-maker. Too often we focus on the mechanics of the process for obtaining guardianship powers, or drafting an advance directive such as a health care declaration, thereafter setting our client on their way to perform their duties with little guidance on how they should do so.

In most cases, it’s fair to assume that the surrogate decision-maker’s instincts and familiarity with the principal will lead them to make the right decisions. However, there will be those occasions when the right decision is not altogether apparent, or when other interested persons such as other

family members will disagree with or question the guardian or health care representative's decisions. Moreover, there will be occasions when the surrogate decision-maker faces obstacles with respect to the implementation of their decisions for the principal that will require effective advocacy to overcome. In such instances the client may turn to the attorney for advice on what to do.

This section is designed to provide tools to help the guardianship client exercise their decision-making. These same tools are appropriately used by informal surrogate decision-makers too, whether they are named in a health care declaration or are recognized as a natural surrogate decision-maker under Indiana's Health Care Consent law found at I.C. § 16-36-1.

A. What Does the Guardianship Code Require?

Certainly, the guardianship code sets forth requirements for the conduct of the guardian's duties with respect to the protected person's assets. The code requires guardians of the estate to "[a]ct as a guardian with respect to the guardianship property and observe the standards of care and conduct applicable to trustees" under I.C. § 29-3-8-3, and "[t]o invest and reinvest the property of the protected person in accordance with powers vested in, and according to the standards imposed upon, trustees under I.C. § 30-4-3-3(c)." I.C. § 29-3-8-4(3). In turn, this leads to the requirement of a guardian of the estate to follow the "prudent investor rule" found at I.C. § 30-4-3.5-2, and the other trust code provisions.

There are also provisions in the guardianship code that allude to the "substituted judgment" principle of decision-making (discussed in further detail below), but really only as it applies to estate planning that a guardian may engage in on behalf of the protected person. I.C. § 29-3-9-4.5(b).

But there is really nothing in Indiana's guardianship code that tells a guardian how to do their job when it comes to making health care decisions for the protected person. Ultimately, in any guardianship proceeding where the court has adjudicated a person to be an "incapacitated adult" under Indiana law and in need of a guardian, the court is not making a decision with respect to where the protected person should live or what type of health care the protected person should (or should not) receive. Rather, the court is deciding who is "*most suitable*" to make those decisions for the protected person. I.C. § 29-3-5-4.

Once appointed, the law relies upon the *judgment* of the guardian in making health care decisions for the protected person. Whether the guardian is exercising the "right" judgment is a qualitative measure of course. But there

are some principles of decision-making that the guardian may employ in wrestling with sometimes difficult decisions they must confront.

B. Informed Consent.

A guardian is exercising “informed consent” on behalf of the protected person. The doctrine of informed consent is long-established. Medical providers must obtain informed consent from a patient or the patient’s legal representative (e.g., guardian) before a proposed treatment, procedure, examination or test. I.C. § 34-18-12.

In other words, consent is something more than signing a consent form. It must be “informed” consent. This is defined as consent obtained after being provided with the following information:

- (1)The general nature of the patient's condition.
- (2)The proposed treatment, procedure, examination, or test.
- (3)The expected outcome of the treatment, procedure, examination, or test.
- (4)The material risks of the treatment, procedure, examination, or test.
- (5)The reasonable alternatives to the treatment, procedure, examination, or test.

I.C. § 34-18-12-3.

Therefore, the first duty of a guardian in exercising their judgment is to ensure that they are properly *informed*. In a fast-paced medical environment there is sometimes resistance to taking the time necessary to provide the guardian with this information, particularly if the proposed procedure or treatment seems uncontroversial from the perspective of the provider.

C. Sources of Guidance.

There are several academic papers addressing (or attempting to address) the process of surrogate decision-making, particularly with regard to end-of-life decision-making. However, there is no single, generally accepted approach to the surrogate decision-making process.

There are various concepts that will be discussed below, such as “substituted judgment,” “best interests,” and “supported decision-making” standards. But even here, there is open debate as to which of these approaches is best in any given situation. Some groups have attempted to define standards of practice and ethical principles for guardians.

1. National Guardianship Association Standards of Practice.

The National Guardianship Association (NGA) was formed in 1988 and has about 1,000 members nationwide, most of whom have served as guardian for an incapacitated adult. It is made up of, and is designed to serve, professional and lay family guardians. It is fair to say though that most of those actively involved in the association are professional guardians or serve in agencies that provide guardianship services.

The NGA Standards of Practice were first adopted in 2000, with revisions made thereafter. The most current version can be found at the following link: <https://www.guardianship.org/wp-content/uploads/2017/07/NGA-Standards-with-Summit-Revisions-2017.pdf>

2. Indiana State Guardianship Association Standards of Practice.

The Indiana State Guardianship Association (ISGA) is the Indiana affiliate to the NGA. It's mission is described as "Defining, Promoting, and Supporting Guardianship Best Practices in Indiana."

In early 2016 the ISGA Board of Directors adopted its own Standards of Practice. It is largely based upon the NGA Standards of Practice, with certain changes and modifications that the ISGA Board of Directors felt made it more relevant to guardianship practice in Indiana, both for professionals and lay family guardians. It can be found on the "Resources" page at www.indianaguardian.org.

D. Generally Accepted Standards of Surrogate Decision-making.

1. Substituted Judgment.

Long favored as the first-line approach to decision-making by a guardian, this is the principle of attempting to make a decision that the protected person would make if they had the capacity to do so. It is thought that this approach best honors the principles of autonomy and self-determination that are associated with medical decisional ethics.

The substituted judgment standard is best associated with family guardians. Unlike professional guardians that may have had no prior connection with the protected person, the family guardian is believed capable of best knowing what decision the protected person would make if they could. This makes

sense if we assume that the family guardian is someone very close, such as a spouse or close adult child, with the protected person. They presumably know the protected person's lifelong habits and preferences, their religious beliefs, and their value system.

The use of the substituted judgment principle is not without detractors. Various empirical studies have demonstrated that the substituted judgment principle is seriously flawed. For example, see Torke, AM, Alexander, GC, and Lantos, J., *Substituted Judgment: The Limitations of Autonomy in Surrogate Decision Making*, J GEN INTERN MED. 2008; 23(9): 1514-1517.

2. Best Interest.

The “best interest” standard is thought of as the most basic for surrogate decision-making. It is defined by the NGA and ISGA Standards of Practice as the principle that “requires the guardian to consider the least intrusive, most normalizing, and least restrictive course of action possible to provide for the needs of the person.” NGA Standards of Practice, Standard 7; ISGA Standards of Practice, Standard 7.

Fundamentally, the exercise of the best interest standard is open to all kinds of interpretations about what is “most normalizing,” etc. It requires the exercise of a guardian's judgment that comes from a balancing of multiple factors.

3. Supported (or Shared) Decision-making.

Supported decision-making (or sometimes referred to as “shared decision-making”) is a more recently defined standard of surrogate decision-making. It is described as,

an approach in which the guardian and person communicate together using the best available evidence when faced with the task of making decisions. The guardian supports the person to deliberate about the possible attributes and consequences of options, to determine a best course of action which respects the persons' autonomy, as well as ethical and legal norms.

ISGA Standards of Practice, Standard 7.

This is an approach that is best suited for adults with developmental disabilities rather than a progressive dementing disease. Many argue that supported decision-making best honors the autonomy and right to self-determination we all seek, even more so than the “substituted judgment” standard.

A significant conceptual problem with treating this approach as a standard of decision-making is that it muddies notions of “powers” and “responsibilities” of the guardian. Rather than a standard of decision-making, the concept of supported decision-making could be thought of as a requirement that someone who might otherwise be adjudicated an “incapacitated person” may not have a guardianship imposed upon them *if* they seek the advice of a mentor or counselor before doing so. It really is an *alternative* to guardianship in the traditional sense.

III. When is Guardianship Appropriate?

A. Incapacity Defined.

Incapacity is a defined term under Indiana law, at least for purposes of justifying a guardianship. Guardianships may only be granted over minors and incapacitated persons. I.C. § 29-3-5-1. A minor is defined as someone under age eighteen who has not been emancipated. I.C. § 29-3-1-10. The definition of an “incapacitated adult” is found at I.C. § 29-3-1-7.5 and is more complicated to adjudicate.

The first definition of an incapacitated person is one who “cannot be located upon reasonable inquiry.” I.C. § 29-3-1-7.5(1). This may seem counter-intuitive at first. Why would someone who can’t be found need a guardian? However, the purpose of this definition is to enable the establishment of guardianships to manage the assets and income of a missing person.

The last definition of an incapacitated person is someone with a developmental disability as defined under I.C. § 12-7-2-61, which means a severe, chronic disability attributable to intellectual disability, cerebral palsy, epilepsy, or autism, or a condition with similar symptomology, which manifested prior to the age of 22 and which is likely to continue indefinitely and results in substantial functional limitations.

The middle definition of an “incapacitated person” is the one most often utilized in cases of petitions seeking guardianship for the first time over older adults. There are two components to the definition – the first setting forth a functional criteria, and the second focusing on the diagnoses or condition:

- Incapacitated person means an individual who... is unable:
- (A) to manage in whole or in part the individual's property;
 - (B) to provide self-care; or
 - (C) both; because of insanity, mental illness, mental deficiency, physical illness, infirmity, habitual

drunkenness, excessive use of drugs, incarceration, confinement, detention, duress, fraud, undue influence of others on the individual, or other incapacity.

I.C. § 29-3-1-7.5(2).

The first component is more relevant to the questions of whether a guardianship is needed, and if so what limitations should be placed upon the guardian (or stated reversely, what powers and authority should remain autonomous to the protected person).

Unfortunately, in practice the focus too often is on the *diagnosis* of the alleged incapacitated person. Just because someone has a diagnosis of, say, dementia doesn't necessarily mean that they are unable to manage their property or self-care.

Note that the list of diagnoses or conditions listed in the definition is not exclusive. Again, it's the functional limitations that really define the prospective ward as an "incapacitated person." Indeed, the physician's report form created by the Marion County Probate Court and popularly used throughout the state seeks to draw out the physician's assessment of the alleged incapacitated person's functional limitations. (This is often without much success, as physician's may tend to focus on the medical diagnoses rather than how those diagnoses affect the patient's *functional* abilities.)

B. Alternatives to Guardianship.

Rightly or wrongly, guardianships are thought of as a remedy of last resort. Indeed, it is serious business and a remarkable invasion of the autonomy of an individual in a free society.

The typical ward has fewer rights than the typical felon.... By appointing a guardian, the court entrusts to someone else the power to choose where they will live, what medical treatment they will get and, in rare cases, when they will die. It is, in one short sentence, the most punitive civil penalty that can be levied against an American citizen, with the exception, of course, of the death penalty.⁵

⁵ Wright, Jennifer, L., Protecting Who From What, and Why, and How?: A Proposal For an Integrative Approach to Adult Protective Proceedings, 12 INCAPACITATED PERSON L.J. 53, 60 (2004).

Guardianship is a means to an end – that end being the bestowing of legal authority with an agent to make health care decisions and/or manage the finances, as needed, for a principal incapable of doing so for themselves. There are other means to achieving that end that may be less restrictive or not as legally “invasive.” With some caveats as discussed below, such means should be considered prior to pursuing guardianship.

Most of the alternatives to guardianship *of the estate* are found in other parts of Indiana law and are familiar to estate planning attorneys, such as trusts, powers of attorney, and joint accounts. Alternatives to a guardian *of the person* are less familiar and are discussed in more detail below.

1. Powers of Attorney, Trusts and Joint Accounts.⁶

Powers of attorney and trusts are familiar to most practitioners as general planning tools in which a client may appoint as their agent someone that they trust and bestow upon them powers, as set forth in I.C. § 30-5 et seq. and I.C. § 30-4, et seq., respectively.

In cases where a client has unquestioned capacity, the creation of a power of attorney is routine. However, challenges arise in this regard when dealing with a client with marginal capacity.

While total incapacity would preclude the client from signing a power of attorney, marginal capacity may or may not allow representation to proceed, under Ind. Rules Prof. Conduct 1.14(a):

When a client’s capacity to make adequately considered decisions in connection with a representation is diminished, whether because of minority, mental impairment or other reason, the lawyers shall, as far as reasonably possible, maintain a normal client-lawyer relationship.

Thus, the lawyer must determine the client’s capacity to proceed, then take appropriate action based on that assessment.

Capacity to contract is the legal standard for establishing the lawyer-client relationship and for the formation of a power of attorney. For the appointment of a Health Care Representative under I.C. § 16-36-1-4, the

⁶ The authors wish to extend their thanks to Scott R. Severns for this section, which comes from a joint paper written by Mr. Severns and H. Kennard Bennett for the Evansville Bar Association’s 26th Annual EBA Estate and Business Planning Institute November 20, 2015.

standard is capacity to consent to health care. Under that law, capacity is presumed unless the treating physician has determined otherwise.

The test for determining a person's mental capacity to contract is whether the person is able to understand in a reasonable manner the nature and effect of his act. *Wilcox Mfg. Grp., Inc. v. Mktg. Servs. of Indiana, Inc.*, 832 N.E.2d 559 (Ind. Ct. App. 2005). The court divided the inquiry into two parts: "To avoid a contract on basis of lack of mental capacity, the party must not only have been of unsound mind, but also must have had no reasonable understanding of the contract's terms due to his instability." *Id.*

Comment 6 to Rule 1.14 of the Indiana Rules of Professional Conduct provide useful guidance to the attorney's inquiry into the client's capacity:

In determining the extent of the client's diminished capacity, the lawyer should consider and balance such factors as: 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. In appropriate circumstances, the lawyer may seek guidance from an appropriate diagnostician.

When capacity is questionable, a current medical opinion of the client's capacity is desirable, both as to the existence of a medical condition that could interfere with capacity and the extent to which the condition limits the ability of the individual to understand. However, it is important to remember that capacity is a legal determination; the medical assessment is not necessarily determinative. Good judgment by the attorney is always required. Help is available to counsel. The ABA, in particular, has a number of useful resources to assist the practitioner assessing client capacity, including an 80 page handbook with checklists and forms:

http://www.americanbar.org/groups/law_aging/resources/capacity_assessment.html

There may be steps that the attorney can take to enhance the capacity of the client, for instance, by arranging a meeting during the client's peak time, taking steps to put the client at ease, eliminating stressors and distractions, speaking clearly and slowly, checking the client's understanding throughout the course of the interview. Depending on the circumstances, the presence of family members for a portion of the meeting may be helpful to the client and useful to the attorney's assessment of the client's relationships and factual circumstances. However, the presence of others can cloud the attorney's assessment and raise questions about undue influence. Great care must be taken to direct questions to and elicit response from the client without others'

prompting or interference⁷. Anxious but well-meaning family members often answer for the impaired client, if only in the interest of time. In addition to such direct actions, others' non-verbal cues to the client may prevent the attorney from knowing the client's independent views. The attorney must overcome the "noise" to get an independent assessment of the client, establish a relationship directly with the client and to create a record that actions taken were free of undue influence.

If others are present for part of the interview, a private meeting with the client should be conducted separately, and consideration given to multiple meetings. The lawyer can assure anxious family members that this step is necessary to help protect the document from later challenge. Too much protest to this step is a red flag.

Like a power of attorney, a *funded* trust affords an agent of the client's choice to have authority to manage the financial affairs of the client. In some ways, the use of a joint bank account can also serve as a tool to enable an agent to handle a client's finances short of guardianship, although it is questionable as to whether normal fiduciary rules applicable to trustees or attorneys-in-fact or guardians also apply to joint account owners.

2. Health Care Declarations and Health Care Powers of Attorney.

There are actually two Indiana statutes that allow a contractually competent individual to delegate health care decision-making. First is the Indiana Health Care Consent Law found at I.C. § 16-36-1-6. The other is the Power of Attorney statute at I.C. § 30-5-5-16 and -17.

Unlike the other powers in a power of attorney, the power to provide informed consent is dependent upon the physician first believing that their patient lacks capacity to provide consent to health care. I.C. § 16-36-1-7(e); I.C. § 30-5-7-3; I.C. § 16-36-1-3.

⁷ Comment 2 to Indiana Rules of Professional Conduct R. 1.14 states:

The fact that a client suffers a disability does not diminish the lawyer's obligation to treat the client with attention and respect. Even if the person has a legal representative, the lawyer should as far as possible accord the represented person the status of client, particularly in maintaining communication.

3. Psychiatric Advance Directive.

Provided for in I.C. § 16-36-1.7, this is “a written instrument that expresses the individual's preference and consent to the administration of treatment measures for a specific diagnosis for the care and treatment of the individual's mental illness during subsequent periods of incapacity.” It does not involve appointing a surrogate to make health care decisions for the patient, but does provide explicit direction with regard to the treatment of a known mental illness.

In the context of avoiding guardianship, this tool can authorize advance treatments that may result in the patient regaining their mental competency, thereby avoiding the need for a guardian.

4. Living Will and Life Prolonging Procedures Declaration.

This, too, is a document familiar to most attorneys, and is authorized by I.C. § 16-36-4. This document does not name an agent like a health care declaration would. However, much like the provision of consent in a psychiatric advance directive, this declaration can provide a form of advance consent for the provision or withdrawal of life prolonging procedures if the patient is unable to speak for themselves.

One might assume that a living will or life prolonging declaration is a tool to avoid the appointment of a guardian in cases where the only reason for the prospective guardianship is to provide consent in end-of-life situations. However, the statute may not be enough to avoid the guardianship.

The fact that there is a living will may not act as a self-implementing decision. The statute allows a physician to withhold treatments if a living will is in place (I.C. § 16-36-4-13(c)), but a living will,

does not *require* the physician to use, withhold, or withdraw life prolonging procedures but is presumptive evidence of the patient's desires concerning the use, withholding, or withdrawal of life prolonging procedures under this chapter; and . . . shall be given great weight by the physician in determining the intent of the patient who is mentally incompetent.

I.C. § 16-36-4-8(f) (emphasis added). (On the other hand, a life prolonging procedures declaration *does* require the physician to provide such life prolonging procedures. I.C. § 16-36-4-8(g)).

It is also true, however, that there is an affirmative obligation on the part of a treating physician who refuses to implement the directives in the living will

or life prolonging procedure declaration to transfer the patient to another physician who will. I.C. § 16-36-4-13(e). In cases where the physician has reason to question the validity of the living will or whether the patient may have changed their mind, then the physician is required to conduct an investigation into the matter by consulting with various people to determine the validity. If the physician determines from that investigation that the patient intended to execute a valid living will, then the physician, rather than acting on the direction of the living will, may request the appointment of a guardian to make the consent decision on behalf of the patient. I.C. § 16-36-4-13(i).

5. Out of Hospital Do Not Resuscitate Declaration.

If someone is “terminal” and “has a medical condition such that, if the person were to suffer cardiac or pulmonary failure, resuscitation would be unsuccessful or within a short period the person would experience repeated cardiac or pulmonary failure resulting in death,” then they may execute an Out of Hospital Do Not Resuscitate Declaration that in turn can translate into a DNR Order from their treating physician. I.C. § 16-36-5-10. When in place, this DNR Order requires that a health care provider not perform cardiopulmonary resuscitation except in certain circumstances. I.C. § 16-36-5-19.

This type of declaration and resulting physician’s order can avoid guardianships that might otherwise be sought simply for purposes of providing DNR direction.

6. Physician Order for Scope of Treatment (POST).

A relatively new provision of Indiana law, adopted in 2013 (updated in 2018) and found at I.C. § 16-36-6 et seq., the Physician Order for Scope of Treatment form (or “POST Form”), is similar to the Out of Hospital Do Not Resuscitate Declaration in operation, except that it is broader in scope and available to a broader population.

First, the form is completed by the competent patient (or the patient’s representative, such as a guardian) with the treating physician. Once completed it acts as a doctor’s order governing patient preference with regard to cardiopulmonary resuscitations, overall level of medical intervention to apply (e.g., comfort measures only, limited interventions, etc.), antibiotics, and artificial nutrition. I.C. § 16-36-6-9.

Second, the POST Order is effective in all health care settings and not just in out of hospital settings. I.C. § 16-36-6-15.

Third, not only are patients diagnosed as terminal entitled to complete a POST Form, so are those with “advanced chronic progressive illness” or “advanced chronic progressive frailty.” I.C. § 16-36-6-5.

While not a substitute for an agent named by the court (guardian) or by the patient (healthcare declaration) in terms of making health care decisions for an incapacitated adult, the POST Form can possibly avoid the need for a guardianship if the only health care questions requiring decisions are already set forth in the POST Form.

7. Indiana’s Health Care Consent Law.

Under Indiana’s health care consent law, found at I.C. § 16-36-1, there is a predefined list of individuals authorized to provide medical consent for an incapacitated adult if the patient has not previously appointed a health care representative. Those that may provide consent include a guardian, a court-appointed health care representative, a spouse, an adult child or an adult sibling. I.C. § 16-36-1-5. If the patient is a member of a religious order, then their religious superior may provide medical consent if others are not available. *Id.*

In 2018, the legislature updated the Health Care Consent Law to prioritize who can make decisions on behalf of an individual. Previously, there was no prioritization and therefore, if two family members disagreed on a course of treatment the medical providers had no way to determine who they should listen to and often a guardianship was needed. These new rules took effect on July 1, 2018.⁸

8. Supported Decision Making Agreements

SEA 380 introduces into Indiana law what amounts to a hybrid form of “power of attorney” and/or “health care declaration” whereby someone (a “supporter”) helps guide an adult with life decisions. This supporter(s) is identified in a Supported Decision Making Agreement (“SDMA”).

We have included SDMA forms created by the Working Interdisciplinary Networks of Guardianship Stakeholders (WINGS) at Appendix 4. You can download these forms and learn more about SDMA at Indiana Disability Rights, <https://www.in.gov/idr/2677.htm>.

⁸ In one of several conundrums under Indiana’s guardianship code, a straight reading of this provision of the health care consent law, and the guardianship code, suggests that a court-appointed guardian has no more authority to make health care decisions than any member of the protected person’s immediate family.

The statute has everything to commend it in terms of its intention of providing another tool for natural advocates help guide our fellow citizens whom may not technically be an “incapacitated adult” under our guardianship code, but whose condition is such that they may be *perceived* by third parties to be incapable of making decisions for themselves. However, the statute has little to recommend it in terms of any meaningful legal mechanism.

The role of a Supporter in a SDMA is clearly that of counselor and advocate for the subscribing adult. However, beyond such role a Supporter has *no legal* authority bestowed upon them by a SDMA. The Supporter cannot substitute their decision for that of the subscribing adult. Rather, the Supporter’s role is to “support the will and preference of the adult, and not the supporter's opinion of the adult's best interests.” I.C. § 29-3-14-5(a)(1). The Supporter cannot exert “undue influence” on the subscribing adult. I.C. § 29-3-14-5(c)(1). A Supporter may not obtain information that might otherwise be obtained by a attorney-in-fact, health care representative, or guardian, without the consent of the subscribing adult.

It is unclear why the SDMA statute is included in the guardianship code rather than as a new section under Title 30-5 (Powers of Attorney) or Title 16-36 (Health Care Consent). However, it awkwardly finds itself there in the guardianship code – a code that is premised entirely upon the idea that there is an “alleged incapacitated adult” requiring guardianship as a means of meeting their needs. The subscribing adult to a SDMA is *not* an incapacitated adult. Indeed, in order to be able to entered into a SDMA the subscribing adult must have contractual capacity. *See* I.C. § 29-3-14-4.

9. Protective Proceedings and Single Transactions

The guardianship code allows a Court to issue a single order without the appointment of a guardian. *See* I.C. § 29-3-4-1. The Court must find that the person is incapacitated and that he or she:

- (1) owns property or has income requiring management or protection that cannot otherwise be provided;
- (2) has or may have financial or business affairs that may be jeopardized or impaired; or
- (3) has property that needs to be managed to provide for the support or protection of the incapacitated person.

The Court also must find that the incapacitated person cannot manage their affairs or property and that the protection sought is necessary. *Id.*

This tool can be useful in circumstances where there is a single issue relating to finances that needs to be resolved and a full, ongoing guardianship is not needed. For example, this tool can be used if a power of attorney needs to be amended or if a single asset needs to be moved into a trust for proper management. An example of a petition and order for a protective proceeding is included at Appendix 5.

C. Guardianship as a Policing Tool.

While alternatives to guardianship are appropriate to consider before pursuing a guardianship, it is also important to recognize that private agency tools such as powers of attorney and trusts come with a lack of oversight of the agent's activities. There are no "power of attorney police" or "trust police."

On the other hand, the work of a guardian is theoretically under the supervision of a court, with greater transparency to the activities of the guardian. Most court supervision comes in the form of monitoring the assets of the protected person by way of inventories and accountings. But a University of Notre Dame study found the following:

Although Indiana statute requires petitions for appointment of guardian to specify the approximate value and description of the property of the proposed ward, 14% of all petitions for guardianship (excluding those petitions for guardianship of the person only) in the current research made no mention of the ward's assets or property. In fact, a significant number of these guardianships were granted and the files lacked requisite inventories long after the ninety-day statutory period for filing had lapsed. This suggests that in many instances, guardians are failing to inform the court of the contents and value of the ward's property subject to their control both at the time of the petition, as well as after being appointed and serving as guardian.⁹

Nationally, required guardianship accountings were found to be missing in 48% of guardianship files. Despite calls for reform, the fact remains that Indiana's courts do not have sufficient resources to properly police the guardians it appoints. In the larger metropolitan counties the courts are able to dedicate staff resources to provide compliance methods, but in the smaller

⁹ The State Of Adult Guardianship In Indiana: An Empirical Perspective, University of Notre Dame Law School. 2011.

counties the duty to review inventories and accountings falls upon the judges themselves. Some judges are better at it than others, but the fact remains that many courts simply don't or can't enforce the requirements of inventories and accountings, much less exert any degree of auditing to those inventories and accountings that are filed.

Indiana may be starting to tighten its methods and means of accountability for guardians. The work of the Indiana Adult Guardianship State (IAGS) Task Force and others has resulted in the creation of an Adult Guardianship Office housed within the Indiana Supreme Court's State Court Administration offices. The implementation of the Adult Guardianship Registry is also expected to build data that will better identify the extent of the problem with respect to insufficient accountability of guardians, hopefully leading to solutions addressing such problems. Moreover, the IAGS Task Force is exploring online guardianship accounting resources modeled after those available in Minnesota, that could lead to an accounting process in Indiana that is both easier for the guardian and their attorney, and at the same time capable of enabling better policing of such accountings by the courts.

IV. Selecting the Most Suitable Person to Serve as Guardian.

A. Qualifications for guardian.

1. Basic qualifications.

Surprisingly, virtually anyone can serve as court-appointed guardian. Within the guardianship code itself there are no age requirements, no relationship requirements, no educational requirements, no certification or licensing requirements, and no residency requirements. The court "shall appoint as guardian a qualified person or persons most suitable and willing to serve..." without limitation, except for disqualifying convictions of the proposed guardian. I.C. § 29-3-5-4.

While not bearing on a prospective guardian's "qualifications," the law does provide that the court shall give "due regard" to the following factors:

- (1) Any request made by a person alleged to be an incapacitated person, including designations in a durable power of attorney under I.C. § 30-5-3-4(a).
- (2) Any request made for a minor by:
 - (A) a parent of the minor; or
 - (B) a de facto custodian of the minor, including a designation in a power of attorney under I.C. § 30-5-3-4(b) or I.C. § 30-5-3-4(c).

- (3) Any request contained in a will or other written instrument.
- (4) A designation of a standby guardian under I.C. § 29-3-3-7.
- (5) Any request made by a minor who is at least fourteen (14) years of age.
- (6) Any request made by the spouse of the alleged incapacitated person.
- (7) The relationship of the proposed guardian to the individual for whom guardianship is sought.
- (8) Any person acting for the incapacitated person under a durable power of attorney.
- (9) The best interest of the incapacitated person or minor and the property of the incapacitated person or minor.

I.C. § 29-3-5-4.

The court is also guided in making its selection by a “pecking order” when it considers who should be appointed as guardian:

- (1) A person designated in a durable power of attorney.
- (2) A person designated as a standby guardian under I.C. § 29-3-3-7.
- (3) The spouse of an incapacitated person.
- (4) An adult child of an incapacitated person.
- (5) A parent of an incapacitated person, or a person nominated by will of a deceased parent of an incapacitated person or by any writing signed by a parent of an incapacitated person and attested to by at least two (2) witnesses, or in a power of attorney of a living parent of an incapacitated person under I.C. § 30-5-3-4(c).
- (6) A parent of a minor, a de facto custodian of a minor, or a person nominated:
 - (A) by will of a deceased parent or a de facto custodian of a minor; or
 - (B) by a power of attorney of a living parent or a de facto custodian of a minor.
- (7) Any person related to an incapacitated person by blood or marriage with whom the incapacitated person has resided for more than six (6) months before the filing of the petition.
- (8) A person nominated by the incapacitated person who is caring for or paying for the care of the incapacitated person.

I.C. § 29-3-5-5. However, this “pecking order” is non-binding in that the court can ignore it if the court feels doing so is in the best interests of the protected person. I.C. § 29-3-5-5(b).

It is also worth pointing out that under the Power of Attorney statute, if the alleged incapacitated person has nominated their attorney-in-fact to serve as guardian, then the court is required to appoint the nominated agent as guardian “except for good cause shown. I.C. § 30-5-3-4.”¹⁰

2. Felonies as a bar to serving as guardian.

Contrary to popular belief, not all felonies preclude someone from serving as guardian. Indeed, only those crimes enumerated in the statute act as a bar, and all of those involve acts of sexual violence and sexual misconduct.¹¹

The guardianship code identifies specific disqualifying criminal convictions precluding a person’s appointment as a guardian. I.C. § 29-3-7-7. These are identified as follows:

- I.C. § 29-3-7-7(1) – a “sexually violent predator,” as elaborately defined under I.C. § 35-38-1-7.5;
- I.C. § 29-3-7-7(2) – someone convicted of:
 - child molesting under I.C. § 35-42-4-3; or
 - sexual misconduct with a minor (as defined by I.C. § 35-42-4-9), if the victim was under age 16 and the misconduct involved the use or threat of deadly force, was done while armed with a deadly weapon, or that resulted in bodily injury;
- I.C. § 29-3-7-7(3) – was under age 18, but convicted as an adult of:
 - Rape (I.C. § 35-42-4-1);
 - Deviate criminal conduct (before its repeal) (I.C. § 35-42-4-2);
 - Child molesting (I.C. § 35-42-4-3);
 - Vicarious sexual gratification, using deadly force or threat of force if armed with a deadly weapon, or the use of a drug. (I.C. § 35-42-4-5(a)(2));
 - Vicarious sexual gratification resulting in serious bodily injury. (I.C. § 35-42-4-5(a)(3));
 - Directing, aiding, inducing, causing a child under 16 to engage in sexual intercourse with another child under 16. (I.C. § 35-42-4-5(b)(1));

¹⁰ Whether it is wise to nominate your attorney-in-fact under a power of attorney as your guardian is a good question. In fact a guardianship proceeding is often initiated because of actual or potential malfeasance on the part of an attorney-in-fact.

¹¹ Given the discretion of the court to decide who is suitable to serve as guardian, though, any felony conviction may influence the decision.

- Directing, aiding, inducing, causing a child under 16 to engage in bestiality. (I.C. § 35-42-4-5(b)(2)); or
- Directing, aiding, inducing, causing a child under 16 to engage in sexual intercourse with another person. (I.C. § 35-42-4-5(b)(3)).

3. Does the proposed guardian have to live in Indiana?

Indiana's guardianship code does not explicitly require that a guardian live in Indiana in order to qualify as a guardian. However, by way of the incorporating statute in the guardianship code (I.C. § 29-3-2-6), Indiana's probate code *does* impose specific requirements on nonresident personal representatives (and therefore guardians), such as the posting of a bond, written acceptance of the court's jurisdiction, and the appointment of a resident agent for service of process. I.C. § 29-1-10-1.

4. Must the proposed guardian have an attorney?

Nothing in the guardianship code requires a guardian to have an attorney. However, some local court rules do require that an attorney be retained by a guardian, particularly a guardian of the estate. *See, e.g.,* Marion Cnty., Ind., Probate R. 402.

PART 2: LEGAL MECHANICS

I. Court of Equity.

The guardianship court is one of equity as opposed to one at law. At a basic level, a court of equity does not award monetary damages, as does a court of law. Instead, courts of equity issue injunctions, decrees, or other orders directing parties to take a certain course of action. Equitable courts also base their rulings on what is fair and just, as opposed to the black letter of the law.

In practice, this means that facts, emotions, and other intangible things that would not be admissible in a court of law come into play during a guardianship proceeding. There are, of course, statutory guidelines; however, the judge's ruling will be based on many factors.

A. Launching a Guardianship.

1. Jurisdiction and Venue.

Depending on the county, any court in the county may have subject-matter jurisdiction over a guardianship proceeding. Larger counties have courts that exclusively hear probate matters and a guardianship is required to be filed in that specific court.

Personal jurisdiction can be an issue if the person has moved from one state to another. In this instance, the Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act¹² (UGAPPJA) applies. *See* I.C. § 29-3.5-1 *et seq.* Under UGAPPJA, Indiana is the appropriate jurisdiction for a guardianship proceeding if Indiana is the person's "home state" or if Indiana "is a significant connection state" and other factors are also met. I.C. § 29-3.5-2-3. If Indiana is not the home state or a state of significant connection, Indiana may still exercise jurisdiction in certain circumstances. I.C. § 29-3.5-2-4. For example, a petition for the appointment of a temporary guardian can be filed even if Indiana is not the person's home state or a state of significant connection. I.C. § 29-3.5-2-4(a).

Home state is defined as the state in which the person was physically present for at least six months immediately prior to the filing of the petition. If that

¹² As of November 2018, the following states have not adopted UGAPPJA: Michigan, Kansas, Texas, Florida.

condition is not met, then home state is the state where the person lived for at least six consecutive months but moved to a new state less than six months before the petition was filed. *See* I.C. § 29-3.5-1-2(6). Significant connection state is defined as “a state, other than the home state, with which a respondent has a significant connection other than mere physical presence and in which substantial evidence concerning the respondent is available.” I.C. § 29-3.5-1-2(15).

If a person is living in Indiana and Indiana has jurisdiction, then the petition must be filed in the county where the person “resides”. I.C. § 29-3-2-2(a)(1)(A). Residence for guardianship purposes is determined “by actual presence rather than technical domicile”. I.C. 29-3-2-5. (For temporary guardianships, a petitioner must file in the county where the person is receiving medical care. I.C. § 29-3-2-2(a)(1)(B), so again “physical presence” becomes the factor for venue.)

2. Who may Petition?

Any person may file a petition for appointment of a temporary (I.C. § 29-3-3-4(a)) or permanent (I.C. § 29-3-5-1(a)) guardian.

3. Contents of Petition.

Any petition for guardianship, temporary or permanent, must contain the following information:

Information about the person:

- The name, age, residence, and post of address of the person.
- The name and address of the person or institution which is providing care and custody of the person.
- The nature of the incapacity.
- The approximate value and description of property owned by the person.
- The amount of income received by the person.
- Whether a protective order or guardianship has been granted over the person in any state.
- The names and addresses, if known, of the person’s closest blood or marriage relatives.
- If the proposed guardian is an individual, the names and addresses of any other persons for which the proposed guardian is acting as guardian.

Information about the proposed guardian:

- The residence and post office address of the proposed guardian.
- The relationship between the person and the proposed guardian.
- The name and business address of the attorney representing the proposed guardian.

Other information:

- A description of any limitations on the powers of the guardianship.
- The reasons why a guardianship is needed.
- A description of the petitioner's efforts to use less restrictive alternatives before seeking guardianship.

I.C. § 29-3-5-1(a).

An example of a petition is included at Appendix 6.

4. Notice.

Notice is required to be given by first class postage prepaid mail. I.C. § 29-3-6-1. The exact language of the notice is provided in Indiana Code section 29-3-6-2.

Notice is to be served on specified relations of the alleged incapacitated person "whose whereabouts can be determined upon reasonable inquiry." I.C. § 29-3-6-1(a)(3). Reasonable inquiry is an ambiguous term. In practice, it likely means using the internet, last known address, or last known telephone to attempt to locate a person entitled to notice. On the other hand, it probably does not require hiring a private investigator to spend weeks locating the individual. If you were unable to locate a person who is entitled to notice, record what efforts you took and report them to the court in the form of an affidavit.

Notice shall be given to the following:

- The person.
- The person's spouse.
- The person's adult children. If there are no adult children, then the person's parents.
- Any person who is serving as guardian for or who has the care and custody of the person.
- If the person does not have a spouse, adult children, or parents, then "at least one (1) of the persons most closely related by blood or marriage." I.C. § 29-3-6-1(a)(4)(C).
- Any attorney-in-fact of the person.
- Any other person the court directs.

I.C. § 29-3-6-1(a)(4). Note that if the person is residing in a facility, then the administrator of the facility is entitled to notice.

The guardianship code itself does not set forth time periods for notice. However, through the probate code sections incorporated into the guardianship code, it appears that if the notice is done by mail, then it must be placed in the mail no less than 14 days prior to the hearing, and if service is by person no less than 10 days prior to the hearing. I.C. 29-1-1-12.

The attorney for the petitioner must file with the court a proof of service of the notices. I.C. 29-1-1-16 as incorporated by I.C. 29-3-2-6.

5. Filing Fees and Waivers.

If the person does not have sufficient funds to pay for the court filing fee, a motion to proceed as an indigent person may be filed under Indiana Code section 34-10-1-1.

The motion and affidavit must be signed by the proposed guardian and filed at the time the permanent or temporary guardianship is filed. See example attached at Appendix 7.

6. Identifying Issues for Hearing and Allotment of Sufficient Time.

At the time you file your petition it is likely you will also set a hearing date. It is helpful at this stage to identify whether or not you believe the guardianship petition will be contested. If it is not contested, a 30-minute hearing slot should be sufficient. A full day or half-day hearing should be requested if the guardianship is contested.

Interested parties who contest the hearing do not always hire counsel, and therefore, you may not know if they intend to appear at the hearing, or which aspects of the guardianship they contest: do they contest the proposed guardian, the finding that the person is incapacitated, or do they believe they should be appointed as guardian? If an interested party shows up unexpectedly at a hearing, with or without counsel, the court may continue the hearing to a different date. The court may also allow the interested party to voice their concerns and appoint the proposed guardian over objection.

B. Preparing for the Guardianship Hearing.

1. Evidence of Incapacity.

Incapacity is a legal determination supported by medical evidence, such as a physician's report signed by a doctor. Some counties provide their own form. Marion County's form is attached in the Appendix 8.

A finding of incapacity must take place before a guardian can be appointed.

Note that this form must be signed by a medical doctor, and not a nurse, nurse practitioner, or other medical professional. The report should be based on a physical examination that happened close in time to the filing of the guardianship petition. Depending on the facts of the case and whether the incapacity of the person is contested, you may have to get the person examined immediately prior to the hearing.

Note that the physician's report is hearsay. If raised, the judge will sustain a hearsay objection to the form. If a party contests the report on hearsay grounds, you may have to subpoena the doctor to give live testimony. You could also stipulate to the admissibility of the report prior to the hearing.

2. Discovery Options.

Most guardianship matters will move forward without any discovery being conducted, with the exception of a completed physician's report. Uncontested guardianships only need to prove that the person is incapacitated and that the guardian is capable of serving.

However, when a guardianship is very contentious and there are numerous issues that will be contested at trial, discovery can assist the parties to clearly identify the issues and possibly reach a mediated settlement without the need for a hearing.

As with any other issue before the court, attorneys must adhere to the Indiana Rules of Trial Procedure and any applicable local rules.

a) Trial Rule 35 Examination

An examination under Indiana Rule of Trial Procedure 35 can be used to determine whether an individual is mentally capable of serving as guardian. This procedure may be used when a party is arguing that the proposed guardian is mentally unstable or suffers from an illness – such as dementia – that would make it difficult for them to serve as guardian.

This motion would be appropriate prior to the permanent guardianship hearing. The results of the examination would then be used at the guardianship hearing to argue that a person is or is not capable of serving as guardian.

This tool can also be used to examine the allegedly incapacitated individual. Sometimes it is difficult for the petitioner to obtain a physician's report – doctors may view the report as a HIPAA violation and will only release the information to a health care representative or in response to a court order. An alleged incapacitated person living in the community may not voluntarily submit themselves to an examination by a doctor. Again, this motion would come before the permanent guardianship hearing so the report can be presented at the hearing.

b) Subpoenas

Parties may subpoena witnesses under Trial Rule 45. Witnesses may be needed to discuss the capacity of a potentially incapacitated person, whether or not a proposed guardian is suitable to serve, or to support any number of other issues.

c) Request for Production.

A request for documents under Trial Rule 34 may be appropriate depending on the issues that will be discussed at the guardianship hearing. For example, medical records may be necessary to show a rapid decline in the potentially incapacitated adult's health. Requests for production of documents could also be used to show financial exploitation or provide evidence of an alleged incapacitated person's (or an attorney-in-fact's) inability to manage finances.

d) Depositions.

Depositions are governed by Trial Rules 27-32. Depositions can be used if a witness is unavailable to testify or to clarify the testimony of a witness.

e) Interrogatories.

Trial Rule 33 dictates the use of interrogatories. Interrogatories can be especially useful to determine the opposing party's arguments before a contested guardianship hearing. You may learn that the only issue up for debate is who should serve as guardian or you may find that the other side does not believe that the person is incapacitated. This will help frame the issues for the hearing, allowing you to focus on the issues that are most important.

3. Presence of the Alleged Incapacitated Person.

The person is required to be present at the guardianship hearing, unless the court determines by evidence that:

- The person cannot be located
- “[I]t is not in the alleged incapacitated person’s best interest to be present because of a threat to the health or safety of the alleged incapacitated person as determined by the court;”
- The person knowingly and voluntarily consented to the appointment of a guardian at a time when the person was not incapacitated; or
- The person knowingly and voluntarily waived notice of the hearing at a time when the person was not incapacitated.

I.C. § 29-3-5-1(d).

In practice, it is difficult to prove the last two options on the list above. Generally, the person is required to attend the hearing unless it can be shown that they are unable to attend or that attendance would endanger their health or safety. For example, attendance at the hearing may not be required if someone is intubated or attached to other medical equipment that would make leaving the hospital or nursing home difficult, impossible, or unsafe. Additionally, the person’s attendance may be excused if they have dementia and traveling to the courthouse would cause a high level of anxiety. Generally, arguing that the person will not be able to understand the proceedings is insufficient to excuse their attendance.

The physician report forms commonly prescribed by local rule ask the doctor to indicate whether or not the person can appear in court “without creating a threat to his or her health or safety.” Some forms ask the doctor to explain why the person cannot appear other forms just have the doctor check a box. Physicians do not always consider the person’s mental capacity to appear at the hearing – i.e., will the hearing cause a high level of stress or anxiety. Most physicians base their answer solely on the person’s physical health and abilities. Accordingly, if the physician states the person can appear, but the family disagrees you may have to get a note from a nurse or doctor. An example of such a letter is attached as Appendix 9. This evidence may be supported by witness testimony.

4. Engaging the Guardian Ad Litem.

A guardian ad litem should almost always be involved in a guardianship proceeding. *See* I.C. § 29-1-1-20(b). This is perhaps the most violated statute in the practice of guardianship in Indiana. A study by the University of Notre Dame Law School found the following:

Across the 14 counties we sampled, guardians ad litem were appointed in 47% of all adult guardianship cases. Two of the fourteen counties relied on in-court guardians ad litem. Eliminating the two counties that provide in-court guardians ad litem, we found guardians ad litem were appointed 20% of the time in the remaining 12 counties.¹³

What is the role of the guardian ad litem? The statute states that the guardian ad litem shall “represent the interests of the alleged incapacitated person or minor if the court determines that the alleged incapacitated person or minor is not represented or is not adequately represented by counsel.” I.C. § 29-3-2-3(a). So, is the guardian ad litem serving as an attorney for the alleged incapacitated person? No. They are representing the “interests of the alleged incapacitated person,” and presumably the “best interests.” But this is a role much different from the role of an attorney for the alleged incapacitated person. Confusing the two roles can lead to serious practical and professional ethical conflicts of interest. There is room for both a guardian ad litem and an attorney who represents the potential ward.

Ideally, a guardian ad litem should conduct an investigation and report to the court prior to the hearing. Upon request by the attorney or another person allowed to participate, the court may appoint the guardian ad litem with specific instructions to conduct an external investigation and report to the court.

Despite the mandate under the law for the appointment of a guardian ad litem, the courts are not provided with any separate monies in their budgets to cover the costs of such a guardian ad litem. If a guardian is appointed and the protected person has sufficient assets, the court could approve the award of fees to a guardian ad litem from the protected person’s funds. I.C. 29-3-9-9.

¹³ The reference to “in-court guardian ad litem” refers to guardian ad litem who do not conduct an outside investigation of the facts prior to the court hearing itself. “It is not uncommon for these guardians ad litem (referred to as “in-court” guardians ad litem hereafter) to meet the ward for the first time at the guardianship hearing. The advantage of an in-court guardian ad litem is that more wards can benefit from the services of a guardian ad litem. The disadvantage to an in-court guardian ad litem is that, due to the high volume of cases and the design of the program, the services provided by the in-court guardian ad litem are often cursory and superficial, missing the crucial issues that will only be discovered from a more thorough investigation into the ward’s circumstances by looking to sources not available within the confines of the courthouse.” *Who’s Overseeing the Overseers? A Report on the State of Adult Guardianship In Indiana*. Feb. 2012, Indiana Adult Guardianship Services Project, State Task Force, p. 45.

5. Revoking Power of Attorney

A guardianship does not trump or automatically invalidate an otherwise valid power of attorney:

A guardian does not have power, duty, or liability with respect to property or personal health care decisions that are subject to a valid power of attorney. A guardian has no power to revoke or amend a valid power of attorney unless specifically directed to revoke or amend the power of attorney by a court order on behalf of the principal. A court may not enter an order to revoke or amend a power of attorney without a hearing. Notice of a hearing held under this section shall be given to the attorney in fact.

I.C. § 30-5-3-4(b). Therefore, in cases where someone is acting as attorney-in-fact, a petition to revoke a power of attorney should accompany a petition for guardianship. An example of a petition to revoke a power of attorney is attached as Appendix 10. Notice must be given to the attorney-in-fact and the matter set for hearing. You can request that the power of attorney hearing be set for the same date and time as the guardianship proceeding.

Of course, a petitioner does not have to revoke a power of attorney. For example, if a financial power of attorney exists but no one can act on the person's behalf regarding health care matters then it might be desirable to leave the power of attorney in place and only seek to appoint a guardian of the person.

6. Preparation of Orders, Acceptance and Oath, Instructions, Bond.

An attorney should prepare the following documents and e-file them prior to the hearing:

- Order appointing guardian (Appendix 11.);
- Acceptance and oath of guardian (Appendix 12.)¹⁴;
- Instructions to the guardian of the person (Appendix 13.) (required by local rules in some courts);
- Instructions to the guardian of the estate (Appendix 14.) (required by local rules in some courts);
- Letters of Guardianship (Appendix 3.);

¹⁴ An Acceptance and Oath must be signed in the presence of the Clerk, or in the presence of another officer authorized to administer oaths, such as a Notary Public. I.C. § 33-42-2-5. In this age of e-filing when attorneys no longer have access to clerks, the client should sign in front of a Notary Public.

- Guardianship Registry Form (Appendix 15.);
- Physician's Report (Appendix 8.) (required by local rules in some courts).

Also, the attorney should be sufficiently prepared to post a bond for their client if one is required. The requirement of bond may be waived by the court (see Appendix 21), but if one is ordered at the guardianship hearing then posting such a bond is a precondition to the issuance of Letters of Guardianship, meaning that after the hearing, while the court may issue an order appointing your client as guardian, the clerk will not issue the Letters of Guardianship until such time as the bond is posted. If the assets of the individual are unclear at the time of the hearing, the Court will delay ordering a bond until after the inventory is filed.

II. Duties of Guardian to Court, and Post-Hearing Role of Court.

The role of the court in guardianship proceedings is unlike almost all other legal proceedings. In addition to rendering seminal decisions in the case – whether a guardianship is necessary, and who is the most suitable person to serve as guardian – the court continues to have a monitoring role with respect to the guardianship. The court is called upon to approve certain actions of the guardian in advance of being taken. At least in theory, the court is called upon to play a role akin to an auditor, examining and approving accountings. The court is also tasked with policing the payment of guardian and attorney fees from the funds of the protected person.

What other court proceeding presumes such a management and supervisory role for the judge, potentially over a period of years or decades for any individual case? Bankruptcy courts may be the closest parallel, or perhaps receiverships.

These supervisory functions of the court exceed the traditional judicial role of “calling balls and strikes” and rendering final judgments. Moreover, with few exceptions, there are no special sets of funds available to the courts to provide the manpower or other tools necessary for it to perform such functions. As a result, such functions are often inadequately performed by the courts if performed at all.

Probably the best example of this is the policing of biennial accountings. In the larger counties, which can (sufficiently?) fund such activities out of their general fund, the courts have compliance officers on the court's payroll who can actually review such accountings for accuracy and/or signs of mismanagement. But in other counties with smaller budgets (and a smaller

number of guardianships to supervise) the court has virtually no capacity to perform such an audit. Indeed, in many counties the accountings are explicitly waived, or noncompliance with accounting requirements are simply overlooked. While dated, a 1987 national survey of guardianships found that in 48% of the cases accountings were missing.¹⁵ There's little to suggest that this statistic is likely to have improved over the subsequent decades.

Confusion surrounding the nature and extent of the court's supervisory role in guardianships is a common source of frustration for judges and attorneys alike. Until there is greater emphasis placed upon this role (and, of course, appropriate funding to make such supervisory functions sustainable), such frustrations are likely to continue.

A. Reports, Inventories and Accountings

1. Timetable

Inventory:

- A permanent guardian is required to file an inventory within 90 days of appointment. I.C. § 29-3-9-5(a).

Accountings:

- Must be filed at least every two years, not more than 30 days after the anniversary date of the guardian's appointment. I.C. § 29-3-9-6(a).
- After the guardianship is terminated, final accountings must be filed within 30 days. I.C. § 29-3-9-6(b).

Report on Condition:

- Filed every one to two years. Refer to your court's local rules. *See also*, I.C. § 29-3-8-1(a)(4).

2. Content and Format.

a) Report on Condition.

Technically, biennial accountings are required to include a report on the condition of the protected person. I.C. § 29-3-9-6(c). Many courts have their own forms to report the condition of the person. Generally, you must report the current residence of the person, a statement of the person's current condition and general welfare, the last time the guardian personally visited the person, and a statement as to whether the guardianship is still

¹⁵ E. Wood, *State-Level Adult Guardianship Data: An Exploratory Survey*, American Bar Association, Commission on Law and Aging, p. 9 (2006).

appropriate. Some counties require an updated physician's report to be filed every year. For an example of a report on condition see Appendix 16.

b) Inventory.

A copy of the inventory must be provided to the protected person themselves, any guardian, parent, or person with whom the person resides or any other person as required by the court. I.C. § 29-3-9-5(a).

This requirement is often ignored, and often for good reason. If the protected person has a diagnosis such that the guardian believes in good faith that the protected person would not understand the nature of the Inventory itself, and/or could cause unnecessary worry or trepidation to the protected person, should they really be required to provide a copy of the Inventory to them? Moreover, if the protected person resides in a congregate living environment with many other residents and staff, is it really a good idea for them to have an Inventory of their assets floating about?

In some instances it would be appropriate to *not* send the Inventory to the protected person. However, the guardians should seek a waiver of this requirement from the Court, citing the Court's inherent authority to do so under I.C. § 29-3-2-4(a). For an example of a Motion to Waive Requirement of Providing Copy of Notice of Filing Inventory to Protected Person see Appendix 17.

A notice must be sent to any person that was entitled to receive notice of the guardianship hearing. The notice must contain the following:

- The cause number.
- A statement that Indiana law requires a guardian to file a written account of the guardian's administration every two years and within 30 days after the termination of the guardianship appointment.
- A statement that the inventory and written verified accountings may be inspected at the court.

I.C. § 29-3-9-5(a).

The format of the inventory must conform to Indiana Code section 29-1-12-1. Specifically, property must be classified into the following categories:

- Real property.
- Furniture and household goods.
- Emblements and annual crops raised by labor.
- Corporate stocks.
- Mortgages, bonds, notes or other written evidences of debt.
- Bank accounts, money, and insurance policies.
- All other personal property.

I.C. § 29-1-12-1(b). An example inventory is at Appendix 18.

The guardian may get an appraisal of real or personal property. Is an appraisal necessary? Nothing in I.C. § 29-1-12-1 or the guardianship code mandates that appraisals be obtained and, indeed, the costs of doing so may weigh against it. If the property is not valuable, or if the guardian does not plan to sell the property an appraisal might not be necessary. An appraisal might be more appropriate if the property will be sold, if it is valuable, or if an appraisal is needed for insurance purposes.

The inventory is not confidential under Administrative Rule 9(H). Complete account numbers or other identifying numbers therein are. Ind. Adm. R. 9(G)(2)(h). Therefore, care should be taken to either redact or truncate the account numbers, such as using “Account No. ****567” instead of the full account number.

c) Accountings.

Accountings must contain three schedules: (1) the balance or value of each account as of the last accounting or inventory; (2) the payments, charges, losses and distributions; and (3) the balance of each account as of the end of the accounting period. I.C. § 29-1-16-4.

The second schedule is the transactional detail. A guardian should provide the court with a separate detailed accounting for each bank account or other asset whose value fluctuates (investment account, retirement account, etc.) due to interest or income/loss. It is not necessary to provide an accounting for items such as stocks – simply record the value as of the day the accounting is prepared or filed. This detail can be recorded in a spreadsheet or in accounting software such as Quickbooks. Courts will not accept hand-written check registers or only bank statements without further detail.

Each transaction should contain the following detail:

- Date of disbursement or deposit.
- Check number or other identifying number.
- The payee’s name or source of income
- The amount of disbursement or deposit.
- The purpose or reason for the disbursement or deposit.

For example:

1.1.2016 Chk. # 125 Senior Home Companion \$2,325

Explanation: Invoice # 456; cost of 5 hours per week of in-home care for the month of December 2015 including cleaning, cooking, groceries.

An example of an accounting is located at Appendix 19.

Guardians are required to provide the court with vouchers (receipts, invoices, cancelled checks, or other proof of payment). I.C. § 29-1-16-4. Depending on the court, instead of including every invoice and receipt with the accounting, you may be able to file one of the following:

- Copy of the cancelled check;
- A receipt signed by the company or person receiving the money.
- For electronic fund transfers, a record showing the payee's identity, the date of disbursement, amount of disbursement, and the confirmation number of the transaction.

Guardians should always keep receipts in case the court requests them.

In practice, it is best to open the guardianship checking account at a bank that automatically provides cancelled checks with its bank statements.

Bank statements may need to be provided, depending on the Court's local rules.

The statute states that the court shall give notice of the accounting to the following individuals:

- The protected person, unless waived by the court. If notice is waived, then the court shall give notice to a person who is not the guardian in the following priority:
 - The protected person's spouse.
 - The adult child of the protected person.
 - A parent of the protected person.
 - A guardian ad litem appointed by the court under subsection (e).

I.C. § 29-3-9-6(d).

As discussed above, it may not always make sense to send notice to the protected person. A Motion to Waive Requirement of Providing Copy of Notice of Filing Accounting to Protected Person is included at Appendix 20.

i. Waiving the Accounting Requirement

Accountings can be waived if the ward has limited funds. Oftentimes a guardian of the estate is needed to marshal assets, pay bills, or apply for Medicaid. Once the individual has little to no assets left, it is not economical for the guardian to prepare detailed accountings, yet the guardian may want to maintain the guardian of the estate powers in order to manage the ward's income stream or to manage their Medicaid benefits. Therefore, a request can be made to the Court to waive accountings and keep the guardian of the estate powers in place. Such a petition is typically done immediately after the initial inventory or after an accounting shows the ward's assets have fallen below a certain threshold, such as \$10,000. The petition and order should also include language that the guardian understands that if the ward's assets exceed \$10,000 in the future, the guardian will report this to the court and the court may again require regular accountings. An example of a petition to waive accountings can be found at Appendix 21.

ii. Effect of accounting approval by court.

In practice, it is rare for a court to hold a hearing on each accounting that is filed. In some counties, judges do not have adequate support staff to be able to review an accounting in detail. In larger counties, such as Marion County, the court employs a Fiduciary Officer whose job it is to review accountings and inventories. Nonetheless, the guardian has a duty to adequately prepare the accounting and file it with the court.

Like the inventory, the accountings are not confidential under Administrative Rule 9(H) – only the complete account numbers are. The guardian must therefore take care to redact the account numbers on any bank statements or other documents provided as verifications with the accounting.

A court may approve an accounting, other than a final accounting, *ex parte*. However, the accounting can be reviewed by the court at any time and does not become final until after notice and hearing on a final accounting. I.C. § 29-3-9-6(f). In some cases, it may be wise to seek a hearing, with notice, even on interim accountings if there is reason to believe that a contentious family member may register an objection. Better to “have it out” now rather than years later when a final accounting is filed.

iii. Final Accountings

For a final accounting (or an interim accounting if requested), the court will set an objection deadline and hearing date after the accounting is filed. Notice of the hearing must be given to the same parties that were entitled to receive notice of the guardianship petition. If no objections are filed by the

deadline, the accounting is approved and the hearing is cancelled. Once the court approves the final accounting, the approval is binding upon all parties. I.C. § 29-3-9-6(g).

A guardian's powers terminate immediately upon the death of a ward. I.C. § 29-3-12-1(e). Except that a guardian can pay expenses that are approved by the court, distribute property to the personal representative or to heirs through an affidavit, and request health records (within 60 days after death). *Id.*

If there are expenses to pay after the death of a protected person – including funeral expenses, guardian's fees, or attorneys' fees – a request should be made in the Final Accounting for the Court to approve such expenses. The guardian may be required to file a supplemental accounting to show the bills were paid. Further, a guardian can simply distribute the ward's assets to family if no estate is needed or the guardian will turn over the assets to the personal representative. In either event, a receipt signed by the personal representative or a supplemental accounting is filed to show the disbursements were made. The court will then terminate the guardianship.

B. Actions Requiring Court Approval.

1. Sale of Real and Personal Property.

Court approval is necessary for a guardian to sell real or personal property. I.C. 29-3-2-6(d), incorporating I.C. 29-1-15 *et seq.*

Petitions to sell personal property appear to require a hearing, but without notice. I.C. 29-1-15-8. Presumably, a hearing without notice is functionally equivalent to no hearing at all.

Petitions to sell real property requires a hearing *with* notice. I.C. § 29-1-15-11. But who is required to receive notice? In the relevant probate code section (which is incorporated into the guardianship statute), the statute requires notice of the hearing to approve the sale of real estate to be given to “all heirs and lienholders...” This would not necessarily include all those individuals that might be entitled to notice of a guardianship proceeding.

A sample petition to sell real estate can be found at Appendix 22.

2. Estate Planning.

A guardian must seek court approval to conduct estate planning, including changing the beneficiary designations on certain accounts, amending or

revoking a trust, making gifts, or do other planning. I.C. § 29-3-9-4.5(a). However, these powers may only be exercised if the court has found that the protected person lacks testamentary capacity.¹⁶ These powers do not include the power to execute a will on the protected person's behalf (although the power to create a trust and/or make other pay on death provisions may allow the guardian to effectively do the same thing.)

Thus, any petition to exercise one of the powers listed in the statute must begin with a finding by the court that the protected person lacks testamentary capacity. This, presumably, would require additional medical evidence that addresses the commonly understood elements of testamentary capacity:

By far the most frequently litigated form of capacity—the capacity to make a will—is typically found to be present if the person making the will—a testator—at the time of executing a will, has the capacity to: (1) know the natural objects of his or her bounty (or one's "generosity"); (2) to understand the nature and extent of his or her property; and (3) to interrelate these elements sufficiently to make a disposition of property; (4) by means of a testamentary instrument. (Mezzullo & Woolpert, 2004; Parry et al., 2002; Walsh, 1994).

Assuming the court finds a lack of testamentary capacity exists, the estate planning statute specifically lists factors the court shall consider when approving the proposed estate planning actions, including:

- The financial needs of the person;
- The needs of individuals who are dependent on the person;
- The interests of creditors;
- Possible reduction in tax liability;
- Eligibility of protected person for governmental assistance;
- Previous patterns of giving;
- Existing estate plan, if any;

¹⁶ This raises an interesting question: If the order appointing the guardian does not include a finding that the protected person lacks testamentary capacity, then can the protected person engage in such estate planning on their own? Well, yes, although the will could always be contested at the time it is offered for probate. But the mere fact that the will was executed at a time when the testator was also a protected person over whom a guardian was appointed does not automatically make the will invalid on the basis of a lack of testamentary capacity. The only statute defining the ability to execute a will is found at I.C. § 29-1-5-1: "Any person of sound mind who is eighteen (18) years of age or older, or who is younger and a member of the armed forces, or of the merchant marine of the United States, or its allies, may make a will." It is presumed someone has testamentary capacity except and until the contrary is shown. *Gast v. Hall*, 858 N.E.2d 154, 165 (Ind. App. 2006).

- Person's life expectancy and whether or not the guardianship will terminate before the person's death; and
- Any other factors.

I.C. § 29-3-9-4.5(b). The statute also states that an existing will is prima facie evidence of the protected person's intent with regard to distribution of assets. I.C. § 29-3-9-4.5(b).

The guardian should also seek approval for any spend-down plan, as it will likely contain changes to the protected person's assets that require court approval. A petition to approve a Medicaid plan should outline the target date of eligibility for Medicaid and all proposed changes to the protected person's estate. A petition to approve a Medicaid spend-down plan is included at Appendix 23.

3. Dissolution, Annulment, Legal Separation

Any dissolution of marriage, annulment, or legal separation must be approved by the court. The petition for authority to take any one of these actions must contain the following information:

- The purpose for requesting a dissolution, annulment, or legal separation.
- The names and addresses of the person, the person's spouse, and the person's adult children.

I.C. § 29-3-9-12.2(b).

On or before the date the petition is filed, a copy of the petition must be mailed to the following:

- The protected person.
- The protected person's spouse.
- The protected person's adult children.
- Any other interested person as ordered by the court.

I.C. § 29-3-9-12.2(c).

If a dissolution, annulment, or legal separation proceeding was pending before the guardian was appointed, then the guardian does not have to defend against such an action or finalize the matter on behalf of the protected person. I.C. § 29-3-9-12.2(h).

4. Settling A Claim

Any settlement of a claim filed by or against the protected person must be approved by the court. No hearing appears to be required. Examples of such claims include personal injury awards, settlements of debt, and small claim

actions. I.C. § 29-3-9-7. A sample petition to approve a compromise of a disputed claim can be found at Appendix 24.

5. Change in Physical Presence

A guardian must seek court approval to move the person to a different residence. The statute states that there must be appropriate notice and a hearing before any move can take place. I.C. § 29-3-9-2. An example is included at Appendix 25.

6. Guardian and Attorneys' Fees

The guardianship code does allow the fees of a guardian and their attorney to be paid from the protected person's estate. *See* I.C. § 29-3-9-3; I.C. § 29-3-9-9. The guardianship code does not specifically address whether attorney or guardian fees must be approved before they may be paid. However, once again through the incorporating statute, I.C. § 29-1-10-13 of the probate code, prior court approval of such fees would seem to be required. Some local rules also specifically require a fee petition. A sample fee petition can be found at Appendix 26.

Some courts may allow guardians to earn monthly fees without filing a fee petition each time. The monthly fee must be approved by the court in advance.

C. Successor Guardians, Removal of Guardians.

Any interested person, or the court itself, may petition to remove a guardian. I.C. § 29-3-12-4(a). Notice and hearing are required. The code states reasons for which a guardian can be removed: when the guardian becomes

incapacitated (unless the incapacity is caused only by a physical illness, infirmity, or impairment), disqualified, unsuitable or incapable of discharging the [guardian's] duties, has mismanaged the estate, failed to perform any duty imposed by law or by any lawful order of the court, or has ceased to be domiciled in Indiana.

I.C. § 29-1-10-6(b). An example of a successor guardianship petition and accompanying documents can be found at Appendix 27.

The guardian may also (presumably) resign. The statute provides that the court "may accept" the resignation of the guardian, suggesting that the court may *not* accept the resignation. I.C. § 29-3-12-4(a).

If the guardian dies, the guardian's personal representative is required to submit the final accounting on behalf of the guardian. I.C. § 29-3-12-4(a).

Upon the resignation, removal, or death of the guardian the court will appoint a successor guardian. I.C. § 29-3-12-4(b).

D. Termination of Guardianships.

The guardianship automatically terminates upon the death of the protected person or upon order of the court removing the guardian or accepting his resignation. I.C. § 29-3-12-5. The termination of the guardianship does not relieve the guardian of his responsibility to file a final account nor does it release the guardian for liability for prior acts. *Id.*

After the guardian has fulfilled all of his duties as guardian, including a final accounting and transferring property to the appropriate successor, the court will issue an order of discharge. I.C. § 29-3-9-6(h). The order of discharge starts a one-year statute of limitations and any claims against the guardian must be filed within that time period. *Id.*

E. Additional Statutory Tools for the Guardian.

1. “Cooperate with the Guardian or Else” Statute.

Guardians of the estate have a statutory tool to use if a third party fails to cooperate and recognize their power as guardian. I.C. § 29-3-9-12. Under this statute, if a third party fails to comply with a guardian’s written demand or instruction that was issued within the scope of the guardian’s authority and is consistent with the guardianship statute, the guardian, after 30 days, can file a motion to compel the third party to act. I.C. § 29-3-9-12(b).

Practitioners should instruct clients to send a written request to the third party or hand deliver such a letter when they first make contact. This will start the thirty-day clock immediately instead of waiting days or week for the third party to comply and then sending the letter later.

If, after thirty days, the third party has not cooperated with the guardian, the guardian may file a motion to compel in the guardianship court to obtain an order forcing the third party to comply.

Examples of a cooperate or else letter and motion to compel are attached as Appendix 28.

A hearing is scheduled and the guardian will give notice to the third party. At the hearing, the court may award attorney’s fees and costs to the guardian if the third party

- (1) acting in bad faith in failing to comply with the guardian's written demand or instruction; or
- (2) refused to respond within thirty (30) business days after receiving the guardian's written demand or instruction, if the demand or instruction is consistent with this article.

I.C. § 29-3-9-12(c).

2. Standby Guardian.

This statute allows a guardian to appoint a standby guardian who takes over the guardianship duties upon the death or incapacity of the guardian. I.C. § 29-3-3-7. The powers of a standby guardian terminate after 90 days. However, during that 90 day period the standby guardian can petition the court to be appointed as permanent guardian and then the standby guardian's powers extend until the court rules on the permanent guardianship petition. I.C. § 29-3-3-7(d).

The standby guardian declaration is completed and signed by the guardian. The declaration must contain the following information:

- The name of the guardian;
- The name of the standby guardian, and the name of the alternate standby guardian, if any;
- The name and date of birth of each protected person that the guardian is assigning the standby guardian;
- A statement that the declaration becomes effective upon the death or incapacity of the guardian;
- A statement that the powers of the standby guardian terminate 90 days after becoming effective unless the standby guardian files a petition for guardianship of the protected person during those 90 days.

I.C. §29-3-3-7(b). The declaration must be signed by the guardian in front of a notary public. An example of a standby guardian declaration is included at Appendix 29.

It is not clear whether or when a standby guardian declaration should be filed with the court. Prior to e-filing, there were reports that some clerks were refusing to file such declarations. However, as a practical matter, it would seem prudent for a guardian to file a standby guardian declaration with the court prior to the time it may ever become necessary.

Once the stand-by guardianship is needed, the named stand-by guardian should file a request to the court to issue letters of guardianship. These

letters must expire in 90 days. For an example of a petition for issuance of letters to a stand-by guardian see Appendix 30. The stand-by guardian also must file a petition for permanent guardianship before the 90 days expires in order to be named permanent guardian. All requirements of notice, etc. apply to this petition.

3. Guardian's Power of Attorney.

A guardian may delegate certain guardianship duties and powers to an agent. The guardian may delegate the power for a period of 12 months or for any period during which the protected person is receiving care from an institution. I.C. § 29-3-9-1(c). The following powers may be delegated: health care, support, custody, or property of the protected person. The guardian may not delegate the power to seek authority to obtain a dissolution of marriage, legal separation or annulment. *Id.* § 29-3-9-1(d)(2).

Note that the guardian remains responsible for any decision that the third-party makes while acting under the authority of a valid power of attorney. *Id.* § 29-3-9-1(e).

The power of attorney may be revoked at any time in writing. *Id.* § 29-3-9-1(j).

A guardian's power of attorney is especially useful when the guardian is an individual and is going on a vacation or other times when there might not be a decision-maker available if an emergency occurs.

An example can be found at Appendix 31.

4. Transferring a Guardianship to or from Indiana

If a protected person permanently moves to a different state the guardianship proceeding should be transferred to the new state. The transfer of a guardianship is outlined in I.C. § 29-3.5-3 in the Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act (UAGAPPJA).

A sample petition requesting the transfer of a guardianship from Indiana to Kentucky is included in Appendix 32.

The transfer is initiated in the Indiana court with a petition requesting the transfer. The petition should contain the following:

- A statement that the protected person already resides in the new state, that they are reasonably expected to move there soon, or that the protected person has significant connects to the new state.

- A description of the plan for care in the new state.
- The arrangements that will be made in the new state to manage the individual's assets.

The guardian must give notice of the petition to anyone who would have been entitled to notice of the original guardianship petition. I.C. § 29-3.5-3-1(b). Presumably the notice given to the interested persons would be very similar to the notice given after an initial guardianship petition is filed, which is found at I.C. § 29-3-6-2.

The guardian may request a hearing or the Court can order a hearing upon its own motion. The Court then issues a provisional order granting the petition to transfer and directs the guardian to petition for guardianship in the new state.

The guardian then files a petition in the new state and must include a certified copy of the original court's provisional order. Notice is again issued to interest parties who are entitled to receive notice of a new guardianship petition. Note that those entitled to notice include everyone entitled to notice in both the new state and the original state. I.C. § 29-3.5-3-2(b). A hearing is held upon the request of the guardian or upon the court's own motion.

Once the new court issues an order accepting the transfer, the original guardianship court will issue a final order confirming the transfer and terminating the guardianship.

Note that the following states have not yet adopted UAGAPPJA: Michigan, Texas, Florida, and Kansas.

UAGAPPJA does not mention the filing of a final accounting in the original jurisdiction, but if there are assets, a final accounting will need to be filed.

III. Temporary ("Emergency") Guardianships vs. Regular ("Permanent") Guardianships.

The guardianship code allows for two types of guardianships: permanent and temporary. Permanent guardianships are intended to last indefinitely until the protected person regains capacity or dies. Due to the sometimes onerous wait time between filing a permanent guardianship petition and the date for a guardianship hearing, practitioners often file for a temporary guardianship as a matter of course in order to grant the proposed guardian power to act.

Temporary guardianships are intended to be limited in scope. I.C. § 29-3-3-4(d) (“The court shall order only the powers that are necessary to prevent immediate and substantial injury or loss to the person or property of the alleged incapacitated person[.]”). Often, temporary guardianships are granted on a plenary basis – allowing the temporary guardian the full range of powers reserved for permanent guardians. However, it is proper under the guardianship code to only allow the temporary guardian to exercise those specific powers that will address the emergency which prompted the filing of the temporary guardianship.

A. “Proceedings in Lieu of Guardianship.”

Temporary guardianships are housed under Indiana Code section 29-3-3 entitled “Proceedings in Lieu of Guardianship.” Of course, the Indiana guardianship code is confusing, but this suggests that state legislators viewed temporary guardianships as a proceeding that would happen when a permanent guardian was not needed. In practice, temporary guardianships have been used to give a proposed guardian immediate and broad powers. This practice likely developed due to the lag time between filing a permanent guardianship petition and the date of the hearing – up to 6 weeks in some counties. Naturally, there will be times when a person has emergent medical needs that must be addressed as soon as possible; other times, no temporary powers are needed. In other words, a temporary guardianship should be reserved for cases when it is absolutely necessary to have a guardian appointed immediately.

It is the attorney’s duty to determine if an emergency exists that justifies the filing of an emergency guardianship petition. Clients almost always believe that their circumstance warrants immediate action. However, the attorney must investigate the situation and determine if a temporary guardianship is necessary.

B. Identifying the Emergency and Enumerating the Powers.

A petition to appoint a temporary guardian should include all of the same information as a permanent guardianship petition. Due to the fast-moving nature of temporary guardianships, it may be difficult to obtain all of the required information, but include as much as you can.

Temporary petitions should also clearly identify the emergency that exists and list the specific powers the petitioner is asking for in order to respond to that emergency. An example petition can be found at Appendix 33.

When possible, support the need for an emergency with evidence. For example, “John Smith is incapacitated and needs life-saving treatment, but the hospital will not allow the treatment without signed authorization from a guardian. In that circumstance, you may be able to obtain a letter from a doctor stating that Mr. Smith has a life-threatening infection and that unless Mr. Smith’s left foot is amputated below the knee as soon as possible it is likely that he will die. The emergency guardianship petition should outline the emergency and the temporary guardianship letters should authorize the temporary guardian to only make those decisions necessary to address the emergency.

C. Notice Issues.

If a proposed guardian requests that a temporary guardianship order be issued without notice and hearing, then it is best practice for an attorney to attempt to give at least oral notice to interested parties *before* the petition is filed. The attorney should call each person required to receive notice under I.C. § 29-3-6-1(a)(4) and state the following:

- The date and approximate time the temporary petition will be filed.
- The specific court in which the petition will be filed.
- The name of the proposed guardian.
- An explanation of the incapacity of the person.
- A description of the immediate and irreparable harm that could result.
- Whether or not the person consents to or objects to the appointment of the proposed guardian.

The date, time, and manner of such notices, as well as whether each person objects to the petition, should be recorded in an affidavit as required by Indiana Trial Rule 65 and filed with the temporary guardianship petition. See example attached as Appendix 34. If the people entitled to notice agree, and it is feasible, you may get signed consent forms stating they agree to the appointment of the proposed guardian and they waive the requirement of hearing and notice.

Advance notice to certain parties may be harmful to the person. For example, if the potential guardian has reason to believe that a family member may try to harm the person if advance notice is given it may be excused by the court. In the affidavit regarding notice, be sure to include detailed reasons why advance notice was not given to an individual.

If a temporary guardian is appointed without advance notice, the statutory notice, along with a copy of the temporary guardianship petition, must be mailed on the day the court sets a date for the hearing or on the date in which the court enters an order appointing a temporary guardian. If an

order is issued, the order must also be included with the notice and petition. I.C. § 29-3-3-4(b).

In most cases, a temporary guardianship petition will be set for hearing, albeit a relatively quick hearing. In those instances notice of the temporary guardianship hearing should be given in the most expeditious manner possible. Unfortunately, the guardianship code is silent with respect to the manner, content, and timing of such notices of a hearing on temporary guardianship. In practice, it makes sense to use the notice set forth for permanent guardianships, with slight modifications. *See* I.C. § 29-3-6-2.

D. Hearing on Temporary Guardianship

Again, upon filing a petition for temporary guardianship, the court will set a hearing to consider the petition. One would hope that the hearing is scheduled relatively quickly, given the fact that an emergency is being alleged. Different courts will have different practices with respect to such hearings. The attorney should contact the court clerk, or the court bailiff, to determine how the judge handles such petitions. Suffice it to say, though, the fact there will be a hearing *before* a temporary guardian is appointed should be the default position of the court. “No such appointment shall be made except after notice and hearing unless it is alleged and found by the court that immediate and irreparable injury to the person or injury, loss, or damage to the property of the alleged incapacitated person or minor may result before the alleged incapacitated person or minor can be heard in response to the petition.” I.C. § 29-3-3-4(a)(4).

It used to be routine practice for an attorney and proposed guardian to meet with a judge or commissioner in chambers, request a temporary guardianship, and walk out with a signed temporary guardianship order. This practice was (or should have been) largely eliminated after the issuance of Indiana Judicial Advisory Commission, Opinion #1-15, which states in part:

...Judges who fail to follow Trial Rule 65(B)’s procedures when granting ex parte petitions for temporary guardianship may run afoul of Rule 2.9 of the Code of Judicial Conduct, which prohibits improper ex parte communications; Rule 2.6, which requires judges to accord the right to be heard to each person who has a legal interest in a proceeding; Rule 1.1, which requires judges to comply with the law; and Rule 1.2, which requires judges to act at all times in a manner which promotes public confidence in the judiciary.

Judges also have a responsibility under the Code of Judicial Conduct to inform the appropriate authority when the judge knows or believes that an attorney has violated the Rules of Professional Conduct. Professional Conduct Rule 3.5(b) prohibits attorneys from engaging in any improper ex parte communication with judges, jurors, prospective jurors, or other officials. If an attorney solicits a judge to grant an emergency petition for temporary guardianship without alleging sufficient facts and proof of the efforts to notify the other party (or the reasons supporting why notice should not be mandated) as T.R. 65(B)(1) and (2) require, the attorney may be in violation of the Rules of Professional Conduct – and the judge’s knowledge of this potential violation may require a confidential report to the Attorney Disciplinary Commission under Rule 2.15 of the Code of Judicial Conduct.

The guardianship code itself defines an emergency in language similar to Trial Rule 65(B): “immediate and irreparable injury to the person or injury, loss, or damage to the property of the alleged incapacitated person or minor may result before the alleged incapacitated person or minor can be heard in response to the petition.” I.C. § 29-3-3-4(a).

The best example of irreparable injury may be if a person is incapacitated and needs life-saving treatment, but the hospital will not allow the treatment without signed authorization from a guardian. There may be many other examples of an “emergency” requiring a temporary guardian, but it is treacherous to predict what the court will accept. For instance, it’s unnerving to consider what the Indiana Judicial Advisory Commission opines, as an example, is *not* an emergency:

Several of the more recent complaints before the Commission involve petitions in which the alleged emergency is merely the acting guardian’s inability to obtain health insurance or Medicaid benefits for a child without a guardianship order, or the guardian’s inability to enroll a child in school. Although it is important for children to have access to health care and education, neither a lack of insurance coverage nor an inability to be enrolled in school are emergencies which would – or should – override the custodial parents’ rights to be heard.

Indiana Judicial Advisory Commission, Opinion #1-15.

Does this mean if your client doesn’t get a temporary guardianship before the beginning of the following month so their temporary guardian can duly marshal and spend down assets for the alleged incapacitated person to

qualify for Medicaid benefits, thereby needlessly incurring thousands of dollars in nursing home costs that would otherwise be covered by Medicaid – that’s not an emergency?

Best advice is that if a proposed guardian is arguing that immediate and irreparable injury will occur, thoroughly describing the facts supporting the emergency is important and, if possible, backed up with solid evidence.

E. Duration of Temporary Guardianships.

A temporary guardianship may only last for a maximum of 90 days. I.C. § 29-3-3-4(a). Notice and hearing is required before an extension can be granted. The temporary guardianship can only be extended one time for a maximum of 90 days.

F. Inventories and Accountings.

A temporary guardian is required to file an inventory within 30 days of appointment. I.C. § 29-3-5-9(a). An accounting is required to be filed within 30 days after the termination of the temporary guardian’s appointment. I.C. § 29-3-9-6(b).

This would suggest that a separate inventory and accounting process is required even if the temporary guardian becomes permanent guardian. Thus, technically speaking, in such cases there would be a (1) temporary guardian’s inventory, (2) temporary guardian’s accounting, then (3) permanent guardian’s inventory, and (4) subsequent interim and a final accountings thereafter. In practice, however, if a temporary guardian also becomes a permanent guardian, the court will likely not require such separate filings. Rather, the court will allow the temporary guardian’s inventory to serve as the permanent guardian’s inventory, etc.

Part 3: COUNSELING YOUR GUARDIAN CLIENT

I. The Basics of Available Benefits.

A. Long Term Care Options.

Oftentimes the need for guardianship of an incapacitated adult is accompanied by a need to consider long term care options. An acute health crisis may unsettle what had been a working housing/care arrangement spurring the need to explore other care settings or care supports in the home.

The high costs of long term care can quickly become unaffordable for most middle class clients without some form of public assistance to pay for such care. Unfortunately, the decisions over what form the long term care will take is often driven by what the client can afford and what public benefits or other forms of insurance may cover.

1. Home Health.

There are over 300 licensed home health agencies serving Indiana consumers. Licensing of home health agencies is governed by I.C. § 16-27 et seq., and regulations found at 410 I.A.C. 17. Generally speaking, these agencies provide supplemental supports for the client in their home that must be provided by a “health care professional.” The services include:

- (1) Nursing treatment and procedures.
- (2) Physical therapy.
- (3) Occupational therapy.
- (4) Speech therapy.
- (5) Medical social services.
- (6) Home health aide services.
- (7) Other therapeutic services.

I.C. § 16-27-1-5(b)

It is important to note that the term “home health services” does not include the following services:

- (1) homemaker services, including shopping, laundry, cleaning, and seasonal chores;
- (2) companion type services, including transportation, letter writing, mail reading, and escort services;

- (3) assistance with cognitive tasks, including managing finances, planning activities, and making decisions;
- (4) attendant care services; or
- (5) any other services for which an individual license, certification, registration, or permit is not required under state law.

I.C. § 16-27-1-10. There are several unlicensed agencies providing the attendant type services as described in this section. The costs for these services is generally lower than those of home health agencies.

Federal regulations setting forth standards for home health agencies receiving Medicare or Medicaid funding is found at 42 C.F.R. 484.

Licensing for home health agencies in Indiana is performed by the Home Health Agency Licensing and Certification Program of the Indiana State Department of Health, Division of Acute Care. Here is the contact information:

Indiana State Department of Health
Division of Acute Care
2 North Meridian Street, 4A
Indianapolis, IN 46204
(317) 233-7474 (Acute Care Receptionist)
(317) 233-1325 (ISDH Main Switchboard)

Program Manager
Kelly Hemmelgarn
khemmelgarn@isdh.in.gov
(317) 233-7541
(317) 233-7472 [Administrative Assistant]

2. Group Homes and Supported Living Homes.

Group homes or “supervised group living” are designed primarily for adults with developmental or intellectual disabilities that require a supported living environment, but do not necessarily require daily services of medical professional such as nurses or therapists. There are various levels of services provided by group homes. These group homes are usually in residential settings and have four to eight residents.

The licensure and standards for these group homes, or “residential facilities for developmentally disabled individuals and mentally ill individuals” are governed by I.C. § 12-28-4, and by 460 I.A.C. 9. On the federal level, such

group homes receiving Medicare or Medicaid dollars are governed by 42 C.F.R. 483, Part 1.

In Indiana the Intermediate Care Facility for Individuals with Intellectual Disabilities Licensing and Certification Program is in charge of group home licensing. Here is the contact information:

Indiana State Department of Health
Division of Acute Care
2 North Meridian Street, 4A
Indianapolis, IN 46204
(317) 233-7474 (Acute Care Receptionist)
(317) 233-1325 (ISDH Main Switchboard)

Program Manager
Kelly Hemmelgarn
khemmelgarn@isdh.in.gov
(317) 233-7541
(317) 233-7472 [Administrative Assistant]

3. Assisted Living.

The number of assisted living facilities in Indiana has grown rapidly over the past ten years. Generally speaking, assisted living is designed to serve those disabled adults that retain the ability to handle a few or some of their own “activities of daily living” (ADL). Unlike nursing facilities, assisted living residents usually have their own room or apartment.

Indiana law does not use the term “assisted living,” but rather the term “residential care facility” as compared to a “comprehensive care facility” (nursing home). A residential care facility may not provide “comprehensive nursing care,” which is defined under 410 I.A.C. 16.2-1.1-15. The scope of what a residential care facility may and may not do is outlined at 410 I.A.C. 16.2-5-.05.

Several aspects of federal law may come into play with respect to the operations of assisted living facilities, but unlike nursing homes there is no separate federal law governing the operations of assisted living facilities. The licensure of assisted living facilities is governed by the same statute governing nursing facilities, namely, I.C. § 16-28-2. The Residential Care Facility Licensing Program is operated under the Indiana State Department of Health. Here is the contact information:

Indiana State Department of Health
Division of Long Term Care
2 North Meridian Street, 4B
Indianapolis, IN 46204
(317) 233-7442 (Long Term Care Receptionist)
(317) 233-1325 (ISDH Main Switchboard)

Program Manager
Miriam Buffington
mbuffington@isdh.in.gov
(317) 233-7613
(317) 233-7322 [Fax]

Questions: Ltcproviderservices@isdh.IN.gov

4. Nursing Facilities.

Nursing facilities in Indiana provide “comprehensive nursing care,” which generally involves a higher level of nursing skill and provision of such services on a round-the-clock basis. Most regulation of nursing facilities is borne out of the Nursing Home Reform Act and the subsequent implementing OBRA Regulations that were passed by Congress in the late 1980’s. These regulations are comprehensive in defining resident rights and defining a standard of care for nursing home residents. State laws and regulations in Indiana largely mirror the requirements of the OBRA Regulations.

The Nursing Home Reform Act is found at 42 U.S.C. 1395i-3. The OBRA Regulations are found at 42 C.F.R. 483. The Indiana statute governing nursing home care and resident rights is found at I.C. § 16-28, and regulations at 410 I.A.C. 16.2.

The Indiana State Department of Health governs the licensure of nursing facilities via its Comprehensive Care Facilities Licensing and Certification Program. Here is the contact information:

Indiana State Department of Health
Division of Long Term Care
2 North Meridian Street, 4B
Indianapolis, IN 46204
(317) 233-7442 (Long Term Care Receptionist)
(317) 233-1325 (ISDH Main Switchboard)

Division Director
Kim Rhoades
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(317) 233-7289
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(317) 233-7322 [Fax]

Program Director, LTC Licensing and Enforcement Program
Miriam Buffington
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(317) 233-7613
(317) 234-3069 [Administrative Assistant]
(317) 233-7322 [Fax]

Questions: Ltcproviderservices@isdh.IN.gov

B. Public Benefits Overview.

1. Social Security.

Social Security is a federal income support for retirees and those individuals under retirement age, but who become disabled. It is paid for through social security taxes. Whether you qualify for social security benefits depends upon your work history. Generally speaking, a person needs at least ten years of work history to have earned sufficient credits” to qualify for social security. The higher the lifetime earnings, the higher the social security benefit. An individual must also be at full retirement age to receive benefits. Full retirement age depends on the year in which a person was born:

Year of birth	Full retirement age
1943-1954	66
1955	66 and 2 months
1956	66 and 4 months
1957	66 and 6 months
1958	66 and 8 months
1959	66 and 10 months
1960 or later	67

One can delay their “retirement age” up to age 70 and, in doing so, increase the social security benefit to which they may be entitled. Similarly, one may

retire as early as age 62, but in doing so their social security retirement benefit will be reduced by about one-half of 1 percent for each month one starts their Social Security before full retirement age. For example, if full retirement age is 66 for a client, and they sign up for Social Security when they become 62, they would only get 75% of their full benefit.

Social Security may be paid for someone with a work history who becomes disabled. Applying for Social Security Disability requires a disability determination made by the Social Security Administration and requires more than a mere statement from your doctor that you are disabled.

2. SSI.

Supplemental Security Income (SSI) is a benefit available to those over age 65 or who are blind or disabled as determined by the Social Security Administration and is designed to provide a basic subsistence level of income. If there is no other income then the monthly benefit amount (in 2018) is \$750, or \$1,125 to a married couple if both are eligible. To qualify for benefits one's assets must be less than \$2,000 for a single person or \$3,000 for a married couple.

3. Medicare.

Medicare is a federal social insurance policy available to certain categories of individuals – the aged, the disabled, and those with end stage renal disease (ESRD). Like social security, we pay for Medicare through our payroll taxes.

There are different “Parts” to Medicare.

Medicare Part A (“Hospital Insurance”) covers inpatient hospital stays, limited care in a skilled nursing facility, hospice care, and some home health care.

Medicare Part B (“Medical Insurance”) covers certain doctors' services, outpatient care, medical supplies, and preventive services. Part B coverage requires the payment of a monthly premium. In 2016 the standard Part B premium was \$121.80 if you enrolled for the first time in 2016. It is higher for higher-earning individuals with a maximum premium of \$389.80.

Medicare Part C (“Medicare Advantage Plans”) is a type of Medicare health plan offered by a private company that contracts with Medicare to provide you with all your Part A and Part B benefits. Medicare Advantage Plans include Health Maintenance Organizations, Preferred Provider Organizations, Private Fee-for-Service Plans, Special Needs Plans, and Medicare Medical Savings Account Plans. If you're enrolled in a Medicare

Advantage Plan, most Medicare services are covered through the plan and aren't paid for under original Medicare. Most Medicare Advantage Plans also offer prescription drug coverage.

Medicare Part D ("Prescription Drug Coverage") is an add-on to traditional Medicare. These plans are offered by private insurance companies approved by Medicare. They provide discounts and coverage for prescription drug costs. Premiums are generally paid directly by the beneficiary, as compared to Part B premiums that are deducted from social security income payments. Premiums will vary depending upon the plan selected. Higher earners will pay an income-related adjustment in addition to the normal plan premium.

Because of Medicare's complexity there are several issues that may arise in the representation of a guardian when it comes to dealing with Medicare coverage questions. A key resource for guidance on such issues is the Center for Medicare Advocacy, found at www.medicareadvocacy.org. For instance, there has been an ongoing issue surrounding the use of "Observation Status" for patients at hospitals. Rather than admit a patient on an in-patient basis, a hospital may choose to treat the patient on an "observation status", even over a period of several days, which dramatically impacts the patient's Medicare coverage. The Center for Medicare Advocacy has recently (August 2017) put out its "Medicare Hospital Outpatient and Observation Status Toolkit" that provides wonderful guidance on this issue.

4. Medicaid.

Unlike Medicare, which operates as an insurance program, Medicaid is a welfare-based or "means-based" program, meaning that you only qualify if you meet certain asset and income levels. There are multiple Medicaid plans administered by the Division of Family Resources (DFR) of the Family Social Service Administration (FSSA).

If someone is over age 65 or disabled they will be eligible for Medicaid assistance at home if their income is less than 100% of the federal poverty level, which is \$1,040/month in 2019 for a single individual, or \$1,409.17/month for a married couple. HIP 2.0., which was passed into law in Indiana and which serves as the Indiana version of Medicaid, provides coverage for individuals earning 138% of the federal poverty guidelines, or \$1,454/month for a single person or \$1,968/month for a married couple.

Medicaid is also the primary payer of costs for nursing facility care in Indiana. Approximately two-thirds of nursing home residents are Medicaid recipients. Institutional-based Medicaid carries its own rules respecting the application of income, but the asset limits are the same as for community-based Medicaid recipients. Also, there are special spousal impoverishment

rules that govern the treatment of assets for a married couple when one is institutionalized and the other remains in the community. These rules are highly complex.

II. Training Your Guardian Client on How To Be an Effective Advocate – The PCOPA Model

Sometimes one of the hardest things to do as a guardian is to serve as a health care *advocate* for the protected person. Faced with a complex medical system, barraged by complex medical terminology, and perhaps not naturally equipped to be assertive, many guardians will feel as though they are not doing the best job in the advocacy role.

The job is particularly daunting in the nursing home setting. This section offers a model of advocacy for use by the guardian of a nursing home resident. However, its principles apply across the health care setting.

A. The PCOPA Model

When approaching the advocacy needs of a nursing home resident client, one can draw from a number of frameworks to address issues. Much can be learned from the art of advocacy in the public sphere as explained for instance in The Community Toolbox¹⁷ or the art of advocacy in the courtroom as explained by noted attorney Gerry Spence¹⁸, or the art of self-advocacy as promoted by groups like the National Multiple Sclerosis Society.¹⁹

One effective approach to advocacy on behalf of the nursing home resident can be referred to as PCOPA, an acronym for the following:

- **Persuasiveness**
- **Curiosity**
- **Objectives**
- **Persistence**
- **Allies**

¹⁷ The Community Tool Box is a service of the Work Group for Community Health and Development at the University of Kansas. See <http://ctb.ku.edu/en/table-of-contents/advocacy/advocacy-principles/understand-the-issue/main>.

¹⁸ Spence, G. (1996). *How to Argue and Win Every Time*. St. Martin's Griffin; Reprint edition.

¹⁹ See <http://www.nationalmssociety.org/NationalMSSociety/media/MSNationalFiles/Brochures/Paper-Self-Advocacy-Overview.pdf>.

Each element is important in achieving the overall goal of the guardian: to ensure that the person under guardianship receives quality care and an optimal quality of life.

1. Persuasiveness

As guardian, you are looking to have a nursing home do what should be done for the person under guardianship. There are two aspects to “what should be done.” First, there are the things that should be done according to best practices in nursing homes – things that the nursing home should know what to do and how to do it because they are in the business. Second, there are the things that should be done for your particular client or family member under guardianship because of their unique needs or characteristics.²⁰ In order to achieve “what should be done” it will be necessary to advocate for the nursing home resident. Such advocacy is at the heart of guardianship practice.

But advocacy can take many forms. One can stand on a soapbox on the corner and advocate for your point of view on a subject matter, but isn’t that advocacy empty if it’s not *persuasive* to the listener? One can shout all day and still not be heard. Are they an effective advocate? They may feel better about themselves, and clothe themselves with the warm, comforting embrace of self-righteousness, but at the end of the day have they achieved what they want to achieve?

In the nursing home setting, the power to persuade requires getting off on the right foot with the nursing home staff and leadership. And this is unlikely to be a one-time thing you do; staff turnover rates are significant enough that your client/family resident is very likely to be present longer than most of the staff you encounter.²¹ So, from time to time, laying the groundwork for your persuasiveness may need repeating.

a) Defining Roles and Responsibilities – The Team Approach

²⁰ Careful observers will rightly point out that the standards of practice in nursing homes include individualized plans of care, so in reality the two aspects are really one. But for the moment, bear with me.

²¹ According to one nationwide study of nursing home staffing levels, “[t]he annualized turnover rate is found to be the highest among certified nursing assistants at 74.5%, followed by registered nurses at 56.1%, and licensed practical nurses at 51.0%.” See Donoghue, C. (2010). *Nursing Home Staff Turnover and Retention, An Analysis of National Level Data*. Journal of Applied Gerontology. Vol. 29 No. 1. Abstract.

As obvious as it may be to those of us serving in the guardianship role, the role of a guardian is not always understood by others, including nursing home staff. A guardian is *not* a health care provider. A guardian is *not* a discharge planner. A guardian is *not* just a “yes man” or someone who just signs consent forms, etc. A guardian is a person or entity appointed by a court with the authority to make some or all personal decisions on behalf of an individual the court determines lacks capacity to make such decisions.

A common way of thinking of guardians is as the surrogate decision-maker responsible for exercising informed consent on behalf of someone who has been deemed incapable of exercising such consent themselves. This model, however, is an insufficient one when it comes to guardians of a nursing home resident.

We say informed consent meaning that the experts – the doctors or nurse – are providing us with information upon which we are asked to say “yes” or “no” – yes to that procedure, no to that drug, etc. But in the nursing home setting, where the person under guardianship shall be *living*, not just convalescing, the decisions to be made are not only with regard to medical or nursing procedures. They also involve the resident’s quality of life. What foods and activities do they enjoy? What were their living habits before moving to the nursing home? Were they night owls? Was lunch or dinner their biggest meal of the day? Briefs or boxers?

Many of these questions are incapable of being answered by the nursing home itself. They are questions the social worker in the nursing home will want answers to, perhaps, but the social worker may not know the questions to ask.

All of which is to say that the guardian and the nursing home staff need to be a team to meet the needs of the resident. The guardian relies upon the nursing home employees to provide the care and services required, but the nursing home relies upon the guardian to provide not only consent, but in many ways resident history, guidance, and direction.

As between the nursing home staff and the guardian, which team analogy makes the most sense? Is the guardian the coach? I would argue not – a coach tells the players how to do their job, how to improve their skills, etc. That’s not the role a guardian must play; a guardian cannot be expected to have the expertise to tell nursing homes how to do their job. Is the guardian the CEO? This is perhaps a better analogy in that the CEO defines the outcomes she wants from the employee team, although this analogy comes across as too top-down and too egotistical.

Maybe the best analogy (and not just because I'm a lawyer) is that of "Managing Partner," in that the guardian is keeping a "team of equals" on track in meeting the needs of the nursing home resident. The guardian still holds the team accountable to the team goals (see discussion on Outcomes below), but recognizes and respects the individual expertise of each of the team members. As with a Managing Partner so it is with guardians: the power of persuasion trumps the power of commandment when it comes to achieving the team's mutual goals.

b) Being A Persuasive Managing Partner

In large part, the art of being persuasive as a guardian of a nursing home resident lies in following the other parts of this PCOPA framework. You will want to learn to be curious – dispelling the fear of not knowing something you think you should already know and thereby genuinely building your knowledge base. You will want outcomes clearly defined and measures of success towards the outcomes clearly set forth. You will need to be persistent. And you will need to build allies to your cause.

But being persuasive starts with the introduction. First impressions are important.

- Introduce yourself to both floor staff and management.

Introducing yourself to the certified nursing assistants and nurses should occur soon after admission and regularly thereafter. Obviously, you will not meet all staff tending to the needs of your nursing home resident all at once. This will be an ongoing process. If you encounter a staff person who you haven't met before, introduce yourself!

- Double-check to make sure that your Letters of Guardianship and contact information are in the nursing home resident's chart.

Asking the charge nurse to check and make sure your contact information is accessible serves as both a reminder that you expect to be contacted with regard to concerns or issues involving your client or family member, and as a means of expressing your desire to be seen as a member of the team.

- Wear a name badge or label.

Isn't it nice to be able to see a staff person's name badge as a reminder of who they are? What's good for the goose... You should have your own name badge so staff can refer to you by name. Don't only include your name, but also your title: "Guardian" or "Guardian for John Doe". This reminds staff that

you are in fact playing an important, defined role; that you are a member of the team.

- Have business cards made with your contact information.

Business cards don't cost much. Being able to hand them out freely to staff and to include in the chart will ensure that everyone knows how to get ahold of you. Handing out such cards may require navigating the intra-staff waters at a nursing facility. Some nurses or administrators will be uncomfortable with the idea that one of their Certified Nursing Assistants (CNAs) is carrying your business card around in their pocket. Some nursing facilities will feel that your giving a CNA a business card is an invitation for them to call you directly, whereas management would strongly prefer that such contact be made by one of the nurses, or the social worker, etc.

- Explain your role as guardian.

When first meeting a staff person at the nursing facility, let them know not only your name, but the role you are playing. This can be a short sentence or two. Even if you are a family member, it is still important to establish your credentials as the guardian. "Hi, my name is Mary Smith. I'm Jane Doe's daughter, but I am also the court-appointed guardian for Jane Doe. I am responsible for making sure her needs are met and making any important decisions regarding her care." (Using the term "court-appointed" is always a helpful reminder to others that as you are overseeing the work they do for your client or family member, you too are subject to oversight from a court.)

- Offer to help.

When first introducing yourself to a staff person, it is helpful to ask them to let you know how you can help. Obviously, this does not necessarily mean help them with the hands-on care of the resident, but rather to help in other ways – providing information about the resident, obtaining items for the resident such as clothing, items for the room, etc. The point to this offer is again to demonstrate your desire to be part of a team with common goals as it relates to the nursing home resident. If a request for help is in fact made (and is appropriate for a guardian to fulfill), then be sure to follow through on the request.

- Find out when care plan conferences are scheduled and attend.

More will be said about care plan conferences a bit later, but early on in a nursing home placement you will want to be sure to know when the first care plan conference is scheduled and plan on attending. Specifically asking staff to tell you when the first care plan meeting will be held is a signal to them

that (1) you are aware that a care plan conference is required, and (2) that you intend to fully participate in the meeting as a team member. Moreover, this query may help demonstrate your willingness to work “within the system.” While you will still need to address immediate care issues and needs before a care plan conference can be held, there will likely be longer term goals for the nursing home resident that you can tell staff “we can wait to address that at the care plan conference.”

- Golden Rule.

One of the most obvious, and often-ignored rules of behavior in society: If you want respect, show respect. If you want to be heard, then listen yourself. If you want people to be responsible for their actions, take responsibility for your own. Embracing this Golden Rule as a pattern for your own behavior will strengthen your hand when you have to exert your authority as guardian, which you will no doubt be required to do from time to time. You are more likely to be seen as persuasive in situations where a care issue is unacceptable to you if your efforts at holding staff accountable are preceded by an atmosphere of mutual respect you helped foster in the first place.

In many ways, developing your powers of persuasion starts with building a reserve of good will with the staff of the nursing home. This is done by establishing your credentials with staff as the guardian, expressions of timely, sincere praise when due, and demonstrations of your “team spirit.”

2. Curiosity

A guardian needs to be curious. Curiosity is defined as “the desire to learn or know more about something or someone.”²² The great management consultant Peter Drucker once said, “My greatest strength as a consultant is to be ignorant and ask a few questions.”

Too many people bestowed with certain leadership positions (such as “guardian”) believe that they need to demonstrate an “I know best” or “I knew that” attitude. They fear being seen as not knowing something more than they fear not actually knowing something in the first place.

But the fact of the matter is that when you are seen as intellectually curious, you become seen as knowledgeable. In turn, being seen as knowledgeable increases your chances of being persuasive, and being persuasive increases your chances of achieving the outcomes you want for your client or family member in the nursing home.

²² <http://www.merriam-webster.com/dictionary/curiosity>.

So what do guardians of nursing home residents need to be curious about?

Well, of course, you want to be curious about the nature of the issues presented by your particular client or family member in the nursing home. They suffer from Huntington's disease? Then learn all you can about how the symptoms of that disease, the medications commonly prescribed for it and why, the side-effects of those medications, what the likely trajectory of the disease will be, etc.

You will also want to know the basics about how nursing homes are structured, who the players are, and what defines the standards of good practice in the nursing home setting. In large part, such knowledge comes from the federal nursing home regulations applicable to any nursing facilities accepting Medicare and/or Medicaid (i.e., virtually all nursing homes).

This is really "background knowledge," worth having mainly so you are conversant in, and have context within which to engage in, the specific discussions you *will* be having with the doctors and nursing home staff about your particular resident.

What you must be particularly curious about, in your role as guardian, is how your client's or family member's *particular* disease process manifests itself in their day-to-day lives, and how their *particular* nursing home is organized, and the particular players you will be working with at the nursing home with respect to their care needs.

This is more "foreground knowledge." You can prepare yourselves in advance with certain "background knowledge" (which we will begin to do here shortly), but you can only gain the necessary foreground knowledge by being curious.

3. Outcomes

In the nursing home setting, the care plan is the primary tool to measure the success of the care for the nursing home resident. This tried and true process by which nursing homes will map out the plan of care for a resident is, in many ways, similar to a standard model of strategic planning.

"Successful RBA [*results-based accountability*] efforts involve strategic planning, implementation, monitoring, and evaluation (which will ultimately provide data that will be used in future planning and implementation efforts). Strategic planning, an essential first step in the development of a results-based accountability system, is defined as the process of addressing the following questions:

- Where are we?
- What do we have to work with?
- Where do we want to be?
- How do we get there?”²³

In the context of nursing home care for our client or family member in the nursing home, what do we mean by “Where do we want to be?” The guardian’s goal for their nursing home client is (or should be) shared by the nursing home itself: ensuring quality care, and achieving an optimal quality of life.

But we also learn from strategic planning processes that to achieve goals, you need to define outcomes (or objectives) along the way towards achieving those goals. Such outcomes are steps towards achieving the “goal” for the nursing home resident. They are more capable of measurement. Establishing clear outcomes allows you as the team leader to be able to measure success.

The methodology of defining clear outcomes and clear measures of success applies both when you and the nursing home staff are defining a general plan of care, and when you are addressing particular care issues and concerns as they come up. For example, if because your client or family member has a condition that makes them prone to falls with injury, then their care plan should include a strategy to minimize the risk of falls and/or the risk of injuries from falls. This is a plan that will be ongoing, but there should be a clear outcome (e.g., no falls with injury) and clear measures of success (e.g., all defined interventions are put into place). On the other hand, let’s say that a new problem crops up – Mrs. Jones starts becoming agitated and combative with her evening hygiene care. The same problem-solving approach used in the general care plan process can and should be used to address this particular issue, too. A clear goal or outcome is defined – e.g., a full week of evening hygiene care without instances of agitation or combativeness – and interventions are defined to achieve that outcome.

4. Persistence

Thomas Jefferson is famously quoted as having said, “The price of liberty is eternal vigilance.” The same price applies to good nursing home care. It is

²³ Shilder, D. Harvard Graduate School of Education, Harvard Family Research Project. (1997). *Strategic Planning Process: Steps in Developing Strategic Plans*. Retrieved from: <http://www.hfrp.org/publications-resources/browse-our-publications/strategic-planning-process-steps-in-developing-strategic-plans>.

undeniable, and unavoidable, that there will be problems with the care in virtually any nursing home.

- Choosing Your Battles

Being persistent requires energy, and it is best to understand early on that to be an effective advocate for your client or family member in the nursing home, you will need to conserve your own energy as much as possible. More than anything else, this means picking your battles wisely. This is not to say that you should “let things slide.” Rather, it means to assume the best of the caregivers providing the care, politely point out the problems as you encounter them, and give them the benefit of the doubt the first time (on more significant lapses), or the first few times (on the more minor things.)

For example, if you encounter soiled linens, you need to bring it to the attention of the floor staff on the assumption that it was just missed this time. Maybe you follow this same approach even the second time. But if the problem becomes a pattern, it’s time for you to take further steps to hold the facility accountable for the lapses.

On the other hand, if you observe only one staff person attempting to transfer your client or family member from the bed to the wheelchair, and you know that according to the care plan two people should always be involved in such a procedure, you need to immediately bring this error to the attention of the nursing staff.

Persistence is a quality that by definition has no conclusion. It’s not as though being persistent will result in something concrete – such as never ever finding your client or family member soiled again. Forget that, because you will. The sooner this is understood, the better. Ninety percent of the time a plane is off-course, but through constant course corrections, and persistence in the navigation effort, it arrives at its destination.

- Arming Yourself for Battle

When you do choose a battle, persistence means staying focused on the problem you are trying to address and pursuing the best routes towards a resolution of those problems. Staying focused on the issue, in a clinical way, is much harder than it sounds.

Remember that as a guardian, your role is to manage the team towards the mutual goal of good care. Do not presume that you know, or should know, the job of the nurse, or the administrator, or the activities director, etc. You don’t. Those professionals will hopefully know their job well enough. But unlike them, your focus is on a particular nursing home resident among the

many they will be responsible for. Therefore, your role is to identify for the staff what your client or family member needs, and to keep bringing them back to those needs until they are addressed.

You are likely to get into “arguments” or “heated discussions” with staff at the nursing home. While it is a good rule of thumb to always keep your cool, sometimes a little righteous anger is not only understandable but also effective. As a tactic, though, such anger is most effective when it is used sparingly. Let’s face it: if you are one to be shouting all the time, about everything, those shouts will soon be ignored.

- Recognizing in Advance What Victory Looks Like

When presenting problems to staff in nursing homes remember that your role is not necessarily to present solutions to those problems. It’s fair to say that, because of your closer observation of the situation, possible greater life experience generally, or your own skills at creative solutions, you will sometimes have ideas to address the problems. (*E.g., “I’ve discovered that because Mrs. Jones’ eyesight is poor in her right eye, she will become less startled and less combative if you gently approach her on her left side.”*) You define the outcome you want to see, engage in the discussion with staff to find a way to that outcome, but let the staff define the plan towards achieving the outcome.

There is an added advantage to keeping these roles clear. When staff come up with the approach to solve the problem or address the issue, they own it. You now have a tool to hold them accountable.

Victory does not always mean success in solving the problem. Proposed solutions to some problems are nothing more than educated guesses as to what will work. Indeed, experimentation is sometimes necessary to determine what interventions work. The team is succeeding even when the problem is not solved right away, so long as the team defines an approach, implements that approach, and then readjusts or rethinks a new approach until the objective is reached.

- Celebrating Success

Celebrate with the team when a problem is solved or an issue is addressed. Recognizing success is important with every team, in every sport and in every endeavor. It reinforces the value of “team” in demonstrating that together it can accomplish worthwhile things. It also reinforces the value of each team member if the celebration includes recognition of the part played by each.

Celebrating success doesn't always require a cake or flowers. Sometimes the best form of celebration is targeted praise – a verbal expression of thanks in the hallway, a thank-you card to the administrator (suitable for posting on the break room bulletin board) identifying by name the team members that led to success. When possible, identifying what created the success helps the team understand what worked so that next time that success can be replicated.

5. Allies

In the nursing home setting, there are internal allies and external allies to which you can turn in times of need. They are not always self-evident, however.

- **External Allies**

The first external ally that comes to mind, of course, is your local ombudsman.

Long-Term Care Ombudsmen are advocates for residents of nursing homes, board and care homes, assisted living facilities and similar adult care facilities. They work to resolve problems of individual residents and to bring about changes at the local, state and national levels that will improve residents' care and quality of life.

Begun in 1972 as a demonstration program, the Ombudsman Program today exists in all states, the District of Columbia, Puerto Rico and Guam, under the authorization of the Older Americans Act. Each state has an Office of the State Long-Term Care Ombudsman, headed by a full-time state ombudsman. Thousands of local ombudsman staff and volunteers work in hundreds of communities throughout the country as part of the statewide ombudsman programs, assisting residents and their families and providing a voice for those unable to speak for themselves.

The statewide programs are federally funded under Titles III and VII of the Act and other federal, state and local sources. The AoA-funded National Long-Term Care Ombudsman Resource Center External Web Site Policy, operated by the National Consumers' Voice for Quality Long-Term Care (or, Consumer Voice), in conjunction with the National Association of States Agencies on

Aging United for Aging and Disabilities (NASUAD), provides training and technical assistance to state and local ombudsmen.²⁴

Your local ombudsman will likely have some experience with the particular nursing home your client or family member is in. That experience can be useful in private consultation with you in your efforts to solve particular issues. They may have seen a pattern of similar problems with other residents at that facility and offer suggestions for how to find a fix. With knowledge of any such pattern, they could also initiate their own contact with facility leadership to orchestrate a systemic approach.

The ombudsman is also empowered to be a direct ally for you in resolving care issues. As with any such resource, it should be employed sparingly in order to maximize its usefulness. Calling upon the ombudsman every time a problem arises without first attempting a resolution on your own will fatigue both the ombudsman and the facility leadership in such a way that you lose your persuasiveness as an advocate.

Your local ombudsman can be found through The Consumer Voice website: http://theconsumervoice.org/get_help

Beyond the help of an ombudsman, and with sufficient financial resources, a guardian could employ the services of a private geriatric care manager to help problem-solve in the nursing home setting.

You can locate a geriatric care manager through The National Association of Geriatric Care Managers website: <http://memberfinder.caremanager.org>.

- Internal Allies

Within most nursing homes, there are those staff members that seem to get things done. Maybe it's someone in leadership, such as the Director of Nursing, but it could also be a particular nurse working a particular shift, or it could also be a top-notch social worker, or a long-time serving (i.e. highly experienced) certified nursing assistant. Finding them requires careful observation and usually comes from regular engagement with staff members on all shifts. The point is these are people who seem to acknowledge problems in care and seem to have found ways within the facility to get them solved.

²⁴ U.S. Department of Health & Human Services, Administration on Aging. *Long Term care Ombudsman Program, The Purpose of the program and How It Works*. Washington, DC: Author. Retrieved from http://www.aoa.gov/aoa_programs/elder_rights/Ombudsman/index.aspx.

These are natural, internal allies for you as guardian. Building a relationship with them – one that acknowledges and appreciates their skills – can be useful along the way. Like any resource they should be used judiciously, but don't ignore them.

Federal regulations require that nursing facilities must allow and facilitate family councils.²⁵ This regulation not only allows residents and/or families to form groups or councils, but to provide space for the meetings of such groups, and designate a staff person to help facilitate the work of the group.

A family council must be listened to by the nursing facility, and their complaints and concerns acted upon.

“When a resident or family group exists, the facility must listen to the views and act upon the grievances and recommendations of residents and families concerning proposed policy and operational decisions affecting resident care and life in the facility.”²⁶

The care problems your client or family member is experiencing is very likely a problem experienced by others as well. Patterns of problems suggest the need for systemic changes in the way the nursing home is operated or managed. Forming and participating in a family council is a way to build an internal alliance that is more likely to get the attention of the nursing home administration. Family councils are welcomed by the better facilities because it offers a means by which generalized concerns in care common to more than one resident can be addressed in an organized fashion. Indeed, family councils can be part of a good “quality assurance” program in that it provides good customer feedback.

6. Background Knowledge Basics

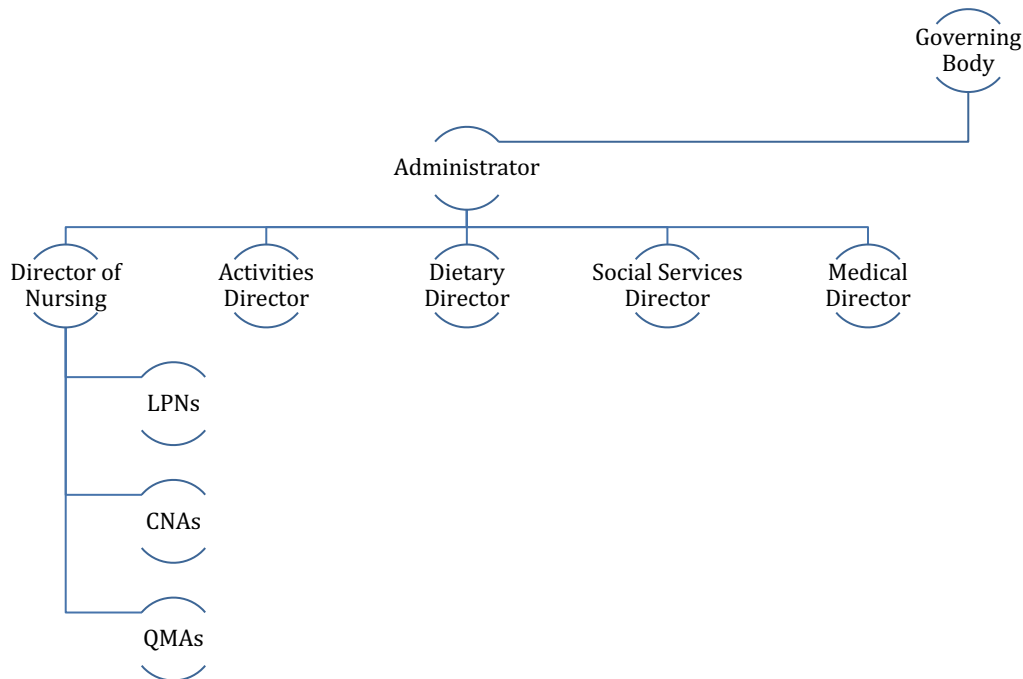
It is beyond the scope of this paper to discuss the particulars of the diseases, disorders, and conditions that nursing home residents may experience. Thank goodness for the internet. Nowadays, if I want to get a basic understanding of Korsakoff's syndrome or Parkinson's disease versus essential tremor, or vascular dementia versus encephalopathy, then a half-hour in front of my computer will give me a good start.

²⁵ 42 C.F.R. § 483.15(c).

²⁶ 42 C.F.R. § 483.15(c)(6).

But how nursing home care is structured, knowing what the common care concerns are, and what the standards of care look like, are something we can discuss here, at least in basic terms.

a) Nursing Home Organizational Structure



The particulars will differ slightly from nursing home to nursing home, but each nursing home has an administrator (sometimes referred to as Executive Director²⁷), and Director of Nursing. Because a nursing home is a multi-disciplinary setting for care, there tend to be basic departments that each have staff, and each of which is led by a director or “coordinator.” By far, the largest department is the nursing department, which will employ Registered Nurses (RNs), Licensed Practical Nurses (LPNs), and Certified Nursing Assistants (CNAs) and Qualified Medicaid Aids (QMAs), and which will provide the majority of the hands on care of the residents.

Some of the services provided within the nursing home may be provided by outside services with which the facility contracts – such as pharmacies, therapists, lab services, etc. Also, while the Medical Director is mandated by

²⁷ The term Executive Director is often used in multi-level care facilities, where there might be a nursing facility, an assisted living facility and even senior independent housing under the same roof or part of the same campus. In such set-ups there may be individual “administrators” of each level of care reporting to the Executive Director.

federal regulations to oversee the quality of medical services in a nursing home, they are almost never actual employees of the nursing home. Rather, medical directors tend to be outside physicians that contract to serve in the role as Medical Director.²⁸

b) Nursing Home Standards of Practice and Regulations

Passed in 1987, the Nursing Home Reform Act was part of the Omnibus Budget and Reconciliation Act (OBRA) of that year.²⁹ This was a major change in the way nursing homes were regulated in that it established a framework for individualized care of nursing home residents, based upon their unique needs and circumstances. These regulations have changed slightly since then, but the basic framework has remained unchanged for the past 25 years.

You can find the OBRA Regulations at 42 Code of Federal Regulations, Part 483. The citation is usually 42 C.F.R. § 483. You can find these regulations online in several places. I like the Cornell University Law School web service: <http://www.law.cornell.edu/cfr/text/42/part-483/subpart-B>.

Within these regulations there are those that address resident rights, discharge rights, quality care requirements, etc. Here is the Table of Contents to help you navigate them:

[§ 483.1 — Basis and scope.](#)

[§ 483.5 — Definitions.](#)

[§ 483.10 — Resident rights.](#)

[§ 483.12 — Admission, transfer and discharge rights.](#)

[§ 483.13 — Resident behavior and facility practices.](#)

[§ 483.15 — Quality of life.](#)

[§ 483.20 — Resident assessment.](#)

[§ 483.25 — Quality of care.](#)

[§ 483.30 — Nursing services.](#)

[§ 483.35 — Dietary services.](#)

[§ 483.40 — Physician services.](#)

[§ 483.45 — Specialized rehabilitative services.](#)

²⁸ Interestingly, the Medical Director is usually also known as the “nursing home doctor” in that they are the doctor that serves as the primary care physician for the nursing home residents. “(1) The facility must designate a physician to serve as medical director. (2) The medical director is responsible for— (i) Implementation of resident care policies; and (ii) The coordination of medical care in the facility.” 42 C.F.R. § 483.75(i). To the extent that the “Medical Director” is policing the quality of medical care in a nursing facility, she is policing herself.

²⁹ You will frequently hear these regulations referred to as “OBRA Regs”.

[§ 483.55 — Dental services.](#)
[§ 483.60 — Pharmacy services.](#)
[§ 483.65 — Infection control.](#)
[§ 483.70 — Physical environment.](#)
[§ 483.75 — Administration.](#)

These regulations apply to all nursing facilities licensed to receive Medicare or Medicaid payments. This is the large majority of nursing homes in the country.

Here's an important point to consider: While there will be complaints about "too much regulation," most of these regulations do nothing more than codify what has long been recognized as standards of good nursing practice.

Each state will have their own sets of regulations pertaining to the care in nursing homes. State regulations apply to nursing homes licensed within the state. These state regulations often look very familiar to the OBRA regulations. So, even if a nursing home doesn't accept Medicare or Medicaid regulations, they may likely be subject to regulations on a state level (for purposes of their licensing requirements) that in many ways mirror the OBRA Regulations.

c) Care Planning

The care planning process is essential to good nursing practice. OBRA Regulations specifically require individualized care plans for nursing home residents:

(k) Comprehensive care plans.

(1) The facility must develop a comprehensive care plan for each resident that includes measurable objectives and timetables to meet a resident's medical, nursing, and mental and psychosocial needs that are identified in the comprehensive assessment. The care plan must describe the following—

(i) The services that are to be furnished to attain or maintain the resident's highest practicable physical, mental, and psychosocial well-being as required under § [483.25](#); and

(ii) Any services that would otherwise be required under § [483.25](#) but are not provided due to the resident's exercise of rights under § [483.10](#), including the right to refuse treatment under § [483.10\(b\)\(4\)](#).

(2) A comprehensive care plan must be—

(i) Developed within 7 days after completion of the comprehensive assessment;

- (ii) Prepared by an interdisciplinary team, that includes the attending physician, a registered nurse with responsibility for the resident, and other appropriate staff in disciplines as determined by the resident's needs, and, to the extent practicable, the participation of the resident, the resident's family or the resident's legal representative; and
- (iii) Periodically reviewed and revised by a team of qualified persons after each assessment.³⁰

Care plans start with assessments. The assessment process is a formalized process reviewing various aspects of the resident's needs and abilities. It assesses their ability to participate in specific activities of daily living ("ADLs"), such as feeding, dressing or grooming themselves. It assesses their diagnoses and the medication regime prescribed. It assesses their nutritional status, their psychosocial well being, etc. The first assessment must be completed within 14 days of admission.³¹ These assessments are reviewed periodically.

The assessments can trigger certain standardized protocols of nursing care. In the OBRA Regulations scheme, these protocols are referred to as Resident Assessment Protocols ("RAPs"). From these RAPs and from other information developed through the assessment process, the care plan is developed for the resident. Bear in mind that these care plans are developed as part of an interdisciplinary team process. You, as guardian, are part of this team. The care plan must be developed within seven days of the assessment.³²

7. Acquiring Foreground Knowledge

Armed with the background knowledge about how nursing home care is organized and what the basic requirements are for nursing homes, you will want to acquire knowledge specific to your client or family member and the particular nursing home they are in. There are any number of ways of acquiring this foreground knowledge.

In general terms, if your client or family member has been diagnosed with particular diseases, then you need to become generally familiar with the disease process – its symptoms, its course trajectory, the common medications used to treat it and how and when they are to be administered, the common side effects associated with those medications, and the overall

³⁰ 42 C.F.R. § 483.20(k)

³¹ 42 C.F.R. § 483.20(b)(2)(i)

³² 42 C.F.R. § 483.20(k)(2)(i)

impact such diseases have on your client or family member's quality of life. You are not the doctor nor the nurse and are not expected to be the expert on the medical conditions your client or family member faces.

Remember, though, that the reason for your having an understanding of your resident's disease process is to enable you to better serve as the Managing Partner and help guide the care team towards the overall goal of quality care and an optimal quality of life.

a) Care Plan Conferences

In the section on background knowledge above you learned the basics of the care planning process. The care plan becomes the organizing tool for your particular client's care needs. Therefore, a guardian must fully engage in the care planning process in order to fulfill their responsibilities.

There is a customary format for care plans, which will tend to look like the following:

Date	Planning Problem/Issue	Goal/Outcome	Interventions	Responsible Discipline
2/1/14	Resident is at risk for falls because of gait disturbance and generalized weakness	Resident will not experience a fall with injury over the next three months.	Ambulate resident with assistance every shift to build strength. Use bed alarm to respond when resident attempts to get out of bed on her own.	Nursing

From the guardian's perspective, the care plan is an important tool to ensure that all the needs of the client or family member are being addressed – that there is a plan in place. The “interventions” portion of the plan is the meat of the plan – the means by which you can help monitor that the goals identified are being met.

Care plans are established and reviewed within the context of a care plan conference that occur on a periodic basis. You will want to make sure that you know when these conferences are to take place and to be present. As your participation is important to the process, reasonable accommodations such as schedule changes should be made to allow you to participate.

You can request a care plan conference be convened, even if a regularly scheduled one is not due, if you identify a particular problem that requires team attention and/or if there is some significant change in your client's or family member's circumstances.

The guardian needs to be prepared for the care plan conference. This starts with getting a copy of the existing care plan so that you can review its contents, identify care issues missing from the plan, and assess for yourself whether the goals are being met with respect to those care issues that are identified in the plan.

Come to the care plan with your own agenda of questions you would like to have answered and issues that you would like to have addressed. At the meeting, ask as many questions as you need to ensure that you understand what you are hearing, take notes, and request a copy of the care plan resulting from the meeting.

b) Surveys

The Social Security Act requires the establishment of minimum standards of care that must be met by nursing homes participating in the Medicare and Medicaid programs. Generally, these surveys are conducted by state regulators following processes set forth by federal regulations. The surveys are conducted periodically and (supposedly) on an unannounced basis. There may also be surveys conducted in response to complaints registered with the state over a particular nursing home's care of a resident.

Following a survey, the state surveyors will complete a survey form that includes citations for any deficiencies found. These deficiencies carry "scope and severity" ratings, with the following matrix:

	SCOPE OF THE DEFICIENCY		
	ISOLATED (One or a very limited number of residents affected and/or one or a very limited number of staff involved, and/or the situation occurred only occasionally or in a very limited number of locations.)	PATTERN (More than a limited number of residents affected, and/or more than a limited number of staff involved, and/or the situation occurred in several locations and/or the same resident(s) have been affected by repeated occurrences of the same practice.)	WIDESPREAD (Situation was pervasive throughout the facility or represented a systemic failure that affected or had the potential to affect a large portion or all the facility's residents.)
(Immediate jeopardy to resident health or safety)	J	K	L
(Actual harm that is not immediate jeopardy)	G	H	I
(No actual harm with potential for more than minimal harm that is not immediate jeopardy)	D	E	F
(No actual harm with potential for no more than minimal harm)	A	B	C

The survey itself contains a “tag” number citing the regulation violated, a statement of the problem identified by the surveyor, and how that problem was in violation of the standards set forth by the regulations. To the right of each citation is a column where the facility must provide a “plan of correction” to demonstrate to the state surveyors how the facility intends to correct the problems identified.

The surveys for your client or family member’s nursing home is required to be available to the residents (and you as guardian) and easily accessible.³³ Examining these surveys will give the guardian some idea of past citations applied against the nursing home and (perhaps more importantly) what the facility has promised to do to correct the problem. You may see problems identified in surveys that are familiar to your own experience with respect to your client or family member. If so, then your efforts to address the problem can include bringing the administration and staff back to the solutions they themselves proposed in their plan of correction.

c) The Nursing Home Record

Each nursing home resident will have their own clinical “chart” or “record”. Within this record there will be the assessments previously discussed, the care plans, physician orders, medication administration records, “flow sheets” that document the resident’s input and output, food consumption, and other measures, vital signs, lab reports, and progress notes for each of the disciplines – medical, nursing, nutrition, activities, social services, therapy, etc.

These various notes and flow sheets provide the reader with valuable information concerning the resident’s experience of care in the nursing home. The chart is kept not merely because it’s required under the law, but because it forms the basis for continuity of care of the resident from month-to-month, day-to-day, and shift-to-shift. Each entry in the chart informs the next person providing care what came before.

You, as guardian, are entitled to inspect the nursing home record. Here’s what the law provides:

- (2) The resident or his or her legal representative has the right—
 - (i) Upon an oral or written request, to access all records pertaining to himself or herself including current clinical records within 24 hours (excluding weekends and holidays); and

³³ 42 CFR § 483.10(g).

(ii) After receipt of his or her records for inspection, to purchase at a cost not to exceed the community standard photocopies of the records or any portions of them upon request and 2 working days advance notice to the facility.³⁴

Even though there are plenty of abbreviations, technical terms, and sheer bad hand-writing to muscle through, the exercise of periodically examining your client or family member's chart is valuable on several levels. First, you *will* be able to understand much of what's in the chart. Second, the mere act of asking the nursing staff a question about what a certain entry means will form the basis for a dialogue about issues that are important from your perspective as guardian. Third, developing a pattern of inquiry into the record will let staff know that you take your responsibilities as guardian seriously, and that you intend to be informed.

Now, having said all that, it is a fact that when a guardian or family member asks to look at the record, the nursing home may become defensive. Why do you want to see it? What are you looking for? What parts do you want to see?

The best way of defusing the defensiveness is to make looking at the record a regular habit, starting early on in your role as guardian. Doing so, you can explain in words and by action, "It's how I keep informed and do my job as guardian." Once the facility becomes used to your habit of examining the record, that natural defensiveness should be dispelled.

III. Guardian's Options for Funeral Planning for a Ward

The Funeral Planning Declaration statute is found at I.C. § 29-2-19. This relatively new statute (circa 2009) has two basic provisions of significance. First, it allows any competent individual to execute a Funeral Planning Declaration in which they may set forth their preferences for funeral planning (cremation v. burial, selection of funeral home, nature of service, etc.) I.C. § 29-2-19-9.

Second (and perhaps more relevant until that day when everyone has completed their own Funeral Planning Declaration), for those *without* a Funeral Planning Declaration, the statute sets forth a pecking order of individuals empowered to make decisions with respect to a decedent's funeral plan I.C. § 29-2-19-17.

³⁴ 42 CFR § 483.10(b)(2).

In those cases where the decedent had a court-appointed guardian prior to their death, what role can a guardian play in making decisions concerning the funeral plan for a ward that dies?

A. Can a guardian execute a Funeral Planning Declaration on behalf of a ward?

The short answer: No. A guardian has no power to execute a Funeral Planning Declaration on behalf of the ward.

The Funeral Planning Declaration statute provides that, “[a] person who is of sound mind and is at least eighteen (18) years of age may execute a funeral planning declaration substantially in the form set forth in section 13 of this chapter.” I.C. § 29-2-19-8(a).

Nowhere does the statute say that a surrogate decision-maker, whether a guardian or health care representative or attorney-in-fact, can execute such a document. One might be inclined to think that the Estate Planning section of the guardianship code, I.C. § 29-3-9-4.5 might include the ability of a guardian to do so, but that is not the case.

B. What authority does a guardian have with respect to decisions about funerals and disposition of the body?

The short answer: None, unless no one else (primarily, family) takes responsibility to do so.

Let’s start by examining that second part of the Funeral Planning Declaration statute. I.C. § 29-2-19-17. The statute defines a pecking order of individuals with priority in making decisions about the funeral and disposition of the body after death. A court-appointed guardian is not among those listed in the pecking order, except to say that a guardian, like any other person who is willing to act, may make such arrangements if no one else higher up the list is able or willing to do so:

- (10) If none of the persons described in subdivisions (1) through (9) are available, any other person willing to act and arrange for the final disposition of the decedent's remains, including a funeral home that:
 - (A) has a valid prepaid funeral plan executed under I.C. § 30-2-13 that makes arrangements for the disposition of the decedent's remains; and
 - (B) attests in writing that a good faith effort has been made to

contact any living individuals described in subdivisions (1) through (9).

I.C. § 29-2-19-17(10).

So what is a guardian to do?

It can be safely argued that a guardian has the ability to purchase a prepaid funeral plan. The statute governing such plans, found at I.C. § 30-2-13, defines a “purchaser” broadly enough that it could include a guardian.³⁵ Nothing in the guardianship codes suggests that it is outside the scope of a guardian’s power to do so. *See* I.C. § 29-3-8-4(9). Indeed, to the extent that prepaid funeral planning is part of a Medicaid spend-down strategy, then it may be argued that a guardian has the *duty* to make such purchases or some equivalent (as will be shown). I.C. § 29-3-8-3.

But this raises an issue: When a prepaid funeral plan is purchased, it may include all kinds of customized products and services. Everything from cremation services to the selection of casket and even the selection of clothing may be included in the package purchased. I.C. § 30-2-13-8. This presupposes the ability of a guardian to make such selections, and as shown, no such authority exists. True, upon the death of a ward a guardian has the power to “pay directly...reasonable funeral and burial expenses of the protected person” (I.C. § 29-3-12-1(e)), but paying for costs and deciding on what the funeral service will be are two different things.

C. Choose a Funeral Trust instead of a Prepaid Funeral Plan.

The better approach for any guardian wishing to ensure in advance that a ward has funds available for their funeral should purchase a funeral trust (sometimes referred to as “burial account” or “burial trust”) under I.C. § 30-2-10. Such funds are recognized as exempt under Indiana Medicaid law and therefore serve the purpose of a strategic spend-down planning strategy for a ward running out of funds during their lifetime. The funeral trust is more flexible, too, in that it doesn’t predetermine the *nature* of the funeral services, but rather allows for a fund to pay for such services.

³⁵ The same may not be true for an attorney-in-fact under the terms of a power of attorney. In such cases, the prepaid contract may be unenforceable. *See* I.C. § 30-2-13-23(b)(2).

D. Other Practical Considerations.

There is another practical consideration guardians must confront. If the ward dies in a hospital, there is some reasonable time to contact the appropriate family members to decide what disposition to make of the body. Hospitals have their own “morgue” that can house the body for a period of time before such decisions are made.

On the other hand, if the ward dies in a nursing home, the guardian will receive a call notifying them of the death and then asking the guardian for instructions concerning the body. If possible, this decisions should be deferred to the appropriate family member as identified in the Funeral Planning Declaration statute. I.C. § 29-2-19-17. However, that’s not always practical and the nursing home will want an answer right away – unlike hospitals, they are not equipped to house a deceased body for long.

If nothing else, the guardian should, as a practical matter, identify a funeral home for the nursing home to call and pick up the body. Ultimately, the family or decision-maker under I.C. § 29-2-19-17 decides upon the use of a different funeral home, there will likely be a cost of transporting the body, but such costs would hopefully be considered part of the “reasonable funeral and burial expenses of the protected person” under I.C. § 29-3-12-1(e).

While circumstances don’t always allow for such advance planning, it would be reasonably prudent for a guardian (particularly a professional guardian unrelated to the ward) to engage in “end-of-life planning” with the family of the ward to clearly identify in advance who has the legal right to make decisions with respect to the funeral plans. Essentially, the plan should be for that person(s) to be “on-call” upon the event of death, and to be prepared to make decisions from that point forward. Putting such a plan in writing, of course, would help with the communication after.

2020 Indiana Guardianship Handbook

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First Regular Session of the 121st General Assembly (2019)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2018 Regular and Special Session of the General Assembly.

SENATE ENROLLED ACT No. 380

AN ACT to amend the Indiana Code concerning probate.

Be it enacted by the General Assembly of the State of Indiana:

SECTION 1. IC 29-3-1-7.8 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2019]: **Sec. 7.8. (a) "Less restrictive alternatives" means an approach to meeting a person's needs that restricts fewer rights of the person than would the appointment of the guardian.**

(b) Less restrictive alternatives may include, but are not limited to, the following:

- (1) A supported decision making agreement (as defined in IC 29-3-14-2).**
- (2) Appropriate technological assistance.**
- (3) The appointment of a representative payee.**
- (4) The appointment of a health care representative (as defined in IC 16-36-1-2).**
- (5) The creation of a power of attorney (as defined in IC 30-5-2-7).**

SECTION 2. IC 29-3-5-1, AS AMENDED BY P.L.162-2011, SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2019]: **Sec. 1. (a) Any person may file a petition for the appointment of a person to serve as guardian for an incapacitated person or minor under this chapter or to have a protective order issued under IC 29-3-4. The petition must state the following:**

- (1) The name, age, residence, and post office address of the**

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alleged incapacitated person or minor for whom the guardian is sought to be appointed or the protective order issued.

(2) The nature of the incapacity.

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

(4) If a limited guardianship is sought, the particular limitations requested.

(5) Whether a protective order has been issued or a guardian has been appointed or is acting for the incapacitated person or minor in any state.

(6) The residence and post office address of the proposed guardian or person to carry out the protective order and the relationship to the alleged incapacitated person of:

(A) the proposed guardian; or

(B) the person proposed to carry out the protective order.

(7) The names and addresses, as far as known or as can reasonably be ascertained, of the persons most closely related by blood or marriage to the person for whom the guardian is sought to be appointed or the protective order is issued.

(8) The name and address of the person or institution having the care and custody of the person for whom the guardian is sought to be appointed or the protective order is issued.

(9) The names and addresses of any other incapacitated persons or minors for whom the proposed guardian or person to carry out the protective order is acting if the proposed guardian or person is an individual.

(10) The reasons the appointment of a guardian or issuance of a protective order is sought and the interest of the petitioner in the appointment or issuance.

(11) A description of the petitioner's efforts to use less restrictive alternatives before seeking guardianship, including:

(A) the less restrictive alternatives for meeting the alleged incapacitated person's needs that were considered or implemented;

(B) if a less restrictive alternative was not considered or implemented, the reason that the less restrictive alternative was not considered or implemented; and

(C) the reason a less restrictive alternative is insufficient to meet the needs of the alleged incapacitated person.



~~(11)~~ **(12)** The name and business address of the attorney who is to represent the guardian or person to carry out the protective order.

~~(12)~~ **(13)** Whether a child in need of services petition or a program of informal adjustment has been filed regarding the minor for whom a guardianship is being sought, and, if so, whether the case regarding the minor is open at the time the guardianship petition is filed.

(b) Notice of a petition under this section for the appointment of a guardian or the issuance of a protective order and the hearing on the petition shall be given under IC 29-3-6.

(c) After the filing of a petition, the court shall set a date for a hearing on the issues raised by the petition. Unless an alleged incapacitated person is already represented by counsel, the court may appoint an attorney to represent the incapacitated person.

(d) A person alleged to be an incapacitated person must be present at the hearing on the issues raised by the petition and any response to the petition unless the court determines by evidence that:

- (1) it is impossible or impractical for the alleged incapacitated person to be present due to the alleged incapacitated person's disappearance, absence from the state, or similar circumstance;
- (2) it is not in the alleged incapacitated person's best interest to be present because of a threat to the health or safety of the alleged incapacitated person as determined by the court;
- (3) the incapacitated person has knowingly and voluntarily consented to the appointment of a guardian or the issuance of a protective order and at the time of such consent the incapacitated person was not incapacitated as a result of a mental condition that would prevent that person from knowingly and voluntarily consenting; or
- (4) the incapacitated person has knowingly and voluntarily waived notice of the hearing and at the time of such waiver the incapacitated person was not incapacitated as a result of a mental condition that would prevent that person from making a knowing and voluntary waiver of notice.

(e) A person alleged to be an incapacitated person may present evidence and cross-examine witnesses at the hearing. The issues raised by the petition and any response to the petition shall be determined by a jury if a jury is requested no later than seventy-two (72) hours prior to the original date and time set for the hearing on the petition. However, in no event may a request for a jury trial be made after thirty (30) days have passed following the service of notice of a petition.

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(f) Any person may apply for permission to participate in the proceeding, and the court may grant the request with or without hearing upon determining that the best interest of the alleged incapacitated person or minor will be served by permitting the applicant's participation. The court may attach appropriate conditions to the permission to participate.

(g) A court shall notify the department of child services of a hearing regarding the guardianship of a minor under this section if a:

- (1) child in need of services petition has been filed regarding the minor; or
- (2) program of informal adjustment involving the minor is pending.

The department of child services may participate in a hearing regarding the guardianship of a minor described in this subsection.

SECTION 3. IC 29-3-9-6, AS AMENDED BY P.L.99-2013, SECTION 8, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2019]: Sec. 6. (a) Unless otherwise directed by the court, a guardian (other than a temporary guardian) shall file with the court:

- (1) at least biennially, not more than thirty (30) days after the anniversary date of the guardian's appointment; and
- (2) not more than thirty (30) days after the termination of the appointment;

a written verified account of the guardian's administration.

(b) A temporary guardian shall file with the court, within thirty (30) days after the termination of the temporary guardian's appointment, and otherwise as ordered by the court, a written verified account of the temporary guardian's administration.

(c) A written verified account required under this section must include the incapacitated person's or minor's current residence and a description of the condition and circumstances of the incapacitated person or minor, **including a specific showing of whether guardianship is still necessary and appropriate, and whether any less restrictive alternatives have been considered or implemented.**

(d) The court shall conduct a hearing on each verified account filed under this section. The court shall give notice to each person entitled to receive notice that an accounting has been filed and will be acted upon by the court on the date set unless written objections are presented to the court on or before that date. The court shall give the notice required by this subsection, unless waived, to the following:

- (1) The protected person, unless waived by the court. If notice to the protected person is waived, the court shall give notice to a person who is not the guardian of the protected person in the

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following priority:

- (A) The protected person's spouse.
- (B) An adult child of the protected person.
- (C) A parent of the protected person.
- (D) A guardian ad litem appointed by the court under subsection (e).
- (2) In the case of a protected person who has died, the personal representative of the estate of the protected person, if any.
- (3) Any other persons that the court directs.
- (e) The court may appoint a guardian ad litem to review on behalf of a protected person an accounting filed under this section if:
 - (1) the protected person does not have a spouse, an adult child, or a parent; or
 - (2) the same individual:
 - (A) served as the protected person's guardian before the death of the protected person; and
 - (B) is the personal representative of the protected person's estate.
- (f) When an account other than an account in final settlement is filed, the court may approve the same ex parte, but the account may be reviewed by the court at any subsequent time and does not become final until an account in final settlement is approved by the court after notice and hearing.
- (g) When notice of hearing has been given under this section, the order of the court approving the intermediate account or the final account is binding upon all persons.
- (h) When a guardian files with the court proper receipts or other evidence satisfactory to the court showing that the guardian has delivered to the appropriate persons all the property for which the guardian is accountable as guardian, the court shall enter an order of discharge. The order of discharge operates as a release from the duties of the guardian's office that have not yet terminated and operates as a bar to any suit against the guardian and the guardian's sureties, unless the suit is commenced within one (1) year from the date of the discharge.

SECTION 4. IC 29-3-14 IS ADDED TO THE INDIANA CODE AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2019]:

Chapter 14. Supported Decision Making

Sec. 1. As used in this chapter, "supported decision making" refers to the process of supporting and accommodating an adult in the decision making process to make, communicate, and effectuate

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life decisions, without impeding the self-determination of the adult.

Sec. 2. As used in this chapter, "supported decision making agreement" means a document that outlines the decision making supports and accommodations the adult chooses to receive from one (1) or more supporters.

Sec. 3. As used in this chapter, "supporter" means a person at least eighteen (18) years of age who has voluntarily agreed to assist an adult in the decision making process as outlined in the adult's supported decision making agreement.

Sec. 4. (a) An adult may not enter into a supported decision making agreement unless the adult:

- (1) enters into the agreement voluntarily and without coercion or undue influence; and
- (2) understands the nature and effect of the agreement.

(b) An adult may make, change, or revoke a supported decision making agreement even if the adult does not have the capacity to independently manage the adult's own health care, legal matters, or financial affairs.

(c) A court may not consider an adult's execution of a supported decision making agreement as evidence of incapacity. The existence of an executed supported decision making agreement does not preclude the adult from acting independently of the supported decision making agreement.

(d) An adult may not enter into a supported decision making agreement under this section if the agreement supplants the authority of a guardian of the adult, unless the guardian consents in writing to the adult entering into the supported decision making agreement.

Sec. 5. (a) A supporter must:

- (1) support the will and preference of the adult, and not the supporter's opinion of the adult's best interests;
- (2) act honestly, diligently, and in good faith;
- (3) act within the scope set forth in the adult's supported decision making agreement;
- (4) avoid conflicts of interest; and
- (5) notify the adult in writing of the supporter's intent to resign as a supporter.

(b) The relationship between an adult and a supporter is one of trust and confidence, and serves to preserve the decision making authority of the adult.

(c) A supporter is prohibited from:

- (1) exerting undue influence upon the adult;



- (2) receiving a fee for service related solely to services performed in the role of supporter;
- (3) obtaining, without the consent of the adult, information acquired for a purpose other than assisting the adult in making a specific decision authorized by the supported decision making agreement;
- (4) acting outside the scope of authority provided in the supported decision making agreement; or
- (5) obtaining, without the consent of the adult, nonpublic personal information as defined in 15 U.S.C. 6809(4)(A).

(d) A supporter who is expressly given relevant authority in a power of attorney may act within the scope of that authority to sign instructions or other documents on behalf of the adult, in order to communicate or implement decisions by the adult.

Sec. 6. A request or decision made or communicated with the assistance of a supporter in conformity with this chapter shall be recognized as the request or decision of the adult for the purposes of any provision of law.

Sec. 7. (a) A supported decision making agreement must:

- (1) name at least one (1) supporter;
- (2) describe the decision making assistance that each supporter may provide to the adult and how supporters may work together; and
- (3) if appropriate, be executed by the adult's guardian.

(b) A supported decision making agreement may:

- (1) appoint more than one (1) supporter;
- (2) appoint an alternate to act in the place of a supporter under circumstances specified in the agreement; or
- (3) authorize a supporter to share information with any other supporter or others named in the agreement.

(c) A supported decision making agreement must be:

- (1) in writing;
- (2) dated; and
- (3) signed by the adult in the presence of a notary.

(d) A supported decision making agreement must contain a separate consent signed by each supporter named in the agreement indicating the supporter's:

- (1) relationship to the adult;
- (2) willingness to act as a supporter; and
- (3) acknowledgment of the duties of a supporter.

(e) An adult who meets the requirements to enter into a supported decision making agreement under section 4 of this



chapter may sign a supported decision making agreement in any manner, including electronic signature, permitted under IC 30-5-4-1(5) or IC 30-5-11-4(a).

Sec. 8. An adult may revoke a supported decision making agreement at any time. A revocation under this section must be in writing, and a copy of the revocation must be provided to each supporter.

Sec. 9. (a) Except as provided in the supported decision making agreement, a supported decision making agreement terminates in the following situations:

- (1) The adult subject of the supported decision making agreement dies.
- (2) The adult subject of the supported decision making agreement revokes the agreement under section 8 of this chapter.
- (3) The named supporters withdraw their participation without naming successor supporters.
- (4) A court of competent jurisdiction determines that the adult does not have capacity to execute or consent to a supported decision making agreement.
- (5) A court of competent jurisdiction determines that a supporter has used the supported decision making agreement to commit:
 - (A) financial exploitation;
 - (B) abuse; or
 - (C) neglect;
 of the adult.
- (6) A court of competent jurisdiction appoints a temporary or permanent guardian for the person or property of the adult, unless the court's order of appointment:
 - (A) expressly modifies but continues the supported decision making agreement; and
 - (B) limits the powers and duties of the guardian.
- (7) The adult signs a valid durable power of attorney, except to the extent that the power of attorney expressly continues, in whole or in part, the supported decision making agreement.

(b) The court may enter an order under subsection (a)(4), (a)(5), and (a)(6) only after notice and a hearing to the adult and all supporters named in the agreement.

Sec. 10. A supported decision making agreement that complies with section 7 of this chapter is presumed valid. A party may rely on the presumption of validity unless the party has actual



knowledge that the supported decision making agreement was not validly executed.

Sec. 11. (a) Except as provided in subsection (c), a person who, in good faith, relies on an authorization in a supported decision making agreement or who, in good faith, declines to honor an authorization in a supported decision making agreement is not subject to civil or criminal liability or to discipline for unprofessional conduct.

(b) Except as provided in subsection (c), a supporter who performs supported decision making in good faith as specified in a supported decision making agreement is immune from civil or criminal liability resulting from the adult's decision.

(c) This section does not apply to a person whose act or omission amounts to fraud, misrepresentation, recklessness, or willful or wanton misconduct.

Sec. 12. The meaning and effect of a supported decision making agreement is determined by the law of the jurisdiction in which the supported decision making agreement was executed, unless the supported decision making agreement provides otherwise.

Sec. 13. A person who:

- (1)** receives a copy of a supported decision making agreement;
- or**
- (2)** is aware of the existence of a supported decision making agreement;

and reasonably believes that an adult is being abused, neglected, or exploited must report the alleged abuse, neglect, or exploitation to adult protective services or another authorized law enforcement agency.

SECTION 5. IC 34-30-2-126.8 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2019]: Sec. 126.8. IC 29-3-14-11 (Concerning supported decision making agreements).



President of the Senate

President Pro Tempore

Speaker of the House of Representatives

Governor of the State of Indiana

Date: _____ Time: _____

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INDIANA GUARDIANSHIP CODE

Annotated for Adult Guardianships

This draft of the Indiana Code 29-3, effective as of 2018, has been modified as follows: (1) Those portions of the Code that apply exclusively to minor guardianships have been redacted; (2) Those portions of the Code that apply exclusively to Volunteer Advocates for Seniors and Incapacitated Adults (VASIA) programs have been redacted; and (3) Highlighting and typographical formatting have been applied as explained in the Key To Highlighting below.

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Key to Highlighting:

	Black Highlight (Redacted) = Sections completely irrelevant to adult guardianships. (i.e., sections that are “repealed”; sections that relate only to VASIA Programs; and sections or portions referring only to guardianship of “minors”).
<u>XXXXX</u>	Gray Highlight are cross references to other sections of the Indiana Code. These references are footnoted with either a brief explanation, or in some cases actually copying the cross-referenced statute.
<u>XXXXX</u>	<u>Bold Underlined</u> portions of the code reflect changes to the law based upon the 2017 & 2018 legislative session.

INDIANA GUARDIANSHIP CODE

IC 29-3

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CHAPTER 1 – DEFINITIONS

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As added by P.L.169-1988, SEC.1.

As added by P.L.137-2016, SEC.3.

As added by P.L.169-1988, SEC.1. Amended by P.L.33-1989, SEC.56.

[REDACTED]

As added by P.L.104-2015, SEC.4. Amended by P.L.25-2017, SEC.1.

IC 29-3-1-2.7 "Content of an electronic communication"

Sec. 2.7. "Content of an electronic communication" has the meaning set forth in IC 32-39-1-6.²

As added by P.L.137-2016, SEC.4.

IC 29-3-1-3 "Court"

Sec. 3. "Court" means the court having probate jurisdiction and, where the context permits, the court having venue of the guardianship.

As added by P.L.169-1988, SEC.1.

IC 29-3-1-3.5 "De facto custodian"

As added by P.L.194-2017, SEC.6.

IC 29-3-1-4 Repealed

IC 29-3-1-4.1 "Digital asset"

Sec. 4.1. "Digital asset" has the meaning set forth in IC 32-39-1-10.³

As added by P.L.137-2016, SEC.5.

IC 29-3-1-5 "Durable power of attorney"

Sec. 5. "Durable power of attorney" means a power of attorney that:

- (1) is executed by an incapacitated person before that person became an incapacitated person;
- (2) provides that the power survives the person's incompetence; and
- (3) is executed in accordance with the law in effect in the jurisdiction in which it was executed on the date it was executed.

As added by P.L.169-1988, SEC.1. Amended by P.L.33-1989, SEC.57.

² IC 32-39-1-5 "Catalogue of electronic communications"

Sec. 5. As used in this article, "catalogue of electronic communications" means information that identifies each person with which a user has had an electronic communication, the time and date of the communication, and the electronic address of the person.

³ IC 32-39-1-10 "Digital asset"

Sec. 10. As used in this article, "digital asset" means an electronic record in which an individual has a right or interest. The term does not include an underlying asset or liability unless the asset or liability is itself an electronic record.

IC 29-3-1-6 "Guardian"

Sec. 6. "Guardian" means a person who is a fiduciary and is appointed by a court to be a guardian or conservator responsible as the court may direct for the person or the property of an incapacitated person [REDACTED]. The term includes a temporary guardian, a limited guardian, and a successor guardian but excludes one who is only a guardian ad litem. The terms guardian and conservator are interchangeable.

As added by P.L.169-1988, SEC.1. Amended by P.L.33-1989, SEC.58.

IC 29-3-1-7 "Guardianship property"

Sec. 7. "Guardianship property" means the property of an incapacitated person [REDACTED] for which a guardian is responsible.

As added by P.L.169-1988, SEC.1. Amended by P.L.33-1989, SEC.59.

IC 29-3-1-7.5 "Incapacitated person"

Sec. 7.5. "Incapacitated person" means an individual who:

- (1) cannot be located upon reasonable inquiry;
- (2) is unable:
 - (A) to manage in whole or in part the individual's property;
 - (B) to provide self-care; or
 - (C) both;

because of insanity, mental illness, mental deficiency, physical illness, infirmity, habitual drunkenness, excessive use of drugs, incarceration, confinement, detention, duress, fraud, undue influence of others on the individual, or other incapacity; or

- (3) has a developmental disability (as defined in IC 12-7-2-61)⁴

As added by P.L.33-1989, SEC.60. Amended by P.L.2-1992, SEC.790.

IC 29-3-1-8 Repealed

IC 29-3-1-9 "Letters"

Sec. 9. "Letters" means letters of guardianship.

As added by P.L.169-1988, SEC.1.

IC 29-3-1-10 "Minor"

Sec. 10. "Minor" means an individual who is less than eighteen (18) years of age and who is not an emancipated minor.

As added by P.L.169-1988, SEC.1. Amended by P.L.264-1989, SEC.2.

⁴ IC 12-7-2-61 "Developmental disability"

Sec. 61. (a) Except as provided in subsection (b), "developmental disability" means a severe, chronic disability of an individual that meets all of the following conditions:

(1) Is attributable to:

- (A) intellectual disability, cerebral palsy, epilepsy, or autism; or
- (B) any other condition (other than a sole diagnosis of mental illness) found to be closely related to intellectual disability, because this condition results in similar impairment of general intellectual functioning or adaptive behavior or requires treatment or services similar to those required for a person with an intellectual disability.

(2) Is manifested before the individual is twenty-two (22) years of age.

(3) Is likely to continue indefinitely.

(4) Results in substantial functional limitations in at least three (3) of the following areas of major life activities:

- (A) Self-care.
- (B) Understanding and use of language.
- (C) Learning.
- (D) Mobility.
- (E) Self-direction.
- (F) Capacity for independent living.
- (G) Economic self-sufficiency.

(b) The definition in subsection (a) does not apply and may not affect services provided to an individual receiving:

- (1) home and community based Medicaid waiver; or
- (2) ICF/IID;

IC 29-3-1-11 "Parent"

Sec. 11. "Parent" means a biological or adoptive parent. The term does not include a stepparent, foster parent, or grandparent.

As added by P.L.169-1988, SEC.1.

IC 29-3-1-12 "Person"

Sec. 12. "Person" means an individual, an organization, an association, a nonprofit corporation, a corporation for profit, a limited liability company, a partnership, a financial institution, a trust, the division of family resources or other governmental entity, or other legal entity.

As added by P.L.169-1988, SEC.1. Amended by P.L.2-1992, SEC.791; P.L.8-1993, SEC.461; P.L.145-2006, SEC.168.

IC 29-3-1-13 "Protected person"

Sec. 13. "Protected person" means an individual for whom a guardian has been appointed or with respect to whom a protective order has been issued.

As added by P.L.169-1988, SEC.1.

IC 29-3-1-14 "Protective proceeding"

Sec. 14. "Protective proceeding" means a proceeding for a protective order under IC 29-3-4.

As added by P.L.169-1988, SEC.1.

IC 29-3-1-15 "Support"

Sec. 15. "Support" means care, maintenance, and education or training, if appropriate.

As added by P.L.169-1988, SEC.1.

IC 29-3-1-15.5 "Volunteer advocate for incapacitated adults"

[REDACTED]

As added by P.L.11-2006, SEC.1. Amended by P.L.72-2010, SEC.1.

IC 29-3-1-16 "Volunteer advocate for seniors"

[REDACTED]

As added by P.L.41-2004, SEC.1. Amended by P.L.72-2010, SEC.2.

IC 29-3-1-17 "Volunteer advocates for incapacitated adults program"

[REDACTED]

As added by P.L.72-2010, SEC.3.

IC 29-3-1-18 "Volunteer advocates for seniors program"

As added by P.L.72-2010, SEC.4.

CHAPTER 2 – GENERAL PROVISIONS

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- 29-3-2-7 Submissions to the court; court requests for information

IC 29-3-2-0.1 Application of certain amendments to chapter

Sec. 0.1. The following amendments to this chapter apply as follows:

- (1) The amendments made to sections 3 and 4 of this chapter by P.L.118-1997 do not apply to an individual whose death occurs before July 1, 1997.
- (2) The amendments made to section 1 of this chapter by P.L.217-2001 apply to all proceedings pending under IC 31-34 on July 1, 2001, and to all proceedings commenced under IC 31-34 after June 30, 2001.

As added by P.L.220-2011, SEC.480.

IC 29-3-2-0.2 Application of article; effect of amendments to certain other statutes

Note: This version of section effective 7-1-2018.

Sec. 0.2. (a) As used in this section, "affected statutes" refers to the following:

- (1) IC 16-8-12-7 (repealed, now codified at IC 16-36-1-8).**
- (2) IC 29-1-7.5-2.**
- (3) IC 33-16-2-2 (repealed, codified at IC 33-42-2-2, also repealed).**
- (4) IC 33-19-3-2 (repealed, now codified at IC 33-37-3-2).**
- (5) IC 35-34-2-3.**
- (6) IC 35-37-1-5.**

(b) This article and the amendments made by P.L.169-1988 to the affected statutes apply to guardianships in existence on June 30, 1989, except to the extent that application of this article and the amendments made by P.L.169-1988 to the affected statutes would contravene any vested or contractual rights in effect on June 30, 1989, in which case the law in effect before July 1, 1989, prevails.

As added by P.L.220-2011, SEC.481. Amended by P.L.128-2017, SEC.11.

IC 29-3-2-1 Application of article; jurisdiction of courts

Sec. 1. (a) This article applies to the following:

- (1) The business affairs, physical person, and property of every incapacitated person [REDACTED] residing in Indiana.
- (2) Property located in Indiana of every incapacitated person [REDACTED] residing

outside Indiana.

(3) Property of every incapacitated person [REDACTED], regardless of where the property is located, coming into the control of a fiduciary who is subject to the laws of Indiana.

(b) [REDACTED]

In the case of an adult (as defined in IC 29-3.5-1-2(1)), [Reference here is to the Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act (UAGPPJA) adopted by Indiana at I.C. 29-3.5, et seq.] a court must establish jurisdiction concerning a guardianship or a protective proceeding in accordance with IC 29-3.5-2.

(c) [REDACTED]

(e) A mental health division of a superior court under IC 33-33-49⁵ has jurisdiction concurrent with the court in mental health proceedings under IC 12-26 relating to guardianship and protective orders.

(f) Jurisdiction under this section is not dependent on issuance or service of summons.

As added by P.L.169-1988, SEC.1. Amended by P.L.33-1989, SEC.61; P.L.1-1990, SEC.275; P.L.2-1992, SEC.792; P.L.16-1995, SEC.5; P.L.1-1997, SEC.118; P.L.217-2001, SEC.1; P.L.98-2004, SEC.100; P.L.138-2007, SEC.4; P.L.178-2011, SEC.1.

IC 29-3-2-2 Venue for appointment of guardian; stay of proceedings; transfer of proceedings

Sec. 2. (a) The venue for the appointment of a guardian or for protective proceedings is as follows:

(1) If the alleged incapacitated person [REDACTED] resides in Indiana, venue is:

(A) in the county where the alleged incapacitated person [REDACTED] resides; or

(B) if the proceeding is for the appointment of a temporary guardian of the person for an alleged incapacitated person [REDACTED] who is in need of medical care, in the county where a facility is located that is providing or attempting to provide medical care to the alleged incapacitated person [REDACTED].

(2) If the alleged incapacitated person [REDACTED] does not reside in Indiana, then venue is in any county where any property of the alleged incapacitated person [REDACTED] is located. However, if the proceeding is for the appointment of a temporary guardian of the person for an alleged incapacitated person [REDACTED] who is in need of medical care, venue is in the county where the facility providing or attempting to provide medical care is located.

(3) If the alleged incapacitated person is an adult (as defined in IC 29-3.5-1-2(1))⁶, venue is determined under the laws of the state or country having jurisdiction under IC 29-3.5-2. However, if a court in Indiana has jurisdiction under IC 29-3.5-2, the rules for determining venue set forth in this section apply.

⁵ This statute is a specific provision placing jurisdiction for mental health commitments within the Marion County Probate Court.

⁶ This is a reference is to the Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act (UAGPPJA), which every state has adopted except Texas, Michigan, Kansas and Florida (as of June 2018), and which governs transfers of guardianship from one state to another and which dictates determinations of proper jurisdiction in cases where parties in two states may be arguing for jurisdiction. To keep up with which states have adopted UAGPPJA, go to <http://www.uniformlaws.org>.

(b) If proceedings are commenced in more than one (1) county, they shall be stayed except in the county where first commenced until final determination of the proper venue by the court in the county where first commenced. After proper venue has been determined, all proceedings in any county other than the county where jurisdiction has been finally determined to exist shall be dismissed. If the proper venue is finally determined to be in another county, the court shall transmit the original file to the proper county. The proceedings shall be commenced by the filing of a petition with the court, and the proceeding first commenced extends to all of the property of [REDACTED] the incapacitated person unless otherwise ordered by the court.

(c) If it appears to the court at any time that:

(1) the proceeding was commenced in the wrong county;

(2) the residence of the incapacitated person [REDACTED] has been changed to another county;

(3) the proper venue is determined to be otherwise under the Indiana Rules of Trial Procedure; or

(4) it would be in the best interest of the incapacitated person [REDACTED] and the property of [REDACTED] the incapacitated person; the court may order the proceeding, together with all papers, files, and a certified copy of all orders, transferred to another court in Indiana. That court shall complete the proceeding as if originally commenced in that court. The court may in like manner transfer a guardianship or protective proceeding in Indiana to a court outside Indiana if the other court assumes jurisdiction to complete the proceeding as if originally commenced in that court. Before any transfer is made under this subsection, a hearing pursuant to notice shall be held in the same manner as provided with respect to the appointment of a guardian.

(d) Where a guardian has been appointed by a court that does not have probate jurisdiction, the matter shall be transferred in accordance with the proper venue to a court having probate jurisdiction for qualification of the guardian and for further proceedings in the guardianship.

(e) Nothing in this section shall be construed as a requirement of jurisdiction.

As added by P.L.169-1988, SEC.1. Amended by P.L.33-1989, SEC.62; P.L.178-2011, SEC.2.

IC 29-3-2-3 Guardian ad litem; appointment

Sec. 3. (a) Unless waived under subsection (b) or if section 4 of this chapter does not apply, the court shall appoint a guardian ad litem to represent the interests of the alleged incapacitated person [REDACTED] if the court determines that the alleged incapacitated person [REDACTED] is not represented or is not adequately represented by counsel. If not precluded by a conflict of interest, a guardian ad litem may be appointed to represent several persons or interests. The court as part of the record of the proceeding shall set out its reasons for appointing a guardian ad litem.

(b) [REDACTED]

As added by P.L.169-1988, SEC.1. Amended by P.L.33-1989, SEC.63; P.L.154-1990, SEC.12; P.L.118-1997, SEC.25.

IC 29-3-2-4 Discretion of court; binding orders

Sec. 4. (a) All findings, orders, or other proceedings under this article shall be in the discretion of the court unless otherwise provided in this article.

(b) If there is not a conflict of interest between a guardian of an estate and the protected person or among persons represented, orders binding a guardian of an estate bind the protected person.

(c) Orders binding a guardian of the person bind the ward if a guardian of the ward's estate has not been appointed.

As added by P.L.169-1988, SEC.1. Amended by P.L.118-1997, SEC.26; P.L.252-2001, SEC.25.

IC 29-3-2-5 Residence; determination

Sec. 5. The residence of a person shall be determined by actual presence rather than technical domicile.

As added by P.L.169-1988, SEC.1.

IC 29-3-2-6 Application of decedents' estates law to guardianships and protected persons

Sec. 6. (a) The applicable rules regarding decedents' estates in IC 29-1-7 through IC 29-1-17⁷ apply to guardianships and protective proceedings under IC 29-3-4 when consistent with this article and IC 29-1-19.⁸

(b) IC 29-1-1-6 through IC 29-1-1-7, IC 29-1-1-9 through IC 29-1-1-10, IC 29-1-1-12 through IC 29-1-1-14, IC 29-1-1-16 through IC 29-1-1-18, and IC 29-1-1-20 through IC 29-1-1-24⁹ apply to guardianships under this article and IC 29-1-19.

(c) This article extends to persons specifically provided for under IC 29-1-19. The provisions of this article are cumulative to the provisions of IC 29-1-19. A conflict arising between this article and IC 29-1-19 is resolved by giving effect to the law stated in IC 29-1-19 in cases to which it applies.

(d) The provisions of IC 29-1-15¹⁰ concerning the sale of decedents' property apply to the sale of protected persons' property.

(e) The provisions of IC 29-1-16¹¹ concerning accounting in decedents' estates apply to accounting in protected persons' estates that are consistent with this article.

(f) The provisions of IC 29-1-14-2, IC 29-1-14-10, IC 29-1-14-11, IC 29-1-14-12, IC 29-1-14-13, and IC 29-1-14-17¹² concerning claims against decedents' estates apply to claims against protected persons' estates.

As added by P.L.264-1989, SEC.3.

IC 29-3-2-7 Submissions to the court; court requests for information

Sec. 7. (a)

⁷ IC 29-1-7: Probate and Grant of Administration; IC 29-1-7.5: Unsupervised Administration; IC 29-1-8: Dispensing With Administration; IC 29-1-9: Adjudicated Compromise of Controversies; IC 29-1-10: Personal Representatives; IC 29-1-11: Bond of Personal Representative; IC 29-1-12: Inventory; IC 29-1-13: Collection and Management of Assets; IC 29-1-14: Claims Against the Estate; IC 29-1-15: Sales, Mortgages, Leases, Exchanges – Personal and Real Property; IC 29-1-16: Accounting; IC 29-1-17: Distribution and Discharge.

⁸ This is a special section of the Indiana Probate Code entitled “Department of Veterans Affairs” and which provides for a special means of appointing a guardian for a veteran for the payment of VA benefits, or payments from the federal government when a guardian is required before payment can be made.

⁹ IC 29-1-1-6: Disqualification of Judges; IC 29-1-1-7: Rules and Forms of Procedures; IC 29-1-1-9: Petitions; IC 29-1-1-10: Notice of Filings, Objections or Answers; IC 29-1-1-12: Service of Notice; IC 29-1-1-13: service by Publication or Mail, Personal Service; IC 29-1-1-14: Service Upon Attorney; IC 29-1-1-16: Proof of Service, Filing; IC 29-1-1-17: Proof of Service as Evidence; IC 29-1-1-18: Notices, Proof of Compliance; IC 29-1-1-20: Incapacitated Persons, Unknown Persons, Guardians; IC 29-1-1-21: Orders, Judgments, Decrees, Vacating or Modifying; IC 29-1-1-22: Appeals, Stay of Proceedings; IC 29-1-1-23: Record of Proceedings, Dockets; IC 29-1-1-24: Fraud, Relief for Injured Parties.

¹⁰ It is unknown why this section is in there, as it is repetitive to the section above, IC 29-3-2-6(a).

¹¹ Again, this is repetitive.

¹² Ditto.

[REDACTED]

As added by P.L.239-2013, SEC.1.

CHAPTER 3 – PROCEEDINGS IN LIEU OF GUARDIANSHIPS

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IC 29-3-3-1 Payment of debt owed to minor; delivery of minor's property in possession of another; use of payment or property

[REDACTED]

As added by P.L.169-1988, SEC.1. Amended by P.L.264-1989, SEC.4; P.L.42-1998, SEC.3; P.L.252-2001, SEC.26.

IC 29-3-3-2 Property of incapacitated person not in excess of \$10,000; deposit, delivery, and disposition of property; compensation and expenses of receiver

Sec. 2. When the entire property of an incapacitated person does not exceed the value of ten thousand dollars (\$10,000), the court may, without the appointment of a guardian, giving of bond, or other order of court, authorize:

(1) the deposit of the property in a depository authorized to receive fiduciary funds in the name of a suitable person designated by the court; or

(2) if the property does not consist of money, the delivery of the property to a suitable person designated by the court.

The person receiving the property shall hold and dispose of the property in the manner the court directs and is entitled to reasonable compensation and to reimbursement for reasonable expenses incurred in good faith on behalf of the incapacitated person and approved by the court.

As added by P.L.169-1988, SEC.1. Amended by P.L.264-1989, SEC.5; P.L.252-2001, SEC.27.

IC 29-3-3-3 Custody of minor by parents; consents, waivers, and powers of attorney provided by statute or Internal Revenue Code; consent to medical treatment

[REDACTED]

As added by P.L.169-1988, SEC.1. Amended by P.L.33-1989, SEC.64; P.L.155-1990, SEC.1; P.L.192-2002(ss), SEC.171; P.L.79-2017, SEC.74.

IC 29-3-3-3.5 Custodians of individual retirement accounts

[REDACTED]

IC 29-3-3-4 Temporary guardians; notice; suspension of guardian; powers and responsibilities

Sec. 4. (a) If:

(1) a guardian has not been appointed for an incapacitated person [REDACTED];
(2) an emergency exists;
(3) the welfare of the incapacitated person [REDACTED] requires immediate action; and
(4) no other person appears to have authority to act in the circumstances;
the court, on petition by any person or on its own motion, may appoint a temporary guardian for the incapacitated person [REDACTED] for a specified period not to exceed ninety (90) days. **Upon notice and hearing, the court may, with good cause shown, grant one (1) extension of the temporary guardianship for not more than ninety (90) days.** No such appointment shall be made except after notice and hearing unless it is alleged and found by the court that immediate and irreparable injury to the person or injury, loss, or damage to the property of the alleged incapacitated person [REDACTED] may result before the alleged incapacitated person [REDACTED] can be heard in response to the petition.¹³ If a temporary guardian is appointed without advance notice and the alleged incapacitated person [REDACTED] files a petition that the guardianship be terminated or the court order modified, the court shall hear and determine the petition at the earliest possible time.

(b) If:

(1) a petition is filed under this section for the appointment of a temporary guardian;
and

(2) each person required to receive notice under IC 29-3-6-1(a) has not:

(A) received a complete copy of the petition and notice required by IC 29-3-6-2

before the court considers and acts on the petition; or

(B) received actual notice of the filing of the petition and specifically waived in writing the necessity for service of the notice required under IC 29-3-6-2 before the court considers and acts on the petition;

the petitioner shall, on the earlier of the date the court enters an order scheduling a hearing on the petition or the date the court enters an order appointing a temporary guardian, serve complete copies of the petition, the court's order, and the notice required by IC 29-3-6-2 on every person entitled to receive notice under IC 29-3-6-1(a) and on each additional person to whom the court directs that notice be given. The requirements of this subsection are in addition to the petitioner's obligations under **Rule 65 of the Indiana Rules of Trial Procedure**¹⁴ to make a specific showing of the petitioner's efforts to provide advance notice to all interested persons or the reasons why advance notice cannot or should not be given.

(c) If the court finds that a previously appointed guardian is not effectively performing fiduciary duties and that the welfare of the protected person requires immediate action, the court may suspend the authority of the previously appointed guardian and appoint a temporary guardian for the protected person for any period fixed by the court. The authority of the previously appointed guardian is suspended as long as a temporary guardian appointed under this subsection has authority to act.

(d) A temporary guardian appointed under this section has only the responsibilities and powers that are ordered by the court. The court shall order only the powers that are necessary to prevent immediate and substantial injury or loss to the person or property of the alleged incapacitated person [REDACTED] in an appointment made under this section.

(e) Proceedings under this section are not subject to the provisions of **IC 29-3-4**.¹⁵

(f) A proceeding under this section may be joined with a proceeding under **IC 29-3-4** or **IC 29-3-5**.¹⁶

*As added by P.L.169-1988, SEC.1. Amended by P.L.33-1989, SEC.65; P.L.154-1990, SEC.13; P.L.178-2011, SEC.3.; **P.L.161-2018, SEC.36.***

¹³ This is essentially a reference to the language of Indiana Trial Rule 65(B).

¹⁴ This trial rule sets requirements and rules for injunctions and temporary restraining orders.

¹⁵ This refers to the chapter entitled "Protective Proceedings and Single Transactions."

¹⁶ This refers to the chapter on regular guardianship proceedings, "Proceedings for Appointment of Guardian or to Procure a Protective Order" In other words, you may combine a petition for temporary guardianship with a petition for regular guardianship or for a protective order of single transaction proceeding.

IC 29-3-3-5 Application for public assistance or transfer; authority of chief of social services at state institution

[REDACTED]

As added by P.L.169-1988, SEC.1. Amended by P.L.2-1992, SEC.793; P.L.1-1993, SEC.214; P.L.40-1994, SEC.74; P.L.215-2001, SEC.105; P.L.141-2006, SEC.110.

IC 29-3-3-6 Surviving parent; custody proceedings; temporary guardian or guardian ad litem; hearing

[REDACTED]

As added by P.L.155-1990, SEC.2. Amended by P.L.1-1993, SEC.215; P.L.1-1997, SEC.119; P.L.68-2005, SEC.7.

IC 29-3-3-7 Standby guardians

Sec. 7. (a) Subject to subsection (e), [REDACTED] the guardian of a protected person may designate a standby guardian by making a written declaration naming the individual designated to serve as a standby guardian. A declarant may name an alternate to the designated standby guardian if the designated standby guardian is unable to serve, refuses to serve, renounces the appointment, dies, or becomes incapacitated after the death of the declarant.

(b) A declaration under this section must contain the following information:

(1) The names of the declarant, the designated standby guardian, and the alternate standby guardian, if any.

(2) The following information concerning each [REDACTED] protected person for whom a standby guardian is designated by the declaration:

(A) The person's full name as it appears on the birth certificate or as ordered by a court.

- (B) The person's date of birth.
- (3) A statement that the declaration becomes effective upon the death or incapacity of the declarant.
- (4) A statement that the declaration terminates ninety (90) days after becoming effective unless the standby guardian files a petition for a guardianship of [REDACTED] protected person during that ninety (90) day period.
- (c) A declaration executed under this section must be signed by the declarant in the presence of a notary public.
- (d) A declaration executed under this section becomes effective upon the death or incapacity (as defined in IC 29-3-1-7.5) of the [REDACTED] guardian and terminates ninety (90) days after the declaration becomes effective. However, if the designated standby guardian files a petition for a guardianship of the [REDACTED] protected person during that ninety (90) day period, the declaration remains in effect until the court rules on the petition.
- (e) [REDACTED]
- (f) A standby guardian shall have all the powers granted to a guardian under this article.
- As added by P.L.178-2011, SEC.4. Amended by P.L.149-2012, SEC.9.*

CHAPTER 4 – PROTECTIVE PROCEEDINGS AND SINGLE TRANSACTIONS

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IC 29-3-4-1 Protective orders; notice and hearing; findings; protective arrangements

- Sec. 1. (a) Upon petition by any person and after a hearing under IC 29-3-5¹⁷, the court may issue, without the appointment of a guardian, any protective order for the benefit of a person who has been adjudicated an incapacitated person [REDACTED].
- (b) Notice of the filing of a petition under this chapter for the issuance of a protective order and the hearing on the petition shall be given under IC 29-3-6.¹⁸
- (c) Incapacitated persons [REDACTED] have the same rights at the hearing on a petition filed under this chapter for the issuance of a protective order as they would have at a hearing for the appointment of a guardian.
- (d) The court may issue a protective order concerning an incapacitated person if the court finds that:
- (1) the incapacitated person:
- (A) owns property or has income requiring management or protection that cannot otherwise be provided;
- (B) has or may have financial or business affairs that may be jeopardized or impaired; or
- (C) has property that needs to be managed to provide for the support or protection of the incapacitated person;

¹⁷ This is referring to the Chapter entitled "Proceedings for Appointment of Guardian or to Procure a Protective Order," meaning a petition for a protective order follows the same procedures as for a regular guardianship.

¹⁸ This refers to the Chapter on notices, so same Notice requirements as for a regular guardianship.

- (2) the incapacitated person is unable to manage the incapacitated person's property and financial or business affairs effectively; and
- (3) the protection sought is necessary.

The court shall make the orders that it considers proper and appropriate to protect the person, business affairs, and property of the incapacitated person.

(e)

(f) If the court finds grounds for a protective order under subsection (d) or (e), it may, without appointing a guardian, declare the person to be a protected person and authorize or ratify any transaction necessary or desirable to meet the needs of the protected person.

Protective arrangements include the following:

- (1) The payment, delivery, deposit, or retention of property.
- (2) The sale, mortgage, lease, or other transfer of property.
- (3) The entry into an annuity contract, a contract for life care, a deposit contract, or a contract for training and educating a person.
- (4) The addition to or establishment of a suitable trust.

As added by P.L.169-1988, SEC.1. Amended by P.L.33-1989, SEC.66; P.L.6-2010, SEC.9.

IC 29-3-4-2 Contracts, trusts or business transactions of incapacitated person or minor; ratification by court; exercise of parental powers in absence of guardian

Sec. 2. The court may, without appointment of a guardian, by protective order authorize or ratify:

- (1) any contract, trust, or other transaction relating to the property and financial or business affairs of the incapacitated person [REDACTED] if the court determines the transaction to be in the incapacitated person's [REDACTED] best interest; or
- (2) if no guardian is acting for an incapacitated person, the exercise of any power on the incapacitated person's behalf that is the same as that given to the parent of a minor under IC 29-3-3-3.¹⁹

As added by P.L.169-1988, SEC.1. Amended by P.L.33-1989, SEC.67.

¹⁹ IC 29-3-3-3 Custody of minor by parents; consents, waivers, and powers of attorney provided by statute or Internal Revenue Code; consent to medical treatment.

Sec. 3. Except as otherwise determined in a dissolution of marriage proceeding, a custody proceeding, or in some other proceeding authorized by law, including a proceeding under section 6 of this chapter or another proceeding under this article, and unless a minor is married, the parents of the minor jointly (or the survivor if one (1) parent is deceased), if not an incapacitated person, have, without the appointment of a guardian, giving of bond, or order or confirmation of court, the right to custody of the person of the minor and the power to execute the following on behalf of the minor:

- (1) Consent to the application of subsection (c) of Section 2032A of the Internal Revenue Code, which imposes personal liability for payment of the tax under that Section.
- (2) Consent to the application of Section 6324A of the Internal Revenue Code, which attaches a lien to property to secure payment of taxes deferred under Section 6166 of the Internal Revenue Code.
- (3) Any other consents, waivers, or powers of attorney provided for under the Internal Revenue Code.
- (4) Waivers of notice permissible with reference to proceedings under IC 29-1.
- (5) Consents, waivers of notice, or powers of attorney under any statute, including the Indiana adjusted gross income tax law (IC 6-3).
- (6) Consent to unsupervised administration as provided in IC 29-1-7.5.
- (7) Federal and state income tax returns.
- (8) Consent to medical or other professional care, treatment, or advice for the minor's health and welfare.

IC 29-3-4-3 Creditors and dependents to be considered by court before issuing protective order; appointment of limited guardian; authority conferred by order

Sec. 3. Before issuing a protective order under this chapter, the court shall consider the interest of creditors and dependents of the protected person and, in view of the disability of the protected person, whether the protected person needs the protection of a guardian. The court may appoint a limited guardian to assist in the establishment of any protective arrangement or other transaction. All persons acting under a protective order have the authority conferred by the order and serve until discharged by the court after reporting to the court all matters conducted under the order.

As added by P.L.169-1988, SEC.1.

IC 29-3-4-4 Compensation; persons whose services benefited protected person or his or her property

Sec. 4. If not otherwise compensated for services rendered, any guardian, attorney, physician, or other person whose services are provided in good faith and are beneficial to the protected person or the protected person's property is entitled to reasonable compensation and reimbursement for reasonable expenditures made on behalf of the protected person. These amounts may be paid from the property of the protected person as ordered by the court.

As added by P.L.169-1988, SEC.1.

CHAPTER 5 – PROCEEDINGS FOR APPOINTMENT OF GUARDIAN OR TO PROCURE A PROTECTIVE ORDER

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29-3-5-1 Petitions for appointment of a guardian or to have a protective order issued; requirements; notice and hearing; conduct of hearing; participation by department of child services

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29-3-5-3 Findings; appointment of guardian; limited guardianship; protective orders

29-3-5-4 Considerations for appointment of guardian

29-3-5-5 Persons entitled to consideration for appointment as a guardian

29-3-5-6 Two or more minors or incapacitated persons; petition for appointment of guardian; separate accounting

IC 29-3-5-1 Petitions for appointment of a guardian or to have a protective order issued; requirements; notice and hearing; conduct of hearing; participation by department of child services

Sec. 1. (a) Any person may file a petition for the appointment of a person to serve as guardian for an incapacitated person under this chapter or to have a protective order issued under IC 29-3-4. The petition must state the following:

- (1) The name, age, residence, and post office address of the alleged incapacitated person for whom the guardian is sought to be appointed or the protective order issued.
- (2) The nature of the incapacity.
- (3) The approximate value and description of the property of the incapacitated person, including any compensation, pension, insurance, or allowance to which the incapacitated person may be entitled.
- (4) If a limited guardianship is sought, the particular limitations requested.
- (5) Whether a protective order has been issued or a guardian has been appointed or is acting for the incapacitated person in any state.
- (6) The residence and post office address of the proposed guardian or person to carry out the protective order and the relationship to the alleged incapacitated person of:
 - (A) the proposed guardian; or
 - (B) the person proposed to carry out the protective order.

(7) The names and addresses, as far as known or as can reasonably be ascertained, of the persons most closely related by blood or marriage to the person for whom the guardian is sought to be appointed or the protective order is issued.

(8) The name and address of the person or institution having the care and custody of the person for whom the guardian is sought to be appointed or the protective order is issued.

(9) The names and addresses of any other incapacitated persons [REDACTED] for whom the proposed guardian or person to carry out the protective order is acting if the proposed guardian [REDACTED] is an individual.

(10) The reasons the appointment of a guardian or issuance of a protective order is sought and the interest of the petitioner in the appointment or issuance.

(11) The name and business address of the attorney who is to represent the guardian or person to carry out the protective order.

(12) [REDACTED]

(b) Notice of a petition under this section for the appointment of a guardian or the issuance of a protective order and the hearing on the petition shall be given under IC 29-3-6.

(c) After the filing of a petition, the court shall set a date for a hearing on the issues raised by the petition. Unless an alleged incapacitated person is already represented by counsel, the court may appoint an attorney to represent the incapacitated person.

(d) A person alleged to be an incapacitated person must be present at the hearing on the issues raised by the petition and any response to the petition unless the court determines by evidence that:

(1) it is impossible or impractical for the alleged incapacitated person to be present due to the alleged incapacitated person's disappearance, absence from the state, or similar circumstance;

(2) it is not in the alleged incapacitated person's best interest to be present because of a threat to the health or safety of the alleged incapacitated person as determined by the court;

(3) the incapacitated person has knowingly and voluntarily consented to the appointment of a guardian or the issuance of a protective order and at the time of such consent the incapacitated person was not incapacitated as a result of a mental condition that would prevent that person from knowingly and voluntarily consenting; or

(4) the incapacitated person has knowingly and voluntarily waived notice of the hearing and at the time of such waiver the incapacitated person was not incapacitated as a result of a mental condition that would prevent that person from making a knowing and voluntary waiver of notice.

(e) A person alleged to be an incapacitated person may present evidence and cross-examine witnesses at the hearing. The issues raised by the petition and any response to the petition shall be determined by a jury if a jury is requested no later than seventy-two (72) hours prior to the original date and time set for the hearing on the petition. However, in no event may a request for a jury trial be made after thirty (30) days have passed following the service of notice of a petition.

(f) Any person may apply for permission to participate in the proceeding, and the court may grant the request with or without hearing upon determining that the best interest of the alleged incapacitated person [REDACTED] will be served by permitting the applicant's participation. The court may attach appropriate conditions to the permission to participate.

(g) [REDACTED]

As added by P.L.169-1988, SEC.1. Amended by P.L.33-1989, SEC.68; P.L.6-2010, SEC.10;

P.L.162-2011, SEC.2.

IC 29-3-5-1.5 Submit information for criminal history check

[REDACTED]

As added by P.L.104-2015, SEC.5.

IC 29-3-5-2 Appointment of guardian before adjudication of incapacity or minority

Sec. 2. A guardian may not be appointed for an incapacitated person [REDACTED] under this chapter until the incapacity [REDACTED] has been adjudicated.

As added by P.L.169-1988, SEC.1. Amended by P.L.264-1989, SEC.6.

IC 29-3-5-3 Findings; appointment of guardian; limited guardianship; protective orders

Sec. 3. (a) Except under subsection (c), if it is alleged and the court finds that:

(1) the individual for whom the guardian is sought is an incapacitated person [REDACTED]; and

(2) the appointment of a guardian is necessary as a means of providing care and supervision of the physical person or property of the incapacitated person [REDACTED]; the court shall appoint a guardian under this chapter.

(b) If it is alleged and the court finds that the welfare of an incapacitated person would be best served by limiting the scope of the guardianship, the court shall make the appointive or other orders under this chapter to:

(1) encourage development of the incapacitated person's self-improvement, self-reliance, and independence; and

(2) contribute to the incapacitated person's living as normal a life as that person's condition and circumstances permit without psychological or physical harm to the incapacitated person.

(c) If the court finds that it is not in the best interests of the incapacitated person [REDACTED] to appoint a guardian, the court may:

(1) treat the petition as one for a protective order and proceed accordingly;

(2) enter any other appropriate order; or

(3) dismiss the proceedings.

As added by P.L.169-1988, SEC.1. Amended by P.L.33-1989, SEC.69.

IC 29-3-5-4 Considerations for appointment of guardian

Sec. 4. The court shall appoint as guardian a qualified person or persons most suitable and willing to serve, having due regard to the following:

(1) Any request made by a person alleged to be an incapacitated person, including designations in a durable power of attorney under IC 30-5-3-4(a).²⁰

(2) [REDACTED]

[REDACTED]

(3) Any request contained in a will or other written instrument.

(4) A designation of a standby guardian under IC 29-3-3-7.

²⁰ **IC 30-5-3-4 Guardians; nomination; appointment; powers and duties; amendment or revocation of power; hearing; notice**

Sec. 4. (a) A principal may nominate a guardian for consideration by the court if protective proceedings for the principal's person or estate are commenced. The court shall make an appointment in accordance with the principal's most recent nomination in a power of attorney except for good cause or disqualification.

- (5) [REDACTED]
- (6) Any request made by the spouse of the alleged incapacitated person.
- (7) The relationship of the proposed guardian to the individual for whom guardianship is sought.
- (8) Any person acting for the incapacitated person under a durable power of attorney.
- (9) The best interest of the incapacitated person [REDACTED] and the property of the incapacitated person [REDACTED].

As added by P.L.169-1988, SEC.1. Amended by P.L.264-1989, SEC.7; P.L.149-1991, SEC.3; P.L.190-2016, SEC.39; P.L.194-2017, SEC.7.

IC 29-3-5-5 Persons entitled to consideration for appointment as a guardian

Sec. 5. (a) The following are entitled to consideration for appointment as a guardian under section 4 of this chapter in the order listed:

- (1) A person designated in a durable power of attorney.
- (2) A person designated as a standby guardian under IC 29-3-3-7.
- (3) The spouse of an incapacitated person.
- (4) An adult child of an incapacitated person.
- (5) A parent of an incapacitated person, or a person nominated by will of a deceased parent of an incapacitated person or by any writing signed by a parent of an incapacitated person and attested to by at least two (2) witnesses, **or in a power of attorney of a living parent of an incapacitated person under IC 30-5-3-4(c).**²¹

(6) [REDACTED]

(7) Any person related to an incapacitated person by blood or marriage with whom the incapacitated person has resided for more than six (6) months before the filing of the petition.

(8) A person nominated by the incapacitated person who is caring for or paying for the care of the incapacitated person.

(b) With respect to persons having equal priority, the court shall select the person it considers best qualified to serve as guardian. The court, acting in the best interest of the incapacitated person [REDACTED], may pass over a person having priority and appoint a person having a lower priority or no priority under this section.

As added by P.L.169-1988, SEC.1. Amended by P.L.33-1989, SEC.70; P.L.190-2016, SEC.40; P.L.194-2017, SEC.8.

IC 29-3-5-6 Two or more minors or incapacitated persons; petition for appointment of guardian; separate accounting

Sec. 6. When a petition is filed for the appointment of a guardian for two (2) or more [REDACTED] incapacitated persons who are children of a common parent, parent and child, or husband and wife, a separate petition need not be filed for each [REDACTED] incapacitated person, and appointment of a guardian for all may be considered in one (1) proceeding. A separate accounting is required for each [REDACTED] incapacitated person, but an actual segregation of assets is not required except as required by the court.

As added by P.L.169-1988, SEC.1. Amended by P.L.33-1989, SEC.71.

CHAPTER 6 – NOTICE OF HEARINGS

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29-3-6-1 Notice of petition and hearing; persons to whom notice must be given; waiver of notice

29-3-6-2 Notice; form and contents; copy of petition to be attached

29-3-6-3 Request for written notice of proceedings and pleadings; determination of

²¹ **IC 30-5-3-4 Guardians; nomination; appointment; powers and duties; amendment or revocation of power; hearing; notice**

Sec. 4. (c) A parent of an incapacitated person may nominate a guardian of the incapacitated person for consideration by the court if protective proceedings for the incapacitated person's person or estate are commenced. The court shall consider a nomination in a power of attorney.

interest; failure to comply with request

IC 29-3-6-1 Notice of petition and hearing; persons to whom notice must be given; waiver of notice

Sec. 1. (a) When a petition for appointment of a guardian or for the issuance of a protective order is filed with the court, notice of the petition and the hearing on the petition shall be given by first class postage prepaid mail as follows:

- (1) If the petition is for the appointment of a successor guardian, notice shall be given unless the court, for good cause shown, orders that notice is not necessary.
- (2) If the petition is for the appointment of a temporary guardian, notice shall be given as required by IC 29-3-3-4.²²

(3) [REDACTED]

(4) If it is alleged that the person is an incapacitated person, notice of the petition and the hearing on the petition shall be given to the following persons whose whereabouts can be determined upon reasonable inquiry:

(A) The alleged incapacitated person, the alleged incapacitated person's spouse, and the alleged incapacitated person's adult children, or if none, the alleged incapacitated person's parents.

(B) Any person who is serving as a guardian for, or who has the care and custody of, the alleged incapacitated person.

(C) In case no person other than the incapacitated person is notified under clause (A), at least one (1) of the persons most closely related by blood or marriage to the alleged incapacitated person.

(D) Any person known to the petitioner to be serving as the alleged incapacitated person's attorney-in-fact under a durable power of attorney.

(E) Any other person that the court directs.

Notice is not required under this subdivision if the person to be notified waives notice or appears at the hearing on the petition.

(b) Whenever a petition (other than one for the appointment of a guardian or for the issuance of a protective order) is filed with the court, notice of the petition and the hearing on the petition shall be given to the following persons, unless they appear or waive notice:

(1) The guardian.

(2) Any other persons that the court directs, including the following:

(A) Any department, bureau, agency, or political subdivision of the United States or of this state that makes or awards compensation, pension, insurance, or other allowance for the benefit of an alleged incapacitated person.

(B) Any department, bureau, agency, or political subdivision of this state that may be charged with the supervision, control, or custody of an alleged incapacitated person.

As added by P.L.169-1988, SEC.1. Amended by P.L.264-1989, SEC.8; P.L.95-2007, SEC.13; P.L.143-2009, SEC.15; P.L.178-2011, SEC.5.

IC 29-3-6-2 Notice; form and contents; copy of petition to be attached

Sec. 2. A copy of the petition shall be attached to the notice, and the notice must be in substantially the following form:

²² This is a reference to the temporary guardianship stand-alone statute.

NOTICE

TO: (name and address of person receiving notice)

On (date of hearing) at (time of hearing) in (place of hearing) at (city), Indiana, the (name and address of court) will hold a hearing to determine whether a guardian should be appointed or a protective order should be issued for (name of alleged incapacitated person [REDACTED]). A copy of the petition requesting appointment of a guardian or for the issuance of a protective order is attached to this notice.

At the hearing the court will determine whether (name of alleged incapacitated person [REDACTED]) is an incapacitated person [REDACTED] under Indiana law. This proceeding may substantially affect the rights of (name of alleged incapacitated person [REDACTED]).

If the court finds that (name of alleged incapacitated person [REDACTED]) is an incapacitated person [REDACTED], the court at the hearing shall also consider whether (name of proposed guardian, if any) should be appointed as guardian of (name of alleged incapacitated person [REDACTED]). The court may, in its discretion, appoint some other qualified person as guardian. The court may also, in its discretion, limit the powers and duties of the guardian to allow (name of alleged incapacitated person [REDACTED]) to retain control over certain property and activities. The court may also determine whether a protective order should be entered on behalf of (name of alleged incapacitated person [REDACTED]).

(Name of alleged incapacitated person) may attend the hearing and be represented by an attorney. The petition may be heard and determined in the absence of (name of alleged incapacitated person) if the court determines that the presence of (name of alleged incapacitated person) is not required. If (name of alleged incapacitated person) attends the hearing, opposes the petition, and is not represented by an attorney, the court may appoint an attorney to represent (name of alleged incapacitated person). The court may, where required, appoint a guardian ad litem to represent (name of alleged incapacitated person [REDACTED]) at the hearing.

The court may, on its own motion or on request of any interested person, postpone the hearing to another date and time.

(signature of clerk of the court)

As added by P.L.169-1988, SEC.1. Amended by P.L.264-1989, SEC.9; P.L.77-1992, SEC.6; P.L.6-2010, SEC.11.

IC 29-3-6-3 Request for written notice of proceedings and pleadings; determination of interest; failure to comply with request

Sec. 3. (a) At any time after the appointment of a guardian or the issuance of a protective order, any person may, in person or by the person's attorney, serve upon the guardian or the guardian's attorney, and file with the clerk of the court where the proceedings are pending, a written request together with a written admission or proof of service stating that the person desires written notice of all hearings and copies of all pleadings or other papers in connection with:

- (1) the settlement of accounts;
- (2) the sale, mortgage, lease, or exchange of any property of the protected person;
- (3) allowances of any nature payable from the protected person's property;
- (4) the investment of funds of the protected person;
- (5) a petition to request the authority to petition for dissolution of marriage, legal separation, or annulment of marriage on behalf of the protected person as provided under IC 29-3-9-12.2;
- (6) the removal, suspension, or discharge of the guardian;
- (7) the final termination of the guardianship; or
- (8) any other notice or matter as specified in the request.

The applicant requesting special notice must include in the written request the applicant's post office address or that of the applicant's attorney. The court may determine that any person requesting notice under this section has no interest in the proceeding, either generally or with respect to a particular matter, and is not entitled to the notice requested. Unless the court otherwise directs, upon filing the request, the guardian or the guardian's attorney shall

comply with the request.

(b) Failure to comply with a request for notice under this section does not affect the validity of the proceeding.

As added by P.L.169-1988, SEC.1. Amended by P.L.83-2014, SEC.1.

Chapter 7 – Qualification and Bonding Requirements for Guardians

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29-3-7-3 Letters of guardianship

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29-3-7-5 Guardianship property; possession by guardian; transfer of property interest; process against property

29-3-7-6 Evidence of possessory and disposition rights in guardianship property; real property of guardianship; filing of letters of appointment or termination orders

29-3-7-7 Persons prohibited from being appointed or from serving as a guardian

IC 29-3-7-1 Guardian's bond; amount; collateral in lieu of sureties on bond; reduced bonds

Sec. 1. (a) Unless the court finds that a bond is unnecessary and enters an order to that effect, or unless the appointed guardian is a bank or trust company (as defined in [IC 28-1-1-3](#)²³), a guardian must execute and file a bond relating to the duties of the guardian's office. Unless otherwise directed by the court, the bond must be in an amount that is not less than the amount determined under STEP THREE of the following STEPS:

STEP ONE: Enter the aggregate value of the guardianship property.

STEP TWO: Add to the amount entered under STEP ONE one (1) year's estimated income.

STEP THREE: From the sum determined under STEP TWO subtract the value of any property that the guardian, by express limitation of power, lacks the power to sell, convey, or encumber without a court order.

(b) The court, instead of sureties on a bond, may accept other collateral for the performance of the bond, including a pledge of securities or a mortgage of the land.

(c) The court may fix the bond at an amount less than that provided under subsection (a), but the amount fixed must, in the court's opinion, provide adequate protection to the property of the protected person. In fixing a reduced bond, the court may do any of the following:

(1) Direct the guardian to invest all, or a part of, the property subject to the guardian's control in:

(A) stocks, bonds, or other securities of any corporation, public or private, which are listed or admitted to trading on the New York Stock Exchange, the American Stock Exchange, the Midwest Stock Exchange, the Pacific Coast Stock Exchange, or any other exchange regulated by the Securities and Exchange Commission; or

(B) securities that are obligations issued or guaranteed by the United States.

(2) Direct the guardian to place all, or a part of, the property subject to the guardian's control in a savings account. However, the court may require property to be held in a manner that requires either the joint authorization of the guardian and the guardian's surety or an order of the court to remove the funds from the account.

(3) Direct the guardian to transfer all, or a part of, the property subject to the guardian's control to a bank or trust company organized under the laws of Indiana or of the United States and operating a bank or trust company located within Indiana to administer the estate as an agent for the guardian.

²³ **IC 28-1-1-3 Definitions**

(2) "Bank" or "bank or trust company" means a financial institution organized or reorganized as a bank, bank of discount and deposit, or trust company under the laws of this state with the express power to receive and accept deposits of money subject to withdrawal by check, and possessing such other rights and powers granted by the provisions of this article in express terms or by implication. The term "bank" or "bank or trust company" does not include a savings association, credit union, or industrial loan and investment company.

(4) Direct the guardian to:

(A) transfer any or all stocks, bonds, and securities subject to the guardian's control only after obtaining an order of the court directing the transfer; and

(B) require that notice of this restriction on the transfer of such stocks, bonds, and securities be placed upon the certificates evidencing those stocks, bonds, and securities.

(5) Direct the guardian to comply with all, part, or any combination of the requisites specified in subdivisions (1) through (4).

(6) Direct the guardian to take any other action that the court determines necessary to provide adequate protection to the property of the protected person.

As added by P.L.169-1988, SEC.1.

IC 29-3-7-2 Bond requirements; liability; consent to jurisdiction; proceedings against sureties

Sec. 2. (a) The following requirements apply to all bonds on which the guardian is primary obligor:

(1) Unless otherwise provided by the terms of the bond, sureties are jointly and severally liable with the primary obligor and with each other.

(2) By executing the bond, the surety consents to the jurisdiction of the court that issued letters in any proceeding pertaining to the fiduciary duties of the primary obligor and naming the surety as a party respondent. Notice of any proceeding under this article must be delivered to the surety or mailed by registered or certified mail to the address listed with the court at the place where the bond is filed and to the address as then known to the petitioner.

(3) On petition of a successor to the primary obligor or any interested person, a proceeding may be initiated against a surety for breach of the obligation of the bond of the primary obligor.

(4) The bond is not void after the first recovery but may be proceeded against from time to time until the whole penalty is exhausted.

(b) No proceeding may be commenced against the surety on any matter as to which an action or proceeding against the primary obligor is barred by adjudication or limitation.

As added by P.L.169-1988, SEC.1.

IC 29-3-7-3 Letters of guardianship

Sec. 3. (a) Letters of guardianship, temporary or otherwise, shall be issued to the person entitled to receive them when:

(1) the guardian, if an individual, has filed bond if required and taken and subscribed before the clerk or any other officer authorized to administer oaths, an oath or affirmation that the guardian will faithfully discharge the duties of the guardian's trust according to law; or

(2) the guardian, if other than an individual, has filed bond if required and has:

(A) taken and subscribed before the clerk or any other officer authorized to administer oaths an oath or affirmation that it will faithfully discharge the duties of its trust according to law; and

(B) filed an acceptance of the appointment, duly executed and acknowledged by one (1) of its officers.

(b) The oath, and if other than an individual also the acceptance, shall be filed and recorded as a part of the proceedings of the guardianship.

(c) If the court limits or restricts the authority of the guardian or creates a limited guardianship, the letters must so state under **IC 29-3-8**.²⁴

As added by P.L.169-1988, SEC.1.

²⁴ This is a reference to the Chapter entitled "Responsibilities and Powers of Guardian." It is uncertain what exactly is meant by this reference, but it makes sense if read specifically in context of IC 29-3-8-8(b), which states: "(b) However, all limitations must be endorsed on the guardian's letters. Following the same procedure, a limitation may be removed or modified and appropriate revised letters issued."

IC 29-3-7-4 Acceptance of appointment as submission to personal jurisdiction

Sec. 4. By accepting appointment, a guardian and the guardian's attorney submit personally to the jurisdiction of the court in any proceeding relating to the guardianship.
As added by P.L.169-1988, SEC.1.

IC 29-3-7-5 Guardianship property; possession by guardian; transfer of property interest; process against property

Sec. 5. (a) A guardian shall take possession of the guardianship property, title to which shall remain in the protected person subject to the right of the guardian to possess and dispose of the property as provided by law.

(b) The interest of the protected person in guardianship property is not transferable or assignable by the protected person. An attempted transfer or assignment by the protected person, though ineffective to affect property rights, may generate a claim under **IC 29-3-10**.²⁵

(c) The property referred to in subsections (a) through (b) is not subject to levy, garnishment, or similar process other than an order issued in a proceeding on a claim under **IC 29-3-10**.

As added by P.L.169-1988, SEC.1.

IC 29-3-7-6 Evidence of possessory and disposition rights in guardianship property; real property of guardianship; filing of letters of appointment or termination orders

Sec. 6. (a) Letters are evidence that the guardian has all, and the protected person does not have any, rights to possess and dispose of the guardianship property. An order terminating a guardianship is evidence that the protected person has all, and the guardian does not have any, rights to possess and dispose of the guardianship property.

(b) Subject to the requirements of general statutes governing the filing or recordation of documents of title to real estate, letters, and orders terminating the same may be filed or recorded in the county where the real estate in question is located to give record notice of rights of possession and disposal as between the guardian and the protected person.

As added by P.L.169-1988, SEC.1.

IC 29-3-7-7 Persons prohibited from being appointed or from serving as a guardian

Sec. 7. A court may not appoint a person to serve as the guardian or permit a person to continue to serve as a guardian if the person:

(1) is a sexually violent predator (as described in **IC 35-38-1-7.5** ²⁶);

²⁵ This Chapter of the guardianship code only contains one section, which is:
IC 29-3-10-1

Payment of debts incurred on behalf of protected person; payment of claims; actions against guardian; filing of claims

Sec. 1. (a) Without prior order of the court, a guardian shall pay from the guardianship property all indebtedness that the guardian has reasonably incurred in good faith on behalf of the protected person.

(b) Upon order of the court, a guardian shall pay from the protected person's property for which the guardian is responsible any claim against the protected person or the protected person's property, that the court determines has merit.

(c) Claims based on:

(1) contracts entered into by a guardian in the guardian's official capacity;

(2) obligations arising from ownership or control of the property for which the guardian is responsible; or

(3) acts or omissions in the course of administration of the guardianship;

may be asserted against the guardianship by proceeding against the guardian in the guardian's official capacity, whether or not the guardian is personally liable.

(d) Any person having a claim against the protected person or the protected person's property or against the guardian as such may file the claim with the court at any time before the claim is barred by the statute of limitations and, upon proof of the claim, procure an order for its allowance and payment from the guardianship property. However, if a claim is filed within sixty (60) days before the date that a protected person attains the age of majority or regains capacity:

(1) the claim shall be stayed until the sixty (60) day period has elapsed;

(2) the protected person shall be substituted as a party; and

(3) the guardian shall prepare and file the guardian's account without regard to the claim.

(2) was at least eighteen (18) years of age at the time of the offense and was convicted of child molesting (IC 35-42-4-3) or sexual misconduct with a minor (IC 35-42-4-9) against a child less than sixteen (16) years of age:

(A) by using or threatening the use of deadly force;

(B) while armed with a deadly weapon; or

(C) that resulted in serious bodily injury; or

(3) was less than eighteen (18) years of age at the time of the offense and was convicted as an adult of:

(A) an offense described in:

(i) IC 35-42-4-1;²⁷

(ii) IC 35-42-4-2 (before its repeal);

(iii) IC 35-42-4-3²⁸ as a Class A or Class B felony (for crimes committed before July 1, 2014) or as a Level 1, Level 2, Level 3, or Level 4 felony (for crimes committed after June 30, 2014);

(iv) IC 35-42-4-5(a)(1);²⁹

(v) IC 35-42-4-5(a)(2);³⁰

(vi) IC 35-42-4-5(a)(3) **(before that provision was redesignated by P.L.158-203, SECTION 441)**;³¹

(vii) IC 35-42-4-5(b)(1)³² as a Class A or Class B felony (for crimes committed before July 1, 2014) or as a Level 2, Level 3, or Level 4 felony (for crimes committed after June 30, 2014);

(viii) IC 35-42-4-5(b)(2);³³ or

(ix) IC 35-42-4-5(b)(3)³⁴ as a Class A or Class B felony (for crimes committed before July 1, 2014) or as a Level 2, Level 3, or Level 4 felony (for crimes committed after June 30, 2014);

(B) an attempt or conspiracy to commit a crime listed in clause (A); or

(C) a crime under the laws of another jurisdiction, including a military court, that is substantially equivalent to any of the offenses listed in clauses (A) and (B).

*As added by P.L.131-2009, SEC.5. Amended by P.L.158-2013, SEC.303; P.L.214-2013, SEC.22; P.L.168-2014, SEC.37; P.L.187-2015, SEC.25, **P.L. 86-2018, SEC.213.***

CHAPTER 8 – RESPONSIBILITIES AND POWERS OF GUARDIAN

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²⁶ This is a lengthy section going into significant detail to define a “sexually violent predator.”

²⁷ Rape.

²⁸ Child molesting.

²⁹ Vicarious sexual gratification; sexual conduct in presence of a minor – (a)(1) – Level 4 felony when child involved is less than age 14.

³⁰ Vicarious sexual gratification; sexual conduct in presence of a minor – (a)(2) – Level 3 felony if force or weapon is used, using drugs or controlled substance, or which results in bodily harm.

³¹ Oops! There is no IC 35-42-4-5(a)(3).

³² Vicarious sexual gratification; sexual conduct in presence of a minor – (b)(1) – When adult “knowingly or intentionally directs, aids, induces, or causes” someone under 16 to engage in sexual intercourse with another child under age 16.

³³ Vicarious sexual gratification; sexual conduct in presence of a minor – (b)(2) – When adult “knowingly or intentionally directs, aids, induces, or causes” someone under 16 to engage in sexual intercourse with an animal not a human being.

³⁴ Vicarious sexual gratification; sexual conduct in presence of a minor – (b)(3) – When adult “knowingly or intentionally directs, aids, induces, or causes” someone under 16 to engage in other sexual conduct [with qualifiers.]

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IC 29-3-8-1 Enumerated responsibilities of guardian

Sec. 1. (a) [REDACTED]

(1) must be or shall become sufficiently acquainted with the minor and maintain sufficient contact with the minor to know of the minor's capabilities, disabilities, limitations, needs, opportunities, and physical and mental health;

(3) to the extent the available parental income and property are insufficient to fulfill the parental obligation of support to the minor, shall apply the guardianship income and, to the extent the guardianship income is insufficient, the principal of the guardianship property to the minor's current needs for support, and protect and conserve that portion of the minor's property that is in excess of the minor's current needs;

(4) shall report the physical and mental condition of the minor to the court as ordered by the court; and

(b) The guardian (other than a temporary guardian) of an incapacitated person is responsible for the incapacitated person's care and custody and for the preservation of the incapacitated person's property to the extent ordered by the court. In addition and without limitation, the guardian of an incapacitated person:

(1) has, with respect to the incapacitated person, the same responsibilities as those of a guardian of a minor enumerated in subsection (a)(1), (a)(3), and (a)(4);

(2) shall, upon termination of the guardianship, comply with the applicable provisions of IC 29-3-12³⁵; and

(3) has any other responsibilities that the court may order.

As added by P.L.169-1988, SEC.1. Amended by P.L.264-1989, SEC.10.

IC 29-3-8-2 Powers which guardian may exercise

Sec. 2. (a) The guardian of [REDACTED] [an incapacitated person] may exercise all of the powers required to perform the guardian's responsibilities, including the following:

(1) The power to receive property payable to the minor or the minor's parent, guardian, or custodian from any source, including any statutory benefit, insurance system, or private contract, devise, trust, or custodianship.

(2) The power to take custody of the person of the minor and establish the minor's place of abode within or without Indiana if in accordance with IC 29-3-9-2.³⁶

³⁵ This is the general Chapter on steps involved with the termination of a guardianship.

³⁶ **IC 29-3-9-2 Change in physical presence of protected person**

Sec. 2. A guardian (other than a temporary guardian), a volunteer advocate for seniors, or a volunteer advocate for incapacitated adults appointed under IC 29-3-8.5 may, with the approval of and under such conditions as may be imposed by the court after notice and hearing, change the physical presence of the protected person to another place in Indiana or to another state if the court finds that such a change is in the best interests of the protected person. Upon such a change, the guardianship may be limited or terminated by the court.

- (3) The power to institute proceedings or take other appropriate action to compel the performance by any person of a duty to support the minor or to pay for the minor's education, health, or welfare.
- (4) The power to consent to medical or other professional care and treatment for the minor's health and welfare.
- (5) The power to consent to the marriage or adoption of the minor.
- (6) If reasonable, the power to delegate to the minor certain responsibilities for decisions affecting the minor's business affairs and well-being.
- (7) The power to purchase a home for the minor or the minor's dependents, to protect the minor's existing home, or to protect the minor's interest in any real estate in which the minor may have an interest, contractual or otherwise, or to purchase any other interest in real property where the court finds the purchase to be in the minor's best interest.
- (8) The powers with respect to the guardianship property as are granted to a guardian under section 4 of this chapter with respect to guardianship property.
- (9) The power to bind all or any part of the guardianship property in a transaction for the benefit of the minor unless the third party dealing with the guardian is acting in bad faith.
- (10) [REDACTED]

(b) The guardian (other than a temporary guardian) of an incapacitated person has all of the powers to perform the guardian's responsibilities, including the powers with respect to the incapacitated person and the incapacitated person's property regardless of where the property is located, that are granted to the guardian of a minor enumerated in subsection (a)(1) through (a)(9).

As added by P.L.169-1988, SEC.1. Amended by P.L.264-1989, SEC.11.

IC 29-3-8-3 Mandatory responsibilities of guardian

Sec. 3. A guardian (other than a temporary guardian) shall do the following:

- (1) Act as a guardian with respect to the guardianship property and observe the standards of care and conduct applicable to trustees.³⁷
- (2) Protect and preserve the property of the protected person subject to guardianship and secure the protective orders or other orders that are required to protect any other property of the protected person.
- (3) Conserve any property of the protected person in excess of the protected person's current needs.
- (4) Encourage self-reliance and independence of the protected person.
- (5) Consider recommendations relating to the appropriate standard of support, care, education, and training for the protected person or the protected person's dependent made by the protected person's parent.

As added by P.L.169-1988, SEC.1. Amended by P.L.108-1996, SEC.6.

IC 29-3-8-4 Exercise of powers to perform responsibilities; enumeration

Sec. 4. A guardian (other than a temporary guardian) may exercise all of the powers required to perform the guardian's responsibilities, including the following:

- (1) To receive and issue a receipt for property payable to the protected person or the protected person's parent, guardian, or custodian from any source, including any statutory benefit, insurance system, or any private contract, devise, trust, guardianship, or custodianship.
- (2) If reasonable, to delegate to the protected person certain responsibilities for decisions affecting the protected person's business affairs and well-being.
- (3) To invest and reinvest the property of the protected person in accordance with

³⁷ Implicit reference to IC 30-4 et seq., which is Indiana's trust code.

powers vested in, and according to the standards imposed upon, trustees under IC 30-4-3-3(c).³⁸

(4) To secure the appointment of a guardian or co-guardian in any other state, when needed, with respect to any part or all of the guardianship property located in another state, to confer upon the appointed guardian any or all of the guardian's powers as guardian with respect to the property.

(5) To continue any business of the protected person, whether in corporate, partnership, or proprietorship form, according to the rules for continuing the business of a decedent specified in IC 29-1-13-11.³⁹

(6) To pay to the person, guardian, department, bureau, or agency having care and custody of the protected person, or to the protected person if at least fourteen (14) years of age, a reasonable amount to be expended for the support of the protected person and the protected person's dependents, with due regard to the following:

(A) The size of the guardianship property, the probable duration of the guardianship, and the extent to which the protected person in the future may be self-sufficient and able to manage the protected person's financial affairs and property.

(B) The accustomed standard of living of the protected person and the protected person's dependents.

(C) Other funds or sources used for the support of the protected person and the protected person's dependents.

(7) To distribute income and discretionary amounts of principal in one (1) or more of the following ways as the guardian believes to be in the best interests of the protected person:

(A) Directly to the protected person.

(B) To a guardian of the protected person appointed in another state.

(C) To a custodian for the protected person under IC 30-2-8.5.⁴⁰

(D) To an adult relative of the protected person.

(E) By expending the money or using the property directly for the benefit of the protected person.

(8) To apply the guardianship property to or for the benefit of any person, including the protected person, in reimbursement for reasonable expenditures made in good faith on behalf of the protected person that the guardian might have made, or in advance for services to be rendered to the protected person if it is reasonable to expect that the services will be performed and advance payments are reasonably necessary under the

³⁸ "(c) In acquiring, investing, reinvesting, exchanging, retaining, selling, and managing property for any trust, the trustee thereof shall exercise the judgment and care required by IC 30-4-3.5. Within the limitations of the foregoing standard, the trustee is authorized to acquire and retain every kind of property, real, personal, or mixed, and every kind of investment, including specifically, but without in any way limiting the generality of the foregoing, bonds, debentures, and other corporate obligations, stocks, preferred or common, and real estate mortgages, which persons of prudence, discretion, and intelligence acquire or retain for their own account, and within the limitations of the foregoing standard, the trustee is authorized to retain property properly acquired, without limitation as to time and without regard to its suitability for original purchase. Within the limitations of the foregoing standard, the trustee is authorized to sell covered security options and to purchase back previously sold covered security options."

³⁹ **IC 29-1-13-11 Business of decedent; continuing**

Sec. 11. Upon a showing of advantage to the estate, the court may authorize the personal representative to continue any business of the decedent for the benefit of the estate; but if the decedent died testate and his estate is solvent, the order of the court shall be subject to the provisions of the will. The order may be with or without notice. If notice is not given to all interested persons before the order is made, notice of the order shall be given within five (5) days after the order, and any such person not previously notified by publication or otherwise may show cause why the order should be revoked or modified. The order may provide:

(a) For the conduct of the business solely by the personal representative or jointly with one (1) or more of the decedents' surviving partners, or as a corporation to be formed by the personal representative alone or acting with others;

(b) The extent of the liability of the estate, or any part thereof, or the personal representative, for obligations incurred in the continuation of the business;

(c) As to whether liabilities incurred in the conduct of the business are to be chargeable solely to the part of the estate set aside for use in the business or to the estate as a whole; and

(d) As to the period of time for which the business may be conducted, and such other conditions, restrictions, regulations and requirements as the court may order.

⁴⁰ Reference to the Uniform Transfers to Minors Act (UTMA).

circumstances.

(9) To bind all or any part of the guardianship property in a transaction for the benefit of the protected person, unless the third party dealing with the guardian is acting in bad faith.

(10) Except as provided in IC 29-3-2-6(d)⁴¹, powers conferred upon trustees and personal representatives respectively by IC 30-4-3-3⁴² and IC 29-1-7.5-3.⁴³ However, if there is a conflict, the broader power controls.

(11) To exercise on behalf of the protected person powers that are the same as those granted to the parent of a minor under IC 29-3-3-3.⁴⁴

(12) To petition the court to request the authority to petition for dissolution of marriage, legal separation, or annulment of marriage on behalf of the protected person, if the protected person is an incapacitated person, as provided under IC 29-3-9-12.2.

As added by P.L.169-1988, SEC.1. Amended by P.L.267-1989, SEC.1; P.L.77-1992, SEC.7; P.L.83-2014, SEC.2.

IC 29-3-8-5 Sale or encumbrance of guardianship property; conflicts of interest

Sec. 5. (a) Any:

(1) sale or encumbrance of any part of the property of a protected person to a guardian or guardian's spouse, agent, attorney, or any corporation, trust, or other organization in which the guardian has a substantial beneficial interest; or

(2) other transaction involving the property that is affected by a substantial conflict between the interest of the protected person and the guardian's personal interest; is void unless approved by the court.

(b) Every contract, sale, or conveyance executed by a protected person is void

As added by P.L.169-1988, SEC.1. Amended by P.L.238-2005, SEC.15.

IC 29-3-8-6 Sale or transfer of guardianship property contrary to terms of protected person's will; election of devisee

Sec. 6. If:

(1) a guardian sells or transfers during a protected person's lifetime property belonging to the protected person that is specifically devised to another in a will executed by the protected person;

(2) the protected person subsequently dies; and

(3) the devised property is consequently not contained in the protected person's estate following the death of the protected person;

the devisee may, at the devisee's option, elect to receive the value of the devised property, as valued at the time of death of the protected person, as a general devise or the proceeds of the sale or transfer as a specific devise.

As added by P.L.169-1988, SEC.1. Amended by P.L.33-1989, SEC.72; P.L.252-2001, SEC.28.

IC 29-3-8-6.5 Severance of property jointly owned with rights of survivorship or use of the assets of a multiple party account

Sec. 6.5. (a) If:

(1) a guardian takes possession of property that is:

(A) jointly owned by or titled in the names of the protected person and another person with rights of survivorship; or

⁴¹ The section regarding the sale of property.

⁴² The section of the trust code that enumerates a trustee's powers.

⁴³ The section of the probate code that enumerates the powers of a personal representative under unsupervised administration.

⁴⁴ See Footnote 19 above.

(B) owned as a multiple party account with another person as joint owner or beneficiary;

(2) the guardian:

(A) severs the joint ownership of the property; or

(B) uses the assets of the multiple party account; and

(3) the protected person subsequently dies while the other person is living; the other person may elect to receive from the protected person's estate property in an amount determined under subsection (b).

(b) The amount of property the other person described in subsection (a) may elect to receive is determined in STEP THREE of the following formula:

STEP ONE: Subtract:

(A) the value of the severed or used property retained by the other person at the time ownership was severed or used, if any; from

(B) the value of the joint property or multiple party account at the time ownership was severed or the assets were used.

STEP TWO: Divide:

(A) the remainder determined under STEP ONE; by

(B) the value of the protected person's property, including the jointly held property or multiple party account, at the time ownership was severed or the assets were used.

STEP THREE: Multiply:

(A) the quotient determined under STEP TWO; by

(B) the value of the deceased protected person's net estate.

(c) As used in this section, "multiple party account" refers to both multiple party accounts described by IC 32-17-11⁴⁵ and transfer on death transfers completed under IC 32-17-14.⁴⁶

As added by P.L.33-1989, SEC.73. Amended by P.L.143-2009, SEC.16.

IC 29-3-8-7 Sale, division, or disposition of property; contracts entered into before incapacity; performance by guardian

Sec. 7. If the court finds that:

(1) an incapacitated person who is a protected person did, before the person became an incapacitated person, enter into a written contract, including a contract for the sale, division, or other disposition of property;

(2) the obligations of the contract have not been fully carried out; and

(3) the contract was a good and binding contract at the time of the making of the contract;

the court shall authorize the guardian of the protected person to perform the contract without notice or hearing unless otherwise ordered by the court.

As added by P.L.169-1988, SEC.1. Amended by P.L.33-1989, SEC.74.

IC 29-3-8-8 Limitations on guardian powers

Sec. 8. (a) The court, at the time of appointment or later, on its own motion or on petition of the protected person or other person approved by the court, may:

(1) confer upon the guardian any additional responsibilities and powers;

(2) increase or decrease the bond of the guardian to satisfy the requirements of IC 29-3-7-1; or

(3) limit the responsibilities and powers of the guardian otherwise conferred by this article and create a limited guardianship.

(b) However, all limitations must be endorsed on the guardian's letters. Following the same procedure, a limitation may be removed or modified and appropriate revised letters issued.

As added by P.L.169-1988, SEC.1.

⁴⁵ Reference to the Property Code section on "Multiple Party Accounts."

⁴⁶ Reference to the "Transfer on Death Property Act."

IC 29-3-8-9 Requirements, terms, and conditions included in order creating guardianship; requirements for modifying or terminating guardianship; notify and refer to department of child services; conduct of hearing

[REDACTED]

As added by P.L.162-2011, SEC.3. Amended by P.L.48-2012, SEC.8.

IC 29-3-8-10 Access of guardian to digital assets; power conferred by court

Sec. 10. (a) IC 32-39-2-11⁴⁷ applies to the right of a guardian to access:

- (1) the content of an electronic communication;
 - (2) a catalogue of electronic communications; or
 - (3) any other digital asset;
- of a protected person.

(b) This article:

- (1) does not confer upon a guardian the power to access:

- (A) the content of an electronic communication;
- (B) a catalogue of electronic communications; or
- (C) any other digital asset;

of a protected person unless a court expressly confers the power upon the guardian under IC 29-3-9-4.1; and

- (2) confers upon a guardian the power to access:

- (A) the content of an electronic communication;
- (B) a catalogue of electronic communications; or
- (C) any other digital asset;

of a protected person only to the extent that the court expressly confers the power upon the guardian under IC 29-3-9-4.1.

(c) For purposes of section 8 of this chapter, a power expressly conferred by a court upon a guardian under IC 29-3-9-4.1 is considered an additional responsibility and power within the meaning of section 8(a)(1) of this chapter.

As added by P.L.137-2016, SEC.6.

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⁴⁷ **IC 32-39-2-11 Disclosure of digital assets to guardian of protected person**

Sec. 11. (a) After an opportunity for a hearing under IC 29-3, a court may grant a guardian access to the digital assets of the protected person.

(b) Unless otherwise ordered by a court or directed by the user, a custodian shall disclose to a guardian the catalogue of electronic communications sent or received by the protected person and any digital assets, other than the content of electronic communications, in which the protected person has a right or interest if the guardian gives the custodian:

- (1) a written request for disclosure of the catalogue of electronic communications and the digital assets in physical or electronic form;
- (2) a certified copy of the court order giving the guardian authority over the digital assets of the protected person; and
- (3) if requested by the custodian:
 - (A) a number, username, address, or other unique subscriber identifier or account identifier assigned by the custodian to identify the account of the protected person; or
 - (B) evidence linking the account to the protected person.

(c) A guardian with general authority to manage the assets of a protected person may, for good cause, request that the custodian of the digital assets of the protected person suspend or terminate an account of the protected person. A request made under this subsection must be accompanied by a certified copy of the court order giving the guardian authority over the protected person's property.

29-3-8.5-10 Petitions for reasonable compensation
29-3-8.5-11 Joint or multiple county programs
29-3-8.5-12 Programs of nonprofit corporations

IC 29-3-8.5-1 Appointment

[REDACTED]

As added by P.L.41-2004, SEC.2. Amended by P.L.11-2006, SEC.2; P.L.72-2010, SEC.5.

IC 29-3-8.5-2 Progress reports; final report

[REDACTED]

As added by P.L.41-2004, SEC.2. Amended by P.L.11-2006, SEC.3; P.L.72-2010, SEC.6.

IC 29-3-8.5-3 Duties

[REDACTED]

[REDACTED]

As added by P.L.41-2004, SEC.2. Amended by P.L.11-2006, SEC.4; P.L.72-2010, SEC.7.

IC 29-3-8.5-4 Actions a volunteer advocate for seniors or a volunteer advocate for incapacitated adults may take

[REDACTED]

As added by P.L.41-2004, SEC.2. Amended by P.L.11-2006, SEC.5; P.L.72-2010, SEC.8; P.L.83-2014, SEC.3.

IC 29-3-8.5-5 Term of appointment

[REDACTED]

As added by P.L.41-2004, SEC.2. Amended by P.L.11-2006, SEC.6; P.L.72-2010, SEC.9.

IC 29-3-8.5-6 Officer of the court

[REDACTED]

As added by P.L.41-2004, SEC.2. Amended by P.L.11-2006, SEC.7; P.L.72-2010, SEC.10.

IC 29-3-8.5-7 Attorney appointment

[REDACTED]

As added by P.L.41-2004, SEC.2. Amended by P.L.11-2006, SEC.8.

IC 29-3-8.5-8 Civil immunity

[REDACTED]

As added by P.L.41-2004, SEC.2. Amended by P.L.11-2006, SEC.9.

IC 29-3-8.5-9 Authorization to consent to or refuse health care

[REDACTED]

As added by P.L.72-2010, SEC.12.

IC 29-3-8.5-10 Petitions for reasonable compensation

[REDACTED]

As added by P.L.72-2010, SEC.13.

IC 29-3-8.5-11 Joint or multiple county programs

[REDACTED]

As added by P.L.72-2010, SEC.14.

IC 29-3-8.5-12 Programs of nonprofit corporations

[REDACTED]

As added by P.L.72-2010, SEC.15.

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IC 29-3-9-1 Delegation of powers by executed power of attorney; limitations

Sec. 1. (a) [REDACTED]

(b) [REDACTED]

(c) Except as provided in subsections (d) and (h), by a properly executed power of attorney, [REDACTED] a guardian (other than a temporary guardian) of a protected person may delegate to another person for:

(1) any period during which the care and custody of the [REDACTED] protected person is entrusted to an institution furnishing care, custody, education, or training; or
(2) a period not exceeding twelve (12) months;
any powers regarding health care, support, custody, or property of the [REDACTED] protected person. A delegation described in this subsection is effective immediately unless otherwise stated in the power of attorney.

(d) A [REDACTED] guardian of a protected person may not delegate under subsection (c) the power to:

(1) [REDACTED]
(2) petition the court to request the authority to petition for dissolution of marriage, legal separation, or annulment of marriage on behalf of a protected person as provided under section 12.2 of this chapter.

(e) A person having a power of attorney executed under subsection (c) has and shall exercise, for the period during which the power is effective, all other authority of the parent or guardian respecting the health care, support, custody, or property of the [REDACTED] protected

person except any authority expressly excluded in the written instrument delegating the power. The [REDACTED] guardian remains responsible for any act or omission of the person having the power of attorney with respect to the affairs, property, and person of the [REDACTED] protected person as though the power of attorney had never been executed.

(f) [REDACTED]

(g) [REDACTED]

(h) [REDACTED]

(i) [REDACTED]

(j) Except as otherwise stated in the power of attorney delegating powers under this section, a delegation of powers under this section may be revoked at any time by a written instrument of revocation that:

(1) identifies the power of attorney revoked; and

(2) is signed by the:

[REDACTED]
(B) guardian of a protected person;
who executed the power of attorney.

As added by P.L.169-1988, SEC.1. Amended by P.L.33-1989, SEC.75; P.L.101-2008, SEC.7; P.L.178-2011, SEC.6; P.L.83-2014, SEC.4; P.L.81-2015, SEC.18; P.L.74-2016, SEC.1.

IC 29-3-9-2 Change in physical presence of protected person

Sec. 2. A guardian (other than a temporary guardian), [REDACTED] may, with the approval of and under such conditions as may be imposed by the court after notice and hearing, change the physical presence of the protected person to another place in Indiana or to another state if the court finds that such a change is in the best interests of the protected person. Upon such a change, the guardianship may be limited or terminated by the court.
As added by P.L.169-1988, SEC.1. Amended by P.L.41-2004, SEC.3; P.L.11-2006, SEC.11.

IC 29-3-9-3 Compensation and reimbursement of guardian

Sec. 3. A guardian is entitled to reasonable compensation for services as guardian and to reimbursement for reasonable expenditures made in good faith on behalf of the protected person.

As added by P.L.169-1988, SEC.1.

IC 29-3-9-4 Repealed

As added by P.L.169-1988, SEC.1. Repealed by P.L.6-2010, SEC.40.

IC 29-3-9-4.1 Guardian access to protected person's digital assets upon authorization of court

Sec. 4.1. (a) After notice to interested persons and upon authorization of a court, a guardian may access:

- (1) the content of an electronic communication;
- (2) a catalogue of electronic communications; or
- (3) any other digital asset;

of a protected person as provided in the order of the court. The court's authorization may apply generally or be restricted in scope.

(b) Before approving a guardian's exercise of the power to access an item described in subsection (a)(1) through (a)(3), the court shall consider primarily the decision that the protected person would have made, to the extent that the decision the protected person would have made can be ascertained.

As added by P.L.137-2016, SEC.7.

IC 29-3-9-4.5 Estate planning

Sec. 4.5. (a) After notice to interested persons and upon authorization of the court, a guardian may, if the protected person has been found by the court to lack testamentary capacity, do any of the following:

- (1) Make gifts.
- (2) Exercise any power with respect to transfer on death or payable on death transfers that is described in IC 30-5-5-7.5.
- (3) Convey, release, or disclaim contingent and expectant interests in property, including marital property rights and any right of survivorship incident to joint tenancy or tenancy by the entireties.
- (4) Exercise or release a power of appointment.
- (5) Create a revocable or irrevocable trust of all or part of the property of the estate, including a trust that extends beyond the duration of the guardianship.
- (6) Revoke or amend a trust that is revocable by the protected person.
- (7) Exercise rights to elect options and change beneficiaries under insurance policies, retirement plans, and annuities.
- (8) Surrender an insurance policy or annuity for its cash value.
- (9) Exercise any right to an elective share in the estate of the protected person's deceased spouse.
- (10) Renounce or disclaim any interest by testate or intestate succession or by transfer inter vivos.

(b) Before approving a guardian's exercise of a power listed in subsection (a), the court shall consider primarily the decision that the protected person would have made, to the extent that the decision of the protected person can be ascertained. If the protected person has a will, the protected person's distribution of assets under the will is prima facie evidence of the protected person's intent. The court shall also consider:

- (1) the financial needs of the protected person and the needs of individuals who are dependent on the protected person for support;
- (2) the interests of creditors;
- (3) the possible reduction of income taxes, estate taxes, inheritance taxes, or other federal, state, or local tax liabilities;

- (4) the eligibility of the protected person for governmental assistance;
- (5) the protected person's previous pattern of giving or level of support;
- (6) the protected person's existing estate plan, if any;
- (7) the protected person's life expectancy and the probability that the guardianship will terminate before the protected person's death; and
- (8) any other factor the court considers relevant.

(c) A guardian may examine and receive, at the expense of the guardian, copies of the following documents of the protected person:

- (1) A will.
- (2) A trust.
- (3) A power of attorney.
- (4) A health care appointment.
- (5) Any other estate planning document.

As added by P.L. 6-2010, SEC.12.

IC 29-3-9-5 Inventory of guardianship property

Sec. 5. (a) Within ninety (90) days after appointment, a guardian (other than a temporary guardian) shall file with the court a complete inventory of the property subject to the guardian's control together with an oath or affirmation that the inventory is believed to be complete and accurate as far as information permits. A temporary guardian shall file the inventory and oath or affirmation with the court within thirty (30) days after appointment. The inventory must conform to the requirements of IC 29-1-12-1.⁴⁸ The guardian shall provide a copy of the inventory to the protected person if the protected person is at least fourteen (14) years of age. A copy also shall be provided to any guardian, parent, or person with whom the protected person resides and any other person ordered by the court. In addition, the guardian shall provide notice of the filing of the inventory to each person that was required to be notified of the hearing on the petition to establish the guardianship. The notice must be provided in the same manner as the notice of the hearing to establish a guardianship. The notice must include all of the following:

- (1) The cause number.
- (2) A statement that Indiana law requires a guardian to file with the court a written verified account of the guardian's administration:
 - (A) at least biennially, not more than thirty (30) days after the anniversary date of the guardian's appointment; and
 - (B) not more than thirty (30) days after the termination of the appointment.
- (3) A statement that the inventory and the written verified accounts may be inspected

⁴⁸ **IC 29-1-12-1 Classification of properties; appraisers; copies of inventories to interested persons**

Sec. 1. (a) Within two (2) months after the appointment of a personal representative, unless a longer time is granted by the court, the personal representative shall prepare a verified inventory of the decedent's probate estate. The verified inventory must:

- (1) consist of at least one (1) written instrument;
- (2) indicate the fair market value of each item of property; and
- (3) include a statement of all known liens and other charges on any item.

(b) Property listed in the inventory required by subsection (a) must be classified as follows:

- (1) Real property, with plat or survey description, and if a homestead, designated as a homestead.
- (2) Furniture and household goods.
- (3) Emblements and annual crops raised by labor.
- (4) Corporate stocks including the class, the par value or that it has no par value, if preferred stock the dividend rate.
- (5) Mortgages, bonds, notes or other written evidences of debt or of ownership described by name of debtor, recording data, and other identification.
- (6) Bank accounts, money, and insurance policies if payable to the estate of the decedent or to the decedent's personal representative.
- (7) All other personal property accurately identified, including the decedent's proportionate share in any partnership, but no inventory of the partnership property shall be required.

(c) The personal representative may employ a disinterested appraiser to assist in ascertaining the fair market value as of the date of the decedent's death of any asset the value of which may be subject to reasonable doubt. Different persons may be employed to appraise different kinds of assets included in the estate. The name and address of any appraiser must be indicated on the inventory with the item or items appraised by the appraiser.

(d) The personal representative shall furnish a copy of the inventory, or any supplement or amendment to it, to interested persons who request it, unless the personal representative has filed the original of the inventory, or any supplement or amendment to it, with the court.

at the court's address.

(b) The guardian shall keep suitable records of the guardian's administration and exhibit the records as ordered by the court.

As added by P.L.169-1988, SEC.1. Amended by P.L.265-1995, SEC.1.

IC 29-3-9-6 Account of administration; filing with court; notice of hearing on account; order of discharge; limitation of actions against sureties

Sec. 6. (a) Unless otherwise directed by the court, a guardian (other than a temporary guardian) shall file with the court:

(1) at least biennially, not more than thirty (30) days after the anniversary date of the guardian's appointment; and

(2) not more than thirty (30) days after the termination of the appointment;
a written verified account of the guardian's administration.

(b) A temporary guardian shall file with the court, within thirty (30) days after the termination of the temporary guardian's appointment, and otherwise as ordered by the court, a written verified account of the temporary guardian's administration.

(c) A written verified account required under this section must include the incapacitated person's [REDACTED] current residence and a description of the condition and circumstances of the incapacitated person [REDACTED].

(d) The court shall conduct a hearing on each verified account filed under this section.

The court shall give notice to each person entitled to receive notice that an accounting has been filed and will be acted upon by the court on the date set unless written objections are presented to the court on or before that date. The court shall give the notice required by this subsection, unless waived, to the following:

(1) The protected person, unless waived by the court. If notice to the protected person is waived, the court shall give notice to a person who is not the guardian of the protected person in the following priority:

(A) The protected person's spouse.

(B) An adult child of the protected person.

(C) A parent of the protected person.

(D) A guardian ad litem appointed by the court under subsection (e).

(2) In the case of a protected person who has died, the personal representative of the estate of the protected person, if any.

(3) Any other persons that the court directs.

(e) The court may appoint a guardian ad litem to review on behalf of a protected person an accounting filed under this section if:

(1) the protected person does not have a spouse, an adult child, or a parent; or

(2) the same individual:

(A) served as the protected person's guardian before the death of the protected person; and

(B) is the personal representative of the protected person's estate.

(f) When an account other than an account in final settlement is filed, the court may approve the same ex parte, but the account may be reviewed by the court at any subsequent time and does not become final until an account in final settlement is approved by the court after notice and hearing.

(g) When notice of hearing has been given under this section, the order of the court approving the intermediate account or the final account is binding upon all persons.

(h) When a guardian files with the court proper receipts or other evidence satisfactory to the court showing that the guardian has delivered to the appropriate persons all the property for which the guardian is accountable as guardian, the court shall enter an order of discharge. The order of discharge operates as a release from the duties of the guardian's office that have not yet terminated and operates as a bar to any suit against the guardian and the guardian's sureties, unless the suit is commenced within one (1) year from the date of the discharge.

As added by P.L.169-1988, SEC.1. Amended by P.L.33-1989, SEC.76; P.L.99-2013, SEC.8.

IC 29-3-9-6.5 Accounting standards and procedures

Sec. 6.5. (a) This section applies to an accounting described under section 6 of this chapter that is filed:

(1) in a court that requires an accounting; and

(2) by a guardian for a protected person:

(A) whose:

(i) annual gross income is not more than one hundred eighty-five percent (185%) of the federal income poverty level as determined annually by the federal Office of Management and Budget under 42 U.S.C. 9902; and

(ii) total assets are worth fifteen thousand dollars (\$15,000) or less; or

(B) who has an annual gross income and total assets of any amount, if the guardian does not have powers concerning the estate of the protected person.

(b) The court shall establish standards for the type of information required to be reported in an accounting described in subsection (a).

(c) Except as provided in subsection (d), the accounting described in subsection (a) is not required to be filed by an attorney for the guardian.

(d) The court may order that the guardian hire an attorney to assist the guardian in filing the accounting described in subsection (a) if the court determines that an accounting filed by the guardian does not conform to the standards established by the court under this section.

As added by P.L.265-1995, SEC.2.

IC 29-3-9-7 Compromise of claim; petition to court; settlement

Sec. 7. (a) Whenever it is proposed to compromise any claim by or against a protected person or the protected person's property, the court, on petition of the guardian, may enter an order authorizing the compromise to be made if satisfied that the compromise will be in the best interest of the protected person.

(b)

As added by P.L.169-1988, SEC.1.

IC 29-3-9-8 Supplementary orders

Sec. 8. At any time after the appointment or issuance of a protective order, the court on its own motion or on the petition of the protected person or other person approved by the court, in addition to its authority under IC 29-3-8-8, may give the instructions and make the amendatory and supplementary orders that the court finds appropriate.

As added by P.L.169-1988, SEC.1.

IC 29-3-9-9 Expenses of proceedings

Sec. 9. (a) Whenever a guardian is appointed for an incapacitated person [REDACTED], the guardian shall pay all expenses of the proceeding, including reasonable medical, professional, and attorney's fees, out of the property of the protected person.

(b) The expenses of any other proceeding under this article that results in benefit to the protected person or the protected person's property shall be paid from the protected person's property as approved by the court.

As added by P.L.169-1988, SEC.1. Amended by P.L.33-1989, SEC.77.

IC 29-3-9-10 Attorney of record for guardian

Sec. 10. The attorney of record for a guardian continues as such until the termination of the guardianship or the attorney's withdrawal, whichever occurs first, as approved by the court.

As added by P.L.169-1988, SEC.1.

IC 29-3-9-11 Investigation and report concerning minor or protected person

Sec. 11. The office of the secretary of family and social services shall investigate and report to the court concerning the conditions and circumstances of [REDACTED] an alleged incapacitated adult or protected person who is an adult and the fitness and conduct of the guardian or the proposed guardian whenever ordered to do so by the court.

As added by P.L.169-1988, SEC.1. Amended by P.L.33-1989, SEC.78; P.L.2-1992, SEC.794; P.L.4-1993, SEC.261; P.L.5-1993, SEC.274; P.L.145-2006, SEC.169; P.L.146-2008, SEC.531; P.L.128-2012, SEC.20.

IC 29-3-9-12 Guardianship of property of minor or incapacitated adult; compliance with demand or instruction; enforcement proceedings; awards

Sec. 12. (a) This section applies only to a guardianship of the property of [REDACTED] an incapacitated adult.

(b) If a third party fails to comply with a guardian's written demand or instruction that:

(1) was issued within the scope of the guardian's authority; and

(2) is consistent with this article;

the guardian may bring an enforcement proceeding to compel compliance in the court having jurisdiction over the guardianship.

(c) A court may award attorney's fees and costs to the guardian in an enforcement proceeding under subsection (b), if the person indebted to the guardianship estate or holding property of the guardianship estate:

(1) acted in bad faith in failing to comply with the guardian's written demand or instruction; or

(2) refused to respond within thirty (30) business days after receiving the guardian's written demand or instruction, if the demand or instruction is consistent with this article.

(d) A court may, upon notice and hearing, award attorney's fees and costs to an estate bringing an enforcement proceeding under subsection (a) against an insurer regulated under IC 27⁴⁹ if:

(1) the insurer failed to respond under IC 27 after receiving a written demand or instruction from the personal guardian; and

(2) the written demand or instruction is consistent with this article.

As added by P.L.51-2014, SEC.7. Amended by P.L.83-2014, SEC.5.

IC 29-3-9-12.2 Petition for authority to petition for dissolution, legal separation, or annulment; granting petition; considerations; petition not required for certain actions

Sec. 12.2. (a) If a guardian of an incapacitated person determines that:

(1) a dissolution of the incapacitated person's marriage;

(2) a legal separation of the incapacitated person and the incapacitated person's spouse;

or

(3) an annulment of the incapacitated person's marriage;

is in the best interests of the incapacitated person, the guardian shall petition the court to request the authority to petition for a dissolution of marriage, a legal separation, or an annulment of marriage on behalf of the incapacitated person.

(b) The petition to request authority described in subsection (a) must set forth the following:

(1) The purpose for petitioning for dissolution of marriage, legal separation, or annulment of marriage.

(2) The names and addresses of all the following:

(A) The incapacitated person's spouse.

(B) If the incapacitated person has adult children, any adult children of the

⁴⁹ IC 27 is Title 27, the Insurance Code.

incapacitated person who are not guardians of the incapacitated person.

(C) If the incapacitated person is a minor, a parent of the incapacitated person whose parental rights have not been terminated.

(c) A guardian that petitions the court to request authority as described in subsection (a) shall provide a copy of the petition, on or before the date the petition is filed, to all the following:

(1) The individuals listed in subsection (b)(2).

(2) Any other interested person as ordered by the court.

(d) The court shall:

(1) set a date for a hearing on the petition to request authority described in subsection (a);

(2) notify:

(A) all the parties; and

(B) any other individual listed in subsection (c);

of the hearing at least thirty (30) days before the hearing; and

(3) hold a hearing on the petition to request authority described in subsection (a).

(e) If the court determines by clear and convincing evidence that petitioning for:

(1) a dissolution of the incapacitated person's marriage;

(2) a legal separation of the incapacitated person and the incapacitated person's spouse;
or

(3) an annulment of the incapacitated person's marriage;

is in the best interests of the incapacitated person, considering the totality of the circumstances, including the desire and interests of the spouse in remaining married, the court shall grant the petition and authorize the guardian to petition for dissolution of marriage, legal separation, or annulment of marriage on behalf of the incapacitated person.

(f) In making a determination under subsection (e), the court shall consider the risk of harm to the incapacitated person's physical or mental health, safety, or property if the court does not grant the petition and authorize the guardian to petition for dissolution of marriage, legal separation, or annulment of marriage on behalf of the incapacitated person.

(g) In making a determination under subsection (e), the court shall also give appropriate weight to evidence of:

(1) the incapacitated person's intent or preferences; or

(2) a prior decision of the incapacitated person;

for or against a dissolution of marriage, a legal separation, or an annulment of marriage. The court may reduce the weight given to evidence of the intent, preferences, or prior decisions of the incapacitated person if the court concludes, from all of the relevant facts and circumstances, that the passage of time, the relevant circumstances at the time of a prior statement or action by the incapacitated person, or changed circumstances after a prior statement or action make the prior statement or action less reliable evidence of the incapacitated person's best interests and current preferences. The court may give no weight to evidence considered under this subsection that the court concludes is unreliable evidence of the incapacitated person's best interests and current preferences.

(h) This section does not require a guardian of an incapacitated person to file a petition under this section in order to:

(1) defend the incapacitated person against a petition for dissolution, legal separation, or annulment of marriage that was filed before or after the filing of the petition for guardianship; or

(2) finalize:

(A) a dissolution of the incapacitated person's marriage;

(B) a legal separation between the incapacitated person and the incapacitated person's spouse; or

(C) an annulment of the incapacitated person's marriage;

if the petition for dissolution of marriage, legal separation, or annulment of marriage was filed by the incapacitated person or the incapacitated person's spouse before the appointment of the guardian.

As added by P.L.83-2014, SEC.6.

IC 29-3-9-13 Filing petition for dissolution, legal separation, or annulment in guardian's county of residence

Sec. 13. (a) This section applies if a court has authorized a guardian to petition for dissolution of marriage, legal separation, or annulment of marriage on behalf of an incapacitated person under section 12.2 of this chapter.

(b) A guardian may file a petition for dissolution on behalf of an incapacitated person under IC 31-15-2⁵⁰ in the county where the guardian resides in accordance with IC 31-15-2-6.

(c) A guardian may file a petition for legal separation on behalf of an incapacitated person under IC 31-15-3-4 in the county where the guardian resides in accordance with IC 31-15-3-6.

(d) A guardian may file an action to annul a marriage under IC 31-11-10 in the county where the guardian resides in accordance with IC 31-11-10-4.

As added by P.L.83-2014, SEC.7.

Chapter 10 – Claims Against Protected Persons

Chapter Table of Contents

29-3-10-1 Payment of debts incurred on behalf of protected person; payment of claims; actions against guardian; filing of claims

IC 29-3-10-1 Payment of debts incurred on behalf of protected person; payment of claims; actions against guardian; filing of claims

Sec. 1. (a) Without prior order of the court, a guardian shall pay from the guardianship property all indebtedness that the guardian has reasonably incurred in good faith on behalf of the protected person.

(b) Upon order of the court, a guardian shall pay from the protected person's property for which the guardian is responsible any claim against the protected person or the protected person's property, that the court determines has merit.

(c) Claims based on:

(1) contracts entered into by a guardian in the guardian's official capacity;

(2) obligations arising from ownership or control of the property for which the guardian is responsible; or

(3) acts or omissions in the course of administration of the guardianship; may be asserted against the guardianship by proceeding against the guardian in the guardian's official capacity, whether or not the guardian is personally liable.

(d) Any person having a claim against the protected person or the protected person's property or against the guardian as such may file the claim with the court at any time before the claim is barred by the statute of limitations and, upon proof of the claim, procure an order for its allowance and payment from the guardianship property. However, if a claim is filed within sixty (60) days before the date that a protected person attains the age of majority or regains capacity:

(1) the claim shall be stayed until the sixty (60) day period has elapsed;

(2) the protected person shall be substituted as a party; and

(3) the guardian shall prepare and file the guardian's account without regard to the claim.

As added by P.L.169-1988, SEC.1.

Chapter 11 – Liability of Guardians and Persons Acting Under Protective Orders

Chapter Table of Contents

29-3-11-1 Protection for persons dealing in good faith with guardian or person acting under protective order; scope of protection

⁵⁰ The statute on dissolution of marriage. Likewise, the other references to sections of IC 31 correlate to the statute on “separation” and “annulment.”

29-3-11-2 Contracts entered into in good faith; personal liability of guardian; liability for acts or omissions; proceeding to determine liability
29-3-11-3 Actions between third party and protected person; service of process; suits against guardian or person acting under protective order; substitution of parties
29-3-11-4 Civil immunity of a guardian

IC 29-3-11-1 Protection for persons dealing in good faith with guardian or person acting under protective order; scope of protection

Sec. 1. (a) A person who in good faith deals with a guardian or person acting under a protective order is:

(1) protected as if the guardian or person acting under a protective order properly exercised the power; and

(2) not required to inquire into the existence of the power or the propriety of its exercise except as to restrictions endorsed on the letters.

(b) A person who deals with a guardian or person acting under a protective order in good faith is not bound to see to the proper application of amounts paid or property delivered to the guardian or person.

(c) The protection expressed in this section:

(1) extends to any procedural irregularity or jurisdictional defect occurring in proceedings under this article; and

(2) is not a substitution for but is in addition to any other applicable law, including the laws relating to commercial transactions and to simplifying transfers of securities by fiduciaries.

As added by P.L.169-1988, SEC.1.

IC 29-3-11-2 Contracts entered into in good faith; personal liability of guardian; liability for acts or omissions; proceeding to determine liability

Sec. 2. (a) Unless otherwise provided in the contract, a guardian or person acting under a protective order is not personally liable on a contract entered into in good faith under the order, unless that person fails to reveal that person's representative capacity and identify that person's capacity in the contract.

(b) Subject to subsection (a), a guardian or person acting under a protective order is not personally liable to the protected person or others for any act or omission in good faith or for any act or omission of the protected person or others acting on behalf of the protected person.

(c) The guardian or person acting under a protective order is personally liable to the protected person for acts or omissions in the course of the administration of the trust of the guardian or person acting under a protective order only for a breach of duty to the protected person.

(d) Any question of liability of the guardian or person acting under a protective order personally to the protected person may be determined in a proceeding for accounting, surcharge, indemnification, or other appropriate proceeding or action.

As added by P.L.169-1988, SEC.1.

IC 29-3-11-3 Actions between third party and protected person; service of process; suits against guardian or person acting under protective order; substitution of parties

Sec. 3. (a) If a guardian has been appointed, all actions between third persons and the protected person seeking to charge or benefit the protected person or the protected person's property shall be prosecuted by or against the guardian or person acting under a protective order to represent the interests of the protected person in the action. All process relating to that action shall be served on the guardian.

(b) In the case of a claim against the guardian or person acting under a protective order personally, the guardian or person acting under the protective order may be sued both as guardian or person acting under the protective order and in the personal capacity of the guardian or person acting under the protective order in the same action.

(c) If an action was commenced by or against the protected person before the appointment of a guardian for the protected person, the guardian upon appointment shall be substituted as a party for the protected person. If the appointment of the guardian is terminated, the guardian's successor shall be substituted as a party to the action. If the protected person dies, the protected person's personal representative shall be substituted. If the protected person is no longer a minor or incapacitated person, the protected person shall be substituted.

As added by P.L.169-1988, SEC.1. Amended by P.L.33-1989, SEC.79.

IC 29-3-11-4 Civil immunity of a guardian

Sec. 4. Except as provided in section 2 of this chapter and except for gross misconduct, a guardian appointed under this article is immune from any civil liability resulting from the guardian's performance.

As added by P.L.41-2004, SEC.4.

Chapter 12 – Termination of Guardianships and Protective Orders

Chapter Table of Contents

29-3-12-1 Termination of guardianship; effect of termination on guardianship powers; powers of guardian after death of protected person

29-3-12-2 Mandatory termination of protective order

29-3-12-3 Minimum period to maintain incapacitated person status; petition to terminate guardianship or protective order; penalty

29-3-12-4 Removal, resignation, or death of guardian; final accounting; appointment of successor; effect of removal on validity of guardian's acts

29-3-12-5 Termination of authority and responsibility of guardian; effect on liability of guardian; court approval

29-3-12-6 Guardianship extends beyond age 18 if minor is incapacitated or receives certain DCS assistance

29-3-12-7 Petition to extend guardianship past age 18

IC 29-3-12-1 Termination of guardianship; effect of termination on guardianship powers; powers of guardian after death of protected person

Sec. 1. (a)

(b) The court shall terminate the guardianship of an incapacitated person upon:

(1) adjudication by the court that the protected person is no longer an incapacitated person; or

(2) the death of the protected person.

(c) The court may terminate any guardianship if:

(1) the guardianship property does not exceed the value of three thousand five hundred dollars (\$3,500);

(2) the guardianship property is reduced to three thousand five hundred dollars (\$3,500);

(3) the domicile or physical presence of the protected person is changed to another state and a guardian has been appointed for the protected person and the protected person's property in that state; or

(4) the guardianship is no longer necessary for any other reason.

(d) When a guardianship terminates otherwise than by the death of the protected person, the powers of the guardian cease, except that the guardian may pay the claims and expenses of administration that are approved by the court and exercise other powers that are necessary to complete the performance of the guardian's trust, including payment and delivery of the remaining property for which the guardian is responsible:

(1) to the protected person;

(2) [REDACTED];

(3) to a trust approved by the court, including a trust created by the guardian, in which:

(A) the protected person is the sole beneficiary of the trust; and

(B) the terms of the trust satisfy the requirements of Section 2503(c) of the Internal Revenue Code and the regulations under that Section;

(4) [REDACTED]; or

(5) to another responsible person as the court orders.

(e) When a guardianship terminates by reason of the death of the protected person, the powers of the guardian cease, **except as follows:**

(1) The guardian **may do the following:**

(A) Pay the expenses of administration that are approved by the court and exercise other powers that are necessary to complete the performance of the guardian's trust.

(B) Deliver the remaining property for which the guardian is responsible to the protected person's personal representative or to a person who presents the guardian with an affidavit under IC 29-1-8-1 or IC 29-2-1-2.

(C) **Request the health records of the protected person under IC 16-39-1-3(c)(4),⁵¹ except as provided in IC 16-39-1-3(d), if the protected person was an incapacitated person. The power of a guardian under this clause terminates sixty (60) days after the date of the protected person's death.**

(2) If approved by the court, the guardian may pay directly the following:

(A) Reasonable funeral and burial expenses of the protected person.

(B) Reasonable expenses of the protected person's last illness.

(C) The protected person's federal and state taxes.

(D) Any statutory allowances payable to the protected person's surviving spouse or surviving children.

(E) Any other obligations of the protected person.

As added by P.L.169-1988, SEC.1. Amended by P.L.264-1989, SEC.12; P.L.95-2007, SEC.14; P.L.48-2012, SEC.9; P.L.115-2012, SEC.1; P.L.240-2017, SEC.2.

IC 29-3-12-2 Mandatory termination of protective order

Sec. 2. The court shall terminate a protective order if:

(1) the protective order has expired by its terms; or

(2) the protective order is no longer necessary for any other reason.

As added by P.L.169-1988, SEC.1.

IC 29-3-12-3 Minimum period to maintain incapacitated person status; petition to terminate guardianship or protective order; penalty

Sec. 3. An order adjudicating a person as an incapacitated person may specify a minimum period, not exceeding one (1) year, during which a petition for an adjudication that the protected person is no longer an incapacitated person may not be filed without court approval. Subject to that restriction, the protected person or any other person may petition for an order that the protected person is no longer an incapacitated person and for termination

⁵¹ **IC 16-39-1-3 Request for patient's health records; who may request**

Sec. 3. (a) Health records may be requested by a competent patient if the patient is:

(1) emancipated and less than eighteen (18) years of age; or

(2) at least eighteen (18) years of age.

(b) If a patient is incompetent, the request for health records may be made by the parent, guardian, or custodian of the patient.

(c) Health records of a deceased patient may be requested:

(1) by a coroner under IC 36-2-14-21 or by the personal representative of the patient's estate;

(2) if the estate of the deceased patient does not have a personal representative, by the spouse of the deceased patient;

(3) if the deceased patient does not have a surviving spouse and the deceased patient's estate does not have a personal representative, by:

(A) a child of the deceased patient; or

(B) the parent, guardian, or custodian of the child of the deceased patient if the child of the deceased patient is incompetent; or

(4) if the deceased patient was an incapacitated person for whom a guardian had been appointed under IC 29-3 or the law of another state, by the guardian of the deceased patient, except as provided in subsection (d).

of the guardianship or protective order. A request for an order may also be made informally to the court. Any person who knowingly interferes with transmission of the request is guilty of contempt of court.

As added by P.L.169-1988, SEC.1. Amended by P.L.33-1989, SEC.80.

IC 29-3-12-4 Removal, resignation, or death of guardian; final accounting; appointment of successor; effect of removal on validity of guardian's acts

Sec. 4. (a) The court may remove a guardian on its own motion or on petition of the protected person or any person interested in the guardianship, after notice and hearing, on the same grounds and in the same manner as is provided under IC 29-1-10-6⁵² for the removal of a personal representative. The court may accept the resignation of a guardian. Upon the death of the guardian, the guardian's personal representative shall submit a final account of guardianship to the court in accordance with IC 29-3-9-6.⁵³ Upon the resignation or removal of the guardian, the guardian shall give a final accounting to the court.

(b) If the appointment of a successor guardian is required, the court shall appoint a qualified successor guardian to succeed to the title, powers, and duties of the predecessor guardian unless otherwise ordered by the court.

(c) The removal or resignation of a guardian after letters are duly issued to the guardian does not by itself invalidate the guardian's acts and omissions prior to removal. A final order under IC 29-3-9-6 protects the successor guardian and the successor guardian's surety to the same extent that it protects the successor guardian's predecessor and surety.

As added by P.L.169-1988, SEC.1. Amended by P.L.264-1989, SEC.13.

IC 29-3-12-5 Termination of authority and responsibility of guardian; effect on liability of guardian; court approval

Sec. 5. (a) The authority and responsibility of a guardian terminate:

- (1) at the time that the court designates;
- (2) upon the death, resignation, or removal of the guardian; or
- (3) upon the termination of the guardianship, **subject to section 1(d) and 1(e) of this chapter.**

(b) The termination for any reason of the authority and responsibility of the guardian does not affect the liability of the guardian for prior acts or the obligation to account for the guardian's conduct of the guardian's trust.

(c) The resignation of a guardian does not terminate the appointment of the guardian until the guardian's resignation and final account have been approved by the court.

As added by P.L.169-1988, SEC.1. Amended by P.L.240-2017, SEC.3.

IC 29-3-12-6 Guardianship extends beyond age 18 if minor is incapacitated or receives certain DCS assistance

⁵² **IC 29-1-10-6 Removal of personal representatives for reasons other than a change in control of a corporate fiduciary**

Sec. 6. (a) This section does not apply to the removal of a corporate fiduciary after a change in control of the corporate fiduciary.

(b) When the personal representative becomes incapacitated (unless the incapacity is caused only by a physical illness, infirmity, or impairment), disqualified, unsuitable or incapable of discharging the representative's duties, has mismanaged the estate, failed to perform any duty imposed by law or by any lawful order of the court, or has ceased to be domiciled in Indiana, the court may remove the representative in accordance with either of the following:

(1) The court on its own motion may, or on petition of any person interested in the estate shall, order the representative to appear and show cause why the representative should not be removed. The order shall set forth in substance the alleged grounds upon which such removal is based, the time and place of the hearing, and may be served upon the personal representative in the same manner as a notice is served under this article.

(2) The court may without motion, petition or application, for any such cause, in cases of emergency, remove such personal representative instantly without notice or citation.

(c) The removal of a personal representative after letters are duly issued does not invalidate official acts performed prior to removal.

⁵³ This is the general statute on guardianship accountings.

Sec. 6. (a) If a protected person:

(1) is a minor; and

(2) has been adjudicated an incapacitated person;

the court may not terminate the guardianship of the protected person when the protected person attains eighteen (18) years of age.

(b) If a protected person is:

(1) a minor; and

(2) a recipient or beneficiary of financial assistance provided by the department of child services through a guardianship described in [IC 31-9-2-17.8\(1\)\(E\)](#);⁵⁴

the court may not terminate the guardianship of the protected person when the protected person attains eighteen (18) years of age.

As added by P.L.115-2012, SEC.2.

IC 29-3-12-7 Petition to extend guardianship past age 18

[REDACTED]

As added by P.L.115-2012, SEC.3.

Chapter 13 – Foreign Guardians

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29-3-13-1 Payment of debt or delivery of property to foreign guardian

29-3-13-2 Filings concerning a foreign guardianship of the property of a minor; registration of the letters of office of a foreign guardian for an adult

29-3-13-3 Acts by which foreign guardian submits to personal jurisdiction

IC 29-3-13-1 Payment of debt or delivery of property to foreign guardian

Sec. 1. (a) Any person indebted to an incapacitated person [REDACTED], or having possession of property belonging to a [REDACTED] incapacitated person, may pay the debt or deliver the property to a foreign guardian appointed by a court of the state in which the incapacitated

⁵⁴ **IC 31-9-2-17.8 Child services.**

Sec. 17.8 "Child services", for purposes of this title, means the following:

(1) Services, other than services that are costs of secure detention, specifically provided by or on behalf of the department for or on behalf of children who are:

...

(E) recipients or beneficiaries of:

(i) adoption assistance or kinship guardianship assistance under Title IV-E of the federal Social Security Act (42 U.S.C. 673), as amended;

(ii) adoption subsidies or assistance under [IC 31-19-26.5](#);

(iii) assistance, including emergency assistance or assisted guardianships, provided under Title IV-A of the federal Social Security Act (42 U.S.C. 601 et seq.), as amended; or

(iv) other financial assistance provided to or for the benefit of a child who was previously adjudicated as a child in need of services or delinquent child, including a legal guardianship established to implement a permanency plan under [IC 31-34-21-7.5\(c\)\(1\)\(E\)](#) if [IC 29-3-8-9](#) applies and the assistance is approved under a rule or published policy of the department.

(2) Costs of using an institution or facility for providing educational services to children described in subdivision (1)(A), under either [IC 20-33-2-29](#) (if applicable) or [IC 20-26-11-13](#) (if applicable).

person [REDACTED] resides upon being presented with proof of the foreign guardian's appointment and an affidavit made by the foreign guardian stating the following:

- (1) That the foreign guardian does not know of any other guardianship proceeding, relating to the incapacitated person [REDACTED], pending in Indiana.
 - (2) That the letters of the foreign guardian were duly issued.
 - (3) In the case of an incapacitated person who is an adult (as defined in IC 29-3.5-1-2(1))⁵⁵, that the foreign guardian does not know of a court in a jurisdiction other than Indiana that has exercised jurisdiction regarding the incapacitated person under a law similar to IC 29-3.5-2.
 - (4) That the foreign guardian is entitled to receive the payment or delivery.
 - (b) If the person to whom the affidavit is presented does not know of any other guardianship proceeding pending in Indiana, payment or delivery in response to the demand and affidavit discharges the debtor or possessor from any further liability.
- As added by P.L.169-1988, SEC.1. Amended by P.L.33-1989, SEC.81; P.L.178-2011, SEC.7.*

IC 29-3-13-2 Filings concerning a foreign guardianship of the property of a minor; registration of the letters of office of a foreign guardian for an adult

Sec. 2. [REDACTED]

- (b) In the case of an incapacitated person who is an adult (as defined in IC 29-3.5-1-2(1)), a foreign guardian for that adult may register certified copies of the guardian's letters of office and order of appointment under IC 29-3.5-4.

As added by P.L.169-1988, SEC.1. Amended by P.L.33-1989, SEC.82; P.L.178-2011, SEC.8.

IC 29-3-13-3 Acts by which foreign guardian submits to personal jurisdiction

Sec. 3. A foreign guardian submits personally to the jurisdiction of Indiana courts in any proceeding relating to the property for which the guardian is responsible by:

- (1) complying with section 2 of this chapter;

(2) [REDACTED]

; or

- (3) doing any act as a guardian in Indiana that would give Indiana jurisdiction over the guardian as an individual.

As added by P.L.169-1988, SEC.1. Amended by P.L.33-1989, SEC.83; P.L.178-2011, SEC.9.

⁵⁵ Reference is to definitions in the Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act. (UAGPPJA).

**LETTERS OF GUARDIANSHIP OF
THE PERSON AND THE ESTATE**

CAUSE NO.: **49D08-1806-GU-123456**

STATE OF INDIANA, MARION COUNTY, Sct:

This is to CERTIFY that the Judge of Marion County Superior Court, Indiana, has this
day granted to

John Doe (Guardian)

the authority to administer as Guardian the guardianship of

Jane Doe (Protected Person).

The Guardian shall have the following powers:

- Those powers set out in Indiana Code 29-3-8-2(a), Subsections (1) through (6).

(“Guardianship of the Person”)

- Those powers set out in Indiana Code 29-3-8-4, Subsections (1) through (10).

(“Guardianship of the Estate”)

The Guardian has no authority to do any act not specifically authorized herein except
with the prior written permission of the court.

Further limitations of the guardian’s authority are as follows:

NONE

Said guardianship shall extend until terminated as provided by law, and John Doe, having
duly qualified and given bond, if required, as such Guardian, is duly authorized to perform the
duties of the trusts of such guardianship, according to law.

WITNESS my hand and seal of said Court, at Indianapolis, Indiana, this

_____.

Clerk, MARION Superior Court

Supporter Appointment Addendum

My Supporters do not make decisions for me. I appoint the following person as my Supporter:

Full name

Address

Email

Telephone

Relationship to adult:

I want this Supporter to help me with decisions related to:

- | | | |
|--|--|---|
| <input type="checkbox"/> Finance | <input type="checkbox"/> Legal Matters | <input type="checkbox"/> Work |
| <input type="checkbox"/> Physical Health | <input type="checkbox"/> Services and Supports | <input type="checkbox"/> Community Living/Housing |
| <input type="checkbox"/> Mental Health | <input type="checkbox"/> Education | <input type="checkbox"/> Other |

Exceptions/limitations to these areas:

-
- ☐ Supporter may work with other Supporters.
- ☐ Supporter may share information with other Supporters.

I want this Supporter to help me by:

- ☐ Giving me information in a way I can understand.
- ☐ Be with me when obtaining information about my decision.
- ☐ Discussing the good/bad (pros/cons) that can happen.
- ☐ Helping me advocate for my decision.
- ☐ Helping me communicate my wishes to others.
- ☐ Other:

Supporter Consent

I, _____, consent to act as Supporter for (Adult). I know I may not make decisions for Adult. I understand that my job as Supporter is to honor and express Adult's wishes. I will support the will and preference of Adult, and not my opinion of Adult's best interests. I will act honestly, diligently, and in good faith, and I will act within the scope set forth in the Supported Decision-Making Agreement. I will avoid conflicts of interest.

I understand the relationship between Adult and Supporter is one of trust and confidence, and serves to preserve the decision-making authority of Adult. I understand that I am not becoming an agent for Adult and I am not liable for the consequences of Adult's decisions. I understand that I am not a surrogate decision maker for Adult and that I do not have authority to sign legal documents on behalf of Adult or bind Adult to a legal agreement unless expressly specified in a separate legal document.

As Supporter, I understand that I am prohibited from:

- exerting undue influence upon Adult;
- receiving a fee for service related solely to services performed in the role of Supporter;
- obtaining, without the consent of Adult, information acquired for a purpose other than assisting Adult in making a specific decision authorized by the Supported Decision-Making Agreement; or
- acting outside the scope of authority provided in the Supported Decision-Making Agreement.

I will notify Adult in writing if I intend to resign as Supporter.

Signature _____

Date

Supported Decision-Making Agreement

This agreement should be reviewed by all parties to the agreement. The form of communication shall be appropriate to the needs and preferences of each party. The adult should sign in the presence of a notary. Each Supporter will acknowledge by signature his/her/their role as determined by the adult.

This document is not intended to create an agency agreement between the adult and any Supporters listed in this document. Supporters do not owe a fiduciary duty to the adult subject to the agreement, and have no authority to make decisions for the adult.

If you have any questions about your legal rights, please talk to an attorney.

Notice to Third Parties: Under Indiana law, a request or decision made or communicated with the assistance of a supporter shall be recognized as the request or decision of the adult. An agreement that complies with Indiana Code 29-3-1-14(7) is presumed valid. A party may rely on the presumption of validity unless the party has actual knowledge that the agreement was not validly executed. A person who, in good faith, relies on or declines to honor an authorization in an agreement is not subject to civil or criminal liability or to discipline for unprofessional conduct. A supporter who performs supported decision making in good faith as specified in an agreement is immune from civil or criminal liability resulting from the adult's decision unless the act or omission amounts to fraud, misrepresentation, recklessness, or willful or wanton misconduct.

Today's date is:

My full name is:

My date of birth is:

My telephone number is:

My address is:

My e-mail address is:

I want to have people I trust help me make decisions. The people who will help me are called Supporters. I can say what kind of help my supporters will give me.

I understand:

- ☐ I can talk to an attorney before I sign this agreement.
- ☐ This agreement is because I want Supporters to help me make decisions.
- ☐ My Supporter cannot make decisions for me.
- ☐ My Supporter is not liable for any consequences or decisions I make unless my Supporter's actions or omissions amount to fraud, misrepresentation, recklessness, or willful or wanton misconduct.
- ☐ I can end or change this agreement when I want to. I must let my Supporters know about any changes I make to this agreement. Anyone with a copy of the agreement should get a copy of the change in writing.
- ☐ I can change my list of Supporters when I want to.
- ☐ My Supporter(s) can quit if he/she/they wants to.

If I have more than one Supporter in any area, I want those Supporters to work jointly (together) unless I note otherwise below or in the Supporter Appointment Addendum.

I want support to help me make decisions about:

☐ Finances

Supporter(s):

How I want help:

Topics/Tasks for specific help:

☐ Physical Health

Supporter(s):

How I want help:

Topics/Tasks for specific help:

(Continued next page)

☐ Mental Health

Supporter(s):

How I want help:

Topics/Tasks for specific help:

☐ Legal Matters

Supporter(s):

How I want help:

Topics/Tasks for specific help:

(Continued next page)

☐ Services and Supports

Supporter(s):

How I want help:

Topics/Tasks for specific help:

☐ Education

Supporter(s):

How I want help:

Topics/Tasks for specific help:

(Continued next page)

☐ **Work**

Supporter(s):

How I want help:

Topics/Tasks for specific help:

☐ **Community Living/Housing**

Supporter(s):

How I want help:

Topics/Tasks for specific help:

(Continued next page)

☐ Other

Supporter(s):

How I want help:

Topics/Tasks for specific help:

☐ Other

Supporter(s):

How I want help:

Topics/Tasks for specific help:

(Continued next page)

I understand that certain documents may give my Supporters more authority in my life or access to my personal information. I am including those documents as part of this agreement:

- ☐ Authorization for Release of Records
 - ☐ Health Insurance Portability and Accountability Act (HIPAA) Release
 - ☐ Family Educational Rights and Privacy Act (FERPA) Release
 - ☐ Other Release
- ☐ Letters of Guardianship [☐ Temporary / ☐ Permanent]
 - ☐ Guardianship of the Person and Estate
 - ☐ Guardianship of the Person
 - ☐ Guardianship of the Estate
- ☐ Power of Attorney
- ☐ Protective Order
- ☐ Educational Surrogate Authorization
- ☐ Trust Documents
- ☐ Health Care Representative Authorization
- ☐ Psychiatric Advanced Directive
- ☐ Representative Payee Authorization
- ☐ Living Will
- ☐ Other

List of Supporters	
<u>Supporter Name</u>	<u>Addendum Attachment No.</u>

Signature of Adult

This supported decision-making agreement starts right now and will continue until the agreement is stopped by me. I have reviewed, agree with, and understand all the information contained in this agreement.

My signature: _____

My full name:

Today's date:

Guardian Consent (*if applicable*)

I am the legal guardian for the above-named individual. I consent to this Agreement.

Notes or limitations (if any):

My signature: _____

My full name:

Today's date:

Signature of Notary

State of

County of

This document was acknowledged before me on _____ (date)

by _____ (name of person completing this form).

Signature of Notary

Printed Name of Notary

Notary Seal, if any:

My commission expires _____

WARNING: PROTECTION FOR ADULTS WITH A DISABILITY

If a person who receives a copy of this agreement or is aware of the existence of this agreement has cause to believe that the adult with a disability is being abused, neglected, or exploited by the supporter, the person shall report the alleged abuse, neglect, or exploitation to Indiana Adult Protective Services at (800) 992-6978.

This product is supported by grant No. 90EJIG0007-01-00 from the Administration for Community Living (ACL), U.S. Department of Health and Human Services (DHHS). Grantees carrying out projects under government sponsorship are encouraged to express freely their findings and conclusions. Therefore, points of view or opinions do not necessarily represent official ACL or DHHS policy.

Name and Address	Relationship
Joe Citizen Lexington, Kentucky	Son

(6) A protective order is needed to amend powers of attorney signed by John

Q. Citizen. The powers of attorney are attached hereto as **Exhibit A**. The powers of attorney signed by Mr. Citizen names Jane Smith as attorney-in-fact. Ms. Smith has already been serving as attorney-in-fact for Mr. Citizen. Ms. Smith is seeking a protective order to amend these powers of attorney as they fail to include the power under Ind. Code § 30-5-5-4.5 regarding retirement plans. Mr. Citizen has a retirement account that cannot be managed with the current powers of attorney as they do not include this power. Importantly, Mr. Citizen, through his attorney-in-fact, needs to take his required minimum distributions in 2019 in order to avoid significant tax penalties.

(7) The protective order is needed because:

- a. The Incapacitated person owns property or has income requiring management or protection that cannot otherwise be provided.
- b. The incapacitated person has financial or business affairs that may be jeopardized or impaired; and/or
- c. The incapacitated person has property that needs to be managed to provide for the support or protection of the incapacitated person.

(8) The name and business address of the attorney who is to represent the guardian or person to carry out the protective order:

H. Kennard Bennett, Atty No. 4015-49
Sara McClammer, Atty. No. 29825-49
Bennett & McClammer, LLP
120 E. Market St., Suite 1150
Indianapolis, IN 46204

WHEREFORE, your petitioner prays the Court to enter an order:

1. Setting a hearing on this petition as soon as possible consistent with the preservation of the rights of the alleged incapacitated person;
2. Requiring that all necessary parties and persons be designated by the Court and given adequate notice of the protective proceedings.
3. After hearing, adjudicate that John Q. Citizen are incapacitated persons;
4. Finding that the incapacitated persons:
 - a. own property or has income requiring management or protection that cannot otherwise be provided.
 - b. has financial or business affairs that may be jeopardized or impaired; and/or
 - c. has property that needs to be managed to provide for the support or protection of the incapacitated person.
5. Finding that a protective order is necessary to amend the powers of attorney to include the power to manage retirement accounts under Ind. Code § 30-5-5-4.5.
6. Finding that the petitioner is suitable to be appointed guardian of John. Q. Citizen
7. And for all other relief which is proper in the premises.

Jane Smith, Petitioner

I affirm, under the penalties for perjury, that the foregoing representations are true.

Jane Smith, Petitioner

Prepared By:
H. Kennard Bennett, Atty No. 4015-49
Sara McClammer, Atty. No. 29825-49
Bennett & McClammer, LLP
120 E. Market St., Suite 1150
Indianapolis, IN 46208
(317) 931-0944

STATE OF INDIANA)
) SS:
COUNTY OF MARION)
) CAUSE NO.:

IN THE MATTER OF PROTECTIVE)
PROCEEDINGS FOR)
JOHN Q. CITIZEN.)

ORDER ON PETITION FOR PROTECTIVE ORDER
AMENDING POWERS OF ATTORNEY

This matter comes before the Court on the Petition for Protective Order
Amending Powers of Attorney filed by Jane Smith.

And the Court having reviewed the Petition and the Petitioner having appeared in
person and by counsel, and the Court having heard evidence thereon on November 13,
2019, and being fully advised in the premises, now finds, pursuant to I.C. § 29-3-4-1, as
follows:

1. John Q. Citizen is an incapacitated person as defined under I.C. § 29-3-1-7.5.
2. The Incapacitated person owns property or has income requiring
management or protection that cannot otherwise be provided;
3. The incapacitated person has financial or business affairs that may be
jeopardized or impaired; and/or
4. The incapacitated person has property that needs to be managed to provide
for the support or protection of the incapacitated person.

And the Court further finds that:

5. John Q. Citizen has been personally served notice of these guardianship
proceedings and has received a copy of the Petition for Protective Order

Amending Powers of Attorney as evidenced by the Proof of Service filed herein;

6. John Q. Citizen did not appear at the hearing, as sufficient evidence was presented for the Court to find that, pursuant to I.C. § 29-3-5-1(d) , it is not in John Q. Citizen's best interest to be present because of a threat to the health or safety of John Q. Citizen;
7. Notice required pursuant to I.C. § 29-3-6-1 has been sent to all interested parties and persons as evidenced by the Proof of Service filed herein;
8. All of the requirements for the issuance of a Protective Order under Ind. Code § 29-3-4-1 have been met.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED by the Court that the Power of Attorney signed by John Q. Citizen on January 1, 2019 naming Smith as attorney in fact is hereby amended and/or the acting attorney in fact has these additional powers:

Authority with respect to retirement plans pursuant to Ind. Code § 30-5-5-4.5, including, but not limited to, the power to fully manage retirement accounts and to request distributions from an IRA or other retirement account for the benefit of the principal.

All of which is ordered on _____.

JUDGE, Marion Superior Court

(6) The residence and post office address of the proposed guardian or person to carry out the protective order and the relationship to the alleged incapacitated person of (A) the proposed guardian; or (B) the person proposed to carry out the protective order:

Name and Address	Relationship

(7) The names and addresses, as far as known or as can reasonably be ascertained, of the persons most closely related by blood or marriage to the person for whom the guardian is sought to be appointed or the protective order is issued:

Name and Address	Relationship

(8) The name and address of the person or institution having the care and custody of the person for whom the guardian is sought to be appointed or the protective order is issued: *

(9) The names and addresses of any other incapacitated persons or minors for whom the proposed guardian or person to carry out the protective order is acting if the proposed guardian or person is an individual: *

(10) The reasons the appointment of a guardian or issuance of a protective order is sought and the interest of the petitioner in the appointment or issuance: *The alleged incapacity needs a guardian because the alleged incapacitated person (1) lacks the requisite cognitive and/or functional capacity to make informed medical decisions on their own behalf; and (2) lacks the cognitive and/or functional capacity to manage their financial and business affairs without the assistance of a guardian.

(11) A description of the petitioner's efforts to use less restrictive alternatives before seeking guardianship, including: (A) the less restrictive alternatives for meeting the alleged incapacitated person's needs that were considered or implemented; (B) if a less restrictive alternative was not considered or implemented, the reason that the less restrictive alternative was not considered or implemented; and (C) the reason a less restrictive alternative is insufficient to meet the needs of the alleged incapacitated person: **The petitioner has consulted with legal counsel, reviewed the known medical facts concerning the alleged incapacitated person, spoken with others including the alleged incapacitated person, and otherwise reviewed the known relevant facts to determine whether there are any less restrictive alternatives to guardianship before filing this petition.**

The petitioner does not believe a less restrictive alternative to guardianship is possible in this instance, for the following reasons:*[change and/or add to as needed]*****

a. The alleged incapacitated person suffers from a progressive, degenerative cognitive condition that makes a supported decision making agreement impossible to implement and maintain.

b. The nature of the alleged incapacitated person's incapacity is cognitive/mental in nature, not physical, and no known "appropriate technological assistance" would therefore address their needs.

c. The appointment of a representative payee alone would not suffice to meet the needs of the alleged incapacitated person. There are income streams besides social security and/or SSI that need to be managed and the sources of which

do not readily provide for “representative payees.” Also, there are existing assets of the alleged incapacitated person held by banks or other financial institutions, which will not allow access by a “representative payee.” Also, the alleged incapacitated person is unable to make health care decisions and other decisions, such as the most appropriate living setting, which are decisions a “representative payee” cannot legally make for them.

d. There is no known health care declaration nor health care power of attorney executed by the alleged incapacitated person and they do not now have the requisite contractual capacity necessary to legitimately execute such a document now. Also, the alleged incapacitated person requires a legally recognized surrogate decision maker to manage their financial affairs and a health care representative or health care power of attorney would not have the authority to do so.

e. There is no known power of attorney executed by the alleged incapacitated person and they do not have the requisite contractual capacity necessary to legitimately execute such a document now. Also, the alleged incapacitated person requires a legally recognized surrogate decision maker to manage their health care needs and a power of attorney would not have the authority to do so.

(12) The name and business address of the attorney who is to represent the guardian or person to carry out the protective order:

WHEREFORE, your petitioner prays the Court to enter an order:

1. Setting a hearing on this petition as soon as possible consistent with the preservation of the rights of the alleged incapacitated person;
2. Requiring that all necessary parties and persons be designated by the Court and given adequate notice of the guardianship proceedings.
3. After hearing, adjudicate that *WARD is an incapacitated person;
4. Finding that a guardian for *WARD needs to be appointed;
5. Finding that the petitioner is suitable to be appointed guardian of *WARD;
6. Appointing *PETITIONER as the guardian of *WARD setting out the duties and powers of the guardian;
7. And for all other relief which is proper in the premises.

*PETITIONER

I affirm, under the penalties for perjury, that the foregoing representations are true.

*PETITIONER

Prepared By:

*

STATE OF INDIANA)
) SS:
COUNTY OF MARION) CAUSE NO.:

IN THE MATTER OF THE GUARDIANSHIP OF)
)
JOHN Q. CITIZEN, ADULT) DOB: 1/01/1994

MOTION AND AFFIDAVIT TO PROCEED AS AN INDIGENT PERSON

Comes now Janella R. Citizen, by counsel, Sara McClammer, who states:

1. I intend to file a court action to initiate guardianship over John Q. Citizen, who is my son and currently lives with me.
2. Upon due inquiry, there are no known funds belonging to John Q. Citizen sufficient to pay filing fees or other costs.
3. Sara McClammer has agreed to provide associated legal representation on a pro bono basis.

WHEREFORE, I request, pursuant to IC 34-10-1-1 that this Court waive all costs of this action, allow me to proceed without payment of bonds, fees, or other costs.

Respectfully submitted,

Janella R. Citizen,
Petitioner

AFFIRMATION

I affirm under the penalties for perjury that the foregoing statements are true to the best of my knowledge and belief.

Janella R. Citizen

Prepared by:
Sara McClammer
Atty. # 29825-49
Bennett & McClammer LLP
120 E Market Street, Suite 510
Indianapolis, IN 46204
(317) 931-0944

STATE OF INDIANA)
) SS:
COUNTY OF MARION) CAUSE NO.:

IN THE MATTER OF THE GUARDIANSHIP OF)
)
JOHN Q. CITIZEN, ADULT) DOB: 1/01/1994

ORDER WAIVING FILING FEE & BOND

Comes now Petitioner, Janelle R. Citizen, by counsel, Sara McClammer, on behalf of the alleged incapacitated person John Q. Citizen, and requests a waiver of the filing fee and court costs. It appearing from her Motion and Affidavit that the alleged incapacitated person does not have the money or means by which to pay the filing fee, required under the laws of the State of Indiana, for the filing of a guardianship proceeding; and it further appearing that the Petitioner is entitled to file an action for judicial review; and the Court having examined said Motion and being duly advised now finds that the filing fee should be waived, the Court now makes the following order:

IT IS THEREFORE ORDERED that Petitioner shall be allowed to file her Petition for Appointment of Guardian Over Adult and the Clerk for this Court shall accept the Petition without payment of fees.

Dated: _____

Judge, Marion County Superior Court

Distributed:
Sara McClammer
BENNETT & MCCLAMMER LLP
120 E. Market St., Suite 510
Indianapolis, IN 46204
(317) 931-0944

IN THE MATTER OF THE GUARDIANSHIP OF)
)
JOHN Q. CITIZEN, ADULT)

Dr. _____, a physician licensed to practice medicine in all its branches in the State of Indiana, submits the following Report on _____, the alleged incapacitated person ("Person") named above, based on an examination of said person conducted within the last three (3) months, on the ____ day of _____, 20____.

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safety. Explain the specific risk to the Person's health or safety if he or she appears in Court.

The report must be signed by a physician. If the description of the Person's mental, physical and educational condition, adaptive behavior or social skills is based on evaluations by other professionals, all professionals preparing or contributing evaluations must sign the report. Evaluations on which the report is based must be performed within three (3) months of the date of the filing of the petition.

I/We affirm under the penalties of perjury that the foregoing representations are true.

Physician:

Name: Signature: _____
Street Address: _____
City: _____ State: _____ Zip: _____ Phone: _____

Other professionals who performed evaluations upon which this report is based:

Name: Signature: _____
Profession: _____
Street Address: _____
City: _____ State: _____ Zip: _____ Phone: _____

Other professionals who performed evaluations upon which this report is based:

Name: Signature: _____
Profession: _____
Street Address: _____
City: _____ State: _____ Zip: _____ Phone: _____

Other professionals who performed evaluations upon which this report is based:

Name: Signature: _____
Profession: _____
Street Address: _____
City: _____ State: _____ Zip: _____ Phone: _____



P.O. Box 100
Beech Grove, IN 46107
(317) 859-1090 • fax (317) 941-7254

January 6, 2015

Re: [REDACTED]

D.O.B.: [REDACTED]

To Whom It May Concern:

[REDACTED] is a patient of mine at [REDACTED] Village. It would be in her best interest not to appear in court or to attend any court proceedings, it would cause unnecessary anxiety with emotional disturbances. If you have any further questions, you may contact my office at 317-[REDACTED]

Sincerely,

named in the purported power of attorney is unable or unwilling to act as attorney-in-fact on behalf of Jane Doe.

4. Pursuant to I.C. 30-5-3-4(b) provides that:

A guardian does not have power, duty, or liability with respect to property or personal health care decisions that are subject to a valid power of attorney. A guardian has no power to revoke or amend a valid power of attorney unless specifically directed to revoke or amend the power of attorney by a court order on behalf of the principal. A court may not enter an order to revoke or amend a power of attorney without a hearing. Notice of a hearing held under this section shall be given to the attorney in fact.

5. Petitioner believes it would be in the best interests of the alleged incapacitated person that a guardian be provided an order directing the guardian to revoke the purported power of attorney, and that it would be in the interest of judicial economy to consolidate a hearing on this petition with the hearing on the petition for the appointment of a guardian that is presently scheduled.

WHEREFORE, after hearing with notice to Jane Doe, Daughter 1 Doe and Daughter 2 Doe, the petitioner respectfully prays that upon the appointment of a guardian for Jane Doe, that guardian be provided an Order directing and authorizing said guardian to revoke the power of attorney, a copy of which is attached hereto. Petitioner prays for all further relief just and proper.

Respectfully submitted,

/s/ Sara McClammer

Sara McClammer, Attorney for the Petitioner
GOOD DAUGHTER DOE

Sara McClammer
Bennett & McClammer LLP
120 E. Market St., Suite 1150
Indianapolis, IN 46204
(317) 931-0944
sara@bennettmcclammer.com

STATE OF INDIANA)
) SS:
COUNTY OF MARION) CAUSE NO.:

IN THE MATTER OF THE GUARDIANSHIP OF)
)
JOHN Q. CITIZEN, ADULT)

ORDER APPOINTING GUARDIAN OVER
PERSON AND ESTATE OF INCAPACITATED PERSON

Comes now Joe Guardian, who having filed a verified petition for the appointment of a guardian over the person and estate of John Q. Citizen, which petition is on file with the Court and a part of the Court's record.

And the Court having reviewed the petition and the petitioner having appeared in person and by counsel, H. Kennard Bennett and Sara McClammer, and the Court having heard evidence thereon on January 1, 2017, and being fully advised in the premises, now finds that the allegations contained in the petition are true, and that:

1. John Q. Citizen has been personally served notice of these guardianship proceedings and has received a copy of the Petition for Guardianship as evidenced by the certificate of service filed herein;
2. Notice required under the statute and by this Court has been sent to all interested parties and persons as evidenced by the Certificate of Service filed herein;
3. John Q. Citizen, an adult person, 79 years of age, a resident at Nursing Home facility in Marion County, Indiana is unable to maintain and care for his person, due to the fact that he suffers from dementia.

4. John Q. Citizen is in need of a guardian because of that incapacity, and it is in the best interests of John Q. Citizen that a guardian be appointed;

5. Joe Guardian is a suitable person to serve as guardian of the person and estate, as she is the daughter of John Q. Citizen and is fully qualified and willing to assume the duties and responsibilities of the guardianship;

6. All of the requirements for the appointment of a guardian as set forth in the Indiana Code have been satisfied, and Joe Guardian is entitled to be guardian of the person and estate and is appointed with those powers set forth in the Letters of Guardianship attached hereto as **Exhibit A**.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED by the Court that:

1. John Q. Citizen by reason of the stated incapacity is unable to care for her person and estate and is therefore adjudicated to be an incapacitated person and a guardian is necessary;

2. Joe Guardian is the most qualified and suitable persons available to serve as guardian of the person and estate and is hereby appointed as the guardian of the person and estate of John Q. Citizen;

3. Joe Guardian shall serve as guardian upon taking an oath before the Clerk of this Court; and

4. Upon taking such an oath, the Clerk of this Court is directed to issue Letters of Guardianship of the Person and Estate to Joe Guardian in the form attached hereto as **Exhibit A**, and guardian is authorized to exercise all powers as enumerated therein.

All of which is ordered on _____.

JUDGE, Marion Superior Court

Copy to:

H. Kennard Bennett, #4015-49
Sara McClammer, #29825-49
Bennett & McClammer LLP
120 E Market Street, Suite 1150
Indianapolis, IN 46204

STATE OF INDIANA)
) SS:
COUNTY OF MARION) CAUSE NO.:

IN THE MATTER OF THE GUARDIANSHIP OF)
)
JOHN Q. CITIZEN, ADULT)

ACCEPTANCE AND OATH OF PERMANENT GUARDIAN

Joe Guardian accepts the Court's appointment as permanent guardian of the estate of John Q. Citizen and affirms under penalties for perjury to faithfully discharge its duties of guardian as enumerated by the Court's order.

Date: This _____.

Joe Guardian

[illegible]

Before me, a Notary Public in and for said County and State, personally appeared Joe Guardian, who acknowledged the execution of the foregoing Affidavit.

WITNESS my hand and Notarial seal, this _____ day of _____, 2018.

Commission Expires: _____

Notary Public

County of Residence: _____

Name (printed)

STATE OF INDIANA)
COUNTY OF MARION) SS:

IN THE MATTER OF THE GUARDIANSHIP OF)
** , ADULT)

CAUSE NO.:

COURT'S INSTRUCTIONS TO GUARDIAN OF THE PERSON

Please read carefully before you date and sign. One copy of this form must be filed with the Court before your appointment as guardian is confirmed by the Court. Keep a copy for your records.

You have been appointed as the guardian of an individual who is unable to care for his or her own personal affairs. It is important that you fully realize your duties and responsibilities. Listed below are some of your duties.

You should be represented at all times by an attorney of record. Your attorney is required to notify the Court if you are not properly performing your duties to the protected person. By signing these Instructions you agree that the filing of that notice does not violate the attorney-client privilege. If the Court receives such notice it will set the matter for hearing and require you to personally appear and account to the Court for all actions taken or not taken by you as guardian.

The Instructions which follow are to be considered by you as Orders of the Court which require you to perform as directed.

The Court appreciates your efforts on behalf of the protected person.

Steve Eicholtz, Judge, Marion Superior Court Probate Division

As Guardian of the person, you have the following duties and authority:

1. You must be or become sufficiently acquainted with the protected person and maintain sufficient contact with the protected person to know his or her capabilities, disabilities, limitations, needs, opportunities, and physical and mental health.

2. You are responsible to make sure the protected person has an adequate place to live that is appropriate for the protected person's needs. You can decide where the protected person will live. You must obtain approval of the Court before you move the protected person to another residence or health facility that is more than fifty miles away.

3. You are responsible to make sure that the protected person receives needed and appropriate medical care. You can consent to medical or other professional care and treatment for the protected person's health and welfare. You can consent to the protected person's admission to a health care facility.

4. You shall, to the extent possible, encourage and promote the self-reliance and independence of the protected person.

5. You can, to the extent that the protected person is able, delegate to the protected person certain responsibilities for decisions affecting the protected person's well-being.

6. You or your attorney must notify the Court if your address changes.

7. You must file a report with the Court at least every two years. The report must state the present residence of the protected person and a statement of the protected person's current condition and general welfare. A sample report form is attached. Failure to file the report may result in your removal as guardian.

I authorize my attorney to notify the Court in the event that he or she has reason to believe that I am not timely performing or am improperly performing my duties to the protected person even if such information would be otherwise confidential.

I acknowledge that I have carefully and completely read the above instructions and received a copy for my records. I agree to properly carry out my duties.

Dated this _____ day of _____, 20 _____.

Signature, Guardian

Print, Guardian

Signature, Guardian

Print, Guardian

I acknowledge that I have carefully and completely discussed the above instructions with my client before this form was signed and believe that he or she is fully aware of and capable of performing the duties required of a guardian of the estate.

Signature, Attorney

Print, Attorney

[illegible]

COURT'S INSTRUCTIONS TO GUARDIAN OF ESTATE

Please read carefully before you date and sign. One copy of this form must be filed with the Court before your appointment as guardian is confirmed by the Court. Keep one copy for your records.

Introduction:

You have been appointed as the guardian of an individual who is unable to care for his or her own financial affairs. It is important that you fully realize your duties and responsibilities. Listed below are some of your duties, but not all of them.

You must be represented at all times by an attorney of record. Your attorney is required to reasonably supervise and guide your actions as guardian unless and until that attorney is permitted by order of the Court to withdraw from representing you.

Your attorney is required to notify the Court in the event that you are not timely performing or improperly performing your fiduciary duties to the protected person, and by signing these Instructions you agree that the filing of that notice does not violate the attorney- client privilege. If the Court receives such notice, it will set the matter for hearing and will require you to personally appear and account to the Court for all actions taken or not taken by you as guardian. You are required to notify the Court in writing in the event that your attorney is not timely performing or improperly performing his or her duties to reasonably supervise and guide your actions as guardian. Upon receipt of the

notice, the Court will set the matter for hearing and require you and your attorney to personally appear and account to the Court for all actions taken or not taken by the attorney.

The Instructions which follow are to be considered by you as Orders of the Court which require you to perform as directed. Although your attorney will file all papers with the Court, the ultimate responsibility to see that all accounts and other documents are accurately prepared and filed, rests with you and you can be found personally liable should you not properly perform.

The Court appreciates your efforts on behalf of the protected person.

Steve Eicholtz, Judge

Marion Superior Court Probate Division

As Guardian you are required to:

1. Locate, collect and maintain all property owned by the protected person.
Keep motor vehicles and real estate insured and protected.
2. Have your attorney file with the Court, within ninety (90) days after your appointment, a verified inventory and appraisal of all the property belonging to the protected person, with values as of the date you were appointed. You must provide a copy of the inventory to the protected person (if over fourteen (14) years of age) and to certain other persons as set out in Indiana Code §29-3-9-5.
3. Have your attorney file with the Court a verified current account of all the income and expenditures of the guardianship every two (2) years after your appointment, consisting of three schedules. The first schedule must include all assets listed on the

inventory or on the last current account along with any additions or adjustments to the inventory. The second schedule must be an itemized list of expenditures, supported by attached cancelled checks or facsimiles of paid checks as evidence of payment. The third schedule must be a recapitulation indicating the remaining property after subtracting expenditures.

4. Pay bond premiums as they become due.

5. File and pay taxes on the protected person's income and assets.

6. Have your attorney file a final accounting with the Court upon the termination of the guardianship, whether due to the death of the protected person, or for any other reason.

7. Keep all of the assets of the protected person separate from your own.

Guardianship funds should never be co-mingled with personal funds. Unauthorized use of the guardianship funds will result in personal liability.

8. Open a guardianship checking account in your name "as guardian of (the protected person)" This account shall be used for all payments or disbursements on behalf of the protected person. The account should be in the protected person's Social Security number, not yours. It cannot be a joint account. Make sure that the financial institution you are utilizing will provide you with cancelled checks or images of paid checks and evidence of payments made from the account..

9. Real estate, automobiles and other accounts and investments should be held in the name of the protected person.

10. All investment accounts and other bank account holdings should be retitled as follows: "John Smith Guardianship, Mary Jones Guardian."

11. Obtain approval from the Court to use guardianship assets, other than for normal bills.
12. Do not self-deal. Do not buy anything from or sell anything to the protected person. Do not borrow anything from the protected person.
13. If applicable, timely qualify the protected person for Medicaid or other public assistance.
14. It is the duty of the guardian to protect and preserve the protected person's property, to account for the use of the property faithfully, and to perform all the duties required by law of a guardian.
15. The guardian has the same duties and responsibilities concerning the protected person whether or not the protected person is a relative of the guardian.
16. NEVER pay attorney fees or compensation to yourself from assets of the guardianship without first obtaining the advance written approval of the Court.
17. If any questions arise during the guardianship, immediately consult with your attorney.

I authorize my attorney to notify the Court in the event that he or she has reason to believe that I am not timely performing or improperly performing my fiduciary duties to the protected person even if such information would be otherwise confidential.

I acknowledge that I have carefully and completely read the above instructions and received a copy for my records. I agree to properly carry out my duties.

Dated this _____ day of _____, 20 ____.

Signature, Guardian

Signature, Guardian

Print, Guardian

Print, Guardian

I acknowledge that I have carefully and completely discussed the above instructions with my client before this form was signed and believe that he or she is fully aware of and capable of performing the duties required of a guardian of the estate.

Signature, Attorney

Signature, Attorney

Print, Attorney

Print, Attorney

Guardianship Registry Information Sheet

*****Please submit on Green paper*****

☐ Minor

☐ Adult

☐ Temporary

☐ Permanent

Related Cases (List any cases in which the Protected Person is a party, e.g., CHINS)

Petitioner

Relationship to Protected Person

Last: _____ Suffix: _____ First: _____ Middle: _____

DOB: _____ SSN: _____ Gender: _____ Race: _____ Hispanic?: ☐ Yes ☐ No

Home Address: _____

Mailing Address: _____

Home Phone: _____ Work Phone: _____ Cell Phone: _____

Email Address: _____

Attorney Name: _____ Bar Number: _____

Protected Person

Estimated Value \$

Last: _____ Suffix: _____ First: _____ Middle: _____

DOB: _____ SSN: _____ Gender: _____ Race: _____ Hispanic?: ☐ Yes ☐ No

Eye Color: _____ Hair Color: _____ Height: _____' _____" Weight: _____ lbs

Scars, Marks, and Tattoos: _____

Home Address: _____

Mailing Address: _____

Home Phone: _____ Work Phone: _____ Cell Phone: _____

Email Address: _____

Attorney Name: _____ Bar Number: _____

Guardian Ad Litem Full Name: _____

Interpreter required?: Yes/No Language: _____

Guardian ☐ Check if same as petitioner ☐ Certified (Only check if Federal or State Certified)

Last: _____ Suffix: _____ First: _____ Middle: _____

DOB: _____ SSN: _____ Gender: _____ Race: _____ Hispanic?: ☐ Yes ☐ No

Mailing Address: _____

Home Phone: _____ Work Phone: _____ Cell Phone: _____

Email Address: _____

Attorney Name: _____ Bar Number: _____

Guardian Institution

Name: _____

Mailing Address: _____

Phone: _____ Fax: _____ Agent Name: _____

Close Relative (Entitled to Notice)

Last: _____ Suffix: _____ First: _____ Middle: _____

Gender: _____ Race: _____ Hispanic?: ☐ Yes ☐ No

Mailing Address: _____

Home Phone: _____ Work Phone: _____ Cell Phone: _____

Email Address: _____

Guardianship Registry Information Sheet

*****Please submit on Green paper *****

(Additional)

Petitioner

Last: _____ Suffix: _____ First: _____ Middle: _____
DOB: _____ SSN: _____ Gender: _____ Race: _____ Hispanic?: ☐ Yes ☐ No
Home Address: _____
Mailing Address: _____
Home Phone: _____ Work Phone: _____ Cell Phone: _____
Email Address: _____
Attorney Name: _____ Bar Number: _____

Protected Person

Estimated Value \$ _____

Last: _____ Suffix: _____ First: _____ Middle: _____
DOB: _____ SSN: _____ Gender: _____ Race: _____ Hispanic?: ☐ Yes ☐ No
Eye Color: _____ Hair Color: _____ Height: _____' _____" Weight: _____ lbs
Scars, Marks, and Tattoos: _____
Home Address: _____
Mailing Address: _____
Home Phone: _____ Work Phone: _____ Cell Phone: _____
Email Address: _____
Attorney Name: _____ Bar Number: _____
Guardian Ad Litem Full Name: _____
Interpreter required?: Yes/No Language: _____

Guardian

☐ Check if same as petitioner

☐ Certified (Only check if Federal or State Certified)

Last: _____ Suffix: _____ First: _____ Middle: _____
DOB: _____ SSN: _____ Gender: _____ Race: _____ Hispanic?: ☐ Yes ☐ No
Mailing Address: _____
Home Phone: _____ Work Phone: _____ Cell Phone: _____
Email Address: _____
Attorney Name: _____ Bar Number: _____

Close Relative (Entitled to Notice)

Last: _____ Suffix: _____ First: _____ Middle: _____
Gender: _____ Race: _____ Hispanic?: ☐ Yes ☐ No
Mailing Address: _____
Home Phone: _____ Work Phone: _____ Cell Phone: _____
Email Address: _____

STATE OF INDIANA) IN THE MARION SUPERIOR COURT
) SS:
COUNTY OF MARION) CAUSE NO.: 49D08-0000-GU-000000

IN THE MATTER OF THE GUARDIANSHIP OF)
)
JANE DOE, ADULT)

REPORT OF GUARDIAN OF PERSON

Karen Citizen and Kathie Citizen guardians of the person of Jane Doe,
respectfully reports the following:

1. The protected person's current address is American Assisted Living, 999 USA Way, Anywhere, IN 46142.
2. The protected person currently resides in an assisted living facility.
3. The current state of the protected person's health is stable. Ms. Doe's dementia has slowly advanced but she is doing very well. She is not agitated and enjoys her current facility.
4. Co-guardian Kathie Citizen last visited Ms. Doe in person on March 1, 2016. Co-guardian Karen Citizen lives out-of-state but is able to speak with Ms. Doe on the phone regularly. Karen Citizen last visited Jane Doe in person in February of 2015 and has plans to visit again in April 2016.
5. I believe the guardianship of the person of the protected person needs to remain in effect because Jane Doe has dementia and she is unable to make decisions for herself.

I affirm, under the penalties of perjury, that the above statements are true.

Dated: _____

Karen Citizen,
Co-Guardian of the Person

Kathy Citizen,
Co-Guardian of the Person

Prepared by:
Sara McClammer, 29825-49
Bennett & McClammer LLP
120 E Market Street, Suite 1150
Indianapolis, IN 46204

STATE OF INDIANA)
) SS:
COUNTY OF MARION) CAUSE NO.:

IN THE MATTER OF THE)
GUARDIANSHIP OF)
JOHN Q. CITIZEN.)

MOTION TO WAIVE REQUIREMENT OF
PROVIDING A COPY OF NOTICE OF FILING OF INVENTORY
TO PROTECTED PERSON.

Comes now the guardian in the above-captioned proceedings, Jane Smith, and respectfully prays for an Order waiving the requirement that Notice of the filing of inventory be served upon the protected person.

In support of this Motion the guardian states:

1. Indiana Code § 29-3-9-5(a) provides in pertinent part that “[t]he guardian shall provide a copy of the inventory to the protected person . . .”
2. In this case the protected person suffers from the following mental incapacity: dementia. Because of that diagnosis the guardian believes in good faith that the protected person would not understand the nature of the inventory itself, and/or could cause unnecessary worry or trepidation to the protected person.
3. If there are any other people known to the guardian that are identified in the statute as being entitled to Notice as set forth in I.C. § 29-3-

9-5, then Notice of the filing of the inventory shall be served upon them with proof of service provided to the Court.

4. Given the size of the protected person's assets, the guardian does not believe it should be necessary to appoint a guardian *ad litem* to review the inventory.

5. The Court has the discretion to waive the requirement that notice of the Inventory be sent to the protected person under I.C. § 29-3-2-4(a).

WHEREFORE, the guardian respectfully prays for an Order waiving the requirement under I.C. § 29-3-9-5 that the protected person be provided with Notice of the filing of the inventory. The guardian seeks all other relief just and proper.

Respectfully submitted,

/s/ H. Kennard Bennett

H. Kennard Bennett,
JANE SMITH
Guardian

CERTIFICATE OF SERVICE

Any counsel of record are believed to be Registered Users of Indiana's electronic filing and electronic service system. Therefore, pursuant to Ind. Trial Rule 86(G)(3)(a) the undersigned certifies that a copy of the foregoing was served upon all counsel of record via Indiana's electronic filing system on the same day as the filing hereof.

/s/ H. Kennard Bennett

IN THE MARION SUPERIOR

IN THE MATTER OF THE)
GUARDIANSHIP OF)
JOHN Q. CITIZEN.)

ORDER WAIVING REQUIREMENT OF
PROVIDING A COPY OF NOTICE OF FILING OF INVENTORY
TO PROTECTED PERSON.

This matter comes before the Court on the Motion to Waiver Requirement of Providing a Copy of Notice of Filing of Inventory to Protected Person, which was filed by the guardian.

And the Court having read and examined same now finds that said Motion should be granted.

IT IS THEREFORE ORDERED that the requirement under I.C. § 29-3-9-5(a) that the protected person be served with Notice of the filing of accounting be and is hereby waived.

Dated: _____

JUDGE, Marion Superior Court

Temporary Guardian's Inventory

Guardianship of:

JOHN DOE

Marion Superior Court

49D08-1707-GU-12345



Temporary Guardian:
**Scout Guardianship
Services, Inc.**

Date of Temporary Guardianship Appt.:	01/01/17
Date of Permanent Guardianship Appt.:	
Total Amount of Bond:	\$0.00

Item #	Description	Value	Notes
--------	-------------	-------	-------

Real Estate

1	1234 Pleasant Ave, Indianapolis	\$ 100,000.00	Zillow.com estimate only.
---	---------------------------------	---------------	---------------------------

Furniture, Household Goods, Etc.

2	Household contents - (Uninventoried / Not yet marshalled.)	\$ -	Unknown value.
---	--	------	----------------

Corporate Stock

	None identified	\$ -	
--	-----------------	------	--

Mortgages, Bonds, Notes

	None identified	\$ -	
--	-----------------	------	--

Bank Accounts, Money

3	Chase Bank Checking Acct # 1234	\$ 78,123.00	Oral report from banker 01/02/2017
4	Chase Bank Savings Acct. # 5678	\$ 80,128.00	Statement 01/15/2017

All Other Property

5	Life Insurance Policies (Uninventoried / Not yet marshalled.)	\$ -	Existence of policies reported by third parties.
---	---	------	--

Recapitulation

Real Estate	\$ 100,000.00
Furniture, Household Goods, Etc.	\$ -
Corporate Stock	\$ -
Mortgages, Bonds, Notes	\$ -
Bank Accounts, Money	\$ 158,251.00
All Other Property	\$ -
TOTAL VALUE	\$ 258,251.00

I hereby swear or affirm that the foregoing inventory contains a complete statement of all of the assets of the incapacitated person that has come to my knowledge listed at its fair market value as best as can be determined.

Date 1-Feb-17

Signature: /s/ H. Kennard Bennett

Scout Guardianship Services, Inc., Temporary Guardian
By: H. Kennard Bennett, President.

Inventory - Other Notes

5	Family members have told us they are certain life insurance policies exist, but we have not yet found statements.	HKB
---	---	-----

STATE OF INDIANA) IN THE MARION SUPERIOR COURT
) SS:
COUNTY OF MARION) CAUSE NO. 49D08-1707-GU-12345

IN RE: THE GUARDIANSHIP OF)
)
JOHN DOE, Adult.)

NOTICE OF FILING OF TEMPORARY GUARDIAN'S INVENTORY

On _____, the guardian, Scout Guardianship Services, Inc., filed its Temporary Guardian's Inventory. This notice is being provided pursuant to Indiana Code section 29-3-9-5(a). In accordance with Indiana law, the guardian will file with the court a written verified account of the guardian's administration of assets at least biennially, not more than thirty (30) days after the anniversary date of the guardian's appointment; and not more than thirty (30) days after the termination of the appointment. The inventory and the written verified accounts may be inspected at the Marion County Superior Court, Probate Division, 200 E Washington Street, T1721, Indianapolis, Indiana 46204.

Sincerely,

Scout Guardianship Services, Inc.
Guardian
120 E Market Street, Suite 1120
Indianapolis, IN 46204

STATE OF INDIANA) IN THE MARION SUPERIOR COURT
) SS:
COUNTY OF MARION) CAUSE NO. 49D08-1707-GU-12345

IN RE: THE GUARDIANSHIP OF)
)
JOHN DOE, Adult.)

CERTIFICATE OF SERVICE OF
NOTICE OF FILING OF INVENTORY

The undersigned hereby certifies that a copy of the Inventory as required by I.C. 29-3-9-5(a) was served upon the following by regular United States Mail, First Class, Postage Prepaid, on the date indicated:

Date

*Protected Person.

*Other interested parties, as required by the statute.

Respectfully submitted,

Dated: _____

Scout Guardianship Services, Inc.
120 E. Market St., Suite 1120
Indianapolis, IN 46204
(317) 202-1909

IN THE MARION SUPERIOR COURT

CAUSE NO. 49D08-1707-GU-12345

MOTION TO APPROVE TEMPORARY GUARDIAN'S FINAL ACCOUNT; MOTION TO APPROVE TEMPORARY GUARDIAN'S FEES; MOTION TO DISCHARGE TEMPORARY GUARDIAN

6. Petitioner requests that this Court issue a final order, following notice and

opportunity for written objections pursuant to Indiana Code section 29-3-9-6(d).

WHEREFORE, Scout Guardianship Services, Inc. respectfully prays for the following relief:

1. that this report be accepted and approved;
2. that after notice and hearing, the temporary guardian's final accounting be approved; and
3. that the guardian fee request be approved;
4. the temporary guardian be discharged and released from duty;
5. for all other relief, just and proper.

Respectfully submitted,

Scout Guardianship Services, Inc.

By: /s/ Sara McClammer

Temporary Guardian for JOHN DOE

Scout Guardianship Services, Inc.
120 E Market Street, Suite 1120
Indianapolis, IN 46204

I affirm, under the penalties for perjury, that the foregoing representations are true. I also affirm, under penalties of perjury, that the accounting attached hereto contains a complete and accurate statement of all the protected person's accounts.

/s/ Sara McClammer

IN THE MARION SUPERIOR COURT

CAUSE NO.: 49D08-1707-GU-027080

IN THE MATTER OF THE GUARDIANSHIP OF)
)
JOHN DOE, ADULT.)

6.) ALL OTHER PROPERTY:

Purdential Life Insurance (CSV) \$0.00

Total: \$0.00

TOTAL APPRAISED VALUE OF ESTATE: \$258,251.00

CURRENT ACCOUNTING

Exhibit	Description	Acct. #	Accounting/Bank Statements
A	Chase Bank Checking	1234	Bank Statements
B	Chase Bank Checking	5678	Accounting
C	Appraisal of Real Property		

RECAPITULATION OF ASSETS

As of 3/31/18

1.) REAL PROPERTY:

1234 Pleasant Ave, Indianapolis		
Appraisal attached as Exhibit C	\$110,858.00	
	Total:	\$110,858.00

2.) FURNITURE AND HOUSEHOLD GOODS:

Miscellaneous Household Goods	\$0.00	
	Total:	\$0.00

3.) CORPORATE STOCK:

None.	\$0.00	
	Total:	\$0.00

4.) MORTGAGES, BONDS, NOTES, OTHER WRITTEN EVIDENCES OF DEBT:

None	N/A	
	Total:	\$0.00

5.) BANK ACCOUNTS, MONEY, INSURANCE POLICY TO ESTATE:

Chase Bank Checking Acct # 1234	\$127,628.86	
Chase Bank Savings Acct. # 5678	\$10,161.65	
	Total:	\$137,790.51

6.) ALL OTHER PROPERTY:

New York Life #1111	CSV	\$12,345.00	
New York Life #2222	CSV	\$5,678.00	
New York Life #3333	CSV	\$8,976.00	
New York Life #4444	CSV	\$11,234.00	
Crown Hill Burial Plots	Unkonwn		
	Total:		\$38,233.00

TOTAL APPRAISED VALUE OF ESTATE:	\$286,881.51
---	---------------------

I affirm, under the penalties for perjury, that the foregoing accounting contains a complete and accurate statement of all the protected person's accounts.

Date: _____

Signature: _____
Scout Guardianship Services, Inc., Temporary Guardian

Sara McClammer, # 29825-49
120 E Market Street, Suite 1150
Indianapolis, IN 46204
317-931-0944

EXHIBIT A

Doe, John

Chase Bank Checking Acct. # ****1234

January 1, 2017 through March 20, 2018

Type	Date	Num	Name	Memo	Debit	Credit	Balance
Deposit	11/10/17			Account Opening Balance	\$ 78,123.00		\$ 78,123.00
Check	11/13/17	9990	Marion County Treasurer	Fall 2017 installment		\$ (467.62)	\$ 77,655.38
Check	11/13/17	9991	Allstate Insurance	Homeowners policy		\$ (1,051.00)	\$ 76,604.38
Check	11/13/17	9992	Life Insurance	Individual policies/cancer,		\$ (89.82)	\$ 76,514.56
Check	11/13/17	9993	New York Life	Life Insurance premium		\$ (42.40)	\$ 76,472.16
Check	11/13/17	9994	Indianapolis Power & Light	Oct statement		\$ (117.27)	\$ 76,354.89
Check	11/13/17	9995	Citizens Energy	Oct statement		\$ (77.32)	\$ 76,277.57
Check	11/13/17	9996	Verizon	cell phone		\$ (169.00)	\$ 76,108.57
Check	11/13/17	9997	AT&T	land line		\$ (159.23)	\$ 75,949.34
Deposit	11/15/17				\$ 0.03		\$ 75,949.37
Deposit	11/17/17			Transfer from Savings	\$ 20,000.00		\$ 95,949.37
Check	11/17/17	6791	Senior Living	Invoice 2681		\$ (4,229.03)	\$ 91,720.34
Check	11/17/17		chase	Cost of counter checks		\$ (2.00)	\$ 91,718.34
Check	11/22/17	1001	Citizens Energy	Nov stmnt		\$ (69.44)	\$ 91,648.90
Check	11/27/17	1002	Spectrum	Cable bill		\$ (208.52)	\$ 91,440.38
Check	11/27/17	1003	Indianapolis Power & Light	Nov Stmnt		\$ 45.30	\$ 91,485.68
Check	11/28/17	1005	Macy's	store credit card		\$ (2.00)	\$ 91,483.68
Check	11/29/17	1006	IU Health	Chest xray on 10/2/17		\$ (5.80)	\$ 91,477.88
Check	12/04/17	auto	IU Health Insurance	December premium		\$ (64.78)	\$ 91,413.10
Check	12/14/17	1007	Senior Living	Dec rent		\$ (4,790.00)	\$ 86,623.10

Check	12/15/17	1008	In Home Care	Inv #305 and 327		\$ (3,735.00)	\$ 82,888.10
Check	12/15/17	1009	Indianapolis Power & Light	Dec stmtnt		\$ (58.36)	\$ 82,829.74
Check	12/15/17	1010	AAA Financial Services	Visa credit card		\$ (3,000.00)	\$ 79,829.74
Check	12/15/17	1011	Verizon	cell phone		\$ 37.49	\$ 79,867.23
Check	12/15/17	1012	Allstate Insurance	Auto Policy		\$ (703.60)	\$ 79,163.63
Check	12/15/17	1013	Spectrum	Cable bill		\$ 94.84	\$ 79,258.47
Check	12/15/17	1014	J.C. Alarm Co.	Home monitoring svcs		\$ (179.70)	\$ 79,078.77
Check	12/15/17	auto	IU Health Insurance	December premium		\$ 64.78	\$ 79,143.55
Check	12/22/17	1015	Citizens Energy	Dec stmtnt		\$ (110.87)	\$ 79,032.68
Check	12/22/17	1016	AT&T	land line		\$ (34.19)	\$ 78,998.49
Check	01/03/18	auto	IU Health Insurance	January		\$ 64.78	\$ 79,063.27
Deposit	01/08/18		Deposit	Tax Return	\$ 7,000.00		\$ 86,063.27
Check	01/09/18	1017	Senior Living	Jan Rent		\$ (4,750.00)	\$ 81,313.27
Check	01/09/18	1018	Scout Guardianship Services	Reimburse for expenses (lock change at house/gift card)		\$ (813.40)	\$ 80,499.87
Check	01/19/18	1019	Life Insurance	Individual policies/cancer,		\$ (89.82)	\$ 80,410.05
Check	01/19/18	1020	New York Life	Life Insurance premium		\$ (42.40)	\$ 80,367.65
Check	01/19/18	1021	Indianapolis Power & Light	Jan stmtnt		\$ (39.39)	\$ 80,328.26
Check	01/19/18	1022	AAA Financial Services	Visa credit card		\$ (23.44)	\$ 80,304.82
Check	01/19/18	1023	Verizon	cell phone		\$ (37.49)	\$ 80,267.33
Check	01/19/18	1024	In Home Care	Inv #349		\$ (380.00)	\$ 79,887.33
Check	01/19/18	1025	AT&T	land line		\$ (55.14)	\$ 79,832.19
Check	01/19/18	1026	Spectrum	Cable bill		\$ (94.84)	\$ 79,737.35
Check	02/02/18	auto	IU Health Insurance	Febbruary premium		\$ (64.78)	\$ 79,672.57

Check	02/06/18	1027	Citizens Energy	Jan smtn		\$ (167.24)	\$ 79,505.33
Check	02/06/18	1028	Verizon	cell phone		\$ (42.55)	\$ 79,462.78
Check	02/07/18	Transfer		transfer to checking	\$ 50,000.00		\$ 129,462.78
Check	02/07/18	1029	Indianapolis Power & Light	Feb Stmnt		\$ (40.85)	\$ 129,421.93
Check	02/07/18	1030	Senior Living	VOID: Feb Rent	\$ -		\$ 129,421.93
Check	02/07/18	1031	Senior Living	February rent		\$ (5,000.00)	\$ 124,421.93
Check	03/02/18	auto	IU Health Insurance	March		\$ (64.78)	\$ 124,357.15
Check	03/06/18	1032	In Home Care	Inv #367		\$ (285.00)	\$ 124,072.15
Check	03/06/18	1033	AT&T	land line		\$ (46.96)	\$ 124,025.19
Check	03/06/18	1034	/2Guys & A Truck	Move some furniture from house to Assisted living		\$ (401.00)	\$ 123,624.19
Check	03/06/18	1036	Verizon	cell phone		\$ (37.55)	\$ 123,586.64
Check	03/06/18	1035	Citizens Energy	Feb stmnt		\$ (148.42)	\$ 123,438.22
Check	03/06/18	1037	Spectrum	Cable bill		\$ (96.36)	\$ 123,341.86
Check	03/06/18	1038	Senior Living	March rent		\$ (5,000.00)	\$ 118,341.86
Deposit	03/16/18		Social Security	Includes back payment	\$ 9,287.00		\$ 127,628.86
							\$ 127,628.86

EXHIBIT B

DOE, JOHN

Chase Bank Savings Acct. # ****5678

January 1, 2017 through March 21, 2018

Type	Date	Num	Memo	Debit	Credit	Balance
Deposit	11/10/17		Account Opening Balance	\$ 80,128.00		\$ 80,128.00
Deposit	11/15/17	Transfer	Transfer from Savings	\$ 20.41		\$ 80,148.41
Deposit	11/17/17		Transfer from Savings		\$ (20,000.00)	\$ 60,148.41
Deposit	11/21/17	interest	Interest	\$ 1.29		\$ 60,149.70
Deposit	12/21/17	interest	December	\$ 3.13		\$ 60,152.83
Deposit	01/21/18	interest	January	\$ 3.45		\$ 60,156.28
Check	02/07/18	Transfer	transfer to checking		\$ (50,000.00)	\$ 10,156.28
Deposit	02/22/18	interest	February stmnt	\$ 2.92		\$ 10,159.20
Deposit	3/21/18	Interest	March Statement	\$ 2.45		\$ 10,161.65
						\$ 10,161.65

STATE OF INDIANA	)	IN THE MARION SUPERIOR COURT
	) SS:	
COUNTY OF MARION	)	CAUSE NO. 49D08-1707-GU-12345
IN RE: THE GUARDIANSHIP OF)	
)	
JOHN DOE, Adult.)	

ORDER SETTING HEARING ON GUARDIAN'S FINAL ACCOUNTING

This matter comes before the Court on the Motion to Approve Temporary Guardian's Final Accounting.

And the Court having read and examined same now finds that notice of said Motion should be served upon parties entitled to receive notice under Indiana Code section 29-3-9-6(d).

IT IS THEREFORE ORDERED that unless written objection is filed with the Court on or before **June 8, 2018**, then the Court shall grant the relief requested in said Motion on **June 01, 2018**, at **3:30pm**.

IT IS FURTHER ORDERED that the temporary guardian shall cause notice of said Motion and this Order to be served upon the parties entitled to notice under Indiana Code section 29-3-9-6(d).

DATED:_____

JUDGE, Marion Superior Court

Copy:

Scout Guardianship Services, Inc.
120 E. Market St., #1120
Indianapolis, IN 46204

STATE OF INDIANA	)	IN THE MARION SUPERIOR COURT
	) SS:	
COUNTY OF MARION	)	CAUSE NO. 49D08-1707-GU-12345
IN RE: THE GUARDIANSHIP OF)	
)	
JOHN DOE, Adult.)	

NOTICE OF FINAL ACCOUNT
TO ALL PERSONS INTERESTED

In the Superior Court of Marion County, Indiana.

In the matter of the guardianship of JOHN DOE, incapacitated adult.

Notice is hereby given that Scout Guardianship Services, Inc., temporary guardian of the above-named guardianship, has filed a report of its Temporary Guardian's Final Accounting. The same will come up for action by the Superior Court of Marion County, Indiana on the **01st** day of **June, 2018 at 3:30 p.m.**

Any objections to the Temporary Guardian's Final Accounting must be filed in writing stating why such Final Accounting should not be approved and must be filed in with the Court on or before **June 8, 2018.**

Clerk of the Superior Court of Marion County

Copies:

Scout Guardianship Services, Inc.
120 E. Market St., #1120
Indianapolis, IN 46204

STATE OF INDIANA	)	IN THE MARION SUPERIOR COURT
	) SS:	
COUNTY OF MARION	)	CAUSE NO. 49D08-1707-GU-12345
IN RE: THE GUARDIANSHIP OF)	
)	
JOHN DOE, Adult.)	

ORDER APPROVING TEMPORARY GUARDIAN'S
FINAL ACCOUNT; APPROVING TEMPORARY GUARDIAN'S FEES AND
DISCHARGING TEMPORARY GUARDIAN

This matter comes before the Court on the temporary guardian's Motion to Approve Temporary Guardian's Final Accounting and Motion to Approve Temporary Guardian's Fees; and Motion to Discharge Temporary Guardian.

And the Court, having examined the same, and finding that no objection has been filed with respect to same, now finds that said motions should be granted, and that the above-captioned cause should be dismissed and the guardian discharged.

IT IS THEREFORE ORDERED as follows:

1. The temporary guardian's final accounting is approved.
2. The temporary guardian's fee petition is approved and the guardian may pay \$1,000 to Scout Guardianship Services, Inc.
3. The temporary guardian is hereby discharged and released from duty.

JUDGE OF THE SUPERIOR COURT OF
MARION COUNTY.

Copies to:

Scout Guardianship Services, Inc.
120 E Market Street, Suite 1120
Indianapolis, IN 46204

STATE OF INDIANA)
) SS:
COUNTY OF MARION)

IN THE MARION SUPERIOR COURT

CAUSE NO.:

IN THE MATTER OF THE)
GUARDIANSHIP OF)
JOHN Q. CITIZEN.)

MOTION TO WAIVE REQUIREMENT OF
PROVIDING A COPY OF NOTICE OF FILING OF ACCOUNTING
TO PROTECTED PERSON.

Comes now the guardian in the above-captioned proceedings, Jane Smith, and respectfully prays for an Order waiving the requirement that Notice of the filing of accounting be served upon the protected person.

In support of this Motion the guardian states:

1. Indiana Code § 29-3-9-6 provides in pertinent part that:

“(d) The court shall conduct a hearing on each verified account filed under this section. The court shall give notice to each person entitled to receive notice that an accounting has been filed and will be acted upon by the court on the date set unless written objections are presented to the court on or before that date. The court shall give the notice required by this subsection, **unless waived**, to the following:

(1) The protected person, **unless waived by the court**. If notice to the protected person is waived, the court shall give notice to a person who is not the guardian of the protected person in the following priority:

- (A) The protected person's spouse.
- (B) An adult child of the protected person.
- (C) A parent of the protected person.
- (D) A guardian ad litem appointed by the court under subsection (e)."

2. In this case the protected person suffers from the following mental incapacity: dementia. Because of that diagnosis the guardian believes

in good faith that the protected person would not understand the nature of the accounting itself, and/or could cause unnecessary worry or trepidation to the protected person.

3. If there are any other people known to the guardian that are identified in the statute as being entitled to Notice as set forth in I.C. § 29-3-9-6, then Notice of the filing of the accounting, and if applicable the date of hearing thereupon and objection deadline, shall be served upon them with proof of service provided to the Court.

4. Given the size of the protected person's assets, the guardian does not believe it should be necessary to appoint a guardian *ad litem* to review the accounting.

WHEREFORE, the guardian respectfully prays for an Order waiving the requirement under I.C. § 29-3-9-6 that the protected person be provided with Notice of the filing of the accounting. The guardian seeks all other relief just and proper.

Respectfully submitted,

/s/ H. Kennard Bennett

H. Kennard Bennett,
JANE SMITH
Guardian

CERTIFICATE OF SERVICE

Any counsel of record are believed to be Registered Users of Indiana's electronic filing and electronic service system. Therefore, pursuant to Ind. Trial Rule 86(G)(3)(a) the undersigned certifies that a copy of the foregoing

was served upon all counsel of record via Indiana's electronic filing system on the same day as the filing hereof.

/s/ H. Kennard Bennett

IN THE MARION SUPERIOR

CAUSE NO.:

ORDER WAIVING REQUIREMENT OF
PROVIDING A COPY OF NOTICE OF FILING OF ACCOUNTING
TO PROTECTED PERSON.

And the Court having read and examined same now finds that said Motion should be granted.

Dated: _____

JUDGE, Marion Superior Court

STATE OF INDIANA)
) SS:
COUNTY OF MARION) CAUSE NO.:

IN THE MATTER OF THE GUARDIANSHIP OF)
)
JOHN Q. CITIZEN, ADULT) DOB: 1/01/1994

PETITION TO WAIVE BOND AND ACCOUNTINGS

Comes now Guardian, Janella R. Citizen, by counsel, and petitions the Court as follows:

1. Janella R. Citizen was appointed Guardian of the person and estate of John Q. Citizen by this Court on January 1, 2018.
2. The Guardian has filed an Inventory with this Court.
3. The Inventory reflects that the protected person's assets are less than \$10,000.
4. Because the amount of assets are low, but the need to retain powers as “guardian of the estate” remain, the petitioner believes it would be in the interest of judicial economy to waive accountings and any requirement of bond, until and unless the assets of the protected person should exceed \$10,000 for any reason.
5. Such an order is appropriate under I.C. 29-3-3-2.

WHEREFORE, the petitioner, respectfully requests for an order waiving the requirement of bond and waiving all accountings. The guardian prays for all further relief just and proper.

Respectfully submitted,
BENNETT & MCCLAMMER

By: /s/ H. Kennard Bennett

APPENDIX 16

Attorneys for Guardian

Bennett & McClammer
120 E. Market St., Suite 1150
Indianapolis, IN 46204
(317) 931-0944

STATE OF INDIANA)
) SS:
COUNTY OF MARION) CAUSE NO.:

IN THE MATTER OF THE GUARDIANSHIP OF)
)
JOHN Q. CITIZEN, ADULT) DOB: 1/01/1994

ORDER WAIVING BOND AND ACCOUNTINGS

This matter comes before the Court on the Petition to Waive Bond and Accountings filed by Janella R. Citizen, the Guardian for John Q. Citizen.

And the Court having read and examined same now finds that said Petition should be granted.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED by the Court that the requirement of bond and accountings in the above-captioned cause is hereby waived pending further order of the Court.

IT IS FURTHER ORDERED that the Guardian shall report to this court if the protected person's assets should ever exceed \$10,000.

JUDGE, Marion Superior Court

Copy to:
Bennett & McClammer
120 E. Market St., Ste. 1150
Indianapolis, IN 46204
(317) 931-0944

STATE OF INDIANA) IN THE MARION SUPERIOR COURT
) SS: PROBATE DIVISION
COUNTY OF MARION) CAUSE NO.: 49D08-0000-GU-000000

IN THE MATTER OF THE GUARDIANSHIP OF)
)
MARTHA Q. CITIZEN, ADULT.)

PETITION TO APPROVE SALE OF REAL ESTATE

Comes now Jane Smith, guardian of the protected person, by her counsel, and respectfully prays for an order approving the sale of certain real estate. In support hereof, the personal representative states as follows:

1. On January 8, 2014, she was appointed guardian of her mother, Martha Q. Citizen.
2. Among the assets of the protected person is certain real estate located at 999 USA Drive, Indianapolis, IN 46222. The protected person is a Medicaid recipient and her continued eligibility status is dependent upon the sale of the real estate in question.
3. An offer to purchase said real estate for the gross cash price of \$34,000 has been received. A copy of the Purchase Agreement is attached as Exhibit A.
4. The guardian believes the sale of the real estate for said price is in the best interests of the guardianship.
5. The sale of the property for the stated amount is in the best interests of the protected person in that there are no other monies in hand with which utilities, taxes, insurance or other costs of administering the real estate can

be paid. Moreover, the offered and accepted price is a fair and reasonable price for the sale of the house.

6. The only other interested party is Ms. Citizen's son, George Citizen. Mr. Citizen's consent to the sale of the real estate is attached as Exhibit B.

WHEREFORE, the guardian of the estate respectfully prays for an order approving the sale of the real estate located at 999 USA Drive, Indianapolis, IN 46222, pursuant to the terms of the Purchase Agreement attached hereto, and for all further relief just and proper.

Respectfully submitted,

H. Kennard Bennett,
Attorney for the Guardian, Jane Smith
CENTER FOR AT-RISK ELDERS, INC.
120 E. Market St., Ste. 1190
Indianapolis, IN 46204
(317) 955-2790

STATE OF INDIANA) IN THE MARION SUPERIOR COURT
) SS: PROBATE DIVISION
COUNTY OF MARION) CAUSE NO.: 49D08-0000-GU-000000

IN THE MATTER OF THE GUARDIANSHIP OF)
)
MARTHA Q. CITIZEN, ADULT.)

CONSENT AND WAIVER

The undersigned hereby acknowledges that he has received a copy of the Petition to Approve Sale of Real Estate, together with attachment (Purchase Agreement), and hereby waives hearing thereupon and consents to the sale of the real estate as proposed therein.

George Citizen

STATE OF INDIANA) IN THE MARION SUPERIOR COURT
)
) SS:
COUNTY OF MARION) CAUSE NO.: 49D08-1509-GU-031086

IN THE MATTER OF THE GUARDIANSHIP OF)
)
HELEN M. SUMMERS, ADULT) DOB: 9/11/1926

ORDER GRANTING PETITION TO APPROVE SALE OF REAL ESTATE

This case comes before the Court on the guardian's Petition to Approve Sale of Real Estate. The Court having considered the Petition now finds that it should be granted.

IT IS THEREFORE ORDERED that the Petition to Approve Sale of Real Estate is hereby approved, and Jane Smith is hereby authorized to sell the real estate located at 999 USA Drive, Indianapolis, IN 46222 in accordance with the Purchase Agreement and Counteroffer attached to the Petition.

Dated: _____

Judge, Marion County Superior Court 7

Copies:
H. Kennard Bennett,
120 E. Market St., Ste. 1190
Indianapolis, IN 46204

guardianship matters and Medicaid planning. Mrs. McClammer's invoice is attached hereto as Exhibit A.

WHEREFORE, Pamela Smith guardian of Jane Doe respectfully prays for an order approving the Medicaid spend down plan as outlined above and for all further relief just and proper.

Respectfully submitted,

Sara McClammer, Atty. # 29825-49
120 E Market Street, Ste. 1150
Indianapolis, Indiana 46204
(t) 317-931-0944
(f) 317-464-8506
ken@bennettmcclammer.com
Attorney for Guardian

CERTIFICATE OF SERVICE

I certify a copy of the foregoing was served by regular U.S. Mail on February 4, 2016 upon the parties below.

Stephen Doe (Interested Party)
999 USA Way
Indianapolis, IN 46221

Sara McClammer

STATE OF INDIANA) IN THE MARION SUPERIOR COURT
)
) SS:
COUNTY OF MARION) CAUSE NO.: 49D08-0000-GU-000000

IN THE MATTER OF THE GUARDIANSHIP OF)
)
JANE DOE, ADULT)

ORDER APPROVING MEDICAID SPEND DOWN PLAN

Comes now, Pamela Smith, permanent guardian of the Jane Doe, by counsel, and submits her Petition for Approval of Medicaid Spend Down Plan.

And the Court, being duly advised as to the facts, now finds that said Petition should be granted.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that the Petition for Approval of Medicaid Spend Down Plan be and is hereby approved and the guardian Pamela Smith is authorized and directed to carry out the following:

- a. Purchase a funeral plan for each of Ms. Doe's children and their spouses not to exceed \$3,400 each.
- b. Gift of up to \$1,200 to Ms. Doe's grandson Larry Doe.
- c. Pay attorney Sara McClammer \$427.50.

All of which is ordered on _____.

JUDGE OF THE SUPERIOR COURT OF
MARION COUNTY

circumstances of the Lawsuit. It is in the best interests of the estate to settle this matter.

WHEREFORE, H. Kennard Bennett, as Guardian of the Estate of Jane Citizen, respectfully requests that this Court enter an order to approve the compromise of the disputed claim upon the terms set forth above and for all other relief just and proper.

Respectfully submitted,

H. Kennard Bennett,
Guardian of the Estate of Jane Citizen
Atty No. 4015-49
120 E Market Street, Ste. 510
Indianapolis, Indiana 46204
317-931-0944

CERTIFICATE OF SERVICE

I certify a copy of the foregoing was served by regular U.S. Mail on May __, 2014 upon the parties below.

Michael Attorney
111 E. Maple Street
Anywhere, IN 46204

Robert Lawyer
9999 E. Happy Street
Indianapolis, IN 46666

Mary HappyCamper
54 Indiana Street
Carmel, In 49999

STATE OF INDIANA)
)SS:
COUNTY OF MARION) PROBATE DIVISION

IN THE MATTER OF THE GUARDIANSHIP OF)
) Cause Number 49D08-0000-GU-000000
 JANE CITIZEN)

ORDER GRANTING MOTION TO APPROVE COMPROMISE OF DISPUTED CLAIM

This matter comes before the Court on the Motion to Approve Compromise of Disputed Claim filed by H. Kennard Bennett, Guardian of the Estate of Jane Citizen.

And the Court having read and examined same now finds that said Motion should be approved.

IT IS THEREFORE ORDERED that the Motion to Approve Compromise of Disputed Claim be and is hereby approved, and H. Kennard Bennett, be and is hereby authorized to settle the disputed claim upon the terms set forth in said Motion.

Dated: _____

JUDGE, Marion Superior Court

Copies:

H. Kennard Bennett
Bennett & McClammer LLP
510 E Market St., Ste. 510
Indianapolis, IN 46220

Michael Attorney
111 E. Maple Street
Anywhere, IN 46204

Robert Lawyer
9999 E. Happy Street
Indianapolis, IN 46666

Mary HappyCamper
54 Indiana Street
Carmel, In 49999

STATE OF INDIANA) IN THE JOHNSON SUPERIOR COURT
) SS:
COUNTY OF JOHNSON) CAUSE NO.: 41D01-0000-GU-00000

IN THE MATTER OF THE GUARDIANSHIP OF)
JOHN DOE, ADULT)

PETITION FOR AUTHORITY TO CHANGE RESIDENCY
OF JOHN DOE ON A TRIAL BASIS

Comes now Jane Smith, the duly appointed and acting guardian of the estate and person of John Doe, who being duly sworn upon her oath files her verified petition for authority to change the residency of John Doe on a trial basis, and respectfully shows the Court as follows:

1. That on April 23, 2012, Jane Smith was appointed guardian over the estate and person of John Doe. She has continued to serve in said capacity.
2. Since the guardianship was established Mr. Doe has been living at home alone, with the aid of daily caregivers.
3. The guardian believes it is in the best interest of John Doe that his residence be changed, on a trial basis, from Mr. Doe's home to the home of his sister, Ms. Good Sister.
4. That such change is in the best interest of John Doe for the following reasons:
 - a. Mr. Doe is currently living alone in his home and receives in-home care twice a day from professional caregivers. They assist with medication reminders, food preparation, safety monitoring, mobility, bathing, dressing, shaving and companionship.
 - b. Mr. Doe now needs a caregiver in his home overnight as he gets up 1-2 times per night. A nurse practitioner that performed an evaluation of Mr. Doe on January

22, 2015 expressed concern that Mr. Doe is at-risk for roaming out of doors. See report attached as **Exhibit A**.

- c. Mr. Doe's care is managed by petitioner, Jane Smith, and by Mr. Doe's sister, Ms. Good Sister. However, Ms. Jones and Ms. Sister live 25 miles from Mr. Doe and it is becoming difficult for them to effectively monitor Mr. Doe's care.
- d. At Ms. Sister's home, Mr. Doe would have his own separate apartment, but would be under her 24-hour supervision. He would continue to receive care from professional caregivers.
- e. Ms. Sister and Ms. Jones live next to each other in Speedway, Indiana. If Mr. Doe were to live with Ms. Sister, Ms. Jones would be able to assist in his care. Additionally, Mr. Doe has several friends that live in the Speedway area that would visit more often if he lived in the area.

5. That due to Mr. Doe's dementia, it would be in his best interest for the move to Ms. Sister's residence to happen gradually and for a 60-day trial period to take place to ensure Mr. Doe would not object to living with Ms. Sister. During this 60-day trial period all of Mr. Doe's current caregivers will continue to provide care at Ms. Sister's home to ensure a smooth transition. After the 60-day trial period, a hearing should be held to determine if a permanent move is in Mr. Doe's best interest.

6. Upon the conclusion of the trial period, and assuming a permanent move is approved by this Court, the bathroom in the apartment occupied by Mr. Doe will have to be remodeled for Mr. Doe to be able to access the shower at a cost of approximately \$7,000. Mr. Doe will have access to the shower in Ms. Sister's apartment (without having to go outside) during the trial period.

WHEREFORE, the guardian prays the Court to approve a change of residency for John Doe for a period of 60 days, and thereafter to set this matter for hearing and directing notice as provided under I.C. 29-3-9-2; and after the hearing direct the guardian to change the residency of John Doe on a permanent basis and for all other relief which is proper in the premises.

Jane Smith, Guardian

I affirm, under the penalties for perjury, that the foregoing representations are true.

Jane Smith, Guardian

STATE OF INDIANA) IN THE JOHNSON SUPERIOR COURT
) SS:
COUNTY OF JOHNSON) CAUSE NO.: 41D01-0000-GU-00000

IN THE MATTER OF THE GUARDIANSHIP OF)
)
JOHN DOE, ADULT)

CERTIFICATE OF SERVICE OF NOTICE

The undersigned hereby certifies that a copy of the *Petition for Authority to Change Residency of John Doe on a Trial Basis* was served upon the following by United States Mail, First Class, Postage Prepaid, on _____, 2015, addressed as follows:

Mr. John Q. Lawyer
Attorney at Law
123 N. Every Street
America, IN 46999

H. Kennard Bennett, Atty. # 4015-49
Bennett & McClammer LLP
120 E Market Street, Suite 1150
Indianapolis, IN 46204
(317) 931-0944

JUDGE OF THE SUPERIOR COURT OF
JOHNSON COUNTY.

Copies to:

H. Kennard Bennett
120 E Market Street, Suite 1150
Indianapolis, IN 46204

WHEREFORE, Scout Guardianship Services, Inc., guardian for , respectfully prays for an Order approving the payment of guardian's and attorneys' fees and expense reimbursement in the amount shown on the attached Invoice, which amount is \$1,766.94. The petitioning guardian respectfully prays for all further relief just and proper.

Respectfully submitted,

SCOUT GUARDIANSHIP SERVICES, INC.
Guardian

/s/ Sara McClammer

H. Kennard Bennett
Sara M. McClammer

I affirm, under the penalties for perjury, that the foregoing representations are true.

/s/ Sara McClammer

Scout Guardianship Services, Inc.
120 E Market Street, Suite 1120
Indianapolis, IN 46204
317-202-1909

Certificate of Service

The undersigned hereby certifies that, pursuant to Rule 86(G) of the Indiana Rules of Trial Procedure, a copy of the foregoing has been served via E-Service through the Indiana E-Filing System or by first class United States mail, postage prepaid, this 1st day of June, 2018, to:

**

/s/ Sara McClammer

STATE OF INDIANA)
) SS:
COUNTY OF MARION) CAUSE NO.: 49D08-1803-GU-12345

IN THE MATTER OF THE GUARDIANSHIP OF)
)
JANE DOE, ADULT) DOB: 01/01/1940

ORDER APPROVING PETITION FOR GUARDIAN AND ATTORNEYS' FEES

Comes now Scout Guardianship Services, Inc., guardian for Jane Doe in the above-captioned matter and submits its Petition for Guardian's and Attorneys' Fees.

And the Court, being duly advised as to the facts, now finds that said Petition should be granted.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that the Petition for Guardian's and Attorneys' Fees be and is hereby approved and the guardian is authorized and directed to pay Scout Guardianship Services, Inc. the sum of \$1,766.94.

All of which is ordered on _____.

JUDGE OF THE SUPERIOR COURT
OF MARION COUNTY

COPIES TO:

Sara McClammer
sara@bennettmcclammer.com

H. Kennard Bennett
ken@bennettmcclammer.com

STATE OF INDIANA)
COUNTY OF WHITLEY) SS:

IN THE MATTER OF THE GUARDIANSHIP OF
JANE Q. CITIZEN, ADULT

)

CAUSE NO.: 92C01-0000-GU-000

PETITION FOR APPOINTMENT OF SUCCESOR GUARDIANS OVER
INCAPACITATED ADULT

Come now John Smith and Jane Smith, by their counsel, and respectfully pray as follows:

1. That the protected person, Jane Q. Citizen, is the sister of the petitioners. She suffers from severe developmental and intellectual disabilities. Such disabilities are permanent in nature and a guardianship remains necessary. The protected person's mother, Madge Smith Citizen, had been previously appointed guardian for the protected person in the above-captioned proceedings.

2. The guardian, Madge Smith Citizen, died on November 15, 2015.
3. The guardianship is, and has been, a “guardianship of the person” only.
4. No limitations on the guardianship are sought.
5. No other protective order has been issued, nor guardian been appointed or is acting for the incapacitated person in any state to the petitioner's knowledge.

6. The residence and post office address of the proposed guardian or person to carry out the protective order and the relationship to the alleged incapacitated person is as follows:

John Smith
999 USA Highway
Anywhere, IN 46160

Jane Smith
333 American Way
Anywhere, IN 46773

Relationship: Petitioners are the only siblings of Jane Q. Citizen.

7. The names and addresses, as far as known or as can reasonably be ascertained, of the persons most closely related by blood or marriage to the person for whom the guardian is sought to be appointed or the protective order is issued, other than the petitioners, is/are as follows:

Name and Address	Relationship
None	

8. The name and address of the person or institution having the care and custody of the person for whom the guardian is sought to be appointed or the protective order is issued, is as follows:

Ron Swanson
Hooverwood
7001 Hooverwood Road
Indianapolis, IN 46260

9. The names and addresses of any other incapacitated persons or minors for whom the proposed guardian or person to carry out the protective order is acting if the proposed guardian or person is an individual:

None

10. That the name and address of the attorney representing said petitioner is H. Kennard Bennett, Attorney At Law, whose contact information is below.

WHEREFORE, your petitioner prays the Court to enter an order:

1. Setting a hearing on this petition as soon as possible consistent with the preservation of the rights of the alleged incapacitated person;
2. Requiring that all necessary parties and persons be designated by the Court and given adequate notice of the guardianship proceedings.
3. Finding that the petitioners, Jane Smith and Jane Smith are suitable to be appointed successor guardians of Jane Q. Citizen;
6. Appointing Jane Smith and Jane Smith as the successor co-guardians of Jane Q. Citizen setting out the duties and powers of the guardian;
7. And for all other relief which is proper in the premises.

Respectfully submitted,

H. Kennard Bennett, Atty No. 4015-49
Attorney for Petitioners
BENNETT & MCCLAMMER
120 E. Market St., Suite 1150
Indianapolis, IN 46208
(317) 931-0944

STATE OF INDIANA	)	IN THE WHITLEY CIRCUIT COURT
	)	SS:
COUNTY OF WHITLEY	)	CAUSE NO.: 92C01-0000-GU-000
IN THE MATTER OF THE GUARDIANSHIP OF)	
)	
JANE Q. CITIZEN, ADULT)	

ORDER APPOINTING SUCCESSOR GUARDIANS OVER
PERSON AND ESTATE OF INCAPACITATED PERSON

Come now the petitioners, John Smith and Jane Smith, who having filed a verified petition for the appointment of a successor guardian over the person and estate of Jane Q. Citizen, which petition is on file with the Court and a part of the Court's record.

And the Court having reviewed the petition and the petitioners having appeared in person and by counsel, H. Kennard Bennett, and the Court having heard evidence thereon on April 21, 2016, and being fully advised in the premises, now finds that the allegations contained in the petition are true, and that:

1. The guardian previously appointed by this Court, Madge Smith Citizen, died on November 15, 2015.
2. Jane Q. Citizen has been personally served notice of these proceedings and has received a copy of the Petition for Appointment of Successor Guardians Over Incapacitated Adult as evidenced by the certificate of service filed herein;
3. Notice required under the statute and by this Court has been sent to all interested parties and persons as evidenced by the Certificate of Service filed herein;

4. John Smith and Jane Smith are suitable persons to serve as guardian of the person and estate, as they are the only siblings of Jane Q. Citizen and are fully qualified and willing to assume the duties and responsibilities of the guardianship;

5. All of the requirements for the appointment of a successor guardian as set forth in the Indiana Code have been satisfied, and John Smith and Jane Smith are entitled to be guardians of the person and estate and are appointed with those powers set forth in the Letters of Guardianship attached hereto as **Exhibit A**.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED by the Court that:

1. John Smith and Jane Smith are the most qualified and suitable persons available to serve as successor guardians of the person and estate and is hereby appointed as the guardian of the person and estate of Jane Q. Citizen;

2. John Smith and Jane Smith shall serve as guardian upon taking an oath before the Clerk of this Court; and

3. Upon taking such an oath, the Clerk of this Court is directed to issue Letters of Guardianship of the Person and Estate to John Smith and Jane Smith in the form attached hereto as **Exhibit A**, and guardians are authorized to exercise all powers as enumerated therein.

All of which is ordered on _____.

JUDGE, Whitley Circuit Court

STATE OF INDIANA)
) SS:
COUNTY OF MARION) CAUSE NO.:

IN THE MATTER OF THE GUARDIANSHIP OF
JANE CITIZEN, ADULT

**ATTORNEY'S AFFIDAVIT CERTIFYING COMPLIANCE WITH
REQUIREMENTS FOR NOTICE REGARDING TEMPORARY
GUARDIANSHIP PETITION**

Comes now Sara McClammer, as attorney for the petitioner in this proceeding, and being first duly sworn, certifies the following facts under I.C. §29-3-3-4(b):

1. Before the filing of the petition for appointment of a temporary guardian in this proceeding, the undersigned attorney has made the following efforts to give notice to the alleged incapacitated person or minor named above or to his or her attorney, and to all other interested persons described in I.C. §29-3-6-1(a)(3) or (a)(4), as applicable:

I personally gave notice to Jane Citizen on November 19, 2014 at her apartment in Country Charm Retirement Center in Indianapolis, Indiana. In my conversation with Jane it was apparent that she has trouble remembering dates and facts. I asked her if she trusted her daughters and she stated that she did. She did not completely understand the Court proceedings, but understood that she needed help managing her finances and she wanted to ensure she was safe.

2. The reasons why advance notice cannot or should not be given to one or more interested persons are as follows:

Counsel reasonably believes, based upon information provided by Joe Smith and John Smith, that notice should not be provided to Jane Citizen's husband, Bob Citizen. Counsel reasonably believes that if Bob Citizen is given notice of the temporary guardianship that he would attempt to remove Jane Citizen from Country Charm Retirement Center upon receiving such notice and that Jane's health and safety would be in jeopardy.

I certify, under the penalties for perjury, that the foregoing statements are true and accurate to the best of my knowledge.

Signature of Attorney for Petitioner

Printed Name of Attorney for Petitioner

STATE OF INDIANA)
) SS:
COUNTY OF MARION) CAUSE NO.: 49D08-0000-GU-000000

IN THE MATTER OF THE GUARDIANSHIP OF)
)
JOHN Q. CITIZEN, ADULT)

PETITION FOR ORDER COMPELLING
COMPLIANCE BY THIRD PARTY, AND
FOR ATTORNEY FEES AND COSTS

Comes now H. Kennard Bennett, as guardian of the estate for John Q. Citizen in the above-captioned proceedings, and pursuant to I.C. 29-3-9-12 hereby petitions the Court for an order compelling **Former Employer Benefit Center** to comply with a legitimate demand or instruction of the guardian, and for attorney fees and costs associated incurred by guardian in seeking said compliance. In support hereof, the guardian states as follows:

1. The guardian has made a written demand or instruction to Former Employer Benefit Center, all as set forth in the attached Affidavit.
2. The written demand or instruction was made by the guardian within the scope of the guardian's authority and consistent with I.C. 29-3 et seq.
3. Former Employer Benefit Center is indebted to the guardianship estate or holding property of the guardianship estate.
4. Former Employer Benefit Center has refused and failed to comply with the legitimate demand or instruction of the guardian.
5. Former Employer Benefit Center has "(1) acted in bad faith in failing to comply with the guardian's written demand or instruction; or (2) refused to

respond within thirty (30) business days after receiving the guardian's written demand or instruction” I.C. 29-3-9-12(C).

6. The guardian has incurred attorney fees and costs associated with its efforts at seeking compliance from Former Employer Benefit Center.

WHEREFORE, the guardian respectfully prays for an order compelling Former Employer Benefit Center to comply with the written demand or instruction of the guardian, and for an award of attorney fees and other costs. Guardian prays for all further relief just and proper.

Respectfully submitted,

H. Kennard Bennett, #4015-49
Guardian of the Estate for John Q. Citizen
BENNETT & MCCLAMMER
120 E. Market St., #1150
Indianapolis, IN 46204
(317) 931-0944

STATE OF INDIANA) IN THE MARION SUPERIOR COURT
) SS:
COUNTY OF MARION) CAUSE NO.: 49D08-0000-GU-000000

IN THE MATTER OF THE GUARDIANSHIP OF)
)
JOHN Q. CITIZEN, ADULT)

AFFIDAVIT

Comes now H. Kennard Bennett, serving as guardian of the estate for John Q. Citizen, and being first duly sworn states as follows:

1. On January 1, 2015, I was appointed guardian of the estate for John Q. Citizen by the Marion County Probate Court under Cause No. 49D08-0000-GU-000000.
2. Upon my appointment as guardian I took steps to identify the assets and income of John Q. Citizen.
3. I identified a pension or other income stream belonging to John Q. Citizen from Former Benefit Center. I contacted that company by telephone and was provided instructions on how to exert control over that income stream.
4. Pursuant to the instructions provided to me, I wrote a letter to Former Benefit Center Benefit Center on December 1, 2015. A copy of that letter is attached as Exhibit A.
5. On or about January 11, 2016 I received a letter denying my request on a form entitled "Guardianship Denial Notice." A copy of that letter is attached hereto as Exhibit B.

6. On January 19, 2016, I wrote another letter to Former Benefit Center demanding the same information and action. A copy of my letter is attached as Exhibit C.
7. On or about February 24, 2016 I received another letter denying my request on a form entitled "Guardianship Denial Notice." A copy of that letter is attached hereto as Exhibit D.
8. Former Benefit Center Benefit Center has denied the court ordered guardianship papers two times and refuses to give an explanation to anyone besides John Q. Citizen, whom the court has deemed legally incapacitated.

I hereby swear or affirm that the foregoing statements are true and correct.

H. Kennard Bennett

STATE OF INDIANA)
) SS:
COUNTY OF MARION)

Before me, a Notary Public in and for said County and State, personally appeared H. Kennard Bennett, who acknowledged the execution of the foregoing Affidavit.

WITNESS my hand and Notarial seal, this _____ day of _____, 2016.

Commission Expires: _____

Notary Public

County of Residence: _____

Name (printed)

December 1, 2017

Former Benefit Center
P.O. Box 17302
Baltimore, MD 21297-1302

RE: Guardianship of John Q. Citizen
SSN: 123-45-6789

Dear Former Benefit Center:

Please be advised that Scout Guardianship Services, Inc. ("Scout") has been appointed as guardian of the estate (conservator) for John Q. Citizen by the Marion County (Indiana) Superior Court, Probate Division, under Cause Number 49D08-1501-GU-12345. Enclosed is a copy of our Letters of Guardianship. Mr. Citizen suffered a traumatic brain injury as a result of a work-related accident and is presently incapacitated and undergoing what will be a months-long course of rehabilitation.

I am the President of Scout Guardianship Services, Inc., and I enclose a copy of Scout's Corporate Resolution confirming my authority to act on behalf of Scout.

I hereby request the following with respect to all accounts held by your company on behalf of Mr. Citizen so that we may fulfill our duties as guardian under Indiana law:

1. Please change the address and other contact information on these accounts to the following:

John Q. Citizen
c/o Scout Guardianship
120 E. Market St., Ste. 1120
Indianapolis, IN 46204

(317) 202-1909 Telephone.
(317) 644-2915 Fax.
ken@scoutguardianship.com

In furtherance of this request, I am enclosing two forms as directed by your office. First, I am enclosing an "Ownership Change" form, which includes my Medallion Signature Guarantee. Second, I am enclosing a "Mutual Fund New Account" form. Please note that we are not changing ownership to title on the accounts; Mr. Citizen remains the owner and all tax-related information should be recorded under his Social Security Number, which is identified above.

2. We also request that a copy of the most recent statement(s) on all accounts be forwarded to us at the new address above so that we may properly report such account balances to the Court.

3. Finally, please confirm for us the name of any POD beneficiary designations on the accounts. This information is also necessary to inform our work as guardian due to our duty not to disturb a client's previously designated beneficiary structure among all assets we come to manage.

Please contact us if you require any further information to fulfill our requests herein.

Thank you for your attention to this matter.

Very truly yours,

H. Kennard Bennett
Scout Guardianship Services, Inc.
Guardian for John Q. Citizen

STATE OF INDIANA) IN THE MARION SUPERIOR COURT
) SS:
COUNTY OF MARION) CAUSE NO.: 49D08-0000-GU-00000

IN THE MATTER OF THE GUARDIANSHIP OF)
)
JOHN Q. CITIZEN, ADULT)

ORDER COMPELLING COMPLIANCE
WITH GUARDIAN'S DEMAND OR INSTRUCTION
AND SETTING HEARING ON REQUEST FOR FEES AND COSTS

This matter comes before the Court on the Petition For Order Compelling Compliance By Third Party, And For Attorney Fees And Costs filed by the guardian in the above-captioned proceedings, together with Affidavit.

And the Court having read and examined same now finds that the written demand or instruction of the guardian to Former Employer Benefit Center as set forth in the Affidavit is within the scope of the guardian's authority and consistent with I.C. 29-3.

IT IS THEREFORE ORDERED that **Former Employer Benefit Center** be and is hereby ORDERED to comply with the written demand or instruction of the guardian as set forth in the said Petition within 14 days from the service of this Order.

IT IS FURTHER ORDERED that this matter be and is hereby set for hearing on _____, 201__ at _____ .m. to hear evidence on the request for fees and costs.

IT IS FURTHER ORDERED that the guardian shall serve notice of this order and hearing upon Former Employer Benefit Center, and thereafter file with the Court proof of such service.

Dated: _____

JUDGE, Marion Superior Court

Copy:

H. Kennard Bennett
BENNETT & MCCLAMMER
120 E. Market St., #1150
Indianapolis, IN 46204

Serve:

Former Employer Benefit Center
P.O. Box 9999
Employer City, DC 28262

STATE OF INDIANA) IN THE MARION SUPERIOR COURT
) SS:
COUNTY OF MARION) CAUSE NO.: 49D08-0000-GU-000000

IN THE MATTER OF THE GUARDIANSHIP OF)
)
JOHN Q. CITIZEN, ADULT)

NOTICE

To: Former Employer Benefit Center
P.O. Box 9999
Employer City, DC 28262

PLEASE TAKE NOTICE of the attached Order from the Marion Superior Court, Indiana, in the above-captioned cause, and the accompanying Petition and Affidavit relating thereto. This Order requires action on your part with a proscribed period of time. Failure to comply with the Order could result in the issuance of a contempt citation or other remedy by the Court.

Also, PLEASE TAKE NOTICE that the Court has set a hearing on _____ at _____ m. in the Marion Superior Court, Room 8, Probate Division, 1721 City-County Building, 200 E. Washington St., Indianapolis, IN 46204 to hear evidence on the guardian's request for fees and costs. You should attend such hearing if you wish to present evidence or cross-exam the witnesses guardian may call to testify at such hearing. The Court may act upon the request of the guardian in your absence.

Clerk, Marion Superior Court

STATE OF INDIANA) IN THE MARION SUPERIOR COURT
) SS:
COUNTY OF MARION) CAUSE NO.: 49D08-0000-GU-000000

IN THE MATTER OF THE GUARDIANSHIP OF)
)
JOHN Q. CITIZEN, ADULT)

ORDER AWARDING ATTORNEY FEES AND COSTS
AGAINST FORMER EMPLOYER BENEFIT CENTER

This matter comes before the Court for hearing on April 28, 2016 on the issue of fees and costs requested by way of the Petition for Order Compelling Compliance By Third party and for Attorney Fees and Costs.

Guardian appears in person and by counsel.

Guardian has filed its Certificate of Service of Notice demonstrating that Former Employer Benefit Center was provided service of the notice of the hearing hereupon.

Former Employer Benefit Center _____ appears, or _____ does not appear.

And evidence being heard, and the court having read and considered the Motion and request for fees and costs, now finds that the protected person's estate is entitled to fees and costs under I.C. 29-3-9-12, and that \$_____ is a fair and reasonable award of fees and costs.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that Former Employer Benefit Center shall pay to H. Kennard Bennett, Guardian of John Q. Citizen, the sum of \$ _____, as an award of fees and costs in this matter.

Dated: _____

JUDGE, Marion Superior Court

STATE OF INDIANA	)	IN THE MARION SUPERIOR COURT
	) SS:	
COUNTY OF MARION	)	CAUSE NO.: 49D08-0000-GU-000000
IN THE MATTER OF THE GUARDIANSHIP OF)	
)	
JOHN Q. CITIZEN, ADULT)	

STAND-BY GUARDIAN DECLARATION

Comes now Jane J. Citizen, guardian of the person and estate of John Q. Citizen, and hereby makes the following declaration pursuant to I.C. 29-3-3-7:

1. I, Jane J. Citizen hereby designate my granddaughter, Jackie Citizen, as the stand-by guardian for John Q. Citizen.
2. Information about the protected person:
 - a. Protected Person's Name: John Q. Citizen
 - b. Protected Person's Date of Birth: 01/01/1924
3. This declaration becomes effective upon my death or incapacity.
4. This declaration terminates ninety (90) days after becoming effective unless the standby guardian files a petition for a guardianship of the protected person during that ninety (90) day period, in which case it terminates at the time of the hearing on the petition for a successor guardianship appointment.

I hereby swear or affirm that the foregoing statements are true and correct.

Jane J. Citizen, Guardian of John Q Citizen

STATE OF INDIANA)
) SS:
COUNTY OF _____)

Before me, a Notary Public in and for said County and State, personally appeared Jane J. Citizen, who acknowledged the execution of the foregoing Stand-By Guardian Declaration.

WITNESS my hand and Notarial seal, this _____ day of _____, 2015.

[SEAL]

Commission Expires: _____

Notary Public

County of Residence: _____

Name (printed)

ACTIVATION OF STAND-BY GUARDIAN DESIGNATION:

(To be completed by the designated stand-by guardian upon the death or incapacity of Jane J. Citizen.)

I, Jackie Citizen, do hereby declare under penalties of perjury that:

1. The Declarant, Jane J. Citizen, is either dead or has become incapacitated effective on the date written below.
2. I hereby swear or affirm that I have notified, or immediately will notify, the court having jurisdiction over the above-captioned guardianship, that this Stand-By Guardian Declaration has become effective by its terms.
3. I hereby swear or affirm that I will faithfully discharge my duties as guardian of John Q. Citizen until such time as the court appoints a successor guardian, and will abide by the rules of the court applicable to guardians.

Date: _____

Jackie Citizen

Prepared by:

Sara McClammer, Atty. # 29825-49
Bennett & McClammer LLP
120 E Market Street, Suite 510
Indianapolis, Indiana 46204
(317) 931-0944

STATE OF INDIANA	)	IN THE MARION SUPERIOR COURT
	) SS:	
COUNTY OF MARION	)	CAUSE NO.: 49D08-0000-GU-000000
IN THE MATTER OF THE GUARDIANSHIP OF)	
)	
JOHN Q. CITIZEN, ADULT)	

VERIFIED PETITION FOR ISSUANCE OF LETTERS TO STAND-BY GUARDIAN

Comes now, Jackie Citizen, by counsel and pursuant to I.C. § 29-3-3-7, and files her *Petition for Issuance of Letters to Stand-by Guardian and Request for Hearing*. In support of this Petition, Jackie Citizen states as follows:

1. Jane J. Citizen, was appointed the guardian for John Q. Citizen by this Court on January 1, 2016.
2. On January 1, 2018, Jane J. Citizen executed a Stand-By Guardian Declaration and named Jackie Citizen as stand-by guardian for John Q. Citizen. The Stand-By Guardian Declaration is attached as **Exhibit A**.
3. On March 1, 2018, Jane J. Citizen died. See Affidavit of Jackie Citizen attached as **Exhibit B**.
4. Jackie Citizen hereby requests that the Court immediately issue letters to her in the form attached as **Exhibit C** pursuant to I.C. § 29-3-3-7.

WHEREFORE, Jackie Citizen respectfully requests that the Court issue letters of temporary guardianship in the form attached to this petition and for all other relief just and proper.

Respectfully submitted,

/s/ Jackie Citizen
Jackie Citizen, Standy-By Guardian

I affirm, under the penalties for perjury, that the foregoing representations are true.

/s/ Jackie Citizen

Bennett & McClammer
120 E Market Street, Suite 1150
Indianapolis, IN 46204
317-931-0944

EXHIBIT B

STATE OF INDIANA)
) SS:
COUNTY OF MARION)
)
IN THE MATTER OF THE GUARDIANSHIP OF)
)
JOHN Q. CITIZEN, ADULT)

IN THE MARION SUPERIOR COURT

CAUSE NO.: 49D08-0000-GU-000000

ACTIVATION OF STAND-BY GUARDIAN DESIGNATION:

(To be completed by the designated stand-by guardian upon the death or incapacity of John Q. Citizen)

I, Jackie Citizen, do hereby declare under penalties of perjury that:

1. The Declarant, Jane J. Citizen, is either dead or has become incapacitated effective on the date written below.
2. I hereby swear or affirm that I have notified, or immediately will notify, the court having jurisdiction over the above-captioned guardianship, that this Stand-By Guardian Declaration has become effective by its terms.
3. I hereby swear or affirm that I will faithfully discharge my duties as guardian of John Q. Citizen until such time as the court appoints a successor guardian, and will abide by the rules of the court applicable to guardians.

Date: _____

Jackie Citizen, Standy-by Guardian

Prepared by:
Bennett & McClammer LLP
120 E Market Street, Suite 1150
Indianapolis, Indiana 46204
(317) 931-0944

EXHIBIT C

LETTERS OF GUARDIANSHIP OF THE PERSON AND THE ESTATE

CAUSE NO.: **49D08-1806-GU-123456**

STATE OF INDIANA, MARION COUNTY, Sct:

This is to CERTIFY that the Judge of Marion County Superior Court, Indiana, has this day
granted to

JACKIE CITIZEN (Guardian)

the authority to administer as Guardian the guardianship of

JOHN Q. CITIZEN (Protected Person).

The Guardian shall have the following powers:

- Those powers set out in Indiana Code 29-3-8-2(a), Subsections (1) through (6).

(“Guardianship of the Person”)

- Those powers set out in Indiana Code 29-3-8-4, Subsections (1) through (10).

(“Guardianship of the Estate”)

The Guardian has no authority to do any act not specifically authorized herein except with the
prior written permission of the court.

Further limitations of the guardian’s authority are as follows:

NONE

This guardianship has been established on a temporary basis and shall expire on _____.

Said guardianship shall extend until terminated as provided by law, and the said Jackie Citizen
having duly qualified and given bond as such Guardian, is duly authorized to perform the duties of the
trusts of such Guardianship, according to law.

WITNESS my hand and seal of said Court, at, Indiana, this _____.

Clerk, MARION Superior Court

GUARDIAN'S POWER OF ATTORNEY

I, H. Kennard Bennett, guardian of *ward, do hereby make, constitute and appoint the following persons, in the following order of priority, as my true and lawful attorney in fact, for me and in my name, place and stead to perform all acts with regard to the care, custody or property of *ward under the terms of my guardianship appointment:

1. My colleague, Sara McClammer.

The individual designated herein may proceed in attending to the personal needs of *ward and may conduct transactions and make all decisions on my behalf that I am otherwise entitled to perform under the terms of my guardianship, which guardianship is presently pending in the Marion Superior Court, Cause No. ** (See attached Letters of Guardianship).

This Power of Attorney shall be in full force and effect from July 28, 2015, to December 31, 2015, and is executed in accordance with the provisions of IC §29-3-9-1. Under no circumstances shall this Power of Attorney exceed twelve (12) months with regard to designation of these powers to the person named herein.

IN WITNESS WHEREOF, I have hereunto set my hand and seal this

_____.

H. Kennard Bennett, Guardian of *ward

STATE OF INDIANA)
)SS:
COUNTY OF MARION)

Before me, a Notary Public in and for said County and State, personally appeared H. Kennard Bennett, and being duly sworn by me upon his oath, says that the facts alleged in the foregoing instrument are true.

WITNESS my hand and Notarial seal, this ____ day of _____, 2015.

[SEAL]

Com. Exp. _____

Notary Public

County of Res. _____

Name (printed)

WHEREFORE, your petitioner prays the Court to enter a provisional order transferring the guardianship to Lexington Kentucky and that upon the issuance of a provisional order from Lexington Kentucky, issue a final order transferring the guardianship to Lexington, Kentucky and terminating the guardianship in Indiana, and for all other relief, just and proper.

Jane Smith, Guardian

I affirm, under the penalties for perjury, that the foregoing representations are true.

Jane Smith, Guardian

Prepared By:
H. Kennard Bennett, Atty No. 4015-49
Sara McClammer, Atty. No. 29825-49
Bennett & McClammer, LLP
120 E. Market St., Suite 1150
Indianapolis, IN 46204
(317) 931-0944

STATE OF INDIANA)
) SS:
COUNTY OF MARION)
) CAUSE NO.:

IN THE MATTER OF PROTECTIVE)
PROCEEDINGS FOR)
JOHN Q. CITIZEN.)

PROVISIONAL ORDER TRANSFERRING GUARDIANSHIP TO KENTUCKY

This matter comes before the Court on the Petition to Transfer the Guardianship to Kentucky.

And the Court having reviewed the Petition and the Petitioner having appeared in person and by counsel, and the Court having heard evidence thereon on November 13, 2019, and being fully advised in the premises, now finds, pursuant to I.C. § 29-3.5-3, as follows:

1. John Q. Citizen is an incapacitated person as defined under I.C. § 29-3-1-7.5.
2. John Q. Citizen has significant connections to Kentucky.

And the Court further finds that:

3. John Q. Citizen has been personally served notice of these guardianship proceedings and has received a copy of the Petition to Transfer the Guardianship as evidenced by the Proof of Service filed herein;
4. John Q. Citizen did appear at the hearing and voice his consent to moving to Kentucky.
5. Notice required pursuant to I.C. § 29-3-6-1 has been sent to all interested parties and persons as evidenced by the Proof of Service filed herein;

6. All of the requirements for the issuance of a Provisional Order transferring the guardianship to Lexington Kentucky have been presented.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED by the Court that a provisional order be Issued and the guardian is directed to present this provisional order to the appropriate court in Lexington, Kentucky requesting a provisional order accepting the transfer of the guardianship. After the guardian has presented Kentucky's provisional order to this court it shall issue a final order transferring the guardianship to Kentucky and terminating this cause.

All of which is ordered on _____.

JUDGE, Marion Superior Court

STATE OF INDIANA)
) SS:
COUNTY OF MARION) CAUSE NO.:

IN THE MATTER OF PROTECTIVE)
PROCEEDINGS FOR)
JOHN Q. CITIZEN.)

FINAL ORDER TRANSFERRING GUARDIANSHIP TO KENTUCKY

This matter comes before the Court on the Petition to Transfer the Guardianship to Kentucky.

On November 13, 2019, this Court issued a provisional order transferring this cause to Lexington Kentucky.

On December 14, 2019, the guardian filed a provisional order issued by the Lexington, Kentucky court accepting jurisdiction over the guardianship.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED by the Court that this cause is transferred to Lexington, Kentucky under cause number _____ and that this cause is now terminated.

All of which is ordered on _____.

JUDGE, Marion Superior Court

STATE OF INDIANA)
) SS:
COUNTY OF MARION) CAUSE NO.:

IN THE MATTER OF THE GUARDIANSHIP OF)
)
JANE A. DOE, ADULT)

PETITION FOR APPOINTMENT OF TEMPORARY
GUARDIAN OVER AN ADULT

Comes now Petitioner, Richard Q. Citizen, by counsel, H. Kennard Bennett, who
being duly sworn petitions the Court as follows:

1. That the alleged incapacitated person is a female, 82 years of age, presently living alone in an apartment in Indianapolis, Indiana where she has resided for 34 years;
2. That Petitioner, Richard Q. Citizen, is Jane A. Doe's nephew.
3. That an emergency exists in that Ms. Doe has been diagnosed with Alzheimer's disease and doctors recommend that she no longer live alone. Dr. Jack Smith notes on November 21, 2013, "Functionally, Ms. Doe urgently and immediately needs 24-hour supervision. The fact that she has not yet had any significant problem at home is a function of unbelievably good luck..." (Exhibit A) On December 25, 2013, she slipped and fell in her bathtub and laid there for over 24 hours before being found. More recently, she has been wandering her neighborhood, knocking on doors at all times of day asking neighbors to take her to the store, etc. Petitioner does not believe it is in her best interests to return to her home.
4. That the need exists for the appointment of a temporary guardian so that the temporary guardian may give written consent for the nursing home placement of Jane

A. Doe, appropriate testing, medical and rehabilitative treatment of Jane A. Doe, and to marshal and protect any assets and income of Jane A. Doe for her benefit.

5. That Jane A. Doe is unable to maintain and care for her financial affairs and person, due to the fact that she suffers the following incapacities: Alzheimer's type dementia. Dr. Leonard Smith and Dr. Jack Smith are two of the physicians treating the alleged incapacitated person. A Physician's Report and examination notes are attached hereto as "Exhibit A" of this petition.

6. That the alleged incapacitated person is not believed to own any real property, nor personal property of any significant value, but her financial status is uncertain due to a lack of information.

7. That there is no guardian of the person and/or estate appointed for the alleged incapacitated person in this state or in any other state, and no proceedings pending to the Petitioner's knowledge;

9. That the Petitioner is Ms. Doe's nephew.

10. That the alleged incapacitated person is divorced and has no children. Ms. Doe does have one living sister, two nephews and two nieces.

11. That the Petitioner requests that the Court grant it the responsibilities and powers as temporary guardian as enumerated in the proposed Letters of Temporary Guardianship.

8. That the name and address of the attorney representing said guardian is H. Kennard Bennett, Attorney Number 4015-49, whose offices are located within the Center for At-Risk Elders, Inc., 120 E. Market St., Suite 1190, Indianapolis, IN 46204.

WHEREFORE, your Petitioner prays the Court to enter an order:

1. Finding the facts herein stated to be true, and appoint a temporary guardian over Jane A. Doe.
2. Finding that immediate and irreparable injury to Jane A. Doe may result before notice and a hearing can be held on the petition for guardianship.
3. Finding that the Petitioner herein is a suitable person to be appointed temporary guardian of Jane A. Doe.
4. Appointing Richard Q. Citizen as temporary guardian of Jane A. Doe.
5. Finding that the temporary guardian is authorized to consent in writing to the medical treatment, care and placement of Jane A. Doe and to marshal and protect the assets of Jane A. Doe for her benefit.

And for all other relief which is proper in the premises.

Richard Q. Citizen
PETITIONER

I affirm, under the penalties for perjury, that the foregoing representations are true.

Richard Q. Citizen

Prepared by:
H. Kennard Bennett, Atty No. 4015-49
Attorney At Law
The Center for At-Risk Elders, Inc.
120 E. Market St., Suite 1190
Indianapolis, IN 46204
(317) 955-2790

STATE OF INDIANA)
) SS:
COUNTY OF MARION) CAUSE NO.:

IN THE MATTER OF THE GUARDIANSHIP OF)
)
DOROTHY A. SMITH, ADULT)

ORDER APPOINTING TEMPORARY GUARDIAN

Comes now Petitioner, Richard Q. Citizen, by counsel, H. Kennard Bennett, who having filed its verified petition for the appointment of a temporary guardian over Dorothy A. Smith, which petition is on file with the Court and a part of the Court's record.

And the Court, having examined said petition, and the Petitioner having appeared in person, and the Court having heard evidence thereon and being fully advised, now finds that the allegations contained in said petition are true, and that a temporary guardian of Dorothy A. Smith should be appointed.

The Court finds that a guardian has not previously been appointed for Dorothy A. Smith; that an emergency exists; that the welfare of Dorothy A. Smith requires immediate action; that no other person has the authority to act under the circumstances; that immediate and irreparable injury to Dorothy A. Smith may result before notice and a hearing can be held because of her need for medical treatment and care is immediate and that Dorothy A. Smith lacks capacity to consent to such treatment, and because the assets and income of Dorothy A. Smith must be marshaled, secured, and used to provide for Dorothy A. Smith's needs prior to the time a hearing could be held.

IT IS THEREFORE ORDERED, ADJUDGED, and DECREED by the Court that:

1. The facts herein stated are true, and appoint a temporary guardian over the person and estate of Dorothy A. Smith is necessary.
2. Immediate and irreparable injury to Dorothy A. Smith may result before notice and a hearing can be held on the petition for guardianship.
3. Richard Q. Citizen is to be appointed temporary guardian of Dorothy A. Smith with the following specific powers:
 - a. To consent in writing to the medical or surgical treatment of Dorothy A. Smith.
 - b. To enter into contracts for the admission of Dorothy A. Smith to any health care facility reasonably deemed necessary for the safety and well-being of Dorothy A. Smith.
 - c. To assume direct control over any and all financial accounts, such as bank accounts and/or investment accounts, that are in the name of Dorothy A. Smith, for the purpose of protecting same until the time of the hearing on the petition for the appointment of a permanent guardian.
 - d. To make application on behalf of Dorothy A. Smith for any and all government or insurance benefits to which Dorothy A. Smith might be entitled for his care and treatment.
4. Richard Q. Citizen be and hereby is appointed as temporary guardian of Dorothy A. Smith with the preceding powers for a period not to exceed ninety (90) days from the date of this Order, or until the date of the hearing on the

appointment of a permanent guardian, whichever is later, unless otherwise later ordered by this Court.

5. The temporary guardian shall serve as guardian upon take an oath.
6. The clerk shall issue letters of temporary guardianship, in the form attached hereto as Exhibit A, to Richard Q. Citizen upon due qualification which letters shall show the temporary guardian's powers and responsibilities.
7. Within thirty (30) days after the date of this Order the temporary guardian shall file an Inventory.
8. Upon termination of the appointment of temporary guardian, Richard Q. Citizen shall file with the court a written verification of the administration as temporary guardian that shall include a description and report on the incapacitated person's physical and mental condition.

All of which is ordered on _____.

JUDGE OF THE SUPERIOR COURT
OF MARION COUNTY

Copy :

H. Kennard Bennett
The Center for At-Risk Elders, Inc.
120 E. Market Street, Suite 628
Indianapolis, IN 46204

LETTERS OF TEMPORARY GUARDIANSHIP

CAUSE NUMBER:

STATE OF INDIANA, MARION COUNTY, Sct:

This is to CERTIFY that the Judge of MARION County Superior Court, Indiana, has this day granted to:

Richard Q. Citizen (Guardian)

the authority to administer as Guardian the guardianship of:

Dorothy A. Smith (Protected Person)

The guardians shall have the following powers only:

- To consent in writing to the medical or surgical treatment of Dorothy A. Smith.
- To enter into contracts for the admission of Dorothy A. Smith to any health care facility reasonably deemed necessary for the safety and well-being of Dorothy A. Smith.
- To assume direct control over any and all financial accounts, such as bank accounts, and/or investment accounts, that are in the name of Dorothy A. Smith, for the purpose of protecting same until the time of the hearing on the petition for appointment of a permanent guardian.
- To take possession and control of any and all real estate owned by Dorothy A. Smith.
- To receive any money or assets to which Dorothy A. Smith may be entitled.
- To make application on behalf of Dorothy A. Smith for any and all government or insurance benefits to which Dorothy A. Smith might be entitled for her care and treatment.

A guardian has no authority to do any act not specifically authorized herein except with the prior written permission of the court.

This Guardianship has been established on a temporary basis and expires on July 10, 2014.

Said Guardianship shall extend until terminated as provided by law, and the said Center for At-Risk Elders, Inc. having duly qualified and given bond as such Guardian, is duly authorized to assume the performance of the duties of the trusts of such Guardianship, according to law.

WITNESS my hand and seal of said Court, at Indianapolis, Indiana, this

_____.

Clerk, MARION Superior Court

STATE OF INDIANA)
) SS:
COUNTY OF MARION) CAUSE NO.:

IN THE MATTER OF THE GUARDIANSHIP OF)
)
JANE CITIZEN, ADULT)

**ATTORNEY'S AFFIDAVIT CERTIFYING COMPLIANCE WITH
REQUIREMENTS FOR NOTICE REGARDING TEMPORARY
GUARDIANSHIP PETITION**

Comes now Sara McClammer, as attorney for the petitioner in this proceeding, and being first duly sworn, certifies the following facts under I.C. §29-3-3-4(b):

1. Before the filing of the petition for appointment of a temporary guardian in this proceeding, the undersigned attorney has made the following efforts to give notice to the alleged incapacitated person or minor named above or to his or her attorney, and to all other interested persons described in I.C. §29-3-6-1(a)(3) or (a)(4), as applicable:

I personally gave notice to Jane Citizen on November 19, 2014 at her apartment in Country Charm Retirement Center in Indianapolis, Indiana. In my conversation with Jane it was apparent that she has trouble remembering dates and facts. I asked her if she trusted her daughters and she stated that she did. She did not completely understand the Court proceedings, but understood that she needed help managing her finances and she wanted to ensure she was safe.

2. The reasons why advance notice cannot or should not be given to one or more interested persons are as follows:

Counsel reasonably believes, based upon information provided by Joe Smith and John Smith, that notice should not be provided to Jane Citizen's husband, Bob Citizen. Counsel reasonably believes that if Bob Citizen is given notice of the temporary guardianship that he would attempt to remove Jane Citizen from Country Charm Retirement Center upon receiving such notice and that Jane's health and safety would be in jeopardy.

I certify, under the penalties for perjury, that the foregoing statements are true and accurate to the best of my knowledge.

Signature of Attorney for Petitioner

Printed Name of Attorney for Petitioner