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Guardianship Proceedings for Disabled Adults

Definition of Disabled Adult: “Developmental disability” means the ward has a disability attributable to (a) an intellectual disability, cerebral palsy, epilepsy or autism; or to (b) any other condition which results in impairment similar to that caused by an intellectual disability and which requires services similar to those required by persons with intellectual disabilities. Such disability must originate before the age of 18 years, be expected to continue indefinitely, and constitute a substantial disability.

Definition of a person with a disability: Is a person over the age of 18 years who because of mental deterioration or physical incapacity is not fully able to manage his person or estate. Such a person may also be a person with a mental illness or developmental disability who is not fully able to manage his person or estate. Other persons who may adjudged disable include those diagnosed with fetal alcohol syndrome or fetal alcohol effects.

Who may act as Guardian? Any person over the age of 18 years, is a resident of the United States, is of sound mind (I know, this is sometimes iffy), and who themselves are not adjudged a disabled adult. A public agency or not-for-profit may petition but I have never seen this happen.

Convicted felon? Probably not. A convicted felon may only act as guardian **if** a Court finds that it is in the ward’s best interest considering the nature of the offense, the date of the offense and evidence of the proposed guardian’s rehabilitation. **No person convicted of a felony offense involving harm or threat to a minor or an elderly person or person with a disability, including sex offenses.**

STEPS TO THE PROCESS

When a disabled child becomes an adult, parents are often at a loss. The process may seem overwhelming and the parents themselves become vulnerable in so far as being given false information or made to

feel intimidated by the Court process. **This is not a scary thing!!!!** Judges know this is a difficult time for parents and the more they are prepared, the smoother things will be. So I hope the following information alleviates some fears.

1. Approximately 6 weeks before the potential ward turns 18 years of age, the proposed guardian must secure a physician's report. These are standard forms physicians are familiar with. They are very simple to prepare. This report **must** be prepared by a medical doctor, not a PA or LPN or anyone else. This report cannot be more than 3 months old prior to the filing of the petition.
2. The proposed guardian must also complete a 20 minute or so educational seminar as to the duties and obligations of a guardian. This can be done on-line by visiting the website of the Office of State Guardian. It is best to be done before Court but may be done within 1 year of the appointment as guardian.
3. A Petition for Adjudication of Disability and Appointment of a Plenary Guardian of the Estate and Person is then filed in the Circuit Court of the County wherein the ward or potential guardian resides or owns real estate. A copy of the physician's report **must** be attached to the Petition. If the ward is refusing to go to the doctor, you can file the petition and the Court will order to ward to submit to an exam for purposes of preparation of the physician's report. This Petition should be filed and timed such that a court date can be scheduled on the ward's 18th birthday or shortly thereafter. These cases are time sensitive so it is important to stay on top of things.
 - a. **Differences between guardian of person and guardian of estate.** Pretty simple: guardian of the person makes decisions as to placements and the day-to-day decisions regarding the care of the ward's physical/mental and emotional needs; guardian of the estate handles the finances. Parent's petitioning for guardianship of a disabled child will want to petition for both the person and the estate.
 - b. There is a difference between a Plenary Guardian and a Limited Guardian. A Plenary Guardian makes all decisions. A Limited Guardian may not have control over all aspects. For example, the ward may be able to handle his/her own finances but be unable to make medical decisions. You will have to prove that a Limited

Guardianship is not sufficient before the Court will appoint a Plenary Guardian.

4. Upon the filing of the Petition, the Court will appoint an attorney called a Guardian ad Litem. This person meets with the ward and the family and does a "mini" investigation. The will go over with the ward their rights. This attorney will be paid at a rate of, usually, \$150 per hour which has been set by the County. Most of us just do a small flat fee considering the circumstances the family is facing.
5. The ward will need to be served by the sheriff's department. We always arrange for you to simply take the ward to the office and be served there.
6. **COURT IS NOT SCARY!!!!** Guardianship proceedings are filed under the Probate Act and are closed to the public upon request. It is no one's business what goes on in the courtroom. They are generally light hearted and fairly stress free. They are short proceedings where standard questions are asked. Again, the judges try to make this as easy for parents as they can.
CAVEAT: If the pleadings, orders and service requirements are not in proper order or correct, the judge will likely be pretty upset given the sensitivity of the proceedings as far as the nature and timing. Make sure your lawyer knows what they are talking about before you hire one or if you choose to proceed self-represented, there are pre-printed forms at the courthouse.

EDUCATORS ROLE

Yes, your IEPs matter!!!! In any type of family or guardianship proceeding, IEPs may be relied upon heavily. If you copy and paste your narratives, **please make sure you have the correct student's name.** The IEP and your opinion lose all credibility when a cut/paste goes bad.

Miscellaneous General Information

Things will go a lot smoother for the proposed guardian if tattoos are covered. Proposed guardians should dress appropriately and if possible in slacks/dress shirt/nice top. You are in a courtroom and decorum is very important.

Seriously, take the gauges and piercing out. Don't be carrying a pack of cigarettes or have one falling out of a pocket. Appearances can influence a judge and perhaps create some unwarranted personal assumptions.

Filing fees will range between \$144.00 to \$179.00. **Do not pay thousands of dollars!!!!** Some attorneys make things sound more difficult than they really are so they can justify crazy amounts in legal fees. Our firm charges \$600.00 in legal fees for an uncontested guardianship. You then have the Gal and filing fees.