



# IDAHO JUDICIARY

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## Guardianships and Conservatorships in Idaho

### Finding a Balance between Autonomy and Protection

Court appointed guardians and conservators step into the shoes of incapacitated adults, persons with developmental disabilities, or minor children, making judgments about property, medical care, living arrangements, lifestyle, and potentially all personal or financial decisions. Guardianships and conservatorships are mechanisms that protect some of the most vulnerable individuals in our society. At the same time, they also remove fundamental rights thereby increasing opportunities for abuse, neglect, or exploitation of those we strive to protect.

### Protecting Rights and Ensuring Choices—Less Restrictive Alternatives to full Guardianship or Conservatorship

A persons' right to make decisions about his or her life is a fundamental value in Idaho law. To further the intent of Title 66 (The Developmental Disability Code) and Title 15 (The Uniform Probate Code) that every person be permitted to participate as fully as possible in decisions affecting them, the Idaho Supreme Court Guardianship and Conservatorship Committee (GC Committee) has explored and institutionalized processes to facilitate limited guardianships and conservatorships and encourage the use of supported decision making when appropriate.

Supported Decision Making occurs when people choose trusted friends, family members, and professionals to help them understand the situations and choices they face so they may make their own decisions.

The GC Committee has membership not only from the judiciary, but from stakeholders across the state with representatives from multiple agencies and backgrounds in order to drive systemic changes in policy and practice. The GC Committee has made a tremendous impact on the monitoring and best practices for guardianships and conservatorships. It has put processes in place to monitor the well-being of the protected person and the financial health of the estate, practices to ensure the protection ordered in a case is specific to the needs of the protected person and created training to ensure everyone is aware of guardian and conservator responsibilities and duties.

#### **Guardianship and Conservatorship Committee Mission:**

Protect and empower vulnerable individuals under guardianship or conservatorship through education, monitoring, enforcement, and community support. To further the intent of the legislature by recognizing that every individual has unique needs and differing abilities and the system should permit every individual to participate as fully as possible in decisions which affect them including the use of alternatives to full guardianship or conservatorship.

With support from an Administration for Community Living grant, this summer over 130 professionals in Idaho received a day of training from national and local experts on the use of less intrusive alternatives to full guardianship. This, in conjunction with previous judicial trainings and the creation and dissemination of resource material, is evidence of the steps being taken in Idaho to ensure the person is at the heart of all decisions and enables people to lead independent, self-determined, and community included lives.

### **Monitoring Guardians and Conservators to Ensure Safety & Reduce Risk**

One 2010 study found that 47% of participants with dementia had been mistreated by their caregivers. Persons with a developmental disability are four to ten times more likely to be abused than their peers without disabilities. When a court appoints a guardian or conservator to make decisions for another, it has a responsibility to provide for ongoing monitoring to ensure the guardian and conservator is acting within the statutory duties to protect and provide for the incapacitated adult, person with a developmental disability, or minor.

Beginning in Fiscal Year 2018, the legislature appropriated funding to provide for a guardianship and conservatorship monitoring coordinator (GCM Coordinator) in each of Idaho's seven judicial districts. The GCM Coordinator monitors the well-being of individuals under guardianship and provides a much needed subject matter expert on guardianships and conservatorships for court staff, stakeholders, and the public. Through their combined effort, 4,397 cases were reviewed, and of those cases 995 required further inquiry and follow-up. The follow-up consisted of 378 in-home visits with the person under guardianship, 808 phone calls, and 287 hearings to ensure the person under guardianship was safe, provided for in an appropriate manner, and living a self-determined life.

One Eastern Idaho woman has already felt the benefits of having a new GCM coordinator in her area. She had been placed under guardianship and conservatorship in 2003. At the time experts indicated the orders should be reevaluated in two years to determine if she had gained the independent living skills to live without a guardianship and conservatorship in place. Several years passed without action from her guardian to seek review while the woman continued to live under the structure of a guardianship. Last year, the newly hired GCM coordinator reviewed the case and requested the court hold a review hearing to reconsider the case. At the hearing, the court determined the woman had acquired the skills necessary to live independently and terminated both the guardianship and conservatorship. On the way out of the courthouse she said, "I've been waiting for this! I have my independence!"

In conjunction with the GCM Coordinators, the Administrative Office of the Courts (AOC) provides for accountants to review and monitor financial reports filed with the court. This fiscal year, the AOC accountants reviewed 2,748 reports with a combined total assets amount of \$278,248,136.

## On the Horizon

The Court's GC Committee is now turning its focus to one of the most difficult issues in the guardianship and conservatorship area - the lack of available guardians or conservators for individuals who have no one else to step in. This is a problem impacting everyone in the system, from the person lacking needed supports, to the GCM coordinators who uncover abuse but cannot find alternative guardians, to the healthcare systems with patients waiting in hospital beds until a guardian can be found and appointed. Although Idaho has made strides to improve practices, the GC Committee understands there is more work to be done to protect and empower vulnerable citizens.

## The Guardianship and Conservatorship Project Fund

The Court is closely monitoring the dedicated Guardianship and Conservatorship fund. Idaho Code section 31-3201G provides for filing fees applicable to guardianship and conservatorship cases which are deposited into this fund. It further provides, "Moneys in the fund shall be expended exclusively for the development of a project which shall be designed to improve reporting and monitoring systems and processes for the protection of persons and their assets where a guardian or conservator has been appointed." The Court utilizes this fund to support the GC Committee's work, to fund financial accounting reviews, and to support one GC Coordinator position. In recent years the fund's expenditures have sometimes exceeded revenue. In Fiscal Year 2018, the fund's revenue was \$266,302 and its expenditures totaled \$233,970, such that the current \$525,188 cash balance was preserved. The Court continues to monitor the fund to ensure that adequate revenue is received to support the monitoring project.

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### Mission Statement of the Idaho Courts

*As the Third Branch  
of Government, we  
provide access to  
justice by ensuring  
fair processes and  
the timely, impartial  
resolution of cases.*

#### *The Idaho Judiciary Stands For:*

*Integrity  
Fairness  
Independence  
Respect  
Excellence  
Innovation*

#### *The Idaho Judiciary Strives To:*

*Provide Timely,  
Impartial Case  
Resolution Through  
Legally Fair  
Procedures*

*Ensure Access to  
Justice*

*Promote Effective,  
Innovative Services*

*Increase Public  
Trust and  
Confidence In  
Idaho's Courts*