

# CONSERVATORSHIPS

## INCAPACITATED ADULTS

### *Bench Card*

*This Bench Card has been created by the Administrative Office of the Court as a resource for judges. Bench Cards do not represent statements of law by the Idaho Supreme Court and do not constitute legal advice.*

#### **PURPOSE**

Appointment of a conservator may be made if a person is unable to manage his or her property and affairs effectively and property will be wasted or dissipated unless proper management is provided, or funds are needed for support, care, and welfare of the person.<sup>1</sup>

#### **APPOINTMENTS**

1. May appoint Guardian *ad Litem* (GAL) Attorney, unless the person has counsel of his own choice.<sup>2</sup>
2. May appoint physician or other qualified person to examine the alleged person to be protected if the alleged disability is mental illness, mental disability, physical illness, advanced age, chronic drug use, or chronic intoxication.<sup>3</sup>
3. May send a visitor to interview the person to be protected.<sup>4</sup>

#### **TEMPORARY APPOINTMENT<sup>5</sup>**

1. May be appointed without notice upon a finding that an emergency exists.
2. Notice of the appointment must be given to all interested persons within five (5) days of appointment.
3. If requested by interested person, a hearing must be held within five (5) days.
  - a. If hearing requested, court shall appoint a visitor and physician to meet with the alleged person to be protected and make a written report.
4. Cannot exceed 90 days unless extended for good cause.

#### **REQUIRED SUBMISSIONS PRIOR TO HEARING**

1. All notices have been given.<sup>6</sup>
  - a. Personal service on the alleged incapacitated person.
  - b. Service by mail or in person on the respondent's spouse; or if none the respondent's adult children; or if none the respondents parents; or if none the closest adult relatives if any can be found.
  - c. Service by mail or in person upon any person currently serving as guardian, conservator, or who is providing care to the alleged incapacitated person.
  - d. Service by mail or in person upon anyone who has filed a request for notice.
2. Certificate of Completion of the Supreme Court's online training course regarding a conservator.<sup>7</sup>
3. GAL Written Report, if appointed.<sup>8</sup>
4. Visitor Written Report, if appointed.<sup>9</sup>
5. Physician Written Report, if appointed.<sup>10</sup>

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<sup>1</sup> IC §15-5-401(b)

<sup>2</sup> IC §15-5-407(b)

<sup>3</sup> IC §15-5-407(b)

<sup>4</sup> IC §15-5-407(b)

<sup>5</sup> IC §15-5-407A

<sup>6</sup> IC §15-5-405

<sup>7</sup> ICAR 54

<sup>8</sup> IC §15-5-434(2)

<sup>9</sup> IC §15-5-407

<sup>10</sup> IC §15-5-407

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### **LIMITED CONSERVATORSHIP AND OTHER PROTECTIVE ORDERS**

1. The court shall exercise the authority so as to encourage the development of maximum self-reliance and independence of the person, and make protective orders only to the extent necessitated by the person's actual mental and adaptive limitations.<sup>11</sup>
2. Without appointing a conservator, the court may authorize, direct or ratify any transaction necessary or desirable to achieve any security, service or care arrangement meeting the foreseeable needs of the person.<sup>12</sup>

### **HEARINGS AND FINDINGS**

#### Findings

1. The person is unable to manage his property and affairs effectively,  
AND
2. The person has property which will be wasted or dissipated unless proper management is provided,  
AND/OR
3. That funds are needed for the support, care and welfare of the person or who is entitled to be supported by him and that protection is necessary or desirable to obtain or provide funds.<sup>13</sup>

#### Standard Orders and Judgments

1. Judgment Appointing Conservator.
2. Letters of Conservatorship.
3. Conservator's Duty to Report.

### **REQUIRED REPORTS**

1. Financial plan if not included in the petition.<sup>14</sup>
2. 90 day inventory.<sup>15</sup>
3. Annual accounting.<sup>16</sup>
4. Accounting when a conservator resigns or is removed.<sup>17</sup>
5. Final accounting when the conservatorship is terminated.<sup>18</sup>

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<sup>11</sup> IC §15-5-408

<sup>12</sup> IC §15-5-409(a)

<sup>13</sup> IC §15-5-401

<sup>14</sup> IC §15-5-404(c)

<sup>15</sup> IC §15-5-419; ICAR 54.3

<sup>16</sup> IC §15-5-419; ICAR 54.3

<sup>17</sup> IC §15-5-419; ICAR 54.2

<sup>18</sup> IC §15-5-419; ICAR 54.2