

GUARDIANSHIPS INCAPACITATED ADULT

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

To appoint a guardian or co-guardians for an adult in the least restrictive form possible and which allows the person to participate as fully as possible in all decisions affecting them and to assist such persons in meeting the essential requirements for their physical health and safety and in protecting their rights.¹

APPOINTMENTS

1. Guardian *ad Litem* (GAL) Attorney unless alleged incapacitated person has an attorney.²
2. Court Visitor.³
3. Physician or other qualified person to examine the alleged incapacitated person.⁴
4. May also appoint a mental health professional to examine the alleged incapacitated person.⁵

TEMPORARY APPOINTMENT⁶

1. May be appointed if an emergency exists, and no guardian has been appointed or the guardian is not performing the guardian's duties;
 - a. Authority of previous guardian is suspended as long as temporary guardian has authority.
2. May be appointed without notice or hearing on finding from sworn statement that proposed incapacitated person would be immediately and substantially harmed before notice can be given or a hearing held.
 - a. Notice must be given within 72 hours after appointment. If requested, a hearing held within 10 days.
3. Authority cannot exceed 90 days, unless extended for good cause.

REQUIRED SUBMISSIONS PRIOR TO HEARING

1. For temporary guardian, no notice needed upon finding from sworn statement of immediate and substantial harm⁷.
 - a. Notice required within 72 hours following appointment of temporary guardian.
2. All notices have been given.⁸
 - 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.
3. Certificate of Completion of the Supreme Court's online training course regarding a guardian.⁹
4. Complete criminal history and background check.¹⁰
 - a. The check must be available to the visitor and GAL.
 - b. A list of civil judgments and bankruptcies available to the visitor, GAL, and all others entitled to notice of the guardianship proceeding.

¹ IC §15-5-303(a)

² IC §15-5-303(b)

³ IC §15-5-303(b); Visitor qualifications at I.C.A.R. 54.4

⁴ IC §15-5-303(b)

⁵ IC §15-5-303(b)

⁶ IC §15-5-310

⁷ IC §15-5-310(c)

⁸ IC §15-5-309

⁹ ICAR 54

¹⁰ IC §15-5-311(5)(a)

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5. GAL Written Report.¹¹
6. Visitor Written Report.¹²
7. Physician Written Report.¹³

CO-GUARDIANS, LIMITED GUARDIANSHIP, AND ALTERNATIVE TO FULL GUARDIANSHIP

1. The court shall encourage the development of maximum self-reliance and independence and make appointments and orders only to the extent necessitated by the alleged incapacitated person's actual mental and adaptive limitations.¹⁴
2. The court may, at any time, on its own motion or on appropriate petition or motion, limit the powers of the guardian. All limitations should be included on the guardian's letters.¹⁵
3. On appropriate findings the court may:¹⁶
 - a. Treat the petition as one for a protective order under IC §15-5-401;
 - b. Enter any other appropriate order; or
 - c. Dismiss the proceedings.
4. The court may appoint up to two (2) persons as co-guardians. The parents of the incapacitated person have preference of appointment, unless they are unwilling or incapable of adequately serving the best interests of the incapacitated person.¹⁷

HEARINGS AND FINDINGS

Who

1. The proposed guardian or co-guardians, unless excused for good cause.¹⁸
2. The person alleged to be incapacitated.¹⁹

Findings

1. Temporary guardian may be appointed if the court finds:²⁰
 - a. A petition for guardianship been filed, but a guardian has not yet been appointed; and
 - Substantial evidence of incapacity;
 - By a preponderance of the evidence an emergency exists that will likely result in immediate and substantial harm to the person's health, safety or welfare;
 - No other person appears to have the ability, authority and willingness to act.
 - OR
 - b. When a person is under guardianship, the court may appoint a temporary guardian if it finds:
 - Substantial evidence that the guardian is not performing the guardian's duties; and
 - By a preponderance of the evidence, an emergency exists that will likely result in immediate and substantial harm to the person's health, safety or welfare.

¹¹ IC §15-5-315(2)

¹² IC §15-5-303(b); ICAR 54.4

¹³ IC §15-5-303(b)

¹⁴ IC §15-5-304(a)

¹⁵ IC §15-5-304(d)

¹⁶ IC §15-5-304(b)

¹⁷ IC §15-5-304(c)

¹⁸ IC §15-5-303(c)

¹⁹ IC §15-5-303(c)

²⁰ IC §15-5-310

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2. A guardian or co-guardian may be appointed if the court finds;
 - a. The person is incapacitated:²¹
 - The person is impaired in that he or she lacks sufficient understanding or capacity to make or communicate responsible decisions concerning his or her person;²²
 - Inability shall be evidenced by acts or occurrences or statements which **STRONGLY** indicate imminent acts or occurrences and must have occurred within 12 months prior to the petition.²³
 - AND
 - b. Appointment of a guardian is necessary or desirable as a means of providing continuing care and supervision of the alleged incapacitated person.
3. Up to two (2) co-guardians may be appointed if the court finds:²⁴
 - a. Appointment will best serve the interests of the incapacitated person; and
 - b. The co-guardians will work together cooperatively to serve the best interests of the incapacitated person.
 - c. Whether the co-guardians may act;
 - independently,
 - act independently but must act jointly on specific matters, or
 - must act jointly.

Standard Orders and Judgments

1. Judgment Appointing Guardian.
2. Letters of Guardianship.
3. Guardian's Duty to Report.

REQUIRED REPORTS

1. Temporary guardian must file reports as required by the court.²⁵
2. 30 day care plan, if information is not included in the petition.²⁶
3. Annual guardianship status report.²⁷
4. Report when a guardian resigns or is removed.²⁸
5. Report when the guardianship is terminated, unless the court determines there is no need.²⁹

²¹ IC §15-5-304(b)

²² IC §15-5-101(a)

²³ IC §15-5-101(a)

²⁴ IC §15-5-304(c)

²⁵ IC §15-5-310(c)

²⁶ IC §15-5-303(a)

²⁷ IC §15-5-312(1)(e); ICAR 54.2

²⁸ IC §15-5-312(1)(e); ICAR 54.2

²⁹ IC §15-5-312(1)(e); ICAR 54.2

CONSERVATORSHIPS

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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.¹

APPOINTMENTS

1. May appoint Guardian *ad Litem* (GAL) Attorney, unless the person has counsel of his own choice.²
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.³
3. May send a visitor to interview the person to be protected.⁴

TEMPORARY APPOINTMENT⁵

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.⁶
 - 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.⁷
3. GAL Written Report, if appointed.⁸
4. Visitor Written Report, if appointed.⁹
5. Physician Written Report, if appointed.¹⁰

¹ IC §15-5-401(b)

² IC §15-5-407(b)

³ IC §15-5-407(b)

⁴ IC §15-5-407(b)

⁵ IC §15-5-407A

⁶ IC §15-5-405

⁷ ICAR 54

⁸ IC §15-5-434(2)

⁹ IC §15-5-407

¹⁰ 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.¹¹
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.¹²

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.¹³

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.¹⁴
2. 90 day inventory.¹⁵
3. Annual accounting.¹⁶
4. Accounting when a conservator resigns or is removed.¹⁷
5. Final accounting when the conservatorship is terminated.¹⁸

¹¹ IC §15-5-408

¹² IC §15-5-409(a)

¹³ IC §15-5-401

¹⁴ IC §15-5-404(c)

¹⁵ IC §15-5-419; ICAR 54.3

¹⁶ IC §15-5-419; ICAR 54.3

¹⁷ IC §15-5-419; ICAR 54.2

¹⁸ IC §15-5-419; ICAR 54.2

PERSON WITH DEVELOPMENTAL DISABILITY GUARDIANSHIP AND CONSERVATORSHIP

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PURPOSE

Appointment of a guardian or conservator permits partially disabled and disabled persons to participate as fully as possible in all decisions which affect them, assists such persons in meeting the essential requirements for their physical health and safety, protecting their rights, managing their financial resources, and developing or regaining their abilities to the maximum extent possible.¹

APPOINTMENTS²

1. Appoint an attorney to represent the respondent unless the respondent has an attorney.
2. Authorize an Idaho Department of Health and Welfare Evaluation Committee (IDHW Committee) to examine the respondent, interview the proposed guardian or conservator and report to the court in writing.

TEMPORARY GUARDIAN³

1. May be appointed if an emergency exists, and no guardian has been appointed or the guardian is not performing the guardian's duties;
 - a. Authority of previous guardian is suspended as long as temporary guardian has authority.
2. May be appointed without notice or hearing on finding from sworn statement that respondent would be immediately and substantially harmed before notice can be given or a hearing held.
 - a. Notice must be given within 72 hours after appointment. If requested, a hearing held within 14 days.
3. Authority cannot exceed 90 days unless extended for good cause.

REQUIRED SUBMISSIONS PRIOR TO HEARING

1. Notice required within 72 hours following appointment of temporary guardian unless the court finds from sworn statement immediate and substantial harm may occur if notice is given.⁴
2. All notices have been given.⁵
 - a. Personal service on the respondent.
 - b. Personal service was made on the respondent's spouse, parents and adult children or, if none, the respondent's closest relative.
 - c. Personal service upon any person currently serving as guardian, conservator, or who is providing care to the respondent.
3. Certificate of Completion of the Supreme Court's online training course regarding a guardian and conservator.⁶
4. Complete criminal history and background check.⁷
 - a. The check must be available to the IDHW Evaluation Committee.
 - b. A list of civil judgments and bankruptcies available to the IDHW Committee, respondent's attorney, and all others entitled to notice of the proceedings.
5. IDHW Evaluation Committee written report.⁸

CO-GUARDIANS, LIMITED GUARDIANSHIP, AND LIMITED CONSERVATORSHIP

¹ I.C. § 66-401.

² I.C. § 66-404(3).

³ I.C. § 66-404A.

⁴ I.C. § 66-404A(3).

⁵ I.C. § 66-404(4).

⁶ I.C.A.R. 54.

⁷ I.C. § 66-404(7).

⁸ I.C. § 66-404(3); I.C.A.R. 54.5.

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1. If it is determined that the respondent has a developmental disability and is unable to manage some financial resources or meet some essential requirements for physical health or safety, the court may appoint a partial guardian and/or partial conservator on behalf of the respondent.⁹
2. A person for whom a partial guardianship or partial conservatorship has been appointed retains all legal and civil rights, except those which have by court order been limited, or which have been specifically granted to the partial guardian or partial conservator by the court.¹⁰
3. The court may appoint up to two (2) co-guardians or co-conservators. The parents of the respondent have preference of appointment unless they are unwilling or incapable of adequately serving the best interests of the person with disabilities.¹¹

HEARINGS AND FINDINGS

Who

1. The respondent.¹²
2. The respondent's attorney.

Findings

1. Temporary guardian may be appointed if the court finds;¹³
 - a. A petition for guardianship been filed, but a guardian has not yet been appointed; and
 - Substantial evidence the person has a developmental disability;
 - By a preponderance of the evidence an emergency exists that will likely result in immediate and substantial harm to the person's health, safety or welfare;
 - No other person appears to have the ability, authority and willingness to act.
 - OR
 - b. When a person is under guardianship, the court may appoint a temporary guardian if it finds:
 - Substantial evidence that the guardian is not performing the guardian's duties; and
 - By a preponderance of the evidence, an emergency exists that will likely result in immediate and substantial harm to the person's health, safety or welfare.
2. A guardian or co-guardians, or conservator or co-conservators, may be appointed if the court finds;
 - a. The respondent has a developmental disability.¹⁴
 - b. Evaluate the respondent's ability to meet his or her essential requirements for physical health or safety and manage financial resources.¹⁵
 - c. Evaluate the ability of the proposed guardian and/or conservator to act in the respondent's best interest, to manage the respondent's financial resources, and to meet essential requirements for the respondent's physical health or safety.¹⁶

⁹ I.C. § 66-405(3).

¹⁰ I.C. § 66-405(3).

¹¹ I.C. § 66-404(6)(f).

¹² I.C. § 66-404(5).

¹³ I.C. § 66-404A.

¹⁴ I.C. § 66-404(6).

¹⁵ I.C. § 66-404(6)(b).

¹⁶ I.C. § 66-404(6)(c).

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- d. Determine the nature and scope of the guardianship or conservatorship services necessary to protect and promote the respondent's well-being.¹⁷
- e. Evaluate the ability of the respondent, or those legally responsible for the respondent, to pay costs associated with the proceeding.¹⁸
3. Up to two (2) co-guardians or co-conservators may be appointed if the court finds;¹⁹
 - a. Appointment will best serve the interests of the person with a developmental disability; and
 - b. The co-guardians will work together cooperatively to serve the best interests of the person.
 - c. Whether the co-guardians may act;
 - independently;
 - act independently but must act jointly on specific matters; or
 - must act jointly.

Standard Orders and Judgments

1. Judgment Appointing Guardian and/or Conservator.
2. Letters of Guardianship and/or Conservatorship.
3. Guardian's and/or Conservator's Duty to Report.

REQUIRED REPORTS

Guardianship

1. Temporary guardian must file reports as required by the court.²⁰
2. Annual guardianship status report.²¹
3. Report when a guardian resigns or is removed.²²
4. Report when the guardianship is terminated.²³

Conservatorship

1. 90 day inventory.²⁴
2. Annual accounting.²⁵
3. Final accounting at resignation, termination or removal.²⁶

¹⁷ I.C. § 66-404(6)(d).

¹⁸ I.C. § 66-404(6)(e).

¹⁹ I.C. § 66-404(6).

²⁰ I.C. § 66-404A(3).

²¹ I.C. § 66-405(6); I.C.A.R. 54.2.

²² I.C. § 66-405(6); I.C.A.R. 54.2.

²³ I.C. § 66-405(6); I.C.A.R. 54.2.

²⁴ I.C. § 66-405(6); I.C.A.R. 54.3.

²⁵ I.C. § 66-405(6); I.C.A.R. 54.3.

²⁶ I.C. § 66-405(6); I.C.A.R. 54.3.

GUARDIANSHIPS

MINOR

Bench Card

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PURPOSE

To appoint a guardian or co-guardians for a minor when parental rights have been terminated, or when a child has been neglected, abused, abandoned or whose parents are unable to provide a stable home environment.¹

APPOINTMENTS

1. Attorney to represent minor, if the minor possesses sufficient maturity to direct the attorney.²
2. Guardian *ad Litem* if minor is not mature enough to direct counsel, unless found that appointment is not necessary to serve the best interests of the minor, or if the Department of Health and Welfare has legal custody.³

TEMPORARY APPOINTMENT⁴

1. May appoint if necessary to protect the minor's health, safety or welfare, and no guardian has been appointed or the guardian is not performing the guardian's duties.
 - a. Authority of previous guardian is suspended as long as temporary guardian has authority.
2. May be appointed without notice or hearing on finding from sworn statement that minor may be immediately and substantially harmed before notice can be given or a hearing can be held.
 - a. Notice must be given within 72 hours after appointment. If requested, a hearing held within 10 days.
3. May not exceed six (6) months, unless extended for good cause.
4. May only be extended once for a period not to exceed six (6) additional months, and a temporary guardianship may not last longer than twelve (12) months in total.
5. The court must appoint a guardian other than a temporary guardian or take other appropriate action prior to the end of an extension period.

GUARDIANSHIPS ARISING UNDER THE CHILD PROTECTIVE ACT (CPA)

1. The court having jurisdiction over the proceeding under the CPA has exclusive jurisdiction unless it declines the jurisdiction.⁵
2. Notice of the following must be given to the Idaho Department of Health and Welfare:⁶
 - a. Petition for the appointment of a guardian of a minor;
 - b. Any pleading filed in connection with such guardianship;
 - c. Any proceeding of any nature in such guardianship;
 - d. The time and place of any hearing in connection with such guardianship.
3. IDHW has the right to appear and be heard.⁷

¹ I.C. § 15-5-204, 207.

² I.C. § 15-5-207(7).

³ I.C. § 15-5-207(7).

⁴ I.C. § 15-5-207(5), (6).

⁵ I.C. § 15-5-212A(1).

⁶ I.C. § 15-5-212A(2).

⁷ I.C. § 15-5-212A(3).

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REQUIRED SUBMISSIONS PRIOR TO HEARING

All notices have been given by mailing or by personal service on:⁸

1. The minor, if 14 or older;
2. The person who has had the principal care and custody of the minor during the 60 days preceding the date of the petition;
3. De facto custodian, if any;
4. Any living parent of the minor with certain exceptions for the father outlined in I.C. § 15-5-207(2)(d).

HEARINGS AND FINDINGS

Findings

1. Temporary guardian may be appointed if the court finds:
 - a. A petition for guardianship been filed, but a guardian has not yet been appointed;
 - The appointment is necessary to protect the minor's health, safety or welfare until the petition can be heard;
 - No other person appears to have the ability, authority and willingness to act.
 - OR
 - b. When a minor is under a guardianship, the court may appoint a temporary guardian if it finds:
 - Substantial evidence that the guardian is not performing the guardian's duties; and
 - The appointment is necessary to protect the minor's health, safety or welfare.
2. A guardian or co-guardians may be appointed if the court finds:
 - a. The petitioner is a qualified person to act as a guardian.⁹
AND
 - b. One or more of the following conditions exist:¹⁰
 - All parental rights to the minor have been terminated by prior court order;
 - The minor has been neglected;
 - The minor has been abused;
 - The minor has been abandoned.
AND
 - c. The welfare and best interests of the minor will be served by the appointment.¹¹
3. Up to two (2) co-guardians may be appointed if the court finds;¹²
 - a. Appointment will best serve the interests of the minor; and
 - b. The co-guardians will work together cooperatively to serve the best interests of the minor.
 - c. Whether the co-guardians may act:
 - independently;

⁸ I.C. § 15-5-207(2).

⁹ I.C. § 15-5-207(4).

¹⁰ I.C. § 15-5-207(4) See §15-5-204.

¹¹ I.C. § 15-5-207(4).

¹² I.C. § 15-5-207(3).

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- act independently but must act jointly on specific matters; or
- must act jointly.

Standard Orders and Judgments

1. Judgment Appointing Guardian.
2. Letters of Guardianship, which indicate whether the appointment is by will or court order.¹³
3. Guardian's Duty to Report.

REQUIRED REPORTS

1. Temporary guardian to file reports as required by court.¹⁴
2. Annual guardianship status report.¹⁵
3. Report when a guardian resigns or is removed.¹⁶
4. Report when the guardianship is terminated.¹⁷

¹³ I.C. § 15-5-207(7).

¹⁴ I.C. § 15-5-207(5), (6).

¹⁵ I.C. § 15-5-209; I.C.A.R. 54.2.

¹⁶ I.C.A.R. 54.2.

¹⁷ I.C.A.R. 54.2.

CONSERVATORSHIPS

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PURPOSE

Appointment of a conservator for a minor may be made if the minor owns money or property that requires management which cannot otherwise be provided, has or may have business affairs which may be jeopardized or that funds are needed for his support and education and that protection is necessary or desirable to obtain or provide funds.¹

APPOINTMENTS

1. Must appoint a Guardian *ad Litem* attorney if at any time the court determines that the interests of the minor are or may be inadequately represented.²
2. If a temporary appointment is made, the court shall appoint a guardian *ad litem* for the minor at the same time the temporary appointment of a conservator is made.³

TEMPORARY APPOINTMENT⁴

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. A hearing must be held within five (5) days of a request by an interested person.
4. Cannot exceed 90 days unless extended for good cause.

REQUIRED SUBMISSIONS PRIOR TO HEARING

1. All notices have been given.⁵
 - a. Personal service on the respondent.
 - 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.

LIMITED CONSERVATORSHIP AND OTHER PROTECTIVE ORDERS

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.⁶

¹ IC §15-5-401(a)

² IC §15-5-407(a)

³ IC §15-5-407A(f)

⁴ IC §15-5-407A

⁵ IC §15-5-405; *See* §15-5-309

⁶ IC §15-5-409(a)

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HEARINGS AND FINDINGS

Findings

1. The minor owns money or property that requires management or protection that cannot be otherwise provided;
OR
2. The minor has or may have business affairs which may be jeopardized or prevented by his minority;
OR
3. Funds are needed for his or her support and education and that protection is necessary or desirable to obtain or provide funds.⁷

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.⁸
2. 90 day inventory.⁹
3. Annual accounting.¹⁰
4. Accounting when a conservator resigns or is removed.¹¹
5. Final Accounting when the conservatorship is terminated.¹²

⁷ IC §15-5-401(a)

⁸ IC §15-5-404(c)

⁹ IC §15-5-419; ICAR 54.3

¹⁰ IC §15-5-419; ICAR 54.3

¹¹ IC §15-5-419; ICAR 54.3

¹² IC §15-5-419; ICAR 54.3

LIMITED GUARDIANSHIPS, CONSERVATORSHIPS, AND SUPPORTED DECISION MAKING

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PURPOSE

Idaho Code requires:

1. Idaho citizens be treated in a manner consistent with their legal rights in a manner no more restrictive than for their protection and the protection of society, for a period no longer than reasonably necessary for diagnosis, care, treatment and protection.¹
2. The least restrictive form of guardianship to assist persons who are only partially incapable of caring for their own needs. Recognizing that every individual has unique needs and differing abilities, the public welfare should be promoted by establishing a guardianship that permits incapacitated persons to participate as fully as possible in all decisions affecting them and that accomplishes these objectives through providing the form of guardianship that least interferes with legal capacity of a person to act in his own behalf.² and
3. The court shall exercise its authority to encourage the development of maximum self-reliance and independence of the incapacitated person, and make appointive and other orders only to the extent necessitated by the incapacitated person's actual mental and adaptive limitations or other conditions warranting the procedure.³

DEFINITIONS

Limited Guardianships and Conservatorships: Relationship in which the guardian or conservator is assigned only those duties and powers that the individual is incapable of exercising.⁴

Supported Decision-Making: Alternative to guardianship through which people with disabilities use friends, family members, and professionals to help them understand the situations and choices they face, so they may make their own decisions without the need for a guardian.⁵

Supported Decision-Making Agreement:⁶ The person with a disability chooses people to support him or her in various areas, such as finances, health care, and employment, and the supporters agree to support the person in his or her decisions, rather than substituting their own.⁷

CASE LAW

The least restrictive alternative principle was first recognized by the U.S. Supreme Court in *Shelton v. Tucker*, and has been applied in a number of contexts, including institutionalization and guardianship, to limit state deprivation of individual rights and liberties only to the extent necessary to achieve the state's legitimate purposes.⁸

¹ IC §66-401; IC § 15-5-304(a)

² IC §15-5-303(a)

³ IC §15-5-304(a)

⁴ Bruce D. Sales, Matthew Powell, Richard Van Duizans & Associates, *Disabled Persons and the Law: State Legislative Issues* (ABA 1982)

⁵ Blanck & Martinis, 2015

⁶ *Id.* (citing the supported decision-making agreement, designated a "Representation Agreement," was first legislatively recognized in British Columbia 30 years ago. Representation Agreement Act, R.S.B.C., ch.405 (1996). See Elizabeth Pell, *Supported Decision Making Pilot: A Collaborative Approach, Pilot Evaluation Year 1 Report* (Human Services Research Institute, Nov. 30, 2015), http://supporteddecisions.org/wp-content/uploads/2015/04/SDM-Evaluation-Report-Year-1_HSRI-2015.pdf.

⁷ *Id.*

⁸ ABA Comm. on Aging, Guardianship and Supported Decision-making, Resolution 113, August 2017, https://www.americanbar.org/groups/law_aging/resources/guardianship_law_practice.html citing *Shelton v. Tucker*, 364 U.S. 479, 493-94 (1960)

LIMITED GUARDIANSHIPS, CONSERVATORSHIPS, AND SUPPORTED DECISION MAKING

Bench Card

COURT RULES

Court visitors and the Idaho Department of Health and Welfare Evaluation Committee reports are required to include recommendations on “[w]hether a guardianship or conservatorship is necessary and why less intrusive alternatives are not appropriate; [and w]hat alternatives to guardianship or conservatorship have been explored or tried.”⁹

EXAMPLES OF LIMITED GUARDIANSHIPS AND CONSERVATORSHIPS

Rights retained by an individual to:¹⁰

1. Determine living arrangements.
2. Spend a set amount of money.
3. Initiate and follow a schedule of daily and leisure activities.
4. Determine religious and/or social activities.
5. Establish personal relationships.

STEPS IN SUPPORTED DECISION-MAKING¹¹

1. Presume guardianship is not needed.
2. Consider whether the individual can meet some or all of the following needs:
 - Money Management
 - Health care
 - Relationships
 - Community Living
 - Employment
 - Personal Safety
3. Ask if a triggering concern may be caused by temporary or reversible conditions.
4. Determine if concerns can be addressed by connecting the individual to family or community resources and making accommodations.
5. Identify areas of strengths and limitations in decision-making.
6. Limit guardianship or conservatorship to what is absolutely necessary and state how guardian or conservator will engage and involve the person in decision making
7. Reassess periodically for modification or restoration of rights

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⁹ ICAR 54.4(14)(A) & (B); ICAR 54.5(13)(A) & (B)

¹⁰ ABA Commission on Law and Aging, American Psychological Association, & National College of Probate Judges, *Judicial Determination of Capacity of Older Adults in Guardianship Proceedings*, A Handbook for Judges

¹¹ Adapted from the PRACTICAL Tool for lawyers: Steps in Supporting Decision-Making, American Bar Association Commission on Law and Aging. Can be found at: https://www.americanbar.org/groups/law_aging/resources/guardianship_law_practice/practical_tool.html