

# PERSON WITH DEVELOPMENTAL DISABILITY GUARDIANSHIP AND CONSERVATORSHIP

## *Bench Card*

### **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.<sup>1</sup>

### **APPOINTMENTS<sup>2</sup>**

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 GUARDIAN<sup>3</sup>**

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.<sup>4</sup>
2. All notices have been given.<sup>5</sup>
  - 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.<sup>6</sup>
4. Complete criminal history and background check.<sup>7</sup>
  - 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.<sup>8</sup>

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<sup>1</sup> I.C. §66-401.

<sup>2</sup> I.C. §66-404(3).

<sup>3</sup> I.C. §66-404A.

<sup>4</sup> I.C. §66-404A(3).

<sup>5</sup> I.C. §66-404(4).

<sup>6</sup> I.C.A.R. 54.

<sup>7</sup> I.C. § 66-404(7).

<sup>8</sup> I.C. § 66-404(3); I.C.A.R. 54.5.

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### **CO-GUARDIANS, LIMITED GUARDIANSHIP, AND LIMITED CONSERVATORSHIP**

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.<sup>9</sup>
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.<sup>10</sup>
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.<sup>11</sup>

### **HEARINGS AND FINDINGS**

#### Who

1. The respondent.<sup>12</sup>
2. The respondent's attorney.

#### Findings

1. Temporary guardian may be appointed if the court finds;<sup>13</sup>
  - 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.<sup>14</sup>
  - b. Evaluate the respondent's ability to meet his or her essential requirements for physical health or safety and manage financial resources.<sup>15</sup>
  - 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.<sup>16</sup>

<sup>9</sup> I.C. § 6 6-405(3).

<sup>10</sup> I.C. § 66-405(3).

<sup>11</sup> I.C. § 66-404(6)(f).

<sup>12</sup> I.C. § 66-404(5).

<sup>13</sup> I.C. § 66-404A.

<sup>14</sup> I.C. § 66-404(6).

<sup>15</sup> I.C. § 66-404(6)(b).

<sup>16</sup> 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.<sup>17</sup>
- e. Evaluate the ability of the respondent, or those legally responsible for the respondent, to pay costs associated with the proceeding.<sup>18</sup>
3. Up to two (2) co-guardians or co-conservators may be appointed if the court finds;<sup>19</sup>
  - 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.<sup>20</sup>
2. Annual guardianship status report.<sup>21</sup>
3. Report when a guardian resigns or is removed.<sup>22</sup>
4. Report when the guardianship is terminated.<sup>23</sup>

#### Conservatorship

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

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<sup>17</sup> I.C. § 66-404(6)(d).

<sup>18</sup> I.C. § 66-404(6)(e).

<sup>19</sup> I.C. § 66-404(6).

<sup>20</sup> I.C. § 66-404A(3).

<sup>21</sup> I.C. § 66-405(6); I.C.A.R. 54.2.

<sup>22</sup> I.C. § 66-405(6); I.C.A.R. 54.2.

<sup>23</sup> I.C. § 66-405(6); I.C.A.R. 54.2.

<sup>24</sup> I.C. § 66-405(6); I.C.A.R. 54.3.

<sup>25</sup> I.C. § 66-405(6); I.C.A.R. 54.3.

<sup>26</sup> I.C. § 66-405(6); I.C.A.R. 54.3.