

CLERK OF THE DISTRICT COURT MANUAL

7.0 ESTATE PROCEEDINGS, TRUSTS, AND GUARDIANSHIPS / CONSERVATORSHIPS

Revised June 2009

7.1 OVERVIEW

Generally, this section covers the types of proceedings used to address the estates of both persons who are deceased, with and without a will, (Estate Proceedings) and those who are still alive (Trusts), and who are alive but unable to manage their estates due to their age or disability (Guardianships and Conservatorships).

7.2 ESTATE PROCEEDINGS (FOLLOWING DEATH OF A PERSON) – (GOVERNED BY THE “UNIFORM PROBATE CODE”, I.C. §§ 15-1-101 THROUGH 15-7-502)

This is the judicial process through which a person is appointed to act for someone who has died, to collect their assets, pay their debts and deliver what is left to the people who are legally entitled to it. When a person dies, an attorney, relative or other person representing the deceased comes to the court to settle the deceased person's affairs. Bills must be paid, property must be accounted for, and items must be passed on to the people chosen by the deceased person. The applicant files an application (for probate or intestacy), a statement (of probate or intestacy) to be signed by the judge, and letters testamentary. The letters testamentary are signed and sworn to by the Personal Representative, state that the Personal Representative accepts the duties and agrees to carry them out in accordance with the law, and are to be signed by the judge. If the application is for probate, the application includes the original will. Usually the applicant is the person asking to be appointed Personal Representative.

A. Definitions:

Administration of the Estate: The process of taking care of decedent's assets and debts and distributing what is left.

Codicil: A supplement or addition to a will, not necessarily disposing of the entire estate but modifying, explaining or otherwise qualifying the will in some way.

Decedent: The individual who is deceased.

Decedent's Estate: The decedent's property including both assets and debts. I.C. § 15-1-201(15).

Devisee or Legatee: Someone who is entitled to receive a decedent's property pursuant to a will. I.C. § 15-1-201(11).

Distributee: A person who has received the decedent's property whether under a will or under the laws of intestate succession (no will), but not including any creditors. I.C. § 15-1-201(13).

Formal Proceedings: Can be either with or without a will; conducted before a judge with notice to the parties. I.C. § 15-1-201(19).

Heir: Is someone who is entitled to receive a decedent's property under the laws of intestate succession (no will). I.C. § 15-1-201(21).

Informal Proceedings: A formal hearing where notice is not required, unless demanded - can be with or without a will. I.C. § 15-1-201(23).

Intestate Succession (intestacy): Defines how the decedent's estate is to be distributed when a person dies without a valid will.

Personal Representative: A person appointed to take care of the decedent's assets, pay the decedent's debts, and distribute what is left. I.C. § 15-1-201(34).

Probate: The process for determining that a will is valid.

Probate Proceeding: Estate proceeding where the decedent has left a valid will.

Summary Administration-when small estates are involved: All decedent's property (including assets and debts) may be immediately distributed to persons entitled without notice to anyone, including creditors. I.C. § 15-3-1203. When the surviving spouse is the sole devisee or heir, the court does not appoint a personal representative, but enters an order (Decree), after notice and hearing, indicating that all the decedent's property passes to the spouse. I.C. § 15-3-1205.

Letters Testamentary: The instrument by which a probate court approves the appointment of an executor under a will and authorizes the executor to administer the estate.

Testate: A person who has died, leaving a valid will.

Testator: A person who has made a will; esp., a person who dies leaving a will.

Will: A document indicating how a person wants their estate to be distributed.

B. Registration of Wills (when not filing an estate case)

Any person who has custody of a will after the testator dies is required to deliver the will with reasonable promptness to a person capable of handling the probate of the will, or to the Court. I.C. § 15-2-902.

Clerical Duties:

1. File stamp the will;
2. Open a case in ISTARS ; and
3. Enter the will in the ROA, and immediately close the case in ISTARS.

Note: There is no fee for registering a will with the court if there is no estate being filed.

C. *Formal vs. Informal Estate Proceedings*

The proceedings will be either formal or informal. The main difference between informal and formal estate proceedings is how the proceeding is started. The attorney or personal representative filing the petition will indicate whether the proceeding is to be formal or informal.

Formal Probate proceedings are governed generally by I.C. §§ 15-3-401 through 15-3-414. With formal probate, the petitioner files a petition, for probate or intestacy, and may also ask for appointment of a Personal Representative. The petitioner requests that the court set a hearing and gives notice to everyone with a potential interest in the decedent's estate. Anyone with an interest in the estate can file an objection to the petition. If no objection is filed, or after any objections are resolved, the court issues an order appointing the Personal Representative and issues letters testamentary.

Informal Probate proceedings are governed generally by I.C. §§ 15-3-301 through 15-3-311. In an informal estate proceeding, the court appoints the Personal Representative without notice and opportunity to object, unless a demand for notice is made. Once appointed, the Personal Representative gives notice to all heirs and devisees. The Personal Representative then proceeds to administer the estate, and close the estate, as in formal proceedings. The Personal Representative may be required to post a bond, obtain court approval before making certain types of actions (like selling real property), submit periodic accountings, or follow the procedures for formal closing of an estate by court order. If someone wants to object after the Personal Representative is appointed, he or she has to file a petition for formal probate.

Clerical Duties:

1. Collect the filing fee and petition;
2. File stamp the petition and other documents filed;
3. Open a case in ISTARS;

4. Indicate if the case is informal or formal;
5. Enter documents received in the ROA;
6. If the letters testamentary are submitted, obtain the judge's signature, certify and send the copies, and file the original;
7. If this is an informal estate, enter the civil disposition and close the case in ISTARS;
8. If this is a formal estate, if requested, set a hearing date and provide the date to the petitioner so they can send notice.

D. Giving Notice

Devises, legatees or heirs: The Personal Representative gives notice to all devisees, legatees or heirs who might be entitled to distribution of the property. If any of the people entitled to distribution of the estate want to contest the proceeding, they can file an objection. The contestant may want to contest the validity of the will, assert the existence of a previously unknown will, or seek appointment of a different Personal Representative.

Creditors: The Personal Representative gives notice to any creditors who may have a claim that the decedent owed them money, including notice by publication. The notice includes a deadline for creditors to file claims.

Affidavits of Service: The Personal Representative should file affidavits of service. The Personal Representative will need them to formally close the estate.

Demand for Notice: Persons with an interest in the estate may also demand that they be given notice of further proceedings. I.C. § 15-3-204. This can be done at any time after death and may be filed with Court before an estate proceeding is filed. If such Demand is filed, the clerk is required to send a copy of it to the Personal Representative.

Clerical Duties:

1. File stamp and file Affidavit of Service or Demand for Notice and enter in ROA;
2. If a Demand for Notice is received, add that person as a party in ISTARS, and send a copy to the Personal Representative (if one has been appointed);
3. Make sure you file a Certificate of Service to evidence you have sent the Demand for Notice.

Note: If a demand for notice is received and an estate has not been filed, do not assign a case number or set up a court file. Keep all of these Demands for Notice

in a file folder together. Periodically check to see if an estate has been filed per local practice. If one has been filed, you will place the Demand for Notice in that case file and send a copy to the Petitioner and/or Personal Representative.

E. Filing Motions or Objections

An interested person may file an objection to the proposed probate and/or distribution, which the Court will determine at a hearing. Sometimes an issue arises during the Personal Representative's administration of the estate that the interested parties want resolved by the court, but the parties don't want to opt into a full-scale formal probate proceeding. In those instances, the parties will file motions asking the court to resolve an issue. For example, an issue may arise as to whether a creditor's claim is valid, or whether a particular piece of property is owned by the decedent and therefore included in the decedent's estate, etc.

Clerical Duties:

1. Collect any applicable filing fee;
2. File stamp the motion and enter in ROA;
3. If a hearing is requested, schedule a hearing in ISTARs and provide the requesting party with a date so they may send notice.

F. Distribution and Closing the Estate – with or without Court Order

The Personal Representative pays the decedent's debts and distributes what is left to the people who are entitled to it under the will or, if there is not a will, under the laws of intestate succession. In most cases, the Personal Representative will simply go forward with the Personal Representative's duties once he/she receives the letters testamentary, without any further court action.

Sometimes the Personal Representative will prepare a written inventory and schedule of distribution, file it with the court, file a motion for approval of the inventory and schedule and notice it up for hearing. If no objections are filed or after any objections are resolved, the court enters an order approving the inventory and schedule or modifying them based on the objections. The order is usually called an Estate Closing Order, even though the estate proceeding is actually not completed until the property is distributed and the Personal Representative is discharged. The Personal Representative then distributes the estate pursuant to the order. A Personal Representative will sometimes seek distribution pursuant to the court order to minimize their potential liability-the potential for persons with an interest in the estate to later claim that the Personal Representative did not properly collect and distribute the decedent's assets.

Sometimes a person with an interest in the decedent's estate will file a motion with the court asking the court to require an inventory and schedule. A person with an interest in

the estate might do this for two reasons. One, they might want to verify that the Personal Representative is properly accounting for all the property and properly distributing it. Two, they might want to minimize the potential for other persons with an interest in the estate to later claim that the Personal Representative did not properly collect and distribute the decedent's assets to avoid the possibility that they might have to give back any property that was improperly distributed.

In most cases, the Personal Representative does not do anything to close the estate on the record-he/she just distributes the estate and stops there. Closing the estate on the record, however, protects the Personal Representative from claims that he/she did not properly distribute the estate, and protects the distributees from claims that they have to give the property back to satisfy someone else's claim.

Clerical Duties:

1. File stamp the original and certify copies of the Letters Testamentary and any Orders or Decrees signed by the Judge. (The letters testamentary may have already been submitted when filing the petition.);
2. Enter documents in ROA;
3. Fill out certificate of mailing and send to parties;
4. Enter the civil disposition and close the case in ISTARs.

Note: A Petition for Final Accounting and the Petition for Distribution require payment of a fee at time of filing.

7.3 TRUSTS (GOVERNED BY I.C. §§ 15-7-101 THROUGH 15-7-502)

A. Definitions

Trust: A right of property, real or personal, held by one person for the benefit of another. I.C. § 15-1-201(49).

Trustee: The person responsible for administering a trust. I.C. § 15-1-201(50).

Beneficiary: Any person having any present or future interest in a trust or who is entitled to enforce a trust. I.C. § 15-1-201(3).

B. Registration of Trusts

The trustee of a trust shall register the trust in the court of this state at the principle place of administration. I.C. § 15-7-101. This is done by filing a statement indicating the name and address of the trustee and acknowledging the trusteeship. I.C. § 15-7-102.

Clerical Duties:

1. There is no filing fee for registering a trust;
2. File stamp Statement, open a case in ISTARS, and enter in ROA;
3. Enter the civil disposition and close the case in ISTARS.

C. *Types of Proceedings Involving A Trust*

Interested parties concerning the internal affairs of a trust may initiate many types of proceedings, including, but not limited to: appointment or removal of a trustee, review of trustee's fees and accounting, determine beneficiaries, questions regarding administration or distribution, to instruct trustees and determine their rights and duties and to release registration of a trust. I.C. § 15-7-201. These proceedings are initiated by filing a Petition in the Court where the trust is registered and giving notice to all interested parties. I.C. § 15-7-206.

Clerical Duties:

1. Collect appropriate filing fee;
2. File stamp Petition and open case in ISTARS, schedule hearings in ISTARS if requested. If not, enter the civil disposition and close the case.

D. *Bonds* (I.C. § 15-7-304.)

Normally, a trustee need not provide bond to secure his or her performance. However, the trust document may require it, or an interest person may petition for this requirement. If bond is required, it shall be filed with the Court where the trust is registered.

Clerical Duties:

1. Accept bond, enter in ISTARS, and give receipt;
2. Schedule hearing in ISTARS if requested. If not, enter the civil disposition and close the case, unless there is a pending bond in which case it shall remain open until the bond is addressed.

E. *Appointment of Trustee*

Upon Application to the Court where the Trust is registered, and after notice to all interested persons and a hearing, the Court may appoint the Trustee. I.C. § 15-7-403. Upon the filing of an Acceptance of Duties, which contains an oath, the Court shall issue Letters of Trusteeship. These letters may be recorded in the recorder's office to give notice to all persons.

Clerical Duties:

1. Collect appropriate filing fee and accept Application, Notice of Hearing and any proposed Letters;
2. Open a case in ISTARS;
3. File stamp Application and Notice and enter in ROA, place proposed Letters in file;
4. Send conformed copies of Notice of Hearing to Applicant for them to serve;
5. After hearing, file stamp any Orders and Letters of Trusteeship the judge has signed and enter in ROA;
6. Send copies to all parties who have appeared (certified copy of Letters to the Trustee);
7. Enter the civil disposition and close the case in ISTARS.

7.4 GUARDIANS AND CONSERVATORS (I.C. §§ 15-5-101 through 15-5-603)

A. *Definitions*

Guardian: A person who is appointed by will or the Court and who has the powers and responsibilities of a parent of either a minor or an incapacitated person. I.C. §§ 15-1-201(20), 15-5-209 (minors) and 15-5-312 (incapacitated persons).

Ward: The person for whom a guardian is appointed. I.C. § 15-5-101(d).

Estate: Means all property of the ward, including community property and trust property. I.C. 15-1-201(15).

Conservator: A conservator is a person who is appointed by the Court to manage the estate of a minor or incapacitated person. I.C. § 15-1-201(7).

Interested person: Includes heirs, devisees, children, spouses, creditors, beneficiaries and any others having a property right in or claim against a trust estate or the estate of a decedent, ward or protected person which may be affected by the proceeding. I.C. § 15-1-201(24).

Note: In many cases, the guardian and the conservator may be the same person. In others, they are different, especially in cases where potential conflict of interest exists.

B. *Appointment and Removal of Guardian for minor*

Appointment by Will (Testamentary Appointment)

A parent of a minor may appoint a guardian of a minor in his or her will. I.C. § 15-5-202. This appointment becomes effective upon filing the Guardians Acceptance of Appointment in the Court where the will is being probated, **if both parents are dead**.

Appointment by Petition

Proceedings may be initiated by the filing of a Petition by any relative, the minor if at least 14 years old, a de facto custodian of the minor, or any person interested in the welfare of the minor. I.C. § 15-5-207. Notice of the time and place for the hearing on the Petition is given by the Petitioner to the Minor (if 14 or over), the person who has custody of the minor, any de facto custodian of the minor, and any living parent of the minor. I.C. § 15-5-207(a). The Court shall appoint an attorney to represent the minor unless it finds that such appointment is not necessary. I.C. § 15-5-207(d).

Clerical Duties:

1. Collect the filing fee, file stamp the Acceptance of Appointment **if** it is accompanied by a family law case information sheet pursuant to I.R.C.P. 3(a)(1), open a case in ISTARs, and enter the documents in the ROA;

Note: The Family Law Case Information Sheet is exempt from disclosure pursuant to I.C.A.R. 32 and should be placed in a sealed envelope.

Note: If after the hearing the Court finds that the welfare and best interests of the minor will be served by the Appointment, it shall order the appointment. I.C. § 15-5-207(b)(3). An order of Appointment will be signed, along with Letters of Guardianship. The Court may also appoint a temporary Guardian, enter a temporary Order and issue temporary Letters, which shall not last longer than 6 months. I.C. § 15-5-207(c).

2. File signed order of appointment and letters of guardianship and send certified copies to the appointee as requested;
3. Enter the date of the appointment of the guardian and check the box on the Guardian tab which indicates that the guardian was appointed;
4. Enter the Care Plan Guardian Report and/or the Annual Report-Guardian. The system should calculate the due dates for these first two reports;
5. When you receive the first Care Plan Guardian Report, collect the appropriate fee and enter the "received date" in the ISTARs report history. Send a copy of the report along with a copy of the order appointing guardian to the

designated independent reviewer and insert the date sent in the “review sent date” area of the report history;

6. When each annual report is submitted, collect the appropriate fee and enter the “received date” in the ISTARS report history. Send a copy of the report to the assigned judge and insert the date sent in the “review sent date” area of the report history. Enter the next report due date by selecting the report type; ISTARS will continue to calculate the due dates for all subsequent reports;
7. If there are any concerns about the report the judge will take appropriate action;
8. Use the “Conservator Delinquency Process” to monitor the timely submission of required reports. Send out delinquency letters for any Guardians who have not submitted reports by the due date;
9. When the Guardian is released, enter civil disposition and close the case in ISTARS.

Note: A guardian’s authority and responsibility terminates upon death, resignation or removal of the guardian or upon the minor’s death, adoption, marriage or majority. I.C. § 15-5-210. Any person interested in the welfare of a ward, or the ward if 14 or older, may petition for the removal of a guardian, which may be granted after notice and a hearing. I.C. § 15-5-212.

Annual Report of Ward’s Condition by Guardian

A guardian must report the condition of the ward and the ward’s estate annually so long as they are the guardian for the ward. I.C. § 15-5-419.

Clerical Duties:

1. When you receive the annual report, collect the appropriate fee and enter the “received date” in the ISTARS Guardian/Conservator report history. Send a copy of the report along with a copy of the order appointing guardian to the presiding judge and insert the date sent in the “review sent date” area of the report history. Enter the next report due date by selecting the report type. ISTARS will continue to calculate the due dates for all subsequent reports;
2. If there are any concerns with the report, the presiding judge will take appropriate action;
3. Use the “Conservator Delinquency Process” to monitor the timely submission of required reports. Send out delinquency letters for any Guardians who have not submitted reports by the due date;

4. When the Guardian is released, enter the date in the party screen in ISTARS and remove any future scheduled reports. If another guardian is being appointed they will be added as an other party to the case and the appointment date will be entered and the report due date would be entered on the report screen which would be one year from the date the new guardian was appointed. If no other guardian is being appointed the disposition needs to be entered on the civil disposition tab and the case closed in ISTARS.

Note: A guardian's authority and responsibility terminates upon death, resignation or removal of the guardian or upon the minor's death, adoption, marriage or majority. I.C. § 15-5-210. Any person interested in the welfare of a ward, or the ward if 14 or older, may petition for the removal of a guardian, which may be granted after notice and a hearing. I.C. § 15-5-212.

C. Appointment of Guardian of Incapacitated Person

Appointment by Will (Testamentary Appointment)

The parent of an incapacitated person may appoint a guardian of their incapacitated child in their will. I.C. § 15-5-301(a). The spouse of an incapacitated person may also appoint a guardian in his or her will. I.C. § 15-5-301(b). The appointment becomes effective upon filing an Acceptance of Guardianship with the Court where the probate is filed and after 7 days notice of the guardian's intention to do so is given to the incapacitated person and the person having the care of him.

Clerical Duties:

1. Collect the filing fee, file stamp the Acceptance of Appointment **if** it is accompanied by a family law case information sheet pursuant to I.R.C.P. 3(a)(1), open a case in ISTARS, and enter the documents in the ROA;

Note: The Family Law Case Information Sheet is exempt from disclosure pursuant to I.C.A.R. 32 and should be placed in a sealed envelope.

Note: If after the hearing the Court finds that the welfare and best interests of the incapacitated person will be served by the Appointment, it shall order the appointment. I.C. § 15-5-207(b)(3). An order of Appointment will be signed, along with Letters of Guardianship. The Court may also appoint a temporary Guardian, enter a temporary Order and issue temporary Letters, which shall not last longer than 6 months. I.C. § 15-5-207(c).

2. File signed order of appointment and letters of guardianship and send certified copies to the appointee as requested;

3. Enter the date of the appointment of the guardian and check the box on the Guardian tab which indicates that the guardian was appointed;
4. Enter the Care Plan Guardian Report and/or the Annual Report-Guardian. The system should calculate the due dates for these first two reports;
5. When you receive the first Care Plan Guardian Report, collect the appropriate fee and enter the “received date” in the ISTARS report history. Send a copy of the report along with a copy of the order appointing guardian to the designated independent reviewer and insert the date sent in the “review sent date” area of the report history;
6. When each annual report is submitted, collect the appropriate fee and enter the “received date” in the ISTARS report history. Send a copy of the report to the designated independent reviewer and insert the date sent in the “review sent date” area of the report history. Enter the next report due date by selecting the report type. ISTARS will continue to calculate the due dates for all subsequent reports;
7. The independent reviewer will respond to the court. If there are any concerns about the report, refer them to the judge for further action;
8. Use the “Conservator Delinquency Process” to monitor the timely submission of required reports. Send out delinquency letters for any Guardians who have not submitted reports by the due date;
9. When the Guardian is released, enter civil disposition and close the case in ISTARS.

Appointment of Guardian, Attorney, Physician, and/or Visitor by Court

The incapacitated person, or any person interested in his/her welfare, may Petition the Court for a finding of incapacity and appointment of guardian. I.C. § 15-5-303(a). Any competent person or a suitable institution may be appointed as a guardian. I.C. § 15-5-311. Upon the filing of a Petition, the Court shall set a hearing date. I.C. § 15-5-303(b). Notice of the hearing on the Petition shall be given to the proposed ward and a spouse, or if none, the ward’s children, or if none, the ward’s parents, or if none, the closest relative, any person currently serving as guardian or who has custody of the ward; and any person who has filed a request for notice. I.C. § 15-5-309(a)(1). This is usually done by the Petitioner or his/her attorney because personal service is required unless the person is out of state. I.C. § 15-5-309(b)(2).

If the alleged incapacitated person does not have an attorney, the Court shall appoint an attorney to represent him or her. The Court is also required to appoint a physician to examine the proposed ward and submit a written report to the Court. The Court shall also appoint a “visitor” to interview the proposed ward, the Petitioner and proposed guardian

and visit the place where the proposed ward is living and is proposed to reside. If an emergency exists such that substantial harm to the ward is likely, the Court may appoint a temporary Guardian. I.C. § 15-5-310. This type of Guardianship cannot exceed 90 days. This can be done without a hearing only if the Court finds from an affidavit or other sworn testimony that the proposed ward will be substantially harmed. I.C. § 15-5-310(c). If the Court appoints without a hearing, notice of the appointment must be given to the ward within 48 hours and if requested by an interested party a hearing must be scheduled within 5 days of the appointment.

If the Court finds that the proposed ward is incapacitated and that appointment of a guardian is necessary or desirable to provide care and supervision of the ward, it may appoint the Guardian. I.C. § 15-5-304(b). An Order of Appointment will be signed, along with Letters of Guardianship. The Court may also appoint a temporary Guardian, enter a temporary Order and issue temporary Letters, which shall not last longer than 90 days. I.C. § 15-5-310.

Clerical Duties:

1. Collect the filing fee, file stamp the petition Acceptance of Appointment **if** it is accompanied by a family law case information sheet pursuant to I.R.C.P. 3(a)(1), open a case in ISTARs, and enter the documents in the ROA;

Note: The Family Law Case Information Sheet is exempt from disclosure pursuant to I.C.A.R. 32 and should be placed in a sealed envelope.

Note: If after the hearing the Court finds that the welfare and best interests of the minor will be served by the Appointment, it shall order the appointment. I.C. § 15-5-207(b)(3). An order of Appointment will be signed, along with Letters of Guardianship. The Court may also appoint a temporary Guardian, enter a temporary Order and issue temporary Letters, which shall not last longer than 6 months. I.C. § 15-5-207(c). A temporary guardian is not entered in ISTARs as an other party.

2. File signed order of appointment and letters of guardianship and send certified copies to the appointee as requested;
3. Enter the date of the appointment of the guardian and check the box on the Guardian tab which indicates that the guardian was appointed;
4. Enter the Care Plan Guardian Report and/or the Annual Report-Guardian. The system should calculate the due dates for these first two reports;
5. When you receive the first Care Plan Guardian Report, collect the appropriate fee and enter the “received date” in the ISTARs Guardian report history. Send a copy of the report along with the file to the appropriate judge and insert the date sent in the “review sent date” area of the report history;

6. When each annual report is submitted, collect the appropriate fee and enter the “received date” in the ISTARs Guardian report history. Send a copy of the report to the appropriate judge and insert the date sent in the “review sent date” area of the report history. Enter the next report due date by selecting the report type. ISTARs will continue to calculate the due dates for all subsequent reports;
7. If there are any concerns about the report, the judge will take appropriate action;
8. Use the “Conservator Delinquency Process” to monitor the timely submission of required reports. Send out delinquency letters for any Guardians who have not submitted reports by the due date;
9. When the Guardian is released, enter civil disposition and close the case in ISTARs.

D. Conservators (Protection of property of minor or incapacitated person.)

Appointment of Conservator for either a minor or an incapacitated person

A Petition for appointment of a conservator may be filed by the person to be protected; any person interested in his estate, affairs or welfare; or any person who would be adversely affected by lack of effective management of his property and affairs. I.C. § 15-5-404. An individual or a corporation with general power to serve as trustee may be appointed as a conservator. I.C. § 15-5-410. Upon receipt of the Petition, the Court shall set a date for hearing. I.C. § 15-5-407(a) and (b). The Court may appoint an attorney to represent the minor or incapacitated person. Notice of the hearing on the Petition must be served personally upon the proposed protected person and his spouse, or if none, his parents and any person who has filed a request for notice. I.C. § 15-5-405. If a person desires notice of these proceedings, they may file a request with the Court and the clerk shall, upon payment of the appropriate filing fee, mail a copy of the request to the Petitioner (or Conservator if already appointed). I.C. § 15-5-406.

The Court may appoint a temporary conservator without a hearing if there is sworn testimony that an emergency exists. I.C. § 15-5-407A. This type of appointment shall be for no more than 90 days. A petition for appointment of temporary conservator must be accompanied by a petition for appointment of permanent conservator. I.C. § 15-5-407A(e).

Clerical Duties:

1. File signed order of appointment and letters of conservatorship and send certified copies to the appointee as requested;
2. Enter the date of the appointment of the conservator and check the box on the conservator tab which indicates that the conservator was appointed;

3. Enter the inventory and Annual Report in the reports section. The system should calculate the due dates for these first two reports;
4. When you receive the inventory, collect the appropriate fee and enter the “received date” in the ISTARS report history. Send a copy of the appointment and inventory to the independent reviewer and insert the date sent in the “review sent date” area of the report history;
5. When each annual report is submitted, collect the appropriate fee and enter the “received date” in the ISTARS report history. Send a copy of the accounting to the independent reviewer and insert the date sent in the “review sent date” area of the report history. Enter the next report due date by selecting the report type. ISTARS will continue to calculate the due dates for all subsequent reports;
6. The reviewer will submit a report to the court. If there are immediate areas of concern, those will be identified and the clerk will document that in the report history. The clerk will then send that information along with the file to the judge. If there are no immediate areas of concern, the clerk will document that in the report history;
7. Use the “Conservator Delinquency Process” to monitor the timely submission of required reports. Send out delinquency letters for any conservator who has not submitted reports by the due date. If there is no response to the notice(s) send the file to the assigned judge for appropriate action;
8. When the conservator is released, enter civil disposition and close the case in ISTARS.

Bond

The Court may require a Conservator to furnish bond conditioned upon faithful discharge of all duties of the trust according to law. I.C. § 15-5-411.

Clerical Duties:

1. Accept bond, enter in ISTARS, and give receipt.

Proceedings after appointment of Conservator

Any person interested in the welfare of a person for whom a conservator has been appointed may file a petition requesting: 1) bond, or more or less bond; 2) an accounting; 3) directions for distribution; 4) removal of conservator and appointing a new conservator; or 5) other relief. I.C. § 15-5-416. After notice and a hearing, the Court may make any appropriate order.

Clerical Duties:

1. Collect any required filing fee, accept Petition and file stamp it, and enter in ROA;
2. Schedule hearing in ISTARS.

E. Foreign Guardianships and Conservatorships

A guardian or conservator who is appointed by a foreign court of competent jurisdiction for a ward residing or domiciled in this state may petition to have the guardianship or conservatorship transferred and accepted in this state. I.C. § 15-9-101 and I.C. § 15-9-201.

Clerical Duties:

1. File stamp and enter in the ROA the petition for the receipt and acceptance of a foreign guardianship or conservatorship or the Order Transferring the Guardianship/Conservatorship. Follow the clerical duties in the relevant section noted above.

F. Transfer of a Guardianship or Conservatorship to a Foreign Jurisdiction

A guardian or conservator may petition the court to transfer a guardianship to a foreign court of competent jurisdiction if the ward or developmentally disabled person has moved permanently to the foreign jurisdiction. I.C. § 15-20-101 and I.C. § 15-10-201.

Clerical Duties:

1. File stamp and enter in the ROA the petition to transfer a guardianship or conservatorship to a foreign jurisdiction. (Make sure the petition includes the name and address of the foreign court);
2. Schedule a hearing on the petition if requested;
3. Follow the clerical duties noted in the section related to change of venue in civil cases.

Note: When the order is signed, we would deal clerically with it like a change of venue.

7.5 PETITION TO COMPROMISE A MINOR'S CLAIM

A "Petition to Compromise a Minor's Claim" may be filed when a minor has a disputed monetary claim against another person. The parents with whom a minor resides and who have the care and custody of the minor may compromise or settle his claim. However,

before it is valid, the compromise must be approved by the court. I.C. § 15-5-409a. The Court may enter an Order approving the compromise or enter other appropriate orders. No hearing is required by the Code, but most Courts hold a hearing.

Clerical Duties:

1. Accept Petition, file stamp, and enter in ROA;
2. Schedule a hearing in ISTARs;
3. After hearing, file stamp and enter in ROA any orders signed by judge and send copies to all parties;
4. Enter civil disposition and close the case in ISTARs. If the petition is filed in another pending civil action, the case will not be closed until that civil case has been resolved.

Note: No filing fee is charged for minor's claim; however, if the person is also petitioning for appointment of conservator, a filing fee is assessed.