

Proposed NEW Rules to Idaho Court Administrative Rule 54
April 2017

The following new rules are recommended by the Idaho Supreme Court's Guardianship and Conservatorship Committee.

Proposed NEW Idaho Court Administrative Rule 54.4. Visitor Reports: The new rule outlines the qualifications of a court visitor in guardianship and conservatorship proceedings. It also includes and updates language on the requirements of the reports a court visitor must provide to the presiding judge. The rule attempts to ensure the information a judge needs to craft specific guardianship and conservatorship orders to an individual's unique circumstances and abilities.

Idaho Court Administrative Rule 54.4. Visitor Reports

- (a) A visitor must have a master's level degree in psychology, social work, or counseling. The court may waive this requirement for good cause if the visitor has a bachelor's degree in one of the above disciplines.
- (b) The visitor must visit and interview the person proposed to be under guardianship ("person") at the person's residence. The visitor must also interview the petitioner and any proposed guardian or conservator. It is preferable that the interviews be conducted separately.
- (c) In preparing reports, the visitor must consider all available information concerning any proposed guardian, conservator, and individual who resides in or frequents the person's proposed residence, including, but not limited to, information available to the visitor pursuant to Idaho Code Section 15-5-311.
- (d) The visitor must file a report with the court, signed under oath or affirmation, which includes the following information:
 - 1. The person's impairments and how those impairments may affect the person's understanding or capacity to make or communicate decisions;
 - 2. The person's functional limitations and how they have exposed or may expose the person to substantial harm in the following areas:
 - A. Ability to provide for food, clothing, shelter, health care, or safety; and
 - B. Ability to manage his or her property or financial affairs;
 - 3. Acts, occurrences, or statements within the past twelve months related to the person's inability to provide for personal needs or to manage property;

4. Whether the acts, occurrences, or statements were done or made:
 - A. Voluntarily;
 - B. With consideration of the risk and consequences and a clear understanding of the potential outcome;
 - C. With relevant information necessary to make the decision;
 - D. With an understanding that the person is free to choose or refuse any alternative available; and,
 - E. As a result of a temporary or reversible condition.
5. Need for care or treatment, and residential requirements;
6. The person's opinions and preferences regarding:
 - A. The need for a guardianship or conservatorship;
 - B. The terms of the guardianship or conservatorship and,
 - C. The proposed guardian or conservator.
7. The financial status of the person, including any public benefits or services;
8. The person's understanding of his or her financial status;
9. Whether the person understands the nature of the proceedings and if he or she is able to and wishes to attend the hearing;
10. Whether a convicted felon resides in or frequents the person's current or proposed residence;
11. Identity of all the people:
 - A. With significant interest in the welfare of the person;
 - B. Who should be informed of the proceedings;
 - C. Who currently assist the person on a regular basis; or
 - D. Who may be available to assist the person on a regular basis.
12. Qualifications of the proposed guardian or conservator and the nature and quality of their relationship with the person;
13. The purpose and need for the guardianship or conservatorship;
14. Recommendations:

- A. Whether a guardianship or conservatorship is necessary and why less intrusive alternatives are not appropriate;
- B. What alternatives to guardianship or conservatorship have been explored or tried;
- C. If a limited guardianship or conservatorship is recommended:
 - i) The specific limitations on the guardian's or conservator's authority; and,
 - ii) How the guardian or conservator will engage and involve the person in decision-making;
- D. If a full guardianship or conservatorship is recommended:
 - i) Why a limited guardianship or limited conservatorship is not appropriate; and,
 - ii) How the guardian or conservator will engage and involve the person in decision-making;
- E. The appropriateness of the proposed guardian or conservator;
- F. The appropriateness of the proposed guardian's care plan or conservator's financial plan;
- G. The appropriateness of requiring a bond by the proposed conservator, taking into account the financial status of the proposed conservator;
- H. The need to reassess periodically for modification or restoration of rights.

(e) Unless the court decides otherwise, the visitor must provide copies of any filed reports to:

1. Guardian ad Litem;
2. Petitioner;
3. Proposed guardian or conservator;
4. Any attorney of record; and
5. Person proposed to be under guardianship or conservatorship.

Proposed NEW Idaho Court Administrative Rule 54.5. Idaho Department of Health and Welfare Evaluation Committee Reports: The new rule outlines the report

requirements of the Idaho Department of Health and Welfare evaluation committee in guardianship and conservatorship cases that fall under Title 66, Chapter 4, Treatment and Care of the Developmentally Disabled. The information required in reports expands on limited guardianships and conservatorships, changes the text to ensure ‘person first’ language and closely aligns with the findings that need to be made when appointing a guardian or conservator for a person with developmental disabilities.

Idaho Court Administrative Rule 54.5. Idaho Department of Health and Welfare Evaluation Committee Reports

(a) The Idaho Department of Health and Welfare Evaluation Committee must interview the person proposed to be under guardianship (“person”). The evaluation committee must also interview the petitioner and any proposed guardian or conservator. It is preferable that the interviews be conducted separately.

(b) In preparing reports, the evaluation committee must consider all available information concerning any proposed guardian, conservator, and individual who resides in or frequents the person’s proposed residence, including, but not limited to, information available to the evaluation committee pursuant to Idaho Code Section 66-404.

(c) The evaluation committee must file a report with the court, signed by each committee member under oath or affirmation, which includes the following information:

1. A description of the person’s chronic disability and whether the individual meets the statutory definition of developmental disability found at Idaho Code Section 66-402(5), including an identification of the three functional limitations and a description of how the identified functional limitations are substantial limitations;
2. A description of the person's mental, emotional, and physical condition; educational status; and adaptive and social skills;
3. A description of the lifelong or extended duration of special care, treatment, or other services, including whether the person is on a Developmental Disability Waiver and whether the individual participates in person-centered planning, including the identity of the person-centered planning team members;
4. The person’s opinions and preferences regarding:
 - A. The need for a guardianship or conservatorship;
 - B. The terms of the guardianship or conservatorship; and,
 - C. The proposed guardian or conservator.

5. The financial status of the person, including any public benefits or services;
6. The person's understanding of his or her financial status;
7. Identify the areas where the person can or cannot achieve a rudimentary understanding of the purpose, nature, and possible risks and benefits of a decision after conscientious efforts at explanation, including, but not limited to, the nature of the proceedings;
8. If the person is able to and wishes to attend the hearing;
9. If known, whether a convicted felon resides in or frequents the person's current or proposed residence;
10. Identity of all the people:
 - A. With a significant interest in the welfare of the person;
 - B. Who should be informed of the proceedings;
 - C. Who currently assist the person on a regular basis; and,
 - D. Who may be available to assist the person on a regular basis.
11. Qualifications of the proposed guardian or conservator, including the following:
 - A. The nature and quality of their relationship with the person;
 - B. Whether the proposed guardian or conservator is willing to permit the person to participate as fully as possible in all decisions which affect the person;
 - C. Whether the proposed guardian or conservator is willing to assist the person in meeting the essential requirements for the person's physical health and safety, protecting the person's rights, and managing the person's financial resources; and,
 - D. Whether the proposed guardian or conservator is willing to assist the person in developing or regaining the person's abilities to the maximum extent possible.
12. The purpose and need for the guardianship or conservatorship;
13. Recommendations:
 - A. Whether a guardianship or conservatorship is necessary and why less intrusive alternatives are not appropriate;
 - B. What alternatives to guardianship or conservatorship have been explored or tried;

C. If a limited guardianship or conservatorship is recommended:

- i) The specific limitations on the guardian's or conservator's authority; and,
- ii) How the guardian or conservator will engage and involve the person in decision-making;

D. If a full guardianship or conservatorship is recommended:

- i) Why a limited guardianship or limited conservatorship is not appropriate; and,
- ii) How the guardian or conservator will engage and involve the person in decision-making;

E. The appropriateness of the proposed guardian or conservator;

F. The appropriateness of the proposed guardian's care plan or conservator's financial plan;

G. The appropriateness of requiring a bond by the proposed conservator, taking into account the financial status of the proposed conservator;

H. The need to reassess the guardianship or conservatorship periodically for review, modification, or restoration of rights; and,

14. The signature of each member of the evaluation committee with a statement of concurrence or non-concurrence with the findings and any dissenting opinions or other comments of the members.

(d) Unless the court decides otherwise, the evaluation committee must provide copies of any filed reports to:

1. Petitioner;
2. Proposed guardian or conservator;
3. Any attorney of record; and
4. Person proposed to be under guardianship or conservatorship.