

# Court Visitor

## Uniform Guardianship Act Training for Adults

Washington State Superior Courts,  
Court Visitors and Training Providers



Department of Social and Health Services  
Aging and Long-Term Support Administration

2024

This curriculum was developed from feedback and input gathered from a combination of historical resources, stakeholders, advisory members and subject matter experts listed below.

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If you need legal advice, please seek a qualified attorney.

Please note that this training may be adapted to meet county specific procedures and requirements. Ask your trainer or local county courts for specific forms that are available, recommended or required. Each county in Washington may vary and have specific tools available to you. It is your responsibility to become familiar with these tools.

## Credits

*Special recognition to Miriam J. Ayoub and Sage Graves Slugić, in rewriting the KCBA GAL manual in 2023 to adapt it to the RCW 11.130. It is only building on their effort, that this work of the 2023-2024 advisory committee was possible.*

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## CHAPTER 1: Overview and Due Process

### Learning Objectives:

The learner will

- Define new terms under the Uniform Guardianship Act and
- Recognize roles, process and rights of the court visitor and respondent.

### Overview

Welcome to the Title 11.130 Court Visitor training! Thank you for your interest in helping the court protect and assist persons who may be fully or partially incapacitated.

The attendees at this training have an interest in guardianship and conservatorship law for a variety of reasons and will approach this training from a variety of viewpoints. Some attendees are lawyers or social workers. Others are professional guardians. Some are experienced in the guardianship/conservatorship field. Others have come to this training because they have developed an interest in helping people who may require the services of a guardian or a conservator.

The Title 11.130 Court Visitor Manual presumes the attendees have minimal knowledge of guardianship and conservatorship law. This manual is designed to be a basic reference tool. The editors hope you will find this manual a useful addition to your guardianship and conservatorship tools long after you become an experienced Title 11 Court Visitor.

This introduction serves as a brief overview of this manual. Matters discussed briefly will be covered in greater detail in the chapters that follow. The first nine chapters are organized chronologically to follow the sequence of a court visitor's duties as set forth in the typical order appointing the court visitor (hereafter referred to as "Order Appointing Court Visitor").

## Uniform Guardianship, Conservatorship and Other Protective Arrangements Act

In 2019, the Washington State Legislature adopted the Uniform Guardianship, Conservatorship and Other Protective Arrangements Act (commonly referred to as the “UGA” or the “Act”), codified as Title 11.130. The provisions of the UGA concerning guardianships and conservatorships of adults went into effect on Jan. 1, 2022. (RCW 11.130.915). The UGA was enacted, in part, to promote person-centered terminology and to use the least-restrictive means necessary to protect individuals who are unable to fully care for themselves.



The UGA changed the role of a guardian ad litem to a court visitor. Under the UGA, a GAL is “a person appointed to inform the court about, or to represent, the needs and best interest of a minor.” (RCW 11.130.010(12)). This manual will address the role of a CV, not the role of a GAL.

### New Terms Under the UGA

Before diving deeper, below is a list of some important terms that were adopted under the UGA. Those include:

#### ***Guardian***

This term refers to a person appointed by a court to make decisions with respect to the personal affairs of an individual.

#### ***Conservator***

This term refers to a person appointed by a court to make decisions with respect to the property or financial affairs of an individual.

#### ***Respondent***

This term replaced the term alleged incapacitated person for an adult that is subject to a petition for guardianship/conservatorship.

#### ***Adult Subject to Conservatorship***

This term replaced the term incapacitated person for an adult for whom a conservator has been appointed.

#### ***Adult Subject to Guardianship***

This term replaced the term incapacitated person for an adult for whom a guardian has been appointed.

#### ***Court Visitor***

The term court visitor replaced the term guardian ad litem and means a person appointed by the court to perform an investigation and to prepare a report containing recommendations on the appropriateness of a guardianship/conservatorship, whether a protective arrangement is available to meet the respondent’s needs, and whether a guardianship/conservatorship should be full or limited.

For the most current definitions, refer to RCW 11.130.010.

#### ***Supportive Decision-Making***

This term means assistance from one or more persons of an individual's choosing in understanding the nature and consequences of potential personal and financial decisions, which enables the individual to make the decisions, and in communicating a decision once made if consistent with the individual's wishes.

### What is a Court Visitor?

In short, a CV is a person appointed by the court to act as a neutral investigator and to report to the court on relevant matters.





A CV is a qualified individual whose name is obtained from a registry maintained by each county. The CV is appointed by the court to:

1. Conduct a thorough investigation regarding the allegation that an individual requires the appointment of a guardian/conservator.
2. Make recommendations regarding the need for a guardian/conservator.
3. Assess the suitability of the proposed guardian/conservator.
4. The court visitor must inform the respondent regarding their rights and options for responding to the petition.

The duties of the CV are limited to those outlined in the Order Appointing Court Visitor. At the appointment of the guardian/conservator, the role of the CV is concluded unless the court orders that the CV remain active in the case.

The CV should report to the court on what the CV believes is in “the best interests” of the respondent. The CV’s conclusion regarding the best interests may be inconsistent with the wishes of the respondent and/or petitioner. However, the CV must take into account the wishes of parties – including the Respondent – in making their recommendation.

## What is the Statutory Process by Which the Court Appoints a Guardian and/or Conservator?

Guardianship has traditionally been considered an extension of the *parens patriae* authority of the state. The state, in protecting its quasi-sovereign interests in the health, comfort and welfare of its people, must provide care for those who cannot care for themselves. (Black’s Law Dictionary, Sixth Edition). Beginning in 1975, the Washington State Legislature enacted laws to provide more protection for the rights of respondents (formerly AIPs).

The intent of the UGA is to “protect the liberty and autonomy of all people of this state, and to enable them to exercise their rights under the law to the maximum extent, consistent with the capacity of each person.” (RCW 11.130.001). With the passage of the UGA, the legislature intended to further protect people with certain incapacities. The new law emphasizes the need to explore less restrictive protective arrangements before resorting to a guardianship/conservatorship. The statute explicitly limits the court’s right to exercise its legal authority over a respondent’s life, as follows:

*The legislature recognizes that people with incapacities have unique abilities and needs, and that some people with incapacities cannot exercise their rights or provide for their basic needs without the help of a guardian. However, their liberty and autonomy should be restricted through guardianship, conservatorship, emergency guardianship, emergency conservatorship and other protective measures only to the minimum extent necessary to adequately provide for their own health and safety, or to adequately manage their financial affairs.*

Incapacity must never be assumed. (RCW 11.130.001 (emphasis added)). RCW 11.130.037 states that for the purposes of this law, an adult is presumed to have legal capacity. No restrictions will be placed on the respondent until the court enters an order. Even if an individual is adjudicated to experience some incapacities, the court must consider less restrictive options and protective arrangements short of guardianship/conservatorship before ordering a guardianship/conservatorship or a limited form thereof.

## The CV's Role in the Guardianship or Conservatorship Process

A guardianship/conservatorship action is commenced when a petition (a legal pleading) is filed by a petitioner seeking to have a guardian/conservator appointed for an individual who lacks the ability to meet essential requirements for physical health, safety, or self-care, or for an individual who is unable to manage their property or financial affairs. (RCW 11.130.265 (guardian) and RCW 11.130.360 (conservator). The petition must state why the identified needs of the respondent cannot be met by a protective arrangement or other less restrictive alternatives.

The petitioner can be a person (e.g., a friend or relative) or an entity (e.g., governmental agency, hospital or nursing home) that is concerned about the welfare of the respondent (the respondent may even be the petitioner). See (RCW 11.130.270 and RCW 11.130.365). A petition may be filed by an attorney on behalf of the petitioner or by a petitioner pro se (acting without an attorney).

The court must appoint a CV upon a petition for an adult guardianship or adult conservatorship. (RCW 11.130.280 and RCW 11.130.380(2)).

RCW 11.130.280 necessitates the appointment of a CV for a **guardianship**:

*On receipt of a petition under RCW 11.130.270 for appointment of a guardian for an adult, the court shall appoint a court visitor. The court visitor must be an individual with training or experience in the type of abilities, limitations and needs alleged in the petition.*

RCW 11.130.380(2) also requires the appointment of a CV for a **conservatorship** of an adult: If the respondent in a proceeding to appoint a conservator is an adult, the court shall appoint a court visitor.

The court must appoint a CV from that county's registry of qualified individuals. The CV's duties are limited to those set forth in the Order Appointing Court Visitor, which are based upon the statutory duties of a CV as enumerated in RCW 11.130.280 and RCW 11.130.380.

Since statutes may be amended from time to time, every CV should be familiar with the current statutory requirements and have access to updates. The full text of the guardianship statute can also be found online, see, e.g., <https://app.leg.wa.gov/RCW/> (11.130).



In addition, the role of a CV is governed by court rules. At the time of the update to this chapter, the court rules have not been updated. The GALR2 General Responsibilities of Guardian Ad Litem document can be found online at [https://www.courts.wa.gov/court\\_rules/pdf/GALR/SUP\\_GALR\\_02\\_00\\_00.pdf](https://www.courts.wa.gov/court_rules/pdf/GALR/SUP_GALR_02_00_00.pdf).

Within five days of receiving the notice of appointment, the CV must file and serve a statement that includes:

- Training related to the duties as a CV.
- Criminal history as defined in RCW 9.94A.030 for the period covering ten years prior to the appointment.
- The CV's hourly rate, if compensated.
- Whether the CV has had any contact with a party to the proceeding prior to the appointment.
- Whether the CV has an apparent conflict of interest. (RCW 11.130.380(4)(a) and RCW 11.130.280(3)(a)).

The CV then conducts an investigation, starting by meeting with the respondent.

Within three days of the later of the actual service or the filing of the CV's statement, any party may schedule a hearing and file and serve a motion for an order to show cause why the CV should not be removed for one of the following reasons:

- Lack of expertise necessary for the proceeding.
- Hourly rate is higher than reasonable.
- A conflict of interest. (RCW 11.130.280 and RCW 11.130.380).

Notice of the hearing shall be provided to the CV and to all parties involved.

The CV must select a qualified professional to prepare a professional evaluation of the respondent's mental and physical condition and the nature, type and extent of the respondent's cognitive and functional abilities and limitations. A professional evaluation is not required in minor guardianships/conservatorships and in conservatorships for an adult respondent where the individual is alleged to be missing, detained or unable to return to the United States. If the respondent objects to the professional selected by the CV, the CV must obtain an evaluation from the professional selected by the respondent. Once the CV receives the evaluation from the professional selected by the respondent, the CV may get a supplemental evaluation from a different professional. Under certain circumstances, a professional evaluation may be waived (see Chapter 4).

The CV should meet with family members, care providers and others who may have relevant knowledge about the respondent. A CV appointed in a guardianship matter is required to visit the respondent's current home and any home where they may move after appointment of the guardian (RCW 11.130.280(5)(b)).

For the CV to evaluate the proposed guardian/conservator, the CV must be familiar with the statutory duties and limitations of a guardian/conservator contained in RCW 11.130. The CV must speak with the proposed guardian/conservator to evaluate how such proposed person (or entity) will meet the respondent's needs. The CV must

determine whether any effective alternatives or protective arrangements short of guardianship/conservatorship are available to protect the respondent.

Once the CV's investigation is completed and the professional evaluation is obtained (if required), the CV must prepare a written report. The report of the professional evaluator and the CV is confidential and must be filed under seal.

If a **guardianship** is being requested, RCW 11.130.280(6) provides that the CV's report must include the following:

1. A summary of self-care and independent living tasks the Respondent can manage without assistance or with existing supports; those the Respondent could manage with the assistance of appropriate supportive services, technological assistance, or supported decision making; and those the Respondent cannot manage.-
2. A recommendation regarding the appropriateness of guardianship, including whether a protective arrangement instead of guardianship or other less restrictive alternative for meeting the respondent's needs is available, and whether the guardianship should be full or limited.
  - a. If a limited guardianship is recommended, the powers that should be granted to the guardian should be included in the report.
3. A statement of qualifications of the proposed guardian and whether the respondent approves or disapproves of the proposed guardian.
4. A statement as to whether the respondent's housing meets their needs and whether they have expressed a preference as to residence.
5. A statement as to whether the respondent declined a professional evaluation under RCW 11.130.290 and what other information is available to determine their needs and abilities without the professional evaluation.

6. A statement as to whether the respondent is able to attend a hearing at the location where the court usually holds hearings.
7. A statement as to whether the respondent can participate in a hearing, including whether any technology or other form of support would help them participate.
8. Anything else the court directs the CV to include.

If a **conservatorship** is being requested, RCW 11.130.380(7) provides that the CV's report must include the following:

1. A recommendation regarding the appropriateness of conservatorship, including whether a protective arrangement instead of conservatorship or other less restrictive alternative for meeting the respondent's needs is available, and whether the conservatorship should be full or limited.
  - a. If a limited conservatorship is recommended, the powers that should be granted to the conservator, and the property that should be placed under the conservator's control, should be included in the report.
2. The amount of the bond or other verified receipt needed under RCW 11.130.445 and 11.130.500.
3. A statement of qualifications of the proposed conservator and whether the respondent approves or disapproves of the proposed conservator.
4. A statement as to whether the respondent declined a professional evaluation under RCW 11.130.390 and what other information is available to determine their needs and abilities without the professional evaluation,
5. A statement as to whether the respondent is able to attend a hearing at the location where the court usually holds hearings.
6. A statement as to whether the respondent can participate in a hearing, including whether any technology or other form of support would help them participate.
7. Anything else the court directs the CV to include.

The CV report must be served and filed no later than 15 days before the hearing on the underlying petition, unless a request is made to "shorten" time or an extension is granted. (RCW 11.130.280(6) and RCW 11.130.380(7)). The professional evaluator's report may be filed and served at the same time as the CV's report. The CV must be familiar with the provisions of the UGA regarding confidentiality and GR 15, 22, and 31 regarding what information may be included in a record filed for public viewing and what documents must be filed under seal.



Either the respondent or the CV may ask the court to send the parties to mediation whenever the respondent could benefit from mediation. (RCW 11.130.035(4)). Alternatively, the court may set a trial date. The respondent has the right to trial on the issue of whether a basis exists for the appointment of a guardian or conservator and on the rights to be retained or restricted if a guardian or conservator is appointed. (RCW 11.130.035(3)).

In uncontested cases, after the CV report is filed and served, there is a hearing before a judge or court commissioner who may then enter an order on the guardianship/ conservatorship petition. That court may adopt the recommendations of the CV, but it is not required to do so. The respondent is required to attend the hearing and the court must make reasonable efforts to hold the hearing at an alternative location convenient to them or to allow them to attend the hearing using real-time audio-visual technology. The hearing may proceed without the respondent's presence only if the court finds by clear and convincing evidence that

they have refused to attend or there is no practical way for them to attend, even with supportive services and technological assistance. (RCW 11.130.295 or RCW 11.130.400). The CV will need to address the respondent's attendance at the hearing in the CV's report.

### **What is the Role of the Attorney for the Respondent?**

The duties of an attorney appointed to represent a respondent are set forth in RCW 11.130.285 and RCW 11.120.385. The attorney shall make reasonable efforts to ascertain the respondent's wishes; advocate for their wishes to the extent the attorney can ascertain them; and, if the attorney cannot ascertain the respondent's wishes, advocate for the result that is the least restrictive consistent with the respondent's interests.

### **What are Alternatives to Guardianship and/or Conservatorship?**

The specific legislative intent of the UGA is to restrict the liberty and autonomy of an individual "only to the minimum extent necessary to adequately provide for" the health, safety or adequate management of the financial affairs of the respondent. (RCW 11.130.001). A CV must always be cognizant of the need to seek a resolution of the guardianship/conservatorship petition that recognizes and appropriately deals with risks to the respondent, but which least restricts that individual's liberty and autonomy. As a result, the scope of a guardianship/conservatorship should be crafted to permit the least possible intrusion upon the independence of the respondent and must evaluate the use of supportive decision making and technology that may be available to maintain the respondent's autonomy.

Chapter 11.130 RCW provides alternative options for guardianships/conservatorships. After a hearing on a petition for a guardianship/conservatorship, a court may issue an order for a protective arrangement instead of a guardianship/conservatorship. (RCW 11.130.580). The standards for protective arrangements can be found in RCW 11.130.585 and RCW 11.130.590.

In this manual, when we discuss the role of a CV in a guardianship/conservatorship, we are also intending to refer to protective arrangements instead of guardianship/conservatorship. As such, the general reference to "guardianship/conservatorship" is meant to include the CV's role in petitions for protective arrangements as well.



### **Due Process Rights of the Respondent**

Throughout the guardianship/conservatorship proceeding, the CV must be alert to the respondent's right to fundamental due process of law. A person should not be deprived of the significant rights at stake in a guardianship/conservatorship without due process of law. The duty to assert these rights lies with counsel for the respondent if one has been appointed. However, since it is the duty of the CV to represent the best interests of the respondent, the CV must report to the court any concerns the CV has about fundamental due process that affects the respondent.

The CV's investigation, especially in cases in which the respondent is not represented by an attorney, should include a determination that the court has jurisdiction to hear the guardianship/conservatorship, that the venue is appropriate and that all steps have been taken to ensure the rights of the respondent.

## Venue and Jurisdictional Requirements

### *Jurisdiction*

The court must have subject matter jurisdiction and also jurisdiction over the respondent. Subject matter jurisdiction is authorized under RCW 11.130.020. It grants the superior court of each county jurisdiction over a guardianship, conservatorship or protective arrangement.

### *Service of Petition and Notice*

Notice that a guardianship/conservatorship petition has been filed and a copy of the petition must be personally served on the respondent and the CV within five court days after the petition has been filed. (RCW 11.130.275 and 11.130.370). Without proper service of the petition and notice on the respondent, the court lacks jurisdiction to hear the case. Because the CV is a party to the case, it is improper for the CV to personally serve the respondent with notice of the proceeding or a copy of the petition.

### *Venue*

The guardianship/conservatorship petition must be brought in the proper county. (RCW 11.130.030).

The venue for a guardianship proceeding is in the county where the respondent lives; the county in which the court is located for cases where the respondent has been admitted to an institution by court order; or, on a petition for emergency guardianship, in the county where the respondent is present. (RCW 11.130.030(2)).

The venue for a conservatorship proceeding is in the county where the respondent lives, whether or not a guardian has been appointed in another county or jurisdiction; or, if the respondent does not reside in Washington, in any county in which property of the respondent is located. (RCW 11.130.030(3)).

## Other Procedural Due Process Requirements Under RCW 11.130

1. Petitions must be heard within 60 days unless an extension is granted for good cause shown. The request for the extension must occur before the 60 days has expired. (RCW 11.130.275 and RCW 11.130.370).
2. As stated above, a copy of the petition and notice of hearing on the petition must be served personally on the respondent and the CV not more than five court days after the petition has been filed. When petitioning for conservatorship, a copy of the petition and notice of hearing must also be personally served on the proposed guardian within five court days after the petition has been filed. (RCW 11.130.370). There is no longer any option for certified mail or other form of serving the respondent and the CV. It may still be possible for the CV to accept alternate forms of notice, but the CV should do so in writing in a form that can be filed with the court. If notice is not personally made on the respondent, the court will not proceed with the guardianship/conservatorship hearing. (RCW 11.130.275 and RCW 11.130.370).
3. There is a long list of people who should get copies of the petition and notice of hearing in RCW 11.130.270 and 11.130.365.

*Note:* Pursuant to RCW 11.130.070, a person may waive notice, but it must be in a record signed by the person or the person's attorney and filed with the court. However, a respondent may not waive notice under the UGA.

## Statutory Due Process Rights of the Respondent

The respondent has the following rights under RCW 11.130:

1. To be represented by a lawyer of the respondent's own choosing or to have the court appoint an attorney at public expense if payment would result in a substantial hardship. (RCW 11.130.285 and RCW 11.130.385).
2. To have a jury decide if there is a basis for the appointment of a guardian/conservator and on the rights to be retained or restricted if a guardian/conservator is appointed. (RCW 11.130.035).
3. To be present in court and testify when the guardianship/conservatorship hearing is held. The statute provides that a hearing cannot go forward unless the respondent attends the hearing, unless the court finds that the respondent has refused to attend the hearing after having been fully informed of the right to attend and the consequences of failing to attend, or there is no practicable way for the respondent to attend and participate in the hearing. If it is not reasonably feasible for the respondent to go to court, the court must make reasonable efforts to hold the hearing at a location convenient to the respondent or to allow the respondent to attend the hearing using real-time audio-visual technology. (RCW 11.130.295 and 11.130.400).
4. To have the CV replaced. (RCW 11.130.280 and RCW 11.130.380).
5. To select the professional to prepare the professional evaluation. (RCW 11.130.290 and RCW 11.130.390).
6. To have special assistance if disabled under the Americans with Disability Act. (42 USC 12101. GR 33).
7. To expect freedom from discrimination based on a disability. (RCW 49.60 and the Americans with Disability Act).

## Due Process Rights: Decision Making During the Pendency of the Guardianship or Conservatorship

The UGA provides for the establishment of an emergency guardian/conservator in certain circumstances. However, it is important to note that the CV is not an emergency guardian or conservator. The CV cannot make decisions for the respondent unless the CV has clear authority.

If the CV has any concern regarding the CV's authority to act, the CV should seek instruction from the court.



## Clear and Convincing Standard

The intent of the legislature is to protect the liberty and autonomy of all people of this state and to enable them to exercise their rights under the law to the maximum extent consistent with the capacity of each person.

To appoint a guardian, RCW 11.130.265 provides that the court must find by clear and convincing evidence that:

1. The respondent lacks the ability to meet essential requirements for physical health, safety or self-care, even with the use of appropriate supportive services, technological assistance or supported decision making.
2. Appointment of a guardian is necessary to prevent significant risk of harm to the respondent's physical health, safety, or self-care.

3. The respondent's identified needs cannot be met by a protective arrangement instead of guardianship or other less restrictive alternative.

To appoint a conservator, RCW 11.130.360 provides that the court must find by clear and convincing evidence that the adult is unable to manage property or financial affairs because:

1. There is a limitation on the adult's ability to receive and evaluate information or make or communicate decisions, even with the use of appropriate supportive services, technological assistance or supported decision making; or the adult is missing, detained or unable to return to the United States.
2. Appointment is necessary to avoid harm to the adult or significant dissipation of the adult's property, or to obtain or provide funds or other property needed for the support, care, education, health or welfare of the adult or of an individual entitled to the adult's support.
3. The adult's identified needs cannot be met by a protective arrangement instead of a conservatorship or other less restrictive alternatives.

Age, eccentricity, poverty or medical diagnosis alone is not enough to justify a finding of incapacity. (RCW 11.130.265 and RCW 11.120.360). The court shall grant the guardian/conservator only those powers necessitated by the demonstrated needs and limitations of the respondent. (RCW 11.120.265 and RCW 11.130.360).

The respondent is entitled to legal representation. If the respondent cannot afford an attorney, one will be appointed at county expense.

## Timeline Summary for Court Visitors

1. Within five days after notice of appointment, the CV shall serve on the parties and file with the court a statement of qualifications. (RCW 11.130.280(3)(a) and RCW 11.130.380(4)(a)).
2. Within three days of the later of service or filing of the CV statement, any party may set a hearing and file and serve a motion to show cause why the CV should not be removed.
3. The CV should meet and consult with the respondent as soon as practicable after being appointed. (RCW 11.130.280(4) and RCW 11.130.380(5)).
4. As soon as possible after appointment, the CV should select a professional to prepare the required professional evaluation, meet with the proposed guardian/conservator, interview and consult others, as needed, and investigate alternatives to guardianship/conservatorship. (RCW 11.130.280, RCW 11.130.290, RCW 11.130.380, and RCW 11.130.390).
5. At least 15 days before the hearing on the underlying petition, the CV must file the CV's report and provide a copy to the respondent, the petitioner and any party who the court has approved to receive notice under RCW 11.130.080. RCW 11.130.280 and RCW 11.130.380. Exception: The foregoing applies unless an extension or reduction of time has been granted by the court for good cause.
6. All petitions for guardianship/conservatorship must be heard within 60 days unless an extension is provided by the court for good cause shown. (RCW 11.130.275 and RCW 11.130.370).



## Checkpoint

Read each question or statement and select the best answer from the options available.

1. **What is the term that refers to a person appointed by a court to make decisions with respect to the personal affairs of an individual?**
  - a. Guardian
  - b. Conservator
  - c. Respondent
  - d. All answers are correct.
2. **What is the term that replaced the term incapacitated person for an adult for whom a conservator has been appointed?**
  - a. Adult who is incapacitated.
  - b. Adult subject to conservatorship.
  - c. Adult subject to guardianship.
  - d. All answers are correct.
3. **This term replaced the term alleged incapacitated person for an adult that is subject to a petition for guardianship/ conservatorship.**
  - a. Adult subject to a conservatorship.
  - b. Adult subject to a guardianship.
  - c. Respondent.
  - d. All answers are correct.
4. **What is a court visitor?**
  - a. A person who is trained as a guardian ad litem.
  - b. A person appointed by the court to act as a neutral investigator and to report to the court on relevant matters.
  - c. A person who visits incapacitated adults in court.
  - d. All answers are correct.
5. **Within five days of receiving the notice of the appointment, the CV will file and serve a statement that includes what?**
  - a. Training related to the duties as a CV.
  - b. Criminal history and conflict of interest.
  - c. The CV's hourly rate, if compensated.
  - d. All answers are correct.
6. **The CV must be alert to the respondent's right to the fundamental due process of law.**
  - a. True
  - b. False
7. **The Respondent has rights under RCW 11.130.**
  - a. True
  - b. False
8. **To appoint a conservator, the court must find by clear and convincing evidence that the adult is incapacitated based on age, eccentricity, poverty or medical diagnosis.**
  - a. True
  - b. False



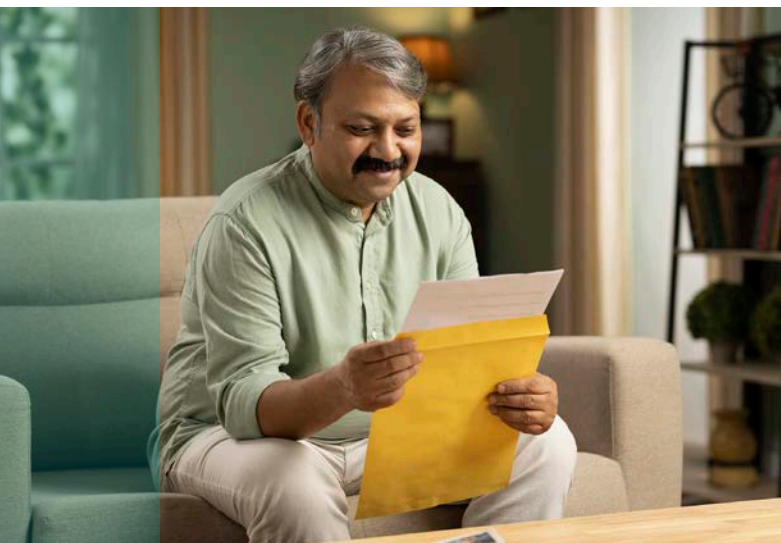
## CHAPTER 2: Court Visitor / GAL and Statement of Qualifications

### Learning Objectives:

The learner will

- Recognize the contents for statement of qualifications.
- Identify upon whom the CV must serve the statement of qualifications.

### Registry for Court Visitors and Guardian Ad Litem Requires Written Statement (RCW 11.13.155)



RCW 11.130.155(1) requires each county to develop and maintain a registry of persons who are willing and qualified to serve as guardian ad litem and CVs in guardianship/conservatorship matters.

The Superior Court is required to utilize a model program to assure that candidates applying for registration have satisfactorily completed training to attain the essential minimum requirements to act as guardian ad litem or CV.

## Contents of Statement of Qualification (RCW 11.130.280 and 11.130.380)

### Quick Tip:

- Ask a colleague for a sample and create your own.
- Do not skimp on the statement of qualifications.
- Complete it in full.
- Update it once a year.
- File it every time you get appointed pursuant to RCW 11.130.280(3)(a).

To be eligible for a CV registry, a person shall present a written statement outlining their background and qualifications. (11.130.155(2)). This statement is referred to as a “statement of qualifications” and, by law, must be updated on an annual basis. (RCW 11.130.155(4)).

This statement shall include, but is not limited to, the following information:

1. Level of formal education.
2. Training related to the duties of a guardian ad litem or CV.
3. Number of years’ experience as a guardian ad litem or CV.
4. Number of appointments as a guardian ad litem or CV and the county or counties of appointment.
5. Criminal history, as defined in RCW 9.94A.030:
  - a. RCW 9.94A.030: which is quite extensive, should be consulted directly.
  - b. “Criminal history” means a list of a defendant’s prior convictions and juvenile adjudications, whether in this state, in federal court, or elsewhere, and any issued certificates of restoration of opportunity pursuant to RCW 9.97.020.

- c. The history shall include, where known, for each conviction (i) whether the defendant has been placed on probation and the length and terms thereof; and (ii) whether the defendant has been incarcerated and the length of incarceration.
6. Experience - evidence of the person’s knowledge, training and experience in each of the following:
    - a. Needs of impaired elderly people.
    - b. Needs of persons with physical disabilities.
    - c. Needs of persons with mental illness.
    - d. Needs of persons with developmental disabilities.
    - e. Other areas relevant to the needs of individuals subject to guardianship/ conservatorship.
    - f. Legal procedures.
    - g. The requirements of RCW Chapter 11.130.
  7. History of removalL In addition, the statement of qualifications must include the names of any counties in which the person was removed from a guardian ad litem or CV registry pursuant to a grievance action, and the name of the court and the case number of any case in which the court has removed the person for cause.
  8. Conflicts of Interest: Your legal guardianship community may be small and collegial. Individuals wear multiple hats with the same set of people in different cases over the years. While it is not necessary to identify all past associations with the parties in the present case, it is important to maintain your specific role and independence in the matter. Having a potential conflict of interest does not necessarily exclude you from your given role. Disclosure, however, is required. When in doubt, you should consider declining the appointment or withdrawing upon discovery and/or objection. Examples of conflicts which should be disclosed and may serve as a basis to decline include:

- a. You have been appointed as CV, GAL, or attorney for respondent and
- Another attorney in your law firm represents the CPG who is nominated as guardian and conservator.
  - The nominated guardian/conservator plans on filing a lawsuit against the hospital for injuries sustained by the respondent and you or someone in your firm represent the hospital.
  - You are the CV, GAL and the lay nominated guardian/conservator asks you to represent them after appointment.
  - If you have a potential conflict of interest, disclose it to the court and all parties and seek agreement, instruction, or an order waiving the conflict if it makes sense for you to continue in the role.

## Service of Statement of Qualifications (RCW 11.130.280(3)(a))

### Quick Tip:

- Serve your statement of qualifications within five days to respondent and all parties.
- Attorneys will generally accept service via email only.
- You should obtain permission from the parties to ensure they will accept service via email.

Many CVs supplement their statement of qualifications with their resume or curriculum vitae, or a modified version thereof, when meeting the service requirement of RCW 11.130.280(3)(a) and RCW 11.130.380(4)(a) which states, in part:

*The CV appointed under subsection (1) or (2) of RCW 11.130.280 or .380 shall within five days of receipt of notice of appointment file with the court and serve, either personally or by certified mail with return receipt, the respondent or his or her legal counsel, the petitioner or his or her legal counsel, and any interested party entitled to notice under RCW 11.130.080 with a statement including: his or her training relating to the duties as a CV; his or her criminal history as defined in RCW 9.94A.030 for the period covering ten years prior to the appointment; his or her hourly rate, if compensated; whether the CV has had any contact with a party to the proceeding prior to his or her appointment; and whether he or she has an apparent conflict of interest.*

A “party” upon whom the CV must serve the statement of qualifications include:

1. Petitioner (or, if represented by counsel, petitioner’s attorney).
2. Respondent (or, if represented by counsel, the respondent’s attorney).
3. A person who has filed a request for notice with the court and the court has approved the request pursuant to RCW 11.130.080.
4. Persons entitled to notice now generally include: spouse, registered domestic partner, adult children, parents. Consult with RCW 11.130.080.

## Objection to CV after Service of Statement

Within three days of CVs actual service or filing of Statement of Qualifications any party may set a hearing and serve a motion for an order to show cause why the CV should be removed for one of the following reasons:

1. Lack of expertise necessary for the proceeding.
2. An hourly rate higher than what is reasonable for the particular proceeding.
3. A conflict of interest.

## Local Court Rules

A CV should be familiar with local court rules. Some jurisdictions may have additional requirements of CVs. Local court rules cover, in part, timetables and instructions regarding the filing and distribution of documents. Many counties have websites on which they post the local rules. The local rules for many of the counties can be found at [http://www.courts.wa.gov/court\\_rules/](http://www.courts.wa.gov/court_rules/).



## Checkpoint

Read the questions below. Select the answer that represents the best answer provided.

1. **To be eligible for a CV registry, a person shall present a written statement outlining their background and qualifications. This statement is referred to as a “Statement of Qualifications”.**
  - a. True
  - b. False
2. **How often should a statement of qualifications be updated?**
  - a. Every time a CV is appointed.
  - b. Once per year.
  - c. Every five years.
  - d. All answers are correct.
3. **Upon whom should the CV serve the statement of qualifications to?**
  - a. The petitioner.
  - b. The respondent.
  - c. Person filing the request.
  - d. All answers are correct.

Chapter 2 checkpoint answers: a, b, d



## CHAPTER 3: Interviewing the Respondent and Understanding Impairments

### Learning Objectives:

The learner will

- Differentiate between what must and should be shared with the respondent.
- List common causes of impaired capacity when working with respondents.



### Interviewing the Respondent

As soon as can be arranged after appointment, the CV is required to meet and consult with the respondent. The CV must provide certain information to the respondent about their rights in the guardianship/conservatorship proceeding. There is also information that the CV should provide to the respondent so that the respondent better understands the process. Finally, the CV needs to obtain information from the respondent.

## Information that Must be Shared with the Respondent.

The CV must inform the respondent of their rights and determine which, if any, the respondent chooses to exercise. Those rights are listed in the Notice of Petition for Guardianship or Conservatorship. (RCW 11.130.657).

**Establishing a rapport.** Recognize the power imbalance between the CV and the respondent. If the CV is dominant, the interviewed person will be guarded in responses. While the CV should maintain a professional demeanor, it is important not to appear cold, threatening or uninterested.

**Using plain language.** The CV must inform the respondent of the substance of the petition for guardianship/conservatorship, and the nature, purpose and effect of the guardianship/conservatorship proceeding(s). Respondents to guardianship petitions have a variety of disabilities and capacities. In many cases, the respondent will not comprehend what they are being told if it is done using long sentences and court jargon. The CV will more likely be understood as they explain the rights and process to the respondent if they speak in plain and simple words. While in the presence of the respondent, it is advisable to use plain language to help ensure clear communication. This includes not only when speaking to the respondent, but also when speaking to the court, to experts, and to anyone else about matters related to the petition while respondent is present. The CV should do their best to help the respondent understand what is going on at all times.



Acronyms can be confusing and are often jargon that will be a barrier to communication. Acronyms that are commonly used by court visitors may be unknown to the respondent and others the CV interviews. Many times, people won't let on they don't know what the acronym stands for.

*PRACTICE TIP:* For more on the use of plain language for people with Autism, see: <https://autisticadvocacy.org/wp-content/uploads/2021/07/One-Idea-Per-Line.pdf>

## RIGHT OF RESPONDENT

## SAMPLE PLAIN LANGUAGE EXPLANATION

To be represented by a lawyer of the respondent's own choosing [if the respondent cannot afford an attorney or it would be a financial hardship, the court will appoint an attorney at county expense].

"You can have a lawyer help you understand the guardianship if you want one. The lawyer can help you try to stop the guardianship. The lawyer must listen to you and will work for what you decide you want. Lawyers know the law about guardianship and how to handle situations with judges and courts.

You don't have to have a lawyer if you don't want one.

You can talk with others to help you decide if you want to have a lawyer.

If you decide you don't want to have a guardian or don't want to have the guardian who is being proposed, you might want a lawyer to help you with going to court. A lawyer will know how to act in court and can help you understand the law.

If you decide you want a lawyer, you will have to pay the lawyer for their help. But, if you don't have enough money to pay the lawyer, the government will pay them. You can also have help in finding a lawyer if you want one.

Do you have questions?"

To request a jury trial on the issue of capacity;

"You can have either a judge or a jury decide whether you have the capacity to make your own decisions. If you want a jury, tell me so. Otherwise, a judge will make all the decisions about the guardianship petition.

*Note:* Be prepared to explain what a jury is in plain language. You may need to explain other words, such as: petition, hearing, judge, court and guardianship .

To be present in court and to testify at any hearing regarding the guardianship/conservatorship petition.

"There will be a hearing. A hearing is a meeting in a courtroom, with a judge. The judge will read my report and decide what to do with the petition for guardianship. You can go to the hearing. You don't have to go if you don't want to. If you go, you can tell the judge what you want and whether you think there should be a guardianship."

*Note:* Be prepared to use plain language to describe what a petition is, and to explain to the respondent what will happen at the hearing.

*(continued on next page)*



(continued from previous page)

RIGHT OF RESPONDENT	SAMPLE PLAIN LANGUAGE EXPLANATION
To request that the court replace the CV.	"You also can ask the judge to replace me with another court visitor."
To ask the court to establish a protective arrangement instead of a guardianship/conservatorship.	"You can ask the judge to set up another option besides guardianship or conservatorship. I can tell you about these other options."  Note: Describe the options identified in Chapter 7. Identify the options that correspond with the arrangement identified in the petition. For example, if the petition is for conservatorship, the CV can describe payeeship, financial power of attorney, etc. Be prepared to describe the options in plain language.

The law requires that you provide the foregoing information. Depending upon the capacity and experience of the respondent, you may decide that additional explanation is needed. The respondent should understand that this is a legal process with a court and a judge. They may be confused or shocked and intimidated by the situation. Explaining what is happening, and their legal rights may take additional time or an extra meeting.

The CV must ascertain and report on the respondent's reaction to the petition, to the specific guardian/conservator-nominee, to the guardian/conservator's proposed powers and duties, and to the scope and duration of the proposed guardianship/conservatorship.

Using plain language – without legal or medical jargon - the CV must explain each of these rights and ask the respondent for their response. The CV will report the respondent's response to the court and should include in the report a description of how the information and choices about respondent's rights were presented.

The CV must be prepared to discuss the rights that a respondent might lose. These are stated in the Notice of Petition for Guardianship or Conservatorship (RCW 11.130.657).

A respondent may lose the right to:

1. Marry, divorce or enter into or end a registered domestic partnership.
2. Vote or hold elected office.
3. Enter into a contract or make or revoke a will.
4. Appoint someone to act on the behalf of the respondent.
5. Sue or be sued other than through the guardian.
6. Possess a license to drive.
7. Buy, sell, own, mortgage or lease property.
8. Consent to or refuse medical treatment.
9. Decide who shall provide care and assistance.
10. Make decisions regarding social aspects of the respondent's life.

Finally, the CV must:

1. Consider and be prepared to discuss protective arrangements or less restrictive alternatives to guardianship/conservatorship.
2. Inform the respondent that all costs and expenses of the proceeding may be paid by the respondent.
3. Explain the general powers and duties of a guardian/conservator.

In addition to explaining to the respondent that they may lose these rights, the CV should be taking notes on the reaction of the respondent. Does the respondent drive, and do they indicate that they believe they can still do so safely? Does the respondent have a will and are they planning to make changes? Is the respondent planning to marry and have a family? Is the respondent a voter – or is planning to become one – and is the potential loss of this right objectionable to them? The CV will be making recommendations that will affect these rights and the respondent's concerns about losing them are important information.

### **Information that Should be Shared with the Respondent**

The CV should be able to explain their role to the respondent, i.e., to investigate, evaluate, and make a recommendation to the court about what is in the respondent's best interests. This should include attention to the respondent's preferences, choices and attitudes that the CV learns from their investigation.

The CV should explain:

- There is no confidentiality between the CV and the respondent or any party.
- Any information imparted to the CV that will assist the commissioner or judge in making a ruling may be included in the CV's report.
- The commissioner or judge is the final decision-maker. This is often a good place to start the interview.



- The guardianship/conservatorship process to the respondent.
  - Be prepared to describe the steps of a guardianship/conservatorship proceeding: the petition and appointment of a CV and a CV's responsibilities, including interviewing the respondent, obtaining a professional evaluation, interviewing others, interviewing the nominee guardian/conservator, researching less restrictive alternatives, and writing a report.
- Describe the hearing or trial.

The CV should be prepared to describe what will happen in the courtroom. The respondent may never have been in court before. Any information the CV can provide will make the respondent more comfortable with the process. Be able to describe a "hearing" and the difference between a commissioner and a judge and explain the meaning of "ex parte," etc.

Offer disability accommodation. The CV should be familiar with the local process for obtaining accommodations in the courtroom. The Americans with Disabilities Act and the Washington Law Against Discrimination require accommodation for people with disabilities in many contexts, and that includes the courts *Tennessee v. Lane*, 541 U.S. 509 (2004). The respondent is by definition a person with a disability and likely to need accommodation, and it is the CV's responsibility to explain this to the respondent. The decisions the respondent makes about whether to appear in

court, ask for a lawyer or a jury trial, and whether to oppose the guardianship may hinge on concerns they have about whether their disability will make their participation in the court process difficult or embarrassing.

The respondent is entitled to assistance by a lawyer, who will help the respondent in requesting necessary accommodations. However, the CV may need to help the respondent obtain disability accommodations prior to obtaining a lawyer. Where no lawyer is appointed, the CV may help the respondent identify and obtain disability accommodations.

## Information to be Obtained from the Respondent

The CV appointed under a petition for guardianship needs to be able to inform the court of the respondent's ability to manage in the areas of health, physical safety, nutrition and housing. The CV appointed under a petition for conservatorship needs to be able to inform the court of the respondent's ability to manage in the areas of property and finances.

In gathering information from the respondent, the CV must obtain information to assist the CV in determining whether a protective arrangement or less restrictive alternative would be sufficient to meet the respondent's needs.

CVs should ask questions that will elicit this information, always being mindful of how intrusive the investigation may appear to the respondent. The CV can also obtain information by observing the respondent, visiting their residence, and by reviewing records in their possession.

**Practice Tip:** It is important to take a few moments to establish a rapport with the respondent. Genuine interest demonstrated by the CV increases the likelihood that they will relax and open-up. The following is a non-exhaustive list of how to establish a rapport:

1. Make a good introduction.
2. Actively listen.

3. Ask engaging general questions (e.g. Questions about their pets, hobbies, etc.).
4. Find common ground.
5. Be aware of body language.
6. Lead with empathy and respect.
7. Be culturally appropriate.

### Sample questions

Sample categorized questions are listed below and may assist in the CV's efforts to collect information but is not a comprehensive list.

#### Health

- How is your health?
- Who are your health care providers?
- When were you last seen by them?
- Do you take any medications?
- What are they for?

#### Physical Safety

- What would you do if there were a fire?
- Do you know the telephone number to call in an emergency?
- Have you had any recent accidents or falls?
- Have you been involved with the police?

#### Physical Safety Tips:

- Add questions related to vulnerability to abuse, neglect, exploitation.
- Ask family and friends about vulnerability to abuse and exploitation.
- Know the signs of abuse and reporting responsibility and process.

#### Nutrition

- Are you able to make your own meals?
- What did you eat for breakfast today?
- How do you make your favorite food?
- Are you able to do your own grocery shopping?
- Do you have access to food?

## Housing

- How long have you lived here?
- What is your monthly rent or mortgage payment?
- Are you able to maintain it on your own?
- Do you feel your home is safe?
- Can you maintain your yard?
- Can you get upstairs?
- Do you like your home and want to stay there?
- Do you know and like your neighbors?

## Finances

- Do you receive any regular monthly income?
- What are the sources?
- How much is it?
- Is it direct deposited in the bank?
- What bank do you use?
- Do you own stocks, bonds, property?
- What are your monthly bills?
- Do you have any unpaid bills?
- Do you worry about money?

## Driving

- Do you have a current driver's license?
- Do you drive or intend to drive in the future?
- Do you have access to a motor vehicle?
- Do you have motor vehicle insurance?
- Do you feel safe driving your car?

## Orientation

The CV should ask questions to determine if the respondent is oriented as to person, place and time. (Memory: e.g, remember three words, then ask questions like, "what city are we in? who is the president? Then ask for three words)

## Veteran Status

The CV should find out if the respondent is a veteran. The Department of Veterans Affairs must be notified of all guardianship/conservatorship proceedings involving veterans.

## Family and Friends

The CV should find out if the respondent has any immediate family and any friends or other family who might be contacted in the guardianship/conservatorship investigation. Family and friends are likely to have additional information about the respondent that will help the CV in getting a full picture. See Chapter 7 for possible roles of family and friends in supporting the respondent's decision-making through a power of attorney, supported decision-making plan and other lesser restrictive alternatives to guardianship. The CV can also ask the respondent who they would like the CV to interview.

The CV should find out if the respondent has made alternative arrangements for assistance, such as durable powers of attorneys. See above paragraph. POLST, will, advance directive, trusts – do you have, yes or no?

## Preference

The CV should ask the respondent if they have a preference for who may serve as guardian/conservator and should ask about their relationship with the proposed guardian/conservator.

## Voting

The CV should ask the respondent if they vote and when they last voted. Expand this to include queries about whether the individual wants to retain right; also for young individuals esp. take note of fact that while the person is not interested at the time of interview, they may want to vote later. The test for voting rights is in the law and that the adult cannot communicate, with or without support, a specific desire to participate in the voting process. (RCW 11.130.210(1)(c). (Practice Tip: At the time the CV meets with the person nominated to serve as guardian, the CV can make it clear that if the court approves them as guardian, their authority won't include the authority to assume the respondent's right to vote.

## Evaluation

The CV should ask the respondent if they will agree to a professional evaluation. If the respondent declines a professional evaluation, the CV should ask other questions to help determine the respondent's needs and abilities without the professional evaluation.

## Attend hearing

The CV should ask whether the respondent can attend the hearing and if not ask or identify whether the respondent has access to technological assistance and tools to participate in the hearing. The CV should offer assistance in obtaining accommodations necessary to attend hearing.

The CV should be aware that other informants may have their own interest and ulterior motives that will affect the way they describe the respondent's abilities and needs. For example, a relative may rely on the respondent's government check, and want to continue to control their money.

## Potential Barriers to Comprehension

### Legalese

Legalese is the formal and technical language of legal documents that is often hard to understand. The CV needs to explain the respondent's rights, the court procedures, etc. in language that the respondent can reasonably be expected to understand. (RCW 11.130.280(4) and RCW 11.130.380(5)). Avoid "legalese." Be prepared to explain or give examples. Language used by the CV should be tailored to the respondent's age and abilities.

### Limited English Proficient

The respondent may be limited English Proficient. This means that the individual may not speak English as their primary language or may have a limited ability to read, speak, write or understand English. The respondent may be entitled to language assistance to ensure meaningful participation in the process.



In some cases, a family member or friend may be present or be offered to interpret between two languages. There are reasons, however, for the discussion to be private and free of potential misinterpretation or omission of spoken or signed information by family members if they are offered as interpreters for the CV interaction. Often family members have conflicts of interest and may not want to have courts be aware of an impaired party's situation at home.

The solution is to use a professional interpreter for persons who do not speak or understand English to effectively communicate or who use signed languages. Most counties and municipalities have an Office of Interpreter Services as part of the court. Court interpreters can provide interpreter services paid for by the court as part of the CV interview process.

Interpreters must be court-certified and listed in the Washington State Administrative Office of the Court Court Interpreter Program. Search for Interpreters directory at courts.wa.gov.

[https://www.courts.wa.gov/programs\\_orgs/pos\\_interpret/](https://www.courts.wa.gov/programs_orgs/pos_interpret/)

Courts participating in the Language Access Interpreter Reimbursement Program will be eligible to have costs for interpreters provided during CV interviews partially reimbursed by the program.

## ***Deaf, DeafBlind, Deafdisabled, Hard of Hearing, Late Deafened and Speech Disabled***

While deaf people share certain experiences, the community is highly diverse. Some consider themselves to be part of the unique cultural and linguistic minority who use sign language as their primary language, while others do not. Deaf people have a wide range of communication preferences, cultural and ethnic backgrounds, and



additional disabilities that shape their interactions with their environment.

Sign languages are complex, natural languages, with their own grammar, vocabulary and dialects. There is no universal sign language. In the United States, American Sign Language is the most frequently used, but there is also Black American Sign Language, and Plains Indian Sign Language. ASL is not a communication code that represents English. It is its own distinct language.

If the respondent communicates through sign language, an interpreter is necessary. The preference of the person should govern the choice of interpretation. Some respondents can communicate in writing, cards, boards, or use other tools to help them respond to questions.

Sometimes communication is hampered by the respondent's poor hearing. If the respondent is speaking loudly, this may be an indication of partial deafness. Ask whether they use a hearing aid and whether it is in place.

A CV should recognize the importance of and read nonverbal communication. Look for the respondent to nod or shake their head, to follow with the eyes, sit forward in their seat, etc. Sometimes the CV can have the respondent respond to questions by squeezing the CV's hand or blinking their eyes. Often caregivers can give the CV background on interpretation of nonverbal communication.

Certified court sign language interpreters can be found through [courts.wa.gov](https://www.courts.wa.gov) or visit <https://www.dshs.wa.gov/altsa/odhh/certified-court-sign-language-interpreters>.

## ***Low vision, visually impaired and blind***

Some respondents may have low vision, partially sighted, legally blind or totally blind. Accommodations may be needed, including use of readers, audio taped texts, raised-line drawings, large print, Braille text or other non-visual media. If the respondent's vision is poor, they may not have been able to read any of the guardianship/ conservatorship documents, and the CV may have to start by thoroughly explaining what is in the documents.

## ***Slang and Idiom***

Slang is informal language of conversation, texting, and other social communication. Idioms are expressions that do not have a literal meaning. Unclear words or phrases can affect the ability to communicate. Even among native English speakers, there are different ways to express an idea. A CV should communicate clearly and avoid slang and idioms whenever possible. If the CV is unsure about a word or phrase used by the respondent, ask clarifying questions to confirm the interpretation.

## ***Cultural Diversity***

Culture includes the values, attitudes, beliefs, experiences and customs shared by a group of people that contribute to a person's identity. It also includes communication styles, behavioral expectations and traditions.


The CV must be proactive in learning about the cultures of the people they work with. Be mindful not to judge people through your own cultural lens. Cultural competence is the ability to recognize the importance of race, ethnicity and culture. It is an awareness and acknowledgment that people from other cultural groups do not necessarily share the same beliefs and practices or perceive, interpret, or encounter similar experiences in the same way. Cultural competence is rooted in respect, validation and openness toward someone whose social and cultural background is different from one's own.

Even the most conscientious CV must take special care to avoid making decisions that are influenced by cultural bias or by personal values. In completing an objective investigation and making appropriate recommendations, a CV must recognize their own biases, which can be based on race, ethnicity,



religion, lifestyle, socioeconomic standing, subculture, gender, age, disability, and education, among others. These biases can improperly impair or skew the CV's objective assessment.

## Example Scenarios

Ada	
	<p><b>Age:</b> 92 <b>Gender:</b> Female <b>Pronouns:</b> She/her</p> <p><b>Medical considerations:</b></p> <ul style="list-style-type: none"><li>• Severe hearing impairment</li><li>• Broken Hip</li><li>• Advanced dementia</li></ul> <p>Ada is the subject of a guardianship. She has gone from her home, where she lived alone, to a nursing home to recover from a broken hip. She is diagnosed with advanced dementia after a physician evaluated her and found her unresponsive and uncommunicative. She consistently ignored what she considered to be impertinent and insulting questions from someone she did not know.</p>

The CV needs to be aware of the woman's hearing impairment and that the woman strongly values her privacy. The CV should be sensitive to the fact that effective communications will require formal introductions and loud, distinct communications or written communications. When the appropriate communication approach is achieved, it may be clear that her mental and intellectual capacities are intact.

## Example Scenarios (continued)

### Walter



**Age:** 80

**Gender:** Male

**Pronouns:** He/him



**Medical considerations:**

- Unknown



Walter is the subject of a guardianship/conservatorship petition. He keeps large piles of junk in and around his property. He has been cited by the city repeatedly. His neighbors are furious and believe the condition of his property lowers the value of all their properties.

The CV learns that the man understands and is unperturbed by the lowered property values, greatly prizes his lifelong collection of unusual objects and enjoys annoying his neighbors, whom he dislikes. He understands the consequences and potential fines and is prepared to pay them. Unless the CV understands this man's values and beliefs, the CV risks mistaking eccentricity for incapacity.

### Ethan



**Age:** 25

**Gender:** Male

**Pronouns:** He/him

**Statue:** Single



**Medical considerations:**

- Facial fractures
- Broken femur
- Brain injury
- Spinal cord injury



Ethan is severely injured in a motorcycle accident. Although young, he has signed a health care directive. A guardianship is sought because he has no relatives to make medical care decisions.

As a result of certain strong religious beliefs, the proposed guardian believes that the provisions of the health care directive are immoral and would not take steps to enforce them. In assessing the appropriateness of this guardian, the CV would find such a person unable to exercise ethical substitute decision making for this man.



## Example Scenarios (continued)

### Nell



**Age:** 75

**Gender:** Female

**Pronouns:** She/her



**Medical considerations:**

- Unknown



Nell, an elderly widow, begins a relationship with her younger caregiver. She gives him expensive gifts. Her children file a petition for conservatorship on the basis that she is no longer able to make sound financial decisions.

The CV learns that the woman can afford to pay all of her bills and to give the gifts to the caregiver. The CV learns that the woman's children have not been involved in her life and the caregiver has been her caregiver for five years.

The CV learns that the woman believes that "family" is not solely limited to someone who is biologically related and that she can create her own family. Unless the CV understands the woman's values and beliefs, the CV risks mistaking the woman's choice for incapacity.

## Interview Notes

In the sealed CV report, the CV provides the court with a summary of the interview with the respondent. The court values direct quotes of the respondent. Some CVs can remember the substance of their conversation with the respondent without taking notes during the interview and believe that notetaking interferes with communication. Other CVs prefer to take notes and refer to their notes when writing the report. (Remember that a party or the court may request copies of your documents, meaning you may have to make available for review.)

## Common Causes of Impaired Capacity

When communicating with the respondent, the CV may encounter a person affected by one or sometimes by an array of circumstances, including physical, mental and emotional disabilities. The CV must try to objectively assess the impact of these disabilities on the respondent's ability to function.

The following is intended to provide a non-exhaustive overview of some of the most common impairments the CV may encounter. It is important to remember that most of these disorders do not occur independently or in isolation. The majority of the cases involve persons who have multiple medical/health conditions, psychological/mental health conditions and complicated psychosocial situations that affect their functions. Socioeconomic status, education, prior life experience, current support system and many other factors can have a significant impact on the functioning of the respondent.

According to 2020 National Alliance of Mental Illness data, in a given year, 52.9 million adults experience mental health condition in a given year. (Nami.org/mhstats)

- 1 in 5 adults in America experience a mental health condition.
- Nearly 1 in 20 adults in America live with a serious mental health condition.
- One half of all chronic mental health conditions begin by the age of 14; three-quarters by the age of 24.
- Approximately 17 million adults have co-occurring mental health and substance use disorders.

It is not the responsibility of the CV to diagnose the respondent. To diagnose a mental health disorder, the person has to discuss their symptoms with a licensed clinician. These brief descriptions are intended to familiarize the CV with the general characteristics, general residual capabilities, and general limitations relative to certain impairments. Several in-depth resources are available that provide extensive clinical descriptions of physical and mental health conditions.

Two commonly used resources are: The Diagnostic and Statistical Manual of Mental Disorders , American Psychiatric Association and The Merck Manual of Diagnosis and Therapy, Merck Sharp and Dohme Research Laboratories.

### **Neurocognitive Disorders**

Neurocognitive disorders is a term used to describe a cluster of symptoms, not a disease that causes those symptoms. Symptoms always include memory impairment accompanied by additional loss of cognitive function that is severe enough to interfere with normal activities of living. Other terms used previously, but are no longer useful, include “organic brain syndrome,” “senility” or “chronic brain syndrome.”

### **Reversible Disorders**

Reversible disorders may be caused by such conditions as anemia, urinary tract infection, hyperthyroidism, tumors, metabolic disorders, depression and the effects of medication.

### **Irreversible Disorders**

Neurocognitive disorders can also be caused by a variety of conditions, including Alzheimer’s Disease, stroke (which may cause multi-infarct dementia or vascular dementia), AIDS, substance use disorder and Parkinson’s Disease.

A professional medical evaluation is necessary to determine the cause of any mental health condition.

Many times, people with neurocognitive disorders become angry or agitated because they do not understand what is expected of them. At other times, they may be frustrated with their inability to make themselves understood.

In the early stages of a dementing condition, people may have trouble finding the words to express thoughts or may be unable to remember the meaning of simple words or phrases, but these conditions are usually minor inconveniences or frustrations. The later stages of illness may be much more difficult with language skills impaired, resulting in nonsensical, garbled statements and great difficulty in understanding.

### **Mental Health Disorders**

Mental health disorders are defined in RCW 71.05.020(39), the involuntary commitment statute, as “Any organic, mental or emotional impairment which has substantial adverse effects on a person’s cognitive or volitional functions.”



The mental health disorders described below constitute syndromes that often lead to guardianship/conservatorship proceedings. Some of these mental health disorders are chronic in nature and result in frequent or lengthy psychiatric hospitalizations and/or require long term treatment and support to maintain stability in the community.

Mental health professionals, such as psychiatrists, psychologists, physician assistants, nurses, social workers working with psychiatrists and psychiatric advanced registered nurse practitioners should be consulted if additional diagnostic and treatment information is required. Many people with mental health disorders successfully manage their own affairs.

The CV should not assume that an individual needs a guardianship/conservatorship based solely on a medical diagnosis. See 11.130.265(3) and RCW 11.130.360(4). The use of a Mental Health Care Directive, a less restrictive alternative, should be analyzed in situations where recurrent episodes of mental health disorders create the need for intervention.

### **Anxiety Disorders**

Occasional anxiety is a normal part of life. Anxiety disorder is feeling of worry and fear of a real or perceived threat that does not go away and can get worse over time. Anxiety can interfere with functions of normal daily life and affect relationships.

Anxiety disorders are the most common mental health disorder in America. In 2020, an estimated 19.1 percent of adults (about 48 million people) in the U.S. had an anxiety disorder. Symptoms of anxiety disorders can become chronic and debilitating if not treated. (NAMI, 2020)

### **Types of Anxiety Disorders**

- Generalized anxiety disorder
- Panic disorder
- Social anxiety
- Phobias



### **Generalized Anxiety Disorder**

Generalized anxiety disorder is a disorder characterized by excessive or exaggerated worry about several aspects of life, such as work, social relationships or financial matters. Individuals with GAD often expect the worst even when there is no obvious reason for concern. GAD is typically diagnosed when the individual finds it difficult to control worry on more days than not for at least six months and has three or more symptoms. Symptoms include difficulty concentrating, fatigue, exhaustion, irritability, muscle tension, nausea, restlessness and sleep problems.

### **Panic Disorder**

Panic disorder is debilitating anxiety and fear arising frequently and without known reason, but more frequently triggered by fear-producing events or thoughts. This disorder is characterized by recurrent, unexpected panic attacks, which are brief episodes of intense fear with symptoms such as racing pulse, shortness of breath and trembling. Often, mistaken for a heart attack, a panic attack causes powerful physical symptoms. Panic attacks can last for a few seconds to several minutes. Because people suffering from panic attacks experience distress during such attacks, they often are worried and anxious about suffering from future panic attacks.



### ***Post-traumatic Stress Disorder***

Post-traumatic stress disorder is a disorder that develops in some people who experience a shocking, scary or dangerous event. Individuals who have been diagnosed with post-traumatic stress disorder find themselves re-experiencing an extremely traumatic event to which they have been exposed either directly (e.g., war-time combat) or indirectly (e.g., witnessing a murder). In the aftermath, the affected individual avoids situations or people that may trigger unwanted memories. Fear triggers many changes in the body to help defend against danger or avoid it. This is known as fight, flight, freeze or fawn reaction.

Nearly everyone will experience a range of reactions after trauma and most people recover from the initial symptoms naturally over time. Those who continue to experience symptoms may be diagnosed with PTSD.

Additional symptoms may include intrusive memories, including flashbacks, disassociation, hyper vigilance including being startled very easily, insomnia, angry outbursts and impaired concentration.

### ***Obsessive-Compulsive Disorder***

Obsessive-compulsive disorder is characterized by repetitive, unwanted, intrusive thoughts (obsessions) and irrational, excessive urges to do certain actions (compulsions). Hoarding behaviors, or pathological collecting, such as accumulating stacks of old newspapers that almost fill an entire

room or saving innumerable jars and cans so that access to the household is nearly blocked, can be evidence of an obsessive-compulsive disorder.

Each person with OCS may experience symptoms differently.

Obsessions may include: Thoughts about harming or having harmed someone, doubts about having done something correctly, unpleasant sexual images, fears of saying or shouting inappropriate things in public.

Compulsions may include: Hand washing due to fear of germs, counting and recounting money because a person is sure they added incorrectly, checking and rechecking to see if a door is locked or a stove is off.

### ***Bipolar Disorder***

Bipolar disorder causes unusual shifts in a person's mood, energy and ability to function. Bipolar disorder is a chronic and generally life-long condition with recurring episodes of mania and depression that can last from days to months. Generally, these mood changes happen in cycles. The manic mental state is characterized by rapid speech, grandiosity, loose association of thoughts, hyperactivity, boundless energy, severe insomnia, occasional weight loss and exhaustion. Between episodes of mania the person may be normal or depressed. Some individuals with this condition may be highly productive during mild manic episodes but may lose an objective perspective for decision making as the manic state increases in severity. Thinking can become psychotic with delusions and hallucinations. Individuals experiencing psychotic symptoms generally are hospitalized involuntarily because they lack the judgment to make logical decisions about their care.

Suicidal thinking and suicide attempts are almost twice as likely with bipolar disorder than those living with depression alone.

### ***Depression***

Depression is a serious, but treatable mood disorder that involves the body, mood and thoughts. It affects the way the person eats and sleeps, feelings about self and the way the person thinks about things.



Depression is not the same as a passing sad mood. It involves serious symptoms that last for at least several weeks and make it difficult to function normally.

### **Mood Impairment**

Feeling low, blue, uninterested in previously enjoyed activities, hopelessness, helplessness and apathy. May exhibit poor self-care, poor work performance with alcohol and/or drug use for purposes of self-medication.

### **Thinking Impairment**

Confusion, decreased concentration and memory, rumination, poor problem solving and recurrent thoughts of death or suicide.

### **Physical Impairment**

Change in appetite, increased or decreased sleep, low energy and fatigue, agitation, or reduced motor activity and increased physical complaints.

### **Schizophrenia and Schizoaffective Disorder**

**Schizophrenia** is a serious mental health disorder that interferes with a person's ability to think clearly, manage emotions, make decisions and relate to others. It is a complex, long-term medical condition, affecting about one percent of Americans. Although schizophrenia can occur at any age, the average age of onset tends to be the late teens to early 20s for men, and late 20s to early 30s for women.

People with schizophrenia typically have phases of acute onsets of the disorder and periods of stability. The acutely psychotic phase, when the person may have lost touch with reality, is a time of great turmoil for the individual and for family, friends and support providers. In the stable phase, they can often live independently without assistance. However, the person in the stable phase still has limitations and unrealistic expectations that can be a source of stress. The fact that despite the disorder, an individual is coping with daily life does not necessarily mean the person can hold a full-time job or get along without support services.

Minor to moderate amounts of stress can lead to severe anxiety or loss of contact with reality. There is difficulty with interpersonal relationships and a tendency towards withdrawal, excessive dependency, lack of motivation, energy and coping skills. A propensity, when stressed, is to lose touch with reality and to develop symptoms of delusions - people may believe that they are controlled by the television or that they are famous historical or religious figures. Other characteristic symptoms include hallucinations, disorganized speech and flat or inappropriate affect.

**Schizoaffective disorder** is similar but includes depressive or manic symptoms in addition to those described above.

Treatment and support services for people with chronic mental health disorders are closely related to the phases of the disorder. When people are experiencing acute psychotic symptoms, an increase in the level of supervision and support services may be necessary. This may include the need for an increase in the level of medication. In some cases, hospitalization will be needed.

In many cases, a strong community support program can deliver necessary support even in the acute phase of the disorder, avoiding disruption in living arrangements, activities and relationships. People who are in the non-acute phase of the disorder can effectively be helped to maintain stability through medications and community support programs. The need for long-term institutional care can be avoided with a good community program that provides necessary support.

However, good community support must be thought of as a long-term program, not a “cure.” Although schizophrenia was once thought of as uniformly producing deterioration, many people who have had good support to retain skills and to hold their lives together show significant improvement as they grow older. Medication, sheltered living if needed, supervised day treatment, life skills training programs if needed, and psychiatric treatment, counseling, and case management are often beneficial to the ongoing care and treatment of the person.

*Note:* This is a very short summary of complex issues. Recognize your own limitations rather than diagnosing the respondent based on limited acquaintance with them.



### ***Developmental and Cognitive Disabilities***

Developmental disability is defined in RCW 71A.10.020(6) as:

[A] disability attributable to intellectual disability, cerebral palsy, epilepsy, autism or another neurological or other condition of an individual found by the secretary to be closely related to an intellectual disability or to require treatment similar to that required for individuals with intellectual disabilities, which disability originates before the individual attains age eighteen, which has continued or can be expected to continue indefinitely, and which constitutes a substantial limitation to the individual. By June 30, 2025, the

administration shall promulgate rules to further define developmental disability without the use of intelligence quotient scores.

The categorical nature of this definition as defined by the statute makes it exclusive rather than inclusive. For example, in Washington, persons with traumatic brain injury, cystic fibrosis, spina bifida, narcolepsy, tuberous sclerosis and numerous other disabling conditions are ineligible for services developed for persons with developmental disabilities unless they also happen to have one of the disabilities included in the statutory definition provided above.

It is important to remember that people with a cognitive or developmental disability remain the experts on themselves. Having a disability does not mean that the person is not aware of their own preferences, wishes, likes and dislikes. When someone communicates other than verbally, it is important to take extra time to understand their preferences. This can be done by learning more about a person, what things are important to them based on observation, non-verbal interaction and by talking to those people who support the person in life.

Common Developmental Disabilities include:

**Autism spectrum disorder and autism** are general terms for a group of complex disorders of brain development. Generally, ASD is characterized in varying degrees by difficulties in social interaction, verbal and non-verbal communication and repetitive behaviors. Persons with ASD can experience significant behavioral disturbances such as emotional outbursts, restless behavior and visible distress when they encounter stress. Some common characteristics might include extreme withdrawal, communication problems (delayed or absent speech, unusual speech rhythms), unusual way of relating to surrounding people and things and repetitive movements (hand twisting, prolonged rocking, spinning, or head banging).

**Cerebral Palsy** refers to a group of disabling conditions caused by damage to the central nervous system. “cerebral” refers to the brain, while “palsy” describes lack of muscle control that is often (but not always) a nervous system symptom. It may be caused by problems during gestation or birth, or it may occur from an accident, lead poison, illness or other factors. Four main descriptions of cerebral palsy are:

1. Spastic, the most common type, which results in tense, contracted muscles.
2. Athetoid, which is characterized by constant uncontrolled movements.
3. Ataxic, which is typified by poor sense of balance and depth perception.
4. A combination of the above.

The effects of cerebral palsy depend on the extent and location of the damage to the brain. One or more of the following conditions may occur: seizures; problems in vision, hearing or speech; abnormal sensation or perception; intellectual disability; and/or impairments in arm and leg movement. Cerebral palsy may be mild or severe, thus the range of capabilities varies widely depending on the individual’s condition.

**Epilepsy** is a condition that is the result of sudden disturbances of brain function that may be manifested as episodic impairment or loss of consciousness. Epilepsy is typically controlled with medication and is not necessarily a debilitating condition. Seizures become problematic and can impair an individual’s ability to function when medication therapy does not control the seizures.

**Intellectual disability /Intellectual and developmental disabilities** involves general mental abilities that affect functioning in two areas: Intellectual functioning (such as learning, problem solving, judgement), and adaptive functioning (activities of daily life such as communication and independent living. Although people with ID/IDD are capable of learning and growing, they are likely to learn more slowly than other people. Individuals with ID/IDD may need to have simple tasks, such as putting on a shirt, broken down into steps and taught one at a time. They may have greater difficulty retaining

and recalling information and may need special cues or reminders about when to do a particular activity. They may lack judgment and insight and may require advice and guidance (or a substitute decision maker) when making complex choices. Because of communication and social challenges, isolation and negative stereotypes, people with ID/IDD may need special support to develop and maintain positive relationships with other people. In some cases, they may need long term supervision and support to carry out daily living activities and to engage in productive work. However, there is overwhelming evidence that a program of habilitation can work and that everyone, no matter the degree of severity of ID/IDD, is capable of growth and development if given adequate and suitable treatment.



### **Substance Use Disorder**

Substance use disorder is a disease that affects a person’s brain and behavior. Drug addiction is clinically referred to as substance use disorder. A person with SUD has an inability to control their use of substances despite negative consequences. Substances hijack the brain. SUD is a chronic, treatable disease similar to other diseases such as diabetes or cancer.

Previously, the DSM identified two separate substance use or related disorders (substance abuse and substance dependence). The DSM-V-TR combined these two disorders, and they are now referred to as substance use disorders. Each substance is a separate disorder – for example, a person could have an alcohol use disorder or a

stimulant use disorder, or both. A person can have more than one substance use disorder at a time. All SUDs use the same criteria for diagnosis. It is not the CVs responsibility to diagnose a substance use disorder, and not everyone who uses a substance is diagnosed with a disorder. Behavioral health professionals use criteria from the most current DSM to diagnose and classify a SUD and the severity.

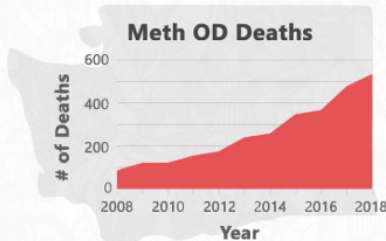
According to the 2020 National Survey on Drug Use and Health, among people aged 12 or older, 58.7 percent (or 162.5 million) people used tobacco, alcohol or another substance within the month prior to the survey.

Each SUD has varied characteristics and treatment options. Each SUD has varied symptoms of use, withdrawal or overdose.

When working with people with SUD, it is important to be aware of stigma and the role it plays in SUDs. Recognize the importance of challenging the beliefs and destigmatizing SUD. Communicate in a person-centered way, considering the language used to improve experiences, empower and reduce harm for the people you encounter.

Stigmatizing language can have a harmful and negative effect. When talking with people with SUDs and others, use non-stigmatizing language. This language must reflect an accurate, science-based understanding of SUD. Let the individual choose how they want to be described. Avoid language that has negative meanings. For example, instead of saying "addict", say "person with a substance use disorder". Other words to avoid: addict, user, substance or drug abuser, junkie, alcoholic, drunk, former addict, reformed addict.

## Meth Overdose: Know When to Get Help



Meth deaths have **increased 600%** in the last decade in WA State.

Learn more at [stopoverdose.org](http://stopoverdose.org)



### Watch for these danger signs:

- Super fast heart rate (2-3x faster than normal)
- High body temperature (sweating or hot, dry skin)
- Really painful headache
- Chest pain or tightness
- Can't walk or move
- Won't wake up
- Can't feel arms or legs
- Seizure or shaking you can't control



### Call 911:

If you see these signs, **call 911** or get medical help right away!

The **Good Samaritan Overdose Law** protects you and the victim from prosecution for drug possession.



Washington  
Recovery Help Line  
24-Hour Help for Substance Abuse, Problem Gambling & Mental Health  
1.866.789.1511

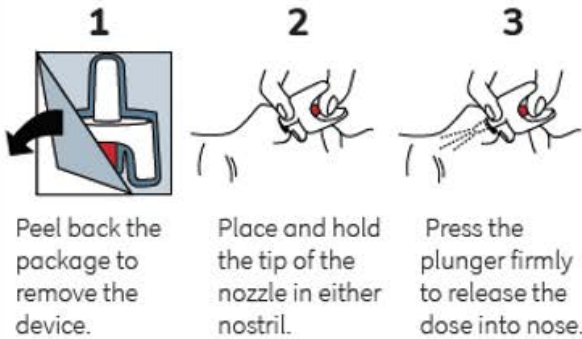
**Want help to cut down your meth use?**  
Call the Washington Recovery Help Line at 1.866.789.1511

**ADAI** UNIVERSITY of WASHINGTON

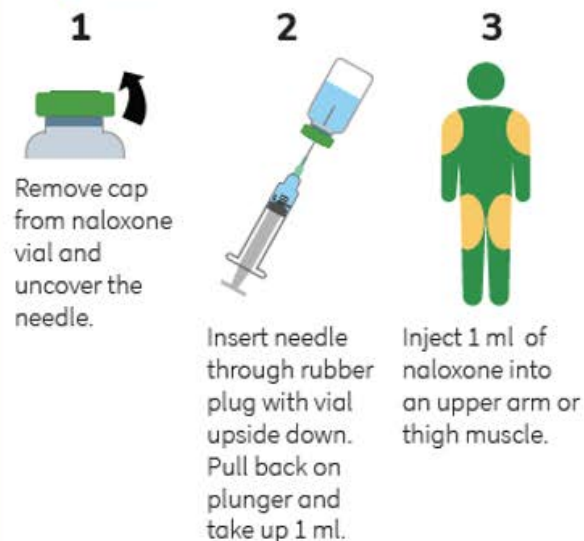


## How to use Naloxone

**Nasal spray** — needs no assembly. Do not test the device. Each device only works once. You may need both devices.



**Injectable** — This requires assembly.



### Rescue Breathing

1. Lay the person flat on their back.
2. Gently tilt their head. Pinch their nose.
3. Give 2 quick breaths into their mouth. The chest (not stomach) should rise.
4. Give 1 slow breath every 5 seconds until they start breathing or wake up.



## Responding to an Opioid Overdose:

During an opioid overdose, breathing can stop in a matter of minutes. Knowing the steps to act **FAST** and increase oxygen could help save a life.

### 1. Check for a response

**Shake them and call their name**, rub your knuckles hard over their chest bone — perform the sternum rub for 10 seconds as hard as possible.

### 2. Call 9-11

**Tell the operator that someone isn't breathing and your exact location.** You do not have to say anything about drugs or medicines at the scene. The WA State Good Samaritan Law offers protections when you call 9-1-1 for an overdose (RCW 69.50.315).

### 3. Give naloxone

### 4. Start rescue breathing

### 5. Repeat steps 3 & 4 if no response

### 6. You may need to give a second dose if they don't respond after 3 minutes

### 7. Stay with them until help arrives

**Wait with them if possible until help arrives.** If you can't wait, roll them into the recovery position in a safe place where they can be found.

If the person starts breathing, but they do not wake up, roll them on their side in the recovery position.

A person who received naloxone might be agitated, in pain, or experiencing withdrawal symptoms. Keep them from using drugs. Remember, naloxone wears off in 30-90 minutes, after which they could overdose again.

Prevention, early intervention and treatment for substance use is available and, if applied, can interrupt the negative consequences of substance use disorder.

The service system today includes services and treatment for substance use disorder and mental health disorders under the umbrella of "behavioral health". This is because people often require treatment for co-occurring conditions.

## **Other Impairments**

There are varying and numerous physical and mental conditions that can lead to impaired functioning. In order to assess capacity and the availability of support for the respondent, the CV must have a basic understanding of the disability.

A disease or disability has certain identifiable symptoms, but the acuity and impact on individuals varies greatly. Sometimes diseases progress in a predictable manner, sometimes not. Sometimes individuals have access to assisted technology, daily living support and medical treatments that can lessen the impact of the impairment, and sometimes not. In learning about these impairments and the resources that are available to support respondents, CVs should always bear this in mind. Each respondent is an individual, and the extent and prognosis of their impairment varies.

The following impairments are representative of some of the more common conditions that may lead to guardianship/conservatorship proceedings:

### **Multiple Sclerosis**

Multiple sclerosis is a chronic neurological disease in which the myelin sheath, the coating or insulation around the message-carrying nerve fibers in the brain and spinal cord, is attacked. Where myelin has been destroyed, it is replaced by plaques of hardened tissue (sclerosis); this occurs in multiple places within the nervous system. When any part of the myelin insulation is destroyed, nerve impulses to the brain are interrupted and distorted. Symptoms vary greatly depending upon where in the central nervous system (brain and spinal cord) the sclerosed patches are formed. Persons with severe physical disability caused by MS may retain intact intellectual functioning.

### **Parkinson's**

A slowly progressive disorder without a known cause. It relates to physical function, but in older people is often associated with mental decline. Manifestations of the disease may include tremors (mainly at rest), slowness of movements, gait disturbance and stiffness of neck and extremities. Depression is frequently observed in Parkinson's disease.

### **Stroke**

Stroke is a generic term used to include cerebral vascular accidents caused by thrombosis, cerebral hemorrhage, embolism to the brain and aneurysm. "Stroke survivor" is the appropriate term to use when referring to this population. Stroke occurs when there is an interruption of the blood flow to the brain causing temporary or permanent damage to brain cells. Generally, only one side of the brain is damaged and functioning on the opposite side of the body may be affected. Impairment can range from minor difficulties such as limb weakness to total paralysis, speech difficulties, poor judgment, seizures and short-term memory, among other deficits.

### **Traumatic Brain Injury**

Traumatic brain injury refers to a sudden insult or damage to the brain or its coverings that results when the head is hit, strikes a stationary object or is shaken violently (as in some whiplash injuries), i.e., the injury is caused by an external physical force. The brain itself may or may not be penetrated from the outside. When the brain is penetrated from the outside (e.g., a bullet wound), the injury is called an open head injury. Closed head injury usually results when the brain itself is not penetrated but is violently shaken within the skull. The injury may result in temporary or permanent impairment.

TBI can produce symptoms that vary greatly depending upon the extent and location of the brain injury. OHI are usually located at a focal point in the brain, resulting in specific problems. For example, the person may have trouble forming speech, but have no problem writing those words on paper. CHI causes damage to nerve fibers in the brain stem (the part that connects the spinal cord to the brain) through which all messages to and from the body are sent. Consequently, CHI may cause multiple problems physically, intellectually, socially, emotionally and vocationally.

TBI impairments are grouped into three major categories:

**Physical**, such as speech, vision, hearing and other sensory impairments; headaches; lack of coordination; spasticity of muscles; paralysis of one or both sides; and seizure disorders. The two most common are the potential for seizures and decreased tolerance for alcohol and other substances.

**Cognitive**, such as memory deficits, short and long term; concentration; slowed thinking; attention; perception; diminished communication, reading and writing skills, planning; sequencing; and judgment. Cognitive deficits are more troublesome than physical deficits in rehabilitation.

**Psycho-Social-Behavioral-Emotion**, such as fatigue, mood swings, denial, self-centeredness, anxiety, depression, lowered self-esteem, sexual dysfunction, restlessness, lack of motivation, inability to self-monitor, difficulty with emotional control, inability to cope, agitation, excessive laughing or crying and difficulty relating to others. A combination of psychosocial impairments reflects a changed personality. Impairments can occur in any combination of the categories listed above and with varying degrees of severity, which makes TBI a very pervasive concern.

People with TBIs may be intellectually intact adults and children who have difficulty with memory, attention, etc. Therefore, communicating with them in a manner that respects their individuality and competence is critical. However, because of difficulties with memory and information processing speed, it is best to check to make sure that what you are saying is what the person is perceiving and understanding. You may also suggest that information that has to be remembered is written down, or you can summarize your meetings in a follow-up letter.

### **Transient Incapacity**

The CV should remember that capacity is not necessarily static. A change in the environment may affect capacity, or the individual's skill may improve with treatment, training and greater exposure to a particular type of situation or with the passage of time.





Capacity is also an interactive concept influenced by the demands of the environment as well as the skills of the individual. For example, two people may possess the same level of ability, but the living arrangements of one may require more self-reliance or their finances may be more difficult to manage. The presence or absence of sources of social support such as relatives, friends or supportive agencies may enhance or frustrate the respondent's ability to function and create greater or lesser demand for self-management skills. Thus, one person may meet the standard of "able to care for self," or "able to care for property," while another person with the same level of ability may not meet the standard.<sup>3</sup>

The CV should assess the availability of opportunities to develop capacity, and also the availability of support in daily living.

<sup>3</sup>Stephen J. Anserer, Determining Competency in Guardianship Proceedings, American Bar Association Division for Public Services 23 (1990). Reprinted with permission.

## Example Scenarios

**Disclaimer.** The information provided in this section was edited by people without specific medical background or training. During a CV’s investigation, if issues addressed in this chapter arise, the CV is encouraged to consult with the respondent’s medical provider or other qualified professional.

David	
	<p> <b>Age:</b> 20 <b>Gender:</b> Male <b>Pronouns:</b> He/him</p> <p> <b>Medical considerations:</b></p> <ul style="list-style-type: none"><li>• Developmental disability</li><li>• Intellectual disability</li></ul> <p> David is the 20-year-old son of a close family living in Seattle, and lives at home. His father has passed away, he has a brother. He has a DDA case manager. His mother does not want to continue to manage his money and is concerned about his future.</p>

He has a developmental disability and intellectual disabilities. He will graduate at 21 from high school. He knows how to read and write his name but has very limited literacy. He does not know how to manage his money. He has worked part time at Target for 6 months. The petition nominates his brother as full guardian.

The CV noted that he has a strong support system including his brother, teachers and his workplace. CV also noted that despite his significant intellectual disability, David has opportunities to continue to learn and grow and develop capacities.

While David does not know how to manage money, he is interested in learning. CV asked his mother about this, and she said she is willing to continue to be his payee until someone else can be identified. CV knows of a program at the local Arc that can act as payee. David also has the potential to learn skills that will enhance his capacity significantly- through his special education program and the Arc payee program, which helps participants learn to manage money.

### Quick Tip:

Guardianship and Transition-Age Special Education YouthParents of youth with intellectual/developmental disabilities are frequently told by school staff that they must get a guardianship when their son or daughter turns 18 or they can’t participate in special education planning. This is not true – parents can continue with the individual education planning through alternatives, including power of attorney. See WAC 392-172A-05135(1)(b) and (6); 34 C.F.R. § 300.520(a).

## Cara



**Age:** 26

**Gender:** Female

**Pronouns:** They/them

**Location:** Homeless



**Medical considerations:**

- Developmental disability
- Intellectual disability



Cara is 26, homeless and has developmental disabilities that result in them having the same intellectual capacities as David.

They have very different situation than David. They do not have any public benefits, SSI or DDA eligibility and they are staying at a shelter. A shelter case manager made a referral to the Office of Public Guardianship and filed a guardianship petition.

CV noted that Cara has little or no apparent and positive support system and currently no opportunities to develop their skills and capacity to manage their own affairs.

## Ulysses



**Age:** 79

**Gender:** Male

**Pronouns:** He/him

**Location:** Assisted Living Facility



**Medical considerations:**

- Progressive dementia



Ulysses lives in an assisted living facility. The manager filed a petition when she noticed that Ulysses' capacity to give consent is declining due to progressive dementia.

His physician says the dementia appears to be progressing and likely to result in much more serious loss of capacity within months.

CV noted that while he has lost some capacity, he retains capacity to understand what it means to appoint an agent, and that he has family in the area.

CV was told by two family members that they are willing to help in any way they can. They had been contacted by the manager when the petition was filed.

Reversible symptoms of incapacity may be caused by dehydration, infection or by adverse reactions to medications. Relatively benign medications may have adverse effects in some elderly patients. A helpful and informative booklet entitled Medication Awareness.

Handbook for Older Adults has been published by the Northwest Regional Council, Northwest Washington's Area Agency on Aging, in Bellingham. Requests for the publication can be made at [www.nwrcwa.org](http://www.nwrcwa.org) or by calling (360) 676-6749 or (800) 585- 6749.

## Checkpoint

Read the statements below. Select true if the statement contains information that must be shared with the respondent.

**1. Inform the respondent of rights and determine which, if any, the respondent chooses to exercise.**

- a. True
- b. False

**2. Inform recommendations that include attention to the CV's preferences, choices and attitudes that the CV learns from their investigation.**

- a. True
- b. False

**3. Inform the right to be represented by a lawyer of your own choosing. The court will appoint a lawyer to represent you if you are unable to pay or payment would result in a substantial hardship to you.**

- a. True
- b. False

**4. Inform the right to ask the court to establish a protective arrangement instead of guardianship or conservatorship.**

- a. True
- b. False

**5. Inform the respondent that there is no confidentiality between the CV and the respondent or any party.**

- a. True
- b. False

**6. Inform the respondent that the commissioner or CV is the final decision-maker. This is often a good place to start the interview.**

- a. True
- b. False

Chapter 3 checkpoint answers: a, b, a, a, b, b



## CHAPTER 4: Professional Evaluation

### Learning Objectives:

The learner will

- Identify key topics and issues that a professional evaluation must address.
- Recognize appropriate responsibilities of the CV in response to the evaluation.

### Obtaining a Professional Evaluation

In most cases, when a petition for guardianship/conservatorship has been filed and the court has appointed a CV, the court will also order a professional evaluation of the respondent. (RCW 11.130.290 and RCW 11.130.390).

RCW 11.130.290 and 11.130.390 require the CV to obtain a professional evaluation from a licensed physician, a licensed psychologist, a licensed advanced registered nurse practitioner or a licensed physician assistant (the “examiner”). The examiner must not have a conflict of interest or be advantaged or disadvantaged by a decision to grant a guardianship/conservatorship. Care should be taken to verify that the examiner signing the report has the required credentials.

If the respondent opposes the examiner chosen by the CV, the CV shall obtain a professional evaluation from an examiner chosen by the respondent. (RCW 11.130.290 and RCW 11.130.390). After receiving an evaluation from the examiner chosen by the respondent, the CV may obtain a supplemental evaluation from a different examiner.

Note: A professional evaluation is not required in minor guardianships/conservatorships and in adult conservatorships where the petition alleges that the respondent is missing, detained or unable to return to the United States. (RCW 11.130.390(5)).

If the respondent declines to participate in the professional evaluation, the court may proceed with the hearing on the guardianship/conservatorship if the court finds that it has sufficient information to determine the respondent’s needs and abilities without the evaluation. (RCW 11.130.290(4) and 11.130.390(4)).

## Mandatory Topics for Professional Evaluation

RCW 11.130.290(3) and RCW 11.130.390(3) identify the following issues or topics that the professional evaluation must address in a petition for guardianship/conservatorship of an adult:

1. The name, address, education, and experience of the examiner.
2. A description of the nature, type and extent of the respondent's cognitive and functional abilities and limitations. [When under a petition for conservatorship, it shall also include the abilities and limitations with regard to the management of the respondent's property and financial affairs.].
3. An evaluation of the respondent's mental and physical condition and, if appropriate, educational potential, adaptive behavior and social skills.
4. A prognosis for improvement.
  - a. When the petition is for a guardianship, the evaluation shall also include a recommendation for the appropriate treatment, support or habilitation plan.
  - b. When the petition is for a conservatorship, the evaluation shall detail the prognosis for improvement with regard to the ability to manage the respondent's property and financial affairs.
5. A description of the respondent's current medications, and the effect of the medications on their cognitive and functional abilities.
6. Identification of persons with whom the examiner has met or spoken regarding the respondent.
7. The date of the examination(s) of the respondent.



## Patient/Client Privilege in Guardianship/Conservatorship Proceeding

The UGA does not specifically create an exception to physician/patient privilege like the now repealed RCW 11.88.045 and RCW 11.88.090 did; however, as mentioned above, a respondent can decline to participate in a professional evaluation. (RCW 11.130.290(4) and 11.130.390(4)).

The examiner may be hesitant to release medical information to the CV because of the fear of violation of the federal law governing confidentiality of medical records. Health Insurance Portability and Accountability Act, 45 CFR Part 160 and 164, otherwise known as HIPAA. Under RCW 11.130.290 and RCW 11.130.390, the court shall order an evaluation, so theoretically the order appointing the CV should provide some authority for the CV to obtain the respondent's protected health care information. Alternatively, some counties may include a provision in the Order Appointing Court Visitor that explicitly authorizes the CV to information otherwise protected under HIPAA. If the Order appointing a CV does include such explicit authority, the CV should direct the evaluator to such provision as part of the request.



## Time Frame for Professional Evaluation

When the appointment of a guardian is being sought, the examiner who prepares the professional evaluation must provide the evaluation to the CV within 30 days of the examination of the respondent. (RCW 11.130.290(3)). Then the CV shall file the evaluation in a sealed record with the court.

When the appointment of a conservator is being sought, RCW 11.130.390(3) only provides that an evaluation shall be promptly provided to the CV and the CV must then file the report in a sealed record with the court.

The CV must ensure that the professional evaluation in guardianship matters is completed within 30 days of the evaluation. If this requirement is not satisfied, the court will likely reject the professional evaluation and the hearing on the petition seeking the appointment of a guardian/conservator may be delayed. Upon receipt of a professional evaluation, the CV should always check to confirm that the report meets important statutory requirements.

## Including the Examiner's Curriculum Vitae

The most efficient way to secure information about the examiner's background and experience is to request that the examiner include with the professional evaluation a curriculum vitae or resume.

## Level of Detail of Professional Evaluation

It is important for the CV to consider whether the evaluation as furnished contains all the mandated information and will be of assistance to the court and parties. If the evaluation is not sufficiently detailed or informative, it is appropriate for the CV to ask the examiner to supplement the evaluation.

Among other things, it is helpful that the evaluation specifies whether the examiner is the respondent's treating physician. It is also helpful to summarize the history of the relationship between the examiner and the respondent, and for the examiner to include references to or copies of the opinions provided by any specialists (such as psychiatrists, physical or occupational therapists, etc.) who have treated the respondent.



An effective professional evaluation should identify the diagnosed conditions, diseases or disabilities that affect the respondent. The evaluation should also contain information about the respondent's symptoms sufficient to answer basic questions that the court and parties may have, including:

1. What are the symptoms manifested by the respondent and when did those symptoms first appear?
2. Was there a single precipitating event, or have the symptoms progressively worsened?
3. Are the symptoms present constantly or do they appear on a sporadic basis?
4. To what extent are the symptoms of cognitive decline caused by reversible factors, such as:
  - a. Medication (or a lack of medication or a need to adjust medication). Some medications can cause lethargy, confusion, forgetfulness, uncontrollable body movements and other symptoms. In some cases, the respondent may not have been complying with the prescribed medication regime, resulting in a reappearance

or exacerbation of symptoms. In other cases, medications may simply need to be adjusted. Sometimes a change in the medication regime may result in a marked improvement in the respondent's symptoms and ability to function.

- b. Inadequate nutrition and/or hydration. Inadequate nutrition and hydration can cause confusion, forgetfulness, hair loss, agitation, impaired reasoning and other symptoms. A lack of vitamins or certain minerals can cause severe cognitive and memory impairment or lead to symptoms that may resemble severe apathy and depression. When balance is restored, cognitive functioning may improve.
- c. Mental health disorders. For example, depression can cause insomnia, psychomotor agitation, fatigue, diminished ability to think or concentrate, indecisiveness and other symptoms.
- d. Socioeconomic Factors, abuse, and abandonment. Abuse, physical, sexual, or emotional, can cause a person to act fearfully, become withdrawn, non-verbal, indecisive, dependent and passive. In addition to physical abuse, abuse can also include withholding medication or overmedicating an individual, isolating an individual or depriving an individual of opportunities to socialize and have human contact.

The professional evaluation should also discuss the prognosis for the respondent and answer questions such as:

1. What is the projected or anticipated duration of the disability or disorder?
2. Are the symptoms expected to remain constant over time?
3. Is the disability or disorder likely to become progressively worse? If so, what is the anticipated rate and the projected long-term impact on the respondent's functional capacity?
4. In the alternative, is the disability or disorder likely to improve over time? If so, what is the anticipated rate and the projected long-term impact on the respondent's functional capacity?
5. What is the anticipated course of future treatment?

## Securing the Professional Evaluation in a Timely Manner

There are times when the examiner fails to provide the professional evaluation in a timely manner. To avoid this situation, the CV should:

1. Immediately after the CV is appointed, ensure that care providers, family members or others make arrangements for the respondent to visit with an examiner.
2. Promptly send the examiner a respectful letter describing the guardianship/conservatorship process, stressing the critical importance of the professional evaluation and requesting the professional prepare the evaluation.
3. Provide a deadline for furnishing the evaluation well in advance of the scheduled hearing, since the CV report should be circulated and filed at least 15 days prior to the hearing on the petition seeking appointment of a guardian/conservator.
4. Send a form for the examiner to fill out so that the evaluation will cover each of the topics required by the UGA.
5. Check in with the examiner's office before sending the letter and professional evaluation form and maintain contact with their office.

The editors recommend asking an experienced CV or the county for a sample professional evaluation form.

## Flexibility in Arranging for Examination

There are also occasions when the respondent is unable or unwilling to leave their home or to visit an examiner's office. Under these circumstances, the CV may contact any number of clinics and agencies that offer programs through which an examiner will visit the respondent at their home or at locations other than a medical office or clinic.

## Payment for Examinations

At times (particularly when the examination is not covered by insurance), the examiner may request payment for conducting the examination. The CV should very clearly inform the examiner that the CV is not personally responsible for the costs of the examination. Arrangements for payment can either be made by others (including a care facility or family member) or the CV can raise the issue with the court through a properly filed and served petition for instructions.

## Respondent's Refusal to Participate in Examination

Occasionally, a respondent may refuse to participate in an examination arranged by the CV for the purpose of securing the professional evaluation.

As noted above, pursuant to RCW 11.130.290(4) and RCW 11.130.390(4), the court may proceed with the hearing to appoint a guardian/conservator if the court finds there is sufficient information to determine the respondent's needs and abilities without a professional evaluation.

If the respondent refuses to participate in the professional evaluation, the CV must include in the CV's report what information is otherwise available to determine the respondent's needs and abilities without the professional evaluation. (RCW 11.130.280(6)(e) and RCW 11.130.380(7)(c)).

If a court finds a professional evaluation is needed, a CV may seek a court order compelling the respondent to attend the examination. Under these circumstances, the best practice may require seeking the appointment of counsel for the resisting respondent.

Civil Rule (CR) 35(a)(1) provides in pertinent part that:

- The court.... may order a party whose mental or physical condition... is in controversy to submit to a physical or mental examination by a suitably licensed or certified examiner.

- The order.... may be made only on motion for good cause and on notice to all parties and the person to be examined; and must specify the time, place, manner, conditions and scope of the examination, as well as the person or persons who will perform it.

## Sealing the Report to Protect Privacy

Pursuant to RCW 11.130.290(3) and RCW 11.130.390(3), once the evaluation is received by the CV, the CV shall file the report in a sealed record with the court. The professional evaluation may contain highly sensitive information that should be protected from the public. GR 22(g) states personal health care records shall be automatically sealed by the clerk when filed with a sealing cover sheet. (The cover sheets are available at each local Clerks' Office.)

GR 22(b)(3) defines "Personal Health Care Record" as any record or correspondence that contains health care information that ... relates to the past, present or future physical or mental health condition of an individual. Only the cover page will be available for public viewing. Different counties may use a variety of methods for filing documents under seal. The CV must check the relevant county's local rules and procedures for filing sealed documents.

## Representative at Examination

There is case law holding that an individual subject to a medical examination as a result of involvement in legal proceedings has the right to record the examination and to have their attorney present during the examination. (Tietjen v. Department of Labor & Industries, 13 Wn. App. 86, 534 P.2d 151 (1975). CR 35(a)(2)) ("The party being examined may have a representative present at the examination, who may observe but not interfere with or obstruct the examination.").

## Checkpoint

Read the questions below. Select the answer that represents the best answer provided.

- 1. The CV is required to obtain a professional evaluation from a licensed physician, a licensed psychologist, a licensed advanced registered nurse practitioner or a licensed physician assistant (the “examiner”).**
  - a. True
  - b. False
  
- 2. A professional evaluation must address several issues or topics, including a prognosis for improvement.**
  - a. True
  - b. False
  
- 3. The CV must ensure that the professional evaluation in guardianship matters is completed within 60 days of the evaluation.**
  - a. True
  - b. False
  
- 4. What should an effective professional evaluation identify?**
  - a. Financial capacity and management skills.
  - b. Criminal history and legal background.
  - c. Diagnosed conditions, diseases or disabilities that affect the respondent.
  - d. All answers are correct.
  
- 5. In situations where a respondent is unable or unwilling to leave their home or visit an examiner’s office, what option is available for the CV to facilitate the examination?**
  - a. Require the respondent to provide a valid medical certificate for exemption.
  - b. Request the respondent to appear in court for the examination.
  - c. Contact clinics and agencies offering home or off-site examination programs.
  - d. All answers are correct.
  
- 6. Once the evaluation is received by the CV, what should the CV do?**
  - a. File the report in a sealed record with the court.
  - b. Protect highly sensitive information from the public.
  - c. Have personal health care records automatically sealed by the clerk with a sealing cover sheet.
  - d. All answers are correct.

Chapter 4 checkpoint answers: a, a, b, c, c, d



## CHAPTER 5: Further Investigation

### Learning Objectives:

The learner will

- Recall requirements and responsibilities of CVs when conducting interviews and investigations.
- Recognize the importance of assessing the appropriateness of legal arrangements based on clear criteria.

In addition to interviewing the respondent, any CV appointed for an adult must interview, at a minimum, the petitioner and the proposed guardian/conservator.

(RCW 11.130.280(5)(a), RCW11.130.320(11)(c)(i), RCW11.130.380(6)(a), and RCW 11.130.430(10)(e)(i)).

The CV is appointed by the court to investigate the allegations in the petition and any other matter relating to the petition that the court orders. (RCW 11.130.280(5)(d), RCW 11.130.320(11)(c)(iv), RCW 11.130.380(6)(d), RCW 11.130.430(10)(e)(iv), and RCW 11.130.605(6)(g)). This investigation, along with the interview of the respondent and any professional evaluation, will provide the basis for the recommendations in the CV's report.

This chapter covers the following:

1. Who must and should be interviewed by the appointed CV.
2. Explaining the CV role to interviewees.
3. Reviewing medical, financial and school records.
4. Investigating self-care and independent living tasks.
5. Investigating the appropriateness of guardianship/conservatorship.

6. Statutory qualifications of a proposed guardian/conservator.
7. Priority and appropriateness of a proposed guardian/conservator.
8. Visiting the respondent's dwelling.
9. Determining the existence of an emergency.
10. Co-guardians/conservators.
11. Guardians/conservators for married couples.
12. How the CV should document their investigation.



## Who Must and Who Should Be Interviewed by the CV

In addition to interviewing the respondent, the appointed CV must interview the following individuals when investigating a petition for guardianship/conservatorship and/or emergency guardianship/emergency conservatorship of an adult:

1. Petitioner.
2. Proposed guardian/conservator and/or emergency guardian/emergency conservator.

The CV is not statutorily required to interview the petitioner when investigating a petition for protective arrangement instead of guardianship/conservatorship, but it is hard to imagine a case

where this would not be advisable and necessary to properly investigate the allegations in the petition.

The UGA requires that all petitions for appointment of a guardian/conservator (including an emergency guardian/conservator or protective arrangement instead of guardianship/conservatorship) include the name and address of the respondent's spouse or domestic partner, or, if none, any adult with whom the respondent has shared household responsibilities with for more than six months in the twelve-month period immediately before the filing of the petition; adult children, or if none, the respondent's parent(s) and sibling(s) or if none, other nearest adult relative(s) who can be found with "reasonable diligence." RCW 11.130.270(2)(b), RCW 11.130.320.(2)(b), RCW 11.130.365(2)(b), RCW 11.130.430(2)(b), and RCW 11.130.595(2).

The UGA also requires the petitioner to identify the respondent's adult stepchildren who the respondent actively parented while they were children and with whom they have had contact within the last two years.

While there is no mandate to interview these individuals in the UGA, their inclusion in the petition suggests that they are relevant sources from which the CV should seek information. Often, these parties can be a vital source of information about the respondent's abilities and needs. How many of these individuals the CV interviews may depend on the complexity of the case and the degree to which agreement or disagreement exists within the family about the need for guardianship/conservatorship and who should serve as the respondent's guardian/conservator. As a safe rule of thumb, if the CV opts not to interview these individuals, it still may be helpful to identify them in the report and indicate why those interviews were deemed unnecessary. Also, if any individual who receives notice of the petition contacts the CV and wishes to discuss the petition, it is generally appropriate to speak to such person.

All petitions for appointment of a guardian/conservator, emergency guardian/conservator or protective arrangement instead of guardianship/conservatorship must also include the names and contact information of:

1. A person responsible for care or custody of the respondent.
2. Any attorney currently representing the respondent.
3. Any representative payee appointed by the Social Security Administration for the respondent.
4. A guardian or conservator acting for the respondent in this state or in another jurisdiction.
5. A trustee or custodian of a trust or custodianship of which the respondent is a beneficiary.
6. Any fiduciary for the respondent appointed by the Department of Veterans' Affairs.
7. An agent designated under a power of attorney for health care in which the respondent is identified as the principal.
8. An agent designated under a power of attorney for finances in which the respondent is identified as the principal.
9. A person nominated as guardian by the respondent.
10. A person nominated as guardian by the respondent's parent or spouse or domestic partner in a will or other signed record.
11. A person who is known to have routinely assisted the respondent with decision making during the six months immediately before the filing of the petition.

Again, the UGA does not require the CV to interview any or all of these individuals, but their expressed identification in the petition suggests the UGA contemplates these individuals being relevant to the investigation. In many cases, the same individual may be filling several of these roles, and they may overlap with the identified family members. Again, if the CV opts not to interview these individuals, it may be best to still identify them in the report and indicate why those interviews were deemed unnecessary.

In many guardianships/conservatorships, an interview of the above individuals will provide more than enough information to allow a CV to draft their report and make their recommendations. However, in some cases, it may also be useful to consider interviewing additional individuals:

1. In cases where the respondent is a young adult with disabilities who is still in high school, interviewing their teacher(s) or advisor(s) can be very useful.
2. In cases where family lives far away, local long-time family friends and/or neighbors may have more of a sense of the current capacities and needs of the respondent.
3. For those involved in a religious community, clergy may be useful to contact.
4. Financial planners, CPAs or other advisors may also have information about relevant issues.

Ideally, the CV would also interview those individuals that the respondent identifies as being good sources of information about their abilities and needs. This can help capture close friends who might fall outside the definitions of individuals required to be notified of and included in the petition. It might also capture individuals the petitioners are unaware of or whose relationship they define differently than the respondent.

## Explaining Role of CV to Interviewees

The UGA is silent about how the CV ought to explain their role to those other than the respondent. It would seem prudent for the CV to explain that they are appointed by the court to investigate the issues and are not employed by or representing any party. It is important that all parties understand that the CV only reports to the court and is not the ultimate decision-maker -- the CV's role is merely to conduct an investigation and to provide useful information to the court to help the court make an informed decision.



In prior case law, courts specifically found it improper for GALs to identify themselves as the “eyes and ears of the court.” In *re* Guardianship of Stamm, 121 Wn. App. 830, 91 P.3d 126 (2004). While this may not technically apply to a CV under the UGA, it is probably wise to stay away from this language and to be as clear as possible that the CV’s report will be one source of information among many that the court will rely upon to make its decision.

It is also important to make sure that all people being interviewed understand that, while CV reports are filed under seal, they are shared with the respondent, the petitioner and any other party granted access by the court. The CV cannot guarantee the confidentiality of materials shared with the CV as part of their investigation.

GALs operating under the old statute were governed by special court rules. While these have not been formally expanded to include CVs under the UGA yet, they should be followed by CVs. Such special rules made it clear that it is important for the GAL to inform all individuals contacted what the role of the GAL is and advise them that any information obtained may become part of the court record. GALR 2(k).

GALR 2(c-f) requires that the GAL treat all individuals with respect, courtesy, fairness and good faith; maintain independence, objectivity and appearance of fairness; and avoid any conflict of interest or even the appearance of a conflict of interest. Whether formally applicable to CVs or not, these are guidelines that should be followed by CVs in all of their interactions.

## Reviewing Medical, Financial and School Records

The UGA mandates that whenever appointed under a petition for guardianship/conservatorship, emergency guardianship/conservatorship, or protective arrangement instead of guardianship/conservatorship, the CV is required to “obtain information from any physician or other person known to have treated, advised or assessed the Respondent’s relevant physical or mental condition.” RCW 11.130.280(5)(c), RCW 11.130.320(11)(c)(iii), RCW 11.130.430(10)(d)(iii), and RCW 11.130.605(6)(e). This information can be obtained by requesting medical records or through interviews.

Of particular use might be any mental capacity evaluation, lists of current medications, and ADL assessments. If the respondent is a resident or patient in a care facility, it may be useful for the CV to review other records, such as the social file, patient log or care facility notes maintained in the respondent’s chart. If the medical situation of the respondent is particularly complex, the CV may feel it is necessary to have the medical records reviewed by professional third parties, such as mental health professionals or physicians. The CV should obtain court approval for a third-party review, particularly if a charge is anticipated for such a review.

A CV appointed under a petition for conservatorship or protective arrangement instead of conservatorship must review relevant financial





records if relevant to the CV's recommendation. RCW 11.130.380(6)(b) and RCW 11.130.605(6)(f). The easiest way to access financial records is to ask the respondent or petitioner to provide them. However, if the respondent refuses or is unable to provide them and/or the petitioner does not have access to them, the CV may need to request instructions from the court and/or subpoena power to get them.

In cases of younger respondents who are still in high school, obtaining a student's Individual Education Plan can be very useful. They often contain a good examination of the respondent's skills and/or deficiencies.



## Investigating Self-care and Independent Living Tasks

The UGA requires that a CV appointed under a petition for guardianship or emergency guardianship include in their report a "summary of self-care and independent living tasks that the respondent can manage without assistance or with existing supports, could manage with the assistance of appropriate supportive services, technological assistance or supported decision making, and cannot manage." RCW 11.130.280(6) (a) and RCW 11.130.320(11)(d)(i). A similar summary is required in CV reports for petitions for protective arrangements "[t]o the extent relevant to the order sought." RCW 11.130.605(7)(a).

Information for the required summary will likely be obtained during the interview with the respondent and/or the professional evaluation, but the CV should supplement this with information from interviews of the petitioner, proposed guardian/conservator and other third parties.

The UGA does not define the "self-care and independent living tasks," and these are not terms of art that are consistently defined by service providers or professionals. Until these terms are better defined by case law and practice, the CV will need to use their best judgment to determine what they need to include.

It may be helpful to think of the self-care tasks as being somewhat equivalent to activities of daily living which is a widely understood term and includes:

1. Bathing and showering.
2. Choosing appropriate clothes and getting dressed.
3. Using the bathroom without assistance.
4. Walking, and getting in and out of furniture and baths.
5. Eating meals independently.

It may also be helpful to think of independent living tasks as being roughly equivalent to instrumental activities of daily living which are often used to assess what assistance individuals who can still manage their own ADLs may need. Examples of IADLs include:

1. Managing a budget.
2. Using the ATM or writing checks.
3. Paying basic household bills on time.
4. Making and remembering to go to medical appointments.
5. Taking medications as prescribed.

6. Planning and preparing meals.
7. Performing basic housework.
8. Shopping – including for groceries, clothing or other necessities.
9. Using the telephone and computer as a means of communication.
10. Calling for assistance in case of fire or medical emergency.
11. Managing transportation – including driving, hiring cabs/ride shares or taking public transportation.
12. Managing a household in its entirety – including pet care, if the person has any pets or care for other dependent family members.
13. Maintaining hobbies or interests.
14. Socializing with friends, family, and peers.

Remember that simply being unable to independently manage ADLs or IADLs should not automatically necessitate a guardianship. Needing help with some areas of life when aging is relatively common. According to research, approximately 18 percent of adults over the age of 75 require assistance with one or more IADLs, while nearly 11 percent require ADL assistance.<sup>4</sup> Many younger adults with disabilities require assistance in these areas as well. In many cases, people who may not be able to independently manage these areas of their life can arrange for informal or formal assistance. But the list of ADLs and IADLs can provide a useful checklist as the CV conducts interviews and asks which of these the respondent can manage independently, with assistance or cannot manage.

## Investigating the Appropriateness of Guardianship and Limitations

RCW 11.130.280(6) and RCW 11.130.320(11)(d)(ii) require that the CV appointed for a petition for guardianship or emergency guardianship include in their report:

*A recommendation regarding the appropriateness of guardianship, including whether a protective arrangement instead of guardianship or other less restrictive alternative for meeting the respondent's needs is available:*

*(i) If a guardianship is recommended, whether it should be full or limited.*

*(ii) If a limited guardianship is recommended, the powers to be granted to the guardian.*

As a reminder, to appoint a guardian, RCW 11.130.265 provides that the court must find by clear and convincing evidence that:

1. The respondent lacks the ability to meet essential requirements for physical health, safety or self-care, even with the use of appropriate supportive services, technological assistance or supported decision making.
2. Appointment of a guardian is necessary to prevent significant risk of harm to the respondent's physical health, safety, or self-care.
3. The respondent's identified needs cannot be met by a protective arrangement instead of guardianship or other less restrictive alternative.

Information necessary to determine appropriate alternatives and limitations will be in large part obtained by the interview with the respondent and the professional evaluation, but it should be a subject explored in each of the CV's interviews as appropriate. In order to provide the court with the best possible information, it is a good idea to ask all interviewees about their experience regarding the respondent's recent decision-making and communication skills.

## Example Questions: Decision-Making and Communication Skills

- Describe how the respondent has been participating in recent medical appointments.
- Do they ask questions?
- Do they appear to be able to track the pros and cons of options?
- Do they remember information from one appointment to another?
- Are they able to come to a decision?
- How much do they rely on others?
- Have there been choices that were delayed or not made because of confusion on their part?

The CV might also ask interviewees about other complex decisions that the respondent might be able or unable to make.

- Are decisions negatively impacted by short-term memory issues?
- Does the respondent exhibit the ability to weigh costs and benefits of choices or apply long-standing values and beliefs to new decisions?

## Applying Guardianship Standard to Respondents

Sometimes an individual's ability to engage in complex thinking is retained while their short-term working memory is diminished. In a situation like this, a protective arrangement that cues the person or assists them in marshaling information for their own choices may be appropriate. Sometimes memory is intact but cognitive impairment limits their ability to make complex choices. In a situation like this, a guardianship where decision making is more fully delegated may be appropriate.

To the extent that guardianship is necessitated by communication issues, it is important to gather details such as what verbal ability the respondent maintains and whether they can consistently and successfully communicate by other means like blinking, squeezing hands or pointing to answers.

If English is not the respondent's first language and they have age-related cognitive impairment or a traumatic brain injury, it may be possible that, even though they mastered English at some point, they now communicate more effectively in their first language. In such situations, an interpreter may be necessary. It can also be useful to see if the respondent suffers from a hearing impairment and if amplification is needed. Depending on what the CV learns on this front, it may be necessary to reinterview the respondent using information the CV has gathered from others to maximize the respondent's ability to understand and respond.

To establish whether the respondent is at significant risk of harm, the CV may want to question interviewees about dangers the respondent has faced in recent months. That might include asking about any falls, injuries related to self-neglect or carelessness, getting lost, interactions with the police or other problems. Ask for specifics about what interviewees fear might happen and the basis for those fears.

Lastly, the CV must consider less restrictive options and ask interviewees about those options to have them help evaluate what might or might not work for the respondent.

If the CV believes that guardianship is going to be necessary, ask about what rights might be retained. Is the limitation on marriage necessary? Should the respondent retain the right to vote?

Be sure to ask interviewees what the respondent is capable of as well as what they are not capable of when it comes to decision making, communication and protecting themselves so the CV can give an accurate and balanced report.

## Example Questions: Decision - Making and Communication Skills

Under RCW 11.130.380(7)(a), a CV under a petition for conservatorship is required to include in their report a recommendation:

*Regarding the appropriateness of conservatorship, or whether a protective arrangement instead of conservatorship or other less restrictive alternatives for meeting the respondent's needs is available; (ii) If a conservatorship is recommended, whether it should be full or limited; (iii) If a limited conservatorship is recommended, the powers to be granted to the conservator, and the property that should be placed under the conservator's control; and (iv) If a conservatorship is recommended, the amount of the bond or other verified receipt needed under RCW 11.130.445 and 11.130.500.*

As previously stated in Chapter I, to appoint a conservator, RCW 11.130.360 provides that the court must find by clear and convincing evidence that the adult is unable to manage property or financial affairs because:

1. There is a limitation on the adult's ability to receive and evaluate information or make or communicate decisions, even with the use of appropriate supportive services, technological assistance or supported decision making; or the adult is missing, detained or unable to return to the United States.
2. Appointment is necessary to avoid harm to the adult or significant dissipation of the adult's property, or to obtain or provide funds or other property needed for the support, care, education, health or welfare of the adult or of an individual entitled to the adult's support.
3. The adult's identified needs cannot be met by a protective arrangement instead of a conservatorship or other less restrictive alternatives.

In these cases, the court can only grant a conservator:

*Those powers necessitated by demonstrated limitations and needs of the respondent and issue orders that will encourage development of the respondent's maximum self-determination and independence. The court may not establish a full conservatorship if a limited conservatorship, protective arrangement instead of conservatorship, or other less restrictive alternative would meet the needs of the respondent.*

RCW 11.130.360(3)

Finding that the respondent meets the legal standard to appoint a conservator will be based on the interview of the respondent and the professional evaluation. However, the CV will want to supplement those sources with information gathered through interviewing other parties and reviewing supporting documentation.

The CV's evaluation of the respondent's ability to gather information, evaluate options and communicate choices is fairly similar to the one described above for guardianships; however, in these cases you will want to focus on the respondent's financial and property interests.

The complexity of the respondent's assets may lead to different levels of needed skills. A Respondent who is solvent but has limited income and assets may only need to pay regular monthly bills and balance a checkbook. A respondent with a large investment portfolio may need to understand investment risk, tax consequences and be relied upon to take minimum distributions from retirement accounts.

A respondent dependent on public benefits may need to be able to understand the rules related to those benefits and how to report appropriately. Again, the respondent may need to rely upon daily money managers, CPAs and financial advisors to help with tasks, explain options and provide support.

For purposes of determining if an individual is missing, detained or unable to return to the United States, the CV may need to gather police, court and/or immigration records. It is important to note that an adult who resides in a long-term care facility, resides in another care setting or is the subject of an involuntary commitment order is not considered missing or detained. RCW 11.130.360(5).

In determining if the appointment is necessary to "avoid harm" to the respondent, it is important to determine how any impairments are currently causing harm or putting the respondent's financial and property interests at risk.

### **Example Questions: Financial Affairs**

- What do you know about the respondent's current capacity to track and do basic math? Their ability to understand or stick to a budget?
- How consistent are they are about paying bills?

### **Example Questions: Risk of Vulnerability to Exploitation**

- Is the respondent making large gifts uncharacteristic of their long-term behavior that puts them at risk of not be able to meet their needs?
- Are they falling for internet scams or other fraud?
- Could they be easily manipulated into giving money to a stranger?
- Would they be able to determine if an advisor was stealing from them?
- In such cases, any less restrictive alternative would need to be protective enough to avoid these harms.

### **Example Questions: Risk of Failing to Manage Funds**

- Is the respondent behind in their rent and bills despite having funds?
- Have their utilities been cut, or do they face possible risk of eviction or foreclosure?
- These risks are more easily addressed by a wider range of less restrictive alternatives which should be explored.

## Statutory Qualifications of a Proposed Guardian/Conservator

A CV report must confirm that the proposed guardian/conservator is legally qualified to serve. Most of this information will come from the interview with the proposed guardian/conservator themselves and a review of their disclosures. Qualifications differ for lay persons versus professional guardians/conservators.

With regard to lay guardians/conservators, the UGA requires that they be at least 21 years of age or over the age of 18 if a parent serves for their child. RCW 11.130.090(1).

Lay guardians/conservators must have also completed the mandatory training prior to appointment. RCW 11.130.090(2). The court may defer successful completion of the training to a date no later than 90 days after appointment "if the petitioner requests expedited appointment due to emergent circumstances." RCW 11.130.090(2) (a). A standard interview with the proposed guardian/conservator should ensure the individual completed the training and feels comfortable with the responsibilities of a guardian/conservator.

Individual professional guardians/conservators must also be 21 years of age. RCW 11.130.090(1). Both professional individuals and corporations must meet any certification requirements established by the administrator for the courts with the exception that a financial institution subject to the jurisdiction of the department of financial institutions and authorized to exercise trust powers, and a federally chartered financial institution when authorized to do so, "may be appointed to act as a guardian or conservator of a person subject to guardianship, conservatorship or both without having to meet the certification requirements established by the administrator for the courts." *Id.*

Out-of-state proposed guardians/conservators must designate a resident agent prior to appointment. RCW 11.130.090(1)(c).

Under RCW 11.130.085, before accepting appointment as a guardian/conservator, a person must disclose to the court whether the person has been convicted of any crime involving dishonesty, neglect, violence or use of physical force; or other crimes relevant to the functions the individual would assume as guardian/conservator. Making sure this disclosure has occurred should be a part of any interview of a proposed guardian/conservator. The CV can also ask the proposed guardian/conservator to prepare and sign a declaration of proposed guardian/conservator, which would state all of the information required to determine that the proposed guardian/conservator is suitable to serve.

As a general rule, those crimes cited above disqualify anyone, lay or professional, from serving as a guardian/conservator. RCW 11.130.090(1)(b). However, a court may, upon consideration of the facts, find that a relative convicted of such a crime is qualified to serve as a guardian/conservator. RCW 11.130.090(1)(b)(ii). The UGA is silent about what those factors might be, but it is probably safe to assume that factors could include the age of the conviction and history of rehabilitation. These factors should be explored when a family member who would otherwise appear to be a good option discloses the existence of a conviction for one of the disqualifying crimes.

The UGA also provides that no one is statutorily qualified to serve as a guardian/conservator if the court finds them "otherwise unsuitable." RCW 11.130.090(1)(e). RCW 11.130.085 mandates that any proposed guardian/conservator should also disclose if they have:

1. Been a debtor in a bankruptcy, insolvency or receivership proceeding.
2. Been convicted of any felony.
3. Any court finding of a breach of fiduciary duty or a violation of any state's consumer protection act, or violation of any other statute proscribing unfair or deceptive acts or practices in the conduct of any business.

The UGA does not state that these render a proposed guardian/conservator unsuitable in and of themselves, but their inclusion in the required disclosures suggests that they should be brought to the court's attention as part of the investigation and addressed in any recommendations about the proposed guardian/conservator.

It may be worth considering as part of this analysis the disproportional impact of the criminal justice system on families of color and the racial wealth gap. The CV should fully explore these issues but also ensure the court has full information about them, so this does not result in respondents of color not being able to select family members as guardians/conservators.

RCW 11.130.305(4) and RCW 11.130.415(4) state that a person that provides paid services to the respondent, or is employed by or is a close family member of an individual who provides paid services to the respondent, may not be appointed as guardian/conservator unless:

1. The individual is related to the respondent by blood, marriage or adoption.
2. The court finds by clear and convincing evidence that the person is the best-qualified person available for the appointment and the appointment is in the best interest of the respondent.

Similarly, the owner, operator or employee of a long-term care facility at which the respondent is receiving care may not be appointed as guardian/conservator unless the owner, operator or employee is related to the respondent by blood, marriage or adoption. RCW 11.130.305(5) and RCW 11.130.415(5).

## Priority and Appropriateness of Guardian/Conservator

RCW 11.130.305 prioritizes who should be appointed as the guardian of an adult. Priority is as follows:

1. A guardian, other than a temporary or emergency guardian currently acting for the respondent in another jurisdiction.
2. A person nominated as guardian by the respondent, including the respondent's most recent nomination made in a power of attorney.
3. An agent appointed by the respondent under a power of attorney for health care.
4. A spouse or domestic partner of the respondent.
5. A relative or other individual who has shown special care and concern for the respondent.
6. A certified professional guardian/conservator.

RCW 11.130.415 lays out a similar ranking of priority for who should be appointed as a conservator for an adult. That order is:

1. A conservator, other than a temporary or emergency conservator, currently acting for the respondent in another jurisdiction.
2. A person nominated as conservator by the respondent, including the respondent's most recent nomination made in a power of attorney for finances.
3. An agent appointed by the respondent to manage the respondent's property under a power of attorney for finances.
4. A spouse or domestic partner of the respondent.
5. A relative or other individual who has shown special care and concern for the respondent.
6. A certified professional guardian/conservator or other entity the court determines is suitable.

In both cases, the UGA addresses circumstances where more than one individual falls within each category. In such cases, the preference would be whoever is “best qualified.” RCW 11.130.305(2) and RCW 11.130.415(2).

In determining the best-qualified person, the UGA calls on the court to consider:

1. The person’s relationship with the respondent.
2. The person’s skills.
3. The expressed wishes of the respondent.
4. The extent to which the person and the respondent have similar values and preferences.
5. The likelihood the person will be able to perform the duties of a guardian/conservator successfully.

The court is also empowered to act in “the best interest of the respondent” by declining to appoint a person having priority under RCW 11.130.305 and RCW 11.130.415, and instead appointing a person having a lower priority or no priority. RCW 11.130.350(3) and RCW 11.130.415(3).

In order to provide the court with the information necessary to make an assessment about the respondent’s best interest in appointing a guardian/conservator, the CV will want to consider the following about the potential candidate:

1. Where the candidate falls in the order of statutory priority.
2. How long they have known the respondent.
3. How frequently they have visited or communicated in recent years.
4. Their own and others’ assessment of how aligned their values are with the respondent’s values.
5. What professional or personal skills or experience they would bring to the job.

To determine the candidate’s likelihood of performing the duties of a guardian/conservator successfully, it may be useful to go over those duties and explore their understanding and willingness to engage in appropriate substitute decision making and to comply with fiduciary duties.

While the specific duties of a guardian may be limited or further defined by order, the following are some key duties the CV should ensure a proposed guardian is willing and able to perform:

1. Make medical choices where the respondent cannot provide informed consent.
2. Arrange safe housing, nutrition and basic hygiene care for the respondent.
3. Regularly visit the respondent to know their needs and wishes.
4. Facilitate and support the respondent’s relationships with others.
5. Care for the respondent’s personal property, pets and other resources.
6. Arrange appropriate education and recreational opportunities.
7. Inform the court of any significant changes in the respondent’s life and make necessary annual reports to the court.

See RCW 11.130.325; RCW 11.130.330; RCW 11.130.340, and RCW 11.130.345.

It is also important that the proposed guardian know the limitations in RCW 11.130.335, which prohibit the guardian from doing the following things without further court order:

1. Involuntarily commit the respondent or force them to live somewhere against their wishes.
2. Consent to certain psychiatric surgeries, treatments or medications.
3. Restrict respondent from social contact with people of their choosing.



Similarly, the CV should make sure that any proposed conservator is willing and able to perform those duties contained in RCW 11.130.505-530, which are:

1. Prudently invest and manage the respondent's assets.
2. Create a budget and pay the respondent's bills and expenses
3. Manage the respondent's insurance needs.
4. Complete necessary tax returns for the respondent.
5. Apply for public benefits where applicable and maintain eligibility.
6. Create regular reports and accountings for the court.

It is important that the proposed conservator also be aware of all the actions contained in RCW 11.130.435 that require specific court authorization, including, but not limited to:

1. Selling the respondent's real estate.
2. Changing the respondent's estate planning or beneficiaries.
3. Making gifts (except gifts of de minimis value).

For both guardians and conservators, the level of skill needed may vary greatly depending on the complexity of the respondent's needs and assets. It is also possible for the proposed guardian/conservator to employ professionals to assist and advise them as long as they would remain the ultimate decision makers. RCW 11.130.125. If the issues involved are complex, asking how they would go about getting necessary assistance may be useful. It can also be useful to determine if they plan to retain counsel to provide advice on their duties and obligations and to assist with reporting.

## Fiduciary Requirements of All Guardians and Conservators

As important as expertise and skills are, it is equally important to make sure that the proposed guardian/conservator understands what would be expected of them as fiduciaries.

All appointed guardians/conservators are fiduciaries. RCW 11.130.325 and RCW 11.130.505. A guardian owes "the highest duty of good faith and care" to the respondent. RCW 11.130.325. A guardian "shall not substitute their moral or religious values, opinions or philosophical beliefs" for those of the respondent. RCW 11.130.325. A conservator owes "duties of prudence and loyalty to the individual subject to conservatorship." RCW 11.130.505.

The guardian/conservator is required to "promote the self-determination of the adult and, to the extent reasonably feasible, encourage the adult to participate in decisions, act on the adult's own behalf and develop or regain the capacity to manage the individual's personal affairs." RCW 11.130.325 and RCW 11.130.505. The UGA provides guidance on how a guardian/conservator is supposed to consider the express interests of the respondent and how they should make decisions when they cannot determine those wishes. RCW 11.130.505(2)-(5) and 11.130.325 (4)-(5). It can be useful to ask the proposed guardian/conservator how they would make difficult choices.

If the CV is considering recommending a professional guardian/conservator, it is important to confirm that the proposed professional is properly certified. It is also useful to review disciplinary records (if any).

## Example Questions: Proposed Professional Guardian/Conservator

- Has the proposed guardian/conservator met the respondent?
- What is their experience with similar cases?
- How often would they be able to visit and what do they anticipate their first steps would be?

Professionals come with a wide range of skill sets, experiences and communication styles. Making sure that they are a good fit for the respondent's needs is just as important as ensuring a family member or friend would be a good fit.

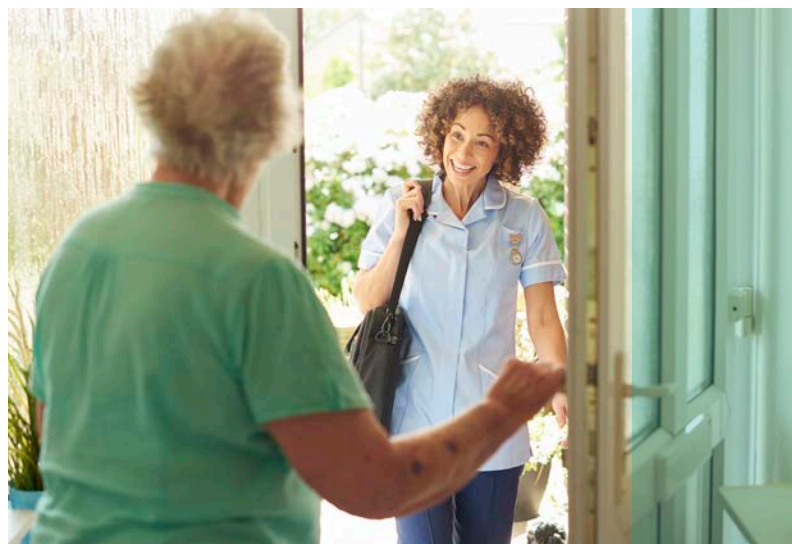
The process of finding a suitable professional guardian/conservator to recommend can be challenging for a CV, particularly if the respondent has little or no assets or income, difficult family dynamics or challenging behaviors. It may also become necessary to call professional guardians/conservators and request that they take the case without charge or with charging only what is allowed by the applicable Washington Administrative Code concerning payment of guardian fees in Medicaid cases. (WAC 182-513-1530). Many professional agencies have established a level of charitable work they can provide to the industry. If no suitable guardian/conservator can be found, notify the court of the dilemma and request instructions.

The CV also has the option of investigating the appointment of a public guardian/conservator for the respondent. However, the Office of the Public Guardianship and Conservatorship may or may not be accepting new cases depending upon the funding of the office by the state legislature at any given time.

If, after investigation, the CV concludes that the respondent would best be served by the appointment of a professional guardian/conservator with whom the CV has had previous dealings, the CV should disclose this information to the court and parties.

## Visiting the Respondent's Dwelling

If the CV is required to visit the respondent's dwelling, the CV will want to talk to the respondent and petitioner early in the case about how best to arrange that. It is also a good idea to ask the petitioner about the general conditions of the house so you can take necessary precautions, such as using a respirator if there is a great deal of fecal contamination or if other health hazards are present. If there are issues with hoarding, it is a good idea to bring sturdy shoes. It is also worth asking if there are weapons in the home. If reason exists to believe that a third party may be present at the dwelling and such party presents a potential safety concern to the CV, it is possible to engage the assistance and supervision of a law enforcement officer to be present at the visit. The CV should never put the CV's safety at risk.



## Example Questions and Observations: Respondent's Dwelling

While the UGA is not specific as to what should be explored in these dwellings, relevant areas of inquiry would seem to include:

- Is the respondent keeping the house clear enough that there is easy ingress and egress in case of an emergency?
- Does there appear to be food in the home and is that food fresh and being stored safely?
- Are medications stored in a safe and organized way that would support them being taken safely?
- Are any medications expired?
- Are there large quantities of unopened mail that suggests that they may not be checking it regularly for bills?
- Is there a large quantity of packages that might be suggestive of manic purchasing?
- Is the home clean enough to be safe or is there sufficient pet waste, mold, or dirt that might be a safety hazard?
- Does the CV see evidence that their financial records are being stored in an organized and rational way?
- Does the CV see unsecured guns or other items of concern?

If the CV is using the state of the dwelling as a basis for your findings, the CV may wish to document what they observe with digital photos.

## Determining the Existence of an Emergency

When appointed under a petition for emergency guardianship/conservatorship, the CV must also include in their report information to allow the court to determine if a true emergency exists.

For guardianships, under RCW 11.130.320, that would include:

1. A detailed summary of the alleged emergency and the substantial and irreparable harm to the respondent's health, safety, welfare, or rights that is likely to be prevented by the appointment of an emergency guardian;
2. A statement as to whether the alleged emergency and the respondent's alleged needs are likely to require an extension of 60 days as authorized under this section.
3. The specific powers to be granted to the emergency guardian and how the specific powers will address the alleged emergency and the respondent's alleged need.

For conservatorships, under RCW 11.130.430, that would include:

1. A detailed summary of the alleged emergency and the substantial and irreparable harm to the respondent's property or finances that is likely to be prevented by the appointment of an emergency conservator.
2. A statement as to whether the alleged emergency and the respondent's alleged needs are likely to require an extension of 60 days as authorized under this section.
3. The specific powers to be granted to the emergency conservator and how the specific powers will address the alleged emergency and the respondent's alleged need.

## Co-guardians and Co-conservators

RCW 11.130.050 allows for the appointment of co-guardians and/or co-conservators. In the case of such appointments, absent different directions in the order, “co-guardians or co-conservators shall make decisions jointly.” (RCW 11.130.050).

If the petition proposes co-guardians/co-conservators or if the CV’s investigation leads the CV to believe that this is the best option for the respondent, the CV’s report should include an analysis of whether the parties are likely to work well together. In general, “co” appointments should be limited to cases where both proposed guardians/conservators are equally appropriate, get along well and have a demonstrated history of working together and effectively making decisions as a team.



## Guardians and Conservators for Spouses/Domestic Partners

Guardianship/conservatorship petitions for married couples or domestic partners may sometimes be filed simultaneously, and the court may appoint one CV to serve for both respondents or a separate CV for each respondent. Petitions may also ask that a single guardian/conservator be appointed as guardian/conservator for both spouses or domestic partners.

The CV should consider the conflicts of interest that may exist or arise between spouses or between domestic partners and the ability of one guardian/conservator to advocate for competing interests.

The Certified Professional Guardian Board issued Ethics Advisory Opinion 2002-03, which is summarized by the Board as follows:

*The appointment of the same guardian to act simultaneously in the best interests of both spouses in a marital relationship, domestic partners or persons in a meretricious relationship presents, at a minimum, the appearance of a potential conflict of interest, and should only be done with great caution by a guardian. If the parties are not married, appellate case decisions have implied and applied certain community property principles to such relationships and legal presumptions may apply. The issues are complex and the circumstances dynamic. Often, actual conflicts may not become apparent until it is too late to seek instruction from the court or for the guardian to take remedial action. The advice of counsel should be sought prior to accepting such an appointment.*

*While a court may consider a well-supported petition for a dual guardian, endorsed by the GAL for one or each of the AIPs, the circumstances upon which the decision was based could change quickly or unknowingly and present a conflict of interest necessitating the removal of the dual guardian from both cases and two new independent guardians being appointed. The latter action would foreseeably result in significant additional costs to the estate of the incapacitated person and potentially to the retiring guardian as well. Only in well-justified cases and after a hearing supported by recommendations of the guardians ad litem for each of the alleged incapacitated persons, and assurance that there would be only de minimus conflicts if any, should a guardian accept such an appointment.*

While this opinion uses the language of the old statute, the analysis would appear relatively unchanged with the UGA and is a good summary of a list of considerations for a CV to consider when making their recommendations.

## How to Document the CVs Investigation

The CV should take good notes during all interviews, dwelling visits and document reviews so that they can access this information while drafting their reports and in answering the court's questions throughout the legal process. These notes may be required to be shared with the parties so making sure they are legible and using professional language is important.

Parties in these cases are often emotional and may not be focused on the issues most relevant to the recommendations that a CV needs to make. As a result, interviews can tend to go off on tangents or cover items in a seemingly random order. It is recommended to use checklists during interviews to help conversations flow naturally and allow parties to share what is most important to them. Checklists help ensure everything that needs to be covered has been addressed. The following checklists are possible starting points for the CV to use, although the CV should feel free to modify them to fit the CV's own needs and style.

## Checklist of Questions for a Potential Guardian/Conservator

It is not possible to learn all that the CV needs to know through a script of questions. In addition to the suggested questions, the CV will need to ask follow up questions and probe issues that pertain to the person's capacities, limitations, experience and abilities.

It is important to realize that each individual is unique.

The fact that a person does not demonstrate an ability does not necessarily mean that they can't learn it. They may have never been asked to demonstrate a skill or may have not been exposed to any instruction in that area. This is particularly the case with youth for who guardianship is sought. Parent or other family may have been taking care of money or responding to physicians or other areas where capacity is in question. The respondent may never have had the chance to exhibit a strength. It is important to inquire of parents whether they have actually asked the respondent to perform a skill and whether or not the respondent has been taught how to perform the task.

### General Questions

- Have you had any prior contact with the respondent?
- Based on your prior contact, how would you propose to meet the needs of the respondent?
- What other issues do you believe need to be addressed?
- Do you believe that you are the right guardian/conservator for this respondent? If not, is there someone else you would recommend?
- If the CV does not recommend that a guardian/conservator be appointed, is there another less restrictive role that could meet the needs of the respondent? (power of attorney, representative payee, trust, protective arrangement or supported decision making agreement).
- If you do not feel that you are qualified to act as guardian and conservator of the respondent, can you fill one of these roles?
- If you are only qualified to fill one of these roles but the CV recommends that both a guardian and conservator should be appointed, who should fill the other role? How would you work with that person?
- How would you involve the respondent in decision making?
- What would be your recourse if you believed a particular decision was essential, but the respondent refused to accept your decision?

### Additional Questions Specifically for a Lay (Non-Certified) Guardian/Conservator

- If you were named in the petition, why were you named? (Be sure the individual understands that the CV is under no obligation to recommend the proposed guardian/conservator, even if they are the petitioner.)
- Do you agree with the summary of the respondent's needs as compiled by the CV?
- Are you familiar with the duties of a guardian/conservator?

*(continued on next page)*

- Are you prepared to make a plan, follow through on it and report to the court on a regular basis for as long as you are the guardian/conservator?
- What steps would you take to ensure the decisions you make are independent decisions, free of influence from family members, friends or other “well-meaning” persons?
- Do you understand that a guardian does not have the authority to decide where a respondent lives (i.e., you cannot put a respondent in a nursing home if they does not want to go there)?
- Do you have special skills or expertise that would be useful in meeting the needs of the respondent in your role as guardian/conservator (i.e., nursing skills, social work, accounting skills)?
- Do you know what the “substituted judgment standard” is? Can you make choices for the respondent using the substituted judgment standard rather than on the basis of your own values, even if your values are in conflict with the standard?
- Do you have the energy and resources to meet the needs of the respondent?
- Do you expect to be paid for your services? If yes, how much?
- Are you the respondent’s caregiver? Have you considered caregiver burnout? How would you meet the respondent’s needs if you burn out?
- Have you ever been convicted of a crime?
- Have you ever applied for a bond and been refused? Do you reside in, own property in, and/or have an agent in Washington state?
- Have you ever filed for bankruptcy?
- Have you ever been sued for breach of fiduciary duty?
- Have you completed the required training for lay guardians/conservators?
- Do you understand that a conservator is required to report to the court and account for all use of the respondent’s resources?

### **Additional Questions Specifically for a Certified Professional Guardian/Conservator**

- Does your agency have a general philosophy that you apply in acting as guardian/conservator? If so, how would that philosophy apply to this respondent?
- Is your staff sufficient to meet the needs of this respondent?
- What is the structure of your organization?
- How would you be contacted in the event of an emergency?
- What is the company’s fee schedule? What is the estimate of the fees you would charge during the first 90 days, the first year, and in subsequent years for this guardianship/conservatorship?
- If called upon to work with family members as co-guardians/co-conservators, how should the court order define the duties and obligations of each co-guardian/co- conservator?
- Is your certification current and have you ever had a disciplinary action filed against you?

*(continued on next page)*

- How do you assist individuals who need help finding resources for medical, therapeutic, educational, personal care or other services related to disabilities?
- If there is a need to pay for home care: How would you find someone to fill this role? What is it likely to cost? How do you arrange to pay the person? Are there government programs for this?
- How do you manage cases that are, say, 50 miles from your office? 100 miles? In another state? What geographical areas do you serve? How would you communicate with the respondent? Are you in close enough proximity to meet with the respondent at least monthly?
- What is your knowledge of: disabilities, Medicare, Medicaid and SSI?
- Who represents you in court? Are you audited? If so, is the audit performed by an independent auditor?
- If the respondent's family or friends are dissatisfied with how the guardianship/conservatorship is being handled, who would they contact? What if they remain dissatisfied? If they ask you to resign, what will you do?
- What services other than managing guardianships/conservatorships does your organization provide?
- Are you required by the CPG Board to carry errors and omissions insurance?
- Do you have errors and omissions insurance? If so, what are the limits of the insurance policy?
- Do you know how to spot signs that a respondent has been abused?

#### Quick Tip:

The CV can help the lay person who petitions to become guardian understand how to report abuse by having information from Adult Protective Services available to provide to them.

If at all possible, the CV should observe the potential guardian's behavior when the respondent is present. The CV should note whether the interactions are respectful, and can take notes documenting the language used and actions of the potential guardian. The CV should also observe and interview the respondent in private in order to ensure the respondent can be frank. The results can be helpful where included in the CVs report.

Sometimes family members do not understand the limitations of the guardian's authority. You may get insight into the potential lay guardian's understanding by asking them "Why do you want to be guardian?" Responses may indicate that the lay guardian thinks the guardian has more authority than the law actually allows.



## Checkpoint

Read the questions below. Select the answer that represents the best answer provided.

- 1. What are the minimum requirements for interviews conducted by a CV appointed by the court in cases involving adult guardianship and conservatorship?**
  - a. The respondent only.
  - b. The petitioner and proposed guardian/conservator.
  - c. The respondent and their spouse or domestic partner.
  - d. All answers are correct.
- 2. How should a CV explain their role to respondent?**
  - a. As a representative of the court.
  - b. As the ultimate decision-maker in the case.
  - c. As the “eyes and ears of the court.”
  - d. All answers are correct.
- 3. When conducting interviews to assess self-care and independent living tasks, what key information should the CV aim to gather from interviewees?**
  - a. Details about the respondent’s own abilities.
  - b. Information about the respondent’s recent decision-making and communication skills.
  - c. The interviewee’s opinion on the necessity of guardianship.
  - d. All answers are correct.
- 4. As a reminder, to appoint a guardian, RCW 11.130.265 provides that the court must find by clear and convincing evidence that:**
  - a. The respondent lacks the ability to meet essential requirements for physical health, safety or self-care, even with the use of appropriate supportive services, technological assistance or supported decision making.
  - b. Appointment of a guardian is necessary to prevent significant risk of harm to the respondent’s physical health, safety or self-care
  - c. The respondent’s identified needs cannot be met by a protective arrangement instead of guardianship or other less restrictive alternative.
  - d. All answers are correct.
- 5. Finding that the respondent meets the legal standard to appoint a conservator will be based on:**
  - a. The interview of the petitioner to identify what the petitioner thinks is best for the respondent.
  - b. Request from the respondent and petitioner.
  - c. The interview of the respondent and the professional evaluation, supplemented with information gathered through interviewing other parties and reviewing supporting documentation.
  - d. All answers are correct.

Chapter 5 checkpoint answers: b, a, a, d, c



## CHAPTER 6: Special Situations: Vulnerable Adults

### Learning Objectives:

The learner will

- Identify the purpose and definitions within RCW 74.34 for vulnerable adults.
- Recognize the CV's role in protecting vulnerable adults.

### Protection of Vulnerable Adults

RCW 74.34 (the "vulnerable adult statute") is intended to protect vulnerable adults from abuse, neglect, financial exploitation or abandonment.

The need for this statute is based upon the legislature's finding in RCW 74.34.005 that:

1. Vulnerable adults may be subjected to abuse, neglect, financial exploitation or abandonment.
2. Vulnerable adults may be home bound or otherwise unable to represent themselves or to obtain the relief available through the courts.
3. Vulnerable adults may lack the ability to obtain necessary services due to lack of capacity to consent.
4. Vulnerable adults may have health problems that place them in a dependent position.

A vulnerable adult is defined in RCW 74.34.020(21) as a person who:

1. Is 60 years of age or older who has the functional, mental or physical inability to care for themselves.
2. Is subject to a guardianship under RCW 11.130.265 or an adult subject to a conservatorship under RCW 11.130.360.
3. Has a developmental disability as defined under RCW 71A.10.020.

4. Is admitted to any facility.
5. Is receiving services from home health, hospice, or home care agencies licensed or required to be licensed under RCW 70.127.
6. Is receiving services from an individual provider.
7. Self-directs their own care and receives services from a personal aide under RCW 74.39.

## Role of Court Visitor in Vulnerable Adult Action

A provision existed under the former guardianship statute (RCW 11.88) that authorized a court visitor to “move for temporary relief under chapter 7.40 RCW to protect the alleged incapacitated person from abuse, neglect, abandonment or exploitation, as those terms are defined in RCW 74.34.020, or to address any other emergency needs of the alleged incapacitated person.” RCW 11.88.090(9).

However, RCW 11.130 et. seq. does not contain a similar provision specifically authorizing a CV to move for temporary relief under the vulnerable adult statute if a guardianship/conservatorship investigation is pending. Still, the CV should be familiar with such statute and the relief available therein. A CV who believes that protection under the vulnerable adult statute is necessary while the

investigation is pending to protect the respondent should report such need to the court and request instructions. The court, after being apprised of the facts and allowing other parties the opportunity to be heard, may direct the CV to initiate a vulnerable adult protection action or to take other action intended to provide temporary relief during the investigation period.

To address terminology changes under the UGA, portions of the vulnerable adult statute were amended by legislative action. All such amendments are now effective.

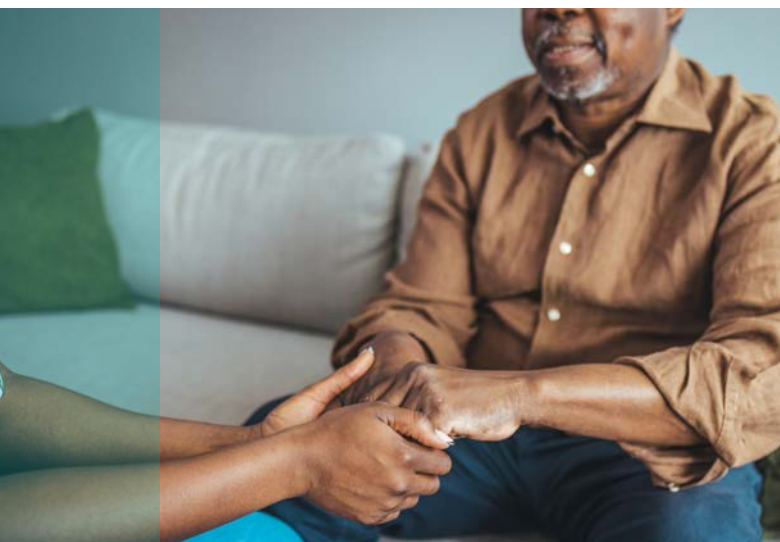
In 2022, RCW 7.105 went into effect. This law was intended to consolidate and harmonize laws governing domestic violence protection orders, sexual assault protection orders, stalking protection orders, anti-harassment protection orders, vulnerable adult protection orders and extreme risk protection orders. New court forms exist that can be used for all various types of protection orders.

Such court forms are available at: <https://www.courts.wa.gov/forms/>. The use of these forms for all civil protection orders are mandatory.

## Procedure For Vulnerable Adult Action

A vulnerable adult protection action is always a separate cause of action from the guardianship/conservatorship action; thus, it requires a separate petition. Sometimes, a VAPA petition is filed at the same time as a guardianship/conservatorship petition. It could also be the case that a VAPA leads to a guardianship/conservatorship petition, or vice-versa.

*Note:* As used in this section, the term “respondent” may refer to the respondent in the guardianship/conservatorship or the respondent in the VAPA matter (the respondent in a VAPA is the individual who allegedly exploited, abused, abandoned or neglected the vulnerable adult).



## Practice Tips

1

Unless the petitioner in either the VAPA or the guardianship/conservatorship proceeding has included language that authorizes a CV investigation into, or participation in, the VAPA, DO NOT presume the CV has any authorization in the VAPA, such as billing for time for investigating the allegations or attending the VAPA hearing.

If the CV believes they need to be involved, the CV may present an order requesting that authority.

2

A CV appointed in a guardianship/conservatorship proceeding in which a petition for protection of a vulnerable adult is filed must proceed carefully. The CV should inform the court in the guardianship/conservatorship matter if a VAPA is filed and seek instruction from the court. Alternatively, if a CV believes a VAPA may be necessary, the CV should immediately inform the court and seek instruction. If the CV does become involved in a VAPA, it is advisable for the CV to keep separate billing records for each matter.

3

A CV should consider seeking authority to retain counsel if they are required to bring a VAPA to protect the interests of a vulnerable adult.

### Petition

A petition for an order for protection may be brought by the vulnerable adult, the vulnerable adult's guardian, conservator or person acting under a protective arrangement, or both, the department, or any "interested person." (RCW 7.105.220(1)).

An "interested person" is defined as "a person who demonstrates to the court's satisfaction that the person is interested in the welfare of the vulnerable adult, that the person has a good faith belief that the court's intervention is necessary and that the vulnerable adult is unable, due to incapacity, undue influence or duress at the time the petition is filed,

to protect their own interests." (RCW 7.105.010(19)). A separate evidentiary hearing may be required to establish that the vulnerable adult is unable to protect their own interests. (RCW 7.105.220).

Under RCW 7.105, a petition "must allege that the petitioner, or person on whose behalf the petition is brought, is a vulnerable adult and that the petitioner, or person on whose behalf the petition is brought, has been abandoned, abused, financially exploited, or neglected, or is threatened with abandonment, abuse, financial exploitation, or neglect by the respondent." (RCW 7.105.100(1)(d)). If the petition is filed by an interested person, the affidavit or declaration must also include a statement of why the petitioner qualifies as an interested person. (RCW 7.105.000(4)).

### Service

Upon making a prima facie case for the entry of a temporary order of protection, the court may restrain a respondent to the VAPA from acting in certain ways. (RCW 7.105.305 and RCW 7.105.310). The court then orders a hearing on the petition to be held within 14 days, at which time the court may enter final orders of relief. (RCW 7.105.305).

Under RCW 7.105, service must be completed upon the respondent and vulnerable adult (unless the vulnerable adult is the petitioner) within five court days of the hearing. RCW 7.105.150 contains further information on acceptable forms of service.

### Relief

RCW 7.105.310 states that the court has "broad discretion to grant such relief as the court deems proper, including an order that provides relief as follows":

1. Restrain respondent from committing acts of abandonment, abuse, neglect or financial exploitation against a vulnerable adult.
2. Restrain the respondent from knowingly coming within, or knowingly remaining within, a specified distance from a specified location (the specified distance is presumptively 1,000 feet, unless the court for good cause finds that a shorter specified distance is appropriate).

3. Require an accounting by the respondent of the disposition of the vulnerable adult's income or other resources.
4. Restrain the transfer of either the respondent's or the vulnerable adult's property, or both, for a specified period not exceeding 90 days.
5. Order financial relief and restrain the transfer of jointly owned assets.
6. Require the respondent to pay the administrative court costs and service fees and to reimburse the petitioner for costs incurred in bringing the action, including reasonable attorney fees.

Under RCW 7.105.310, the court must specify the date the order expires. RCW 7.105 authorizes the court to issue a permanent protection order, which expires 99 years from the issuance date.

## Practice Tip

4

If the vulnerable adult/respondent in the guardianship/conservatorship is being financially exploited, consider utilizing other means of protection. For example, recording the guardianship/conservatorship petition and note for hearing with the county auditor provides notice to third parties that the vulnerable adult's/respondent's capacity is in question and that the guardianship/conservatorship hearing will be held on a given date. RCW 30A.22.210 may also prove helpful if the CV can demonstrate to the financial institution that there is uncertainty as to whom is entitled to the funds in the account. If a CV freezes the vulnerable adult's/respondent's bank account, consider how their bills will be paid pending the hearing. A less formal approach might be to write a letter to the person who appears to be making unauthorized withdrawals. The CV can also consider utilizing the provisions of RCW 11.130.375, which authorizes the court to issue an order to preserve and apply property of the respondent as required for the support of the respondent..."

## Vulnerable Adult/Respondent Disagrees

RCW 7.105.220(4) provides specific guidance for the situation in which the vulnerable adult/respondent in the guardianship/conservatorship disagrees with the relief requested. RCW 7.105.200(4) provides:

- If the court determines that the vulnerable adult is capable of protecting their person or estate in connection with the issues raised in the petition, and the individual continues to object to the protection order, the court shall dismiss the order or may modify the order if agreed to by the vulnerable adult. If the court determines that the vulnerable adult is not capable of protecting their person or estate in connection with the issues raised in the petition or order, and that the individual continues to need protection, the court shall order relief consistent with RCW 74.34.130 as it deems necessary for the protection of the vulnerable adult.
- If an order is inconsistent with the expressed wishes of the vulnerable adult, the court should be governed by the legislative findings in or RCW 7.105.900.
- When the vulnerable adult opposes the issuance of a vulnerable adult protection order, the standard of proof is clear, cogent, and convincing evidence, because the order impedes the vulnerable adult's due process rights. In re the Matter of Dagmar O. Knight, 178 Wash. App. 929, 937, 317 P. 3d 1068 (2014).

## Adult Protective Services/Attorney General

Adult Protective Services is the branch of the Department of Social and Health Services that investigates allegations of vulnerable adult abuse, neglect, abandonment and financial exploitation. Some people who deal with vulnerable adults are required to report suspected abuse. RCW 74.34.020(13). Other people are permissive reporters who may report but are not mandated to do so. RCW 74.34.020(16). Permissive reporters may report to the department or a law enforcement agency when there is reasonable cause to believe that a vulnerable adult is being or has been abandoned, abused, financially exploited or neglected. RCW 74.34.035. A CV does not meet

the definition of a mandatory reporter under RCW 74.34.020(13), and thus, is a “permissive reporter,” i.e., a person who is not required to report abuse. However, the King County Guardian ad Litem Registry Code of Conduct provides that the CV “shall report” any child abuse or neglect or adult abuse as found by the CV. Again, if this issue arises, a CV may seek direction from the court.

To report suspected vulnerable adult abuse, call 1-866-ENDHARM. After an initial intake of a complaint, an investigator may be assigned. The investigation may result in the filing of a guardianship/conservatorship petition or action for other relief. Thus, the petitioner in some guardianship/conservatorship and VAPA proceedings may be the state of Washington. When the petitioner in a guardianship/conservatorship or vulnerable adult protection proceeding is DSHS, an Assistant Attorney General will represent DSHS as the client.

### **CV Safety**

If the CV is uncomfortable visiting the home of the respondent in a guardianship/conservatorship proceeding for any security reasons, and if it is known that APS is involved in the case, an APS investigator may be willing to introduce the respondent and stay nearby. If there are more serious security concerns, a CV may request law enforcement assistance.

### **APS Records**

APS reports and investigative notes are confidential but often contain vitally important information. If the CV wants to review APS records or speak with the APS investigator about the case, the CV may obtain the APS records by forwarding all requests for records to the inbox for the APS unit that processes record requests: [apspublicrecords@dshs.wa.gov](mailto:apspublicrecords@dshs.wa.gov). Any records received by the CV from DSHS may not be disseminated to anyone without court order.

## **Practice Tip**

**5** It is helpful for the order appointing the CV to include specific authority for the CV to access APS records. If this is not in the order appointing the CV and the CV has any difficulty obtaining APS records, the CV should seek a court order granting specific authority to receive the necessary records.

## Checkpoint

Read the questions below. Select the answer that represents the best answer provided.

1. **What is the primary purpose of RCW 74.34, the "vulnerable adult statute"?**
  - a. To regulate guardianship and conservatorship proceedings.
  - b. To protect vulnerable adults from abuse, neglect, financial exploitation, or abandonment.
  - c. To provide financial assistance to vulnerable adults.
  - d. All answers are correct.
2. **According to RCW 74.34.005, what are some of the reasons for the need for the vulnerable adult statute?**
  - a. Vulnerable adults may have financial difficulties.
  - b. Vulnerable adults may be home bound and unable to represent themselves.
  - c. Vulnerable adults may have health problems unrelated to abuse.
  - d. All answers are correct.
3. **How is a "vulnerable adult" defined in RCW 74.34.020(21)?**
  - a. Anyone over the age of 50.
  - b. A person over 60 years old without any specific criteria.
  - c. A person who is 60 years of age or older with functional, mental or physical inability to care for themselves, among other criteria.
  - d. All answers are correct.
4. **What role does a court visitor play in a vulnerable adult action?**
  - a. They provide medical care to vulnerable adults.
  - b. They initiate guardianship/conservatorship proceedings.
  - c. They can seek temporary relief for vulnerable adults under certain conditions.
  - d. All answers are correct.
5. **Who can bring a petition for an order of protection under RCW 7.105?**
  - a. Only law enforcement agencies.
  - b. Various parties, including the vulnerable adult, their guardian, conservator or an "interested person."
  - c. Only the Department of Social and Health Services.
  - d. All answers are correct.
6. **What types of relief can a court grant under RCW 7.105.310 in a vulnerable adult protection order?**
  - a. Only financial relief.
  - b. A wide range of relief, including restraining the respondent from committing various acts and requiring an accounting of income.
  - c. Restraining the vulnerable adult from pursuing legal action.
  - d. All answers are correct.
7. **What should a court visitor do if they believe protection under the vulnerable adult statute is necessary during a guardianship/conservatorship investigation?**
  - a. Take no action and wait for the court to decide.
  - b. File a VAPA petition without notifying the court.
  - c. Report the need to the court and request instructions.
  - d. All answers are correct.
8. **When a vulnerable adult opposes the issuance of a vulnerable adult protection order, what standard of proof is required?**
  - a. Beyond a reasonable doubt.
  - b. Clear, cogent and convincing evidence.
  - c. Preponderance of the evidence.
  - d. All answers are correct.

Chapter 6 checkpoint answers: b, b, c, c, b, b, c, b



## CHAPTER 7: Alternatives to Guardianship/ Conservatorship

### Learning Objectives:

The learner will

- List alternatives to guardianship and conservatorship outlined within regulation.
- Identify power of attorney language and requirements.

### Overview Of Concept of Less Restrictive Alternatives

In all guardianship/conservatorship investigations, CVs must consider the availability and suitability of less restrictive alternatives. Thus, CVs should become familiar with alternatives that would prevent the need for a guardianship/conservatorship or limited form thereof.

This chapter describes various means by which every competent person can minimize the circumstances in which a guardian/conservator will need to be appointed. Sometimes, one of the alternatives can be executed by the respondent while a guardianship/conservatorship proceeding is pending, thereby eliminating the need for appointment of a guardian/conservator, or at least allowing the guardianship/conservatorship to be substantially limited.

### Legislative Intent

RCW 11.130.001 states as follows:

The legislature recognizes that people with incapacities have unique abilities and needs, and that some people with incapacities cannot exercise their rights or provide for their basic needs without the help of a guardian." However, "[a person's] liberty and autonomy should be restricted through guardianship, conservatorship, emergency guardianship, emergency conservatorship and other protective arrangements only to the minimum extent necessary to adequately provide for their own health or safety, or to adequately manage their financial affairs.



RCW 11.130.001 (emphasis added).

Under the UGA, a “less restrictive alternative” is defined as:

[A]n approach to meeting an individual’s needs which restricts fewer rights of the individual than would the appointment of a guardian or conservator. The term includes supported decision making, appropriate technological assistance, appointment of a representative payee and appointment of an agent by the individual, including under a power of attorney for health care or power attorney for finances.

RCW 11.130.010(15).

### **Need to Inquire into and Consider Less Restrictive Alternatives**

A petition for guardianship/conservatorship of an adult must include a statement regarding “any protective arrangement instead of [guardianship/conservatorship] or other less restrictive alternative for meeting the respondent’s alleged need which has been considered or implemented.”

RCW 11.130.270(2)(d)(ii) and RCW 11.130.365(2)(e)(iii). If no protective arrangement or other less restrictive alternative has been considered or implemented, the petition must state the reasons for such and why, in the opinion of the petitioner, a protective arrangement or less restrictive alternative would be “insufficient to meet the respondent’s alleged need.” RCW 11.130.270(2)(d)(iii)-(iv) and RCW 11.130.365(2)(e)(iv)-(v).

The CV’s report must contain “[a] recommendation regarding the appropriateness of [guardianship/conservatorship] including whether a protective arrangement instead of [guardianship or conservatorship] or other less restrictive alternative for meeting the respondent’s needs is available.” RCW 11.130.280(6)(b) and RCW 11.130.380(7)(a)(i).

The CV should analyze all the available alternatives to guardianship/conservatorship. It is good practice to incorporate this analysis into the CV report as a way of bolstering the CV’s position for or against a guardianship/conservatorship.

The prior guardianship statutes did not provide any express alternatives to a guardianship/conservatorship. Generally, options for less restrictive alternatives were conferred by commonly used estate planning documents, including health care and general powers of attorney and living trusts.

Conversely, the UGA directly addresses other protective arrangements. Specifically, Article 5 (RCW 11.130.580 – 11.130.635) addresses other protective arrangements and Article 7 (RCW 11.130.700 – 11.130.755) addresses supported decision making agreements. These materials will provide a procedural and substantive summary of the specific statutes addressing alternatives to guardianship/conservatorship.



### **Powers Of Attorney**

A power of attorney is a written delegation by one person, known as the principal, to another person or entity, known as the agent (also known as “attorney-in-fact”) of limited or general authority, to act on behalf of the principal. The power can be for a specific one-time purpose, such as to sign a deed for the sale of real estate while the principal is out of the country. In that case, the power of attorney is called a special and limited power of attorney. On the opposite extreme, the power of attorney can be general and encompass the authority to act on behalf of the principal at all times in all matters permitted by law.

A power of attorney must be signed and dated by the principal, and the signature must be either acknowledged before a notary public or attested by two or more witnesses. RCW 11.125.050(1).

A power of attorney is “durable” if it withstands the incapacity of the principal. In Washington, to be durable, a power of attorney must state that it is not affected by the disability of the principal or that it will only take effect upon disability or use similar language. RCW 11.125.040. When the durable power of attorney states it will become effective only upon the finding of incapacity of the principal or other such language, it is called a “springing” power of attorney because it springs into effect only in the circumstance described in the document.

A durable power of attorney can be a viable less restrictive alternative to a guardianship/conservatorship where the respondent has previously executed, or is willing to execute, such a document and is believed to have sufficient capacity to do so.

The standard of capacity to execute a durable power of attorney is the subject of some debate. Generally, the respondent should have some knowledge of the person being named as the agent and understand that they are entering into a fiduciary relationship with that person regarding the powers granted to the agent. Under Washington law, a person of legal age is presumed to possess full legal capacity to enter into a power of attorney until adjudged incapacitated.

Some of the **advantages** to powers of attorney are as follows:

1. The principal maintains autonomy and privacy by personally selecting a friend or family member to act as their fiduciary.
2. The principal retains all right and authority to continue to act.
3. The principal retains the power to revoke the power of attorney at any time as long as the principal is not incapacitated.

**Disadvantages** include:

1. The agent may not agree with the principal as to an appropriate course of action, thus rendering the relationship untenable.
2. The agent may be unavailable or later become incapacitated.
3. Because the principal remains able to act on the principal’s own behalf, e.g., to contract, the principal may be vulnerable to abuse by and/or the undue influence of others.
4. Because the principal can revoke the power of attorney at will, it may not be a viable long-term alternative to avoid guardianship or conservatorship in some cases.

A durable general power of attorney usually grants the agent the power to act for the principal in a myriad of matters. Durable powers of attorney may be broad and general or can be limited and specifically tailored to certain actions.

A general power of attorney does not permit the agent to make health care decisions unless it specifically grants to the agent the power to make health care decisions for the principal. See RCW 11.125.400. In addition, RCW 11.125.400(3) excludes certain persons from acting as agent for health care matters for a principal.

Some people want to give very specific instructions to their agent regarding health care. Since a copy of a power of attorney is usually kept in the medical chart, many attorneys recommend that a separate durable power of attorney for health care be executed. Separate durable powers of attorney for health care and financial matters also allow the principal to name different agents for each function.

## **Resolution of Problems Involving Powers of Attorney**

Some guardianship/conservatorship petitions are brought because there is a conflict involving the exercise of a durable power of attorney for the benefit of a respondent. CVs should be familiar with RCW 11.125.160, which provides for the filing of a petition to resolve matters regarding the application and use of powers of attorney. The petition is filed in

court seeking an order regarding the actions of the agent. The persons who have standing to file such a petition are enumerated in RCW 11.125.160(1).

If a durable power of attorney document exists, but there are certain issues or concerns to be addressed for the durable power of attorney to be effective, such proposals can be made by the CV to the court citing the court's authority under RCW 11.125.160(2) and RCW 11.96A.020(1)(a).

Regardless of who has been nominated to serve as a guardian/conservator in the petition, the person designated by the respondent in the respondent's most recent power of attorney document as guardian or conservator must be considered ahead of the nominee named in the petition. See RCW 11.130.305(1)(b); RCW 11.130.415(1)(b). See also RCW 11.125.080(1).

## Practice Tip

6

If the reason that the petition for conservatorship has been filed is because an otherwise valid power of attorney is not being honored by a bank, a title company or other financial institution, the CV may make a recommendation to the court that steps be taken under RCW 11.125.190-200 to establish the validity of the power of attorney.

Under former guardianship laws, the court order appointing a guardian or conservator generally revoked any previously executed powers of attorney. However, the UGA contemplates that, in some cases, there may be a guardian and an agent under a health care power of attorney or a conservator and agent under a durable general power of attorney. See RCW 11.130.335 and RCW 11.130.435.

## Informed Consent Statute

Occasionally, a guardianship is sought by health care providers or third parties who believe that the patient lacks the legal capacity to give informed consent to proposed health care procedures and therefore needs a guardian. A guardianship, however, is not always needed to give consent to health care.

The informed consent to treatment of a patient who is not legally competent to give it may be given by another person who is authorized to provide such consent. RCW 7.70.065. A statutory hierarchy of persons who can grant consent is set forth in section (1)(a) of that statute:

1. The appointed guardian of the patient, if any.
2. The individual, if any, to whom the patient has given a durable power of attorney that encompasses the authority to make health care decisions.
3. The patient's spouse or state registered domestic partner.
4. Children of the patient who are at least eighteen years of age.
5. Parents of the patient.
6. Adult brothers and sisters of the patient.
7. Adult grandchildren of the patient who are familiar with the patient.
8. Adult nieces and nephews of the patient who are familiar with the patient.
9. Adult aunts and uncles of the patient who are familiar with the patient.
10. An adult who:
  - a. Has exhibited special care and concern for the patient.
  - b. Is familiar with the patient's personal values.
  - c. Is reasonably available to make health care decisions.
  - d. Is not any of the following: A physician to the patient or an employee of the physician; the owner, administrator or employee of a health care facility, nursing home, or long-term care facility where the patient resides or receives care; or a person who receives compensation to provide care to the patient.
  - e. Provides a declaration under RCW 7.70.065(a)(x)(B).

Difficulties may arise if members of the class of people (e.g., the children) disagree on a course of treatment. If agreement cannot be reached, a guardianship petition may be needed.

The authority of a person under RCW 7.70.065 is limited to informed consent to health care treatment. Informed consent would not allow someone to, for example, withdraw treatment or make placement decisions regarding rehabilitative or long-term care.

Some of the **advantages** to informed consent are:

1. Health care providers view the informed consent statute as clear and concise in providing direction. It alleviates confusion in the event of a medical emergency.
2. No document or forethought on the part of the respondent may be required if they have family who is able to provide informed consent.

**Disadvantages** include:

1. Health care providers may seek court direction when there is conflict among the classes of persons and no consensus is reached.
2. Medical decisions are frequently made in emergency situations; the emotional reaction to the situation may interfere with the ability of others to make informed consent.
3. Informed consent is limited and may not apply to all situations in a health care setting (see above).

## Health Care Directive (Living Will)

When a petition for guardianship is filed, particularly when the respondent has a critical or chronic illness, the willingness of a guardian-nominee to honor the wishes contained within a health care directive is vital information for the CV to have.

The Washington Natural Death Act permits persons to direct whether life-sustaining treatment and artificial nutrition and hydration should be withdrawn or withheld in the event they are in a terminal condition or permanent unconscious condition. See RCW Chapter 70.122. The statute

provides a model health care directive form, which can be used as is or with changes. See RCW 70.122.030.

If a respondent has executed a health care directive pursuant to RCW 70.122.030, then no appointment of a guardian should be necessary to effectuate the respondent's desire to withhold or withdraw life-sustaining treatment in the event they are in a terminal or permanent unconscious condition and the mandatory physician verification has taken place.

Even if the respondent has failed to execute a health care directive or similar writing, the Washington Supreme Court has stated that "a guardian need not be appointed to make the decision to withhold life-sustaining treatment if the incompetent patient's immediate family members all agree that such treatment should be withheld." *In re Grant*, 109 Wn.2d 545, 566 n.4 (1987), citing *In re Hamlin*, 102 Wn.2d 810 (1984).



## Practice Tip

- 7 Health care directives are subject to revocation (oral, written, destruction of the document, or if the document is stored in the health care declarations registry, by an online method of revocation) by the declarer regardless of the declarer's mental state or competency. See RCW 70.122.040(1).

## Mental Health Advance Directive

If a respondent suffers from debilitating psychological or psychiatric disorders, a mental health advance directive may be a suitable alternative to a guardianship of the person. A MHAD describes what a person wants to happen if they become so incapacitated by mental illness that their judgment is impaired and/or they become unable to communicate effectively. See RCW 71.32.

Similar to a health care directive, the MHAD informs others about what treatment may or may not be permissible and identifies a substitute decision maker for the principal. Using this advance directive, a person who suffers from mental health disorders that are periodically incapacitating may make decisions in advance about mental health treatment, including medications, short-term admission to inpatient treatment and electroconvulsive therapy.

A person identified as an agent, who accepts appointment, must act in a manner that is consistent with the principal's wishes. If the agent does not know what the principal's wishes are, the agent must act in the principal's best interests. The agent can withdraw from the appointment at any time. In addition, a MHAD may be withdrawn by the principal as described in RCW 71.32.080.

Washington law requires mental health providers to respect a properly executed MHAD, but they are not mandated to follow the directives in all cases. Directives may be disregarded if following express instructions or preferences would violate the accepted standard of care, the requested treatment is unavailable, compliance would violate applicable law or it is an emergency situation and compliance would endanger any persons' life or health. RCW 71.32.150. Also, if a person is involuntarily hospitalized under the Involuntary Treatment Act or incarcerated in jail, MHADs may not be fully honored. *Id.*

In view of the limitations of authority of a guardian of the person, a MHAD may be an appropriate alternative to a guardianship where the primary risk is created by mental health disorders.

Mental Health Advance Directives can be a valuable resource for CVs, guardians and others because they contain specific information regarding how the person wants to be treated when they can't express their competent wishes. Information about Mental Health Advance Directives – including a form – can be found at Washington LAwHelp: <https://www.washingtonlawhelp.org/resource/mental-health-advance-directives>

Information about the utility of MHAD for persons with dementia can be found at: <https://www.washingtonlawhelp.org/resource/alzheimers-disease-and-dementia-mental-health-advance-directive>

## Trusts

As an alternative to a conservatorship, a CV may recommend that a trust be created or continued for the benefit of a respondent. The court can require court supervision of a trust for the benefit of an adult subject to conservatorship. When there is a preexisting trust, an alternative to a conservatorship could include recommending a change of trustees, requiring an accounting to resolve specific questions, and using the trust instead of a conservatorship, but requiring the trustee to submit to some degree of court supervision.

A trust is an arrangement whereby a person (called the trustor or settlor) transfers money or property to another person or entity (called the trustee) to be managed and used as directed in the trust document for the benefit of some party (called the beneficiary). If the trustor creates the trust while alive, it is called a "living trust" or "inter-vivos trust." If the trust is created by the trustor's last will, it is called a "testamentary trust."

The trust document typically directs the trustee to spend the trust funds as may be necessary for the care and support of the beneficiary. It may identify one or more successor individuals to act as the successor trustee if the original trustee becomes incapacitated, dies or is otherwise unable to continue acting as trustee.

Trustees (including successor trustees in the context of typical living trusts) are recognized as fiduciaries under the law and must act always in good faith and with honest judgment. The court has inherent power to sanction or remove trustees if they breach their fundamental fiduciary responsibilities, responsibilities under the trust document or statutory responsibilities that have not been waived by the trustor. The problem, however, is that other than court created trusts, few trusts are subjected to scrutiny by the courts except when an interested party commences litigation or other judicial proceeding.

If a person has set up a living trust arrangement for the management of their financial affairs in the event of their incapacity, the person's wishes in that regard should be respected in most cases by the CV and the courts. If a particular trustee is found to have breached their fiduciary responsibilities, courts have ample power to remedy the breach by sanctions or by replacing the trustee with another trustee.

Some of the **advantages** to trusts are:

1. Allows a person's estate to be managed by the person they have chosen and in the manner they have chosen.
2. No loss of constitutional rights.
3. Can be less expensive to administer than a conservatorship.

**Disadvantages** include:

1. May not have the same safeguards as a guardianship, i.e., bonding, accounting, court scrutiny, etc..
2. Arrangement may no longer be appropriate for the management of the person's estate.
3. Certain assets cannot be titled in a trust (like retirement accounts), thus may not be an effective mechanism to control the respondent's entire estate.

## Special Needs Trust

In limited circumstances, the CV may recommend that a special needs trust be established for the benefit of the respondent with or without the appointment of a guardian/conservator. The special needs trust really has only one central purpose: to preserve ongoing means-tested benefits (like SSI and Medicaid, which require the respondent to have below a certain amount in countable resources to qualify) for a disabled person who is receiving or may be eligible to receive certain government benefits.

A court-created first-party special needs trust may be appropriate when the intended beneficiary is disabled as defined by Social Security law, is under 65 years of age, is on or is eligible to receive SSI, SSDI and/or Medicaid, and the disabled person anticipates receiving settlement proceeds from a personal injury case, inheritance or some other source. If receipt of funds would result in a loss of SSI and Medicaid benefits, a determination should be made that placing the funds into a conservatorship (with resultant loss of benefits) would be harmful to the intended beneficiary – more harmful than locking them up in a trust.

If the disabled person is not on benefits, it may be appropriate to keep the assets in a conservatorship instead of a trust and take a wait and see approach. A first-party special needs trust may be created at any time prior to the disabled person's 65th birthday, even after receipt of funds. There is no penalty attached to this approach at this time.

Special needs trusts are very complex and must be drafted or amended by an experienced attorney familiar with government benefit law. The court, guardians and conservators, and CVs should insist on using an independent, qualified special needs trust drafter. It is often recommended that trust counsel be appointed by the court and, as part of that appointment, counsel's duties should be outlined in the order. This clarifies the work to be performed, the responsibilities of the various parties and fee ranges. It also ensures trust counsel will be paid for the work performed and that the report or testimony of counsel will be considered by the court.

If a CV is involved in matters involving the approval, amendment, administration or reformation of a special needs trust and does not feel qualified to handle these issues, the CV should approach the court and ask that a more experienced CV be appointed or that trust counsel be appointed to assist the CV.



## Driver's License Re-Examinations

A guardianship/conservatorship proceeding may be started primarily to restrict a respondent's right to drive a motor vehicle. The Washington Department of Licensing form titled "Recommendation for Driver Re-examination" may be submitted by any person with personal knowledge of a driver who has physical or mental disabilities that could affect the driver's ability to safely operate a motor vehicle. The form is available online at <http://www.dol.wa.gov/forms/500008.pdf>.

Upon receipt of the recommendation, the Department of Licensing acts to reassess driver competency. The DOL may require a full written and driving re-examination and certification of the driver's fitness by a physician or approved medical professional. A driver's license may be revoked, restricted, or renewed by the DOL. RCW 46.20.305 and 46.20.041.

Some of the **advantages** to driver's license re-examinations are:

1. Safety concerns for driving can be resolved in a less restrictive alternative to guardianship.
2. The respondent may be more amenable to accepting services in the home if their right to drive is removed.

**Disadvantages** include:

1. A copy of the Recommendation for Driver Re-examination is provided to the driver if the driver requests it. The form includes the signature of the petitioning party. This may create additional conflict.
2. Removal of the respondent's right to drive may not deter them from driving without a license.
3. The respondent may need protection in other areas that are not addressed by the Department of Motor Vehicle action.

## Practice Tip

**8** While a guardianship/conservatorship is not needed if the sole purpose is to deal with a driver's license issue, every CV should be aware that the licensing statute, RCW 46.20.031(4), provides that a driver's license may not be issued to anyone who has been adjudged to be "mentally ill, insane or incompetent" due to mental disability or disease. A driver's license may be issued, however, if the person "(a) has been restored to competency by the methods provided by law; or (b) The superior court finds the person able to operate a motor vehicle with safety upon the highways during such incompetency." *Id.*

The CV should consider including in the report information about whether the Respondent drives or intends to drive, has access to a car, has a current driver's license and has auto insurance.

## Care/Case Management Services

Whether the recommendation by the CV calls for the appointment of a guardian/conservator, limited form thereof, or continuance of management of the respondent's affairs under a durable power of attorney or trust, the CV may recommend that the family contract with a professional care manager to develop a plan of care to be followed by a health care agent who will then routinely report to the family. Sometimes the personal and medical needs of a respondent can be met through care or case management services alone, so that the individual can continue functioning with autonomy, but with the supervision that is needed to ensure the safety of the respondent. A case or care manager is usually a private pay solution and is therefore only available in cases in which the respondent has the funds to pay for the manager.

Care/case management involves assessing an individual's needs and developing and implementing a plan to meet those needs. The manager maintains ongoing contact with the impaired individual to enable prompt response to the individual's needs and changes in their condition. The care/case management contract requires the impaired individual's acceptance and agreement with the plan of care and the payment agreements. An agent acting under a power of attorney can generally sign agreements for these services on behalf of the principal. A CV can identify potential care/case management providers through online searches or seek recommendations from professional guardianship agencies, governmental agencies, advocacy, non-profit or charitable groups established for the particular impairment affecting the Respondent, e.g., The Alzheimer's Association. suffers, e.g., The Alzheimer's Association.

It should be noted that the success of care/case management services as an alternative to a guardianship/conservatorship of the person will vary. The degree and extent of care/case management services varies widely. Fees for such services are affected by the nature and degree of incapacity and the respondent's willingness to accept services.

Some of the **advantages** to care/case management services are:

1. The Respondent maintains their autonomy.
2. Appropriate services are secured.
3. May enable the respondent to remain at home.

**Disadvantages** include:

1. The respondent may not fully understand the contract for services or may resist signing an agreement.
2. Services may be too expensive.
3. The respondent may terminate the care/case manager's services at any time.
4. The care/case manager may terminate the services at any time.
5. The care/case manager may be unwilling to contract with the respondent without an agreement with the agent or the surrogate decision maker.

### Practice Tip

9

Be aware that there are professional associations and certification credentials for care/case managers: apply consumer safeguards.

If the respondent is already receiving case management services through the Department of Social and Health Services, additional services should not be duplicative.

### Protective Payeeships

Where a person isn't capable of handling their own money, payeeship is commonly used to protect the person, insure that their bills are paid and they have a place to live and basic necessities of life, and that reports are made to the source of funds. "Protective payeeships" are sometimes created for people who receive Social Security Disability Insurance (SSDI) and Supplemental Security Income (SSI), as well as veteran's benefits. Where the primary concern is financial, payeeship is a less restrictive, easy to set-up and manage option that doesn't require



any court process. Sometimes the payee is a close acquaintance or family member, other times it is an agency like the Arc or a financial institution. People whose money is managed by a payee sometimes learn to handle their own money and the payeeship is discontinued.

## Other Protective Arrangements

A “protective arrangement” is an alternative to guardianship/conservatorship that allows a court to enter an order that is tailored to the individual’s circumstances/needs. Thus, a protective arrangement can be a way to address a specific issue and/or authorize a delineated act. A protective arrangement is more limited in scope and duration than a guardianship/conservatorship.

### Who Can Petition?

Any person “interested in an adult’s welfare” (including the adult or conservator for the adult) may petition for a protective arrangement instead of a guardianship. RCW 11.130.580(2).

However, only the following persons can petition for a protective arrangement instead of a conservatorship:

1. The individual for whom the protective arrangement is sought.
2. A person interested in the property, financial affairs or welfare of the individual, including a person that would be adversely affected by lack of effective management of property or financial affairs of the individual.
3. The guardian for the individual.

RCW 11.130.580(3)

It may be the case that a petitioner directly seeks a protective arrangement instead of a guardianship/conservatorship. It could also be the case that a petitioner seeks the appointment of a guardian/conservator, but at the hearing on the petition, the court orders a protective arrangement instead of a guardianship/conservatorship. See RCW 11.130.580 – RCW 11.130.635.

## Protective Arrangements Instead of Guardianship

Under RCW 11.130.585, the court can enter a protective arrangement instead of a guardianship if the court finds by clear and convincing evidence that:

1. Respondent is unable to care for themselves even with appropriate supportive services, technological assistance, or supported decision making.
2. The respondent’s identified needs cannot be met by a less restrictive alternative.

Because the UGA requires a determination that the respondent’s identified needs cannot be met by a less restrictive alternative prior to entering a protective arrangement, the CV must consider the availability of other less restrictive alternatives, such as a durable power of attorney, prior to considering the suitability of a protective arrangement.

The statute lists examples of potential protective arrangements instead of guardianships. Under RCW 11.130.585(2), instead of appointing a guardian, the court may:

1. Authorize or direct a transaction necessary to meet the respondent’s needs for health, safety, or care, including:
  - a. A particular medical treatment or refusal of a particular medical treatment.
  - b. Visitation or supervised visitation between the respondent and another person.
2. Restrict access to the respondent by a specified person whose access places the Respondent at serious risk of physical, psychological or financial harm.
3. Reorder other arrangements on a limited basis that are appropriate.

The use of the word “including” can likely be interpreted as meaning that the above list is non-exhaustive.

## Protective Arrangements Instead of Conservatorship

Under RCW 11.130.590(1), the court can enter a protective arrangement instead of conservatorship if the court finds by clear and convincing evidence that:

1. The adult is unable to manage property or financial affairs, even with appropriate supportive services, technological assistance or supported decision making; or the adult is missing, detained or unable to return to the United States.
2. That an order is necessary to avoid harm to the adult or significant dissipation of the property of the adult; or obtain funds for the benefit of the respondent.
3. The respondent's identified needs cannot be met by a less restrictive alternative.

Similar to a protective arrangement instead of a guardianship, the CV still must consider the availability of less restrictive alternatives prior to considering the suitability of a protective arrangement.

The statute lists examples of potential protective arrangements instead of conservatorships. Under RCW 11.130.590(3), instead of appointing a conservator, the court may authorize or direct a transaction necessary to protect the financial interest or property of the respondent, including:

1. An action to establish eligibility for benefits.
2. Payment, delivery, deposit or retention of funds or property.
3. Sale, mortgage, lease or other transfer of property.
4. Purchase of an annuity.
5. Entry into a contractual relationship, including a contract to provide for personal care, supportive services, education, training, or employment.
6. Addition to or establishment of a trust.

7. Ratification or invalidation of a contract, trust, will or other transaction, including a transaction related to the property or business affairs of the respondent.
8. Settlement of a claim.
9. Restrict access to the respondent's property by a specified person whose access to the property places the respondent at serious risk of financial harm.

Similar to the above note, the use of the word "including" can likely be interpreted as meaning that the list is non-exhaustive.

RCW 11.130.590(4) allows a court to order a protective arrangement even without a finding that: 1) the Respondent is unable to manage property or financial affairs, and 2) that the protective arrangement is necessary to avoid harm or significant dissipation of the property of the adult or to provide for the needed support, care, education, health, and welfare for the adult or another individual entitled to the adult's support.

RCW 11.130.590(4) allows the court to issue an order "to restrict access to the respondent or the respondent's property by a specified person that the court finds by clear and convincing evidence: (a) Through fraud, coercion, duress or the use of deception and control caused or attempted to cause an action that would have resulted in financial harm to the respondent or the respondent's property; and (b) Poses a serious risk of substantial financial harm to the respondent or the respondent's property."

## Petition for Protective Arrangement

RCW 11.130.595 sets forth the list of information that should be included in a petition for a protective arrangement. While the contents of the petition, for the most part, are similar to a petition for appointment of a guardian/conservator, a petition for a protective arrangement should also include:

1. Nature of the protective arrangement sought.
2. The reason the protective arrangement sought is necessary, including a brief description of:
  - a. The nature and extent of the respondent's alleged need.

- b. Any less restrictive alternative for meeting the respondent's alleged need which has been considered or implemented.
- c. The reason for the insufficiency of existing less restrictive alternatives.

RCW 11.130.595(4)-(5).

## Notice; Hearing

Hearings on a petition for a protective arrangement instead of guardianship/conservatorship, just as with petitions for guardianship/conservatorship, are heard within 60 days of filing the petition unless extended for good cause. RCW 11.130.600. The persons who are entitled to notice of a petition for a protective arrangement instead of a guardianship/conservatorship are the respondent, the court visitor and those individuals who are required to be listed in the petition under RCW 11.130.595(1)-(3). RCW 11.130.600(3) and RCW 11.130.595. A copy of the petition and notice of hearing on the petition for a protective arrangement must be served on the respondent and CV not more than five court days after the petition has been filed. The notice must inform the respondent of their rights at the hearing, including the right to an attorney and to attend the hearing. RCW 11.130.600(b). The notice must also include a description of the nature, purpose and consequences of granting the petition for protective arrangement. *Id.* As in guardianship/conservatorship matters, the court may not grant the petition if notice is not provided to the respondent pursuant to the statute. *Id.*

## Appointment and Role of Court Visitor

Pursuant to RCW 11.130.605, the court shall appoint a CV upon the filing of a petition for protective arrangement. The role of the CV in a petition for a protective arrangement instead of a guardianship/conservatorship is substantially the same as the role of the CV in a guardianship/conservatorship matter.

CVs must still file a statement of qualifications. See RCW 11.130.605. CVs must still also obtain a professional evaluation. See RCW 11.130.615.

Rules regarding attendance at the hearing are the same as attendance rules for a hearing on a petition for guardianship/conservatorship. See RCW 11.130.620.

If appointed under a petition for a protective arrangement, CVs should carefully review RCW 11.130.605(6)-(7). RCW 11.130.605(6) includes directions for the CV when interviewing the respondent. RCW 11.130.605(7) states what the CV must include in the report for a protective arrangement.

## Role of Special Agent

If a protective arrangement is ordered, "[t]he court may appoint a special agent, to assist in implementing a protective arrangement." RCW 11.130.635. If so appointed, the "special agent has the authority conferred by the order of appointment and serves until discharged by court order." *Id.*

## Supported Decision Making Agreements

A "supported decision-making agreement" is a new concept under the UGA. Provisions concerning supported decision-making agreements are located under Article 7 (RCW 11.130.700-755). A SDMA is "an agreement between an adult with a disability and one or more supporters entered into under this chapter." RCW 11.130.700(2). The purpose of a SDMA is to provide for a "less restrictive alternative to a guardianship for adults with disabilities who need assistance with decisions regarding daily life." RCW 11.130.705.

Under RCW 11.130.700(1), disability is defined, with respect to an individual, as "a physical or mental impairment that substantially limits one or more major life activities." The supporter is a person "who has entered into a supported decision-making agreement with an adult with a disability." RCW 11.130.700(3).

The new law on supported decision-making (SDM) is just now being implemented, and is not always recognized by court staff, attorneys, and others. CVs are required by the statute to make recommendations to the Court regarding whether a less restrictive option (including SDM) can meet the needs of the Respondent, so it is important to understand the potential of this new tool.

There are resources court visitors can access to learn more about SDM and when it can be useful as an alternative to guardianship. The Northwest Justice Project hosts a website, Washington Lawhelp, that contains extensive practical information and forms related to alternatives to guardianship. This information is useful to Court Visitors as they learn about options. This includes information and forms on Durable Powers of Attorney, payeeship and Supported Decision-Making. <https://www.washingtonlawhelp.org/issues/aging-elder-law/guardianships-powers-of-attorney-2> There is also information available on the web, including a website for the National Resource Center for Supported Decision-Making. <https://supporteddecisionmaking.org/> This website includes videos, examples, and other materials.

## Scope

Under RCW 11.130.715, a SDMA can authorize a supporter to:

1. Provide supported decision making, by providing assistance in understanding the options, responsibilities and consequences of the adult's life decisions, without making those decisions on behalf of the adult with a disability.
2. Assist in accessing, collecting, and obtaining information that is relevant to a given life decision.
3. Assist the adult in understanding the information collected pursuant to the above bullet point.
4. Assist in communicating the adult's decisions to appropriate people.

The supporter under a SDMA will only have authority as to the specific items granted in the SDMA. RCW 11.130.720.

## Termination of SDMA

The supporter's authority to act will terminate under the terms of the SDMA. The SDMA can also be terminated as detailed in RCW 11.130.725, if the supporter is found to have abused, neglected or exploited the person with a disability. The SDMA may also be terminated by the person with a disability (orally, in writing, through an assistive technology device, or by any other means or act showing a specific intent to terminate the SDMA). The supporter can also terminate the SDMA as it relates to that supporter by providing written notice to the person with a disability.

## Presumption of Capacity

RCW 11.130.710(1) states that "all adults are presumed to be capable of managing their affairs." Further, "the manner in which an adult communicates with others is not grounds for deciding that the adult is incapable of managing the adult's affairs." RCW 11.130.710(2). "Execution of a [SDMA] may not be used as evidence for the petition or appointment of a guardianship/conservatorship." RCW 11.130.710(3). Thus, a CV should not consider the existence of a SDMA as evidence that an adult is incapacitated under the provisions of the UGA.

## Form/Execution of SDMA

RCW 11.130.740 and RCW 11.130.745 provide further information on the form of the SDMA and execution formalities.

## Checkpoint

Read the questions below. Select the answer that represents the best answer provided.

**1. What does RCW 11.130.001 emphasize regarding guardianship and conservatorship proceedings?**

- a. It encourages appointing guardians and conservators for all incapacitated individuals.
- b. It highlights the need to restrict a person's liberty and autonomy to the maximum extent possible.
- c. It advocates for minimal restriction of an individual's rights and autonomy.
- d. All answers are correct.

**2. How does the Uniform Guardianship Act define a "less restrictive alternative"?**

- a. Any approach that completely eliminates the need for guardianship or conservatorship.
- b. An approach that restricts fewer rights than guardianship or conservatorship.
- c. An approach that is cost-effective for the state.
- d. All answers are correct.

**3. What must a petition for guardianship/conservatorship of an adult include regarding less restrictive alternatives?**

- a. A statement regarding any protective arrangement or less restrictive alternative considered or implemented.
- b. A statement detailing every alternative considered.
- c. A recommendation for guardianship/conservatorship without considering alternatives.
- d. All answers are correct.

**4. According to Washington law, what must a power of attorney include to be considered "durable"?**

- a. It must be signed and dated by the agent.
- b. It must be notarized by a notary public.
- c. It must include language indicating it remains effective even in the principal's incapacity.
- d. All answers are correct.

**5. What standard of capacity is generally required to execute a durable power of attorney in Washington?**

- a. The principal must have no knowledge of the agent.
- b. The principal must possess full legal capacity until adjudged incapacitated.
- c. The principal must be at least 21 years old.
- d. All answers are correct.

Chapter 7 checkpoint answers: c, b, a, c, b



## CHAPTER 8: The Court Visitor Report

### Learning Objectives:

The learner will

- Recognize the actions required for the protection of sensitive information within reports.
- Compare considerations and deadlines for writing and filing reports.

### Sealing Of Reports

Because court records in many counties may be available online as well as for review in the courthouse, the Washington Supreme Court adopted a rule to assure that certain private or sensitive information is not made public. GR 22.

RCW 11.130.300(3) and RCW 11.130.410(3) further clarify the confidential nature of the CV's report. A report of the CV or a professional evaluation generated in the course of the proceeding must be sealed on filing, but are available to the following:

(a) The court; (b) The individual who is the subject of the report or evaluation, without limitation as to use; (c) The petitioner, visitor, petitioner's and respondent's attorneys, and proposed guardians, for purposes of the proceeding; (d) Unless the court directs otherwise, an agent appointed under a power of attorney [see details under RCW 11.130.300 and RCW 11.130.410 as they differ slightly]; and (e) Any other person if it is in the public interest or for a purpose the court orders for good cause.

Similar language is also included in RCW 11.130.620 (protective arrangements).

General Rule 22 Washington State Courts – Court Rules

ACCESS TO FAMILY LAW, PROTECTION ORDER, GUARDIANSHIP AND THERAPEUTIC COURT RECORDS

[https://www.courts.wa.gov/court\\_rules/pdf/GR/GA\\_GR\\_22\\_00\\_00.pdf](https://www.courts.wa.gov/court_rules/pdf/GR/GA_GR_22_00_00.pdf)

(a) Purpose and Scope of this Rule. This rule governs access to family law, protection order, guardianship, and therapeutic court records, whether the records are maintained in paper or electronic form. The policy of the courts is to facilitate public access to court records, provided that such access will not present an unreasonable invasion of personal privacy, will not permit access to records or information defined by law or court rule as confidential, sealed, exempted from disclosure, or otherwise restricted from public access, and will not be unduly burdensome to the ongoing business of the courts.

GR 22(e)(2) requires that certain reports be filed as two separate documents, one public and one sealed, as follows:

### Public Document

Private or personal information should not be included in the public report.

The public portion of any report shall include a simple listing of:

- i. Materials or information reviewed.
- ii. Individuals contacted.
- iii. Tests conducted or reviewed.
- iv. Conclusions and recommendations.

### Sealed Document

The sealed portion of the report shall be filed with a coversheet designated: "Sealed Confidential Report." The material filed with this coversheet shall include:

- i. Detailed descriptions of material or information gathered or reviewed.
- ii. Detailed descriptions of all statements reviewed or taken.
- iii. Detailed descriptions of tests conducted or reviewed.
- iv. Any analysis to support the conclusions and recommendations.

The CV should exercise care to insert in the public report only that information which is required by GR 22 and avoid setting forth any information that is of a private or confidential nature. Such information is intended by the rule to be kept from public viewing and should be placed in the sealed report. A CV should be familiar with the local rules in their county regarding the sealing of the CV's confidential report and the professional evaluation.

See also GALR 2(n)1 which states as follows:

Maintain privacy of parties. As an officer of the court, a guardian ad litem shall make no disclosures about the case or the investigation except in reports to the court or as necessary to perform the duties of a guardian ad litem. A guardian ad litem shall maintain the confidential nature of identifiers or addresses where there are allegations of domestic violence or risk to a party's or child's safety. The guardian ad litem may recommend that the court seal the report or a portion of the report of the guardian ad litem to preserve the privacy, confidentiality or safety of the parties or the person for whom the guardian ad litem was appointed. The court may, upon application, and under such conditions as may be necessary to protect the witnesses from potential harm, order disclosure or discovery that addresses the need to challenge the truth of the information received from the confidential source.

GR 22(e)(3) further provides that the sealed portion of the report may not be placed in the court file or used as an attachment or exhibit to any other document except under seal.

<sup>1</sup>This Chapter assumes the Superior Court Guardian ad Litem Rules and General Rules will apply equally to CVs

## Contents Of Sealed CV Reports

### Guardianship

RCW 11.130.280(6) requires that the CV report for a guardianship include:

1. A summary of self-care and independent living tasks the respondent can manage without assistance or with existing supports, could manage with the assistance of appropriate supportive services, technological assistance, or supported decision making, and cannot manage.
2. A recommendation regarding the appropriateness of guardianship, including whether a protective arrangement instead of guardianship or other less restrictive alternative for meeting the respondent's needs is available.
  - a. If a guardianship is recommended, whether it should be full or limited.

If a limited guardianship is recommended, the powers to be granted to the guardian.

3. A statement of the qualifications of the proposed guardian and whether the respondent approves or disapproves of the proposed guardian.

A statement as to whether the proposed dwelling meets the respondent's needs and whether they have expressed a preference as to residence;

A statement as to whether the respondent declined a professional evaluation under RCW 11.130.290 and what other information is available to determine their needs and abilities without the professional evaluation.

A statement as to whether the respondent is able to attend a hearing at the location court proceedings typically are held.

A statement as to whether the respondent is able to participate in a hearing and which identifies any technology or other form of support that would enhance their ability to participate.

Any other matter the court directs.

### Conservatorship

RCW 11.130.380(7) requires that the CV report for a conservatorship include the following:

1. A recommendation:
  - a. Regarding the appropriateness of conservatorship, or whether a protective arrangement instead of conservatorship or other less restrictive alternative for meeting the respondent's needs is available.
  - b. If a conservatorship is recommended, whether it should be full or limited.
  - c. If a limited conservatorship is recommended, the powers to be granted to the conservator, and the property that should be placed under the conservator's control.
  - d. If a conservatorship is recommended, the amount of the bond or other verified receipt needed under RCW 11.130.445 and 11.130.500. (Note: The UGA now includes a formula for calculating bond amounts.)
2. A statement of the qualifications of the proposed conservator and whether the respondent approves or disapproves of the proposed conservator.
3. A statement as to whether the respondent declined a professional evaluation under RCW 11.130.390 and what other information is available to determine their respondent's needs and abilities without the professional evaluation.
4. A statement as to whether the respondent is able to attend a hearing at the location court proceedings typically are held.
5. A statement as to whether the respondent is able to participate in a hearing and which identifies any technology or other form of support that would enhance the their ability to participate.
6. Any other matter the court directs.



## Practice Tip

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If there is not a standard form for use in a specific county, a good practice tip is to communicate with an experienced CV in such county to obtain a template or sample report form that the CV can adopt for their use. The sample forms provide only a suggested format although the forms are not themselves required by statute.

Some CVs find it helpful to create a “table” with the required topics of investigation in one column and the narrative answers in the next column. This makes the topics of investigation clear to the court and ensures that no sections are omitted.

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At the beginning of the report, the CV should set out a brief summary of recommendations to include, but not necessarily limited to, the nature and extent of guardianship/ conservatorship, if any, and the identity of the nominee guardian(s)/ conservator(s).

## Other Important Information to Include in the Report

The CV should carefully review the statute and use that as the basic template for the report. That way, the CV will not miss any required information. The parties and the court can also more easily verify that all required information is contained in the written record.

If the petition for guardianship/conservatorship does not identify that the respondent is a member of a Native American or Native Alaskan tribe (which can trigger other investigations), and whether the respondent is a veteran and the CV learns during the course of the CVs investigation that the respondent is a member of a Native American or Alaskan tribe or veteran, the CV should note this in the report.

## Nomination of Guardian or Conservator

The CV’s report should contain a section concerning the suitability of the proposed guardian/ conservator. Any information that could potentially impact suitability should be addressed in the CV’s report.

## Right to Vote and Marry

The UGA requires specific findings to revoke the respondent’s right to vote and/or marry. If a guardianship is imposed on a respondent, they do not lose the right to vote or marry unless the court makes a finding of fact that supports removing the right to vote or marry. Specifically, as to the right to vote, the court must find “that the adult cannot communicate, with or without support, a specific desire to participate in the voting process.” RCW 11.130.310(1)(c).

If the order revokes the respondent’s right to vote, the court must notify the appropriate county auditor so the person can be removed from the voting rolls. In some counties, the local rule requires that the CV or the guardian notify the county auditor about removal of the person from the list of registered voters.

## Protective Agreement Reports

The CV may be appointed in a petition for a protective agreement instead of guardianship/ conservatorship and asked to investigate and make recommendations. RCW 11.130.605 outlines such appointments and lists the information that should be included in a report.

The same deadline of filing the report 15 days prior to the hearing and the same service requirements apply. Even if the case is not filed as a petition for protective agreement instead of guardianship/ conservatorship, such recommendations may be appropriate to include in a guardianship/ conservatorship matter as a possible less restrictive alternative.

RCW 11.130.605(7) requires the CV to include in their report the following information:

1. To the extent relevant to the order sought, a summary of self-care, independent living tasks and financial management tasks the respondent:
  - a. Can manage without assistance or with existing supports.
  - b. Could manage with the assistance of appropriate supportive services, technological assistance or supported decision making.
  - c. Cannot manage.
2. A recommendation regarding the appropriateness of the protective arrangement sought and whether a less restrictive alternative for meeting the respondent's needs is available.
3. If the petition seeks to change the physical location of the dwelling of the respondent, a statement as to whether the proposed dwelling meets the respondent's needs and whether the respondent has expressed a preference as to their dwelling.
4. A statement as to whether the respondent declined a professional evaluation under RCW 11.130.615 and what other information is available to determine their needs and abilities without the professional evaluation.
5. A statement as to whether the respondent is able to attend a hearing at the location court proceedings typically are held.
6. A statement as to whether the respondent is able to participate in a hearing and which identifies any technology or other form of support that would enhance their ability to participate.
7. Any other matter the court directs.

## **Suggestions for Reports**

### ***Use Topic Sentences***

The CV should use basic writing composition techniques to identify the subject of the information contained in each area of the report. The CV should edit the report so that the CV avoids rambling compilations of information

collected in the investigation. The CV should use the information from the investigation to support the general points the CV is trying to make. A chronological rendition of your investigation is not helpful to an understanding of the issues, and it causes the reader to wonder what relevance the particular recitation has to the subject of the guardianship/conservatorship proceeding. Formatting the topics of investigation in a table helps to keep the report organized and succinct.

### ***Write the Report to Show That the CV Has Made a Complete Investigation***

The CV should ensure that the CV collects all information required by the statute and any other relevant information necessary to support the CV's recommendations. For example, when considering whether to recommend a professional guardian/conservator, do not assume that a CPG is appropriate simply on the basis of certification. Other factors may affect the CPG's ability to serve in the particular case.

### ***Be Respectful***

The CV should be respectful of how the CV expresses their opinions and in how the CV summarizes information learned in the investigation. Even though the CV's confidential report is sealed, it will still be read by the court, the respondent and other parties. The CV should give the court information to support the recommendations but be mindful of how that information is presented. For example, the CV should not say: "The sisters hate each other's guts because of an incident where one sister stole money from the other sister and can't put their feelings aside to take care of mom." Instead, say, "The family is unable to put aside personal disputes and work together for the best interest of their mother." While it is important to give the court an accurate picture of the respondent's situation, it is not always necessary to include details of family conflict which are peripheral, and which would only serve to upset family members or parties.

### **Review Work**

The CV should leave enough time before the report is due to ensure that the report contains the information necessary to assist the court in resolving all issues. Failure to adequately investigate and present the information may cause a continuance and a denial of fees the CV would have otherwise earned. The CV's fees may be denied where proof of investigation of best interest has not occurred. *Marriage of Swanson*, 88 Wn. App. 128, 944 P.2d 6 (1997).

### **Be Brief and to the Point**

The CV should take extra time to edit the report to correct errors and to make the report as readable as possible. The CV should remove any information that does not explain or support the recommendations. One failing that many reports have is the tendency to reflect everything the CV has learned in the investigation so that the report serves as a record. The notes that the CV has compiled will serve to make the record while the report is solely designed to support the CV's recommendations. The CV report should provide sufficient information that is material to the court's analysis and understanding of the respondent, respondent's need.

### **Serve the Confidential Report and Public Report**

The CV should serve the confidential report and public report (and professional evaluation) on the respondent (or respondent's attorney), the court, petitioner and their attorney, and any interested parties entitled to notice under RCW 11.130.080. RCW 11.130.280(6), RCW 11.130.380(7), and RCW 11.130.605(5).

With regard to "interested parties," RCW 11.130.080 authorizes a person who is not otherwise entitled to notice to file a request for notice if the person is "interested in the welfare of a respondent, individual subject to guardianship or conservatorship, or individual subject to a protective arrangement..." RCW 11.130.080(1) (b). The court must approve the request for notice in order for the individual to be entitled to notice. RCW 11.130.080(3).

### **File the Report on Time**

The statute requires the timely filing and service of the CV report on those parties entitled to receive it. The CV report must be filed and served 15 days prior to the hearing date. RCW 11.130.280(6), RCW 11.130.380, and RCW 11.130.605(5). If the CV needs additional time to complete the investigation and report, the CV can petition the court for an extension of the hearing date, if good cause exists. RCW 11.130.370(1), RCW 11.130.275(1), and RCW 11.130.600(1).

## **Practice Tip**

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If the CV is certain that the report will not be filed on time and the CV has a good reason for the delay, the CV should seek agreement from all the statutory parties to a reduced period for filing the report or attempt to obtain an agreement from all parties for a continuance of the hearing.

If the CV needs additional time to finalize the report, then the CV must petition the court for a postponement of the hearing or, with the consent of all other parties, a reduction in time for filing the report.

### **Provide Working Copies to the Court**

The CV should look to the local court rules in the county in which they are appointed for rules on providing "working papers" or "bench copies" to the court. Working papers must be provided to the court prior to the hearing, so that the judge/commissioner has the opportunity to review your report and the professional evaluation prior to the hearing.

## Checkpoint

Read the questions below. Select the answer that represents the best answer provided.

**1. Why does the Washington Supreme Court adopt rules for sealing certain portions of court visitor reports?**

- a. To make the reports more accessible to the public.
- b. To protect the privacy of the CV.
- c. To ensure that certain sensitive information is not made public.
- d. All answers are correct.

**2. Under General Rule 22 (GR 22), who is allowed access to sealed CV reports in Washington?**

- a. Only the CV and the court.
- b. The CV, the court and the subject of the report.
- c. The CV, the court and the petitioner.
- d. All answers are correct.

**3. What is the purpose of filing certain CV reports as two separate documents, one public and one sealed, as required by GR 22(e)(2)?**

- a. To protect private or personal information in the report.
- b. To ensure the reports are organized properly.
- c. To make the reports more readable for the court.
- d. All answers are correct.

**4. What is the key consideration when writing CV reports in Washington, as mentioned in the "Suggestions for Reports" section?**

- a. Include all information collected during the investigation.
- b. Be respectful in expressing opinions and summarizing information.
- c. Create a chronological rendition of the investigation.
- d. All answers are correct.

**5. What is the deadline for filing CV reports in Washington, as specified in the statutes?**

- a. 30 days prior to the hearing.
- b. Seven days prior to the hearing.
- c. 15 days prior to the hearing.
- d. All answers are correct.

Chapter 8 checkpoint answers: c, b, a, b, c



## CHAPTER 9: Respondent's Right to Counsel

### Learning Objectives:

The learner will

- Identify a respondent's rights and the circumstances to counsel in guardianship, conservatorship or protective arrangement proceedings.
- Recognize the CV's duty regarding a respondent's rights for choice and refusal to counsel.

### Questions And Answers

#### What is the Respondent's Right to Counsel?

RCW 11.130.285 (guardianships), RCW 11.130.385 (conservatorships), and RCW 11.130.610 (protective arrangements) detail the appointment and role of attorneys for respondents.

The respondent has the right to be represented by willing counsel at any stage of a guardianship, conservatorship or protective arrangement proceeding.

Thus, even though a respondent may initially decline to be represented by an attorney, they may change their mind at any time during the proceeding and exercise their right to be represented.

## When is an Attorney Appointed for the Respondent?

Counsel for the respondent can be appointed upon the court's own motion, or upon a petition for appointment of counsel filed by the court visitor, by an attorney purporting to represent the respondent or by the respondent themselves.

Unless the respondent is represented by an attorney, the court is not required, but may appoint an attorney to represent the respondent, regardless of their ability to pay, except as provided otherwise in statute.



The statute provides that under certain circumstances, the court appoints an attorney for the respondent at public expense. The court must appoint an attorney to represent the respondent at public expense when either of: the respondent is unable to afford an attorney; the expense of an attorney would result in substantial hardship to the respondent; or the respondent does not have practical access to funds with which to pay an attorney. If the respondent can afford an attorney but lacks practical access to funds, the court must appoint an attorney. The respondent may be ordered to reimburse the expense of counsel as part of a final order RCW 11.130.285, RCW 11.130.385, and RCW 11.130.610.

The law states the appointment of counsel for respondents is in the court's discretion, except as otherwise provided.

The court visitor should become familiar with local court rules and practice with respect to the appointment of an attorney at public or private expense.

Immediately upon the filing of a petition for an emergency guardian or emergency conservator, the court must appoint an attorney to represent the respondent. RCW 11.130.320(9) and RCW 11.130.430(9).

In addition, at any time during the proceeding, the court can appoint an attorney for the respondent if the court determines that the rights and interests of the respondent cannot otherwise be adequately protected and represented in the proceeding. RCW 11.130.280(1)(ii), RCW 11.130.385(1)(c)(ii), and RCW 11.130.610(1)(c)(ii).

## How Does the Court Select an Attorney to Appoint for the Respondent?

When the respondent does not request a specific attorney, or when an attorney has not otherwise petitioned for appointment in the proceeding, the court selects an attorney to represent the respondent. How the court selects the attorney may vary from county to county. If the CV believes the circumstances warrant appointment of counsel with special expertise, the CV should inform the court of the circumstances.

## Who Can Serve as Attorney for the Respondent?

A respondent is entitled to willing counsel of their choosing at any point in the proceeding. Any attorney for the respondent must be appointed by the court (though not necessarily selected by the court) on the court's own motion or by separate petition.

## What are the CV's Duties Regarding the Respondent's Right to Counsel?

As soon as practicable following appointment, the CV must meet with the respondent and inform them of their right to counsel, the right to be represented by an attorney of their choosing, and to have an attorney appointed by the court to represent them in the proceeding.

If an attorney has not otherwise been appointed for the respondent, it is the duty of the CV:

- 1) to investigate and report to the court if the respondent requests to be represented by counsel.
- 2) if the CV believes that it is in the respondent's best interest an attorney be appointed.
- 3) If the particular rights and interests of the respondent cannot otherwise be adequately protected and represented, an attorney should be appointed.

It is very important if at any point in the proceeding, the respondent objects to the proceeding, states they want an attorney, or otherwise expresses a desire for legal assistance, the CV must take appropriate steps to ensure an attorney be appointed for the respondent.

Likewise, during the CV's initial visit with the respondent if there is an affirmative desire expressed by the respondent they want an attorney, the CV should:

- A. First determine if the respondent is represented or desires to be represented by a specific attorney. Contact the specific attorney to determine if that attorney is willing or able to represent the respondent for the matter at hand.
- B. Then the CV should explain the next steps the CV will take to ensure the respondent will be represented by an attorney.
- C. The CV should suspend the meeting with the respondent and explain that the meeting will be resumed after the appointment of an attorney for the respondent.
  - a. NOTE: GALR(4)(a) Access to party. ... When a respondent is represented by an attorney, the [CV/guardian ad litem] shall notify the attorney in advance of contact and the contact with the represented party shall be as permitted by the respondent's attorney, unless otherwise noted by the court.

**BEST PRACTICE NOTE:** Be familiar with the GALR and remember a CV shall not advise or advocate for any party so as to create in the mind of a reasonable

person the appearance of representing that party as an attorney. Any duties outside the original order appointing a CV should be documented by court order.

If the respondent indicates that they already have an attorney or want to be represented by a specific attorney, the CV should contact that attorney, if named by the respondent.

If the respondent is unable to name the attorney, the CV should consider consulting with their friends or family regarding the name of the attorney.

The CV should contact the attorney to inquire whether they are willing to represent the respondent in the proceeding. The attorney may decline to serve if the representation is beyond the attorney's expertise or would pose a conflict of interest.

If the attorney agrees to represent the respondent in the proceeding, the attorney should petition the court for their appointment by the court. If the attorney fails to do so within a reasonable time period, the CV should follow up with the attorney or petition the court for instructions, as necessary. See the court's local rules and forms.

1. In general, if an attorney for the respondent has not otherwise been appointed, the CV should petition the court for instructions regarding the appointment of an attorney for the respondent if the CV is unable to determine whether the respondent wants to be represented by an attorney.
2. The respondent affirmatively states that they do not wish to be represented by counsel, but the CV believes that the rights and interests of the respondent cannot otherwise be adequately protected and represented without the appointment of an attorney.

As addressed in other chapters, it is very important for the CV to be aware that ex parte communications (i.e., contacting the court directly without including other parties on communications or providing notice of filings or hearings) may be grounds for the CV's removal.

**BEST PRACTICE:** Thus, if the CV intends to petition for the appointment of an attorney for the respondent or instructions from the court, the CV must inform the petitioner and any required notice party of the CV's intentions and provide notice of the filing and hearing on the petition to the petitioner, the respondent and any other required notice parties.

Parties entitled to notice in these situations are the respondent and the petitioner, and may include any other parties identified in the petition and entitled to notice of the petition being filed. Additional individuals may become a notice party by requesting notice under RCW 11.130.080.

Forms for petitioning the court for appointment of an attorney for the respondent are available on the Washington Court Forms website (titled Motion to Appoint Lawyer and Order Appointing Lawyer). Washington State Court Forms AND the court which you are appearing in front of may have their own forms related to the appointment of an attorney or its own process for appointment of an attorney. Double check.

If the CV is contacted at any point during the proceeding by an individual claiming to be the attorney for the respondent, the CV should inform such individual they must be appointed by the court before they can act on behalf of the respondent in the proceeding.

If an attorney has been appointed by the court, and subsequently another attorney of the respondent's choosing petitions for appointment as their counsel, the prior attorney appointed by the court would be discharged upon the court order appointing the newly appearing attorney.

## **What Happens After an Attorney is Appointed for the Respondent?**

An attorney for the respondent must have adequate time for consultation with the respondent and preparation prior to the final hearing. Absent a convincing showing in the record to the contrary, and with the exception of emergency guardianship or conservatorship proceedings, a period of less than three weeks prior to the final hearing is presumed to be inadequate time for counsel to consult with the respondent. RCW 11.130.285, RCW 11.130.385, and RCW 11.130.610.

Once an attorney is appointed the CV should notify the attorney in advance of such contact. The respondent is entitled to have their attorney present at any meeting with the CV. However, the attorney for the respondent shall not impede or impair the CV's investigation, including the CV's interview of the respondent. SEE GALR.

## **What are the Duties of Appointed Counsel for the Respondent**

The attorney for the respondent must advocate for the expressed preferences of the respondent, to the extent reasonably ascertainable, regardless of whether the attorney believes those preferences are in the respondent's best interest. The attorney must make reasonable efforts to ascertain the respondent's wishes.

If the attorney cannot ascertain the respondent's wishes, the attorney shall advocate for the "result that is the least restrictive in type, duration and scope, consistent with the respondent's interests." RCW 11.130.285(2)(c), RCW 11.130.385(2)(c), and RCW 11.130.610(2)(c) (emphasis added)

The respondent's attorney should ensure compliance by all parties and the CV with all procedural and substantive requirements of the law, including all due process requirements.

Any failure of the petitioner or the CV to comply with the procedural or substantive requirements of the law are subject to challenge by the respondent's attorney, and any such challenge could result in removal of the CV, an award of fees against the petitioner or even dismissal of the pending proceeding.

All attorneys appointed for a respondent are subject to the Washington State Rules of Professional Conduct.

The reasonable fees and costs for an attorney appointed for a respondent is subject to RCW 11.130.100. An attorney for a respondent in a proceeding under chapter 11.130 RCW is entitled to reasonable compensation for services and reimbursement of reasonable expenses from the property of the respondent or at public pay. In both



private pay and public pay cases, the court must approve compensation and expenses payable under this section before payment. Approval is not required before a service is provided or an expense is incurred.

**BEST PRACTICE NOTE:** Like CV's, Attorneys appointed for respondents should not solicit or accept payment for fees and costs from a respondent or a third party without advance approval from the court.

## What if the Respondent Refuses or is Unable to Communicate with Their Court-Appointed Counsel?

If the respondent refuses to communicate with their appointed attorney or is unable to communicate with the attorney even with appropriate accommodations and assistive devices, the attorney is thus unable to receive direction from the respondent. While this circumstance may typically preclude an attorney-client relationship, the appointed attorney still has a role and duty in the proceeding. If the attorney cannot ascertain the respondent's wishes, the attorney shall advocate for the "result that is the least restrictive in type, duration and scope, consistent with the respondent's interests." *Id.*

**BEST PRACTICE FOR ATTORNEYS:** Rule of Professional Conduct 1.14: See also RPC Comment [5] If a lawyer reasonably believes a client is at risk of substantial physical, financial or other harm unless action is taken, and that a normal client-lawyer relationship cannot be maintained because the client lacks sufficient capacity to communicate or to make adequately considered decisions in connection with the representation then reasonable necessary proactive action, including consulting with individuals or entities that have the ability to take action to protect the client (such as seeking a guardian ad litem, conservator or guardian, is permitted. Comment [5] also gives other examples such as consulting with family members, using a reconsideration period to permit clarification or improvement of circumstances, using voluntary surrogate decision making tools such as a durable power of attorney or consulting with support groups, professional services, adult protective agencies or other individuals or entities that have

the ability to protect the client. The lawyer should be guided by such factors as the wishes and values of the client to extent known, the client's best interest and the goals of intruding into the client's decision-making autonomy to the least extent feasible, maximizing client capacities and respecting the client's family and social connections.

### *In Determining the Extent of the Client's Diminished Capacity*

An attorney should consider and balance such factors: the client's ability to articulate reasoning leading to a decision, variability of state of mind and ability to appreciate consequences of a decision; the substantive fairness of a decision; and the consistency of a decision with the known long-term commitments and values of the respondent client. In appropriate circumstances, the lawyer may seek guidance from an appropriate diagnostician. See RPC Comment [6].

### *Disclosure of Client's Condition*

Client confidentiality governs. See RPC 1.16 and RPC 1.14 Comment [10]. When taking protective action, the attorney is impliedly authorized to make necessary disclosures, even when the client directs the attorney to the contrary. There are limits on disclosure to third parties. The question should be whether it is likely the person or entity consulted with will act adversely to the client's interests before discussing matters related to the client.

## How is Counsel for the Respondent Compensated?

An attorney for the respondent is entitled to reasonable compensation for services and reimbursement of reasonable expenses from the assets/property of the respondent. RCW 11.130.100 or in proceedings in which the attorney is appointed at public expense.

In all appointments of an attorney and payment is from the assets of the respondent or at public expense, attorney fees and costs must be submitted for court approval prior to payment. Attorneys should submit a declaration regarding incurred fees and costs supported by detailed billing statements for the court's review and approval.



However, in any proceeding for the appointment of a guardian/conservator or for a protective arrangement that does not result in an adjudication of incapacity and resulting guardianship, conservatorship, or protective arrangement, the respondent's attorney's fees and costs may not be subject to court review and the petition and CV have no rights to object to the reasonableness. See also: *In re Guardianship of Beecher*, 130 Wn. App. 66 (2005)

The court has plenary discretion to award attorney fees against or to any party in the proceeding. See also RCW 11.96A.150 and RCW 11.130.100

Counsel for the respondent will be appointed and paid at public expense if:

1. The respondent is unable to afford an attorney.
2. The expense of an attorney would result in substantial hardship to the respondent.
3. The respondent does not have "practical access" to funds to pay an attorney. If the respondent can afford an attorney, but lacks access to funds, the court may order reimbursement as part of the final order.

## When is Court-Appointed Counsel for the Respondent Discharged?

In most cases, the court-appointed attorney for the respondent is discharged by the court at the final hearing on the petition. In some cases, the court may determine there is good cause for the attorney to continue to represent the respondent for a period of time, or even indefinitely.

## Summary Of Statutory Authority Under RCW 11.130

### Right to Counsel

A respondent has the right to be represented by an attorney of their choosing at any stage of the proceeding. RCW 11.130.285(1)(a), RCW 11.130.385(1)(a), and RCW 11.130.610(1)(a).

Any attorney purporting to represent a respondent must petition the court to be appointed. RCW 11.130.285(1)(a), RCW 11.130.385(1)(a), and RCW 11.130.610(1)(a).

If counsel has not otherwise been appointed for the respondent who is able to afford and pay for an attorney, the court is not required but may appoint an attorney to represent the respondent. RCW 11.130.285(1)(b), RCW 11.130.385(1)(b), and RCW 11.130.610(1)(b).

However, "(w)hen, in the opinion of the court, the rights and interests of the respondent cannot otherwise be adequately protected and represented, the court on its own motion must appoint an attorney at any time to represent the respondent." RCW 11.130.285(1)(c)(ii), RCW 11.130.385(1)(c)(ii), and RCW 11.130.610(1)(c)(ii).

### Adequate Time for Consultation and Preparation

Representation requires adequate time for consultation with client and preparation – at least three weeks before any final hearing. RCW 11.130.285(1)(c)(iii), RCW 11.130.385(1)(c)(iii), and RCW 11.130.610(1)(c)(iii).

## Role (Duties) of Attorney

An attorney for a respondent must make reasonable efforts “to ascertain the respondent’s wishes (and) advocate for such wishes to the extent reasonably ascertainable.” If the attorney cannot ascertain respondent’s wishes, the attorney shall advocate for the “result that is the least restrictive in type, duration and scope, consistent with the respondent’s interests” (emphasis added). RCW 11.130.285(2), RCW 11.130.385(2), and RCW 11.610(2). SEE also RPC 1.14

## Appointment of Attorney: Emergency Conservator and Guardian Proceedings

Immediately on filing of a petition for appointment of an emergency guardian or emergency conservator, the court shall appoint an attorney to represent the respondent. RCW 11.130.320(9); RCW 11.130.430(9).

Petitioner must personally serve the respondent, appointed attorney and the CV with the petition for emergency guardian/conservator and notice of hearing within 48 hours. An order appointing an emergency guardian or conservator for the respondent may not be entered unless the respondent, the respondent’s attorney and the court visitor have received a minimum of 14days’ notice of the date, time and place of a hearing on the petition. RCW 11.130.320(9); RCW 11.130.430(9).

However, the court may, under certain circumstances (see RCW 11.130.320(10)), appoint an emergency guardian without advance notice to the respondent and respondent’ attorney. If an emergency guardian is appointed without advance notice to the respondent and Respondent’s attorney:

1. Notice of the appointment of an emergency guardian without advance notice must be given to the respondent and respondent’s attorney within 48 hours. RCW 11.130.320(10)(a).
2. A hearing must be held within five days of appointment on the appropriateness of the appointment of an emergency guardian. RCW 11.130.320(10)(b).

Unlike in emergency guardianship proceedings, RCW 11.130.430 (regarding emergency conservatorships) does not allow for the appointment of an emergency conservator without advance notice of the petition and hearing on the appointment of an emergency conservator to the respondent and appointed counsel.

BEST PRACTICE NOTE for APPOINTED ATTORNEYS:  
See RPC 1.14 Emergency Legal Assistance – Comment [9] and Comment [10]

## Temporary Substitute Guardian and Temporary Substitute Conservatorship Proceedings – Appointment of Counsel

An adult subject to guardianship/conservatorship has the right to be represented by an attorney of their choosing in any temporary substitute guardianship or conservatorship proceedings. RCW 11.130.130(3).

## Termination or Modification of Guardianship/Conservatorship – Appointment of Counsel

Before terminating a guardianship/conservatorship, the court shall follow the same procedures to safeguard the rights of the individual subject to guardianship/conservatorship which apply to a petition for guardianship/conservatorship. RCW 11.130.355(6) and RCW 11.130.570(8).

An individual subject to guardianship/conservatorship who seeks to terminate or modify the terms of the guardianship or conservatorship has the right to choose an attorney to represent the individual. RCW 11.130.355(7) and RCW 11.130.570(9).

## Compensation and Expenses – Attorney for Respondent

### Attorney Compensation and Expenses – In General

The attorney for the respondent is entitled to reasonable compensation for services and reimbursement of reasonable expenses from the assets/property of the respondent. RCW 11.130.100(1)-(2). See each court for limitations on appointments at public expense.

If a guardian/conservator is appointed for the respondent, attorney fees and costs must be submitted for court approval prior to payment. RCW 11.130.100(5).

### Appointment at Public Expense

An attorney for the respondent must be paid at public expense when:

1. The respondent is “unable to afford” an attorney.
2. The expense of an attorney would result in “substantial hardship” to the respondent.
3. The respondent does not have “practical access” to funds to pay an attorney. If the respondent can afford an attorney, but lacks access to funds, the court may order reimbursement as part of final order.

RCW 11.130.285(1)(c), RCW 11.130.385(1)(c), and RCW 11.130.610(1)(c).

### Less Restrictive Alternatives

Less restrictive alternatives, such as powers of attorney, trusts, Supported decision-making agreements, etc. do not need to be established through a court proceeding and are not subject to court supervision. In this regard, the right to and appointment of counsel is inapplicable. However, within a guardianship, conservatorship or protective arrangement proceeding, a suitable less restrictive alternative to a guardianship, conservatorship or protective arrangement may be determined, and the right to counsel/appointment of counsel provisions under guardianships/conservatorships/protective arrangements may thus be applicable, accordingly.

## Checkpoint

Read the questions below. Select the answer that represents the best answer provided.

1. **When can a respondent exercise their right to be represented by an attorney in guardianship, conservatorship or protective arrangement proceedings?**
  - a. Only at the initial stage of the proceeding.
  - b. At any stage of the proceeding.
  - c. Only if they can afford an attorney.
  - d. Only if the court appoints an attorney.
2. **Under what circumstances must the court appoint an attorney for the respondent at public expense?**
  - a. If the respondent can afford an attorney but lacks practical access to funds.
  - b. If the respondent initially declined representation by an attorney.
  - c. If the court deems it necessary to protect the respondent's rights and interests.
  - d. If the court visitor recommends it.
3. **Who can serve as an attorney for the respondent?**
  - a. Any attorney chosen by the respondent.
  - b. Any attorney appointed by the court.
  - c. Only attorneys selected by the court.
  - d. Only attorneys recommended by the court visitor.

(continued on the next page)

## Checkpoint (continued)

### 4. What is the duty of the court visitor regarding the respondent's right to counsel?

- a. The CV should advocate for the respondent as if they were an attorney.
- b. The CV should inform the respondent that they have no right to an attorney.
- c. The CV must take appropriate steps to ensure an attorney is appointed if the respondent expresses a desire for legal assistance.
- d. The CV should provide legal advice to the respondent.

### 5. How are court-appointed attorneys for the respondent compensated?

- a. They are paid by the respondent directly.
- b. They are compensated from the assets/property of the respondent or at public expense.
- c. They are paid by the court.
- d. They receive no compensation.

### 6. When can court-appointed counsel for the respondent be discharged?

- a. They can only be discharged by the respondent.
- b. They are discharged at the final hearing on the petition in most cases.
- c. They are discharged when the court visitor recommends it.
- d. They can never be discharged.

### 7. What is the attorney's role and duty in advocating for the respondent's wishes?

- a. The attorney must always advocate for what they believe is in the respondent's best interest.
- b. The attorney must advocate for the least restrictive result consistent with the respondent's interests.
- c. The attorney should always follow the court's instructions.
- d. The attorney's role is to advocate for the petitioner's wishes.

### 8. In which types of proceedings can the respondent exercise their right to choose an attorney to represent them?

- a. Guardianship and conservatorship proceedings only.
- b. Temporary substitute guardianship or conservatorship proceedings only.
- c. Termination or modification of guardianship/conservatorship proceedings only.
- d. All answers are correct.

### 9. What is the attorney's role and duty in advocating for the respondent's wishes?

- a. The court automatically appoints an attorney for every respondent.
- b. The court follows the recommendations of the court visitor.
- c. The court uses its discretion based on the circumstances and the respondent's ability to pay.
- d. The court relies on the preference of the petitioner.

Chapter 9 checkpoint answers: b, c, b, c, b, b, d, c, d



## CHAPTER 10: Final Words of Wisdom

### Learning Objectives:

The learner will

- Recall the requirements for respondent's attendance in a guardianship/conservatorship proceeding.
- Identify communication criteria for CV cases.

### Court Hearings

#### Attendance at Legal Proceedings

Superior Court Guardian ad Litem Rule (GALR) 2(i) requires the CV to attend all hearings unless excused by court order.

In guardianship/conservatorship proceedings, the respondent's presence at the final hearing on the petition is required. RCW 11.130.295(1) and RCW 11.130.400(1). Under the UGA, the presence of the proposed guardian/conservator is also required unless excused for good cause. RCW 11.130.295(6) and RCW 11.130.400(6).

Pursuant to RCW 11.130.295(1) and RCW 11.130.400(1), if it is not reasonably feasible for the respondent to attend a hearing at the location where hearings are typically held, the court shall make reasonable efforts to hold a hearing at a location convenient to the Respondent or to allow them to attend using real-time audio-visual technology.

Without the respondent's attendance, the hearing may not proceed unless the court finds by clear and convincing evidence that (1) the respondent has refused to attend the hearing after being fully informed of the right to attend and the potential consequences of not attending [in conservatorship matters, the respondent must have "consistently and repeatedly" refused to attend (RCW 11.130.400(2); this language is not in the guardianship statute (RCW 11.130.295(2).)]; (2) there is no practicable way for the respondent to attend and participate in the hearing even with appropriate supportive services or technological assistance; or (3) only in a conservatorship for a minor, the respondent is a minor who has received proper notice and attendance would be harmful to the minor. RCW 11.130.295(2), RCW 11.130.400(2), and RCW 11.130.205(1)(b).

The respondent cannot be forced to attend the hearing and may simply refuse to do so. The CV should always ask the respondent if they wish to attend the hearing and include the respondent's response in the CV's report. The respondent has the right to be represented by an attorney of their choice at the hearing. RCW 11.130.295(4) and RCW 11.130.400(4).

If the respondent is unable to arrange for transportation to the hearing, the CV can assist with making arrangements to have a third party transport the respondent to the hearing, if necessary. However, the CV should generally not transport the respondent to the hearing. The CV should not take action that would appear as though the CV is serving in a representative capacity for the respondent, rather than a neutral party who is advocating for the respondent's best interests.

At the hearing, the respondent has the right to present evidence and subpoena witnesses and documents, the right to examine witnesses, including any court-appointed evaluator and the CV, and otherwise has the right to participate in the hearing. RCW 11.130.295(5) and RCW 11.130.400(5).

## **Courtroom Demeanor**

The CV should be aware of and adhere to certain basic rules with regard to courtroom demeanor. The CV should maintain an appearance of impartiality by not sitting next to or appearing with the petitioner or the respondent, or otherwise give the impression that the CV favors one party (the petitioner, the respondent, other family members, etc.) over the other. Although individuals involved in the process know that with whom the CV sits is not an indication of favoritism, lay individuals involved in this process may see this in a very different manner.

It is critical for the CV to be on time for the court hearing, whether the hearing is in person or virtual. Therefore, the CV should allow plenty of time for travel to the courthouse and/or familiarize themselves with the video platform and log in early. When the CV enters the courtroom area, the CV should greet the parties, introduce themselves to any parties or attorneys that the CV has not met, and attempt to resolve any issues related

to the proposed order before the hearing. In the event your hearing is taking place over Zoom or other virtual means, you should ensure that your background is appropriate and professional.

The CV should maintain their dignity and decorum. The CV should dress professionally in a manner that shows respect for the process and the parties, regardless of whether the hearing is in a physical courtroom or virtual medium.

The CV should be aware of and obey posted rules such as no food or drink in the courtroom, no chewing gum in the courtroom and turning off or silencing cell phones before entering the courtroom. During virtual hearings, the CV should treat the court and other parties with the same respect they would if they were in the courtroom, and the CV should not engage in other tasks while present in the virtual courtroom.

The court will give each party an opportunity to speak. The CV, when given the opportunity to address the court, should explain their point of view and be prepared to respond to any questions the court may have. The CV should present a clear and concise account of the facts and the CV's recommendations. Normally, referencing the report and summarizing recommendations is sufficient, but if the CV has received additional information after completion of the report, it is appropriate to mention this information and indicate whether it has any impact on the recommendations contained in the report.

Emotions can run high in a guardianship/ conservatorship proceeding. The CV should not inflame the situation by arguing with the other parties, their counsel or the court. Throughout the process it is critical that the CV take all precautions to maintain an appearance of neutrality, including in the CV report and in any court appearance. In addition, the CV should be mindful of the impact of words on a situation that is often difficult and emotionally charged. The CV should avoid over-generalizations and the inclusion of inflammatory statements. Occasionally, however, repeating a negative statement or description of a person's conduct is relevant and necessary to support the CV's recommendation. Usually, in a hearing on the

petition, the court will have read the full CV report prior to the hearing. Consequently, the CV should keep any comments in open court brief and directly responsive to the court's questions. The CV should not interrupt the court or any other party.

## Working or Bench Copies

The CV is responsible for submitting working copies of their report and any other documents filed with the court, such as the medical/professional evaluation. The CV should review the local rules for each county on which the CV's name appears on the registry for guardians ad litem and CVs. The local rules will inform the CV of the "working paper" or "bench copy" requirements for each county. If a local rule does not exist stating the "working copy" or "bench copy" procedure, the CV should contact another experienced CV in the county or the clerk's office for assistance.

If a hearing is continued, the CV should not assume that the working papers or bench copies will be automatically moved to the next hearing date. Unless the CV can request and receive confirmation that the working copies or bench copies have been moved to the continued hearing date, it is best to forward a second set.

## Noting Hearing

The CV may need to note hearings on matters such as petitions for instructions, motions for additional hours, or other requests for authority. Often hearing dates may need to be changed to accommodate other parties' availability or the court's calendar. It is important to be aware of the difference between a hearing set by notice and a hearing set by court order. Parties who have noted a hearing may re-note the hearing by filing a re-note and/or notice to strike the previous hearing. If the hearing was set by court order, it can only be re-set by court order. Check the local court rules for specific procedures. Generally, the parties find a mutually acceptable date and submit a proposed agreed order resetting hearing.

## Review of Proposed Order

Preparation of the proposed order appointing the guardian/conservator is the responsibility of the petitioner. The CV should review the proposed order before the petitioner submits the working copy to the court to confirm it comports with the recommendations in the CV Report.

The CV should not be drafting proposed orders and other pleadings on behalf of pro se petitioners or other parties.

## Ex Parte Communication

"A guardian ad litem [or CV] shall not engage in ex parte communications with any judicial officer involved in the matter for which [the CV] is appointed during the pendency of the proceeding, except as permitted by court rule or statute for ex parte [communications]." RCW 11.130.150; see also GALR 2(m). Ex parte communication may result in the CV's removal from the case or the CV registry and may even require forfeiture of any fees for professional services in the pending case. RCW 11.130.150.

Ex parte communication occurs when a judicial officer or their staff is contacted by one party to a proceeding and the other party or parties to the proceeding are not present and have not been provided notice. This includes email. When emailing the court, all parties to the matter must be copied.

Certain ex parte contact is permitted, such as in cases of extreme emergency or when injunctions or orders of protection are needed. A CV should evaluate the situation very carefully and determine if other alternatives exist that will serve the best interests of the respondent before engaging in ex parte communication with the court. Unless the CV is convinced that advance notice to the parties would harm the respondent, the CV should always give advance notice to all parties (consistent with court rules) or obtain a written waiver of notice from all parties.

All communication with judicial officers about a proceeding should be in open court and on the record.



If the respondent requests and/or the CV recommends the appointment of an attorney for the respondent, the CV should seek the appointment expeditiously. If there is an objection to the proposed order appointing an attorney for the respondent, a hearing must be noted with notice to all parties as required by local rules. In most cases, no one will object to the proposed order, in which case the CV may be able to submit the order as agreed using the court's ex parte system, if any.

## Practice Tip

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Depending on the county, if the CV receives an email from a party or attorney authorizing the CV to sign the proposed order on the party or attorney's behalf. If the CV does attach such an email, the CV should request the party's permission to do so as a matter of professional courtesy.

## Petition For Instructions

It may become necessary to seek court direction prior to establishment of a guardianship/conservatorship.

The authority of a CV is limited by the guardianship/conservatorship statutes and the order appointing the CV. GALR 2(j).

Occasionally, a CV may believe an action is necessary that is beyond the scope of RCW 11.130.280, RCW 11.130.380, RCW 11.130.605, or the order of appointment. Before taking any unauthorized action, the CV should petition the court for instructions. The petition for instructions is a useful tool. Use it sparingly, however. The CV should first be thoroughly familiar with their statutory duties and powers and the authority granted to the CV in the order appointing before seeking specific direction from the court. The CV should not seek an order authorizing actions the CV is already permitted or directed to do, unless the CV believes that the permissions or directives in the order appointing the CV exceed the scope of their authority as limited by statute. It is not uncommon for petitioning attorneys to include expansive authority for CVs, and the CV should not

feel pressured by other parties to take any actions that the CV feels exceeds the scope of the CV's authority.

Before petitioning for instructions, it is wise to discuss the situation with another experienced CV. If a petition for instructions is brought, the petition should suggest possible alternative courses of action, and the proposed order should reflect those alternatives. It is also a good idea to leave space in the form of blank lines on the proposed order so the court can insert its own instructions if the ruling does not agree with any of the CV's proposals. The CV should not become too invested in any one possible course of action.

Notice should be provided to any persons or entities interested in the petition for instructions. At a minimum, it is necessary to provide notice to the petitioner and the respondent or their attorney, and any other person authorized to receive notice under RCW 11.130.080. Other persons who have filed a notice of appearance should also receive a copy of the CV's petition for instructions and notice of any hearing on the petition; however, it is important that the CV only provide sealed information to those individuals required to receive notice under the UGA.

Common areas for petitions for instructions include problems in getting a professional evaluation, emergency housing or financial needs and medical issues.

## Privacy Issues

### Private vs. Public Information

There is an inherent conflict between the public's right to know and the individual's right to privacy. There is a presumption that all cases are, and should be, open to the public. Wash. Const. art. I, § 10; Dreiling v. Jain, 151 Wn.2d 900, 909, 93 P.3d 861 (2004).

However, the public's right to information may be limited to protect other significant and fundamental rights. *Id.* at 909. Specific findings by the court must support the decision to close hearings and

seal documents or entire files. *Id.* at 907–908. GR 22 requires the sealing of confidential medical records, financial records, and detailed GAL (CV) reports in guardianship as well as family law cases. Although GR 22 has not yet been amended to include CV reports or replace GAL with “CV,” the CV should comply with the directives of GR 22.

## GR 31

Courts have or are in the process of making most court records available via internet to any individual with a computer. At the same time, guardianship/conservatorship—by its very nature—deals with confidential information, which could easily be misused. Internet access to personal information contained in court records could make abuse easier.

While the court in a guardianship/conservatorship action must be aware of the nature and extent of the respondent’s estate, there should never be enough identifying information in unsealed files to provide the public access to financial accounts.

GR 31(e) provides:

1. Except as otherwise provided in GR 22, parties shall not include, and if present shall redact, the following personal identifiers from all documents filed with the court, whether filed electronically or in paper, unless necessary or otherwise ordered by the court.
  - a. Social Security Numbers. If the Social Security Number of an individual must be included in a document, only the last four digits of that number shall be used.
  - b. Financial Account Numbers. If financial account numbers are relevant, only the last four digits shall be recited in the document. Driver’s License Numbers.

It is the CV’s responsibility to comply with these rules. Do not expect the court to assume responsibility for applying these rules. The CV should consult GR 31 as well as GR 22 and the local rules for each county on which the CV’s name appears on the registry. The CV should also be familiar with GR 15, “Destruction, Sealing, and Redaction of Court Records.”

## Fees

### Amount Allowed

The court, in the order appointing a CV, must specify the hourly rate of the CV and the maximum amount the CV may charge without additional court review and approval. RCW 11.130.280(2) and RCW 11.130.380(3).

If the order appointing the CV does not establish the maximum fee, the CV should, before proceeding further, present the court with a petition and order on instruction establishing the hourly rate and the maximum amount that the CV may charge.

Should the CV determine that the maximum amount of fees set forth in the order appointing CV will not be sufficient for them to fulfill their duties, the CV should seek court approval for additional time before working the additional time. Failure to secure court approval for additional time may result in the CV not receiving payment for services provided over the maximum amount allowed by court order.

### To Whom Charged

Typically, the CV’s fees will be charged to the estate of the respondent. 11.130.280(2) and RCW 11.130.380(3). If the court finds that such payment would result in substantial hardship upon such respondent, the county will be responsible for payment of the CV’s fees in an amount approved by the court. *Id.* If the court finds that the petition for guardianship/conservatorship is frivolous or not brought in good faith, the court shall charge the CV’s fees to the petitioner. *Id.* The court may allocate the CV’s fees to the respondent, any person appearing in the guardianship/conservatorship action or may otherwise allocate fees as the court deems just. *Id.*

If the CV’s fees will be paid by the county in which they practice, the CV should become familiar with the procedure that the county uses to review and approve fees. Each county has different procedures. For example, in King County, the CV should provide a motion, fee declaration and proposed order to the Ex Parte Coordinator in order to process their fees and costs incurred and to obtain payment.

## Petition or Declaration for Fees

The CV must keep accurate and legible time and expense records. The CV must submit their time records to the court as part of a petition or declaration for fees along with a fee statement. A petition or declaration for fees is a sworn statement by the CV attesting to the services provided, the time expended, estimated time to be expended, the hourly rate, and costs, if any, incurred.

The CV should file and serve on all parties a declaration and statement as to fees and costs, setting out the services provided, time charged and actual costs incurred in service as a CV. If the CV's fees are not included in the guardianship/conservatorship order, the CV will need to submit a separate order for fees, with advance notice to all parties, and have a separate hearing. That results in extra time, effort and expense that, with a little planning, is usually avoidable.

The petition or declaration for fees should be filed with the court and working papers or bench copies provided for the bench prior to any hearing seeking approval of the CV's fees and costs. The petition or declaration for fees may be filed at the same time that the CV files their report. A copy of the petition or declaration for fees should be provided to all parties to the guardianship/conservatorship action prior to the hearing. The fee declaration can include an estimate of the time it will take to conclude the CV's investigation, review the proposed order and attend the court hearing. As long as that time is reasonable and does not exceed the time previously authorized by the court, the fees will likely be approved. If the time does exceed the time previously authorized by the court, the CV should include a detailed explanation regarding the circumstances that necessitated the extra time in their fee declaration.

If fees are to be paid by the county, local rules may require that the declaration and the request for fees follow a different procedure and may not need to be presented at the time of entry of the order appointing the guardian/conservator. CVs should contact the registry manager in each county of practice for information about local procedures.

In King County, for example, after discharge, the CV should prepare a motion, fee declaration and proposed order for compensation that should be submitted to the county. The motion, fee declaration and proposed order do not need to be filed in advance of submission.

## CV Authority & Immunity

The duties of a CV are set forth in RCW 11.130.280 and 11.130.380 and the order appointing the CV.

The CV acts under the supervision and control of the court. So long as the CV acts as directed by the court, they will have "quasi-judicial immunity" from any claim for damages arising out of the performance of their duties. See *Barr v. Day*, 124 Wn.2d 318, 332, 879 P.2d 912 (1994) (relating to GAL's quasi-judicial immunity). Should a CV take any action outside the authority granted to them by the court, the CV could lose immunity and be personally liable for damages that arise out of the unauthorized conduct.

As previously discussed, if the CV believes they need to take certain action not specifically authorized in the order appointing the CV and in applicable statutes, they must bring the situation to the attention of the court by filing a petition for instructions.

Under the former RCW 11.88.090, the GAL had statutory authority to make emergency life-saving medical decisions on behalf of the AIP (respondent) if such person was unable to give informed consent due to incapacity prior to the appointment of a guardian. Such authority does not exist under Chapter 11.130 RCW. Notably, the list of individuals who may provide informed consent under RCW 7.70.065 does not include a CV.

As such, if called upon in an emergency event, the CV should inform the medical providers that they do not have the authority to make such decisions. The medical staff should first determine whether or not the respondent has granted authority to someone else to make medical decisions for the them. In practice, if it is a true emergency, it is likely the hospital will take action without obtaining informed consent. Informed consent is presumed in true emergencies.

The CV has no authority to make any other medical decisions or to terminate the care for the respondent and may be subject to liability for doing so as it is outside of the scope of the CV's authority. If a health care provider asks a CV to make medical decisions or to terminate the care for the respondent, the CV must first advise the requester of the CV's limited authority. As in all situations where the CV believes actions exceeding their statutory and court ordered authority may be in the respondent's best interest, the CV must file a petition for instructions and obtain court authority in advance for any action to be taken. Also, in situations like this, even if the CV has authority to make medical decisions on behalf of the respondent, you should not hesitate to seek additional instruction from the court.

## Emergency Guardian/ Conservator

Rather than providing informed consent or making any health care decisions on the respondent's behalf, the CV should strongly consider whether the appointment of an emergency guardian under RCW 11.130.320 is appropriate. A standard petition for emergency guardianship requires 14 days' notice of the hearing on the petition. However, under RCW 11.130.320(10), the court may appoint an emergency guardian for an adult without notice to the adult and any attorney for the adult if the court finds from an affidavit or testimony that the respondent's physical health, safety or welfare will be substantially harmed before a hearing with notice on the appointment can be held. The court is required to immediately appoint an attorney for the respondent upon the filing of a petition for the appointment of an emergency guardian. RCW 11.130.320(9).

An emergency guardianship petition may be filed by any person interested in the respondent's welfare. RCW 11.130.320(1). In practice, the CV should first approach the petitioner to request that the petitioner take lead on filing the emergency guardianship petition. In the unlikely event the petitioner refuses, the CV may presumably file as a person interested in the respondent's welfare, but, if possible, the CV should obtain court authority to do so.

Similarly, a person interested in the respondent's welfare may file a petition for the appointment of an emergency conservator if, inter alia, an emergency exists such that appointment of an emergency conservator is likely to prevent substantial and irreparable harm to the individual's property or financial interests. See RCW 11.130.430.

If appointed as CV in an emergency guardianship or conservatorship proceeding, the CV must be willing and able to act expeditiously to carry out their duties and should immediately inform the petitioner if they are unable to do so to allow the petitioner to seek the appointment of a replacement CV.

In emergency guardian/conservator situations, the timeline for completion of the CV's investigation is significantly shortened. CV reports are due seven days in advance of the hearing, leaving only up to a week (or sometimes as little as five days due to the fact that service notifying the CV of the CV's appointment may be made up to two days after appointment) for the CV's investigation. RCW 11.130.320(11)(d) and RCW 11.130.430(9)(f).

In emergency guardianships/conservatorships, the CV should carefully review RCW 11.130.320 and RCW 11.130.430 in preparing the CV's report, as certain additional information is required in the CV reports in emergency situations as opposed to non-emergency petitions.

## Expediting the Guardianship/ Conservatorship Matter

If expediting the matter may be required, the CV should first consider whether the appointment of an emergency guardian/conservator is in the respondent's best interest. If an emergency guardian/conservator is not needed, then the CV can work with the parties to expedite the matter on a non-emergency basis.

In general, all hearings under RCW 11.130 require 14 days' notice. RCW 11.130.065. Under RCW 11.130.275 and RCW 11.130.370, all guardianship/conservatorship petitions must be heard within 60 days unless a party or the CV obtains an order extending the 60-day period for good cause.

In all cases, the respondent and CV must be personally served not more than five court days after the petition has been filed. RCW 11.130.275(2)(a) and RCW 11.130.370(2)(a). Thus, if a professional evaluation has been prepared, it is possible to have a final hearing 14 days after filing and providing notice to the respondent, with the CV's report filed on shortened time. However, if counsel is appointed to represent the respondent, a continuance of the hearing may be required. Absent a convincing showing to the contrary, a period of less than three weeks shall be presumed to be an inadequate time for a newly appointed attorney to consult with the respondent. RCW 11.130.285(1)(c)(iii) and RCW 11.130.385(1)(c)(iii).

## Staying Neutral

Someone who acts as a guardian/conservator without court approval or without proper appointment becomes a "guardian de facto" and has the same duties and liabilities of a properly appointed guardian. *King v. Sells*, 193 Wash. 294, 75 P.2d 130 (1938); *In re Bouchat*, 11 Wn.App. 369, 522 P.2d 1168 (1974). A CV should not exceed their statutory duties or the duties set forth in the order appointing the CV or any order on a petition for instructions. If the CV exceeds such duties, the CV could become a "guardian de facto" for the respondent and lose any quasi-judicial immunity.

The filing of the guardianship/conservatorship matter and appointment of a CV in and of itself does not divest the respondent of authority to act on their own behalf, but other parties may be reluctant to deal directly with the respondent when the guardianship/conservatorship matter is pending. See RCW 11.130.280(7) and RCW 11.130.380(8).

## Practice Tip

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Hospitals should know that the CV has limited authority, but it is not unusual for a CV to receive a request to authorize the release of the respondent to a skilled nursing home or other care facility. The CV should clearly advise the individual making the request that the CV does not have authority to make this decision (making this decision frequently involves signing paperwork that the CV will be financially responsible for the care of the respondent). The choice of care facility may impact the respondent for many months into the future so making these decisions is better left to the guardian/conservator after their appointment. If emergency circumstances exist, it is preferable to contact the attorney for the petitioner about appointing an emergency guardian/conservator or shortening time on the hearing. If the petitioner objects, it may be necessary to file a petition for instructions.

In some situations, it may be possible or advisable to obtain authority from the court, through a petition for instructions, to allow the respondent to handle a matter on their own or with additional assistance from and authority by the CV. For example, if a home sale is pending and must be closed before the conservatorship hearing is held, and if everyone is in agreement that the sale is in the best interest of the respondent, an order that authorizes the CV to sign the final papers with a requirement that the proceeds be held in escrow until the conservatorship issues are resolved could benefit the respondent and satisfy the title company. However, again, it would likely be far more appropriate for an emergency conservator to be appointed to take such emergency actions, and the CV should only petition the court for such authority under extenuating circumstances in which the appointment of an emergency guardian/conservator is impossible or impractical.

## Trial On Guardianship/ Conservatorship Petition

RCW 11.130.035(3) provides “[a]n adult respondent may demand a jury trial ... on the issue of whether a basis exists for the appointment of a guardian ... or a conservator and on the rights to be retained or restricted if a guardian or conservator is appointed.” Consequently, the CV should conduct every investigation as if they will be called to testify at a trial.

The role of the CV has been generally discussed elsewhere in this manual. There is no case law on the role of a CV, but case law concerning the role of a guardian ad litem as a witness can be consulted for persuasive authority on the CV’s role in trial. The role of the CV (GAL) as a witness is addressed in *In re Guardianship of Stamm*, 121 Wn. App. 830, 91 P.3d 126 (2004). The GAL, and presumably a CV, may be permitted by the court to give opinion evidence as an expert witness if the court so allows.

Generally, a petition for guardianship/conservatorship is not automatically noted for trial. In King County, a court commissioner must certify the matter for trial if requested by the respondent. Often, cases are resolved in the initial, less formal hearing on the petition. If the guardianship/conservatorship is contested and a trial is sought, often mediation is helpful. RCW 11.130.035(4) permits the CV or respondent to request that the court order mediation prior to the appointment of a guardian/conservator, if it appears that the respondent could benefit from mediation. However, if the respondent demands a jury trial, that is their right. The respondent is not required to submit to mediation in lieu of a trial.

If mediation or trial is likely and the order appointing the CV has a fixed time limit, they will likely need to petition, prior to incurring the additional time, for authorization to expend more time.

It has been said elsewhere, but deserves repeating, that the CV must keep accurate notes during the course of the investigation and must be prepared to produce those notes in response to discovery requests.

Once the investigation has been completed and the CV’s report has been filed, if the matter is contested, the CV may need to restrict contact in order to maintain the appearance of impartiality.

Prior to discussing the investigation and recommendations, the CV should always review their notes taken during the investigation. The CV should resist making statements based on memory unless their memory is clear on the question. If the answer is not in the notes, and the CV is not sure, then it is better to acknowledge such than to speculate.

In a contested case, it is likely that one or more of the parties (or more likely their attorneys) will dispute all or a portion of the CV’s report. The CV should always remember the attorney has a job to do. In many cases, the attorney’s job will be to show why the CV’s recommendations should not be followed by the judge or the jury. The CV should not take this effort personally.

At trial, the CV should speak clearly, professionally and politely, and always address the jury (or judge, if it is a bench trial) directly.

## Miscellaneous Practical Concerns

### Address of Respondent

Although the address for the respondent contained in the petition should be correct, it is wise to verify the address in advance of driving to the location. The CV should not rely on the respondent to give the CV directions to their home, especially if the respondent has gotten lost driving or is no longer driving. Sometimes in larger facilities, there is a specific entrance that should be used, or in city locations there may be parking restrictions. If possible, try to talk to a responsible person and verify the address and any unique factors to consider in reaching the address. The petitioner or their attorney should generally be able to provide the CV with instructions on the best way to arrange a meeting with the respondent.

Due to the ongoing COVID-19 pandemic, many courts allow CVs to meet with the respondent virtually. If the CV does conduct a virtual meeting, the CV should state they did so in the CV's report. If the respondent is unable to arrange and manage the virtual meeting themselves, often a family member, caregiver, social worker or hospital staff member can assist with the meeting. However, keep in mind, if someone helps facilitate the meeting, you should politely ask them to step out of the room so that you can meet independently with the respondent.

RCW 11.130.280(5)(b) states that the CV, in guardianship matters, is required to "visit the respondent's present dwelling and any dwelling in which it is reasonably believed the respondent will live if the appointment is made." At times, it may be difficult or dangerous to visit the respondent's dwelling, or the respondent may object to such a visit due to privacy concerns. If the CV does not visit the respondent's dwelling, the CV should explain the reasons why they did not do so in the CV's report.

## **Respondent in Prison or Other Limited Access Facility**

If a respondent is in jail, at Western State Hospital, or in another restricted access facility, before meeting with the respondent, the CV should make certain that they understand any limitations on access to the respondent.

1. Call the facility in advance and ask about any rules that might apply to meeting with the respondent.
2. If ID is required, determine what ID is acceptable. Some facilities require only a driver's license, while others may require proof of the professional status of the

CV, such as an attorney identification card. Due to the COVID-19 pandemic, some facilities require proof of vaccination or negative COVID-19 test.

3. Find out where in the facility the individual is located. (Western State has many buildings and knowing the building number and where it is located in advance can save a great deal of time once the CV arrives at Western State.)
4. Find out if any equipment (such as a cell phone or computer) is permitted in the facility.

Sometimes a facility will require an officer to be present to protect the CV and prevent the respondent from escaping. While this is not ideal, unless there is some sort of unique issue involved, having an officer present is not critical to the case, but the presence of the third party must be mentioned in the CV's report.

## **Dress for the Situation**

While it is important when appearing in court to dress professionally, this may not be the best way to meet with a respondent in their home since a Respondent may not be open to an individual in a suit or other professional/formal attire. The CV should consider the individual circumstances of the respondent and whether dressing casually would make the respondent more comfortable. The role of the CV is to obtain meaningful information from the respondent and if that means sitting on the floor and playing with a young adult who functions at the age of a young child, then the CV should be prepared to do so. Some homes may be very cluttered and contain things such as bed bugs that could present problems to the respondent. While the CV sometimes cannot avoid entering these homes since the condition of the home is a factor that the CV must consider, sitting on a wood or metal chair is safer in some places than a stuffed cushion.

## **Use of Technology**

While most CVs likely rely on emails and text messages in their personal and professional lives, many respondents, especially older people, may prefer not to use this technology or are not able to do so effectively. If the respondent does not respond in a reasonable time, use the telephone for contact and do not criticize the individual for not responding. It should go without saying, but as a general rule, do not ever criticize the respondent. Even if the respondent knows how to use the technology, it is not uncommon for a respondent to avoid responding to the CV if they do not want a guardian/conservator and believes that by not responding to the CV the process can be avoided. It is important that the CV use whatever method is necessary to reach the respondent, which may also include an unannounced drop-in.

## Checkpoint

Read the questions below. Select the answer that represents the best answer provided.

- 1. In guardianship/conservatorship proceedings, when is the respondent's presence required at the final hearing on the petition?**
  - a. Always.
  - b. Only if requested by the respondent.
  - c. Only if the court orders it.
  - d. All answers are correct.
- 2. What may allow a hearing to proceed without the respondent's attendance in a guardianship/conservatorship proceeding?**
  - a. The CV's recommendation.
  - b. Court's discretion.
  - c. Clear and convincing evidence.
  - d. All answers are correct.
- 3. What is the CV's responsibility if the Respondent is unable to arrange transportation to the hearing?**
  - a. Transport the respondent to the hearing.
  - b. Assist in making transportation arrangements.
  - c. Contact the court for assistance.
  - d. All answers are correct.
- 4. During a court hearing, what should the CV do if they receive additional information after completing the CV report?**
  - a. Include the information in the report.
  - b. Notify the court of the new information.
  - c. Mention the information during the hearing.
  - d. All answers are correct.
- 5. What is the consequence of engaging in ex parte communication with a judicial officer during the pendency of a proceeding?**
  - a. A warning from the court.
  - b. A fine imposed on the CV.
  - c. Removal from the case or CV registry.
  - d. All answers are correct.
- 6. When can ex parte communication with a judicial officer be permitted?**
  - a. In all cases.
  - b. Only when the CV believes it's necessary for the respondent's best interests.
  - c. In cases of extreme emergency or orders of protection.
  - d. All answers are correct.
- 7. What should the CV do if they receive an email from a party authorizing the CV to sign a proposed order on their behalf?**
  - a. Immediately sign the order.
  - b. Request the party's permission as a matter of professional courtesy.
  - c. Forward the email to the court without further action.
  - d. All answers are correct.



## Acronyms List

<b>Acronym</b>	<b>Term</b>
ADA	Americans with Disabilities Act
ADL	Activities of Daily Living
AIP	Alleged Incapacitated Person
AL TSA	Aging and Long-Term Services Administration
AOC	Washington State Administrative Office of the Court
ASD	Autism Spectrum Disorder
ASL	American Sign Language
BASL	Black American Sign Language
CHI	Closed Head Injury
CV	Court Visitor
DDA	Developmental Disabilities Administration
DRW	Disability Rights Washington. Protection and advocacy for people with disabilities
DSHS	Department of Social and Health Services
DSM-5	The Diagnostic and Statistical Manual of Mental Disorders
GAD	Generalized Anxiety Disorder
GAL	Guardian ad Litem
GALR2	General Responsibilities of Guardian ad Litem
GR	General Rule. Court rule abbreviation as in GR 31 or GR 33
HCA	Health Care Administration
HIPAA	Health Insurance Portability and Accountability Act
IADL	Instrumental Activities of Daily Living
ID	Intellectual Disability
I/DD	Intellectual or Developmental Disabilities
IP	Incapacitated Person
LAIRP	Language Access Interpreter Reimbursement Program
LTCO	Long-Term Care Ombuds
MHAD	Mental Health Advanced Directive
MS	Multiple sclerosis
NAMI	National Alliance of Mental Illness
OCD	Obsessive-compulsive disorder
OHI	Open Head Injury
OPG	Office of Public Guardianship
PISL	Plains Indian Sign Language

## Acronyms List (continued)

<b>Acronym</b>	<b>Term</b>
PTSD	Post-traumatic stress disorder
RCW	Revised Code of Washington
SDMA	Supported Decision-making agreements
SSA	Social Security Administration
SSDI	Social Security Disability Income
SSI	DDA
SUD	Substance Use Disorder
TBI	Traumatic Brain Injury
UGA	Uniform Guardianship, Conservatorship, and Other Protective Arrangements Act
WAC	Washington Administrative Code
WLAD	Washington Law Against Discrimination, RCW 49.60
WSBA	Washington State Bar Association

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