

**Training for Court Visitors and Guardians ad Litem
The Uniform Guardianship Act as it Relates to Adults**



Credits

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

The materials and/or forms included within this publication are for use by Washington State Title 11 Court visitors and guardians ad litem, Superior Courts, and training providers as a guide. DSHS nor any contributor(s) make express or implied warranties regarding the accuracy, timeliness or reliability of statements, forms, articles, or other materials contained herein. Court visitors, guardians ad litem, legal professionals and lay persons must depend on their own legal knowledge, research and expertise when referring to or utilizing any information contained herein. Any views or conclusions expressed herein are not necessarily those of DSHS, the Superior Court, or individuals listed below. Please note that all suggestions for improvement of this handbook are highly encouraged. If you have any comments, questions, or feedback for this curriculum, please contact DSHS\ALTS\HCS TCDU Training developer at TCDUTrngDev1@dshs.wa.gov. 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.



Agenda

Time	Chapter
	1: Overview and Due Process
	2: Court Visitor / GAL Statement of Qualifications
	3: Interviewing the Respondent and Understanding Impairments
	4: Professional Evaluation
	5: Further Investigation
	6: Special Situations: Vulnerable Adults
	7: Alternatives to Guardianship/Conservatorship
	8: The Court Visitor Report
	9: Respondent's Right to Counsel
	10: Final Words of Wisdom



CHAPTER 1

Overview and Due Process

Objectives

- 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. This training will cover what you should know to protect and assist persons who may be fully or partially incapacitated.

UGA

The Uniform Guardianship, Conservatorship, and Other Protective Arrangements Act (UGA), codified as Title 11.130 and changed the role of Guardian ad Litem (GAL) to a Court Visitor (CV).



New Terms Under the UGA

Guardian

Conservator

Respondent

Adult Subject to Conservatorship

Adult Subject to Guardianship

Court Visitor

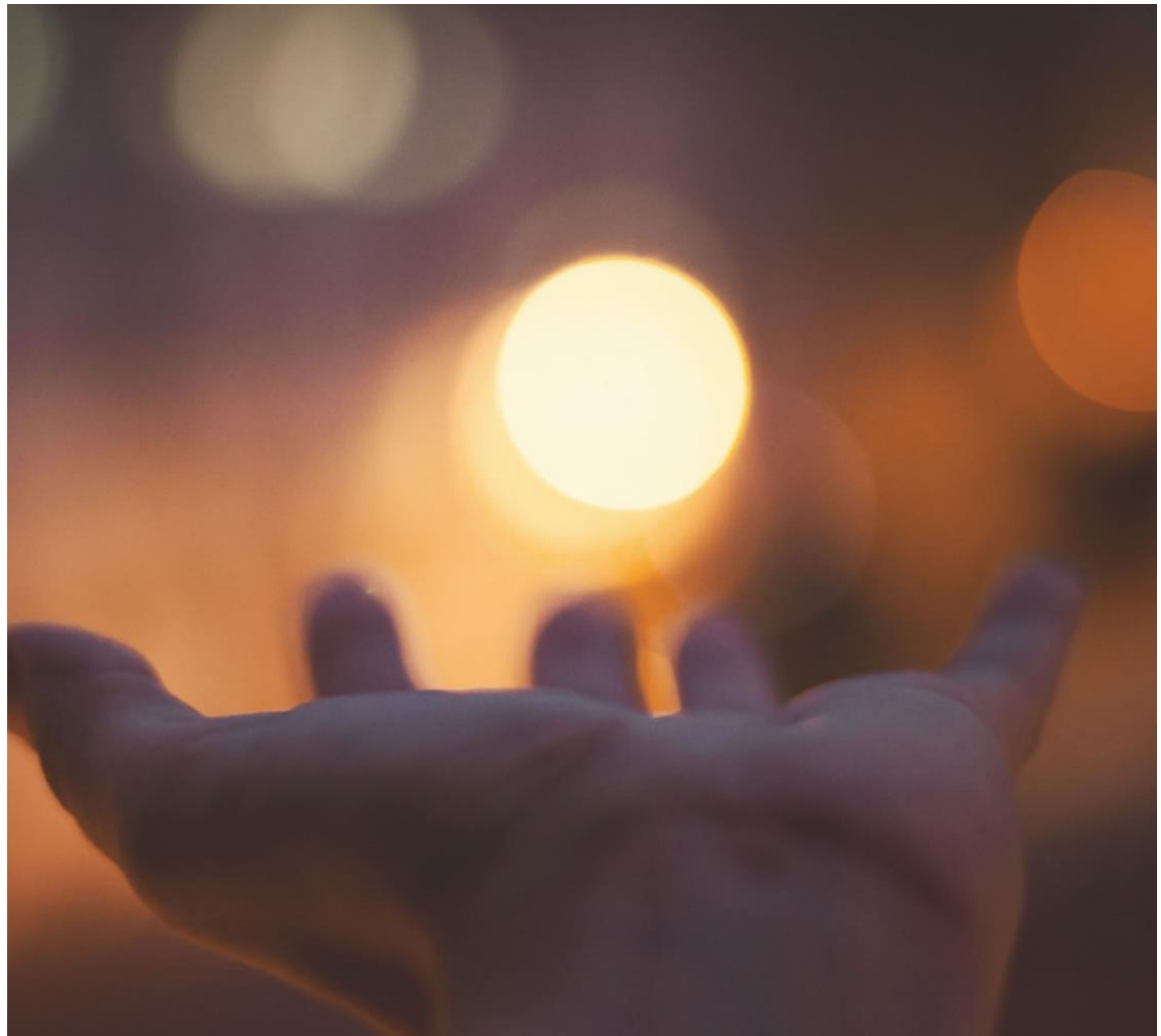


What is a Court Visitor?

Person appointed by the court to act as a neutral investigator and to report to the court on relevant matters.

Statutory Process

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)



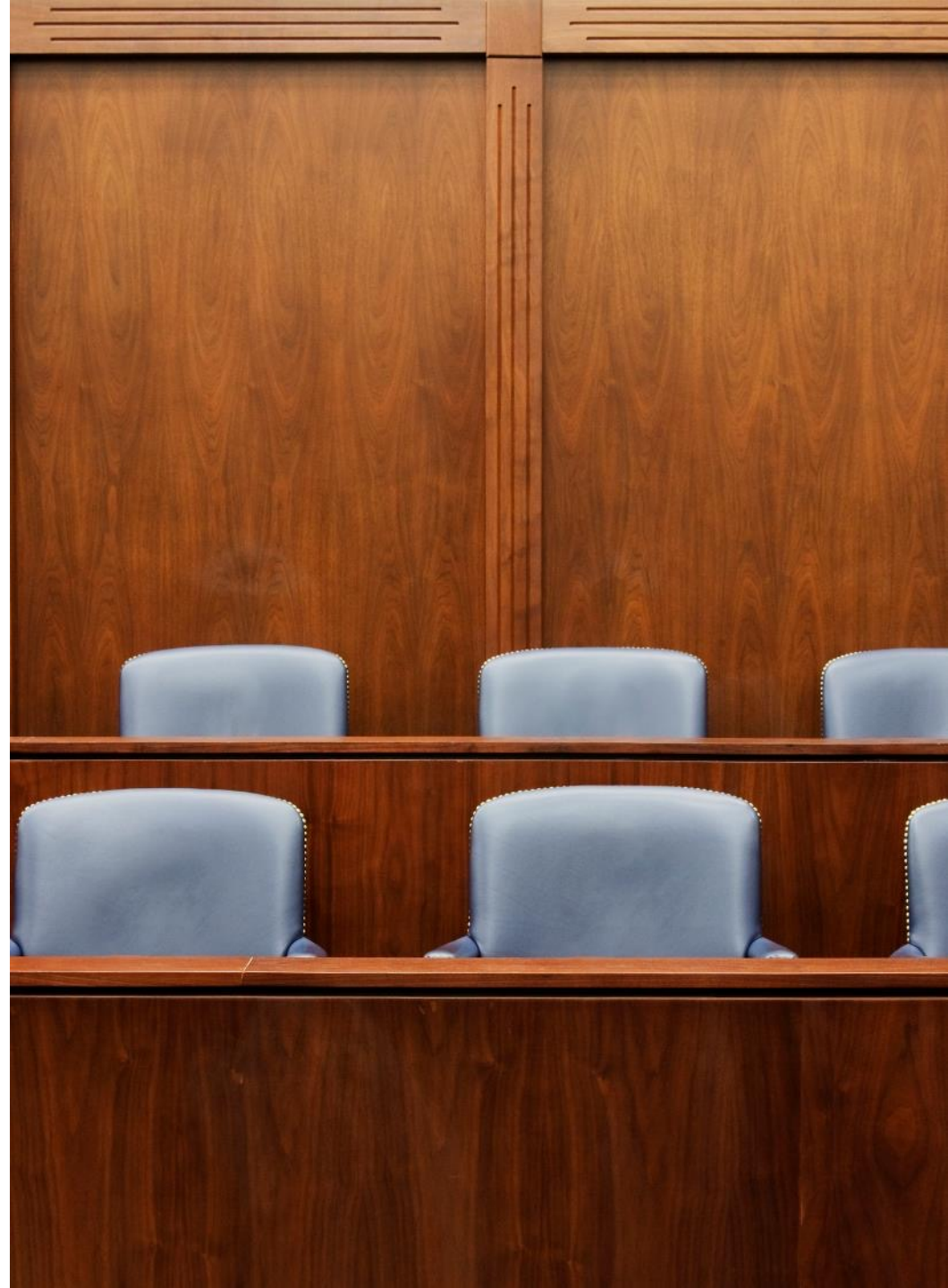


CV's Role

- RCW 11.130.280 necessitates the appointment of a CV for a guardianship.
- RCW 11.120.380(2) also requires the appointment of a CV for a conservatorship of an adult.
- The role of the CV is governed by court rules.

Role of the Attorney for Respondent

The attorney shall make reasonable efforts to ascertain the Respondent's wishes; advocate for the Respondent's 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.





Alternatives

Recognize and appropriately deal with risks to the Respondent, but which least restricts that individual's liberty and autonomy.

Due Process Rights of Respondent

Venue &
Jurisdiction

Other
Procedural

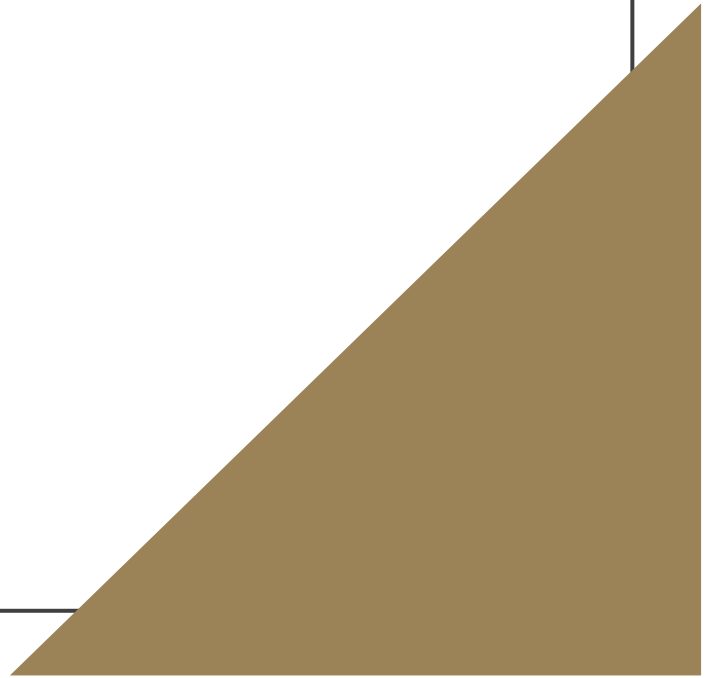
Statutory
Due
Process

Due
Process
Rights

Substantive
Due
Process



County Specific





Checkpoint

Check your knowledge



CHAPTER 2

CV and GAL Statement of Qualifications

Objectives

- Recognize the contents for statement of qualifications, and
- Identify upon whom the CV must serve the Statement of Qualifications.





Registry for CV/GAL

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.

Contents of Statement of Qualifications

To be eligible for a CV registry, a person shall present a written statement outlining their background and qualifications. (11.130.155(2)).

8 items



Service of Statement of Qualifications

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).

A close-up photograph of a person's hands in a white shirt, wearing a gold ring, pulling a document from a metal filing cabinet. The background is bright and slightly blurred, suggesting an office environment.

Objection to CV after Service of Statement

Within three (3) days of CVs
actual service or filing of
Statement of Qualifications.

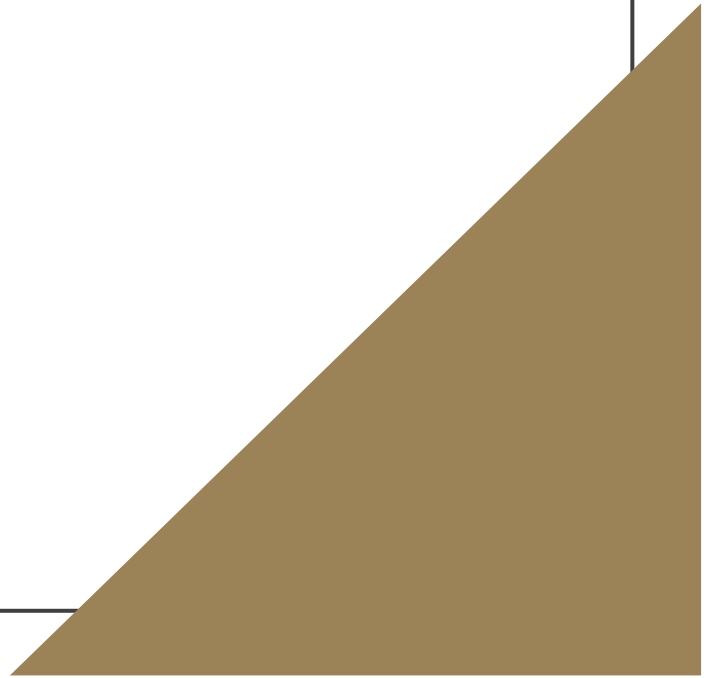
A pair of scales of justice is shown against a blue gradient background. The scales are positioned on the right side of the frame, with the pans hanging from a central beam. The lighting is dramatic, highlighting the metallic surfaces of the scales. In the top left corner, there is a small orange horizontal bar.

Local Court Rules

A CV should be familiar with local court rules.



County Specific





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CHAPTER 3

Interviewing the Respondent and Understanding Impairments

Objectives

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

Interviewing the Respondent

Must be
shared

Should
be shared

Obtained
from

Potential Barriers to Comprehension

- Legalese
- Limited English Proficiency (LEP)
- Deaf, DeafBlind, Deafdisabled, Hard of Hearing, Late Deafened, and Speech Disabled
- Low vision, visually impaired, and blind
- Slang and Idiom
- Cultural Diversity



Ada



Age: 92

Gender: Female

Pronouns: She/her



Medical considerations:

- Severe hearing impairment
- Broken Hip
- Advanced dementia



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.

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.

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.

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.

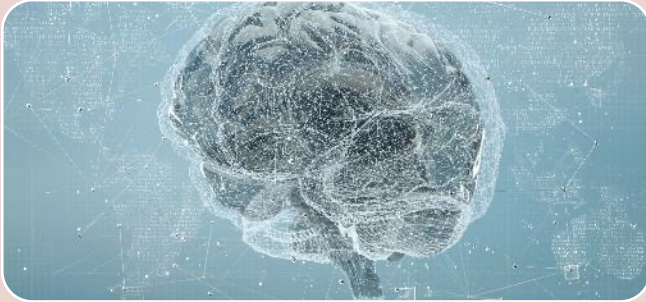
The CV learns that the woman believes that "family" is not solely limited to someone who is biologically related and that she can create her own family. Unless the CV understands the woman's values and beliefs, the CV risks mistaking the woman's choice for incapacity.

A top-down view of a desk with various items: a smartphone with a black screen, a spiral-bound notebook with lined pages, a silver pen, a white keyboard with visible keys like 'caps lock', 'shift', 'fn', 'control', 'alt', 'option', 'Z', 'X', 'A', 'S', 'W', 'C', a white mouse, and a white cup filled with dark coffee. A small green plant is visible in the top left corner.

Interview Notes

In the sealed CV report, the CV provides the court with a summary of the interview with the Respondent.

Common Causes of Impaired Capacity



Neurocognitive
disorders



Reversible
disorders



Irreversible
disorders

Mental Health Disorders



Anxiety
Disorders

PTSD

OCD

Bipolar
Disorder

Depression

Schizophrenia/
Schizoaffective
Disorder

Developmental
and Cognitive
Disabilities

Substance
Use Disorder

Other

David



Age: 20

Gender: Male

Pronouns: He/him



Medical considerations:

- Developmental disability
- Intellectual disability



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.

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.

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.

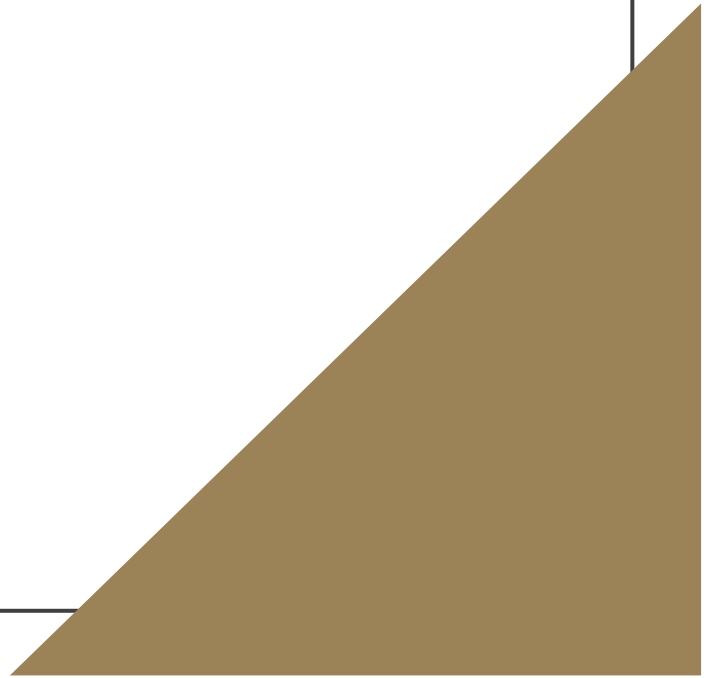
His physician says the dementia appears to be progressing and likely to result in much more serious loss of capacity within months.

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.



County Specific





Checkpoint

Check your knowledge



CHAPTER 4

Professional Evaluation

Objectives

- Identify key topics and issues that a professional evaluation must address, and
- 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.



Mandatory Topics for Professional Evaluation

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

Patient/Client Privilege

- 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

When the appointment of a guardian is being sought, the examiner who prepares the professional evaluation must provide the evaluation to the CV within thirty (30) days of the examination of the Respondent.



Including the Examiner's CV

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

If the evaluation is not sufficiently detailed or informative, it is appropriate for the CV to ask the examiner to supplement the evaluation.



Timely Manner

There are times when the examiner fails to provide the professional evaluation in a timely manner.





Examination

- Flexibility
- Payment
- Refusal to Participate





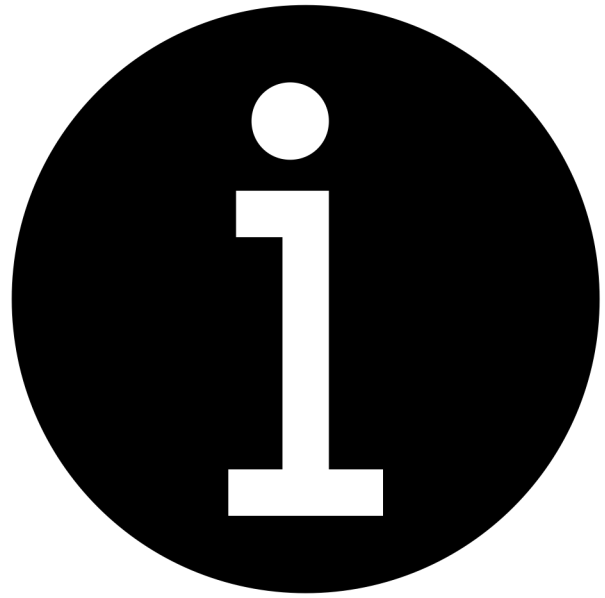
Sealing the Report to Protect Privacy

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.

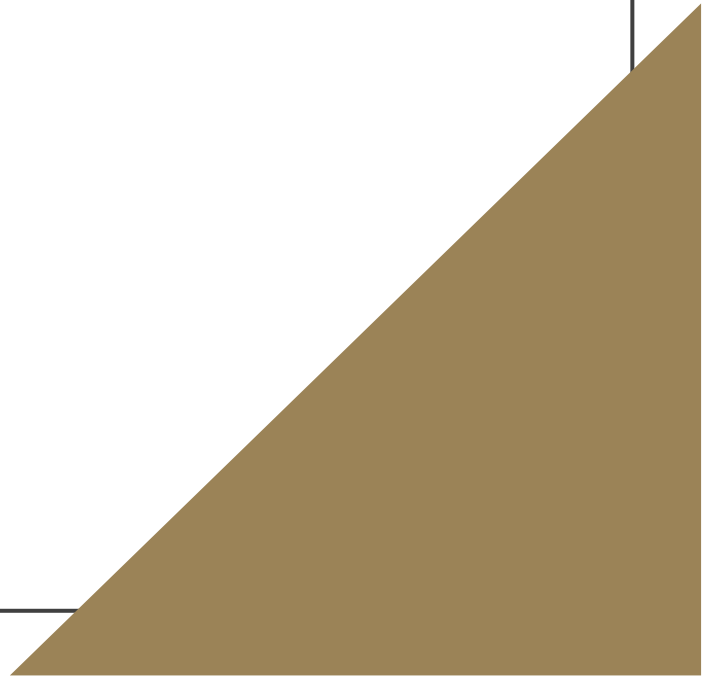


Representative at Examination

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



County Specific





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CHAPTER 5

Further Investigation

Objectives

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

Who Must and Should be Interviewed





Explaining Role of CV

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.

Reviewing Records

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.”



Self-care & Independent Living Tasks



Include in the CV 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.”

Guardianship

Appropriateness

Limitations

Example
Questions

Applying
Guardianship
Standard

Conservatorship

Appropriateness

Limitations

Example
Questions

Guardian/Conservator

Statutory qualifications

Priority and appropriateness

Fiduciary requirements



Visiting the Respondent's Dwelling

- Visiting the dwelling
- Example questions and observations

Existence of an Emergency

Does a true emergency exist?



- Co-guardian and co-conservators
 - Guardians and conservators for spouses/domestic partners
-

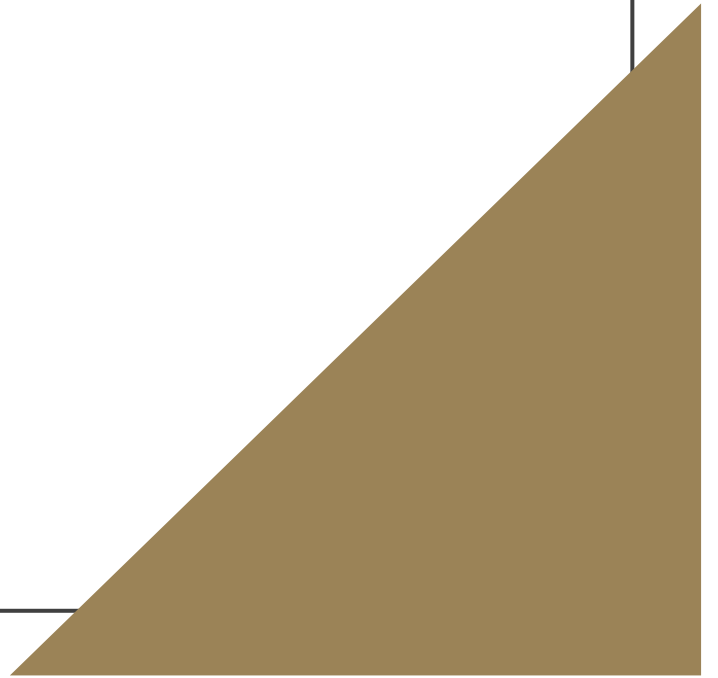
Document and Checklist

- How to document the CVs investigation
- Checklist of questions for a potential guardian/conservator





County Specific





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CHAPTER 6

Special Situations: Vulnerable Adults

Objectives

- Identify the purpose and definitions within RCW 74.34 for vulnerable adults, and
- Recognize the CVs role in protecting vulnerable adults.

Protection for Vulnerable Adults

- RCW 74.34 (the “vulnerable adult statute”) is intended to protect vulnerable adults from abuse, neglect, financial exploitation, or abandonment.
- Role of court visitor in vulnerable adult action



Procedure for Vulnerable Adult Action (Practice Tips)

1

2

3

Petition



Service



Relief

**Procedure for
erable
Action
ractice
Tips)**



4

Vulnerable adult/respondent disagrees



APS/AG



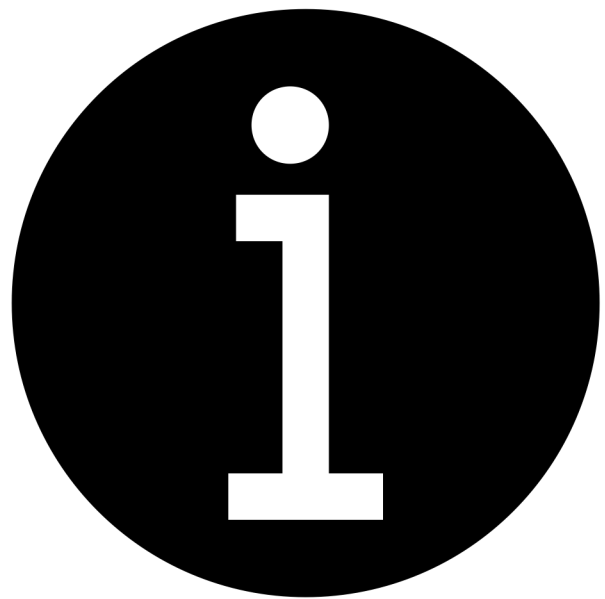
CV Safety



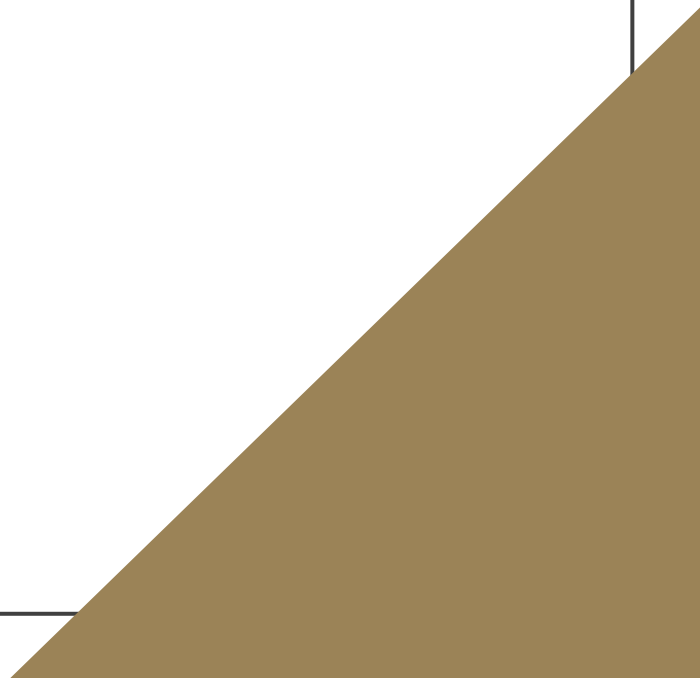
APS Records

**Procedure for
erable
Action
ractice
Tips)**





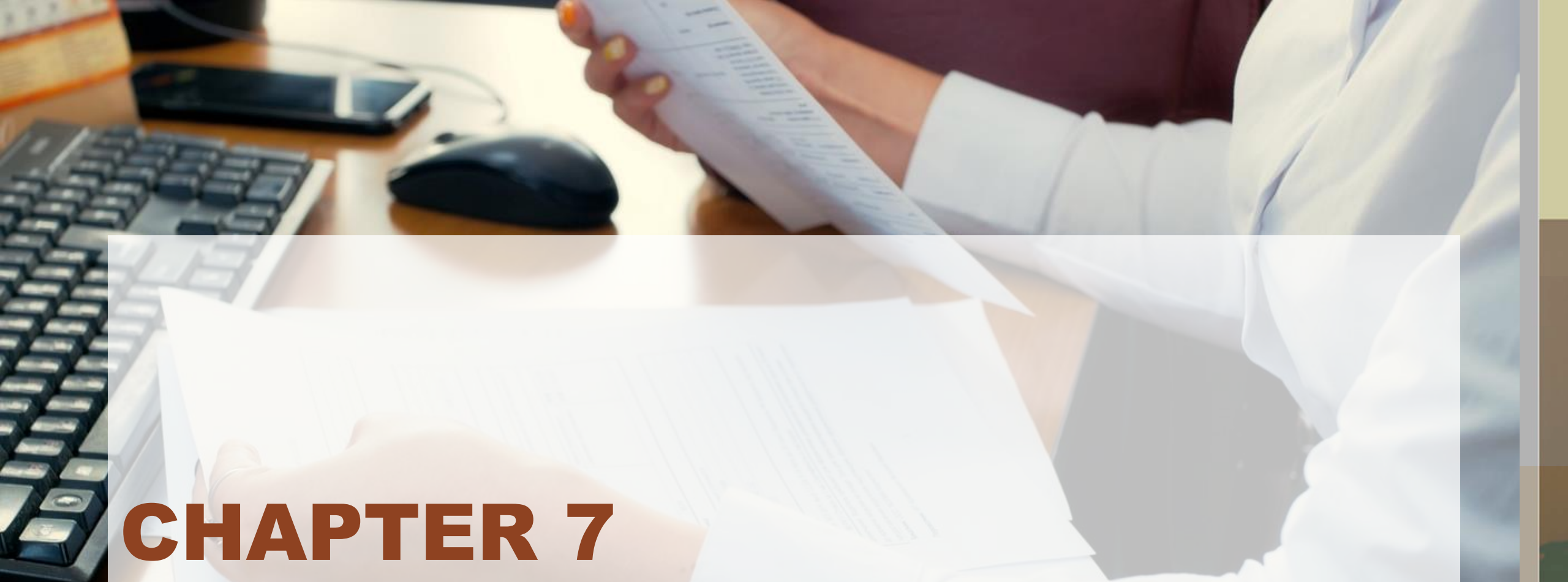
County Specific





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CHAPTER 7

Alternatives to Guardianship/Conservatorship

Objectives

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

Less Restrictive Alternatives

- Legislative intent
- Need to inquire into and consider less restrictive alternatives

Powers of Attorney

- What is a power of attorney
- Advantages
- Disadvantages
- Resolution of problems



Power of Attorney

DESIGNATION OF AGENT I (your name) name the following person as my agent
Agent: _____

DESIGNATION OF SUCCESSOR AGENT(S) (OPTIONAL) if my agent is unable
Name of Successor Agent: _____

unable or unwilling to act for me, I name as my agent _____

Practice Tip



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.



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.



Practice Tip



Mental Health Advance Directive

- If a Respondent suffers from debilitating psychological or psychiatric disorders, a mental health advance directive (MHAD) 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.



Trusts

- Definition
- Advantages
- Disadvantages
- Special needs trust

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 (DOL) 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.



Practice Tip



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.

Practice Tip



Other Protective Arrangements

- Who can petition?
- Protective arrangements instead of guardianship
- Protective arrangements instead of conservatorship
- Petition for protective arrangement
- Notice; hearing
- Appointment and role of court visitor
- Role of special agent

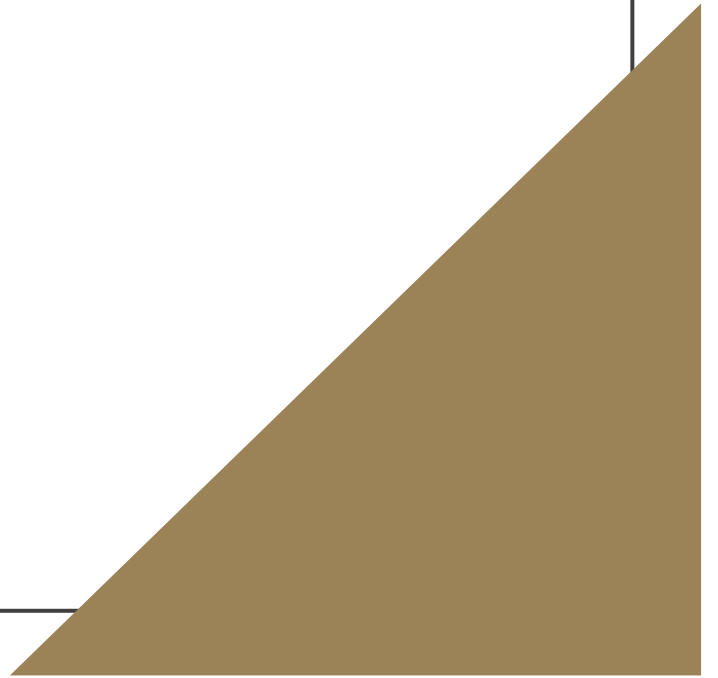
Supported Decision Making Agreements

A “supported decision-making agreement” is a new concept under the UGA.

- Scope
- Termination of SDMA
- Presumption of Capacity
- Form/Execution of SDMA



County Specific





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CHAPTER 8

The Court Visitor Report

Objectives

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

Sealing of Reports

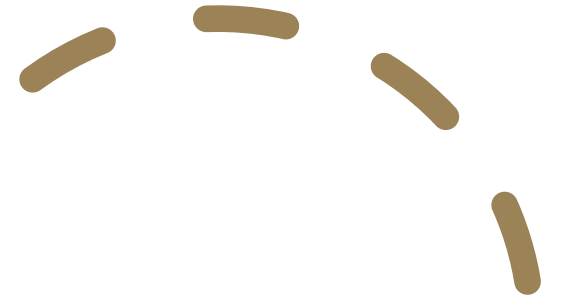
Because court records in many counties may be available online as well as for review in the courthouse, the Washington Supreme Court adopted a rule to assure that certain private or sensitive information is not made public. GR 22.

- Public document
- Sealed document



Contents of Sealed CV Reports

- Guardianship
- Conservatorship




Practice Tip

11

10



Contents of Sealed CV Reports

- 
- Other important information to include in the report
 - Nomination of guardian or conservator
 - Right to vote and marry
 - Protective agreement reports

Suggestions for Reports

- Use topic sentences
- Write the report to show that the CV has made a complete investigation
- Be respectful
- Review work
- Be brief and to the point
- Serve the confidential report and public report
- File the report on time
- Provide working copies to the court

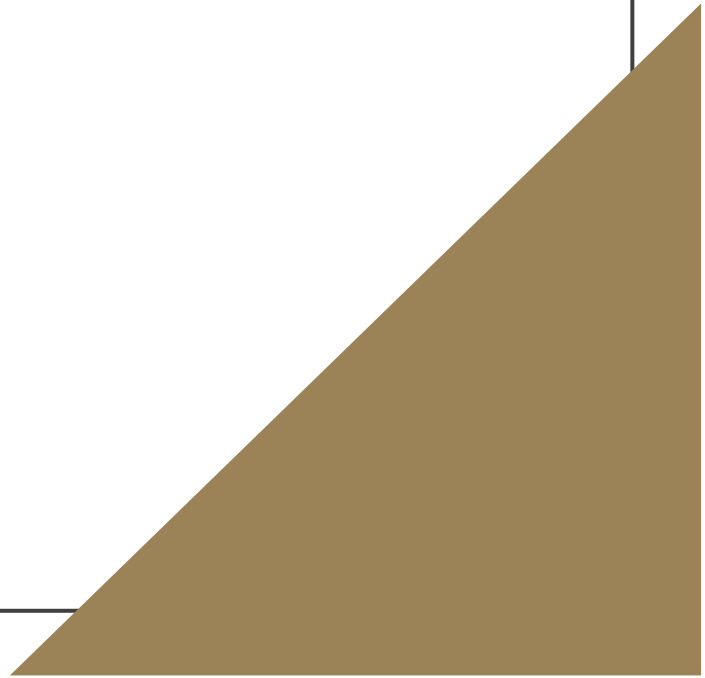


Practice Tip





County Specific





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CHAPTER 9

Respondent's Right to Counsel

Objectives

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



Questions and Answers

- What is the Respondent's right to counsel?
 - When is an attorney appointed for the Respondent?
 - How does the court select an attorney to appoint for the Respondent?
 - Who can serve as attorney for the Respondent?
 - What are the CV's duties regarding the respondent's right to counsel?
 - What happens after an attorney is appointed for the respondent?
 - What are the duties of appointed counsel for the respondent?
 - What if the Respondent refuses or is unable to communicate with their court-appointed counsel?
-

Best Practice for Attorneys



RULE OF PROFESSIONAL
CONDUCT 1.14



IN DETERMINING THE
EXTENT OF THE CLIENT'S
DIMINISHED CAPACITY



DISCLOSURE OF CLIENT'S
CONDITION



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.

Summary of Statutory Authority



RCW 11.130



Right to counsel



Adequate time for
consultation and
preparation



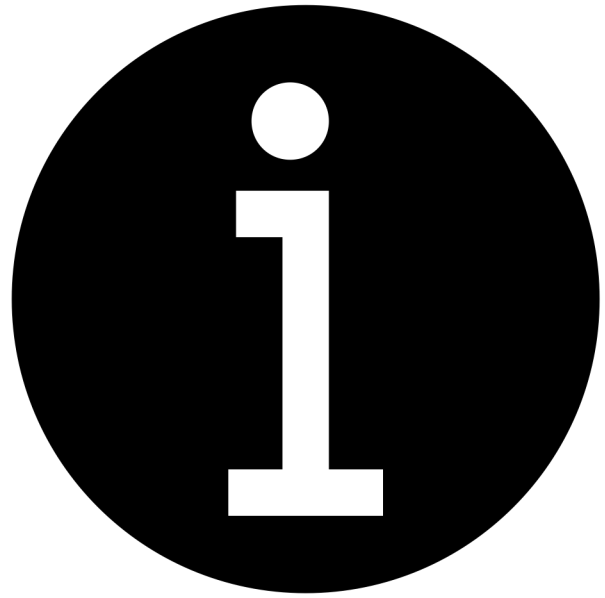
Role (duties) of attorney



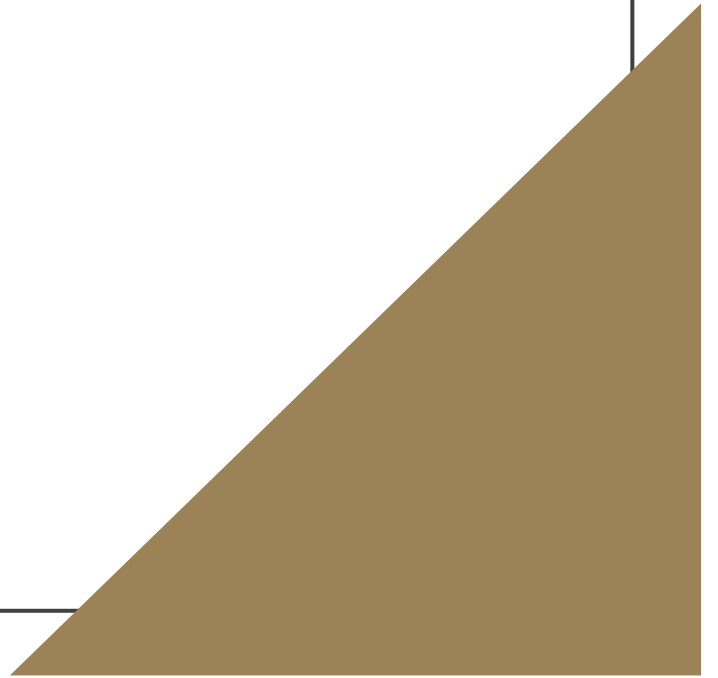
Appointment of attorney:
emergency conservator
and guardian
proceedings

Summary of Statutory Authority

- Temporary substitute proceedings – appointment of counsel
- Termination or modification – appointment of counsel
- Compensation and expenses
- Appointment at public expense
- Less restrictive alternatives



County Specific





Checkpoint

Check your knowledge



CHAPTER 10

Final Words of Wisdom

Overview

- Recall the requirements for Respondent's attendance in a guardianship/conservatorship proceeding, and
- Identify communication criteria for CV cases.



Court Hearings

- Attendance at legal proceedings
- Courtroom demeanor
- Working or bench copies
- Noting hearing
- Review of proposed order
- *Ex Parte* communication

**Practice
Tip**



Petition for Instructions

- 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.
- 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

GR 31

Fees

- Amount allowed
- To whom charged
- Petition or declaration for fees



CV Authority & Immunity

The background of the slide is a photograph of a grand, classical building. It features several large, fluted columns supporting a structure above. In the foreground, a wide set of light-colored stone steps leads up towards the building. The lighting is bright, suggesting a sunny day, and the overall tone is formal and institutional.

- The CV acts under the supervision and control of the court. So long as the CV acts as directed by the court, the CV will have “quasi-judicial immunity” from any claim for damages arising out of the performance of their duties.

Emergency Guardian/Conservator

- The CV should strongly consider whether the appointment of an emergency guardian under RCW 11.130.320 is appropriate.
- Expediting the guardianship/conservatorship matter
- Staying neutral

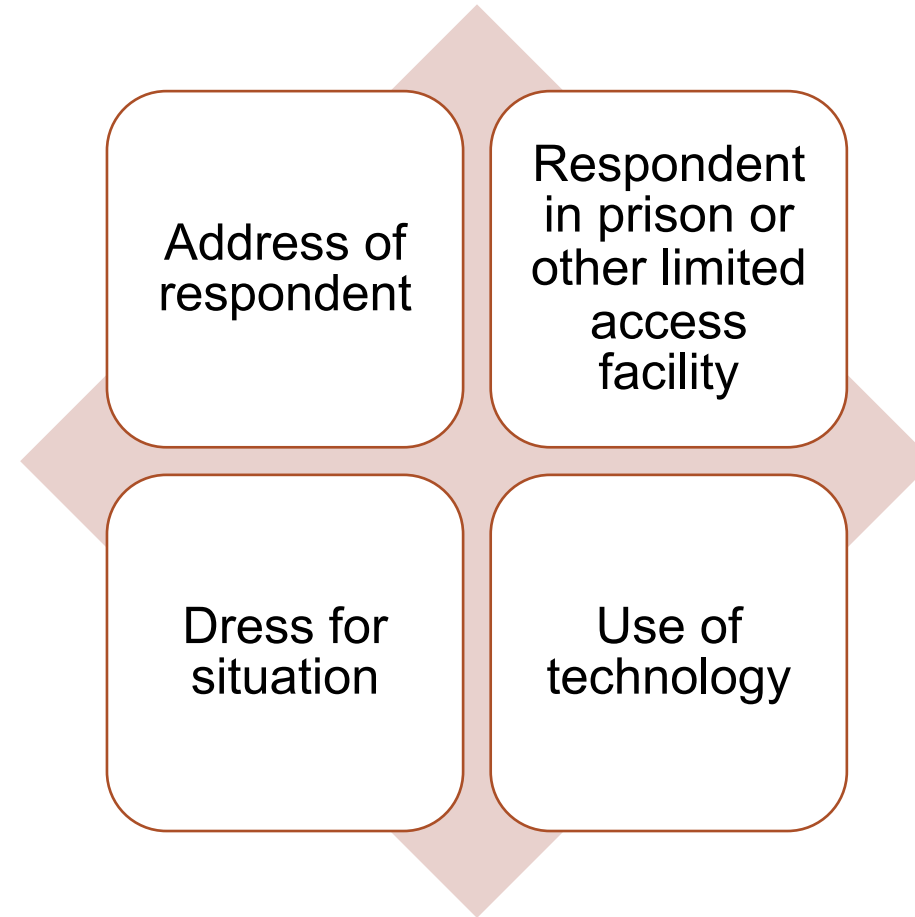
**Practice
Tip**

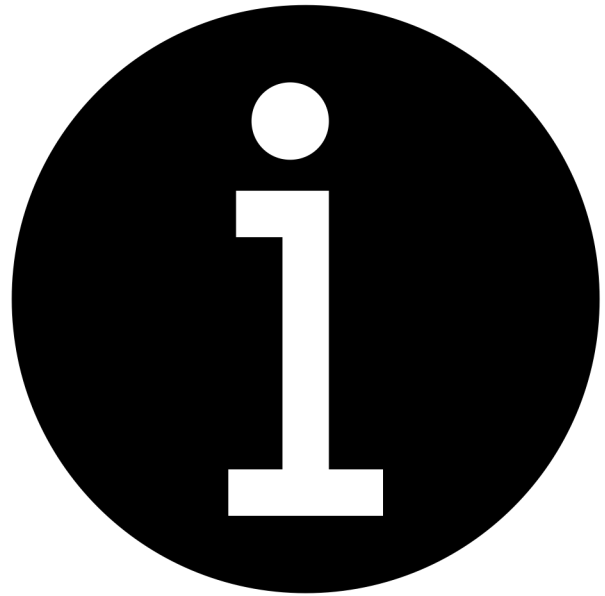
14

Trial on Petition

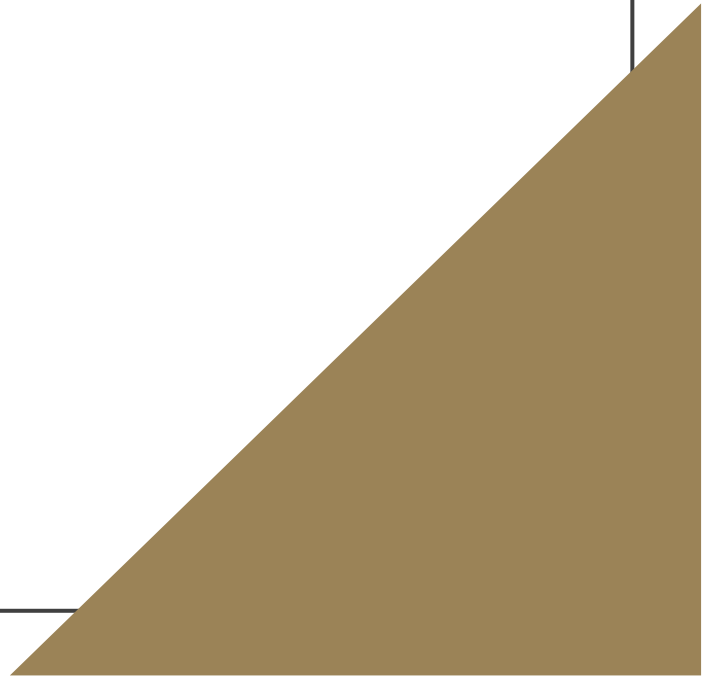
RCW 11.130.035(3) provides “[a]n adult Respondent may demand a jury trial ... on the issue of whether a basis exists for the appointment of a guardian ... or a conservator and on the rights to be retained or restricted if a guardian or conservator is appointed.” Consequently, the CV should conduct every investigation as if the CV will be called to testify at a trial.

Miscellaneous Practical Concerns





County Specific





Checkpoint

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Thank you for participating in this training. For questions, contact: (Name), (Email)