



Georgia Department of Human Services
Division of Aging Services

Best Practices and Ethics in Guardianship Advocacy and Representation

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The Georgia Department of Human Services

Vision

Stronger Families for a Stronger Georgia.

Mission

Strengthen Georgia by providing Individuals and Families access to services that promote self-sufficiency, independence, and protect Georgia's vulnerable children and adults.

Core Values

- Provide access to resources that offer support and empower Georgians and their families.
- Deliver services professionally and treat all clients with dignity and respect.
- Manage business operations effectively and efficiently by aligning resources across the agency.
- Promote accountability, transparency and quality in all services we deliver and programs we administer.
- Develop our employees at all levels of the agency.



The Georgia Division of Aging Services

Vision

Living Longer, Living Safely, Living Well.

Mission

The Division of Aging Services (DAS) supports the larger goals of DHS by assisting older individuals, at-risk adults, persons with disabilities, their families and caregivers to achieve safe, healthy, independent and self-reliant lives.

Core Values

- A Strong Customer Focus - We are driven by customer – not organizational – need. We consider customer's input and preferences in all decision-making.
- Accountability and Results - We are good stewards of the trust and resources placed with us. We base our decisions on data analysis and strive for quality improvement.
- Teamwork - We do business through teamwork and collaboration. We practice shared decision-making and everyone's contribution is valued.
- Open Communication - Our communication is open and responsive. We listen to our customers and partners and provide them accurate, timely information.
- A Proactive Approach - We envision the future needs of our customers and the changing service network. We lead and advocate with innovation.
- Dignity and Respect - We respect the rights and self worth of all people.
- Our Workforce - Our workforce, including volunteers, is our best asset. We maintain a learning environment with opportunities to increase professional growth, share knowledge and stimulate creative thinking.
- Trust - Compassion and integrity drive what we do and who we are.
- Diversity - We value a diverse workforce; it broadens our perspective and enables us to better serve our customers.
- Empowerment - We support the right of our customers and workforce to make choices and assume responsibility for their decisions.



Presentation Overview

- **Right to Counsel and Undertaking Representation**
- **Case Preparation and Pre-trial**
- **Trial**
- **Post-Trial**
- **General Tips**



Presentation Overview

- **Terminology: Georgia law refers to the person subject to the guardianship as a “ward.”**
 - Here, “person under guardianship” or “protected person” are substituted for “ward.”
- **For “proposed ward,” “respondent” is used.**



Presentation Overview

- **This presentation is introductory, for lawyers who are new to representing persons under guardianship.**
- **The focus of the presentation is on the petition for guardianship; however, counsel may be appointed for the protected person for other motions and petitions related to the guardianship.**
- **The presentation is not comprehensive.**



Right to Counsel and Undertaking Representation



Role of Counsel

- What Counsel is NOT:
 - Guardian *ad litem*
 - Guardian



Counsel Versus Guardian *ad Litem*

Counsel

- Zealous advocate for the client's legal goals.

Guardian *ad Litem*

- Investigator for the court.

- One attorney may not serve as both the attorney for the respondent and the GAL in the same case. O.C.G.A. § 29-9-3.



Role of Counsel

- Conflict of Roles
 - Role of Counsel: Counsel pursues the legal goal of the client.
 - If you are appointed to serve as counsel, you are “client-directed.”
 - A person under guardianship or conservatorship retains the right to direct the guardianship or conservatorship litigation. O.C.G.A. § 29-4-21(a)(7).



Role of Counsel

- All ethics and professionalism rules attach to this relationship.
- **Georgia Rules of Professional Conduct Rule 1.14, Client with Diminished Capacity:** When a client's capacity to make adequately considered decisions in connection with a representation is diminished, whether because of minority, mental impairment or for some other reason, the lawyer shall, as far as reasonably possible, *maintain a normal client-lawyer relationship with the client.*



Role of Counsel

- **Georgia Rules of Professional Conduct**
Rule 1.2: “A lawyer shall abide by a client's decisions concerning the scope and objectives of representation...”



Role of the Guardian *ad Litem*

- Role of the GAL: A guardian *ad litem* (GAL) is an investigative arm of the court.
 - A GAL conducts an investigation and presents a report to the court.
- A GAL performs duties under a best interest standard.
 - In re Estate of Thompson, 332 Ga. App. 774 (2015)
 - Best interest factors are not statutorily defined for adult guardianships.
 - In 2014, the juvenile court code defined the duties of the guardian *ad litem* in the child welfare context; however, this is not applicable or controlling in adult guardianships.
- Treat the GAL as a witness and the report submitted as evidence.



Counsel Versus Guardian *ad Litem*

- **Georgia Rules of Professional Conduct Rule 3.7, Lawyer as Witness:** A lawyer shall not act as advocate at a trial in which the lawyer is likely to be a necessary witness...
 - Comment 2: “A witness is required to testify on the basis of personal knowledge, while an advocate is expected to explain and comment on evidence given by others.”



Counsel Versus Guardian *ad Litem*

IRL



Role of Counsel

- Examples of Misunderstanding the Role of Counsel
 - Confused Attorney during opening statement:
“Your Honor, I understand that Ms. Smith won’t take her medication. She’s a schizophrenic. Her family can never find her; she disappears for weeks at a time. When they do find her, she’s living on the streets. Based on the fact that she’s just not safe, I believe that the court should grant the guardianship.”



Role of Counsel

- Examples of **breaking the State Bar rules.**
 - Aimee:
“When you talked to your client, what did she say she wanted?”
 - Confused Attorney:
[Laughing, but being brutally honest]
“When I talked to her? For what? I don’t ask crazy people what they want.”



IN THE PROBATE COURT OF ANY COUNTY
STATE OF GEORGIA

IN RE: ESTATE OF
Carol Brady, Ward

ESTATE NO. 11111

RESPONSE OF COURT APPOINTED ATTORNEY FOR CAROL BRADY

COMES NOW, Jane Doe, Court Appointed Attorney for Carol Brady, and acknowledges service of the Ward's Petition to Marry and responds as follows:

In the Petition, the Ward, Carol Brady, requests permission of this Court to legally marry Danny Partridge. Ms. Brady has been dating Mr. Partridge for two years. Ms. Brady is pregnant with Mr. Partridge's child. The couple lives together. Legalizing this relationship would not change their everyday life.

Mr. Partridge is a teacher. Through his employment, he receives benefits, such as health insurance, life insurance, and retirement plan contributions. As his wife, Ms. Brady could also be receive these benefits. Ms. Brady currently has no health insurance, but Mr. Partridge could add her to his coverage if they marry. Upon Mr. Partridge's death, Ms. Brady may be eligible for survivor benefits.

Therefore, as counsel for Ms. Brady, I consent to the Court's authorization of this marriage.

IN THE PROBATE COURT OF ANY COUNTY
STATE OF GEORGIA

ESTATE NO. 11111

Have you ever filed an answer to your client's petition?

What would be the right way to respond?

If you feel you were actually appointed to act as a guardian *ad litem*, consider:

Make sure you have an order of appointment that clearly states your role.

Conflict analysis: former client

If the petitioner filed the petition *pro se*, and then you were appointed, contact the person under guardianship and begin representation.

But if you are counsel for the petitioner, you do not file an answer to the petition.

Prepare to present the case.

COURT APPOINTMENT OF
I, Jane Doe, Court Appointee, do hereby respond to the Ward's Petition to appoint me as guardian of the person of the Ward, Carol Brady, requests permission to marry Danny Partridge. Ms. Brady has been dating Mr. Partridge for several years. The couple lives together. Mr. Partridge is currently employed, he receives benefits, such as health insurance and retirement plan contributions. As his wife, Ms. Brady currently has no health insurance coverage. Mr. Partridge is eligible for survivor benefits. Upon Mr. Partridge's death, Ms. Brady, I consent to the Court's authorization of this

Role of Counsel

- **Rule 1.9 Conflict of Interest: Former Client**

(c) A lawyer who has formerly represented a client in a matter or whose present or former firm has formerly represented a client in a matter shall not thereafter:

1. use information relating to the representation to the disadvantage of the former client except as Rule 1.6 or Rule 3.3 would permit or require with respect to a client, or when the information has become generally known; or
2. reveal information relating to the representation except as Rule 1.6 or Rule 3.3 would permit or require with respect to a client.

Exceptions listed 1.6 and 3.3

1.6 Confidentiality of Information

3.3 Candor Toward the Tribunal



Role of Counsel

- **Rule 1.8 Conflict of Interest: Prohibited Transactions**

(b) A lawyer shall not use information gained in the professional relationship with a client to the disadvantage of the client unless the client gives informed consent, except as permitted or required by these Rules.



Case Preparation and Pre-trial



Diligence and Competence

- **Georgia Rules of Professional Conduct Rule 1.3, Diligence:** A lawyer shall act with reasonable diligence and promptness in representing a client. Reasonable diligence as used in this Rule means that a lawyer shall not without just cause to the detriment of the client in effect willfully abandon or willfully disregard a legal matter entrusted to the lawyer.

- **Georgia Rules of Professional Conduct Rule 1.1, Competence:** A lawyer shall provide competent representation to a client. Competent representation as used in this Rule means that a lawyer shall not handle a matter which the lawyer knows or should know to be beyond the lawyer's level of competence without associating another lawyer who the original lawyer reasonably believes to be competent to handle the matter in question. Competence requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation.



Resources

PRACTICAL Tool for Lawyers: Steps in Supporting Decision-Making

Jointly produced by the Commission on Law and Aging; Commission on Disability Rights; Section on Civil Rights and Social Justice; and Section on Real Property, Trust and Estate Law

ABA
Defending Liberty Pursuing Justice

ABA
AMERICAN BAR ASSOCIATION
Commission on Law and Aging

PRACTICAL Tool

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- Guardianship and Supported Decision-Making Law and Practice

▶ PRACTICAL Tool

- Court Volunteer Guardianship Monitoring Handbooks
- Guardianship Jurisdiction

The PRACTICAL Tool aims to help lawyers identify and implement decision-making options for persons with disabilities that are less restrictive than guardianship. It is a joint product of four American Bar Association entities – the Commission on Law and Aging, Commission on Disability Rights, Section on Civil Rights and Social Justice, and Section on Real Property, Trust and Estate Law, with assistance from the National Resource Center for Supported Decision-Making.

“PRACTICAL” is an acronym for nine steps for lawyers to identify these options. The lawyer can use the PRACTICAL checklist of steps during the client interview and immediately after to assist in case analysis. The steps blend in naturally with the case interview process. Lawyers serving in different roles may use the steps differently.

Newly Revised Edition: Edna Selan Epstein's

The Attorney-Client Privilege and the Work-Product Doctrine

SIXTH EDITION

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Section of Litigation

Webinar

A free webinar held June 28 featured the Tool; an archived version is available online.

Finding Options Less Restrictive Than Guardianship: A New Tool for Lawyers

This webinar presented the American Bar Association's new PRACTICAL tool to help lawyers identify and consider decision-making options for persons with disabilities that are less restrictive than guardianship, as required by most state statutes. The speakers summarized each of tool's nine steps, and gave examples of their use in practice. They also described how the tool can blend in with the case interview process and assist in case analysis, and how it can help lawyers in a variety of roles.



Understanding Capacity

- If guardianship is a legal determination that an adult lacks sufficient capacity to make or communicate significant responsible decisions concerning his or her health or safety, the lawyer for the person proposed to be in need of a guardianship should understand capacity

THO. ROUGH. LY.



Capacity Evaluation

- The evaluation may include, but not be limited to:
 - (A) A self-report from the proposed ward, if possible;
 - (B) Questions and observations of the proposed ward to assess the functional abilities of the proposed ward;
 - (C) A review of the records for the proposed ward including, but not limited to, medical records, medication charts, and other available records;
 - (D) An assessment of cultural factors and language barriers that may impact the proposed ward's abilities and living environment; and
 - (E) All other factors the evaluator determines to be appropriate to the evaluation.

O.C.G.A. § 29-4-11(d)(3)



Capacity Evaluation and Report

- Court-appointed evaluators determine the method and tools used for the evaluation.
 - There are many tools, or tests, that purport to evaluate decisional capacity.
- Get the evaluator's report. Review it. Review it. Review it. And then, review it again.
 - Make sure you understand how the evaluation was conducted and the conclusions or opinions the evaluator included in the report.
 - Is the report sufficient?
 - Does it just state conclusions or list diagnoses?
- Should you file a response to the report?
- Should you subpoena and examine the evaluator?
- Should you seek your own evaluation?



Client Interaction



Attorney-Client Relationship

- **Georgia Rules of Professional Conduct Rule 1.14, Client with Diminished Capacity:** When a client's capacity to make adequately considered decisions in connection with a representation is diminished, whether because of minority, mental impairment or for some other reason, the lawyer shall, as far as reasonably possible, maintain a normal client-lawyer relationship with the client.



Client Interaction

- You must have it.
- **Georgia Rules of Professional Conduct Rule 1.4, Communication**

A lawyer shall:

1. Promptly inform the client of any decision or circumstance with respect to which the client's informed consent...

Comment [2] If these Rules require that a particular decision about the representation be made by the client, paragraph (a)(1) requires that the lawyer promptly consult with and secure the client's informed consent prior to taking action unless prior discussions with the client have resolved what action the client wants the lawyer to take. For example, a lawyer who receives from opposing counsel an offer of settlement in a civil controversy or a proffered plea bargain in a criminal case must promptly inform the client of its substance unless the client has previously indicated that the proposal will be acceptable or unacceptable or has authorized the lawyer to accept or to reject the offer. See Rule 1.2(a).



Client Interaction

- Georgia Rules of Professional Conduct Rule 1.0, Terminology
- "Informed consent" denotes the agreement by a person to a proposed course of conduct after the lawyer has communicated adequate information and explanation about the material risks of and reasonably available alternatives to the proposed course of conduct.



Client Interaction

- Be humble.
- Be open to learning and ask to be educated.
- Gather as much information as possible about the client's disabilities, communication style, routine, and preferences.
- Be flexible and adapt.
- Never make assumptions about persons with disabilities.
 - A diagnosis tells you nothing about a person's decisional capacity or functional abilities.
- Never generalize from one person to another.



Discussing the Client's Wishes

- Be thorough in covering all of the legal and practical issues involved in the legal matter.
- Use the principals of supported decision-making.
 - Each of us receives assistance in making decisions on a daily basis.
 - Supported decision-making is not new to attorneys.
 - Interpreting the law to non-legal speak and explaining legal concepts to non-lawyers are at the heart of our counselor-at-law role.



Discerning the Client's Wishes

- What about when the client cannot execute one of the steps of decision-making?
 - Understanding Factors/Information
 - For example, the client is experiencing delusions or hallucinations.
 - Appreciating/Applying the Information
 - For example, the client cannot understand that a behavior, if continued, could be life-threatening.
 - Reasoning
 - Expression of Choice
 - For example, the client cannot communicate at all or cannot communicate in any means understandable (interpretable) to others.



Discerning the Client's Wishes

- What about when the client cannot execute one of the steps of decision-making?
 - Understanding Factors/Information
 - For example, the client is experiencing delusions or hallucinations.
- Distill information.
- Try at different times.
- Try different ways.



Discerning the Client's Wishes

- **Georgia Rules of Professional Conduct Rule 1.14, Client with Diminished Capacity, Comment 5, Taking Protective Action:** [5] If a lawyer reasonably believes that 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 as provided in paragraph (a) because the client lacks sufficient capacity to communicate or to make adequately considered decisions in connection with the representation, then paragraph (b) permits the lawyer to take protective measures deemed necessary.

Such measures could include: consulting with family members, using a reconsideration period to permit clarification or improvement of circumstances, using voluntary surrogate decision-making tools such as durable powers 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. In taking any protective action, the lawyer should be guided by such factors as the wishes and values of the client to the extent known, the client's best interests 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.



Discerning the Client's Wishes

- What is clear and uniform across secondary legal sources: the role of court-appointed counsel for the respondent does not convert to that of a GAL.



When You Cannot Discern the Client's Wishes

- The duty of counsel is to vigilantly safeguard the client's due process rights and protections.
- Guidance from Maryland, In re Lee, 132 Md. App. 696 (2000):
 - In guardianship proceedings, effective representation by counsel ensures that the proper procedures are followed by the court, that the guardianship is imposed only if the petitioner proves by "clear and convincing evidence" that such a measure is necessary and there is no reasonable alternative, that the guardianship remains no more restrictive than is warranted, that no collusion exists between the court appointed investigator and petitioner, and that the client's right to appeal is exercised, if appropriate.



When You Disagree with the Client's Wishes

- What about when you disagree with the soundness of the client's stated legal goal?
- **Rule 1.2 Scope of Representation and Allocation Of Authority Between Client And Lawyer, Comment 5:**
[5] Legal representation should not be denied to people who are unable to afford legal services, or whose cause is controversial or the subject of popular disapproval. By the same token, representing a client does not constitute approval of the client's views or activities.



Hearing Preparation

- Investigate and develop the case.
- Just reviewing the pleadings and talking to sources who are easy to reach does not constitute preparing the case.
 - That is “sham” preparation, not real preparation.



Trial



Right to Presence

- The respondent has a right to be present for all parts of the guardianship trial.
 - The right of a natural party to be present in the courtroom when her case is being tried is deeply rooted in the law of this nation and, if anything, even more embedded in the law of this State. It has been treated as a component of the due process of law in both criminal and civil cases since the early decisions of this Court.

Kesterson v. Jarrett, 291 Ga. 380 (2012).



Right to Presence

- Presence can be waived, but only after obtaining the informed consent of the client.
 - Like most other rights, the right to be present may be waived or forfeited by a party. A party may choose not to attend all or part of her trial...or affirmatively waive presence during all or part of a proceeding...But because the right to be present in court is held by the party, the decision not to attend, or to waive attendance, must be made by the party, not by her lawyer alone.

Kesterson at 385.



Right to Presence

- Procedural Justice
 - The perceived fairness of court procedures and treatment.
- Studies have shown that people are more likely to accept decisions when they:
 - Believe they were treated with dignity and respect,
 - Understand the process,
 - Had a chance to be heard (voice), and
 - Believe the decision-making process is neutral and unbiased (neutrality).

From the Center for Court Innovation,
http://www.courtinnovation.org/sites/default/files/documents/Procedural_Justice_Fair_Treatment_Matters.pdf



Trial

- Make sure that the petitioner has met every prerequisite for the guardianship.



Trial

- The court may appoint a guardian for an adult only if the court finds the adult lacks sufficient capacity to make or communicate significant responsible decisions concerning his or her health or safety.

O.C.G.A. § 29-4-1



Trial

He is getting to violent and we can not control him.



The proposed ward is unable to make significant responsible decisions regarding his person and property. Before the petitioners were denied visitation with the proposed ward he had been diagnosed with dementia. He would not voluntarily refuse to see the petitioners if he was of sound mind.

5.

It is in the best interest of the proposed ward that:

_____ be appointed as guardian; and/or _____
Esq. be appointed as conservator.



Trial

- No guardian shall be appointed for an adult unless the appointment is in the best interest of the adult.

O.C.G.A. § 29-4-1



Trial

- All guardianships ordered pursuant to this chapter
 - Shall be designed to encourage the development of maximum self-reliance and independence in the adult and
 - Shall be ordered only to the extent necessitated by the adult's actual and adaptive limitations
 - After a determination that less restrictive alternatives to the guardianship are not available or appropriate.
- O.C.G.A. § 29-4-1



Trial

- Make sure that the petitioner meets the burden of persuasion for every right that can be removed from your client.



Trial

- A plenary guardianship removes from the person under guardianship the right to:
 - (1) Contract marriage;
 - (2) Make, modify, or terminate other contracts;
 - (3) Consent to medical treatment;
 - (4) Establish a residence or dwelling place;
 - (5) Change domicile;
 - (6) Revoke a revocable trust established by the ward; and
 - (7) Bring or defend any action at law or equity, except an action relating to the guardianship.

O.C.G.A. § 29-4-21



Trial

- Other powers that may be granted to the guardian:
 - (1) To establish the ward's place of dwelling outside this state;
 - (2) To change the jurisdiction of the guardianship to another county in this state that is the county of the ward's place of dwelling, pursuant to Code Section 29-4-80;
 - (3) To change the domicile of the ward to the ward's or the guardian's place of dwelling, in the determination of which the court shall consider the tax ramifications and succession and inheritance rights of the ward and other parties;
 - (4) To bring an action for the divorce of the ward based on any of the grounds listed in Code Section 19-5-3, except on the ground that the marriage is irretrievably broken;
 - (5) To consent to the adoption of the ward;
 - (6) To receive reasonable compensation from the estate of the ward for services rendered to the ward; and
 - (7) If there is no conservator, to disclaim or renounce any property or interest in property of the ward in accordance with the provisions of Code Section 53-1-20.

O.C.G.A. § 29-4-23



Other Relief

- Consider requesting other relief designed to protect the rights of the person under guardianship.
 - The probate court is authorized to grant relief that is in the best interest of the person. O.C.G.A. § 29-4-13(a)(7).
- Guardians must attempt to assist the person under guardianship to participate in decisions and develop or regain the capacity to manage his or her own affairs. O.C.G.A. § 29-4-22(a).
 - If there is any concern about the guardian's ability or willingness to do this, ask the court to consider limits on the guardian's authority or ordering specific interventions or services.



Other Relief

- Persons under guardianship have the right to be restored to capacity (terminate the guardianship) at the earliest possible time. O.C.G.A. § 29-4-20(a)(7).
 - If there is any indication that issues affecting the capacity of the person under guardianship are temporary, request a time-limited guardianship or that the court set a hearing to reassess the need for the guardianship on a date certain.
 - If the petition was filed by a single petitioner with the support of an affidavit of a physician, psychologist, or licensed clinical social worker, the professional must state the foreseeable duration of the guardianship. O.C.G.A. § 29-4-10(c)(1).
- A guardian must file reports with the court regarding the wellbeing of the person under guardianship. O.C.G.A. § 29-4-22(b)(9).
 - Consider whether additional reporting may be necessary to monitor the guardian.



The Order

- As with any case, ask that the judge make findings on the record.
 - Example – Court disregards respondent’s nominee of person to serve as guardian.
 - This is within the discretion of the court but may **only** be done upon good cause shown. O.C.G.A. § 29-4-3.
 - Remember that if an appeal is needed, clear findings of fact are essential for appeal.
- Request to draft the final order.



Post-Trial



Explaining the Final Order

- Counsel for the person under guardianship must explain the order and the impact of the guardianship on the person's rights to the person under guardianship. O.C.G.A. § 29-4-13(c).



Appeals

- For “Article 6”/O.C.G.A. § 15-9-4(b) (population of 90,000 or more) counties, appeals are to the appellate courts of Georgia, namely the Georgia Court of Appeals. O.C.G.A. § 5-3-2.
- In non-Article 6 counties, appeals are *de novo* to superior court. O.C.G.A. § 29-4-70.



Actions Relating to the Guardianship

- Inquiry into Unjust Denial of Rights or Privileges of the Person under Guardianship
- (a) Upon the petition of any interested person, including the ward, or upon the court's own motion, the court may conduct a judicial inquiry into whether the ward is being denied a right or privilege provided for by this chapter and may issue appropriate orders. Except for good cause shown, the court shall order that notice of the inquiry be given, in whatever form the court deems appropriate, to the ward, the guardian, the ward's legal counsel, if any, and the ward's conservator, if any. The court, in its discretion, may appoint legal counsel for the ward or a guardian ad litem, or both.
- (b) No petition alleging that the ward is being unjustly denied a right or privilege provided for by this chapter shall be allowed by the court within two years after the denial or dismissal on the merits of a petition alleging that the ward is being unjustly denied substantially the same right or privilege unless the petitioner shows a significant change in the condition or circumstances of the ward.

O.C.G.A. § 29-4-40



Actions Relating to the Guardianship

- Modification of Guardianship
- (a) Upon the petition of any interested person, including the ward, or upon the court's own motion, the court may modify the guardianship by adjusting the duties or powers of the guardian, as defined in Code Sections 29-4-22 and 29-4-23, or the powers of the ward, as defined in Code Sections 29-4-20 and 29-4-21, or by making other appropriate adjustments to reflect the extent of the current capacity of the ward or other circumstances of the guardianship. Except for good cause shown, the court shall order that notice of the petition be given, in whatever form the court deems appropriate, to the ward, the guardian, the ward's legal counsel, and the ward's conservator, if any. In any proceeding under this Code section that would expand or increase the powers of the guardian or further restrict the rights of the ward, the court shall appoint legal counsel for the ward. In all other cases, the court, in its discretion, may appoint legal counsel for the ward or a guardian ad litem, or both.
- (b) If the petition for modification alleges a significant change in the capacity of the ward, it must be supported either by the affidavits of two persons who have knowledge of the ward, one of whom may be the petitioner, or of a physician licensed to practice medicine under Chapter 34 of Title 43, a psychologist licensed to practice under Chapter 39 of Title 43, or a licensed clinical social worker, setting forth the supporting facts and determinations. If, after reviewing the petition and the affidavits, the court determines that there is no probable cause to believe that there has been a significant change in the capacity of the ward, the court shall dismiss the petition. If the petition is not dismissed, the court shall order that an evaluation be conducted, in accordance with the provisions of subsection (d) of Code Section 29-4-11. If, after reviewing the evaluation report, the court finds that there is no probable cause to believe that there has been a significant change in the capacity of the ward, the court shall dismiss the petition. If the petition is not dismissed, the court shall schedule a hearing, with notice as the court deems appropriate.
- (c) If the petition for modification does not allege a significant change in the capacity of the ward, the court in its discretion may modify the guardianship upon a showing that the modification is in the ward's best interest; provided, however, that the court may order compliance with any of the provisions of subsection (b) of this Code section prior to granting the petition for modification.
- (d) In any proceeding under this Code section that would expand or increase the powers of the guardian or further restrict the powers of the ward, the burden is on the petitioner to show by clear and convincing evidence that the modification is in the ward's best interest. In any proceeding under this Code section that would restrict the powers of the guardian or restore powers to the ward, the burden is on the petitioner to show by a preponderance of the evidence that the modification is in the ward's best interest.
- (e) No petition for modification shall be allowed by the court within two years after the denial or dismissal on the merits of a petition for substantially the same modification unless the petitioner shows a significant change in the condition or circumstances of the ward.



Actions Relating to the Guardianship

- Termination of Guardianship
- (a) Upon the petition of any interested person, including the ward, or upon the court's own motion, and upon a proper showing that the need for a guardianship is ended, the court may terminate the guardianship and restore all personal and property rights to the ward. Except for good cause shown, the court shall order that notice of the petition be given, in whatever form the court deems appropriate, to the ward, the guardian, the ward's legal counsel, if any, and the ward's conservator, if any. The court shall appoint legal counsel for the ward and may, in its discretion, appoint a guardian ad litem.
- (b) A petition for termination must be supported either by the affidavits of two persons who have knowledge of the ward, one of whom may be the petitioner, or of a physician licensed to practice medicine under Chapter 34 of Title 43, a psychologist licensed to practice under Chapter 39 of Title 43, or a licensed clinical social worker, setting forth the supporting facts and determinations. If, after reviewing the petition and the affidavits, the court determines that there is no probable cause to believe that the guardianship should be terminated, the court shall dismiss the petition. If the petition is not dismissed, the court shall order that an evaluation be conducted, in accordance with the provisions of subsection (d) of Code Section 29-4-11. If, after reviewing the evaluation report, the court finds that there is no probable cause to believe that the guardianship should be terminated, the court shall dismiss the petition. If the petition is not dismissed, the court shall schedule a hearing, with such notice as the court deems appropriate.
- (c) In any proceeding under this Code section, the burden is on the petitioner to show by a preponderance of the evidence that there is no longer a need for the guardianship.
- (d) No petition for termination of a guardianship shall be allowed by the court within two years after the denial or dismissal on the merits of a petition for termination of the guardianship unless the petitioner shows a significant change in the condition or circumstances of the ward.
- (e) The death of the ward automatically terminates the guardianship, except as otherwise provided in Code Section 29-4-43.
- (f) Upon termination of the guardianship, the guardian shall deliver any money or property to the ward or, if a conservator has been appointed for the ward, to that conservator or, if the ward is deceased, to the ward's personal representative.

O.C.G.A. § 29-4-42



General Tips



Practice Tips

- When researching case law, take note of the law under which the decision was decided; substantive changes in the law may have made the holdings of some cases inapplicable to your current case.
- Never be tempted to treat the guardianship process with informality.
 - File motions and responsive pleadings when applicable.
 - Follow rules of evidence.
 - Make objections on the record and ensure that the ruling on the objection goes on the record.
- If filing an appeal, make sure you can competently navigate appellate practice.
 - Most likely, the appeal will end up in the Court of Appeals.
 - Do you know Rule 33? Do you know what physical precedent only is?



Questions?

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