

The petitioner must serve a copy of the petition upon the subject of the petition and his or her counsel and on all other persons entitled to notice under D.C. Code, sec. 21-2042 by first-class mail within 3 days of the filing of the petition in accordance with Superior Court, Probate Division Rule 321(c).

The petitioner must also serve a copy of this notice regarding the hearing personally **on the subject of the petition** and on all other individuals in accordance with Superior Court, Probate Division Rule 325. The notice must be served at least 14 days before the time set for the hearing.

The Court, for good cause shown, may provide for a different method or time of giving notice for any hearing.

Unless it is waived, notice of hearings in these proceedings must be given to each of the following:

- (1) The subject of the petition and his or her spouse. If none, his or her adult children. If none, his or her parents. If none, at least one of the nearest adult relatives of the subject.
- (2) Any person who is serving as guardian or conservator or who has the care and custody of the individual alleged to be incapacitated;
- (3) Any counsel for the subject;
- (4) All persons entitled to notice if this petition had been filed in the subject's home state; and
- (5) Any other person as directed by the Court.

The subject of the petition may not waive notice. Other individuals including a guardian *ad litem* or other fiduciary may waive notice by a signed writing filed with the Court.

Upon the filing of the petition the Court will appoint an attorney to represent the subject of the petition unless he/she has chosen counsel.

At any point in the proceeding, the Court may appoint a guardian *ad litem* to prosecute or defend the interest of any individual if the Court determines that representation of that person's interest otherwise would be inadequate.

Upon the filing of the petition, the Court may appoint a visitor and an examiner pursuant to

D.C. Code, sec. 21-2041 or sec. 21-2054. The examiner and visitor will be separate individuals. Each must file and serve on all parties written reports no later than 10 days before the date set for the hearing.

After the filing of the reports of the examiner and the visitor, the parties may file a joint stipulation that the proceeding is uncontested as to all issues.

The purpose of the proceeding is to determine whether the subject of the intervention proceeding is incapacitated because said individual is an adult whose ability to receive and evaluate information effectively or to communicate decisions is impaired to such an extent that he or she lacks the capacity to take actions necessary to

[Select appropriate box(es)]:

- obtain, administer, and dispose of real and personal property, intangible property, business property, benefits, and income
- provide health care, food, shelter, clothing, personal hygiene, and other care without which serious physical injury or illness is more likely than not to occur
- acquire and maintain those life skills that enable him or her to cope more effectively with the demands of his or her own person and of his or her own environment and to raise the level of his or her own physical, intellectual, social, emotional, and economic efficiency to meet all or some essential requirements for his or her therapeutic needs

[Select one]

- without court-ordered assistance
- or
- without the appointment of
 - a guardian and/or a conservator

Procedure

Upon the filing of a petition for the appointment of a permanent limited or general guardian, the appointment of a successor limited or general guardian, the appointment of a general or limited conservator or special conservator, or the entry of a protective order, the court will schedule a hearing on the petition. If a joint stipulation is filed, a hearing may be scheduled on an expedited basis. Not later than 5 days before the hearing the parties may file responsive pleadings in accordance with Superior Court, Probate Division Rule 321.

Significance

This proceeding does not repeal, alter, or amend the right of an individual who is the subject of a petition for civil commitment in any proceeding under Chapter 5 of Title 21, or the Mentally Retarded Citizens Constitutional Rights and Dignity Act of 1978 (D.C. Code, sec. 6-1901, *et seq.*).

This proceeding does not affect guardians or conservators appointed by the Court prior to September 30, 1989, unless the prior proceedings are reinstated under D.C. Code, Chapter 20 of Title 21 (1988 Supp.).

A finding of incapacity does not constitute a finding of legal incompetence. An individual found to be incapacitated retains all legal rights and abilities other than those expressly limited or curtailed in the order of appointment of a guardian or in a protective proceeding or in a subsequent order of the Court.

In a guardianship or protective proceeding, the Court will exercise its authority so as to encourage the development of maximum self-reliance and independence of the incapacitated or protected individual and make appointive, protective, and other orders only to the extent needed by the incapacitated or protected individual's mental and adaptive limitations and other conditions warranting the procedure.

If a guardian is appointed, the guardian will be responsible for care, custody, and control of the incapacitated individual with the powers set forth at D.C. Code, sec. 21-2047 or with more limited powers set forth in the order of appointment. Unless otherwise directed by the Court, the guardian will not have the power (1) to consent to certain medical treatment as set forth at D.C. Code, sec. 21-2047(c) or (2) to consent to the waiver of any substantive or procedural right of the incapacitated individual in any proceeding arising from an insanity acquittal or (3) to prohibit marriage or divorce or (4) consent to termination of parental rights.

While a petition for appointment of a conservator or other protective order is pending, and after preliminary hearing, and without notice to others, the Court may preserve and apply the property of the individual to be protected as required for the support of the individual or the dependents of the individual.

After hearing and upon determining that a basis for an appointment of a conservator or other protective order exists with respect to an individual, the Court has the power over the estate and business affairs that the individual could exercise if present and not incapacitated except the power to make a will.

If a conservator is appointed, the conservator will hold title as trustee to all property of the protected individual presently held or after acquired, or to part of the property as specified in the order, including title to any property held for the protected individual by custodians or attorneys-in-fact. An order specifying that only part of the property of a protected individual vests in the conservator creates a limited conservatorship.

Rights

In proceedings for the appointment of a guardian or conservator, the petitioner must present clear and convincing evidence that the appointment or protective order is warranted.

The individual alleged to be incapacitated has the right to request that the hearing be closed and must be present at the hearing unless cause is shown for his or her absence. The individual must be represented by counsel and is entitled to present evidence and cross examine witnesses including any court-appointed examiner or visitor.

As approved by order of the Court, pursuant to D.C. Code, sec. 21-2060, any visitor, attorney, examiner, conservator, special conservator, guardian *ad litem*, or guardian is entitled to compensation for services rendered in a guardianship proceeding or a protective proceeding or in connection with a guardianship or protective arrangement.

Upon payment of a fee, any interested person who desires to be notified before any order is made in any of these proceedings may file a request for notice with the Clerk of the Court and serve it on all parties in accordance with Superior Court, Probate Division Rule 304(a). A request for notice is not sufficient to confer permission to participate.

The protected individual or any other interested person may petition the Court for removal of a guardian or conservator or termination of the proceeding. The guardian or conservator may resign upon petition and acceptance of the resignation by the Court. The protected

individual seeking termination is entitled to the same rights and procedures as he or she would have in an original proceeding.

Any person interested in the welfare of an individual for whom a conservator is appointed may petition for orders subsequent to appointment requiring action with respect to bond or other appropriate relief pursuant to D.C. Code, sec. 21-2062, or for enlargement or limitation of powers pursuant to D.C. Code, sec. 21-2072.