Adult Guardianship/Conservatorship

I. Introduction

A. What is a guardianship and conservatorship?

B. Legal presumptions of O.C.G.A. §§29-4-1 and 29-5-1: no presumption to be in need of guardian/conservator unless adjudicated by a court to be in need of one.

C. How does it differ from other forms of alternative decision-making?

II. Current issues driving greater demand for establishing guardianships and conservatorships

A. HIPPA laws passed in 1996 affecting who can receive a patient’s information

B. Aging population – approximately 20% of the population are baby boomers – between the ages of 55 and 73

C. Increased awareness of the vulnerability of people under a disability

III. General statements on the law

A. Probate Courts have exclusive, original and general jurisdiction over

1. Establishment of guardianship/conservatorship

2. Monitoring of guardianship/conservatorship

3. Citation/removal of guardian/conservator

B. Guardianship/Conservatorship law – Title 29

1. Substantially revised in 2005

2. Began using terms “guardian” and “conservator” versus “guardian of the person” and “guardian of the property”

3. Uniform Guardianship and Conservatorship Proceedings Jurisdiction Act – Chapter 11

C. Issues the code tries to address

1. Ensuring maximum self-reliance and independence of Ward

2. Giving the Ward input into who is appointed as guardian or conservator

3. Increased burden of proof on party attempting to establish a guardianship or conservatorship over another

4. Safeguards to ensure person not railroaded into a guardianship or conservatorship

a. Independent evaluation

b. Right to representation

c. Notice

d. Requirement for a hearing

e. Deference to Proposed Ward in who would serve as guardian or conservator if one needed

IV The process

A. Filing of petition – GPCSF 12

1. Two interested parties

2. One interested party and affidavit from physician/psychologist/LCSW who has examined no more than 15 days prior to petition being filed

3. Filed where Proposed Ward is domiciled or found

B. Initial review by Court

1. Looking for probable cause to believe Proposed Ward may be in need of a guardian/conservator

2. Can dismiss if probable cause not found

C. Notice to Proposed Ward

1. Requires PERSONAL SERVICE

2. Inform Proposed Ward of rights

a. Counsel

b. Attend hearing

c. What can happen if guardianship/conservatorship granted

3. Date of evaluation

D. Notice to others

1. Statutory interested parties

2. POAs and HCPOAs/Advance Directives

3. Chapter 11 people

E. Evaluation

1. Independent evaluator usually chosen by court

2. Proposed Ward can be made to attend

3. Proposed Ward does not have to say anything

4. Attorney for Proposed Ward can attend but not contribute

5. Proposed Ward can seek their own independent evaluation

6. Court makes second probable cause decision after evalution

F. Hearing

1. Takes place at court or, for good cause, somewhere else

2. Counsel for Proposed Ward can waive their client’s presence 3. Burden on petitioners to show need by clear and convincing evidence

4. Preference for who serves as guardian/conservator

5. Must be reported or recorded

V. Appeals

A. Article 6 courts go to the Court of Appeals

B. Non-Article 6 courts go to the Superior Court (de novo)

C. Ability to appoint emergency guardian or conservator while appeal pending

1. Done by Article 6 judge or Superior Court judge

2. Not appealable

VI. Ramification of appointment of guardian or conservator

A. Rights lost

1. Marry

2. Contract

3. Ability to transfer assets

4. Ability to change residence or domicile

5. Ability to consent to medical treatment

6. Firearm rights

7. Pursue legal actions

B. Rights retained

1. Right to vote and make a will unless specifically removed by court

2. Right to bring action regarding the guardianship or conservatorship

3. Right to communicate with others unless otherwise ordered by court

4. Right to seek restoration

5. Right to refuse treatment

C. Duties of Guardians/Conservators

1. Bond

2. Reporting