

930

FU

FHB

5/2

1910

HB

572

Attachment 1

GOVERNOR'S COUNCIL FOR THE HANDICAPPED
AND GIFTED

ESTIMATES OF NEED AND FISCAL IMPACT
OF GUARDIANSHIP BILL

CURRENT NEED FOR GUARDIANS

Facility	# without Guardian	# which do not need Guardian	# needing Guardian	# needing Private Guardian	# needing Public Guardian
Southcentral Region					
Harborview	53	38	15	11	4
Hope Cottages	123	111	12	6	6
Valley	4	3	1	0	1
Wesleyan	59	3	56	35	21
Glenmore	142	81	61	3	58
Careage House	42	37	5	4	1
Northern Region					
Careage North	65	38	27	21	6
Hope Center	19	4	15	12	3
Southeast Region					
Island View Manor	0	0	0	0	0
Wrangell General (long-term care)	10	3	7	2	5
Gateway	4	0	4	1	3
St. Ann's	19	12	7	0	7
TOTALS	540	330	210	95	115
Percent of Total Facility Population	81%	50%	32%	14%	17%

CURRENT STATUS OF GUARDIANSHIPS

Facility	# Patients	# with Guardians	# with Private Guardians	# with Public or Disint. Guardians
Southcentral Region				
Harborview	90	37	26	11
Hope Cottages	126	3	1	2
Valley	6	2	2	0
Wesleyan	61	2	0	2
Glenmore	158	16	4	12
Careage House	43	1	0	1
Northern Region				
Careage North	73	8	6	2
Hope Center	25	6	5	1
Southeast Region				
Island View Manor	43	43	43	0
Wrangell General (long-term care)	14	4	0	4
Gateway	5	1	1	0
St. Ann's	21	2	1	1
TOTALS	665	125	89	36
Percent of Total Facility Population		19%	13%	5%

PROJECTED NEED FOR GUARDIANSHIPS

<u>Facility</u>	<u>Admissions (Approx. per yr.)</u>	<u># needing Guardian</u>	<u># needing Private Guardian</u>	<u># needing Public Guardian</u>
Southcentral Region				
Harborview	7	4	3	1
Hope Cottages	32	4	2	2
Valley	8	5	4	1
Wesleyan	38	36	22	14
Glenmore	36	17	1	16
Careage House	36	3	2	1
Northern Region				
Careage North	236	40	30	10
Hope Center	4	3	3	0
Southeast Region				
Island View Manor	17	17	17	0
Wrangell General (long-term care)	4	4	1	3
Gateway	0	0	0	0
St. Ann's	45	19	2	17
TOTALS	463	152	87	65
Percent of Total Admissions		33%	19%	14%

TOTAL UTILIZATION OF GUARDIANS

Facility	Total # of Guardians who could be in use now	# Private Guardians	# Public Guardians
Southcentral Region			
Harborview	52	37	15
Hope Cottages	15	7	8
Valley	3	2	1
Wesleyan	58	35	23
Glenmore	77	7	70
Careage House	6	4	2
Northern Region			
Careage North	35	27	8
Hope Center	21	17	4
Southeast Region			
Island View Manor	43	43	0
Wrangell General (long-term care)	11	2	9
Gateway	5	2	3
St. Ann's	9	1	8
TOTALS	335	184	151
Percent of Total Facility Population	50%	28%	23%

COURT INFORMATION ON GUARDIANSHIPS

District	1976*		1977*		1978**	
	Guardianships	Protective Proceedings	Guardianships	Protective Proceedings	Guardianships	Protective Proceedings
#1 (Juneau, Ketchikan, Sitka)	7	7	11	14	7	6
#2 (Nome)	1	2	1	1	1	2
#3 (Kodiak, Anchorage, Kenai)	10	100	5	88	2	83
#4 (Fairbanks, Barrow, Bethel)	0	16	2	23	0	15
TOTALS	18	125	19	126	10	106

* Calendar year

** First nine months

FISCAL IMPACT-GUARDIANSHIP

PERSONAL SERVICES

\$54,218

Admin Officer II (Rg 19) \$2243/mo	\$26,916
Legal Secretary I (Rg 10) \$1194/mo	14,328
	<u>41,244</u>
FICA-.0613% x \$37,228	2,282
PERS- 17.70%	7,300
Health Ins- 24 mo x \$141.32	3,392
	<u>\$54,218</u>

TRAVEL

\$24,300

Quarterly visits to wards and visitor inquiries estimated at 5 trips per month- 60 annually

Transportation- \$225/trip	\$13,500
Per Diem \$60/day x 3 days/trip	10,800
	<u>\$24,300</u>

Assumptions made:

- (1) Quarterly visitation requirement would be delegated to Public Administrator at judicial district level.
- (2) Length of trip provides concurrent visitation with several wards
- (3) No distinction is made in cost for visitor requirements as it is presumed quarterly visitation to wards could not be fully complied with in initial year.

CONTRACTUAL SERVICES

\$151,055

Basic telephone & long distance \$600/month	\$ 7,200
Postage- Routine correspondence \$300/month	540
Certified estimated 15/mo @ \$1.25	225
Copy machine-USAGE ONLY 10,000 copies @ \$.25	2,500
Printing- Lettersets, envelopes	1,200
Forms requirements	2,500
Typewriter rental \$365/mo	4,380
	<u>\$18,545</u>

Professional fees & services- 210 current backlog of cases

Court system estimates on 188 cases in first 4 months of FY 79 reflects average cost of \$525 per case. This provided approximately 14 hours attorney time and 2 hours of hearing time before a Standing Master

\$110,250

Expert testimony- Rules of Court specifications \$50/hr	
Assumption: 2 hours per case.	\$ 21,000

CONTRACTUAL SERVICES:continued

Physiatric or other evaluative testing is arbitrarily estimated at 2% of the total caseload. Current costs vary from \$180-\$300 per case.

\$ 1,260

\$151,055

COMMODITIES

\$ 1,200

EQUIPMENT

\$ 2,450

Desk, Executive	\$ 280.96
Desk, Secy	345.16
Bookcase 3 shelf	81.85
Legal files	
(2 4 dwr)	349.54
Chair, Exec	141.01
Chair, Secy	92.72
Calculator	218.47
Transcriber	464.86
Dictating unit	464.86
	<u>\$2,439.43</u>

TOTAL PROJECTED FY 80 BUDGET REQUEST

\$233,212

ANTICIPATES 100% federal funding through existing programs.

As the present caseload in the courts for all guardianship cases is averaging 45- 50 cases per month statewide, it is reasonable to assume the current backlog would more likely be dealt with over a two year period.

The budgeting alternative would be to provide funding as follows:

	<u>FY 80 A</u>	<u>FY 80 B</u>	<u>FY 81(2)</u>
Personal Services	\$ 54,218	\$ 54,218	\$ 58,013(1)
Travel	24,300	24,300	26,730
Contractual Serv	151,055	85,430	136,961(3)
Commodities	1,200	1,200	1,320
Equipment	<u>2,439</u>	<u>2,439</u>	
Total	\$233,212	\$167,587	\$223,024

Funding would be federal funds passed through interagency to the Court System.

- (1) FY 81 increase assumes maximum 7% increase in keeping with the President's guidelines.
- (2) Basic inflation 10% all other costs
- (3) Assumes 170 cases (50% current backlog plus 65 projected additional.)

Possible federal funds identified are:

Governor's Council Handicapped & Gifted \$50,000

While it is not feasible to identify other specific amounts it is reasonable to assume certain programs would be appropriately billed for such costs, ie.

Office of Ageing- under requirements for advocacy & legal services to those over 60.

Foster Care- under protection & advocacy

Other social services programs.

APPENDICES

- Appendix One Present Alaska Statutes AS 13.26.005 - 315
- Appendix Two CSHB 63
- Appendix Three Protection of Persons under Disability and Their Property
- Appendix Four Limited Guardianship for the Mentally Disabled
- Appendix Five Guardianship of the Mentally Impaired: A Critical Analysis
- Appendix Six Protective Services: A Private Sector Approach
- Appendix Seven Legal Issues in State Mental Health Care: Proposals for Change: Guardianship including the Suggested Statute on Guardianship
- Appendix Eight Guardianship Questionnaire
Proposed Federal Regulations
- Appendix Nine Model Guardianship and Conservatorship Act
Draft-9/10/78, American Bar Association
- Appendix Ten Summary of Comments on First Guardianship Draft, Nov. 1978

APPENDIX ONE

PRESENT ALASKA STATUTES AS 13.26.005 - 315

THE FOLLOWING DOCUMENT(S) MAY NOT FILM
LEGIBLY BECAUSE OF POOR QUALITY OF THE
ORIGINAL.

Chapter 26. Protection of Persons Under Disability and Their Property.

Article

1. General Provisions (§§ 13.26.005—13.26.020)
2. Guardians of Minors (§§ 13.26.030—13.26.085)
3. Guardians of Incapacitated Persons (§§ 13.26.095—13.26.155)
4. Protection of Property of Persons Under Disability and Minors (§§ 13.26.165—13.26.315)
5. Powers of Attorney (§§ 13.26.325—13.26.330)

Article 1. General Provisions.

Section	Section
05. Definitions and use of terms	15. Facility of payment or delivery
10. Jurisdiction of subject matter; consolidation of proceedings	20. Delegation of powers by parent or guardian

Sec. 13.26.005. Definitions and use of terms. Unless otherwise apparent from the context, in this code:

(1) "incapacitated person" means any person who is impaired by reason of mental illness, mental deficiency, physical illness or disability, advanced age, chronic use of drugs, chronic intoxication, or other cause (except minority) to the extent that he lacks sufficient understanding or capacity to make or communicate responsible decisions concerning his person;

(2) a "protective proceeding" is a proceeding under the provisions of § 165 of this chapter to determine that a person cannot effectively manage or apply his estate to necessary ends, either because he lacks the ability or is otherwise inconvenienced, or because he is a minor, and to secure administration of his estate by a conservator or other appropriate relief;

(3) a "protected person" is a minor or other person for whom a conservator has been appointed or other protective order has been made;

(4) a "ward" is a person for whom a guardian has been appointed; a "minor ward" is a minor for whom a guardian has been appointed solely because of minority. (Ch 78 SLA 1972)

Sec. 13.26.010. Jurisdiction of subject matter; consolidation of proceedings. (a) The court has jurisdiction over protective proceedings and guardianship proceedings.

(b) When both guardianship and protective proceedings as to the same person are commenced or pending in the same court, the proceedings may be consolidated. (Ch 78 SLA 1972)

Sec. 13.26.015. Facility of payment or delivery. Any person under a duty to pay or deliver money or personal property to a minor may perform this duty, in amounts not exceeding \$5,000 a year, by paying or delivering the money or property to, (1) the minor, if he has attained the age of 18 years or is married; (2) any person having the care and custody of the minor with whom the minor resides; (3) a guardian of the minor; or (4) a financial institution incident to a deposit in a federally insured savings account in the sole name of the minor and giving notice of the deposit to the minor. This section does not apply if the person making payment or delivery has actual knowledge that a conservator has been appointed or proceedings for appointment of a conservator of the estate of the minor are pending. The persons, other than the minor or any financial institution under (4) of this section, receiving money or property for a minor, are obligated to apply the money to the support and education of the minor, but may not pay themselves except by way of reimbursement for out-of-pocket expenses for goods and services

necessary for the minor's support. Any excess sums shall be preserved for future support of the minor and any balance not so used and any property received for the minor must be turned over to the minor when he attains majority. Persons who pay or deliver in accordance with provisions of this section are not responsible for the proper application thereof. (§ 1 ch 78 SLA 1972; am § 22 ch 56 SLA 1973)

Sec. 13.25.020. Delegation of powers by parent or guardian. A parent or a guardian of a minor or incapacitated person, by a properly executed power of attorney, may delegate to another person, for a period not exceeding one year, any of his powers regarding care, custody, or property of the minor child or ward, except his power to consent to marriage or adoption of a minor ward. (§ 1 ch 78 SLA 1972)

Article 2. Guardians of Minors.

Section	Section
30. Status of guardian of minor; general	60. Court appointment of guardian of minor; procedure
35. Testamentary appointment of guardian of minor	65. Consent to service by acceptance of appointment; notice
40. Objection by minor of 14 or older to testamentary appointment	70. Powers and duties of guardian of minor
45. Court appointment of guardian of minor; conditions for appointment	75. Termination of appointment of guardian; general
50. Court appointment of guardian of minor; venue	80. Proceedings subsequent to appointment; venue
55. Court appointment of guardian of minor; qualifications; priority of minor's nominee	85. Resignation or removal proceedings

Sec. 13.26.050. Status of guardian of minor; general. A person becomes a guardian of a minor by acceptance of a testamentary appointment or upon appointment by the court. The guardianship status continues until terminated, without regard to the location from time to time of the guardian and minor ward. (§ 1 ch 78 SLA 1972)

Sec. 13.26.035. Testamentary appointment of guardian of minor. The parent of a minor may appoint by will a guardian of an unmarried minor. Subject to the right of the minor under § 40 of this chapter, a testamentary appointment becomes effective upon filing the guardian's acceptance in the court in which the will is probated, if before acceptance, both parents are dead or the surviving parent is adjudged incapacitated. If both parents are dead, an effective appointment by the parent who died later has priority. This state recognizes a testamentary appointment effected by filing the guardian's acceptance under a will probated in another state which is the testator's domicile. Upon acceptance of appointment, written notice of acceptance must be given by the guardian to the minor and to the person having his care, or to his next of kin in that relation. (§ 1 ch 78 SLA 1972; am § 23 ch 56 SLA 1973)

Sec. 13.26.040. Objection by minor of 14 or older to testamentary appointment. A minor of 14 or more years may prevent an appointment of his testamentary guardian from becoming effective, or may cause a previously accepted appointment to terminate, by filing with the court in which the will is probated a written objection to the appointment before it is accepted or within 30 days after notice of its acceptance. An objection may be withdrawn. An objection does not preclude appointment by the court in a proper proceeding of the testamentary nominee, or any other suitable person. (§ 1 ch 78 SLA 1972; am § 24 ch 56 SLA 1973)

Sec. 13.26.045. Court appointment of guardian of minor; conditions for appointment. The court may appoint a guardian for an unmarried minor if all parental rights of custody have been terminated or suspended by circumstances or prior court order. A guardian appointed by will as provided in § 35 of this chapter whose appointment has not been prevented or nullified under § 40 of this chapter has priority over any guardian who may be appointed by the court but the court may proceed with an appointment upon a finding that the testamentary guardian has failed to accept the testamentary appointment within 30 days after notice of the guardianship proceeding. (§ 1 ch 78 SLA 1972; am § 25 ch 56 SLA 1973)

Sec. 13.26.050. Court appointment of guardian of minor; venue. The venue for guardianship proceedings for a minor is in the place where the minor resides or is present. (§ 1 ch 78 SLA 1972)

Sec. 13.26.055. Court appointment of guardian of minor; qualifications; priority of minor's nominee. The court may appoint as guardian any person whose appointment would be in the best interests of the minor. The court shall appoint a person nominated by the minor, if the minor is 14 years of age or older, unless the court finds the appointment contrary to the best interests of the minor. (§ 1 ch 78 SLA 1972)

Sec. 13.26.060. Court appointment of guardian of minor; procedure. (a) Notice of the time and place of hearing of a petition for the appointment of a guardian of a minor is to be given by the petitioner in the manner prescribed by AS 13.06.110 to:

- (1) the minor, if he is 14 or more years of age;
- (2) the person who has had the principal care and custody of the minor during the 60 days preceding the date of the petition; and
- (3) any living parent of the minor.

(b) Upon hearing, if the court finds that a qualified person seeks appointment, venue is proper, the required notices have been given, the requirements of § 45 of this chapter have been met, and the welfare and best interests of the minor will be served by the requested appointment, it shall make the appointment. In other cases the court may dismiss the proceedings, or make any other disposition of the matter that will best serve the interest of the minor.

(c) If necessary, the court may appoint a temporary guardian, with the status of an ordinary guardian of a minor, but the authority of a temporary guardian shall not last longer than six months.

(d) If, at any time in the proceeding, the court determines that the interests of the minor are or may be inadequately represented, it may appoint an attorney to represent the minor, giving consideration to the preference of the minor if the minor is 14 years of age or older. (§ 1 ch 78 SLA 1972)

Sec. 13.26.065. Consent to service by acceptance of appointment; notice. By accepting a testamentary or court appointment as guardian, a guardian submits personally to the jurisdiction of the court in any proceeding relating to the guardianship that may be instituted by any interested person. Notice of any proceeding shall be delivered to the guardian, or mailed to him by ordinary mail at his address as listed in the court records and to his address as then known to the petitioner. Letters of guardianship must indicate whether the guardian was appointed by will or by court order. (§ 1 ch 78 SLA 1972)

Sec. 13.26.070. Powers and duties of guardian of minor. A guardian of a minor has the powers and responsibilities of a parent who has not been deprived of custody of his minor and unemancipated child, except that a guardian is not legally obligated to provide from his own funds for the ward and is not liable to third persons by reason of the parental relationship for acts of the ward. In particular, and without qualifying the foregoing, a guardian has the following powers and duties:

(1) A guardian must report the condition of his ward and of the ward's estate which has been subject to his possession or control, as ordered by court on petition of any person interested in the minor's welfare or as required by court rule.
(am § 26 ch 56 SLA 1973)

Sec. 13.26.075. Termination of appointment of guardian; general. A guardian's authority and responsibility terminates upon the death, resignation or removal of the guardian or upon the minor's death, adoption, marriage or attainment of majority, but termination does not affect his liability for prior acts, nor his obligation to account for funds and assets of his ward. Resignation of a guardian does not terminate the guardianship until it has been approved by the court. A testamentary appointment under an informally probated will terminates if the will is later denied probate in a formal proceeding. (§ 1 ch 78 SLA 1972)

Sec. 13.26.080. Proceedings subsequent to appointment; venue.
(a) The court where the ward resides has concurrent jurisdiction with the court which appointed the guardian, or in which acceptance of a testamentary appointment was filed, over resignation, removal, accounting and other proceedings relating to the guardianship.

(b) If the court located where the ward resides is not the court in which acceptance of appointment is filed, the court in which proceedings subsequent to appointment are commenced shall in all appropriate cases notify the other court, in this or another state, and after consultation with that court determine whether to retain jurisdiction or transfer the proceedings to the other court, whichever is in the best interest of the ward. A copy of any order accepting a resignation or removing a guardian shall be sent to the court in which acceptance of appointment is filed. (§ 1 ch 78 SLA 1972)

Sec. 13.26.085. Resignation or removal proceedings. (a) Any person interested in the welfare of a ward, or the ward, if 14 or more years of age, may petition for removal of a guardian on the ground that removal would be in the best interest of the ward. A guardian may petition for permission to resign. A petition for removal or for permission to resign may, but need not, include a request for appointment of a successor guardian.

(b) After notice and hearing on a petition for removal or for permission to resign, the court may terminate the guardianship and make any further order that may be appropriate.

(c) If, at any time in the proceeding, the court determines that the interests of the ward are or may be inadequately represented, it may appoint an attorney to represent the minor, giving consideration to the preference of the minor if the minor is 14 or more years of age. (§ 1 ch 78 SLA 1972)

Article 3. Guardians of Incapacitated persons.

Section	Section
95. Testamentary appointment of guardian for incapacitated person	guardian; termination of incapacity
100. Venue	130. Visitor in guardianship proceeding
105. Procedure for court appointment of a guardian of an incapacitated person	135. Notices in guardianship proceedings
110. Findings; order of appointment	140. Temporary guardians
115. Acceptance of appointment; consent to jurisdiction	145. Who may be guardian; priorities
120. Termination of guardianship for incapacitated person	150. General powers and duties of guardian.
125. Removal or resignation of	155. Proceedings subsequent to appointment; venue

Sec. 13.26.95. Testamentary appointment of guardian for incapacitated person. (a) The parent of an incapacitated person may by will appoint a guardian of the incapacitated person. A testamentary appointment by a parent becomes effective when, after having given seven days prior written notice of his intention to do so to the incapacitated person and to the person having his care or to his nearest adult relative, the guardian files acceptance of appointment in the court, in which the will is informally or formally probated, if, prior thereto, both parents are dead or the surviving parent is adjudged incapacitated. If both parents are dead, an effective appointment by the parent who died later has priority unless it is terminated by the denial of probate in formal proceedings.

(b) The spouse of a married incapacitated person may by will appoint a guardian of the incapacitated person. The appointment

becomes effective when, after having given seven days prior written notice of his intention to do so to the incapacitated person and to the person having his care or to his nearest adult relative, the guardian files acceptance of appointment in the court in which the will is informally or formally probated. An effective appointment by a spouse has priority over an appointment by a parent unless it is terminated by the denial of probate in formal proceedings.

(c) This state recognizes a testamentary appointment effected by filing acceptance under a will probated at the testator's domicile in another state.

(d) On the filing with the court in which the will was probated of written objection to the appointment by the person for whom a testamentary appointment of guardian has been made, the appointment is terminated. An objection does not prevent appointment by the court in a proper proceeding of the testamentary nominee or any other suitable person upon an adjudication of incapacity in proceedings under §§ 100--155 of this chapter. (§ 1 ch 78 SLA 1972)

Sec. 13.26.100. Venue. The venue for guardianship proceedings for an incapacitated person is in the place where the incapacitated person resides or is present. If the incapacitated person is admitted to an institution under order of a court of competent jurisdiction, venue is also in the judicial district in which that court sits. (§ 1 ch 78 SLA 1972)

Sec. 13.26.107. Procedure for court appointment of a guardian of an incapacitated person. (a) The incapacitated person or any person interested in his welfare may petition for a finding of incapacity and appointment of a guardian.

(b) Upon the filing of a petition, the court shall set a date for hearing on the issues of incapacity and unless the allegedly incapacitated person has counsel of his own choice, it shall appoint an appropriate official or attorney to represent him in the proceeding, who shall have the powers and duties of a guardian ad litem. The person alleged to be incapacitated shall be examined by a physician appointed by the court who shall submit his report in writing to the court and be interviewed by a visitor sent by the court. The visitor also shall interview the person seeking appointment as guardian, and visit the present place of abode of the person alleged to be incapacitated and the place it is proposed that he will be detained, or reside if the requested appointment is made and submit his report in writing to the court. The person alleged to be incapacitated is entitled to be present at the hearing in person, and to see or hear all evidence bearing upon his condition. He is entitled to be present

by counsel, to present evidence, to cross-examine witnesses, including the court-appointed physician and the visitor, and to trial by jury. The issue may be determined at a closed hearing without a jury if the person alleged to be incapacitated or his counsel so requests. (§ 1 ch 78 SLA 1972)

Sec. 13.26.110. Findings; order of appointment. The court may appoint a guardian as requested if it is satisfied that the person for whom a guardian is sought is incapacitated and that the appointment is necessary or desirable as a means of providing continuing care and supervision of the person of the incapacitated person. Alternatively, the court may dismiss the proceeding or enter any other appropriate order.

Sec. 13.26.115. Acceptance of appointment; consent to jurisdiction. By accepting appointment, a guardian submits personally to the jurisdiction of the court in any proceeding relating to the guardianship that may be instituted by any interested person. Notice of any proceeding shall be delivered to the guardian or mailed to him by ordinary mail at his address as listed in the court records and to his address as then known to the petitioner. (§ 1 ch 78 SLA 1972)

Sec. 13.26.120. Termination of guardianship for incapacitated person. The authority and responsibility of a guardian for an incapacitated person terminates upon the death of the guardian or ward, the determination of incapacity of the guardian, or upon removal or resignation as provided in § 125 of this chapter. Testamentary appointment under an informally probated will terminates if the will is later denied probate in a formal proceeding. Termination does not affect his liability for prior acts nor his obligation to account for funds and assets of his ward. (§ 1 ch 78 SLA 1972; am § 27 ch 50 SLA 1973)

Sec. 13.26.125. Removal or resignation of guardian; termination of incapacity. (a) On petition of the ward or any person interested in his welfare, the court may remove a guardian and appoint a successor if in the best interests of the ward. On petition of the guardian, the court may accept his resignation and make any other order which may be appropriate.

(b) An order adjudicating incapacity may specify a minimum period, not exceeding one year, during which no petition for an adjudication that the ward is no longer incapacitated may be filed without special leave. Subject to this restriction, the ward or any person interested in his welfare may petition for an order that he is no longer incapacitated, and for removal or resignation of the guardian. A request for this order may be made by informal letter to the court or judge and any person who knowingly interferes with transmission of this kind of request to the court or judge may be adjudged guilty of contempt of court.

(c) Before removing a guardian, accepting the resignation of a guardian, or ordering that a ward's incapacity has terminated, the court, following the same procedures to safeguard the rights of the ward as apply to a petition for appointment of a guardian, may send a visitor to the residence of the present guardian and to the place where the ward resides or is detained, to observe conditions and report in writing to the court. (§ 1 ch 78 SLA 1972)

Sec. 13.26.130. Visitor in guardianship proceeding. A visitor is, with respect to guardianship proceedings, a person who is trained in law, nursing or social work and is an officer, employee or special appointee of the court with no personal interest in the proceedings. (§ 1 ch 78 SLA 1972)

Sec. 13.26.135. Notices in guardianship proceedings. (a) In a proceeding for the appointment or removal of a guardian of an incapacitated person other than the appointment of a temporary guardian or temporary suspension of a guardian, notice of hearing shall be given to each of the following:

(1) the ward or the person alleged to be incapacitated and his spouse, parents and adult children;

(2) any person who is serving as his guardian, conservator or who has his care and custody; and

(3) in case no other person is notified under (1) of this subsection, at least one of his closest adult relatives if any can be found.

(b) Notice shall be served personally on the alleged incapacitated person, and his spouse and parents if they can be found within the state. Notice to the spouse and parents, if they cannot be found within the state, and to all other persons except the alleged incapacitated person shall be given as provided in AS 13.06.110. Waiver of notice by the person alleged to be incapacitated is not effective unless he attends the hearing or his waiver of notice is confirmed in an interview with the visitor. Representation of the alleged incapacitated person by a guardian ad litem is not necessary. (§ 1 ch 78 SLA 1972)

Sec. 13.26.140. Temporary guardians. If an incapacitated person has no guardian and an emergency exists, the court may exercise the power of a guardian pending notice and hearing. If an appointed guardian is not effectively performing his duties and the court further finds that the welfare of the incapacitated person requires immediate action, it may, with or without notice, appoint a temporary guardian for the incapacitated person for a specified period not to exceed six months. A temporary guardian is entitled to the care and custody of the ward and the authority of any permanent guardian previously appointed by the court is suspended so long as a temporary guardian has authority. A temporary guardian may be removed at any time. A temporary guardian shall make

any report the court requires. In other respects the provisions of this code concerning guardians apply to temporary guardians. (§ 1 ch 78 SLA 1972)

Sec. 13.26.145. Who may be guardian; priorities. (a) Any competent person or a suitable institution may be appointed guardian of an incapacitated person.

(b) Persons who are not disqualified have priority for appointment as guardian in the following order:

- (1) the spouse of the incapacitated person;
- (2) an adult child of the incapacitated person;
- (3) a parent of the incapacitated person, including a person nominated by will or other writing signed by a deceased parent;
- (4) any relative of the incapacitated person with whom he has resided for more than six months before the filing of the petition;
- (5) a person nominated by the person who is caring for him or paying benefits to him. (§ 1 ch 78 SLA 1972)

Sec. 13.26.150. General powers and duties of guardian. (a) A guardian of an incapacitated person has the same powers, rights and duties respecting his ward that a parent has respecting his unemancipated minor child except that a guardian is not liable to third persons for acts of the ward solely by reason of the parental relationship. In particular, and without qualifying the foregoing, a guardian has the following powers and duties, except as modified by order of the court:

(1) to the extent that it is consistent with the terms of any order by a court of competent jurisdiction relating to detention or commitment of the ward, he is entitled to custody of the person of his ward and may establish the ward's place of abode inside or outside this state;

(2) if entitled to custody of his ward he shall make provision for the care, comfort and maintenance of his ward and, whenever appropriate, arrange for his training and education; without regard to custodial rights of the ward's person, he shall take reasonable care of his ward's clothing, furniture, vehicles and other personal effects and commence protective proceedings if other property of his ward is in need of protection;

(3) a guardian may give any consents or approvals that may be necessary to enable the ward to receive medical or other professional care, counsel, treatment or service;

(4) if no conservator for the estate of the ward has been appointed, he may:

(A) institute proceedings to compel any person under a duty to support the ward or to pay sums for the welfare of the ward to perform his duty;

(B) receive money and tangible property deliverable to the ward and apply the money and property for support, care and education of the ward; but, he may not use funds from his ward's estate for room and board which he, his spouse, parent, or child have furnished the ward unless a charge for the service is approved by order of the court made upon notice to at least one of the next of kin of the ward, if notice is possible; he must exercise care to conserve any excess for the ward's needs;

(5) a guardian is required to report the condition of his ward and of the estate which has been subject to his possession or control, as required by the court or court rule;

(6) if a conservator has been appointed, all of the ward's estate received by the guardian in excess of those funds expended to meet current expenses for support, care, and education of the ward must be paid to the conservator for management as provided in this code, and the guardian must account to the conservator for funds expended. (am § 28 ch 56 SLA 1973)

Sec. 13.26.155. Proceedings subsequent to appointment; venue.

(a) The court where the ward resides has concurrent jurisdiction with the court which appointed the guardian, or in which acceptance of a testamentary appointment was filed, over resignation, removal, accounting and other proceedings relating to the guardianship.

(b) If the court located where the ward resides is not the court in which acceptance of appointment is filed, the court in which proceedings subsequent to appointment are commenced shall in all appropriate cases notify the other court, in this or another state, and after consultation with that court determine whether to retain jurisdiction or transfer the proceedings to the other court, whichever may be in the best interest of the ward. A copy of any order accepting a resignation or removing a guardian shall be sent to the court in which acceptance of appointment is filed. (§ 1 ch 78 SLA 1972)

Article 4. Protection of Property of Persons Under Disability and Minors.

Section	Section
165. Protective proceedings	245. General duty of conservator
170. Protective proceedings; jurisdiction of affairs of protected persons	250. Inventory and records
175. Venue	255. Accounts
180. Original petition for appointment or protective order	260. Conservators; title by appointment
185. Notice	265. Recording of conservator's letters
190. Protective proceedings; request for notice; interested person	270. Sale, encumbrance or transaction involving conflict of interest; voidable; exceptions
195. Procedure concerning hearing and order on original petition	275. Persons dealing with conservators; protection
200. Permissible court orders	280. Powers of conservator in administration
205. Protective arrangements and single transactions authorized	285. Distributive duties and powers of conservator
210. Who may be appointed conservator; priorities	290. Enlargement or limitation of powers of conservator
215. Bond	295. Preservation of estate plan
220. Terms and requirements of bonds	300. Claims against protected person; enforcement
225. Acceptance of appointment; consent to jurisdiction	305. Individual liability of conservator
230. Compensation and expenses	310. Termination of proceeding
235. Death, resignation, or removal of conservator	315. Payment of debt and delivery of property to foreign conservator without local proceedings
240. Petitions for orders subsequent to appointment	

Sec. 13.26.165. Protective proceedings. Upon petition and after notice and hearing in accordance with the provisions of §§ 165—315 of this chapter, the court may appoint a conservator or make other protective order for cause as follows:

(1) appointment of a conservator or other protective order may be made in relation to the estate and affairs of a minor if the court determines that a minor owns money or property that requires management or protection which cannot otherwise be provided, has or may have business affairs which may be jeopardized or prevented by his minority, or that funds are needed for his support and education and that protection is necessary or desirable to obtain or provide funds;

(3) the person has property which will be wasted or dissipated unless proper management is provided, or that funds are needed for the support, care and welfare of the person or those entitled to be supported by him and that protection is necessary or desirable to obtain or provide funds. (§ 1 ch 78 SLA 1972)

Sec. 13.26.170. Protective proceedings; jurisdiction of affairs of protected persons. After the service of notice in a proceeding seeking the appointment of a conservator or other protective order and until termination of the proceeding, the court in which the petition is filed has

(1) exclusive jurisdiction to determine the need for a conservator or other protective order until the proceedings are terminated;

(2) exclusive jurisdiction to determine how the estate of the protected person which is subject to the laws of this state shall be managed, expended or distributed to or for the use of the protected person or any of his dependents;

(3) concurrent jurisdiction to determine the validity of claims against the person or estate of the protected person and his title to any property or claim. (§ 1 ch 78 SLA 1972)

Sec. 13.26.175. Venue. Venue for proceedings under §§ 165—315 of this chapter is

(1) in the place in this state where the person to be protected resides whether or not a guardian has been appointed in another place; or

(2) if the person to be protected does not reside in this state, in any place where he has property. (§ 1 ch 78 SLA 1972)

Sec. 13.26.180. Original petition for appointment of protective order. (a) The person to be protected, any person who is interested in his estate, affairs or welfare including his parent, guardian, or custodian, or any person who would be adversely affected by lack of effective management of his property and affairs may petition for the appointment of a conservator or for other appropriate protective order.

(b) The petition shall set out to the extent known, the interest of the petitioner; the name, age, residence and address of the person to be protected; the name and address of his guardian, if any; the name and address of his nearest relative known to the petitioner; a general statement of his property with an estimate of its value, including any compensation, insurance, pension or allowance to which he is entitled; and the reason why appointment of a conservator or other protective order is necessary. If the appointment of a conservator is requested, the petition also shall set out the

name and address of the person whose appointment is sought and the basis of his priority for appointment. (§ 1 ch 78 SLA 1972)

Sec. 13.26.185. Notice. (a) On a petition for appointment of a conservator or other protective order, the person to be protected and his spouse or, if none, his parents, must be served personally with notice of the proceedings at least 14 days before the date of hearing if they can be found within the state, or, if they cannot be found within the state, they must be given notice in accordance with AS 13.06.110. Waiver by the person to be protected is not effective unless he attends the hearing or, unless minority is the reason for the proceeding, waiver is confirmed in an interview with the visitor.

(b) Notice of a petition for appointment of a conservator or other initial protective order, and of any subsequent hearing, must be given to any person who has filed a request for notice under § 190 of this chapter and to interested persons and other persons as the court may direct. Except as otherwise provided in (a) of this section, notice shall be given in accordance with AS 13.06.110. (§ 1 ch 78 SLA 1972)

Sec. 13.26.190. Protective proceedings; request for notice; interested person. Any interested person who desires to be notified before any order is made in a protective proceeding may file with the registrar a request for notice subsequent to payment of any fee required by statute or court rule. The clerk shall mail a copy of the demand to the conservator if one has been appointed. A request is not effective unless it contains a statement showing the interest of the person making it and his address, or that of his attorney, and is effective only as to matters occurring after the filing. Any governmental agency paying or planning to pay benefits to the person to be protected is an interested person in protective proceedings. (§ 1 ch 78 SLA 1972)

Sec. 13.26.195. Procedure concerning hearing and order on original petition. (a) Upon receipt of a petition for appointment of a conservator or other protective order because of minority, the court shall set a date for hearing on the matters alleged in the petition. If, at any time in the proceeding, the court determines that the interests of the minor are or may be inadequately represented, it may appoint an attorney to represent the minor, giving consideration to the choice of the minor if 14 years of age or older. A lawyer appointed by the court to represent a minor has the powers and duties of a guardian ad litem.

(b) Upon receipt of a petition for appointment of a conservator or other protective order for reasons other than minority, the court shall set a date for hearing. Unless the person to be protected has counsel of his own choice, the court must appoint a lawyer to represent him who then has the powers and duties of a guardian ad litem. If the alleged disability is mental illness, mental deficiency, physical illness or disability, advanced age, chronic use of drugs, or chronic intoxication, the court may direct that the person to be protected be examined by a physician designated by the court, preferably a physician who is not connected with any institution in which the person is a patient or is detained. The court may send a visitor to interview the person to be protected. The visitor may be a guardian ad litem or an officer or employee of the court.

(c) After hearing, upon finding that a basis for the appointment of a conservator or other protective order has been established, the court shall make an appointment or other appropriate protective order. (§ 1 ch 78 SLA 1972)

Sec. 13.26.200. Permissible court orders. The court has the following powers which may be exercised directly or through a conservator in respect to the estate and affairs of protected persons:

(1) 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 has power to preserve and apply the property of the person to be protected as may be required for his benefit or the benefit of his dependents;

(2) after hearing and upon determining that a basis for an appointment or other protective order exists with respect to a minor without other disability, the court has all those powers over the estate and affairs of the minor which are or might be necessary for the best interests of the minor, his family and members of his household;

(3) after hearing and upon determining that a basis for an appointment or other protective order exists with respect to a person for reasons other than minority, the court has, for the benefit of the person and members of his household, all the powers over his estate and affairs which he could exercise if present and not under disability, except the power to make a will; these powers include, but are not limited to power to make gifts, to convey or release his contingent and expectant interests in property including marital property rights and any right of survivorship incident to joint tenancy or tenancy by the entirety, to exercise or release his powers as trustee, personal representative, custodian for minors, conservator, or donee of a power of appointment, to enter into contracts, to create revocable or irrevocable trusts of property of the estate which may extend beyond his disability or life, to exercise options of the disabled person to purchase securities or other property, to exercise his rights to elect options and change beneficiaries under insurance and annuity policies and to surrender the policies for their cash value, to exercise his right to an elective share in the estate of his deceased spouse and to renounce any interest by testate or intestate succession or by inter vivos transfer;

(4) the court may exercise, or direct the exercise of its authority to exercise or release powers of appointment of which the protected person is donee, to renounce interests, to make gifts in trust or otherwise exceeding 20 per cent of any year's income of the estate or to change beneficiaries under insurance and annuity policies, only if satisfied, after notice and hearing, that it is in the best interests of the protected person, and that he either is incapable of consenting or has consented to the proposed exercise of power;

(5) an order made pursuant to this section determining that a basis for appointment of a conservator or other protective order exists, has no effect on the capacity of the protected person. (§ 1 ch 78 SLA 1972)

Sec. 13.26.205. Protective arrangements and single transactions authorized. (a) If it is established in a proper proceeding that a basis exists as described in § 165 of this chapter for affecting the property and affairs of a person the court, without appointing a conservator, may authorize, direct or ratify any transaction necessary or desirable to achieve any security, service or care arrangement meeting the foreseeable needs of the protected person. Protective arrangements include, but are not limited to, payment, delivery, deposit or retention of funds or property, sale, mortgage, lease or other transfer of property, entry into an annuity contract, a contract for life care, a deposit contract, a contract for training and education, or addition to or establishment of a suitable trust.

(b) When it has been established in a proper proceeding that a basis exists as described in § 165 of this chapter for affecting the property and affairs of a person the court, without appointing a conservator, may authorize, direct or ratify any contract, trust or other transaction relating to the protected person's financial affairs or involving his estate if the court determines that the transaction is in the best interests of the protected person.

(c) Before approving a protective arrangement or other transaction under this section, the court shall consider the interests of creditors and dependents of the protected person and, in view of

his disability, whether the protected person needs the continuing protection of a conservator. The court may appoint a special conservator to assist in the accomplishment of any protective arrangement or other transaction authorized under this section who shall have the authority conferred by the order and serve until discharged by order after report to the court of all matters done pursuant to the order of appointment. (§ 1 ch 78 SLA 1972)

Sec. 13.26.210. Who may be appointed conservator; priorities. (a) The court may appoint an individual, or a corporation with general power to serve as trustee, as conservator of the estate of a protected person. The following are entitled to consideration for appointment in the order listed:

(1) a conservator, guardian of property or other like fiduciary appointed or recognized by the appropriate court of any other jurisdiction in which the protected person resides;

(2) an individual or corporation nominated by the protected person if he is 14 or more years of age and has, in the opinion of the court, sufficient mental capacity to make an intelligent choice;

(3) the spouse of the protected person;

(4) an adult child of the protected person;

(5) a parent of the protected person, or a person nominated by the will of a deceased parent;

(6) any relative of the protected person with whom he has resided for more than six months before the filing of the petition;

(7) a person nominated by the person who is caring for him or paying benefits to him.

(b) A person in priorities (a)(1), (3), (4), (5), or (6) of this section may nominate in writing a person to serve in his stead. With respect to persons having equal priority, the court is to select the one who is best qualified of those willing to serve. The court, for good cause, may pass over a person having priority and appoint a person having less priority or no priority. (§ 1 ch 78 SLA 1972)

Sec. 13.26.215. Bond. The court may require a conservator to furnish a bond conditioned upon faithful discharge of all duties of the trust according to law, with sureties as it shall specify. Unless otherwise directed, the bond shall be in the amount of the aggregate capital value of the property of the estate in his control plus one year's estimated income minus the value of securities deposited under arrangements requiring an order of the court for their removal and the value of any land which the fiduciary, by express limitation of power, lacks power to sell or convey without court authorization. The court in place of sureties on a bond, may

accept other security for the performance of the bond, including a pledge of securities or a mortgage of land. (§ 1 ch 78 SLA 1972)

Sec. 13.26.220. Terms and requirements of bonds. (a) The following requirements and provisions apply to any bond required under § 215 of this chapter:

(1) unless otherwise provided by the terms of the approved bond, sureties are jointly and severally liable with the conservator and with each other;

(2) by executing an approved bond of a conservator, the surety consents to the jurisdiction of the court which issued letters to the primary obligor in any proceeding pertaining to the fiduciary duties of the conservator and naming the surety as a party defendant; notice of any proceeding shall be delivered to the surety or mailed to

him by registered or certified mail at his address as listed with the court where the bond is filed and to his address as then known to the petitioner;

(3) on petition of a successor conservator or any interested person, a proceeding may be initiated against a surety for breach of the obligation of the bond of the conservator;

(4) the bond of the conservator is not void after the first recovery but may be proceeded against from time to time until the whole penalty is exhausted.

(b) No proceeding may be commenced against the surety on any matter as to which an action or proceeding against the primary obligor is barred by adjudication or limitation. (§ 1 ch 78 SLA 1972)

Sec. 13.26.225. Acceptance of appointment; consent to jurisdiction. By accepting appointment, a conservator submits personally to the jurisdiction of the court in any proceeding relating to the estate that may be instituted by any interested person. Notice of any proceeding shall be delivered to the conservator, or mailed to him by registered or certified mail at his address as listed in the

petition for appointment or as thereafter reported to the court and to his address as then known to the petitioner. (§ 1 ch 78 SLA 1972)

Sec. 13.26.230. Compensation and expenses. If not otherwise compensated for services rendered, any visitor, lawyer, physician, conservator or special conservator appointed in a protective proceeding is entitled to reasonable compensation from the estate. (§ 1 ch 78 SLA 1972)

Sec. 13.26.235. Death, resignation or removal of conservator. The court may remove a conservator for good cause, upon notice and hearing, or accept the resignation of a conservator. After his death, resignation or removal, the court may appoint another conservator. A conservator so appointed succeeds to the title and power of his predecessor. (§ 1 ch 78 SLA 1972)

Sec. 13.26.240. Petitions for orders subsequent to appointment. (a) Any person interested in the welfare of a person for whom a conservator has been appointed may file a petition in the appointing court for an order

(1) requiring bond or security or additional bond or security, or reducing bond;

(2) requiring an accounting for the administration of the trust;

(3) directing distribution;

(4) removing the conservator and appointing a temporary or successor conservator; or

(5) granting other appropriate relief.

(b) A conservator may petition the appointing court for instructions concerning his fiduciary responsibility.

(c) Upon notice and hearing, the court may give appropriate instructions or make any appropriate order. (§ 1 ch 78 SLA 1972)

Sec. 13.26.245. General duty of conservator. In the exercise of his powers, a conservator is to act as fiduciary and shall observe the standards of care applicable to trustees as described by AS 13.36.075. (§ 1 ch 78 SLA 1972)

Sec. 13.26.250. Inventory and records. Within 90 days after his appointment, every conservator shall prepare and file with the appointing court a complete inventory of the estate of the protected person together with his oath or affirmation that it is complete and accurate so far as he is informed. The conservator shall provide a copy of it to the protected person if he can be located, has attained the age of 14 years, and has sufficient mental capacity to understand these matters, and to any parent or guardian with whom the protected person resides. The conservator shall keep suitable records of his administration and exhibit them on request of any interested person. (§ 1 ch 78 SLA 1972)

Sec. 13.26.255. Accounts. Every conservator must account to the court for his administration of the trust upon his resignation or removal, and at other times as the court may direct. On termination of the protected person's minority or disability, a conservator may account to the court, or he may account to the former protected person or his personal representative. Subject to appeal or vacation within the time permitted, an order, made upon notice and hearing, allowing an intermediate account of a conservator, adjudicates as to his liabilities concerning the matters considered in connection with it; and an order, made upon notice and hearing, allowing a final account, adjudicates as to all previously unsettled liabilities of the conservator to the protected person or his successors relating to the conservatorship. In connection with any account, the court may require a conservator to submit to a physical check of the estate in his control, to be made in any manner the court may specify. (§ 1 ch 78 SLA 1972)

Sec. 13.26.260. Conservators; title by appointment. The appointment of a conservator vests in him title as trustee to all property of the protected person, presently held or thereafter acquired, including title to any property theretofore held for the protected person by custodians or attorneys in fact. The appointment of a conservator is not a transfer or alienation within the meaning of general provisions of any federal or state statute or regulation, insurance policy, pension plan, contract, will or trust instrument, imposing restrictions upon or penalties for transfer or alienation by the protected person of his rights or interest, but this section does not restrict the ability of persons to make specific provision by contract or dispositive instrument relating to a conservator. (§ 1 ch 78 SLA 1972)

Sec. 13.26.265. Recording of conservator's letters. Letters of conservatorship are evidence of transfer of all assets of a protected person to the conservator. An order terminating a conservatorship is evidence of transfer of all assets of the estate from the conservator to the protected person, or his successors. Subject to the requirements of general statutes governing the filing or recordation of documents of title to land or other property, letters of conservatorship, and orders terminating conservatorships, may be filed or recorded to give record notice of title as between the conservator and the protected person. (§ 1 ch 78 SLA 1972)

Sec. 13.26.270. Sale, encumbrance or transaction involving conflict of interest; voidable; exceptions. Any sale or encumbrance to a conservator, his spouse agent or attorney, or any corporation or trust in which he has a substantial beneficial interest, or any transaction which is affected by a substantial conflict of interest is voidable unless the transaction is approved by the court after notice to interested persons and others as directed by the court. (§ 1 ch 78 SLA 1972)

Sec. 13.26.275. Persons dealing with conservators; protection. A person who in good faith either assists a conservator or deals with him for value in any transaction other than those requiring a court order as provided in § 200 of this chapter, is protected as if the conservator properly exercised the power. The fact that a person knowingly deals with a conservator does not alone require the person to inquire into the existence of a power or the propriety of its exercise, except that restrictions on powers of conservators which are endorsed on letters as provided in § 290 of this chapter are effective as to third persons. A person is not bound to see to the proper application of estate assets paid or delivered to a conservator. The protection here expressed extends to instances in which some procedural irregularity or jurisdictional defect occurred in proceedings leading to the issuance of letters. The protection here expressed is not by substitution for that provided by comparable provisions of the laws relating to commercial transactions and laws simplifying transfers of securities by fiduciaries. (§ 1 ch 78 SLA 1972)

Sec. 13.26.280. Powers of conservator in administration. (a) A conservator has all of the powers conferred herein and any additional powers conferred by law on trustees in this state. In addition, a conservator of the estate of an unmarried minor under the age of 18 years, as to whom no one has parental rights, has the duties and powers of a guardian of a minor described in § 70 of this chapter until the minor attains the age of 18 or marries, but the parental rights so conferred on a conservator do not preclude appointment of a guardian as provided by §§ 30 — 85 of this chapter.

(i) A conservator has power without court authorization or confirmation, to invest and reinvest funds of the estate as would a trustee.

(c) A conservator, acting reasonably in efforts to accomplish the purpose for which he was appointed, may act, without court authorization or confirmation, to

(1) collect, hold and retain assets of the estate including land in another state, until, in his judgment, disposition of the assets should be made, and the assets may be retained even though they include an asset in which he is personally interested;

(2) receive additions to the estate;

(3) continue or participate in the operation of any business or other enterprise;

(4) acquire an undivided interest in an estate asset in which the conservator, in any fiduciary capacity, holds an undivided interest;

(5) invest and reinvest estate assets in accordance with (b) of this section;

(6) deposit estate funds in a bank including a bank created by the conservator;

(7) acquire or dispose of an estate asset including land in another state for cash or on credit, at public or private sale; and to manage, develop, improve, exchange, partition, change the character of, or abandon an estate asset;

(8) make ordinary or extraordinary repairs or alterations in buildings or other structures, to demolish any improvements, to raze existing or erect new party walls or buildings;

(9) subdivide, develop, or dedicate land to public use; to make or obtain the vacation of plats and adjust boundaries; to adjust differences in valuation on exchange or to partition by giving or receiving considerations; and to dedicate easements to public use without consideration;

(10) enter for any purpose into a lease as lessor or lessee with or without option to purchase or renew for a term within or extending beyond the term of the conservatorship;

(11) enter into a lease or arrangement for exploration and removal of minerals or other natural resources or enter into a pooling or unitization agreement;

(12) grant an option involving disposition of an estate asset, to take an option for the acquisition of any asset;

(13) vote a security, in person or by general or limited proxy;

(14) pay calls, assessments, and any other sums chargeable or accruing against or on account of securities;

(15) sell or exercise stock subscription or conversion rights; to consent, directly or through a committee or other agent, to the reorganization, consolidation, merger, dissolution, or liquidation of a corporation or other business enterprise;

(16) hold a security in the name of a nominee or in other form without disclosure of the conservatorship so that title to the security may pass by delivery, but the conservator is liable for any act of the nominee in connection with the stock so held;

(17) insure the assets of the estate against damage or loss, and the conservator against liability with respect to third persons;

(18) borrow money to be repaid from estate assets or otherwise; to advance money for the protection of the estate or the protected person, and for all expenses, losses, and liability sustained in the administration of the estate or because of the holding or ownership of any estate assets and the conservator has a lien on the estate as against the protected person from advances so made;

(19) pay or contest any claim; to settle a claim by or against the estate or the protected person by compromise, arbitration, or otherwise; and to release, in whole or in part, any claim belonging to the estate to the extent that the claim is uncollectible;

(20) pay taxes, assessments, compensation of the conservator, and other expenses incurred in the collection, care, administration and protection of the estate;

(21) allocate items of income or expense to either estate income or principal, as provided by law, including creation of reserves out of income for depreciation, obsolescence, or amortization, or for depletion in mineral or timber properties;

(22) pay any sum distributable to a protected person or his dependent, without liability to the conservator, by paying the sum to the distributee or by paying the sum for the use of the distributee either to his guardian or if none, to a relative or other person with custody of his person;

(23) employ persons, including attorneys, auditors, investment advisors, or agents, even though they are associated with the conservator to advise or assist him in the performance of his administrative duties; to act upon their recommendation without independent investigation; and instead of acting personally, to employ one or more agents to perform any act of administration, whether or not discretionary;

(24) prosecute or defend actions, claims or proceedings in any jurisdiction for the protection of estate assets and of the conservator in the performance of his duties; and

(25) execute and deliver all instruments which will or may facilitate the exercise of the powers vested in the conservator. (9 L. C. 78 SLA 1972; am §§ 29, 30 ch 56 SLA 1973)

Sec. 13.26.235. Distributive duties and powers of conservator.

(a) A conservator may expend or distribute income or principal of the estate without court authorization or confirmation for the support, education, care or benefit of the protected person and his dependents in accordance with the following principles:

(1) the conservator is to consider recommendations relating to the appropriate standard of support, education and benefit for the protected person made by a parent or guardian, if any; he may not be surcharged for sums paid to persons or organizations actually furnishing support, education or care to the protected person pursuant to the recommendations of a parent or guardian of the protected person unless he knows that the parent or guardian is deriving personal financial benefit therefrom, including relief from any personal duty of support, or unless the recommendations are clearly not in the best interests of the protected person;

(2) the conservator is to expend or distribute sums reasonably necessary for the support, education, care or benefit of the protected person with due regard to

(A) the size of the estate, the probable duration of the conservatorship and the likelihood that the protected person, at some future time, may be fully able to manage his affairs and the estate which has been conserved for him;

(B) the accustomed standard of living of the protected person and members of his household;

(C) other funds or sources used for the support of the protected person;

(3) the conservator may expend funds of the estate for the support of persons legally dependent on the protected person and others who are members of the protected person's household who are unable to support themselves and who are in need of support;

(4) funds expended under this subsection may be paid by the conservator to any person, including the protected person to reimburse for expenditures which the conservator might have made, or in advance for services to be rendered to the protected person when it is reasonable to expect that they will be performed and where advance payments are customary or reasonably necessary under the circumstances.

(b) If the estate is ample to provide for the purposes implicit in the distributions authorized by (a) of this section, a conservator for a protected person other than a minor has power to make gifts to charity and other objects as the protected person might have been expected to make, in amounts which do not exceed in total for any year 20 per cent of the income from the estate.

(c) When a minor who has not been adjudged disabled under § 165(2) of this chapter attains his majority, his conservator, after meeting all prior claims and expenses of administration, shall pay over and distribute all funds and properties to the former protected person as soon as possible.

(d) When the conservator is satisfied that a protected person's disability (other than minority) has ceased, the conservator, after meeting all prior claims and expenses of administration, shall pay over and distribute all funds and properties to the formerly protected person as soon as possible.

(e) If a protected person dies, the conservator shall deliver to the court for safekeeping any will of the deceased protected person which may have come into his possession, inform the executor or a beneficiary named in the will that he has done so, and retain the estate for delivery to a duly appointed personal representative of the decedent or other persons entitled to it. If after 40 days from the death of the protected person no other person has been appointed personal representative and no application or petition for appointment is before the court, the conservator may apply to exercise the powers and duties of a personal representative so that he may proceed to administer and distribute the decedent's estate without additional or further appointment. Upon application for an order granting the powers of a personal representative to a conservator, after notice to any person demanding notice under AS 13.16.070 and to any person nominated executor in any will of which the applicant is aware, the court may order the conferral of the power upon determining that there is no objection, and endorse the letters of the conservator to note that the formerly protected person is deceased and that the conservator has acquired all of the powers and duties of a personal representative. The making and entry of an order under this section has the effect of an order of appointment of a personal representative as provided in AS 13.16.115 and AS 13.16.245—13.16.655 except that estate in the name of the conservator, after administration, may be distributed to the decedent's successors without prior retransfer to the conservator as personal representative. (§ 1 ch 78 SLA 1972)

Sec. 13.26.290. Enlargement or limitation of powers of conservator. Subject to the restrictions in § 200(4) of this chapter, the court may confer on a conservator at the time of appointment or later, in addition to the powers conferred on him by §§ 280 and 285 of this chapter, any power which the court itself could exercise under § 200(2) and (3) of this chapter. The court may, at the time of appointment or later, limit the powers of a conservator otherwise conferred by §§ 280 and 285 of this chapter or previously conferred by the court, and may at any time relieve him of any limitation. If the court limits any power conferred on the conservator by §§ 280 and 285 of this chapter, the limitation shall be endorsed upon his letters of appointment. (§ 1 ch 78 SLA 1972)

Sec. 13.26.295. Preservation of estate plan. In investing the estate, and in selecting assets of the estate for distribution under § 285(a) and (b) of this chapter, in utilizing powers of revocation or withdrawal available for the support of the protected person, and exercisable by the conservator or the court, the conservator and the court should take into account any known estate plan of the protected person, including his will, any revocable trust of which he is settlor, and any contract, transfer or joint ownership arrangement with provisions for payment or transfer of benefits or interests at his death to another or others which he may have originated. The conservator may examine the will of the protected person. (§ 1 ch 78 SLA 1972)

Sec. 13.26.300. Claims against protected person; enforcement. (a) A conservator shall pay from the estate all just claims against the estate and against the protected person arising before or after the conservatorship upon their presentation and allowance. A claim is considered presented on the first to occur of receipt of the written statement of claim by the conservator, or the filing of the claim with the court. A presented claim is allowed if it is not disallowed by written statement mailed by the conservator to the claimant within 60 days after its presentation. The presentation of a claim tolls any statute of limitations relating to the claim until 30 days after its disallowance. A claim may be presented by either of the following methods:

(1) the claimant may deliver or mail to the conservator a written statement of the claim indicating its basis, the name and address of the claimant and the amount claimed;

(2) the claimant may file a written statement of the claim, in the form prescribed by rule, with the clerk of the court and deliver or mail a copy of the statement to the conservator.

(am § 31 ch 56 SLA 1973)

(b) A claimant whose claim has not been paid may petition the court for determination of his claim at any time before it is barred by the applicable statute of limitation, and, upon due proof, procure an order for its allowance and payment from the estate. If a proceeding is pending against a protected person at the time of appointment of a conservator or is initiated against the protected person thereafter, the moving party must give notice of the proceeding to the conservator if the outcome is to constitute a claim against the estate.

(c) If it appears that the estate in a conservatorship is likely to be exhausted before all existing claims are paid, preference is to be given to prior claims for the care, maintenance and education of the protected person or his dependents and existing claims for expenses of administration. (§ 1 ch 78 SLA 1972)

Sec. 13.26.305. Individual liability of conservator. (a) Unless otherwise provided in the contract, a conservator is not individually

... contract properly entered into in his fiduciary capacity in the course of administration of the estate unless he fails to reveal his representative capacity and identify the estate in the contract.

(b) The conservator is individually liable for obligations arising from ownership or control of property of the estate or for torts committed in the course of administration of the estate only if he is personally at fault.

(c) Claims based on contracts entered into by a conservator in his fiduciary capacity, on obligations arising from ownership or control of the estate, or on torts committed in the course of administration of the estate may be asserted against the estate by proceeding against the conservator in his fiduciary capacity, whether or not the conservator is individually liable for them.

(d) Any question of liability between the estate and the conservator individually may be determined in a proceeding for accounting, surcharge, or indemnification or other appropriate proceeding or action. (§ 1 ch 78 SLA 1972)

Sec. 13.26.310. Termination of proceeding. The protected person, his personal representative, the conservator or any other interested person may petition the court to terminate the conservatorship. A protected person seeking termination is entitled to the same rights and procedures as in an original proceeding for a protective order. The court, upon determining after notice and hearing that the minority or disability of the protected person has ceased may terminate the conservatorship. Upon termination, title to assets of the estate passes to the former protected person or to his successors subject to provision in the order for expenses of administration or to conveyances from the conservator to the former protected person or his successors, to evidence the transfer. (§ 1 ch 73 SLA 1972)

Sec. 13.26.315. Payment of debt and delivery of property to foreign conservator without local proceedings. (a) Any person indebted to a protected person, or having possession of property or of an instrument evidencing a debt, stock, or chose in action belonging to a protected person may pay or deliver to a conservator, guardian of the estate or other like fiduciary appointed by a court of the state of residence of the protected person, upon being presented with proof of his appointment and an affidavit made by him or on his behalf stating:

(1) that no protective proceeding relating to the protected person is pending in this state; and

(2) that the foreign conservator is entitled to payment or to receive delivery.

(b) If the person to whom the affidavit is presented is not aware of any protective proceeding pending in this state, payment or delivery in response to the demand and affidavit discharges the debtor or possessor. (§ 1 ch 73 SLA 1972)

Sec. 13.26.320. Foreign conservators. If no local conservator has been appointed and no petition in a protective proceeding is pending in this state, a domiciliary foreign conservator may file with a court in this state in a judicial district in which property belonging to the protected person is located, authenticated copies of his appointment and of any official bond he has given. Thereafter, he may exercise as to assets in this state all powers of a local conservator and may maintain actions and proceedings in this state subject to any conditions imposed upon nonresident parties generally. (§ 32 ch 56 SLA 1973)

THE PRECEDING DOCUMENT(S) MAY NOT FILM
LEGIBLY BECAUSE OF POOR QUALITY OF THE
ORIGINAL.

APPENDIX TWO

CSHB 63

Original sponsor: Rules Committee
by request of the Governor

Offered: 4/25/78
Referred: Rules

1 IN THE HOUSE BY THE JUDICIARY COMMITTEE

2 CS FOR HOUSE BILL NO. 63

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 TENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to guardians of incapacitated per-
7 sons."

8 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

9 * Section 1. AS 13.26.005(1) is amended to read:

10 (1) "incapacitated person" means any person who is impaired
11 by reason of mental illness, mental deficiency, mental retardation or
12 other developmental disability, physical illness or disability, advanced
13 age, chronic use of drugs, chronic intoxication, or other cause (except
14 minority) to the extent that he lacks sufficient understanding or capa-
15 city to make or communicate responsible decisions concerning his person;

16 * Sec. 2. AS 13.26.005 is amended by adding new paragraphs to read:

17 (5) "developmental disability" means a disability of a person
18 which

19 (A) is attributable to mental retardation, cerebral
20 palsy, epilepsy, autism, or any other condition resulting in sig-
21 nificant impairment of general intellectual functioning and adap-
22 tive behavior;

23 (B) originates before the person attains the age of 18;

24 (C) has continued and can be expected to continue
25 indefinitely; and

26 (D) constitutes a substantial handicap to the person's
27 ability to function normally in society;

28 (6) "partial guardian" means a guardian who possesses fewer
29 than all of the legal rights and powers of a plenary guardian, and whose

1 rights, powers, and duties have been specifically enumerated by court
2 order;

3 (7) "plenary guardian" means a guardian who possesses the
4 legal rights and powers of a full guardian of the person.

5 * Sec. 3. AS 13.26 is amended by adding a new section to art. 3 to read:

6 Sec. 13.26.090. PURPOSE AND BASIS FOR GUARDIANSHIP. Guardianship
7 for incapacitated persons shall be used only as is necessary to promote
8 and protect well-being of the individual, shall be designed to encourage
9 the development of maximum self-reliance and independence in the indi-
10 vidual, and shall be ordered only to the extent necessitated by the
11 individual's actual mental and adaptive limitations.

12 * Sec. 4. AS 13.26.095 is amended by adding a new subsection to read:

13 (e) A testamentary guardian has the powers of a plenary guardian
14 initially, but is subject to the authority of the court to modify the
15 scope of guardianship or to be removed as guardian as provided in sec.
16 125 of this chapter.

17 * Sec. 5. AS 13.26.105 is repealed and re-enacted to read:

18 Sec. 13.26.105. PROCEDURE FOR COURT APPOINTMENT OF A GUARDIAN OF
19 AN INCAPACITATED PERSON. (a) A petition for the appointment of a
20 guardian for an individual who is incapacitated must be accompanied by
21 a report which contains:

22 (1) current evaluations of the individual's mental, physical,
23 social, and educational condition;

24 (2) a recommendation proposing the type and scope of guardian-
25 ship services needed by the individual;

26 (3) a judgment as to the most appropriate living arrangement
27 for the individual;

28 (4) the signatures of all persons, one of whom must be a
29 physician or psychologist, who performed the evaluations upon which the

1 report is based.

2 (b) If no report accompanies the petition, the court shall appoint
3 a qualified person who may but need not be an employee of the state, a
4 municipality, or the court, to arrange for evaluations to be performed,
5 to prepare a report, and to file it with the court.

6 (c) Upon the filing of a petition, the court shall set a date for
7 a hearing on the issues of incapacity.

8 (d) If the allegedly incapacitated person does not have an attor-
9 ney of his own choice, the court shall appoint an attorney to represent
10 him in the proceeding. The appointed attorney has the powers and duties
11 of a guardian ad litem.

12 (e) The person alleged to be incapacitated must be examined by a
13 physician appointed by the court who shall submit his report in writing
14 to the court, and must be interviewed by a visitor sent by the court.
15 The visitor shall also interview the person seeking appointment as
16 guardian, and visit the present residence of the person alleged to be
17 incapacitated and the place it is proposed that he or she will be
18 detained or will reside if the requested appointment is made. The
19 visitor shall submit the report in writing to the court.

20 (f) The person alleged to be incapacitated is entitled to be
21 present at the hearing in person, and to see or hear all evidence
22 bearing upon his condition. He or she is entitled, through an attorney,
23 to present evidence, to cross-examine witnesses, including the court-
24 appointed physician and the visitor, and to trial by jury. The issues
25 may be determined at a closed hearing without a jury if the person
26 alleged to be incapacitated or his or her attorney requests it.

27 * Sec. 6. AS 13.26.110 is repealed and re-enacted to read:

28 Sec. 13.26.110. FINDINGS; ORDER OF APPOINTMENT. (a) The court,
29 at a hearing for the appointment of a guardian for an incapacitated

1 person, shall:

2 (1) inquire into the nature and extent of the general func-
3 tioning of the person asserted to need a guardian;

4 (2) determine the extent of the impairment of the person's
5 behavior;

6 (3) ascertain his capacity to care for himself.

7 (b) If it is found that the person for whom a guardian is sought
8 possesses the capacity to care for himself, the court may dismiss the
9 action or enter any other appropriate order.

10 (c) If it is found that the person for whom a guardian is sought
11 is able to perform some but not all of the functions necessary to care
12 for himself, the court may appoint a partial guardian to provide limited
13 guardianship services, but may not appoint a plenary guardian.

14 (d) If it is found that the person for whom a guardian is sought
15 is totally without capacity to care for himself, the court may appoint
16 a plenary guardian, but not before the feasibility of a partial guardian
17 has been considered.

18 (e) The duration of the term of guardianship under this section
19 shall be specified in the court order.

20 * Sec. 7. AS 13.26 is amended by adding new sections to read:

21 Sec. 13.26.112. PARTIAL GUARDIANSHIP. A court order establishing
22 partial guardianship shall contain findings of fact, shall define the
23 powers and duties of the partial guardian so as to permit the incapacit-
24 ated person to care for himself to the extent he is able, and shall
25 specify legal disabilities to which the incapacitated person is subject.

26 Sec. 13.26.114. LIVING ARRANGEMENTS. (a) In addition to evalu-
27 ating capacity, the court with the help of a physician it has appointed
28 and a visitor (as defined in sec. 130 of this chapter) shall examine
29 proposed and alternative living arrangements for the person asserted to

1 need a guardian.

2 (b) A guardian who, other than in response to a court order,
3 places his ward in an out-of-home living situation shall inform the
4 court of the placement.

5 * Sec. 8. AS 13.26.120 is amended to read:

6 Sec. 13.26.120. TERMINATION OF GUARDIANSHIP FOR INCAPACITATED
7 PERSON. The authority and responsibility of a guardian for an incapaci-
8 tated person terminates upon the death of the guardian or ward, the
9 determination of incapacity of the guardian, or upon removal or resig-
10 nation as provided in sec. 125 of this chapter, or upon the expiration
11 of the period specified by court order for the duration of the guardian-
12 ship. Testamentary appointment under an informally probated will ter-
13 minates if the will is later denied probate in a formal proceeding.
14 Termination does not affect his liability for prior acts nor the guar-
15 dian's [HIS] obligation to account for funds and assets of the [HIS]
16 ward.

17 * Sec. 9. AS 13.26.125 is amended to read:

18 Sec. 13.26.125. REMOVAL OR RESIGNATION OF GUARDIAN; CHANGE IN
19 OR TERMINATION OF INCAPACITY. (a) On petition of the ward, the guar-
20 dian, or any person interested in the ward's [HIS] welfare, the court
21 may modify the provisions of the court order to change the responsibi-
22 lities of the guardian or remove a guardian and appoint a successor if
23 in the best interests of the ward. On petition of the guardian, the
24 court may accept his resignation and make any other order which may be
25 appropriate.

26 (b) The [AN ORDER ADJUDICATING INCAPACITY MAY SPECIFY A MINIMUM
27 PERIOD, NOT EXCEEDING ONE YEAR, DURING WHICH NO PETITION FOR AN ADJUDI-
28 CATION THAT THE WARD IS NO LONGER INCAPACITATED MAY BE FILED WITHOUT
29 SPECIAL LEAVE. SUBJECT TO THIS RESTRICTION, THE] ward, the guardian,

1 or any person interested in the ward's [HIS] welfare may petition for an
2 order that he or she is no longer incapacitated or no longer incapaci-
3 tated to the same degree, [AND] for removal or resignation of the
4 guardian, or for a change in the guardian's responsibilities. A request
5 for this order may be made by informal letter to the court or judge and
6 any person who knowingly interferes with transmission of this kind of
7 request to the court or judge may be adjudged guilty of contempt of
8 court.

9 (c) Before removing a guardian, changing his responsibilities,
10 accepting the resignation of a guardian, or ordering that a ward's
11 incapacity has changed or terminated, the court, following the same
12 procedures to safeguard the rights of the ward as apply to a petition
13 for appointment of a guardian, may send a visitor to the residence of
14 the present guardian and to the place where the ward resides or is
15 detained, to observe conditions and report in writing to the court.

16 (d) If at any time the incapacitated person requests or indicates
17 to his guardian or to the agency (or employees of the agency) responsi-
18 ble for his care that he desires a change in guardianship or change in
19 living arrangements, the guardian or the agency providing care shall
20 inform the court of the request.

21 * Sec. 10. AS 13.26.135(a) is amended to read:

22 (a) In a proceeding for the appointment, change in responsibili-
23 ties, or removal of a guardian of an incapacitated person other than the
24 appointment of a temporary guardian or temporary suspension of a guar-
25 dian, notice of hearing shall be given to each of the following:

26 (1) the ward or the person alleged to be incapacitated and
27 his or her spouse, parents and adult children;

28 (2) any person [WHO IS] serving as his or her guardian or [,]
29 conservator or having [WHO HAS] his or her care and custody; [AND]

1 (3) in case no other person is notified under (1) of this
2 subsection, at least one of his closest adult relatives, if any can be
3 found;

4 (4) the petitioner;

5 (5) any person who performed an evaluation for the peti-
6 tioner's report;

7 (6) the director of the facility in which the individual is
8 residing; and

9 (7) the individual's guardian ad litem if one has been ap-
10 pointed.

11 * Sec. 11. AS 13.26.135 is amended by adding a new subsection to read:

12 (c) A reasonable effort shall be made by the court at the time a
13 guardian is appointed to acquaint the incapacitated person with his
14 right to request, at a later date, his guardian's dismissal or a modi-
15 fication of the guardianship order, and a written statement shall be
16 provided to him, explaining his rights and specifying the procedures to
17 be followed in petitioning the court.

18 * Sec. 12. AS 13.26.140 is amended to read:

19 Sec. 13.26.140. TEMPORARY GUARDIANS. If an incapacitated person
20 has no guardian and an emergency exists, the court may exercise the
21 power of a guardian pending notice and hearing. If an appointed guar-
22 dian is not effectively performing his duties and the court further
23 finds that the welfare of the incapacitated person requires immediate
24 action, it may, with or without notice, appoint a temporary guardian for
25 the incapacitated person for a specified period not to exceed six
26 months whose powers and duties shall be specifically enumerated by
27 court order. [A TEMPORARY GUARDIAN IS ENTITLED TO THE CARE AND CUSTODY
28 OF THE WARD AND THE AUTHORITY OF ANY PERMANENT GUARDIAN PREVIOUSLY
29 APPOINTED BY THE COURT IS SUSPENDED SO LONG AS A TEMPORARY GUARDIAN HAS

1 AUTHORITY. A TEMPORARY GUARDIAN MAY BE REMOVED AT ANY TIME. A TEMPO-
2 RARY GUARDIAN SHALL MAKE ANY REPORT THE COURT REQUIRES. IN OTHER
3 RESPECTS THE PROVISIONS OF THIS CODE CONCERNING GUARDIANS APPLY TO
4 TEMPORARY GUARDIANS.]

5 * Sec. 13. AS 13.26.145 is amended to read:

6 Sec. 13.26.145. WHO MAY BE GUARDIAN; PRIORITIES. (a) Any com-
7 petent person or a suitable agency or institution, public or private,
8 including any private association capable of conducting an active
9 guardianship program for an incapacitated person, may be appointed
10 guardian of an incapacitated person, but the court may not appoint as
11 guardian a public or private agency that is providing direct care to the
12 incapacitated person if the appointment could conflict with the best
13 interests of the incapacitated person.

14 (b) Persons who are not disqualified have priority for appointment
15 as guardian in the following order:

16 (1) the spouse of the incapacitated person;

17 (2) an adult child of the incapacitated person;

18 (3) a parent of the incapacitated person, including a person
19 nominated by will or other writing signed by a deceased parent;

20 (4) any relative of the incapacitated person with whom he
21 or she has resided for more than six months before the filing of the
22 petition;

23 (5) a person nominated by the person who is caring for the
24 incapacitated person [HIM] or paying benefits to him;

25 (6) a public or private agency, institution, or association
26 capable of conducting an active guardianship program for an incapaci-
27 tated person.

28 * Sec. 14. AS 13.26.150(a)(5) is amended to read:

29 (5) a guardian is required to report the condition of his

1 ward and of the estate which has been subject to his possession or
2 control, as required by the court or court rule but at least once a
3 year; the report shall as a minimum contain statements indicating:

4 (A) the person's current mental, physical and social
5 condition;

6 (B) his present living arrangements;

7 (C) the need for continued guardianship services;

8 (D) any other information requested by the court or
9 necessary or desirable in the opinion of the guardian;

10 * Sec. 15. AS 13.26.170 is amended by adding a new subsection to read:

11 (b) When both guardianship and protective proceedings as to the
12 same person are commenced or pending, the proceedings may be consoli-
13 dated.

COMMITTEE SUBSTITUTE FOR HOUSE BILL 63

The Department of Health and Social Services has offered an amendment to House Bill 63 which would create the Office of Public Guardian within the Department as a functionally independent position. In the Department's view, such a provision would allow for an independent public guardian for incapacitated persons, many of whom reside in private nursing homes and state institutions. These persons have special needs which cannot adequately be met solely by reliance upon private individuals and organizations. The Office of Public Guardian would be available for appointment for those persons without family, friends or service organizations willing to take responsibility for their personal matters.

Other states have established centrally-located, specialized guardianship positions. Some travel for a centrally-located position would be necessary, but most of the work of a public guardian can be done in writing or by phone. Because the Office of Public Guardian would operate largely on behalf of persons who are institutionalized, most of the public guardian's work would be with the facilities and little, if any, direct contact with individuals would be necessary.

Guardianship is not a new role, but as patient rights have become more widely acknowledged by states, the necessity for separating treatment from personal affairs of the patient have become necessary. Private nursing homes that are responsible for patient care are becoming increasingly uncomfortable about having the responsibility for making independent decisions on how patient monies should be spent. Potential for abuse exists, putting these facilities in a tenuous legal position. Creating the Office of Public Guardian would eliminate this conflict of interest.

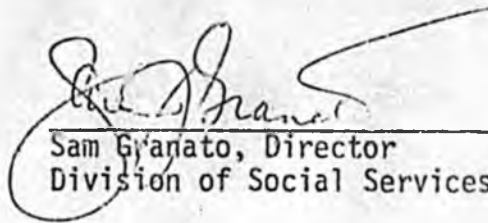
The same conflict of interest exists with public institutions but the additional responsibility of decisions concerning treatment modalities is important. Without an independent guardian to represent the patient's interest, the Division of Mental Health, for example, may be placed in the position of having to make a treatment decision without the patient's point of view being represented, putting the State in a questionable position.

Committee Substitute for House Bill 63 has been proposed by the House Judiciary Committee in the belief that the creation of a central Office of Public Guardian would not allow for adequate services to be provided to individuals throughout the State. In order for the Department to provide for these guardianship duties on a local basis, additional positions would be needed within the Division of Social Services. The Division of Public Assistance has estimated approximately 285 nursing home patients, or 42% of the statewide total, are in need of guardians. There may be additional persons within Pioneer Homes and outside of institutions who are in need of a public guardian. If CSHB 63 is the favored approach, the Department requests that funds for three social worker positions and one clerk typist position be allocated for the Division of Social Services to permit statewide guardianship services.

The Department still believes that the amendment proposing the creation of the Office of Public Guardian is the best approach to achieving an independent, responsible guardianship program. It should be recognized that a potential conflict of interest exists whenever an agency providing care or services to a

person is called upon to act as a guardian for that person. The actions of a guardian must be completely independent of any interests or duties that are incompatible with the interests of individuals. The creation of an Office of Public Guardian, functionally independent of the agencies providing services, is perhaps the most efficient and cost-effective means of providing this needed service.

Recommended by:



Sam Granato, Director
Division of Social Services

5/4/78
Date

Approved by:



Helen D. Beirne, Commissioner
Department of Health & Social Services

5/4/78
Date

POSITION PAPER / Department of Health and Social Services

Page 8 , line 15

change period to comma and add

"except as provided in sec. 158 of this chapter."

Page 9, between lines 11 and 12:

insert the following:

Sec. 15. AS 13.26 is amended by adding "new sections" to read:

AS 13.26.158. PUBLIC GUARDIAN. There is created the Office of Public Guardian which is located for administrative purposes only in the Department of Health and Social Services. It is completely independent of, and has no functional relationship with any other agency of that department which has the custody of minors or other incapacitated persons who may require guardians. When appointed guardian by the court the public guardian has the same powers and duties as private guardians under this chapter.

AS 13.26.160. WHEN PUBLIC GUARDIAN MAY BE APPOINTED. The court may appoint the public guardian as a last priority under sec. 145 (b)(6) of this chapter when there is no person or private institution or agency willing or qualified to act as guardian, including those listed in sec. 145(b)(1) - (6) of this chapter.

AS 13.26.162. REIMBURSEMENT FOR PUBLIC GUARDIAN'S FEES. An incapacitated person for whom the public guardian is appointed is liable for the costs of service rendered by the public guardian according to ability to provide payment. Unpaid fees for the services rendered by the public guardian constitute a debt to the state and are a preferred claim against the estate of the ward after death.

Page 9, line 12:

Change "Sec.15" to read "Sec. 16".

FISCAL NOTE

I. REQUEST

Bill/Resolution No. CS House Bill No. 63

Title "An Act relating to Guardianship of Incapacitated Persons"

Requested by _____ Date 4/28/78

II. FISCAL DETAIL

Agency Affected Department of Health and Social Services

Program Category Affected Social Services

Budget Request Unit(s) Affected Social Services

EXPENDITURES (Thousands of Dollars)

	FY 78	FY 79	FY 80	FY 81	FY 82	FY 83
100 PERSONAL SERVICES		104.4	110.7	117.3	124.3	131.8
200 TRAVEL		4.6	4.9	5.2	5.5	5.8
300 CONTRACTUAL		2.9	3.1	3.3	3.5	3.7
400 COMMODITIES		1.6	1.7	1.8	1.9	2.0
500 EQUIPMENT		2.5	0	0	0	0
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC.						
TOTAL		116.0	120.4	127.6	135.2	143.3

FUNDING (Thousands of Dollars)

	FY 78	FY 79	FY 80	FY 81	FY 82	FY 83
GENERAL FUND		116.0	120.4	127.6	135.2	143.3
FEDERAL FUNDS						
OTHER (Specify)						

POSITIONS

	FY 78	FY 79	FY 80	FY 81	FY 82	FY 83
FULL TIME		3	3	3	3	3
PART TIME		2	2	2	2	2
TEMPORARY		0	0	0	0	0

III. ANALYSIS (See Fiscal Note Preparation Instructions, Section III)

A. Assumptions

A constant 6% cost of living increase was used for fiscal years subsequent to FY 1979.

B. Program Summary:

New Positions. It is assumed four positions (1/2 Social Worker in Juneau, 1/2 Social Worker in Fairbanks, 2 Social Workers and a Clerk-Typist in Anchorage) will be required to carry out this new function as follows:

Class Title	Salary	Benefits	Equipment	Travel	Other Costs	Total
Social Workers III	68.3	19.8	1.3	4.6	4.1	98.1
Clerk-Typist III	12.4	3.9	1.2	-0-	.4	17.9

IV. DATE April 28, 1978 PREPARED BY Mary Eldemar
 AGENCY HEALTH AND SOCIAL SERVICES
 PHONE 665-2777

FISCAL NOTE

I. REQUEST

Bill/Resolution No. House Bill No. 63
 Title "An Act Relating to Guardianship of Incapacitated Persons"
 Requested by _____ Date January 10, 1978

II. FISCAL DETAIL

Agency Affected Department of Health and Social Services
 Program Category Affected Social Services
 Budget Request Unit(s) Affected Office of Internal Review

EXPENDITURES (Thousands of Dollars)

	FY 78	FY 79	FY 80	FY 81	FY 82	FY 83
100 PERSONAL SERVICES		53.3	56.5	59.9	63.5	67.3
200 TRAVEL		3.2	3.4	3.6	3.8	4.0
300 CONTRACTUAL		3.5	3.7	3.9	4.2	4.5
400 COMMODITIES		1.0	1.1	1.2	1.3	1.4
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC.						
TOTAL		63.1	64.7	68.6	72.8	77.2

FUNDING (Thousands of Dollars)

	FY 78	FY 79	FY 80	FY 81	FY 82	FY 83
GENERAL FUND		63.1	64.7	68.6	72.8	77.2
FEDERAL FUNDS						
OTHER (Specify)						

POSITIONS

	FY 78	FY 79	FY 80	FY 81	FY 82	FY 83
FULL TIME		2	2	2	2	
PART TIME		0	0	0	0	
TEMPORARY		0	0	0	0	

III. ANALYSIS (See Fiscal Note Preparation Instructions, Section III)

A. Assumptions:

A constant 6% cost of living increase was used for fiscal years subsequent to FY 1978.

B. Program Summary:

New Positions. It is assumed two (2) positions will be required to carry out this new function as follows:

Class Title	Salary	Benefits	Equipment	Travel	Other Costs	Total
Guardianship Admin.	29.7	7.3	.8	3.2	2.7	43.7
Clerk Typist III	12.4	3.9	1.3	-0-	1.8	19.4

Rick Williams
For

IV. DATE January 10, 1978 PREPARED BY Roger C. Lange
 AGENCY Health and Social Services
 Original: Legislative Finance PHONE 465-3331
 cc: Budget and Management
 Prime Sponsor (First Legislator Named)

APPENDIX THREE

PROTECTION OF PERSONS UNDER DISABILITY AND THEIR PROPERTY

PART FIVE
THE PROTECTION OF PERSONS
UNDER DISABILITY AND
THEIR PROPERTY

CHAPTER 26

INTRODUCTION TO GUARDIANSHIP
AND CONSERVATORSHIP ...

§ 26.01 Introduction

The concept and necessity of guardianship derive from the circumstance when a person is under some type of disability which causes that person to be unable to manage his own personal or business affairs or both. [Woerner, § 1]. Through the guardianship device, such a disabled person's rights and interests can be protected. Generally, the person who suffers from such disabilities is either a minor, mental incompetent or other incompetent. The disability of a minor is presumed by legislative determination depending upon the person's age. [Woerner, § 1]. The other forms of disability require voluntary action by the person or some form of legal proceeding to determine the incompetency status.

An important feature of guardianship is that it serves two distinct functions. The first and most

apparent is guardianship of property. Under such a guardianship, the guardian manages (receives and expends) his ward's property or estate for the purposes of the guardianship. The second, which is particularly important in the case of minors, is the guardianship of the person. Here the guardian has custody and, therefore, physical control over the ward. The same person may be permitted to serve in both capacities.

Guardianship laws, with a few exceptions, have typically remained unchanged for many years. [2 UPC Practice Manual, 495]. Consequently, many of the procedures and substantive regulations suffer unreasonably from excessive formality or administrative restrictions or both. In addition, they frequently are antiquated, poorly organized, fragmented and insufficient in coverage. Despite these inadequacies, legislatures have not acted. Although in 1946 the draftsmen of the Model Probate Code attempted to improve and modernize guardianship laws, it did not stir reform in the states. [Model Probate Code, 189-234].

In order to remedy this unfortunate state of affairs, the Code includes a comprehensive and modernized article on the law dealing with the protection of persons under a disability and their property. The Code's general purposes are to streamline guardianship, to consolidate and reorganize existing concepts, to make guardianship more responsive to modern commercial and societal needs and to eliminate guardianships when

they are not essential. [Art. V, General Comment]. The inherent goal of the Code is to make a guardian of a person as effective and efficient as an ordinary prudent person would be in managing his own estate and conducting his own personal relationships. [2 UPC Practice Manual, 500].

CHAPTER 27

GENERAL PROVISIONS ON GUARDIANSHIP AND CONSERVATORSHIP

§ 27.01 Overview and Definitions

In modernizing the law of guardianship, the Code renovates, reorganizes and renames many of the guardianship devices and concepts used in non-Code states. Although the concept and term "guardian" is retained under the Code, it is only concerned with the person who has physical control over or custody of the ward and does not include guardians ad litem or guardians of the estate. [Art. V, Pts. 2 and 3; see 1-201(16)]. The terms "ward" and "minor ward" are separately defined as and limited to a person "for whom a guardian has been appointed." [5-101(4)]. A guardian of a minor ward is further limited to an appointment made solely because of minority. In addition, as with these two definitions, the Code's provisions concerning guardians of minor wards are separated and distinct from those concerning guardians of incapacitated persons. [Compare 5-201 to 5-212 with 5-301 to 5-313]. The various issues raised by these two types of guardianship are sufficiently different to justify separate treatment.

For the protection of a disabled person's property the Code incorporates a procedure called

[292]

"protective proceedings." This procedure is to be used for the determination of the need for protection and the administration of the estate of a minor or other disabled person. [5-101(2)]. Various methods of using this procedure are provided, including the appointment of a conservator to manage the estate. The fiduciary position of conservator is similar to the position of guardian of the property which may be created in many non-Code states. Accordingly, a conservator is defined as one "who is appointed by a Court to manage the estate of a protected person." [1-201(6)]. Concomitantly, a protected person is one "for whom a conservator has been appointed or other protective order has been made." [5-101(3)]. All provisions concerned with the conservator and other protective proceedings are included within a single part of the Code regardless of whether the protected person is a minor or otherwise disabled. [5-401 to 5-431]. Because management of asset issues associated with minors are generally the same as those associated with other disabled persons, there was no reason to separate the protective proceedings into two parts.

It is also important to emphasize that under the Code, just because a guardian of the person is necessary, it does not mean that protective proceedings are required or vice versa. Situations may arise in which a person may need a guardian but has no property or assets requiring a conservator. On the other hand, a person may require

[293]

a conservator but not require a guardian. For example, a missing person whose assets require management certainly does not need a guardian appointed to take care and custody of his absent person.

§ 27.02 *Jurisdiction and Venue for Guardianship
and Protective Proceedings*

A. *JURISDICTION OVER THE SUBJECT
MATTER*

The Code Court is expressly given jurisdiction over the subject matter for guardianship and protective proceedings. [5-102(a)]. With the following exceptions, jurisdiction over the subject matter, venue and other related matters are the same for proceedings concerned with persons under disability as they are for proceedings concerned with the other matters with which the Court may deal. [See §§ 3.01, 3.02]. For emphasis and clarity, however, the Code includes several special provisions which are exclusively related to proceedings concerned with persons under disability.

First, guardianship and protective proceedings for the same person may be consolidated if they are commenced or pending in the same court. [5-102(b)]. Because the requirements for the above two proceedings are not identical, however, it is necessary that the parties involved take care to satisfy the requirements of both proceedings

even though consolidated. Differences between the two proceedings include variations between (1) the priority of persons who request appointment as the fiduciary, (2) notice of date and time of the hearing, (3) waiver of notice of hearing, (4) the necessity for the appointment of the fiduciary, (5) the qualification of the "visitor" and (6) the issues to be determined at the hearing. [2 UPC Practice Manual, 503-04].

Second, the Code recognizes that in a proceeding subsequent to appointment concerned with a guardian of a minor or a guardian of an incapacitated person, the ward may not reside any more in the judicial subdivision wherein the initial proceeding for appointment was instituted or in which acceptance of a testamentary appointment was filed. Under such a circumstance, the Court where the ward presently resides has concurrent jurisdiction over matters such as resignation, removal, accounting and other proceedings relating to the guardianship with the court in which the guardian was appointed or the acceptance was filed. [5-211(a), 5-313(a)]. Any Code Court with such concurrent jurisdiction must notify the other court whether the latter court is in the same or other state. After consultation with that other court, the Court with concurrent jurisdiction must determine whether to retain jurisdiction or to transfer the proceedings to the other court, considering always the best interests of the ward. [5-211(b), 5-313(b)]. Before retaining jurisdiction, however, the Court should consider

whether it is able to obtain the same personal jurisdiction over the guardian which the acceptance or appointive court is capable of obtaining. [5-211, Comment]. Generally, the decision whether to retain or to transfer should be based upon concepts similar to those employed under the doctrine of forum non conveniens. If the Court retains jurisdiction and accepts resignation or orders removal of the guardian, a copy of the order must be sent to the other court.

Third, for formal protective proceedings the Code recognizes a distinction between exclusive and concurrent jurisdiction. The Court in which the protective proceeding petition has been filed has until termination exclusive jurisdiction over the following issues:

- (1) The determination of the need for a protective order or the appointment of a conservator [5-402(1)];
- (2) The determination of the manner in which the protected person's estate which is subject to the laws of the Code state must be managed, expended or distributed to or for the use of the protected person or any of his dependents [5-402(2)];
- (3) The determination of matters subsequent to appointment such as bonding, accounting, distribution or any other appropriate relief [5-416(a)];

- (4) The determination of instructions requested by the conservator [5-416(b)]; and
- (5) The determination of termination of the protective proceeding. [5-430].

The Court also has concurrent jurisdiction with any other court which also may obtain jurisdiction over issues concerned with the determination of the validity of third persons' claims against the protected person individually or against his estate and for the determination of his title to any property or claim. [5-402(3); see 5-428].

B. JURISDICTION OVER THE PERSON

Similar to the rule applicable to personal representatives, the Code provides a continuing type of personal jurisdiction power in the Court of appointment or acceptance over the fiduciaries serving persons under disability. This continuing jurisdiction power is applicable to guardians of minors [5-208], guardians of incapacitated persons [5-305] and conservators of their estates. [5-413]. It subjects these fiduciaries to any proceedings relating to their fiduciary office which may be instituted by any interested person. The only special requirement to sustain this jurisdiction is that a specific notice requirement must be satisfied for each proceeding. For a guardian of a minor or an incapacitated person, notice of each proceeding must either be delivered to the guardian or mailed to him by ordinary mail both

to his official address listed with the Court and to any other address known to the petitioner. [5-208, 5-305]. The conservator must be notified of any proceeding brought against him either by delivery of the notice or by registered or certified mail sent to his last address listed with the Court and to any other address known to the petitioner. [5-413].

C. VENUE

Venue rules for proceedings concerned with persons under a disability are also set out in the Code. For proceedings dealing with the guardianship of a minor, venue is in the place where the minor resides or is present. [5-205]. Venue for proceedings dealing with the guardianship of an incapacitated person is also generally in the place where the incapacitated person resides or is present. [5-302]. Venue in such latter proceedings, however, may also be in a Court of competent jurisdiction which had ordered the incapacitated person admitted to an institution. Venue for protective proceedings may be either in the place where the person to be protected resides or if that person does not reside in the Code state, in any place where he has property. [5-403(1)-(2)]. Venue for protective proceedings based upon the person's residence is not affected by a guardian having been appointed in another place. [5-403(1)]. It is important to note that the one appropriate venue recognized for all three types of proceedings concerned with a person under a

disability is based upon the disabled person's residence and not his domicile. Reconciliation of identical proceedings in two or more appropriate venues must be made according to Section 1-303. [See § 3.01].

CHAPTER 28

AVOIDANCE DEVICES AND DURABLE
POWERS OF ATTORNEY

§ 28.01 Miscellaneous Avoidance Devices

One of the avowed goals of the Code's provisions concerned with persons under disabilities is to minimize the necessity for employing the devices and procedures and to simplify these procedures and devices when it is essential to employ them. [Art. V, General Comment]. Many features of the Code which attempt to attain these goals will be emphasized throughout the explanation of the Code's guardianship and conservatorship provisions. Several collateral but related devices incorporated within the Code which seek these goals deserve discussion at this point.

In the case of a minor, the Code includes a facility of payment provision. Under it, any person who owes the minor \$5,000 or less of cash or personal property per year may pay or deliver it either to the minor, if eighteen or married, to the minor's custodian, to the minor's guardian or into a federally insured financial institution savings account in the minor's name and with notice to the minor of the deposit. [5-103]. If these conditions are met, the person making the payment or delivery is discharged from liability for misappropriation by the recipient. Any person to

[300]

Ch. 28 AVOIDANCE DEVICES § 28.01

whom the property is delivered or paid, other than the minor and the financial institution, is obligated to apply the money or property (1) to the minor's present needs for support and education, (2) to preserve any excess for future payment for support, and (3) to preserve any excess above the first two purposes for delivery to the minor upon his attaining majority. These same recipients are also empowered to reimburse themselves for out of pocket expenses for the minor's support although they may not pay themselves for their own services. Payments or deliveries may not be made under this section if the person who owes the minor has actual notice that an appointed conservator exists or that a proceeding for the appointment of one is pending. This facility of payment provision will provide a convenient alternative to a conservatorship and other protective proceedings, for example, where contractual obligors such as insurance companies have small and annual payments due to a minor. [5-103, Comment].

The Code includes another provision which, under its limited circumstances, may also avoid the necessity of the appointment of a guardian for both a minor and an incapacitated person. Except for the power to consent to a minor's marriage or adoption, a parent or guardian may temporarily delegate to another person any of his care, custody and property powers over the ward. [5-104]. The only two requirements for such a delegation are that the form of the delegation

[301]

must be made by a properly executed power of attorney and its term cannot exceed six months in duration. This provision provides a parent or a guardian with a convenient and simple method to provide continual guardianship protection in case an emergency would arise while the parent or appointed guardian was absent. For example, the delegatee could give consent to an emergency operation. [5-104, Comment].

§ 28.02 *Durable Powers of Attorney*

The Code contains two provisions which make powers of attorney more durable than under the law of most non-Code jurisdictions. One provision applies to all written powers of attorney and adopts the civil law rule with regard to the effect of the principal's death, disability or incompetence. [5-502]. It provides that actions by the attorney in fact in good faith and according to the written power of attorney are valid even though such actions take place after the principal's death, disability or incompetence so long as the attorney in fact did not have actual knowledge of the happening of such an event. [5-502(a)]. Any such valid action taken binds the principal and his heirs, devisees and personal representative. For the protection of third parties dealing with the attorney in fact and in the absence of fraud, an affidavit executed by the attorney in fact stating that he did not have knowledge at the time of his action of a revocation or

[302]

termination caused by death, disability or incompetence is conclusive proof of nonrevocation or nontermination of his power to act at that time. [5-502(b)]. If the action taken requires the execution and delivery of a recordable instrument, the affidavit is also recordable when authenticated. Significantly, this provision does not alter or effect any inconsistent provision in the power of attorney dealing with revocation or termination. [5-502(c)].

The second provision truly creates a durable power of attorney but requires specific draftsmanship in the instrument creating the power. Under this provision, a written power of attorney may specifically provide that the disability of the principal does not affect the power of the appointed attorney in fact to act. [5-501]. The Code offers suggestions for the necessary phrases to create such a power. For a power of attorney which is to become immediately effective, the phrase suggested is "this power of attorney shall not be affected by disability of the principal." For a power which will become effective in the future due to disability, the suggested phrase is "this power of attorney shall become effective upon the disability of the principal." Neither phrase constitutes words of art and the substance of their purpose and effect may be stated with other similar words. All actions taken according to the power by the attorney in fact during a period of disability or incompetence of the principal have the same binding and beneficial effect as if

[303]

the principal was not disabled. In addition, under such a power of attorney the same effect applies to actions taken under circumstances where it is uncertain whether the principal is dead or alive. If due to the disability or disappearance a conservator is appointed for the principal, the attorney in fact must account to the conservator rather than the principal. The conservator now has the same power over the attorney in fact as the principal would have had if incapacity or disappearance had not occurred, including the power to revoke, suspend or terminate any part or all of the power.

These two subsections dealing with written powers of attorney will be particularly useful with older clients who do not wish to enter into complex trusts but who anticipate impending senility or incompetence. Similarly, these provisions will avoid in many situations the need for and the embarrassment of formal protective proceedings. It has also been suggested that these provisions might be used by military personnel whose whereabouts or death or both may become unknown while on military assignments. [2 UPC Practice Manual, 549-50].

CHAPTER 29

THE GUARDIAN OF A MINOR

§ 29.01 Necessity, Selection and Appointment of the Guardian of a Minor

Under the Code, no guardianship by any method may be created for a person who is incapacitated solely because of minority unless the minor is unmarried and all parental rights of custody have been terminated or suspended. [5-204]. Consequently, a natural or adoptive parent is automatically the guardian of the person of his or her minor natural and adopted children. There need be no official acceptance or court action taken in these situations. Presumably, any parent would have to be removed according to removal proceedings before any other person could be appointed guardian of that parent's minor children. [5-204; see 5-212]. When a guardian of a minor is needed, the Code includes two procedures by which one may be appointed. The first procedure is called "testamentary appointment" [5-202] and the other, "court appointment." [5-204].

Under the Code's testamentary appointment procedure a parent of a minor may appoint by will a guardian for his unmarried minors. [5-202]. The appointment in the will of the last parent to die has priority over the first to die un-

less the survivor has also been adjudged incapacitated. Any testamentary appointment becomes effective upon the nominated person filing his acceptance in the Court in which the will is either informally or formally probated. Unless a written objection is filed before or within thirty days of acceptance by a minor ward, who is fourteen years old or more, the nominated person becomes the guardian without additional court proceedings. [5-203]. Letters of guardianships by the clerk of court to the guardian must indicate that he was appointed by will. [5-208]. A testamentary guardian who has accepted appointment under a will probated in another state which is the testator's domicile must also be recognized in the Code state. To safeguard against misuse of this very casual procedure, the guardian upon acceptance must give written notice to the minor and to the person having his care or his nearest adult relation. Once the acceptance procedure is complete, however, the testamentary guardian must be removed before the Court can appoint another person guardian. [5-202, 5-204, Comment].

If a parent is unable to serve as guardian, a minor of fourteen years or more objects to the testamentary nominee or a testamentary appointment has not been accepted for thirty days, a guardian of a minor must be appointed by the Court. [5-204]. Presumably, a petition for such an appointment may be filed by any person interested in the ward's welfare. [2 UPC Practice Manual, 511; see 5-212(a)]. Notice of the time

and place of the hearing must be given in a manner prescribed by Section 1-401 to the minor, if fourteen or more years of age, to the person who has the custody and care of the minor for the sixty days prior to the petition and to the minor's living parents, if any. [5-207(a); see § 4.01]. In addition, if the Court determines that the ward's interests are or may be inadequately represented, it can appoint a guardian ad litem for the minor at any time during the proceeding. [5-207(d)]. When the minor is fourteen or more years of age, the Court is to give preference to the attorney selected by the minor.

Priority of appointment is left basically to the discretion of the Court. If a minor of fourteen years or more nominates a person of his choice, this person must be appointed unless the Court finds that such an appointment would be against the best interest of the minor. [5-206]. In all other cases, the Court upon petition may appoint any person including the contested testamentary nominee, whose appointment would be in the best interest of the minor. [5-206, 5-203]. Letters of guardianship issued by court appointment to the guardian must indicate he was appointed by court order. [5-208].

At the hearing the Court is to make the appointment only after it determines that: (1) a qualified person seeks appointment; (2) venue is proper; (3) the necessary notices have been given; (4) the proper priorities have been observed; and (5) the appointment would serve the welfare

and best interests of the minor. [5-207(b)]. Although "qualified person" is not defined in the Code, it is not restricted either and would not preclude an otherwise qualified non-resident from being appointed. In its determination of the proper priorities, the Court must find that all parental rights of custody are terminated or suspended and that no qualified testamentary guardian exists. [5-204]. When the circumstances do not qualify, the Court can dismiss or make any other appropriate order which would be in the minor's best interest. Under the latter discretion or when otherwise appropriate, the Court has a convenient option to appoint, at any time with or without a hearing, a temporary guardian who would have ordinary guardian status except his authority has a maximum duration of six months. [5-207(c)].

§ 29.02 Powers, Duties and Liabilities of the Guardian of a Minor

Except that a guardian of a minor is neither obligated to use his own funds for the minor's support nor liable to third persons for the acts of the ward as a parent would be, he has the powers and duties of a parent who properly has custody and whose child is unemancipated. [5-209]. Every guardian of a minor has the following specifically mentioned duties and powers:

- (1) To take reasonable care of the ward's property;

[308]

- (2) To apply money received for the ward to the ward's current needs for support, care and education, including payment to himself for room and board;
- (3) To conserve any excess sums for the ward's future needs, such as deposit in a federally insured financial institution account;
- (4) To report the ward's condition and the condition of the ward's estate which has been subject to the guardian's possession or control to the Court on petition of any person interested in the minor's welfare or as required by court rule;
- (5) To receive according to any type of contract, trust, devise or fiduciary entity sums for the support of the ward;
- (6) If a conservator has not been appointed, to receive payments and property under the facility of payment provision, Section 5-103;
- (7) To institute legal proceedings in order to compel third persons having a duty to support the ward or owing sums for the ward's welfare to perform their duties;
- (8) To facilitate the ward's education, social and other activities;
- (9) To authorize medical and other professional care, treatment or advice; and
- (10) To consent to the marriage or adoption of the ward.

[309]

[5-209(a)-(d)]. The guardian does not have a duty to provide bond or to file periodic or final accountings. Presumably, the Court with its inherent power over these matters could order both to be given. [See 2 UPC Practice Manual, 509-10]. In addition, it is very significant to emphasize that a guardian's duties and powers do not terminate even though he moves himself and his ward from the state of appointment. [5-201]. The guardian, of course, is liable to his ward for injury caused by any breach of duty or improper exercise of a power or both. He is not liable for injury to his ward caused by the negligence or acts of third persons merely because the guardian consented to the activity, unless the consent would have been illegal if given by a parent. [5-209(c)].

The Code contains provisions concerned with the important relationship between guardianship and protective proceedings. First, the guardian has an affirmative duty to commence protective proceedings when necessary to protect the ward's estate or property. [5-209(a)]. Consequently, for example, anytime the guardian comes into possession of property of the ward which requires investment or administration, he must commence these protective proceedings, including the possibility of requesting for a conservator to be appointed. [2 UPC Practice Manual, 508]. Second, although the guardian may use funds of the ward received for support, care and education, he may not use sums received for the compensation for

[310]

his personal services unless the compensation is approved by court order or approved by a duly appointed conservator who is not also the guardian. [5-209(b)]. Third, when a conservator has been appointed the guardian's duties and powers are modified and more limited. Under these circumstances and if sums are received in excess of the ward's present needs, the guardian must pay over these sums to the conservator at least on an annual basis. In addition, because of the appointment of a conservator, the guardian is no longer entitled to receive payments under the facility of payment provision. [5-103]. Significantly, the restrictions and limitations prohibiting a guardian of a minor from acting as a conservator, do not apply vice versa. [See 5-424(a), § 31.04 (B)].

§ 29.03 *Duration and Termination of the Guardian of a Minor*

~~The~~ guardianship of a minor continues until the minor dies, is adopted, marries or attains majority and it terminates upon the guardian's death, removal or approved resignation. [5-210]. A testamentary appointment is also terminated if the will which makes the appointment is denied probate in formal testacy proceedings. Although a guardian may resign his fiduciary office, the resignation does not terminate the guardianship until it is approved by the Court. Termination means the guardian's authority and responsibility end, but does not affect the guardian's liability

[311]

for prior acts or his duty to account for the ward's funds and assets.

Removal proceedings may be instituted by any person interested in the ward's welfare or by the ward himself if fourteen years of age or more. [5-212(a)]. The ground for removal is that it would be in the best interests of the ward. After notice and a hearing, the Court may order termination by removal and may make any other appropriate orders. [5-212(b)]. If the Court determines that the ward's interests are or may be inadequately represented, it can appoint a guardian *ad litem* for the minor at anytime during the proceeding. [5-212(c)]. When the minor is fourteen or more years of age, the Court is to give preference to the attorney selected by the minor.

CHAPTER 30

THE GUARDIAN OF AN INCAPACITATED PERSON

§ 30.01 Necessity, Selection and Appointment of the Guardian of an Incapacitated Person

The Code defines an incapacitated person as one who for any reason except minority "lacks sufficient understanding or capacity to make or communicate responsible decisions concerning his person." [5-101(1)]. Although any cause which meets the standard is covered, specifically mentioned examples of the cause of such a condition include mental illness, mental deficiency, physical illness or disability, advanced age, chronic use of drugs and chronic intoxication. It must be emphasized that this guardian is not the guardian of the incapacitated person's property but is the caretaker of the incapacitated person's person. [See 5-312]. Consequently, the definition of incapacity makes questions concerning the alleged incapacitated person's ability to manage his estate irrelevant. [2 UPC Practice Manual, 520].

As with guardians of minors, the Code recognizes the testamentary appointment device for the appointment of a guardian for an incapacitated person. [5-301; see § 29.01]. Although this

device for appointment is commonly recognized in statutes dealing with the appointment of a guardian for minors, it has not generally existed when dealing with guardians of incapacitated persons. Under the Code, the power to make a testamentary appointment of a guardian in these situations is limited to the two special circumstances when the testamentary appointment is made (1) by the incapacitated person's spouse or (2) by his parent. [5-301(a)-(b)]. A spouse's appointment takes priority over a parent's appointment if they conflict. [5-301(b)]. In addition, the appointment in the will of the last parent to die has priority over the first to die unless the surviving parent has been adjudged incapacitated or the will of the last parent to die is denied probate in formal testacy proceedings. [5-301(a)]. Apparently any person can be appointed. [See 5-301(d); 5-301, Comment]. A testamentary guardian who has accepted appointment under a will probated in another state which is the testator's domicile must also be recognized in the Code state. [5-301(c)].

A testamentary appointment becomes effective upon the nominee's filing of an acceptance of appointment in the Court in which the will has been either informally or formally probated. [5-301(a)-(b)]. The appointed guardian must give seven days advance notice to the incapacitated person and to the person having his care or to his nearest adult relative. The incapacitated person can prevent the appointment from taking effect

or terminate a previous testamentary appointment by filing a written objection with the Court. [5-301(d)]. This objection would not necessarily foreclose the person from eventually being appointed but would restrict that person's appointment solely to the result of a court appointment procedure.

When testamentary appointment is not available or desired, a guardian for an incapacitated person must be appointed by the Court. The Code's court appointment procedures are meritoriously designed to prevent unwanted appointments of such guardians. The procedure is initiated by the incapacitated person or any person interested in his welfare filing a petition for a finding of incapacity and for the appointment of a guardian. [5-303(a)]. Although the Code does not state what the contents of the petition must have, it is very explicit with regard to the requirements for notice of the date and time of the hearing on such a petition. [5-309]. The person alleged to be incapacitated must be personally served with notice and waiver of such notice is ineffective unless he is present at the hearing or a visitor confirms the waiver after an interview with the person. [5-309(b)]. His spouse, parents and adult children must also be personally served if they can be found within the state. [5-309(a)(1), (b)]. Finally, his guardian, conservator, caretaker, or custodian, if any, and his parents and spouse if not found within the state must be given notice as provided in Sec-

public guardian - OK?

tion 1-401. [5-309(a)(2), (b)]. If the alleged incapacitated person's spouse, parents, and adult children are not notified, then one of his closest adult relatives must be notified if one can be found. [5-309(a)(3)].

Protection is also provided the alleged incapacitated person throughout the proceeding. First, he must be represented by his own or an appointed counsel who has the duties and powers of a guardian ad litem. [5-303(b)]. Second, he must be examined by a court appointed physician who must submit a written report on his examination to the Court. Third, he must be visited before appointment by a "visitor" who has no personal interest in the proceeding and who is either trained in law, nursing or social work. [5-303(b), 5-308]. Finally, the alleged incapacitated person is entitled to be present at the hearing and to have counsel present evidence and cross-examine all relevant witnesses. [5-303(b)].

The scope and necessity of a jury trial in a hearing concerned with the incapacity of a person is left to the option of the enacting jurisdiction. [5-303]. The bracketed phrases permit the alleged incapacitated person to have a jury trial or not to have one at his election.

The Code is much more specific as to the person who can become or should become guardian of an incapacitated person than it is for a guardian of a minor. For the court appointment procedure, a full priority list is established which

ranks by status the persons ordinarily most desirable for the job. [5-311(b)]. Chart 6 describes these priorities set for appointment.

CHART 6. PRIORITY ORDER FOR APPOINTMENT OF A GUARDIAN OF AN INCAPACITATED PERSON

Priority Rank	Description of Candidates
1	The spouse of the incapacitated person.
2	Any adult child of the incapacitated person.
3	A parent of the incapacitated person, including a deceased parent's nominee identified in the latter's will or other writing.
4	Any relative with whom the incapacitated person resided for more than six months prior to the petition.
5	Any person nominated by the person caring for or paying benefits to the incapacitated person.

12-554

The Code neither explains how the parents' nomination authority under priority rank 3 coincides with their testamentary appointment authority nor why the spouse of the incapacitated person is not given the former authority. It is also asserted without explanation that the first four rankings may confer their priority on a nominee. [2 UPC Practice Manual, 520-21]. When consistent with the priority list, any competent person or institution may be appointed guardian of an incapacitated person. [5-311(a)].

Before a guardian for an incapacitated person is appointed, the Court must be satisfied that the

§ 30.01 *DISABLED PERSONS* Pt. 5

person for whom a guardian is sought is actually incapacitated and that the appointment is necessary or at least desirable for the purpose of providing continuing care and supervision of the incapacitated person. [5-304]. If the circumstances do not satisfy these criteria, the Court may dismiss or make any other appropriate order which presumably must be in the incapacitated person's best interest.

The Code also has provisions concerning the Court's power to appoint temporary guardians. When an emergency exists for an incapacitated person who has no guardian, the Court is given the authority to exercise the power of a guardian pending proper notice and a hearing. [5-310]. The Court is also empowered to suspend the authority of a court appointed permanent guardian and to appoint a temporary guardian for a period of time not to exceed six months, if it finds that the appointed guardian is not effectively performing his duties and the welfare of the incapacitated ward requires immediate action. Such an appointment may be made with or without notice. The appointed temporary guardian is entitled to the care and custody of the ward and possesses all the powers of a permanent guardian except as directed by court order. [See 5-312, Comment]. A curious, probably unintentional, omission contained in this provision is that it only specifically applies to guardians who obtain their positions by court appointment and not to guardians who obtain their positions by testamentary appointment.

[318]

Emergency to be considered with

Ch. 30 *INCAPACITATED PERSON* § 30.02

Consequently, termination by removal may be the only way a temporary guardian can enforce his right to custody and care of the ward against a testamentary appointee. [2 UPC Practice Manual, 522]. All appointed temporary guardians must make reports to the Court as it requires and are subject to removal at any time apparently with or without notice or hearing.

§ 30.02 Powers, Duties and Liabilities of the
Guardian of an Incapacitated Person

Generally, the powers, duties and obligations of a guardian of an incapacitated person are the same as those which a parent has over his unemancipated child but without parental relationship liability to third persons for the ward's acts. [5-312(a)]. On these matters the Code does not distinguish between testamentary appointment and court appointment. Accordingly, except as modified by a court order, every guardian of an incapacitated person has the following specifically mentioned duties and powers:

- (1) To take custody of the person of his ward unless a court of competent jurisdiction has otherwise detained or committed the ward;
- (2) To provide for the care, comfort and maintenance of his ward when he has custody;
- (3) To arrange for his training and education whenever appropriate;

[319]

- (4) To take reasonable care of the ward's clothing, furniture, vehicles and other personal effects;
- (5) To commence protective proceedings if the ward's property needs protection;
- (6) To consent to or approve necessary medical or other professional care, counsel, treatment or services for the ward; and
- (7) To report the condition of the ward and of the ward's estate which has been subject to his possession or control to the Court as required by the Court or by court rule.

[5-312(a)(1), (2), (3) and (5)]. The restriction, on a guardian of an incapacitated person's right to custody when a court of competent jurisdiction has detained or committed the ward, permits the Code to avoid any conflict of its provisions with those of commitment laws.

Only if a conservator has not been appointed for the ward does the guardian of an incapacitated person have the following additional powers:

- (3) To institute proceedings to compel third persons having a duty to support the ward or owing sums for the ward's welfare to perform their duties;
- (9) To receive money or tangible property owing to the ward;
- (10) To conserve any excess sums for the ward's future needs (such as depositing

[320]

them in a federally insured financial institution account).

[5-312(a)(4)(i)-(ii)]. Upon the appointment of a conservator, these powers of the guardian are terminated. The guardian must pay over to the conservator all funds in his possession or control which are in excess of current needs and must account to the conservator for all funds expended previous to the latter's appointment. [5-312(a)(6)]. Presumably, the newly appointed conservator must be substituted in all actions and proceedings concerning the ward's estate to which the guardian was a party.

A guardian of an incapacitated person does not have a duty to provide bond or when no conservator is appointed, to file periodic or final accountings. Presumably, the Court with its inherent powers over these matters could order both to be given. As with a guardian of a minor, the duties and powers of a guardian of an incapacitated person do not terminate even though he moves himself and his ward from the state of appointment. [5-312(a)(1)]. The guardian of an incapacitated person, of course, is liable to his ward for injury caused by a breach of duty or improper exercise of a power or both.

The Code also deals with the relationship between a guardianship and protective proceedings instituted for the same incapacitated person. As indicated, if a conservator has been appointed, the powers and duties of the guardian of the in-

capacitated ward are more restricted. Therefore, those actions which a guardian could take if no conservator had been appointed, must now be done by the conservator after his appointment. Even if there is no conservator, the guardian may not charge the ward's estate for room and board unless the charge is approved by order of court after notice to at least one of the ward's next of kin. [5-312(a)(4)(ii)]. If a conservator has been appointed, the conservator must still approve the room and board charge and it must be reasonable under the circumstances. [5-312(b)]. Notwithstanding, this pervasive authority which an appointed conservator has over the ward's assets and property, the guardian continues to have the control over the ward's custody and care. The guardian may request the conservator to pay the ward's funds directly to third persons and institutions that have cared for or maintained the ward. Significantly, whereas a conservator of a minor may when necessary act as his guardian, a conservator for an incapacitated person does not have that similar power but would have to seek court appointment. [See 5-424(a), § 31.04(B)].

§ 30.03 *Duration and Termination of the Guardian of an Incapacitated Person*

Termination of a guardianship for an incapacitated person occurs when either the guardian or the ward dies, when the guardian is determined incapacitated or when the guardian is removed or

[322]

resigns according to proper procedures and proceedings. [5-306]. A testamentary appointment is also terminated if the will which makes the appointment is denied probate in formal testacy proceedings. Such a termination means the guardian's authority and responsibility end but does not affect the guardian's liability for prior acts or his duty to account for the ward's funds and assets.

Removal proceedings may be instituted by the ward or by any other person interested in the ward's welfare. [5-307(a)]. The ward may request a removal order merely by sending an informal letter to the Court or judge and any intentional interference by any person with such a communication may constitute contempt of court. [5-307(b)]. So that a ward who is displeased about being judicially found to be incapacitated does not continually bring new removal proceedings, the order adjudicating incapacity can specify a discretionary restriction on review. This discretionary restriction on review is phrased in terms of time and cannot exceed one year. [See 5-307, Comment].

The procedures for removing a guardian, for accepting the resignation of a guardian or for ordering that the ward is no longer incapacitated contain the same safeguards as the proceedings to appoint a guardian. [5-307(c)]. These safeguards also specifically require the appointment of a visitor who can then visit the present guardi-

[323]

an's residence or the place where the ward resides or is detained and who can observe the conditions under which the ward lives. Notice requirements for removal proceedings are the same as for appointment proceedings. [5-309(a)].

CHAPTER 31

PROTECTIVE PROCEEDINGS AND
THE CONSERVATOR

§ 31.01 Protective Proceedings

A. NECESSITY

As previously emphasized, the Code separates its provisions concerned with the custody and care of the ward's person from its provisions concerned with the management of the protected person's estate. Under the heading "Protective Proceedings," disabled persons who are in need of having their assets and property managed or protected may have a conservator appointed or obtain some other protective court order for such a purpose. [5-401]. The term "disabled person" is not separately defined but means a person who is either a minor or an incapacitated person or who is confined, detained or missing.

Although the provisions dealing with the management of property for minors and for all other disabled persons are combined into a single part of the Code, there are several important differences in treatment. Most important of these is that the standards upon which the Court is to base its decision to act are different. Thus a conservator may be appointed or other protective orders issued by the Court for a minor only when the minor (1) has property needing otherwise

unobtainable management or protection, (2) has business affairs which minority may jeopardize or prevent or (3) has a need for support and education funds better obtainable through a protective proceeding. [5-401(1)]. Whereas for all other disabled persons, similar court action may be taken only when a person for any reason is unable to manage his property and affairs and either (1) the person's property may be wasted or dissipated without proper management or (2) support, care and welfare funds for that person are necessary and better obtainable through a protective proceeding. [5-401(2)].

B. INITIATION PROCEDURE

The only method by which protective action may be obtained, including the appointment of a conservator, is by formal proceedings before Court. [5-401]. These proceedings are initiated by a petition requesting a protective order or appointment. They may be filed by any of the following persons: (1) the prospective protected person; (2) any person interested in the protected person's estate, affairs or welfare; or (3) any person adversely affected by the lack of effective management. [5-404(a)]. The petition must contain the following information and statements to the extent known by the petitioner:

- (1) The petitioner's interest in filing the petition;
- (2) The protected person's name, age, residence and address;

[326]

- (3) The name and address of any guardian for the protected person;
- (4) The name and address of the protected person's nearest relative;
- (5) Generally, a description and estimated value of the protected person's property, including any obligations due him such as compensation, insurance, pension or allowance; and
- (6) The reason why the requested court action is necessary.

[5-404(b)]. When the petition requests the appointment of a conservator, it must also set forth the following additional information:

- (7) The name and address of the person requesting appointment; and
- (8) The basis of the applicant's priority for appointment.

C. PRE-HEARING NOTICE

The Code is very explicit with regard to the requirements for notice of the date and time of the hearing on such a petition. [5-405]. The person to be protected must be personally served with such notice and waiver of notice is ineffective unless (1) he is present at the hearing, (2) he is a minor ward or (3) a visitor confirms the waiver after an interview with him. [5-405(a)]. Either his spouse or, if no spouse, his parents must also be personally served with notice if they may be found within the state. Any required personal

[327]

service under this provision must be accomplished at least fourteen days before the hearing date. If personal service cannot be accomplished on the person's spouse or parents, then the petitioner must give notice to these people in accordance with Section 1-401. Finally, notice given in accordance with Section 1-401 must also be given as follows: (1) to all interested persons; (2) to persons who the Court directs; and (3) to any person who has filed a request for notice under Section 5-406. [5-405(b)].

In a procedure similar to the demand for notice procedure in Article III, the Code provides that any interested person may file a request for notice with the Registrar. [5-406; see 3-204, § 14.03(E)]. Governmental agencies paying or planning to pay benefits to the protected person are considered interested persons under this procedure. The request must include the following information and statements: (1) the interest of the person making the request; (2) the demandant's address or that of his attorney; and (3) that the request is effective only to matters occurring after the date of its filing. Upon the payment of any required fee, the clerk must mail a copy of the request to any appointed conservator.

D. SAFEGUARDS AGAINST MISUSE

The Code attempts to protect a person from misuse of its protective proceedings by requiring representation for the person or review of his

condition by independent third persons. In the case of minors, if the Court determines that it would be in the best interest of the minor to have an attorney appointed, it may appoint an attorney who can represent the minor as a guardian ad litem. [5-407(a)]. For other disabled persons, the person to be protected must have his own counsel or the Court must appoint an attorney to represent him as a guardian ad litem. [5-407(b)]. In addition, if the person to be protected is an incapacitated person, the Court may direct that the alleged incapacitated person be examined by a physician or send a visitor to interview him, or both. The physician selected must not be affiliated with any institution in which the person is a patient or is committed. The visitor may either be a guardian ad litem or a court officer or employee. The Code in dealing with protective proceedings does not contain any special rule with regard to the right of a jury trial.

E. COURT DETERMINATIONS AND ORDERS

The Court may appoint a conservator or make some other protective order only after a hearing and after it is convinced that a need is established. [5-407(c)]. It is important to emphasize that the Court has the authority to issue orders which are less drastic than the appointment of a conservator. [5-409]. The scope of these orders include what are called both protective arrangements and single transaction authorization. [5-409(a)-(b)]. Actually, it is difficult to make

§ 31.01 *DISABLED PERSONS* Pt. 5

a clear distinction between the two devices. Basically, protective arrangements deal with court orders which are designed to set up stable and continuing arrangements for purposes of handling the ward's foreseeable needs with respect to security, service or care. [5-409(a)]. In a non-exclusive list of permissible arrangements, the Code permits the Court under this device to issue orders dealing with payment arrangements concerned with the ward's cash or personal effects, real estate or contractual rights. In addition, the Court is given the authority to establish a suitable trust for the ward. These protective arrangements may be particularly beneficial to third persons including, for example, life insurance or annuity companies which owe the person to be protected sums of money but which do not know to whom or how properly to pay. A protective order is available under these protective arrangements to direct such third persons on these matters and to protect them from potential liability for improper payment.

Basically the single transaction power permits the Court to make any authorization, ratification or other direction which would be in the best interests of the protected person with respect to any transaction relating to the person's financial affairs or estate. [5-409(b)]. Such court orders would include single transactions such as the sale of an asset or may be a series of independent but related transactions. As its name indicates, this power is related to isolated or related transac-

[330]

Ch. 31 *PROTECTIVE PROCEEDINGS* § 31.02

tions and not to a continuing type of an arrangement.

Under the terms of both of these devices, the Court is specifically given the authority to exercise them without appointing a conservator. [5-409(a)-(b)]. Consequently, they have obvious usefulness any time a conservatorship is not necessary. Notwithstanding this usefulness, the Court must give consideration to the interests of the protected person's creditors and dependents as to whether the continuing protection of a conservator is required. [5-409(c)]. In addition, in order to be able to carry out the protective arrangement or authorized single transaction, the Court is given the authority to appoint a special conservator for these purposes. Such a conservator has the authority conferred by the Court, must report to the Court all matters pursuant to his appointment and is discharged only by court order.

§ 31.02 *Selection and Bonding of the Conservator*

Because of the authority and power given by the Code to an appointed conservator and the potential for misuse of this device, the Code establishes several guidelines by which one must be appointed. A pervasive requirement is that the conservator must be an individual or a corporation possessing trustee powers. [5-410(a)]. As with other appointment procedures in the Code, it

[331]

§ 31.02 *DISABLED PERSONS* Pt. 5

also lists specific priorities for the Court's consideration in making an appointment. [5-410(a)(1)-(7)]. Chart 7 describes these priorities for appointment.

CHART 7. PRIORITY ORDER FOR APPOINTMENT OF A CONSERVATOR

Priority Rank	Description of Candidates
1	Similar kind of fiduciary appointed by an appropriate court in any jurisdiction in which the protected person resides.
2	Nominee of the protected person if the latter is at least fourteen years of age and the Court determines he has sufficient mental capacity to make an intelligent choice.
3	The spouse of the protected person.
4	Any adult child of the protected person.
5	A parent of the protected person including a deceased parent's testamentary nominee.
6	Any relative with whom the protected person resided for more than six months prior to the petition.
7	Any person nominated by the person caring for or paying benefits to the protected person.

IM-385

Chart 7 requires additional explanation. The first priority would apparently include an appropriate fiduciary appointed in a foreign country. Including the nominee of the protected person, persons holding priority through the first six ranks may nominate in writing another person to serve in the nominator's stead. [5-410(b)]. The seventh priority would include public or governmental agencies such as the Veterans' Administration. [2 UPC Practice Manual, 533]. Be-

[332]

Ch. 31 *PROTECTIVE PROCEEDINGS* § 31.02

tween persons of equal priority, the Court has discretion to select the one best qualified if more than one is willing to serve. In addition, for good cause shown, the Court has discretion to ignore these priorities and to appoint anyone, including a person with less or without any priority. [5-410(b)].

If a conservator is appointed, his obligation to furnish a bond is left to the discretion of the Court. [5-411]. If required, the bond must be conditioned upon the faithful discharge of a conservator's fiduciary duties. Unless the Court directs otherwise, the bond must equal in value the aggregate capital value of the property of the estate plus one year's estimated income reduced by the value of court controlled securities deposited under special arrangements and by the value of real estate held by the conservator but which the conservator cannot sell without court authorization. The Court is also given discretion to accept other means of security for the performance of the fiduciary duties.

When bond is furnished by sureties, the Code sets the following terms and condition:

- (1) All sureties must be jointly and severally liable with the conservator and with each other;
- (2) Each surety, by executing an approved bond, consents to the jurisdiction of the Court when named party defendant to proceedings pertaining to the conserva-

[333]