



Preparing for a Contested Hearing

WITH THANKS TO ALASKA LEGAL SERVICES

Guardianship and Conservatorship

Guardianship

- ▶ A guardian handles medical or mental health needs, housing/placement, services, education, vocational and recreational affairs.
- ▶ Burden of proof to provide “clear and convincing evidence” is on the petitioner

Conservatorship

- ▶ A conservator handles financial affairs that would include income, expenses, assets and liabilities including both cash and property.
- ▶ The burden of proof that must be shown by the petitioner is that assets will be wasted or dissipated

- ▶ Part I and II on the Alaska Court System website provides information about what to think about prior to petitioning and then how to petition and the process. ASAGA has training on the petition form.
- ▶ A petition needs to be filed either for a full guardian which includes conservatorship, a partial guardian or conservator of just a conservator.
- ▶ The Court will set a hearing, appoint a Court Visitor and an attorney for the respondent
 - ▶ Court Visitor is the investigator
 - ▶ Attorney represents the respondent wishes/best interest
 - ▶ Hearing can be set within 120 days or 3 days if a true emergency
 - ▶ Written instructions also available on the Court website

Starting a Guardianship or Conservatorship Case

Initial Hearing

- ▶ If all are in agreement, the Court could issue findings and an order
- ▶ If the parties do not agree then the court will set the matter on for a contested hearing.
- ▶ Remember – it is the burden of the petitioner to prove incapacity in a guardianship and assets would be wasted in a conservatorship.

Contested Guardianship Hearings

- ▶ File a short trial brief explaining why an order is necessary. See sample trial brief. It can also contain your exhibits such as medical records, overdue invoices, emails etc
- ▶ File a witness list – these are the people you believe have information to support your petition. See sample witness list
- ▶ Some of these witnesses may be doctors or other medical providers, family, friends, case managers, financial representatives, etc.
- ▶ If they are unwilling to come voluntarily, you may have to subpoena
- ▶ If you need records, you may have to subpoena. See how to Subpoena instructions.



Getting a Subpoena

- ▶ A subpoena is an official summons from the court for a witness to appear or appear and/or produce
- ▶ You must contact your local court to find out how to get a subpoena. Most courts have a customer service office you can go to.
- ▶ Once you have a stamped subpoena from the court- you will need to serve the subpoena
 - ▶ The instructions on getting a subpoena also provide information on how to serve

Serving a Subpoena



Once you have a stamped subpoena, you can serve the subpoena via certified mail, in person, or via process server



In person is the easiest- However, It cannot be served by you. It cannot be served by a party in the case upon the witness. But you can get a friend or anyone over the age of 18 to serve the subpoena on the witness.



There are witness fees which must be given to the witnesses when they are served. \$12.50 for under 3 hours of trial, \$25.00 for more than 3 hours of trial.



Make sure you keep a copy of your stamped subpoena so that you can prove that you served the witness

Exhibit List

If you have any medical reports, text messages that show the respondent is asking you frequently to help them with daily tasks, etc. They will need to be marked as an exhibit.

Petitioners label their exhibits as Exhibit 1, Exhibit 2, Exhibit 3 and so on.

You must provide complete copies of the exhibit list to the court, court visitor, AND respondents attorney. Use the exhibit list form

Witness List

- ▶ If you are planning to subpoena or call witnesses then you must provide the court, court visitor, and respondent's attorney with a list of the witnesses you are planning to call. See sample form
- ▶ You must provide the witnesses name, address, phone number- if they are a doctor or professional then you should include that information



Questions for Witnesses

- ▶ Prior to the hearing, you will also receive any exhibits or witness list from other parties.
- ▶ Write down your questions for your witnesses or the ones others plan to call
- ▶ Understand that the other party can cross examine your witness just like you can them. It means you can both ask the witness questions.

Additional Information



ONLY RESPONDENT CAN REQUEST A JURY TRIAL BE HELD TO DETERMINE THE ISSUE OF INCAPACITY. A JUDGE WILL STILL DECIDE WHO IS TO BE APPOINTED.



PETITIONERS, IF THEY BELIEVE THAT IN THE COURSE OF A CASE THE GUARDIANSHIP IS NO LONGER NEEDED, CAN ASK FOR THE CASE TO BE DISMISSED. THIS SHOULD BE DONE IN WRITING BUT A SIMPLE LETTER REFERENCING THE CASE NUMBER STATING THE PETITIONER WANTS TO WITHDRAW

Questions?

- ▶ Alaska Legal Services Corporation
 - ▶ Call Toll Free to apply at (888) 478-2572
 - ▶ www.alsc-law.org
 - ▶ Or finding an attorney <http://www.courts.alaska.gov/shc/shclawyer.htm>
- ▶ ASAGA – Alaska State Association for Guardianship & Advocacy
 - ▶ 907-444-4015 or asagaak@gci.net
 - ▶ www.asaga.info
- ▶ COURT WEBSITE - How to Prepare for Trial
 - ▶ Helpful information such as courtroom behavior etc
 - ▶ <http://www.courts.alaska.gov/shc/family/shcforms.htm#trial>
 - ▶ Or representing yourself information at <http://www.courts.alaska.gov/shc/representing-yourself-info.htm>