

**PROPOSED FEDERAL REGULATION
TO PRESERVE BASIC RIGHTS AND FREEDOMS
RE: GUARDIANSHIP / CONSERVATORSHIP**

**SUBMITTED AUGUST 31, 2010
TO RANKING MEMBER OF HOUSE SUBCOMMITTEE ON CRIME, TERRORISM &
HOMELAND SECURITY: U.S. REPRESENTATIVE LOUIE GOHMERT (TX).**

**SUBMITTED NOVEMBER 9, 2010
TO CHAIRMAN OF SENATE SPECIAL COMMITTEE ON AGING: U.S. SENATOR
HERB KOHL (WI).**

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**RE: PROPOSED FEDERAL REGULATION TO
PRESERVE BASIC RIGHTS AND FREEDOMS**

UNRESOLVED ISSUES:

- 1) Each state has different procedures and standards to effectively eliminate an individual's United States Constitutional rights under their current guardianship/conservatorship laws.
- 2) Family members or other interested persons spread throughout the United States cannot rely upon one set of regulations to control guardianship/conservatorship fraud. The lack of national regulation immediately and frequently has adverse affects upon the freedoms of parents, siblings, relatives and friends.
- 3) A growing elderly population will more easily fall victim to unscrupulous professionals who prey upon the elderly, safe in the knowledge that outsiders not familiar with local laws or access to attorneys knowledgeable in out-of-state regulations are thereby at a disadvantage in attempting to prevent fraud.
- 4) Many states, in their guardianship/conservatorship laws, do not inform prospective wards of their simple and constitutional right to due process with a trial by jury.
- 5) The **National Conference of Commissioners on Uniform State Laws** can simply provide recommendations that are unaddressed either too frequently or addressed too late; exemplified by the Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act revised in 1997 and 2007.

GOALS:

- 1) Create a dependable, timely and uniform Federal standard for guardianship/conservatorship procedures to protect all United States citizens.
- 2) Safeguard the United States Constitutional rights provided and guaranteed to prospective wards of guardians and conservators that are mandated by **U.S. Code Title 42 Chapter 35 Subchapter I**.
- 3) Mandate a trial by a jury of one's peers, as does the State of Kentucky, for anyone charged with incapacity and the subsequent loss of all basic individual freedoms and rights because of such charges, which include, but are not limited to the rights and freedoms to:
 - a) vote,
 - b) marry,
 - c) apply for government benefits,
 - d) drive,
 - e) travel,
 - f) seek or retain employment,
 - g) enter into contracts,
 - h) file suit,
 - i) manage property,
 - j) gift or dispose of property,
 - k) determine residence,
 - l) consent to medical treatment,
 - m) make decisions about social environment or other aspects of life.

146 4) Severe penalties must focus on strict implementation of regulations to help preserve a prospective
147 ward’s individual rights and assure an expedient end to any fraudulent guardianship.
148

149 5) There is a growing need to protect and preserve as many of these individual American civil rights
150 and freedoms as possible by Federal regulation before they are lost or destroyed:
151

152 (existing) **U.S. Code Title 42 Chapter 35 Subchapter I § 3001. Congressional Declaration of Objectives:**

153 The Congress hereby finds and declares that, in keeping with the traditional American concept of
154 the inherent dignity of the individual in our democratic society, the older people of our Nation are
155 entitled to, and it is the joint and several duty and responsibility of the governments of the United
156 States, of the several States and their political subdivisions, and of Indian tribes to assist our older
157 people to secure equal opportunity to the full and free enjoyment of the following objectives:

- 158 (10) Freedom, independence, and the free exercise of individual initiative in planning and managing
159 their own lives, full participation in the planning and operation of community-based services and
160 programs provided for their benefit, and protection against abuse, neglect, and exploitation.
161

162 (existing) **U.S. Code Title 42 Chapter 35 § 3002. Definitions:**

163 For the purposes of this chapter— (18) (A) The term “exploitation” means the fraudulent or
164 otherwise illegal, unauthorized, or improper act or process of an individual, including a caregiver or
165 fiduciary, that uses the resources of an older individual for monetary or personal benefit, profit, or
166 gain, or that results in depriving an older individual of rightful access to, or use of, benefits,
167 resources, belongings, or assets.

168 (B) In subparagraph (A), the term “caregiver” means an individual who has the responsibility for
169 the care of an older individual, either voluntarily, by contract, by receipt of payment for care, or as a
170 result of the operation of law and means a family member or other individual who provides (on
171 behalf of such individual or of a public or private agency, organization, or institution) compensated
172 or uncompensated care to an older individual.
173

174
175 **PROPOSED FEDERAL LEGISLATION KNOWN AS: “THE ADELE CHRIS ACT”**
176 **TO BE CONSIDERED UNDER United States Code Title 18, Part 1, Chapter 13, § 242.**
177

178 **GUARDIANSHIP/CONSERVATORSHIP**
179

180
181 **.500 Declaration of Federal legislative purpose.**

182 1. It is the intent and purpose of this United States Code to recognize that incompetent persons have
183 varying degrees of incompetence.

184 2. Persons who are only partially incompetent must be legally protected without a determination of
185 total incompetency and without the attendant deprivation of civil and legal rights that such a
186 determination requires.

187 3. To this end, guardianship and conservatorship for incompetent persons shall be utilized only as is
188 necessary to promote their well-being, including protection from neglect, exploitation, and abuse;
189 shall be designed to encourage the development of maximum self-reliance and independence in each
190 person; and shall be ordered only to the extent necessitated by each person’s actual mental and
191 adaptive limitations.

192 4. If the court determines that some form of guardianship or conservatorship is necessary, limited
193 guardianship or limited conservatorship shall be the preferred form of protection and assistance for
194 an incompetent person.
195

196 **.510 Definitions.**

197 As used in this section:

198 1. “Conservator” means an individual, agency, or corporation appointed by the court to manage the
199 financial resources of an incompetent person.

200 2. “Developmental incompetency” means a severe, chronic incompetence of a person which:

201 (a) Is attributable to a mental or physical impairment or combination of mental and physical
202 impairments, including pervasive developmental disorder;

203 (b) Is manifested before the person attains age twenty-two (22);

204 (c) Is likely to continue indefinitely;

205 (d) Results in substantial functional limitations in three (3) or more of the following areas of major
206 life activity:

207 (1) Self-care;

208 (2) Receptive and expressive language;

209 (3) Learning;

210 (4) Mobility;

211 (5) Self-direction;

212 (6) Capacity for independent living; and

213 (7) Economic self-sufficiency; and

214 (e) Reflects the person’s need for a combination and sequence of special interdisciplinary or generic
215 care, treatment, or other services which are of lifelong or extended duration and are individually
216 planned and coordinated.

217 3. “Guardian” means any individual, agency, or corporation appointed to have full care, custody, and
218 control of an incompetent person.

219 4. “Incompetent” means a person legally adjudicated by a jury and by order of the court as being
220 unable to manage their personal or financial affairs and is not a medical disability, and is measured
221 by objective functional incapacities. It refers to any person fourteen (14) years of age or older who is:

222 (a) Unable to make informed decisions with respect to their personal affairs to such an extent that
223 they lack the capacity to provide for their physical health and safety; or

224 (b) Unable to make informed decisions with respect to their financial resources to such an extent that
225 they lack the capacity to manage their property effectively by those actions necessary to obtain,
226 administer, and dispose of both real and personal property.

227 (c) Such inability shall be evidenced by acts or occurrences within six (6) months prior to the filing
228 of the petition for guardianship or conservatorship and shall not be evidenced solely by isolated
229 instances of negligence, improvidence, or other behavior.

230 5. “Interdisciplinary evaluation report” means a report of an evaluation of a respondent performed to
231 determine whether they are partially incompetent or incompetent as defined herein.

232 6. “Interested entity” means an official or representative of a public or private agency, corporation, or
233 association concerned with that person’s welfare, or any other person found suitable by the court.

234 7 “Interested person” means any adult relative, friend or heir of the respondent or ward.

235 8. “Limited conservator” means an individual, agency, or corporation who possesses fewer than all of
236 the legal powers and duties of a full conservator, serving a fiduciary role appointed to assist in
237 managing the financial resources of a partially incompetent person and whose powers and duties
238 have been specifically enumerated.

239 9. “Limited guardian” means an individual who possesses fewer than all of the legal powers and
240 duties of a full guardian, and whose powers and duties have been specifically enumerated.

241 10. “Mentally ill person” means a person with substantially impaired capacity to use self-control,
242 judgment, or discretion in the conduct of their affairs and social relations, associated with
243 maladaptive behavior or recognized emotional symptoms where impaired capacity, maladaptive

- 244 behavior, or emotional symptoms can be related to physiological, psychological, or social factors,
245 despite treatment.
- 246 11. “Partially incompetent” refers to an individual who lacks the capacity to manage some of their
247 personal affairs and/or financial resources as provided in subsection four (4) of this section, but who
248 cannot be found to be fully incompetent as provided therein.
- 249 12. “Petitioner” means a person who initiates a proceeding.
- 250 13. “Respondent” means an individual alleged to be a partially incompetent or incompetent person.
- 251 14. “Standby” guardian or conservator means a person or entity designated by the court to assume the
252 powers and duties assigned to a limited guardian, guardian, limited conservator, or conservator upon
253 their death, resignation, removal, incapacity or incompetency.
- 254 15. “Temporary emergency” guardian ad litem, guardian, or conservator means any individual,
255 agency, or corporation appointed to have care, custody, and control of an incompetent person not to
256 exceed sixty (60) days and whose powers and duties have been specifically enumerated.
- 257 16. “Testamentary” guardian or conservator means an individual, agency, or corporation nominated
258 in the will of a limited guardian, guardian, limited conservator, or conservator to succeed the testator
259 in that capacity upon their death.
- 260 17. “Ward” means a person for whom a limited guardian, guardian, limited conservator, or
261 conservator has been appointed.
262

263 **.520 Jurisdiction of State District or Circuit Court -- Venue.**

- 264 1. A State’s district, circuit or county court shall have exclusive jurisdiction over all proceedings
265 involving a determination of partial incompetency or incompetency, the appointment and removal of
266 guardians and conservators, and the management and settlement of their accounts.
- 267 2. The venue for all proceedings shall be:
- 268 (a) In the county where the respondent or ward last resided; or
269 (b) In the county of domicile of the respondent or ward.
270

271 **.530 Filing of petition -- Contents -- Application -- Objections.**

- 272 1. A petition for a determination of partial incompetency or incompetency and the appointment of a
273 limited guardian, or guardian, or limited conservator, or conservator may be filed by any interested
274 person under penalty of perjury; or without undue influence by an individual needing guardianship or
275 conservatorship. The respondent shall receive a copy of the petition; the date, time and place of
276 hearing; notice of the respondent’s rights provided by law before any hearing is held, and such notice
277 shall be issued by the clerk of the court upon filing of the petition and served upon the respondent by
278 a sheriff or any licensed process server returnable to the court. The petition shall set forth the
279 following:
- 280 (a) The name and address of the respondent;
281 (b) The date of birth of the respondent if known, or an approximate age;
282 (c) The nature and degree of the alleged incompetency of the respondent;
283 (d) The facts and reasons with verifiable documented evidence supporting the need for guardianship
284 or conservatorship;
285 (e) A description and approximation of the value of the respondent’s assets, property and financial
286 resources, including government benefits, insurance entitlements, and anticipated yearly income;
287 (f) The names and addresses of the respondent’s next of kin;
288 (g) The name and address of the individual or facility, if any, having custody of the respondent;
289 (h) The name, address and interest of the petitioner;
290 (i) The name and address of the petitioner’s attorney, if any; and
291 (j) The name and address of any person or entity appointed by the respondent as respondent’s
292 attorney-in-fact under a durable power of attorney, as defined by state law, or as respondent’s

293 surrogate to make health care decisions under an advance directive;
294 (k) The name and address of physicians and medical doctors seen by the respondent within the
295 previous three (3) years;
296 (l) A copy of any known previously executed will, trust, power of attorney, durable power of
297 attorney, health care directive, advance directive or other directive(s).
298 2. The petition shall be accompanied by a verified application of the person or entity desiring
299 appointment as limited guardian, guardian, limited conservator, or conservator. The application shall
300 state the name, address, and qualifications of the applicant and their relationship to the respondent.
301 3. The respondent shall have the right to retain counsel of choice, to file any objection to or refute
302 any information contained in the petition or application at or any time prior to hearing.
303 4. No petition shall seek relief that is in conflict with any properly executed will, trust, power of
304 attorney, durable power of attorney, health care directive, advance directive or other directive(s)
305 unless undue influence can be proven in the creation of such documents by clear and convincing
306 evidence at a hearing held under the rules of civil procedure.
307 5. Any petition submitted by an adult relative shall first be subject to non-binding mediation which
308 may be attended by the respondent's spouse and any person related by lineal consanguinity to the
309 respondent.

310
311 **.540 Interdisciplinary evaluation report.**

312 1. Prior to a hearing on a petition for a determination of partial incompetency or incompetency and
313 the appointment of a limited guardian, or guardian, or limited conservator, or conservator as
314 described in section .530, an interdisciplinary evaluation report shall be filed with the court within
315 thirty (30) days after filing the petition. The report may be filed as a single and joint report of the
316 interdisciplinary evaluation team, or it may otherwise be constituted by the separate reports filed by
317 each individual of the team.
318 2. Twenty (20) days prior to conducting any interdisciplinary evaluation, each evaluator, whether
319 single and joint, or separate, shall provide a written notice to the respondent identifying all individual
320 rights the respondent may lose upon a finding of total incompetency at trial and a notice of the
321 respondent's right to contact an attorney before participating in any evaluation. The respondent shall
322 sign each notice on its face only to indicate receipt of same and shall be provided a copy of each
323 notice.
324 3. If the court and all parties to the proceeding and their attorneys agree to the admissibility of the
325 report or reports, the report or reports shall be admitted into evidence and shall be considered by the
326 jury. The report shall be compiled by at least three (3) individuals, and must include a physician, a
327 physician seen by the respondent within the last three years if available, a spouse and adult family
328 member by lineal consanguinity to the respondent, and may include a psychologist licensed or
329 certified by the laws of the state, and a person licensed or certified as a social worker by the laws of
330 the state, and there shall be no additional compensation beyond a standard rate of pay for their service
331 on the interdisciplinary evaluation team.
332 4. At least one (1) person participating in the compilation of the report shall have knowledge of the
333 particular incompetency which the respondent is alleged to have or knowledge of the skills required
334 of the respondent to care for their self and their estate.
335 5. If the respondent is alleged to be partially incompetent or incompetent due to untreatable mental
336 illness, at least one (1) person participating in the compilation of the interdisciplinary evaluation
337 report shall be a qualified mental health professional as defined by the laws of the state. If the
338 respondent is alleged to be partially incompetent or incompetent due to mental retardation, at least
339 one (1) person participating in the compilation of the evaluation report shall be a qualified mental
340 retardation professional as defined by the laws of the state.
341 6. The interdisciplinary evaluation report shall contain:

342 (a) A description of the nature and extent of the respondent's incompetence, if any;
343 (b) Current evaluations of the respondent's social, intellectual, physical, and educational condition,
344 adaptive behavior, and social skills. Such evaluations may be based on prior evaluations not more
345 than three (3) months old, except that evaluations of the respondent's intellectual condition may be
346 based on individual intelligence test scores not more than one (1) year old;
347 (c) An opinion as to whether guardianship or conservatorship is needed, the type of guardianship or
348 conservatorship needed, if any, and the reasons therefor;
349 (d) An opinion as to the length of time guardianship or conservatorship will be needed by the
350 respondent, if at all, and the reasons therefor;
351 (e) If a limited guardianship or conservatorship is recommended, a further recommendation as to the
352 scope of the guardianship or conservatorship, specifying particularly the rights to be limited and the
353 corresponding powers and duties of the limited guardian or limited conservator;
354 (f) A description of the social, educational, medical, and rehabilitative services currently being
355 utilized by the respondent, if any;
356 (g) A determination whether alternatives to guardianship or conservatorship are available such as, but
357 not limited to, a durable power of attorney or other forms of directives in order to avoid guardianship
358 or conservatorship;
359 (h) A recommendation as to the most appropriate treatment or rehabilitation plan and living
360 arrangement for the respondent and the reasons therefor, including the alleged incompetent person's
361 preferences;
362 (i) A listing of all medications the respondent is receiving, the dosage, and a description of the impact
363 of the medication upon the respondent's mental and physical condition and behavior;
364 (j) The names and addresses of all individuals who examined or interviewed the respondent or
365 otherwise participated in the evaluation;
366 (k) Any dissenting opinions or other comments by the evaluators.

367 7. The evaluation report may be compiled by a community mental health-mental retardation center, a
368 licensed facility for mentally ill or developmentally incompetent persons, if the respondent is a
369 resident of such facility, or a similar agency.

370 8. In all cases where the respondent is a resident of a licensed facility for mentally ill or
371 developmentally incompetent persons and the petition is filed by an employee of that facility, the
372 petition shall be accompanied by an interdisciplinary evaluation report prepared by the facility.

373 9. Except as provided in subsection six (6) of this section, the court shall order appropriate
374 evaluations to be performed by qualified persons or a qualified agency. The report shall be prepared
375 and filed with the court and copies mailed to the respondent and the attorneys for both parties at least
376 ten (10) days prior to the hearing. All items specified in subsection six (6) of this section shall be
377 included in the report.

378 10. If the person evaluated is a poor person as defined by the laws of the state, the examiners shall be
379 paid by the county in which the petition is filed upon an order of allowance entered by the court.
380 Payment shall be in an amount which is reasonable as determined by the court, except no payment
381 shall be required of the county for an evaluation performed by a salaried employee of a state agency
382 for an evaluation performed within the course of their employment. Additionally, no payment shall
383 be required of the county for an evaluation performed by a salaried employee of a community mental
384 health-mental retardation center or private facility or agency where the costs incurred by the center,
385 facility, or agency are reimbursable through third-party payors. Affidavits or other competent
386 evidence shall be admissible to prove the services rendered but not to prove their value.

387 11. The respondent or any interested party may serve and file a response to the evaluation report no
388 later than five (5) days prior to the hearing.

389 12. The respondent or any interested party may secure and submit an independent evaluation. If the
390 respondent is a poor person as defined by state law and unable to pay for the evaluation,

391 compensation for the independent evaluation shall be paid by the county in an amount which is
392 reasonable as determined by the court.
393

394 **.550 Hearing date and place -- Notice.**

395 1. If the petition is accompanied by an interdisciplinary evaluation report when filed, the court shall
396 fix a date, time and place for a hearing to be held within sixty (60) days after the filing of the petition.
397 The time for a hearing may be extended by the court, on motion of either party, for cause.

398 2. Notice of the date, time and place of the hearing shall be served by the clerk of the court within
399 five (5) days of the filing of the petition and not less than fourteen (14) days prior to the hearing to
400 the attorneys for both parties, all persons named in the petition, the next of kin as determined by state
401 law, and any person proposed for appointment as limited guardian, guardian, limited conservator, or
402 conservator.

403 3. Notice to the respondent shall comply with section .530(1).
404

405 **.560 Appointment of counsel for respondent -- Compensation.**

406 1. Unless an appearance has been entered on behalf of the respondent, the court shall appoint counsel
407 for the respondent after thirty (30) days of the filing of a petition for determination of incompetence.
408 The respondent may refuse court-appointed counsel and retain counsel of choice during a
409 continuance not to exceed thirty (30) days or proceed pro se.

410 2. Appointed counsel shall be entitled to compensation for services. If counsel is appointed for a poor
411 person as defined by the laws of the state, the court shall prescribe reasonable compensation to be
412 paid by the county in which the proceeding is held in accordance with the complexity of the issues,
413 the time involved, and other relevant considerations, except that appointed counsel shall not be
414 compensated at a rate lower than sixty dollars (\$60) an hour for time spent in court and no lower than
415 forty dollars (\$40) an hour for time spent out of court.

416 3. If necessary the respondent's appointed counsel shall act as guardian ad litem.
417

418 **.570 Hearing -- Burden of proof.**

419 1. At a hearing convened for the purpose of determining the incompetency of a respondent, the
420 respondent shall have a 12-person jury trial, open to the public, and shall have the right to hire
421 counsel of choice, present evidence and to confront and cross-examine all witnesses.

422 2. Jury trial fees shall be paid to the court by the petitioner without refund or reimbursement.

423 3. The respondent shall be present at the hearing, and their presence may be waived only upon a
424 determination of the court, based upon an objective medical finding, that their attendance would
425 subject them to serious risk of harm. Such determination shall be evidence only of the respondent's
426 inability to attend the hearing and shall not be considered in determining the need for guardianship or
427 conservatorship.

428 4. The court may remove itself to the place of residence of the respondent to conduct the hearing in
429 the presence of the respondent.

430 5. The burden of proof shall be on the petitioner to prove the partial incompetency or incompetency
431 of the respondent beyond a reasonable doubt.

432 6. The respondent will not be determined partially incompetent or incompetent unless each of the
433 persons participating in such interdisciplinary evaluation has examined the respondent in person, and at
434 least one (1) of the persons who participated in the interdisciplinary evaluation testifies in person at
435 the hearing. This section shall not be interpreted to preclude the respondent from requiring the
436 testimony of more than one (1) person participating in the preparation of the evaluation report.

437 7. The court shall assure that all necessary means for a respondent to participate in and understand
438 the proceedings are provided and, if mechanical, are in working order during the proceedings.

- 439 8. Ex parte communications shall void any petition or the results thereof and all hearings shall be
440 recorded either electronically or by stenographic recording.
441 9. If the petition is found to be frivolous or fraudulent, or not brought in good faith, or the petitioner
442 does not prevail, respondent's counsel fees and all related fees and expenses shall be charged to the
443 petitioner.
444 10. The respondent shall retain rights to seek actual and punitive damages from the petitioner.
445

446 **.580 Responsibilities of jury during a hearing -- Determinations upon finding of partial**
447 **incompetence or incompetence.**

- 448 1. At a hearing convened for a determination of partial incompetence or incompetence, the jury shall:
449 (a) Inquire into the nature and extent of the general intellectual functioning of the respondent;
450 (b) Inquire into the respondent's capacity to make informed decisions concerning their personal
451 affairs and financial resources;
452 (c) Determine whether the respondent is partially incompetent, incompetent, or has no incompetence
453 in relation to the management of their personal affairs; and
454 (d) Determine whether the respondent is partially incompetent, incompetent, or has no incompetence
455 in relation to the management of their financial resources.
456 2. If the respondent is found not to be partially incompetent, or incompetent, the petition shall be
457 dismissed.
458 3. If the respondent's counsel is found not to be zealously defending the rights of the respondent, the
459 petition shall be dismissed.
460 4. If the respondent is found to be partially incompetent, or incompetent, the jury shall, at the same
461 hearing, determine:
462 (a) The specific legal incompetencies to which the respondent is subject, if the respondent has been
463 determined to be partially incompetent;
464 (b) Whether the respondent retains any or all legal and civil rights;
465 (c) The type of guardian or conservator to be appointed;
466 (d) The corresponding powers and duties of the limited guardian, or guardian, or limited conservator,
467 or conservator, if the respondent has been determined to be partially incompetent or incompetent;
468 (1) The jury shall consider the qualifications, current caseload and relevant work history of a limited
469 guardian or guardian, or limited conservator or conservator before approving any assignment.
470 (2) The jury shall determine the duties of the limited guardian, or guardian, or limited conservator, or
471 conservator to the respondent in areas concerning, but not limited to, professional visitation schedule
472 of the limited guardian, or guardian, or limited conservator, or conservator to the respondent,
473 respondent's access to finances for personal use, respondent's access to family and friends, and the
474 respondent's exercise of personal freedoms.
475 (e) The individual or entity to be appointed by the court as limited guardian or guardian, or limited
476 conservator or conservator;
477 (f) The individual or entity, if any, to be appointed as standby guardian or conservator; and
478 (g) The duration of the term of guardianship or conservatorship.
479

480 **.590 Types of guardians and conservators to be appointed -- Order of appointment -- Filing of**
481 **judgment and order -- Legal incompetence.**

- 482 1. If the respondent is found partially incompetent in managing their personal affairs, but not partially
483 incompetent or incompetent in managing their financial resources, a limited guardian shall be
484 appointed.
485 2. If the respondent is found partially incompetent in managing their financial resources, but not
486 partially incompetent or incompetent in managing their personal affairs, a limited conservator shall
487 be appointed.

- 488 3. If the respondent is found incompetent in managing their personal affairs, but not partially
489 incompetent or incompetent in managing their financial resources, a guardian shall be appointed.
490 4. If the respondent is found incompetent in managing their financial resources, but not partially
491 incompetent or incompetent in managing their personal affairs, a conservator shall be appointed.
492 5. The order of appointment of a limited guardian, or guardian, or a limited conservator, or
493 conservator shall specify:
494 (a) The type of guardianship or conservatorship to which the ward is subject;
495 (b) The name and address of the limited guardian, or guardian, or limited conservator, or conservator;
496 (c) The name and address of the standby guardian or conservator, if a standby guardian or
497 conservator is designated;
498 (d) The specific legal incompetencies to which the respondent is subject, if the respondent has been
499 determined to be partially incompetent or incompetent;
500 (e) The corresponding powers and duties of the limited guardian or limited conservator, if the
501 respondent has been determined to be partially incompetent;
502 (f) The corresponding powers and duties of the guardian or conservator, if the respondent has been
503 determined incompetent, and;
504 (g) The duration of the term necessary for guardianship or conservatorship.
505 6. A limited guardian or limited conservator shall not be appointed for a term greater than one (1)
506 year and may be appointed for a lesser period. A guardian or conservator may be appointed for a
507 period of unlimited duration subject to annual review by the court at an open hearing.
508 7. The judgment of partial incompetence or incompetence and the order of appointment shall be filed
509 by the court. The judgment shall be indexed by the county clerk in the book in which notices of
510 actions and encumbrances are indexed. Unless such judgment is filed and indexed, it shall not
511 constitute notice to any subsequent bona fide purchaser for value, mortgagee, or encumbrancer.
512 8. If the respondent is determined to be partially incompetent or incompetent but no limited guardian,
513 or guardian, or limited conservator, or conservator is appointed at the hearing, the determination shall
514 have no legal effect.
515 9. The rights of which a ward is legally deprived of upon a determination of incompetence in
516 managing their personal affairs and financial resources include, but are not limited to, the right to
517 dispose of property, execute instruments, enter into contractual relationships, determine their living
518 arrangements, consent to medical procedures, and obtain a motor vehicle operator's license. A ward
519 shall only be deprived of the right to vote if the jury separately and specifically makes a finding on
520 the record.
521 10. A partially incompetent or incompetent person for whom an emergency guardian, limited
522 guardian or guardian, or emergency conservator, limited conservator, or conservator has been
523 appointed retains all legal and civil rights except those which have by the jury been designated as
524 legal incompetencies or which have been specifically granted to the limited guardian, guardian, or
525 limited conservator, conservator.
526 11. A person who is partially incompetent may be subject to some but not all of the incompetencies
527 specified in subsection nine (9) of this section.

528
529 **.600 Appointment -- Consideration of preference of respondent.**

- 530 1. Prior to the appointment, the court shall make a reasonable effort to question the respondent
531 concerning their preference regarding the person or entity to be appointed limited guardian, or
532 guardian, or limited conservator, or conservator, and any preference indicated shall be given due
533 consideration.
534 2. The jury may appoint as limited guardian, or guardian, or limited conservator, or conservator any
535 suitable person or any entity, public or private, capable of conducting an active guardianship or
536 conservatorship program.

537 3. No appointment or order shall be issued that is in conflict with any properly executed will, trust,
538 power of attorney, durable power of attorney, health care directive, advance directive or other
539 directive(s) unless undo influence can be proven in the creation of such documents by clear and
540 convincing evidence at a hearing held under the rules of civil procedure.

541 4. A limited guardian, or guardian, or limited conservator, or conservator may act within their scope
542 of authority without counsel.

543

544 **.605 Qualifications to consider when appointing a guardian or conservator.**

545 Preference shall be given to any sui juris person who meets the following qualifications when
546 appointing a person as guardian or conservator:

547 1. Kinship to respondent;

548 2. Education and business experience of applicant;

549 3. Capability to handle financial affairs;

550 4. Ability to carry out the requirements of guardian or conservator;

551 5. Long-term relationship with respondent.

552

553 **.610 Petition for renewal of limited appointment -- Accompanying affidavits.**

554 Prior to the expiration of a term of a limited guardianship or limited conservatorship, the limited
555 guardian or limited conservator may petition for a renewal of their appointment for a period not to
556 exceed one (1) year. The petition shall be accompanied by sworn affidavits of a physician, or a
557 psychologist licensed or certified by the laws of the state, or a person licensed or certified as a social
558 worker by the laws of the state, supporting the need for the continuation of the limited guardianship
559 or limited conservatorship.

560

561 **.620 Petition for relief -- Hearing on petition -- Judgment.**

562 1. A partially incompetent or incompetent person, their limited guardian, or guardian, or limited
563 conservator, or conservator, or any other person or entity may petition the court for:

564 (a) Termination or modification of an order of partial incompetence or incompetence;

565 (b) Removal and/or replacement of a limited guardian, or guardian, or limited conservator, or
566 conservator; or

567 (c) Renewal of the appointment of a limited guardian or limited conservator.

568 2. Petitions pursuant to this section shall set forth:

569 (a) The name and address of the ward;

570 (b) The name and address of the limited guardian, or guardian, or limited conservator, or conservator;

571 (c) The name, address, and interest of the petitioner;

572 (d) The names and addresses of the ward's next of kin;

573 (e) The name and address of the individual or facility, if any, having custody of the ward;

574 (f) The relief requested; and

575 (g) The facts and reasons supporting the request.

576 3. A request under subsection (1) of this section, if made by the ward, may be communicated to the
577 court by any means, including, but not limited to, oral communication or informal letter. If such a
578 request is communicated by means other than a petition, the court shall appoint a suitable person who
579 may, but need not be, an employee of the state, county, or court to prepare a written petition to be
580 filed with the court within seven (7) days following the petition.

581 4. A partially incompetent or incompetent person, their limited guardian, or guardian, or limited
582 conservator, or conservator, or any other person or entity may petition the court for a trial by jury for
583 relief under this section.

584 5. Within thirty (30) days after the filing of a petition for relief under this section, the court shall
585 conduct a hearing at which the ward shall be entitled to counsel of choice. The time for a hearing

586 may be extended by the court, on motion of either party, for cause. Notice of the date, time and place
587 of the hearing shall be served by the clerk of the court not less than fourteen (14) days prior to the
588 hearing to the ward and all persons named in the petition.

589 6. At the request of any party or on its own initiative, the court may order an interdisciplinary
590 evaluation of the ward. The time period in which the court must review a petition may be extended
591 for an appropriate period of time if an evaluation is ordered by the court. The county shall pay for
592 the interdisciplinary evaluation report if the ward is a poor person as defined by state law. The
593 interdisciplinary evaluation report may be filed as a single or joint report of the interdisciplinary
594 evaluation team, or it may otherwise be constituted by the separate reports filed by each individual of
595 the team. If the court and all parties to the proceeding and their attorneys agree to the admissibility of
596 the report or reports, the report or reports shall be admitted into evidence and shall be considered by
597 the court.

598 7. If the original order is dissolved and no further order is issued, the ward shall be relieved of all
599 legal incompetencies and all restrictions previously imposed. The court shall enter an order and
600 judgment restoring to the person all of the rights and privileges of a citizen. The clerk shall note the
601 judgment or modification in the book in which notices of actions and encumbrances are indexed.

602 8. The clerk of the court shall transmit a certified copy of the restoration judgment or modification to
603 the originating court, if the judgment or modification is ordered by a court other than the court in
604 which the original judgment was entered.

605

606 **.660 Specific powers and duties of limited guardian or guardian.**

607 1. It shall be the general duty of the limited guardian or guardian to carry out diligently and in good
608 faith the specific duties and powers determined by the jury and to:

609 (a) Assure that the personal, civil, and human rights of the ward are protected; and

610 (b) Encourage the ward to:

611 (1) Participate to the maximum extent of their abilities in all decisions that affect them;

612 (2) Act in their own behalf on all matters in which they are able to do so; and

613 (3) Develop or regain, to the maximum extent possible, their capacity to meet the essential
614 requirements for their physical health or safety, and, if impaired, their capacity to manage their
615 financial resources.

616 (c) Act with respect to the ward in a manner that limits the deprivation of civil rights and restricts any
617 personal freedom only to the extent necessary to provide needed care and services. Isolation and
618 restricted visitation may be considered a deprivation of civil rights and personal freedom. The limited
619 guardian or guardian will actively work to assure the ward is able to visit and interact with all family
620 members unless the jury, after hearing evidence and testimony, has determined a specific family
621 member is a danger to the ward;

622 (d) Expend sums from the financial resources of the ward that are reasonable and necessary to carry
623 out the powers and duties assigned to them and, unless a separate limited conservator or conservator
624 has been appointed, to manage the financial resources of this ward;

625 (e) To make provision for the ward's care, comfort, and maintenance and arrange for such
626 educational, social, vocational, and rehabilitation services as are appropriate and as will assist the
627 ward in the development of maximum self-reliance and independence;

628 (f) To involve the ward as much as possible in and not restrict the exercise of the ward's religious
629 expression.

630 2. A guardian of a partially incompetent or incompetent person shall have the following powers and
631 duties, except as limited by the determination of the jury and order of the court:

632 (a) To take custody of the ward and to maintain the ward's preferred and least restrictive place of
633 abode within the state, except that, if at any time a guardian determines it necessary to place a ward
634 in any residential facility, the guardian shall, thirty (30) days prior to such placement, file with the

635 court a petition for placement, stating with specificity the reasons for such placement, and an
636 interdisciplinary evaluation report detailing the social, psychological, medical or other considerations
637 on which such placement is predicated, a description of the treatment or habilitation programs which
638 will benefit the ward as a result of such placement, and a determination that such placement will
639 provide appropriate treatment in the least restrictive treatment and residential program. For purposes
640 of this subsection, the interdisciplinary evaluation report may be one performed within two (2)
641 months prior to the placement for purposes of determining whether such placement is necessary and
642 appropriate. Timely notice of hearing on such petition shall be mailed by the clerk of the court to all
643 interested persons or entities in accordance with section .530;

644 (b) To give any necessary consent or approval to enable the ward to receive medical or other
645 professional care, counsel, treatment or service, except that a limited guardian or guardian may not
646 consent on behalf of a ward to an abortion, sterilization, psychosurgery, removal of a bodily organ, or
647 amputation of a limb, unless the procedure is first approved by order of the court or is necessary, in
648 an emergency situation, to preserve the life or prevent serious impairment of the physical health of
649 the ward.

650 3. A limited guardian or guardian must inform and involve family members concerning the medical
651 condition of the ward, including but not limited to placement in any care facility, any hospitalization,
652 or any condition involving anticipated or imminent death. The guardian must, prior to any burial,
653 cremation or other post-mortem process, inform all parties of such death who were noticed in the
654 original petition for guardianship as described in .550(2).

655 4. Court approval must be obtained before any measures are taken that have the potential to shorten
656 the lifespan of the ward.

657 5. If a separate limited conservator or conservator has been appointed for the ward, the expenditure
658 of funds by the limited guardian or guardian shall be consistent with the duties assigned to and
659 procedures and policies established by such limited conservator or conservator. Conflicts arising
660 between a limited guardian or guardian and a limited conservator or conservator, or the ward
661 regarding the expenditure of funds which are unable to be otherwise resolved shall be submitted to
662 the court for resolution.

663 6. A ward's living will shall not be violated.

664

665 **.670 Annual report of limited guardian or guardian.**

666 1. A limited guardian or guardian shall file with the court at least annually a true and verified report
667 stating:

668 (a) The ward's current mental, physical, and social condition;

669 (b) The address of every residence of the ward during the reporting period and length of stay at each
670 residence;

671 (c) A summary of the medical, social, educational, vocational, and other professional services
672 received by the ward during the reporting period;

673 (d) An outline of the limited guardian's or guardian's visits with and activities on behalf of the ward;

674 (e) A recommendation as to the need for continued limited guardianship or guardianship;

675 (f) A statement signed by the standby guardian, if one has been appointed, that the standby guardian
676 continues to be willing to serve in the event of the death, resignation, removal, or incapacity of the
677 guardian; and

678 (g) Other information requested by the court or useful to the record including but not limited to a
679 statement by the limited guardian or guardian concerning what has been done, or is currently being
680 done, to encourage the ward's independence, and a written statement from the ward concerning the
681 care provided.

- 682 2. For the purpose of filing the report required by subsection one (1) of this section, the limited
683 guardian or guardian shall be given access to records pertaining to the ward held by public or private
684 agencies that contain information necessary for the guardian to perform their duties.
- 685 3. The court shall review the report required in subsection one (1) of this section and take whatever
686 action it considers necessary to enhance the well-being of the ward.
- 687 4. In addition to the requirements of this section, a limited guardian or guardian shall comply with the
688 reporting requirements of a limited conservator or conservator unless a separate limited conservator
689 or conservator has been appointed.
- 690 5. The limited guardian or guardian shall not fraudulently spend down the assets of the ward in order
691 to obtain the ward's eligibility for any private or governmental benefits.

692
693 **.690 Specific powers and duties of limited conservator or conservator.**

- 694 1. It shall be the general duty of the limited conservator or conservator to carry out, diligently and in
695 good faith, the specific duties and powers determined by the jury and to:
- 696 (a) Manage or assist in managing those financial resources placed under their supervision and/or
697 control as would a prudent person managing their own resources and, if a conservator has special
698 skills or is named conservator on the basis of representations of special skills or expertise, they shall
699 use those skills; and
- 700 (b) Encourage the ward to:
- 701 (1) Participate, to the maximum extent of their abilities, in all decisions which affect them;
- 702 (2) Act on their own behalf on all matters in which they are able to do so; and
- 703 (3) Develop or regain, to the maximum extent possible, their capacity to manage their financial
704 resources.
- 705 2. A limited conservator or conservator shall expend or distribute, or authorize the expenditure or
706 distribution of, or assist in the expenditure or distribution of, the principal or income from the
707 financial resources placed under their supervision and control to assure that:
- 708 (a) The essential requirements for the physical health or safety of the ward are met;
- 709 (b) The rights of the ward are protected;
- 710 (c) The financial resources of the ward that are subject to the conservatorship are prudently managed
711 and conserved;
- 712 (d) The ward's state and federal income taxes and state personal property taxes are paid on time;
- 713 (e) The ward's pre-existing and current financial obligations are paid;
- 714 (f) The ward has the opportunity to develop or regain the capacity to perform functions previously
715 removed; and
- 716 (g) The limited guardian or guardian for the ward, if any, is able to carry out the duties and powers
717 determined by the jury.
- 718 3. In performing their duties, the limited conservator or conservator shall consider:
- 719 (a) The size of the financial resources under the limited conservator's or conservator's supervision or
720 control;
- 721 (b) The probable duration of the conservatorship;
- 722 (c) The likelihood that the ward may be able to manage their financial resources in the future;
- 723 (d) The accustomed standard of living of the ward;
- 724 (e) Other funds or resources that may be used for the support of the ward which have not been placed
725 under the control or supervision of the limited conservator or conservator; and
- 726 (f) The requests of the ward and the ward's limited guardian or guardian, if any.
- 727 4. A limited conservator or conservator of a partially incompetent or incompetent person has all of
728 the powers conferred herein, except as limited by determination the jury, and any additional powers
729 conferred by law on trustees. The conservator may take possession of the ward's real and personal
730 property, and of all rents, incomes, and benefits therefrom, whether accruing before or after their

731 appointment, and of the proceeds arising from the sale, mortgage, lease or exchange thereof. Subject
732 to such possession the title of all such estate and to the increment and proceeds thereof shall be to the
733 ward and not to the limited conservator or conservator. It is the duty of the conservator to protect
734 and preserve the estate, to retain, sell and invest it as hereinafter provided, prosecute or defend
735 actions, claims or proceedings in any jurisdiction for the protection of the estate's assets, to account
736 for it faithfully, to perform all other duties required of them by law, and, at the termination of the
737 conservatorship, to deliver the assets of the ward to the persons lawfully entitled thereto.

738 5. The limited conservator or conservator shall apply the money and property for the payments of
739 debts, taxes, claims, charges and expenses of the conservatorship and for the support, care,
740 maintenance and education of the ward or the ward's dependents.

741 6. Any sale of realty of a ward shall be as provided by state law. Consideration shall be given to the
742 ward's preferences in regard to the distribution of real or personal property and to preserve all items
743 for distribution as listed in a ward's properly and previously executed will.

744 7. If a separate limited guardian or guardian has been appointed for the ward, the expenditure of
745 funds by the limited conservator or conservator shall be consistent with the duties assigned to and
746 procedures and policies established by such limited guardian or guardian. Conflicts arising between a
747 limited conservator or conservator, and a limited guardian or guardian, or the ward regarding the
748 expenditure of funds which are unable to be otherwise resolved shall be submitted to the court for
749 resolution.

750

751 **.710 Filing of inventory by limited conservator or conservator -- Biannual report -- Final report**
752 **and account.**

753 1. Within thirty (30) days of appointment, the limited conservator or conservator shall file with the
754 court a true and verified inventory of all the real and personal property of the ward which has come
755 to their possession or knowledge, including a statement of all encumbrances, liens, and other secured
756 claims on any item, any claims against the estate of the ward, and any cause of action accruing to the
757 ward. The limited conservator or conservator shall provide a copy thereof to the ward and all parties
758 of record.

759 2. A limited conservator or conservator, or any guardian acting as such, shall file with the court a true
760 and verified report and financial account biannually within thirty (30) days after the anniversary date
761 of their appointment. The report shall contain:

762 (a) The present personal status of the ward whose estate is managed by the limited conservator or
763 conservator;

764 (b) The limited conservator or conservator's plan for preserving and maintaining the estate of which
765 they have control or supervision;

766 (c) The need for continuation or cessation of the limited conservatorship or conservatorship; and

767 (d) The need for any alteration in the powers of the limited conservatorship or conservatorship.

768 3. The biannual report shall specify the amount and type of real and personal property received by
769 the limited conservator or conservator and remaining in their control or invested by them, the nature
770 of such investment, and expenditures made during the preceding year. Upon request of the court or
771 any interested party, the limited conservator or conservator shall produce for examination any
772 information or documentation which the court may consider relevant to the accounting of the
773 financial and property transactions of the estate.

774 4. Each new accounting shall show a continuous carryover from the previous accounting of all assets
775 identifying their former and current status, and a showing of any beginning cash balance from the
776 previous accounting and an ending balance for the new accounting.

777 5. Upon the resignation, removal, or death of a limited conservator or conservator, or on the
778 termination of the conservatorship, the limited conservator or conservator, or their personal
779 representative, shall forthwith submit a final report and account to the court and to the former ward

780 and to the successor limited conservator or conservator and any interested person or entity within 30
781 days of the resignation, removal or death of a limited conservator or conservator, or on the
782 termination of the conservatorship, or, if the ward is deceased, to their personal representative, and
783 shall pay over the trust estate to the person entitled thereto. Upon approval of the report and account,
784 the limited conservator or conservator shall be discharged and their surety, if any, may be released.
785 6. The limited conservator or conservator shall not fraudulently spend down the assets of the ward in
786 order to obtain the ward's eligibility for any private or governmental benefits
787

788 **.720 Surety of limited conservator or conservator**

789 The court shall require a limited conservator or conservator to provide surety on their bond consistent
790 with the provisions of state law, except for the appointment of a family member in which case the
791 court may decide to waive the surety bond or have it paid for from the estate.
792

793 **.725 Final accounting.**

794 A report of final accounting shall be submitted to the court by a limited guardian, or guardian, or
795 limited conservator, or conservator within thirty (30) days of termination of assigned care.
796

797 **.730 Testamentary nomination -- Succession of parent as guardian.**

- 798 1. A parent, spouse, or child of a partially incompetent or incompetent person who has been
799 appointed as emergency guardian, limited guardian, or guardian, or emergency conservator, limited
800 conservator, or conservator of that person may, by will, nominate an individual to succeed in that
801 capacity upon the testator's death. Such nomination shall be reviewed by the court upon admitting
802 the will to probate if no other person is serving in that capacity at the time of the testator's death and
803 no standby guardian or conservator has been appointed.
804 2. When the biological or adoptive parents of a partially incompetent or incompetent adult person are
805 appointed in any capacity as co-guardians or co-conservators of that person and one (1) of the co-
806 guardians or co-conservators dies, the survivor shall become the successor guardian or conservator
807 without any additional action by the court.
808

809 **.760 Court costs -- Compensation and reimbursement for expenses.**

- 810 1. No court costs shall be charged to a respondent or ward in any proceeding under this code if the
811 respondent or ward is a poor person as defined by state law.
812 2. Limited guardians, or guardians, or limited conservators, or conservators are entitled to reasonable
813 compensation for services rendered and to reimbursement for reasonable and necessary expenses and
814 attorney's fees incurred in the exercise of their assigned guardianship or conservatorship duties and
815 powers. Such compensation and reimbursement may be paid from the financial resources of the
816 ward. Compensation and reimbursement of limited guardians, or guardians, or limited conservators,
817 or conservators shall not exceed three percent (3%) of the ward's assets as determined annually,
818 except for any family member as determined by lineal consanguinity serving in such capacity.
819 3. All compensation for services under this section shall be approved by court order.
820

821 **.770 Confidentiality of records -- Disclosure of information -- Expungement of records.**

- 822 1. All determinations of incompetency and orders of appointment, modification, and termination
823 shall be filed as public records with the clerk of the court. All court records of a respondent made in
824 all proceedings shall be open to the general public.
825 2. Following the dismissal or withdrawal of a petition filed under this chapter or a determination that
826 a respondent is no longer incompetent, the respondent may at any time move to have all court records
827 pertaining to the proceedings expunged from the files of the court.
828

829 **.800 Notices.**

830 1. Any first notice relating to failure to file reports of any type required in this chapter and any
831 notices of rule motions shall be sent by the court or by the party making the motion to the attorney of
832 record for the guardian and to all persons named in the original petition as required by section
833 .530(1).

834 2. If there is no attorney of record or there is a second or subsequent notice relating to failure to file
835 reports, or any second or subsequent notice with regard to a rule motion, the notice shall be sent by
836 the court or by the party making the motion to the guardian as well as to the attorney of record, if
837 any, and the guardian, and all persons named in the original petition as required by section .530(1).

838

839 **.925 Filing of temporary emergency petition – Ex parte communications.**

840 1. A petition for a determination of temporary emergency partial incompetency or incompetency and
841 the appointment of an emergency limited guardian ad litem, emergency limited guardian, or
842 emergency limited conservator may be filed by any interested person. The respondent shall receive
843 notice of the petition and a copy of the petition and notice of the respondent's rights provided by law
844 before any hearing is held, and such notices shall be issued by the clerk of the court upon filing of the
845 petition. These notices shall be served upon the respondent before any hearing is held and such
846 notices shall be issued by the clerk of the court upon filing of the petition and served upon the
847 respondent by a sheriff or any licensed process server returnable to the court. Notice shall also be
848 given to the respondent's next of kin and any interested person within three (3) business days of the
849 petition's filing by certified return receipt U.S. Mail returnable to the court.

850 2. The petition must set forth the following:

851 (a) The name, address, and interest of the petitioner;

852 (b) The name and address of the petitioner's attorney, if any;

853 (c) The name and address of the respondent;

854 (d) The date of birth of the respondent if known, or an approximate age;

855 (e) The names and addresses of the respondent's next of kin;

856 (f) The danger alleged to be imminent;

857 (g) The nature and degree of the alleged incompetence of the respondent;

858 (h) The type of appointment and the protection and assistance requested;

859 (i) The facts and reasons supporting the request with verifiable documented evidence, including any
860 medical reports, supporting the need for emergency guardianship or conservatorship;

861 (j) A description and approximation of the value of the respondent's financial resources;

862 (k) The name and address of the individual or facility, if any, having custody of the respondent;

863 (l) The name, address, and qualifications of the proposed emergency limited guardian ad litem,
864 emergency limited guardian or emergency limited conservator;

865 (m) The name and address of any person or entity appointed by the respondent as respondent's
866 attorney-in-fact under a durable power of attorney, as defined by state law, or as respondent's
867 surrogate to make health care decisions under an advance directive;

868 (n) The name and address of physicians and medical doctors seen by the respondent within the
869 previous three (3) years;

870 (o) A copy of any known previously executed will, trust, power of attorney, durable power of
871 attorney, health care directive, advance directive or other directive(s).

872 3. Within two (2) weeks of the filing of a petition pursuant to this section, the court shall conduct a
873 preliminary hearing at which the respondent shall be entitled to counsel. Notice of the date, time and
874 place of the preliminary hearing shall be given within three (3) business days following the filing of
875 the petition to all persons named in the petition as set forth in subsection one (1) of this section and to
876 the county attorney.

877 4. The petition shall be accompanied by a verified application of the person or entity desiring
878 appointment as emergency guardian ad litem, emergency limited guardian, or emergency limited
879 conservator. The application shall state the name, address, and qualifications of the applicant and
880 their relationship to the respondent.

881 5. The respondent shall have the right to retain counsel of choice, or have counsel appointed by the
882 court if the respondent is a poor person as defined by state law, or to refuse counsel in which case a
883 guardian ad litem shall be appointed by the court, or to request a continuance if necessary to pursue
884 retaining counsel of choice, to file any objection to or refute any information contained in the petition
885 at or any time prior to hearing.

886 6. The burden shall be on the petitioner to prove by clear and convincing evidence the need for the
887 emergency appointment of an emergency limited guardian ad litem, emergency limited guardian, or
888 emergency limited conservator.

889 7. If the court appoints an emergency limited guardian ad litem, or an emergency limited guardian, or
890 an emergency limited conservator or appoints another to do so in an emergency situation as set forth
891 in subsection one (1) of this section, the court shall state on the record findings of fact as to the
892 danger determined to be imminent, the sources relied on in arriving at such determination, the type of
893 assistance to be provided, and the powers and duties of the emergency limited guardian ad litem,
894 emergency limited guardian, or emergency limited conservator.

895 (a) The authority of the emergency guardian ad litem, or emergency guardian, or emergency
896 conservator shall expire within 60 days.

897 (b) Emergency guardianship or emergency conservatorship shall cease after 60 days.

898 (c) Upon the termination of an emergency guardianship or emergency conservatorship, any petition
899 for further guardianship or conservatorship shall follow the requirements of .520 - .800.

900 (d) No petition for permanent guardianship shall be filed if an official investigation involving the
901 respondent is pending or until such investigation is concluded and results reported to the court.

902 8. Ex parte communications shall void any emergency petition or the results thereof and all hearings
903 shall be recorded either electronically or by stenographic recording and held open to the public.

904 9. In no event shall any assets or property of the respondent be available to any emergency limited
905 guardian ad litem, emergency limited guardian, or emergency limited conservator or to assignment
906 by the court for the duration of any emergency appointment, except for the payment of pre-existing
907 or necessary expenses. An accurate accounting of such expenses shall be maintained by the
908 emergency limited guardian ad litem, emergency limited guardian, or emergency limited conservator
909 and filed with the court upon termination of the emergency guardianship or conservatorship.

910 10. For the duration of appointment of any temporary emergency limited guardian ad litem,
911 emergency limited guardian, or emergency limited conservator, the respondent may be considered a
912 ward of the state, but shall retain sole interest in all personal assets and property, which shall not be
913 used for care of the respondent under this section.

914 11. The court shall endeavor to appoint a spouse or family member by lineal consanguinity as
915 emergency limited guardian ad litem, emergency limited guardian, or emergency limited conservator,
916 and in no event shall the respondent be subject to orders of the court or actions by the emergency
917 limited guardian ad litem, emergency limited guardian, or emergency limited conservator that restrict
918 freedoms of the respondent beyond what is necessary to preserve the immediate health and welfare of
919 the respondent.

920 12. No petition shall seek relief that is in conflict with any properly and previously executed will,
921 trust, power of attorney, durable power of attorney, health care directive, advance directive or other
922 directive(s) unless undue influence is proven in the creation of such documents by clear and
923 convincing evidence at a hearing held under the rules of civil procedure.

924
925

926 **.990 Penalties.**

927 1. A violation of or a failure to perform any provision of this code shall be considered an emergency
928 for the purpose of hearing on such violation or failure, and a finding that a violation or failure
929 occurred shall result in immediate termination of the guardianship/conservatorship and with all rights
930 returned to the ward.

931 (a) A determination of any violation or failure to perform any provision of this code shall be
932 considered by a preponderance of evidence.

933 (b) A correctable error shall not be considered a defense for any violation or failure to perform any
934 provision of this code.

935 2. Upon petition by any interested person, a new hearing shall be required to re-determine any
936 incompetency. Upon petition by any person or entity, such new hearing shall be governed by the
937 rules of criminal procedure in order to guarantee the preservation of the respondent's future civil
938 rights.

939 3. Upon petition by any person or entity, additional remedy for relief of any non-criminal violation or
940 failure to perform any provision of this code shall be governed by the rules of civil procedure.

941 4. Any person who wrongfully causes or conspires with or assists another in causing the unwarranted
942 determination of partial incompetence or incompetence of any individual under the provisions of this
943 code or the denial of any individual of any rights accorded to them under the provisions of this code
944 shall be penalized under the provisions of United States Code Title 18, Part 1, Chapter 13, § 242.