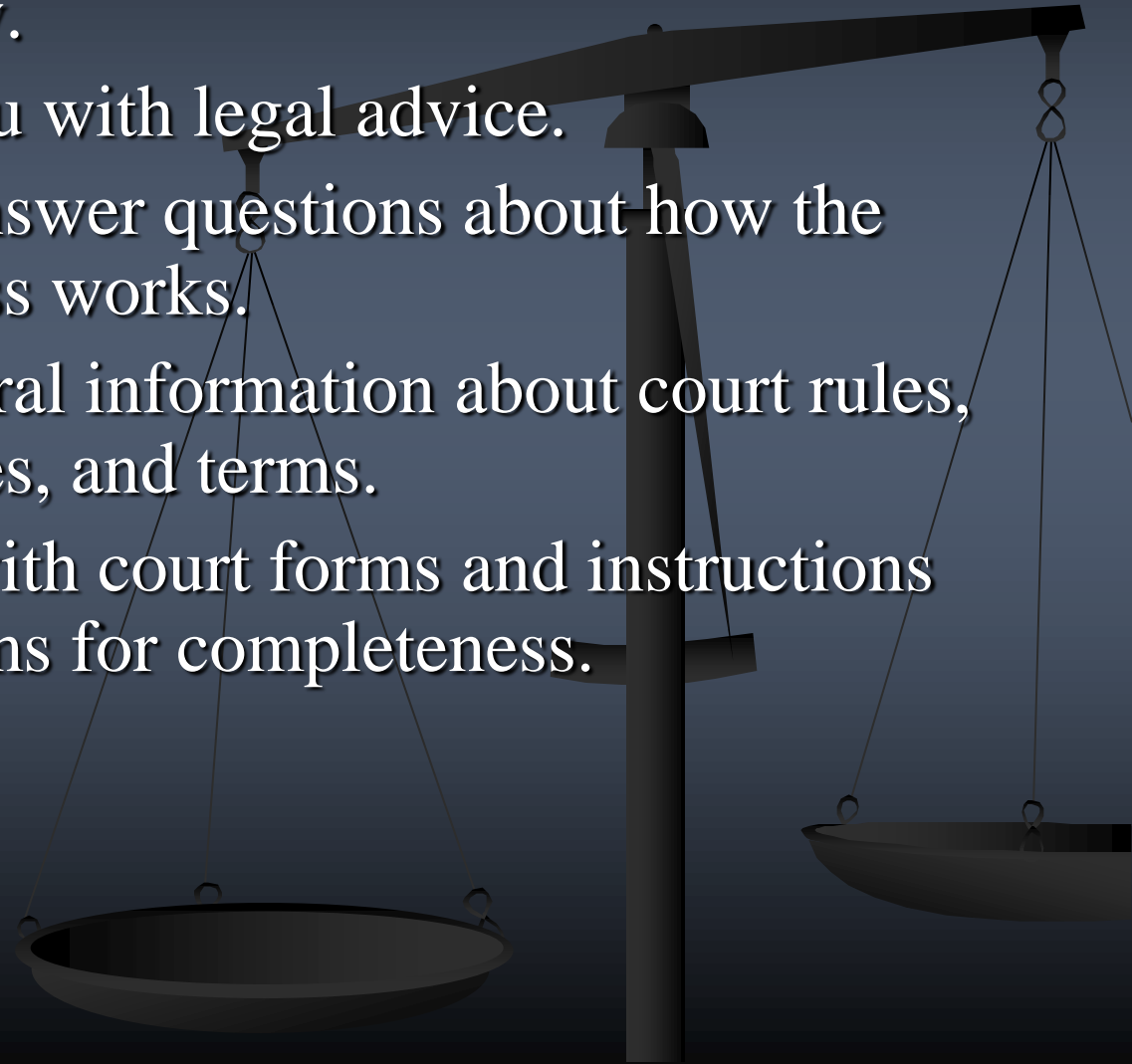


**Becky Byer  
Lincoln County  
Register in Probate**



# What Can I do for you?

- I am not an attorney.
- I cannot provide you with legal advice.
- I can explain and answer questions about how the guardianship process works.
- I can give you general information about court rules, procedures, practices, and terms.
- I can provide you with court forms and instructions and check your forms for completeness.



GUARDIANSHIP  
Due to Incompetency

# Presentation Goals:

- Define “What is a Guardianship”. (Legal definition as set forth in Black’s Law Dictionary – Abridged Sixth Edition.)
- Explain why a guardian of the person and/or estate is necessary.
- Explain the duties and powers of a guardian of the person.
- Explain the duties and powers of a guardian of the estate.



# Presentation Goals (continued):

- Provide, review and assist you with completing the forms necessary to file a petition for a guardianship.
- Explain the court process.

# What is Guardianship?

- A legal arrangement under which one person (a guardian) has the legal right and duty to care for another (the ward) and his or her property.
- A guardianship is established because of the ward's inability to legally act on his or her own behalf because of minority or mental or physical incapacity.

# What is a Guardian of the Person?

- A guardian of the person is an individual appointed by the court to make decisions for an individual who the court has determined is incompetent.

# What are the Duties of a Guardian of the Person?

- Make an annual report on the condition of the ward to the court.
- Make an effort to secure necessary care or services for the ward that are in the ward's best interests.
  - Regular inspection of the ward's person, condition, surroundings, and treatment.
  - Examination of the ward's health care and treatment records and authorize re-disclosure as appropriate.
  - Attend and participate in staff meetings relating to the ward's treatment and care.
  - Inquire into the risks and benefits of, and alternatives to, treatment for the ward, particularly if drastic or restrictive treatment is proposed.
  - Consult with providers of health care and social services in making all necessary treatment decisions.

# What are the Powers of a Guardian of the Person?

- Only those rights and powers specifically authorized by statute, rule, or court order.
- Any other right or power is retained by the ward, unless the ward has been declared incompetent and that right or power has been transferred to the guardian.

# What is a Guardian of the Estate?

- A guardian of the estate is an individual or corporation appointed by the court to manage the financial affairs of another person who has been determined to be incompetent or a spendthrift.

# What are the Duties of a Guardian of the Estate?

- Take possession of the ward's income and assets and prepare an inventory of the same.
- Use the ward's income and assets to maintain and support the ward.
- Prepare and file with Register in Probate on an annual basis an accounting of income, assets, expenses and liabilities.
- Pay debts of the ward, including filing tax returns.



# What are the Duties of a Guardian of the Estate (continued)?

- For a ward who receives governmental benefits, apply to be appointed as the ward's representative payee.
- Upon the termination of the guardianship, deliver the ward's assets to the person(s) entitled to them.
- Perform any other duties required by court order.



# What are the Powers of a Guardian of the Estate?

- Court Approval Not Required:
  - Apply for public or private benefits.
  - Pay support obligations of the ward.
  - Authorize access to or release of the ward's confidential financial records.
  - Sell, mortgage or lease the ward's property at or above fair market value.
  - Invest & reinvest any of the ward's assets.
  - Retain real and/or personal property of the ward.
  - Settle claims and/or accounts of the ward.

# What are the Powers of a Guardian of the Estate?

- Court Approval Required:
  - Transfer assets of the ward to an existing trust or establish a new trust.
  - Purchase annuity or insurance contract or change beneficiary or terms of existing contracts.
  - Establish or exercise rights of the ward under a retirement plan or account.
  - Exercise elective rights the ward might have upon the death of a spouse or parent or release or disclaim any interest to which the ward may be entitled due to inheritance.

# What a Guardian of the Estate May Never Do:

- Loan any of the ward's money or assets.
- Use any of the ward's money or assets to benefit himself or herself.
- Make gifts of the ward's money or assets.
  - Church donations or offerings.
  - Birthday, Christmas, etc. gifts for family and/or friends.

Forms!

Forms!

Forms!





# **Petition for Permanent Guardianship Due to Incompetency**

# Interested Persons

- The proposed ward if 14 years of age or older.
- The spouse of the proposed ward, if married.
- Any adult child of the proposed ward.
- The parent(s) of a proposed ward.
- If no spouse, child, or parent, any heir that may be reasonably ascertained.
  - Siblings.
  - If no siblings, grandparents.
  - If no grandparents, aunts and uncles, etc.

# Should I ask that a Standby Guardian be appointed?

- Appointment of the Standby Guardian becomes effective immediately ...
  - Upon the death, unwillingness or inability to act, or resignation of the original guardian.
  - Upon the court's removal of the guardian.
  - When the original guardian is unable to act due to an extended vacation or illness or is otherwise unable to fulfill his or her duties.

# Benefits of Appointing a Standby Guardian

- No further hearing required.
- No lapse of guardianship duty or authority over the ward.
- Can be permanent or for a limited period of time.



# My Petition is complete. What do I do with it now?

- Contact the Register in Probate to make an appointment to file your guardianship action.
- When you meet with the Register in Probate, you will be asked to file your original petition and the mandatory \$200 deposit for GAL fees.
- Once your petition is filed, the Register in Probate will appoint a GAL and assign a hearing date and time to your case.



# Order Appointing Guardian ad Litem or Attorney

# What does a Guardian ad Litem (GAL) do and why is one necessary?

- A guardian ad litem (GAL) is required to be appointed in all guardianship proceedings.
- The GAL is an attorney who advocates to the court the *best interests* of the proposed ward as to the guardianship proceedings.
- The GAL functions independently, in the same manner as an attorney, and shall consider, but is not bound by, the wishes of the proposed ward or the positions of others.
- The GAL has none of the rights or duties of a guardian.



# Order and Notice of Hearing



Statement of Acts by Proposed  
Guardian and Consent to Serve  
as Guardian

# Preparing for the Hearing

- Prior to leaving the Register in Probate Office you will be provided with authenticated copies of the Petition, the Order for Hearing and the Order Appointing GAL.
- You can decide if you want to make the additional copies for the interested persons on your own or if you want the Register in Probate to make them for you.

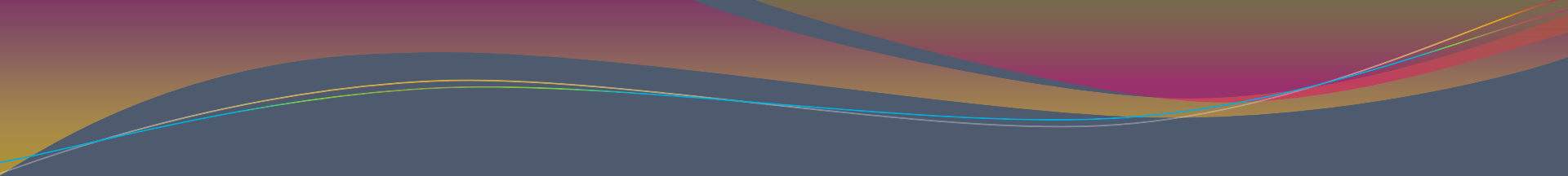
# Preparing for the Hearing (continued)

- You will need to provide a copy of the Petition, the Order for Hearing and the Order Appointing GAL to each of the interested persons that you listed on the Petition.
- Copies can be provided by any of the following accepted methods of service:
  - Regular Mail
  - Certified Mail (Return Receipt)
  - Personal Service
  - Fax (Must provide a transmittal report)

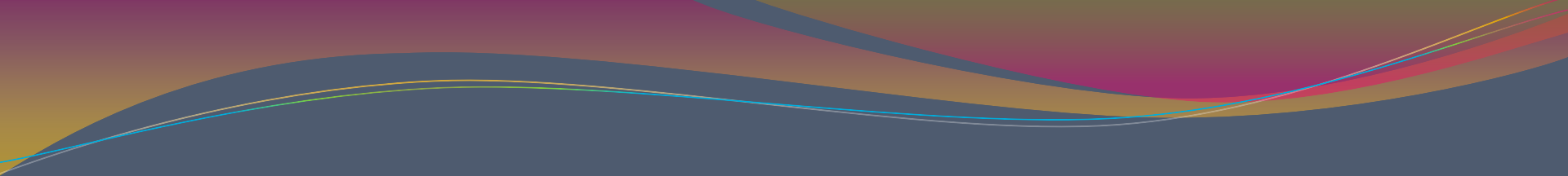
# Preparing for the Hearing (continued)

- Keep close track of the date(s) and method(s) of service that were used for serving each of the interested persons, as you will need to provide this information to the Court on an *Affidavit of Service* form.
- This is a good time to get signatures on the *Waiver and Consent to Guardianship* form.
- Arrange an appointment for your ward to be seen by his or her physician so that they are able to complete the Examining Physician's or Psychologist's Report prior to the hearing.





Affidavit of Service  
(Guardianship,  
Conservatorship, Protective  
Placement or Protective  
Services)



**Waiver and Consent to  
Petition for Guardianship  
Due to Incompetency**



# **Examining Physician's or Psychologist's Report**

# Examining Physician's or Psychologist's Report

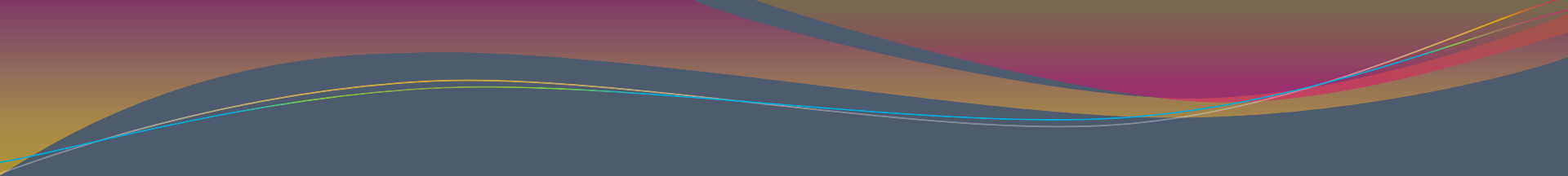
- Report must be prepared by a licensed physician or psychologist.
- Report must be recent. Lincoln County's policy is that the report must be prepared no more than ninety (90) days prior to the scheduled hearing.
- The Petitioner must file the original report with the Register in Probate at least three (3) days prior to the scheduled hearing.
- The Petitioner must provide a copy of the report to the proposed ward or his or her attorney, the guardian ad litem, and the petitioner's attorney (if any).

# Pre-Hearing Checklist:

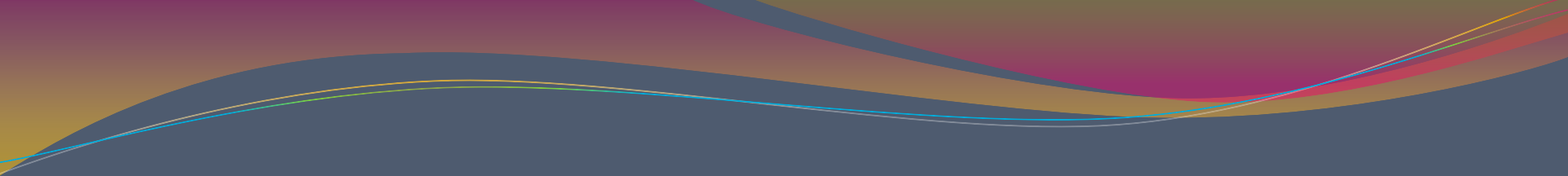
- Be sure that the following documents are filed with the Register in Probate prior to the hearing:
  - Examining Physician's or Psychologist's Report
    - At least 4 business days prior to the hearing.
    - Copy to Ward
    - Copy to GAL
  - Affidavit of Service
  - Waiver and Consent

# Pre-Hearing Checklist (continued):

- *Determination and Order on Petition for Guardianship Due to Incompetency AND Letters of Guardianship of the Person (Due to Incompetency)* forms must be complete and ready for the judge to sign at the hearing.



**Determination and Order on  
Petition for Guardianship  
Due to Incompetency**



# **Letters of Guardianship of the Person Due to Incompetency**





# **Letters of Guardianship of the Estate Due to Incompetency**

# The Guardianship Hearing

- Who must appear at the hearing?
  - The proposed guardian, co-guardian, and stand-by guardian(s).
  - The ward, unless the GAL has previously determined that their presence can be waived.
  - The Guardian ad Litem.

# The Guardianship Hearing (continued):

- After calling the case and noting the appearances, the judge will ask the GAL to give his or her recommendation.
- The judge may request brief testimony from the petitioner(s) and/or the ward.
- After hearing all of the facts and reviewing the reports contained in the file, the judge will make his findings and order.
- If the guardianship is granted, the judge will sign the Order and Letters of Guardianship that you submitted.

# I'm the guardian...so now what?

- You must provide a copy of the *Determination and Order on Petition for Guardianship due to Incompetency* to the ward, the guardian ad litem, the ward's placement facility (if other than your home) and to the agency responsible for providing services to your ward.
- Advise physicians and service providers that you have been appointed Guardian of the Person for the purpose of making personal and medical decisions on behalf of your ward.



# Guardianship or Conservatorship Inventory



# **Annual Report on the Condition of the Ward**



# Account of Guardian or Conservator

# How much will it cost?

- There is a \$200 deposit due at the time the Petition is filed. It will be applied to the Guardian ad Litem (GAL) Fees at the conclusion of the proceedings. If the GAL fees are less than \$200 the balance will be refunded. If more, the county will seek reimbursement from the ward's assets.
- You will need one copy of the Determination and Order on Petition for Guardianship. The cost for this copy will be \$7.
- You will need a minimum of one certified copy of each of the Letters of Guardianship. The cost per certified copy is \$3 per certification and \$1 per page.
- The Forms Packet to initiate the action (provided today) is \$5.



# Total Costs - Recap

■ GAL Deposit	\$200.00*
■ Copy of Order	\$ 7.00
■ Certified Copy of Letters	\$ 11.00
■ Forms Packet	\$ 5.00
■ Inventory Filing Fee	<u>\$ 20.00</u>
	\$ 243.00

\* May vary depending on the final GAL bill.

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