

FINAL SCRIPT —6/3/04

INSTRUCTIONS FOR GUARDIANS SUPERIOR COURT STATE OF WASHINGTON

Dick Sayre:

Hi, my name's Dick Sayre, and I'm an attorney who's devoted my practice primarily to guardianship matters. Most people who are appointed as guardians have a lot of questions about their new duties and responsibilities. This video is intended to help answer those questions, and to clarify your role as a guardian.

Guardians assume some very important responsibilities. As guardian, you may be responsible for the life, healthcare, well being, and property of another person. Your duties are set forth by the state in Title 11 of the Revised Code. If you feel you need help to carry out those duties, you may wish to consult with an attorney, but you must remember that the ultimate responsibility rests with you. As guardian, you have a fiduciary duty to act in the best interests of the person you represent. Serious consequences can result if you do not perform those duties properly. Examples of the legal forms and reports you will need to file with the court will be provided later. But for now, please pay close attention throughout this video, as you will be given detailed information on your duties and responsibilities.

Court Commissioner Val Jolicoeur :

Hi. I'm Commissioner Jolicoeur. I'd like to thank you for accepting the role of guardian. You'll find it both challenging and rewarding. The responsibility of caring for a person who is no longer capable of caring for him or herself, and of protecting their assets for their benefit, is a very important one. I believe that you'll find great satisfaction in

knowing that you've honestly and in good faith helped individuals who can no longer help themselves.

It is the responsibility of the Superior Court to oversee all guardianships and to make certain that they are functioning in the best interests of an incapacitated person. As you may know by now, an incapacitated person is one who has had a guardian appointed. This person is also often referred to as a ward. The court must review periodic reports and accountings that you, as guardian, are required to file. The judges and commissioners of the court take this responsibility seriously, and we expect that you will do the same.

There are two basic types of guardians: guardians of the person and guardians of the estate. You may be appointed as one or the other, or both. The guardian of the person has the responsibility of arranging for the personal affairs of the incapacitated person, such as food, clothing, shelter, and medical decisions. The guardian of the estate is responsible for managing the assets of the incapacitated person.

The first step in any guardianship process is that the court clerk will require you to file an oath. This is a sworn commitment to faithfully carry out the duties of guardian. After the oath is filed, one of the first things you'll need to do is have Letters of Guardianship issued by the court clerk. These are the official court documents that show your authority to act on behalf of the incapacitated person. You must then select a standby guardian. This person will have authority to act in an emergency, if you are unavailable.

In addition, the standby would normally become the successor guardian, if for some reason, you resign or are removed. This standby designation is made on the court-approved Designation of Standby form, which is signed by you and the standby, and then filed with the court.

After being appointed guardian, you must keep the court advised as to your current address and that of the incapacitated person anytime there is a change. This must be done in writing and filed with the court.

Now, let's review specific duties of someone appointed as guardian of a person, followed by the duties of someone appointed as guardian of an estate. Remember, in your situation, this could be one or the other, or both.

As guardian of a person, you should maintain a level of care for the incapacitated person that is consistent with his or her financial resources, and should take steps to preserve whatever measure of independence the incapacitated person can handle. You must file a report each year informing the court of the person's condition and needs. This is called a Care Plan. The first Care Plan is very detailed and is called the Initial Care Plan. Subsequent care plans are brief updates and are called Periodic Care Plans. The Initial Care Plan must be filed within 90 days of your appointment as guardian. Periodic Care Plans must be filed within 90 days after each anniversary of the guardianship appointment date.

As guardian of the person, it's important to visit the incapacitated person on a regular basis in order to ensure that their personal and medical needs are being met. You should confer with their doctor and other healthcare and service providers, and maintain good communication with them, since you'll have authority to give consent for medical treatment or any other needs that arise. Remember too, that, as much as possible, and to a reasonable extent, you should consult with the incapacitated person about medical and personal care matters and take his or her preferences seriously.

In summary, as guardian of the person, you must decide where the incapacitated person will live and how food, clothing, health and personal care, transportation and social stimulation will be provided. Before acting, you should try to discuss these decisions with the incapacitated person, even though he or she is impaired. The alternatives selected should preserve the greatest degree of personal independence, dignity and lifestyle of the incapacitated person. If the person dies or improves sufficiently and no longer needs a guardian, you should notify the court in writing within 30 days and take steps to terminate the guardianship.

Next, let's discuss the performance of your duties as guardian of the estate.

A guardian of the estate is appointed to manage the estate of a minor until the minor reaches age 18, or the estate of an adult who is unable to manage property and other assets because of incapacity. In this case, the guardian is responsible for all of the assets of the incapacitated person, including real property, motor vehicles, furniture,

cash, stocks, bonds, and other valuables. The court has a duty to make certain that all assets of the person are protected and are not used improperly.

When you're appointed guardian of the estate, the court may order that a surety bond be posted which will cover the assets of the incapacitated person. The premium is paid from the estate. Alternatively, the court may require that all or part of the funds in the estate be placed in a blocked account at a financial institution, such as a bank. If the court orders funds held in a blocked account, you must provide a Receipt of Funds in Blocked Account form to be completed by a representative of the financial institution. This must then be filed with the court.

Upon your appointment as guardian of the estate, it's your duty to promptly locate and take control of all the incapacitated person's assets to ensure that they are properly safeguarded. As you identify and locate the assets of the estate and the sources of income, and arrange for them to become part of the guardianship, you should immediately open a checking account in your name as guardian of the estate of the incapacitated person. Use the checking account to deposit income and to pay bills. Identify all sources of income and all expenditures in the checkbook register. If excess funds accumulate, you should open an interest bearing or investment account titled the same way.

Once you, as guardian, have located and assembled the assets, you must prepare an inventory on a form approved by the court. This document must be filed within 90 days of your appointment as guardian.

You must also file an accounting each year which is due no later than 90 days after the anniversary date of your appointment. You are required to account for all income received, disbursements made, and any other disposition of estate assets. The accounting must identify the sources of the income and the recipient of the disbursements. Good record keeping is essential. The guardianship checking account should be set up to provide cancelled checks or scanned images. The court may ask to see the bank statements, cancelled checks, receipts, and invoices when reviewing your annual accounting.

In dealing with the assets, you're required to invest prudently and to use the care in managing property that a reasonable prudent person would use in dealing with the property of another. It is acceptable to request fees for work performed. Many guardians for family members or low-income persons waive fees. If you intend to charge fees, keep a record of the duties you've performed and the time spent.

Reasonable attorney fees may also be charged against the guardianship estate. If you need to take money from an investment account to pay bills, be sure to place the money first in the checking account. In that way, all expenditures will go through one checking account and it will be much easier for you to prepare the accounting. Always use the

incapacitated person's social security number for all accounts, not your own. Never put their money in the same bank account in which you keep your own funds. You must always maintain the incapacitated person's money separate from your own or anyone else's. You may never use that money for yourself unless you have a court order to do so. And remember, your responsibility is solely to the incapacitated person, not to their heirs.

Normally, funds held in the estate of a minor must be preserved until the child reaches the age of 18. If funds are needed for the minor's support, a court order must be obtained. In determining what expenditures may be appropriate on behalf of a child, the court will consider the parent's obligation to support the child, and their financial ability to do so.

It may be appropriate for some incapacitated persons to be able to pay their own utility bills or control a small checking account. Doing so may provide a measure of self-esteem. This is acceptable. However, if you intend to provide funds for an incapacitated person to control and spend, court approval should be obtained. A clean audit trail must be maintained for disbursements from a guardianship account. For this reason, withdrawals using ATM cards are generally not acceptable.

The guardian of the estate is also responsible for seeing that all taxes such as property taxes and income taxes are paid. This will include filing tax returns on behalf of the incapacitated person. You may hire and pay a tax preparer without prior court approval.

You should seek court approval for large expenses such as the purchase of a car or home, but most routine expenses can be incurred and paid without specific court approval. It's important to remember to maintain insurance on property in the estate such as a home or vehicle. A proposed budget should be submitted to the court at the beginning of the guardianship and annually thereafter. Some investments such as speculative stocks are not reasonable in a guardianship. Funds should be invested prudently and conservatively. Advance court approval should be obtained before property of the estate is sold or disposed of.

If the guardianship is no longer necessary or ends because of death, you must file a final accounting and request discharge from the court. If the incapacitated person dies, you should file a Notice of Death with the court within 30 days. In some cases, you may apply to the court for authority to exercise the powers and duties of a personal representative and then proceed to administer and distribute the estate of the deceased incapacitated person without any further appointment.

In summary, as guardian of the estate, you must take control of the property, pay the debts and bills, collect the income and prudently invest the property of the estate. You will also have to periodically account to the court about property, income and disbursements. You must keep detailed records of all transactions and should, to the extent practical, keep the incapacitated person informed about his or her finances.

If you follow these instructions with reasonable diligence, I'm confident you will not only perform your duties as required by law, but you'll also gain much satisfaction from the services you have rendered to a person who is in need of your help. Thank you.

Dick Sayre:

As you have heard, the responsibilities of a guardian are considerable, but so is the need. The court and its personnel look forward to working with you over the coming years. Any time you have occasion to contact the court, please include the name of the incapacitated person and the court file number.

Thank you for your time and your willingness to serve.

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