

Conservatorships in Tennessee

Conservatorships in Tennessee Handling A Pro Bono Referral

Presented By

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What Is A Conservatorship

- **A conservatorship** is a legal relationship created by a court order taking decision-making authority away from a person with a disability and vesting that authority in another.
- A “person with a disability” is a person over 18 determined by a court to be in need of partial or full supervision, protection and assistance by reason of mental or physical incapacity.
- In Tennessee, conservatorships are brought in any court exercising probate jurisdiction. In most counties that is the Chancery Court.
- In Davidson County, the Seventh Circuit (Probate Court) has jurisdiction.
- T.C.A. 34-1-101; 34-3-101

Why Conservatorships Matter:

- Need for family stability and legal relationships:
 - Consenting to treatment decisions
 - Application for benefits
 - Admission/ release/ decision-making at care facilities.
 - Education decisions
 - Disney Cruises

Conservator's Statutory Responsibilities

- Make decisions in the best interest of the Respondent
- File annual report with the court using forms available on-line
 - *Annual Status Report*
 - *Annual Financial Report*
- *Report forms are available at the court's website and are straightforward so no lawyer help should be required*

Amy to expand on this after this presentation

Who Is the Client

The statute allows any person with knowledge of the circumstances to file a Petition

- With this project, clients will be screened and only referred if:
 - Family member seeking a conservatorship over adult person with a profound disability.
 - The family member has or will obtain a physician's statement that the respondent needs a conservator and is not capable of making decisions.
 - No one else is seeking to be conservator (uncontested matters).
 - Financial Eligibility: Household income of the client does not exceed 200% of the Federal Poverty Guidelines. Nelson Mullins accepts up to 300% of poverty.

TCA -34-3-102

Role Of Legal Aid Society

- Screen cases for merit and financial eligibility (very defined screening tool).
- Make referral to individual lawyers via Nelson Mullins.
- Provide connection to mentors and physical office space to meet with clients.
- Provide professional negligence coverage.
- Follow up with lawyers regarding status of case.
- Report hours to CLE Commission (1 hour of E&P credit for every 5 hours of pro bono help provided up to 3 hours per year).

Referrals from Legal Aid Society

- LAS will send the lawyer or firm coordinator an email with 2 or 3 case summaries for potential clients.
- When a lawyer selects a case and notifies Legal Aid Society, an Opening Letter is sent to the lawyer with the client contact information and to the client. Attorney receives the screening tool.
- An initial interview is required to confirm the information needed for the Petition. This may be in person or by telephone. You may also send the questionnaire in advance for all the relevant info. and then set a meeting to review and sign.
- When the Petition is finalized the client must sign it and it must be notarized. Make sure you meet the client and the respondent.
- An Affidavit of Indigency can be completed at the time of signing the Petition asking for pre-payment of filing fees to be waived. This is for 200% and below the poverty level.

Where is the court action filed

In Tennessee, conservatorships are brought in any court exercising probate jurisdiction. In most counties that is the Chancery Court.

- In Davidson County, the Seventh Circuit (Probate Court) has jurisdiction.
- The Petition for Conservatorship is filed in the county of residence of the person with a disability.

The Petition for Conservatorship

- A Petition for Conservatorship is an adversarial court action, the Petitioner v. Respondent
- There are no universal forms approved for use in Tennessee. We created forms and they are in your training manual.
- The statute specifies the contents of the Petition.
- The Petition must be signed and sworn by the Petitioner.
- T.C.A. 34-3-104

The Petition for Conservatorship

- **The Statute provides that the Petition contain 10 facts:**
 - **(1)** The name, date of birth, residence and mailing address of the respondent;
 - **(2)** A description of the nature of the alleged disability of the respondent;
 - This does not require paragraphs but one or two sentences stating the facts of the mental or physical disability, usually reflected in the physician's statement.
 - **(3)** The name, age, residence and mailing address of the petitioner, a statement of the relationship of the petitioner to the respondent, and a statement of any felony or misdemeanor convictions of the petitioner, if any;
 - **(4)** The name, age, mailing address, relationship of the proposed conservator and a statement of any felony or misdemeanor conviction of the proposed conservator and, if the proposed conservator is not the petitioner, a statement signed by the proposed conservator acknowledging awareness of the petition and a willingness to serve;

The Petition for Conservatorship

- **(5)** The name, mailing address and relationship of the closest relative or relatives of the respondent and the name and mailing address of the person or institution, if any, having care and custody of the respondent or with whom the respondent is living. If the respondent has no then living spouse, child, parent or sibling, the petition shall so state and more remote relatives are not to be listed;
- **(6)** A summary of the facts supporting the petitioner's allegation that a conservator is needed;

The Petition

- **(7)** The name of the respondent's physician or, where appropriate, respondent's psychologist or senior psychological examiner and either:
- **(A)** A sworn examination report described in § 34-3-105(c);
- **(B)** A statement that the respondent has been examined but the sworn examination report has not been received but will be filed before the hearing; or
- **(C)** A statement that the respondent refuses to be examined voluntarily, with a request that the court direct the respondent to submit to medical examination;

Petition for Conservatorship

- 8) The rights of the respondent to be removed from the respondent and transferred to the conservator. The rights the court may remove may include, but are not limited to:
 - right to vote
 - dispose of property
 - execute instruments, make purchases, enter into contractual relationships
 - hold a valid Tennessee driver license
 - give or refuse consent to medical and mental examinations and treatment or hospitalization
 - or do any other act of legal significance the court deems necessary or advisable
 - The enumeration of rights that may be removed is listed at T.C.A. 34-3-107 (2)(B)

Petition for Conservatorship

9) In these cases the Petitioner will not be asking to manage the Respondent's property. The Respondent has no assets and the only income (if any) is from Social Security. The attorney will request the Court to waive the filing of a Property Management Plan. Petition is set up to waive the appointment.

10) In these cases the Petitioner will not be asking for a guardian ad litem. A family member seeks to establish a conservatorship and the disability is undisputed, the attorney will request the Court to waive the appointment of a guardian ad litem. Petition is set up to waive the appointment.

Filing Fees and Costs: Affidavit of Indigency

- Client can file an Affidavit of Indigency seeking to file the Petition without paying the filing fees up front. Must be 200% or below poverty level.
- Clients should be made aware that the court may order them to pay the fees at the hearing. The fees can be assessed for payment from the funds of the Respondent as the action is for the Respondent's benefit.
- If unable to pay the filing fee, Nelson Mullins pays the fee.

Physicians Statement

- The Physician's Statement is a signed and sworn form stating that the Respondent needs a conservator.
- A form is available at the Probate Court Website or Manual.
- The client is expected to have obtained the statement prior to referral from Legal Aid Society. Not usually the case so we provide the form and ask the client to obtain the statement.
- T.C.A. 34-3-105

Process When Petition is Filed/Service:

- When the Petition is filed that includes the request for waiver of Guardian ad Litem, the Court reviews the Petition and enters an Order waiving the appointment of a GAL and setting the case for hearing.
- The Order is served on the Respondent by the Court with Notice of the Hearing and a copy of the Petition.
- Notice is mailed by the Clerk. The Clerk mails the Notice to the closest relatives required to be named in the petition and to the person having care of the Respondent or any institution where Respondent is living.

T.C.A. 34-1-108

Rights of the Respondent

Recognizing that removing rights has significant legal and personal consequences, the statute establishes rights and protections for the Respondent:

- Court may appoint Guardian ad Litem.
- Court may appoint attorney ad litem to advocate the interests of the Respondent.
- Respondent has a right to attend any hearing and to present evidence.

Nuts & Bolts of the Hearing

- **Place:** In Davidson County, the Seventh Circuit (Probate) Court in the Historic Metro Courthouse
- **Evidence:** Burden of proof is upon Petitioner; court will consider the petition, physicians statement and testimony of Petitioner.
- **Testimony:** Statement from Petitioner reciting in lay words disability, limitations on daily activities, history of education, where Respondent has lived and who has provided care.

Order for Conservatorship

- Makes a determination that a conservator is needed
- Names the conservator or co-conservators; may designate standby conservator
- Enumerated the powers removed from the Respondent and vested in the conservator
- Issues Letters of Appointment

Resources: Davidson County Probate Court

Probate Court Clerk's Office

Phone: (615) 862-5980

Fax: (615) 862-5987

Fax Filings: (615) 296-4502

Office Hours: 8:00 am to 4:30 pm

Monday through Friday (Excluding [holidays](#))

Mailing Address

Probate Court Clerk's Office

P.O. Box 196300

Nashville, TN 37219-6300

Street Address

Probate Court Clerk's Office

1 Public Square

Suite 303

Nashville, TN 37201

Davidson County Probate Forms:

<http://circuitclerk.nashville.gov/probate/probateforms.asp>

Resources: Statute

- Guardianships and Conservatorships Generally T.C.A. 34-1-101 to 34-1-133
- Conservatorship Generally T.C.A 34-3-101 to 34-3-109