

DISABILITY JUSTICE

Rights of Person Subject to Guardianship or Conservatorship

➤ At time of hearing, initial appointment:

- To be provided notice of a hearing and that a petition for guardianship/conservatorship has been filed.
- To be present at the hearing, unless excused by the court for good cause.
- To nominate (suggest) someone that you'd prefer to serve as your guardian/conservator if you must have one.
- To be represented by a lawyer if you request a lawyer, the visitor appointed by the court recommends that you have a lawyer, or the court believes you need a lawyer.
- To present evidence, subpoena witnesses and documents, question witnesses, and otherwise participate in the hearing.
- To request that the hearing be closed (not open to the public).
- Court should only appoint a guardian/conservator if the judge finds by clear and convincing evidence that:
 - You are incapacitated.
 - Your needs cannot be met by less restrictive means, including technological assistance.
- Court should only grant a guardian or conservator the powers necessary as determined by your limitations and needs and should make orders that will “encourage the development of [your] maximum self-reliance and independence.”

➤ Once guardian/conservator is appointed:

- Within 30 days, you should be provided with a copy of the appointment order and information about your right to request to modify or terminate the guardianship and/or conservatorship.
- To be provided with notice of a filing of a report by the guardian/conservator and with a copy of the report within 10 days after the filing of the report.
- Participate in decisions the guardian/conservator makes for you, to the extent possible.
- Have a guardian/conservator who becomes and remains personally acquainted with you and maintains enough communication with you to know your capacities, limitations, needs, opportunities, and physical and mental health.

- Have guardian/conservator take “reasonable care” of your belongings.
- Have guardian/conservator spend your money to meet your needs for support, care, education, health, and welfare, and to save any money you have remaining.
- To keep responsibilities for some decisions affecting your well-being, if “reasonable under all circumstances.”
- To have any compensation paid to the guardian or conservator approved by the court or by your conservator.
- Not to have your guardian/conservator revoke a medical power of attorney that is already in place or make decisions in the place of an agent you have selected, without court approval.
- Not have guardian/conservator “commit” you for mental health treatment over your objection except as allowed under the law for civil commitment (see C.R.S. §27-65-106-119).
- To be represented by a lawyer *at your expense* after a guardian/conservator is appointed, unless the court finds by clear and convincing evidence that you lack the capacity to give informed consent to be represented (in which case the court should appoint a guardian ad litem to represent your best interest).

➤ **To modify/terminate guardianship or conservatorship:**

You have a right to petition the court to modify (change, limit) or terminate a guardianship and/or conservatorship. The court should terminate guardianship/conservatorship if you no longer meet the standard for establishing guardianship/conservatorship (see above). For more information, see handout and flow chart on Modification/Termination of Guardianship and Conservatorship.

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