

Once the judge decides that a guardianship is necessary and that the individual proposed as guardian is appropriate the court will order that the person be appointed guardian. It is at this time the scope of guardianship is also ordered depending on the petition and the witnesses' testimony. Limits of authority will be determined by the judge. The court may at that time set a **bond** which will have to be posted by the guardian. The bond is a legal promise that the guardian will properly perform their duties as guardian. If an estate guardian is established the bond is simply a written promise by the guardian to safeguard the funds and other property. In the case of a large estate, however, the court may require that a commercial bond be posted. Such a bond is similar to an insurance policy in which the surety company promises to reimburse the estate of the disabled person if the guardian improperly uses the funds and/or property of the disabled person.

The judge will enter a written order appointing a guardian. However, the legal document which is the "badge" of guardianship is entitled **letters of office**. This is a one page legal paper informing everyone that the guardian has been appointed and has continuing legal authority. Presentation of the letters of office is the way the guardian proves he or she has proper legal authority. See Section 13 Guardianship Checklist for steps involved.

### 3. Manner in Which a Guardian Exercises Authority

Substituted judgment by a guardian for a client can be exercised in two very different ways. One, the guardian can act as a "reasonably prudent person" without reference to the manner in which the ward may have made those decisions in the past. When operating in this manner the guardian will act more conservatively regarding safeguarding the assets of the ward and in making decisions regarding the personal care of the individual.

The second way a guardian may make decisions is to determine how the client would have made the decision based on that individual's life history and past conduct. A guardian must have evidence of the way in which the ward made decisions previously. The guardian cannot speculate about how the client would have made the decision. It should be understood that the action of the guardian may have an impact on persons other than the client. For example, how the guardian of estate spends money for the benefit of the

ward is more important than the concern of the people who may inherit the client's money after the client's dies.

The personal liability of the guardian is very real. If the guardian acts honestly, consistent with law, and keeps accurate records, he or she will not be personally liable for anything to anyone! The action taken by the guardian as guardian is not action taken personally by the guardian. This means that the guardian's personal funds are not liable for payment of the client's debts nor can the creditors seek to collect those debts from the guardian personally. Generally, if the guardian acts in good faith and in the best interests of the client there is no liability to third parties. When operating as guardian of the estate there are some basic rules:

- Keep very good records regarding income and expenses.
- Set up a separate checking account.
- File the financial reports required by the court.
- The guardian does not have to be an accountant but good records are important.

Other comments and information and forms will be covered in Section 12 for Estate guardian duties.

Residential placement authority. The guardian cannot place the client in a residential facility without specific court approval. The judge's decision to grant placement authority, if granted, is made at the time when the original guardianship is established. **Important**-See Section 5 for Illinois law.

Withdrawing life sustaining treatment. The Illinois Health Care Surrogate Act (HCSA) was passed in 1991 and amended in 1998. The act provides standards for making medical treatment decisions for those lacking decision-making capacity and who have not executed a DPOA for health care. The act establishes responsibilities for Illinois physicians and health care facilities in treating patients. The HCSA is important enough to require a separate section to introduce the reader to this law. While discussion of it can be expanded in Section 8, it is recommended that legal counsel be consulted if there are further questions about implementation.

Relationship between agent under power of attorney and guardian is important. If the disabled person has executed a valid power of attorney, the (POA) continues to operate even after a guardian is appointed. An agent

operating under a durable POA for health care has broader legal authority than a guardian. In a POA for health care a person can direct the agent not to take certain action in the event of serious illness. A guardian, on the other hand, may have the legal obligation of taking such action if it appears to be in the client's best interests. Under such circumstances, the decision of the agent takes precedence over that of the guardian. However, the court that imposes the guardianship can specifically order that the guardian's decision supersede those of the agent operating under the durable POA.

Terminating the guardianship can be ended in various ways. A guardianship may be ended in various ways.

- The client dies and after the court is petitioned to discharge the guardian with a death certificate attached, the guardian is discharged. If there was an estate involved the court will also ask for a final accounting and ask for appropriate legal disposition of money remaining in estate and to turn over balance to executor along with any property.
- Guardian can resign for personal reasons or the guardian may die. If the guardian wants to resign a motion to the court is made, submission of final accounting if estate guardian, and then a new guardian is appointed. If guardian dies, the original GAL must be notified so a successor appointment can be made.
- Under Illinois law, the client can, at any time, request that his or her rights be restored. Again, after a motion is made, the original GAL is notified. The court will hold a hearing and determine whether a guardianship is necessary and, if not, will request a final accounting, if it is an estate case, and terminate the guardianship.

As the opening (3) Sections come to a close which were contributed by Howard Eisenberg with the Legal Clinic at SIU-C, he closed his remarks this way. " *The important points for an individual to remember in a guardianship is to comply with all the legal requirements, to keep good financial records, to document decisions (and visits) which are based on the 'substituted judgment' standard, not to self deal, to apply to the court for direction when in doubt, and to assure that at the end of the guardianship the matter is properly and completely closed out.*"