

personal decisions including things like health care, living arrangements, school arrangements, care arrangements. A conservatorship is where an individual is appointed to make financial decisions on behalf of the Incapacitated Adult.

So, in a conservatorship case, there's a finding by the court that the alleged incapacitated person is unable to manage his or her affairs by reason of the same types of ideas: mental illness, mental deficiency, physical incapacity and that the adult has assets that could be wasted or dissipated if not properly managed...or there are funds that are needed to support that person that are not currently being accessed or best utilized.

So, the conservator is the name for the person who's appointed to manage the financial affairs of the incapacitated adult. I will point out here that conservatorships are not necessary if the incapacitated adult has no assets and is merely surviving on Social Security benefits. That's because it is possible for an individual to be appointed as a representative payee through the Social Security Administration, to receive and manage Social Security benefits on behalf of an incapacitated person without the need for a conservatorship.

Conservatorships are quite complicated, and they can be quite overwhelming, especially for individuals who are not professionals. So, in my humble opinion, they are to be avoided if possible.

Just like in the guardianship context, a conservatorship can be temporary or permanent and a conservator can be appointed on an emergency basis with or without notice. Now, very often guardianships and conservatorships are undertaken simultaneously under the same case number- not always but quite often.

Who can be a conservator? The same idea as in the guardianship context-you must be an adult to act as a conservator and then we have the list of statutory priorities which are virtually identical to the list of priorities in the guardianship statute.

What does this guardianship process look like? Well, it's not uncomplicated and that's why it can be overwhelming for individuals who are not lawyers. First of all, there is a mandatory training program for-I mentioned the term non-licensed petitioners. The name of the person asking the court to be appointed as the guardian or conservator, is a petitioner in this case. The case is initiated by the filing of a petition to appoint a guardian or conservator.

A person who is not a fiduciary has to take a mandatory online training program to be both a guardian and conservator. That training program is available through the

Supreme Court's website and I've given you the reference earlier on in the presentation- there are a lot of good materials there, by the way.

But it provides an outline for the petitioning party about what their duties and responsibilities are, if they are appointed as a guardian or conservator for an individual. As I mentioned, the process is initiated by a petition, but it's also accompanied by a variety of other documents. As of January 1st, there were some additional new forms and those new forms are also available on the Supreme Court website. Once the petition is filed, a variety of things happen at the courthouse level.

First, the judge appoints an attorney to represent the alleged incapacitated adult. In Coconino County, we have a list of attorneys who are willing to accept court appointments. I think that is true in other counties but not all. Another individual, called a Court Investigator is also appointed by the court and the court investigator is a neutral party, who will, during the course of the case, interview all of the parties involved to prepare then, a report to be filed with the Judge, which recommends whether guardianship is necessary or not (and whether the party who has petitioned to become the guardian or conservator is the appropriate party to act in that capacity).

Here in Coconino County, we have a court investigator who is a full-time employee of the county-she works for the Health Department and so, she handles these cases all the time in other counties like Yavapai County, they have a list of court investigators who just kind of rotate through those cases. Then, the third individual who is appointed by the court to be involved here is either a physician, a psychologist or registered nurse who is going to evaluate the individuals who's the subject of the case and again submit a report to the court about whether the medical practitioner thinks that a guardianship or conservatorship is warranted in this instance.

As a person who represents a lot of petitioners, we always nominate for the court a physician who has an established relationship with the individual who's the subject of the guardianship. We want someone who knows this person, who can speak to what kind of deficiencies or strengths they may have and to what extent they need a guardianship and conservatorship. Because the court is not going to just pull a name out of thin air.

Once these individuals become involved in a case, the judge also sets a hearing date and it depends how far out that hearing date is county by county. Again, here are Coconino County, we typically see hearings set in about four weeks in some counties, it's not that fast. But in the interim, you must as a petitioner personally serve the alleged incapacitated adult at least 14 days prior to the hearing. So, personal service means that they must be served by a process server or a sheriff, who can then of course, file an affidavit with the court that says that they personally, served this individual with the documents.

As you can imagine, in some instances it seems like a waste of time to do that-because the person is so incapacitated, they have no idea what's being handed to them and it can also be quite upsetting to them. So, if we anticipate that situation we will often make sure that there's a family member or a trusted advisor or friend present to kind of smooth out the service of process. The petitioning party coordinates this entire process and notifies all the parties involved about their appointment by the court, provides them with copies of any relevant court orders and then of course make sure that all the reports that you see listed here-get filed with the court before the hearing.

I would say that most cases involving guardianship and conservatorship are uncontested. This means that the individual who is the subject of the guardianship or conservatorship does not object to the appointment of a guardian or conservator. Now again, very often this is because they are so incapacitated that they don't have the ability to even comprehend the nature of the proceeding let alone object to it. But, that's why they get an attorney so that the attorney can as best possible, sit down with them to explain the process or to at least evaluate the process and try to represent that individual as best they can.

The incapacitated adult may waive his or her appearance at the hearing, if they have been personally served and very often, they don't want to appear at the hearing even if they have a modicum of understanding, the whole process is still overwhelming and if they're not going to object they don't want to show up at the hearing either but that just means their attorney appears on their behalf.

So, assuming it goes smoothly and there's no argument about whether a guardian or conservator should be appointed then there's a brief hearing, they typically run about 15 minutes and at that hearing the court makes the requisite findings that the individual is incapacitated and appoints the guardian or conservator. There's an acceptance of that appointment filed by the person appointed and then something called letters of guardian and conservator are issued. That is just a very old-fashioned word for a court order and its sort of a confusing term- but it's just a piece of paper that says you, person X are appointed as guardian and conservator for person Y. Very often the letters are then subsequently certified, a copy is certified by the court clerk's office and that is the proof of appointment, that the petitioning party then carries around and shows everybody who needs to know that they have the authority to act.

A conservator is statutorily required to file something called a surety bond. So, a surety bond is an insurance policy that backs up the conservator's performance of his or her duties. So that if they basically run away with all of the incapacitated adults' assets, the insurance company will pay up. Right, sort of like a surety bond in the construction context, it guarantees performance.

Now, the amount of a surety bond is equal to the amount of assets that are under management by the conservator. It can be reduced by what we call fixed expenses if

someone's in a nursing home and it cost \$60,000 a year well we know that \$60,000 is going to be spent over the course of that year and it won't be part of the bond calculation. The cost of the bond is not insignificant, but it is payable out of the incapacitated adults' assets.

Contested cases again much less frequent than uncontested cases, become contested because the person who's the subject of the case or really any other interested party, can object, in writing or orally at the first hearing. I won't go into the details of who's an interested party because it's defined by law-generally speaking, it's going to be family members. The case then proceeds like any other contested civil proceeding but perhaps in a more expedited fashion so whereas the civil case may take two years to go to trial-that's not going to be the same with a contested guardianship or conservatorship.