

December 3, 2010

## **Part Two: Adult Guardianship of Disabled Children in New Mexico - The Process**

The process of adult guardianship begins when a parent or other caregiver petitions the court in the county where the adult in need of protection resides. Typically, this petition is drawn up with the guidance and counsel of an attorney, and may include a brief history, as well as the nature of the incapacity and current concerns. The petitioner has the burden of proof in setting forth the reasons why the adult requires a guardian.

Once the petition is filed with the district court, notice is required to be given to the alleged incapacitated person, as well as certain family members or others as outlined by law. A hearing will be scheduled, at which both the alleged incapacitated person and the petitioner must attend.

In order for the court to make a guardianship determination, they must have access to data that supports the need. The court receives this information through three independent sources: a guardian ad litem, a court visitor and a qualified health care professional.

The court will appoint a guardian ad litem; an attorney who represents the alleged incapacitated adult. This attorney interviews the alleged incapacitated adult, as well as the petitioner and possibly others involved in the adult's life. They also review any reports generated by others, and present the alleged incapacitated adult's position at the hearing. They may be required to provide the court with a written report of their recommendations, but if allowed, can submit their findings verbally.

A court visitor will also be appointed by the court, who is typically a social worker or other qualified person. They visit the current home, interview both the alleged incapacitated adult and petitioner, and evaluate the adult's daily needs, as well as their capabilities. They will then submit their findings and recommendations to the court in a written report. The court visitor may or may not be required to appear at the hearing.

The court also requires a report from a qualified health care professional. This is usually a report written by a doctor or other health care practitioner who has treated the alleged incapacitated person and can make a recommendation of whether or not this person needs a guardian.

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After all three individuals have compiled their data and submitted it to the court, the judge assigned will review the information. Then a hearing will be held in front of the judge in a closed court proceeding. This means that no one other than those designated by law will be allowed in the hearing room without express permission by the judge.

During the hearing, the alleged incapacitated person will be represented by the guardian ad litem, and the petitioner will be represented by an attorney of their choice or will represent themselves. Each party will be given opportunity to present their positions and the judge will make the final determination of guardianship. The judge will then sign an order prepared by the petitioner or petitioner's attorney if guardianship is granted, or will outline limitations to guardianship that will be drawn up after the hearing.

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