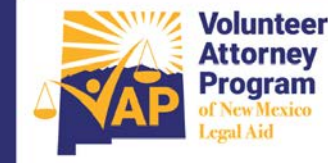


WELCOME TO THE VAP PRO BONO COLLABORATIVE ECHO CLE SERIES

02/20/2024

Adult Guardianship 101
Part 1: Petition to Hearing

Agenda



Introductions - Zac Addison, Esq., VAP Director, New Mexico Legal Aid, Inc.



Announcements for Session: Marissa Gonzalez, VAP Paralegal, New Mexico Legal Aid, Inc.



Topic Presentation: Adult Guardianships 101 – Part 1: Petition to Hearing



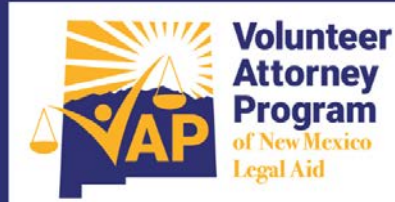
Topic Presenter: Patricia Galindo, JD – Supervising Attorney, Administrative Office of the Courts



Case Presenter and Q&A: Zac Addison, JD – VAP Director, New Mexico Legal Aid



Overview & Closing Remarks: Volunteer Attorney Program of New Mexico Legal Aid



Guardianship 101 – Part 1: Petition to Hearing

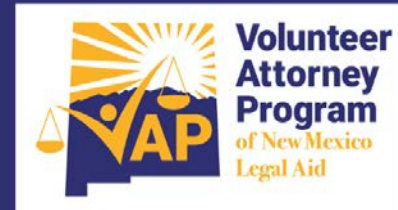


PATRICIA M. GALINDO, JD
Supervising Attorney

Focus of Today's Presentation

What Is
Guardianship?

Petition → Hearing



Different Types of Guardianships

Kinship Guardianship

Minor children are raised by a family member, relative or friend of the family.

Treatment Guardian

Guardian make decisions on medications and/or treatment appropriate for another person, often in mental health cases.

Adult Guardianship

Incapacitated adult that requires assistance in managing his/her personal and/or financial affairs.

Guardian of Minor

- Insurance Settlement
- Deceased Parent
- Inheritance

Completely Different Than Any Other Case Types

Adult Guardianship & Conservatorship Cases

- Don't fit the traditional “civil” or “probate” case type.
- Very specific rules and time standards.
- Judge must ensure all processes are followed because of the potential loss of civil rights.

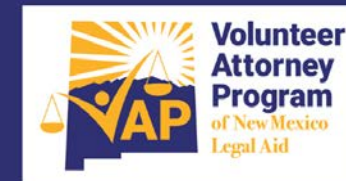


Adult Guardian & Conservator Statutes

Probate Code

Chapter 45, Article 5

- Part 3 – Guardians of Incapacitated Persons
- Part 4 – Protection of Property of Persons Under Disabilities and Minors



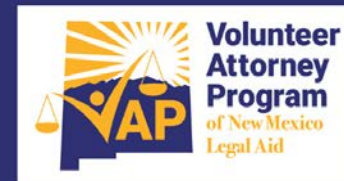
“Guardianship” Case



A court may appoint:

- a guardian
- a conservator
- a guardian and a conservator

Although a case may be called a guardianship case, it may actually involve both a guardian and a conservator.



How to Refer to an Individual in a Guardianship case?



- ◆ Prior to the hearing, the adult is referred to as the “**Alleged Incapacitated Person**” or the “**AIP**”.
- ◆ After a hearing, if a judge appoints a guardian and/or conservator, the adult is then referred to as the “**Protected Person**”.
- ◆ “Ward” is no longer used. Replaced by “Protected Person” in 2009.

What are Guardianship cases called?



Case Caption:

In the matter of . . .

These types of cases are referred to as “PQ” cases within the judiciary.

What is the difference between a Guardian and a Conservator?



Role of the Guardian



Appointed by the Court to make personal and healthcare decisions for another adult who lacks capacity.

- ✓ Medical Appointments
- ✓ Medical Treatments
- ✓ Living Arrangements
- ✓ Healthcare Services

Role of the Conservator



Appointed by the Court to manage financial affairs for another adult who lacks capacity.

- ✓ Checking Account
- ✓ Investments
- ✓ Manages Real Estate
- ✓ Income/Expenses

Who can serve as a Guardian or Conservator?



Judge may appoint:

- Family Member
- Friend/Acquaintance
- Company/Agency
- Professional Services Company

When Is Guardianship To Be Used?



- ▶ As is necessary to promote and to protect the well being of the person;
- ▶ Designed to *encourage the development of maximum self reliance and independence of the person*; and
- ▶ Shall be ordered only to the extent necessitated by the person's actual functional mental and physical limitations.

Definition of an Incapacitated Person

§ 45-5-101(F)

A person who demonstrates over time either **partial or complete functional impairment** by reason of

- mental illness,
- mental deficiency,
- physical illness or disability,
- chronic use of drugs,
- chronic intoxication or
- other cause

Types of Guardianship/Conservatorship

LIMITED

Judge determines the adult is able to handle some affairs on their own but could use some assistance and appoints someone with limited duties and responsibilities.

PLENARY (FULL)

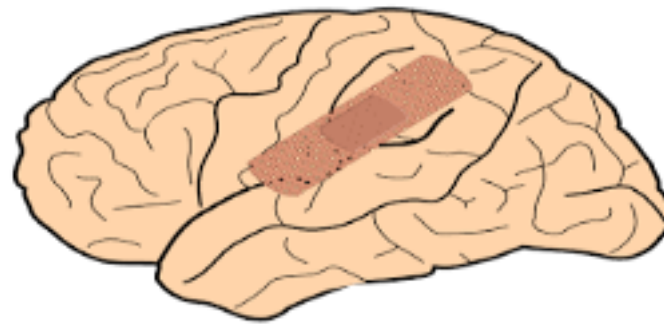
Judge determines the adult is unable to handle any of their own affairs and appoints someone else to make all decisions for them.

Protected Person Retains Rights



An adult for whom a guardian or conservator has been appointed retains all legal and civil rights except those which have been expressly limited by court order or have been specifically granted to the guardian and/or conservator by the court.

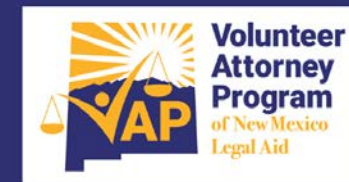
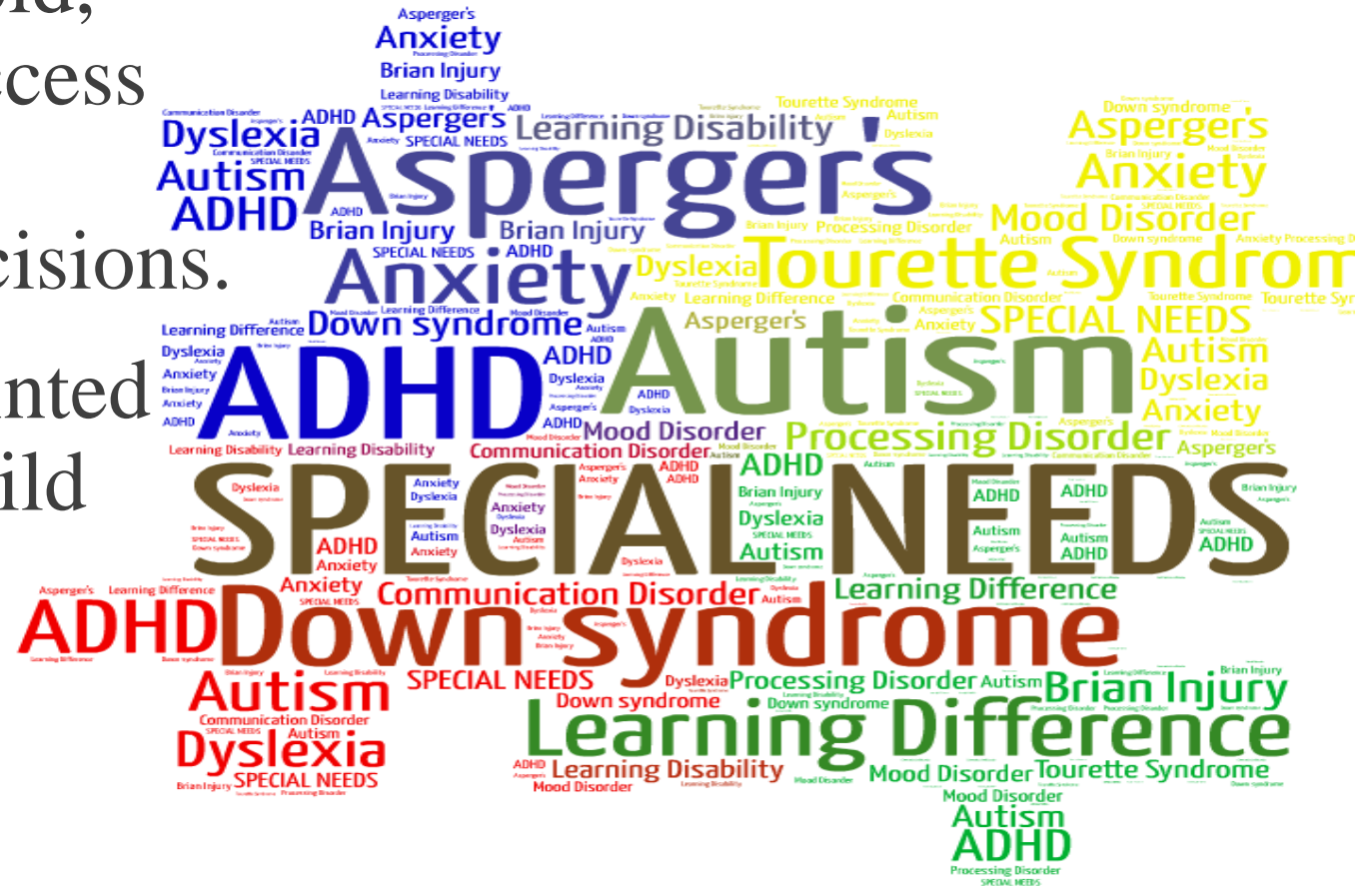
Most common scenarios in Adult Guardianship cases



Adult Child with Disabilities

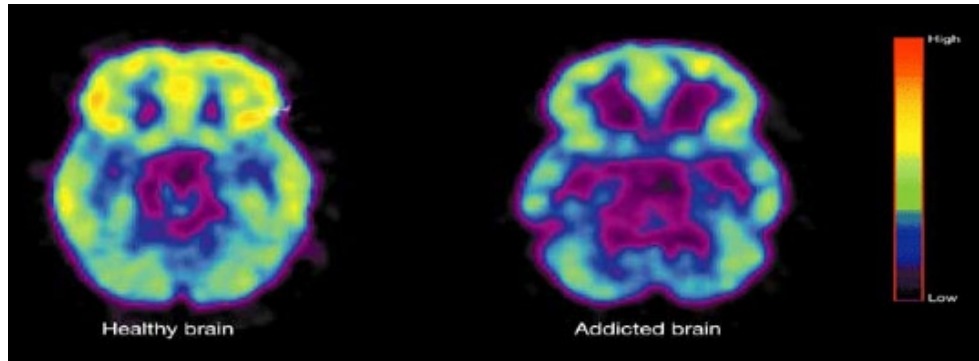
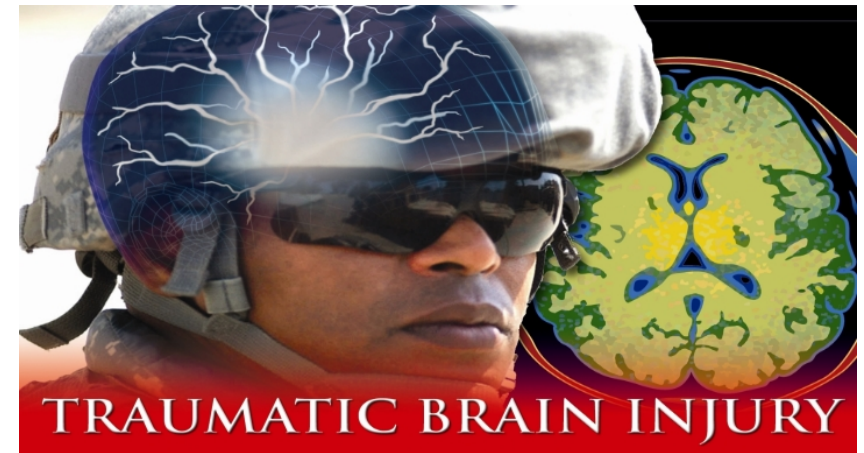
Once a child turns 18 years old, parents may not be able to access healthcare information or participate in educational decisions.

Parent(s) petition to be appointed the guardian of their adult child with disabilities.



TBI or Other Brain Damage

Adult with severe brain damage from an accident or from long-term drug and/or alcohol abuse.



Older Adult

Older adult with cognitive issues. Prognosis that the condition will continue to get worse.



First Step in a Guardianship Case



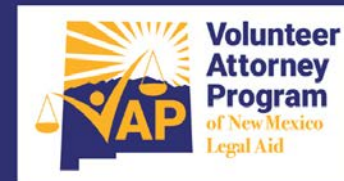
- Guardianship case begins when a petition is filed in court.
- Guardianship cases are handled by District Courts in New Mexico.
- Venue – where an alleged incapacitated person resides or is present.

Who Can File A Petition?

§ 45-5-303(A)

An interested person may petition for appointment of a guardian for an alleged incapacitated person.

▶ “Interested Person” means any person who has an interest in the welfare of the person to be protected.



What Must a Petition Include?

Guardian

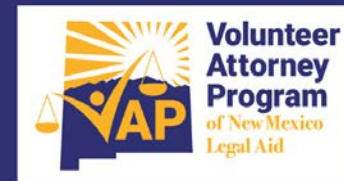
§ 45-5-303

Conservator

§ 45-5-404

Contact information for:

- Petitioner, including their relationship to the Alleged Incapacitated Person (AIP)
- Name of the Alleged Incapacitated Person (AIP)



Petition Requirements (continued)

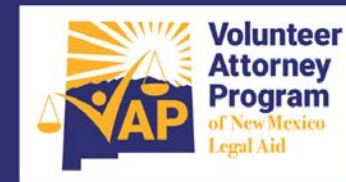
Close Familial Relationships

- spouse/domestic partner
- adult children/parent(s)
- adult siblings/adult relative
- adult step-children whom the AIP parent(s) has an ongoing relationship with

Petition Requirements (continued)

Additional Information

- current caretaker
- attorney
- representative payee
- guardian/conservator
- trustee/custodian
- VA fiduciary
- agent under a Power of Attorney



Petition Requirements (continued)

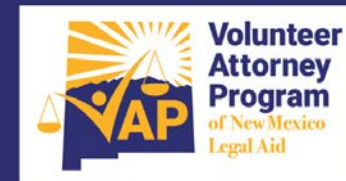
Other Information

- person previously nominated as guardian by the AIP
- proposed guardian and/or conservator
- recent decision maker for the AIP

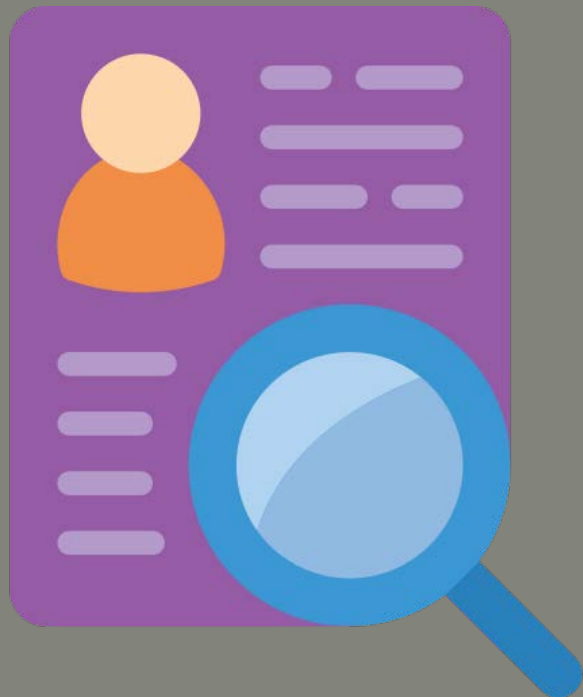
Information Sheet

Supreme Court
Form 4-992

- Identifies who has access to the court record and who is entitled to the Notice of Hearing
- Includes everyone mentioned in the Petition and required by statute.
- All of the branches of the AIP's tree.



Importance of Information Sheet



- ◆ Don't need to read the Petition for information.
- ◆ Provides clerks with a list of all individuals that must be added to Odyssey.
- ◆ Easily identifies who is entitled to notice and access to case information.

Second Step in a Guardianship Case



Judge reviews the Petition to ensure it complies with all statutory requirements.



Third Step in a Guardianship Case



- Court shall set a hearing on the petition within **five (5) days** of the petition being filed.
- Hearing must be set **no sooner than sixty (60) days** after the filing of the petition.
- **Notice of Hearing** – official notice of the hearing.

Who is Entitled to Receive Notice of the Hearing?

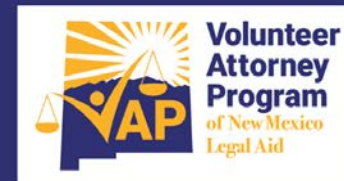
Guardianship

§ 45-5-309(B) & (C)

Conservatorship

§ 45-5-405(B) & (C)

- Every person listed in the Information Sheet (Petition)
- Any other person interested in the AIP's welfare that the court determines.

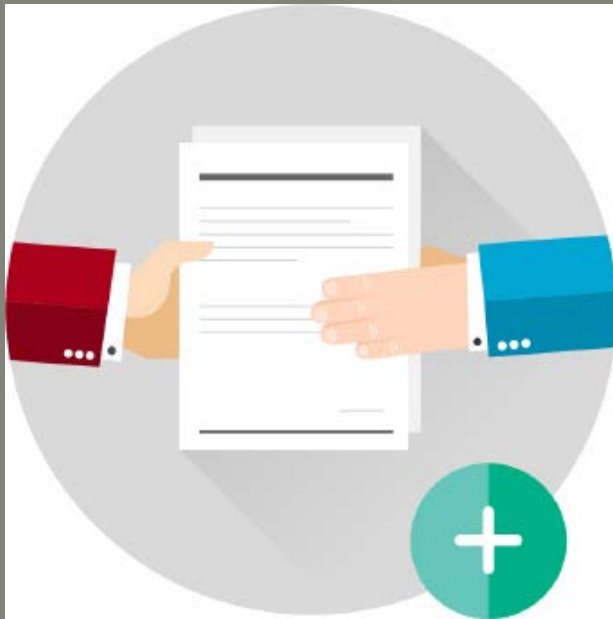


Notice of Hearing and Rights

Must Inform the
Alleged
Incapacitated
Person of These
Rights:

- to obtain an attorney of their own choice
- to object to professionals appointed
- to attend the hearing
- to present evidence at the hearing
- to subpoena witnesses and documents
- to examine witnesses at the hearing
- to participate in the hearing
- to be personally served with a copy of the notice and petition

Notice of Hearing and Rights (continued)



* The Alleged Incapacitated Person (AIP) must be **personally served**

● Notice of Hearing must include a description of nature, purpose and consequences of granting petition.

Notice of Hearing and Rights (continued)

The Court **SHALL NOT** grant the Petition if the Notice of Hearing and Rights does not substantially comply with these requirements.

- ✓ **Personal Service on AIP**
- ✓ **Notice of the AIP's Specific Rights**

**MUST
HAVE**

Fourth Step in a Guardianship Case

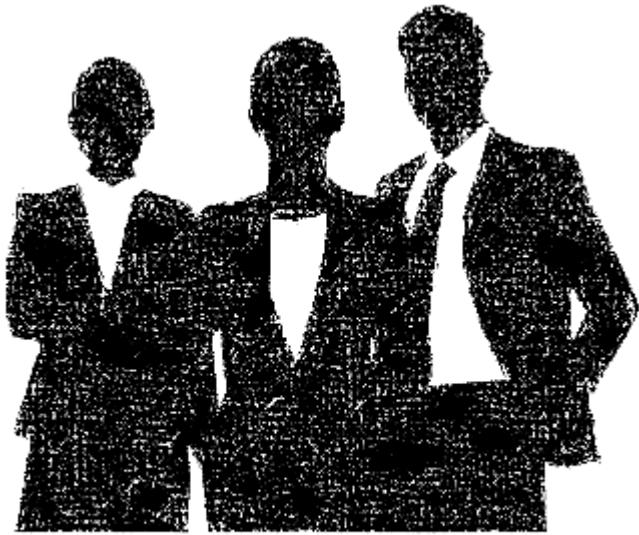


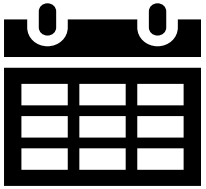
New Mexico statutes require the appointment of 3 professionals to assist the judge in determining functional limitation and capacity of the AIP.

- ▶ Guardian ad Litem (GAL)
- ▶ Qualified Health Care Professional
- ▶ Court Visitor

How Professionals Assist in a Guardianship Case

- ◆ Have a specific area of expertise and role in evaluating the needs of the alleged incapacitated person.
- ◆ Provide written reports and opinions on the best interest of the alleged incapacitated person.





Professional's Reports filed before hearing to determine if a Guardian &/or a Conservator should be appointed

Allows AIP to prepare for hearing

Judge can review before hearing

QHCP

14 days



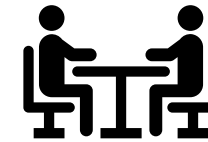
Visitor

11 days



GAL

7 days

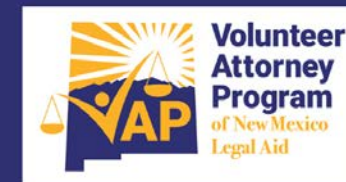


GAL reviews with AIP



Hearing

Importance of Deadlines



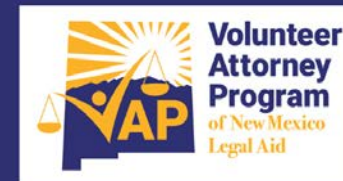
Pre- Adjudication Checklist

Statutory and Rule Requirements

- Information Sheet (Form 4-992)
- Notice of Hearing and Rights (Form 4-999)
- Personal Service - Alleged Incapacitated Person

PROFESSIONAL'S REPORTS:

- Qualified Health Care Professional
 - No later than 14 days before hearing
- Visitor
 - No later than 11 days before hearing
- Guardian ad litem
 - No later than 7 days before hearing

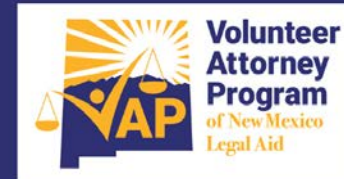


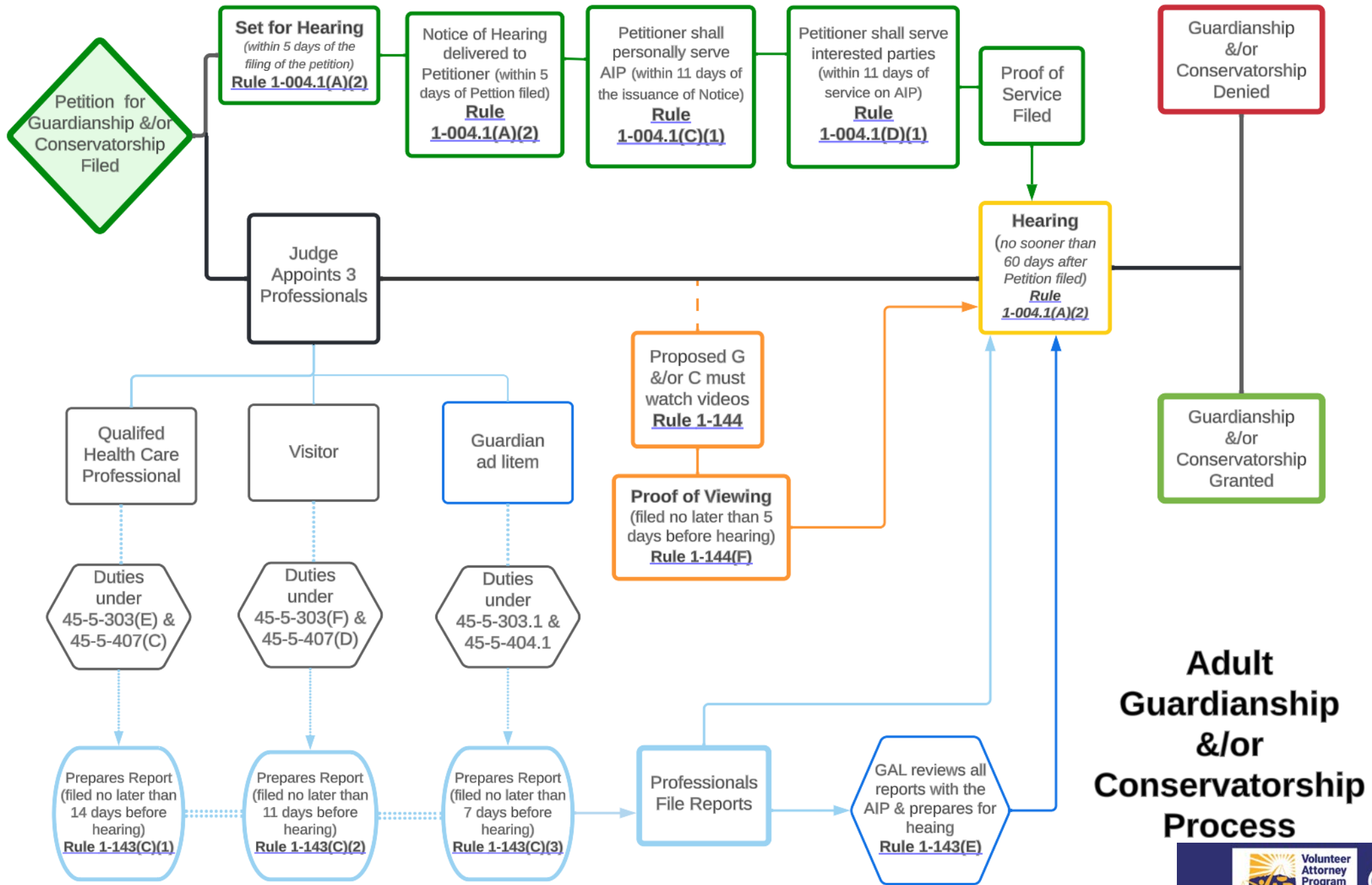
Orientation Program Videos



★ Proposed Guardian and/or Conservator **MUST** watch training videos.

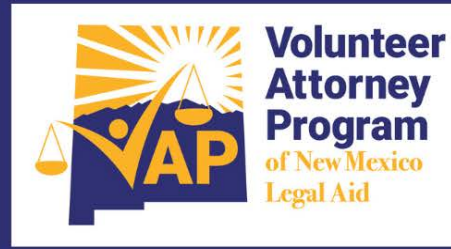
☑ Submit a certificate of completion **five (5) calendar** days prior to hearing.





Adult Guardianship &/or Conservatorship Process

Case Presentation



LEGAL ISSUE: What is the least restrictive means to protect a husband and wife who are both incapacitated due to dementia and whose power of attorneys only list each other as agents?

Factual Summary - Wife

- 80 y/o with diabetes, COPD, Alzheimers diagnosis 5 yrs ago and unable to
 - Distinguish napkin from plate
 - Remember familiar names, dates, etc.
- Out of town Son organizes pill planners each 2 weeks, reviews mail and finances
- Husband is Wife's live-in caretaker
 - Gives Wife 3 bottles/week of cough syrup to treat COPD cough = her blood glucose readings >300
 - She misses 40% of medication weekly
 - Husband defensive when asked
- Hospitalized twice with diverticulitis
 - Recent colon surgery
 - Unsubstantiated nurse allegation of cancer
 - Son unable to obtain oncology test results
- Released from Rehab facility on condition that in-home care be hired
 - Husband fired 2 caretakers after 1st visits alleging no \$, lack of need
- Poor hygiene contributing to UTI's

Factual Summary - Husband

- 87 y/o with congestive heart failure
- Borderline illiterate
 - Asks bank teller for help writing checks to “cash” each week
 - Pays most bills by check but forgets some
- Keeps loaded pistol on Wife/s nightstand
- Dangerous driver frequently causing close calls, resists giving up driving
- Recent decline
 - Overdosed on Rx meds/delusional
 - Paid fraudsters 4x’s in 1 week to cut down same tree
 - Getting lost walking/driving in familiar places
 - Tripled amount of cash withdrawals compared to 2 yr average
 - Defensive
 - Admits does not compare cash received at bank to check face amounts

Factual Summary - Both

- Husband and Wife both updated Financial and Healthcare POA's 15 years ago
 - Each named the other as agents
 - No alternate agents
- Property:
 - \$40K home in poor condition and location
 - \$200K in savings
 - \$20K in joint bank accounts with Son
- Monthly Income:
 - \$990 Husband SS Retirement
 - \$900 Wife SS Retirement
 - \$2K Wife Teacher Retirement
- Family:
 - Husband: 4 deceased daughters from 1st marriage + 3 living siblings (2 with dementia)
 - Half of 6 grandchildren's locations unknown
 - Wife: no living siblings or children outside this marriage
 - Husband + Wife:
 - Disabled adult daughter with physical & cognitive disabilities + 2 adult grandchildren
 - Son who is caretaker, 2 hours away

Question(s) of Practice

1. What steps can Son take to relocate Parents 2 hours away to his home so he can pay for a live-in caretaker from Parents' savings and monitor their care?
2. Can Son take any immediate steps to obtain Mother's medical records/oncology results?
3. If Son files for Guardianship and Conservatorship of both Parents, who is entitled to notice?
4. Would additional steps be required if Son lived in NM and Parents lived out-of-state (or vice versa)?

+

○

Adult Guardianship 101 - Part 2/4:
Petition to Hearing

Thursday, March 5, 2024
3:30 – 5:00 pm

Income Tax Series- Part 2/3:
Understanding Income Tax Benefits for
Low- & Middle-Income Families

Thursday, February 22, 2024
11:30 am – 1:00 pm

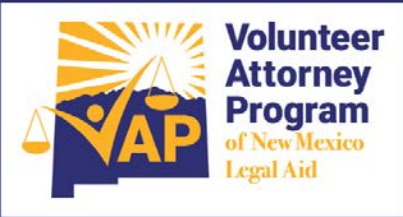
Next Sessions



Upcoming Pro Bono Opportunities

- **Law-La-Palooza Legal Fair in Albuquerque:**
Friday, March 1
- **Legal Fair in Roswell:**
Friday, March 8

If you are interested in volunteering at an upcoming legal fair, please sign-up [here](#).



THANK YOU FOR JOINING TODAY'S VAP PRO BONO COLLABORATIVE ECHO SESSION!

ADULT GUARDIANSHIP 101 -
PART 1
FEBRUARY 20, 2024

Topic Presenter:

Patricia Galindo, Supervising Attorney, Administrative Office of the Courts

Case Presenter:

Zac Addison, Volunteer Attorney Program Director, New Mexico Legal Aid

Facilitated By:

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Marissa Gonzalez, VAP Paralegal, NM Legal Aid

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