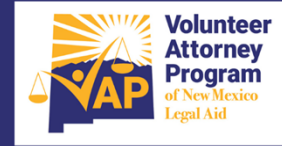


**WELCOME TO THE
VAP PRO BONO
COLLABORATIVE
ECHO CLE SERIES**

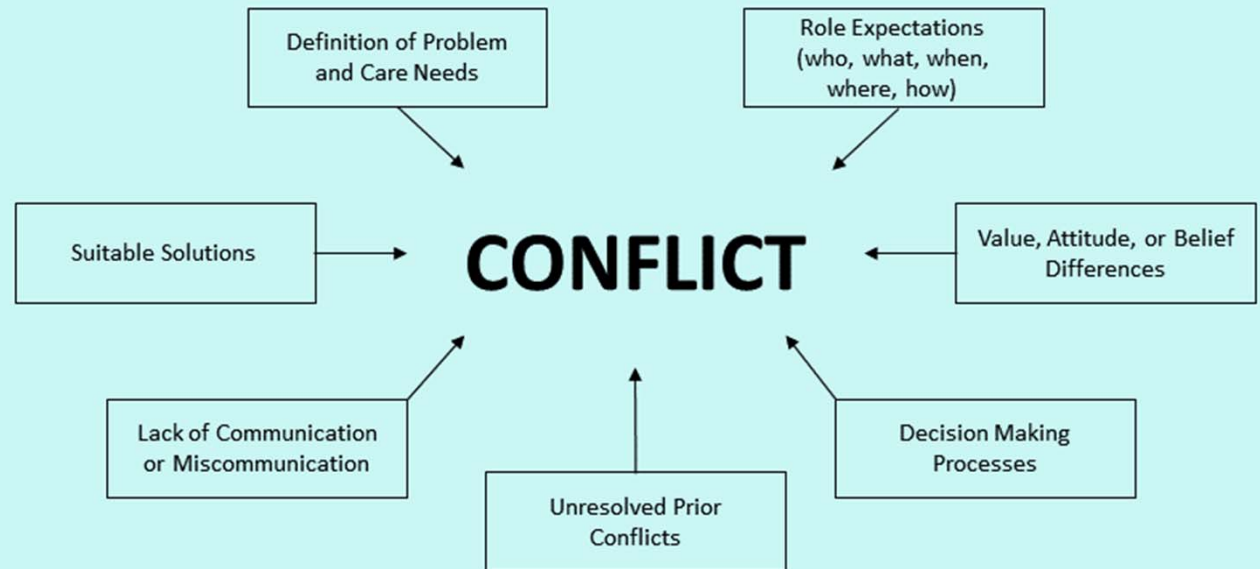
03/19/2024

**Adult Guardianship 101
Part 3: Dealing with
Family Conflict**

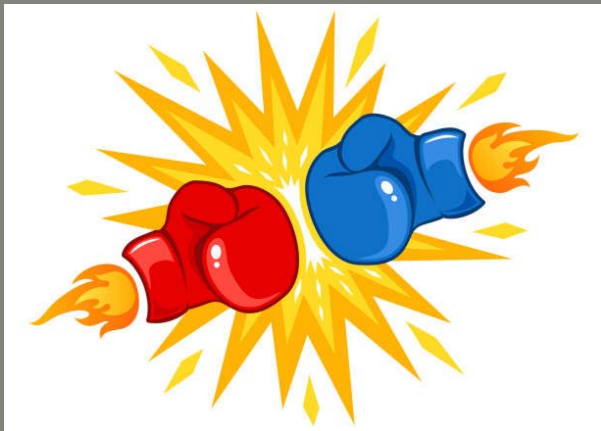


Most Family Conflict Occurs with Adult Siblings

Long Term Care and Family Decision Making: Potential Sources of Conflict



Pre- Adjudication Conflict



1. Appointment/Reports of Professionals
2. Unresolved family issues
3. Whether the AIP needs a Guardian
4. AIP's medical condition

Issues with Professionals



- Qualified Health Care Provider
- GAL
- Court Visitor

Unresolved Family Issues



- ✓ Parent's favorite
- ✓ Left to care for Parent
- ✓ Siblings live out-of-state
- ✓ Inequities in financial support
- ✓ Paid for college/wedding
- ✓ Bad apple/black sheep
- ✓ Change will/deed/accounts

No Need for a Guardian

Hardest part of growing up is..



Watching your parents grow old

- ✓ Minimizes Issues
- ✓ Take Parent's side
- ✓ Parent is “just getting older”
- ✓ General Denial

AIP's Medical Condition

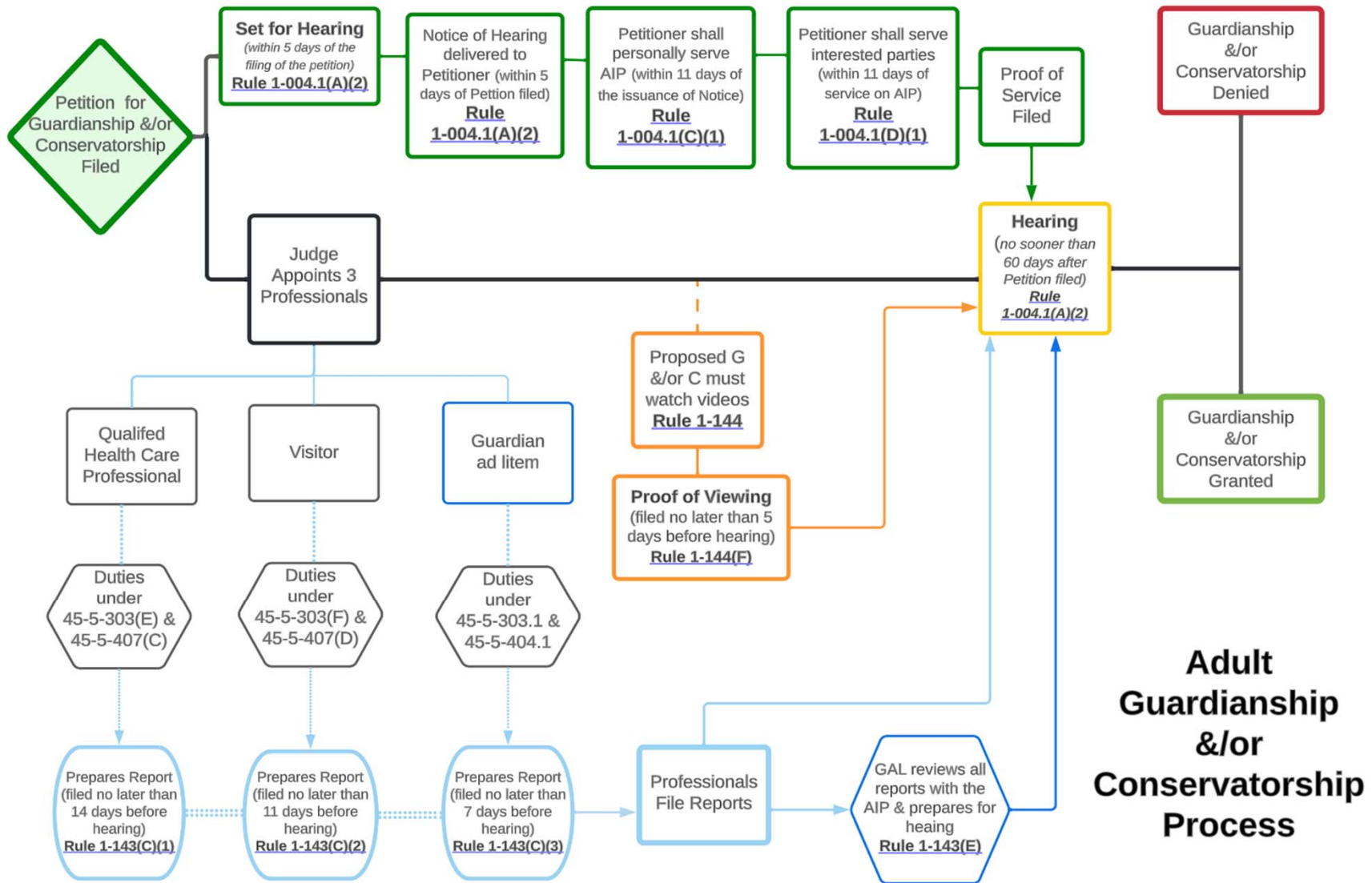


- You are just getting older
- It's all the medicine you are taking
- You just need to . . . exercise, lose weight, relax, get some more sleep
- The doctor doesn't know what they're talking about
- You need a second opinion

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.



Post Adjudication Conflict



1. Unhappy with Judge's decision
2. Disagreement with Parent's care
3. Costs associated with case
4. Disagreement on where Parent lives
5. Limited Visitation/Access
6. Cost of Parent's care
7. Depletion of Parent's assets

Who Pays the Cost?



§45-5-105. Compensation and expenses.

If not otherwise compensated for services rendered, any visitor, attorney, qualified health care professional or guardian appointed in a guardianship proceeding is entitled to reasonable compensation from the estate of the incapacitated person.

Dealing with Contested Guardianship Cases



- Talk to your client
- Mediation
- Ask the court to order each party to pay their own attorney's fees



Other Options

Grievance

§ 45-5-110



A protected person, or any interested person. . . who believes a guardian, conservator or representative payee is breaching their fiduciary duty or otherwise acting in a manner inconsistent with the Uniform Probate Code or orders of appointment, **may file a grievance with the court.**

4-999.1. Grievance about guardian or conservator.

Name of protected person: _____
Case number: _____
County where case is filed: _____
Judge assigned to case: _____

(Note: You can search for the case online at <https://caselookup.nmcourts.gov/caselookup/>)

GRIEVANCE ABOUT GUARDIAN, CONSERVATOR, OR REPRESENTATIVE PAYEE

This form is optional. If you choose to use it, please answer each question. Write "Unknown" or "N/A" if you do not know the answer or the question does not apply to your grievance. It will help the court to review your grievance if you provide as much information as possible. You may attach additional pages if needed for explanation of your grievance.

1. Information about you and/or protected person

Your name: _____

Your contact information: _____

Address: _____

Phone number: _____ Email: _____

Are you the protected person? Yes No

If no, what is your interest in the welfare of the protected person or to the case?

2. Information about your grievance

Type of Case:

Guardianship Conservatorship Other (e.g., trustee, representative payee, VA fiduciary)

Name of person grievance is against: _____

Their contact information: _____

Address: _____

Phone number: _____ Email: _____

Briefly describe below how the person has failed to comply with their duties and responsibilities. Describe what the person did or did not do, what they said, or any other actions of the person you are concerned about. Be as specific as possible, and please attach copies of relevant documents, such as court orders, petitions, letters to the protected person, etc.

Date: _____ Time: _____

Location: _____

Description of what happened: _____

What would you like the court to do? _____

Have you brought this to the court's attention within the past six months? Yes No

Do you have concerns for yourself or the protected person about raising this grievance?

Yes No If yes, what are your concerns?

If you are not the protected person, is the protected person aware of your grievance?

Yes No If yes, what was the protected person's response?

If no, why not? _____

Have you discussed your grievance with the person you have the grievance against?

Yes No If yes, what was the response?

If no, why not? _____

Have you contacted other authorities about this incident, such as Adult Protective Services, nursing home staff, ombudsman, law enforcement, Attorney General's Office, District Attorney's Office, Center for Guardianship Certification, Social Security Administration, Veteran's Administration, Office of State Auditor, or Office of Guardianship? Yes No

If yes, please identify any authorities you have notified, the date, and the result. Attach a copy of any materials submitted or received.

Authority: _____ Date: _____ Result: _____

Authority: _____ Date: _____ Result: _____

Authority: _____ Date: _____ Result: _____

3. Affirmation and signature.

- The information in this grievance is true and accurate to the best of my knowledge.
- I understand that my grievance will be filed in the court file and available to the person who my grievance is against and anyone else who is entitled to access court records in the case.

Date _____ Name _____

Mail or deliver your grievance to the courthouse located in the county where the case is filed. Please keep a copy of the grievance for your records.

[Approved by Supreme Court Order No. 19-8300-011, effective August 20, 2019.]

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.

Grievance Procedure



The Court **shall review grievance.**

If reasonable belief:

- a. removal of G/C may be appropriate
- b. termination/modification of G/C may be appropriate;
- c. transfer of accounts to successor representative payee may be appropriate

Termination of Guardianship and/or Conservatorship



Protected Person's condition has improved so there is no longer a need for the Guardianship and/or Conservatorship.

★ Case is dismissed.

Removal of a Guardian or Conservator



Physical



Psychological



Neglect



Financial

Guardian or Conservator is acting inappropriately or failing to act, to the detriment of the Protected Person:

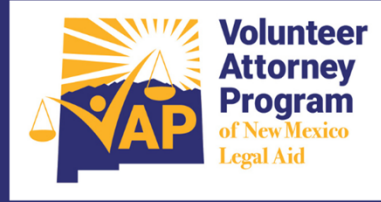
- Financial abuse
- Physical abuse
- Emotional/psychological abuse
- Isolating Protected Person from family and friends
- Not including the Protected Person in making decisions

Removal of a Guardian or Conservator



Actions by Guardian/Conservator Removal/Replacement

- Failure to follow judge's orders
- Fraud or misrepresentation
- Misuse of funds by Guardian or the Conservator
- Inadequate care

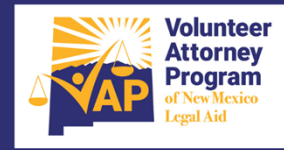


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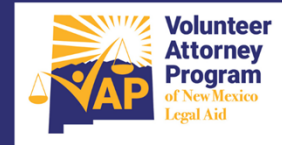
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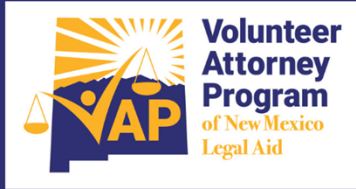




**Volunteer
Attorney
Program**
of New Mexico
Legal Aid

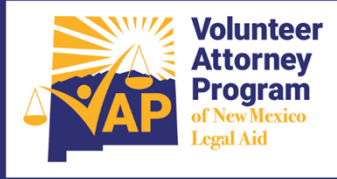


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- **Peter Johnstone Day Legal Fair in Albuquerque:**
Saturday, April 13
- **Legal Fair in Hernandez:**
Saturday, April 27
- **McKinley County Teleclinic:**
Friday, May 3
- **Statewide Teleclinic:**
Thursday, May 16





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

SESSION 3
MARCH 19, 2024

Topic and Case Presenter:

Patricia Galindo, Supervising Attorney,
Administrative Office of the Courts



Facilitated By:

Zac Addison, Esq., VAP Director, NM Legal Aid

Marissa Gonzalez, VAP Paralegal, NM Legal Aid

vapecho@nmlegalaid.org