

## **CHAPTER 10**

### **PUBLIC GUARDIANSHIP FOR THE ELDERLY PROGRAM**

#### **10-1 LEGAL AUTHORITY**

In accordance with Tennessee Code Annotated, Section 34-1-101, the Tennessee Commission on Aging and Disability shall administer the Public Guardianship for the Elderly Program in cooperation with the Area Agency on Aging and Disability in each of the nine planning and service areas (PSAs).

The scope of the Public Guardianship for the Elderly Program shall extend to those persons 60 years or older who, due to physical or mental limitations, are unable to meet essential requirements of their physical health or to manage essential aspects of their financial resources, and have no family member, friend, bank or corporation willing and able to act on their behalf.

The Public Guardianship for the Elderly Program may serve in the following capacities if an individual who meets the guidelines for the program as set out by these policies and procedures and has no family member, friend, bank or corporation willing and able to serve: as conservator, representative payee, and attorney in fact under a durable power of attorney for finances and/or health care.

#### **10-2 DEFINITIONS**

- (1) Adversary Counsel - a private lawyer hired by a respondent to represent the respondent's interest in any action under Tennessee Code Annotated, Section 34-1-102 et seq..

- (2) Attorney ad litem - an attorney appointed by the court to act as counsel for the respondent.
- (3) Attorney in fact - a person designated in a written document by another (the principal) to act on the principal's behalf in the specific areas set out in the written document (the power of attorney) at the times specified by the power of attorney.
- (4) Beneficiary - a recipient of government benefits.
- (5) Client - any individual receiving services from the Public Guardianship for the Elderly Program.
- (6) Conservator or Co-conservator - a person or persons, including an agency or a corporate entity, appointed by the court to provide partial or full supervision, protection and assistance of the person or property, or both, of a disabled person. District Conservator is utilized in these policies to refer to the person employed to serve as conservator under the Public Guardianship for the Elderly Program and also would include a designee such as persons acting as assistants or back-ups.
- (7) Durable Power of Attorney - a power of attorney by which a principal designates another person or agency as his attorney-in-fact in writing, and the writing contains the words "This power of attorney shall not be affected by subsequent disability or incapacity of the principal," or "This power of attorney shall become effective upon the disability or incapacity of the principal," or similar words showing the intent of the principal that the authority conferred shall be exercisable notwithstanding the principal's

subsequent disability or incapacity. If a power of attorney does not contain this language, and the principal becomes incapacitated, the power of attorney will be void. The statutory provisions that govern the power of attorney for financial matters are set out in the Uniform Durable Power of Attorney Act, Tennessee Code Annotated, Section 34-6-101, et seq.

- (8) Disabled person - any person 18 years of age or older determined by the court to be in need of partial or full supervision, protection and assistance by reason of mental illness, physical illness or injury, advanced age, developmental disability or other mental or physical incapacity.
- (9) Durable Power of Attorney for Health Care - a durable power of attorney to the extent that it authorizes an attorney-in-fact to make health care decisions for the principal. This power of attorney should be utilized to appoint an agent to make health care decisions and the form of such a power of attorney must comply with the provisions of Tennessee Code Annotated, Section 34-6-203 to be valid.
- (10) Fiduciary - a term defined in various ways in the Tennessee Code Annotated, and may refer to a conservator, or in some cases, an attorney in fact. There are statutory obligations imposed upon specific fiduciaries. There are also statutory obligations and duties imposed on all fiduciaries who, by virtue of their position, are in a trust relationship to the person for whom they serve, and they must exercise a standard of care established under the "Prudent Person Rule" [T.C.A. 35-14-103 et seq.]. Traditionally, this term was applied to a person or agency that managed property or

money for another. Any fiduciary that has investment responsibilities must ensure that the proper standard of care is exercised in the management and investment of this money.

- (11) Grantee Agency - the contracting agency administering the Public Guardianship for the Elderly Program.
- (12) Guardian ad litem - a person or persons who is appointed by the court to represent the respondent and to perform the duties set forth in Tennessee Code Annotated, Section 34-1-107(d). The Court must appoint a lawyer licensed to practice in the state of Tennessee or, if there are insufficient lawyers within the court's jurisdiction for the appointment of a lawyer as guardian ad litem, the court may appoint a non-lawyer.
- (13) Representative Payee - an individual or organization named by a governmental agency to receive government benefits on behalf of, and for the benefit of, the beneficiary entitled to such benefits.
- (14) Respondent - a person who is alleged to be a disabled person for whom a fiduciary is being sought.
- (15) State Agency - the Tennessee Commission on Aging and Disability.

### **10-3 ADMINISTRATIVE REQUIREMENTS**

- (1) State Agency.
  - (a) The state agency shall employ a coordinator to oversee program development and implementation.

- (b) The state agency shall contract with area agencies in each of the nine planning and service areas for the implementation of the district conservatorship program to provide service in all the counties included in their respective PSAs.
- (c) The state agency shall provide technical assistance to conservatorship programs.
- (d) The state agency shall maintain standards and policies for the program.
- (e) The state agency shall develop standard forms for use by all district programs.
- (f) The state agency, in conjunction with the area agency, shall provide initial orientation to the conservator. The state coordinator shall provide continuing training, technical assistance, and selected training materials to district programs. Training topics shall include, but not be limited to, guardianship laws, disability and aging issues, medical and psychiatric treatment, medication issues, end of life decisions, housing alternatives, money management alternatives, and case management techniques.
- (g) The state agency will provide quality assurance oversight to ensure compliance with standards and policies and procedures of the state agency.
- (h) The state agency shall purchase bonding that will cover the district conservator. The grantee agency shall provide requested

information regarding specific positions to be covered on the bond provided by the state agency.

- (i) In the event the court requires that an individual bond be purchased to protect the indigent client, the state agency will pay the cost of the bond. If the court requires a bond for a non-indigent client, the state agency shall not be responsible for purchasing the bond.
- (2) District Programs.
  - (a) Each grantee agency shall comply with all statutory, administrative and other requirements established by the state agency for the implementation of the statewide conservatorship program.
  - (b) Each grantee agency shall employ, at a minimum, one full-time staff person who shall be responsible for the conservatorship program on a daily basis. The minimum requirement of education and experience for the district conservator is a Bachelor's degree in human services or related field and at least two years of successful employment in a field related to public guardianship activities, such as social services, law, financial institutions, and/or health care or other related fields. Individuals with a minimum of two years of post-secondary education and at least five years of successful employment in a field related to public guardianship activities, such as social work, gerontology, nursing, health administration, finance, paralegal training pre-law and/or health care may substitute equivalent experience in lieu of a college

degree. Individuals with a minimum of a high school diploma or equivalency and eight years experience of successful employment as an assistant public guardian may substitute equivalent experience in lieu of a college degree. Staff who are currently employed in a district public conservatorship position as of the effective date of this policy are exempt from this requirement.

- (c) Within two years of the effective date of this policy or the date of employment, each district public conservator shall initiate work toward satisfying requirements for certification by the National Guardian Association as Registered Guardian. Within five years of the effective date of this policy or the date of employment, each district public conservator shall complete all requirements for certification by the National Guardian Association as Registered Guardian.
- (d) Each grantee agency shall:
  - 1. Designate an individual(s) to accept the responsibility of making specific decisions regarding the needs of the client and/or to make emergency decisions.
  - 2. Name the designated position(s) on paragraph (1) above on the bond.
  - 3. Provide information and community education to the general public, local bar association, court, social service agencies

and other agencies involved in services to the elderly as well as ongoing educational and training programs.

4. Require designated staff to attend all training and in-service specified by the state agency.
  5. Provide adequate supervisory assistance, office space, supplies, and secretarial service to support the district conservatorship program.
  6. Develop and maintain written policies and procedures consistent with and approved by the state agency.
  7. Comply with the standards established by the state agency.
  8. Provide adequate travel funds to support program operations for the district conservatorship program.
- (e) Each district conservatorship program shall maintain records and submit reports according to state agency requirements.
- (f) Each district conservatorship program shall establish and maintain cooperative working agreements with respective district long-term care ombudsman for obtaining referrals of problems that require the advocacy and intervention of that program.
- (g) Each district conservatorship program shall establish and maintain cooperative working agreements with the respective Title III legal assistance program when the client requires the advocacy of a lawyer.

- (h) Each district conservatorship program shall have a signed contractual service agreement with an attorney or attorneys to represent the program as the attorney of record in conservatorship issues and shall provide the state agency guardianship coordinator with a copy of the contractual agreement on an annual basis.
- (i) Each district conservatorship program shall establish and maintain coordination agreements with local offices of Legal Services, Human Services, Social Security, and Veteran's Administration as well as the local bar, courts and other agencies as indicated for the purpose of insuring coordination with those offices and agencies.
- (j) Each district conservatorship program shall ensure that clients needing to be placed in a long-term or residential facility are admitted to and housed in facilities licensed or approved by the appropriate agencies.
- (k) There is no charge for services provided by the district program for conservatorship or other services provided by the conservatorship program if the client is indigent or otherwise meets the cost exemption guidelines set out in the sliding fee schedule periodically established by the state agency (see attachment I to this chapter).
- (l) A fee may be set by the court or agreed to by the client. The fee schedule shall be consistently established and distributed to the courts and other agencies by the state agency. Fees generated by

the program shall remain in the local district and shall be used in the public conservatorship program. These locally generated fees shall not replace previously committed resources or funding allocated by the state or budgeted by the district. Fees collected within the last quarter of the fiscal year are to be budgeted as program income and may be spent appropriately within the next fiscal year.

#### **10-4 PROGRAM REQUIREMENTS**

Program requirements shall be followed by each district program to ensure that the conservatorship program operates statewide in a consistent and uniform manner.

- (1) Supplemental Funds
  - (a) In accordance with Tennessee Code Annotated, Section 34-7-104, a district conservator may accept the services of volunteer persons and organizations and raise money to supplement operating costs.
  - (b) Monies collected in accordance with this law shall be used to support the district conservatorship programs. Accountability will be the responsibility of the grantee agency in accordance with state agency policy and federal regulations.
- (2) Avoidance of Conflict of Interest
  - (a) A District Conservator shall not co-mingle personal or program funds with the funds of a client.

- (b) A District Conservator shall not sell or transfer real or personal property or any interest therein to himself/herself, a relative, his/her spouse, agent, or attorney, or any corporation or trust in which the conservator has a substantial beneficial interest unless the transaction is approved by the court after notice to interested persons and others as directed by the court.
- (c) A District Conservator shall not accept, as a gift or purchase, any items of any type or value from a client or his/her estate during the provision or after the termination of services from the district conservatorship program.
- (d) It is permissible for the district conservatorship program to accept financial contributions, including funds from relatives of a client.
- (e) All contributions received shall remain in the district where collected for use by the district conservatorship program. A receipt for the gift shall be given to the donor that complies with requirements of the Internal Revenue Service. Documentation must be kept in the files for audit purpose. Accountability of these funds shall be the responsibility of the grantee agency.
- (f) A District Conservator shall not solicit any cases. Providing information and education, as set out in these policies, is not considered solicitation.
- (g) The District Conservator shall not serve as petitioner in requesting a court appointment.

- (h) An attorney shall be used to file court documents in the following instances:
    - 1. When requesting any fee;
    - 2. When submitting a final accounting; and 3. In situations where a motion results in a judge/chancellor signing an order.
  - (i) The District Public Conservator may personally file a document with the court in the following situations:
    - 1. Submitting an inventory;
    - 2. Submitting a Property Management Plan; and,
    - 3. Submitting an accounting when no fee is requested.
- (3) Conservator
- (a) Conservatorship is the most intrusive intervention that can be imposed on persons who may be unable to make financial or health care decisions for themselves. Tennessee Code Annotated, Section 34-1-127 codifies this perception when it states: "The court has an affirmative duty to ascertain and impose the least restrictive alternatives upon the disabled person which are consistent with the adequate protection of the disabled person and the disabled person's property." It is for this reason that the conservatorship program is set up to serve its clients in a less restrictive form, such as through powers of attorney when appropriate.
  - (b) Under Tennessee Code Annotated, Section 34-3-102 a petition for the appointment of a conservator may be filed by any person

having knowledge of the circumstances necessitating the appointment of a conservator. The priority of the persons to be appointed is established in Tennessee Code Annotated, Section 34-3-103 and the order of priority is as follows: (1) The person or persons designated in writing signed by the alleged disabled person; (2) The spouse of the disabled person; (3) Any child of the disabled person; (4) Closest relative(s) of the disabled person; and (5) Other person(s).

- (c) Under Tennessee Code Annotated, Section 34-3-104 the requirement is imposed on the Petitioner who is requesting that some other person or agency serve as conservator to provide a statement signed by the proposed conservator acknowledging awareness of the petition and a willingness to serve. Therefore, the District Conservator should include within the program policies the requirement that an application be made to the program as well as a copy of the petition so that the District Conservator can determine the appropriateness of the referral based on agency guidelines and accept or deny the application for services.
- (d) When notified by the court, the District Conservator or designee shall make all reasonable efforts to attend all hearings that are addressing the appointment of the District Conservator. When hearings are scheduled for the same day and time or when distance between hearings scheduled for the same day does not allow for

reasonable travel time, the District Conservator shall notify the court of the conflict and attempt to make alternative arrangements.

(e) The District Conservator shall be available for, and accept cases previously reviewed and accepted and appointed by the court, except when the state agency has approved a temporary cap of the caseload.

(f) If the public conservator becomes aware of the client having substantial assets, the conservator, with the court's permission, shall consult with a financial institution, corporation and/or bank.

(4) Representative Payee

An individual or agency or the Social Security Administration (SSA) or the Veterans Administration (VA) may request the District Conservator to serve as representative payee for government benefits when the determination is made by the SSA or VA that a client is incapable of managing his/her funds.

(a) Representative payee assignments shall be accepted only in conjunction with a conservatorship or power of attorney referral.

(b) The representative payee has the duty to receive and manage benefit payments on behalf of the beneficiary. This responsibility includes the obligation to:

1. Spend payments for the benefit of the beneficiary for the following purposes and in the priority listed:

- (i) For the current maintenance of the beneficiary including costs incurred in obtaining food, shelter, clothing, medical care and personal comfort items.
    - (ii) For the current maintenance of the beneficiary's legal dependents.
    - (iii) For paying past debts if the expenses in (i) and (ii) above have been met.
  - 2. Insure that all goods and services for which payment is made are properly delivered and rendered.
  - 3. After paying expenses listed in section (1), prudently safeguard those funds remaining for the beneficiary's future needs.
  - 4. File accounting as required or requested by the agency administering the benefits.
  - 5. Promptly notify the agency responsible for administering the benefits to the beneficiary, or any other change in the beneficiary's circumstances that may affect his or her entitlement to the benefits.
  - (c) The District Conservator shall adhere to all guidelines set forth by the Social Security Administration or Veterans Administration governing representative payee duties and responsibilities.
- (5) Power of Attorney

An individual may request the District Conservator to serve as attorney-in-fact under a Durable Power of Attorney for finances and/or health care. This instrument should specify the powers of the attorney-in-fact and should always be "durable," allowing it to remain in effect in case of disability. Many persons use these instruments to plan in case of disability in order to minimize the role of the court in their affairs and to insure that the least restrictive alternative is used in the management of care for the individual. The District Conservator may accept appointments under such documents that comply with the statutory provisions of Tennessee Code Annotated, Sections 34-6-101, et seq. and Sections 34-6-210, et seq.

- (a) Prior to accepting such a referral, the District Conservator shall require that an application for services be completed and other appropriate information be provided as a basis for making a decision to accept or deny the application.
- (b) The District Conservator shall insure that the potential client is competent to request the services and should request a medical statement regarding the person's competency.
- (c) The District Conservator should require that the Power of Attorney document specify duties in clearly stated terms.
- (d) The District Conservator shall determine the powers granted under a power of attorney, and if the document references powers specified by statute, become familiar with these provisions. The

District Conservator may not take any action not authorized by the power of Attorney.

- (e) The District Conservator may be compensated as set out in these policies and procedures and in accordance with the fee schedule established by the state agency. However, an agreement about payment of fees shall be obtained from the client at the time of referral.
- (6) Caseload size

To insure that adequate services are provided for each client, the state agency shall submit certification to the appropriate agency or court when the District Conservator has attained maximum caseload. Maximum caseload will be determined by considering the number and type of cases served, extent of care required, total hours spent on caseload and number of pending cases.

- (a) The District Conservator and Area Agency on Aging and Disability Director will submit documentation to the state coordinator substantiating the basis for the request for a caseload cap.
- (b) The state coordinator shall review the documentation and make recommendations to the state agency director.
- (c) If the request for a cap on a caseload is approved, the state agency shall, within fifteen (15) business days of the receipt of the request, notify the district program and the court.

- (d) If the request for cap is not approved, the state agency shall notify the district program within fifteen (15) business days of the receipt of the request.
- (7) Termination of cases
  - (a) Conservatorship.
    1. The client, or any interested person acting on the client's behalf, may petition the court at anytime for a termination or modification of a conservatorship order. [T.C.A. 34-3-108]
    2. The District Conservator shall notify the court if a client's condition changes such that the conservatorship should be modified or terminated [T.C.A. 34-1-111(c)2].
    3. If the conservatorship is terminated the District Conservator should complete all the steps required by law.
    4. If a client dies, the conservatorship will terminate. [T.C.A. 34-3-108(e)]
    5. The conservator must file a preliminary final accounting within 120 days after termination of conservatorship or the client's death. When the accounting is approved and becomes final, the conservator shall transfer to the personal representative (the person appointed to be the administrator or executor of the estate of the client) the client's property and receive a receipt which shall be filed with the court.

6. In cases where there appears to be no personal representative identified, and where a thorough investigation does not reveal such source, the District Public Conservator should consult their district program attorney for direction on how to proceed in disposing of the client's assets.
7. The District Conservator may not act as a personal representative (administrator or executor) to settle a client's estate. However, the District Conservator may request the court for instructions on handling certain matters prior to the termination of the conservatorship.
8. Beginning ninety (90) days after the termination of conservatorship or death of a client, the case will no longer be counted as an active case by the state agency.

(b) Power of Attorney

Powers of attorney may be terminated in a variety of ways, depending on the type of document and the wording of the document. However, death always terminates a Power of Attorney, and all powers under such document cease. The District Conservator may not serve as a personal representative to handle the disposition of the estate of the client.

1. Power of Attorney for finances

- i. A competent individual may revoke such a power of attorney at any time. This revocation should be in writing. Therefore, if a client verbally indicates a desire to revoke, the District Conservator shall make arrangements for the revocation to be put in writing. Such revocation should be recorded in the County Register's office in the county where the client resides and/or has property.
- ii. If the Power of Attorney is "durable" and the client becomes disabled, s/he may not be competent to revoke the Power of Attorney. In such a situation, the District Conservator should always obtain a medical statement, preferably an evaluation to determine whether the person is competent to revoke the Power of Attorney. If a third party continues to question the Power of Attorney status, the district conservator may need to initiate court action for resolution.
- iii. If, for some reason, the Power of Attorney is interpreted to not be "durable", the Power of Attorney is automatically terminated, and a conservatorship would be required.

## 2 . Durable Power of Attorney for Health Care

A Durable Power of Attorney for Health Care may be revoked by the client at any time. The District Conservator shall always cease to serve in this capacity if the client has revoked the Durable Power of Attorney for Health Care, either verbally or in writing.

(c) Representative Payee

1. Termination of Representative Payee in conjunction with services through a conservatorship or power of attorney may be as a result of the death of the client, the appointment of a new conservator or agent, the agency making a determination that the service is no longer needed, or the decision of the District Conservator that the services should no longer be provided. If the service terminates because of death, the District Conservator may not act as a personal representative (executor or administrator) to dispose of the client's assets.
2. In the event of termination of Representative Payee status, the District Conservator shall:
  - i. Notify in writing the client and the agency of the intent, reason, and requested date of termination. The governmental agency will process requests for termination and notify the parties involved.
  - ii. Submit to the agency and the client a final financial accounting of money remaining in the client's account.

- iii. All accumulated funds shall be disbursed according to the directives of the specific agency, or to the personal representative in the case of the death of a client where there are excess funds, in the form of a check.
- iv. A receipt must be obtained from a personal representative and/or the agency involved.

(8) Transfer of Conservatorship Cases.

- (a) The District Conservatorship program must petition the court for an order to resign as conservator or substitute another agency or person as conservator and transfer the fiduciary relationship. [T.C.A. 34-1-117]

- 2. A District Public Conservator may resign by submitting a written request to the court. If the court approves and the fiduciary submits a final accounting that is approved, the resignation shall be effective on the date set by the court.
- 3. A District Conservator should not submit a resignation unless a substitute conservator has been identified.
- 4. The District Conservator must receive prior written permission from the state agency to resign a conservatorship prior to receiving a substitute conservator. Examples of situations where permission would be granted include those where threats have been made to staff by the client or family members of the client, or where the refusal of client to

cooperate with the conservator is such that the conservator cannot carry out the responsibilities. The District Conservator shall notify the client and close family members in writing of all actions taken under this paragraph, including the reason and the anticipated date of transfer.

(9) Volunteer Program

Each District Program shall be responsible for development and implementation of a volunteer program. The volunteers will provide each District Public Conservator additional support and assistance in the performance of responsibilities.

- (a) Each District Program shall make an effort to recruit and place reputable volunteers.
- (b) Each grantee agency shall have satisfactory evidence that no volunteer appears to have a criminal record.
- (c) Each district conservatorship program shall recruit and train volunteers to assist in the program. The training and use of volunteers shall comply with any requirements established by the state agency.
- (d) Each volunteer who might have direct contact with Guardianship Program clients shall have a background check that complies with guidelines approved by the state agency.

- (e) Each District shall utilize the services of volunteers to enhance the general welfare and well being of the client.
- (f) Each District Program shall conduct training in compliance with *Tennessee Commission on Aging and Disability Guide to Contract Preparation and Reporting*.
- (g) Each District Conservator shall operate the volunteer service according to the requirements of the *Tennessee Commission on Aging and Disability Guide to Contract Preparation and Reporting*.
- (h) Each District Conservator shall have a signed agreement of volunteer job responsibility in place before volunteers are assigned to client(s) in order for all parties to understand the duties and responsibilities of a volunteer. If volunteer responsibilities change, an amendment shall be made to the agreement.

(10) Advisory Committee

- (a) Each District Conservatorship Program shall be responsible for establishing an advisory committee made up of professionals and lay people who offer services necessary to develop a comprehensive program and the professional expertise to assist in the decision making process.
- (b) The District Committee should be comprised of, but not limited to, members with expertise the fields of law, medicine, taxes, long-

term care, congregate living, veteran affairs, real estate, psychology and social work.

- (c) Each District Program shall provide a roster of advisory committee members to the state coordinator with updates and changes as they occur.
- (d) Each District Committee shall develop and operate within written policies and procedures which specify the purpose, function and governing guidelines, including the formal relationship to the District Conservator and the grantee agency.

#### **10-5 RECORD KEEPING, DOCUMENTATION, AND REPORTING REQUIREMENTS**

It is the responsibility of each District Conservator to maintain accurate records pertaining to each client and submit designated reports to the appropriate agencies and the court within the times mandated by agency procedures or the statutory provisions.

##### **(1) Client File**

- (a) Each District Conservator shall establish and maintain a file for each assigned client. All files are considered confidential and shall be maintained in the district offices in accordance with the responsibilities of the office. The District Conservator shall be the custodian of the records maintained in the district offices.

- (b) Requests for disclosure of information contained in the file of the court appointed client shall be reviewed by the District Conservator and a determination made if powers extended to the conservator include the power to authorize the release of the particular information, and a determination made regarding whether the particular request for release should be authorized.
  - (c) If the client retains the right to authorize the release of his own records, written approval must be obtained from the client and placed in the client file prior to the release of requested information if the information is such that it is confidential and/or privileged and specific client consent is necessary. If a statutory exception exists, the information may be released as determined appropriate by the District Conservator.
- (2) Program Reports
- (a) Quarterly client and volunteer reports shall be submitted to the state coordinator by the 20th day of the month following the end of each quarter in a manner prescribed by the state agency.
  - (b) Terminated or closed cases shall be reported to the state coordinator on a quarterly basis in a manner specified by the state agency. Conservatorships remain open until all necessary documents have been filed with and approved by the court. Tennessee Code Annotated, Section 34-3-108(e) requires a

conservator to file a preliminary final accounting within 120 days after the client's death.

(3) Financial Reports

(a) Representative Payee

1. All Government Agencies

In reference to accountings that are due to all Government agencies, including but not limited to, the Veterans Administration, the Public Conservator shall file the required reports upon request.

2. Veterans Administration

(i) Accountings are due to the Veterans Administration on the anniversary date of appointment. Prior to the deadline, the Veterans Administration will issue the required forms for completion.

(ii) A full accounting is required in cases where a veteran receives 100% service connected benefits or if the veteran's estate exceeds \$6,000.

3. Social Security Administration

(i) Supplemental Security Income (SSI)

The Social Security Administration requires an annual representative payee report on each client receiving supplemental security income. The District Conservator should have in place a tickler

system that identifies the date that an accounting is due in case forms are not received by the anniversary date.

- (ii) Social Security, Social Security Disability (SSDI) and Railroad Retirement.

The Social Security Administration randomly selects representative payees to submit an annual accounting. Forms will be issued to the District Conservator as a request for submitting the report. The District Conservator shall prepare an annual accounting for the client and include a copy in the client file.

- (b) Conservatorship

Tennessee Code Annotated, Section 34-1-111 sets out the requirements for all annual accountings. These requirements also apply to the clients who were adjudicated under the prior conservatorship or limited guardianship statute. The District Conservator shall comply with all requirements of this statute. Although the clerk is required to send out notices prior to the due date, the District Conservator should have in place a tickler system identifying when the accounting is due. Even if the conservatorship case is for person only and/or the accounting of the client is

waived, the status report must still be filed with the court within this time frame.

(c) Powers of Attorney

A specific requirement for accounting is not set out in the statutory provisions. However, the initial agreement with the client should specify the type of accounting desired by the client and whether the client desires for any other individual or agency to receive a copy of the accounting. An accounting should be provided to the client at least annually. The District Conservator should develop a tickler system that ensures the timely provision of these accountings. A family member can request that the court set a bond when a non family member serves as an attorney-in-fact.

## **10-6 MANAGING CLIENT RESOURCES**

(1) Guidelines for establishing accounts and payments to client

(a) Checking accounts

1. Each District Program may elect to use either a co-mingled account or individual checking accounts for each client. Personal or program funds may not be co-mingled with the funds of a client.
2. Checking and other interest bearing accounts are to be handled in the following manner:

- (i) The account shall be opened in the name of the grantee agency, "for" the client. (e.g. Ocean City Development District for Jane Doe).
- (ii) If a co-mingled checking account is maintained, it shall be opened in the name of the grantee agency and identified as the District Conservatorship account.
- (iii) Withdrawal from accounts shall require two signatures, and shall not include the client. Only individuals who are bonded through the conservatorship program or the grantee agency will provide such signatures.
- (iv) Accumulation of funds in a non-interest checking account in excess of 30 to 60 days of anticipated monthly expenses shall be transferred to an interest bearing account.

(b) Investment Accounts and Fiduciary Responsibility

When a client has financial assets, the District Conservator shall investigate and, with court approval if necessary, select a savings or investment program for the client. The District Conservator is held to a "Prudent Person Rule" in making investment decisions. The District Conservator must also comply with the provisions of Tennessee Code Annotated, Section 35-3-117. Additionally, the following factors must be considered:

- (i) To insure safety of funds, all accounts or investments should be maintained in FDIC insured institutions;
- (ii) Attempt to place client funds to obtain the highest rate of return possible.
- (iii) Maintain eligibility for Medicaid and/or Supplemental Security Income, where appropriate.

(c) Payments to Clients

1. The District Conservator shall develop a monthly budget for each client using a computer accounting package approved by the state agency.
2. Monthly expenses will be deducted from the individual account of each client as disbursements are made.
3. A spending allowance may be issued to the client on an individual basis.
4. Interest bearing accounts shall be set up to assure accrued interest is credited to the individual client.

(2) Specific Requirements for use of funds for conservatorship, representative payee and power of attorney clients.

(a) Conservatorships

The specific order and property management plan for each conservatorship shall provide the guidelines for how property may be invested and income expended. If circumstances change, the

property management plan should be amended. Under Tennessee Code Annotated, Section 34-1-113 the conservator is entitled to pay the costs of any required medical exam, the guardian ad litem fee, bond premium, court costs, attorney's fees, fees for income tax preparation and court accounting, investment management fees, taxes or governmental charges for which the client is obligated, and such other expenses as the court determines are necessary for the fiduciary. However, prior court approval is required before payment of attorney's fee, guardian *ad litem* fee, fees for income tax preparation and court accountings or investment management fees.

(b) Representative Payees

The District Conservator shall adhere to the regulations set out by the Veterans Administration and the Social Security Administration when making extraordinary purchases for the client.

(c) Power of Attorney

When an agreement is made to provide services to a client through a Power of Attorney, the District Conservator shall develop a written plan regarding how monthly payments are to be made and how the property is to be invested. This plan shall be signed by both the District Conservator and the client and placed in the client file.

## **10-7 LIQUIDATION OF ASSETS**

The District Conservator must comply with the provisions of Tennessee Code Annotated, Section, 34-1-116 for conservatorships. Property of the client may not be sold without specific court approval except for tangible property with a fair market value of less than \$1,000 or a motor vehicle.

## **10-8 COURT COST REQUEST**

The conservatorship statute sets out how court costs are charged. Tennessee Code Annotated, Section 34-1-114 authorizes the court to assess court costs against the property of the client. However, if the value of the property does not exceed the Supplemental Security Income eligibility limit or if no fiduciary is appointed, these costs shall be assessed against the petitioner. The District Conservator should pay the court costs according to the court order. If there is a problem or mistake regarding the determination of the client's ability to pay, the District Conservator should notify the court or seek consultation from the district program legal counsel.

## **10-9 PERSONAL CONTACT AND ONGOING RESPONSIBILITY**

- (1) When acting as a conservator or attorney-in-fact, the District Conservator shall formulate short and long-range plans for the client and shall engage in ongoing activities and responsibilities to implement the plans.

(2) The representative of the District Conservatorship Program shall visit with the client at least once a month. However, each individual client must be given the time required to provide the necessary service and some cases will require more contact. Volunteers may assist the District Conservator in the following requirements as long as regular, ongoing monitoring of the volunteers takes place. Each guardianship program will develop and maintain procedures regarding personal contact with clients and provide ongoing supervision of all employees and volunteers who provide services to clients regardless of whether an individual (such as a 'volunteer guardian of the person'), or the guardianship program is appointed as conservator. Supervisory procedures will provide for the training, monitoring, and evaluation of an employee and a volunteer whose services are consistent with the state agency's guardianship policies and procedures.

(a) The District Conservator shall maintain regular communication with the client to ascertain his satisfaction with the current living situation, the extent of current disability or impairment, and the current needs and desires of the client.

(b) If the client resides in a care-providing facility, the District Conservator shall maintain regular communication with the providers and caregivers of the client. This may include conversations with physicians, psychologists, social workers,

nurses, district ombudsman and residence operators. If case conferences are held at the living site for the client for whom the District Conservator has conservatorship or Power of Attorney for Health Care, the Conservator or designee shall attend or provide comment in writing or by telephone.

- (c) The District Conservator, including authorized agents such as program volunteers, shall examine, as necessary, any charts or notes maintained regarding the client.
- (d) The District Conservator shall assess at least annually the appropriateness of maintaining the client in the current living situation considering social, psychological, educational, vocational, health, and personal needs as well as the following:
  - 1. If residence is a care-providing facility, the District Conservator must insure that the facility is licensed or approved by the appropriate agencies and that the living situation provides the most appropriate, least restrictive, living arrangement available. As part of this responsibility, the District Conservator should determine whether there is an active habilitation and rehabilitation plan to maximize the client's potential for independent living and the quality of life offered by facility.
  - 2. The District Conservator shall assess the client's satisfaction with the current living situation.

3. The living situation shall meet the needs of the client in relation to the availability of support systems.
  4. The District Conservator shall assess the client's physical appearance and the manner in which the client is reacting to his environment.
  5. The District Conservator shall assess the state of repair, cleanliness and safety of a client's living situation.
- (3) The District Conservator and volunteers shall keep a written record of all personal contact with the client, either in person or by phone, and/or with other service providers on behalf of the client.

#### **10-10 AUTHORIZING MOVE TO MORE RESTRICTIVE ENVIRONMENT**

Before moving the client to a more restrictive environment, the District conservator shall provide written documentation in the client's file specifying the need for such move as well as specify the following:

- (1) Determine if court authorization is required or if an emergency exists.
- (2) Consult with professionals actively involved with the client.
- (3) Consult with and/or inform family members of intent if appropriate.

#### **10-11 SECURING MEDICAL SERVICES AND AUTHORIZING MEDICAL TREATMENT**

- (1) Certain criteria must be considered when making medical decisions for the client that include:

- (a) When at all possible, at the beginning of a relationship with a client, the District Conservator shall determine whether a client has executed advance directives regarding health care decisions and obtain a copy of such directives. If the client has not executed, and is not competent to execute such documents at that time, and the District Conservator has assumed responsibility for making health care decisions, the District Conservator shall discuss with the client and appropriate family members of client, any desires expressed by client regarding health care; however, in the case of a conservatorship, the District Conservator should always determine the extent of the authority granted in the court order and if necessary, seek additional court authority.
- (b) If a client has executed advance directives, the District Conservator shall follow them when relevant.
- (c) If a client has not executed advance directives, but the District Conservator has obtained information from the client and/or family members regarding the desires of the client, the District Conservator shall, when legally possible, make decisions based on the expressed desire of the client.
- (d) If the District Conservator has no information regarding the desires of the client and has responsibility for making such decisions, the District Conservator shall consider the perceived best interest of the client and use whatever knowledge he has of the client and

make the decision on what he believes the client would want. However, no decision should be made without a medical opinion as set out below. When appropriate, the District Conservator should seek court authorization.

(2) The District Public Conservator can make decisions regarding certain medical interventions on the recommendation of one physician or other appropriate professional. These include but are not limited to:

- (a) Diagnostic physical exams.
- (b) Eye Exams.
- (c) Routine dental work (e.g. examinations, teeth cleaning and fillings).
- (d) Physical therapy.
- (e) Minor medications, both prescriptions and non-prescription, such as aspirin, cold medications, vitamins, and other medications that the client routinely takes.
- (f) Routine low-risk immunizations.

(3) The District Conservator should determine whether the following procedures require a second opinion, and document how the decision was made:

- (a) Interventions requiring general or major anesthesia or involving a moderate or significant risk to the client.
- (b) Extensive use of x-ray.
- (c) Administration of potentially damaging drugs, regimen or therapy.

- (d) Administration of anti-psychotic or psychotropic drugs.
  - (e) Interventions which drastically affect personal appearance or functioning, such as cosmetic surgery and other surgery.
  - (f) Treatments that require restraints, either chemical or mechanical, or any adverse behavior modification.
  - (g) Amputations.
  - (h) Interventions which pose a significant risk to the client's condition or unique vulnerabilities.
  - (i) Any other treatment or intervention which would cause a reasonable person to seek a second opinion.
- (4) Extraordinary procedures require that the person have executed advance directives or that a second medical opinion be provided. If possible, the original court order should specify whether these procedures are included. Otherwise, if the District Conservator deems appropriate, the District Conservator may petition the court for directions. These extraordinary procedures include the following:
- (a) Organ transplant.
  - (b) Experimental treatment.
  - (c) Medical treatment for persons whose religious beliefs prohibit such treatment. By way of example this would include blood transfusions for a Jehovah's Witness or medical treatment for a Christian Scientist.

- (5) The District Conservator is authorized to grant or deny medical treatment after reasonable assessment of all factors involved and conferring with attending physicians. For unusual medical procedures not covered in these policies, the District Conservator shall consult the state coordinator for direction.

**Instructions**

On November 17, 2009, TCAD's Commission Members approved the request for the revision of the fee schedule for the Public Guardianship for the Elderly Program with an effective date of January 1, 2010.

The approval was established to begin effective January 1, 2010, and revised on an annual basis, if applicable, by an announcement from TCAD.

Below is the fee schedule for year 2014 as recommended by TCAD:

<b>INCOME LEVEL</b>	<b>LIQUID ASSETS</b>	<b>SUGGESTED SLIDING SCALE FEE FOR ANNUAL ACCOUNTINGS</b>
<b>Medicaid Eligible</b>	<b>\$0 - \$2,000 (Medicaid, Supplemental Security Income Eligible)</b>	<b>No Fee</b>
<b>Up to \$10,999 Per Year</b>	<b>Assets up to \$50,000</b>	<b>\$37.51 Per Hour</b>
	<b>Assets more than \$50,000</b>	<b>\$42.86 Per Hour</b>
<b>\$11,000 - \$30,499 Per Year</b>	<b>Assets up to \$50,000</b>	<b>\$53.58 Per Hour</b>
	<b>Assets more than \$50,000</b>	<b>\$58.94 Per Hour</b>
<b>\$30,500 - \$49,999 Per Year</b>	<b>Assets up to \$50,000</b>	<b>\$66.43 Per Hour</b>
	<b>Assets more than \$50,000</b>	<b>\$77.15 Per Hour</b>

If you have any questions, please feel free to contact Jeanne Caudill, L.C.S.W, Aging Program Coordinator, Public Guardianship for the Elderly Program, at (615) 253-3967, or by e-mail at [jeanne.caudill@tn.gov](mailto:jeanne.caudill@tn.gov).

JS/JC/ckw

C: Executive Directors, Grantee Agencies