

Agenda

Utah Working Interdisciplinary Network of Guardianship Stakeholders (WINGS)

June 20, 2019

12:00 to 2:00 p.m.

Administrative Office of the Courts

Scott M. Matheson Courthouse

450 South State Street, 1st floor

Large Conference Room A, Suite W-19

12:00 p.m.	Welcome, minutes		Keith Kelly
12:10 p.m.	Court Probate Committee report		Laura Scott
12:20 p.m.	Collaboration with Tribes update and feedback		James Toledo
12:40 p.m.	Evaluation of Judicial education done in 2018		Andrew Riggle
1:00 p.m.	Clerical education: <ul style="list-style-type: none">• Update of the clerical manual (see Tab 2)• Form Subcommittee (clerical staff, public guardian, private practitioners)	Tab 1	Karolina Abuzyarova Michael Drechsel
1:30 p.m.	Guardianship Signature Program update <ul style="list-style-type: none">• June 27, 11:30am CLE in St. George Court		Karolina Abuzyarova
1:40 p.m.	Guardianship data	Tab 2	Keith Kelly

Committee webpage: <http://www.utcourts.gov/utc/wings>

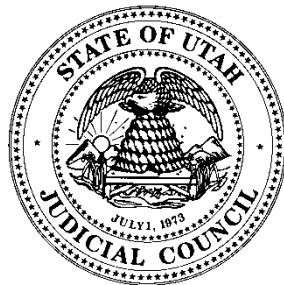
2019 schedule: August 15, October 17, December 19.

Tab 1



Utah State Courts

Case Management for Adult Guardianship and Conservatorship



May 13, 2013

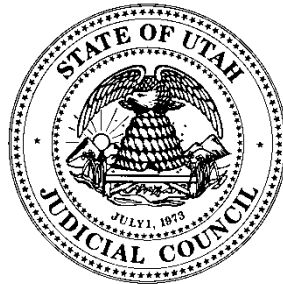
Public Webpage: <http://www.utcourts.gov/howto/family/gc/>

(1) Acknowledgments

This manual is written and published with funds from the State Justice Institute, Grant Number SJI-11-N-001. The points of view expressed are those of the authors and do not necessarily represent the position or policies of the State Justice Institute, the Utah Judicial Council or the Utah State Courts.

The Judicial Council grants permission for this handbook to be reproduced, in print or electronic form, for use in courts and by the judiciary, in institutes of higher learning, and for use by not-for-profit organizations, provided that the use is for noncommercial purposes only and acknowledges original publication by the Judicial Council, including the title of the book and the legend “Reprinted by permission of the Utah Judicial Council.”

Copyright © 2013 Utah State Courts. All rights reserved.

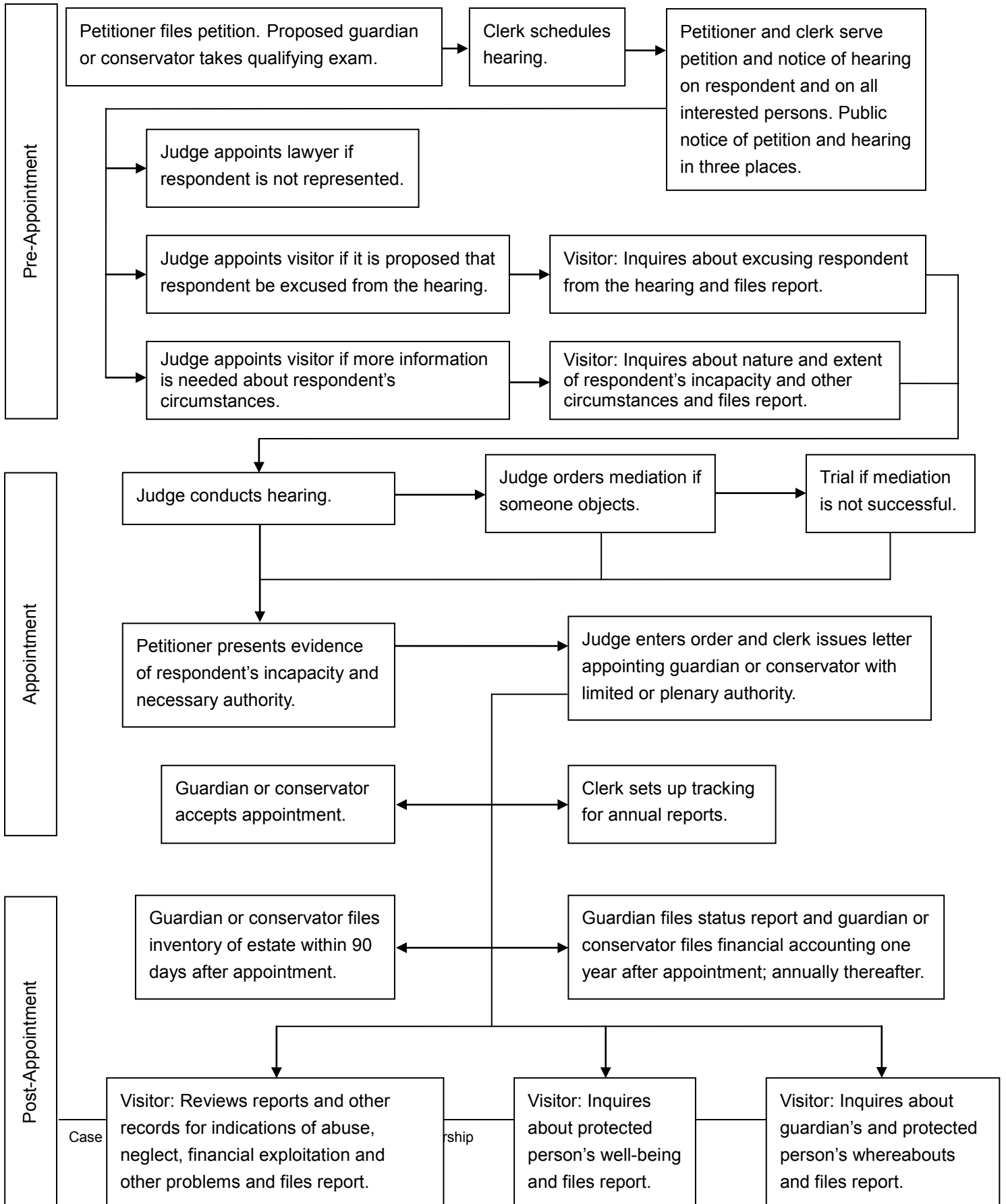


Case Management for Adult Guardianship and Conservatorship

(1)	Acknowledgments	2
(2)	Summary of the process (Guardianship)	5
(3)	Nature of the office	6
(4)	CORIS entries for case initiation.....	7
(5)	Preparing for the hearing	7
(a)	Guardianship.....	7
(b)	Conservatorship.....	10
(6)	CORIS entries for appointment of the guardian or conservator	13
(7)	Reports.....	13
(a)	The reports are required (mostly).....	13
(b)	Inventory of the protected person’s property	14
(c)	Annual status report.....	14
(d)	Annual financial accounting	14
(e)	Final accounting.....	14
(f)	Reporting procedures	14
(g)	CORIS entries for reports.....	15
(h)	CORIS entries for tracking annual accountings and other reports	16
(i)	CORIS entries to update tracking on annual accountings and other reports	17
(j)	CORIS-generated notices for annual accountings and other reports	18
(8)	Reviewing the reports; Monitoring the guardian or conservator	18
(9)	Cannot locate the guardian or conservator.....	20
(10)	Further proceedings	20
(a)	Moving the protected person to a different residence	20
(b)	Transferring a guardianship or conservatorship from one county to another ..	20
(c)	Asking for instructions, changes, sanctions	21
(11)	Terminating the guardianship or conservatorship	21
(a)	Transfer to another state.....	21
(b)	Upon request	22
(c)	Death of protected person.....	22

(12)	Temporary guardianship	22
(13)	Checklist to prepare for the hearing — Guardianship.....	24
(14)	Checklist to prepare for the hearing — Conservatorship.....	25

(2) Summary of the process (Guardianship)



(3) Nature of the office

Anyone 18 or older has the right to make decisions based on his or her values and beliefs, even if others disagree with those decisions. Making decisions is an essential part of adult life. Every day we make decisions for ourselves and for those who depend on us. Decision making can be burdensome, even stressful at times, but few of us would willingly give up the right to make our own decisions. But the appointment of a guardian or conservator does just that — removes the right of a person to make his or her own decisions. That is why paying special attention to these cases is an important court responsibility.

A **guardian of an adult** is a person or institution appointed by a court to make decisions about the personal well-being — residence, health care, nutrition, education, personal care, etc. — of an incapacitated adult, who is called a “protected person.” “Incapacity” means that an adult’s ability to:

- receive and evaluate information; or
- make and communicate decisions; or
- provide for necessities such as food, shelter, clothing, health care, or safety

is impaired to the extent that the person lacks the ability, even with appropriate technological assistance, to meet the essential requirements for financial protection or physical health, safety, or self-care. Incapacity is a judicial determination, and is measured by the person’s functional limitations. Utah Code [Section 75-1-201](#).

A **conservator of an adult** is a person or institution appointed by the court to make decisions about a protected person’s estate. A person does not have to be incapacitated to have a conservator appointed. A conservator may be appointed if the respondent is unable to manage his or her property effectively and a conservator is needed:

- to prevent the respondent’s property from being harmed; or
- to obtain or provide funds for the respondent’s support or the support of those entitled to be supported by the respondent.

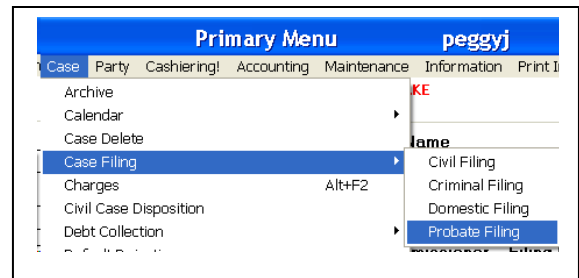
The protected person’s estate includes all of his or her property, personal and business. Some examples are income (such as wages, an annuity, a pension, and Social Security or other government benefits), real property (buildings and land), and personal property (such as furniture, cash, bank accounts, certificates of deposit, stocks, bonds, motor vehicles, jewelry, tools, furs and art). A conservator must use reasonable care, skill and caution to manage and invest the estate to meet the protected person’s needs over his or her expected life.

Under appropriate facts, the court might appoint a guardian or a conservator or both. The guardian and the conservator might be two different people, or they might be the same person. If there is no conservator, the guardian has some of the conservator’s responsibilities.

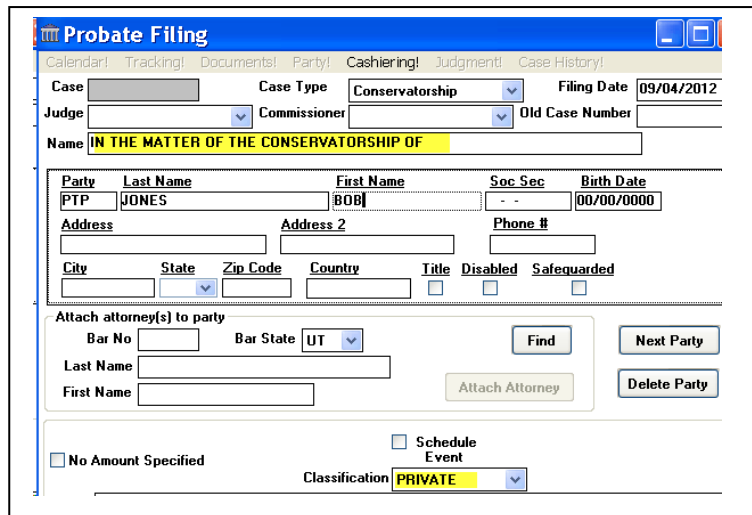
If the protected person needs help in some but not all areas of decision making, the court will order a limited guardianship. A limited guardianship is preferred, and the court will grant a full guardianship only if nothing else is adequate. A limited guardian has only those powers listed in the court order. The court can also limit the authority of a conservator.

(4) CORIS entries for case initiation

- 1) From the Primary Menu, select Case > Case Filing > Probate > Case Type > Conservatorship OR Guardianship. If the petition is for appointment of a guardian and a conservator, use case type “Guardianship.”



- 2) Tab to the Name line and enter the name of the respondent (the person the appointment is for).
- 3) Tab to Party and select the appropriate party type for the Respondent (PTP for protected person) and enter the appropriate information. Press the Next Party button and select PET from the drop down box. Enter the address and any other information available. Add any other interested persons and addresses who have received notice. Use Attach the attorney(s) to party to enter the information for each party’s attorney if they are represented by counsel. (DCCTR: Attach an Attorney.)



- 4) Press the Accept Fee button. This brings up the probate case number and the judge assignment for the case before the Cashiering Screen displays. (DCCTR: Cashiering.)
- 5) The Civil Fee Document screen opens and displays the document title “Complaint No Amount Probate”. Enter the actual name of the document. Select Enter.
- 6) Calendar the hearing. (DCCTR: Calendaring).

(5) Preparing for the hearing

(a) Guardianship

See also the form [Checklist to Prepare for the Hearing](#) at the end of this manual.

Is venue correct? The petition may be filed in any county in which the respondent resides or is present. [Section 75-5-302](#).

Does the respondent have a lawyer? [Section 75-5-303](#) requires that the judge appoint a lawyer for the respondent if the respondent does not have a lawyer. There are no lawyers on call, but the Access to Justice Coordinator at the bar may be able to find a lawyer. Call 801-297-7027 or email probono@utahbar.org.

Will the respondent attend the hearing? [Section 75-5-303](#) requires that the respondent attend the hearing except in a few circumstances.

If not, has a visitor been assigned? If it is proposed that the respondent not attend the hearing, either the petitioner must present clear and convincing evidence from a physician that the respondent:

- has fourth stage Alzheimer's disease;
- is in an extended coma; or
- has an intellectual disability with an IQ under 25.

Or the judge must order an investigation by a court visitor.

In the pilot districts (Districts 2, 3, 4 and 7), contact one of the coordinators for the Volunteer Court Visitor Program (email: visitor@utcourts.gov or see the court's webpage <http://www.utcourts.gov/visitor/>), and she will prepare an order assigning a volunteer court visitor. In other districts, the judge will have to assign someone "trained in law, nursing, or social work ... with no personal interest in the proceedings." [Section 75-5-308](#). There are no volunteer court visitors outside of the pilot districts.

Have the respondent and all interested persons been properly served with a copy of the petition and notice of the hearing? [Section 75-5-309](#) requires that the respondent and interested persons be served with a copy of the petition and notice of hearing. The interested persons are:

- the respondent's spouse, parents and adult children;
- at least one of the respondent's closest adult relatives, if the respondent has no spouse, parents, or adult children or if they cannot be found;
- the respondent's guardian, conservator, caregiver and custodian;
- the person nominated as guardian by the respondent or by the respondent's parent, spouse, or caregiver;
- the respondent's health care decision making agent;
- the respondent's agent under a power of attorney; and
- any other interested person.

The concept of "interested persons" is meant to be fluid and controlled by the judge in any given case. The judge can direct that others be considered interested persons under the definition of that term in [Section 75-1-201](#).

Service on the respondent must be by personal service. Service on the respondent's spouse and parents must be by personal service if they are within the state. [Section 75-5-309](#)

Service on the respondent's spouse and parents if they are not within the state and on all other persons is by the clerk mailing a copy of the petition and notice of hearing at least 10 days before the hearing. In addition, the clerk must post notice of the hearing in at least three public places in the county at least ten days before the hearing. [Section 75-1-401](#).

Does the respondent want to be examined by a physician or interviewed by a court visitor? [Section 75-5-303](#) permits the respondent to demand either or both. There are no physicians on call. In the pilot districts (Districts 2, 3, 4 and 7), contact one of the coordinators for the Volunteer Court Visitor Program (email: visitor@utcourts.gov or see the court's webpage <http://www.utcourts.gov/visitor/>), and she will prepare an order assigning a volunteer court visitor. In other districts, you will have to assign someone "trained in law, nursing, or social work ... with no personal interest in the proceedings." [Section 75-5-308](#). There are no volunteer court visitors outside of the pilot districts.

Does the judge want more information about the respondent's circumstances? [Section 75-5-303](#) permits the judge to direct an inquiry by a visitor into the respondent's circumstances. In the pilot districts (Districts 2, 3, 4 and 7), contact one of the coordinators for the Volunteer Court Visitor Program (email: visitor@utcourts.gov or see the court's webpage <http://www.utcourts.gov/visitor/>), and she will prepare an order assigning a volunteer court visitor. In other districts, you will have to assign someone "trained in law, nursing, or social work ... with no personal interest in the proceedings." [Section 75-5-308](#). There are no volunteer court visitors outside of the pilot districts.

Is an interpreter needed? [Rule 3-306](#) requires that the court appoint an interpreter for any person who is unable to understand or communicate in English. If an interpreter is needed, contact your court's interpreter coordinator.

Are all of the required documents in the file? The file should contain:

- petition to appoint;
- notice of hearing;
- list of persons to be served with petition and notice of hearing (If the petitioner uses court-approved forms, this is called "Schedule A.");
- proof of service under [URCP 4](#) of petition and notice of hearing at least 10 days before the hearing on:
 - the respondent;
 - the respondent's spouse and parents if they are within Utah;
- certificate of service under [Section 75-1-401](#) and [URCP 5](#) of petition and notice of hearing at least 10 days before the hearing on:
 - the respondent's spouse and parents if they are not within Utah;

- the respondent's adult children
- the respondent's closest adult relative if respondent has no spouse, parents, or adult children or if they cannot be found;
- the respondent's guardian, conservator, caregiver and custodian;
- the person nominated as guardian by the respondent or by the respondent's parent, spouse, or caregiver;
- the respondent's health care decision making agent;
- the respondent's agent under a power of attorney; and
- any other interested person.
- clerk's certificate of posting public notice at least 10 days before the hearing;
- physician's report or other statements or affidavits about respondent's incapacity and need for a guardian;
- other documents often filed with the petition, but not necessary until appointment:
 - completion of testing certificate, if required;
 - acceptance of appointment;
 - proposed findings of fact, conclusions of law and order;
 - letter of guardianship.

The file might contain:

- waivers of notice or consents to the appointment from interested persons who would otherwise have to be served;
- death certificates or other proof of the death of interested persons who would otherwise have to be served;
- documents authorizing and proving alternative service (If the people required to be served cannot be served as required either under [URCP 4](#) or [Section 75-1-401](#), then the petitioner must have them served by alternative means.);
- any written objections;
- nominations of a guardian.

Objections. If no one objects and everything is in order, the judge may appoint the guardian at the hearing. If there is an objection, the judge may refer the case for mediation or set it for trial, at which time the petitioner will have to prove the claims made in the petition.

(b) Conservatorship

The procedures for the appointment of a conservator are similar to the procedures for the appointment of a guardian, but there are not as many protections for the respondent. Follow these procedures only if the petition is for the appointment of a conservator only. If the petition is for the appointment of a guardian and a conservator, follow the procedures in [Section \(4\)\(a\)](#).

See also the form [Checklist to Prepare for the Hearing](#) at the end of this manual.

Is venue correct? The petition must be filed in the county in which the respondent resides or, if the respondent does not reside in this state, in any county where s/he has property. [Section 75-5-403](#).

Does the respondent have a lawyer? [Section 75-5-407](#) permits the judge to appoint a lawyer for the respondent but does not require it. There are no lawyers on call, but the Access to Justice Coordinator at the bar may be able to find a lawyer. Call 801-297-7027 or email probono@utahbar.org.

The role of the respondent's appointed counsel in conservatorship proceedings is that of a guardian ad litem representing the respondent's best interests. [Section 75-5-407](#). The attorney is bound by [Rule of Professional Conduct 1.14](#), Client with Diminished Capacity.

Will the respondent attend the hearing? There are no statutes on point. Presumably the respondent has the right to attend the hearing, but is not required to do so.

Has anyone requested notice? [Section 75-5-406](#) permits any interested person to file a request for notice of the proceedings. If you receive a request for notice, send a copy to the petitioner (or conservator if one has already been appointed). The petitioner/conservator is required to give notice of any future proceedings to the person making the request.

Have the respondent and all interested persons been properly served with notice of the hearing? Service in a conservatorship proceeding is substantially different from service in a guardianship proceeding. Under [Section 75-5-405](#) no one has to be served with a copy of the petition, only with notice of the hearing. Only the respondent and the respondent's spouse must be served. If the respondent does not have a spouse, the respondent's parents must be served. Any interested person requesting notice must also be served.

Service must be by personal service on the respondent and on the respondent's spouse and parents if they are within the state. Service on the respondent and respondent's spouse and parents if they are not within the state and on any interested person requesting notice is by the clerk mailing a copy of the notice of hearing at least 10 days before the hearing. In addition, the clerk must post notice of the hearing in at least three public places in the county at least ten days before the hearing. [Section 75-5-405](#) and [Section 75-1-401](#).

The concept of "interested persons" is meant to be fluid and controlled by the judge in any given case. The judge can direct that others be considered interested persons under the definition of that term in [Section 75-1-201](#).

Does the judge want more information about the respondent's circumstances? [Section 75-5-407](#) permits the judge to have the respondent examined by a physician or interviewed by a court visitor. There are no physicians on call. In the pilot districts (Districts 2, 3, 4 and 7), contact one of the coordinators for the Volunteer Court Visitor

Program (email: visitor@utcourts.gov or see the court's webpage <http://www.utcourts.gov/visitor/>), and she will prepare an order assigning a volunteer court visitor. In other districts, you will have to assign someone "trained in law, nursing, or social work ... with no personal interest in the proceedings." [Section 75-5-308](#). There are no volunteer court visitors outside of the pilot districts.

Is an interpreter needed? [Rule 3-306](#) requires that the court appoint an interpreter for any person who is unable to understand or communicate in English. If an interpreter is needed, contact your court's interpreter coordinator.

Are all of the required documents in the file? The file should contain:

- petition to appoint;
- notice of hearing;
- list of persons to be served with notice of hearing (If the petitioner uses court-approved forms, this is called "Schedule A.");
- proof of service under [URCP 4](#) on the respondent if s/he is in Utah or certificate of service under [Section 75-1-401](#) and [URCP 5](#) if s/he is not in Utah;
- proof of service under [URCP 4](#) on the respondent's spouse if s/he is in Utah or certificate of service under [Section 75-1-401](#) and [URCP 5](#) if s/he is not in Utah;
- proof of service under [URCP 4](#) on the respondent's parents if the respondent is not married and if they are in Utah or certificate of service under [Section 75-1-401](#) and [URCP 5](#) if they are not in Utah;
- certificate of service under [Section 75-1-401](#) and [URCP 5](#) on any interested person requesting notice at least 10 days before the hearing;
- clerk's certificate of posting public notice at least 10 days before the hearing;
- physician's report or other statements or affidavits about respondent's incapacity, disability or other need for a conservator;
- other documents often filed with the petition, but not necessary until appointment:
 - completion of testing certificate, if required;
 - acceptance of appointment;
 - proposed findings of fact, conclusions of law and order;
 - letter of conservatorship.

The file might contain:

- waivers of notice or consents to the appointment from interested persons who would otherwise have to be served;
- death certificates or other proof of the death of interested persons who would otherwise have to be served;
- documents authorizing and proving alternative service (If the people required to be served cannot be served as required either under [URCP 4](#) or [Section 75-1-401](#), then the petitioner must have them served by alternative means.);
- any written objections;
- nominations of a conservator.

Objections. If no one objects and everything is in order, the judge may appoint the conservator at the hearing. If there is an objection, the judge may refer the case for mediation or set it for trial, at which time the petitioner will have to prove the claims made in the petition.

(6) CORIS entries for appointment of the guardian or conservator

1) After the guardian or conservator has been appointed, go to the Name/Address screen with the name the party the court has appointed selected. Check the box Retain Data for new party and select Add Party button.

2) Choose the appropriate party type for the guardian/conservator (GUA Guardian, GCN Guardian Conservator, CON Conservator,) and enter them as the new party.

3) If no post-judgment reporting is required, select the appropriate reason from the drop down box under No annual reporting. (See the next section for guidelines on post-judgment reporting.

4) From the primary menu go to Case>Civil Case Disposition. Enter the date the case was disposed, the status of the disposition and the judge/commissioner making the order.

(7) Reports

(a) The reports are required (mostly)

Not every guardian or conservator is required to report annually, but most are. You can use CORIS to distinguish the requirements and monitor compliance. Continue to enforce compliance because bad things can happen when the court does not remain involved after a guardian or conservator has been appointed.

No inventory, annual status report, or annual financial accounting is necessary if the guardian or conservator is the parent of the adult protected person. Otherwise, [Section](#)

[75-5-312](#) and [Section 75-5-417](#) and [Rule 6-501](#) require that the guardian and conservator of an adult file the reports. The judge can impose a \$5,000 penalty if they:

- willfully fail to file a report;
- make a substantial misstatement in a report; or
- are guilty of gross impropriety in handling the protected person’s property.

(b) Inventory of the protected person’s property

Within 90 days after being appointed, the conservator — or the guardian if there is no conservator — must identify, locate and inventory the protected person’s property and file the inventory. [Section 75-5-418](#) and [Rule 6-501](#).

(c) Annual status report

A guardian must report annually to the court about the protected person’s care and status. [Section 75-5-312](#). The report shows what and how the protected person is doing and alerts the court to changes and possible problems.

(d) Annual financial accounting

A conservator — or the guardian if there is no conservator — must annually account to the court for the protected person’s estate. [Section 75-5-312](#) and [Section 75-5-417](#).

If the protected person’s estate is limited to payments from a state or federal agency that requires an annual accounting, the guardian or conservator may file a copy of the agency’s accounting form.

(e) Final accounting

The conservator — or the guardian if there is no conservator — must file a final accounting if:

- the guardian or conservator resigns or is removed;
- the protected person dies;
- the guardianship or conservatorship ends; or
- the court transfers the guardianship or conservatorship to another state.

The reporting period will be from the date of the most recently filed accounting to the date the guardianship or conservatorship ends. [Section 75-5-419](#).

(f) Reporting procedures

The deadlines are:

Document	Who Files?	Due Date
Inventory	Conservator*	Within 90 days after the appointment.
Annual Status Report	Guardian	Within 60 days after each anniversary of the appointment.

Document	Who Files?	Due Date
Annual Financial Accounting	Conservator*	Within 60 days after each anniversary of the appointment.
Final Financial Accounting	Conservator*	Upon resignation or removal of the guardian or conservator or upon termination of the guardianship or conservatorship.

* Filed by the guardian if there is no conservator.

The guardian or conservator must file the documents with the court that made the appointment unless there has been a change of venue. The guardian or conservator must serve a copy of the documents, along with a notice of right to object, on:

- the protected person (if s/he is of an appropriate age and mental capacity to understand the proceedings);
- the protected person's guardian or conservator (if the judge has appointed separate people);
- the protected person's spouse, adult children, parents and siblings; and
- anyone requesting notice under [Section 75-5-406](#).

Code of Judicial Administration [Rule 6-501](#).

The guardian or conservator may serve the documents by mail, email or hand delivery. If anyone objects to the filing or if the judge has further questions, the judicial assistant will schedule a hearing. Code of Judicial Administration [Rule 6-501](#).

(g) CORIS entries for reports

Four probate document types may be selected from the drop down box to help in tracking the required probate post-judgment reports.

They are:

- 1) Accounting and Status - Probate
- 2) Annual Accounting - Probate
- 3) Final Accounting - Probate
- 4) Inventory - Probate

After selecting one of the above options, the Filed by box will appear and all parties names attached to the case will be displayed. When the party that filed the document being entered is selected, a case history note of the document filing and the party name will be created.

Example:

Filed: Inventory - Probate

Filed By: John Doe

Selecting the party who filed the document will allow for accurate record keeping. This is especially important when there are separate guardians and conservators, or a current guardian or conservator as well as a prior guardian or conservator.

(h) CORIS entries for tracking annual accountings and other reports

The dates the required reports are due should be entered into CORIS when the appointment is made. CORIS will help monitor if reports are filed timely. To enter dates:

1) Go to Guardian Conservator Reporting. This screen can be reached 3 different ways.

a. Primary >Case > Management > Guardian Conservator Reporting

or

b. Primary >Case > Incourt > New Minutes. Guardian Conservator Reporting.

or

c. Primary >Case > Documents (F5) > Toolbox > Guardian Conservator Reporting.

2) Under Report Type,

select all the report types to be filed. You can select Inventory with Combined Accounting and Report on Status, or just Inventory with the Accounting only. Under to be filed by, select the party responsible to file each report. Under due on, enter the date each report is due.

The Inventory due date, for example, is 90 days from the date the order appointing the guardian or conservator is signed. The other due dates should be one year from the date of appointment.

NOTE: This may vary if the judge approved different dates for the convenience of the guardian or conservator.

(i) CORIS entries to update tracking on annual accountings and other reports

When each tracked report has been filed and accepted by the court, go to this screen and change the date to the next due date. This will trigger the automatic Notice and Order to Show Cause on the next due date.

NOTES: If a clerk tries to set a report due date on a case that does not require post-judgment reporting or does not have a party type of Guardian or Conservator, this warning will display.

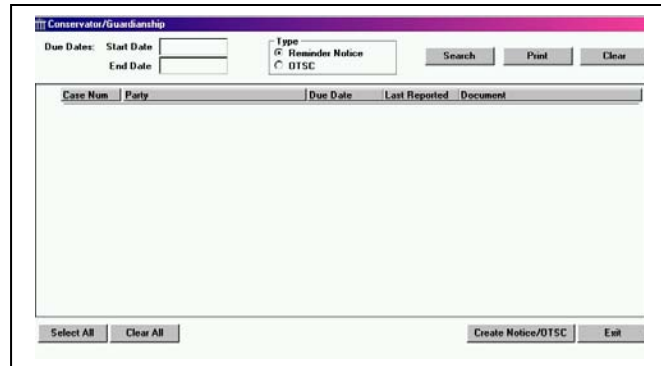
A date cannot be added on this screen until the Guardian or Conservator party has been added in the Name/Address screen.

If No annual reporting was entered on the Name/Address screen, a warning “Excused from Reporting” will display on the Reporting Dates screen. No parties will be listed in the drop down box.

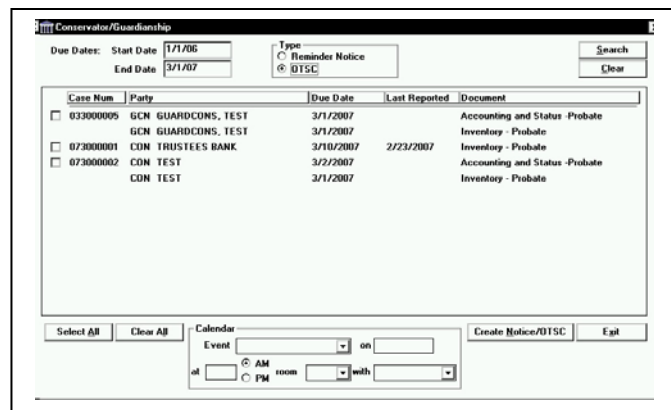
(j) CORIS-generated notices for annual accountings and other reports

The Guardian Conservator Notices screen is used to track when reports are due, prepare reminder letters, and set up the order to show cause process.

- 1) Select Case > Management > Guardian Conservator Notices
- 2) The Conservator/Guardianship screen will display. Determine the period of time for which to check for post-judgment reports due the court. Enter the Start Date and End Date for the period of time. Using Type, select the document to prepare reminder Notices or Order to Show Causes and select Search.



- 3) Depending on the selection, this search will pull all cases that require a reminder notice or an Order to Show Cause in the Due Date time period.



- 4) A list of cases that meet the criteria of the search will display. To create a notice or Order to Show Cause, select the box next to the case number and the Create Notice/OSC button. The Notice or Order to Show Cause will be prepared and sent to the print index.

NOTE: If the OSC Type was selected, an OSC hearing must be calendared. The notice screen will display to set up notices.

(8) Reviewing the reports; Monitoring the guardian or conservator

[Section 75-5-312](#) and [Section 75-5-417](#) require the court to review and approve the reports. Although the statutes give no guidance about how thorough the review should be or what standards apply consider this from the 2012 National Probate Court Standards:

Standard 3.3.17 Monitoring

Probate courts should monitor the well-being of the respondent and the status of the estate on an on-going basis, including, but not limited to:

- Determining whether a less intrusive alternative may suffice.

- Ensuring that plans, reports, inventories, and accountings are filed on time;
- Reviewing promptly the contents of all plans, reports, inventories, and accountings.
- Independently investigating the well-being of the respondent and the status of the estate, as needed.
- Assuring the well-being of the respondent and the proper management of the estate, improving the performance of the guardian/conservator, and enforcing the terms of the guardianship/conservatorship order.

And this commentary to the Standard, citations omitted:

Following appointment of a guardian or conservator, probate courts have an on-going responsibility to make certain that the respondent is receiving the services and care required, the estate is being managed appropriately, and the terms of the order remain consistent with the respondent's needs and condition. The review, evaluation, and auditing of the initial plans, inventories, and report and the annual reports and accountings filed by a guardian or conservator is the initial step in fulfilling this duty. Making certain that those documents are filed is a necessary precondition. ... Probate courts should also have the capacity to investigate those situations in which guardian/conservators may be failing to meet their responsibilities under the order or exceeding the scope of their authority.

A principal component of the review is to ensure that the guardian/conservator included all of the information required by the court in these reports. Probate courts should not permit conservators to file accountings that group expenses into broad categories, and should require that all vouchers, invoices, receipts, and statements be attached to the accounting to enable comparison. Prompt review of the guardian's or conservator's reports enables probate courts to take early action to correct abuses and issue a show cause order if the guardian/conservator has violated a provision of the original order.

Reviewing the reports is important. Your approval of an annual report adjudicates the conservator's liability for matters considered in connection with the report. [Section 75-5-419](#). Although limited on its face to conservators, the principle probably applies to reports by guardians as well. Similarly, approval of the final accounting adjudicates all previously unsettled liabilities.

Perhaps more important, an incapacitated person is at risk of being abused, neglected and financially exploited. That harm might come from the guardian or conservator or from someone else because the guardian or conservator is not doing a good job of protecting the protected person. Indications of harm and risk of harm might be in the annual reports.

A volunteer court visitor can help to review reports for indications of problems. In the pilot districts (Districts 2, 3, 4 and 7), contact one of the coordinators for the Volunteer Court Visitor Program (email: visitor@utcourts.gov or see the court's webpage

<http://www.utcourts.gov/visitor/>), and she will prepare an order assigning a volunteer court visitor. There are no volunteer court visitors outside of the pilot districts.

In any district, with or without an objection to the report, you can schedule a hearing and personally interview the guardian or conservator, the protected person, and others in the protected person's life. [CJA 6-501](#).

Ultimately, whether the conclusion is based on your review, your clerk's review, a visitor's review or a hearing, you should be satisfied that the guardian and conservator are performing their duties and exercising their authority and discretion in accordance with law and your orders. If they are not, sanctions against the guardian or conservator may be appropriate, or it may be appropriate to appoint a successor.

(9) Cannot locate the guardian or conservator

If it comes to your attention that the guardian or conservator has moved, try to re-establish contact immediately. The guardian and conservator are supposed to notify the court if they move, but they often do not do so. The sooner the effort is made to try to find the guardian or conservator, the more likely the effort will be successful. The most common scenario is that the guardian or conservator has failed to file an annual report, and the court's OSC has been returned as undeliverable, but there may be other circumstances.

If you cannot find the guardian or conservator, contact one of the coordinators for the Volunteer Court Visitor Program (email: visitor@utcourts.gov or see the court's webpage <http://www.utcourts.gov/visitor/>), and she will prepare an order assigning a volunteer court visitor to try to re-establish contact. This service is available for all districts, not just the pilot districts.

(10) Further proceedings

(a) Moving the protected person to a different residence

The guardian does not need the court's permission to move the protected person to another residence, even to another county within Utah, but the guardian and conservator must notify the court if they or the protected person moves.

(b) Transferring a guardianship or conservatorship from one county to another

The guardian or conservator does need the court's permission to transfer the guardianship or conservatorship to another county within Utah. Moving the protected person to another residence within Utah, even if the residence is in a different county, is different from transferring the guardianship or conservatorship itself to another county. It is possible for the protected person to move without transferring the guardianship or

conservatorship, and it is possible to transfer the guardianship or conservatorship without moving the protected person.

Transferring the guardianship or conservatorship to another county within Utah is called a “change of venue,” and the guardian or conservator needs the court’s permission. If it would be more convenient to report to the district court in a county other than the one that made the appointment, the guardian or conservator can file a motion to change venue. [Section 75-5-302](#) and [Section 75-5-403](#).

(c) Asking for instructions, changes, sanctions

The guardian or conservator, the protected person, or someone interested in the protected person may file a petition or motion. Some possible circumstances:

- Most of the guardian’s and conservator’s decisions do not have to be approved by the judge, but there are some that do. Or the guardian or conservator might want the extra protection of having a particularly controversial decision approved by an independent authority.
- If the protected person’s incapacity becomes better or worse, the guardian or conservator may need less or more authority than given in the previous order and letter of guardianship or letter of conservatorship.
- If the guardian or conservator has harmed the protected person, the judge can impose sanctions. The harm might have been physical, emotional or financial.

[Section 75-5-307](#), [Section 75-5-415](#), [Section 75-5-426](#).

(11) Terminating the guardianship or conservatorship

(a) Transfer to another state

To transfer a guardianship or conservatorship to another state, the guardian or conservator must petition the Utah district court for permission. Notice of the petition must be served on the persons who would be entitled to notice of a petition for the appointment of a guardian or conservator.

The Utah court may hold a hearing and will issue an order provisionally granting the petition to transfer if the judge is satisfied that:

- the guardianship or conservatorship will be accepted by the other state;
- the protected person is present in or is reasonably expected to move permanently to the other state, or, if the proceeding is a conservatorship, the protected person has a significant connection to the other state;
- there is no objection to the transfer, or the objector has not established that the transfer would be contrary to the protected person’s interests; and
- plans for the protected person in the other state are reasonable and sufficient, and arrangements for management of his or her property are adequate.

The order will direct the guardian or conservator to petition for guardianship or conservatorship in the other state. The Utah court will issue a final order confirming the transfer and terminating the Utah guardianship or conservatorship upon receipt of an order from the court of the other state accepting the proceeding and the documents required to terminate the Utah guardianship or conservatorship.

[Section 75-5b-301](#).

Transferring a guardianship or conservatorship from another state into Utah is essentially the reverse of these procedures. [Section 75-5b-302](#). Or the guardian or conservator from the other state can file a regular petition for appointment in this state.

(b) Upon request

The protected person or anyone interested in the protected person's welfare may file a motion or letter asking that the court terminate the guardianship or conservatorship. [Section 75-5-307](#) and [Section 75-5-430](#). Anyone who knowingly interferes with this request may be guilty of contempt of court. [Section 75-5-307](#).

If the order appointing the guardian specifies a minimum period of time during which no one is permitted to claim that the protected person is not incapacitated, the person who wants to file the motion or letter will first have to ask the court for permission to do so. The minimum period can be up to one year. [Section 75-5-307](#).

If the appointment is of a guardian, the court will follow the same procedures as provided in [Section 75-5-303](#). Since the protected person's incapacity is at issue, the court is required to appoint an attorney to represent the protected person. If the appointment is of a conservator, the court will follow the same procedures as provided in [Section 75-5-407](#).

(c) Death of protected person

If the protected person dies, the guardian or conservator must notify the court and interested persons and file a copy of the death certificate. If a protected person dies, the conservator must also:

- deliver the protected person's will to the court and inform the executor or a beneficiary named in the will that s/he has done so;
- continue to pay the protected person's obligations and protect the estate from harm; and
- deliver the balance of the estate to the protected person's personal representative or to others who are entitled to it.

[Section 75-5-425](#).

(12) Temporary guardianship

Under [Section 75-5-310](#), the judge may appoint a temporary guardian if:

- an emergency exists; and
- the respondent's welfare requires immediate action; and
- the respondent has no guardian or the guardian is not effectively performing their duties.

The appointment of a temporary guardian is not a determination of the respondent's incapacity. The appointment of a temporary guardian can be without notice to anyone. The order will designate a period of days (not to exceed 30 days) during which the temporary guardian has authority to make decisions on the respondent's behalf. The order might limit the areas in which the temporary guardian can make decisions.

Within 5 days after the order, the court must hold a hearing and begin the process to determine the respondent's incapacity.

The temporary guardian is responsible for the protected person's care and custody and must not permit the protected person to leave Utah. The authority of any previously appointed guardian is suspended so long as a temporary guardian has authority.

Utah law does not provide for the appointment of a temporary conservator.

(13) Checklist to prepare for the hearing — Guardianship

- Is venue correct?
 - Yes
 - No
- Will the respondent attend the hearing?
 - Yes
 - No
- If not, has a visitor been assigned?
 - Yes (Has the report been filed?)
 - No — Petitioner claims clear and convincing evidence from a physician that respondent has fourth stage Alzheimer’s disease, extended coma, or an intellectual disability with an IQ of less than 25.
 - No — Petitioner has **not** claimed clear and convincing evidence. (Assign court visitor.)
- Does the respondent have a lawyer?
 - Yes
 - No (Appoint lawyer.)
- Does the respondent want to be examined by a physician or interviewed by a court visitor?
 - Yes (Assign physician or court visitor. Has the report been filed?)
 - No
- Does the judge want more information about the respondent’s circumstances?
 - Yes (Assign court visitor. Has the report been filed?)
 - No
- Is an interpreter needed?
 - Yes — What language? _____ . (Contact interpreter coordinator.)
 - No
- Are all of the required documents in the file?

The file should contain:

- petition to appoint;
- notice of hearing;
- list of persons to be served with petition and notice of hearing (If the petitioner uses court-approved forms, this is called “Schedule A.”);
- proof of service under [URCP 4](#) of petition and notice of hearing at least 10 days before the hearing on:
 - the respondent;
 - the respondent's spouse and parents if they are within Utah;
- certificate of service under [Section 75-1-401](#) and [URCP 5](#) of petition and notice of hearing at least 10 days before the hearing on:
 - the respondent's spouse and parents if they are not within Utah;
 - the respondent’s adult children;
 - the respondent's closest adult relative if respondent has no spouse, parents, or adult children or if they cannot be found;

- the respondent's guardian, conservator, caregiver and custodian;
- the person nominated as guardian by the respondent or by the respondent's parent, spouse, or caregiver;
- the respondent's health care decision making agent;
- the respondent's agent under a power of attorney; and
- any other interested person.
- clerk's certificate of posting public notice at least 10 days before the hearing;
- physician's report or other statements or affidavits about respondent's incapacity and need for a guardian;
- other documents often filed with the petition, but not necessary until appointment:
 - completion of testing certificate, if required;
 - acceptance of appointment;
 - proposed findings of fact, conclusions of law and order;
 - letter of guardianship.

The file might contain:

- waivers of notice or consents to the appointment from interested persons who would otherwise have to be served;
- death certificates or other proof of the death of interested persons who would otherwise have to be served;
- documents authorizing and proving alternative service (If the people required to be served cannot be served as required either under [URCP 4](#) or [Section 75-1-401](#), then the petitioner must have them served by alternative means.);
- any written objections;
- nominations of a guardian.

(14) Checklist to prepare for the hearing — Conservatorship

The procedures for the appointment of a conservator are similar to the procedures for the appointment of a guardian, but there are not as many protections for the respondent. Follow these procedures only if the petition is for the appointment of a conservator only. If the petition is for the appointment of a guardian and a conservator, follow the procedures in [Section \(4\)\(a\)](#) and see the checklist in [Section \(12\)](#).

- Is venue correct?
 - Yes
 - No
- Will the respondent attend the hearing?
 - Yes
 - No
- Does the respondent have a lawyer?
 - Yes
 - No (Does the judge want to appoint a lawyer?)
- Does the respondent want to be examined by a physician or interviewed by a court visitor?

- Yes (Assign physician or court visitor. Has the report been filed?)
- No
- Does the judge want more information about the respondent's circumstances?
 - Yes (Assign court visitor. Has the report been filed?)
 - No
- Is an interpreter needed?
 - Yes — What language? _____ . (Contact interpreter coordinator.)
 - No
- Are all of the required documents in the file?

The file should contain:

- petition to appoint;
- notice of hearing;
- list of persons to be served with petition and notice of hearing (If the petitioner uses court-approved forms, this is called "Schedule A.");
- proof of service under [URCP 4](#) on the respondent if s/he is in Utah or certificate of service under [Section 75-1-401](#) and [URCP 5](#) if s/he is not in Utah;
- proof of service under [URCP 4](#) on the respondent's spouse if s/he is in Utah or certificate of service under [Section 75-1-401](#) and [URCP 5](#) if s/he is not in Utah;
- proof of service under [URCP 4](#) on the respondent's parents if the respondent is not married and if they are in Utah or certificate of service under [Section 75-1-401](#) and [URCP 5](#) if they are not in Utah;
- certificate of service under [Section 75-1-401](#) and [URCP 5](#) on any interested person requesting notice at least 10 days before the hearing;
- clerk's certificate of posting public notice at least 10 days before the hearing;
- physician's report or other statements or affidavits about respondent's incapacity, disability or other need for a conservator;
- other documents often filed with the petition, but not necessary until appointment:
 - completion of testing certificate, if required;
 - acceptance of appointment;
 - proposed findings of fact, conclusions of law and order;
 - letter of conservatorship.

The file might contain:

- waivers of notice or consents to the appointment from interested persons who would otherwise have to be served;
- death certificates or other proof of the death of interested persons who would otherwise have to be served;
- documents authorizing and proving alternative service (If the people required to be served cannot be served as required either under [URCP 4](#) or [Section 75-1-401](#), then the petitioner must have them served by alternative means.);
- any written objections;
- nominations of a conservator.

Tab 2

Guardianship & Conservator Cases Filed Q3 of FY2019

Jan 1, 2019 to Apr 1, 2019

		Guardian-Minor	Guardian-Adult Child	Guardian-Adult	Guardianship	Conservatorship
District 1	Brigham City	3		1		1
	Logan	5	2	2		4
	District 1	8	2	3		5
District 2	Farmington	27	10	11	1	3
	Morgan	1				1
	Ogden	20	6	11		4
	District 2	48	16	22	1	8
District 3	Salt Lake City	99	46	41		4
	Silver Summit		1			1
	Tooele	3	3	2		3
	District 3	102	50	43		8
District 4	American Fork	1		1	1	
	Fillmore	1		2		
	Heber City	1	1			2
	Nephi		1	2		
	Provo	26	18	18		9
	Spanish Fork			1		1
	District 4	29	20	24	1	12
District 5	Beaver	1				1
	Cedar City	5	2			1
	St. George	22	3	5		2
	District 5	28	5	5		4
District 6	Kanab		1			
	Manti		3	1		
	Richfield	1		2		
	District 6	1	4	3		
District 7	Castle Dale	1				
	Price	6				1
	District 7	7				1
District 8	Duchesne	1				
	Roosevelt	1				
	Vernal	1	1	3		1
	District 8	3	1	3		1
Total		226	98	103	2	39