Guardianship Terminology

When NGA was developing a set of principles and standards to be used on a national scope, we realized it was necessary to review and consider the tremendous variety of terms that were currently in use throughout the country. Our concerns with these differences and possible misinterpretation of principles and concepts led to the development of this set of terms and definitions. This list has subsequently been updated to include the latest version of Black's Law Dictionary 8th Edition. Whenever, possible, state specific terms have also been included as a reference guide for users.

Adjudication

The legal process of resolving a dispute; the process of judicially deciding a case. (Black's)

Administrator/Executor/Personal Representative

A person appointed by the court to manage the assets and liabilities of an intestate decedent. Executor is a person named by the testator to carry out the provisions in the testator's will. (Black's)

Advance Directive

A written instruction, such as a living will or durable power of attorney for health care, which guides care when an individual is terminally ill or incapacitated and unable to communicate his/her desires. (E & S)

Advocate

A person who assists, defends, or pleads, or prosecutes for another. (Black's)

Alleged Incapacitated Person or Person at Risk

Individual for whom a guardianship proceeding has been initiated. (Florida)

Arms Length Relationship

A relationship between two agencies or organizations, or two divisions or departments within one agency, which ensures independent decision-making on the part of both. (E & S)

Attorney at law

A person who practices law. (Black's)

Attorney for the Alleged Incapacitated Person

An attorney who represents the alleged incapacitated person. Such attorney shall represent the expressed wishes of the alleged incapacitated person. (Florida)

Best Interest

That course of action that maximizes what is best for a ward and that includes consideration of the least intrusive, most normalizing, and least restrictive course of action possible given the needs of the ward. (E & S)

Capacity

Legal qualification, competency, power, or fitness. Ability to understand the nature of the effects of one's acts. (Black's 5th Edition)

Decisional Capacity

The ability to understand and appreciate the nature and consequences of a decision and to reach and communicate an informed decision in the matter. (Black's)

Clerk of Court

A court officer responsible for filing papers, issuing process, and keeping records of court proceedings as generally specified by rule or statue. (Black's)

Competence:

A basic or minimal ability to do something; qualify esp. to testify <competence of a witness> (Black's)

Competency:

The mental ability to understand problems and make decisions. (Black's)

Conflict of Interest

Situations in which an individual may receive financial or material gain or business advantage from a decision made on behalf of another. Situations, which create a public perception of a conflict of interest, should be handled in the same manner as situations in which an actual conflict of interest exists. (E & S)

Conservator

See Guardian.

Counsel

See Attorney.

Court

A governmental body consisting of one or more judges who sit to adjudicate disputes and administer justice. (Black's)

Court Order

A legal document issued by the court and signed by a judge. Examples include a letter of guardianship; spelling out directions for the care of the ward and the estate and authorization or denial of a request for action. (E & S)

Court Required Report

A report which the guardian is required by statute or court order to submit to the court relative to the guardianship. (E & S)

Court Visitor, Monitor, Investigator

A person appointed by the court to provide the court with information concerning a ward or a guardian.

Dementia

A category of disorders characterized by the development of multiple cognitive deficits (including memory impairment) that are due to the direct physiological effects of a general medical condition, to the persisting effects of a substance or to multiple etiologies (e.g., the combined effects of cerebral vascular disease and Alzheimer's disease). (DSM-IV)

Developmental Disability

A severe, chronic disability of an individual 5 years of age or older that:

A. Is attributable to a mental or physical impairment or combination of mental and physical impairments;
B. Is manifested before the individual attains age 22;
C. Is likely to continue indefinitely;
D. Results in substantial functional limitations in three or more of the following areas of major life activity
   1. Self-care
   2. Receptive and expressive language
   3. Learning
   4. Mobility
   5. Self-direction
   6. Capacity for independent living
   7. Economic self-sufficiency; and
E. Reflects the individual's need for a combination and sequence of events of special, interdisciplinary, or generic services, supports, or other assistance that is of lifelong or extended duration and is individually planned and coordinated. (DD Act)

Designation of Guardian

A formal means of nominating a guardian before a guardian is needed. (E & S)

Direct Services

Includes medical and nursing care, care/case management and case coordination, speech therapy, occupational therapy, physical therapy, psychological therapy, counseling, residential services, legal representation, job training and other similar services. (E & S)

Disabled Person

A person 18 years of age or older deemed by the Court to be lacking sufficient understanding or capacity to make or communicate responsible decisions concerning the care of his person or financial affairs. See also Ward.

Estate

Both real and personal, tangible and intangible, and includes anything that may be the subject of ownership. (E & S)

Extraordinary Medical Circumstance

Includes abortion, removal of life support, sterilization, experimental treatment and other controversial medical issues. (E & S)

Fiduciary

An individual, agency or organization that has agreed to undertake for another a special obligation of trust and confidence, having the duty to act primarily for another's benefit and subject to the standard of care imposed by law or contract. (Select)

Free Standing Entity

An agency or organization that is independent from all other agencies or organizations. (E & S)

Functional Assessment

A diagnostic tool that measures the overall well-being of an individual and provides a picture of how well the person is able to function in a variety of multidimensional situations. (University of South Florida Gerontology Department, Eric Pfeiffer, MD, Director)

Guardian

An individual or organization named by order of the court to exercise any or all powers and rights over the person and/or the estate of an individual. The term includes conservators and certified private or public fiduciaries. All guardians are accountable to the court. (E & S)

Corporate Guardian

A corporation that is named as guardian for an individual and that may receive compensation in its role as guardian with court approval. Corporate guardians may include banks, trust departments, for-profit entities, and nonprofit entities.
(E & S)

Emergency/Temporary Guardian

A guardian whose authority is temporary and usually only appointed in an emergency. (E & S)

Family Guardian

An individual who is appointed as guardian for a person to whom he or she is related by blood or marriage. In most cases when there is a willing and able family member who has no conflict with the prospective ward, the court prefers to appoint the family member as guardian. On court approval, a family guardian may receive reasonable compensation for time and expenses relating to care of the ward. (E & S)

Foreign Guardian

A guardian appointed within another state or jurisdiction. (E & S).

Guardian Ad Litem

A person appointed by the Court to make an impartial inquiry into a situation and report to the Court.

Guardian of the Person

A guardian who possesses any or all powers and rights granted by the court with regard to the personal affairs of the individual. (E & S).

Guardian of the Estate

A guardian who possesses any or all powers and rights with regard to the property of the individual. (E & S)

Individual Professional Guardian

An individual, who is not related to the ward by blood or marriage and who with court approval, may receive compensation in his or her role as guardian. He/she usually act as guardian for two or more individuals. (E & S)

Limited Guardian

A guardian who is appointed by the court to exercise the legal rights and powers specifically designated by a court order entered after the court has found that the ward lacks capacity to do some, but not all, of the tasks necessary to care for his or her person or property, or after the person voluntarily petitions for appointment of a limited guardian. A limited guardian may possess fewer than all of the legal rights and powers of a plenary guardian. Also Partial Guardian. (E & S)

Master Guardian

An advanced level guardian who demonstrates a high degree of competence in managing complex issues. (E & S)

Partial Guardian

A guardian who possesses fewer than all of the legal rights and powers of a plenary guardian. (Select)

Plenary Guardian

A person who is appointed by the court to exercise all delegable legal rights and powers of the ward after the court has found the ward lacks the capacity to perform all of the tasks necessary to care for his or her person or property. (E & S)

Pre-need Guardian

A guardian who is formally nominated before a guardian is needed. (E & S)

Public Guardian

A guardian appointed by the court, who is deemed to be an officer of the court. This person may be appointed to guardianship over many incompetent or incapacitated persons. The appointee may be paid for services from public funds or from assets of the incapacitated person of concern, if such funds are available. (AARP)

Registered Guardian

An entry-level guardian who demonstrates a basic knowledge and understanding of guardianship, ethical principles and standards of good practice. (E & S)

Standby Guardian

A person, agency or organization whose appointment as guardian shall become effective without further proceedings immediately upon the death, incapacity, resignation, or temporary absence or unavailability of the initially appointed guardian. (Select and E & S)

State Guardian

A branch of the government of the state which is appointed when no one else is willing or able to act as guardian for incapacitated residents of the state.

Successor Guardian

A guardian who is appointed to act upon the death or resignation of a previous guardian. (E & S)

Volunteer Guardian

A person who is not related to the ward by blood or marriage and who does not receive any compensation in his or her role as guardian. The guardian may receive reimbursement of expenses or a minimum stipend with court approval. (E & S)

Incapacitated or Incompetent Person/Conservatee

Any person who is impaired by an intoxicant, by mental illness or deficiency, physical illness or disability to the extent that personal decision-making is impossible. (Black's) Also Incompetent Person. (Black's)

Incapacity or Incompetency

A person's inability to make and then act upon personal and/or property decisions on his or her own behalf.

Indigent

One who is needy and poor, or one who has not sufficient property to furnish him/her a living nor anyone to support him/her who he/she is entitled to look for support (Black's 5th Edition)

Indigency

The state or condition of a person who lacks the means of subsistence; extreme hardship or neediness; poverty. (Black's)

Informed Consent

A person's agreement to allow something to happen, made with knowledge of risks involved and the alternatives. A patient's knowing choice about a medical treatment or procedure, made after a physician or other healthcare provider discloses whatever information a reasonable prudent provider within the medical community would give to a patient regarding the risks involved in the proposed treatment or procedure. (Black's)

Interested Person

Individuals who, according to state statute, have a right to notice regarding a guardianship cause of action. This may include parents, siblings, spouse, and residential provider.

Least Intrusive

A mechanism, course of action, or situation, which allows the ward the greatest opportunity for autonomy with a minimum of intervention. (Select)

Least Restrictive Alternative

A mechanism, course of action, or environment which allows the ward to live, learn, and work in a setting which places as few limits as possible on the ward's rights and personal freedoms as is appropriate to meet the needs of the ward. (E & S)

Letters of Office

Formal document issued by the court containing or attesting the grant of some power authority or right. Also Letters of Guardianship.

Notice of Motion

A notice in writing, related to a specific case, stating that on a certain day, a motion will be made to the court for the purpose or object stated.

Oath of Office

A legal document signed by the guardian in which he/she pledges to carry out his/her legal obligations to the ward in a proper manner.

Parens Patriae

A legal principle meaning that the state or the government can act to determine what is in the best interests of an individual, even if the individual disagrees, on the basis of evidence of incapacitation or charges of personal or serious property mismanagement. Literally, the "father of the country." (AARP)

Petition

A formal, written request presented to a court or other official body. (Black's) For example, relative to guardianship, the document filed to initiate the process for adjudication of disability and appointment of a guardian.

Physician's Report

A report required, in some states, in relationship to a guardianship proceeding, which substantiates the need for a substitute decision maker. Also Examining Committee Report.

Prudent Person

A person who acts cautiously in the handling of assets. See Prudent Person Rule. (E & S)

Prudent Person Rule

An investment standard that considers the reasonableness of an investment based on whether a prudent person of discretion and intelligence, who is seeking reasonable income and preservation of capital, would make that investment. (E & S)

Prudent Investor Rule

All investments must be considered as part of an overall portfolio rather than individually. No investment is inherently imprudent or prudent. The rule recognizes that certain nontraditional investment vehicles may actually be prudent and the guardian who does not use risk-reducing strategies may be penalized. Under most circumstances, the ward's assets must be diversified. The guardian is obligated to spread portfolio investments across asset classes and potentially across global markets to both enhance performance and reduce risk. The possible effects of inflation must be considered as part of the investment strategy. The guardian shall either demonstrate investment skill in managing assets or shall delegate investment management to another qualified party. (E & S)

Psychotropic Medications

Any medication prescribed for the management of behavior.

Representative Payee

An individual, agency, 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. (Select)

Self-determination

A doctrine that states the actions of a person are determined by that person. It is free choice of one's acts without external force. (E & S)

Social Services

Services provided to meet social needs, including provisions for public benefits, case management, money management services, adult protective services, companion services, and other similar services. (E & S)

Substituted Judgment

The principle of decision-making which requires implementation of the course of action which comports with the individual ward's or beneficiary's known wishes expressed prior to the appointment of the guardian or representative payee, provided the individual was once capable of developing views relevant to the matter at issue and reliable evidence of these views remains. Current opinions and desires of the ward or beneficiary shall be examined and are relevant to a determination of the ward's or beneficiary's views prior to appointment of the guardian or representative payee. (Select)

Sui Juris:

Of full age and capacity; possessing full social and civil rights. (Black's)

Surety Bond

Obligation of a guarantor to pay a second party upon default by a third party in the performance the third party owes to the second party. (Black's 5th Edition)

Trustee

One who, having legal title to property, holds it in trust for the benefit of another and owes a fiduciary duty to that beneficiary. Generally a trustee's duties are to convert to cash all debts and securities that are not qualified legal investments, to re-invest the cash in proper securities, to protect and preserve the trust property, and to ensure that it is employed solely for the beneficiary in accordance with the directions contained in the trust instrument. (Black's)

Ward

A person for whom a guardian has been appointed. Synonyms include Conservatee, disabled person, protected person, and incapacitated person. (E & S)

AARP refers to the material which Irene provide from AARP

Black's refers to Black's Law Dictionary 8th Edition, unless otherwise specified

E & S refers to the NGA Ethics and Standards for Guardians

Select refers to the Report from the Subcommittee on Housing and Consumer Interests
of the Select Committee on Aging House of Representatives