

*Guardianship: Transcript 3*

Conservatorship case.

However, you'll see here that there are provisions for pretrial conferences, motions, discovery. Discovery being the fancy term for the exchange of information between parties, as to what they intend to present at a hearing to support their position. There are limits on the amount of discovery that can be done in a guardianship and conservatorship case. But, the parties involved also have a duty confer with one another to try to narrow down the issues for the courts benefit. They must file the joint report with the court again, that outlines what they're exactly fighting about and at the end of the day there's an evidentiary hearing. This is like a trial and in guardianship cases there is a statutory right to have a jury trial, but it must be requested within the first thirty days of the filing of the case and if you don't demand your jury trial, you waive it.

Something to keep in mind and I have done this on more than one occasion is that these cases can be settled. So, they can be referred to the court alternative dispute resolution program and I think every Court or every county in the state has an ADR program and I think the thing that works best in this instance, is mediation. So, mediation is where a third-party neutral is assigned to the case and they facilitate a discussion among the parties to try to iron out their differences. So, sometimes that can be because the incapacitated adult doesn't like the person who's petitioned to become the guardian or conservator, or it could be because two kids are fighting over who should be guardian and conservator for Mom. There's lots of different disputes that arise in these cases, so this is just a way to try to get settled without a full-on evidentiary hearing which can be complicated and expensive and frankly, quite destructive to the family at the end of the day.

Once appointment occurs one way or the other, there are continuing responsibilities that the guardian and conservator must comply with. The first is guardians do have to file two reports on an annual basis- the first is an annual report of Guardian, which is a report by the Guardian about how the what we call ward at this point the incapacitated adult, how that person has been doing over the past year, any significant changes in their well-being or placement and whether the Guardian believes that continued guardianship is necessary.

There's also a report filed by the doctor who sees the ward on a regular basis and again, it's just an update about how they're doing whether there have been any significant changes in this person's medical or psychiatric condition. As I mentioned earlier, the Guardian does have that inpatient authority to put the person into a psychiatric unit, it must be every year with a motion that's supported by the report of the doctor (a psychiatrist or psychologist). In Coconino County these Guardian reports are put on to the judge's non-appearance calendar. The probate rules did change again in the

beginning of January to say that we no longer have non-appearance hearings and so I just don't know how that's going to play out.

But, the bottom line is that the judge doesn't want people to have to come to court if they've already filed the necessary reports the judge can read them and approve the reports and set the next hearing without having to see anybody. So, it's just meant to streamline the process a little bit and so I think that these hearings will continue to be non-appearance, but we'll see how that goes.

As I mentioned earlier the conservator has a lot on his or her plate and there's a tremendous burden especially for non-professional conservators to comply with the requirements of statute and the probate rules. So, among other things, the conservator within 90 days of appointment must submit an inventory of assets, a budget—which is what do we think we're going to have to spend for the incapacitated adult this year and how much income are we going to receive? A copy of a consumer credit report and they also must do something called record the letters of conservator in any County where there's real estate located.

So, quite a bit on the front end and then through the course of every year they are going to be keeping track of literally every penny that comes in the door and goes out the door on behalf of this individual who is incapacitated. That information is submitted to the court and we call it an accounting, or an account and it's submitted annually, and it's reviewed by someone called a court accountant. Again, I don't believe that every county has a Court Accountant, but we certainly do here in Coconino County. So, the other thing the conservator is tasked with is a constant evaluation of how sustainable the conservatorship is. Sustainable being the term of art work do we have enough money?