

**Group Legal Services Association
Solo, Small Firm, and General Practice Section
2016 Joint Spring Meeting
May 11-14, 2016, Key West, Florida**

Guardianship: The Brave New World

**Thursday, May 12
9:45 am – 10:45 am
Salon C-2**

Presenter: Rinky Parwani, Parwani Law, P.A., Tampa, FL

RINKY S. PARWANI



MANAGING ATTORNEY, PARWANI Law, P.A.

Rinky S. Parwani began her career practicing law in Beverly Hills, California handling high profile complex litigation and entertainment law matters. Later, her practice turned transactional to Lake Tahoe, California with a focus on business startups, trademarks, real estate resort development and government law. After leaving California, she also served as in-house counsel for a major lending corporation headquartered in Des Moines, Iowa as well as a Senior Vice President of Compliance for a fortune 500 mortgage operation in Dallas, Texas prior to opening Parwani Law, P.A. in Tampa, Florida. She has served various sophisticated individual, government and corporate clients and counseled in a variety of litigation and corporate matters throughout her career. Ms. Parwani also has prior experience with state and federal consumer lending laws for unsecured credit cards, revolving credit, secured loans, retail credit, sales finance and mortgage loans. She also has served as a special magistrate and legal counsel for various Florida County Value Adjustment Boards. Her practice varies significantly from unique federal and state litigation cases to transactional matters.

Born and raised in Des Moines, Iowa, Ms. Parwani worked in private accounting for several years prior to law school. Her background includes a Certified Public Accountant (CPA) certificate from Iowa (currently the license is inactive) and a Certified Management Accountant (CMA) designation (currently the license is inactive).

Ms. Parwani or the firm is currently a member of the following organizations: Hillsborough County Bar Association, American Bar Association, Brandon Bar Association, Tampa Bay Bankruptcy Bar Association, National Association of Consumer Bankruptcy Attorneys, and the American Immigration Lawyers Association.

Ms. Parwani is a frequent volunteer for Fox Channel 13 Tampa Bay Ask-A-Lawyer. She has recently published an article entitled "Advising Your Client in Foreclosure" in the Stetson Law Review, Volume 41, No. 3, Spring 2012 Foreclosure Symposium Edition. She is a frequent continuing legal education speaker and has also taught bankruptcy seminars for the American Bar Association and Amstar Litigation. She was commissioned by the Governor of Kentucky as a Kentucky Colonel. In addition, she teaches Bankruptcy Law and Legal Research and Writing as an adjunct faculty instructor at the Hillsborough Community College Ybor campus for the paralegal studies program.

Court Admissions

Ms. Parwani is licensed to practice law in four states:

Florida #629634

California #199487

Texas #24049868

Iowa #18659

In addition, Ms. Parwani has been admitted to the following courts:

U.S. Supreme Court

U.S. Tax Court #PR-0625 CAF-0305-86807R

11th US Circuit Court of Appeals

9th US Circuit Court of Appeals

US District Court Middle District of Florida

US District Court Northern District of Florida

US District Court Southern District of Florida

US District Court Central District of California.

US District Court Southern District of California

Education

Ms. Parwani received her education at the following schools:

Juris Doctor 1998

University of Minnesota Law School - Minneapolis, Minnesota

Master of Business 1993

Drake University - Des Moines, Iowa

Bachelor of Science in Business Administration 1992

Drake University - Des Moines, Iowa

Double Major: Accounting and Corporate Finance

Guardianship

Prepared By : Rinky S. Parwani

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- ❖ A guardian is a person who is given the legal power and duty by a court to take care of and manage the property and rights of another person who, due to incapacity, is considered unable to manage their own affairs.
- ❖ Courts are directed by law to use least restrictive alternative in ensuring needs of incapacitated persons are met.
- ❖ Guardianships could be established for a minor child or adult.
- ❖ Guardianships can be voluntary or involuntary.
- ❖ Guardianships can be either of a person or of property.
- ❖ Guardianships can be appointed without a court order.

What is Guardianship?

- ❖ Guardianship is considered when a person is mentally impaired.
- ❖ It can also be used when someone lacks the capacity to care for themselves.
- ❖ This can be due to any of the following:
 - ❖ Psychiatric Illness
 - ❖ Neurological Illness
 - ❖ Developmentally Disabled
- ❖ Guardianship should seek to preserve for the incompetent person the opportunity to exercise those rights that are within his comprehension and judgment.

Why Guardianship?

- ❖ To be able to restore the rights of the individual, which can be either in full or partially.
- ❖ Guardianships should not be permanent.
- ❖ Guardian to assist the incapacitated person in getting services to help with restoring capacity.
- ❖ Help the incapacitated person become more independent

Guardianship Goals



Types of Guardianships

- ✓ Can only exercise those rights delegated to them which were removed from the Ward by the court.
- ✓ Must carry out the guardianship plan that is made before being appointed and has to be revised periodically.
- ✓ Rights relating to medical care and social aspects of the Ward's life are delegated to you which include the following rights:
 - ✓ The determination of residence
 - ✓ Consent to medical treatment
 - ✓ Making and carrying out decisions about the ward's social environment and other social aspects of the ward's day to day living.

Guardian of a Person

Plenary

- ✓ Enter into Contracts
- ✓ Conduct litigation
- ✓ Apply for government benefits
- ✓ Manage property and make gifts or other dispositions of property

Limited

- ✓ Can only exercise those rights/powers that have been removed from the ward by the court
- ✓ Helps with personal care or property management needed to carry on daily life

Guardian of Property

- ✓ Fiduciary duty to invest and manage the ward's investment assets as a prudent investor would, considering the purposes, terms, distribution requirements, and other circumstances of the ward.
 - ✓ Not limited to one type of investment
- ✓ Fiduciary duty to diversify investments unless the guardian reasonably believes that the ward's best interest is served by not diversifying.
- ✓ Guardian must file verified inventory of ward's property after letters of guardianship are issued.
 - ✓ Includes safety deposit box. Safety deposit boxes are inventoried when opened in presence of bank official. Guardian is unable to remove any property out of safety deposit box unless it is approved by the court.
- ✓ Guardian is required to file an annual accounting report of all financial activity.

Guardian of Property

Emergency Temporary Guardian

- ✓ Court appointed to temporarily care for a ward or their property when a incapacity hearing is pending
- ✓ Appointed if there is imminent fear the ward's property will be subject to misappropriation or waste
- ✓ Appointed if ward's health or safety will be adversely affected if guardian is not appointed
- ✓ Powers of guardian are temporary and expire after 90 days after appointment or when a plenary or limited guardian has been appointed.

Voluntary Guardian

- ✓ Appointed at the request of a ward who is mentally competent.
 - ✓ Ward is petitioner and has to submit with petition a letter from their doctor certifying ward is mentally competent
 - ✓ Guardian of property only
 - ✓ Ward can not transfer/control property placed in guardian's care
 - ✓ If ward is declared incapacitated voluntary guardianship is terminated upon appointment of involuntary guardian.
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✓ Standby Guardian

- ✓ Appointed to assume the responsibilities and powers of a guardian if the current guardian is no longer able to serve if necessary

✓ Preneed Guardian

- ✓ Written designation to have a guardian when an adult becomes incapacitated or upon death of parents of a child.

✓ Professional Guardian

- ✓ Any guardian who has at any time rendered services to three or more wards as their guardian.

✓ Guardian Advocates

- ✓ A person appointed by written order of the court to represent a person with developmental disabilities

✓ Surrogate Guardians

- ✓ Appointed to act for the existing guardian when they are unavailable to act
- ✓ Only professional guardians can be surrogate guardians.
- ✓ Can not exceed 30 days unless the court extends appointment, and does not limit existing guardians responsibility for the ward.

Types of Guardians

- ✓ An individual - Such as a parent, family member or other suitable person (Registered Guardian)
- ✓ Corporation -Non-Profits
- ✓ Public Agency – County Department of Social Services or local human services agency

Who Can Be A Guardian?



GUARDIANSHIP RIGHTS AND PROCEDURES

Rights retained by Incapacitated Person

- Guardianship report and plan review
 - Review of need for restriction of rights
 - Capacity restored at earliest time possible
 - To be humanely treated, with dignity and respect and to be protected against abuse and neglect
 - To have a qualified guardian
 - To remain independent as possible
 - To be properly educated
 - Receive prudent financial management
 - To be informed about the management of property
 - Receive necessary services and rehabilitation for quality of life
 - To be free from discrimination due to incapacity
 - Access to the court and to have counsel
 - Receive visitors and communicate with others
 - Notice of all proceedings related to guardianship and capacity
 - Privacy
 - Protected against exploitation
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Rights removed

- To marry
- To vote
- To personally apply for government benefits
- To have a driver's license
- To travel
- To seek or retain employment

Rights delegated to Guardian

- Enter into contracts
 - To sue and defend lawsuits
 - Apply for government benefits
 - Manage property and to make gifts and other dispositions of property
 - Determine residence
 - Consent to medical and mental health treatment
 - To make decisions about social environment or other social aspects of the ward's life
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Jurisdiction and venue

- Jurisdiction resides with the circuit courts.
- The venue of all proceedings reside in the county where the incapacitated person lives.

Procedure

- The determination of incapacity is started by the filing of a petition
- After a petition has been filed the subject of all the proceedings is appointed an attorney by the court.
- The court also appoints an examining committee to the person subject to the incapacity hearing. After the examination the committee then prepares and files a report to the court.
- The incapacity hearing is then scheduled no more than 14 days after the committee's report is filed.

Determination of Incapacity

- To initiate guardianship procedures a petition has to be filed.
- After the filing of the petition the court decides whether to appoint the petitioner as guardian or not.
- Once petitioner is appointed as guardian of the incapacitated person, they have to file an oath and designate a resident agent for service of process before the court issues the letters of guardianship.

Guardianship Procedures



Alternatives to Guardianship

➤ Advanced Directives

Competent individuals may give another person(s) the legal authority to act on their behalf when they become unable to handle personal and financial affairs.

➤ Advanced Directives may include one or more of the following:

- Powers of Attorney (Limited, General, Durable, & Health Care)
- Advance Instruction for Mental Health Treatment
- Living Will
- Trust and Wills

➤ Family, friends

Individuals may have family or friends willing and capable of providing for their needs.

Guardianship Alternatives

➤ Advance Instruction for Mental Health Treatment

An individual writes out advanced instruction regarding mental health treatment. The document may include consent to or refusal of certain types of mental health treatment. When a person is declared incompetent, general statutes require that the guardian follow the instructions in the document.

➤ Payee

Individuals may have income (Social Security, SSI) that can be managed by a payee.

➤ Special Bank Account

Individuals may benefit from having someone share decision making about their finances (joint bank accounts).

Guardianship Alternatives

- A written document in which one person (the principal) appoints another person to act as an agent on his or her behalf, thus conferring authority on the agent to perform certain acts or functions on behalf of the principal.
- Powers of attorney are routinely granted to allow the agent to take care of a variety of transactions for the principal, such as executing a stock power, handling a tax audit, or maintaining a safe-deposit box.
- Powers of attorney can be written to be either general (full) or limited to special circumstances.

Power Of Attorney (POA)

- Limited – The principal authorizes the attorney-in-fact to do specific things for a limited period of time.
- General – The attorney-in-fact has the authority to do whatever the principal can do. When the principal becomes incapacitated or dies, the General POA ends.
- Durable – The attorney-in-fact can continue to act for the principal even after the principal becomes incapacitated. In order for this type of POA to be valid, it must be registered with the register of deeds office. The guardian has authority to dismiss the Durable POA. .

Types of POA's

- Health Care - The principal authorizes the attorney-in-fact to make decisions in matters relating to the total health care of the principal. This POA remains active after the principal becomes incapacitated and can only be dismissed by the Clerk of Court.
- Springing - Allows the attorney-in-fact to act if one becomes incapacitated and is not effective until you are incapacitated.

Types of POA's

POA

- appropriate if individual has capacity.
- does not involve loss of rights, autonomy.
- Allows individual to exercise control by planning in advance, and avoids expense and burdensomeness of court involvement.
- Low cost
- Ends upon death of principal

GUARDIANSHIP

- necessary if individual lacks capacity (and needs a decision-maker).
- **UNABLE TO BE REVOKED.**
- Generally reviewed by request, but can be court ordered to review guardianship on specific date.
- Ends upon death of principal

POA vs. GUARDIANSHIP
