



Improving the Process for Appointment of Guardians and Conservators in the South Carolina Probate Courts

The Elder Law Committee (ELC) of the South Carolina Bar is looking at ways to improve the process for the appointment of guardians and conservators in the South Carolina Probate Courts. In cooperation with the South Carolina Association of Probate Judges Article 5 Committee, the ELC has established the following goals to be addressed through proposed legislation to improve upon our current law. The ELC is seeking comment on these goals and on potential ways to meet those goals from stakeholders and the public.

Goals:

- Simplify and clarify the process to promote uniformity throughout the state.
- Ensure adequate due process protections for the allegedly incapacitated person (respondent).
- Increase the availability and practicality of limited guardianships.
- Reduce the cost of the process.
- Create consistency between conservatorship and guardianship actions.
- Establish a system for adequate monitoring of guardians and conservators.

Statutory changes under consideration:

- Separate the attorney role from the guardian ad litem role.
- Combine the guardian ad litem role and the visitor role and set standards for adequately fulfilling that role.
- List the rights the court may remove when appointing a guardian.
- Provide guidance for when a conservator is terminated or resigns.
- Add definitions in S.C. Code § 62-5-101 for clarity and uniformity.
- Create a limited process in some circumstances, including the creation of a Special Needs Trust for Medicaid eligibility purposes.
- Apply a clear and convincing evidentiary standard to the conservatorship process for consistency.

Additional considerations:

- Review Probate Court's authority to waive court fees for indigents.
- Guidance on fees for conservators.

Written comments may be sent by email to article5comments@scbar.org or mailed to the South Carolina Bar, Attn. Caitlin Watson, Post Office Box 608, Columbia, SC 29202. Comments must be submitted by July 31, 2015.