



Guardianship may be an Option for Loved Ones with Mental Injuries or Conditions

In Kentucky, County Attorneys have many important responsibilities within the court system. One such responsibility is presenting evidence to the District Court in adult guardianship and conservatorship proceedings. The process for appointing a Guardian over a child is different and one with which the County Attorney's office is not involved; as it relates to children with intellectual or developmental delays, however, many parents find guardianship necessary when their child reaches the age of majority.

Guardianship and/or conservatorship may also be needed for elderly individuals with diminished cognitive capacities and individuals suffering from traumatic brain injuries as a result of, for instance, a car accident.

Guardianship is a confidential process whereby a guardian – another adult – may be appointed by the District Court to help an individual manage his or her personal decisions, financial responsibilities, or both. There are different levels of guardianship available, and service can be temporary and/or jointly held with another individual. A Guardian is an individual appointed by the Court with decision-making authority and responsibility over a protected person's personal affairs, such as support, care, health, rehabilitation, and therapeutic treatment. A Limited Guardian is a Guardian who possesses fewer than all of the legal powers or duties of a full Guardian, and the Court will specifically list the required duties in such a situation.

Similar to guardianship, there is another court appointment known

as conservatorship. A Conservator is an individual appointed by the Court to manage the property and financial resources of a protected person. A Limited Conservator is an individual appointed by the Court to assist in managing certain financial resources of a protected person, and much like with a Limited Guardian, the Court will specifically list the required duties of a Limited Conservator.

In Boone County, the Petitioner files a guardianship petition in the district where the Respondent (the individual alleged to need assistance) lives. The Petitioner may, but is not required to, be represented by an attorney. Along with the petition, the individual who wishes to be appointed Guardian/Conservator must file an "Application for Appointment of Fiduciary of Disabled Person." At the time these documents are filed, an "Application for Emergency Appointment" may also be filed if there is a danger to the health and safety of the Respondent, or risk of damage to the Respondent's property prior to the disability trial.

Throughout the process, the Respondent will be represented by an attorney. If the Respondent cannot afford a private attorney, the Court will appoint an attorney to represent the Respondent. Evaluations of the Respondent must be completed by a doctor, a psychologist, and a social worker – the "Interdisciplinary Team" – and reports from these professionals are filed with the Court.



Assistant County Attorney Andrew Boyer manages the office's guardianship cases.

A trial is then held to determine whether the Respondent is disabled, partially disabled, or not disabled. Disabled means a legal disability and not necessarily a medical disability, and is measured by functional inabilities, defined in Kentucky law. This may be held before a judge or, upon request, a jury. At this hearing, the County Attorney presents evidence to the Court and questions a member of the Interdisciplinary Team. The Respondent must be present at the hearing unless the Court determines that attendance would subject the Respondent to a serious risk of harm.

If the Judge or jury determines that the Respondent is disabled or partially disabled, the Judge will appoint a Guardian and/or Conservator. At that point, the duties of the County Attorney's Office are complete. It is important to note, however, that if an appointment is made, the Guardian/Conservator must post a bond and file an inventory and periodic settlements with the Court. Perhaps most importantly, people under guardianship/conservatorship have the ability to request modification or termination by the Court, should circumstances change.

An individual who would like to initiate this process on behalf of a loved one may contact the Boone County Attorney's Office for more information.

