

Overview

A review of the judicial precedents and “best practices” recommendations discussed above reveals several recurring themes. Attorneys should be qualified to handle these special cases. They should be properly trained. Their competency on relevant issues should be verifiable.

Attorneys should act as advocates, not guardians ad litem. They should advocate for the client’s stated wishes, not what they believe is in the client’s best interests. If the client’s wishes cannot be ascertained, they should defend the client’s existing rights and require the petitioner to prove all allegations with clear and convincing *evidence*.

Court-appointed attorneys should treat clients with cognitive and communication disabilities the same as they would any other client. They should adhere to the same standards of performance and ethics as they would for a client who privately retains them. The same requirements of confidentiality with respect to attorney-client communications and the work-product privilege apply. There is always a duty of loyalty.

The attorneys should be able to communicate *effectively* with their clients in a manner that works best for their clients. If additional supports and services are needed to have effective communication with clients who have disabilities, then the attorneys should seek authorization from the court for ancillary supports and services to accomplish this objective. Attorneys may not stipulate to a judgment or surrender significant rights without a knowing and intelligent waiver by their clients.

Attorneys have a duty to conduct a thorough investigation of all issues. This includes the issue of capacity to make various decisions as well as whether there are any lesser restrictive alternatives to guardianship that are feasible. The investigation should include whether the proposed guardian is qualified and if he or she is the best choice for this position of authority.

Clients should be interviewed in private. Potential witnesses should be interviewed, including the petitioner, proposed guardians, family members, neighbors, and close friends of the clients. Professionals who have been involved in the life of the clients should be interviewed as well, including doctors, psychologists, social workers, and teachers.

A thorough review of all records relevant to the issues in the case should be conducted. This includes the petition and supporting documents, medical and psychological records, existing or previous capacity assessments, and school records.

If there are any relevant defenses or suggested alternatives, evidence should be developed to support these positions and submitted to the court. Experts should be appointed to evaluate potential defenses or alternatives to guardianship.

If an attorney has any objections to the granting of a petition, the selection of a particular person as guardian, or to specific terms of the guardianship, a notice of appeal should be filed to preserve the right of a client to obtain appellate review of these issues.