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ELDER LAW



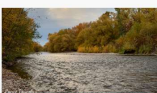
DISABILITY LAW



ESTATE PLANNING



SPECIAL NEEDS PLANNING



MEDICAID AND LONG TERM
CARE PLANNING



SETTLEMENT PLANNING

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CK QUADE LAW PLLC

**GUARDIANSHIP AND
CONSERVATORSHIP
EXPLAINED:**

CAPACITY, CONSENT, AND THE SPECTRUM OF
SUPPORTED DECISION-MAKING

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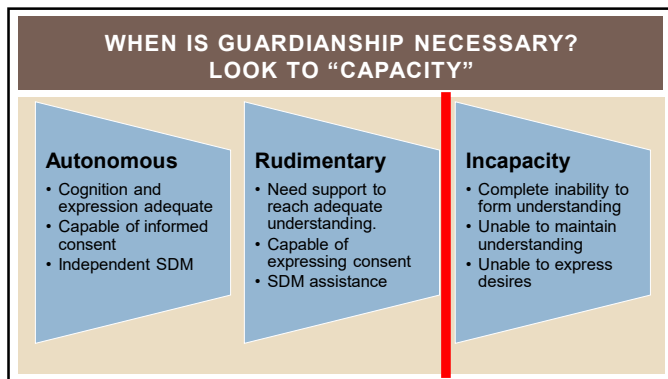
"Alternatives to guardianship, including ***supported decision making***, should always be identified and considered whenever possible ***prior to*** the commencement of guardianship proceedings."

- National Guardianship Association, "Position Statement on Guardianship, Surrogate Decision Making and Supported Decision Making" (2015)

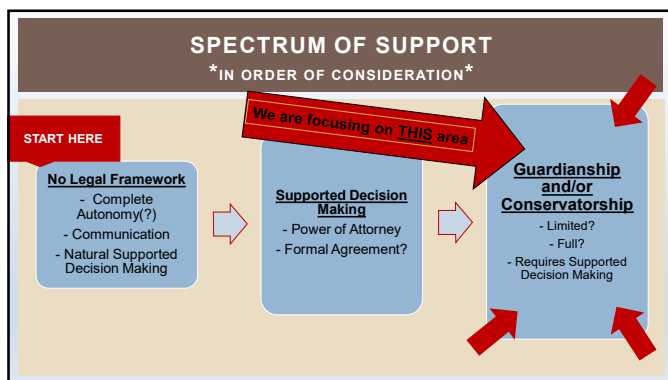


**Supported
Decision-
Making**

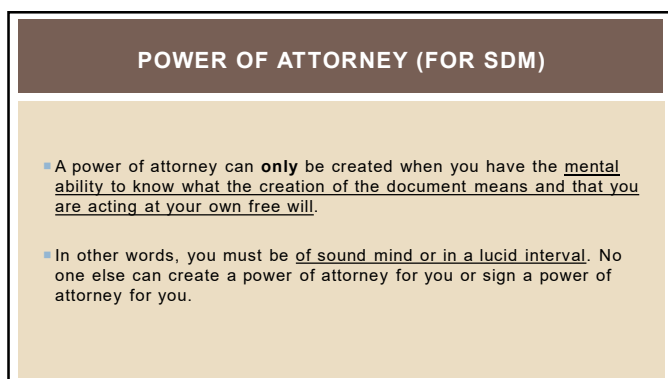
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LEGAL BASIS FOR GUARDIANSHIP

- **I.C. § 15-5-303:** "...the person for whom a guardian is sought is incapacitated and that the appointment is necessary or desirable as a means of providing continuing care and supervision of the incapacitated person."
- **I.C. § 15-5-310 (Emergency Cases):** "substantial evidence of incapacity ... preponderance of the evidence an emergency exists that will likely result in immediate and substantial harm to the person's health, safety or welfare"

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FULL VS LIMITED GUARDIANSHIP

- I.C. 66-405(3) "... developmental disability and is unable to manage some financial resources or meet some essential requirements for physical health or safety,"
- ICAR 54.5 B: "What alternatives to guardianship or conservatorship have been explored or tried[?];"
- "SOME" = partial / limited guardianship
- ALL / Most = closer to full guardianship
- 66-402(13) "Meet essential requirements for physical health or safety" means the actions necessary to provide health care, food, clothing, shelter, personal hygiene and/or other care without which serious physical injury or illness would occur.

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66-404. PROCEEDINGS FOR APPOINTMENT OF GUARDIANS AND CONSERVATORS

- **"Developmental disability"** means a chronic disability of a person which appears before the age of twenty-two (22) years of age and:
 - (a) Is attributable to **an impairment, such as intellectual disability, cerebral palsy, epilepsy, autism or other condition found to be closely related to or similar** to one (1) of these impairments that requires similar treatment or services, or is attributable to dyslexia resulting from such impairments; and
 - (b) Results in **substantial functional limitations in three (3) or more of the following areas of major life activity:** self-care, receptive and expressive language, learning, mobility, self-direction, capacity for independent living, or economic self-sufficiency; and
 - (c) Reflects the **need for a combination and sequence of special, interdisciplinary or generic care, treatment**

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STEPS TO OBTAINING G&C: REPRESENTATION

- **PARTIES INVOLVED:** courts, GAL attorney, Health and Welfare, . . . Maybe other family members, depending
- **Pro Se (Self-representation)?**
 - draft forms and instructions on your own, without attorney assistance: <https://courtselfhelp.idaho.gov/Forms/guardianship>
 - Idaho Legal Aid Services, Inc. (ILAS) <https://www.idaholegalaid.org/>; Interactive forms are available for free to low income individuals
- **Attorneys:**
 - PRO BONO - Idaho Volunteer Lawyer Program <https://isb.idaho.gov/ilf/vlp/legal-assistance/>
 - Private Attorney: **"seek a specialist"** C.K. Quade Law, PLLC (firm specializing in this area of law)

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WHAT IS THE PROCESS AND TIMELINE?

- **Step 1: Gather Documents**
- **Step 2: Draft Petition and Accompanying Docs**
- **Step 3: File with Court**
- **Step 4: Court Responds –**
 - GAL appointed
 - Training Authorized
 - Background Check
 - Care Plan
 - Health and Welfare Committee (for DD)
- **Step 5: Set Hearing**

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WHAT CHANGES WITH GUARDIANSHIP?

- SDM, Least Restrictive
- Healthcare decisions
 - Reproductive rights
 - Experimental treatment
 - End-of-Life decisions
- Restrictions and requirements
- Gun Rights, Contract Rights
- Reporting Requirements and Review

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WHEN TO FILE DD GUARDIANSHIP?

- Six (6) months prior to 18th birthday
- *The Court is often frustrated with families who have not started the proceedings when they should have and then claim that there is an emergency. For instance, the family will initiate the petition for the appointment of a guardian and conservator after their parent has lost many thousands of dollars and then expect the Court and the conservator to recover the lost funds. When families wait too long to file an action, serious injury and/or death to the parent or family member who is incapacitated can result. Another frustrating area for the Court is when an ex parte (no hearing or notice) temporary guardianship is sought for a minor child alleged to be in danger instead of a child protection action being started.*
- - Supreme Court, on Q&A on Guardianship https://isb.idaho.gov/wp-content/uploads/bro_guardianship.pdf

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THANKS!

Feel Free to Contact us

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