

What Every Lawyer Should Know When Handling a Conservatorship

Top Ten Things You Should Do:

1. Become familiar with TCA § 34-3-101, et seq.
2. Find out if there are already advanced directives in place.
3. During the Initial Consultation with your Client, gather all of the vital information required to prepare a Petition.
4. Determine true motives and goals of the individual seeking to be appointed as Conservator.
5. Become familiar with current case law and treatises.
6. Know Local Rules of Court and the Chamber Rules, if any, for the jurisdiction where you intend to file the Conservatorship Petition.
7. Enter into a written Retainer Agreement or require the client to sign an Engagement Letter.
8. Know the Clerk of the Court and verify whether any prior pleadings have been filed, or are pending, with regard to the disabled individual.
9. Make sure that at least one supportive Medical Report is attached to your Petition, or in the alternative, be prepared to obtain supporting medical evidence in a timely manner.
10. Be Mindful of Constitutional Due Process Requirements.

Top Ten Things You Don't want to Do:

1. Don't fail to maintain contemporaneous time records of all services and activities in representing parties in Conservatorship cases.
2. Don't fail to remind your client that if she advances filing fees, incurs expenses or expects to be compensated for her services rendered as a conservator or as a proposed conservator she must be prepared to produce adequate records receipts, as well as contemporaneous time records of her services and activities.
3. Don't propose that the court waive the appointment of a Guardian Ad litem, unless you have exceptional circumstances and intend to bring the Respondent to court.
4. Even though we know you've earned it, do not permit the Conservator to pay your fees out of conservatorship funds without obtaining prior court approval.
5. Even though the Conservator may be entitled to compensation and should be reimbursed for necessary expenses, do not permit her to pay or reimburse herself without prior court approval.
6. Do not propose that a convicted felon or someone convicted of a misdemeanor be appointed as a Conservator over property.
7. Do not propose that someone with bad credit, a judgement debtor, has filed bankruptcy, or someone currently a defendant in litigation to be appointed as Conservator over property.
8. If your client is the proposed conservator, or has been appointed as Conservator over property; do not permit her to sell real property without court approval.
9. Do not fail to inform your client that if the court should fail to appoint a conservator and she is the original Plaintiff all of the costs including your fees, guardian ad litem fees, expert witness fees and court costs may become her sole responsibility.
10. Do not forget that the Tennessee Rules of Evidence and the Tennessee Rules of Civil Procedure are applicable to all conservatorship proceedings.

Top Ten Questions That The Trial Judge Wants to Ask You:

1. Is the Respondent 'disabled' to such an extent that he can no longer manage his personal/and or financial affairs?
2. Has the Petitioner presented sufficient evidence to meet the 'Clear and Convincing' standard?
3. What are the findings and recommendations of the Guardian Ad Litem?
4. Have all of the constitutional and statutory rights of the Respondent been protected in this proceeding?
5. Is it in the manifest best interest of the Respondent for the Court to appoint the Petitioner as the Conservator?
6. If the Petitioner is not the best candidate to appoint as conservator, who is?
7. What type of conservatorship are we being asked to impose and which type is appropriate?
8. In cases where a bond is likely or appropriate, what values are attributable to the assets and income of the respondent?
9. If this is a conservatorship over property, is the proposed conservator bondable?
10. Is there a less restrictive measure that would be in the best interest of the respondent, absent the establishment of a conservatorship and the appointment of a conservator?