

## PRO-SE PACKET

### GUARDIANSHIP -- INCAPACITATED PERSON

#### FAMILY COURT OF THE FIRST CIRCUIT

This packet describes the steps necessary to establish a guardianship of an incapacitated person under the new Act 161 of 2004, which was effective as of January 1, 2005. Please note that this packet does NOT address the situation in which a guardian was previously appointed by a will or other written document. Information is provided on preparing documents and presenting them for filing. Samples of the basic forms are also included.

We strongly recommend that you seek the services of an attorney. The Lawyer Referral Service (537-9140) of the Hawai'i State Bar Association may be able to provide names of attorneys, but they do not have information on any fees charged by the attorneys. The Volunteer Legal Services (528-7046) and the Legal Aid Society of Hawai'i (536-4302) offer assistance to people with low incomes who meet their financial criteria. You may also consult the yellow pages of the telephone book for attorneys who specialize in family law.

Should you decide to proceed on your own without the assistance of an attorney, you may wish to review Hawai'i Revised Statutes (HRS) §§ 560:1-401 and 560:5-304 to 560:5-311 pertaining to Guardians of Incapacitated Persons. You are responsible for ensuring that your documents comply with Rule 3 of the Rules of the Circuit Court, applicable Hawai'i Family Court Rules, applicable sections of the Hawai'i Revised Statutes, as well as any memoranda issued by the Family Court.

Copies of these statutes, rules and memoranda are available at the Hawai'i Supreme Court Law Library - 417 South King Street, behind the King Kamehameha statue). Court rules and statutes are also available on-line at [www.courts.state.hi.us](http://www.courts.state.hi.us) (rules) and [www.capitol.hawaii.gov/hrscurrent](http://www.capitol.hawaii.gov/hrscurrent) (statutes).



In accordance with the Americans with Disabilities Act, and other applicable state and federal laws, if you require a reasonable accommodation for a disability, please contact the ADA Coordinator at the First Circuit Family Court office at PHONE NO. 954-8200, FAX 954-8308 or via email at [adarequest@courts.hawaii.gov](mailto:adarequest@courts.hawaii.gov) at least ten (10) working days prior to your hearing or appointment date.

Please call the Family Court Service Center at (808) 954-8290 if you have any questions regarding forms or procedures.

## **OVERVIEW OF DOCUMENTS IN THIS PACKET**

This packet includes the following forms. Should you wish to have more than one person serve as co-guardians, you will need to amend pertinent portions of the documents to show that this is a co-guardianship case.

1) "**Petition for Appointment of a Guardian of an Incapacitated Person**" states the factual and legal basis for the appointment of a guardian and asks the court to issue an Order appointing a guardian.

2) "**Notice of Hearing**" is attached to the Petition. Court personnel will schedule the hearing and fill in the blank spaces for the date and time of hearing. (see the instructions on page 4.)

3) "**List of Exhibits**" - this cover sheet organizes supporting documents that are submitted at the time of the filing the Petition.

4) "**Waiver of Notice and Consent to Guardianship**" informs the court that a person, who is otherwise entitled to notice, agrees to have the guardianship proceedings take place without his or her involvement. This document may be filed to support the Petition for Appointment of a Guardian of an Incapacitated Person. The proposed guardian and the alleged incapacitated person are always expected to attend the hearing, unless previously excused by the court. The alleged incapacitated person cannot waive notice of the hearing.

This form allows interested parties to be able to waive the requirement that they be given at least 14 -days advance notice of the hearing on the Petition. It also has a check off box if the interested party wants to waive notice of any future hearings.

5) **Order Appointing Guardian with [ ] Limited [ ] Unlimited Authority;** **Exhibit A** - contains the Judge's findings and states, among other things, the conditions under which the guardian shall serve and the events that will terminate the guardianship. See other documents listed under the heading, "After the Hearing."

## **HOW TO PREPARE DOCUMENTS FOR FILING**

**Typing** If you wish to add the information to the blank forms, please type in the information. Also, please adjust or delete phrases (noted on the sample forms, in parentheses) to fit the information in your case. If you type your own documents on your computer, then all documents must be typed

in black ink using 12 point pica size print. A 10 point elite size print is not acceptable. On the first page of each document, the name of the Court (for example, "Family Court of the First Circuit") shall be centered and be not less than 3" from the top of the page. Top and bottom margins on the other pages must be 1". The left and right-hand margins shall not be less than 1".

**Signature** Documents must be dated and **signed in legible, dark ink**.

**Terms:** The "**Petitioner**" is the person requesting the guardianship. Any person interested in the alleged incapacitated person's welfare may submit the petition. The Petition requests that someone be appointed as the "**Guardian**." In the Petition, the alleged incapacitated person is referred to as the "**Respondent**." After a guardianship is granted, the incapacitated person is referred to as the "**Ward**."

**Case name and number:**

All documents filed in the same case record must have the same case name (the name of the Respondent noted in the case caption on the left hand side of the caption on the first page. These documents should also have the same "FC-G" (for example, FC-G No. 06-1-0002) case number in the right-hand side of the caption on the first page of the document.

**Name:** Be sure to print the Petitioner's name, address and phone number on the upper left-hand corner of the first page of each document. A daytime or cell phone number is important so that the court can call and notify you that your documents are ready to be picked up for filing. You are responsible for filing your documents. The Court cannot file the documents for you.

**Copies** You need to make enough copies of each original document. Each person who is required to receive notice (see section entitled "Service of Documents") must have a copy. Be sure to keep a copy for yourself.

**Filing:** All documents must be **filed** with the Legal Documents Branch which is located on the first floor of the Ronald T. Y. Moon Courthouse, 4675 Kapolei Parkway, Kapolei, Hawai'i 96707 or on the first floor of the Kaahumanu Hale, First Circuit Court building at 777 Punchbowl Street, Honolulu, Hawai'i 96813. "**Filed**" means that the original documents (the original document with original signatures; not copies) has an original file-stamped (date and time) and the name of the Documents Filing Clerk on the upper right-hand corner of the first page of the document. This "**filed**" original is kept by the Family Court as part of the guardianship case record.

**Conforming copies:**

All copies must be "conformed." "Conforming" means that any changes the Court made to your original documents and added to your copies, so that the text of the copies are identical to the original document. For example, if a date and time for a court hearing are added to the Notice of Hearing, you must add this same date and time to ALL copies of the Notice of Hearing. This ensures that all persons receiving the Notice of Hearing will have the same information.

**PRESENTING DOCUMENTS TO OBTAIN HEARING DATE**

After completing all of the necessary forms, you must obtain a hearing date from the Judicial Services Branch. To do this, you must drop off the original and appropriate number of copies of your documents to Window #5 on the first floor at the Ronald T. Y. Moon Courthouse, 4675 Kapolei Parkway, Kapolei, Hawai'i or place your guardianship documents in an envelope addressed to the Special Division Calendar Clerk, Judicial Service Branch and drop the envelope in the Judicial Services court jacket located at the Legal Documents Branch on the first floor of the Kaahumanu Hale, 777 Punchbowl Street, Honolulu, Hawai'i. After a hearing date has been assigned, you will be contacted--by telephone--to pick up the documents. Again, we emphasize the importance of including your daytime or cellular phone number on documents turned in to the court. Your documents may be picked up at Window #5 at the Kapolei courthouse.

**PRESENTING DOCUMENTS FOR INITIAL FILING**

When you pick up the documents, please make sure that the hearing date and time is reflected on the original notice of hearing and on all the copies. You must conform the copies (i.e., fill in this same information that is on the original on all of the other copies you submitted). You may do this by writing in or stamping the information that the court added to the original document. Be sure that the information is exactly the same as on the original. It is critical that you include the date and time of the hearing on all copies of the Notice of Hearing.

To file the documents, present the original and all copies to a Documents Receiving Clerk in the Legal Documents Branch on the first floor of the Ronald T. Y. Moon Courthouse, 4675 Kapolei Parkway, Kapolei, Hawai'i or on the first floor of the Kaahumanu Hale, 777 Punchbowl Street, Honolulu, Hawai'i. Ask the clerk to certify all copies of the petition and notice. A \$215.00 filing fee is required to file the Petition. Filing fees may be paid in person by cash, cashier's check or money order. Please make all cashier's checks or money orders payable to "Chief Clerk, First Circuit Court".

If you are paying by cashier's check or money order, the Documents Receiving Clerk will accept your cashier's check or money order, assign a case number, and file your documents and return copies to you. A receipt will be mailed to the filing party within 48 hours to confirm the payment.

If you are paying in cash, the Documents Receiving Clerk will assign a case number and direct you to the Cashier's Section to pay the filing fee and surcharge. After you have paid your fees, return to the Legal Documents Branch counter to have the documents filed.

It is preferable that certified copies of your documents be served on the parties. The Documents Receiving Clerk will certify as many copies as requested at the time of filing of your documents. There is an additional charge should you request certified copies at a later date.

### **SERVICE OF THE DOCUMENTS**

You must serve copies of the "**Petition for Guardianship**" and the "**Notice of Hearing**" on all parties entitled to notice under HRS §560:5-309 by the appropriate method of service as described in that section, in HRS §560:1-401, and in Rule 4 of the Hawai'i Family Court Rules. You are reminded that in all cases, the alleged incapacitated person ("Respondent") must be served personally.

Please note that the new law requires that the Notice of Hearing include a statement that the Respondent must be physically present unless excused by the Court, inform the Respondent of the Respondent's rights at the hearing, and include a description of the nature, purpose, and consequences of the appointment. The Court will not grant your petition if you fail to serve the Respondent with a notice substantially complying with these requirements.

Pursuant to HRS §560:5-309 and §560:1-401, the following persons **must** be served with a copy of the Petition and Notice of Hearing at least 14 days prior to the hearing. Service on the persons listed below, except for the Respondent, may be made by certified, registered or first class mail (HRS §560:1-401(a)(1):

- A) Respondent - ***personal service only***\* (See HRS §560:5-309( a));
- B) current spouse or reciprocal beneficiary of the Respondent;
- C) adult with whom Respondent resided for more than 6 months before the filing of the petition( if there is no spouse or reciprocal beneficiary);
- D) Respondent's adult children;  
If there are no adult children; then notice should be given to Respondent's parents and adult siblings; if the Respondent has none, then notice should be given to at least one adult nearest in kinship to Respondent who can be found;

- E) Respondent's current custodian (including care home provider)
- F) Respondent's legal representative, if any;
- G) any person nominated as the guardian by the Respondent;
- H) any agent appointed by the Respondent under any medical directive, mental health care directive, or health care power of attorney; or if none, then any designated surrogate under the Uniform Health Care Decisions Act (HRS §327E-5(f));
- I) any proposed guardian.
- J) any interested persons, per HRS Section 560:5-116

\* **“personal service”** means that either a process server (ask the Family Court Service Center for a list of names) or an adult (defined as a person who is 18 years of age or older), other than yourself, delivers the document to the Respondent. The person who served the document must complete a Proof of Service, which must be filed with the Court, under the same FC-G case name and number noted on the Petition.

For each person listed in #A-J, if applicable, you must have **one** of the following:

- 1) written proof of service (required for the Respondent),
- 2) a signed waiver of notice and consent to guardianship (except for the Respondent ),
- 3) a statement of mailing attaching the Post Office receipt and completed returned receipt indicating that the person received the document by mail,
- 4) a sworn statement that has been filed or stated on the record at the hearing, if the person listed is deceased.

If you do not have at least **one** of the documents noted above (#1-4) for **each** person listed in Items A-J, if applicable, that person must be present at the hearing. If you received prior approval from the Court to serve notice by publication, it should be coordinated so that the last day of the publication is at least 10 days prior to the hearing (HRS §560:1-401(a)(3)).

At the Court hearing, you must be able to prove that:

- √ Respondent is incapacitated (HRS §560:5-311). Prior to the hearing , the court may require you to file under seal (HRS §560:5-307) a doctor's or psychologist's or other qualified person's written report, containing information required in HRS §560:5-306.
- √ Respondent resides in the First Circuit (Oahu) (HRS §560:5-108(b)(1))
- √ the proposed guardian(s) is/are qualified (HRS §560:5-310)
- √ that the Respondent's identified needs cannot be met by less restrictive means (HRS §560:5-311)
- √ all notices were personally served or mailed at least 14 days prior to hearing (HRS §560:1-401 and §560:5-309), except that the Respondent

cannot be served by mail but must be personally served.

These requirements are mandated by HRS §560:5-304 to §560:5-309. If they are not met, your case will be dismissed. You may file birth, death or marriage certificates or proof of divorce, but they are not required.

### **LIMITED OR UNLIMITED GUARDIANSHIP**

The Court may appoint a limited or unlimited guardianship. Whenever feasible, the Court will grant to the guardian only those powers which are necessary due to the Ward's limitations and needs.

### **GUARDIAN AD LITEM OR KOKUA KANAWAI**

The Court may appoint either a Guardian Ad Litem or a Kokua Kanawai\* to assist the Court by meeting with the Respondent and investigating the need for a guardianship. \*See definition in HRS § 560:5-102. You may have to pay for these services.

### **ATTORNEY FOR THE RESPONDENT**

The Court will appoint an attorney to represent the Respondent if requested by the Respondent, recommended by the Kokua Kanawai, or as determined by the Court. You may have to pay for these services.

### **PROFESSIONAL EVALUATION**

The Court may order a professional evaluation of the Respondent by a physician, psychologist, or other qualified individual to evaluate the Respondent's alleged impairment. You will have to pay for these services.

### **AFTER THE HEARING**

1) **Order Appointing Guardian with [ ] Limited [ ] Unlimited Authority:**

If the court appoints a guardian, you must prepare an **Order Appointing Guardian with [ ] Limited [ ] Unlimited Authority** and submit the Order to the court for the Judge's signature within ten (10) days of the hearing, unless otherwise requested. After the Order has been signed, the court will mail the Order to you in a stamped, self-addressed envelope which you are to provide to the court at the time you submit your order.

2) **Notice of Appointment of Guardian and Notice of Right to Request**

### **Modification or Termination; Certificate of Service**

Within 14 days after the Guardian is appointed by the Court, the Guardian is required to send or deliver to the ward and to all other persons who were notified of the hearing, a copy of the Order and a notice of the right to request modification or termination of the guardianship. The Guardian must also complete the attached **Certificate of Service** which indicates the names and addresses of all persons who were notified and the date of such notification.

#### **3) Reports to the Court:**

Within 30 days of the appointment of a guardian, the Guardian must submit the Initial Report of the Guardian of An Incapacitated Person. This written report to the Court reflects the condition of the ward and gives an accounting of the money and other assets in the Guardian's possession or subject to the Guardian's control. Annual written reports must be submitted to the Court, addressing the following: (1) The current mental, physical, and social condition of the ward; (2) The living arrangements for all addresses of the ward during the reporting period; (3) The medical, educational, vocational, and other services provided to the ward and the guardian's opinion as to the adequacy of the ward's care; (4) A summary of the guardian's visits with the ward and activities on the ward's behalf and the extent to which the ward has participated in decision-making; (5) If the ward is institutionalized, whether the guardian considers the current plan for care, treatment, or habilitation to be in the ward's best interest; (6) Plans for future care; and (7) A recommendation as to the need for continued guardianship and any recommended changes in the scope of the guardianship.

Please note that the Court may appoint a Kokua Kanawai to review a report, interview the ward or guardian, and make any other investigation the Court directs.

#### **4) Notice of the Filing of the Guardian's Report: to be delivered or sent within 14 days after the filing of the report.**

The Guardian is required to give notice of the filing of the guardian's report together with a copy of the report, to the ward and any other person the court directs. The notice shall be delivered or sent within 14 days after the filing of the report. This notice is attached to the Annual Report form.

### **CONFIDENTIALITY**

The written reports of a Kokua Kanawai and any professional evaluation will be kept as confidential documents, with limited access. Court hearings and records are open to the public. A Court hearing may be closed upon the request of the Respondent and a showing of good cause.