



ROOKER

JUNE 2013

REPORT

A MONTHLY PUBLICATION OF THE DAVIDSON COUNTY, TENNESSEE CIRCUIT COURT CLERK'S OFFICE

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CHANGES IN TENNESSEE CONSERVATORSHIP LAW TAKE EFFECT JULY 1, 2013

A bill which rewrites state law governing conservatorships in Tennessee has been passed by the legislature and signed by the governor. The new law will take effect July 1, 2013, and will only apply to cases filed after July 1, 2013. Major areas of focus in the new law include establishing a uniform emergency placement process, clarifying the role of guardians *ad litem* (GALs), and requiring court orders to specify what rights are being taken away. The overall proposal was offered earlier this year by the Tennessee Bar Association following a series of public hearings held across the state.

There are significant costs associated with obtaining and administering a conservatorship. They include, at a minimum, attorney fees, GAL fees, court filing fees, and expenses in obtaining necessary affidavits and records. Costs may also include the costs of accounting and financial reports and expenses of obtaining financial records. If the matter is contested or involves extended litigation, there can also be substantial costs related to trials, trial preparation, and the fees of expert witnesses.

con·ser·va·tor·ship

A conservatorship is a proceeding in which a court removes decision-making powers and duties from a person with disabilities (i.e., the ward), who is 18 years of age or older and lacks capacity to make decisions in one or more important areas. The court transfers the decision-making powers and duties to a person, persons, or an entity (i.e., the conservator), who exercises these powers and duties on behalf of the ward but under the supervision of the court.

As changes to the current law were being contemplated, it became apparent that the issue of "emergency" conservatorships needed to be addressed since the way emergency cases were being handled across the state varied widely. Under the new law, in cases where a person is placed in a conservatorship on an emergency basis without prior notice, notice will have to be provided within 48 hours and a hearing held within five days. An emergency conservatorship can be ordered only with a finding by the judge that the ward will be substantially harmed absent the order.

NEW LAW PROMPTS CHANGES TO OUR WEBSITE

Due to the new legislation, we have updated the content and format of our Probate Forms page on our website (<http://circuitclerk.nashville.gov>) so that it now includes, among other new things, an updated Accounting Form Packets. These form packets include an easy step-by-step checklist of specific requirements and timelines. Interim Accountings for conservatorships and guardianships must now be submitted within thirty (30) days after the six-month anniversary of the conservator's date of appointment; and thereafter Accountings must be submitted annually. Any incomplete Accounting will now be returned by our office for corrective action.

QUOTE OF THE MONTH

"Great minds discuss ideas. Average minds discuss events. Small minds discuss people."

- Eleanor Roosevelt



OTHER MAJOR PROVISIONS OF THE NEW CONSERVATORSHIP LAW

The law replaces the term “disabled person” with the term “person with a disability” throughout the conservatorship statutes.

The law details a non-exhaustive list of powers and rights that a court may transfer from a person with a disability to a conservator.

The law clarifies that a guardian ad litem would not represent the minor or person with a disability that is the subject of conservatorship proceedings, but would investigate the allegations made against the respondent in accordance with present law. Present law requires the guardian ad litem to report the facts to the court, and this law additionally requires the guardian ad litem to report the guardian ad litem’s recommendations as to the best interests of the respondent to the court as well as to report on any other matters as directed by the court.

Present law requires the guardian ad litem to investigate the physical and mental capabilities of the respondent. A new provision requires that such investigation include:

- (A) An in-person interview with the respondent; and
 - (B) A review of the sworn report made by a physician, psychologist or senior psychological examiner under present law to verify that the sworn statement contains:
 - (i) A detailed description of the respondent’s physical or mental conditions or both that may render the respondent a person with a disability; and
 - (ii) A detailed description of how the respondent’s physical or mental conditions or both may impair the respondent’s ability to function normally.
-

The law specifies that the sworn report made by a physician, psychologist or senior psychological examiner in conservatorship proceedings would be prima facie evidence of the respondent’s disability and need for the appointment of a fiduciary unless the report is contested and found to be in error.

Under present law, in a proceeding seeking the appointment of a fiduciary to manage the respondent’s property, the guardian ad litem must investigate the nature and extent of the respondent’s property, the financial capabilities of the proposed fiduciary, and proposed property management plan. The new law removes the requirement that the guardian ad litem investigate the proposed property management plan and requires that the guardian ad litem investigate the integrity of the proposed fiduciary. Additionally, the law authorizes the guardian ad litem, in evaluating the financial capabilities of the proposed fiduciary, to take such actions as directed by the court and as the guardian ad litem deems necessary.

The law requires that letters of conservatorship or guardianship, which are used under present law to administer the estate of a minor or person with a disability, either:

- (A) Recite the specific powers to be exercised by the fiduciary and the specific powers retained by the minor or person with a disability; or
 - (B) Have attached to them the orders of the court specifying the powers to be exercised by the fiduciary and the powers retained by the minor or person with a disability.
-

Under present law, in a proceeding for the appointment of a conservator, a notice of the hearing must be served on the respondent. The new law specifies that such notice would be served by the guardian ad litem or as otherwise authorized by the Tennessee Rules of Civil Procedure. This bill requires that such notice also be served upon the closest relative or relatives of the respondent other than the petitioner and upon the person or institution, if any, having care and custody of the respondent or with whom the respondent is living. Service by mail, sent to the last known address of such persons or institution, would be sufficient.

Generally, under present law, a fiduciary appointed in a guardianship or conservatorship proceeding must make an annual accounting to the court within 60 days after the anniversary of the fiduciary’s appointment and such accounting must include a financial accounting and a statement concerning the physical or mental condition of the disabled person. This accounting may be excused by the court in certain circumstances. The new law specifies that in such circumstances, the court may only excuse the financial accounting and may not excuse the statement concerning the physical or mental condition of the disabled person. The law also clarifies that the present law requirements regarding financial accountings do not apply to fiduciaries who do not have authority over the property of the person with a disability. The law also requires that an accounting be made within 30 days after the six-month anniversary of the fiduciary’s appointment.

Under present law, a disabled person or any interested person on the disabled person’s behalf may petition the court at any time for an order to terminate or modify the conservatorship. The new law authorizes the court, prior to holding a hearing on such petition, to require that the person with a disability submit to an examination made by a physician, psychologist or senior psychological examiner to support the person with a disability’s contention that a conservator is no longer needed.

Present law grants the respondent in a conservatorship proceeding the right to appeal the final decision on the petition. The new law specifies that such appeal may be made with the assistance of an attorney ad litem or adversary counsel. The law also grants the respondent the right to request a protective order placing under seal the respondent’s health and financial information, including sworn reports made by a physician, psychologist or senior psychological examiner.

CIRCUIT COURT TRIAL VERDICTS

JUNE 2013

JURY TRIALS

**IF CASE WAS
APPEALED FROM
GENERAL SESSIONS**

CASE	TYPE	COURT	CIRCUIT JUDGMENT	GEN. SESSIONS JUDGMENT	APPELLANT
Week of June 17					
11C-5194	AUTOMOBILE	8	PLAINTIFF \$11,748	N/A	
11C-4076	AUTOMOBILE	5	PLAINTIFF \$30,000 (STIPULATED)	N/A	
10C-3707	NEGLIGENCE/BED BUGS	2	DEFENDANT VERDICT	N/A	
09C-1715	AUTOMOBILE	1	HUNG JURY, THEN CT MEDIATED & C/S	N/A	
Week of June 24					
10C-3469	NEGLIGENCE	6	DEFENDANT / DIRECTED VERDICT	N/A	

NON-JURY TRIALS

CASE	TYPE	COURT	CIRCUIT JUDGMENT	GEN. SESSIONS JUDGMENT	APPELLANT
Week of June 3					
12C-3872	MALPRACTICE / DAMAGES	6	PLAINTIFF \$250,000 + PRE-JUDG INT	N/A	
13C-530	CONTRACT	2	PLAINTIFF \$2,719	P - \$7,169	DEFENDANT
10C-4075	WORKERS' COMP	6	DEFENDANT / DISMISSED	N/A	
11C-4161	WORKERS' COMP	1	PLAINTIFF 65% PERM PARTIAL DISABILITY	N/A	
12C-3121	DEBT / FEE DISPUTE	4	PLAINTIFF \$4,497 + PRE-JUDG INT	N/A	

SPECIALLY SET TRIALS (JURY & NON-JURY)

CASE	TYPE	COURT	CIRCUIT JUDGMENT	DATE OF TRIAL	JURY OR NON-JURY
10C-1744	CONTRACT / DEBT	1	DEFENDANT \$27,000	6-6-13	Non-Jury
CONSOLIDATED WITH 10C-2367 & 10C-2368				(CONT FROM 2-19-13)	
13C-843	G.S. APPEAL / CONTRACT	2	PLAINTIFF \$7,666 + COSTS	6-26-13	Non-Jury
(G.S. JUDG FOR PL \$14,044)					

**USE CASLINK TO ACCESS MORE DETAILED INFORMATION
ABOUT THESE CASES AND THOUSANDS MORE**

DEPARTMENTS BY THE NUMBER

June 2013

CIRCUIT COURT

	JUN	YTD
New Civil Cases Filed.....	180	1,236
Jury Demand.....	95	550
Non-Jury.....	85	686
New Divorce Cases Filed	147	1,196
Domestic Petitions Filed	202	1,331
New Adoption Petitions	10	73
Civil Cases Concluded.....	238	1,425
Jury Demand.....	108	848
Non-Jury.....	130	577
Divorce Cases Concluded	309	1,496
Domestic Petitions Concluded	526	2,167

GENERAL SESSIONS CIVIL

	JUN	YTD
Total New Cases Filed	3,825	22,776
Civil Warrants	1,871	11,074
Detainer Warrants	941	5,547
Recovery Warrants.....	15	126
Pet for Order of Protection.....	303	1,687
Emergency Committals	674	4,219
Other.....	21	123
Executions Issued.....	3,716	23,704
Garnishment Payments	3,961	26,884
Judgments Collected.....	\$835,072	\$6,116,492

PROBATE COURT

	JUN	YTD
Total New Cases Filed	174	1,120
Total Cases Closed	207	1,043
Probate Will	85	506
Probate Will for Muniment of Title.....	5	45
Letters of Administration.....	23	168
Small Estate Affidavits.....	27	187
Conservatorship.....	18	117
Guardianship of Minor.....	2	11
Name Change	9	49
Trust Matters.....	1	7
Other Miscellaneous	4	30

TRAFFIC VIOLATIONS BUREAU

	JUN	YTD
Total Traffic Violations.....	10,693	63,082
Moving Citations	6,156	38,457
Parking Citations.....	4,537	24,625
Environmental Citations.....	85	670
Total Fines Collected	\$354,674	\$2,517,633
Nullifications.....	465	3,705
Nullification Fees Collected	\$5,574	\$44,444
*Credit Card Payments	4,811	27,684

DAVIDSON COUNTY TRIAL COURTS IMPLEMENT INNOVATIVE PLAN

Driving Under the Influence cases will take priority in a single court under an innovative plan recently implemented by the Davidson County trial courts. The 18 trial court judges approved a plan effective October 15th that transfers first, second and third offense DUIs, as well as all other driver's license-related charges, to Second Circuit Court Judge Amanda McClendon. Previously, these cases were assigned to a criminal court hearing a full docket, plus the DUI cases, with assistance from other criminal court judges.

"We can accomplish more with existing resources," Presiding Judge Joe P. Binkley, Jr., said. "Our strategy is to reassign DUI cases to one court to move them through the system more efficiently. This is a collaborative effort by the entire state trial court judiciary." "I look forward to this challenge," Second Circuit Court Judge Amanda McClendon said. "Prioritizing the DUIs in one court helps the criminal courts manage their rising case loads and as-

ures all involved in DUI cases a timely conclusion to their case." Previously, Criminal Court Judge Mark Fishburn presided over the DUI cases, as well as a full criminal case load, with assistance from other criminal court judges from time to time.

In addition to this change in procedure, order of protection cases will be heard by a circuit court special master with assistance from the eight circuit court judges. The two family law courts, presided over by Judges Philip Smith and Phillip Robinson, previously handled the order of protection cases, in addition to their full case loads.

"The individuals that worked on and crafted this plan are to be commended for their efforts to bring about change to improve the administration of justice," Trial Court Administrator Tim Townsend said. "The judges, district attorney, public defender, clerks of court and sheriff worked together and figured out a better way to do business."

CIRCUIT COURT TRIALS
BY TYPE OF CASE

**JUNE
2013**



AUTO ACCIDENT

	JUN	YTD
Total Cases Tried	3	17
Plaintiff Verdicts	2	13
Defendant Verdicts	0	3
Other/Under Adv	1	1
Jury Trials	3	15
Non-Jury Trials	0	2
Appeal from G.S.	0	4
Plaintiff Verd.	0	4
Def. Verdict	0	0
Other/None	0	0

CONTRACT

	JUN	YTD
Total Cases Tried	4	27
Plaintiff Verdicts	3	20
Defendant Verdicts	1	7
Other/Under Adv	0	0

HEALTH CARE LIABILITY

	JUN	YTD
Total Cases Tried	0	2
Plaintiff Verdicts	0	1
Defendant Verdicts	0	1
Other/Under Adv/Hung	0	0

MISCELLANEOUS

	JUN	YTD
Total Cases Tried	5	36
Plaintiff Verdicts	2	22
Defendant Verdicts	3	13
Other/Under Adv	0	1

DO YOU KNOW ABOUT THIS SERVICE?



Nashville Financial Empowerment Centers provide free, professional financial counseling to Nashvillians citywide.

Nashville's Centers can help Davidson County residents reduce debt and build assets through free, one-on-one financial counseling incorporated into existing services offered in the city.

Nashvillians can directly call the United Way 2-1-1 Helpline to make an appointment, which is available 24 hours a day, seven days a week.

The Nashville Financial Empowerment Center is a program of the Office of Mayor Karl Dean in partnership with the United Way of Metropolitan Nashville. The program is funded by a grant from the Cities for Financial Empowerment (CFE) Fund, a project of Bloomberg Philanthropies.

Counselors operate out of the Foster Street Center in east Nashville and in south Nashville at the Casa Azafran Community Center, which serves as the headquarters of Conexion Americas and other organizations. Counselors at Casa Azafran are bi-lingual and can serve Spanish-speaking clients.

Satellite locations are located at Metro Action Commission, Metro Social Services, Nashville Career Advancement Center, and state offices that provide welfare benefits through the Temporary Assistance to Needy Families program. Walk-in appointments are welcome or appointments can be made by dialing the United Way 2-1-1 Helpline.

**ROOKER
REPORT**

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