

Guardianship Changes to Examining Committee Reports

August 2019

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There has been a recent ruling in the guardianship law which has the effect of giving those persons who are under siege of a guardianship proceeding some protection. It involves the examining committee reports and the procedures used to complete them.

The procedures used to initiate a guardianship proceeding starts with the filing of a petition to determine whether a person is incapacitated or not. The persons (family members or friends) who start a guardianship action usually do so for the purposes of protecting a loved one from exploitation, dementia, safety or the inability to care for themselves in a home setting.

When a guardianship proceeding is started, the law gives the court the direction to appoint three people to visit and interview the alleged incapacitated person. During the visit, the law specifically directs the examining personnel (called examining committee) to come up with their individual analysis and opinions of whether the person has the capacity to perform certain day to day functions. Some of those functions are to contract, decide where to live, manage property, manage their health and other items of daily living.

The examining committee persons will visit the alleged incapacitated person individually and prepare a report about their visit and their opinions as to what daily living activities the person has the ability to perform. The flaw in such interview is the standard measurement that is being used to determine one's ability to perform versus not being able to perform those daily activities.

The recent change has to do with a Fourth District Court of Appeal ruling involving the comprehensiveness of an examiner's report. The law states that the examining committee member (during the interview with the alleged incapacitated person) is to perform the following: 1) a physical examination; 2) a mental health examination; and, 3) a functional assessment. The statute goes on to state if any of the three tests are not performed or could not be accomplished, the examining person is to state why it was not.

The physical examination may involve blood pressure, pulse and heart readings. A mental health examination may involve a standardized MMSE or CLOX test. A functional assessment may involved whether a person can perform certain things (i.e. ambulation, follow commands, touch the floor). The tests are not particularly difficult but give insight as to a person's limitations.

When one or more of these comprehensive tests is not performed, the law gives the court the ability to either dismiss the case or have the examinations performed again. Unfortunately, to have the tests run again is costly and usually the alleged incapacitated person is the one who ends up paying again.

Guardianship cases can be devastating to a person who loses their rights. If you have a loved one who is the recipient of a guardianship proceeding, have the attorney who is representing your family member to review the reports and be sure it is comprehensive in its findings and explanations. It's too easy to simply check off the box stating a person lacks capacity which results in the removing of a person's rights they have come to enjoy each day.

If you or your loved one is currently being sued under a guardianship proceeding, seek out the attorney of your choice and have them get involved in making sure the examining committee personnel make a comprehensive examination of the person who is alleged to be incapacitated.

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