DUE PROCESS AND RIGHTS IN GUARDIANSHIP/CONSERVATORSHIP PROCEEDINGS

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RCW 11.130.001 LEGISLATIVE INTENT

- "It is the intent of the legislature to protect the liberty and autonomy of all people of this state, and to enable them to exercise their rights under the law to the maximum extent, consistent with the capacity of each person. The legislature recognizes that people with incapacities have unique abilities and needs, and that some people with incapacities cannot exercise their rights or provide for their basic needs without the help of a guardian. However, their liberty and autonomy should be restricted through guardianship, conservatorship, emergency guardianship, emergency conservatorship, and other protective arrangements only to the minimum extent necessary to adequately provide for their own health or safety, or to adequately manage their financial affairs."
- Guardianship takes away someone's rights to make their own decisions, must be sure the process by which this happens affords all due process protections.

PROCEDURAL DUE PROCESS RIGHTS

- Subject Matter Jurisdiction [RCW 11.130.020]
- Personal Jurisdiction [RCW 11.130.275; .370]
- Venue [RCW 11.130.030]
- Petitions heard within 60 days unless good cause [RCW 11.130.275; .370]
- Notice of hearing 14 days prior [RCW 11.130.065]

STATUTORY DUE PROCESS RIGHTS

- Court Visitor – neutral investigator
  - Respondent object to CV after filing statement of qualifications [RCW 11.130.280; .380]
- Professional Evaluation [RCW 11.130.290; .390]
  - Respondent can select professional to complete the report
- CV Report due 15 days before hearing [RCW 11.130.280; .380]
- Right to counsel of own choosing [RCW 11.130.280; .385]
- Right to trial [RCW 11.130.035]
- Have a jury decide capacity [RCW 11.130.035]
- Be present in court when the hearing is held [RCW 11.130.295; .400]

SUBSTANTIVE DUE PROCESS

- Court must make determination whether meets the statutory criteria
- Professional Evaluation; CV Report – incapacity is a legal determination
- Clear and convincing evidence that the person is at risk of harm to person and/or estate.
- Guardianship must be limited based on specific needs for the person's protection and assistance.

RIGHT TO COUNSEL [RCW 11.130.285; .385]

- Err on the side of appointing counsel
  - Respondent unable to communicate at all on the subject and the CV is satisfied that the Respondent does not affirmatively desire to be represented by counsel
- Any stage of the proceedings
- Respondent gets to identify counsel or preferences
- Attorney MUST be appointed by the court
- Attorney can seek own appointment or CV petitions
- Attorney exercise due process rights of Respondent