Senior Tips

 **Tips on how to make your life better!**

 **From Your Elder Law & Life Care Planning Team**

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**Capacity in Guardianship and Conservatorship Proceedings**

Guardianships and conservatorships for older adults are on the rise, probably due in part to the baby boomer generation growing older.  In guardianship and conservatorship proceedings judges are asked to determine the capacity of protected persons. These decisions are complex, and in making them, judges have to balance the individual’s well being against the loss of their individual rights.

In the handbook, “The Judicial Determination of Capacity of Older Adults in Guardianship Proceedings”, developed by the American Bar Association and the American Psychological Association, six guidelines for determining incapacity are listed:

1.    Medical Condition:  What is the medical cause of the individual’s alleged incapacities and will it improve, stay the same, or get worse?

2.    Cognitive Functioning:  In what area is the individual’s decision-making and thinking impaired and to what extent?

3.    Everyday Functioning:  What can the individual do and not do in terms of everyday activities?  Does the individual have the insight and willingness to use assistance or adaptations in problem areas?

4.    Consistency of Choices with Values, Patterns, and Preferences:  Are the person’s choices consistent with long-held patterns or values and preferences?

5.    Risk of Harm and Level of Supervision Needed:  What is the level of supervision needed?  How severe is the risk of harm to the individual?

6.    Means to Enhance Functioning:  What treatments might enhance the individual’s functioning?

These guidelines are evaluated in relation to Idaho’s statutory definition of incapacity found in Idaho Code §15-5-101:

“Incapacitated person” means any person who is impaired, except by minority, to the extent that he lacks sufficient understanding or capacity to make or communicate responsible decisions concerning his person.

“Incapacity” means a legal, not a medical disability and shall be measured by function limitations and it shall be construed to mean or refer to any person who has suffered, is suffering, or is likely to suffer substantial harm due to an inability to provide for his personal needs for food, clothing, shelter, healthcare, or safety, or an inability to manage his or her property or financial affairs.

According to the handbook, the judge’s role in making a capacity determination is to:

        protect rights

        promote self determination

        identify less restrictive alternatives

        provide guidance to guardians

        craft limited guardianships when possible

If you have questions about the rights or safety of a loved one, contact the law office of Tom Packer.

**Tom Packer is an Elder Care Attorney serving all of Southeast Idaho.**

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