

# ADMINISTRATION OF A DISABLED PERSON'S ESTATE BY A CONSERVATOR

Missouri Bar  
Solo and Small Firm Conference  
June 9-11, 2021

**Christine A. Alsop**  
*The Elder & Disability Advocacy  
Firm of Christine A. Alsop, LLC*

**Patrick J. Connaghan**  
*Commissioner-Probate Div.  
22<sup>nd</sup> Judicial Circuit*

**William L. Hubbard**  
*Hubbard & Kurtz, LLP*

1

## Before Taking a Potential Conservatorship Case...

- Will your client qualify to be the Conservator?
- Can your client do the job? It is thankless and low or no pay and not easily understood by the Client.
- Bondable?
  - Credit Check
  - Background Check?-2018 Amendments
- Focus on Disabled Adults
- “Granny Snatching”-Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act (UAGPPJA) 475.501 *et seq.*
- Changes effective 8-28-2018. Summary at FAQ of Probate Dept. @ [www.16thcircuit.org](http://www.16thcircuit.org).

2

2

## General Duties and Powers of Conservator Under Section 475.130

- Generally, the Conservator **shall under the supervision of the Court, protect, preserve and manage the estate as provided by the probate code and faithfully account, and at termination deliver the assets to whom they legally belong.**
- Section 475.130 lists the powers of the Conservator, and the duties and responsibilities should be understood by the client
- If the Conservator breaches any of the duties, the Court may order that the Conservator be surcharged for the losses to the estate.

3

3

## Practice Tips From The Bar and The Bench

- Don't dabble in Probate
- Don't expect your client to understand; must provide written and verbal guidance
- Keep the checkbook!
- Keep an ongoing accounting
- Ensure that your client does not breach the high duty and standard of care
- Ask the Clerk and Probate staff questions when unsure and be nice to them; don't waste the Court's time or unnecessary fees
- Pay attention to the Court issued checklist and timely respond

4

4

## Your Client Has Been Appointed- Now What?

- File bond before letters will be issued.
  - Set by court at hearing=Personal prop. + 1 yrs income
  - Unless 208.180 applies-court may require minimum bond-\$1,000 in Jackson County-example: pending PI case.
  - Bond adjusted upward upon filing inventory or any settlement reflects additional assets-adjusted down upon order and/or in conjunction with restricting assets. Bond increased when sell real estate or release from restricted status. Will surety issue increased bond?
- Inventory due in 30 days after letters issued.

5

5

## Preparing the Inventory Under Section 475.145

(Hint: Same as a Decedents' Estate Under Sections 473.233 through 473.243)

- The inventory must contain a list of all property valued as of the date of adjudication.
- All assets in which the protectee has an interest must be listed, such as trust assets, entirety property, jointly held real property, multiple party bank accounts and other jointly held personal property. It must show the fractional interest of the protectee as a tenant in common. Name(s) of any individual who has an interest in the property, in addition to the protectee, must be reflected on the inventory.
- Income and benefits from all sources must also be listed indicating the amount and frequency of periodic payments. The corpus of the trust in which a protectee has an interest and income and benefits from all sources must be listed as information only items on the inventory. Their value or amounts must not be included in the value column or ending totals.  
Jackson County Probate Procedure Manual (PPM) § 31.30

6

6

## Inventory

- Generally, no orders entered until inventory is filed.
- Categories of assets grouped together.
- Real Estate-equity value. List real property in other states. (Note this is different from an inventory in a decedent's estate).
- Furniture, household goods, wearing apparel-not separately listed unless collectibles, antiques, etc.
- Information items: Trusts & income
- Supplemental inventory-add real estate not listed on original inventory-Personal property added can be shown on next settlement-no need to file a supplemental inventory. Amended inventory to correct errors.
- Undetermined values, e.g. LLC, closely held corp., pending litigation-amend later.
- Must disclose any persons to receive non-probate transfers-added in 2018. See, § 475.145

7

7

## Real and Personal Property

- Sale of Real Estate §475.200
  - Same as decedent's estate.
  - Ten days notice to protectee unless waived by court (added in 2018, See § 475.230.2). In the judgment of disability, a finding that respondent cannot comprehend the nature and extent of their assets.
  - Purposes: protectee's care, education, treatment, habilitation or family; pay debts, costs of administration; investment of proceeds or in the best interests of the protectee
  - After order to sell is entered-file report of sale within 10 days after property sold (date of contract). The report of sale should have language authorizing the disbursement of any incidental closing costs from the proceeds of the sale such as title insurance, real estate commission, loan discount, proration of taxes, insurance and/or loan escrow account and liens not assumed by the purchaser.
  - On 11<sup>th</sup> day or later-file petition to approve and confirm sale. Before court will enter judgment approving and confirming sale-file additional bond to cover sale proceeds.

8

8

## Real and Personal Property

- Check legal description with title commitment, inventory and conservator's deed.
- Check if sale is  $\frac{3}{4}$  of inventory value, if not, file amended inventory.
- Court must find sale at a price and terms most advantageous to the estate. Court may prefer cash sale, but installment sale not prohibited.
- Work with realtor and title company who understand the probate process

9

9

## Real and Personal Property

### Use of Multiple-Party Accounts and Joint Property under Section 475.322 and Preserving the Estate Plan

- Conservator's duties:
  - Preserve existing estate plan
  - Take charge of and preserve property
  - Take possession of all protectee's property
  - Provide support and maintenance to protectee & family
- The conservator may with the authorization of the court, redeem joint bonds, withdraw funds from joint account, and sell, exchange or mortgage the protectee's estate or interest in such joint or entirety property, to the extent that funds are needed to pay expenses under §475.125 or claims under § 475.211.
- With respect to property held in joint tenancy, the provisions of §362.470 and § 369.174 shall be applicable and with respect to any property held in tenancy by the entirety, the provisions of § 442.035 shall be applicable.

10

10

## Real and Personal Property

### Use of Multiple-Party Accounts and Joint Property under Section 475.322 and Preserving the Estate Plan

- Sections 362.470 and 369.174 provide that the appointment of a conservator does not sever joint tenancy and the deposit may be withdrawn, paid or pledged by any one or more joint tenants in the same manner as though there was no adjudication of disability, except disabled joint tenant's interest is handled by the conservator.
- So, non-disabled beneficiaries can draw all the money out, but conservator needs court order.
- If the conservator fails to provide necessary support for the protectee if means exist, may render conservator liable to protectee's estate. Jointly titled assets are existing "means."
- Conservator needs to get control over the jointly titled assets to discharge her duties.

11

11

## Real and Personal Property

### Use of Multiple-Party Accounts and Joint Property under Section 475.322 and Preserving the Estate Plan

- Special provisions for tenancy by entirety property.
- Conservator shall have NO authority, even with court approval, to withdraw, sell, redeem or exchange entirety property without the consent of the other tenant by entirety.
- §442.035-conservator or spouse can apply to court for an AGREED disposition of entirety property:
  - "In the event the court finds that the proposed disposition is fair and equitable to the protectee taking into consideration all of the circumstances of the case including the proper interests of the other spouse, the court shall make appropriate authorization of disposition and orders as are necessary and proper in the case."
- If the spouse is conservator-need conservator *ad litem*.

12

12

## Real and Personal Property

### Use of Multiple-Party Accounts and Joint Property under Section 475.322 and Preserving the Estate Plan

- Jointly owned property can be partitioned. When one joint owner contributes all the funds, but titled in joint tenancy, the joint owner can terminate joint ownership and regain sole title. Burkholder v. Burkholder, 48 S.W.3d 596 (Mo banc 2001)
- Tenants in common of real estate presumed to own equally, but presumption can be overcome by a showing of unequal contributions, unless a gift was intended. Hoit v. Rankin, 320 S.W. 3d 761 (Mo App W.D. 2010)

13

13

## Real and Personal Property

- Estate plan involves not only will or trust, but also how property is titled and beneficiaries named.
- Conservator files a petition for control of joint assets and a plan to deal with the POD assets. Join all interested parties.
- Order maintains relative ownership interest in the assets now controlled by the conservator?

14

14

## Example

- H & W in their 80's, second marriage, he suffers stroke while in a second residence in Palm Springs, but residents of Jackson County, MO. W is appointed guardian and conservator in Jackson County.
- There is a pre-nup-H agrees to provide for W in comfort according to their lifestyle. H has a trust at a KC bank that provides for his HEMS. H in and out of nursing home-W helps take care of H when he is at their apartment with caregivers paid by trust. Trust pays for nursing home while there, but no apartment expenses.
- Prior to judgment H withdrew \$10,000/mo by automatic transfer from an account in his name to a joint bank account for living expenses. Some accounts joint with W, others in H's name.
- H owns three cars titled in his name but driven by his grandchildren. He paid the insurance on the cars prior to incapacity. One car is totaled, and insurance is payable to H. Grandson needs new car. H had been generous with grandchildren.
- H has 3 irrevocable life insurance trusts, one benefits son, one benefits a grandchild, and one benefits his trust. Premiums had been paid by policy loans but no cash value left so now owe \$5,000 per yr premiums.
- Joint credit cards are paid by automatic withdrawals every mo. Various expenses for utilities, country club, insurance, etc. are paid by automatic withdrawal, some from his account and some from joint accounts.
- Prior to incapacity son had been enabled by H.
- Palm Springs house titled in joint irrevocable trust that provides upon death of one spouse, the house is to be sold and the proceeds split between descendants of deceased spouse and surviving spouse. Expenses had been paid by other trust as directed by H, but no specific direction contained in document.

15

15

## Real and Personal Property

- **Trusts Established by the Court Under Section 475.092**
  - ...the court, without appointing a conservator, may authorize, direct or ratify any contract or other transaction relating to the person's financial affairs or involving such person's estate if the court determines that the transaction is in the best interests of the person and if such action would otherwise be within the power of the court. A transaction pursuant to this section may include the establishment by the court or other grantor of an inter vivos trust, including a trust that complies with the provisions of 42 U.S.C. Section 1396p(d)(4), on behalf of the person provided that upon such person's death, after the payment of trustees' fees, any payments to the state Medicaid agency that are required by the provisions of 42 U.S.C. Section 1396p(d)(4) are made and, provided further, that any creditor of the person other than the state of Missouri shall also be paid all sums due for such person's care, maintenance and support, to the extent trust property is sufficient therefor, and, provided, such trust shall terminate upon such person's death and any amounts remaining in the trust after the foregoing payments shall be distributed to the remainder beneficiaries designated in the trust or as designated pursuant to the exercise of a power of appointment set forth in the trust.
  - Commonly used in the settlement of personal injury cases or inheritance where receipt will cause the individual to lose SSI or Medicaid benefits. May be done by probate division if a conservator is in place or by another division if case is pending and no conservator appointed. May need approval in both probate & trial division. If under \$10,000 may need judgment dispensing with conservatorship.

16

16



## Real and Personal Property

### Trusts Established by the Court Under Section 475.092

- Special Needs Trust must meet statutory requirements set out in 42 U.S.C. Section 1396p(d)(4).
- Pay-back clause to all States which provided Medicaid benefits
- Irrevocable
- Sole benefit for the beneficiary
- Established by the competent person, parent, guardian, grandparent or court
- Who will be trustee? Jackson County Probate Division requires corporate trustee or a bond if an individual. Other counties may treat similar to a conservatorship and require court orders for expenditures from trust and annual settlements.

17

17

## Court Approved Participation in a Pooled Special Needs Trust

- Pursuant to Section 475.093, if the Court finds that it would be in the Protectee's best interest, the Court may allow the assets to be funded into a Pooled Special Needs Trust pursuant to 42 U.S.C. Section 1396p(d)(4)(C) and Section 402.203.

18

18

### Conservator's Authorized Powers Under Section 475.094 (Revised Significantly in 2018)

- Court may authorize gifts to reduce taxes or qualify for governmental benefits.
- Convey, release or disclaim interests in property including marital rights.
- Exercise or release a power of appointment.
- Create trusts, irrevocable or revocable, or amend a trust.
- Change beneficiaries, elect options.
- Exercise elective shares in spouse's estate.
- Court shall primarily consider the decision that the protectee would have made, if ascertainable.

19

19

### Conservator's Authorized Powers Under Section 475.094

- The court shall also consider:
  - Needs of protectee and dependents.
  - Eligibility for government assistance.
  - The protectee's previous pattern of giving and support.
  - Existing estate plan.
  - Protectee's life expectancy and probability that conservatorship will terminate before protectee's death.
  - Any other factors the court considers relevant.
- 475.094.3 A conservator cannot revoke or amend a durable power of attorney without court authorization. Court must decide whether to terminate dpoa or appoint conservator.

20

20

## Required Settlements Under Sections 475.270 and 475.295

- Annually. Due within 60 days after the anniversary of the appointment of the conservator. The court should send notice, but lack of notice is no excuse. See, § 475.270
- Same requirements as § 473.543 for decedent's estates. Form 3.291, 3 Missouri Practice-Probate Forms Manual
- Settlement can be waived when
  - Meets indigency under Chapter 208.
  - Assets under control of another fiduciary, e.g. trustee, rep payee, VA fiduciary, or
  - Assets placed in restricted custody and a statement is filed showing assets on hand, receipts during the year, disbursements made and name & address of any depository.

21

21

## Settlements

### "No Further Process"

- If meet indigency standards under Chapter 208-no court costs, no bond, no settlement. If did not qualify at adjudication, can convert later upon court order approving final settlement.
- If all assets restricted, then by Jackson County procedures:
  - (1) Request for Final Court Costs Estimate
  - (2) Settlement
  - (3) Petition to Invest Funds in Restricted Account
  - (4) Order to Invest Funds in Restricted Account
  - (5) Verification of Restricted Assets (one for each account)
  - (6) Copy of trust instrument of which protectee is a beneficiary, if all assets in trust with corporate trustee
  - (7) Petition for Approval of Settlement and for Order of NFP
  - (8) Order of NFP

22

22

## No Further Process

- Jackson County requires the Conservator to maintain a \$1,000 bond-consider pre-paying bond premium for a few years, or if a minor at least until 18 ½ years old.
- No court costs, no settlements while on NFP. Can get occasional expenditures authorized for unexpected expenses, even though on NFP with court order and keep estate on NFP.
- Often need to get court order to release restriction when minor turns 18 or upon death of disabled person.

23

23

## Settlements

- The 2018 Amendment requires additional information:
  - Present address of protectee
  - Present address of conservator
  - Services being provided for the protectee
  - Significant actions taken by the conservator for the year
  - Whether protectee continues to need a conservator
  - Compensation and expenses of the conservator
  - A plan for the coming year
  - Any other information requested by the court

24

24

## Settlements

- § 473.543 Requirements
  - Each Settlement that is filed, must State the period covered
  - Just & true account of all money collected, the date, from whom and on what account
  - Exact amount of principal & interest
  - Exact amount for expenditures, the date, to whom and for what.
  - Interest earned and rate
  - Vouchers if expense over \$75 or less if required by court, but court has discretion to accept non-conforming vouchers
  - Verifications for all assets of the estate § 475.275. See form at 3 Missouri Practice-Probate Forms Manual, Forms 4.78 & 4.79. Pooled accounts permitted by 2018 amendments.

25

25

## Example Settlements

(Slides Graciously Provided by Daniel P. Wheeler)

IN THE CIRCUIT COURT OF JACKSON COUNTY, MISSOURI – PROBATE DIVISION

AT  KANSAS CITY  
 INDEPENDENCE

IN THE ESTATE OF JOHN JACKSON ESTATE NUMBER 08-PR1000018

Deceased.  Protectee.

SETTLEMENT  
 (Annual)  (Final)

The undersigned fiduciary of the above captioned estate submits the following as a just and true account for the period from 1/1/14 to including 7/23/14.

ASSETS PER INVENTORY OR LAST SETTLEMENT	
1. Furniture, household goods, wearing apparel.	\$ 1,000.00
2. Corporation stocks.	1,100.00
3. Mortgages, bonds, notes.	1,200.00
4. Cash, Bank and Savings and Loan Accounts, Insurance Policies	1,300.00
5. All other property.	1,400.00
TOTAL	\$ 6,000.00

Attached hereto on separate sheets is a detailed account describing each transaction and showing the date funds or other assets were received or paid out. Also attached hereto is a summary of the ending balances of personal property as of the date last above written.

26

26

## Example Settlements

Annual Settlement John Jackson Estate.pdf - Adobe Acrobat Pro

ESTATE NUMBER 08-PR1000018

**ENDING BALANCES**

DEBIT	CREDIT

**THE ABOVE BALANCE CONSISTS OF THE FOLLOWING:**

- Furniture, household goods, wearing apparel. \$ 100.00
- Corporation stocks. 100.00
- Mortgages, bonds, notes. 100.00
- Cash, Bank and Savings and Loan Accounts, Insurance Policies 100.00
- All other property. 100.00

TOTAL \$ 500.00

The undersigned swears that the matters set forth above are true and correct to the best knowledge and belief of the undersigned, subject to the penalties of making a false affidavit or declaration.

Dated July 23, 2014

*John Jackson*

Personal Representative  Conservator

1001 LOCUST  
Address  
KANSAS CITY, MO 64108  
City, State Zip

ATTORNEY D. C. HOWE, LLP BAR No. 12345  
ADDRESS 12 OAK, KANSAS CITY, MO 64111  
TELEPHONE ( 816 ) 474-9800 FAX NO. ( 816 ) 474-9801  
E-MAIL ADDRESS DC@HOWE.COM

27

27

## Example Settlement Excel Worksheet

59981031.pdf - Adobe Acrobat Pro

Please fill out the following form.

Estate name Alma Rollins Estate no. 1616-PR1000013

YEAR MO./DAY	TYPE	DETAILS	VOUCHER NUMBER	DEBITS/ RECEIVED	CREDITS/ PAID
6/19/14	Select one	Starting balance 6-19-13		30,000.00	
6/19/14	Rent	2 month rent on 1 Oak, KCMO. This amount is due monthly and check mailed to Realtek Management Inc in Lenexa KS 66244 with rental agent.	47701		1,239.55
6/19/14	Household	Groceries for week.	47702		189.99
6/20/14	Household	Time Warner 4 months	47703		589.99
6/30/14	SSI	SSI		1,289.88	
6/30/14	Medicine	CVS medicine	47704		29.99
6/30/14	Medical	Walgreens medicine	47705		27.88
6/30/14	Financial	Interest from US8 CD. When CD #69-2111 matured today it also had principal of 24 months CD at 2.25% with interest paid monthly. Amount received was \$10,000.		1,897.88	
6/30/14	Household	John Allen Assoc. replaced water heater.	47706		477.99
7/1/14	Household	Visiting Angels Care for 24/7 service for July	47707		7,888.55
7/1/14	Household	Reimburse Margie for payment of car repairs on Irwin's car	47708		233.99
7/1/14	Financial	Deposit refund from Independence Manor		477.89	

28

28

## Audit of Settlement

- Each settlement should be audited by the court.
- Level of review may vary county by county.
- All expenditures should be supported by a court order, except expenses of administration (other than compensation of conservator or attorney), taxes, allowed claims.
- § 475.091 allows court to ratify expenditures.
- Although § 475.130 contains a list of actions the conservator may take without court authority better practice is to obtain a court order.

29

29

## Investments

- Prudent Investor Act applies to conservator. § 469.900 through § 469.913
- Conservator may delegate investment and management of investments to an agent, provided agent acknowledges in writing that agent is acting as investment fiduciary on the account.
- Even though as agent may be appointed that does not insulate the conservator from liability if a loss occurs. The conservator must select a qualified agent.
- If delegating to an agent get prior approval and approval of fee arrangement for the agent.
- Court may be conservative on investments.

30

30

## Claims Under Sections

### § 475.205 through § 475.213

- All claims whether before or after adjudication or liabilities incurred by the conservator for the benefit of the protectee to be filed in the probate division.
- An allowed claim is a judgment subject to interest at legal rate unless the claim provides for a different rate.
- Filing a notice of the pendency of a lawsuit in the probate division constitutes the filing of a claim.
- No published notice, no claim period, only bar is statute of limitations.
- Claims less than \$1,000 arising before adjudication can be paid as long as a claim filed and conservator served. Section 475.130 allows payment and § 475.205 provides for filing in the probate division.

31

31

## Claims Under Sections

### § 475.205 through § 475.213

- Four classes of claims: court cost, expenses of administration, expenses for reasonable support and maintenance of the protectee, and all other claims.
- Claims to paid in order of priority as far as the assets permit in the order specified. Since expenses of support and maintenance are ongoing obligations, the practical effect is that “other claims” will only be paid when the conservatorship is terminated.
- § 475.213.2 allows any interested party to move to give notice to creditors requiring them to file claims within a period stated, not less than 2 months from first publication, or their claim will be barred. Conservator files a list of creditors actually notified, and court may order payment of filed claims.

32

32



## Removal of Conservator

- § 473.140 (Removal of Personal Representative) invoked by § 475.110 (Removal of Guardian or Conservator)
- May be filed by an interested party.
- In 2018, the definition of “interested party” was added to include spouses, children, parents, adult family members, agents under Durable Powers of Attorney, Trustees under a Trust where the protectee is a beneficiary, creditors or others having a property right or claim against the estate. See, § 475.010. (12).

33

33

## Final Settlement Under § 475.320

- If no will and no debts other than the funeral and burial, estate taxes, obligations of the protectee incurred by the conservator, and expenses of administration, all as ordered by the court, then the conservator can distribute to the heirs at law in the same manner as an administrator.
- If there are other debts or a will, the conservator must turn over to the personal representative.
- Can also turn over assets pursuant to a small estate affidavit or refusal of letters.

34

34

## Final Settlement Under § 475.320

- (1) Suggestion of death and petition to close estate without administration
- (2) Order to proceed without administration
- Request for Final Court Costs Estimate (obtain at least two weeks prior to filing final settlement)
- (4) Final settlement
- (5) All original receipts or canceled checks (vouchers)
- (6) Petition for approval of final settlement
- (7) Mailed notice and proof of mailed notice to heirs at law or waiver of notice
- (8) Order of Distribution
- (9) Receipt of Distributees
- (10) Order discharging guardian/conservator-after settlement approved

35

35

## Final Settlement: Decedent With Assets

- (1) Request for Final Court Costs Estimate
- (2) Final settlement
- (3) All original receipts or canceled checks (vouchers)
- (4) Petition for approval of final settlement
- (5) Order of distribution
- (6) Acceptance or waiver or notice by personal representative
- (7) Receipt of personal representative
- (8) Order of Discharge

36

36

## Final Settlement

- Other times a final settlement is required
- Conservator resigns or is removed and a successor appointed.
- Conservator dies-final settlement to be filed by personal representative, but if sole purpose is opening a decedent's estate for the conservator is for the purpose of filing the final settlement, court may authorize the successor to file the final settlement.
- Minor turning 18.

37

37

## Compensation of Conservator and Attorney

- There is no fee schedule. The compensation of the attorney and conservator is in an amount determined by the Court to be reasonable and necessary for the services performed.
- Section 32 of Jackson County Probate Procedures Manual is an example of how courts treat compensation.
  - A "reasonable fee standard" for attorneys' compensation only applies to legal services. Attorneys will not be compensated at normal hourly professional rates for administrative services.
  - The Court may decline to consider an application for compensation while a citation, show cause order or auditor's exception letter is unresolved.

38

38

## Compensation of Conservator and Attorney

- An attorney serving as guardian/conservator may bill at his or her professional hourly rate only for legal services rendered, time of paralegals and attorneys employed by him for the protectee's benefit, at reasonable hourly rates for the type of services performed. He or she may also bill for services such as visiting the ward in a nursing home, paying routine bills and making bank deposits, at a rate appropriate for those types of services.
- The Court may decline to consider an application for compensation while a citation, show cause order or auditor's exception letter is unresolved.
- In determining whether the lay conservator's request for compensation is reasonable, the Court will consider the amount of supervision and participation necessary by the attorney. A guardian/conservator's earning capacity in his normal business or occupation shall not constitute grounds for determining the rate of compensation but may be considered along with any special skills or expertise in determining reasonableness, only to the extent the estate directly benefits therefrom.

39

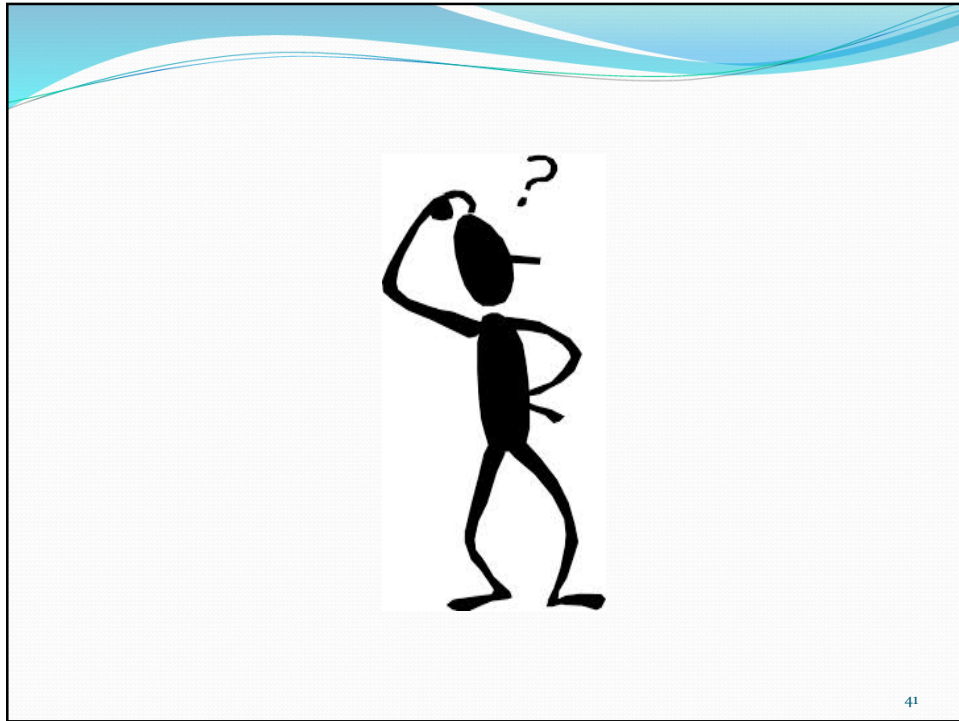
39

## Compensation of Conservator and Attorney

- Fees for the guardian or conservator and his attorney may be allowed at any time when it appears that the fees have been earned or it is otherwise appropriate; generally, however, fees in conservatorship estates should not be sought more frequently than annually.
- Ordinarily the Court will not allow attorneys or corporate fiduciaries to be reimbursed for items of expense which are usual and customary costs of doing business, e.g., routine photocopies, in-town mileage and postage. These expenses are contemplated in the hourly rate. If, however, extraordinary expenses are generated because of litigation or other circumstances unique to the estate, the application requesting reimbursement should so state.
- In re Washington, 603 S.W. 3d 705 (Mo. App. E.D. 2020).

40

40



41