

15-5-303. PROCEDURE FOR COURT APPOINTMENT OF GUARDIANS OF AN INCAPACITATED PERSON. (a) The incapacitated person or any person interested in his welfare may petition for a finding of incapacity and appointment of a guardian or co-guardians pursuant to the provisions of section 15-5-101, Idaho Code, limited or general. It is desirable to make available the least restrictive form of guardianship to assist persons who are only partially incapable of caring for their own needs. Recognizing that every individual has unique needs and differing abilities, the public welfare should be promoted by establishing a guardianship that permits incapacitated persons to participate as fully as possible in all decisions affecting them; that assists such persons in meeting the essential requirements for their physical health and safety, in protecting their rights, in managing their financial resources, and in developing or regaining their abilities to the maximum extent possible; and that accomplishes these objectives through providing, in each case, the form of guardianship that least interferes with legal capacity of a person to act in his own behalf. The petition shall include a plan in reasonable detail for the proposed actions of the guardian regarding the affairs of the ward after appointment of the guardian, to the extent reasonably known to the petitioner at the time of filing of the petition. If the complete mental, physical and emotional status, and the health care needs and other needs of the ward are not reasonably known to the petitioner at the time the petition is filed, or if the petitioner is not the proposed guardian, then the guardian shall submit to the court, and to all interested persons, in writing, within thirty (30) days after appointment of the guardian, a reasonably detailed plan covering such matters. Such plan must also be given to any person who has filed a request for notice under section 15-5-406, Idaho Code, and to other persons as the court may direct. Such plan shall be given to all such persons in accordance with the methods set forth in section 15-1-401, Idaho Code. If the plan changes during any time period between the periodic reports of the guardian, the modified plan shall be filed with the next report as a part thereof.

(b) Upon the filing of a petition, the court shall set a date for hearing on the issues of incapacity and unless the allegedly incapacitated person has counsel of his own choice, it shall appoint an attorney to represent him in the proceeding, who shall have the powers and duties of a guardian ad litem. The person alleged to be incapacitated shall be examined by a physician or other qualified person appointed by the court who shall submit his report in writing to the court. The court may, in appropriate cases, appoint a mental health professional, defined as a psychiatrist, psychologist, gerontologist, licensed social worker, or licensed counselor, to examine the proposed ward and submit a written report to the court. The person alleged to be incapacitated also shall be interviewed by a visitor sent by the court. The visitor shall also interview the person who appears to have caused the petition to be filed and any person who is nominated to serve as guardian, and visit the present place of abode of the person alleged to be incapacitated and the place it is proposed that he will be detained or reside if the requested appointment is made and submit his report in writing to the court. Where possible without undue delay and expenses beyond the ability to pay of the allegedly incapacitated person, the court, in formulating the

judgment, may utilize the service of any public or charitable agency that offers or is willing to evaluate the condition of the allegedly incapacitated person and make recommendations to the court regarding the most appropriate form of state intervention in his affairs.

(c) Unless excused by the court for good cause, the proposed guardian shall attend the hearing. The person alleged to be incapacitated is entitled to be present at the hearing in person, and to see or hear all evidence bearing upon his condition. He is entitled to be represented by counsel, to present evidence and subpoena witnesses and documents, to examine witnesses, including the court-appointed physician, mental health professional, or other person qualified to evaluate the alleged impairment, as well as the court-appointed visitor, and otherwise participate in the hearing. The hearing may be a closed hearing upon the request of the person alleged to be incapacitated or his counsel and a showing of good cause. After appointment, the guardian shall immediately provide written notice of any proposed change in the permanent address of the ward to the court and all interested parties.