

Guardianship and Conservatorship Program Rules Regulations

405 General Decision Standards

All decisions and activities of the guardian and conservator shall be made according to the applicable decision standard.

405.1 The primary standard for decision-making is the Substituted Judgment Standard based upon the guardian and conservator's determination of the ~~incapacitated person's~~individual subject to guardianship and/or conservatorship's competent preferences, i.e. what the ~~incapacitated person~~individual would have decided when he or she had ~~capacity~~the ability to receive and evaluate information or make or communicate decisions.

405.1.1 In making a decision for an adult subject to guardianship, the guardian and conservator shall make the decision the guardian and conservator reasonably believes the adult would make if the adult were able unless doing so would unreasonably harm or endanger the welfare or personal or financial interests of the adult. To determine the decision the adult subject to guardianship would make if able, the guardian and conservator shall consider the adult's previous or current directions, preferences, opinions, values, and actions, to the extent actually known or reasonably ascertainable by the guardian and conservator. The guardian and conservator shall make reasonable efforts to ascertain the ~~incapacitated person's~~ individual's historic preferences and shall give significant weight to such preferences. ~~Competent~~ Such preferences may be inferred from past statements or actions of the ~~incapacitated person~~ individual subject to guardianship and/or conservatorship when the ~~incapacitated person~~ individual had ~~capacity~~ the ability to receive and evaluate information or make or communicate decisions.

405.1.2 In making a decision for an individual subject to conservatorship, the guardian and conservator shall make the decision the guardian and conservator reasonably believes the individual would make if able, unless doing so would fail to preserve the resources needed to maintain the individual's well-being and lifestyle or otherwise unreasonably harm or endanger the welfare or personal or financial interests of the individual. To determine the decision the individual would make if able, the guardian and conservator shall consider the individual's prior or current directions, preferences, opinions, values, and actions, to the extent actually known or reasonably ascertainable by the guardian and conservator. The guardian and conservator shall make reasonable efforts to ascertain the individual's historic preferences and shall give significant weight to such preferences. Such preferences may be inferred from past statements or actions of the individual subject to guardianship and/or conservatorship when the

individual had the ability to receive and evaluate information or make or communicate decisions.

405.2 When the ~~competent prior~~ preferences of an ~~incapacitated person individual subject to guardianship and/or conservatorship~~ cannot be ascertained, the guardian and conservator is responsible for making decisions which are in the best interests of the ~~incapacitated person individual~~. ~~A determination of the best interests of the incapacitated person shall include consideration of the stated preferences of the incapacitated person and defer to an incapacitated person's residual capacity to make decisions.~~

405.2.1 If a guardian and conservator appointed as a guardian for an adult cannot make a decision under the Substituted Judgment Standard because the guardian and conservator does not know and cannot reasonably determine the decision the adult probably would make if able, or the guardian and conservator reasonably believes the decision the adult would make would unreasonably harm or endanger the welfare or personal or financial interests of the adult, the guardian and conservator shall act in accordance with the best interests of the adult.

In determining the best interests of the adult, the guardian and conservator shall consider:

(a) Information received from professionals and persons that demonstrate sufficient interest in the welfare of the adult;

(b) Other information the guardian and conservator believes the adult would have considered if the adult were able to act; and

(c) Other factors a reasonable person in the circumstances of the adult would consider, including consequences for others.

405.2.2 If a guardian and conservator appointed as a conservator cannot make a decision under the Substituted Judgment Standard because the guardian and conservator does not know and cannot reasonably determine the decision the individual subject to conservatorship probably would make if able, or the guardian and conservator reasonably believes the decision the individual would make would fail to preserve resources needed to maintain the individual's well-being and lifestyle or otherwise unreasonably harm or endanger the welfare or personal or financial interests of the individual, the guardian and conservator shall act in accordance with the best interests of the individual. In determining the best interests of the individual, the guardian and conservator shall consider:

(a) Information received from professionals and persons that demonstrate sufficient interest in the welfare of the individual;

(b) Other information the guardian and conservator believes the individual would have considered if the individual were able to act; and

(c) Other factors a reasonable person in the circumstances of the individual would consider, including consequences for others.