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Clerk of the Appellate Courts
Rec'd By LM

**IN THE SUPREME COURT OF TENNESSEE
AT NASHVILLE**

**IN RE: PROPOSED RULE 55,
RULES OF THE TENNESSEE SUPREME COURT**

NO. Adma022-00797

**PETITION OF THE METROPOLITAN NASHVILLE & DAVIDSON COUNTY OFFICE
OF CONSERVATORSHIP MANAGEMENT TO PROPOSE RULE 55 FO THE RULES
OF THE TENNESSEE SUPREME COURT TO REQUIRE CONSERVATORSHIP
TRAINING ACROSS THE STATE OF TENNESSEE**

The Metropolitan Nashville & Davidson County Office of Conservatorship Management (“OCM”), by and through Amy Willoughby Bryant, respectfully petitions the Tennessee Supreme Court to create Rule 55 of the Rules of the Tennessee Supreme Court to require training for conservators¹ before, or shortly after, they are appointed.

BACKGROUND

Conservators may be granted the power, by the courts, to take control of vulnerable persons’ medical care, finances, and some other functions of daily life. Along with this power comes responsibilities including filing annual accountings² and a report regarding the physical or

¹ For the purposes of this petition, the terms “conservator” and “conservatorship” include what may be called “guardians” and “guardianships” in other jurisdictions.

² Tennessee Code Title 34. Guardianship § 34-1-111

mental condition of the person with a disability may not be waived or excused³ (“Status Reports”). While Tennessee currently has these requirements for acting conservators, there is no required training in place to teach prospective conservators of their responsibilities.

A. The Tennessee Supreme Courts Authority To Create a New Rule

Under Tenn. Code Ann. §§ 34-1-121 (a)–(b)⁴, the Supreme Court has the authority to determine the requirements that conservators must satisfy before appointment. We value the authority of the Supreme Court of Tennessee, and do not wish to impinge on the legislation process. Instead, we view the authority as an opportunity to protect the vulnerable population under the supervision of conservators appoint by our justice system.

Tennessee would not be the first state to require conservatorship training; courts in other states including Arizona⁵, Idaho⁶, Ohio⁷, Maryland⁸, New Jersey⁹, New Hampshire¹⁰, North Dakota¹¹, and Washington¹² have promulgated rules or orders that require conservators or potential conservators to undergo some type of training. Training in these states varies from online training to orientation programs and exams.

B. The National Call to Action for Implementation of Conservatorship Training

³ Tennessee Code Title 34. Guardianship § 34-1-111(i)(3)

⁴ Tenn. Code Ann. §§ 34-1-121 (a)–(b) (“The court has broad discretion to require additional actions not specified in this chapter, and chapters 2 and 3 of this title as the court deems in the best interests of the minor or person with a disability and the property of the minor or the person with a disability.”); *see also* Tenn. Sup. Ct. R. 11. (citing Tenn. Code Ann. § 16-3-502).

⁵ Ariz. Code Jud. Admin. §§ 7-202(E)(c)–(d) <https://www.azcourts.gov/Portals/22/admorder/orders12/2012-62.pdf>

⁶ Idaho Ct. Admin. R. 54 <https://isc.idaho.gov/icar54>

⁷ Ohio Sup. Ct. R. 66.06–07

⁸ Md. R. 10-108, 10-205.1, and 10-304.1

<https://www.mdcourts.gov/family/guardianship/guardianofdisabledpersontrainingprogram>

⁹ N.J. Ct. R. 4:86-4 (a)(6) <https://www.njcourts.gov/attorneys/assets/rules/r4-86.pdf>

¹⁰ N.H. Prob. Ct. Admin. Ord. 16

¹¹ N.D. Sup. Ct. Admin. R. 59 <https://www.ndcourts.gov/legal-resources/rules/ndsuptadmjnr/59>

¹² Wash. Sup. Ct. Civ. R. 23

<https://www.courts.wa.gov/guardianportal/index.cfm?fa=guardianportal.adultLavGuardianship#>

The need for conservatorship training has also received attention on the national stage. The National College of Probate Judges (“NCPJ”) highlights the critical need for conservators to receive training before taking on their roles, explaining the need is rooted in newly appointed conservators’ lack of understanding of their duties and responsibilities¹³. The NCPJ’s proposed Probate Court Standard Rules state “Probate courts should develop and implement programs for the orientation, education, and assistance of guardians and conservators.”¹⁴

Other organizations, including the National Association for Court Management (“NACM”), the U.S. Government Accountability Office,¹⁵ and the U. S. Senate Special Committee on Aging¹⁶ also have recognized the critical part conservatorship training plays in helping conservators prepare for their role and in helping to prevent elder abuse. In a guide on best practices for courts, the NACM¹⁷ states, “At the most basic level, guardians—whether professional guardians, volunteers, or family members—need training to understand their role and responsibilities and where to seek help when needed.”

Implementing training requirements for conservators is crucial now and will become even more necessary over the next two decades. According to a 2017 study from Cornell University, approximately 30.9% of non-institutionalized Tennesseans between the ages of 65 and 74 have

¹³ NAT’L COLLEGE OF PROB. CT. JUDGES, NATIONAL PROBATE COURT STANDARDS, 88 (2012). (“Even when the appointment order clearly sets forth the duties and authority of a guardian and conservator . . . there will be instances in which guardians or conservators will be uncertain about how best to meet their responsibilities or whether they have the authority to take the actions necessary.”)

¹⁴ NAT’L COLLEGE OF PROB. CT. JUDGES, NATIONAL PROBATE COURT STANDARDS, 88 (2012).

¹⁵ U.S. GOV’T ACCOUNTABILITY OFFICE, *GAO-17-33, SSA: Elder Abuse—The Extent of Abuse by Guardians is Unknown, but Some Measures Exist to Help Protect Older Adults*, 20 (2016).

¹⁶ U.S. Senate, Special Committee on Aging, *Ensuring Trust: Strengthening State Efforts to Overhaul the Guardianship Process and Protect Older Americans*, at 30 (115 S. Rep. 392). Available from: https://www.aging.senate.gov/imo/media/doc/Guardianship_Report_2018_gloss_compress.pdf; Accessed 5/18/20.

¹⁷ *Adult Guardianship Guide*, NAT’L ASSN. FOR CT. MGMT., 28 (July 2014), <https://www.txcourts.gov/media/1359759/Adult-Guardianship-Guide.pdf>

some type of disability.¹⁸ Among that subset of individuals, 16.6% (105,800 people) of individuals either have a disability that impacts their ability to live independently or a cognitive disability that impacts their ability to make decisions.¹⁹

The same study shows approximately 53.2% of non-institutionalized Tennesseans over the age of 75 have some type of disability.²⁰ Within the group over 75, approximately 41% (169,000) of non-institutionalized disabled individuals either have a disability that impacts their ability to live independently or have a cognitive disability that potentially impairs their decision-making skills.²¹

Also, recent projections²² for Tennessee's population show that the number of elderly people in the state will increase a drastic 38% between 2020 and 2040, which means that more individuals will likely seek conservatorships in coming years. As our Tennessee population ages, conservatorships will continue to be an important and necessary device used to aid and protect people who can no longer make decisions for themselves. Tennessee probate and chancery courts received approximately 3,707 filings for conservatorships in the 2018–2019 fiscal year alone.²³ Tennessee courts likely will see the number of conservatorships rise with the aging population. Implementing training requirements is an important action because, without the proper training

¹⁸ Lee Erickson, *2017 Disability Status Report: Tennessee*, CORNELL UNIVERSITY YANG TAN INST. ON EMP. AND DISABILITY, 19 (2019), https://www.disabilitystatistics.org/StatusReports/2017-PDF/2017-StatusReport_TN.pdf

¹⁹ *Id.* at 20

²⁰ *Id.* at 21

²¹ *Id.* at 22

²² *2018 to 2070 Tenn. Population Projection*, A BOYD CTR. FOR BUS. AND ECON., (Dec. 2019), <https://myutk.maps.arcgis.com/apps/opsdashboard/index.html#/cbf0d40870304807a0de26ddf6779604>

²³ TENN. AOC, *Annual Report of the Tennessee Judiciary Fiscal Year 2018-2019*, 15–17.

and resources, new conservators in the next two decades may not properly understand their duties and may not know where to look when they need assistance.

C. Current Training Available in Tennessee

Currently, the OCM website has a webpage called “Conservatorship School.”²⁴ This program is designed to provide basic information about the conservator’s fiduciary duties under TN laws. Trainings are offered at no cost to the participant and a certificate of completion is provided on successful completion of the quizzes. Additionally, the website has other educational videos, documents, and instructional pamphlets. This training is geared towards Davidson County conservators but is applicable to conservators across the state of Tennessee. These videos can be tailored to the needs of the court in the future.

PROPOSED RULE 55

The OCM respectfully requests that the Court create Rule 55 to require conservatorship training across the state of Tennessee. In cases where a conservator is needed, the respondent is entitled to a conservator who is competent to perform the duties and responsibilities that are necessary to protect the interests of the respondent, in addition to the other rights outlined in law. In an effort to further these rights, conservator shall complete court-approved training prior to a letter of guardianship or conservatorship being issued.

This proposed rule will require conservators to complete court-approved training prior to a letter of guardianship or conservatorship being issued. The training will inform current and

²⁴ METRO. NASHVILLE OFF. OF CONSERVATORSHIP MGMT., OCM Conservatorship School, <https://officeofconservatorshipmanagement.nashville.gov/ocm-conservatorship-school/>

prospective conservators on their fiduciary duties, the means of accomplishing them, and support that can be provided to them.

PROPOSED RULE 55 LANGUAGE:

“Unless expressly waived by order of the Court, prior to obtaining letters, the fiduciary shall provide the court with a sworn statement that the fiduciary has completed court-approved training prior to a letter of guardianship or conservatorship being issued.

The court-approved training must be free and easily accessible through internet access or other online availability.

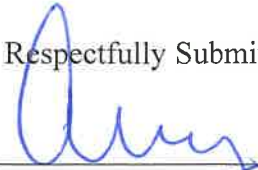
The following is a list of acceptable training that can be approved by the court:

- (A) Videos or written materials prepared and updated by the Conservatorship Association of Tennessee;
- (B) Videos or written materials prepared and updated by the office of conservatorship management for metropolitan Nashville & Davidson County; or
- (C) Videos or written materials prepared and updated by the court or clerk for each respective county.

CONCLUSION

As a reflection of current events, there is a recent uptick asking for regulation of the conservatorship process. We need to take steps to educate conservators on their fiduciary duties and how to accomplish them in order to avert preventable wrongs against a vulnerable population.

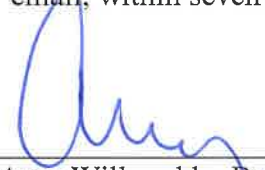
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CERTIFICATE OF SERVICE

The undersigned certifies that a true and correct copy of the foregoing has been served upon the individuals and organizations identified in Exhibit A by mail or email, within seven (7) days of filing with the Court.



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