

# ADULT GUARDIANSHIP INSTRUCTIONS

## Introduction

These instructions are to be used when the appointment of a permanent guardian for an adult (the “Subject Person”) has been requested and the Subject Person has invoked the right to jury trial. *See* A.R.S. § 14-5303(C) (“The alleged incapacitated person is entitled . . . to trial by jury.”). Arizona law does not allow for the use of a jury trial when the appointment of a temporary guardian for an adult has been requested, *see* A.R.S. § 14-5310 (setting forth procedures relating to temporary guardianships for adults), nor does it allow for the use of a jury trial when the appointment of a guardian for a minor has been requested, *see* A.R.S. §§ 14-5201 through -5213 (guardianships for minors). In addition, only the alleged incapacitated adult is entitled to a jury trial, *see* A.R.S. § 14-5303(C); no statute authorizes any other party to request a jury trial.

The Committee considered including a specific instruction to the jury that the Subject Person is presumed to have capacity. However, the Committee determined that such an instruction is unnecessary and might confuse the jury, because the instructions state that the petitioner has the burden of proving that the Subject Person is incapacitated. Consequently, an instruction as to the presumption of capacity is intentionally omitted.

Before the court may appoint a guardian for an adult, the court must find by clear and convincing evidence all three of the following: (1) the Subject Person is incapacitated (as defined in A.R.S. § 14-5101); (2) the appointment of a guardian is necessary to provide for the Subject Person’s demonstrated needs; and (3) the Subject Person’s needs cannot be met by less restrictive means, including the use of appropriate technological assistance. A.R.S. § 14-5304(B). However, the jury addresses only the first of those three elements. *See* A.R.S. § 14-5303(C) (providing that the court must set a hearing on the “issues of incapacity” and then providing the Subject Person with the right to trial by jury). The latter two findings above are addressed by the court only if the jury finds that the petitioner has proven the first element by clear and convincing evidence. Similarly, only the court (not the jury) may decide whether to limit the guardian’s powers, *see* A.R.S. §§ 14-5304(B) and -5312(A) (authorizing the court to modify the guardian’s powers), and only the court (not the jury) determines who should be appointed as guardian, *see* A.R.S. § 14-5311 (setting forth priority for appointment as guardian). Consequently, the court should consider whether to hold a separate bench trial on all issues other than incapacity and whether to give the jury limiting instructions that directs them to consider only the issue of whether the petitioner has proven by clear and convincing evidence that the Subject Person is an incapacitated person.

Often, a petition for the appointment of a guardian for an adult will include a request for the appointment of a conservator for that adult. Although A.R.S. § 14-5303(C) expressly provides the Subject Person with the right to a jury trial in connection with a petition for appointment of a guardian, no statute provides the Subject Person with the right to a jury trial in connection with a petition for appointment of a conservator or other protective proceeding. *Compare* A.R.S. § 14-5303(C) *with* A.R.S. § 14-5407(D). For this reason, if the appointment of both a guardian and a conservator for the Subject Person has been

requested, the court likewise should consider whether to bifurcate the proceedings, holding a jury trial solely on the issue of whether the Subject Person is incapacitated and a bench trial on all other issues. The bench trial should address the request for the appointment of a conservator, as well as whom should be appointed as the guardian and conservator and whether the guardianship or conservatorship should be limited. If the court decides to hold a single trial on all the issues, the court should give the jury a limiting instruction that focuses the jury on the sole issue presented to the jury, namely whether the petitioner has proved by clear and convincing evidence that the subject person is an “incapacitated person” as defined in A.R.S. § 14-5101.

### ADULT GUARDIANSHIP PRELIMINARY JURY INSTRUCTIONS

The Committee recommends considering whether the following RAJI (Civil) 7<sup>th</sup> Preliminary Instructions might be used for Preliminary Jury Instructions in conjunction with the RAJI Standard Adult Guardianship Jury Instruction:

Preliminary 1 Duty of Jurors  
Preliminary 2 Importance of Jury Service  
Preliminary 3 Evidence  
Preliminary 4 Rulings of Court  
Preliminary 5 Credibility of Witnesses  
Preliminary 6 Expert Witnesses  
Preliminary 7 Evidence, Statements of Lawyers, Rulings  
Preliminary 8 No Transcripts  
Preliminary 9 Admonition  
Preliminary 10 Media Coverage  
Preliminary 11 Questions by Jurors  
Preliminary 12 Exclusions of Witnesses  
Preliminary 13 Alternate Jurors  
Preliminary 15 Scheduling During Trial  
Preliminary 16 Order of Trial  
Standard 8 Closing Instruction

**[USE NOTE: Preliminary 5 and 6 should be included in the final use packet]**

## STANDARD ADULT GUARDIANSHIP

### Statement of Issue, Definitions, and Burden of Proof

In this case, [Petitioner's name] alleges that [Subject Person's name] is an incapacitated person. [Subject Person's name] denies being an incapacitated person.

[Petitioner's name] has the burden of proving<sup>1</sup> by clear and convincing evidence that [Subject Person's name] is an incapacitated person.<sup>2</sup>

An “[i]ncapacitated person” is a person who is at least 18 years of age and is impaired by reason of mental illness, mental deficiency, mental disorder, physical illness of disability, chronic use of drugs, chronic intoxication, or other cause to the extent that the person lacks sufficient understanding or capacity to make or communicate responsible decisions concerning his or her person.<sup>3</sup>

A person lacks sufficient understanding or capacity to make or communicate responsible decisions concerning his or her person if that person's decision-making process is so impaired that the person is unable to care for the person's personal safety or is unable to attend to and provide for such necessities as food, shelter, clothing, and medical care, without which physical injury or illness may occur.<sup>4</sup> & <sup>5</sup>

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**SOURCES:** <sup>1</sup>A.R.S. § 14-1311 (providing that in actions brought under Title 14, A.R.S., unless a statute provides otherwise, “[p]arties have the ultimate burden of persuasion as to matters with respect to which they have the initial burden of proof”).

<sup>2</sup>Before the court appoints a guardian for an adult, the court must find by clear and convincing evidence all three of the following: (1) the Subject Person is incapacitated (as defined in A.R.S. § 14-5101); (2) the appointment of a guardian is necessary to provide for the Subject Person's demonstrated needs; and (3) the Subject Person's needs cannot be met by less restrictive means, including the use of appropriate technological assistance. A.R.S. § 14-5304(B). However, only the jury addresses only the first of those three elements. *See* A.R.S. § 14-5303(C) (providing that the court must set a hearing on the “issues of incapacity” and then providing the Subject Person with the right to trial by jury). The latter two issues are addressed by the court only if the jury finds that the petitioner has proven the first element by clear and convincing.

<sup>3</sup> A.R.S. § 14-5101(3).

<sup>4</sup> In *In re Guardianship of Reyes*, 152 Ariz. 235, 236, 731 P.2d 130, 131 (App.1986), the Arizona Court of Appeals adopted the construction of “lacks sufficient understanding or capacity to make or communicate responsible decisions concerning his person” as set forth by the Utah Supreme Court in *In re Boyer*, 636 P.2d 1085, 1089 (Utah 1981). *In Re Boyer* contains an extensive discussion of the difference between eccentric and incapacitated.

<sup>5</sup> RAJI (Civil) Standard Instruction 3 (7<sup>th</sup> ed. 2021).

**STANDARD ADULT GUARDIANSHIP**  
**Statement of Issue, Definitions, and Burden of Proof**

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In considering the evidence in this case, you must not be concerned about what may result as a consequence of whether you find [*Subject Person's name*] meets the legal definition of an incapacitated person. Do not speculate or otherwise concern yourselves with matters that are not before you. The only matter for you to decide is whether [*Petitioner's name*] has proven their case according to the evidence and instructions I have given you. The consequences of your determination are reserved to the judge, so you must not consider those possible consequences in making your determination.

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**USE NOTE:** This instruction should be read in conjunction with Standard 3 Burden of Proof (Clear and Convincing). If appropriate, Standard 3 may be modified to delete the third paragraph, which states “You are to use the standard of more probably true than not true for all claims in this case except for those on which you are specifically instructed that the burden of proof is the standard of clear and convincing evidence.”