

State of Minnesota

District Court  
Probate Division

County of Winona

Judicial District: THIRD

Court File No. 85-PR-19-1081

Case Type: Guardianship/Conservatorship

In Re:  Guardianship

Conservatorship of

Petition for Appointment of:

Guardian

Conservator

David A. Russell

TO THE HONORABLE JUDGE OF THE DISTRICT COURT:

1. Petitioner's: Name: Todd Bennick  
Address: Winona County Health & Human Services  
202 West 3<sup>rd</sup> St  
Winona, MN 55987  
Telephone number: 507-457-6281  
Interest in this matter: Social Worker  
Relation to the Respondent: Commitment Case Manager

2. Respondent's: Name: David A. Russell  
Address: 166 West 6<sup>th</sup> St  
Apt. 213  
Winona, MN 55987  
Telephone number: 507-312-9042  
Age and date of birth: 42 / March 13<sup>th</sup>, 1980

and if the petition is granted, Respondent will be moved to: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

3. The names and addresses of the Respondent's spouse and kin are:

a) Spouse.

Name: None

Address: \_\_\_\_\_  
\_\_\_\_\_

Relationship: \_\_\_\_\_

b) List the name of any adult with whom the Respondent has resided for more than 6 months before the filing of this petition.

Name: None

Address: \_\_\_\_\_  
\_\_\_\_\_

Relationship: \_\_\_\_\_

c) Kin

Name: Cheryl Davis  
 Address: 570 Prairie Island Rd  
Winona, MN 55987  
 Relationship: Mother

Name: Pamela Traver  
 Address: Winona, MN 55987  
 Relationship: Sister

Name: Timothy Russell  
 Address: Winona, MN 55987  
 Relationship: Brother

d) Administrator (if Respondent is in a hospital, nursing home, VA unit, group home, home care agency, or other institution):

Name: Christine W. Galardy, MD, PhD  
 Address: 1216 2<sup>nd</sup> Street SW  
Rochester, MN 55905

e) Legal representative:

Name: Independent Management Services – Judy Bjorndal  
 Address: 101 21<sup>st</sup> St SE  
Austin, MN 55912  
 Relationship: Professional guardian

f) Persons nominated, proposed, or confirmed by prior order, as guardian or conservator

Name: \_\_\_\_\_  
 Address: \_\_\_\_\_

Relationship: \_\_\_\_\_

Name: \_\_\_\_\_  
 Address: \_\_\_\_\_

Relationship: \_\_\_\_\_

Name: \_\_\_\_\_  
 Address: \_\_\_\_\_

Relationship: \_\_\_\_\_

4. A Guardian of Respondent should be appointed because:
- A. The Respondent is an incapacitated person in that Respondent lacks sufficient understanding or capacity to make personal decisions, and is unable to meet their personal needs: The Respondent has been diagnosed with schizoaffective disorder, depressive type on August 11<sup>th</sup>, 2021, by Rob Morgan III, MD, PhD. Beginning in 2014 the Respondent has been placed on a 6 month civil commitment 5 times, with 3 of the 5 commitments each extended an additional 12 months, and the most recent commitment extended an additional 12 months.
- B. The Respondent has demonstrated behavioral deficits evidencing an inability to meet Respondent's needs for medical care, nutrition, clothing, shelter, and/or safety: A review of the reasons for each of the commitments and extensions finds similar concerns: difficulty managing aggression, verbal or physical threats of violence or suicidal ideation, and fix delusional thinking accented by his refusal to continue taking medications that have helped stabilize him when in facilities following a discharge home. Once in facilities, the Respondent has refused to apply for appropriate insurance, leading to significant debt from his previous hospital stays. Attempts have been made to provide assistance and support for this via a limited guardianship, however, as the Respondent has refused to supply the guardian the necessary bank information so the guardian could sign him up for Medical Assistance (MA), he has continued to increase the size of his debt. In the past he has stated he would not apply for MA, saying the County could pay for his stay, and that each of the civil commitments is illegal, and, as a result, he is the victim of conspiracies, torture, and abuse. He currently reports he could not afford to cover the cost of the spenddown associated with MA, and that it would bankrupt him if he were to go on it, leading to him becoming homeless and losing all of his possessions. Recently, the management company of the apartment building he lives at has informed him they will not be renewing his lease. They have reported the reason for this is due to the ongoing problems related to his delusional thinking leading to him making statements and acting in a way toward his neighbors that have made them uncomfortable and worried of further escalating behavior.
- C. Less restrictive means have been attempted and considered, but are not sufficient to meet the Respondent's identified needs. The description of what has been attempted and considered, how long less restrictive means have been attempted, but have not been sufficient to meet the Respondent's needs are listed below.
- A limited Guardianship was established on July 10<sup>th</sup>, 2019 by court order, provided the guardian with: "the power to apply on behave of the ward for any assistance, services, or benefits, available to the ward through any unit of government under Minn. Stat. 524.5-313(c)(7)." This, unfortunately, was not sufficient as the Respondent refuses to supply the needed banking information to the guardian, so each application is rejected due to there being insufficient information provided. In addition, Winona County has offered to cover the cost

of medication co-pays, and covers the cost of Adult Rehabilitative Mental Health Services (ARMHS) which he would not otherwise receive due to the absence of MA.

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5. The following powers are needed for a Guardian to protect and supervise the person of the Respondent:

All of the rights and powers on behalf of a person subject to guardianship under Minn. Stat. § 524.5-313(c) paragraphs 1, 2, 3, 4, 5, 6, 7, 9, and 10. A limited guardianship is not appropriate because a limited guardianship has been attempted and has not been successful due to the Respondent's continued refusal to supply the needed banking information.

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6. A Conservator of Respondent is needed because:

A. Respondent is unable to manage property and business affairs because of an impairment in the ability to receive and evaluate information or make decisions, even with the use of appropriate technological assistance. (Describe present general mental condition supporting this allegation): The Respondent has been diagnosed with schizoaffective disorder, depressive type on August 11<sup>th</sup>, 2021, by Rob Morgan III, MD, PhD. Beginning in 2014 the Respondent has been placed on a 6 month civil commitment 5 times, with 3 of the 5 commitments each extended an additional 12 months.

B. The Respondent has demonstrated behavioral deficits evidencing an inability to manage Respondent's estate (Describe behavior supporting this allegation): The Respondent has consistently refused to apply for health care benefits that would allow him to access appropriate health care and inpatient treatment, as well as community supports that can assist him in his continued recovery and help him to avoid future hospitalizations and commitments. The Respondent has Medicare and a Medicare supplement, however, these are not sufficient to cover the cost of his hospitalizations. While he is eligible for Medical Assistance (MA) with a spend down, he refuses to apply, having previously stated the County could cover the cost of his care, and currently claims doing so would leave him homeless and without possessions. He has based his decision on the faulty perception that his civil commitments have all been illegal, and that State and County government agencies owe him thousands of dollars in withheld taxes. Because of his refusal to apply for MA he has accrued significant debt estimated to currently be \$250,000 or more.

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C. Less restrictive means have been attempted and considered, but are not sufficient to meet the Respondent's identified needs. The description of what has been

attempted and considered, how long less restrictive means have been attempted, but have not been sufficient to meet the Respondent's needs is listed below:

A limited Guardianship was established on July 10<sup>th</sup>, 2019 by court order, provided the guardian with: "the power to apply on behalf of the ward for any assistance, services, or benefits, available to the ward through any unit of government under Minn. Stat. 524.5-313(c)(7)." This, unfortunately, was not sufficient as the Respondent refuses to supply the needed banking information to the guardian, so each application is rejected due to there being insufficient information provided. In addition, Winona County has offered to cover the cost of medication co-pays, and covers the cost of Adult Rehabilitative Mental Health Services (ARMHS) which he would not otherwise receive due to the absence of MA. While it has been acknowledged that the Respondent is an intelligent person who, when stable, appears to be able to manage his own affairs, when he is refusing medications and symptomatic, it is felt he requires the support of a conservator to ensure he does not continue to increase the size of his debt, and that his medical and other bills are being paid in a timely manner.

D. Respondent has property that will be dissipated without proper management; or funds are needed for the support, care, education, health and welfare of (1) the Respondent; and/or (2) those entitled to the support of the Respondent.

7. The following powers are needed for a Conservator to protect and supervise the estate of the Respondent:

All of the rights and powers under Minn. Stat. § 524.5-417(c) paragraphs 1, 2, 3, 4, 5, 6, and 7. A limited conservatorship is not appropriate because it is unclear what powers would be needed in order to ensure that the Respondent's bills are paid out as they come in, and what banking information would be needed to establish the appropriate insurance to cover current and future medical costs.

***(If the Conservator is granted limited powers and duties, specify which powers and duties are vested in the Conservator by this Order.)***

Pay reasonable charges for the support, maintenance, and education of the person subject to conservatorship in a manner suitable to their station in life and the value of their estate, Minn. Stat. § 524.5-417(c)(1);

Pay out of the estate of the person subject to conservatorship all lawful debts of the person subject to conservatorship, Minn. Stat. § 524.5-417(c)(2);

Possess and manage the estate of the person subject to conservatorship, collect all debts and claims in favor of the person subject to conservatorship, or with the approval of the court compromise them, institute suit on behalf of the person subject to conservatorship and represent the person subject to conservatorship in all civil court proceedings, and invest all funds not currently needed for debts, charges, and management of the estate in accordance with the provisions of

sections 48A.07, subdivision 6, 501C.0901, and 524.5-423, or as otherwise ordered by the court, Minn. Stat. § 524.5-417(c)(3);

- Exchange or sell an undivided interest in real property, Minn. Stat. § 524.5-417(c)(4);
- Approve or withhold approval of any contract, except for necessities, which the person subject to conservatorship may make or wish to make, Minn. Stat. § 524.5-417(c)(5);
- Apply on behalf of the person subject to conservatorship for any assistance, services, or benefits available to the person subject to conservatorship through any unit of government, Minn. Stat. § 524.5-417(c)(6); and
- Establish and exercise all powers over an Achieving a Better Life Experience Act of 2014 account under section 529A of the Internal Revenue code (known as an ABLE account), Minn. Stat. § 524.5-417(c)(7);
- (other) \_\_\_\_\_  
\_\_\_\_\_;

and all other powers, duties and responsibilities conferred on the Conservator under applicable law.

8. The probable value and the general character of the assets of the Respondent are:

Homestead:	\$ <u>0</u>
Other Real Estate:	\$ <u>0</u>
Money:	\$ <u>3800</u>
Investments:	\$ <u>Unknown</u>
Personal Property:	\$ <u>Unknown</u>
Other:	\$ _____
TOTAL:	\$ <u>3800</u>

9. The probable amount of the debts of the Respondent is \$ 250,000 +/-.

10. The Respondent is ( not) a patient at a State Hospital for persons with mental illness; is ( not) a person with developmental disabilities or dependent and neglected ward of the Commissioner of Human Services; and is ( not) under the temporary custody of the Commissioner of Human Services.

11.  The Respondent appears to understand the nature and effect of voting and should maintain the right to vote.

The Respondent does not appear to understand the nature and effect of voting and the court should determine Respondent's capacity to vote.

12. The name, address, and phone number of each proposed:

Guardian is: Name: Catholic Charities of Southern Minnesota  
Address: 111 Market Suite, Suite 2  
Winona, MN 55987

Telephone number: 507-454-2270;

and the proposed Guardian:

- was appointed by prior order of the court;  
 nominated by the Respondent,  
 nominated by the Respondent's parent;  
 nominated by the Respondent's spouse, or  
 nominated by some other person; and

Conservator is: Name, age: Catholic Charities of Southern Minnesota  
Address: 111 Market St, Suite 2  
Winona, MN 55987

Telephone number: 507-454-2270;

13. A. The proposed guardian, Catholic Charities of Southern Minnesota, anticipates charging the following rate for the performance of these services: (list hourly, monthly, or flat rate) \$55.00 / hour, and

has never been removed for cause from serving as a guardian or conservator.

OR

has been removed for cause from serving as a guardian or conservator and the court location and court file number are: \_\_\_\_\_

- B. The proposed conservator, Catholic Charities of Southern Minnesota, anticipates charging the following rate for the performance of these services: (list hourly, monthly, or flat rate) \$55.00 / hour, and

has never been removed for cause from serving as a guardian or conservator.

OR

has been removed for cause from serving as a guardian or conservator and the court location and court file number are: \_\_\_\_\_

14.  The proposed guardian, Catholic Charities of Southern Minnesota, is a professional guardian and a summary of the proposed guardian's educational background, relevant work experience, and other experience is as follows: Catholic Charities offers professional guardian / conservator services, and is a non-profit agency that services numerous clients in both capacities. The company has provided such services for many years.

a. The professional guardian’s current customary rate per hour is \$55 / hour  
 The proposed conservator, Catholic Charities of Southern Minnesota, is a professional conservator and a summary of the proposed conservator’s educational background, relevant work experience, and other experience is as follows: Catholic Charities of Southern Minnesota offers professional guardian / conservator services, and is a non-profit agency that services numerous clients in both capacities.

b. The professional conservator’s current customary rate per hour is \$55 / hour

15. A. The proposed guardian, Catholic Charities of Southern Minnesota

has not applied for or held any professional licenses.

OR

has applied for or held the following professional licenses:

Type of License	Agency	License Number	Status

If the status of the license has been denied, conditioned, suspended, revoked, or cancelled, please explain why: \_\_\_\_\_

B. The proposed conservator, Catholic Charities of Southern Minnesota

has not applied for or held any professional licenses.

16. A. The proposed guardian, Catholic Charities of Southern Minnesota

has not been found civilly liable in an action involving fraud, misrepresentation, material omission, misappropriation, theft, or conversion.

OR

has been found civilly liable in an action involving fraud, misrepresentation, material omission, misappropriation, theft, or conversion.

List court location and court case number: \_\_\_\_\_

B. The proposed conservator, Catholic Charities of Southern Minnesota

has not been found civilly liable in an action involving fraud, misrepresentation, material omission, misappropriation, theft, or conversion.

OR



has been found civilly liable in an action involving fraud, misrepresentation, material omission, misappropriation, theft, or conversion.

List court location and court case number: \_\_\_\_\_

17. A. The proposed guardian, Catholic Charities of Southern Minnesota

has not filed nor has received protection under the bankruptcy laws in the last 5 years.

OR

has filed or has received protection under the bankruptcy laws in the last 5 years.

List court location and court case number: \_\_\_\_\_

B. The proposed conservator, Catholic Charities of Southern Minnesota

has not filed nor has received protection under the bankruptcy laws in the last 5 years.

OR

has filed or has received protection under the bankruptcy laws in the last 5 years.

List court location and court case number: \_\_\_\_\_

18. A. The proposed guardian, Catholic Charities of Southern Minnesota

does not have any outstanding civil monetary judgments.

OR

has outstanding civil monetary judgments.

List court location, court case number, and outstanding amount owed: \_\_\_\_\_

B. The proposed conservator, Catholic Charities of Southern Minnesota

does not have any outstanding civil monetary judgments.

OR

has outstanding civil monetary judgments.

List court location, court case number, and outstanding amount owed: \_\_\_\_\_

19. A. The proposed guardian, Catholic Charities of Southern Minnesota

does not have nor has had an order for protection or harassment restraining order issued against him / her.

OR

currently has or has had an order for protection or harassment restraining order issued against him / her.

List court location and court case number: \_\_\_\_\_

B. The proposed conservator, Catholic Charities of Southern Minnesota  
 does not have nor has had an order for protection or harassment restraining order issued against him / her.

OR

currently has or has had an order for protection or harassment restraining order issued against him / her.

List court location and court case number: \_\_\_\_\_

20.

A. the proposed guardian, Catholic Charities of Southern Minnesota  
 has not been convicted of a gross misdemeanor or felony.

OR

has been convicted of a gross misdemeanor or felony.

List court case number and convicted offense: \_\_\_\_\_

B. Other than a petty misdemeanor or traffic offense, the proposed conservator,  
Catholic Charities of Southern Minnesota  
 has not been convicted of a crime.

OR

has been convicted of a crime

21. The proposed:

- A.  Guardian is the most suitable and best qualified among those available and willing to discharge the trust and is not excluded from appointment pursuant to Minn. Stat. § 524.5-309(c);
- B.  Conservator is the most suitable and best qualified among those available and willing to discharge the trust and is not excluded from appointment pursuant to Minn. Stat. § 524.5-413(d).

WHEREFORE, your Petitioner respectfully requests the Court schedule a time and place for hearing this petition and, after the hearing, an order appointing:

Catholic Charities of Southern Minnesota Guardian and Conservator of Respondent with the powers and duties described in allegations numbered 5 above;

I declare or affirm that I have read the foregoing petition and, to the best of my knowledge or information, its representations are true, correct and complete.

Dated: April 6<sup>th</sup>, 2022



**Petitioner**

Name: Paul R. Ellison

License No.: 0397449

Address: 171 West 3<sup>rd</sup> St

City/State/Zip: Winona, MN 55987

E-mail address: pellison@co.winona.mn.us