U.S. Department of Labor
Employment Standards Administration
Wage and Hour Division
Washington, D.C. 20210

June 4, 1998 **FMLA-96**

Dear ***Name****,

Your inquiry regarding the application of the Family and Medical Leave Act of 1993 (FMLA), originally submitted to our ***Name**** District Office, was referred to this office for a response. Specifically, you ask if the term "legal ward", as used in FMLA, would include your parents-in-law for whom the courts have appointed you co-guardian and co-conservator. For the purpose of addressing your question, we will assume no other issues or provisions of FMLA are disputed and there is no need to summarize the Act's provisions.

The FMLA provides that, in part, an eligible employee of a covered employer may take FMLA leave "to care for the spouse, or a son, daughter, or parent, of the employee, if such spouse, son, daughter, or parent has a serious health condition." (Section 102(a)(1)(C)) The FMLA, in section 101(12), defines "son or daughter" as "a biological, adopted, or foster child, a stepchild, a legal ward, or a child of a person standing in loco parentis, who is -

(A) under 18 years of age; or
(B) 18 years of age or older and incapable of self-care because of a mental or physical disability.

In addressing your question, we looked first at the placement of the term "legal ward" within FMLA. This term is included in the FMLA definition of "**son or daughter**" (section 101(12)) rather than in section 102(a)(1)(C) that lists situations in which an employee is entitled to FMLA leave. This leads us to conclude that the legislation considers the term legal ward only in the context of determining those individuals who, for purposes of FMLA, would be considered a son or daughter. In other words, an employee may qualify for FMLA leave to provide care for a legal ward so long as the relationship between the employee and the legal ward is similar in nature to that of parent to child. Our conclusion may have been different had FMLA's leave entitlements in section 102(a)(1)(C) included leave to care for a legal ward.

Next, we reviewed the legislative history of these sections of FMLA to determine if the legislative history is consistent with our conclusion. The sections of the Senate (SR 103-3) and House Reports (HR 103-8) discussing the term "son or daughter" both state in part that the definitions "reflect the reality that many children in the United States today do not live in traditional 'nuclear' families with their biological father and mother" and that "those who find themselves in need of workplace accommodation of their child care responsibilities are not the biological parent of the children they care for, but their adoptive, step, or foster parents, their guardians, or sometimes simply their grandparents or other relatives or adults." Finally, the reports state that the definitional language is intended to "be construed broadly . . . to ensure that an employee who actually has day-to-day responsibility for caring for a child is entitled to leave even if the employee does not have a biological or legal relationship to that child."

With regard to sons or daughters older than 18, the reports recognize "that in special circumstances, where a child has a mental or physical disability, **a child's need for parental care may not end when he or she reaches 18 years of age**. In such circumstances, **parents may continue** to have an active role in caring for the son or daughter. **An adult son or daughter** who has a serious health condition and who is incapable of self-care because of a mental or physical disability presents the same compelling **need for parental care** as the child less than 18 years of age with a serious health condition." (Emphasis added.)

The language in the reports supports the conclusion that an employee is entitled to FMLA leave to care for a legal ward only to the extent that the employee has a relationship with the ward that is similar to that of a parent to a child. If, for example, a child becomes the legal ward of his or her aunt, uncle, or parents' best friends because of the death of his or her biological parents, we believe that such legal wards fall within FMLA's definition of son or daughter. We do not believe, however, that the definition of "son or daughter" can be interpreted to encompass relatives such as parents-in-law.

That your wife has been named co-guardian and co-conservator for her parents does not impact on her entitlement to take leave to care for her parents.

Although you have not specifically raised the question, we would also like to point out that the term “parent”, as used in section 102(a)(1)(C) is limited to the employee’s biological parent or an individual who stood in loco parentis to the employee. The term does not extend to a parent-in-law. Moreover, this entitlement is expressly limited to “ . . . care for the . . . parent, **of the employee**, if such . . . parent has a serious health condition.” Thus, each eligible spouse may take qualifying FMLA leave to care for his or her own biological (or in loco parentis) parent who has a serious health condition, but the leave entitlement cannot be extended to parents-in-law.

While we appreciate that our conclusion means that you are not entitled to FMLA leave to care for your parents-in-law who have become your legal wards, we believe that a careful review of FMLA and the legislative history supports no other result. If you have any further questions, please contact our District Office located at ***Name**** , telephone *************.

Sincerely,

Michelle M. Bechtoldt
Office of Enforcement Policy
Family and Medical Leave Act Team

***** *Note: The actual name(s) was removed to preserve privacy in accordance with 5 U.S.C. 552 (b)(7).*