

INSTRUCTIONS FOR HANDING A GUARDIANSHIP OF THE PERSON

General Information

For general information on guardianship, please refer to *General Information about Guardianship of the Person*, a separate document in this handbook (Refer to Tab No. 3).

Who is My Client

Your client is the Petitioner. The Petitioner is usually a parent (sometimes another family member) who is seeking to become Guardian of the Person of the proposed Ward.

Before the Client Meeting

1. Review Chapter 54 of the Wisconsin Statutes:
<http://nxt.legis.state.wi.us/nxt/gateway.dll?f=templates&fn=default.htm&d=stats&jd=ch.%2054>.
2. Review the *Guardianship Information Sheet* (Refer to Tab No. 6) and *Examining Physician's or Psychologist's Report* (Refer to Tab No. 7) provided in advance of your meeting by your firm coordinator.
3. Contact the Marquette student assigned to your case (if one has been assigned) regarding the client meeting and preparation of the necessary documents.

Students may not be available in the months of January, April, May or December due to break and/or exams.

4. Prepare a draft *Petition for Permanent Guardianship Due to Incompetency and Rider* (Refer to Tab No. 8). (Note – See § 54.38 and § 54.01(17) for interested persons who must be listed as such on the Petition. **This includes the county department and county corporation counsel!** See pages 8-10 of this Tab for additional information regarding identifying who are interested persons.). If a student is assigned to your case, he or she will draft the *Petition* and *Rider* for you.
5. Prepare a draft *Statement of Acts of Proposed Guardian and Consent to Serve* for each of the proposed Guardian(s) and the proposed Standby Guardian(s) (Refer to Tab No. 9). If a student is assigned to your case, he or she will draft this for you. This draft should be used only as a guide and a final form should be filled out (handwritten is best) and signed by the Proposed Guardian(s) and Proposed Standby(s).
6. Obtain or prepare an engagement letter. For WHD, obtain an engagement letter from Liana Ramirez. For QB, the sample engagement letter is document number 6603826 and the Spanish version is document number 10513653 (please do NOT save your edits on either of these letters, but save as a new document in your client's individual matter).
7. If not already provided to you, conduct a CCAP and Internet search for any criminal history for the Petitioner and any proposed Guardian(s) and Standby Guardian(s). If a student is assigned to your case, he or she can do this for you. Be sure to explore all items listed in the

CCAP report with the Petitioner, Proposed Guardian(s) and Proposed Standby Guardian(s) - we have had some instances where the Proposed Guardian was questioned at the hearing about a fairly extensive criminal background.

8. Conduct a PACER search for any bankruptcy history for any nominated Guardian(s) and Standby Guardian(s).

At the Client Meeting

1. Speak with your assigned student (if one has been assigned) about attending the client meeting. **NOTE:** prior consent will have been attained by the social worker for a student to attend this meeting.
2. Discuss the representation and have the engagement letter signed.
3. Discuss the risk of fee shifting of guardian ad litem and adversary counsel fees. **Explain to the Petitioner that if the proposed Ward is not a suitable candidate for guardianship and the court does not grant the guardianship, the Petitioner is responsible for the Guardian ad Litem fees, fees of any adversary counsel and any other fees and costs. Also explain that the Ward may be required to pay the Guardian ad Litem fees even if the guardianship is awarded.**
4. If the social worker or anyone other than the Petitioner is present, ask him/her to leave to preserve the attorney-client privilege if something private will be discussed.
5. Inform the Petitioner that the Ward will be visited by two people. First, a process server will be required to come to the Ward's residence to personally serve the papers on the Ward, explaining the content of the papers. Let the Petitioner know that you will provide his or her telephone number to the process server so that he can contact the Petitioner in advance and set up a time to serve the papers. Second, the Guardian ad Litem will need to also meet with the Ward at his or her residence.
6. Discuss with the Petitioner the *Guardianship Information Sheet* and *Examining Physician's or Psychologist's Report* to ensure understanding of condition and no errors.
7. Obtain addresses of any interested persons, as defined by Chapter 54 of the Wisconsin Statute (see pages 8-10 of this Tab for information on identifying who are interested persons). If the address of an interested person is unknown, inquire further to determine whether there is another resource that could be checked to find the current or last known address. **If the address cannot be obtained, you may be required to publish notice if your case is in a county other than Milwaukee County. Contact the Register in Probate Office for more information.**
8. If possible, and if a notary is present, have the Petitioner sign the *Petition*. **The signature must be notarized (if you are a notary, you are able to notarize your client's signature).**
9. If possible, and a notary is present, have the proposed Guardian sign the *Statement of Acts of Proposed Guardian and Consent to Serve*. **The signature must be notarized.**

10. If possible, and a notary is present, have the proposed Standby Guardian sign the *Statement of Acts of Proposed Guardian and Consent to Serve*. **The signature must be notarized.**
11. Inform the Petitioner that all Guardians and Standby Guardians and the Proposed Ward should be present at the hearing. If someone cannot be there, the court must excuse him/her or allow him/her to appear by phone. Ask whether there are any dates or times they know they cannot make work. In Milwaukee County, the hearings are generally in the afternoon.
12. If steps 7 through 10 above could not be accomplished at the meeting, send these forms to the Petitioner by mail (refer to Tab No. 19 for a sample letter) or schedule another meeting to have the forms signed, notarized and returned to you.
13. If the Ward has already turned 18 or will be turning 18 before the papers will be filed or the hearing likely held, ask the Petitioner whether there are any exigent circumstances that require the guardianship papers be filed and entered on an expedited basis (*e.g.*, the Ward is having surgery and someone will need to sign the consent forms). If that is the case, you will have to consider contacting the Commissioner for an expedited hearing date and sometimes they are willing to work with you but you may have to file a *Temporary Petition for Guardianship Due to Incompetency* (same form as is used for the Permanent Petition - Refer to Tab No. 8) and the *Consent to Serve as Temporary Guardian* (Form GN-3230) in conjunction with the *Petition for Permanent Guardianship Due to Incompetency* and related papers.
14. If your client is non-English speaking, CHW will provide an interpreter at this initial meeting. If you have a MCGAP case where the client does not speak English, you and the firm coordinator are responsible for finding an interpreter or can reschedule your appointment to meet the client at the Hospital and an interpreter will be provided. If you need an interpreter after the meeting but before the hearing, please contact your firm coordinator who will work with you on getting someone to assist.
15. If your client seeks a co-guardianship, be sure to explore the risks associated with doing a co-guardianship and explore possible alternate language to include (*e.g.*, decisions to be made with the consent of both guardians but if both guardians are not available, then decisions can be made by either alone).

*These cases are generally filed in Milwaukee County but we have had an increased number filed in Waukesha and Racine Counties; thus, instructions are included below for all three counties. To the extent you have a case outside of these three counties, please review any applicable local rules and consult with the other attorney volunteers to see whether anyone has had experience in that county.

Filing the forms after the client meeting – Milwaukee County

1. Complete and assemble the following:
 - a) *Petition for Permanent Guardianship Due to Incompetency with Rider* – Original plus 2 copies (Refer to Tab No. 8);
 - b) *Order and Notice of Hearing* – Original plus 2 copies (Refer to Tab No. 10);
 - c) *Order Appointing Guardian ad Litem or Attorney* – Original plus 2 copies (Refer to Tab No. 11);
 - d) *Examining Physician's or Psychologist's Report* (original provided by the CHW or MCGAP coordinator) – Original plus 2 copies (Refer to Tab No. 7);
 - e) *Statement of Acts of Proposed Guardian and Consent to Serve* (of proposed Guardian) – Original plus 2 copies* (Refer to Tab No. 9);
 - f) *Statement of Acts of Proposed Guardian and Consent to Serve* (of proposed Standby Guardian(s)) – Original plus 2 copies* (Refer to Tab No. 9);
 - g) Firm check for \$15.00 payable to Milwaukee County in payment of the filing fee; and
 - h) Postpaid return envelope addressed to you.

* If you do not have one or both of the *Statement of Acts of Proposed Guardian and Consent to Serve*, you must file it/them no later than 96 hours before the hearing, and also provide them to the guardian ad litem.

2. Call the Register in Probate Office at (414) 278-4444 (or Commissioner Baker's clerk at (414) 278-4461 to schedule a time for the hearing). From the automated main menu, select the option for scheduling a hearing on the ex parte calendar. If your client or the proposed Ward does not speak English, let the clerk know this so that the clerk can try to assign a Guardian ad Litem who speaks the client's or the proposed Ward's language. Then follow steps 3, 4 and 5 below at the Milwaukee County Courthouse, Room 207. To file your papers, you may send a messenger rather than filing them in person if you wish to do so.
3. Go to the front desk of Room 207 to pay the \$15.00 filing fee and file your papers (or have a firm representative or messenger do this for you). You should return to the firm with one file-stamped copy of each form as noted in No. 1 above, including a conformed copy of the *Order and Notice of Hearing* and a receipt for the filing fee, EXCEPT for the *Order Appointing Guardian ad Litem or Attorney* (the court will mail this to you in the postpaid return envelope you provided once a guardian ad litem is appointed). The court will retain the originals of all documents for its files and will send the other set of copies of all documents to the guardian ad litem. **You must still serve notice on the guardian ad litem as discussed below at pages 8-10 of this Tab.**

4. The hearing **must** be held within 90 days of filing the Petition. Milwaukee County generally schedules them within 45 days.
5. If your client does not speak English, let the Probate office know when you file the initial paperwork that you will need an interpreter. Call the Commissioner's clerk in advance of the hearing to confirm that one will be present at the hearing.

Filing the forms after the client meeting – Waukesha County

1. Complete and assemble the following:
 - a) *Petition for Permanent Guardianship Due to Incompetency* – Original plus 1 copy (Refer to Tab No. 8);
 - b) *Order and Notice of Hearing* – Original plus 1 copy (Refer to Tab No. 10);
 - c) *Order Appointing Guardian ad Litem* – Original plus 1 copy (Refer to Tab No. 11);
 - d) *Examining Physician's or Psychologist's Report* (original provided by the CHW or MCGAP coordinator) – Original plus 1 copy (Refer to Tab No. 7);
 - e) *Statement of Acts of Proposed Guardian and Consent to Serve* (of proposed guardian) – Original plus 1 copy* (Refer to Tab No. 9);
 - f) *Statement of Acts of Proposed Guardian and Consent to Serve* (of proposed standby guardian) – Original plus 1 copy* (Refer to Tab No. 9);
 - g) Postpaid return envelope addressed to you.

* If you do not have one or both of the *Statement of Acts of Proposed Guardian and Consent to Serve*, you must file it/them no later than 96 hours before the hearing.

2. Mail the above packet to: Register in Probate, Waukesha County Courthouse, 515 W. Moreland Blvd., Room C380, Waukesha, WI 53188. The court will set a hearing date and inform you of that date by completing and returning a copy of the *Order and Notice of Hearing*. Hearings are generally held on Fridays at 1:00 p.m. or 2:00 p.m. and will be scheduled within approximately 90 days. If you know that a particular Friday within a 60-75 day timeframe will not work for you, the Petitioner, the nominated Guardian, the nominated Standby Guardian(s) or Proposed Ward, you should state this in your transmittal letter. If a hearing date must be rescheduled, you must make a request in writing to the Register in Probate. The court will retain the originals of all documents for its files and will send the other set of copies of all documents to you.
3. In your return envelope, you should receive one file-stamped copy of each form filed as noted in No. 1 above. Waukesha County does not send out the package of documents to the Guardian ad Litem - you will be responsible for doing so.
4. Once the Petition has been filed, the hearing **must** be held within 90 days of filing the petition.

Filing the forms after the client meeting – Racine County

1. Complete and assemble the following:
 - a) *Petition for Permanent Guardianship Due to Incompetency* – Original plus 1 copy (Refer to Tab No. 8);
 - b) *Order and Notice of Hearing* – Original plus 1 copy (Refer to Tab No. 10);
 - c) *Order Appointing Guardian ad Litem* – Original plus 1 copy (Refer to Tab No. 11);
 - d) *Examining Physician's or Psychologist's Report* (original provided by the CHW or MCGAP coordinator) – Original plus 1 copy (Refer to Tab No. 7);
 - e) *Statement of Acts of Proposed Guardian and Consent to Serve* (of proposed guardian) – Original plus 1 copy* (Refer to Tab No. 9);
 - f) *Statement of Acts of Proposed Guardian and Consent to Serve* (of proposed standby guardian) – Original plus 1 copy* (Refer to Tab No. 9);
 - g) Postpaid return envelope addressed to you; and
 - h) Background Information Disclosure Form - this will be sent to you by the court after the papers are filed and must be filled out by the proposed Guardian and Standby Guardian before the hearing. You can request the form be sent to you in your transmittal letter when filing the Petition. You can bring that form with you to the hearing or send it to the court earlier, which is helpful.

*If you do not have one or both of the *Statement of Acts of Proposed Guardian and Consent to Serve*, you must file it/them no later than 96 hours before the hearing.

2. There is no filing fee.
3. In your return envelope, you should receive both file-stamped copies of each form filed as noted in No. 1 above. You should provide all materials to the Guardian ad Litem.
4. Mail the above packet to: Racine County Probate Court, Attn: Clerk, Racine County Courthouse, 730 Wisconsin Avenue, 6th Floor, Racine, WI 53403. The court will set a hearing date and inform you of that date by completing and returning a copy of the *Order and Notice of Hearing*. Hearings are generally held all day on Mondays and Friday mornings. If you want a more specific date and time, you can call the Clerk at (262) 636-3333 (#5) and ask her to give you a couple dates that are available and then state your first choice and an alternate date in your transmittal letter. Otherwise, they are at least 60 days out from when they receive the filing.
4. Racine also has a Guardianship Administrator, Carol Schiller, who is extremely helpful and can be contacted at (262) 636-3967 with questions.

Providing Notice to Interested Parties

Refer to the table below regarding providing notice to interested persons. Statutory deadlines are provided below, but it is best to provide notice as soon as possible to ensure that no deadlines are missed. (Refer to Tab No. 20 for sample letters.) If notice is not given correctly or timely, the court lacks jurisdiction. **Note: Deadlines are to be counted by excluding weekends and holidays, and the date of service does not count when determining when notice must be given. Affidavits of Service must be prepared as evidence of service. These must be filed no later than at the hearing. (Refer to Tab No. 12 for sample Affidavits of Service.)**

People who are interested persons in every case are identified below along with the documents they are to receive and how and when service is to be completed. **In every case, you should refer to Wis. Stat. §§ 54.01(17) and 54.38 to determine whether there are any other interested persons in your case, and if so, how they should be served.**

If you have a student assigned to your case, they can assist in you in preparing the notice letters.

If you are unable to provide notice within the required period of time, a *Waiver and Consent to Petition for Guardianship Due to Incompetency* is available online (Form GN-3115). This should only be used in emergency situations.

	Petitioner	Proposed Guardian	Proposed Standby Guardian	Persons with whom proposed Ward is living	Both parents, if living; if neither living, persons defined in Wis. Stat. §852.01 until reach level with living persons	County Corporation Counsel*	County Dept. of Health and Human Services**	Proposed Ward	Proposed Ward's current Guardians and current Standby Guardians (if any)	Guardian ad Litem	Anyone else listed in Wis. Stat. §54.01(17) or §54.38
Petition	X	X	X	X	X	X	X	X	X	X	X
Order for Notice and Hearing	X	X	X	X	X	X	X	X	X	X	X
Notice of Rights Prior to Exam by Physician/Psychologist										X	
Examining Physician's/ Psychologist's Report								X		X	
Statement of Acts (by all nominated Guardians and nominated Standby Guardians)										X	
Regular mail at least 10 business days before hearing	X	X	X	X	X	X	X			X****	X (unless otherwise noted)
Personal service at least 10 business days before hearing								X***			
Personal service or registered or certified mail at least 10 days before hearing									X*****		

* Milwaukee County Corporation Counsel: Milwaukee County Corporation Counsel, 901 N. 9th Street, #303, Milwaukee, WI 53233

Waukesha County Corporation Counsel: Waukesha County Corporation Counsel, 1320 Pewaukee Road #330, Waukesha, WI 53188

Racine County Corporation Counsel: Racine County Courthouse, 730 Wisconsin Ave., 10th Floor, Racine, WI 53403

** Milwaukee County Disability Services Division: Priscilla Beadle, MA, MSW, Unit Supervisor, Milwaukee County Disability Services Division, 1220 W. Vliet Street, 3rd Floor, Milwaukee, WI 53205

Waukesha County Department of Health and Human Services: Waukesha County Department of Health and Human Services, 500 Riverview Avenue, Waukesha, WI 53188

Racine County Disability Services Division: Racine County Disability Services Division, 1220 Mound Ave., Suite 312, Racine, WI 53404

*** Use a professional process server for personal service on the proposed Ward. WHD and QB volunteers use Jay Myhre Process Service. Call Jay Myhre at (414) 271-9574 as soon as possible to make arrangements. (Refer to Tab No. 20 for a sample letter and Tab No. 12 for a sample Affidavit of Service to provide to the process server.) For a Spanish speaking Ward, contact Southeast Wisconsin Process, LLC, 707 W. Moreland Blvd., Suite 2, Waukesha, WI 53188 at (262) 650-8904.

For the Examining Physician's or Psychologist's report ONLY, you may provide this to the proposed Ward by regular mail at least 96 hours before the hearing. If you do this, complete an Affidavit of Service accordingly for filing at the hearing.

**** For the Statements of Acts ONLY, you may provide this to the guardian ad litem by regular mail at least 96 hours before the hearing. If you do this, complete an Affidavit of Service accordingly for filing at the hearing.

***** In most cases, the proposed Ward will not have a current Guardian or Standby Guardian. This has been included in the chart to alert you to the different service requirements if this occurs in your case.

NOTE: If the Petitioner does not know the current or last known address of an interested person, you must try to find such address. If you cannot find such address, for Milwaukee County, you should state on the record at the hearing that no last known address could be located and explain what you and/or the Petitioner did to try to determine the address. For Waukesha County, publication of notice likely will be required - call the County Register in Probate Office for specific instructions.

Preparing For the Hearing

1. The Petitioner, the nominated Guardian and the proposed Standby Guardian(s) must appear at the hearing. If someone is unable to appear at the hearing, he/she must be excused by the court unless the court allows him/her to appear by phone. If a student has been assigned, he or she should plan to attend (schedule permitting). Please make sure to check with the student before obtaining a hearing date to maximize the potential that he or she can attend.
2. The proposed Ward must appear at the hearing unless the Guardian ad Litem waives his or her appearance. You should call the Guardian ad Litem at least one week before the hearing to:
 - a) Confirm whether the proposed Ward must attend the hearing; and
 - b) Confirm the Guardian ad Litem's position on the loss of rights and transfer of powers in your proposed *Determination and Order on Petition for Guardianship Due to Incompetency* and work out any differences before the hearing.
3. Prepare the following forms to bring to the hearing:
 - a) *All Affidavits of Service* (Refer to Tab No. 12) - originals;
 - b) *Determination and Order on Petition for Guardianship Due to Incompetency* (Refer to Tab No. 15) completed as you would like the court to enter it - original plus 2 copies (one copy will be for the court to conform and return to you and the other is for the Guardian ad Litem);

(**NOTE** - there is now a Firearm restriction provision that must be filled out on page 4 of the *Determination and Order*);
 - c) *Letters of Guardianship of the Person* (Refer to Tab No. 16) completed as you would like the court to enter it - original;
 - d) In Milwaukee County only, *Hearing Data Sheet* (Refer to Tab No. 14) – original plus 1 copy, both for filing; and
 - e) Obtain and bring a firm check for \$18.00 payable to the appropriate county for 3 certified copies of the *Letters of Guardianship of the Person*.

If a student is assigned, he or she will assist you in preparing these documents.

If you plan to meet with the Petitioner before the hearing, please do your best to involve the student (if one is assigned) to participate in that meeting.

At the Hearing

1. Take testimony of the Petitioner as described in Sample Questions for an Uncontested Hearing on Guardianship of the Person and otherwise as needed (Refer to Tab No. 21);
2. Obtain a conformed copy of the *Determination and Order on Petition for Guardianship Due to Incompetency* from the judge/commissioner. (The Guardian ad Litem may request a copy of this as well.).
3. Obtain 3 certified copies of the *Letters of Guardianship of the Person* – 2 for the client and 1 for the firm’s file from:
 - a) In Milwaukee County – Register in Probate Office - Room 207
 - b) In Waukesha County – Register in Probate Office - Room C380
4. In Milwaukee County, the Commissioner’s clerk may give you the documents to take down to the Probate clerk for filing - do not take the originals home with you!
5. Get written permission from the newly appointed Guardian for permission to give copies of the *Determination and Order* and *Letters of Guardianship of the Person* to the CHW or MCGAP coordinator. (Refer to Tab No. 22).

After the Hearing

1. Mail the *Letter to Guardian after Hearing* (Refer to Tab No. 23) to the client with copies of the following:
 - a) *Determination and Order on Petition for Guardianship Due to Incompetency*;
 - b) *Annual Report on the Condition of the Ward* (Refer to Tab No. 17) with only caption and case number filled in – this is for the new Guardian to complete and mail to the Register in Probate and county department every year by April 15 and should be addressed to;
 - i. Milwaukee County: (1) Register in Probate, Milwaukee County Courthouse, 901 N. 9th Street, Room 207, Milwaukee, WI 53233; **and** (2) Priscilla Beadle, MA, MSW, Unit Supervisor, Milwaukee County Disability Services Division, at 1220 W. Vliet Street, Suite 300, Milwaukee, WI 53205;
 - ii. Waukesha County: (1) Register in Probate, Waukesha County Courthouse, 515 W. Moreland Blvd., Room C380, Waukesha, WI 53188; **and** (2) Waukesha County Department of Health and Human Services, 500 Riverview Avenue, Waukesha, WI 53188
 - c) *Notice of Change of Address* (Refer to Tab No. 18) with only caption and case number filled in (for the new Guardian to complete and mail to the Register in Probate in the applicable county, addresses above, if the Guardian or Ward move).

2. If permission was obtained from the Guardian to provide copies to the CHW or MCGAP coordinator of the *Determination and Order* and *Letters of Guardianship of the Person*, please provide a PDF copy of both via e-mail to Lauren Harpke and Hillary Wucherer for QB volunteers and Liana Ramirez for WHD and NM volunteers, who will forward same to the CHW or MCGAP coordinator.
3. The representation has been completed. ***Thank you!***

The scope of the CHW and MCGAP programs is to get the guardianship in place. If you are contacted by the Guardian or Standby Guardian at any time after this has been completed, please contact your firm's coordinators to see if the issue can be addressed or if it is too far beyond the scope of the clinics. A few issues have arisen which we have handled several times for former clients:

4. Terminating a guardianship due to death of the Ward: Send to the court a completed *Petition for Termination of Guardianship of Person* (Form GN-3650) (noting the reason is death of the Ward), *Order for Termination of Guardianship of Person* (Form GN-3660), *Order for Discharge of Guardian* (Form GN-3740) and a copy of the death certificate. No hearing is required.
5. Change of Venue: if the Ward moves out of Milwaukee County but remains in Wisconsin, you need to file a *Petition* (GN-3525) and *Order to Change Venue* (GN-3526). Then you need to provide notice of the *Petition* to the old county's Corporation Counsel and the new county's Corporation Counsel and Register in Probate. If there is no objection within 15 days after the date notice is given, an Order Changing Venue will be granted. Refer to Wisconsin Stat. § 54.30(3)(b).

Throughout the Process

Please update Lauren Harpke and Hillary Wucherer for QB and NM volunteers and Liana Ramirez for WHD volunteers, when the *Petition* has been granted or if any issues arise during your case.

THANK YOU AGAIN FOR VOLUNTEERING FOR THIS GREAT PROJECT!