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The live presentation will begin at 12:00PM.

Tips for Viewers

- Submit questions to the presenter by emailing mvlc.law@marquette.edu. Please do not unmute yourself to ask a question.
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- Please note: It takes a while for these sessions to appear on the Board of Bar Examiners website for reporting purposes.

The live presentation will begin at 12:00PM.
Common Clinic Issues: Starting an Adult Guardianship

Amy Wochos
April 9, 2020
Brown Bag CLE Series 2019-2020

STARTING AN ADULT GUARDIANSHIP

How to help a MVLC client who wants to start an adult guardianship
Scope of presentation:
- Will only discuss adult guardianship, not minor guardianships.
- Will only discuss the process for initiating an adult guardianship, not post-judgment issues such as concerns with the conduct of a guardian, changing guardians, restoring rights to a ward, etc.
- Will generally only discuss permanent guardianships, not temporary ones.

TOPICS
- Overview of adult guardianship and comparison with power of attorney
- Top questions to address with every MVLC adult guardianship client
- How to help a client fill out forms, file for guardianship, and obtain proper service
- Procedural overview – how to explain what will happen after filing
- Referral resources
ADULT GUARDIANSHIP OVERVIEW

- Standard for Guardianship
- Guardianship vs. Health Care Power of Attorney
  - Power of Attorney – Voluntary/Competent
  - Guardianship – Involuntary/Incompetent
- Temporary Guardianship vs. Permanent Guardianship
- Protective Placement/Protective Services

WHAT THE PROBATE OFFICE CAN AND CANNOT DO FOR PRO SE LITIGANTS

CAN:
- Provide forms
- Explain procedure for filing guardianship
- Explain how to serve (not who to serve)
- Review paperwork for completeness

CANNOT:
- Analyze substance of guardianship case
- Help fill out forms
- Determine interested parties/who to serve in individual cases
KEY THINGS YOU CAN DO TO HELP CLIENT IN MVLC CLINIC

- Determine whether guardianship is appropriate and if so, where to file.
- Ensuring client has a proper doctor’s report.
- Helping fill out petition for guardianship, particularly determining interested persons.
- Explaining filing.
- Explaining service.

TOP QUESTIONS TO ASK EVERY MVLC ADULT GUARDIANSHIP CLIENT
Question: Is the client prepared to act as his/her own attorney in a formal proceeding?

• Many people believe that obtaining guardianship is as simple as filling out paperwork, like a Power of Attorney.
• Client should understand that he/she is starting a court case and if pro se, is responsible for filing the correct documents, obtaining service, and representing him/herself in a formal proceeding before a court commissioner or judge.

Question: Is there already a guardianship or power of attorney in place?

• If there is already an adult guardianship, refer to other materials regarding post-judgment guardianship issues.
• If there is power of attorney in place –
  • What kind?
  • Who is the POA?
  • Why do they think they need a guardianship?
  • If insist on pursuing a guardianship or are having issues with the POA – should be referred to a guardianship attorney.
Question: Is it possible that this will be a contested guardianship, by the proposed ward or other parties?

- There are fewer resources for contested guardianships and courts must be neutral during the proceedings.
- Importantly, pursuant to Wis. Stat. §54.46(3)(c), if a guardian is not appointed, “the petitioner is liable for any fees due the guardian ad litem and the proposed ward’s legal counsel.

Question: Why are they seeking a guardianship?

- Confirm that the situation involves an incompetent person and that a POA would not be appropriate.
- Confirm that the person does not have unreasonable expectations about what a guardian can do, for example:
  - Force the ward to take medication
  - Force the ward to go enter into drug/alcohol treatment
  - Involuntarily admit ward to behavior/mental health hospital
Question: Does the client have “control” over the proposed ward?

- Must be able to get proposed ward to a doctor’s appointment for the purpose of evaluation for guardianship
- If cannot do so, referral to an attorney is appropriate

Question: Is there proper jurisdiction and if so, which county?

- Proposed ward must be at least 17 years, 9 months at time of adult guardianship hearing
- Must be brought in the county where the ward resides or in which the ward is physically present
HELPING A CLIENT START AN ADULT GUARDIANSHIP

• May be returning after having been instructed to obtain one (if they have not previously been to the MVLC, please still go through the screening questions with them).
• If the client doesn’t have one, instruct client to obtain one and return to clinic
• If instructing client to obtain one, make sure to emphasize that appointment must be for the purposes of guardianship and report must be on the correct form (GN-3130)

DETERMINE WHETHER THE CLIENT HAS A DOCTOR’S REPORT
REVIEW THE DOCTOR’S REPORT

- Make sure it is completed by a Physician or Psychologist (not a counselor, nurse practitioner, social worker, etc.)
- Make sure it is on the correct form (GN-3130)
- Make sure the answer to the first question is checked yes – that the examiner read the statement of rights before the examination - or that if it is checked no there is a reason given.
- Make sure Question 6A is checked yes – that the person has incapacity due to his/her condition

HELPING TO FILL OUT THE FORMS

Required forms for filing:
GN-3100 – Petition for Guardianship
GN-3130 – Examining Doctor’s Report
GN-3140 – Statement of Acts
GN-3110 – Order and Notice for Hearing
GF-131 – Order Appointing Guardian ad Litem
FILLING OUT THE PETITION (SELECTED QUESTIONS)

Question 1: Anyone can petition for guardianship of another. If the client is not a relative, he/she should choose “Other”

Question 5 – “Interested Persons” – see chart

Service of Process for Initial Adult Guardianship Under Wis. Stat §54.38

In All Cases, By Personal Service

1. Proposed ward

In All Cases, By Mail to Current Address (or personal service) or (if unable to determine) Last Known Address *

2. Milwaukee County Corporation Counsel, by mail
   901 N. 9th St. Room 303
   Milwaukee, WI 53233

3. Interested party family members (stop when reach a category with applicable people – when a category has applicable people, then ALL people in that category must be served)
   a. Spouse of proposed ward and (if any) adult children of the proposed ward who are not children of the current marriage
   b. If none, then adult children of the proposed ward or any adult children of deceased children (i.e., adult grandchildren)
   c. If none, then parents of the proposed ward,
   d. If none, then siblings of the proposed ward and any children of deceased siblings
   
4. Proposed guardian (if not the same as the petitioner)
   The Following Must Also Be Served, By Mail to Address (or personal service), Where Applicable *

5. Any proposed standby guardian

6. Any person who has legal or physical custody of proposed ward, including any facility where the proposed ward is currently living.

7. Any person who has legal or physical custody of proposed ward if the proposed ward is receiving veteran’s benefits
   5400 West National Ave
   Milwaukee, WI 53218

8. County Department if proposed ward is receiving benefits such as Family Care or Medicaid (BadgerCare, not Medicare)
   a. If 60 or over, Department on Aging
      1228 W. Vliet St
      Milwaukee, WI 53205
   b. If under 60, Department of Disability Services
      1228 W. Vliet St
      Milwaukee, WI 53205

9. Any other public or private agency from which the proposed ward is receiving assistance

10. Trustee of any trust for the proposed ward

11. Any other person required by the court (would be extremely rare before first hearing).

* Any party in these categories can sign a waiver and consent instead of being served. Proposed ward MUST be served and by personal service.
Questions 7 and 8: Red flags – if the answers are “does” or “aware” – this should be referred out to a guardianship attorney

Question 15 – the answers to these subparts should mirror the doctor’s report. If the client disagrees with the doctor about the nature of the impairment or the rights to be removed – red flag - this should be referred out to a guardianship attorney
Question 16 – Guardian of the Estate

- A guardian of the estate is only necessary if the proposed ward’s assets are (in Milwaukee) over $10,000, exclusive of monthly income (income can be handled by a representative payee).

- If no guardian of the estate is necessary, check the box at question 17.

- If guardian of the estate may be necessary, advise the client that:
  - They must be bonded in the amount of the estate.
  - They will have to provide an accounting every year of all of the income/outflow of the ward’s money.

Statement of Acts

- Must be filled out completely.
- A yes to any of the questions is not an automatic disqualifier, but may affect whether the court will appoint that person as the guardian.

Orders for Hearing and for Guardian ad Litem

Fill out up to “The Court Orders”.

OTHER DOCUMENTS
CHECKLIST FOR FILING IN MILWAUKEE

- Original and 2 copies of all documents.
- Self-addressed, stamped envelope (for return of order naming GAL)
- Must be reviewed by a Deputy Register
  - Generally available 9-11 and 1:30-3:30, M-F
  - Should call 278-4444 the day they want to come to make sure Dep. Reg. is not covering a court

POST FILING DOCUMENTS

- GN-3120 Affidavits of Service
- GN-3115 Waiver and Consent (if applicable)

Don’t need to fill out proposed order or letters of guardianship for Milwaukee County
Helping someone understand service is the most important thing you can do!

Improper or untimely service is the number one reason pro se guardianships are adjourned.

Please help by filling out all portions of the affidavit of service that can be filled out prior to service.

For most cases, that will be two affidavits, one for service on the ward and one for service on other interested parties.

SERVICE OF PROCESS

Proposed ward must be PERSONALLY SERVED at least 10 business days before hearing.
- Served with petition, order and notice for hearing, and doctor’s report.
- Neither petitioner nor other interested persons can serve the ward
- Process server must “inform the proposed ward …of the complete contents of the notice and petition…” Wis. Stats. §54.38(2)(a)
- Server must prepare an affidavit of service. Server should file with court or give to the petitioner to bring to the hearing

All other interested persons can be served by mail at least 10 business days before the hearing
- Served with petition as well as order and notice for hearing
- Petitioner can mail, prepare an affidavit of service, and bring to the hearing

Any interested person, other than the ward, can sign the waiver and consent form in lieu of being served.

SERVICE OF PROCESS
EXPLAINING THE GUARDIANSHIP PROCESS

- Petitioner files documents as on the checklist and receives a court date.
- Petitioner must timely have the ward served and serve other interested parties.
- Court appoints a guardian ad litem (GAL) who will meet with the necessary parties and prepare a report.
- Court hearing is held. Petitioner, proposed guardian (if someone different) and GAL testify. Others may testify as necessary.
- One court hearing in front of a commissioner, if uncontested. If the proposed ward, the guardian ad litem or other interested party objects, it is transferred to a judge and there could be multiple hearings.
- Once appointed, the guardian gets certified letters which they use to show they have the powers contained therein. Every year they must submit a report to the court by April 15 about their ward’s status and must keep the court updated as to any changes of address of ward or guardian.

SELECT REFERRAL RESOURCES

- Milwaukee Bar Association Lawyer Referral Service – 414-274-6768. There are guardianship attorneys on the Modest Means panel.
- MCGAP – for students in MPS who are about to or recently turned 18. Parents need a referral from the school’s transition coordinator (if they don’t know who that is they should talk to the school social worker).
- Legal Action Volunteer Lawyers Project – 414-278-7722 (for Milwaukee and Waukesha counties) or a Legal Action referral at clinic.
SELECT REFERRAL RESOURCES (CONTINUED)

- Greater Wisconsin Agency of Aging Resources (GWAAR) – Guardianship Support Center - https://gwaar.org/guardianship-resources
- Milwaukee County Department on Aging (60+)
  Intake Line – 414-289-6874
- Milwaukee County Disability Service (under 60)
  Intake Line – 414-289-6660

Thank You!!!!!
Resources & Referrals

- Gold Guides
  - Adult Guardianship
- Referrals
  - ELCA Outreach Center
  - Lagmann
  - Legal Action of Wisconsin Volunteer Lawyers Project (uncontested guardianships)
  - State Bar of Wisconsin Modest Means Panel
- Other Resources
  - Checklist for Adult Guardianship in Milwaukee County (English and Spanish)
  - Sample Petition and Petition Rider re: Interested Parties
  - Greater Wisconsin Agency on Aging Resources
  - Milwaukee County Aging Resource Center
  - Milwaukee County Disability Resource Center
  - Wisconsin Guardianship Support Center

Online Attendance Form

Visit https://law.marquette.edu/mvlc/brown-bag-cle-series and click "Attendance form" or go to the "Online Attendance Form" link in your confirmation email.