

Basics of an Adult Guardianship Case

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What's on the Agenda

- Initial Steps and Considerations Before Filing
- Preparing to File and Process Overview
- After Filing and Hearing Preparation
- Hearing
- Post-Hearing

Initial Steps – Client Interview

- Why does the client believe guardianship is necessary?
- Is guardianship the least restrictive option?
- Special scenarios:
 - Mental health meds/treatment
 - Long-term care
 - Financial matters

Alternatives to Guardianship

- Supported Decision-Making
 - Can be used with guardianship and can be useful if individual can make some decisions on their own
- Powers of Attorney
 - Can be useful if individual knows they need assistance, understands what the form is for, and is willing to create one
- Representative payee
 - Can be useful if only income is Social Security/SSI – but not useful for other income/assets

Guardianship and Mental Health

- Limitations of guardianship:
 - A guardian cannot consent to involuntary administration of psychotropic medication
 - A guardian cannot consent to psych admission or treatment over the ward's objection
 - Guardianship cannot change behavior

But:

- A guardian can consent to other medical care
- A guardian can arrange for housing and other support services
- A guardian of estate and/or rep payee can manage finances

Long-Term Care/Placement

- A guardian can place without a court order:
 - In a facility < 16 beds as long as ward does not object
 - In a facility > 16 beds for short-term care (post-IP rehab, short-term stabilization, respite, etc.) – up to 60 days
- A guardian needs a protective placement order for:
 - Facility > 16 beds if placement will be longer than 60 days
 - Any size facility if ward objects
- Protective Placement cannot be used to place for *treatment* of mental illness or developmental disability – but can be used to provide support/structure to individuals with these types of impairments

Guardianship of the Estate

- Milwaukee requires for estates over \$10K
- Why else might you want it?
 - Medicaid applications/renewals
 - Guardian of person can only sign IF granted explicit authority in order/letters
 - Contracts (including leases)
 - Income other than SSI/Social Security
 - Future inheritance or other legal matters
 - Do not need to create/manage ABLE account but DO need if using ward's funds to establish a special needs trust on their behalf

Preparing to File

Timing

Forms

Timing

- Guardianship has strict timeline: case must be heard within 90 days of filing.
 - Has competency report been completed?
 - If new exam is needed, make sure it is scheduled before filing!
- Special consideration for adolescents:
 - Proposed ward must be at least 17 and 9 months at the time guardianship is ordered
 - Depending on court calendar, may want to wait till 17/7 or 17/8 at the earliest to make sure hearing is after 17/9

Brief Overview of Court Process

- Case is filed – 90 day clock starts
 - Court assigns guardian *ad litem* and sets hearing date
- Doctor's report and guardian training (if not already completed)
- Notice & Service – at least 10 days before hearing
- GAL connects with proposed ward & petitioner and completes report
- Hearing
 - Court decides whether person meets standard of incompetency, whether gdn is appropriate, and what gdn can do
- Guardian receives order/Letters of office

Forms

Substantive Forms	Administrative Forms	Hearing Forms
<u>Filed to start case:</u> GN-3100: Petition GN-3130: Competency Report • Must be completed by a physician or psychologist – not a PA or NP GN-3135: Training Confirmation • Proposed guardian completes GN-3140: Statement of Acts • Proposed guardian completes	<u>Needed for filing:</u> GF-131A: Order Appointing GAL • Probate fills in the name/contact info GN-3110: Order & Notice of Hearing • Probate fills in the date/time <u>Needed after filing:</u> GN-3120: Declaration of Service • May need 2 – one for service to interested persons, one for service to proposed ward • Can send GN-3115 (waiver & consent) to IP also but not required	<u>Filed at least one week before hearing:</u> GN-3170: Determination & Order GN-3200: Letters of Guardianship of Person GN-3210: Letters of Guardianship of Estate (if needed)

Forms: Petition

Common points of confusion

- Q5: Interested persons
- Q11: Finances
- Gdn of Person: shared decision-making; other powers
- Gdn of Estate: additional powers

Petition: Who are Interested Persons?

- Proposed ward
- Proposed guardian
- Family:
 - Spouse (if any), adult children (if any), parents if proposed ward is a minor
 - Nearest heirs under intestacy rules if no spouse/adult children/parents
- Agents named in POAs (if any)
- Trustee(s) of any trusts
- Any person/facility that currently has custody of the person
- County corporation counsel
- County human services (if receiving services, including if on Medicaid waiver program)

Petition: Other Points of Confusion

Finances: do not need exact numbers; need enough to determine whether > \$10k

For guardian powers generally:

- Consider proposed ward's strengths and weaknesses and whether any given power is necessary for ward's protection
- Understand the 3 items that gdn can never exercise on ward's behalf and the "shared" decisions where gdn may be able to provide approval for ward's decision but cannot exercise on ward's behalf

If only filing for guardian of person, consider adding the following in #16, "other":

- Apply for Medicaid or other public benefits on behalf of the ward and provide disclosures and releases as needed
- Appoint an authorized representative on behalf of the ward for Medicaid purposes

Guardian of estate "prior court approval" powers:

- Can ask for these in petition if likely to need – most common are mgmt of retirement benefits, mgmt of life insurance, create/fund special needs trust

Statement of Acts

Each proposed guardian must file their own!

If any “yes” answers: it is not an automatic barrier but court will want to know the circumstances to ensure the proposed guardian is fit to serve. Provide explanation on the form and be prepared to discuss with the court at hearing.

Order/Letters

- Powers should match the petition!
- If there is anything specific they want to ensure (e.g., ward retains right to vote, Gdn of Person has Medicaid authority, etc.), they can put that into the order – more likely to get what they ask for
- Court official may make changes before signing

Efiling

Petitioner can choose to opt in for efiling before or after hearing

- \$35 fee
- If they are efiling orders/letters: should file as “proposed”

It is a convenient way to get/print new copies of order or Letters (although they will not be certified this way); it is also a convenient way to file annual reports.

After Filing: What Next?

Hearing logistics

Notice & Service

Hearing prep

Hearing Logistics

- Hearings are typically by Zoom
- Client can ask for in-person if preferred (and proposed ward always has the right to attend in person if they wish) – if they ask at the time of filing, they can get a hearing notice with the correct information BEFORE they serve anyone
- Remind client that if they choose Zoom, they need stable internet
- Remind client they must ensure proposed ward's attendance unless GAL waives, so they must make sure proposed ward also has access to device + internet (supervised if necessary)

Notice & Service

All interested persons must be served at least 10 days before hearing

Proposed ward must be served in person (by someone other than petitioner or IP)

- They get petition, hearing notice, doctor's report
- Contents of petition should be explained even if person isn't likely to understand

Guardian ad litem:

- Gets petition, hearing notice, doctor's report. Suggestion: contact them and ask if they are okay getting it from the e-file or if they want petitioner to send it. Most will probably say e-file.

Other interested persons may be served by mail/fax

- They get petition & hearing notice only – no doctor's report
- If current address unknown: send to last known if at all possible or note "unascertainable" or similar. Be prepared to explain attempts to find current address.

Declaration of Service

We generally prepare two:

- One for the ward
 - They get additional paperwork (the competency report)
 - They must be served in person by someone other than petitioner
- One for other IP, who may be served by petitioner

Both should be signed/dated, returned to petitioner, and filed at least a week before hearing

Hearing Preparation

- Check with GAL on whether they will waive ward's attendance
- Complete and file forms needed for hearing (proposed D&O, proposed letters)
- File declarations of service
- Double-check hearing logistics – transportation if in person, internet/devices if by Zoom

At hearing

- Court will get sworn testimony from petitioner about the nature of the incompetency, proposed ward's ability to manage health care and safety, and ability to evaluate information
- Proposed guardian (if not petitioner) may also have to testify briefly
- Court will ask for GAL's recommendation
- If proposed ward is present, court may want to hear from them
- Court will complete order
- If guardianship is granted, court will complete/sign Letters

After Hearing

After Hearing: Next Steps

Letters of Guardianship:

- Get certified copies of signed Letters (probably 2-3 copies)
 - Can mail or hand-deliver their own copies - saves on copy fees
 - Certification is \$5 per copy

Guardianship of Estate tasks:

- Inventory – 60 days from date of appointment, value is as of the date of appointment
- Contact financial institutions to set up/convert accounts to guardianship accounts
- Start keeping track of income/expenses
- General tasks:
 - Contact health care and service providers, school, financial institutions (if GE), etc. and provide them with a copy of the relevant Letters

Post-Guardianship Matters

Changing Guardians

Terminating Guardianship

Changing Guardians – Voluntary

If standby has already been appointed, current gdn can resign (if able) and standby can step up

- If not able to resign, should provide proof that current gdn is unable to serve

Forms:

- Notification of Assumption of Duties
- Resignation of Gdn (if they are willing to sign)
- New Statement of Acts (and if they haven't prev completed training, should do so and provide that form/certificate)
- Order for Appt of Successor Gdn of Person/Estate (two separate forms)
- Letters of Guardianship
- May also need Notice of Appointment of Successor Guardian (without hearing) – to be provided to the ward and interested persons

Changing Guardians - Voluntary

If no standby, will need to file petition to be appointed successor.

- Obtain gdn resignation or provide proof of inability to serve.
- Notice & service/hearing procedures will be the same as for initial petition.

Forms:

- Petition to Appoint Successor (with hearing)
- Statement of Acts/Training form (new guardian completes)
- Order on Petition to Appoint Successor
- Order & Notice of Hearing
- Order Appointing GAL
- Letters of Guardianship
- Declaration of Service

Changing Guardians – Involuntary

If there's any chance existing guardian is willing to step down, try that + successor process first.

If they will not: court will likely need to find cause to remove, which means a Petition for Review of Conduct.

- If current guardian is a corporate or paid guardian, there is an option on this form if an unpaid volunteer is now available. Does not require a finding of misconduct
- Otherwise: will need to be prepared to prove to court that current guardian has committed misconduct severe enough to justify removal

Terminating Guardianship

The ward or someone acting on their behalf may file.

If ward has regained competency:

- Should have a statement or report from doctor or psychologist to that effect. Does not have to be GN-3130.
- Can present other witnesses to testify to ward's decision-making abilities.
- If court rejects, could try modifying it to make it less restrictive/return some decision-making back to the ward instead and try again later.

Questions?