

Adult Guardianship Clinic Training and Materials for Volunteers

Questions? Contact project supervisor Marisa Zane (marisa.zane@marquette.edu).

1. [Training video](#)
2. Important Links
 - a) [MVLC Resources Folder](#)
 - b) [Milwaukee Justice Center Internal Forms site](#)
 - c) [Salesforce](#) (client visit summary)
3. Guardianship Resources and Materials

The following resources and materials are available in the [MVLC Resources Folder](#):

- a) GOLD GUIDE – Adult Guardianship
- b) ATTORNEY/STUDENT Checklist – Adult Guardianship
- c) Adult Guardianship Filing Directions
- d) Adult Guardianship Service Directions
- e) MVLC Guardianship Forms Cover Sheet

4. Review the Referral Materials and Attend the Appointment

You will be emailed the Proposed Ward's doctor's report that was sent to the Marquette Volunteer Legal Clinic or Milwaukee Justice Center. Review the materials carefully before the client's appointment. Use the doctor's report and information gathered during the remote appointment to complete the forms listed in Section 5 below.

Appointments take place in Room G-9 of the Milwaukee County Courthouse. You will pass through security, so please bring few or no items with you (water bottles are okay). Room G-9 is on the ground floor of the Courthouse. Staff at the security checkpoint can point you in the right direction if it is your first shift. You will use clinic-provided computers during your shift. Masks are required for in-person clinics. Please bring your own mask.

After your forms are complete, print one copy of each and have the forms reviewed by the supervising attorney.

5. Forms You Should Prepare

The latest version of the forms are available in fillable PDF format on the Milwaukee Justice Center Internal Forms [website](#). Complete and submit drafts of the following forms to the project supervisor for review (consult the sample forms linked below):

- ✓ Adult Guardianship Packet – includes the following forms:
 - Petition for Permanent Guardianship Due to Incompetency
 - Statement of Acts by Proposed Guardian and Consent to Serve as Guardian – 1 each for Proposed Guardian, Co-Guardian and Standby Guardians (this form is available by itself on the Milwaukee Justice Center Internal Forms site if you need more than two for additional nominees)

- Order and Notice of Hearing
- Order Appointing Guardian ad Litem or Attorney
- Affidavits of Service
 - If the Interested Parties don't fit on the Affidavit of Service, use the Microsoft Word version available on the Milwaukee Justice Center Internal Forms site.
- ✓ Rider to Petition – Interested Parties (not a court form). To determine interested parties in your case, refer to page 9 in “Instructions for Working with an Adult Guardianship Client.”
- ✓ Letters of Guardianship of the Person (and Letters of Guardianship of the Estate, if applicable)
- ✓ Determination and Order on Petition for Guardianship Due to Incompetency

6. General Information and Sample Forms

General Information

- a) Adult Guardianship Forms Clinic decision tree
- b) Overview of the MVLC Adult Guardianship Forms Clinic
- c) Overview of Adult Guardianship
- d) Instructions for Working with an Adult Guardianship Client

Sample Forms

Always use the newest forms on the Milwaukee Justice Center Internal Forms [website](#). Use the samples here to guide you.

1. [Examining Physician's or Psychologist's Report](#)
2. [Adult Guardianship Packet](#)
3. [Rider to Petition – Interested Parties](#)
4. [Letters of Guardianship of the Person](#)
5. [Determination and Order on Petition for Guardianship Due to Incompetency](#)

Overview of the MVLC Adult Guardianship Forms Clinic

The MVLC Adult Guardianship Forms Clinic exists to provide forms assistance to individuals petitioning in Milwaukee County to become permanent legal guardians of other adults. This program can complete the following forms associated with petitioning for adult guardianship and being appointed Guardian:

- Petition for Permanent Guardianship Due to Incompetency
- Statement of Acts by Proposed Guardian and Consent to Serve as Guardian
- Order and Notice of Hearing
- Order Appointing Guardian ad Litem or Attorney
- Affidavits of Service
- Letters of Guardianship
- Determination and Order on Petition for Guardianship Due to Incompetency

This program does not prepare forms for post-judgement guardianship issues. Clients can receive assistance with these issues and forms through the MVLC brief legal advice clinics. This program does not provide representation at the initial guardianship hearing. The client must be prepared to file forms at the Milwaukee County Register in Probate office, obtain service on the interested parties, and act as their own representative in a formal proceeding in front of a court commissioner or judge. This program does not assist with guardianship matters that are likely to be contested. Contested issues are best handled with the help of a private attorney. If, during the course of your meeting with the client, you learn that there may be an existing guardianship or contested issues, you should speak with the supervising attorney immediately.

The Adult Guardianship Forms Clinic is separate and distinct from the Children's Hospital of Wisconsin (CHW) Guardianship Clinic and the Milwaukee County Guardianship Assistance Program (MCGAP). These programs serve petitioners seeking guardianship of youths about to reach age 18. Referrals are made directly from CHW or Milwaukee Public Schools, and attorneys from partner law firms provide pro bono representation from the initial appointment through the hearing necessary to appoint the Guardian.

Clients can self-refer to the Adult Guardianship Forms Clinic, or they may be referred by attorney or law student volunteers from the MVLC or Milwaukee Justice Center (MJC) or by staff at the Milwaukee County Register in Probate office. Referrals are reviewed by clinic supervisors before clients are scheduled for appointments. Marquette law students conduct client interviews to complete the forms. The forms are reviewed by a supervising attorney before the client signs them.

How does the MVLC Adult Guardianship Forms Clinic work?

- Individuals seeking guardianship over another person contact the Milwaukee Justice Center legal helpline or the Marquette Volunteer Legal Clinic, or an MVLC volunteer assesses that a client needs guardianship paperwork completed.
- An MVLC intake worker contacts the prospective client and determines if a Forms Clinic appointment is appropriate.
- The client provides the Adult Guardianship Forms Clinic with a copy of the Examining Physician's or Psychologists report before the appointment.

- A Marquette law student volunteer conducts an interview with the client during the appointment to collect information needed to complete the forms needed for a new adult guardianship action.
- The student volunteer prepares the draft Petition for Permanent Guardianship Due to Incompetency, Statement of Acts by Proposed Guardian and Consent to Serve as Guardian (one for each Proposed Guardian, Co-Guardian and Standby Guardian), Order and Notice of Hearing, Order Appointing Guardian ad Litem or Attorney, Affidavits of Service, Letters of Guardianship of the Person Due to Incompetency (and Letters of Guardianship of the Estate Due to Incompetency, if applicable), and Determination and Order on Petition for Guardianship Due to Incompetency.
- The supervising attorney reviews the draft documents and works with the student volunteer to make changes.
- The law student reviews the forms with the client for accuracy, makes any needed changes, and prints the forms. Also print the Adult Guardianship Filing Directions, Adult Guardianship Service Directions and MVLC Guardianship Forms Cover Sheet.
- The client signs the forms. The supervising attorney or MJC staff can notarize the Statement of Acts.
- The law student makes copies needed for filing. Refer to the Adult Guardianship Filing Directions to determine how many copies of each form are needed.
- The client files the petition with the Register in Probate in Room 207, obtains service on the interested parties, completes the affidavits of service, and attends the hearing.

Overview of Adult Guardianship

What is a Guardian of the Person?

A Guardian of the Person is a person appointed by the court to assist with the health, safety and personal needs of an individual found incompetent (known as the Ward).

What is a Guardian of the Estate?

A Guardian of the Estate is a person appointed by the court to make some or all decisions related to the Ward's property or money, to sign contracts, or to represent the Ward in a legal proceeding that has to do with money or property.

What is a Standby Guardian?

A Standby Guardian is a person designated by the court whose appointment as Guardian becomes effective upon death, resignation, or removal of the initially appointed Guardian, or if the initially appointed Guardian is temporarily or permanently unable or unwilling to fulfill their duties. Designation of Standby Guardians of the Person (and Estate, if applicable) as part of the initial guardianship proceedings is encouraged but not mandatory. Only one Standby Guardian may be appointed.

When may a Guardian be appointed?

Once a decision has been made (1) that the person has an impairment, (2) the person lacks evaluative capacity so that he or she is at risk of harm, and (3) that guardianship is the appropriate means of decision-making support, the court can appoint a Guardian of Person, Estate, or both. Additionally, the Ward must be at least 17 years and 9 months old when the guardianship order is issued. The court tailors its order to the individual abilities and circumstances of the person, determining what rights and powers he or she will keep, what rights will be lost or be subject to veto by the Guardian, and what powers will be transferred to the Guardian.

Guardianship of the Estate is necessary for someone else to make decisions about the Ward's money and property if the individual's assets, exclusive of monthly income, are above a certain limit (\$10,000 in Milwaukee County).

What are the powers and duties of a Guardian of the Person?

A Guardian of the Person acting on behalf of a Ward may exercise only those powers authorized by statute and court order. A Guardian of the Person may be granted only those powers necessary to provide for the personal needs of the Ward in a manner that is appropriate to the Ward and that constitutes the least restrictive form of intervention. A Ward retains all rights not assigned to the Guardian of the Person or otherwise limited by statute. Rights that a Ward always retains include, but are not limited to, constitutional rights and access to the court and legal counsel.

In addition to limiting action to powers that are granted by the court, a Guardian of the Person must:

- 1) Exercise the degree of care, diligence and good faith when acting on behalf of a Ward that an ordinarily prudent person exercises in his or her own affairs;
- 2) Advocate for the Ward's best interests;
- 3) Exhibit the utmost degree of trustworthiness, loyalty and fidelity in relation to the Ward;

- 4) Notify the court of any change in address of the Guardian of the Person or Ward;
- 5) Make an annual report on the condition of the Ward to the court and the county department;
- 6) Endeavor to secure any necessary care or services for the Ward that are in the Ward's best interests, based on all of the following:
 - a. Regular inspection, in person, of the Ward's conditions, surroundings and treatment;
 - b. Examination of the Ward's patient health care records and treatment records and authorization for re-disclosure as appropriate;
 - c. Attendance and participation in staff meetings of any facility in which the Ward resides or is a patient, if the meeting includes a discussion of the Ward's treatment and care;
 - d. Inquiry into the risks and benefits of, and alternatives to, treatment for the Ward, particularly if drastic or restrictive treatment is proposed; and
 - e. Specific consultation with providers of health care and social services in making all necessary treatment decisions.

What are the powers and duties of a Guardian of the Estate?

Unlike Guardianship of the Person, an order for Guardianship of the Estate gives the Guardian the full duties and powers available under the statute, except as limited in the order. The court is required to tailor its order so that it grants only powers that (1) are necessary to provide for financial management and (2) are the least restrictive form of intervention. Some powers of a Guardian of Estate may only be exercised with specific approval of the court, including powers to make gifts, put money in trust, or buy and sell real estate.

The primary duties of the Guardian of the Estate are: to make sure the Ward's funds are used to meet his or her needs, to preserve the funds from waste or exploitation by others, and to manage and invest the funds in a responsible way.

The Guardian of Estate does not have the responsibility to support the Ward out of the Guardian's own money. However, the Guardian does have the responsibility of making sure that applications are made for all local, state, and federal income support programs (such as Unemployment Compensation, disability insurance benefits, Social Security, Supplemental Security Income, Supplemental Nutrition Assistance, veterans' benefits, Medicare and Medical Assistance, and other supportive programs such as the Community Options Program) that could assist in supporting the Ward.

A Guardian of Estate has the following duties:

- 1) Post a bond to protect the Ward from loss due to the Guardian's actions, unless this requirement has been waived by the court.
- 2) Take possession of the Ward's property and income over which he or she has been given authority under the guardianship (known as the guardianship estate), and of any income that is earned on the property (such as rent, interest or dividends). The Ward continues to be the owner, and title to the property should remain in the Ward's name, but the Guardian has possession and control.

- 3) Make and file an inventory of everything the Ward owns at the time the guardianship is created. If the Guardian later discovers assets, the Guardian must file an amended inventory to include those assets.
- 4) Use the guardianship estate to provide for the maintenance and support for the Ward and his or her dependents. The Guardian does not need court permission to provide support to people the Ward is legally obligated to support, but would need prior written court permission use the Ward's property to provide support to other dependents, e.g., grandchildren who have lived with the Ward, or adult children with disabilities. The Guardian should also be aware of the potential impact gifts of this kind may have on public benefits.
- 5) Keep track of money received and spent, and file accounts with the court, including annual accountings, unless waived by the court, a final accounting, and any other accounting that the court may require. The Guardian is responsible for transferring remaining property at termination of guardianship.
- 6) Act as an advocate for the Ward in legal proceedings that relate to the Ward's finances.
- 7) Find out if the Ward has a will, and where it is. If the Ward dies, the Guardian must make sure that the appropriate people know that the will exists and that the Ward has died.

Unless otherwise specified in the order, a Guardian of Estate has the following powers, but as noted, some powers may require individual, case-by-case court approval:

- 1) To make contracts that obligate the Ward. This is a power that may be limited by the court order.
- 2) To pay the Ward's debts, claims and taxes. The Guardian is responsible for making sure that claims are legitimate and disputing questionable claims. The Guardian's power includes power to settle claims and represent the Ward in legal actions on debts and claims.
- 3) To keep, sell, and invest the Ward's property. The Guardian must get prior court authorization for any decision to buy, sell or mortgage real estate.
- 4) To authorize access to confidential financial records.
- 5) To apply for public and private benefits that are available to the Ward, and to act as representative payee, if appointed to do so by the benefits agency. The Guardian has a duty to make sure the Ward gets available benefits and is not spending his or her own money on things that could be covered by benefits.
- 6) To make gifts and disclaim interests, under limited circumstances. Any time the Guardian makes a gift to another person or gives up an interest that the Ward has in property, without getting market value in return, the Guardian must get prior written approval of the court. If the Ward gets public benefits, the Guardian should find out whether the gift or disclaimer will affect the benefits, before making any kind of gift or disclaimer.
- 7) To purchase or cash in annuities and insurance and make changes of beneficiaries. Any of these kinds of changes require prior written court approval.
- 8) To make decisions about management and ownership of marital property, but only with prior written court approval.

Instructions for Working with an Adult Guardianship Client

General information

Refer to the Overview of Adult Guardianship section of this manual.

Who is the client?

Your client is the Petitioner. The Petitioner usually is a family member who is seeking to become Guardian of the Person and/or Estate of the Proposed Ward.

Professionalism and Ethical Responsibilities for Remote Services

The Marquette Volunteer Legal Clinic rules regarding professionalism and ethics still apply even though you are working remotely.

- 1) If you take notes containing confidential information anywhere other than the client visit form, be sure to dispose of them properly (i.e. shredder, emptying the trash on your computer desktop)
- 2) Do not share information about the client outside of the legal clinic unless it is necessary to share the information with another supervisor or volunteer.
- 3) Watch for potential conflicts of interest, such as a situation involving an opposing party you worked with in or out of the legal clinic.
- 4) Avoid giving anything that could be construed as legal advice. Your supervising attorney is available during clinics to provide legal advice if needed.

Before the client meeting

- 1) Review the Examining Physician's or Psychologist's Report provided by the client.
- 2) Arrive at the Milwaukee Justice Center 10 minutes before your shift. Allow enough time to pass through security. Bring as little as possible (a water bottle is okay).
- 3) Open the appropriate tabs on the computer at your station, including the MJC Internal Forms site, MVLC Gold Guides and Salesforce.

During the client meeting

- 1) Introduce yourself by first name and identify yourself as a Marquette law student.
- 2) Position your screen with the client so they can see what you are typing in the forms.
- 3) Explain the scope of services.

"This is the Marquette Volunteer Legal Clinic Adult Guardianship Forms Clinic. Before we get started with our forms, I'm going to explain what we can and cannot do for you today. We can prepare the forms needed to file a petition and attend the hearing for Guardianship of the Person and/or Guardianship of the Estate. We cannot represent you or go to court with you, and I cannot provide legal advice because I am not an attorney. Once your forms are complete, it is your responsibility to file them, obtain service on the interested parties, and represent yourself in a formal hearing in front of a judge or court commissioner. Everything we discuss is confidential. Do you have any questions?"

If the client needs legal advice, speak with the supervising attorney.

- 4) Discuss the risk of fee shifting of Guardian ad Litem and adversary counsel fees.

“Before we proceed, you should know that if the court does not grant guardianship, you, as the Petitioner, are responsible for the Guardian ad Litem fees, any adversary counsel fees, and any other fees and costs associated with the case. The Ward may be required to pay the Guardian ad Litem fees even if guardianship is awarded.”

- 5) Interview the client to complete the following forms (see sample forms for assistance):
- a. Petition for Permanent Guardianship Due to Incompetency
 - b. Rider to Petition – Interested Parties (not a court form)
 - i. Determining the Interested Parties
 1. Proposed Ward
 2. Proposed Guardian and Standby Guardian
 3. Milwaukee County Corporation Counsel
 4. Milwaukee County Department of Health and Human Services
 5. Any agent appointed under a POA for finances/property or health care
 6. Trustee of any trust for the Proposed Ward
 7. Spouse, if Proposed Ward is currently married AND adult children of the Proposed Ward who are not children of the current marriage
 8. All adult children and adult children of deceased children, if the Proposed Ward is unmarried
 9. Parents, if the Proposed Ward is unmarried and has no adult children or adult children of deceased children
 10. Siblings and adult children of deceased siblings, if the Proposed Ward is unmarried and has no living adult children, grandchildren or parents.
 11. Other next of kin, if the Proposed Ward is unmarried and has no living adult children, grandchildren, parents, siblings, nieces or nephews
 12. Any person who has legal or physical custody of the Proposed Ward, including any facility where the Proposed Ward is currently living
 13. Department of Veterans Affairs, if the Proposed Ward receives veterans’ benefits (5400 W. National Ave., Milwaukee, WI 53214 in Milwaukee County)
 14. Any other government or private agency from which the Proposed Ward gets aid or assistance
 15. The Proposed Ward’s attorney (if any) and Guardian ad Litem
 - ii. The Petitioner should attempt to locate addresses or last-known addresses for each Interested Party. If the Petitioner cannot locate an address, list it as “unascertainable.” The Petitioner should be prepared to explain to a judge or court commissioner their efforts to locate the person’s address.
 - c. Statement of Acts by Proposed Guardian and Consent to Serve as Guardian for each proposed Guardian and co-Guardian and each proposed Standby Guardian.

of Service for the Proposed Ward in front of a notary after completing service. Then they should return the Affidavit of Service to you.

- ii. You can serve the other Interested Parties by mail. After you have mailed a copy of the three documents to each Interested Party, you need to sign the Affidavit of Service for the Interested Parties in front of a notary.
- iii. File the completed Affidavits of Service in Room 207 at least 2 weeks before the hearing.
- c. A Guardian ad Litem will meet with the Proposed Ward. A Guardian ad Litem is an attorney the court appoints to investigate and make a recommendation about what would be in the best interests of the Proposed Ward. It is important to cooperate with the Guardian ad Litem in scheduling a meeting with the Proposed Ward.
- d. All Proposed Guardians and Standby Guardians and the Proposed Ward should attend the hearing. If someone cannot be there, the court must excuse them or allow them to appear by phone.

11) Complete the Salesforce client visit notes. Follow the guidelines in the [MVLC Notetaking Guide for Law Students](#).

12) Thank the client for using the MVLC Adult Guardianship Forms Clinic and remind them they can send follow-up questions to the Gmail address listed at the bottom of both the Filing Directions and Service Directions.

After the client meeting

- 1) Delete any saved notes, forms or other client information from the computer desktop and trash.
- 2) Download a fresh set of documents if you have another client scheduled during your shift.
- 3) Clean your desk/table, chair arms, and pens with a sanitizing wipe.
- 4) Close browser windows, push in chairs, and clean up other materials at the end of your shift.
- 5) Log your hours in your pro bono account at the end of your shift.