

Guardianship for Beginners

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What is a guardian?

A guardian is a person with court authority having powers and duties over an individual as a parent does over a child.

When is a guardian needed?

If the individual is unable to or does not have the capacity to make or communicate informed decisions (Note: Informed decisions may not necessarily be popular decisions) about his or her personal well-being due to:

- Mental illness
- Mental deficiency
- Physical illness
- Physical disability
- Chronic use of drugs
- Chronic intoxication

Who may petition the court for a guardianship?

The alleged legally incapacitated individual (LII) or any person who is interested in the welfare of that individual.

Where and how is a petition filed?

The Oakland County Probate Court is located at 1200 N. Telegraph in Pontiac. Petitions and all forms are available at the counter during office hours: Monday through Friday, 8:00 a.m. until 5:00 p.m. There is a \$50 filing fee and petitions must be filed before 4:30 p.m. for same-day processing.

What happens after the petition for guardianship is filed?

The court will set a hearing date and the petitioner must serve the alleged LII and all other interested persons with a *Notice of Hearing*. Prior to the court hearing, the petitioner must file a *Proof of Service* for the *Petition* and the *Notice of Hearing*. (Note: The case will be dismissed if the *Proof of Service* has not been filed or all parties have not been served).

An attorney guardian ad litem will be appointed for the legally incapacitated individual to investigate the petition and report back to the court. The court may also appoint legal counsel if the GAL determines it is in the best interest of the LII or if the LII contests the petition.

If the court appoints a guardian over the individual, the guardian must file an *Acceptance of Appointment* or bond as required by the court. Please remember that the guardian cannot act until the court issues appropriate *Letters of Authority*.

What are the duties of the guardian ad litem?

The guardian ad litem must perform the following duties:

- Visit the individual
- Explain the nature, purpose, and legal effects of the appointment
- Explain the hearing procedures and the individual's right to be present at the hearing, to contest the petition or to object to the appointment.
- Inform the individual of the name of the proposed guardian
- Discuss and determine whether there are appropriate and perhaps less restrictive alternatives
- Attend the hearing and make recommendations on the petition to the court.

What responsibilities does the guardian have after their appointment?

- The guardian must file an annual written report with the court (PC-634)
- The report must be served on the LII and all interested parties
- Must participate with reviews of guardianships as required by law and/or court order

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What are the duties of the guardian?

- The guardian must consult with the LII prior to any major decision (where meaningful communication is possible)
- Provide the LII care, comfort and maintenance
- Care for the LII's personal effects
- Commence protective proceedings if necessary
- Give consent or approval for medical or professional care, counseling, treatments or other needs of the ward.

When may a guardianship be terminated?

- When the individual is no longer legally incapacitated
- When the individual has moved to another state and the guardian provides the court with a proof of authority from that state
- Upon the individual's death

You should also review PC-666, "What You Need to Know Before Filing a Petition to Appoint a Guardian for an Incapacitated Adult." This form is available at the Probate counter.

Also, be sure to review the Mental Health Code definition of a developmentally disabled person (Section 330-1100(a)(19)), as you may need to file a petition for a developmentally disabled person rather than an adult guardianship.

A personal note: As you can see, my by-line has changed! In June I married attorney Charlie Langton, another DCL graduate with his practice in Sterling Heights. Stay tuned!