

Adult Guardianships

by **Rebecca A. Schnelz**
Probate Court Administrator



The Estates and Protected Individuals Code (EPIC) provides for the appointment of a guardian for individuals who are determined by the Probate Court to be legally incapacitated. Once appointed, the guardian is responsible for the personal and physical well-being of the Legally Incapacitated Individual (LII).

The court may appoint a guardian for an adult upon a finding by clear and convincing evidence that the person is an incapacitated individual and that the appointment is necessary as a means of providing continuing care and supervision of the individual.¹ "Incapacitated individual" is defined as an individual who is impaired by reason of mental illness, mental deficiency, physical illness or disability, chronic use of drugs, chronic intoxication, or other cause to the extent that they lack sufficient understanding or capacity to make or communicate informed decisions.²

Proceedings are begun through the filing of a *Petition for Appointment of Guardian of Incapacitated Individual* (PC 625). There is a \$150.00 filing fee, which must be paid at the time of application. A hearing date will be set by the court, usually within three to four weeks to allow for service and for the GAL to complete his/her duties. The petitioner is responsible for serving all interested parties with a copy of the petition and the *Notice of Hearing*. A *Proof of Service* must be filed with the court prior to the hearing.

A petition may be filed by an individual on his or her own behalf, or by any person interested in the individual's welfare. The petition must contain specific facts about the alleged LII's condition and specific examples of recent conduct that demonstrate the need for a guardian.³ A guardianship may be initiated in the Oakland County Probate Court if the alleged LII resides or is present in Oakland County.

Pursuant to MCL 700.5303(3), upon the filing of a petition, the court will appoint a guardian ad litem for the alleged LII, unless that person has legal counsel of their own choice. The court will appoint legal counsel if the GAL determines it is in the best interest of the alleged LII or if the alleged LII wishes to contest the petition, limit the guardian's powers, or object to a particular person being appointed guardian.⁴

All guardianships are not the same. After reviewing the evidence, including any independent evaluations, if the court determines a guardian is necessary, then the court is to grant a guardian only those powers necessary to provide for the demonstrated need of the incapacitated individual. The guardianship is to be designed to encourage the development of maximum self-reliance and independence in the individual. If the individual lacks the capacity to do some, but not all, of the tasks necessary for their own care, then the court may appoint a limited guardian to provide assistance in the areas where the LII cannot handle matters on their own.⁵

In appointing a guardian, the court may appoint a person designated by the LII, if that person is competent, suitable and willing to serve. If there is no such person, MCL 700.5313(3) provides an order of preference for appointment as guardian. If the court finds that neither the nominated guardian nor any individual under MCL 700.5313(3) is appropriate, the court may appoint a competent individual it finds suitable and willing to serve as guardian.

If a guardianship is granted, the guardian cannot act until they receive a *Letter of Guardianship* from the court. An *Acceptance of Appointment* is usually all that is required by the court, although a bond may be ordered as well. By accepting an appointment as guardian, the individual is personally submitting to the court's jurisdiction in a proceeding relating to the guardianship.

Guardians serve an essential role in caring for individuals who are not able to make appropriate decisions for themselves. It can be a difficult and daunting task, but it is vital to the well-being of legally incapacitated individuals. Additional information regarding the duties of a guardian can be found at www.oakgov.com/probate.

Footnotes

- 1 MCL 700.5306(1).
- 2 MCL 700.1105(a).
- 3 MCL 700.5303(1).
- 4 MCL 700.5305.
- 5 MCL 700.5306.