

Minor Guardianships

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There are many facets to the jurisdiction of the probate court. A vital and proportionately large share of what happens revolves around petitions for the appointment of a guardian of a minor.

There are two types of minor guardianships that may be obtained by petition under the Estates and Protected Individuals Code (EPIC). MCL 700.5204 provides the mechanism for what is commonly called a full minor guardianship. MCL 700.5205 provides for the appointment of a limited guardianship of a minor. While there are many procedural and practical similarities between the two types, there are some very fundamental differences that need to be considered when determining which guardianship to petition to file.

The filing fee for both full and limited minor guardianships is \$150. A hearing date will be set by the court upon the filing of either type of petition. Along with the appropriate petition, the petitioner will need to complete and file a *Minor Guardianship Social History* (PC 670), a *Declaration of Party Seeking Order Regarding Minor Child* (PEMH 1085), and a *DHS Record Check* (PEMH 1038). (The PEMH forms are Oakland County forms and are available at www.oakgov.com/probate.)

Limited Guardianships

In addition to the petition and the documents listed above, a limited guardianship also requires the filing of a *Limited Guardianship Placement Plan* (PC 652) and a *Parental Attendance Form* (PEMH 1075). A limited guardianship petition may only be filed by the custodial parent(s) of the minor child, so their signature must appear on the petition. The proposed guardian must sign the placement plan, as well as the petitioning parent(s).

The parent(s) who signed a limited guardianship petition **must** attend the hearing unless excused by the judge. If a parent lives more than 100 miles from the courthouse, their attendance *may* be excused at the discretion of the judge. The judge *may* choose to contact them by telephone on the day of the hearing.

The placement plan submitted by the parent(s) and proposed guardian must be ruled on by the judge at the hearing. The placement plan must provide specifics regarding the guardianship, such as the reason the parent(s) are requesting the appointment, sufficient parenting time and contact between the minor and the parents to maintain a parent/child relationship, the duration of the limited guardianship, and financial support for the minor. Other provisions to which the parties agree may also be included in the proposed plan.

It is important that the parent(s) who are a party to the plan understand that substantial failure to comply with the

plan without good cause may result in the termination of the parent's parental rights through a separate neglect proceeding in juvenile court.

Full Guardianship

A full guardianship may be petitioned for by a person interested in the welfare of a minor, or by the minor if they are at least 14 years old. Specific circumstances must exist before the court may appoint a guardian.¹ These reasons are delineated on the SCAO petition form and the petition will not be accepted unless the applicable grounds for the guardianship are checked on the petition.

The petitioner's presence is required at the hearing on the guardianship and the proposed guardian should be present as well. While the judge will have specific questions regarding the plan to care for the minor child, there is not a specific placement plan form to be completed as there is in a limited guardianship. MCL 700.5204(5) does allow the court to order a minor's parents to pay reasonable support and order reasonable parenting time and contact between the minor ward and his or her parents for the minor's welfare.

After the Appointment

In regard to the powers of the guardian, a full guardianship and a limited guardianship are substantially similar. Essentially, the only differences between the two are that a limited guardian cannot consent to the adoption of the minor child or release the minor for adoption, nor can the guardian consent to the marriage of the minor. During the term of either type of guardianship the guardian has custody and the parental rights are suspended.

Both a limited guardian and a full guardian are required to annually report on the condition of the minor to the court (PC 654). It should be stressed that all guardians are subject to the possible suspension of their powers under MCR 5.203 should they fail to comply with this requirement.

Until next month...

Footnotes

- 1 MCL 700.5204(2) The court may appoint a guardian for an unmarried minor if any of the following circumstances exist:
 - (a) The parental rights of both parents or the surviving parent are terminated or suspended by prior court order, by judgment of divorce or separate maintenance, by death, by judicial determination of mental incompetency, by disappearance, or by confinement in a place of detention.
 - (b) The parent or parents permit the minor to reside with another person and do not provide the other person with legal authority for the minor's care and maintenance, and the minor is not residing with his or her parent or parents when the petition is filed.
 - (c) All of the following:
 - (i) The minor's biological parents have never been married to one another.
 - (ii) The minor's parent who has custody of the minor dies or is missing and the other parent has not been granted legal custody under court order.
 - (iii) The person whom the petition asks to be appointed guardian is related to the minor within the fifth degree by marriage, blood, or adoption.