

GUARDIANSHIP: INCAPACITATED INDIVIDUAL

Montcalm County Probate Court
Hon. Charles W. Simon, III
Montcalm County Court Complex
625 North State Street
Stanton, Michigan 48888
(989) 831-7316

Office Hours: Monday-Friday
8:00 a.m. – 5:00 p.m.

The Court and the Court's staff are prohibited by law (Section 1211 of the Estates and Protected Individual's Code [EPIC]) from providing legal advice and assistance in completing forms. The information, forms, and instructions are intended to provide general information concerning filing procedures and may be useful as a guide. This is the only assistance that can be provided by the court's staff. *If, after reviewing this information, you have any questions or need assistance in completing the forms consider contacting an attorney for assistance.*

When an adult becomes unable to make responsible decisions, then that adult may be in need of a guardian, conservator, or other alternative. The Estates and Protected Individuals Code states that a guardian may be appointed if a court determines that a person is an incapacitated individual [MCL 700.5303, et. seq.]. The law defines an incapacitated individual as *"...one who is impaired by reason of mental illness, mental deficiency, physical illness or disability, chronic use of drugs, chronic intoxication, or other cause, not including minority, to the extent of lacking sufficient understanding or capacity to make or communicate informed decisions."* [MCL 700.1105(a)]

Prior to the filing of a guardianship petition, the petitioner should review "Alternatives to Full Guardianship" which contains information regarding a limited guardian, conservator, patient advocate designation, do-not-resuscitate declaration, or durable power of attorney with or without limitations on purpose, authority, or time period, and an explanation of each alternative.

Montcalm County does not have a "public" guardian to appoint in this type of case. If filing a Petition for Guardianship, you must submit the name of a proposed guardian.

When a guardianship petition is filed, the court will appoint a guardian ad litem (unless the allegedly incapacitated individual has legal counsel of his or her own choice) to investigate the situation and make a recommendation to the court prior to the hearing. A guardian ad litem is a local attorney appointed by the court to represent the interests of the alleged incapacitated individual. The guardian ad litem will not act on behalf of the petitioner. This guardian ad litem will charge for his/her services and those fees are charged to the petitioner, the individual or his/her family.

In the event the individual states to the guardian ad litem that they wish to be present for the hearing, IT IS THE RESPONSIBILITY OF THE PETITIONER to see that they have transportation to the Court. If the petitioner

fails to provide said transportation, the hearing will be adjourned until a later date.

If a petition for guardianship is filed in which a temporary guardianship pending a hearing on the full guardianship is requested, the petition will be presented to the Judge. If the allegations in the petition warrant further investigation, a guardian ad litem will be appointed to the individual who will then make a recommendation to the court regarding the necessity of appointing a temporary guardian. If a temporary guardian is appointed, that guardianship will expire within 28 days from the date of appointment.

Frequently Asked Questions

What are the duties of a guardian?

Generally, a guardian has the same authority and responsibility for the adult as a parent has for a minor child. The guardian must visit the ward within three months of becoming guardian and at least every three months thereafter. A guardian may make routine medical decisions but may not consent to extraordinary medical procedures without a court order. The goal of a guardian is to try to restore the ward to independence. A guardian is required to file a report, annually, with the Court and provide a copy of that report to the adult and any other interested persons. See Annual Reporting.

What is the difference between a guardian and a conservator? A guardian makes decision about the person, such as medical or housing decisions, and the conservator makes decisions about the property or finances of the person. A guardian and conservator can be the same person.

What do I have to do when I petition for guardianship? Upon the filing of the petition with the Court the petitioner will be required to set the matter for hearing and provide "notice" of their petition and the pending hearing on the alleged incapacitated individual and that person's presumptive heirs (spouse, children, parent(s), and siblings). The petitioner will be

required to complete and file a Proof of Service with the Court.

At the hearing, the petitioner will be expected to appear to present their petition and present testimony and/or evidence as to why their petition should be granted. The judge will determine if there is a basis for the guardianship and if the proposed guardian is appropriate for appointment.

If I am appointed guardian, what do I have to do? Upon appointment of the guardian, he/she will be required to file an acceptance of appointment (SCAO Form PC571) indicating that they are willing to serve as guardian. The guardian will be issued letters of authority. The guardian is expected to maintain their current address and the current address of the incapacitated individual at all times with the Court. You will find a Change of Address form on the website for your use.

Yearly, on the anniversary of the appointment of the guardian, the guardian will be required to file an annual report of guardian and proof of service. See instructions for Annual Reporting.

When may a guardianship be terminated? Anyone, including the ward, may file a petition to terminate the guardianship or to have a different guardian appointed. Upon the filing of a petition to terminate or modify, the same procedure will be followed as when a new guardianship petition is filed. There is a \$20.00 filing for the petition.

When the adult dies, the court should be notified immediately and a copy of the death certificate provided so that the guardianship can be ended and the court's case closed.

Annual Reporting

As the guardian, your duty BY LAW is to file a report of guardian annually with the Court on the anniversary of your appointment. *You will not receive a reminder of this.* The report is delinquent 56 days after the anniversary of

your appointment and a notice of deficiency will be issued if not timely filed. You are also required to serve a copy of the annual report on all interested persons. *FAILURE TO SERVE ALL INTERESTED PERSONS, AS REQUIRED, MAY RESULT IN YOUR SUSPENSION AS GUARDIAN OR SUBJECT YOU TO CONTEMPT PROCEEDINGS OF THE COURT.*

Guardianship Reviews

In addition to the yearly reporting of the guardian, the Court will order a review of the guardianship one year after the appointment of the guardian and every three years thereafter. A report will be filed with the Court with recommendations for continuation of the guardianship. If necessary, the Court will schedule a review hearing.