

**GUIDELINES FOR
GUARDIAN AD LITEM REPORTS AND GUARDIAN REVIEWS**

1. In performing your duties as a guardian ad litem, refer to MCL 700.5305, MCL 700.1403(d) and MCR 5.121. Review MCL 700.5303, 700.5304, 700.5305 and 700.5406 dealing with incapacitated individuals and protective proceedings.

2. Visit the home, convalescent center or hospital facility where the alleged incapacitated individual may be. Check with the petitioner to see if the incapacitated individual has recently been moved. It is also a good idea to telephone the facility in advance to confirm that the incapacitated individual is there to avoid needless travel.

The ward is to be served personally by the GAL at least 7 days prior to the hearing date with a copy of the petition.

If you go to the residence, nursing home or hospital without first calling and learn the respondent is deceased, you will not be paid. If you learn the respondent is deceased through a phone call, do not prepare a full report. Just write "ward deceased" on the Report on Review of Guardianship of Legally Incapacitated Individual (PC 636) for that individual. You will not be paid.

Note: For guardian reviews, it is not necessary to include any medical records or copies of financial statements with your report.

3. Attempt an interview. Explain the purpose of your visit and the nature of the petition before the court. Explain that you have been sent by the court to protect the interest of the alleged incapacitated individual. Ascertain whether the incapacitated individual is able to discuss the matter and give his or her viewpoint. Ask whether there is concurrence with having the nominated person act as a Guardian or Conservator.

Are there any objections to the nomination? If so, is the objection to the individual nominated to be guardian or is the objection to anyone serving as guardian? If the ward objects, fill out and file a WCPC 260, Objection to Petition for Appointment of Guardian or Conservator, on behalf of the proposed ward. Sign and submit this item with your GAL report. If they indicate they want some other individual to serve, the Guardian Ad Litem ("GAL") should contact that individual to determine if she/he is willing to serve and is an appropriate person. The GAL should encourage the individual to attend the hearing.

If the ward objects, fill out and file a WCPC 260, Objection to Petition for Appointment of Guardian or Conservator, on behalf of the proposed ward. Sign and submit this item with your GAL report.

4. If possible, determine whether a guardian or a conservator is really necessary. Can the incapacitated individual manage his/her financial affairs? Does the incapacitated individual need someone to give consent for medical attention or some other informal consent for the incapacitated individual? Perhaps there is a need for one, but not the other?

5. Determine, if you can, the income and assets of the incapacitated individual--Social Security, personal retirement income, rents, bank savings, checking, savings certificates, real estate, stocks, bonds, and any other assets. Are the assets held individually or jointly with someone else?

6. Check with the facility personnel to evaluate how the incapacitated individual has been getting along. Is there any prognosis?

7. Contact the petitioner and the attorney for the petitioner for further details if needed.

8. Do *not* rely solely on the representations of the petitioner or the petitioner's attorney. **Verify matters on your own. That is why you were appointed. The court wants your independent investigation, evaluation, and recommendation.**

9. Questions concerning the specific requirements of individual judges for their GAL reports should be addressed to their respective staffs.

10. The GAL report is to be filed with the court 3 work days prior to the hearing. A copy can be faxed to the court submitted in person. The fax number for Judge Terrance A. Keith is - (313) 224-8105; Judge David Braxton - (313) 224-8098; Judge Freddie G. Burton - (313) 224-8107; Judge June E. Blackwell-Hatcher - (313) 224-8097; and Judge Judy A. Hartsfield - (313) 967-6685; Judge Lawrence J. Paolucci (313) 224-8099.

11. Submit a written report and recommendation to the court prior to the date of the hearing, if possible, by filing it directly with the court clerk. *Include the date and time of hearing on the front page of your written report.*

Appear in court on the date of hearing and be prepared to expand upon your report, if necessary. This may be necessary particularly where objections are filed to the appointment of a guardian or conservator.

DUTIES OF GUARDIAN AD LITEM - MCL 700.5305

Sec. 5305. (1) The duties of a guardian ad litem appointed for an individual alleged to be incapacitated include all of the following:

- (a) Personally visiting the individual.
 - (b) Explaining to the individual the nature, purpose and legal effects of a guardian's appointment.
 - (c) Explaining to the individual the hearing procedure and the individual's rights in the hearing procedure, including, but not limited to, all of the following:
 - (i) The right to contest the petition.
 - (ii) The right to request limits on the guardian's powers, including a limitation on the guardian's power to execute a do-not-resuscitate order on behalf of the ward.
 - (iii) The right to object to a particular person being appointed guardian.
 - (iv) The right to be present at the hearing.
 - (v) The right to be represented by legal counsel.
 - (vi) The right to have legal counsel appointed for the individual if he or she is unable to afford legal counsel.
 - (d) Informing the individual that if a guardian is appointed, the guardian may have the power to execute a do-not-resuscitate order on behalf of the individual and, if meaningful communication is possible, discern if the individual objects to having a do-not-resuscitate order executed on his or her behalf.
 - (e) Informing the individual of the name of each person known to be seeking appointment as guardian.
 - (f) Asking the individual and the petitioner about the amount of cash and property readily convertible into cash that is in the individual's estate.
 - (g) Making determinations, and informing the court of those determinations, on all of the following:
 - (i) Whether there are 1 or more appropriate alternatives to the appointment of a full guardian or whether 1 or more actions should be taken in addition to the appointment of a guardian. Before informing the court of his or her determination under this subparagraph, the guardian ad litem shall consider the appropriateness of at least each of the following alternatives or additional actions:
 - (A) Appointment of a limited guardian, including the specific powers and limitation on those powers the guardian ad litem believe appropriate.
 - (B) Appointment of a conservator or another protective order under part 4 of this article. In the report informing the court of the determinations under this subdivision, the guardian ad litem shall include an estimate of the amount of cash and property readily convertible into cash that is in the individual's estate.
 - (C) Execution of a patient advocate designation, do-not-resuscitate order, or durable power of attorney with or without limitations on purpose, authority, or duration.
 - (ii) Whether a disagreement or dispute related to the guardianship petition might be resolved through court ordered mediation.
 - (iii) Whether the individual wishes to be present at the hearing.
 - (iv) Whether the individual wishes to contest the petition.
 - (v) Whether the individual wishes limited placed on the guardian's powers.
 - (vi) Whether the individual object to having a do-not-resuscitate order executed on his or her behalf.
 - (vii) Whether the individual objects to a particular person being appointed guardian.
- (2) The Court shall not order compensation of the guardian ad litem unless the guardian ad litem states on the record or in the guardian ad litem's written report that he or she has complied with subsection (1).
- (3) If the individual alleged to be incapacitated wishes to contest the petition, to have limits placed on the guardian's powers, or to object to a particular person being appointed guardian and if legal counsel has not been secured, the court shall appoint legal counsel to represent the individual alleged to be incapacitated. If the individual alleged to be incapacitated is indigent, the state shall bear the expense of legal counsel.
- (4) If the individual alleged to be incapacitated requests legal counsel or the guardian ad litem determines it is in the individual's best interest to have legal counsel, and if legal counsel has not been secured, the court shall appoint legal counsel. If the individual alleged to be incapacitated is indigent, the state shall bear the expense of legal counsel.
- (5) If the individual alleged to be incapacitated has legal counsel appointed under subsection (3) or (4), the appointment of a guardian ad litem terminates.