

SERVING AS GUARDIAN AD LITEM

By

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Judge
Wayne County Probate Court**

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I. INTRODUCTION

Material Covers the Following Topics:

- A. Serving as guardian ad litem in adult guardianship proceedings.
- B. Procedure for conducting adult guardianship reviews.
- C. Serving as guardian ad litem in estate and conservatorship proceedings.
- D. Serving as guardian ad litem in minor guardianship proceedings.
- E. Remote Court Hearings: Update on the Wayne County Probate Court process.
- F. Serving as guardian ad litem in proceedings requesting LEIN removal.

II. IN GENERAL

- A. What is a guardian ad litem? Typically, a guardian ad litem (GAL) serves as the “eyes and ears” of the Court. The precise nature of their duties will vary depending on the particular hearing type.
- B. **Important Note #1:** The Court needs a copy of the GAL report at least three business days before the scheduled hearing. The report must be sent to the office of the Judge of record. It is not acceptable to give the report to the attorney for the petitioner two days before the hearing, who then brings a copy to the Court at the hearing.
- C. **Important Note #2: GAL reports can be submitted via FAX.** No original has to be filed with the Court. The FAX numbers for each Judge are:

Hon. Freddie G. Burton, Jr.	(313) 967-4045
Hon. David A. Perkins	(313) 967-4010
Hon. Judy A. Hartsfield	(313) 967-4039
Hon. Terrance A. Keith	(313) 967-4023
Hon. David Braxton	(313) 967-4014
Hon. Lawrence J. Paolucci	(313) 967-4020

D. GAL Immunity from Civil Liability

1. **MCL 691.1407(6)** provides: “A guardian ad litem is immune from civil liability for injuries to persons or damages to property whenever he or she is acting within the scope of his or her authority as guardian ad litem.”
2. This provision was added by **1996 PA 143** to overturn the decision of **Bullock v Huster, 209 Mich. App. 551; 532 NW 2d 202 (1995)**.

E. Duties of Guardian Ad Litem

1. Before the hearing date, the GAL shall conduct an investigation and make a report in open court or file a written report of the investigation and recommendations. The GAL does not have to appear at the hearing unless required by law or directed by the court. **MCR 5.121(C)**.
2. All Judges of the Wayne County Probate Court require **written reports** from their GALs.
3. For a complete listing of the items which the Wayne County Probate Court Bench requires in their written GAL reports, see Topics and Issues Concerning Written Guardian ad Litem (GAL) Reports, which is found on the Court’s website in the 2021 Attorney Training materials.

F. Practical Tips from the Bench

G. Practical Tips from the Bar

1. **Important Note #3:** During the public health emergency, guardian ad litem are not making in person visits to meet with the subject of a petition or otherwise discharge their duties, but instead will interact via phone and participate in any hearing (if required) via ZOOM.
2. In General
 - a. Your duties as GAL can take you to a number of different neighborhoods and situations.

- b. The following pointers should be kept in mind as you attempt to discharge your GAL responsibilities.

Note: Always remember to be polite to the person you are interviewing. Many of these individuals may suffer from dementia and/or mental illness which can cause their behavior to be erratic and contribute to an unkempt home. As GAL, you are part of the process by which the individual may be able to receive assistance to help improve their situation.

3. Pointers for Safety

- a. Try to make your visit during the day, if possible.
- b. Conduct a search before going to the home to determine its location.
- c. Do not bring your laptop or tablet with you into the home.
- d. Do not wear expensive jewelry, wedding ring, etc.
- e. Let your office know when and where you are making your visit.
- f. Be aware that there may be dogs on the property.
- g. Be aware of your surroundings.
- h. Follow your gut – if you feel an area is particularly unsafe, it is acceptable not to stop and get out of your car. Your options in these circumstances are:
 - 1) Return later.
 - 2) Attempt to arrange meeting outside of the home setting.
 - 3) Inform the Court that you were unable to conduct the visit.
- i. If your instincts tell you it would be unsafe/inappropriate to enter the home, conduct the meeting on the porch/front steps.

4. Additional Tips

- a. In some homes you may feel safe but the conditions could be extremely unsanitary.
- b. In these situations, consider standing during the interview or directing the individual outside to conduct your meeting.

- c. If situation appears unhealthy (i.e., trash, highly unclean) and/or the individual presents as disheveled, filthy, etc., consider calling Adult Protective Services (APS) at 1-855-444-3911. Also, remember to note these items in your report.

5. Suggestions for a Successful Interview

- a. Adjust your approach based on the individual you are meeting with. An elderly individual should be handled differently than a teenager.
- b. Help to lower the emotional temperature, not raise it.
 - 1) This is especially important when you are dealing with confrontational/agitated siblings/children who insist on being part of the interview process.
 - 2) In these scenarios, politely let the person know that you must meet with the subject of the petition separately, but then you want to talk with the individual and also get their input.
- c. Be aware of the individual's non-verbal cues – i.e., are they defensive, relaxed, fearful, etc.

III. SERVING AS GUARDIAN AD LITEM IN ADULT GUARDIANSHIP PROCEEDINGS

- A. As part of the due process protection for the adult who is the subject of a guardianship petition, a GAL is appointed to review the situation and make a report to the Court.

After a date has been set for an adult guardianship hearing, a GAL must be appointed unless the alleged incapacitated individual (II) has their own legal counsel. **MCL 700.5303(2)**.

- B. The GAL's duties are outlined in **MCL 700.5305**. They include:
 - 1. Personally visiting the individual (visits to be conducted via phone during the public health emergency).
 - 2. Explaining to the individual the nature, purpose and legal effects of a guardian's appointment.

3. Explaining to the individual the hearing procedure and their rights, including (but not limited to) the following:
 - a. To contest the petition.
 - b. Request limits on the guardian's powers, including limitations on a guardian's power to execute a do-not-resuscitate (DNR) order or a physician order for scope of treatment (POST) form on their behalf.
 - c. Object to a particular person being appointed guardian.
 - d. Be present at the hearing.
 - e. Be represented by a lawyer, and an attorney will be appointed for them if they cannot afford to hire their own.

Note: The GAL must also give the individual a copy of their rights in the guardianship process (PC 626, Notice of Rights to Alleged Incapacitated Individual). This is discussed in greater detail infra.

- f. Inform alleged ward that if guardian appointed, they may have the authority to execute a DNR and a POST form on their behalf and, if meaningful communication possible, discern whether person objects to execution of DNR order.
4. Telling the individual the name of any person known to be seeking appointment as guardian.
5. Making determinations (and informing the Court) on the following:
 - a. Whether there are 1 or more appropriate alternatives to the appointment of a full guardian. Before informing the court of their determination on this issue, the GAL must **consider** the appropriateness of at least each of the following alternatives:
 - 1) Appointment of a limited guardian, including the specific powers and limitation on those powers the GAL believes appropriate.
 - 2) Appointment of a conservator or another protective order under EPIC.
 - 3) Execution of a patient advocate designation, do-not-resuscitate order, physician order for scope of treatment,

or durable power of attorney with or without limitations on purpose, authority, or duration.

- b. Whether a disagreement or dispute related to the guardianship petition might be resolved through court ordered mediation.
 - c. Whether the individual wants to be present at the hearing.
 - d. Whether the individual desires to contest the petition.
 - e. Whether the individual wishes limits placed on the guardian's powers.
 - f. Whether alleged ward objects to the execution of a DNR order or a POST form.
 - g. Whether the individual objects to a particular person's appointment as guardian.
6. **Note:** The Court will appoint a lawyer for the alleged II if they request one, desire to contest the petition, have the guardian's powers limited, object to a particular person being appointed guardian, or the GAL determines it is in the best interest of the alleged II to have legal counsel.
7. A GAL's appointment terminates when the alleged II has a lawyer appointed for them.

C. Guardian Bill of Rights

- 1. A guardian bill of rights exists under EPIC.
 - 2. 33 specific rights are listed for the subject of a guardianship petition or ward. **MCL 700.5306a.**
 - 3. **Note:** The list is a compilation of existing rights from various sections of EPIC's adult guardianship subchapter.
 - 4. The guardian ad litem is required to inform the ward in writing of these rights. The State Court Administrative Office (SCAO) and the Office of Services to the Aging have developed a form, PC 626, Notice of Rights to Alleged Incapacitated Individual, to accomplish this. **MCL 700.5306a(2).** A copy of this form can be found on the Court's website in the 2021 Attorney Training Materials.
 - 5. This form has been added to the packet of materials that a GAL receives for adult guardianship proceedings. This item must be given to the alleged LIP in addition to the other documents which they receive from the GAL.
- D. A sample GAL report on an alleged II has been included on the website in the 2021 Attorney Training materials.

Note: PC 627, Acceptance of Appointment and Report of GAL of Alleged Incapacitated Individual, is included in the packet of materials given to GALs appointed in adult guardianship cases. This form should be submitted as a “cover sheet” with your GAL report.

E. Privilege\Subsequent Appointment of GAL as Counsel for Alleged II

1. Appointment of lawyer as GAL **does not** create an attorney-client relationship, and communications between the alleged II and the GAL are not subject to attorney-client privilege. The GAL must inform the person whose interests are represented by this lack of privilege as soon as practicable after the appointment. The GAL may report or testify about any communication with the person whose interests are represented. **MCR 5.121(E)(1)**.
2. If the GAL’s appointment is terminated and the same person is subsequently appointed attorney, the appointment as attorney creates an attorney-client relationship that **relates back** to the date of the GAL appointment. **MCR 5.121(E)(2)**.

IV. PROCEDURE FOR CONDUCTING ADULT GUARDIANSHIP REVIEWS

A. The following is an overview of the adult guardianship review process.

1. Funding for adult guardianship reviews has been partially restored by Wayne County. The Court will pay \$60 for guardianship reviews where the ward has less than \$5,000 in liquid assets. Where the ward has \$5,000 or more in liquid assets, their estate may be billed as follows:

<u>Ward’s Assets</u>	<u>Payment</u>
\$0-4999	\$60 paid by Court
\$5000-10000	Bill ward’s estate \$200*
>\$10000	Bill ward’s estate standard hourly rate (bill to be pre-approved by the Court)**

*To be noted clearly in your report.

**Proposed bill to be attached to your report.

2. Attorneys will receive approximately 10 cases at a time.
3. Assignments for guardian reviews will be received approximately every 2-3 months.

4. Reports are due 28 days after assignment. If additional time is needed, please email the Probate Register's Administrative Coordinator before the due date at or register@wcpc.us.
5. When ordering files for these reviews, please use WCPC 31, Request to Review Files for Guardianship Reviews. A copy of this item is contained in the seminar handouts on the Court's website (2021 Attorney Training Materials).

Note #1: During the public health emergency, until the Court reopens to the public, documents can be viewed (and printed, except for letters of guardianship) from our website, www.wcpc.us, under Case Access.

Note #2: Attorneys have the ability to view images of files in lieu of ordering the physical file, via the computers in the Court's file viewing area on the 13th Floor, in the Attorney Lounge on the 12th Floor, or using the Court's public access computers on the 13th Floor.

Note #3: Effective September 1, 2018, the Court has stopped creating new file jackets and maintaining/storing physical documents. All physical documents accepted for filing after this date are immediately scanned and only maintained for 60 days after the filed date or adjudication date, whichever is later. When reviewing a file, please begin by reviewing information in CourtView, the court's case management system. Please request the physical file only if images are not available. The Court began imaging all court documents in October, 2003.

6. You may use a legal assistant, office staff, or other individual to conduct these reviews. If you use a third party, please identify that person in your report.
- B. The Court generates an **Order Appointing Attorney to Review/Investigate Guardianship (Form PC 635)** and e-mails a copy to the lawyer.
- C. **Within 28 days**, the attorney must:
1. Pull the probate file to obtain information on the ward. For the guardianship review file retrieval process, see the handouts on the Court's website under the 2021 Attorney Training materials.
 2. Conduct an investigation. Remember, during the public health emergency, the investigation and interviews will be conducted via phone. The ward must be visited, either by you as attorney or your legal assistant or other member of your office staff. If someone other than yourself conducts the review please identify that person in your report.

3. File a report with the Court. (**Form PC 636 - Report on Review of Guardianship of Legally Incapacitated Individual**)

- a. Indicate due date and the time of the hearing at the top of the report.
- b. Include names, addresses, and telephone numbers of the ward, guardian, and conservator, if any.
- c. Report must reflect ward's financial status.
- d. For additional information on the requirements for completing guardianship reviews, see "Notice to Attorneys Participating in Guardianship Reviews" which is in the seminar handouts on the Court's website (2021 Attorney Training Materials).

Note: When you conduct your review (once the public health emergency ends and the Court reinstates in person reviews), please bring a blank copy of **Form PC 634 - Annual Report of Guardian on Condition of Legally Incapacitated Individual**. (This form is available on the Court's website, www.wcpc.us, under Forms\Feedback – SCAO Approved Forms – Guardianship.) Give this form to the guardian and explain that an annual report must still be submitted to the Court even though you have conducted a guardianship review. Many laypersons mistakenly assume that the annual report is not required due to your visit.

- D. If the ward is found to be a minor, the order is vacated. If the ward is deceased, the guardian is discharged.
- E. The Court will informally review the report. Depending on the attorney's findings, it will enter one of the following orders (**Form PC 637 - Order Following Review of Guardianship**):
 1. To continue the guardianship. A copy of the report and order will be mailed to the ward and guardian.
 2. To appoint an attorney to represent the ward for filing a petition for modification of the guardianship. The lawyer appointed may be different than the attorney who conducted the review.
 - a. A copy of the report and order will be mailed to the ward, the guardian and the attorney appointed for the ward.
 - b. **Within 14 days**, the attorney must:
 - 1) File pleadings with the Court.
 - 2) Obtain hearing date.

Tip: The hearing date on a petition for modification can be obtained from the Judge of record's Court Clerk.

- 3) Make service on interested persons.

V. SERVING AS GUARDIAN AD LITEM IN ESTATE AND CONSERVATORSHIP PROCEEDINGS

A. Estate Proceedings

1. The most frequent reason that a GAL is appointed in estate proceedings is to review contested accountings.
 - a. In estates under supervised administration, accountings must be filed annually. The matter must be set for hearing, although if all interested persons consent the account may be approved without a proceeding in open court.
 - b. Items to look for when reviewing accountings as GAL
 - 1) Receipts for all items?
 - 2) Math verification - check subtotals and totals. (Note that the Court no longer audits accountings, whether for conservatorships or decedent's estates.)
 - 3) Reasonableness of expenses - use your common sense.
2. Attorney and Fiduciary Fee Disputes
 - a. This may be part of an accounting, and may often be at the heart of the controversy between the interested persons.
 - b. A detailed overview of this topic is beyond the scope of this outline.
3. Miscellaneous Scenarios
 - a. In these situations, the judge of record will be looking for you to be their "eyes and ears" by reviewing the situation and making a recommendation regarding the relief requested.
 - b. Petition Examples

- 1) Reform\amend trust instrument.
- 2) Exercise certain rights\elections under a trust.
- 3) Appoint\remove personal representative.
- 4) Sale of real estate.
- 5) Petition to authorize settlement of a cause of action.

c. A discussion of these specific situations is outside of this outline's scope.

B. Conservatorship Proceedings

1. In General

- a. The following material contains an overview of the circumstances under which a conservatorship may be established for a minor and an adult, along with relevant terms.
- b. See the sample GAL report Recommending Denial of Petition for Appointment of Successor Guardian and Conservator which has been included in the 2021 Attorney Training materials on the Court's website.

2. Circumstances Under Which a Conservator may be Appointed

- a. A minor conservatorship is used to manage assets on behalf of a child until they reach age 18.

A conservator may be appointed in relation to the estate and affairs of a minor if the court determines that the minor:

- 1) Owns money or property that requires management or protection which cannot otherwise be provided;
- 2) Has or may have business affairs which may be jeopardized or prevented by minority; or
- 3) Funds are needed for the minor's support and education and that protection is necessary or desirable to obtain or provide money.

MCL 700.5401(2).

- b. Appointment of a conservator or other protective order may be made in relation to the estate and affairs of an individual if the court determines both of the following:
 - 1) The individual is unable to manage his or her property and affairs effectively for reasons such as mental illness, mental deficiency, physical illness or disability, chronic use of drugs, chronic intoxication, confinement, detention by a foreign power, or disappearance;
 - 2) The individual has property which will be wasted or dissipated unless proper management is provided; **or** money is needed for the individual's support, care and welfare or for those entitled to be supported by the individual **and** that protection is necessary to obtain or provide money.

MCL 700.5401(3).

- c. Appointment of a conservator may be made in relation to the estate and affairs of an individual who is mentally competent, but due to age or physical infirmity is unable to manage his or her property and affairs effectively and who, recognizing this disability, requests a conservator's appointment. **MCL 700.5401(4).**

3. Relevant Probate Terms

- a. A **conservator** is a person appointed by the court to manage a protected individual's estate. **MCL 700.1103(h).**
- b. A **protected individual** is a minor or other individual for whom a conservator has been appointed or other protective order made pursuant to the Estates and Protected Individuals Code. **MCL 700.1106(v).**
- c. A conservator is a **fiduciary** for purposes of the Estates and Protected Individuals Code. **MCL 700.1104(e).**
- d. A **protective proceeding** is a proceeding under the provisions of sections 5401-5433 of the Estates and Protected Individuals Code. **MCL 700.1106(w).**
- e. A **protective order** may be issued by the court to authorize, direct, or ratify a transaction necessary or desirable to achieve a security, service, or care arrangement meeting the protected individual's foreseeable needs. **MCL 700.5408.**

f. A ***guardian of the estate*** (sometimes referred to as a plenary guardian) is a person appointed by the court under the Mental Health Code to manage the assets of an individual with developmental disabilities (DDI). They are considered a fiduciary for purposes of the Estates and Protected Individuals Code. **MCL 330.1632.**

4. Attorney\Guardian Ad Litem for Minor

- a. The Court may appoint an attorney to represent the minor if at any time in the proceeding the Court determines the interests of the minor are or may be inadequately represented. The Court is to give consideration to the minor's choice if they are at least 14 years old. **MCL 700.5406(1).**
- b. An attorney appointed by the Court has the powers and duties of a guardian ad litem. **MCL 700.5406(1).**
- c. An attorney is rarely appointed for a minor in conservatorship proceedings, except where a petition for authority to settle a cause of action is filed.

5. Conservatorship and Protective Order Proceedings.

A GAL appointed in a conservatorship or other protective order proceeding who meets, examines, or evaluates the alleged protected individual must:

- a. Consider whether there is an appropriate alternative to conservatorship.
- b. If conservatorship is appropriate, consider desirability of limiting scope\duration of conservator's authority.
- c. Report to the court on these considerations.

MCL 700.5406(4).

6. Conservatorship Accountings

- a. Unless otherwise ordered by the court, a conservator is required to file an **Account of Fiduciary (PC Form 583 or 584)** annually within 56 days of the anniversary of the conservator's appointment. **MCL 700.5418; MCR 5.409(C)(1)&(2).**
- b. A **Petition and Order Allowing Account (PC Form 585)** must also be filed in order to have the accounting approved by the Court.

- c. Refer to the GAL estate materials for a discussion of the items to look for when you are appointed to review an accounting for the Court.

7. Petitions for Ward's Allowance (Petition and Order to Use Funds)

- a. In minor conservatorships, distributions cannot be made without prior court approval.

- b. Some conservators will request distributions for the benefit of their minor ward. Examples:

- 1) Tuition for private elementary\high school and\or a tutor.
- 2) An automobile in order to secure employment.
- 3) Personal computer.
- 4) Braces.
- 5) Funds to participate in foreign study program.
- 6) Monthly allowance for support (typically approved for a period of one year) when non-parent has custody of child.
- 7) Special requirements of the minor above normal support needs (i.e., wheelchair ramp for house, etc.).

- c. Form Used - **PC 673, Petition and Order to Use Funds (Conservatorship)**

Prior to this form being developed, attorneys would draft their own petitions, which were given various titles, including Petition for Ward's Allowance.

- d. Factors\issues to consider when reviewing wards' allowance requests as GAL.

- 1) Size of conservatorship vs amount of fund request - The greater the total value of the estate, the more the conservatorship would be able to make the distribution without unduly diminishing the funds to be given to the ward at age 18.
- 2) Degree of benefit to ward – Is the request actually for the ward, or is it merely a smokescreen for accessing the minor's funds on behalf of the entire family? Examples: Who would use the car

requested for the minor; would a personal computer be used primarily by the parent(s) or is it for the ward's use with school assignments?

3) Does the request pass the "smell test"? Use your common sense – express any misgivings\concerns\observations in your GAL report.

e. **Practice Pointer:** For most minor conservatorships, the parent(s) of the ward are serving as fiduciary. Often it is difficult for them to comprehend that conservatorship funds cannot be used for the general good of the child's family, or for items which a parent is responsible for providing (i.e., food, housing, etc.). This can be particularly hard to understand if the family is living in an impoverished situation.

VI. SERVING AS GUARDIAN AD LITEM IN MINOR GUARDIANSHIP PROCEEDINGS

A. Typically, counsel is appointed to represent parties in minor guardianship proceedings only under the following circumstances:

1. As guardian ad litem for a minor mother and/or father.
2. As guardian ad litem for a mentally incompetent adult mother and/or father.

B. Only a small portion of the Court's minor guardianship cases fall within either of these scenarios.

C. **Note:** In reality, appointments under the circumstances in A are as guardian ad litem. They are technically not assigned counsel.

D. Minor Guardianship Reviews

Guardianships for minors under age 6 must be reviewed annually. **MCL 700.5207(1)**. The Department of Human Services (DHS) or one of their subcontractors conducts these reviews.

E. Circumstances Under Which Full and Limited Minor Guardianships may be Created\Terms and Definitions

1. Full Guardianship

a. An individual appointed by the Court with full authority over the minor, including ability to consent to adoption and marriage of minor.

b. Full guardian can be appointed if either:

- 1) Parental rights of both parents (or the surviving parent) are terminated\ suspended by prior court order, divorce, death, adjudication of mental incompetency, disappearance or imprisonment. **MCL 700.5204(2)(a).**
- 2) Parent or parents have permitted the minor to reside with another person and have not provided the person with legal authority for the minor's care and maintenance, and the minor is not residing with his or her parent or parents. **MCL 700.5204(2)(b).**
- 3) If the minor's biological parents have never been married to each other, the custodial parent dies or is missing and the other parent has not been given legal custody, and the nominated guardian is related to the minor within the fifth (5th) degree by marriage, blood, or adoption. **MCL 700.5204(2)(c).**

Example: Unwed drug addict mother leaves child with grandmother and disappears. Grandmother could seek full guardianship.

2. Limited Guardianship

- a. Limited guardian cannot consent to the adoption, release for adoption, or marriage of the minor. **MCL 700.5206(4).**
- b. Limited guardian can be appointed only if all of the following requirements are satisfied:
 - 1) Parent(s) with custody consent to appointment. **MCL 700.5205(1)(a).**
 - 2) Parent(s) voluntarily consent(s) to suspension of parental rights. **MCL 700.5205(1)(b).**
 - 3) Court approves a limited guardianship placement plan which is also agreed to by custodial parent(s) and proposed limited guardian(s). **MCL 700.5205(1)(c).**

Example: Drug addict mother with custody of child is entering treatment program. She voluntarily consents to suspension of parental rights by having child's grandmother appointed limited guardian. Placement plan is submitted outlining how she will ultimately regain full parental rights over the child.

3. Definitions

- a. **Ward** - An individual for whom a guardian is appointed. **MCL 700.1108(a).**

- b. **Guardian Ad Litem (GAL)** - An individual (In Wayne County, always an attorney) whom the Court appoints to represent the minor's interest in a proceeding and/or investigate a situation on behalf of the Court. GALs are rarely used by the Court in minor guardianship proceedings.
- c. **Temporary Guardian** - If necessary, the Court can appoint an individual temporary guardian with the status of a full guardian, but the authority of a temporary guardian cannot exceed six months. **MCL 700.5213(3)**.

F. Petition and Order for Authority to Adopt

1. If a full guardian of a minor desires to adopt their ward, they must file a petition to obtain authorization from the Court to begin the adoption process.
2. The appointment of a Guardian Ad Litem under these circumstances is discretionary with the Judge; determinations are made on a case-by-case basis.

VII. SERVING AS GUARDIAN AD LITEM IN PROCEEDINGS REQUESTING LEIN REMOVAL

A. Removal of Mental Health Proceeding Orders from LEIN

Section 464a of the Mental Health Code provides:

(1) Upon entry of a court order directing that an individual be involuntarily hospitalized or that an individual involuntarily undergo a program of alternative treatment or a program of combined hospitalization and alternative treatment, the court shall immediately order the department of state police to enter the court order into the law enforcement information network. The department of state police shall remove the court order from the law enforcement information network only upon receipt of a subsequent court order for that removal.

(2) The department of state police shall immediately enter an order into the law enforcement information network or shall immediately remove an order from the law enforcement information network as ordered by the court under this section.

MCL 330.1464a. (emphasis added)

B. What is the LEIN system?

1. It is a computer network maintained by the Michigan State Police. This database allows law enforcement officials throughout the state to obtain

information on an individual, typically when they are pulled over for a traffic stop, arrested, seeking a gun permit, etc.

2. The above Mental Health Code provision is designed to prevent individuals from being granted a gun permit and/or legally purchasing a gun while they are subject to a mental health order.

C. LEIN Order Removal Procedure

1. Petition is filed at the Probate Counter, Room 1307 of the Coleman A. Young Municipal Center or by mail. During the public health emergency, it can be filed via mail, email, or fax.
 - a. If the person was under an existing order, including alternative treatment or combined hospitalization\alternative treatment, the petition would not be accepted by the court, since anyone on a current order cannot be removed from LEIN.
 - b. If the petitioner had a new pending petition for hospitalization, the LEIN removal petition would not be set for hearing.
 - c. If the petitioner was not under a treatment order, and no hearing on a new petition was pending, a hearing would be held on their LEIN removal request.
2. Filing Fee – None.
3. Form Used – MC 239, Removal of Entry From LEIN
4. The petitioner fills out the form. There is no right to a court appointed attorney for this type of petition.
5. Petition will be set for hearing in same manner as any other item on the mental health docket.
6. An attorney will be assigned by the Court to review the petition.
 - a. The lawyer's role is that of a Guardian ad Litem (GAL) – i.e., investigate and report findings in writing to the Judge handling the hearing. The lawyer does not represent the person seeking the LEIN removal order.
 - b. Unless directed by the Judge, the GAL is not required to attend the hearing.

7. Court Hearing

- a. Judge will determine whether it is appropriate to grant the petition to remove the order from the LEIN.
- b. If the petition is granted, the Court will prepare the order of removal and forward it to the State Police.

VIII. REMOTE COURT HEARINGS: UPDATE ON THE WAYNE COUNTY PROBATE COURT PROCESS

- A. For specific questions, feel free to contact the Court via email (info@wcpc.us), phone ((313) 224-5685, 224-5602, or 224-5578) or the Judge of record's staff:

FGBStaff@wcpc.us

DAPStaff@wcpc.us

JAHStaff@wcpc.us

TAKStaff@wcpc.us

DBStaff@wcpc.us

LJPStaff@wcpc.us

B. Notice to Interested Persons

1. ZOOM instructions are included in the Notice of Hearing form you receive from the Court.
2. This information must be provided as part of the notice given to all the interested persons.

C. ZOOM Hearing Tips

1. The following are a series of tips for participating in ZOOM hearings to ensure they are as productive and efficient as possible.
2. **Please dress appropriately.** Remember that you are an officer of the Court. Although not physically present, your location is an extension of the courtroom and subject to the same rules of decorum and attire. (No golf shirts, T shirts or hats, etc.)
3. **Sit near the microphone.** This will ensure the Court can hear and understand you. Consider purchasing a headset to help ensure that you will be heard clearly. (You may need a transcript.)

4. **Remember that everything is recorded.** It is easy to forget this when you are not physically present in the Court. Do not say anything that you would not like recorded as part of the official record. Please remember to comport yourself accordingly. Do not work on your keyboard while on microphone. Please do not place the camera “upfront and personal” to you face. If your client is to appear, confirm you client’s connections before the case is called. Advise the court if you client is appearing and if you do or do not see the client on the hearing call or if they having problems with the connections. Email whatever new documents you want the court to review for the hearing prior to the case being called.
5. **Avoid “rapid speak”.** ZOOM is subject to audio and video delays. If you speak too quickly, neither the Court nor other parties will be able to hear an understand you.
6. **Use proper lighting.**
 - Check the lighting in the room. When necessary, please put lighting on your face and that of you client to ensure that you will be visible to the Judge.
 - Avoid having a bright light or bright sunlight in the background, as this will wash out your image.
 - Have a proper background. Check what is in your background. If you’re participating from home, consider the personal items in the background and what is being shown and recorded as part of the court record. Also, if participating from home, where possible, take steps to ensure that children, pets, etc. do not enter into the picture or make noise.
7. **Do not drive or walk while on ZOOM.** You must be in a room and stationary for your ZOOM hearing.

IX. CONCLUSION

This presentation has provided you with a brief overview of the procedures and responsibilities for serving as a guardian ad litem in Wayne County Probate Court. Feel free to use these materials for guidance in this area.