

2014

## **Asking the Court to Review the Conduct of a Guardian**

In certain circumstances, a guardian's conduct may be reviewed. These circumstances include if a guardian is acting in an abusive or neglectful manner towards the ward, in a manner outside the scope of his or her authority, or if the guardian is not performing his or her duties. By law, a paid guardian, such as a corporate guardian, may also be replaced if a previously unavailable volunteer or family guardian is available and the court finds that person's appointment would be in the ward's best interest.

This document provides legal information about how to ask the court to review the guardian's conduct. Filing a petition to review the guardian's conduct is a significant act. Depending on the applicable situation, alternative measures, such as informal dispute resolution, should be pursued before considering filing this type of petition. Consultation with an attorney about the nature of the law as applied to particular facts is recommended.

### **1. What type of conduct is subject to court review?**

For a guardian to be removed, the guardian's conduct must be deemed as unacceptable behavior as defined by state law. A petition for review may be brought for any of the following reasons:

- A. Failing to file timely an inventory or account, as required under this chapter that is accurate and complete.
- B. Committing fraud, waste, or mismanagement.
- C. Abusing or neglecting the ward or knowingly permitting others to do so.
- D. Engaging in self-dealing.
- E. Failing to provide adequately for the personal needs of the ward from the ward's available assets and income, including any available public benefits.
- F. Failing to exercise due diligence and reasonable care in assuring that the ward's personal needs are being met in the least restrictive environment consistent with the ward's needs and incapacities.
- G. Failing to act in the best interests of the ward.

- H. Failing to disclose conviction for a crime that would have prevented appointment of the person as guardian.
- I. Failing to disclose that the guardian is listed on Wisconsin Caregiver's Misconduct Registry.
- J. Failing to perform any duties of a guardian or performing acts prohibited to a guardian.
- K. A previously unavailable volunteer guardian is available to serve and that person's appointment would be in the best interests of the ward. Note: this provision is only about other persons now able to serve and not about the current guardian's conduct.

Wis. Stat. § 54.68(2) & (5).

Consultation with an attorney is recommended, especially if one is unsure whether the guardian's actions fall within these forms of inappropriate conduct.

If the reason why an individual is not satisfied with the guardian is not included within the above, that person should consider exploring other ways to resolve the issue(s). General interpersonal disagreements are unlikely to be sufficient grounds to remove a guardian.

## **2. How can a person file a petition to review the conduct of a guardian?**

To initiate the review of a guardian's conduct, an individual completes and files the form GN: 3670, "Petition for Review of Conduct of Guardian." This form may be obtained through the local Register in Probate or on the Wisconsin Circuit Court Access website, <http://wicourts.gov/forms1/index.htm>. A copy of the form, any other document submitted with the petition, the notice of hearing, and any other form as required by the court should be provided to the ward, the guardian, and any other person designated by the court. The hearing on the petition may be held not less than 10 days and no more than 60 days after the petition is filed. The court may authorize use by the petitioner of any of the methods of discovery specified in Wis. Stat. Ch. 804 in support of the petition to review conduct of the guardian. See Wis. Stat. § 54.68(3).

An individual who believes the guardian is not acting appropriately should be prepared to provide the court with evidence of the guardian's actions.

Note: The individual who signs the petition for review conduct of guardian is presenting to the court certain things. The act of signing a pleading attests that that the matters contained within the pleadings are true to the best of that signor's knowledge, information, and belief, formed after an inquiry reasonable under the circumstances, and that

- A. The paper is not being presented for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation.
- B. The claims, defenses, and other legal contentions stated in the paper are warranted by existing law or by a nonfrivolous argument for the extension, modification, or reversal of existing law or the establishment of new law.
- C. The allegations and other factual contentions stated in the paper have evidentiary support or, if specifically so identified, are likely to have evidentiary support after a reasonable opportunity for further investigation or discovery.
- D. The denials of factual contentions stated in the paper are warranted on the evidence or, if specifically so identified, are reasonably based on a lack of information or belief.

See Wis. Stat. § 802.05(2). If an individual files the petition for an improper purpose or files it frivolously, that individual may be subject to sanctions by the court.

### **3. Who May Ask the Court to Review the Guardian's Conduct?**

The statute does not expressly state who may file a petition for review the conduct of the guardian. At minimum, those who may file this petition includes the ward, adult protective services (APS), and any interested person as defined by Wis. Stat. § 54.01(17).

### **4. What Are the Ward's Rights?**

If the ward petitions the court, the ward may retain legal counsel. The ward has the right to contract for the payment of that attorney's fees. The selection of the ward's legal counsel is subject to the court's approval. The ward retains this right regardless of whether (1) the guardian consents to the retention of counsel or (2) the court find no cause for the court action. Wis. Stat. § 54.68(6)(b).

Regardless of who files the petition, the ward also maintains these rights:

- A. To have access to and communicate privately with the court and with governmental representatives, including the right to... initiate grievances, including under state and federal law regarding resident or patient rights, and the right to participate in administrative hearings and court proceedings.
- B. To have access to and communicate privately with representatives of the protection and advocacy agency and the board on aging and long-term care.
- C. To have access to, communicate privately with, and retain legal counsel.

- D. To exercise any other rights specifically reserved to the individual by statute or the constitutions of the state or the United States, including the rights to free speech, freedom of association, and the free exercise of religious expression.

Wis. Stat. § 54.25(25)(b)1,2,3 & 7.

## 5. What type of remedies might be entered against the guardian?

The court may:

- E. Order the guardian to file an inventory or other report or account required of the guardian.
- F. Require the guardian to reimburse the ward or the ward's estate for losses incurred as the result of the guardian's breach of a duty to the ward.
- G. Impose a forfeiture of up to \$10,000 on the guardian, or deny compensation for the guardian or both.
- H. Remove the guardian.
- I. Enter any other order that may be necessary or appropriate to compel the guardian to act in the best interests of the ward or to otherwise carry out the guardian's duties.  
Wis. Stat. § 54.68(4).
- J. Require the guardian to pay personally any costs of the proceeding, including costs of service and attorney fees.

Wis. Stat. § 54.68(6)(a).

**QUESTIONS? Call the Wisconsin Guardianship Support Center at 1-855-409-9410 or email at [guardian@gwaar.org](mailto:guardian@gwaar.org).**

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