

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

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Guardians have a responsibility to act in the best interests of their wards and to ensure the least restrictive environment possible. If concerns arise about the guardian's actions, including if a guardian is abusing or neglecting a ward, overstepping their authority, or not performing their duties, the court may review the conduct of the guardian and take actions that may be necessary to resolve the situation, including potentially replacing the guardian.

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 situation, there may be other options to explore first, such as mediation, filing a grievance with the state (if the guardian is a corporate guardian), or filing a report with county Adult Protective Services. It may be helpful to discuss a particular situation with a private attorney to determine whether review of a guardian's conduct is appropriate.

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

The court can review the conduct of a guardian for any of the following reasons:

- a. Failing to file timely an accurate and complete inventory or account, as required by Ch. 54, Wis. Stats.
- b. Committing fraud, waste, or mismanagement.
- c. Abusing or neglecting the ward or knowingly permitting others to do so.
- d. Knowingly isolating a ward from the ward's family members or violating a visitation order under [Wis. Stat. § 50.085\(2\)](#).
- e. Engaging in self-dealing.
- f. Failing to provide adequately for the personal needs of the ward from the ward's available assets and income, including any available public benefits.
- g. 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.
- h. Failing to act in the best interests of the ward.

- i. Failing to disclose conviction for a crime that would have prevented appointment of the person as guardian.
- j. Failing to disclose that the guardian is listed on Wisconsin Caregiver's Misconduct Registry.
- k. Failing to perform any duties of a guardian or performing acts prohibited to a guardian.

[Wis. Stat. § 54.68\(2\)](#). The same form may also be used if a previously unavailable volunteer guardian is now available to serve and that person's appointment would be in the best interests of the ward. [Wis. Stat. § 54.68\(5\)](#). Note: this provision is only about other persons now able to serve and not about the current guardian's conduct.

If the individual's reason for concern does not fall into any of these categories, they should consider exploring other options to resolve the issue(s). General interpersonal disagreements are unlikely to be sufficient grounds to remove a guardian.

## II. Who can ask the court to review the conduct of a guardian?

State law 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\(17\)](#).

## III. How can someone ask the court to review the conduct of a guardian?

An individual who believes a guardian is not acting appropriately can ask the court to review the guardian's conduct by filing court form GN-3670, "Petition for Review of Conduct of Guardian."<sup>1</sup> After the form and any supporting documentation have been filed, the court will schedule a hearing, which must take place at least 10 days after the date the petition is filed, but no more than 60 days after that date. The petitioner must provide a copy of the petition and any supporting documentation, the hearing notice, and any other documents the court might require to the ward, guardian, and any other persons the court specifies. The court may authorize the petitioner to use any of the methods of discovery specified in [Ch. 804, Wis. Stats.](#), in support of the petition. See [Wis. Stat. § 54.68\(3\)](#).

Note: when someone signs a court pleading, including a petition for review of conduct, they are attesting that the information they are submitting to the court is true to the best of their knowledge, information, and belief. They are also attesting that the petition is not being presented for any improper purpose, such as harassing someone or causing unnecessary delay in other court proceedings. If the court determines that the petition was filed for an improper purpose or that it was filed frivolously, the petitioner may be subject to court sanctions. For more information about the requirements for court pleadings generally, see [Wis. Stat. § 802.05\(2\)](#) or consult a private attorney for assistance.

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<sup>1</sup> Court forms are available online: <https://www.wicourts.gov/forms1/circuit/formcategory.jsp?Category=17>. Review local practice rules or consult with the register in probate whether there are any other forms that may need to be filed in a particular county.

#### IV. What rights does the ward have?

If the ward petitions the court to review their guardian's conduct, the ward has the right to have an attorney represent them. The ward may find their own attorney, subject to court approval, and may contract for payment of the attorney's fees without guardian consent. If the ward is unable to obtain an attorney on their own, they may ask the court to appoint an attorney to represent them.

No matter who files the petition, the ward also has the right to be present at any hearing regarding the guardianship and the right to have hearings in a location and manner that is accessible to them.

#### V. What can the court do if it finds the guardian has acted inappropriately?

If the court finds the guardian has acted inappropriately, it can take any of the following actions:

- a. Order the guardian to file an inventory or other report or account required of the guardian.
- b. 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.
- c. Impose a forfeiture of up to \$10,000 on the guardian, deny compensation for the guardian, or both.
- d. Remove the guardian.
- e. 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\(4\)](#).

The court can also require the guardian to personally pay any costs of the proceeding, including 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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