

Notice & Service Requirements for Appointment of Guardian and Order for Protective Services

Updated 9/2020

I. Introduction

This publication covers notice and service requirements for the appointment of a permanent guardian of an adult and orders for protective services/placement. It does not cover notice and service requirements for other types of proceedings, such as minor guardianships, temporary guardianships, proceedings involving the transfer of a guardianship from another state, or modifications/reviews of orders for protective services/placement.

The requirements for a permanent guardianship proceeding are, in some cases, slightly different than those for a protective services and/or placement proceeding. Read all requirements carefully to ensure that notice and service is properly delivered.

Local practice may vary – check with the county Register in Probate for any local rules you may need to follow.

II. What are “notice” and “service”?

Notice and service are legal concepts to make sure that everyone who is entitled to be informed of a legal proceeding gets the basic information they need to participate. “Notice” means making a party or participant aware of the case, its nature, and any relevant hearings. “Service” is the means by which the parties and participants are provided with notice.

III. “Who, what, and when” of service

The information below covers notice and service for appointment of a permanent guardian of an adult and a change of guardian. It includes who must provide notice and who must be served or otherwise receive notice, what must be provided, and the timeframes for providing notice.

It is **very important** to make sure that everyone who is entitled to notice is served. Verify addresses if possible; your county Register in Probate may be able to provide addresses for county agencies that must receive notice. If an interested person or party later claims not to have been served, the court may lose jurisdiction to proceed and be forced to dismiss the petition.

a. Who must provide notice and/or perform service



The petitioner (or petitioner's attorney, if they have one) is required to provide notice to all "parties" and "interested persons" (described below). Service can be performed in a number of different ways, depending on who is being served:

- Personal service: this generally means providing a copy of the notice/documents directly to the specified individual in person. The person providing service cannot be the petitioner or other party to the action or anyone named as an interested person. A disinterested individual or a process server can provide service.
- Certified/registered mail;
- Regular mail or fax.

b. Who must be served

Wisconsin statutes include two lists of individuals/organizations that must receive notice: a list of required recipients, and a list of "interested persons," whose receipt of notice can be waived by the court. Recipients may be served by any means unless otherwise noted. According to Wis. Stat. § 54.38(2), the list of required recipients includes:

- The ward/proposed ward;
 - **Must receive notice by personal service upon the individual**, unless in custody or confinement
 - If the individual is in custody or confinement, the petitioner shall serve notice on the custodian by registered/certified mail; the custodian must immediately serve it upon the ward/proposed ward
 - **Note:** "custody" and "confinement" are not defined. Some counties may take them to mean prison, jail, or other institutions that prevent direct access to the ward/proposed ward. Other counties may include nursing homes. Check with the Register in Probate at the courthouse if necessary
 - The person who serves the ward/proposed ward must inform the individual of the contents of the documents being served
- The current guardian, if any;
 - **Must receive notice by personal service or registered/certified mail**
- The ward/proposed ward's counsel, if any;
- The ward/proposed ward's guardian *ad litem* (independent attorney appointed by the court to represent the individual's best interests; the county Register in Probate can provide the appropriate contact information);
- Any presumptive adult heirs of the individual;
- Any other interested persons (below) unless specifically waived by the court);
- Agents under powers of attorney for health care and/or finances, if any;
- Any public or private agency, charity, or foundation from which the individual is receiving assistance;
- The proposed guardian (if not the petitioner)
- Any other person the court requires.

The list of **interested persons** is outlined in Wis. Stat. 54.01(17) and includes the following in addition to those listed above:

- The spouse or adult child of the proposed ward;
- For a proposed ward who has no spouse or child, other heirs as defined by law and who can be reasonably identified with due diligence;
- If the proposed ward has established a trust, the trustee(s);
- The federal and/or state Departments of Veterans Affairs, if the individual receives from or pays money to them;
- The county department of human services or social services, if the individual receives long-term support services or similar public benefits;
- The corporation counsel (county attorney) of the county in which the petition is filed; if it is filed somewhere other than the individual's county of residence, then the corporation counsel of the county of residence must also receive notice;
- Any other person required by the court.

c. What must be served

The petitioner must serve a copy of the Notice and Order of Hearing, the Petition, and any accompanying documents (e.g., an evaluation from a physician/psychologist, if it is filed with the petition). Interested persons should also receive a copy of the standard court form "Waiver and Consent to Petition Due to Incompetency," which will allow them to consent to the petition and waive their right to notice of any further hearings if they wish.

d. When service must happen

Service must happen at least ten days before the hearing. This time period excludes weekends and holidays, per Wis. Stat. § 801.15(1)(b).

IV. Proof of service

The petitioner must provide proof of service to the court by the time of the hearing. The person who serves the ward/proposed ward must complete the standard court form **Certificate of Service** (GN-3121). The petitioner must complete the standard court form **Affidavit of Service** (GN-3120) to indicate that other parties/interested persons have been served, whether by personal service or other means. Both forms must be signed in front of a notary.

V. Additional requirements for proceedings for protective placement/services

The requirements for notice and service for a proceeding for an order for protective placement/services are very similar to those for a permanent guardianship. A protective placement/services proceeding requires notice be provided to some additional individuals/entities:

- Any person/entity with physical custody of the individual (hospital, nursing home, etc.);



- The county department responsible for planning and provision of protective services and placement (typically the department of adult or elder protective services);
- The Wisconsin Department of Health Services, if the individual may be placed in one of the state centers for individuals with developmental disabilities.

As for a guardianship proceeding, check with the county Register in Probate for any local practices you may need to follow.

VI. References

Wisconsin guardianship law is outlined in [Ch. 54](#) of the Wisconsin Statutes. Please see Wis. Stat. § 54.01 for definitions of terms and Wis. Stat. § 54.38 for more information on notice and service procedures for a guardianship proceeding.

Protective placements/services proceedings are governed by [Ch. 55](#), Wis. Stats. Please see Wis. Stat. § 55.09 for more information on notice and service procedures for these proceedings.

Standard court forms are available from the state courts website: <http://www.wicourts.gov>.

QUESTIONS? Call the Wisconsin Guardianship Support Center at 1-855-409-9410 or email at guardian@gwaar.org.

Reproduction of this brochure is permitted and encouraged, so long as no modifications are made and credit to the Wisconsin Guardianship Support Center of the Greater Wisconsin Agency on Aging Resources, Inc., is retained.

This publication is provided for educational purposes only. The information contained herein is not intended, and should not be used, as legal advice. Application of the law depends upon individual facts and circumstances. In addition, statutes, regulations and case law are subject to change without notice. Consult a legal professional for assistance with individual legal issues.

