

Rights of a Proposed Ward in a Guardianship Case

Updated 07/2022

I. Introduction

A petition has been filed in the circuit court to appoint a guardian for you. You are known as a “proposed ward” in the guardianship process.

The petition must claim that you have a disability, called an “impairment.” The petition must also claim that because of your impairment, you are not able to manage your personal or financial decisions and you need a guardian.

As a proposed ward, you have certain rights. The purpose of this publication is to explain your rights as a proposed ward.

II. The role of the guardian *ad litem*

The court will appoint an attorney called a *guardian ad litem*, or GAL. The *guardian ad litem* is not your attorney or your guardian. Their role is to investigate the facts, interview all of the people involved, and report to the court whether they think the guardianship is in your best interests and the proposed guardian is the right person to be your guardian.

The GAL will explain the guardianship process and talk with you about your rights. The GAL will also talk with you about your opinions, concerns and wishes regarding the guardianship and the proposed guardian. You can decide how much information to share with the GAL. Keep in mind that the *guardian ad litem* might not agree that what you want is in your best interests.

III. Your right to advocacy counsel

If you do not agree with the guardianship petition, you have the right to hire your own lawyer to represent you or request that the court appoint one for you. This lawyer is called your “advocacy counsel.” Unlike a *guardian ad litem*, whose role is to tell the court what is in your best interests, your advocacy counsel’s role is to tell the court what you want.

Specific reasons why you may request the advocacy counsel include:

- You do not think you need a guardian, or
- You do not want the court to appoint the person proposed as your guardian, or
- You want to keep rights that the guardianship petition says you should lose, or



- You disagree with any other part of the guardianship petition.

You may find a lawyer on your own. If you want advocacy counsel and you are not able to find a lawyer on your own, you should tell the *guardian ad litem*. The *guardian ad litem* will ask the court to appoint advocacy counsel for you. The court must appoint an attorney for you if you request one.

Even if you do not ask for advocacy counsel, the *guardian ad litem* may ask the court to appoint an attorney for you if they think you should have one. In addition, any other person may ask the court to appoint advocacy counsel for you. If the court thinks you should have advocacy counsel, the court may appoint one even if nobody asks for one.

Your advocacy counsel will explain your opinions, concerns and wishes to the court. Your advocacy counsel will try to get the court to agree with your point of view. Your advocacy counsel may also present evidence and question witnesses on your behalf.

IV. Your right to a jury trial

You may have a trial by jury if:

- The *guardian ad litem* asks for one, or
- Your advocacy counsel asks for one, or
- You ask for one.

One way to ask for a jury trial is to tell your *guardian ad litem* or your advocacy counsel that you want one. They have a duty to let the court know about your request. Or you can write a letter to the court asking for a jury trial.

If you want a jury trial, you should tell your *guardian ad litem* or your attorney or mail a letter requesting a jury trial as early as possible. The court must receive the request at least 48 hours before the time set for the hearing – otherwise you lose your right to a trial by jury.

V. Your rights prior to a competency evaluation

As part of the guardianship process, a physician or a psychologist must examine you. This examination is sometimes called a “competency examination.” The physician or psychologist must write a report with their opinion about whether you have an impairment and need a guardian. This physician or psychologist must give this report to the court.

Unlike regular visits to your primary care provider, the physician or psychologist who examines you does not have to keep the things you say during this examination private. Things you say during this visit might be used in court during the guardianship hearing. Things you say might be used to try to convince the court that you need a guardian.

Unless the court orders you to participate in this examination, you have the right to refuse to



participate. Even if the court orders you to participate, you have the right to refuse to speak to the physician or psychologist.

Even if you do not speak to the physician or psychologist, the physician or psychologist must write a report for the court.

VI. Your right to an independent evaluation

You have the right to a second, independent medical or psychological evaluation. You may choose to have this examination if you are unhappy with the original examination. You must pay for this independent examination if you can afford it. If you cannot afford the examination, the court must pay for it.

You have the right to use the report from the independent medical or psychological examination in court during the guardianship proceeding. You also have a right to have the independent physician or psychologist testify during the guardianship hearing.

VII. Your right to be present at any hearing

You have the right to attend any hearing regarding the guardianship. The person who petitioned for guardianship must make sure that you have transportation to the hearing. If you do not want to attend a hearing, you should tell the *guardian ad litem*. The *guardian ad litem* can excuse you from attendance at the hearing.

You should think very carefully before you decide not to attend the hearing. The hearing is very important. If the court appoints a guardian for you, it changes your rights. Most judges want to see you at the hearing, because they feel that they can make a better decision about your need for a guardian when they can see you in person.

VIII. Your right to an accessible hearing

You have the right to have any hearing regarding the guardianship in a place and manner that is accessible to you. For example, if you use a wheelchair, the courthouse must have a ramp or an elevator. If the courthouse is not accessible to you, the hearing must be moved to a different, more accessible location.

You also have a right to accommodations for any disability. For example, if you have a hearing impairment, you have a right to assistive listening devices or a sign language interpreter. You also have a right to a translator if English is not your preferred language.

The *guardian ad litem* must tell the court if you need to have a hearing held somewhere other than the courthouse or if you need accommodations. You should let the *guardian ad litem* know about your needs well before the date of the hearing.

IX. Your right to review your guardianship



If a guardian is appointed and later you think your guardianship should be changed or ended, you have the right to ask the court to review:

- Whether you need a guardian, or
- Whether a different person may be a better guardian for you, or
- Whether you should have more power to make your own decisions.

Before you ask the court for review, make sure:

- It has been at least 180 days since you had a guardianship hearing, or
- It is an emergency, or
- Your situation has changed and you have new evidence for the court.

X. If you have questions

If you have questions about any part of the guardianship process, you can:

- Ask the *guardian ad litem*,
- Ask the court, or
- Contact the Wisconsin Guardianship Support Center.

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.

