

THE RIGHTS OF A PROPOSED WARD **IN A GUARDIANSHIP CASE**

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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*. The *guardian ad litem* is an attorney, but she or he is not your attorney. The *guardian ad litem* is not your guardian.

The *guardian ad litem*'s job is to investigate the facts and report to the court about whether she or he thinks the guardianship is in your best interests. The *guardian ad litem* will explain the guardianship process and talk with you about your rights. The *guardian ad litem* 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 *guardian ad litem* about your opinions, concerns and wishes. 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 called “advocacy counsel.”



You have the right to advocacy counsel if you request one. 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 advocacy counsel on your own. If you want advocacy counsel and you are not able to find one 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 advocacy counsel for you if you request one.

Even if you do not ask for an advocacy counsel, the *guardian ad litem* may ask the court to appoint one if she or he thinks you should have one. In addition, any other person may ask the court to appoint an advocacy counsel for you. If the court thinks you should have an 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 Examination

As part of the guardianship, a physician or a psychologist must examine you. This examination is sometimes called a “competency examination.” The physician or psychologist must meet with you in person. The physician or psychologist must write a report with his/her 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 physician, your doctor 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 in person 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 are able to make a better decision about your need for a guardian when they can see you in person.

VIII. Your Right To A Hearing In An Accessible Location

You have the right to have any hearing regarding the guardianship in a place 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.

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 guardian@gwaar.org.

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