

DUTIES OF GUARDIANS AD LITEM

Note: The guardian ad litem is not entitled to court-ordered compensation until he/she states on the record or in the report that he/she has complied with these duties. MCL 700.5305(2).

In addition to those duties set forth in the statutes, the Macomb County Probate Court also requests that you include the following information in your written report to the Court:

- The place, date and time you served the Ward with the petition and notice of hearing.
- Question the petitioner about all interested persons, and obtain the interested persons' names, addresses and telephone numbers. Include this information in your written report.

Pursuant to MCL 700.5305(1) and MCL 700.5306a(2), your duties as guardian ad litem include all the following:

1. Visit the individual alleged to be incapacitated.
2. Explain to the individual the nature, purpose, and legal effects of the appointment of a guardian.
3. Give the individual form PC 626 that outlines the rights in MCL 700.5306a(1).
4. Inform the individual that if a guardian is appointed, the guardian may have the power to execute a do-not-resuscitate order and/or physician orders for scope of treatment (POST) form on behalf of the individual.
5. Explain to the individual the hearing procedure and the individual's rights in the hearing procedure, including but not limited to:
 - (a) the right to contest the petition.
 - (b) the right to request limits on the guardian's powers, including a limitation on the power to execute a do-not-resuscitate order and/or a physician orders for scope of treatment (POST) form on behalf of the individual.
 - (c) the right to object to a particular person being appointed guardian.
 - (d) the right to be present at the hearing.
 - (e) the right to be represented by legal counsel and that legal counsel will be appointed for the person if s/he is unable to afford legal counsel.
6. Inform the individual of the name of any person known to be seeking appointment as guardian.
7. Ask the individual and the petitioner about the amount of cash and property readily convertible into cash that is in the individual's estate.
8. Make determinations and inform the court of those determinations, on all the following:
 - (a) whether the individual alleged to be incapacitated wishes to be present at the hearing.
 - (b) whether the individual alleged to be incapacitated wishes to contest the petition.
 - (c) whether the individual alleged to be incapacitated wishes limits be placed on the guardian's powers.
 - (d) whether the individual alleged to be incapacitated objects to having a do-not-resuscitate order and/or physician orders for scope of treatment (POST) form executed on his or her behalf.
 - (e) whether the individual alleged to be incapacitated objects to a particular person being appointed guardian.

- (f) whether there is one or more appropriate alternatives to the appointment of a full guardian or whether other action should be taken in addition to the appointment of a guardian after considering:
 - (i) appointment of a limited guardian, including the specific powers and limitation on those powers the guardian ad litem believes appropriate.
 - (ii) appointment of a conservator or another protective order under 700.5401 et seq.
 - (iii) execution of a patient advocate designation, do-not-resuscitate declaration, physician orders for scope of treatment form, or durable power of attorney with or without limitations on purpose, authority, or duration.
 - (iv) available support from family members. Family members may often take responsibility for the care of an individual. Also, if the individual should be diagnosed as having a reduced life expectancy because of an advanced illness, state law allows a member of the individual's immediate family or next of kin to make informed decisions regarding the individual receiving, continuing, discontinuing and refusing medical treatment and may choose palliative treatment and adequate and appropriate pain and symptom management.
- (g) whether a disagreement or dispute related to the guardianship petition might be resolved through court-ordered mediation.

SERVING AS GAL IN ESTATE AND CONSERVATORSHIP PROCEEDINGS

1. The most frequent reason a GAL is appointed in estate proceedings is to review contested accountings.
2. In estates under supervised administration, accountings must be filed annually and, unless all interested persons consent, the matter must be set for hearing.
3. Items to look for when review accountings as GAL:
 - a. Receipts for all items?
 - b. Math verification – check subtotals and totals.
 - c. Reasonableness of expenses – use your common sense.
4. Attorney and Fiduciary Fee Disputes.
 - a. This may be part of an accounting, and is often at the heart of the controversy between the interested persons.
 - b. Account must have attached a detailed itemized statement of all fiduciary and attorney fees.
 - c. Fees charged must be within the accounting period.