

Cass County Probate Court

Law & Courts Building
60296 M-62, Cassopolis, MI 49031
Phone: (269) 445-4454 Fax: (269) 445-4453

This document is for informational purposes. It is not a substitute for legal advice. The Cass County Probate Court staff cannot give you legal advice and cannot tell you what to do. If you have legal questions, you should speak with an attorney.

Guardianship – Developmentally Disabled

Filing Fee: No initial filing fee.

Forms Used:

[PC 658](#) Petition for Appt. of Guardian, Individual with Alleged Developmental Disability

[PC 659](#) Report to Accompany Petition

Report and Evaluation completed within one year of filing. MCL 330.1612

Cass County Form. [Testimony of Interested Persons Form](#)

Cass County Form: [Criminal History Form for Proposed Fiduciary](#)

[PC 661](#) Notice of Right to Request Dis. of Guardian or Mod. Of Guardianship Order
Must be personally served on the individual to be protected.

[PC 562](#) Notice of Hearing

[PC 617](#) Declaration of Intent to Give Notice by Publication

Used if the address for an interested party is unknown.

[PC 563](#) Publication of Notice of Hearing

Used if the address for an interested party is unknown.

[PC 564](#) Proof of Service

[PC 571](#) Acceptance of Appointment

[MC 97, Personal Identifying Information Form](#)

[MC 97a, Personal Identifying Information - Addendum](#)

After the guardian is appointed:

[PC 660](#) Order Appointing Guardian for Individual with Developmental Disability

[PC 662](#) Letters of Guardianship of Individual with Developmental Disability

[PC 663](#) Report of Guardian on Condition of Individual with Developmental Disability

This is due annually on the date of the anniversary of the appointment.

[PC 564](#) Proof of Service

The annual report must be served on the Ward and all interested persons.

[PC 583](#) or [PC 584](#) Account of Fiduciary

An account must be filed yearly if the guardian has also been appointed over the estate.

[PC 585a](#) Petition to Allow Account

*All SCAO approved forms are available at the website listed below:

<https://courts.michigan.gov/Administration/SCAO/Forms/Pages/Probate-Index.aspx>

Interested Persons:

The interested persons need to be listed on the petition, along with their proper address. Per MCR 5.125(C)(19), the interested persons are the individual, the individual's attorney, the

petitioner, the individual's presumptive heirs, preparer of the report or another appropriate person who performed an evaluation, director of any facility where the individual may be residing, the individual's guardian ad litem, if appointed, and any other person the court may determine. If an interested person is not included or is not properly served, ***the hearing cannot be held***. Per [MCL 330.1614](#), the following people must be served with the Notice of Hearing:

1. The respondent;
2. The respondent's presumptive heirs;
 1. Spouse, if no spouse then children, if none then parents, etc.
3. The preparer of the report;
4. The director of the facility where the respondent resides;
5. The respondent's legal counsel;
6. The Respondent's guardian ad litem, if one has been appointed.

Service:

The Petitioner must serve a copy of the Petition and Notice of Hearing on the person to be protected and all interested persons. The interested parties must be served 14 days prior to the hearing if served by mail, or 7 days prior to the hearing if served personally. The person to be protected must be served personally and must be served with [PC 661](#) – Notice of Right to Request Dismissal of Guardian or Modification of Guardianship Order.

The Petitioner must then submit a Proof of Service ([PC 564](#)) prior to the hearing date confirming that all interested persons were served. If all interested persons did not receive proper service, the Judge may dismiss the petition or adjourn the hearing to a later date. Proper notice of the new hearing date will then have to be served on the interested persons by the Petitioner. An interested person can waive notice of a hearing and consent to the relief requested in the petition by completing [PC 561](#) Waiver/Consent. *MCR 5.104(B)(1)*.

Publication may be completed for interested persons whose address or whereabouts are unknown. *MCR 5.105(A)(3)*. In such situations, the Petitioner must complete [PC 617](#) – Declaration of Intent to Give Notice by Publication and [PC 563](#) – Publication of Notice of hearing. The notice must be published in a Cass County newspaper once at least 14 days prior to the hearing. The publication fee is paid directly to the newspaper. For more information on publication, you may wish to contact the newspaper directly. Leader Publications is commonly used as they publish four papers in Cass County. The newspaper will provide the Petitioner with a Proof of Publication, which the Petitioner must file with the Court prior to the hearing.

Hearing Date:

The petition will be set for a hearing by the Court, which will typically be held within 30 days of the date of filing. ***The petitioner must attend the hearing or the petition will be dismissed.*** The preparer of the psychological report must attend the hearing and provide testimony. The subject of the proceeding and his/her counsel must also attend the hearing.

Appointment of an Attorney

The Court must appoint an attorney for the subject of the petition. [MCL 330.1615](#). It will be the attorney's responsibility to visit the person and make a recommendation to the court as to whether or not the guardianship is needed. The attorney charges a fee for their service, which is the responsibility of the Petitioner to pay. This fee does not have to be paid at the time of the filing, but the Court will seek reimbursement at a later date.

Suitability of Proposed Guardian

To evaluate the suitability of the proposed guardian, the Court will request a criminal history check of the proposed fiduciary. Therefore, the proposed guardian will need to complete the Criminal History Authorization form and submit it to the Court along with a copy of their driver's license. This form and the results of the search will be maintained confidentially.

Guardianship for an Individual with a Developmental Disability

Terms and Definitions

- Petition:** The form filed with the Probate Court that tells the Court why a guardianship is needed and who should be appointed.
- Petitioner:** The person who signs the petition and brings the matter to the attention of the court.
- Respondent:** The subject of the petition who is believed to be an individual with a developmental disability for whom the petitioner is seeking a guardian.
- Ward:** Once the Judge determines that the Respondent has a developmental disability and is in need a guardian, he/she is named a Ward of the Guardian.
- Guardian of the Estate:** The person appointed by the Court who has legal authority to manage the financial affairs of an individual with a developmental disability.
- Guardian of the Person:** The person appointed by the Court who has legal authority to make decisions on behalf of an individual with a developmental disability regarding the person and his/her well-being
- Guardian ad Litem:** A person appointed by the Judge to investigate and represent the best interests of the respondent.
- Developmental Disability** Per [MCL 330.1100\(a\)\(25\)](#), *“Developmental disability means either of the following:*
(a) If applied to an individual over than 5 years of age, a severe, chronic condition that meets all of the following requirements:
(i) Is attributable to a mental or physical impairment or a combination of mental and physical impairments;
(ii) Is manifested before the individual is 22 years old;
(iii) Is likely to continue indefinitely;
(iv) Is results in substantial functional limitations in 3 or more of the following areas of major life activity:

- *Self-care, receptive and expressive language, learning, mobility, self-direction, capacity for independent living, economic self-sufficiency.*
- (v) *Reflects the individual's need for a combination and sequence of special, interdisciplinary, or generic care, treatment, or other services that are of lifelong or extended duration and are individually planned and coordinated.*
- (b) *If applied to a minor from birth to 5 years of age, a substantial developmental delay or a specific congenital or acquired condition with a high probability of resulting in developmental disability as defined in subdivision (a) if services are not provided."*

Overview

Reason for a Guardianship

A guardianship establishes a relationship between the Guardian and the ward similar to that of a parent child relationship. A guardianship for a developmentally disabled person should promote and protect the well-being of the ward, as well as encourage the development of maximum self-reliance for the ward. The Guardian's duties and responsibilities to the ward are determined by the Probate Court based on the needs and abilities of the individual with a developmental disability. [MCL 330.1602](#)

What are the different types of guardianships?

Depending on the needs of the respondent, the Court may appoint a guardian over the estate and/or a guardian over the person. A guardian over the estate has authority to handle the financial affairs of that individual, while the guardian over the person has authority to make decisions regarding the care and well-being of an individual with a disability.

The guardian can be appointed as plenary or partial depending on the ward's needs and abilities. If someone is appointed as plenary guardian, he/she has all the authority of a full guardian. [MCL 330.1600\(d\)](#). A partial guardian possesses fewer than all of the legal rights and powers of a plenary guardian. [MCL 330.1600\(e\)](#). and the appointment will be for a term not to exceed five years [MCL 330.1626\(2\)](#). The partial guardian's authority will be specifically listed on the Court Order and Letters of Guardianship.

Additionally, the guardian can also be appointed on a temporary basis, if necessary for the welfare or protection of the individual with a developmental disability. If a temporary guardian is appointed, his/her duties will be specifically noted on the Court's order and the letters of guardianship. [MCL 330.1607](#). Finally, the court can appoint a standby guardian, who can act upon the death, incapacity, resignation, or temporary absence of the guardian without a court proceeding. [MCL 330.1640](#).

Who can file the petition?

The petition can be filed by the individual with a developmental disability or an interested person/entity, which includes an adult relative or friend, an official or representative of a public or private agency, corporation, or an association concerned with the individual's welfare. [MCL 330.1600\(c\)](#).

Where do you file the petition?

The proper venue for a guardianship petition is the county in which the individual resides or is found. [MCL 330.1600\(b\)](#).

What are the Rights of the Respondent?

The subject of the guardianship proceeding has a right to:

- Have a trial by jury;
- Present evidence and cross-examine witnesses;
- Have a hearing that is closed to the public;
- Attend the hearing;
- Request an independent evaluation.

[MCL 330.1617](#)

Hearing

The Petitioner must attend the hearing or the petition will be dismissed. The petitioner must provide testimony and evidence establishing that the appointment of a guardian is necessary. The Court shall appoint a guardian if satisfied by clear and convincing evidence that the statutory grounds for appointment have been met.

Report

The applicable statute, [MCL 330.1612](#), requires that a report accompany the petition. Among other requirements, it must contain a description of the individual's developmental disability, current evaluation of his/her condition, an opinion regarding the need for guardianship, and a recommendation regarding the most appropriate rehabilitation and living plan. The psychological tests/evaluations which the report are based upon must have been performed within the last year. ***The individual who completed the report must testify in person at the court hearing.** (*This report will not be part of the public record.*)

What if an Emergency Exists?

If an emergency exists, the Judge of Probate may appoint a temporary guardian until a full hearing can be held. [MCL 330.1607](#). The petitioner should check box #14 on the petition and state, in detail, the nature of the emergency. The Court may hear the matter on an emergency basis. If so, the court will appoint an attorney and schedule an emergency hearing. If clear and convincing evidence establishes that it is necessary, the Court may appoint a temporary guardian, whose duties will be specifically listed in the court order. The hearing on the permanent guardianship will be set by the Court within 14 days.

Who can be Appointed as Guardian?

Any person or agency that the Court deems suitable can be appointed as the guardian, and the preference of Respondent will be considered by the Court. [MCL 330.1628](#).

Responsibilities of a Guardian – D.D.

The guardian of an individual with a developmental disability has many responsibilities that differ based on the appointment. A plenary guardian over the person basically has the same powers, rights, and duties respecting the ward that a parent has for a minor child, such as the authority to make decisions about medical care and where the ward should live. If the guardian is also appointed over the estate, he/she also has the authority to manage the assets of the individual. A partial guardian only has the powers that are specifically listed on the Court Order and Letters of Guardianship.

The guardian over the person must file an annual report each year on the condition of the ward. The report is due on the anniversary of the date of appointment as guardian. If also appointed over the estate, the guardian must file an inventory within 56 days of appointment and must file an annual accounting. The Court will send out a pre-notice reminder along with the necessary paperwork around the due date of the report. The Guardian must serve the annual report on the ward, the person who has principal care and custody of the ward, the ward's spouse and children, or if no living children, then the presumptive heirs of the ward.

As a reminder of the required filings, the Court will mail the guardian a Notice of Duties after appointment. An example can be found on the last page of this handout. ****The court cannot assist the guardian in filling out the required filings. Failure to file the required paperwork can result in the suspension of the guardian's authority.***

Attorney for the Petitioner

The law regarding guardianships is complex, and the court personnel cannot give you legal advice or act as your attorney. Failure to understand the applicable law and court rules is not an excuse for non-compliance. Therefore, it is recommended that the Petitioner seek the advice of an attorney. This informational packet and forms are provided to help you understand the procedure involved. It is not a complete statement of the law and it is not intended to teach you the law. If you have legal questions, you will need to speak with an attorney.

Statutes and Court Rules

- The Michigan Compiled Laws (MCL) that are referenced in this document can be accessed through the link below:
 - [MCL Search](#)
- Many resources can be found on the Michigan Courts website, including the current court rules and the Probate Court forms.
 - [Chapter 5 - Michigan Court Rules](#)

Legal Resources

- **State Bar of Michigan** - <https://www.michbar.org/>
 - **Legal Resource and Referral Center** - <https://lrs.michbar.org/>
- **Michigan Legal Help** - <http://michiganlegalhelp.org/>
- **Legal Aid** - Services are available to individuals who are low-income or over 60 years old, and live in Cass, Kalamazoo, Van Buren, or St. Joseph counties.
 - Contact: (888) 783-8190
 - <https://www.lawestmi.org/>
- **Cass County Council on Aging** - They offer a free legal clinic on a monthly basis that is available to seniors and individuals with disabilities. Please call the organization to learn more. An appointment is required.
 - Contact: (269) 445-8110
 - <http://casscoa.org/>
- **Elder Law of Michigan, Inc.** - They offer a variety of services including pension counseling, benefits access counseling, technical services, and professional services.
 - Contact: (866) 400-9164
 - <https://www.elderlawofmi.org/>

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**The information contained in this notice is an example of the Notice generated by the Court's case management system. After a guardian is appointed, the Court will mail the fiduciary a Notice that will be specific to that guardianship.*

Notice of Duties for Guardian of Developmentally Disabled

As Required by Michigan Court Rules You are Notified:

You are required to file with this court a written report on the indicated form(s) and at the indicated times. Forms are available at the court.

CHANGE OF ADDRESS: You are required to promptly inform the court of any change in the ward's address within 14 days of the change. You are also required to keep the court and interested persons informed in writing within 7 days of any change of your address.

ANNUAL REPORT: Your annual report on condition of the individual with developmental disability is due on the anniversary of your appointment as guardian each year. (Use form PC 663).

ACCOUNTS: You must file with this court once a year, either on the anniversary date of your letters of authority or on another date you choose (you must notify the court of this date) or more often if the court directs, a complete itemized accounting of your administration of the estate. On termination of the individual's disability, you shall account to the court or to the individual or that individual's successors. The accounts must be served on the required persons at the same time they are filed with the court, along with proof of service. (Use form PC 583, PC 584 or PC 648, 'Account').

INVENTORY: You are required by law to prepare an inventory of the assets of the estate that you have been given authority over within 5 days from the date of your appointment.

**The sections regarding Accounts and Inventory only apply if the guardian has been appointed over the estate.*

DEATH OF WARD: If the protected individual dies during the guardianship, you must give written notification to the court within 14 days of the individual's date of death. If accounts are required to be filed with the court, a final account must be filed within 56 days of the date of death.

DELEGATION OF DUTIES: You are required by law to notify the court when you delegate duties under a durable power of attorney.

ATTENTION: The above provisions are reporting duties only and are not the only duties required by you. These mandatory provisions are specified in court rules adopted by the Michigan Supreme Court. Your failure to comply may require the court to appoint a special fiduciary in your place and to suspend your powers. This may result in your removal as fiduciary. The court is prohibited by statute from giving you legal advice.

Keep this notice for future reference.

MCR 5.202, MCR 5.402(D), MCR 5.405(C), MCR 5.406(A), MCR 5.409