

# GUARDIANSHIP: PERSONS WITH DEVELOPMENTAL DISABILITY

Montcalm County Probate Court  
Hon. Charles W. Simon, III  
Montcalm County Court Complex  
625 North State Street  
Stanton, Michigan 48888  
(989) 831-7316

Office Hours: Monday-Friday  
8:00 a.m. – 5:00 p.m.

The Court and the Court's staff are prohibited by law (Section 1211 of the Estates and Protected Individual's Code [EPIC]) from providing legal advice and assistance in completing forms. The information, forms, and instructions are intended to provide general information concerning filing procedures and may be useful as a guide. This is the only assistance that can be provided by the court's staff. *If, after reviewing this information, you have any questions or need assistance in completing the forms consider contacting an attorney for assistance.*

## **WHEN IS A GUARDIANSHIP NECESSARY?**

Guardianships for persons diagnosed with a developmental disability are necessary when a developmentally disabled person needs protection for any reason, including protection from neglect, exploitation, or abuse. Generally, a guardianship for a developmentally disabled person is filed after the individual attains the age of majority because a parent can no longer make decisions on the individual's behalf.

## **WHAT IS A DEVELOPMENTAL**

**DISABILITY?** The law defines a developmental disability as a severe, chronic condition that meets all of the following 1) it is attributable to a mental or physical impairment or a combination of mental and physical impairments; 2) it was manifested before the individual was 22 years old; 3) it is likely to continue indefinitely; 4) it results in substantial functional limitations in at least three of the following major life activities: self-care, receptive and expressive language, learning, mobility, self-direction, capacity for independent living, economic self-sufficiency; and 5) it 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.

## **WHAT ARE THE PURPOSES OF A**

**GUARDIANSHIP?** Guardianships for individuals with developmental disability shall be: 1) utilized only as is necessary to promote and protect the well-being of the individual, including protection from neglect, exploitation and abuse; 2) designed to encourage the development of maximum self-reliance and independence in the individual; and 3) ordered only to the extent necessitated by the individual's actual mental and adaptive limitations.

## **WHO MAY PETITION FOR APPOINTMENT OF A GUARDIAN?**

A petition for appointment of a guardian for an individual who has been diagnosed as developmentally disabled may be filed by any interested person such as an adult relative or friend of the individual, a representative of a public or private agency, corporation, or association concerned with the person's welfare.

**THE GUARDIANSHIP PROCESS:** The local Community Mental Health office, the Montcalm Center for Behavioral Health, generally provides input and evaluations to determine the need for guardianship services for an adult with a developmental disability. The family many times has had some contact with Community Mental Health and the need for the appointment of a guardian becomes known when the individual nears the age of eighteen. Community Mental Health can arrange for and/or conduct the required evaluations and makes recommendations to the Court. Their offices are located in the second building south of the court complex.

The Petition for Appointment of Guardian for an individual with developmental disability (PC 658) must be accompanied by a Report to Accompany Petition (PC 659) which includes an evaluation of the mental, physical, social, educational adaptive behavior and social skills of the person. The name and title of the person performing such evaluations and the dates performed (which must be within one year of the date of filing the petition) must be included on this report and, in addition, a list of all psychotropic medications as well as any and all other medications that the individual is receiving on a continual basis that may or may not affect behavior.

If the alleged developmentally disabled person has recently been attending school, it may be that the school psychologist has the information and evaluations that will be needed.

When a petition for appointment of a guardian of an individual with developmental disability and the accompanying report are completed, the petitioner should bring these documents to the Probate Court. The petition and accompanying report will be reviewed for completeness and compliance with the Mental Health Code. A date for a hearing on the petition will be scheduled and the Court will appoint legal counsel for the individual with alleged developmental disability.

If the petitioner is represented by an attorney, the attorney will prepare the necessary legal documents and notices and cause them to be served on

interested persons. The attorney will also insure that either a person who prepared the report or a person who performed an evaluation that served in part as a basis for the report testifies at the hearing. If the petitioner is not represented by an attorney, they will be responsible for doing those things that would normally be done by the attorney. IT IS THE RESPONSIBILITY OF THE PETITIONER to bring the alleged developmentally disabled individual to the hearing.

An individual with developmental disability in a guardianship proceeding has the right to:

1. A jury trial;
2. Present evidence and to confront and cross-examine witnesses;
3. A closed hearing;
4. To be present at all proceedings; and
5. To secure an independent evaluation at his/her own expense or at the expense of the State if the alleged individual with developmental disabilities is indigent.

If the court, after a full hearing and testimony, determines that a guardian is required, the appointment will then be made. The guardian must provide an acceptance of appointment or bond so Letters of Guardianship can be issued. A guardian appointed by the Court shall not have the power, unless specified by court order, to place an individual with developmental disability in a facility.

A Notice of Right to Request Dismissal or Modification of Guardianship Order (PC 661) will be served on the ward. This notice informs the ward about his/her rights regarding future requests for modification or dismissal of the guardianship.

It is a good idea to nominate a stand-by guardian at the time of filing the petition. The Court can make a determination during the hearing and appoint the stand-by guardian, who would then file an Acceptance of Appointment also. In case of an emergency and the guardian is unable to act, the stand-by guardian is then in place to make important decisions concerning the ward.

### **WHO MAY BE APPOINTED GUARDIAN?**

The Court may appoint as guardian for an individual with developmental disability any suitable individual or agency, public or private, including a private association capable of conducting an active guardianship program for an individual with developmental disability. The Court shall not appoint the Department of Mental Health as guardian or any other agency, public or private, that is directly providing services to the individual with developmental disability.

Before the appointment, the Court shall make a reasonable effort to question the individual concerning his or her preference regarding the person to be appointed as guardian, and any preference indicated shall be given due consideration.

**WHAT ARE THE DUTIES OF THE GUARDIAN?** To the extent ordered by the Court, the guardian has the following duties:

1. Custody of the ward;
2. Make provisions from the ward's estate or other sources for the ward's care, comfort and maintenance;
3. The duty to make a reasonable effort to secure for the ward training, education, medical and psychological services, and social and vocational opportunities that are appropriate and as well as assist the ward in the development of maximum self-reliance and independence;
4. Within 56 days of the appointment, the guardian of the estate must file with the court a complete inventory of the ward's assets and provide a copy to the ward, his/her presumptive heirs and the parent or guardian with whom the individual resides;
5. The guardian of the individual shall file with the Court not less than annually on the anniversary date of appointment, a report of guardian on the ward's current mental, physical and social condition, living arrangements, etc. A copy of this report shall also be provided to the ward, the ward's presumptive heirs and the parent or guardian with whom the individual resides.

6. The guardian of the estate shall file with the Court not less than annually on the anniversary date of appointment, an account of fiduciary and provide a copy to the ward, the ward's presumptive heirs and the parent or guardian with whom the individual resides.

### **WHEN MAY A GUARDIAN BE DISCHARGED OR HAVE HIS/HER DUTIES MODIFIED?**

A guardian for an individual with developmental disability may be discharged or have his/her duties modified when the individual's capacity to perform the tasks necessary for the care of his/her person and/or the management of his/her estate have changed so as to warrant modification or discharge. The individual with developmental disability, the person's guardian, or any interested person on his/her behalf may petition the Court for a discharge or modification order. A request if made by the individual with developmental disability may be communicated to the Court by any means, including oral communication. Upon receipt of this petition, the court shall conduct a hearing.

**FURTHER QUESTIONS:** If you have questions after reading this pamphlet, you should discuss them with an attorney.

Michigan's Mental Health Code contains the law dealing with the appointment of guardians for developmentally disabled persons. The laws, court rules and forms are available online at [www.montcalm.org/probate.asp](http://www.montcalm.org/probate.asp).