

Appointment of Guardian of Incapacitated Individual Checklist

The following checklist is based on [MCL 700.5303](#) and [MCL 700.5306](#).

- The person intending to file the petition has been provided with written information setting out alternatives to full guardianship. [MCL 700.5303\(2\)](#).
- Venue is proper. [MCL 700.5302](#).
- Petition contains specific examples of alleged incapacitated individual's recent conduct demonstrating a need for appointment. [MCL 700.5303\(1\)](#).
- Ensure alleged incapacitated individual resides in this state, or is present in this state and has a significant connection¹ to this state. [MCL 700.5301b\(1\)](#).
- Schedule hearing to determine whether individual is incapacitated. [MCL 700.5303\(3\)](#).
- Appoint guardian ad litem to represent alleged incapacitated individual, unless he/she has legal counsel. [MCL 700.5303\(3\)](#).
- May order examination of alleged incapacitated individual by physician or mental health professional. [MCL 700.5304\(1\)](#).

¹ "In determining if the individual for whom a guardian is sought has a significant connection to this state under [[MCL 700.5301b\(1\)\(b\)](#)], the court shall consider all of the following factors: (a) The wishes of the individual[;] (b) The location of the individual's family and other interested persons[;] (c) The length and time the individual was present in this state and the duration of any absence[;] (d) The location of the individual's property[;] (e) The extent to which the individual has ties to this state, such as voting registration, state tax return filing, vehicle registration, driver license, social relationship, and receipt of services[;] (f) Any other factor the court considers relevant." [MCL 700.5301b\(2\)](#).

- May need to determine reasonableness of evaluation fee if alleged incapacitated individual secured an independent evaluation and is indigent. [MCL 700.5304\(2\)](#).
- If examination ordered by court, proper report has been filed within five days of scheduled hearing on incapacity. [MCL 700.5304\(1\)](#); [MCL 700.5304\(3\)](#).
- May permit use of videoconferencing technology in accordance with [MCR 2.407](#), if requested by a participant or sua sponte.² [MCR 5.140\(A\)](#). “[I]f the subject of the petition wants to be physically present, the court must allow the individual to be present.” [MCR 5.140\(C\)](#). A minor has the right to be present at a minor guardianship hearing concerning him or her if the minor is age 14 or older. *Id.* Notwithstanding [MCR 2.407\(B\)\(5\)](#) and an individual’s right to be present at a hearing on a petition when he or she is the subject of the petition, “the use of videoconferencing technology is presumed in all uncontested petitions or motions in guardianship, conservatorship, protected individual and decedent estates.” [MCR 5.140\(C\)](#).
- If alleged incapacitated individual wishes to be present at hearing on incapacity, take all practical steps to ensure presence, including moving the hearing site. [MCL 700.5304\(4\)](#).
- This court is located in the place where the incapacitated individual resides or is present, or if admitted to an institution by court order, is located in the county where that institution is located. [MCL 700.5302](#).
- Ensure proper notice of hearing given or waived by all interested parties. [MCL 700.5311](#); [MCR 5.125\(C\)\(23\)](#).
- Identify parties and interested persons.
- State case history.
- Ask guardian ad litem if he/she complied with [MCL 700.5305](#) and if it is appropriate to proceed in the absence of the ward (if the ward is not present).
- Determine whether legal counsel needs to be secured or appointed. [MCL 700.5305\(3\)-\(5\)](#). Adjourn if necessary.
- Petitioner presents witnesses and evidence.

² If videoconferencing technology is used, it must be “in accordance with the standards established by the State Court Administrative Office[,]” and the proceeding “must be recorded verbatim by the court.” [MCR 5.140\(D\)](#).

- Respondent presents witnesses and evidence.
- Court may appoint a full or limited guardian if it makes the following findings on the record:
 - Find whether by clear and convincing evidence respondent is an incapacitated individual to the extent that he/she lacks sufficient understanding or capacity to make or communicate informed decisions, impaired by reason of:
 - mental illness,
 - mental deficiency,
 - physical illness or disability,
 - chronic use of drugs,
 - chronic intoxication, or
 - other cause (not minority). [MCL 700.1105\(a\)](#); [MCL 700.5306\(1\)](#).

Appointing Full Guardian. Alleged incapacitated individual is totally without the capacity to care for himself/herself and appointment of a full guardian is necessary as a means of providing continuing care and supervision of him or her. [MCL 700.5306\(1\)](#); [MCL 700.5306\(4\)](#).

OR

Appointing Limited Guardian. Alleged incapacitated individual lacks the capacity to do some, but not all, of the tasks necessary to care for himself/herself and appointment of a limited guardian is necessary as a means of providing continuing care and supervision of him or her. [MCL 700.5306\(1\)](#); [MCL 700.5306\(3\)](#).

OR

Dismiss Petition. If clear and convincing evidence does not exist as indicated above, a guardian cannot be appointed.

- If supported, appoint:
 - Guardian with priority under [MCL 700.5313](#).
 - Professional guardian as described in [MCL 700.5106](#) after determining that:

- Appointment of a professional fiduciary is in the incapacitated person's best interests, and
- A preponderance of the evidence finding shows that no persons designated or listed as priority under [MCL 700.5313](#) are competent, suitable, and willing to serve in that fiduciary capacity.³ *In re Guardianship/Conservatorship of Harold William Gerstler*, 324 Mich App 494, 513-514 (2018). See also [MCL 700.5106\(2\)](#).

Court form to use:

[Order Regarding Appointment of Guardian of Incapacitated Individual, PC 631](#)

³ “[A] ‘suitable’ guardian is one who is qualified and able to provide for the ward’s care, custody, and control.” *In re Redd Guardianship*, 321 Mich App 398, 408 (2017). “[The] probate court must use the preponderance-of-the-evidence standard when determining whether a person is ‘suitable’ to serve as a ward’s guardian under [MCL 700.5313\(2\)](#).” *Redd*, 321 Mich App at 410.