

Petition for guardian summary under Michigan law

Who May File?

Section 22.31 An individual on his or her own behalf or any person interested in the Individuals welfare may petition for the appointment of a guardian. MCLA 700.5303(1). Another person interested in the individuals welfare may file a separate petition seeking other relief, such as the appointment of another person as guardian. If the second petition is filed in a timely manner, the court usually consolidates the petitions for the hearing at the same time.

An interested person or the subject of the petition may file an answer to the petition, seeking different relief such as appointment of another person as guardian or the dismissal of the initial petition; however, it is rare to see answers to the petitions for the appointment of a guardian, because MCR 5.119(B) allows an interested person to make oral objections on pending petitions at the time of the hearing.

The ward can file a letter objecting to the guardian. Here are some things the guardian must do.

CONSULTATION. The guardian must consult with the ward before making a major decision for the legally incapacitated individual.

CUSTODY. The guardian has custody of the ward and may establish the ward's place of residence, either inside or outside Michigan. The guardian must notify the court within 14 days of any change in the Ward's place of residence. **The guardian must visit the Ward within three months of appointment and at least once within three months after each previous visit.**

PETITIONS TO MODIFY OR TERMINATE A GUARDIANSHIP

SEC 22.49 Once the court has entered an order appointing a guardian, the ward or any person interested in the ward's welfare may bring a petition to remove the guardian, appoint a successor guardian, or modify the terms of or terminate the guardianship. MCLA 700.5310(2); see PC 675, Petition to Terminate/Modify Guardianship.

A request for such an order may be made by an Informal letter to the court. MCLA 700.5310(2). If the action or inaction of the guardian threatens the immediate wellbeing of the legally incapacitated individual, counsel may petition for the removal of the fiduciary and the appointment of a temporary guardian, pursuant to MLCA 700.5312(2).

A petition to terminate or modify the guardianship may also be initiated after a periodic review of a guardianship. If the person appointed by the court to investigate the guardianship recommends that it be terminated or modified, the court must enter an order appointing an attorney to represent the legally incapacitated individual for the purpose of filing the petition. MCR 5.408(A)(2)-(3). The court appointed attorney must file the Petition, PC 675 within 14 days of the date of appointment. MCR 5.408(A)(4); see also PC 637, Order Following Review of Guardianship.

The interested persons to a modification or termination petition are the guardian and the same persons as those interested in the petition for the appointment of a guardian. MCR 5.125 (C)(25).

If the legally incapacitated individual petitions for or requests termination or modification and that individual does not have an attorney, the court must immediately appoint an attorney. If another person petitions for or requests termination or modification, the court must appoint a guardian ad litem. If the guardian ad litem determines that the legally incapacitated individual contests the requested relief, the court must appoint an attorney for the legally incapacitated individual and terminate the appointment of the guardian ad litem. **Before acting on a modification or termination petition, the court must send a visitor to the residence of the present guardian and the ward to observe conditions and report in writing.**