

PETITION FOR TEMPORARY GUARDIAN

Pursuant to MCR 5.403(C), "A petition for a temporary guardian for an alleged incapacitated individual shall specify in detail the emergency situation requiring the temporary guardianship. For the purpose of an emergency hearing, the court shall appoint a guardian ad litem unless such appointment would cause delay and the alleged incapacitated individual would likely suffer serious harm if immediate action is not taken. The duties of the guardian ad litem are to visit the alleged incapacitated individual, report to the court and take such other action as directed by the court. The requirement of MCL 700.5312(1) that the court hold the fully noticed hearing within 28 days applies only when the court grants temporary relief."

Under MCL 700.5312(1), "If an individual does not have a guardian, an emergency exists, and no other person appears to have authority to act in the circumstances, the court shall provide notice to the individual alleged to be incapacitated and shall hold a hearing. Upon a showing that the individual is an incapacitated individual, the court may exercise the power of a guardian, or appoint a temporary guardian with only the powers and for the period of time as ordered by the court. A hearing with notice as provided in section 5311 shall be held within 28 days after the court has acted under this subsection."

In other words, the court was not required to provide full notice to all interested parties on a hearing for a temporary guardian. Further, the court does not have to hold a full hearing after proper notice of a temporary guardian. Proceedings on the guardianship of an alleged incapacitated adult are focused on protecting the rights of the allegedly incapacitated person. A person is presumed non-incapacitated until proven otherwise. In a hearing for a temporary guardianship, the petitioner bears the burden of proving that there is an emergency situation and that the individual is incapacitated.

As stated in MCL 700.5306(1), "The court may appoint a guardian if the court finds by clear and convincing evidence both that the individual for whom a guardian is sought is an incapacitated individual and that the appointment is necessary as a means of providing continuing care and supervision of the incapacitated individual, with each finding supported separately on the record. Alternately, the court may dismiss the proceeding or enter another appropriate order."

If the petitioner fails to meet the burden of incapacity by "clear and convincing evidence," then the court must (by default) consider the individual legally competent. Remember, having a court declare a person incapacitated strips them of their legal independence and autonomy. That is why the petitioner (like a prosecutor in a criminal case) bears the burden of proof. The alleged incapacitated person does not have to say anything or present any evidence, the burden fully rests with the petitioner. Therefore, finding the potential ward competent is really saying that the petitioner failed to meet his burden of proving the individual incapacitated.

Under MCL 700.5306(2), "The court shall grant a guardian only those powers and only for that period of time as is necessary to provide for the demonstrated need of the incapacitated individual. The court shall design the guardianship to encourage the development of maximum self-reliance and independence in the individual."