

MACOMB COUNTY PROBATE COURT

MINOR GUARDIANSHIP POLICY MANUAL

Practice Tip:

Your first step should be to call the Probate Court and ask to speak to a Court Attorney prior to filling out forms or attempting to file forms with the Probate Court. (586) 469-5290

Full Guardianship

Forms:

The following is a list of the forms contained in the Court's Full Guardianship Packet:

1. Cover Sheet - This form lists the required documents, general instructions and information regarding fees.
2. Petition for Appointment of Guardian of Minor (PC 651)
3. Order Regarding Appointment of Guardian of a Minor (PC 653)
4. Acceptance of Appointment (PC 571)
5. Notice of Hearing (PC 562)
6. Proof of Service (PC 564)
7. Waiver and Consent (PC 561)
8. Macomb County Probate Court Minor Guardianship Clearance Request - This form is used to provide the Court with information about the proposed guardian(s) so that background and clearance checks may be performed.
9. Fiduciary Proof of Identity (PC 1071)

Limited Guardianship

Forms:

The following is a list of forms contained in the Court's Limited Guardianship Packet:

1. Cover Sheet - Essentially the same as above which sets forth the required documents, provides general instructions, and information regarding fees.

2. Petition for Appointment of Limited Guardian of a Minor (PC 650)
3. Limited Guardianship Placement Plan (PC 652)
4. Notice of Hearing (PC 562)
5. Order Regarding Appointment of Guardian of a Minor (PC 653)
6. Waiver and Consent (PC 561)
7. Proof of Service (PC 564)
8. Acceptance of Appointment (PC 571)
9. Macomb County Probate Court Guardianship Clearance Request - Same as above
10. Fiduciary Proof of Identity (PC 1071)

The following is a list of additional forms that will be filed by the petitioner under certain circumstances:

1. Publication of Notice of Hearing (PC 563) - Provided when an interested party whose whereabouts are unknown and must be served by publication. The fee for publication in the Macomb County Legal News as of **October 10, 2017** is **\$90.50**, which is not included in the filing fee.
2. Affidavit and Order Suspension of Fees/Costs (MC 20) - Provided when the petitioners claim that they are receiving government assistance from the State of Michigan or some other source, or their income is such that they are indigent. Publication fees cannot be waived. If requesting a waiver on the basis of government assistance, the Court requires documentation verifying DHS case number or Bridge Card number.
3. Indian Children - If the minor is an Indian child within the meaning of MCL 712b(6) and MCR 5.402(4), some of the forms in the above packets will be different. If filing for guardianship for an Indian child, be prepared to provide the Court with the name of the minor's tribe and identification number (if any). Further, there are different forms for Indian children. See PC 650i, PC 651ia, PC651ib, PC 653i.

The following form is to be completed by a Court Attorney and attached to the packet of forms prior to the filing of the Petition:

1. Guardianship of Minor Investigation Request (aka Referral Form) - A half page form usually prepared

by the Court Attorney at the time of filing of the packet, used to request an investigation of the proposed guardian(s) by the Guardianship Investigation Department or by the Department of Human Services.

B. Petitioning

Who may petition:

Full Guardianship -

1. Any person interested in the welfare of the minor
2. The minor, if age 14 or older

Limited Guardianship -

1. The parent(s) with legal **physical** custody of the minor

Where to file petition:

The petition is to be filed in the Probate Court where either:

1. The minor resides, or
2. Where the minor is present

Specific Circumstances for Full Guardianship (MCL 700.5204):

1. Parental rights of both parents or of the surviving parent have been terminated or suspended by a prior court order, judgment of divorce or separate maintenance, death, judicial determination of mental incompetency, disappearance or confinement in a place of detention.
2. The parent(s) have permitted the minor to reside with another person and have not provided the other person with legal authority for the care and maintenance of the minor.
3. All of the following:
 - i. the minor's biological parents have never been married to one another

- ii. the minor's parent who has custody of the minor dies or is missing and the other parent has not been granted legal custody under court order
- iii. the person whom the petition asks to be appointed guardian is related to the minor within the fifth degree by marriage, blood or adoption.

C. Interested Persons

The persons interested in the appointment of a full guardian of a minor are as follows:

1. The minor, if 14 years of age or older
2. If known by the petitioner, each person who had the principal care and custody of the minor during the 60 days preceding the filing of the petition
3. The parents of the minor or, if neither of them is living, any grandparents and the adult presumptive heirs of the minor
4. The nominated guardian
5. The guardian of any person identified in paragraphs 1 through 4
6. An attorney who has entered an appearance for any person identified in paragraphs 1 through 5.

D. Miscellaneous Matters Regarding the Petition

The following also applies to the information provided on the petition:

1. The name, address and telephone number of the nominated guardian must be stated on the petition.
2. The nominated guardian must be a person who is willing and able to serve the welfare of the minor.
3. The minor may nominate his/her guardian if:
 - i. The minor is age 14 or older
 - ii. The guardian who is nominated by the minor must be a person who is willing and able to serve the welfare of the minor

E. Pre-Hearing Procedures

1. Birth Certificate - The petitioner must present the birth certificate of the minor prior to the hearing.

Photocopies of birth certificates are allowed.
Hospital records are not allowed

2. Death Certificate - When one or both parents of the minor are deceased, the death certificate must be presented by the petitioner prior to the hearing. Photocopies of death certificates are allowed.
3. Judgment of Divorce, Custody Orders, Judgment of Filiation, Affidavit of Parentage, etc. - These documents establish whether a parent has physical custody of the minor and/or whether paternity of the minor has been established. The petitioner must present these documents **prior to** the filing of the petition. Photocopies of these documents are allowed.
4. Letter from Juvenile Court or Department of Human Services - If either of these agencies are involved with the minor:
 - i. Juvenile Court - A letter is required from the Judge or Referee to whom the minor's case has been assigned where the minor been adjudicated a ward of the Court. In some cases, where the minor has been adjudicated a ward of the Court on a delinquency file, a letter from the minor's assigned probation officer or the probation officer's supervisor may be required.
 - ii. Children's Protective Services- A letter is required from the caseworker or the caseworker's supervisor when Children's Protective Services has been involved with the minor or if the petitioner has been instructed to file a Petition for Appointment of Guardian of a Minor with the Probate Court by Children's Protective Services.
5. Fees - A filing fee of \$175.00 is required for each Petition for Guardianship. An additional \$12.00 fee is required for each certified Letter of Guardianship. A total of \$187.00 due at the time the Petition is filed. A petitioner who claims that his/her economic circumstances are such that he/she is unable to afford the filing fee may file an Affidavit and Order for Suspension of Fees/Costs (MC 20). The Affidavit will be reviewed by a Court Attorney or the Director of Legal Service to determine whether the Petitioner qualifies for a waiver of fees.

6. Hearing Dates - Guardianship hearings are scheduled on Mondays, Wednesdays or Fridays at either 9:00 a.m. or 1:30 p.m. unless otherwise permitted by the Judge or Director of Legal Services.
7. Service on Interested Parties - The petitioner is responsible for serving the Petition for Appointment of Guardian of a Minor and the Notice of Hearing on the interested parties listed in Section C, Paragraphs 1 through 6 above. Service is not necessary on an interested party who has signed a Waiver/Consent (PC 561) to the Guardianship. Service may be accomplished:
 - i. By ordinary first class mail, registered mail or certified mail. The papers served in this manner must be placed in the mail at least 14 days before the date of the hearing.
 - ii. By personal service. The papers served in this manner must be served on the interested party at least 7 days before the date of the hearing.
 - iii. By publication in the Macomb County Legal News. Publication must occur at least 14 days before the date of the hearing. Service by publication may be used when the address of the interested party is unknown or unobtainable or the interested party has disappeared.
8. Other Duties of Petitioner - The Petitioner is required to complete the Order Regarding Appointment of Limited Guardian/Guardian of a Minor (PC 653) prior to the filing of the petition.
9. Duties of the Proposed Guardian(s) - The Acceptance of Appointment (PC 571), the Minor Guardianship Clearance Request and the Fiduciary Proof of Identity form must be completed by the proposed guardian(s) prior to the hearing. The proposed guardian(s) must include a personal reference on the Fiduciary Proof of Identity form. The personal reference on this form may not be living in the proposed 'guardian(s)' residence.
10. Temporary Guardianships - A separate petition requesting a temporary guardian may be filed along with the initial petition for full guardianship or separately at any time after the filing of the initial petition but before the full hearing. A temporary

guardian may only be appointed when a documented medical need is established and the matter is heard by a judge. Medical documentation which sets forth the medical need of the minor is usually required when the petition is filed. The Court may appoint a temporary guardian for a period not to exceed 6 months.

F. Investigation of the Proposed Guardian

The following are factors involved in the investigation of the proposed guardian:

1. Department of Human Services/Children's Protective Services - Any involvement by DHS/CPS with the minor or the minor's parents which results in the filing of a Petition for Full Guardianship will require DHS/CPS provide a Home Study (Form DHS-616) on the proposed guardian to the Court prior to the hearing. The Home Study must include a Central Registry Check and Criminal Background check of the proposed guardian. Letters from DHS/CPS are not to be accepted as Home Studies. All Home Studies must be signed by the caseworker and the supervisor.
2. Probate Court Guardianship Supervisor - The Guardianship Supervisor investigates all proposed guardians. The proposed guardians fall into three categories:
 - i. Relative - The relationship to the minor is that of either great grandparents, grandparents, aunts, uncles, sisters, or brothers. Step relatives and half siblings would also come under this category. Cousins of any degree would not be considered a relative. The Guardianship Supervisor would perform a criminal background check and a Central Registry check on any proposed guardian who is a relative.
 - ii. Non-relative - This category would include any other proposed guardian who is not considered a relative such as a person who is **not** related to the minor by blood. This category would also include cousins of any degree and spouses of relatives who are proposed as guardians on their own. The Guardianship Investigation Department would perform a criminal and Central Registry background check on the proposed

guardian and anyone living in the proposed guardian's home.

In-Home investigations by CPS are to be prepared on any proposed guardian of an infant (to 12 months of age) regardless of relationship.

- iii. Out-of-state guardian - If the proposed guardian, lives outside of the State of Michigan, the petitioner or proposed guardian is required to contact the agency in the state which has a similar function to Children's Protective Services, or other licensed social service agency to do an in-home investigation of the proposed out-of-state guardian, and provide the Court with a report, seven (7) days prior to the hearing. The cost of such investigation is the responsibility of the petitioner and/or the out-of-state guardian. Guardianship Supervisor is available to assist the petitioner in locating such an agency. In certain cases, DHS may contact an out of state social service agency to perform the investigation.

G. Hearing

The following factors must be considered during the hearing:

1. The Court is not obliged to appoint an attorney for a party based on indigence.
2. A Court Attorney may conduct the hearing when the petition is uncontested, service is proper and the In-Home, Home Study or clearances are favorable. In cases such as these, any party may request that the matter be heard before a judge. MCL 600.834 (4)
3. If the matter is contested or there are special or unusual circumstances involved in the guardianship, the matter will be heard by a judge.
4. During the hearing for full guardianship, the following must be established by a preponderance of the evidence:
 - i. The subject matter of the petition is, in fact, a minor.

- ii. The minor either resided in or was present in the County on the date when the petition was filed.
 - iii. The identity and status of the minor's parents.
 - iv. All interested parties were properly served.
 - v. The welfare of the minor would be served by the appointment of a guardian.
 - vi. One of the three circumstances for full guardianship as set forth in MCL 700.5204 existed at the time the petition was filed.
5. If the matter is uncontested and, in certain circumstances where the minor's presence is not required at the hearing, there is no need for the minor to be present at the hearing. If the minor appears at such a hearing, the Court will not provide written verification stating that the minor's presence was required.

H. Post Hearing

The following factors must be considered after the hearing has concluded:

1. The guardian has signed and completed the Acceptance of Appointment (PC 571)
2. The Order Regarding Appointment of Guardian/Limited Guardian of a Minor (PC 653) must be properly completed. One of the three factors for full guardianship must be checked in Paragraph 4 of the Order. When Children's Protective Services, the Department of Human Services or Juvenile Court is involved in the guardianship or with the minor, Paragraph 14 of the Order may contain the following language:

"No transfer/change of placement of minor child without court order."

The Order may also contain other restrictions that the Court wishes to place on the Guardian's authority.

3. Letters of Guardianship (PC 633) may also contain restrictions that the Court wishes to place on the Guardian's authority.
4. Annual Report of Guardian on Condition of Minor (PC 654). The report is due one year from the date of

the appointment of a guardian by the Court. The report must be completed and signed by the guardian(s).

Modification or Termination of Guardianship of Minor (MCL 700.5208, MCL 700.5209, MCL 700.5210, MCL 700.5219)

Required Forms:

1. Petition to Terminate/Modify Guardianship (PC 675)
2. Notice of Hearing (PC 562)
3. Waiver and Consent (PC 561)
4. Proof of Service (PC 564)
5. Macomb County Probate Court Minor Guardianship Clearance Request
6. Order Regarding Termination/Modification of Guardian for Minor (PC 638a)

Who May Petition to Terminate Guardianship:

1. In a Limited Guardianship, the parents or the sole parent with right to custody of the minor.
2. In a Full Guardianship, the minor's parent or parents.

Who May Petition to Modify Guardianship:

1. A person Interested in a ward's welfare or, if 14 years of age or older, the minor.