

GUARDIANSHIPS INCAPACITATED ADULT

Bench Card

PURPOSE

To appoint a guardian or co-guardians for an adult in the least restrictive form possible and which allows the person to participate as fully as possible in all decisions affecting them and to assist such persons in meeting the essential requirements for their physical health and safety and in protecting their rights.¹

APPOINTMENTS

1. Guardian *ad Litem* (GAL) Attorney unless alleged incapacitated person has an attorney.²
2. Court Visitor.³
3. Physician or other qualified person to examine the alleged incapacitated person.⁴
4. May also appoint a mental health professional to examine the alleged incapacitated person.⁵

TEMPORARY APPOINTMENT⁶

1. May be appointed if an emergency exists, and no guardian has been appointed or the guardian is not performing the guardian's duties;
 - a. Authority of previous guardian is suspended as long as temporary guardian has authority.
2. May be appointed without notice or hearing on finding from sworn statement that proposed incapacitated person would be immediately and substantially harmed before notice can be given or a hearing held.
 - a. Notice must be given within 72 hours after appointment. If requested, a hearing held within 10 days.
3. Authority cannot exceed 90 days, unless extended for good cause.

REQUIRED SUBMISSIONS PRIOR TO HEARING

1. For temporary guardian, no notice needed upon finding from sworn statement of immediate and substantial harm⁷.
 - a. Notice required within 72 hours following appointment of temporary guardian.
2. All notices have been given.⁸
 - a. Personal service on the alleged incapacitated person.
 - b. Service by mail or in person on the respondent's spouse; or if none the respondent's adult children; or if none the respondents parents; or if none the closest adult relatives, if any can be found.
 - c. Service by mail or in person upon any person currently serving as guardian, conservator, or who is providing care to the alleged incapacitated person.
 - d. Service by mail or in person upon anyone who has filed a request for notice.
3. Certificate of Completion of the Supreme Court's online training course regarding a guardian.⁹
4. Complete criminal history and background check.¹⁰
 - a. The check must be available to the visitor and GAL.
 - b. A list of civil judgments and bankruptcies available to the visitor, GAL, and all others entitled to notice of the guardianship proceeding.

¹ IC §15-5-303(a)

² IC §15-5-303(b)

³ IC §15-5-303(b); Visitor qualifications at I.C.A.R. 54.4

⁴ IC §15-5-303(b)

⁵ IC §15-5-303(b)

⁶ IC §15-5-310

⁷ IC §15-5-310(c)

⁸ IC §15-5-309

⁹ ICAR 54

¹⁰ IC §15-5-311(5)(a)

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5. GAL Written Report.¹¹
6. Visitor Written Report.¹²
7. Physician Written Report.¹³

CO-GUARDIANS, LIMITED GUARDIANSHIP, AND ALTERNATIVE TO FULL GUARDIANSHIP

1. The court shall encourage the development of maximum self-reliance and independence and make appointments and orders only to the extent necessitated by the alleged incapacitated person's actual mental and adaptive limitations.¹⁴
2. The court may, at any time, on its own motion or on appropriate petition or motion, limit the powers of the guardian. All limitations should be included on the guardian's letters.¹⁵
3. On appropriate findings the court may:¹⁶
 - a. Treat the petition as one for a protective order under IC §15-5-401;
 - b. Enter any other appropriate order; or
 - c. Dismiss the proceedings.
4. The court may appoint up to two (2) persons as co-guardians. The parents of the incapacitated person have preference of appointment, unless they are unwilling or incapable of adequately serving the best interests of the incapacitated person.¹⁷

HEARINGS AND FINDINGS

Who

1. The proposed guardian or co-guardians, unless excused for good cause.¹⁸
2. The person alleged to be incapacitated.¹⁹

Findings

1. Temporary guardian may be appointed if the court finds:²⁰
 - a. A petition for guardianship been filed, but a guardian has not yet been appointed; and
 - Substantial evidence of incapacity;
 - By a preponderance of the evidence an emergency exists that will likely result in immediate and substantial harm to the person's health, safety or welfare;
 - No other person appears to have the ability, authority and willingness to act.
 - OR
 - b. When a person is under guardianship, the court may appoint a temporary guardian if it finds:
 - Substantial evidence that the guardian is not performing the guardian's duties; and
 - By a preponderance of the evidence, an emergency exists that will likely result in immediate and substantial harm to the person's health, safety or welfare.

¹¹ IC §15-5-315(2)

¹² IC §15-5-303(b); ICAR 54.4

¹³ IC §15-5-303(b)

¹⁴ IC §15-5-304(a)

¹⁵ IC §15-5-304(d)

¹⁶ IC §15-5-304(b)

¹⁷ IC §15-5-304(c)

¹⁸ IC §15-5-303(c)

¹⁹ IC §15-5-303(c)

²⁰ IC §15-5-310

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2. A guardian or co-guardian may be appointed if the court finds;
 - a. The person is incapacitated:²¹
 - The person is impaired in that he or she lacks sufficient understanding or capacity to make or communicate responsible decisions concerning his or her person;²²
 - Inability shall be evidenced by acts or occurrences or statements which **STRONGLY** indicate imminent acts or occurrences and must have occurred within 12 months prior to the petition.²³
 - AND
 - b. Appointment of a guardian is necessary or desirable as a means of providing continuing care and supervision of the alleged incapacitated person.
3. Up to two (2) co-guardians may be appointed if the court finds:²⁴
 - a. Appointment will best serve the interests of the incapacitated person; and
 - b. The co-guardians will work together cooperatively to serve the best interests of the incapacitated person.
 - c. Whether the co-guardians may act;
 - independently,
 - act independently but must act jointly on specific matters, or
 - must act jointly.

Standard Orders and Judgments

1. Judgment Appointing Guardian.
2. Letters of Guardianship.
3. Guardian's Duty to Report.

REQUIRED REPORTS

1. Temporary guardian must file reports as required by the court.²⁵
2. 30 day care plan, if information is not included in the petition.²⁶
3. Annual guardianship status report.²⁷
4. Report when a guardian resigns or is removed.²⁸
5. Report when the guardianship is terminated, unless the court determines there is no need.²⁹

²¹ IC §15-5-304(b)

²² IC §15-5-101(a)

²³ IC §15-5-101(a)

²⁴ IC §15-5-304(c)

²⁵ IC §15-5-310(c)

²⁶ IC §15-5-303(a)

²⁷ IC §15-5-312(1)(e); ICAR 54.2

²⁸ IC §15-5-312(1)(e); ICAR 54.2

²⁹ IC §15-5-312(1)(e); ICAR 54.2