

Procedure for Emergency Appointment of Temporary Guardians for Adults Pending Full Hearing

In general, a Petition for Appointment of Guardian of Incapacitated Individual ([PC 625](#)) is set for hearing approximately 3-4 weeks from the date of filing. All expedited dates are at the judge's discretion.

When is a temporary guardian needed?

Many times it is necessary that a temporary guardian be appointed pending the full hearing. The alleged legally incapacitated individual may need immediate medical treatment, placement in a nursing home or some other urgent attention requiring a temporary guardian to be in a position to make personal decisions for the ward. Because of the requirements for notice to the interested parties, such a crisis may need to be handled well before the full hearing can be held. Life-threatening medical emergencies that occur during non-court business hours should be handled according to established protocol for the medical facility.

If a guardianship is already in place, i.e., there has been the hearing and determinations of incapacity and the need for a guardian, the court may appoint a temporary guardian to serve for up to six months if the incumbent guardian is not performing duties effectively and if the ward's welfare requires immediate action.

Many courts may hold such hearings within a few hours of receiving the petition as MCR 5.403 (B) allows the court to shorten the period for notice of hearing. The alleged legally incapacitated person must still be served personally with the petition and notice of hearing before the hearing can be held. However, the hearing can be held before other interested persons receive notice.

Although a hearing may be scheduled the same day for medical emergencies, it is more common to have a hearing within 1 or 2 days.

How do I request it?

To request a temporary guardian, the petitioner must **check Box #13** on the Petition and **specify in detail** the emergency situation requiring the temporary guardianship.

Any other filing requirements?

- The Petition **must** be completely filled out before it may be accepted for filing.
- Petitions **must** be accompanied by a letter from medical or social work personnel indicating the nature of the emergency. A letter simply indicating an ongoing or progressing medical condition may not be sufficient to secure an expedited hearing.
- The petition **must** name a proposed temporary guardian who must be available at the time of the hearing.
- The filing fee **must** be paid at the time the petition is presented for filing. The fee is \$150 as long as the request for a temporary guardian is filed at the same time as the petition for appointment of a full guardian. One certified copy of the Letters of Guardianship is included

in the filing fee and additional certified copies may be purchased for \$12 each.

What does the Court do upon the filing of the Petition?

Once the petition is accepted for filing, the judge will review it for a determination on the emergency hearing request.

Ideally, the petitioner personally serves the alleged legally incapacitated individual and interested persons at least 24 hours before the emergency hearing. Service time requirements may be adjusted and/or waived by the judge depending on the circumstances. A Proof of Service ([PC 564](#)) **must** be filed for all completed service.

A guardian ad litem (“GAL”) will be appointed by the court. Generally, this attorney will visit the alleged legally incapacitated individual, conduct a preliminary investigation into the allegations stated in the petition, and make recommendations regarding his/her best interests to the judge on the record.

What happens at the hearing?

At the hearing the court will hear testimony from the petitioner and others who may wish to testify. It will also receive the report and recommendation of the guardian ad litem. The **medical personnel must be prepared to testify under oath** as to the nature of the condition of the alleged legally incapacitated individual. The petitioner or attorney for the petitioner must be prepared to examine the witness(es) and to establish a legal basis for the appointment of a temporary guardian.

What is the basis for an emergency appointment?

Before the Court can appoint a temporary guardian, it must find by clear and convincing evidence two distinct things:

1. the person is impaired to the extent that the person lacks sufficient understanding or capacity to make or communicate informed decisions concerning; and
2. an emergency exists and no other person appears to have authority to act in the circumstances

Order and Letters of Temporary Guardianship

If the Court appoints a temporary guardian and enters the Order Appointing Temporary Guardian of Legally Incapacitated Individual (PC 632), it must specify in that order the powers and responsibilities the temporary guardian shall have. If a temporary guardian is appointed to replace an appointed guardian who is not effectively performing his or her duties, the temporary guardian has the same authority as the previously appointed permanent guardian. The temporary guardian will qualify by filing an Acceptance of Appointment (PC 571). Once the Acceptance of Appointment is filed, the court will issue Temporary Letters of Guardianship (PC 633). The Letters will also contain any restrictions on the temporary guardian's powers and responsibilities.

Hearing on the full petition

If a temporary guardian is appointed, the court must schedule the full guardianship hearing within 28 days of such appointment. If the request for a temporary guardian is denied, the 28 day requirement does not apply.

It is the petitioner’s responsibility to serve the parties with the temporary order and to make the guardian aware of the appointment and the nature

of the impending medical decisions.

A hearing on the full guardianship will follow, generally within the next month. The petitioner must appear for that hearing as well.