

# **SERVING AS GUARDIAN AD LITEM**

**Judge Terrance A. Keith  
Wayne County Probate Court  
&  
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## **I. INTRODUCTION**

### Material Covers the Following Topics:

- A. Adult Guardianship Proceedings.
- B. Minor Guardianship Proceedings
- C. Conservatorship and Estate Proceedings.
- D. Conducting Adult Guardianship Reviews.
- E. Proceedings Requesting LEIN Removal.
- F. Practice Tips from The Bench and Bar
- G. Video Courtroom Hearings

## II. IN GENERAL

### A. What is a Guardian Ad Litem

Generally speaking, a Guardian Ad Litem, frequently referred to as the GAL, is an attorney appointed by the court to serve as its “eyes and ears” to conduct investigations of the allegations in the petition(s) filed with the court. The precise nature of a Guardian Ad Litem’s duties will vary depending on the nature of the petition and the allegations. This outline will discuss the many types of matters where a Guardian Ad Litem may be appointed.

### B. Why appoint a Guardian Ad Litem

1. The appointment of a Guardian Ad Litem is part of the due process protection for an adult who is the subject of a guardianship petition as an alleged incapacitated individual.
2. An incapacitated individual is an individual who is impaired by reason of mental illness, mental deficiency, physical illness or disability, chronic use of drugs, chronic intoxication, or other cause, not including minority, to the extent of lacking sufficient understanding or capacity to make or communicate informed decisions. **MCL 700.1105(a)**
3. After a date has been set for a hearing on a petition for adult guardianship or conservatorship, a Guardian Ad Litem must be appointed to investigate and file a written report of recommendations on the legal and factual to issues. **MCL 700.5303(3).MCL 700.5406(2).**
4. With the exclusion of emergency petitions, written reports are required. Oral reports are permitted when appearing on an emergency hearing for a temporary guardian or conservator; however, a full written report must be prepared for the scheduled hearing on the petition for full guardianship or conservatorship.
5. Unless waived by the court in advance of the hearing, a Guardian Ad Litem is required to appear at the guardianship or conservatorship hearing. **MCR 5.121(C).**
6. For a complete listing of the information required in Guardian Ad Litem reports, see Topics and Issues Concerning Written Guardian Ad Litem Reports, which is found on the court’s website in the 2023 Attorney Training materials.

### C. Filing Reports: A Few Good Practice Points

**If you are appointed to serve as a Guardian Ad Litem, *and* desire to be and remain in good standing with the court and, most importantly, the court staff, to be mindful of the following practice notes:**

**Practice Point #1:** It is a very bad practice *and* wholly unacceptable to file reports with the court the night before or the morning of the hearing. Filing untimely reports may cause the hearing to be adjourned. *The court requires Guardian Ad Litem reports to be filed at not less than three (3) business days before the scheduled hearing.* The report must be emailed or faxed to the judge of record at the address below. It is also bad practice to submit the Guardian Ad Litem report to the attorney for the petitioner the day before or the morning of the hearing.

**Practice Point #2:** Make certain to talk with the attorney(s) and/or interested parties regarding the report *prior* to the day of the hearing.

**Practice Point #3:** If you are the Guardian Ad Litem with the majority of the court's docket, it is also very bad practice *and* wholly unacceptable to be in another courtroom at the time you are due to appear.

**Practice Point #4:** In the event of a scheduling conflict i.e., in another courtroom or an emergency has occurred, *prior to the hearing*, advise the court clerk. The clerk may be able to have the matter called later in the docket, rescheduled or have your appearance waived.

**Practice Point #5:** If there is difficulty in transmitting the Guardian Ad Litem report or other issues problems arise, contact the court in advance of the hearing.

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### III. ADULT GUARDIANSHIP PROCEEDINGS

An individual in his or her own behalf, or any person interested in the individual's welfare, may petition for a finding of incapacity and appointment of a guardian.

Before a petition is filed, the court must provide the person intending to file the petition with written information describing alternatives to appointment of a full guardian, including, but not limited to, a limited guardian, conservator, patient advocate designation, do-not-resuscitate order, physician orders for scope of treatment form, or durable power of attorney with or without limitations on purpose, authority, or time period, and an explanation of each alternative.

Upon the filing of a petition the court must set a date for hearing on the issue of incapacity. Unless the allegedly incapacitated individual has legal counsel of his or her own choice, the court must appoint a Guardian Ad Litem to represent the person in the proceeding. **MCL 700.5303**

#### A. Duties of Guardian Ad Litem

Pursuant to **MCL 700.5305** the duties of a Guardian Ad Litem to an allegedly include:

1. Personally, or electronically visiting the individual.
2. Explaining to the individual the nature, purpose and legal effects of a guardian's appointment.
3. Explaining to the individual the hearing procedure and their rights, including and not limited to, the following:
  - a. To contest the petition.
  - b. Request limits on the guardian's powers, including limitations on a guardian's power to execute a do-not-resuscitate (DNR) order or a physician order for scope of treatment (POST) form on their behalf.
  - c. Object to a particular person being appointed guardian.
  - d. Be present at the hearing.
  - e. Be represented by a lawyer, and an attorney will be appointed for them if they cannot afford to hire their own.

- f. Inform alleged incapacitated individual that if guardian appointed, they may have the authority to execute a DNR and a POST form on their behalf and, if meaningful communication possible, discern if the person objects to execution of DNR order.
4. Informing the individual of the name of any person known to be seeking appointment as guardian.
  5. Making determinations, and informing the court, on the following:
    - a. If there are one or more appropriate alternatives to the appointment of a full guardian. Before informing the court of their determination on this issue, the Guardian Ad Litem must consider the appropriateness of at least each of the following alternatives:
      - 1) Appointment of a limited guardian, including the specific powers and limitation on those powers the Guardian Ad Litem believes appropriate.
      - 2) Appointment of a conservator or another protective order under EPIC.
      - 3) Execution of a patient advocate designation, do-not-resuscitate order, physician order for scope of treatment, or durable power of attorney with or without limitations on purpose, authority, or duration.
    - b. If a disagreement or dispute related to the guardianship petition might be resolved through court ordered mediation.
    - c. If the individual wants to be present at the hearing.
    - d. If the individual desires to contest the petition.
    - e. If the individual wishes limits placed on the guardian's powers.
    - f. If individual objects to the execution of a DNR order or a POST form.
    - g. If the individual objects to a particular person's appointment as guardian.
  6. If the individual objects to the petition, requests a contested hearing, demands the guardian have limited powers or demands an attorney, the court must appoint a lawyer to represent their interest. If the Guardian Ad Litem determines the individual lacks capacity to adequately state their objection or consent, the Guardian Ad Litem may recommend, in the best interest of the alleged incapacitated individual, the court appoint an attorney.

7. Upon review of the Guardian Ad Litem report, the court may terminate the Guardian Ad Litem to enable the Guardian Ad Litem to be appointed the attorney for the incapacitated individual.

B. Guardian Bill of Rights

The Guardian Ad Litem must also serve the individual with a copy of the Guardian Bill of Rights (Bill of Rights) in the guardianship process. (PC 626, Notice of Rights to Alleged Incapacitated Individual).

1. An individual for whom a guardian is sought or has been appointed under section **MCL 700.5306** has thirty-three enumerated rights under EPIC.
2. The specific rights are listed for the subject of a guardianship petition or ward. **MCL 700.5306a**
3. The list is a compilation of existing rights from various sections of EPIC's adult guardianship subchapter.
4. The Guardian Ad Litem is required to inform the ward in writing of these rights. The State Court Administrative Office (SCAO) and the Office of Services to the Aging have developed a form, PC 626, Notice of Rights to Alleged Incapacitated Individual, to accomplish this. **MCL 700.5306a(2)**. A copy of this form can be found on the court's website in the 2023 Attorney Training Materials.
5. The Bill of Rights has been added to the packet of materials that a Guardian Ad Litem receives for adult guardianship proceedings. This item must be given to the alleged LIP in addition to the other documents which they receive from the Guardian Ad Litem.
6. A sample Guardian Ad Litem report on an alleged incapacitated individual has been included on the website in the 2023 Attorney Training materials.

**Note:** Form PC 627, Acceptance of Appointment and Report of Guardian Ad Litem of Alleged Incapacitated Individual, is included in the packet of materials given to the Guardian Ad Litem appointed in adult guardianship cases. This form should be submitted as a "cover sheet" with your Guardian Ad Litem report.

C. Privilege\Subsequent Appointment of Guardian Ad Litem as Attorney

1. Appointment of lawyer as Guardian Ad Litem *does not* create an attorney-client relationship; communications between the alleged incapacitated individual and the Guardian Ad Litem are not subject to attorney-client privilege. The Guardian Ad Litem *must* inform the person whose interests are represented of the lack of privilege as soon as practicable after the appointment. The Guardian Ad Litem may report or testify about any communication with the person whose interests are represented. **MCR 5.121(E)(1)**.



2. If the Guardian Ad Litem appointment is terminated and the same person is subsequently appointed attorney for the alleged incapacitated individual, the appointment as attorney creates an attorney-client relationship relates back to the date of the Guardian Ad Litem appointment. **MCR5.121(E)(2)**.
3. A Guardian Ad Litem is immune from civil liability. **MCL 691.1407(6)** provides: “A Guardian Ad Litem is immune from civil liability for injuries to persons or damages to property whenever he or she is acting within the scope of his or her authority as Guardian Ad Litem.”
4. **MCL 691.1407(6)** was added by **1996 PA 143** to overturn the decision of **Bullock v Huster, 209 Mich. App. 551; 532 NW 2d 202 (1995)**.

D. Adult Guardianship Reviews

The court is required to review adult guardianship not later than 1 year after the guardian’s appointment and not later than every 3 years after each review. **MCL 700.5309**. See also Section IV, below, regarding the Procedure for Conducting Guardianship Review

**IV. MINOR GUARDIANSHIP PROCEEDINGS**

A. Minor Guardianships

A person may become a minor's guardian by parental or court appointment. Guardianship provides an individual appointed by the court with authority over the minor, including ability to consent to adoption and marriage of minor. A Guardian Ad Litem may be appointed to serve as the attorney for the minor.

1. Minor guardianship can be granted *if* either:
  - a. Parental rights of both parents (or the surviving parent) are terminated/suspended by prior court order, divorce, death, adjudication of mental incompetency, disappearance or imprisonment. **MCL 700.5204(2)(a)**.
  - b. Parent or parents have permitted the minor to reside with another person and have not provided the person with legal authority for the minor's care and maintenance, and the minor is not residing with his or her parent or parents. **MCL 700.5204(2)(b)**.
  - c. If the minor's biological parents have never been married to each other, the custodial parent dies or is missing and the other parent has not been given legal custody, and the nominated guardian is related to the minor within the fifth (5th) degree by marriage, blood, or adoption. **MCL 700.5204(2)(c)**.

Example: A teenage mother leaves her child with the grandmother and disappears. Grandmother could seek full guardianship.

## 2. Issues related to Minor Guardianships

- a. On a very rare occurrence, the court may appoint and Guardian Ad Litem to serve as the attorney to represent *parties* in minor guardianship proceedings *only* under the following circumstances:
  1. As Guardian Ad Litem for a minor mother and/or father.
  2. As Guardian Ad Litem for a mentally incompetent adult mother and/or father.
  3. Only a small portion of the court's minor guardianship cases fall within either of these scenarios.
  4. Appointments under the circumstances described above are a Guardian Ad Litem, not as an attorney.

### B. Limited Guardianship

1. A limited guardian cannot consent to the adoption, to the release for adoption, or consent to marriage of the minor. **MCL 700.5206(4).**
2. A limited guardian can be appointed only if all the following requirements are satisfied:
  - a. Parent(s) with custody consent to appointment. **MCL 700.5205(1)(a).**
  - b. Parent(s) voluntarily consent(s) to suspension of parental rights. **MCL 700.5205(1)(b).**
  - c. Court approves a limited guardianship placement plan which is also agreed to by custodial parent(s) and proposed limited guardian(s). **MCL 700.5205(1)(c).**

Example: A homeless mother has custody of her child. While searching for housing she wants to place the child with a relative. She voluntarily consents to suspension of parental rights by having child's grandmother appointed limited guardian. Placement plan is submitted outlining how she will ultimately regain full parental rights over the child.

### C. Minor Guardianship Reviews

Guardianships for minors under age 6 must be reviewed annually. **MCL 700.5207(1)**. The Department of Human Services (DHS), or one of its subcontractors, conducts an initial review of minor guardianships. Guardianships requiring further investigation are forwarded to the court for the appointment of a Guardian Ad Litem to determine if an attorney should be appointed or other court action should be taken. See also Section IV, below regarding the Procedure for Conducting Guardianship Review.

D. Petition for Guardian Authority to Consent to or Release for Adoption

1. If a guardian of a minor desires to adopt their ward or release the ward for adoption, the guardian must file a petition to obtain authorization from the court to begin the adoption process in family court.

The appointment of a Guardian Ad Litem on a petition for guardian authority to consent to or release for adoption is discretionary with the judge. Guardian Ad Litem appointments on these matters are rare and made on a case-by-case basis.

V. **CONSERVATORSHIP PROCEEDINGS**

See the sample Guardian Ad Litem report Recommending Denial of Petition for Appointment of Successor Guardian and Conservator which has been included in the 2023 Attorney Training materials on the court's website.

A Guardian Ad Litem is often appointed to review the initial petition for conservatorship as well as the variety of petitions arising within conservatorship proceedings.

Review of an initial petition for conservatorship requires contacting the petitioner, or their attorney, to meet, discuss, examine and evaluate the alleged protected individual. The Guardian Ad Litem report should consider, and is not limited to, the following:

- a. Determine if there is an appropriate alternative to conservatorship. e.g. power of attorney
- b. If conservatorship is appropriate, consider desirability of limiting scope\duration of conservator's authority.
- c. The report must also contain a recommendation regarding a bond as required under **MCL 700.5410**.
- d. File a written report to the court on these considerations. **MCL 700.5406(4)** and any other factual or legal issue(s) believed to be relevant to the court's resolution of the petition.

A. Adult Conservatorship and Protective Orders

1. A conservator is a person appointed by the court to manage a protected individual's estate. **MCL 700.1103(h)**. Pursuant to **MCL 700.5401(3)** the Appointment of a conservator or entry of a protective order may be made in relation to the estate and affairs of an individual.
2. A conservator's duties are described in **MCL 700.5416 – MCL 700.5433**
3. Upon appointment a conservator acts as a fiduciary and must observe the standard of care applicable to a trustee. **MCL 700.1104(e)**. **MCL 700.5416**.
4. A protected individual is a minor or other individual for whom a conservator has been appointed or other protective order made pursuant to the Estates and Protected Individuals Code. **MCL 700.1106(v)**.
5. A protective order may be issued by the court to authorize, direct, or ratify a transaction necessary or desirable to achieve a security, service, or care arrangement meeting the protected individual's foreseeable needs. **MCL 700.5408**. The appointment of a conservator or entry of a protective order requires the court to determine both of the following:
  - a.) The individual is unable to manage his or her property and affairs effectively for reasons such as mental illness, mental deficiency, physical illness or disability, chronic use of drugs, chronic intoxication, confinement, detention by a foreign power, or disappearance.
  - b.) The individual has property which will be wasted or dissipated unless proper management is provided; **or** money is needed for the individual's support, care and welfare or for those entitled to be supported by the individual **and** that protection is necessary to obtain or provide money.
6. Appointment of a conservator may also be made in relation to the estate and affairs of an individual who is mentally competent, but due to age or physical infirmity is unable to manage his or her property and affairs effectively and who, recognizing this disability, requests a conservator's appointment. **MCL 700.5401(4)**.

B. Minor Conservatorship **MCL 700.5401(2)**

1. A minor conservatorship is used to manage assets on behalf of a child until they reach age 18. A conservator may be appointed in relation to the estate and affairs of a minor if the court determines the minor:
  - a. Owns money or property requiring management or protection which cannot otherwise be provided.
  - b. Has or may have business affairs which may be jeopardized, or prevented by, minority; or
  - c. Funds are needed for the minor's support and education and that protection is necessary or desirable to obtain or provide money.

C. Attorney\Guardian Ad Litem for Minor

1. The court may appoint an attorney to represent the minor if at any time in the proceeding the court determines the interests of the minor are or may be inadequately represented. The court is to consider the minor's choice if they are at least 14 years old. **MCL 700.5406(1)**. An attorney appointed by the court has the powers and duties of a Guardian Ad Litem. **MCL 700.5406(1)**.
2. Except where a petition for authority to settle a cause of action is filed, an attorney is rarely appointed for a minor in conservatorship proceedings.

D. Petition for Use of Funds

A conservator may seek a distribution of assets for the benefit of the ward. Distributions cannot be made without prior court approval. Request require a Petition and Order to Use Funds (Conservatorship), Form PC 673 to be filed. A Guardian Ad Litem is used to aid the court in determining the reasonableness of the request.

Among the most frequent reasons:

- 1) Tuition for private elementary\high school and\or a tutor.
- 2) An automobile to secure employment.
- 3) Personal computer.
- 4) Braces.
- 5) Funds to participate in foreign study program.
- 6) Monthly allowance for support (typically approved for a period of one year) when non-parent has custody of child.

- 7) Special requirements of the minor above normal support needs (i.e., wheelchair ramp for house, etc.).

E. Petition for Allowance

A conservator may also file a petition for allowance to increase compensation for the ward, the guardian, an aide or other care provider. A Petition and Order to Use Funds (Conservatorship), Form PC 673, is required. When reviewing a petition for allowance a Guardian Ad Litem should consider the following:

1. Size of conservatorship vs. amount of fund request - The greater the total value of the estate, the more the conservatorship would be able to make the distribution without unduly diminishing the funds to be given to the ward at age 18.
2. Degree of benefit to ward – Is the request for the ward, or a disguised effort to access the minor’s funds for the benefit of the entire family? i.e.: Who would use the car requested for the 14-year-old minor; would a personal computer be used primarily by the parent(s) or is it for the ward’s use with school assignments.
3. For most minor conservatorships, the parent(s) of the ward are serving as fiduciary. Often it is difficult for them to understand that conservatorship funds cannot be used for the general good of the family, or for items the parent(s) is responsible for providing (i.e., food, housing, etc.).
4. Does the request pass the “smell test”? Does common sense suggest any misgivings\concerns\observations? If so, the concerns should be included in the Guardian Ad Litem report.

F. Petition to Allow Account

The most frequent use of a Guardian Ad Litem is to review a petition to allow account in conservatorship and estate proceedings. A petition to allow account is required in all conservatorship and estate proceedings and is set for hearing.

A Guardian Ad Litem is appointed to audit the supporting detail. The court may waive the hearing and approve the account if all interested persons file a written consent to granting the account. The court may also waive the hearing upon review of a favorable Guardian Ad Litem report.

1. Conservatorships.

- a. Unless otherwise ordered by the court, a conservator is required to file an account not less than annually, Account of Fiduciary (PC Form 583 or 584), MCL 700.5418, and within 56 days of the anniversary of the conservator's appointment. MCR 5.409(C)(1)&(2).
- b. A Petition and Order Allowing Account (PC Form 585) must also be filed to have the accounting approved by the court.

2. Estate Proceedings

In estates under supervised administration, accounts must be filed annually and scheduled for hearing. **MCL 700.3954(1)d); MCL 700.3988(1)**. Items to review include, and are not limited to, the following:

- a. Receipts.
- b. Math verification - check subtotals and totals. The court does not audit accountings for either conservatorships or decedent's estates. The Guardian Ad Litem review serves as the audit. The Guardian Ad Litem report should, therefore, affirmatively state, the Guardian Ad Litem has reviewed the math and detail in support of the account.
- c. Reasonableness of expenses based on the circumstances and information the Guardian Ad Litem has been able to substantiate.
- d. Reasonableness of expenses includes an examination of attorney and fiduciary fees and expenses. As a result of the controversy between the interested persons fee disputes often arise as an objection to an accounting even if the Guardian Ad Litem believes the fees to be reasonable.

G. Related Estate Proceedings

Guardian Ad Litem are also appointed to review various petitions and related pleadings arising within conservatorship proceedings to make a recommendation regarding the relief requested.

Examples:

- 1) Reform\amend trust instrument.
- 2) Exercise certain rights\elections under a trust.
- 3) Appoint\remove personal representative.

4) Sale of real estate.

3) Petition to authorize settlement of a cause of action.

## VI. PROCEDURE FOR CONDUCTING ADULT GUARDIANSHIP REVIEWS

This section describes the procedure for a completing adult and minor guardianship reviews discussed in Sections III (D) and IV(C), above.

- A. The court pays \$60 for guardianship reviews where the ward has less than \$5,000 in liquid assets. Where the ward has \$5,000 or more in liquid assets, their estate may be billed as follows:

<u>Ward's Assets</u>	<u>Payment</u>
\$0-4999	\$60 paid by court
\$5000-10000	Bill ward's estate \$200*
>\$10000	Bill ward's estate standard hourly rate (bill to be pre-approved by the court)**

\*To be noted clearly in your report.

\*\*Proposed bill to be attached to your report.

- 1 Attorneys will receive approximately 10 cases at a time.
- 2 Assignments for guardian reviews will be received approximately every 2-3 months.
- 3 Reports are due 28 days after assignment. If additional time is needed, please email the Probate Register's Administrative Coordinator before the due date at or [register@wcpc.us](mailto:register@wcpc.us).
- 4 When ordering files for these reviews, please use WCPC 31, Request to Review Files for Guardianship Reviews. A copy of this item is contained in the seminar handouts on the court's website (2023 Attorney Training Materials).

**Note #1:** Documents can be viewed on the website: [www.wcpc.us](http://www.wcpc.us), under Case Access.

**Note #2:** Attorneys may view images via the computers in the Attorney Lounge on the 12<sup>th</sup> Floor if a member of the Wayne County Probate Bar Association or using the court's public access computers on the 13<sup>th</sup> Floor.



**Note #3:** You may use a legal assistant, office staff, or other individual to conduct these reviews. If you use a third party, please identify that person in your report.

- B. The court generates an Order Appointing Attorney to Review/Investigate Guardianship (Form PC 635) and e-mails a copy to the lawyer.
- C. **Within 28 days**, the attorney must:
  - 1. Review the probate file to obtain information on the ward. For the guardianship review file retrieval process, see the material on the Court's website under the 2023 Attorney Training materials.
  - 2. The ward *must* be visited, either in person or remotely (e.g., via Zoom, FaceTime, etc.), by you as attorney, your legal assistant or other member of your office staff. If someone other than yourself conducts the review, identify that person in your report.
  - 3. File a report with the court. (Form PC 636 - Report on Review of Guardianship of Legally Incapacitated Individual).
    - a. Indicate due date at the top of the report.
    - b. Include names, addresses, and telephone numbers of the ward, guardian, and conservator, if any.
    - c. Report must indicate the ward's financial status.
    - d. For additional information on the requirements for completing guardianship reviews, see "Notice to Attorneys Participating in Guardianship Reviews" which is in the seminar handouts on the court's website (2023 Attorney Training Materials).
- D. If the ward is found to be a minor, the order is vacated. If the ward is deceased, the guardian is discharged.

**Note:** When you conduct your review, provide the fiduciary with a blank copy of Form PC 634 - Annual Report of Guardian on Condition of Legally Incapacitated Individual. (This form is available on the court's website, [www.wcpc.us](http://www.wcpc.us), under Forms\Feedback – SCAO Approved Forms – Guardianship.) Give this form to the guardian and explain that an annual report must still be submitted to the court even though you have conducted a guardianship review. Many petitioners mistakenly assume that the annual report is not required due to your visit.

- E. The court will informally review the report. Depending on the attorney's findings, the court will enter one of the following orders (Form PC 637 - Order Following Review of Guardianship):
1. To continue the guardianship. A copy of the report and order will be sent to the ward and guardian.
  2. To appoint an attorney to represent the ward for filing a petition for modification of the guardianship. The lawyer appointed may be different than the attorney who conducted the review.
    - a. A copy of the report and order will be sent to the ward, the guardian, and the attorney appointed for the ward.
    - b. **Within 14 days**, the attorney must:
      - 1) File pleadings with the court.
      - 2) Obtain hearing date. The hearing date on a petition for modification can be obtained from the judge of record's court clerk.
      - 3) Make service on interested persons.

## VII. PROCEEDINGS REQUESTING LEIN REMOVAL

### A. The LEIN Network

1. It is a computer network maintained by the Michigan State Police. This database allows law enforcement officials throughout the state to obtain information on an individual, typically when they are pulled over for a traffic stop, arrested, seeking a gun permit, etc.
2. **MCL 330.1464a** is designed to prevent individuals who are subject to a mental health order from being granted a gun permit and/or legally purchasing a gun.

### E. Removal of Mental Health Orders from LEIN

Section 464a of the Mental Health Code provides:

(1) Upon entry of a court order directing that an individual be involuntarily hospitalized or that an individual involuntarily undergo a program of alternative treatment or a program of combined hospitalization and alternative treatment, the court shall immediately order the department of state police to enter the court order into the law enforcement information network. The department of state police shall remove the court order from the law enforcement information network only upon

receipt of a subsequent court order for that removal.

(2) The department of state police shall immediately enter an order into the law enforcement information network or shall immediately remove an order from the law enforcement information network as ordered by the court under this section. **MCL 330.1464a.** (Emphasis added)

F. LEIN Order Removal Procedure

1. A petition is filed with the court.
  - a. If the petitioner is under an existing order, including alternative treatment or combined hospitalization\alternative treatment, the petition is not to be accepted by the court, since anyone on a current order cannot be removed from LEIN.
  - b. If the petitioner has a new pending petition for hospitalization, the LEIN removal petition will not be set for hearing.
  - c. If the petitioner was not under a treatment order, and no hearing on a new petition was pending, a hearing will be scheduled on petition.
    1. Filing Fee – None.
    2. Form Used – MC 239, Removal of Entry From LEIN
    3. The petitioner fills out the form. There is no right to a court-appointed attorney for this type of petition.
    4. Petition will be set for hearing in same manner as any other item on the mental health docket.
    5. An attorney will be assigned by the court to review the petition.
      - a. The lawyer’s role is that of a Guardian Ad Litem, i.e., investigate and report findings in writing to the judge to whom the matter was assigned. NOTE: The lawyer does not represent the person seeking the LEIN removal order.
      - b. Unless directed by the judge, the Guardian Ad Litem is not required to attend the hearing.

2. Court Hearing

- a. The court will determine if it is appropriate to grant the petition to remove the order from the LEIN.
- b. If the petition is granted, the court will prepare the order of removal and forward it to the Michigan State Police.

## **VIII. PRACTICE TIPS FROM THE BENCH AND BAR**

### **A. In General**

The first duty of a Guardian Ad Litem is to personally visit the alleged incapacitated individual. **MCL 700.5305(1)(a)**. Visits with the alleged incapacitated individual may be conducted in-person or using video technology. Personal visits, both in person and video visits, present situations requiring different approaches to successfully complete an interview.

Here are a few suggestions to keep in mind when conducting in-person and video visits:

Always remember to be polite to the person you are interviewing. Many of these individuals may suffer from dementia and/or mental illness which can cause their behavior to be erratic and contribute to an unkempt home. As Guardian Ad Litem, you are part of the process to enable assistance to help improve their situation.

Help to lower the emotional temperature, not raise it. Be aware of an individual's non-verbal cues, i.e., do they appear to be defensive, relaxed, fearful, etc.; also consider what appears to be the individual's physical and mental condition, adjust your approach accordingly.

This is especially important when you are dealing with confrontational/agitated siblings/children or other family members and unrelated persons who insist on being part of the interview process. In these scenarios, politely let the person know that you must meet with the alleged incapacitated individual separately. Also advise the person that upon conclusion of your interview you will want to talk with the individual to include their concerns.

### **B. In Person Visits**

When performing an in-person visit, the following pointers should be kept in mind as you attempt to discharge your Guardian Ad Litem responsibilities.

1. Conduct your visit during the day.
2. Before going to the home, conduct an online search to determine its location.

3. Do not bring your laptop or tablet with you into the home.
4. Do not wear expensive jewelry, wedding ring, etc.
5. Let your office know when and where you are making your visit.
6. Be aware of your surroundings.
7. Be aware of be dogs on the property.

If your instincts tell you, it would be unsafe\inappropriate to enter the home, conduct the meeting on the porch\front steps.

- a. If you feel an area is particularly unsafe, it is acceptable not to stop and or to get out of your car. Your options in these circumstances include and are not limited to:
  - i. Return later and record the number of attempted to visits.
  - ii. Arrange to conduct a video interview.
  - iii. If in-person and video visits are unsuccessful, advise the court that you were unable to conduct the visit.
- b. If situation appears unhealthy (i.e., trash, highly unclean) and\or the individual presents as disheveled, filthy, etc., consider calling **Adult Protective Services (APS) at 1-855-444-3911**. Also, remember to note these items in your report.

C. Video Interviews.

1. Some petitioners and alleged incapacitated individuals may not immediately accept your statement that you are the Guardian Ad Litem from the court. If asked, be prepared, if necessary, to show the order of appointment as Guardian Ad Litem to identify yourself as the Guardian Ad Litem. If they decide not to disclose information until they are in court, provide them with the hearing information and conclude the interview.
2. Avoid using your personal phone or email address.
3. Be aware of the images in your background.
4. Verify the audio and video connection is clear and without distortion.
5. Identify the person(s), if any, in the room with the individual.
6. Confirm the relationship of those in the room.

7. Notice if the individual is being coached or prompted or distracted when responding to your questions.
8. Advise to turn down or remove background noises or loud pet sounds.
9. Feel free to reschedule the interview to a more convenient time or place.
10. As discussed above, whenever possible or necessary, exclude the others from the room; advise you need to talk alone with the individual.
11. Upon conclusion of talking with the individual(s), talk with those who were exclude from the room or those in the room who were necessary to conduct the interview.

## **IX. VIDEO COURTROOM HEARINGS:**

### **A. Tips To Share With Interested Parties Appearing For Video Hearings**

All Wayne County Probate court hearing are conducted in a video remote courtroom. To further the productive and efficient use of video interview and attending video courtroom hearings, here are a few a few of tips share with the petitioners and interested parties, especially those who are not acquainted or comfortable using video technology.

1. Encourage petitioner to dress appropriately. Although not physically present, the “video courtroom” is an extension of the courtroom and subject to the same rules of decorum and attire. (No golf shirts, T shirts or hats, etc.) your client(s) should also be reminded they are in court while attending via Zoom.
2. When checking-in with the court clerk, petitioner should verify their audio and video is being heard and seen without distortion. This will ensure the court can hear and understand the statements of record and will ensure, if requested, the recording can be accurately transcribed.
3. Advise the petitioner *everything is recorded*. When not physically in the court it is easy to forget *everything is recorded*. Advise petitioner they should not say anything or do anything on camera they would not like to have as part of the of the court record. If they do not want certain things recorded, petitioner should become familiar with how to use the mute and video icons on their phones and computer.

4. Please encourage the petitioner to remember while on camera, even when the case has not been called, they are on camera. Do not work on your keyboard while on microphone or camera. Please do not place the camera “upfront and personal” to you face.
5. If you’re the petitioner is to appear from home, ask them to confirm the use of the phone/computer connections *before* the case is called. Advise the court if the petitioner is appearing. Advise if you do or do not see the petitioner on the Zoom hearing or if they are having problems with the connection.
6. Avoid “rapid speak”. Video hearings are subject to audio and video transmission delays. If you speak rapidly, neither the court nor other parties will be able to understand what has been said.

***There is NO driving or walking while attending any hearing on video. All parties must be in a room and stationery during a video hearing.***

## **X. CONCLUSION**

This presentation has provided you with a brief overview of the procedures and responsibilities for serving as a Guardian Ad Litem in Wayne County Probate Court. Feel free to use these materials for guidance in this area.

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