

Article 81 Guardianship Process

NOTE

Documents Needed

- Verified Petition
- Order to Show Cause (OSC)
- Request for Judicial Intervention (RJI)
- Supporting Documents or Affidavits (sworn statements), if needed

Starting the Case

- File all documents
- Paper or E-filing depends on county. if paper, be sure to make a copy for yourself
- Fees: Must buy index number and RJI, can be waived

COURT EMPLOYEES ARE NOT ALLOWED TO PROVIDE LEGAL ADVICE OR ASSIST WITH PREPARING DOCUMENTS.

After Filing

- Court will decline to sign OSC if the petition lacked evidence
- If the judge signs the OSC, the case will be set for a hearing.
- Order will have:
 - Date, time, and location of hearing (may be virtual)
 - Who must be served and how
 - Contact info for anyone appointed, which may include a Court Evaluator, lawyer to the Alleged Incapacitated Person (AIP) or temporary guardians.
 - A response to any request for emergency interventions.

IF POSSIBLE, GET ADVICE FROM AN ATTORNEY

Before the Hearing

- Petitioner serves documents and files affidavit of service (proof of service): not filing can delay the hearing or even cause the petition to be dismissed
- A Court Evaluator, if appointed, will investigate the case which includes meeting with the AIP and talking to those who know them well
- AIP may hire a private attorney or request a lawyer be appointed if the court has not already done so.

The Hearing

- AIP's appearance may be excused (waived)
- Petitioner present any evidence and witnesses testify
- The AIP/their attorney can bring evidence and question the petitioner's witnesses
- Court Evaluator will submit their report and sometimes will testify
- Some hearings may take multiple days and the judge will make orders as it goes

The Decision

- The court will give a decision out loud or, usually after a few days, in writing.
- The court will say whether they find the AIP not incapacitated, incapacitated, or, if they consent, a person in need of a guardian (PING).
- The decision will appoint a guardian, list the guardian's powers, give length of guardianship, name a Court Examiner, order payments, list guardian's duties
- The judge will give instructions on how the order should be drafted, and submitted to the court. Sometimes a party will be asked to draft it and notify all parties.

Guardianship Begins

- Once the judge signs the order, the guardian must do a few things before they can begin: file the commission, file oath and designation, take a class, and get a bond (if required).
- Guardians need to file an Initial (90 day) Report and, each May, an Annual Accounting.
- There are resources to support lay (family/friend) guardians.