

Video 3: Guardianship: The Court Process

Hello and thank you for taking the time to learn more about guardianship. This video is about the court process to appoint a legal guardian for an adult. Many adult guardianship cases are decided in what is called an article 81 guardianship proceeding. Other types of guardianship are discussed on the court website.

If you are seriously considering guardianship, please keep in mind, the judge will only appoint a guardian if no other services or legal tools are available to help. Every alternative must be explored first. There are several resources to learn more about alternatives. You can find more information on the guardianship website, including a video which is part of this series.

Let's talk about who can start an article 81 guardianship proceeding.

Chapter Heading: Who Can Start an Article 81 Guardianship Proceeding?

Anyone concerned with the well-being of another person can start an Article 81 Guardianship Proceeding, including family, friends, adult protective services, hospitals and even the person themselves. While you do not need an attorney, keep in mind that the process is complex. You should work with an attorney, if possible.

Let's take a minute to review some terms that you should know. The person who brings the case is called the petitioner. If the petitioner does not have a lawyer, they are called "self-represented" or a Latin term, "pro se." The person who may need a guardian is called an "alleged incapacitated person," or "AIP" for short.

Another important individual in this process is the Court Evaluator, sometimes called “the eyes and ears of the court.” A judge often appoints a Court Evaluator to make a recommendation about whether they believe the person needs a guardian and who the guardian should be. They are a neutral person who will talk to the alleged incapacitated person, the petitioner, and other people involved. The court evaluator may also review records to learn more about the situation. Let’s talk about how to start a case.

Chapter Heading: How to Start a Case

There are a few items that must be filed with the court. The case is filed in the county where the alleged incapacitated person, or AIP, lives. How and where you file the papers will differ depending on that county’s rules. It may be in person, online, or by mail. It's always best to call the court or check on the court website.

Three documents are needed to start a case. First, we will talk about the Order to Show Cause.

Chapter heading: Order to Show Cause

The order to show cause document is often called “OSC.”

The OSC tells the AIP what their legal rights are in this process. It also lists the powers the petitioner thinks the guardian should have to keep the AIP safe. If there are any time-sensitive issues like urgent medical needs or a possible eviction, these issues should be addressed in the order to show cause. The judge will review the document and add information about the proceeding, such as the time and place of the hearing.

Another important document you will need to file is the verified petition.

Chapter Heading: Verified Petition

The verified petition is where you tell your story, explaining why the person needs a guardian and who should take on this role. Be specific:

Why is this person unable to manage their personal needs or property?

Give examples of poor decision making.

Clearly state the powers requested and identify a proposed guardian.

In both the order to show cause and the verified petition, the petitioner must name all interested parties. The term “interested party” means those involved in the life of the AIP. This can include family, roommates, or perhaps the administrator of a nursing home, if that’s where the AIP is living.

There is one more required document, a Request for Judicial Intervention.

Chapter Heading: Request for Judicial Intervention

The Request for Judicial Intervention is also known as an RJI. When you start a case, the clerk uses this form to assign a judge. You will also need to purchase an index number. The court uses this number to easily identify your case going forward. The index number will go on all your forms. Fees for the RJI and index number can be expensive. Expect to pay several hundred dollars. If you cannot afford this fee, call your specific court to request a “poor person’s affidavit,” asking the court to waive it.

Let’s talk about what happens next.

Chapter Heading: What Happens Next

Once you file everything, a judge will review your papers. If the judge decides your papers have all the needed information, they will sign the Order to Show Cause and provide the following information:

the date, time, and location of the hearing,

the name and contact information of the court evaluator,

the name of the AIP’s attorney, if one is appointed, and

who has to be notified of the proceedings and how.

If you do not hear from the court, you should call the clerk and asked if a signed copy of the OSC is ready. You may have to pick it up in person, or it might be emailed.

Another term you should know is Service.

Chapter Heading: Service

The term “service” is used to describe how to notify everyone about the case. Once signed, the Order to Show Cause will explain which papers need to be served, how they should be served, and who should receive them. There are several possibilities: People can be served in person, by mail, or another way. Please note, the petitioner is not allowed to serve the papers. Service must be made by someone else and they must be 18 or older. A court proceeding cannot continue until you let the court know everyone has either been served or an attempt has been made to serve them. You do this by filing what is called an affidavit of service. More information about service is available on the court website.

The next thing that will happen is the Hearing.

Chapter Heading: The Hearing

At the hearing, it is up to the petitioner to prove that the AIP needs a guardian. You can ask people to testify as witnesses. This could include family members, friends, social workers, and others who know the person well. Keep in mind that all witnesses can be asked questions by others involved in the case.

Think about what you want to say before your hearing date. The hearing is an opportunity to tell the story of your petition and provide more details.

After the petitioner presents their case, the AIP and other parties will have an opportunity to talk. If you are the AIP in a guardianship proceeding, you can have an attorney represent you

and help explain your point of view. If an attorney was not appointed and you want one, you should let the Court Evaluator or the court know. You can also hire an attorney yourself.

At or before the hearing, the Court Evaluator will submit a report summarizing their investigation and whether they recommend a guardian. Sometimes they will testify as well.

If you do not understand what is happening during a hearing, ask the judge or another trusted individual in the court to help explain.

At the end of the hearing the judge will usually give their decision either out loud or at a later date in writing. Their decision will detail:

Whether or not they think a guardian needs to be appointed,

Who the guardian will be,

What powers the guardian will have

And how long the guardianship should last.

Please keep in mind that even if the petitioner asks to be the guardian or suggests another person, the judge can still pick someone else. If a guardian is appointed, the judge will appoint a Court Examiner who will review the guardian's reports going forward and ensure the guardian complies with their duties. Note that the Court *Examiner* is a different role than the Court *Evaluator* who I mentioned earlier.

The petitioner will sometimes be asked to draft an order for the judge to sign. The order is an official paper stating the judge's decision. There are resources available on our website to explain this process.

We have covered a lot of material. An Article 81 Guardianship proceeding is a complex legal process. It is best to talk to a lawyer, if possible. You can also ask the judge or other court staff

questions if you don't understand what is happening with your case. I hope the information in this video has been helpful. Thanks for watching