

# Appointment of Guardian of Individual with Developmental Disability Checklist

The following checklist is based on [MCL 330.1602](#), [MCL 330.1618](#), and [MCR 5.125](#).

- Petition filed by:
  - an interested person or entity, or
  - the individual. [MCL 330.1609\(1\)](#).
- Petition includes:
  - Relationship and interest of the petitioner.
  - Name, date of birth, and place of residence of the respondent.
  - Facts and reasons supporting the need for a guardianship.
  - Names and addresses of the individual's current guardian, and the respondent's presumptive heirs.
  - Name and address of the person or facility where the respondent is residing.
  - Description and approximation of the value of the respondent's estate and an estimate of the individual's anticipated annual income and the source of the income.
  - Name, address, and age of the proposed guardian and if the proposed guardian is a current provider of services to the developmentally disabled.
  - Factual description of the nature and extent of the respondent's developmental disability.

- Report regarding the alleged developmental disability. [MCL 330.1609\(1\)](#); [MCL 330.1612\(1\)](#).
- Appoint counsel if no appearance has been made. [MCL 330.1615\(1\)-\(2\)](#).
- Appoint guardian ad-litem, if necessary. [MCL 330.1616](#).
- Schedule hearing. [MCL 330.1614\(1\)](#).
- Venue is proper. [MCL 330.1614\(2\)](#).
- Ensure proper notice has been provided. [MCL 330.1614\(3\)](#); [MCR 5.125\(C\)\(19\)](#).
- May permit use of videoconferencing technology in accordance with [MCR 2.407](#), if requested by a participant or sua sponte.<sup>1</sup> [MCR 5.140\(A\)](#). “[I]f the subject of the petition wants to be physically present, the court must allow the individual to be present.” [MCR 5.140\(C\)](#).
- Identify parties and interested persons. See [MCL 330.1617\(4\)](#).
- State case history.
- Opening statements (unless waived).
- Petitioner presents witnesses and evidence.
- Respondent presents witnesses and evidence.
- Inquire into nature/extent of general intellectual functioning of respondent. [MCL 330.1618\(1\)\(a\)](#).
- Determine extent of impairment in respondent’s adaptive behavior. [MCL 330.1618\(1\)\(b\)](#).
- Determine respondent’s capacity to care for himself/herself by making and communicating responsible decisions concerning his/her person. [MCL 330.1618\(1\)\(c\)](#).
- Determine capacity of respondent to manage his/her estate/ financial affairs. [MCL 330.1618\(1\)\(d\)](#).

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<sup>1</sup> If videoconferencing technology is used, it must be “in accordance with the standards established by the State Court Administrative Office[,]” and the proceeding “must be recorded verbatim by the court.” [MCR 5.140\(D\)](#).

- Determine appropriateness of proposed living arrangements of respondent and determine whether it is the least restrictive setting suited to respondent's condition. [MCL 330.1618\(1\)\(e\)](#).
- If respondent is residing in a facility, specifically determine the appropriateness of the living arrangement and determine whether it is the least restrictive suited to respondent's condition. [MCL 330.1618\(1\)\(f\)](#).
- Make a reasonable effort to question respondent regarding his/her preference as to who should be appointed guardian. [MCL 330.1628\(2\)](#).
- Make findings:
  - Finds whether by clear and convincing evidence respondent is developmentally disabled and requires guardianship services. [MCL 330.1618\(4\)-\(5\)](#).
  - If guardianship is supported by evidence, further find by clear and convincing evidence whether respondent is totally/partially without capacity to care for his/her person/estate as to the following necessary tasks, responsibilities, or judgments, but is otherwise legally competent and has the capacity to perform in other areas. [MCL 330.1618\(4\)-\(5\)](#); [MCL 330.1620](#).
  - Find least restrictive living arrangement suited to respondent's condition. [MCL 330.1618\(1\)\(e\)-\(f\)](#); [MCL 330.1623](#).
  - If appointing an agency directly providing services to respondent**, find that there is no qualified, suitable individual or agency willing to act as guardian and the appointment of an agency directly providing services to individual is necessary at present. [MCL 330.1628\(1\)](#).]
- Order that petition is granted/denied.
- If granting petition**, appoint plenary/partial guardian (if partial, set out specific powers).
- Make a reasonable effort to orally inform respondent of his/her right to request the guardianship be dismissed/modified at any time, and provide written notice regarding rights and procedures. [MCL 330.1634](#).
- State duration of guardianship (no longer than five years if partial). [MCL 330.1626](#).

- State standby guardian information, if applicable. [MCL 330.1640](#).

Court form to use:

*Order Appointing Guardian for Individual with Developmental Disability*, PC 660