

An “Interested Person” in Adult Guardianship Matters in Massachusetts

**Prepared by the Mental Health Legal Advisors Committee
May 2018**

ADULT GUARDIANSHIP¹

Who may establish a guardianship?

A probate court may appoint a guardian to make decisions for a person found by the court to be incapacitated and thereby unable to make some or all of his or her own decisions.

How should a court define the role of a guardian?

The court should limit a guardian’s role as much as possible. When establishing or reviewing a guardianship, the court must maximize the self-reliance and independence of the incapacitated person, and only grant the guardian powers necessary to make up for the person’s limitations.²

Limiting a guardianship means carefully crafting the guardian’s powers so that the individual under guardianship retains as much authority as possible over his or her life. For example, a guardianship might be limited so that an individual can make decisions about:

- where and with whom to live;
- the nature of the services and supports one receives;
- essential health care;
- with whom one associates;
- where one works;
- where one worships; and
- other important life decisions.³

In rare cases, when a person is incapacitated to the extent that he or she cannot make or participate in any decision-making, such that no limitations are appropriate, the court will order a general (or “plenary”) guardianship.

FILING A PETITION

Who can file a petition in an adult guardianship matter?

Any person interested in the welfare of a person alleged to be incapacitated may file a petition to place the person under guardianship.⁴

NOTICE

Who is entitled to notice in an adult guardianship matter?

Notice must be provided to:

- the subject of the guardianship;
- everyone named in the guardianship petition;
- the U.S. Veteran's Administration (VA), if the person is entitled to any benefit, estate, or income through the VA; and
- the Department of Developmental Services, if the subject of the guardianship has an intellectual disability.⁵

INTERVENTION

What is intervention in a court proceeding?

Intervention is when a person who is not a party to a court matter formally inserts oneself in the case in order to have a say in the proceeding. The process by which one seeks to intervene is governed by Mass. R. Civ. P. 24(a).

Why would someone intervene in a guardianship proceeding?

In guardianship matters, an "interested person" might seek to intervene for the following reasons:

- to oppose or support a petition for guardianship;
- to expand a guardianship;⁶
- to modify a guardianship;⁷
- to limit a guardianship;⁸
- to remove a guardian;⁹
- to terminate a guardianship.¹⁰

How does one intervene in an adult guardianship?

The person who wants to intervene must petition the court for the right to do so and the court must approve the intervention.

Once the court declares that a person has sufficient interest and has the right to intervene, the person "ordinarily becomes a party with full litigative rights."¹¹

Who can intervene in an adult guardianship matter?

An "interested person" may intervene in an adult guardianship matter. Typically, interested persons will be the immediate family members of the respondent – such as children, spouses, or parents, but the statute permits anyone with an interest to initiate or request the right to intervene

in the proceedings. Often, an “interested person” may be a hospital or a public agency, such as the Department of Mental Health.¹²

The court decides if a person or entity seeking to intervene is an “interested person.”

How does a court determine if someone is an “interested person”?

When a person files a motion to intervene as an interested party in a guardianship matter, the court makes findings on whether there is sufficient evidence to show that the person has an interest in the welfare of the incapacitated person. The qualification for an interested person may be different in different contexts and proceedings. Thus, the definition should be read expansively to further the purpose of the specific proceeding.

For example, in a recent decision, the Court held that the grandfather of a young woman with an intellectual disability would have the right to intervene if he is a “person interested in the welfare of the incapacitated person” who demonstrates enough facts, along with his motion to intervene, to establish his interest.¹³

The Court did not explain what procedures are required to assess whether a person qualifies as an interested person, but judges may conduct a non-evidentiary or evidentiary hearing in order to make that assessment.¹⁴

ENDNOTES

¹ For additional information about guardianship, see the website of the Mental Health Legal Advisors Committee at <http://www.mhlac.org/Library.htm#10>.

² See G.L. c. 190B, § 5-306(a).

³ See, generally, Leo V. Sarkissian, Self-Determination vs. Guardianship Decrees: Self-Determination Wins! Expanding the Ability of Courts to Limit Guardianship Decrees, Advocate (ARC, Fall 2016) at 1, 10, available at <https://issuu.com/thearcofmassachusetts/docs/advocate10.16>.

⁴ G.L. 190B, § 5-303(a). The petition form is available at <https://www.mass.gov/files/documents/2016/08/vf/mpc120-petition-for-appointment-of-guardian-adult-fill.pdf>.

⁵ G.L. 190B, § 5-304.

⁶ Petition to Expand, Modify, Limit the Powers of a Guardian, MPC 220, <http://www.mass.gov/courts/docs/forms/probate-and-family/mpc220-petition-to-expand-modify-limit-fill.pdf>.

⁷ Petition to Expand, Modify, Limit the Powers of a Guardian, MPC 220, <http://www.mass.gov/courts/docs/forms/probate-and-family/mpc220-petition-to-expand-modify-limit-fill.pdf>.

⁸ If there is a *pending* guardianship matter, an interested person may seek to intervene to limit the guardianship by filing a motion to limit the guardianship. If there is *no pending court proceeding or the next hearing date is far in the future*, an interested person should file a petition at the Probate and Family Court using a form entitled Petition to Expand, Modify, Limit

the Powers of a Guardian, MPC 220. *See In re Guardianship of B.V.G.*, 474 Mass. 315, 326 n.20 (2016). The form is available at <http://www.mass.gov/courts/docs/forms/probate-and-family/mpc220-petition-to-expand-modify-limit-fill.pdf>.

⁹ G.L. c. 190B, § 5-212.

¹⁰ If a person is no longer incapacitated, an interested person may petition for an order to terminate a guardianship or make an informal request to the court. G. L. c. 190B, § 5-311(b).

The form to seek to terminate a guardianship is available at <https://www.mass.gov/files/documents/2016/08/uc/mpc203-petition-terminate-fill.pdf>. To make an informal request to the court, consult with the court clerk.

¹¹ *Care and Protection of Zelda*, 26 Mass.App.Ct. 869, 872 (1989).

¹² *Guardianship of B.V.G.*, 474 Mass. at 323. The Court cited G. L. c. 190B, § 5-306 (a) which requires the court to encourage the development of maximum self-reliance and independence of the incapacitated person and issue orders only to the extent necessitated by the incapacitated person's limitations or other conditions. In reaching its conclusion, the Court also looked to the definition of “interested party” at G. L. c. 190B, § 1-201(24) and applied it to the provision which allows an interested person to petition the court to limit the powers of a guardian over a ward (G. L. c. 190B, § 5-306 (c)).

¹³ *Id.* at 324-326.

¹⁴ *Id.* at 317.