**CHAPTER THREE**

**GUARDIANSHIP PROCEEDINGS IN PROBATE COURT**

1. **Introduction**

Guardianship is a process by which the probate court appoints a guardian to make decisions for an incapacitated individual regarding health, education, maintenance, and support. For information on alternatives to guardianship, see Chapter 2 of this Manual.

Guardianship is a formal proceeding. All formal proceedings in probate court begin with the filing of a summons and a petition.[[1]](#footnote-1) As mentioned in Chapter 1, both a summons and a petition are required to initiate every guardianship.[[2]](#footnote-2)

Unlike a civil lawsuit with a plaintiff and a defendant, a guardianship involves a petitioner and an alleged incapacitated individual (A.I.I.), as well as other interested parties (called “co-respondents”),[[3]](#footnote-3) including:

* Spouse and adult children of the A.I.I., or if none, parents; or if none, the closest adult relative;
* Any agent under a general power of attorney or health care power of attorney;
* A person with equal or greater priority to be appointed guardian;[[4]](#footnote-4)
* A person, other than a healthcare worker who has been caring for the A.I.I. during the preceding six months.

While a guardianship is not necessarily an adversarial process, the process can be very contentious. The A.I.I. may not believe that he or she is incapacitated and may not want a guardian. Also, two or more parties may disagree about who should be appointed as guardian. When the parties disagree over the outcome, the guardianship case may be called a “contested” case.

Whether a case is contested or not, the probate judge will review the facts of the case, including the information and recommendations provided by the guardian *ad litem* (GAL), and make a decision by applying the law to the facts of the case.

*Note: For more information on the definitions used in guardianship, see the Appendix.*

1. **Before the Formal Procedure**

Before a petition is filed, a family member or friend of an individual with limited capacity may identify a need for a surrogate decision maker. A surrogate decision maker is someone who has legal authority to make a decision for another person. Guardians are surrogate decision makers, but so are representative payees through the social security system, as are agents under powers of attorney. Individuals with capacity may choose to execute a power of attorney, granting an agent the legal authority to make decisions for them, particularly if they become incapacitated and cannot make decisions for themselves. Advance directives such as a living will or healthcare power of attorney might also be appropriate. Guardianship is usually not necessary for someone who has properly executed appropriate documents in advance of incapacity.

Prior to filing a guardianship case, caregivers should ask:

* Is the person incapacitated?
	+ Review the definitions, particularly the definitions of “incapacity,” “supports and assistance,” and “less restrictive alternative.”[[5]](#footnote-5)
	+ Discuss with medical professionals (take definitions).
* Is there an alternative that would reduce or eliminate the need for a guardianship?
* What rights need to be removed from the individual alleged to be incapacitated?
* What rights need to be transferred to the proposed guardian?
* If a guardian is needed, who should serve?

These questions are the issues that will arise in most guardianship cases and are the same questions the GAL should be trying to answer during the fact-finding portion of the case.

1. **Formal Procedure for Guardianship - Step by Step**
	1. Step 1 - Filing the Summons and Petition

The filing of the summons and petition begins the formal process for the appointment of a guardian. The petition may seek a finding of incapacity, appointment of guardian, or both.

*What is a summons?*

A summons calls respondents, including the A.I.I., to appear before the judge and answer the allegations contained in the petition. The summons indicates that a proceeding is formal and provides information on the who, what, when, and where of the case.

*What is a guardianship petition?*

A petition in a guardianship case sets forth the basic facts of the case and makes allegations that the A.I.I. is incapacitated. Most of the time, the petitioner is also asking the court to appoint the petitioner as the guardian. However, in some cases, the petitioner may simply ask that another person be appointed as guardian or only for a determination of incapacity. A petition for guardianship must contain the following information:[[6]](#footnote-6)

* Interest of the petitioner;
* Name, age, current address, and contact information for the A.I.I.;
* Physical location of the A.I.I. during the six-month period preceding the filing of the petition (and if not in South Carolina, information on why the court has jurisdiction);
* Information regarding co-respondents. Co-respondents are individuals who may have an interest in the guardianship action. For example, if the mother of an adult child files a petition to be the guardian of the adult child, she will need to provide information to the court about the adult child’s father, even if they are divorced;
* Information regarding the proposed guardian;
* Statement of the rights the petitioner is requesting be removed from the A.I.I.;
* Information on the A.I.I.’s assets and income.

*Who files the petition?*

The statute does not limit who can file a guardianship petition, it just notes that “a person” may seek a finding of incapacity and appointment of a guardian.[[7]](#footnote-7) A person is defined broadly such that a corporation or even a government agency is considered a “person” under the statute.[[8]](#footnote-8) Typically, the petitioner is a close family member or friend of the A.I.I.

*In what court is the petition filed?*

The probate court has “exclusive original jurisdiction” over guardianship actions involving adults.[[9]](#footnote-9) Family court has jurisdiction over guardianships of minors. “Exclusive original jurisdiction” means that if an adult guardianship action was brought in any other court than the probate court, the case should be dismissed because the other courts do not have subject matter jurisdiction over guardianships.

*In what county is the petition filed?*

The venue, or correct county, for a guardianship case is the place where the A.I.I. resides or is present. If the A.I.I. is in an institution by a court order, then the venue can be the county where the court issued the order.[[10]](#footnote-10) For example, if John is from Greenville County and if the Greenville County Probate Court committed him to Patrick B. Harris Psychiatric Hospital in Anderson County, a petition for guardianship of John may be brought in Anderson County, where John is present, or in Greenville County, where John resides.

*Note: If more than one petition for guardianship is before the court, the court may consolidate the proceedings.[[11]](#footnote-11) Also, if a petition for guardianship, and a petition for a protective proceeding are both before the court, the court may consolidate those actions as well.[[12]](#footnote-12) This means that the court may hear all matters at one hearing rather than having a separate hearing on each petition.*

*When is a guardianship case filed?*

The petitioner will file the case when the petitioner feels there is a need for a guardian. Note that the probate court has jurisdiction over guardianship cases for adults only. An adult is defined as an individual who has attained age 18 or who, if under 18, is married or has been emancipated.[[13]](#footnote-13) Some probate courts allow petitioners to file petitions in advance of an individual turning age 18. Some probate courts may require a petitioner to wait until after the individual turns age 18.

*Note: A petitioner filing for guardianship may not have all the information at the time of filing. Some petitioners file the action “pro se,” which means that they do not have an attorney helping them with the petition. The GAL may know more about guardianship than the petitioner. While the GAL may provide some general information to the parties, like a link to this guide, it is inappropriate for the GAL to provide legal advice to any of the parties involved in the action. A GAL who is not an attorney can never provide legal advice. For more information on working with the parties, see Chapter 6.*

* 1. Step 2--Service of the Summons and Petition

*What is service?*

Service is the process by which the A.I.I. and any co-respondents are notified about the action. Service is necessary for personal jurisdiction over the A.I.I. In addition, the due process clause of the United States Constitution requires that individuals who may lose rights be notified that they may lose their rights and have an opportunity for a hearing to oppose the proposed action.[[14]](#footnote-14)

*Does anything have to be served along with the summons and petition?*

Yes. The notice of right to counsel and any affidavits or physician’s reports filed with the petition must be served on the A.I.I. with the summons and petition.[[15]](#footnote-15) The notice of right to counsel advises the A.I.I. of the right to choose counsel and provides information on when the court will appoint counsel if the A.I.I. does not have an attorney.

*How is service accomplished on the A.I.I. and other respondents?*

Rule 4 of the South Carolina Rules of Civil Procedure (SCRCP) sets out the rules by which service must be accomplished. The summons and petition must be served together. The rule specifies that only someone over age 18 who is not a attorney or a party to the action may serve the summons and petition. Frequently, a sheriff’s deputy is used to accomplished service. Service on all parties is to happen as soon as possible, but no later than 120 days after the filing of the petition. Otherwise, the court may dismiss the action.

The Probate Code also includes requirements concerning service. Both the Probate Code and the SCRCP require personal service on a person considered to be incapacitated. Even if the A.I.I. is in a coma or in a persistent vegetative state, he or she must be personally served.

Co-respondents may be served in person, by certified mail (restricted delivery with return receipt), or by commercial delivery service.[[16]](#footnote-16)

A co-respondent may also sign an acceptance of service showing the date and location that service is accepted, and the acceptance is then delivered to the person making service, who files it with the court as proof of service.

*Note: “Less restrictive alternatives” is defined as supports and assistance which maximize an individual’s ability to exercise self-determination and autonomy.[[17]](#footnote-17) “Supports and assistance” is also defined ias essentially anything that either was established in advance to provide a surrogate decision maker, like a power of attorney, or anything that is a reasonable accommodation to allow the individual to continue to exercise self-determination, like supported decision making.[[18]](#footnote-18) For more information on alternatives to guardianship, see Chapter 2.*

* 1. Step 3 - Appointments

The next step in the formal process of the determination of incapacity and possible appointment of a guardian is the appointment of court officers to represent the A.I.I. or to investigate and report on the matter to the court.

* + 1. *Attorney for the A.I.I.*

The notice of right to to counsel informs the A.I.I. that he or she has a right to select an attorney to represent him or her, but if the A.I.I. does not take that step or the attorney fails to file a notice of appearance to let the court know the attorney has been selected, the court will appoint an attorney to represent the A.I.I. within fifteen days from the filing of the proof of service on the A.I.I.[[19]](#footnote-19)

The appointed attorney may file a motion to be relieved from representing the A.I.I. if the A.I.I. is incapable of communicating with or without reasonable accommodations, the A.I.I.’s wishes, interests, or preferences regarding the litigation. If the appointed attorney files a motion to be relieved from representing the A.I.I., the attorney may request to be appointed as the GAL, if a GAL has not already been appointed.[[20]](#footnote-20)

*Note: The Americans with Disabilities Act (ADA) and other disability rights laws may require that accommodations be made for people with disabilities, and the Civil Rights Act of 1964 prohibits discrimination on the basis of national origin by entities receiving federal financial assistance, including individuals with limited English proficiency. Depending upon various factors, these laws may mean the A.I.I. is entitled to an interpreter to ensure full access to the legal process. For example, the court may be required to provide an interpreter for an individual with limited English proficiency. Likewise, an A.I.I. who uses American Sign Language to communicate is entitled to have an interpreter. Information on resources for finding appropriate interpreters can be found at www.sccourts.org.*

* + 1. *Guardian ad Litem (GAL)*

Within 30 days from the filing of proof of service of the summons, petition, and notice of right to counsel upon the A.I.I., the court will appoint a GAL.[[21]](#footnote-21) If the GAL is not an attorney, the GAL may request that the court appoint an attorney to represent the GAL at any time during the proceeding.[[22]](#footnote-22)

* + 1. *Appointing an Examiner*

Also, within 30 days from the filing of proof of service on the A.I.I., the court will appoint one examiner who must be a physician. The physician must file a report consistent with S.C. Code Ann. § 62-5-303D. If a report from a physician was filed with the petition and served on all the parties, absent an objection from the GAL or the A.I.I., the court can appoint that physician as the examiner, allowing that report to be used.[[23]](#footnote-23) The court can appoint an additional examiner if it believes more information is necessary to determine whether the individual is incapacitated.

* 1. Step 4 - Responsive Pleadings

A responsive pleading is a document, also called an “answer,” that will respond to the allegations contained in the petition. For example, the A.I.I. may assert that he or she is not incapacitated or that the proposed guardian is not qualified. A co-respondent, possibly an individual who wants to contest the appointment of the proposed guardian, may also file a responsive pleading or, if he or she wants to be considered for appointment as guardian, may file a competing summons and petition for guardianship. Unless an extension is granted, the A.I.I. has 30 days to file the responsive pleading. The 30 days run from either the time the A.I.I.’s attorney files a notice of appearance or from the time the court appoints an attorney.[[24]](#footnote-24)

* 1. Step 5 - Investigation/Fact Finding/Discovery

The GAL will spend the time between the filing of the responsive pleadings and the hearing learning the facts of the case and developing recommendations. Ultimately, the process will culminate in a report prepared by the GAL. This report must be served upon the parties to the case and anyone who has requested notice prior to the hearing, but it should be served as soon as it is completed. This process is fully covered in Chapter 5.

* 1. Step 6- The Hearing

A hearing on the merits cannot be held sooner than the time for all responsive pleadings to be submitted -- usually 30 days after the summons and petition have been served. Notice of the time and place of the hearing is to be given to the A.I.I., any co-respondents, and anyone who has demanded notice. (A family member may file a demand for notice to be informed about the proceedings even if they do not want to file a competing petition to be appointed guardian.) The notice of hearing must be mailed or delivered at least 20 days before the date set for the hearing.

At the hearing, the A.I.I. has the right to attend, and can use discovery and evidence to contest the allegations. The proceeding should be a formal one, including the presentation of witnesses, cross examination of witnesses, and opportunities for the attorneys in the case to present open and closing arguments. The South Carolina Rules of Civil Procedure and the Rules of Evidence apply, and the probate judge has the authority to control the courtroom. The court can and will require decorum. Any unruly attendee may be asked to leave and can be forced to leave by the bailiff. The GAL or the A.I.I. may ask that the hearing be closed to the public.[[25]](#footnote-25)

The A.I.I. may waive his right to receive notice of the hearing and to attend the hearing.[[26]](#footnote-26) The A.I.I. may also waive his right to a hearing altogether, but only under the following circumstances:

* All the parties are in agreement;
* The GAL report indicates that a hearing would not further the interests of justice; and
* The A.I.I., represented by an attorney, agrees to waive his or her right to a hearing.

Even if these three requirements are met, the court may require a formal hearing, require an informal proceeding, or proceed to issue an order without a hearing.

If no formal hearing is held, the court will issue a temporary consent order, which will expire in 30 days. The A.I.I. is given a copy of the order and a notice of his or her right to request a hearing on the consent order within 30 days. If the A.I.I. does not request a hearing, the court will issue a permanent order upon the terms agreed to by the parties.

*Note: The provision in the statute allowing the waiving of the hearing was added in the 2019 amendments due to concerns regarding the cost of proceedings. Guardianship proceedings can get very expensive. It is important for the GAL to be aware of the costs and attempt to reduce costs when possible. However, if a hearing is important to ensure justice, ensure the rights of the A.I.I., or ensure that the correct decision is made by a judge, then the GAL should not allow anyone to pressure the GAL into making a recommendation that the hearing be waived. The court is not aware of the details and nuances of the case in the same way that the GAL is aware--at least not at the time when a decision is made about whether a hearing needs to be held. Therefore, a hearing may be necessary to ensure the interests of justice.*

*What must be decided by the court?*

* *Is the A.I.I. incapacitated?*  The definition of incapacity includes the following concepts relevant to guardianship:
	+ *Is the A.I.I. unable to effectively receive, evaluate, and respond to information or make or communicate decisions?*  Such a determination could be described as to whether an individual can conceptualize information and form an opinion for a course of action based on that information. Can the A.I.I. get information through listening or reading or through an interpreter or other methods? Does the A.I.I. then know what he or she wants based on the information or perhaps in spite of the information? Many smokers can receive the information that smoking is bad for their health. However, they may choose to ignore that warning. Making bad decisions does not mean that someone lacks capacity. Can the A.I.I. identify a course of action? Finally, can the A.I.I. communicate a decision once he or she has made it?
	+ *Are there supports or assistance which can aid the A.I.I., who would otherwise be incapacitated, in making decisions?*  Supports and assistance may be systems put in place for incapacity, like powers of attorney, or they may be using technology or services that eliminate the need for a guardian because the A.I.I.’s essential health needs are being met through other systems.
	+ *Is the A.I.I.’s incapacity so severe that it interferes with meeting the essential requirements for health, safety, and self-care?* Some individuals may be indecisive or have trouble communicating decisions, but when it comes to meeting their basic needs, there is not a need to add a guardian into the mix. They may be independent, or they may have supports to assist.
* *Is guardianship the least restrictive option to meet the essential health, safety, and self-care needs of the A.I.I.?*  Guardianship is the most restrictive form of decision making.
* *If the A.I.I. is incapacitated and the appointment of a guardian is necessary, what rights must be removed from the ward and what rights need to be retained by the ward?* Only those rights which cannot be exercised by the A.I.I. and which are necessary to meet A.I.I.’s needs should be removed.
* *If guardianship is needed, who should be appointed as the guardian?*

*Note: In some cases when two or more people would be appropriate to serve as guardians and both are willing to serve as guardians, the court may appoint both to serve as “co-guardians.” Only in rare circumstances will a court allow for co-guardians, and only if it is in the ward’s best interest. [[27]](#footnote-27)*

*What is the burden of proof?*

In a guardianship case, the Petitioner has the burden to present enough evidence to demonstrate that the A.I.I. is incapacitated and that a guardian is necessary, namely that there is not a less restrictive alternative. The evidence presented must be clear and convincing. Only if this burden is met should the rights of the A.I.I. be removed and potentially transferred to a guardian.

*Who should be appointed guardian?*

The statute sets forth an order of priority for those who may be considered for appointment as guardian.[[28]](#footnote-28) However, the court has discretion to choose a guardian who has a lower priority if it is in the best interest of the ward. The order of priority for appointment is as follows:

1. A person previously appointed guardian, other than a temporary or emergency guardian, currently acting for the ward in this State or elsewhere;
2. A person nominated to serve as guardian by the A.I.I. if he has sufficient mental capacity to make a reasoned choice;
3. An agent designated in a power of attorney by the A.I.I., whose authority includes powers relating to the care of the A.I.I.;
4. The spouse of the A.I.I. or a person nominated as testamentary guardian in the will of the A.I.I.’s deceased spouse;
5. An adult child of the A.I.I.;
6. A parent of the A.I.I. or a person nominated as testamentary guardian in the will of the A.I.I.’s deceased parent;
7. The person nearest in kinship to the A.I.I. who is willing to accept the appointment;
8. A person with whom the A.I.I. resides outside of a healthcare facility, group home, homeless shelter, or prison;
9. A person nominated by a healthcare facility caring for the A.I.I.; and
10. Any other person considered suitable by the court.

*What evidence may be presented in a guardianship case?*

Any party to the case, including the A.I.I., may present witnesses to establish the relevant facts in the case. The court will want to receive information from the GAL. For more information on preparing the report and preparing to testify in a guardianship case, see Chapter 5.

* 1. Step 7- Court Order

As discussed previously, for the court to appoint a guardian, there must be clear and convincing evidence that the A.I.I. is incapacitated and the appointment of a guardian is necessary to provide continuing care and supervision.[[29]](#footnote-29) The court can enter an appropriate order, treat the matter as a protective proceeding, or dismiss the proceeding.[[30]](#footnote-30) In entering its order, the court is to exercise its authority to encourage maximum self-reliance and independence of the incapacitated individual and issue orders only to the extent necessitated by the incapacity of the individual.[[31]](#footnote-31)

The court must set forth in its order any rights removed from the ward and any rights vested in the guardian. Those rights include but are not limited to the right to marry or divorce, to reside in a place of the individual’s choosing, to travel, to make medical decisions, to make end-of-life decisions, to drive, to vote, and to be employed.[[32]](#footnote-32) Some of the rights can be transferred to the guardian, and some of them cannot be transferred. For example, the right to vote may be removed from the ward., but that right cannot be transferred to the guardian. Another right that cannot be transferred is the right to marry. If an individual is not competent to marry, then a guardian cannot make decisions for them to “allow” a marriage.

The GAL will serve a vital role in making recommendations of what rights should be removed and what rights should be retained by the A.I.I. The emphasis should remain on what are the least restrictive measures to ensure that decisions which the ward cannot make are made to ensure the ward’s health, safety, and welfare. For example, in situations where there is not a clear designated decision maker under the Adult Health Care Consent Act, then a competent healthcare decision maker needs to be appointed to ensure the A.I.I. has someone who can consent to healthcare in order to maintain their health.

Employment is one very important decision making area and should not be removed from the ward absent a clear reason to believe that the individual cannot exercise the right to be employed. Individuals with significant disabilities can work.

It is also important to note that the court is required to report to the State Law Enforcement Division (SLED) the name and identifying information of anyone for whom a guardian is appointed. Once reported, the ward is prohibited from shipping, transporting, possessing, or receiving firearms or ammunition.[[33]](#footnote-33)

1. **Mediation**

All contested litigation in probate court is eligible for mediation. It is generally understood that the issue of capacity, if contested, is not subject to mediation. That is because the Probate Code gives the judge the responsibility of deciding if there is clear and convincing evidence that the A.I.I. is an incapacitated individual. However, other issues in guardianship and protective proceedings, such as who should be appointed, what relief should be granted, what rights are lost or retained, could often benefit from mediation. Mediation is intended to give all interested parties an opportunity to participate in a facilitated conference and arrive at a mutually acceptable resolution that can then be presented to the court for approval. The court order authorizing the mediation should specify the part the GAL is to play in the mediation. If the order is not clear, prior to participating in a mediation the GAL should contact the appointing probate court to obtain clear instructions.

If the GAL believes mediation would be beneficial to the parties, or if the GAL believes mediation would not be advantageous, he or she should notify the court. It is up to the judge to decide whether and to what extent the GAL should be involved in the mediation process.

1. **Fees/Costs**

The court has broad discretion in determining fees and deciding who should pay fees and costs associated with a guardianship case.[[34]](#footnote-34) Unless the court orders otherwise, a petitioner is responsible for his or her own attorney’s fees and costs, as well as other costs and expenses of the action. This is a difficult concept for many petitioners to understand when they are often simply trying to bring a situation before the court so that someone they care about can be adequately protected. The petitioner may request that these fees and costs be reimbursed from or, to the extent not yet paid, paid from the funds of the ward, if the ward has sufficient resources. In most cases, this request will be granted, but some potential petitioners are not willing or able to take the financial risk.

If there are sufficient funds and the court believes that the action was in the best interest of the protected person, the court will generally order that counsel for the petitioner, counsel for the A.I.I., the guardian *ad litem*, and the examiner(s) be paid from the funds of the A.I.I. The court may determine the reasonableness of the fees and may in some instances reduce the fees.

Each person expecting to be paid or reimbursed should request payment of fees and expenses in the petition or responsive pleadings, or at the hearing or in a motion. A fee affidavit will be required to be submitted into the record setting forth the services provided, the time expended, the hourly rate, and any costs incurred.

In addition to being able to award fees from the funds of the A.I.I., the court may assess fees and costs to another party. This gives the court the flexibility to decide that a party was acting in bad faith or otherwise causing the petitioner or the A.I.I. to incur fees and expenses that should not, in the court’s consideration of justice and equity, have been necessary. This power in the court should serve as a deterrent to frivolous actions or defenses.

1. **Emergency/Temporary Proceedings**

From the time pleadings are filed until the court issues its final order may take several months. In some circumstances, it is necessary for the court to take action before the final order. State law sets forth procedures for both emergency orders and temporary orders.[[35]](#footnote-35) An emergency order may be issued without notice if immediate and irreparable injury, loss, or damage will result before notice can be served and a hearing held. For instance, an emergency order might be appropriate if an A.I.I. needs an operation and the physician is refusing to perform the operation using the implied consent of the individual and the individual is incapable of consenting and has no one else to consent on his or her behalf under the Adult Health Care Consent Act. After the issuance of an emergency order, service of the pleadings is required, and a hearing must be held within ten days of the order.

Where it is imperative that action should be taken, but the situation does not rise to the definition of an “emergency,” a temporary order, after notice, can be issued following a hearing. A temporary order will expire after six (6) months unless otherwise specified in the order. A hearing for permanent relief must be held within six (6) months of the temporary order. For more information about emergency and temporary proceedings, see Chapter 5.

1. **The Guardian**
	1. Qualifications

When deciding who is qualified to serve as guardian, the probate courts have significant discretion. Each proposed guardian must submit to a criminal background check. However, having a criminal background may not necessarily disqualify someone from serving as guardian. For example, a person with a criminal history of writing bad checks many years prior to the appointment will probably not be appointed as a conservator, but the court may allow him or her to serve as a guardian. Ultimately, a guardian needs to have the ability to act in the best interest of the ward, and the time and availability to make the decisions to ensure the ward’s health, safety, and welfare.

* 1. Responsibilities and Duties

The responsibilities of the guardian will vary depending upon what rights transferred from the ward to the guardian. The order will identify the rights which were removed and the rights which were transferred to the guardian. For the rights retained by the ward, the guardian may still be instrumental in supporting the ward, providing advice, and helping the ward make decisions. The guardian will also have to coordinate with the ward as the rights being exercised by the ward and the rights being exercised by the guardian may overlap. The guiding principles should be what is least restrictive and what is in the ward’s best interest. For example, the ward may retain rights related, to employment while the guardian has rights relating to the ward’s residence. If the ward wants a job that requires a move to another placement, the ward and the guardian will have to coordinate that effort.

1. **Proceedings after appointment**

The Probate Code has a number of mechanisms in place to allow a guardianship to adapt to changes in the circumstances of the ward or guardian. Some of the changes which may occur include:

* The ward has increased ability for independence and self-determination, and rights need to be restored to the ward.
* The guardian’s ability to make decisions on behalf of the ward has diminished because of age or infirmity of the guardian.
* The death of the ward or guardian.
* The ward’s ability to exercise the rights retained has diminished, and the guardian’s authority to make decisions on behalf of the ward needs to be expanded.

In addition to these examples of changing circumstances, any individual may become concerned that the guardian is not acting in the best interest of the ward. If abuse, neglect, or exploitation is suspected, the individual with knowledge of the circumstances may be required by law and should report the information to the appropriate authorities. The reporter should also notify the court. If the reporter does not suspect abuse, neglect, or exploitation but believes that the guardian is not acting in the ward’s best interest, the reporter can notify the court in an informal notice.[[36]](#footnote-36)

1. *See* S.C. Code Ann. § 62-1-201(17). [↑](#footnote-ref-1)
2. S.C. Code Ann. § 62-5-303. [↑](#footnote-ref-2)
3. S.C. Code Ann. §§ 62-5-303, 62-5-303A. [↑](#footnote-ref-3)
4. S.C. Code Ann. § 62-5-308. [↑](#footnote-ref-4)
5. See the Appendix and S.C. Code Ann. § 62-5-101. [↑](#footnote-ref-5)
6. S.C. Code Ann. § 62-5-303. [↑](#footnote-ref-6)
7. *Id*. [↑](#footnote-ref-7)
8. S.C. Code Ann. § 62-5-101(17). [↑](#footnote-ref-8)
9. S.C. Code Ann. § 62-1-302(a)(2)(i). [↑](#footnote-ref-9)
10. S.C. Code Ann. § 62-5-302. [↑](#footnote-ref-10)
11. S.C. Code Ann. § 62-4-303(A). [↑](#footnote-ref-11)
12. S.C. Code Ann. § 62-5-102. [↑](#footnote-ref-12)
13. S.C. Code Ann. § 62-5-101(1). [↑](#footnote-ref-13)
14. U.S. Const., 14th Am. (“[No state shall] deprive any person of life, liberty, or property, without due process of law.”); S.C. Const., Article 1, Sec. 3. [↑](#footnote-ref-14)
15. S.C. Code Ann. § 62-5-303A(A). [↑](#footnote-ref-15)
16. Rule 4, SCRCP. [↑](#footnote-ref-16)
17. S.C. Code Ann. § 62-5-101(14). [↑](#footnote-ref-17)
18. S.C. Code Ann. § 62-5-101(23). [↑](#footnote-ref-18)
19. S.C. Code Ann. § 62-5-303A(C); 62-5-303B(A)(1). [↑](#footnote-ref-19)
20. S.C. Code Ann. § 62-5-303B(C). [↑](#footnote-ref-20)
21. S.C. Code Ann. § 62-5-303B(2)(a). [↑](#footnote-ref-21)
22. S.C. Code Ann. § 62-5-303B(B). [↑](#footnote-ref-22)
23. S.C. Code Ann. § 52-5-303B(2)(b). [↑](#footnote-ref-23)
24. S.C. Code Ann. § 62-5-303A(D); see Rule 12, SCRCP. [↑](#footnote-ref-24)
25. S.C. Code Ann. § 62-5-303C(A). [↑](#footnote-ref-25)
26. S.C. Code Ann. § 62-5-303C(A). [↑](#footnote-ref-26)
27. S.C. Code Ann. § 62-5-304(C). [↑](#footnote-ref-27)
28. S.C. Code Ann. § 62-5-308. [↑](#footnote-ref-28)
29. S.C. Code Ann. § 62-5-304. [↑](#footnote-ref-29)
30. S.C. Code Ann. § 62-5-304(B). [↑](#footnote-ref-30)
31. S.C. Code Ann. § 62-5-304(A). [↑](#footnote-ref-31)
32. S.C. Code Ann. § 62-5-304A. [↑](#footnote-ref-32)
33. S.C. Code Ann. § 23-31-1040(D). [↑](#footnote-ref-33)
34. S.C. Code Ann. § 62-5-105. [↑](#footnote-ref-34)
35. S.C. Code Ann. § 62-5-108. [↑](#footnote-ref-35)
36. S.C. Code Ann. § 62-5-307. [↑](#footnote-ref-36)