

Rule 321. Procedures for a petition for a general proceeding or for termination of a guardianship or conservatorship.

(a) Petition.

A general proceeding is initiated by filing a petition on Form II-A. The acceptance of the duties of the office of guardian and/or conservator shall be indicated on Form II-A (paragraph 14) or on Form II-A-1 as appropriate. A notice of hearing (Form II-J or II-J1) and proposed orders appointing counsel (Form I-E), and if sought, an examiner (Form II-D), a visitor (Form II-E) and/or, a guardian ad litem (Form I-F), shall also be filed, together with any filing fee. If petitioner seeks to have the Court waive appointment of a visitor or an examiner, petitioner shall specify the reasons in the petition. Each proposed order shall list the names and addresses of all parties and their counsel.

(b) Hearing.

Upon the filing of a petition, the Court must schedule a hearing.

(c) Service of the petition and notice of hearing.

Unless the petitioner is the subject of the petition, the petition and notice of hearing must be served upon those persons listed in Rule 325 and in accordance with Rule 311(a).

(d) Counsel.

Concurrently with scheduling a hearing, the Court shall enter an order appointing an attorney to represent the subject of the petition. If the petition discloses that the subject is represented by counsel, the Court shall appoint such person unless good cause to the contrary exist. The Register of Wills shall immediately serve a copy of the petition, order of appointment and notice of hearing on the appointed counsel, and appointed counsel shall forthwith file a notice of appearance (Form I-D).

(e) Examiner and visitor.

(1) The Register of Wills shall maintain a list of persons qualified to serve as examiners and visitors in general intervention proceedings. In making the appointments special consideration where appropriate may be given to any personal examiner or visitor whether or not on such a list whom the petition states is willing to serve as examiner or visitor and who is qualified and has had prior contact with the subject of the proceeding.

(2) Upon the entry of an order appointing an examiner or visitor, the Register of Wills shall send copies of the order to all parties and counsel and copies of the petition and notice of hearing to the examiner or visitor by first class mail.

(3) The examiner and the visitor so appointed shall file and serve on all parties written reports substantially in the format set forth in Forms II-F and II-G no later than 10 days before the date set for the initial hearing and shall perform the duties set forth in Rules SCR-PD 326 and 327 respectively.

(f) Pleadings prior to hearing.

No later than 5 days prior to the hearing, all parties and persons entitled to participate at the hearing shall file and serve, if appropriate:

(1) A responsive pleading which shall contain any admissions or denials of allegations in the petition, a statement of position and any prayers for relief;

(2) A statement as to whether the presence of the subject of the proceeding should be excused from the hearing, the reasons therefor and a statement as to whether the subject wishes the hearing to be closed;

(3) A petition for the appointment of additional examiners and/or visitors to evaluate the condition of the subject of the proceedings, with a statement of the reasons for the request;

(4) A petition for the appointment of a guardian ad litem pursuant to SCR-PD 306, with a statement of the reasons for the request and the proposed specific duties of the guardian ad litem

(5) Any current comprehensive evaluation or habilitation plan, current social, psychological, medical or other evaluation used for diagnostic purposes in the development of a current plan of treatment, or current plan of treatment for the subject; and

(6) A statement indicating whether the proceeding may be resolved at the hearing and, if so, the issues which must be determined by the Court at the hearing to effect that resolution and, if not, what issues remain to be determined and the best means for determining them.

(g) Hearing.

(1) At the hearing, each party or person granted permission to participate may present evidence in support of the relief sought by that party or participant. Unless the proceeding can be resolved at the hearing, the Court may enter an order for such further proceedings as may be necessary.

(2) If the Court sets a pretrial conference, pretrial statements substantially in the format set forth in PD Form II-1 shall be filed and served by all parties not later than 5 days before the pretrial conference. The Court may order the parties to file a joint pretrial statement.

(h) Temporary relief. While a petition for the appointment of a conservator or for other protective order is pending, and after preliminary hearing and without notice to others, the Court may enter an order to preserve and apply the property of the individual to be protected as may be required for the support of that individual or his or her dependents.

(i) Petition to terminate a guardianship or conservatorship. The procedures set out in this rule shall apply to a petition to terminate a guardianship or conservatorship.