CHICAGO VOLUNTEER LEGAL SERVICES

Because equal access to justice is everyone's fight

Guardians *ad Litem* for Adult Guardianship and Mental Health Combined Cases (Calendar 20)

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Manual for Guardians Ad Litem for Adult Guardianship and Mental Health combined cases (Calendar 20)

Please also review CVLS' parallel training materials on GAL for Adults at https://www.cvls.org/volunteer/volunteer-resources/

INTRODUCTION

Judges in Cook County's Probate Division appoint CVLS to serve as pro-bono Guardian Ad Litem (GAL) in hundreds of cases each year, including on cases involving alleged or adjudicated adults with disabilities. Last year, the Circuit Court of Cook County ("Circuit Court") created a new court call (Calendar 20) to manage cases involving individuals with mental health issues who have or may need a guardian. As of early 2025, two judges hear cases on this court call – one with jurisdiction over an individual pursuant to the Illinois Probate Act of 1975 ("Probate Act") and one with jurisdiction over the same individual pursuant to the Illinois Mental Health and Developmental Disabilities Code ("Mental Health Code"). For clarity, these individuals will collectively be referred to as "respondent" throughout this manual, though they may be referred to by different terms at different stages of case.

CVLS is accepting court appointments to serve as GAL in Calendar 20 cases and in cases that should be transferred into Calendar 20. If you are interested in serving as a GAL in a Calendar 20 case, this manual will help prepare you to handle them. When you're ready, please reach out to the program's Supervising Attorney, Jami Schlafer at jschlafer@cvls.org . She will help you choose a case that best suits your experience level and schedule. CVLS offers comprehensive training and support for your GAL case and will supervise and support you throughout.

I. Conflicts

Neither CVLS nor the GAL cannot have a conflict of interest with any party in a case. CVLS conducts conflict checks, but volunteers should conduct their own conflict checks before taking a case.

II. Scheduling

Before you accept a case, make sure you have read this manual and understand your obligations. You'll need to be able to conduct a thorough investigation (as described later in the manual) and be available to appear on the hearing date set by the judge in the appointment order.

III. CVLS Supervision, Case Management and Help

CVLS staff and attorneys are always at your disposal to help you with your case. Please do not hesitate to consult with us before and after you accept a case. We

want to review your written Reports and other documents in advance of filing or submission. We want you to be as prepared as possible for court. When you have been assigned a CVLS case you will be covered for that case by our professional liability insurance.

CVLS uses an online case management program called LegalServer. As a volunteer with CVLS, you are eligible for credentials that enable you to log into that system and manage your pro bono cases and contact information. You can even see what cases are available and keep track of your pro bono time in the system.

CVLS conducts Volunteer Orientations each month. If you are new to CVLS you may want to attend an orientation to learn in greater detail and anecdotally how we can help. You can also check out the Volunteer Resources tab on our website at www.cvls.org.

IV. Fees

CVLS only accepts GAL appointments for cases with no assets or income to pay fees. Although the judges do a good job of vetting the cases, sometimes assets are later discovered after GAL appointment. If this occurs, please contact CVLS so that the matter can be handled appropriately.

CALENDAR 20

I. Overview & Purpose of Calendar 20

The Circuit Court created Calendar 20, a new court call, to foster cross-collaboration between adult guardianship and mental health cases for a holistic approach to a single respondent's situation. Cases on this court call focus on respondents with mental health issues who have a pending or existing guardianship or may need one.

Until the launch of the Calendar 20, the Circuit Court had separate court calls in separate divisions for adult guardianship and mental health cases. Adult guardianship cases are heard in the Probate Division (by a "Probate judge"), while mental health cases are heard in the County Division (by a "County judge"). These cases were siloed from each other, with no cross collaboration, even if they both involved the same respondent.

Consider the following example – An eighteen-year-old suffers from schizophrenia and is not compliant with her medication. As the result of a psychotic break, her parents contact the State's Attorney for help filing an involuntary treatment or involuntary admission (also referred to as commitment) petition. Yet, because she is an adult, her parents have no right to know anything

about her hospitalization, treatment plan, discharge, etc. Her, and they may not know how to apply for guardianship.

Consider the reverse of this as well – The same eighteen-year-old suffering from schizophrenia finds herself in mental health court responding to an involuntary treatment petition, filed by a hospital, because she presents as a danger to herself. Her parents are already her court appointed guardians in an adult guardianship case. The County judge enters a 90-day involuntary treatment order. At the expiration of the 90 days, the mental health case closes, and the Mental Health Code provides no mechanism for the County judge to monitor the respondent).

Both scenarios demonstrate a gap in the current system. These situations can create "revolving door" cases in which respondents in mental health cases find themselves in and out of hospitals, as involuntary treatment or admission petitions are filed again and again.

Calendar 20 offers a more holistic approach to minimize the instability, confusion, and lack of coordination that occurs when a respondent has mental health issues. While guardians are limited in their authority as it relates to mental health issues (i.e. they cannot authorize involuntary admission or treatment per Section 11a-17 of the Probate Act), GALs can provide information and resources in the case of mental health crises. The Calendar 20 judge can further assist guardians in managing duties within the orders entered in the mental health case. Calendar 20 will provide a better connection between the guardianship and involuntary treatment, which will in turn, benefit the respondent by providing a better coordination of efforts to maintain stability.

II. Logistics of Calendar 20

Calendar 20 cases are heard Thursdays at 1:30 p.m. via Zoom or in person. However, keep in mind that respondents with mental illness may be uncomfortable or experience paranoia over zoom proceedings.

Two judges preside over Calendar 20 – one from the Probate Division and one from the County Division. Right now, the Probate judge primarily handles the call and the cases, while the County judge remains on the call if his or her assistance is needed.

Proceedings may be closed to the public upon the request of the respondent. However, proceedings with both a Probate and County case number are required to be transcribed by a court reporter (verbatim recorded). Proceedings with only a Probate case number are recorded.

III. The Guardian ad litem (GAL)

A significant support used in all adult guardianship cases, including in Calendar 20, is the guardian ad litem ("GAL"). A GAL is a lawyer appointed by the court to investigate the facts of a respondent's situation, acting as the "eyes and ears" of the court. The GAL conveys the facts and respondent's wishes to the court and makes recommendations where appropriate, so that the court can make an informed determination as to the particular respondent's best interests.

Although the Illinois Mental Health and Developmental Disabilities Code ("Mental Health Code") allows for the appointment of GALs in involuntary treatment cases (notably, not in involuntary admission cases), they have not been used for decades. However, the Calendar 20 judge will appoint GALs in mental health cases assigned to Calendar 20, giving respondents with mental health issues additional resources and support.

CASE PLACEMENT ON CALENDAR 20

I. Transfer from County Division

A County judge may transfer an already pending mental health case to Calendar 20 if (1) the County judge presiding over the case orders involuntary treatment for the respondent; and (2) the respondent has an open guardianship or a pending guardianship petition in the Probate Division.

If a respondent already has a pending mental health case, but no guardianship matter, the County judge may appoint a GAL for the purpose of causing a guardianship petition to be filed. The GAL would be appointed in the mental health case and then once a guardianship petition is filed, both cases would likely be transferred to Calendar 20.

If the County judge decides the mental health case should be transferred to Calendar 20, the judge will transfer the case by request to the Presiding Judge of the County Division, who will enter an order formally transferring the case to Calendar 20.

Importantly, if there is a companion involuntary admission petition involving the same respondent, it will also be transferred to Calendar 20.

II. Transfer from Probate Division

A Probate judge *may* transfer an already pending adult guardianship case, whether pre- or post-adjudication, to Calendar 20 if the respondent has an unstable mental health issue. Notably, if the respondent's mental health issue is stable and the respondent does not need additional resources (such as

involuntary treatment), the Probate judge may not find the case appropriate for Calendar 20. However, the case may be transferred in the future if Respondent's situation becomes unstable.

If the Probate judge finds the adult guardianship case to be appropriate for Calendar 20, the Probate judge will transfer the case by request to the Presiding Judge of the Probate Division, who will then enter an order formally transferring the case to Calendar 20.

III. Initial Assignment to Calendar 20

If a petitioner seeking to open a new adult guardianship case and/or mental health case believes the case(s) would be appropriate for placement on Calendar 20, the petitioner may make a special request via petition to the Presiding Judge of either the Probate Division or County Division for immediate assignment to Calendar 20.

CHARACTERISTICS OF CALENDAR 20 CASES

I. Two Separate Cases

Both adult guardianship cases and mental health cases transferred to Calendar 20 will keep their respective case numbers. The two cases are not consolidated; because the court understands the distinct restrictions, procedures, and duties, both cases procedurally move forward parallel to each other pursuant to applicable laws and procedures, but will account for each other where possible, necessary, and appropriate. The legal requirements for each case must still be met.

For instance, if a mental health petition is filed in a mental health case previously transferred to Calendar 20, the County Division will still conduct the hearing on the petition. The parties in Calendar 20 can monitor the mental health case and report back to Calendar 20. The GAL may advise the judge in Calendar 20 that a mental health petition has been filed or may have caused a new mental health petition to be filed. Once the petition cycles through the County Division and the hearing is held, the mental health case will return to Calendar 20 for ongoing oversight, support, and case management.

Remember, GALs cannot be appointed in involuntary admission cases, so even if one is filed in a mental health case previously transferred to Calendar 20, the GAL will not be involved.

Further, the adult guardianship case is likely to remain open longer than the mental health case. Adult guardianship cases typically do not end until the death or restoration of the respondent and may continue for years, even decades. The

duration of an involuntary treatment order is typically 90 days (but may be extended for up to an additional 90 days after a second petition and hearing and up to an additional 180 days after a third consecutive petition and hearing). If a new petition is filed at least 15 days prior to the expiration of an existing order, the treatment or admission may continue in accordance with the existing order, even if the hearing on the new petition has not yet occurred.

II. Qualifying Mental Illnesses

Mental Illness (also included on Page vi of the Glossary of Terms) is defined by the Mental Health Code as "a mental, or emotional disorder that substantially impairs a person's thought, perception of reality, emotional process, judgment, behavior, or ability to cope with the ordinary demands of life, but does not include a developmental disability, dementia or Alzheimer's disease absent psychosis, a substance use disorder, or an abnormality manifested only by repeated criminal or otherwise antisocial conduct." 405 ILCS 5/1-129. Those with mental illness may have symptoms of psychotic episodes, delusions, hallucinations, paranoia, aggressive behavior, risk of harm to self or others, inability to understand risks or consequences, extreme mood changes, suicidal thinking, excessive fears not based in reality, etc., though no two illness will be the same.

Calendar 20 will **not** hear cases in which respondents have solely intellectual and developmental disabilities (even though mental health case generally can include intellectual and developmental disabilities)

Calendar 20 will **not** hear cases in which respondents have an alleged or diagnosis of degenerative disorders, such as Dementia and Alzheimer's Disease.

III. Common Issues

- Guardianship matters where the respondent suffers from mental health issues can be more challenging, as the respondent may be less cooperative.

- Respondents with mental health issues often are highly functioning, but noncompliant with psychotropic medication or do not have access to the necessary resources because of housing instability or similar issues. A GAL should bring this to the court's attention, as the respondent may have options other than guardianship.

- A hospitalized respondent may be discharged from the hospital before a guardian who can help in discharge planning can be appointed for a myriad of reasons. If a guardianship is already in place, however, the guardian must be consulted prior to discharge by the hospital. Unfortunately, many hospitals and doctors are not aware of this

requirement and may discharge or try to discharge a respondent without consulting or notifying the guardian.

- If a guardian has not been appointed, the respondent in a mental health case who has been hospitalized or admitted to the facility, including for treatment, has the sole right to determine who can be notified of his or her hospitalization or admission. 405 ILCS 5/2-113(a). This can prompt family members to petition for guardianship.

- While the Probate Division will be aware if a respondent has a mental illness based on the Physician's Report (discussed later in this manual), the County judge may not know if the respondent has a guardian until the mental health matter is set for hearing. This can lead to a gap in oversight or care.

- Where there is no guardian, but a respondent is hospitalized pursuant to a writ of detention and examination issued by a County judge, it may be time to obtain a Physician's Report to proceed with guardianship. However, the doctor/hospital may refuse to complete a Physician's report, even though encouraged/requested to do so, because under the Mental Health Code, a respondent may refuse an evaluation by a physician. Notably, completion of this report is not a breach of a patient's confidentiality under Section 10(a)(5) of the Mental Health and Developmental Disabilities Confidentiality Act, 740 ILCS 110/10(a)(5).

- If the doctor assigned to administer involuntary or voluntary treatment on an outpatient basis is too far away or otherwise difficult for the patient to access, a guardian has the right to request that the physician transfer the order to a closer hospital.

- Respondents in mental health cases and those with mental health issues generally often have pending criminal matters, including active arrest warrants. If this issue arises in your case and you are asked by a party for resources, please contact Jami Schlafer at CVLS for assistance.

- In the case of a mental health crisis, the County judge will preside over an emergency petition for detention and examination, if one is filed. These emergency matters will not be heard on Calendar 20.

IV. Orders under the Probate Act

The judge in Calendar 20 can enter all orders a judge presiding over an adult guardianship case can order, including:

- Plenary, limited, and/or temporary guardianship.
- Invasive medical care.

- Residential placement into a nursing home, independent living facility, skilled nursing facility, or rehabilitation facility (this does not include involuntary admission to a mental health facility) and/or authority to move the respondent.
- Sale and management of assets.
- Investments.
- Financial expenditures.
- Restrictions on visitation.
- Estate planning, including advanced directives.
- Case management services.
- Caregiver services.
- Release of records.

V. Orders under the Mental Health Code

Calendar 20 will not enter orders under the Mental Health Code for involuntary treatment and/or admission. If a petition for either is required, the petition must be heard in the County Division. Once the ruling has been made in the County Division, the mental health case will return to Calendar 20 for ongoing oversight and support.

GUARDIANSHIP VS. MENTAL HEALTH CASES

I. The Law (also included on page i of the Glossary of Terms)

Adult Guardianship cases are governed by the Illinois Probate Act of 1975. 755 ILCS 5/11a-1 et. seq. and certain rules under Part 12 of the Local Rules of the Circuit Court of Cook County. Additional relevant statutes in the Probate Act (Chapter 755):

- Act 8 – Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act
- Act 40 – Health Care Surrogate Act
- Act 43 – Mental Health Treatment Preference Declaration Act
- Act 45 – Illinois Power of Attorney Act

Mental Health cases are governed by the Mental Health and Developmental Disabilities Code ("Mental Health Code"). 405 ILCS 5/1-100 et. seq. There are no local circuit court rules pertaining to mental health cases. Additional relevant statutes in the Mental Health Code (Chapter 405):

- Act 43 - Mental Health Treatment Preference Declaration Act
- Act 45 – Protection and Advocacy for Mentally Ill Persons Act

II. Key Players in Adult Guardianship Cases

*Please refer to Pages i and ii in the Glossary of Terms for definitions

- Respondent
- Ward
- Petitioner
- Co-Petitioner
- Cross-Petitioner
- Guardian
- Guardian of the Estate
- Guardian of the Person
- Co-Guardian
- Office of the State Guardian ("OSG")
- Office of the Public Guardian ("OPG")
- Facilities, Hospitals, and Physicians

III. Key Players in Mental Health Cases

*Refer to Pages iv and v in the Glossary of Terms for definitions

- Respondent
- Recipient of Services
- Petitioner
- Custodian
- Substitute Decision Maker
- Guardian
- Responsible relative
- State's Attorney
- Guardianship and Advocacy Commission ("GAC")
- Legal Advocacy Service ("LAS")
- Public Defender
- Facilities, Hospitals, and Physicians

IV. Types of Guardianship Cases

*Refer to Pages ii and iii in the Glossary of Terms for definitions

- Guardianship of the Person
- Guardianship of the Estate
- Plenary Guardianship
- Limited Guardianship
- Temporary Guardianship

V. Types of Mental Health Cases

*Refer to Pages v and vi in the Glossary of Terms for definitions

- Involuntary Treatment
  - This type of case is the most applicable to Calendar 20, as only involuntary treatment cases will be transferred to Calendar 20 from the County Division.
  - Once an involuntary treatment petition is granted, the County Division steps back. This is where a GAL, appointed in Calendar 20, can help by coordinating and communicating between both court calls and providing oversight and case management during and after treatment.
- Involuntary Admission:
  - GALs cannot be appointed in involuntary admission cases. Involuntary admission cases only appear on the Calendar 20 call if there is also an involuntary treatment order against respondent.
- Request for Mental Health Evaluation

VI. Conflicts between Guardianship and Mental Health Law

Rights: A person adjudicated disabled or under limited guardianship loses certain fundamental rights. A guardianship should only be established if there is no less restrictive alternative available for a respondent. As such, guardianships should also be structured in the least restrictive manner for a respondent. For example, if feasible, a respondent should have a say in how his or her money is spent, where he or she lives, what medical services are received, etc. However, the bottom line is that the guardian(s), subject to court oversight, and after considering the best interests of the respondent, has the final say on any decisions not specifically reserved to the respondent in a court order. What the guardian(s) and the court determine may not always align with the respondent's wishes.

In mental health cases, even if involuntary treatment and/or admission is ordered, the respondent does not lose his or her fundamental right to make his or her own personal and financial decisions. Section 2-101 of the Mental Health Code specifies that "no recipient of services shall be presumed to be a person under a legal disability, nor shall such person be held to be a person under a legal disability except as determined by a court." The statute goes on to say that proceedings for mental health services and adjudication of disabilities are separate.

Authority to Involuntary Commit or Treat: A guardian's authority never includes the ability to consent to involuntary treatment or admission on behalf of an objecting respondent. Only the court with jurisdiction over a mental health

case can order involuntary treatment or admission upon appropriate petition or authorize a guardian to consent to involuntary treatment per Section 2-107.1 of the Mental Health Code. Importantly, though, the court does not tell a guardian to consent to treatment.

Visitation: A guardian has authority to restrict visitation, but cannot unreasonably prevent the respondent's adult child, spouse, adult grandchild, parent, or adult sibling from visiting the respondent. In determining whether a restriction is reasonable, the court will consider the respondent's preferences if ascertainable and/or the respondent's best interests. 755 ILCS 5/11a-17(g)(2). In mental health cases, a respondent committed to a mental health facility has the right to choose to have full unrestricted and private visits and communications with anyone of his or her choice. 405 ILCS 5/2-103.

Expenditures: the Mental Health Code specifically allows respondents in mental health cases to have unrestricted access and use of their funds, *unless* a guardianship order prohibits it. 405 ILCS 5/2-105.

Physician's Report. A physician's report (discussed later in this manual) is required for an adult guardianship case to move forward and for an adjudication of a disability. This is the "evidence" necessary for the court to adjudicate a disability. A petitioner can usually get one from a hospital, facility, or doctor treating the respondent if informed that it is required to support a petition for guardianship. If medical personnel won't cooperate, the Probate judge can order an independent medical evaluation. However, under Section 3-208 of the Mental Health Code, a respondent in a mental health case has the right to receive notice of and refuse a medical evaluation. In addition, the respondent has the right to obtain his or her own independent medical evaluation in both mental health and guardianship proceedings. 405 ILCS 5/3-804.

Notice. In an adult guardianship case, petitioners and cross-petitioners are required to give notice to the following individuals, where applicable: the respondent, any acting agents under power of attorney for respondent, the current guardian(s) of respondent, and certain family members of respondents (i.e. spouse, adult children, parents, adult siblings, or the nearest adult living relatives).

In a mental health case, petitioner must give notice to the following individuals where applicable: the respondent's guardian and/or agent under power of attorney, the respondent's spouse, respondent's counsel, respondent's defense attorney if respondent has a criminal case pending, the facility director of if respondent is currently admitted to a facility, and designated persons (i.e. respondent may name designate two people upon his or her admission to a facility).

VII. Additional Terms and Definitions

Some medical terms and acronyms are included in Appendix F

Adult Guardianship Additional Terms:

*Refer to Pages iii and iv in the Glossary of Terms for definitions

- Disabled Person
- Decision-Making Standards
- Best Interests
- Restoration
-

Mental Health Additional Terms:

*Refer to Pages vi through viii in the Glossary of Terms for definitions

- Mental Illness
- Care and Custody Order
- Treatment
- Psychotropic Medication
- Least-Restrictive and Humane Care
- Refusal of Services
- Aftercare Plan
- Discharge
- Person Subject to Involuntary Admission on an Inpatient Basis
- Person Subject to Involuntary Admission on an Outpatient Basis

GAL INVESTIGATION AND DUTIES

Section 5/11a-10 of the Probate Act authorizes the appointment of a GAL in adult guardianship matters. In mental health cases, Section 2-107.1(a-10) of the Mental Health Code authorizes the appointment of a guardian ad litem *specifically to monitor treatment and compliance with court orders authorizing the involuntary administration of psychotropic medication and electroconvulsive therapy.* (Emphasis added)

A Probate GAL must investigate the facts of respondent's situation and communicate those facts, and any relevant opinion or recommendations the GAL has formed to the court. Guardianship takes away a person's most fundamental rights. As a result, the GAL has to make every effort to communicate with the respondent, explain how the guardianship will affect him or her and how he or she can fight to keep those rights. In addition, the GAL must investigate and advise the court, in a written report and orally in court, of the respondent's situation, including living arrangements, health, etc., and recommend what the GAL believes is best for that person. The recommendation can

include whether the respondent needs a guardian, who should be guardian, what are the most appropriate living arrangements and any other issues that will protect the respondent in the least restrictive way.

In Calendar 20, the GAL must also follow the associated mental health case and assist the respondent with mental health support and resources.

I. Initial Appointment

Section 5/11a-10 of the Probate Act provides that the court appoint a GAL in every case when the initial guardianship petition is filed, unless the court "determines that such appointment is not necessary for the protection of the respondent or a reasonable informed decision on the petition." In most cases, a Probate judge does not appoint a GAL when the respondent will be present in court because the judge can observe and communicate directly with the respondent. A GAL may receive the appointment order from the original calendar in the Probate Division or from Calendar 20.

A County judge may appoint a GAL in a mental health case when there is no guardianship petition yet pending against the respondent, but the judge believes the respondent would benefit from guardianship. In such a case, the GAL may be appointed to cause a guardianship petition to be filed.

A GAL in Calendar 20 may be appointed under both the Probate and County case numbers, or under only one. This will be up to the determination of the court, but there is currently a preference to appoint GALs under the Probate case number because the GAL may remain appointed for longer (if only appointed under the County case number, the GAL's appointment may only last for as long as the order for involuntary treatment which is typically 90 days)

II. Appointment after Adjudication

A GAL may also be appointed after a guardian already has been appointed for the respondent. In this instance, the case may already be on Calendar 20 or may need to be reassigned.

GALs are also often appointed after adjudication when the court needs additional help with fact finding, filing of pleadings, or determining the respondent's best interests for a specific issue. These issues may include the guardian not fulfilling his or her statutory duties, being unresponsive or uncooperative, reports of abuse or neglect, a unique request from the guardian, a need to modify guardianship, appoint a successor guardian or if the respondent petitions for restoration. Depending on the issues, the court may look to the GAL to file pleadings such as citation to remove the current guardian or a petition for a successor guardian. The GAL may also be able to offer more minimal assistance, such as assisting the current guardian in filing a late annual report on respondent.

A case may also pose new mental health issues if, for instance, a respondent becomes newly noncompliant with medication or poses a danger to themself or others. The court may want to appoint a GAL to provide additional avenue for resources and support, or to follow and report back on an involuntary treatment petition filed in the County Division.

III. Areas of Investigation

Primary Issues/Considerations: In guardianship, the two primary issues that a GAL must investigate are:

1. Whether the respondent should be adjudicated a person with a disability; and
2. Whether the proposed guardian is an appropriate guardian.

In Calendar 20, these two issues exist, but the GAL must also consider collateral mental health issues and their impact on guardianship. For instance, if the respondent is compliant with medication, does he or she need a guardian?

To assist effectively in both arenas, the GAL should consider the following areas during the investigation:

1. The respondent's position on adjudication of a disability, the proposed guardian, residential and care changes, the taking of psychotropic medications, and any other issues material to the specific case.
2. The respondent's daily routine, interests, and activities.
3. The respondent's residence and whether it is safe, comfortable, and appropriate.
4. Whether the respondent has or has ever had a mental health case, whether for involuntary treatment or admission. Try to ascertain whether there is a history or pattern of noncompliance with medication, recurring hospitalizations, instabilities in housing or similar daily living issues.
5. Whether the respondent, guardian of respondent, or surrogate decision maker for respondent has a written aftercare plan from a previous mental health order.
6. Involvement of others, such as family, friends, caretakers, other members of the respondent's residence, staff at the respondent's facility, case workers, social workers, health care providers, etc.
7. Relevant medical records, which at a minimum will include the physician's report. In Calendar 20 cases, it is likely that the respondent has been hospitalized or committed several times in the past.

8. Decisions and any proposed care plan by petitioner and/or the nominated guardian(s). Consider whether additional resources or recommendations can supplement or supplant an insufficient or inappropriate care plan.

While GAL investigations should be thorough and complete, do not waste time fishing for problems. Although it is best to protect the respondent before issues arise, recurring or other problems are likely to become apparent over the course of the case.

IV. Review of Case File

Once appointed, review the entire case file. This will include pleadings filed in the public court file but may also include additional documents that need to be obtained directly from the court, the petitioner, or CVLS.

Order Appointing Guardian ad Litem.
The court's GAL appointment order will specify the hearing date, time, and courtroom. It may also specify the purpose of the GAL's appointment, such as to investigate the respondent's living arrangements or to file a guardianship petition. It may also include additional information to assist the GAL, including, for instance, petitioner's contact information and information on the respondent's whereabouts.

In addition, unless the appointment is limited to a specific purpose, the order appointing a GAL includes more general language that the GAL shall:

a. Personally observe the respondent;
b. Inform the respondent orally and in writing of the contents of the guardianship petition and of the respondent's rights under Section 11a-10 of the Probate Act;
c. Attempt to elicit the respondent's position concerning the adjudication of disability, the proposed guardian, a proposed change in residential placement, changes in care which might result from guardianship, and other areas of inquiry deemed appropriate by the court;
d. Be present at the hearing on the guardianship petition; and
e. File a written report with the court on or before the hearing.

The GAL appointment order also gives the GAL authority to access, inspect, and copy any medical or mental health records of the respondent, which the GAL deems necessary. This means the GAL will have access to mental health records from hospitals, physicians, facilities, etc., but please note that the mental health case file held with the clerk of the circuit court is sealed and not available to the public. However, the GAL will be given access to the mental health case file.

Please also note that while the GAL will typically have access to all medical and mental health records of the respondent, the court may decide to expressly limit this. More likely, the court will limit the guardian's access to the respondent's medical and mental health records, especially in cases of limited guardianship. Respondents with mental health issues often see psychiatrists and/or therapists. The concern is that by allowing access to notes from those sessions, the respondent may no longer speak freely at the sessions and no longer trust their psychiatrist and/or therapist. A GAL restricted from reviewing therapy or similar records, may petition to review them if the records are believed to be important for a specific purpose, such as if there is a genuine concern of abuse and/or neglect.

Pleadings/Procedural History: Review all pleadings and orders in the court file. It's important to know and understand the case's procedural history and current status. Check for possible defects in the pleadings or process, such as lack of notice, that can be resolved before the case is in front of the judge.

Petition and Exhibit A: Review the petition for a description of the alleged disability, the respondent's location, the petitioner's information, and information on the respondent's relatives. Confirm that the respondent resides in Cook County or that the respondent has real or personal property in Cook County. Petitions are not always accurate, especially when it comes to the description of the disability, making it important to also review any other available medical records, including the physician's report. Take note of any vague or missing information from the petition that will require further investigation.

Summons and Notice: Make sure that the respondent is personally served with the guardianship petition at least 14 days prior to hearing. This allows the court to take jurisdiction over the respondent. Also ensure that notice has been sent to everyone listed on Exhibit A of the guardianship petition at least 14 days prior to the hearing.

Physician's Report (known as CCP-211 in Cook County): All adult guardianship cases, plenary and limited, must have a valid report from a physician to move forward with an adjudication of a disability. The court cannot proceed if the report is missing or insufficient. Although it's the petitioner's responsibility to obtain a valid report, the GAL may have to help, especially when the petitioner is self-represented.

A valid Physician's Report must:

- Include the date of the exam. The report must be based upon an evaluation of respondent completed within 90 days of the date the guardianship petition was filed.
- Be signed by an Illinois licensed Medical Doctor (MD) or Doctor of Osteopathic Medicine (DO). (Notably, medical reports in mental health

cases may be completed by a physician, qualified examiner, or clinical psychologist).
- Have all questions on the form answered legibly.
- Specify whether the respondent is totally or partially incapable or totally capable of making personal and/or financial decisions. If the report states "partially" capable, but does not provide further explanation, the GAL may need to follow up with the physician to determine how and to what extent the respondent is disabled.
- Specify appropriate living arrangements for the respondent. The GAL should ensure that the proposed care plan for the respondent conforms to these recommendations and, if not, whether the proposed care plan is otherwise feasible or appropriate. For instance, the physician may recommend a facility placement for 24/7 supervision, but a simple follow up may reveal that 24/7 caregivers in the respondent's home is equally appropriate.

The physician's report is never made a part of the public court record. It is either filed on seal or directly submitted to the judge to be filed under seal.

V. Contact with Parties/Investigation of Parties

General Notes on Contact:

- Do not give advice. It is not appropriate for a GAL to advise parties, as the GAL solely represents the best interests of the respondent. But the GAL can give information to the parties about guardianship law and procedure.

- Individual Meetings. It is always best for the GAL to meet with each person individually, to minimize outside influence or pressure. Insist on separate interviews, especially if people object. A GAL can always have group meetings after the initial one-on-ones.

- In-Person Meetings. While the Probate Act only requires that the GAL meet with the respondent in person, an in-person meeting can help you tell a lot about a person. If at all possible, the GAL should have at least an in-person meeting with the petitioner and nominated guardian(s), if individuals, in addition to the respondent.

- Build Rapport. The GAL wants people to open up and be willing to share information. Try to make each person comfortable. Make small talk and explain your role upfront. Allow each person to ask questions.

- Explain your Role. Explain your role as GAL to anyone you speak with during the investigation. People often think the GAL is the court appointed guardian or a social worker. Do not be surprised if you have

to explain your role multiple times or answer a lot of questions. Make it clear that you are an attorney, that do not represent them or the respondent, that you are not the guardian, and that nothing you are told will remain confidential (unless it pertains to someone's HIV status pursuant to the Illinois AIDS Confidentiality Act). Explain that you must and will file a written report with the court.

- Specific Questions. Each case is different. Make sure you are asking questions relevant to the specific case. If the court appointed you for a specific purpose, make sure to ask the questions relevant to that issue or issues.

- Impressions. In addition to what people say, take notes on your impressions of them. Also take notes on the respondent's living arrangements, personal appearance and the appearance of their living space. When you see the respondent and prospective guardian together, pay attention and make a note of how they interact. Do they seem to like each other or are they uncomfortable. It's especially important to see how the respondent reacts to the prospective guardian.

- No Contact. Sometimes you won't be able to get in contact with someone. Keep notes of your attempts to contact or connect with that person, specifying any reasons for the lack of contact. For instance, if the petitioner refused to speak with you, note it.

Meeting with Petitioner

- Petitioner's Counsel.

  If petitioner is represented, do not contact petitioner directly. First, get permission from petitioner's counsel to speak with petitioner.

  Petitioner's counsel may also be able to give you vital background information that will help with the investigation. Ask counsel for copies of relevant documents you don't already have that are not in the public court file, such as the physician's report. Talk to them about any deficiencies you've noticed in the pleadings or the court file, such as a missing summons or notice.

- Background Information.

  Contact the petitioner as many times as you need to get all the information you believe is necessary for your investigation and to make informed recommendations to the court. It's common for the GAL to contact the petitioner multiple times as new information comes to light.

Get information about the respondent's history, status, needs, and whereabouts—anything that will prepare you for your meeting with the respondent, such as who to contact to schedule the meeting, whether the respondent is bedbound, ambulatory, able to speak, conscious, whether the respondent is aware of the petition for guardianship or petition for involuntary treatment, if applicable, etc.

Try to learn the best way to approach and talk to the respondent. Respondents with mental illness may have certain triggers (such as seeing someone take notes, a certain word, men vs. women, etc.). On the other hand, respondents with mental illnesses may be comfortable or happy talking about certain topics or people. Getting this information from petitioner before your meeting with the respondent may save you a lot of time and lead to a more open, informative discussion.

Find out about petitioner's relationship with the respondent, what the petitioner knows about the respondent (including their medical issues, medications, activities, relationships, etc.), and petitioner's proposed care plan for the respondent. Try to learn whether the respondent's mental illness has been an ongoing issue, i.e. whether the respondent has always been noncompliant with medication, or whether the respondent is only now in need of assistance. Remember, many people with mental illness can care for themselves if compliant with medication and given the right resources. If the petitioner filed for guardianship in the hopes of admitting the respondent for involuntary admission and/or treatment, discuss the legal restrictions and what that process would look like.

If petitioner is the nominated guardian, elicit his or her willingness to make decisions for the respondent using substituted judgment and best interests' standards. Try to get a sense of whether the petitioner will adhere to the law and court orders. He or she should know that the court will expect annual reports (and accountings if under estate guardianship) and that the court appointed guardian must take guardianship training through the state's Guardianship & Advocacy Commission.

Get contact information for anyone else you believe relevant to your investigation, such as other family members, caregivers, and doctors.

- Verify Information.

  Verify the information in the guardianship petition and any other relevant pleadings, such as the respondent's address, whether Exhibit A to the guardianship petition is correct, etc.

  Confirm that the nominated guardian is qualified to act as guardian. In the

case of individuals, they must be (1) a resident of the US; (2) over the age of 18; (3) of sound mind; (4) not adjudicated disabled by a court; and (5) not convicted of a felony (unless the court determines appointment is still in the respondent's best interests and the offense is not one which under Section 11a-5(a)(5) of the Probate Act would prohibit appointment).

To the extent that you can, also verify any information the petitioner provided during your initial meeting.

- Relevant Documents.

  Ask for copies of any relevant documents in petitioner's possession, such as medical records or powers of attorney. Find out whether the respondent has an existing power of attorney for healthcare and/or property, as petitioners do not always include this information in the guardianship petition, especially if someone else is named as the Respondent's agent.

  Ask for documents that will allow you to verify information given to you by petitioner (or others), especially if petitioner's answers or stories are unsure, vague or otherwise questionable.

  If you identify any deficiencies in the petitioner's pleadings, tell them or their counsel. While you cannot give them advice, you can tell them the proper steps and legal requirements to proceed on a guardianship petition.

Meeting with Respondent

- Set up Meeting.

  You will often need to set up a meeting with the respondent through petitioner or someone else residing with the petitioner. Often, respondents will not (or be unable to) answer the door.

  If the respondent resides in a facility, arrange with the facility to schedule a meeting with the respondent. If the respondent is in a locked or psychiatric facility, you must schedule in advance and provide proof that you are a court-appointed GAL. If not a locked or psychiatric facility, you may be able to show up during visiting hours, but by scheduling an appointment, you ensure that the respondent will be available and you may also be able to speak with medical personnel and the respondent's assigned social worker while you're there.

  Confirm the appointment the day before or day of your meeting. Respondents can be moved, hospitalized or even pass away before your

scheduled meeting.

- In-Person Meeting. The Probate Act requires that the GAL meet with the respondent in person. It's also important to meet in person so that you can see, for yourself, the respondent's living arrangements and environment.

  Sometimes, safety issues may prevent you from meeting the respondent in person at his or her residence. For instance, if a respondent with mental illness resides alone in the community and is having a psychotic break, it may not be safe to visit at the respondent's home, alone. Confirm these issues with petitioner before your visit. If the situation is unsafe, find out if you can meet with the respondent in a public setting. If that is not possible, you find out whether anyone else can be present at the home. If not, request a police escort. If you cannot determine a safe way to visit with the respondent, please contact CVLS for assistance.

  If you do visit with the respondent and begin to feel unsafe during the visit, stop and leave the interview. Once in a safe place, contact CVLS for assistance. If the situation escalates, do not hesitate to call the police. Be mindful of signs that the respondent is becoming agitated, such as indicating that he or she is hallucinating, making threats, clenching fists, etc.

- Notice of Rights. The GAL must inform the respondent, both orally and in writing, of the contents of the guardianship petition and of his or her rights under Section 11a-11 of the Probate Act. The notice must include:

  1. The date, time, and location of the hearing.
  2. The Judge's name and telephone number.
  3. An explanation that a guardianship petition has been filed and that if granted, a guardian will be appointed.
  4. A brief explanation as to what types of decisions a guardian may be able to make.
  5. A list of the respondent's rights, including:
     - The right to be present at the court hearing;
     - The right to be represented by a lawyer.
     - The right to ask for a jury of six persons.
     - The right to present evidence to the court and to confront and cross-examine witnesses.
     - The right to ask the judge to appoint an independent expert to examine the respondent and provide an opinion on the need for guardianship.
     - The right to tell the court who the respondent prefers as guardian.

  While the GAL must provide a written copy of the notice of rights to the

respondent, sometimes the respondent will not accept the document. In these cases, simply leave the notice with them as opposed to directly handing it to them or, in the case of facilities, ask the doctor, nurse, or social worker to put the paperwork in the respondent's chart.

The Mental Health Code also provides for a notice of rights to a recipient of services and his or her guardian, if applicable (Section 2-200 of the Mental Health Code). The GAL is not required to ensure the recipient receives that notice (that notice is typically given by the hospital social worker, not the GAL).

- Speaking with Respondent.

  Ask questions to confirm limitations and deficits specified in the physician's report and whether the respondent's status has deteriorated or improved. This is especially important if a significant amount of time has passed since the physician's report was completed or if the disability is a result of a new injury.

  Depending on whether the guardianship petition is for the person only or person and estate, the GAL needs to ask questions that help determine the respondent's ability to care for him or herself and/or the ability to manage assets.

  Try to get a sense of the respondent's typical day, preferences, deficits, concerns, and the ability to recall facts about their own life. For instance, ask questions about their family and assets (if relevant) their address, understanding of recent hospitalizations and medications, what he or she had for breakfast that morning, etc. Some answers will require later verification from the petitioner or other persons, but you should be able to get a general sense of the person's capabilities.

  A list of sample questions to ask respondent are included in Appendix A. Please note that these questions are for all types of respondents, not just those with mental illnesses. Some may not be relevant to respondents in Calendar 20 cases. For instance, some GALs use the Mini Mental Exam, which is used by healthcare professionals, to get a sense of a respondent's orientation as to time, place, and person and memory. This may not be relevant to Calendar 20 respondents with adequate memories. Whether or not the respondent remembers his or her birthday or address will not give you a lot of insight into whether he or she needs a guardian.

  For respondents in Calendar 20, ask questions that will help you determine whether the respondent has impaired executive functioning (i.e. critical thinking skills), is able to express an appropriate plan of self-care, and can appropriately problem solve. Remember – just because a

respondent hallucinates or is paranoid, does not automatically mean he or she has impaired executive functioning. For instance, you might ask:

1. If you were discharged from the mental health facility tomorrow, where would you go?
2. How would you spend $100.00?
3. If there was a fire, what number would you call?
4. How do you write a check?
5. If you cut your hand, what would you do?
6. What do you want for dinner tonight? How would you make or obtain that dinner?
7. If a stranger came to your door, what would you do?
8. How would you get to the grocery store?
9. If the power went out in your home, what would you do?
10. If you received a bill for something that you don't remember buying, what would you do with the bill?

The GAL must also ask the respondent questions about their wishes regarding guardianship; i.e. do they object to guardianship; do they object to the nominated guardian(s). You need to know the answer to both questions. Sometimes their answers will be clear. Other times, the respondent may be unable or unwilling to respond clearly or at all. You may need to repeat or rephrase questions several times. If the answer is still unclear by the end of your meeting, note that in your report.

If appropriate to do so, you may also need to ask the respondent questions about his or her preferences for mental health treatment and facilities. These questions may not be necessary or appropriate if you know, from petitioner, that these topics trigger the respondent. Instead, you may be able to get a sense of the issues by asking other relevant questions like, "do you know why you're in this facility?"

Generally, you will likely need to ask leading questions to get a clear response from the respondent, including yes or no questions. Depending on the respondent's limitations, you may need to write out questions and possible answers and let the respondent point to answers, This technique works best with yes or no questions.

- Observations and Notes.

Take notes on the respondent's appearance (the existence of glasses, hearing aids, medical devices, bandages, injuries, etc.), reactions (especially to things like the petitioner's name), demeanor, and responses (or lack thereof).

Sometimes, note taking will trigger the respondent, especially those with

mental illness, if they have delusions, paranoia, or general distrust. In that case, you may need to write your notes after the meeting. If so, do it right away while impressions and answers are fresh in your mind. Do not audio or video record your interviews under any circumstances.

- Collateral Contacts

  In addition to speaking with the respondent and petitioner, the GAL may also find it necessary to speak with family members, friends, medical personnel, social workers, cross-petitioners, power of attorney agents, etc. In Calendar 20 cases, it may even sometimes be necessary to contact the State's Attorney or the Legal Advocacy Service ("LAS").

  There is no hard and fast rule about whether collateral contacts should be contacted but be sure to speak with anyone you believe will be helpful to a thorough investigation. Feel free to talk to CVLS' supervising attorney if you are not sure what is best for your case.

VI. Contested Matters

In guardianship, matters may be contested because (1) the respondent is objecting to guardianship and/or the proposed guardian(s); (2) Someone has filed a cross-petition for guardianship; or (3) the petitioner can't get a physician's report or there are conflicting physician reports.

If the respondent objects and/or has requested counsel, the court will appoint counsel for the respondent. In mental health cases, matters become contested when the respondent does not agree to voluntary treatment and/or admission. In most mental health cases, Legal Advocacy Service or the Public Defender will represent the respondent.

Note the difference between Probate and Mental Health laws: In a Probate guardianship, the respondent must object to make a case contested. Under Mental Health law, the respondent's lack of agreement makes it contested.

To clarify: if a respondent in a in guardianship case fails to expressly object to guardianship (maybe because they refuse to speak to the GAL or anyone else or maybe because they cannot speak), the court may take that as a "non-objection" and grant guardianship if all other requirements are met. However, in a mental health case, if the respondent does not expressly object or fails to appear in court, the court must hold a hearing to be able to order involuntary treatment (or admission). Involuntary treatment (or admission) can be ordered by "default."

GALs can be instrumental in settling contested cases. For instance, a GAL may visit the respondent, provide more information, answer questions and address concerns, leading the respondent to agree to a limited guardianship (if

appropriate given the respondent's needs and the Report of Physician) or change their mind about a plenary. In some cases, the respondent may suggest a preferred guardian.

Similarly, it may be possible to obtain an agreed order for voluntary treatment in mental health cases and guardianship cases. Agreed orders for admission will not be entered, but if the respondent agrees to be inpatient, he or she sign a "voluntary" and the court will then only enter an order dismissing the pending involuntary admission proceeding.

If the guardianship case does not settle, be prepared to testify at the trial. Section 5/11a-10 of the Probate Act states that the GAL "shall appear at the hearing and testify as to any issues presented in his or her report."

VII. GAL Report

- **Written Report**

When the investigation is complete, the GAL must draft and file the initial written report with the court. (705 ILCS 5/11a-10). The report must include the GAL's opinion and a recommendation as to the best interests of the respondent in addition to:

- Does the GAL believe the respondent needs a guardian;
- Does the GAL believe that the nominated guardian is appropriate; and
- What are the Respondent's wishes regarding guardianship and the nominated guardian.

The GAL should also include a recommendation and opinion regarding respondent's living arrangements and any other aspects of respondent's life that the GAL finds appropriate to support the respondent's best interests and maximize self-reliance and independent.

The report is expected to contain, in narrative form, details that support the GAL's recommendations, including:

- Author and date of appointment
- Any defects in the guardianship petition and/or Exhibit A
- Any defects in the summons or notice
- Summary of medical/psychiatric information including relevant or significant history
- Summaries of all interviews and discussions and/or attempted contacts including date, time, and location of the interviews
- Summary of petitioner's care plan and abilities as proposed guardian
- Summary of the respondent's personal history, physical appearance, and residence

- Name medications the respondent is taking
- Mental health court involvement/history
- Statement that the contents of the guardianship petition and rights of respondent were given
- Statement of any objection or agreement to guardianship and the proposed guardian
- Summarize any examination of the respondent, such as the mini mental examination
- Note any other relevant pleadings, such as cross-petitioners
- Note any powers of attorney for healthcare and/or property
- Note any felony convictions of the proposed guardian(s)
- Note any pending litigation
- Summarize your opinions and recommendations

In more complicated or contested cases, the GAL will often file more than one written report over the course of the case.

Avoid stating things as fact, unless you have verified it. Quote and attribute statements where appropriate.

A GAL report filed under the mental health case number will be sealed automatically (as are all documents filed in mental health cases). A GAL report filed under the guardianship case number should be filed confidentially, or else it will be made part of the public record. When efiling, you have the option to choose "confidential," as opposed to "nonconfidential," when filing a document. If you have to file in person at the courthouse for any reason, be sure to tell the clerk that you are filing the report confidentially.

- **Oral Summaries**

The GAL must summarize the findings and recommendations in the written report in person at the hearing on the guardianship petition. If the case is not resolved at that hearing and the GAL is not discharged, the court will expect updates from the GAL at each court date. Sometimes the updates can be oral, other times, the GAL will be expected to submit a written update. The GAL is expected to appear at all court dates unless discharged.

VIII. Additional Roles of the GAL

- **Cause involuntary treatment and/or admission petition**

In Calendar 20 cases where no involuntary treatment and/or admission petition is pending in the County Division, if the GAL (and/or the court and other parties) believe the respondent needs mental health services and will not otherwise agree, the GAL can try to get or "cause" a involuntary treatment and/or admission petition to be filed. Although GALs cannot be appointed for involuntary admission

cases, they can try to convince other parties, like the State's Attorney, to either file or get an appropriate entity to file. This may be necessary, for example, when the initial period for involuntary treatment or admission is ending, and the GAL believes continuing services are necessary.

In these instances, the GAL can work with the appropriate people to "cause" a mental health petition to be filed. If the respondent has a guardian or involved family, they can file. (Remember, a petitioner in a mental health case need only be over the age of 18 and have personal knowledge of the facts). If the guardian is an agency, such as OSG, and there is no involved family, the more likely route will be for the GAL to reach out to the State's Attorney with a referral. The court can also instruct the State's Attorney to file a mental health petition based on a report from the GAL. However, note that mental health petitions are filed by psychiatrists 99% of the time.

A GAL would not personally file an involuntary treatment petition because (1) the GAL is unlikely to have personal knowledge of the facts; and (2) this will cause a conflict necessitating the withdrawal of the GAL.

- **Fill gaps between treatments and hospitalizations**

Respondents who have received multiple mental health services via treatment and/or admission orders, may have been in and out of different hospitals and facilities. Because a new treating hospital and/or facility may not be aware of that history, which is useful to help determine an appropriate course of treatment, the GAL can minimize gaps in treatment by providing a history of treatment to a current provider.

a. Mediation and Negotiation

In adult guardianship cases, GALs often help mediate issues and negotiate settlements, including disagreements between two guardians on the best course of treatment for the respondent or helping to negotiate a settlement of limited guardianship for a respondent objecting to plenary guardianship.

In both mental health and adult guardianship cases, a GAL can also discuss assisted outpatient treatment ("AOT") with respondent and help get agreed orders for voluntary treatment and/or admission. However, for voluntary admission, the respondent must have capacity to consent, which may be unlikely if under guardianship (405 ILCS 5/3-400 and 755 ILCS 5/11a-17).

Section 3-801.5 of the Mental Health Code lists the following requirements for an agreed order for voluntary treatment on an outpatient basis (i.e. assisted outpatient treatment):

1. The court and the parties have been presented with a written psychiatric report containing a recommendation for court-ordered treatment on an out-patient basis and the conditions;
2. The court is satisfied that the proposal for admission on an outpatient basis is in the best interests of the respondent and the public;
3. The court advises the respondent of the conditions in open court and is satisfied the respondent understands and agrees; and
4. The proposed custodian [which in calendar 20 cases will typically be the guardian] is advised of the recommendations and agrees to abide by the terms of the order.

The agreed order cannot:

1. Require the respondent to be hospitalized, unless the respondent fails to comply with the conditions of the agreed order (in this case, an application may be brought to the court for an order authorizing police to take the respondent into custody and transport the respondent to the hospital specified in the agreed order). This differs from a writ of detention and examination, as the respondent will be taken into care and custody for treatment, not for an evaluation;
2. Includes, as one of its conditions, the administration of psychotropic medications, unless the court determines that the respondent is unlikely to continue receiving psychotropic medication in the absence of such an order;
3. Constitute a finding that the respondent is subject to involuntary admission, including treatment, on an inpatient or outpatient basis.

If an agreed order for voluntary treatment is obtained, the court will often appoint someone for "care and custody," to ensure compliance with outpatient treatment. This person will typically be guardian of the person, if one is appointed. If there is no appointed guardian yet, the person with "care and custody" is usually a parent or spouse.

However, the GAL should keep tabs on this problem and bring any issues with noncompliance to the court. Unlike a involuntary treatment order, doctors are not actively involved in the management of an agreed voluntary outpatient treatment order. As a result, the court may rely more on the GAL and the guardianship to manage this issue.

Many respondents in mental health cases prefer agreed orders for voluntary treatment because it holds them accountable. In many cases, agreements for voluntary treatment can be obtained during periods of involuntary treatment. This is true for the simple fact that during involuntary treatment, the respondent may be stable enough to fully understand the positives of an agreed order and may be more willing to engage in treatment. Agreed orders for voluntary treatment (and for admission) are generally preferred because it lowers the risk of trauma to the

person receiving services.

Agreements entered in the County Division are still effective if the case is transferred to Calendar 20.

- **Ensuring compliance with treatment**

  If the respondent has agreed to voluntary treatment, the GAL may be expected to help ensure the respondent compliance with the agreement. This can include checking in with the guardian, the respondent medical providers, or with the respondent and reporting any issue with compliance to the court. The GAL, if necessary, can also file an emergency motion to advance a court date if compliance is an issue.

- **Document Creation**

  When petitioners are self-represented, the Court expects the GAL to help them create documents, including a guardianship petition's Exhibit A, notice, summons, oaths and bonds, etc., to move the case along. In special circumstances, the GAL may need to prepare and file a petition for plenary and/or temporary guardianship, especially if a mental health case was transferred to Calendar 20 for this reason.

  In rare cases when the GAL cannot recommend the appointment of a proposed guardian, the court may direct the GAL to file a cross-petition for guardianship to appoint someone else, such as another family member, responsible friend, agency, professional guardian, OSG, or OPG. (The GAL can do this without direction from the court if necessary.)

  The court may also expect the GAL to draft and submit orders following court appearances, including agreed orders for voluntary treatment where applicable.

  In cases where the respondent has capacity to do so, the GAL may also help the respondent get advanced directives for healthcare. Importantly for Calendar 20 cases, this can include a Declaration for Mental Health Treatment. If a respondent has a valid Declaration for Mental Health Treatment, the mental health case does not have to proceed to a hearing. However, while a GAL can offer information and provide copies of blank forms, a GAL should not help with or be present for the execution of advanced directives. A respondent who can and wants to execute advanced directives can seek assistance from LAS and/or the adult guardianship held desk (located in room 1202 at the Daley Center).

- Obtaining Physician's Report

  As previously stated, sometimes it's hard to get a physician's report for Calendar 20 cases. The court can order an independent medical evaluation under the

guardianship matter, but the physician cannot be compelled to conduct the evaluation. Also, in many of these cases, the parties will not have the financial resources to pay a physician to conduct an independent medical evaluation. A medical evaluation cannot be ordered under the Mental Health Code.

The GAL can ask the respondent's physician directly to try to get a report completed, but, again, the court cannot force the physician to do it.

- Already appointed in the Probate Division

  In some cases, a GAL is appointed for a respondent with mental health issues, even though the case hasn't been transferred to Calendar 20. This is often because the respondent is compliant with treatment and stable enough making Calendar 20 reassignment unnecessary. In these cases, the GAL may be asked to check with the parties and the respondent from time to time to confirm continued stability. If the circumstances change and the respondent requires additional mental health services, the GAL would be expected to advise the court and likely petition to transfer the case to Calendar 20.

- Connection to Resources.

  Petitioners, guardians, and respondents often need help finding additional resources, especially when mental health issues are involved. The GAL can be a wonderful conduit for helping them access this information. CVLS has resource information that GALs can access. In addition, CVLS has a full-time social worker who can assist volunteer in locating appropriate resources for each specific case.

  Refer to Appendix E for additional resource information

IX. GAL Discharge

In adult guardianship cases, GALs are often discharged after appointment of a guardian and adjudication of a disability. If appointed for a specific issue, the GAL may be discharged after that issue is resolved. For more complicated or contested matters, a GAL may remain appointed indefinitely.

While GALs are not currently utilized in mental health cases in the County Division, a GAL would typically be discharged after the period for involuntary treatment terminates (which, again, is for 90 to 180 days at a time). However, the issue with this is that multiple involuntary treatment petitions are typically filed over time for a respondent, so that a GAL's appointment may be lengthier, or the GAL will be reappointed time and time again.

If an adult guardianship case or mental health case requires the reappointment of a GAL after discharge, the court will typically reappoint the initial GAL if possible. In the case of CVLS appointments, though, this does not mean the same

individual who accepts a volunteer case has to continue to be reappointed.

These two “timelines” for a GAL appointment will need to be considered by the court, so that GALs are used efficiently and as necessary. In the end, though, a GALs appointment and discharge will be determined by the court.

GLOSSARY OF TERMS

Guardian ad litem:

A significant support used in all adult guardianship cases, including in Calendar 20, is the guardian ad litem ("GAL"). A GAL is a lawyer appointed by the court to investigate the facts of a respondent's situation, acting as the "eyes and ears" of the court. The GAL conveys the facts and respondent's wishes to the court and makes recommendations where appropriate, so that the court can make an informed determination as to the particular respondent's best interests.

Statutes & Jurisdiction:

- Adult Guardianship Statute: Illinois Probate Act of 1975. 755 ILCS 5/11a-1 et. seq. and certain rules under Part 12 of the Local Rules of the Circuit Court of Cook County.

- Adult Guardianship Jurisdiction: The Probate Division in Cook County hears adult guardianship, minor guardianship, and decedent estate cases.

- Mental Health Statute: Mental Health and Developmental Disabilities Code ("Mental Health Code"). 405 ILCS 5/1-100 et. seq. There are no local circuit court rules pertaining to mental health cases.

- Mental Health Jurisdiction: The County Division in Cook County hears, among other types of cases, civil mental health proceedings.

Adult Guardianship – Key Players:

- Respondent: the alleged disabled person named in a guardianship petition.

- Ward: the adult who has been adjudicated a person with a disability by the court. Note – a person under limited or temporary guardianship has not been adjudicated disabled.

- Petitioner: the party who files the initial petition to appoint a guardian for a respondent. The petitioner usually seeks to be appointed as the guardian but may nominate other individuals or entities.

- Co-Petitioner: A party who petitions with another person for guardianship. Often, one petitioner is seeking the appointment as guardian of the person and the other petitioner is seeking the appointment as guardian of the estate. Other times, parents or two siblings plan to share the responsibility and seek to be appointed co-guardians of a relative.

- Cross-Petitioner: the party who files a petition in objection to the initial petition, naming a different person or entity to serve as guardian.

- Guardian: the person or entity appointed to act as guardian of the estate and/or person for the respondent. A guardian may be an individual, a public agency or not for profit

corporation, a corporation qualified to accept and execute Trusts in Illinois (usually a bank), the State Guardian, or the Cook County Public Guardian

- Guardian of the Estate: A guardian of the estate makes decisions regarding the respondent's finances and properties. Under Section 5/11a-18 of the Probate Act, the guardian of the estate is tasked with the care, management, and investment of the estate. Generally, a guardian of the estate must receive permission from the court to spend, alter, or sell the respondent's assets. The Cook County Probate Division requires petitioners seeking appointment as guardian of the estate to be represented by an attorney.

- Guardian of the Person: A guardian of the person makes personal and health care decisions for the respondent. Under Section 5/11a-17 of the Probate Act, a guardian of the person is tasked with providing for the support, care, comfort, health, education, maintenance, and professional services of the respondent. The guardian of the person further has the duty to "assist the respondent in the development of maximum self-reliance and independence." There are generally few restrictions to this authority, but the guardian of the person cannot move the respondent without court permission and cannot unreasonably restrict visitors. An individual seeking to be appointed guardian of the person can be self-represented. The guardian of the person shall also have custody of the respondent's minor and adult dependent children, if any and must provide for their support, care, comfort, health, education and maintenance, and professional services as appropriate. However, this should not deprive the respondent's spouse or a second parent of the children from care and custody, unless the spouse or second parent is unfit or unwilling to provide care and custody.

- Co-Guardian: a party who has been appointed guardian of the respondent with another individual or entity. Co-guardianship is generally unfavored because while the two guardians have concurrent authority, they may not always agree or consult with each other. The most common situation for co-guardianship is where parents are seeking guardianship of a disabled child after the child reaches 18 years of age.

- Office of the State Guardian ("OSG"): OSG has jurisdiction to act as guardian of the person only and for estates when the respondent's assets total less than $25,000.00. OSG is often nominated when a nursing home, elder abuse investigator, or hospital is petitioning and for someone who does not have anyone willing or able to serve as guardian. The court usually does not appoint a GAL when OSG is guardian.
- Office of the Public Guardian ("OPG"): OPG has jurisdiction to act as guardian of the person and estate when the respondent's assets total more than $25,000.00. CVLS is rarely involved in these cases.

- Facilities, Hospitals, and Physicians: These entities/individuals may be involved because the respondent resides in a facility, is hospitalized, or requires evaluation.

Adult Guardianship – Types of Cases:

- Guardianship of the Estate: The court may appoint a guardian of the estate if it has been demonstrated, by clear and convincing evidence, that the respondent is unable to manage or direct others to manage his or her estate or financial affairs because of a disability.

- Guardianship of the Person: the court may appoint a guardian of the person if it has been demonstrated by clear and convincing evidence that because of the respondent's disability, he or she lacks sufficient understanding or capacity to make or communicate responsible decisions regarding the care of his or her person, such as medical decisions. There are three types of guardianship of the person.

- Plenary Guardianship: is needed when the respondent is "totally" incapable of making personal and/or financial decisions. A plenary guardian makes all personal and/or financial decisions for the respondent, except decisions that require court approval 755 ILCS 5/11a-12 and 11a-14.

- Temporary Guardianship: is used to protect the immediate welfare of the respondent in an emergency, for instance, if an unconscious person needs immediate surgery. Temporary guardianships expire after 60 days but may be extended for another 60 days. A second petition for temporary guardianship must be filed if 120 days have passed, a petition for plenary or limited guardianship is not ready to be filed and immediate protection is still needed.

- Limited Guardianship: is needed when the respondent is "partially" incapable of making personal and/or financial decisions. Limited guardians can only make certain decisions for the respondent and the respondent retains the remaining rights and powers. The appointment order must specify which rights are conferred upon the limited guardian and which rights are reserved to the respondent. Examples of rights that may be reserved to the respondent include the right to vote, to drive, to maintain a small allowance, to be consulted, etc. 755 ILCS 5/11(a)-12 and 5/11a-14.

Adult Guardianship – Additional Terms:

- Disabled Person: Section 5/11a-2 of the Probate act defines as disabled person as one who is "18 years or older who (a) because of mental deterioration or physical incapacity is not fully able to manage his person or estate, or is a person with mental illness or a person with a developmental disability and who becomes of his mental illness or developmental disability is not fully able to manage his person or estate, or (c) because of gambling, idleness debauchery or excessive use of intoxicants or drugs, or spends or wastes his estate as to expose himself or his family to want or suffering, or (d) is diagnosed with fetal alcohol syndrome or fetal alcohol effects."

- Physician's Report: All adult guardianship cases, plenary and limited, must have a valid report from a physician to move forward with an adjudication of a disability. The court cannot proceed if the report is missing or insufficient. This report must details the respondent's disability/diagnoses, whether the respondent is totally or partially incapable of making personal and/or financial decisions, the type of guardianship needed, and the most suitable living arrangements for the respondent.

- Decision-Making Standards: Section 5/11a-17(e) of the Probate Act specifies the standards by which guardians are to make decisions for a respondent. Decisions should first be based on the respondent's previously expressed preferences, conforming "as closely as possible to what the respondent, if competent, would have done or intended under the circumstances, taking into account evidence that includes, but is not limited to,

the respondent's personal, philosophical, religious and moral beliefs, and ethical values relative to the decision to be made by the guardian."

If the disabled person's preferences are unknown and cannot be ascertained, decisions should be based on the disabled person's best interests. In determining best interests, the guardian shall weigh:

- The reason for and nature of the proposed action;
- The benefit or necessity of the action;
- The possible risks and other consequences of the proposed action;
- Any available alternatives and their risks, consequences, and benefits; and
- Any other information, including the views of family and friends, that the guardian believes the respondent would have considered if able to act for himself.

- Best Interests: The best interests of the respondent is the standard by which decisions should be made on behalf of a respondent (Section 5/11a-17(e) of the Probate Act).

- Restoration: When a respondent has regained capacity to make his or her own decisions, guardianship may no longer be necessary. The court may terminate the adjudication of a disability and revoke the guardianship. In this case, the respondent has been "restored" to capacity. This requires a hearing and court findings.

Mental Health – Key Players:

- Respondent: a person subject to an involuntary treatment and/or involuntary admission petition.

- Recipient of Services: the person in a mental health case who is, either by agreement or through a court order, committed to a mental health facility or receiving mental health treatment services.

- Petitioner: the party who files a petition. The petitioner must be 18 years of age or older with personal knowledge of the facts.

- Custodian: A person authorized, with the consent of the respondent, to provide or arrange for property and adequate treatment of a respondent subject to involuntary admission. 405 ILCS 5/1-102.

- Substitute Decision Maker: a person with the authority to make decisions under the Powers of Attorney for Health Care Law or under the Mental Health Treatment Preference Declaration Act. 405 ILCS 5/1-110.5.

- Guardian: A person appointed by a Probate judge as guardian of the respondent in a mental health proceeding. A respondent in a mental health proceeding may have co-guardians. 405 ILCS 5/1-110.

- Responsible Relative: the spouse or, if the recipient is under 18 years of age, parent of a recipient receiving services in facilities or programs under the Mental Health Code. 405 ILCS 5/1-124.

- State's Attorney: The State's Attorney represents the State of Illinois in mental health cases. Although they are available to help individuals file petitions, more often they file them when cases are referred by hospitals or other service providers. The State's Attorney is required to attend mental health proceedings and ensure that petitions, reports, and orders are properly prepared. They appear in court for every mental health case, including those in Calendar 20. 405 ILCS 5/4-101. The State's Attorney can be contacted at (312) 603-8600.

- Guardianship and Advocacy Commission ("GAC"): A state agency, The GAC protects the right and promotes the welfare of persons with disabilities, sometimes representing them in court (see below). GAC consists of several divisions including OSG.

- Legal Advocacy Service ("LAS"): LAS is a division of the GAC that advises and represents adults and children with disabilities to protect and enforce their rights guaranteed by Illinois mental health laws. LAS's services range from providing information to representation in court on issues that include admission and discharge from hospitalization, adequate treatment, refusal of unwanted services, and confidentiality of mental health records. The contact information for LAS must be given to anyone admitted or objecting to a hospital admission. 405 ILCS 5/3-206. Often represents the respondent in mental health cases, someone from LAS appears in court on every mental health case, including those in Calendar 20.

- Public Defender: The Public Defender is often appointed to represent the respondent in mental health cases when LAS has a conflict, typically when OSG (another division of the GAC) is already guardian for the respondent.

- Facilities, Hospitals, and Physicians: These entities/individuals may be involved because the respondent resides in a facility, is hospitalized, or requires evaluation. Petitions in a mental health case are often prompted because an individual with a mental illness becomes hospitalized and needs treatment or admission but will not consent.

Mental Health – Types of Cases:

- Involuntary Treatment: Under Section 2-107.1 of the Mental Health Code, treatment using psychotropic medication and electroconvulsive therapy may be administered, on an outpatient or inpatient basis, without the informed consent from the recipient of services upon appropriate petition and hearing. The following conditions must be met:

    1. A petition by someone 18 years of age or older with personal knowledge of the facts, which includes any power of attorney and may include specific requests for any tests or procedures sought to be administered to respondent.
    2. Service of the petition to respondent, the respondent's attorney, the respondent's agent or attorney-in-fact (if applicable), and the respondent's guardian (if applicable), at least 3 days before hearing. Service must be acknowledged (acknowledgment is not strictly defined but often comes in the form of a signed receipt that is then filed with the court) within 24 hours, and if not, petitioner must serve the petition by personal service. If the hearing is via emergency, then service will be made after the hearing using the same standards.
    3. The hearing is held within 7 days of the filing of the petition (this is typically a case management appearance as opposed to a full hearing). If the respondent is

also subject to a petition for involuntary admission, the proceedings shall be held separately.

4. The judge has determined by clear and convincing evidence that all the following factors are present (with consideration of respondent's history of physical violence, repeated patterns of specific behavior, actions related to the respondent's illness, or past outcomes of treatment):
    a. The respondent has a serious mental illness or developmental disability;
    b. Because of the mental illness or developmental disability, the respondent exhibits any one of the following:
        i. Deterioration of his or her ability to function;
        ii. Suffering; or
        iii. Threatening behavior;
    c. The illness or disability has existed for a distinct period of time or for repeated episodes, marked by the continuing presence of deterioration of the ability to function, suffering, or threatening behavior;
    d. The benefits of treatment outweigh the harm;
    e. The respondent lacks the capacity to make a reasoned decision about treatment;
    f. Other less restrictive services have been explored and found inappropriate; and
    g. The testing and procedures requested in the petition are essential for the safe and effective administration of the treatment.
5. The judge has entered an order specifying the person authorized to administer the treatment and the medication(s) and dosages.

- Involuntary Admission: Involuntary admission cases are governed by Chapter 3 of the Mental Health Code.

- Request for Mental Health Evaluation: these requests are made on an emergency basis when either the family or the respondent is at risk of serious physical harm. If granted, the order will direct law enforcement to transport the respondent to a hospital for a psychiatric evaluation. This is commonly referred to as a "writ" or "writ of detention and examination."

Mental Health – Additional Terms:

- Mental Illness: is defined by the Mental Health Code as "a mental, or emotional disorder that substantially impairs a person's thought, perception of reality, emotional process, judgment, behavior, or ability to cope with the ordinary demands of life, but does not include a developmental disability, dementia or Alzheimer's disease absent psychosis, a substance use disorder, or an abnormality manifested only by repeated criminal or otherwise antisocial conduct." 405 ILCS 5/1-129. Those with mental illness may have symptoms of psychotic episodes, delusions, hallucinations, paranoia, aggressive behavior, risk of harm to self or others, inability to understand risks or consequences, extreme mood changes, suicidal thinking, excessive fears not based in reality, etc., though no two illness will be the same.

- Care and Custody Order: authorization for an appropriate person, with that person's consent, to provide or arrange for proper and adequate treatment of another person subject to involuntary treatment on an outpatient basis. 405 ILCS 5/1-102. The court

may place the respondent in the care and custody of a relative or other person willing and able to care for the respondent if the respondent is found subject to involuntary treatment on an outpatient basis. 405 ILCS 5/3-812(a). In a practical sense, this may mean that a respondent in a mental health case could have a care and custody order while a guardianship petition is pending.

- Treatment: means "an effort to accomplish an improvement in the mental health condition or related behavior of a recipient" of services. Treatment can include partial or full hospitalization, outpatient services, examination, diagnosis, evaluation, care, training, psychotherapy, pharmaceuticals, and other services provided for recipients by mental health facilities. 405 ILCS 5/1-128.

- Psychotropic Medication: medication used for antipsychotic, antidepressant, antimanic, antianxiety, behavioral modification or behavioral management purposes. 405 ILCs 5/1-121.1.

- Least-Restrictive and Humane Care: Just as guardianships are meant to be the least restrictive possible and work under the best interests of the respondent, a recipient of services in a mental health case must receive "adequate and humane care and services and in the least restrictive environment." Plans for care may receive input from a guardian, if applicable, or substitute decision maker. The recipient may also designate anyone else he or she wants involved in his or her care plan. 405 ILCS 5/2-102(a).

- Refusal of Services: The recipient of services or the recipient's guardian (and the recipient's substitute decision maker, if any) must be informed of the recipient's right to refuse medication or electroconvulsive therapy. They may then refuse "generally accepted" mental health services, which then will not be given unless necessary to prevent the recipient from "causing serious and imminent physical harm to the recipient or others and no less restrictive alternative is available." 405 ILCS 5/2-107(a).

- Aftercare Plan: When a recipient of services under the Mental Health Code is discharged from treatment, whether it was voluntary or involuntary, the Department of Human Services shall provide the recipient and the recipients guardian a written aftercare plan, which should include: (1) the nature of the illness and follow up required; (2) medications; (3) if the recipient was given an informed consent form for the medications; (4) expected course of recovery; (5) recommendations regarding treatment; (6) referrals to providers of medical and mental health services; and (7) any other relevant information. 405 ILCS 5/3-911.

- Discharge: means the full release of any person admitted to or otherwise detained under the Mental Health Code from treatment, habilitation, or care and custody. 405 ILCS 5/1-109.

- Person Subject to Involuntary Admission on an Inpatient Basis: means a person with mental illness who (1) because of his or her illness is reasonably expected to engage in conduct placing him or her or another person in physical harm; (2) because of his or her illness is unable to provide for his or her basic physical needs so as to prevent serious harm without the assistance of others; (3) a person with mental illness who refuses treatment or is noncompliant with treatment, is unable to understand his or her need for

treatment, and is reasonably expected to suffer mental or emotional deterioration. 405 ILCS 5/1-119.

- Person Subject to Involuntary Admission on an Outpatient Basis: means a person (1) who, in the absence of outpatient treatment, would meet the above criteria for admission on an inpatient basis but outpatient treatment can only be reasonably ensured via court order; or (2) with mental illness, which if left untreated, is reasonably expected to result in an increase in the symptoms caused by the illness to the point the person would meet the criteria for admission and whose mental illness has, more than once, caused that person to refuse necessary mental health services in the community. 405 ILCS 5/1-119.1.