



## Restoring the Voting Rights of People Under Guardianship

August 30, 2012

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### **Introduction**

The right to vote is a fundamental right—and every vote counts. Sometimes, however, state laws disqualify people under guardianship from voting. In the majority of the states that have such laws, a person can retain the right to vote when he or she has a guardian appointed, or have the right restored later, by showing that he or she has the capacity to vote.

In states that do not identify circumstances in which people under guardianship may retain the right to vote, courts have often allowed these individuals to vote if they show that they have the capacity to do so. How do you know what the law is in your state? Check the chart “State Laws Affecting the Voting Rights of People with Mental Disabilities” at:

[www.bazelon.org/portals/0/Voting/8.12Survey of State Laws Affecting Voting Rights of People with Disabilities \(2\).pdf](http://www.bazelon.org/portals/0/Voting/8.12Survey%20of%20State%20Laws%20Affecting%20Voting%20Rights%20of%20People%20with%20Disabilities%20(2).pdf)

This paper provides tools and resources that people under guardianship—or their family members or advocates—can use to restore voting rights taken away because a person with a mental disability has a guardian. Usually, this requires going back to the court that appointed the guardian and asking the court to revise the guardianship order to make it clear that the person with a guardian has the right to vote.

These tools include three model motions asking the court to revise the guardianship order, three model “affidavits” or sworn written testimony to persuade the judge, and a model proposed order clarifying the right to vote for an individual under guardianship.

### **Three Model Motions Asking the Court to Revise the Guardianship Order**

- [Motion to modify guardianship order where the order explicitly takes away the right to vote.](#)
  - A guardianship order may say that the person under guardianship cannot vote. This could be because (1) the person was found to lack the capacity to vote, or (2) no one raised the issue of voting at the guardianship hearing and the state’s law provides that a person under guardianship automatically loses the right to vote unless the person shows that he or she has the capacity to vote. If a person’s guardianship order takes away his or her right to vote and

the person would like to vote, use this motion to ask the court to change the order to restore the person's right to vote.

- [Motion to modify guardianship order where the order is silent on the person's voting rights but state law takes away the right to vote from people with guardians.](#)
  - If the guardianship order does not say anything about voting rights but the state's election law says that people with guardians cannot vote, sometimes this may result in the person being unable to vote. This may depend on how election officials interpret the law and whether they receive notice of individuals' guardianship status. If an election official tells a person that he or she cannot vote because state law prohibits people with guardians from voting, use this motion to ask the court to change the guardianship order to make it clear that the person under guardianship has the right to vote.<sup>1</sup>
- [Motion to modify guardianship order where the order is silent but state law takes away the right to vote from people with guardians, unless a person's guardianship order explicitly says that the person can vote.](#)
  - In some states the election law says that a person with a guardian cannot vote unless the order appointing the guardian explicitly says that the order does not affect the person's right to vote. If an election official tells you that a person with a mental disability cannot vote because the guardianship order does not say that the person can vote, use this motion to ask the court to change the guardianship order to make it clear that the person under guardianship has the right to vote.<sup>2</sup>

### **Three Model "Affidavits" or Sworn Written Testimony to Persuade the Judge**

When you ask a judge to modify a guardianship order to restore the right to vote of a person with a guardian, you will need to give the judge some facts about why the person should be able to vote. The affidavits tell the judge that the person wants to vote, understands what it means to vote, and can vote without being inappropriately influenced by someone else (even if the person may need some help to vote).

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<sup>1</sup> If the court previously made a finding that the person lacked the capacity to vote, the person needs to show that now he or she does have that capacity.

<sup>2</sup> Sometimes the election official may be wrong. For example, the state's law may provide that the person keeps the right to vote unless the judge makes a specific finding that the person lacks the capacity to vote. In that case, taking up the matter with election officials may be the best way to address the problem. If the problem continues, however, it may make sense to try to have the guardianship order changed to clarify that the person has the right to vote.

The model affidavits included here are:

- [from a person under guardianship who wants the right to vote.](#)
- [that person's guardian.](#) and
- [a mental health professional who has examined the person.](#)

### **Model Proposed Order Clarifying the Right to Vote**

Finally, the paper includes [a model proposed order](#) you can use in court to change the guardianship order to clarify that the person under guardianship should have the right to vote.

### **For More Information**

Please visit the following to learn more about this issue:

- <http://www.bazelon.org/Where-We-Stand/Self-Determination/Voting.aspx>
- <http://www.bazelon.org/Where-We-Stand/Self-Determination/Voting/Voting-Policy-Documents.aspx>
- <http://www.bazelon.org/Where-We-Stand/Self-Determination/Voting/Voting-Legal-Action.aspx>

If you have any questions about how to use any of these materials, please contact:

Jennifer Mathis or Lewis Bossing  
Bazelon Center for Mental Health Law  
1101 15<sup>th</sup> Street NW, Suite 1212  
Washington, DC 20005  
(202) 467-5730  
[www.bazelon.org](http://www.bazelon.org)

***Motion to Modify Guardianship Order Where the Order  
Explicitly Takes Away the Right to Vote***

**IN THE SUPERIOR COURT FOR THE STATE OF [STATE NAME]  
FOR THE COUNTY OF [COUNTY NAME]**

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**In the Guardianship of** )  
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**JOHN DOE,** ) **Case No.** \_\_\_\_\_  
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**An Incapacitated Person.** )  
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**MOTION TO MODIFY ORDER APPOINTING GUARDIAN**

Movant John Doe respectfully asks that the Court modify its Order appointing Jane Roe as Mr. Doe’s guardian to specify that Mr. Doe retains the right to vote. The Order removed Mr. Doe's right to vote. Mr. Doe now has the capacity to vote and would like to vote in the upcoming general election scheduled to take place on November 6, 2012, and in subsequent elections.

As demonstrated in the attached affidavits from Mr. Doe and his treating mental health professional, [**name**], Mr. Doe understands what it means to vote and how the voting process works. Mr. Doe has the capacity to choose from among the candidates whose names will appear on the general election ballot and to form an opinion concerning the questions presented on the

ballot, and wishes to express his preferences by voting. Ms. Roe supports this Motion. *See* Affidavit of Jane Roe, attached.

As provided in the attached Proposed Order Modifying Order Appointing Guardian, Mr. Doe requests that the Order appointing Ms. Roe be modified by adding the following sentence:

Mr. Doe retains the right to vote.

Should the Court deem further proceedings necessary to decide this motion, Mr. Doe requests that the Court appoint an attorney to represent him in such proceedings.

Respectfully submitted,

Date: \_\_\_\_\_

\_\_\_\_\_

John Doe

***Motion to Modify Guardianship Order Where the Order Is Silent but State Law Takes Away the Right to Vote from People with Guardians***

**IN THE SUPERIOR COURT FOR THE STATE OF [STATE NAME]  
FOR THE COUNTY OF [COUNTY NAME]**

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**In the Guardianship of** )  
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**JOHN DOE,** ) **Case No.** \_\_\_\_\_  
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**An Incapacitated Person.** )  
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**MOTION TO MODIFY ORDER APPOINTING GUARDIAN**

Movant John Doe respectfully asks that the Court modify its Order appointing Jane Roe as Mr. Doe’s guardian to specify that Mr. Doe retains the right to vote. **[State Name]** law prohibits voting by individuals under guardianship, but courts have interpreted the law to permit restoration of the right to vote where a person has the capacity to vote. **[Cite.]** Mr. Doe has the capacity to vote and would like to vote in the upcoming general election scheduled to take place on November 6, 2012, and in subsequent elections.

As demonstrated in the attached affidavits from Mr. Doe and his treating mental health professional, [name], Mr. Doe understands what it means to vote and how the voting process works. Mr. Doe has the capacity to choose from among the candidates whose names will appear on the general election ballot and to form an opinion concerning the questions presented on the ballot, and wishes to express his preferences by voting. Ms. Roe supports this Motion. *See* Affidavit of Jane Roe, attached.

As provided in the attached Proposed Order Modifying Order Appointing Guardian, Mr. Doe requests that the Order appointing Ms. Roe be modified by adding the following sentence:  
  
Mr. Doe retains the right to vote.

Should the Court deem further proceedings necessary to decide this motion, Mr. Doe requests that the Court appoint an attorney to represent him in such proceedings.

Respectfully submitted,

Date: \_\_\_\_\_

\_\_\_\_\_

John Doe

***Motion to Modify Guardianship Order Where State Law Takes Away the Right to Vote from People with Guardians, Unless a Person's Guardianship Order Explicitly Says That the Person Can Vote***

**IN THE SUPERIOR COURT FOR THE STATE OF [STATE NAME]**

**FOR THE COUNTY OF [COUNTY NAME]**

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**In the Guardianship of** )  
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**JOHN DOE,** ) **Case No.** \_\_\_\_\_  
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**An Incapacitated Person.** )  
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**MOTION TO MODIFY ORDER APPOINTING GUARDIAN**

Movant John Doe respectfully asks that the Court modify its Order appointing Jane Roe as Mr. Doe's guardian to specify that Mr. Doe retains the right to vote. [State name] law provides that a person adjudged incapacitated cannot vote unless the person has the capacity to vote. [Cite.] No determination was made concerning Mr. Doe's capacity to vote when he was placed under guardianship. The Order does not state that Mr. Doe retains the right to vote. Mr. Doe has the capacity to vote and would like to vote in the upcoming general election scheduled to take place on November 6, 2012, and in subsequent elections.

As demonstrated in the attached affidavits from Mr. Doe and his treating mental health professional, [name], Mr. Doe understands what it means to vote and how the voting process works. Mr. Doe has the capacity to choose from among the candidates whose names will appear on the general election ballot and to form an opinion concerning the questions presented on the ballot, and wishes to express his preferences by voting. Ms. Roe supports this Motion. *See* Affidavit of Jane Roe, attached.

As provided in the attached Proposed Order Modifying Order Appointing Guardian, Mr. Doe requests that the Order appointing Ms. Roe be modified by adding the following sentence:  
  
Mr. Doe retains the right to vote.

Should the Court deem further proceedings necessary to decide this motion, Mr. Doe requests that the Court appoint an attorney to represent him in such proceedings.

Respectfully submitted,

Date: \_\_\_\_\_

\_\_\_\_\_

John Doe

**Model Affidavit of Person Under Guardianship  
Seeking to Have Right to Vote Restored**

**IN THE SUPERIOR COURT FOR THE STATE OF [STATE NAME]  
FOR THE COUNTY OF [COUNTY NAME]**

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**In the Guardianship of** )  
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**JOHN DOE,** ) **Case No.** \_\_\_\_\_ )  
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**An Incapacitated Person.** )  
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**AFFIDAVIT OF JOHN DOE**

JOHN DOE, being duly sworn, deposes and says:

1. My name is John Doe and I am **[insert age, gender]**.
  
2. I live with \_\_\_\_\_ **[identify people that you live with]** at **[insert address, including if applicable name of facility, and describe nature of facility, i.e., a skilled nursing facility, assisted living facility]**.
  
3. I have had a guardian since **[date]**.
  
4. My guardian is \_\_\_\_\_ **[insert name; provide a description of guardian relationship, including the duration and the responsibilities of the guardian. For example,**

**“My guardian is my sister-in-law, Mrs. Smith. She has been my guardian for 11 years. My guardian assists me with my medical decisions and my finances.”]**

5. As a result of being placed under guardianship, I have not been permitted to vote in any local, state, or federal elections. Neither I, nor my guardian, knew that I would lose my right to vote when I was placed under guardianship.

6. **[If the guardian is supportive of your effort to get the right to vote discuss that here. For example, “My guardian believes that I am capable of voting and should have the right to vote.”]**

7. **[Describe the highest level of education you have received. For example, “I have a high school certificate of completion.”]**

8. **[If you are working, describe your job.]**

8. **[If you have been involved in any clubs, organizations, or support groups that you have held any leadership roles or had to vote for leaders describe those experiences here. If you had to vote for leaders in those groups discuss what you did to prepare. For example, “I have been a member of Project X for many years, an organization that helps to improve parts of my community. Every year we elect new members to the board. I have voted in the past six elections and was a candidate for the position of secretary last year. When I vote, I pay attention to a person’s character, their job performance, and the promises that they make in the campaign.”]**

9. To remain informed of current affairs, I **[provide information on what you do to stay informed. For example, “I watch the news, I listen to the radio, I read the newspaper, and I have conversations with friends and family to stay well informed of current affairs.”]**

10. I want to be able to vote because **[Describe why you want to vote. You may wish to discuss particular elections that are important to you, the fact that you have a**

**preference for a particular candidate, issues that are important to you, or current events that have affected you].**

11. I declare under penalty of perjury under the laws of the State of **[state name]** that the foregoing is true and correct.

Dated: \_\_\_\_\_, 2012

\_\_\_\_\_

Name of Affiant

**Model Affidavit of Guardian Supporting Restoration of Voting Rights  
of Person Under Guardianship**

**IN THE SUPERIOR COURT FOR THE STATE OF [STATE NAME]  
FOR THE COUNTY OF [COUNTY NAME]**

\_\_\_\_\_  
**In the Guardianship of** )  
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**JOHN DOE,** ) **Case No.** \_\_\_\_\_  
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**An Incapacitated Person.** )  
\_\_\_\_\_ )

**AFFIDAVIT OF [GUARDIAN]**

NAME OF AFFIANT, being duly sworn, deposes and says:

1. Pursuant to an Order of this Court dated **[insert date]** (the “Guardianship Order”), I was appointed the guardian of the **[person and/or property]**<sup>3</sup> of John Doe. Attached hereto at Exhibit A is a copy of the Guardianship Order. The Guardianship Order has not been amended.

\_\_\_\_\_  
<sup>3</sup> In some states a person who is appointed to manage the property of another person is called a “conservator.”

2. The Guardianship Order does not state whether Mr. Doe may still exercise his right to vote. As a result of his being placed under guardianship, Mr. Doe has not been permitted to vote in local, state, or national elections. I submit this Affidavit in support of Mr. Doe's motion dated **[insert date]** to amend the Guardianship Order so that it expressly provides that Mr. Doe has retained his right to vote.

3. **[If applicable:]** I am Mr. Doe's **[describe relationship to ward: wife, son, daughter, brother, sister, aunt, uncle, nephew niece, friend]**. I have known Mr. Doe for **[number of]** years.

4. John Doe is a **[number]** year old male who lives in **[describe where the person under guardianship lives and with whom. For example, if the person still lives in his or her home, state whether the person lives with anyone. If the person does not live in his or her own home, provide the name and address of the facility where the person lives.]**<sup>4</sup>.

5. **[If applicable:]** Before I was named his guardian, Mr. Doe regularly exercised his right to vote. **[The guardian should explain how he or she knows that to be the case and, if possible, provide some personal anecdotal evidence. For example, if the guardian is a spouse, a friend or a companion, he or she may be able to say "For many years Mr. Doe and I went together to vote at our local polling place."]**

6. Mr. Doe keeps up with current events by reading the newspaper, including **[insert name(s) of newspaper]** and magazines, including **[insert names(s) of magazines]**. He listens to the news on the radio and watches news and news related programs on television, such as **[insert name(s) of television programs]**.

7. Typically, I visit Mr. Doe **[describe frequency: weekly, or every Sunday, or once a month]**. We visit **[describe where visits occur; if applicable, describe**

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<sup>4</sup> It may be helpful to obtain a separate affidavit from someone who lives with the person or a service provider, such as a home health aide or visiting nurse, describing activities that show the person's capacity to understand election issues (for example, that the person under guardianship reads newspapers on a daily basis, watches news programs or news related programs, or discusses current events, including elections).

**who else may be present during those visits].** When I visit with Mr. Doe we talk about many things, including current events. Recently we have talked about the upcoming [**national, state, local**] election. Mr. Doe has expressed his views about the candidates and various issues. [**If applicable, also discuss the person’s participation in advocacy or other organizations, such as a People First chapter, and any experience with elections as part of this participation.**]

8. When I visited Mr. Doe on [**insert date**], he asked me if he could vote in the upcoming election. [**or: I asked him if he would like to vote in the upcoming election. Without hesitation, Mr. Doe stated that he wants to vote in the upcoming election.**]

9. Based on my numerous conversations with Mr. Doe, I believe that he understands what an election is, and that he will exercise his own judgment when voting.

10. Although Mr. Doe may need assistance from a guardian with some decisions, he understands the voting process and will make independent decisions when voting.

11. I declare under penalty of perjury under the laws of the State of [**state name**] that the foregoing is true and correct.

Dated: \_\_\_\_\_, 2012

\_\_\_\_\_

Name of Affiant

**Model Affidavit of Medical Professional Supporting Restoration of Voting Rights  
of Person under Guardianship**

**IN THE SUPERIOR COURT FOR THE STATE OF [STATE NAME]  
FOR THE COUNTY OF [COUNTY NAME]**

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**In the Guardianship of** )  
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**JOHN DOE,** ) **Case No.** \_\_\_\_\_  
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**An Incapacitated Person.** )  
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**AFFIDAVIT OF [MEDICAL PROFESSIONAL]**

NAME OF AFFIANT, being duly sworn, deposes and says:

1. I am a licensed **[psychiatrist, psychologist, geriatrician]** in the State of **[state name]** and I make this Affidavit in support of the Motion dated **[date]** of John Doe to modify the **[insert date of order]** Order of this Court (the “Guardianship Order”) so as to explicitly acknowledge that Mr. Doe should be considered competent to vote.

2. **[Affiant’s educational background and licensing information:]** I obtained my **[insert name of degree]** from **[insert name of school]** in **[insert year]**. **[Include information about residency/fellowship training.]** I have been licensed to practice **[insert specialty]** in the State of **[state name]** since **[insert year]**.

3. My curriculum vita is attached hereto and is an accurate representation of my professional background. **[Attach a copy of resume as Exhibit A.]**

4. **[If appropriate:]** I have experience with guardianship proceedings [or capacity determinations]. **[Provide examples of instances when medical professional was involved in guardianship proceeding or in making capacity determinations, e.g., I have previously testified in courts of law as to the capacity of the subjects of guardianship proceedings, specifically where the capacity to vote has been addressed, and I have served as an expert witness in such proceedings. ]**

5. I have treated John Doe, a **[insert age, gender]** since **[insert year]**. Mr. Doe resides with **[identify people who live with Mr. Doe]** at **[insert address, including if applicable name of facility, and describe nature of facility, i.e., a skilled nursing facility, assisted living facility]**.

6. I have in the past and continue to treat Mr. Doe for **[insert diagnosis, for example, Bi-Polar Disorder, Manic Depression, Parkinson's Disease, Depression, Schizophrenia, Alzheimer's, Alcoholic Dementia, Traumatic Brain Injury]**. **[Include a brief description of movant's condition and current status. For example, if Mr. Doe's functional and decisional abilities are intermittently affected by a mental health impairment, Affiant could discuss the current state of his condition. If Mr. Doe's condition is Alzheimer's or dementia, Affiant can specify the ways in which the condition does (and does not) currently affect his functioning. If a developmental disability, Affiant can describe the level of Mr. Doe's functioning and community participation, i.e. holds a job, volunteers, takes classes.]**

7. The Guardianship Order provides for a guardian to help Mr. Doe make decisions about **[insert areas of decision making identified in the Order]**. The Order made no specific finding with respect to Mr. Doe's capacity to vote. However, as a result of being assigned a guardian Mr. Doe has been deprived of the right to vote.

8. During the course of my relationship with Mr. Doe, I have had discussions with him regarding his desire to vote. Mr. Doe is aware that he is currently not allowed to vote under **[state name]** law, but he would like to have his right to vote restored.

9. I examined Mr. Doe on **[date]**. I concluded then that Mr. Doe is competent to vote in local, state, and federal elections. Mr. Doe understands the electoral process and understands the nature and effect of voting. Mr. Doe also has the capacity to make his own decisions regarding candidates and questions on the ballot. Mr. Doe has opinions about elections that he holds entirely on his own without undue outside influence.

10. An individual may need assistance from a guardian in making decisions in one or more areas of life, but may retain capacity to make decisions in another area of life. This is the case for John Doe. He may need assistance from his guardian in making decisions about **[areas of decision making identified in the Order]**, but he is very capable of making informed decisions about voting.

11. I have reached my opinions based on my education and training, my **[number]** years of experience as a mental health professional, my regular treatment of Mr. Doe over the past **[number]** years, and my recent examination of Mr. Doe on **[date]**.

12. I declare under penalty of perjury under the laws of the state of **[state name]** that the foregoing is true and correct.

Dated: \_\_\_\_\_, 2012

\_\_\_\_\_

Name of Affiant

**Model Proposed Order Modifying Guardianship Order  
to Restore the Right to Vote**

**IN THE SUPERIOR COURT FOR THE STATE OF [STATE NAME]  
FOR THE COUNTY OF [COUNTY NAME]**

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**In the Guardianship of** )  
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**JOHN DOE,** ) **Case No.** \_\_\_\_\_ )  
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**An Incapacitated Person.** )  
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**PROPOSED ORDER MODIFYING ORDER APPOINTING GUARDIAN**

Having considered the instant Motion and attached Affidavits, and having heard no opposition to the Motion, the Court hereby GRANTS the Motion.

The Order appointing Jane Roe as guardian of John Doe, dated **[date]**, will be modified by adding the following sentence to the Order:

Mr. Doe retains the right to vote.

The Clerk of the Court shall so notify appropriate election officials.

So signed this \_\_ day of **[month]**, 2012.

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Judge [Name]