

GUIDE TO GUARDIANSHIP CASES
(MINORS AND ADULTS WITH DISABILITIES)

By: Judge Anna M. Benjamin

GENERAL GUARDIANSHIP INFORMATION

Setting a Hearing

Any party filing a Petition for Guardianship must contact the court clerk upon filing to request that a guardian ad litem (GAL) be appointed and a court date set. Court dates will be set approximately thirty (30) days out, except in the case of an emergency, as provided below.

Please let the court clerk know if a party requires an interpreter and one will be provided by the Court.

Guardian ad Litem

A guardian ad litem (GAL) is appointed by the Court to investigate a guardianship petition. A GAL will be appointed in all guardianship cases unless waived by the court for good cause shown. The GAL will need to speak with the parties and must be sent copies of all pleadings and proposed orders. After the guardian ad litem is appointed, a hearing date will be scheduled, and the guardian ad litem will schedule an appointment for the investigation to begin.

Emergencies

Local Rule 2.1 of the Sixth Judicial Circuit Court requires that all parties or their attorneys (see sections below on “Notice”) be given notice at least 14 days before a court date. If there is an emergency and good cause is shown, this requirement may be waived. Any party requesting to waive the notice requirement must request this in a written pleading or motion filed with the circuit clerk and send a courtesy copy to the Court, the GAL and opposing counsel, if any.

GUARDIANSHIPS FOR MINORS

Definition of Minor

“Minor” refers to a person who is under eighteen (18) years of age. However, a guardianship for a minor may also be filed for individuals up to age 21, with their consent, for the purpose of obtaining special immigrant juvenile status findings, as provided below.

Requirements to be Guardian of a Minor

A prospective guardian of a minor must be a resident of the United States who is not of unsound mind, has not been adjudicated as a disabled person, and has not been convicted of a felony, with limited exceptions. A prospective guardian must also be capable of providing an active and suitable program of guardianship for the minor. One person may be appointed guardian of the person and another person guardian of the estate. Appointment requirements are found within the Illinois Probate Act, 755 ILCS 5/11-3.

Petition for Guardianship of a Minor

One petition for the appointment of a guardian may include multiple minors. The following information, if known, must be included in a Petition for Guardianship of a Minor:

- (1) Name, date of birth, and residence of each minor (separately);
- (2) The names and addresses of the nearest relatives of each minor (separately). In order, the closest relative is:
 - (a) the spouse, if any; if none,
 - (b) the parents, adult siblings, or the short-term guardian, if any; if none,
 - (c) the nearest adult kindred.
- (3) The name and address of the person who has custody of the minor;
- (4) The approximate value of the minor’s personal estate;
- (5) The amount of anticipated gross annual income and other receipts;
- (6) The name and address of the proposed guardian. If the proposed guardian is an individual, their age and occupation should be included;
- (7) If there is one, facts about the execution or admission to probate of the written designation of a guardian. A copy of the written designation may be attached to the petition or filed with the petition;
- (8) (a) Facts about any pending juvenile, adoption, parentage, dissolution, or guardianship court proceeding that concerns the minor or the parents of the minor, and (b) whether there is a guardian currently acting for the minor. Copies of orders or other documents pertaining to confidential case types should not be attached to the petition.

Other additional information to include if present in the case:

- (9) Administrative separation: Include facts about any administrative separation of the parent(s) (from the child) and include: (a) the date of separation, and (b) the known or presumed location of the parent(s). Include documents about the separation as exhibits.
- (10) Short-term guardian: If a short-term guardian was previously appointed, include facts about the appointment of the short-term guardian, including: (a) the date of the appointment, (b) the circumstances around the appointment, (c) the date the short-term guardian appointment ends, and (d) reasons a court-ordered guardian is also needed for the minor. Attach a copy of the short-term guardian appointment to the petition.

Requirements for the petition are found within the Illinois Probate Act, 755 ILCS 5/11-8.

Filing a Petition

The petition must be filed electronically with the Circuit Clerk or an exemption from e-filing must be requested. The Champaign County Circuit Clerk has guardianship forms available at <https://www.champaigncircuitclerk.org/common-forms> and information regarding e-filing at <https://www.champaigncircuitclerk.org/common-forms/electronic-filing/>. The Champaign County Self-Help Center at the Champaign County Courthouse also has more information on electronic filing and guardianship forms.

Notice

Written notice of the time and place of the hearing on the petition must be given at least 14 days before the hearing. Notice must be given to any person required to be listed in the petition. If the minor is over fourteen (14) years old, notice must be given to the minor, or the minor may nominate a guardian, subject to the approval of the Court.

Parents of the child must be given notice, even if they do not regularly see the child or are incarcerated. The only situation in which a legal parent is not required to be given notice is if their parental rights have been terminated by a court order, in which case a copy of the court order should be brought to the hearing.

Proof of service must be filed with the Circuit Clerk for each notice of hearing. Notice requirements are found within the Illinois Probate Act, 755 ILCS 5/11-5.

Notice by Publication

If the address of any person required to be listed in the petition is unknown, notice should be given by publication beginning at least 30 days prior to the scheduled hearing. A Certificate of

Publication from the newspaper must be filed with the Circuit Clerk prior to the hearing or brought to the hearing. These requirements may be waived by the court.

Publication specifications are found within the Illinois Code of Civil Procedure, 735 ILCS 5/2-206 through 2-207, which governs matters of procedure not regulated by the Illinois Probate Act, 735 ILCS 5/1-108.

Special Immigrant Minor Findings

The Court may make the findings necessary to enable a minor who is the subject of a petition for guardianship to petition the United States Citizenship and Immigration Services for classification as a Special Immigrant Juvenile.

If a motion requests findings regarding Special Immigrant Juvenile Status (SIJS) and the evidence supports the findings, the Court may enter an order that finds:

- (1) The minor is a dependent of the court or is legally committed to or placed under the custody of a state agency, department, or an individual or entity appointed by the court;
- (2) That reunification of the minor with either one or both of their parents is not viable due to abuse, neglect, abandonment, or another similar reason; and
- (3) That it is not in the minor's best interest to be returned to their or their parent's previous country of nationality or last habitual residence.

Evidence in these proceedings related to the SIJS request may consist solely of, but need not be limited to, a declaration of the minor. Information regarding the immigration status of the minor and of the minor's parent(s) or guardian(s) that is not otherwise protected by state confidentiality laws will remain confidential and be available only to the court, the minor and their counsel, the parties and their attorneys, and the minor's parent(s) or guardian(s). Special immigrant juvenile status requirements are found within the Illinois Probate Act, 755 ILCS 5/11-5.5.

Settlement of Personal Injury

Pursuant to Local Rule 8.9 of the Sixth Judicial Circuit Court, an attorney filing a petition for leave to settle a cause of action for personal injuries sustained by a minor must certify that, based upon the facts and law, the proposed settlement is just and proper. The attorney must also furnish an affidavit certifying the attorney's fees and costs incurred, as well as a statement of the reasonableness, necessity, and propriety of those expenses. Additionally, no settlement on behalf of a minor will be authorized unless a statement of the attending physician or surgeon is filed with the petition stating (1) the nature and extent of the injury, and (2) the current medical condition of the minor. The minor shall appear in court unless the appearance is waived by the Court.

Oath and Bond

Before undertaking their duties, a guardian must sign a written oath affirming that they will faithfully carry out the duties of a guardian of a minor. Additionally, the guardian must file with and have approved by the court a bond binding them to do so. The court may waive the bond requirement for a guardian of the person (not the estate). Each bond must have at least two individual sureties or one surety company.

The value of the bond must be:

- (1) At least double the value of the personal estate if individuals act as sureties or if the bond or security is excused.
- (2) At least 1.5 times the value of the personal estate if a company acts as surety.
- (3) There will be an additional bond for taking possession of a ward's real estate.

For the purpose of calculating bond, a cause of action for personal injury to the ward is valued at \$500. Unless the court excuses it, the guardian must file and have approved by the court a bond for at least double the amount likely to be obtained as proceeds from judgment or settlement if an individual acts as a surety or at least 1.5 times the amount likely to be obtained as proceeds from judgment or settlement if a company acts as surety. These requirements are found within the Illinois Probate Act, 755 ILCS 5/12-2 through 12-6.

Guardianship Reports

All appointed guardians must file annual or tri-annual reports, even where settlement proceeds are deposited into a restricted access guardianship account.

Rule 8.6 of the Sixth Judicial Circuit requires that every guardian present the account and evidence required by Section 24-11 of the Probate Act, 755 ILCS 5/24-11: (1) within the thirty (30) days after a year passes from the issuance of letters; (2) annually after the date of the first account; (3) within thirty (30) days after the guardian's office terminates; and (4) at other times the Court orders.

Pursuant to Section 24-11 of the Illinois Probate Act, the report should include a statement of the receipts and disbursements of the guardian since the last account, accompanied by evidence of disbursements. It is also essential that the guardian file a Change of Address form with the Circuit Clerk if his or her mailing address changes.

If the ward's estate is either completely or partly from payments of compensation, adjusted compensation, pension, insurance, or other similar benefits made directly to the estate by the Veteran's Administration, notice of a hearing on any account of the ward's estate and a copy of the account must be given to the Veteran's Administration Regional Office at least ten (10) days before the hearing.

Costs

The Court will assess reasonable fees for the GAL, generally at the standard rate approved by the Sixth Judicial Circuit Court. If a party's request for a fee waiver has been approved, the GAL must submit an affidavit of fees and a proposed order to the court for payment to be made from the Champaign County Treasurer.

There is a filing fee for each annual or triannual report. An application for fee waiver may be submitted with the report.

Letters of Guardianship

Once appointed, a guardian should request a document called Letters of Guardianship from the Circuit Clerk's office. This is a formal document that can be presented to prove guardianship, and there is usually a fee associated with obtaining copies. Guardians should contact the Circuit Clerk's office to determine how and when they may obtain copies.

GUARDIANSHIPS FOR DISABLED ADULTS

Guardian Requirements

A prospective guardian must be a resident of the United States who is not of unsound mind, has not been adjudicated as a disabled person, and has not been convicted of a felony, with limited exceptions. A prospective guardian must also be capable of providing an active and suitable program of guardianship for the person with a disability.

A public agency or non-profit may be appointed as guardian of either or both the person and estate of a person with a disability if it can provide an active and suitable plan of guardianship. The Court will consider the nature of the disability and the services the agency provides. An agency or employee of an agency cannot be the guardian of a person with a disability if it is providing residential services to that person. One agency or employee can be guardian of the estate and another the guardian of the person.

A corporation that can accept and execute trusts can be the guardian of the estate of a person with a disability. Requirements for a guardianship of a disabled adult are found within the Illinois Probate Act, 755 ILCS 5/11a-5(a).

“Person with a Disability” Defined

A person with a disability is a person age eighteen (18) or older who (a) because of mental deterioration or physical incapacity is not fully able to manage their person or estate, or (b) is a person who, due to their mental illness or developmental disability, is not fully able to manage their person or estate, or (c) because of gambling, idleness, debauchery, or excessive use of intoxicants or drugs, spends or wastes their estate and exposes themselves or their dependents to want or suffering, or (d) is diagnosed with fetal alcohol syndrome or fetal alcohol effects. These definitions are found within the Illinois Probate Act, 755 ILCS 5/11a-2.

Petition for Guardianship of a Disabled Adult

The following information, if known, must be included in a Petition for Guardianship of a Disabled Adult:

- (1) The relationship and interest of the petitioner to the alleged person with a disability (the respondent);
- (2) The name, date of birth, and place of residence of the respondent;
- (3) The reasons for the guardianship;
- (4) The name and address of the respondent’s current guardian, if any, or of the respondent’s agent or agents appointed under the Illinois Power of Attorney Act, 755 ILCS 45/2-1 et seq., if any;
- (5) The names and addresses of the nearest relatives of the respondent in the following order:
 - (a) The spouse and adult children, parents, and adult siblings, if any; if none,

- (b) The nearest adult kindred known to the petitioner.
- (2) The name and address of the person or facility the respondent is residing with or at;
- (3) The approximate value of the respondent's personal and real estate;
- (4) The amount of the anticipated annual gross income and other receipts;
- (5) The name and address of the proposed guardian. If the proposed guardian is an individual, also include their age, occupation and relationship to the respondent.

Additional information to include if seeking to appoint a previously appointed standby guardian as guardian of the person with a disability:

- (6) Facts about the standby guardian's previous appointment; and
- (7) (a) The date of death of the guardian of the person with a disability, or (b) facts about the consent of the guardian of the person with a disability to the appointment of the standby guardian as guardian, or (c) the willingness and ability of the guardian of the person with a disability to make and carry out day-to-day care decisions concerning the person with a disability.

The petition may not be dismissed or withdrawn without leave of the court. Requirements for the petition are found within the Illinois Probate Act, 755 ILCS 5/11a-8.

Filing a Petition for Guardianship of a Disabled Adult

The petition must be filed electronically with the Circuit Clerk. Visit the website of the Champaign County Circuit Clerk, <https://www.champaigncircuitclerk.org/common-forms/electronic-filing/>, for more information on electronic filing. A courtesy copy of the petition must be sent to the court clerk to request a hearing date and GAL appointment.

Physician's Report or Psychological Evaluation

A report must be filed with the Petition and must contain:

- (1) The nature and type of disability and an assessment of how the disability impacts the ability of the respondent to make decisions or function independently;
- (2) An analysis and results of evaluations of the respondent's mental and physical condition and adaptive behavior and social skills, including any educational condition, completed within three (3) months of the date of the petition was filed, or in the case of an intellectual disability, a psychological evaluation by a licensed clinical psychologist made within one (1) year of the date the petition is filed.
- (3) An opinion as to whether a guardianship is needed, the type and scope of the guardianship needed, and the reasons for the opinion;
- (4) A recommendation on the most suitable living arrangement and treatment or habilitation plan for the respondent;
- (5) The name, business address, business phone number, and signatures of all the people who performed the evaluations the report is based on. One signee must be a licensed

physician, or, for an intellectual disability, a licensed clinical psychologist. The report must include a short statement of the certification, license, or other credentials that qualify the evaluators who prepared the report.

These requirements are found within the Illinois Probate Act, 755 ILCS 5/11a-9.

Setting a Court Date

Once the petition is filed, contact the court clerk to have a guardian ad litem (GAL) appointed and a court date set. Court dates will be set in approximately thirty (30) days, except in the case of an emergency. Please let the court clerk know if you require a translator or interpreter and one will be provided. The GAL is required to file a written report and recommendation prior to the hearing.

Summons

The respondent must be served with a copy of the petition and a summons at least fourteen (14) days before the hearing. Service must be made by a private person aged 18 or over who is not a party to the action. If the respondent has not been properly served prior to the hearing, the court may grant a request to hold a temporary guardianship hearing, pursuant to the procedure below. The summons should be printed in large, bold type and should include a “Notice of the Rights of Respondent” with all required information. Proof of service of summons on the Respondent must be placed on file prior to the hearing or brought to the hearing. Summons requirements are found within the Illinois Probate Act, 755 ILCS 5/11a-10.

Notice

Petitioner must give written notice of the time and place of the hearing by mail or in person to all people whose names and addresses are in the petition and who do not waive notice, at least fourteen (14) days before the hearing. Proof of service must be filed for each notice of hearing. Notice requirements are found within the Illinois Probate Act, 755 ILCS 5/11a-10.

Temporary Guardianship

Prior to the adjudication of disability and appointment of a guardian, a petitioner may also request that a temporary guardian be appointed. This request may be made by a petition filed at or after the time the petition for adjudication of disability and plenary guardianship is filed. The court may grant the request to appoint a temporary guardian upon a showing that it is necessary for the immediate welfare and protection of the alleged disabled adult. Notice of hearing on a petition for temporary guardianship must be given to the respondent, the proposed guardian, and the other individuals required to be listed in the petition for guardianship, at least

three days in advance of the hearing. The temporary guardianship shall expire within 60 days after the appointment, or whenever a guardian is regularly appointed, whichever occurs first, with limited exceptions. The requirements for temporary guardianships are found within the Illinois Probate Act, 755 ILCS 5/11a-4.

Publication

If the address of any person required to be listed in the petition is unknown, notice should be given by publication beginning at least 30 days prior to the scheduled hearing. A Certificate of Publication from the newspaper should be filed with the Circuit Clerk prior to the hearing or brought to the hearing. These requirements may be waived by the court. Publication specifications are found within the Illinois Code of Civil Procedure, 735 ILCS 5/2-206 through 2-207, which governs matters of procedure not regulated by the Illinois Probate Act, 735 ILCS 5/1-108.

Appointment of Counsel for Respondent

The Court may appoint counsel for the Respondent if the interests of the Respondent will be best served by the appointment, and the Court will appoint counsel upon the Respondent's request or if the Respondent takes a position adverse to that of the GAL. The Court may allow counsel for the Respondent reasonable compensation.

Settlement of Personal Injury

Pursuant to Local Rule 8.9 of the Sixth Judicial Circuit, an attorney filing a petition for leave to settle a cause of action for personal injuries sustained by a disabled adult must certify that, based upon the facts and law, the proposed settlement is just and proper. The attorney must also furnish an affidavit certifying the attorney's fees and costs incurred, as well as a statement of the reasonableness, necessity, and propriety of those expenses. Additionally, no settlement on behalf of a disabled adult will be authorized unless a statement of the attending physician or surgeon is filed with the petition stating (1) the nature and extent of the injury, and (2) the current medical condition of the disabled adult.

Oaths and Bonds

Before undertaking their duties, a guardian must take an oath affirming that they will faithfully complete the duties of a guardian of a disabled adult. Additionally, the guardian must file with and have approved by the court a bond binding them to do so. The court may waive the bond requirement for a guardian of the person (not the estate). Each bond must have at least two sureties or one surety company. The Office of the State Guardian is not required to have a surety or surety company as a security on its bonds.

The amount of bond must be:

- (1) At least double the value of the personal estate if individuals act as sureties or if the bond or security is excused.
- (2) At least 1.5 times the value of the personal estate if a company acts as surety.
- (3) There will be an additional bond for taking possession of a ward's real estate.

For the purpose of calculating bond, a cause of action for wrongful death of the decedent or for personal injury to the ward is valued at \$500. Unless the court excuses it, the guardian must file and have approved by the court a bond for at least double the amount likely to be obtained as proceeds from judgment or settlement if an individual acts as a surety or at least 1.5 times the amount likely to be obtained as proceeds from judgment or settlement if a company acts as surety. These requirements are found within the Illinois Probate Act, 755 ILCS 5/12-2 through 12-6.

Notice of Right to Seek Modification

After adjudication of a disability and appointment of a guardian, the person with a disability shall be informed of their rights to modify or revoke the guardianship or the adjudication of disability. The Notice must be in large type and in the format substantially similar to the form attached in Appendix 1. The requirement is found within the Illinois Probate Act, 755 ILCS 5/11a-19.

Guardianship Training Program

Anyone appointed guardian of the person for a disabled adult must complete a training program that outlines the responsibilities of the guardian of the person and the rights of the person under guardianship, with limited exceptions. The guardian must file a certificate of completion with the circuit clerk within one year of appointment. This training is provided online, at no cost, through the Illinois Guardianship Advocacy Commission at <https://gac.illinois.gov/osg/guardianship-training.html>. The requirement is found within the Illinois Probate Act, 755 ILCS 5/11a-12(e).

Guardianship Reports for Disabled Adults

Rule 8.6 of the Sixth Judicial Circuit requires that every guardian present the account and evidence required by Section 24-11 of the Probate Act, 755 ILCS 5/24-11: (1) Within the thirty (30) days after one year passes from the issuance of letters; (2) Annually after the date of the first account; (3) Within thirty (30) days after the guardian's office terminates; and (4) At other times the Court orders.

Pursuant to Section 24-11, the report should include a statement of the receipts and disbursements for the disabled adult since the last account, accompanied by evidence of

disbursements. If the ward's estate is either completely or partly from payments of compensation, adjusted compensation, pension, insurance, or other similar benefits made directly to the estate by the Veteran's Administration, notice of a hearing on any account of the ward's estate and a copy of the account must be given to the Veteran's Administration Regional Office at least ten (10) days before the hearing.

The guardian of a disabled adult should file either annual or triannual reports that state:

- (1) the current mental, physical, and social condition of the ward and the ward's minor and adult dependent children;
- (2) their present living arrangement, and a description and the address of every residence where they lived during the reporting period and the length of stay at each place;
- (3) a summary of the medical, educational, vocational, and other professional services given to them;
- (4) a description of the guardian's visits with and activities on behalf of the ward and the ward's minor and adult dependent children;
- (5) a recommendation as to the need for continued guardianship;
- (6) any other information requested by the court or useful in the opinion of the guardian.

If the guardian requests it, the Office of the State Guardian will provide assistance in making this report. Reports must be given even where settlement proceeds are restricted by time or age. A report by a guardian of the person may be substantially similar to the form attached in Appendix 2. It is also essential that the guardian file a Change of Address form with the Circuit Clerk if his or her mailing address changes. Reporting requirements are also found within the Illinois Probate Act, 755 ILCS 5/11a-17(b).

Costs

The Court will assess reasonable fees for the GAL, generally at the standard rate approved by the Sixth Judicial Circuit Court. If a party's request for a fee waiver has been approved, the GAL must submit an affidavit of fees and a proposed order to the court for payment to be made from the Champaign County Treasurer. There is a filing fee for each annual or triannual report. An application for fee waiver may be submitted with the report.

Letters of Guardianship

Once appointed, a guardian should request a document called Letters of Guardianship from the Circuit Clerk's office. This is a formal document that can be presented to prove guardianship, and there is usually a fee associated with obtaining copies. Guardians should contact the Circuit Clerk's office for any questions associated with how and when they may obtain copies.