

Special Processes & Procedures

Guardianship

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Notice to the Public

This document is designed and written to provide best practice guidance to trial courts, clerks, and court staff regarding guardianships. **Indiana Supreme Court policies do not permit our office to provide legal advice to the public.** We recommend that any person with questions about their case seek the advice of a licensed attorney. The Indiana Coalition for Court Access (<https://indianalegalhelp.org/>) or local bar associations can assist in finding low-cost or pro bono legal help.

Guardianship Case Types

Two guardianship case types exist: guardianship (GU) and guardianship miscellaneous (GM).

Situations appropriate for filing a GU case type:

- Petition for guardianship over incapacitated adult or minor under I.C. 29-3-5-1
- Settlement of a minor's lawsuit if the amount of the settlement exceeds ten thousand dollars (\$25,000.00)

GU case types should be included in the Guardianship Registry. The filing of the Guardianship Information Sheet is required under Trial Rule 3.1(A)(10).

Actions under I.C. 29-3-4 should be filed as a GM case type. Just as with GU case types, probate filing fees are required unless the filer qualifies as indigent pursuant to I.C. 33-37-3-2. The GM case type ensures that these non-guardianship appointment matters are not included in the Guardianship Registry.

Situations appropriate for filing a GM case include:

- Protective Proceedings and Single Transactions:
 - The Indiana Code (I.C. 29-3-4) outlines methods for a person to petition the court for a protective order for the benefit of a person who has been found an incapacitated person (defined in I.C. 29-3-1-7.5) or a minor without requesting the appointment of a guardian.
 - Examples where incapacitated adults may need protection of assets could include: an adult experiencing acute incapacitation, such as injury from a collision, who is expected to regain capacity but has financial or business affairs requiring action; an adult who has family member(s) permitted to make decisions pursuant to Indiana's Medical Consent Law (I.C. 16-36-1-5) but who requires funds to be protected, such as by transferring them to a Special Needs Trust to qualify or remain eligible for government or other benefits.
- Issuance of Confidential Health Disclosure Order:
 - Petitioners may file a verified petition for issuance of a confidential health disclosure order against a respondent health care provider that both (1) has existing health or medical records in their possession or custody that contain medical evidence of capacity or incapacity about an alleged incapacitated person, or (2) may be able to create a report to summarize medical evidence of capacity or incapacity about an alleged incapacitated person (I.C. 29-3-4-1.5).
 - These petitions are not confidential case records. However, any protected health information contained within the petition must be excluded from the publicly filed document and must be filed as confidential under the Indiana Rules for Access to Court Records 5(B).
- Minor Compromises (Not Exceeding Ten Thousand Dollars (\$25,000.00)):
 - Minor compromises require court approval (I.C. 29-3-9-7). However, guardianship is not required if the property belonging to the minor does not exceed ten thousand dollars (\$25,000.00) (I.C. 29-3-3-1). In such cases, the compromise can be handled under a GM case type.

If a petitioner seeks guardianship and the matter is improperly filed as a GM, the clerk is not permitted to reject the filing. The court has options to ensure the pleadings are in the correct

GU case type. The court can use Trial Rule 88(B) to issue an order to correct the case type. Additionally, courts could consider striking the filings and dismissing the case.

Temporary Guardianship Extensions

The Indiana Code sets the maximum period available by law (90 days) for a temporary guardian to act if appointed (I.C. 29-3-3-4). The law permits only one extension (up to 90 more days) for a temporary guardianship case beyond the initial term. The extension requires notice and a hearing, and good cause to be shown to grant the extension (I.C. 29-3-3-4(a)):

- If the temporary guardianship powers have expired by operation of law (i.e., 90 days has passed), Indiana Office of Court Services advises courts that the proper practice requires a new petition for temporary guardianship or a petition for a permanent guardianship to be filed, resulting in a new case number. If a new petition is required, the court can still review the circumstances to determine if waiving court costs is appropriate. If the parties request a continuance, the court shall check the timelines and ensure that the temporary guardianship will not expire before the new hearing date.
- Note: The Registry cannot be altered after powers have expired (I.C. 29-3-3-4).

Special Considerations in Guardianship Orders and Letters

Courts and clerks should include the expiration date of the temporary guardianship within the orders and Letters of Guardianship. This practice helps inform guardians as to the duration of their authority to act on behalf of the protected person and can aid guardians in timely requesting a one-time extension with the court (I.C. 29-3-3-4). This practice is also important for individuals or entities that interact with guardians to understand the scope and duration of the guardian's powers more clearly. The temporary guardianship letters and order templates in the Registry provide a place for the expiration date.

Proposed / signed orders should address the intended revocation of any existing agency documents (such as Powers of Attorney). A guardian does not have powers with respect to decisions subject to a valid agency document, such as a Power of Attorney (I.C. 30-5-3-4(d)). Agency documents that existed before the guardianship proceedings are not

automatically revoked under Indiana law when guardianship is ordered. Guardians do not have freestanding legal authority to revoke an agency document; the revocation must occur through a judicial order after a hearing has been held (see, i.e.: *Kinney v. Kinney* (In re Morris), 56 N.E.3d 719, 724 (Ind. Ct. App. 2016)).

Courts should clearly endorse any limitations on the guardian’s authority directly in the Letters of Guardianship. Limitations to guardianship authority ensure that the guardianship is utilized in the least-restrictive manner to respect the needs of the protected person. Without limitations, a plenary guardianship could risk providing a guardian with overbroad authority that might unnecessarily infringe on rights that should have been retained by the protected person.

Dismissed, Denied, or Terminated Guardianship Cases

There are instances where a party might request to reopen a guardianship case after the guardianship has either been dismissed, denied, or terminated.

Dismissed Guardianship

- A guardianship is dismissed when the case is disposed of prior to a trial or hearing on the merits of establishing the guardianship. A case is closed once it has been dismissed.
- A petitioner may voluntarily move to dismiss a petition for any reason under the Indiana Trial Rules.
- A petition may also be involuntarily dismissed for issues regarding failure of notice, jurisdiction or venue or other defects including failure to follow petition requirements (I.C. 29-3-5-1).

Denied Guardianship

- A court may deny the guardianship after conducting an evidentiary hearing or trial on the merits of the petition. A case is closed once it has been denied.
- If the court denies the petition, the case may only be re-opened if the order of denial is set aside. The order setting aside the denial must be entered in the case and recorded on the Chronological Case Summary (CCS).

Terminated Guardianship

- A guardianship case may be terminated when been previously established by the court. A case is closed once it is terminated. Situations for termination of a case can include:
- when the incapacitated adult has capacity restored or has died (I.C. 29-3-12-1(b)).
- when the guardianship property does not exceed \$3,500 (or is reduced to \$3,500) (I.C. 29-3-12(c)(1) and (2)).
- when the protected individual's domicile or physical presence changes to another state and a guardian has been appointed in that state (IC 29-3-12(c)(3)).
- when the guardianship is no longer needed for any other reason (I.C. 29-3-12(c)(4)).
- when a temporary guardianship expires after 90 days, unless extended for an additional 90-day period for good cause (IC 29-3-3-4(a)).
- when the minor attains the age of 18, has died, or custody has been restored to a natural parent (I.C. 29-3-12-1(a)).
- **Note:** A guardianship over a minor may continue past the age of 18 where the person has been determined to be incapacitated or is extended until age 22 (I.C. 29-3-12-7). When a guardianship terminates, most powers of the guardian cease. The guardian may continue to fulfill accounting and administration obligations as approved by the court (I.C. 29-3-12(d) and (e)). Upon the death of the protected person, the guardian may also: control the disposition of the deceased protected person's body, make anatomical gifts, request an autopsy, make funeral or ceremonial arrangements (I.C. 29-3-12(e)).

Accountings

Guardians are subject to several requirements for reporting and accounting. It is critical for the guardian(s) to notify the court if his or her address or contact information changes at any time during the duration of the guardianship. Courts should require guardians to provide their email addresses on the Guardianship Information Sheet, where applicable.

Guardianship of the Person

- **Report:** A guardian must file a report with the court at least every two (2) years, or as otherwise ordered by the court (this is known as “biennial” reporting) (I.C. 29-3-8-1 and I.C. 29-3-9-6). The report shall state the protected person’s residence and contain a statement of his or her current welfare and general condition, along with whether the need for guardianship still exists, and whether any less restrictive alternatives have been considered or implemented (I.C. 29-3-9-6(c)).

Guardianship of the Estate

- **Inventory:** A temporary guardian shall file an Inventory of the property subject to the guardian’s control within thirty (30) days after appointment. A permanent guardian shall file an Inventory within ninety (90) days after appointment (I.C. 29-3-9-5).
- **Current Accounting:** A permanent guardian shall file with the court, at least biennially (or as otherwise ordered by the court), and not more than thirty (30) days after the anniversary of appointment, a written verified account of the guardian’s administration (I.C. 29-3-9-6). Each accounting shall follow the three-schedule format (set forth in I.C. 29-1-16-4).
- **Final Accounting:** A temporary or permanent guardian shall file with the court, not more than thirty (30) days after termination of the appointment, a written verified account of the guardian’s administration (I.C. 29-3-9-6). Each accounting shall follow the three-schedule format (set forth in I.C. 29-1-16-4).

Courts may benefit from forms setting forth court instructions to guardians of the person and estate as well as requiring guardians to sign and file these forms with the court.

Registry Alerts

The Guardianship Registry provides alerts and reports to aid the court in monitoring cases. These alerts and reports can assist the court in following up on past-due items or addressing issues prior to cases expiring as a matter of law. The use of alerts or reports may be helpful in the following situations:

- Issuing Letters of Guardianship

- Expiration Dates
- Status Reports
- Accountings
- Inventories

VASIA Court-Ordered Fees

The Indiana Code allows for VASIA programs to petition the court for reasonable compensation for the services they provide or reimbursement for expenditures made on behalf of the protected person (IC 29-3-8.5-10). Courts may also provide this compensation or reimbursement upon their own motion.

Courts are encouraged to utilize this provision of the VASIA statutes whenever it is practical, appropriate, and reasonable. Factors to consider when ordering this type of compensation and/or reimbursement include:

- Availability of funds to pay for the request, with consideration to the long-term financial, health, and other needs of the protected person
- Reasonableness of the request, with consideration to the amount(s) requested and the prevailing market rate for those services; if providing a specialty/high-cost service, justification for the increased rate(s) should be provided
- Duration and scope of the compensation/expenditure
- How the compensation/expenditure is affected by other laws, policies, rules, or regulations (including, but not limited to, the general prohibition on professional guardians collecting more than \$35/month for services provided to protected persons receiving Medicaid benefits)

This provision can only be utilized by VASIA programs under the applicable state VASIA law (IC 29-3-8.5-10). As such, it cannot be used by other adult guardianship service providers, professional guardians, or family/lay guardians.

- Though other types of guardians may petition for reimbursement for services and other expenditures, it cannot be ordered through this statute. It must also be compliant with any other laws and regulations that would affect guardian or service provider reimbursement more generally.