

Special Processes & Procedures

Guardianship

Contact: Nick Parker; email: nick.parker@courts.in.gov

Notice to the Public

This information is written to assist trial courts and circuit clerks. **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/>) can assist in finding low-cost legal help. Additionally, the Indiana Coalition for Court Access (<https://indianalegalhelp.org/what-if-i-dont-qualify/>) and Bar Associations provide options if you do not qualify for low-cost legal aid.

This document is designed to provide best practice guidance to trial courts, clerks, and court staff regarding guardianships.

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
- Minor compromises in an amount exceeding ten thousand dollars (\$10,000.00)

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).

As of January 2020, actions under I.C. 29-3-4 shall 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 outlines methods for a person to petition the court for a protective order for the benefit of a person who has been adjudicated an incapacitated person (defined in I.C. 29-3-1-7.5) or a minor without requesting the appointment of a guardian. I.C. 29-3-4.
 - Examples for incapacitated adults needing 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:
 - Starting July 1, 2023, 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 Rule 5(B).

- Minor compromises in an amount not exceeding ten thousand dollars (\$10,000.00):
 - Minor compromises require court approval pursuant to I.C. 29-3-9-7. However, pursuant to I.C. 29-3-3-1, a guardianship is not required if the property belonging to the minor does not exceed ten thousand dollars (\$10,000.00). In such cases, the compromise can be handled under a GM case type.

If a petitioner seeks a 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 T.R. 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

I.C. 29-3-3-4 revision (effective July 1, 2018): the Indiana Code sets the maximum period available by law, 90 days, for a temporary guardian to act if appointed and permits only one 90-day extension for a temporary guardianship case beyond the initial 90 days. The extension requires notice and a hearing, and good cause to be shown to grant the extension as provided in I.C. 29-3-3-4(a).

- If the temporary guardianship powers have expired by operation of law (i.e., 90 days has expired), 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 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 will not be altered after powers have expired in accordance with I.C. 29-3-3-4.

Expiration Dates in Guardianship Orders and Letters

Courts and clerks should include the expiration date of the temporary guardianship within the orders and letters. 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 as outlined in I.C. 29-3-3-4. This practice also is 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.

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 to establish 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 under 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 CCS (Chronological Case Summary).

Terminated Guardianship

- A guardianship case may be terminated after a guardianship has been established by the court. A case is closed once it is terminated.
- A guardianship case may be terminated in the following situations: 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. This includes:
 - 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 \$3500). 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); or
 - 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 a guardianship terminates the powers of the guardian cease. The guardian may continue to fulfil 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 do the following: 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 Registry Information Form, 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. 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 using forms setting forth court instructions to guardians of the person, instructions to guardians of the estate, and requiring guardians to sign and file them with the court.

Courts would benefit from establishing a system for alerting Guardians to reporting and accounting deadlines, to disseminate notices requesting overdue reports or accountings. Indiana has developed an accounting application, My Indiana Accounting (MyINA). MyINA allows guardians to prepare inventories and accountings to the court through a secure, designated portal. The software also assists the courts in reviewing and approving these financial reports.

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
- Expiration dates
- Status reports
- Accountings
- Inventories