

Maryland Judiciary
Attorney-Guardian Ethics

This video is intended for attorneys who have been appointed as guardians by the court.

As an attorney, you must navigate your role as a guardian alongside your obligations under the Maryland Attorneys' Rules of Professional Conduct. While there are functional differences between serving as an attorney for a person with diminished capacity and serving as their guardian, your ethical obligations as an attorney remain.

In this video, we'll talk about your accountability to the court, discuss the Rules of Professional Conduct that apply specifically to your role as a guardian, address your ethical responsibilities, and offer some tips to keep you on track.

Your role as guardian for a minor or disabled person is an important one. Your actions will impact their physical, mental, and financial well-being. As an attorney-guardian, you have obligations to the minor or disabled person under the guardianship, and also to the court. As an officer of the court, you must remain mindful of your obligations under the Rules of Professional Conduct when performing your duties as guardian. Let's look at some specific rules.

Rule 1.4 on communication states in part that "an attorney shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions." Rules 1.7 and 1.8 on conflicts also require your attention. Be careful of conflicts if the minor or disabled person is a former client or if you represented an interested person to the guardianship. Rules 1.6 and 1.9 on confidentiality make it clear that you have a duty to keep information about present or former clients confidential.

But perhaps the most important for attorney-guardians is Rule 1.14, Client with Diminished Capacity. This rule can provide helpful guidance as you make decisions on behalf of a person under guardianship. It requires you to assess the minor or disabled person's limitations and his or her ability to give informed consent, and to understand how the person's age, disease, or disability impacts his or her ability to process information and make informed decisions. Finally, Rule 1.14 requires that you take protective action if the minor or disabled person is at risk of substantial physical, financial, or other harm.

As an attorney-guardian, you must have a clear understanding of your role and responsibilities. Become familiar with the minor or disabled person's needs and preferences by learning about their social, medical, and emotional needs and considering their preferences, values, and beliefs. Whenever possible, make decisions that maintain the autonomy of the person under guardianship. Commit the necessary time and resources to meet the personal and financial needs of the person under guardianship.

Finally, let's talk about some helpful ethical considerations. Avoid conflicts of interests, including those with current or former clients, as well as self-interest. If you are appointed as guardian of the property, keep guardianship funds separate from your own money, and maintain excellent records of all transactions. Share only information about the minor or disabled person that is reasonably necessary to perform your duties as guardian or to protect that person from harm. Remember to regularly consult the Rules of Professional Conduct. When in doubt about what you can or cannot do as a guardian, ask the court. If you are unsure about your ethical obligations, contact the Maryland State Bar Association's Ethics Committee for an opinion or guidance. Finally, if you are unable to adequately serve as guardian, notify the court immediately and take appropriate action to protect the minor or disabled person. For instance, you can ask the court to allow you to resign and appoint a substitute or successor guardian.

In summary, your duties as a guardian are equally as important as your ethical obligations under the Rules of Professional Conduct. You will be held accountable to the court both in your capacity as a guardian and in your role as an officer of the court. You must uphold the rules that govern communication, confidentiality and conflict, and perhaps even more importantly, the ones that govern clients with diminished capacity. Review these rules regularly, and ask the court or the Bar's Ethics Committee if you have questions. Finally, if you are unable to serve, notify the court while also protecting the minor or disabled person.