

Effective January 1, 2018

MARYLAND RULES OF PROCEDURE
TITLE 10 – GUARDIANS AND OTHER FIDUCIARIES

**APPENDIX: MARYLAND GUIDELINES FOR COURT-APPOINTED ATTORNEYS IN
GUARDIANSHIP PROCEEDINGS**

INTRODUCTION AND SCOPE

These Guidelines are intended to promote good practice and consistency in the appointment and performance of attorneys appointed to represent minors and alleged disabled persons in guardianship proceedings in orphans' and circuit courts. However, the failure to follow a Guideline does not itself give rise to a cause of action against an attorney, nor does it create any presumption that a legal duty has been breached. These Guidelines apply to guardianship of the person and property cases where the court may be called upon to decide whether a minor or alleged disabled person needs a guardian and whether a proposed guardian is appropriate. Nothing contained in these Guidelines is intended to alter the duty an attorney owes to a client pursuant to the Maryland Attorneys' Rules of Professional Conduct.

1. RESPONSIBILITIES

It is the responsibility of court-appointed attorneys in guardianship proceedings to protect the due process rights of minors and alleged disabled persons. This role is distinct from the role of an investigator appointed under Rule 10-106.1.

As clients in guardianship proceedings may have diminished capacity due to minority, mental impairment, or some other reason, the court-appointed attorney should be mindful of the obligation, as far as reasonably possible, to maintain a normal client-attorney relationship as prescribed by the Maryland Attorneys' Rules of Professional Conduct. The court-appointed attorney's role is to advocate for the client's position even if that position conflicts with the attorney's judgment as to what the best interest of the client, except where the attorney reasonably believes that a client with diminished capacity is at risk of substantial physical, financial, or other harm. In that instance the attorney may take reasonably necessary protective action.

In guardianship proceedings, it is the role of court-appointed attorneys to:

- (a) explain the proceedings to the client;
- (b) advise the client of his or her rights;
- (c) keep the client's confidences;
- (d) advocate for the client's position; and
- (e) protect the client's interests.

Given the significant loss of rights and liberties imposed on individuals under guardianship, the court-appointed attorney is to ensure that:

- (a) proper procedures are followed by the court;

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- (b) guardianship is imposed only if the petitioner proves by clear and convincing evidence that guardianship is necessary as required under Code, Estates and Trusts Article, §13-705 (b);
- (c) guardianship remains no more restrictive than is warranted;
- (d) there is no collusion between an investigator appointed pursuant to Md. Rule 10-106.1 and the petitioner; and
- (e) the client's right to appeal is exercised, if appropriate.

The attorney's appointment terminates as prescribed under Md. Rule 10-106 (d).

2. TRAINING

Training for court-appointed attorneys in guardianship proceedings should include the following topics:

- (a) **OVERVIEW OF GUARDIANSHIP**
What a guardianship is and when it is necessary; alternatives to guardianship; the types of guardianship; the general role, responsibilities, limitations, and basic competencies required of guardians; parties to a guardianship; and guardianship law and procedures.
- (b) **UNDERSTANDING DISABILITIES AND DIMINISHED CAPACITY**
The manifestation of mental health issues; distinguishing between temporary and permanent conditions; assessing capacity; interacting with people with disabilities or diminished capacity; and types and signs of abuse (physical, sexual, and emotional), neglect (including self-neglect), and exploitation to which vulnerable persons are susceptible and how to respond to and prevent abuse, neglect, and exploitation.
- (c) **THE ROLE OF COURT-APPOINTED ATTORNEY**
How attorneys are appointed in guardianship proceedings; the role of the attorney; meeting with the minor or alleged disabled person and interested persons; assessing physicians', psychologists', and social workers' certificates and reviewing records; filing answers and motions; and waivers, assessing the appropriateness of the proposed guardian, identification of assets, and less restrictive alternatives.
- (d) **ETHICS**
Applicable Maryland Attorneys' Rules of Professional Conduct, including Rules 19-301.14 (Client with Diminished Capacity), 19-301.4 (Communication), 19-301.6 (Confidentiality of Information), 19-301.2 (Scope of Representation and Allocation of Authority Between Client and Attorney), 19-301.3 (Diligence), and 19-301.7 (Conflict of Interest - General Rule).
- (e) **FEES**
Guardianship-specific fee issues including billing practices, determining indigence, and working with state agencies.

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Attorneys should complete the training before appointment in a guardianship proceeding. If a court finds a reason to appoint an attorney who has not completed the training, the attorney should complete it before the first hearing in the case. Courts may waive the training requirement for attorneys with relevant guardianship experience or training.

3. QUALIFICATIONS

When evaluating relevant experience of an attorney eligible for appointment under Rule 10-106 (b), courts may consider the attorney's experience in litigation, social work, mental health, health care, elder care, disability issues, and other related fields. While courts may not require attorneys to represent a minor or disabled person on a *pro bono* basis, they may take into account a particular attorney's willingness to accept or past history of accepting *pro bono* appointments. Courts should encourage attorneys seeking appointments in guardianship proceedings to maintain their knowledge of current guardianship law and practice and take advantage of available continuing education opportunities.