

**LAKE COUNTY RULES OF PROCEDURE APPLICABLE TO
GUARDIANSHIPS**

LR 45-PR00-31

All probate rules and regulations promulgated by the Veterans Administration are hereby adopted as probate rules of the Court.

LR 45-PR00-32

A Guardian's Information Sheet must be completed and filed with any petition seeking to establish a temporary or permanent guardianship or a protective order pursuant to I.C. § 29-1-3-4 et. seq., as amended. The Court will not act upon the petition until the Guardian's Information Sheet is completed and filed. The Guardian's Information Sheet must be filed on green paper in compliance with Indiana Trial Rule 5(G) and Administrative Rule 9(G)(1). (SEE ATTACHED FORM A).

LR 45-PR00-33

In all guardianship matters pertaining to declaring an adult incapacitated for any reason, at a minimum, the Physician's Statement in a form acceptable to the Court, executed by the licensed physician treating the alleged incapacitated person, must be submitted at the time the petition is filed or on the hearing date. No determination will be made without the Physician's Statement and/or supporting medical testimony. (SEE ATTACHED FORM B)

LR 45-PR00-34

In all guardianship matters, the Court's Instructions to the Guardian, executed by the Guardian, must be filed with the Court prior to Court appointment and issuance of letters. These Instructions are to be considered as direct Orders of the Court. Instructions to Guardian when the guardianship will be of the person only (SEE ATTACHED FORM C) or when the guardianship will apply to the minor's or incapacitated adult's property (SEE ATTACHED FORM D) must be completed and filed with the Court. If the Guardian will be appointed over both the person and estate, both sets of Court's Instructions to the Guardian must be completed and filed with the Court. No substitute form will be accepted by the Court.

LR 45-PR00-35

All petitions, of any nature or kind, in all matters, must be executed and verified by the Guardian or the Interested Party (Petitioner), and not by the Attorney. All petitions requesting relief or action by the Court should, where applicable, contain reference to the appropriate statute or rule authorizing such relief or action.

LR 45-PR00-36

Pursuant to I.C. §30-5-3-4(b), as amended, an appointment of a Guardian over an estate shall not operate to terminate a valid power of attorney, unless the power of attorney instrument provides for termination upon the incapacity of the principal. A Guardian shall not have power over property or health care conditions that are subject to a valid power of attorney. A Guardian cannot revoke or amend a power of attorney on behalf of a principal without Court approval. A Guardian seeking to revoke a valid power of attorney must obtain Court approval which can be granted only after hearing and notice to the attorney-in-fact.

LR 45-PR00-37

All Attorneys are required to prepare CCS Entry Forms and Orders in a form approved by the Court (order per form or OPF) for all proceedings except where expressly indicated to the contrary by the Court.

LR 45-PR00-38

Where matters are filed by mail, or left with the Court for filing, a self-addressed stamped envelope must be included for return of documents to the Attorney.

LR 45-PR00-39

Routine matters, such as Bonds, Inventories, and Status Reports, may be filed with the Probate Clerk for transmittal to the Court.

LR 45-PR00-40

Unless waived by the applicable Court, Attorneys desiring to have the Court Reporter present for a hearing must make a written request for same ten (10) days in advance of the hearing. Hearings involving the Court Reporter shall be set subject to his or her availability.

LR 45-PR00-41

Any contested matters scheduled for hearing on a probate day shall take precedence over unscheduled business. Attorneys are encouraged to call the Court to find out when contested matters are routinely scheduled.

LR 45-PR00-42

The Attorney shall prepare and serve any required notices on interested persons pursuant to I.C. §29-1-7-4.5, as amended, and proof thereof pursuant to I.C. §29-1-1-16, as amended.

LR 45-PR00-43

Inventories must be filed in all temporary guardianships of the estate within thirty (30) days after appointment of the Guardian. For permanent guardianships of the estate, inventories must be filed within ninety (90) days after appointment of the Guardian.

LR 45-PR00-44

Attorneys must attend all hearings. The Court may, in its discretion, require the attendance of the Guardian at any hearing.

LR 45-PR00-45

All accountings filed with the Court must follow the statutory format prescribed by I.C. §29-1-16-4, as amended. Informal, handwritten, or transactional accountings will not be accepted. Unless otherwise ordered by the Court, an accounting filed with the Court shall be accompanied by an Affidavit in Lieu of Vouchers stating that receipts are available for all disbursements contained in the accounting.

LR 45-PR00-46

Receipts for all final distributions must be filed with the final report or the supplemental report before discharge will be given by the Court.

LR 45-PR00-47

The name and address of the Insurance Agency providing the corporate surety must be typed on all corporate bonds filed in any guardianship.

LR 45-PR00-48

In all contested matters, the Indiana Rules of Trial Procedure shall apply.

LR 45-PR00-49

Any petition for the allowance of fees, for the Attorney and/or the Guardian shall set forth a description of the services performed and a calculation of the amount of the fee requested. At the time the petition is considered by the Court, the Attorney must be present. No fee request will be considered as a part of the final report or account in a guardianship proceeding. A separate petition must be filed requesting such fee determination. No fee shall be paid without prior approval of the Court.

LR 45-PR00-50

Attorney and Guardian fees in guardianship proceedings over the person of the protected person shall not be subject to Court approval.

LR 45-PR00-51

All transfers, sales, or encumbrances of the protected person's real or personal property is subject to prior Court approval.

LR 45-PR00-52

In all wrongful death proceedings, the Guardian must be present at the time the settlement, either partial and/or final, is presented to the Court for approval. The Court retains the right to require the presence of the minor, incapacitated person, or a Custodial parent at the time the settlement is presented to the Court for approval.

LR 45-PR00-53

All documents filed with the Court must comply with the requirements of Indiana Trial Rule 5(G) and Administrative Rule 9(G)(1).

LR 45-PR00-54

For good cause shown, the Court may waive any local procedural rule.

LR 45-PR00-55

The Court shall determine the amount of the Guardian's bond in accordance with I.C. §29-3-7-1, as amended. A bond shall be required equal to the sum calculated under I.C. §29-3-7-1, as amended. Exceptions as provided by statute may be permitted in the Court's discretion.

LR 45-PR00-56

Subject to the discretion of the Court, the Court may restrict transfer of all or part of the liquid assets of a Guardianship by placing those assets in a federally-insured financial institution or in a brokerage account (or any combination of the two) with the following restriction placed on the face of each account or document creating or evidencing the account:

NO PRINCIPAL OR INTEREST SHALL BE WITHDRAWN WITHOUT WRITTEN ORDER OF THE LAKE CIRCUIT/SUPERIOR COURT, PROBATE DIVISION. THE GUARDIAN AND/OR FINANCIAL INSTITUTION SHALL PROMPTLY NOTIFY THE COURT IN WRITING IN THE EVENT PRINCIPAL AND/OR INTEREST IS WITHDRAWN WITHOUT WRITTEN COURT ORDER.

Within thirty (30) days after an Order authorizing the creation of the restricted account or investment, a certificate by an officer of the institution at which the restricted account or investment has been created shall be filed with the Court which affirms that the account or investment is restricted by Court Order. (SEE ATTACHED FORM E).

The Guardian and/or the financial institution shall promptly notify the Court in writing in the event that any principal or interest is withdrawn from the account without Court authorization.

LR 45-PR00-57

Current reports filed by the Guardian must show the present whereabouts of the protected person and his/her general welfare.

LR 45-PR00-58

All benefits and payments, such as Social Security benefits received on behalf of a protected person, must be included and accounted for in the Guardian's accountings unless excluded by prior order of the Court.

LR 45-PR00-59

Neither the Guardian nor the Attorney shall take or receive any fees until the amount thereof has been approved by the Court.

LR 45-PR00-60

Unless limitations on the powers of the Guardian are sought in the Petition for Appointment, an order in a form approved by the Court (order per form or OPF) must be submitted at the time of the appointment of a Guardian, detailing the duties, responsibilities and powers of the Guardian.

LR 45-PR00-61

In all instances in which the appointment of a Guardian is contested, a Guardian Ad Litem shall be appointed unless waived by law, or by the Court in the Court's discretion, or if the alleged incapacitated person is represented by counsel.

GUARDIANSHIP FORMS

FORM A. GUARDIAN'S INFORMATION SHEET

NAME: _____

Last

First

Middle

ALIAS: _____

ADDRESS: _____

WORK ADDRESS: _____

DATE OF BIRTH: _____

SOCIAL SECURITY NUMBER: _____

DRIVER'S LICENSE NUMBER: _____ (attach a copy)

SEX: _____

RACE: White ____ Black ____ Hispanic ____ Asian ____ Indian ____
 Unknown ____

HEIGHT: _____

WEIGHT: _____

EYE COLOR: _____

HAIR COLOR: _____

FORM B. PHYSICIAN'S REPORT

PHYSICIAN'S REPORT

_____, a physician holding an unlimited license to practice medicine in the State of Indiana, submits the following report on _____, "Patient", based upon examination of Patient.

1. Set forth the dates of all examinations of the Patient within the last one (1) year from the date hereof.

2. In your opinion, based upon your examination and observation of the Patient, is the Patient incapacitated as defined by Indiana law (see attached definition of "Incapacity")?

Yes ____ No ____ If more than one cause for incapacity exists, describe the nature and type of each incapacity.

3. In your opinion, based upon your examination and observation of the Patient, how long has the Patient been incapacitated?

4. Describe the Patient's mental and physical condition; and, if appropriate, describe the Patient's educational condition, adaptive behavior and social skills.

5. In your opinion, is the Patient totally or only partially incapable of making personal and financial decisions?

Totally Incapable _____ Partially Incapable _____ Capable _____

If the Patient is partially incapable of making personal and/or financial decisions, please state the kinds of decisions which the Patient can and cannot make; and, include the reasons for this opinion.

6. In your opinion, what is the most appropriate living arrangement for the Patient? And, if applicable, describe the most appropriate treatment or rehabilitation plan. Include the reasons for your opinion.

7. In your opinion, can the Patient appear in Court without injury to his/her health? Yes _____ No _____

If the answer is no, explain the medical reasons for your answer.

8. In your opinion, is the Patient capable of making a knowing and voluntary consent to the appointment of a Guardian?

Yes _____ No _____

9. In your opinion, is the Patient capable of making a knowing and voluntary waiver of the "Notice of Court Hearing" in Guardianship proceedings?

Yes _____ No _____

10. In your opinion, is it in the best interests of the Patient that a Guardian be appointed to care for the Patient? Yes _____ No _____

If a Guardian is needed, is one needed for personal or financial needs, or both? Personal _____ Financial _____ Both _____

I affirm, under the penalties of perjury, the above and foregoing is true and correct to the best of my knowledge and belief.

Signed: _____

Address: _____

Telephone: _____

Dated: _____

If the description of the Patient's mental, physical and educational condition, adaptive behavior or social skills is based on evaluations by other professionals, please provide the names and addresses of all professionals who are able to provide additional evaluations. Evaluations on which the report is based should have been performed within three (3) months of the date of the filing of the Petition.

Names and addresses of other persons who performed evaluations upon which this report is based (including without limitation nurse practitioners, physician assistants, etc.):

Name: _____

Address: _____

Telephone: _____

Signed: _____

Dated: _____

Name: _____

Address: _____

Telephone: _____

Signed: _____

Dated: _____

DEFINITION OF “INCAPACITY”
AS DEFINED BY INDIANA LAW

I.C. 29-3-1-7.5, INCAPACITATED PERSON:

It means an individual who:

- (1) cannot be located upon reasonable inquiry;
- (2) is unable:
 - (a) to manage in whole or in part the individual’s property;
 - (b) to provide self-care; or
 - (c) bothbecause of insanity, mental illness, mental deficiency, physical illness, infirmity, habitual drunkenness, excessive use of drugs, incarceration, confinement, detention, duress, fraud, undue influence of others on the individual, or other incapacity; or

I.C. 12-7-2-61, DEVELOPMENTAL DISABILITY:

- (1) Has a developmental disability attributable to:
 - (a) mental retardation, cerebral palsy, epilepsy, or autism;
 - (b) any other condition closely related to mental retardation;
 - (c) dyslexia resulting from any disability described above;
 - (d) originates before the person is 18 years old, has continued or is expected to continue indefinitely, and substantially affects the individual’s ability to function normally in society.
- (2) Has a severe, chronic disability that:
 - (a) is attributable to a mental or physical impairment, or a combination of both;
 - (b) is manifested before the individual is 22 years old;
 - (c) is likely to continue indefinitely;
 - (d) reflects the need for special types of care of lifelong, or extended duration, individually planned and coordinated;
 - (e) results in substantial limitations in a least 3 of:
 - i. Self-care;
 - ii. Receptive and expressive language;
 - iii. Learning;
 - iv. Mobility;

- v. Self-direction;
- vi. Capacity for independent living;
- vii. Economic self-sufficiency.

FORM C. COURT'S INSTRUCTIONS TO GUARDIAN OF THE PERSON
IN THE LAKE CIRCUIT/SUPERIOR COURT
PROBATE DIVISION
LAKE COUNTY, INDIANA

GUARDIANSHIP OF _____

CAUSE NUMBER _____

COURT'S INSTRUCTIONS TO GUARDIAN OF THE PERSON

Please read carefully before you date and sign. One copy of this form must be filed with the Court before your appointment as guardian is confirmed by the Court. Keep a copy for your records.

You have been appointed as the guardian of an individual who is unable to care for his or her own personal affairs. It is important that you fully realize your duties and responsibilities. Listed below are some of your duties.

You should be represented at all times by an attorney of record. Your attorney is required to notify the Court if you are not properly performing your duties to the protected person. By signing these Instructions you agree that the filing of that notice does not violate the attorney-client privilege. If the Court receives such notice it will set the matter for hearing and require you to personally appear and account to the Court for all actions taken or not taken by you as guardian.

The Instructions which follow are to be considered by you as Orders of the Court which require you to perform as directed. The Court appreciates your efforts on behalf of the protected person.

As Guardian of the person, you have the following duties and authority:

1. You must be or become sufficiently acquainted with the protected person and maintain sufficient contact with the protected person to know his or her capabilities, disabilities, limitations, needs, opportunities, and physical and mental health.

2. You are responsible to make sure the protected person has an adequate place to live that is appropriate for the protected person's needs. You can decide where the protected person will live. You must obtain approval of the Court before you move the protected person to another residence or health facility that is more than fifty (50) miles away.

3. You are responsible to make sure that the protected person receives needed and appropriate medical care. You can consent to medical or other professional care and treatment for the protected person's health and welfare. You can consent to the protected person's admission to a health care facility.

4. You shall, to the extent possible, encourage and promote the self-reliance and independence of the protected person.

5. You can, to the extent that the protected person is able, delegate to the protected person certain responsibilities for decisions affecting the protected person's well-being.

6. You or your attorney must notify the Court if your address changes.

7. You must file a report with the Court at least every two (2) years. The report must state the present residence of the protected person and a statement of the protected person's current condition and general welfare. Failure to file the report may result in your removal as guardian.

I authorize my attorney to notify the Court in the event that he or she has reason to believe that I am not timely performing or am improperly performing my duties to the protected person even if such information would be otherwise confidential.

I acknowledge that I have carefully and completely read the above instructions and received a copy for my records. I agree to properly carry out my duties.

Dated this ____ day of _____, 20____.

Signature, Guardian

Signature, Guardian

Print, Guardian

Print, Guardian

I acknowledge that I have carefully and completely discussed the above instructions with my client before this form was signed and believe that he or she is fully aware of and capable of performing the duties required of a guardian of the person.

Signature, Attorney

Signature, Attorney

Print, Attorney

Print, Attorney

FORM D. COURT'S INSTRUCTIONS TO GUARDIAN OF ESTATE

IN THE LAKE CIRCUIT/SUPERIOR COURT

PROBATE DIVISION

LAKE COUNTY, INDIANA

GUARDIANSHIP OF _____

CAUSE NUMBER _____

COURT'S INSTRUCTIONS TO GUARDIAN OF ESTATE

Please read carefully before you date and sign. One copy of this form must be filed with the Court before your appointment as guardian is confirmed by the Court. Keep one copy for your records.

Introduction:

You have been appointed as the guardian of an individual who is unable to care for his or her own financial affairs. It is important that you fully realize your duties and responsibilities. Listed below are some of your duties, but not all of them.

You must be represented at all times by an attorney of record. Your attorney is required to reasonably supervise and guide your actions as guardian unless and until that attorney is permitted by order of the Court to withdraw from representing you.

Your attorney is required to notify the Court in the event that you are not timely performing or improperly performing your fiduciary duties to the protected person, and by signing these Instructions you agree that the filing of that notice does not violate the attorney client privilege. If the Court receives such notice, it will set the matter for hearing and will require you to personally appear and account to the Court for all actions taken or not taken by you as guardian. You are required to notify the Court in writing in the event that your attorney is not timely performing or improperly performing his or her duties to reasonably supervise and guide your actions as guardian. Upon receipt of the notice, the Court will set the matter for hearing and require you and your attorney to personally appear and account to the Court for all actions taken or not taken by the attorney.

The Instructions which follow are to be considered by you as Orders of the Court which require you to perform as directed. Although your attorney will file all papers with the Court, the ultimate responsibility to see that all accounts and other documents are accurately prepared and filed, rests with you and you can be found personally liable should you not properly perform.

The Court appreciates your efforts on behalf of the protected person.

As Guardian you are required to:

1. Locate, collect and maintain all property owned by the protected person. Keep motor vehicles and real estate insured and protected.
2. Have your attorney file with the Court, within ninety (90) days after your appointment, a verified inventory and appraisal of all the property belonging to the protected person, with values as of the date you were appointed. You must provide a copy of the inventory to the protected person [if over fourteen (14) years of age] and to certain other persons as set out in Indiana Code §29-3-9-5, as amended.
3. Have your attorney file with the Court a verified current account of all the income and expenditures of the guardianship every two (2) years after your appointment, in the statutory format prescribed by I.C. §29-1-16-4. Informal, handwritten, or transactional accountings will not be accepted.
4. Pay bond premiums as they become due.
5. File and pay taxes on the protected person's income and assets.
6. Have your attorney file a final accounting with the Court upon the termination of the guardianship, whether due to the death of the protected person, or for any other reason.
7. Keep all of the assets of the protected person separate from your own. Guardianship funds should **never be co-mingled** with personal funds. Unauthorized use of the guardianship funds will result in personal liability.
8. Open a guardianship checking account in your name "as guardian of **(the protected person)**". This account **shall** be used for all payments or disbursements on behalf of the protected person. The account should be in the protected person's Social Security number, not yours. It cannot be a joint account.
9. Real estate, automobiles and other accounts and investments should be held in the name of the protected person.
10. All investment accounts and other bank account holdings should be retitled as follows: "John Smith Guardianship, Mary Jones Guardian."

11. Obtain approval from the Court to use guardianship assets, other than for normal bills.

12. Do not self-deal. Do not buy anything from or sell anything to the protected person. Do not borrow anything from the protected person.

13. If applicable, timely qualify the protected person for Medicaid or other public assistance.

14. It is the duty of the guardian to protect and preserve the protected person's property, to account for the use of the property faithfully, and to perform all the duties required by law of a guardian.

15. The guardian has the same duties and responsibilities concerning the protected person whether or not the protected person is a relative of the guardian.

16. **NEVER** pay attorney fees or compensation to yourself from assets of the guardianship without first obtaining the advance written approval of the Court.

17. If any questions arise during the guardianship, immediately consult with your attorney.

I authorize my attorney to notify the Court in the event that he or she has reason to believe that I am not timely performing or improperly performing my fiduciary duties to the protected person even if such information would be otherwise confidential.

I acknowledge that I have carefully and completely read the above instructions and received a copy for my records. I agree to properly carry out my duties.

Dated this ____ day of _____, 20_____.

Signature, Guardian

Signature, Guardian

Print, Guardian

Print, Guardian

I acknowledge that I have carefully and completely discussed the above instructions with my client before this form was signed and believe that he or she is fully aware of and capable of performing the duties required of a guardian of the estate.

Signature, Attorney

Signature, Attorney

Print, Attorney

Print, Attorney

FORM E. CERTIFICATE OF ACCOUNT RESTRICTION

CERTIFICATE OF RESTRICTION OF ACCOUNT

The undersigned hereby certifies that he/she is an Officer or employee of the below named financial institution and that the following account has been opened:

Type of Account: _____

Account Number: _____

Amount Deposited: _____

Owner per Signature Card or Document of Title: _____

The undersigned further certifies that a copy of the Order of the Circuit/Superior Court of Lake County has been examined in full by us and that the terms of this account included a restriction that withdrawal of principal or interest may be made only on written order of the Circuit/Superior Court of Lake County, or upon the Protected Person reaching the age of majority unless the Court orders the guardianship extended past the age of majority pursuant to I.C. §29-3-12-7, as amended.

DATE: _____

Name of Financial Institution

Signature

Printed

Title