

# Guardianship & Special Immigration Status Cases

Revised 1, 2020



*Circuit Court for Worcester County, Maryland*

Brian D. Shockley, Administrative Judge

## Guardianship Cases

Guardianship cases are overseen by the Guardianship Judge designated by the County Administrative Judge. Once a guardianship is established, subsequent reviews are assigned to an individual Guardianship Judge so there is consistent management of the case.

Guardianship cases are managed in the Family Services Division by the Trust Clerk. The Trust Clerk assists the Guardianship Judge as needed to orient new guardians, to respond to inquiries by guardians, to investigate lapses in reporting or asset management, review filings or otherwise to aid in the management of guardianship matters.

A guardianship of either person or property is initiated by a petition to appoint a guardian of person or property, pursuant to Md. Rule 10-201 and 10-301. The form of the petition must comply with the provisions of Md. Rule 10-111 (guardianship of a minor), Md. Rule 10-112 (guardianship of an alleged disabled person), or Md. Rule 10-301 (guardianship of property.) A petition seeking guardianship of an alleged disabled person must be accompanied by medical certificates that describe the disability, consistent with the requirements of Md. Rule 10-202 or affidavits/exhibits documenting Md. Rule 10-301(d) requirements if the alleged disability is due to detention by a foreign power, by imprisonment, or due to disappearance.

Once the petition is filed, a show cause order will be issued, to be served upon the minor or the alleged disabled person. The advice of rights in the form set forth in Md. Rule 10-204 will be included for the alleged disabled person only. The petition, show cause order and a “Notice to Interested Persons” shall also be mailed by the petitioner by ordinary mail and by certified mail to all other interested persons identified in the petition as set forth in Md. Rule 10-203(b).2.

An alleged disabled person is entitled to representation in any guardianship matter. The Court may appoint counsel to represent the alleged disabled person in the guardianship matter as set forth in Md. Rule 10-106(b)(d). If the petition indicates the alleged disabled person has

sufficient assets to afford to retain counsel, the Family Law Clerk will prepare an order to assign an agreed upon attorney from a list maintained by the Family Law Clerk of counsel willing to accept appointments at the Court approved rate in guardianship matters. If the information in the petition appears to indicate that there are not sufficient assets to afford counsel, the Family Law Clerk will prepare an order to assign counsel designated under contract through the Maryland Department of Human Services to provide representation in guardianship matters. The Order of Appointment of Counsel, along with the Show Cause Order, will be forwarded to the Guardianship Judge for signature. The initial Guardianship Hearing date is set on the show cause order.

Any request to expedite a Guardianship Hearing including in Connection with Medical Treatment Md. Rule 10-201(f) and Md. Rule 16-302(b)(3) must be filed by motion setting forth any special or compelling circumstances that warrants earlier hearing. Any request for expedited hearing will be referred to a Guardianship Judge for ruling.

Most guardianship cases proceed by stipulation or agreement of the parties and counsel; therefore, the show cause order that is issued will identify a hearing date based upon the assumption that the case will not be contested. If the case appears to be contested, the hearing date set on the show cause order may be converted to a Scheduling Conference with a Guardianship Judge. At the Scheduling Conference, the Guardianship Judge will confer with counsel to determine the complexity of the issues, whether a jury trial is anticipated, the length of time needed for any discovery, if the case is appropriate for mediation and the estimated length of trial. A trial date will be set, no more than 75 days out, and cleared through the Civil Assignment Office to ensure there is a Guardianship Judge available to hear the case on the trial date selected.

If a guardianship is established, the Guardianship Judge will prepare the appropriate order, and the parties will be referred to the Trust Clerk to obtain information concerning the duties and responsibilities of the guardian. In cases involving guardianship of property, the guardian will be provided an Initial Inventory form, substantially in the form approved by the

State Court Administrator and posted on the Judiciary website Md. Rule 10-707, along with instructions on how to complete and file the required information within 60 days of the order granting guardianship. Individuals who are not attorneys who are appointed to serve as guardians are required to complete an on-line orientation program for new guardians. It is the expectation of the Court that a prospective Guardian shall complete the necessary training prior to their appointment but in no later than 30 days after their appointment.

Guardians of person and property are required to file an annual report, substantially in the form approved by the State Court Administrator and posted on the Judiciary website Md. Rule 10-206 (guardianship of a minor or disabled person) and/or Md. Rule 10-708 (guardianship of property.) The Clerk's Office will issue reminders to guardians to prompt compliance with the report obligation and will forward delinquency notifications to guardians for any report that is not timely filed. If a guardian fails to file a required report after a delinquency notice is issued, the Trust Clerk will forward the file to the assigned Guardianship Judge for review, to include issuing a summons for a review hearing. If the Guardianship Judge determines that the guardian cannot or will not fulfill their responsibilities a substitute guardian shall be appointed.

The Trust Clerk will review the annual reports and forward them to the assigned Guardianship Judge for approval. The Trust Clerk will audit the guardianship of property reports to determine that balances reconcile with those reported in the initial inventory or the most recent annual report, income and disbursements are identified, required documentation is attached, and financial account balances are verified. The Trust Clerk will note any discrepancy on the guardianship report before it is sent to the assigned Guardianship Judge for approval.

Questions or discrepancies that arise throughout the management of guardianship cases are referred to the Trust Clerk for review to resolve issues or obtain information to assist a Guardianship Judge in ruling on the matter. The Trust Clerk will coordinate with the assigned Guardianship Judge to ensure close case management.

Guardianship cases are terminated by court order when grounds for termination are met or the court finds good cause. Grounds for a minor are when the minor turn eighteen, meets the trust/order requirements, becomes emancipated or by death. Grounds for disabled persons may be met when a disability giving rise to the guardianship ceases, or when the disabled person dies. A petition to terminate a guardianship shall be filed within 45 days of the Guardian's discovery of grounds or any time after a minor without a disability attains majority and must be accompanied by appropriate documentation (Md. Rule 10-209). If the guardianship included property, a final accounting report must be filed with the request to terminate.

## Special Immigrant Status Cases

Special Immigrant Juvenile Status (SIJS) petitions provide a mechanism for undocumented children to apply to the United States Citizen and Immigration Services to adjust their immigration status and remain legally in the United States. 8 U.S.C.A. § 1101(a); 8 C. F. R. § 204.11(a), (d)(2)(iii). SIJS requests typically accompany a petition seeking custody or guardianship of a minor; however, Maryland law extends jurisdiction for SIJS requests to "an unmarried individual under the age of 21 years." See Md. Family Law Ann., § 1-201(a).

The County Administrative Judge has designated the Magistrate and Family Law Judge to review all SIJS requests. Any case seeking SIJS findings will be forwarded to the Magistrate for initial screening after the case is docketed. The Magistrate will review the file to determine if necessary parties have been named, whether valid consents from necessary parties are attached, whether any required service of process has occurred, and whether the case is ripe for a hearing. The Magistrate will document any action that remains to be taken and will set in for a status hearing and will also note any scheduling exigency that may exist, based upon the age of the party seeking SIJS. Once the SIJS request is ripe for hearing, the case will be referred to the Civil Assignment Office to schedule a hearing before the Family Division Judge within 90 days.