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Representing the Alleged Disabled Person (ADP)

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Becoming the attorney for the ADP

- The most common way is the court appoints counsel(CAC) pursuant to Maryland Rule 10-106(a), Estates & Trusts, § 13-211(b) and/or 13-705(d).
 - Contract Attorneys through the Dept. of Human Resources
- The Alleged Disabled Person (ADP) can hire his/her own attorney.
- The family or other interested person assists the ADP in hiring an attorney.

Becoming the attorney for the ADP Cont.

Estates & Trusts § 13-705(d). Counsel for disabled person

- (1)(i) Subject to paragraph (2) of this subsection, unless the ADP has counsel of the person's own choice, the court shall appoint an attorney to represent the person in the proceeding and may require the deposit of an appropriate sum into the court registry or the appointed attorney's escrow account within 30 days after the order of appointment has been entered, subject to further order of the court.
 - (ii) If the person is indigent, the State shall pay a reasonable attorney's fees.
 - (iii) The court may not require the deposit of an appropriate sum into the court registry or the appointed attorney's escrow account under subparagraph (i) of this paragraph if payment for the services of the court-appointed attorney for the ADP is the responsibility of:
 - 1. A government agency paying benefits to the disabled person;
 - 2. A local department of social services; or
 - 3. An agency eligible to serve as the guardian of the disabled person under § 13-707 of this subtitle.
- (2) In any action in which payment for the services of a court-appointed attorney for the ADP is the responsibility of the local department of social services, unless the court finds that it would not be in the best interests of the ADP, the court shall:
 - (i) Appoint an attorney who has contracted with the Dept. of Human Resources to provide those services, in accordance with the terms of the contract; and
 - (ii) In an action in which an attorney has previously been appointed, strike the appearance of the attorney previously appointed and appoint the attorney who is currently under contract with the Dept. of Human Resources, in accordance with the terms of the contract.

Becoming the attorney for the ADP Cont.

The seminal case in guardianship law in Maryland is In Re Sonny Lee, 132 Md. App. 696, 754 A.2d 426 (2000).

- Clarified the role of the ADP.
- Advocate vs. Investigator.
- Ethical considerations – Maryland Rule of Professional Conduct 1.14.
- Requesting live testimony of the certifying professionals.

Order Appointing Counsel (Form 1)

IN THE CIRCUIT COURT FOR (INSERT DOMICILE) COUNTY, MARYLAND
In the Matter of _____
(insert ADP's name)
For the Appointment of Guardian Case No. _____
Of the Person and Property
* * * * *

*

Order Appointing Counsel

Upon consideration of the Motion for Appointment of Counsel filed herein, and as provided by Maryland Rule 10-106(1) and Md. Code Ann. Est. & Trusts Section 13-705, it is this _____ day of _____, _____, by the Circuit Court for (insert county of domicile) County, Maryland,

ORDERED, that (insert attorney's name) Esq., whose address is (insert address), and whose telephone number is (insert telephone number) be and she hereby is, appointed counsel for the alleged disabled person in this matter; and it is further,

ORDERED, that payment of (insert name)'s fees and costs incurred in this matter shall be paid in accordance with Maryland Rule 10-106(a).

JUDGE

The Client Meeting

- How to set it up.
- Interview process – The guardianship version of Miranda – “I can make my own decisions.”
- How many times should you meet with the client?
- Ethical considerations – Rule 1.14.
- When is it appropriate to ask for an Independent Investigator?
- When is it appropriate to disagree with your client’s stated wishes?

Preliminary Motions

- Change of Venue
- Venue is improper under Md. Rules
- Motion to Dismiss and/or Motion for Appropriate Relief
- Petition does not comply with Md. Rules
- *Examples:*
- 1) Lack of Certificate by Certifying Professional
- 2) Non-Compliance with Md. Rule 10-202
- 3) Petition Does Not List Proposed Guardian
- 4) Petition Does Not State Reason Guardianship is Needed

Drafting and Filing an Answer

- An answer is NOT a Report to the Court.
- If the Petition asks for a Guardian of the Person, the answer must address the right to a jury trial – either it includes a waiver or it does not.
- If a Petition asks for only a Guardian of the Property, there is no right to a jury trial.

Answer (Form 2)

Answer to Petition for Appointment of Guardian of the Person and Property and Waiver of Jury Trial

(INSERT ADP'S NAME), Respondent, by her attorney, (insert attorney's name) responds to Petitioner's Petition for Guardianship and states as follows:

1. That the Respondent admits the allegations contained in paragraphs _____.
2. That the Respondent denies the allegations contained in paragraphs _____.
3. That the Respondent neither admits nor denies the allegations contained in paragraphs _____.
4. That (insert attorney's name) met with the Respondent at (insert place where attorney met ADP) on (insert date of meeting).
5. That Respondent stated that she objects to the appointment of a Guardian of her Person and Property.
6. That undersigned counsel hereby requests Respondent's presence at all court proceedings in this matter.

WHEREFORE, Respondent prays:

- A. That Petitioner's request to appoint a Guardian of the Person and Property for (insert ADP's name) be DENIED; and
- B. For such other and further relief as the nature of the cause may require.

Respectfully submitted by,

(insert attorney's name)
(insert attorney's address)
Attorneys for Respondent

Answer Continued

WAIVER OF JURY TRIAL

(INSERT NAME OF ADP), by her attorneys, (insert attorney's name) hereby waives a jury trial in the above captioned matter.

(insert attorney's name)

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this _____ day of _____, _____, a copy of the foregoing Answer and Waiver of Jury Trial were mailed, postage pre-paid to the following: (insert all attorneys in the case and interested persons)

(insert attorney's name)

Sample Answer (Form 3)

IN THE CIRCUIT COURT FOR MONTGOMERY COUNTY, MARYLAND

IN THE MATTER OF
NAME OF ADP FOR THE
APPOINTMENT OF A GUARDIAN OF
THE PERSON AND PROPERTY

*
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*
*
*
*

Case No. _____

* * * * *

**ANSWER TO PETITION FOR APPOINTMENT OF A
GUARDIAN OF THE PERSON AND PROPERTY AND WAIVER OF JURY TRIAL**

NAME OF ADP, Respondent, by her attorneys, Ria P. Rochvarg and Ria P. Rochvarg, P.A., responds to Petitioner's Petition for Appointment of a Guardian of the Person and Property and states:

1. That the Respondent admits the allegations contained in paragraphs 1, 2, 4-9, and 11-14.
2. That the Respondent neither admits nor denies the allegations contained in paragraphs 3, 6, 7, and 10.
3. That Ria P. Rochvarg met with the Respondent at _____ Nursing Center on _____ date.
4. That due to Respondent's disability, she is unable to specifically state her wishes in reference to a guardianship.
5. That based upon her investigation, Ms. Rochvarg agrees with Petitioner that Respondent is in need of a guardian of the person and property, and that there is no less restrictive alternative available.
6. That Ms. Rochvarg hereby waives Respondent's right to be present at all court proceedings in this matter.

WHEREFORE, Respondent prays:

Sample Answer Continued

GRANTED; and

- A. That Petitioner's request to appoint a guardian of the person and property for **NAME OF ADP** be
- B. For such other and further relief as the nature of the cause may require.

Respectfully submitted by,

Ria P. Rochvarg
Ria P. Rochvarg, P.A.
P.O. Box 1907
Ellicott City, MD 21041-1907
(410) 313-9725
Attorneys for Respondent

WAIVER OF JURY TRIAL

NAME OF ADP, by her attorneys, Ria P. Rochvarg and Ria P. Rochvarg, P.A., hereby waives a jury trial in the above captioned matter.

Ria P. Rochvarg

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this _____ day of _____, 20_____,
a copy of the foregoing Answer and Waiver of Jury Trial were mailed, postage prepaid, to:

Ria P. Rochvarg

Interested Persons

- Role of the local Department of Social Services and/or the local Area Agency on Aging.
 - Guardian of Last Resort.
- Family Members.
- “Friends.”

Mediation

- When is a Guardianship case really “custody of an ADP?”
- When is it appropriate to ask the court to Order mediation?

The Show Cause Hearing & Trial

- If case is by consent, an Order will be signed appointing Guardian at the Show Cause Hearing.
- Role of the CAC in the trial.
- Bench trial vs. Jury trial.
- How to handle the difficult client in a trial with a judge.
- How to handle the difficult client a trial with a jury.
- When is it appropriate to waive the presence of the ADP.
- Filing a Petition for Fees – standards.

Role Of CAC

- Who should the CAC advocate for being appointed the Guardians of the Person and/or Property?
 - ADP's stated wishes.
 - Best interest of ADP – deviating from stated wishes.
 - Role of county agencies.

Post-Guardianship Issues

- If ADP or another party is dissatisfied with the ruling of the judge or jury, here are options available:
 - File a Motion to Alter/Amend the Judgment.
 - File for an *En Banc* hearing.
 - File an Appeal.
 - File a Request for a Review Hearing.
- Petitioner requests fees to be paid by Respondent
 - File a fee petition in accordance with ET § 13-704(c)
 - Legislative history

Post-Guardianship Issue

Continued

- If county agency is appointed the Guardian of the Person, the case will be reviewed every 6 months by the Adult Public Guardianship Review Board (APGRB).
 - Role of the APGRB.
- If no appeal is filed, and a county agency is not the Guardian of the Person, the CAC's appointment ends after 30 days.
- The ADP is referred to a DP once a Guardian is appointed.