

FREQUENTLY ASKED QUESTIONS FOR GUARDIANSHIP

Questions can arise while you are looking for the content that you need. The following are common questions that have often been posed to our office.

WHAT IS A GUARDIANSHIP?

A guardianship is an involuntary trust relationship in which one party, called the guardian, acts for an individual called a ward. The law regards the ward as incapable of managing his/her own person and/or affairs.

WHO NEEDS A GUARDIAN?

A guardian may be appointed for either an incompetent or minor, which are defined by statute as:

- a. **Incompetent:** Any person who is so mentally impaired as a result of a mental or physical illness or disability, or as a result of chronic substance abuse, that he is incapable of taking proper care of himself or his property or fails to provide for his family or other persons for whom he is charged by law to provide, or any person confined to a penal institution within this state.
- b. **Minor:** Any person under 18 years of age who has neither a father nor a mother or whose parents are unsuitable to have custody and tuition of such minor, or whose interests, in the opinion of the Court, will be promoted.
- c. **Minor Settlement:** Natural parents do not have an inherent right to settle personal injury claims on behalf of a minor child. The Probate Court must authorize approval of such settlements. If the settlement exceeds \$25,000, the Court will require the appointment of a guardian of an estate.

WHAT ARE THE TYPES OF GUARDIANSHIPS?

Person and/or Estate: A guardian may be appointed either a guardian of the person, a guardian of the estate, or both. A guardian of the person has custody of, controls, and protects the person of the ward. A guardian of the estate controls and protects the assets or property of the ward.

Emergency: In an emergency in which significant injury to a prospective adult ward may occur unless immediate action is taken, the Court may appoint an emergency guardian for 72 hours. The adult's physician must testify in Court.

A CITIZEN’S GUIDE TO COMMUNICATING WITH THE JUDGE AND MAGISTRATES

Why can’t I communicate directly with the judge or magistrate on my case?

If the matters are contested, judges and magistrates are not allowed to communicate with individual parties. This is what the law calls an *ex-parte* communication (this is when a judge or magistrate only communicates with an individual party, on their own, without the knowledge of all parties to a case). In order to keep the court process as fair, equal and as transparent as possible, *ex-parte* communication is strictly forbidden. It is unfair for the court to share information without all of the parties present.

You cannot email the judge or magistrate, as the email is considered an *ex-parte* communication. In addition, emails are not pleadings (motions.) You cannot write a personal letter to the judge or magistrate as this may be considered an *ex-parte* communication.

How can I speak to the judge or magistrate on my case?

Typically, to speak to the judge or magistrate on your case, you must file a written motion with the court explaining what you want the court to do and all motions become part of the public record. You also have to send a copy of whatever you file to the other parties, or their attorney if they are represented by an attorney (this is called “service”). A motion is not considered an *ex-parte* communication because all parties are officially notified. You may be required to pay a filing fee when you file your written motion. Please note, there is no fee if you wish to speak to the magistrate in an uncontested matter, on their assigned walk-in days.

I’ve heard there’s always a magistrate on duty to hear arguments immediately – what does that mean?

There is a magistrate on duty every business day. The on-duty magistrate may answer generic procedural questions. The on-duty magistrate may also discuss matters in an uncontested case. For all other matters, the on-duty magistrate is prohibited from speaking with you. To address the court for these matters, you must file a written motion. The on-duty magistrate will set the matter for hearing before the magistrate assigned on your case or the judge.

What if I need to tell the judge or magistrate something I don’t want the other party to know about?

Unfortunately, you cannot withhold information from another party to your case. In order to keep the case fair to everyone involved, as soon as you tell the judge or magistrate something, you must also tell the other parties. All sides must have an opportunity to respond to the information that you have shared with the court.