



MINOR GUARDIANSHIPS

NEW PROBATE REGISTER ORIENTATION



2021



LEARNING/ TRAINING OBJECTIVES

- The basics of Minor Guardianship
- Temporary Minor Guardianship
- Full Minor Guardianship
- Limited Minor Guardianship
- Custody Actions
- Indian Child Welfare Act and the Michigan Indian Family Preservation Act.
- The role of DHHS in Guardianship matters

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REASONS FOR A MINOR GUARDIANSHIP?

MCL 700.5204

- The guardianship of a minor is used to grant legal authority to someone other than the custodial parent.
- Reasons
 - Termination or suspension of parental rights
 - By prior court order
 - By judgment of divorce or separate maintenance
 - By death
 - By judicial determination of mental incompetency
 - By disappearance
 - Or by confinement in a place of detention.
 - The parent or parents permit the minor to reside with another person but fail to provide legal authority.

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reasons
continued...

- The minor's biological parents have never been married to one another
- The minor's parent who has custody of the minor dies or is missing and there is no existing court order granting legal custody.
- The person whom the petition to be appointed guardian is related to the minor within the fifth degree by marriage, blood or adoption.
- The custodial parent consents to the guardianship.

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POWERS AND DUTIES

MCL 700.5215

- Take reasonable care of the minor's property.
- Receive money for the minor's care.
- Facilitate the minor's education, social activities, and medical care.
- Additionally...
 - Guardians should work with the parents to facilitate reunification, and cooperate with a court structured plan if one is in place.

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ALTERNATIVES TO GUARDIANSHIP

MCL 700.5103(1)

- Delegation of Powers
 - By a properly executed power of attorney, a parent or guardian can delegate powers to another person, for a period not exceeding 180 days. This covers the following powers over:
 - CARE
 - CUSTODY
 - PROPERTY OF THE MINOR CHILD
 - Under a POA they can not consent to marriage, adoption, or to release the minor for adoption.

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JURISDICTION AND VENUE

MCL 700.1301

- The Probate Court has jurisdiction over all minor guardianships.
 - Except for Juvenile Guardianships which fall under the Juvenile Code.
 - The Indian Child Welfare Act and the Michigan Indian Family Preservation Act govern any action removing an Indian child from a parent or Indian Custodian. (more on this later)
- A petition **SHOULD** be filed in the County where the child resides or is found.

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WHO CAN FILE A PETITION?

MCL 700.5204(1)

Any person interested in the welfare of the minor, or the minor if they are 14 years or older.

- Close family members
- An agency
- Family friend
- Limited guardian
 - Not based on suspension of parental rights from prior limited petition.

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INITIAL FILING FEES/ FEE WAIVER REQUEST

- Total filing fee: \$175.00
 - FULL/ LIMITED/ TEMPORARY INCLUDED
 - \$150.00 - MCL 600.880a(1)
 - \$25.00 – MCL 600.1986(1)(a)
 - Electronic filing fee
- If submitted with MC20 – Fee Waiver Request
 - \$0.00 – MCR 2.002

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CHECK LIST FOR MINOR GUARDIANSHIP FILINGS

- Petition for Appointment of Guardian of Minor.
 - Form PC651 if non-parent files (MCL 700.5204, MCL 700.5213, MCR 5.125(C)(19), MCR 5.404.
- Petition for Appointment of Limited Guardian of Minor
 - Form PC650 if the custodial parent(s) files (MCL 700.5205, MCR 5.125(C)(19), MCR 5.404)
 - Limited Guardianship Plan - PC670 (MCL 700.5205(2), MCR 5.404(A),(B)
 - PC652 Must be signed by custodial parent(s) and proposed guardian.
- Filing Fee
- Minor Social History
 - PC670 is kept confidential in file. (MCR 5.404(A)(4)
- DHHS Central Register Clearance/ Copy of Picture Identification.
 - DHS-194 is kept confidential. (MCL 722.627-722.627j)
- Criminal Background Check on anyone 18+ in the home.

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MISCELLANEOUS DOCUMENT

These may be required depending on a specific situation.

- Birth Certificate is required if the father is unknown (Paternity has not been established)
- Death Certificate is required if a parent is deceased.
- Copy of Order Terminating Parental Rights – if applicable.

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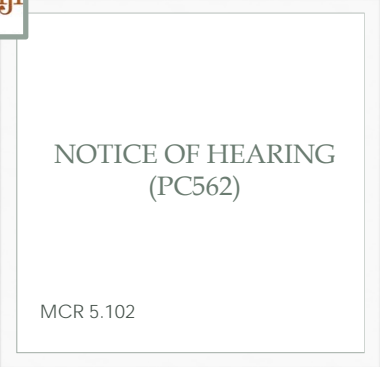


ONCE A PETITION IS FILED, WHO SHOULD BE NOTIFIED?

MCR 5.125(A)(B)(C)(20)

- The minor, if 14 or older
- Anyone who has had principal care and custody of the minor during the previous 63 days
- The parents of the minor
 - If the parents are deceased, any grandparents and presumptive adult heirs.
- Attorney general – if no known heirs
- Proposed Guardian
- Guardian/ Conservator from another state if one is appointed.
- Guardian ad litem, attorney, or fiduciary.
- A person could file a request for notice with the register of the court, and the attorney of a guardian if one has filed an appearance in the matter. MCL 700.5104(1)
- If the minor receives Veterans Affairs benefits , the Office of Veterans' Affairs must be notified.

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- Notice of Hearing Must Contain:
 - Time
 - Date
 - Place
 - Nature of hearing
- Time guidelines
 - First Class – 14 days prior to the hearing
 - Personal – 7 days prior to the hearing
 - Electronic – 7 days prior to the hearing
 - Please see MCR 1.109(G)(6)(a)
- Notice can be waived (PC561).
 - MCR 5.104(B)(1)

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- FOR GOOD CAUSE...
 - The court can shorten or eliminate notice (except to the minor if they are 14 or older).
 - A Probate Court can even sign a temporary order ex-parte.
- IF A TEMPORARY GUARDIAN IS ENTERED WITH SHORTENED OR ELIMINATED SERVICE THE COURT MUST.
 - Send notice of the guardianship proceeding to all interested parties, including SCAO form PC 672 – NOTICE OF APPOINTMENT OF TEMPORARY GUARDIAN FOR A MINOR AND OF RIGHT TO OBJECT.
 - If an objection is received you are required to hold a hearing within 14 days of the objection.
- Best Practice – Even in the event that notice is not given for the temporary hearing we will hold a hearing 99.9999% of the time so that we can have testimony on the record. As you may learn or are already aware of, once someone testifies in court the facts of the petition may not match up....

2021



NOTICE BY PUBLICATION

MCR 5.106

- PUBLICATION OF NOTICE OF HEARING
 - PC 563
- REQUIREMENTS
 - A NOTICE OF HEARING OR OTHER NOTICE REQUIRED TO BE MADE BY PUBLICATION MUST BE PUBLISHED IN A NEWSPAPER AT LEAST 14 DAYS PRIOR TO THE HEARING.
- CONTENTS
 - IT MUST CONTAIN THE NAME OF THE INTERESTED PARTY WHO CAN NOT BE FOUND, AND THAT A RESULT OF THE HEARING MAY AFFECT THE PERSON'S INTEREST IN THE MATTER, AS WELL AS THE DATE, TIME, AND LOCATION OF THE HEARING.

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PUBLICATION OF NOTICE OF HEARING

Approved: SCAO JRS CODE: PNH

STATE OF MICHIGAN PROBATE COURT COUNTY OF ST. CLAIR	PUBLICATION OF NOTICE OF HEARING	FILE NO. 2021-0084 GM
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In the matter of LAYLA ANN MARIE DARBY, a minor

TO ALL INTERESTED PERSONS including: STEVEN DARBY and JENNA SHARROW
whose address(es) is/are unknown and whose interest in the matter may be barred or affected by the following:

TAKE NOTICE: A hearing will be held on MONDAY, MAY 24, 2021 at 10:20 A.M.
Date Time
at 201 McMoran Blvd, Room 2600 Port Huron, MI 48060 before Judge JOHN D. TOMLINSON P-45917
Location Bar no.

for the following purpose:

ON THE ATTACHED PETITION FOR APPOINTMENT OF GUARDIAN OF MINOR, FILED BY
KELSIE WAGAR, PRAYING THE COURT APPOINT HERSELF AS THE GUARDIAN OF THE
ABOVE NAMED MINOR.

MUST BE PRESENT AT HEARING:

KELSIE WAGAR, PETITIONER / PROPOSED GUARDIAN
JENNA SHARROW, MOTHER
STEVEN DARBY, FATHER
KRISTINA FRALEY, GUARDIANSHIP INVESTIGATOR / DHHS LIANSON

YOU HAVE THE ABILITY TO APPEAR IN PERSON, BY TELEPHONE, OR BY ZOOM VIDEO CONFERENCE – SEE ATTACHED INSTRUCTION SHEET. PLEASE CONTACT THE COURT AT (810) 985-2066 AT LEAST TWO (2) DAYS PRIOR TO THE HEARING TO INDICATE HOW YOU INTEND TO APPEAR.

MARCH 2, 2021
Date
KELSIE WAGAR
Petitioner name (type or print)
Address
859 RICHMAN ROAD
City, state, zip KIMBALL, MI 48074 Telephone no. 810-367-6147

PUBLISH ABOVE INFORMATION ONLY
Publish 1 time(s) in THE TIMES HERALD in ST. CLAIR County.
Furnish 1 copies to None publication.

Furnish affidavit of publication to the court, 201 McMoran Blvd., Room 2600, Port Huron, MI 48060
St. Clair County Probate Court, 201 McMoran Blvd., Room 2600, Port
Huron, MI 48060 - Acct. Number: LSA-15200667 - FEE WAIVER

Forward statement for publication charges to None

USE NOTE: If this form is being filed in the circuit court family division, please enter the court name and county in the upper left-hand corner of the form.

Do not write below this line - For court use only

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NOTICE FOR
INCARCERATED
INTERESTED PARTIES

MCR 2.004

- The following process is required if an interested party is incarcerated.
 - Contact the department of corrections.
 - Confirm the incarceration, prisoner number, and location of inmate.
 - Serve the incarcerated individual.
 - Prepare MC 286, requesting the Department of Corrections to allow the interested party to participate in the hearing either by telephone or video.

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PROOF OF SERVICE
(PC 564)

MCL 700.1401, MCL 700.1306, MCR
5.104(A), MCR 5.105, MCR 5.107

- A Proof of Service must be filed indicating the documents served, the date of service, the manner and method of service, the person or persons served prior to a hearing.

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DOCUMENTS IN THE FILE FOR THE HEARING.

- When preparing a file for your Judge the documents needed in the file for an initial hearing are as follows:
 - PC653 – ORDER REGARDING APPOINTMENT OF GUARDIAN/ LIMITED GUARDIAN OF A MINOR
 - MCL 700.5106, MCL 700.5204, MCL 700.5212, MCL 700.5213, MCR 5.402(E)
 - PC571 – ACCEPTANCE OF APPOINTMENT
 - NEEDS TO BE SIGNED PRIOR TO ISSUING LETTERS OF GUARDIANSHIP
 - MCL 700.5214
 - PC633 – LETTERS OF GUARDIANSHIP
 - MCL 700.5214

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TEMPORARY GUARDIANSHIP

Under MCL 5.403(D), the Probate Court has the authority to appoint a temporary guardian for a minor child if the following requirements have been met.

- If there is no guardian previously appointed (no open case)
 - The court receives a petition specifying why a temporary guardian is necessary.
 - If a petition for a temporary guardian follows a petition for the appointment of a limited guardian, the court must take into consideration the limited guardianship placement plan, and how that relates to powers being granted to guardian during the duration of the temporary guardianship.
- If a guardian is in place but not fulfilling their obligation, the court can appoint a temporary guardian.
- In both situations the appointment may not last longer than 6 months.

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TEMPORARY GUARDIAN
APPOINTMENT FROM
ANOTHER STATE.

MCL 700.5202a

- The Probate Court can appoint a temporary guardian through application if the following are met:
 - A guardianship has not been established in Michigan.
 - The proposed guardian files an Application and order for Appointment of Out-of-State Guardian of a minor (PC 684).
 - An authenticated copy of the guardians' appointment from the other State.
 - An acceptance of appointment.

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TEMPORARY GUARDIAN
APPOINTMENT FROM
ANOTHER STATE.

- The letters of guardianship should expire in 28 days.
- The guardian shall send notice to all interested parties within 14 days of the appointment.
- Once the guardian files the proof of service with the court, the temporary guardian shall be appointed full guardian.
- If an objection is filed, the temporary guardianship continues unless a court in this state enters an order removing the guardian.

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FULL GUARDIANSHIP OF A MINOR

MCL 700.5204(2)

- A FULL GUARDIANSHIP CAN ONLY BE ESTABLISHED IF THE FOLLOWING TERMS HAVE BEEN MET..
 - Parental rights of the parents have been terminated or suspended by prior court order, by a judgement of divorce or separate maintenance, by death, by judicial determination of mental incompetency, by disappearance, or by confinement in a place of detention.
 - The parent(s) permit the minor to reside with another person and do not provide the other person with legal authority for the minor's care and maintenance, and the minor is not residing with the parent or parents when the petition is filed.
 - The custodial parent dies or disappears, never having married the other parent, and the other parent has not been granted legal custody.

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LIMITED GUARDIANSHIP

- Only the custodial parent or parents are able to file the petition for the appointment of a limited guardian.
 - MCL 700.5305(1)
- The court may appoint a limited guardian if...
 - The custodial parent(s) consent to the appointment.
 - The parent(s) consent to the suspension of their parental rights.
 - The limited guardianship plan is approved by the court.
 - MCL 700.5206(c)
 - MCL 700.5205

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LIMITED
GUARDIANSHIP
PLACEMENT PLAN

PC 652

- What needs to be included in the limited guardianship placement plan? MCL 700.5205(2); MCR 5.404(E)(1)
 - The reason for the limited guardianship.
 - Parenting time requirements.
 - How long will the limited guardianship last.
 - Who will be providing financial support for the minor child.
 - Other possible stipulations. MCL 5.404(E)(b)
 - Substance Abuse Treatment
 - Parenting classes
 - Obtaining housing

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LIMITED
GUARDIANSHIP
PLACEMENT PLAN

- The parties can modify the plan without filing a petition. MCL 700.5206(2)
 - The court must review the proposal within 14 days.
 - If the court approves the modification, it will be endorsed and all parties will be notified.
 - If the court does not approve the modification, a hearing can be set, or a new plan can be submitted.
 - MCR5.404(E)(3)

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APPOINTMENT OF A FULL GUARDIAN THROUGH A WILL

MCL 700.5202

- The parent of an unmarried minor may appoint a guardian for the minor by Will or another writing signed by the parent and attested by at least 2 witnesses.
 - If by Will, the acceptance should be filed where the Will has been probated.
 - If by a nontestamentary instrument, the acceptance should be filed where the minor is located.
- If the minor is 14 years or older they have the right to object prior to the appointment or 28 days following the appointment.
 - MCL 700.5203

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REVIEWS

- The Probate Court can review a minor guardianship as it sees fit.
- An annual review of a guardianship MUST be done if the minor child is 6 years old or younger.
 - MCL 700.5207
- The review is completed on PC 655 and submitted to the court.

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REVIEW

- A review may consist of an informal review of the report submitted.
- A hearing on the report may be scheduled and set within 28 days.
 - MCR 5.404(G)(3)

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REVIEW

- FACTORS FOR THE REVIEW
 - Compliance by the parent(s) and guardian with a court structured plan.
 - Welfare of the minor child.
 - Should the guardianship continue?
 - Willingness of guardian to continue.
 - Ability of guardian to continue.
 - Effect on the minor's wellbeing if continued.
 - MCL 700.5207(1)

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ANNUAL REPORT OF
GUARDIAN ON
CONDITION OF MINOR
(PC 654)

MCL 700.5215(f), MCR 5.409(A)

- The guardian of a minor child is required to report to the court on a yearly basis on the condition of the minor. This report will detail Living Arrangements, Health, Education, Social aspects of the minor's life, and interactions between parents.

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TERMINATION OF
MINOR
GUARDIANSHIP

MCL 700.5208, MCL 700.5209

- The minor's parent or parents may file a petition to terminate the guardianship(PC 675)
 - The court may do any of the following
 - Order DHHS, or a court employee to conduct and investigation and file a written report with the court prior to the hearing.
 - Take into account any recommendation from other professionals involved with the minor child.
 - Appoint a Guardian Ad Litem, Or Lawyer Guardian Ad Litem to represent the minor.

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TERMINATION OF MINOR GUARDIANSHIP

MCL 700.5209

- The court has several options when terminating a guardianship.
 - Enter an order terminating the guardianship and restoring parental rights.
 - Enter orders to reintegrate the minor into the home for up to 6 months.
 - Order DHHS/ Family Independent Agency to supervise the transition period.
 - Order DHHS/ Family Independent Agency to provide services during the transition period.

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INVESTIGATION

- The court can appoint a court employee, DHHS, or any other person to investigate any matter in a minor guardianship
 - If the court appoints DHHS to preform an investigation it will be assigned to protective service or foster care staff.
 - The investigator must file a report 28 days following the appointment.
 - MCR 5.404(G)(2)

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STANDING TO SEEKING CUSTODY

MCL 722.26b

- The Full or Limited guardian does have standing to bring an action for custody of a child.
 - Unless the parents have been compliant with the limited guardianship plan.
- The custody action must be brought in the family division of the circuit court of the county where the guardianship was established.
- When a custody action is filed it stays the guardianship case.

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SHARED FUNDS POSITION

- The St. Clair County Probate Court has a shared funds position with DHHS
 - The DHHS court liaison is appointed on all new guardianships for an initial investigation, as well as appointed on any petition to terminate or modify the guardianship.

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LAWYER-GUARDIAN AD LITEM

If the Court determines the minor's rights are not being represented you can appoint a Lawyer-Guardian Ad Litem.

MCL 700.5213(3)

- Attorney Client Privilege Applies
 - MCL 712A.17d(1)(a)
- The LGAL represents the child not the court.
 - MCL 712A.17d
- Additionally, the LGAL is tasked with taking into account the best interest of the minor, as well as the opinion of the minor child.
 - MCL 712A.17d(1)(i) – MCL 712A.17d
- The LGAL report may be filed with the court, and not entered into evidence unless all parties agree.
 - MCL 700.5213(5)(a)

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GUARDIANSHIP PROCEEDINGS INVOLVING AN INDIAN CHILD

- Indian child welfare act and the Michigan Indian family preservation act.
 - ICWA and MIFPA apply to any child custody proceeding involving an *Indian* child being removed from their parent or Indian Custodian and they can not have the child returned on demand.

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GUARDIANSHIP
PROCEEDINGS
INVOLVING AN INDIAN
CHILD

- Involuntary Proceedings
 - Procedural requirements of MCL 700.5204 and .5205 apply.
 - Included on the petition for the involuntary appointment of a guardian of an Indian child (PC651-1b) must be the efforts made to prevent the break up of the Indian family. (MCR 5.404(B)(3))

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GUARDIANSHIP
PROCEEDINGS
INVOLVING AN INDIAN
CHILD

- Voluntary proceedings
 - If the parent(s) or Indian custodian consent to the guardianship it must be submitted in writing (PC686)
 - This consent can be withdrawn at any time using (PC 687).
 - A hearing must be held to determine if the tribe has exclusive jurisdiction that will result in the dismissal of the petition, and if valid consent was obtained. (MCL 712B.13)

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GUARDIANSHIP
PROCEEDINGS
INVOLVING AN INDIAN
CHILD

- If the court receives a Petition for Appointment of Guardian of Minor (PC651) The Court should do the following.
 - If item number 5 or the second box in item 3 is marked, indicating that the child is a member of an American Indian tribe, check to see if the tribe is listed on the petition.
 - If one is listed, the court shall notice the tribe on all court proceedings.
 - If no tribe is listed, the court should ask the petitioner to amend the petition to identify the specific tribe or report that the tribal affiliation is unknown.
 - Once a guardian is appointed the court should appoint an LGAL or DHHS to investigate the placement, including the child's tribal affiliation.
 - If the court feels it is in the best interest to appoint a temporary guardian for the minor, it can, but steps should be taken by the court to determine the whereabouts of the parents, and the tribal affiliation.

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GUARDIANSHIP
PROCEEDINGS
INVOLVING AN INDIAN
CHILD

- Right to Intervene
 - The Indian child, parent(s), Indian custodian, or tribe can intervene at any point in a guardianship proceeding. (25 USC 1911(c); MCL 712B.7(6); MCR 5.402(E)(4).
 - Written motion not required.
 - If the tribe intervenes it does so as an independent entity.

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GUARDIANSHIP
PROCEEDINGS
INVOLVING AN INDIAN
CHILD

- If an Indian Child is identified in a guardianship proceeding the court has specific requirements for noticing as specified in MCR 5.109.
 - (1) in addition to any other service requirements, **the petitioner shall notify the parent or Indian custodian and the Indian child's tribe, by personal service or by registered mail with return receipt requested and delivery restricted to the addressee, of the pending proceedings on a petition to establish guardianship over the Indian child and of their right of intervention on a form approved by the State Court Administrative Office.** If the identity or location of the parent or Indian custodian, or of the Indian child's tribe, cannot be determined, notice shall be given to the Secretary of the Interior by registered mail with return receipt requested. **If a petition is filed with the court that subsequently identifies the minor as an Indian child after a guardianship has been established, notice of that petition must be served in accordance with this subrule.**
 - (2) **the court shall notify the parent or Indian custodian and the Indian child's tribe of all other hearings pertaining to the guardianship proceeding as provided in MCR 5.105. If the identity or location of the parent or Indian custodian, or of the Indian child's tribe, cannot be determined, notice of the hearings shall be given to the Secretary of the Interior.** Such notice may be made by first-class mail.

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GUARDIANSHIP
PROCEEDINGS
INVOLVING AN INDIAN
CHILD

- If a minor is determined to be an Indian Child after a guardianship is in place, the court must..
 - Schedule a hearing in accordance to MCR 5.404(C)(F)
 - Enter an order for investigation in accordance to MCR 5.404(A)(2)
 - The guardian must cooperate with the investigation.
 - Provide notice in accordance to MCR 5.109(1).

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RESOURCES

- Michigan Probate Bench Book
- Michigan Guardianship and Conservatorship Hand Book
- Estates and Protected Individuals Code
- Indian Child Welfare Act of 1978: A court resource guide.

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MATERIAL PREPARED AND PRESENTED BY:

Michigan
Guardianship

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