

MI Rules MCR 5.404

RULE 5.404 GUARDIANSHIP OF MINOR

(A) Petition for Guardianship of Minor.

(1) *Petition.* A petition for guardianship of a minor shall be filed on a form approved by the State Court Administrative Office. The petitioner shall state in the petition whether or not the minor is an Indian child or whether that fact is unknown. The petitioner shall document all efforts made to determine a child's membership or eligibility for membership in an Indian tribe and shall provide them, upon request, to the court, Indian tribe, Indian child, Indian child's lawyer-guardian ad litem, parent, or Indian custodian.

(2) *Investigation.* Upon the filing of a petition, the court may appoint a guardian ad litem to represent the interests of a minor and may order the Department of Human Services or a court employee or agent to conduct an investigation of the proposed guardianship and file a written report of the investigation in accordance with [MCL 700.5204\(1\)](#). If the petition involves an Indian child, the report shall contain the information required in [MCL 712B.25\(1\)](#). The report shall be filed with the court and served no later than 7 days before the hearing on the petition. If the petition for guardianship states that it is unknown whether the minor is an Indian child, the investigation shall include an inquiry into Indian tribal membership.

(3) *Guardianship of an Indian Child.* If the petition involves an Indian child and both parents intend to execute a consent pursuant to [MCL 712B.13](#) and these rules, the court shall proceed under subrule (B). If the petition involves an Indian child and a consent will not be executed pursuant to [MCL 712B.13](#) and these rules, the petitioner shall state in the petition what active efforts were made to provide remedial services and rehabilitative programs designed to prevent the breakup of the Indian family as defined in [MCR 3.002\(1\)](#). The court shall proceed under subrule (C).

(4) *Social History.* If the court requires the petitioner to file a social history before hearing a petition for guardianship of a minor, it shall do so on a form approved by the State Court Administrative Office. The social history for minor guardianship is confidential, and it is not to be released, except on order of the court, to the parties or the attorneys for the parties.

(5) *Limited Guardianship of the Child of a Minor.* On the filing of a petition for appointment of a limited guardian for a child whose parent is an unemancipated minor, the court shall appoint a guardian ad litem to represent the minor parent. A limited guardianship placement plan is not binding on the minor parent until consented to by the guardian ad litem.

(B) Voluntary Consent to Guardianship of an Indian Child.

A voluntary consent to guardianship of an Indian child must be executed by both parents or the Indian custodian.

(1) *Form of Consent.* To be valid, the consent must contain the information prescribed by [MCL 712B.13\(2\)](#) and be executed on a form approved by the State Court Administrative Office, in writing, recorded before a judge of a court of competent jurisdiction, and accompanied by the presiding judge's certificate that the terms and consequences of the consent were fully explained in detail and were fully understood by the parent or Indian custodian. The court shall also certify that either the parent or Indian custodian fully understood the explanation in English or that it was interpreted into a language that the parent or Indian custodian understood. Any consent given before, or within 10 days after, the birth of the Indian child is not valid.

(2) *Hearing.* The court must conduct a hearing on a petition for voluntary guardianship of an Indian child in accordance with this rule before the court may enter an order appointing a guardian. Notice of the hearing on the petition must be sent to the persons prescribed in [MCR 5.125\(A\)\(8\)](#) and [\(C\)\(19\)](#) in compliance with [MCR 5.109\(1\)](#). At the hearing on the petition, the court shall determine:

- (a) if the tribe has exclusive jurisdiction as defined in [MCR 3.002\(6\)](#). The court shall comply with [MCR 5.402\(E\)\(2\)](#).
- (b) that a valid consent has been executed by both parents or the Indian custodian as required by [MCL 712B.13](#) and this subrule.
- (c) if it is in the Indian child's best interest to appoint a guardian.
- (d) if a lawyer-guardian ad litem should be appointed to represent the Indian child.

(3) *Withdrawal of Consent.* A consent may be withdrawn at any time by sending written notice to the court substantially in compliance with a form approved by the State Court Administrative Office. Upon receipt of the notice, the court shall immediately enter an ex parte order terminating the guardianship and returning the Indian child to the parent or Indian custodian except, if both parents executed a consent, both parents must withdraw their consent or the court must conduct a hearing within 21 days to determine whether to terminate the guardianship.

(C) Involuntary Guardianship of an Indian Child.

(1) *Hearing.* The court must conduct a hearing on a petition for involuntary guardianship of an Indian child in accordance with this rule before the court may enter an order appointing a guardian. Notice of the hearing must be sent to the persons prescribed in [MCR 5.125\(A\)\(8\)](#) and [\(C\)\(19\)](#) in compliance with [MCR 5.109\(1\)](#). At the hearing on the petition, the court shall determine:

(a) if the tribe has exclusive jurisdiction as defined in [MCR 3.002\(6\)](#). The court shall comply with [MCR 5.402\(E\)\(2\)](#).

(b) if the placement with the guardian meets the placement requirements in subrule (C)(2) and (3).

(c) if it is in the Indian child's best interest to appoint a guardian.

(d) if a lawyer-guardian ad litem should be appointed to represent the Indian child.

(e) whether or not each parent wants to consent to the guardianship if consents were not filed with the petition. If each parent wants to consent to the guardianship, the court shall proceed in accordance with subrule (B).

(2) *Placement.* An Indian child shall be placed in the least restrictive setting that most approximates a family and in which his or her special needs, if any, may be met. The child shall be placed within reasonable proximity to his or her home, taking into account any special needs of the child. Absent good cause to the contrary, the placement of an Indian child must be in descending order of preference with:

(a) a member of the child's extended family,

(b) a foster home licensed, approved, or specified by the child's tribe,

(c) an Indian foster family licensed or approved by the Department of Human Services,

(d) an institution for children approved by an Indian tribe or operated by an Indian organization that has a program suitable to meet the child's needs.

The standards to be applied in meeting the preference requirements above shall be the prevailing social and cultural standards of the Indian community in which the parent or extended family resides or with which the parent or extended family members maintain social and cultural ties.

(3) *Deviating from Placement.* The court may order another placement for good cause shown in accordance with [MCL 712B.23\(3\)-\(5\)](#) and [25 USC 1915\(c\)](#). If the Indian child's tribe has established a different order of preference than the order prescribed in subrule (C)(2), placement shall follow that tribe's order of preference as long as the placement is the least restrictive setting appropriate to the particular needs of the child, as provided in [MCL 712B.23\(6\)](#). Where appropriate, the preference of the Indian child or parent shall be considered.

(D) Hearing. If the petition for guardianship of a minor does not indicate that the minor is an Indian child as defined in [MCR 3.002\(12\)](#), the court must inquire if the child or either parent is a member of an Indian tribe. If the child is a member or if a parent is a member and the child is eligible for membership in the tribe, the court shall either dismiss the petition or allow the petitioner to comply with MCR 5.404(A)(1).

(E) Limited Guardianship Placement Plans and Court-Structured Plans.

(1) All limited guardianship placement plans and court-structured plans shall at least include provisions concerning all of the following:

- (a) visitation and contact with the minor by the parent or parents sufficient to maintain a parent and child relationship;
- (b) the duration of the guardianship;
- (c) financial support for the minor; and
- (d) in a limited guardianship, the reason why the parent or parents are requesting the court to appoint a limited guardian for the minor.

(2) All limited guardianship placement plans and court-structured plans may include the following:

- (a) a schedule of services to be followed by the parent or parents, child, and guardian and
- (b) any other provisions that the court deems necessary for the welfare of the child.

(3) *Modification of Placement Plan.*

- (a) The parties to a limited guardianship placement plan may file a proposed modification of the plan without filing a petition. The proposed modification shall be substantially in the form approved by the state court administrator.
- (b) The court shall examine the proposed modified plan and take further action under subrules (c) and (d) within 14 days after the filing of the proposed modified plan.
- (c) If the court approves the proposed modified plan, the court shall endorse the modified plan and notify the interested persons of its approval.

(d) If the court does not approve the modification, the court either shall set the proposed modification plan for a hearing or notify the parties of the objections of the court and that they may schedule a hearing or submit another proposed modified plan.

(F) Evidence.

(1) *Involuntary Guardianship of an Indian Child.* If a petition for guardianship involves an Indian child and the petition was not accompanied by a consent executed pursuant to [MCL 712B.13](#) and these rules, the court may remove the Indian child from a parent or Indian custodian and place that child with a guardian only upon clear and convincing evidence that:

(a) active efforts have been made to provide remedial services and rehabilitative programs designed to prevent the breakup of the Indian family,

(b) these efforts have proved unsuccessful, and

(c) continued custody of the child by the parent or Indian custodian is likely to result in serious emotional or physical damage to the child.

The evidence shall include the testimony of at least one qualified expert witness, as described in [MCL 712B.17](#), who has knowledge about the child-rearing practices of the Indian child's tribe. The active efforts must take into account the prevailing social and cultural conditions and way of life of the Indian child's tribe. If the petitioner cannot show active efforts have been made, the court shall dismiss the petition and may refer the petitioner to the Department of Human Services for child protective services or to the tribe for services.

(2) *Reports, Admission into Evidence.* At any hearing concerning a guardianship of a minor, all relevant and material evidence, including written reports, may be received by the court and may be relied on to the extent of their probative value, even though such evidence may not be admissible under the Michigan Rules of Evidence.

(3) *Written Reports, Review and Cross-Examination.* Interested persons shall be afforded an opportunity to examine and controvert written reports so received and, in the court's discretion, may be allowed to cross-examine individuals making reports when such individuals are reasonably available.

(4) *Privilege, Abrogation.* No assertion of an evidentiary privilege, other than the privilege between attorney and client, shall prevent the receipt and use of materials prepared pursuant to a court-ordered examination, interview, or course of treatment.

(G) Review of Guardianship for Minor.

(1) *Periodic Review.* The court shall conduct a review of a guardianship of a minor annually in each case where the minor is under age 6 as of the anniversary of the qualification of the guardian. The review shall be commenced within 63 days after the anniversary date of the qualification of the guardian. The court may at any time conduct a review of a guardianship as it deems necessary.

(2) *Investigation.* The court shall appoint the Department of Human Services or any other person to conduct an investigation of the guardianship of a minor. The investigator shall file a written report with the court within 28 days after such appointment. The report shall include a recommendation regarding whether the guardianship should be continued or modified and whether a hearing should be scheduled. If the report recommends modification, the report shall state the nature of the modification.

(3) *Judicial Action.* After informal review of the report, the court shall enter an order continuing the guardianship or set a date for a hearing to be held within 28 days. If a hearing is set, an attorney may be appointed to represent the minor.

(H) Termination of Guardianship.

(1) *Necessity of Order.* A guardianship may terminate without order of the court on the minor's death, adoption, marriage, or attainment of majority or in accordance with subrule (H)(6). No full, testamentary, or limited guardianship shall otherwise terminate without an order of the court.

(2) *Continuation of Guardianship.* When a court has continued a guardianship for a period not exceeding one year, the court shall hold the final hearing not less than 28 days before the expiration of the period of continuance.

(3) *Petition for Family Division of Circuit Court to Take Jurisdiction.* If the court appoints an attorney or the Department of Human Services to investigate whether to file a petition with the family division of circuit court to take jurisdiction of the minor, the attorney or Department of Human Services shall, within 21 days, report to the court that a petition has been filed or why a petition has not been filed.

(a) If a petition is not filed with the family division, the court shall take such further action as is warranted, except the guardianship may not be continued for more than one year after the hearing on the petition to terminate.

(b) If a petition is filed with the family division, the guardianship shall terminate when the family division authorizes the petition under [MCL 712A.11](#), unless the family division determines that continuation of such guardianship pending disposition is necessary for the well-being of the child.

(4) *Resignation of Limited Guardian.* A petition by a limited guardian to resign shall be treated as a petition for termination of the limited guardianship. The parents or the sole parent with the right to custody may file a petition for a new limited guardianship. If the court does not approve the new limited guardianship or if no petition is filed, the court may proceed in the manner for termination of a guardianship under section 5209 or 5219 of the Estates and Protected Individuals Code, [MCL 700.5209](#) or [MCL 700.5219](#).

(5) *Petition for Termination by a Party Other Than a Parent.* If a petition for termination is filed by other than a parent or Indian custodian, the court may proceed in the manner for termination of a guardianship under section 5209 of the Estates and Protected Individuals Code, [MCL 700.5209](#).

(6) *Voluntary Consent Guardianship.* The guardianship of an Indian child established pursuant to subrule (C) shall be terminated in accordance with subrule (B)(3).

Credits

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