



Questions and considerations for finding and engaging an attorney to terminate guardianship



- 1) Please tell me your view on whether a person with a disability has to have guardianship.

- 2) Have you ever worked on a guardianship termination case before?
 - 2a) If yes, how many?
 - 2b) How many of those did you win?
 - 2c) How many of those did you lose?
 - 2d) Why did you lose?

Considerations on whether a termination case is “won” or “lost”:

Each case is different depending on the person’s disability, his circumstances, and his guardian. It could be that the loss was a modification of guardianship or a transfer of guardianship to a guardian who is more supportive. Those situations could be a ‘win’ in their own limited way. A person could have the guardianship transferred to a more supportive guardian, and then use the intervening two years, after the denial of a termination petition, to build up his case for guardianship removal. The person would then be able to show he could live on his own: For example, arranged for his own transportation, managed his own money, found a supportive doctor (with the help of the more supportive, new guardian), etc. Then, when the two years has passed, the person could file another petition for rights restoration and the facts would be more favorable to him because his could show the court all the decisions he has been making.

- 3) Please describe the timeline and the process for guardianship termination?

- 4) Are you familiar with supported decision making as a means to show capable decision making?

- 5) In order to prepare the case, what information will you need?



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Considerations on information the attorney will require to prepare your petition:

If the attorney does not tell you to provide the below items, he/she may not be the right attorney to represent you:

- A plan to live your life without a guardian (including how you will make decisions about your health, your safety, and your finances). This is your Supported Decision Making Plan.
- Your probate court file
- What witnesses might you need? (family members, caregivers, employers, etc)
- What documents might you need? (budget, documentation about employment, pay stubs, etc)

The attorney who will best serve you will spend time talking with you and your support system, reviewing your probate court file, talking to current guardian if necessary, and thinking through items that may not have been thought through yet (Use of the tool PRACTICAL Tool (https://www.americanbar.org/groups/law_aging/resources/guardianship_law_practice/practical_tool/) may help here.) For example, if removal of guardian means a change in living arrangement, how will you choose where to live? Will it be close to public transportation? Will you live with others? etc. You want the attorney to be able to identify any 'gaps' in your plan for living your life without a guardian and help you (and your supporters) fill those gaps.

- 6) What is your strategy if my guardian opposes the termination of my guardianship?
- 7) In order to modify my guardianship is the process the same as termination?
 - 7a) What is the procedure.
 - 7b) What do I have to prove?



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Considerations for strategy for when the guardian opposes termination / or there is modified termination:

Note that modification of the guardianship could also be viewed as a 'win.' See above. Also, as another example, the person may still want a conservator to manage their money, but they want their guardian removed as to health/safety/all other decisions.

- 8) How much does it cost to ask the court to terminate my guardianship (both legal fees and court fees)?
- 9) What happens if I can't afford your fee or court fees?

After you have chosen your attorney, additional questions:

- 1) What kind of questions should I prepare for from the judge?
- 2) If my guardian opposes, how do I prepare for questions from him/her?
- 3) What other preparations should I make for Court?
- 4) If the Judge does not restore my rights, what are my options/next steps?
- 5) If I believe my rights are being violated by my guardian, what can I do?



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