

STATE OF INDIANA)	MARION CIRCUIT AND
)	SUPERIOR COURTS
)	
COUNTY OF MARION)	
)	
In Re Local Court Rules)	

Notice of Proposed Local Rule Amendments, Finding Good Cause to Deviate from the Schedule for Amending Local Court Rules, and Requesting Comments

The Judges of the Marion County Courts in compliance with the provisions of Trial Rule 81 give Notice of proposed amendments to their local court rule concerning **Probate Division Rules at LR49-PR00-401. PLEADINGS AND ORDERS, LR49-PR00 Rule 403. ATTENDANCE OF PROPOSED FIDUCIARIES, and LR49-PR00-413.**

GUARDIANSHIPS. And, pursuant to Trial Rule 81(D), the Judges find that good cause exists to deviate from the schedule established by the Division of State Court Administration for the publishing of amendments to local rules. Accordingly, the Courts issue the following proposed amendments to the Marion County Local Court Rules and ask for comment from the bar and the public. Underlining indicates proposed additions and ~~striking through~~ indicates deletions. The amended rule will be effective on **January 13, 2017.**

Comments to this proposed Local Rule amendment will be received through **Noon on January 12, 2017.** Comments to this proposed amended Local Rule should be e-mailed to the Office of the Court Administrator, c/o Emily VanOsdol, at Emily.Vanosdol@indy.gov or mailed to:

Emily VanOsdol

Office of the Court Administrator
Marion County Circuit and Superior Courts

200 East Washington St., Ste. T-
1221 Indianapolis, IN 46204

All of the above is so ORDERED this 12th day of December, 2016.

/s John M.T. Chavis, II

* Judge John M.T. Chavis, II
Presiding Judge

* Original signature on file with the Court.

LR49-PR00 Rule 401. PLEADINGS and ORDERS

401.1 Petition and Application for Appointment of Fiduciary. In addition to the requirements under [I.C. §§ 29-1-7-5](#) and [29-3-5-1](#), all Petitions for appointment of a personal representative or guardian shall set forth minimally all the provisions in [MSCPR Form 401.1](#). Additionally, if a proposed personal representative or proposed guardian (including a proposed co-fiduciary) is a non-resident of Indiana, the Petitioner shall also file an application form ([MSCPR Form 401.1-A](#) or [401.1-B](#)) for his or her appointment, containing information as to the proposed non-resident fiduciary's qualification to serve as such fiduciary. The application shall include the following information regarding the proposed fiduciary's qualifications to serve:

1. current residence address if an individual and business address if a corporate fiduciary;
2. educational background;
3. the proposed fiduciary's current employment or a statement that he or she is retired or is a homemaker or stay-at-home spouse or partner;
4. all prior experience in financial management, including investments and checkbook management;
5. a statement of the proposed fiduciary's prior felony convictions, if any;
6. a statement that the Petitioner has attained the age of majority and is not incapable of performing the required fiduciary duties by reason of physical or mental illness, impairment, or infirmity.
7. a statement providing the name, office address, attorney number, telephone number, fax number and email address of the attorney for the proposed fiduciary.
8. a statement that:
 - a. the attorney for the proposed fiduciary has been provided with the proposed fiduciary's Social Security Number and Date of Birth; and,
 - b. authorizes the attorney to release the same to the Court in the event of breach of any legal or fiduciary duty.

9. As required by [I.C. 29-1-10-1](#), if the proposed fiduciary is a nonresident individual or a corporate fiduciary, the petition must also include the following:

- a. a statement that the proposed fiduciary accepts the appointment as fiduciary;
- b. a statement providing the name, address and telephone number of the resident agent appointed by the proposed fiduciary to accept service of process, notices, and other documents in the fiduciary proceeding;
- c. a statement that the Petitioner has agreed to submit personally to the jurisdiction of the Court in any proceeding that relates to the estate of the decedent or protected person.

10. MSCPR [Form 401.1-A](#) must be completed and filed with the Court upon the filing of a Petition for appointment of a proposed personal representative or co-personal representative. ~~who is a non-resident individual.~~ No substitute form will be accepted by the Court.

11. MSCPR **Form [Form 401.1-B](#)** must be completed and filed with the Court upon the filing of a Petition for appointment of a proposed guardian or co-guardian who is a non-resident individual. No substitute form will be accepted by the Court.

401.2 Original Will or Affidavit Required. All petitions to probate a Will with administration or to Spread the Will of Record **shall be filed electronically.** ~~must be accompanied by the original Will.~~ **When the original will is offered for probate electronically then MSCPR Form 401.2, Proof of Will and Affidavit Regarding Original Will Offered for Probate Electronically, must accompany the petition. The party offering the Will shall retain or deposit with the attorney for the Personal Representative the original of the electronically filed Will until the Decedent's estate is closed and the Personal Representative is released from liability. Upon the Court's request, the original Last Will and Testament will be delivered to the Court.**

In the event that only a copy of the Will can be located, **then** the copy of the Will and **MSCPR Form 401.3 Proof of Lost Will and Affidavit,** ~~substantially in accordance with MSCPR Form 401.2,~~ must accompany the petition.

401.3 When Petitions Are Required. Parties may file motions to request relief or action by the Court where motions are permitted under a generally applicable Rule of Court (such as the Indiana Rules of Trial Procedure or the Indiana Rules of Evidence) or for purely administrative, ministerial, or scheduling matters. All other requests for relief or action by the Court shall be made by the appropriate written petition filed with the Court.

401.4 Citation to Authority. All petitions requesting relief or action by the Court should, where applicable, contain reference to the appropriate statute or rule authorizing such relief or action.

401.5 Requirement of Verification. All motions, petitions, inventories and accounts in estates or guardianships shall be notarized or verified with the statement, "I verify under the penalties for perjury that the above statements are true."

401.6 Attorney Contact Information.

A. All pleadings, motions, inventories and accounts in estates and guardianships shall contain the name, attorney number, office address, telephone number, fax number and email address of the attorney for the fiduciary.

B. All claims, motions, and pleadings filed by or on behalf of creditors or other interested persons who are not fiduciaries shall contain the name, attorney number, office address, telephone number, fax number and email address of the attorney for the creditor or other interested person.

401.7 Proposed Orders Required. A moving party shall provide proposed orders for rulings. Proposed Letters Testamentary, Letters of Administration or Letters of Guardianship shall be filed with the Petition for Appointment.

~~401.8 Self-addressed Envelopes Required. All proposed orders shall be accompanied with self-addressed, stamped envelopes for return, and, if necessary, for distribution to parties or beneficiaries, and creditors~~

LR49-PR00 Rule 403. ATTENDANCE OF PROPOSED FIDUCIARIES

~~403.1 Except as otherwise permitted under MSCPR 403.2, all~~ **The court may require that the proposed personal representatives and guardians shall appear before the Court to qualify.**

~~403.2 In extraordinary circumstances, and provided that the Petition for appointment of a non-Indiana resident as personal representative or guardian is accompanied by an application containing all the information required by paragraphs 10 or 11 of MSCPR 401.1, the Court, in its discretion, may waive the requirement in the preceding MSCPR 403.1 if the non-Indiana resident who is the proposed fiduciary is temporarily unable to appear in person when the Petition is filed, and if counsel for the Petitioner personally appears before the Court on behalf of the proposed fiduciary.~~

Marion County Probate Form 401.1-A Application for Appointment of Personal Representative *(for proposed personal representative who is a non-resident of Indiana)*

STATE OF INDIANA)
) SS: IN THE MARION SUPERIOR COURT
COUNTY OF MARION) PROBATE DIVISION
) CAUSE NO: 49D08 _____

IN THE MATTER OF THE)
UNSUPERVISED / SUPERVISED) [*choose one*]
ESTATE OF _____)

APPLICATION FOR APPOINTMENT OF PERSONAL REPRESENTATIVE

[If there are Co-Personal Representatives, then
complete one form for each personal representative]

CONTACT INFORMATION:

Name of Petitioner: _____

Address of Petitioner: _____

[Including street
number, city, zip] _____

Home Phone Number: _____

Cell Phone Number: _____

E-Mail: _____

EDUCATIONAL BACKGROUND:

Do you have a High School Education? Yes ____ No ____

If you do not have a High School

Education, do you have a GDI? Yes ____ No ____

Do you have a college education? Yes ____ No ____

If so, please list college, number of years attended, and the year you obtained a degree, and the type of degree you obtained.

Do you have a post graduate or professional degree? Yes ____ No ____

If so, please identify educational institution, the year you obtained that degree, and the degree you obtained.

EMPLOYMENT:

Name of Employer: _____

Address of Employer: _____

Length of Employment: _____

If you are not currently employed, please state whether you are retired, or a homemaker, or a surviving spouse or surviving partner of the deceased person, and please describe your most occupation or work experience before your retirement or before you stopped working outside your home.

FINANCIAL EXPERTISE:

Please list all prior experience in financial management, including investments and checkbook management:

FELONY CONVICTIONS:

Do you have any prior felony convictions Yes ____ No ____

If so, list date of conviction and type of felony.

AFFIRMATION OF PETITIONER:

As Petitioner requesting my appointment as Personal Representative of the Estate of _____, I hereby state as follows:

1. That I have attained 18 years of age and I am not incapacitated in any manner that would interfere with my administration of the decedent's estate.

2. That my attorney is _____,
with offices located at _____

That my attorney's Phone Number is: _____

That my attorney's Fax Number is: _____

That my attorney's E-Mail address is: _____

3. That I have provided my attorney with my Social Security Number and the date of my birth.

4. That I accept my appointment as fiduciary.

5. That I agree to submit personally to the Jurisdiction of this Court in any proceeding that relates to the estate of the decedent.

AFFIRMATION AND VERIFICATION:

I affirm under the Penalties of perjury that the foregoing information is true and correct. That as a condition of my appointment as fiduciary in this matter, I hereby waive the privilege associated with this information and authorize my attorney to disclose this information to the Court, upon Court order, in the event of my failure to render an account as required by law or other determination of a breach of my fiduciary duty.

Dated: This _____ day of _____, 20____.

Signature of Petitioner

MSCPR Form 401.2

STATE OF INDIANA)
) SS:
COUNTY OF MARION)

IN THE MARION SUPERIOR COURT
PROBATE DIVISION
CAUSE NO. 49D08\

IN THE MATTER OF):

THE ESTATE OF)

**PROOF OF WILL AND AFFIDAVIT REGARDING ORIGINAL WILL
OFFERED FOR PROBATE ELECTRONICALLY**

The undersigned hereby alleges and represents as follows:

- 1. Affiant concurrently is filing a petition for probate of the Last Will and Testament of the above named Decedent and for appointment as the Personal Representative of the estate**
- 2. Affiant possesses Decedent's original Last Will and Testament and the copy submitted for probate herewith is a true and accurate copy of the Will.**
- 3. Decedent gave no indication to Affiant or anyone else, to Affiant's knowledge, of any intention to revoke this Will.**
- 4. Affiant will retain or deposit with the attorney for the Personal Representative the original of the electronically filed Will until the Decedent's estate is closed and the Personal Representative is released from liability.**
- 5. Upon the Court's request, the original Last Will and Testament will be delivered to the Court.**

Further Affiant sayeth not.

I affirm under penalties of perjury that the foregoing representations are true.

Affiant

Before me, a Notary Public in and for said County and State, personally appeared _____ who acknowledged the execution of the foregoing affidavit and who, having been duly sworn, stated that any representations therein contained are true.

Witness my hand and Notarial Seal this ____ day of _____, ____.

, Notary Public

Printed

County of Residence:

My Commission Expires: _____

**MARION COUNTY PROBATE FORM 401.32. PROOF OF LOST WILL AND
AFFIDAVIT**

STATE OF INDIANA)	IN THE MARION SUPERIOR COURT	
)		SS: PROBATE DIVISION
COUNTY OF MARION)		CAUSE NO. 49D08

IN THE MATTER OF:)	CAUSE NO. 49D08 _____
)	
THE ESTATE OF)	

**PROOF OF LOST WILL AND AFFIDAVIT REGARDING
WHETHER ORIGINAL WILL DESTROYED WITH INTENT TO REVOKE**

The undersigned hereby alleges and represents as follows:

1. Affiant is acquainted with the affairs of the above-entitled Decedent.
2. While Affiant has not located Decedent's original Last Will and Testament, Affiant believes that the copy submitted for probate herewith is a true and accurate copy of Decedent's said Will as executed.
3. Decedent gave no indication to Affiant or anyone else, to Affiant's knowledge of any intention to revoke said Will.
4. Affiant believes that Decedent did not destroy said original Will with the intent to revoke.

Further Affiant sayeth not.

I affirm under penalties of perjury that the foregoing representations are true.

Affiant

LR49-PR00-413. GUARDIANSHIPS

413.1 Petitions Not Accepted. ~~No Petition for Guardianship over the person of a minor will be accepted by the Court if:~~

- ~~1. There is a current custody order in effect resulting from a dissolution decree;~~
- ~~2. There is a current custody order in effect resulting from any paternity proceeding;~~
- ~~3. There is a current custody order in effect resulting from a custody proceeding filed by a non-parent;~~
- ~~4. There are dissolution of marriage or paternity or non-parent custody proceedings currently pending; or~~
- ~~5. The child is involved in an open Child in Need of Services proceeding under IC 31-34.~~

~~With respect to any of the situations described above, Petitions for guardianship of the estate (property) of a minor will continue to be accepted.~~

413.21 Presence of Incapacitated Person. In all guardianship or protective proceedings seeking to declare an adult incapacitated, either the person alleged to be incapacitated shall be present at the hearing, or the petitioner shall present sufficient medical evidence to establish that a court appearance would result in injury to the person's health or safety. An opinion that the person would have difficulty in understanding the procedure or might say something inappropriate is not sufficient reason alone for absence.

413.32 Physician's Report. In all guardianship proceedings seeking to declare an adult incapacitated, a Physician's Report by the doctor treating the alleged incapacitated person, or such additional evidence as the Court may require, shall be presented to the Court at the time the petition is filed or on the date of the hearing. The Physician's Report shall substantially comply with MSCPR [Form 413.3](#). No determination will be made without a supporting medical report or testimony at hearing. In the event the guardianship proceeding is contested, the Physician's Report shall be considered as hearsay unless the parties stipulate to its admissibility.

413.43 Notice. Consistent with [I.C. § 29-3-3-4\(a\)](#) and [\(b\)](#), no guardian of an adult shall be appointed or protective order entered without notice to the alleged incapacitated person or to his duly appointed attorney-in-fact (if known), except upon verified allegations that delay may result in immediate and irreparable injury to the alleged incapacitated person or loss or damage to property. The petitioner shall certify to the Court in writing the efforts, if any, that have been made to give notice and the reasons supporting the petitioner's claim that advance notice should not be required.

413.54 Appointment of Guardian *Ad Litem* or Attorney. The Court may in its discretion determine that the alleged incapacitated person should have a guardian *ad litem* or attorney appointed to represent his or her interests, and the hearing for appointment of a guardian for the alleged incapacitated person may be continued by the Court for that purpose. A guardian *ad litem* will be paid reasonable compensation, considering the needs of the alleged incompetent person, the nature and relative difficulty of the services provided, local custom, the availability or limitations of resources of the alleged incompetent person's estate, and, in the discretion of the Court, any other considerations deemed relevant under the circumstances of the case.

413.65 Petition For Guardianship of A Minor. In every petition for the appointment of a guardian of the person of a minor child, in addition to the statements required by [I.C. § 29-3-5-1\(a\)](#) and MSCPR 401.1, the following information shall also be contained in the petition:

1. The present address of the child.
2. The places where the child has resided during the past two years, and the names and present addresses of the persons with whom the child has lived during that period. If such information is not available, the petition should state the reason for such unavailability.
3. Whether, to petitioner's knowledge, any other litigation is pending in this state or in any other state concerning the custody of the child.
4. Whether, to petitioner's knowledge, any person not a party to the guardianship proceeding has physical custody of the child or claims to have custody or visitation rights with respect to the child.

The Court may, in its discretion, initiate such further investigation, and obtain a report by the Indiana Department of Child Services, pursuant to [I.C. § 29-3-9-11](#).

413.76 Hearings. Hearing shall be held by the Court on any petition seeking guardianship over an adult alleged to be an incapacitated person. The court reserves the right to require and to hold a hearing on any petition seeking a guardianship over a child's person or property, but the Court may waive the necessity for a hearing based on all the material facts and circumstances, including but not limited to a showing that all interested persons entitled to notice under [I.C. § 29-3-6-1](#) have given written waivers notice of a hearing or the necessity for a hearing.

413.87 Restricted Accounts.

1. In guardianships over the estate of a minor, unless otherwise authorized by the Court, funds shall be placed in a restricted account designating that no principal or interest may be withdrawn without written order of the Court.

2. Prior to the issuance of letters in a guardianship over a minor's estate or the compromise of a minor's claim, the guardian and attorney shall execute the Court's attorney's undertaking making the attorney personally responsible for the deposit of the funds in a restricted account. The attorney's undertaking in a guardianship shall be substantially in accordance with the form of [MSCPR Form 409.4](#). With respect to compromise of a minor's claim, *see* MSCPR 418.6 and [MSCPR Form 418.6\(A\)](#).

3. Within thirty (30) days after the Order authorizing the creation of the account, a certification by a financial institution that a properly restricted account has been created in accordance with this MSCPR 413.8 shall be filed. The certification shall be substantially in accordance with the form of [MSCPR Form 409.5](#).

4. The guardian and the financial institution shall both promptly notify the Court in writing in the event that any principal or interest is withdrawn from the account without Court authorization.

413.98 Power of Attorney. An appointment of a guardian over an estate shall not operate to terminate a power of attorney, unless the power of attorney instrument provides for termination upon the incapacity of the principal. A guardian shall not have power over property or health decisions that are subject to a valid power of attorney, and cannot revoke or amend a power of attorney on behalf of a principal. A guardian seeking to revoke a valid power of attorney must obtain Court approval which can be granted only after hearing and notice to the attorney in fact.

413.109 Rules of the Veteran's Administration. Nothing contained in these rules shall amend or supersede the Probate Rules and Regulations promulgated by the Veteran's Administration of the United States, and every guardian appointed by the Court or the attorney for such guardian shall comply with those Rules and Regulations, if applicable.