



Instructions Guardianship

Prepared by Equal Justice Wyoming

INSTRUCTIONS FOR APPOINTMENT OF A GUARDIAN – MINOR

These standard instructions are for informational purposes only and are not meant to be legal advice about your specific case. If you choose to represent yourself, you must follow the same procedures and rules as an attorney.

GENERAL INFORMATION

1. Usually, you must file a guardianship case in the District Court in the county where the child lives. BUT, if there is already a child custody case with orders affecting the child in another county, you **MUST** file the guardianship petition in that same county and court where the custody orders exist. That way, there will not be two different courts issuing custody orders about the minor that could conflict with each other. You can find a directory of the District Courts here:
<http://www.courts.state.wy.us/DistrictCourtDirectory.aspx>
2. Any person may file the case. NOTE: If you are the biological or adoptive parent of the minor child, these forms are not for you. If you are responding to a guardianship petition, there is a separate packet available. If you want to terminate (end) a guardianship, you would need to file a Motion to Terminate Guardianship. If you are seeking custody and visitation from the other biological or adoptive parent, you would need to file a Petition to Establish Custody or Paternity.
3. If the Minor has a large amount of income or assets, such as real estate or stocks, you may also need to file for conservatorship in order to manage the money or assets.
4. The Court may appoint a Guardian for a child if the Court finds the appointment would be in the best interests of the child. If there is a living parent (or parents) and he or she still has parental rights but has not agreed (consented) to the guardianship, then you must also prove to the Court that the parent is unwilling or unable to care for his or her child (not just that you are a better caregiver). You must be prepared to testify and give enough evidence to convince the judge that what you are saying is true.
5. Make sure to read any answers to **Frequently Asked Questions on Guardianship**. They will help you to better understand the Guardianship process.
6. For additional information, please review Wyoming Statutes 3-1-101 through 3-2-303.

COMMON TERMS

1. The Petitioner is the person who filed the Petition for Guardianship (if you are filing the petition to be appointed Guardian, then you are the Petitioner).
2. The Respondent or "Interested Party" is the person answering the petition. This may be a parent, or current guardian, or another person such as a relative or caregiver who does not want you to be the guardian.
3. "Guardian" means a person who has been appointed by the court to exercise the powers granted by the court. The term includes a plenary (full), limited, emergency and standby guardian, but does not include a guardian ad litem (see below for more information on Guardian Ad Litem);
4. "Ward" means an individual for whom a guardian or conservator has been appointed by the court. In this case, it will be the Minor child or children;
5. "Minor" means a child under the age of 18 that has not been emancipated.
6. "Order" means the official decree signed by the judge. If you are granted Guardianship of a minor child, you will want to keep this document handy at all times, to prove that you are the legal guardian.
7. "Letters" means formal notice identifying your authority as Guardian. You will need this proof to enroll the child in school, apply for public benefits, add him or her to your insurance, get medical care, and other legal situations.

FEES

A filing fee of \$70.00-100.00 is required. Call the local district court clerk in your county for the exact amount. If you feel you are unable to pay, you must complete the Affidavit of Indigency and Request for Waiver of Filing Fees and all Fees Associated Therewith. You can get a copy of this form from the district court clerk's office. This form can also be found on the Supreme Court website, <http://www.courts.state.wy.us>, in "Miscellaneous Forms" (Packet 10) on the Family Law Pro Se Forms page under the Self Help Center.

FORMS

Read these instructions carefully to determine what forms you may need. You may not need all of the listed forms. **Check with the District Court** where you plan to file your case to determine if they have any special requirements. You can find a directory of the District Courts here: <http://www.courts.state.wy.us/DistrictCourtDirectory.aspx>

STEPS TO FILING YOUR CASE

Step 1: Complete the Forms.

Before you file, make sure that you make copies of all the forms listed. NOTE: You can only use the forms for more than one child if the children have the SAME mother and father. If they have different parents, you MUST file separate forms.

- **Civil Cover Sheet**

- ✓ For part I, fill in the petitioner's name address and names of minor children just like caption on the other forms. You will receive the docket number when you file.
- ✓ For part II, you should check the box for "Guardianship" listed under "Probate."
- ✓ For part III, list any related cases.
- ✓ For part IV, you may leave the "Amount in Controversy" blank.

- **Petition for Appointment of Guardian**

- ✓ The Petitioner must complete all applicable sections on the form.
- ✓ If the child's father is not known (no name appears on the birth certificate), then a copy of the birth certificate of the child should be attached to the Petition. If the parental rights have been terminated or the parents are deceased, copies of the termination papers or the death certificates should be attached to the petition.

- **Summons and Return**

- ✓ This completed form will need to be served upon any parent of the minor child who is living and whose rights have not been terminated. If the child or children are not residing with a parent, then you must also serve any current guardian of the child.
- ✓ You must provide a file-stamped copy of the Petition to each person served. See below in the FAQ section for more information on "service".

- **Parental Consent**

- ✓ The Minor's parent(s) or legal guardian can consent to the appointment by completing this form.
- ✓ If the parent or legal guardian signs this form, it must be signed **in the presence of a Court Clerk or Notary Public.**

- **Consent or Nomination of Minor**

- ✓ A Minor over the age of 14 can consent to the appointment or nominate a guardian by using this form. The Minor's wishes may be considered in the appointment of a guardian.
- ✓ If the Minor signs this form, it must be signed **in the presence of a Court Clerk or Notary Public.**

Step 2: You are Ready to File your Papers with the Court.

Provide the Court with the documents completed as described in Step 1 above and pay the filing fee. You will need to make copies of the documents for each of the following persons (Interested Persons) and give them notice of the filing (see below for how to serve):

- a. Any person who has the primary care and custody of the Minor.
- b. Each living parent of the Minor or, if there is none, the adult nearest in kinship that can be found.
- c. Any appointee of a parent whose appointment has not been terminated.
- d. Any Guardian or Conservator currently acting for the Minor in this state or elsewhere.

Step 3: Notice to Parents and Other Interested Persons, if any.

If you know where the parents or other interested persons (above) are located, you will need to serve them by having a sheriff or process server hand deliver the documents to them. See below in the FAQ section for more information on service. In addition to copies of the above forms, you will also need to prepare this form:

- **Return (second page of the Summons)**

- ✓ This document must be filled out by the sheriff or process server that serves the Petition upon the parents and/or other interested persons. It must be notarized or signed by the clerk of court and filed with the clerk of court after service is completed.

OR

You can avoid paying for personal service if the parent(s) and/or other interested persons agree to the service. Each person who agrees must complete the following form:

- **Acknowledgment and Acceptance of Service**

- ✓ This form may be signed by the minor child's parent or other interested person who is required to receive notice of the filing of the petition. If the respondent parent or other person agrees, you will not need to have the summons and petition formally served on him or her. See the FAQ section below for more information on "service".
- ✓ You must still provide file-stamped copies of the *Summons* and *Petition* to the parent or other person even if they accept service with this form.
- ✓ If the parent or other interested person signs this form, it must be signed **in the presence of a Court Clerk or Notary Public.**

OR

If you do not have a current address for the parents or other interested persons, or if their identity is not known and cannot be found with reasonable efforts (diligence), you must publish the notice of the petition in the newspaper. You will have to prove to the court that you tried to locate the person. You should look in the phone book, search the internet and Facebook, contact prior employers, family, friends, etc. to locate a current address. You will need these forms:

- **Motion and Affidavit for Service by Publication**

- ✓ If you do not know how to locate the parents or other interested person, you will need to complete this form and the next two forms.
- ✓ You must detail the efforts you made to obtain an address.

- **Order for Service by Publication**

- ✓ Fill out the top part of this form. The Judge will sign and date the order.

- **Notice of Publication**

- ✓ Complete this form and have it published for four (4) consecutive weeks in a newspaper of general circulation in the county where the hearing is to be held.
- ✓ Do not sign where the Clerk needs to sign.

- **Affidavit Following Service by Publication**

- ✓ You will complete this form after you have published the notice in the newspaper for four (4) consecutive weeks, and obtained the **Affidavit of Publisher** from the newspaper.

Step 4: Wait for the Response Time to Expire.

Once the parent(s) and/or other interested persons have been properly served, you must wait for the response time to expire. If the other party was personally served or acknowledged service, he or she has **20 days to respond, or 30 days if served out of state**. If the other party was served by publication, he or she has **30 days after the last day of publication** to respond. Once the time to file a Response has expired, you can move forward with your case.

Step 5: Default.

If the parent(s) or other interested persons were served, but did not sign a notarized consent or did not respond to the petition, then you will want to have the Clerk enter a default into the case record before the hearing. You should prepare and file these forms with the Clerk of Court:

- **Affidavit for Entry of Default**

- ✓ This form must be signed by the Petitioner **in the presence of a Court Clerk or Notary Public.**

- **Application for Entry of Default**

- ✓ Make sure you give the correct date when the person was served or signed the affidavit acknowledging service.

- **Entry of Default**

- ✓ If you know the respondent's address, you must give it to the clerk, along with a pre-addressed, stamped envelope.

Step 6: If you think you might need a Guardian Ad Litem

If you want a Guardian Ad Litem to be appointed, fill out the *Motion to Appoint Guardian Ad Litem*. If the guardianship may be contested by the minor child's parents or other legal caregivers, then you may want to request that the court appoint a Guardian Ad Litem. Sometimes, the judge will appoint a Guardian Ad Litem, even if no one else requests one.

The Guardian Ad Litem doesn't represent you, but, instead, helps to figure out what is best for the child or children.

IMPORTANT: Be aware that if you request a Guardian Ad Litem, you will very likely be required to **pay** his or her fees.

- **Motion to Appoint Guardian Ad Litem**
- **Order Appointing Guardian Ad Litem**
 - ✓ If you file a Motion to Appoint a Guardian Ad Litem (above), you must file this proposed order with your Motion. You only need to fill out the top portion of this order. Leave the date and signature for the Judge to sign.

Step 7: Ask for a Hearing Date

Most guardianship cases will require a hearing, even if both parents or other interested persons agree (consent) and no one files a response or objection. The Clerk or Judge's office will tell you if a hearing is required. **DO NOT ASSUME THAT THE HEARING WILL BE SCHEDULED AUTOMATICALLY.** Once the response time has expired (see above), you will have to formally request a hearing date from the Court.

Your court may have forms to request a hearing date, or you can fill out these forms to request a hearing date:

- **Request to Set Hearing**
- **Order Setting Hearing**
 - ✓ The court clerk or judicial assistant will fill in the date, time and courtroom/Judge for the hearing.
 - ✓ You must send a copy of the Order Setting Hearing to all interested parties who consent or respond, Guardian ad Litem, or anyone else required by the Judge. You will need to provide a pre-addressed, stamped envelope for you and everyone else that must receive a notice of the hearing.
 - ✓ You will probably need to send the Order Setting Hearing to:
 - Any parents or legal guardians who consented to the petition (although they do not need to attend the hearing);

- Any other interested persons who responded to the petition and do not have an entry of default against them (See above);
- Any Guardian ad Litem assigned to the case; and
- Any other person required by the Judge or Court.

NOTE: Individual courts have different policies on scheduling, so it is important to contact the court where your case is filed to determine when and how to schedule your appearance in front of the Judge.

Step 8: Before the Hearing.

Pretrial Disclosures. If someone responded to the Petition and is objecting to the guardianship, you will need to prepare your evidence in advance. See below for more information about the evidence you should present at the hearing. Prior to the hearing, the Judge may order that you send a list of your witnesses and other evidence to the Court and other parties to the case a certain number of days before the hearing or by a specific date. If you do not follow these instructions, the judge may not allow you to use your witnesses or other evidence. You can use this form to prepare your evidence lists for the other parties:

- **Pretrial disclosures**

Step 9: Prepare for the Hearing.

Regardless of whether anyone objects or not, you will need to complete these forms to bring to the hearing:

- **Proposed Order and Visitation Order**
 - ✓ The Judge will fill out and sign these forms, or you may be asked to fill out the Orders after the hearing. Complete only the top portion (case name and number) of these forms before the hearing.
 - ✓ Bring them to the court hearing and present them to the judge or clerk when he or she requests it.
- **Oath of Guardian**
 - ✓ **Do not sign the Oath of Guardian** until the day of the hearing. Fill out the top portion only. After the hearing, you will take it over to the court clerk, and sign it in her/his presence.

- **Letters of Guardianship**

- ✓ Fill out the top portion. This form will be signed by the court clerk, and indicates when the guardianship expires, and is proof that you are the legal guardian of the minor child.
- ✓ If you are filing for more than one child, prepare one for each child.

You will also want to prepare your evidence. See below for information about the evidence you should bring to your hearing.

Step 10: The Hearing

The Petitioner must appear at the hearing and should be prepared to present evidence as to why the Guardianship is in the child's best interest, even if no one has objected to the guardianship.

- a. Be prepared to take notes.
- b. Be prepared to present evidence showing that the parents are aware of the proceedings and that they agree to the Guardianship.
- c. If the Petitioner cannot prove that the parents agree to the Guardianship, then he/she must be prepared to present evidence showing that the parents are either unwilling or unable to take care of the child or that their parental rights have been terminated.
- d. You must prove to the court that the natural parents are unfit. You cannot merely demonstrate that you are the better person to care for the child. Be prepared to offer exhibits such as medical records, social services records, and testimony of witnesses such as friends, family, or medical professionals, educators and babysitters.
- e. If the Court appoints a Guardian, the Court will issue Letters of Guardianship as a formal notice of the appointment and provide you with a copy of the Order Appointing Guardian. The Judge may ask you to complete the Letters and Order forms and other documents. Make sure that you listen carefully and write down exactly what the Judge says when the Judge makes his or her decision.

Step 11: After the Hearing

1. A copy of the Order must be sent to interested persons. You will need to provide the clerk with pre-addressed, stamped envelopes for yourself and every interested person that must receive a copy of the Order. This list includes:

- a. Any parents or guardians who consented to the petition (even if they did not attend the hearing);
- b. Any parents, guardians or other interested persons who received notice of the Petition and do not have an Entry of Default against them (See above);
- c. Any Guardian ad Litem assigned to the case; and
- d. Any other person required by the Judge or Court.

You may have to provide or pay for copies of the final Order sent to these additional parties.

2. You may need certified copies of the Letters and Order. The number needed will vary, depending on your circumstances. The Clerk can make certified copies for you as needed (there will be a fee for extra certified copies).

Step 12: Reporting Requirements after the Court Appoints a Guardian.

Forms:

- **Guardian's Report**

- ✓ You will be required to file the reports:

- Within six months of your appointment as guardian;
- Every six months following the initial report;
- Within thirty days of your removal or resignation from, or the termination of, the guardianship; and/or
- At other times as the court may order.

- ✓ The Guardian's Report must be provided to the persons listed in the Order of Appointment within **ten (10) days** of filing the report with the court.

If the Court or Judge has a form they want you to use, then you should use that one.

The purpose of the six-month report is to inform the Court and other interested persons such as the parents about the well-being of the Minor. The Guardian's Report must describe the physical condition, including level of disability or functional incapacity, principal residence, treatment, care and activities of the Minor, as well as providing a description of those actions the Guardian has taken on behalf of the Minor.

If you do not file a report, the Judge will enter an order for you to show cause why you, the guardian, should not be held in contempt. The Judge could also terminate (cancel) your guardianship of the child/children.

FAQ:

1. What is “Service” in a Guardianship?

When you are involved in a court case, you are responsible for delivery (service) of copies of important papers you file with the court to other people involved in the case (like the Minor’s parents or current legal guardian, for example). Depending on the circumstances, the papers must be served by personal delivery (called personal service), or if the person agrees, they can waive personal delivery with a notarized statement. In limited circumstances, you may be allowed to serve by publishing a notice in a newspaper or by registered mail. Service lets these persons know that you are asking the court to appoint a guardian for the child named in the Petition; the person you want the court to appoint as guardian; and the date and time when they must respond to your request.

2. How to Serve the Respondent. Choose **ONLY ONE** of the following options to serve each Respondent:

Option 1– Service by Sheriff

Summons. It is recommended to have a Sheriff in the county where the Respondent can be found serve him or her with the papers. There will be a separate **service fee** (usually fifty (\$50.00) dollars in Wyoming). You can contact the Sheriff’s department in the county where the Respondent lives to determine the fee charged by the Sheriff. This is also true if the Respondent is going to be served in a different state. **You will need to provide the Sheriff with a file-stamped copy of the *Summons* and *Petition* to be served on the Respondent.**

Proof of Service. The Sheriff’s office will complete the last page of the *Summons* called the “***Return***” (or they may have their own form - an “***Affidavit of Service***”) and will usually file the original with the Clerk’s office and send you a copy. If you receive what looks like the original “***Return***” or “***Affidavit of Service***” from the Sheriff, call the Clerk’s office to make sure the original has been filed. If it has not, then file the original with the Clerk’s office and keep a copy for yourself. This is the proof that the Respondent was given proper notice.

Note: Once the Respondent has been served, you **MUST** file the original *Summons* and the original *Return* (or *Affidavit of Service*) with the Clerk’s office so that the Judge knows that proper service was made.

Option 2 – Acknowledgement and Acceptance of Service.

If the Respondent agrees, he or she may sign a form stating that a copy of the *Summons* and *Petition* were received. If the Respondent agrees, you will need to fill out an *Acknowledgement and Acceptance of Service* form. The Respondent must sign this document in front of a Notarial Officer (Notary or Court Clerk).

Proof of Service. Once the *Acknowledgement and Acceptance of Service* form is signed, take the original and two (2) copies of the signed form to the Clerk's office for filing. You should keep one copy for your records and provide the other copy to the Respondent.

Note: You must file the signed *Acknowledgment and Acceptance of Service* form and the original *Summons* with the Clerk's office so that the Judge knows that proper service on the Respondent was made.

Option 3 –Service by publication if you cannot find a Respondent.

If you were unable to serve the Respondent either by the Sheriff or by obtaining an *Acknowledgement or Acceptance of Service*, then you may make a request to serve the Respondent by Publication.

There are additional fees for service by publication and it will take more time. If you are unsure whether or not you are allowed to serve the Respondent by publication, you need to consult with a lawyer. However, if can demonstrate that you have made every effort to find the respondent's address, completely fill out an *Affidavit to Allow Service by Publication* and *Notice of Publication*.

After the Clerk signs and files the *Notice of Publication*, it is your responsibility to contact the appropriate newspaper and to arrange for the publication and pay the appropriate fees. An appropriate newspaper is one that has been regularly issued at least once each week for a period of fifty-two (52) consecutive weeks prior to the date of the first publication of notice or advertisements. It must have a paid circulation of at least five hundred (500) and each page must not be less than ten (10) inches by twelve and one-half inches in size. The newspaper must publish the notice once a week for four (4) consecutive weeks.

Proof of Service. The other party will have thirty (30) days after the **last** date of publication to file a written response to your petition. After the thirty (30)-day waiting period, fill out, sign and notarize the *Affidavit Following Service by Publication*. You must also attach the *Affidavit of Publisher*, which is a form the newspaper will prepare and send to you after it completes the publishing.

Note: You must file the *Affidavit Following Service by Publication* and the *Affidavit of Publisher* with the Court, so that the Judge knows that proper service on the Respondent was made.

3. Who can serve?

Ask a private process server, or a representative of the county sheriff's civil division, to personally serve copies of the forms to the persons named above. The forms cannot be sent by mail. You will have to pay this person for his or her services. The Clerk of Court in the county where you need to make service may have a list of local process servers.

4. What if I cannot locate one or both of the minor child's parents or he or she is avoiding service of process?

You will have to publish notice of the hearing in the newspaper in the county where you have filed the petition. See information above for forms and instructions on service by publication.

5. What if one or both of the minor child's parents do not agree with me being the guardian?

If the parents do not agree, then the court will most likely schedule a court hearing, where you will present your evidence as to why you should be appointed the guardian of the minor child. At the hearing, the child's parent(s) will be given a chance to show the judge why a guardianship is not necessary. If a hearing is scheduled, you should consult with an attorney.

6. What if both of the child's parents give their consent to me to be the guardian?

If the parents give consent, and they sign the Parental Consent in front of a Notary Public, then you may not need a hearing. However, some Judges may still require a hearing.

7. What if I am granted guardianship (temporary or permanent), and then the child's parent or parents change their mind and want the child back?

The parent or parents usually have the right to ask for the child back at any time, unless their parental rights have been terminated. However, you have legal custody of the child until the guardianship end date (usually when the child turns 18 for a permanent guardianship) or until the Court says otherwise. **If the term for the guardianship has not ended**, the parents will have to file paperwork to ask the court to set aside the guardianship. When that happens, you will need to file a response and the court will set a hearing on the matter. Be sure that the court always has your current address and phone

numbers at all times, and read all mail you may get from the court, and follow any instructions carefully and on time.