

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: <https://www.courts.state.wy.us/district-courts/district-court-locations/>
2. Any person may file the case. NOTE: If you are the biological or adoptive parent (legal 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 the child's biological parent and 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. The person requesting the guardianship must be prepared to testify and give enough evidence to prove that the parents are unfit, not just that the person asking to be guardian would be a better caregiver, and that the guardianship is in the child's best interest.
5. You can read **Frequently Asked Questions** on pages 11-14, or access **Common Questions about Guardianship for a Minor** at <http://www.legalhelpwy.org/index.php/get-legal-help/self-help-2/family-law/guardianships/guardianship-of-a-minor-child/common-questions/> . These may 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 Appointment of Guardian of a Minor (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.
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. A “Legal Parent” is a person who has established a parent-child relationship with the child. A legal parent-child relationship can be established through biological relationship or through an adoption or paternity order issued by a court. A woman who gives birth to a child is the child’s legal mother, unless her parental rights have been terminated by court order, such as through an order of termination or adoption by another person. A man who is married to a woman at the time of the child’s birth will usually be presumed to be the legal father of a child and will be included on the birth certificate. A man who is the biological father of a child, but who is not married to the mother of the child at the time of birth, can sign an acknowledgement of paternity to establish a legal parent-child relationship or there may be a paternity order from a court establishing the parent-child relationship. Any legal parents for the child must be served with the Petition for Appointment of Guardian of a Minor.
7. “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.
8. “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 and the Order from the District Court Clerk’s office. This form can also be found on the Supreme Court’s website, <https://www.courts.state.wy.us/legal-assistances-and-forms/court-self-help-forms/>, Family Law Forms, Packet 18 (Miscellaneous Forms for Guardianship Actions).

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:

<https://www.courts.state.wy.us/district-courts/district-court-locations/> .

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 legal parents. 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 the 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 of a Minor**

- ✓ 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 or custodian of the child.

- ✓ Some courts may require you to also serve the child with the guardianship documents. You may ask the local District Court Clerk in your county if you need to serve the child.
- ✓ You must provide a file-stamped copy of the Petition to each person served. See below in the **Frequently Asked Questions** section for more information on “service.”
- **Parental Consent to Appointment of a Guardian**
 - ✓ The Minor’s parent(s) or legal guardian can consent (agree) 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 Notarial Officer (Notary Public).**
- **Consent to Guardianship or Nomination of a Guardian by a 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 Notarial Officer (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 have them served. Service is required for the *Petition for Appointment of Guardian*

of a Minor and Summons so the Court has proof that the other party received the papers. Personal service of the *Petition for Appointment of Guardian of a Minor* and the *Summons* are required to be made on the Respondent by a Sheriff, unless the Respondent completes an *Acknowledgment and Acceptance of Service* form. Other forms of service exist, but these are the two easiest methods that meet the formal service requirement for a Guardianship. If you cannot serve the Respondent by either of these methods, you may request alternative methods of service, such as service by publication, in limited circumstances.

You MUST give the Respondent official notice that you have filed the *Petition for Appointment of Guardian of a Minor* **within 90 days** from the date you filed the *Petition*. This is done by serving a file-stamped copy of the *Summons* and *Petition for Appointment of Guardian of a Minor* upon the opposing parties or by having them sign an *Acknowledgment and Acceptance of Service* form stating that copies of those documents were received. If you do not serve the Respondents within 90 days, your case can be dismissed by the Court.

See below in the **Frequently Asked Questions** 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 District Court Clerk and filed with the District Court Clerk 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 **Frequently Asked Questions** 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 Notarial Officer (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 to Allow Service by Publication (Form available in Packet 18)**
 - ✓ 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 will need to fully complete these forms, except for the Clerk's signature.
 - ✓ You must detail the efforts you made to obtain an address.
- **Order for Service by Publication (Form available in Packet 18)**
 - ✓ Fill out the top part of this form. The Judge will sign and date the order.
- **Notice of Publication (Form available in Packet 18)**
 - ✓ 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. **The Clerk must sign the Notice of Publication BEFORE you take it to the newspaper.**
- **Affidavit Following Service by Publication (Form available in Packet 18)**
 - ✓ 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 Answer Period to Expire.

Once the parent(s) and/or other interested persons have been properly served, you must wait for the answer period 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 an Answer 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. An entry of default does not guarantee that the court will approve the guardianship. You are not required to enter a default if the Respondent doesn't file an answer and you may skip this step and request a hearing. If you want to have a default entered against the Respondent, you should prepare and file these forms with the District Court Clerk:

- **Affidavit in Support of Default**
 - ✓ This form must be signed by the Petitioner **in the presence of a Court Clerk or Notarial Officer (Notary Public).**
- **Motion 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: 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 an answer or objection. File a Request to Set Hearing. The Judge's office will tell you if a hearing is required. **DO NOT ASSUME THAT THE HEARING WILL BE SCHEDULED AUTOMATICALLY.** Once the answer period 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 for Setting**
- **Order Setting Hearing**
 - ✓ The District 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 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 7: 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 form**

- ✓ Fill in the information at the top of the first page. The names, case number and court information should match the information on the Petition for Appointment of Guardian of a Minor.
- ✓ Enter the names and contact information for any witnesses in the first table on page 4.
- ✓ For each witness, check whether you expect to use them or if you will only use them if necessary.
- ✓ In the second table, enter a name for each piece of evidence (“Document or Exhibit”) you might want to show the court. Example: “Exhibit A: Ward’s Medical Records.”
- ✓ Enter a short description (“Summary of Evidence”) for each piece of evidence. Example: “These medical records describe the child’s special care needs.”

- ✓ For each piece of evidence, check whether you expect to use it or if you will only use it if necessary.
 - ✓ Sign the Pretrial Disclosures form.
 - ✓ Complete the Certificate of Service section on the same day you file the document.
1. Make at least two copies of the completed form (one for yourself and one for the Respondent). Hand deliver, fax, or use first class mail to send a copy of the Pretrial Disclosures form to the Respondent. If the Respondent has a lawyer, you would send the form to his or her lawyer instead.

Step 8: Prepare for the Hearing.

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

- **Order Appointing Guardian for Minor(s) 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 District Court Clerk, and sign it in her/his presence.
- **Letters of Guardianship**
 - ✓ Fill out the top portion. This form will be signed by the District 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 9: 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 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 will provide you with a copy of the Order Appointing Guardian for Minor(s). 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 10: After the Hearing

1. The District Court Clerk is required to send a copy of the Order to all parties and interested persons in the case. This 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 District Court Clerk can make certified copies for you as needed (there will be a fee for extra certified copies).

Step 11: 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.

FREQUENTLY ASKED QUESTIONS:

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 District Court 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 District Court 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 Court Clerk or Notarial Officer (Notary Public).

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 District Court 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 District Court Clerk's office so that the Judge knows that proper service was made on the Respondent.

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. **(Forms available in Packet 18)**

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 you can demonstrate that you have made every effort to find the respondent's address, completely fill out a *Motion and Affidavit to Allow Service by Publication* and *Notice of Publication*.

After the District Court 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 answer 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 was made on the Respondent.

3. Who can serve?

If you are a party in the case, you cannot personally serve the Petition. Any person over the age of 18 who is NOT a party to the case may personally serve documents, but it is usually easiest to 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 District

Court Clerk 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. The person asking for the guardianship, the Petitioner, has the burden of proof and must prove that the parents are unfit and that the guardianship is in the child's best interest. 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 **Court Clerk or Notarial Officer (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 an answer 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.