

# Standby Guardianship

# TABLE OF CONTENTS

<u>SECTION</u>	<u>PAGE NUMBER</u>
<b>Introduction</b>	
When To Use The Packet.....	1
How To Use The Packet.....	2
Tips and Reminders.....	2
Who is Petitioner and Respondent.....	2
Legal Advice.....	3
Organizing Court Papers.....	5
Answers to Frequently Asked Questions about Standby Guardianship... 6	
The Standby Guardianship Process.....	10
<b>Section 1: Starting the Standby Guardianship Process</b>	
Starting the Process.....	11
Petition for Standby Guardianship .....	11
Custody Separate Statement.....	15
Information Sheet.....	15
Optional Forms	
Affidavit that a Party’s Address is Unknown.....	16
Waiver of Rights under the Servicemember’s Civil Relief Act.....	16
Affidavit of Consent of Parent to Standby Guardianship.....	17
Affidavit of Consent of Child 14 Years of Age or Older.....	18
Where to File.....	18
Filing Fee.....	19
Service of Process.....	19
Publication.....	21
The Answer.....	21
Sample Forms	
Petition for Standby Guardianship .....	22
Custody Separate Statement.....	26

Information Sheet.....	29
Affidavit that a Party’s Address is Unknown.....	31
Waiver of Rights under the Servicemember’s Civil Relief Act.....	32
Affidavit of Consent of Parent to Standby Guardianship.....	33
<b>Section 2: The Court’s Decision</b>	
Scheduling the Hearing.....	34
Motion for Continuance.....	34
Affidavit of Non-Military Service.....	35
Sample Forms	
Motion for Continuance.....	37
Affidavit of Non-Military Service.....	38
<b>Section 3: Assumption of Duties as Standby Guardian</b>	
Triggering Event.....	39
Petition for Confirmation of Standby Guardian.....	39
Alternate Standby Guardian.....	40
Declining Appointment.....	40
Sample Forms	
Petition for Confirmation of Standby Guardian.....	41
<b>Section 4: Changing and Ending Standby Guardianship</b>	
Events causing standby guardianship to end.....	42
<b>Appendix A: Commonly Used Terms in Standby Guardianship.....</b>	<b>43</b>

# STANDBY GUARDIANSHIP PACKET

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Use the **Standby Guardianship Packet ONLY** if you are one of the following persons:

- ❑ You are a parent, custodian or guardian of a child (if a custodian or guardian, you must have a current Court Order naming you as the custodian or guardian); **AND**
- ❑ You are at least 18 years old; **AND**
- ❑ You want to appoint a standby guardian for your child(ren). An appointed standby guardian is a person who assumes the powers and duties of guardianship of a child upon the death or determination of incapacity or debilitation of the parent, custodian or guardian; **AND**
- ❑ The child is **younger than 18 years of age**. (Family Court can only grant standby guardianship of a minor; **AND**
- ❑ The child has been living in Delaware for **AT LEAST 6 CONSECUTIVE MONTHS BEFORE** filing your Petition for Standby Guardianship. (There are exceptions to this 6 month requirement. If the child has not lived in Delaware for at least 6 months talk to an attorney to see if an exception applies to your situation).

To make this Instruction Packet easier to read, it will explain standby guardianship as if you wanted to file for standby guardianship of one child. If you would like to appoint a standby guardian for more than one child and all of the children have the same mother **AND** the same father, you may file standby guardianship for all of the children on the same petition. Please note that if any of the children of whom you are seeking standby guardianship have different fathers or mothers, you must file for Standby Guardianship on separate petitions. For example, if two of the children have one father and one of the children has a different father, you would be required to file two petitions, one for each father.

## HOW TO USE THE PACKET

This packet contains general information about **Standby Guardianship**, basic instructions on how to complete the Court forms you must file, and samples of the completed Court forms.

**ONLY FILE THE FORMS INCLUDED IN THE FORMS PACKET.** The forms in this **Instruction Packet** are just samples to help you understand how to fill out the real forms in the **FORMS PACKET**. Read the instructions and sample forms carefully before completing each form you must file. When you complete a form, write in blue or black ink **AND** write neatly.

Please look for the shaded written instructions and the following symbols throughout the packet. They will help guide you.



**THIS DOCUMENT MUST BE FILED**



**FILL IN THE BLANKS OR WRITE INFORMATION HERE**



**YOU DO NOT HAVE TO TAKE THESE STEPS NOW**



**READ THIS SECTION CAREFULLY**

## TIPS AND REMINDERS ...

- ✓ Remember who the Petitioner is and who is the Respondent.
  - The **PETITIONER** is the person who files the Petition.
  - The **RESPONDENT** is the person replying (responding) to the Petition.
  
- ✓ Remember that just because you fill out the forms correctly does not necessarily mean the Court will give you (grant) what you want. It is up to you at the court hearing to prove why the Court should give you what you want.
  
- ✓ Representing yourself may take a lot of time, may be difficult and may be confusing. The Court will expect you to follow the same rules that attorneys must follow. **If at any point throughout the Court process you are not sure about representing yourself, you should talk to an attorney.**
  
- ✓ Please remember that **COURT STAFF CANNOT GIVE YOU LEGAL ADVICE**. Should you have a question about what options you have or what you should do, you should talk to an attorney. Just because you talk to an attorney does not necessarily mean that you must hire that attorney to represent you. Ask the attorney if he/she is willing to meet with you and answer your questions without having to hire that attorney for full representation. Before you meet with the attorney, ask what fees may be involved for such limited services.
  
- ✓ If you would like assistance in finding an attorney, you can call the **Lawyer Referral Service** in New Castle County, 302-478-8850, and in

Kent and Sussex Counties, 1-888-225-0582. (You may call the same telephone numbers and ask for the **Legal Help Link** to find out if you qualify for free legal assistance.) You also can refer to the **Attorney Roster** that is located at the Family Court Resource Centers. The Attorney Roster is a listing of some of the attorneys who practice family law in Delaware and includes information about how to contact the attorneys and what fees the attorneys charge.

- ✓ **Always bring your photo identification** with you (such as your driver's license, or a state-issued photo identification card).
  
- ✓ **THERE IS A LOT OF PAPER IN A COURT CASE AND HAVING THE COURT MAKE COPIES FOR YOU CAN BE VERY EXPENSIVE.**

**PLEASE READ AND REMEMBER THESE IMPORTANT TIPS**

**REMEMBER**

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- **Keep a copy of every document and court paper.**
- **Keep all notes, documents and court papers together and organized in a folder with the most recent papers on top.**
- **Bring the folder with your papers every time you go to Court.**
- **When you file a document with the Court, bring the required number of copies of each paper and an extra copy for you to have “clocked-in.” Keep the clocked-in copy in your folder so you have proof of the time and date you filed each document. You may make copies at the Resource and Self-Help Centers but there is a small fee.**
- **When you complete a document or form for filing with the Court, always include the full case name and file and petition numbers (if there are any).**
- **When you must mail something, we suggest that you use regular mail AND “certified mail, return receipt requested” so that you have proof that the other party received the envelope. If you cannot afford to pay for “certified mail” we suggest you get a “certificate of mailing” at the post office to prove that you mailed the envelope to the other party. You may purchase stamped envelopes at the Resource and Self-Help Centers and the Court will mail your Court papers for you by regular mail. You are responsible for certified mailing.**



## STANDBY GUARDIANSHIP



### **What is the Purpose of Standby Guardianship?**

Standby Guardianship is a means of establishing guardianship quickly to enable a parent or guardian suffering from a progressive chronic condition or terminal illness to make plans for the permanent future care or the interim care of a child without terminating parental or legal rights.

Included in a Standby Guardianship Order is a **Custody Order**. Therefore, a Standby Guardian has the same legal authority to care for the child as a parent would. However, the Court also has the right to limit any of the powers and duties granted to a Standby Guardian.



### **Who Can Petition to Appoint a Standby Guardian?**

Any parent, custodian or guardian of a minor child may petition for a Standby Guardianship Order. The Petitioner is the person currently caring for the child and is seeking the appointment of a standby guardian. The Petitioner is the person currently caring for the child who is seeking the appointment of a standby guardian.



### **What are the Responsibilities of a Standby Guardian?**

Assuming the Court places no limitations in the Order, the Standby Guardian will be responsible for providing for the child both physically and emotionally. The Guardian must provide a healthy and safe living environment, an education and all the necessary and appropriate medical treatment, including but not limited to medical, dental and psychological care. Furthermore, the Guardian will be responsible for making the following decisions:

- Education;
- Travel;
- Medical treatment;
- Right to marry or enlist in the military;

- Representation in legal matters;
- Welfare and upbringing; **AND**
- Where the child will live.



### **What are the Responsibilities of the Child's Parent after Standby Guardianship is Granted?**

Because a parent's parental rights are not terminated when a non-parent is given guardianship, the Court will determine the following:

- How much, if any, contact the parent(s) should have with the child after the Guardianship is granted; **AND**
- How much, if any, information about the child the Guardian should share with the parent(s); **AND**
- A visitation schedule, if appropriate, so that the parent(s) may spend time with the child.

In addition, the child will continue to have the right to inherit from his/her parent(s) and the parent(s) will continue to have the right to inherit from the child. If the Guardian wishes to have the child inherit from him/her, the Guardian must state that desire in a will. For more information on wills and inheritance rights, you should talk to an attorney. Wills and inheritance rights are not handled in Family Court.

**The parent may have to continue to provide financial support to the child. In other words, the parent(s) may be required to pay child support to the guardian.** Child support is handled in a separate proceeding. If the Court grants you guardianship, you must file a separate Petition for Child Support in order for the Court to consider your request for child support. You may contact the Division of Child Support Enforcement for more information.

**Division of Child Support Enforcement**

New Castle County: 302-577-7171

Kent County: 302-739-8299

Sussex County: 302-856-5386



## **What are the Grounds for Standby Guardianship?**

### **Where the *parent* is the person suffering from a progressive chronic condition or terminal illness**

The Court must find that the appointment of the standby guardian is in the child's best interests and:

- 1) the child would be dependent, neglected or abused in the care of the other parent; or
- 2) the other parent of the child is deceased; or
- 3) the other parent's parental rights have been terminated; or
- 4) the other parent consents to the appointment of the standby guardian.

### **Where the *legal guardian or custodian* is the person suffering from a progressive chronic condition or terminal illness**

The Court must find that the appointment of the standby guardian is in the child's best interest and:

- 1) that the child remains dependent, neglected or abused in the parents' care; or
- 2) the parent of the child is deceased; or
- 3) the parents' parental rights have been terminated; or
- 4) the parent consents to the appointment of the standby guardian



**The Court must also find, prior to appointing a standby guardian that there is a significant risk that the parent or guardian will die, become incapacitated, or become debilitated as a result of a chronic condition or terminal illness within 2 years of the filing of the petition as certified by an attending physician.**



## **When does the Standby Guardian assume their role?**

If an Order for Standby Guardianship is granted, the Order shall say that the standby guardian assumes their role in one of two ways:

- 1) Upon receipt of a determination of petitioner's incapacity, debilitation or death from the attending physician; **OR**
- 2) Upon written consent of the petitioner.



### **How do I become confirmed as a standby guardian?**

Upon the occurrence of a triggering event (see above question), the appointed standby guardian assumes their role immediately. If the event is incapacity or debilitation of the guardian, the attending physician shall provide a determination to the standby guardian (if the attending physician knows who the appointed standby guardian is).

! Within 30 days, the standby guardian must then petition the Court for confirmation. The Petition for Confirmation of Standby Guardianship is Form #264 and may be found in the forms packet.

! A determination of incapacity or debilitation or a death certificate must be attached to the Petition for Confirmation of Standby Guardianship.



### **What if the alternate Standby Guardian petitions for confirmation?**

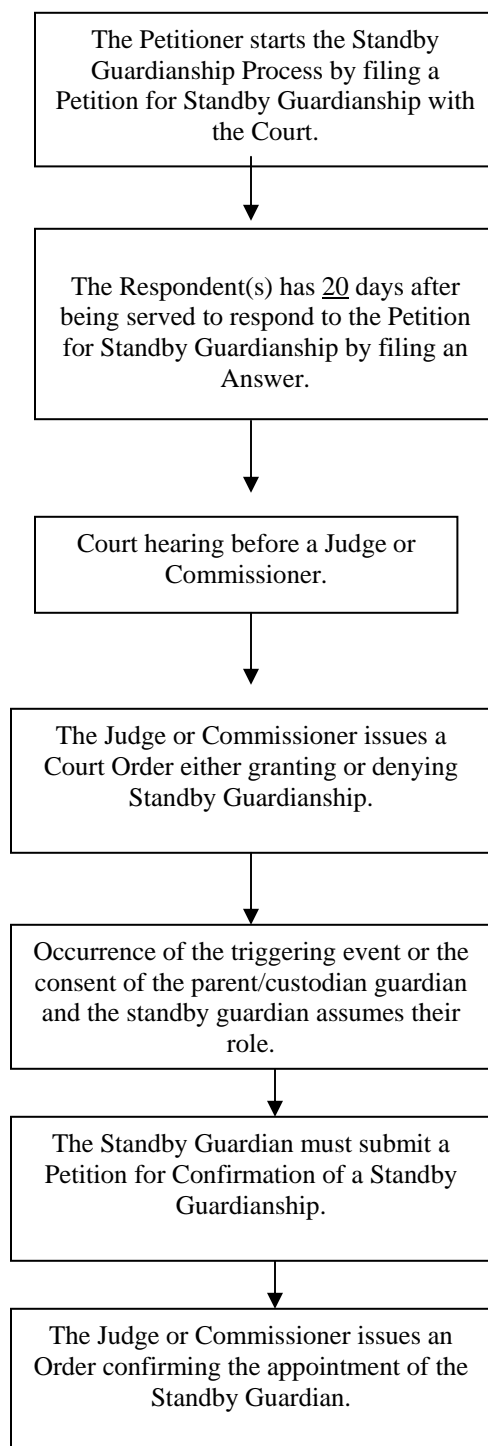
If the Petition for Confirmation of a Standby Guardian is submitted by the alternate standby guardian, the Petition must also state why the appointed standby guardian is unwilling or unable to act.



### **What if I have been appointed standby guardian but cannot or do not wish to perform the duties?**

A standby guardian may decline appointment at anytime before the assumption of duties by filing a written statement to the Court, with notice (a copy of the written statement) provided to the Petitioner and the minor child if the child is over the age of 14. Once a standby guardian has assumed their duties, they can give up their role by doing so in writing, filing this written notice with the Court and notifying the parent or guardian in writing.

## STANDBY GUARDIANSHIP PROCESS



## SECTION 1

### **STARTING THE STANDBY GUARDIANSHIP PROCESS**

To File for Standby Guardianship, the following requirements must be met:

- ❑ The child had been living in Delaware for **AT LEAST 6 CONSECUTIVE MONTHS BEFORE** the Petitioner filed the Petition for Standby Guardianship. (There are exceptions to this 6 month requirement. If the child has not lived in Delaware for at least 6 months, talk to an attorney to see if an exception applies in your situation.); **AND**
- ❑ The Petitioner is at least 18 years of age and is a parent, custodian or guardian of the child (if custodian or guardian, must have a current Court Order naming the Petitioner as custodian or guardian). The Petitioner is the person currently caring for the child and who is seeking the appointment of a standby guardian.



You **MUST** file the **ORIGINAL** and **ONE (1) COPY FOR EACH RESPONDENT** of each form below with the Court.

- Make a copy of each completed form for your records.
- Have your set of copies “clocked-in” for your file. Having a paper “clocked-in” means that the Court will stamp on the copy the time and date you filed your papers. Your clocked-in copy will serve as proof of the time and date you filed the paper.



**Petition for Standby Guardianship of a Minor form.** (*file the original and one copy for each Respondent*).

- A sample of this form may be found on page 22.

- You must allege in your Petition that there is a significant risk that the parent, custodian or guardian will die, become incapacitated or become debilitated within two (2) years of the filing of the petition. You must attach supporting documentation from an attending physician.
- Only a **parent, guardian or custodian** may file for standby guardianship. If you are not the parent, guardian or custodian in a court order and you are seeking guardianship of a child, please see the Guardianship Instruction Packet for more information.
- The U.S. and Delaware State Constitutions require that whenever a petition is filed with the Court, **ALL** of the people involved with the case must be notified. By naming a person as a Respondent, you are asking the Court to notify him/her of the petition. In Standby Guardianship cases the following people should be named as Respondent(s):
  - The natural or adoptive parents of the child;
  - Any guardian of the child or the person with whom the child is living;
  - Any Guardian ad Litem of the child;
  - An organization having custody of the child (for example, the Division of Family Services).

If you fail to notify any of the necessary parties, your petition may be deficient and you may have to start the process over.

- You **MUST** list **BOTH of the natural parents** as Respondents, even if one of the parents has never had any contact with the child (except in cases where a parent is the petitioner. In those cases the other parent would be the respondent). If the child lives with a step-parent, you **must list the natural parent**, not the step-parent as the Respondent. For example, if the child lives with his mother and step-father and has had no contact with his natural father, you

must name mother and father, not step-father, as the Respondents on your petition.

- If one or both parents are deceased, do not list the deceased parent(s) as a Respondent(s). Indicate on the petition (where there are blank lines) that he/she is deceased and list the date of death.
- When alleging facts in your Petition for Standby Guardianship, you must demonstrate to the court one of the following things regarding each parent:
  - The parent(s) **voluntarily consents** to the standby guardianship. If the parent voluntarily consents then he/she must complete an **Affidavit of Consent**. Please see page ?? for more information; **OR**
  - The child would be dependent or neglected in the parent's care **AND** it is in the child's best interest for the appointed standby guardian to have custody of the child after the triggering event. Dependency, neglect and the best interest standard are explained below.
- Because the legislature has determined that it is in the best interest of a child to live with his/her parents, a non-parent cannot care for and control a child unless Family Court determines that the child is **dependent or neglected** in his/her parents' care as defined by Title 10 of the Delaware Code, section 901 (8) and (11).
  - A child is **dependent** when a parent is **unable** to provide adequate care for the child.
  - A child is **neglected** when a parent has the ability to care for the child, but **does not** or **will not** provide adequate care.

On your Petition for Standby Guardianship, you must explain to the Court why the child would be dependent or neglected if not in the care of the standby guardian upon the occurrence of the triggering event.



- When alleging facts in your Petition for Standby Guardianship you also want to give the Court information why it is in the child’s “**best interest**” to appoint a standby guardian. The child’s “best interest” is the legal standard the Court must follow when deciding who should have custody of a child. (See Title 13 of the Delaware Code, section 722.) The Court will want to know about the following things when deciding what is in the child’s “best interest.” Explain to the Court how the following things apply to your situation.

1. The wishes of the child’s parents as to his/her custody and living arrangements;
2. The wishes of the child as to his/her custody and living arrangements;
3. The interaction of the child with his/her parents, brothers and sisters, grandparents and any people living in the child’s home or affecting the child’s best interest;
4. The child’s adjustment to his/her home, school and community;
5. The mental and physical health of all individuals involved;
6. How well each parent has in the past and currently satisfies their parental rights and responsibilities with respect to their children;
7. Evidence of domestic violence; and
8. The criminal history of any party or other resident of a household, including guilty pleas, pleas of no contest and criminal convictions.

- When writing down your allegations, you should list each point that you want to make in its own **numbered paragraph**. This will make

it easier for the Court and the Respondent(s) to understand your reasons for the appointment of a standby guardian.

- If you need more space to write, you may attach additional pages to the Petition for Guardianship. Be sure to state on the petition that you have attached more pages, so that the Court and the Respondent(s) will know to look for additional information.
- You must sign your Petition for Standby Guardianship in the presence of a notary public or authorized Court staff.



**Custody Separate Statement** form. (file the original and one copy).

- A sample of this form may be found on page 26.
- The Custody Separate Statement explains to the Court a child's past and present living arrangements, so the Court can determine if it has authority to decide your Petition for Guardianship. If all of the children included in your petition have had the **same living arrangements as one another** for the past five years, then you may include all children on a single form. However, if the children have **lived apart** from each other sometime during the past five years, you must complete a separate form for each child. For example, if last year, one child resided with one parent and one child resided with the other parent, it would be necessary to file two Custody Separate Statements, explaining where each child lived.



**Information Sheet** form. (file the original and one copy).

- A sample of this form may be found on page 29.
- This form provides the Court with general information about the parties that allows the Court to adequately notify the parties about upcoming proceedings and to maintain up-to-date records.

## BELOW ARE OPTIONAL FORMS


**ONLY** file the following forms if the situation applies to you.

### **If you do not know where the Respondent(s) live, file:**

 **Affidavit that a Party's Address is Unknown** form. (*file the original and one copy*).

- A sample of this form may be found on page 31.
- You must provide the Court with each Respondent's current address. If you do not know where the Respondent(s) currently lives, you must **try to locate** him or her. Ways to do this include talking to the Respondent's friends or relatives or checking the Internet. If, after looking for the Respondent(s), you cannot find his/her current address, you must complete this form. **Do not complete** this form until you have made sincere efforts to locate the Respondent(s).
- You must complete this form before you publish notice of the matter in the newspaper. Please see page ?? for more information regarding Notice by Publication.

### **If Respondent(s) is in the military, file:**

 **Waiver of Rights under the Servicemembers' Civil Relief Act** (*file the original and one copy for each Respondent*).

- A sample of this form may be found on page 32.

- If the Respondent(s) is in the military, the Respondent(s) must file an Answer, an Affidavit of Appearance or **YOU** must have the Respondent(s) sign a Waiver of Rights under the Servicemembers' Civil Relief Act. If the Respondent(s) does not file one of these documents, you must file a **Motion to Appoint an Attorney**. You should start this process as soon as possible because it takes time. The Court will not schedule your standby guardianship hearing until you complete this process.
- If there are multiple Respondents who are in the military you must file a separate form for each Respondent.

**If the parent(s) agree to the standby guardianship,  
file:**




**Affidavit of Consent of a Child's Parent to Appointment of a Standby**


**Guardian** form. *(file the original and one copy for each Respondent)*


- A sample of this form may be found on page 33.
- If one, or both, of the child's parents agree to the appointment of the standby guardian, he/she must complete an Affidavit of Consent, stating that he/she is in agreement.
- Each parent must complete their own Affidavit of consent.
- The parent must sign the Affidavit of Consent in the presence of a notary or court staff.

## **If the child(ren) over 14 agree to the standby guardianship, file:**


 **Affidavit of Consent of Child 14 Years of Age or Older** *(file the original and one copy for each Respondent)*

- A sample of this form may be found on page .
- If a child is 14 years of age or older, he/she must file an Affidavit of Consent stating that he/she is in agreement with the person selected to be his/her standby guardian.
- If the child does not agree with the standby guardianship and sign a consent form, you must explain to the Court why the standby guardianship should be granted over the child's objection.
- The child must sign the Affidavit of Consent in the presence of a notary or court staff.
- If you are requesting the appointment of a standby guardian of more than one child over the age of 14, you must have each child complete their own Affidavit of Consent.

 **BE SPECIFIC WHEN COMPLETING THE FORMS** and make sure that you address **ALL** of the areas explained on pages 14-15 in your petition. When you complete a form, write in blue or black ink **AND** write neatly.

 File the forms at the Family Court **in the County where the child currently lives, in the County where a legal guardian currently lives or in the County where a parent of the child currently lives.** If the child does not currently live in Delaware, you should talk to an attorney before filing to make sure the Delaware Family Court is the right Court to hear your case and to find out in which state and county you should file.

- In Kent and Sussex Counties you may file your papers at the Resource Centers on the first floor of the Family Court buildings.
- In New Castle County, you may file your papers at the Family Court Resource Center on Lower Level 1 of the New Castle County Courthouse.
- If you file your papers by mail, the addresses for each courthouse are available on the Family Court website. The Court does **NOT** accept filings that are faxed or e-mailed.

 A filing fee is charged for each petition that is filed. The filing fee can be paid in cash, by credit card, by debit card, by check or by money order made payable to “Family Court”. If you are filing by mail, you may only pay by check or money order. **FAMILY COURT WILL NOT ACCEPT YOUR PAPERS WITHOUT THE FILING FEE.** There are additional costs if you must publish notice of this action. (See page 21 for more information of when publication is necessary.)

## **ADDITIONAL INSTRUCTIONS FOR STANDBY GUARDIANSHIP**

### **SERVICE OF PROCESS**

**Each** Respondent **must receive** a copy of the Petition for Standby Guardianship. The delivery of the Petition for Guardianship and any other forms you file is called **Service of Process**. The way that you accomplish Service of Process depends on how much information you can provide the Court about where the Respondent(s) lives. Determine from the following options how Service of Process should be accomplished in your case.

□ **The Respondent Lives in Delaware and You Know His/Her Address**

If the Respondent lives in Delaware **AND** you know his/her address, a **Process Server** (someone whose job involves delivering Court papers) will give a copy of your petition and other papers to the Respondent(s). This is called **Personal Service**. You do not need to fill out any additional paperwork.

□ **The Respondent Does Not Live in Delaware and You Know His/Her Address**

If a Respondent(s) does **NOT** live in Delaware **AND** you know the Respondent's address, the Court will mail your papers *via* certified mail, return receipt requested, to the Respondent(s). If delivery of the certified mail is unsuccessful, **YOU** must publish **AT YOUR EXPENSE** a legal notice of your petition in an approved newspaper in the county and state where the Respondent(s) lives. This is referred to as **Service of Process by Mail and Publication**. You must also complete an Affidavit that Address is Unknown form (see page 17).

□ **You Do Not Know Where the Respondent Lives or Works**

If you do **NOT** know where a Respondent lives or works so that the Process Server can deliver your petition to that Respondent, **YOU** must publish **AT YOUR EXPENSE** a legal notice of your petition in an approved newspaper in the county and state where the Respondent's last known address was located. You must also complete an Affidavit that Address is Unknown form (see page 17).



**PUBLICATION**

- Instructions on how to publish notice of a court action are available in the Resource Centers. It is important to carefully follow the

instructions for publication. If you do not properly publish notice, your Petition for Guardianship could be dismissed.

### **THE ANSWER**

- Once the Respondent(s) has been served with the Petition for Standby Guardianship, each Respondent(s) has **20 days** from the date of service (the date that the court papers are delivered to the Respondent(s)) to respond by filing an **Answer** to your Petition for Standby Guardianship. If there is more than one Respondent in your case, each Respondent must file his/her own separate Answer. You should receive a copy of the Respondent's Answer in the mail.
- On the Answer to your Petition for Standby Guardianship, the Respondent(s) must **admit** (agree with) or **deny** (disagree with) each of the statements you made in your petition. The Respondent(s) may explain why he/she disagrees with the statement.

**SECTION 2 BEGINS AFTER THE SAMPLE FORMS  
FOR SECTION 1.**

**YOU SHOULD BEGIN SECTION 2 ONCE YOU HAVE  
FILED THE FORMS IN SECTION 1.**



# The Family Court of the State of Delaware

In and For  New Castle  Kent  Sussex County

Check the county in which you are filing.

## PETITION FOR STANDBY GUARDIANSHIP OF A MINOR

*Petitioner* 

*2<sup>nd</sup> Petitioner (if any)*

Name <b>Anne C. Smith</b>	D.O.B. <b>2/3/1964</b>	Name <b>n/a</b>	D.O.B.	File Number <b>CK04-12111</b>
Street Address <b>123 Oak Street</b>		Street Address		
Apt. or P.O. Box Number <b>Apartment #123</b>		Apt. or P.O. Box Number		Petition Number
City <b>Dover</b>	State <b>DE</b>	Zip Code <b>19901</b>	City State Zip Code	
Home Phone Number <b>302-555-1111</b>	Work Phone Number <b>302-555-1212</b>	Home Phone Number Work Phone Number		
Relation to Child(ren) <b>Mother</b>		Relation to Child(ren)		

*Respondent* 

*2<sup>nd</sup> Respondent (if any)*

Name <b>John D. Smith</b>	D.O.B. <b>7/13/1965</b>	Name <b>n/a</b>	D.O.B.
Street Address <b>490 Pine Street</b>		Street Address	
Apt. or P.O. Box Number		Apt. or P.O. Box Number	
City <b>Wilmington</b>	State <b>DE</b>	Zip Code <b>19801</b>	City State Zip Code
Home Phone Number <b>302-666-9999</b>	Work Phone Number <b>302-999-0033</b>	Home Phone Number Work Phone Number	
Relation to Children <b>Father</b>		Relation to Children	

*Guardian Ad Litem (if any)*

*Attorney for Guardian Ad Litem (if any)*

Name <b>n/a</b>	Name <b>n/a</b>
Street Address	Street Address
Apt. or P.O. Box Number	Apt. or P.O. Box Number
City State Zip Code	City State Zip Code
Home Phone Number Work Phone Number	Home Phone Number Work Phone Number

**IN THE INTEREST OF THE FOLLOWING CHILD(REN): (Attach additional sheets if necessary.)**

Child's Name <b>Douglas A. Smith</b>	Child's Date of Birth <b>10/14/1991</b>	Child's Place of Birth (City, State) <b>Wilmington, DE</b>	Child's Gender (Check one) <input checked="" type="checkbox"/> Male <input type="checkbox"/> Female
<b>Mary J. Smith</b>	<b>4/17/1996</b>	<b>Newark, DE</b>	<input type="checkbox"/> Male <input checked="" type="checkbox"/> Female
			<input type="checkbox"/> Male <input type="checkbox"/> Female

1. Complete the table below regarding the child(ren)'s parents (individuals holding parental rights):

	NAME	Address	Date of Birth
MOTHER	<u>Anne C. Smith</u>	<u>101 Oak Street, #123 Dover, DE 19901</u>	<u>2/3/1964</u>
FATHER	<u>John D. Smith</u>	<u>490 Pine Street Wilmington, DE 19801</u>	<u>7/13/1965</u>

2. If you do not know the name/address of the child(ren)'s mother and/or father, write in the space provided below what you have done to try to locate him/her/them.

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➤ I have attached to this Petition the following affidavits:

Affidavit that a Party's Address is Unknown

3. Name(s) of the person(s) or organization **holding parental rights** of the child(ren):

Anne C. Smith

Address of person(s) or organization:



101 Oak Street, #123

Dover, DE 19901

4. Name(s) of the person(s) or organization **having the guardianship, care, control or custody** of the child(ren):

Address of person(s) or organization if address is different from address of Petitioner(s):

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5. Name(s) of the person(s) **to whom standby guardianship** shall be vested if this Petition is granted

Melinda Jones

Address of person(s) or organization if address is different from address of Petitioner(s):



127 Lime Lane

Dover, DE 19901

6. Proposed guardian(s)' relationship to child(ren) if proposed guardian is **NOT** the Petitioner:

Maternal Aunt

7. Please check all that apply:

The following child(ren) is/are not yet 14 years of age or older:

OR

The child(ren) is/are 14 years of age or older and consents to (agree with) this Petition (*Attach Affidavit of Consent executed by each child(ren) who consents*) Name(s) of child(ren) 14 years of age or older who consent(s):

---

The child(ren) is/are 14 years of age or older does/do NOT consent to (agree with) this Petition. Name(s) of child(ren) 14 years of age or older who do NOT consent:

---

8. I am filing this petition because: (Check ALL that apply)



- I am suffering from a progressive chronic condition or terminal illness
- The parent(s) consent to the appointment of a standby guardian
- The child(ren) would be dependant and/or neglected in the care of the other parents based on the following reason(s):

Father is not involved in the lives of Mary and Doug. I currently have sole custody. Father has not spoken to or seen either child in over 5 years. When last seen Father was abusing both drugs and alcohol and was not able to care for the children.

---

- It is in the best interests of the child(ren) for the above referenced person to be named standby guardian because:

This living arrangement will maintain the greatest amount of consistency for the children in the event of my death. They will be able to maintain their relationships with other family members, continue in school and community activities and it is the wishes of the children as well.

---

9. The proposed standby guardian's qualifications to serve are as follows:



Melinda is one of Doug and Mary's maternal aunts. She lives very close to the children and is an active part of their daily lives. Having Melinda as their guardian will cause the least amount of transition to their daily lives.

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10. The triggering event(s) that shall cause the authority of the standby guardian to become effective are as follows:



Upon the incapacitation of Mother due to cancer and/or cancer treatment, the appointed standby guardian shall assume her role.

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11. There is a significant risk that the parent, custodian or guardian will die, become incapacitated or become debilitated within two (2) years of the filing of this petition.

- I have attached supporting documentation from the attending physician as defined by 13 Del.C. §2362.

12. Name(s) of the person(s) **to whom standby guardianship** shall be vested as an **alternate** if the person named in this Petition is unable to serve:

Patricia Jones

Address of above referenced person(s):

444 Sweet Lane

Wilmington, DE 19801



13. The qualifications of the above referenced alternate stand-by guardian are as follows:

Patricia is the other maternal aunt of Doug and Mary. She has been a close family member and an active part of their lives.

**WHEREFORE**, Petitioner(s) seek appointment of Melinda Jones as Standby Guardian(s) of the above-named minor child(ren).

Anne C. Smith

Petitioner



6/6/2009

Date

Sign in the presence of a notary.

2<sup>nd</sup> Petitioner (if any)

Date

Sworn to subscribed before me



Donna King

Mediator/Notary Public

6/6/2009

Date

Sworn to subscribed before me:

Mediator/Notary Public

Date

Signed by notary or court staff.

# The Family Court of the State of Delaware

In and For  New Castle  Kent  Sussex County

Check the county in which you are filing.

## CUSTODY SEPARATE STATEMENT IN COMPLIANCE WITH TITLE 13, SECTION 1928 OF THE DELAWARE CODE

Petitioner <b>Anne C. Smith</b>	Respondent <b>John D. Smith</b>	File No.: <b>CK04-12111</b>
------------------------------------	------------------------------------	--------------------------------

1. What type of petition are you filing? Petition for Standby Guardianship

2. Who is the child(ren) named in your petition? (Please provide full name and date of birth)

<u>Doug A. Smith 10/16/05</u>	<u>Mary J. Smith 4/17/96</u>

3. Have all the children listed above continually resided with one another?  Yes  No  
 If you answered "No," the children have not continually resided with one another, please complete a Custody Separate Statement for each child.

4. Where is the child(ren) living as of today's date?

<u>101 Oak Street, Apt. #123</u>	<u>Dover</u>	<u>DE</u>	<u>19901</u>
Street Address	City	State	Zip Code
<u>Anne C. Smith</u>	<u>Mother</u>		
Name of person(s) child(ren) is living with	Relationship to child(ren)		


5. During the past five years, where have the child(ren) lived? *List addresses from the most recent to the oldest beginning with the address where the child(ren) currently lives. If the child(ren) is under the age of five years old end with the first address where the child lived.*

Address where child(ren) currently resides	City	State	Zip Code
<u>101 Oak Street, Apt. #123</u>	<u>Dover</u>	<u>DE</u>	<u>19901</u>
Date child(ren) lived there	Name of person(s) child(ren) is living with	Relationship to child(ren)	
<u>1/1/2004-present</u>	<u>Anne C. Smith</u>	<u>Mother</u>	
Person's current address	City	State	Zip Code
<u>same as above</u>			

Address where the child(ren) lived before that.	City	State	Zip Code
<u>490 Pine Street</u>	<u>Wilmington</u>	<u>DE</u>	<u>19899</u>
Date child(ren) lived there	Name of person(s) child(ren) is living with	Relationship to child(ren)	
<u>8/10/2002-12/31/2003</u>	<u>John and Anne Smith</u>	<u>Parents</u>	
Person's current address	City	State	Zip Code
<u>490 Pine Street</u>	<u>Wilmington</u>	<u>DE</u>	<u>19899</u>

Address where the child(ren) lived before that.	City	State	Zip Code
<u>6160 Beachfront Drive</u>	<u>Virginia Beach</u>	<u>VA</u>	<u>23464</u>
Date child(ren) lived there	Name of person(s) child(ren) is living with	Relationship to child(ren)	
<u>Birth to 8/10/2002</u>	<u>John and Anne Smith</u>	<u>Parents</u>	
Person's current address	City	State	Zip Code
<u>Same as above</u>			


Address where the child(ren) lived before that.	City	State	Zip Code
Date child(ren) lived there	Name of person(s) child(ren) is living with	Relationship to child(ren)	
Person's current address	City	State	Zip Code

 6. Check **ONE** and complete as directed.

- I have not been involved in any other court action for custody and/or visitation of this child(ren).
- I have been involved in another court action for custody and/or visitation of this child(ren). *If you check this box, complete the information below. Attach additional sheets if necessary.*

<b>TYPE OF ACTION</b> (custody, visitation or modification)	<b>PERSON</b> who filed action	<b>STATE</b> action was filed in	<b>COURT</b> where the action was filed
<b>DATE action was filed</b>	<b>CASE NUMBER</b>	<b>RESULT of action</b>	<b>DATE OF ORDER</b>

<b>TYPE OF ACTION</b> (custody, visitation or modification)	<b>PERSON</b> who filed action	<b>STATE</b> action was filed in	<b>COURT</b> where the action was filed
<b>DATE action was filed</b>	<b>CASE NUMBER</b>	<b>RESULT of action</b>	<b>DATE OF ORDER</b>

 7. Check **ONE** and complete as directed.

- I do not know of any other court action such as, Protection From Abuse, Termination of Parental Rights, Guardianship, Adoption or Paternity involving myself, the other party or the child(ren) that could affect this petition.
- I, the other party or the child(ren) have been and/or are currently involved in another court action such as, Protection From Abuse, Termination of Parental Rights, Guardianship or Adoption, that could affect this petition. *If you check this box, complete the information below. Attach additional sheets if necessary.*

<b>TYPE OF ACTION</b> (PFA, TPR, Guardianship, Adoption)	<b>PERSON</b> who filed action	<b>STATE</b> action was filed in	<b>COURT</b> where the action was filed
PFA	Anne C. Smith	DE	Family Court
<b>DATE action was filed</b>	<b>CASE NUMBER</b>		
12/31/04	CK04-12111		

<b>TYPE OF ACTION</b> (PFA, TPR, Guardianship, Adoption)	<b>PERSON</b> who filed action	<b>STATE</b> action was filed in	<b>COURT</b> where the action was filed
<b>DATE action was filed</b>	<b>CASE NUMBER</b>		



Check **ONE** and complete as directed.

- No one other than the parties has physical custody, legal custody or visitation rights with the child(ren).
- A person(s) other than the parties have physical custody, legal custody or visitation rights with the child(ren). *If you check this box, complete the information below. Attach additional sheets if necessary.*

Name of person(s) child(ren) is living with		Relationship to child(ren)	
Address of person(s) where child(ren) reside	City	State	Zip Code

Name of person(s) child(ren) is living with		Relationship to child(ren)	
Address of person(s) where child(ren) reside	City	State	Zip Code

SWORN TO AND SUBSCRIBED  
before me this date,

*March 17, 2004*



Sign in the presence of a notary.

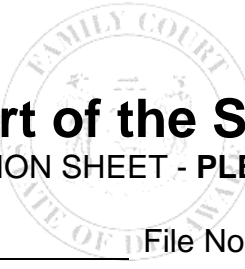


*Anne C. Smith*  
Petitioner



Signed by notary or court staff.

*Donna King*  
Notary Public



Fill in the date you file the form.

# The Family Court of the State of Delaware

## INFORMATION SHEET - PLEASE PRINT

If you know your case file number, put it; if not, leave blank.

Date: 12/13/2017 File No.: CN17-99999

**Please fill in A to K pertaining to you the Applicant/Petitioner. (For additional petitioners use additional sheets)**

**A. Name:** Anne C. Smith Each Petitioner must complete a separate form

**B. Address:** 101 Oak Street, Apartment #123  
**City/State/Zip:** Dover, DE 19901

**C. Phone – Home:** (302) 555-1111 **Work:** (302) 555-9999 **Cell:** (302) 999-8888

**D. Employer & Address:** ABC Child Care Center  
500 Pine Street  
Dover, DE 19904  
**Hours/Shift** 7:30 to 4:30 Monday-Friday

**E. Social Security No.:** 000-00-0000 **F. Date of Birth:** 2/3/1986

**G. Place of Birth (City & State):** Wilmington, DE

**H. Sex:** F **Race:** White **Height:** 5'4" **Weight:** 135 lbs **Hair:** Blond **Eyes:** Brown  
**Marks/Scars/Tattoos:** None

**I. Type of motor vehicle operated by you:** 2010 Honda Accord

**J. Driver's License No.:** 9999999 **State of Issue:** DE **Expiration Date:** 2/3/2020

**K. Your relationship to the Defendant/Respondent:** Spouse

**L. Attorney:** None

Entering your email address on this line authorizes the Court to send you notices by email. If you choose this option, you will not receive notices in regular mail.

I authorize Family Court to deliver court orders in my case(s) to my email address instead of to my mailing address. My email address is: Anne.C.Smith@example.com

\*Please note that if you provide an email address, all orders in your pending civil cases in Family Court will be sent in an encrypted email via Egress to the email address provided and will not be mailed to your physical address. For information on how to receive encrypted emails through Egress, please visit <https://judicial.state.de.us/courtbox/Download.aspx?id=94888&court=readonly>.

**Please fill out the information below in reference to the child(ren) who are involved.**

**Children**

Name	Relationship	Sex	Race	D.O.B.	SSN	Birthplace City & State
<u>Douglas A. Harding</u>	<u>Nephew</u>	<u>M</u>	<u>White</u>	<u>10/14/2012</u>	<u>987-65-4321</u>	<u>Newark, DE</u>



Please fill in L to Y pertaining to the Defendant/Respondent. (For additional respondents use additional sheets)

M. Defendant/Respondent is a: (Check One)  ADULT  JUVENILE

N. Name: Michelle Jones

O. Address: 490 Pine Street  
 City/State/Zip: Dover, DE 19901

P. Phone – Home: (302) 333-3333 Work: (302) 222-2222 Cell: (302) 111-1111

Q. Employer & Address: XYZ Corporation  
67 Walnut Avenue  
Dover, DE 19901

Hours/Shift 9:00 AM to 5:00 PM, Monday-Friday

You must complete a separate form for each Respondent.

R. Social Security No.: 888-88-8888 S. Date of Birth: 7/13/1991

T. Place of Birth (City & State): Wilmington, DE

U. Relationship to Child:  Not Applicable  Mother  Father  Relative  Non-Relative  
 Other (Please Describe) \_\_\_\_\_

V. Sex: F Race: White Height: 5'4" Weight: 140 lbs Hair: Black Eyes: Brown

Marks/Scars/Tattoos: Tattoo of a heart on right shoulder

W. Driver's License State & No.: DE 1111111 X. Type of vehicle operated by Defendant/Respondent: 2009 Chevy Impala

Y. Parent's Name (if a juvenile): \_\_\_\_\_

Z. Time when Respondent is usually home: 7:00 PM to 6:30 AM, Monday-Friday; mornings on weekends

List places where the Respondent spends time other than at home or \_\_\_\_\_

AA. Additional information about Respondent that may aid the process server in locating him/her to serve petition:

If you are unable to locate the Respondent at her place of residence or her place of employment, she spends a lot of time at her brother's house, which is located at 775 Spruce Lane, Dover, DE 19901.

Write directions to each address listed on this form to make sure that the process server can locate the Respondent.

DIRECTIONS TO RESPONDENT'S RESIDENCE

Home: Go West on 8th Street until you reach Pine Street. Turn right and go 3 and one-half blocks. The Respondent's house is on the right and is white with blue shutters.

Work: Go North on Route 13 and take the first right onto Cherry Drive. Go about a mile and a half and turn left onto Walnut Avenue. XYZ Corporation is on your left.

Brother's Residence: Go two blocks past Respondent's home to 10th Street. Turn left and go one block to Spruce Lane. Turn right. It is the second house on the right. The house is green.

# The Family Court of the State of Delaware

in and for  New Castle  Kent  Sussex County

Check the county in which you are filing.

## AFFIDAVIT THAT A PARTY'S ADDRESS IS UNKNOWN

Petitioner		
Last	First	MI
Smith	Anne	C.

vs.

Respondent		
Last	First	MI
Smith	John	D.

File No. CK04-12111
CPI No.

Fill in the county in which you are filing.

State of Delaware  
Kent County )

SS.

Fill in the date you have the form notarized.

BE IT REMEMBERED, that on this 17th day of March, 2004, personally appeared before me, a Notary Public for the State and County aforesaid, Anne C. Smith, ("Affiant"), who, being by me duly sworn according to law did depose and say:

The person filling out the form is the "Affiant" and his/her name goes here.

1. My name is Anne C. Smith
2. I do not know the current address and/or telephone number, nor do I know anyone who could provide me with the current address and/or telephone number of John D. Smith. I have contacted his/her (Please check as appropriate)  Parent  Spouse  Employer  Other: Respondent's Brother. His/Her last known address and telephone number were:

490 Pine Street  
Wilmington, Delaware 19899

Fill in the date that the Respondent last lived at the above address.

as of January 10, 2004.

3. I have had no contact with him/her since January 1, 2004.
4. I have been informed of my responsibility to accomplish publication and my failure to do so will result in the petition being dismissed.
5. The information contained herein is true and correct to the best of my knowledge and belief.

STOP Sign in the presence of a notary.

Anne C. Smith  
Affiant

SWORN TO AND SUBSCRIBED before me the day and year aforesaid.

STOP Signed by notary or court staff.  
Donna King  
Notary Public

# The Family Court of the State of Delaware

In and For  New Castle  Kent  Sussex County

Check the county in which you are filing.

IN RE THE MARRIAGE OF

Anne C. Smith )  
 )  
 ) Petitioner,  
 )  
 ) and  
 )  
John D. Smith )  
 )  
 ) Respondent,  
 )

File No.: CK04-12111

Petition No.: \_\_\_\_\_

## WAIVER OF RIGHTS UNDER THE "SERVICEMEMBERS CIVIL RELIEF ACT"

STATE OF DELAWARE

Write in the county in which you are filing.

Kent COUNTY )

SS.

Fill in the date you have the form notarized.

BE IT REMEMBERED, that on this date, March 25, 2004, personally appeared before me, a Notary Public for the State of Delaware in the County declared above, John D. Smith, ("Affiant"), who, being duly sworn by me according to law, did depose and say:

1. That Affiant is the Respondent in the above captioned case.
2. That Affiant is active duty in the United States military: a
3. The Affiant waives his/her rights under the "Servicemembers Civil Relief Act" and so acknowledges that he/she, or his/her attorney, will be required to appear at all legal proceedings associated with the above captioned case.

The "Affiant" is the Respondent. ONLY the Respondent may complete this form. If you are the Petitioner in this proceeding, you may not fill out this form.



Sign in the presence of a notary or court staff.

John D. Smith

Respondent ("Affiant")

SWORN TO AND SUBSCRIBED before me this date, March 25, 2004



Signed by notary or court staff.

Donna Young



Notary Public or Clerk of Court



# The Family Court of the State of Delaware


In and For  New Castle  Kent  Sussex County


Check the county in which you are filing.

## STANDBY GUARDIANSHIP AFFIDAVIT OF CONSENT OF A CHILD'S PARENT

<b>Petitioner</b> 			<b>Respondent</b> 			File Number <b>CK04-00221</b>	
Name <b>Anne C. Smith</b>			Name <b>John D. Smith</b>			Case Number	
Street Address <b>100 Oak Street</b>			Street Address <b>490 Pine Street</b>				
Apt. or P.O. Box Number <b>Apartment #123</b>			Apt. or P.O. Box Number				
City <b>Dover</b>	State <b>DE</b>	Zip Code <b>19901</b>	City <b>Wilmington</b>	State <b>DE</b>	Zip Code <b>19801</b>		
Date of Birth <b>2/3/1964</b>			Date of Birth <b>7/13/1965</b>				

<b>Standby Guardian</b> 			<b>Alternate Standby Guardian</b> 		
Name <b>Melinda Jones</b>			Name <b>Patricia Jones</b>		
Street Address <b>44 Lime Lane</b>			Street Address <b>55 Sweet Avenue</b>		
Apt. or P.O. Box Number			Apt. or P.O. Box Number		
City <b>Dover</b>	State <b>DE</b>	Zip Code <b>19901</b>	City <b>Wilmington</b>	State <b>DE</b>	Zip Code <b>19801</b>
Date of Birth <b>3/14/1977</b>			Date of Birth <b>4/25/1980</b>		

BE IT REMEMBERED, that on this date, May 14, 2009, John D. Smith , ("Affiant"), who, being duly sworn to me according to the law personally appeared before me, a Notary Public for the State and County declared above, did depose and say:

- I am the Respondent in the above captioned matter involving my child:  
 Child's Name: Mary J. Smith & Douglas A. Smith   
 Child's Date of Birth: 4/17/1996 & 10/16/2005
- I hereby agree that the above referenced Standby Guardian(s) shall become the guardian(s) of this child upon the occurrence of a triggering event and that the Alternate Standby Guardian shall serve in that role if the Standby Guardian is unable to do so. As guardian, the Petitioner(s) shall protect, manage and care for this child.
- I understand that I shall have the primary responsibility to support this child financially and that this child will have the right to inherit from me and I will have the right to inherit from the child.
- I understand that my visitation and contact with the child shall be that which is set forth in a Court Order or a Consent Order entered into by all parties to this matter.

SWORN TO AND SUBSCRIBED  
before me this date,

May 14, 2009

Donna King

Notary Public/Clerk of Court

Sign in the presence of a notary.



Signed by notary or court staff.

John D. Smith

Affiant

# The Family Court of the State of Delaware

In and For  New Castle  Kent  Sussex County

Check the county in which you are filing.

## STANDBY GUARDIANSHIP AFFIDAVIT OF CONSENT OF CHILD 14 YEARS OF AGE OR OLDER

<b>Petitioner</b>		<b>Respondent</b>		File Number  CK04-12111	
Name <u>Anne C. Smith</u>		Name <u>John D. Smith</u>			
Street Address <u>123 Oak Street</u>		Street Address <u>490 Pine Street</u>		Petition Number	
Apt. or P.O. Box Number <u>Apt. #123</u>		Apt. or P.O. Box Number			
City	State	Zip Code	City	State	Zip Code
<u>Dover</u>	<u>DE</u>	<u>19901</u>	<u>Wilmington</u>	<u>DE</u>	<u>19801</u>
Date of Birth		Date of Birth			

<b>Petitioner</b>		<b>Respondent</b>			
Name <u>n/a</u>		Name <u>n/a</u>			
Street Address		Street Address			
Apt. or P.O. Box Number		Apt. or P.O. Box Number			
City	State	Zip Code	City	State	Zip Code
Date of Birth		Date of Birth			

BE IT REMEMBERED, that on this date, 10/25/2008, Douglas A. Smith (‘‘Child’’), who, being duly sworn by me according to the law personally appeared before me, a Notary Public for the State and County declared above, did depose and say:

- I hereby agree that Melinda Jones shall be my standby guardian(s)
- I understand that as my standby guardian(s), Melinda Jones shall protect, manage and care for me as a parent would and they shall make decisions regarding my care upon the occurrence of my parent(s)/ guardian(s) death, incapacity, or debilitation.

SWORN TO AND SUBSCRIBED  
before me this date,

10/25/2008

Donna King

Notary Public/Clerk of Court

Sign in the presence of a notary.



Douglas A. Smith

Affiant

Signed by notary or court staff.

## Section 2

### SCHEDULING THE HEARING

You do not need to file any additional paperwork to have your hearing scheduled. The Court will notify you when your hearing is scheduled, by mailing you a **Notice** to inform you of the time and date of the **Court Hearing**.

Some judges may schedule a **pre-trial hearing**. The purpose of this hearing is to discuss the status of your case prior to scheduling a full hearing where you will present evidence and call witnesses.

If you cannot attend the scheduled hearing, you must file the following form:



**Motion for Continuance** (*file one original and mail one copy to the Respondent*).

- Sample form on page 37.
- If, once you receive your Notice, you cannot attend the scheduled Standby Guardianship Hearing, you must contact the Court **IMMEDIATELY** by filing a **Motion for Continuance**. **DO NOT** call the Court. On this Motion, you must state **very specific reasons** why you cannot attend the hearing. You must have a legal and unavoidable reason for needing to reschedule the hearing. You cannot request a continuance simply because it is not convenient for you to attend the hearing on the scheduled day. Before you file the Motion for Continuance, you must contact each of the Respondent(s) regarding the continuance and then **tell the Court in your motion how the Respondent(s) feels about the**

**continuance.** Because the law is very strict when it comes to rescheduling, these Motions are not always granted.

- You will be notified by the Court if your Motion for Continuance has been granted. **UNLESS THE COURT GRANTS YOU A CONTINUANCE, YOU MUST APPEAR AT COURT THE DAY OF YOUR SCHEDULED HEARING.** If you fail to appear at your hearing, the Court can dismiss your petition or enter an order granting the Respondent(s) everything that he/she wants.

## **THE DAY OF THE HEARING**

If the Respondent(s) has not filed an answer or otherwise appeared in the standby guardianship matter, complete the following form and bring it to Court with you on the day of your hearing:

 **Affidavit of Non-Military Service** form.

- Sample form on page 38.
- **ONLY** complete this form if the Respondent(s) is **NOT** in the military and has not filed an answer or otherwise appeared in this Standby Guardianship matter.
- If there is more than one Respondent, you must complete a separate form for each person.

Unless the parent(s) consent to the standby guardianship, it is up to **YOU** at the hearing to prove to the Judge that the grounds for standby guardianship have been met. To review the grounds for standby guardianship, please see pages 14-15.

Because a parent's parental rights are not terminated when guardianship or standby guardianship is granted, the parent(s) may still be entitled to contact with the child. At the hearing, you should also be prepared to present evidence or

testimony regarding how much **contact** the parent(s) should have with the child and how much **information** the standby guardian will be required to provide to the parent(s) if the standby guardianship is granted. Be aware of the following information when preparing for the hearing:

- Contact with the child can include contact by mail, telephone and e-mail, as well as visitation.
- Before the hearing consider the length, frequency and location of any possible visitation. The Court will determine whether visitation is in the best interest of the child.



# The Family Court of the State of Delaware

In and For  New Castle  Kent  Sussex County

Check the county in which you are filing.

## MOTION FOR Continuance

Fill in the title of the motion that you are filing.

### Petitioner

### Respondent

Name <b>Anne C. Smith</b>		
Street Address <b>101 Oak Street</b>		
Apt. or P.O. Box Number <b>Apt. # 123</b>		
City <b>Dover</b>	State <b>DE</b>	Zip Code <b>19901</b>
Social Security Number <b>111-22-333</b>	Date of Birth <b>2/3/64</b>	
Attorney Name and Phone Number <b>n/a</b>		

Name <b>John D. Smith</b>		
Street Address <b>490 Pine Street</b>		
Apt. or P.O. Box Number		
City <b>Wilmington</b>	State <b>DE</b>	Zip Code <b>19899</b>
Social Security Number <b>787-98</b>	Date of Birth	
Attorney Name and Phone Number <b>n/a</b>		

File Number <b>CK04-12111</b>
Petition Number

Fill in the type of hearing that is scheduled. This information appears on the Notice of Hearing you received in the mail.

A PROCEEDING involving Standby Guardianship having been filed in this Court, Movant hereby moves the Court for a continuance and, in support thereof, alleges the following facts:

Explain what you would like the court to order.

The parties' daughter, Mary Smith has suffered from severe tonsilitis. She is scheduled for surgery on November 30<sup>th</sup>, 2004, the date of the parties' custody hearing. I request that the Court grant a continuance so that I can be with my daughter while she is in surgery. I have contacted the Respondent and he agrees that a continuance should be granted.

Describe in detail for the Court why it should grant your motion. Tell the Court how the other party feels about your request.

SWORN TO AND SUBSCRIBED before me this date,

November 10, 2004



Sign in the presence of a notary.

Anne C. Smith  
Movant/Attorney

Donna King  
Notary Public/Clerk of Court



Signed by notary or court staff.

I, the Movant, affirm that a true and correct copy of this Motion was placed in the U.S. Mail on this date 11/10/2004 at the address listed on the petition, being John D. Smith, first class postage pre-paid.

Fill in the Respondent's name and the date that you mailed him/her a copy of the motion.

SWORN TO AND SUBSCRIBED before me this date,

November 28, 2004



Sign in the presence of a notary.

Anne C. Smith  
Movant/Attorney

Donna King  
Notary Public/Clerk of Court



Signed by notary or court staff.

# The Family Court of the State of Delaware

In and For  New Castle  Kent  Sussex County

Check the county in which you are filing.

Petitioner			Respondent			File Number	
Name <b>Anne C. Smith</b>			Name <b>John D. Smith</b>			CK04-12111	
Street Address <b>101 Oak Street</b>			Street Address <b>490 Pine Street</b>			Petition Number	
Apt. or P.O. Box Number <b>Apt. #123</b>			Apt. or P.O. Box Number			04-42301	
City <b>Dover</b>	State <b>DE</b>	Zip Code <b>19901</b>	City <b>Wilmington</b>	State <b>DE</b>	Zip Code <b>19899</b>		
Social Security Number <b>111-22-3333</b>		Date of Birth <b>2/3/64</b>	Social Security Number <b>787-98-6767</b>		Date of Birth <b>7/13/65</b>		
Attorney Name and Phone Number <b>n/a</b>			Attorney Name and Phone Number <b>n/a</b>				

The section below is to be completed by and signed in the presence of a Notary Public/Clerk of Court on the day of your Hearing.

## AFFIDAVIT OF NON-MILITARY SERVICE

Fill in the county where you are filing,

STATE OF DELAWARE )

Kent COUNTY )

ss. )

Fill in the date you have the form notarized.

BE IT REMEMBERED, that on this date, November 30, 2004, personally appeared Before me, a Notary Public for the State of Delaware in the County declared above, Anne C. Smith, ("Affiant"), who, being duly sworn by me according to law, did depose and say:

1. That Affiant is the Petitioner in the Petition for Divorce/Annulment;
2. That Respondent is not in the military service of the United States of America; and
3. That Affiant has made this Affidavit pursuant to the provisions of § 200 of the Act of Congress entitled "Soldiers and Sailors Civil Relief Act of 1940" (50 U.S.C.A. App. 520) approved October 17, 1940.



Sign in the presence of a notary or court staff on the day of your hearing.



Anne C. Smith

Petitioner

SWORN TO AND SUBSCRIBED before me this date, November 30, 2004



Signed by notary or court staff.

Donna King

Notary Public or Clerk of Court

## Section 3

# ASSUMPTION OF DUTIES AS STANDBY GUARDIAN

Once the Court enters a Standby Guardianship Order, the current custodial situation will not change until the “**triggering event**” occurs. The triggering event will be stated in the Standby Guardianship Order. The Order will state that the Standby Guardianship becomes effective immediately upon receipt of a determination of petitioner’s incapacity, debilitation or death OR upon written consent of the petitioner.

Once the triggering event has occurred, the appointed standby guardian assumes their duties **immediately**. If the event is incapacity or debilitation of the guardian, the attending physician shall provide a determination to the standby guardian (if the attending physician knows who the appointed standby guardian is).

Within **30 days** of assuming their duties, the standby guardian must file a **Petition for Confirmation of Standby Guardianship**. The Standby Guardian must attach a determination of incapacity or debilitation (from an attending physician) or a death certificate.



**Petition for Confirmation of Appointment of a Standby Guardian form.**

*(file the original and one copy).*

- A sample of this form may be found on page 41.
- On this form, you are asking the Court to formally confirm your appointment as a standby guardian.

- Only file this form after the occurrence of the triggering event stated in the Court's Order.
- You must attach one of the following documents to this form:
  - The consent of the Parent/Custodian/Guardian, stating that you may assume your role as Standby Guardian immediately; OR
  - A determination of incapacity or debilitation from the attending physician or a death certificate.

If the Appointed Standby Guardian cannot or will not serve, and the **Petition for Confirmation of Standby Guardianship** is submitted by the **alternate** Standby Guardian, the petition must also state why the Standby Guardian is unable to serve.

If the Standby Guardian no longer wishes to serve, they may decline appointment at anytime before the assumption of duties by filing a written statement to the Court, with **notice provided to the Petitioner and the minor child if the child is over the age of 14**. Once a standby guardian has assumed their duties, they can give up their role by doing so in **writing**, filing this written notice with the Court and notifying the parent or guardian in writing.

# The Family Court of the State of Delaware

In and For  New Castle  Kent  Sussex County

Check the county in which you are filing.

## PETITION FOR CONFIRMATION OF STANDBY GUARDIANS

Standby Guardian

Respondent

Name <b>Melinda Jones</b>	Name <b>John D. Smith</b>	File Number <b>CK04-02111</b>
Street Address <b>100 Lime Lane</b>	Street Address <b>490 Pine Street</b>	Petition Number
Apt. or P.O. Box Number	Apt. or P.O. Box Number	
City <b>Dover</b>	City <b>Wilmington</b>	State <b>DE</b>
Zip Code <b>19901</b>	Zip Code <b>19801</b>	
Date of Birth <b>2/17/1964</b>	Date of Birth <b>7/13/1965</b>	
Attorney Name and Phone Number <b>n/a</b>	Attorney Name and Phone Number <b>n/a</b>	

This portion is to be completed by the standby guardian.

Petitioner respectfully requests this Court to enter an Order confirming Melinda Jones as the guardian of the following children (please provide full name and date of birth):

<u>Mary J. Smith</u>	<u>4/17/1996</u>
<u>Douglas A. Smith</u>	<u>10/16/2005</u>

In support of this Petition, the Petitioner states as follows:

- 1) The triggering event indicated in the **attached** Court Order has occurred.
- 2) Written consent of the parent/guardian OR a letter from the attending physician stating a determination of the parent/guardian's incapacity, debilitation or death OR a death certificate is attached to this Petition.

Sign in the presence of a notary.
Melinda Jones   
Standby Guardian

SWORN TO AND SUBSCRIBED before me this date June 27, 2009

Donna King  
Notary Public/Deputy Clerk of Court

Signed by notary or court staff.

## Section 4

# CHANGING AND ENDING STANDBY GUARDIANSHIP

Once the Court enters a Standby Guardianship Order, it will not end until one of the following happens. In other words, once you become the guardian of a child, you will continue to be that child's guardian until one of the following occurs:

- The child dies;
- The guardian dies;
- The child is adopted;
- The child turns 18 years old; **OR**
- The Court determines that the Order should end.

Before the Court can decide that a guardianship should end, someone must file a Petition asking the Court to terminate or rescind the Guardianship Order. Even if all parties agree that the guardianship order should end, the Court will make the final determination based upon the best interest standard. Please see pages 14-15 for an explanation of the best interest standard.

## Commonly Used Terms in Standby Guardianship

(1) "**Appointed standby guardian**" means a person appointed pursuant to this subchapter to assume the powers and duties of guardianship of a child upon the death or determination of incapacity or debilitation of the parent, custodian, or guardian.

(2) "**Attending physician**" means the physician who has primary responsibility for the treatment and care of the parent, custodian or guardian. Where more than 1 physician shares such responsibility, or where a physician is acting on the attending physician's behalf, any such physician may act as the attending physician. If no physician has responsibility for the care and treatment of the parent, custodian, or guardian, any physician who is familiar with the parent's, custodian's, or guardian's medical condition may act as the attending physician.

(3) "**Custodian**" means a nonparent who has been awarded custody of a child by order of the Family Court, but excludes the Department of Services for Children, Youth and Their Families when it or any of its divisions have been awarded custody by order of the Family Court.

(4) "**Debilitation**" means a person's chronic and substantial inability, as a result of a terminal illness, disease or injury, to care for a child. "Debilitated" means a person's state of chronic and substantial inability, as a result of a terminal illness, disease or injury to care for a child.

(5) "**Designated standby guardian**" means a person designated pursuant to this subchapter to assume temporarily the duties of guardianship of a child upon the death or a determination of incapacity or debilitation of the parent, custodian or guardian.

(6) "**Designator**" means a parent, custodian or guardian who makes a designation of a standby guardian.

(7) "**Determination of debilitation**" means a written determination made by the attending physician which contains the physician's opinion to a reasonable degree of medical certainty regarding the nature, cause, extent and probable duration of the parent's, custodian's or guardian's debilitation.

(8) "**Determination of incapacity**" means a written determination made by the attending physician which contains the physician's opinion to a reasonable degree of medical certainty regarding the nature, cause, extent and probable duration of the parent's, custodian's or guardian's incapacity.

(9) "**Incapacity**" means a person's chronic and substantial inability, as a result of mental impairment, to understand the nature and consequences of decisions concerning the care of the child, and a consequent inability to care for the child. "Incapacitated"

means a state of chronic and substantial inability, as a result of mental impairment, to understand the nature and consequences of decisions concerning the care of the child, and a consequent inability to care for the child.

(10) "**Triggering event**" means an event in the designation, petition or decree which empowers the standby guardian to assume the duties of the office, which event may be the death, incapacity, or debilitation of the parent, custodian, or guardian, whichever occurs first.