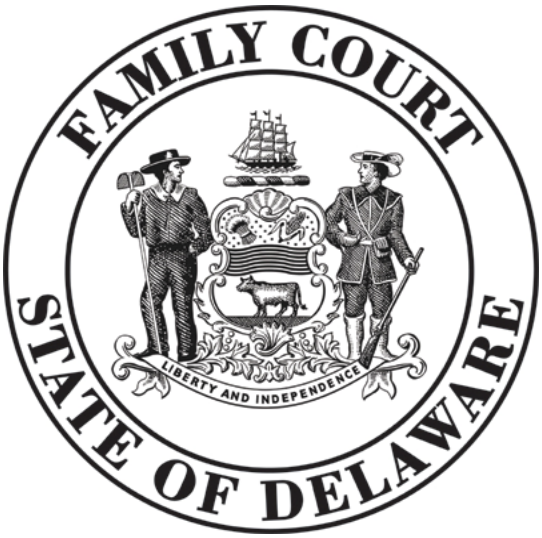
# GUARDIANSHIP INSTRUCTION PACKET



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# GUARDIANSHIP INSTRUCTION PACKET

Use the Guardianship Instruction Packet **ONLY** when:

- You are at least 18 years old; **AND**
- You want to be the Guardian of a child. A Guardian is a non-parent charged with caring for a minor; **AND**
- The child is **younger than 18 years of age**. (Family Court can only grant guardianship of a minor. If you are requesting guardianship of a person over the age of 18, you must file your request in the Court of Chancery); **AND**
- The child has been living in Delaware for **AT LEAST 6 CONSECUTIVE MONTHS BEFORE** filing your Petition for 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).

You may file for Guardianship singly or jointly with another person. If you file jointly with another person, the other person must also be at least 18 years old.

To make this Instruction Packet easier to read, it will explain guardianship as if you wanted to file for guardianship of one child. If you would like to have guardianship of more than one child and all of the children have the same mother **AND** the same father, you may file for guardianship of all of the children on the same petition. Please note that if any of the children of whom you are seeking guardianship have different fathers or mothers, you must file for 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 the process of filing a Petition for Guardianship, basic instructions on how to complete the Court forms you must file, and samples of the completed Court forms.

You should read the instructions and sample forms carefully **before** filling out any forms. All of the forms must be neatly filled out by hand or typed. **ONLY FILE THE FORMS INCLUDED IN THE FORMS PACKET.** The sample forms included in this Instruction Packet are simply to help you understand how to fill out the real forms in the Forms Packet.

**YOU DO NOT HAVE TO COMPLETE ALL THE SECTIONS AT ONCE.** For example, you do not have to file the forms in Section 2 at the same time as the forms in Section 1. Read the information carefully to be sure that you know what you are supposed to do and when.

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

**READ THIS SECTION CAREFULLY**

**THIS DOCUMENT MUST BE FILED**

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

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

## TIPS AND REMINDERS …

- ✓ Make sure to read any **Answers to Frequently Asked Questions** on Guardianship. They will help you to better understand the guardianship and permanent guardianship process.

- ✓ Remember who is the Petitioner and who is the Respondent.
  - ➢ The **PETITIONER** is the person who filed the Petition for Guardianship, in other words, you.
  - ➢ The **RESPONDENT** is the person(s) replying (responding) to the Petition.

- ✓ Remember that just because you fill out the forms correctly does not necessarily mean that 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 finding an attorney, you can call the **Lawyer Referral Service** in New Castle County, 302-478-8850, and in Kent and Sussex Counties, 1-800-773-0606. (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) whenever you get a Court form notarized.

- ✓ **THERE IS A LOT OF PAPER IN A COURT CASE AND HAVING THE COURT MAKE YOU COPIES CAN BE VERY EXPENSIVE**.

***PLEASE READ AND REMEMBER THESE IMPORTANT TIPS***

## REMEMBER

- **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 with you every time you go to Court.**
- **When you file a document with the Court, <u>bring</u> the required number of copies of each paper and an extra copy for you to have "clocked-in." Keep the clocked-in copy <u>in your folder</u> 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.**

# GUARDIANSHIP

### The Definition of Guardianship

Guardianship is the possession by a non-parent of the **powers, rights**, and **duties** which are necessary to protect, manage and care for a child. A Guardian has the legal authority to take care of the child as if he/she were the child's parent until the child turns 18 years of age.

Included in a Guardianship Order is a **Custody Order**. Therefore, a Guardian has the same legal authority to care for the child as a parent would. However, unlike a parent, the Guardian cannot be held liable by a third party for something the child has done wrong simply because he/she is the guardian. Additionally, the Court also has the right to limit any of the powers and duties granted to a Guardian.

### Who Can Be a Guardian?

Any person at least 18 years old may be the Guardian of a child. However, if you are not a relative (immediate family member, grandparent, aunt, uncle or first cousin) and the Respondent(s) do not consent to the guardianship, the Division of Family Services must approve the placement.

### The Responsibilities of a Guardian

Assuming the Court places no limitations in the Guardianship Order, the 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 psychiatric 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.

**The Responsibilities of the Child's Parent after Guardianship is Granted**

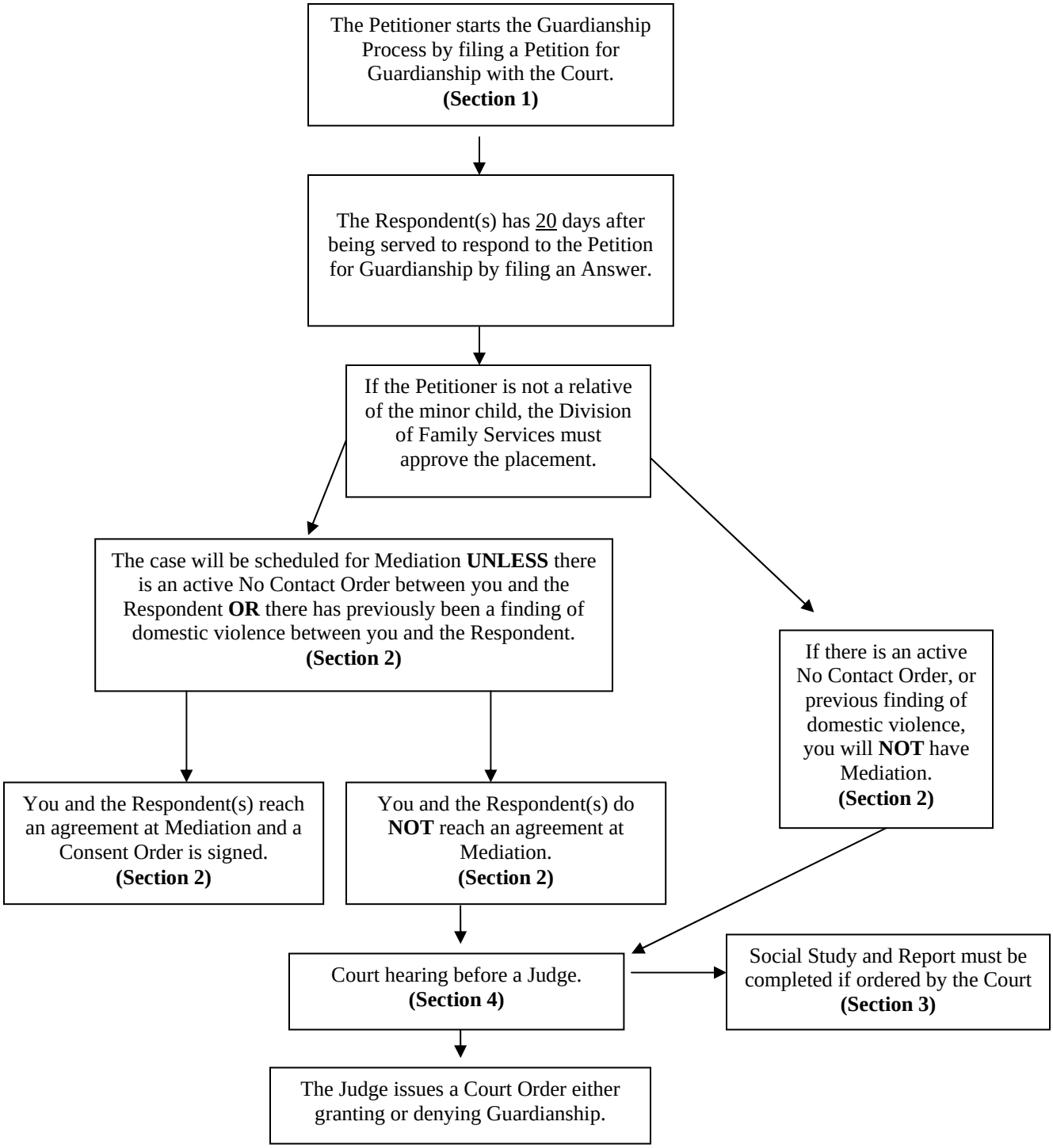
Because a parent's parental rights are not terminated when a non-parent is given guardianship, the Court will determine the following:

- How much, if any, contact the parent(s) should have with the child after the Guardianship is granted;
- 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.

# GUARDIANSHIP PROCESS



# SECTION 1

## STARTING THE GUARDIANSHIP PROCESS

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

- ❑ There is **NO** Guardianship Order in place in Delaware or anywhere else. (If there is an existing Guardianship Order regarding the child and you want to **change the Order**, see page ?); **AND**
- ❑ The child had been living in Delaware for **AT LEAST 6 CONSECUTIVE MONTHS BEFORE** the Petitioner filed the Petition for 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 **NOT** a parent of the child.

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

- ➢ A sample of this form may be found on page 20.
- ➢ Only a **non-parent** may file for guardianship. If you are a parent and would like custody of a child, please see the Custody 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 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;
  - And the 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. 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, list the deceased parent(s) as a Respondent(s), indicate on the petition that he/she is deceased and list the date of death.
- If the child over which you would like to have guardianship is **14 years of age or older**, the child must fill out an **Affidavit of Consent**, agreeing to the guardianship. For more information please see page 15.
- When alleging facts in your Petition for Guardianship, you must demonstrate to the court one of the following things regarding each parent:

- The parent **voluntarily consents** to the guardianship. If the parent voluntarily consents then he/she must complete an **Affidavit of Consent**. Please see page 14 for more information; **OR**
- The child is dependent or neglected in the parent's care **AND** it is in the child best interest for you to be appointed guardian over the child. 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 Guardianship, you must explain to the Court why the child is dependent or neglected.

➢ When alleging facts in your Petition for Guardianship you also want to give the Court information why it is in the child's "**best interest**" for you to have guardianship. 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 why you think that you should have guardianship of the child.
- 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 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 24.
- The Custody Separate Statement explains to the Court a child's past and present living arrangements, so that 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 27.
- 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 29.

- You must provide the Court with each Respondent's current address. If you do not know where the Respondent(s) currently lives, you must **<u>try to locate</u>** 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 an effort to locate the Respondent(s).
- You must complete this form before you publish notice of the matter in the newspaper. Please see page 18 for more information regarding Notice by Publication.

## If all parties agree on the Guardianship, file:

**Consent Order-Guardian of the Person** form. (*<u>file</u> one original*).

- A sample of this form may be found on page 30.
- File this document only if you and the Respondent(s) have already agreed upon the guardianship.
- On this form, you will describe for the Court the following things:
  - Who shall have guardianship of the child(ren)
  - Whether Respondent(s) shall have visitation with the child(ren)
  - What that visitation schedule will be
- When describing the visitation schedule, be as **<u>specific</u>** as possible. Explain the places, dates and times that visitation will occur. Also, explain to the Court who will be responsible for driving the child to and from the visitations.
- All Petitioners and Respondents must sign and notarize the Consent Order. If the minor child is over the age of 14, the child must sign the Consent Order also.
- Before you file the Consent Order, you and the Respondent(s) **may** have to meet with a court employee to review the terms of your agreement.

- Once you have filed your agreement with the Court, it will be forwarded to a Judicial Officer who will review your agreement. If the Judicial Officer finds that the agreement is in the best interests of the child, then he or she will sign the agreement and it will become a court order, called a **Consent Order**.
- Once the Judicial Officer signs the Consent Order, the Court will mail a copy of the signed order to you and the Respondent(s).

## 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 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 child(ren) over 14 agree to the 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 33.

- 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 you becoming his/her guardian.
- If the child does not agree with the guardianship and sign a consent form, you must explain to the Court why the 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 guardianship of more than one child over the age of 14, you must have each child complete their own Affidavit of Consent.

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

**Affidavit of Consent of a Child's Parent** *(file the original and one copy for each Respondent)*

- A sample of this form may be found on page 34.
- If one, or both, of the child's parents agree that you should be granted guardianship, 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.

**BE SPECIFIC WHEN COMPLETING THE FORMS** and make sure that you address **ALL** of the areas explained on pages 11-12 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 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 Intake 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 of $50 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 18 for more information of when publication is necessary.)

## ADDITIONAL INSTRUCTIONS FOR GUARDIANSHIP

### SERVICE OF PROCESS

**Each** Respondent **must receive** a copy of the Petition for 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 pages 13-14).

- **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 pages 13-14).

## 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 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 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 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.**

Form 126
(Rev. 10/05)
20

# 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 GUARDIANSHIP OF A MINOR

File Number(s): _____ Petition Number: _____

**PETITIONER**

| | | |
|---|---|---|
| Name: Anne C. Smith | | Date of Birth: 2/3/1964 |
| Street Address: 101 Oak Street, Apartment #123 | | |
| Apt. No. or Box No. | | |
| City: Dover | State: DE | Zip Code: 19901 |
| Home Phone No. (302) 555-1111 | | |
| Work Phone No. (302) 555-9999 | | |
| Relation to Child(ren): Aunt | | |
| Attorney Name (if any): None | | |
| Street Address | | |
| Suite or Box No. | | |
| City | State | Zip Code |

**2nd PETITIONER (if any)**

| | | |
|---|---|---|
| Name: Scott R. Smith | | Date of Birth: 3/14/1964 |
| Street Address: 101 Oak Street, Apartment #123 | | |
| Apt. No. or Box No. | | |
| City: Dover | State: DE | Zip Code: 19901 |
| Home Phone No. (302) 555-1111 | | |
| Work Phone No. (302) 555-5555 | | |
| Relation to Child(ren): Uncle | | |
| Attorney Name (if any): None | | |
| Street Address | | |
| Suite or Box No. | | |
| City | State | Zip Code |

**RESPONDENT**

| | | |
|---|---|---|
| Name: Michelle Jones | | Date of Birth: 11/12/1967 |
| Street Address: 123 State Street | | |
| Apt. No. or Box No. | | |
| City: Dover | State: DE | Zip Code: 19901 |
| Home Phone No. (302) 222-1212 | | |
| Work Phone No. (302) 222-3333 | | |
| Relation to Child(ren): Mother | | |
| Attorney Name (if any): None | | |
| Street Address | | |
| Suite or Box No. | | |
| City | State | Zip Code |

**2nd RESPONDENT (if any)**

| | | |
|---|---|---|
| Name: Steven Harding | | Date of Birth: 9/14/1969 |
| Street Address: 123 Main Street | | |
| Apt. No. or Box No. | | |
| City: Dover | State: DE | Zip Code: 19901 |
| Home Phone No. (302) 222-4545 | | |
| Work Phone No. (302) 222-9999 | | |
| Relation to Child(ren): Father | | |
| Attorney Name (if any): None | | |
| Street Address | | |
| Suite or Box No. | | |
| City | State | Zip Code |

Guardian ad Litem, if any: Jane Walker

Address: 525 South Washington Street Dover, DE 19901

Attorney for Guardian ad Litem, if any: Martha Bates, Esquire
Address of Attorney for Guardian ad Litem: 111 Legal Way Dover, DE 19901

IN THE INTEREST OF THE FOLLOWING CHILD(REN): (**Complete the table below for each child for which petitioner wants guardianship**. Attach additional sheets if necessary.)

| Child's Name | Child's Date of Birth | Child's Place of Birth (City, State) | Child's Gender (Check One) |
|---|---|---|---|
| Doug A. Smith | 10/14/1991 | Dover, DE | ☒ Male Female |
| | | | Male Female |
| | | | Male Female |

1. Complete the table below regarding the child(ren)'s parents:

| | Name | Address | Date of Birth | Social Security No. |
|---|---|---|---|---|
| **MOTHER** | Michelle Jones | 123 State Street Dover, DE 19901 | 11/12/1967 | 111-22-3333 |
| **FATHER** | Steven Harding | 123 Main Street Dover, DE 19901 | 9/14/1969 | 444-55-6666 |

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.

Names and addresses have been indicated above

3. Name(s) of person(s) or organization **holding parental rights** to the child(ren): Michelle Jones and Steven Harding

Address of person(s) or organization: See above

4 Name(s) of the person(s) or organization **having the guardianship, care, control or custody** of the child(ren): Michelle Jones and Steven Harding

Address of person(s) or organization: See above

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

Anne and Scott Smith

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

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

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):

Doug A. Smith

The Affidavit of Consent can be found in the forms packet.

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**)

☒ The child(ren)'s parent(s) agree that I/we should become the guardian(s) of the child(ren) (**Attach** an Affidavit of Consent executed by the parent(s) who agree).

I am a stepparent of the child(ren) and the legal parent having custody or primary placement for the child(ren) has become disabled. The child(ren) have been living with me immediately before the legal parent having custody or primary placement has become disabled.

The child(ren)'s parent(s) are deceased. (**Attach a certified copy of the death certificate**)

☒ The child(ren) is/are dependant and/or neglected based on the following reason(s):

List your allegations in numbered paragraphs

1) Both Mother and Father are currently in rehab for drug and alcohol abuse

2) It is in the best interests of Dough Smith to reside with the Petitioners.

3) Doug Smith has been residing with Petitioners for several months, is enrolled in school in Petitioner's district and has friends at that school and in the neighborhood.

4) Since coming to live with Petitioner's, Doug's health has improved, as well as his grades in school.

5) Petitioners have no history of domestic violence and no one who lives in the household has a criminal history.

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

Anne C. Smith
Petitioner/Petitioner(s)' Attorney

Date: December 15, 2005

Sign in the presence of a notary.

Steven R. Smith
Petitioner 2, if any

Date: December 15, 2005

**SWORN TO AND SUBSCRIBED** before me this date, 12/15/2005

Donna King
Notary Public or Clerk of Court

**SWORN TO AND SUBSCRIBED** before me this date, 12/15/2005

Donna King
Notary Public or Clerk of Court

Signed by notary or Court staff

Form 346
(Rev. 6/05)

# 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 | Respondent | File No.: |
|---|---|---|
| Anne C. Smith, Scott R. Smith | Michelle Jones, Steven Harding | |

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

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

Doug A. Smith 10/14/91

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?

| Street Address | City | State | Zip Code |
|---|---|---|---|
| 101 Oak Street, Apt. #123 | Dover | DE | 19901 |

| Name of person(s) child(ren) is living with | Relationship to child(ren) |
|---|---|
| Anne C. Smith, Scott R. Smith | Aunt and Uncle |

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 |
|---|---|---|---|
| 101 Oak Street, Apt. #123 | Dover | DE | 19901 |

| Date child(ren) lived there | Name of person(s) child(ren) is living with | Relationship to child(ren) |
|---|---|---|
| 12/1/2005-present | Anne C. Smith, Scott R. Smith | Aunt and Uncle |

| Person's current address | City | State | Zip Code |
|---|---|---|---|
| same as above | | | |

| Address where the child(ren) lived before that. | City | State | Zip Code |
|---|---|---|---|
| 490 Pine Street | Wilmington | DE | 19899 |

| Date child(ren) lived there | Name of person(s) child(ren) is living with | Relationship to child(ren) |
|---|---|---|
| 8/10/2002-11/31/2005 | Michelle Jones and Steven Harding | Parents |

| Person's current address | City | State | Zip Code |
|---|---|---|---|
| 490 Pine Street | Wilmington | DE | 19899 |

| Address where the child(ren) lived before that. | City | State | Zip Code |
|---|---|---|---|
| 6160 Beachfront Drive | Virginia Beach | VA | 23464 |

| Date child(ren) lived there | Name of person(s) child(ren) is living with | Relationship to child(ren) |
|---|---|---|
| Birth to 8/10/2002 | Michelle Jones and Steven Harding | Parents |

| Person's current address | City | State | Zip Code |
|---|---|---|---|
| Same as above | | | |

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.*

| **TYPE OF ACTION** (custody, visitation or modification) | **PERSON** who filed action | **STATE** action was filed in | **COURT** where the action was filed |
|---|---|---|---|
| | | | |

| **DATE action was filed** | **CASE NUMBER** | **RESULT** of action | **DATE OF ORDER** |
|---|---|---|---|
| | | | |

| **TYPE OF ACTION** (custody, visitation or modification) | **PERSON** who filed action | **STATE** action was filed in | **COURT** where the action was filed |
|---|---|---|---|
| | | | |

| **DATE action was filed** | **CASE NUMBER** | **RESULT** of action | **DATE OF ORDER** |
|---|---|---|---|
| | | | |

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.*

| **TYPE OF ACTION** (PFA, TPR, Guardianship, Adoption) | **PERSON** who filed action | **STATE** action was filed in | **COURT** where the action was filed |
|---|---|---|---|
| PFA | Anne C. Smith | DE | Family Court |

| **DATE action was filed** | **CASE NUMBER** |
|---|---|
| 12/31/04 | CK04-12111 |

| **TYPE OF ACTION** (PFA, TPR, Guardianship, Adoption) | **PERSON** who filed action | **STATE** action was filed in | **COURT** where the action was filed |
|---|---|---|---|
| | | | |

| **DATE action was filed** | **CASE NUMBER** |
|---|---|
| | |

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

☒ No one other than the parties have 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,

STOP

Sign in the presence of a notary.

*Anne C. Smith, Scott R. Smith*

Petitioner

*December 15, 2005*

STOP

Signed by notary or court staff.

*Donna King*

Notary Public

Form 240
Rev (3/03)

# The Family Court of the State of Delaware

Fill in the date you file the form

INFORMATION SHEET - **PLEASE PRINT**

Date: December 15, 2005 File No. : _____

**Please fill in A to K pertaining to you the Applicant (Petitioner).**

Each Petitioner must complete a separate form

A. Name: Anne C. Smith

B. Address: 101 Oak Street, Apartment #123
Dover, Delaware 19901

C. Phone: Home: (302) 555-1111 Work: (302) 555-9999

D. Employer & Work Address: ABC Child Care Center, 500 Pine Street, Dover, Delaware 19904

Hours/Shift: 7:30 to 4:30 Monday-Friday

E. Social Security No.: 111-22-3333 F. Date of Birth: 2/3/64

G. Description: Sex: F Race: white Height: 5'4" Weight: 135 lbs Hair: blond Eyes: brown

Marks/Scars/Tattoos: none

H. Type of Vehicle operated by you: 1998 Honda Accord

I. Driver's License: DE 7654 (State and Number) J. Your relationship to the Defendant/Respondent: spouse

K. Attorney: none

**If you are filing for Custody, Visitation, Support or Petition for Protection from Abuse please fill out the information needed below in reference to the child(ren) who are involved..**

## Children (Custody/Visitation/Support/Petition for Protection from Abuse)

| Name | Relationship | Sex | Date of Birth |
|---|---|---|---|
| Doug A. Smith | Nephew | Male | 10 / 14 / 91 |
| | | | |
| | | | / / |
| | | | / / |
| | | | / / |
| | | | / / |
| | | | / / |

Form 240
Rev (3/03)

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

L. Defendant/Respondent is a: (Check One) **X ADULT** **ف JUVENILE**

M. Name: Michelle Jones

You must complete a separate form for each Respondent

N. Address: 490 Pine Street
Wilmington, Delaware 19899

O. Phone: Home: (302) 555-9876 Work: (302) 555-3434

P. Employer and Work Address: XYZ Corporation, 67 Walnut Avenue, Newark, Delaware 19867

Hours/Shift: 9 am -5pm, Monday-Friday

Q. Social Security No.: 787-98-6767 R. Date of Birth: 7/13/65

S. Description: Sex: F Race: white Height: 5'4" Weight: 190 lbs Hair: black Eyes: brown

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

T. Drivers License No.: DE93765 U. Type of vehicle operated by Defendant/Respondent 99 Trailblazer

V. Parent's Name (if a Juvenile):

W. Time when Respondent is usually home: 7pm-6:30 am, Monday-Friday and Mornings on the weekends

List places where the Respondent spends time other than at home or at work.

X. Any additional information about Respondent that may aid the process server in locating him/her to serve this petition:
If you are unable to locate the Respondent at his place of residence or his place of employment, she spends a lot of time at brother's house which is located at 775 Spruce Lane, Newark, DE 19867.

Write directions to each address list on this form to make sure that the process serve 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 a half blocks. The Respondent's house is on the right and is white with blue shutters.

Work: Take I-95 towards Baltimore. Get off at Exit 10 and take your first right onto Cherry Drive. Go about a mile and a half. Turn left onto Walnut Ave. XYZ Corporation is on your left.

Brother: 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.

Form 241
(Rev 12/94)

# The Family Court of the State of Delaware

in and for ☐ New Castle X Kent ☐ Sussex County

Check the county in which you are filing.

## AFFIDAVIT THAT A PARTY'S ADDRESS IS UNKNOWN

| Petitioner Last | First | MI | | Respondent Last | First | MI | File No. |
|---|---|---|---|---|---|---|---|
| Smith | Anne | C. | vs. | Jones | Michelle | | |
| | | | | | | | CPI No. |

Fill in the county in which you are filing.

You must complete a separate form for each Respondent whose address is unknown

State of Delaware )
) SS.
Kent County )

Fill in the date you have the form notarized.

BE IT REMEMBERED, that on this 15th day of December, 2005, 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 Michelle Jones. I have contacted his/her (Please check as appropriate) ☐ Parent ☐ Spouse ☐ Employer X Other: Respondent's Sister.
His/Her last known address and telephone number were:

490 Pine Street
Wilmington, Delaware 19899

as of December 1, 2005.

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

3. I have had no contact with him/her since November 1, 2005.

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.

Sign in the presence of a notary.

Anne C. Smith
Affiant

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

Signed by notary or court staff.

Donna King
Notary Public

Form

# The Family Court of the State of Delaware

In and For ☐ New Castle ☒ Kent ☐ Sussex County

Check the county in which you are filing.

## CONSENT ORDER-GUARDIAN OF THE PERSON

**Petitioner**

| | | |
|---|---|---|
| Name: Anne C. Smith | | |
| Street Address: 101 Oak Street | | |
| Apt. or P.O. Box Number: Apartment #123 | | |
| | | |
| City: Dover | State: DE | Zip Code: 19901 |
| Date of Birth: 2/3/1964 | Social Security #: 111-22-3333 | |

**Respondent**

| | | |
|---|---|---|
| Name: Michelle Jones | | |
| Street Address: 123 State Street | | |
| Apt. or P.O. Box Number: | | |
| | | |
| City: Dover | State: DE | Zip Code: 19901 |
| Date of Birth: 3/14/1964 | Social security #: 222-33-4444 | |

File Number:

Case Number:

**Petitioner**

| | | |
|---|---|---|
| Name: Scott R. Smith | | |
| Street Address: 101 Oak Street | | |
| Apt. or P.O. Box Number: Apartment #123 | | |
| | | |
| City: Dover | State: DE | Zip Code: 19901 |
| Date of Birth: 3/14/1964 | Social Security #: 333-44-5555 | |

**Respondent**

| | | |
|---|---|---|
| Name: Steven Harding | | |
| Street Address: 123 Main Street | | |
| Apt. or P.O. Box Number: | | |
| | | |
| City: Dover | State: DE | Zip Code: 19901 |
| Date of Birth: 9/14/1969 | Social security #: 666-77-8888 | |

IN THE INTEREST OF the following child(ren): Doug A. Smith (Name) 10/14/1991 (DOB)

The parties in the above entitled cause agree upon the following arrangement and do consent to the entry of an Order providing for same:

GUARDIANSHIP AWARDED TO: Anne and Scott Smith (Aunt and Uncle)

Name and Relationship

101 Oak Street, Apartment #123

Dover, DE 19901

Address

Respondent(s) shall have visitation as follows:

Describe the visitation schedule you have agreed upon in detail.

Mother shall have visitation with the children every other weekend beginning the first weekend in January 2006. Mother will pick up the children from school on Friday afternoon and return the children to Aunt & Uncle's home by 4pm on Sunday.

Father shall have visitation with the children every other weekend beginning the second weekend in January, 2006. Father shall pick up the children from school on Friday afternoon and return the children to Aunt & Uncle's home by 4pm on Sunday.

Fill in the date you have the form notarized.

BE IT REMEMBERED, that on this date ___December 15, 2005 _, __Anne Smith and Scott Smith_____ ("Petitioner(s)"), 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: We, the undersigned, hereby agree upon the following guardianship agreement for the above-named child. We signed this consent agreement voluntarily and of our own free will.

| | | |
|---|---|---|
| ___Doug Jones_____ | _____Anne Smith_____ | _____Scott Smith_____ |
| Minor (if over 14) | Petitioner | Petitioner |
| __Michelle Jones_____ | _____Steven Harding_____ | |
| Respondent | Respondent | |

All parties must sign in the presence of a notary.

Signed by notary or Court staff

SWORN TO AND SUBSCRIBED before me this date ___12/15/2005_____.

_____Donna King_____
Notary Public

SO ORDERED this _____ day of _____, _____.

_____
Judge

Form 420
(Rev. 12/04)
***FILM***

# The Family Court of the State of Delaware

In and For ☐ New Castle ☒ Kent ☐ Sussex County

Check the county in which you are filing.

| | | |
|---|---|---|
| Anne C. Smith<br>Petitioner, | ) | File No.: _____ |
| and | ) | |
| Michelle Jones<br>Respondent, | ) | ): _____ |

You must file a separate form for each Respondent

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

STATE OF DELAWARE )
Kent COUNTY ) ss.

Write the county in which you are filing.

Fill in the date you have the form notarized.

BE IT REMEMBERED, that on this date, December 15, 2005, personally appeared before me, a Notary Public for the State of Delaware in the County declared above, Michelle Jones, ("Affiant"), who, being duly sworn by me according to law, did depose and say:

1. That Affiant is the Respondent in the above captioned civil proc
2. That Affiant is active duty in the United States military: and
3. The Affiant waives his/her rights under the "Servicemember so acknowledges that he/she, or his/her attorney, will be quir d 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.

*Michelle Jones*
Respondent ("Affiant")

SWORN TO AND SUBSCRIBED before me this date, *December 15, 2005*

Signed by notary or court staff.

*Donna Young*
Notary Public or Clerk of Court

Form

# The Family Court of the State of Delaware

In and For ☐ New Castle ☒ Kent ☐ Sussex County

Check the county in which you are filing.

## GUARDIANSHIP

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

**Petitioner**

| | | |
|---|---|---|
| Name: Anne C. Smith | | |
| Street Address: 101 Oak Street | | |
| Apt. or P.O. Box Number: Apartment #123 | | |
| City: Dover | State: DE | Zip Code: 19901 |
| Date of Birth: 2/3/1964 | Social Security #: 111-22-3333 | |

**Respondent**

| | | |
|---|---|---|
| Name: Michelle Jones | | |
| Street Address: 123 State Street | | |
| Apt. or P.O. Box Number: | | |
| City: Dover | State: DE | Zip Code: 19901 |
| Date of Birth: 3/14/1964 | Social security #: 222-33-4444 | |

File Number:

**Petitioner**

| | | |
|---|---|---|
| Name: Scott R. Smith | | |
| Street Address: 101 Oak Street | | |
| Apt. or P.O. Box Number: Apartment #123 | | |
| City: Dover | State: DE | Zip Code: 19901 |
| Date of Birth: 3/14/1964 | Social Security #: 333-44-5555 | |

**Respondent**

| | | |
|---|---|---|
| Name: Steven Harding | | |
| Street Address: 123 Main Street | | |
| Apt. or P.O. Box Number: | | |
| City: Dover | State: DE | Zip Code: 19901 |
| Date of Birth: 9/14/1969 | Social security #: 666-77-8888 | |

Fill in the date you have the form notarized.

BE IT REMEMBERED, that on this date __December 15, 2005_____, ____Doug 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:

1) I hereby agree that the above named Petitioner(s) shall be my guardian(s).
2) I understand that as my guardian(s), the Petitioner(s) shall protect, manage and care for me as a parent would and that they shall make decisions regarding my care.

STOP

Sign in the presence of a notary.

_____*Doug A. Smith*_____
Child

SWORN TO AND SUBSCRIBED before me this date __12/15/2005_____.

STOP

_____*Donna King*_____
Notary Public

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.

## GUARDIANSHIP

## AFFIDAVIT OF CONSENT OF A CHILD'S PARENT

**Petitioner**

| | | |
|---|---|---|
| Name: Anne C. Smith | | |
| Street Address: 101 Oak Street | | |
| Apt. or P.O. Box Number: Apartment #123 | | |
| | | |
| City: Dover | State: DE | Zip Code: 19901 |
| Date of Birth: 2/3/1964 | Social Security #: 111-22-3333 | |

**Respondent**

| | | |
|---|---|---|
| Name: Michelle Jones | | |
| Street Address: 123 State Street | | |
| Apt. or P.O. Box Numbe | | |
| | | |
| City: Dover | State: DE | Zip Code: 19901 |
| Date of Birth: 3/14/1964 | ial security #: 33-4444 | |

File Number:

Case Number:

**Petitioner**

| | | |
|---|---|---|
| Name: Scott R. Smith | | |
| Street Address: 101 Oak Street | | |
| Apt. or P.O. Box Number: Apartment #123 | | |
| | | |
| City: Dover | State: DE | Zip Code: 19901 |
| Date of Birth: 3/14/1964 | Social Security #: 333-44-5555 | |

Each Respondent that consents to the Guardianship must complete a separate form.

Fill in the date you have the form notarized.

BE IT REMEMBERED, that on this date 12/15/2005, Michelle Jones ("Affiant"), 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:

1) I am the Respondent in the above captioned matter involving my child(ren):

   Child(ren)'s Name: Doug Smith

   Child(ren)'s Date of Birth: 10/14/1991

2) I hereby agree that the above referenced Petitioner(s) shall become the guardian(s) of this child. As guardian, the Petitioner(s) shall protect, manage and care for this child.

3) 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.

4) 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.

STOP

Sign in the presence of a notary.

_____Michelle Jones_____
Affiant

SWORN TO AND SUBSCRIBED before me this date ____12/15/2005_____.

STOP

_____Donna King_____
Notary Public

Signed by notary or Court staff

# Section 2

# MEDIATION

After all of the Respondents have been served with the Petition for Guardianship and each of the Respondents has had an opportunity to file an Answer, the Court normally will schedule your Guardianship matter for **Mediation**. **<u>ALL PARTIES</u> are required to attend**.

- The Court will **NOT** schedule Mediation if there is an active **No Contact Order** involving you and the Respondent(s) or there has been a previous finding of domestic violence such as the following:
  - A Protection from Abuse Order, **OR**
  - An adjudication of criminal charges.

  If there is an active No Contact Order involving you and the Respondent(s), you will **NOT** attend Mediation and the Court will schedule a Court Hearing before a Judge.
- Mediation is **NOT** a Court Hearing. At Mediation, a Mediator (a neutral third party) will **try to help** you and the Respondent(s) reach an agreement about guardianship. The Mediator will ask you and the Respondent(s) to tell how you both think the matter should be resolved and will work with you to find a solution you both agree on. In other words, the Mediator is there to help you and the Respondent(s) work together in deciding what arrangement is best for the child(ren). Therefore, try your best to come with a "spirit of cooperation."

**CONSENT ORDERS**

- If, at the end of Mediation, you and the Respondent(s) reach an agreement, the Mediator will type your agreement into a document and will have you and the Respondent(s) will sign the agreement. The Mediator will also sign the agreement. Then, you will be

allowed to leave and the Mediator will give your signed agreement to a Judicial Officer. The Judicial Officer will decide whether your agreement should become a court order**,** called a **Consent Order.**

- If the Judicial Officer decides your agreement should become a Consent Order, the Judicial Officer will sign the agreement and the Consent Order will be mailed to you and the Respondent(s). You will **NOT** have to go to a Hearing with a Judge. Most often, the Judicial Officer will sign a Consent Order proposed by a Mediator.
- Once a consent Order is signed by a Judicial Officer, it is a court order and you and the Respondent(s) **MUST** follow the instructions in the Order.

Come to Mediation prepared to discuss why you should be granted guardianship. Keep the following information in mind as you prepare for mediation.

- Because a parent's parental rights are not terminated when a non-parent is given guardianship, the parent may still have contact with the child and receive information about the child as the parties agree or the Court orders.
- During the mediation, you may discuss whether the Respondent(s) should have visitation with the child. Prior to mediation, you should review the Family Court's **Standard Visitation Guidelines** to get a general idea about visitation arrangements. The Standard Visitation Guidelines are available in the Resource Centers and on the Family Court website (http://courts.state.de.us/family). . Consider whether the Standard Visitation Guidelines accommodate your and the Respondent's schedule as well as the schedule of the child. You are not required to follow the Standard Visitation Guidelines. At Mediation, you and the Respondent(s) can work together to establish a visitation schedule that works best for you, the Respondent(s) and, **most importantly** the child(ren).

**Be realistic when asking for the terms of a guardianship order.** The law says that it is best for a child to have at least some contact with both parents unless that contact would endanger the child's physical health or significantly impair his or her emotional development. The focus is on what is in the **CHILD'S best interests**. Just because **YOU** do not want the parents to be involved in the child's life may not mean that that is in the **CHILD'S** best interests. Therefore, at Mediation, be prepared and try to work with the parents to accommodate their right to a continuing relationship with the child.

**IF YOU REACHED AN AGREEMENT AT MEDIATION, THIS IS THE *END* OF THE PACKET. OTHERWISE, GO TO SECTION 3.**

# Section 3

# SOCIAL STUDY AND REPORT

## Only Complete This Section If The Court Orders That A Social Study And Report Be Completed.

## If The Court Does Not Order A Social Study And Report, <u>Go To Section 4</u>.

After you file a Petition for Guardianship, the Court may order that a **Social Study and Report** be done to help the Court decide whether you should be granted guardianship. If a Social Study and Report is **NOT** ordered, then you should skip this section and begin reading Section 4.

A Social Study and Report is a report that provides detailed information about you and the child that will **help the Court to determine whether you should become the child's guardian**. A worker from a child-placing agency will talk to all of the people involved with the case including you, the child's parents and the child. The worker will then write a report and submit it to the Court. The report will include information about the following:

- The child and the child's background;
- You, the proposed guardian, and your home where the child will be living;
- The child's physical and mental condition;
- The suitability of the placement;
- Whether all of the requirements under Delaware law have been met; **AND**
- The agency's recommendation regarding whether the guardianship should be granted.

Because the Social Study and Report must contain a lot of information, the worker investigating and preparing the report will probably need to get some information from you. The worker will likely ask you for the **names of people** that he/she can speak with to find out more information about **you**, the **child** and the **child's situation**. Furthermore, the worker may want to **visit your home** and see the environment where the child will be living. The worker may also ask you to provide him/her with **documents and papers** that are needed to prepare the report. It is **VERY** important that you cooperate with the worker and comply with his/her requests to the best of your ability. Remember that the information in the report will guide the Court when deciding whether you should be awarded guardianship.

If the Court requires that a Social Study and Report be completed, **YOU** must **select** a licensed child-placing agency to do the Social Report and Study. A list of child-placing agencies is available in the Family Court Resource Centers located in each courthouse and on the Family Court website. You select the agency by filing the following form:

**Order of Reference** *(file one original and one copy for each Respondent)*

- A sample form may be found on pages 42-43.
- **DO NOT** complete an Order of Reference **unless the Court <u>orders</u>** you to have a Social Study and Report completed.
- The Order of Reference is a <u>two</u> page form that includes the information about the agency chosen and an order form for a judge to sign.

- On the Order of Reference you will list the **names and ages** of the child(ren) for which you are requesting guardianship, the names of the child's **parent(s)** and the name of the **licensed child-placing agency** that you have selected to complete the Social Study and Report.

- Once you have completed this form and submitted it to the Court, a Clerk of Court will sign the form and forward a copy of it to the agency you have selected. The agency can then begin preparing the social study and report.
- You **MUST** pay the licensed child-placing agency to complete the Social Study and Report. This is not a Court fee and **cannot be waived** by the Court. You are responsible for the entire cost of preparing the Social Study and Report.
- The Social Study and Report can be very expensive so you might want to find out how much different agencies charge before deciding which one to use.
- The agency preparing the Social Study and Report has **4 months** from the date that the Court orders that the Social Study and Report be conducted to file the completed Report with the Court.
- The Court may allow the agency more time to complete the Social Study and Report, but **ONLY IF** the additional time is reasonable and is to enable the agency to complete the report.

**SECTION 4 WILL BEGIN AFTER THE SAMPLE FORM FOR SECTION 3.**

FORM

# The Family Court of the State of Delaware

In and For ☐ New Castle ☒ Kent ☐ Sussex County

Check the county in which you are filing.

Insert the name of your selected child placement agency

Petition for Guardianship/Permanent Guardianship of a Minor
Order of Reference

Civil Action No.:
In the Matter of:
Doug Smith

Insert the child's name

Dear Child Placement Agency,

Please be advised that Anne C. Smith (and Scott R. Smith)

has (have) petitioned the Court for Guardianship /Permanent Guardianship with respect to the following child(ren):

Circle Guardianship or Permanent Guardianship

Doug A. Smith, ☒ male or ☐ female child, aged 14, born 10/14/1991;

_____, ☐ male or ☐ female child, aged _____, born_____;

_____, ☐ male or ☐ female child, aged _____, born _____;

_____, ☐ male or ☐ female child, aged _____, born _____;

_____, ☐ male or ☐ female child, aged _____, born _____;

_____, ☐ male or ☐ female child, aged _____, born _____;

Check whether the Respondents have consented to the Guardianship

Written consent ☒ has ☐ has not been filed with the petition.
WHEREUPON it has been ordered by the Court that _____
Child Placement agency

do make a careful and thorough social study of this matter, making the inquiries required by the Act of the General Assembly and reporting the findings in writing to the Court.

12/15/2005
Date

*Donna King*
Clerk of Court

Signed by notary or Court staff

==========REPLY TO==========

☐ 500 KING STREET, STE 110
WILMINGTON, DE 19801-3742
(302) 255-0244

☒ 400 COURT STREET
DOVER, DE 19901
(302) 672-1000

☐ 22 THE CIRCLE
GEORGETOWN, DE 19947
(302) 855-7400

Form 193
(Rev. 3/99)

# The Family Court of the State of Delaware

In and For ☐ New Castle ☒ Kent ☐ Sussex County

Check the county in which you are filing.

Anne C. Smith ,
Petitioner

v.

Michelle Jones ,
Respondent

File No.: CN-040550

Petition No.: 06-0223

## ORDER

Having considered the request of the movant, Anne C. Smith,

**IT IS SO ORDERED**, this date: _____

Leave blank for the hearing officer to fill in

That
Child Placement Agency shall do a careful and thorough social study of Movant's Petition for Guardianship of Doug Smith (10/14/1991), making inquiries required by the Act of the General Assembly and reporting the findings in writing to the Court within four months of the date of this Order.

Make sure to include the selected child placement agency and the child's name and birth date.

_____
Judge/Commissioner

cc:

# Section 4

# HEARING WITH A JUDGE

## SCHEDULING THE HEARING

A **Court Hearing** will be scheduled by the Court **ONLY** if:

- The Mediation was unsuccessful (no agreement was reached) **OR** Mediation was not required**.**

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).*

- A sample may be found on page 49.
- If, once you receive your Notice, you cannot attend the scheduled 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 <u>MUST</u> 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 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.

- A sample may be found on page 50.
- **ONLY** complete this form if the Respondent(s) is **NOT** in the military and has not filed an answer or otherwise appeared in this Guardianship matter.
- If there is more than one Respondent, you must complete a separate form for each person.

The Court Hearing is a Trial in front of a Judge. At the Court Hearing, you and the Respondent(s) will each be given an opportunity to tell your side of the case and ask questions of witnesses. During the Court Hearing, the Judge expects you to follow a certain procedure. It is important that you are familiar with this procedure so that you know what you are allowed to do, when you are allowed to talk, and how to tell your side of the story**.**

Family Court has developed a **Court Hearing Procedure Overview** that explains generally what the Court Hearing procedure is and should answer many of the questions you have about the procedure. Family Court also has developed a series of **Answers to Frequently Asked Questions on Your Court Hearing** to help you prepare and organize for your Court Hearing. It will be helpful to read this information before your scheduled hearing.

Unless the parent(s) consent to the guardianship, it is up to **YOU** at the hearing to prove to the Judge **WHY** the child is **dependent or neglected** and

**WHY** it is in the **child's best interest** for the Court to grant you guardianship of the child. Dependency and neglect are explained on page 11 of this packet. The best interest standard is explained on pages 11-12 of this packet. Review that information before the hearing, so that you are prepared to present your case to the Court.

Because a parent's parental rights are not terminated when 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** you as the guardian will be required to provide to the parent(s) if the 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.
- For more information on visitation, please see page 37.

After both sides have presented all of their evidence, one of two things can happen. The Judge can **announce his/her decision** at the end of the hearing, in which case you will leave the Courthouse knowing what the guardianship arrangement is. **OR**, the Judge can **reserve decision**. When the Judge reserves decision, he/she considers all of the information presented during the hearing and issues a written order explaining the guardianship arrangement sometime after the hearing. Regardless of how the Judge issues the order, you should receive a copy of the Judge's decision, or Court Order, in the mail.

Once the Court has entered a Guardianship Order, you and the Respondent(s) should follow the terms of the Order. In other words you should do what the Order tells you to do. The Court will not enforce any agreements made by the parties that are not in a Court Order. If circumstances change, you and the Respondent(s) can change the Order by filing the proper petition. See Section 5 for information about when a guardianship order can be changed.

**SECTION 5 WILL BEGIN AFTER THE SAMPLE FORMS FROM SECTION 4.**

Form 191
(Rev. 6/05)

# The Family Court of the State of Delaw

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: Anne C. Smith | Name: Michelle Jones | File Number: CK04-12111 |
| Street Address: 101 Oak Street | Street Address: 490 Pine Street | |
| Apt. or P.O. Box Number: Apt. # 123 | Apt. or P.O. Box Number: | Petition Number: |
| City: Dover State: DE Zip Code: 19901 | City: Wilmington State: DE Zip Code: 19899 | |
| Social Security Number: 111-22-333 Date of Birth: 2/3/64 | Social Security Number: 787-98 | |
| Attorney Name and Phone Number: n/a | Attorney Name: n/a | |

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 Guardianship having been filed heretofore 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 Petitioner's daughter, Ashley Smith, has suffered from severe tonsillitis. She is scheduled for surgery on January 25, 2006, the date of the parties' guardianship hearing. I request that the Court grant a continuance so that I can be with my daughter during surgery. I have contacted all Respondents and they are in agreement 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,

Sign in the presence of a notary.

*December 15, 2005*

*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 12/15/2005 and addressed to Michelle Jones at the address listed on the petition, being , 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,

Sign in the presence of a notary.

*December 15, 2005*

*Anne C. Smith*
Movant/Attorney

*Donna King*
Notary Public/Clerk of Court

Signed by notary or court staff.

Form 405
(Rev. 10/90)
***FILM***

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

Fill in the county where you are filing,

## AFFIDAVIT OF NON-MILITARY SERVICE

STATE OF DELAWARE )
) ss.
Kent COUNTY )

Fill in the date you have the form notarized.

BE IT REMEMBERED, that on this date, January 6, 2006, 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 above captioned civil proceeding;
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 "Servicemembers Civil Relief Act of 1940" (50 U.S.C. App. 521) approved October 17, 1940.

STOP

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, January 6, 2006

STOP

Signed by notary or court staff.

Donna King
Notary Public or Clerk of Court

# Section 5

# CHANGING AND ENDING GUARDIANSHIP

Once the Court enters a 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 11-12 for an explanation of the best interest standard.