

# GUARDIANSHIP INSTRUCTION PACKET



<https://courts.state.de.us/family>

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# GUARDIANSHIP INSTRUCTION PACKET

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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. The sample forms may vary slightly from our current Word versions of these forms, which can be accessed online at this link: <https://courts.delaware.gov/family/> or in our Resource Centers.

**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, or to see if you qualify for free legal assistance, you can visit the Delaware Volunteer Legal Services website at <https://delegalhelplink.org>.

✓ 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**

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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 with you 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.**

# 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, as defined in Section 2302 of Title 13 (sibling, grandparent, uncle, aunt, first cousin, first cousin once removed, great-grandparent, grandaunt or granduncle, half sibling, stepparent, stepsibling, stepaunt or stepuncle, or stepgrandparent of the child who is the subject of a guardianship petition), the Division of Family Services must assess 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.

**Note:** If the guardian proposes relocation of a child for a period of 60 days or more involving either a move outside the State of Delaware or a move that materially affects a parent's existing visitation arrangement or order, the guardian must obtain either leave of the court or consent of the child's parents. To such a request, the Court will apply the relocation factors under Section 734 of Title 13.



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

#### **Granted**

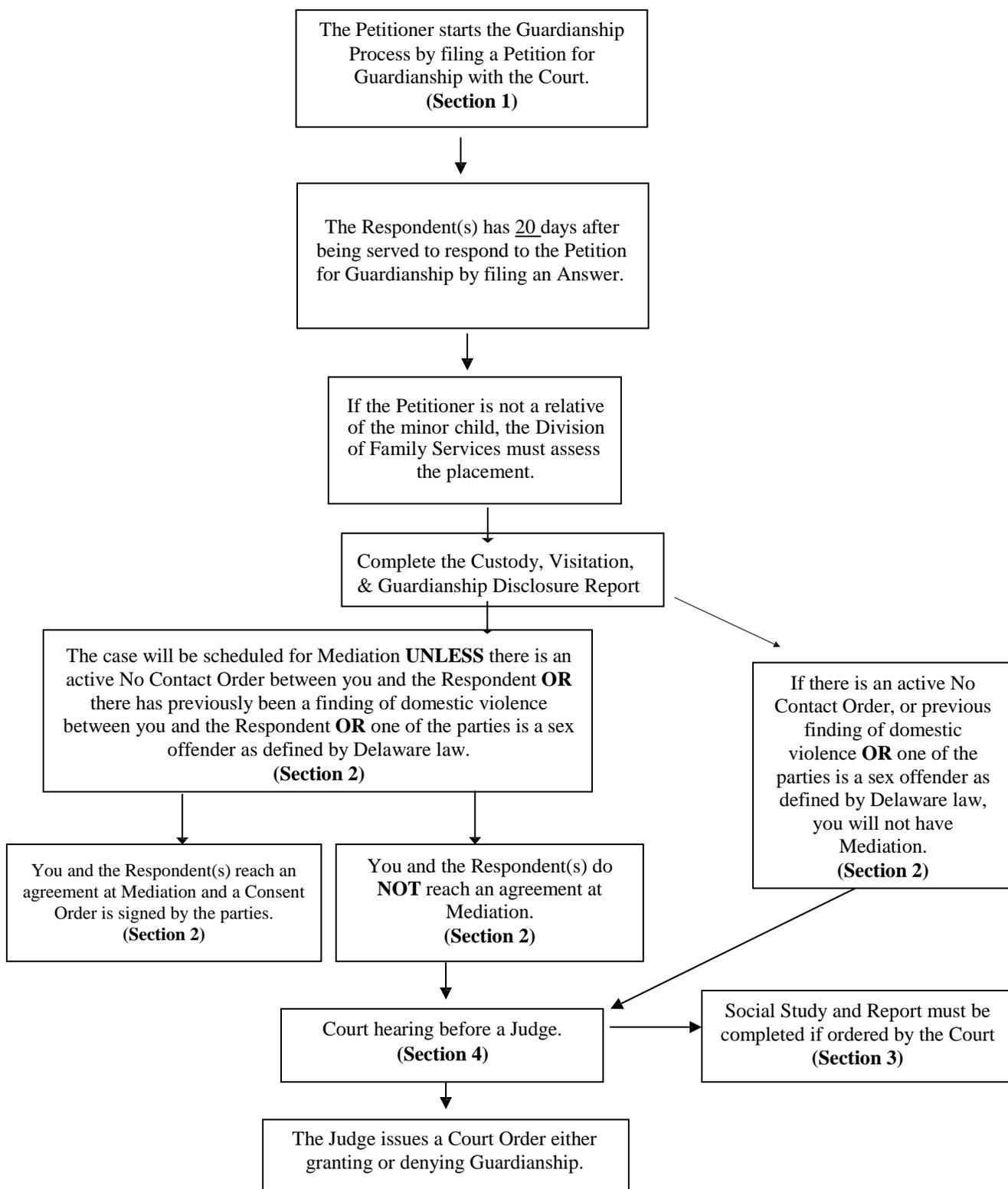
Because a parent's parental rights are not terminated when a non-parent is given guardianship, the Court will determine the following:

- 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 60); **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 126.** (*file the original and one copy for each Respondent*).

- A sample of this form may be found on page 24.

➤ 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;
- 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 19.

➤ 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**. The parent must consent not only to the guardianship, but also to the reason(s) the guardianship is necessary. (Please see page 19 for more information); **OR**
- The child is dependent, neglected, or abused in the parent's care **AND** it is in the child best interest for you to be appointed guardian over the child. Dependency, neglect, abuse 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, neglected, or abused** in his/her parents' care as defined in Section 901 of Title 10 of the Delaware Code.

- A child is **abused** by a parent if he or she causes or inflicts sexual abuse on the child or causes or inflicts physical injury through unjustified force, emotional abuse, torture, exploitation, maltreatment or mistreatment.

- 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, neglected, or abused.

➤ 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 Section 722 of Title 13 of the Delaware Code) 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 346.** (*file the original and one copy*).

- A sample of this form may be found on page 29.
- 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 240.** (*file the original and one copy*).

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

## **Required Form Prior to Mediation or First Court Appearance**



### **Custody, Visitation, and Guardianship Disclosure Report Form 364.**

- A sample of this form may be found on page 34.
- Prior to mediation, each party is required to fill out the Custody, Visitation and Guardianship Disclosure Report. Each party shall bring the completed form to mediation. If mediation is bypassed, each party must complete and exchange with the opposing party or attorney a Custody, Visitation and Guardianship Disclosure Report at least 7 calendar days prior to the first court appearance additionally filing a copy of the Report with the Court at least 7 calendar days prior to the first court appearance.

## BELOW ARE OPTIONAL FORMS

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

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

 **Affidavit that a Party's Address is Unknown Form 241.** (file the original and one copy).

- A sample of this form may be found on page 37.
- 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 an effort to locate the Respondent(s).
- You must complete this form before you publish notice of the matter in the newspaper or on the Court's legal notice website. Please see page 23 for more information regarding Notice by Publication.

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

 **Consent Order-Guardian of the Person Form 124.** (file one original).

- A sample of this form may be found on page 38.
- File this document only if you and the Respondent(s) have already agreed upon the guardianship and the reason(s) the guardianship is necessary.
- 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 **specific** 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 Form 420**  
*(file the original and one copy for each Respondent).*

- A sample of this form may be found on page 44.
- 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 Form 201**

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

- A sample of this form may be found on page 45.
- 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 Form 202**

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

- A sample of this form may be found on page 46.
- If one, or both, of the child's parents agree that you should be granted guardianship and to the reason(s) the guardianship is necessary, 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 12-15 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 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 Leonard L. Williams Justice Center.
- **If you file your papers by mail**, the address for each courthouse is available on the Family Court website. The Court does **NOT** accept filings that are faxed.



### **FILING BY EMAIL**

You may also file your petition and required forms by email. The required forms are those referenced beginning on page 12 in this packet.

To file by email, you must send the petition and required forms to:

FC\_Guardianship@delaware.gov.

For more information on filing by email, please review the Civil Filing by Email FAQ:

<https://courts.delaware.gov/family/faqs>



A filing fee is charged for each petition that is filed. **If filing in person**, the filing fee can be paid in cash, by credit card, by check or by money order made payable to “Family Court.” **If you are filing by email**, you may only pay by credit card. Family Court staff will call you for credit card information. It is important that you include your phone number in the email communication to the Court. **Your petition will not be considered filed until the filing fee is paid**. If you are unable to pay by credit card, you may file by mail enclosing a check or money order with your petition. **If you are filing by mail**, you may only pay by check or money order. There are additional costs if you must publish notice of this action. See the next page for additional information about when publication is necessary.

➤ **CAN THE FEE SOMETIMES BE WAIVED?**

You may qualify for an administrative fee waiver under the following circumstances:

- You currently have, or had in the past, a Protection From Abuse (PFA) Order against any of the respondents you are naming in this petition.
- You are filing this guardianship petition with a letter of support from the Division of Family Services (DFS).
- You or an immediate household member are currently receiving means-tested governmental assistance, such as TANF (cash assistance/welfare), SNAP (Food Stamps), SSI, or low-income/subsidized housing.

If you believe one of the three above circumstances apply to you, please fill out Form 680- Petitioner's Unsworn Declaration in Support of Waiver of Fees.

If you are represented by a Qualified Legal Services Provider such as Community Legal Aid Society Inc. (CLASI), Delaware Volunteer Legal Services (DVLS), or Legal Services Corporation of Delaware (LSCD), your attorney can file Form 681- Counsel's Certification for Waiver of Fees on your behalf.

If you do not qualify for any of the above, but feel your financial situation makes it difficult for you to pay the costs, fill out an Affidavit in Support of Application to Proceed in Forma Pauperis (fee waiver), Form 257P. This is a detailed financial information form, which requires supporting documentation of your financial situation, and requests that the Court consider waiving the filing fees associated with filing this Petition because you believe that your financial situation makes it difficult for you to pay the costs.

## 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, and you are unable to find another address for the respondent, you must also complete an Affidavit that Address is Unknown Form 241 (see page 17). ~~You may~~ then publish notice of your petition either on the Court's legal notice website or in a newspaper in the county and state in which the Respondent lives or was last located.

### ❑ 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 complete an Affidavit that Address is Unknown Form 241 (see page 17). You may then publish notice of your petition either on the Court's legal notice website or in a newspaper in the county and state in which the Respondent lives or was last located.



### 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

\*Each sample form may list information from individual cases and not all parties will match.

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

<http://courts.state.de.us/family>

# The Family Court of the State of Delaware

In and For  New Castle County  Kent County  Sussex County

## PETITION FOR GUARDIANSHIP OF A MINOR



Check the county in which you are filing.

File Number: CK16-98765

Petition Number: \_\_\_\_\_

### Petitioner

Name: Anne C. Smith

Street Address: 101 Oak Street

Apartment: #123

P.O. Box Number: \_\_\_\_\_

City/State/Zip Code: Dover, DE 19901

Date of Birth: 02/03/1984

Phone Number: 302-555-1111

Attorney Name: \_\_\_\_\_

Interpreter needed?  Yes  No

Language: \_\_\_\_\_

### Respondent

Name: Michelle Jones

Street Address: 490 Pine Street

Apartment: \_\_\_\_\_

P.O. Box Number: \_\_\_\_\_

City/State/Zip Code: Wilmington, DE 19809

Date of Birth: 07/13/1985

Phone Number: 302-555-9876

Attorney Name: \_\_\_\_\_

Interpreter needed?  Yes  No

Language: \_\_\_\_\_

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

Name: Scott R. Smith

Street Address: 101 Oak Street

Apartment: #123

P.O. Box Number: \_\_\_\_\_

City/State/Zip Code: Dover, DE 19901

Date of Birth: 03/14/1983

Phone Number: 302-222-1212

Attorney Name: \_\_\_\_\_

Interpreter needed?  Yes  No

Language: \_\_\_\_\_

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

Name: Steven Harding

Street Address: 490 Pine Street

Apartment: \_\_\_\_\_

P.O. Box Number: \_\_\_\_\_

City/State/Zip Code: Wilmington, DE 19809

Date of Birth: 09/14/1981

Phone Number: 302-222-4545

Attorney Name: \_\_\_\_\_

Interpreter needed?  Yes  No

Language: \_\_\_\_\_

### Guardian Ad Litem (if any)

Name: Jane Walker

Law Firm: \_\_\_\_\_

Office Address: 525 South Washington Street

City/State/Zip Code: Dover, DE 19901

Phone Number: \_\_\_\_\_

Does this matter relate to a federal immigration case?  YES  NO

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.

<b>Child's Name:</b> <u>Douglas A. Smith</u>
Date of Birth: <u>10/14/2012</u>
State of Birth: <u>Delaware</u>
City of Birth: <u>Dover</u>
Gender: (check one) <input checked="" type="checkbox"/> Male <input type="checkbox"/> Female

<b>Child's Name:</b> _____
Date of Birth: _____
State of Birth: _____
City of Birth: _____
Gender: (check one) <input type="checkbox"/> Male <input type="checkbox"/> Female

<b>Child's Name:</b> _____
Date of Birth: _____
State of Birth: _____
City of Birth: _____
Gender: (check one) <input type="checkbox"/> Male <input type="checkbox"/> Female

<b>Child's Name:</b> _____
Date of Birth: _____
State of Birth: _____
City of Birth: _____
Gender: (check one) <input type="checkbox"/> Male <input type="checkbox"/> Female

Petitioner's relationship to the child(ren):

Select one relationship from the choices below.

- non-relative
- brother or sister       grandparent or great-grandparent       aunt or uncle
- grandaunt or granduncle       half-brother or half-sister       stepparent
- stepgrandparent       stepaunt or stepuncle       first cousin
- stepbrother or stepsister       first cousin once removed
- other relative (please explain): \_\_\_\_\_

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

<b><u>MOTHER</u></b>
Name: <u>Michelle Jones</u>
Street Address: <u>490 Pine Street</u>
Apartment: _____
P.O. Box Number: _____
City/State/Zip Code: <u>Wilmington, DE 19809</u>
Date of Birth: <u>07/13/1985</u>

<b><u>FATHER</u></b>
Name: <u>Steven Harding</u>
Street Address: <u>490 Pine Street</u>
Apartment: _____
P.O. Box Number: _____
City/State/Zip Code: <u>Wilmington, DE 19809</u>
Date of Birth: <u>09/14/1981</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.

Names and addresses have been provided in #1.

➤ I have attached to this Petition the following affidavit:

**Affidavit that a Party's Address is Unknown (Form 241)**

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

Name(s): Michelle Jones and Steven Harding  
Street Address: See above.  
Apartment: \_\_\_\_\_  
P.O. Box Number: \_\_\_\_\_  
City/State/Zip Code: \_\_\_\_\_

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

If address is the same address as Petitioner(s), please write "same as Petitioner(s)."

Name(s): Anne C. Smith and Scott R. Smith  
Street Address: same as Petitioners  
Apartment: \_\_\_\_\_  
P.O. Box Number: \_\_\_\_\_  
City/State/Zip Code: \_\_\_\_\_

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

If address is the same address as Petitioner(s), please write "same as Petitioner(s)."

Name(s): Anne C. Smith and Scott R. Smith  
Street Address: same as Petitioners  
Apartment: \_\_\_\_\_  
P.O. Box Number: \_\_\_\_\_  
City/State/Zip Code: \_\_\_\_\_

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

Relationship: Aunt/Uncle

7. Please check all that apply:

The following children are under 14 years of age:

---

**OR**

The following children are 14 years of age or older and consent to (agree with) this Petition. (*Attach Affidavit of Consent executed by each child who consents.*)

List the name of each child 14 years of age or older who consents:

Douglas A. Smith

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

The following children are 14 years of age or older who DOES NOT consent to this Petition. List the name of each child 14 years of age or older who DOES 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).

The guardianship is needed because (a reason must be provided; check all that apply):

- parent(s) lack stable housing
- parent(s) dealing with substance abuse issues
- parent(s) physical health
- parent(s) mental health
- parent(s) lack of financial resources
- other (please explain): \_\_\_\_\_

(*Attach an Affidavit of Consent (Form 202) executed by the parent(s) who agree.*)

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

The child(ren) is/are dependent, neglected, and/or abused based on the following reason(s):

1. Both mother and father are currently in rehab for drug and alcohol abuse.  
2. It is in the best interest of Doug Smith to reside with the petitioners.  
3. Doug Smith has been residing with the petitioners for several months, is enrolled in school in the petitioners' district and has friends at that school and in the neighborhood. Since coming to live with the petitioners, Doug's health has improved, as well as his grades in school.  
4. Petitioners have no history of domestic violence and no one who lives in the household has a criminal history.

List your allegations in numbered paragraphs.

9. I believe that this guardianship is in the child(ren)'s best interest for the following reason(s):

Doug Smith has been residing with the petitioners for several months, is enrolled in school in the petitioners' district and has friends at that school and in the neighborhood. Since coming to live with the petitioners, Doug's health has improved, as well as his grades in school. Petitioners have no history of domestic violence and no one who lives in the household has a criminal history.

**NOTICE – This request for guardianship, if filed by a non-relative or a relative whose relationship is not captured in the definition of "relative" found in 13 Del. C. § 2302, is subject to an assessment conducted by the Department of Services for Children, Youth and Their Families or a licensed agency, as required by 13 Del. C. § 2324A.**

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

Sign in the presence of a notary.

<u>Anne C. Smith</u>	<u>12/07/2016</u>	<u>Scott R. Smith</u>	<u>12/07/2016</u>
Petitioner	Date	2 <sup>nd</sup> Petitioner (if any)	Date

Sworn to and subscribed before me:

Sworn to and subscribed before me:

<u>Donna King</u>	<u>12/07/2016</u>	<u>Donna King</u>	<u>12/07/2016</u>
Donna King	Date	Donna King	Date
Clerk of Court/Notary Public		Clerk of Court/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.

## CUSTODY SEPARATE STATEMENT

*Petitioner*

*v. Respondent*



<i>Name</i> Anne C. Smith	<i>Name</i> John D. Smith	<i>File Number</i> CK04-1211
------------------------------	------------------------------	---------------------------------



1. What type of petition are you filing? FILL IN PETITION TYPE (E.g. Petition for Custody)



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

Child's Name	Date of Birth (mm/dd/yyyy)	Place of Birth (City, State)
Doug A. Smith	10/15/2010	Dover, DE
Mary J. Smith	4/22/2013	Dover, DE



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.**

<b>CURRENT ADDRESS</b>	<i>Address where child(ren) <u>currently reside(s)</u></i>			<i>Date(s) Child(ren) lived here</i>		
	<b>** If the address where the child(ren) currently resides is a confidential address in Family Court, DO NOT provide the address on this form. Instead, please mark the fields as CONFIDENTIAL.</b>			1/28/2016 to present		
	<i>Address</i>		<i>City</i>	<i>State</i>	<i>Zip</i>	
	101 Oak Street, Apt 123		Dover	DE	19901	
	<i>People living in the household with the child(ren):</i>			<i>Date of Birth</i>	<i>Relationship to child(ren):</i>	
Anne C. Smith			12/26/1985	Mother		
Mary A. White			4/28/1959	Grandmother		



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

<b>PRIOR ADDRESS</b>	<i>Address where child(ren) previously resided</i>		<i>City</i>	<i>State</i>	<i>Zip Code</i>
	10 Clayton Street		New Castle	DE	19720
	<i>Date(s) child(ren) lived there</i>	<i>Name of person(s) child(ren) lived with</i>		<i>Relationship to child(ren)</i>	
2/14/2014 to 1/27/2016		Anne C. Smith & Mary A. White		Mother and Grandmother	
<i>Person's current address</i>		<i>City</i>	<i>State</i>	<i>Zip Code</i>	
101 Oak Street, Apt 123		Dover	DE	19901	
<b>PRIOR ADDRESS</b>	<i>Address where child(ren) previously resided</i>		<i>City</i>	<i>State</i>	<i>Zip Code</i>
	490 Pine Street		Wilmington	DE	19899
	<i>Date(s) child(ren) lived there</i>	<i>Name of person(s) child(ren) lived with</i>		<i>Relationship to child(ren)</i>	
	10/1/2010 to 2/14/2014		John D. Smith and Anne C. Smith		Father Mother
<i>Person's current address</i>		<i>City</i>	<i>State</i>	<i>Zip Code</i>	
Unknown (John Smith) 101 Oak Street, Apt 123		Dover	DE	19901	

PRIOR ADDRESS	Address where child(ren) previously resided		City	State	Zip Code
	Date(s) child(ren) lived there to	Name of person(s) child(ren) lived with	Relationship to child(ren)		
	Person's current address		City	State	Zip Code
PRIOR ADDRESS	Address where child(ren) previously resided		City	State	Zip Code
	Date(s) child(ren) lived there to	Name of person(s) child(ren) lived with	Relationship to child(ren)		
	Person's current address		City	State	Zip Code



5. 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.

PERSON 1	Name of person(s) with physical custody, legal custody or visitation		Relationship to child(ren)		
	Person's current address	City	State	Zip Code	
PERSON 2	Name of person(s) with physical custody, legal custody or visitation		Relationship to child(ren)		
	Person's current address	City	State	Zip Code	



6. Select all that apply 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.

ACTION 1	Type of Action (e.g. Custody, Visitation, Other) Visitation	Person (who filed the action) John D. Smith		State DE
	Court Family Court	Case Number CK16-1122	Date Filed 10/2/2016	
	Result Visitation granted	Date of Order 12/15/2016		
ACTION 2	Type of Action (e.g. Custody, Visitation, Other)	Person (who filed the action)		State
	Court	Case Number	Date Filed	
	Result	Date of Order		
ACTION 3	Type of Action (e.g. Custody, Visitation, Other)	Person (who filed the action)		State
	Court	Case Number	Date Filed	
	Result	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.*

<b>ACTION 1</b>	Type of Action (e.g. PFA, TPR, Guardianship, Other)	Person (who filed the action)		State
	PFA	Anne C. Smith		DE
	Court	Case Number	Date Filed	
	Family Court	CK04-12111	8/11/2017	
<b>ACTION 2</b>	Type of Action (e.g. PFA, TPR, Guardianship, Other)	Person (who filed the action)		State
	Court	Case Number	Date Filed	



Sign in the presence of a notary or court staff.



Anne C. Smith

Petitioner

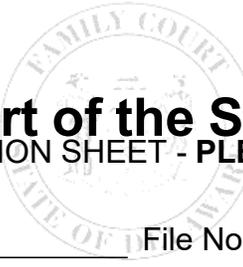
Sworn to and subscribed before me this 18<sup>th</sup> day of September, 2017.



Signed by notary or court staff.



Donna King  
Clerk of Court/Notary Public



# The Family Court of the State of Delaware

## INFORMATION SHEET - PLEASE PRINT

Fill in the date you file the form.

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)

Each Petitioner must complete a separate form

A. Name: Anne C. Smith

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/courtdox/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

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.

Check the county in which you are filing

# The Family Court of the State of Delaware

In and For  New Castle County  Kent County  Sussex County

## CUSTODY, VISITATION, AND GUARDIANSHIP DISCLOSURE REPORT

Name: Anne C. Smith  
Relationship to the child(ren): Mother  
Date of Birth: 7/13/1991  
Address: 490 Pine Street  
Dover, DE 19901

File Number: CN17-99999  
Petition Number: 19-99999  
Home Phone Number: (302) 333-3333  
Work Phone Number: (302) 222-2222  
Cell Phone Number: (302) 111-1111

Names and dates of birth of any child(ren) involved in this proceeding:

- |                              |                        |          |            |
|------------------------------|------------------------|----------|------------|
| 1. <u>Douglas A. Harding</u> | DOB: <u>10/14/2012</u> | 4. _____ | DOB: _____ |
| 2. _____                     | DOB: _____             | 5. _____ | DOB: _____ |
| 3. _____                     | DOB: _____             | 6. _____ | DOB: _____ |

Names and dates of birth of all persons living in your household, and relationship to the child (ren):

- |                           |                       |   |
|---------------------------|-----------------------|---|
| 1. <u>Nicole C. Smith</u> | DOB: <u>1/14/1991</u> | Relationship to Child(ren): <u>Aunt</u> |
| 2. _____                  | DOB: _____            | Relationship to Child(ren): _____       |
| 3. _____                  | DOB: _____            | Relationship to Child(ren): _____       |
| 4. _____                  | DOB: _____            | Relationship to Child(ren): _____       |
| 5. _____                  | DOB: _____            | Relationship to Child(ren): _____       |
| 6. _____                  | DOB: _____            | Relationship to Child(ren): _____       |

1. What contact schedule do you have now with the child(ren) noting how often the child(ren) live(s) with you or visit(s) with you? The children are in my household on average 8 overnights a month.

2. This schedule is by:  court order or  by agreement

3. What contact schedule are you requesting for yourself with the child(ren)?

- Primary residency, with visitation with the other party **OR**
- Shared Placement
- Visitation, with primary residency with the other party

If you want primary residency, what visitation schedule do you want the visiting party to have with the child(ren)?  
In a safe environment John D. Smith may have him on the weekends or as the court deems fit.

If you want shared residency, how would you like to share the time with the other party?

N/A

If you are seeking visitation or a change in visitation, what visitation schedule are your requesting?

N/A

4. **Legal custody** refers to a parent's right to make decisions regarding the child, not where the child primarily lives. **Joint legal custody** means that the parents share the duties and responsibilities of raising the child and are expected to share information and decide major issues about the child together. **Sole legal custody** means that one parent has decision-making authority although both parents have access to the child and the right to request information about the child.

**Requesting Joint Legal Custody**

**Requesting Sole Legal Custody**

If you are requesting sole legal custody, explain why.

N/A

5. Where do you work and what is your work schedule? XYZ Corporation

9:00 AM to 5:00 PM, Monday-Friday

6. How many miles do you live from the other party? 15

7. How many miles do you live from the child(ren)'s school? 5

8. In which school district do you live? Capital

9. How many miles does the other party live from the child(ren)'s school? 20

10. In what school district does the other party live? Smyrna

11. Do you have any history of drug or alcohol abuse?  Yes  No

If yes, describe: \_\_\_\_\_

12. Does the other party have any history of drug or alcohol abuse?  Yes  No

If yes, describe: Previously marijuana, not 100% certain if he still does.

13. Do you have any concerns about your physical or mental health?  Yes  No

If yes, describe concerns: \_\_\_\_\_

14. Do you have any concerns about the physical or mental health of the child(ren)?  Yes  No

If yes, describe concerns: I just want to make sure wherever Douglas will be it's a safe environment without any dangerous conditions.

15. Do you have any concerns about the physical or mental health of the other party?  Yes  No

If yes, describe concerns: \_\_\_\_\_

16. List all of your criminal convictions, including DUIs. The Court is required to check criminal histories of all parties and members of the household: None.

17. List all criminal convictions of the other party of which you are aware, including DUIs:

Marijuana possession, speeding.

18. Do you intend to offer evidence of domestic violence at trial?

Not at this time.

19. Have you or the other party ever been investigated by the Division of Family Services or a child welfare agency in another state?  Yes  No

If yes, explain: \_\_\_\_\_  
\_\_\_\_\_

20. Do you or the other party have a finding of child abuse or neglect by the Division of Family Services or a child welfare agency in another state?  Yes  No

If yes, explain: \_\_\_\_\_  
\_\_\_\_\_

21. Has the child(ren) ever lived with anyone other than you or the other party?  Yes  No

If yes, with whom did the child(ren) live and what were the dates: Maternal grandmother November-December 2012

Any other information that you believe is relevant to this proceeding: I have the financial ability, maturity, and help to be able to care for Douglas whereas the opposing party in my belief is not quite there yet.

**There is a duty to supplement and/or update this report. As such, parties are free to amend without leave of the Court.**

3/17/2019

Date

Anne C. Smith

Print Name

Anne C. Smith

Signature

Sample Attorney, Esq.

Attorney Print Name

Sample Attorney

Attorney Signature

Only sign this form in the presence of a notary or court staff

Sworn to and subscribed before me this 17th day of March, 2019

Marianne Notary

Notary / Clerk of Court (Print)

Ms. Marianne Notary

Notary / Clerk of Court (Sign)

3/17/2019

Date

This Affidavit of Exchange must be signed in the presence of a notary or court staff

**Affidavit of Exchange**

**The Report must be exchanged with the other party.**

**Please check one of the following boxes indicating how this exchange occurred.**

- I affirm that this Custody, Visitation, and Guardianship Disclosure Report was filed with my petition and was therefore served by the Court upon the other party.
- I affirm that this Custody, Visitation, and Guardianship Disclosure Report was filed with the Court after the filing of the petition. I further affirm that a true and correct copy of this Disclosure Report was placed in the U.S. mail on the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_ and sent to the other party or attorney at the address listed on the petition, first class postage pre-paid.
- I affirm that this Custody, Visitation, and Guardianship Disclosure Report was brought to the Family Court mediation conference on the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_ with a true and correct copy given to the other party.

3/17/2014

Date

Anne C. Smith

Print Name

Anne C. Smith

Signature

Sample Attorney, Esq.

Attorney Print Name

Sample Attorney

Attorney Signature

Sworn to and subscribed before me this 17th day of March, 2019

Marianne Notary

Notary / Clerk of Court (Print)

Ms. Marianne Notary

Notary / Clerk of Court (Sign)

3/17/2019

Date

# 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**  
 Name: Anne C. Smith  
 State of Delaware  
Kent County

**Respondent**  
 Name: Michelle Jones

File Number: CK16-98765  
 Petition Number: \_\_\_\_\_

Fill in the county in which you are filing.

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

Fill in the date you have the form notarized.

BE IT REMEMBERED, that on this 7th day of December, 2016, 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  Other: Respondent's brother
3. His/Her last known address and telephone number were:

Street Address (including Apt)	<u>490 Pine Street</u>
P.O. Box Number	_____
City/State/Zip Code	<u>Wilmington, DE 19809</u>
Phone Number	<u>(302) 222-1212</u>
Information as of: (date)	<u>12/1/2012</u>

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

4. I have had no contact with him/her since December 1, 2012.
5. I have been informed of my responsibility to accomplish publication, unless the Court has approved my application to proceed in Forma Pauperis, and my failure to do so will result in the petition being dismissed after 30 days.
6. 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

Signed by a notary or court staff.

Sworn to subscribed before me this 7th day of December, 2016

**STOP**

Donna King  
Clerk of Court/ Notary Public

12/7/2016  
Date

# The Family Court of the State of Delaware

In and For  New Castle County  Kent County  Sussex County

## CONSENT ORDER – GUARDIAN OF THE PERSON



Check the county in which you are filing.

File Number: CK16-98765

Case Number: \_\_\_\_\_

<b><u>Petitioner</u></b>	v.
Name: <u>Anne C. Smith</u>	
Street Address: <u>101 Oak Street</u>	
Apartment: <u>#123</u>	
P.O. Box Number: _____	
City/State/Zip Code: <u>Dover, DE 19901</u>	
Date of Birth: <u>02/03/1984</u>	

<b><u>Respondent</u></b>
Name: <u>Michelle Jones</u>
Street Address: <u>490 Pine Street</u>
Apartment: _____
P.O. Box Number: _____
City/State/Zip Code: <u>Wilmington, DE 19809</u>
Date of Birth: <u>07/13/1985</u>

<b><u>2<sup>nd</sup> Petitioner (if any)</u></b>
Name: <u>Scott R. Smith</u>
Street Address: <u>101 Oak Street</u>
Apartment: <u>#123</u>
P.O. Box Number: _____
City/State/Zip Code: <u>Dover, DE 19901</u>
Date of Birth: <u>03/14/1983</u>

<b><u>2<sup>nd</sup> Respondent (if any)</u></b>
Name: <u>Steven Harding</u>
Street Address: <u>490 Pine Street</u>
Apartment: _____
P.O. Box Number: _____
City/State/Zip Code: <u>Wilmington, DE 19809</u>
Date of Birth: <u>09/14/1981</u>

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.

<b>Child's Name:</b> <u>Douglas A. Smith</u>
Date of Birth: <u>10/14/2012</u>
State of Birth: <u>Delaware</u>
City of Birth: <u>Dover</u>
Gender: (check one) <input checked="" type="checkbox"/> Male <input type="checkbox"/> Female

<b>Child's Name:</b> _____
Date of Birth: _____
State of Birth: _____
City of Birth: _____
Gender: (check one) <input type="checkbox"/> Male <input type="checkbox"/> Female

<b>Child's Name:</b> _____
Date of Birth: _____
State of Birth: _____
City of Birth: _____
Gender: (check one) <input type="checkbox"/> Male <input type="checkbox"/> Female

<b>Child's Name:</b> _____
Date of Birth: _____
State of Birth: _____
City of Birth: _____
Gender: (check one) <input type="checkbox"/> Male <input type="checkbox"/> Female

Petitioner's relationship to the child(ren):  
Select one relationship from the choices below.

- non-relative
- brother or sister
- grandaunt or granduncle
- stepgrandparent
- stepbrother or stepsister
- other relative (please explain): \_\_\_\_\_
- grandparent or great-grandparent
- half-brother or half-sister
- stepaunt or stepuncle
- first cousin once removed
- aunt or uncle
- stepparent
- first cousin

The parties agree that:

- the guardianship is necessary for the reason(s) listed on the petition.
- the guardianship is necessary for the following reason(s):

Mother and Father are unemployed, do not have stable housing, and cannot provide financially for the child.

If you check the second box, describe why the petitioner(s) should have guardianship.

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 C. Smith and Scott R. Smith (Aunt and Uncle)            
with the powers and duties set forth in 13 *Del. C.* § 2340, a copy of which is attached to this order.

Respondent(s) shall have visitation as follows:

Describe the visitation schedule you have agreed upon in detail.

Mother shall have visitation with the child every other weekend beginning in the first weekend in January 2017. Mother will pick up the child from school on Friday afternoons and return the child to Aunt & Uncle's home by 4:00 PM on Sunday.

Father shall have visitation with the child every other weekend beginning in the second weekend in January 2017. Father shall pick up the child from school on Friday afternoons and return the child to the Aunt & Uncle's home by 4:00 PM on Sunday.

Fill in the date you have the form notarized.

BE IT REMEMBERED, that on this date, December 8, 2016 , Anne & Scott Smith , (“Petitioner”), 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(ren). We signed this consent agreement voluntarily and of our own free will.

**THE RESPONDENTS ACKNOWLEDGE THAT EACH WAS ADVISED THAT IF HE/SHE IS INDIGENT AND WISHES TO HAVE COURT APPOINTED COUNSEL REPRESENT HIM/HER IN THIS ACTION, COUNSEL MAY BE APPOINTED FOR HIM/HER. HE/SHE FREELY AND VOLUNTARILY WAIVES HIS/HER RIGHT TO COUNSEL.**

**THE RESPONDENTS EACH ACKNOWLEDGE THAT BY SIGNING THIS DOCUMENT AND AUTHORIZING ITS FILING, HE/SHE IS ENTERING AN APPEARANCE AND AGREEING TO WAIVE SERVICE OF PROCESS OF THE PETITION FOR GUARDIANSHIP.**

**Each respondent acknowledges that by agreeing to the reason(s) for the guardianship, if respondent later seeks to rescind (end) the guardianship, respondent will be required to show that the guardianship is no longer needed for that reason(s).**

**This agreement of the parties is subject to review of the parties’ criminal histories by a hearing officer before entry as an order of the court.**

**NOTICE – This agreement of the parties, if filed by a person not meeting the definition of “relative” in 13 Del. C. § 2302, is subject to an assessment conducted by the Department of Services for Children, Youth and Their Families or a licensed agency, as required by 13 Del. C. § 2324A.**

**If signed by a Commissioner, the parties hereby waive their right to a Review of a Commissioner’s Order as this Order is entered pursuant to this voluntary agreement.**

Child Sign <i>(if over 14 years of age)</i>	<u>Anne C. Smith</u> Petitioner Sign	<u>Michelle Jones</u> Respondent Sign
<i>(if over</i>	<u>Anne C. Smith</u> Petitioner Print	<u>Michelle Jones</u> Respondent Print
Additional Child(ren) Sign <i>(if necessary)</i>	<u>Scott R. Smith</u> 2 <sup>nd</sup> Petitioner Sign <i>(if any)</i>	<u>Steven Harding</u> 2 <sup>nd</sup> Respondent Sign <i>(if any)</i>
Additional Child(ren) Print <i>(if necessary)</i>	<u>Scott R. Smith</u> 2 <sup>nd</sup> Petitioner Print <i>(if any)</i>	<u>Steven Harding</u> 2 <sup>nd</sup> Respondent Print <i>(if any)</i>

All parties must sign in the presence of a notary.

SWORN TO AND SUBSCRIBED before me this date, December 8, 2016

SIGNED BY NOTARY OR COURT STAFF	<u>Donna King</u> Donna King Mediation Officer/Notary Public/Clerk of Court
---------------------------------	---

SO ORDERED this \_\_\_\_\_ day of \_\_\_\_\_

The Judge will complete this portion if your consent is approved.

\_\_\_\_\_

Judge/Commissioner

## TITLE 13

### Domestic Relations

#### CHAPTER 23. Guardianship of a Child

##### Subchapter IV. Powers and Duties of a Guardian

#### **§ 2340. Powers and duties of the guardian of the child [effective January 27, 2024].**

- (a) The Court shall grant to the guardian of the child such powers, rights and duties which are necessary to protect, manage and care for the child.
- (b) The guardian of the child may exercise the same powers, rights and duties respecting the care, maintenance and treatment of the child as a parent would, except that the guardian of the child is not liable to third persons for acts of the child solely by reason of the guardianship relationship.
- (c) Except as modified by the order of guardianship and without qualifying the foregoing, a guardian of the person has the following powers and duties:
  - (1) The guardian is entitled to custody of the child and may establish the child's place of abode.
    - a. Notwithstanding the guardian's authority under this subsection, if there is a proposed relocation of a child for a period of 60 days or more involving either a move outside Delaware or a move that materially affects a parent's existing visitation arrangement or order, the guardian must obtain at least 1 of the following:
      - 1. Leave of court.
      - 2. The consent of the child's parents.
    - b. When considering a guardian's request to relocate a child, the Court shall apply the relocation factors under § 734 of this title.
  - (2) The guardian shall provide the child with:
    - a. A physically and emotionally healthy and safe living environment and daily care;
    - b. Education; and
    - c. All necessary and appropriate medical treatment, including but not limited to medical, dental and psychiatric examinations, treatment or surgery.
  - (3) The guardian shall make decisions regarding:
    - a. Education;
    - b. Travel;
    - c. All necessary and appropriate medical treatment, including but not limited to medical, dental and psychiatric examinations, treatment or surgery;
    - d. The child's right to marry or enlist in the armed forces;
    - e. Representation of the child in legal actions; and

f. Any other matter that involves the child's welfare and upbringing.

(4) The guardian shall:

a. Be responsible for the health, education and welfare of the child;

b. Comply will all terms of any Court order to provide the child's parents with visitation, contact or information.

(d) The Court, in its discretion, may expressly limit the duties and powers of the guardian as set forth in this chapter.

(e) No bond shall be required from any guardian appointed under this chapter.

73 Del. Laws, c. 150, § 1; 73 Del. Laws, c. 360, § 5; 84 Del. Laws, c. 128, § 13

SAMPLE

# The Family Court of the State of Delaware

In and For  New Castle  Kent  Sussex County

Anne C. Smith  )  
Petitioner, )  
and )  
Michelle Jones )  
Respondent, )

File No.: CK16-98765

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

You must file a separate form for each respondent.

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

STATE OF DELAWARE  )  
Kent COUNTY )

Write the county in which you are filing.

ss.  )

Fill in the date you have the form notarized.

BE IT REMEMBERED, that on this date, December 8, 2016, 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 case;
2. That Affiant is active duty in the United States military; and
3. The Affiant waives his/her rights under the "Servicemembers Civil Relief Act" and in doing so acknowledges that he/she, or his/her attorney, will be required to timely respond to and appear at all legal proceedings associated with the above captioned case.



Sign in the presence of a notary or court staff.



Michelle Jones  
Respondent ("Affiant")

SWORN TO AND SUBSCRIBED before me this date, December 8, 2016



Signed by a notary or court staff.

Donna King  
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.

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

### Petitioner

Name <b>Anne C. Smith</b>
Street Address (including Apt) <b>101 Oak Street, Apt. #123</b>
P.O. Box Number 
City/State/Zip Code <b>Dover, DE 19901</b>
Date of Birth <b>2/3/1984</b>

### Respondent

Name <b>Michelle Jones</b>
Street Address (including Apt) <b>490 Pine Street</b>
P.O. Box Number 
City/State/Zip Code <b>Wilmington, DE 19899</b>
Date of Birth <b>7/13/1985</b>

File Number <b>CK16-98765</b>
Case Number 

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

Name <b>Scott R. Smith</b>
Street Address (including Apt) <b>101 Oak Street, Apt. #123</b>
P.O. Box Number 
City/State/Zip Code <b>Dover, DE 19901</b>
Date of Birth <b>3/14/1983</b>

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

Name <b>Steven Harding</b>
Street Address (including Apt) <b>490 Pine Street</b>
P.O. Box Number 
City/State/Zip Code <b>Wilmington, DE 19899</b>
Date of Birth <b>9/14/1981</b>

Fill in the date you have the form notarized.

BE IT REMEMBERED, that Douglas A. Smith, ("Child"), on this date December 8, 2016 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.

SWORN TO AND SUBSCRIBED  
before me this date,

December 8, 2016



*Donna King*

Notary Public/Clerk of Court

Signed by notary or court staff.

Sign in the presence of a notary.



*Douglas A. Smith*

Affiant

Check the county in which you are filing.



# The Family Court of the State of Delaware

In and For  New Castle County  Kent County  Sussex County  
**GUARDIANSHIP AFFIDAVIT OF CONSENT OF A CHILD'S PARENT**

File Number: CK16-98765 Petition Number: \_\_\_\_\_

**Petitioner**  
 Name: Anne C. Smith  
 Street Address: 101 Oak Street  
 Apartment: #123  
 P.O. Box Number: \_\_\_\_\_  
 City/State/Zip Code: Dover, DE 19901  
 Date of Birth: 02/03/1984

**Respondent**  
 Name: Michelle Jones  
 Street Address: 490 Pine Street  
 Apartment: \_\_\_\_\_  
 P.O. Box Number: \_\_\_\_\_  
 City/State/Zip Code: Wilmington, DE 19899  
 Date of Birth: 07/13/1985

**2<sup>nd</sup> Petitioner (if any)**  
 Name: Scott R. Smith  
 Street Address: 101 Oak Street  
 Apartment: #123  
 P.O. Box Number: \_\_\_\_\_  
 City/State/Zip Code: Dover, DE 19901  
 Date of Birth: 03/14/1983

Each Respondent who consents to the guardianship must complete a separate form.

**2<sup>nd</sup> Respondent (if any)**  
 Name: Steven Harding  
 Street Address: 490 Pine Street  
 Apartment: \_\_\_\_\_  
 P.O. Box Number: \_\_\_\_\_  
 City/State/Zip Code: Wilmington, DE 19899  
 Date of Birth: 09/14/1981

BE IT REMEMBERED, that Michelle Jones, ("Affiant"), on this date 12/08/2016 being duly sworn by me according to the law, personally appeared before me, a Notary Public for the State and County of \_\_\_\_\_, and acknowledged to me that she executed the foregoing as her free and voluntary act and deed.

Fill in the date you have the form notarized.

➤ **Please initial by each statement.**

1. MJ I am the Respondent in the above captioned matter involving my child:

Child's Full Name: Douglas A. Smith  
 Child's Date of Birth: 10/12/2012

2. MJ 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. MJ I agree that the guardianship is necessary for the reason(s) listed on the petition.

4. MJ I understand that by agreeing to the reason(s) for the guardianship if I later seek to rescind (end) the guardianship, I will be required to show that the guardianship is no longer needed for that reason(s).

Initial each line in the presence of a notary.

5.  MJ  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.
6.  MJ  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.
7.  MJ  I understand that the Court may appoint counsel to indigent respondents in guardianship cases. I freely and voluntarily waive my right to counsel.
8.  MJ  I understand that by signing this document and authorizing its filing, I am entering an appearance and agreeing to waive service of process of the petition for guardianship.

SWORN TO AND SUBSCRIBED before me this date,  12/08/2016

Signed in the presence of a notary.

*Donna King*

*Michelle Jones*

Donna King

Affiant

Notary Public/Clerk of Court

Signed by a 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. ALL PARTIES 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.

➤ The Court will **NOT** schedule mediation if one of the parties is a sex offender as defined by Delaware law. If one of the parties is a sex offender as defined by Delaware law, you will **NOT** attend Mediation and the Court will schedule a Court Hearing before a Judge.

➤ The Court will **NOT** schedule for mediation if the petition is filed by a non-relative or a relative whose relationship is not captured in the definition of “relative” found in 13 *Del. C.* § 2302. Petitions filed by non-relatives are subject to an assessment conducted by the Department of Services for Children, Youth and Their Families (DSCYF) or a licensed agency, as required by 13 *Del. C.* § 2324A. Additionally, should a mediator learn during a mediation that a petitioner is a non-relative the mediation will be ended and a referral to DSCYF for assessment will be made.

➤ 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) 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**.

- **Note:** When reaching an agreement, you and the Respondent(s) must agree on why the guardianship is necessary. The reason could be the one(s) included in the petition or a reason agreed to during the mediation. The agreed to reason(s) will be included in the 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 located in Appendix A of this instruction packet. They are also available in the Resource Centers and on the Family Court website (<https://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.

- **Note:** Should you be granted guardianship and wish to relocate the child for a period of 60 days or more involving a move either outside the State of Delaware or in a manner that materially affects a parent's existing visitation arrangement or order, you will be required to obtain either leave of the court or consent of the child's parents. To such a request, the Court will apply the relocation factors under Section 734 of Title 13.

**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, Go To Section 4.**

 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 located 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 in a Guardianship Action Form 209** (*file one original and one copy for each Respondent*)

- Sample forms can be found on page 54.
- The Order of Reference is a form that includes the information about the agency chosen and an order for the judge to sign.
- On the Order of Reference you will list 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, along with all other forms, a judge must sign it. The Clerk will then

forward the Order to the agency. 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.

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

# 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 & Scott R. Smith ,  
Petitioner

v.

Michelle Jones & Steven Harding ,  
Respondent

File No.: CK16-99999

Petition No.:                     

Leave this line blank. The hearing officer will date it on the day that the order is issued.

The Movant is the person who has requested the study.

## GUARDIANSHIP ORDER OF REFERENCE

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

IT IS SO ORDERED, this date:                     

The foregoing Petition for Guardianship having been presented to the Court, and it appearing that the petition has been properly filed.

It is ordered that the Child Placement Agency perform a Social Study and submit a report to the Court as required by 13 Del.C., § 2324.

Write in the name of the child placement agency you have chosen

\_\_\_\_\_  
Judge/Commissioner

## Section 4

### 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**.

Judges may schedule a **case management conference** or **pre-trial hearing**. The purpose of these proceedings is to discuss the status of your case prior to scheduling a full hearing where you will present evidence and call witnesses.

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



**Motion for Continuance Form 196** (*file one original and mail one copy to the Respondent*).

- 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 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 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 405.**

- Sample form on page 59.
- **ONLY** complete this form if the Respondent(s) is **NOT** in <sup>the</sup> 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.

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, neglected, or abused** and **WHY** it is in the **child's best interest** for the Court to grant your client guardianship of the child.

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** your client 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.

# The Family Court of the State of Delaware

In and For  New Castle  Kent  Sussex County

## MOTION FOR Continuation

### Petitioner

### Respondent

Name <b>Anne C. Smith</b>	Name <b>Michelle Jones</b>	File Number <b>CK16-98765</b>
Street Address (including Apt) <b>101OakStreet,Apt.#123</b>	Street Address (including Apt) <b>490PineStreet</b>	Petition Number [Redacted]
P.O. Box Number [Redacted]	P.O. Box Number [Redacted]	
City/State/Zip Code <b>Dover, DE 19901</b>	City/State/Zip Code <b>Wilmington, DE 19899</b>	
Date of Birth <b>2/3/1984</b>	Date of Birth <b>7/13/1985</b>	
Attorney Name <b>n/a</b>	Attorney Name <b>n/a</b>	
Interpreter needed? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	Interpreter needed? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	
Language [Redacted]	Language [Redacted]	

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, is suffering from severe Tonsillitis. She is scheduled for surgery on January 25, 2017, the date of the parties' guardianship hearing. I request that the Court grant a continuance so that I can be with my daughter during the 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.

Sign in the presence of a notary.

SWORN TO AND SUBSCRIBED before me this date,

December 8, 2016

*Donna King*



*Anne C. Smith*  
Movant/Attorney

I, the Movant, affirm that a true and correct copy of this Motion was placed in the U.S. Mail on this date \_\_\_\_\_, and sent to the other party or attorney at the address listed on the petition, being \_\_\_\_\_,

First class postage pre-paid.

SWORN TO AND SUBSCRIBED

Before me this date, \_\_\_\_\_

Movant / Attorney

Clerk of Court / 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.

### Petitioner

### Respondent

<b>Name</b> Anne C. Smith	<b>Name</b> Michelle Jones	<b>File Number</b> CK16-99999
<b>Street Address</b> 101 Oak Street, Apt. #123	<b>Street Address</b> 490 Pine Street	<b>Petition Number</b> 
<b>P.O. Box Number</b> 	<b>P.O. Box Number</b> 	
<b>City/State/Zip Code</b> Dover, DE 19901	<b>City/State/Zip Code</b> Wilmington, DE 19899	
<b>Date of Birth</b> 2/3/1984	<b>Date of Birth</b> 7/13/1985	
<b>Attorney Name</b> n/a	<b>Attorney Name</b> n/a	

## 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, December 8, 2016, 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 action;
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 § 3931 of the Servicemembers Civil Relief Act (50 U.S.C.A. § 3931).



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



Anne C. Smith  
Affiant

SWORN TO AND SUBSCRIBED before me this date,

December 8, 2016



Signed by a notary or court staff.

Donna King

Clerk of Court/Notary Public

## Section 5

### 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.

If a parent files a Petition to Rescind Guardianship, she or/ he must show that the reasons the guardianship was established no longer exist. Once a parent has made this showing, the Court will rescind the guardianship unless:

**1.** the guardian shows by a preponderance of the evidence that the child will be dependent, neglected or abused in the care of the parent seeking rescission

**or**

**2.** the guardian shows by clear and convincing evidence that the child will suffer either physical or emotional harm if the guardianship is terminated.

# The Family Court of the State of Delaware

In and For  New Castle  Kent  Sussex County

## Contact Guidelines

Parents are encouraged to create an agreed equitable written contact schedule that fits their circumstances and their children's lives, with the following serving as a possible schedule when the parents cannot agree. Nothing herein prohibits the parents from changing the schedule upon mutual agreement. In the event of conflicting dates and times, holidays and school breaks shall take priority.

If a child indicates a strong opposition to being with the other parent, it shall be the responsibility of both parents to appropriately deal with the situation by calmly discussing with the child his or her reasons, and to work together to alleviate any issues without confrontation or argument. If they cannot resolve the problem, the parents are encouraged to seek the immediate assistance of a counselor or other professional, or may file a motion requesting Court-ordered counseling. It is the absolute affirmative duty of both parents to encourage compliance with any such Court Order.

The Court's goal is to have the children spend as much quality time with each parent as possible.

The guidelines are based on the assumption that both parents are competent and effective parents and that the child is safe with each parent. In the event that the parties attend a mediation conference and are unsuccessful in reaching either an interim or permanent agreement on the issue of parental contact, the mediator may recommend an alternative schedule considering the particular circumstances of the case as presented during that mediation.

It is with this background that the following guidelines will be applied after considering the factors in 13 Del. C. §722:

1. The wishes of the child's parent or parents as to his or her custody and residential arrangements;
2. The wishes of the child as to his or her custodian(s) and residential arrangements;
3. The interaction and interrelationship of the child with his or her parents, grandparents, siblings, persons cohabiting in the relationship of husband and wife with a parent of the child, any other residents of the household or persons who may significantly affect the child's best interests;
4. The child's adjustment to his or her home, school and community;
5. The mental and physical health of all individuals involved;
6. Past and present compliance by both parents with their rights and responsibilities to their child under § 701 of this title;
7. Evidence of domestic violence as provided for in Chapter 7A of this title; and
8. The criminal history of any party or any other resident of the household including whether the criminal history contains pleas of guilty or no contest or a conviction of a criminal offense

In addition to the 13 Del.C. §722 factors, the following factors may be considered:

1. Previous contact with parents
2. Parents' ability to communicate
3. Geographical proximity with regard to home, school and daycare
4. Housing arrangements
5. Parents' work schedule

6. Number and age of siblings
7. Drug and alcohol history
8. Prior parental interaction
9. Other relevant factors as the Court deems appropriate.

For those children who have had more exclusive care by one parent, the Court should consider whether such overnight visitation should be phased in.

**Birth to 18 months:** Every other weekend, beginning 6:00 p.m. on Friday through 6:00 p.m. Sunday and two week nights for a minimum of three hours with the parent seeking contact. Each parent shall be entitled to two non-consecutive weeks of vacation. A parent shall give a minimum of thirty (30) days written notice to the other parent prior to the first parent exercising his or her vacation.

**18 months to 5 years:** Two overnights per week and every other weekend from 6:00 p.m. on Friday through Monday morning with the parent seeking contact. Each parent shall be entitled to two non-consecutive weeks of vacation. A parent shall give a minimum of thirty (30) days written notice to the other parent prior to the first parent exercising his or her vacation.

**5 years and up:** Shared contact schedule which may be extended to alternate weeks.

1. **Holidays** \_\_\_\_\_ shall have the children on the holidays in Column 1 in odd-numbered years and the holidays in Column 2 in the even-numbered years. \_\_\_\_\_ shall have the children on the holidays in Column 1 in the even-numbered years and the holidays in Column 2 in odd-numbered years:

**Column 1**

Easter or other religious holiday  
 Fourth of July  
 Halloween  
 Christmas Day

**Column 2**

Memorial Day  
 Labor Day  
 Thanksgiving Day  
 Christmas Eve

With the exception of Christmas and Halloween contact, holiday contact shall be from 9 a.m. until 6 p.m. the day of the holiday. Halloween contact shall begin at 5 p.m. and end at 8 p.m. on Halloween. Christmas Eve contact shall begin at 6 p.m. on December 24<sup>th</sup> and end at noon on December 25<sup>th</sup>. Christmas Day contact shall begin at noon on December 25<sup>th</sup> and end at 6 p.m. on December 26<sup>th</sup>. When a holiday falls on a Monday immediately following a contact weekend, the parent that had contact for the weekend shall be entitled to keep the children continuously from 6 p.m. Friday until 6 p.m. Monday.

2. **Mot her' s/Fat her's Da y:** On Mother's Day and Father's Day, no matter whose turn for contact, the children shall be with the parent whose holiday is being celebrated from 9 a.m. until 6 p.m.

3. **School Breaks (Winter and Spring):** Winter and Spring Breaks shall be shared equally between the parents by dividing the breaks equally or rotating the breaks.

4. **Summer Vacation:** With the exception of children under the age of 5 years, the parents shall alternate contact weeks in the summer with the schedule beginning the first Friday in June and concluding the last Friday in August. \_\_\_\_\_ shall select their weeks first in odd numbered years and \_\_\_\_\_ shall select their weeks first in even numbered years. The parent whose choice it is that year shall give the other parent written notice of his/her summer week selection between March 1<sup>st</sup> and April 1<sup>st</sup>. The parent who has the child for the week shall be responsible for taking the child to his or her extra curricular activities, summer school, and providing summer care for that week.

5. **Late pick-up:** Both parents shall have the children ready for pick-up at the start of all contact periods. The children and the parent have no duty to wait for the other parent to arrive for contact more than thirty (30) minutes, unless notified. The parent who arrives more than thirty (30) minutes late without prior notification for a particular contact, forfeits that contact, unless the other parent agrees otherwise.
6. **Drop-off:** Neither parent shall return the children early from contact unless the parents agree to a different drop-off time in advance. The parent or other adult well-known to the children must be present when the children are returned from contact.
7. **Canceling contact:** Except in emergency situations, parents must give one another at least twenty-four (24) hours advance notice when canceling a contact period.
8. **Medical treatment and emergencies:** If the children become seriously ill or injured, each parent shall notify the other parent as soon as practicable. If the children become ill or injured during contact, the parent shall contact the other parent to secure treatment unless the situation is a medical emergency.
9. **Communication:** Both parents shall be entitled to reasonable communication with the child while the child is in the other parents' care (including but not limited to telephone, e-mail, mail and text messaging). Neither parent shall interfere with the communication between the children and the other parent. Long distance calls from an out-of-town parent shall be at that parent's expense.
10. **Transportation:** Unless otherwise ordered or mutually agreed, parents shall have shared responsibility for transportation of the children to and from their home for contact periods and may use another adult well-known to the children for picking up or dropping off the children when necessary. Any person transporting the children shall not be under the influence of alcohol or drugs, and must be a licensed, insured driver. All child restraint and seat belt laws must be observed by the driver.
11. **School work:** Parents shall provide time for children to study and complete homework assignments, even if the completion of work interferes with the parent's plans for the children. Both parents are responsible for providing all of the school assignments and books to the other parent. Summer school which is necessary for a child must be attended, regardless of which parent has the child during the summer school period.
12. **Extracurricular activities:** Regardless of where the children are living, their continued participation in extracurricular activities, school related or otherwise, should not be interrupted. The parent with whom the children are staying shall be responsible for providing transportation to activities scheduled during contact with that parent. Each parent shall provide the other parent with notice of all extracurricular activities, complete with schedules and the name, address and telephone number of the activity leader, if available.
13. **Relocation:** Prior to a parent relocating their residence, consideration shall be given to the effect the relocation may have on the existing contact schedule. If the relocation may result in a change in the child's school, travel time to school or extracurricular activities or otherwise may adversely affect the child's best interest, the parent choosing to relocate shall obtain written approval from the other parent or a Court Order prior to relocating.
14. **Notice of change of address:** Both parents shall give written notice to the other parent immediately upon any impending change of address and/or phone number. The written notice must include the new mailing address and phone number (in the event the mailing address is a Post Office Box, the written notice must include a physical address and/or directions to the new residence), unless a restrictive order has been obtained from the Court. A copy of the notice shall also be provided to the Family Court in the appropriate county.

15. Other:

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