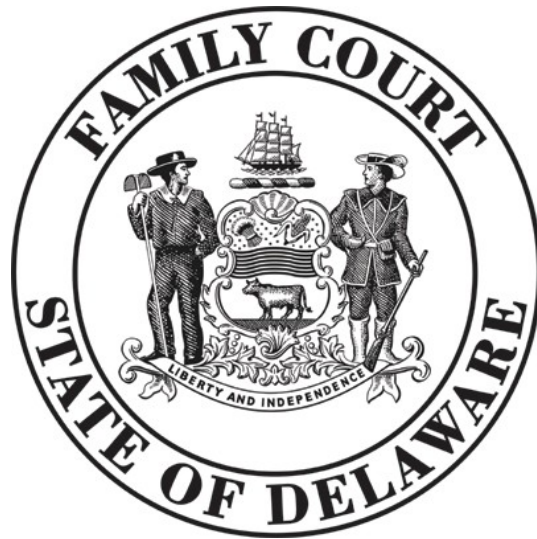


# PERMANENT GUARDIANSHIP INSTRUCTION PACKET



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# PERMANENT GUARDIANSHIP INSTRUCTION PACKET

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

- You are at least 18 years old; **AND**
- You want to be the Permanent Guardian of a child. A Permanent Guardian is a non-parent charged with caring for a minor; **AND**
- You are a blood relative or foster parent of the child; **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 who is 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 Permanent 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).

**Only a blood relative or foster parent of a child may file for Permanent Guardianship. The Petitioner(s) may not be the biological parent(s) of the child. If you are not a blood relative or foster parent of a child, please see the guardianship packet, termination of parental rights packet or contact an attorney for assistance.**

You may file for Permanent 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.

This Instruction Packet will explain permanent guardianship as if you wanted to file for permanent guardianship of one child. If you would like to have permanent guardianship of more than one child and all of the children have the same mother **AND** the same father, you may file for permanent guardianship of all of the children on the same petition. Please note that if any of the children for which you are seeking permanent guardianship have different fathers or mothers, you must file for permanent 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 Permanent 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 in ink or typed. **ONLY FILE THE FORMS INCLUDED IN THE BLANK 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. Do not file the sample forms.

**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 and Permanent Guardianship. These are located in the Resource Centers in each courthouse. 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 Permanent Guardianship, in other words, you.
  - The **RESPONDENT** is the person(s) answering (responding) to the Petition.
  
- ✓ Remember that just because you fill out the forms correctly does not necessarily mean that the Court will give you (grant) what you want. It is up to you at the court hearing to prove why the Court should give you what you want.
  
- ✓ Representing yourself may take a lot of time, may be difficult and may be confusing. The Court will expect you to follow the same rules that attorneys must follow. **If at any point throughout the Court process you are not sure about representing yourself, you should talk to an attorney.**
  
- ✓ Please remember that **COURT STAFF CANNOT GIVE YOU LEGAL ADVICE**. Should you have a question about what options you have or what you should do, you should talk to an attorney. Just because you talk to an attorney does not necessarily mean that you must hire that attorney to represent you. Ask the attorney if he/she is willing to meet with you and answer your questions without having to hire that attorney

for full representation. Before you meet with the attorney, ask what fees may be involved for such limited services.

- ✓ If you would like assistance finding an attorney, you can call the **Lawyer Referral Service** in New Castle County, 302-478-8850, and in Kent and Sussex Counties, 1-800-773-0606. (You may call the same telephone numbers and ask for the **Legal Help Link** to find out if you qualify for free legal assistance.) You also can refer to the **Attorney Roster** that is located at the Family Court Resource Centers. The Attorney Roster is a listing of some of the attorneys who practice family law in Delaware and includes information about how to contact the attorneys and what fees the attorneys charge.
  
- ✓ Always bring your photo identification with you (such as your driver's license, or a state-issued photo identification card) whenever you get a Court form notarized.
  
- ✓ **THERE IS A LOT OF PAPER IN A COURT CASE AND HAVING THE COURT MAKE YOU COPIES CAN BE VERY EXPENSIVE.**



**PLEASE READ AND REMEMBER THESE IMPORTANT TIPS**

***REMEMBER***

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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.**

# PERMANENT GUARDIANSHIP



## **The Definition of Permanent Guardianship**

The intent of Permanent Guardianship is to create a relationship between a child and a caretaker which is permanent and self-sustaining and creates a permanent family for the child without having to terminate the parental rights of the child's parents.

- Only a relative (as defined by 10 Del. C. § 901(20)), foster parent(s) or guardian(s) of the child may serve as a Permanent Guardian. Neither a parent nor step-parent is eligible to file for Permanent Guardianship.
- A relative is defined as immediate family members, grandparent, aunt, uncle, first cousin, great-grandparent, grand aunt or grand uncle, half-brother or half-sister.
- A foster parent must have been caring for the child for at least 6 months.
- A guardian must have held guardianship for at least 6 months.

Included in most Permanent Guardianship Orders is an Order for Custody. Therefore, assuming Custody is also granted, a Permanent Guardian may exercise the same powers, rights and duties respecting the care maintenance and treatment of the child as a parent would. However, unlike a parent, the Permanent Guardian cannot be held liable by a third party for something the child has done wrong simply because he/she is the permanent guardian. The Court also has the right to limit any of the powers and duties granted to the Permanent Guardian.



## **The Responsibilities of a Permanent Guardian**

Assuming the Court places no limitations in the Permanent Guardianship Order, the Permanent 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 Permanent Guardian will be responsible for making the


following decisions:


- Education;
- Travel;
- Medical treatment;
- Right to marry or enlist in the military;
- Representation in legal matters;
- Welfare and upbringing; **AND**
- Where the child will live.


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

Because a parent's parental rights are not terminated when a non-parent is given permanent 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.

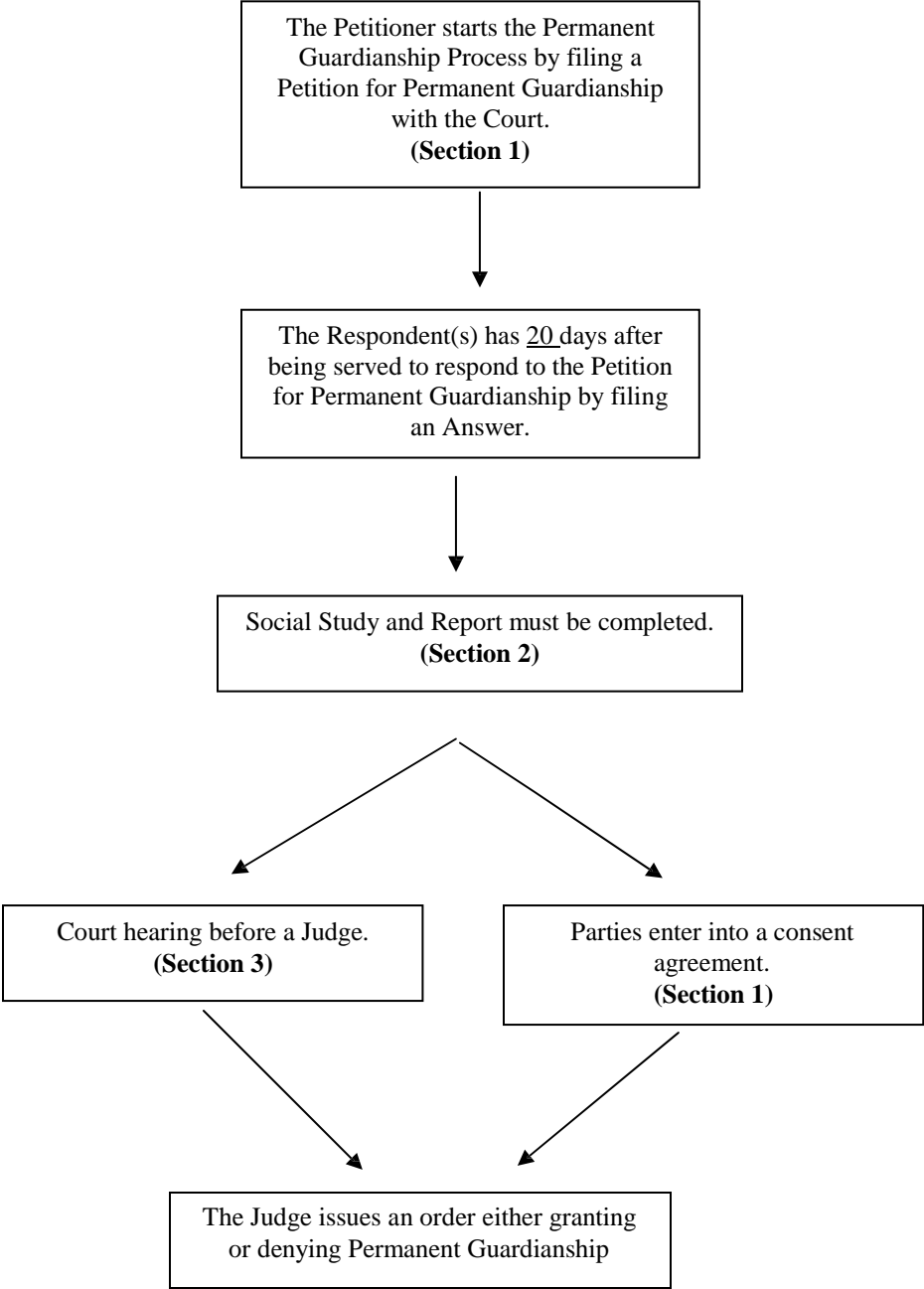
 **Once a Permanent Guardianship is granted, a parent may petition the Court to modify the contact, information or visitation portions of the Order.**

 **Once a Permanent Guardianship is granted, a parent MAY NOT petition the Court to terminate the permanent guardianship.** *(For more information, see page 52).*

 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 Permanent Guardian wishes to have the child inherit from him/her, then the Permanent 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(s) may have to continue to provide financial support to the child. In other words, the parents 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.

# PERMANENT GUARDIANSHIP PROCESS



**SECTION 1**  
**STARTING THE PERMANENT GUARDIANSHIP**  
**PROCESS**

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

- There is **NO** current Permanent Guardianship Order in place in Delaware or anywhere else. (If there is an existing Permanent Guardianship Order regarding the child and you want to **change the Order**, see page 52);  
**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(s) is at least 18 years of age and is not a parent of the child; **AND**
- The Petitioner is a relative, foster parent or guardian 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 Permanent Guardianship of a Minor** form. (file the original and one copy).

- Sample Form can be found on pages 21-28.
- Only a **non-parent** relative, foster parent, or guardian may file for permanent guardianship. If you are a parent and would like custody of a child, please see the Custody Instruction Packet for more information.
- The U.S. and Delaware State Constitutions require that whenever a petition is filed with the Court, **ALL** of the people involved with the case must be notified. By naming a person as a Respondent, you are asking the Court to notify him/her of the petition. In Guardianship cases the following people should be named as Respondent(s):
  - The natural or adoptive parents of the child;
  - Any guardian of the child or the person with whom the child is living;
  - Any Guardian ad Litem of the child;
  - And the organization having custody of the child (for example, the Division of Family Services).

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

- There will likely be more than one Respondent listed on your Petition for Guardianship.
- 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 the date of death.
- If the Respondent(s) **voluntarily consent** to the permanent guardianship, they must complete an **Affidavit of Consent**. For more information, please see page 16.
- If the child over which you would like to have permanent guardianship is **14 years of age or older**, the child must fill out an **Affidavit of Consent**, agreeing to the permanent guardianship. For more information please see pages 15-16.
- You must sign your Petition for Permanent Guardianship in the presence of a notary public or authorized Court staff.

### **Grounds for Permanent Guardianship**

- When alleging facts in your Petition for Guardianship, you must indicate at least one Ground for Permanent Guardianship for each child. The Petition for Permanent Guardianship lists the grounds and you should place an “x” in front of all the grounds that apply. The grounds can be found in Appendix A of this Instruction booklet and can be found on the last three pages of the Petition for Permanent Guardianship.



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

- Sample form can 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 Permanent Guardianship. If all of the children included in your petition have had the **same living arrangements as one another** for the past five years, then you may include all children on a single form. However, if the children have **lived apart** from each other



sometime during the past five years, you must complete a separate form for each child. For example, if last year, one child resided with one parent and one child resided with the other parent, it would be necessary to file two Custody Separate Statements, explaining where each child lived.



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

- Sample form can 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.

## **BELOW ARE OPTIONAL FORMS**

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

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



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

- Sample form can be found on page 34.
- 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. Please see page 20 for more information regarding Notice by Publication.

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




**Consent Order-Permanent Guardian of the Person** form. *(file one original)*.

- Sample form may be found on page 35-37.
- File this document only if you and the Respondent(s) have already agreed upon the permanent guardianship.
- On this form, you will describe for the Court the following things:
  - Who shall have permanent 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 you are submitting a Consent Order, you must also submit the following forms:
  - Affidavit of Consent of Child 14 Years of Age or Older (if the child is 14 or over)
  - Affidavit of Consent of a Child's Parent (file one for each parent)

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

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


- A sample form may be found on page 38a.
- 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 permanent guardian.
- If the child does not agree with the permanent guardianship, you must explain to the Court why the permanent 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 permanent 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 permanent guardianship,  
file:**

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

- Sample form may be found on page 39.
- If one, or both, of the child's parents agree that you should be granted permanent guardianship, he/she must complete an Affidavit of Consent, stating that he/she is in agreement.
- Each parent must complete their own Affidavit of Consent.
- The parent must sign the Affidavit of Consent in the presence of a notary or court staff.

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

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

- Sample form may be found on page 38.
- 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. Instructions on completing a Motion to Appoint an Attorney may be found in the Resource Center in each courthouse.
- If there are multiple Respondents who are in the military you must file a separate form for each Respondent.



**BE SPECIFIC WHEN COMPLETING THE FORMS** and make sure that you address **ALL** of the grounds found on pages (Appendix A) 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 the county in which 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 Family Court Intake on Lower Level 1 of the New Castle County Courthouse.
- If you file your papers by mail, the addresses for each courthouse are available on the Family Court website. The Court does **NOT** accept filings that are faxed or e-mailed.



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

# ADDITIONAL INSTRUCTIONS FOR PERMANENT GUARDIANSHIP



## SERVICE OF PROCESS

**Each** Respondent **must receive** a copy of the Petition for Permanent Guardianship. The delivery of the Petition for Permanent 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** and the Court will do this for you.

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

If a Respondent(s) does **NOT** live in Delaware **AND** you know the Respondent's address, the Court will mail your papers *via* certified mail, return receipt requested, to the Respondent(s). If delivery of the certified mail is unsuccessful, **YOU** must publish **AT YOUR EXPENSE** a legal notice of your petition in an approved newspaper in the county and state where the Respondent(s) lives (see below).

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

If you do **NOT** know where a Respondent lives or works so that the Process Server can deliver your petition to that Respondent, **YOU** must publish **AT YOUR EXPENSE** a legal notice of your petition in an approved newspaper in the county and state where the

Respondent's last known address was located. You must also complete an Affidavit that Address is Unknown form (see page 14).



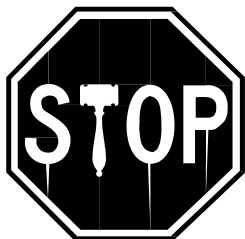
## PUBLICATION

- Instructions on how to publish notice of a court action are available in the Resource Centers. It is important to carefully follow the instructions for publication. If you do not properly publish notice, your Petition for Permanent Guardianship could be dismissed.



## THE ANSWER

- Once the Respondent(s) has been served with the Petition for Permanent 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 Permanent 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 Permanent 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.



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

# The Family Court of the State of Delaware

In and For  New Castle  Kent  Sussex County

Check the county in which you are filing.

## PETITION FOR PERMANENT GUARDIANSHIP OF A MINOR

*Petitioner*

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

Name Anne C. Smith	D.O.B. 2/3/1964	Name Scott R. Smith	D.O.B. 3/14/1964
SSN 111-22-3333		SSN 222-33-4444	
Street Address 101 Oak Street		Street Address 101 Oak Street	
Apt. or P.O. Box Number #123		Apt. or P.O. Box Number #123	
City Dover	State DE	Zip Code 19901	
Home Phone Number (302) 555-1111		Work Phone Number (302) 762-0099	
Home Phone Number (302) 555-1111		Work Phone Number (302) 997-0044	
Relation to Child(ren) Maternal Aunt		Relation to Child(ren) Maternal Uncle	
Attorney Name None		Attorney Name None	
Street Address		Street Address	
Apt. or P.O. Box Number		Apt. or P.O. Box Number	
City	State	Zip Code	

File Number CK04-0221
Petition Number 07-1553

*Respondent*

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

Name Michelle Jones	D.O.B. 11/12/1967	Name Steven Harding	D.O.B. 9/14/1969
SSN 777-66-8989		SSN 102-44-5673	
Street Address 123 State Street		Street Address 454 Main Street	
Apt. or P.O. Box Number		Apt. or P.O. Box Number	
City Dover	State DE	Zip Code 19901	
Home Phone Number (302) 445-6898		Work Phone Number none	
Home Phone Number (302) 445-6898		Work Phone Number none	
Relation to Children Mother		Relation to Children Father	
Attorney Name None		Attorney Name None	
Street Address		Street Address	
Apt. or P.O. Box Number		Apt. or P.O. Box Number	
City	State	Zip Code	



*Guardian Ad Litem (if any)*



*Attorney for Guardian Ad Litem (if any)*



Name <b>Jane Walker</b>			Name <b>Martha Bates, Esquire</b>		
Street Address <b>525 South Washington Street</b>			Street Address <b>111 Legal Way</b>		
Apt. or P.O. Box Number			Apt. or P.O. Box Number		
City <b>Dover</b>	State <b>DE</b>	Zip Code <b>19901</b>	City <b>Dover</b>	State <b>DE</b>	Zip Code <b>19901</b>
Home Phone Number <b>(302) 465-9889</b>		Work Phone Number <b>(302) 255-0987</b>		Home Phone Number <b>(302) 678-9999</b>	
				Work Phone Number <b>(302) 456-0899</b>	

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

Child's Name	Child's Date of Birth	Child's Place of Birth (City, State)	Child's Gender (Check one)
<u><b>Douglas A. Smith</b></u>	<u><b>10/14/1991</b></u>	<u><b>Dover, DE</b></u>	<input checked="" type="checkbox"/> Male <input type="checkbox"/> Female
_____	_____	_____	<input type="checkbox"/> Male <input type="checkbox"/> Female
_____	_____	_____	<input type="checkbox"/> Male <input type="checkbox"/> Female

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

	NAME	Address	Date of Birth	Social Security Number
MOTHER	<u><b>Michelle Jones</b></u>	<u><b>123 State Street Dover, DE 19901</b></u>	<u><b>11/12/1967</b></u>	<u><b>777-86-8989</b></u>
FATHER	<u><b>Steven Harding</b></u>	<u><b>454 Main Street Dover, DE 19901</b></u>	<u><b>9/14/1969</b></u>	<u><b>102-44-5673</b></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 indicated above.**

> I have attached to this Petition the following affidavits:

**Affidavit that a Party's Address is Unknown**

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

**Michelle Jones and Steven Harding**

Address of person(s) or organization:

**See above**

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

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

**See above**

5. Name(s) of the person(s) to whom permanent guardianship shall be vested if this Petition is granted  
Anne and Scott Smith

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

See above

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

7. Please check all that apply:

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

OR

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

Douglas A. Smith

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

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

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

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

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

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

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

1) Both Mother and Father are currently in rehab for drug and alcohol abuse. Due to their drug habit, they have abandoned the child, leaving the child with the Petitioner's for the past several years. It does not appear that Mother and Father have the ability or the desire to regain custody of the child.

List your reasons in numbered paragraphs

9. I acknowledge the following is true for the child(ren) named in this petition:

Adoption of the child is not possible or appropriate;

Permanent Guardianship is in the best interests of the child

The proposed permanent guardian:

i. Is emotionally, mentally, physically and financially suitable to become the permanent guardian;

ii.  Is a relative (pursuant to 10 Del. C. § 901(20)),

- immediate family member
- grandparent or great grandparent
- uncle or aunt
- first cousin
- grand uncle or grand aunt
- half brother or half sister

- iii.  Foster parent caring for the child at least 6 months OR
- iv.  Guardian holding guardianship at least 6 months
- v. Has expressly committed to remain the permanent guardian and assume the rights and responsibilities for the child for the duration of the child's minority (until the child is 18 years old); AND
- vi. Has demonstrated an understanding of the financial implications of becoming a permanent guardian;

If the child is at least 14 years old, the child consents to the permanent guardianship being granted.

If the proposed permanent guardian is a foster parent(s):

- i. The child is at least 12 years old; OR
- ii. The proposed permanent guardian is the permanent guardian of one of the child's siblings; OR
- iii. The child receives substantial governmental benefits for a serious physical and/or mental disability which would no longer be available to the child if parental rights were terminated and/or if the child was adopted.

I/We have made the following efforts to place the child for adoption (if applicable):

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10. I have attached the Grounds for Permanent Guardianship for each child named above. I have indicated at least one Ground for Permanent Guardianship for each child named in this petition.

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

<u>Anne C. Smith</u> Petitioner	<div style="background-color: #cccccc; padding: 2px;">12/15/2007</div> Date	<u>Scott R. Smith</u> 2 <sup>nd</sup> Petitioner (if any)	<div style="background-color: #cccccc; padding: 2px;">12/15/2007</div> Date
Sworn to subscribed before me:		Sworn to subscribed before me:	
<div style="background-color: #cccccc; padding: 2px;">Donna King</div> <u>Mediator/Notary Public</u>	<div style="background-color: #cccccc; padding: 2px;">12/15/2007</div> Date	<div style="background-color: #cccccc; padding: 2px;">Donna King</div> <u>Mediator/Notary Public</u>	<div style="background-color: #cccccc; padding: 2px;">12/15/2007</div> Date
 <div style="border: 1px solid black; border-radius: 15px; padding: 5px; display: inline-block; margin-top: 10px;">           Signed by notary or Court staff         </div>			

**GROUNDS FOR PERMANENT GUARDIANSHIP**

Complete the following for each child named in the Petition for Permanent Guardian

NAME OF CHILD: Douglas A. Smith

Indicate the grounds for Permanent Guardianship (**Place an "X" next to the grounds that apply.**)

1.  The parent(s) of the child, or the person(s) or organization holding parental rights over such child agree (consent) that this Petition should be granted. (**Attached is/are the parent(s) affidavit of consent.**)
2.  Respondent has abandoned the child **AND** intended to abandon the child as evidenced by the fact that: (**Place an "X" next to which reason applies**)
  - a.  The child is younger than 6 months old and at the time of filing this Petition, Respondent did not do ANY of the following:
    - Pay reasonable prenatal, natal and postnatal expenses in accordance with Respondent's financial means; AND
    - Visit regularly with the child; AND
    - Manifest (show) an ability and willingness to assume legal and physical custody of the child (this third reason applies if the child was not in the physical custody of the other parent).
  - b.  The child is at least 6 months old at the time of filing this Petition and for at least six consecutive months (six months in a row) during the year immediately before filing the Petition, Respondent(s) did not do ANY of the following:
    - Make reasonable and consistent payments in accordance with Respondent's financial means, for support of the child; AND
    - Communicate or visit regularly with the child; AND
    - Manifest (show) the ability and willingness to assume legal and physical custody of the child (this third reason applies if the child was not in the physical custody of the other parent).
  - c.  The child is younger than 6 months old at the time of filing this Petition and Respondent has placed the child in circumstances leaving the child in substantial risk of injury or death and therefore has manifested (shown) the unwillingness to exercise parental rights.
3.  Respondent has abandoned the child BUT did not intend to abandon the child because: (**Place an "X" next to which reason applies**)
  - a.  For 12 consecutive months (12 months in a row) in the 18 months before filing this Petition, Respondent did not do ANY of the following:
    - Communicate or visit regularly with the child; AND
    - File or pursue a pending Petition to establish paternity or to establish the right to have contact or visitation with the child; AND
    - Manifest (show) the ability and willingness to assume legal and physical custody of the child (this third reason applies if the child was not in the physical custody of the other parent).

**AND** one of the below applies (**Place an "X" next to all that apply**):

- The child is not in the legal and physical custody of the other parent and Respondent is not able or willing promptly to assume legal and physical custody of the child, and to pay for the child's support, in accordance with Respondent's financial means.
- Placing the child in Respondent's legal and physical custody would pose a risk of substantial harm to the physical or psychological well being of the child. Respondent is unfit to maintain a relationship of "parent and child" with the child because of any of the following reasons:

- i. The circumstances of the child's conception; OR
- ii. Respondent's behavior during the mother's pregnancy; OR
- iii. Respondent's behavior after the child was born; OR
- iv. Respondent's behavior with respect to other children.

Failure to grant the Petition for Permanent Guardianship would be detrimental to the child.

4.  The parent(s) of the child or any person(s) holding parental rights over such child are found mentally incompetent and therefore, are unable to discharge parental responsibilities in the foreseeable future. (The Court will select 2 qualified psychiatrists to form an opinion regarding mental incompetence and inability to discharge parental responsibilities. The Court also will appoint a licensed attorney as guardian ad litem to represent the alleged incompetent's interests in the proceeding)
5.  Respondent has been found by a Court of competent jurisdiction to have: **(Place an "X" next to all that apply)**
- a.  Committed a felony level offense as described in subchapter II of Chapter 5 of Title 11 against the person in which the victim was a child;
  - b.  Aided or abetted, attempted, conspired or solicited to commit a felony level offense as described in subchapter II of Chapter 5 of Title 11 against the person in which the victim was a child;
  - c.  Committed or attempted to commit the offense of Dealing in Children as set forth in § 1100 of Title 11.
  - d.  Committed the felony level offense of endangering the welfare of a child as set forth in § 1102 of Title 11.
6.  The parent(s) of the child, or any person(s) holding parental rights over the child, are not able or have failed to plan adequately for the child's physical needs or mental and emotional health and development, and 1 or more of the following conditions has been met: **(Place an "X" next to each condition that has been met)**
- a.  If the child is in the care of the Department or a licensed agency, **place an "X" next to each condition below that has been met:**
    - The child has been in the care of the Department of licensed agency for a period of one year, or if the child has come into care as an infant, a period of 6 months, or there is a history of previous placement(s) of this child;
    - There is a history of neglect, abuse, or lack of care of the child or other children by Respondent;
    - Respondent is incapable of discharging parental responsibilities due to extended or repeated incarceration;
    - Respondent is not able or willing to assume promptly legal and physical custody of the child, and to pay for the child's support, in accordance with Respondent's financial means.
    - Failure to grant the Petition for Permanent Guardianship will result in continued emotional instability or physical risk to the child.
  - b.  If a relative is seeking permanent guardianship **place an "X" next to each condition below that has been met:**
    - The child has resided in the home of the relative for a period of at least 1 year, or in the case of an infant, a period of 6 months

Respondent is incapable of discharging parental responsibilities, and there appears to be little likelihood that Respondent will be able to discharge such parental responsibilities in the near future.

7.  Respondent's parental rights over a sibling (brother, sister, half-brother, half-sister) of the child who is the subject of the Petition have been involuntarily terminated in a prior proceeding.
8.  The parent has subjected the child to torture, chronic abuse, sexual abuse, and/or life-threatening abuse.
9.  The child has suffered unexplained serious physical injury under such circumstances as would indicate that such injuries resulted from the intentional conduct or willful neglect of the parent.

# 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



Name Anne C. Smith	Name John D. Smith	File Number 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.**

CURRENT ADDRESS	Address where child(ren) <u>currently reside(s)</u>			Date(s) Child(ren) lived here	
	<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	
	Address		City	State	Zip
	101 Oak Street, Apt 123		Dover	DE	19901
	People living in the household with the child(ren):		Date of Birth	Relationship to child(ren):	
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.

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



<b>PRIOR ADDRESS</b>	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
<b>PRIOR ADDRESS</b>	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.

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

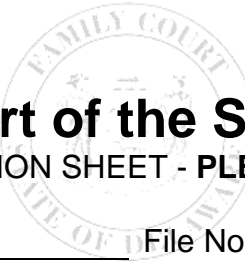


6. Select all that apply and complete as directed.

- 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.

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





Fill in the date you file the form.

# The Family Court of the State of Delaware

## INFORMATION SHEET - PLEASE PRINT

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

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

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

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

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

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

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

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

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

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

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

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

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

**L. Attorney:** None

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

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

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

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

**Children**

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

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

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

N. Name: Michelle Jones

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

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

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

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

You must complete a separate form for each Respondent.

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

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

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

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

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

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

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

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

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

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

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

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

**DIRECTIONS TO RESPONDENT'S RESIDENCE**

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

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

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

# The Family Court of the State of Delaware

in and for New Castle  Kent Sussex County

Check the county in which you are filing.

## AFFIDAVIT THAT A PARTY'S ADDRESS IS UNKNOWN

**Petitioner**

**Respondent**

Last Smith First Anne MI C.

vs. Last Jones First Michelle MI \_\_\_\_\_

File No. CK04-0221  
CPI No. 07-1553

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.

State of Delaware )  
 )  
Kent County )

SS.

BE IT REMEMBERED, that on this 15th day of December, 2005, personally appeared before me, a Notary Public for the State and County aforesaid, Anne C. Smith, ("Affiant"), who, being by me duly sworn according to law did depose and say:

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

1. My name is Anne C. Smith

2. I do not know the current address and/or telephone number, nor do I know anyone who could provide me with the current address and/or telephone number of Michelle Jones. I have contacted his/her (Please check as appropriate)  Parent  Spouse  Employer  Other: Respondent's Sister. His/Her last known address and telephone number were:

490 Pine Street  
Wilmington, Delaware 19899

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

as of December 1, 2005.

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

4. I have been informed of my responsibility to accomplish publication and my failure to do so will result in the petition being dismissed.

5. The information contained herein is true and correct to the best of my knowledge and belief.

STOP Sign in the presence of a notary.

Anne C. Smith  
Affiant

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

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

# The Family Court of the State of Delaware

In and For D New Castle  Kent D Sussex County

Check the county in which you are filing.

## CONSENT ORDER-PERMANENT GUARDIAN OF THE PERSON

### Petitioner

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

### Respondent

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

File Number:

CK04-0221

Case Number:

07-1553

### Petitioner

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

### Respondent

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

IN THE INTEREST OF the following child(ren):

Doug A. Smith

Name

10/14/1991

DOB

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

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

Name and Relationship

101 Oak Street, Apartment #123

Dover, DE 19901

Address

I understand the importance of my decision and fully realize the effects of granting permanent guardianship of my child to the above-named individuals;

I understand that I retain the following rights:

- a. The right to visitation, contact and information as ordered by the court;
- b. The right to inheritance by and from the child;
- c. The right to consent to termination of parental rights and/or adoption of the child;  
AND
- d. The right to seek modification of the visitation, contact and information portions of the permanent guardianship order.

I understand that I may still have the primary responsibility to support my child financially;

I understand that after this consent is signed by me and confirmed, I may not petition the Court to terminate the Permanent Guardianship;

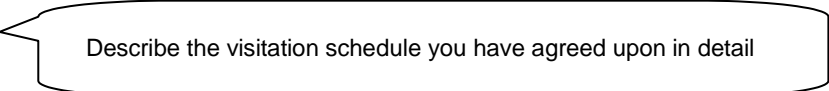
I know and understand that I have the right to be served with a copy of the petition for permanent guardianship, and have a hearing on that petition. I understand that the Family Court may conduct a hearing on this matter. I hereby waive my right to service and any notice of such hearing by checking the following box ;

I know that I will receive notice of the final order of the Court only if I check the following box .

I have received a copy of my signed consent; and

I have signed this consent voluntarily and of my own free will. I have neither been promised nor received any money or anything else of value in exchange for this consent.

Respondent(s) shall have visitation as follows:



Describe the visitation schedule you have agreed upon in detail

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

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

BE IT REMEMBERED, that on this date December 15, 2005, Anne Smith and Scott Smith ("Petitioner(s)"), who, being duly sworn by me according to the law personally appeared before me, a Notary Public for the State and County declared above, did depose and say: We, the undersigned, hereby agree upon the following permanent guardianship agreement for the above-named child. We signed this consent agreement voluntarily and of our own free will.

Doug Jones  
Minor (if over 14)

Anne Smith  
Petitioner

Scott Smith  
Petitioner



All parties must sign in the presence of a notary.

Michelle Jones  
Respondent

Steven Harding  
Respondent

Signed by notary or Court staff

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

Donna King  
Notary Public



# The Family Court of the State of Delaware

In and For  New Castle  Kent  Sussex County

Check the county in which you are filing.

Anne C. Smith

Petitioner,

File No.: CK04-0221

and

Michelle Jones

Respondent,

Petition No.: 07-1553

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

1. That Affiant is the Respondent in the above captioned civil proceeding;
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.

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



Sign in the presence of a notary or court staff.

Michelle Jones

Respondent ("Affiant")

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



Signed by notary or court staff.

Donna Young

Notary Public or Clerk of Court

# The Family Court of the State of Delaware

In and For D New Castle  Kent D Sussex County

Check the county in which you are filing.

## PERMANENT GUARDIANSHIP

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

#### Petitioner

#### Respondent

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

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

File Number:  
CK04-0221

07-1553

#### Petitioner

#### Respondent

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

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

Fill in the date you have the form notarized.

BE IT REMEMBERED, that on this date December 15, 2005, Doug A. Smith ("Child"), who, being duly sworn by me according to the law personally appeared before me, a Notary Public for the State and County declared above, did depose and say:

- 1) I hereby agree that the above named Petitioner(s) shall be my guardian(s).
- 2) I understand that as my permanent 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.



Doug A. Smith

Child

Sign in the presence of a notary.

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



Donna King

Notary Public

Signed by notary or Court staff

# The Family Court of the State of Delaware

In and For D New Castle D Kent D Sussex County



Check the county in which you are filing.

## PERMANENT GUARDIANSHIP

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

#### Petitioner

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

#### Respondent

Name Michelle Jones		
Street Address 123 State Street		
Apt. or P.O. Box Number		
City Dover	State DE	Zip Code 19901
Date of Birth 3/14/1964	Social security # 222-83-4444	

File Number:

CK04-0221

Case Number:

07-1553

#### Petitioner

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

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

Fill in the date you have the form notarized.

BE IT REMEMBERED, that on this date 12/15/2005, Michelle Jones ("Affiant"), who, being duly sworn by me according to the law personally appeared before me, a Notary Public for the State and County declared above, did depose and say:

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

Child(ren)'s Name: Doug Smith

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

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

- 3) I understand that I shall have the primary responsibility to support this child financially and that this child will have the right to inherit from me and I will have the right to inherit from the child.
- 4) I understand that my visitation and contact with the child shall be that which is set forth in a Court Order or a Consent Order entered into by all parties to this matter.



Michelle Jones

Affiant

Sign in the presence of a notary.

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



Donna King

Notary Public

Signed by notary or Court staff

## Section 2

### SOCIAL STUDY AND REPORT

#### For Permanent Guardianship, a Social Study and Report is Mandatory.



A Social Study and Report is a report that provides detailed information about you and the child which will **help the Court determine whether you should become the child's permanent 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 permanent 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.



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

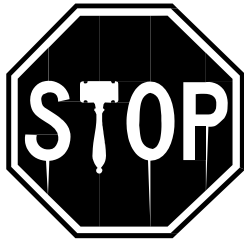


**Order of Reference Letter and Order** (*file one original and one copy for each Respondent*)

- Sample form may be found on pages 43-44.
- The Order of Reference Letter and Order is a two page form that includes the information about the agency chosen and an order form for the judge to sign.
- On the Order of Reference you will list the names and ages of the child for which you are requesting permanent guardianship, the names of the child's parent(s) and the name of the licensed child-placing agency that you have selected to complete the Social Study and Report.
- Once you have completed this form and submitted it to the Court, a Clerk of Court will sign the form and forward a copy of it to the agency you have selected. The agency can then begin preparing the social study and report.
- You **MUST** pay the licensed child-placing agency to complete the Social Study and Report. This is not a Court fee and cannot be waived by the

Court. You are responsible for the entire cost of preparing the Social Study and Report.

- The Social Study and Report can be very expensive so you might want to find out how much different agencies charge before deciding which one to use.
- The agency preparing the Social Study and Report has 4 months to file the completed Report with the Court.
- **The Court may allow the agency more time to complete the Social Study and Report, but ONLY IF the additional time is reasonable and is to enable the agency to complete the report.**



**SECTION 3 WILL BEGIN AFTER THE  
SAMPLE FORM FOR SECTION 2.**

# The Family Court of the State of Delaware

In and For  New Castle  Kent  Sussex County



Check the county in which you are filing.

Insert the name of your selected child placement agency

## Petition for Guardianship/Permanent Guardianship of a Minor

### Order of Reference

Civil Action No.: CK04-1211

In the Matter of:

Insert the child's name

Douglas A. Smith

Dear Child Placement Agency

Please be advised that Anne C. Smith (and Scott R. Smith) has (have) petitioned the Court for Permanent Guardianship with respect to the following child(ren):

Insert the type of Petition that you are filing, Permanent Guardianship.

Douglas A. Smith



,  male or  female child, aged, 14 born; 10/14/1991

,  male or  female child, aged, \_\_\_\_\_ born; \_\_\_\_\_

,  male or  female child, aged, \_\_\_\_\_ born; \_\_\_\_\_

,  male or  female child, aged, \_\_\_\_\_ born; \_\_\_\_\_

,  male or  female child, aged, \_\_\_\_\_ born; \_\_\_\_\_

,  male or  female child, aged, \_\_\_\_\_ born; \_\_\_\_\_

Check whether the Respondents have consented to the Guardianship

Written consent  has  has not been filed with the petition. WHEREUPON it has been ordered by the Court that Child Placement Agency do make a careful and thorough social study making the inquiries required by the Act of the General Assembly and reporting Child Placement Agency writing to the Court.

Insert the name of your selected child placement agency.

12/15/2007  
Date

Donna ing  
Clerk of Court

**PLEASE REPLY TO**

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

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

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



# The Family Court of the State of Delaware

In and For  New Castle  Kent  Sussex County

Check the county in which you are filing.

Anne C. Smith



Petitioner

v.

Michelle Jones

Respondent

File No.:

CK04-12111

Petition No.:

07-1553

## ORDER



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

Leave blank for the hearing officer to fill in

IT IS SO ORDERED, this date: \_\_\_\_\_

That Child Placement Agency shall do a careful and thorough social study of Movant's Petition for Permanent Guardianship of Douglas Smith (10/14/1991), making inquiries required by the Act of the General Assembly and reporting the findings in writing to the Court within 4 months of the date of this Order.

Leave blank for the hearing officer to sign

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

cc:

## Section 3

### HEARING WITH A JUDGE

#### SCHEDULING THE HEARING



A **Court Hearing** will be scheduled by the Court.

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

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



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

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

- ▶ Sample form may be found on page 50.
- ▶ If, once you receive your Notice, you cannot attend the scheduled Permanent 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 permanent guardianship matter, complete the following form and bring it to Court with you on the day of your hearing.

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

- Sample form may be found on page 51.
- **ONLY** complete this form if the Respondent(s) is **NOT** in the military and has not filed an answer or otherwise appeared in this Guardianship matter.
- If there is more than one Respondent, you must complete a separate form for each person.

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

 Family Court provides **Court Hearing Procedure Information** that explains generally what the Court Hearing procedure is and should answer many of the questions you have about the procedure. It will be helpful to read this information before your scheduled hearing. This information is available in Appendix B of this packet and on the Family Court website.



Unless the parent(s) consent to the permanent guardianship, it is up to **YOU** at the hearing to prove that the grounds for Permanent Guardianship are met. These grounds are explained in Appendix A of this packet. Review that information before the hearing, so that you are prepared to present your case to the Court.

Because a parent's parental rights are not terminated when permanent guardianship is granted, the parent(s) may still be entitled to contact with the child. At the hearing, you should also be prepared to present evidence or testimony regarding how much **contact** the parent(s) should have with the child and how much **information** you as the guardian will be required to provide to the parent(s) if the guardianship is granted. Be aware of the following information when preparing for the hearing:

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



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

Once the Court has entered a Permanent Guardianship Order, you and the Respondent(s) should follow the terms of the Order. In other words you should do what the Order tells you to do. The Court will not enforce any agreements made by the parties that are not in a Court Order. If circumstances change, you and the Respondent(s) can change the Order by filing the proper petition. See Section 4 for information about when a guardianship order can be changed.



**SECTION 4 WILL  
BEGIN AFTER THE  
SAMPLE FORMS 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.

## MOTION FOR Continuance

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

### Petitioner

### Respondent

Name: **Anne C. Smith**

Street Address: **101 Oak Street**

Apt. or P.O. Box Number: **Apt. # 123**

City: **Dover** State: **DE** Zip Code: **19901**

Social Security Number: **111-22-333** Date of Birth: **2/3/64**

Attorney Name and Phone Number: **n/a**

Name: **Michelle Jones**

Street Address: **123 State Street**

Apt. or P.O. Box Number:

City: **Dover** State: **DE** Zip Code: **19901**

Social Security Number: **787-98-676** Date of Birth:

Attorney Name and Phone Number: **n/a**

File Number: **CK04-12111**

Petition Number: **07-1553**

A PROCEEDING involving **Permanent Guardianship** having been filed heretofore in this Court,

Movant hereby moves the Court for a continuance support thereof, alleges the following facts:

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

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

SWORN TO AND SUBSCRIBED before me this date,

**December 15, 2005**

**Donna King**

Notary Public/Clerk of Court

Sign in the presence of a notary.

**Anne C. Smith**  
Movant/Attorney

Signed by notary or court staff.

I, the Movant, affirm that a true and correct copy of this Motion was placed in the U.S. Mail on this date **12/15/2005** and sent to the other party or attorney at the address listed on the petition, being **Michelle Jones**, first class postage pre-paid.

SWORN TO AND SUBSCRIBED before me this date,

**December 15, 2005**

**Donna King**

Notary Public/Clerk of Court

Sign in the presence of a notary.

**Anne C. Smith**  
Movant/Attorney

Signed by notary or court staff.

# The Family Court of the State of Delaware

In and For  New Castle  Kent  Sussex County

Check the county in which you are filing.

Petitioner			Respondent			File Number	
Name <b>Anne C. Smith</b>			Name <b>Michelle Jones</b>			<b>CK04-1211</b>	
Street Address <b>101 Oak Street</b>			Street Address <b>123 State Street</b>			Petition Number	
Apt. or P.O. Box Number <b>Apt. #123</b>			Apt. or P.O. Box Number			<b>07-1553</b>	
City <b>Dover</b>	State <b>DE</b>	Zip Code <b>19901</b>	City <b>Dover</b>	State <b>DE</b>	Zip Code <b>19901</b>		
Social Security Number <b>111-22-3333</b>		Date of Birth <b>2/3/64</b>	Social Security Number <b>787-98-6767</b>		Date of Birth <b>7/13/65</b>		
Attorney Name and Phone Number <b>n/a</b>			Attorney Name and Phone Number <b>n/a</b>				

Fill in the county where you are filing,


## AFFIDAVIT OF NON-MILITARY SERVICE


STATE OF DELAWARE )  
 )  
Kent COUNTY )

Fill in the date you have the form notarized.

BE IT REMEMBERED, that on this date, January 6, 2006, personally appeared Before me, a Notary Public for the State of Delaware in the County declared above, Anne C. Smith, ("Affiant"), who, being duly sworn by me according to law, did depose and say:

1. That Affiant is the Petitioner in the above captioned civil proceeding;
2. That Respondent is not in the military service of the United States of America; and
3. That Affiant has made this Affidavit pursuant to the provisions of § 200 of the Act of Congress entitled "Servicemembers Civil Relief Act of 1940" (50 U.S.C. App. 521) approved October 17, 1940.

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

 → Anne C. Smith  
 Petitioner

SWORN TO AND SUBSCRIBED before me this date, January 6, 2006

 Signed by notary or court staff. Donna King  
 Notary Public or Clerk of Court



## Section 4

# CHANGING AND ENDING PERMANENT GUARDIANSHIP

A parent may petition the Court to change the visitation, contact or information portions of the Permanent Guardianship Order. However, a parent **may not** petition the Court to terminate a Permanent Guardianship once it is granted. Once the Court enters a Permanent Guardianship Order, it will only be changed or ended if there is a substantial change in circumstances and if the change or termination is in the best interests of the child. In other words, once you become the permanent guardian of a child, you will continue to be that child's permanent 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 be modified or ended based on the best interests standard and a substantial change in circumstances.

## GROUNDS FOR PERMANENT GUARDIANSHIP

Complete the following for each child named in the Petition for Permanent Guardian

NAME OF CHILD: \_\_\_\_\_

Indicate the grounds for Permanent Guardianship (**Place an "X" next to the grounds that apply.**)

1.  The parent(s) of the child, or the person(s) or organization holding parental rights over such child agree (consent) that this Petition should be granted. (**Attached is/are the parent(s) affidavit of consent.**)
2.  Respondent has abandoned the child **AND** intended to abandon the child as evidenced by the fact that: (**Place an "X" next to which reason applies**)
  - a.  The child is younger than 6 months old and at the time of filing this Petition, Respondent did not do ANY of the following:
    - Pay reasonable prenatal, natal and postnatal expenses in accordance with Respondent's financial means; AND
    - Visit regularly with the child; AND
    - Manifest (show) an ability and willingness to assume legal and physical custody of the child (this third reason applies if the child was not in the physical custody of the other parent).
  - b.  The child is at least 6 months old at the time of filing this Petition and for at least six consecutive months (six months in a row) during the year immediately before filing the Petition, Respondent(s) did not do ANY of the following:
    - Make reasonable and consistent payments in accordance with Respondent's financial means, for support of the child; AND
    - Communicate or visit regularly with the child; AND
    - Manifest (show) the ability and willingness to assume legal and physical custody of the child (this third reason applies if the child was not in the physical custody of the other parent).
  - c.  The child is younger than 6 months old at the time of filing this Petition and Respondent has placed the child in circumstances leaving the child in substantial risk of injury or death and therefore has manifested (shown) the unwillingness to exercise parental rights
3.  Respondent has abandoned the child **BUT** did not intend to abandon the child because: (**Place an "X" next to which reason applies**)
  - a.  For 12 consecutive months (12 months in a row) in the 18 months before filing this Petition, Respondent did not do ANY of the following:
    - Communicate or visit regularly with the child; AND
    - File or pursue a pending Petition to establish paternity or to establish the right to have contact or visitation with the child; AND
    - Manifest (show) the ability and willingness to assume legal and physical custody of the child (this third reason applies if the child was not in the physical custody of the other parent).

**AND** one of the below applies (**Place an "X" next to all that apply**):

- The child is not in the legal and physical custody of the other parent and Respondent is not able or willing promptly to assume legal and physical custody of the child, and to pay for the child's support, in accordance with Respondent's financial means.
  - Placing the child in Respondent's legal and physical custody would pose a risk of substantial harm to the physical or psychological well being of the child. Respondent is unfit to maintain a relationship of "parent and child" with the child because of any of the following reasons:
    - i. The circumstances of the child's conception; OR
    - ii. Respondent's behavior during the mother's pregnancy; OR
    - iii. Respondent's behavior after the child was born; OR
    - iv. Respondent's behavior with respect to other children.
  - Failure to grant the Petition for Permanent Guardianship would be detrimental to the child.
4.  The parent(s) of the child or any person(s) holding parental rights over such child are found mentally incompetent and therefore, are unable to discharge parental responsibilities in the foreseeable future. (The Court will select 2 qualified psychiatrists to form an opinion regarding mental incompetence and inability to discharge parental responsibilities. The Court also will appoint a licensed attorney as guardian ad litem to represent the alleged incompetent's interests in the proceeding)
5.  Respondent has been found by a Court of competent jurisdiction to have: **(Place an "X" next to all that apply)**
- a.  Committed a felony level offense as described in subchapter II of Chapter 5 of Title 11 against the person in which the victim was a child;
  - b.  Aided or abetted, attempted, conspired or solicited to commit a felony level offense as described in subchapter II of Chapter 5 of Title 11 against the person in which the victim was a child;
  - c.  Committed or attempted to commit the offense of Dealing in Children as set forth in § 1100 of Title 11.
  - d.  Committed the felony level offense of endangering the welfare of a child as set forth in § 1102 of Title 11.
6.  The parent(s) of the child, or any person(s) holding parental rights over the child, are not able or have failed to plan adequately for the child's physical needs or mental and emotional health and development, and 1 or more of the following conditions has been met: **(Place an "X" next to each condition that has been met)**
- a.  If the child is in the care of the Department or a licensed agency, **place an "X" next to each condition below that has been met:**
    - The child has been in the care of the Department of licensed agency for a period of one year, or if the child has come into care as an infant, a period of 6 months, or there is a history of previous placement(s) of this child;

- There is a history of neglect, abuse, or lack of care of the child or other children by Respondent;
  - Respondent is incapable of discharging parental responsibilities due to extended or repeated incarceration;
  - Respondent is not able or willing to assume promptly legal and physical custody of the child, and to pay for the child's support, in accordance with Respondent's financial means.
  - Failure to grant the Petition for Permanent Guardianship will result in continued emotional instability or physical risk to the child.
- b.  If a blood relative is seeking permanent guardianship **place an "X" next to each condition below that has been met:**
- The child has resided in the home of the blood relative for a period of at least 1 year, or in the case of an infant, a period of 6 months
  - Respondent is incapable of discharging parental responsibilities, and there appears to be little likelihood that Respondent will be able to discharge such parental responsibilities in the near future.
7.  Respondent's parental rights over a sibling (brother, sister, half-brother, half-sister) of the child who is the subject of the Petition have been involuntarily terminated in a prior proceeding.
8.  The parent has subjected the child to torture, chronic abuse, sexual abuse, and/or life-threatening abuse.
- The child has suffered unexplained serious physical injury under such circumstances as would indicate that such injuries resulted from the intentional conduct or willful neglect of the

## YOUR FAMILY COURT HEARING

Make sure to read ALL Answers to Frequently Asked Questions on Court Hearings and on the subject of your Hearing, as well as the Court Hearing Procedure Overview and any other materials BEFORE the day of your Court Hearing.

Part I: Introduction

Part II: Practice

Part III: Organize

Part IV: Tips and Reminders for Your Hearing

### PART I: INTRODUCTION

#### WHAT IS A COURT HEARING?

A Court Hearing is the same thing as a Court Trial. It is your chance to tell the Court your side of the story. After the Court Hearing, a Judicial Officer will make some of the most important decisions affecting your life. **These decisions could change your life and your children's lives, if you have children.**

#### MUST I READ ALL OF THE INFORMATIONAL MATERIALS ON COURT HEARINGS BEFORE MY COURT HEARING?

Absolutely. Because your Court Hearing is so important, the Family Court of the State of Delaware has developed a series of Answers to Frequently Asked Questions ("FAQ's") and a Court Hearing Procedure Overview to help you learn what the Court will expect of you at the Court Hearing and to help you prepare.

The Court Hearing is your chance to tell the Court your side of the story. You do not want to waste this opportunity; in many cases, there may not be another chance, at least not for a while.

#### WHAT HAPPENS AT A COURT HEARING?

A certain procedure must be followed during a Court Hearing. It is important that you are familiar with this procedure so that you know what you are allowed to do, when you are allowed to talk, and how to tell your side of the story. The Court Hearing Procedure Overview explains generally what the Court Hearing procedure is and should answer any questions you have.

#### WHERE CAN I FIND THE COURT HEARING PROCEDURE OVERVIEW?

The Court Hearing Procedure Overview is located at the Family Court Resource Centers in each of the Family Court buildings in Kent and Sussex Counties and at the Self-Help Center in the New Castle County Courthouse. It is also available on this website.

### PART II: PRACTICE

#### ARE YOU READY FOR YOUR COURT HEARING?

At the Hearing, you must be clear about what you want the Court to do. Think about the way you want to tell your side of the story. Everything about you, the way you dress, the way you act, and the way you explain things, may affect the decision of the Judge, the Commissioner or the Special Master (the "Judicial Officer"). **Therefore, make sure you are fully prepared and ready to tell your side of the story at the Hearing. How do you do that? PRACTICE.**

#### HOW DO I PREPARE FOR MY COURT HEARING?

First, think about the reason for the Hearing, the reason written on the notice of the Hearing date. Is it a Custody Hearing, a Visitation Hearing, a Child Support Hearing, etc.? Make sure to understand what information the Judicial Officer is looking for in order to make his or her decision.

Look in the Overview on the subject of your Hearing, the Instruction Packet you are using, and any Answers to Frequently Asked Questions about the subject of your Hearing to find out what information the Judicial Officer needs to know. Also, look in the Delaware Code to read what the law is, and, if possible, meet with an attorney to discuss how the law applies to your situation.

Based on the information the Judicial Officer must learn from you, write down why the Court should give you what you want and not give the other person what he/she wants. Stick to the basic facts and keep things as simple as possible.

**SHOULD I HAVE OTHER PEOPLE TALK OR BRING THINGS TO THE HEARING?**

You must bring anything that your Notice says to bring. However, as to whether you should bring anything else or have someone else talk, it depends. Do you want the Court to know what other people have seen, heard, or said? If so, you should have these people at the Hearing. Do you want to talk about something that someone else wrote? If so, you should have the person who wrote the paper AND the paper at the Hearing.

For example, if you want to show the Court that your child is doing better in school since the child started living with you, you should bring to Court the child's report cards to show the Court how the child was doing in school before living with you and since living with you. If you want to talk about a letter your child's doctor wrote about your child's medical or emotional health, then you must have the doctor's letter AND the doctor at the Hearing. Remember, it is not always enough just to tell the Court something, you must prove to the Court that what you are saying is true.

**WHO SHOULD I HAVE GO TO THE HEARING?**

When it comes to deciding whom you want to speak at the Hearing, think about what you want that person to tell the Court. You do not want, for example, 2 people to tell the Court the same thing. Instead, pick the person who has the most to tell. If you want different people to talk about different things, then you might want all of them to come in. Write down (for your use ONLY) what you want the people to talk about to make sure that at the Hearing, you ask them to talk about everything you want them to cover. You may NOT tell those people what to say, but you MAY tell them what issues they should address.

Remember, you tell and show the Court at the Hearing EVERYTHING you want the Judicial Officer to know before the Judicial Officer makes his/her decision. Even if something already is in the file, bring it up again at the Hearing. Even if you told the Judicial Officer something at another Hearing, if you want the Judicial Officer to consider something in making his/her decision at this Hearing, you must bring it up again. If you do not bring up something (evidence) at the Hearing, you might not have another chance to tell the Court.

Make sure that what you or someone else tells or shows the Court helps you prove your point and relates to what the Judicial Officer must know.

**WILL THE JUDICIAL OFFICER LISTEN TO EVERYTHING I WANT TO SAY OR LOOK AT EVERYTHING I WANT TO SHOW?**

Not necessarily. The Court must follow what are called the Rules of Evidence. The Rules of Evidence are very complicated and may stop you or someone else from being able to tell or show the Court something. If you are worried about whether the Rules of Evidence may stop you from being able to fully tell the Court your side of the story, you should hire an attorney to represent you at the Hearing. Attorneys have taken classes at law school to learn about the Rules of Evidence as well as about the law.

**AM I DONE PREPARING ONCE I KNOW WHAT I WANT TO TELL AND SHOW THE COURT?**

No. You must organize. In what order do you want to tell your story to the Judicial Officer? In what order will you want to say things, have other people say things, or show things to the Court?

Keep practicing to make sure you do not forget something and to make sure that at the Hearing, you tell your story in the order you want.

**WHAT CAN I DO TO MAKE SURE SOMEONE GOES TO THE HEARING AND/OR BRINGS A PAPER OR THING THAT I WANT HIM/HER TO BRING?**

You should always have a Subpoena served. If you do not have the Court or appropriate person issue a Subpoena and that person does not show up at the Hearing, the Hearing will go on without that person and you will be unable to appeal the Court's decision to have the Hearing without the person present. Please read the Overview on Subpoenas to find out what it is and how to get one.

Similarly, if you do not think that someone will bring a paper or thing that you want that person to bring, then you should have the Court issue a Subpoena Duces Tecum. The Overview on Subpoenas also explains what a Subpoena Duces Tecum is and how to get one.

**PART III: ORGANIZE**

**WHAT DO I TAKE TO THE HEARING?**

Make sure you take the following to the Hearing:

- The Court Notice that states the Hearing Officer's name and the date and time of your Hearing. If you cannot find your Court Notice, make sure you know the name of the Hearing Officer when you enter the courthouse.
- Your notes that you used to practice to make sure that you tell and show the Court everything you want the Court to know and that you ask people all the questions you want to ask. (You should not look at your notes when you tell your side of the story. If you must look at your notes to refresh your memory, you must show your notes to the other side before you may look at them. You may look at your notes when you ask other people questions. See the Court Procedure Overview for more information about use of your notes.)
- Everything you want the Court to look at. If you are not sure whether you want to bring something, bring it just in case.
- If you want the Court to look at a paper, bring 4 copies (1 original and 3 copies). You must give the Court the original paper, give one copy to the other side, keep one copy for yourself and have the third copy available should you decide to use it when questioning a witness. To know when you should give out these papers, read the Court Hearing Procedure Overview.
- All of your Court papers from this case and put them in a folder with the most recent papers on top.
- A pen and paper so that you can take notes.

**WHAT ELSE SHOULD I DO *BEFORE* MY HEARING DAY?**

- Double check the day and time your Hearing is scheduled.
- As your Hearing day approaches and if you are able, call the people you want to go to the Hearing to remind them to be there and/or to bring with them whatever you want them to bring.
- Get a babysitter for your children, if you have any, on your Hearing Day. The courthouse is not a place for children nor is it good for your children to hear their parents talking about adult matters, or negative things about their family.
- Dress nicely for the Hearing. Make sure what you want to wear is clean. Women should wear a dress or a blouse with dress pants or a skirt. Men should wear nice pants, a shirt,

and a tie, if you have one. You are trying to make a good impression; do not wear casual clothes such as shorts, halters, miniskirts, jeans, etc.

- Make sure you know how to get to Family Court and where to park.

## **PART IV: TIPS AND REMINDERS FOR YOUR HEARING**

### **GOING TO THE FAMILY COURT OF THE STATE OF DELAWARE**

- Remember to dress nicely. Women should wear a dress or a blouse with dressy pants or a skirt. Men should wear nice pants, a shirt, and a tie, if you have one.
- Arrive at least 15 minutes early to the Hearing AND allow even more time to find parking. In Wilmington, you should arrive even earlier because the courthouse is large and it may take additional time for you to report to the appropriate location. When you arrive at the courthouse, you must check in at two different places: 1) the receptionist or clerk of court desk when you first enter the building to find out where in the courthouse you need to go; and 2) the reception desk on the floor where your Hearing will be. Each check-in takes time and there may be a line. After the 2nd check in, someone will call you when the Court is ready to begin your hearing.
- Effective December 1, 2005, all cell phones, pagers, or other electronic recording devices are prohibited from entering the New Castle County Courthouse.
- Do NOT bring with you to Court any weapons. This includes pocketknives, scissors, chains on a wallet, nail files, glass containers, etc.
- Bring something to do while you wait for the Court to be ready to begin your Hearing.

### **AT THE COURT HEARING**

- Do NOT wear a hat unless you must wear one for religious or medical reasons.
- Do NOT eat or chew gum in the courtroom. (You might want to eat something before you go to the courthouse in case you get hungry during the Hearing.)
- Do NOT bring into the courtroom anything to drink. If you must have something to drink in the courtroom, you may ask the Judicial Assistant (“J.A.”) for some water.
- ALWAYS call the Judge, Commissioner or Special Master (Judicial Officer) “Your Honor.”
- ALWAYS stand when you talk to the Judicial Officer unless you are told you may sit.
- Act respectfully, reasonably, courteously, and politely to everyone in the courthouse.
- Keep calm. Do not lose your temper. Control your emotions and stay focused.
- Do NOT talk at a Hearing unless it is your turn to speak. If it is not your turn to speak, sit quietly in the courtroom. If you disagree with what someone says, write it down. This way, you will remember to ask him/her about his/her statement when it is your turn to speak.
- Do NOT have side discussions or argue with the other side at any time during the Hearing. This includes making comments under your breath about what someone, including the Judicial Officer, has said. Talk directly only to the Court unless you are answering questions or asking a witness questions.
- When it is your turn to speak, speak up so everyone in the courtroom can hear you.
- Say “Yes” and “No.” Do NOT nod your head to answer yes or no. The Hearing is being recorded, and a recording cannot tell what is your answer if you nod your head.
- Do NOT argue with the Judge, Commissioner, Special Master or Mediator.
- When being asked a question, listen carefully. If you are not sure what is being asked, ask to have the question repeated or asked a different way.
- ALWAYS tell the truth. Be honest even if you do not want to admit the truth.
- If you are told at the end of the Hearing, that the Court will give you a paper such as an Order, a letter, or a Notice, make sure BEFORE the Judicial Officer leaves the courtroom, you understand what the paper is and what it will say.