

New Mexico Legal Aid, Inc. Kinship Caregivers' Legal Guide



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I. Introduction

Welcome to the New Mexico Legal Aid, Inc. Kinship Caregivers' Guide! We are glad you could join us as you embark or continue on the journey of raising children who have found their way into your care and concern.

This is a legal manual designed to provide you with the tools necessary to establish a legal relationship for the child(ren) in your care. It is not designed to be a comprehensive guidebook for actually doing the work of kinship parenting. For an excellent guidebook on this equally important, and sometimes equally perplexing, work of kinship parenting, please see *The Kinship Parenting Toolbox: A Unique Guidebook For the Kinship Care Parenting Journey*, edited by Kim Phagan -Hansel (2015 edition). Throughout the book, you will find wisdom from people who are caring for children in kinship relationships, with special emphasis on trauma support, emotional resilience, financial tools, medical care, behavior and discipline, working with schools, understanding attachment, dealing with abusive/neglecting biological or previous parents and visitation, perspectives of children themselves and teenagers, and a whole host of other considerations unaddressed in this legal guidebook. *The Kinship Caregivers' Toolbox* has limited sections devoted to establishing the legal relationship, so our goal is to fill in the gaps, and provide you with a step-by-step guide for establishing a lasting, permanent legal relationship in New Mexico.

The guide is written with specific reference to the laws of the State of New Mexico, United States of America. Every state in the United States has different laws, rules, and regulations related to kinship care, but many commonalities remain the same. If you, and/or the children residing with you, have questions about the laws in your state, please do not attempt to guess at their applicability. We encourage you, instead, to consult a duly licensed attorney, or kinship social services organization, in your local jurisdiction, for resolution of specific questions.

There are many nuanced situations unaddressed in this guide, unique to you and your family's distinct situation. For the resolution of issues specific to your situation, please do not hesitate to reach out to the organizations discussed herein for specific guidance. Free consultation with attorneys, legal advocates, and support staff may be available for qualified applicants, and usually the answer is easier to resolve than you may initially assume. Once a specific understanding of the facts and circumstances unique to your case, are thoroughly understood, and/or legally researched, even advice and counsel over the telephone, and in the initial stages of any case, can save you dozens of hours of frustration, confusion, and heartache later on!

This guide does not constitute legal advice or the formation of an attorney-client relationship. We can take no responsibility for errors which may be contained herein. It is developed, in a generalized way, and based on dozens of cases previous to yours, in helping

real-life, genuine caregivers establish a legal relationship with the child(ren), whom fate and circumstance saw fit, to deliver into your care. We have seen a lot in the past, but are always hearing about new facts and circumstances that surprise, even us, from time to time. It is the job of the legal professional or advocate to apply the unique facts presented by with the laws which remain relatively stable, and provide the best advice and services possible, within the limits of time and resources available, and hundreds of other equally-deserving families such as your own. When in doubt, stop and call one of the organizations listed herein! You'll be glad you did.

We wish you all the best in your adventure of kinship parenting! Above all, we congratulate you on the courage it takes to provide the love, support, and nurturing care to children whom, by no fault of their own, lack the love and support of their biological parent(s). We know you didn't necessarily ask for this job, or have limited, (if not any) initial responsibility for the children, but have taken on the mission of parenting anyway! Maximizing the childrens' happiness, especially when considering a past history of abuse and/or neglect, is a job only YOU can do. It can never be fulfilled by the legal system. It is our sincere desire that this guide will alleviate the legal burdens and hurdles to cross, so you can focus more on the most important job of all: Love.

Many thanks to our partners at the State of New Mexico's Children Youth and Families Department (CYFD), Pegasus Legal Services for Children, Southwest Family Guidance Center, and the Fostering Family program, who contributed and provided much of the content (used with this permission) in this guide. It could not have been completed without their invaluable contributions, input, unique talents, guidance, and direction.

II. Kinship Caregivers General Frequently Asked Questions (FAQ) and Basic Definitions to Know

1. What is Kinship Guardianship / kinship care?

A **kinship caregiver** is defined as any individual who is a relative, godparent, member of a child's tribe or clan, or an adult with a significant bond (fictive kin) who are raising a child or youth because the biological parents are not able or unwilling to do so.

Kinship Guardianship is a legal relationship that is established between a minor child the adult caring for that child. Only a Court can grant permanent Guardianship to a non-parent.

Kinship care is the full-time care, nurturing and protection of children by relatives, members of their tribes or clans, godparents, stepparents, or any adult who had a kinship bond with a child. (Child Welfare League of America)

Informal kinship care is when an adult only has revocable legal authority (power of attorney or caregiver's affidavit) or no legal authority. When kinship care is informal, a parent can remove the child without notice. Police and child protective services will not prevent the child's removal unless there is recent evidence of significant abuse or neglect.

Formal kinship care is when an adult has legal guardianship or custody of the child.

Institutional kinship care is when a child is in the home of an adult with a kinship bond, but the state has custody.

2. Who Qualifies to be a Kinship Guardian?

Any individual who is a relative, godparent, member of a child's tribe or clan, or an adult with a significant bond (fictive kin) who are raising the youth because the biological parents are unable or unwilling to do so. The individual does not have to have legal guardianship to qualify for services.

3. What are the advantages of formal kinship guardianship?

- Preservation of family, community and cultural ties.
- Avoidance of trauma resulting from moving in with strangers.
- Less likelihood of multiple placements.
- Legally established formal kinship caregivers have legal authority and can prevent the parents from removing the child.
- Eligibility for State and Federal Benefits, including TANF (food stamps), medical insurance and care authorization, child tax credits or deductions, etc ...

4. If I don't want to represent myself in Court (*pro se*), or have questions or needs unaddressed in this guide, how do I make a Referral / Begin my application for community and legal services?

Southwest Family Guidance Center / Families Fostering Family (See <https://swfamily.com/fostering-family/>)- is available in Bernalillo, Doña Ana, and Rio Arriba counties. Access an Online Referral Form for the appropriate county and complete as thoroughly as possible. Once submitted: 1. The referral will be assigned to a designated coordinator who will reach out to the referral source and the family to begin engagement. 2. The program coordinator will triage the families' needs, which can occur over 4 sessions, prior to becoming a client. 3. Based on assessment of need, the Family will be referred to appropriate services. 4. Services begin. For more information please contact: Leandrea Romero-Lucero, PhD, LPCC Families Fostering Family Coordinator lromero@swfamily.com (505) 830 1871 x 611

Pegasus Legal Services for Children - The Guardianship Legal Helpline provides information, advice, and assistance to self-represented litigants in kinship guardianship cases statewide. Pegasus also provides **full service direct legal representation** in uncontested and contested guardianship cases statewide. [Guardianship of a Child - Pegasus Legal Services for Children \(pegasuslaw.org\)](http://www.pegasuslaw.org)

Pegasus helps grandparents and other people raising children whose parents are unable or unwilling to provide them with proper care.

If you need help or have questions about kinship guardianship of a child, call the Guardianship Legal Helpline (505) 217-1660 or 1-833-355-6944.

We will determine whether your case is appropriate for our services. Se habla español.

The Guardianship Legal Helpline offers information, advice, and referrals for direct legal representation.

New Mexico Legal Aid, Inc. - Legal Services for permanent kinship caregivers. Petitions, help with court filings, telephonic advice and counsel, assistance drafting documents, and/or direct attorney representation (for qualified cases) are available. (See <http://newmexicolegalaid.org>)

Apply for Legal Help - Please call to conduct an intake with our intake unit and mention you were referred by the CYFD kinship caregiver's project or from a CYFD partnered agency (Families Fostering family, SW Family Guidance, Pegasus, etc.)

By phone: 1-833-LGL-HELP (1-833-545-4357)
(generally Monday through Thursday, 10am to 3pm)

[Apply online](http://www.newmexicolegalaid.org/node/230/apply-online-solicite-en-l%C3%ADnea)

<https://www.newmexicolegalaid.org/node/230/apply-online-solicite-en-l%C3%ADnea>

5. How do children end up in kinship care?

Parents place children with kin because they are unable or unwilling to take care of the children themselves, often due to substance abuse, incarceration, mental illness, or other dysfunction.

Family members intervene and remove a child or prevent a parent from removing a child from home.

A Children, Youth, and Family Services Department (CYFD) worker suggests placement with kin after referral for abuse or neglect, or mandates temporary physical custody with kin either while investigating, substantiating or un-substantiating child abuse and/or neglect allegations.

6. What are the legal tools I can consider while I'm temporarily taking care of a child of kin?

A. Power of Attorney

1. Must be signed by a parent before a notary
2. Can limit which authority is delegated (school, health, etc.)
3. Any power can be delegated except power to authorize marriage or adoption
4. Must be renewed every six months
5. Revocable at will of the biological parent(s)

B. Caregiver's Authorization Affidavit (Kinship Guardianship Act, NMSA §40-10B-15)

1. Used by a caregiver with whom a child is living for any amount of time
2. Any caregiver can receive authorization to enroll a child in school and school-related medical services.
3. Only "classified relatives," including adults with whom children have a significant bond, can authorize any other medical care.
4. Valid for one year
5. Protects a person who provides services pursuant to a Caregiver's Authorization Affidavit from criminal or civil liability
6. Must be signed by the caregiver before a notary public
7. Does not need to be signed by the biological parents, only the child / children's current caregivers

C. Kinship Guardianship (NMSA §40-10B-1 et seq.)

Kinship guardianship establishes a legal relationship between a child and a kinship caregiver and provides the child with a stable and consistent relationship with a kinship

caregiver that will enable the child to develop physically, mentally and emotionally when the parents are not willing to do so.

Proceedings shall be in the court of the county of the child's legal residence or the county where the child resides if different from the county of legal residence.

A kinship guardianship petition may be filed by a kinship caregiver; or by a caregiver who has reached his twenty-first birthday, with whom no kinship with the child exists, who has been nominated to be guardian of the child by the child, and the child has reached his fourteenth birthday or a caregiver designated by a parent in writing.

After the petition is filed, the court may appoint a temporary guardian to serve for 180 days or less or until the case is decided on the merits, whichever comes first.

At the court hearing on the petition, if the court finds that a qualified person seeks appointment, the venue is proper, the required notices have been given, the requirements of the statute have been proven, and the best interests of the child will be served by the requested appointment, it shall make the appointment of guardianship.

A permanent kinship guardian may be appointed only if:

- A parent of the child is living and has consented in writing to the appointment of a guardian, and the consent has not been withdrawn
- A parent of the child is living, but all parental rights regarding the child have been terminated or suspended by prior court order
- The child has resided with the petitioner without the parent for a period of ninety (90) days or more immediately preceding the date the petition is filed and a parent having legal custody of the child is currently unwilling or unable to provide adequate care, maintenance, and supervision for the child or there are extreme circumstances; and no guardian of the child is currently appointed. The 90 day requirement can be waived by the District Judge if the Petitioner can demonstrate the presence of a risk of harm coming to the child, during a preliminary hearing.

A guardian has the legal rights and duties of a parent, except the right to consent to an adoption of a child and rights and duties that the court orders retained by a parent.

7. What temporary actions can I take and can I represent myself?

Pegasus (See <https://pegasuslaw.org/kinship-guardianship/>)

- If a parent wants you to be able to take their child to the doctor or make school decisions for their child, you may use a [Power of Attorney](#).

If you are unable to find a parent, but need to have documentation stating you take care for the child in order to take the child to the doctor or make school decisions for a child, you may use a [Caregiver's Authorization Affidavit](#).

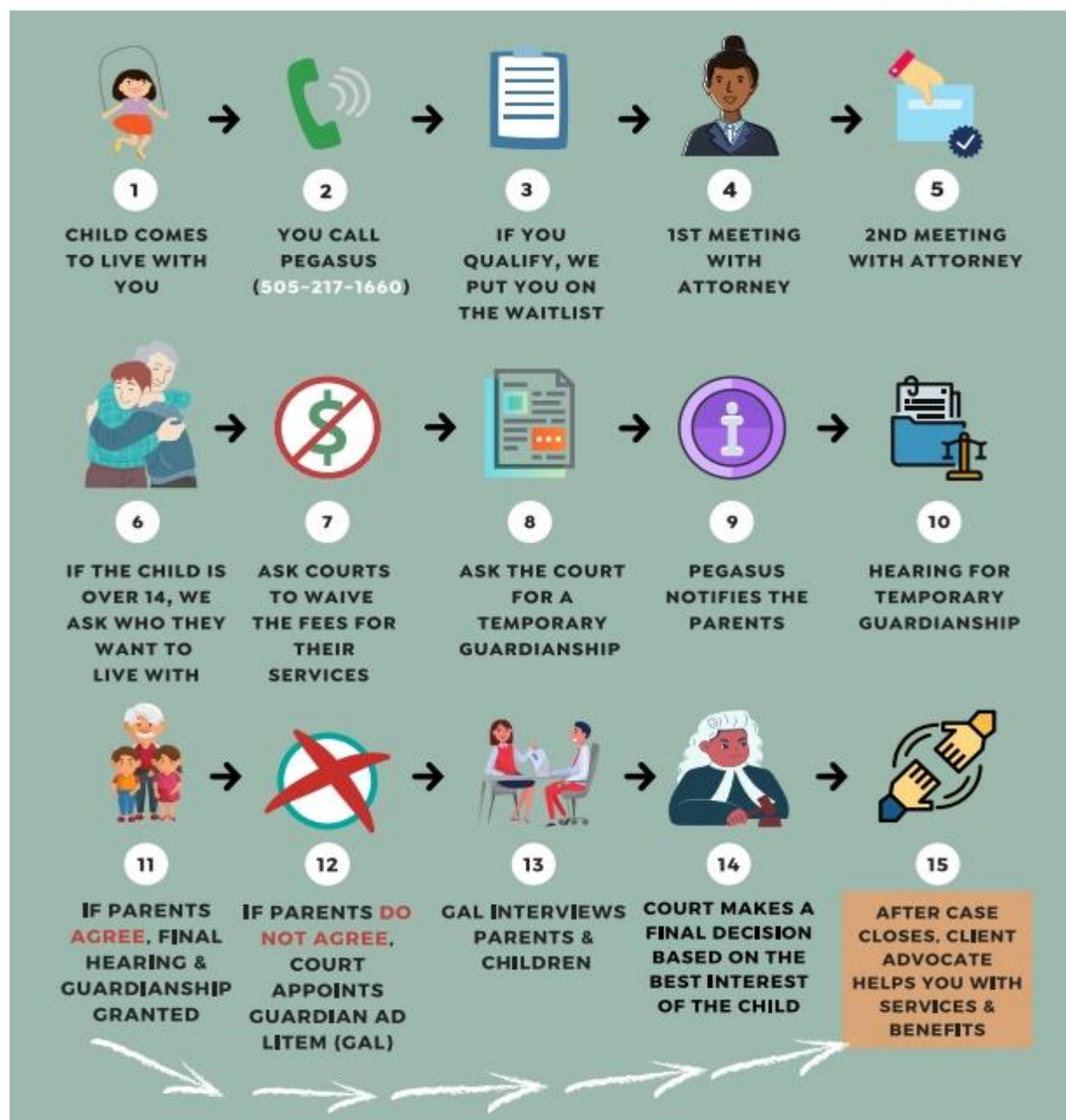
If you want to represent yourself, you may access the New Mexico Supreme Court forms [here](#). They are also attached to this guide at p. 52. Most applicable forms can be found under "District Court Forms" > "Domestic Relations" > "Kinship Guardianship."

Want to learn more? See Pegasus's [Kinship Guardianship Infographic that](#) outlines the process step-by- step.

<https://pegasuslaw.org/wp-content/uploads/2020/09/KG-Graphic-PDF-1.pdf>

KINSHIP GUARDIANSHIP

A STEP-BY-STEP
PROCESS



USED WITH PERMISSION ... August 2022

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8. What additional forms of assistance are available?

New Mexico Legal Aid, Inc., CYFD, Pegasus Legal Services for Children, Southwest Family Guidance Center, and the Fostering Family Program, can coordinate services and support in any one of the following areas:

Assistance in determining the needs of the family and what services they may be eligible to receive. Information and resource referrals for local, state and national services. Education related to kinship care, such as: 1. Caregiving 2. Self-care 3. Mental health 4. Legal Assistance 5. Social Media and current technologies 6. Child Development 7. Childhood Trauma 8. Financial planning, Taxes 9. Cultural Competency

Assistance in completing guardianship packets to help caregivers register children for school and apply for medical services. Collaboration with civil legal service providers in order to refer caregivers to legal services as appropriate in relation to: 1. Obtaining guardianship or custody orders; 2. Child/Parent visitation; 3. Public benefits and financial matters; 4. Assistance with negotiations; 5. Housing; 6. Culturally appropriate legal services to immigrant caregivers. Access to federal, state and local benefits including, but not limited to: 1. Temporary Assistance for Needy Families; Supplemental Nutrition Assistance Program; 2. WIC; 3. Supplemental Security Income (SSI); 4. Housing Authority; 5. Income Support Division; 6. Medicaid; 7. Child Support; 8. Respite care; 9. Guardianship Assistance; 10. Legal Assistance; 11. Child Care Assistance; 12. Education Therapeutic services, either in-house or with community based services. Behavioral Management Services Case management Peer Support Services Individual & Family Therapy.

III. Steps to Establishing a Legal Relationship with the Child(ren) in Your Care

A. Pre-filing Steps and Considerations

- 1. Consider Executing a Caregiver's Affidavit to Access Resources and make temporary decisions on behalf of the child, while the court case is pending.**

A Caregiver's Affidavit is a document that you can sign and execute without the consent or signature of the biological parent(s) or previous guardian. It is meant to secure temporary services for the child without delay, and limits the legal liability of any third-party providers, such as doctors, therapists, school officials, and/or lawyers, for providing immediate care or assistance to the child in your care, based on your sworn declaration, alone.

The Caregiver's Affidavit does not get filed in Court by itself, but may be used in conjunction with a Petition to Establish Kinship Guardianship, as evidence documenting your previous history and decision-making capacity for the child in the absence of the biological parent or previous guardian.

A form example of the Caregiver's Affidavit can be found included in this guide, at section VII, p. 52. An additional Electronic Copy can be found on the Pegasus Legal Services for Children website:

<https://pegasuslaw.org/wp-content/uploads/2020/05/Caregivers-Authorization-Affidavit.pdf>

The Caregiver's Affidavit is used in situations in which the biological parents or previous guardians are unknown, out of contact, or unable, due to competency or mental health issues, to provide the consent necessary to achieve immediate care or make decisions. Many times unwillingness to consent, due to incapacity, may manifest due to the biological parents' own substance abuse, mental illness, incarceration, or other factors not in your control.

If you are unable to find a parent, but need to have documentation stating you take care of the child in order to take the child to the doctor or make school decisions for a child, the Caregiver's Affidavit is your temporary ticket to freedom, while you begin to arrange for a formal and/or permanent kinship guardianship through the Court and Legal systems.

If you already have a lawfully-executed **Power of Attorney** document, you will not need to utilize the Caregiver's Affidavit, UNLESS there is something included in the Power of Attorney document which limits your authority to get the needed care, support, services, or make decisions, for the child. Please review Section 5 below for an additional discussion on the differences between physical and legal custody.

Completion of Items 1-4 and the signing of the affidavit is sufficient to authorize the caregiver to: (1) enroll a minor in early intervention services, child development programs, headstart, preschool or a kindergarten through grade twelve school ("school"); (2) consent to medical care, including school-related medical care, immunizations, sports physical examinations, dental care and mental health care; and (3) be the authorized contact person for school-related purposes. B. Completion of Items 5-7 is additionally required to authorize any other medical care.

To authorize medical care, beyond school-related medical and mental health care, it will be necessary for you to declare one or both of the following:

“Check one or both (for example, if one parent was advised and the other cannot be located): () I have advised the parent(s) or other person(s) having legal custody of the minor of my intent to authorize medical care, and have received no objection. () I am unable to contact the parent(s) or other person(s) having legal custody of the minor at this time, to notify them of my intended authorization.”

If you are confronted with a situation in which the biological parent(s) or guardian is refusing to consent to necessary medical care outside of school, due to their substance abuse, mental health issues, or inability to manifest consent due to these factors, it is best to consult with an attorney, advocate, or advisor instead of using the Caregivers' Affidavit. That individual may advise you to begin a contested kinship guardianship directly in Court instead of utilizing a Caregiver's Affidavit, and a Motion for Temporary Guardianship, with Order granting issued by the Court, instead, can achieve the same thing as the Caregiver's Affidavit. *See also* Section 6 below on Emergency Motions.

This declaration does not affect the rights of the minor's parents or legal guardian regarding the care, custody and control of the minor and does not mean that the caregiver has legal custody of the minor. 2. A person who relies on this affidavit has no obligation to make any further inquiry or investigation. 3. This affidavit is not valid for more than one year after the date on which it is executed.

Importantly, if a biological parent(s) has explicitly refused to provide her, his, or their consent to your decision-making authority, or temporary physical custody, a **Caregiver's Affidavit** may not be lawfully executed or utilized. By swearing to the contents of a Caregiver's Affidavit, you are taking full responsibility for the authority it represents, and may be liable for damages to the biological parents if your sworn declaration turns out to be materially false, executed in bad faith, or exceeding the limits of your previously granted authority. Any third party service providers, or school officials, will most likely not be liable for any damages associated with providing the care or assistance you request. Carefully review the contents of the Affidavit before you sign before a Notary Public.

2. Consider Executing a Power of Attorney to Access Resources and Make decisions on behalf of the child while the Court Case is Pending

A Power of Attorney document is very similar to the Caregiver's Affidavit, the difference being that the biological parent(s) voluntarily agrees to temporarily transmit to you either physical and/or legal custody, for a specified period of time, not to exceed **6 months**. The Power of Attorney can always be voluntarily renewed by the biological parent(s), as many times as necessary.

NMSA § 45-5-104. Delegation of powers by parent or guardian

"A parent or a guardian of a minor or an incapacitated person, by an acknowledged power of attorney, may delegate to another person, for a period not exceeding six months, any of the parent's or guardian's powers regarding care, custody or property of the minor child or protected person, except the power to consent to marriage or adoption of a minor protected person."

Importantly, a Power of Attorney is revocable at any time by the biological parents, for any reason. If you wish to establish a permanent kinship guardianship relationship, essentially taking the place of the biological parents, and provide the child with stability and predictability, it is best to file a Petition for Order Appointing Kinship Guardian directly in Court.

The Power of Attorney does not get filed in Court by itself, but may be used in conjunction with a Petition for Order Appointing Kinship Guardian, as evidence documenting your previous history and decision-making capacity for the child, with the voluntary consent of the biological parents.

A form example of the Power of Attorney for a Minor Child can be found included in this guide, at Section VII, p. 52.

3. Consider 90 days continuous physical custody Requirement Prior to Filing a Petition, Unless the Petitioners Can Demonstrate “extraordinary circumstances.”

The default rule is that the child must have resided with you, directly in your household, for a period of 90 days **without the biological or current parent(s)**, prior to filing a Petition for Order Appointing Kinship Guardian.

If you have not yet established 90 days continuous physical custody, you can consider executing a Caregiver’s Affidavit or a Power of Attorney document, described at §B and C above, and begin to prepare the other necessary documents in the meanwhile.

However, a recent case decided by the New Mexico Court of Appeals provides that you can file earlier, if necessary, if you can demonstrate “extraordinary circumstances.”

If you have compelling facts justifying the filing of a Petition Prior to 90 days, Courts are now required to hold an initial hearing on your extraordinary circumstances, prior to either dismissing your Petition, or continuing the case for further proceedings, as appropriate. Under *D.W. v. B.C.*, 2022-NMCA-006, Courts must see if the situation of you the Petitioner and child and parents is unusual, have a hearing on the facts, look at the relationship of the child to petitioner, ensure that the proposed kinship guardianship is in the spirit of the Kinship Guardianship Act, and is in the best interest of the child.

See D.W. v B.C., 2022-NMCA-006

So what does the phrase “extraordinary circumstances” mean?

“Our Supreme Court has construed the phrase, ‘or there are extraordinary circumstances’ to demonstrate legislative intent to reject a rigid reading of the threshold requirements of that section. *Id.* ¶¶ 10, 24. Although the length of time the child had resided with the petitioner was not at issue in *Patrick D.*, the related requirement that the child reside with the petitioner ‘without the parent’ for the ninety-day period prior to filing the petition; and the requirement that the parent “ha[ve] legal custody of the child” were at issue. *Id.* ¶¶ 24-30 (internal quotation marks and citation omitted).”

D.W. v. B.C., 2022-NMCA-006, ¶ 21, 504 P.3d 559

“The phrase ‘or there are extraordinary circumstances,’ has been construed by this Court in light of the legislative purposes of a kinship guardianship to allow the creation of a kinship guardianship when a parent is not currently ‘unwilling or unable’ to provide adequate care, but where there is instead ‘a substantial likelihood of serious physical or psychological harm or serious detriment to the child,’ if the child is placed with the parent. *Victoria R.*, 2009-NMCA-007, ¶ 28 (Pickard, J., specially concurring) (internal quotation marks and citation omitted). This definition is drawn from our Supreme Court's decision in *In re Adoption of J.J.B.*, 1995-NMSC-026, ¶ 68, 119 N.M. 638, 894 P.2d 994, which adopted this exception to the parental preference doctrine.”

D.W. v. B.C., 2022-NMCA-006, ¶ 20, 504 P.3d 559.

So, in short, non-legal speak, extraordinary circumstances means, at a bare minimum, that there is a likelihood of serious physical or psychological harm or serious detriment to the child that could come, if the Court dismisses your Petition and continues to keep the children in the care of the current parents, until the 90 day requirement is met.

Extraordinary circumstances can mean other things outside of a substantial likelihood of harm, but the Court must at least hear your argument at a hearing, as to why the 90 day physical custody requirement should be imposed. The District Court now must, at least, grant a hearing to you to determine if extraordinary circumstances exist, and allow all parties a chance to argue and demonstrate their case.

If you are faced with a judge who may not be aware of this case, you can cite the case to the judge in response to any proposed dismissal of your Petition to Establish Kinship Guardianship. In contested cases, the Court may be required to appoint a Guardian Ad Litem (GAL), representing the Child exclusively, before a permanent kinship guardianship may be granted. See Section G below, for more information on Guardian Ad Litem.

At the initial hearing, the Court may also determine that granting your Motion for Order Appointing Temporary Guardianship to you is appropriate, until the GAL can complete her or his work and investigation, and all parties can later appear for a Final Hearing. Your initial hearing on the circumstances justifying filing before the 90 days continuous physical custody requirement is an excellent time to request that the Court grant you temporary guardianship, when appropriate.

C. Filing a Petition for Kinship Guardianship and Steps of the Case in Court
1. Draft a Petition for Order Appointing Kinship Guardian

Blank samples of a Petition for Kinship Guardianship form are attached to this manual at Section VII, p. 52.

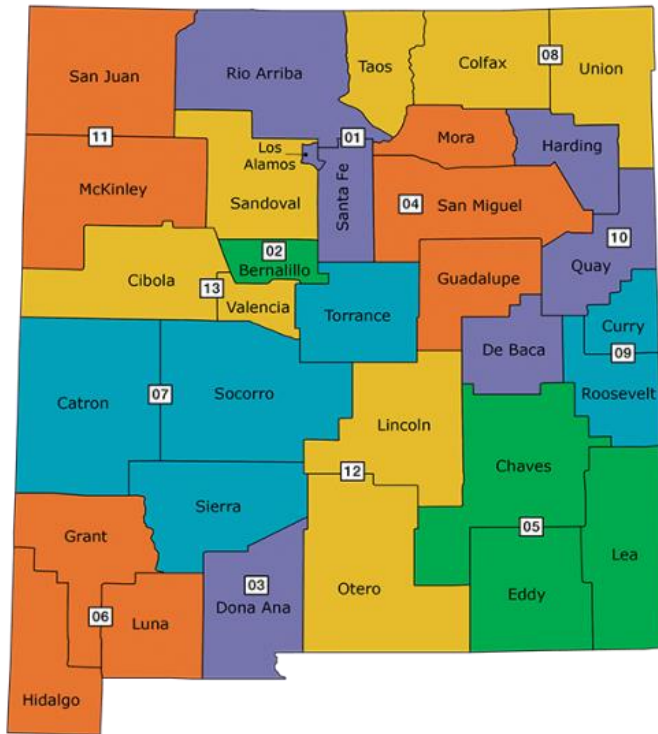
If you represent yourself, you are required to use Form 4A-501. If an attorney is representing you, they are permitted to submit substantially the same information in alternate forms.

If you don't have access to computer equipment or a word processor, hand-written Petitions are acceptable, so long as they are legible. The more carefully written and legible the words, the easier it will be for the judge to find in your favor!

In the caption (top of document), you should list the county you are filing in, under State of New Mexico. Under the County is the number of the judicial district you, and the child (except in cases of extraordinary circumstances), are residing in. Example: the First Judicial District Court (Santa Fe County), the Second Judicial District Court (Bernalillo County), etc.

For a full list of counties and districts see this handy guide:

https://ballotpedia.org/New_Mexico_District_Courts



If you are attempting to establish a kinship guardianship for the first time, you will list your name(s) as the Petitioner(s). If you are married or have a second adult over 21 who also wishes to become a permanent parent of the child, they may be listed as a second Petitioner. A petitioner must be an adult with whom the child has a significant bond. *See* NMSA 1978, Section 40-10B-5 for persons who may file as a petitioner under the Kinship Guardianship Act.

Example: John Doe and Mary Jane,
Petitioners.

The child's name gets listed **with their initials** in the caption (top of document), while the full name of the children must be placed lower in the body of the document. This is done to preserve the child(ren)'s privacy in computerized records or information that may be accessible to the public, although kinship guardianship records are restricted public access automatically, as a matter of course. Be warned, however, that anyone recognized as a valid Respondent and Party will be able to access records physically through the Court Clerk, unless a Judge Orders such records permanently sealed, or specifies specific Parties for whom the records may or may not still be accessed and copied.

Example:

IN THE MATTER OF THE KINSHIP GUARDIANSHIP OF
A.B., (a) Child(ren), and concerning
Peter and Jane Doe, Respondent(s).

The biological parent(s) or current legal guardians get listed as Respondents. A Respondent can be anybody who currently holds legal and/or physical custody of the minor child, by virtue of birth, by subsequent placement in the foster system or social services, or anybody else who currently holds physical and/or legal custody informally, or through prior Court Order, including the CYFD as an organization.

Example: Peter and Jane Doe, Respondents.

Your physical address must be listed. However, if there are safety concerns with any Respondent knowing your physical address or contact information, you may file a Motion to Seal Petitioner's Address for safety reasons with the Petition, and then leave your address out of the Petition itself, which must get eventually served to the Respondents personally. So long as the Court has a record of your address and contact information, deposited in a separate document with the Court itself, this is permissible at the early stages, unless specifically directed otherwise by the Court later on.

If any information is unknown to you, such as the name of a biological mother or father, it is permissible to state "Unknown" in the Petition. The judge may have specific questions for you, later on, concerning your attempts to obtain this information, but it is acceptable to list Unknown in your initial Petition.

If a Respondent is deceased, you should attempt to list as much information as possible about the deceased parent(s) or guardian. The form requires you to provide proof of death, such as a copy of a death certificate, obituary, or funeral record, which can get attached to the Petition as an Exhibit or transmitted to the Court under separate cover. If no proof is available to you, you should describe the reasons why this proof may not be available to you, and then the judge may decide how to proceed at her or his discretion.

Each District Judge has a designated email address to which proposed documents and necessary exhibits referenced by the Pleadings may be submitted. The Petition for Kinship

Guardianship is the initial pleading which gets filed into the record by the Clerk and file stamped, whereas any attached documents or evidence that does not need to be filed into the record can get submitted to the assigned judge using their proposed text email address. For a full list of the Judge's proposed text email addresses see, click on the District in which you filed, and then use the assigned Judge's email address, noting the case number first in the subject line of your email, followed by the name of the case designated in the caption, and a brief description of what you are submitting:

<https://www.nmcourts.gov/e-filing/proposed-text-documents/>

Example Email:

To: albddiv25proposedtxt@nmcourts.gov

From: John Doe

Subject: D-202-DM-2021-01234 – John Doe v. Jane Peters, In Re: C.D. – Proof of Death

Dear Judge Levy (Proposed Text),

Attached please find a scanned copy of the Death Certificate for Jane Peters, in support of my Petition to Establish Kinship Guardianship, filed on July 25, 2022. I have also attached a file-stamped copy of my Petition.

Please call me at 505-555-1234 with any questions or concerns regarding this transmission.

Sincerely,
John Doe

If you do not know who your assigned judge is, it is okay to call the Clerk of Court with your name and case number to ask who your judge is. The Judge gets randomly assigned at the time of initial filing of the Petition.

Any minor child fourteen (14) years of age or older must be served with a copy of this petition. If a child is fourteen (14) years of age or older and does not want the petitioner(s) to be the child's guardian, the Court will not appoint the petitioner(s). See NMSA 1978, § 40-10B-11(B). If the child is fourteen (14) years of age or older and consents to the petitioner(s) as guardian(s), please use the Nomination of Kinship Guardian Form, Form 4A-506 NMRA. See Section B2, below, for more information on the Nomination of the Child form.

You may elect to request Child Support from Respondents at your discretion. You can also

choose to waive your request for child support. If you elect to pursue child support, information concerning your own income does not need to get attached to the initial Petition. Respondents will have a later opportunity to contest, or agree, to your request for child support, before the judge.

The remainder of the Petition to Appoint Kinship Guardians becomes somewhat self-explanatory, although do not hesitate to reach out to someone more experienced, either attorney, legal advocate, or social services and resources in this, for specific help in drafting the form.

After it is drafted, you must sign the form in the presence of a Notary Public, who will inspect and verify your identification, and endorse the Petition. *See* Section B3, below, for more information on Notaries.

2. For children 14 years old and above Draft a Nomination of Child Form and Have the Child Sign

The Court is required to consider the opinions of a child over 14 years of age on who should be their permanent kinship caregiver and parent. If the child already consents to your appointment, you can have them fill out a copy of the Nomination of Child Form included in Section VII, using the same caption as described above. The child should sign before a Notary Public (See Section 3 below), after the notary checks their ID, and then this notarized form can get filed at the same time as you file your Petition for Kinship Guardianship, and becomes part of the permanent record. If the child is unsure, or has questions, it is best to seek additional help from one of the resources in this guide.

It is important to not attempt to coerce, bribe, or put pressure on the child who is considering filling out this form, as the Court may question the child directly on whether they have made their choice voluntarily, and without undue influence from you.

Crucially, if a child over 14 years old refuses and adamantly objects to you taking the permanent place of the current parent(s) or other current caregiver, the Court is generally required to deny your Petition for Appointment. Such denial does not, however, prevent other temporary actions, such as you still utilizing a Caregiver's Affidavit or Power of Attorney described above, or the Court may also elect to continue your appointment as Temporary Kinship Guardian, and RESERVE the final decision for a future decision or hearing, once any concerns, or questions, have been addressed, out of court.

If the child consents to your appointment, even over the objections of their current parents or Respondents, Congratulations! That is a major step in securing your final appointment as the permanent parent. In some cases, and especially in contested cases, the judge may examine the form, and sometimes question the child, separately (*in camera*), and outside the presence of both you and Respondents, to properly ensure that this is the child's own decision, and that the child fully understands that this means you will be taking the place of their parents, permanently.

3. Notaries, what they are and where to find them

A notary is a public officer whose function is to attest and certify by signature and official seal certain documents which can then be used in court proceedings. Some notaries are open to the public as a business and charge a small fee to witness the signing of documents. The most common use of notaries in kinship guardianship cases is for the notarization of affidavits such as the *Caregivers Authorization Affidavit* discussed in Section A1 of this guide.

You can also locate notaries who operate as a free or low-cost public service in many banks and other financial institutions (if you hold an account at a bank, they will often; you may be able to get documents notarized for free by calling to make an appointment with the notary at your closest local bank, and many banks will accommodate walk-ins).

It is important to remember that you should **WAIT** to sign your prepared documents before the Notary Public. The Notary's function is to confirm your identity, that you are who you say you are, and not signing on behalf of someone else. They will need to check your ID and record your identification information in their log book, and then you will sign the document(s), and they will attest that you signed the documents in their presence, with a stamped seal.

The notary is NOT allowed to answer any questions concerning what needs to be placed in the documents, or how to fill any content out, as that would be giving legal advice and performing the function of an attorney, or legal advocate. A Notary Public's function is to simply confirm that the identity of the signer matches the signature, and that the signer swore to the accuracy of the contents of the document itself, to the best of their knowledge and belief. The Notary will not be reviewing the contents of your document for accuracy, so it is important to be as accurate as possible. Any information that is unknown to you should be noted with Unknown, and you should not surmise or speculate as to the correct answer. You can always tell the judge, in person, that you don't know for sure, but you think or guess that such and such ... For written documents, anything unknown is best noted as "**unknown**," and not left blank, so that the Judge does not assume that you might have forgotten to fill in that specific portion of the document.

4. Contested v. Uncontested Cases and Negotiating with Current Parents

A legal case where the biological parents or current parents consent to the kinship guardianship of another adult is known as an “uncontested” kinship guardianship because the guardianship has been agreed-to by the biological parents. If, however, the biological parents do not consent to the kinship guardianship then the legal case will be a “contested” kinship guardianship.

Documents you will need for an uncontested kinship guardianship case are discussed in Section B7 of this guide. Documents for a contested kinship guardianship case are discussed in Section B11 of this guide.

Some practical considerations- Not all custodial matters are resolved by a court hearing or filing of a court case. It may be possible, or even beneficial, to contact the biological parents of the child(ren) and attempt to negotiate a plan for custody that is in the best interest of the child(ren). However, there are instances where contacting biological parents can lead to further conflict or even safety issues for you or the minor child(ren). Common areas of disagreement can include financial responsibility for the child, decision making authority over the child’s healthcare or schooling and contact between the child and parents or other family members. Please remember, every situation is unique and a kinship caregiver should always first begin by determining whether a *Caregivers Authorization Affidavit* as discussed in Section A1 of this guide will allow the kinship caregiver to accomplish what is needed for the child, or whether a kinship guardianship case is needed for permanent guardianship.

Importantly, in your negotiations with the biological parents, you can also try offering any of the following incentives to secure their consent to your appointment, as permanent parent(s). Achieving their consent will speed up the process dramatically and forgo on the necessity of appointing a Guardian Ad Litem (GAL), so it is in your best interests to try to negotiate the current parents’ consent, when appropriate and safe to do so. If the current biological parents ask you not to contact you after your initial attempt, it is important not to continue to press or harass them, and best to let further discussions for in court, and on the record:

1. You may offer supervised or unsupervised visitation periods or agreeing to a visitation plan, in writing or confirmed by email, that will allow them continued and structured access to their child (not appropriate for all cases, especially in cases of intentional abuse, but may be valuable tool in cases of neglect). If supervised visitation is necessary, a neutral agency such as Neutral Corner in Albuquerque or

APN may be utilized at a cost, although supervised visitation can also require your presence or the presence of another trusted family member, at your discretion. Unsupervised visitation will not require your presence, and can even include overnights at the Respondents' residence, in cases where appropriate.

2. You can offer to forgo any request of child support from the parents or current legal guardian(s), once you take over as permanent parent.
3. You can offer to allow free and open visitation any time the child wishes (not appropriate in all cases, and is at your discretion as the new parent).
4. You can offer to allow for frequent and continued communications via telephone, video, or social media, again at your discretion when safe and appropriate to do so.
5. Any other creative incentives you can think of. Again, if you are appointed as kinship caregiver, you will have all the decision-making authority as would the biological parent.

It is important not to threaten the Respondents' with criminal charges for neglect or abuse, as making threats and extortion is considered illegal. Waiving a civil request for child support, if they agree to your appointment as kinship guardian, is perfectly acceptable. If you are unsure about this distinction, it is best to consult with one of the resources in this guide before beginning Negotiations with the biological parents.

5. Physical v. Legal Custody and Arranging for Visitation (if safe and appropriate) with Biological Parent(s); No Contact Orders and Orders of Protection in Domestic Violence Cases

Physical custody in the context of kinship guardianship refers to the physical location of the child(ren)- meaning where the child actually resides during overnight hours, and with whom the child resides. Often the adult with whom the child is living is the same adult who is responsible for the care of the child on a day-to-day basis. Joint physical custody refers to two or more caregivers who may share responsibilities and timesharing on a staggered schedule. A typical example of joint physical custody would be a mother who has overnight custody of her child during weekdays, and a father who has overnight custody of the child on weekends, after a divorce situation in which the biological parents are living in separate households. A temporary or permanent kinship caregiver, however, is usually not given joint physical custody with any other biological parent or caregiver. A more typical arrangement is for either the temporary or permanent kinship caregiver to be granted 100% physical and legal custody, with either supervised or unsupervised **visitation** granted to the biological parent. The difference being is that the kinship caregiver with 100% physical custody retains all responsibility and right for revoking visitation arrangements at any time, and for any reason, without having to seek adjustment from the Court or Judge, prior to doing so.

Legal custody is the authorization to make decisions that affect the interests of a child, including decisions concerning schooling, non-emergency healthcare choices, religious involvement and instruction, the persons with whom the child is permitted to visit and socialize with, financial decisions, and other important life decisions. The person(s) with legal custody also have a default responsibility and duty to support the child's needs, such as food, clothing, shelter, and other such concerns, unless modified by a Court, or alternative child support arrangement. Generally speaking, you **DO NOT** need legal custody to authorize **emergency medical care** for the child, but do require either legal custody, a Caregiver's Affidavit, or a Power of Attorney, before you can make any other non-emergency medical decisions and authorizations.

Importantly- it is possible for one or more individuals to have physical custody of a child without having legal custody of that child.

Visitation is the right to see a child, typically awarded by a court to a parent who does not have physical custody of the child. There are generally two kinds of visitation, supervised and unsupervised. A court will deny visitation rights only if it decides that visitation would hurt the child so much that the parent should be kept away. A voluntary visitation and timesharing schedule can often be agreed to, without court order, granted by the person(s)

who currently holds legal custody over the child, to the person(s) who would like to visit. A typical example of this would be a temporary guardian or kinship caregiver, developing a voluntary visitation schedule with the biological parents, oftentimes in exchange for the biological parents' non-opposition to the kinship caregivers' appointment as permanent guardian(s).

If there are concerns of abuse, neglect, or absconding with the child during periods of unsupervised visitation, it is often best to ask the judge to adopt a visitation schedule through Court Order, so that it can be more easily enforced and monitored. If none of those concerns exist, and relations are friendly, then the person with legal and/or physical custody could agree to visitation and timesharing arrangements, at their own discretion.

The judge on a kinship guardianship case has authority to issue a **No Contact Order** between the Parties, which gets filed in the kinship guardianship case. Often, a request for a No Contact Order can be made directly by you orally, at the first available hearing, or through written Motion.

In cases where a **No Contact Order** is in place between the Petitioner(s) and Respondents, it is often advisable to handle any and all custody exchanges of the children through a neutral and mutually agreeable third party, whether friend or family member, so that contact between the Petitioner and Respondent or biological parent can be minimized. Any contact necessary, in these situations, should only involve information concerning the child, without any other communications between the parties being necessary. You can ask the judge that all information concerning the child(ren) be exchanged, strictly by email or text message, so that there is always a written record of what is being said back and forth. If the biological parent or Respondent attempts to engage conversation with you on topics outside matters concerning the children, you can then show the email or text message to the Judge in any Motion for Order to Show Cause Hearing.

In some cases a caregiver may need to seek additional legal protection from a biological parent who commits acts of abuse through an "**Order of Protection**," sometimes also called a restraining order or a protection order. New Mexico recognizes several possible legal reasons to grant an Order of Protection for an adult on behalf of him/her/themselves or on behalf of a minor child from a biological parent, who would be called the 'Respondent' in an Order of Protection case. Order of protection cases get filed under a separate DV case number and are separate from the DM case number. The DM case is assigned to the kinship guardianship case, but one case can easily reference the other. **Generally speaking, custody orders issued in DV cases will take precedence over DM cases for a duration of up to 6 months, unless renewed by the DV court.** It then becomes the responsibility of the DM or kinship guardianship judge to alter, amend, or continue such custody

arrangements as might be deemed in the best interests of the child. There is space to list related cases in both the DM and DV documents (“pleadings”) filed in both cases, so that each assigned judge or hearing officer can easily reference computer records from the other.

For an **Order of Protection** based on stalking or sexual abuse, you do not have to have or have had, any type of ongoing relationship with the Respondent. In fact, often in these cases, the Respondent is a virtual stranger.

For an **Order of Protection** based on domestic violence, the Respondent must be a household member. New Mexico defines a household member as a spouse, former spouse, boyfriend/girlfriend, ex-boyfriend/girlfriend (including same-sex relationships), parent, present or former stepparent, present or former parent-in-law, child, stepchild, grandchild, co-parent of a child or a person with whom the petitioner has had a continuing personal relationship. Cohabitation is not necessary. For more information on Orders of Protection please visit our website, <https://www.newmexicolegalaid.org/>

No Contact Orders differ from **Orders of Protection** in important ways. Orders of Protection are immediately enforceable by calling 911, and carry possible criminal penalties for even the first proven infraction. Infractions of the Order of Protection usually get prosecuted by the District Attorney’s office, whereas No Contact Orders require the party to file a Motion for Order to Show Cause, as to why the violator / Respondent should not be held in contempt of the DM Court. Oftentimes, the Respondent will be given 15 days to respond, in writing, to a Motion for Order to Show Cause, and there still might need to be a hearing before the DM judge can impose penalties upon the person violating. If safety, speed, and immediate enforceability through 911 and law enforcement are concerns, then it is often best to directly seek an Order of Protection in DV court.

If you are able to safely arrange visitation with a biological parent some practical considerations include: 1) setting up a regular schedule so that the child(ren) know when to expect to see that parent and for how long, 2) the safety considerations of allowing a biological parent access to the child; 3) the logistical and/or safety issues around the location of a visit: some parents may be able to safely visit a child, in your home, while others should have restricted or no access to your home location. Please note that in this case, conducting any required or court ordered visitation exchange in a safe location, such as a well monitored public location, or local police station, may be advisable. Kinship guardians may also need to consider the Order of Protection process described above in this Section, and may need to arrange visitation through a neutral or trusted third party, so that there are no concerns with violation of the Order of Protection or No Contact Order, between the parties themselves.

There are also several agencies statewide, such as Neutral Corner or APN in Albuquerque, which can log **supervised exchanges** (there is then a record of time and date of each parent or custodian arriving for offsite, actual visitation), or conduct **supervised visitations** at the agency or facility itself, although there will be a cost associated with such exchanges. If cost is of concern, it is often best to ask the assigned judge to Order those costs to be met by the visiting party, or alternatively on a 50 / 50 basis. Supervised visitations can also take place, without the necessity of an outside agency, supervised by a trusted, neutral person, or family member, at the discretion or choice of the person holding temporary or permanent legal custody.

For a list of state agencies for supervised visitation or exchanges, please see:

<http://www.svdirectory.com/state.htm?st=nm>

6. Emergency and *Ex Parte* Motions

For help in filing Motions, Requesting Hearings on your Motion, and Providing Notice of Hearing on your Motion, please see the New Mexico District Courts Self-Help Guide Available here:

<https://www.nmcourts.gov/self-help/self-help-guide/>

In certain situations, it may be advisable to file an Emergency or *Ex Parte* Motion with the Court. *Ex Parte* means only one party has been heard from, prior to the judge taking some action, such as ordering a child to be transported, or relocated, by law enforcement, CYFD, or the police.

The Rules on *Ex Parte* Motions are fairly strict. In brief, you must demonstrate the probability of **immediate and irreparable harm** coming to yourself or the child, if the Court does not act immediately, and without waiting to hear from the other side.

In usual Motion Practice under the New Mexico Rules of Civil Procedure, the party opposed to the Motion will have 15 days to file a Response, with an additional 15 days for the Movant to file a Reply, followed by the Court setting a hearing on the Motion, the Parties appearing for the hearing on the Motion, and the Court issuing a ruling (sometimes even long after the hearing).

Such process can be dispensed with, through filing an *Ex-Parte* Motion and requesting immediate action be taken (or an immediate in-person hearing, as the judge finds appropriate, or if the judge has questions concerning your motion or grounds for filing).

In Kinship Guardianship cases, typical situations which have justified the use of *Ex Parte* or Emergency Motion Practice include any of the following (sometimes in combination):

1. Situations in which the Respondent(s) is making **direct threats** to the safety of the Petitioner or Petitioner's household members, or the lives and safety of the child(ren) involved. The *Ex Parte* Motion filed will typically include a request for a No Contact Order to be issued, and would be filed, at the same time as the underlying Petition for Kinship Guardianship, and accompanied by a Motion for Temporary Guardianship to be granted in Petitioner's favor, after the No Contact Order issues. No Contact Orders typically prohibit the opposing party from contacting you or the child(ren) directly, or coming within 100 yards of your address, while the Petition for Kinship Guardianship is pending. They may also be accompanied by a Petition for Order of Protection in Domestic Violence Court (DVOFP), but the No Contact Order gets issued by the judge assigned to the kinship guardianship case under the DM case number. A Domestic Violence Order for Protection may grant you temporary physical and legal custody for up to **six months**, as well, sometimes with an accompanying order allowing for Respondent(s) to have **supervised visitation** through a neutral agency such as APN or Neutral Corner. For more information on filing Petitions for Domestic Violence Orders of Protection or to seek representation or advice on these issues, with or without a pending Kinship Guardianship case, please see:

New Mexico Legal Aid, Inc.'s, Domestic Violence, Sexual Assault and Stalking Legal Helpline

The Domestic Violence, Sexual Assault and Stalking legal helpline IS still accepting calls during the COVID-19 crisis.

The legal helpline is opened Monday through Friday from 9:00 AM to 5:00 PM to assist victims of domestic abuse, sexual assault and stalking with legal issues they are facing.

Toll free telephone: [1-877-974-3400](tel:1-877-974-3400)

(CAUTION! Please call the Helpline only from a phone or an email address that is safe and private. Do not use a phone that anyone other than you or a trusted friend may have access to.)

For more information about the Helpline and other available services, please click [here](#)

Or Visit: www.newmexicolegalaid.org

2. Situations in Which the Respondent(s) is threatening to leave the State or jurisdiction with the children, or hide the children, or keep the children from contacting you (the Petitioner), or their previous caregiver, for the fulfillment of urgent needs, such as food, clothing, or urgent, necessary medical treatment.
3. Situations in which the Respondent(s) is abusing substances and is therefore inattentive to the immediate safety or supervision needs of the children, or the children are lacking immediate, basic necessities, such as food, shelter, water, clothing, etc.
4. Situations in which the parents are directly abusing the children in their care, either physically, sexually, or emotionally. Note that, generally speaking, the emotional abuse must be **severe, immediate, and irreparable, in order to justify an emergency Ex Parte Order**. In other words, if reasonable, uninvolved people, could have different opinions about whether the emotional abuse was severe, then it may need to be addressed through formal motion practice, requesting a hearing, and the longer kinship guardianship process described herein.

As a rule of thumb, if any of the above abuse situations are present, a report of child abuse and/or neglect should be made to the New Mexico Children Youth and Families Department (CYFD). CYFD has authority to independently, and temporarily, place the children in your care, should their investigation of the matter find abuse and/or neglect is present. CYFD attorneys and support staff may also independently take Court action to grant you physical or legal custody, on a longer-term basis, or appear as witnesses in the ongoing, or soon to be initiated, Kinship Guardianship case (you should indicate CYFD involvement and the case worker in the appropriate line in your Kinship Guardianship Petition):

To Report Child Abuse: CYFD – (1-855-333-SAFE [7233] or #SAFE from a cell phone)

<https://cyfd.org/child-abuse-neglect/reporting-abuse-or-neglect>

Forms of relief in any emergency or *ex parte* motion, filed with the judge, may also take any one of the following forms:

1. An Order for Law Enforcement pickup of the children and physical relocation to your household or CYFD custody, pending further proceedings
2. An Order requiring emergency or urgent medical assistance to be given to the child, if being blocked by inattentive or purposefully obstructive parents.
3. An Order requiring drug or substance abuse testing for the Respondent before either supervised or unsupervised visitations can resume.
4. An Order not to leave the city or State with the children, often (but not always) accompanied with an immediate law enforcement pickup order.
5. Miscellaneous forms of relief as appropriate, such as Ordering Respondent to immediately refrain from the consumption of alcohol during the parents' direct contact with the children, or to immediately cease an ongoing action, such as prohibiting the child to have contact with another third party, or step parent or other household member, who might be suspected of physical, emotional, or sexual abuse.

7. If uncontested, draft a Parental Consent and Waiver of Service Form and send to the biological parent(s) for notarized signing, along with a copy of the Petition to Establish a Kinship Guardianship, and return to you.

If you have gained to biological parents' voluntary consent to your appointment as permanent kinship guardian, you should prepare a **Parental Consent and Waiver of Service Form**, available at Section VII of this guide. After filling in the form with as much known information as possible, you should attach your prepared Petition for Appointment as Kinship Guardian, and then ask the biological parent or current legal guardian (Respondent(s)), to sign the form in the presence of a Notary Public.

It is important that your draft Petition for Kinship Guardian accompany the **Parental Consent and Waiver of Service Form**, as the Respondent must be able to read, review, and agree to the information included in the draft, unfilled Petition. When the biological parent or current legal guardian voluntarily signs this form they are agreeing to the following:

1. Your (Petitioner(s)'s) Appointment as Permanent Kinship Guardian. From the point of final Order appointing you kinship guardian onward, you are taking the place of the biological parent, with all the rights *and* responsibilities such as duty as a parent entails, except the right to consent to marriage or adoption. When explaining this permanent appointment, it is important not to hide the fact that the appointment is permanent, and cannot be undone without extreme legal complication and difficulty, after the fact. If more temporary options are better given what you know of the situation, please consider a Caregiver's Affidavit or Power of Attorney described above.
2. The Respondent(s) agrees to waive formal, and personal, service of process of the documents usually served to them directly, and the Respondent(s) does not necessarily need to be included in any resultant confirmation hearing(s), or even receive formal Notice of Hearing, that such a confirmation hearing is taking place. Oftentimes, if relations are friendly, you can voluntarily agree to provide the Respondent(s) the Notice of Hearing when such is received by you from the Judge's office, but if the Respondent(s) has waived service of process by signing the **Parental Consent and Waiver of Service Form**, you are under no strict legal obligation to provide the Notice of Hearing.

Be sure to read the form carefully before submitting it to the biological parents or current legal custodians for signing before a Notary Public, and fill it out with as much known and accurate information as possible, noting unknown information as "unknown" rather than being left blank.

Once signed and notarized, the **Parental Consent and Waiver of Service Form** can be filed directly on the docket, as a pleading, along with your Petition for Appointment as Kinship Guardian, at the time of opening the case. It will get assigned and stamped with your unique case number, and then becomes available for the judge to review as she or he considers your appointment as permanent guardian.

8. File a Petition to Establish Kinship Guardianship In Court

A. Waiving Court Filing Fees

A kinship caregiver who is low-income may request that the court “waive” and not charge any filing fees to submit documents to the court. The process to request a waiver requires that the caregiver complete two documents, the first is “Form 4-222. Application for free process and affidavit of indigency,” which can be found in the appendix of this Guide. Within Form 4-222 are several checkboxes and “fill-in the blank” sections for the caregiver to list the reasons why he/she/they should not be charged court fees to file documents. Once completed, this form can be submitted to the court with other legal documents.

It is strongly recommended that you complete the document at the beginning of the case so that you do not get charged any unnecessary costs or fees to file your legal documents with the court.

The second document you will need which would be submitted together with Form 4-222 is “4-223. Order for free process” which is submitted to the court for signature by the judicial hearing officer or judge to approve the application for free process you submitted in Form 4-222. Within the Form 4-223 Order for free process, you only need to fill out the top sections of the document above the title which list the parties to the case and court location, and ensure that the caption matches your Petition for Kinship Guardianship exactly.

The Application for Free Process usually gets reviewed by a different District Judge than the Judge ultimately assigned to your Kinship Guardian DM case. Ask the Clerk of Court with questions about whom the Application for Free Process should be submitted to (usually a rotating on-duty Judge), accompanied by your unfiled Petition for Kinship Guardianship and supporting documents, for review.

If you are representing yourself, and you receive any form of public assistance, such as Social Security Disability, TANF, or Medicaid / Medicare, it is faster and easier to make a copy of a statement of your public assistance benefits and submit that with the Application for Free Process to the reviewing Judge. This allows the judge to make a very quick determination that you are entitled to a waiving of the Filing Fee, without having too many questions about your expenses and income listed out in your Application for Free Process. Attaching proof makes it much faster and easier to the assigned judge!

Sometimes you will have to wait a few days, and come back to the courthouse to pick up your signed and granted Order for Free Process, which will hopefully be waiting for you at the Judge’s office. After picking up your Order for Free Process, you can then take the

Order for Free Process, Application for Free Process, Petition for Kinship Guardianship, and supporting documents (such as the signed Parental Consent and Waiver of Process form), back to the Clerk of Court for filing all the documents, and opening the case. All the documents will receive a case number and Judge assignment.

- B. Draft and File a **Motion for Temporary Kinship Guardianship** (good for six months while court case is pending) and Submit a Proposed Order to the assigned Judge

A form Motion for Temporary Guardianship (included at Section VII of this guide) can now be filed into the opened kinship guardianship case. If it is granted, this will typically grant you temporary legal and physical custody of the child(ren) for a period of up to six months (unless renewed by the Judge), while the kinship guardianship case is pending.

A form Order Granting Temporary Guardianship

If you have access to a word processor, and MS Word .docx file Order Granting Temporary Guardianship can be submitted to the assigned judge at their email address.

If you don't have access to a word processor, a hand-written Order Granting Temporary Guardianship can be hand-delivered to the Judge for modification, signing, and filing on the docket. Be sure to fill in as much information as you know before giving it to the judge for entry and signing, such as the caption (exactly matching the Petition along with newly-assigned case number), your contact information as the person drafting the Order, and

Each District Judge has a designated email address to which proposed documents and necessary exhibits referenced by the Pleadings may be submitted. The Petition for Kinship Guardianship is the initial pleading which gets filed into the record by the Clerk and file stamped, whereas any attached documents or evidence that does not need to be filed into the record can get submitted to the assigned judge using their proposed text email address. For a full list of the Judge's proposed text email addresses, click on the District in which you filed or will be filing, and then use the assigned Judge's email address, noting the case number first in the subject line of your email, followed by the name of the case designated in the caption, and a brief description of what you are submitting:

<https://www.nmcourts.gov/e-filing/proposed-text-documents/>

Example Email:

To: albddiv25proposedtxt@nmcourts.gov

From: John Doe

Subject: D-202-DM-2021-01234 – John Doe v. Jane Peters, In Re: C.D. – Proposed Order Granting **Temporary** Guardianship

Dear Judge Levy (Proposed Text),

Attached for the Court's review, modification, approval, and entry, please find a proposed Order Granting Temporary Guardianship in .docx MS Word form, and my Petition to Establish Kinship Guardianship, filed on July 25, 2022. I have also attached a file-stamped, endorsed copy of my Petition for your reference.

Please call me at 505-555-1234 with any questions or concerns regarding this transmission.

Sincerely,
John Doe

If submitting documents by hand to the Judge's office, a cover letter can be also be used, with substantially the same information as that included in the above sample email. Some, but not all, Judges may enter their own form of Order after seeing your Motion for Temporary Guardianship filed on the docket, but you can make life much easier and faster for the assigned judge by submitting your own drafted order to the assigned Judge for approval, after filling in as much known information as possible. It is much easier for the Judge to simply sign your proposed Order, rather than having to look up the names, case number, etc., and draft, sign, and enter their own.

Another advantage to drafting your own proposed Order is that you can stipulate the terms of any unsupervised or supervised visitation, and/or supervised or unsupervised visitations, during the up to six month period while the permanent case is pending.

Example:

Respondent and biological mother Mary Jane is granted supervised visitation at APN in Albuquerque three days per week, for one hour per visitation, while this case is pending. Costs of supervised visitation are the responsibility of Respondent Mary Jane.

C. For contested cases, execute a Summons for Each Biological Parent or Respondent from the Court Clerk

The next document in your contested kinship guardianship case is the Summons (*see* NMSA § 47-8-43). This document is endorsed by the court clerk and tells the biological parent(s) that a lawsuit has been filed and that the parent has a certain amount of time to answer the Petition in the lawsuit. The summons will be attached to the complaint or the petition for service of process. Service of process means that the parent must be notified of the lawsuit by having the Petition and the summons delivered to him or her so that the defendant will know there is a lawsuit. Sometimes, the summons will include a notice of hearing, which tells the defendant the date, time, and place of a hearing or trial on the merits. In kinship guardianship cases, it is common that a notice of hearing will be part of the Summons.

A form Summons is available in Section VII of this guide. After filling out the Summons with matching caption and case number, it then gets submitted to the Court Clerk for endorsement. It will be stamped with the Court Seal and returned to you, for you to arrange service to Respon.

It is necessary to have a separate Summons for each responding biological parent or Responding party, individually. Each parent must receive separate, personal notice of the pending action or Petition, and their own copies of each relevant document.

D. For contested cases, serve the Clerk-Endorsed Summons(es) to the Biological Parent(s) or Respondent(s) Through a Process Server

The Endorsed Summons, Petition for Kinship Guardianship and Supporting Documents and preliminary Motions (if any), then get **personally served** to the

Responding party or parties individually, by a neutral process server. **A neutral process server is anyone over 18 years of age who is not a party to the lawsuit, or interested in the outcome of your Petition for Kinship Guardianship.** There are several professional process servers, available for hire, through running a Google search for “process server,” in the jurisdiction where your case is pending. You can also choose any disinterested person over the age 18, but that person must be comfortable with signing the Return before a Notary Public, and, if necessary later, serving as witness in Court if the Respondent attempts to deny that they were properly served.

The process server then fills out the page of the Summons titled “Return,” or Affidavit of Service, signs before a Notary Public, and then gives back to you the executed Summons with completed Return to you for filing. It is then your responsibility to file the Return(s) on the case docket, and the Clerk will note the amount of time the Responding Party(ies) has to Answer or Respond, and note such date in the computer system.

Ask the Court Clerk or see the Self-Help Guide for additional assistance on drafting, endorsing, serving, and returning Summonses.

E. For contested cases in which the biological parent(s) is unknown or unable to be contacted, Draft and File a Motion for Service by Publication

In cases in which the biological parents are known to still be alive, but may be out of contact, or physical address(es) unknown, or in cases in which the name of either biological parent is unknown, it may be advantageous to file a Motion for Service by Publication with the judge. If granted, this will allow you to publish a Notice of Pendency of Action, informing the world that the case is pending, in a newspaper of general circulation, usually in the Legal Notices section, for a specified amount of time. The newspaper will then give back to you an Affidavit of Publication, confirming that your notice of suit ran in the paper for the required amount of time, and you can file the Affidavit of Publication back into the case docket. This will satisfy many judges, that you used all best efforts to contact and notify the absentee biological parent(s), and the Judge will have less hesitancy, from that point on, in appointing you as permanent kinship caregiver.

A sample **Motion for Service by Publication** is included at Section VII of this Guide, or a generic Motion can be made utilizing the forms available in the Self-help guide referenced herein.

A Motion for Service by Publication is particularly useful when you are faced with a situation in which one biological parent has been properly served with a Summons, or has consented and waived service through the Parental Consent and Waiver of Service form, but the other, absentee biological parent's whereabouts are unknown, or if the second parent has never been fully-identified. In such cases, the Court is empowered to proceed forward with the single parent's consent or participation alone, but still has a duty to make sure that the other biological parent can receive some notice, if possible. A Motion for Service by Publication is the perfect solution, in such cases, and can often be made orally at any preliminary hearing addressing the issue. Beyond your initial, best efforts to obtain the absentee parent's name or contact information, it is not your responsibility to hire expensive private investigators, or expend unreasonable time and resources, to have the absentee parent participate in the proceeding. A Motion for Service by Publication is often the perfect solution, often accompanied by your appointment as temporary guardian in the meanwhile, while the ad is running in the newspaper.

We have reproduced the formal rule on Service by Publication below, but be sure to consult an experienced advocate or attorney for guidance, if you have questions. **Importantly, the Rule requires you to first get the assigned Judge to Order using this method, you cannot proceed to service by publication without the Court's consent first:**

K.Process; service by publication. Service by publication may be made only pursuant to Paragraph J of this rule. A motion for service by publication shall be substantially in the form approved by the Supreme Court. A copy of the proposed notice to be published shall be attached to the motion. Service by publication shall be made once each week for three consecutive weeks unless the court for good cause shown orders otherwise. Service by publication is complete on the date of the last publication.(1) Service by publication pursuant to this rule shall be by giving a notice of the pendency of the action in a newspaper of general circulation in the county where the action is pending. Unless a newspaper of general circulation in the county where the action is pending is the newspaper most likely to give the defendant notice of the pendency of the action, the court shall also order that a notice of pendency of the action be published in a newspaper of general circulation in the county which reasonably appears is most likely to give the defendant notice of the action.(2) The notice of pendency of action shall contain:(a) the caption of the case, as provided in Rule 1-008.1 NMRA, including a statement which describes the action or relief requested;(b) the name of the defendant or, if there is more than one defendant, the name of each of the defendants against whom service by publication is sought;(c) the name, address and telephone number of plaintiff's attorney; and(d) a statement that a default judgment may be entered if a response is not filed.

F. Appearing for Initial Hearing

In uncontested cases, the first hearing is sometimes the last. After the Judge is satisfied that all parties entitled to notice have, in fact, received Notice of such proceedings, and after reviewing the contents of the documents (**pleadings**), filed into the docket, and especially after reviewing any Parental Consent and Waiver form, the Judge is then empowered to appoint you as permanent kinship guardian. Sometimes the Judge will have specific questions for you concerning the situation, such as how long you have had continuous, physical custody, or safety risks, or child support concerns. These questions are simply aimed at the Court satisfying its duty of due diligence, to be sure you are an actual, real person, someone who has a genuine bond with the child in question (and not just a person attempting to qualify for public resources, expanded TANF benefits, child tax deductions and credits, or other financial benefits, with no intention of caring for the child, long term), that you yourself are fit and able to care for the child, and that you the Petitioner understand that the duties you are taking on include you becoming, for all legal distinction, the child's new parent until at least age 18.

The best advice for appearing at the initial hearing is this: Listen fully to each question being asked, and provide a simple, concise, truthful, and direct answer to each question being asked. Don't volunteer more information than is necessary, don't talk over the Judge, and do not speculate as to any unknown information. If you don't know the answer to a question, simply state, "I don't know the answer to that." If the Judge asks you to speculate, it is ok to speculate, but you should make it clear that you don't know for sure, so that nobody can later accuse you of lying under oath. It is not necessary for you to argue why you are a more fit parent than the Responding party, if one or both of the contested parties has already provided their consent to your appointment. For uncontested cases, that is usually all it takes to have the Judge rule in your favor! Congratulations!

For contested cases, however, the first hearing is very seldom the last hearing. Usually the judge will use the first opportunity to rule on your pending Motion for Temporary Guardianship for the next 6 months, or any other pending Motions, short of permanent appointment as kinship guardian.

In cases where the biological parent(s) is presenting as willing, and able, to continue to be the child's parent, the Court must appoint a Guardian Ad Litem (GAL) (See Section 14 below), to investigate all potential home locations and relevant caregivers, and make recommendations to the Court on who should be appointed as permanent caregiver, for argument and determination at a later hearing. Sometimes the Court can determine, for themselves, that such a GAL appointment is unnecessary, in cases where the Responding parent is unable, or unfit, to continue as parent, such as a parent in long-term incarceration, or with several failed drug tests already in the record, or presenting with prior convictions, and the like, impairing his ability to effectively parent, or if another CYFD witness is present, and substantiates child abuse or neglect allegations. Sometimes CYFD still has the matter under investigation, and will need to reserve, or wait, on deeming the responding parent unfit until after more investigation.

In preparing for a preliminary hearing, it is beneficial to ask the CYFD investigator to be present at the hearing, and personally testify regarding the status and results of their investigation. Many times, if you have listed the CYFD investigator in your Petition, they will receive a Court-issued Subpoena to appear for the hearing. If the Court has not issued its own subpoena, then you can also ask the Clerk for assistance in endorsing a subpoena for any witness you want present at the first hearing. Do not feel the necessity to fully argue your case at the preliminary hearing (you can be prepared with targeted points as to why you are parent to be appointed, for the time being, in the best interests of the child).

It is oftentimes best to make a list of why you are the most appropriate caregiver for the child, and to consult this list while presenting any arguments to the Court. The Court's primary concern is **the best interests of the child, and the more points you can give the Court as to why your appointment is in the child's best interests, the better.** Every statement can be made with that first phrase, "best interests of the child," rather than focusing on the negative aspects or past behavior of the responding parent(s), who the Court can address separately, and sometimes are their own worst enemies, in speaking for themselves.

Example Argument using Positive or Neutral Statements:

1. It's in Michael's (the child's) best interests that I be appointed temporary guardian, because I will ensure he makes it to school on time, and every day. He hasn't been to school in three weeks, and I am concerned.
2. It's in Jane's best interests that I be appointed permanent guardian, because I will not be drinking any alcohol or using drugs in her presence, and I will ensure she gets her prescribed medication for ADHD, every day, as instructed by her therapist. She hasn't seen a Doctor for seven months, and I will make her an appointment right away.
3. It's in Tony's best interests that I be appointed permanent guardian, because, as CYFD is about to testify, there have been substantiated findings of child abuse in his current living situation.

If the Court is not asking for any Argument from you at the initial hearing, and merely addressing procedural or preliminary matters, or asking specific questions, then it is important to respect that and save it for a later hearing or setting. In contested cases, above all, it is important to be patient! The right decision will ideally be made, but it sometimes requires more process and time. Slow and steady wins the race!

G. For contested cases, Assignment of a Guardian Ad Litem (GAL)

A guardian ad litem ("GAL") is an attorney appointed by the court to investigate a case and report its findings and recommendations to the court. The investigation, report, and recommendations are based upon the best interests of the child. The GAL is a lawyer for the child and works in the best interests of the child. Every GAL has had education, training, and experience regarding needs of children.

The formal New Mexico Rule of Civil Procedure governing the appointment of Guardian ad litem in contested custody appointments can be found at NMRA, Rule 1-053.3, available [here](#):

[Rule 1-053.3 - Guardians ad litem ; domestic relations appointments, N.M. R. Civ. P. Dist. Ct. 1-053.3 | Casetext Search + Citator](#)

Once appointed in a contested case, the GAL will investigate the background of the case, interview all relevant caregivers, interview the child herself (for those of an appropriate age), review medical and school records, and conduct on-site, home visits to each potential location, in which the child(ren) might be making their home. Once their investigation is complete, the GAL will issue a Report to all Parties and file its Recommendations, in pleading form, with the Judge. Both sides will have an opportunity to Object or Concur with the GAL's Recommendations, before such are formally adopted by the Court.

Sometimes a GAL will make interim or preliminary recommendations, before issuing its final Report and Recommendations. It is best to read and understand the Order Appointing Guardian Ad Litem thoroughly with questions about the timing, duration, and work requirements of the GAL's responsibilities, as every case is sometimes a bit different, depending on the situation.

If the cost of appointment and the GAL's attorney's fees is an issue, you can ask that the Judge fee-shift that fee to the Responding party, in part, or in full. You can also ask the Judge to tap any existing State resources for payment of the GAL's fees, where available in some jurisdictions. Many times, a contesting party will not be able to meet such fees, if they have higher financial priorities than the best interests of the child (such as abusing substances). In such cases, the GAL will report back to the Judge that the GAL was unable to complete a full investigation due to lacking a fee retainer from the responding party, or report that one or both Responding Parties was uncooperative. If this occurs, it usually only results in a decision by the Judge in your (the Petitioner's) favor. If you, yourself, are having difficulty in making your portion of the GAL's fees, you might consider asking the GAL if he or she will engage in a voluntary payment plan with you. Some GALs have access to low-interest loan programs that you can consider taking for this important, one-time purpose.

Most importantly, it is important to be fully cooperative and friendly with the GAL, and to respond timely to their requests for information, respond timely to interview requests, and open your wonderful home up to the GAL for a site visit. It is helpful for the GAL to see physically where the child will live while in your care, and usually results in nothing but favorable recommendations back to the Judge.

The human relationship between you and the GAL (staying friendly and cooperative), is one of the most important factors influencing the GAL's ultimate report and recommendations to the Court. For this reason, don't excessively focus on the bad conduct, neglect, or abuse being engaged in by the Responding party or parties. There will be plenty of time for the GAL to investigate all of that for herself, outside of your presence. Rather, focus on all the good and positive reasons why the child's physical and legal custody with you is in the child's best interests. Get to know the GAL on a personal level and develop a healthy and positive relationship. You can still point out the concerns you have for the child, while in the potential care of Respondents for the GAL's follow up investigation, but most of your time with the GAL should be focused on demonstrating that you are the safe, appropriate, and best choice for permanent custody. Help the GAL to see, by virtue of who you are, and how you conduct yourself, that the child will be living, in a permanent household, filled with genuine **love**. In all of your interactions with the GAL, sometimes it is more effective to let the Truth speak for itself. You can point out helpful lines of

investigation, but ultimately the GAL needs to know what a wonderful caretaker you will be, in your own right, regardless of the opposing party's past actions or inactions.

H. Appearing for a Final Hearing

A final hearing is usually scheduled to either appoint you as permanent caregiver and guardian or reject your Petition for Appointment, as necessary. It is often the same hearing in which the Court will consider the GAL's Recommendations, after reviewing both parties Objections or Concurrences with the GAL's filed recommendations and allow for additional argument and testimony from all interested Parties and their witnesses, before rendering a final decision.

Many of the same considerations apply to a final hearing as would to a preliminary hearing, or discreet Motion Hearing:

In preparing for a final hearing, it is beneficial to ask the CYFD investigator to be present at the hearing, and personally testify regarding the status and results of their investigation(s). Many times, if you have listed the CYFD investigator in your Petition, they will receive a Court-issued Subpoena to appear for the hearing. If the Court has not issued its own subpoena, then you can also ask the Clerk for assistance in endorsing a Subpoena for any witness you want present at the final hearing, and then serving that Subpoena to the assigned CYFD investigator once you know the final date and time of the hearing. You can be prepared with targeted points as to why you are parent to be appointed, for the time being, and in the best interests of the child.

Before the hearing, it is oftentimes best to make a list of why you are the most appropriate caregiver for the child, and to consult this list while presenting any arguments to the Court. The Court's primary concern is **the best interests of the child, and the more points you can give the Court as to why your appointment is in the child's best interests, the better.** Every statement can be made with that first phrase, "best interests of the child," rather than focusing on the negative aspects or past behavior of the responding parent(s), who the Court can address separately, and sometimes are their own worst enemies, in speaking for themselves.

Example Argument using Positive or Neutral Statements:

1. It's in Michael's (the child's) best interests that I be appointed temporary guardian, because I will ensure he makes it to school on time, and every day. He hasn't been to school in three weeks, and I am concerned.

2. It's in Jane's best interests that I be appointed permanent guardian, because I will not be drinking any alcohol or using drugs in her presence, and I will ensure she gets her prescribed medication for ADHD, every day, as instructed by her therapist and Doctor. At the last hearing, she hadn't seen a Doctor for seven months, but after I was able to make her an appointment, she is doing much, much better.
3. It's in Tony's best interests that I be appointed permanent guardian, because, as CYFD is about to testify, there have been substantiated findings of child abuse in his current living situation.
4. It is in Betty's best interests to appoint me as permanent guardian. Ever since she has been in my care, she has been getting all As and Bs at school. May I show you (Judge) her report card, before and after, at this time? I have sent scanned copies of her report cards to your proposed text email address and have provided copies of the same documents to Respondents at least 48 hours prior to this hearing.

Note on Exhibits: The Judge is not allowed to review and consider anything that has not been disclosed to the opposing party at least 48 hours before the hearing (sometimes more time is required, if specifically ordered by the Judge in a Scheduling Order). So, if you want to make sure the Judge sees Betty's report cards from school, be sure to disclose the evidence to the other party, well before any hearing, and follow the Court's exact, written instructions on submitting evidence to the Court beforehand. The documents will usually need to be pre-labeled Exhibit 1, 2, 3, etc., so that they can be easily referenced later while on the record. It's okay to hand write on the front corner, or back of the exhibits with numbers and letters, so long as they are legible and they do not obstruct the contents of any document, or you can also label scanned documents through PDF software and resave before sending, as necessary.

Typical Exhibit Labels will take the following form: Pet. Exh. 1, Res. Exh. B, etc.

If the Court is not asking for any Argument from you at the final hearing, and merely addressing procedural or final matters after reviewing Objections to the GAL's recommendations (hopefully in your favor), or asking specific questions, such as arranging for visitation, then it is important to respect this guidance from the judge, and save your testimony, for the appropriate opportunity to speak. It is acceptable to ask the Judge, at any time, if, "Is it okay that I speak to this matter and provide some additional testimony?" before providing your testimony or evidence. The Judge will be glad you asked before jumping right in!

Lastly, do not feel the necessity to oversell your case. Throughout the hearing, it is important to keep an eye on the Judge and listen to the cues being given, in order to anticipate if the Judge is already leaning toward deciding in your favor. Don't talk the Judge out of deciding in your favor, if she or he is already signaling that you have won your case!

IV. Post-Court Case Motions and Undoing a Permanent Kinship Guardianship after it has been granted

Undoing a permanent kinship guardianship appointment, after it has been granted, is very difficult. Within the first 30 days after the Entry of Final Judgment and Order Appointing Kinship Guardian, any party can file a Motion for New Trial Under New Mexico Rule of Civil Procedure, Rule 1-059, reproduced here:

"A. Grounds. A new trial may be granted to all or any of the parties and on all or part of the issues in an action in which there has been a trial by jury, for any of the reasons for which new trials have heretofore been granted. On a motion for a new trial in an action tried without a jury, the court may open the judgment if one has been entered, take additional testimony, amend findings of fact and conclusions of law or make new findings and conclusions, and direct the entry of a new judgment.

B. Time for motion. A motion for a new trial shall be filed not later than thirty (30) days after the entry of the judgment.

C. Time for serving affidavits. When a motion for new trial is based upon affidavits they shall be served with the motion. The opposing party has fifteen (15) days after such service within which to serve opposing affidavits, which period may be extended for an additional period not exceeding twenty (20) days either by the court for good cause shown or by the parties by written stipulation. The court may permit reply affidavits.

D. On initiative of court. Not later than ten (10) days after entry of judgment the court of its own initiative may order a new trial for any reason for which it might have granted a new trial on motion of a party. After giving the parties notice and an opportunity to be heard on the matter, the court may grant a motion for a new trial, timely served, for a reason not stated in the motion. In either case, the court shall specify in the order the grounds therefor.

E. Motion to alter, amend, or reconsider a final judgment. A motion to alter, amend, or reconsider a final judgment shall be filed not later than **thirty (30) days after** entry of the judgment."

NMRA, Rule 1-059.

After 30 days, the Motion for Relief from judgment or order under NMRA, Rule 1-060 may be utilized, but the standard is much higher. It is necessary first to reopen the closed case and one of the following conditions must be satisfied:

“A. Clerical mistakes. Clerical mistakes in judgments, orders, or parts of the record and errors therein arising from oversight or omission may be corrected by the court at any time of its own initiative or on the motion of any party and after such notice, if any, as the court orders. During the pendency of an appeal, these mistakes may be so corrected before the appeal is docketed in the appellate court, and thereafter while the appeal is pending may be so corrected with leave of the appellate court.

B. Mistakes; inadvertence; excusable neglect; newly discovered evidence; fraud, etc. On motion and on such terms as are just, the court may relieve a party or the party’s legal representative from a final judgment, order, or proceeding for the following reasons:

(1) mistake, inadvertence, surprise, or excusable neglect;

(2) newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under Rule 1-059 NMRA;

(3) fraud (whether heretofore denominated intrinsic or extrinsic), misrepresentation, or other misconduct of an adverse party;

(4) the judgment is void;

(5) the judgment has been satisfied, released, or discharged, or a prior judgment on which it is based has been reversed or otherwise vacated, or it is no longer equitable that the judgment should have prospective application; or

(6) any other reason justifying relief from the operation of the judgment, including failure of a party who was subject to the provisions of Rule 1-009(J) NMRA to comply with Rules 1-009(J)(2) and 1-017(E) NMRA, and to substantially comply with Form 4-226 NMRA. The motion shall be made within a reasonable time, **and for reasons (1), (2), and (3) not more than one (1) year after the judgment, order, or proceeding was entered or taken.** A motion under this paragraph does not affect the finality of a judgment or suspend its operation. This rule does not limit the power of a court to entertain an independent action to relieve a party from a judgment, order, or proceeding, or to set aside a judgment for fraud upon the court. Writs of coram nobis, coram vobis, audita querela, and bills of review and bills in the nature of a bill of review, are abolished, and the proceeding for obtaining any relief from a judgment shall be by motion as prescribed in these rules or by an independent action.

1-060 NMRA.

In short, to undo a final judgment appointing a kinship guardian after 30 days, the party moving to undo the appointment must have discovered new evidence which was not available during the time limits under Rule 1-059, have proof of outright fraud or misrepresentation to the Court, or the catch all under B(6), which is up to the judge’s discretion.

A party seeking to undo the District Court's judgment through filing an appeal to the New Mexico Court of Appeals, the complex legal mechanics of which are beyond the scope of this guide. For help in filing an appeal, it is best to consult a licensed attorney experienced in appellate work.

For all intents and purposes, the kinship guardianship appointment through the Kinship Guardianship Act is intended to be permanent and irreversible, barring outright fraud or material mistakes, or newly discovered evidence, unavailable at the time of hearings in the District Court case.

V. Updating information and Securing Benefits with State Agencies, IRS, TANF, SSA, Name Changes, etc

One of the first steps is to inform the IRS and State Tax Authority that a child is now living in the household with legal appointment through Court process. This may make the new parent eligible for a whole host of benefits, tax credits, and deductions, depending on your income and assets, and other relevant factors. The IRS may be contacted here and may require a copy of the Order Appointing Kinship Guardian. If Certified Copies (endorsed and sealed by the Clerk of Court as authentic) of the Order Appointing Kinship Guardian are further required, those may be picked up and certified from the Clerk of Court, for a small fee. Sometimes it is simply easier, depending on the timing of the Appointment, to wait for the next tax year and then claim the new child, utilizing the child's social security number. One of the most important benefits is expanded Food Stamp (TANF) eligibility as well. Please see any of the following links for information on how to update and apply:

1. <https://www.irs.gov/credits-deductions/individuals/child-tax-credit>
2. <https://www.tax.newmexico.gov/individuals/online-services-overview/>
3. https://www.hsd.state.nm.us/lookingforassistance/temporary_assistance_for_needy_families/
4. https://www.ssa.gov/onlineservices/?gclid=Cj0KCQjw54iXBhCXARIsADWpsG84tT_l6Dp2kjMrVOOJR8VW9wnpyfKtn3CFQ42egTNzD7juuy5IEXAaAtWdEALw_wcB
5. <https://www.medicaid.gov/about-us/beneficiary-resources/index.html>
6. <https://seconddistrictcourt.nmcourts.gov/home/civil-forms/change-of-name-under-14/>

Also, **if a last or full name change is required for the child**, this can also be generally accomplished by the Judge in the same case, utilizing the forms linked under ¶6 above.

If you forgot to include an Order of Name Change during the kinship confirmation hearing, most judges are happy to sign such an Order within the first 30 days of the Appointment Order, and will not require an additional fee. Speak to the Judge's Trial Court Administrative Assistant (TCAA) for help in arranging for the name change, through generally submitting prepared forms to the Judge's proposed text email inbox.

For additional help regarding financial or benefit matters, individuals can also apply for additional legal help here, including services through NMLA's low-income taxpayers clinic (LITC):

<https://www.newmexicolegalaid.org/node/254/read-you-apply-online>

VI. Conclusion

Congratulations on completing the first step in your exciting journey and adventure of providing the child(ren) in your care with a lifetime of support, nurture, and care! You have now established a legal relationship with the child or children concerned, and are their parent for every decision here on, except to consent to marriage or adoption. You also have all the rights *and* responsibilities as would any other biological parent up until age 18.

Do not hesitate to reach out to one of the organizations listed in this guide if we can be of further assistance, and apply for advocacy or direct legal services or representation in Court.

It was a pleasure helping you in the first stages of your exciting journey! We wish you all the best luck!

VII. Frequently Used Forms

- A. Caregiver's Affidavit**
- B. Power of Attorney**
- C. Application for Free Process and Temporary Covid 19 Application Procedures**
- D. Blank Petition for Order Appointing Kinship Guardian**
- E. Blank Nomination of Child Form**
- F. Parental Consent and Waiver of Service Form**
- G. Motion for Temporary Kinship Guardianship and Order**
- H. Motion for Service by Publication and Order**
- I. Final Order Appointing Kinship Guardian**

Caregiver's Affidavit

Information

NOTICE:

- ✓ This declaration does not affect the rights of the minor's parents or legal guardian regarding the care, custody and control of the minor.
- ✓ This declaration does not mean that the caregiver has legal custody of the minor.
- ✓ A person who relies on this affidavit has no obligation to make any further inquiry or investigation.
- ✓ This affidavit is valid for one year from the date on which it is executed.

CAREGIVERS:

Caregiver for purposes of this Act means, “an adult, who is not a parent of the child, with whom a child resides and who provides that child with the care, maintenance and supervision consistent with the duties and responsibilities of a parent of the child.”

Qualified Relative for purposes of Item 5, means a spouse, parent, stepparent, brother, sister, stepbrother, stepsister, half-brother, half-sister, uncle, aunt, niece, nephew, first cousin, godparent, member of the child's tribe or clan, an adult with whom the child has a significant bond or any person denoted by the prefix “grand” or “great”, or the spouse or former spouse of any of the persons specified in this definition.

School-related medical care for purposes of Items 1-4 , means medical care that is required by the state or a local government authority as a condition for school enrollment.

If the minor stops living with you, you are required to notify any school, health care provider, mental health care provider, health insurer or other person to whom you have given this affidavit.

If you do not have the information requested in Item 8, provide another form of identification such as your social security number or Medicaid number.

HEALTH CARE PROVIDERS & HEALTH CARE SERVICE PLANS:

- ✓ No person who acts in good faith reliance upon a caregiver's authorization affidavit to provide medical, dental or mental health care, without actual knowledge of facts contrary to those stated on the affidavit, is subject to criminal liability or to civil liability to any person, or is subject to professional disciplinary action, for such reliance if the applicable portions of the form are completed.
- ✓ This affidavit does not confer dependency for health care coverage purposes.

This Form is authorized by New Mexico Statute: 40-10B-15 NMSA 1978.

CAREGIVER'S AUTHORIZATION AFFIDAVIT

- ✓ Completion of Items 1-4 and signing the affidavit is sufficient to authorize enrollment of a minor in school and authorize school-related medical care.
- ✓ Completion of Items 5-8 is additionally required to authorize any other medical, dental or mental health care.

1 Name of Minor	
2 Minor's birthdate	
3 Caregiver's Name	
4 Caregiver's Home Address	
5 <input type="checkbox"/> I am a grandparent, aunt, uncle or other qualified relative of the minor. (See back or following page for a definition of "qualified relative.")	
6 Check one or both (for example, if one parent was advised and other cannot be located)	
<input type="checkbox"/> I have advised the parent(s) or other person(s) having legal custody of the minor of my intent to authorize medical care, and have received no objection.	
<input type="checkbox"/> I am unable to contact the parent(s) or other person(s) having legal custody of the minor at this time, to notify them of my intended authorization.	
7 Caregiver's Birthdate	
8 Caregiver's Driver's License or other identification card & number	

WARNING: Do not sign this form if any of the statements above are incorrect, or you will be committing a crime punishable by a fine, imprisonment or both.

I declare under penalty of perjury under the last of the state of New Mexico that the foregoing is true and correct.

CAREGIVER'S SIGNATURE

NOTARY PUBLIC ACKNOWLEDGMENT

(Photo Identification, Signature Witnessing & Notary Seal Required)

This affidavit was subscribed, sworn to and acknowledged before me this,

the _____ day of the month of _____, 201 _____.

NOTARY PUBLIC

My Commission Expires

(Seal)

This Form is authorized by New Mexico Statute: 40-10B-15 NMSA 1978.

S.F. 40-10B-15 Caregiver's Authorization Affidavit/Kinship Guardianship. (2001)

"Caregiver's Authorization Affidavit

Use of this affidavit is authorized by the Kinship Guardianship Act.

Instructions:

- A. Completion of Items 1-4 and the signing of the affidavit is sufficient to authorize enrollment of a minor in school and authorize school-related medical care.
- B. Completion of Items 5-8 is additionally required to authorize any other medical care.

Print clearly:

The minor named below lives in my home and I am 18 years of age or older.

- 1. Name of minor: _____
- 2. Minor's birth date: _____
- 3. My name (adult giving authorization): _____
- 4. My home address: _____
- 5. () I am a grandparent, aunt, uncle or other qualified relative of the minor (see back of this form for a definition of "qualified relative").
- 6. Check one or both (for example, if one parent was advised and the other cannot be located):
 - () I have advised the parent(s) or other person(s) having legal custody of the minor of my intent to authorize medical care, and have received no objection.
 - () I am unable to contact the parent(s) or other person(s) having legal custody of the minor at this time, to notify them of my intended authorization.
- 7. My date of birth: _____
- 8. My NM driver's license or other identification card number: _____

WARNING: Do not sign this form if any of the statements above are incorrect, or you will be committing a crime punishable by a fine, imprisonment or both.

I declare under penalty of perjury under the laws of the state of New Mexico that the foregoing is true and correct.

Signed: _____

The foregoing affidavit was subscribed, sworn to and acknowledged before me this _____ day of _____ 20_____, by _____.

My commission expires: _____
Notary Public

Notices:

1. This declaration does not affect the rights of the minor's parents or legal guardian regarding the care, custody and control of the minor, and does not mean that the caregiver has legal custody of the minor.
2. A person who relies on this affidavit has no obligation to make any further inquiry or investigation.
3. This affidavit is not valid for more than one year after the date on which it is executed.

Additional Information:

TO CAREGIVERS:

1. "Qualified relative", for purposes of Item 5, means a spouse, parent, stepparent, brother, sister, stepbrother, stepsister, half-brother, half-sister, uncle, aunt, niece, nephew, first cousin, godparent, member of the child's tribe or clan, an adult with whom the child has a significant bond or any person denoted by the prefix "grand" or "great", or the spouse or former spouse of any of the persons specified in this definition.
2. If the minor stops living with you, you are required to notify any school, health care provider, mental health care provider, health insurer or other person to whom you have given this affidavit.
3. If you do not have the information requested in Item 8, provide another form of identification such as your social security number or medicaid number.

TO HEALTH CARE PROVIDERS AND HEALTH CARE SERVICE PLANS:

1. No person who acts in good faith reliance upon a caregiver's authorization affidavit to provide medical, dental or mental health care, without actual knowledge of facts contrary to those stated on the affidavit, is subject to criminal liability or to civil liability to any person, or is subject to professional disciplinary action, for such reliance if the applicable portions of the form are completed.

2. This affidavit does not confer dependency for health care coverage purposes."

STATE OF NEW MEXICO)
) SS
COUNTY OF _____)

**POWER OF ATTORNEY TO
CREATE A TEMPORARY GUARDIANSHIP**
§45-5-104 (NMSA)

Pursuant to Probate Code §45-5-104 (NMSA 1978), I, _____ being the custodial parent, do hereby delegate to, _____ my _____ of _____ New Mexico, as my attorney and agent to act as guardian for my child/ren, _____, DOB: _____, and _____, DOB: _____.

_____, shall have the authority and power necessary for the care, custody and property of said children for a period not exceeding six (6) months excepting any power to consent to marriage or adoption of said child.

This power of attorney shall expire _____

ACKNOWLEDGMENT

[illegible]

The foregoing instrument was acknowledged before me this _____ day of _____, 20____, by _____.

Notary Public

My commission expires:

See page 2 for the language of §45-5-104 (NMSA)

New Mexico Statutes

Chapter 45. Uniform Probate Code

Article 5. Protection of Persons Under Disability and Their Property

Part 1. GENERAL PROVISIONS

Current through 2010 Legislative Session

§ 45-5-104. Delegation of powers by parent or guardian

A parent or a guardian of a minor or an incapacitated person, by an acknowledged power of attorney, may delegate to another person, for a period not exceeding six months, any of the parent's or guardian's powers regarding care, custody or property of the minor child or protected person, except the power to consent to marriage or adoption of a minor protected person.

PROCEDURE ---- APPLYING FOR FREE PROCESS

(Waiver of Filing Fee for CIVIL Cases)

1. APPLICATION FOR FREE PROCESS AND AFFIDAVIT OF INDIGENCY

A. Caption. Type or print legibly the caption in the following format:

(Your Name),

Plaintiff,

vs.

(The person you are suing), Defendant.

B. Fill in all blanks completely and accurately.

~~C. **Notarized Signature Required!** Sign your name on the signature block on the last page before a notary. Notary service is available in the Clerk's Office, Room 119 of the District courthouse, but you can also go to any available notary public. You must have picture identification with you.~~

*****As a COVID 19 safety measure, notarization of this document is temporarily suspended. On the last page of the application, fill out the affirmation, enter the date, and sign and print your name in the blanks provided. Complete address and phone number also required! If no phone, write "NONE." *****

2. ORDER ON APPLICATION FOR FREE PROCESS

A. Caption Only. Type or print legibly the caption as you did on the Application.

B. DO NOT WRITE ANYTHING ELSE. The judge will fill in the rest of the Order.

3. IF YOU ARE REPRESENTED BY AN ATTORNEY IN THIS CASE

Have your attorney fill out ATTORNEY'S AFFIDAVIT SUPPORTING INDIGENCY. If you are not represented by an attorney DO NOT submit this form.

4. SUBMIT TO JUDGE ASSIGNED TO FREE PROCESS APPLICATIONS: Attach these completed forms to the Complaint you wish to file, then take them to Judge _____ (ask the Clerk's Office or Self Help Center for the name of the Judge assigned to review Free Process papers for the month). Ask the judge's office when you might check back to see if the judge has reviewed your Application.

5. If your Free Process Application has been approved, you may file it with your Complaint in the Clerk's Office on the First Floor, Room 119 between the hours of 8:00 A.M. and 4:00 P.M.*, Monday - Friday. Be sure to carefully read your Free Process Order! NOTE: Free Process does not mean that your entire case is free! Even if the judge 'waives your filing fee, you might still be responsible to pay for service of process and other court fees. Although Free Process might include service fees by the sheriff within Bernalillo County, YOU are responsible for arranging for service. Other costs normally not covered by Free Process are listed at the bottom of the Order.

*Hours subject to change. Call 505-841-7438 to confirm hours

6. If the judge did not grant Free Process, you must pay the filing fee of \$132.00 cash.

**STATE OF NEW MEXICO
COUNTY OF BERNALILLO
SECOND JUDICIAL DISTRICT COURT**

_____,
Plaintiff

v.

No. _____

_____,
Defendant

ORDER ON APPLICATION FOR FREE PROCESS

THIS MATTER having come before the court on Plaintiff's application for free process and affidavit of indigency, and the court being otherwise advised in the premises,

FINDS that:

☐ the applicant receives public assistance and is, therefore, entitled to free process.

☐ the applicant's annual income does not exceed _____ percent of the federal poverty guidelines, and the applicant is, therefore, entitled to free process.

☐ the applicant's annual income exceeds _____ percent of the federal poverty guidelines, but the applicant is not reasonably able to pay fees or costs and is, therefore, entitled to free process.

☐ on the basis of the applicant's available funds or annual income, the applicant is not entitled to free process.

☐ the applicant is not entitled to free process for the forgoing reason(s):

THE COURT ORDERS that:

☐ the filing fee is waived.

☐ the filing fee is waived except for the \$_____ alternative dispute resolution (ADR) fee.

☐ the applicant is granted free service of process by the Sheriff in Bernalillo County, New Mexico for 1 2 3 4 5 or _____ summons(es), provided that the applicant first attempts service by certified mail pursuant to Rule 1-004 NMRA.

☐ the applicant is granted free service of process by the Sheriff in Bernalillo County, New Mexico of a temporary restraining order or _____.

☐ the applicant is to pay the filing fee on _____, 20

☐ interpretation services shall be provided to the applicant.

☐ free process is denied.

☐ Other:

Unless specifically granted above, this order of free process does not include the following costs: jury fees, certification fees, subpoena fees for witnesses, witness fees for hearings or trials, mailings, long distance charges, transcripts for appeals or record proper, duplication fees for audiotapes or compact discs, copy charges, publication fees, or facsimile services. Application for all other costs are to be made to the judge assigned to your case. If the applicant prevails in this law suit and collects money by judgment or settlement, the court is to be reimbursed for any waived costs. ***This order is subject to revision, modification or rescission by the judge assigned to your case.***

JUDGE – Second Judicial District Court

STATE OF NEW MEXICO
COUNTY OF BERNALILLO
SECOND JUDICIAL DISTRICT COURT

_____,
Plaintiff

v.

No. _____

_____,
Defendant

APPLICATION FOR FREE PROCESS AND AFFIDAVIT OF INDIGENCY

My marital status is: Single _____ Married _____ Divorced _____ Separated _____ Widowed _____

I request interpretation services: _____ yes _____ no (If yes, please describe what you need)

INFORMATION ABOUT MY FINANCES (check all that apply to you and fill in the blanks):

A. PUBLIC ASSISTANCE

_____ I do not receive public assistance. (If you check this blank, go directly to Section B
EMPLOYMENT/UNEMPLOYMENT).

_____ I currently receive the following public assistance in _____ County (please check all
applicable public assistance programs):

_____ Temporary Assistance for Needy Families (TANF)

_____ Food Stamps

_____ Medicaid

_____ General Assistance (GA)

_____ Supplemental Security Income (SSI)

_____ Social Security Disability Income (SSDI)

_____ Public Housing

_____ Disability Security Income (DSI)

_____ Department of Health Case Management Services (DHMS)

_____ Other (please describe _____)

B. EMPLOYMENT/UNEMPLOYMENT

_____ I am currently unemployed and have been unemployed for _____ months in the past year.
I am unemployed because _____.

_____ I receive unemployment benefits in the amount of \$ _____ per month.

_____ I have no income because I am unemployed.

_____ I am employed. I am paid \$ _____ per hour and work _____ hours per week.

My employer's name, address and phone number is:

_____ I am married, and my spouse is unemployed and has been unemployed for _____ months in the past year because _____
_____ My spouse receives unemployment benefits in the amount of \$ _____ per month.

_____ I am married, and my spouse is employed. My spouse is paid \$ _____ per hour and works _____ hours per week.

My spouse's employer's name, address and phone number is:

C. OTHER SOURCES OF INCOME (Check all that apply)

_____ I have income from another source not mentioned above.

_____ Child Support \$ _____
_____ Alimony \$ _____
_____ Investments \$ _____
_____ Community property from my spouse \$ _____
_____ Other _____ \$ _____

_____ I do not have any other sources of income.

_____ I am married, and my spouse has income from another source not mentioned above.

_____ Child Support \$ _____
_____ Alimony \$ _____
_____ Investments \$ _____
_____ Other _____ \$ _____
_____ Other _____ \$ _____

_____ I am married, and my spouse does not have any other sources of income.

_____ Another adult contributes to household income in the following amount: \$ _____.

D. OTHER ASSETS (Please list other assets owned by you or your spouse that can be turned into cash. Do not include money you have in retirement accounts):

Cash on hand	\$ _____
Bank accounts	\$ _____
Stocks/bonds	\$ _____
Income tax refund	\$ _____
Other assets (describe below):	\$ _____
_____	\$ _____
_____	\$ _____

IF YOU DO NOT HAVE ACCESS TO YOUR OWN OR YOUR SPOUSE'S INCOME OR ASSETS,
EXPLAIN WHY.

E. MONTHLY EXPENSES

House Payment/Rent	\$	_____
Utilities	\$	_____
Telephone	\$	_____
Groceries (after food stamps)	\$	_____
Car Payment(s)	\$	_____
Gasoline	\$	_____
Insurance	\$	_____
Child Care	\$	_____
Student and Consumer Loans	\$	_____
Court-ordered family support obligations	\$	_____
Other court-ordered payments	\$	_____
Medical expenses	\$	_____
Other _____	\$	_____

F. HOUSEHOLD

I live at _____,

and the head of the household is _____,

Other than myself, the other members of the household are:

<u>Name</u>	<u>Age</u>	<u>Employment</u>	<u>I Support</u>
_____	_____	_____	()
_____	_____	_____	()
_____	_____	_____	()
_____	_____	_____	()
_____	_____	_____	()

*This statement is made under oath. I hereby state that **the above** information regarding my financial condition is correct to the best of my knowledge. I hereby authorize the Court to obtain information from financial institutions, employers, relatives, the federal internal revenue service and other state agencies. If at any time the Court discovers that information in this application for free process was false, misleading, inaccurate, or incomplete at the time the application was submitted, the Court may require me to pay for any costs or fees that were waived under an order of free process that was granted based on the information in this application.*

I, _____, the (Petitioner/Respondent), affirm under penalty of perjury under the laws of the State of New Mexico that the preceding statements are true and correct.

Date: _____

Signature

Name (printed)

Address

Telephone number

4A-506. Nomination of kinship guardian(s).

STATE OF NEW MEXICO

COUNTY OF _____
_____ JUDICIAL DISTRICT

_____, Petitioner(s)

No. _____

IN THE MATTER OF THE KINSHIP GUARDIANSHIP OF

_____,¹ (a) Child(ren), and concerning
_____, Respondent(s).

NOMINATION OF KINSHIP GUARDIAN(S)

I, _____ (*name of minor child*), was born in the year
_____ and am _____ years old (*current age*).

I nominate and request the Court to appoint _____
(*name(s) of Petitioner(s)*) as my guardian(s).

I affirm under penalty of perjury under the laws of the State of New Mexico that the
statements in this document are true and correct.

Date

Signature of Minor Child

USE NOTE

1. Insert the initials of each child listed in the Petition To Appoint Kinship Guardian.

[Provisionally approved, effective August 15, 2003 until August 31, 2004; approved, effective
January 20, 2005; 4-983 recompiled and amended as 4A-506 by Supreme Court Order No. 16-
8300-020, effective for all pleadings and papers filed on or after December 31, 2016.]

4-984. Motion for appointment of temporary guardian.

[Section 40-10B-7 NMSA 1978]

STATE OF NEW MEXICO

COUNTY OF _____
_____ JUDICIAL DISTRICT

[Petitioner] [Petitioners]

v.

No. _____

Respondent
IN THE MATTER OF THE GUARDIANSHIP
OF _____

MOTION FOR APPOINTMENT OF TEMPORARY GUARDIAN

The [petitioner requests] [petitioners request] the court to enter an order appointing them as kinship guardians pending a final hearing on the Petition for Order Appointment Kinship Guardian.

A temporary guardianship is necessary because:

We have attempted to notify the respondent by the following methods:

Signature of person filing motion

Printed Name: _____

Address: _____

Telephone: _____

[Provisionally approved, effective August 15, 2003 until August 31, 2004; approved, effective January 20, 2005.]

4-987. Order appointing temporary kinship guardian.

[Section 40-10B-7 NMSA 1978]

STATE OF NEW MEXICO

COUNTY OF _____
_____ JUDICIAL DISTRICT

[Petitioner] [Petitioners]

v.

No. _____

Respondent
IN THE MATTER OF THE GUARDIANSHIP
OF _____

**ORDER APPOINTING TEMPORARY
KINSHIP GUARDIAN**

The court has reviewed the sworn petition for appointment of _____
[and _____] as kinship [guardian] [guardians] of the above minor child
and the [petitioner's] [petitioners'] motion to appoint a temporary kinship guardian.

The court having considered the petition and motion, FINDS that the court has
jurisdiction and that:

1. The [petitioner is] [petitioners are] _____ (state the
relationship) of the above named child.
2. The following extraordinary circumstances exist:

- _____

3. Appointment of the [petitioner] [petitioners] as temporary kinship [guardian] [guardians]
is necessary.

4. Other: _____

_____.

This order shall automatically terminate one hundred eighty (180) days after the date set forth
below or upon entry of an order on the Petition for Order Appointing Kinship Guardian,
whichever date is earlier.

IT IS SO ORDERED.

Date

District court judge

USE NOTE

This form may be used with Civil Forms 4-981 and 4-984 NMRA.

[Provisionally approved, effective August 15, 2003 until August 31, 2004; approved, effective January 20, 2005.]

4A-501. Petition to appoint kinship guardians.

STATE OF NEW MEXICO

COUNTY OF _____
_____ JUDICIAL DISTRICT

_____, Petitioner(s)

No. _____

IN THE MATTER OF THE KINSHIP GUARDIANSHIP OF

_____, ¹ (a) Child(ren), and concerning
_____, Respondent(s).

PETITION TO APPOINT KINSHIP GUARDIAN(S)²

Petitioner(s), ³ _____, request(s) the Court to grant an Order
Appointing Kinship Guardian(s) of the minor child(ren), _____.

The Court has jurisdiction of the parties and the subject matter of the cause of action.

A. INFORMATION ABOUT THE PETITIONER(S)³

1. Petitioner #1 Name and address:

2. Petitioner #2 Name and address:

3. Petitioner(s) are currently providing adequate care, maintenance, and supervision
for _____ (*names of minor
child(ren)*).

B. INFORMATION ABOUT THE CHILD(REN)⁴

1. Child's Name _____

a. Address _____

b. Place and year of birth
City _____
State _____
Year of birth _____

c. Are Petitioner(s) related to the child? _____ Yes _____ No

d. If yes, what is the relationship?

If no, describe Petitioner(s)'s connection with the child.

e. Is the child fourteen (14) years of age or older? _____ Yes _____ No
If yes, has the child stated that he/she wants the named Petitioner(s) as the
guardian(s)? _____ Yes⁵ _____ No

f. Is the child a Native American child?⁶ _____ Yes _____ No
If yes, what tribe is the child enrolled with or eligible to be enrolled with?

Have you contacted/informed the tribe of this Petition? _____ Yes
_____ No

If yes, who did you contact and how did you make contact?

Tribal contact information (address and phone number):

2. Child's Name _____

a. Address _____

b. Place and year of birth
City _____
State _____
Year of birth _____

c. Are Petitioner(s) related to the child? _____ Yes _____ No

d. If yes, what is the relationship?

If no, describe Petitioner(s)'s connection with the child.

e. Is the child fourteen (14) years of age or older? _____ Yes _____ No
If yes, has the child stated that he/she wants the named Petitioner(s) as the guardian(s)? _____ Yes⁵ _____ No

f. Is the child a Native American child?⁶ _____ Yes _____ No
If yes, what tribe is the child enrolled with or eligible to be enrolled with?

Have you contacted/informed the tribe of this Petition? _____ Yes
_____ No

If yes, who did you contact and how did you make contact?

Tribal contact information (address and phone number):

C. INFORMATION ABOUT CHILD'S PARENTS (RESPONDENTS)⁷

1. Respondent #1

a. _____ (*name of Respondent-parent*) is the parent of _____.

b. This Respondent-parent is _____ alive _____ deceased (*if deceased, provide proof of death*)

c. If alive, list address (*include physical street address, city, state, and zip code*):

_____.

d. Upon information and belief, (*complete only one choice below*)

- i. Respondent-parent _____ (name)
consents to the appointment of Petitioner(s) as Kinship
Guardian(s).⁸

Or

- ii. This legal parent is unable or unwilling to provide adequate care, maintenance, and supervision for the minor child(ren) named in this petition (*explain why you think this parent is unable or unwilling to provide care*):

2. Respondent #2

- a. _____ (name of Respondent-parent) is the parent
of _____.

- b. This Respondent-parent is _____ alive _____ deceased (*if deceased, provide proof of death*)

- c. If alive, list address (*include physical street address, city, state, and zip code*):

- d. Upon information and belief, (*complete only one choice below*)

- i. Respondent-parent _____ (name)
consents to the appointment of Petitioner(s) as Kinship
Guardian(s).⁸

Or

- ii. This legal parent is unable or unwilling to provide adequate care, maintenance, and supervision for the minor child(ren) named in this petition (*explain why you think this parent is unable or unwilling to provide care*):

D. FACTS REGARDING REQUEST FOR GUARDIANSHIP

1. Consent to Guardianship

a. Does Respondent #1 consent to the guardianship? ____ Yes ____ No

If no, has the child(ren) lived with Petitioner(s) without Respondent #1 in the home for ninety (90) days immediately prior to filing this petition?

____ Yes ____ No

b. Does Respondent #2 consent to the guardianship? ____ Yes ____ No

If no, has the child(ren) lived with Petitioner(s) without Respondent #2 in the home for 90 days immediately prior to filing this petition?

____ Yes ____ No

2. Describe how the child came to reside with you and why you want guardianship.

3. If a Respondent-parent is willing and able to parent the child(ren), are there extraordinary circumstances that justify granting the guardianship?⁹

____ Yes (*please explain*) ____ No

E. OTHER INFORMATION

1. Are there any other court cases involving these children? ____ Yes ____ No

If yes, please provide:

Case Number _____

Type of case _____

2. Is there current Children, Youth, and Families Department (CYFD) involvement?

____ Yes ____ No

a. If yes, what is the contact information for the CYFD case worker?

b. If yes, does CYFD consent to this guardianship?
_____ Yes _____ No _____ Don't know (*please explain*):

3. Is there a CYFD court case filed? _____ Yes _____ No (*If the children are in the custody of CYFD there is a CYFD court case filed*)

4. Do any other person(s) have or claim to have court ordered custody of the child(ren)?¹⁰ _____ Yes _____ No

If yes, the name(s) and address(es) are:

5. Do any other person(s) have court ordered visitation with the child(ren)?¹⁰
_____ Yes _____ No

If yes, the name(s) and address(es) are:

6. Petitioner(s) are requesting child support from Respondents.¹¹
_____ Yes _____ No

7. Petitioners accept the duties and responsibilities of guardianship, including providing for the care, maintenance, and supervision of the child(ren).

8. No guardian of the child(ren) is currently appointed pursuant to a provision of the Uniform Probate Code, NMSA 1978, Section 45-1-101.

9. It is in the best interests of the child(ren) that the Petitioner(s) be appointed as kinship guardian(s).

WHEREFORE, Petitioner(s) respectfully request(s) an Order Appointing Kinship Guardian(s) of the minor child(ren).

VERIFICATION

Petitioner #1:

I, _____, the Petitioner, affirm under penalty of perjury under the laws of the State of New Mexico that I am the Petitioner in the above-entitled cause; that I have read the Petition to Appoint Kinship Guardian(s); and that the contents of the petition are true and correct

to the best of my information and belief.

Date

Signature of Petitioner #1

Petitioner #2:

I, _____, the Petitioner, affirm under penalty of perjury under the laws of the State of New Mexico that I am the Petitioner in the above-entitled cause; that I have read the Petition to Appoint Kinship Guardian(s); and that the contents of the petition are true and correct to the best of my information and belief.

Date

Signature of Petitioner #2

USE NOTE

1. Enter the initials of each child. Each child should be listed in the petition under Section A.
2. Forms 4A-501 to 4A-513 NMRA are required to be used by persons representing themselves in kinship guardianship proceedings. Parties represented by an attorney may use other forms that serve the same purpose.
3. A petitioner must be an adult with whom the child has a significant bond. *See* NMSA 1978, Section 40-10B-5 for persons who may file as a petitioner under the Kinship Guardianship Act.
4. Fill out Section B for each child you are seeking guardianship over. If you are applying for guardianship of more than two children, repeat the sections as necessary for each child.
5. Any minor child fourteen (14) years of age or older must be served with a copy of this petition. If a child is fourteen (14) years of age or older and does not want the petitioner(s) to be the child's guardian, the Court will not appoint the petitioner(s). *See* NMSA 1978, § 40-10B-11(B). If the child is fourteen (14) years of age or older and consents to the petitioner(s) as guardian(s), please use the Nomination of Kinship Guardian Form, Form 4A-506 NMRA.
6. The Indian Child Welfare Act defines "Indian child" as "any unmarried person who is under age eighteen and is either (a) a member of an Indian tribe or (b) is eligible for membership in an Indian tribe and is the biological child of a member of an Indian tribe." *See* 25 U.S.C. § 1903(4).
7. If there are more than two parents for the children involved, repeat the information for each additional parent. Unless the child's parent is deceased or the parent's

parental rights have been terminated, use Form 4-206 NMRA for service of process on each parent named in the petition unless (a) the parent has waived service in writing; (b) the parent is deceased; or (c) the parent's rights as a parent have been terminated by a court order.

8. Form 4A-505 NMRA must be signed, notarized, and filed with the court for each respondent-parent who consents to the guardianship.

9. For example: Has the child lived with the petitioner(s) for so long that removing the child would cause anguish or harm to the child? Are there other reasons why the child should not be with the parent?

10. If there are other people claiming to have court-ordered custody or court ordered visitation of the child(ren), they must also be served with a copy of the petition and notice of the hearing.

11. Both parents may be ordered to pay child support. The petitioners' income should not be used for calculation of child support.

[Provisionally approved, effective August 15, 2003 until August 31, 2004; approved, effective January 20, 2005; 4-981 recompiled as amended as 4A-501 by Supreme Court Order No. 16-8300-020, effective for all pleadings and papers filed on or after December 31, 2016.]

**4-985. Parental consent to appointment of guardian and waiver of service of process
(paternity admitted).**

[Kinship Guardianship Act, Sections
40-10B-1 to 40-10B-14 NMSA 1978]

STATE OF NEW MEXICO

COUNTY OF _____
_____ JUDICIAL DISTRICT COURT

No. _____

_____, Petitioner

v.

_____, Respondent

IN THE MATTER OF THE GUARDIANSHIP
OF _____

**PARENTAL CONSENT TO APPOINTMENT OF GUARDIAN
AND WAIVER OF SERVICE OF PROCESS
(Paternity admitted)**

I, _____ (*name of parent*) upon my oath or affirmation state:

1. PARENTS OF THE CHILD

I, _____ (*list name*), am the [mother] [father]¹ of (*circle one*) of:

Name: _____ (*last name, first and middle*)

Date of birth: _____

Present address:

_____ (*street*)

_____ (*city*)

_____ (*state and zip code*)

**2. MY AGREEMENT TO GIVE THE KINSHIP GUARDIANS MY LEGAL RIGHTS
AND DUTIES AS A PARENT**

I understand that by signing this paper:

A. I am giving _____ (*name of petitioner or petitioners*)

(1) my legal rights and duties as a parent, except for the right to consent to adoption
and the duty to pay child support; and

(2) unless we have agreed upon visitation, the authority to make all decisions when
and if I may visit with my [child] [children].

B. If I want to terminate the kinship guardianship of the above child, I will have to prove that
the circumstances surrounding the signing of this paper have changed and that it is in the
best interest of my [child] [children] that the guardianship be terminated.

- C. I agree that it is in the best interest of the above child that the above named petitioners be named as kinship guardians for the above child.

3. **CHILD SUPPORT OBLIGATION**

[] I understand that the petitioners are not requesting child support in this proceeding.

[] I agree to pay child support as follows: _____.

I understand that the court may require me to pay child support and understand that the amount ordered can be changed by the court at any time in the future.

4. **CONSENT TO APPOINTMENT OF GUARDIAN**

I consent to the appointment of _____ (*list guardian's or guardians' names*) as [guardian] [guardians] of the above [child] [children].

5. **WAIVER OF RIGHT TO SERVICE OF SUMMONS AND PETITION**

I have copies of the Petition for Order Appointing Kinship Guardian filed in this case and waive service of the summons and additional pleadings.

I have not been given anything in exchange for signing this consent form.

6. **RIGHT NOT TO SIGN**

I UNDERSTAND THAT I DO NOT HAVE TO SIGN THIS CONSENT FORM AND THAT I HAVE THE RIGHT TO CONTEST THIS ACTION. I AM KNOWINGLY AND VOLUNTARILY SIGNING THIS FORM.

When I sign below, I am telling the judge that I have read this document and agree with everything in it. I state upon my oath or affirmation that this document and the statements in it are true and correct to the best of my information and belief.

7. **RIGHT TO WITHDRAW CONSENT**

I understand that I may withdraw this consent at any time before the court enters an order granting the petition for kinship guardianship by filing with the court a motion notifying the court of my withdrawal of consent.²

Respondent's (parent's) signature

Printed name

Address: _____

Telephone: _____

STATE OF NEW MEXICO)
) ss
COUNTY OF _____)

Acknowledged, subscribed and sworn to before me this _____ day of _____, _____
by _____, the petitioner.
My commission expires: _____

Notary Public

USE NOTE

1. This form should be used only if both respondents admit that they are the parents of the child. If paternity has not been established, Civil Forms 4A-331 and 4A-332 NMRA may be used to establish paternity. It is not necessary to establish paternity for the court to enter a kinship guardianship order, however, child support may not be ordered to be paid by a respondent who has been named as the father of the child unless paternity has been established.

2. If a respondent wishes to withdraw consent prior to the final court order appointing the petitioner as kinship guardian, Form 4-991 NMRA may be used.

[Provisionally approved, effective August 15, 2003 until August 31, 2004; approved, effective January 20, 2005.]

4A-502. Motion for service by publication.

STATE OF NEW MEXICO

COUNTY OF _____
_____ JUDICIAL DISTRICT

_____, Petitioner(s)

No. _____

IN THE MATTER OF THE KINSHIP GUARDIANSHIP OF

_____,¹ (a) Child(ren), and concerning
_____, Respondent(s).

MOTION FOR SERVICE BY PUBLICATION²

Petitioner(s), _____ (*name(s) of Petitioner(s)*), state(s) that after diligent inquiry and search efforts, Petitioner(s) have been unable to serve process on _____ (*name of Respondent*), and the following diligent efforts were made to locate and serve the Respondent with a summons and petition:

(*Check each method of service attempted and complete applicable blank spaces.*)³

- ☐ Personal service;
☐ Service at Respondent's last known residential address by _____ (*name of person attempting service*);
☐ Service by mail or courier service under Paragraph F of Rule 1-004 NMRA;
☐ Service at Respondent's last known business address;
☐ Service at the address listed at the motor vehicle division for Respondent's driver's license;
☐ Service at the address listed in the last telephone directory listing for the following city or county (*list cities and counties*): _____;
☐ A search of the records of the following courts (*list courts*): _____;
_____;
☐ Contacted the post office for the zip code of the last known address of Respondent and there was no forwarding address;
☐ Other (*describe other attempts to locate and serve Respondent, including searches using the internet, Facebook, or other social media*): _____;
_____;

WHEREFORE, Petitioner(s) ask(s) the Court to permit service upon Respondent by publication of the attached Notice of Pendency of Action.⁴

Submitted by,

Signature

Printed Name

Address

Phone number

VERIFICATION

I, _____, the Petitioner, affirm under penalty of perjury under the laws of the State of New Mexico that I am the Petitioner in the above-entitled cause; that I have read the motion for service by publication; and that the contents of the motion are true and correct to the best of my information and belief.

Date: _____

Signature of Petitioner

USE NOTE

1. Enter the initials of each child listed in the Petition To Appoint Kinship Guardian(s).
2. You need to try to find and serve the respondent(s) with the petition and other documents you filed in the kinship guardianship case. If you are unable to find the respondent, you may want to consider service by publication in a newspaper. If there is more than one respondent that you need to serve by publication (for example the mother and the father of the child), you need to file one motion for each respondent. The information you provide about trying to locate the respondent in the motion is for each individual respondent. If the court allows you to serve by publication, you may use only one Notice of Pendency of Action and include all of the respondents in the same document.
3. Check all of the boxes that apply. You need to tell the court about all of the efforts you made to find and serve the respondent. Be prepared to show the court your efforts to search records to find the respondent, including, for example, a letter from the postmaster, any court docket printouts, or any returned mail.
4. Complete and attach a Notice of Pendency of Action, Form 4A-503 NMRA.

[Adopted by Supreme Court Order No. 16-8300-020, effective for all pleadings and papers filed on or after December 31, 2016.]

4A-504. Order for service of process by publication in a newspaper.

STATE OF NEW MEXICO

COUNTY OF _____
_____ JUDICIAL DISTRICT

_____, Petitioner(s)

No. _____

IN THE MATTER OF THE KINSHIP GUARDIANSHIP OF

_____,¹ (a) Child(ren), and concerning
_____, Respondent(s).

**ORDER FOR SERVICE OF PROCESS
BY PUBLICATION IN A NEWSPAPER**

Petitioner(s) filed a motion requesting that the Court approve service of process upon _____ (*name of each Respondent to be served*) by publication in a newspaper of general circulation.

The Court FINDS that Petitioner has made diligent efforts to make personal service, but has not been able to complete service of process. The last known address of _____ (*name of Respondent to be served*) is _____ (*Respondent's last known address*).

The Court further FINDS that the newspaper of general circulation in this county is (*name of newspaper*) _____, and that

1. ☐ this newspaper is most likely to give Respondent notice of the pendency of the action.

OR

2. ☐ in the county of _____, State of _____, a newspaper most likely to give notice of the pendency of this proceeding to the person to be served is (*name of newspaper*) _____.

THEREFORE, IT IS HEREBY ORDERED that Petitioner serve process on _____ (*name of Respondent*) by publication once a week for three consecutive weeks in the (*name of newspaper*) _____

☐ and once a week for three consecutive weeks in (*name of newspaper*) _____

_____ in _____ County.

Petitioner shall file proof of service with a copy of the Affidavit of Publication when service has been completed.

Dated this _____ day of _____, 20____

District Judge

USE NOTE

1. Enter initials of each child listed in the Petition To Appoint Kinship Guardian.

[Approved by Supreme Court Order No. 16-8300-020, effective for all pleadings and papers filed on or after December 31, 2016; as amended by Supreme Court Order No. 17-8300-017, effective for all pleadings and papers filed on or after December 31, 2017.]

4A-503. Notice of pendency of action.¹

STATE OF NEW MEXICO

COUNTY OF _____
_____ JUDICIAL DISTRICT

_____, Petitioner(s)

No. _____

IN THE MATTER OF THE KINSHIP GUARDIANSHIP OF

_____,² (a) Child(ren), and concerning
_____, Respondent(s).

NOTICE OF PENDENCY OF ACTION

STATE OF NEW MEXICO to _____,³ Respondent(s).

Greetings:

You are hereby notified that _____,⁴ Petitioner(s), filed a
Petition To Appoint Kinship Guardian(s) for _____⁵ against you in
the above entitled Court and cause.

Unless you enter your appearance and written response in said cause on or before
_____ (date),⁶ a judgment by default will be entered against you.

Name and Address of Petitioner or Petitioner's Attorney: _____

USE NOTE

1. This form must be filled out and attached to Form 4A-502 NMRA, Motion for Service by Publication.

2. Enter initials of each child listed in the Petition To Appoint Kinship Guardian.

3. Enter name of the respondent. If there is more than one respondent and all respondents are located in the same area (*i.e.*, will be notified by the same newspaper), you may list all of the Respondents' names. If the respondents are in different areas (*e.g.*, New Mexico and Texas), then you must fill out a separate Notice of Pendency of Action for each respondent.

4. Enter names of all petitioners.

5. Enter name and year of birth for each minor child that is named in the petition.

6. Enter the date that is thirty (30) days from the first date the notice will be published in the newspaper.

[Adopted by Supreme Court Order No.16-8300-020, effective for all pleadings and papers filed on or after December 31, 2016.]

4A-511. Order appointing kinship guardian(s).

STATE OF NEW MEXICO

COUNTY OF _____
_____ JUDICIAL DISTRICT

_____, Petitioner(s)

No. _____

IN THE MATTER OF THE KINSHIP GUARDIANSHIP OF

_____, ¹ (a) Child(ren), and concerning
_____, Respondent(s).

**ORDER APPOINTING
KINSHIP GUARDIAN(S)**

THIS MATTER came before the Court on the Petition To Appoint Kinship Guardian(s) for the minor child(ren). Petitioner(s) _____ (*name(s) of Petitioner(s)*) appeared pro se. Respondent 1, _____ (*name of Respondent 1*), [] appeared pro se [] did not appear. Respondent 2, _____ (*name of Respondent 2*), [] appeared Pro Se [] did not appear. The Court having reviewed the petition, heard testimony, and being sufficiently advised FINDS:

1. The Court has jurisdiction under the Kinship Guardianship Act, Sections 40-10B-1 to -15 NMSA 1978.

2. All necessary parties have been given adequate notice of the proceedings.

3. The name and age of the minor child(ren) are as follows:

Child's name	Age
_____	_____
_____	_____
_____	_____

4. Petitioner(s) is/are the minor child(ren)'s _____ (*relationship*) and is/are proper person(s) to be Kinship Guardian(s) under the Kinship Guardianship Act.

5. (*Select all that apply*)

[] **Respondent 1** is the minor child(ren)'s legal parent and

[] consents to the appointment of Petitioner(s) as the guardian(s);

or

☐ the minor child(ren) has/have resided with Petitioner(s) for at least ninety (90) days prior to filing the petition to appoint kinship guardian(s), and Respondent 1 was not residing in the home and is unable or unwilling to provide appropriate care, maintenance, and supervision for the minor child(ren).

☐ **Respondent 2** is the minor child(ren)'s legal parent and

☐ consents to the appointment of Petitioner(s) as the guardian(s);

or

☐ the minor child(ren) has/have resided with Petitioner(s) for at least ninety (90) days prior to filing the petition to appoint kinship guardian(s), and Respondent 2 was not residing in the home and is unable or unwilling to provide appropriate care, maintenance, and supervision for the minor child(ren).

OR

☐ There are **extraordinary circumstances** in this matter as follows:

6. Petitioner(s) is/are providing appropriate care, maintenance, and supervision for the minor child(ren).

7. The Indian Child Welfare Act, 25 U.S.C. §§ 1901 to 1963,

☐ does not apply to this matter or

☐ does apply to this matter.

8. The requirements of Section 40-10B-8(B) NMSA 1978 have been proven by clear and convincing evidence.

9. It is in the minor child(ren)'s best interests that Petitioner(s) be appointed as the minor child(ren)'s kinship guardian(s).

10. Other: _____

WHEREFORE IT IS ORDERED:

1. Petitioner(s) is/are appointed as the kinship guardian(s) of the minor child(ren).

2. The appointment of kinship guardianship shall remain in effect until the minor child(ren) reach(es) the age of eighteen (18) or until further order of the court, whichever comes first.

3. Under Section 40-10B-13(A) NMSA 1978, Petitioner(s) has/have the legal rights and duties of a parent except the right to consent to the adoption of the minor child(ren).

4. Respondents' parental rights pertaining to the minor child(ren) are hereby suspended until further Order of the Court.

5. Visitation shall be as follows:

☐ Pursuant to the Kinship Guardianship Act, NMSA 1978 §40-10B-13(B), visitation between the legal parents and the minor child(ren), or any other persons shall be at the discretion of the guardian(s);

or

☐ Visitation shall be as follows: _____

6. Child Support shall be as follows:

☐ No child support is ordered because Petitioner(s) waive a request for child support at this time, but reserve their right to request child support at a later time;

or

☐ Child support is ordered as follows: _____

7. Other: _____

District Court Judge

Signature of Petitioner 1

Printed Name

Address

Telephone Number

Signature of Petitioner 2

Printed Name

Address

Telephone Number

USE NOTE

1. Insert the initials of each child listed in the Petition To Appoint Kinship Guardian(s).
[Provisionally approved, effective August 15, 2003 until August 31, 2004; approved, effective January 20, 2005; 4-988 recompiled and amended as 4A-511 by Supreme Court Order No. 16-8300-020, effective for all pleadings and papers filed on or after December 31, 2016.]