

8. Guardianship Law and Practice

- a. Statute Citation: Guardianship
- b. Guardianship Primer
- c. Guardianship Case Law Summaries
- d. Adoption and Guardianship Subsidy Temporary Amendment Act of 2010
- e. Guardianship Administrative Order

Please see DC Code
§§ 16-2381 - 16-2399 and
D.C. Act 18-478, the Adoption Reform Amendment Act
of 2010 (which amends the following sections of the
guardianship statute: §§16-2390, 16-2399). The rules
governing abuse and neglect proceedings and the
general family court rules are available here:

<http://www.dcappeals.gov/internet/legal/dcscrules.jsf>

(Note there are no separate rules for guardianship
matters.)

Guardianship – A Primer

I. Background

In 2000, legislation was enacted in D.C. that permits the court to grant guardianship of adjudicated neglected children to non-parent caregivers.¹ This legislation created a new custodial status that had not existed previously.²

What is guardianship and why was it created?

The purpose of the guardianship law is to create another “permanency option” for caregivers of adjudicated neglected children in addition to custody and adoption.

A guardianship order, like an order of custody or adoption, creates a long-term custodial status that vests a caretaker with continuing legal authority over a child without the periodic review, oversight and renewal by the court and D.C. Child and Family Services Agency (CFSA) that is required by law when a caregiver is given time-limited custody through a disposition order in a neglect case.³

Why was an alternative to the existing long-term options of adoption and custody created? Not all caregivers, even those who have cared for children for many years, are comfortable with adoption, particularly when the caregiver is a relative. But a custody order may not be a viable option for caregivers who are foster parents, because they would no longer be able to receive foster care maintenance payments if they obtained long-term custody through a custody proceeding, the neglect case closed, and the child no longer was in foster care status.⁴

¹ D.C. Law 13-273, “Foster Children’s Guardianship Act of 2000,” D.C. Code §16-2381 *et seq.*

² Although there is another statute, D.C. Code §21-101 *et seq.*, that empowers the court to appoint guardians for children generally, such cases are rarely brought. Those proceedings are heard in the Probate Division of the court and are utilized for the most part for orphans and the management of their estates.

³ In a neglect case, the court can only grant custody through a “disposition order” for one or two years, subject to extensions of one year at a time until the child is 21. D.C. Code §§16-2320, 2322.

⁴ Children in foster care are in the legal custody of the D. C. Child and Family Services Agency (“committed” to CFSA). Children can be placed in foster care only through an order in an open neglect case in D.C. Superior Court.

Guardianship grants long-term custodial authority to the caregiver without permanently terminating the birth parents' rights. The indefinite duration of the guardianship order obviates the need for an active neglect case as the means for vesting custody in a caretaker. In addition, if the child is eligible, the guardian can receive "guardianship subsidy" payments that are similar to foster care payments (see below).

How does guardianship differ from custody and adoption?

Rights

Guardianship differs from adoption in that it does not result in a permanent severance of the birth parents' rights. It more closely resembles a custody proceeding, in that custodial rights are allocated between the caregiver and the parent, with the guardian routinely having sole or primary legal and physical custody.⁵ Like a custody proceeding, guardianship vests custody in the caretaker for an indefinite period of time and is subject to modification upon order of the court.⁶ Adoption, on the other hand, permanently terminates the birth parents' rights and creates a new parent-child relationship between the child and the adoptive parent. The court does not have on-going authority to modify an adoption decree.⁷

Another distinction is that, unlike custody and adoption, if the guardianship is terminated (see below), the neglect case can usually be reopened, and the court will resume its post-dispositional authority in the neglect case.

⁵ See D.C. Code §16-914 for definitions of legal and physical custody. *See also Ysla v. Lopez*, 684 A.2d 775 (D.C. 1996). The scope of guardianship is addressed in D.C. Code §16-2389.

⁶ The terms "permanent custody" and "permanent guardianship" are misleading. Custody and guardianship are always modifiable subject to the applicable legal standards.

⁷ As a result of the Adoption Reform Amendment Act of 2010, D.C. Law 18-0232, birth parents and adoptive parents can now enter into judicially enforceable and modifiable post-adoption contact agreements. Other than that, adoptions are non-modifiable.

Financial support

There are six main government benefits programs through which children not in foster care status might be eligible for cash assistance.⁸ They are:

Temporary Assistance for Needy Children (TANF): TANF is an income-based program available to children in the care of relatives who are not receiving parental financial support. In addition, a child who is eligible for TANF will also be eligible for Medicaid.

General Assistance for Children: A program available only to D.C. residents, GAC is similar to TANF but does not require that the caretaker be a relative.

Supplemental Security Income (SSI): An income-based program for children with qualifying physical, mental or emotional disabilities. A child who is eligible for SSI will also be eligible for Medicaid.

Grandparent Caregiver subsidy: An income-based program for grandparent, great grandparent and great aunt and uncle D.C. resident caregivers. No custody order is required but proof of custodial relationship and application for TANF benefits are required. The caregiver must enter into a subsidy agreement with the Child and Family Services Agency.

Adoption subsidy⁹: The main, although not exclusive, benefits are a monthly cash payment (comparable to the foster care payment) and Medicaid. Most children in foster care will be eligible for adoption subsidy. In order for the child to receive subsidy, the caregiver must be a licensed foster parent prior to the adoption and enter into a subsidy agreement with the Child and Family Services Agency.

Guardianship subsidy: Modeled in part on the adoption subsidy program, guardianship subsidy provides a monthly cash payment comparable to the foster care payment. In most situations, the child will also be eligible for Medicaid. Most children in foster care will be eligible for guardianship subsidy. In order for the child to receive subsidy, the caregiver must be a licensed foster parent prior to

⁸ These are only brief general summaries of the programs. Attorneys are cautioned to fully investigate the nature of the benefits and the eligibility requirements. In addition, as the descriptions suggest, eligibility for some of these programs may be mutually exclusive.

⁹ Adoption subsidy is a program that D.C. is required to offer pursuant to the requirements of Title IV-E of the Adoption Assistance and Child Welfare Act of 1980 (P.L. 96-272).⁹ See also D.C. Code §4-301.

the guardianship and enter into a subsidy agreement with the Child and Family Services Agency. (See below for more information on guardianship subsidy.)

Thus, probably the most important difference for most caretakers between guardianship and custody is not a legal one but rather a financial one: the “guardianship subsidy” that is available to most caregivers who are awarded guardianship of the child.

Keep in mind that there may be caregivers and children for whom adoption, custody and guardianship all have drawbacks and whose interests would best be served by keeping the neglect case open (and keeping the child in foster care status). It is usually advisable to discuss all the options with a caregiver and, in particular, to explore the financial consequences of each option (what services will and will not continue to be paid for). However, guardianship may offer some caretakers an appropriate option of a long-term non-adoptive custodial arrangement with some financial support but without the intrusiveness and constraints that may result from an open neglect court case and from the child being in the foster care system.

II. Procedure and Legal Standard

Guardianship proceedings are governed by D.C. Code §16-2381 *et seq.* In addition, the court has issued Administrative Order 16-02 (February 5, 2016) at <http://www.dccourts.gov/internet/documents/16-02-Guardianship-Procedures-Supersedes-02-05-Feb-5-2016.pdf> concerning procedure in guardianship proceedings.¹⁰

The language of the guardianship statute and the procedure for obtaining guardianship are modeled in part on the termination of parental rights statute, D.C. Code §16-2351 *et seq.*, and in part on the adoption statute, D.C. Code §16-301 *et seq.*

The guardianship statute provides the following:

- A guardianship proceeding is initiated by the filing of a motion in the neglect case. The motion can be filed by the proposed guardian, the District of Columbia or the child’s guardian *ad litem*.¹¹

¹⁰ Administrative Order 16-02 replaces Administrative Order 02-05. There are currently no court rules specifically governing guardianship proceedings. While the neglect rules may apply because guardianship proceedings are motions in neglect cases, neglect and guardianship proceedings are sufficiently different that not all the rules may be relevant. The guardianship statute had not been enacted at the time that the neglect rules were adopted.

¹¹ The statute uses the term “legal representative.” In interpreting the same language in the termination of parental rights statute, the Court of Appeals held that it includes the court-

- The motion can be filed at any time after a neglect petition has been filed, but a guardianship order cannot be entered unless the child has been adjudicated neglected and has been living with the proposed guardian for at least six months.

Guardianship motions are filed through the Family Court Central Intake Center.¹² A separate guardianship case file will be created and will be assigned a case number that parallels the neglect case (e.g., 2009 NEG 1246, 2009 GDN 1246).

- Parties specified by statute are the parents, the child, the proposed guardian, the agency having legal custody of the child, and the District of Columbia.
- Personal service of the motion and a summons is required or, if personal service cannot be effected, the court can authorize constructive service.

Summonses for guardianship cases can be obtained in the Neglect Clerk's office.

At this time, the "Diligent Search Unit" (DSU) of CFSA will conduct a search for the birth parents and either serve them and file an affidavit of service, or file an "affidavit of efforts" which can be used in support of a motion for constructive service.

- After an adjudicatory hearing, the court may enter a guardianship order if it finds that guardianship is in the child's best interests, that adoption or return to the parent is not appropriate, and that the guardian is suitable and able to provide a safe and permanent home. At the adjudicatory hearing or trial, the prospective guardian has the burden of proof by a preponderance of the evidence. The court must consider whether the parents and child (if 14 years-old or older) consent to the guardianship.

The general practice is that the judge or magistrate judge who presides over the neglect case will preside over the guardianship trial.

appointed guardian *ad litem*. *In re L.H.*, 634 A.2d 1230 (D.C. 1993). It is relatively rare for the child's guardian *ad litem* to initiate a guardianship proceeding, more commonly the caretaker will secure legal counsel and file on her own.

¹² After filing of the initial motion for guardianship at the Court's Central Intake Center, typically all other filings are filed electronically through CasefileXpress.

- The guardian may not relocate over 100 miles from the place of residence at the time the order was entered without filing a notice with the court that is personally served on all parties fifteen business days prior to the relocation.
- A guardianship order lasts indefinitely unless and until modified or terminated by the court. The court retains jurisdiction until the child is age 18 or, if the child consents, until age 21.
- Guardianships can be modified or terminated. There is also a procedure for designating successor guardians.
- Upon entry of the guardianship order and during the period of time the order remains in effect, the requirements of D.C. Code §§16-2322 and 2323 are suspended. Upon the entry of an order terminating the guardianship, the court shall hold a hearing pursuant to §16-2323.¹³

III. Guardianship Subsidy

The guardianship statute allows the District to make subsidy payments to guardians, subject to the availability of appropriated funds.¹⁴ The eligibility requirements set forth in the statute are (1) the child must be adjudicated neglected, (2) the child must be committed to the legal custody of CFSA (*i.e.* in foster care), and (3) a subsidy payment agreement must be entered into by CFSA and the guardian. Originally, guardianship subsidy was only available if the child’s foster parents were kinship caregivers as defined (relatives or “godparents”). However, as a result of the “Adoption Reform Amendment Act of 2010,” D.C. Law no. 18-0230, unrelated foster parents are now also able to receive guardianship subsidy. D.C. Code § 16-2399(b).

¹³ The oversight mechanisms of the neglect case (counsel, social worker visits, reports, periodic review hearings) are thus suspended for the period of time the guardianship order is in effect. In essence, this allows the neglect case to become dormant subject to reactivation should the guardianship order be terminated. The statute also allows the neglect case to be “closed.” This distinction seems to be blurred in practice, although they are two separate options in the statute.

¹⁴ D.C. Code §16-2399 as amended by D.C. Act 18-478, the Adoption Reform Amendment Act of 2010. The guardianship subsidy program was originally a D.C.-funded program loosely based on the adoption subsidy program. Adoption subsidy is a program that must be offered by states that participate (as does the District) in the federal funding scheme offered through the Adoption Assistance and Child Welfare Act of 1980 (P.L. 96-272) (also known as Title IV-E). (D.C. Code §4-301 also provides that the District shall have a subsidy program.) Federal financial participation may also now be available for some guardianship subsidies.

Guardianship subsidy regulations were promulgated in 2001 and have not been updated since then (thus the regulations are inconsistent with the law). 29 DCMR 6100 (D.C. Register, November 23, 2001). The regulations require that:

- the guardian must have been the kinship caregiver (defined in the regulations as a foster parent caring for a kin foster child) for at least six months immediately preceding the application for subsidy; however, this provision of the regulations will have been superseded by the Adoption Reform Amendment Act, *supra*;
- the child must be adjudicated neglected and in the legal custody of CFSA (*i.e.* in foster care);
- the child must be either a member of a sibling group, difficult to place for adoption, at least two years old, or would likely not be placed in a permanent placement outside of the applicant's family;
- CFSA has determined that the permanency plan of legal guardianship is in the child's best interest;
- the guardian has a financial need for guardianship subsidy;¹⁵
- the guardian shall enter into a subsidy agreement with CFSA.

Subsidy payments can be time-limited or can continue indefinitely until the child's 21st birthday.¹⁶ Typically, subsidy agreements should provide for subsidy until the child is 21.

Subsidy Benefits

¹⁵ According to the subsidy regulations, guardians with an income from \$0 - \$108,188 will receive the maximum subsidy rate. D.C. Mun. Regs. Tit. 29, § 6103.3. Guardians with adjusted gross income over \$108,188 will receive a reduced subsidy rate.

¹⁶ This is another change resulting from the Adoption Amendment Reform Act, *supra*. Previously, guardianship subsidies could only continue until age 18. As of now, the regulations have not been changed to conform with the statute, but CFSA offers subsidy agreements that provide that payments will be made until the child is 21.

Monthly Payment

The core benefit of guardianship subsidy is a monthly cash payment. Pursuant to the D.C. subsidy regulations, the subsidy amount is based on the foster care payment rate (a level system based on the age and needs of the child) and the income of the applicant.¹⁷

The subsidy regulations set forth a rate schedule. However, the schedule in the regulations is not actually what is currently used by CFSA in determining the amount of guardianship subsidy. First, CFSA has stated (in spring 2011) that it will no longer consider the guardian's income in determining the amount of subsidy. In other words, there will no longer be a means test and the amount of subsidy will be based only on the child's age and needs classification.

Second, the rates in the regulations are not currently followed for either foster care payments or for guardianship subsidy. CFSA reviews foster care rates annually and typically increases them every year (a small cost of living adjustment), but the guardianship subsidy regulations may not be updated accordingly. In practice, the subsidy amount offered by CFSA will be based on the foster care rate that the foster parent is currently receiving, even if the subsidy regulations have not been updated to reflect the current rates.¹⁸ In addition, in practice, if foster care rates increase after the agreement is signed, CFSA will typically increase the subsidy as well.

Medicaid

Originally, Medicaid was not a part of guardianship subsidy. Once the guardianship order was entered and the child was no longer in foster care, the guardian would have to apply for Medicaid for the child in the state of residence, and eligibility would be determined. Typically, a child would be eligible for Medicaid because the guardian's income would not be counted in determining the child's eligibility.¹⁹

¹⁷ D.C. Mun. Regs. Tit. 29, § 6103.03 (2001).

¹⁸ The foster care and guardianship subsidy rate schedule provides for four possible levels (and two age categories of under-12, and 12-and-over). However, some foster parents receive a rate higher than the "multi-handicapped" (level 4) rate. Typically, these are foster parents who are licensed and monitored by private foster care agencies that contract with CFSA. At present, CFSA's position generally is that it will not offer this higher rate (sometimes known as a "therapeutic" rate) for either guardianship subsidy or adoption subsidy however in recent years counsel for caregivers have been able to secure negotiated rates off the scale

¹⁹ The regulations provide that the guardianship subsidy agreement shall include "a statement as to whether District of Columbia Medicaid shall be provided." However, once the child was out of

However, CFSA had a practice of automatically continuing children on D.C. Medicaid even after the entry of the guardianship order, without the child having to apply and establish eligibility, and regardless of the state of residence.

With the passage in 2008 of the federal Fostering Connections to Success and Increasing Adoptions Act (P.L. 110-351), a federal child welfare funding statute, Medicaid is available automatically for children who meet the Title IV-E eligibility requirements (which most foster children do) and who are with kinship guardians. For other children, Medicaid will have to be applied for and eligibility determined independently, unless CFSA continues its practice of keeping children on D.C. Medicaid.

Non-recurring Costs

As a result of the Fostering Connections to Success and Increasing Adoptions Act, *supra*, guardianship subsidy for Title IV-E-eligible children, if it is a kinship guardianship, can include \$2,000 for one-time reasonable and necessary non-recurring costs associated with securing guardianship.

the foster care system, D.C. Medicaid should only have been available to D.C. residents and only if the child applied and was found eligible under the laws and regulations governing the Medicaid program. The caregivers of children residing in other states, such as Maryland, would likewise have to apply for Medicaid in the state of residence and have the child's eligibility for the Medicaid program in that state determined. As indicated in the text above, children would typically be eligible because the guardian's income was not counted in determining eligibility.

Disclaimer

The following summaries were prepared by the Counsel for Child Abuse and Neglect (CCAN) Office and are meant to be used as a starting place for legal research. Each case summary reflects an interpretation of the case and is not a definitive statement of the law. Attorneys should read the entire case and not rely on the summary. The summaries are not guaranteed to be a complete compilation of all relevant case law.

Guardianship Cases Decided by the Court of Appeals

In re C.B., 983 A.2d 1012 (D.C. 2009)

Right to examine and cross examine witnesses in adjudicatory guardianship hearing

Mother whose daughter was adjudicated neglected challenges order awarding guardianship of her daughter to aunt and uncle. Mother objected to magistrate judge not reporting the full contents of her interview with the child to the parties and not allowing parties to examine and cross examine aunt, uncle, and therapist regarding information from child's interview with m.j. "Where a witness cannot be examined, the search for truth is severely impaired." "...interrogation by the judge is not a sufficient substitute for cross-examination by counsel." Case remanded to allow parties to examine and cross examine the three witnesses only examined by the judge.

In re A.G., 900 A.2d 677 (DC 2006).

Burden of proof for permanent guardianship, child's opinion, terms of visitation.

- (1) Father opposed permanent guardianship and argued that Foster Children's Guardianship Act, D.C. Code § 16-2381 et. seq., violated due process requirement of Constitution by requiring only a "preponderance of the evidence" standard for permanent guardianship rather than the "clear and convincing evidence" standard required for TPR. Court of appeals affirmed trial court holding that "preponderance of the evidence" standard was sufficient for permanent guardianship because the parent still retained significant rights regarding the child, including the right to move to terminate the guardianship at any time in the child's best interest.
- (2) Trial court did not err in awarding permanent guardianship without interviewing the child.
- (3) Trial court did not violate father's constitutional right to maintain a relationship with his child when it left visitation decisions to the discretion of guardians.

In re D.B., 879 A.2d 682 (D.C. 2005)

Deadline for appealing magistrate judge's order; limits on visitation in guardianship order affirmed

Mother appealed from an order denying her motion for review of a magistrate judge's guardianship order. The trial court's order denied her appeal as untimely and upheld the guardianship order. The court ruled that mother's appeal was timely under Super. Ct. Gen. Fam. R. D(e), the rule regarding magistrate judge appeals, and Super Ct. Civ. R. (6)(e), the rule adding a three day extension, excluding weekends and holidays, to time deadlines following notice of a judgment provided by mail. Case affirmed trial court's limits on visitation in guardianship order.

AN ACT

*Codification
District of
Columbia
Official Code*

2001 Edition

**2010 Fall
Supp.**

**West Group
Publisher**

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

To amend, on a temporary basis, An act to provide for the care of dependent children in the District of Columbia and to create a board of children’s guardians to extend the adoption subsidy for a child from 18 years of age to 21 years of age; and to amend Chapter 23 of Title 16 of the District of Columbia Official Code to extend the guardianship subsidy for a child from 18 years of age to 21 years of age, and to clarify that a child who exits foster care to a guardianship or an adoption may not reenter foster care.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the "Adoption and Guardianship Subsidy Temporary Amendment Act of 2010".

Sec. 2. Section 3(e) of An act to provide for the care of dependent children in the District of Columbia and to create a board of children’s guardians, approved July 26, 1892 (27 Stat. 269; D.C. Official Code § 4-301(e)), is amended as follows:

**Note,
§ 4-301**

(a) Designate the existing text as paragraph (1).

(b) The newly designated paragraph (1) is amended by striking the phrase “Eligibility for payments” and inserting the phrase “Except as provided in paragraph (2) of this subsection, eligibility for payments” in its place.

(c) A new paragraph (2) is added to read as follows:

“(2) For adoptions that are finalized on or after the effective date of the Adoption and Guardianship Subsidy Emergency Amendment Act of 2010, passed on emergency basis on April 20, 2010 (Enrolled version of Bill 18-759), eligibility for payments shall continue until the child reaches 21 years of age.”.

Sec. 3. Chapter 23 of Title 16 of the District of Columbia Official Code is amended as follows:

(a) Section 16-2390 is amended to read as follows:

"§ 16-2390. Jurisdiction.

**Note,
§ 16-2390**

“(a) Subject to subsection (b) of this section, the court shall retain jurisdiction to enforce, modify, or terminate a guardianship order until a child reaches 18 years of age; provided, that the court may retain jurisdiction until the child reaches 21 years of age if the child consents and the court finds it is in the best interest of the child.

“(b) A child who exits foster care to guardianship or adoption may not reenter

ENROLLED ORIGINAL

foster care after age 18.”.

(b) Section 16-2399 is amended as follows:

Note,
§ 16-2399

(1) Subsection (b) is amended as follows:

(A) Paragraph (2) is amended by adding the word “and” at the end.

(B) Paragraph (3) is repealed.

(2) Subsection (d) is amended as follows:

(A) Designate the existing text as paragraph (1).

(B) The newly designated paragraph (1) is amended by striking the phrase “Eligibility for subsidy” and inserting the phrase “Except as provided in paragraph (2) of this subsection, eligibility for subsidy” in its place.

(C) A new paragraph (2) is added to read as follows:

“(2) For guardianships that are finalized on or after the effective date of the Adoption and Guardianship Subsidy Emergency Amendment Act of 2010, passed on emergency basis on April 20, 2010 (Enrolled version of Bill 18-759), eligibility for subsidy payments under this section may continue during the period of the guardianship order until the child reaches 21 years of age.”.

Sec. 4. Fiscal impact statement.

The Council adopts the fiscal impact statement of the Chief Financial Officer as the fiscal impact statement required by section 602(c)(3) of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 813; D.C. Official Code § 1-206.02(c)(3)).

Sec. 5. Effective date.

(a) This act shall take effect following approval by the Mayor (or in the event of veto by the Mayor, action by the Council to override the veto), a 30-day period of Congressional review as provided in section 602(c)(1) of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 813; D.C. Official Code § 1-206.02(c)(1)), and publication in the District of Columbia Register.

(b) This act shall expire after 225 days of its having taken effect.

Chairman
Council of the District of Columbia

Mayor
District of Columbia

**SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
ADMINISTRATIVE ORDER 16-02**

**Guardianship Procedures
(Supersedes Administrative Order 02-05)**

WHEREAS, the Foster Children’s Guardianship Act of 2000 (“Guardianship Act”), D.C. Act 13-566 (2001), as amended,¹ provides for guardianship as a new permanency option for children who have been adjudicated to be abused or neglected (codified as amended at D.C. Code §§ 16-2381 to -2399); and

WHEREAS, a Working Group, has been organized by the Family Court consisting of representatives from the Superior Court, the Office of the Attorney General for the District of Columbia, and the Child and Family Services Agency (“CFSA”) as well as child welfare practitioners; and

WHEREAS, the Working Group has developed procedures closely following the statute for implementation of the Guardianship Act by the Superior Court pending promulgation and adoption of final rules under the Guardianship Act; and

WHEREAS, the working group was re-convened in 2014 to develop revised procedures, which take into account amendments to the Guardianship Act, update references to Superior Court Rules, and make changes to the procedures to maximize the efficient implementation of the law in light of the Court’s experience with the procedures since the law was enacted;

NOW, THEREFORE, it is, by the Court,

ORDERED, that the following procedures are made applicable to all motions for permanent guardianship filed in the Superior Court of the District of Columbia.

I. Parties to a Permanent Guardianship Proceeding

(A) Parties to a permanent guardianship proceeding shall include:

- (1) The child alleged or adjudicated to have been abused or neglected;
- (2) The child’s parent(s);
- (3) The proposed permanent guardian;
- (4) The agency having legal custody of the child; and

¹ The Adoption Reform Amendment Act of 2010, D.C. Act 18-478 (2010), amended the Foster Children’s Guardianship Act of 2000, to extend the Court’s jurisdiction over the child until age 21 provided the child consents, extend subsidy payments until the child reaches age 21, and allow non-kin to be guardians. The Act also determined that a child, who exited foster care by way of guardianship or adoption, may not re-enter foster care after age 18.

(5) The District of Columbia.

(B) The Court may, at its discretion, join other parties on its own motion or in response to a motion for joinder or intervention.

II. Appointment of Counsel

(A) An attorney who has been appointed to represent a party in a neglect proceeding shall also represent that party in proceedings relating to a motion for permanent guardianship.

(B) The Court shall appoint counsel for parents, including unknown or missing parents, or proposed guardians, who are financially unable to obtain adequate representation, in accordance with D.C. Code § 16-2304. Upon its own motion or upon a motion by any of the parties, the Court may join the proposed guardian as a party to the neglect proceeding and appoint counsel to represent the proposed guardian in accordance with D.C. Code § 16-2304 (b)(3) and Superior Court Neglect Rules 42 and 47.

(C) An attorney appointed to represent a party to a guardianship proceeding shall be compensated in accordance with D.C. Code § 16-2326.01, if the party meets the eligibility guidelines under the Counsel for Child Abuse and Neglect (“CCAN”) Program.

III. Motions for Permanent Guardianship

(A) A permanent guardianship proceeding shall be initiated by the filing of a motion in a pending neglect case. The motion shall be filed² with the Clerk of the Central Intake Center of the Family Court. The judge currently assigned to the underlying neglect case, absent good cause, will conduct all guardianship proceedings.

(B) A motion for permanent guardianship may be filed by:

- (1) An individual seeking to be appointed the child’s permanent guardian;
- (2) The District of Columbia Government; or
- (3) The child through his or her legal representative.

(C) A motion for permanent guardianship may be filed at any time after the filing of a neglect petition.

² Filing shall be done pursuant to procedures set out in Administrative Order 12-10, E-Filing in the Neglect and Abuse, Juvenile and Domestic Relations Branches of the Family Court. A copy shall be provided to the judge by hard copy or by including the judge in the e-filing service list.

(D) A motion for permanent guardianship shall include:

- (1) A caption stating the case name, case number, social file number, x-ref number, and the name of the judge to which the case is assigned;
- (2) The name, sex, date and place of birth, and current placement of the child;
- (3) The proposed permanent guardian's name and relationship or other connection to the child;
- (4) The name and address of the child's parent(s);
- (5) A plain and concise statement of the facts and opinions on which the permanent guardianship is sought;
- (6) A description of the child's mental and physical health;
- (7) A statement why permanent guardianship, rather than adoption, termination of parental rights, or return to the parent, is in the child's best interest;
- (8) A statement as to the various efforts made by the moving party to locate the parent(s) of the child, if the parents' whereabouts are unknown;
- (9) An itemization of the child's assets;
- (10) A statement of compliance with the Uniform Transfers to Minors Act, D.C. Code § 21-301 et seq., if applicable;
- (11) The name of proposed successor guardians, if any, and their relationship or other connection to the child and the proposed permanent guardian;
- (12) Information required by the Uniform Child Custody Jurisdiction and Enforcement Act, D.C. Code § 16-4601.01 et seq.;³
- (13) Written consents, if any, to the permanent guardianship;
- (14) A statement indicating whether the proposed guardian intends to seek a permanent guardianship subsidy; and
- (15) The names, addresses, phone numbers, e-mail addresses, and fax numbers, if any, of all parties, including the moving party, or their attorneys, the Assistant

³ The Guardianship Act requires the motion to include information required by Chapter 45 of Title 16 (Uniform Child Custody Proceedings), which was repealed and replaced by Chapter 46 of Title 16 (Uniform Child Custody Jurisdiction and Enforcement Act ("UCCJEA")).

Attorney General, and the guardian *ad litem*.

IV. Notice

(A) Upon the filing of the Motion for Permanent Guardianship, the Court shall issue a summons.

(B) Summons

A summons shall:

- (1) Include a copy of the motion for permanent guardianship;
- (2) Advise the party that no action shall be taken on the motion unless and until the Court has found that the child who is the subject of the motion was neglected. The summons shall advise the party that, if the Court finds or has already determined that the child was neglected, the Court shall schedule an adjudicatory hearing on the motion for permanent guardianship, the date, time, and location of which the party shall receive separate notice by mail;
- (3) Advise a party who wishes to contest the entry of a permanent guardianship that he or she must appear at the guardianship hearing and that a default judgment may be entered if the party fails to appear;
- (4) Advise a party wishing to contest the guardianship that, within 20 days following the date of service of the motion, he or she may file a written opposition with the Court and counsel for all parties;
- (5) Advise the party to contact his or her counsel. The summons shall provide the name and contact information for the moving party's attorney;
- (6) Advise an unrepresented party that he or she may request the appointment of counsel, if financially eligible;
- (7) Advise the party that, if the motion is granted, the guardian will have the following rights and responsibilities with respect to the child:
 - (a) Physical custody;
 - (b) Protect, nurture, discipline, and educate the child; and
 - (c) Provide food, clothing, shelter, education as required by law, and routine health care for the child.

(8) Advise the party that, if the motion is granted, the guardian will have the following rights and responsibilities with respect to the child until the child reaches the age of 18, unless there has been a finding that the child is unable to make his own decisions:

- (a) Consent to health care without liability by reason of the consent for injury to the child resulting from the negligence or acts of third persons unless a parent would have been liable in the circumstances;
- (b) Authorize a release of physical and mental health care and educational information;
- (c) Authorize a release of information when consent of a parent is required by law, regulation, or policy;
- (d) Consent to social and school activities of the child;
- (e) Consent to military enlistment;
- (f) Obtain representation for the child in legal actions; and
- (g) Determine the nature and extent of the child's contact with other persons except as set forth in the permanent guardianship order.

(9) Advise the party that, if the motion is granted, the parent(s) will retain the following rights and responsibilities with respect to the child, until the child turns 18:

- (a) The right to visit or contact the child, except as may be limited by the Court;
- (b) The right to consent to the child's adoption; and
- (c) The right to determine the child's religious affiliation.

(10) Advise the party that the responsibility to provide financial, medical, and other support for the child continues to age 21.

(11) Advise the party that, if the motion is granted, the child will retain the right to inherit from his or her parents; and

(12) Advise a parent that he or she may consent to the proposed guardianship, if the child is under the age of 18, either by filing an affidavit of consent on a form prescribed by the Court or by appearing at the guardianship hearing and stating

his or her consent.

(C) Service

(1) Service upon Parents

- (a) CFSA shall cause the parent(s) to be served personally with a summons. The summons shall include the date, time, and location of the next scheduled hearing. CFSA shall file proof of service with the Court and counsel for the moving party within 45 days. If personal service cannot be made within 45 days, CFSA shall file an affidavit of efforts to serve the parent(s) with the Court and counsel for the moving party. Nothing in this section shall preclude the movant from serving a summons on the parent(s) in person.
- (b) If the parent(s) have not been served by the next scheduled hearing, the judge will issue an order setting another date, and that order will be served on the parent(s).
- (c) If personal service on a parent cannot be effected, any party may request and the Court may order constructive service in accordance with Super. Ct. Neglect Rule 11(g).

(2) The movant shall promptly serve a copy of the guardianship motion on counsel for all other parties to the guardianship proceeding as well as counsel for any other person who, at the time of filing the motion for permanent guardianship, is a party to the neglect proceeding, unless the Court orders personal service on a party. The movant shall file a certificate of service consistent with the Superior Court Neglect Rules.

V. Discovery

- (A) Subject to paragraph (B), discovery shall be conducted pursuant to Super. Ct. Neg. R. 1.
- (B) The Court shall set a schedule for discovery.

VI. CFSA Report and Recommendation

- (A) Upon receipt of a motion for permanent guardianship, CFSA shall commence preparing its report and recommendation on the proposed permanent guardianship.
- (B) Five (5) business days before a scheduled adjudicatory hearing on the motion for permanent guardianship, CFSA shall submit its report and recommendation to the Court and

parties. At least five (5) business days before the adjudicatory hearing, if CFSA cannot timely produce the report, CFSA shall notify all parties.

(C) When appropriate, the Court may conduct an adjudicatory hearing on the motion for permanent guardianship even though CFSA has not completed its report and recommendation and shall hold in abeyance any findings until receipt of the report.

(D) Upon receipt of a motion for permanent guardianship, CFSA shall commence a criminal record check and child protection clearances of a successor guardian designated by the moving party.

VII. Timing of the Adjudicatory Hearing

(A) If a motion for permanent guardianship is filed before the child has been adjudicated neglected, an adjudicatory hearing on the motion shall be scheduled to occur within 45 days following the adjudication of neglect, provided that the Court has received proof of service. If the Court has not received proof of service, an adjudicatory hearing on the motion shall be scheduled to occur within 60 days following the entry of an order permitting constructive service or within 45 days following the adjudication of neglect, whichever is later.

(B) If a motion for permanent guardianship is filed after the child has been adjudicated neglected, an adjudicatory hearing on the motion shall be scheduled to occur within 90 days following the filing of the motion.

(C) A guardianship hearing may be consolidated with a previously scheduled adjudicatory, dispositional, or review hearing.

(D) For good cause, the Court may continue the adjudicatory hearing to a later date on its own initiative or in response to a motion by any of the parties.

VIII. Adjudicatory Hearing

(A) The Court shall ascertain whether all parties are present and whether notice has been served properly on all parties. If a parent has been given proper notice but fails to appear, the Court may proceed in the parent's absence.

(B) Once the Court has determined that all parties have been served properly, the Court shall determine the position of the parties present with respect to the proposed permanent guardianship. The Court may accept the consents of the parents and/or the consent of the child over the age of 14. Any party contesting the proposed guardianship may appear at the hearing or appear through counsel to state his or her opposition to the establishment of a permanent guardianship.

(C) Each party shall have the right to present evidence, to be heard on his or her own

behalf, and to cross-examine witnesses called by another party.

(D) The moving party shall have the burden of proving by a preponderance of the evidence that the proposed guardianship is in the child's best interest.

(E) In its determination of whether to grant the motion for permanent guardianship, the Court shall consider:

(1) Whether permanent guardianship is in the child's best interest. In determining whether the proposed guardianship is in the child's best interest, the Court shall consider each of the following factors:

- (a) The child's need for continuity of care and caretakers, and for timely integration into a stable and permanent home, taking into account the differences in the development and the concept of time of children of different ages;
- (b) The physical, mental, and emotional health of all individuals involved to the degree that each affects the welfare of the child, the decisive consideration being the physical, mental, and emotional needs of the child;
- (c) The quality of interaction and interrelationship of the child with his or her parent, siblings, relatives, and caretakers, including the proposed permanent guardian;
- (d) To the extent feasible, the child's opinion of his or her own best interests in the matter; and
- (e) Evidence that drug-related activity continues to exist in a child's home environment after intervention and services have been provided pursuant to D.C. Code § 4-1301.06a.

(2) Whether adoption, termination of parental rights, or return to the parent are appropriate for the child; and

(3) Whether the proposed permanent guardian is suitable and able to provide a safe and permanent home for the child.

(F) In considering whether to grant the motion for permanent guardianship, the Court shall take into account any and all relevant, material, and competent evidence presented at the adjudicatory hearing. Neither the spouse or domestic partner privilege nor the physician/client or mental health professional/client privilege shall be a ground for excluding evidence, pursuant to D.C. Code § 16-2388(e).

(G) The Court shall consider any and all evidence relevant to a determination of what contact or visitation, if any, between the child and his or her relatives would be in the child's best interest in the event that the permanent guardianship motion is granted.

IX. Entry of Permanent Guardianship Order

(A) The Court shall not enter an order of permanent guardianship unless it finds, by a preponderance of the evidence, that:

- (1) The permanent guardianship is in the child's best interests;
- (2) Adoption, termination of parental rights, or return to parent is not appropriate for the child; and
- (3) The proposed permanent guardian is suitable and able to provide a safe and permanent home for the child.

(B) If the child is 14 years of age or older, the Court shall designate the permanent guardian selected by the child, unless the Court finds the designation is contrary to the child's best interest.

(C) A final order of permanent guardianship may not be issued unless the child has been adjudicated neglected and has been living with the proposed permanent guardian for at least six months. In computing whether the six-month residency requirement has been met, the Court shall consider all time that the child has resided with the proposed guardian in shelter care, pursuant to D.C. Code § 16-2310.

(D) When a child has been adjudicated neglected but has not yet resided with the proposed guardian for the required six (6) months, the Court may issue an interlocutory order of guardianship, if such an order is in the child's best interest. In determining whether an interlocutory order of guardianship is in the child's best interest, the Court shall consider the impact that granting the order may have on the guardian's eligibility for foster care payments or a permanent guardianship subsidy.

- (1) The interlocutory order shall specify the date, not less than six (6) months nor more than one year from the date of entry of the interlocutory order, upon which it shall become a final guardianship order, unless in the interim the order shall have been set aside for cause shown.
- (2) The agency having responsibility for the child shall be permitted to visit the child during the period of the interlocutory order and may be ordered to provide services as specified in the interlocutory order.
- (3) The Court may revoke the interlocutory guardianship order, either on its own

motion or on the motion of one of the parties, for good cause shown, at any time before it becomes a permanent guardianship order if it is in the child's best interest. Before the revocation, personal notice shall be given to the parties and an adjudicatory hearing shall be conducted.

(E) No final order of permanent guardianship shall be issued until the Court has received notice:

(1) From CFSA that it has entered into a subsidy payment agreement with the proposed permanent guardian contingent on a final Court order of guardianship; or

(2) From the proposed permanent guardian that he or she desires to assume permanent guardianship of the child without receiving a subsidy.

(F) An order for permanent guardianship shall state in writing:

(1) The findings of fact and conclusions of law on which the order is based, including:

(a) Findings pertaining to the Court's jurisdiction; and

(b) Findings pertaining to each of the considerations listed in section VIII, subsection (E), above;

(2) The rights and responsibilities concerning the care, custody, and control of the child that have been granted to the permanent guardian;

(3) The rights and responsibilities that are retained by the parent(s);

(4) That the Court will retain jurisdiction to enforce, modify, or terminate the guardianship order until the child reaches age 21, provided that when the child reaches the age of 18, the child consents and the Court finds it is in the best interest of the child, and provided that a child who exits foster care to guardianship may not re-enter foster care after age 18.

(5) That the permanent guardian is required to file a motion to modify or terminate the guardianship order before taking any action that is reasonably likely to have an adverse affect on the rights of another party under the guardianship order; and

(6) That the permanent guardian shall not relocate with the child over 100 miles from his or her place of residence at the time the guardianship order is entered without filing a notice with the Court. The notice must be personally served on

all parties 15 business days before the relocation. Notice of relocation shall include the permanent guardian's new address, telephone number, and anticipated date of relocation, unless, for good cause shown, the Court permits the permanent guardian to withhold this information from another party.

(G) An order for permanent guardianship may:

(1) Specify the frequency and nature of visitation or contact between relatives and the child; and

(2) Designate a successor guardian who, pursuant to section XIII below, is approved by the Court to assume physical custody of the child upon the death or infirmity of the permanent guardian.

(H) The Court shall issue findings and an order on the motion for permanent guardianship within 60 days of the completion of the adjudicatory hearing.

X. Status/Resolution of Neglect Case

(A) Upon entry of a final order establishing permanent guardianship, and during the period of time such order remains in effect, the requirements of D.C. Code §§ 16-2322 and 16-2323, regarding time limits on dispositional orders and review of dispositional orders in neglect cases, shall be suspended.

(B) Upon entry of a final order establishing permanent guardianship, any party to the permanent guardianship proceeding may make an oral or written motion to the Court to make a permanency determination and close the neglect case. The neglect case shall be closed if such resolution is in the child's best interest.

XI. Motion to Modify, Terminate, or Enforce Guardianship Order

(A) The Court shall retain jurisdiction to enforce, modify, or terminate a guardianship order until the child reaches age 21 provided when the child reaches 18 years of age, the child consents to the extension of jurisdiction.

(B) A motion to modify, terminate, or enforce a guardianship order may be filed by any party with the presiding judge of the Family Court, who shall assign the case to the appropriate judge within two days from receipt of the motion. Prior to filing any motion to modify, terminate or enforce the guardianship order, the movant must, if appropriate, make efforts to resolve any issues or problems. These efforts must be detailed in the motion to modify, terminate or enforce guardianship. Further, the movant shall ensure that copies of the motion are served on the Office of the Attorney General and counsel for all parties.

(C) A permanent guardian shall file a motion to modify or terminate the guardianship

order before taking any action that will substantially and materially change the child's circumstances, if there is a reasonable likelihood that such change of circumstances will adversely affect the rights of another party under the guardianship order.

(D) Order of Reference

(1) Within 14 days from the receipt of a motion to modify, terminate or enforce the guardianship order, the judge will issue an order of reference served on all parties and counsel.

The order shall:

- (a) Advise the party that a motion to modify, terminate or enforce the guardianship order has been filed;
- (b) Include a date for a status hearing to be set within 30 days from the issuance of the order;
- (c) Advise the party to contact his or her attorney and provide the party with the name and contact information for the attorney of record;
- (d) Direct the Child and Family Services Agency to conduct an investigation concerning the allegations contained in the motion and file a written status report containing information obtained through the investigation along with recommendations for future action;
- (e) The report and recommendation shall be filed with the Court and served on the parties within 30 days from the issuance of the order of reference and no fewer than three (3) days prior to the status hearing.
- (f) If the motion is to terminate the current guardianship order due to the death or infirmity of the permanent legal guardian and the child is residing in the home of a successor guardian, whether or not named in the guardianship order, the report shall include the identities of all persons who reside in that home, the results of criminal or child protection background checks performed on any occupants of that home.

(E) The Court shall hold an adjudicatory hearing in accordance with the requirements of D.C. Code § 16-2388. The adjudicatory hearing will be held within 90 days from the issuance of the order of reference.

(F) The Court may grant a motion to modify or terminate the guardianship order if the Court finds, by a preponderance of the evidence, that:

(1) There has been a substantial and material change in the child's circumstances subsequent to the entry of the guardianship order; and

(2) It is in the child's best interest to modify or terminate the guardianship order.

(G) The Court shall enter a written order within 45 days of the adjudicatory hearing, granting or denying the motion and reciting the findings of fact and conclusions of law on which such order is based, including findings relating to the Court's jurisdiction.

(H) Upon entry of an order terminating the guardianship, the permanent guardian shall no longer:

(1) Be entitled to physical custody of the child;

(2) Have any other parental rights and responsibilities concerning the child created under Title 16, Chapter 23, Subchapter V; or

(3) Have party status in any further proceeding brought under Title 16, Chapter 23, Subchapter V.

(I) Upon entry of an order terminating the guardianship, the Court shall hold a review hearing pursuant to D.C. Code § 16-2323.

XII. Support

(A) A permanent guardian may receive money paid for the child's support to the child's parent(s) under the terms of any statutory benefit or insurance system or any private contract, settlement, agreement, court order, devise, trust, conservatorship, or custodianship, and money or property of the child.

(B) After due notice to the parent(s) or other persons legally obligated to care for and support the child and after a hearing, the Court may order and decree that the parent(s) or other legally obligated person shall pay, in such manner as the Court may direct, a reasonable sum that will cover in whole or in part the support and medical treatment of the child after the guardianship order is entered. If the parent(s) or other legally obligated person willfully fails or refuses to pay such sum, the Court may proceed against that person for contempt, or may file the order, which shall have the effect of a civil judgment.

XIII. Successor Guardians

(A) A party moving for permanent guardianship may designate a successor guardian. Upon entry of an order for permanent guardianship, the Court shall approve the successor guardian designated by the movant.

(B) The Court's approval of the successor guardian shall be based on:

- (1) Child protection and criminal background checks performed by CFSA prior to the adjudicatory hearing, and
- (2) The testimony of the successor guardian regarding his or her age, address, health, relationship to the child and intent to serve as the child's permanent legal guardian in the event of the death or incapacity of the party moving for permanent guardianship.

(C) A successor guardian may be designated or removed after the creation of the permanent guardianship by the filing of a motion to modify by a party, pursuant to Section XI, above.

(D) Upon the permanent guardian's death, or physical or mental infirmity, the successor guardian shall immediately obtain physical custody of the child and assume the permanent guardian's rights and responsibilities concerning the child.

(E) The successor guardian shall move the Court for a modification of the original guardianship order within 30 days of obtaining physical custody of the child. Unless otherwise ordered by the Court, the successor guardian shall assume the permanent guardian's rights and responsibilities concerning the child, until the Court conducts a hearing on the motion to modify.

(F) A motion filed pursuant to subsection (E) shall:

(1) Include the following:

- (a) The name, sex, date and place of birth, and current placement of the child;
- (b) The successor guardian's name and relationship or other connection to the child;
- (c) The name and address of the child's parents;
- (d) A plain and concise statement of the facts and opinions on which the successor guardian seeks permanent guardianship;
- (e) A description of the child's mental and physical health;
- (f) A statement why permanent guardianship, rather than adoption, termination of parental rights, or return to the parent, is in the child's best interest;

(g) A statement as to the various efforts taken by the moving party to locate the parent(s) of the child, if appropriate;

(h) An itemization of the child's assets;

(i) A statement of compliance with the Uniform Transfers to Minors Act, D.C. Code § 21-301 et seq., if applicable;

(j) The name of proposed successor guardians, if any, and their relationship or other connection to the child and the proposed permanent guardian;

(k) Information required by the Uniform Child Custody Jurisdiction and Enforcement Act, D.C. Code § 16-4601.01 et seq.;⁴

(l) Written consents, if any, to the permanent guardianship; and

(m) If the child is at least 14 years old, the child's written consent to the proposed guardianship, or a good cause explanation for why the child's consent has not been given;

(2) Append the original order which designated the successor guardian; and

(3) Append a copy of either:

(a) Proof of the permanent guardian's death, such as a copy of a death certificate or funeral home receipt; or

(b) Proof of the permanent guardian's physical or mental infirmity.

(G) Before issuing a final order granting the successor guardian's motion for guardianship, the Court shall hold an adjudicatory hearing, as provided for in Section VIII above and shall, at the conclusion of the hearing, enter a written order reciting the findings on which such order is based, including findings pertaining to the Court's jurisdiction.

(H) The adjudicatory hearing shall be held no later than 120 days from the filing of the successor guardian's motion for guardianship, except for good cause shown.

(1) In determining whether good cause has been shown, the Court shall consider and state its findings on the record, whether:

⁴ The Guardianship Act requires the motion to include information required by Chapter 45 of Title 16 (Uniform Child Custody Proceedings), which was repealed and replaced by Chapter 46 of Title 16 (Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA)).

(a) There has been or will be a delay resulting from other proceedings concerning the child, including, but not limited to, examinations to determine the mental competency or physical capacity of the child or of a parent, guardian, or custodian, or from any interlocutory or expedited appeal;

(b) Any essential witness is absent or unavailable, meaning that his or her whereabouts are unknown or cannot be determined by due diligence or that his or her presence for the hearing cannot be obtained by due diligence; or any essential witness is otherwise unavailable;

(c) Despite the exercise of due diligence, necessary medical examinations, drug analysis, or other scientific tests have not been completed;

(d) Service of process has not been completed;

(e) A parent files or has filed a motion to modify the guardianship or for return of the child or reunification; or

(f) The best interests and safety of the child are best served by continuing the period of foster care.

(2) Scheduling conflicts will not qualify as a primary basis for a finding that good cause exists for a delay in the proceedings.

(I) The Court shall issue findings of fact and an order on the successor guardian's motion for permanent guardianship within 60 days of the completion of the adjudicatory hearing.

(J) The Court shall not enter a final order granting the successor guardian's motion for permanent guardianship unless it finds that:

(1) The successor guardian was duly designated by the permanent guardian;

(2) The permanent guardian is deceased or is physically or mentally infirm;

(3) The transfer of permanent guardianship is in the child's best interest;

(4) Adoption, termination of parental rights, or return to the parent is not appropriate for the child; and

(5) The successor guardian is suitable and able to provide a safe and permanent home for the child.

(6) The child has been living with the successor guardian for a total of 6 months or more, pursuant to D.C. Code § 16-2383(a).

XIV. Prior Orders Rescinded

Any prior administrative orders addressing establishment of guardianships that are inconsistent with this order are hereby rescinded to the extent of any such inconsistency.

XIV. Confidentiality

D.C. Code §§ 16-2332 and 16-2333 shall apply to all records and files related to a guardianship proceeding.

SO ORDERED.

BY THE COURT

DATE: February 5, 2016

/s/
Lee F. Satterfield
Chief Judge

Attachments: Child's Consent to Permanent Guardianship
Parent's Consent to Permanent Guardianship

Copies to: Judges
Magistrate Judges
Executive Officer
Clerk of the Court
Division Directors
Director, CCAN Office
Library
OAG
CFSA

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
FAMILY COURT
JUVENILE AND NEGLECT BRANCH

In re:) Next Court Date
)
) GDN-
)
Respondent.) Judge

**CONSENT OF CHILD 14 YEARS OF AGE OR OLDER TO THE APPOINTMENT OF
PERMANENT GUARDIAN**

I, [name], state as follows:

1. My name is [child's full name]. I am a [female/male] and was born on [date], in [city and state]. I am _____ years of age.

2. I reside in the home of [full name of proposed permanent guardian(s)].

3. I agree to (“consent to”) the appointment by this Court of _____ and
_____, who live(s) at _____,
_____, as my permanent guardians(s).

4. (If applicable) I further consent to having _____ and
_____, who live(s) at _____,
_____, named as the successor guardian(s)
for me in the event that the permanent guardian(s) die(s) or [is/are] unable to continue caring for
me.

5. It has been explained to me and I understand that if _____ and _____ [is/are] appointed my permanent guardian(s), [he/she/they] will have physical custody over me.

6. It has also been explained to me and I understand that if _____ and _____ [is/are] appointed my permanent guardian(s), unless the Court specifies otherwise, [he/she/they] will have the following rights or responsibilities towards me:

- To protect, nurture, discipline, and educate me;
- To provide me with food, clothing, shelter, education, and routine health care;
- To consent to my health care without liability by reason of the consent for injury to me resulting from the negligence or acts of third persons unless a parent would have been liable in the circumstances;
- To provide information about my health or health care to others;
- To provide information about my school and education to others;
- To provide other information about me in situations where a parent's consent is required;
- To consent to my participation in social and school activities;
- To consent to my enlistment in the military;
- To obtain a lawyer for me in legal actions; and
- To determine whether and in what capacity I can have contact with other people.

7. It has also been explained to me and I understand that if _____ and _____ [is/are] appointed my permanent guardian(s), it will not terminate the legal relationship between my parents and me. My parents will still be my legal parents. In particular, it has been explained to me and I understand that I still have the right to inherit from my parents and that my parents will still maintain the following parental rights and responsibilities towards me:

- To visit and have contact with me, unless limited by the Court;
- To consent to any future adoption of me;
- To determine my religion;
- To provide me with financial, medical, and other support.

8. It has also been explained to me and I understand that if _____ and _____ [is/are] appointed my permanent guardian(s), the Court may specify when and how I will visit with my relatives.

9. I understand that if _____ and _____ [is/are] appointed my permanent guardian(s), we cannot relocate over one hundred (100) miles from where we reside when the order is entered without notifying the Court and all parties fifteen (15) days in advance of the relocation.

10. I understand that if _____ and _____ [is/are] appointed my permanent guardian(s), any party, including me, may, in the future, ask this Court to modify, terminate or enforce the guardianship order. I also understand that if, following a hearing, the Court finds that there has been a substantial change in my circumstances and it is in my best interest, the order may be modified or terminated.

11. I hereby swear or affirm that the contents of this Consent of Child 14 Years of Age or Older to the Appointment of Permanent Guardian are true and correct to the best of my knowledge, information and belief.

Child's signature

Child's name printed

Date

Subscribed and sworn to before me this _____ day of _____, 20____.

Notary Public

My commission expires _____

Guardian *Ad Litem* Statement

I hereby swear or affirm that I explained the contents of the Consent of Child 14 Years of Age or Older to the Appointment of Permanent Guardian to [child's full name] ("child") prior to the child's signing, and that the child signed this Consent of Child 14 Years of Age or Older to the Appointment of Permanent Guardian in my presence.

Guardian *ad litem* signature

Guardian *ad litem* name printed

Date

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
FAMILY COURT
JUVENILE AND NEGLECT BRANCH

In re:) Next Court Date
))
) GDN- SF
))
Respondent.) Judge

**CONSENT OF THE [MOTHER/FATHER] TO THE APPOINTMENT OF
PERMANENT GUARDIAN**

I, [mother/father] state as follows:

1. I am the [mother/father] of [child's full name] ("child"), a [female/male] who was born on [date], in [city and state] and who currently resides in the home of [full name of proposed permanent guardian].

2. I hereby consent to the appointment by this Court of [proposed permanent guardian(s)], who reside(s) at _____ [full address] _____, as the permanent guardian(s) of the child.

[Proposed permanent guardian(s)(if applicable)] [is/are] the [relationship(s)] of the child. I further consent to having [proposed successor guardian(s)] named as successor guardian(s) of the child in the event of death or incapacity of the permanent guardian(s). [Proposed successor guardian(s)] [is/are] the [kinship relationship(s)] of the child]. I believe that [these/this appointment(s)] [is/are] in the best interest of the child.

3. I understand that if _____ and _____ [is/are] appointed the child's permanent guardian(s), [he/she/they] will be given the following rights and responsibilities towards the child:

- To maintain physical custody of the child;
- To protect, nurture, discipline, and educate the child;
- To provide food, clothing, shelter, education as required by law, and routine health care for the child;
- To consent to health care without liability by reason of the consent for injury to the child resulting from the negligence or acts of third persons unless a parent would have been liable in the circumstances;
- To authorize a release of health care and educational information;
- To authorize a release of information when consent of a parent is required by law, regulation, or policy;
- To consent to social and school activities of the child;
- To consent to military enlistment;
- To obtain representation for the child in legal actions; and
- To determine the nature and extent of the child's contact with other persons;

4. I understand that even if [proposed guardian(s)] is/are appointed the child's legal guardian(s), as the child's parent I maintain the following parental rights and responsibilities towards the child:

- To visit and have contact with the child except as limited by court order, and under reasonable restrictions of time and location as specified by the permanent guardian;
- To consent to any future adoption of the child;

- To determine the child’s religious affiliation;
- To provide financial, medical, and other support for the child.

5. I understand that even if [proposed guardian(s)] is/are appointed the child's legal guardian(s), the child retains the right to inherit from me in the event of my death.

6. I understand that if [proposed guardian(s)] is/are appointed the child's legal guardian(s), any party may, in the future, ask this Court to modify, terminate or enforce the guardianship order. I also understand that if, following a hearing, the Court finds that there has been a substantial change in the child’s circumstances and that modification or termination of the guardianship order is in the child’s best interest, the guardianship order may be modified or terminated. Finally, I understand that I have the right to present evidence on my behalf at these hearings.

7. I hereby swear or affirm that the contents of this Consent of [Mother/Father] to the Appointment of Permanent Guardian are true and correct to the best of my knowledge, information, and belief.

[Mother/Father]’s signature

[Mother/Father]’s name printed

Date

Subscribed and sworn to before me this ____ day of _____ 20____.

Notary Public

My commission expires _____.