

A Guide to
KINSHIP CARE & MINOR GUARDIANSHIP
in Maine



A resource for adults providing care for the children of relatives or family friends, for the parents of children who are in the care of others, and for teens involved in minor guardianship cases.



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INTRODUCTION TO KINSHIP CARE

In all cultures throughout history, relatives, friends, and neighbors have helped each other in times of need. This includes caring for a child when the child's parents are unable to provide care based on choice or circumstance.

Under Maine law, a child's parents are the natural guardians of that child. As the natural guardians, they are responsible for the child's care, custody, education, and finances until the age of 18, when the child becomes a legal adult.

But many children are cared for on a day-to-day basis by an adult relative (such as a grandparent, aunt, uncle, older sibling, or cousin) or by a non-relative friend of the family. Sometimes, this care is short-term or only on occasion. Other times, the care is long-term and ongoing. This kind of care for a child is often called "kinship care."

This guide is written primarily for kinship caregivers. It may also be useful for parents, teens, and other family members to better understand the options for keeping children safe and providing them with stability and a sense of identity and belonging.

Informal Kinship Care

Sometimes, family or friends will care for a child on an informal or temporary basis if the parent is:

- Sick
- Deployed for military service
- Incarcerated
- Out of town for work
- Caring for another relative

The benefit of an informal arrangement is that the child's parents and the caregiver can work out an agreement that serves everyone's interests without involving lawyers, the court system, or complicated paperwork.

The downside of an informal arrangement is that parental rights and responsibilities are not transferred to a caregiver. This means that a parent can step in at any time and resume care and custody of the child. This also means that a caregiver may not have the legal authority necessary to make decisions for the child, including accessing medical care and enrolling them in school.

Written Permission by Parents

If parents and caregiver agree on the type of care needed and for how long, they may decide to create a written agreement. This is a way for parents to give written permission—and legal authority—to the caregiver so that the caregiver can

make certain decisions that usually only a parent can make. This written permission is called a power of attorney.

You do not have to go to court to create a power of attorney. It is a document that:

- Outlines the authority delegated to the caregiver
- Sets the time period that the agreement is enforceable (must be 12 months or less in Maine)
- Is signed by both parties
- Is notarized

At any time, a parent can provide a written document to the caregiver revoking the power of attorney.

If creating a power of attorney sounds like a good option for your situation, we encourage you to contact a lawyer. **Contact information for some legal service providers or ways to find an attorney can be found in Resources on p.15**

But not all doctors will accept a power of attorney given to a non-parent as a basis to treat a child. Also, many Maine school districts will not allow a caregiver to enroll a child in the school near the caregiver's residence based only on a power of attorney. For these reasons, the family may need to consider a minor guardianship instead of, or in addition to, a power of attorney. The rest of this Guide will explain how minor guardianship works.

Formal Kinship Care

Due to the limits of informal kinship care and power of attorney, a caregiver may want to pursue more formal options that allow them to provide long-term care for a minor child and have the legal authority to provide all aspects of such care.

A caregiver may want a more formal arrangement if the parent is:

- Facing a life-threatening illness
- Deceased
- Incarcerated for a long time
- In long-term treatment for substance use disorder
- Emotionally or physically abusing or neglecting the child

This is just a list of examples. When parents are unable to meet their child's basic needs and provide appropriate care, or if there are concerns about abuse or neglect, one option is to start the legal process of becoming the child's legal guardian. ■

MINOR GUARDIANSHIP IN MAINE OVERVIEW

What is a legal guardian?

Under Maine law, the legal guardian of a minor “has the duties and responsibilities of a parent regarding the minor’s support, care, education, health, and welfare.” The child’s parents remain their child’s legal parents—their rights are not terminated but are mostly suspended.

In most cases, this means that the guardian makes all day-to-day parental decisions about the child’s upbringing and care, including but not limited to:

- *Enrolling the child in public school in the community where the child’s legal guardian resides*
- *Requesting and approving medical treatment on behalf of the child*
- *Supporting the child’s mental, emotional, physical, and medical needs*
- *Protecting the child from harm*
- *Providing for the child’s general health and welfare*

What rights do the child’s legal parents keep?

A judge will decide on which rights the child’s parents keep based on the unique circumstances of the case. **Typical examples include:**

Financial responsibility. The child’s legal guardian is not financially responsible for the child—that responsibility remains with the child’s parents. The judge can order the parents to pay child support to the guardian.

Visitation rights. The judge can order the guardian to allow the legal parents to visit or otherwise have contact with the child, and the judge can impose conditions on that contact, such as requiring that the visits are supervised or take place in public.

Social Security and Inheritance. The child keeps a legal relationship with their parents. This means that the child will be a beneficiary of Social Security only from their parents, not from the legal guardian. This also means that the child will stand to inherit under Maine inheritance laws (if there is no will) from their parents, and not from the legal guardian (unless the guardian has a valid will and decides to leave money to the child upon their death).

Liability. The child’s parents—not the legal guardian(s)—are liable to a third party for the acts of the minor. If for example, the child vandalizes a neighbor’s property and the neighbor sues, the parents may be legally and financially responsible for that lawsuit and any resulting damages.

Who can petition for the appointment of a legal guardian for a minor child?

Any person interested in the welfare of a child can petition a court asking to be appointed as the child’s legal guardian. While these petitions are most often filed by a family member (typically a grandparent, aunt, uncle, or cousin), family friends, neighbors, or other community members who care about the child’s welfare can also ask to be appointed as a guardian. If more than one person petitions to be the child’s guardian, the court will generally give preference to suitable family members over non-relatives.

Two people can petition to be co-guardians of a minor, and a parent can join a petition to be a co-guardian along with a non-parent.

A minor who is age 14 or older can also petition the court for appointment of a guardian on their behalf. The court will prioritize the potential guardian nominated by the minor child.

Will the Department of Health and Human Services (DHHS) be involved?

Sometimes, the Maine Department of Health and Human Services (DHHS or the State) gets involved with a family if there are concerns that a parent may be neglecting or abusing the child. In these situations, DHHS may remove a child from their parents’ home, or the agency could decide to work with the family on a more informal basis.

Non-parent family members often have questions about what DHHS involvement means for their relationship with the child. These situations can get very complicated, and this guide will not provide everything you need to know. You should contact a lawyer, or if you are or want to be a caregiver for a child, **Adoptive and Foster Families of Maine may be able to help. See the Resources section at the end of this Guide.**

When DHHS files a case in court about a child, including to get court permission to remove a child from their home, this is called a “child protection” or “protective custody” case. In many of these cases, DHHS will see if the child can live temporarily with a family member. The State takes legal custody of the child and is responsible for the child’s welfare, which can mean that DHHS provides support and services to the child, their parents, and their caregivers. ▼

MINOR GUARDIANSHIP IN MAINE OVERVIEW

A relative caregiver may also be eligible for payments as “foster parents” while the child is in their care. The State is responsible for making reasonable efforts to reunite the child with their parents, and if that is not possible, to make alternative arrangements for the child’s long-term care, which can include terminating the parents’ rights. The parents are entitled to a free lawyer, and a court will appoint a *Guardian ad litem* to investigate and represent the best interests of the child. **See p. 7 for more information about Guardians ad litem.**

Minor guardianship is a very different kind of case, and it is usually an option in situations where DHHS has not already started a court case. Sometimes, after an investigation into a child’s situation, a DHHS caseworker will suggest to a family member or other person that they petition to become a child’s guardian as a safe placement.

In those situations, the State does not become part of the guardianship court case and they are not seeking to terminate the parent’s rights. The fact that DHHS is not directly involved in the guardianship case means that families will not get support, services, payments, or other kinds of assistance from the State, and there won’t be a formally supervised path to reunification—the process by which parents may regain custody of the child.

If you have concerns that a child is being abused or neglected or is otherwise in danger, please call DHHS Office of Children and Families Services immediately at (207) 287-3707, or call 911 for emergency situations.

Do I need to hire a lawyer for a private guardianship case?

We highly recommend that you have a lawyer help you pursue guardianship. An attorney can help you navigate the process, ensure that the necessary forms are completed accurately and thoroughly, and can advocate for your interests.

Private Attorneys

There are private lawyers in Maine who specialize in representing parents and potential guardians in these types of proceedings. The Maine State Bar Association offers a referral service to help you locate these types of attorneys. **You can find contact information in our Legal Information and Assistance section in Resources on p. 15.**

Court-Appointed Attorneys

If you qualify based on financial need, your local court may be able to arrange a court-appointed attorney to represent you, either free-of-charge or at a reduced rate.

If you are a parent who does not consent to a guardianship, you are entitled to a court-appointed attorney if you qualify based on financial need. If you are a potential guardian involved in a contested hearing, you may also be entitled to a court-appointed attorney.

Contact the clerk of the court where the petition is filed early in the process to ask whether you are eligible for a court-appointed lawyer. They are not always available for proposed guardians in every case.

The court may, at its discretion (and with due consideration of the minor’s wishes if the child is age 14 or older), appoint an attorney for the child. This is very unusual. More often, a judge will appoint a *Guardian ad litem*, who is not a legal guardian but someone who will investigate and represent a child’s best interests in the court case. **See p. 7 for more information about Guardians ad litem.**

Legal Aid

There are legal aid organizations in Maine that may be able to assist you with either full representation or with access to helpful resources. **You can find more information about legal aid resources in Maine in our Legal Information and Assistance section in Resources on p. 15.**

Pro Se: Self-Represented Parties

You may represent yourself in the proceeding without the assistance of an attorney. This is common and it is called “*pro se*”—Latin for “*in one’s own behalf*.” This Guide was created to provide self-represented parties with information and tools to help them while they are representing themselves in these proceedings. ■

STARTING A GUARDIANSHIP CASE

What court will I be dealing with?

If there is a pending custody or parental rights matter, the minor guardianship hearing will be held in a Maine District Court.

Cases about a child in District Court could include:

- Divorce
- Parental rights and responsibilities
- Child protection
- Another case in district court involving the child

If there is such a case, then the Maine District Court will have what is known as “exclusive jurisdiction” over matters involving that child (this means that it is the only court that can preside over your case), and the guardianship petition must be filed there.

If there is no case open in district court, then the guardianship matter will be heard in probate court, and the petition should be filed there. **See p. 14 for a list of probate courts in Maine including address and contact information.**

What should be my first step?

Make sure you know the specific forms to use and procedures to follow for the court where you plan to file your petition. It is especially important to contact the court register or clerk in advance if you will be in probate court, because each court handles the minor guardianship process a little differently. You need to be sure that you are following the appropriate procedures for your local court.

The court will likely tell you to complete and file a Petition for Minor Guardianship using **Form GS-001**. The person who files such a petition is known as a “petitioner”.

The form will ask basic information about the petitioner, the proposed guardian (who may or may not be the petitioner), and the child, and will ask who should be notified of the proceeding and the reason for guardianship.

Remember, some court documents must be witnessed or notarized at the time they are signed. If a witness or notary is required, there will be a space for the witness or notary right after the signature line. If you need a notary, the court clerk can notarize the document for you, or you can ask your local bank for notary services.

After completing the Petition for Guardianship, your next step depends on whether you believe the child is in immediate danger. If so, you’ll want to ask the court to enter an emergency guardianship order. If the child is not in immediate danger, you can ask for a regular (non-emergency) guardianship order. For most guardianship cases, a regular guardianship order is all you need, but the next section explains what to do if you think the child is in immediate danger. ■



STATE OF MAINE	
PROBATE COURT County: _____ Docket No. _____	DISTRICT COURT Location: _____ Docket No. _____
IN RE: _____ (Minor Name)	PETITION TO APPOINT GUARDIAN OF MINOR 18-C.M.R.S. § 5-204
1. Petitioner Information:	
Name: _____	
Mailing Address: _____	
Physical Address: _____	
Date of Birth: _____	
Telephone: _____	
Co-Petitioner Information:	
Name: _____	
Mailing Address: _____	
Physical Address: _____	
Date of Birth: _____	
Telephone: _____	
2. Minor Information:	
Name: _____	
Mailing Address: _____	
Physical Address: _____	
Date of Birth: _____	
Telephone: _____	
3. Proposed Guardian Information:	
Name: _____	
Mailing Address: _____	
Physical Address: _____	
Date of Birth: _____	
Telephone: _____	
Relationship to Minor: _____	
GS-001, Rev. 01/21	Page 1 of 7

A sample of the first page of Petition for Guardianship Form GS-001

EMERGENCY GUARDIANSHIP

What if a child is not safe and needs a guardian immediately?

If you are concerned that a child is in immediate danger or being harmed, you should call the Maine Department of Health and Human Services at (207) 287-3707 right away.

If you want to be the guardian of a child who is in a dangerous situation and faces substantial harm to their physical health and safety without immediate protection, you can ask the court to appoint you as the child’s guardian on an emergency basis. If this applies in your case, you will need to complete **Form GS-003**, called a “Motion for Appointment of Guardian of Minor on an Emergency Basis,” in addition to the Petition for Minor Guardianship (**Form GS-001**) as noted on the previous page.

The form is titled "STATE OF MAINE" and is for the "PROBATE COURT" and "DISTRICT COURT". It includes fields for County, Location, and Docket No. The title is "MOTION FOR APPOINTMENT OF GUARDIAN OF MINOR ON AN EMERGENCY BASIS" under 18-C.M.R.S. § 5-204(4). It contains a "PLEASE NOTE" section and a numbered list of questions: 1. Petitioner Name, 2. Co-Petitioner Name, 3. Minor Name, 4. Proposed Guardian Name, 5. Proposed Guardian Relationship to Minor, and 6. A detailed question about the reasons for the emergency guardianship. It ends with a footer: "Please attach an additional page if necessary. GS-003, Rev. 09/19 Page 1 of 2".

A sample of the first page of Motion for Appointment of Guardian of Minor on an Emergency Basis, Form GS-003

The court will soon schedule a hearing on the motion, typically between 7 to 14 days from when the petitioner files the motion with the court.

Once the probate court tells the petitioner when and where the hearing will be, the petitioner must provide notice of the motion and of the time/date of the hearing to:

- Each living parent of the minor
- Any person having care or custody of the minor if that person is not a parent
- A minor child age 14 or older

This notice may be provided verbally (in person or by telephone), by email, or in writing—whichever way the petitioner believes, in good faith, is the most effective way of giving such notice.

The court will ask the petitioner to complete and file a sworn statement, also known as an Affidavit of Notice, on a special court **Form GS-006**, telling the court exactly how the petitioner provided notice to the above individuals. A sample of the Affidavit of Notice form is below.

The court may decide that there is enough evidence from the motion itself to immediately appoint a guardian on an emergency basis, before notice is provided, to prevent substantial harm to the child’s physical health and safety. The court will still hold the hearing and give the parents a chance to challenge the emergency appointment.

The form is titled "STATE OF MAINE" and is for the "PROBATE COURT" and "DISTRICT COURT". It includes fields for County, Location, and Docket No. The title is "AFFIDAVIT OF NOTICE" under 18-C.M.R.S. § 5-204(4). It contains a section for providing notice to individuals, with a table for Name, Address, Phone Number, Method of Service, and Date, Time, and Location of Notice. It includes a sworn statement section: "I affirm that notice has been given to the above-named individuals and that the method of service is the most effective way to ensure actual notice to those individuals." It also has signature lines for the Petitioner, Co-Petitioner, and Attorney (if any). It ends with a footer: "STATE OF MAINE COUNTY Personally appeared the above named, and made oath that the foregoing statements are true under penalty of perjury. Before me, Date: Attorney at Law / Notary Public / Register / Clerk GS-006, Rev. 09/19 Page 1 of 1".

A sample of the first page of Affidavit of Notice, Form GS-006

What will happen at the hearing for emergency guardianship?

You will be given the opportunity to participate by phone or video, or come to court in person. If you appear in person, the written notice from the court may tell you which courtroom your hearing will be in. If you are not sure, you should go to the office of the register of probate or the district court clerk, depending on which court you are in, and ask for help finding your courtroom. ▼

EMERGENCY GUARDIANSHIP

A court officer or other court employee can tell you where in the courtroom you should sit. The judge will enter the courtroom and guide you through the hearing process by asking you questions about what you want to have happen and why.

During the hearing, you will have to prove to the judge “by a preponderance of the evidence” (generally, showing that the evidence is more than 50% likely to be true) that:

- The emergency guardianship is needed to protect the child from substantial harm
- No one else has authority or willingness to act in the circumstances
- Waiting for a regular appointment of guardianship will likely result in substantial harm to the child
- A petition for guardianship has been filed and there is a substantial likelihood that there is a basis for the court to appoint a guardian
- Proper notice has been provided to the interested parties (minor child, parents, caregivers)

If granted, the emergency guardianship will be limited to the powers (this means the kinds of legal authority) spelled out in the judge’s order. The judge decides which powers are necessary to protect the child from substantial harm. The emergency guardianship can last for up to 90 days.

The granting of an emergency guardianship will not affect the outcome of a Petition for Minor Guardianship. So even if the court orders an emergency guardianship, the petitioner will still need to prove the need for regular guardianship after the emergency order ends.

Will an emergency guardian receive child support on behalf of the minor child?

The court order will indicate if there are any current child support orders. If so, the court will also need to determine if the guardianship appointment has an effect on the order, and may mandate a parent pay child support to the guardian.

The court may also decide that an order for support is not appropriate in the context of emergency guardianship, or that it is not appropriate at all. This is up to the individual judge based on the surrounding circumstances. ■

NEXT STEPS AFTER FILING A PETITION OF APPOINTMENT OF GUARDIAN

What is the process for getting the parent’s consent to a guardianship?

If both the caregiver and parent agree that the caregiver should become the child’s legal guardian, then the parent may “consent” (agree) to the arrangement. If that is the case, the parent will need to complete the Parent’s Consent to Appointment of Guardian of Minor **Form GS-007**.

A parent can also waive their right to receive notice about certain further proceedings in the guardianship case if, for some reason, they do not want to participate or receive court notices.

Will the parties have a chance to participate in mediation?

The court may require those involved in a guardianship proceeding to participate in mediation. Mediation is a shared process, aided by a professional mediator, where the parties make a good faith effort to agree on the guardianship before the court schedules a hearing. If an agreement about the child’s care is possible, the court wants the parties to have every opportunity to reach such an agreement. ▼

A sample of the first page of Parent’s Consent to Appointment of Guardian of Minor, Form GS-007

NEXT STEPS AFTER FILING A PETITION OF APPOINTMENT OF GUARDIAN

Mediation can be an incredibly helpful experience. An experienced mediator will help everyone in the room feel comfortable expressing their wishes, concerns, and goals, and will attempt to find common ground and a path forward. Many people find that mediation can result in an agreement that works for everyone, and mutually agreed-upon decisions usually last longer and make for better relationships.

It is to everyone's benefit for all parties to fully participate in the mediation process; in fact, the court may impose sanctions (which means a penalty of some kind) if one party fails to appear or does not make a good faith effort during the process.

If you reach an agreement during the mediation process, the mediator will help you put the agreement in writing, sign it, and present it to the court for approval as an enforceable court order.

What rights do children have in guardianship cases?

Guardianship cases are a bit different from other kinds of family law cases because children who are age 14 and older have important rights. These rights include:

- Receiving a copy of all petitions filed in the case
- Receiving notice of and appearing at court hearings
- Telling the court whether or not they agree to a particular person being appointed as a guardian
- Asking the court to change or end the guardianship
- Giving information to the court about the guardianship after it has started
- Hiring their own lawyer to represent them in the case

If you are age 14 or older and want to enforce these rights, you can ask the court to appoint a lawyer for you, but the court is not required to do so. **You can also contact Pine Tree Legal Assistance or the Cumberland Legal Aid Clinic for legal help. See Resources on p.15.**

What is a *Guardian ad litem* and how does it differ from a guardian?

Although it shares the word "*guardian*," a *Guardian ad litem*, is different from the guardian of a minor. As we learned above, any adult interested in the welfare of a child may petition to become that child's guardian. A *Guardian ad litem*, on the other hand, is a person appointed by the court, just for this particular court case, to make recommendations to the judge in order to help them make a good decision about a child. A *Guardian ad litem* (sometimes called a GAL) is a licensed Maine attorney or a qualified licensed mental health professional.

To become a GAL, a person must:

- Complete an application
- Pass a criminal history background check and child protection background check by the Maine Department of Health and Human Services
- Provide a certificate of good standing and disciplinary history letter
- Successfully complete the rostered Guardian ad litem core training and continuing education requirements
- Be appointed by the Maine Guardian ad litem Review Board

In a minor guardianship case, a judge may appoint a GAL to represent the best interests of the minor child. The GAL will not represent either "party" (the parent(s) or the person petitioning to serve as guardian). The judge will tell the GAL what they need to do in a particular case, such as interview the child, speak to family members, review records, etc. The GAL will, essentially, help the judge understand the child's perspective and the family dynamics, and the judge will ultimately consider the GAL's recommended course of action.

If we are moving forward with a final hearing, do I need to send the other party any documents? Can I request documents from them?

You may hear the judge or an attorney in your case talk about "*discovery*." Discovery means that the parties involved in the case share relevant information with each other. This may include financial information or information about the child, the petitioners, or the parents. This exchange of information can lead to the case being resolved by agreement or settlement, because the parties will have a better understanding of the evidence that could be presented to the court in a final hearing. The court doesn't want people to be surprised by the information presented in a hearing.

As part of the court process, you may ask the other party in the case to provide certain records or other information. For example, if a parent is in recovery for substance use, you can ask them to provide documentation of their counseling work. Discovery rules can be hard to understand if you don't have a lawyer, so it's a good idea to ask the judge to order the other party to provide you with the documents or information you need to prepare your case, if it seems likely that you will have a contested hearing. Also, it's possible that the other party may ask you to provide them with some information as well. If you are concerned about the information they are requesting, you can raise this with the court during a hearing or by sending a letter. ■

PROCEDURES FOR FINAL HEARINGS

What should I wear to court? What should I bring with me?

A minor guardianship hearing may be the first time you have been inside a courtroom. The experience can be intimidating, but less so if you come prepared and know what to expect.

First, you should look presentable and professional. You do not need to wear a suit or fancy outfit, but putting some effort into looking nice will show the judge that you are taking the situation seriously. This means wearing clothes that are clean and in good condition and nothing that is too casual or revealing. Dress as if you were going to a job interview, because in a way, you are: the job of being the guardian of this child.

Next, you need to be prepared. You may want to bring a bag containing a folder or binder with the documents you can refer to during the hearing. This may include medical records, reports from the child's school, therapist's records, emails or printouts of text messages between you and the parent, or anything else relevant to the case. Organizing these materials into a three-ring binder is helpful so you can easily find the document you need.

If you want to show any documents to the judge, you will need to bring at least two extra copies: one for the judge, and one for the other adult(s) in the case. Submitting documents to the judge can be tricky; sometimes you need the person who created the document present in court to tell the judge what the document is. You can't always just give the judge written statements from other people, especially if they are not parties to the case.

Before the hearing, you should check with the court to find out if you need to bring the child with you, if the child is already in your care. Some judges like to meet briefly with the child named in a guardianship petition as part of their decision-making, even if the parent consents to the guardianship.

The morning of the hearing, you will either come to court in person or participate by phone or video. If you appear in person, you will want to leave plenty of time to arrive at the court and find parking if you are driving yourself or someone else is bringing you. The written notice from the court may tell you which courtroom your hearing will be in. If you are not sure, you should go to the office of the register of probate or the district court clerk, depending on which court you are in, and ask them to help you find the courtroom. A court officer or other court employee can tell you where in the courtroom you should sit. The judge will enter the courtroom and

guide you through the process of the hearing by asking you questions about what you want to have happen and why.

You can find additional information about representing yourself in court on the websites for Pine Tree Legal Assistance and the Maine Judicial Branch. See Resources on p. 15.

How does the court determine if a guardianship is needed?

There are three scenarios that each provide a potential path to guardianship, and the court must find that ONE applies to your situation.

1. The child's parents consent (agree) to the guardianship. Most guardians in Maine are appointed with the parent's consent. This is the most straightforward way to become a child's guardian.
2. The parents' rights to the child may already have been terminated. In this case, parental consent is not needed. The court will still want to find out whether you are a suitable guardian for the child and if the guardianship is in the child's "best interest." (More on this in the next section.)
3. The court finds that the child's parents are unwilling or unable to exercise their parental rights. A court does not need to terminate the parental rights of the legal parents but will still figure out if the parents are able to care for the child, if you are a suitable guardian, and if the guardianship is in the child's best interest.

How will the court determine what is in the "best interest of the child?"

In determining what is in the best interest of the child, the court will carefully weigh a number of factors, including but not limited to:

- *The child's age*
- *The child's relationship with their parents and any other persons who may significantly affect the child's welfare*
- *The child's preference if old enough to express it*
- *How long and how appropriate the child's current living arrangements are, and whether it's desirable to remain there for consistency reasons ▼*

PROCEDURES FOR FINAL HEARINGS

- *The stability of any proposed living arrangements for the child*
- *Whether those involved in the child's care are capable of providing love, affection, and guidance*
- *The child's adjustment to their current home, school, and community*
- *Whether there is an ongoing or prior history of child abuse by a parent*
- *Domestic abuse between the child's parents*
- *Any other factor that has a reasonable bearing on the physical and psychological well-being of the child*

How does the court determine if I am a "suitable" guardian?

Before a court can appoint anyone as a child's guardian, it must conclude that the person is suitable for that role. "Suitable," with respect to a guardian for a minor, means that the guardian:

- *Can provide a safe and appropriate residence for the minor*
- *Understands and is prepared to follow the terms of the appointment*
- *Understands and can address the minor's needs and protect them from harm*

If you are asking to be appointed as a guardian, you need to come to court with evidence that shows why you are in a position to meet the child's needs. The court will be interested in understanding the relationship you already have with the child, your own background and living situation, and how the child came to be in your care.

If the parents do not consent, or their parental rights have not been terminated, how does the court decide if the child's legal parents are "unwilling or unable to exercise their parental rights"?

If the child's legal parents do not consent to the guardianship, and their parental rights have not been terminated by a court, then this next step is the most important one to securing guardianship of the child.

The court will need to find by clear and convincing evidence (meaning it is highly likely to be true) that the parents are unwilling or unable to exercise their parental rights. Under Maine law, this means that either:

- *The parent is currently unwilling or unable to meet the minor's needs, which will have a significant negative impact on the minor's well-being if the minor lives with the parent.*
- *Or, the parent has failed, without good reason, to maintain a parental relationship with the minor. This means that if a parent has not had contact with the child for a significant period of time, the court may interpret that as an intent to abandon the child.*

Important information for parents who do not consent to the guardianship petition or who are not sure if they should consent.

If you are a parent and someone is trying to become the guardian of your child, you have many important rights in guardianship hearings. These rights include:

- *Receiving a copy of anything that any party files with the court*
- *Receiving a copy of all court notices and orders*
- *Attending every court hearing in the case*
- *Objecting to or challenging the petitioner's evidence*
- *Presenting your own evidence about why the petitioner is not suitable (such as testimony about their background, living situation, criminal history, financial instability, and relationship with your child that suggests they are not in a position to provide your child with stability, safety, and care)*
- *Presenting your own evidence about your ability to exercise your parental rights and care for the child*

You also have the right to ask the court to change or end the guardianship order if one is entered, even if you previously consented to the order. If you and the guardian do not agree about the guardianship petition or whether the guardianship should end, remember that you can ask the court to appoint a lawyer to represent you if you cannot afford to hire your own lawyer. ■

GUARDIANSHIP ORDERS

If the judge determines that all of the requirements for appointment of a guardian have been met, they will issue a final order appointing the guardian.

The final order will include the following information:

- Why the appointment of a guardian is needed
- Whether the parties agreed to the order (in mediation, for example) or whether the judge made their findings after a final hearing, and what those findings are
- What powers and duties the guardian will have
- What rights and responsibilities, if any, the parent(s) still have
- How long the guardian's appointment will last, including whether the appointment is temporary or permanent
- An explanation of how the parties may change or end the guardianship
- An explanation of the court's ability to enforce the order by finding one party in "contempt," which means they did not properly follow the terms of the final order

This final order is the controlling legal document from this point forward, unless either party is successful in changing or ending the order at a later date.

If you have questions about the content of the order, you should ask your attorney, if you have one, or call the court and ask for clarification or further guidance. A sample guardianship order form is below to the right.

What are my duties and responsibilities if I am appointed as a child's guardian?

A child's guardian has the same duties and responsibilities as the child's parent, including acting in the best interest of the child to support their care, education, health, and welfare.

Specifically, there are six responsibilities that guardians must take seriously. Some of these may be obvious, but they are important to read and understand:

1. Spend time with the child and get to know their abilities, limitations, physical, and mental health needs
2. Take care of the child's personal belongings and be willing and able to legally protect their property
3. If money is received on behalf of the child, spend such funds on items and activities that support the minor's care, education, health, and welfare
4. Save any unused money received on behalf of the child for the child's future needs

5. If the court requires it, complete and file a report with the court on a regular basis, providing updated information about the child and the child's property, if the child has any of their own
6. Inform the court immediately of any change in the child's living arrangements or address

Does the guardian pay for the child's needs, or do the parents pay the guardian?

Under Maine law, the guardian is entitled to reasonable compensation for their services and to reimbursement for room, board, and clothing for the child, as approved by the court, to be paid out of the child's own financial resources. In practice, this is very unusual because most children do not have property or income of their own. A guardian may be entitled to child support from one or more parent, but most parents cannot afford to pay.

You may want to explore your eligibility for public benefits as a child's legal guardian. See the Resources on p. 15 for more information about public benefits.

Will the court require me to submit a report about the child's welfare?

Probably yes. The court may include a requirement in its final order that you submit a report, typically yearly, giving updates on the child's well-being and status. The report will usually include information about the child's health, education, amount of contact with parents, and a summary of how the guardian has spent any money held or received on the child's behalf. The court may also require the guardian to provide a copy of the report to the child's parents or to someone else. ■

STATE OF MAINE

PROBATE COURT _____ DISTRICT COURT _____
County _____ Location _____
Docket No. _____ Docket No. _____

IN RE: _____
(Minor Name)

ORDER OF APPOINTMENT OF
GUARDIAN OF MINOR
AND FINDINGS OF FACT
AND CONCLUSIONS OF LAW
 Interim Final
18-C.M.R.S. §§ 5-204 - 5-211

By agreement of the parties; after a final hearing, the Court finds that a suitable person has been presented to be appointed guardian of the above-named minor, that venue is proper, that the required notices have been given or waived, and that the requirements of 18-C.M.R.S. §§ 5-204 and 5-205 have been met. In addition, the Court finds that the appointment is in the best interest of the minor, as set forth below.

The Court hereby appoints the following person as guardian:
Name: _____
Address: _____

The Court hereby appoints the following person as co-guardian:
Name: _____
Address: _____

If co-guardians are appointed, they shall act jointly and severally, unless limited as follows:

The Court hereby directs issuance of Letters of Guardianship to said guardian(s) and finds as follows:

1. REASONS FOR APPOINTMENT (check all that apply):
 The following parent(s) consent.
 All parental rights have been terminated.
 The following parents are unwilling or unable to exercise their parental rights, as set forth in the attached findings and conclusions, _____, or
 All parents are deceased.

2. DUTIES AND RESPONSIBILITIES OF GUARDIAN
Except as limited by this order of appointment, the guardian of the minor has the duties and responsibilities of a parent regarding the minor's support, care, education, health, and welfare. A guardian shall act at all times in the best interest of the minor and shall exercise reasonable care, diligence, and prudence. The guardian shall also:
A. Become or remain personally acquainted with the minor and maintain sufficient contact with the minor to know of the minor's capacities, limitations, needs, opportunities, and physical and mental health.
B. Take reasonable care of the minor's personal effects and bring a protective proceeding if necessary to protect other property of the minor.
C. Expound money of the minor that has been received by the guardian exclusively for the minor's support, care, education, health, and welfare.

GS-002, Rev. 02/20 Page 1 of 5

A sample of the first page of Guardian Order, Form GS-009

CARING FOR A CHILD

If you have completed the process of becoming a child's guardian, congratulations! It is an honor to be entrusted with the care of a young person and to give them the opportunity to thrive in their life with you in their new home.

Important Documents

One of the first things you will want to do as a new guardian is gather and store important documents about the child. Be sure to keep these documents in a safe and accessible location. You may also want to keep electronic copies on your computer.

Important documents may include:

- *The child's birth certificate*
- *The child's medical and immunization records*
- *Legal documents proving that you are the child's legal guardian*
- *Phone numbers of relatives, pediatrician, dentist, mental health provider, attorney, Guardian ad litem, and other service providers*

Health Care

Make sure to arrange for the child's health care needs.

Health care arrangements may include:

- *Enrolling them in or confirming their enrollment in a health insurance plan*
- *Making an appointment with a local pediatrician*
- *Making an appointment for a dental exam and cleaning*
- *Maintaining or arranging appointments with a mental health provider or school counselor*



Education

As guardian, the child in your care may attend school in the district where you live. You will want to contact your local elementary, middle, or high school (depending on the child's age) to enroll them.

Additionally, guided by the child's interests and curiosities, you may want to consider enrolling them in extracurricular activities such as sports, art classes, and other recreational and educational opportunities.

Be sure to notify the child's school that you have been appointed as the child's guardian. The school administration and nurse will want to keep that information on file so that you are the point of contact for emergencies and other important communications.

Food and Nutrition

Of course, a growing child needs adequate nutrition to be healthy and thrive. Many schools have need-based school breakfast and lunch programs, and some communities have food pantries available to families needing one-time or ongoing support for accessing food. Additionally, you may qualify for nutrition assistance or need-based financial support through federally-funded state programs.

Resources may be found on p. 15. ■



CHANGING OR ENDING (ALSO KNOWN AS “MODIFICATION” AND “TERMINATION”) MINOR GUARDIANSHIP ORDERS

Can a guardianship order be changed?

Yes. The parties’ circumstances may change substantially, and that can mean that the guardianship order needs to be updated. This is typically referred to as a “modification.” A guardian, parent, another person, or the minor involved if they are age 14 or older, may file a motion asking the court to modify the order or take other action to protect the child. They do this by completing a Petition for Modification of Guardianship, Termination of Guardianship, Removal of Guardian, or Resignation of Guardian **Form GS-009**. If the guardian and the child’s parents agree to the changes, the process is quick and easy, and the court can enter a new order based on the agreement. If there is no agreement, the court will need to hold a hearing.

Why would a guardianship order need to be modified?

There are many reasons, so let’s look at an example. An original guardianship order that granted an aunt guardianship over a 10-year-old child did not allow a parent to have visitation rights due to concerns about the parent’s substance use. If the parent has since participated in a rehabilitation program, they can petition the court for a modification of the order to allow visitation. The court may consider this to be a “substantial change in circumstances” that would justify reconsidering visitation rights.

When does a guardianship order end?

If the minor dies, is adopted, is emancipated, gets married, or reaches the age of 18, the guardianship will end automatically.

The court can also enter an order ending the guardianship order. This is usually referred to as a “termination” of the guardianship. The court can enter a termination order if an “interested party” (usually the parent) files a Petition to Terminate. The court may not terminate the guardianship without the guardian’s consent unless the court finds that the termination is in the best interest of the minor. There are important additional requirements if the parent petitions to terminate the guardian, as explained in the next section.

Can a parent petition to terminate the guardianship and regain custody?

Yes. A parent may file a Petition for Modification of Guardianship, Termination of Guardianship, Removal of Guardian, or Resignation of Guardian **Form GS-009** asking the court to terminate the guardianship of the minor.

If the parent does so, and the guardian does not agree that the guardianship should end, the guardian can oppose the petition. If the guardian opposes the petition, the guardian must prove to the court that it’s highly likely that the parent remains unwilling or unable to exercise their parental rights. This is the same standard the court uses for appointing a guardian over a parent’s objection. If the guardian fails to meet this standard, the court will terminate the guardianship.

If a parent files a termination petition and the guardian objects, the court may appoint a lawyer or *Guardian ad litem* for the minor child, or a lawyer for the guardian or parent if they are unable to afford a lawyer.

Can a guardian change or be removed without ending the guardianship itself?

Yes. If the guardian dies, resigns, or is removed by the court, the guardian’s appointment will terminate and a new guardian will be appointed. Resignation is only effective when approved by the court.

In addition,, the minor’s parent, a minor who is age 14 or older, or another interested party may petition for removal of a child’s guardian if doing so is in the child’s best interest or for another good reason.

Removal of the guardian does not mean that the guardianship itself will be terminated. The court may appoint a “successor” guardian to serve as the minor’s next guardian if the original guardian is unable, unwilling, or unfit to serve. A successor guardian may be designated before the vacancy occurs in order to ensure a smooth transition. ▼

CHANGING OR ENDING (ALSO KNOWN AS “MODIFICATION” AND “TERMINATION”) MINOR GUARDIANSHIP ORDERS

Transitional Arrangements

The judge can order the parties to take certain steps to transition the child either into a new guardianship arrangement or back to the care of the parent. For example, the judge may order a series of increasingly longer visits between the child and parent so that they can reunite and reconnect over a period of time. Another example is for the child to attend counseling with the parent for a period of time before starting unsupervised visits.

The idea of transitional arrangements is to avoid a sudden change that may be difficult for the child to manage, and to slowly try some new arrangements. Transitional arrangements can take up to six months to complete, although that can be extended if the child is in the middle of the school year.

Adoption

In some cases, in order to provide stability for a minor child, a guardian may wish to pursue formal adoption. Doing so would first involve the legal process of terminating the parental rights of the child’s natural parents. The parents may agree to the adoption if they think it would be in the best interest of the child and they don’t plan to resume care of the child, but they also may contest the adoption.

If the parents contest the adoption, the person seeking to adopt will have to prove to the court (by a high standard of evidence) that the parent cannot now—and is unlikely to be able in the future—safely care for the child. If an adoption is granted, it cannot be undone, and it is a final and permanent change as to the actual parent. As you can imagine, the standard is very high for a judge to approve an adoption, and the judge will have to be persuaded that the child is never going to be safe and adequately cared for in the parent’s custody.

Adoption involves a separate petition and new court case. The requirements and standards are extensive, and the protection of parental rights is very high. Adoption is a serious step with a permanent outcome, and as a result, a complex court case.

For more information about adoption, you can contact other resources including Adoptive and Foster Families of Maine, Inc. and The Kinship Program. Contact information is listed in Legal Aid Providers in Resources on p. 15. ■



RESOURCES: COURTS

Probate Courts

Every county in Maine has its own probate court. Below is contact information for each of the 16 probate courts in Maine:

Androscoggin County
2 Turner St. Auburn, ME 04210
Ph: (207) 782-0281
Hours: 8:00am to 4:00pm

Aroostook County
26 Court St., Ste. 103
Houlton, ME 04730
Ph: (207) 532-1502
Hours: 8:00am to 4:30pm

Cumberland County
142 Federal St., Ste. 125
Portland, ME 04101
Ph: (207) 871-8382
Hours: 8:30am to 4:00pm

Franklin County
140 Main St.
Farmington, ME 04938
Ph: (207) 778-5888
Hours: 8:30am to 4:00pm

Hancock County
50 State St.
Ellsworth, ME 04605
Ph: (207) 667-8434
Hours: 8:30am to 4:00pm

Kennebec County
95 State St.
Augusta, ME 04330
Ph: (207) 622-7558
Hours: 8:00am to 4:00pm

Knox County
62 Union St.
Rockland, ME 04841
Ph: (207) 594-0427
Hours: 8:00am to 4:00pm

Lincoln County
32 High St.; P.O. Box 249
Wiscasset, ME 04578
Ph: (207) 882-7392
Hours: 8:00am to 4:00pm

Oxford County
26 Western Ave.; P.O. Box 179
South Paris, ME 04281
Ph: (207) 743-6671
Hours: 8:00am to 4:00pm

Penobscot County
97 Hammond St.
Bangor, ME 04401
Ph: (207) 942-8769
Hours: 8:00am to 4:30pm

Piscataquis County
159 East Main St.
Dover-Foxcroft, ME 04426
Ph: (207) 564-2431
Hours: 8:30am to 4:00pm

Sagadahoc County
752 High St.; P.O. Box 246
Bath, ME 04530
Ph: (207) 443-8218
Hours: 8:30am to 4:30pm

Somerset County
41 Court St.
Skowhegan, ME 04976
Ph: (207) 474-3322
Hours: 8:30am to 4:00pm

Waldo County
103 Church St.; P.O. Box 323
Belfast, ME 04915
Ph: (207) 338-2780
Hours: 8:00am to 4:00pm

Washington County
85 Court St.; P.O. Box 297
Machias, ME 04654
Ph: (207) 255-6591
Hours: 8:00am to 4:00pm

York County
45 Kennebec Rd.; P.O. Box 399
Alfred, ME 04002
Ph: (207) 324-1577
Hours: 8:00am to 4:15pm

District Courts

The following is a list of district courts in Maine:

Augusta
1 Court St., Suite 101
Augusta, ME 04330
(207) 213-2800

Bangor
78 Exchange St.
Bangor, ME 04401
(207) 561-2300

Belfast
11 Market St.
Belfast, ME 04915
(207) 338-1940

Biddeford
25 Adams St.
Biddeford, ME 04005
(207) 283-1147

Bridgton
3 Chase St., Suite 2
Bridgton, ME 04009
(207) 647-3535

Calais
382 South St., Suite B
Calais, ME 04619
(207) 454-2055

Caribou
144 Sweden St., Suite 104
Caribou, ME 04736
(207) 493-3144

Dover-Foxcroft
159 East Main St., Suite 21
Dover-Foxcroft, ME 04426
(207) 564-2240

Ellsworth
50 State St., Suite 2
Ellsworth, ME 04605
(207) 667-7141

Farmington
129 Main St., Suite 1
Farmington, ME 04938
(207) 778-2119

Fort Kent
139 Market St., Suite 101
Fort Kent, ME 04743
(207) 834-5003

Houlton
26 Court St., Suite 201
Houlton, ME 04730
(207) 532-2147

Lewiston
71 Lisbon St.; P.O. Box 1345
Lewiston, ME 04240-1345
(207) 795-4800

Lincoln
52 Main St., Lincoln, ME 04457
(207) 794-8512

Machias
85 Court St.; P.O. Box 526
Machias, ME 04654-0526
(207) 255-3044

Madawaska
Physical: 645 Main St.
Madawaska, ME 04756
(207) 728-4700
Mail: 139 Market St., Ste 101
Fort Kent, ME 04743

Millinocket
207 Penobscot Ave.
Millinocket, ME 04462
(207) 723-4786

Newport
12 Water St.
Newport, ME 04953
(207) 368-5778

Portland
205 Newbury St., Grnd Flr
Portland, ME 04101
(207) 822-4200

Presque Isle
27 Riverside Dr.
Presque Isle, ME 04769
(207) 764-2055

Rockland
62 Union St.
Rockland, ME 04841
(207) 596-2240

Rumford
145 Congress St.
Rumford, ME 04276
(207) 364-7171

Skowhegan
47 Court St.
Skowhegan, ME 04976
(207) 474-9518

South Paris
26 Western Ave.
South Paris, ME 04281
(207) 743-8942

Springvale
447 Main St.
Springvale, ME 04083
(207) 459-1400

Waterville
18 Colby St.
Waterville, ME 04901
(207) 873-2103

West Bath
101 New Meadows Rd.
West Bath, ME 04530
(207) 442-0200

Wiscasset
32 High St.; P.O. Box 249
Wiscasset, ME 04578
(207) 882-6363

York
11 Chases Pond Road
York, ME 03909
(207) 363-1230

RESOURCES

Legal Information and Assistance

Cumberland Legal Aid Clinic, University Of Maine School Of Law

Web: Mainelaw.maine.edu/Public-Service/Clac

Phone: Greater Portland Area (207) 780-4370

Toll Free: Outside of Greater Portland Area 1-(877) 780-2522

Free Legal Answers Maine

Web: Maine.FreeLegalAnswers.org

Legal Services For The Elderly

Web: MaineLSE.org

Helpline: 1-(800) 750-5353

Maine Equal Justice

Information about and assistance with public benefits programs.

Web: MaineEqualJustice.org

Maine State Bar Association (MSBA) Lawyer Referral Service

Web: MaineBar.Community.Lawyer

Pine Tree Legal Assistance

Web: PTLA.org

Phone*: Aroostook County
(207)764-4349

Washington & Hancock Counties
(207) 255-8656

Penobscot, Piscataquis, & Waldo Counties
(207) 942-8241

Kennebec, Somerset, Knox, & Lincoln Counties
(207) 622-4731

Androscoggin, Oxford, & Franklin Counties
(207) 784-1558

Cumberland, York, & Sagadahoc Counties
(207) 774-8211

*See website for details about current times available for legal assistance calls.

State of Maine Judicial Branch

This website contains information about court rules and procedures.

Web: Courts.Maine.gov

Volunteer Lawyers Project

Web: VLP.org

Phone: Northern Maine 1-(888) 956-4276
Fridays 9:00am - 12:00pm

Southern Maine 1-(800) 442-4293
Mondays 1:00pm - 3:30pm
Fridays 9:00am - 11:30am

Additional Resources

**Adoptive & Foster Families of Maine, Inc.
and The Kinship Program**

Web: AFFM.net

Phone: (207) 827-2331 or 1-(800) 833-9786

Good Shepherd Food Bank Of Maine

Web: GSFB.org/Get-Help/Food-Map/

**Maine Department of Health and Human Services
Office of Child and Family Services**

To Report Child Abuse or Neglect: 1-(800) 452-1999

**Maine Supplemental Nutrition Assistance Program (SNAP):
Maine Food Supplement Program**

Web: Maine.gov/DHHS/Ofi/Programs-Services/Food-Supplement

Maine Temporary Assistance To Needy Families (TANF)

Web: Maine.gov/DHHS/Ofi/Programs-Services/TANF



A Guide to Kinship Care & Minor Guardianship in Maine

MAINE
UNIVERSITY OF MAINE SCHOOL OF LAW
LAW

Cumberland
Legal Aid Clinic

VLP
MAINE VOLUNTEER
LAWYERS PROJECT