

4A-501. Petition to appoint kinship guardians.

STATE OF NEW MEXICO
COUNTY OF _____

_____ JUDICIAL DISTRICT

_____, Petitioner(s)

No. _____

IN THE MATTER OF THE KINSHIP GUARDIANSHIP OF

_____,¹ (a) Child(ren) (*use initials only*), and concerning

_____, Respondent(s).

PETITION TO APPOINT KINSHIP GUARDIAN(S)²

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

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

A. INFORMATION ABOUT PETITIONER(S)³

1. Petitioner #1 Name and address:

2. Petitioner #2 Name and address:

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

[] Petitioner(s) have a Guardianship Assistance Agreement with the Children, Youth and Family Department (“CYFD”). Attach a copy of the agreement (*check if applicable*).

B. INFORMATION ABOUT THE CHILD(REN)⁴

1. Child’s Name _____

a. Address _____

b. Place and year of birth

City _____

State _____

Month and year of birth _____

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

d. If yes, what is the relationship?

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

e. Is the child fourteen (14) years of age or older? ____ Yes ____ No

If yes, has the child stated that he/she wants the named Petitioner(s) as the guardian(s)? ____ Yes⁵ ____ No

f. Is the child a Native American child?⁶ ____ Yes ____ No

If yes, what tribe is the child enrolled with or eligible to be enrolled with?

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

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

Tribal contact information (address and phone number):

2. Child's Name _____

a. Address _____

b. Place and year of birth

City _____

State _____

Month and year of birth _____

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

d. If yes, what is the relationship?

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

e. Is the child fourteen (14) years of age or older? ____ Yes ____ No

If yes, has the child stated that he/she wants the named Petitioner(s) as the guardian(s)? ____ Yes⁵ ____ No

f. Is the child a Native American child?⁶ ____ Yes ____ No

If yes, what tribe is the child enrolled with or eligible to be enrolled with?

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

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

Tribal contact information (address and phone number):

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

1. Respondent #1

- a. _____ (name of Respondent-parent if known) is the parent of _____.
- b. This Respondent-parent is _____ alive _____ deceased (if deceased, provide proof of death)
- c. If alive, list address (include physical street address, city, state, and zip code):

_____.
- d. On information and belief, (complete only one choice below)
 - i. Respondent-parent _____ (name) consents to the appointment of Petitioner(s) as Kinship Guardian(s).⁸
 - Or
 - ii. This legal parent is unable or unwilling to provide adequate care, maintenance, and supervision for the minor child(ren) named in this petition (explain why you think this parent is unable or unwilling to provide care including whether parent(s) have signed a Voluntary Placement Agreement with CYFD):

_____.

2. Respondent #2

- a. _____ (name of Respondent-parent if known) is the parent of _____.
- b. This Respondent-parent is _____ alive _____ deceased (if deceased, provide proof of death)
- c. If alive, list address (include physical street address, city, state, and zip code):

_____.
- d. On information and belief, (complete only one choice below)
 - i. Respondent-parent _____ (name) consents to the appointment of Petitioner(s) as Kinship Guardian(s).⁸
 - Or

- ii. This legal parent is unable or unwilling to provide adequate care, maintenance, and supervision for the minor child(ren) named in this petition (*explain why you think this parent is unable or unwilling to provide care including whether parent(s) have signed a Voluntary Placement Agreement with CYFD*):

D. FACTS REGARDING REQUEST FOR GUARDIANSHIP

1. Consent to Guardianship

- a. Does Respondent #1 consent to the guardianship? ____ Yes ____ No
If no, has the child(ren) lived with Petitioner(s) without Respondent #1 in the home for ninety (90) days immediately prior to filing this petition?
____ Yes ____ No
- b. Does Respondent #2 consent to the guardianship? ____ Yes ____ No
If no, has the child(ren) lived with Petitioner(s) without Respondent #2 in the home for 90 days immediately prior to filing this petition?
____ Yes ____ No

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

Parent(s) signed a Voluntary Placement Agreement with CYFD, placing the children in CYFD's legal custody, and to the best of Petitioner's knowledge, the Voluntary Placement Agreement has not been revoked.

Petitioner(s) signed a Guardianship Assistance Agreement with CYFD and to the best of petitioner(s) knowledge, it has not been revoked.

3. If a Respondent-parent is willing and able to parent the child(ren), are there extraordinary circumstances that justify granting the guardianship?⁹
____ Yes (*please explain*) ____ No

E. OTHER INFORMATION

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

If yes, please provide:

Case Number _____

Type of case _____

2. Is there current CYFD involvement?

_____ Yes _____ No

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

Name: _____

Position (if known): _____

Phone Number and/or email address: _____

b. If yes, does CYFD have legal custody of any of the child(ren) named in this petition? Yes _____ No _____. If yes, CYFD must be served with a copy of this petition.¹⁰

c. If yes, does CYFD consent to this guardianship?

_____ Yes _____ No _____ Don't know (*please explain*):

3. Has CYFD filed a court case against the parents concerning this child?

_____ Yes _____ No

4. Do any other person(s) have or claim to have court ordered custody of the child(ren)?¹⁰

_____ Yes _____ No

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

5. Do any other person(s) have court ordered visitation with the child(ren)?¹⁰

_____ Yes _____ No

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

6. Petitioner(s) are requesting child support from Respondents.¹¹

_____ Yes _____ No

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

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

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

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

VERIFICATION

Petitioner #1:

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

Date

Signature of Petitioner #1

Address, phone number, and email for
Petitioner #1

Petitioner #2:

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

Date

Signature of Petitioner #2

Address, phone number, and email for
Petitioner #2

USE NOTES

1. Enter the initials of each child. Each child should be listed in the petition under Section A.
2. Forms 4A-501 to -513 NMRA are required to be used by persons representing themselves in kinship guardianship proceedings. Parties represented by an attorney may use other forms that serve the same purpose.
3. A petitioner must be an adult with whom the child has a significant bond. *See* NMSA 1978, Section 40-10B-5 (2022) for persons who may file as a petitioner under the Kinship Guardianship Act.
4. Fill out Section B for each child you are seeking guardianship over. If you are applying for guardianship of more than two children, repeat the sections as necessary for each child.

5. Any minor child fourteen (14) years of age or older must be served with a copy of this petition. If a child is fourteen (14) years of age or older and does not want the petitioner(s) to be the child's guardian, the court will not appoint the petitioner(s). *See* NMSA 1978, § 40-10B-11(B) (2001). If the child is fourteen (14) years of age or older and consents to the petitioner(s) as guardian(s), please use the Nomination of Kinship Guardian Form, Form 4A-506 NMRA.

6. The Indian Child Welfare Act defines "Indian child" as "any unmarried person who is under age eighteen and is either (a) a member of an Indian tribe, or (b) is eligible for membership in an Indian tribe and is the biological child of a member of an Indian tribe." *See* 25 U.S.C. § 1903(4) (1978).

7. If there are more than two parents for the children involved, repeat the information for each additional parent. Unless the child's parent is deceased or the parent's parental rights have been terminated, use Form 4-206 NMRA for service of process on each parent named in the petition unless (a) the parent has waived service in writing; (b) the parent is deceased; or (c) the parent's rights as a parent have been terminated by a court order.

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

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

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

11. If CYFD has legal custody of any child named in this petition, CYFD must be served with a copy of this petition. CYFD has designated addresses and individuals to accept service of the petition. Court clerks and the local CYFD office will supply the address and contact information for the address and person that will accept service on behalf of CYFD.

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

[Provisionally approved, effective August 15, 2003 until August 31, 2004; approved, effective January 20, 2005; 4-981 recompiled and amended as 4A-501 by Supreme Court Order No. 16-8300-020, effective for all pleadings and papers filed on or after December 31, 2016; as amended by Supreme Court Order No. 22-8300-020, effective for all pleadings and papers filed on or after December 31, 2022.]