

# Information for Non-Attorneys on Legal Guardianship for Minors

## Contents

Disclaimer.....	1
Purpose of this Paper.....	1
Explanation of the Terms Used in this Paper.....	2
The Meaning of Legal Guardianship .....	3
Legal Situations When a Judge Cannot Appoint a Guardian .....	3
The Legal Effect of a Paternity Affidavit on a Guardianship Case.....	4
Legal Situations When a Judge May Appoint a Legal Guardian.....	4
Responsibilities of a Legal Guardian .....	5
Information for Non-Parent Self-Represented Litigants Who Want to Be Appointed Legal Guardian of a Child .....	5
Removal of Guardian and Termination of Guardianship.....	7

## Disclaimer

This paper and the forms do not create an attorney-client relationship between the reader and Kids’ Voice of Indiana, Inc.

## Purpose of this Paper

The purpose of this paper is to explain:

- (1) legal terms for situations when a non-parent wants to be appointed as the legal guardian of a child;
- (2) what legal guardianship means, and when legal guardianship may be requested under Indiana law;
- (3) how divorce cases, paternity cases, and the signing of a paternity affidavit affect a non-parent’s ability to be appointed legal guardian for a child;
- (4) the legal process of appointing a guardian, including forms for self-represented litigants who want to be appointed as the guardians of a child

It is best for non-parents who want to be appointed as guardians for a child to be represented by an attorney who is licensed to practice law in Indiana. Non-parents who have limited financial resources should contact Indiana Legal Services at **(844) 243-8570** to find out whether they are eligible to receive free legal representation to be appointed guardians for a child. Non-parents may also consult the [Indiana Supreme Court Website](#) at the Self Service Legal Center by clicking on [Getting Legal Help](#). This link connects users to information for District Pro Bono providers who might be able to provide free legal representation.

If the child has funds or assets (for example, life insurance benefits, parents' savings, real estate, or personal property that could be sold for a significant amount of money) for the child's benefit, the non-parent must be represented by an Indiana attorney to petition for the appointment of a guardian and also to account to the Court for the guardian's use of the child's funds. This type of guardianship is a guardianship of the person and "estate." If the child has funds available, the Judge may authorize using the child's funds to pay for the non-parent's attorney fees requesting the appointment of a legal guardian.

## **Explanation of the Terms Used in this Paper**

"Child" means a person who is under the age of eighteen.

"CHINS petition" is a legal case filed in court by the Department of Child Services when child abuse or neglect has been substantiated. Having a CHINS case filed is different from an assessment (formerly called an investigation) by Child Protective Services (CPS).

"Judge" means a trial court judge who has been elected by the county voters or another judicial officer, including a magistrate, commissioner, or referee.

"Minor" is the legal term for a child under age 18 in a guardianship case.

"Non-parent" means a person who is not the child's mother or legal father.

"Self-represented litigant" means a person who does not have an attorney.

"Third-party custodian" means a non-parent who is seeking custody of a child in a divorce ("dissolution") case or a paternity case.

"Third-party custody" and "guardianship" both mean that a non-parent has the legal authority to provide a home for the child and make decisions on the child's behalf, including decisions about the child's medical care and education.

"Termination of guardianship" is when a parent or a non-parent asks the court to end the guardianship and return the child to a parent.

## **The Meaning of Legal Guardianship**

The appointment of a legal guardian requires a court case. A Judge is the only person who has the legal authority to sign a court order appointing a legal guardian for a child. A parent may not sign a paper which legally “gives guardianship” of a child to a non-parent. A parent may sign a consent to the appointment of a non-parent as the legal guardian of a parent’s child, but signing the consent is only one of the steps needed to appoint a legal guardian for the child. A parent’s suggestion in a will, a power of attorney form, or a standby guardian form does not establish legal guardianship. The standby guardian form is effective for only 90 days, and the parent must be deceased or incapacitated for the standby guardian form to be used by the non-parent. The Judge may consider the parent’s wishes as shown in a signed document, but the Judge is not required to agree with the parent’s wishes when appointing a legal guardian for the child. The Judge must decide, among other things, whether appointing the non-parent as guardian is in the child’s best interests. Indiana law prevents the Judge from appointing a non-parent as legal guardian for a child if the non-parent has been convicted of one of the following felonies:

1. child molesting;
2. sexual misconduct with a minor;
3. rape;
4. criminal deviate conduct;
5. vicarious sexual gratification; or
6. attempt or conspiracy to commit one of the above crimes.

The non-parent does not need to be a relative of the child in order to be appointed guardian of the child. The non-parent cannot give money or something valuable to the parents “in exchange for” the parents’ consenting to the guardianship.

## **Legal Situations When a Judge Cannot Appoint a Guardian**

Indiana law does not allow a Judge to appoint a guardian for a child if there is already a divorce case or a paternity case about the child. If the child’s parents are divorced, only the divorce court has the authority to make court orders about the child’s custody until the child is at least nineteen years old. This is true even after the parents have been divorced. A non-parent who wants “guardianship” or “third-party custody” of the child must file a petition in the court case for the parents’ divorce requesting to be appointed the child’s “third party custodian.” If the parents have been divorced, and later one of the parents dies, the non-parent should ask the Judge with jurisdiction over legal guardianships to appoint a legal guardian for the child, because the divorce court’s jurisdiction ends when a parent dies.

If the child's paternity has been established in a court case and a custody and child support order has been entered, only the paternity court has the legal authority to make orders about the child's custody until the child is at least nineteen years old. This is true even after the identity of the child's biological father has been legally established in court. A non-parent who wants "guardianship" or "third-party custody" of the child must file a petition in the paternity court and request to be appointed the child's "third-party custodian." The authority of the paternity court to make orders about the child's custody continues, even after the death of one of the parents. If paternity was established as part of a Title IV-D child support case, the non-parent should request third party custody in the Title IV-D court case.

If the Department of Child Services (DCS) has filed a CHINS petition about the child, non-parents' requests for "guardianship" or "third-party custody" should be filed in the CHINS case as long as the CHINS case remains open.

## **The Legal Effect of a Paternity Affidavit on a Guardianship Case**

If the parents weren't married when the child was born, and never married after the child's birth, the parents might have signed a paternity affidavit. The paternity affidavit may be signed at the hospital by both parents not more than 72 hours after the child's birth. Sometimes signing the paternity affidavit is called "signing the birth certificate," although this is not legally accurate. The parents may also sign a paternity affidavit later at the County Department of Health until the child becomes an adult. When the paternity affidavit has been signed by both parents, the father's paternity is legally established without a court case or court ordered DNA test. If the paternity affidavit has been signed by both parents, the mother usually has sole legal and physical custody of the child, unless a court has made an order about custody. Sometimes the parents who sign the paternity affidavit agree to joint legal custody, but the mother always has sole physical custody, unless a court order has been made about custody.

If a non-parent is seeking to be appointed legal guardian of a child, the father who signed the paternity affidavit must either consent to the guardianship or receive notice of the filing of the guardianship.

## **Legal Situations When a Judge May Appoint a Legal Guardian**

A non-parent may petition to be appointed legal guardian of a child if:

- (1) both of the child's parents are deceased;
- (2) the parents were divorced, but one of the parents is now deceased;
- (3) the child's parents remain married to each other;

- (4) the child was born to unmarried parents and paternity has not been established in a court case; or
- (5) the child has been found to be a CHINS because the Department of Child Services has filed a CHINS case and the CHINS case remains open, the Judge may appoint a legal guardian as a permanency plan for the child.
- In any other situations, a guardianship would not be appropriate, but third-party custody might be. This paper only discusses guardianship.

## **Responsibilities of a Legal Guardian**

When a Judge appoints a legal guardian for a child, the legal guardian has the responsibility to provide a clean, safe home for the child. There must be no abuse, neglect, domestic violence, or exposure to illegal drugs or persons who have been convicted of serious crimes, such as murder, or sex crimes in the home. The legal guardian must be sure that the child receives medical care, dental care, food, clothing, supervision, and education. The guardian must not “give” the child back to the parents or other non-parents without permission from the Judge in advance.

If a non-parent has been appointed legal guardian for a child, the non-parent will have the legal authority to obtain medical care for the child, enroll the child in school, and apply for financial benefits for the child, including Social Security, child support, health insurance (including health insurance from the guardian’s employer, depending on the employer’s insurance policy), Supplemental Security Income, and Veteran’s Administration benefits. The Judge can specifically limit the legal guardian’s powers and duties and also order the legal guardian to comply with specific orders, including providing visitation (or parenting time) for the parents. If the appointed guardian becomes unwilling or unable to care for the child, the guardian must obtain the Judge’s permission to resign as legal guardian, so the Judge can appoint a new guardian. If the guardian has been appointed guardian of the child’s estate, the guardian must file court documents accounting for the use of the child’s money, real estate, or other assets. A guardian for the child’s estate will need to be represented by an attorney who will assist with filing the correct court documents.

## **Information for Non-Parent Self-Represented Litigants Who Want to Be Appointed Legal Guardian of a Child**

Court procedures are different in each of Indiana’s 92 counties. In some counties, the Judge who has the legal authority to appoint a guardian for a child allows a non-parent to

petition for guardianship without an attorney. The legal forms in this article may be helpful to a non-parent self-represented litigant. The forms may be used only if the child's parents sign notarized consents to the appointment of the non-parent as the child's legal guardian. Using these forms is a last resort when efforts to secure the services of an attorney have failed. The non-parent cannot give money or something valuable to the parents "in exchange for" the parents' consenting to the guardianship. The Verified Petition for Appointment of Guardian of the Person over the Minor requires the person who is requesting to be appointed guardian to swear or affirm under the penalty for perjury that the statements in the petition are true.

The self-represented litigant will need:

- (1) a Verified Petition for Appointment of Guardian of the Person of Minor;
- (2) the legal parents' signed notarized Consents to the Appointment of Guardian of the Person of Minor;
- (3) a proposed Order for the Appointment of Guardian of the Person of a Minor;
- (4) the Oath of Guardian; and
- (5) the Letters of Guardianship of the Person.

If the Judge appoints the non-parent as legal Guardian of the Person of the Minor, a completed Guardianship Registry Information Sheet must also be prepared. Make four copies of each completed document listed above. Attach the parents' Consents to the Verified Petition for Appointment of Guardian of the Person. Remember that when the father has signed a paternity affidavit, he is a legal parent and his signed, notarized consent is needed along with the mother's consent. If one or both of the parents is deceased, a copy of the death certificate (which may be obtained through the funeral director or the State Department of Health) or other documentation that the parent is deceased is needed. You will also need the filing fee of \$176.00 which must be paid in cash to the court clerk to open the court file. If you cannot afford the filing fee, it may be possible to have this fee waived by the Judge, if a fee waiver request is prepared and provided to the Court along with the other documents. Consult the [Self-Service Legal Center](#) on the Indiana Supreme Court website [www.in.gov/judiciary](http://www.in.gov/judiciary). Click on [Court Forms](#) and then on [Fee Waiver](#). Ask the County Clerk's Office for the procedures used in your county to file guardianship petitions. If the Judge signs the Order Appointing Guardian, the Guardian's Oath is usually signed in the Clerk's presence, and the Letters of Guardianship are stamped by the Clerk. The Order and Letters may be needed to enroll the child in school, obtain medical care, apply for health insurance, and apply for benefits. The appointed guardian should always keep a copy of all the documents for after the Order, Oath, and Letters have been signed and stamped.

## **Removal of Guardian and Termination of Guardianship**

If a parent wants to remove the appointed guardian and substitute a different guardian, the judge must make this decision, unless both parents and the legal guardian make an agreement. The Judge must approve the agreement. If a parent wants to terminate (end) the guardianship so the child will live with a parent, the Judge must also make this decision unless both parents and the legal guardian agree to terminate the guardianship. The Judge must approve the agreement. The legal guardian may object to being removed or to termination of the guardianship, and request that a hearing be scheduled. The Judge will make the decision on removing the guardian or terminating the guardianship after listening to witness testimony and looking at other evidence presented by both parents and the guardian.

Guardianship usually ends automatically when the child reaches the age of eighteen. The exceptions to this rule are when the eighteen-year-old is receiving financial help from the Department of Child Services, has been found by the Judge to be an incapacitated person, or if a child who is at least seventeen years old and his or her current guardian jointly petition the Court to extend the duration of the guardianship.