

N.M. Ct. R. Form 4-981

New Mexico Rules

State Court Rules

Civil Forms

Article 9. Statutory Proceedings

Form 4-981. Petition for Order Appointing Kinship Guardian

[Simplified petition, Kinship Guardianship Act, Sections
40-10B-1 to 40-10B-14 NMSA 1978 [FN1]]

JUDICIAL DISTRICT COURT

COUNTY OF _____
STATE OF NEW MEXICO

Petitioner [FN2]

v. No. _____

and _____
Respondents [FN3]

IN THE MATTER OF THE KINSHIP GUARDIANSHIP OF _____, born _____ [FN4]

PETITION FOR ORDER APPOINTING KINSHIP GUARDIAN [FN5]

1. INFORMATION ABOUT THE PETITIONERS (the persons filing this petition requesting to be appointed to serve as a kinship guardian.)

A. The [petitioner is] [petitioners are] the child's [FN2]:

- maternal [grandparents] [grandparent] (child's mother's parents);
- paternal [grandparents] [grandparent] (child's father's parents);
- aunt;
- uncle;
- brother;
- sister;
- a family member:

_____ (describe the family relationship);

- an adult with whom the child has a significant bond:

_____ (describe the relationship)

B. The petitioner or petitioners reside at:

_____ (street address)
_____ (city, state, zip code)
_____ (telephone number)
_____ (fax number, if any)

C. Venue is proper because the child or children reside in this county or this county is the legal residence of the child or children.

(check applicable alternative)

- D. [] The above named child has lived with the petitioner or petitioners for ninety (90) or more days immediately preceding the filing of this petition.
- [] Each respondent has consented to the appointment of kinship guardians. The consent forms are attached to this petition.
[FN6]
- E. The petitioner or petitioners accept the duties and responsibilities of guardianship, including providing for the care, maintenance and supervision of the child.
- F. The above child is not an Indian child and is not subject to provisions of the federal Indian Child Welfare Act. [FN5]

2. REQUEST FOR COURT TO NAME PETITIONERS AS KINSHIP GUARDIANS OF A MINOR CHILD

The petitioners request the court to enter an order appointing the

[petitioner] [petitioners] as [guardian] [guardians] of the following child of _____ [FN7] (father) and _____ [FN7] (mother), who are the respondents in this case: (List the name and the date of birth of the child and each address of the child for the last five (5) years. Use a separate sheet if necessary.) [FN8]

Name: _____
(last name, first and middle)

Date of birth: _____

Place of birth: _____

Present address:

_____ (street)
_____ (city)
_____ (state and zip code)

Next previous address:
_____ (street)
_____ (city)
_____ (state and zip code)

Next previous address:
_____ (street)
_____ (city)
_____ (state and zip code)

3. INFORMATION ABOUT THE CHILD'S PARENTS

A. Information about mother:

(Check each applicable statement.)

[] _____ (mother's name) is the mother of the child.
Her current address is _____ (city, county and state and zip code.)

- [] The mother is living and has consented in writing [FN9] to [my] [our] appointment as kinship guardian. (Attach consent form signed by child's mother.)
- [] The mother is deceased. (Attach death certificate to this petition.)
- [] The mother is living but her parental rights have been terminated by an earlier court order. (Attach a copy of the court order to this petition.)

B. Information about father:

(Check each applicable statement.)

- [] _____ (father's name) is the father of the child.
His current address is _____ (city, county and state and zip code.)
- [] The father is living and has consented in writing [FN6] to [my] [our] appointment as kinship guardian. (Attach consent form signed by child's father.)
- [] The father is deceased. (Attach death certificate to this petition.)
- [] The father is living but his parental rights have been terminated by an earlier court order. (Attach a copy of the court order to this petition.)
- [] Although the petitioner believes _____ (name of alleged father) to be the father of the child, he has not acknowledged that he is child's father.
- [] The name of the father of the child is not known by the petitioners because: (explain) _____.

4. INFORMATION ABOUT OTHER CASES (complete if applicable)

- A. The following divorce, separation, order of protection, child support, paternity, abuse or neglect [FN10] cases have been previously filed involving the above parents:

(complete if known)

Type of Case Year Filed Case Number

Where Filed

- B. (Complete if applicable.) The following persons, other than the petitioner or petitioners or the parents of the [child] [children], have or claim to have custody of the [child] [children] or visitation rights to the [child] [children]

(List names of each guardian, custodian or person with visitation rights and circle applicable claim.)

_____ (name) [guardian]

[custody] [visitation]

_____ (name) [guardian]

[custody] [visitation]

_____ (name) [custody]

[visitation]

5. CHILD OVER FOURTEEN (14) YEARS OF AGE OR MARRIED

(Complete if applicable)

_____ (name of child) was born on _____ (date of birth) and at the time of the hearing on this petition will be at least fourteen (14) years of age.

_____ (name of child):

(Check if applicable)

[] has signed an affidavit nominating _____ (name of person

nominated) to be appointed as guardian. A copy of the signed nomination is attached and made a part of this petition. [FN11]
[] has been served with a copy of this petition and a copy of the nominating petition, but has failed or refused to sign the nomination form.

[] is married

[] is not married

6. CHILD SUPPORT

(Check applicable alternative)

[] [I] [We] request that the court enter a child support order ordering _____ (name of parent or parents) to pay child support [FN12].

[] [I] [We] do not request child support.

STATE OF NEW MEXICO)

) ss

COUNTY OF _____)

The [petitioner was sworn and states] [petitioners were sworn and state]: [I] [We] have read this petition and it is true to the best of [my] [our] knowledge and belief. [I] [We] understand that [I] [We] can be punished both civilly and criminally if any information in this petition is false.

Date _____ Signature of Petitioner

Date _____ Signature of Petitioner

Signed and sworn before me on this _____ day of _____, ____.

Notary public

My commission expires: _____.

USE NOTES

[FN1] Civil Forms 4-981 to 4-992 NMRA may be used in the district courts of this State by persons who are representing themselves in uncontested kinship guardianship proceedings. Civil Forms 4-981 to 4-991 NMRA are not required to be used. Parties represented by an attorney may use other forms that serve the same purpose.

[FN2] The petitioner must be a spouse, parent, stepparent, godparent, brother, sister, stepbrother, stepsister, half-brother, half-sister, uncle, aunt, niece, nephew, first cousin or any person denoted by the prefix "grand" or "great", the spouse or former spouse of the child or an adult with whom the child has a significant bond. See Section 40-10B-5 NMSA 1978 for persons who may file as a petitioner pursuant to the Kinship Guardianship Act.

[FN3] Unless the child's parent is deceased or the parent's parental rights have been terminated, the parent must be joined as a respondent. This petition must be served on each parent of the child in the manner provided by Rule 1-004 NMRA for personal service to Rule 1-004 NMRA, unless:

- (a) a consent form has been signed by the parent;
- (b) the parent is deceased and a death certificate is attached to this petition at the time it is filed;
- (c) the parent's rights as a parent have been terminated by a court order and a copy of the order is attached to this petition at the time it is filed.

Civil Form 4-982, "Kinship Guardianship Summons" has been provided for use with this petition.

[FN4] Insert the name or the initials of the minor child and the child's birthdate. This form may be modified to include additional minor children. The name of a child shall not be made available to the public on the internet.

[FN5] This form cannot be used without revision if the child is an Indian child. In these cases the form of the petition and the manner of notice must comply with federal law. The Indian Child Welfare Act, 25 USC Section 1901 et seq., defines "Indian child" as follows:

"'Indian child' means 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."

25 U.S.C. Section 1903(4). If the child is enrolled or is eligible for enrollment in an Indian tribe, the form of the petition and the manner of the notice must comply with federal law. The parent or Indian custodian of an Indian child may have the right to have the child returned upon demand as may be determined by tribal law or custom.

[FN6] See Forms 4-985 or Form 4-986 NMRA for parental consent forms.

[FN7] If the parent is deceased insert "deceased" instead of address and check the "deceased" box. A copy of the death certificate must be attached to this Petition.

[FN8] Section 40-10-10 NMSA 1978 of the Uniform Child-Custody Jurisdiction Enforcement Act requires the first pleading of every custody action to give information under oath as to the child's present address, the places where the child has lived within the last 5 years and the names and present addresses of the persons with whom the child has lived during that period.

[FN9] Attach a copy of each parent's Verified Parental Consent to Appointment of Guardian and Waiver of Service of Process to this petition. See Civil Forms 4-985 and 4-986 NMRA.

[FN10] If an abuse or neglect or other proceeding has been filed by the Children, Youth and Families Department, that department must file a consent to the appointment of petitioners as Kinship Guardians. Attach a copy of such consent to this petition.

[FN11] If the child is fourteen (14) years of age or older, the child must be served with a copy of this Petition or a copy of the Nomination of Guardian Form, Civil Form 4-983 NMRA, must be attached to this Petition at the time it is filed.

[FN12] The child's mother may be ordered to pay child support. The respondent named as the child's father may be ordered to pay child support if the respondent father has admitted paternity or paternity has been established by another proceeding. See Civil Forms 4A-331 and 4A-332 NMRA for a petition to establish paternity and a final decree of paternity.