

KINSHIP GUARDIANSHIP: STEPS FOR PEOPLE WITHOUT LAWYERS

Step 1:

If a child lives with you and you qualify to apply for “Kinship Guardianship,” you can apply for Kinship Guardianship by opening a case with the district court in your county.

To “qualify” for Kinship Guardianship, generally, a child must live in your home and have lived there for at least 90 days without their parents in the house. Their parents must also be unable and/or unwilling to care for the child. If parents do live at home, they must agree to the Guardianship before you start a case. Please note that a court case for kinship guardianship can be a long process that can take 6 months or longer to finish.

To learn more about this process you can read through the [SRL Kinship Guardianship](#) form or call Pegasus Legal Services for Children at (505) 217-1660.

Step 2:

Look up the “Judicial District Court” in the county you and the child live in. This court will be the court where you go for assistance, to submit documents, and to meet with a judge in the judge's courtroom (an official meeting with the judge is called a hearing).

Step 3:

Obtain the documents needed to start the Kinship Guardianship case.

To get these documents you can do one of the following:

- Download and print documents at our website [here](#).
- Download and print documents on the court website [here](#). (This website can be challenging to navigate, so you may want to use another method or call the court in your county for assistance in locating each document).
- Go to the court and ask for a packet of Kinship Guardianship documents. You can also ask the court for “Free Process Forms,” so that you can apply for a discount to open a case. Be sure to check that you have a copy of the following documents (if necessary) included in your packet, as they are not always all included:

These are some documents that are frequently needed to start a Kinship Guardianship case:

- *Petition to Appoint Kinship Guardian(s) (4A-501)*
- *Parental Consent to Appointment of Kinship Guardian and Waiver of Service of Process (4A-505)*
- *Nomination of Kinship Guardian (4A-506)*
- *Summons (4-206)*
- *Motion for Service by Publication (4-209)*
- *Notice of Pendency of Action (4A-503)*
- *Order for Service of Process for Publication in Newspaper (4-209B)*
- *Request for Hearing (4A-206) -- **two copies***
- *Notice of Hearing (4A-207) -- **two copies***

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- *Order Appointing Kinship Guardian (4A-511)*
- *Motion to Appoint Temporary Kinship Guardian (4A-509)*
- *Ex Parte Motion to Appoint Temporary Kinship Guardian (4A-507)*
- *Order Appointing Temporary Kinship Guardian (4A-510)*
- *Ex Parte Order Appointing Temporary Kinship Guardian (4A-508)*
- *Application for Free Process and Affidavit of Indigency (4-222)*
- *Order on Application for Free Process (4-223)*
- *Request for Court Interpreter (4-115)*
- *Cancellation of Court Interpreter (4-116)*
- *Department consent to appointment of kinship guardian and waiver of service of process (4A-514)*

Step 4:

Fill out the following forms then make copies of them. If you run into any questions while filling out these forms you can ask the clerks of the court or you can schedule a call with Pegasus. Please fill out as much of the forms as possible and prepare a list of questions before scheduling a call with Pegasus. These forms will take a long time to fill out so please set aside a few hours to complete this process well.

1. Prepare a *Petition to Appoint Kinship Guardian(s) (4A-501)* form. This form is where you will explain why you are applying for Kinship Guardianship and the facts of the case.
 1. The person who is filling out the *Petition to Appoint Kinship Guardian* is the "Petitioner." There can be more than one Petitioner. All Petitioners must live in the same home with the child.
 2. The "Respondents" are the people who are currently legally in charge of the child. This is usually the child's biological parents, but in some cases could be a person who had previously been appointed guardian of the child or an adopted parent. Even if a parent is not listed on the child's birth certificate, they should be listed as a Respondent.
 3. If a parent or respondent consents to the guardianship, prepare a *Parental Consent to Appointment of Kinship Guardian and Waiver of Service of Process (4A-505)* for the parent/respondent and have them sign it.
 4. If children are 14 or older, they have to voluntarily choose their guardian. They can sign a *Nomination of Kinship Guardian(s) (4A-506)* form to state they would like to have Petitioner as their guardian.
 5. If CYFD is a party to the case, prepare a *Department consent to appointment of kinship guardian and waiver of service of process (4A-514)* and send it to CYFD and have them sign it.

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2. Prepare a *Summons (4-206)* form for each parent/respondent. This is a form that is used to legally notify a parent/respondent that there is a court case related to them.
 1. Fill out only the box at the top of the page. The “Defendants” name is the same as the “Respondent.” The “Plaintiff” is the “Petitioner.”
 2. If a parent is unknown or there is no way to contact them, fill out a *Motion for Service by Publication (4-209)*, as well. This will ask the judge for permission to run an ad in a newspaper instead of having to contact someone directly. Also, fill out a *Notice of Pendency of Action (4A-503)* and an *Order for Service by Publication in Newspaper (4-209B)*.

3. Prepare a *Request for Hearing (4A-206)* form for the Petition for Kinship Guardianship.
 1. All Petitioners and Respondents need to be notified of hearings (for more information on how to legally notify see **Step 8**).

4. Prepare a *Notice of Hearing (4A-207)* form for the Petition for Kinship Guardianship.
 1. Fill in as much of this form as you can. The Court will fill in the date and time slots.

6. Prepare a *Motion to Appoint Temporary Kinship Guardian(s) (4A-509)* form. Temporary Guardianship lasts for 180 days, and it gives the Petitioner guardianship while they wait for the final hearing, so the Petitioner can provide proper care for the child.
 1. If there is an emergency use an *Ex Parte Motion to Appoint Temporary Kinship Guardian(s) form (4A-507)* instead. If you would like advice about if your situation qualifies as an emergency you can call the court you identified at **Step 2** or contact Pegasus with your question.

7. Prepare a *Request for Hearing (4A-206)* form for the Motion for Temporary Kinship Guardianship.
 1. All Petitioners and Respondents need to be notified of hearing, unless you are in an emergency situation and prepared an *Ex Parte Motion for Temporary Kinship Guardianship*. If you filed an *Ex Parte Motion*, only the Petitioners need to be notified (for more information on how to legally notify see **Step 8**).

8. Prepare a *Notice of Hearing (4A-207)* form for the Motion for Temporary Kinship Guardianship.
 1. Fill in as much of this form as you can. The Court will fill in the date and time slots.

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8. It generally costs about \$150.00 to file a case in district court. If you require financial assistance for filing your case, prepare an *Application for Free Process and Affidavit of Indigency (4-222)* and an *Order on Application for Free Process (4-223)*.
9. If you would like interpretation services, prepare a *Request for Court Interpreter (4-115)* form. If you feel more comfortable speaking another language, you can request an interpreter at no cost.

Step 5:

If you run into questions on the previous step, you can call the court to ask for assistance or call an attorney for help. You can call our intake line at Pegasus (505) 217-1660 to schedule a brief appointment with an attorney over the phone to answer any specific questions you may have.

Step 6:

Apply for Free Process if you qualify. Take all forms to the Judicial District Court in your county. This is the court you identified in **Step 2**. Give the clerk of the court the following three forms: *Petition to Appoint Kinship Guardian(s) (4A-501)*, *Application for Free Process and Affidavit of Indigency (4-222)*, and an *Order on Application for Free Process (4-223)*. They will notify you when to come back and finish turning in the rest of your documents.

Step 7:

Take finished documents to the court to begin your case. If you do not want to apply for Free Process, take all forms to the court identified in **Step 2** and skip **Step 6**. Go to the clerk of the court to have your case filed and opened and be sure to bring with you money to open the case. Before you leave the clerk of the court, make sure you have a stamped copy of every filed document for yourself and for every Respondent.

Step 8:

Serve the parents/respondents in the case. You must notify all people involved in the case and show the Court proof that they have been notified. The process of notifying a parent/respondent is called service. Each person should receive a stamped copy of every document you filed.

The court accepts the following options as proof that someone has been made aware of a case: a signed CONSENT, a signed CERTIFIED MAIL RECEIPT, a SUMMONS RETURN that has been signed by a third party, and an AFFIDAVIT OF PUBLICATION IN A NEWSPAPER. Choose the one that best fits your situation.

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- **CONSENT:** If a parent signs a *Consent* form (form 4A-505), take it to the clerk of the court for filing. If the parent only agrees to Temporary Kinship Guardianship, you must still serve them. Please proceed to the other options to see how to serve them.
- **CERTIFIED MAIL RECEIPT:** If you have an address for the parent/respondent, you should include a copy of all the stamped documents you filed with at the court. Go to a post office and send this package to the address of the parent/respondent by CERTIFIED MAIL, and mark that you would like a return receipt for the package. If the receipt is returned to you with their signature, you can file it in the court as proof of service. Make sure to keep sending anything else you file to the parent/respondent, including the proof of service.
- **SUMMONS RETURN BY FRIEND:** You can ask someone who is not involved with the case to hand the court documents to the parent/respondent. The friend who hands them the documents must be older than 18. After handing the documents to the parent/respondent, the friend must sign a *Summons (4-206)* from the court in front of a notary and the signed document must be filed with the court for proof of service.
- **SUMMONS RETURN BY SHERIFF:** You can ask the sheriff or a “private process server” to hand the court documents to the parent/respondent. They will usually charge a fee for this service. After handing the documents to the parent/respondent, they will need to fill out a *Summons (4-206)* filed with the court and give it back to you for filing in the court.
- **PUBLICATION IN NEWSPAPER:** If you do not know the identity of one of the parents/respondents or have no way of contacting them, you can ask the Judge for permission to put a Legal Notice in a local newspaper. To get permission, fill out a *Motion for Service by Publication (4-209)*, an *Notice of Pendency of Action (4A-503)* and an *Order for Service by Publication in Newspaper (4-209B)* and submit them to the court. When you get back the *Notice of Pendency of Action* from the court, you can send that to the newspaper the judge approved of and ask them to publish it once a week for three consecutive weeks. Before running a legal notice in a newspaper, be sure the newspaper will give you an “Affidavit of Publication” afterwards as proof that the legal notice ran. Scan the ‘Affidavit of Publication’ and file it with the court once the legal notice is finished running.

Step 9:

After you correctly notify each parent, be sure to give the proof to the court.

Step 10:

Attend a hearing about your Motion for Temporary Kinship Guardianship. Once all your documents have been given to the court, the judge should set a time for your hearing.

If three or four weeks have passed and you have not heard about a hearing time, you can go to the court in person or call to ask about your case and make sure your contact information is up to date. The hearing is usually in front of a judge and will be a space for you to explain why temporary guardianship is what would be best for the child.

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Step 11:

If parents/respondents agree to the Guardianship, the judge will schedule a hearing to talk about the Petition for Kinship Guardianship. Ask the parents/respondents to sign a Consent form (4A-505) and file it with the courts before the next hearing.

If you have not heard about a hearing time, you can go to the court in person or call to ask about your case and make sure your contact information is up to date. The hearing is usually in front of a judge and will be a space for you to explain why guardianship would be best for the child.

Step 12:

If parents DO NOT agree to the Guardianship, the judge will appoint a special attorney for the child, who is called a Guardian Ad Litem (GAL). This attorney is in charge of investigating what would be best for the child. They will interview everyone involved and make a report to the court about what would be best for the child.

Step 13:

Attend a hearing about your Petition for Kinship Guardianship. The judge will decide what is in the best interest of the child and make a decision.

Step 14:

If you obtain Guardianship of the child, you can show the final Order to whoever needs to see it – dentists, doctors, schools, etc.