

INSTRUCTIONS:
HOW TO ASK THE COURT TO APPOINT A GUARDIAN
FOR A MINOR
WHO IS AN INDIAN CHILD¹

Introduction

The court may appoint a guardian for an unmarried minor child if all parental rights of custody have been terminated or suspended by circumstances or prior court order.²

The court may appoint as guardian any adult whose appointment would be in the best interests of the minor. A priority is given to an adult family member.³ If the minor is age 14 or older, the minor may nominate his/her guardian.⁴

Lawyers

Before starting this process, it may help to talk to a lawyer who is familiar with guardianship procedure. If you are unsure about whether you should hire a lawyer, it is a good idea to talk to one about your case before you decide whether you can handle it alone. If you do not know a lawyer, you can call or write:

Lawyer Referral Service of the Alaska Bar Association
P.O. Box 100279, Anchorage, AK 99510-0279
Phone: 272-0352 or 800-770-9999 outside Anchorage (toll free within Alaska)

Costs of the Proceedings

See page 13 for information about who has to pay the costs involved in petitioning for appointment of a guardian for a minor.

Definitions of Some Terms Used in These Instructions⁵

- Minor: A minor is a person who is under 18 years of age.⁶
- Petitioner: The petitioner is the person who signs the petition asking the court to appoint a guardian.
- Ward: A ward is a person for whom a guardian has been appointed. (Thus, the “minor” is called a “ward” or “minor ward” after the judge appoints a guardian.)

¹ See definition of Indian child on page 3.

² AS 13.26.045

³ “Adult family member” means “a person who is 18 years of age or older and who is (a) related to the child as the child's grandparent, aunt, uncle, or sibling; or (b) the child's sibling's legal guardian or parent.” AS 47.10.990(1).

⁴ AS 13.26.055

⁵ AS 13.26.005

⁶ AS 13.06.050(29)

How To File

Step 1. Fill out the attached *Petition* form (PG-610).

If you are seeking guardianship of more than one child, fill out a separate petition for each child.

Fill in the top of the form as shown in the following illustration:

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA AT <u>City Where Court is Located</u>	
In the Matter of the Protective Proceeding of)
)
)
)
<u>Name of Child Who Needs a Guardian</u>)
Minor)
Date of Birth: <u>xx/xx/xx</u>)
	CASE NO. _____
	PETITION FOR APPOINTMENT OF A GUARDIAN FOR A MINOR (AS 13.26.045)

Print clearly, using black ink.

a. Parent’s Rights

In paragraph 2 (about the child’s mother) and paragraph 3 (about the child’s father), you must indicate whether the mother’s and father’s rights of custody have been either “terminated” or “suspended by court order” or “suspended by circumstances.”

“Terminated” means a court has entered a written order ending the person’s parental rights concerning the child.

“Suspended by court order” means the court has suspended the parent’s right to have custody. This might happen, for example, in a “child-in-need-of-aid” (CINA) case in which the court gives temporary custody of the child to the state.

“Suspended by circumstances” means that for some reason the parents are unable to provide care and supervision for the child on a day to day basis and perform normal parenting duties.

If “suspended by circumstances” is the reason a guardian is needed, you must explain in paragraphs 2 and 3 what those circumstances are. **You must give enough details for the judge to understand the situation.**

b. Indian Child

In paragraph 5, you must state whether the child is “an Indian child as defined by the Indian Child Welfare Act.” The Indian Child Welfare Act (ICWA) is a federal law which establishes special procedures that must be followed whenever the placement of an Indian child is being decided. ICWA includes the following definitions:⁷

"Indian child" means any unmarried person who is under the age of 18 and who 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.

"Indian tribe" means any Indian tribe, band, nation, or other organized group or community of Indians recognized as eligible for the services provided to Indians by the Secretary [of the Interior] because of their status as Indians, including any Alaska Native village as defined in section 1602(c) of Title 43.

There are over 200 Alaska tribes, mostly Native villages. If the child or any of the child's parents or grandparents was born in a village, the child might qualify for tribal membership. Ask the child, the parents, and (if necessary) other relatives about this.

If you need help determining whether a child qualifies as an "Indian child" under ICWA, you may be able to get help from the tribe you think the child might belong to.

The federal Bureau of Indian Affairs (BIA) publishes an updated list of the tribes every year in the Federal Register. The list includes the name, address and telephone number of a contact person for each tribe. You can get the list on the BIA website: www.doi.gov/bureau-indian-affairs Click on the “List of ICWA Designates.”

You can also call the Juneau office of the BIA and ask for assistance (1-800-645-8397, press 2 for "Tribal Enrollment," then press 3 to speak to the ICWA child welfare social worker). You will need to give them the names and dates of birth of the child's parents and, if possible, the child's grandparents.

- c. Check the box at the beginning of paragraph 7 if both parents are dead. Then check one of the two boxes below to state whether the last surviving parent left a will that appoints a guardian for the child. If there is a will appointing a guardian, then check one of the next two boxes explaining why the appointed guardian is not or cannot be the guardian. The two choices are:

⁷ 25 USC 1903

(1) **The guardian has not accepted the appointment.**

Alaska Statutes require a guardian appointed by will to file a written acceptance of the appointment in the court in which the will is probated.⁸ The guardian must then give notice of the acceptance to the child and to the person who has care of the child as explained in the statutes and court rule. See the PG-650 packet for more information about this.

If there is a guardian appointed by will who has not accepted the appointment and you want a different person appointed guardian, you must notify the person appointed in the will that you are filing a petition for appointment of a guardian.⁹ You can do this by sending the person a letter stating the following:

Name & Address of Person Appointed Guardian in Will	Date: _____
Dear _____	
You were nominated in the will of <u> (name of parent) </u> to be the guardian of (his)(her) child, <u> (name of child) </u> . The parent has died, and you have not agreed to be the guardian. So, I am filing a petition in the Superior Court at <u> (court address) </u> , asking the court to appoint <u> (me) or (name of person) </u> as guardian for this minor child. If you object to my petition, you must notify the court in writing within 30 days.	
Your Signature Your Name (printed or typed) Your Address	

You must file a copy of this letter with the court. Attach to the court's copy a separate sheet of paper like the following:

Certificate of Service
Case No. <u> (write the case number if one has been assigned) </u> In the Matter of the Protective Proceeding of <u> (child's name) </u> , Minor
I certify that I mailed the original of the attached letter to <u> (name of person) </u> on <u> (date) </u> by first class mail. <u> (Your Signature) </u> (Print your Name)

⁸ AS 13.26.035 and Probate Rule 15.1

⁹ AS 13.26.045

Keep a copy of both the letter and the certificate of service for yourself.

(2) The child opposed the appointment made in the parent’s will.

If the minor child is age 14 or older, the child may file a written objection with the court opposing the appointment of the person named in the will. The objection must be filed either before or within 30 days after the child receives notice of the guardian’s acceptance of the appointment. The court will then hold a hearing to decide if the person should be the guardian. Check the second box on your petition if this is what happened in your case.

- d. Paragraphs 8, 9, and 10 ask about other court orders or proceedings concerning the child. If there are any court orders or court cases pending, please include the type of case, case name, case number and location of the court, if you can. Include any type of case that affects who has custody of the child (for example, an adoption case) in either state or tribal court.
- e. In paragraph 12, explain why the person you recommend as guardian should be appointed as guardian.
- f. Signature.

Sign and date the *Petition* on page 3. You will also need to complete the “Verification” section that follows your signature. You must do this in front of a notary public. A court clerk can provide this notary service for you (at no charge) when you bring the *Petition* to court. You must bring a photo ID with you for the notarization.

Step 2. Fill out the attached *Child Custody Jurisdiction Affidavit* (DR-150). In the affidavit, you must provide information about the child, including all the places the child has lived for the past five years. If you are seeking guardianship of more than one child, prepare a separate affidavit for each child.

Fill in the top of the form as shown in the following illustration:

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA AT <u>City Where Court is Located</u>	
In the Matter of the Protective Proceeding of)))))) <u>Name of Child Who Needs a Guardian</u>) Minor) Date of Birth: <u>xx/xx/xx</u>) _____)	CASE NO. _____ CHILD CUSTODY JURISDICTION AFFIDAVIT

Step 3. Fill out the attached *Acceptance of Appointment* (form PG-630). Fill in the top of the form as you did on the *Petition*, and fill in the guardian's name in the first paragraph. Before signing the *Acceptance*, the proposed guardian must read the statute that describes the duties of a guardian of a minor, AS 13.26.070. See page 14.

Step 4. Parent's Consent (form PG-615).

If the child's mother or father is alive and there is no court order terminating or suspending the parent's right to have custody of the child, then the only way a court can appoint a guardian for the child is if the court finds that the parent's rights of custody have been "suspended by circumstances" as described on page 2.

If the parent agrees that his or her rights have been "suspended by circumstances" and agrees that a guardian needs to be appointed, the parent can either come to the court hearing and tell the judge this or fill out and sign a PG-615 *Parent's Consent* form.

If a parent agrees with the appointment of a guardian and is not able to attend the hearing, you should get the consent form filled out and signed and filed with the court before the hearing (or at the time of the hearing). You will need a separate *Consent* form from each parent if both are living and their custodial rights have not been terminated or suspended by court order.

Note: If the parent is under age 18, the parent will need to come to the court hearing instead of signing the *Parent's Consent* form.

You and the parent should fill out the form in full. Make sure the parent understands the form and make sure the form is completely filled out before the parent signs it. The parent will need to sign it in front of a notary public or court clerk.

Step 5. Make a copy of the *Petition*, *Custody Affidavit*, *Acceptance of Appointment*, and *Parent's Consent* forms for yourself. Note: You will also need extra copies of the *Petition* to send along with the notice of hearing described in Step 8 on the next page.

Step 6. File the original *Petition*, *Custody Affidavit*, *Acceptance of Appointment* and *Parent's Consent* forms at the superior court filing location nearest to where the minor child lives (see list of court addresses on page 12), and pay the \$75 filing fee.¹⁰ You can deliver these documents to the court in person or mail them along with the filing fee. If you cannot afford this fee, ask the clerk for form TF-920, *Request for Exemption from Payment of Fees*. If you are petitioning for guardianship of more than one child at the same time, you only have to pay one filing fee even though you must file a separate petition for each child.

If you change your address or phone number after you file the petition and before the court hearing, be sure to notify the court.

¹⁰ Administrative Rule 9(b)(4)

Step 7. Scheduling of Court Hearing.

The court clerk will mail to you a *Notice of Hearing* telling you the time and place of your hearing and the name of the judge or master who will preside.

Step 8. Notifying Others About the Hearing.

As petitioner, it is your responsibility to notify certain other people about the hearing. Do this as soon as possible after you receive the court's *Notice of Hearing*. Use the attached form PG-621, *Notice of Guardianship Hearing for Indian Child*. Be sure to read what this *Notice* form says about the rights of the parents, the child's tribe, and the child's Indian custodian (if there is one) in this matter.

- a. On page 1 of the PG-621, fill in the top of the form as you did on the *Petition*. Then fill in all the lines in the first paragraph: the case number, the time and place of the hearing, the name of the judge or master who will preside, and the court telephone number. (See list of telephone numbers on page 12.)
- b. On page 2, fill in as much information as you can. This information is needed in order to determine the child's tribe. Sign and date the form.
- c. On page 3, check the box in front of each paragraph that applies. Fill in the date of mailing or delivery (if hand-delivery is allowed), the method of delivery, and the name of the person to whom notice is being given.
 - (1) Check the first box if the child is age 14 or older. If the child is younger, do not check this box. Check the box showing whether the notice will be delivered by mail or hand-delivery.
 - (2) Check the second box and fill in the name of the person who has had principal care and custody of the child during the 60 days before you filed the petition. Fill in the date and method of delivery of the notice.
 - (3) Check the third box and fill in this section only if the child has an "Indian custodian." "**Indian custodian**" is defined in the Indian Child Welfare Act to mean "any Indian person who has legal custody of an Indian child under tribal law or custom or under State law or to whom temporary physical care, custody, and control has been transferred by the parent of such child."¹¹
 - (4) Check the fourth and fifth boxes (mother and father) and fill in these sections if the parents are living and have not signed a "waiver of notice."¹² Note: The *Parent's Consent* form (PG-615) includes a place for the parent to state that he/she does not want notice of the hearing.

¹¹ 25 USC § 1903(6)

¹² AS 13.06.115

If the parent checks this box on the *Consent* form, you do not have to send the parent notice of the hearing. If this happens, check the box in the fourth or fifth paragraph that says the parent “waived notice.” Be sure to file the *Parent’s Consent* with the court.

- (5) Check the sixth box (concerning the tribe). Then check whichever of the three subparagraphs applies.
- **First Box.** To give notice to the tribe, send the notice of hearing to the contact person for the tribe listed in the BIA list of tribes described in paragraph “b” on page 3. If it is possible that the child is eligible for membership in more than one tribe, you must send the notice to all the possible tribes.
 - **Second Box.** You must send the notice to the child’s tribe unless the child’s parents (1) agree in writing to the guardianship and (2) file a statement that the tribe has not been served with notice in order to protect the privacy of the parents.¹³ The *Parent’s Consent* form (PG-615) provides a place for the parents to do this (in paragraph 11(d) on page 2).
 - **Third Box.** If you have reason to believe that the child is an Indian child, but you cannot determine the child’s tribe, check the third box and mail (by certified mail) a copy of the *Notice*, the *Petition* and the PG-622 *Request to BIA* form to the Bureau of Indian Affairs at the address on the PG-622 form.
- d. Sign the bottom of page 3 and fill in your address and telephone number.
- e. Make copies of the *Notice* form and the *Petition* form and send a copy of both to each person or tribe listed on page 3 of the *Notice*. You must do this at least 14 days before the hearing.¹⁴ The notices to the Indian custodian (if any), the parents, the tribe(s) and the BIA must be sent by certified mail with return receipt requested. The notices to the parents and Indian custodian must also be sent “restricted delivery.”
- f. **Proof That Notice Was Given.** After the *Notice* has been sent to everyone, you must file proof with the court that this has been done.
- (1) Your proof that you sent the notice to the first two people on page 3 (the child and the person who has had custody of the child for the last 60 days) is the original *Notice* form with your completed certificate of service and your original signature on page 3. File the original *Notice*

¹³ Probate Rule 15(b)

¹⁴ AS 13.06.110

with the court before or at the time of the hearing. Keep a copy of the *Notice* for yourself.

- (2) For the rest of the people (the Indian custodian, parents, tribes and BIA), you must fill out form PG-623, *Certificate of Service by Certified Mail*. Fill out a separate PG-623 form for each person you serve by certified mail. Attach to it the original green card you got back from the Post Office, showing that the certified mail was delivered **to the person to whom you sent it**. File the original *Certificate* with the court. Keep a copy of each *Certificate* for yourself.
- (3) If anyone has signed a written waiver of notice, file the original with the court along with your original *Notice*.

Step 9. Court Hearing.¹⁵

The hearing will probably be held from 30 to 90 days after you file your petition. The hearing will be before a judge or master.

The child has the right to be present at the hearing.

Usually these hearings are closed to the public.

The hearing will usually proceed as follows:

- a. The judge will identify everyone present (for the hearing record).
- b. If an attorney for the petitioner or the child is present, the judge will ask the attorney whether the case is contested or not.
- c. If the case is not contested, the judge may ask you questions about what you state in your petition. The judge may also ask if anyone in the courtroom objects to the appointment.
- d. If the case is contested, the judge will ask what the dispute is. In a contested case,
 - (1) You may be required to testify under oath and/or call witnesses to testify in support of your petition. You will have the burden of proving what you have said in your petition.
 - (2) The judge may have to postpone the hearing if it is going to take a long time to hear all the necessary testimony.

¹⁵ AS 13.26.060

- (3) The judge may order mediation under Probate Rule 4.5. (The court's order will state who the mediator will be, when mediation must begin and how the costs of the mediation will be split between the parties.)
- e. If the judge decides it is necessary to appoint a guardian, the judge may appoint as guardian any adult whose appointment would be in the best interests of the child. Alaska statutes give a priority to adult family members.¹⁶ "Adult family member" means a person who is 18 years of age or older and who is (1) related to the child as the child's grandparent, aunt, uncle, or sibling; or (2) the child's sibling's legal guardian or parent.¹⁷

Note: Section 1915(b) of the Indian Child Welfare Act establishes certain preferences for the placement of Indian children, beginning with "a member of the Indian child's extended family" (unless there is good cause not to do this).

The judge must appoint a person nominated by the child, if the child is 14 years of age or older, unless the judge finds the appointment contrary to the best interests of the child.

If necessary, the judge may appoint a temporary guardian for no more than six months.¹⁸

- f. At any time during the proceeding, the judge can appoint an attorney to represent the child if the judge determines that the child's interests are or may be inadequately represented.¹⁹

Step 10. What Happens After a Guardian is Appointed.

- a. Letters of Guardianship

After appointing the guardian and after the guardian has filed a written acceptance of the appointment (on form PG-630), the court will issue a document called "Letters of Guardianship of a Minor" (form PG-635). The guardian can get certified copies of this document from the court and use them if the guardian needs to prove to someone that he/she is the child's guardian (for example, schools, hospitals, government agencies, etc.)

¹⁶ AS 13.26.055

¹⁷ AS 47.10.990

¹⁸ AS 13.26.060(c)

¹⁹ AS 13.26.060(d)

b. Annual Reports

Every year, for as long as the guardianship lasts, the guardian must file an *Annual Report on Guardianship of a Minor* (PG-640) with the court. The court's appointment order will tell you the date the report is due each year.

c. Change of Address

Any time the child or the guardian changes his/her address or telephone number, the guardian must immediately send written notice to the court and all parties in the guardianship case.²⁰ You may use the PG-195 *Notice of Change of Address* form. **Include your case number whenever you write to the court about your case.**

d. Requests to Change the Guardianship

At any time, the guardian, the child or any other interested party may ask the court to remove the guardian and replace him/her with another guardian, appoint a co-guardian, end the guardianship, or change the guardianship order. You may use court form PG-190, *Petition for Review of Guardianship/Conservatorship*, to ask the court to do this. Form PG-190 is available at any state court and on the court system's website:
<http://www.state.ak.us/courts/forms.htm>

e. Termination of Guardianship

The guardianship will end when the child turns age 18 unless it is terminated earlier by court order.²¹ A guardian cannot simply stop performing the guardian's duties without court permission before the child turns 18. If something happens that leads the guardian to believe the guardianship should end, the guardian must first file a request with the court. Form PG-190, described in paragraph "d" above, can be used for this.

²⁰ Probate Rule 14(c)

²¹ AS 13.26.075

SUPERIOR COURT FILING LOCATIONS FOR GUARDIANSHIPS

ANCHORAGE:	Probate Office, 303 K Street, Anchorage, AK 99501-2099	(264-0433)
BARROW:	Box 270, Barrow, AK 99723-0270	(852-4800)
BETHEL:	Box 130, Bethel, AK 99559-0130	(543-2298)
CORDOVA:	Box 898, Cordova, AK 99574-0898	(424-7312)
DILLINGHAM:	Box 909, Dillingham, AK 99576-0909	(842-5215)
FAIRBANKS:	Probate Dept., 101 Lacey Street, Fairbanks, AK 99701-4765	(452-9257)
GLENNALLEN:	Box 86, Glennallen, AK 99588-0086	(822-3405)
HOMER:	3670 Lake St., Suite 400, Homer, AK 99603-7686	(235-8171)
JUNEAU:	Box 114100, Juneau, AK 99811-4100	(463-4707)
KENAI:	125 Trading Bay Drive, Suite 100, Kenai, AK 99611-7717	(283-3110)
KETCHIKAN:	415 Main St., Rm 400, Ketchikan, AK 99901-6399	(225-3195)
KODIAK:	204 Mission Road, Rm 10, Kodiak, AK 99615-7312	(486-1600)
KOTZEBUE:	Box 317, Kotzebue, AK 99752-0317	(442-3208)
NAKNEK:	Box 229, Naknek, AK 99633-0229	(246-4240)
NOME:	Box 1110, Nome, AK 99762-1110	(443-5612)
PALMER:	435 S. Denali, Palmer, AK 99645-6437	(746-8181)
PETERSBURG:	Box 1009, Petersburg, AK 99833-1009	(772-3824)
SEWARD:	Box 1929, Seward, AK 99664-1929	(224-3077)
SITKA:	304 Lake St., Rm 203, Sitka, AK 99835-7759	(747-3291)
UNALASKA	Box 245, Unalaska, AK 99685-0245	(581-1379)
VALDEZ:	Box 127, Valdez, AK 99686-0127	(835-2266)
WRANGELL:	Box 869, Wrangell, AK 99929-0869	(874-2311)

If your nearest court is not on this list, check with that court to find out if a petition for appointment of a guardian can be filed there.

Costs In Minor Guardianship Proceedings

Cost	Who Must Pay
Filing Fee	The petitioner must pay the \$75 filing fee (unless the court waives the fee because the petitioner is indigent). ²²
Attorney for Petitioner	The petitioner must pay the attorney if the petitioner hires an attorney.
Attorney for Minor	If, at any time in the proceeding, the court determines that the interests of the minor are or may be inadequately represented, the court may appoint an attorney to represent the minor, giving consideration to the preference of the minor if the minor is 14 years of age or older. ²³ The court will pay for the attorney. ²⁴
Attorney for Parents	If the court finds that the parents are not financially able to pay for an attorney, the court can appoint an attorney to represent the parents, and the court will pay for the attorney. ²⁵

²² Administrative Rule 9(b)(4) and (f)(1).

²³ AS 13.26.060(d)

²⁴ Administrative Rule 12(e)(1)(A)(ii)

²⁵ Administrative Rule 12(e)(1)(A)(ii)

Powers and Duties of Guardian of a Minor

A guardian of a minor has the powers and responsibilities of a parent who has not been deprived of custody of a minor and unemancipated child, except that a guardian is not legally obligated to provide from the guardian's own funds for the ward and is not liable to third persons by reason of the parental relationship for acts of the ward. In particular, and without qualifying the foregoing, a guardian:

- (1) must take reasonable care of the ward's personal effects and commence protective proceedings if necessary to protect other property of the ward;
- (2) may receive money payable for the support of the ward to the ward's parent, guardian or custodian under the terms of any statutory benefit or insurance system, or any private contract, devise, trust, conservatorship or custodianship; the guardian also may receive money or property of the ward paid or delivered by virtue of [AS 13.26.015](#); any sums so received shall be applied to the ward's current needs for support, care and education; the guardian must exercise due care to conserve any excess for the ward's future needs unless a conservator has been appointed for the estate of the ward, in which case excess shall be paid over at least annually to the conservator; sums so received by the guardian may not be used for compensation for the guardian's services except as approved by order of court or as determined by a duly appointed conservator other than the guardian; a guardian may institute proceedings to compel the performance by any person of a duty to support the ward or to pay sums for the welfare of the ward;
- (3) may facilitate the ward's education, social, or other activities and authorize medical or other professional care, treatment, or advice; a guardian is not liable by reason of this consent for injury to the ward resulting from the negligence or acts of third persons unless it would have been illegal for a parent to have consented; a guardian may consent to the marriage or adoption of the ward;
- (4) must report the condition of the ward and of the ward's estate which has been subject to the guardian's possession or control, as ordered by court on petition of any person interested in the minor's welfare or as required by court rule.