

# **KINSHIP/ GUARDIANSHIP FORMS**

Revised (06/2023)

# KINSHIP GUARDIANSHIP AND THE NEW MEXICO KINSHIP GUARDIANSHIP ACT

*This information guide is general in nature and is not designed to give legal advice. The court does not guarantee the legal sufficiency of this information guide or that it meets your specific needs. Because the law is constantly changing, this guide may not be current. Therefore, you may wish to seek the advice and assistance of an attorney.*

**For basic information about representing yourself in District Court, see the Representing Yourself – Basic Information section of the Self-Help Guide.**

In New Mexico, there are several laws that affect guardianship of a child. This section is about guardianship under the New Mexico Kinship Guardianship Act. You will find, this Act at Sections 40-10B-1 through 40-10B-21 NMSA 1978. Read more about where to find New Mexico's laws and rules in the Representing Yourself—Basic Information section of this guide.

Since there are other laws that govern the care of a child, you may wish to talk to a lawyer to make sure this is the right procedure for your situation.

## **WHAT IS A KINSHIP GUARDIANSHIP?**

When a parent has left a child in the care of an adult who is not the child's parent, that adult can ask the court to create a legal relationship between them and the child. This is called a kinship guardianship.

A kinship guardianship suspends most of the rights and duties of a child's parents and transfers those rights and duties to another adult, who *is called* the "legal guardian." There are some things *the* legal guardian cannot do, like agree to the child's adoption or take over any parental rights or duties that a court orders the parents to keep. Read more at Section 40-10B-13 NMSA 1978.

## **WHO CAN FILE A KINSHIP GUARDIANSHIP CASE?**

An adult can file a kinship guardianship case if they are one of these:

- The child's kinship caregiver - an adult who is not the child's parent and the child has been living with them for at least 90 days immediately before filing the kinship guardianship case. Read more at Sections 40-10B-3, 40-10B-5 and 40-10B-8 NMSA 1978.
- A caregiver who is at least 21 years old, and the child has been living with them for 90 days immediately before filing the kinship guardianship case **and** the child has asked for them to be their legal guardian. This only applies if the child is at least 14 years old. Read more at Section 40-10B-5 NMSA 1978.
- A caregiver that the child's parent has chosen **in writing**. If both parents consent, the child does not have to live with the caregiver for 90 days immediately before filing the kinship guardianship case. Read more at Section 40-10B-5 NMSA 1978.

## **HOW DO I BECOME A KINSHIP GUARDIAN?**

To become a child's legal guardian, you must file a court case for kinship guardianship in the district court where the child lives or where the parent(s) live. Kinship guardianship forms are available on the New Mexico Supreme Court's website at <https://nmsupremecourt.nmcourts.gov> and on many district courts' websites. You can also check with your local district court to see if they offer a packet of forms for kinship guardianship.

## **FORMS USED IN A KINSHIP GUARDIANSHIP COURT CASE**

If you are starting a court case for kinship guardianship, use this form:

- **Form 4A-501 NMRA** – petition to appoint kinship guardian(s)

If the parents agree to the kinship guardianship, each must fill out the following form:

- **Form 4A-505 NMRA** – parental consent to appointment of kinship guardian and waiver of service of process

If there is CYFD involvement, and CYFD agrees with the proposed kinship guardianship, then CYFD's attorney must fill out the following form:

- **Form 4A-514 NMRA** – department consent to appointment of kinship guardian and waiver of service of process

If the parents do not agree to the kinship guardianship, fill out one of these for **each** parent:

- **Form 4-206** - summons
- **Form 4A-511** - order appointing kinship guardian(s)

Optional – If the child is 14 years old or older, they can fill out this form:

- **Form 4A-506** - nomination of kinship guardian(s)

Courts also require a form that asks the judge to schedule a court date (called a "hearing"). You will have to provide a request for hearing form and notice of hearing form. Ask your local district court for more information.

### **DO-IT-YOURSELF STEPS:**

Step 1: Fill out the forms - choose the forms that fit your situation.

Step 2: File the forms - take the original and 3 copies of all documents to the clerk's office for filing. Check with your local district court for the filing fee. You can also ask the court clerk about having the filing fee, or part of the fee waived. The court keeps the originals, stamps the copies and gives them back to you. One copy is for you and one copy is for each parent.

Step 3: Serve your court papers - each parent must receive a copy of your court papers. This is called "serving" your court papers. For more information about serving kinship guardianship papers, read **Sections 40-10B-6** and **45-1-401 NMSA 1978**. Even if you do not know where to find one or both parents, you still have to serve them your court papers. You may have to ask the court for permission to publish a notice in the newspaper. Please read **Rule 1-004 NMRA** carefully for more details.

One thing is very important - **you** do not serve these court papers on each parent; your job is to arrange for someone else to do this for you.

Step 4: Go to your hearing - you will get a notice with your court date in the mail. Bring any documents that support your case. If you have any witnesses, make sure they come.

### **HOW LONG BEFORE I GET A HEARING?**

You should get a hearing on the petition between 30 and 90 days from when you filed the guardianship. If you also request a temporary guardianship, you should have a hearing on that request within 20 days of filing it.

## **I THINK THIS IS AN EMERGENCY - CAN I GET GUARDIANSHIP RIGHT AWAY?**

Under certain circumstances you may be able to file for guardianship on an emergency basis. Once you file for guardianship then you can file for temporary guardianship. The judge may grant the motion for temporary guardianship with or without a hearing. Use all the forms listed in "How Do I Become a Kinship Guardian" plus:

**Form 4A-509 NMRA** - motion to appoint temporary kinship guardian(s)

**Form 4A-510 NMRA** - order appointing temporary kinship guardian(s)

## **I'VE BEEN GIVEN A PETITION FOR KINSHIP GUARDIANSHIP— HOW DO I TALK TO THE JUDGE ABOUT IT?**

You can't talk to the judge until you go to the court hearing but you can file a Response to the Petition within 30 days after service of the Petition. Read more at **Rule 1-012 NMRA**. Currently, there is no New Mexico Supreme Court approved form available for a response to a kinship guardianship petition. You can answer each paragraph in the petition. Check with your local district court to see if they offer a form.

If you do not file a response within the 30 days, a "Judgment by Default" maybe entered against you. Read more at **Rule 1-055 NMRA**.

## **CAN I CANCEL THE KINSHIP GUARDIANSHIP?**

Canceling the guardianship is called "revoking" the guardianship. You will have to prove to the judge that circumstances have changed and that revoking the guardianship is in the best interests of the child. If you believe that it is time to revoke the guardianship, use this form:

**Form 4A-512 NMRA** – motion to revoke kinship guardianship

Courts may also require a form to ask for a court date (called a "request for hearing"). Check with your local district court.

You must serve your motion on the guardians and other parent. One thing is very important you do not serve these court papers; your job is to arrange for someone else to do this for you.

## **LETTERS OF GUARDIANSHIP TO BE ISSUED AFTER ORDER APPOINTING KINSHIP GUARDIAN(S) FILED WITH COURT:**

After the Court sends you a file-stamped copy of the Order Appointing Kinship Guardian(s), you must take a file-stamped copy of the Order Appointing Kinship Guardian(s) along with **Form 4A-516 NMRA** Letters of Guardianship to the clerk's office to be issued by the district court clerk. Pre-fill the case caption information on **Form 4A-516 NMRA** Letters of Guardianship and take the original and two (2) extra copies to the district court clerk's office when you go to have **the Form 4A-516 NMRA** Letters of Guardianship issued. The district court clerk will keep one (1) of the **Form 4A-516 NMRA** Letters of Guardianship and return the other two (2) issued **Form 4A-516 NMRA** Letters of Guardianship to you after they are issued by the district court clerk.

## KINSHIP / GUARDIANSHIP FORMS

- FORM 4A-517 – Information Sheet
- FORM 4A-501 NMRA – Petition to Appoint Kinship Guardian
- FORM 4A-505 NMRA - Parental Consent of Appointment of Kinship Guardian and Waiver of Service of Process
- FORM 4A-514 NMRA - Department Consent to Appointment of Kinship Guardian and Waiver of Service of Process
- FORM 4-206 – Summons
- FORM 4A-506 – Nomination of Kinship Guardian(s)  
(If the child is 14 years old or older, they can fill out this form.)

**WAIT .....** If consent is received by both parents or both parents have been served, you can proceed

- FORM 4A-511 – Order Appointing Kinship Guardian(s)
- Request for Setting
- FORM 4A-516 - Letters of Guardianship

**4A-517. Kinship guardianship information sheet.**

**KINSHIP GUARDIANSHIP INFORMATION SHEET.**  
**NOTE TO CLERK: DO NOT FILE THE INFORMATION SHEET**  
*Type or print responses. Use only for kinship guardianship cases.*

**1. Petitioner's attorney information.** *(Complete only if Petitioner has an attorney.)*

Petitioner's name: \_\_\_\_\_  
Attorney's name: \_\_\_\_\_  
Attorney's address: \_\_\_\_\_  
City: \_\_\_\_\_  
State: \_\_\_\_\_  
Zip code: \_\_\_\_\_  
Telephone: \_\_\_\_\_  
Email address: \_\_\_\_\_

**2. Information regarding Petitioner(s) and Respondent(s).** There may be multiple petitioners and respondents. Fill out the information for each petitioner and respondent. *(Do not use an attorney's mailing address. Use a separate sheet if necessary.)*

**Petitioner 1**

Name: \_\_\_\_\_  
*(Last name, first, middle)*  
Other names *(e.g., maiden name)*: \_\_\_\_\_

Address: \_\_\_\_\_  
City: \_\_\_\_\_  
State: \_\_\_\_\_  
Zip code: \_\_\_\_\_  
Email address: \_\_\_\_\_  
Date of birth: \_\_\_\_\_  
Social Security number: \_\_\_\_\_

**Petitioner 2 (if applicable)**

Name: \_\_\_\_\_  
*(Last name, first, middle)*  
Other names *(e.g., maiden name)*: \_\_\_\_\_

Address: \_\_\_\_\_  
City: \_\_\_\_\_  
State: \_\_\_\_\_  
Zip code: \_\_\_\_\_  
Email address: \_\_\_\_\_  
Date of birth: \_\_\_\_\_  
Social Security number: \_\_\_\_\_

**Respondent 1**

Name: \_\_\_\_\_  
*(Last name, first, middle)*  
Other names *(e.g., maiden name)*: \_\_\_\_\_

Address: \_\_\_\_\_  
City: \_\_\_\_\_  
State: \_\_\_\_\_  
Zip code: \_\_\_\_\_  
Email address: \_\_\_\_\_  
Date of birth: \_\_\_\_\_  
Social Security number: \_\_\_\_\_

**Respondent 2**

Name: \_\_\_\_\_  
*(Last name, first, middle)*  
Other names *(e.g., maiden name)*: \_\_\_\_\_

Address: \_\_\_\_\_  
City: \_\_\_\_\_  
State: \_\_\_\_\_  
Zip code: \_\_\_\_\_  
Email address: \_\_\_\_\_  
Date of birth: \_\_\_\_\_  
Social Security number: \_\_\_\_\_

**Respondent 3 (if applicable)**

Name: \_\_\_\_\_

*(Last name, first, middle)*

Other names (e.g., maiden name): \_\_\_\_\_

Address: \_\_\_\_\_

City: \_\_\_\_\_

State: \_\_\_\_\_

Zip code: \_\_\_\_\_

Email address: \_\_\_\_\_

Date of birth: \_\_\_\_\_

Social Security number: \_\_\_\_\_

**Respondent 4 (if applicable)**

Name: \_\_\_\_\_

*(Last name, first, middle)*

Other names (e.g., maiden name): \_\_\_\_\_

Address: \_\_\_\_\_

City: \_\_\_\_\_

State: \_\_\_\_\_

Zip code: \_\_\_\_\_

Email address: \_\_\_\_\_

Date of birth: \_\_\_\_\_

Social Security number: \_\_\_\_\_

**3. Minor children.** *(Provide the date of birth and social security number for each minor child. Use a separate sheet if necessary.)*

Name: \_\_\_\_\_

*(Last name, first, middle)*

Date of birth: \_\_\_\_\_

Social Security number: \_\_\_\_\_

Name: \_\_\_\_\_

*(Last name, first, middle)*

Date of birth: \_\_\_\_\_

Social Security number: \_\_\_\_\_

Name: \_\_\_\_\_

*(Last name, first, middle)*

Date of birth: \_\_\_\_\_

Social Security number: \_\_\_\_\_

Name: \_\_\_\_\_

*(Last name, first, middle)*

Date of birth: \_\_\_\_\_

Social Security number: \_\_\_\_\_

Name: \_\_\_\_\_

*(Last name, first, middle)*

Date of birth: \_\_\_\_\_

Social Security number: \_\_\_\_\_

Name: \_\_\_\_\_

*(Last name, first, middle)*

Date of birth: \_\_\_\_\_

Social Security number: \_\_\_\_\_

[Adopted by Supreme Court Order No. 22-8300-020, effective for all pleadings and papers filed on or after December 31, 2022.]

**4A-501. Petition to appoint kinship guardians.**

STATE OF NEW MEXICO  
COUNTY OF DONA ANA  
THIRD JUDICIAL DISTRICT

\_\_\_\_\_, Petitioner(s)

No. D-307-DM-\_\_\_\_\_

IN THE MATTER OF THE KINSHIP GUARDIANSHIP OF

\_\_\_\_\_,<sup>1</sup> (a) Child(ren) (*use initials only*), and concerning

\_\_\_\_\_, Respondent(s).

**PETITION TO APPOINT KINSHIP GUARDIAN(S)<sup>2</sup>**

Petitioner(s),<sup>3</sup> \_\_\_\_\_, 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)<sup>3</sup>**

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)<sup>4</sup>**

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)? \_\_\_\_ Yes<sup>5</sup> \_\_\_\_ No

f. Is the child a Native American child?<sup>6</sup> \_\_\_\_ 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)? \_\_\_\_ Yes<sup>5</sup> \_\_\_\_ No

f. Is the child a Native American child?<sup>6</sup> \_\_\_\_ 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)<sup>7</sup>**

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).<sup>8</sup>

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).<sup>8</sup>

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*):

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**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.

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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?<sup>9</sup>  
\_\_\_\_ Yes (*please explain*) \_\_\_\_ No

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**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.<sup>10</sup>

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)?<sup>10</sup>

\_\_\_\_\_ 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)?<sup>10</sup>

\_\_\_\_\_ Yes \_\_\_\_\_ No

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

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

6. Petitioner(s) are requesting child support from Respondents.<sup>11</sup>

\_\_\_\_\_ 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.]

**4A-505. Parental consent to appointment of kinship guardian and waiver of service of process.**

STATE OF NEW MEXICO  
COUNTY OF DONA ANA  
THIRD JUDICIAL DISTRICT

\_\_\_\_\_, Petitioner(s)

No. D-307-DM-\_\_\_\_\_

IN THE MATTER OF THE KINSHIP GUARDIANSHIP OF

\_\_\_\_\_,<sup>1</sup> (a) Child(ren) (*use initials only*), and concerning

\_\_\_\_\_, Respondent(s).

**PARENTAL CONSENT TO APPOINTMENT OF KINSHIP GUARDIAN  
AND WAIVER OF SERVICE OF PROCESS**

1. I, \_\_\_\_\_ (*name of parent*), am the adoptive or biological parent of \_\_\_\_\_ (*name(s) of child(ren)*). I do hereby knowingly and voluntarily consent to the following: (*select all that apply*)<sup>2</sup>

The appointment of Petitioner(s) as TEMPORARY kinship guardian(s) for no more than one hundred eighty (180) days.

The appointment of Petitioner(s) as PERMANENT kinship guardian(s).<sup>3</sup>

2. I understand that the purpose of the guardianship is to establish a legal relationship between \_\_\_\_\_ (*child(ren)*) and \_\_\_\_\_ (*Petitioner(s)*).

3. I agree that it is in the child(ren)'s best interests that Petitioner(s) be named as the child(ren)'s Kinship Guardian(s).

4. I understand that while the guardianship is in effect, Petitioner(s) will have the right to make all decisions about visitation and the health, education, and welfare of the child(ren) unless otherwise ordered by the court.

5. I understand that I might not have visitation and it may be up to Petitioner(s) if I have visitation with my child(ren).

6. I request to be notified of hearings in this case at the address listed below. I understand that I must notify the court of any changes in my address.

7. I understand that the court may require me to pay child support.



**4A-514. Department consent to appointment of kinship guardian and waiver of service of process.**

STATE OF NEW MEXICO  
COUNTY OF DONA ANA  
THIRD JUDICIAL DISTRICT

\_\_\_\_\_, Petitioner(s)

No. D-307-DM-\_\_\_\_\_

IN THE MATTER OF THE KINSHIP GUARDIANSHIP OF

\_\_\_\_\_,<sup>2</sup> (a) Child(ren) (*use initials only*), and concerning

\_\_\_\_\_, Respondent(s).

**DEPARTMENT CONSENT TO APPOINTMENT OF KINSHIP GUARDIAN  
AND WAIVER OF SERVICE OF PROCESS**

1. The Children, Youth and Families Department has legal custody of the child by way of an unrevoked Voluntary Placement Agreement (VPA) with the following parents:

- a. Name and relationship to child(ren): \_\_\_\_\_
- b. Name and relationship to child(ren): \_\_\_\_\_
- c. Name and relationship to child(ren): \_\_\_\_\_

For the following child(ren): (*include full names and dates of birth*):

\_\_\_\_\_

2. The Children, Youth and Families Department is the legal custodian and has received a copy of the Petition to Appoint Kinship Guardian(s) filed by (name(s) of Petitioner(s)):

\_\_\_\_\_;

3. The Children, Youth and Families Department hereby knowingly and voluntarily consents to the following: (select all that apply)<sup>3</sup>

The appointment of Petitioner(s) as TEMPORARY kinship guardian(s) for no more than one hundred eighty (180) days.

The appointment of Petitioner(s) as PERMANENT kinship guardian(s).

4. The Children, Youth and Families Department understands that the purpose of the guardianship is to establish a legal relationship between \_\_\_\_\_ (child(ren)) and \_\_\_\_\_ (Petitioner(s)).

5. The Children, Youth and Families Department states that it is in the child(ren)'s best interests that Petitioner(s) be named as the child(ren)'s kinship guardian(s).

6. The Children, Youth and Families Department understands that while the guardianship is in effect, Petitioner(s) will have the right to make all decisions about visitation and the health, education, and welfare of the child(ren) unless otherwise ordered by the court.

7. The Children, Youth and Families Department waives the right to be served with the Petition, and understands it will be made a party to this case and concurs.

8. The Children, Youth and Families Department understands that the Department or the parents may withdraw a consent before the court enters an order granting the guardianship. The Children, Youth and Families Department understands that to withdraw its consent, it must notify the court in writing.

9. The Children, Youth and Families Department understands that if it desires at a later date to revoke the guardianship, a petition to revoke the guardianship must be filed.

\_\_\_\_\_  
Signature of counsel for CYFD

\_\_\_\_\_  
Address

\_\_\_\_\_  
Telephone number

\_\_\_\_\_  
Email address

#### USE NOTES

1. As used in this form, a permanent kinship guardian is a guardian whose appointment continues until the child's eighteenth birthday or until the guardianship is revoked based on proof that the circumstances justifying the appointment have changed and that revocation is in the child(ren)'s best interests.

2. Enter the initials of each child listed in the Petition to Appoint Kinship Guardian.

3. You may select either option or both options, depending on whether you consent to the appointment of a temporary kinship guardian or a permanent kinship guardian or both.

[Adopted by Supreme Court Order No. 22-8300-020, effective for all pleadings and papers filed on or after December 31, 2022.]

<b>SUMMONS</b>	
THIRD JUDICIAL DISTRICT COURT COUNTY OF DONA ANA STATE OF NEW MEXICO 201 W. Picacho Las Cruces NM 88005 Phone: (575) 523-8200	Case Number: _____  Judge: _____
Plaintiff(s): _____ v. Defendant(s): _____	Defendant Name: _____ Address: _____ _____

**TO THE ABOVE NAMED DEFENDANT(S):** Take notice that

1. A lawsuit has been filed against you. A copy of the lawsuit is attached. The Court issued this Summons.
  2. You must respond to this lawsuit in writing. You must file your written response with the Court no later than thirty (30) days from the date you are served with this Summons. (The date you are considered served with the Summons is determined by Rule 1-004 NMRA) The Court's address is listed above.
  3. You must file (in person or by mail) your written response with the Court. When you file your response, you must give or mail a copy to the person who signed the lawsuit.
  4. If you do not respond in writing, the Court may enter judgment against you as requested in the lawsuit.
  5. You are entitled to a jury trial in most types of lawsuits. To ask for a jury trial, you must request one in writing and pay a jury fee.
  6. If you need an interpreter, you must ask for one in writing.
  7. You may wish to consult a lawyer. You may contact the State Bar of New Mexico for help finding a lawyer at [www.nmbar.org](http://www.nmbar.org); 1-800-876-6227; or 1-505-797-6066.
- Dated at \_\_\_\_\_, New Mexico, this \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

CLERK OF COURT

By: \_\_\_\_\_  
 Deputy

Attorney for Plaintiff or Plaintiff Pro Se  
 Name: \_\_\_\_\_  
 Address: \_\_\_\_\_  
 \_\_\_\_\_  
 Telephone No.: \_\_\_\_\_  
 Fax No.: \_\_\_\_\_  
 Email Address: \_\_\_\_\_



[ ] to \_\_\_\_\_ (name of person), \_\_\_\_\_,  
(title of person authorized to receive service. Use this alternative when the defendant is a corporation or an association subject to a suit under a common name, a land grant board of trustees, the State of New Mexico or any political subdivision).

Fees: \_\_\_\_\_

\_\_\_\_\_  
Signature of person making service

\_\_\_\_\_  
Title (if any)

Subscribed and sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.<sup>2</sup>

\_\_\_\_\_  
Judge, notary or other officer  
authorized to administer oaths

\_\_\_\_\_  
Official title

#### USE NOTE

1. Unless otherwise ordered by the court, this return is not to be filed with the court prior to service of the summons and complaint on the defendant.
  2. If service is made by the sheriff or a deputy sheriff of a New Mexico county, the signature of the sheriff or deputy sheriff need not be notarized.
- [Adopted effective August 1, 1988; as amended by Supreme Court Order 05-8300-01, effective March 1, 2005; by Supreme Court Order 07-8300-16, effective August 1, 2007; by Supreme Court Order No. 12-8300-026, effective for all cases filed or pending on or after January 7, 2013; as amended by Supreme Court Order No. 13-8300-022, effective for all cases pending or filed on or after December 31, 2013; as amended by Supreme Court Order No. 14-8300-017, effective for all cases pending or filed on or after December 31, 2014.]

**4A-506. Nomination of kinship guardian(s).**

STATE OF NEW MEXICO  
COUNTY OF DONA ANA  
THIRD JUDICIAL DISTRICT

\_\_\_\_\_, Petitioner(s)

No. D-307-DM-\_\_\_\_\_

IN THE MATTER OF THE KINSHIP GUARDIANSHIP OF

\_\_\_\_\_,<sup>1</sup> (a) Child(ren) (*use initials only*), and concerning

\_\_\_\_\_, Respondent(s).

**NOMINATION OF KINSHIP GUARDIAN(S)**

I, \_\_\_\_\_ (*name of minor child*), was born in the year  
\_\_\_\_\_ and am \_\_\_\_\_ years old (*current age*).

I nominate and request the court to appoint \_\_\_\_\_ (*name(s)*  
*of Petitioner(s)*) as my guardian(s).

I affirm under penalty of perjury under the laws of the State of New Mexico that the  
statements in this document are true and correct.

\_\_\_\_\_  
Date

\_\_\_\_\_  
Signature of Minor Child

**USE NOTES**

1. Insert the initials of each child listed in the Petition to Appoint Kinship Guardian.

[Provisionally approved, effective August 15, 2003 until August 31, 2004; approved, effective  
January 20, 2005; 4-983 recompiled and amended as 4A-506 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.]

**4A-511. Order appointing kinship guardian(s).**

STATE OF NEW MEXICO  
COUNTY OF DONA ANA  
THIRD JUDICIAL DISTRICT

\_\_\_\_\_, Petitioner(s)

No. D-307-DM-\_\_\_\_\_

IN THE MATTER OF THE KINSHIP GUARDIANSHIP OF

\_\_\_\_\_,<sup>1</sup> (a) Child(ren) (*use initials only*), and concerning

\_\_\_\_\_, Respondent(s).

**ORDER APPOINTING  
KINSHIP GUARDIAN(S)**

THIS MATTER came before the court on \_\_\_\_\_ (*insert date*) regarding the Petition to Appoint Kinship Guardian(s) for the minor child(ren). Petitioner(s)

\_\_\_\_\_ (*name(s) of Petitioner(s)*) appeared pro se. Respondent 1, \_\_\_\_\_ (*name of Respondent 1*), [ ] appeared pro se [ ] did not appear.

Respondent 2, \_\_\_\_\_ (*name of Respondent 2*), [ ] appeared pro se [ ] did not appear. The court having reviewed the petition, heard testimony, and being sufficiently advised,

**FINDS:**

1. The court has jurisdiction under the Kinship Guardianship Act, Sections 40-10B-1 to -15 NMSA 1978.

2. All necessary parties have been given adequate notice of the proceedings.

3. The name and age of the minor child(ren) are as follows:

Child's name	Birth year	Age
_____	_____	_____
_____	_____	_____
_____	_____	_____

4. Petitioner(s) is/are the minor child(ren)'s \_\_\_\_\_ (*relationship*) and is/are proper person(s) to be kinship guardian(s) under the Kinship Guardianship Act.

5. (*Select all that apply*)

[ ] Respondent 1 is the minor child(ren)'s legal parent and

[ ] \_\_\_\_\_ consents to the appointment of Petitioner(s) as the guardian(s);

or

the minor child(ren) has/have resided with Petitioner(s) for at least ninety (90) days prior to filing the petition to appoint kinship guardian(s), and Respondent 1 was not residing in the home during that time;

**OR**

There are **extraordinary circumstances** in this matter as follows, which include that Respondent 1 is unable or unwilling to provide appropriate care, maintenance, and supervision for the minor child(ren)<sup>2</sup>: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

**Respondent 2** is the minor child(ren)'s legal parent and

consents to the appointment of Petitioner(s) as the guardian(s);

or

the minor child(ren) has/have resided with Petitioner(s) for at least ninety (90) days prior to filing the petition to appoint kinship guardian(s), and Respondent 2 was not residing in the home during that time;

**OR**

There are **extraordinary circumstances** in this matter as follows, which include that Respondent 2 is unable or unwilling to provide appropriate care, maintenance, and supervision for the minor child(ren):

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_.

6. Petitioner(s) is/are providing appropriate care, maintenance, and supervision for the minor child(ren).

7. The Indian Child Welfare Act, 25 U.S.C. §§ 1901-1963,

does not apply to this matter or

does apply to this matter.

8. The requirements of Section 40-10B-8(B) NMSA 1978 have been proven by clear and convincing evidence.

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

10. Other: \_\_\_\_\_

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**WHEREFORE IT IS ORDERED:**

1. Petitioner(s) is/are appointed as the kinship guardian(s) of the minor child(ren).
2. The appointment of kinship guardianship shall remain in effect until the minor child(ren) reach(es) the age of eighteen (18) or until further order of the court, whichever comes first.
3. Under Section 40-10B-13(A) NMSA 1978, Petitioner(s) has/have the legal rights and duties of a parent except the right to consent to the adoption of the minor child(ren).
4. Respondents' parental rights pertaining to the minor child(ren) are hereby suspended until further order of the court.
5. Visitation shall be as follows:

Under the Kinship Guardianship Act, Section 40-10B-13(B) NMSA, visitation between the legal parents and the minor child(ren), or any other persons shall be at the discretion of the guardian(s);

or

Visitation shall be as follows: \_\_\_\_\_

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6. Child support shall be as follows:

No child support is ordered because Petitioner(s) waive a request for child support at this time, but reserve his/her/their right to request child support at a later time;

or

Child support is ordered as follows: \_\_\_\_\_

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7. This order allows the kinship guardian to apply for State programs and assistance on behalf of the minor child(ren) without reference to the kinship guardian(s)'s income.

8. Other: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
District Court Judge

\_\_\_\_\_  
Signature of Petitioner 1

\_\_\_\_\_  
Printed name

\_\_\_\_\_  
Address

\_\_\_\_\_  
Telephone number and email address

\_\_\_\_\_  
Signature of Petitioner 2

\_\_\_\_\_  
Printed name

\_\_\_\_\_  
Address

\_\_\_\_\_  
Telephone number and email address

\_\_\_\_\_  
Signature of Respondent 1

\_\_\_\_\_  
Printed name

\_\_\_\_\_  
Address

\_\_\_\_\_  
Telephone number and email address

\_\_\_\_\_  
Signature of Respondent 2

\_\_\_\_\_  
Printed name

\_\_\_\_\_  
Address

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Telephone number and email address

USE NOTES

1. Insert the initials of each child listed in the Petition to Appoint Kinship Guardian(s).

[Provisionally approved, effective August 15, 2003 until August 31, 2004; approved, effective January 20, 2005; 4-988 recompiled and amended as 4A-511 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.]

STATE OF NEW MEXICO  
 COUNTY OF DONA ANA  
 THIRD JUDICIAL DISTRICT COURT

\_\_\_\_\_  
 Petitioner(s),

v.

Case No. \_\_\_\_\_

\_\_\_\_\_  
 Respondent

Judge: \_\_\_\_\_

\_\_\_\_\_  
 Respondent

**REQUEST FOR SETTING**

NON-JURY

Specific matter to be heard: **Kinship Guardianship Petition, must be heard between 30-90 days of the filing of this Petition**

Time requested for hearing (check one):  15 minutes  30 minutes  other \_\_\_\_\_

Any hearing presently set in this matter (check one):  NO  YES (When? \_\_\_\_\_)

Requested by (check one)  PETITIONER(S)  RESPONDENT(S)

Below provide names and addresses of parties who need to be notified of the hearing, attach list if necessary.

**Only list CYFD if the child(ren) involved in this matter have an open abuse & neglect case & only list children over the age of 14 to be notified of the hearing.**

	Respondent	Respondent	CYFD if necessary	Child over 14 yrs
(Name)				
(Address)				
(City/State/Zip)				
(Telephone)				

I certify that I have caused a copy of this Request for Setting to be mailed or hand delivered to the above persons on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_

\_\_\_\_\_  
 (SIGN YOUR NAME)  
 (PRINT YOUR NAME) \_\_\_\_\_  
 (YOUR MAILING ADDRESS) \_\_\_\_\_  
 (CITY/STATE/ZIP) \_\_\_\_\_  
 (YOUR TELEPHONE) \_\_\_\_\_

**4A-516. Letters of guardianship.**

STATE OF NEW MEXICO  
COUNTY OF DONA ANA  
THIRD JUDICIAL DISTRICT

No: D-307-DM-\_\_\_\_\_

In the Matter of \_\_\_\_\_, (a) Child(ren), and Concerning

\_\_\_\_\_, Petitioner(s)

\_\_\_\_\_, Respondent(s).

**LETTERS OF GUARDIANSHIP**

On \_\_\_\_\_, 20\_\_ this court entered an order appointing \_\_\_\_\_ (Petitioner(s)) as the guardian(s) of \_\_\_\_\_ (minor child(ren)) under Sections 40-10B-1 to -21 NMSA 1978 and Rule 1-155 NMRA.

**WHEREFORE**, the order appointing kinship guardian(s) suspends the rights of the Respondent(s) and vests in the guardian(s) all rights and responsibilities of a parent, except for the right to consent to adoption of the child(ren), including but not limited to:

1. Petitioner(s) is/are permitted to consent to medical, mental health, and dental services and treatment for the minor child(ren) not prohibited by other law;

2. Petitioner(s) is/are permitted to seek tribal, state, and federal benefits on behalf of the child(ren) without reference to the income of Petitioners (the benefits should be based on the parent(s)' income);

3. Petitioner(s) is/are permitted to enroll the child(ren) in school and extracurricular activities, including religious activities and ceremonies;

4. Petitioner(s) shall be considered the education decision maker or surrogate parent under Section 300.519 of the Individuals with Disabilities Education Act.

5. Petitioner(s) is/are permitted to obtain and modify vital records for the child(ren);

6. Petitioner(s) \_\_\_\_\_ is/are \_\_\_\_\_ permitted \_\_\_\_\_ to

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_.

WITNESS, the Honorable \_\_\_\_\_, District Court Judge, and the seal of the  
Third Judicial District Court on \_\_\_\_\_.

CLERK OF THE DISTRICT COURT

[SEAL]

\_\_\_\_\_  
Deputy

[Adopted by Supreme Court Order No. 22-8300-020, effective for all pleadings and papers filed  
on or after December 31, 2022.]