

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA

ADMINISTRATIVE ORDER NO. 02-05

WHEREAS, the Foster Children’s Guardianship Act of 2000 (“Guardianship Act”), D.C. Act 13-566, provides for guardianship as a new permanency option for children who have been adjudicated to be abused or neglected (D.C. Code §§ 16-2381 - 16-2399); and

WHEREAS, a Working Group, has been organized by the Family Division consisting of representatives from the Superior Court, the Office of Corporation Counsel, and the Child and Family Services Agency (CFSA), as well as child welfare practitioners; and

WHEREAS, the Working Group has developed procedures closely following the statute for implementation of the Guardianship Act by the Superior Court pending promulgation and adoption of final rules under the Guardianship Act;

NOW THEREFORE, the following procedures are hereby promulgated and made applicable to all motions for permanent guardianship filed in the Superior Court of the District of Columbia.

I. Parties to a Permanent Guardianship Proceeding

A. Parties to a permanent guardianship proceeding shall include:

1. The child alleged or adjudicated to have been abused or neglected;
2. The child’s parent(s);
3. The proposed permanent guardian;
4. The agency having legal custody of the child; and
5. The District of Columbia.

B. The Court may, at its discretion, join other parties on its own motion or in response to a motion for joinder or intervention.

II. Appointment of Counsel

A. An attorney who has been appointed to represent a party in a neglect proceeding shall also represent that party in proceedings relating to a motion for permanent guardianship.

B. The Court shall appoint counsel for parents, including unknown or missing parents, or proposed guardians, who are financially unable to obtain adequate representation, in accordance with D.C. Code § 16-2304. Upon its own motion or upon a motion by any of the parties, the Court may join the proposed guardian as a party to the neglect proceeding and appoint counsel to represent the proposed guardian in accordance with D.C. Code § 16-2304(b)(3) and Neglect Rules 9 and 27.

C. An attorney appointed to represent a party to a guardianship proceeding shall be compensated in accordance with D.C. Code § 16-2326.01 if the party meets CCAN eligibility guidelines.

III. Motions for Permanent Guardianship

A. A permanent guardianship proceeding shall be initiated by the filing of a motion within a pending neglect case. The motion shall be filed with the Clerk of the Juvenile and Neglect Branch of the Family Court. The judge currently assigned to the underlying neglect case, absent good cause, will conduct all guardianship proceedings.

B. A motion for permanent guardianship may be filed by:

1. An individual seeking to be appointed the child's permanent guardian;
2. The District of Columbia Government; or
3. The child through his or her legal representative.

C. A motion for permanent guardianship may be filed at any time after the filing of a neglect petition.

D. A motion for permanent guardianship shall include:

1. A caption stating the case name, case number, social file number, and the name of the judge to which the case is assigned;

2. The name, sex, date and place of birth, and current placement of the child;
3. The proposed permanent guardian's name and relationship or other connection to the child;
4. The name and address of the child's parent(s);
5. A plain and concise statement of the facts and opinions on which the permanent guardianship is sought;
6. A description of the child's mental and physical health;
7. A statement why permanent guardianship, rather than adoption, termination of parental rights, or return to the parent, is in the child's best interest;
8. A statement as to the various efforts made by the moving party to locate the parent(s) of the child;
9. An itemization of the child's assets;
10. A statement of compliance with the Uniform Transfers to Minors Act, D.C. Code § 21-301 et seq., if applicable;
11. The name of proposed successor guardians, if any, and their relationship or other connection to the child and the proposed permanent guardian;
12. Information required by Chapter 46 of Title 16 (Uniform Child Custody Jurisdiction and Enforcement Act);¹
13. Written consents, if any, to the permanent guardianship;
14. If the child is at least 14 years old, the child's written consent to the proposed guardianship, or a good cause explanation for why the child's consent has not been given;
15. A statement indicating whether the proposed guardian has applied for or

¹ The Guardianship Act requires the motion to include information required by Chapter 45 of Title 16 (uniform child custody proceedings), which was repealed and replaced by Chapter 46 of Title 16 (Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA)).

intends to seek a permanent guardianship subsidy; and

16. The names, addresses, phone numbers, e-mail addresses, and fax numbers, if any, of all parties, including the moving party, and their attorneys, the Assistant Corporation Counsel, and the guardian *ad litem*.

IV. Notice

A. Summons

A summons shall:

1. Include a copy of the motion for permanent guardianship;
2. Advise the party that no action shall be taken on the motion unless and until the Court has found that the child who is the subject of the motion was neglected. The summons shall advise the party that, if the Court finds or has already determined that the child was neglected, the Court shall schedule an adjudicatory hearing on the motion for permanent guardianship, the date, time and location of which the party shall receive separate notice by mail;
3. Advise a party who wishes to contest the entry of a permanent guardianship that he or she must appear at the guardianship hearing and that a default judgment may be entered if the party fails to appear;
4. Advise a party wishing to contest the guardianship that, within 20 days following the date of service of the motion, he or she may file a written opposition with the Court and counsel for all parties;
5. Advise the party to contact his or her counsel. The summons shall provide the name and contact information for the moving party's attorney;
6. Advise an unrepresented party that he or she may request the appointment of counsel;
7. Advise the party that, if the motion is granted, the guardian will have the following rights and responsibilities with respect to the child:
 - a. Physical custody;

- b. Protect, nurture, discipline, and educate the child;
- c. Provide food, clothing, shelter, education as required by law, and routine health care for the child;
- d. Consent to health care without liability by reason of the consent for injury to the child resulting from the negligence or acts of third persons unless a parent would have been liable in the circumstances;
- e. Authorize a release of physical and mental health care and educational information;
- f. Authorize a release of information when consent of a parent is required by law, regulation, or policy;
- g. Consent to social and school activities of the child;
- h. Consent to military enlistment;
- i. Obtain representation for the child in legal actions; and
- j. Determine the nature and extent of the child's contact with other persons except as set forth in the permanent guardianship order.

8. Advise the party that, if the motion is granted, the parent(s) will retain the following rights and responsibilities with respect to the child:

- a. The right to visit or contact the child, except as may be limited by the court;
- b. The right to consent to the child's adoption;
- c. The right to determine the child's religious affiliation; and
- d. The responsibility to provide financial, medical, and other support for the child.

9. Advise the party that, if the motion is granted, the child will retain the right to inherit from his or her parents; and

10. Advise a parent that he or she may consent to the proposed guardianship either by filing an affidavit of consent on a form prescribed by the Court or by appearing at the guardianship hearing and stating his or her consent.

B. Service

1. Service upon Parents

a. CFSA shall cause the parent(s) to be served personally with a summons. CFSA shall file proof of service with the Court and counsel for the moving party within 45 days. If personal service cannot be made within 45 days, CFSA shall file an affidavit of efforts to serve the parent(s) with the Court and counsel for the moving party. Nothing in this section shall preclude the movant from serving a summons upon the parent(s) in person.

b. If personal service upon a parent cannot be effected, any party may request and the Court may order constructive service in accordance with Neglect Rule 7(g).

2. The movant shall promptly serve a summons upon counsel for all other parties to the guardianship proceeding, as well as counsel for any other person who is, at the time of filing the motion for permanent guardianship, a party to the neglect proceeding, unless the Court orders personal service upon a party. The movant shall file proof of service within 45 days.

C. Notice of the Hearing Date

1. Motions Filed Before Adjudication of Neglect

Upon an adjudication of neglect, the Court shall schedule an adjudicatory hearing on the motion for permanent guardianship and cause notice of the date, time, and place of the hearing to be sent to all parties, provided that:

a. The Court has received proof of service; or

b. The Court has ordered constructive service.

2. Motions Filed After Adjudication of Neglect

Upon the filing of proof of service, or upon entry of an order permitting constructive service, the Clerk, with the concurrence of the assigned judge, shall schedule an adjudicatory hearing on the guardianship motion and shall mail notice of the date, time, and location of the hearing to all parties and their attorneys.

V. Discovery

A. Subject to paragraph (B), discovery shall be conducted pursuant to Neglect Rule 15.

B. Unless a party requests and the Court orders enlargement of the time for discovery, the parties shall complete discovery:

1. Within 30 days following the adjudication of neglect if the motion for permanent guardianship is filed before such adjudication; or
2. Within 30 days following the date of service if the motion for permanent guardianship is filed after an adjudication of neglect.

VI. CFSA Report and Recommendation

A. Upon receipt of a motion for permanent guardianship, CFSA shall commence preparing its report and recommendation on the proposed permanent guardianship.

B. Upon receipt of a motion for permanent guardianship, CFSA shall commence a criminal record check of a successor guardian designated by the moving party.

C. Three (3) business days before a scheduled adjudicatory hearing on the motion for permanent guardianship, CFSA shall submit its report and recommendation to the Court. At least three (3) business days before the adjudicatory hearing, CFSA may request and the Court may grant a continuance of the hearing date if, for good cause, CFSA has not completed its report and recommendation. If CFSA requests a continuance, it shall immediately notify counsel for all other parties.

D. When appropriate, the Court may conduct an adjudicatory hearing on the motion for permanent guardianship even though CFSA has not completed its report and recommendation.

VII. Timing of the Adjudicatory Hearing

A. If a motion for permanent guardianship is filed before the child has been adjudicated

neglected, an adjudicatory hearing on the motion shall be scheduled to occur within 45 days following the adjudication of neglect, provided that the Court has received proof of service. If the Court has not received proof of service, an adjudicatory hearing on the motion shall be scheduled to occur within 60 days following the entry of an order permitting constructive service or within 45 days following the adjudication of neglect, whichever is later.

B. If a motion for permanent guardianship is filed after the child has been adjudicated neglected, an adjudicatory hearing on the motion shall be scheduled to occur within 45 days following the filing of proof of service or, if personal service upon a parent cannot be effected, within 60 days following the entry of an order permitting constructive service.

C. A guardianship hearing may be consolidated with a previously scheduled adjudicatory, dispositional, or review hearing.

D. For good cause, the Court may continue the adjudicatory hearing to a later date on its own initiative or in response to a motion by any of the parties.

VIII. Adjudicatory Hearing

A. The Court shall ascertain whether all parties are present and whether notice has been served properly on all parties. If a parent has been given proper notice but fails to appear, the Court may proceed in the parent's absence.

B. The Court shall ensure that any party desiring representation by counsel has had an opportunity to secure counsel or has counsel appointed for him or her pursuant to section II above.

C. Once the Court has determined that all parties have been served properly, the Court shall determine the position of the parties present with respect to the proposed permanent guardianship. Any party contesting the proposed guardianship must appear at the hearing and state his or her opposition to the establishment of a permanent guardianship.

D. Each party shall have the right to present evidence, to be heard on his or her own behalf, and to cross-examine witnesses called by another party.

E. The moving party shall have the burden of proving that the proposed guardianship is in the child's best interest.

F. In its determination of whether to grant the motion for permanent guardianship, the

Court shall consider:

1. Whether permanent guardianship is in the child's best interest. In determining whether the proposed guardianship is in the child's best interest, the Court shall consider each of the following factors:
 - a. The child's need for continuity of care and caretakers, and for timely integration into a stable and permanent home, taking into account the differences in the development and the concept of time of children of different ages;
 - b. The physical, mental, and emotional health of all individuals involved to the degree that each affects the welfare of the child, the decisive consideration being the physical, mental, and emotional needs of the child;
 - c. The quality of interaction and interrelationship of the child with his or her parent, siblings, relatives, and caretakers, including the proposed permanent guardian;
 - d. To the extent feasible, the child's opinion of his or her own best interests in the matter; and
 - e. Evidence that drug-related activity continues to exist in a child's home environment after intervention and services have been provided pursuant to D.C. Code § 4-1301.06a.
2. Whether adoption, termination of parental rights, or return to the parent are appropriate for the child; and
3. Whether the proposed permanent guardian is suitable and able to provide a safe and permanent home for the child.

G. In considering whether to grant the motion for permanent guardianship, the Court shall take into account any and all relevant, material, and competent evidence presented at the adjudicatory hearing, including any report and recommendation submitted by CFSA. Neither the husband/wife privilege nor the physician/client or mental health professional/client privilege shall be ground for excluding evidence, *see* D.C. Code § 16-2388(e).

H. The Court shall consider any and all evidence relevant to a determination of what

contact or visitation, if any, between the child and his or her relatives would be in the child's best interest in the event that the permanent guardianship motion is granted.

IX. Entry of Permanent Guardianship Order

A. The Court shall not enter an order of permanent guardianship unless it finds that, based on a preponderance of the evidence, the creation of the permanent guardianship is in the child's best interest.

B. If the child is 14 years of age or older, the Court shall designate the permanent guardian selected by the child, unless the Court finds the designation is contrary to the child's best interest.

C. A final order of permanent guardianship may not be issued unless the child has been adjudicated neglected and has been living with the proposed permanent guardian for at least six months. In computing whether the six (6) month residency requirement has been met, the Court shall consider all time that the child has resided with the proposed guardian in shelter care pursuant to D.C. Code § 16-2310.

D. When a child has been adjudicated neglected but has not yet resided with the proposed guardian for the required six (6) months, the court may issue an interlocutory order of guardianship, if such an order is in the child's best interest. In determining whether an interlocutory order of guardianship is in the child's best interest, the Court shall consider the impact that granting the order may have on the guardian's eligibility for foster care payments or a permanent guardianship subsidy.

1. The interlocutory order shall specify the date, not less than six (6) months nor more than one year from the date of entry of the interlocutory order, upon which it shall become a final guardianship order, unless in the interim the order shall have been set aside for cause shown.
2. The agency having responsibility for the child shall be permitted to visit the child during the period of the interlocutory order and may be ordered to provide services as specified in the interlocutory order.
3. The Court may revoke the interlocutory guardianship order, either on its own motion or on the motion of one of the parties, for good cause shown, at any time before it becomes a permanent guardianship order if it is in the child's best interest. Before the revocation, personal notice shall be given to the parties and an

adjudicatory hearing shall be conducted.

E. No final order of permanent guardianship shall be issued until the Court has received notice:

1. From CFSA that it has entered into a subsidy payment agreement with the proposed permanent guardian contingent upon a final Court order of guardianship; or
2. From the proposed permanent guardian that he or she desires to assume permanent guardianship of the child irrespective of receipt of a subsidy.

F. An order for permanent guardianship shall state in writing:

1. The findings of fact and conclusions of law on which the order is based, including:
 - a. Findings pertaining to the Court's jurisdiction; and
 - b. Findings pertaining to each of the considerations listed in section VIII(F) above;
2. The rights and responsibilities concerning the care, custody, and control of the child that have been granted to the permanent guardian;
3. The rights and responsibilities that are retained by the parent(s);
4. That the Court will retain jurisdiction to enforce, modify, or terminate the guardianship order until the child reaches age 18;
5. That, on or before the child's eighteenth birthday, the permanent guardian, child, or guardian *ad litem* may move the Court to retain jurisdiction over the guardianship order until the child reaches age 21;
6. That the permanent guardian is required to file a motion to modify the guardianship order before taking any action that is reasonably likely to have an adverse affect on the rights of another party under the guardianship order; and
7. That the permanent guardian shall not relocate with the child over 100 miles

from his or her place of residence at the time the guardianship order is entered without filing a notice with the court. The notice must be personally served on all parties 15 business days before the relocation. Notice of relocation shall include the permanent guardian's new address, telephone number, and anticipated date of relocation unless, for good cause shown, the Court permits the permanent guardian to withhold this information from another party.

G. An order for permanent guardianship may:

1. Specify the frequency and nature of visitation or contact between relatives and the child; and
2. Designate a successor guardian who, pursuant to section XIII below, is approved by the court to take guardianship of the child upon the death or infirmity of the permanent guardian.

X. Status/Resolution of Neglect Case

A. Upon entry of a final order establishing permanent guardianship, and during the period of time such order remains in effect, the requirements of D.C. Code §§ 16-2322 and 16-2323 — regarding time limits on dispositional orders and review of dispositional orders in neglect cases — shall be suspended.

B. Upon entry of a final order establishing permanent guardianship, any party to the permanent guardianship proceeding may make an oral or written motion to the Court to make a permanency determination and close the neglect case. The neglect case shall be closed if such resolution is in the child's best interest.

XI. Motion to Modify, Terminate, or Enforce Guardianship Order

A. The Court shall retain jurisdiction to enforce, modify, or terminate a guardianship order until the child reaches age 18. Upon motion by the permanent guardian, the guardian *ad litem*, or the child, the Court may retain jurisdiction over the guardianship order until the child reaches age 21 if the court finds that it is in the child's best interest and if the child consents.

B. A motion to modify, terminate, or enforce a guardianship order may be filed by any party with the presiding judge of the Family Division, who shall assign the case to the appropriate judge.

C. A permanent guardian shall file a motion to modify the guardianship order before taking any action that will substantially and materially change the child's circumstances if there is a reasonable likelihood that such change of circumstances will adversely affect the rights of another party under the guardianship order.

D. Notice

1. A summons shall:

- a. Include a copy of the motion to modify, terminate, or enforce the guardianship order;
- b. Advise the party that the Court will schedule an adjudicatory hearing on the motion to take place within 60 days after the Court receives proof of service;
- c. Advise the party that he or she will receive separate notice of the hearing date in the mail and that he or she should contact an attorney for legal advice;
- d. Advise a party who wishes to contest the motion that he or she must appear at the hearing; and
- e. Advise a party wishing to contest the motion that, within 20 days following the date of service, he or she may file a written opposition with the Court and counsel for all parties.

2. Service

- a. CFSA shall cause the parent(s) and permanent guardian to be served in person with a summons. CFSA shall file proof of service with the Court and counsel for the moving party within 45 days. Nothing in this section shall preclude the movant from serving a summons upon the parent(s) or permanent guardian in person.
- b. The movant shall promptly cause all parties, except the parent(s) and permanent guardian, to be served in person with a summons. The movant shall file proof of service with the Court and all parties, or their counsel, within 45 days.

c. If personal service upon a party cannot be effected within 45 days, the movant or CFSA shall file an affidavit of efforts to serve the party with the Court and counsel for the moving party.

d. If personal service upon a party cannot be effected, any party may request and the Court may order constructive service in accordance with Neglect Rule 7(g).

E. Upon the filing of proof of service, or upon entry of an order for constructive service, the Clerk shall schedule an adjudicatory hearing on the motion to take place within 60 days and shall mail notice thereof to all parties and their attorneys.

F. The Court may issue an order of reference directing CFSA to file a report and recommendation regarding the proposed modification or termination of the guardianship order within 45 days of the filing date of the motion.

G. The Court shall hold an adjudicatory hearing in accordance with the requirements of D.C. Code § 16-2388.

H. The Court may grant a motion to modify or terminate the guardianship order if the Court finds, by a preponderance of the evidence, that:

1. There has been a substantial and material change in the child's circumstances subsequent to the entry of the guardianship order; and
2. It is in the child's best interest to modify or terminate the guardianship order.

I. If the Court finds that a substantial and material change in the child's circumstances is the discontinuance of a permanent guardianship subsidy for any reason, including lack of appropriated funds, the permanent guardian or the guardian *ad litem* may file a motion requesting to reopen the neglect case and commence foster care payments or other subsidies available through neglect proceedings.

J. The Court shall enter a written order granting or denying the motion and reciting the findings of fact and conclusions of law upon which such order is based, including findings relating to the Court's jurisdiction.

K. Upon entry of an order terminating the guardianship, the permanent guardian shall no longer:

1. Be entitled to physical custody of the child;
2. Have any other parental rights and responsibilities concerning the child created under Title 16, Chapter 23, Subchapter V; or
3. Have party status in any further proceeding brought under Title 16, Chapter 23, Subchapter V.

L. Upon entry of an order terminating the guardianship, the Court shall reopen the child's neglect case and hold a review hearing pursuant to D.C. Code § 16-2323.

XII. Support

A. A permanent guardian may receive money paid for the child's support to the child's parent(s) under the terms of any statutory benefit or insurance system or any private contract, settlement, agreement, court order, devise, trust, conservatorship, or custodianship, and money or property of the child.

B. After due notice to the parent(s) or other persons legally obligated to care for and support the child and after a hearing, the court may order and decree that the parent(s) or other legally obligated person shall pay, in such manner as the court may direct, a reasonable sum that will cover in whole or in part the support and medical treatment of the child after the guardianship order is entered. If the parent(s) or other legally obligated person willfully fails or refuses to pay such sum, the court may proceed against that person for contempt, or may file the order, which shall have the effect of a civil judgment.

XIII. Successor Guardians

A. A party moving for permanent guardianship may designate a successor guardian. Upon entry of an order for permanent guardianship, the Court shall approve the successor guardian designated by the movant.

B. A successor guardian may be designated or removed after the creation of the permanent guardianship by the filing of a motion to modify pursuant to section XI above.

C. The successor guardian shall immediately obtain physical custody of the child and assume the permanent guardian's rights and responsibilities concerning the child upon the

permanent guardian's death, or physical or mental infirmity.

D. The successor guardian shall move the court for a modification of the original guardianship order within 30 days of obtaining physical custody of the child. Unless otherwise ordered by the Court, the successor guardian shall assume the permanent guardian's rights and responsibilities concerning the child until the Court conducts a hearing on the motion to modify.

E. A motion filed pursuant to this section shall:

1. Include the following:

- a. The name, sex, date and place of birth, and current placement of the child;
- b. The successor guardian's name and relationship or other connection to the child;
- c. The name and address of the child's parents;
- d. A plain and concise statement of the facts and opinions on which the successor guardian seeks permanent guardianship;
- e. A description of the child's mental and physical health;
- f. A statement why permanent guardianship, rather than adoption, termination of parental rights, or return to the parent, is in the child's best interest;
- g. A statement as to the various efforts taken by the moving party to locate the parent(s) of the child;
- h. An itemization of the child's assets;
- i. A statement of compliance with the Uniform Transfers to Minors Act, D.C. Code § 21-301 et seq., if applicable;
- j. The name of proposed successor guardians, if any, and their relationship or other connection to the child and the proposed permanent guardian;

k. Information required by Chapter 46 of Title 16 (Uniform Child Custody Jurisdiction and Enforcement Act);²

l. Written consents, if any, to the permanent guardianship; and

m. If the child is at least 14 years old, the child's written consent to the proposed guardianship, or a good cause explanation for why the child's consent has not been given;

2. Append the original order which designated the successor guardian; and

3. Append a copy of either:

a. Proof of the permanent guardian's death, such as a copy of a death certificate or funeral home receipt; or

b. Proof of the permanent guardian's physical or mental infirmity.

F. Before issuing a final order transferring the permanent guardian's rights and responsibilities to the successor guardian, the Court shall hold an adjudicatory hearing, as provided for in section VIII above and shall, at the conclusion of the hearing, enter a written order reciting the findings upon which such order is based, including findings pertaining to the Court's jurisdiction.

G. The Court shall not transfer the permanent guardian's rights and responsibilities to the successor guardian unless it finds that:

1. The successor guardian was duly designated by the permanent guardian;

2. The permanent guardian is deceased or is physically or mentally infirm;

3. The transfer of permanent guardianship is in the child's best interest;

4. Adoption, termination of parental rights, or return to the parent is not appropriate for the child; and

² The Guardianship Act requires the motion to include information required by Chapter 45 of Title 16 (uniform child custody proceedings), which was repealed and replaced by Chapter 46 of Title 16 (Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA)).

