

CHAPTER 13

**GUARDIANSHIP OF
MINOR CHILDREN**

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Overview of Guardianship 391

- What Is a Guardianship of a Minor? 391
- Is a Guardianship Right for My Situation? 391
- Who Can File for a Guardianship of a Minor (Child)? 391
- What Is the Difference Between a Temporary Guardianship and a Permanent Guardianship? 391
- What if There Is an Emergency? 392
- Who Can Get a Court-Appointed Lawyer? 392
 - Child 392
 - Parent 392
 - Petitioner 393
 - Guardian 393
- How Does a Court Decide Whether to Appoint a Guardian for a Child? 393
- What if the Judge Wants More Information? 394
- Can a Guardianship Be Changed to Add or Restrict Visitation or to Increase or Decrease a Child Support Order? 395
- Can a Parent Get Back Custody of a Child Under Guardianship? 395

Information for a Petitioner 396

- Part A—What to Do if You Want the Court to Appoint a Guardian for a Child 396
 - Step 1—Getting Information in Your Language 396
 - Step 2—Filing the Petition and Other Necessary Forms 396
 - Step 3—Getting a Docket Number 397
 - Step 4—Serving the Notice and Order 397
 - Step 5—Publishing Notice in a Newspaper (if Necessary) 398
 - Step 6—Filing Proof of Service 398
 - Step 7—(Optional) Filing and Serving Motions 398
- Part B—Preparing for a Hearing or Trial 399
 - Hearing on a Motion 399
 - Trial or Evidentiary Hearing on Petition 399
- Part C—Changing a Guardianship 400

Information for a Parent 401

- Part A—What to Do if Someone Wants the Court to Appoint a Guardian for Your Child 401
 - Step 1—Getting Information in Your Language 401
 - Step 2—Finding a Lawyer, Even if You Cannot Afford One 401

Step 3—Knowing Your Rights (Before You Sign a Consent Form).....	402
Step 4—Filing an Appearance and Objection.....	402
Step 5—(Optional) Asking for a Lawyer for Your Child	402
Step 6—(Optional) Filing and Serving Motions.....	402
Part B—Preparing for a Hearing or Trial	402
Attend Court Dates.....	402
Hearing on a Motion.....	403
Trial or Evidentiary Hearing on Petition	403
Part C—Changing a Guardianship.....	404
CHECKLIST 13.1—For a Party Filing for Guardianship	406
CHECKLIST 13.2—For a Parent Responding to a Petition for Guardianship of a Minor.....	407
CHECKLIST 13.3—For a Parent Filing a Petition for Removal of Guardian of a Minor.....	408
CHECKLIST 13.4—For a Guardian Responding to a Petition for Removal of a Guardianship of a Minor.....	409
EXHIBIT 13A—Petition for Appointment of Guardian of Minor (Form MPC 140) ...	410
EXHIBIT 13B—Affidavit Disclosing Care or Custody Proceeding (Form OCAJ-1 TRC IV).....	414
EXHIBIT 13C—Bond (Form MPC 801)	417
EXHIBIT 13D—Notarized Waiver and Consent to Petition for Guardianship of Minor (Form MPC 440)	419
EXHIBIT 13E—Military Affidavit	421
EXHIBIT 13F—Affidavit of Indigency.....	422
EXHIBIT 13G—Notarized and Verified Consent or Nomination by Minor (Form MPC 441)	424
EXHIBIT 13H—Request for Counsel (Form MPC 301)	425
EXHIBIT 13I—Verified Motion for Appointment of Temporary Guardian for a Minor (Form MPC 340)	426
EXHIBIT 13J—Order Appointing Temporary Guardian of a Minor (Form MPC 742).	428
EXHIBIT 13K—Notice of Right to Counsel (Form MPC 592)	431
EXHIBIT 13L—Application for Appointment of Counsel (Form MPC 263)	432
EXHIBIT 13M—Notice of Appearance and Objection (Form MPC 505a).....	433
EXHIBIT 13N—Massachusetts Probation Service Consent Form.....	434
EXHIBIT 13O—Decree and Order of Appointment of Guardian of a Minor (Form MPC 740)	435
EXHIBIT 13P—Annual Report of Guardian of Minor (Form MPC 443)	438
EXHIBIT 13Q—Complaint for Modification (Form CJ-D104).....	441
EXHIBIT 13R—Petition for Removal of Guardian of Minor Pursuant to G.L. c. 190B, § 5-212 (Form MPC 240)	442
EXHIBIT 13S—Decree and Order of Termination of Guardianship of Ward /Minor (Form MPC 743)	444
EXHIBIT 13T—Interested Parties Checklist for Guardianship of Minor Proceedings: Standing Order 4-09.....	446

OVERVIEW OF GUARDIANSHIP

What Is a Guardianship of a Minor?

“Guardianship of a minor” is a legal way for a court to give someone other than a parent the right to take care of, and make decisions for, a child. For example, if a child is living with a grandparent—or other adult—and neither of the child’s parents is available and/or able to care for the child, the grandparent can ask the court to appoint the grandparent as the “guardian” of the child. When the court appoints someone to be a child’s guardian, the guardian acts as the child’s parent for as long as the guardianship lasts. This means that, as long as the guardianship lasts, the child’s parents do not have regular parenting rights. Most of a parent’s rights are suspended during a guardianship, and the parent must ask the guardian or the court for permission to spend time with the child or help make decisions for the child.

In a guardianship case, each of the people involved gets a legal label or name. The person who files the guardianship case is a “petitioner.” The parent is called a “respondent,” and together, parents are “respondents.” The child is sometimes called a “minor” and sometimes called a “ward.” A “party” is someone who is named on one side of a case or the other. For example, *Jane Doe v. John Smith*—Jane Doe and John Smith are parties in this case. In a guardianship case, the petitioner(s) and the parents are the parties. The child may be called the “subject child” or may be called an “interested party.” An interested party is someone who must be notified about a petition to appoint or remove a guardian or change an existing decree of guardianship. **Checklist 13.1** can help you figure out who are the interested parties in your case.

Is a Guardianship Right for My Situation?

Sometimes a guardianship is not necessary to meet a child’s needs and a family’s needs. Another option is naming a “caregiver” for your child. A caregiver is an adult who, like a parent, has authority to make educational and medical decisions for a child. The caregiver shares this authority with the child’s parent(s). The parents’ rights are not suspended, as they are under a guardianship, but the caregiver does not need to ask the parents’ permission before acting on behalf of the child. A properly completed caregiver authorization affidavit is valid for up to two years. A blank affidavit and instructions for completing it can be found at <https://www.mass.gov>.

Who Can File for a Guardianship of a Minor (Child)?

Any adult can ask the court to appoint a guardian for a child, and a child age fourteen or older can also ask for a guardian. In order to ask the court to appoint a guardian for a child, the person must go to the Probate and Family Court and file a guardianship case, which is called a petition for the appointment of guardian of a minor. (How and where to file a petition is discussed later in this chapter.) More than one person can ask to be appointed as a guardian. When there is more than one petitioner, they may be called “petitioners” or “copetitioners.”

If the parents agree that the petitioner should be appointed guardian of the child, the court process is simple. The parents can tell the court that they “assent” or “consent” by signing a notarized waiver and consent to petition. If the child is fourteen or older, he or she can also consent to the guardianship or can “nominate” the petitioner to be guardian by completing a notarized and verified consent to nomination by minor form. If a parent or a child age fourteen or older does not agree to the guardianship, the process is more difficult.

What Is the Difference Between a Temporary Guardianship and a Permanent Guardianship?

There are two kinds of guardianship orders: a temporary order of guardianship and a permanent order (or “decree”) of guardianship. A temporary guardianship typically ends after three months, unless the court makes a new order. A permanent guardianship does not end until the child turns eighteen, unless the court makes a new order.

If a parent or child age fourteen or older objects to a petition for guardianship, the court cannot make an order of permanent guardianship until there has been a trial or “evidentiary hearing.” Typically it will take several months before an evidentiary hearing is scheduled to determine whether an order of permanent guardianship is needed.

Sometimes this is too long to wait. If the child needs a guardian right away, a petitioner can file a motion for appointment of temporary guardian to ask the court to appoint a guardian before the evidentiary hearing.

What if There Is an Emergency?

If an emergency arises, you may file a motion for temporary guardianship and ask the court to have a hearing that same day, without giving notice of the motion and hearing to the child's parents or any other interested persons. If you believe there is an emergency, you must complete an "affidavit" and file it with your motion. Mass. R. Dom. Rel. P. 6. An affidavit is a written statement that you sign under oath (as though you were testifying at a trial). The affidavit must explain what the emergency is and what steps are necessary to protect the child from immediate harm. There must be extreme circumstances and very good reasons why you are unable to wait and give notice of the hearing to parents and others.

Who Can Get a Court-Appointed Lawyer?

A court-appointed lawyer is paid by the Commonwealth and not by the person being represented.

Child

Under Massachusetts law, the court must appoint a lawyer for the subject child in a guardianship case, if someone asks the court to appoint a lawyer for the child. G.L. c. 190B, § 5-106. (The court may also choose to appoint a lawyer for the child even if no one has requested a lawyer for the child, but this is not a requirement. G.L. c. 190B, § 5-106.) A lawyer for the child represents only the child, not the person asking for guardianship and not either parent. Unless the child is very young and/or has a disability that makes the child unable to express a clear opinion, a lawyer for the child will work for what the child wants, even if the lawyer thinks that the child's wishes may not be in the child's best interest. If you want to have a lawyer represent the child and work for what the child wants, you can file a request for counsel form.

Parent

Under Massachusetts law, the court must appoint a lawyer for a parent who is a respondent in a petition for appointment of guardian of a minor if

- the parent files a request for counsel and an affidavit of indigency and
- the affidavit of indigency shows that the parent is income-eligible for a court-appointed lawyer.

Guardianship of V.V., 470 Mass. 590 (2015).

If a parent wants to modify an existing guardianship to significantly change visitation with the child, or if a parent wants to end the guardianship and regain care and custody of the child, the court will appoint a lawyer for the parent if

- the parent files a request for counsel and an affidavit of indigency; and
- the affidavit of indigency shows that the parent is income-eligible for a court-appointed lawyer; and
- the request for counsel shows that the parent has a "meritorious claim" (i.e., a good reason for asking for a change in, or end to, the guardianship).

L.B. v. Chief Justice of the Probate & Family Court, 474 Mass. 231, 246 (2016).

A "meritorious claim" does not mean that the parent must show that he or she will win; it means that the parent must show a good reason for asking the court to consider making a change to, or ending, the guardianship. *L.B. v. Chief Justice of the Probate & Family Court*, 474 Mass. at 241–42. Good reasons might include the following:

- there is no order for visitation at this time;
- the current visitation order is no longer working (e.g., the guardian or parent has moved, or the child's schedule has changed, or the parent's work, school, or therapy schedule has changed);
- current visitation has been going well and expanding would be in the child's best interest because it would strengthen the parent-child bond;
- finding housing;

- leaving an abusive partner;
- completing an addiction recovery program;
- complying with any requirements of a DCF service plan;
- going to counseling; and/or
- responding to the concerns that led to the guardianship.

Practice Note

If you are not able to get a court-appointed attorney and you have limited income, contact a legal services agency. For help finding a legal services agency near you, go to <https://www.masslegalservices.org/findlegalaid>. For a list of legal services agencies, see <http://www.mass.gov/eohhs/docs/mashealth/membappforms/legal-services-guide.pdf>.

Petitioner

Under Massachusetts law, a person petitioning to become a guardian of a minor does not have a right to counsel. However, there are other resources available to help. You can ask at the courthouse or visit <http://www.mass.gov/courts/docs/courts-and-judges/courts/probate-and-family-court/guide-relative-caregivers-western.pdf> or <https://www.mass.gov/service-details/learn-how-to-get-help-with-filing-for-guardianship>.

Guardian

Once a person becomes a guardian, the guardian may be able to get a court-appointed lawyer if

- a parent or other person has filed a petition for removal of guardian of a minor and
- the court finds that appointing an attorney “would materially assist in determining the best interest of the child.”

Guardianship of K.N., 476 Mass. 762, 767 (2017).

How Does a Court Decide Whether to Appoint a Guardian for a Child?

The court may appoint a guardian for a minor if either the parents of the child agree (“consent”) to the guardianship, or, if a parent does not consent, the court finds the parent is unavailable or “unfit” to take care of the child. G.L. c. 190B, § 2-504(a). If a parent’s parental rights have been terminated (usually in a case brought by the Department of Children and Families), the parent does not have any legal rights in connection with the child, so the information in this chapter does not apply to any parent whose parental rights have been terminated.

There are many reasons why a parent might not be able to care for a child for a period of time, and sometimes parents and other adults all agree to a guardianship plan. When parents consent to a guardianship, the court will usually issue a guardianship decree right away. If one or both parents do not consent to the guardianship, it is much more difficult to get an order of guardianship of a minor child.

Under Massachusetts law, a parent is the best person to care for a child, except in extreme situations. *Guardianship of Estelle*, 70 Mass. App. Ct. 575, 578 (2007). It is not enough that another person would do a good job or a better job than the parent. *Guardianship of Estelle*, 70 Mass. App. Ct. at 580 (citing *Custody of a Minor*, 389 Mass. 755, 765 (1983)). In order to appoint a guardian without parental consent, the judge must find that there is “clear and convincing evidence” that each parent who objects is “unfit” to have custody of the child. G.L. c. 190B, § 5-204(a); *Custody of a Minor*, 383 Mass. 595, 600 (1981); *Guardianship of Estelle*, 70 Mass. App. Ct. at 578–79 (citing *Adoption of Nancy*, 443 Mass. 512, 515 (2005)).

“Clear and convincing” is the “standard of proof” in guardianship cases. This is a high standard of proof. The court must have little or no doubt that a guardianship is necessary and appropriate in order to appoint a guardian over the objection of a parent. In addition, the “burden of proof” is on the petitioner and is not on the child’s parents. *Petition of Robert Kauch*, 358 Mass. 327, 373 (1970). This means the petitioner must show that the parents are not fit, instead of each parent needing to prove that he or she is fit. Under Massachusetts law, “unfit” means much more than simply not doing a good job as a parent; it means that the parent has “grievous shortcomings.” *Adoption of Rhona*, 57 Mass. App. Ct. 479, 483 (2003).

Some typical reasons for a guardianship include the following:

- a parent is addicted to alcohol or opioids or another drug, and the addiction leaves the parent unable to care for the child;
- there is domestic violence in the child's home and the child is exposed to the violence;
- the child's health or education needs are not being met;
- a parent has been abusive to the child;
- a parent is not involved in the child's care (i.e., the parent is "absent" or has "abandoned" the child);
- the child has missed a lot of school without a good reason; and/or
- DCF believes the child may be abused or neglected.

Important information for the court to know might include the following:

- whether DCF is currently involved;
- whether any of the adults involved has ever been involved with DCF;
- who takes the child to school;
- who takes the child to doctor appointments;
- who cares for the child after school;
- where the child lives and who else lives in that home;
- how long the child has lived in the current home;
- whether either parent has other children and, if so, who cares for those other children; and/or
- whether any professional raised concerns about the child's safety and wellbeing (e.g., DCF, the child's school, the child's doctor, the child's therapist).

See, e.g., Adoption of Diane, 400 Mass. 196 (1987) (unfitness based on lengthy history of physical and emotional abuse of child); *Adoption of Nadia*, 42 Mass. App. Ct. 304 (1997) (poor nutrition, neglect of medical needs, unkempt appearance, and neglect of physical needs); *Adoption of Ramon*, 41 Mass. App. Ct. 709 (1996) (poor hygiene and nutrition of child, missed visits, alcohol and drug abuse, exposure to domestic violence); *Adoption of Nicole*, 40 Mass. App. Ct. 259 (1996) (father's imprisonment, criminal record, substance abuse, and lack of relationship with child); *Adoption of Hanna*, 33 Mass. App. Ct. 542 (1992) (mother threatened to kill her children, was a substance abuser, and failed to comply with social service plan); *Care & Prot. of Lilith*, 61 Mass. App. Ct. 132 (2004) (where a parent has committed domestic violence against the child's other parent, the court must consider the impact of the domestic violence on the child). The child's progress (e.g., in school, in therapy), if any, since being in the care of someone other than a parent can be considered by the judge. *Adoption of Hugh*, 35 Mass. App. Ct. 346 (1993); *Adoption of Arthur*, 34 Mass. App. Ct. 914 (1993).

The process and standards for getting a temporary guardianship are different in some ways from the process and standards for getting a permanent guardianship. This is because a decision about a permanent guardianship comes after a trial or evidentiary hearing—a formal proceeding with witnesses giving "testimony" and documents offered to the court as "exhibits." Typically, a decision about a temporary guardianship is made after a less formal hearing. At a hearing on a motion to appoint a temporary guardian, each side gives the court a summary or "representation" of the evidence that would be given at a trial. The hearing is short and often does not include anyone other than the parties.

The court will appoint a temporary guardian for a child only if it is necessary to prevent "substantial harm to the health, safety or welfare of the minor (child) occurring prior to the return date (the evidentiary hearing date), and no other person appears to have authority to act in the circumstances. . . ." G.L. c. 190B, § 5-204(b).

What if the Judge Wants More Information?

Sometimes the judge wants more information before making a decision about guardianship. A way for the court to get information is to order an investigation of the facts and circumstances of the case. The investigation can be done by a Probate and Family Court probation officer (also known as a family service officer) or by a lawyer or mental health professional acting as a "guardian ad litem." G.L. c. 190B, § 5-106(b). A guardian ad litem is a person who has had special training and can be appointed by the court to review documents; interview children, parents,

extended family, teachers, health providers, and other people with information about a child's needs; and write a report for the court. The court will not force you to cooperate with the investigator. However, if you do not cooperate, the court may consider your failure to cooperate as evidence that there is a problem. The investigator may be able to help you prove your case, so it is generally a good idea to provide a list to the investigator of people or records you believe have important evidence for your case. If you believe an investigation would be helpful in your case, you can ask the judge to order an investigation. To ask for a court investigation or guardian ad litem, you must file a motion for a guardian ad litem or court investigation and proposed order, getting a hearing date, giving notice to the other people in your case, and having a hearing.

Can a Guardianship Be Changed to Add or Restrict Visitation or to Increase or Decrease a Child Support Order?

Yes. A temporary or permanent guardianship decree can be changed (i.e., “modified”). A decree of guardianship may or may not include an order for visitation between the parent(s) and the child. In order to change the order—either to increase or to restrict visitation or other contact with the child—the party asking for the change will need to file a complaint for modification. Massachusetts guardianship law does not state what burden or standard of proof is required for a complaint to modify a guardianship. Typically, in child custody cases in the Probate and Family Court, the person asking for a change must show that there has been a “material change in circumstances” and that it would be in the child's best interest to modify the order. So, it is likely that the person asking for a change in the guardianship will need to prove to the court that something significant has changed and that, because of this change, it would be in the child's best interest to change visitation under the guardianship. A parent or guardian could also ask for a modification of child support if a parent's income increases or decreases.

A parent seeking increased visitation who cannot afford to hire a lawyer may be able to get a court-appointed lawyer. The parent must show that he or she is financially eligible and must show that he or she has a “meritorious claim” for increased visitation by the guardian. *L.B. v. Chief Justice of the Probate & Family Court*, 474 Mass. 231, 246 (2016). See “Who Can Get a Court-Appointed Lawyer?,” above.

After a complaint for modification is filed, the parent who filed it must provide notice to the interested parties, including the guardian(s), a child age fourteen or older, and the other parent. The Massachusetts Guardianship Statute does not state how notice must be provided. Neither G.L. c. 190B, § 5-212 nor Probate and Family Court Standing Order 4-09 explains service in a complaint for modification of a guardianship. The parent may be required to have a sheriff, constable, or other court-approved person give a copy of the notice and order in hand to the guardian, child (if age fourteen or older), and the other parent. Mass. R. Dom. Rel. P. 4. To be certain that you follow the correct procedure, ask a clerk in the court registry how to service notice. If you cannot afford to pay for a sheriff or constable to service notice, you can ask the court to pay for the expense. To ask the court to pay for the expense of service, you must complete an affidavit of indigency.

Can a Parent Get Back Custody of a Child Under Guardianship?

Yes. Even a “permanent” guardianship can be terminated, and a fit parent is entitled to custody and care of his or her child. *Guardianship of Estelle*, 70 Mass. App. Ct. 575, 578 (2007) (citing *Bezio v. Patenaude*, 381 Mass. 563, 576 (1980)). At the same time, the needs of each child are unique and it is possible for a parent to be fit to care for one child and unfit to care for another child. *Guardianship of Estelle*, 70 Mass. App. Ct. at 581. For example, a child who has been cared for by a guardian for many years may be so attached to the guardian that separation from the guardian would be traumatic for the child. It is possible that an otherwise fit parent could not meet the needs of a child resulting from the trauma of leaving a guardian's home and care. *Guardianship of Cheyenne*, 77 Mass. App. Ct. 826, 831 (2010) (citing *Bezio v. Patenaude*, 381 Mass. 563, 575 (1980)). Fortunately, when guardians and parents work together during the guardianship to provide contact between the parent and child and to transition a child back into the parent's care when appropriate, the child is far less likely to experience significant trauma.

If a parent wants to end a guardianship, the parent must file a petition for removal of a guardian of a minor (Form MPC 240). Traditionally, when a parent filed a petition asking the court to end a guardianship, the guardian had to prove, by clear and convincing evidence, that the guardianship was still necessary because the parent was still unfit to parent the child at the time of the petition for removal. The laws for guardianship cases changed in 2009 and, since that time, it is not clear whether the guardian must prove that the parent is still unfit or whether the parent must prove that he or she is now fit. See *Guardianship of Verity*, No. 15-P-778, 2016 WL 2941076, Mass. App. Ct. (May 19, 2016);

Guardianship of Vasily, 2013 Mass. App. Unpub. LEXIS 1090, 84 Mass. App. Ct. 1119 (Nov. 14, 2013); *Washington v. Aquoi*, 2015 Mass. App. Unpub. LEXIS 14, 87 Mass. App. Ct. 1101 (Jan. 9, 2015); see also *Care & Prot. of Thomasina*, 75 Mass. App. Ct. 563, 570 (2009). If you are involved in a removal case, you may want to ask the judge how the decision will be made—who has the burden of proof, what is the standard of proof, and what must be proven.

INFORMATION FOR A PETITIONER

Part A—What to Do if You Want the Court to Appoint a Guardian for a Child

Step 1—Getting Information in Your Language

What language do you speak at home? If you speak a language other than English, you can ask for an interpreter to help you understand court forms and to help you in the courtroom. You can ask for an interpreter at the registry in the courthouse. If there is no one at the courthouse who speaks your first language, the court can get an interpreter on the telephone for you.

Step 2—Filing the Petition and Other Necessary Forms

In order to start a guardianship of a minor case, four forms must be completed and filed with the court:

- petition for appointment of guardian of a minor (Form MPC 140) (tells the court who you are, what you want, and why you are asking for the court’s help);
- affidavit disclosing care and custody (Form OCAJ-1) (tells the court whether there are now, or have been in the past, any custody orders about the child);
- bond (Form MPC 801) (tells the court whether the child has money or other valuables that need to be protected); and
- one of the following:
 - if a parent consents, notarized waiver and consent to petition (Form MPC 440) (this is proof that each parent agrees to the guardianship); or
 - if a parent does not agree, military affidavit (Form MPC 470) (tells the court whether a parent might qualify for a free lawyer based on military service).

Some additional forms you may want to file are as follows:

- affidavit of indigency (if you cannot afford to pay for service of the notice and order);
- notarized and verified consent or nomination by minor (Form MPC 441) (if the child is fourteen or older);
- request for counsel (Form MPC 301) (if you want the child to have a lawyer); and
- verified motion for appointment of temporary guardian (Form MPC 340) and blank (proposed) order appointing temporary guardian of a minor (Form MPC 742) (if you need a court order quickly).

A complete set of these forms can be found at the end of this chapter and at <http://www.mass.gov>.

When completing the bond form, if the child does not have property worth more than \$100, the petitioner should check “without sureties” on the bond form and ask the clerk to file the bond “without sureties.” This means that no one other than the person filing to be the guardian needs to sign the form. If the child has real estate or other additional assets worth more than \$100, the case is more complicated and is beyond the scope of this chapter.

There is no fee for filing a petition for guardianship of a minor, but it does cost money to service the notice and order. If you cannot afford the cost of serving notice, you can file an affidavit of indigency. This is a form that shows the court why you do not have enough money to pay costs and asks the court to have the state pay your costs for you. You should file the affidavit of indigency at the same time that you file the guardianship of a minor petition, but *only* if you have low income and cannot afford to pay expenses.

You must file the petition and other documents with the Probate and Family Court in the county where the child lives.

Step 3—Getting a Docket Number

After the petition for appointment of guardian of a minor is filed, the court will assign a “docket number” to the case. The docket number is like an account number; it is used by the court to identify each case. Write down the docket number and always have the docket number with you when you go to court.

Step 4—Serving the Notice and Order

Whenever a party wants the court to take action, the party must give the other parties “notice.” This is also called “service.” If everyone agrees to a guardianship, signing the consent forms is the only notice that is necessary. In all other cases, at the start of a guardianship case, the petitioner must “serve” a “notice and order” on each of the parents and on the child, if the child is fourteen or older. The notice and order is printed by the court after the guardianship petition is filed. The notice and order tells the parents and a child fourteen or older that a petition has been filed and other important information about the case. “Service” is a word used to describe how the notice is delivered to the parents. How service is done in each case depends on the facts of each case. G.L. c. 190B, § 1-401; Probate and Family Court Standing Order 4-09.

The chart below comes from the Mass.gov website and can be found at <http://www.mass.gov/courts/docs/forms/probate-and-family/mpc936-petitioner-instruction-guardianship-of-minor.pdf>.

How Notice Is Delivered		
Interested party	Form of service	How many days before hearing*
Minor (age fourteen and over) (if not the petitioner)	In hand by sheriff, constable, or other person approved by court	Fourteen days
Party whose residence is known	In hand by sheriff, constable, or other person approved by court	Fourteen days
Party whose residence is known, but cannot serve in hand after trying, may file motion and affidavit; may get order for service, then	By mailing first-class mail to last and usual address and by sheriff leaving at last and usual address (or other method as ordered by court)	Fourteen days
Party whose residence or whereabouts is not known or cannot be ascertained with reasonable diligence	By mailing first-class mail to last and usual address	Fourteen days
	And court will issue an order for service by publication; must be published at least one time	Seven days
Party whose identity is not known	Court will issue an order for service by publication; must be published at least one time	Seven days
Veteran’s Administration (notice only required when child receives benefits paid by the Veteran’s Administration)	By petitioner, by first-class mail	Seven days
Department of Children and Families (notice only required if the agency has custody of the child.)	By petitioner, by first-class mail	Seven days
* In some instances the court will change the time period, known as a “short order of notice.”		

Be sure to mail a *copy* of the notice of guardianship form instead of the original form, because you will have to return the original form to the court.

Step 5—Publishing Notice in a Newspaper (if Necessary)

If you are not able to have each party served in hand, you may need to publish a legal notice in a newspaper. If you need to publish a legal notice, the court website, at <http://www.mass.gov/courts/selfhelp/family/service-of-process-pfc.html>, offers the following instructions:

1. Ask the register which form you should file—a “motion for service by publication” or a “motion for alternative service”—and whether the court has a sample you can look at.
2. Attach an affidavit to the motion. An affidavit is a written statement that is sworn under the pains and penalties of perjury. In your affidavit, write that you do not know where the defendant lives. Write down the defendant’s last known address. Briefly describe your efforts to find him or her.
3. Mail the motion, affidavit, and proposed order to the court or file it in person with the register. Ask the register if you need to appear before a judge or if you will be notified by mail.
4. If the judge allows your motion you will get an order. The order will state which newspaper to publish the notice in and when to publish it. It will also give you the wording of the notice. Bring the notice to the newspaper and give it to their legal notices department. After it is published in the newspaper, get a copy of that page of the newspaper and file it with court to prove it was published.

If you cannot afford to pay the cost of publication in a newspaper, you can ask the court to pay the expense by filing an affidavit of indigency.

Step 6—Filing Proof of Service

The court must have proof that service was properly completed. The notice and order has a section that must be completed by the person who completes service of the summons and notice and order (usually a constable). This completed form must be filed with the court. Make sure that this step is completed before your first court date.

Step 7—(Optional) Filing and Serving Motions

Whenever you file a motion with the court, you must also file a proposed order, get a hearing date for the motion, and “serve” all the interested parties. A motion tells the court what issue or problem you would like the court to act on, and a proposed order tells the court exactly what you would like the court to do. Getting a hearing date is not the same at every courthouse. When you file the motion and proposed order, ask a clerk how to get a hearing date in your court. To “serve” someone (“service”) means that you must deliver a copy of the motion, a copy of the proposed order, and a notice of the hearing date to all other parties in the case, including the child’s attorney if there is one or to the child if the child is age fourteen or older.

Once you know the hearing date, you must mail or hand-deliver a copy of the motion and proposed order to the other parties, along with a notice of the hearing date and time. If you complete service by mail, you must mail the documents at least ten days before the date of the hearing. If you hand-deliver the documents, you must deliver them at least seven days before the date of the hearing. After you have sent or delivered notice, you must complete the “certificate of service” on the motion form and file that document with the court.

In addition to these general rules, there are special rules for filing a motion for appointment of temporary guardian. The motion must

- explain what the risk of harm is: why is there a need for a temporary guardian (i.e., what are the circumstances that make a guardianship necessary to prevent substantial harm to the child) and
- state why the petitioner needs an appointment of guardianship in order to protect the child: what are the steps the petitioner needs to be able to take in order to prevent harm to the child (e.g., register the child for school or get medical care for the child or get cash assistance such as TAFDC for the child).

In addition to the motion, the petitioner must file an “affidavit” (i.e., a written statement signed “under the pains and penalties of law”) and the affidavit must include “facts supporting the statement and requests in the motion.” G.L. c. 190B, § 5-204.

A complete set of forms can be found at the end of this chapter and at <http://www.mass.gov>.

Part B—Preparing for a Hearing or Trial

Courts can be very busy and a hearing or trial date can be a long day in court. Plan ahead for child care or other arrangements you may need to make. On your court date, it can help to dress in clothes that are neat, simple, and not too casual. This is a way to show everyone at the courthouse that you respect the court and think the court process is a serious matter. Also be sure to arrive on time. If you do not, the judge can enter orders that you may not agree with and these orders may be difficult to change.

Practice Note

Some courthouses do not allow people to bring in cellphones.

Hearing on a Motion

In most cases, you will not see a judge right away. Instead, you may be asked to meet with a Probate and Family Court probation officer. The Probation Department will run a criminal background check on all of the parties and will check to see if any party is involved in a 209A protective order (also known as a restraining order). This information may be shared with the judge later in the day. The Probation Department will also ask whether the Department of Children and Families (DCF) is involved with the child or with any of the adults, and may want to contact DCF.

When you go to the courtroom, it is important to be quiet because the judge may be busy with another case and will not want to be distracted or interrupted. Take a seat and wait to hear your name or the name of the child called by the judge's clerk. When that happens, stand up and follow the court's instructions. In most courthouses, you will stand in front of a small table facing the judge. The judge is called "Your Honor." Listen carefully to what the judge says. Usually, the party who filed the motion speaks first and then each other party is given a chance to reply. Wait until it is your turn to speak, and do not interrupt anyone. When it is your turn to speak, be polite and focused, and look directly at the judge when you are speaking. It is important to be clear and specific, and it is important to get to the point quickly. Tell the judge exactly why you believe a guardianship is necessary.

Practice Note

The judge probably will not have enough time to hear everything you would like to say at a hearing on a motion. Be careful to think about what is most important. You may want to prepare ahead of time by writing down up to three reasons for each of the following:

- why the child's parents are unfit;
- what harm the child is at risk of suffering; and
- what steps you, as guardian, would take to protect the child.

You can use these notes to help you if you get nervous during the hearing.

At the end of the hearing the judge may tell you whether a temporary guardian will be appointed. In some cases, the judge will "take it under advisement." This means that the judge has not yet made a decision. In these cases, you will have to wait until you get a document in the mail that tells you what decision the judge has made.

Trial or Evidentiary Hearing on Petition

A trial or evidentiary hearing is difficult. Trials and evidentiary hearings follow strict rules. You cannot simply talk to the judge about all of your concerns. There are rules about how and when each party is allowed to present evidence, and there are rules about what information a judge is allowed to hear, read, and review. The judge is not required to consider evidence that is not properly presented to the court.

You should talk to a lawyer if possible, even if you cannot afford to have a lawyer represent you at trial. If you cannot pay for a lawyer to represent you, you may be able to get information about how to present evidence from a volunteer lawyer at a Lawyer for the Day program at the courthouse. Or, you may be able to hire a lawyer for limited assistance representation (LAR) to go over your evidence with you. LAR is a way to hire a lawyer for just a piece of your case—whatever you can afford and whatever you think would be most helpful and cost effective.

It is a good idea to prepare in advance. Be ready to give the court information that answers these questions:

- Is the child's mother fit to care for the child? If not, why not?
- Is the child's father fit to care for the child? If not, why not?
- What steps have you taken to try to communicate with the child's mother and with the child's father?
- How will you care for the child?
- Where does the child go to school and how will the child get to school if you become guardian?
- Is it in the child's best interest to live with you and be cared for by you, and why?
- Does the child have any special needs and, if the child does, how will you care for those needs?
- Has DCF ever found you guilty of neglect or abuse and, if that has happened, what has changed since that time? How can the court be confident that you will not neglect or abuse this child?
- What visitation or other contact (e.g., telephone, Internet) will you allow the parents to have with the child, and why do you think your plan is the best plan?

Evidence you can present to the court might include

- your testimony (your spoken words to the court, given under oath);
- your affidavit (your written words to the court, given under oath); and
- testimony or documents from
 - a person who has seen a parent abuse or neglect the child,
 - the child's doctor or other health-care provider,
 - school staff,
 - DCF workers, and
 - any other people who have information about the child or the parents.

A letter or other document from a child's teacher or doctor or from any other person who is not at court with you may not be proper evidence. This is because it is difficult for the court to be certain that the document is authentic and that the information in the document is true and accurate and complete. Sometimes courts will look at these documents, if no one objects. If you have a document you would like the court to see, you can tell the court you have it. If the court wants to see it, a court officer will bring it to the judge.

If another party has a document you do not want the court to see, you can say, "Your Honor, I object." This tells the court that you think the court should not look at the document. For example, if the petitioner asks the court to look at a letter and you have not seen it, you could say, "Your Honor, I object. I have not seen the document and I do not know if it is real." If you have seen the document but do not like what the document says, you can still say, "I object." The court may choose to look at the document, or the court may accept your objection and refuse to look at it. It is worth stating your objection.

At the end of the hearing or trial the judge may tell you whether a guardian will be appointed. In some cases, the judge will "take it under advisement." This means that the judge has not yet made a decision. In these cases, you will have to wait until you get a document in the mail that tells you what decision the judge has made.

If you are appointed guardian of a minor, you must complete and file an annual report of guardian of a minor (Form MPC 443).

Part C—Changing a Guardianship

If a parent or other person files a complaint to modify a guardianship or a petition to remove you as guardian, the person filing the complaint or petition must serve a copy and notice on you, just as you served notice of the original petition for guardianship on the child's parents (and other interested parties). The process for complaints to modify or petitions to remove a guardianship are similar to the process for the appointment of a guardian. The court will schedule a date for a hearing or conference on the complaint or petition. At that court event, the judge will determine whether anyone objects to the petition and, if you or anyone else does object, a trial or evidentiary hearing will be scheduled. While waiting for a trial date, a motion for temporary orders may be filed and scheduled for a hearing.

If someone files a petition for removal of a guardian of a minor and you cannot afford to hire a lawyer to represent you, *you may be able to get a court-appointed attorney*. A trial court judge may (but is not required to) appoint an attorney for a guardian if the court finds that appointing an attorney “would materially assist in determining the best interest of the child.” *Guardianship of K.N.*, 476 Mass. 762, 767 (2017). If you would like the court to appoint an attorney for you, you should file a request for counsel form. If you are not able to get an attorney to represent you, you may be able to talk with a volunteer attorney at a Court Service Center or through a Lawyer for the Day or similar program. A list of programs that might help you is available at <https://www.mass.gov/service-details/learn-how-to-get-help-with-filing-for-guardianship>.

Refer to “Preparing for a Hearing or Trial,” above. The preparation for a trial on a complaint to modify a guardianship or a petition to remove a guardian is similar. Be prepared to provide evidence (through witnesses and through documents) clearly and convincingly showing that the parent continues to be unfit to care for the child and that it is in the best interest of the child to continue the guardianship without any changes.

In a removal case, you may want to focus on the child’s bond with you and the stability of school, community, health-care providers, and the like that you are able to provide for the child. Many children develop strong bonds with their guardians. Typically, that is not enough to deny a parent the right to resume custody of the child. See *Youmans v. Ramos*, 429 Mass. 774 (1999). However, where there is evidence that a child will suffer significant trauma from removal from a guardian’s home, bonding is a factor that a court will consider. *L.B. v. Chief Justice of Probate & Family Court*, 474 Mass. 231, 239 (2016) (citing *Guardianship of Cheyenne*, 77 Mass. App. Ct. 826, 830–31 (2010)); *Guardianship of Estelle*, 70 Mass. App. Ct. 575, 581–82 (2007) (citing *Bezio v. Patenaude*, 381 Mass. 563, 571–75 (1980)). Even in these cases, the judge should consider what steps could be taken to reduce and respond to the child’s trauma. *Adoption of Rhona*, 63 Mass. App. Ct. 117, 127 (2005); *Adoption of Katherine*, 42 Mass. App. Ct. 25, 30–31 (1997).

INFORMATION FOR A PARENT

Part A—What to Do if Someone Wants the Court to Appoint a Guardian for Your Child

Step 1—Getting Information in Your Language

What language do you speak at home? If you speak a language other than English, you can ask for an interpreter to help you understand court forms and to help you in the courtroom. You can ask for an interpreter at the registry in the courthouse. If there is no one at the courthouse who speaks your first language, the court can get an interpreter on the telephone for you.

Step 2—Finding a Lawyer, Even if You Cannot Afford One

You have a right to a lawyer. If you have low income or no income, you can ask the court to appoint a lawyer (“counsel”) for you. See *Guardianship of V.V.*, 470 Mass. 590 (2015). When you are served with guardianship papers, you should receive a notice of right to counsel (Form MPC 592). To ask for court-appointed counsel, you must file a Request for Counsel form (Form MPC 263), an affidavit of indigency, and a Consent form to verify income eligibility. The affidavit of indigency tells the court why you cannot afford to hire a lawyer.

Practice Note

A sample of each form discussed in this chapter can be found at the end of the chapter.

It is important to ask for a lawyer right away. It can take time for the court to find an available lawyer. Also, it is important to go to court every time there is hearing or other court date in your case, even if you do not have a lawyer yet. If you have not yet found a lawyer, you can tell the judge that you want a lawyer and that you have filed a request for counsel. It is important for you to tell the judge; otherwise the judge may not know that you want a lawyer.

If you do not qualify for a free lawyer, you can ask the court for a list of limited assistance representation (LAR) lawyers and sliding-fee lawyers. These lawyers can give you some help, often for a smaller amount of money than other lawyers. LAR is a way to hire a lawyer for just a piece of your case—whatever you can afford and whatever you think would be most helpful and cost effective.

Practice Note

If you are not able to get a court-appointed attorney, contact a legal services agency. For help finding a legal services agency near you, go to <https://www.masslegalservices.org/findlegalaid>. For a list of legal services agencies, see <http://www.mass.gov/eohhs/docs/masshealth/membappforms/legal-services-guide.pdf>.

Step 3—Knowing Your Rights (Before You Sign a Consent Form)

There are times when consenting to a guardianship of your child is a good choice. *Even if you agree to a guardianship, you may want to talk to a lawyer first.* A lawyer can help you understand your rights and can help you protect your rights during the guardianship. For example, you may want to ask for visitation with your child during the guardianship. You may want to ask for the right to go with the guardian to school or doctor appointments for your child. You may want the guardianship to last for only three months. If you do not protect your rights before a guardianship starts, it may be harder and take more time to end the guardianship when you are ready to parent again.

Step 4—Filing an Appearance and Objection

If you do not agree that the court should appoint a guardian for your child and you do not have a lawyer, file a written Appearance form (MPC 505a).

Step 5—(Optional) Asking for a Lawyer for Your Child

As stated above, the court must appoint a lawyer for your child if you or any other interested party asks the court to do so. However, it is important to note that the lawyer works only for the child and, in most cases, works for what the child wants, even if the child's wishes may not be the same as what is in the child's best interest. If you want your child to have a lawyer, you must complete a Request for Counsel form (Form MPC 301) and file it with the court.

Step 6—(Optional) Filing and Serving Motions

Whenever you file a motion with the court, you must also file a proposed order, get a hearing date for the motion, and “serve” all interested parties. A motion tells the court what issue or problem you would like the court to act on, and a proposed order tells the court exactly what you would like the court to do. Getting a hearing date is not the same at every courthouse. When you file the motion and proposed order, ask a clerk how to get a hearing date in your court. To “serve” someone (“service”) means that you must deliver a copy of the motion, a copy of the proposed order, and a notice of the hearing date to all other parties in the case, including the child's attorney if there is one, or to the child if the child is age fourteen or older.

Once you know the hearing date, you must mail or hand-deliver a copy of the motion and proposed order to the other parties, along with a notice of the hearing date and time. If you complete service by mail, you must mail the documents at least ten days before the date of the hearing. If you hand-deliver the documents, you must deliver them at least seven days before the date of the hearing. After you have sent or delivered notice, you must complete the “certificate of service” on the motion form and file that document with the court.

A complete set of forms can be found at the end of this chapter and at <http://www.mass.gov>.

Part B—Preparing for a Hearing or Trial

Attend Court Dates

Plan to attend court dates even if you agree that a temporary or permanent guardianship would be good for your child. You may want to ask the court to include a visitation plan and give you access to the child's school and health records, allow you to participate in school and medical appointments or meetings for the child, or determine another way to allow you to receive information about your child's education and health during the guardianship. Maintaining a relationship with your child during the guardianship can be an important part of protecting your ability to regain custody of your child in the future. It is helpful to have a specific plan for visitation and for communication about the child's education and health. Before you go to court, think about what visitation schedule would work best for the child, as well as for you and the guardian. Think about how you and the guardian will communicate. You may want to suggest text messages so that there will be a written record of your communications.

Courts can be very busy and a hearing or trial date can be a long day in court. Plan ahead for child care or other arrangements you may need to make. On your court date, it can help to dress in clothes that are neat, simple, and not too casual. This is a way to show everyone at the courthouse that you respect the court and think the court process is a serious matter. Also, be sure to arrive on time. If you do not, the judge can enter orders you may not agree with, and these orders may be difficult to change.

Practice Note

Some courthouses do not allow people to bring in cellphones.

Hearing on a Motion

In most cases, you will not see a judge right away. Instead, you may be asked to meet with a Probate and Family Court probation officer. The Probation Department will run a criminal background check on all parties and will check to see if any party is involved in a 209A protective order (also known as a restraining order). This information may be shared with the judge later in the day. The Probation Department will also ask whether the Department of Children and Families (DCF) is involved with your child or with any of the adults, and may want to contact DCF.

When you go to the courtroom, it is important to be quiet because the judge may be busy with another case and will not want to be distracted or interrupted. Take a seat and wait to hear your name or the name of the child called by the judge's clerk. When that happens, stand up and follow the court's instructions. In most courthouses, you will stand in front of a small table facing the judge. The judge is called "Your Honor." Listen carefully to the judge's questions. Usually, the party who filed the motion speaks first, and then any other party is given a chance to reply. Wait until it is your turn to speak, and do not interrupt anyone. When it is your turn to speak, be polite, be focused, and look directly at the judge when you are speaking. It is important to be clear and specific, and it is important to get to the point quickly. Tell the judge exactly why a guardianship is not needed in your child's case.

Practice Note

The judge probably will not have enough time to hear everything you would like to say at a hearing on a motion. Be careful to think about what is most important. You may want to prepare ahead of time by writing down up to three reasons you believe that you (and/or the child's other parent) are able to care for your child and up to three reasons why it would be best for the child to be in your (and/or the other parent's) care and custody. You can use these notes to help you if you get nervous during the hearing.

At the end of the hearing the judge may tell you whether a temporary guardian will be appointed. In some cases, the judge will "take it under advisement." This means that the judge has not yet made a decision. In these cases, you will have to wait until you get a document in the mail that tells you what decision the judge has made.

Trial or Evidentiary Hearing on Petition

A trial or evidentiary hearing is difficult. Trials and evidentiary hearings follow strict rules. You cannot simply talk to the judge about all of your concerns. There are rules about how and when each party is allowed to present evidence, and there are rules about what information a judge is allowed to hear, read, and review. The judge is not required to consider evidence that is not properly presented to the court.

You should talk to a lawyer if possible, even if you cannot afford to have a lawyer represent you at trial. If you cannot pay for a lawyer to represent you and you are not eligible for a court-appointed lawyer, you may be able to get information about how to present evidence from a volunteer lawyer at a Lawyer for the Day program at the courthouse. Or, you may be able to hire a lawyer for limited assistance representation (LAR) to go over your evidence with you. LAR is a way to hire a lawyer for just a piece of your case—whatever you can afford and whatever you think would be most helpful and cost effective.

Keep in mind, the person asking for guardianship must present clear and convincing evidence that each of the child's parents is either unavailable or unfit to care for the child and it is in the child's best interest to appoint a guardian. G.L. c. 190B, § 5-204(a). It is not enough to say that there are concerns about the parent or that the parent may not be able to do a good job parenting. There must be more. *Guardianship of Estelle*, 70 Mass. App. Ct. 575, 580 (2007); *Adoption of Rhona*, 57 Mass. App. Ct. 479, 483 (2003). Also, evidence of past problems is not enough. The petitioner must show that the parents are currently unfit to care for the child. *Adoption of George*, 27 Mass. App. Ct. 265, 268 (1989).

In most cases, it is best not to avoid talking about problems that exist. In most cases it is best to tell the court about problems that exist, as long as you can also tell the court steps you are taking to respond to the problems and how you are caring for the child even though problems exist. For example, if a parent has lost stable housing but is looking for new housing and is staying with friends or relatives, the housing situation alone should not mean that the parent is “unfit” to care for a child. The parent is experiencing a period of instability but has a plan for fixing the problem and is caring for the child during the crisis. Also, use of alcohol and/or drugs also does not automatically mean that a parent is unfit. There must be evidence that the alcohol or drug use interferes with the parent’s ability to care for the child. *Adoption of Rhona*, 57 Mass. App. Ct. at 483.

It is important to prepare in advance for a hearing or trial. Bring evidence that shows you are a fit parent. Evidence that could help you show you are fit to parent might include testimony (i.e., your statements, made under oath) and documents (e.g., school and medical records) that show the following:

- You know the name of your child’s school and teacher.
- Your child has a good school attendance record.
- You understand your child’s learning strengths and weaknesses.
- Steps you have taken or you are taking to get your child help with any school difficulties.
- You know the name of your child’s doctor and the date of your child’s last visit to the doctor.
- You understand your child’s health and education needs, including any special needs.
- Steps you have taken or are taking to improve your health, safety, housing, and/or income.
- Steps you are taking to work with DCF.
- Help you have asked for and/or are getting from other agencies and organizations.
- Steps you have taken to overcome an addiction and/or steps you are taking to stay sober.

A letter or other document from a child’s teacher or doctor or from any other person who is not at court with you may not be proper evidence. This is because it is difficult for the court to be certain that the document is authentic and that the information in the document is true and accurate and complete. Sometimes courts will look at documents, if no one objects. If you have a document you would like the court to see, you can tell the court you have it. If the court wants to see it, a court officer will bring it to the judge.

If the petitioner has a document you do not want the court to see, you can say, “Your Honor, I object.” This tells the court that you think the court should not look at the document. For example, if the petitioner asks the court to look at a document and you have not seen it, you could say, “Your Honor, I object. I have not seen the document and I do not know if it is real.” If you have seen the document but do not like what it says, you can still say, “I object.” The court may choose to look at the document, or the court may accept your objection and refuse to look at it. It is worth stating your objection.

At the end of the hearing the judge may tell you whether a temporary guardian will be appointed. In some cases, the judge will “take it under advisement.” This means that the judge has not yet made a decision. In these cases, you will have to wait until you get a document in the mail that tells you what decision the judge has made.

Part C—Changing a Guardianship

If you want to change the terms of a guardianship—for example, to increase visitation with your child—or if you want to end the guardianship and regain custody of your child, you must file a complaint for modification or a petition for removal of guardianship of a minor. Remember, you may qualify for a court-appointed lawyer. See “Who Can Get a Court-Appointed Lawyer,” above.

After you file a complaint for modification or petition for removal of guardian of a minor, you must give notice of the complaint or petition to the interested parties, including the guardian(s), a child age fourteen or older, and the other parent. The Massachusetts Guardianship Statute does not state how notice must be provided. Neither G.L. c. 190B, § 5-212 nor Probate and Family Court Standing Order 4-09 explains how to complete service in a complaint for modification or a petition for removal of guardian of a minor. You will probably be required to have a sheriff, constable, or other court-approved person give a copy of a notice and order or a copy of the complaint and a document called a “summons” in hand to the guardian, child age fourteen or older, and the other parent. Mass. R.

Dom. Rel. P. 4. To be certain, ask a clerk in the court registry how to service notice. If you cannot afford to pay for a sheriff or constable to service notice, you can ask the court to pay for the expense. To ask the court to pay for the expense of service, you must complete an affidavit of indigency.

Refer to the section above that talks about preparing for a trial (or evidentiary hearing) on a petition to appoint a guardian. The preparation for a trial on a complaint to modify a guardianship or a petition to remove a guardian is very similar. Be prepared to provide evidence (through witnesses and through documents) clearly and convincingly showing that you are currently fit to parent your child. Include evidence about your child's particular needs and how you will meet them.

Also be prepared to respond to an argument that the child has bonded with the guardian. Many children develop strong bonds with their guardians. Typically, that is not enough to deny a parent the right to resume custody of the child. See *Youmans v. Ramos*, 429 Mass. 774 (1999). However, where there is evidence that a child will suffer significant trauma from removal from a guardian's home, this is a factor that a court will consider. *L.B. v. Chief Justice of Probate & Family Court*, 474 Mass. 231, 239 (2016) (citing *Guardianship of Cheyenne*, 77 Mass. App. Ct. 826, 830–31 (2010)); *Guardianship of Estelle*, 70 Mass. App. Ct. 575, 581–82 (2007) (citing *Bezio v. Patenaude*, 381 Mass. 563, 571–75 (1980)). Even in these cases, the judge should consider what steps could be taken to reduce and respond to the child's trauma. *Adoption of Rhona*, 63 Mass. App. Ct. 117, 127 (2005); *Adoption of Katherine*, 42 Mass. App. Ct. 25, 30–31 (1997).

A complete set of forms can be found at the end of this chapter and at <http://www.mass.gov>.

✓ CHECKLIST 13.1

For a Party Filing for Guardianship

- Consult with a lawyer and have a lawyer represent you, if possible.
- If English is not your first language, you may ask the court to provide an interpreter at all court events.
- File the following:
 - Petition for appointment of guardian of a minor (MPC 140).
 - Affidavit disclosing care and custody proceeding (OCAJ-1).
 - Bond (MPC 801).
 - Either
 - if a parent consents*, notarized waiver and consent to petition (MPC 440); or
 - if a parent does not agree*, military affidavit (MPC 470).
- Some additional forms you may want to file are as follows:
 - affidavit of indigency;
 - notarized and verified consent to nomination by minor (MPC 441);
 - request for counsel for the child (MPC 301); and
 - verified motion for appointment of temporary guardian (MPC 340).
- Serve the notice and order, using as a guide the chart in “Step 4—Serving the Notice and Order,” above.
- File proof of service.
- If necessary, file a verified motion for appointment of temporary guardian, get hearing date, and serve parties copies of motion and notice of hearing date.
- Gather documents, records, witnesses, and other proof that the parents are “unfit” and that it is in child’s best interest that you be his or her guardian.
- Get your papers in order so it is easy to find them while in court.
- Prepare for motion hearings and attend motion hearings.
- Request, prepare for, and appear at the hearing on permanent guardianship.
- Gather documents, records, witnesses, and other proof that the parents are “unfit” and that it is in child’s best interest that you be his or her guardian.
- Get your papers in order so it is easy to find them while in court.
- Prepare for trial.
- After the hearing, check with the court clerk to determine the procedure for obtaining a certified copy of the guardianship certificate. In some counties, you may be able to get the certificate the day of the hearing, particularly if there is an emergency.
- In some counties, you may receive an “inventory” form that asks that you list the income and assets of the child. If you receive this form, fill it out and return it to the court.
- File annual report of guardian of minor (MPC 443).

✓ CHECKLIST 13.2

For a Parent Responding to a Petition for Guardianship of a Minor

- Consult with a lawyer and have a lawyer represent you, if possible.
- If you cannot afford a lawyer, file a request for counsel with the court.
- If English is not your first language, you may ask the court to provide an interpreter at all court events.
- Before you sign a Consent form, consider whether you want
 - to receive notice of all court dates,
 - to have a set plan for visiting and/or communicating with your child during a guardianship,
 - to attend meetings, appointments, and events or have access to documents about your child’s education and health, and
 - what other contact and/or information you need during the guardianship to make it easier for you and your child to maintain a relationship during the guardianship.
- Gather documents, records, witnesses, and other proof you are “fit” and that it is in child’s best interest to remain with you or the child’s other parent.
- Before going to court, get your papers in order so it is easy to find them while in court.
- Prepare for and attend all court dates.

✓ CHECKLIST 13.3

For a Parent Filing a Petition for Removal of Guardian of a Minor

- Consult with a lawyer and have a lawyer represent you, if possible.
- If you cannot afford a lawyer, file a Request for Counsel form with the court.
- If English is not your first language, you can ask for an interpreter at all court events.
- File the following:
 - Petition for removal of guardian of a minor (MPC 240).

You may also want to file:

- Affidavit of indigency, if you cannot afford to pay a filing fee and/or the cost of serving notice of the petition on the guardians and on the child, if fourteen or more years old.
- Serve the notice and order on the guardians, the other parent, and the child if fourteen or more years old by sending a copy of the papers by certified mail.

If any of the parties served by certified mail do not pick up the certified mail:

- File proof of service. Sign and fill out the return of service part of the original Notice of Guardianship form and return it to the court with the certified mail receipts and the newspaper page, if it was published.
- File a verified motion for appointment of temporary guardian and proposed order, get a hearing date, and serve parties copies of the motion, proposed order, and hearing date notice.
- Get your papers in order so it is easy to find them while in court; gather documents, records, witnesses, and other proof that the parents are “unfit” and that it is in child’s best interest that you be his or her guardian.
- Prepare for motion hearings and attend motion hearings.
- Request, prepare for, and appear at the hearing on permanent guardianship. Get your papers in order, gather documents, records, witnesses, and other proof that the parents are “unfit” and that it is in child’s best interest that you be his or her guardian. Consult with and get a lawyer, especially if you do not have an agreement with the other party or parties.
- Tell the court why you are now fit to parent your child (be specific and bring proof of housing, employment, counseling—whatever is relevant to your current fitness).

✓ CHECKLIST 13.4

For a Guardian Responding to a Petition for Removal of a Guardianship of a Minor

- Consult with a lawyer and have a lawyer represent you, if possible.
- If you cannot afford a lawyer, file a Request for Counsel form with the court.
- Ask for help in the language you are most comfortable speaking and/or reading.
- Before you sign a Consent form, consider whether you want
 - to receive notice of all court dates,
 - to have a set plan for visiting and/or communicating with your child during a guardianship,
 - to attend meetings, appointments, and events or have access to documents about your child's education and health, and
 - what other contact and/or information you need during the guardianship to make it easier for you and your child to maintain a relationship during the guardianship.
- Before going to court, get your papers in order so it is easy to find them while in court; gather documents, records, witnesses, and other proof you are "fit" and that it is in child's best interest to remain with you or the child's other parent.
- Prepare for motion hearings and attend motion hearings.
- Request, prepare for, and appear at an evidentiary hearing on permanent guardianship. Get your papers in order, gather documents, records, witnesses, and other proof that you are fit and that it is not in child's best interest to have a guardian appointed.

EXHIBIT 13A—Petition for Appointment of Guardian of Minor (Form MPC 140)

PETITION FOR APPOINTMENT OF GUARDIAN OF MINOR	Docket No. _____	Commonwealth of Massachusetts The Trial Court Probate and Family Court
In the Interests of: _____ First Name Middle Name Last Name _____ Minor		_____ Division

1. Information about the Minor:

First Name M.I. Last Name Current age Date of Birth

(Address) (Apt, Unit, No. etc.) (City/Town) (State) (Zip)

County of Residence: _____

2. The Petitioner is:

a person or persons interested in the welfare of the Minor. or the Minor

3. Information about the Petitioner(s):

Name: _____

First Name M.I. Last Name

(Address) (Apt, Unit, No. etc.) (City/Town) (State) (Zip)

Primary Phone #: _____ Relationship to Minor: _____

Name: _____

First Name M.I. Last Name

(Address) (Apt, Unit, No. etc.) (City/Town) (State) (Zip)

Primary Phone #: _____ Relationship to Minor: _____

4. Information about the Biological Mother/parent one and Father/parent two:

_____ Deceased

Mother's/Parent One Name M.I. Last Name

(Address) (Apt, Unit, No. etc.) (City/Town) (State) (Zip)

_____ Deceased

Father's/Parent Two Name M.I. Last Name

(Address) (Apt, Unit, No. etc.) (City/Town) (State) (Zip)

5. Is there a nomination of a guardian by will or other writing signed by a parent or guardian? Yes No

If **Yes**, attach copy of document.

6. Venue for this proceeding is proper in this county/Division of the Probate and Family Court because

- the minor resides in the county/Division.
- the guardian was nominated in a will which was or could be probated in this county/Division.

7. The best interests of the Minor will be served by appointment of a guardian for the Minor.

8. **The minor is unmarried and**

- parent(s) consent to the appointment of a guardian. **Attach Notarized Consent of Parent(s).**
- all parental rights have been terminated by
 - prior court order. **Attach a copy of the court order to this Petition.**
 - a signed voluntary surrender. **Attach a copy of the surrender to this Petition.**
 - death. If available, **attach a copy of the death certificate to this Petition.**
- Parent or parents are unavailable to exercise their parental rights because: (Briefly explain)

- Parent or parents are unfit to exercise their parental rights because: (Briefly explain)

- Guardianship has previously been granted to a third party who has died or become incapacitated, and the guardian has not appointed a successor guardian by will or written instrument. **Describe and attach order or any relevant documents.**

9. Petitioner is requesting to be appointed as Guardian and is not currently being investigated nor does he/she have charges pending for assault resulting in bodily injury to the minor. Petitioner is not being investigated and does not have charges pending for neglect of the minor.

10. I request that sureties required on the bond be waived by the court.

11. Petitioner is requesting the following person be appointed as Guardian:

Name: _____
First Name M.I. Last Name

(Address) (Apt, Unit, No. etc.) (City/Town) (State) (Zip)

Primary Phone #: _____ Relationship to Minor: _____

He/She has priority for appointment as guardian pursuant to G.L.c. 190B, § 5-207 because the proposed Guardian is nominated by the Minor and the Minor is 14 years of age or older. **Attach Nomination of Minor.**

12. **Who, other than you, had primary care and custody of the Minor during the 60 days prior to filing this Petition? (G.L. c. 190B, §5-206):** No one or Person listed below

Name: _____
First Name M.I. Last Name

(Address) (Apt, Unit, No. etc.) (City/Town) (State) (Zip)

Primary Phone #: _____ Relationship to Minor: _____

Dates of care _____

13. **If mother and father are deceased, list brothers and sisters or adult relatives, for example aunt, uncle, grandparent who can be found:**

CHAPTER 13: GUARDIANSHIP OF MINOR CHILDREN

Name: _____
First Name M.I. Last Name

(Address) (Apt. Unit, No. etc.) (City/Town) (State) (Zip)

Primary Phone #: _____ Relationship to Minor: _____

Name: _____
First Name M.I. Last Name

(Address) (Apt. Unit, No. etc.) (City/Town) (State) (Zip)

Primary Phone #: _____ Relationship to Minor: _____

[click to add](#) [click to remove](#)

14. Is any person currently acting as a Guardian or Conservator for the Minor in Massachusetts or elsewhere?

Yes No If **Yes**, identify:

Name: _____
First Name M.I. Last Name

(Address) (Apt. Unit, No. etc.) (City/Town) (State) (Zip)

Primary Phone #: _____ Relationship to Minor: _____

If a conservatorship case exists or you are also filing a Petition for Appointment of Conservator, do not complete section 15. Please note that a guardianship case does not provide authority over substantial funds.

15. Does the Minor have any assets, e.g. bank accounts, property, and anticipated income, e.g. Social Security, interest?

Yes No If **Yes**, identify: **Do not list bank account numbers or Social Security numbers.**

Description of Assets, e.g. Bank Accounts, Property	Estimated Value of Property or Amount of Income
Total	

[click to add](#) [click to remove](#)

The Petitioner shall provide notice to the parents, Minor if 14 years of age or older, and persons listed in paragraphs 11-13 of the time and place for a hearing on this Petition in accordance with Probate and Family Court Standing Order 4-09. Notice requirements may be different if an emergency guardianship is sought.

The Petitioner/Co-Petitioners is/are interested in the welfare and best interests of the Minor and request/s that an appointment of a guardian be made after notice and hearing.

In addition, I/We request that the Court:

SIGNED UNDER THE PENALTIES OF PERJURY

I affirm or swear under oath that I have read the foregoing petition and that the statements set forth therein are true and correct to the best of my knowledge.

Date _____

Signature of Petitioner

Date _____

Signature of Co-Petitioner (if applicable)

Attorney for Petitioner

Print Name

(Address)

(Apt, Unit, No. etc.)

(City/Town)

(State)

(Zip)

Primary Phone #: _____

BBO No.: _____

Reset Form

EXHIBIT 13B—Affidavit Disclosing Care or Custody Proceeding (Form OCAJ-1 TRC IV)

AFFIDAVIT DISCLOSING CARE OR CUSTODY PROCEEDING Pursuant to Trial Court Rule IV		TRIAL COURT OF MASSACHUSETTS Name of Case _____			DOCKET NUMBER _____																								
BMC Division _____	District Court Division _____	Juvenile Court Division _____	Prob & Family Court Division _____	Superior Court Division _____																									
Section 1	I, _____ hereby declare, to the best of my knowledge, information, and belief that all information on this form is true and complete:																												
Section 2	The name(s) of the child(ren) whose care or custody is at issue in this case are: A. _____ (LAST, FIRST) B. _____ (LAST, FIRST) C. _____ (LAST, FIRST) Use only the letter appearing in front of the child's name above when referring to the child in completing the remaining sections.																												
Section 3	The party filing this affidavit may request certain addresses to be kept confidential if the address is a shelter for battered persons and their dependent child(ren), or the party filing this affidavit believes that he/she or the child(ren) are in danger of physical or emotional abuse, or the party is filing an action under G.L. c. 209A. If you believe that this provision applies to you, check the box at right, complete sections 10 and 11 on the reverse side of this page and DO NOT complete sections 4 and 5 below.				<input type="checkbox"/>																								
Section 4	The address(es) of the above-named child(ren) whose care and custody is at issue in this case is/are: Address(es): CHILD A _____ Address(es) During the Last 2 Years, if Different _____ CHILD B _____ CHILD C _____																												
Section 5	My address is: _____																												
Section 6	I <input type="checkbox"/> have <input type="checkbox"/> have not participated in and I <input type="checkbox"/> know <input type="checkbox"/> do not know of other care or custody proceedings involving the above-named child(ren) in Massachusetts or in any state or country.																												
Certified copies of any pleadings or determinations in care or custody proceeding outside of Massachusetts listed in Sections 7 and 8 must be filed with this affidavit unless already filed with this court or an extension for filing these documents has been granted by this court.																													
Section 7	The following is a list of all pending or concluded proceedings I have participated in or know of involving the care or custody of the above-named child(ren): <table style="width:100%; border-collapse: collapse;"> <thead> <tr> <th style="width:15%;">Letter of Child</th> <th style="width:20%;">Court</th> <th style="width:20%;">Docket No.</th> <th style="width:20%;">Status</th> <th style="width:10%;">[W]itness [P]arty [O]ther</th> <th style="width:15%;">[N]one</th> </tr> </thead> <tbody> <tr> <td>CHILD _____</td> <td>_____</td> <td>_____</td> <td>_____</td> <td>[]</td> <td>[]</td> </tr> <tr> <td>CHILD _____</td> <td>_____</td> <td>_____</td> <td>_____</td> <td>[]</td> <td>[]</td> </tr> <tr> <td>CHILD _____</td> <td>_____</td> <td>_____</td> <td>_____</td> <td>[]</td> <td>[]</td> </tr> </tbody> </table>					Letter of Child	Court	Docket No.	Status	[W]itness [P]arty [O]ther	[N]one	CHILD _____	_____	_____	_____	[]	[]	CHILD _____	_____	_____	_____	[]	[]	CHILD _____	_____	_____	_____	[]	[]
Letter of Child	Court	Docket No.	Status	[W]itness [P]arty [O]ther	[N]one																								
CHILD _____	_____	_____	_____	[]	[]																								
CHILD _____	_____	_____	_____	[]	[]																								
CHILD _____	_____	_____	_____	[]	[]																								
Section 8	The names and addresses of parties to care or custody proceedings involving any of the above-named child(ren) or those claiming a legal right to these child(ren) during the last two years (not including myself) are: <table style="width:100%; border-collapse: collapse;"> <thead> <tr> <th style="width:20%;">Letter of Child</th> <th style="width:30%;">Name of Party/Claimant</th> <th style="width:50%;">Current (or last known) Address of Party/Claimant</th> </tr> </thead> <tbody> <tr> <td>CHILD _____</td> <td>_____</td> <td>_____</td> </tr> <tr> <td>CHILD _____</td> <td>_____</td> <td>_____</td> </tr> <tr> <td>CHILD _____</td> <td>_____</td> <td>_____</td> </tr> </tbody> </table>					Letter of Child	Name of Party/Claimant	Current (or last known) Address of Party/Claimant	CHILD _____	_____	_____	CHILD _____	_____	_____	CHILD _____	_____	_____												
Letter of Child	Name of Party/Claimant	Current (or last known) Address of Party/Claimant																											
CHILD _____	_____	_____																											
CHILD _____	_____	_____																											
CHILD _____	_____	_____																											
Section 9	If the box at the right is checked, this affidavit discloses the adoption of one or more of the above-named child(ren) and I am requesting the court to impound this affidavit. See instructions.				<input type="checkbox"/>																								
This affidavit must be personally signed by the party listed in section 1 above, unless he/she is under 18 years of age or has been adjudged incompetent in which case the attorney of record must sign. A revised affidavit must be filed with the court if new information is discovered subsequent to this filing.																													
Signed this _____ day of _____, 20____ under the penalties of perjury.																													
X _____ SIGNATURE OF PARTY OR ATTORNEY OF RECORD FOR JUVENILE/INCOMPETENT PRINTED NAME OF PERSON SIGNING																													
ADDRESS OF ATTORNEY OF RECORD FOR JUVENILE/INCOMPETENT _____																													
THE PARTY FILING THIS AFFIDAVIT MUST FURNISH A COPY OF IT TO ALL OTHER PARTIES TO THIS ACTION.																													

OCAJ-1 TRC IV (07/95)

ADDRESSES TO BE KEPT CONFIDENTIAL

The party filing this affidavit may request certain address(es) to be kept confidential if the address is a shelter for battered persons and their dependent child(ren), or the party filing this affidavit believes that he/she or the child(ren) are in danger of physical or emotional abuse, or the party is filing an action under G.L. c. 209A. **If you checked the box in section 3 indicating that you believe the above provision applies to you, complete sections 10 and 11 below, and DO NOT complete sections 4 and 5.**

ADDRESSES TO BE KEPT CONFIDENTIAL

Section 10	The address(es) of the child(ren) listed in section 2 whose care or custody is at issue in this case are:		
	Child(ren)	Address(es)	Address(es) During Last 2 Years, If Different
	Child A.	_____	_____
		Street Address	Street Address
		_____	_____
		City, State, Zip Code	City, State, Zip Code
	Child B.	_____	_____
		Street Address	Street Address
		_____	_____
		City, State, Zip Code	City, State, Zip Code
	Child C.	_____	_____
		Street Address	Street Address
	_____	_____	
	City, State, Zip Code	City, State, Zip Code	

Section 11	My address is: _____ Street Address, City, State, Zip Code
---------------	---

Section 12	LIST OF ATTORNEYS AND GUARDIANS AD LITEM/INVESTIGATORS	
	Please list the names of all attorneys and guardians ad litem involved in the pending proceedings listed in section 7.	
	1. <input type="checkbox"/>	_____ Attorney(s) for child(ren). (Please specify if each child is represented by a different attorney.)
	<input type="checkbox"/>	_____
	<input type="checkbox"/>	_____
	2. <input type="checkbox"/>	_____ GAL(s)/Investigator(s) (Please indicate if a GAL has been appointed to represent a specific child.)
	<input type="checkbox"/>	_____
	<input type="checkbox"/>	_____
	3. <input type="checkbox"/>	_____ Attorney(s) for mother
	<input type="checkbox"/>	_____
	4. <input type="checkbox"/>	_____ Attorney(s) for father

(Fill Out Below If Applicable)		
I, _____, attorney for D.C.F. or its agent have ascertained from the above checked off attorney(s) and guardian(s) ad litem/investigators a willingness to accept an appointment from the court to represent the same party should the court elect to make such appointment.		
_____ (Signature)		

READ BEFORE COMPLETING THE AFFIDAVIT

A. WHAT IS AN "AFFIDAVIT DISCLOSING CARE OR CUSTODY PROCEEDING"?

It is a document signed under the penalties of perjury which lists information required by Trial Court Rule IV concerning children involved in a care or custody proceeding.

B. WHO MUST FILE THIS AFFIDAVIT?

The party to a petition (including a modification petition) or complaint involving the care, custody, visitation, or change of name of a child pursuant to G.L. c. 119 (except delinquency actions under G.L. c. 201, G.L. c. 207, G.L. c. 208, G.L. c. 209, G.L. c. 209A, G.L. c. 209C, G.L. c. 210, or any other provision of law concerning the care or custody of a child must file this affidavit.

This affidavit **must be signed by the party** unless the party is under 18 years of age or has been adjudged incompetent in which case the attorney of record must sign this affidavit on behalf of the juvenile or incompetent party.

C. WHEN MUST THIS AFFIDAVIT BE FILED?

The person filing the petition or complaint must file this affidavit at the time of filing and the other party must file this affidavit with the first pleading.

This affidavit should be submitted upon the filing of an application for a Child Requiring Assistance (CRA) pursuant to G.L. c. 119.

This affidavit need not be filed if the petition or complaint is for **support only**.

D. WHERE MUST THIS AFFIDAVIT BE FILED?

The completed affidavit must be filed, in person or by mail, with the Clerk-Magistrate or Register of Probate in the court in which this action is being brought.

E. WHEN MUST A REVISED AFFIDAVIT BE FILED?

A revised affidavit must be filed with the Clerk-Magistrate or Register of Probate if new information is discovered subsequent to the filing of this affidavit.

F. WHAT MUST BE FILED AS PART OF THIS AFFIDAVIT?

Certified copies of each pleading and of any determination entered in a foreign country or in a state other than Massachusetts must be filed with this affidavit unless these documents are on file with the court in this case, or an extension has been granted by the court for filing these documents.

INSTRUCTIONS FOR COMPLETING AFFIDAVIT

When completing this affidavit if additional space is needed for any of the sections, attach a separate sheet which includes your name (printed), the docket number and the sections to which you are referring. You must also sign and date the sheet.

The party filing this affidavit must complete the section entitled "Name of Case" and indicate the Court Department and Division in which the case is being brought. The docket number should also be listed, if known.

DO NOT COMPLETE SECTIONS 2, 3, 4, 8 AND 10 IF THIS AFFIDAVIT IS BEING FILED WITH A PETITION FOR ADOPTION.

- Section 1 You must print your first and last name. If this affidavit is filed by an attorney on behalf of an incompetent person or a juvenile, the name of the party on which behalf this affidavit is being completed must be listed.
- Section 2 List the names of all child(ren) involved in this care or custody proceeding. All future references to the child(ren) listed in this section should be with the letter in front of the child's name (e.g. If John Smith is listed next to the letter A, all references to John Smith will be as Child A).
- Section 3 Check the box if this section applies to you. If this box is checked, do not complete Sections 4 and 5. You must complete Sections 10 and 11 on the reverse side of page 1.
- Sections 4 & 5 List the present and all prior addresses during the last two years of the above-named child(ren) and your present address. If legal custody of a child has been awarded to a social service agency, list the name and address of the agency with legal custody.
- Section 6 Check the appropriate box.
- Section 7 List all pending or concluded proceedings which you have participated in or know of involving the care or custody of the child(ren) named in this affidavit. Indicate the letter of the child; the court in which the case was heard, the docket number, the person(s) to whom custody was awarded, and the date of the award, and the nature of your participation in the proceeding by listing "W" for witness, "P" for party, "O" for other or "N" for none. If specific information required in this section is not known, you or your attorney should contact the court where the case was heard to obtain such information. **In the case of a petition for adoption, list all information except the person(s) to whom custody was awarded, the date of the award and the nature of your participation. Under the heading "Status of Case", indicate type of case.**
- Section 8 List the name(s) and current residential address(es), if known, otherwise the last known address(es) of parties to care or custody proceedings or persons claiming a legal right to the above-named child(ren) during the last two years. Do not include yourself.
- Section 9 Check this box if this affidavit discloses the adoption of a child and you are requesting the court to impound this affidavit. If this provision is applicable, you should contact the Clerk-Magistrate or Register of Probate for assistance concerning the appropriate motion to be filed.
- Sections 10 & 11 **COMPLETE ONLY IF YOU CHECKED THE BOX IN SECTION 3.** List the present and all prior addresses during the last two years of the child(ren) listed in Section 2 of this affidavit and your present address. If legal custody of a child has been awarded to a social service agency, list the name and address of the agency with legal custody.
- Section 12 List the attorneys and guardians ad litem/investigators previously appointed in Section 7.
- Signature The party listed in Section 1 must date and sign this affidavit except for an incompetent or juvenile, in which case the attorney of record on behalf of the juvenile or incompetent party must date and sign this affidavit and print his/her name and address.

THIS AFFIDAVIT MUST BE FILED WITH THE COURT AND A COPY FURNISHED BY THE PARTY FILING IT TO ALL OTHER PARTIES TO THIS ACTION.

EXHIBIT 13C—Bond (Form MPC 801)

<p style="text-align: center;">BOND</p> <p><input type="checkbox"/> Without sureties</p> <p><input type="checkbox"/> With personal sureties</p> <p><input type="checkbox"/> With corporate surety Bond #: _____</p>	Docket No. _____	Commonwealth of Massachusetts The Trial Court Probate and Family Court
<p>In the Interests of:</p> <p>_____</p> <p style="text-align: center;">First Name Middle Name Last Name</p> <p>Incapacitated Person/Protected Person/Ward/Decedent/Trust</p>	<div style="text-align: right;"> ▼ Division </div>	

The condition of this bond is the faithful discharge by the fiduciary of all duties according to law (for Public Administrators see G. L. c. 194, § 2). By executing this bond, a Personal Representative or Trustee submits personally to the jurisdiction of any court of the Commonwealth in any proceeding pertaining to the estate that may be instituted by any interested person. By executing this Bond, any other fiduciary submits personally to the jurisdiction of the Court which issued the Letters of Appointment. This bond is not void after the first recovery but may be proceeded against from time to time until the whole penalty is exhausted.

Estimated Value of Real Estate _____ Estimated Value of Personal Estate _____

Penal Sum of Bond (if applicable) _____

1. Fiduciary Name: _____

(Address)
(Apt, Unit, No. etc.)
(City/Town)
(State)
(Zip)

 Primary Phone #: _____

 2. Fiduciary Name: _____

(Address)
(Apt, Unit, No. etc.)
(City/Town)
(State)
(Zip)

 Primary Phone #: _____
- click to add

click to remove

The undersigned fiduciary accepts appointment as _____ and stand(s) personally bound to the First Justice of said Court and his or her successors as obligee for the benefit of the persons interested in the estate and declare(s) the above estimates to be true and accurate to the best of his/her knowledge and belief.

Date _____

Signature of Fiduciary 1.

Date _____

Signature of Fiduciary 2.

CHAPTER 13: GUARDIANSHIP OF MINOR CHILDREN

In the Interests of: _____ <div style="display: flex; justify-content: space-around; font-size: small;"> First Name Middle Name Last Name </div>	Docket No. _____
---	------------------

Persons who sign as sureties may be individually or collectively liable in the amount of the penal sum listed on page 1 for losses caused by improper administration of the estate by the fiduciary. By executing this Bond, we, the sureties, consent personally to the jurisdiction of this Court in any proceedings pertaining to fiduciary duties and naming the surety as a party.

Complete the following section if the bond is with personal surety.

Name: _____

First Name
Middle Name
Last Name

(Address Line)
(Apt, Unit, No. etc.)

 _____, Massachusetts _____ Primary Phone #: _____

(City/Town)
(Zip)

By signing this document I hereby certify under the penalties of perjury that I am a Massachusetts resident and that I possess sufficient unencumbered assets located in Massachusetts in excess of the penal sum.

Date _____ Signature _____

Name: _____

First Name
Middle Name
Last Name

(Address Line)
(Apt, Unit, No. etc.)

 _____, Massachusetts _____ Primary Phone #: _____

(City/Town)
(Zip)

By signing this document I hereby certify under the penalties of perjury that I am a Massachusetts resident and that I possess sufficient unencumbered assets located in Massachusetts in excess of the penal sum.

Date _____ Signature _____

Complete the following section if the bond is with corporate surety.

Bond #: _____ Penal Sum of Bond: _____

We, the undersigned surety company, a corporation duly organized by law under the state of _____
 and having a usual place of business in Massachusetts at: _____

(Address)

 _____ stand bound as surety in the aforesaid penal sum.

_____ by _____

Corporate Surety (name)
Signature and Title

FOR COURT USE ONLY

_____, ss _____ Date _____ examined and _____ approved

Justice-Assistant-Judicial Case Manager-Assistant Register-Magistrate
of the Probate and Family Court

Reset Form

EXHIBIT 13D—Notarized Waiver and Consent to Petition for Guardianship of Minor (Form MPC 440)

NOTARIZED WAIVER AND CONSENT TO PETITION FOR GUARDIANSHIP OF MINOR	Docket No. _____	Commonwealth of Massachusetts The Trial Court Probate and Family Court
In the Interests of: _____ First Name Middle Name Last Name Minor	_____ Division	

I STATE THAT:

1. I am the mother the father a person interested as _____ of the above-named minor

2. I acknowledge that a Petition for Guardianship of Minor requesting the appointment of (name) _____
 First Name M.I. Last Name
 as guardian(s) of the person of the above-named minor has been or will be filed.

3. I understand that if the court appoints a temporary guardian, **the guardianship will continue for 90 days** and can be **extended for additional 90 day periods.**

4. I understand that if the court appoints a permanent guardian, the guardianship will continue **until the minor attains age 18 or upon marriage**, or until otherwise terminated by the court.

5. I understand if the court appoints a temporary or permanent guardian, I may be required to pay child support, if I otherwise have an obligation to do so under the law.

By signing this document, I consent to this guardianship and waive my rights to notice of hearings as required by the statutes.

Signature of Father or Interested Person	Signature of Mother or Interested Person
(Print name)	(Print name)
(Street address) (Apt. Unit, No. etc.)	(Street address) (Apt. Unit, No. etc.)
(City/Town) (State) (Zip)	(City/Town) (State) (Zip)
Date _____	Date _____

NOTARIZATION

_____, SS _____ Date _____

On this _____ day of _____, 20____, _____ personally appeared before me, the undersigned notary public, and proved to me through satisfactory evidence of identification, which was _____, to be the person whose name is signed on the preceeding or attached document in my presence.

Signature of Notary Public

(Print name)

My Commission Expires

■ CHAPTER 13: GUARDIANSHIP OF MINOR CHILDREN

In the Interests of: _____ First Name Middle Name Last Name	Docket No.
---	------------

NOTARIZATION

_____, ss _____ Date _____
On this _____ day of _____, 20____, _____ personally appeared
before me, the undersigned notary public, and proved to me through satisfactory evidence of identification, which was
_____, to be the person whose name is signed on the preceeding or attached document
in my presence.

Signature of Notary Public

(Print name)

My Commission Expires

add notary

remove

Reset Form

EXHIBIT 13E—Military Affidavit

MILITARY AFFIDAVIT	DOCKET NO. _____	Trial Court of Massachusetts District Court Department	
	DIVISION _____	<input type="checkbox"/>	
PLAINTIFF'S NAME, ADDRESS, ZIP CODE AND PHONE _____ _____ _____	DEFENDANT'S NAME, ADDRESS, ZIP CODE AND PHONE _____ _____ _____		
<p>MILITARY AFFIDAVIT (Mass. R. Civ. P. 55(b)(6))</p> <p>I, _____, on behalf of _____, plaintiff herein, on oath depose and say that _____, defendant herein, is not in the military service of the United States or any of its allies, as defined in the Servicemembers Civil Relief Act as evidenced by the following facts: _____ _____ _____</p> <p>Signed under penalties of perjury.</p> <p style="text-align: right;">Signature: _____ Name: _____ Attorney for: _____ Address: _____ Telephone: _____</p> <p>Date: _____</p>			

EXHIBIT 13F—Affidavit of Indigency

Commonwealth of Massachusetts

AFFIDAVIT OF INDIGENCY

AND REQUEST FOR WAIVER, SUBSTITUTION
OR STATE PAYMENT OF FEES & COSTS

*(Note: If you are **currently confined in a prison or jail** and are not seeking immediate release under G.L. c. 248 §1, but you are suing correctional staff and wish to request court payment of “normal” fees (for initial filing and service), **do not use this form**. Obtain separate forms from the clerk.)*

Court	Case Name and Number (if known)	
Name of applicant: _____		
Address: _____		
(Street and number)	(City or town)	(State and Zip)

SECTION 1: Under the provisions of General Laws, Chapter 261, Sections 27A-27G, I swear (or affirm) as follows:
I AM INDIGENT in that (*check only one*):

- (A) I receive public assistance under (*check form of public assistance received*):
- | | |
|---|---|
| <input type="checkbox"/> Transitional Aid to Families with Dependent Children (TAFDC) | <input type="checkbox"/> Medicaid (MassHealth) |
| <input type="checkbox"/> Emergency Aid to Elderly, Disabled or Children (EAEDC) | <input type="checkbox"/> Supplemental Security Income (SSI) |
| <input type="checkbox"/> Massachusetts Veterans Benefits Programs; or | |
- (B) My income, less taxes deducted from my pay, is \$ _____ per week biweekly month year
(*check the period that applies*) for a household of _____ persons, consisting of myself and _____ dependents;
which income is at or below the court system's poverty level; (*Note: The court system's poverty levels for households of various sizes must be posted in this courthouse. If you cannot find it, ask the clerk or check online at: <http://www.mass.gov/courts/sjc/docs/povertyguidelines.pdf>. The court system's poverty level is updated each year.*)

(List any other available household income for the checked period on this line: \$ _____); or
- (C) I am unable to pay the fees and costs of this proceeding, or I am unable to do so without depriving myself or my dependents of the necessities of life, including food, shelter and clothing.

IF YOU CHECKED (C), YOU MUST ALSO COMPLETE THE SUPPLEMENT TO THE AFFIDAVIT OF INDIGENCY.

SECTION 2: (Note: In completing this form, please be as specific as possible as to fees and costs known at the time of filing this request. A supplementary request may be filed at a later time, if necessary.)

I request that the following **NORMAL FEES AND COSTS** be waived (not charged) by the court, or paid by the state, or that the court order that a document, service or object be substituted at no cost (or a lower cost, paid for by the state): (Check all that apply and, in any "\$ ____" blank, indicate your best guess as to the cost, **if known**.)

- Filing fee and any surcharge. \$ _____
- Filing fee and any surcharge for appeal. \$ _____
- Fees or costs for serving court summons, witness subpoenas or other court papers. \$ _____
- Other fees or costs of \$ _____ for (specify): _____
- Substitution (specify): _____

SECTION 3: I request that the following **EXTRA FEES AND COSTS** either be waived (not charged), substituted or paid for by the state:

- Cost, \$ _____, of expert services for testing, examination, testimony or other assistance (specify): _____
- Cost, \$ _____, of taking and/or transcribing a deposition of (specify name of person): _____
- Cassette copies of tape recording of trial or other proceeding, needed to prepare appeal for applicant **not** represented by Committee for Public Counsel Services (CPCS-public defender).
- Appeal bond
- Cost, \$ _____, of preparing written transcript of trial or other proceeding
- Other fees and costs, \$ _____, for (specify): _____
- Substitution (specify) _____

Date signed	Signed under the penalties of perjury x_____
By order of the Supreme Judicial Court, all information in this affidavit is CONFIDENTIAL . Except by special order of a court, it shall not be disclosed to anyone other than authorized court personnel, the applicant, applicant's counsel or anyone authorized in writing by the applicant.	
This form prescribed by the Chief Justice of the SJC pursuant to G.L. c. 261, § 27B. Promulgated March , 2003. Fillable PDF created August 2013.	

EXHIBIT 13G—Notarized and Verified Consent or Nomination by Minor (Form MPC 441)

NOTARIZED AND VERIFIED CONSENT OR NOMINATION BY MINOR	Docket No. _____	Commonwealth of Massachusetts The Trial Court Probate and Family Court
In the Interests of: _____ First Name Middle Name Last Name Minor	Division ▼	

I, _____ (full name of minor) am 14 years of age or older and I:

Consent to the appointment of _____ (full name) as my guardian(s) pursuant to G.L. c. 190B, § 5-203.

Do not consent to the appointment of _____ (full name) as my guardian(s) pursuant to G.L. c. 190B, § 5-203.

Nominate _____ (full name), as my guardian(s) pursuant to G.L. c. 190B, §5-207.

VERIFICATION AND ACKNOWLEDGMENT

I swear/affirm under oath that I have read the foregoing Consent or Nomination by Minor and that the statements set forth therein are true and correct to the best of my knowledge.

Date _____

 Signature of Minor

 (Address) (Apt, Unit, No. etc.)

 (City/Town) (State) (Zip)
 Primary Phone #: _____

NOTARIZATION

_____, ss _____ Date _____

On this _____ day of _____, 20____, _____ personally appeared before me, the undersigned notary public, and proved to me through satisfactory evidence of identification, which was _____, to be the person whose name is signed on the preceding or attached document in my presence.

 Signature of Notary Public

 (Print name)

 My Commission Expires

EXHIBIT 13I—Verified Motion for Appointment of Temporary Guardian for a Minor (Form MPC 340)

VERIFIED MOTION FOR APPOINTMENT OF TEMPORARY GUARDIAN FOR A MINOR G.L. c.190B, §5-204	Docket No. _____	Commonwealth of Massachusetts The Trial Court Probate and Family Court
In the Interests of: _____ First Name Middle Name Last Name Minor on Petition filed _____	_____ Division	

Now comes the moving party _____
 First Name Middle Initial Last Name
 who states as follows:

1. An emergency exists requiring the appointment of a Temporary Guardian as any delay in the appointment will cause immediate and substantial harm to the health, safety or welfare of the Minor, and no other person has authority to act in the circumstances.
2. The nature of the circumstances requiring the appointment of a Temporary Guardian are:
3. The particular harm sought to be avoided is:
4. The actions which need to be taken by a Temporary Guardian to avoid the harm are:

WHEREFORE, PETITIONER REQUESTS THAT THIS HONORABLE COURT:

1. Appoint

 First Name Middle Name Last Name
 as Temporary Guardian(s) of the Minor to serve with without sureties for the following reasons:
 the minor has no estate
 other: _____
2. The moving party further seeks specific court authorization:
3. In addition, I request that the Court:

SIGNED UNDER THE PENALTIES OF PERJURY

I affirm or swear under oath that I have read the foregoing petition and that the statements set forth therein are true and correct to the best of my knowledge.

Date _____

Signature of moving party

Attorney for moving party:

Print Name

(Address)

(Apt. Unit, No. etc.)

(City/Town)

(State)

(Zip)

Primary Phone #: _____

BBO No.: _____

Reset Form

EXHIBIT 13J—Order Appointing Temporary Guardian of a Minor (Form MPC 742)

ORDER APPOINTING TEMPORARY GUARDIAN OF A MINOR	Docket No.	Commonwealth of Massachusetts The Trial Court Probate and Family Court
In the Interests of: _____ First Name Middle Name Last Name Ward	_____ Division	

After hearing on the Motion for Appointment of Temporary Guardian,

The Court finds:

1. That venue is proper.
2. Notice pursuant to G.L. c. 190B, §§5-204(d-f) was:
 - Properly given.
 - Shortened or waived in whole or in part because the Court finds that an immediate emergency situation exists which requires the immediate appointment of a Temporary Guardian. The nature of the emergency is:
3. It is necessary to appoint a Temporary Guardian because of the likelihood of immediate and substantial harm to the health, safety, or welfare of the Ward and that no other person appears to have authority to act in the circumstances.
4. The ward is over 14 years of age and requested to be present.
 The ward was not present as the court finds that his/her best interests would not be served thereby.

The Court appoints the following person(s) as Temporary Guardian(s):

1. Name: _____

 First Name M.I. Last Name

 (Address) (Apt, Unit, No. etc.) (City/Town) (State) (Zip)
 Primary Phone #: _____
2. Name: _____

 First Name M.I. Last Name

 (Address) (Apt, Unit, No. etc.) (City/Town) (State) (Zip)
 Primary Phone #: _____

The Court orders the following:

1. If this Order was issued without full notice, post-appointment notice must be given together with a statement that the appointment may be vacated and heard as a de novo matter as expeditiously as possible. Said notice must be given within seven days from the date of this appointment to the those persons named in the petition who were not previously given notice in accordance with G.L. c. 190B, §5-204(d). A certification stating such notice has been given must be filed within seven days of the appointment or the appointment may be vacated sua sponte.

2. The Temporary Guardian(s) shall serve:
- without surety on his/her/their bond: minor has no estate
 - without surety on his/her/their bond for the following good cause:

with personal sureties corporate surety on his/her bond in the amount of _____ pursuant to G.L. c. 190B, §5-410.

NO LETTERS OF TEMPORARY GUARDIANSHIP SHALL ISSUE UNTIL THE BOND IS FILED AND APPROVED.

3. The Guardian **may not** establish or move the Minor's custodial dwelling outside the Commonwealth of Massachusetts without a Court order.
- The Guardian **may** establish or move the Minor's custodial dwelling outside the Commonwealth of Massachusetts without a Court order.
4. The authority of the Temporary Guardian does not include the authority to consent to extraordinary medical treatment, G. L. c. 190B, §5-306A.
5. This temporary guardianship expires on _____ (Date) (date not to exceed 90 days from appointment without basis listed below).
- The Court finds the following extraordinary circumstances necessitate a longer period of appointment to a date certain.

6. A _____ hearing shall be held on this matter on _____ at _____ : _____ a.m. p.m. at the _____ Probate and Family Court.

7. The Court further orders:
- The parties shall comply with a stipulation or agreement dated today, which is filed with the Court and expressly made part of this Order.
 - Other:

Date _____

JUSTICE OF THE PROBATE AND FAMILY COURT

Reset Form

EXTENSION OF APPOINTMENT

For good cause shown, the appointment of the Temporary Guardian(s) is extended for an additional period of time and shall expire on _____
Date

The Bond of the Temporary Guardian(s) is hereby re-examined and re-approved.

A _____ hearing shall be held on this matter on _____ at
____ : ____ a.m. p.m. at the _____ Probate and Family Court.

Date _____

JUSTICE OF THE PROBATE AND FAMILY COURT

EXHIBIT 13K—Notice of Right to Counsel (Form MPC 592)

NOTICE OF RIGHT TO COUNSEL For Parent of Minor Child Guardianship of Minor	Docket No.	Commonwealth of Massachusetts The Trial Court Probate and Family Court
In the Interests of: _____	_____ Division	
Minor		

IMPORTANT NOTICE

Right to counsel: If you are a parent of the minor child who is the subject of this proceeding you have a right to be represented by an attorney. If you want an attorney and cannot afford to pay for one and if you give proof that you are indigent, an attorney will be assigned to you. Your request for an attorney should be made immediately by filling out the Application for Appointment of Counsel form. Submit the application form in person or by mail at the court location where your case is going to be held.

TO THE COURT:

Please attach this form to the Notice and Order: Petition for Appointment of Guardianship of a Minor and any notices sent to parents of minor children in Petition for Appointment of Guardian of Minor proceedings.

EXHIBIT 13L—Application for Appointment of Counsel (Form MPC 263)

APPLICATION FOR APPOINTMENT OF COUNSEL For Parent of Minor Child Guardianship of Minor	Docket No.	Commonwealth of Massachusetts The Trial Court Probate and Family Court
In the Interests of: _____ Minor		Division

Information about the Requesting Party:

Name: _____
First Name
M.I.
Last Name

(Address)
(Apt. Unit, No. etc.)
(City/Town)
(State)
(Zip)

Primary Phone #: _____ Email: _____

I hereby request the Court appoint an attorney for myself as I am the mother father of the minor named above.

I request a waiver of the \$150.00 counsel fee assessment under G.L. c. 211D, § 2A (f).

Date _____

Signature of Requesting Party

Right to counsel: If you are a parent of the minor child who is the subject of this proceeding you have a right to be represented by an attorney. If you want an attorney and cannot afford to pay for one and if you give proof that you are indigent, an attorney will be assigned to you. Your request for an attorney should be made immediately by filling out the Application for Appointment of Counsel form. Submit the application form in person or by mail at the court location where your case is going to be held.

Counsel for any indigent ward, incapacitated person or person to be protected shall be compensated by the Commonwealth.

EXHIBIT 13M—Notice of Appearance and Objection (Form MPC 505a)

NOTICE OF APPEARANCE <input type="checkbox"/> AND OBJECTION	Docket No. _____	Commonwealth of Massachusetts The Trial Court Probate and Family Court
Case Name: _____ _____ Petition for: _____ Filed on: _____		_____ <input type="checkbox"/> Division

Enter my appearance: for myself, an interested person.
 as attorney for the following interested person:

_____ First Name _____ M.I. _____ Last Name
 _____ (Address) _____ (Apt. Unit, No. etc.) _____ (City/Town) _____ (State) _____ (Zip)
 Primary Phone #: _____

This appearance is **NOT** an objection.
 IS an objection.

A written affidavit of objections signed by the above-named person, stating the specific facts and grounds upon which the objections are based is filed with this Appearance and Objection will be filed within 30 days after the return date.

Date: _____

 Signature of Attorney or Interested Person, if pro se

 Print name of Attorney

 (Address) _____ (Apt. Unit, No. etc.)

 (City/Town) _____ (State) _____ (Zip)

Primary Phone #: _____

BBO #: _____

ANY PERSON FILING A PLEADING SHALL SEND A COPY TO THE PERSON WHO SIGNED THIS APPEARANCE TOGETHER WITH NOTICE OF ANY HEARING SCHEDULED BEFORE THE COURT ON THE PLEADING. A COPY OF THIS FORM MUST BE MAILED TO PETITIONER'S ATTORNEY OR, IF NONE, TO PETITIONER.

Reset Form

EXHIBIT 13N—Massachusetts Probation Service Consent Form

**1 MASSACHUSETTS PROBATION SERVICE
CONSENT FORM**

_____ Court (District/BMC/Juv/Superior/P & E) PCF _____

Individual Claiming Indigency – Inability to Pay _____

DEFINITION OF INDIGENCY

The Supreme Judicial Court defines someone as indigent who:

- a. receives any of the following public assistance programs [Transitional Aid to Families with Dependent Children (TAFDC), Emergency Aid to Elderly, Disabled and Children (EAEDC), needs-based veterans' benefits, Supplemental Nutrition Assistance Program (SNAP), Refugee Cash Assistance benefits, or SSI State Supplemental];
- b. has an annual income after taxes of 125% below the federal poverty guidelines;
- c. lives in a tuberculosis treatment center, a mental health facility or facility for intellectual or developmental disabilities, is the subject of a mental health commitment proceeding, or is the subject of a substituted judgment proceeding; or
- d. a person under 18 in a delinquency, youthful offender, child welfare proceeding, or in DCF custody, or a young adult (18-22) in a child welfare proceeding.

CONSENT TO PROBATION

I consent that employees of the Massachusetts Probation Service can research my or my client's claim of indigency or ability to pay using any of the following methods until the case is disposed, appointed counsel is revoked by the court, or ability to pay is no longer considered by the court:

- 1. Beacon - check of public assistance information at the Department of Transitional Assistance;
- 2. IDS - check of wage, asset, and tax information at the Massachusetts Department of Revenue;
- 3. RMV - a check of vehicle information at the Massachusetts Registry of Motor Vehicles; and
- 4. A review of paper records and/or other information related to indigency or ability to pay.

PENALTY FOR MISREPRESENTATION

I acknowledge that I have read the above information and I grant consent to Probation to attempt to verify indigency or inability to pay. I understand that if the Court finds that I have materially misrepresented or omitted any relevant financial information, the Court can impose sanctions allowed by law.

Print Name: _____ Signature: _____

■ CHAPTER 13: GUARDIANSHIP OF MINOR CHILDREN

In the Interests of: _____ First Name Middle Name Last Name	Docket No.
---	------------

2. Name: _____
First Name M.I. Last Name

(Address) (Apt, Unit, No. etc.) (City/Town) (State) (Zip)

Primary Phone #: _____

click to add

click to remove

The Court directs the issuance of Letters of Appointment of Guardianship as follows:

- The Letters shall expire on:
 - the Minor's 18th birthday
 - or _____
(date)
- The powers and duties of the Guardian are unrestricted, except the Guardian may not consent to extraordinary medical treatment pursuant to G.L. c. 190B, §5-306A
- The powers and duties of the Guardian are limited by the following restrictions:

IT IS FURTHER ORDERED THAT:

1. **The Guardian(s) shall notify the Court in writing within 30 days of any changes to his/her home address, or telephone number or of that of the Minor.**
2. **The Guardian(s) shall, on or before one year from the date of this decree, and annually thereafter, file an Annual Report of Guardian. Failure of the Guardian(s) to do so may result in the revocation of this Decree.**
3. The Guardian(s) is/are prohibited from permanently removing the child from the Commonwealth without an order of the Court.
4. The Guardian shall serve:
 - without surety on his, her, or their bond:
 - because the minor has no estate
 - for the following good cause

with personal sureties corporate surety on his/her/their bond in the amount of _____
pursuant to G.L. c. 190B, §5-410
5. Parent One shall have the following rights to contact with the minor child:

 Parent Two shall have the following rights to contact with the minor child:

In the Interests of: _____ <div style="display: flex; justify-content: space-around; font-size: small;"> First Name Middle Name Last Name </div>	Docket No. _____
---	------------------

6. Parent One shall pay child support in the amount of \$ _____ beginning _____ (date) by wage/suspended wage assignment.
- Parent Two shall pay child support in the amount of \$ _____ beginning _____ (date) by wage/suspended wage assignment.
7. The parties shall comply with a stipulation or agreement dated _____ (date), which is filed with the Court and expressly made part of this Order.
8. Other:

Date _____

 JUSTICE OF THE PROBATE AND FAMILY COURT

Reset Form

EXHIBIT 13P—Annual Report of Guardian of Minor (Form MPC 443)

ANNUAL REPORT OF GUARDIAN OF MINOR	Docket No.	Commonwealth of Massachusetts The Trial Court Probate and Family Court
In the Interests of: _____ First Name Middle Name Last Name Minor	Division ▼	

Child's name, date of birth and address:

_____ (Date of Birth)

 First Name Middle Name Last Name

 (Address) (Apt. Unit, No. etc.) (City/Town) (State) (Zip)

Each guardian's name and address:

1. _____
 First Name M.I. Last Name

 (Address) (Apt. Unit, No. etc.) (City/Town) (State) (Zip)

1. Please list the names, ages and relationship to you of all persons currently living in your household:

	First Name	M.I.	Last Name	Age	Relationship
1.					
2.					
3.					
4.					
5.					
6.					

2. Have you been investigated for abuse or neglect since the last report or since you were in court? Yes No

If **YES**, please state the date(s), circumstances, investigating agency, outcome and any information regarding court involvement such as the name of the court and docket number of the case:

3. Has the child moved since your last report or since you were last in court? Yes No

If **YES**, please explain:

4. Is the child currently in school? Yes No

If **NO**, and the child is over age 6, please explain:

If **YES**, please answer the following:

What grade is the child in? _____

How is the child doing in school? Please describe the child's grades and any special services the child is receiving in school:

5. Has the child's physical, psychological or medical condition changed since the last report? Yes No
 Has he/she been hospitalized or injured?

If **YES**, please explain:

6. Does the child have contact with his or her parent(s)? Yes No

If **YES**, how frequently, how recently, is it regular, and what is the quality of the contact?

7. Has the child been involved in any court cases since the last report or since you were last in court? For example - delinquency or criminal charges, CHINS petition? Yes No

If **YES**, please explain:

8. Please provide any other information you believe will assist the court in reviewing the child's general well being. (*Attach additional pages if needed*)

SIGNED UNDER THE PENALTIES OF PERJURY

I affirm or swear under oath that I have read the foregoing petition and that the statements set forth therein are true and correct to the best of my knowledge.

Date _____

Signature of Guardian

Date _____

Signature of Co-Guardian (if applicable)

Attorney for Guardian:

Print Name

(Address)

(Apt, Unit, No. etc.)

(City/Town)

(State)

(Zip)

Primary Phone #: _____

BBO No.: _____

Reset Form

EXHIBIT 13Q—Complaint for Modification (Form CJ-D104)

Commonwealth of Massachusetts
The Trial Court
Probate and Family Court Department

Division _____ Docket No. _____

COMPLAINT FOR MODIFICATION

_____, Plaintiff v. _____, Defendant

1. Plaintiff resides at _____
(Street Address) (City/Town) (County)
 _____; defendant resides at _____
(State) (zip) (Street address)

(City/Town) (County) (State) (zip)

2. This Court, on _____ entered a judgment ordering that
(date)

3. Since that date,

there is now a difference between the amount of the existing child support order and the amount that would result from application of the Child Support Guidelines issued by the Chief Justice for Administration and Management.

the following change(s) in circumstance have occurred:

4. Wherefore, plaintiff requests that the Court order the judgment of _____
 be modified by _____
(date)

Date _____

(Signature of attorney or plaintiff, if pro se)

(Print name)

(street address)

(city/town) (state) (zip)

Tel. No. _____

B.B.O. # _____

EXHIBIT 13R—Petition for Removal of Guardian of Minor Pursuant to G.L. c. 190B, § 5-212 (Form MPC 240)

PETITION FOR REMOVAL OF GUARDIAN OF MINOR PURSUANT TO G.L. c. 190B, §5-212	Docket No.	Commonwealth of Massachusetts The Trial Court Probate and Family Court
In the Interests of: _____ First Name Middle Name Last Name Minor	_____ Division	

1. Petitioner(s),

_____ First Name M.I. Last Name

Current address _____
(Address) (Apt, Unit, No. etc.) (City/Town) (State) (Zip)

Primary Phone #: _____

is/are the Parent(s) mother father both.

is the Minor (if 14 or more years of age).

is a person interested in the welfare of the Minor. (State nature of interest)

2. Guardian(s),

_____ First Name M.I. Last Name

Current address _____
(Address) (Apt, Unit, No. etc.) (City/Town) (State) (Zip)

Primary Phone #: _____

was appointed on _____
(date)

3. Petitioner(s) requests that the court remove the guardian/co-guardians for the following reasons:

The biological parent(s) can resume parental responsibilities. (Explain circumstances)

Address of parent(s) resuming responsibility

_____ First Name M.I. Last Name

_____ (Address) (Apt, Unit, No. etc.) (City/Town) (State) (Zip)

Primary Phone #: _____

The Minor was adopted.

Other: (Attach additional sheets or documents, if necessary)

4. Petitioner requests that

First Name	M.I.	Last Name
		<input type="button" value="click to add"/> <input type="button" value="click to remove"/>

be appointed as successor Guardian(s) (Petitioner is not required to nominate a successor).

5. Petitioner requests a hearing be scheduled on this matter.

The Minor (if 14 years of age or older), guardian, and the parents of the minor, provided that the parental rights have not been terminated or a voluntary surrender has not been signed, are required by law to be given notice of the time and place of hearing on this Petition.

SIGNED UNDER THE PENALTIES OF PERJURY

I affirm or swear under oath that I have read the foregoing petition and that the statements set forth therein are true and correct to the best of my knowledge.

Date	Signature of Petitioner
------	-------------------------

Date	Signature of Co-Petitioner (if applicable)
------	--

Attorney for Petitioner	Print Name
	(Address) (Apt, Unit, No. etc.)
	(City/Town) (State) (Zip)
	Primary Phone #: _____
	BBO No.: _____

DECREE AND ORDER OF TERMINATION OF GUARDIANSHIP OF A WARD/MINOR ON A PETITION FOR <input type="checkbox"/> REMOVAL <input type="checkbox"/> RESIGNATION	Docket No. _____	Commonwealth of Massachusetts The Trial Court Probate and Family Court
In the Interests of: _____ Ward/Minor <small>First Name Middle Name Last Name</small>		

II. Resignation

The Court finds and orders that notice has been properly given or waived and that the Guardian's resignation is accepted because:

- The following parent(s) can now resume parental responsibilities.
 Name of Parent 1: _____
First Name M.I. Last Name
 Name of Parent 2: _____
First Name M.I. Last Name

- The Guardian is no longer able to serve because _____

- A Successor Guardian is appointed. (See separate decree of appointment)
 _____ Docket Number: _____
First Name M.I. Last Name

- The remaining co-guardian shall continue to serve

- Other:

III. It is further ordered that:

- The parties shall comply with a stipulation or agreement of the parties dated _____ which is filed with the Court and expressly made part of this order.

- Pursuant to _____ Court's Order/Judgment dated _____
(County)
 Docket Number: _____, custody reverts to _____
First Name M.I. Last Name

- By operation of law, custody reverts to _____
First Name M.I. Last Name

-

Date _____

JUSTICE OF THE PROBATE AND FAMILY COURT

Reset Form

EXHIBIT 13T—Interested Parties Checklist for Guardianship of Minor Proceedings: Standing Order 4-09

Interested Parties checklist for Guardianship of Minor Proceedings: Standing Order 4-09

Please review the Petition for Appointment of Guardian of a Minor and complete this chart to determine who the “Interested Parties” are in your case. In most cases, mother and father will be the only “Interested Parties.”

Possible Interested Parties	Serve this person: YES	Serve this person: NO	How to Serve (Deliver) Notice to this person (see instructions)	For Court Use
Child age 14 _____ (name) If the child is 14 or over, he or she must be served, unless the child is the petitioner.				
MOTHER: _____ (name) Does the child have a mother living? The mother must be served UNLESS: The mother had her legal parental rights terminated or signed a voluntary surrender as stated in item # 8 on your Petition for Appointment of Guardian of a Minor.				
FATHER: _____ (name) Does the child have a father living? The father must be served UNLESS: The father had his legal parental rights terminated or signed a voluntary surrender as stated in item # 8 on your Petition for Appointment of Guardian of a Minor.				
CAREGIVER: _____ (name) During the last 60 days has anyone other than the parents been given custody of the child or had the child living with them? If yes, this person must be served. See items # 12 and 14 on your Petition for Appointment of Guardian of a Minor.				
Nominated Guardian: _____ (name) Has the child, age 14 or above nominated someone to be the Guardian? If YES, this person must be served. See item #11 on your Petition for Appointment of Guardian of a Minor.				
Nominated Guardian: _____ (name) Has a parent, through a will or other written instrument nominated someone to be the Guardian? See item #5 on your Petition for Appointment of Guardian of a Minor.				

Possible Interested Parties	Serve this person: YES	Serve this person: NO	How to Serve (Deliver) Notice to this person (see instructions)	For Court Use
<p>Veteran's Administration: Does the child receive benefits paid by the Veteran's Administration? If, YES, they must be served by first class mail.</p>			<p>You mail notice by first class mail to: Veterans Benefits Admin, JFK Federal Bldg., Gov't Center, Boston, MA 02203.</p>	
<p>Department of Children and Families: Is the child in the custody of the Department of Children and Families? If, YES, they must be served by first class mail.</p>			<p>You mail notice by first class mail to the local office of the Department of Children and Families</p>	
<p>Spouse: if the Minor is married</p>				
<p>If no parents are living, brothers and sisters 18 years of age or older.</p> <p>_____ (name) _____ (name)</p> <p>See item #13 on your Petition for Appointment of Guardian of a Minor.</p>				

