

## NOTICE OF COMMENT PERIOD

The Nebraska Supreme Court Commission on Children in the Courts submitted a proposal to codify Standards of Best Practice for Guardianships in Juvenile Court. The proposal would create six new rules setting forth the procedure for establishing, maintaining, and terminating a guardianship in a juvenile court case after a child has been adjudicated pursuant to Neb. Rev. Stat. § 43-247(3)(a). The new rules would be codified at Neb. Ct. R. §§ 4-501 through 4-506.

The Nebraska Supreme Court invites interested persons to comment on the proposed standards. Anyone desiring to comment on the proposed standards should do so in writing to the office of the Clerk of the Supreme Court and Court of Appeals, P.O. Box 98910, Lincoln, Nebraska 68509-8910, or via e-mail to [wendy.wussow@nebraska.gov](mailto:wendy.wussow@nebraska.gov) no later than August 5, 2019.

The full text of the proposed standards is available below, or a hard copy may be obtained from the office of the Clerk of the Supreme Court and Court of Appeals upon request.

### CHAPTER 4: CHILDREN AND FAMILIES

....

#### **Article 5: Standards of Best Practice for Guardianships in Juvenile Court.**

##### **§ 4-501. Introduction.**

The purpose of these Standards is to advance a procedure for the establishment of guardianships for minor children under juvenile court jurisdiction. The Standards will ensure consistency in the process to establish, maintain, and/or terminate a guardianship incidental to juvenile court proceedings. The Standards are designed to guide the process while protecting the best interests of the minor child.

##### **§ 4-502. Process to establish guardianship.**

(A) For a minor child under juvenile court jurisdiction pursuant to Neb. Rev. Stat. § 43-247(3)(a), a guardianship shall occur within the existing juvenile court case, rather than opening a separate probate case in county court.

(B) The guardianship for the minor child may be established by consent as an alternative to the termination of parental rights leading to adoption.

(C) If the guardianship is contested, the petitioner must demonstrate proof of the factors by reasons pursuant to Neb. Rev. Stat. § 43-1312.01(1).

(D) In either case, the initial application must state the following:

(1) the reasons why a guardianship is being sought;

(2) a description of the nature and extent of the limitations in the minor child's ability to care for himself/herself;

(3) representations that less intrusive alternatives to guardianship have been examined;

(4) the guardianship powers being requested and the duration of the powers;

(5) the nature and estimated value of assets;

(6) if the minor child is ten (10) years of age or older, he/she must consent to the appointment; and

(7) acceptance from the guardian.

(E) There should be a written acknowledgment by the parents and minor child that the parameters of the guardianship are understood and that they have been advised of those parameters by either the Department of Health and Human Services or their attorney. The written acknowledgment shall be filed with the Clerk of the Court and held in the confidential file established in the guardianship.

(F) The biological parents' authority to make educational decisions on the minor child's behalf will be suspended during the appointment of a guardian.

(G) If requested at any time, the court may establish a reasonable visitation schedule which allows the minor child to maintain meaningful contact with his or her biological parents and siblings through personal visits, telephone calls, letters, or other forms of communication. The court may issue an order restricting or denying any form of contact or communication if it is in the best interests of the minor child.

(H) The guardian ad litem may remain appointed to monitor the guardianship, with judicial discretion to end the appointment if no longer deemed necessary. All statutory requirements and obligations pursuant to court rules shall apply unless specifically waived by the court.

(I) The Department of Health and Human Services shall be released from the case once the guardian has been appointed, unless the guardianship should disrupt and the court places the child back into the custody of the Department. Upon appointment of the guardian, the original placement shall end in JUSTICE when applicable.

(J) The attorney for the parents shall be released from the case once the guardian has been appointed, but may be reappointed at any time at the court's discretion or upon written request of the parents.

#### **§ 4-503. Training.**

(A) All guardians shall be required to attend and successfully complete a training program, offered by the Nebraska Supreme Court and provided by the Office of the Public Guardian, unless waived by the court for good cause shown.

(B) The training shall include, but not be limited to,:

(1) the duties and responsibilities of guardians;

(2) the proper use of forms;

(3) reporting and filing requirements;

(4) how to seek assistance from the court;

(5) what court proceedings may be held after the appointment;

(6) the relationship between guardians and other decisionmakers;

(7) what to do when a guardian no longer wishes or is unable to serve as a guardian;

(8) how to end a guardianship; and

(9) what do in the case of the death of a person under guardianship.

**§ 4-504. Review hearings and reports.**

(A) In the event the court deems it appropriate, given the specific circumstances of each individual case, it may conduct semiannual or annual review hearings to confirm that the minor child is receiving the services and care required and that his or her needs are being met through the guardianship.

(B) Each guardian of a minor child shall sign, date, and file with the court an Annual Report on Condition of a Ward. The first Annual Report shall be filed twelve (12) months after the appointment of a guardian. If a hearing described in subdivision (A) of this section is held, the Annual Report shall be received by the court at least five (5) days prior to each hearing. If no hearing is to be held, the Annual Report shall be received by the court and filed of record.

(C) The Annual Report shall be mailed or emailed by the guardian(s) to those entitled to notice as directed and defined as interested parties by the Nebraska Statutes. If parental rights have not been terminated, parents will continue to be listed as “interested parties” and shall receive copies of the Annual Report.

(D) The Annual Report on Condition of Ward form shall require the guardian to report on the condition of ward subject to the guardianship as follows:

(1) living conditions;

(2) educational information to include name of school, grade level, academic performance, extracurricular activities, and education-related concerns;

(3) funding by the State for minor child or other sources of financial support for the child;

(4) medical and mental health conditions and treatment;

(5) dates of parental visitation, if applicable;

(6) dates and description of contact with siblings, if applicable;

(7) itemized description of the assets of the minor child;

(8) services currently being provided to the minor child; and

(9) a detailed description of any additional needs of the minor child.

(E) A minor child may provide information to the court about the guardianship by completing the Youth Court Questionnaire and submitting it to the court, or by attending any scheduled hearing. The Clerk of the Court shall annually mail this form to the guardian for purposes of providing it to the child.

(F) If the minor child has any interest in either real property or financial assets which have a value in excess of the sum of \$1,000, the guardian shall include that information in the Annual Report and shall be required to submit a financial accounting.

**§ 4-505. Termination of guardianship.**

(A) The guardianship of a minor child ceases upon:

(1) the solemnized marriage of a ward;

(2) the ward's attaining majority; or

(3) termination by the court.

(B) A guardian may be removed or suspended for reasons that include misconduct, failure to perform duties, or if the guardianship is no longer proper. If a guardian is removed or suspended, the guardianship shall be considered "disrupted" and the court shall proceed as provided below.

(C) If a motion to terminate the guardianship is filed, the burden of proof is on those opposing the termination of the guardianship to show either that the parent is unfit or that the parent has forfeited his or her right to custody of the minor child. In the event that a parent files a motion to terminate the guardianship, the court shall reappoint legal counsel for the parents whose parental rights remain intact upon request by the parent.

(D) The court may, but is not required to, appoint legal counsel for the guardian upon the court's own motion, or upon request by the guardian.

**§ 4-506. Disruption of guardianship.**

If the guardian is suddenly no longer able to serve for any reason including, but not be limited to: death, medical or related reasons, refusal to continue to serve as guardian, or the child/guardian relationship has disrupted, the court may be required, in the best interests of the minor child, to do the following:

(A) Upon the filing of appropriate legal documents, such as a motion and affidavit or other such evidence, the court may suspend or terminate the guardianship and place the minor child back into temporary care, custody, and control of the Department of Health and Human Services.

(B) A placement hearing shall be scheduled by the court as soon as possible, and all interested parties as defined by law shall be given notice, including, but not limited to, the County Attorney, parents whose parental rights are intact and their respective attorneys, the legal guardians, the guardian ad litem for the minor child, and Department of Health and Human Services.

(C) The Department of Health and Human Services should be directed to make an investigation into the minor child's circumstances and make a recommendation to the court as to:

(1) the need for ongoing guardianship;

(2) possible suitable successor guardians; and

(3) any other factors affecting the best interests of the child.

(D) The court may reappoint an attorney immediately for the parents whose parental rights are intact either upon the disruption of the guardianship or at the request of the parents, following notification of the hearing.

(E) The court may, but is not required, to appoint an attorney for the guardian(s), if requested.