

## Appendix B

### STANDBY GUARDIAN CHECKLIST

#### 1. Designation Only:

*These steps apply to a situation where the parent is not ready to go through the court process for appointment of a Standby Guardian but wants to put her wishes in writing.*

- A. First meeting**
  - Complete standby guardianship intake form and absent parent questionnaire
  - If supervising attorney is available to review, have client sign a Written Designation. Otherwise, prepare Written Designation after first meeting.
- B. Second meeting**
  - Have client sign Written Designation
  - Give client the Written Designation and “Information for Designated Standby Guardian”

#### 2. By Client's Petition:

*These steps apply when the client wants to go through the court process to have a Standby Guardian appointed by the Clerk. If after the first meeting the client opts to have the Standby Guardian follow-through with the court process (e.g. because of client's poor health), skip to part 3 of this checklist.*

- A. First meeting**
  - Complete standby guardianship intake form and absent parent questionnaire
  - Possibly have client sign a Written Designation
  - Obtain birth certificates for each child
- B. Investigation:**
  - Interview proposed Standby Guardian and evaluate commitment and fitness
  - Interview proposed Alternate and evaluate commitment and fitness
  - Conduct other interviews as necessary
  - Follow-up on birth certificates, addresses, etc.
- C. Get signed at second meeting:**
  - Medical Release
  - Petition to Sue as an Indigent
  - Waiver of Bond
  - Written Designation (if not already prepared)

- **D. Figure out service method** (note, you may have to use different methods to serve different absent parents)
  - certified mail
  - sheriff
  - publication in newspaper
  - no service if absent parent is deceased – in that event obtain death certificate (see below)
  
- **E. Call Clerk to schedule hearing**
  - Determine dates client, guardian and alternate are available
  - Prepare Notice of Hearing if serving by certified mail or the sheriff
  - Prepare a return of service if serving by the sheriff.
  - Prepare Notice of Service of Process by Publication if serving by publication in newspaper).
  
- **F. Send to Clerk for filing: (original + 2 copies)**
  - Petition to Appoint Standby Guardian
  - Petition to Sue as an Indigent
  - Estates Action Cover Sheet (not all counties require this)
  - Notice of Hearing (unless service is to be by publication)
  - Stamped envelope addressed to Legal Project

Note: Send all of this with a cover letter itemizing the documents enclosed and asking the clerk to return the file-stamped copies to you.

- **G. After filed copies are returned by Clerk, *serve* biological parent with:**
  - Petition to Appoint Standby Guardian
  - Notice of Hearing

Note: Discuss method of service with your supervising attorney. We serve most parents by certified mail or by the sheriff. If address of biological parent cannot be found after a due and diligent search to find it, the biological parent can be served by publication. This involves a publication notice in a general circulation newspaper; no Notice of Hearing need be prepared. Instead, prepare the Notice of Service of Process by Publication and send it to newspaper.

- **H. Obtain death certificate, if the absent parent is deceased.**

Ask the client if she has one; most clerks will accept a copy. If your client does not have one, you will have to obtain it from the state agency that maintains them. In North Carolina, it is: NC Vital Records, 1903 Mail Service Center, Raleigh, NC 27699-1903, (919) 733-3526, Raleigh, NC 27626-0537. The cost is \$10. You have to request it in writing; no faxes or e-mails. See our web resources for link to find death certificates for other states.

- **I. Obtain generic physician affidavit, or in cases where the client does not object to disclosure of his/her illness, a copy of typed medical record showing diagnosis of HIV/AIDS.**
  
- **J. Prepare proof of service:**
  - *Sheriff:* Make sure you have received Sheriff's Return of Service
  - *Certified mail:* Affidavit of Service with return receipts attached. Send to Clerk for filing or submit at hearing.
  - *Publication* (See Checklist for Service by Publication):
    - Obtain Affidavit of Service from newspaper.
    - Draft Affidavit of Due Diligence
  
- **K. Conduct additional investigation as necessary**
  
- **L. Make sure standby guardian and witnesses are available for hearing.**
  
- **M. Prepare Documents for hearing:**
  - Student Representative Authorization signed by client
  - Consent to Commencement after Letter Issued (if applicable)
  - Order on Petition for Appointment of Standby Guardian
  - Letters of Appointment
  - Oath
  - Have Waiver of Bond ready.
  
- **N. Prepare client and witnesses for hearing**

### **3. By Standby Guardian's Petition**

*Note: cases in which the standby guardian is the petitioner tend to fall into two categories. The Steps listed below will vary somewhat depending on what kind of case you have.*

1. ***New case:*** *We have a new case in which the designating parent and the guardian have decided (usually with our guidance) that the standby guardian will be the petitioner. These are often cases in which the designating parent is very sick and/or where the standby guardian has already assumed primary parenting responsibilities.*
2. ***Reopened case:*** *We are re-opening a case in which a parent has previously designated a guardian but did not proceed to a hearing. The parent has typically become sicker or died.*

#### **New Case (designating parent still living):**

- **A. First meeting**
  - Complete standby guardianship intake form and absent parent questionnaire
  - Possibly have designating parent sign a Written Designation and Consent to Commencement of Standby Guardian's Authority. (In some cases, either or both documents may be signed at a subsequent meeting.)
  - Possibly have designating parent sign Waiver of Bond
  - Obtain birth certificates for each child
  - Have parent sign Medical Release
  - If appropriate, have custodial parent and standby guardian sign dual representation agreement
- **B. Investigation:**
  - Interview proposed Standby Guardian
  - Interview proposed Alternate
  - Conduct other interviews as necessary
  - Follow-up on birth certificates, addresses, etc.
  - If designating parent is deceased, obtain death certificate
- **C. Get signed at next meeting:**
  - Dual representation agreement (if not done already)
  - Medical Release
  - Petition to Sue as an Indigent
  - Waiver of Bond
  - Written Designation (if not already prepared)
  - Consent to Commencement of Standby Guardian's Authority

**Re-opened Case**

- **A. First Meeting: Note: Schedule in time to file Petition within 90 days of Triggering Event**
  - Interview Standby Guardian and update information about children and absent parent
  - If we don't have them already, obtain birth certificates for children.
  - Obtain death certificate or other evidence of triggering event.
  - Have client sign Standby Guardian's Petition for Appointment of Standby Guardian
  - Have Standby Guardian sign Petition to Sue as an Indigent.

**ALL CASES:**

***Within 90 days of Consent or other Triggering Event:***

- **A. Investigation:**
  - Interview Alternate Standby Guardian
  - Conduct other interviews as necessary, to obtain witnesses, determine addresses of absent parents
  - Follow-up on birth certificates, death certificate, etc.
- **B. Figure out service method (note, you may have to use different methods to serve different absent parents)**
  - certified mail
  - sheriff
  - publication in newspaper (See Checklist for Service by Publication)
  - no service if absent parent is deceased – in that event obtain death certificate (see below)
- **C. Call Clerk to schedule hearing**
  - Determine dates client, guardian and alternate are available
  - Prepare Notice of Hearing if serving by certified mail or the sheriff
  - Prepare a return of service if serving by the sheriff.
  - Prepare Notice of Service of Process by Publication if serving by publication in newspaper).
- **D. Send to Clerk for filing: (original + 2 copies)**

***YOU MUST FILE WITHIN 90 DAYS OF THE TRIGGERING EVENT***

  - Standby Guardian's Petition w/Written Designation and evidence of triggering event attached (i.e. death certificate or consent).
  - Petition to Sue as an Indigent
  - Estates Action Cover Sheet (not all counties require this)
  - Notice of Hearing (unless service is to be by publication)

- Stamped envelope addressed to Legal Project

Note: Send all of this with a cover letter itemizing the documents enclosed and asking the clerk to return the file-stamped copies to you.

- E. After filed copies are returned by Clerk, *serve absent parent with:***

- Standby Guardian's Petition (including attachments)
- Notice of Hearing

Note: Discuss method of service with your supervising attorney. We serve most parents by certified mail or by the sheriff. If address of biological parent cannot be found after a due and diligent search to find it, the biological parent can be served by publication. This involves a publication notice in a general circulation newspaper; no Notice of Hearing need be prepared. Instead, prepare the Notice of Service of Process by Publication and send it to newspaper.

- F. Obtain death certificate, if the absent parent is deceased.**

Ask the client if she has one; most clerks will accept a copy. If your client does not have one, you will have to obtain it from the state agency that maintains them. In North Carolina, it is: NC Vital Records, 1903 Mail Service Center, Raleigh, NC 27699-1903, (919) 733-3526, Raleigh, NC 27626-0537. The cost is \$10. You have to request it in writing; no faxes or e-mails. See our web resources for link to find death certificates for other states.

- G. Obtain generic physician affidavit, or in cases where the client does not object to disclosure of his/her illness, a copy of typed medical record showing diagnosis of HIV/AIDS. If designating parent is deceased, obtain death certificate.**

- H. Prepare proof of service:**

- Sheriff:* Make sure you have received Sheriff's Return of Service
- Certified mail:* Affidavit of Service with return receipts attached. Send to Clerk for filing or submit at hearing.
- Publication:*
  - Obtain Affidavit of Service from newspaper.
  - Draft Affidavit of Due Diligence

- I. Conduct additional investigation as necessary**

- J. Make sure standby guardian and witnesses are available for hearing.**

- **K. Prepare Documents for hearing:**
  - Student Representative Authorization signed by client
  - Consent to Commencement after Letter Issued (if applicable)
  - Order on Standby Guardian's Petition for Appointment of Standby Guardian
  - Letters of Appointment
  - Oath
  - Have Waiver of Bond ready.
  
- **L. Prepare client and witnesses for hearing**