

## DUKE HEALTH JUSTICE CLINIC INFORMATION FOR DESIGNATED STANDBY GUARDIAN

The attached document is a “Designation of Standby Guardian.” In this document, you have been chosen to be the standby guardian for certain children after the parent’s death or during any times of the parent’s life that she or he is unable to handle the responsibilities of being a parent.

Normally, a parent wishing to have a standby guardian appointed will file papers with the Clerk of the Court requesting that a standby guardian be appointed and appear at a hearing with the Clerk. However, some parents become too ill to complete that process. This “Designation of Standby Guardian” allows the process to be completed in the event the parent cannot complete it herself or himself. If the parent is able to complete the process, this document will not be used.

***This Designation, by itself, does not give you authority to act in the role of a parent to the children. In order for you to have guardianship authority, several more things must happen:.***

1. ***Triggering Event:*** Before you can get authority, one of the following things must happen. These events are called “triggering events.” These events are:

- a. the parent’s death, or
- b. the parent’s mental incapacity, or
- c. the parent’s physical incapacity, or
- d. the parent’s consent.

2. ***Proof of Triggering Event Attached to Designation:*** Proof of one of the triggering events must be attached to the Designation. In the event of the parent’s death, a death certificate must be attached. In the event of either the parent’s mental or physical incapacity, a written determination of that incapacity made by the parent’s attending physician must be attached. In the event of the parent’s consent, the written consent must be attached.

3. ***Papers filed with the Clerk of Superior County Within 90 Days of Triggering Event:***, The papers described above, plus the “Standby Guardian’s Petition for Appointment as Guardian” must be filed with the Clerk of Superior Court in the county where the children have been living within 90 days of the date of one of the triggering events.

4. ***Hearing With the Clerk of Superior Court:*** A hearing with the Clerk of the Court must be scheduled. At the hearing, the Clerk of Court will decide whether to officially appoint you as the guardian. You should obtain the services of an attorney to assist with this process. The Duke Health Justice Clinic may be available to assist. Please call us at (919) 613-7169

**Note:** During the time between the occurrence of one of the triggering events and the filing with the Clerk of Court, you have the authority to act in the role of a parent. That authority is ends if the papers are not filed with the Clerk of the Court within the required 90 days and the Clerk does not officially appoint you as guardian.

If you obtain authority during the parent's lifetime, the parent continues to have the authority to exercise parental rights, to the extent she or he is able to do so. Both you and the parent have parental rights with regard to the children, in the same way two parents have joint parental rights.

Please let us know if you have any questions.

Health Justice Clinic  
Duke Law School  
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