

Kinship Legal Guardianship

Pro Se Manual

Applying for kinship legal guardianship on your own



Kidlaw Resource Center

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Introduction

Is the child of a relative or close friend living in your home? Has the child been living with you for more than the last 12 months? Is this arrangement likely to continue? Do the parents have serious problems that prevent them from caring for their child? Are you willing to raise the child to adulthood?

If you answered “yes” to these questions, then you may want to become the child’s kinship legal guardian. The Kinship Legal Guardianship law allows you -- the caregiver -- to become the child’s legal guardian. That means you act, in almost every way, like the child’s parent.

This manual describes what a kinship legal guardian is and the governing law. It also explains the process you follow to become a kinship legal guardian and some financial supports that may be available to you together with the eligibility requirements. It is important that you learn about all your options and consider the effect of a kinship subsidy on any benefits that you presently receive before making your final decision.

Please note that if the child was placed in your home because of abuse or neglect by the Division of Child Protection and Permanency, formerly the Division of Youth & Family Services or DYFS, other laws apply. You can call your caseworker or your caseworker’s supervisor at DCP&P to discuss whether a kinship legal guardianship arrangement is the appropriate permanent plan for the child or children. To learn more about those cases, read “Kinship Legal Guardianship: A Permanency Option in DCP&P Cases” which you can find at www.kidlaw.org or by calling ACNJ at (973) 643-3876.

What is a Kinship Legal Guardian?

As the *kinship legal guardian*, you will have almost all the same rights, responsibilities and authority relating to the child as a birth or adoptive parent. This includes:

- ▶ making decisions concerning the child's care and well-being;
- ▶ consenting to routine and emergency medical and mental health needs;
- ▶ arranging and consenting to educational plans for the child;
- ▶ applying for financial assistance and social services for which the child is eligible;
- ▶ ensuring the maintenance and protection of the child;
- ▶ responsibility for activities necessary to ensure the child's safety, permanency and well-being;
- ▶ applying for a motor vehicle operator's license; *and*
- ▶ applying for admission to college.

You may not change the child's name, adopt the child, or agree to an adoption of the child by another person without the parents' consent or a court order.

The *parents* retain:

- ▶ the right to visitation with the child as determined by the Judge;
- ▶ the authority to consent to adoption or a name change of child; *and*
- ▶ the obligation to pay child support.

The *child* keeps:

- ▶ his/her current home;
- ▶ a relationship with his/her parents, siblings and relatives; *and*
- ▶ the right to any benefits derived from his/her parents, (inheritance, eligibility for benefits, or insurance).

Kinship legal guardianship terminates when the child reaches 18 years of age or when the child is no longer continuously enrolled in high school, whichever event occurs later, or when kinship legal guardianship is otherwise terminated by a Judge.

Why become a Kinship Legal Guardian?

As the child's kinship legal guardian, you legally formalize the living arrangement that presently exists. This type of court order provides stronger legal protection for the relationship between you and the child, meaning it is much more difficult for the biological parents to regain custody. This also allows you to legally make medical and educational decisions for the child without having to consult with either parent or obtain parental consent.

What should you consider when making your decision?

Ask yourself the following questions:

- ▶ Has the child been living in your home for at least the last 12 months?
- ▶ Is this arrangement likely to continue indefinitely?
- ▶ Are you physically able to raise this child to adulthood?
- ▶ Are you emotionally committed to raising the child?
- ▶ Have you successfully dealt with the child's needs concerning day care, school, medical and dental?
- ▶ Can you support the child until she/he becomes an adult?
- ▶ Can you and the child continue to live in the same location or will you have to relocate because you are in senior housing or some other restricted housing?
- ▶ If you are married or in a permanent relationship, is your spouse or partner also willing to become the child's legal guardian? You may want your spouse or partner to become a legal guardian with you. That way, if something happened to you, your spouse or partner remains the legal guardian, so the child has stability. That individual must undergo the same background checks and participate in the assessment as a member of the household whether or not they become a legal guardian with you.

This is a long-term commitment to this child and should be carefully considered. If you decide to become a kinship legal guardian, you should feel ready to meet the responsibilities of raising this child to adulthood.

When Can You Become A Kinship Legal Guardian?

To become a kinship legal guardian, certain facts must exist which you must clearly prove to the Judge. They are:

- ▶ You must have a legal, biological or emotional relationship with the child.
- ▶ The child must have lived in your home for at least the last 12 consecutive months,
- ▶ The parents must have a **serious incapacity** that makes them unable, unavailable or unwilling to parent their child for the foreseeable future. Examples of serious incapacities include:
 - a long-term jail sentence,
 - a serious, long-term drug or alcohol problem,
 - a serious, documented mental illness, or
 - a parent has been missing for a significant period of time.
- ▶ You are committed to and have the ability to raise the child to adulthood,
- ▶ You can continue to provide a safe and permanent home for the child, *and*
- ▶ You must show that it is in the child's best interest to stay with you.

Process to Become a Kinship Legal Guardian

If you can establish the above, then you may apply to become the child's kinship legal guardian. The process is simple. Although you do not need a lawyer to become a kinship legal guardian, you can hire a lawyer. Each county's attorney referral program is listed at the end of this manual. If you decide to represent yourself in the court process, you are referred to as a "*pro se* litigant."

Whether or not you decide to hire an attorney to represent you, the first step is to call the **Kinship Navigator Program at 2-1-1**.

The Kinship Navigator Program was created to help caregivers *navigate* their way through government systems and find local support and resources. The Kinship Navigator Program has *wrap-around* services and can provide financial assistance to those who meet the eligibility criteria.

The people answering your call to 2-1-1 will ask you some questions to help connect you with the community agency in your area that will meet with you to discuss the case. The agency should contact you within a short time, but it may take 30 days or more to schedule your first appointment to begin the process, so try to be patient.

The person(s) from the agency will need information from you to be given to the Judge as part of your **Kinship Legal Guardianship Assessment**. **Family Court staff will not accept your request, called a "petition," to become a kinship legal guardian without the completed assessment** so you cannot file any paperwork in court prior to meeting with the community agency and completing their process.

The **Kinship Legal Guardianship Assessment** includes the following information:

- ▶ how the child came to live in your home,
- ▶ your relationship to the child,
- ▶ what the parents' problems are,
- ▶ the whereabouts of the parents and their wishes, if known;
- ▶ information regarding any property or assets that the child may own, *and*
- ▶ your commitment and ability to raise the child.

While the assessment is being completed, certain background checks must be completed on you and any adults living in your home. These include a criminal history check, a domestic violence central registry check, and a child abuse registry check. The regional agency will explain this process and assist you in completing these background checks as well.

There may be a fee for the Kinship Legal Guardianship Assessment. If your income is less than 150 percent of federal poverty guidelines, the Kinship Navigator Program may pay the cost of your assessment and it is likely that you will receive a subsidy of \$250 per month once you become the kinship legal guardian.

If you are a relative or already a legal guardian, and your income is over 150 percent of federal poverty guidelines you will not receive an ongoing subsidy, but the community agency can still provide you with information and assist you with the process and may be able to cover the cost of the assessment. You may be eligible for some other services which are described later in this manual. If you are a family friend, not a relative, you have to pay the cost of the assessment.

Once the Kinship Legal Guardianship Assessment is completed, the community agency provides you with a form **Petition for Kinship Legal Guardianship**, which you complete and attach to the assessment. The paperwork is then filed in the Family Part of the New Jersey Superior Court in the county where you and the child live. There is no fee for filing a Petition for Kinship Legal Guardianship.

Scheduling the Hearing

Once the petition and completed assessment have been filed and the background checks have been received, court staff will schedule the court hearing. Court staff will provide you with written notice of the date and time to come to court. A notice must also be sent to both parents, and to anyone else who had court-ordered custody or visitation with the children in the past. Attached to the hearing notice sent to the parents will be the Petition and the Kinship Legal Guardianship Assessment that you completed with the agency.

If you have any special needs, such as an interpreter, you should notify the court prior to the hearing. Court staff will prepare the file and the orders for the Judge to sign after making a decision.

Appearing in Court

Although you may have to wait outside the courtroom before your hearing starts, you should arrive on time for your hearing. If you are late or fail to attend the judge may decide your case without you. Do not eat in the courtroom and do not bring the child(ren) unless asked to do so.

Although the hearing may be somewhat informal, there are certain rules that apply. Turn off all cell phones and other electronic devices before you enter the courtroom.

At the beginning of the hearing, you will be asked to swear or affirm to tell the truth. You should wait for the Judge to tell you to speak before presenting your case. You will be given time to tell your side of the story and to ask the Judge to appoint you as the child's kinship legal guardian. If you have any concerns about the parents having contact with the child, you should explain the basis for those concerns to the Judge. If you have any questions about the process or your rights, you should ask them while you are in court.

If you have documents to support your case, you should try to have the original documents to present to the Judge and several copies because the document needs to be shared with others in the courtroom. Sometimes it is easier if you write down what you want to say in court, in case you get nervous. Making a written list of items you want to tell the Judge lessens the chances of forgetting what you want to explain.

Tell only the facts that you know to be true. If someone else has information that is relevant, you should bring that person to court as a **witness**. You cannot tell the Judge what someone else told you. That is called **hearsay** and is generally not permitted in court.

The parents will then be given an opportunity to tell their story. You need to be respectful, listen to what is said, and wait until the Judge asks for a response before speaking again. This may be difficult, but it is important for the Judge to learn all the facts and to listen to both sides.

The Judge will either decide to make you the kinship legal guardian of the child, determine that more information is needed and schedule another hearing or deny your request. The decision will be written into a **Court Order**. You should ask the court officer for a copy of the final order before you leave.

If the Judge grants your request to become the child's kinship legal guardian, a **Judgment for Kinship Legal Guardianship** will also be signed. This Judgment will clearly state the decision-making authority you have over the child and should be kept with your important papers. Copies of this Judgment can be given to the school, doctors or others needing written documentation.

Once kinship legal guardianship is established, it's very difficult to change. To modify or change the final order, **clear and convincing evidence** must be shown that the parent's incapacity no longer exists and that termination of kinship legal guardianship is in the child's best interest. This is not an easy burden to meet. An order may also be changed if a Judge finds that you failed to or are unable to provide proper care of the child, or if the arrangement is no longer in the child's best interest.

Available Supports

There are several programs through which you can obtain financial assistance for the child living in your home. Your particular financial circumstances must be part of the decision-making process. Do you have the resources to provide for this child until she/he turns 18 or finishes high school? The type of legal arrangement between you and the child helps to define the financial supports that might be available to you.

Is public assistance available to kinship legal guardians?

To determine what financial options and legal arrangements are available to you, ask for information about all existing programs. Find out the following for each program:

- ▶ the application process, including the extent of State intrusion to assess your suitability,
- ▶ your responsibility to the child.
- ▶ your obligations to the State,
- ▶ benefits, and
- ▶ eligibility requirements for benefits,

Generally speaking, the greater the level of support, the greater the level of State intrusion into your family situation. You need to ask questions regarding your particular situation. Sometimes the support impacts upon other financial assistance that you might be eligible for or already receiving. **It is important that you be fully informed before you make a final decision.**

Child-Only Grant

This financial support is paid through the Temporary Assistance to Needy Families (TANF) program, which is paid by your county's Board of Social Services and may be referred to as **welfare**. Relatives who have physical custody of the child or a legal guardian can apply for the child-only TANF grant which is a small amount of money each month, but includes Medicaid coverage for the child. Non-relatives who have custody of a child cannot apply for TANF.

While there is no income eligibility for you to meet, meaning that your income and financial circumstances are not considered in determining whether you are eligible to receive this assistance, the child's income is considered. There is no assessment of your home, others living in your home or your ability to care for the child.

You need to establish yourself as the **parent-person** by legally proving you are related to the child by blood or marriage (generally through birth certificates), or that you are the child's legal guardian. You do not have to have a custody order from the Family Court to apply for this program. "Physical custody" means the child is living in your home. However you should consider obtaining such legal authority if the child is to remain in your home for any extended period of time.

The assistance will continue until the child turns 18 as long as the child remains in your home. Payments may be extended until age 19 if the child is still in high school and expected to graduate before age 19 or until age 21 if the child is enrolled in special education.

Kinship Navigator Program

Recognizing that relative caregivers need assistance, the State created the **Kinship Navigator Program**, an information and

referral resource for kinship caregivers that helps eligible kinship caregivers to address immediate problems, and refers kinship caregivers to a local kinship agency which will work with caregivers to access additional services. For example the **Wrap Around Program** provides eligible caregivers with vouchers to pay for necessities that are not available through existing programs such as

- clothing for the child
- furniture for the child
- moving costs
- housing and legal fees
- summer camp costs
- tutoring

You should call to find out how the office can assist you. To access the **Kinship Navigator Program call 2-1-1** and they will put you in touch with the community organization in your area that provides assistance to relative caregivers. A final Kinship Legal Guardianship Judgment is not required to obtain this other assistance through the Navigator Program.

Caregivers who are under age 60 are eligible for assistance if their household income does not exceed 350 percent of the federal poverty level. Those over age 60 qualify if their household income does not exceed 500 percent of the federal poverty level. These income guidelines are adjusted each year. For more information, visit the NJ Department of Children and Families website at <http://www.nj.gov/dcf/families/support/kinship/>

Kinship Legal Guardianship Subsidy

Becoming the child's kinship legal guardian is the threshold to obtaining an additional subsidy of up to \$250 per month plus Medicaid if your household income does not exceed 150 percent of federal poverty guidelines. **Income** includes not only salary, but retirement benefits, disability, interest income, some public benefits and child support you may receive. The kinship care agency can help you apply for these funds if you are eligible.

This \$250 stipend will continue provided you meet the eligibility requirements annually and the New Jersey Legislature continues to fund the program. While it is anticipated that State funding for this

program will continue and hopefully increase, your legal obligation as the kinship legal guardian to support the child is not dependent on the State's budget allocation. Sometimes the support impacts upon other financial assistance that you might be eligible for or already receiving. **It is important that you be fully informed before you make a final decision.**

Adoptive Parent (Non-DCP&P Cases)

If you decide to adopt a relative's child, you become the parent and can only receive financial assistance from your county Board of Social Services if your income meets the eligibility requirements. You will also be subject to the work requirements and the 5-year cap on benefits under Work First New Jersey.

County Bar Association Attorney Referral Programs

Atlantic County Bar Association - (609) 345-3444

www.atcobar.org/

Bergen County Bar Association - (201) 488-0044

<http://bergenbar.org/>

Burlington County Bar Association - (609) 261-4542

<http://burlcobar.org/>

Camden County Bar Association - (856) 482-0618

<http://www.camdencountybar.org/>

Cape May County Bar Association - (609) 463-0313

<http://www.cmcba.org/>

Cumberland County Bar Association - (856) 696-5550

<http://www.ccnjbar.org/>

Essex County Bar Association - (973) 622-6204

<http://www.essexbar.com/>

Gloucester County Bar Association - (856) 848-4589

<http://www.gcbanj.org/>

Hudson County Bar Association - (201) 798-2727

<http://www.hcbalaw.com/>

Hunterdon County Bar Association - (908) 236-6109

<http://www.huntcolaw.org/>

Mercer County Bar Association - (609) 585-6200

<http://www.mercerbar.com/>

Middlesex County Bar Association - (732) 828-0053

<http://www.mcbalaw.com/>

Monmouth County Bar Association - (732) 431-5544

<http://www.monmouthbarassociation.com/>

Morris and Sussex County Bar Association -
(973) 267-5882 (between 9AM and 1PM)

<http://www.morriscountybar.com/>

Ocean County Bar Association - (732) 240-3666

<http://www.oceancountybar.org/>

Passaic County Bar Association - (973) 345-4585

<http://www.passaicbar.org/>

Salem County Bar Association - (856) 935-5629

<http://www.salemcountybar.org/>

Somerset County Bar Association - (908) 685-2323

<http://www.somersetbar.com/>

Union County Bar Association - (908) 354-8222

<http://www.uclaw.com/>

Warren County Bar Association - (800) 285-0554

<http://www.warrencountybar.org/>

Please Note:

This short pamphlet is intended as a reference guide for people who are thinking about applying to become a child's kinship legal guardian. It describes the process and is not intended to offer advice or legal guidance.

The **Kidlaw Resource Center** offers information, assistance, training and legal publications about the rights of children.

The center provides free fact sheets, manuals and other information. Staff is available to provide presentations and training on children's legal rights to community groups and professionals. Visit www.kidlaw.org for more information and other written materials on children's legal rights.

Advocates for Children of New Jersey (ACNJ) is a non-profit, non-partisan organization. ACNJ is the trusted, independent voice putting children's needs first for more than 35 years. We educate the public and policymakers and equip caregivers with the information they need to be their child's strongest ally. Our work results in better laws and policies, more effective funding and stronger services for children and families. This means more children are given the chance to grow up safe, healthy and educated.

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