

Kinship Guardianship Made Easy

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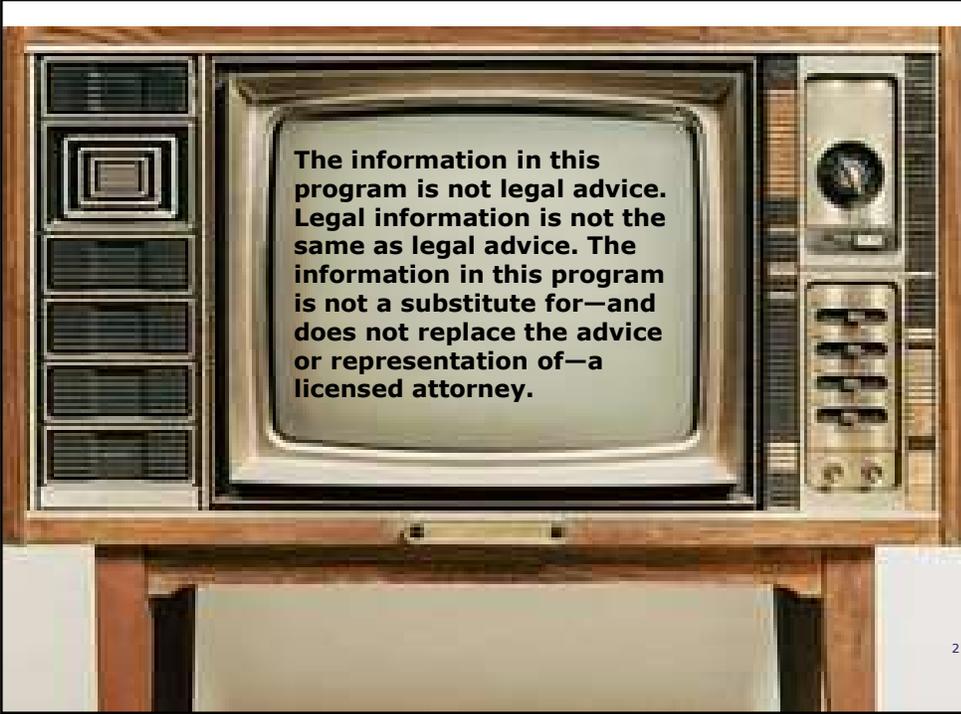


Eighth Judicial District Court
Counties of Colfax, Taos & Union



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Taos, New Mexico 87571
taodhlh@nmcourts.gov**

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A vintage television set with a wooden cabinet. The screen displays a disclaimer. The television is mounted on a wooden stand.

The information in this program is not legal advice. Legal information is not the same as legal advice. The information in this program is not a substitute for—and does not replace the advice or representation of—a licensed attorney.

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Kinship Guardianship (KG)

Kinship Guardianship Act

§40-10B-1 through 15

related statutes

The Indian Family Protection Act
[§32A-28-1 to 32A-28-42 NMSA
1978]

§40-4-11.1 NMSA 1978 –
Determination of award of child
support

§45-1-401 NMSA 1978 – Notice;
method and time of giving

KG Rules: ARTICLE 15 - Kinship
Guardianship Proceedings

1-150. Scope; forms.

1-151. Petition; parties; intervention; joinder
and sealing.

1-152. Mandatory and discretionary
appointment of guardian ad litem; powers and
duties of the guardian ad litem; payment.

1-153. Advisement of rights.

1-154. Kinship guardianship hearing; elements
of proof; judgment.

1-155. Appointment of guardian.

1-156. Successor guardian.

Rules of Civil Procedure for District Courts

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Taos Pueblo from Worldatlas.com

§40-10B-3 Contains Definitions. Some important definitions to understand are:

"caregiver" means an adult, who is not a parent of a child, with whom a child resides and who provides that child with the care, maintenance and supervision consistent with the duties and responsibilities of a parent of the child

Indian is defined as "a person who is a member of an Indian tribe; or *eligible for membership in an Indian tribe.*" It also states, " 'Indian child' means an Indian person, or a person *whom there is reason to know is an Indian person*, under eighteen years of age..."

They also differentiate between:

"kinship" means the relationship that exists between a child and a relative of the child, a godparent, a member of the child's tribe or clan or **an adult with whom the child has a significant bond.**

and

"relative" means an individual related to a child as a spouse, parent, stepparent, brother, sister, stepbrother, stepsister, half-brother, half-sister, uncle, aunt, niece, nephew, first cousin or any person denoted by the prefix "grand" or "great", or the spouse or former spouse of the persons specified.

§40-10B-3



Questions to Ask for Kinship Guardianship Petition:

- *Is the child in CYFD custody? Was the child placed with Petitioners as part of a safety plan?*
- *Does the child have Native American heritage? If yes, which tribe or tribes/pueblos?*
- *Who has existing parental rights?*
- *Is the child 14 or older?*
- *Do the proposed guardian or guardians need immediate appointment? Why?*
- *What is the relationship between the proposed guardians and the child?*
- *How long has the child been with the proposed guardians?*

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Where to File?

The district court of the county of the child's legal residence

or the county where the child resides, if different from the county of legal residence

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§40-10B-4

Who can file?

- ▶ a kinship caregiver;
- ▶ a caregiver, who has reached the age of twenty-one, with whom no kinship with the child exists who has been nominated to be guardian of the child by the child, **and the child has reached the age of fourteen;**
- ▶ a caregiver designated formally or informally by a parent in writing; or
- ▶ a caregiver with whom the department (CYFD) has placed the child pursuant to the Children's Code.

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§40-10B-5

What to file?

The caption of your Petition should vary:

If CYFD **is a party** to the case, all documents, including the Letters of Guardianship must use an abbreviated caption, such as:

*State of New Mexico
County of Fun
21st Judicial District*

District Cause Number D-2121-DM-2026-00001

In the matter of Y.A.B., a minor

If CYFD **is a NOT party** to the case, all documents, including the Letters of Guardianship may use a regular Kinship Guardianship caption, such as:

*State of New Mexico
County of Fun
21st Judicial District*

District Cause Number D-2121-DM-2026-00001

*Goldie Locks, Petitioner
In the matter of Y.A.B., a minor, and concerning
Georgie Porgie and Little Red Locks, Respondents*

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Please Note That In Both Instances, Only The Child's Initials Are Listed.

Rule 1-155

What to file?

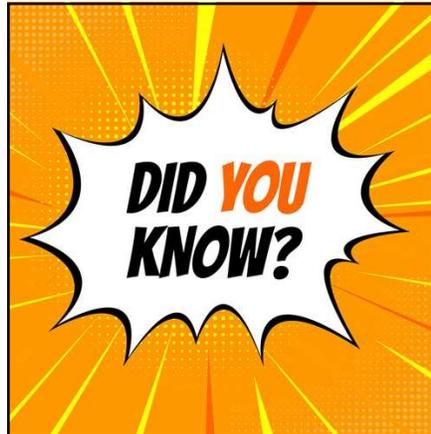
Your Petition should contain:

- ▶ the date and place of birth of the child;
- ▶ the legal residence of the child and the place where the child resides, if different from the legal residence;
- ▶ the name and address of the petitioner;
- ▶ the kinship, if any, between the petitioner and the child;
- ▶ the names and addresses of the parents of the child;
- ▶ the names and addresses of persons having legal custody of the child;
- ▶ the existence of any matters pending involving the custody of the child;
- ▶ a statement that the petitioner agrees to accept the duties and responsibilities of guardianship;
- ▶ **the existence of any CYFD matters pending and, if so, a statement if the department consents to appointment;**
- ▶ whether the child is an Indian child or there may be reason to believe the child is an Indian child, and, if so: a) the Indian child's tribe; b) the tribal affiliations of the Indian child's parents; and c) active efforts made to comply with the notice requirements pursuant to the Indian Family Protection Act; and
- ▶ other facts in support of the guardianship sought.

DON'T FORGET TO SUBMIT AN INFORMATION SHEET AND HAVE A SUMMONS ISSUED!

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§40-10B-5



Your case can be dismissed if you fail to submit a Kinship Guardianship Information Sheet?

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Who Needs to Know?

Service must be made on:

- ▶ The parents of each child
- ▶ The person who currently has physical custody of the child
- ▶ The child, if the child is 14 or older
- ▶ CYFD if there is a pending CYFD case
- ▶ Any tribe or tribes each child may be enrolled in or may be eligible to be enrolled in



Parents in
prison
must also
be served

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Fathers... or 2nd Mothers... or 2nd Fathers...

Petitioners must include in their petitions ALL persons who may have a parental liberty interest. Even though the statutes still contain father/mother specific language, case law is clear that parental interests are not related to the sex of the parties.

Under New Mexico statute there are four types of Fathers:

"presumed father" means a man who, by operation of law pursuant to Section 2-204 of the New Mexico Uniform Parentage Act, is recognized as the father of a child until that status is rebutted or confirmed in a judicial proceeding;

"acknowledged father" means a man who has established a father-child relationship pursuant to Article 3 of the New Mexico Uniform Parentage Act;

"adjudicated father" means a man who has been adjudicated by a court of competent jurisdiction to be the father of a child; or

"alleged father" means a man who alleges himself to be, or is alleged to be, the genetic father or a possible genetic father of a child, but whose paternity has not been determined.

All persons who fall, or may fall, under these categories, should be included in the petition and served with the documents filed in a Kinship Guardianship matter.

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§40-11A-102



Rights of 14-Year-Olds

Minors who are 14 or older can sign a form nominating their guardian.



§40-10B-11

“The court **shall** appoint a person nominated by a child who has reached the age of fourteen unless the Court finds the nomination contrary to the best interests of the child”

“The court **shall not** appoint a person as guardian if a child who has reached the age of fourteen files a written objection in the proceeding before the person accepts appointment as guardian unless the court makes a specific finding that it is in the best interest of the child” ¹⁵

Things Get a Bit Complicated if CYFD is Involved

CYFD is supposed to designate and provide contact information for their agent who will accept service of KG petitions.

If CYFD has a guardianship assistance agreement with the Petitioners, CYFD must be served.

CYFD’s response will be filed under seal, along with any voluntary placement agreement, revocation of such an agreement, and notice regarding any abuse/neglect cases with the same parties and/or child

When CYFD is a party:

The case may be sealed which will mean you may not be able to file using File & Serve.

If the petitioners are self-represented and have an unrevoked guardianship assistance agreement, CYFD has several items they are mandated to help with under Rule 1-151.

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Wait, Now we Need a Guardian ad Litem?

The court **may** appoint a guardian ad litem for the child upon the motion of a party or solely in the court's discretion.

The court **shall** appoint a guardian ad litem if a parent of the child is participating in the proceeding and objects to the appointment requested, or when a parent petitions for revocation.

The GAL shall:

make a diligent investigation, including visiting the child in the home, interviewing the person proposed as guardian and interviewing the parents of the child

Recommend an appropriate transition plan in the event the guardianship is revoked

Report to the court concerning the best interests of the child and the child's position on the requested relief

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§40-10B-9 & 10

A Little Bit About ICWA & IFPA

The definition of child custody proceeding in ICWA specifically mentions kinship guardianship cases.

The statute states that active efforts must be made to maintain or reunite an Indian child with Indian family.

Notice to Indian tribes must be made.

If the tribe petitions to transfer the proceeding to their court, it must be done.

If each parent is a member of a different tribe or Pueblo, each tribe or Pueblo must be served.

Each Tribe or Pueblo may have a different way they want to be served the documents and/or informed of any pending hearings.

IFPA is the INDIAN FAMILY PROTECTION ACT which works with ICWA to preserve tribal rights regarding Indian children.

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§32A-28-1 through 42



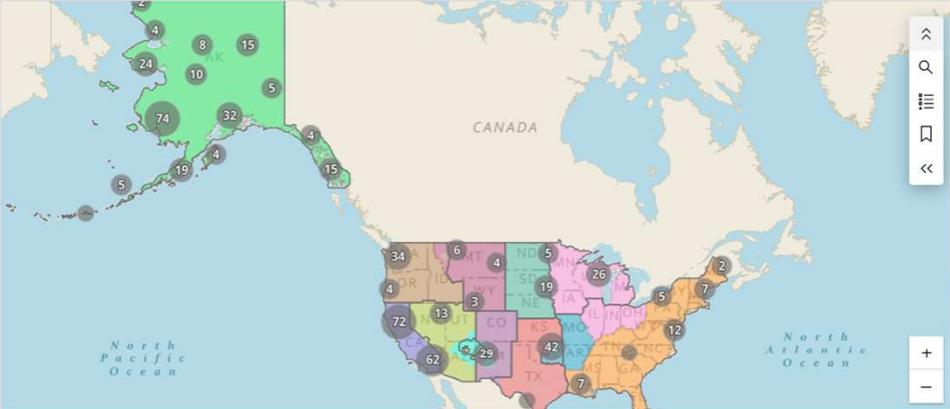
NEVER FEAR!

WE HAVE ANSWERS

 Bureau of Indian Affairs

ICWA Designated Agents Listing

<https://biamaps.geoplatform.gov/ICWA-Agents-Directory/>



Bureau of Indian Affairs, National Park Service, Natural Earth, National Forest Service, US Census | Branch ... Powered by Esri

ICWA Map More Information Disclaimer

ICWA Agents
584
In Frame

The ICWA Designated Agent Listing will be updated quarterly on the following dates each calendar year: January 15th, April 15th, July 15th, and October 15th.

Points on map show Tribal headquarter locations.
Reset options by clicking on blue circle in lower right

Select by state here Select by Tribe here Select by Tribal Affiliation ...

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The Court SHALL set a hearing on the Petition no less than 30 days and no more than 90 days from the date of filing of the Petition...

UNLESS
A motion for temporary guardianship is filed, which shall be heard within 20 days of the date of the motion...

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"We had a scheduling conflict, so tomorrow's meeting has been moved to yesterday."

BUT
If the motion and order are entered *ex parte*, then the Court SHALL schedule a hearing within 10 (business) days if a party objects to the entry of the *ex parte* order.

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§40-10B-6 & 7

A Guardian May Be Appointed If No Guardian Exists And...

Consent

The living parents have consented in writing.

OR

Termination

The parents' rights have been terminated or suspended and not re-established

OR

Residence

Child has resided with the petitioner without a parent for 90 days immediately preceding the Petition.

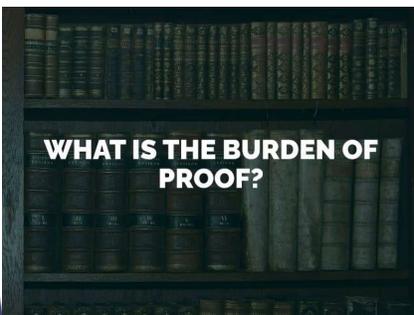
You can show it is in the best interests of the child.

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§40-10B-8

HOWEVER...

A Kinship Guardian may also be appointed if the Court finds that extraordinary circumstances exist and that it will serve the best interests of the child.



In all KG cases Petitioners must prove by CLEAR AND CONVINCING evidence that their appointment is in the child's best interests.

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Rights & Duties of Guardians

Parent

A guardian appointed under the KGA has the legal rights & duties of a parent, EXCEPT the right to consent to an adoption.

Visitation

A guardian has the right to make all decisions regarding visitation between the child and a parent, unless the court ordered otherwise.

Proof

A certified copy of the order appointing the guardian is satisfactory proof of the authority of the guardian to decide for the child.

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§40-10B-13

Support & Visitation

The Court may order the parents to pay reasonable costs of support and maintenance of the child.

The Court may order visitation between parent and child to maintain or rebuild their relationship.

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§40-10B-8

Not quite sure what to do right now...

"I realize I'm sending you mixed messages. But I'm doing so on advice of my attorney."

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A Little Contradiction

§40-10B-13C:
...letters of guardianship need not be issued.

Rule 1-155:
When the court enters and order appointing a guardian, it shall issue letters of guardianship...

Guardianship... At Last

The Guardianship Order suspends the parental rights of the parents.

The Guardianship lasts until the child is 18, or until new order by the Court.

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Revocation Is Still on the Table

Who can ask for revocation?

- Anyone over the age of 18;
- The parents; and
- A minor who is 14 or older



A person requesting revocation shall attach a transition plan to their motion. The plan is to assist with integration or reintegration into a parent's home or a new home.

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§40-10B-12



The burden of proof for revocation is PREPONDERANCE of the evidence that it will be in the minor's best interest. §40-10B-12

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In a proceeding in which a parent of the child has petitioned for the revocation of a guardianship established pursuant to the Kinship Guardianship Act and the guardian objects to the revocation, the court shall appoint a guardian ad litem.

GUESS
WHO'S
BACK

If the court finds that revocation is in the best interests of the child, it shall grant the motion and adopt a transition plan proposed by a part or the guardian ad litem.



Revocation – Transition Plan

A transition plan should include, but not be limited to, information about the child's health, doctors, dentists, special medical needs, school, extra-curricular activities, religious worship, all visitation rights of the parties and other persons and any other matters relevant to the best interests of the child and how the needs of the child will be met after the termination of the kinship guardianship.



The Transition Plan should state what shared activities and contact the child will have with the guardian through the transition period and after the transition is complete. The child(ren)'s transition should occur over time moving from shorter meetings and visits to more frequent and longer visits with the reunifying parent assuming more and more parenting responsibilities and activities.



Revocation – Transition Plan

- Dates, times and location of visits
- Visit frequency
- Visit length
- Who will be present at visits
- Visit conditions (e.g. specific behaviors that must or must not occur)
- Transportation arrangements
- Arrangements for monitoring, visit coaching, or supervision, if any
- Plan for handling of emergency situations
- Procedures for handling problems with visitation
- Identifying information regarding the family members and others relevant to the visiting plan
- Benchmarks or timeframes for increased visitation including when first overnights will occur
- Any days and times for telephone contact to occur.

Sample Steps in a Reunification Process

- Stage 1: Get support. Each parent and child should have a way to get support during the process. This could include a counselor, mediator or a trusted friend or family member.
- Stage 2: Initial communication. Reuniting parent writes letter to child. Child and his/her other parent or support person read and discuss the letter together.
- Stage 3: Initial parenting time. Brief encounters between the child and parent in a safe, supportive setting, like a counselor's office, the guardian's parent's home or a public place such as a park with supervision by a familiar person.
- Stage 4: Introduction of child to the reuniting parent's home environment if appropriate.
- Stage 5: Regular parenting time. Once a week visits graduating to overnights³⁵



ANY
Questions?