

# GUARDIANSHIP OF A CHILD



## What is a Guardianship?

Guardianship is a form of custody that is sought by a person who is taking care of the child but is not a parent of the child. It may be a relative or close family friend. A guardianship can only be granted by a court order. The person seeking a guardianship over a child is asking the court to be the “guardian” of the child. A guardianship differs from custody in two main ways: (1) after a court appoints a guardian, the guardianship case remains open so the court can monitor the child’s well-being, and (2) the guardian is required to file with the court an annual well-being report giving the court details on how the child is doing. The person who is appointed a guardian will be entitled to custody of the child, unless this would be inconsistent with a court order.[1]

Once appointed, the guardian has the legal authority to make decisions that are in the child’s best interest. For instance, the guardian can enroll the child in school, seek medical help for the child, and make other decisions necessary for the child’s best interest. Generally, unless limited by a court order, a guardian of a minor has the powers a parent otherwise would have regarding the minor’s support, care, education, health, safety, and welfare. An extensive list of powers of a guardian is provided in Miss. Code. Ann. § 93-20-209.

A guardian also holds a fiduciary relationship with the child, meaning that the person serving in that role must act in an especially trustworthy manner regarding his or her legal and ethical responsibilities for the child. A detailed list of the duties of a guardian are provided in Miss. Code. Ann. § 93-20-208.

You are not required to hire an attorney to file pleadings to create a guardianship, but it is strongly recommended because there are certain steps to the court process that might be confusing to a person who does not practice law. In addition, once appointed guardian, you must retain an attorney unless the court finds that this would impose an undue burden on the child’s estate.[2]

The information above is meant to give you an introduction to what a guardianship is and what being a guardian means. It does not cover all issues that pertain to a guardianship. To understand better the role of a guardian, please refer to the Mississippi Code, Title 93, Chapter 20, Sections 201 to 210, which can be found at this link: <https://www.msatjc.org/preparing-for-court>.

1. See Miss. Code. Ann. §§ 93-20-206(3)-(4) and 93-20-209(b). You can get access to the Mississippi Code Annotated at this link: <https://www.msatjc.org/preparing-for-court>.
2. See Miss. Code. Ann. §§ 93-20-108(2); 93-20-201(3); and Unif. Chan. Ct. R. 6.01.





# HOW DO I GET GUARDIANSHIP?

To ask a court for guardianship of a child, you must first file a Petition for Guardianship of a Minor Child (“Petition”)[1] at the Chancery Court Clerk’s office in the county in which the child resides or is present at the time the proceeding commences.[2] Your Petition must include a basis for the guardianship, so you must state under oath that a guardianship is in the child’s best interest and that one of the following three situations exist:

- (1) each parent of the child consents to the guardianship;
- (2) all parental rights of the parents have been terminated; OR
- (3) there is clear and convincing evidence that no parent of the child is willing or able to take care of the child, or exercise the powers the court has been asked to grant the guardian.[3]

Additional information must be provided to the court, including the following:

- (1) You must provide an affidavit under the Uniform Child Custody Jurisdiction and Enforcement Act (Title 93, Chapter 27, Mississippi Code of 1972) and must also include:
  - (a) The name and address of any attorney for the parents of the minor;
  - (b) The reason guardianship is sought and would be in the best interest of the minor;
  - (c) Your name and address and the reason you should be selected; and
  - (d) If the minor has property other than personal effects, a general statement of the minor’s property with an estimate of its value.[4]

And,

- (2) You must disclose to the court whether you have been:
  - (a) A debtor in a bankruptcy, insolvency, or receivership proceeding; or
  - (b) Have been convicted of:
    - (i) A felony;
    - (ii) A crime involving dishonesty, neglect, violence, or use of physical force; or
    - (iii) Other crime relevant to the functions you would assume as guardian.[5]

After you have filed the Petition, you will then need to schedule a hearing with the Court Administrator and have a Rule 81 Summons issued by the Chancery Court Clerk for each of the following people:

- (1) The child, but only if the child will be 14 years of age or older on the day of the hearing;
- (2) Each parent of the child who can be found with reasonable diligence; if the parents are deceased, then the adult nearest in kinship to the child who can be found with reasonable diligence; AND
- (3) Each person who had the care or custody of the child for at least 60 days during the 6 months before you filed the Petition.

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1. Fillable forms for guardianship of a minor child can be found at <https://mjc.olemiss.edu/gap-act/>. The Petition is listed as “Petition for Appointment Minor pro se.” Since the form includes required language for a guardianship, make sure you add all of the details needed in the blanks.

2. Miss. Code. Ann. § 93-20-106(1)(a). If there is a case already open in another county concerning the custody of the child, then the Petition for Guardianship must be filed in that county. A link to the Mississippi Code Annotated can be found here: <https://www.msatjc.org/preparing-for-court>.

[3] Miss. Code. Ann. § 93-20-201(2)(c).

[4] Miss. Code. Ann. § 93-20-202(2).

[5] Miss. Code. Ann. § 93-20-117.

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You must then have each person served with the Summons and a copy of the Petition.<sup>[1]</sup> However, you, as the Petitioner, cannot serve anyone. It is recommended that you hire the sheriff's department or a process server to serve them.

You must attend the hearing. The child will also be required to attend the hearing, but the court may excuse the child's attendance. In order to excuse the child's attendance, the court will hold a hearing to consider whether clear and convincing evidence has been supplied that:

- (1) The minor consistently and repeatedly refused to attend the hearing after being fully informed of the right to attend; if the child is 14 years of age or older, he or she must also be advised of the potential consequences of not attending.
- (2) There is no practical way for the child to attend;
- (3) The child lacks the ability or maturity to participate meaningfully in the hearing; or
- (4) Attendance would be harmful to the minor.<sup>[2]</sup>

You will likely be required to testify at the hearing as to why you are seeking the guardianship and your ability to care for the child. You might also be asked to testify about the facts in your Petition. The court might also hear testimony from the child. If you are representing yourself, you will need to be prepared to conduct your case and demonstrate the necessary items with admissible proof. There are resources on this website that can help you: <https://www.msatjc.org/preparing-for-court>.

At the end of the hearing, the court will advise you whether or not the guardianship will be granted. If you are representing yourself, you should be prepared to draft and present an order to the court based on the court's decision. Alternatively, the court may take the matter under advisement and issue its own written decision at a later time.

The information above is meant to give you an overview of how to request a guardianship of a child. It does not cover all steps that pertain to a guardianship. To understand better the guardianship procedure, please refer to the Mississippi Code, Title 93, Chapter 20, Sections 201 to 210, which can be found at this link: <https://www.msatjc.org/preparing-for-court>.

If you would like to hire a lawyer or talk to a legal aid organization you can find directories online here: <https://www.msatjc.org/hire-a-lawyer>

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1. People under categories 2 and 3 can sign a waiver of service, but the child can never waive service.  
2. Miss. Code. Ann. § 93-20-205(1)-(2).



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