

KINSHIP GUARDIANSHIP

MOTION TO REVOKE KINSHIP GUARDIANSHIP

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(Revised 06/2023)

KINSHIP GUARDIANSHIP AND THE NEW MEXICO KINSHIP GUARDIANSHIP ACT

This information guide is general in nature and is not designed to give legal advice. The court does not guarantee the legal sufficiency of this information guide or that it meets your specific needs. Because the law is constantly changing, this guide may not be current. Therefore, you may wish to seek the advice and assistance of an attorney.

For basic information about representing yourself in District Court, see also the Appendix of this publication.

In New Mexico, there are several laws that affect guardianship of a child. This section is about guardianship under the New Mexico Kinship Guardianship Act. You will find, this Act at Sections 40-10B-1 through 40-10B-21 NMSA 1978. Read more about where to find New Mexico's laws and rules in the Representing Yourself—Basic Information section of this guide.

Since there are other laws that govern the care of a child, you may wish to talk to a lawyer to make sure this is the right procedure for your situation.

WHAT IS A KINSHIP GUARDIANSHIP?

When a parent has left a child in the care of an adult who is not the child's parent, that adult can ask the court to create a legal relationship between them and the child. This is called a kinship guardianship.

A kinship guardianship suspends most of the rights and duties of a child's parents and transfers those rights and duties to another adult, who *is called* the "legal guardian." There are some things *the* legal guardian cannot do, like agree to the child's adoption or take over any parental rights or duties that a court orders the parents to keep. Read more at Section 40-10B-13 NMSA 1978.

WHO CAN FILE A KINSHIP GUARDIANSHIP CASE?

An adult can file a kinship guardianship case if they are one of these:

- The child's kinship caregiver - an adult who is not the child's parent and the child has been living with them for at least 90 days immediately before filing the kinship guardianship case. Read more at Sections 40-10B-3, 40-10B-5 and 40-10B-8 NMSA 1978.
- A caregiver who is at least 21 years old, and the child has been living with them for 90 days immediately before filing the kinship guardianship case **and** the child has asked for them to be their legal guardian. This only applies if the child is at least 14 years old. Read more at Section 40-10B-5 NMSA 1978.
- A caregiver that the child's parent has chosen **in writing**. If both parents consent, the child does not have to live with the caregiver for 90 days immediately before filing the kinship guardianship case. Read more at Section 40-10B-5 NMSA 1978.

HOW DO I BECOME A KINSHIP GUARDIAN?

To become a child's legal guardian, you must file a court case for kinship guardianship in the district court where the child lives or where the parent(s) live. Kinship guardianship forms are available on the New Mexico Supreme Court's website at <https://nmsupremecourt.nmcourts.gov> and on many district courts' websites. You can also check with your local district court to see if they offer a packet of forms for kinship guardianship.

FORMS USED IN A KINSHIP GUARDIANSHIP COURT CASE

If you are starting a court case for kinship guardianship, use this form:

- **Form 4A-501 NMRA – Petition to appoint kinship guardian(s)**

If the parents agree to the kinship guardianship, each must fill out the following form:

- **Form 4A-505 NMRA – Parental consent to appointment of kinship guardian and waiver of service of process**

If the parents do not agree to the kinship guardianship, fill out one of these for **each** parent:

- **Form 4-206 - Summons**
- **Form 4A-511 - Order appointing kinship guardian(s)**

Optional – If the child is 14 years old or older, they can fill out this form:

- **Form 4A-506 - Nomination of kinship guardian(s)**

Courts also require a form that asks the judge to schedule a court date (called a "hearing"). You will have to provide a request for hearing form and notice of hearing form. Ask your local district court for more information.

DO-IT-YOURSELF STEPS:

Step 1: Fill out the forms - choose the forms that fit your situation.

Step 2: File the forms - take the original and 3 copies of all documents to the clerk's office for filing. Check with your local district court for the filing fee. You can also ask the court clerk about having the filing fee, or part of the fee waived. The court keeps the originals, stamps the copies and gives them back to you. One copy is for you and one copy is for each parent.

Step 3: Serve your court papers - each parent must receive a copy of your court papers. This is called "serving" your court papers. For more information about serving kinship guardianship papers, read Sections 40-10B-6 and 45-1-401 NMSA 1978. Even if you do not know where to find one or both parents, you still have to serve them your court papers. You may have to ask the court for permission to publish a notice in the newspaper. Please read. Rule 1-004 NMRA carefully for more details.

One thing is very important - **you** do not serve these court papers on each parent; your job is to arrange for someone else to do this for you.

Step 4: Go to your hearing - you will get a notice with your court date in the mail. Bring any documents that support your case. If you have any witnesses, make sure they come.

HOW LONG BEFORE I GET A HEARING?

You should get a hearing on the petition between 30 and 90 days from when you filed the guardianship. If you also request a temporary guardianship, you should have a hearing on that request within 20 days of filing it.

I THINK THIS IS AN EMERGENCY - CAN I GET GUARDIANSHIP RIGHT AWAY?

Under certain circumstances you may be able to file for guardianship on an emergency basis. Once you file for guardianship then you can file for temporary guardianship. The judge may grant the motion for temporary guardianship with or without a hearing. Use all the forms listed in "How Do I Become a Kinship Guardian" plus:

Form 4A-509 NMRA - Motion to appoint temporary kinship guardian(s)

Form 4A-510 NMRA - Order appointing temporary kinship guardian(s)

I'VE BEEN GIVEN A PETITION FOR KINSHIP GUARDIANSHIP— HOW DO I TALK TO THE JUDGE ABOUT IT?

You can't talk to the judge until you go to the court hearing but you can file a Response to the Petition within 30 days after service of the Petition. Read more at **Rule 1-012 NMRA**. Currently, there is no New Mexico Supreme Court approved form available for a response to a kinship guardianship petition. You can answer each paragraph in the petition. Check with your local district court to see if they offer a form.

If you do not file a response within the 30 days, a "Judgment by Default" maybe entered against you. Read more at **Rule 1-055 NMRA**.

CAN I CANCEL THE KINSHIP GUARDIANSHIP?

Canceling the guardianship is called "revoking" the guardianship. You will have to prove to the judge that circumstances have changed and that revoking the guardianship is in the best interests of the child. If you believe that it is time to revoke the guardianship, use this form:

Form 4A-512 NMRA – Motion to revoke kinship guardianship

Courts may also require a form to ask for a court date (called a "request for hearing"). If the case with the court has been closed, you will also need to submit a Certificate of Re-Open Status Form at the time you file the **Form 4A-512 NMRA** - Motion to revoke kinship guardianship and a **Form 4A-517 NMRA** - Kinship guardianship information sheet. Check with your local district court.

You must serve your motion on the guardians and other parent. One thing is very important you do not serve these court papers; your job is to arrange for someone else to do this for you.

4A-517. Kinship guardianship information sheet.

KINSHIP GUARDIANSHIP INFORMATION SHEET.
NOTE TO CLERK: DO NOT FILE THE INFORMATION SHEET
Type or print responses. Use only for kinship guardianship cases.

1. Petitioner's attorney information. *(Complete only if Petitioner has an attorney.)*

Petitioner's name: _____
Attorney's name: _____
Attorney's address: _____
City: _____
State: _____
Zip code: _____
Telephone: _____
Email address: _____

2. Information regarding Petitioner(s) and Respondent(s). There may be multiple petitioners and respondents. Fill out the information for each petitioner and respondent. *(Do not use an attorney's mailing address. Use a separate sheet if necessary.)*

Petitioner 1

Name: _____
(Last name, first, middle)
Other names *(e.g., maiden name)*: _____
Address: _____
City: _____
State: _____
Zip code: _____
Email address: _____
Date of birth: _____
Social Security number: _____

Petitioner 2 (if applicable)

Name: _____
(Last name, first, middle)
Other names *(e.g., maiden name)*: _____
Address: _____
City: _____
State: _____
Zip code: _____
Email address: _____
Date of birth: _____
Social Security number: _____

Respondent 1

Name: _____
(Last name, first, middle)
Other names *(e.g., maiden name)*: _____
Address: _____
City: _____
State: _____
Zip code: _____
Email address: _____
Date of birth: _____
Social Security number: _____

Respondent 2

Name: _____
(Last name, first, middle)
Other names *(e.g., maiden name)*: _____
Address: _____
City: _____
State: _____
Zip code: _____
Email address: _____
Date of birth: _____
Social Security number: _____

Respondent 3 (if applicable)

Name: _____

(Last name, first, middle)

Other names (e.g., maiden name): _____

Address: _____

City: _____

State: _____

Zip code: _____

Email address: _____

Date of birth: _____

Social Security number: _____

Respondent 4 (if applicable)

Name: _____

(Last name, first, middle)

Other names (e.g., maiden name): _____

Address: _____

City: _____

State: _____

Zip code: _____

Email address: _____

Date of birth: _____

Social Security number: _____

3. **Minor children.** *(Provide the date of birth and social security number for each minor child. Use a separate sheet if necessary.)*

Name: _____

(Last name, first, middle)

Date of birth: _____

Social Security number: _____

Name: _____

(Last name, first, middle)

Date of birth: _____

Social Security number: _____

Name: _____

(Last name, first, middle)

Date of birth: _____

Social Security number: _____

Name: _____

(Last name, first, middle)

Date of birth: _____

Social Security number: _____

Name: _____

(Last name, first, middle)

Date of birth: _____

Social Security number: _____

Name: _____

(Last name, first, middle)

Date of birth: _____

Social Security number: _____

[Adopted by Supreme Court Order No. 22-8300-020, effective for all pleadings and papers filed on or after December 31, 2022.]

**STATE OF NEW MEXICO
COUNTY OF DOÑA ANA
THIRD JUDICIAL DISTRICT COURT**

☐ STATE OF NEW MEXICO/HSD, (☒ if Petitioner or Intervenor)

_____, Petitioner,

v.

Case No. D-307-DM-_____

Judge: _____

_____, Respondent.

CERTIFICATE OF RE-OPEN STATUS

Pursuant to Rule 1-099 NMRA, I certify that:

NO FILING FEE IS REQUIRED BECAUSE:

- ☐ Pending or filed within 90 days of the disposition.
- ☐ Requesting action which may be performed by the clerk of the court or seeking to correct a mistake in the Judgment or record filed; or a motion accompanied by a signed stipulated order disposing of issue(s).
- ☐ I am seeking only enforcement of a child support order.

FILING FEE OF \$137.00 IS DUE BECAUSE:

- ☐ I am seeking post decree relief in addition to or other than enforcement of a prior child support order.
- ☐ I am requesting judicial action 90 days or more after final disposition of the case and not within the categories described in Rule 1-099 NMRA.

Respectfully submitted,

(SIGN YOUR NAME)

(PRINT YOUR NAME)

(YOUR MAILING ADDRESS)

(CITY/STATE/ZIP)

(YOUR TELEPHONE)

4A-512. Motion to revoke kinship guardianship.

STATE OF NEW MEXICO
COUNTY OF DONA ANA
THIRD JUDICIAL DISTRICT

_____, Petitioner(s)

No. D-307-DM-_____

IN THE MATTER OF THE KINSHIP GUARDIANSHIP OF

_____,¹ (a) Child(ren) (*use initials only*), and concerning

_____, Respondent(s).

MOTION TO REVOKE KINSHIP GUARDIANSHIP

COME(S) NOW [Respondent] [Kinship Guardian] [Other] (*circle one*), _____
(*name*) pro se, and respectfully requests that this court revoke the
kinship guardianship of _____ (*name(s) of child(ren)*). As
grounds for this motion, movant states the following:

1. The court has jurisdiction under the Kinship Guardianship Act, Sections 40-10B-1 to -15 NMSA 1978.

2. The name, year of birth, and age of the minor child(ren) are as follows:

Child's name	Birth year	Age
_____	_____	_____
_____	_____	_____
_____	_____	_____

3. Kinship guardian(s), _____ (*name(s) of kinship guardian(s)*), were appointed on _____ (*date*).

4. The circumstances have changed as follows (*describe what has changed and why the guardianship should be revoked*): _____

5. A transition plan is attached to this motion. A transition plan must be attached to this motion or the judge may not grant this motion.²

6. It is in the child(ren)'s best interests to revoke the guardianship.

7. ☐ I have contacted the other parties and they
 ☐ agree with this motion;
 ☐ do not agree with this motion; or
 ☐ did not respond after I asked them if they agreed or disagreed with this motion;
OR
 ☐ I have not contacted the other parties.

WHEREFORE, Movant(s) respectfully request(s) that the court, after a hearing, grant the Motion to Revoke Kinship Guardianship.

Respectfully submitted by:

Signature

Printed name

Address

Phone number and email address

VERIFICATION OF SERVICE

I affirm under penalty of perjury under the laws of the State of New Mexico that on _____ (date), I (check the applicable item below and fill in all information)

- ☐ mailed a copy of this motion by United States mail, postage prepaid, to:

Name: _____

Mailing address: _____

City, state, and zip code: _____;

- ☐ delivered a copy of this motion to _____ (the other party or the other party's attorney); or

- ☐ emailed a copy of this motion to _____ (the other party or the other party's attorney) using the following email address: _____. The time and date of the email was _____ (a.m) (p.m) on _____ (date).

Signature of person who made service

Date of signature

USE NOTES

1. Insert the initials of each child listed in the Petition to Appoint Kinship Guardian(s).
2. Describe the plan for moving the child(ren) from the kinship guardians to the parent. Include information about how quickly the move will occur and how the child(ren)'s needs will be met like school, doctor(s), activities, and visits with the kinship guardians.

[Provisionally approved, effective August 15, 2003 until August 31, 2004; approved, effective January 20, 2005; 4-991 recompiled and amended as 4A-512 by Supreme Court Order No. 16-8300-020, effective for all pleadings and papers filed on or after December 31, 2016; as amended by Supreme Court Order No. 22-8300-020, effective for all pleadings and papers filed on or after December 31, 2022.]

4A-513. Order revoking kinship guardianship.

STATE OF NEW MEXICO
COUNTY OF DONA ANA
THIRD JUDICIAL DISTRICT

_____, Petitioner(s)

No. D-307-DM-_____

IN THE MATTER OF THE KINSHIP GUARDIANSHIP OF

_____,¹ (a) Child(ren) (*use initials only*), and concerning

_____, Respondent(s).

ORDER REVOKING KINSHIP GUARDIANSHIP

THIS MATTER having come before the court on (*insert date*) _____ regarding _____'s Motion to Revoke Kinship Guardianship of the minor child(ren) and the court being sufficiently advised, **FINDS:**

1. The court has jurisdiction under the Kinship Guardianship Act, Sections 40-10B-1 to -15 NMSA 1978.

2. The name, year child was born, and age of the minor child(ren) are as

Child's name	Birth year	Age
_____	_____	_____
_____	_____	_____
_____	_____	_____

3. Kinship guardian(s), _____ (*name(s) of kinship guardian(s)*), were appointed by this court on _____ (*date*).

4. The guardianship should be revoked for the following reasons: _____

WHEREFORE IT IS ORDERED:

1. The Order Appointing Kinship Guardianship of _____ (*name(s) of child(ren)*) is hereby revoked.

2. The parental rights of _____ (*names of Respondent(s)*) are hereby restored.

3. Other: _____

☐ This case is dismissed with prejudice.

District Court Judge

Submitted by:

USE NOTES

1. Insert the initials of each child listed in the Petition to Appoint Kinship Guardian(s).

[Adopted by Supreme Court Order No. 16-8300-020, effective for all pleadings and papers filed on or after December 31, 2016; as amended by Supreme Court Order No. 22-8300-020, effective for all pleadings and papers filed on or after December 31, 2022.]

STATE OF NEW MEXICO
COUNTY OF DONA ANA
THIRD JUDICIAL DISTRICT COURT

_____, Petitioner,
(print first, middle and last name)

v.

Case No. _____

Judge: _____

_____, Respondent.
(print first, middle and last name)

REQUEST FOR SETTING

☒ NON-JURY

Specific matter to be heard: _____

Time requested for hearing (check one): ☐ 15 minutes ☐ 30 minutes ☐ other _____

Any hearing presently set in this matter (check one): ☐ NO ☐ YES (When? _____)

I request interpretation services (check on): ☐ NO ☐ YES

If yes, please describe what you need: _____

Requested by (check one) ☐ PETITIONER ☐ RESPONDENT

Below provide names, mailing addresses and telephone numbers of parties who need to be notified of the hearing - attach a list if necessary.

	Respondent	Respondent	CYFD (If Necessary)
(Name)			
(Address)			
(City/State/Zip)			
(Telephone)			

I certify that I have caused a copy of this Request for Setting to be mailed or hand delivered to the above persons on the _____ day of _____, 20_____.

(SIGN YOUR NAME)

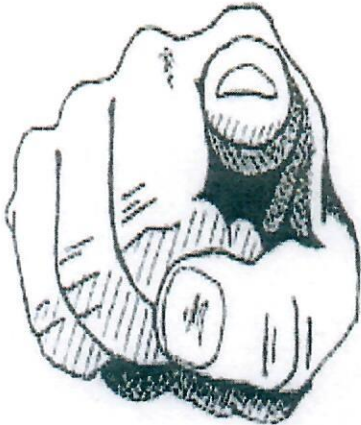
(PRINT YOUR NAME)

(YOUR MAILING ADDRESS)

(CITY/STATE/ZIP)

(YOUR TELEPHONE)

Giving Legal Notice When You Reopen Your Case



YOU ... must legally notify each party in your court case that you have reopened your case and that you have filed a motion.

A copy of all your paperwork must be delivered to each party.

YOU ... must file proof with the court that you did this.

The "Affidavit" form in this packet is your proof.

The court **DOES NOT** do this for you.

1. LEGAL NOTICE BY PERSONAL SERVICE

If you **KNOW** where the other party lives, works, or can be found



THIS IS OKAY

A friend or family member (must be over 18) delivers a copy of all the paperwork to them.



THIS IS BETTER

A process server delivers a copy of all the paperwork to them.

2. LEGAL NOTICE BY CERTIFIED MAIL

If you have a good mailing address for the other party



The postman delivers a copy of all the paperwork to them.

They must sign the green card. Restricting delivery to them helps.

3. LEGAL NOTICE BY PUBLICATION

If you **DON'T** know where the other party works, lives, or can be found



You can publish a notice in the newspaper.

BUT you have to ask the court's permission to do this.

Your case will **NOT** move forward unless you legally notify each party that you reopened your case and filed a motion. You may want to see a lawyer for advice.

This information sheet only highlights the 3 most common ways to serve the other party. For details, see the New Mexico Rules of Civil Procedure.

☐ STATE OF NEW MEXICO/HSD, (✓ if Petitioner or Intervenor)

v.

Case No. D-307-DM-_____

_____, Respondent.

STATE OF NEW MEXICO }
 }ss.
COUNTY OF _____ }

1. I personally served a copy of the following: (✓check each box that applies)

- ☐ Summons
 - ☐ Certificate to Reopen
 - ☐ Petition
 - ☐ Domestic Relations Info. Sheet
 - ☐ Temporary Domestic Order
 - ☐ Motion to Establish Custody/Timesharing
 - ☐ Order for Parent Education
 - ☐ Motion for *temporary* Custody/Timesharing
 - ☐ Request for Hearing/Setting
 - ☐ Motion: _____

2. WHO I served (first & last name): _____

WHERE I served (Address): _____

(City/State/Zip): _____

WHEN I served (mm/dd/yyyy): _____

(SIGN YOUR NAME) _____

(PRINT YOUR NAME) _____

Subscribed & sworn to before me by Affiant on _____, 20____.

Notary Public
My commission expires: _____