

# Minor Guardianships

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As we all know, there are a variety of situations that can occur that leave children without proper care. In some of these instances, Children's Protective Services (CPS) will become involved and the children become the subject of neglect and abuse proceedings under the Juvenile Code. In Oakland County, these types of cases are assigned to the Family Division of the Circuit Court.

However, not all situations involving the care of minors require the involvement of CPS. For instance, single parents in the military may be assigned overseas or a child may lose both parents in an accident. Under the Estates and Protected Individuals Code (EPIC) there are two types of guardianships for minors that are available in situations where a child needs someone with legal authority to care for them.

Both types of guardianship proceedings are initiated through the filing of the appropriate petition with the probate court. MCL 700.5204 provides the mechanism for what is commonly called a full minor guardianship. MCL 700.5205 provides for the appointment of a limited guardianship of a minor. There are many aspects of the two guardianship types that are the same; however, there are fundamental differences in the basis for the guardianships that must be considered when determining which type of action to file.

## *Limited Guardianships*

Under MCL 700.5205, a limited guardianship may only be sought by the parent or parents of the minor child. (If only one parent has custody, that parent must petition and consent to the appointment of a guardian.) In addition, the parent or parents must voluntarily consent to the suspension of their parental rights.

The main feature of the limited guardianship is the limited guardianship placement plan. This plan must be agreed to by the appropriate parties, including the par-

ent or parents and the proposed guardian, before being reviewed and approved by the court. The plan includes the reasons for the guardianship and lays out the details of the parent or parents' responsibilities during the guardianship, including visits and contact with the child, and financial support. The plan must also delineate the intended action the parent must achieve to have the guardianship terminated. The plan must be put in writing on the SCAO form *Limited Guardianship Placement Plan* (PC652) and must be signed by the parent or parents and the proposed guardian(s).

It is important that a parent who is a party to the plan understands that the substantial failure to comply with the plan without good cause may result in the termination of their parental rights through a separate neglect proceeding in juvenile court.

## *Full Guardianships*

A full guardianship petition may be filed by a person interested in the welfare of the minor, or by the minor if

*(continued on page 35)*

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(continued from page 33)

they are at least 14 years old. MCL 700.5204 is very specific as to the circumstances that must exist before the court may appoint a guardian.<sup>1</sup> The *Petition for Appointment of Guardian of Minor* (PC651) includes allegation options based on the statute and the petition will not be accepted for filing unless the applicable grounds for the guardianship are checked on the petition.

Please note that unlike the limited guardianship, the basis for a full guardianship assumes that the parent is not involved in seeking the guardianship and may, in fact, oppose the guardianship. MCL 700.5204(5) allows the court to order a minor's parents to pay reasonable support and order reasonable parenting time and contact between the minor ward and his or her parents for the minor's welfare.

## General Information

The powers of the guardian, whether full or limited, are substantially similar. The essential difference between the two is that a limited guardian cannot consent to the adoption of the minor child or release the minor for adoption, nor can the guardian consent to the marriage of the minor. During the term of either type of guardianship the guardian has custody and the paren-

tal rights are suspended. The minor may not be moved from the state or returned to the parent(s) without prior court approval.

The filing fee for both full and limited guardianship petitions is \$150. A separate petition must be filed for each minor child. Along with the appropriate petition, the petitioner will need to complete and file a *Minor Guardianship Social History* (PC 670), a *Declaration of Party Seeking Order Regarding Minor Child* (PEMH 1085), and a *DHS Record Check* (PEMH 1038). (The PEMH forms are Oakland County forms.) All forms are available at [www.oakgov.com/probate](http://www.oakgov.com/probate).

## Footnotes

- <sup>1</sup> MCL 700.5204(2) – The court may appoint a guardian for an unmarried minor if any of the following circumstances exist:
- The parental rights of both parents or the surviving parent are terminated or suspended by prior court order, by judgment of divorce or separate maintenance, by death, by judicial determination of mental incompetency, by disappearance, or by confinement in a place of detention.
  - The parent or parents permit the minor to reside with another person and do not provide the other person with legal authority for the minor's care and maintenance, and the minor is not residing with his or her parent or parents when the petition is filed.
  - All of the following:
    - The minor's biological parents have never been married to one another.
    - The minor's parent who has custody of the minor dies or is missing and the other parent has not been granted legal custody under court order.
    - The person whom the petition asks to be appointed guardian is related to the minor within the fifth degree by marriage, blood, or adoption.

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