

§5-205. Judicial appointment of guardian; procedure

1. Petition; notice of hearing. After a petition for appointment of a guardian is filed, the court shall schedule a hearing, and the petitioner shall give notice of the time and place of the hearing, together with a copy of the petition, to:

- A. The minor, if the minor has attained 14 years of age and is not the petitioner; [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]
- B. Any person alleged to have had the primary care and custody of the minor during the 60 days before the filing of the petition; [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]
- C. Each living parent of the minor or, if there is none, the adult nearest in kinship who can be found; [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]
- D. Any person nominated as guardian by the minor if the minor has attained 14 years of age; [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]
- E. Any appointee of a parent whose appointment has not been prevented or terminated under section 5-203; and [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]
- F. Any guardian or conservator currently acting for the minor in this State or elsewhere. [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

If the court finds that receiving information from the Department of Health and Human Services may be necessary for the determination of any issue before the court, it may order a Department of Health and Human Services employee to attend the hearing and to provide information relevant to the proceeding. When receiving information by oral testimony that is confidential pursuant to Title 22, section 4008, the court shall close the proceeding and ensure that it is recorded. When receiving information contained in written or media records that is confidential pursuant to Title 22, section 4008, the court shall review those records in camera, weighing the confidentiality of such records against the necessity for counsel and the parties to have access to them, and enter an appropriate order regarding the scope and manner of access. The court, in its discretion, may take other measures necessary to preserve the confidentiality of the information received.

[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

2. Appointment; other disposition. The court, after the hearing scheduled pursuant to subsection 1, shall make the appointment of a guardian if the court finds that venue is proper, the required notices have been given, the conditions of section 5-204, subsection 2 have been met and the best interest of the minor will be served by the appointment. In other cases, the court may dismiss the proceeding or make any other disposition of the matter that will serve the best interest of the minor.

[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

3. Priority of minor's nominee. The court shall appoint a person or persons nominated by the minor, if the minor has attained 14 years of age, in accordance with the requirements of section 5-204. [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

4. Appointment of counsel. A nonconsenting parent whose parental rights have not been terminated is entitled to court-appointed legal counsel if indigent. In a contested action, the court may also appoint counsel for any indigent guardian or petitioner when a parent or legal custodian has counsel.

[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

5. Attorney for a minor; notice to minor. If the court determines at any stage of the proceeding, before or after appointment, that the interests of the minor are or may be inadequately represented, the court may appoint an attorney to represent the minor, giving consideration to the choice of the minor if the minor has attained 14 years of age. A minor may appear with or through counsel, but the court is

not restricted from requiring the minor to be present for some or all of a hearing or other proceeding. A minor 14 years of age or older must receive notice of any proceeding subsequent to the appointment of a guardian through the same means as required for any other party, and the minor may consent, object or otherwise participate in the proceeding.

[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

6. Informed consent of parent. If the petition for guardianship is filed by or with the consent of a parent, the petition must include a consent signed by the parent verifying that the parent understands the nature of the guardianship and knowingly and voluntarily consents to the guardianship. If a parent informs the court after the petition has been filed that the parent wishes to consent to the guardianship, the court shall require the parent to sign the consent form at that time. The consent required by this section must be on a court form or substantially similar document.

[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

7. Term or duration of order. The court may specify the term of the appointment based on the parties' agreement or the court's findings. The term may be extended or otherwise modified by agreement of the parties or after a hearing. If no term is specified, the appointment remains in place until modified or the occurrence of an event resulting in termination set forth in section 5-210.

If one of the parents of a minor is a member of the National Guard or the Reserves of the United States Armed Forces under an order to active duty for a period of more than 30 days, a guardianship that would otherwise expire is automatically extended until 30 days after the parent is no longer under those active duty orders or until an order of the court so provides as long as the parent's service is in support of:

A. An operational mission for which members of the reserve components have been ordered to active duty without their consent; or [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

B. Forces activated during a period of war declared by the United States Congress or a period of national emergency declared by the President of the United States or the United States Congress. [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

8. Interim order. Upon motion by a party or the court's initiative, and pursuant to an agreement of the parties or findings made after a hearing, the court may enter an interim order appointing a guardian for a period of time up to 6 months or pending the court's order after the scheduled final hearing on a petition for appointment, if such an order is necessary to provide for the minor's housing, health, education, medical or other essential needs prior to the hearing. Any interim order must meet the requirements of section 5-204 and this section, including notice, and may be extended or modified pursuant to an agreement of the parties or findings made after a hearing.

[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

9. Mediation. The court may refer the parties to mediation at any time after a petition or motion is filed, if meditation services are available at a reasonable fee or no cost, and may require that the parties have made a good faith effort to mediate the issue before holding a hearing. If the court finds that any party failed to make a good faith effort to mediate, the court may order the parties to submit to mediation, dismiss the action or any part of the action, render a decision or judgment by default, assess attorney's fees and costs or impose any other sanction that is appropriate in the circumstances. The court may also impose an appropriate sanction upon a party's failure without good cause to appear for mediation after receiving notice of the scheduled time for mediation. An agreement reached by the parties through mediation on an issue must be reduced to writing, signed by the parties and presented to the court for approval as a court order.

[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

10. Identifying information sealed. If a party alleges in an affidavit or a pleading under oath that the health, safety or liberty of a party or the minor would be jeopardized by disclosure of identifying information, including but not limited to the address of a party or the minor, the information must be sealed by the register or clerk and not disclosed to any other party or to the public unless the court orders the disclosure to be made after a hearing in which the court takes into consideration the health, safety or liberty of the party or minor and determines that the disclosure is in the interest of justice.

[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

SECTION HISTORY

PL 2017, c. 402, Pt. A, §2 (NEW). PL 2017, c. 402, Pt. F, §1 (AFF). PL 2019, c. 417, Pt. B, §14 (AFF).

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