

District Court Guardianship Applications in the Dublin area Self help guide

This note is intended to assist fathers of children who have decided to make a District Court family law application for legal guardianship of a child, without the assistance of a solicitor.

Step 1 – Prior to starting proceedings

If you are on any kind of speaking terms with the child's mother and you know what her views are we suggest that you try and reach agreement before the court hearing.

The option of engaging in mediation or making an agreement with the assistance of legal advice is open to you. Mediation is a process where a third party (mediator) sits down with two parents and try to help them come to their own solution. Arriving at your own solution to difficulties that may have arisen is more beneficial in the long term for all parties involved.

There is a mediation service available in Dolphin House and the Legal Aid Board recommends that you get information about mediation before you pursue a court application in relation to your child.

If the child's mother agrees, it is possible for you to become a guardian without going to Court. To do this you must both swear a particular document before a Peace Commissioner, Commissioner for Oaths, or a solicitor. A model document is attached to this note. If you do this you must keep the declaration safe as it cannot be registered anywhere. You should be aware however that if you are not registered on the child's Birth Certificate, the Registrar of Births Deaths and Marriages may decline to re-register the birth with to name you as the father in the absence of either the mother's consent or a Court Order appointing you a guardian. You can also make an application to the court with the consent of the child's mother if she is willing to consent to you being appointed a legal guardian

Step 2 –Starting the Proceedings

Most family law court cases in Dublin that involve guardianship of a child are heard in Dolphin House, East Essex Street, Dublin 2. You may already have started an application and be aware of the date on which your application will be heard. If this is not the case and an application is required you can attend the District Court office on the ground floor and they will start the case for you.

Step 3 – Preparing for the Hearing

If the application goes before the Judge the Judge will want to know what involvement you have had in the child's life or what efforts you have made to have an involvement. If you are named on the child's birth certificate as the father you should

bring a copy of the certificate with you to court. If you have been making payments for the benefit of the child and you have a record of those payments you should bring the record with you.

Step 3 – The Hearing

The Court decides the case on the basis of the best interests of the child. Guardianship hearings are heard in private. When you arrive at the courthouse you should locate the correct court room. Usually the Judge will read out the list of cases for the day at the start of the day with everyone present. He is likely to call your case by initials or by reference to the number which you will find on the court application. When your case is called you should tell the Judge that you are present and whether you are going ahead with your case. After the list is read through the judge then deals with the cases in private. The District Court Clerk comes out of the courtroom and calls out the initials of the cases. Sometimes a public address system is used.

If you have reached agreement when the case is called, both you and your child's mother enter the courtroom and tell the Judge what you have agreed. The Judge will consider the matter and may then make an order on the basis of what you have agreed.

If you have not agreed then generally you start by telling the Judge that you are looking for an order appointing you a guardian of the child. The case will then proceed as directed by the Judge. Both of you may have to give sworn oral evidence.

If you fail to attend the court on the hearing date when your case is called it will be struck out and you will have to make another application if you wish to proceed.

If for some reason you cannot attend court you should let the child's mother know in advance and you should also contact the District Court Office to let them know. Your case may be postponed to another date if you do this.

If the child's mother does not attend, the Judge will decide whether he or she is satisfied that the child's mother has been properly served with the proceedings and is aware of the Court date. If the Judge is so satisfied, the case can go ahead and the Judge can make an order. The Judge may also postpone the case and ask the District Court Clerk to formally notify the child's mother of the new date.

Finally, remember when at the hearing to treat the Court and the child's mother with respect and avoid using bad language or behaving in a rude or threatening manner. It will not help your case if you behave like this.

Step 4 - Appeal

If you or the child's mother is not happy with the District Court decision, then you need to be aware that an appeal to the Circuit Court can be made within 14 days of the decision. If you want to appeal you should contact the District Court office and they should be in a position to assist you in serving and filing your appeal.

Statutory Declaration of Father and Mother in relation to Joint Guardianship of Child

THE MAKING OF THIS DECLARATION WILL SERIOUSLY AFFECT THE LEGAL POSITION OF BOTH PARENTS. IT IS ADVISABLE TO OBTAIN LEGAL ADVICE BEFORE MAKING THIS DECLARATION.

THIS DECLARATION IS AN IMPORTANT DOCUMENT AND ON COMPLETION SHOULD BE KEPT IN A SAFE PLACE.

In the matter of a declaration under paragraph (e) of section 2(4) (inserted by the Children Act, 1997) of the Guardianship of Infants Act, 1964 —

We—

_____ of

(father's name)

(father's address)

and

(mother's name)

of

(mother's address)

do solemnly and sincerely declare and say as follows:

1. We have not married each other.

2. We are the father and mother of _____ who was born on day of , 199 .

(child's name)

We agree to the appointment of _____ as a guardian of

(father's name)

_____.

(child's name)

4. We have entered into arrangements regarding the custody of [and access to]* _____

(child's name)

*Strike out as necessary.

We make this solemn declaration conscientiously believing the same to be true by virtue of the Statutory Declarations Act, 1938 , and pursuant to paragraph (e) of section 2(4) (inserted by the Children Act, 1997) of the Guardianship of Infants Act, 1964 .

Signed _____ (Father)

Signed _____ (Mother)

DECLARED BEFORE ME BY

_____ who are personally known to me or (who are identified to me by

_____ who is personally known to me at

this day of , 20 .

(Peace Commissioner/Commissioner for Oaths/Notary Public)