

# GUARDIANSHIPS

## MINOR

### *Bench Card*

*This Bench Card has been created by the Administrative Office of the Court as a resource for judges. Bench Cards do not represent statements of law by the Idaho Supreme Court and do not constitute legal advice.*

#### **PURPOSE**

To appoint a guardian or co-guardians for a minor when parental rights have been terminated, or when a child has been neglected, abused, abandoned or whose parents are unable to provide a stable home environment.<sup>1</sup>

#### **APPOINTMENTS**

1. Attorney to represent minor, if the minor possesses sufficient maturity to direct the attorney.<sup>2</sup>
2. Guardian *ad Litem* if minor is not mature enough to direct counsel, unless found that appointment is not necessary to serve the best interests of the minor, or if the Department of Health and Welfare has legal custody.<sup>3</sup>

#### **TEMPORARY APPOINTMENT<sup>4</sup>**

1. May appoint if necessary to protect the minor's health, safety or welfare, and no guardian has been appointed or the guardian is not performing the guardian's duties.
  - a. Authority of previous guardian is suspended as long as temporary guardian has authority.
2. May be appointed without notice or hearing on finding from sworn statement that minor may be immediately and substantially harmed before notice can be given or a hearing can be held.
  - a. Notice must be given within 72 hours after appointment. If requested, a hearing held within 10 days.
3. May not exceed six (6) months, unless extended for good cause.
4. May only be extended once for a period not to exceed six (6) additional months, and a temporary guardianship may not last longer than twelve (12) months in total.
5. The court must appoint a guardian other than a temporary guardian or take other appropriate action prior to the end of an extension period.

#### **GUARDIANSHIPS ARISING UNDER THE CHILD PROTECTIVE ACT (CPA)**

1. The court having jurisdiction over the proceeding under the CPA has exclusive jurisdiction unless it declines the jurisdiction.<sup>5</sup>
2. Notice of the following must be given to the Idaho Department of Health and Welfare:<sup>6</sup>
  - a. Petition for the appointment of a guardian of a minor;
  - b. Any pleading filed in connection with such guardianship;
  - c. Any proceeding of any nature in such guardianship;
  - d. The time and place of any hearing in connection with such guardianship.
3. IDHW has the right to appear and be heard.<sup>7</sup>

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<sup>1</sup> I.C. § 15-5-204, 207.

<sup>2</sup> I.C. § 15-5-207(7).

<sup>3</sup> I.C. § 15-5-207(7).

<sup>4</sup> I.C. § 15-5-207(5), (6).

<sup>5</sup> I.C. § 15-5-212A(1).

<sup>6</sup> I.C. § 15-5-212A(2).

<sup>7</sup> I.C. § 15-5-212A(3).

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#### REQUIRED SUBMISSIONS PRIOR TO HEARING

All notices have been given by mailing or by personal service on:<sup>8</sup>

1. The minor, if 14 or older;
2. The person who has had the principal care and custody of the minor during the 60 days preceding the date of the petition;
3. De facto custodian, if any;
4. Any living parent of the minor with certain exceptions for the father outlined in I.C. § 15-5-207(2)(d).

#### HEARINGS AND FINDINGS

##### Findings

1. Temporary guardian may be appointed if the court finds:
  - a. A petition for guardianship been filed, but a guardian has not yet been appointed;
    - The appointment is necessary to protect the minor's health, safety or welfare until the petition can be heard;
    - No other person appears to have the ability, authority and willingness to act.
  - OR
  - b. When a minor is under a guardianship, the court may appoint a temporary guardian if it finds:
    - Substantial evidence that the guardian is not performing the guardian's duties; and
    - The appointment is necessary to protect the minor's health, safety or welfare.
2. A guardian or co-guardians may be appointed if the court finds:
  - a. The petitioner is a qualified person to act as a guardian.<sup>9</sup>  
AND
  - b. One or more of the following conditions exist:<sup>10</sup>
    - All parental rights to the minor have been terminated by prior court order;
    - The minor has been neglected;
    - The minor has been abused;
    - The minor has been abandoned.  
AND
  - c. The welfare and best interests of the minor will be served by the appointment.<sup>11</sup>
3. Up to two (2) co-guardians may be appointed if the court finds;<sup>12</sup>
  - a. Appointment will best serve the interests of the minor; and
  - b. The co-guardians will work together cooperatively to serve the best interests of the minor.
  - c. Whether the co-guardians may act:
    - independently;

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<sup>8</sup> I.C. § 15-5-207(2).

<sup>9</sup> I.C. § 15-5-207(4).

<sup>10</sup> I.C. § 15-5-207(4) See §15-5-204.

<sup>11</sup> I.C. § 15-5-207(4).

<sup>12</sup> I.C. § 15-5-207(3).

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- act independently but must act jointly on specific matters; or
- must act jointly.

#### Standard Orders and Judgments

1. Judgment Appointing Guardian.
2. Letters of Guardianship, which indicate whether the appointment is by will or court order.<sup>13</sup>
3. Guardian's Duty to Report.

#### **REQUIRED REPORTS**

1. Temporary guardian to file reports as required by court.<sup>14</sup>
2. Annual guardianship status report.<sup>15</sup>
3. Report when a guardian resigns or is removed.<sup>16</sup>
4. Report when the guardianship is terminated.<sup>17</sup>

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<sup>13</sup> I.C. § 15-5-207(7).

<sup>14</sup> I.C. § 15-5-207(5), (6).

<sup>15</sup> I.C. § 15-5-209; I.C.A.R. 54.2.

<sup>16</sup> I.C.A.R. 54.2.

<sup>17</sup> I.C.A.R. 54.2.