

Guardianship of a Child

Guardianship is a form of custody that is sought by a person who is taking care of the child but is not a parent of the child. It may be a relative or close family friend. A guardianship can only be granted by a court order. The person seeking a guardianship over a child is asking the court to be the “guardian” of the child. A guardianship differs from custody in two main ways: (1) after a court appoints a guardian, the guardianship case remains open so the court can monitor the child’s well-being, and (2) the guardian is required to file with the court an annual well-being report giving the court details on how the child is doing. The person who is appointed a guardian will be entitled to custody of the child, unless this would be inconsistent with a court order.¹

Once appointed, the guardian has the legal authority to make decisions that are in the child’s best interest. For instance, the guardian can enroll the child in school, seek medical help for the child, and make other decisions necessary for the child’s best interest. Generally, unless limited by a court order, a guardian of a minor has the powers a parent otherwise would have regarding the minor’s support, care, education, health, safety, and welfare. An extensive list of powers of a guardian is provided in Miss. Code. Ann. § 93-20-209.

A guardian also holds a fiduciary relationship with the child, meaning that the person serving in that role must act in an especially trustworthy manner regarding his or her legal and ethical responsibilities for the child. A detailed list of the duties of a guardian are provided in Miss. Code. Ann. § 93-20-208.

You are not required to hire an attorney to file pleadings to create a guardianship, but it is strongly recommended because there are certain steps to the court process that might be confusing to a person who does not practice law. In addition, once appointed guardian, you must retain an attorney unless the court finds that this would impose an undue burden on the child’s estate.²

The information above is meant to give you an introduction to what a guardianship is and what being a guardian means. It does not cover all issues that pertain to a guardianship. To understand better the role of a guardian, please refer to the Mississippi Code, Title 93, Chapter 20, Sections 201 to 210, which can be found at this link: <https://www.msatjc.org/preparing-for-court>.

¹ See Miss. Code. Ann. §§ 93-20-206(3)-(4) and 93-20-209(b). You can get access to the Mississippi Code Annotated at this link: <https://www.msatjc.org/preparing-for-court>.

² See Miss. Code. Ann. §§ 93-20-108(2); 93-20-201(3); and Unif. Chan. Ct. R. 6.01.