

### §4038-C. Permanency guardian

As part of the permanency plan, the District Court may appoint a person or persons as guardian of a minor, to be known as a permanency guardian. "Permanency guardian," when used in this section and in section 4038-D and Title 20-A, section 12572, means the person or persons appointed as the permanency guardian. [PL 2005, c. 471, §3 (AMD).]

**1. Criteria.** The District Court may appoint a person to be a permanency guardian only if the court finds that the prospective permanency guardian:

- A. Has the ability to provide a safe home for the child; [PL 2005, c. 372, §6 (NEW).]
- B. Has a close emotional bond with the child and that the child has a close emotional bond with the prospective permanency guardian; [PL 2005, c. 372, §6 (NEW).]
- C. Is willing and able to make an informed, long-term commitment to the child; [PL 2011, c. 402, §6 (AMD).]
- D. Has the skills to care for the child; and [PL 2011, c. 402, §7 (AMD).]
- E. Has submitted to having fingerprints taken for the purposes of a national criminal history record check. [PL 2011, c. 402, §8 (NEW).]

[PL 2011, c. 402, §§6-8 (AMD).]

**2. Powers and duties of permanency guardian.** A permanency guardian has all of the powers and duties of a guardian of a minor pursuant to Title 18-C, sections 5-207 and 5-208. A permanency guardianship terminates upon the minor's death, adoption or attainment of majority or as ordered by the court pursuant to this section.

[PL 2019, c. 664, Pt. C, §1 (AMD).]

**3. Parental and relative contact.** A parent, grandparent or sibling of a child subject to a permanency guardianship or to a proceeding to establish a permanency guardianship may petition the court to determine rights of contact as provided in subsection 6. If the District Court determines that it is in the best interest of the child, it may order that the parent, grandparent or sibling of the child has a reasonable right of contact with the child and may specify the type, frequency, duration and conditions of that contact.

[PL 2005, c. 372, §6 (NEW).]

**4. Child support.** The parents shall pay the permanency guardian child support. Title 19-A, section 1652 and Title 19-A, chapter 63 govern the award of child support to the permanency guardian. The child support obligation may be enforced pursuant to Title 19-A, chapter 65 or 67.

If there is an existing child support order or obligation regarding the child, and if the District Court fails to make a child support order at the time of appointing a permanency guardian, the permanency guardian becomes the obligee under the existing support order or obligation. A copy of the order appointing the permanency guardian is sufficient proof of the permanency guardian's status as obligee. [PL 2005, c. 372, §6 (NEW).]

**5. Jurisdiction over permanency guardian.** The District Court has exclusive jurisdiction to appoint or remove a permanency guardian and to establish any rights of contact between a child and a parent, grandparent or sibling.

[PL 2005, c. 372, §6 (NEW).]

**6. Proceedings to terminate permanency guardianship or to determine rights of contact.** Proceedings to terminate permanency guardianship or to determine rights of contact are governed by the following.

- A. Any party to the child protective proceeding may petition to terminate a permanency guardianship and any parent, grandparent or sibling of the child may petition the court to establish

rights of contact with the child, except that a person having once petitioned unsuccessfully to terminate a permanency guardianship or to establish rights of contact may not bring a new petition to terminate the permanency guardianship or to establish rights of contact within 12 months after the end of the previous proceeding, and then only if the petitioner alleges and proves that there has been a substantial change of circumstances regarding the child's welfare. [PL 2005, c. 372, §6 (NEW).]

B. Notice of a petition under paragraph A must be given in the manner provided for by Rule 4 of the Maine Rules of Civil Procedure to all parties to the child protective case and to the permanency guardian. [PL 2005, c. 372, §6 (NEW).]

C. The permanency guardianship may be terminated only if the petitioner proves by a preponderance of the evidence that the termination is in the best interest of the child. [PL 2005, c. 372, §6 (NEW).]

[PL 2005, c. 372, §6 (NEW).]

**7. Effect on inheritance rights and public benefits.** The appointment of a permanency guardian does not affect the inheritance rights between a child and the child's parent or parents.

The appointment of a permanency guardian may not affect the child's entitlement to benefits due that child from any 3rd person, agency or state or the United States. Except as required by federal law or regulation, the permanency guardian's resources and income are not counted in determining eligibility for any public benefit to which the child may be entitled.

The permanency guardianship does not affect the rights and benefits that a Native American derives from descent from a member of a federally recognized Indian tribe.

[PL 2005, c. 521, §1 (AMD).]

**8. Resignation, death or incapacity of permanency guardian.** Resignation of a permanency guardian does not terminate the guardianship until it has been approved by the court. If a permanency guardian resigns, dies or becomes incapacitated, the District Court shall hold a judicial review and a permanency planning hearing at the earliest practicable time.

[PL 2005, c. 372, §6 (NEW).]

**9. Preference.** The District Court shall give preference for placement and permanency guardianship to a person nominated by a deceased permanency guardian in a valid will or by an incapacitated permanency guardian in a valid power of attorney, unless the District Court finds that the placement or permanency guardianship is not in the child's best interest.

[PL 2005, c. 372, §6 (NEW).]

**10. Limitation.** The District Court does not have authority to provide a guardianship subsidy for permanency guardianship under section 4038-D.

[PL 2005, c. 683, Pt. A, §36 (AMD).]

**11. Application to pending cases.** The District Court may appoint a permanency guardian in a proceeding pending on September 17, 2005 or in a proceeding commenced on or after September 17, 2005.

[PL 2005, c. 521, §2 (NEW).]

**12. Appointments terminate; later appointments.** Unless the District Court has scheduled a judicial review or orders otherwise, the court's appointments of the guardian ad litem and attorneys for parents and guardians terminate, and the attorneys and guardian ad litem have no further responsibilities to their clients or the court upon appointment of a permanency guardian pursuant to this section. If a party files a motion for judicial review when no judicial review is required pursuant to section 4038, subsection 1-A, or if a party files a petition pursuant to subsection 6 to terminate a permanency guardianship or determine rights of contact, the court shall appoint a guardian ad litem and attorneys for indigent parents and custodians, including permanency guardians, as required by section 4005.

[PL 2007, c. 284, §7 (NEW).]

**13. Resource family license.** The department shall issue a resource family license in accordance with standards adopted by the department to a resource family that meets the requirements and standards for permanency guardianship of children in foster care under subsection 1 and for a license fee established by the department.

[PL 2011, c. 402, §9 (NEW).]

#### SECTION HISTORY

PL 2005, c. 372, §6 (NEW). PL 2005, c. 471, §3 (AMD). PL 2005, c. 521, §§1,2 (AMD). PL 2005, c. 683, §A36 (AMD). PL 2007, c. 284, §7 (AMD). PL 2011, c. 402, §§6-9 (AMD). PL 2017, c. 402, Pt. C, §66 (AMD). PL 2017, c. 402, Pt. F, §1 (AFF). PL 2019, c. 417, Pt. B, §14 (AFF). PL 2019, c. 664, Pt. C, §1 (AMD).

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