START HERE

1. Is the person guardianship is brig sought over a minor child?

YES →

2. Does the minor child reside in West Virginia?

3. Has the child ever been subject to an Abuse and Neglect petition?

YES →

The Circuit Court that heard the abuse and neglect case retains jurisdiction, even if the abuse and neglect case is no longer active.

Continue to Question #4

↓ **NO**

↓ **NO**

↘ **YES**

↗ **Continue**

↘ **NO**

This guide is designed for the guardianship of minor children. For guardianship of adults, see W. Va. Code §44A-1.

The minor child must be a resident of West Virginia in order for a Court in WV to have jurisdiction to appoint a guardian over the minor child.

The Petition for Guardianship Appointment must be filed in the county where the minor child has resided for the six months preceding the filing of the petition, unless the court finds extraordinary circumstances for a sooner filing.

Family and Circuit Courts have concurrent jurisdiction to appoint a guardian for a minor. Since the child has not been involved in an abuse and neglect proceeding, the case will be filed in the Family Court in the county in which the child resides.

Continue to Question #4

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4. Is the minor child involved in another court proceeding relating to custody or guardianship?

NO →

5. Is the Petitioner a parent whose parental rights to the minor child have previously been terminated?

NO →

6. Is the petitioner a parent who is seeking custodial rights adverse to the child's other parent ?

↓ **YES**

↓ **YES**

↓ **YES**

↓ **NO**

Under W. Va. Code §44-10-3 and W. Va. Rules of Minor Guardianship Proceedings-Rule 2(a), the Petition for Guardianship Appointment cannot be considered since the minor child is already involved in another proceeding. Petitioner(s) may be able to file a Motion to Intervene in the active case.

Under W. Va. Code §44-10-3(d), a parent whose parental rights to the child have been previously terminated by a court cannot petition for guardianship of the child.

Under W. Va Code §44-10-3 and W. Va. Rules of Minor Guardianship Proceedings-Rule 2(a), the Petition for Guardianship Appointment cannot be considered when the petitioner is a parent who is seeking custodial rights that ate adverse to the child's other parent.

The Petition for Guardianship Appointment can be considered.

Continue to Question #7

7. The Petitioner or anyone living in the petitioner's home:

- Is required to register as a sex offender.

- Has been convicted of any misdemeanors or felonies.

- Has been subject to a retraining or protective order.

- Has had any substantiated report alleging child abuse, neglect, or molestation.

- Habitually use any illegal substance or abuse alcohol.

YES →
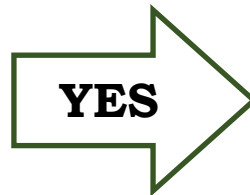
- While this is not an absolute ban on being appointed as guardian, the court will consider this a pertinent matter when determining the suitability of appointing a guardian.
- W. Va. Rules of Minor Guardianship Proceedings-Rule 10.
- Be prepared to thoroughly explain the circumstances and reasons as to why it should not bar the petitioner from being appointed guardian.

NO →
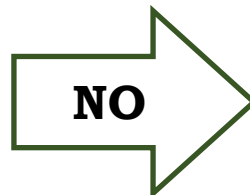
Continue to Question #8

8. Will the child's biological parent(s) consent to the Guardianship?

NO

YES

9. Is the minor child age 14 or older?

NO → **Continue to Question #10**

Continue

YES

- If the parent(s) are not willing to consent to having a guardian appointed, petitioner will have the burden to prove that the parent(s) are unwilling or unable to exercise their parental rights or that they have abandoned the child.
- W. Va. Code §44-10-3(f)

- If the parent(s) are willing to consent to the Guardianship, they can waiver their priority right as guardian by signing a Waiver of Guardianship Appointment form and file it with the court. Or they can verbally waiver their right in front of the judge.
- W. Va. Rules of Minor Guardianship Procedures-Rule 8
- There is a Law Help Waiver form available.

- Since the minor child is 145 or older, the child may nominate a guardian.
- So long as the court deems the nominated guardian appropriate and the guardianship in the child's best interest, the nominated guardian shall be appointed.
- W. Va. Code §44-10-4 and W. Va. Rules of Minor Guardianship Procedures-Rule 6.
- There is a Law Help Nomination of Guardian form available.

10. Does the Petition allege that the child is abused or neglected?

NO →

11. Does anyone other than the child's parent(s) and/or petitioners have custody or visitation rights with the child?

YES ↓

Continue →

YES ↓   **NO** ↓

- West Virginia Rules of Minor Guardianship Proceedings-Rule 13.
- Cases involving abuse and neglect will be remanded to the Circuit Court. Once the case is in the Circuit Court, it will remain there, in its entirety, indefinitely.
- Allegations of abuse and neglect must be proved by clear and convincing evidence.
- The WV Department of Health and Human Services (DHHR) will receive notice and become involved in the case.
- A temporary guardian may be appointed during the proceedings.
- Petitioners may become co-petitioners with DHHR on the abuse and neglect allegations.
- Abuse and Neglect proceedings are governed by The West Virginia Rules of Procedure for Abuse and Neglect. There is also an Abuse and Neglect Benchbook put out by the West Virginia Judiciary.

- Any person with court ordered custodial rights to the child must be served with the Petition for Guardian Appointment.
- W. Va. Rules of Minor Guardianship Proceedings-Rule 5.

Continue to Question #12

12. Does the Petitioner qualify for a Fee Waiver?

YES

NO

- For current qualifications and necessary forms, visit the West Virginia Judiciary's website.
- The Fee Waiver form is available as a LAWV Law Help form or as a fillable pdf on the court's website.

- If the client does not qualify for a fee waiver, the regular civil case filing fee will need to be paid at the time of filing.
- For current qualifications and necessary forms, visit the West Virginia Judiciary's website.

This is the end of the client interview.