

STIPULATION TO JUVENILE GUARDIANSHIP CHECKLIST

Hon. John J. DiMotto

- Obtain recitation of the discussions from all counsel/parties.**
- Colloquy with Parent.**
 1. Do you understand that (name of proposed guardian) is seeking guardianship of your child/children?
 2. Do you understand that if this guardianship is granted, that the proposed guardian will have the power to make both the important and daily decisions in the life of your child/children?
 3. What is your Decision?
- Inquiry with Parent.**
 1. Swear Parent.
 - a. Biographical data: name, address, d.o.b.
 - b. Marital status.
 - c. Education.
 - i. Last grade completed.
 - ii. Degree.
 - iii. Read and write English.
 - iv. Ever in Special Ed?
 2. Have you read, or had read to you, the Guardianship Petition?
 - a. Have you discussed it with counsel?
 - b. Do you understand the Petition?
 - i. Are you legal parent of child?
 - ii. Do you currently take any prescription medication?
 - iii. Does the medication affect your ability to think about what we are doing today or interfere with your ability to discuss these matters with the Court?
 - iv. Are you under the influence of any alcohol or other drugs?
 - v. Have you consumed ANY alcohol or other drugs within the last 24 hours?

- vi. Have you ever been treated for any mental illness?
- vii. Are you currently experiencing any mental or emotional problems today that would interfere with your ability to answer questions right now?
- viii. (If parent has no lawyer) I know that you do not have a lawyer. Have you considered hiring a lawyer?
- ix. (If parent has no lawyer) Have you decided against hiring a lawyer?
- x. (If parent has no lawyer) Do you understand that a lawyer is trained in the law and can advise you as to whether there are any mitigating circumstances or defenses to the allegations in the guardianship petition?
- xi. (If parent has no lawyer) Understanding how a lawyer could assist you, is it your decision to proceed without a lawyer?
- xii. (If parent has a lawyer) Have you discussed your decision with your lawyer?
- xiii. (If parent has a lawyer) Do you want more time to discuss your decision with your lawyer?
 - 1. **IF YES**, pass case or grant adjournment to another date.
- xiv. Do you understand that in stipulating/entering a no contest plea to this guardianship you are giving up the following rights:
 - 1. Right to Trial
 - 2. Right to see, confront and cross examine State's witnesses.
 - 3. Right to subpoena and present witnesses.
 - 4. Right to testify.
 - 5. Right to silence—although it can be used against you.
 - 6. Right to make the petitioner prove case by clear, convincing, and satisfactory evidence.
- xv. Do you understand that if I accept your stipulation/no contest plea, and if the Court finds that a factual basis for this guardianship petition exists we will conduct a Dispositional Hearing?
- xvi. Do you understand that in the Disposition Phase, the Court makes the final decision?

- xvii. Do you understand that in the Disposition Phase the prevailing factor in the Court's decision will be what is in BIC?
- xviii. Do you understand that if I grant the guardianship, the guardian will make all of the important and daily decisions for your child/children?
- xix. Do you understand that you will not have the right to participate in making those decisions?
- xx. Have you talked to anyone about your decision to stipulate/enter a no contest plea to the guardianship petition?"
- xxi. Has anyone at all offered you money or promised you anything in exchange for you to come to court today and stipulate/enter a no contest plea to the guardianship petition?
- xxii. Has anyone threatened you, forced you or in any way coerced you to get you to stipulate/enter a no contest plea to the guardianship petition?
- xxiii. Do you have any questions about what you are doing?
- xxiv. Are you at all unclear or confused about any aspect of what you are doing today?
- xxv. Do you want any more time to think about what you are doing?
- xxvi. Is there anything about these proceedings that you do not understand or any questions that you would like to ask me about these proceedings?
- xxvii. Are you making your decision to stipulate/enter a no contest plea to the guardianship petition freely, voluntarily, intelligently and understandingly after having thought about everything we have discussed today (and after having consulted with your lawyer)?

Inquiry with Parent's Lawyer (if parent is represented).

1. Interaction with client:
 - a. Have you gone over the issue of stipulating/entering a no contest plea to the guardianship petition with your client?
 - b. Have you gone over the consequences of the Court granting the guardianship petition with your client?

- c. Have you discussed potential mitigating circumstances and defenses to the allegations in the petition?
- d. Are you satisfied that your client understands the potential mitigating circumstances and defenses?
- e. Did you go over all of the rights that your client has and is giving up by stipulating/entering a no contest plea to the guardianship petition?
- f. Are you satisfied that your client understands all of the rights your client has and is giving up?
- g. Are you aware of any threats, promises or coercion that has been brought to bear on your client?
- h. Are you satisfied that your client is stipulating/entering a no contest plea to the guardianship petition freely, voluntarily, intelligently and understandingly by your client?
- i. Do you believe that this decision to stipulate/entering a no contest plea as opposed to contesting the allegations in the Petition is in your client's best interests?

Inquiry with GAL.

- 1. Determine if any other questions for parent.
- 2. Recommendation of GAL.

Court Findings Regarding Acceptance of Stipulation/No Contest Plea.

- 1. The Court approves the waiver of the parent's right to contest the Petition for Guardianship; and
- 2. The Court approves the stipulation/no contest plea made by the parent; and
- 3. The Court finds that this waiver and stipulation is being made freely, voluntarily, intelligently and with full understanding of the nature of the proceedings, potential consequences of the decision and all of the rights being given up; and

The Court accepts the waiver and stipulation/no contest plea.

- 1. Factual Basis for Petition.
 - a. Obtain a factual basis that supports the allegations in the Petition.
 - b. Obtain an assent from the parent to the use of those facts and ask whether they are substantially true and correct.

2. Findings of Fact and Conclusion of Law.

- a. The Court finds that there is a factual basis for the allegations in the Petition and,
- b. Based on the parent's waiver of the right to contest the allegations in the Petition which the Court has accepted and,
- c. Based on the entry of the parent's stipulation/no contest plea to allegations in the guardianship petition which the Court has accepted,
- d. The Court now finds that the allegations for guardianship have been proven by clear, convincing and satisfactory evidence.

Dispositional Phase.

1. BIC is the "polestar" in the dispositional phase.