

Book V.
Title XXIX.

Concerning confirming a guardian.
(De confirmirmando tutore.)

Bas. 37.3: D. 26.3.

5.29.1. Emperor Alexander to Priscus.

Guardians appointed in a mother's will need not excuse themselves (from acting) unless their appointment is, after investigation, confirmed by a decree that conforms to the wish of the deceased.¹

Promulgated March 13 (224).

5.29.2. The same Emperor to Valerius.

It is settled law that a guardian cannot be legally appointed by a letter or by an imperfect testament. But it is customary in such cases for the judge who has jurisdiction in the matter, to follow the wish of the father in appointing guardians or curators. Accordingly, you need not fear that time for your confirmation has passed² (ne tumpus cesserit).³

Promulgated August 6 (226).

5.29.3. The same Emperor to Sosianus.

If, as you say, the father did not, in his testament, legally appoint guardians for the minor ones whom you mention and, before those named in the testament were confirmed, others were appointed by the magistrate having jurisdiction in the matter, such action, legally taken, cannot be revoked. But whether the persons named by the father should be appointed as curators for the same minor, will be determined by the proper judge when he is called upon to consider the benefit to the minor.

Promulgated April 11 (228).

5.29.4. Emperor Justinian to Julianus, Praetorian Prefect.

Looking after the interests of natural children, we give permission to their fathers to appoint a guardian for them as to property which they give or leave to them in any manner, within the limit fixed by our laws. Such a guardian should cause his appointment to be confirmed by the proper judge and so manage the minor's property. Given at Constantinople March 18 (530).

Note.

A father, or other male parent, had paternal control only over legitimate children, not over natural, illegitimate children. A father of a natural child had no right, as a matter of course, to appoint a guardian for such child. His designation of such guardian was first investigated and generally confirmed if found to be proper, provided that something had been left to the child in the testament of the father. D. 26.3.7.

¹ [Blume] See note to C. 28.4.

² Blume originally had "you need not fear that you will be held responsible...before you are confirmed (as guardian or curator)."

³ [Blume] Meaning obscure; see German translation.

