

Book V.
Title XXXI.

Those who seek guardians or curators.
(Qui petant tutores vel curatores.)

Bas. 37.6; D. 26.6.

Headnote.

The present title deals with the third class of guardians, namely, those who, in the absence of testamentary or statutory guardians were appointed by the proper court or magistrate. Such guardians were called *sativi*—given or appointed.

5.31.1. Emperor Antoninus to Chrysantha.

Admonish the adolescent youth (a minor over the age of puberty) whom you want to meet in a law suit, to ask that a curator be appointed for him, with whom you can join issue according to the rules of law. If he should fail to do so, you may go before a competent judge and ask him to perform his duty in appointing a curator.¹
Promulgated February 4 (214).

5.31.2. The same Emperor to Epaphroditus.

If the sons of your patron are of an age that their property should be managed by guardians, go before the praetor and give him the names of persons from among whom the guardians may be appointed, lest, if you neglect to do so, you run the risk of being considered as neglecting your duty of reverence.²
Promulgated July 5 (214).

5.31.3. The same Emperor to Atlanta.

Ask the proper judge to appoint for your sons, in place of the guardian who has died or has been relegated (banished) in perpetuity, another guardian from the same province, and such judge will look after the interests of your sons according to his duty.
Promulgated July 12 (215).

5.31.4. The same Emperor to Dominus.

If there are no relatives of the minor children of your debtor who should ask for a guardian, you may see to that yourself, so that they may have those by whom they may be legally protected.
Promulgated July 13 (215).

Note.

A freedman was under the duty to ask for the appointment of a guardian for the minor children under the age of puberty of his patron. Law 2 of this title. If he failed in this duty, he might be heavily punished—D. 26.6.2.1, indicates that he might lose his freedom. So, too, a mother was under the duty to seek for a guardian for her minor children under the age of puberty, and in case of failure to do so, she could not, unless

¹ [Blume] See headnote C. 5.28.

² [Blume] As to reverence due from freedmen to patrons, see C. 6.6.8. See also law 4 of this title.

herself a minor, inherit from them; C. 2.34.2; C. 6.56.3 and note; D. 26.6.2.1; other persons, too, who might inherit from the minors were required to ask for such guardian at the risk in case of failure, of losing the right to inherit. C. 6.58.10. These persons were not compelled to ask for a curator for a minor over the age of puberty. D. 26.6.2.4.

5.31.5. Emperor Alexander to Fusciana.

A paternal aunt is not forbidden to ask for the appointment of guardians for the children of her brother.

Promulgated June 27 (223).

5.31.6. The same Emperor to Atacilia.

Your motherly love can teach you whom to ask to be guardian of your son, and to see that nothing is done in connection with his property that ought not to be done. No duty is, however, imposed on mothers to seek curators for her sons since children over the age of puberty but younger than 25 years should, if their property demands it, personally ask for the appointment of curators for themselves.³

Promulgated September 22 (224).

5.31.7. Emperor Gordian to Dionysius.

Admonish the woman who was your former ward, and who, as you state, is not only of marriageable age but has, (in fact) already married, to ask a curator for herself. But if she fails to do so, you are not forbidden to do so for her, by going before the proper person who has jurisdiction over the matter, so that you may the sooner render your account of your administration (as guardian).

Promulgated January 8 (239).

5.31.8. Emperors Diocletian and Maximian to Musicus.

Although mothers must be diligent in asking for a guardian (for their children) and fortuitous circumstances are not considered as impediments,⁴ still since you state that the procurator, who had been appointed by the mother to ask for a guardian for the minor, was killed by robbers, whereby the petition (for a guardian) was of necessity delayed, it would be harsh to bar the mother, who, according to what you say, was guilty of no fault, from inheriting from the minor.⁵

Promulgated March 11 (291).

5.31.9. The same Emperors and Caesars to Aclepiodotus.

Since no guardian can legally be appointed for a minor who already has one, you perceive that the mother is guilty of no neglect of her motherly duty in seeking a guardian, but acts in accordance with law in not asking for such guardian for her son.

Subscribed at Byzantium April 3 (293).

5.31.10. The same Emperors and Caesars to Priscus.

If the mother of the grandsons of your brother does not perform the duty which she owes in seeking guardians for them, you may do so in the customary manner.

³ [Blume] As to curators see note to law 5 of this title and headnote to C. 5.28.

⁴ [Blume] Impediments—in as much as a procurator might be appointed for that purpose.

⁵ [Blume] See C. 6.56.3 and note.

Subscribed April 30 (294).

5.31.11. Emperor Zeno to Dioscarus, Praetorian Prefect.

Mothers must ask for the appointment of guardians for their natural children the same as for children who are born of a lawful marriage, and no ignorance of the law shall excuse them in not complying with the provisions of the laws and constitutions, if they fail to ask for such appointment.

Given at Constantinople September 1 (479).