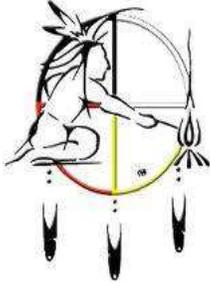


**FOREST COUNTY POTAWATOMI
GUARDIANSHIP AND PROTECTIVE
PROCEEDINGS ORDINANCE**

CHAPTER 3-4 (05/09/2015)



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GUARDIANSHIP AND PROTECTIVE
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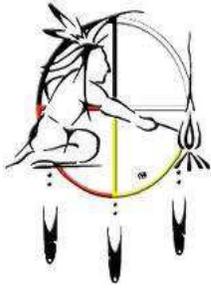
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FOREST COUNTY POTAWATOMI GUARDIANSHIP AND PROTECTIVE PROCEEDINGS ORDINANCE

§ 1. General

1.1. Purpose

The purpose of this ordinance is to protect the best interests of a tribal member who is a minor, vulnerable adult, or an incapacitated person and may be in need of assistance from Tribal Court.

1.2. Authority

The Forest County Potawatomi General Council enacts this ordinance pursuant to its authority granted under the Forest County Potawatomi Tribal Constitution, Article IV, §1(d).

1.3. Effective Date and Title

This ordinance is hereby adopted immediately following the majority approval from the Forest County Potawatomi General Council and it shall be known as the Forest County Potawatomi Guardianship and Protective Proceedings Ordinance.

1.4. Sovereign Immunity

The Tribe, by adoption of this ordinance, does not waive its sovereign immunity in any respect. Any person acting under good faith of this ordinance shall be immune from any civil liability arising out of such actions. The adoption of this ordinance shall do nothing to disestablish any preexisting guardianships or conservatorship.

1.5. Amendment or Repeal

This ordinance may be amended or repealed only by a Majority vote of the Forest County Potawatomi General Council. All rules and regulations heretofore adopted by the Forest County Potawatomi General Council which are in conflict with the provisions of this ordinance are hereby repealed.

1.6. Jurisdiction

The Forest County Potawatomi Tribal Court shall have original jurisdiction over all proceedings under this ordinance.

1.7. Severability and Non-Liability

If any portion or section of this ordinance is adjudged to be unconstitutional or invalid by a court of competent jurisdiction, the remaining sections of this ordinance shall not be affected.

1.8. Delegation of Power by Parent or Guardian

A parent or guardian of a minor or incapacitated person, by a power of attorney, may delegate to another person, for a period not exceeding six months, any power regarding care, custody, or property of the minor or ward, except the power to consent to marriage or adoption.

1.9. Subject-Matter Jurisdiction

This Ordinance applies to, and the Court has jurisdiction over, guardianship and related proceedings for Forest County Potawatomi Tribal Members, and other Indians domiciled or present on the reservation or on any land placed into trust for the Tribe, protective proceedings for tribal members, and other Indians domiciled in or having property located on the reservation or on any land placed into trust for the Tribe, and property coming into the control of a guardian or conservator who is subject to the laws of this Tribe. Tribal Court has jurisdiction over the tribal members, wherever located, by virtue of their enrollment within the Tribe.

1.10. Transfer of Jurisdiction

- (A) After the appointment of a guardian or conservator or entry of another protective order, the Court may transfer the proceeding to a court in another jurisdiction if the Court is satisfied that a transfer will serve the best interest of the ward or protected person.
- (B) If a guardianship or protective proceeding is pending in another jurisdiction and a petition for guardianship or protective proceeding is filed in this Court, the Court shall notify the original court and, after consultation with the original court, assume or decline jurisdiction, whichever is in the best interest of the ward or protected person.
- (C) The Court shall have the authority to recognize orders of appointment of guardian or conservator from other jurisdiction under full faith and credit pursuant to the Tribe's Foreign Judgment Enforcement Ordinance.

1.11. Practice in Court

- (A) Except as otherwise provided in this Ordinance, the Tribe's rules of civil procedure, including the rules concerning appellate review, shall govern proceedings under this Ordinance.
- (B) If guardianship and protective proceedings as to the same individual are commenced or pending in the same Court, the proceedings may be consolidated.

1.12. Order of Appointment

Upon the guardian's acceptance of office, the Court shall issue an appropriate order of appointment as guardian or conservator and shall indicate any limitations on the powers within the order. Upon the conservator's acceptance of office and any required bond, the Court shall issue appropriate letters of conservatorship. Letters of guardianship or conservatorship must indicate any limitations on the powers in the order.

1.13. Jurisdiction Over Guardian/Conservator

By accepting appointment, a guardian or conservator submits personally to the jurisdiction of the Court in any proceeding relating to the guardianship or conservatorship.

1.14. Termination of, or Change in, Guardian's or Conservator's Appointment

- (A) The appointment of a guardian or conservator terminates upon the death, resignation, or removal of the guardian or conservator or upon termination of the guardianship or conservatorship. A resignation of a guardian or conservator is effective when approved by the Court. Termination of the appointment of a guardian or conservator does not affect the obligation to account for money and other assets of the ward or protected person.
- (B) A ward, protected person, or person interested in the welfare of a ward or protected person may petition for removal of a guardian or conservator on the ground that removal would be in the best interest of the ward or protected person or for other good cause. A guardian or conservator may petition for permission to resign. A petition for removal or permission to resign may include a request for appointment of a successor guardian or conservator.

1.15. Multiple Appointments or Nominations

If a respondent or other person makes more than one written appointment or nomination of a guardian or a conservator, the most recent controls; however, the Tribal Court shall have final authority over all appointments

§ 2. Definitions

For the purpose of this ordinance, the following words and phrases shall have the meanings given to them in this section and by law:

"Claim," with respect to a protected person, includes a claim against an individual, whether arising in contract, tort, or otherwise, and a claim against an estate which arises at or after the appointment of a conservator, including expenses of administration.

"Conservator" means a person who is appointed by a Court to manage the estate of a protected person. The term includes a limited conservator.

"Court" means the Forest County Potawatomi Community Tribal Court.

"Guardian" means a person who has qualified as a guardian of a minor or incapacitated person pursuant to appointment by a parent or spouse, or by the Court. The term includes a limited, emergency, and temporary substitute guardian but not a guardian ad litem. The Court may appoint a guardian for the person and/or a guardian of the estate who may, at the Court's discretion, be two separate people.

"Incapacitated person" means an individual who, for reasons other than being a minor, is unable, either temporarily or permanently, to receive and evaluate information or make or communicate decisions to such an extent that the individual lacks the ability to meet essential requirements for physical health, safety, or self-care, even with appropriate technological assistance. This definition may also include tribal members who are incapacitated due to alcohol or drug abuse or subject to undue influence or coercion.

"Interested Person" may include:

- (A) The Ward, Protected Person, or Respondent.
- (B) A nominated Guardian or Conservator, or the duly appointed Guardian or Conservator.
- (C) Tribal Advocate.
- (D) The Tribal Prosecutor.
- (E) The spouse, Parent, adult children and siblings, or if none of such Persons is living or can be located, the next of kin of the Ward, Protected Person, or Respondent.
- (F) An adult Person who has lived with a Ward, Protected Person, or Respondent for a period of more than six (6) months.
- (G) An attorney for the Ward or Protected Person.

- (H) A governmental Agency paying or to which an application has been made for benefits for the Respondent, Ward, or Protected Person, including the county social services Agency for the Person's county of residence.
- (I) A health care agent or proxy appointed pursuant to a power of attorney for health care, a living will, or other similar document enforceable under the laws of this Tribe.
- (J) Any other Person designated by the Court in its discretion, provided notice is given to the guardian/conservator.

"Legal representative" includes a representative payee, a guardian or conservator acting for a respondent, a trustee or custodian of a trust or custodianship of which the respondent is a beneficiary, and an agent designated under a power of attorney, whether for health care or property, in which the respondent is identified as the principal.

"Letters" includes letters of guardianship and letters of conservatorship.

"Master" means an individual appointed by the Court to assist it in specific judicial duties as may arise in a case. The master's powers and duties depend upon the terms of the order appointing the master.

"Minor" means an unemancipated individual who has not attained [18] years of age.

"Parent" means a parent whose parental rights have not been terminated.

"Person" means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, government, governmental subdivision, agency, or instrumentality, or any other legal or commercial entity.

"Protected person" means a minor or other individual for whom a conservator has been appointed or other protective order has been made.

"Respondent" means an individual for whom the appointment of a guardian or conservator or other protective order is sought.

"State" means a State of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States.

"Tribe" means an Indian tribe or band, or Alaskan Native village, which is recognized by federal law or formally acknowledged by a State.

"Ward" means an individual for whom a guardian has been appointed.

§ 3. Guardianship of Minor

3.1. Appointment and Status of Guardian

A person becomes a guardian of a minor by parental appointment or upon appointment by the Court. The guardianship continues until terminated, without regard to the location of the guardian or minor ward.

3.2. Parental Appointment of Guardian

- (A) A guardian may be nominated by will or other signed writing by a parent for any minor child the parent has or may have in the future. The nomination may specify the desired limitations on the powers to be given to the guardian. The nominating parent may revoke or amend the nomination before confirmation by the Court.
- (B) Subject to §3.3, the appointment of a guardian becomes effective upon the nominating parent's death, an adjudication that the parent is an incapacitated person, or a written determination by a physician who has examined the parent that the parent is no longer able to care for the child, whichever occurs first.
- (C) The guardian becomes eligible to act upon order of appointment by the Court.
- (D) The guardian shall give notice of the order of appointment to the appointing parent, if living, the minor, if the minor has attained 14 years of age and a person other than the parent having care and custody of the minor.
- (E) The order of appointment issued by the Court must include a statement of the right of those notified to terminate the appointment by filing a written objection with the Court as provided in §3.3.
- (F) The appointment of a guardian by a parent does not supersede the parental rights of either parent. If both parents are dead or have been adjudged incapacitated persons, an appointment by the last parent who died or was adjudged incapacitated has priority. An appointment by a parent which is affected by filing the guardian's acceptance under a will probated in the jurisdiction of the testator's domicile is effective in this jurisdiction.

3.3. Objection by Minor or Others to Parental Appointment

A minor who is the subject of an appointment by a parent and who has attained 14 years of age, the other parent, or a person other than a parent or guardian having care or custody of the minor may object to the appointment by filing a written objection with the

Court within 30 days of the appointment. The Court shall hear the objection within 30 days of filing the notice of the objection with the Court.

3.4. Judicial Appointment of Guardian: Conditions for Appointment

- (A) A minor or a person interested in the welfare of a minor may petition for appointment of a guardian.
- (B) The Court may appoint a guardian for a minor if the Court finds the appointment is in the minor's best interest, and:
 - (1) the parents consent;
 - (2) all parental rights have been terminated; or
 - (3) the parents are unwilling or unable to exercise their parental rights.
- (C) If a guardian is appointed by a parent pursuant to §3.2 and the appointment has not been prevented or terminated under §3.3, that appointee has priority for appointment.
- (D) The Court may appoint a temporary guardian for a minor upon a showing that an immediate need exists and that the appointment would be in the best interest of the minor. Except as otherwise ordered by the Court, the temporary guardian has the authority of an unlimited guardian, but the duration of the temporary guardianship may not exceed six months. The Court may dispense with notice if it finds from affidavit or testimony that the minor will be substantially harmed before a hearing can be held on the petition.

3.5. Judicial Appointment of Guardian: Procedure

- (A) After a petition for appointment of a guardian is filed, the Court shall schedule a hearing, and notice shall be given to all interested parties.
- (B) The Court, upon hearing, shall make the appointment if it finds that a qualified person seeks appointment, venue is proper, the required notices have been given, the conditions of §3.4(B) have been met, and the best interest of the minor will be served by the appointment.
- (C) If the Court determines at any stage of the proceeding, before or after appointment, that the interests of the minor are or may be inadequately represented, it may appoint a guardian ad litem to represent the minor provided the minor has attained 14 years of age.

3.6. Duties of Guardian

Except as otherwise limited by the Court, a guardian of a minor ward has the duties and responsibilities of a parent regarding the ward's support, care, education, health, and welfare. A guardian shall act at all times in the ward's best interest and exercise reasonable care, diligence, and prudence.

3.7. Powers of Guardian

- (A) Except as otherwise limited by the Court, a guardian of a minor ward has the powers of a parent regarding the ward's support, care, education, health, and welfare.
- (B) A guardian may:
 - (1) apply for and receive money for the support of the ward otherwise payable to the ward's parent, guardian, or custodian under the terms of any statutory system of benefits or insurance or any private contract, devise, trust, conservatorship, or custodianship;
 - (2) if a conservator for the estate of a ward has not been appointed with existing authority, commence a proceeding, including an administrative proceeding, or take other appropriate action to compel a person to support the ward or to pay money for the benefit of the ward;
 - (3) consent to medical or other care, treatment, or service for the ward; and
 - (4) consent to the marriage of the ward subject to applicable law.

3.8. Immunity of Guardian

A guardian is not liable to a third person for acts of the ward solely by reason of the guardianship. A guardian is not liable for injury to the ward resulting from the negligence or act of a third person providing medical or other care, treatment, or service for the ward except to the extent that a parent would be liable under the circumstances.

3.9. Termination of Guardianship

A guardianship of a minor terminates upon the minor's death, adoption, emancipation or attainment of majority or as ordered by the Court.

§ 4. Guardianship of Incapacitated Person

4.1. Appointment and Status of Guardian

A person becomes a guardian of an incapacitated person by a parental or spousal appointment or upon appointment by the Court. The guardianship continues until terminated, without regard to the location of the guardian or ward.

4.2. Appointment of Guardian by Will or Other Writing - Effectiveness; Confirmation

- (A) A parent, by will or other signed writing, may nominate a guardian for an unmarried child who the parent believes is an incapacitated person, specify desired limitations on the powers to be given to the guardian, and revoke or amend the nomination before appointment by the Court.
- (B) The authority of a guardian appointed under this Section terminates upon the appointment of a guardian by the Court.

4.3. Contents of Petition

A petition for a determination of incapacity, in whole or in part, and for the appointment of a limited or unlimited guardian or conservator for an individual must set forth the following:

- (A) The petitioner's name, residence, current address, relationship to the respondent, and interest in the appointment and, to the extent known, state or contain the following with respect to the respondent and the relief requested;
- (B) the respondent's name, age, principal residence, current street address, and, if different, the address of the dwelling in which it is proposed that the respondent will reside if the appointment is made;
 - (1) the name and address of the respondent's:
 - (2) spouse, or if the respondent has none, an adult with whom the respondent has resided for more than six months before the filing of the petition; and
 - (3) adult children or, if the respondent has none, the respondent's parents and adult brothers and sisters, or if the respondent has none, at least one of the adults nearest in kinship to the respondent who can be found;
- (C) the name and address of any person responsible for care or custody of the respondent;
- (D) the name and address of any legal representative of the respondent;

- (E) the name and address of any person nominated as guardian by the respondent and shall attach to the petition a copy of the nominating papers;
- (F) the name and address of any proposed guardian and the reason why the proposed guardian should be selected;
- (G) the reason why guardianship or conservatorship is necessary, including a brief description of the nature and extent of the respondent's alleged incapacity;
- (H) if an unlimited guardianship is requested, the reason why limited guardianship is inappropriate and, if a limited guardianship is requested, the powers to be granted to the limited guardian; and
- (I) a general statement of the respondent's property with an estimate of its value, including any insurance or pension, and the source and amount of any other anticipated income or receipts.

4.4. Hearing Procedures

- (A) Upon receipt of a petition to establish a guardianship, the Court shall set a date and time for hearing the petition and appoint a guardian ad litem to represent the best interests of the respondent.
- (B) The Court shall appoint a lawyer to represent the respondent in the proceeding if:
 - (1) requested by the respondent;
 - (2) recommended by the guardian ad litem; or
 - (3) the Court determines that the respondent needs representation.
- (C) The guardian ad litem shall interview the respondent in person and, to the extent that the respondent is able to understand, explain the nature of the proceedings, inform the respondent of his/her right to counsel and that the Court may impose costs and expenses from the respondent's estate;
- (D) The guardian ad litem shall file a report with the Court which shall include the guardian ad litem's recommendations regarding the appropriateness of guardianship, including whether less restrictive means of intervention are available, the type of guardianship, and, if a limited guardianship, the powers to be granted to the limited guardian.

- (E) The guardian ad litem shall make any other investigation or file any other reports as the Court directs.
- (F) The Court, at its discretion, may order that the reasonable costs and fees associated with the guardian ad litem/attorney shall be paid by the proposed Ward's estate.

4.5. Professional Evaluation

At or before a hearing under this article, the Court may order a professional evaluation of the respondent and shall order the evaluation if the respondent so demands. If the Court orders the evaluation, the respondent must be examined by a physician, psychologist, or other individual appointed by the Court who is qualified to evaluate the respondent's alleged impairment. The examiner shall promptly file a written report with the Court. Unless otherwise directed by the Court, the report must contain:

- (A) a description of the nature, type, and extent of the respondent's specific cognitive and functional limitations;
- (B) an evaluation of the respondent's mental and physical condition and, if appropriate, educational potential, adaptive behavior, and social skills;
- (C) a prognosis for improvement and a recommendation as to the appropriate treatment or habilitation plan; and
- (D) the date of any assessment or examination upon which the report is based.

4.6. Confidentiality of Records

The written report of a guardian ad litem and any professional evaluation are confidential and must be sealed upon filing, but are available to:

- (A) the Court;
- (B) the respondent without limitation as to use;
- (C) the petitioner, the guardian ad litem, and the petitioner's and respondent's lawyers, for purposes of the proceeding;
- (D) the Tribal Prosecutor; and
- (E) other persons for such purposes as the Court may order for good cause.

4.7. Presence and Rights at Hearing

- (A) Unless excused by the Court for good cause, the proposed guardian shall attend the hearing. The respondent shall attend and participate in the hearing, unless excused by the Court for good cause. The respondent may

present evidence and subpoena witnesses and documents; examine witnesses, including any Court-appointed physician, psychologist, or other individual qualified to evaluate the alleged impairment; and otherwise participate in the hearing. The hearing may be held in a location convenient to the respondent and may be closed upon the request of the respondent and a showing of good cause.

- (B) Any person may request permission to participate in the proceeding. The Court may grant the request, with or without hearing, upon determining that the best interest of the respondent will be served. The Court may attach appropriate conditions to participation.

4.8. Notice

- (A) A copy of a petition for guardianship and notice of the hearing on the petition must be served personally on the respondent. The notice must include a statement that the respondent must be physically present unless excused by the Court, inform the respondent of the respondent's rights at the hearing, and include a description of the nature, purpose, and consequences of an appointment. A failure to serve the respondent with a notice substantially complying with this subsection precludes the Court from granting the petition.
- (B) In a proceeding to establish a guardianship, notice of the hearing must be given to the persons listed in the petition. Failure to give notice under this subsection does not preclude the appointment of a guardian or the making of a protective order.
- (C) Notice of the hearing on a petition for an order after appointment of a guardian, together with a copy of the petition, must be given to the ward, the guardian, and any other person the Court directs.
- (D) A guardian shall give notice of the filing of the guardian's report, together with a copy of the report, to the ward and any other person the Court directs. The notice must be delivered or sent in accordance with the Court Code and the Tribal Court Rules.

4.9. Findings and Appointment of Guardian

- (A) Following the hearing, the Court shall select an individual best qualified to meet the best interests of the respondent. The Court may appoint a limited or unlimited guardian for a respondent only if it finds by clear and convincing evidence that the respondent is an incapacitated person, and the respondents identified needs cannot be met by less restrictive means, including use of appropriate technological assistance. The Court, acting in

the best interest of the respondent, may decline to appoint any person otherwise nominated.

- (B) With appropriate findings, the Court may treat the petition as one for a protective order, enter any other appropriate order, or dismiss the proceeding. The Court, whenever feasible, shall grant to a guardian only those powers necessitated by the ward's limitations and demonstrated needs and make appointive and other orders that will encourage the development of the ward's maximum self-reliance and independence.
- (C) Within 14 days after an appointment, a guardian shall send or deliver to the ward and to all other persons given notice of the hearing on the petition a copy of the order of appointment, together with a notice of the right to file a written objection within 30 days after receipt of notice.

4.10. Duties of Guardian

- (A) Except as otherwise limited by the Court, a guardian shall make decisions regarding the ward's support, care, education, health, and welfare. A guardian shall exercise authority only as necessitated by the ward's limitations and, to the extent possible, shall encourage the ward to participate in decisions, act on the ward's own behalf, and develop or regain the capacity to manage the ward's personal affairs. A guardian, in making decisions, shall consider the expressed desires and personal values of the ward to the extent known to the guardian. A guardian at all times shall act in the ward's best interest and exercise reasonable care, diligence, and prudence.
- (B) A guardian shall:
 - (1) expend money of the ward that has been received by the guardian for the ward's current needs for support, care, education, health, and welfare;
 - (2) conserve any excess money of the ward for the ward's future needs;
 - (3) immediately notify the Court if the ward's condition has changed so that the ward is capable of exercising rights previously removed; and
 - (4) inform the Court of any change in the ward's custodial dwelling or address.

4.11. Powers of Guardian

Except as otherwise limited by the Court, a guardian may:

- (A) apply for and receive money payable to the ward or the ward's guardian or custodian for the support of the ward under the terms of any statutory system of benefits or insurance or any private contract, devise, trust, conservatorship, or custodianship;
- (B) if a conservator for the estate of the ward has not been appointed with existing authority, commence a proceeding, including an administrative proceeding, or take other appropriate action to compel a person to support the ward or to pay money for the benefit of the ward;
- (C) consent to medical or other care, treatment, or service for the ward;
- (D) consent to the marriage or divorce of the ward subject to applicable law.

4.12 Rights and Immunities of Guardian; Limitations

- (A) A guardian is entitled to reasonable compensation for services as guardian but only as approved by order of the Court. If a conservator, other than the guardian or one who is affiliated with the guardian, has been appointed for the estate of the ward, reasonable compensation and reimbursement to the guardian may be approved and paid by the conservator only by order of the Court.
- (B) A guardian is not liable to a third person for acts of the ward solely by reason of the relationship. A guardian who exercises reasonable care in choosing a third person providing medical or other care, treatment, or service for the ward is not liable for injury to the ward resulting from the wrongful conduct of the third party.
- (C) A guardian, without authorization of the Court, may not revoke a power of attorney for health care of which the ward is the principal. If a power of attorney for health care is in effect, absent an order of the Court to the contrary, a health-care decision of the agent takes precedence over that of a guardian.
- (D) A guardian may not initiate the commitment of a ward to a mental health-care institution except in accordance with any applicable Tribal or State statutory procedure for involuntary civil commitment.

4.13. Review of Guardianship

- (A) The Court shall review the appropriateness of continued guardianship no less than annually.

- (B) The guardian shall report to the Court on the condition of the ward and account for money and other assets in the guardian's possession or subject to the guardian's control.
- (C) The Court shall make a determination as to the need for continued guardianship and any recommended changes in the scope of the guardianship, or, if the ward is institutionalized, whether the current plan for care, treatment or habilitation, or continued institutionalization is in the ward's best interest.
- (D) The Court may appoint a guardian ad litem to review a report, interview the ward or guardian, and make any other investigation the Court directs.

4.14. Termination of Guardianship

- (A) A guardianship terminates upon the death of the ward or upon order of the Court.
- (B) On petition of a ward, a guardian, or another person interested in the ward's welfare, the Court may terminate a guardianship if the ward no longer needs the assistance or protection of a guardian. The Court may modify the type of appointment or powers granted to the guardian if the extent of protection or assistance previously granted is currently excessive or insufficient or the ward's capacity to provide for support, care, education, health, and welfare has so changed as to warrant that action.

§ 5. Protection of Property of Protected Person

5.1. Establishment of Conservatorship

Upon petition and after notice and hearing, the Court may appoint a limited or unlimited conservator or make any other protective order provided in this article in relation to the estate and affairs of:

- (A) a minor; or
- (B) any individual, including a minor, if the Court determines that, for reasons other than age:
 - (1) by clear and convincing evidence, the individual is unable to manage property and business affairs because of an impairment in the ability to receive and evaluate information or make decisions, even with the use of appropriate technological assistance; and
 - (2) by a preponderance of evidence, the individual has property that will be wasted or dissipated unless management is provided or

money is needed for the support, care, education, health, and welfare of the individual or of individuals who are entitled to the individual's support and that protection is necessary or desirable to obtain or provide money. In meeting this standard, the Court shall consider the totality of the circumstances based on reliable information.

5.2. Petition for Conservatorship

(A) The following may petition for the appointment of a conservator or for any other appropriate protective order:

- (1) the person to be protected;
- (2) an individual interested in the estate, affairs, or welfare of the person to be protected, including a parent, guardian, or custodian.

(B) A petition must set forth the

- (1) petitioner's name, residence, current address, relationship to the respondent, and interest in the appointment or other protective order, and, to the extent known, state or contain the following with respect to the respondent and the relief requested:
- (2) the respondent's name, age, principal residence, and current street address;
- (3) if the petition alleges impairment in the respondent's ability to receive and evaluate information, a brief description of the nature and extent of the respondent's alleged impairment;
- (4) the name and address of the respondent's:
 - (i) spouse or, if the respondent has none, an adult with whom the respondent has resided for more than six months before the filing of the petition; and
 - (ii) adult children or, if the respondent has none, the respondent's parents and adult brothers and sisters or, if the respondent has none, at least one of the adults nearest in kinship to the respondent who can be found;
- (5) the name and address of the person responsible for care or custody of the respondent;
- (6) the name and address of any legal representative of the respondent;

- (7) a general statement of the respondent's property with an estimate of its value, including any insurance or pension, and the source and amount of other anticipated income or receipts; and
- (8) the reason why a conservatorship or other protective order is in the best interest of the respondent.

5.3. Notice

- (A) A copy of the petition and the notice of hearing on a petition for conservatorship or other protective order must be served personally on the respondent. The notice must include a statement that the respondent must be physically present unless excused by the Court, inform the respondent of the respondent's rights at the hearing, and, if the appointment of a conservator is requested, include a description of the nature, purpose, and consequences of an appointment. A failure to serve the respondent with a notice substantially complying with this subsection precludes the Court from granting the petition.
- (B) In a proceeding to establish a conservatorship or for another protective order, notice of the hearing must be given to the persons listed in the petition. Failure to give notice under this subsection does not preclude the appointment of a conservator or the making of another protective order.

5.4. Hearing Procedure

- (A) Upon receipt of a petition to establish a conservatorship, the Court shall set a date and time for hearing the petition and appoint a guardian ad litem.
- (B) The Court shall appoint a lawyer to represent the respondent in the proceeding if:
 - (1) requested by the respondent;
 - (2) recommended by the guardian ad litem; or
 - (3) the Court determines that the respondent needs representation.
- (C) The guardian ad litem shall interview the respondent in person and, to the extent that the respondent is able to understand, explain the nature of the proceedings, inform the respondent of his/her right to counsel and that the Court may impose costs and expenses from the respondent's estate;
- (D) The guardian ad litem shall file a report with the Court which shall include the guardian ad litem's recommendations regarding the appropriateness of

the conservatorship, including whether less restrictive means of intervention are available, the type of conservatorship, and, if a limited conservatorship, the assets over which the conservator shall be granted authority.

- (E) The guardian ad litem shall make any other investigation or file any other reports as the Court directs.

5.5. Confidentiality of Records

The written report of a conservator and any professional evaluation are confidential and must be sealed upon filing, but are available to:

- (A) the Court;
- (B) the respondent without limitation as to use;
- (C) the petitioner, the conservator, and the petitioner's and respondent's lawyers, for purposes of the proceeding;
- (D) the Tribal Prosecutor; and
- (E) other persons for such purposes as the Court may order for good cause.

5.6. Presence and Rights at Hearing

- (A) Unless excused by the Court for good cause, the proposed conservator shall attend the hearing. The respondent shall attend and participate in the hearing, unless excused by the Court for good cause. The respondent may present evidence and subpoena witnesses and documents; examine witnesses, including any Court-appointed physician, psychologist, or other individual qualified to evaluate the alleged impairment; and otherwise participate in the hearing. The hearing may be held in a location convenient to the respondent and may be closed upon the request of the respondent and a showing of good cause.
- (B) Any person may request permission to participate in the proceeding. The Court may grant the request, with or without hearing, upon determining that the best interest of the respondent will be served. The Court may attach appropriate conditions to the participation.

5.7. Findings and Order of Conservatorship

- (A) Following the hearing, the Court shall select an individual best qualified to meet the best interests of the respondent. The Court may appoint a limited or unlimited conservator for a respondent that is a minor or if the Court

finds by clear and convincing evidence that the respondent is an incapacitated person. The Court, acting in the best interest of any respondent, may decline to appoint any person otherwise nominated.

- (B) With appropriate findings, the Court may treat the petition as one for a protective order, enter any other appropriate order, enter any other appropriate order, including the appointment of the protected payee, or dismiss the proceeding.
- (C) The Court, whenever feasible, shall grant to a conservator only those powers necessitated by the respondent's limitations and demonstrated needs and make appointive and other orders that will encourage the development of the respondent's maximum self-reliance and independence.
- (D) Within 14 days after an appointment, a conservator shall send or deliver to the respondent and to all other persons given notice of the hearing on the petition a copy of the order of appointment, together with a notice of the right to file a written objection within 30 days after receipt of notice.
- (E) The appointment of a conservator or the entry of another protective order is not a determination of incapacity of the protected person.

5.8. Required Court Approval

- (A) After notice to interested persons and only upon express authorization of the Court, a conservator may:
 - (1) make gifts;
 - (2) convey, release, or disclaim contingent and expectant interests in property, including marital property rights and any right of survivorship incident to joint tenancy or tenancy by the entireties;
 - (3) exercise or release a power of appointment;
 - (4) create a revocable or irrevocable trust of property of the estate, whether or not the trust extends beyond the duration of the conservatorship, or revoke or amend a trust revocable by the protected person;
 - (5) exercise rights to elect options and change beneficiaries under insurance policies and annuities or surrender the policies and annuities for their cash value;

- (6) exercise any right to an elective share in the estate of the protected person's deceased spouse and to renounce or disclaim any interest by testate or intestate succession or by transfer inter vivos; and
 - (7) make, amend, or revoke the protected person's will.
- (B) A conservator, in making, amending, or revoking the protected person's will, shall comply with the applicable state statute for executing wills or complying with any applicable tribal ordinance pertaining to wills if one is in effect.
- (C) The Court, in exercising or in approving a conservator's exercise of the powers listed in subsection (a), shall consider primarily the decision that the protected person would have made, to the extent that the decision can be ascertained. The Court shall also consider:
- (1) the financial needs of the protected person and the needs of individuals who are in fact dependent on the protected person for support and the interest of creditors;
 - (2) possible reduction of income, estate, inheritance, or other tax liabilities;
 - (3) eligibility for governmental assistance;
 - (4) the protected person's previous level of support;
 - (5) the existing estate plan;
 - (6) the protected person's life expectancy and the probability that the conservatorship will terminate before the protected person's death; and
 - (7) any other factors the Court considers relevant.
- (D) Without authorization of the Court, a conservator may not revoke or amend a durable power of attorney of which the protected person is the principal. If a durable power of attorney is in effect, absent a Court order to the contrary, a decision of the agent takes precedence over that of a conservator.

5.9. Protective Arrangements and Single Transactions

- (A) If a basis is established for a protective order with respect to an individual, the Court, without appointing a conservator, may:

- (1) authorize, direct, or ratify any transaction necessary or desirable to achieve any arrangement for security, service, or care meeting the foreseeable needs of the protected person, including:
 - (i) payment, delivery, deposit, or retention of funds or property;
 - (ii) sale, mortgage, lease, or other transfer of property;
 - (iii) purchase of an annuity;
 - (iv) making a contract for life care, deposit contract, or contract for training and education; or
 - (v) addition to or establishment of a suitable trust, including a trust created under the Uniform Custodial Trust Act; and
 - (2) authorize, direct, or ratify any other contract, trust, will, or transaction relating to the protected person's property and business affairs, including a settlement of a claim, upon determining that it is in the best interest of the protected person.
- (B) In deciding whether to approve a protective arrangement or other transaction under this section, the Court shall consider the factors described in §5.11(C).
- (C) The Court may appoint a Master to assist in the accomplishment of any protective arrangement or other transaction authorized under this section. The Master has the authority conferred by the order and shall serve until discharged by order after report to the Court.

5.10. Who May Be Conservator: Order of Preference

- (A) The Court, in appointing a conservator, shall consider persons otherwise qualified in the following order of preference:
- (1) a conservator, guardian of the estate, or other like fiduciary appointed or recognized by an appropriate Court of any other jurisdiction in which the protected person resides;
 - (2) an agent appointed by the respondent to manage the respondent's property under a durable power of attorney;
 - (3) the spouse of the respondent;
 - (4) an adult child of the respondent;

- (5) a parent of the respondent;
 - (6) an adult with whom the respondent has resided for more than six months before the filing of the petition; and
 - (7) any other person deemed appropriate by the Court.
- (B) With respect to persons having equal priority, the Court shall select the one it considers best qualified. The Court, acting in the best interest of the protected person, may decline to appoint a person having preference and appoint a person having a lower preference or no preference.

5.11. Termination or Modification of Conservatorship

- (A) A conservatorship terminates upon the death of the ward or upon order of the Court.
- (B) On petition of a ward, a guardian, or another person interested in the ward's welfare, the Court may terminate a conservatorship if the ward no longer needs the assistance or protection of a conservator. The Court may modify the type of appointment or powers granted to the conservator if the extent of protection or assistance previously granted is currently excessive or insufficient or the ward's capacity to provide for support, care, education, health, and welfare has so changed as to warrant that action.
- (C) In addition to the powers listed herein, the Court may also require a bond or collateral or an accounting of the protected person's estate, direct distribution, remove the conservator, appoint a successor conservator, modify the type of appointment, or grant any other relief the Court deems just and necessary.
- (D) A conservator may petition the Court for instructions concerning fiduciary responsibility.
- (E) Upon notice and hearing the petition, the Court may give appropriate instructions and make any appropriate order.

5.12. Bond

The Court may require a conservator to furnish a bond conditioned upon faithful discharge of all duties of the conservatorship according to law, with sureties and amounts as it may specify.

5.13. Terms of Bond

The following rules apply to any bond required:

- (A) Except as otherwise provided by the terms of the bond, sureties and the conservator are jointly and severally liable.
- (B) By executing the bond of a conservator, a surety submits to the jurisdiction of the Court.

5.14. Compensation and Expenses

If not otherwise compensated for services rendered, a guardian, guardian ad litem, conservator, lawyer for the respondent, lawyer whose services resulted in a protective order or in an order beneficial to a protected person's estate, or any other person appointed by the Court may receive reasonable compensation from the ward's estate as ordered by the Court.

5.15. General Duties of Conservator; Plan

- (A) A conservator is a fiduciary and shall observe the standards of care applicable to a trustee.
- (B) A conservator may exercise authority only as necessitated by the limitations of the protected person, and to the extent possible, shall encourage the person to participate in decisions, act in the person's own behalf, and develop or regain the ability to manage the person's estate and business affairs.
- (C) Within 60 days of appointment, the conservator shall file an initial report to the Court which includes a detailed inventory of the estate subject to the conservatorship.
- (D) Conservator shall also file with the Court a proposed monthly budget for the Court's review and approval. The budget shall be based on the actual needs of the person and take into consideration the best interests of the ward.
- (E) A conservator shall report to the Court for administration of the estate annually unless the Court otherwise directs.

5.16. Protected Person's Interest Inalienable

- (A) The interest of a protected person in property subject to a conservatorship is not transferable or assignable by the protected person, except upon order of the Court.
- (B) Property managed by a conservator by appointment and the interest of the protected person in that property are not subject to levy, garnishment, or

similar process for claims against the protected person except under Tribal Law.

5.17. Powers of Conservator in Administration

Except as otherwise qualified or limited by the Court in its order of appointment, a conservator has the powers granted in this section and any additional powers granted by the Court:

- (A) Without further Court authorization or confirmation, a conservator may receive additions to the estate and make payments in accordance with the Court approved monthly budget, and collect, hold, and retain assets of the estate, until the conservator, with the Court's approval, considers that disposition of an asset should be made;
- (B) pay taxes, assessments, compensation of the conservator and any guardian, and other expenses incurred in the collection, care, administration, and protection of the estate;
- (C) subject to the Court's approval, pay or contest any claim, settle a claim by or against the estate or the protected person by compromise, arbitration, or otherwise, and release, in whole or in part, any claim belonging to the estate to the extent the claim is uncollectible;
- (D) subject to the Court's approval, prosecute or defend actions, claims, or proceedings in any jurisdiction for the protection of assets of the estate and of the conservator in the performance of fiduciary duties; and
- (E) execute and deliver any and all instruments that will accomplish or facilitate the exercise of the powers vested in the conservator.

5.18. Death of Protected Person

- (A) If a protected person dies, the conservator shall deliver to the Court for safekeeping any will of the protected person which may have come into the conservator's possession, inform the personal representative or beneficiary named in the will of the delivery, and retain the estate for delivery to the personal representative of the decedent or to another person entitled to it.
- (B) If a personal representative has not been appointed within 40 days after the death of a protected person and an application or petition for appointment is not before the Court, the conservator may apply to exercise the powers and duties of a personal representative in order to administer and distribute the decedent's estate.

5.19. Personal Liability of Conservator

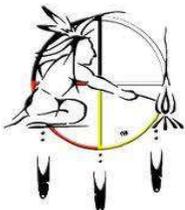
- (A) Except as otherwise agreed, a conservator is not personally liable on a contract properly entered into in a fiduciary capacity in the course of administration of the estate unless the conservator fails to reveal in the contract the representative capacity and identify the estate.
- (B) A conservator is personally liable for obligations arising from ownership or control of property of the estate or for other acts or omissions occurring in the course of administration of the estate only if the Court determines that the conservator is personally at fault.

5.20. Termination of Proceedings

- (A) A conservatorship terminates upon the death of the protected person or upon order of the Court. Unless created for reasons other than that the protected person is a minor, a conservatorship created for a minor also terminates when the protected person attains majority or is emancipated.
- (B) On petition of a protected person, a conservator, or another person interested in a protected person's welfare, the Court may terminate the conservatorship if the protected person no longer needs the assistance or protection of a conservator. Termination of the conservatorship does not affect the obligation to account for funds and assets of the protected person.
- (C) Upon the establishment of a prima facie case for termination, the Court shall order termination unless it is proved that continuation of the conservatorship is in the best interest of the protected person.
- (D) The Court shall enter a final order of discharge upon the approval of the final report and satisfaction by the conservator of any other conditions placed by the Court on the conservator's discharge.

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Legislative History for the Forest County Potawatomi Guardianship and Protective Proceedings Ordinance:



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