



Guardianship FAQ

- 1. What is a guardianship?** A guardianship is an order of the court giving another person the legal right to care for and make decisions for a child under the age of 18 or an incompetent adult. When a parent is unavailable and another person, usually a relative or close family friend, is willing to care for the child a guardianship gives that person the authority to care for and make decisions for the child. For example, guardians may need to make decisions about schooling, medical care and religion.
- 2. How do I become the guardian of a child I'm caring for or will be caring for?** You can obtain a Guardianship Petition form from the Forest County Potawatomi Clerk of Courts. You file the Petition with the Clerk of Court. You will be notified of a court date after the parents have been provided with notice of the Petition.
- 3. What is the guardian of the estate and guardian of the person?** In some cases the job of a guardian is divided into two parts. The guardian of the estate has control over the ward's money and property. The guardian of the person has decision-making power over all other decisions for the ward such as medical, religion and education.
- 4. I am a grandparent and caring for my child's children. Do I need a guardianship?** If you will be caring for your grandchildren for any significant length of time (more than 30 days) a guardianship is a good idea. Without a guardianship, you do not have the legal power to make decisions for your grandchildren relating to medical care, school, religion and other major life issues.
- 5. My child left his/her children with me and I am not willing/able to care for them. What should I do?** You should try to talk to your child and explain the situation. If that is not possible or doesn't work, you should contact an attorney or a social worker to review your options. You also have the option of making an ICW Referral if the child is enrolled or eligible to be enrolled in the Forest County Potawatomi Tribe.
- 6. I would rather not have the parents involved. Is it possible to do a guardianship without involving the parents?** No. Granting a person the right to be a guardian over a child is a serious step of which the parents must have notice. It is not possible to have a guardianship without at least making a serious attempt to notify the parents the petition has been filed. If the parents choose not to participate, that is their choice.

7. **I don't know where the parents of the proposed ward are located. How can I get them served with the guardianship papers?** The parents of a child who is the subject of a proposed guardianship must be noticed that a hearing is scheduled in court to decide on guardianship for the child. If parents cannot be served personally or by mail, it is possible to publish a notice in the newspaper with the information about the court date.
8. **The parent of the child I am caring for says s/he will sign whatever papers are necessary for me to be the guardian. Can I have them sign a form?** Guardianships cannot be granted simply with a form. A petition must be filed in court. The parent must have a chance to appear in court and share their views with the judge. The judge would like to meet with the parents face to face in court and talk with them on the record.
9. **I have been granted a guardianship over my grandchild/niece/nephew, etc. The parent of the child is stating s/he wants the child back. Am I required to give the child to the parent?** You are not obligated to give the child to the parent unless the Court has specified that the parent will have periods of physical placement. If the parent wants to resume raising the child and being the parent, s/he must make that request to the Court in writing.
10. **What determines which Court has jurisdiction of the child's custody arrangements?** It depends on many factors. If the child's custody and placement determinations were originally heard in Forest County Potawatomi Tribal Court then you may file in Tribal Court. (The child's custody and placement determination could only have been made through a paternity action because the Tribal Court currently does not hear divorces). If the child's custody and placement determinations were made in state court, then whether you may file in tribal court is a much more complicated question; you should consult an attorney.
11. **What is a guardian ad litem?** A guardian ad litem is a person appointed by the Court to represent the best interests of the child. It is very different from a guardian. A guardian ad litem has no power to make decisions for a child. The guardian ad litem will investigate a proposed guardian and report back to the Court.
12. **What is legal custody?** Under Forest County Potawatomi law, custody and legal custody are used interchangeably and mean the same thing. Legal custody means the right to make major life decisions for a child including: education, health care, religion, military service, etc. Legal custody DOES NOT mean one parent physically being with or living with his or her child.
13. **What is physical placement?** Physical placement means the time when a parent or caregiver is visiting with and caring for his or her child. Physical placement may be for a short time (1 hour) or several weeks or months. (Physical placement and visitation are the same thing and are used interchangeably.)

- 14. Are phone appearances allowed before the FCP Court?** Phone appearances are generally not permitted. However they are allowed in limited circumstances such as when a party lives out of state or is incarcerated. There is a form to make such a request which must be approved by the judge prior to the court date. Contact the Clerk of Court, 715-478-7255.