

**POKAGON BAND OF POTAWATOMI INDIANS
GUARDIANSHIP AND CONSERVATORSHIP OF ADULTS CODE**

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CHAPTER 1

Short Title; Authority; Purpose; Construction; No Waiver of Sovereign Immunity; Severability; Effective Date; and Definitions

Section 1.01 Short Title

This Code shall be known as the "Guardianship and Conservatorship of Adults Code."

Section 1.02 Authority

The Tribal Council enacts this Code pursuant to the duties of the Tribal Council stated in Article IX, Subsections 1(a) and (c) of the Constitution and the legislative powers of the Tribal Council as enumerated in Article IX, Subsection 2(a) of the Constitution.

Section 1.03 Purpose

The purpose of this Code is to codify a process and procedure governing the appointment of a Guardian or Conservator for Adults to promote the health, safety and general welfare of the Band.

Section 1.04 Construction

This Code, to the extent reasonable, shall be read and interpreted in a manner consistent with the Constitution; provided in the event of any inconsistency, the Constitution shall control.

Section 1.05 No Waiver of Sovereign Immunity

Nothing in this Code shall be construed to waive the sovereign immunity of the Band or any of its governmental officers, representatives, employees, or agents.

Section 1.06 Severability

If any provision of this Code, or the application thereof to any person or circumstances, shall, for any reason, be adjudged by a court of competent jurisdiction to be invalid, such judgment shall not affect, impair, or invalidate the remainder of this Code, which shall continue in full force and effect.

Section 1.07 Effective Date

This Code shall become effective on the date of enactment of this Code by the Tribal Council.

Section 1.08 References

The reference or citation to any Section or Subsection in this Code shall refer to a Section or Subsection of this Code, except as otherwise expressly stated.

Section 1.09 Definitions

As used in this Code:

(a) “Adult” means any person who is eighteen (18) years of age or older.

(b) “Band” means the Pokagon Band of Potawatomi Indians, a sovereign federally recognized Indian tribe.

(c) “Citizen” means a duly enrolled member of the Band.

(d) “Clear and Convincing” means evidence that produces in the mind of the trier of fact a firm belief or conviction as to the truth of the allegations sought to be established, evidence so clear, direct, weighty and convincing as to enable the trier of fact to come to a clear conviction, without hesitancy, of the truth of the precise facts in issue. Evidence may be uncontroverted, and yet not be clear and convincing. Conversely, evidence may be “clear and convincing” despite the fact that it has been contradicted.

(e) “Code” means this Guardianship and Conservatorship of Adults Code.

(f) “Conservator” means a person or entity that has been appointed by the Tribal Court to perform the duties and exercise the authority relative to the collection, care, preservation, administration and protection of the Ward’s Estate in accordance with this Code and includes a Limited Conservator.

(g) “Constitution” means the Band’s Constitution.

(h) “Court of Appeals” means the appellate level court of the Band.

(i) “Department of Social Services” means the Band’s Department of Social Services.

(j) “Estate” means income, accounts, securities, assets, liabilities and personal and real property.

(k) “Guardian” means a person or entity who has been appointed by the Tribal Court to perform the duties and exercise the authority to provide for the care, custody and control of the Ward in accordance with this Code, and includes a Limited Guardian.

(l) “Hearing” means the hearing described in Section 4.01.

(m) “Immediate Family” means the grandparent, parent, step-parent, spouse, brother, sister, brother-in-law, sister-in-law and Adult children of the proposed Ward.

(n) “Incapacitated Adult” means an Adult who is impaired by reason of Mental Illness, mental deficiency, physical illness or disability, chronic use of drugs, chronic intoxication, or other cause, to the extent of lacking sufficient understanding or capacity to make or communicate informed decisions.

(o) “Initial Hearing” means the initial hearing described in Section 2.05.

(p) “Limited Conservator” means a person or entity that has been authorized by the Tribal Court to perform less than all duties or to exercise less than all authority set forth in this Code in relation to the Ward’s Estate as enumerated by Tribal Court order.

(q) “Limited Guardian” means a person or entity who has been authorized by the Tribal Court to perform less than all duties or to exercise less than all authority set forth in this Code in relation to the Ward as enumerated by Tribal Court order.

(r) “Mental Illness” means a substantial disorder of thought or mood that significantly impairs judgment, behavior, capacity to recognize reality, or ability to cope with the ordinary demands of life.

(s) “Petition” means a petition for appointment of a Guardian or Conservator, or any combination thereof.

(t) “Petitioner” means a person or entity who has filed a Petition with the Tribal Court.

(u) “Presenting Officer” means any attorney who is authorized to represent the Band in a matter under this Code.

(v) “Tribal Council” means the governing body of the Band established pursuant to Article X of the Constitution.

(w) “Tribal Court” means the trial level court of the Band.

(x) “Trust Land” means all land held in trust by the United States of America for the benefit of the Band, and all other land of the Band which qualifies as Indian country under 25 U.S.C. 1151.

(y) “Ward” means an Adult for whom the Tribal Court has appointed a Guardian or Conservator.

CHAPTER 2

Jurisdiction; Standing; Eligibility for Appointment; Contents of Petition; Initial Hearing; and Notice

Section 2.01 Jurisdiction

(a) Tribal Court proceedings under this Code are civil in nature, and the Tribal Court shall

have jurisdiction over such proceedings.

(b) In accordance with the Constitution, the Court of Appeals shall have jurisdiction to hear all appeals arising from Tribal Court decisions or proceedings under this Code.

(c) In accordance with the requirements of this Code, the Tribal Court may appoint a Guardian for any Adult, or a Conservator in relation to the Estate of any Adult, over whom the Tribal Court may exercise civil jurisdiction.

Section 2.02 Standing

(a) Any person interested in the welfare of an Adult may petition the Tribal Court for appointment of a Guardian.

(b) Any Adult, on his or her own behalf, or any person interested in the Estate, affairs or welfare of an Adult, a Guardian or any person or entity who would be adversely affected by lack of effective management of a proposed Ward's Estate or business affairs, may petition the Tribal Court for appointment of a Conservator.

(c) The Department of Social Services may petition the Tribal Court for appointment of a Guardian or Conservator only in the absence of an available Petitioner, as determined by the Director of the Department of Social Services.

(d) If the Tribal Court determines that financial protection of a Ward's Estate is required for the Ward, the Tribal Court may order the Guardian to petition the Tribal Court for appointment of a Conservator.

Section 2.03 Eligibility for Appointment

(a) The Tribal Court may appoint any competent, suitable and willing person to serve as Guardian or Conservator or may appoint any suitable and willing entity, which is authorized to exercise fiduciary powers, to serve as Guardian or Conservator, provided that the Court shall appoint an entity as Guardian or Conservator only if such appointment is in the Ward's best interests and there is no person who is competent, suitable and willing to serve as Guardian or Conservator.

(b) The same person or entity may be appointed to serve as Guardian and Conservator.

(c) Except as otherwise provided in this Code, the Tribal Court shall appoint a person as Guardian or Conservator based upon the following order of priority:

- (1) a person, or entity in the case of a Conservator, designated by the proposed Ward;
- (2) the proposed Ward's spouse;
- (3) a proposed Ward's Adult child;

(4) a proposed Ward's parent;

(5) a relative of the proposed Ward, other than those listed above, with whom the proposed Ward has resided for more than six (6) months before the filing of the Petition;

(6) a member of the proposed Ward's Immediate Family, other than those listed above;
and

(7) any other competent, suitable and willing person.

(d) The Tribal Court may depart from the order of priority, including appointing a person or entity with lower or no priority, if the Tribal Court determines that such departure is in the best interests of the proposed Ward. In determining the best interests of the proposed Ward, the Tribal Court may consider all factors deemed relevant by the Tribal Court, which may include, without limitation, whether a proposed Guardian or Conservator is familiar with the history and culture of the Band.

Section 2.04 Contents of Petition

All Petitions must be filed with the Tribal Court on a form provided by the Tribal Court and must be dated, signed and verified by the Petitioner. Petitions for appointment of a Guardian or Conservator may be combined into a single Petition and, whether combined or not, shall include the following information, to the extent reasonably available:

(a) the Petitioner's full name, address, tribal affiliation, relationship to the proposed Ward and a statement regarding the Petitioner's standing under Section 2.02;

(b) the full name, sex, date and place of birth, residence and tribal affiliation of the proposed Ward;

(c) the full names and addresses of persons known to have an interest in the Petition, including but not limited to, any current Guardian or Conservator and Immediate Family (if known);

(d) the basis for the Tribal Court's jurisdiction, as set forth in Section 2.01;

(e) whether the Petitioner seeks appointment of a Guardian or Conservator, or both, for the proposed Ward;

(f) the reasons that the appointment of a Guardian or Conservator, or both, is sought, including but not limited to, specific facts about the proposed Ward's condition and specific examples of the proposed Ward's recent conduct that demonstrate the need for such appointment;

(g) the full name, address, and any tribal affiliation and relationship to the proposed Ward of every person or entity, whom the Petitioner recommends for appointment as Guardian or

Conservator, or both, and a statement of any priority afforded under Subsection 2.03(c); and

(h) a complete description and statement of the estimated value of the proposed Ward's Estate, including but not limited to, any real and personal property owned, possessed, or in which the proposed Ward has an interest, and any income, compensation, insurance, allowance, payment and accounts receivable to which the proposed Ward is entitled.

Section 2.05 Initial Hearing

(a) Upon receipt of a Petition, the Tribal Court shall set a date for the Initial Hearing to occur within fourteen (14) days of filing of the Petition, provided that for good cause the Tribal Court may adjourn the Initial Hearing beyond such fourteen (14) days upon motion of any party or on initiative of the Tribal Court.

(b) The purpose of the Initial Hearing shall include to address procedural matters and enter such orders as permitted pursuant to Subsections 3.02(a), 3.03(a), 3.04(a) and 4.04(a)(2).

Section 2.06 Notice

The clerk of the Tribal Court shall cause a notice of the Initial Hearing, along with the Petition, to be served on the Petitioner, the proposed Ward, Immediate Family (who are identified in the Petition), any guardian *ad litem* (as described in Section 3.02) and other persons as directed by the Tribal Court, in a manner permitted under Band law.

CHAPTER 3

Presenting Officer; Guardian *Ad Litem*; Physician or Mental Health Professional; Department of Social Services; and Disclosure and Service

Section 3.01 Presenting Officer

(a) The Presenting Officer is authorized to represent the Band in proceedings under this Code where the Department of Social Services is the Petitioner.

(b) The Presenting Officer shall not represent any other person or entity in any proceeding under this Code.

(c) The Presenting Officer shall be a state licensed attorney who is admitted to practice before the Tribal Court.

Section 3.02 Guardian *Ad Litem*

(a) Unless the proposed Ward has retained legal counsel, the Tribal Court shall appoint a guardian *ad litem* to advocate for the best interests of the proposed Ward in a proceeding under this Code, who shall serve until dismissed by the Tribal Court.

(b) The guardian *ad litem* shall be a state licensed attorney who is admitted to practice before the Tribal Court.

(c) The duties of the guardian *ad litem* shall include, without limitation, the following:

(1) to personally visit the proposed Ward prior to the Hearing conducted pursuant to Section 4.01;

(2) to explain to the proposed Ward the nature, purpose and legal effect of appointment of a Guardian or Conservator;

(3) to explain to the proposed Ward the procedures and the rights of the proposed Ward in connection with proceedings under this Code;

(4) to inform the proposed Ward of the name of the Petitioner and of each person or entity, known to be seeking or being considered for appointment as Guardian or Conservator; and

(5) to make determinations and inform the Tribal Court of the following:

(A) whether any appropriate alternatives exist to appointment of a Guardian or Conservator;

(B) whether the proposed Ward wishes to be present at the Hearing, to contest the Petition and, as applicable, seeks a Limited Guardian or Limited Conservator; and

(C) whether the proposed Ward objects to or prefers that a specific person or entity, be appointed Guardian or Conservator, as applicable.

(d) Except as otherwise provided in the Tribal Court order appointing the guardian *ad litem*, the guardian *ad litem* shall have the following authority:

(A) to fully and actively participate in all aspects of any proceedings under this Code;

(B) to determine the Ward's best interests by conducting an independent investigation, including but not limited to, interviewing the Ward, Immediate Family and others as necessary;

(C) to access relevant information regarding the Ward, including but not limited to, all written reports prepared pursuant to Subsection 3.03(a), 3.03(b) or 3.04(a); and

(D) to exercise any other authority as reasonably necessary to fulfill the duties stated in Subsection 3.02(c).

(e) The appointment of a guardian *ad litem* shall not create an attorney-client relationship. Accordingly, communications between the guardian *ad litem* and the proposed Ward are not subject to attorney-client privilege, and the guardian *ad litem* may report or testify about any

communication with the proposed Ward. The guardian *ad litem* must inform the proposed Ward of such lack of privilege as soon as practicable after appointment.

(f) The Tribal Court shall assess the Ward's Estate the cost of a guardian *ad litem*, provided that if the Ward's Estate lacks adequate resources, the Band shall pay such cost.

Section 3.03 Physician or Mental Health Professional

(a) The Tribal Court may order, at the Band's expense, that the proposed Ward be examined by a physician or mental health professional appointed by the Tribal Court who shall submit a written report to the Tribal Court at least five (5) days prior to the Hearing.

(b) The proposed Ward has the right to secure, at his or her expense, an independent examination by a physician or mental health professional who shall submit a written report to the Tribal Court prior to the Hearing.

(c) Any report prepared pursuant to Subsection 3.03(a) or 3.03(b) shall:

(1) describe, in detail, the proposed Ward's physical and psychological infirmities;

(2) explain the manner and extent to which each infirmity interferes with the proposed Ward's ability to receive and evaluate information in making decisions;

(3) list all medications the proposed Ward is receiving, the dosage of each medication, and describe the effects of each medication;

(4) describe the prognosis for improvement in the condition of the proposed Ward and, as applicable, the most appropriate rehabilitation program; and

(5) be signed by all individuals who performed the evaluations upon which the report is based and list their qualifications.

Section 3.04 Department of Social Services

(a) The Tribal Court may order that a representative of the Department of Social Services interview the proposed Ward and any proposed Guardian or Conservator, as applicable, and prepare a written report to the Tribal Court.

(b) The report shall contain all pertinent information which may reasonably assist the Tribal Court in rendering a decision, including but not limited to, whether grounds exist to appoint a Guardian or Conservator and the suitability of any proposed appointment.

(c) The report must be signed by the representative of the Department of Social services who conducted the interviews and prepared the report.

(d) The Department of Social Services shall submit the report to the Tribal Court at least ten

(10) days prior to the Hearing.

Section 3.05 Disclosure and Service

(a) Any report prepared pursuant to Subsection 3.03(a) or 3.04(a) shall be admissible without testimony, may be used without regard to privilege in any proceeding under this Code and shall be available to the proposed Ward, the Petitioner, their respective attorneys, any guardian *ad litem* and other persons as directed by the Tribal Court. Any such report shall not be included within the public record of any proceeding.

(b) Any privilege regarding a report made as part of an independent examination under Subsection 3.03(b) shall be deemed waived if the proposed Ward seeks to have the report considered in any proceeding under this Code. The Tribal Court may admit such report without testimony. Any such report shall not be included within the public record of any proceeding.

(c) The clerk of the Tribal Court shall cause any report submitted to the Tribal Court pursuant to this Code to be served on the individuals referenced in Subsection 3.05(a).

(d) Notwithstanding Subsection 3.05(a), the Tribal Court may limit or condition access to any report submitted to the Tribal Court pursuant to this Code, as reasonably necessary to protect or maintain the confidentiality of any information contained in any such report.

CHAPTER 4

Hearing; Grounds for Guardianship; Grounds for Conservatorship; and Court Orders

Section 4.01 Hearing

(a) The Tribal Court shall hold a Hearing on the Petition to determine whether there are grounds for appointment of a Guardian or Conservator, as applicable, to make any such appointment, and to enter any other appropriate order.

(b) The Petitioner, the proposed Ward, Immediate Family, their respective attorneys, any guardian *ad litem* and other persons as permitted by the Tribal Court shall be afforded an opportunity to call witnesses, to cross-examine witnesses, to examine and challenge the information and conclusions contained in any written reports received by the Tribal Court and to examine or cross-examine the signatories of any such reports.

(c) The Petitioner shall bear the burden to establish by Clear and Convincing evidence that grounds exist for appointment of a Guardian or Conservator.

(d) The proponent of the appointment of a proposed Guardian or Conservator shall bear the burden to establish by a preponderance of the evidence that a proposed Guardian or Conservator is eligible, is granted any priority, and is most suitable for the appointment.

(e) All Tribal Court proceedings under this Code shall be closed to the public, and access

shall be limited to the Petitioner, the proposed Ward, Immediate Family, their respective attorneys, any guardian *ad litem*, fact and expert witnesses called to testify at the proceeding under the authority of the Tribal Court and any other person or entity authorized by the Tribal Court to be present at the proceeding.

(f) Any person may request permission from the Tribal Court to participate in the Hearing, and the Tribal Court may grant the request, with or without a hearing, upon determining that the best interest of the proposed Ward will be served by granting the request. The Tribal Court may attach appropriate conditions to any such grant of permission.

(g) A proposed Ward has the right to be represented by legal counsel at his or her expense, to be present at proceedings under this Code, to call and cross-examine witnesses, to present evidence, and see or hear all evidence presented.

Section 4.02 Grounds for Guardianship

Subject to the requirements of this Code, the Tribal Court may appoint a Guardian for an Adult, if Tribal Court finds by Clear and Convincing evidence both of the following:

(a) the proposed Ward is an Incapacitated Adult; and

(b) appointment of a Guardian is necessary as a means of providing continuing care and supervision of the Incapacitated Adult.

Section 4.03 Grounds for Conservatorship

Subject to the requirements of this Code, the Tribal Court may appoint a Conservator in relation to the Estate of an Adult, if the Tribal Court finds by Clear and Convincing evidence either of the following:

(a) the proposed Ward is unable to manage his or her Estate effectively because the proposed Ward is an Incapacitated Adult or because of confinement, detention, or disappearance; and

(1) the proposed Ward's Estate will be wasted or dissipated unless proper management is provided; or

(2) money is needed for the proposed Ward's support, care and welfare, or for those entitled to the proposed Ward's support; and protection is necessary to obtain or provide money; or

(b) the proposed Ward is mentally competent, but due to age or physical infirmity is unable to manage his or her Estate or affairs effectively, and recognizing this disability, files a Petition with the Tribal Court for appointment of a Conservator.

Section 4.04 Court Orders

(a) Without limiting any other authority of the Tribal Court under any Band law, the Tribal Court has the following powers, which may be exercised directly, or through a Guardian:

(1) If an emergency exists and no other person appears to have authority to act under the circumstances, then the Tribal Court, upon receipt of a Petition, may exercise the power of a Guardian over a proposed Ward or may appoint a Guardian on a temporary basis and may enter appropriate protective orders consistent with the authority granted in this Subsection. The Tribal Court shall hold an Initial Hearing, as provided in Section 2.05, after acting under this Subsection.

(2) At the Initial Hearing, the Tribal Court may enter appropriate protective orders as the Tribal Court determines to be reasonably necessary to protect the best interests of the proposed Ward.

(b) Without limiting any other authority of the Tribal Court under any Band law, the Tribal Court has the following powers, which may be exercised directly, or through a Conservator, as applicable:

(1) After a Petition for appointment of a Conservator has been filed, and without notice to others, the Tribal Court has power to enter temporary orders to preserve and apply the proposed Ward's Estate as may be required for the support of the proposed Ward or the Ward's dependents. The Tribal Court shall hold an Initial Hearing, as provided in Section 2.5, after acting under this Subsection.

(2) After the Hearing on Petition for appointment of a Conservator and, upon determining that a basis exists for appointing a Conservator, the Tribal Court, for the benefit of the Ward and members of the Ward's household, has all the powers over the Ward's Estate and affairs that the Ward could exercise if present and not under disability, except the power to make a will; provided, however, the exercise of any such power must be in the best interests of the Ward.

(3) The Tribal Court may enter appropriate protective orders consistent with the authority granted in this Subsection 4.04(b).

CHAPTER 5

Powers and Duties of Guardian; Powers and Duties of Conservator; and Limitations on Powers and Duties

Section 5.01 Powers and Duties of Guardian

Except as modified by Tribal Court order, a Guardian shall be responsible for the care, custody and control of the Ward and, without limiting such responsibilities, shall have all of the following powers and duties:

(a) To the extent consistent with the terms of an order by a court of competent jurisdiction relating to detention or commitment of the Ward, the Guardian shall be entitled to custody of the person of the Ward and may establish the Ward's place of residence, provided that the Guardian shall give preference as follows:

(1) to the least restrictive setting in which the Ward's special needs, if any, will be met;

(2) to places within the Service Area, if residence within the Service Area and outside the Service Area would be substantially equivalent; and

(3) to places that are not treatment facilities, unless the only available and appropriate place of residence is a treatment facility, in which case the Guardian shall give preference to any tribal-based treatment facilities over other such facilities.

(b) The Guardian shall visit the Ward within one (1) month of appointment and not less than once within one (1) month after each previous visit.

(c) The Guardian shall make provisions for the Ward's care, comfort, and maintenance and, when appropriate, arrange for the Ward's training and education.

(d) The Guardian shall secure services to restore the Ward to the best possible state of mental and physical well-being in an effort to return the Ward to self-management at the earliest possible time.

(e) Without regard to custodial rights of the Ward's person, the Guardian shall take reasonable care of the Ward's personal property, including but not limited to, clothing, furniture and vehicles, and shall commence protective proceedings if any of the Ward's property needs protection.

(f) The Guardian shall have authority to consent to any medical, legal, psychiatric, psychological, and other professional care, counsel, treatment or service for the Ward and to give any other consent or approval on the Ward's behalf that may be required or in the Ward's best interest. When making such decisions, to the extent permitted under applicable law, the Guardian should consider the intent of the Ward expressed prior to entry of the Order appointing the Guardian.

(g) If no Conservator has been appointed, or to the extent consistent with the appointment of a Limited Conservator, a Guardian may do any of the following:

(1) institute a proceeding to compel a person under a duty to support the Ward or to pay money for the Ward's welfare to perform the duty;

(2) receive money and tangible property deliverable to the Ward and apply the same for the Ward's care, comfort, maintenance and appropriate training and education; provided, however, the Guardian shall not use money from the Ward's Estate for room and board which is furnished by the Guardian or his or her spouse, parent or child unless authorized by

order of the Tribal Court upon notice to at least one (1) Immediate Family member (who has appeared in the action). The Guardian shall exercise care to conserve any excess for the Ward's needs.

(h) If a Conservator has been appointed, the Guardian shall pay to the Conservator, for management pursuant to this Code, the amount of the Ward's Estate received by the Guardian in excess of the amount the Guardian expends for the Ward's current care, comfort, maintenance and appropriate training and education, and the Guardian is empowered to make such expenditures, subject however to the requirements of this Code and any limitations imposed by the Tribal Court. The Guardian shall account to the Conservator for all amounts expended.

(i) Whenever meaningful communication is possible, the Guardian shall consult with the Ward before making any major decision affecting the Ward.

(j) The Guardian may petition the Tribal Court for authority to do any act about which the Guardian is uncertain, and the Tribal Court may grant such authority if such act appears to be in the best interests of the Ward.

Section 5.02 Powers and Duties of Conservator

(a) All title to the Estate, including any interest in Trust Land, shall remain with the Ward, and shall not be vested in the Conservator; subject, however, to possession and control by the Conservator and the exercise of powers and duties conferred under this Code.

(b) Except as otherwise provided in this Code, or modified by Tribal Court order, a Conservator has the powers and duties to perform every act that a reasonable and prudent person would perform incident to the collection, care, preservation, administration and protection of the Ward's Estate to accomplish the purpose of the appointment, without further approval of the Tribal Court, including but not limited to, the following:

(1) to collect, hold, and retain the Estate, in the Ward's name, and receive any addition thereto, until proper disposition in accordance with this Code;

(2) to continue or participate in any business or enterprise in which the Ward was engaged;

(3) to prudently invest or reinvest the Estate and deposit Estate money in a federally insured financial institution;

(4) to acquire or dispose of the Estate, including real property, subject however to Subsection 5.02(c), as applicable;

(5) to make repairs or alterations to buildings or other structures, and demolish or construct new buildings or structures;

(6) to vote a security in person or by proxy or sell or exercise stock subscription or

conversion rights or pay sums chargeable or accruing against or on account of securities owned by the Ward;

(7) to pay a call, assessment or other amount chargeable or accruing against or on account of security;

(8) to consent, directly or through a committee or other agent, to the reorganization, consolidation, merger, dissolution, or liquidation of a corporation or other business enterprise;

(9) to insure the Estate property against damage or loss or the Conservator against liability with respect to third persons;

(10) to borrow money to be repaid from the Estate property or otherwise for such periods of time and upon such terms and conditions as the Conservator shall deem advisable, for the purpose of paying debts, taxes, and other claims against the Estate or the Ward;

(11) to pay a tax, assessment or other expense incurred in the collection, care, preservation, administration and protection of the Ward's Estate;

(12) to employ persons, such as attorneys, auditors, investment advisors, appraisers and agents to advise and assist the Conservator in the performance of duties under this Code;

(13) to maintain any appropriate action, claim, or proceeding to obtain support to which the Ward is legally entitled, to recover possession of Estate property, to determine the title thereto, or to recover damages for any injury done to the Estate or the Ward;

(14) to compromise, adjust, arbitrate, sue on, defend, abandon, or otherwise deal with and settle any claim in favor of or against the Estate or the Ward; provided that if the Conservator will share in any portion of a settlement, the Conservator shall not enter into the settlement without the prior approval of the Tribal Court;

(15) to respond to an environmental concern or hazard affecting the Estate property; and

(16) to expend or distribute the Estate income or principal for the support, education, care, or benefit of the Ward or the Ward's dependents and others who are members of the Ward's household who are unable to support themselves.

(c) A Conservator shall not sell, transfer, mortgage, encumber, lease, or otherwise dispose of the Ward's real property or any interest therein, without the prior approval of the Tribal Court and the Tribal Council to the extent required under Band law.

(d) Whenever meaningful communication is possible, the Conservator shall consult with the Ward before making any major decision affecting the Ward's Estate or affairs.

(e) A Conservator may petition the Tribal Court for authority to do any act about which the

Conservator is uncertain, and the Tribal Court may grant such authority if such act appears to be in the best interests of the Ward.

Section 5.03 Limitations on Powers and Duties

(a) The Tribal Court shall design any guardianship and conservatorship to encourage the development of maximum self-reliance and independence.

(b) The Tribal Court may impose restrictions and limitations on the duties and powers of a Guardian or Conservator and condition the appointment on the performance of specific duties, and accordingly:

(1) if the Tribal Court finds by Clear and Convincing evidence that pursuant to Section 4.02 that grounds exist to appoint a Guardian, but the proposed Ward is partially disabled in managing his or her personal affairs, then a Limited Guardian may be appointed; or

(2) if the Tribal Court finds by Clear and Convincing evidence pursuant to Section 4.03 that grounds exist to appoint a Conservator, but the proposed Ward is partially disabled in managing his or her Estate and affairs, then a Limited Conservator may be appointed.

(c) Any Tribal Court order appointing a Limited Guardian or Limited Conservator shall specify all duties and authority of the Limited Guardian or Limited Conservator and any time limits on the appointment.

(d) A Ward for whom a Limited Guardian or Limited Conservator has been appointed shall retain all rights except those which have been granted to the Limited Guardian or Limited Conservator by Tribal Court order or the exercise of which would be inconsistent with those granted by Tribal Court order.

(e) A Guardian or Conservator shall have no authority to relinquish a Ward's citizenship in the Band.

CHAPTER 6

Bond; Acceptance; Letters; Reimbursement; Compensation; Reports; and Review Hearings

Section 6.01 Bond

The Tribal Court may, in its discretion, require a Guardian or Conservator to be bonded in such amount as the Tribal Court may deem necessary to protect the Ward's Estate and affairs.

Section 6.02 Acceptance

A Guardian or Conservator shall file an acceptance with the Tribal Court on a form approved by the Tribal Court. At a minimum, the acceptance shall state that the Guardian or Conservator

accepts the appointment, submits to the jurisdiction of the Tribal Court, will not delegate any authority of the Guardian or Conservator and will perform all required duties and obligations.

Section 6.03 Letters

Upon a Guardian or Conservator filing proof of any bond required by the Tribal Court, and the required acceptance form, the clerk of the Tribal Court shall issue letters under seal of the Tribal Court granting the Guardian or Conservator the powers authorized by Tribal Court order and this Code, as applicable. Any restriction or limitation of the powers of a Guardian or Conservator must be set forth in the letters.

Section 6.04 Reimbursement

(a) A Guardian or Conservator shall be entitled to be reimbursed out of the Ward's Estate for necessary, reasonable, and proper expenditures incurred in the performance of his or her duties, subject to such limitations and requirements of Subsection 6.04(b) and as the Tribal Court may establish.

(b) The Tribal Court may order reimbursement payments to be made on a regular schedule or on the request of the Guardian or Conservator; subject, however, to the submission of adequate proof of the expenditure, the necessity of the expenditure, and the availability of funds.

Section 6.05 Compensation

(a) A Guardian or Conservator may petition the Tribal Court to be compensated at a reasonable amount for services rendered.

(b) The Tribal Court shall determine the amount of any such compensation, which if approved, shall be paid from the Ward's Estate.

(c) A Guardian or Conservator shall not receive any compensation for acting in such capacity without the prior approval of the Tribal Court.

(d) A Guardian or Conservator shall be deemed to have waived any right to compensation for all periods prior to approval thereof by the Tribal Court.

Section 6.06 Reports

(a) All Guardians and Conservators shall file reports with the Tribal Court annually within thirty (30) days after the anniversary of the appointment, and at such other times as ordered by the Tribal Court. If a report is not filed, the Tribal Court shall take appropriate action.

(b) All reports filed by a Guardian shall provide complete and accurate information regarding the condition of the Ward, including but not limited to:

- (1) the Ward's current mental, physical and social condition;

(2) any improvement or deterioration in the Ward's mental, physical and social condition during the reporting period;

(3) the Ward's present living arrangement and any changes to the same during the reporting period;

(4) whether a different living arrangement is recommended;

(5) all services received by the Ward during the reporting period;

(6) the dates and times of the Guardian's visits with the Ward during the reporting period;

(7) all actions taken on behalf of the Ward during the reporting period;

(8) a full accounting of the Ward's Estate, which is subject to the control or possession of the Guardian, including but not limited to, all assets, liabilities, receipts, disbursements and other relevant financial information for the reporting period;

(9) a recommendation as the need for continued guardianship, including but not limited to, a proposed future care plan; and

(10) other information required by the Tribal Court or useful in the opinion of the Guardian.

(c) If a Conservator has not been appointed and the Guardian determines that there is more money or property that is readily convertible into cash in the Ward's Estate than was stated in the Petition or reported to the Tribal Court, then the Guardian shall report the amount of the additional money or property to the Tribal Court within thirty (30) days of such determination.

(d) Within sixty (60) days after appointment, or within another time specified by order of the Tribal Court, the Conservator shall prepare and file with the Tribal Court a complete inventory of the Ward's Estate together with an oath and affirmation that to the best of the Conservator's knowledge, such inventory is complete and accurate.

(e) All reports filed by a Conservator shall provide a full accounting of the Ward's Estate, which is subject to the control or possession of the Conservator, including but not limited to, all assets, liabilities, receipts, balances, investments, disbursements and other relevant financial information for the reporting period.

(1) The Tribal Court shall review and either approve or not approve any such report and, if not approved, the Tribal Court shall, by order, inform the Conservator of the deficiencies in the report and set a deadline by which the report must be resubmitted.

(2) The Tribal Court shall reconcile or settle every account or balance by allowing or disallowing it, either in whole or in part, and may charge or assess the Conservator for any deficiencies.

(f) The Tribal Court shall cause all reports filed pursuant to this Section 6.05 to be served on the Ward and other persons as directed by the Tribal Court, in a manner permitted under Band law.

(g) The Tribal Court shall develop and provide forms to assist in completing reports required under this Section 6.06.

Section 6.07 Review Hearings

The Tribal Court shall conduct a review hearing as it deems necessary and upon the filing of a report by a Guardian or Conservator.

CHAPTER 7

Resignation, Successor, Modification and Termination; and Term of Service

Section 7.01 Resignation, Successor, Modification and Termination

(a) Any Guardian or Conservator, who wishes to resign, shall file a petition with the Tribal Court setting forth the reasons for the resignation request. A petition may include a request to appoint a successor Guardian or Conservator.

(b) The Ward, the guardian *ad litem*, or a person interested in the Ward's welfare, may petition for an order removing or appointing a successor Guardian or Conservator, or modifying or terminating a guardianship or conservatorship. A request for such an order may be made by informal letter to the Tribal Court or Judge. Any person who knowingly interferes with the transmission of such a letter to the Tribal Court or Judge shall be subject to the Tribal Court's power of contempt.

(c) Except as otherwise provided in the order finding incapacity, upon receiving a petition or request under Subsections 7.01(a) or 7.01(b), the Tribal Court shall set a date for a hearing to be held within twenty-eight (28) days after the receipt of the petition or request, provided that an order finding incapacity may specify a minimum period, not exceeding 182 days, during which such a petition or request shall not be filed without special leave of the Tribal Court.

(d) At any such hearing, the Ward shall have all rights afforded under Subsection 4.01(g). A Guardian or Conservator may resign, be removed and a successor may be appointed if such action is in the best interests of the Ward. A guardianship or conservatorship may be modified or terminated based upon the standards set forth in Section 4.02 or 4.03, as applicable, and the best interests of the Ward.

(e) Upon the resignation, removal, or death of a Guardian or Conservator, the Tribal Court, if necessary, may appoint a successor and, prior to any such appointment, may enter an emergency or interim order which is in the best interests of the Ward.

(f) Before accepting a resignation, removing or appointing a successor Guardian or

Conservator, or modifying or terminating a guardianship or conservatorship, the Tribal Court may direct the Department of Social Services to prepare and file a report with the Tribal Court in accordance with Section 3.03.

Section 7.02 Term of Service

A Guardian or Conservator shall serve until discharged from such duties by order of the Tribal Court or the Ward dies.

CHAPTER 8

Fiduciary Duty; Consent; Transactions; and Liability

Section 8.01 Fiduciary Duty

(a) Any person or entity acting as a Guardian or Conservator acts in the capacity of a fiduciary and shall observe the standard of care applicable to a trustee, including but not limited to, the duties of loyalty, care and prudence.

(b) Notwithstanding any other provision of this Code, any person or entity that breaches the fiduciary duty will be liable for all damages resulting from such breach.

Section 8.02 Consent

(a) Any person or entity who accepts appointment as a Guardian or Conservator submits to the jurisdiction of the Tribal Court, and shall be deemed to agree as follows:

(1) any portion of the Ward's Estate which is under the control or possession of the Guardian or Conservator in connection with the guardianship or conservatorship shall be subject to the jurisdiction of the Tribal Court; and

(2) the Guardian or Conservator shall be subject to the jurisdiction of, and all orders entered by, the Tribal Court in connection with all actions or proceedings related in any way to service in such capacity, and notices served upon the Guardian or Conservator shall have the same force and effect as if such service had been personally made upon such person or entity within Trust Land.

(b) Any surety of any bond provided in connection with this Code shall be deemed to have consented to the jurisdiction of the Tribal Court for purposes of any action against such surety in connection with any such bond.

Section 8.03 Transactions

(a) Any person who, in good faith, either assists or deals with a Guardian in the conduct of a transaction may assume the existence and proper exercise of trust powers by the Guardian. A third person is not bound to inquire whether a Guardian may act or is properly exercising power.

Unless the third person has actual knowledge that the Guardian is exceeding or improperly exercising the Guardian's powers, a third person shall be fully protected in dealing with the Guardian as if the Guardian properly exercised the power. This Subsection 8.03(a) does not apply to a Limited Guardian.

(b) Any person who in good faith either assists or deals with a Conservator for value in a transaction, excluding any transaction requiring a Tribal Court order under Subsection 5.02(c), shall be protected as if the Conservator properly exercised the power. The fact that a person knowingly deals with a Conservator does not alone require the person to inquire into the existence of a power or the propriety of its exercise. This Subsection 8.03(b) does not apply to a Limited Conservator.

(c) Except as otherwise provided in this Code, the Ward's Estate, or any portion thereof, over which the Conservator exercised possession or control, shall not be transferable or assignable by the Ward; provided, however, a damage claim may arise from any such attempted transfer or assignment.

Section 8.04 Liability

(a) The fact that a person or entity is a Guardian or Conservator shall not, in itself, make such person liable to third persons for the Ward's acts.

(b) Unless otherwise provided in a contract, a Conservator shall not be personally liable to a third person on a contract properly entered into in a fiduciary capacity in the course of exercising any power or performing any duty unless the Conservator failed to reveal the representative capacity and identify the Estate in connection with the contract.

(c) A Conservator shall not be personally liable to a third person for an obligation arising from ownership or control of the Estate or a tort committed in the course of exercising any power or performing any duty unless the Conservator was personally at fault.

(d) A claim based on a contract entered into by a Conservator in a fiduciary capacity, an obligation arising from ownership or control of the Estate, or a tort committed in the course of Estate administration may be asserted against the Estate by proceeding against the Conservator in the Conservator's fiduciary capacity, whether or not the Conservator is personally liable for the claim.

(e) Any question of liability between the Estate and the Guardian or Conservator may be determined in a Tribal Court proceeding for accounting, surcharge, indemnification, or other appropriate proceeding or action.

LEGISLATIVE HISTORY

Guardianship and Conservatorship of Adults Code, enacted November 14, 2013
by Res. No. 13-11-14-01