



NHBP TRIBAL COURT

NOTTAWASEPPI HURON BAND OF THE POTAWATOMI

Court Rules for Guardianship and Conservatorship Proceedings

Chapter 14

Table of Contents

Section 1. Title.....	2
Section 2. Purpose.....	2
Section 3. Definitions.....	2
Section 4. Commencing an Action.....	3
Section 5: Proceedings for Temporary Guardianship or Conservatorship.....	6
Section 6: Persons Permitted at Hearings.....	8
Section 7: Examination by Medical Professional or Mental Health Professional.....	9
Section 8: Hearings on a Petition.....	9
Section 9: Jurisdiction of the Tribal Court.....	12
Section 10: Review of Guardianships and Conservatorships.....	12
Section 11: Modification of a Guardianship or Conservatorship.....	14
Section 12: Resignation or Removal of a Guardian or Conservator.....	15
Section 13: Termination of the Guardianship or Conservatorship.....	16
Section 14: Guardian or Conservator Requests for Court Orders.....	17
Section 15: Relinquishment of Tribal Enrollment.....	19
Section 16: Bond of Conservator.....	20
Section 17: Payments.....	20
Section 18: Short Title, Effective Date and Citation Format.....	21
CERTIFICATE OF ADOPTION.....	22

Court Rules for Guardianship and Conservatorship Proceedings

Chapter 14

Section 1: Title

This Chapter of Court Rules will be known as the Court Rules for Guardianship and Conservatorship Proceedings.

Section 2: Purpose

The purpose of this Chapter of Court Rules is to facilitate guardianship and conservatorship proceedings in the Tribal Court and to establish procedures by which the intent and purpose of the *Nottawaseppi Huron Band of the Potawatomi (NHBP) Guardianship and Conservatorship Code* can be carried out to benefit all persons coming under the authority of that Code.

Section 3: Definitions

The following terms shall have the following meanings:

- A. This Chapter of Court Rules recognizes and adopts, for the purposes of this Chapter, the definitions found in Section 102 of the *NHBP Guardianship and Conservatorship Code*, unless otherwise modified by this Chapter.
- B. “*Band*” and “*Nation*” and “*Tribe*” are synonymous and mean the Nottawaseppi Huron Band of the Potawatomi. (NHBP)
- C. “*Chief Judge*” means the Chief Judge of the Tribal Court or his or her designee.
- D. “*Court*” and “*Tribal Court*” are synonymous and mean the trial court of the Tribe.
- E. “*Court Clerk*” refers to the Tribal Court Administrator (TCA) or a person designated to perform such duties by the Chief Judge or the TCA.
- F. “*Day*” means a calendar day.
- G. “*Ex Parte*” means outside the presence of all of the persons or parties to a legal proceeding. It usually refers to a court making a decision and/or issuing an order without notice or a hearing with all interested persons present.
- H. “*Immediate family*” means domestic partners, parents, grandparents, children, step-children, grandchildren, siblings, mother-in-law, father-in-law, sisters-in-law and brothers-in-law.
- I. “*Petition*” means a written, signed and notarized document that includes the information required in the *NHBP Guardianship and Conservatorship Code* to request the appointment of a guardian.

- J. “*Proposed Ward*” means the person for whom a guardianship or conservatorship is sought.
- K. “*Tribal Supreme Court*” means the appellate court of the Tribe.
- L. “*Ward*” means a child who has been adjudicated a dependent child or an adult who has been adjudicated a protected individual over whom the Tribal Court has jurisdiction.

Section 4: Commencing an Action

- A. Pursuant to Section 105 of the *NHBP Guardianship and Conservatorship Code*,
 - 1. Guardianship of a minor may be requested if:
 - a. The parental rights of both parents or the surviving parent have been terminated or suspended by prior order of the Tribal Court or any court of competent jurisdiction, by judgment of divorce or separate maintenance, by death, by judicial determination of mental incompetency, by disappearance or by confinement in a place of detention;
 - b. The appointment of a guardian is necessary for the immediate well-being of the minor; or
 - c. The parent with custody of the child requests the appointment.
 - 2. Guardianship of an adult may be requested if:
 - a. The adult is alleged to be incapable of caring for himself or herself; and
 - b. Such incapability is a significant impediment to his/her health and well-being; and
 - c. Such incapability is not a temporary condition.
 - 3. A conservator of an estate may be requested if:
 - a. The ward is alleged to be unable or unwilling to competently administer his/her financial affairs.
 - b. The Tribal Court may appoint an individual or a corporation authorized to exercise fiduciary powers to serve as a conservator of the ward’s estate.
- B. Pursuant to Section 106 of the *NHBP Guardianship and Conservatorship Code*, any person, including Tribal social service agencies, may file a petition for guardianship.
 - 1. A child who is fourteen (14) years of age or older may petition for guardianship.

2. A child who is fourteen (14) years of age or older may petition for the appointment of a guardian on his or her own behalf, provided that such petition is jointly filed with the proposed guardian.
- C. Pursuant to Section 401 of the *NHBP Guardianship and Conservatorship Code*, the Court may appoint an individual, a corporation authorized to exercise fiduciary powers, or any person the Tribal Court deems qualified, with the following being entitled to consideration for appointment:
1. An individual or corporation as nominated by the protected individual, if he or she is fourteen (14) years of age or older and of sufficient mental capacity to make an intelligent choice, including a nomination in a durable power of attorney;
 2. The protected individual's spouse;
 3. An adult child of the protected individual;
 4. A parent of the protected individual;
 5. A relative of the protected individual; or
 6. If none of the persons listed are suitable and willing to serve, any person that the Tribal Court determines is suitable and willing to serve.
- D. Pursuant to Section 201 of the *NHBP Guardianship and Conservatorship Code*, the petitioner shall make a good faith effort to find out the following information and provide it in the written petition for guardianship or conservatorship:
1. The full name, sex, date and place of birth, residence and tribal affiliation of the proposed ward;
 2. The full name, address, age, relationship if any to the proposed ward, and interest if any in the proceeding of the petitioner;
 3. The names and addresses of other persons (including parents for a proposed ward under the age of 18):
 - a. Known to have an interest in the petition for appointment of guardian; and
 - b. If any such interested person is deceased, the petition shall include the relationship to the proposed ward and the date of death;
 4. The basis for the Court's jurisdiction;

- a. A statement of the reason(s) that the appointment of a guardian is sought containing specific facts about:
 - i. The individual's condition and specific examples of the individual's recent conduct that demonstrate the need for a guardian's appointment;
 - ii. Whether the petitioner seeks the appointment of a guardian of the adult, guardian of the child, conservator of the estate, or both; and
 - iii. Whom the petitioner recommends or seeks to have appointed as such guardian or conservator.
 - b. A full description and statement of value of the proposed ward's assets and liabilities, with an estimate of the value of any property owned, possessed or in which the proposed ward has an interest, including any income and receivables to which the proposed ward is entitled.
5. All petitions must be signed and dated by the petitioners, and must be notarized or witnessed by the Clerk of the Tribal Court, the Tribal Court Administrator (TCA) or the designee of the TCA or the Chief Judge.
 6. Pay, by cash, check or money order, the required filing fee or file an affidavit for fee waiver with the Court for a waiver of the filing fee.
- E. Once a petition has been properly filed with the filing fee or affidavit for waiver of filing fee, the TCA shall forward the petition to the Chief Judge.
- F. The Chief Judge:
1. Shall immediately order that the Tribal Social Services Department or other qualified agency conduct a guardianship evaluation on the proposed guardian and the proposed ward prior to the hearing.
 - a. The resulting guardianship report shall contain all pertinent information necessary to assist the Tribal Court in determining the best interests of the proposed ward; and
 - b. The report shall be filed with the Tribal Court and a copy shall be provided to all parties who have received notice of the petition.
 2. May appoint a Lawyer Guardian ad Litem (LGAL) and order that the LGAL conduct an independent investigation including interviewing the child, parents, social workers, school personnel, care providers, and other persons to properly ascertain the facts and circumstances which are material to determining the best interests of the child prior to the hearing.

- a. The resulting LGAL report shall contain all pertinent information necessary to assist the Tribal Court in determining the best interests of the proposed ward; and
 - b. The report shall be filed with the Tribal Court and a copy shall be provided to all parties who have received notice of the petition.
3. May order that a physician or mental health professional examine the proposed ward and issue a report to the Tribal Court prior to the hearing if the petition alleges that the proposed ward is legally incapacitated.
 - a. The resulting report shall contain all pertinent information necessary to assist the Tribal Court in determining whether the allegations regarding the proposed ward is legally incapacitated; and
 - b. The report shall be filed with the Tribal Court and a copy shall be provided to all parties who have received notice of the petition.
4. A scheduling hearing shall be set within twenty-one (21) days from the date the Tribal Court received the petition or as circumstances require.

G. The TCA shall:

1. Send a notice of the petition and date for the scheduling hearing by mail within seven (7) days from the date the petition was filed with the Tribal Court.
 - a. The Petitioner;
 - b. The proposed ward if fourteen (14) years of age or older;
 - c. Any individuals appointed by the Court;
 - d. The LGAL, if appointed; and
 - e. All persons listed as having an interest in this matter in the petition.

Section 5: Proceedings for Temporary Guardianship or Conservatorship

A. Temporary Guardianships or Conservatorship

1. A Temporary guardianship or temporary conservatorship may be granted if:
 - a. The proposed ward would suffer immediate harm; or
 - b. The proposed ward's estate would suffer immediate harm.

2. A Petition for Temporary Guardianship or a Petition for a Temporary Conservatorship shall specify in detail the conditions requiring a temporary order.
3. The TCA shall immediately contact the Chief Judge to advise that a Petition for Temporary Guardianship or Conservatorship has been filed.
4. The Court shall set the date and type of hearing as circumstances require but not more than five (5) business days from the date the petition was filed with the Tribal Court.
5. In cases involving the temporary guardianship of a minor:
 - a. The Court may appoint a guardian ad litem unless such appointment would cause delay and the proposed ward would likely suffer serious harm if immediate action is not taken.
 - i. The duties of the guardian ad litem are to visit the minor, report to the Court and take such other action as directed by the Court.
6. In cases involving the temporary guardianship of an adult:
 - a. The Court shall appoint a guardian ad litem for the Hearing on the Temporary Guardianship of an adult unless such appointment would cause delay and the proposed ward would likely suffer serious harm if immediate action is not taken.
 - i. The duties of the guardian ad litem are to visit the adult proposed ward, report to the Court and take such other action as directed by the Court.
7. The Court may hold an Ex Parte Hearing on the Temporary Guardianship, shortening or eliminating the Notice of Hearing, when the Court:
 - a. Provides personal service of the Notice of Hearing to a proposed ward who is fourteen (14) years of age or older;
 - b. Holds a Hearing or Ex Parte Hearing; and
 - c. States the reasons for good cause for shortening or eliminating the Notice of Hearing on the record during the Ex Parte Hearing and in the order.
8. The TCA shall send Notice of the Order of Temporary Guardianship by mail to all interested persons within two (2) business days of the date of the Ex Parte Hearing with that Notice:

- a. Informing of the right to object to the appointment;
 - b. Informing of the process for objecting to the appointment; and
 - c. Providing the date of the next Hearing, if scheduled.
- B. An objection to an Order for Temporary Guardianship must be:
 1. In writing;
 2. Specify in detail the reasons for the objection; and
 3. Be served on all interested persons by the party filing the objection.
- C. If an objection to an Order for Temporary Guardianship is received within the period stated in the notice, the Court shall:
 1. Schedule a hearing on the Objection to the Order for Temporary Guardianship within twenty-one (21) days of the date the objection was filed with the Tribal Court; and
 2. Mail notice of the hearing to all interested persons, including the proposed ward if the proposed ward is fourteen (14) years of age or older, within five (5) business days of the date the objection was filed with the Tribal Court.
- D. If an objection to an Order for Temporary Guardianship is not received within the period stated in the Notice, the Order for Temporary Guardianship shall remain in effect until a full hearing on the petition for a guardianship or conservatorship is scheduled pursuant to Section 8 of this Court Rule.
- E. When it comes to the attention of the Court that a guardian of a minor is not properly performing the duties of a guardian, the Court, after a hearing at which testimony is taken, may appoint a temporary guardian until a review hearing is held within ninety (90) days of the date the Order for Temporary Guardianship was entered by the Court.

Section 6: Persons Permitted at Hearings

- A. Guardianship or conservatorship hearings are private matters and only persons having a “direct interest in the matter” will be allowed to attend the proceedings. Court files shall not be open to the general public but only accessed by persons with permission of the Court.
- B. For the purposes of this Chapter of Court Rules, persons having a “direct interest in the proceedings” are defined as:
 1. The petitioner;

2. The proposed ward;
3. The LGAL;
4. Any attorney who has entered an appearance accepted by the Court;
5. If the proposed ward is a minor, the minor's parents, custodian or any other person responsible for the minor's care;
6. All persons listed as having an interest in this matter in the petition;
7. Immediate family;
8. Witnesses as identified by the Court; and
9. Any other person authorized by the Court.

Section 7: Examination by Medical Professional or Mental Health Professional

- A. The Court may order examination by a physician or mental health professional.
 1. The Court may receive into evidence without testimony a written report of a physician or mental health professional who examined a ward, provided:
 - a. The written report is filed with the Court seven (7) days prior to the review hearing.
 - i. The Court may issue on its own initiative, or any party may secure, a subpoena to compel the preparer of the report to testify.
 2. A report ordered by the Court may be used in guardianship and conservator proceedings without regard to any privilege.
- B. Any privilege regarding a report made as part of an independent evaluation at the request of a respondent is waived if the respondent seeks to have the report considered in the proceedings.

Section 8: Hearings on a Petition

- A. Rules of Evidence. Evidence at these hearings shall be relevant and material.
 1. Hearsay may be allowed at the Court's discretion at any hearing.

2. All relevant and material evidence, including written reports, may be received by the Court and may be relied on to the extent of their probative value, even though such evidence may not be admissible under the NHBP Court Rules of Evidence.
 - a. Interested persons shall be afforded an opportunity to examine and controvert written reports so received and, in the Court's discretion, may be allowed to cross-examine individuals making reports when such individuals are reasonably available.
 - b. No assertion of an evidentiary privilege, other than the privilege between attorney and client, shall prevent the receipt and use of materials prepared pursuant to a court-ordered examination, interview, or course of treatment.
 - i. Any privilege regarding a report made as part of an independent evaluation at the request of a ward is waived if the respondent seeks to have the report considered in the proceedings.
- B. The burden of proof and persuasion is on the Petitioner requesting the guardianship.
- C. The Court may hold an in camera interview with the ward as justice so requires.
- D. The “clear and convincing” standard of review shall apply to matters brought under the *NHBP Guardianship and Conservatorship Code*.
- E. The Court shall issue an order following a hearing on a petition for guardianship
 1. A petition may be dismissed by the Court as follows:
 - a. Without prejudice. This means that the petitioner may re-file the petition with the Court.
 - i. Occurs when the petition is dismissed prior to hearing or trial;
 - ii. Before the first witness is sworn;
 - iii. By agreement of the parties; or
 - iv. At the discretion of the Court as the interests of justice require.
 2. With Prejudice. This means that the petitioner may not re-file the petition with the Court.
 - a. Occurs if the petitioner fails to meet their burden of proof; or
 - b. If the petition is dismissed after the first witness is sworn.

F. Pursuant to Section 105, the Court may:

1. Appoint a guardian for a minor if:
 - a. The parental rights of both parents or the surviving parent have been terminated or suspended by prior order of the Tribal Court or any court of competent jurisdiction, by judgment of divorce or separate maintenance, by death, by judicial determination of mental incompetency, by disappearance or by confinement in a place of detention;
 - b. The appointment of a guardian is necessary for the immediate well-being of the minor; or
 - c. The parent with custody of the child requests the appointment.
2. Appoint a guardian for an adult if:
 - a. The adult is alleged to be incapable of caring for himself or herself;
 - b. Such incapability is a significant impediment to his/her health and well-being; and
 - c. Such incapability is not a temporary condition.
3. Appoint an individual or corporation authorized to exercise fiduciary powers, or any person the Tribal Court deems qualified, to serve as conservator of a proposed ward's estate if the proposed ward is alleged to be unable or unwilling to competently administer his or her financial affairs with the following being entitled to consideration for appointment:
 - a. An individual or corporation as nominated by the protected individual, if he or she is fourteen (14) years of age or older and of sufficient mental capacity to make an intelligent choice, including a nomination in a durable power of attorney;
 - b. The protected individual's spouse;
 - c. An adult child of the protected individual;
 - d. A parent of the protected individual;
 - e. A relative of the protected individual; or
 - f. If none of the persons listed are suitable and willing to serve, any person that the Tribal Court determines is suitable and willing to serve.

G. The Court shall conduct a hearing and issue an oral order on the record followed by a written order within seven (7) days, or a written order only within seven (7) days, or issue an order as stated on the record.

1. An Order of Appointment shall include:

- a. The responsibilities and limitations of the guardianship;
- b. The length of the guardianship;
- c. The date or time frame for the next review hearing; and
- d. The reports to be submitted for the review hearing, including:
 - i. The content of the reports; and
 - ii. The deadlines for when the reports shall be submitted to the Court.

Section 9: Jurisdiction of the Tribal Court

By accepting a court appointment as guardian or conservator, a guardian or conservator submits to the NHBP Tribal Court's jurisdiction as it relates to the guardianship or conservatorship.

Section 10: Review of Guardianships and Conservatorships

A. The Court may order review hearings as the circumstances of the case require, but not less than the following:

- 1. In the first year of the guardianship or conservatorship, a review hearing shall be held a minimum of four (4) times a year or once per quarter or every ninety (90) days.
- 2. In the second year of the guardianship or conservatorship, a review hearing shall be held a minimum of two (2) times per year or biannually or every six (6) months.
- 3. In the third year and thereafter of the guardianship or conservatorship, a review hearing shall be held on an annual basis within thirty (30) days of the anniversary of the guardianship or conservatorship.

B. If the review hearing is scheduled without prior notice to the parties, the Court shall send notice to the parties a minimum of fourteen (14) days in advance of the hearing.

- 1. If represented by counsel, notice shall be sent by regular mail to the attorney; or

2. If not represented by counsel, notice shall be sent by regular mail to the party at the last known address on record with the Court.
- C. A guardian of a minor or an adult shall submit to the Court at least seven (7) days prior to a review hearing a written report that:
1. Provides details as to the condition of the ward, including medical or mental health treatment or care that the ward received since the last report to the Court;
 2. Provides the following information for the ward's estate that is subject to the guardian's possession or control:
 - a. A list of all accounts that the guardian manages on behalf of the ward, the name of the institution where the account is held and the amount in the account;
 - b. A list of all real property and interest in real property owned by or held in trust for the ward that the guardian manages;
 - c. A list of all real property, an interest in real property and/or personal property valued below three thousand dollars (\$3,000) that has been sold since the last hearing that the guardian manages; and
 - d. A detailed accounting of monies received and expended by the guardian on behalf of the ward.
- D. A conservator shall submit to the Court at least seven (7) days prior to a review hearing a written report that includes:
1. A list of all accounts that the conservator manages on behalf of the ward, the name of the institution where the account is held and the amount in the account;
 2. A list of all real property and interest in real property owned by or held in trust for the ward that the conservator manages;
 3. A list of all real property, an interest in real property and/or personal property valued below three thousand dollars (\$3,000) that has been sold since the last hearing that the conservator manages; and
 4. A detailed accounting of monies received and expended by the conservator on behalf of the ward.
- E. The Court may require additional reports in the Order of Appointment, in an Order for Report which shall detail what is required in the report to the Court, during a hearing, in an order following a hearing or by other order of the Court as the interests of justice require.

- F. Unless otherwise stated, all reports shall be due to the Court within seven (7) days of the hearing.
- G. The Court may conduct an in camera interview with the ward as justice so requires.
- H. The Court shall conduct the review hearing and issue an oral order on the record followed by a written order within seven (7) days, or a written order only within seven (7) days, or issue an order as stated on the record.

Section 11: Modification of a Guardianship or Conservatorship

- A. An individual issuing a report, a ward and/or the guardian or conservator may submit a written motion to modify a guardianship or conservatorship for consideration at a review hearing.
 - 1. A written request for modification of a guardianship or conservatorship shall be submitted not less than seven (7) days before the scheduled review hearing.
 - a. If the guardian or conservator consents to the modification, they must submit the terms in writing to the Court and the reasons for the modification.
 - 2. The Court may appoint a Tribal Social Services Department or other qualified agency, GAL, LGAL and/or a physician or mental health professional to conduct an investigation and issue a report.
 - a. Any reports ordered shall contain all pertinent information necessary to assist the Tribal Court in determining whether the modification requested is in the best interests of the ward; and
 - b. Any reports shall be filed with the Tribal Court and a copy shall be provided to all parties who have received notice of the review hearing.
 - 3. The Court may conduct an in camera interview with the ward as justice so requires.
 - 4. The Court shall address the requested modification during the review hearing.
 - 5. The Court shall address the motion for modification in the order regarding the review hearing, including whether the motion has been granted in whole or in part or denied and the reasons for the decision.

Section 12: Resignation or Removal of a Guardian or Conservator

- A. The Tribal Court may accept the resignation of a guardian or conservator upon submission of the following in writing:
 - 1. A motion detailing the reasons for their request to resign;
 - 2. A full accounting for settlement; and
 - 3. An acknowledgment that the guardian or conservator is still liable for all actions that he or she took while serving as the guardian or conservator.
- B. The Tribal Court may remove a guardian or conservator upon its own motion or upon request of any individual with personal information about actions of the guardian or conservator that warrant removal of the guardian or conservator.
 - 1. An individual with personal information shall:
 - a. Pay the filing fee; and
 - b. Submit a written motion detailing the personal information they have about actions of the guardian or conservator that warrant removal of the guardian or conservator.
 - 2. Upon receipt of the motion and fee, the Court:
 - a. Shall set a scheduling hearing within twenty-one (21) days from the date the motion was filed with the Court; and
 - b. May order the Tribal Social Services Department or other agency to conduct an investigation, appoint an LGAL, order an examination by a physician or mental health professional and/or other order any other report the Court deems necessary.
 - 3. The TCA shall send notice of the hearing and allegations to the guardian and all interested persons.
 - 4. The Court shall conduct a hearing and issue an oral order on the record followed by a written order within seven (7) days, or a written order only within seven (7) days, or issue an order as stated on the record, finding:
 - a. Whether the guardian negligently managed the affairs of his or her ward; or
 - b. Whether the guardian has intentionally caused the ward personal or financial harm.

5. If the Court finds that the guardian caused the ward personal or financial harm through negligent or intentional conduct, the Court shall:
 - a. Remove the guardian; and
 - b. Appoint a temporary guardian following the same criteria that would apply to the initial appointment of a guardian.
- C. Upon the removal, death or resignation of a guardian, the Tribal Court shall appoint a successor guardian following the same criteria that would apply to the initial appointment of a guardian.

Section 13: Termination of the Guardianship or Conservatorship

- A. A guardian of a minor shall have the responsibilities in the Order of Appointment until the minor turns eighteen (18) years old, marries, dies or is emancipated by the Court or a Court of competent jurisdiction, or until legally discharged by the Court.
- B. A guardian of an adult shall have the responsibilities in the Order of Appointment until the adult ward dies or until legally discharged by the Tribal Court.
- C. A conservator shall have the responsibilities in the Order of Appointment until the ward dies, the assets are depleted or finished, or until legally discharged by the Court.
- D. An individual issuing a report, a ward and/or the guardian or conservator may submit a written motion to terminate the guardianship or conservatorship for consideration at a review hearing.
 1. A written request for termination of a guardianship or conservatorship shall be submitted not less than seven (7) days before the scheduled review hearing.
 - a. If the guardian or conservator consents to the termination, they must submit the terms in writing to the Court and the reasons for the termination.
 2. The Court may appoint a Tribal Social Services Department or other qualified agency, GAL, LGAL and/or a physician or mental health professional to conduct an investigation and issue a report.
 - a. Any reports ordered shall contain all pertinent information necessary to assist the Tribal Court in determining whether the modification requested is in the best interests of the ward; and
 - b. Any reports shall be filed with the Tribal Court and a copy shall be provided to all parties who have received notice of the review hearing.

3. The Court shall conduct a hearing and issue an oral order, followed by a written order within seven (7) days, or a written order only within seven (7) days, or as stated on the record, stating whether the termination has been granted.
 - a. The Order shall be filed with the Tribal Court and a copy shall be provided to all persons listed as having an interest in this matter in the petition.
4. Upon the removal, death or resignation of a guardian, the Tribal Court shall appoint a successor guardian following the same criteria that would apply to the initial appointment of a guardian.

Section 14: Guardian or Conservator Requests for Court Orders

A. Pursuant to the *NHBP Guardianship and Conservatorship Code*, a guardian or conservator may request an order from the Court to assist with performing their duties as provided in the Code.

1. If, pursuant to Section 301 of the *NHBP Guardianship and Conservatorship Code*, a guardian of an adult ward believes specific medical, legal, psychological or other professional care, counsel, treatment or service is in the best interest of the ward and wishes to secure a concurring order from the Court, the guardian shall:
 - a. Pay the filing fee; and
 - b. Submit a written motion to the Court:
 - i. Identifying the care, counsel, treatment or service in detail;
 - ii. The name of the individual or agency that will be providing the care, counsel, treatment or service;
 - iii. The qualifications and/or credentials of the individual or agency that will be providing the care, counsel, treatment or service; and
 - iv. The reasons for believing it is in the best interest of the ward to sell or otherwise dispose of the ward's real property or interest.
2. If, pursuant to Section 302 of the *NHBP Guardianship and Conservatorship Code*, a guardian of a minor ward believes it is in the best interests of the ward to sell or otherwise dispose of the ward's real property or interest in real property and wishes the Court issue an order granting the guardian permission to commence a legal action, the guardian shall:

- a. Pay the filing fee; and
- b. Submit a written motion to the Court:

- i. Identifying the care, counsel, treatment or service in detail;
 - ii. The name of the individual or agency that will be providing the care, counsel, treatment or service;
 - iii. The qualifications and/or credentials of the individual or agency that will be providing the care, counsel, treatment or service; and
 - iv. The reasons for believing it is in the best interest of the ward to sell or otherwise dispose of the ward's real property or interest.
- 3. If, Pursuant to Section 303 of the *NHBP Guardianship and Conservatorship Code*, a conservator believes that it is in the ward's best interest to lease, sell or otherwise dispose of the ward's real property, interest in real property or personal property and wishes to start the action, the conservator shall:
 - a. Pay the filing fee; and
 - b. Submit a written motion to the Court:
 - i. Identifying in detail the real property, interest in real property or personal property the guardian proposes to sell or otherwise dispose of;
 - ii. The terms of the sale or disposition; and
 - iii. The reasons for believing it is in the best interest of the ward to sell or otherwise dispose of the ward's real property or interest.
- 4. For any other order required or permitted in the *NHBP Guardianship and Conservatorship Code*, the guardian or conservator shall:
 - a. Pay the filing fee; and
 - b. Submit a written motion to the Court:
 - i. Identifying in detail the order requested from the Court;
 - ii. The names and addresses of any individuals affected by the order requested; and
 - iii. The reasons for believing it is in the best interest of the ward for the order to be issued.

- B. For any motion filed by a guardian or conservator for an order from the Court to assist in the performance of their duties as provided in the *NHBP Guardianship and Conservatorship Code*:
1. Upon receipt of the motion and fee, the Tribal Court shall set a scheduling hearing on the motion.
 - a. The scheduling hearing shall be set within twenty-one (21) days from the date the motion was filed with the Court.
 - b. The TCA shall send notice of the hearing by mail to all interested persons within fourteen (14) days in advance of the hearing.
 2. The Chief Judge may appoint a guardian as special conservator prior to or at the hearing.
 3. The Court shall conduct a hearing and issue an oral order, followed by a written order within seven (7) days, or a written order only within seven (7) days, or as stated on the record, stating whether permission has been granted for the guardian or conservator to move forward as requested.

Section 15: Relinquishment of Tribal Enrollment

- A. There is a presumption in all proceedings that it is in the best interest of a ward to retain their status as a Tribal Member of the NHBP.
- B. With the presumption that it is in the best interest of a ward to retain Tribal Membership, the standard of review for the relinquishment of Tribal Membership is “clear and convincing”.
- C. To relinquish Tribal Membership, the guardian shall comply with Article VIII of the Enrollment Code and submit a written motion to the Tribal Court that:
 1. Specifically pleads how it is in the best interests of the ward to relinquish Tribal Membership;
 2. Identifies the jurisdiction in which the guardianship will be transferred, if applicable, and the Court grants the motion to relinquish Tribal Membership; and
 3. The resources available to the ward and guardian in the proposed jurisdiction.
- D. Upon receipt of the motion and fee, the Tribal Court shall schedule a hearing on the motion.
 1. The hearing shall be scheduled within twenty-one (21) days from the date the motion was filed with the Court.

2. The TCA shall send notice of the hearing by mail to all interested persons within fourteen (14) days in advance of the hearing.
- E. The Court shall conduct a hearing and issue an oral order, followed by a written order within seven (7) days, or a written order only within seven (7) days, or as stated on the record that:
1. Grants or denies the request; and
 2. Includes findings detailing how the retention or relinquishment of Tribal Membership is in the best interest of the ward.

Section 16: Bond of Conservator

- A. The Court may require a conservator to obtain a bond conditioned upon faithful discharge of all duties of the trust according to law, with sureties specified in an order.
- B. The bond shall be in the amount of the aggregate capital value of the estate property in the conservator's control; or
- C. The Court may accept other security for the performance of the bond in the amount the Court finds necessary to protect the estate, including:
 1. A pledge of securities; or
 2. Mortgage of land.

Section 17: Payments

- A. Individuals appointed by the Court as a GAL, LGAL, physician or mental health professional shall be paid pursuant to the NHBP Tribal Court Schedule of Compensation for Court-Appointed Services within thirty (30) days of providing the Court-appointed services.
 1. The person seeking compensation shall complete and submit the NHBP Tribal Court Compensation for Court-Appointed Services Voucher.
 2. The Tribal Court may order monthly reimbursement payments to the person or agency appointed as guardian of the person, provided that sufficient funds have been appropriated by the Tribal Council.
 - a. Such payments must be used by the guardian for the sole purpose of covering expenses incurred in the care and custody of the ward and shall not be used for any other purpose.

- i. The use of such payments for any purpose other than that described in this Section shall subject the guardian to contempt of court proceedings and any other criminal or civil penalties provided by the Tribal Court Code.
 3. The Tribal Court may order monthly reimbursement payments to the person or agency appointed as guardian of the person, provided that sufficient funds have been appropriated by the Tribal Council.
 - a. Such payments must be used by the guardian for the sole purpose of covering expenses incurred in the care and custody of the ward and shall not be used for any other purpose.
 - i. The use of such payments for any purpose other than that described in this Section shall subject the guardian to contempt of court proceedings and any other criminal or civil penalties provided by the Tribal Court Code.
- B. If overnight accommodations are required to perform their duties or to testify at the NHBP Tribal Court, individuals appointed by the Court as a GAL, LGAL, physician, mental health professional or other investigator shall:
 1. Be reimbursed for mileage at the federal rate;
 2. Be reimbursed for lodging pursuant to the rate set by the NHBP Tribal Court; and
 3. Receive a per diem at the federal rate.
 4. To receive payments, the individual seeking reimbursement or a per diem shall submit the following to the TCA within thirty (30) days of the expenditure:
 - a. Complete the NHBP Tribal Court Request for Reimbursement for Court-Appointed Services;
 - b. All applicable original receipts; and
 - c. Documentation as to the current federal rate for per diem in the location the services were provided.

Section 18: Short Title, Effective Date and Citation Format

- A. Short Title. These Rules are titled "Rules for Guardianship and Conservatorship Proceedings".
- B. Effective Date. These Rules become effective when adopted by the Chief Judge of the Court.

C. Citation. The official abbreviated citation form to these Rules is: NHBPCR 14.

CERTIFICATE OF ADOPTION

The Chief Judge of the Tribal Court adopts the above Chapter of Court Rules on August 18, 2014.

August 18, 2014
Dated


Melissa L. Pope, Chief Judge P55328

JUDICIAL HISTORY

The Court Rules for Guardianship and Conservatorship Proceedings were adopted by the Chief Judge on August 18, 2014 after reviewing comments submitted pursuant to Chapter 1 – Procedures for the Adoption of Tribal Court Rules.