

ARTICLE III. ADULTS

Appointment of Guardian

§ 5-3-101. Petition for Appointment of Guardian

(a) Any person interested in the welfare of a person believed to be an incapacitated person or partially incapacitated person may file a petition alleging that such person is an incapacitated or partially incapacitated person, and request the appointment of a guardian.

(b) The petition shall be verified and shall specify:

(1) The names and addresses of persons entitled to notice pursuant to Section 5-3-110 of this Act and to the attorney of the subject of the proceeding, if any, and if known to the petitioner;

(2) The nature and degree of the alleged incapacity;

(3) The relief requested and the facts and reasons supporting the need for such relief including, where applicable, a description of any acts or behavior of the subject of the proceeding which gave rise to the allegations; and

(4) The estimated value of all intangible personal property of the ward.

(c) A copy of the results of any physical, psychological or other appropriate professional evaluation of the condition of the subject of the proceeding which has been completed within sixty (60) days prior to the filing of the petition, may be attached to the petition at the time it is filed.

(d) A guardianship plan or plans substantially in the form required by Section 5-3-120 or Section 5-3-122 of this Act or both, as appropriate, may be attached to the petition at the time it is filed or may be submitted to the court at the time of the hearing.

(e) Before making the appointment, the court may receive an investigation and report regarding the background and home of the prospective guardian. When required, the investigation and report of the prospective guardian and placement restrictions and requirements shall include a check of the petitioner and each adult member of the petitioner's household establishing that there is no record of a criminal conviction, protective order or pending criminal charge. The petitioner shall disclose the case name and status of any civil or criminal matter in tribal, state or federal court, including but not limited to bankruptcy adjudications, involving the petitioner or any adult household member.

[History: PUBLIC LAW #SF-15-30, December 11, 2014.]

§ 5-3-102. Nomination of Guardians or Alternate Guardians by Adult - Priorities of Nominations

(a) Every person eighteen (18) years of age or older who is of sound mind and not acting under duress, menace, fraud or undue influence, may nominate a guardian of his person and property, or of either, as provided by this section. Such nomination shall, in the event of the incapacity or partial incapacity of said person be proved in the same manner as any other writing. The nomination shall be binding on the court subject to the disqualification of the nominee by the court.

(b) Such nomination shall be in writing and shall be signed by the person making such nomination. The nomination shall be substantially in the following form:

NOMINATION OF GUARDIAN BY AN ADULT

I, _____ (Name), being of sound mind and not acting under any duress, menace, fraud, or other undue influence do hereby nominate (Name, current residence, and relationship, if any, of the nominee) to serve as the guardian of my (person, property, both) in the event that after the date of this instrument I become incapacitated.

Executed at _____ (city, state/tribe)

on this _____ day of _____, 20__.

Signature

<end document>

(c) In such nomination, the person making it may nominate an alternate guardian or guardians to act in the event a previously named nominee is unable or unwilling to act as guardian.

(d) If the same person has executed more than one nomination of a guardian:

(1) The most recent nomination shall control; or

(2) If two or more nominations bear the same most recent date the court may appoint one of the nominees or may appoint more than one of the nominees as coguardians upon determining the nominator to be an incapacitated or partially incapacitated person.

[History: PUBLIC LAW #SF-15-30, December 11, 2014.]

§ 5-3-103. Nomination of Guardian or Limited Guardian by Will

A parent of an unmarried incapacitated or partially incapacitated person, the spouse of a married incapacitated or partially incapacitated person, or an adult child of such person who is serving as guardian or limited guardian may nominate by will, or by other writing executed by the nominating parent or parents, spouse, or adult child, an individual to serve as guardian or limited guardian upon the death or incapacity of the nominator. Such nomination shall be executed by the nominator in the same manner as provided for nominations made pursuant to Section 5-3-102 of this Act.

[History: PUBLIC LAW #SF-15-30, December 11, 2014.]

§ 5-3-104. Priorities for Selection by Court of Guardian or Limited Guardian - Appointment of Organization - Determination of Suitability - Appointment of Public Agency

(a) The following priorities shall guide the selection by the court of a guardian or limited guardian of an incapacitated or partially incapacitated person from among those eligible:

(1) The individual or individuals nominated by the subject of the proceeding pursuant to Section 5-3-102 of this Act;

(2) The current guardian or limited guardian appointed or recognized by the appropriate court of any other jurisdiction in which the incapacitated or partially incapacitated person resides;

(3) An individual nominated by the will or by other writing of a deceased parent, spouse, or an adult child who was serving as the guardian or limited guardian of the subject of the proceeding;

(4) The spouse, adult child, parent or sibling of the subject of the proceeding;
or

(5) Any individual approved by the court with whom the subject of the proceeding has been living with more than six (6) months prior to the filing of the petition. Provided that any owner, operator, administrator or employee of a facility subject to licensing as a Nursing Home, Residential Home or Group Home for the Developmentally Disabled or Physically Handicapped shall not be appointed guardian or limited guardian of a resident of such facility unless said owner, operator, administrator or employee is the spouse of said resident, or a relative of said resident within the second degree of consanguinity (such as a nephew and uncle) and is otherwise eligible for appointment.

(b) When the guardian or limited guardian of an incapacitated or partially incapacitated person is the guardian of property only, the court may appoint an organization which is eligible to manage the financial resources of an individual and has fiduciary powers, or its successor in interest, when:

(1) Such organization is nominated by the subject of the proceeding pursuant to Section 5-3-102 of this Act; or

(2) Such organization is nominated by a person eligible to make such nomination pursuant to Section 5-3-103 of this Act; or

(3) The appointment of such organization is in the best interest of the subject of the proceeding.

(c) The court shall make reasonable inquiry to determine whether the person or organization proposed to serve as the guardian or limited guardian of an incapacitated or partially incapacitated person is suitable and will exercise the powers and carry out the duties and responsibilities of guardian or limited guardian in the best interest of the ward. The court shall also inquire of the proposed guardian of the person of the ward as to how the guardian proposes to provide for the care of the ward, and of the proposed guardian of the estate of the ward as to how the guardian proposes to manage the property of the ward and to provide for the ward's financial care. The court shall make such orders with respect thereto as the court deems to be for the best interest of the ward.

[History: PUBLIC LAW #SF-15-30, December 11, 2014.]

§ 5-3-105. Court Appointment Where Nominee Is Unable, Unwilling or Cannot Qualify to Serve

In the event the person nominated is unable, unwilling, or cannot qualify to so serve, the court shall make a finding of such fact and shall proceed to the appointment of a guardian as if such nomination had not been made, taking into account any alternative guardian named in the nomination.

[History: PUBLIC LAW #SF-15-30, December 11, 2014.]

§ 5-3-106. Rights of Individual Alleged to Be or Found to Be Incapacitated or Partially Incapacitated - Confidentiality - Relief from Costs and Fees - Record

(a) In all hearings conducted pursuant to Article III of the Sac and Fox Guardianship and Conservatorship Act, an individual who is alleged to be or found to be an incapacitated or partially incapacitated person shall have a right to:

- (1) notice as provided in Section 5-3-110 of this Act;
- (2) be present at such hearings;
- (3) compel the attendance of witnesses;
- (4) present evidence;
- (5) cross-examine witnesses;
- (6) appeal adverse orders and judgments as provided by the rules of civil procedure;
- (7) representation by court-appointed counsel upon request and when available; and
- (8) request that the proceedings be closed to the public.

(b) The requirement of notice to the subject of the proceeding shall not be waived. The requirement that the subject of the proceeding be present at a hearing may be waived only for good cause shown. The court shall make inquiries to determine whether there is sufficient cause to waive the right to be present. Whenever the requirement that the subject of the proceeding be present is waived, the court shall make a finding on the record as to the reason the subject of the proceeding is not present at the proceeding and the alternatives which were considered to enable the subject of the proceeding to be present.

(c) Any person may apply for permission to participate in a proceeding or to be admitted to a proceeding which has been closed to the public. The court may grant the request to participate upon determining that the best interest of the subject of the proceeding will be served thereby. The court may, for good cause shown, grant the request of such person for permission to be admitted to the closed proceeding upon determining that said person has a legitimate interest in the proceedings. In granting either request, the court may impose any appropriate conditions it deems necessary.

(d) If the subject of the proceeding is taking or under the influence of psychotropic medication during any judicial hearing held pursuant to this Act, the court shall be advised of this fact, the purpose of the medication, and the effect which it may have on the individual's actions, demeanor and participation at the hearing.

(e) Statements of individuals alleged or found to be partially incapacitated or incapacitated persons made during the course of the evaluations, examinations and treatment pursuant to the Sac and Fox Guardianship and Conservatorship Act shall be privileged and confidential. Such statements shall not be admissible without the individual's consent in any civil or criminal proceeding other than a proceeding held pursuant to the Sac and Fox Guardianship and Conservatorship Act.

(f) A party to a proceeding held pursuant to the Sac and Fox Guardianship and Conservatorship Act may be relieved of court costs and filing fees by the Court.

[History: PUBLIC LAW #SF-15-30, December 11, 2014.]

§ 5-3-107. Appointment of Counsel - Explanation and Inquiry by Court

(a) If at any point in a proceeding alleging a person to be incapacitated or partially incapacitated the subject of the proceeding is not represented by counsel and is unable to afford one, the court may upon its own initiative, the request of the proposed ward, or any other interested party to the proceeding, appoint an attorney to represent the person sought to be made a ward, *provided* funds or *pro bono* attorneys are available.

(b) At the first appearance of the subject of the petition, the court shall explain:

(1) the purpose and potential consequences of the proceeding; and

(2) the right to be represented by counsel at their own expense, and that if the subject of the proceeding wishes to be represented by counsel the court will, if attorneys are available, appoint an attorney to represent the proposed ward.

(c) If an attorney is appointed, the court shall delay the hearing on the petition only for the period of time necessary for the attorney to prepare the case for the hearing but in no event less than five (5) days after such appointment.

[History: PUBLIC LAW #SF-15-30, December 11, 2014.]

§ 5-3-108. Evaluations of Subject of Proceeding

(a) After the filing of the petition the court may on its own motion or at the request of any party to the proceeding, if the court determines it to be for the best interest of the ward, order an evaluation of the subject of the proceeding in connection with any proceeding pursuant to the Sac and Fox Guardianship and Conservatorship Act where the capacity of said person is a material issue.

(b) Any evaluations made pursuant to the Sac and Fox Guardianship and Conservatorship Act, as appropriate for the condition or alleged condition of the person being evaluated, shall be performed by an expert with

(1) knowledge of the particular incapacity or disability which the individual is alleged to have, such as a physician or a psychologist; or

(2) knowledge of the skills required to meet the essential requirements for the individual's physical health or safety or to manage that individual's financial

resources, such as a licensed social worker with appropriate professional experience.

(3) knowledge, or at a minimum awareness of, Sac and Fox culture, history, customs or traditions, where the subject of the evaluation is or was actively living within the Sac and Fox community.

(c) An evaluation report prepared and signed by the person(s) performing the evaluation shall be submitted to the court 48 hours prior to the hearing at which the court shall consider the report. The report shall include, but not be limited to:

(1) a description of the nature and extent of the incapacity of the person, if any;

(2) a description of the mental, emotional and physical condition of the person, his ability to function in the ordinary activities of daily life and, if appropriate, the educational condition, adaptive behavior and social skills of the person;

(3) an opinion regarding the kind and extent of assistance, if any, required by the person;

(4) an assessment and review of any services necessary to provide for the well-being of the person in the following areas:

(A) physical and mental health,

(B) social skills,

(C) adequate and appropriate living conditions and

(D) continuity with both family and Sac and Fox or other Indian culture(s);

(5) an opinion regarding:

(A) the probability that the extent of the incapacity, if any, of the person may significantly lessen or increase, and

(B) the type of services or treatment, if any, appropriate for the subject of the proceeding or which could facilitate improvement in the condition of the subject of the proceeding; and

(6) a description of any tests or other evaluative techniques used.

[History: PUBLIC LAW #SF-15-30, December 11, 2014.]

§ 5-3-109. Hearing on Petition - Setting of Date

When it is represented to the court in a petition filed pursuant to this act alleging that a person is an incapacitated or partially incapacitated person, the court shall set a date for a hearing on the petition which shall be no more than thirty (30) days after the filing of the petition. The court shall cause notice to be served pursuant to the provisions of Section 5-3-110 of this Act and to the attorney of the subject of the proceeding, if known.

[History: PUBLIC LAW #SF-15-30, December 11, 2014.]

§ 5-3-110. Notice of Hearing

(a) The court shall cause notice to be served of the time and place of the hearing on the petition requesting the appointment of a guardian on:

(1) the subject of the proceeding; and

(2) the following persons whose existence and address can be ascertained by the petitioner with reasonably diligent efforts:

(A) the spouse, if any, of the subject of the proceeding,

(B) the attorney, if any, of the subject of the proceeding,

(C) all adult children, or if no adult child, then the parent or parents of the subject of the proceeding, or

(D) if there are no parents, all adult brothers and sisters of the subject of the proceeding and all adult grandchildren of the subject of the proceeding;

(3) in case no person listed in paragraph 2 of this subsection is given notice, notice shall be given to at least one and not more than three of the nearest adult relatives of the subject of the proceeding who are known to the petitioner or whose existence and address can be ascertained with reasonably diligent efforts;

(4) if not the petitioner, any person or organization which is proposed to serve as guardian or limited guardian or, to the extent such nomination is known to the petitioner, who is nominated by will or other writing to serve as guardian or limited guardian;

(5) to the extent known to the petitioner:

(A) the person or facility having care or custody of the subject of the proceeding, and

(B) the Social Services, if said Department is providing services to the subject of the proceeding;

(6) as appropriate, the Veterans Administration; and

(7) any other person as directed by the Court.

(b) A copy of the pleading which gave rise to the notice shall be attached to any notice served pursuant to this section.

(c) Except for actions appointing a special guardian pursuant to Section 5-3-115 of this Act:

(1) Notice shall be served personally on the individual who is the subject of the proceeding at least ten (10) days before the time set for hearing. Service shall be made pursuant to the Sac and Fox Civil Procedure Code. The person making such services shall make proper return thereof.

(2) Notice to other persons entitled to notice of a hearing on the original petition requesting the appointment of a guardian shall be mailed by regular first-class mail at least ten (10) days before the time set for the hearing.

(d) The notice to the subject of the proceeding shall set forth the date, time, place, and purpose of the hearing to which the notice refers. Such notice shall be substantially in the following form:

NOTICE OF HEARING

TO: _____
(Name of subject of proceeding)

Service Address: _____

You are hereby notified that a petition has been filed alleging that you are an ___ incapacitated, ___ partially incapacitated person and are incapable of ___ caring for yourself, ___ managing your property. The petition requests that a ___ guardian, ___ limited guardian be appointed by the court to make decisions for you regarding ___ yourself, ___ your property.

A copy of the petition is attached.

The hearing on the petition will be held on _____
_____ (date, time and place of the hearing)

At the hearing a () guardian, () limited guardian may be appointed for your () person, () property. The judge will explain to you the nature, purpose and effect of the proceedings.

You have the right to attend the hearing. You may confront and cross-examine all witnesses and present your own witnesses. You have the right to request that your hearing be closed to the public. You may request that an expert be appointed to examine you and if the judge believes that an examination is necessary, the judge will order an evaluation to be done.

You have the right to hire an attorney of your choice to represent you. If you do not have an attorney and cannot afford one, and you wish to be represented by an attorney at the hearing, the court may appoint one for you if funds are available. If you are able, you will be required to pay the cost of an attorney appointed by the court.

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[History: PUBLIC LAW #SF-15-30, December 11, 2014.]

§ 5-3-111. Determination by court - Order appointing guardian - Standard of Proof

(a) At the hearing on the petition the court shall determine whether or not it is necessary to appoint a guardian of the person, property or both. If a guardian is needed, the court shall determine:

(1) when a general or limited guardian of the person of the subject of the proceeding is requested, the essential requirements for the health and safety of the subject of the proceeding and the skills and knowledge necessary to meet those requirements;

(2) when a general or limited guardian of the property of the subject of the proceeding is requested, the type and amount of the financial resources of the subject of the proceeding, the essential requirements for managing the financial resources, and the skills and knowledge necessary to manage the financial resources;

(3) the nature and extent of the incapacity of the subject of the proceeding, if any; and

(4) whether by clear and convincing evidence the subject of the proceeding is an incapacitated or partially incapacitated person.

(b) If after a full hearing and examination upon such petition, the court finds by clear and convincing evidence that the subject of the proceeding is an incapacitated or partially incapacitated person, the court shall appoint a guardian or limited guardian and shall issue an order appointing a guardian. The court shall explain on the record the facts and reasons supporting the decision not to impose any less restrictive alternatives.

[History: PUBLIC LAW #SF-15-30, December 11, 2014.]

§ 5-3-112. Appointment of Guardians or Limited Guardians

(a) Whenever the Court finds the subject of the proceeding to be an incapacitated person the court shall appoint:

(1) a general guardian of the person; and

(2) as the court determines to be necessary and appropriate, a guardian of the property of the ward.

(b) Whenever the court finds the subject of the proceeding to be a partially incapacitated person the court shall appoint, as necessary and appropriate for said person:

(1) a limited guardian of the person; or

(2) a general or a limited guardian of the property of said person; or

(3) a limited guardian of the person and a general or limited guardian of the property of said person.

(c) The court may appoint the same or separate persons to serve as guardian or limited guardian of the person and guardian or limited guardian of the property of a ward.

[History: PUBLIC LAW #SF-15-30, December 11, 2014.]

§ 5-3-113. Order Appointing Guardian - Specific Determinations of Capacity - Submission of Guardianship Plan - Other Orders

(a) The order appointing a guardian shall set forth:

(1) the determinations made by the court at the hearing;

(2) the name and address of the individual appointed to serve as the limited guardian or guardian;

(3) the specific limitations imposed upon the ward, if the ward is a partially incapacitated person;

(4) any authority granted a guardian of the person of the ward to change the place of abode of the ward outside of the Sac and Fox Nation without the prior permission of the court; and

(5) the date of any review hearing(s).

(b) In establishing the specific limitations on the legal activities of a ward for whom a limited guardian of the person is appointed, the court shall make specific determinations regarding the capacity of the subject of the proceeding, including but not limited to determining whether the ward retains sufficient capacity:

(1) to vote;

(2) to serve as a juror;

(3) to operate a motor vehicle;

(4) to be licensed or continue to practice any profession of the ward; and

(5) to make personal medical decisions including but not limited to decisions to withhold or withdraw life-sustaining procedures, to donate organs, to undergo elective surgery, or to consent to routine or necessary medical or other professional care, treatment or advice.

(c) In establishing the specific limitations on the legal abilities of a ward for whom a limited guardian of the property is appointed, the court shall make specific determinations regarding the capacity of the subject of the proceeding, including but not limited to determining whether the ward retains sufficient capacity to:

(1) appoint an agent to act on his behalf;

(2) enter into contracts;

(3) grant conveyances; or

(4) make gifts of property.

(d) If not submitted with the petition or at the hearing, the guardian or limited guardian shall submit a guardianship plan as required by Section 5-3-120 or 5-3-122 of this Act, or both, as appropriate and a copy of said plan shall be mailed to those persons entitled to notice pursuant to paragraphs 1, 2, 3 and 7 of subsection A of Section 5-3-110 of this Act. The guardianship plan as approved by the court shall be made a part of the order of the court. Said plan may be modified as provided by this Act.

(e) The court may make such further orders as the court deems necessary for the best interest of the ward for care of the ward and management of the ward's property, including but not limited to:

(1) order the guardian of the property of the ward to provide the ward from such property with specified amounts of money, whether monthly or from time to time, which the ward may dispose of as the ward wishes and which, other than a

showing of the amounts paid to the ward, the guardian will not be required to account. Such order may be modified upon application of the guardian or any interested person, and a hearing conducted thereon, with notice of the hearing on such application to be given to those persons entitled to notice pursuant to paragraphs 1, 2, 3 and 7 of subsection A of Section 5-3-110 of this Act and shall be given as provided in Section 5-3-110 of this Act; and

(2) the amount of the bond as required by Section 5-4-201 of this Act.

[History: PUBLIC LAW #SF-15-30, December 11, 2014.]

§ 5-3-114. Assignment of Powers to Limited Guardian - Endorsement of Limitation or Specification of Assets upon Letters of Guardianship

(a) The court may assign to a limited guardian of the person any portion of the powers and duties of a general guardian of the person except the power to take custody of the person of the ward. The court may also assign to the limited guardian the duty to assist the ward in those particular areas in which the capacity of the ward is impaired including, but not limited to, the duty to assist the ward in:

(1) meeting the requirements for his health or safety;

(2) protecting his rights;

(3) obtaining necessary services;

(4) fulfilling his civic duties; and

(5) any other areas as determined necessary by the court and which are not specifically prohibited by Section 5-3-119 of this Act.

(b) An order specifying that only part of the property or estate of a ward is under the control or management of the guardian creates a limited guardianship of the property.

(1) The court may assign to a limited guardian of property any of the duties and powers of a general guardian of the property regarding the management of financial resources which the partially incapacitated person lacks the capacity to perform; or

(2) The court may assign to a limited guardian of property the duty of assisting the ward to perform any of such functions with regard to any financial resource of the ward.

(c) If the court limits any power conferred on the guardian of property or specifies that

management of some but not all assets of the ward be placed under the control of a guardian of the property, the limitation or specification of assets subject to the guardianship must be endorsed upon the letters of guardianship.

[History: PUBLIC LAW #SF-15-30, December 11, 2014.]

§ 5-3-115. Appointment of Special Guardian - Powers - Duration - Bond - Removal

In emergency situations,

(a) The court may appoint a special guardian for a person who appears to be or has been found to be an incapacitated or partially incapacitated person when it appears:

(1) There is imminent danger that the health or safety of said person will be seriously impaired or that the financial resources of said person will be seriously damaged or dissipated unless immediate action is taken; and

(2) No other person appears to have authority to act in the circumstances or the guardian previously appointed is unable to or refuses to take action.

(b) The request for appointment of a special guardian may be included in the petition to appoint a guardian or by separate petition, either of which must be verified.

(c) The court may, when such are available, appoint an attorney for the subject of the proceeding who does not have and can not afford legal representation. Regardless, the Court may proceed to hear the petition for appointment of a special guardian with or without notice. If the Court requires notice, the notice shall set a time for hearing on the petition within seventy-two (72) hours. If the Court requires it, notice shall be served on:

(1) The subject of the proceeding;

(2) The attorney of the subject of the proceeding, if any;

(3) The spouse of the subject of the proceeding, if any, and if the spouse is not the petitioner; and

(4) At least one other adult relative of the subject of the proceeding or any other person who is not the petitioner, as directed by the court.

Notice shall be personally served in the manner as the court directs on the subject of the proceeding and on other persons receiving notice as directed by the court.

(d) The court may without notice appoint a special guardian upon the filing of the petition,

(1) upon presentation of evidence of the incapacity of the subject of the proceeding,

(2) upon a showing that an reasonably foreseeable serious physical harm to the subject of the proceeding or serious impairment of the financial resources of said person will result from a delay, and

(3) upon presentation of a proposed emergency plan of care for the subject of the proceeding.

Whenever a special guardian is immediately appointed as provided by this subsection, the court shall cause a copy of the petition, order and letters of special guardianship to be served on:

(4) The subject of the proceeding;

(5) The spouse of the subject of the proceeding, if any, if the spouse is not the petitioner; and

(6) At least one other adult relative of the subject of the proceeding, if such relative is known or can be ascertained with reasonable diligence, or by any other person who is not the petitioner, as directed by the court.

The notice shall be served in the manner the court directs.

(e) The special guardian shall be granted only powers necessary to accomplish acts that are both supported by the proposed emergency plan of care and found necessary for the particular emergency. Power to change the place of residence of the subject of the proceeding shall be specifically granted by the court upon a showing the needs of the subject of the proceeding cannot be met within at his or her present residence. The court's approval shall be required for any changes in either the emergency plan of care or the specified powers of the special guardian. Special guardianship letters shall clearly state

(1) the person is a special guardian,

(2) the date of the expiration of the special guardianship, and

(3) the specific power(s) of the special guardian.

(f) a special guardianship shall be effective from the date of appointment until a guardian is appointed pursuant to Section 5-1-112 of this Act, or for thirty (30) days, whichever is less.

(g) The court shall not require bond if the appointment is over the person only, and may require or waive bond if the appointment is as to the property of the ward.

(h) The authority of any guardian or limited guardian previously appointed by the court is suspended with regard to the powers granted to the special guardian, but not otherwise, for as long as a special guardian has authority as provided by this section.

(i) The court may remove a special guardian at any time. The special guardian shall file a report showing all actions taken during the special guardianship and shall make any other report the court requires.

[History: PUBLIC LAW #SF-15-30, December 11, 2014.]

§ 5-3-116. Proceedings to Determine Restoration to Capacity

(a) Any person who has been judicially determined to be an incapacitated or partially incapacitated person, the guardian or limited guardian, any relative of the ward or any friend of the ward may apply by petition to the district court, to have the fact of the ward's restoration to capacity judicially determined. The petition shall state that such person is no longer incapacitated or partially incapacitated.

(b) Upon receiving the petition, the court shall appoint a day for the hearing. Such hearing shall be set within thirty (30) days after the date of the filing of the petition. The court shall cause notice to be served as provided by Section 5-3-110 of this Act and to the attorney of the subject of the proceeding, if any, and if known to the petitioner. At the hearing, the guardian or relative of the petitioner, and in the discretion of the court, any other person, may contest the right of the petitioner to the relief demanded. Witnesses may be required to appear and testify, as in all other civil matters, and may be called and examined by the judge on his own motion. If it is found that the petitioner is no longer incapacitated or partially incapacitated and capable of taking care of himself or his property, or both, his restoration to capacity shall be adjudged, and the guardianship of such person shall cease.

[History: PUBLIC LAW #SF-15-30, December 11, 2014.]

§ 5-3-117. Presumption of Capacity When Guardian Discharged Without Appointment of Another

Whenever a guardian or limited guardian who has been appointed for an incapacitated or partially incapacitated person has been discharged by the final order of the court, and no other guardian has been appointed for said person by the court, the person for whom said guardian had been appointed shall be presumed to be fully restored and presumed fully capable and competent to make contracts and transact any and all business as though said person had never been declared to be incapacitated or partially incapacitated.

[History: PUBLIC LAW #SF-15-30, December 11, 2014.]

§ 5-3-118. Duties and Powers of Guardian or Limited Guardian

(a) A guardian or limited guardian of the person of an incapacitated or partially incapacitated person is responsible for the care or control of the ward pursuant to the provisions of the Sac and Fox Guardianship and Conservatorship Act, and the orders of the court, and the guardianship plan approved by the court and shall perform diligently and in good faith any specific duties and powers assigned by the court.

(b) (1) A guardian or limited guardian of the person of an incapacitated or partially incapacitated person shall:

(A) become or remain sufficiently acquainted with the ward and maintain sufficient contact with the ward to know of the capacities, limitations, needs, opportunities, and physical and mental health of the ward;

(B) assure that the ward has a place of abode in the least restrictive, most normal setting consistent with the requirements for his health or safety; and

(C) provide any required consents or approvals on behalf of the ward as authorized by the court.

(2) A guardian or limited guardian of the person, if consistent with the terms of an order of the court, may:

(A) if no guardian of the property or conservator for the estate of the ward has been appointed, institute proceedings, including administrative proceedings, or take other appropriate action to compel the performance by any person of a duty to support the ward or to pay sums for the welfare of the ward; and

(B) consent to routine or necessary medical or other professional care, treatment, or advice for the ward without liability by reason of the consent for injury to the ward resulting from the negligence or acts of third persons unless a parent would have been liable in the circumstances.

(c) If satisfied that the incapacity or partial incapacity of the ward has ceased, the guardian or limited guardian shall file a petition requesting a determination on the restoration to capacity of the ward and the termination of the guardianship.

[History: PUBLIC LAW #SF-15-30, December 11, 2014.]

§ 5-3-119. Limitation of Powers of Guardian

A guardian shall have no powers except as provided by the Sac and Fox Laws or given to such guardian in the orders in the guardianship proceeding. This limitation of powers includes but is not limited to the following:

(1) No guardian shall have the power to consent on behalf of the ward to the withholding or withdrawal of life-sustaining procedures from the ward, except:

(A) with specific authorization of the court. Such authorization must be granted in a separate order and only at such time when the ward is in need of life-sustaining treatment,

(B) as authorized by a prior executed directive properly executed by the ward, or

(C) as authorized by the wards previously executed consent not to resuscitate.

Such prior authorizations must be made when the ward was of a mental capacity to knowingly consent to such medical procedures.

(2) No guardian, nor the Court under the guardianship proceeding, shall have the power to consent on behalf of the ward, or order the consent on behalf of the ward, to the termination or relinquishment of parental rights of the ward;

(3) Except in an emergency and only as necessary to preserve the life of the ward, no guardian shall have the power to consent on behalf of the ward to an abortion, psychosurgery, removal of a bodily organ, performance of any experimental biomedical or behavioral procedure, or participation in any biomedical or behavioral experiment, except with specific authorization of the court;

(4) No guardian shall have the power to prohibit the marriage or divorce of an adult ward except with specific authorization of the court; and

(5) No guardian shall have the power to consent on behalf of the ward to placement of the ward in a facility or institution to which a person without a guardian would have to be committed pursuant to the laws of this tribe, or Oklahoma, absent formal commitment proceedings.

[History: PUBLIC LAW #SF-15-30, December 11, 2014.]

§ 5-3-120. Proposed Plan for Care and Treatment of Ward

(a) If not filed with the petition or submitted to the court at the time of the hearing, within ten (10) days after his appointment the guardian or limited guardian of the person of an incapacitated or partially incapacitated person shall file with the court, for its approval, a proposed plan for the care and treatment of the ward and shall submit subsequent or modified plans as required by this Act. Upon the application of the guardian or limited guardian, the court may extend the time for filing the plan for not more than thirty (30) days. The court may approve a plan acceptable to the court without notice or hearing or may, as necessary, order the modification of the plan at the initial review hearing.

(b) (1) The proposed guardianship plan and any subsequent guardianship plans for the care and treatment of the ward shall state:

(A) the services which are necessary to meet the essential requirements for the physical health or safety of the ward taking into account the contents and recommendations of an evaluation report made with respect to the ward, if any;

(B) the means for obtaining those services;

(C) the manner in which the guardian or limited guardian, the ward, and the guardian of the property of the ward or the conservator, or if an organization or another person has been appointed to serve in that capacity, will exercise and share decision-making authority; and

(D) such other services necessary to assist in fulfilling the needs of the ward, the terms of the most recent dispositional order applying to such guardian or limited guardian, and the duties of such guardian or limited guardian.

(2) Each such plan shall be substantially in the following form:

PLAN FOR THE CARE AND TREATMENT OF A WARD

I, _____ (Name), the (guardian, limited guardian) for

(Name and current place of abode of the ward) hereby submit this (initial, annual or as ordered by the court) Guardianship Plan for the care and treatment of said ward.

1. I believe the services necessary for the physical health and safety of the ward are:

2. Those services will be obtained or provided as follows: _____

3. The guardian (or conservator) of the property (Name or indicate as not applicable) of the ward, the ward, and I plan to cooperate and share decision-making authority with regard to the ward within the provisions of the dispositional order as follows:

4. I believe the following services will assist in fulfilling the needs of the ward, implementing the terms of the most recent dispositional order applying to me as (guardian or limited guardian):

Date

Signature of guardian or limited guardian)

<end document>

(c) If ordered by the court, the plan for the care and treatment of the ward shall be prepared with the assistance of any person designated by the court to provide such assistance.

[History: PUBLIC LAW #SF-15-30, December 11, 2014.]

§ 5-3-121. Disposition of Financial Resources under Supervision and Control of Guardian or Limited Guardian - Petition for Restoration of Capacity

(a) A guardian of the property must keep safe the property of his ward and shall act as a fiduciary as provided by Section 5-1-121 of this Act.

Subject to the order and the guardianship plan for the management of the financial resources of the ward, a guardian or limited guardian of the property of the ward:

(1) shall expend or distribute, authorize the expenditure or distribution of, and assist in the expenditure or distribution of, the principal of or income from the financial resources placed under his supervision and control to assure that:

(A) the essential requirements for the physical health or safety of the ward are met,

(B) the property rights of the ward are protected,

(C) the financial resources of the ward which are subject to the guardianship are prudently managed, and

(D) the guardian or limited guardian of the person of the ward, if any, or if other than the guardian or limited guardian of the property, is able to

perform the duties and powers assigned by the court;

(2) may expend funds of the estate for the support of persons legally dependent on the ward, and with approval of the Court, those dependent on the ward under Sac and Fox custom;

(3) may, subject to prior specific approval by the court, make gifts to charity, persons (which may include the guardian or limited guardian), or both such charity and persons, as the ward might have been expected to make based upon an established pattern of giving made by the ward prior to the appointment of a guardian or limited guardian or if the court finds it is in the best interest of the subject of the proceeding on the basis of tax or estate planning. The Court may approve gifts of small amounts for holidays, birthdays or similar occasions and shall specify in the order the maximum amount which may be expended for such purpose and the person or persons to whom such gifts can be made, which may include guardians or limited guardians.

(b) Limited guardians of property shall consider the size of the financial resources of the ward which have not been placed under their supervision or control.

(c) If satisfied that the incapacity or partial incapacity of the ward has ceased, the guardian or limited guardian of the property shall file a petition requesting a determination on the restoration to capacity of the ward and the termination of the guardianship.

[History: PUBLIC LAW #SF-15-30, December 11, 2014.]

§ 5-3-122. Proposed Plan for Management of Financial Resources of Ward

(a) If not filed with the petition or submitted to the court at the time of the hearing, within two (2) months after his appointment, a guardian or limited guardian of the property of an incapacitated or partially incapacitated person shall file with the court for its approval a proposed plan for the management of the financial resources of the ward that are under his management or administration, and an inventory as required pursuant to Section 5-4-301 of this Act. Said guardian or limited guardian shall submit subsequent or modified plans as required by this Act.

(b) Initial and subsequent guardianship plans for the management of the financial resources of the ward shall state:

(1) the services which are necessary to manage the property of the ward placed under the control of the guardian or limited guardian;

(2) the means for obtaining those services;

(3) the manner in which the guardian or limited guardian of the property of the ward, the ward, and the guardian or limited guardian of the person, or if another individual has been appointed to serve in that capacity, will exercise and share decision-making authority;

(4) such other services necessary to assist in the management of the property placed under the guardian or limited guardian in fulfilling the needs of the ward and the duties of such guardian or limited guardian, and the terms of the most recent dispositional order.

(c) Each such plan shall be substantially in the following form:

PLAN FOR THE MANAGEMENT OF THE PROPERTY OF THE WARD

I, _____(Name), the (petitioner, guardian or limited guardian) for

_____ (Name and current place of abode) hereby submit this (initial, annual or as ordered by the court) Guardianship Plan.

1. I believe the services necessary to manage the property of the ward which is subject to this Plan are as follows: _____

2. Those services will be provided in the following manner:

3. The guardian (or limited guardian) of the person, (Name, or indicate as not applicable) the ward, and I plan to cooperate and share decision-making authority with regard to the ward within the provisions of the dispositional order as follows:

4. I believe the following services will assist in the management of the property of the ward subject to my control, implementing the terms of the most recent dispositional order applying to me as (guardian or limited guardian) of the property:

Date

(Signature of guardian or limited guardian)

<end document>

[History: PUBLIC LAW #SF-15-30, December 11, 2014.]

§ 5-3-123. Sale or Lease of Homestead of Incapacitated or Partially Incapacitated Person

Guardians of incapacitated and partially incapacitated persons are authorized and empowered subject to the dispositional order and the guardianship plan to lease all or part of the homestead of the incapacitated or partially incapacitated person for oil, gas, and other mineral exploration, development and production purposes and for agricultural purposes, subject to any federal or tribal laws or restrictions.

[History: PUBLIC LAW #SF-15-30, December 11, 2014.]

§ 5-3-124. Sale or Lease of Real Property by Guardian - Approval - Joinder of Spouse

When the ward owns an interest in a tract of real property in addition to a homestead interest, no conveyance, deed, contract or lease executed pursuant to the authority granted by Section 5-3-123 of this Act shall be valid, unless the sale or leasing be conducted in the manner provided by law for the sale or leasing of other lands of an incapacitated or partially incapacitated person, be approved by the court in which the guardianship proceeding is pending, and the spouse of the ward be a party to such conveyance, deed, contract or lease and join in the execution and acknowledgment thereof. When the ward owns no interest in a tract of real property other than a homestead interest or possible homestead interest, a guardian may execute a conveyance thereof on behalf of the ward for the purpose of waiving such homestead interest or possible homestead interest, if so authorized by order of the court, made pursuant to application and notice sent by ordinary mail to the persons set forth in Section 5-3-110 of this Act at least ten (10) days prior to the hearing of such application. All such actions shall be subject to any federal or tribal restrictions on trust assets.

[History: PUBLIC LAW #SF-15-30, December 11, 2014.]

§ 5-3-125. Reserved

§ 5-3-126. Estates of Incapacitated or Partially Incapacitated Persons Not Exceeding \$5,000 - Disposition - Discharge and Release

(a) When the whole estate of an adult who has been adjudicated to be incapacitated or partially incapacitated does not exceed the value of Five Thousand Dollars (\$5,000.00), the court may, in its discretion, without the appointment of a guardian or the giving of bond, authorize the deposit thereof in a depository authorized to receive fiduciary funds in the name of a suitable person designated by such court, or, if the assets do not consist of money, authorize the delivery thereof to a suitable person designated by such court. The person receiving such property shall hold and dispose of the same in such manner as such court directs.

(b) The person making payment, delivery, transfer or issuance of property or evidence thereof to the person designated by such court under this section is discharged and released to the same extent as if such payment, delivery, transfer or issuance was made to a guardian of the incapacitated or partially incapacitated person, and he is not required to see to the application thereof. A person making payment, delivery, transfer or issuance of property, or evidence thereof, to a next friend or guardian ad litem may be discharged and released as provided for in the Sac and Fox Guardianship and Conservatorship Act.

[History: PUBLIC LAW #SF-15-30, December 11, 2014.]

Appointment of Conservator

§§ 5-3-201 to 5-3-210. Reserved

§ 5-3-211. Petition for Appointment of Conservator by Reason of Physical Disability - Consent - Notice and Hearing

When it is represented to the court upon verified petition of any person, any relative, or friend that:

(1) a person is an inhabitant or resident of the Nation or has property within the Nation's jurisdiction;

(2) that such person is, by reason of physical disability only, unable to manage his property; and

(3) that such person voluntarily consents to the establishment of a conservatorship and the appointment of a conservator, the court must cause notice to be served personally on the person so alleged to be unable to manage his property and on such other persons and in such manner as the court directs, of the time and place of hearing such petition, not less than five (5) days before the time so appointed, and such person, if able to attend, must be produced before the court at the hearing.

[History: PUBLIC LAW #SF-15-30, December 11, 2014.]

§ 5-3-212. Appointment of Conservator - Consent Necessary

If, after a full hearing and examination upon such petition, it appears to the court that the person in question is, by reason of physical disability, unable to manage his property and that such person consents to the appointment of a conservator, the court shall appoint a conservator of the estate of such person. A conservator shall not be appointed if the person in question does not consent to the appointment.

[History: PUBLIC LAW #SF-15-30, December 11, 2014.]

§ 5-3-213. Persons Ineligible for Appointment as Conservator

No person shall be appointed conservator of an estate who would be ineligible to act as guardian of the ward.

[History: PUBLIC LAW #SF-15-30, December 11, 2014.]

§ 5-3-214. Care, Custody and Management of Estate - Bond

Every conservator appointed to preserve and protect the estate of his ward shall have the care, custody and management of such estate until such conservator is legally discharged. The conservator shall give bond to the Court, in like manner and conditions as provided for guardians of incapacitated and partially incapacitated persons.

[History: PUBLIC LAW #SF-15-30, December 11, 2014.]

§ 5-3-215. Powers and Duties of Conservator - Jurisdiction of Court

A conservator shall have the same powers and duties, including the submission of plans and reports, as a guardian or limited guardian of the property of an incapacitated or partially incapacitated person as required by the Sac and Fox Guardianship and Conservatorship Act. All laws relative to the jurisdiction of the court over the estate of a person under guardianship as an incapacitated or partially incapacitated person, including the investment, management, sale or mortgage of his property and the payment of his debts, shall be applicable to the estate of a person under conservatorship.

[History: PUBLIC LAW #SF-15-30, December 11, 2014.]

§ 5-3-216. Discharge of Conservator - Accounting

A conservator may be discharged by the court upon the application of the ward or otherwise upon such notice to the conservator and next of kin of said ward as the court may determine reasonable and proper, when it appears that the conservatorship is no longer necessary. In the event of the death, resignation or removal of a conservator, the court, on the application of the former ward and upon such notice to the next of kin of said ward as the court may order, may certify that said ward is discharged by operation of law if it appears that the conservatorship of said ward is no longer necessary. Upon the termination of a conservatorship, a conservator shall account to the court as otherwise provided by the Sac and Fox Guardianship and Conservatorship Act for guardians of property.

[History: PUBLIC LAW #SF-15-30, December 11, 2014.]

§ 5-3-217. Compensation of Conservator

The conservator shall receive as compensation for his services the compensation provided by law for guardians.

[History: PUBLIC LAW #SF-15-30, December 11, 2014.]

§ 5-3-218. Subsequent Appointment of Guardian of Ward - Effect on Estate

Any subsequent appointment of a guardian of said ward as an incapacitated or partially incapacitated person shall be an appointment as guardian of the person only of said ward and shall not include the appointment of such guardian of the estate of said ward or in any manner affect the custody, management and the handling of the estate of said ward by the conservator so long as such conservatorship proceedings are pending.

[History: PUBLIC LAW #SF-15-30, December 11, 2014.]

§ 5-3-219. Limitation on Right of Ward to Contract

Upon the appointment of a conservator, the ward shall not thereafter have the power to enter into any contract creating an obligation against his estate except for necessities.

[History: PUBLIC LAW #SF-15-30, December 11, 2014.]