

## ARTICLE IV. MISCELLANEOUS

### Eligibility for Appointment

#### § 5-4-101. Appointment as Guardian of More than Four Wards Prohibited - Exceptions

(a) No person shall be appointed guardian of any minor, incapacitated, or partially incapacitated person, who at the time of the hearing of the application for appointment is the guardian of four or more persons, or whose appointment as guardian would make them guardian of more than four wards. Provided, this restriction shall not apply to a guardian of his own family or relatives so long as the Court on the record finds there is no other reasonable alternative.

(b) The provisions of this section and Section 5-4-102 of this Act shall not apply to the Sac and Fox Nation or its departments and agencies. Other governmental entities, or governmentally licensed non-profit or for profit entities, may also be exempted upon showing to the Court proper protections and safeguards of the wards are in place. The Court may place upon a guardianship granted under this section such restrictions or requirements as it deems appropriate.

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

#### § 5-4-102. Violations

Any person or official violating the provisions of Section 5-4-101 of this Act shall be liable for a civil penalty not to exceed \$5,000 per violation. Each day, and each ward of the guardian, in excess of the statutory limit shall be deemed a separate violation. The Sac and Fox Social Services Department may issue citations for violations of Sections 5-4-101 and 5-4-102, hold hearings, issue findings and assess penalties. Any such Department findings or assessments may be appealed to the District Court.

Alternatively, the Court may upon its own initiative or upon motion of the Attorney general, issue notices, hold hearings and make a final determination for such violations and penalties. The Code of Civil Procedure shall apply to such Court proceedings.

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

#### § 5-4-103. Reserved

**§ 5-4-104. Reserved**

**§ 5-4-105. Inquiry into Suitability of Person Proposed to Serve as Guardian**

(a) In conducting an inquiry to determine whether a person is suitable to serve as a guardian, the court shall determine if:

(1) The person proposed to serve as guardian is themselves legally competent;

(2) The proposed guardian or any member of the proposed guardian's household has a criminal record, pending criminal charge, protective order, and any civil or administrative matters that are either pending or judgments granted against them within the last five (5) years. The petitioner shall disclose the case name and status of any civil or criminal matter in tribal, state or federal court involving the proposed guardian or any household member of the proposed guardian;

(3) The proposed guardian has declared bankruptcy during five (5) years prior to the filing of the guardianship pleading;

(4) The proposed guardian is under any financial obligation to the ward; or

(5) The proposed guardian has a conflict of interest which could be detrimental to the proposed ward.

(b) If the person proposed as guardian has any potentially disqualifying criteria under subsection (a), the court shall make inquiry into the potential disqualification and the surrounding circumstances. The court shall appoint such person proposed to serve only upon determining on the record that the facts underlying the circumstances do not give rise to a reasonable belief the proposed guardian will be unfaithful to or neglectful of the fiduciary and care responsibilities of the guardian, and the appointment is in the best interest of the ward.

(c) No un-emancipated minor or incapacitated person shall be appointed as a guardian.

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

**Bond**

**§ 5-4-201. Guardian's Bond**

(a) Before the entry of an order appointing a person or organization as a guardian and before the letters issue, the court may require the person or organization to be appointed to

provide a bond, with sufficient sureties, to be approved by the court, and in such penal sum as the court shall order, conditioned that the guardian will faithfully execute the duties of the trust according to law.

(b) Upon a finding by the court that the anticipated annual income to a ward for one (1) year plus the value of the personal property of the ward is less than Twenty Thousand Dollars (\$20,000.00), the court may order that a bond is not necessary. For purposes of this paragraph, personal property shall not include property owned with a joint tenant.

The provisions of this section shall not apply to cases subject to the Uniform Veterans Guardianship Act.

(c) In the event the intangible personal property of the ward, as determined by the inventory, is in a greater amount than as determined by the court at the hearing on the petition, the guardian shall at the time the inventory is filed post, or modify, a bond sufficient for the full amount of the intangible personal property. The amount of the bond in the future may be adjusted up or down in amount based upon the intangible personal property shown in future annual accountings; provided, however, no bond shall be reduced except upon order of the court.

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

**§ 5-4-202. Request for Security or Bond - Suspension of Powers - Order**

When a petition is presented praying that a guardian be required to give further security, or to give bond where no bond was originally required, and it is alleged on oath that such is necessary to serve the best interest of the ward or his estate, the judge may suspend the guardian's powers until the matter can be heard. If the judge decides a bond or other security is in the best interests of the ward or his estate the judge shall order the same to be posted. If bond is not given within a reasonable time as fixed by the judge the guardian shall be removed.

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

**§ 5-4-203. Requirement of New Bonds - Discharge of Sureties on Old Bond**

The court may require a new bond be given by a guardian whenever the court deems it necessary. Alternatively, the Court may discharge the existing sureties from further liability, after notice is given as the court may direct, when it appears that no injury will result to the ward or his/her estate.

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

**§ 5-4-204. Preservation of Bonds - Breach of Condition - Actions on Bonds**

Every bond given by a guardian must be filed and preserved in the office of the district court clerk, and in case of a breach of a condition thereof, may be prosecuted for the use and benefit of the ward or of any person interested in the person or estate of the ward.

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

**§ 5-4-205. Limitation of Action on Bond - Effect of Disability**

No action can be maintained against the sureties on any bond given by a guardian, unless it is commenced within three (3) years from the discharge or removal of the guardian. However, if at the time of such discharge a person entitled to bring action is under any legal disability to sue, the action may be commenced by such person at any time within three (3) years after his or her disability is removed.

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

**Inventory, Accounting and Reports**

**§ 5-4-301. Inventory and Account of Estate of Ward - Appraisal - Waiver of Inventory Prohibited**

(a) Every guardian or limited guardian of the property of a ward shall file an inventory of the estate of his ward within two (2) months after his appointment. The time to file an inventory may be extended by the court for good cause shown. The court may, upon application made by any interested person, compel the guardian or limited guardian of the property of a ward to render a revised inventory or account to the court of the estate of his ward. Each inventory and account returned or rendered must be sworn to by the guardian or limited guardian.

(b) The guardian shall state his opinion of the value of the estate of the ward described in the first inventory. Such inventory shall be filed with the district court clerk. Whenever any other property of the estate of any ward is discovered that was not included in a prior inventory of the estate, and whenever any other property has been succeeded to or acquired by or for any ward, like proceedings must be had for their return. If requested by the ward, judge or any interested person, such property must be appraised by a properly appointed independent appraiser, with their appraisal sworn or affirmed.

(c) The court shall not waive any inventory of property of the ward which is required by this section.

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

§ 5-4-302. Reserved

§ 5-4-303. Settlement and Allowance of Accounts - Reports to Court - Date Certain for next Annual Report

(a) Except as otherwise provided by subsection (b) of this section, a guardian or limited guardian of the property shall, upon the expiration of a year from the time of appointment, and at least annually thereafter, present accounts to the court for settlement and allowance as part of the guardianship report as required by Section 5-4-306 of this Act.

(b) If there has been a significant change in the physical or mental condition of the ward, or the ward's financial resources, the details thereof shall be set forth in the annual report required by subsection (a) of this section.

Except as otherwise directed by the court or required by the Uniform Veteran's Guardianship Act (72 U.S.C. 126.1, et seq.), the provisions of this subsection regarding the filing of an annual accounting and annual plan shall not apply to any guardianship of the property of a ward if the ward's financial resources or assets, other than a homestead, are worth less than Twenty Thousand Dollars (\$20,000.00) if a bond has been posted, or are worth less than Ten Thousand Dollars (\$10,000.00) regardless of whether or not a bond has been posted, and if the guardian or limited guardian of the property is the spouse or a relative of the ward within the second degree of consanguinity, (e.g. niece & aunt).

(c) In addition to the reports required by subsections (a) and (b) of this section, a guardian or limited guardian shall submit a report whenever there is a significant change that impacts the ward or the guardianship.

(d) The court shall not waive the filing of any report for a period in excess of five (5) years.

(e) If the same person or organization is required to file reports as to both the person and the property of a ward, the reports may be consolidated.

(f) An accounting information submitted by a guardian or limited guardian of the

property of a ward shall be verified. The Court shall set a date certain by which the guardian shall file the next annual report.

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

**§ 5-4-304. Account by One of Joint Guardians**

When an account is rendered by two or more joint guardians, the Court may allow the same upon oath of any of them.

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

**§ 5-4-305. Report on Guardianship of Person - Requirements - Attachments**

(a) A report on the guardianship of the person of an incapacitated or partially incapacitated person shall set forth:

(1) the name and place of abode of the ward and the name and address of the guardian or limited guardian;

(2) any significant change in the capacity of the ward to meet the essential requirements for his physical health or safety;

(3) the services being provided to the ward and the relationship of those services to the individual guardianship plan;

(4) any significant actions taken by the guardian or limited guardian or guardian during the reporting period;

(5) any significant problems relating to the guardianship which have arisen during the reporting period;

(6) the reasons, if any, why the appointment should be continued; and

(7) the reasons, if any, why no less restrictive alternative will permit the incapacitated or partially incapacitated person to meet the essential requirements for his physical health or safety.

(b) The report shall be substantially in the following form:

**REPORT ON THE GUARDIANSHIP OF THE PERSON**

I, (Name) the (Guardian/Limited Guardian of the person) for (Name) , an (incapacitated/partially incapacitated) person hereby submit this (annual, court-ordered) Guardianship Report.

1. The present place of abode of the ward is:

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2. The type of home or facility in which the ward lives is \_\_\_\_\_ and the name of the person in charge of the home or facility is \_\_\_\_\_

3. My present street address and telephone number is:

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4. During the last year, I have seen the ward \_\_\_\_\_ times. I otherwise or also have become or remained familiar with the needs and care of the ward as follows:

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The nature of my visits to the ward have been:

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5. The following services are currently being provided to the ward:

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6. These services (are, are not) provided for in the current Guardianship Plan. The reason they are not shown in the current Guardianship Plan is:

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7. The ward was last seen by a physician on: \_\_\_\_\_ The purpose of the visit was:

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8. I (have, have not) observed any major change in the ward's physical or mental condition during the last year. (If so,) these are my observations:

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9. I (have, have not) taken any significant action for or on behalf of the ward since the last time I submitted a Guardianship Report. (If so,) I took the following actions:

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10. There (have, have not) been any significant problems relating to the ward or to my guardianship of the ward since the last time I submitted a Guardianship Report or, if this is an initial report, since the issuance of my letters. (If so,) I have observed these problems:

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11. It is my opinion that the guardianship (should, should not) be continued. (If so,) the basis for my belief is as follows:

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12. I believe the ward (would, would not) be able to manage essential requirements for physical health and safety with fewer restrictions on the ward's ability to act for himself or herself. (If so,) the basis for my belief is as follows:

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13. My opinion of the present care being provided to the ward is as follows:

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14. The place of abode of the ward (has, has not) changed since the last guardianship report. (If so,) the place was changed for the following reasons: \_\_\_\_\_

I hereby swear that the answers set forth above are true and correct to the best knowledge and belief of the undersigned, subject to the penalties of making a false affidavit or declaration.

Date: \_\_\_\_\_

\_\_\_\_\_  
(Signature of Guardian or Limited Guardian)

Telephone: \_\_\_\_\_

*<end document>*

(c) Whenever there are changes or proposed changes to the guardianship plan, an individual guardianship plan, substantially in the same form as provided in Section 5-3-120 of this Act, shall be submitted with the guardianship report and shall show any such changes

or proposed changes in the guardianship plan.

(d) Attached to the report shall be:

(1) an accounting of any monies received by the guardian or limited guardian on behalf of the ward;

(2) any expenditures made by the limited guardian or guardian on behalf of the ward;

(3) any compensation requested by the guardian or limited guardian; and

(4) copies of any appropriate medical records, evaluations, or other similar documentation pertinent to the reporting period.

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

**§ 5-4-306. Report on Guardianship or Limited Guardianship of Property - Requirements - Attachments - Review of Financial Resources**

(a) A report on the guardianship or limited guardianship of the property of a ward shall set forth:

(1) the name and place of abode of the ward, and the name and address of the guardian or limited guardian;

(2) if the ward is an incapacitated or partially incapacitated person, any significant actions taken or changes in the guardianship, the ward, or the guardianship plan;

(3) if the ward is an incapacitated or partially incapacitated person, the reasons, if any, why the guardianship should not be terminated, or why no less restrictive alternative would permit the ward to manage his financial resources.

(b) If the ward is an incapacitated or partially incapacitated person, reports on the guardianship of the property shall be substantially in the following form:

**REPORT ON THE GUARDIANSHIP OF PROPERTY**

I, (Name) the (Guardian or Limited Guardian of the property) of (Name) , an incapacitated (or a partially incapacitated) person, hereby submit this (annual, court-ordered) Report.

1. List any significant changes in the capacity of the ward to manage his or her financial resources: \_\_\_\_\_

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2. The services currently being provided to the ward are as follows: \_\_\_\_\_

3. These services (are, are not) provided for in the current Guardianship Plan as approved by the court.

The reason these services are not shown in the current plan are as follows: \_\_\_\_\_

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4. I (have, have not) taken any significant actions for or on behalf of the ward since the last time I submitted a Guardianship Report.

(If so:) These actions are as follows:

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5. There (have, have not) been any significant problems relating to the guardianship since the last time I submitted a Guardianship Report.

(If so:) The problems are as follows:

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6. In my opinion, the guardianship (should, should not) be continued. The reasons for my belief are as follows:

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7. It is my belief that the ward (would, would not) be able to manage his or her financial resources with fewer restrictions on the ward's ability to act for him or herself. The reasons for my belief are as follows:

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I hereby swear that the answers set forth above are true and correct to the best knowledge and belief of the undersigned, subject to the penalties of making a false affidavit or declaration.

\_\_\_\_\_  
(Date of Report)

\_\_\_\_\_  
(Signature of Guardian or Limited Guardian)

<end of document>

(c) If the ward is a minor, reports on the guardianship of the property shall be substantially in the following form:

**REPORT ON THE GUARDIANSHIP OF A MINOR’S PROPERTY**

I, (Name) the (Guardian or Limited Guardian of the property) of (Name) , a minor, hereby submit this (Annual, Court ordered) Report.

1. The services currently being provided to the ward are as follows:

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2. These services (are, are not) provided for in the current Guardianship Plan as approved by the court.

The reason these services are not shown in the current plan are as follows:\_\_\_\_\_

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3. I (have, have not) taken any significant actions for or on behalf of the ward since the last time I submitted a Guardianship Report.

(If so:) These actions are as follows:

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4. There (have, have not) been any significant problems relating to the guardianship since the last time I submitted a Guardianship Report.

(If so:) The problems are as follows:

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I hereby swear that the answers set forth above are true and correct to the best knowledge and belief of the undersigned, subject to the penalties of making a false affidavit or declaration.

\_\_\_\_\_  
(Date of Report)

\_\_\_\_\_  
(Signature of Guardian or Limited Guardian)

<end of document>

(d) Whenever there are changes or proposed changes to the guardianship plan, an

individual guardianship plan for the management of financial resources, substantially in the same form as provided in Section 5-3-122 of this Act, shall be submitted with the guardianship report and shall show any such changes or proposed changes in the guardianship plan since last submitted and approved by the court.

(e) The report:

(1) shall contain a complete financial statement of the financial resources of the ward under the control or supervision of the guardian or limited guardian of the property;

(2) shall contain an accounting of any receipts and disbursements received, or expenditures made by the guardian or limited guardian on behalf of the ward;

(3) may include any request for compensation for the guardian.

(f) As directed by the court, following submission of a report or in conjunction with an initial or annual review or any subsequent proceeding, a guardian or limited guardian shall submit to an actual review of the financial resources placed under his control.

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

**§ 5-4-307. Mailing of Copies of Annual Report - Objections to Report - Hearing**

(a) (1) Upon the filing of an annual report the court shall immediately cause a copy of the report to be mailed by first-class mail to:

(A) the persons entitled to notice pursuant to Section 5-2-101 of this Act for minors, or

(B) those persons entitled to notice pursuant to paragraphs 1, 2, 3 and 7 of subsection (a) of Section 5-3-110 of this Act for adults, and

(C) the attorney of the ward, if any.

(2) Attached to the copy of the report shall be a statement notifying the recipient that objections to the report must be filed within fifteen (15) days after the date of the filing of the annual report with the court.

(3) Any person entitled to receive a copy of the annual report may file an objection to said report within fifteen (15) days after filing of the annual report.

(b) (1) After notice, the court may on its own motion hold a hearing on an annual

report and shall hold a hearing:

(A) upon the filing of an objection to the annual report; or

(B) when the court is considering issuing an order other than an order accepting the report and granting the relief requested.

(2) Notice for a hearing on an annual report shall be given, by mail, to the persons entitled to notice pursuant to Section 5-2-101 of this Act for minors or paragraphs 1, 2, 3 and 7 of subsection A of Section 5-3-110 of this Act for adults at least ten (10) days prior to the date set for the hearing. Notice shall be in such form as the court may direct and shall be sent by regular first-class mail.

(c) The court may enter an order granting the relief requested in the report without notice if the court determines that such relief should be granted immediately. In that event, the court shall grant such relief on a temporary basis pending a hearing on the report or the expiration of the fifteen (15) days within which an objection to the report may be filed.

(d) When no objection to an annual report is filed and no hearing on the annual report is, the court shall issue an order accepting the annual report and granting the relief requested.

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

**§ 5-4-308. Application for Relief - Notice - Hearing - Order - Appointment of Counsel to Represent Ward - Joinder of Separate Applications or Objections - Evaluation of Ward - Hearing Without Notice**

(a) After the appointment of a guardian, the ward, any person interested in the welfare of the ward, or a guardian may make application to the court for:

(1) termination of the guardianship;

(2) removal of the guardian;

(3) resolution of a dispute pertaining to the guardianship plan;

(4) if the ward is an incapacitated or partially incapacitated person, the imposition of additional restrictions upon the legal capacity of the ward to act on his own behalf or the removal of one or more existing restrictions; or

(5) a review hearing.

(b) Such application shall set forth:

- (1) the names and addresses of the individuals and entities entitled to notice;
- (2) the relief requested; and
- (3) the alleged facts and reasons supporting the request.

(c) Any person entitled to notice of the hearing on an application filed pursuant to this section may object to the relief requested in the application. If the ward is a minor, notice shall be as provided by Section 5-2-101 of this Act. If the ward is an incapacitated or partially incapacitated person, notice shall 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 by Section 5-3-110 of this Act and to the attorney of the subject of the proceeding, if any.

(d) The court shall set an application filed pursuant to this section for hearing on a date certain and shall cause notice to be given to the persons entitled thereto by regular first-class mail at least ten (10) days prior to such date. However, except for an order terminating a guardianship, the court may enter an order granting the relief requested in the application without notice if the court determines that such relief should be granted immediately. In that event, the court may grant such relief on a temporary basis and proceed to set the application for further hearing following the giving of notice as provided by this subsection. At the hearing, based upon the evidence, the judge may continue, modify or vacate his temporary order.

(e) At the hearing upon the application filed under this section the court may make any order which the court deems to be in the best interests of the ward or the estate of the ward.

(g) After notice, the court may join the issues raised in separate applications or separate objections for determination at a single hearing, unless the court determines joinder would be prejudicial to the interests of the ward.

(h) As necessary and appropriate the court may order an evaluation of the ward in connection with any guardianship proceeding subsequent to the appointment of a guardian.

(i) The court may hear an application regarding matters other than set forth in subsection (a) of this section, with or without notice. If the court requires notice to be given, the court shall specify to whom notice shall be given, the manner, and time in which such notice shall be given.

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

## **Expenses, Compensation and Costs**

### **§ 5-4-401. Expenses and Compensation of Guardians**

(a) Every guardian must be allowed the amount of his reasonable expenses in the execution of his trust, and he may also have compensation for his services as the court deems reasonable.

(b) To the extent that the services of a guardian or limited guardian of the property are for the collection of income of the ward, compensation for such services shall not exceed seven and one-half percent (7 1/2 %) of the income so collected. For the purposes of this section, "income" means funds received by and accounted for by the guardian or limited guardian on behalf of the ward, other than from the sale of property of the ward, plus the net proceeds from the sale of property of the ward in excess of the value of such property as last determined in the guardianship proceeding. *However*, Per Capita or Tribal assistance / grants, and state or federal benefits such as unemployment, SSI or Veterans benefits, shall not be subject to computation in compensation of guardianship fees.

(c) All compensation and reimbursements pursuant to this section shall be approved by the court prior to payment.

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

### **§ 5-4-402. Joint Guardians - Compensation**

Joint guardians shall not receive more compensation than a single guardian.

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

### **§ 5-4-403. Compensation for Attorneys, Guardians Ad Litem and Persons Conducting Evaluations**

(a) (1) An attorney, other than a public defender, for a ward or a subject of a proceeding pursuant to this Act or whose services are obtained by a guardian on behalf of a ward is entitled to reasonable compensation to be paid from and as a charge against the estate of the ward. Reasonable compensation for attorney services rendered and expenses made on behalf of the guardian of the ward incurred prior to the appointment of the guardian may be paid from and charged against the estate of the ward, as approved by the court prior to payment.

(3) A person conducting an evaluation of the subject of the proceeding, whose services resulted in the appointment of a limited guardian or guardian or other order

beneficial to the subject of the proceeding, is entitled to reasonable and necessary compensation.

(b) (1) Compensation and reimbursements pursuant to this section shall be paid from the financial resources of the subject of the proceeding unless the court determines that such payment of compensation and reimbursements would:

(A) substantially impede the partially incapacitated or incapacitated person from meeting the essential requirements for his physical health or safety, and

(B) substantially impair the financial resources of such person, or *substantially* impede his ability to obtain the services necessary for developing or regaining his abilities to the maximum extent possible.

(c) All compensation and reimbursements pursuant to the provisions of this section shall be approved by the court prior to payment.

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

**§ 5-4-404. Appointment of Guardian to Authorize Entry into Armed Forces**

No costs shall be required by the court clerk in any guardianship proceeding where the proceeding is for the purpose of appointing a guardian to approve or authorize the ward to enter the armed forces of the United States.

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

**Joint Guardians**

**§ 5-4-501. Appointment of More than One Guardian - Bond**

The court may appoint more than one guardian of any person or property subject to guardianship. Such guardians shall be governed and liable in all respects as a sole guardian. Such guardian shall give bond in the manner and conditions as prescribed for sole guardians unless waived.

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

**§ 5-4-502. Two or More Guardians**

(a) If there are two guardians the act of one alone shall be effectual:

(1) if a co-guardian is under any legal disability from serving, said co-guardian shall be relieved from official liability. Provided: an order of the district court is first obtained; or

(2) if a co-guardian has given the other coguardian authority in writing to act for both.

(b) If there are more than two guardians, the act of a majority of them is valid.

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

**§ 5-4-503. Death of Joint Guardian**

On the death of one of two or more joint guardians, the power continues to the survivor until a further appointment is made by the court.

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

**§ 5-4-601 Reserved**

**Powers and Duties of Guardian**

**§ 5-4-701. Payment of Debts**

Every guardian appointed under the provisions of this Act shall pay all just debts due from the ward out of the personal estate and income of the ward, if sufficient.

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

**§ 5-4-702. Collection and Settlement of Accounts and Appearance for Ward in Suits - Compromise and Settlement of Claims**

A guardian must settle all accounts of the ward, and demand, sue for, and receive all debts due to the ward, or may, with the approval of the court, compromise or compound for the same and give discharges to the debtors on receiving a fair and just settlement of such claim. A guardian shall appear for and represent the ward in all legal suits and proceedings,

unless another person is appointed for that purpose as guardian or next friend. A guardian, with the approval of the court exercising jurisdiction in the suit or proceeding, may compromise and settle any claim made by, on behalf of or against the ward in such suit or proceeding.

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

**§ 5-4-703. Discharge and Release**

The person making payment, delivery, transfer or issuance of property or evidence thereof to the person designated by the 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 minor or incapacitated or partially incapacitated person, and he is not required to see to the application thereof.

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

**§ 5-4-704. Service upon Guardian - Duty of Guardian**

Whenever a minor or an incapacitated or partially incapacitated person has a guardian of his estate residing in this jurisdiction, personal service upon the guardian of any process, notice, or order of the court concerning the estate of the deceased person, in which the ward is interested, is equivalent to service upon the ward. It is the duty of the guardian to attend to the interests of the ward in the matter. Such guardian may also appear for his ward, and waive any process, notice, or order to show cause which an adult or a person of sound mind might do.

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

**§ 5-4-705. Management of Estate - Income Applied for Support of Ward**

Every guardian must manage the estate of his ward frugally and without waste, and apply the estate's income and profits, as far as may be necessary, for the comfortable and suitable maintenance and support of the ward, and his family, if there be any.

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

**§ 5-4-706. Maintenance and Support of Ward - Credit on Settlement - Payment of Third Person Furnishing Necessaries on Guardian's Refusal**

When a guardian has advanced for the necessary maintenance, support or education of his ward, an amount proportionate to the value of the estate or condition of life of the ward and the same is proved to the satisfaction of the court, the guardian must be allowed credit therefor in his settlement. Whenever a guardian fails, neglects, or refuses to furnish suitable and necessary maintenance, support or education for his ward, the court may order the guardian to do so. Whenever any third person at the request of the ward supplies a ward with reasonable and necessary maintenance, support or education which is shown to have been done after refusal or neglect of the guardian to supply the same, the court may order the guardian to pay therefor out of the estate of the ward and take other action as appropriate regarding the guardian.

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

**§ 5-4-707. Execution of Waivers or Consents for Wards**

The duly appointed and acting guardian, limited guardian, conservator, attorney in fact, or any other person legally authorized to act on behalf of any minor or incapacitated or partially incapacitated heir, devisee or legatee may execute waivers or consents for his ward as authorized by the court. There shall be attached to each waiver or consent a certified copy of the instrument authorizing him to perform such act.

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

**§ 5-4-708. Investment of Money and Proceeds of Sales**

The district court, on the application of a guardian or any person interested in the estate of any ward, after notice to persons as the judge shall direct, may authorize and require the guardian to invest the proceeds of sales, and any other of the ward's money in the guardian's hands; and the district court may make such other orders as needed for the management, investment and disposition of the estate and effects.

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

**§ 5-4-709. Investment of Monies Belonging to Estates**

Except as may be otherwise provided by law, the money belonging to estates of minors and incapacitated or partially incapacitated persons, subject to the jurisdiction of the court, can only be invested in one or more of the following:

(a) Real estate;

(b) United States bonds, or any other type of security certificate, or evidence of indebtedness which is guaranteed by the United States government, or any authorized agency thereof;

(c) State bonds;

(d) Annuities covered by the Oklahoma Life and Health Insurance Guaranty Association, which do not exceed Three Hundred Thousand Dollars (\$300,000.00), individually; or

(e) Accounts in savings and loan associations and credit unions, and all types of interest-bearing time deposits and certificates of banks, savings and loan associations, and credit unions, not to exceed the amount insured by the United States government. All such accounts and institutions must be federally insured and located within Oklahoma.

(f) Any other investment of monies must be specifically approved by the Court with suitable showing of how the investment is reasonably safeguarded to protect the ward's interest and avoids risks of loss to the estate.

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

**§ 5-4-710 to 4-766. Reserved**

**§ 5-4-767. Limitation of Action for Recovery of Estate Sold - Disability and Removal Thereof**

No action for the recovery of any estate sold by a guardian can be maintained by the ward, or by any person claiming under him, unless it is commenced within three (3) years immediately following the termination of the guardianship or, when a legal disability to sue exists by reason of minority or otherwise, at the time when the cause of action accrues, within three (3) years immediately following the removal of such disability.

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

## **Suspension, Removal or Termination of Guardian**

### **§ 5-4-801. Removal of Guardians**

A guardian may be removed by the district court for any of the following causes:

- (a) For abuse of his fiduciary responsibility.
- (b) For continued failure to perform his duties.
- (c) For incapacity to perform his duties.
- (d) For criminal conviction or civil judgement(s) that indicates unfitness to serve as guardian.
- (e) For having an interest adverse to the faithful performance of his duties.
- (f) If the instrument in which the person was nominated as guardian is judicially determined to be invalid.
- (g) In the case of guardian of the property, for insolvency.
- (h) When it is no longer proper that the ward should be under guardianship.

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

### **§ 5-4-802. Suspension of Power of Guardian - Marriage of Incapacitated or Partially Incapacitated Person**

- (a) The power of a guardian is suspended only:
  - (1) By order of the court;
  - (2) If the appointment was made solely because of the ward's minority, by his obtaining majority; or
  - (3) The guardianship over the person only of a minor ward, by the marriage of the ward.
- (b) Whenever a person who has been found by the court to be an incapacitated or partially incapacitated person marries, the court may, upon application of an interested person, hold a review hearing to determine whether:

- (1) the guardianship should be terminated;
- (2) a successor guardian should be appointed;
- (3) the limitations on the ward, or the powers and duties of the guardian; or
- (4) the guardianship should be continued unchanged.

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

**§ 5-4-803. Termination of Guardian or Conservator - Removal - Resignation - Final Account - Notice and Hearing**

(a) The authority and responsibility of a guardian terminates upon the death of the guardian, conservator, or the ward, the determination of incapacity of the guardian or conservator, or upon removal or resignation of the guardian or conservator. Termination does not affect the liability of a guardian or conservator for prior acts or the obligation to account for any funds and assets of the ward under the control of the guardian or conservator. The authority and responsibility of a guardian of a minor also terminates upon the marriage or majority of the ward.

(b) The court, after notice and hearing, may remove a guardian or conservator for cause if the guardian or conservator has failed for thirty (30) days, after he is required to do so, to render an account or make a report, and compel him to surrender the estate of the ward to the person found to be lawfully entitled thereto.

(c) Every guardian or conservator may resign when it appears proper to allow the same and upon the resignation or removal of a guardian or conservator the court may appoint a successor guardian or conservator in the place of the guardian or conservator who has resigned or has been removed or make other appropriate orders pursuant to the provisions of this Act.

(d) Upon termination of the disability of the ward or the ward's death, or upon the resignation or removal of the guardian or conservator, a guardian or conservator or their personal representative, shall file the guardian's or conservator's final account and request for final compensation with the court within thirty (30) days after such event. If the guardian or conservator is incapacitated or deceased and there is no personal representative then some suitable person shall be appointed by the court to file such report.

(1) The court shall set the final account for hearing on a date not less than fifteen (15) days after the filing thereof. Notice of such hearing shall be given at least ten (10) days prior to the date set for hearing, by mailing a copy of the notice of hearing by first-class mail:

(A) if the guardianship was established for a minor or a minor's estate, to the persons entitled to notice pursuant to Section 5-2-101, or to the ward only if the ward has attained majority or has married. If the ward is deceased persons entitled to notice shall be pursuant to Section 5-2-101 of this Act and to the personal representative of the ward's estate if such representative has been appointed; or

(B) if the guardianship was established for an adult or an adult's estate, or if the proceeding is a conservatorship action, to those persons entitled to notice pursuant to paragraph 1, unless the ward is deceased, and Section 5-3-110 of this Act and, if the ward is deceased, to the personal representative of the ward's estate if such representative has been appointed.

(2) Any person to whom notice is given in accordance with this subsection may appear at the hearing on the final account and file his exceptions in writing to the final account and contest the same.

(3) The settlement of the account and the allowance thereof by the court shall be conclusive against all persons interested in the estate of the ward, except as to persons subject to a legal disability at the time the notice of hearing is given.

(4) Upon approval of the final account, the guardian or conservator and his sureties, if any, shall be discharged.

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

**§ 5-4-804. Termination of Guardianship When Unnecessary**

The guardian of an incapacitated or partially incapacitated person or minor may be discharged by the court when it appears to the court, on the application of the ward or otherwise, that the guardianship is no longer necessary.

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

**§ 5-4-805. Distribution of Personal Property of Intestate Ward**

When an adult ward dies intestate leaving only personal property and his total estate does not exceed Ten Thousand Dollars (\$10,000.00), the guardian shall proceed to probate and distribute his estate in the same manner as if he had been appointed personal representative of such estate, and the surety or sureties on his bond shall be responsible for his faithful administration and distribution of such estate.

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

## **Civil Liability--Concealment or Embezzlement of Property**

### **§ 5-4-901. Civil Liability of Guardians or Petitioners - Damages**

(a) Any guardian who willfully violates the duties or willfully misuses the powers assigned by the court and thereby causes injury to the ward or damages to the financial resources of the ward shall, in addition to any criminal penalties, be liable in a civil action for any actual damages suffered by the ward. Nothing in this subsection shall limit the authority of the court to surcharge a guardian as otherwise provided by law.

(b) Any person who willfully or maliciously files a false petition or application pursuant to the provisions of this Act or a petition or application without a reasonable basis in fact for such a petition pursuant to the provisions of this Act shall be liable in a civil suit for any actual damages suffered by the subject of the petition or application.

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

### **§ 5-4-902. Citation for Concealment or Embezzlement**

Upon complaint made to the court by any guardian, ward, creditor, or other person interested in the estate, or having a prospective interest therein as heir or otherwise, against anyone suspected of having concealed, or conveyed away any of the money, goods or effects, or an instrument in writing, belonging to the ward or to his estate, the Court may require such suspected person to appear before the Court, and may examine and proceed with such person on such civil charge in the manner provided by law with respect to persons suspected of, and charged with, concealing or embezzling the property of another. Should the Court determine the allegations of the complaint are true, the suspected person or entity to reimburse the estate or ward and pay a civil penalty to the ward or estate of not more than twice the value of the property at issue.

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

### **§ 5-4-903. Reporting of Abuse, Neglect, or Exploitation - Violation and Penalty - Civil Liability**

(a) Any person having reasonable cause to believe that an incapacitated person, a partially incapacitated person, or a minor is suffering from abuse, neglect, or exploitation shall make a report to the Indian Child Welfare, Social Services Department, the Attorney General's Office, or the Police Department as soon as such person is aware of the situation.

(b) Any person who owes a legal duty of protection to the ward (such as a guardian, parent or custodian, or medical provider) and knowingly fails to promptly report any abuse,

neglect, or exploitation as required by the provisions of subsection (a) of this section, upon conviction shall be guilty of a crime punishable by a fine of not more than \$1000.00, incarceration of not more than Ninety (90) days or a combination thereof.

(c) Notwithstanding any potential criminal liability, any person who owes a legal duty of protection to the ward (such as a guardian, parent or custodian, or medical provider) and knowingly fails to promptly report any abuse, neglect, or exploitation as required by the provisions of subsection (a) of this section, shall be liable for a civil penalty for such failure not to exceed \$1500.00. Additionally, the Court may determine and assess the costs of any damages or harm suffered by the ward due to the person failing in their duty to report against the person failing to report. Such fine, damages or harm shall be assessed by the Court after notice and hearing.

(d) Any person participating in good faith and exercising due care in the making of a report pursuant to the provisions of this section shall have immunity from any civil or criminal liability that might otherwise be incurred or imposed. Any such participant shall have the same immunity with respect to participation in any judicial proceeding resulting from such report.

(e) Any person who willfully or recklessly makes a false report or a report without a reasonable basis in fact for such a report pursuant to the provisions of this section shall be civilly liable for any actual damages suffered by the person or persons being reported and for any punitive damages set by the court or jury which may be allowed in the discretion of the court or jury.

(f) No employer shall terminate the employment, prevent or impair the practice or occupation of, or impose any other sanction on any employee for the reason that the employee made or caused to be made a report or cooperated with an investigation pursuant to the provisions of this section. The court, in addition to other damages and remedies, may assess reasonable attorney fees against an employer who has been found to have violated the provisions of this subsection.

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