



PONCA TRIBAL COURT

1800 Syracuse Avenue • Norfolk, NE 68701 • Phone: 402.371.8834 • Fax: 402.371.3238

Re: Guardianship

Enclosed, please find the Petition that you may use to file a Guardianship action through the Ponca Tribal Court. Please complete this Petition and return it to my office, along with a \$60.00 filing fee. If you cannot afford the filing fee, then please complete the enclosed Motion to Proceed In Forma Pauperis. The Judge has to approve or deny the Motion. Please note that the Ponca Tribal Council has determined that the filing fee may be waived for Ponca Members only.

I have also enclosed a jurisdiction affidavit that must be completed in order to file your Petition. If an emergency exists, then you may complete the enclosed Affidavit to request the Judge issue an emergency order without waiting for a hearing. I have also enclosed an Oath of Guardian. No guardian may be appointed without this required Oath. This Oath will have a list of powers and duties for you to keep. I have also enclosed a Request for Service by publication. Please only complete this form if you do not know the address of the parents.

Once I receive the Petition and the filing fee (or an Order signed by the Judge approving the Motion to Proceed), then I will make arrangements to have all the interested parties served. In the case of an incompetent adult, you will need to provide PROOF that a guardian is necessary because the person is incapable of taking care of their own affairs.

A pretrial conference will be set to determine what issues still need to be resolved. If issues are not resolved during the pretrial conference, then a trial date will be set. Pretrial conferences may be held by phone, so I have also enclosed telephonic hearing rules.

If you have any questions, please feel free to contact me at 402-371-8834, or via email at ruthanneg@poncatribene.org.

Sincerely,

RUTHANNE GALLUP
Tribal Court Administrator

Enc: Petition, Motion to Proceed In Forma Pauperis, Jurisdiction Affidavit, Affidavit, Oath, Request for Service by Publication, Telephonic Hearing Rules

IN THE PONCA TRIBAL COURT

In Re: Guardianship/Conservatorship of: _____) CIV _____
_____)
_____)

Proposed Ward(s) First Middle and Last Name _____)

Proposed Ward(s) First Middle and Last Name _____)

PETITION FOR:
() GUARDIANSHIP
() CONSERVATORSHIP

State of: _____)
_____) SS

County of: _____)

I am requesting: () Guardianship – a person appointed to care for the ward
() Conservatorship – a person appointed to care for the property of the ward:

1) INFORMATION REGARDING JURISDICTION

A separate Jurisdictional Affidavit will be completed and returned with the Petition for Guardianship. This Petition will NOT be filed without the Jurisdictional Affidavit. Please note that a copy of this Petition will be provided to all parties.

2) INFORMATION OF PERSON OR PERSONS REQUESTING GUARDIANSHIP:

Full Legal Name: _____

Address: _____

Telephone Number: _____

County of residence: _____

Do you have Tribal Affiliation? _____ If so, which tribe? _____

What is your relationship (if any) to the ward?

Does the ward currently live with you? _____ If so, what is the date the ward was first placed or lived with you? _____

Will there be a co-guardian? If so, please complete the following for the co-guardian.

Full Legal Name: _____

Address: _____

Telephone Number: _____

County of residence: _____

Is there a Tribal Affiliation? _____ If so, which tribe? _____

What is their relationship (if any) to the ward?

Does the ward currently live with the co-guardian? _____ If so, what is the date the ward was first placed or lived with the co-guardian? _____

3) INFORMATION ON WARD A

Full Legal Name: _____
Date of Birth: _____ Sex: _____
Place of Birth: _____
Current Residence: _____
Tribal Affiliation: _____

I have listed the property and the value of the property that the ward owns below:
_____ worth \$ _____
_____ worth \$ _____
_____ worth \$ _____
_____ worth \$ _____

IF WARD IS A MINOR CHILD, COMPLETE THE FOLLOWING:

Who currently has legal custody of the child? _____
Their current address _____

Their Tribal Membership _____

Full name of mother: _____

Full address of mother: _____

Tribal Affiliation of mother: _____

Have parental rights of mother been terminated? _____ Have parental rights of father been terminated? _____

Full name of father: _____

Full address of father: _____

Tribal Affiliation of father: _____

Parents of Ward () are or have been married () were **NEVER** married

Paternity determined by: **check one** () court order () affidavit () not established

4) INFORMATION ON WARD B

Full Legal Name: _____
Date of Birth: _____ Sex: _____
Place of Birth: _____
Current Residence: _____
Tribal Affiliation: _____

I have listed the property and the value of the property that the ward owns below:

_____ worth \$ _____
_____ worth \$ _____
_____ worth \$ _____
_____ worth \$ _____

IF WARD IS A MINOR CHILD, COMPLETE THE FOLLOWING:

Who currently has legal custody of the child? _____
Their current address _____

Their Tribal Membership _____

Full name of mother: _____

Full address of mother: _____

Tribal Affiliation of mother: _____

Have parental rights of mother been terminated? _____ Have parental rights of father been terminated? _____

Full name of father: _____

Full address of father: _____

Tribal Affiliation of father: _____

Parents of Ward () are or have been married () were **NEVER** married

Paternity determined by: **check one** () court order () affidavit () not established

5) INFORMATION ON WARD C - Please attach a separate paper if there are more than 3 wards.

Full Legal Name: _____

Date of Birth: _____ Sex: _____

Place of Birth: _____

Current Residence: _____

Tribal Affiliation: _____

I have listed the property and the value of the property that the ward owns below:

_____ worth \$ _____
_____ worth \$ _____
_____ worth \$ _____
_____ worth \$ _____

IF WARD IS A MINOR CHILD, COMPLETE THE FOLLOWING:

Who currently has legal custody of the child? _____

Their current address _____

Their Tribal Membership _____

Full name of mother: _____

Full address of mother: _____

Tribal Affiliation of mother: _____

Have parental rights of mother been terminated? _____ Have parental rights of father been terminated? _____

Full name of father: _____

Full address of father: _____

Tribal Affiliation of father: _____

Parents of Ward () are or have been married () were **NEVER** married

Paternity determined by: **check one** () court order () affidavit () not established

6) Information about Previous cases are as follows:

Full Name of person(s) last known to have legal custody of the ward are: _____

Their last known Address: _____

Their Tribal Affiliation: _____

List any previous or current Court cases involving the Ward: _____

This information is not available because: _____

7) Information about interested parties is as follows: Please note this must be a complete list and each person listed will be provided a copy of this Petition, and be informed of the initial Court hearing.

PLEASE ATTACH A SEPARATE PAGE IF NECESSARY.

Name of Extended Family Member: _____

Address of Extended Family Member: _____

Tribal Affiliation of Extended family member: _____

Name of Extended Family Member: _____

Address of Extended Family Member: _____

Tribal Affiliation of Extended family member: _____

Name of Extended Family Member: _____
Address of Extended Family Member: _____

Tribal Affiliation of Extended family member: _____

Name of Extended Family Member: _____
Address of Extended Family Member: _____

Tribal Affiliation of Extended family member: _____

Name of Extended Family Member: _____
Address of Extended Family Member: _____

Tribal Affiliation of Extended family member: _____

Name of Former Care Giver: _____
Address of Former Care Giver: _____

Tribal Affiliation of Former Care Giver: _____

Name of Former Care Giver: _____
Address of Former Care Giver: _____

Tribal Affiliation of Former Care Giver: _____

Name of Any other person who has direct interest in Ward: _____
Address of Person with direct interest: _____

Tribal Affiliation of Person with direct interest: _____

This information is not available because: _____

8) Information about why a guardianship/conservatorship is necessary is as follows:

That the reasons which warrant the appointment of a guardian for the Ward are:

List in detail the reasons why a guardian/conservator is needed, attach another sheet if necessary.

Emergency Temporary Orders.

- I am NOT requesting an Emergency Order
- I am requesting an Emergency Order. I will attach a separate Affidavit that will state the reasons for such a request. **I understand that no emergency order will be granted without a separate notarized Affidavit.**

WHEREFORE, I am requesting that the Court appoint

_____ as Guardian

_____ as Conservator
and issue Letters of Guardianship/Conservatorship to the appointed Guardian/Conservator to act as Guardian/Conservator of the Ward.

I declare under penalty of perjury that the foregoing is true and correct and executed on

_____, _____.

Petitioner

SUBSCRIBED TO and sworn before me on _____.

[SEAL]

Notary Public

I declare under penalty of perjury that the foregoing is true and correct and executed on

_____, _____.

Co-guardian/Petitioner

SUBSCRIBED TO and sworn before me on _____.

[SEAL]

Notary Public

IN THE PONCA TRIBAL COURT

STATE OF _____)
) ss
COUNTY OF _____)

MOTION TO PROCEED
IN FORMA PAUPERIS

I, _____, being duly sworn upon by oath, say:
(Your Name)

- 1. I am unable to pay the costs of this action.
2. I am a member of the _____ Tribe, enrollment # _____.

The Ponca Tribal Council has determined that only enrolled members of the Ponca Tribe are eligible for a waiver of filing fees.

- 3. My family unit consists of _____ people (1 Self + _____ children + _____ adults)
4. My family unit has an average gross monthly income of \$ _____, including (check all)
[] Employment \$ _____ [] Food Stamps \$ _____ [] Medicaid
[] Child Support \$ _____ [] SSI \$ _____ [] TANF \$ _____
[] Other _____ [] Other _____

- 5. I receive no income from other sources. This is how I can live without any money coming in or going out to pay bills: _____

- 6. My family unit's average monthly expenses are \$ _____, which include
Rent \$ _____ Heating \$ _____ Lights \$ _____ Trash \$ _____
Phone \$ _____ Child Care \$ _____ Food (Do not include food stamps) \$ _____
Alcohol \$ _____ Cigarettes \$ _____ Car, insurance & gas for car \$ _____
Other (explain) \$ _____ Other (explain) \$ _____

- 7. I own [] no real or personal property of more than nominal value. [] the following real or personal property that has more than nominal value: _____

- 8. I wish to add the following for consideration. _____

- 9. The phone number where I may be contacted at is _____.

- 10. Have you, on three or more prior occasions, brought an action or appeal in a Ponca Court that were dismissed on the grounds of being frivolous, malicious, or failing to state a claim upon which relief may be granted? () Yes () No
If yes, is the reason you are coming to court because you are in imminent danger of serious bodily injury? () Yes () No

- 11. I understand that a false statement or answer to any questions in this Motion may subject me to penalties of perjury.

Your Signature _____ Date _____
SUBSCRIBED AND SWORN BEFORE ME ON THIS _____ DAY OF _____, 20_____

IN THE PONCA TRIBAL COURT

_____,)
)
Plaintiff,)
)
vs.)
)
_____,)
)
Defendant)

CASE # _____

JURISDICTIONAL AFFIDAVIT

STATE OF _____)
) ss
COUNTY OF _____)

COMES NOW Affiant, after being duly sworn and under penalty of perjury, and states as follows:

- 1) My name is _____.
- 2) My mailing address is _____.
- 3) My telephone number is _____.
- 4) My physical address, where I primarily reside, is _____
located in _____ County in the state of _____.

5) I ()am a member of the _____ Tribe, my enrollment number is _____. This () is () is not a federally recognized Tribe.
I () am not a member of a Tribe.
My child is a member of the _____ Tribe, enrollment# _____.

6) I understand that this information is being provided to determine if I reside within the territorial jurisdiction of the Ponca Tribe of Nebraska.

7) I understand that I am providing this information under oath and penalty of perjury, with legal consequences if I knowingly make a false statement in this document.

FURTHER AFFIANT SAYETH NOT

DATED this _____ day of _____, 20_____.

Affiant

SUBSCRIBED TO and sworn before me on _____.

[SEAL]

Notary Public

IN THE PONCA TRIBAL COURT

IN RE GUARDIANSHIP OF,) CASE # _____
 _____)
 _____)
 _____) **OATH OF GUARDIAN AND/OR**
 _____) **CONSERVATOR**
 _____)
 Petitioner.)

STATE OF _____)
 _____) ss
 COUNTY OF _____)

Comes now _____, the prospective guardian(s), and states under oath pursuant to Ponca Tribal Code sec. 3-9-19, 3-9-24 & 25 that said prospective guardian(s) have received a copy of the powers and duties of guardian(s)/conservator(s) and will faithfully perform all the duties of Guardian as defined in the Ponca Tribal Code.

 Signature of guardian/conservator Date

 Printed name of guardian/conservator

SUBSCRIBED TO and sworn before me on _____.

[SEAL] _____
 Notary Public

 Signature of co-guardian/conservator Date

 Printed name of co-guardian/conservator

SUBSCRIBED TO and sworn before me on _____.

[SEAL] _____
 Notary Public

Return this page to the Court

Keep this page

Section 3-9-24. Powers and Duties of Guardians.

1. Except as limited or modified by order of the Court, a guardian shall be responsible for the care, custody and control of the ward and, without limiting such responsibilities, shall have all of the following powers and duties:

a. To the extent consistent with the terms of an order of the Court relating to detention or commitment of the ward, have custody of the person of the ward and establish the ward's place of residence, provided that the guardian shall give preference as follows:

i. To the least restrictive setting in which the ward's special needs, if any, will be met;

ii. To places within the territory of the Tribe, if residence within the territory of the Tribe and outside the territory of the Tribe would be substantially equivalent; and

iii. To places that are not treatment facilities, unless the only available and appropriate place of residence is a treatment facility, in which case the guardian shall give preference to any treatment facilities licensed or approved by the Tribe over other such facilities;

b. Provide for the care, comfort and maintenance of the ward and, whenever appropriate, arrange for training and education of the ward;

c. Take reasonable care of the ward's clothing, furniture, vehicles, and other personal effects and begin protective proceedings if other property of the ward is in need of protection;

d. If the ward is an incapacitated person, to the extent possible, secure services to restore the ward to the best possible state of mental and physical well-being in an effort to return the ward to self-management at the earliest possible time;

e. Consent to or approve any necessary medical or other professional care, counsel, treatment or service for the ward and any other matters that may be required or in the ward's best interest;

f. If no conservator has been appointed or the guardianship does not exclude guardianship of the ward's estate, to the extent consistent with the orders of the Court:

i. Institute a proceeding to compel a person under a duty to support the ward or to pay money for the ward's welfare to perform the duty;

ii. Receive money and tangible property deliverable to the ward and apply the same for the ward's care, comfort, maintenance and appropriate training and education while exercising care to

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conserve any excess for the ward's needs; provided, however, the guardian shall not use money from the ward's estate for room and board which is furnished by the guardian or his or her spouse, parent or child unless authorized by order of the Court;

g. If a conservator has been appointed, pay the conservator for management, pursuant to this Chapter, the amount of the ward's estate received by the guardian in excess of the amount the guardian expends for the ward's current care, comfort, maintenance and appropriate training and education, and account to the conservator for all amounts expended; and

h. Do all other things necessary for the protection of the ward.

2. Except as limited or modified by order of the Court, a guardian shall:

a. Whenever meaningful communication is possible, consult with the ward before making any major decision affecting the ward;

b. Visit the ward within one (1) month of appointment and not less than once within one (1) month after each previous visit;

c. Immediately notify the Court, in writing, of any change of address;

d. Provide the Court with annual written reports on the guardianship as provided in this Chapter; and

e. At the termination of the guardianship, deliver the assets of the ward to the persons entitled thereto.

3. A guardian may petition the Court for authority to do any act about which the guardian is uncertain, and the Court may grant such authority if such act appears to be in the best interests of the ward.

4. Except as provided by order of the Court, a guardian shall have no authority to relinquish a ward's membership in the Tribe without express permission of the Court.

5. The Court may impose restrictions and limitations on the duties and powers of a guardian and condition the appointment on the performance of specific duties.

Section 3-9-25. Powers and Duties of Conservators.

1. Except as limited or modified by order of the Court, a conservator shall be responsible for the collection, care, preservation, administration and protection of the ward's estate and, without limiting such responsibilities, shall have all of the following powers and duties without Court authorization or confirmation:

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- a. To expend or distribute the ward's estate income or principal for the support, education, care, or benefit of the ward or the ward's dependents and others who are members of the ward's household who are unable to support themselves;
- b. To collect, hold, and retain assets of the ward's estate, in the ward's name, and receive any additions thereto, including real property wherever situated, until proper disposition in accordance with this Chapter;
- c. To continue or participate in the operation of any business or other enterprise in which the ward is engaged;
- d. To deposit estate funds in a federally insured financial institution;
- e. To insure the assets of the estate against damage or loss, and the conservator against liability with respect to third persons;
- f. To pay taxes, assessments, compensation of the conservator, and other expenses incurred in the collection, care, administration and protection of the estate;
- g. To pay any sum distributable to a ward or dependent of the ward by paying the sum to the proper party; and
- h. To execute and deliver all instruments that will accomplish or facilitate the exercise of the powers vested in the conservator.

2. Upon authorization by the Court, a conservator may exercise the following powers:

- a. To acquire an undivided interest in any asset of the ward's estate in which the conservator, in any fiduciary capacity, holds an undivided interest;
- b. Sell, transfer, mortgage, encumber, lease, or otherwise dispose of the ward's real property or any interest therein;
- c. To consent to the reorganization, consolidation, merger, dissolution, or liquidation of a corporation or other business enterprise in which the ward is engaged;
- d. To prudently invest and reinvest assets and funds of the ward's estate as would a trustee;
- e. To acquire or dispose of an asset of the ward's estate, including non-trust land wherever located, for cash or on credit, at public or private sale;
- f. To borrow money to be repaid from the ward's estate or otherwise for the purpose of paying debts, taxes, and other claims against the ward or the ward's estate;
- g. To manage, develop, improve, exchange, partition, change the character of, or abandon an asset of the estate;
- h. To make ordinary or extraordinary repairs or alterations to buildings or other structures, and demolish or construct new buildings or structures and any improvements;
- i. To vote a security owned by the ward in person or by general or limited proxy;

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- j. To employ persons, including attorneys and lay counsel, auditors, investment advisors, or agents, even though they are associated with the conservator, to advise and assist the conservator in the performance of administrative duties and to act upon their recommendation without independent investigation;
- k. To prosecute or defend actions, claims or proceedings in any jurisdiction to obtain support to which the ward is legally entitled and for the protection of assets of the ward's estate or of the conservator in the performance of his or her duties;
- l. To compromise, adjust, arbitrate, sue on, defend, abandon, or otherwise deal with and settle any claim in favor of or against the ward or the ward's estate; and
- m. To prosecute claims of the ward, including those for personal injury.

3. Except as limited or modified by order of the Court, a conservator shall:

- a. Whenever meaningful communication is possible, consult with the ward before making any major decision affecting the ward's affairs or estate;
- b. Within forty-five (45) days of appointment, conduct a due diligence investigation of the ward's estate and prepare and submit to the Court an inventory and appraisal of the estate;
- c. Mail notice of the conservator's appointment to all known creditors who were not originally notified of the conservatorship appointment;
- d. Immediately notify the Court, in writing, of any change of address;
- e. Provide the Court with annual written reports on the conservatorship as provided in this Chapter; and
- f. At the termination of the conservatorship, deliver the assets of the ward to the persons entitled thereto.

4. A conservator may petition the Court for authority to do any act about which the conservator is uncertain, and the Court may grant such authority if such act appears to be in the best interests of the ward.

5. A conservator shall have no authority to relinquish a ward's membership in the Tribe.

6. The Court may impose restrictions and limitations on the duties and powers of a conservator and condition the appointment on the performance of specific duties.

**PONCA TRIBAL COURT
INSTRUCTIONS FOR VIDEOCONFERENCE AND/OR TELEPHONIC APPEARANCES
DURING COVID PANDEMIC**

You may appear by videoconference or by telephone for hearings in the Ponca Tribal Court if the hearing for which you will be appearing will not require evidence (such as testimony from witnesses, documents, or other physical evidence) to be taken. **Parties at the following types of hearings may always appear by videoconference or telephonically, unless the Court orders otherwise:**

- Pretrial conferences
- Temporary hearings by affidavit (sworn written statements) only
- Status hearings
- Any other hearings where the Court has specifically allowed videoconference or telephonic appearances

Videoconference is viewed as personal appearance. To appear by videoconference, you must contact the Tribal Court Clerk by email at tribalcourt@poncatribene.org and request a link to use on your computer or smart phone.

You are expected to follow the Rules of Conduct for the Ponca Tribal Court. As stated in the Rules of Conduct, "Anyone not giving the proper respect to the process of Justice may be removed from the Courtroom".

Your hearing may not happen at the scheduled time, as the Court will frequently schedule a number of hearings for the same time and take them in order. The Order of the hearings will be determined by the Tribal Court Judge and the Tribal Court Administrator and be based upon: 1. Time of Arrival of the parties. 2. Representation by counsel. 3. Nature of the Hearing. 4. Anticipated length of the hearing. 5. Any other factors that need to be considered.

To appear by phone, you must call the Court to check in within 15 minutes of your scheduled hearing, and provide to the Court a telephone number where you can be reached when your telephonic hearing is ready to begin. Regardless of where the Court is held **the number to check in is 402-371-8834.**

Your hearing may not happen at the scheduled time, as the Court will frequently schedule a number of hearings for the same time and take them in order as listed above. Thus, you should be prepared for a delay prior to your hearing.

If you choose, you may check-in for your telephonic hearing by e-mail to tribalcourt@poncatribene.org. This e-mail check-in must be made within 15 minutes of your scheduled hearing, and provide a telephone number where you can be reached when your hearing is ready to begin.

FAILURE TO APPEAR BY VIDEOCONFERENCE OR TO CALL AND CHECK IN, OR FAILURE TO ANSWER AT THE NUMBER PROVIDED AFTER THE CHECK-IN, WILL BE TREATED BY THE COURT AS A FAILURE TO APPEAR AFTER PROPER NOTICE.