

PONCA TRIBAL COURT

1800 Syracuse Ave. | Norfolk, NE 68701 • Phone: 531.371.1628 • Fax: 402.371.3238

Re: Guardianship of children

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.

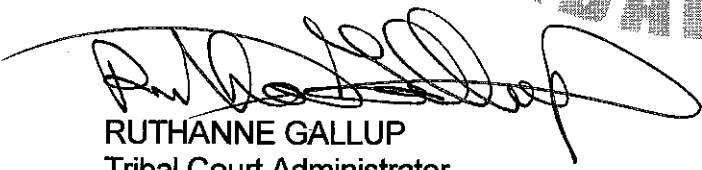
I have also enclosed a checklist which includes information to consider and what is needed in Order to file a Petition for guardianship. I have also attached a jurisdiction affidavit that must be completed in order to file your Petition. If an emergency exists, then you may complete the enclosed Affidavit 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.

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. Please note both parents will need to be personally served with the paperwork.

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 Tribal Court staff at 531-371-1628, or via email at tribalcourt@poncatribes-ne.gov.

Sincerely,



RUTHANNE GALLUP
Tribal Court Administrator

Enc: Checklist, Petition, Motion to Proceed In Forma Pauperis, Jurisdiction Affidavit, Affidavit, Oath, Telephonic Hearing Rules

CHILDREN GUARDIANSHIP CHECKLIST

Please initial on the lines below

THINGS TO CONSIDER

- _____ Parents have the right to parent their children, and a guardianship suspends this right. It isn't about what is best for the child, it is about the fitness of the parents
- _____ If parents do not agree with the guardianship, I will have to prove the parents are currently unfit
- _____ If the children are with the parents and in danger, then I should call the child abuse hotline
- _____ If the children are wards of a State or another Tribe, this Guardianship will be put on hold. It is not a way to avoid the removal of children from their parents by child welfare
- _____ I will need to complete an annual report that includes medical and school records
- _____ I will be responsible for the care and supervision of the children and if no conservator is appointed, I will be responsible for them financially
- _____ Is there an emergency – a valid reason why this can't wait for a court hearing

HOW TO START A GUARDIANSHIP

- _____ I have completed the Petition for Guardianship
 - _____ It is legible – easily read. If it can't be read, the judge may deny my Petition
 - _____ It has been notarized
 - _____ I have listed the Ward's parents, grandparents and other family members and interested parties
 - _____ I have included all information about any child welfare cases and/or CPS involvement
- _____ I have paid the filing fee or if I am Ponca I have completed the form to waive the filing fee if I am unable to pay
- _____ I have read and completed the Oath of Guardianship
- _____ I have completed the Jurisdictional Affidavit
- _____ If there is an emergency, I have completed the Affidavit stating the reasons that a Guardianship is necessary without notifying any other party

AFTER THE PAPERWORK IS SUBMITTED TO THE COURT

- _____ I understand I will need to attend the Court hearings. If I do not attend, the Judge may dismiss my Petition, and my filing fee may be kept
- _____ I will need to keep the Court updated of my address and the Ward's address
- _____ I will complete the Annual Reports with medical and school records

IN THE PONCA TRIBAL COURT

In Re: Guardianship/Conservatorship of: _____)

CIV _____)

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

PETITION FOR:

☐ **GUARDIANSHIP**

☐ **CONSERVATORSHIP**

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

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: _____
First Middle Last

Address: _____
Street State Zip Code

Telephone Number: _____

Email Address - if you use and check it regularly: _____

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: _____
First Middle Last

Address: _____
Street State Zip Code

Telephone Number: _____

Email Address - if you use and check it regularly: _____

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 \$

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 \$ _____

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 \$ _____

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 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 is _____.
 The email address that I regularly use and check 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____

 Notary

 (SEAL) Commission Expires: _____

IN THE PONCA TRIBAL COURT

_____,)
Plaintiff/Petitioner,)
)
vs.)
)
_____,)
Defendant/Respondent.)

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 email that I check often is _____.
- 5) My physical address, where I primarily reside, is _____
located in _____ County in the state of _____.
- 6) 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# _____.
- 7) I understand that this information is being provided to determine if I reside within
the territorial jurisdiction of the Ponca Tribe of Nebraska.
- 8) 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 – My signature

SUBSCRIBED TO and sworn before me on _____.

[SEAL]

Notary Public

AFFIDAVIT

State of _____)
County of _____) ss

I, _____ being duly sworn upon by oath, say:

Please attach a separate page, if necessary.

Affiant

Date

SUBSCRIBED AND SWORN BEFORE ME ON THIS _____ DAY OF

_____, 20____.

Notary

Commission Expires

IN THE PONCA TRIBAL COURT

IN RE GUARDIANSHIP OF,

CASE # _____

Petitioner.

**OATH OF GUARDIAN AND/OR
CONSERVATOR**

STATE OF _____)

COUNTY OF _____)

ss

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

Keep this page

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:

Keep this page

- 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;

Keep this page

- 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

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, notarized 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@poncatribes-ne.gov and request a link to use on your computer or smart phone. You may request the link earlier than the scheduled hearing date, and request to test the link on your computer or smart phone. You may also contact the offices below to schedule a room to appear by videoconference.

Ponca Tribe of NE Courtroom – 1800 Syracuse Avenue, Norfolk NE 68701	402-371-8834
Fred LeRoy Health & Wellness – 2602 J. Street, Omaha, NE 68107	402-734-5275
Ponca Tribe of NE in Ralston – 5805 S. 86th Circle, Ralston, NE 68127	402-315-2760
Ponca Health & Wellness – 1600 Windhoek Drive, Lincoln NE 68512	402-438-9222
Ponca Tribe of NE Office – 125 6th Street, Sioux City IA 51103	712-258-0500
Ponca Tribe of NE Headquarters – 2523 Woodbine Street, Niobrara NE 68760	402-857-3391

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 between 8 am and 9 am on the date 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@poncatribes-ne.gov. This e-mail check-in must be made between 8 am and 9 am the day 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.