

## CHAPTER 9

### STOCKBRIDGE-MUNSEE TRIBAL LAW GUARDIANSHIP

#### **Section 9.1 Starting an Action to Appoint Guardian**

(A) Petition - Who May File: Any person at least eighteen (18) years old may file a petition with the Tribal Court requesting that he or she be appointed as a guardian over a proposed ward. If the petitioner is married: his or her spouse must also be at least eighteen (18) years old and must sign the petition unless the spouse's whereabouts is unknown or unless this requirement is waived by the Court.

(B) Petition - Contents: A petition for appointment of guardian shall include:

- (1) The name, birth date, residence, and tribal status of the proposed ward;
- (2) The name, birth date, residence, and tribal status, if known, of the proposed ward's family and in the case of a youth (person under age 18), the youth's parent(s); and,
- (3) A concise statement of the facts and reasons supporting the request that the petitioner be appointed as a guardian.

#### **Section 9.2 Guardianship Hearing.**

(A) Setting the Hearing: When the Court receives the petition it shall set a hearing date, which shall not be more than thirty-five (35) calendar days after the Court receives the petition.

(B) Notice of Hearing: Notice of hearing shall be served on all parties in the manner specified under Section 7.12 of Chapter 7. Notice shall be served at least twenty (20) days prior to the date of the hearing. The notice shall include: the name of the court; the date of the hearing; the time and place of the hearing; the purpose of the hearing; and a copy of the petition. Notice shall be served on:

- (1) The proposed ward;
- (2) The youth's parent(s), if the proposed ward is under 18 years of age;
- (3) The Presenting Officer or Tribe's Legal Office, if the proposed ward is under 18 years of age;
- (4) Any person the Court deems necessary for proper adjudication; and
- (5) Any person the parties believe necessary for the hearing.

(C) Guardianship Report - Preparation:

(1) Proposed ward over 18 years of age:

(a) The Tribal Court shall appoint or approve a guardian ad litem. The guardian ad litem shall prepare a report regarding the proposed guardianship, and serve the report to the Court and to all interested parties 5 calendar days prior to the hearing. The guardian ad litem shall consult with the petitioner, other family members as appropriate, health and social service personnel who have had prior professional contacts with the proposed ward to determine whether appointment of a guardian would be in the best interests of the proposed ward. The guardianship report shall be in writing and contain the professional opinions of all personnel consulted.

(b) The Court may alternatively use the services of a licensed social worker to perform the duties of the guardian ad litem.

(2) Proposed ward under 18 years of age.

(a) The Indian Child Welfare Worker shall prepare a guardianship report. The Indian Child Welfare Worker shall serve the report to the Court and to all interested parties 5 calendar days prior to the hearing. In preparing the report, the Indian Child Welfare Worker shall conduct a complete home study and shall consult with the youth's parent(s), all health, education and social service personnel who have had prior professional contacts with the youth, and with the petitioner(s) to determine whether appointment of a guardian would be in the best interests of the youth. The Indian Child Welfare Worker may also review the child's previous court record, if any. In addition, the Indian Child Welfare Worker must obtain the recommendation, if any, of the Stockbridge-Munsee Community Tribal Council as to the disposition and any other relevant issues. The guardianship report shall be in writing and contain the professional opinions of all personnel consulted.

(b) The Court may alternatively use the services of a licensed social worker to perform the duties of the Indian Child Welfare worker.

(D) Additional Reports: Any party may file a report which shall include his or her recommendations for consideration by the Court.

(E) Guardianship Hearing - Purpose: The Court shall conduct the hearing to determine whether appointment of a guardian is in the best interest of the proposed youth.

(F) Guardianship Hearing - Conduct: In the cases of the proposed ward being under the age of 18 years old, the hearing shall be private and closed. The following procedural rules apply, Section 8.8, (F)-(O) of Chapter 8.

(1) Testimony and evidence shall be presented to determine whether guardianship is in the best interest of the proposed youth. The Court shall consider all guardianship reports submitted for review.

(2) All parties shall be given the opportunity to contest the factual contents and conclusions of the guardianship reports and other medical reports.

### **Section 9.3 Grounds for Appointing a Guardian and Burden of Proof.**

(A) The Court may appoint a guardian when the parent has consented in writing to the guardianship, if the proposed youth is under 18 years of age.

(B) Alternatively, if there is no consent the Court must find all the following conditions have been proved by clear and convincing evidence if the proposed youth is under 18 years of age:

(1) That appointment of a guardian is in the best interest of the youth; and

(2) The youth's best interests would not be served if the youth does not have a guardian; and

(3) That the petitioner(s) can provide appropriate and adequate parental care for the youth's financial and emotional support.

(C) If the proposed ward is over 18 years of age, the Court must find by clear and convincing evidence that the proposed ward is legally incompetent and is unable to manage his or her affairs.

(1) The Court shall consider the medical reports and reports and the guardian ad litem and any other relevant evidence, including substantiated findings of elder abuse as provided for in Chapter 66.

### **Section 9.4 Placement Preference.**

The order of preference in placing a youth with a guardian is:

(A) Extended family member;

(B) A member of or person eligible for enrollment in the Stockbridge-Munsee Tribe;

(C) A member of another Indian tribe;

(D) If this order of placement preference cannot be met, for good cause shown, then placement may be made with any person who has knowledge of and a desire to foster the youth's tribal affiliation and special needs.

### **Section 9.5 Enrollment Prior to Appointment of Guardian.**

If a youth is eligible for enrollment in the Stockbridge-Munsee Tribe, the Indian Child Welfare Worker may assist the parent in making application for enrollment of the youth to the Stockbridge-Munsee Community Tribal Enrollment Clerk.

### **Section 9.6 Order of Appointment - Powers of Guardian.**

(A) If the Court orders the appointment of a guardian, the order may define or limit the guardian's power. If the order does not define or limit the power of the guardian, the guardian has all the rights and responsibilities of a ward except:

- (1) The power to enroll ward in a tribe other than the Stockbridge-Munsee Tribe if the ward is enrolled or eligible for enrollment in the Stockbridge-Munsee Tribe;
- (2) The guardian shall not move outside a fifty mile radius of the Stockbridge-Munsee Community without tribal court approval upon notice and hearing;
- (3) Authority to place a ward in another home or with any agency, or to transfer the ward's domicile without court approval;
- (4) The guardian may not consent to any adoption of the child, if the ward is under 18 years of age.

### **Section 9.7 Visitation.**

The Court may order visitation between the ward and parent(s) or any other person if the Court finds such visitation is in the best interest of the ward..

### **Section 9.8 Court Review.**

Unless otherwise ordered by the Court, the guardianship shall not be subject to continuing supervision. Unless otherwise ordered by the Court, the guardianship shall be subject to Court review every 12 months.

### **Section 9.9 Severability**

In the event that any provision of this ordinance is ruled illegal by a court of competent jurisdiction, the remaining provisions of this ordinance shall remain unaffected.

### **Legislative History:**

1. Children's/Youth Code:
  - Stockbridge-Munsee Children's Code approved by Tribal Council, August 8, 1981, by Resolution No. 0764.

- Ordinance Committee revised as Stockbridge-Munsee Youth Code, submitted to Tribal Council for review May 3, 1988.
  - Tribal Council adopted Youth Code by motion August 16, 1988.
  - Resolution No. 1104 dated August 29, 1988 officially adopted Youth Code, at a Council meeting on September 20, 1988.
  - BIA recommended changes that were approved by Tribal Council by Resolution No. 1161, July 18, 1989.
2. Amended by Tribal Council Resolution 01-08 on October 2, 2007. The amendments renamed Chapter 9, “Guardianship”; created §9.2(C) in its entirety; §9.3(C),(C)(1); §9.9; and 9.10; amended §9.1(A); §§9.1(B)(1),(2),(3); §9.2(A); §§9.2(B)(1),(2),(3); §§9.2(E),(F),(F)(1),(F)(2); §§9.3(A),(B)(1),(B)(2); §§9.6(A),(A)(1),(A)(3),(A)(4); §9.8; deleted §9.2(D); and renumbered §9.2. BIA approved the amended ordinance, except for Section 9.10, on April 16, 2012. Section 9.10, regarding the need for BIA approval of future amendments, was deleted.