

YAVAPAI-APACHE NATION

TITLE 27

ADULT GUARDIANSHIP CODE

CHAPTER 1- JURISDICTION

101 – Authority to Appoint in General

The Yavapai-Apache Nation Court shall have authority, whenever it appears necessary or convenient, to appoint guardians for the persons and/or their estates, or for the purpose of actual or contemplated litigation (guardian ad litem) of all persons incompetent by reason of physical or mental sickness or deficiency, advanced age, or chronic use of drugs or alcohol, or for any other reason as established by a preponderance of evidence introduced in the Yavapai-Apache Nation Court.

102 – Authority to Appoint for Tribal Member

The Tribal Court shall have authority to appoint guardians when the person for whom the guardianship is sought is a member of the Yavapai-Apache Nation Court or the child of a member of the Yavapai-Apache Nation , whether or not he or she resides on the Reservation and whether or not the facts or circumstances alleged occurred within the Reservation boundaries.

103 - Authority to Appoint for Juveniles

The Yavapai-Apache Nation Court may refer matters concerning the guardianship of a minor or any person under the age of twenty-one to the Juvenile Court, provided that the Yavapai-Apache Nation Court may, in the process of administering an estate for which there is a valid will containing a designation of a guardian for minor children if orphaned by the deceased's death, appoint the person therein designated as guardian of the minors involved without the necessity of a separate guardianship hearing. If the person so designated is unable or unwilling to serve, or if such person's appointment is objected to by the child over 14 years of age, or if the Court deems such to be in the minor's best interest, a separate guardianship hearing shall be held in the Juvenile Court pursuant to the procedures set forth in Title 7 of the Yavapai-Apache Nation Law and Order Code.

104 – Emergency Appointment Authority

The Yavapai-Apache Nation Court may, in the process of hearing a guardianship petition, enter an emergency ex-parte appointment of a guardian, provided that the Court enters findings of fact supporting an immediate, emergency order, *and* the appointment shall not exceed fourteen days during which time notice of the appointment *and* hearing on the same is given to all interested parties and a hearing is scheduled allowing all interested persons to appear and present argument

concerning continuing the emergency appointment. In order for the Court to continue the emergency appointment for any period to exceed fourteen (14) days, the Court must find that:

1. The moving party is likely to succeed on the merits of his or her petition when the guardianship application reaches a full hearing pursuant to the provisions of this Title; and
2. The protections provided by entering the guardianship order outweigh the potential harm created by entering the order of guardianship; and
3. The petitioner has made all reasonable attempts to serve all interested parties of notice of the appointment and hearing on the same; and
4. No other remedy is available to protect the interests protected by the order of guardianship; and
5. A bond or other assurance has been posted, and
6. The emergency guardian is appropriate for the appointment.

CHAPTER 2 – PROCEDURES

201 - Petition

(a) Except as provided in the preceding section, guardianship proceedings shall be initiated by the filing of a petition by a relative or other interested person on behalf of the minor or incompetent. The Court may initiate proceedings to appoint a guardian if such appointment reasonably appears necessary and no other person has initiated such proceedings.

(b) The petition shall set forth the name of the petitioner; the petitioner's relationship to the alleged incompetent and shall list all known relatives of the alleged incompetent and their addresses, relationships and ages insofar as is known to petitioner; shall list all property of the alleged incompetent, real and personal, known to petitioner; shall list in detail the present conditions and circumstances which warrant the appointment of a guardian; shall pray that Letters of Guardianship be issued to himself or some other suitable person to act as guardian of the minor or incompetent.

202 - Notice-Hearing

(a) Notice: Unless expressly provided otherwise, notice of a hearing shall be accomplished by the petitioner, or the clerk of the Court, if the Court itself initiates the proceeding, who shall cause notice of the hearing to be given by mail or personal service to all known interested persons listed on the petition not less than five days before a scheduled hearing. Such notice need not be given in the case of an adult where the spouse and children living on the Reservation appear and waive such notice. An appearance and waiver may be made personally or by affidavit to the Court.

(b) Personal Service. If the person to be served with a summons can be found within the exterior boundaries of the reservation, the summons, and a copy of the petition shall be personally served upon them by any person not a party to the action, over the age of eighteen and approved by the Court as appropriate for service of process. If the person to be served with a summons cannot be found within the exterior boundaries of the reservation, the summons and a copy of the petition may be personally served upon them by any person qualified to serve legal process under the laws of the jurisdiction where the person resides. In either event, a return of service certifying that personal service has been completed, identifying the person so served, identifying the documents served and identifying the date and time of said service shall be accepted as a rebuttable presumption that service has been completed. Service is completed by physically touching any part of the person to be served with any document to be served upon them, or by leaving a copy of the documents with a person over the age of fourteen (14) at the residence of the person or by leaving the document to be served at the office of the person to be served with a person over the age of fourteen (14).

(c) Mail Service. If the parties are not within the exterior boundaries of the reservation, and their address is known, the summons and petition may be served by certified mail with a return receipt requested. This shall be considered personal service provided that a signed return receipt is filed with the Court.

(d) Notice through Extended Family or Official Tribal Records. If the court cannot accomplish personal service or mail service, the court shall attempt to notify the parent, guardian, or custodian by contacting members of the extended family of the parent, guardian, or custodian, and/or the extended family of the child. If such service is unsuccessful, the court shall obtain the official mailing address from the Yavapai-Apache Enrollment Office and send service by certified mail to that address. This shall be considered personal service provided that a signed return receipt is filed with the Court.

(e) Service of Summons to Persons Living Together. Persons who are living together at their usual place of residency may be served by delivery of two (2) copies of the summons to either person.

(f) Alternative Service by Publication. In a case arising under this Title where it appears within the body of the petition or within an accompanying statement that the interested party is a non-resident of the reservation, or that their name, place of residence or whereabouts is unknown, as well as in all cases where after due personal service or service by certified mail has been unable

to be effected, the court shall direct the clerk to publish legal notice in a newspaper, printed in the county or on the reservation, qualified to publish summons once a week for three consecutive weeks with the first publication of the notice to be at least five days prior to the date fixed for the hearing. Such notice shall be directed to the interested party, if their names are known, or if unknown a phrase "to whom it may concern", be used and applied to and be binding upon any such person whose names are unknown. The name of the court, name of the alleged incompetent, the date of the filing of the petition, the date of the hearing, and the object of the proceeding in general terms, shall be set forth. There shall be filed with the clerk an affidavit showing publication of the notice. The publication of the notice shall be initially paid by the tribe, but taxed as costs in the case. The publication of the notice shall be deemed equivalent to personal service upon all persons known or unknown who have been designated as provided in this section. Publications may be taxed to the estate as the court deems just.

203 – Court Appointed Investigator of Guardianship Petition

Upon the filing of a petition for guardianship, the court may appoint a person to conduct an investigation of the factual basis on the request for appointment of a guardian. This person shall file a report to the court, and serve copies on all interested parties who have filed a response to the petition setting forth a recommendation regarding appointment of a guardian in a manner which ensures that the liberty and autonomy is restricted through the guardianship process only to the minimum extent needed to adequately provide for the health, safety and management of financial affairs of the alleged incompetent, and setting forth a recommendation regarding whether the person recommended for appointment at a guardian in the petition possesses the appropriate character and resources to meet the obligations of a guardian under the facts of the case. This report shall be filed and served on all parties a minimum of ten days prior to the hearing referenced in Section 204, below.

204 – Hearing

At a hearing conducted to appoint a guardian for an alleged incompetent, the Court shall:

- (a) Examine the petition;
- (b) Determine the need to have a guardian appointed by taking such testimony as any interested party wishes to present, but including not less than two doctors' reports, written or oral, under oath, to the effect that the incompetent is not presently able to handle his property or affairs, the anticipated duration of the incapacity, and that the best interests of the incompetent will be served by having a guardian appointed;
- (c) Determine which person, either the petitioner or some other person, is most suitable to act as guardian, and that person's willingness to act as such; and
- (d) Make an order appointing a guardian, setting forth the authority of the guardian, whether or not security for his performance is to be required, the dates of accountings and reports to the Court, as well as the contents required in such reports, and the duration of such appointment.

205 -Who May Serve as Guardian

Any adult person 21 years of age or older and subject to the jurisdiction of the Tribal Court may serve as a guardian, provided that the Court determines that the guardian is of appropriate character to protect and preserve the assets of the incompetent and the best interests of the alleged incompetent. Preference shall be given to relatives of the alleged incompetent in order of their closeness of relationship and some preference shall also be given to a person with whom the alleged incompetent is living at the time of the guardianship hearing. Preference shall be given to the person preferred to act as his guardian by an alleged incompetent, but in all cases, the Court shall determine the best interests of the alleged incompetent in selecting a guardian.

206 - Security for Faithful Performance of Duties

The Court may, but need not, require a guardian to provide security in the form of a bond or otherwise to assure the faithful performance of the guardian's duties. Any surety of any such security will be deemed to have consented to the jurisdiction of the Tribal Court for purposes of action against such security.

207 - Oath-Letters of Guardianship

(a) The guardian appointed by the Court shall be required to take an oath, the form of which to be prescribed by the Court, to the effect that he will faithfully perform his duties as guardian.

(b) Upon taking the oath and filing with the Court such security, if any, as may have been required, the guardian shall be issued Letters of Guardianship, issued by the clerk under the seal of the Court, as evidence of his appointment. Any limitations in the authority of the guardian shall be set forth on the Letters so issued.

CHAPTER 3 – DUTIES AND TERMS OF GUARDIAN

301 - Inventory and Appraisement

(a) Within forty-five (45) days after the appointment of a general guardian or guardian of the property or estate of a minor or incompetent, the guardian shall prepare and submit to the Court an inventory and appraisement of the estate.

(b) Appraisals of all property of the incompetent shall be made by three disinterested persons who shall certify under oath to their appraisal and may receive from the estate reasonable compensation for their services, as determined by the Court.

(c) No appraisal shall be required of items of obvious, readily ascertainable value, e.g. bank account assets, or where the value of the entire estate is reasonably believed by the guardian to be less than \$1,000.00. If no appraisal is required, the guardian shall certify under oath to the obvious or estimated value of the assets not appraised.

302 - Annual Accounting

(a) The guardian of every estate in value over \$1,000.00 shall submit an annual account of the estate to the court for approval, on such notice as the Court may direct, in each year in which the value of the estate is or is reasonably believed to be in excess of \$1,000.00.

(b) Such account shall be verified on the oath of the guardian and shall contain an accounting of all additions to and any withdrawals from the estate, and shall be accompanied by supporting canceled checks, vouchers, receipts, statements, etc.

303 - Guardians Compensation

(a) No guardian shall receive any compensation for acting as such, without the prior approval of the Court.

(b) The guardian of an estate in excess of \$3,000.00 in value may receive annual compensation for acting as such in an¹ amount not less than \$25.00 nor greater than 10 percent of the gross income of the estate; provided that such compensation must be approved by the Court prior to payment of the same.

(c) The guardian of an estate less than \$3,000.00 in value shall receive no compensation unless specifically ordered by the Court for extraordinary service to the estate.

304 - Powers and Responsibilities of Guardian

(a) Except as otherwise specifically ordered or limited by the Court:

(1) A guardian of the person of a minor or incompetent shall have the right to take or provide for the custody of the person of the incompetent and shall be required to care for the health, safety and welfare of such incompetent and provide for their education and medical care as needed or appropriate.

(2) A general guardian or guardian of the estate or property of an incompetent shall have authority to invest, manage and dispose of the property of the incompetent in a prudent and

reasonable manner and expend such portions of the estate, income and then principle, as the guardian shall deem reasonably necessary for the support, care, including medical care, and education of the incompetent given the size and nature of the estate and the station in life and needs of the incompetent.

(3) A general guardian shall have power and authority to represent an incompetent's best interests in actual, threatened or contemplated litigation or other proceedings of a legal nature (other than of a criminal nature), and to employ counsel, and settle or compromise suits or claims, subject to the approval of the Court.

(b) A guardian of any kind may petition the Court for authority to do any act about which he is uncertain of his authority, and the Court may grant or deny such authority after such notice and hearing, if any, as the Court may direct, if such appears to be consistent with the best interests of the incompetent.

(c) A guardian of any kind shall stand in a fiduciary relationship to the incompetent ward; shall exercise a high degree of care in managing the estate of his ward; shall derive no personal benefit of any kind from his management of the estate of his ward, other than payment for guardianship services as approved by the Court; and shall be civilly liable to said ward for any losses to the estate attributable to a breach of these duties. Action to enforce such liability may be brought by the ward or a subsequently appointed guardian on behalf of the ward within two (2) years after the appointment of a new guardian or the removal of the incompetency, or within two (2) years after discovery of such loss to the estate attributable to a breach of these duties following disclosure of the same during the course of reporting to the Court. Upon discovery of probable cause of such loss during the course of reporting to the Court, the Court shall appoint a qualified member of the tribal court bar or a tribal prosecutor to investigate and report to the Court regarding the apparent loss to the estate, bring evidence forth regarding such loss and file such recommends regarding such loss. The Court may enter any Order regarding the alleged loss to the estate that the Court finds is appropriate based upon such evidence.

305 - Discharge of Guardian

(a) Every guardian appointed as provided herein shall serve until discharged by the Court.

(b) A person who has had a guardian appointed for reasons of incompetency, or the guardian or a relative of such incompetent may petition the Court for a determination of his restoration to capacity and for the discharge of the guardian. The Court shall hold a hearing, after such notice to known interested persons as the Court shall direct, and receive evidence, both of a medical nature and otherwise, of the ward's competency. If it be found that the ward is of sound mind and capable of taking care of himself and his property, his restoration to capacity shall be adjudged and his guardianship and guardian discharged.

(c) A person who has been appointed a guardian for an incompetent may petition for discharge by the Court based upon the death of the ward by filing a certified copy of the death certificate with the Court, along with a final accounting of the estate, a copy of the will, if one is known,

and a recommendation concerning appointment of an administrator for the estate of the deceased ward.

CHAPTER 4 - MISCELLANEOUS PROVISIONS

401 – Guardianship Court Records

The clerk shall keep a separate, permanent file for each guardianship proceeding and shall file all papers relevant thereto, including petitions, notices, orders for hearings, etc. Any guardian duly appointed shall be entitled to receive, without charge, three certified copies of the Letters of Guardianship. Certified copies of filed papers shall be otherwise available at a fee per copy to be established by the Court, unless such fee is waived based upon a finding of financial hardship.

402 - Guardianship of Trust Property

The Court is hereby authorized to appoint a guardian of the trust estate of an incompetent using the procedures and safeguards outlined herein for the purpose of conveying or consenting to the conveyance of an interest in trust property owned by such incompetent if it appears that the price to be paid is reasonable and adequate and that such sale is to the best interests of said incompetent, the Court may enter an order authorizing such action. All actions taken by such guardian consenting to or conveying trust property shall be subject to the approval of the Bureau of Indian Affairs as required by federal law.

403 - Guardianship of Per Capita Payments

The Court is hereby authorized to appoint a guardian of any funds paid or assets transferred to an incompetent in the form of per capita payments either from the Yavapai-Apache Nation or other source of funds, using the procedures and safeguards outlined herein. All such funds may be disbursed and accounted for only pursuant to the procedures set forth in this Title.

404 – Intent, Interpretation and Applicable Law

It is intended that the provisions of this Chapter be applied and interpreted to provide protection to the persons and assets of citizens of the Yavapai-Apache Nation, provided that the liberty and autonomy of any incompetent person should be restricted through the guardianship process only to the minimum extent needed to adequately provide for their own health or safety, or to adequately manage their financial affairs. All terms herein are to be interpreted to reach a just and fair result which protects both the persons and property of any such citizen, with minimal restrictions on that person. Highly technical interpretation of terms and procedures must yield to a common sense interpretation which provides for justice and protects the property and persons

of all who use this Chapter. Further, in any case where this code is silent, the Court may use applicable custom or tradition, provided reliable evidence of such custom or tradition is introduced into the record. If this Code is silent regarding an issue and no custom or tradition is in evidence, the Court shall apply the laws or procedures of other Tribes, federal rules or laws, or the laws and procedures of the state of Arizona, in the order listed.

405 - Severability

The provisions of this Chapter are severable. Should any section or provision of this Chapter be declared unconstitutional or otherwise invalid by any court of competent jurisdiction in a valid judgment or decree, such determination shall not affect the validity of the Chapter as a whole, or any part thereof, other than the specific part declared to be unconstitutional or invalid.