HO-CHUNK NATION CODE (HCC)
TITLE 4-CHILDREN, FAMILY, AND ELDER WELFARE CODE
SECTION 11 – HOCAK NATION THIRD PARTY GUARDIANSHIP ACT

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Chapter 1
General Provisions, Policies, and Definitions

1. **Authority**.

a. Article V, Section 2(a) of the Ho-Chunk Nation Constitution ("Constitution") grants the Legislature the power to make laws, including codes, ordinances, resolutions, and statutes.

b. Article V, Section 2(b) of the Constitution grants the Legislature the power to establish Executive Departments, and to delegate legislative powers to the Executive Branch to be administered by such Departments in accordance with the law; any Department established by the Legislature shall be administered by the Executive; the Legislature reserves the power to review any action taken by virtue of such delegated power.

c. Article V, Section 2(h) of the Constitution grants the Legislature the power to enact all laws prohibiting and regulating conduct, and imposing penalties upon all persons within the jurisdiction of the Nation.

d. Article V, Section 2(r) of the Constitution grants the Legislature the power to protect and foster Ho-Chunk religious freedom, culture, language, and traditions.

e. Article V, Section 2(s) of the Constitution grants the Legislature the power to promote public health, education, charity, and such other services as may contribute to the social advancement of the members of the Ho-Chunk Nation.

f. Article V, Section 2(u) of the Constitution grants the Legislature the power to enact laws to regulate domestic relations of persons within the jurisdiction of the Nation.

2. **Purpose**. When it appears to the Court to be in the best interests of a child, the Court may appoint guardians for the persons and/or property of children under the Court's jurisdiction who have no guardian, or where there is such instability within the

home that the appointment of a guardian would be in the child's best interests. Such appointment may be made on the petition of a proposed guardian or by the minor child if sixteen (16) years of age. Before making such an appointment, the Court must cause such notice as the Court deems reasonable to be given to any person having the care of the child and to such other traditional relatives of the child residing on or off Trust Lands as the Court may deem proper.

3. **Definitions**. As used in this Guardianship Act, the singular includes the plural and the plural the singular, and the masculine the feminine, when consistent with the intent of this Act. The following definitions apply:

a. "Adult" means a person eighteen (18) years of age or older, or otherwise emancipated by order of a court of competent jurisdiction.

b. "Child" means an individual who is not married and has not attained eighteen (18) years of age, or has not been deemed emancipated by the Court.

c. "Court" means the Hocąk Nation Trial Court.

d. "Crime" means conduct which is prohibited by state, federal, or tribal law and is punishable by fine or imprisonment or both. Conduct punishable by forfeiture alone does not constitute a crime for the purposes of this Act.

e. "Guardian Ad Litem" means a person appointed by the Court to represent the child's interests before that Court.

f. "Guardian of the Person" means a person appointed by the Court to maintain the care, custody, and control of the person of a minor child.

g. "Guardian of Property" means a person appointed by the Court to manage the property of a child.

h. "Indian" means any member of a federally recognized American Indian Tribe, Alaska Native, or a member of a regional corporation as defined in 43 USC § 1606.

i. "Legal Custody" means the authority to make those major life decisions, such as the right to consent to marriage, to enlist in the Armed Forces, to make education decisions, and to consent to major medical, surgical, or psychiatric treatment, and as may otherwise be granted by the Court.

j. "Multiple Displacement Assessment" means an assessment performed by Children and Family Services (hereinafter CFS) to determine what if any negative effects stem from numerous changes in guardianship.

k. "Parent" means a biological parent or a Traditional Hocąk parent as described in the definition of Hocąk Traditional Relatives.

l. "Permanent Guardian" means a guardian who has been granted long term guardianship status that is irrevocable unless the guardian is unsuitable as determined by the Court or the appointed guardian petitions for revocation.

m. "Physical Custody" means the physical custody and responsibility for the care of a child including the rights and duties to provide him/her with food, clothing, shelter, education, transportation, and emergency medical care.

n. "Power of Attorney" means a written legal document authorizing a person to act as another's attorney in-fact or agent for another person, property, or health care.

o. "Property" means property such as credits, savings and bank deposits, notes, bonds, proceeds from the sale of realty, and Children's Trust Fund accounts, but does not include small monetary gifts in an amount less than $500.00.

p. "Residual Parental Rights and Duties" means those inherent rights and duties remaining with the parents after legal custody or guardianship, or both, has been vested in another person, including but not limited to: the responsibility for support; the right to consent to customary adoption; and the right to reasonable visitation unless restricted by the Court. If no guardian has been appointed, "residual parental rights and duties" also includes the right to consent to marriage, to enlistment in the Armed Forces, and to consent to major medical, surgical, or psychiatric treatment.

q. "Suitable" means individuals who are willing and able to provide a home environment that is fit, safe, and appropriate, as well as meets the purpose of this Act.

r. "Temporary Guardian" means a person, other than a parent, who is assigned by a court of law as having the duty and authority to provide physical care until the child turns eighteen (18) years of age or the Court grants a revocation, removal or termination of the guardianship.

s. "Traditional Arrangement" means a mutual authorization of child placement via consultation through *najokijawasiki*, a Hocąk traditional practice. Examples include, but are not limited to, the grandparents for purposes of Hocąk teachings, i.e., sacred teachings, way-of-life, etc.

t. "Traditional Court" means the forum of Hocąk Nation clan representatives, which provides guidance and assistance to the Court and other interested parties on matters of Hocąk traditions and customs.

u. "Traditional Relatives" mean those people within the child's *wazoki* (intrinsic familial network) according to Hocąk tradition.

Chapter 2
Appointment of Guardian

4. **Appointment of Guardian Generally.**

a. The Court may appoint a guardian of the person or a guardian of the property, or both, for an individual if the Court determines that the individual is a minor child and such guardianship is in the best interests of the child.

b. In cases where the Court orders guardianship over the person, temporary guardianship shall be considered over permanent guardianship.

c. A guardian must wait six (6) months prior to motioning the Court to modify a Guardianship Order to reflect a change from temporary to permanent guardianship. However, the Court may consider a variety of exigent circumstances, including whether the minor child has already resided with the proposed guardian for a period of six (6) months or longer, in finding an exception to this general rule.

5. **Types of Guardianships.** Types of guardianships shall include:

a. Temporary Guardianship of the Person. The Court may appoint a temporary guardian, based upon a successful petition, under such terms and conditions as the Court sets forth in the written Order. A temporary guardianship remains in effect until the child reaches the age of majority (18 years of age) or emancipates. A temporary guardianship may be terminated if the Court determines that it is in the best interests of the child to change custody from the temporary guardian to a new guardian or to return the child to the parent. The parent(s) and the child's Traditional Relatives and Clan Members shall be granted liberal visitation rights unless deemed inappropriate by the Court.

b. Permanent Guardianship of the Person. The Court may appoint a permanent guardian, based upon a successful petition, for the child under such terms and conditions as the Court sets forth in the written Order. Permanent guardianship provides for permanent custody of the child to someone other than the parent(s), although there is no termination of the parental rights of the parents. There shall be a presumption of continued permanent guardianship in order to provide stability for the child. Permanent guardianship can only be terminated based upon the unsuitability of the permanent guardian. The parent(s) and the child's Traditional Relatives and Clan Members shall be granted liberal visitation rights unless deemed inappropriate by the Court.

c. Guardianship of Property. The Court may appoint a guardian of the property of a child under such terms and conditions as the Court sets forth in the written Order. The guardianship may cover all property until the child reaches eighteen (18) years of age or emancipates. It may be limited to only specific property or a specific legal action as set forth in the written order. A temporary or permanent guardianship of the person may also include guardianship of the child's property if set forth in the written Order.

Chapter 3
Guardianship Preferences, Powers & Duties, Limitations

6. **Guardianship Preferences and Order.** The Court shall consider the appointment of a guardian for a child from the following persons in the following order:

a. Paternal Traditional Relatives, provided these relatives are Hocąk Tribal members, with priority to paternal grandparents.

b. Other maternal Traditional Relatives, with priority to the *Tega* and maternal grandparents, if the father is not a member of the Hocąk Nation, or is not known.

c. Another Hocąk family.

d. Another American Indian family that is a relative of one of the child's parents.

e. A suitable American Indian family.

f. Another family which can provide a suitable home for Hocąk children.

7. **Guardianship Duties and Powers.**

a. Traditional Ways and Cultural Ties. Any appointment under this Act shall encourage a child to maintain cultural ties with the Nation, to be informed of the tradition and customs of the Nation, and to have the opportunity to learn the Hocak language.

b. Guardianship Duties. A guardian appointed by the Court shall:

(1) Use the degree of care, diligence, and good faith when acting on behalf of the child that an ordinarily prudent person exercises in his/her own affairs;

(2) Advocate for the child's best interests;

(3) Demonstrate the utmost degree of trustworthiness, loyalty, and fidelity in relation to the child; and

(4) Notify the Court of any change in address of the guardian(s) or child.

(5) Make medical, dental, and psychiatric care decisions.

(6) Consent to marriage, if the child is still a minor.

(7) Make decisions related to education.

(8) Make decisions related to mobility and travel.

(9) Consent to military service.

(10) Consent/refuse visitation by relatives, subject to the limitation set forth in Section 19.

c. Guardianship Powers. A guardian appointed by the Court may be bestowed with the following powers:

(1) The power to manage the child's estate.

(2) The power to seek child support.

(3) The power to seek a name change, if tradition and custom permits.

8. **Limitations Placed on the Guardian.**

Limitation on Authority. When a guardian has been appointed by the Court for a child, the Court may grant legal custody and care of the child and management of his property until such child arrives at the age of eighteen (18), marries, is emancipated by the Court under this Act, or until the guardian is legally discharged; provided, however, that said guardian shall not have the authority without express written consent of the Court to dispose of any real or personal property of the child in any manner. The disposal of a minor child's real or personal property in any way shall subject said person(s) to contempt of court and/or to criminal and civil penalties or remedies provided by Ho-Chunk Nation law.

Chapter 4
Guardianship Procedures

9. **Jurisdiction.**

a. General Jurisdiction.

(1) The Court shall have the authority to issue all orders necessary to ensure the safety of children within the Hocąk community. This grant of civil jurisdiction to the Court authorizes the Court to exercise its power to issue and enforce subpoenas, issue orders of restriction, impose fines, adjudicate and punish contempt, order confinement, and issue other orders that may be deemed necessary and appropriate, in matters regarding children.

(2) Once the Court exercises its jurisdiction under this Act, its authority continues until such time as it may be terminated pursuant to paragraph c, below.

(3) The Court may exercise jurisdiction over the following persons:

(a) Enrolled members of the Nation under the age of eighteen (18) years.

(b) Persons under the age of eighteen (18) who are eligible for enrollment in the Nation.

(c) Indians, as defined in section 3i, who are under the age of eighteen (18).

(d) Children of enrolled members of the Nation or other Indians, as defined in section 3i, including adopted children.

b. Jurisdiction Over Adults.

(1) In any case in which a child has come within the jurisdiction of the Court, the Court shall have authority to exercise jurisdiction over adults to the extent necessary to make proper disposition of each case, including authority to punish for contempt either in or out of the Court's presence.

(2) Consent to Jurisdiction. Any adult living off the Nation's Trust Lands who obtains custody of a child, however designated, from the Court personally, shall be deemed to have consented to the jurisdiction of the Court for all purposes or actions in any way related to such custody of the child.

(3) Procedures Applicable to Adults. Except when specific procedures are otherwise specified in this Act, all matters concerning adults or the rights of any adult which come before the Court need not be handled according to procedures established by the Court, but rather may be handled in an informal manner as in other children's cases. The Court shall see to it that minimum standards of procedural fairness are observed.

c. Termination of Continuing Jurisdiction. Jurisdiction obtained by the Court of a child under this Act shall continue until the child becomes eighteen (18) years of age, emancipates, or the guardianship order is revoked or terminated; at which time the continuing jurisdiction of the Court shall terminate.

10. **Initiating an Action.**

a. Petition for Guardianship.

(1) Who May File. A petition for guardianship may be filed either by the proposed guardian or by the child if at least sixteen (16) years of age.

(2) Contents of Petition. The petition for guardianship shall include the following:

(a) The full name, address, and tribal affiliation of the petitioner.

(b) The full name, sex, date and place of birth, residence, and tribal affiliation of the child.

(c) The basis for the Court's jurisdiction.

(d) The relationship of the proposed guardian to the child.

(e) The name and address of the person having legal custody of the child.

(f) The type of guardianship requested.

(g) To the best information and belief of the petitioner, a full description and statement of value of all property owned, possessed, or in which the child has an interest (if guardianship of property is requested).

(h) The present conditions and circumstances that warrant the appointment of the guardian.

(i) A list of people willing and able to become an interim successor guardian in the sudden event that the guardian cannot carry out his/her duties.

(3) All petitions must be signed and dated by the petitioner, and must be notarized or witnessed by a Clerk of the Court.

(4) Petitioners must submit a signed Release of Information to permit the Court to conduct a criminal background check. The Court may consider charging a reasonable filing fee to cover the costs of conducting these checks.

11. **Service of Process.**

a. Initial Summons – When Required. An initial summons is issued the first time a petition is filed.

(1) After an initial petition is filed, the Court may deem it necessary to request further investigative reports in the petition, such as a home study of the proposed guardian. When the Court accepts the filed petition, the Court shall promptly issue a summons. The summons is to be personally served on the parent(s) of the child, the proposed guardian, and any other interested party. A summons is required whether or not a person appears voluntarily or files a written waiver of service with the Clerk of Court at or prior to the hearing.

(2) Any person can waive the time requirement to respond to the petition.

b. Summons – Content Requirements.

(1) The summons shall contain the name of the Court, the title of the proceedings, and (except for published summons) a brief statement regarding the substance of the petition. A published summons shall state that a proceeding concerning the child (identified by initials and date of birth only) is pending in the Court and that an adjudication will be made. The summons shall require the person or persons who have legal custody of the child to appear personally. If the person or persons so summoned are

not the parent(s) of the child, then the summons shall also be issued to the parent(s) notifying them of the pendency of the proceedings and the time and place set for the hearing. No summons need be issued to a parent or parents whose parental rights have been relinquished.

(2) The summons issued by the Court shall conspicuously display the words:

> **NOTICE** – VIOLATION OF THIS ORDER IS SUBJECT TO PROCEEDINGS FOR CONTEMPT OF COURT. **SUBPOENAS**: "THE FAILURE TO COMPLY WITH A SUBPOENA SHALL SUBJECT THE PERSON FAILING TO COMPLY TO THE CONTEMPT POWER OF THE COURT." THE COURT MAY FIND ANY PARTY TO THIS MATTER IN CONTEMPT OF COURT FOR FAILURE TO APPEAR AT A COURT HEARING OR FOR FAILURE TO FOLLOW COURT ORDERS.

c. Summons – Other Persons. Summons may be issued to any person within the jurisdiction of the Court whose presence the Court deems necessary.

d. Compulsory Attendance of Witnesses. A proposed guardian(s) shall be entitled to issuance of compulsory process for the attendance of a witness on his/her behalf. A *Guardian Ad Litem* shall be entitled to compulsory process for the attendance of witnesses on behalf of the child(ren). Should any person fail to attend a hearing after being properly served with process and be unable to provide the Court with an acceptable explanation, the Court may find such person in contempt pursuant to the Hocak Nation Contempt Ordinance.

e. Payment of Travel Expenses. The Court may authorize the payment of necessary travel expenses incurred by persons summoned or otherwise required to appear at the hearing of a case under this Act. A person or party must make a written request to the Court for such expense payment. The terms of travel reimbursement shall equal the amount that the Nation reimburses its employees under it employment law.

f. Service of Summons.

(1) By Whom Served.

(a) A designee selected by the Court shall make service of summons or process.

(b) A service of summons may be made by delivering a copy to the person summoned. Provided, however, that parents of a child living together at their current place of residence may both be served personally by delivering to either parent copies of the summons, one copy for each parent.

(c) Upon order of the Court for good cause shown, service may be accomplished by publishing the contents of the summons in the *Hocak Worak* or another

newspaper of general circulation in an area where the party was last known to be domiciled.

(2) Substituted Service – Jurisdiction. If the parent(s) required to be summoned by personal service under this Section cannot be found upon reasonable search, the fact of the child's enrollment or eligibility for enrollment shall confer jurisdiction to the Court as to any absent parent(s).

(3) Time Requirement.

(a) In the case of service of an initial petition where all parties reside in the State of Wisconsin; in order to be sufficient to confer jurisdiction on the person served; service must occur no less than ten (10) calendar days before the time set in the summons for the appearance.

(b) In the case of service of an initial petition to any party residing outside the State of Wisconsin; in order to be sufficient to confer jurisdiction on the person served; service will occur within a reasonable time period before the time set in the summons for the appearance.

g. Disobedience – Contempt.

Any person summoned as herein provided, whom, without reasonable cause, fails to appear, may be proceeded against for contempt of court pursuant to the Hocak Nation Contempt Ordinance, and the Court may cause a bench warrant to be issued to produce such a person in Court.

12. **Additional Guardianship Procedures**

a. Due to a potential conflict of interest, the Court shall not appoint CFS to play a role in cases under this Act, unless it is making a referral to CFS for a child protection intake or for a Multiple Displacement Assessment as required under section 26f.

b. Appointment of a *Guardian Ad Litem*. The Court shall appoint a *Guardian Ad Litem* to protect the best interests of the child.

c. Guardianship Report.

(1) Upon the filing of a guardianship petition, the Court shall immediately request that the *Guardian Ad Litem* submit a guardianship report on the proposed guardian, successor guardians, and child.

(2) The guardianship report shall contain all pertinent information necessary to assist the Court in determining the best interests of the child.

(3) No determination can be made on a Guardianship Petition until the Guardianship Report has been completed and then submitted to and considered by the Court. The guardianship report shall be submitted to the Court no later than ten (10) days before the hearing. The Court may order additional reports as it deems necessary.

d. Guardian Ad Litem Duties. The *Guardian Ad Litem*, in addition to the other duties laid out in the *Ho-Chunk Nation Rules for Guardian Ad Litem*, shall:

(1) Interview the proposed guardian and report to the Court concerning the suitability of each individual interviewed to serve as guardian.

(2) Meet with and observe the minor child in the proposed home setting and conduct an assessment of the home.

(3) Make written reports to the Court regarding the best interests of the child, including conclusions and recommendations and the facts upon which they are based. Written reports other than the Guardianship Report, shall be filed with the Court at least three (3) days prior to the guardianship proceeding. Copies shall be provided to the other parties.

(4) Attend all court proceedings related to the guardianship.

(5) Report to the Court on any matter that the Court requests.

e. Statement of Acts by Proposed Guardian.

(1) The proposed guardian shall submit to the Court a sworn and notarized confidential Statement of Acts. The Statement of Acts shall be submitted to the Court no later than ten (10) days before the hearing.

(2) The purpose of the Statement of Acts is to allow the proposed guardian to provide answers to the below mentioned questions which will be utilized by the Court in making a determination of suitability. If the answer to any of the following questions is yes, then the proposed guardian will be required to provide attachments to provide further details:

(a) Whether the proposed guardian, or anyone living in the proposed guardian's home, is currently charged with or has been convicted of a crime.

(b) Whether the proposed guardian, or anyone living in the proposed guardian's home, is required to register as a sex offender.

(c) Whether the proposed guardian, or anyone living in the proposed guardian's home, has had a restraining order or protective order filed against him/her in the last ten (10) years.

(d) Whether the proposed guardian, or anyone living in the proposed guardian's home, has been charged with, arrested for, or convicted of any form of child abuse, neglect, or molestation.

(e) Whether the proposed guardian, or anyone living in the proposed guardian's home, has had any reports alleging any form of abuse, neglect, molestation made to any agency charged with protecting children (e.g., WI Child Protective Services, HCN Child and Family Services) or any other law enforcement agency regarding him/her or anyone living within the proposed guardian's home.

(f) Whether the proposed guardian has filed for or received protection under the federal bankruptcy laws.

(g) Whether the proposed guardian has ever had a license, certificate, permit, or registration required by the laws of any state for the practice of a profession or occupation suspended or revoked.

(h) Whether the proposed guardian has ever been removed as a guardian in any other case.

(i) Whether the proposed guardian, or anyone living in the proposed guardian's home, has habitually used any illegal substances or abused alcohol.

(j) Whether the proposed guardian, or anyone living in the proposed guardian's home, has been charged with, arrested for, or convicted of a crime involving illegal substances or alcohol.

(k) Whether the proposed guardian, or anyone living in the proposed guardian's home, has a social worker, parole officer, or probation officer assigned to him/her.

(l) Whether the proposed guardian, or anyone living in the proposed guardian's home, is receiving services from a psychiatrist, psychologist, or therapist for a mental health-related issue.

(m) Whether the proposed guardian, or anyone living in the proposed guardian's home, suffers from a mental illness.

(3) Failure to provide such statement, or failure to provide truthful answers within the statement, shall subject said person(s) to contempt of court, as it will impair the ability of the Court to establish findings of fact, and ultimately interfere with the administration of justice.

f. Written Consent. Any person who has legal custody of the child may consent to a guardianship. Such consent must be in writing and notarized or witnessed by a clerk of the Court, with the original being filed with the Court.

g. Withdrawal of Consent.

(1) Any consent given under subsection e above may be withdrawn by the person who gave consent at any time prior to the hearing of the petition. No reason need be stated and no hearing need be held on such withdrawal. All withdrawals must be in writing and notarized or witnessed by a Clerk of the Court, with the original being filed with the Court.

(2) If consent is withdrawn after the hearing of the petition and the appointment of a guardian, then the Court shall order a Best Interests Study to be conducted. The *Guardian Ad Litem* shall perform the study and submit a report with his/her findings with regards to the best interests of the child. The Court shall then take this study into consideration in making its decision.

13. **Guardianship Hearing Procedures.**

a. Time of Hearing. A Guardianship Hearing shall be held within forty-five (45) days of filing of a Guardianship Petition.

b. Purpose of Hearing. The Court shall conduct the hearing to determine if it is in the best interests of the child to be placed with the petitioner(s), and whether the proposed guardian is suitable to be appointed.

c. Rights of Parties. During the hearings the Court shall advise the party(ies) of the following basic rights:

(1) The reason for the hearing.

(2) Right to counsel at their own expense. The Court shall permit one continuance to secure counsel, unless reasonable efforts are shown to the Court that the parties are actively seeking counsel.

(3) Right to confront and cross-examine those appearing against them.

(4) Right to present and subpoena witnesses.

(5) Right to substitution of judge. The parties shall be notified that a request for substitution of judge must be made before the end of the Guardianship Hearing or this right will be deemed waived unless good cause is shown at a later point in the proceedings.

(6) Right to a jury trial.

d. Burden of Proof. The petitioner(s) maintains the burden of proving that he/she is suitable and that the guardianship is in the best interests of the child.

e. Evidence and Testimony. In determining the best interests of the child and the suitability of the proposed guardian, the Court shall examine each of the following:

(1) Validity of written consent.

(2) Length of time of the child has resided with the petitioner(s).

(3) Special conditions of the child.

(4) Parent communication with the child.

(5) Minor's consent to guardianship dependent upon maturity.

(6) Any report submitted by the *Guardian Ad Litem.*

(7) The Statement of Acts submitted by the proposed guardian.

(8) Order of preference of placement.

f. Closed Hearing. The general public shall be excluded from the proceedings. Only the parties, their counsel, witnesses, the child's Traditional Relatives, and other persons determined to be appropriate by the Court shall be permitted to attend.

14. **Disposition of Petition.**

a. Denial of Petition.

(1) If the Court finds that the guardianship will not be in the child's best interest, or that all of the requirements of this Act have not been met, it may deny the petition and make any other Order it deems necessary for the child not inconsistent with this Act.

(2) If the Court determines that the proposed guardian is unsuitable, then the Court shall request that a petition proposing a suitable guardian be filed which may include individuals from the list of successor guardians found in the Guardianship Petition or other relatives. The Court shall set a date for a hearing to be held within thirty (30) days, and shall require the *Guardian Ad Litem* to investigate the suitability of a new proposed guardian.

b. Appointment of Guardian.

If the Court is satisfied that the guardianship will be in the child's best interest, the requirements of the Act have been met, and the proposed guardian is suitable, then it may

appoint the petitioner(s) as guardian(s) and issue an Order in accordance with Chapter 5 of this Act.

Chapter 5
Court Orders

15. **Court Orders Generally.**

a. The Court shall set forth, in the written Guardianship Order, the findings of fact that supports the decision of the Court.

b. In accordance with the best interests of the minor child, the Court shall set forth, in the written Guardianship Order, which powers will be granted to the appointed guardian.

c. The Court shall set forth, in the written Guardianship Order, any limitations of authority to be placed on the appointed guardian.

d. The Court shall set forth, in the written Guardianship Order, all duties that the appointed guardian will have.

16. **Management of Property.**

a. In the event that any guardian receives any property (e.g., real property, money, or funds) of any child while acting as guardian, before taking and receiving into custody such money or funds, the Court may require of such person a bond with sufficient surety to be approved by the Court and in such sum as the Court shall order, conditioned that the guardian will faithfully execute the duties of his/her trust. The following conditions shall form the part of such bond without being expressed therein.

(1) To make an inventory of the property of the child that comes into his/her possession or knowledge and to return the same within such time as the Court may order.

(2) To discharge and manage the property according to the law and in the best interests of the child, and faithfully discharge his trust in relation thereto, and also in relation to the care, custody, and education of the child.

(3) To render an account (Court created form) of the property of the child and all proceeds or interests derived therefore annually and at such other times as the Court directs.

(4) At the expiration of the child's trust, the guardian shall settle the child's accounts with the Court, with the child if of the age of majority, or the child's legal representative. The guardian shall deliver all of the property to the person who is legally entitled to possession.

(5) The funds of any child must be used by his/her guardian solely for the support and education of such child, and shall be expended by the guardian in a reasonable manner according to the circumstances of the child, and in such manner as can reasonably be afforded according to the income and estate of the child.

b. If determined to be appropriate by the Court, the written Order may set forth that the child's property may not be used for the child's care, but rather to be managed for the child until the child reaches the age of eighteen (18) or is emancipated by the Court.

17. **Annual Guardianship Report.** Guardians of the person shall file an annual report (Court created form) on or about the anniversary of the Guardianship Order or at such other time as is ordered by the Court. The purpose of said report is to update the Court on the status of the guardianship and the well-being of the child.

18. **Child Support.** The Court may order child support to the person(s) to whom guardianship is granted under this Act if sought by the guardian(s). Guardian(s) of the child must use disbursements for the sole purpose of covering expenses incurred in the care and custody of said child and shall not be used for any other purpose. The use of said funds for any purposes other than that described in this Act shall subject said person(s) to contempt of court and to criminal and civil penalties or remedies provided by Tribal law. The Court shall order payments to be made directly to the guardian. The guardian and payor shall be responsible for maintaining adequate records of payments made and received. The Court may review the history of payments periodically upon motion of the guardian.

19. **Visitation Rights.** The parent(s) and the child's Traditional Relatives and Clan Members shall be granted liberal visitation rights unless deemed inappropriate by the guardian or the Court.

20. **Co-Guardians.** If the Court appoints a guardian of the person or a guardian of the estate, it may also consider appointing the guardian's spouse as a co-guardian in an attempt to better protect the best interests of the child. In addition to having similar guardianship powers, the co-guardian will be subject to all the limitations and will have all of the duties of the petitioning guardian.

21. **Name Change.** A guardian(s) could request the child's name to be changed pursuant to a determination from the Traditional Court that tradition and custom permits such change under the circumstances of the case.

Chapter 6
Modification, Revocation, Removal, and Termination

22. **Judgments Inoperative After Age 18**. No judgment, Order, or decree of the Court shall be in effect after the child becomes eighteen (18) years of age.

23. **Motions to Modify Guardianship Orders.**

a. The Court may modify any Order or decree, but no modification of an Order shall be made until there has been a hearing after due notice to all persons concerned.

b. The Court may hold a hearing to modify a Guardianship Order at any time upon the motion of any of the following:

(1) The child age sixteen (16) years of age or older.

(2) The child's parents.

(3) The guardian of the child.

(4) The *Guardian Ad Litem.*

c. The motioning party bears the burden of proving that modification of the Guardianship Order is in the best interests of the child.

d. The motioning party may seek a modification of a variety of things, including, but not limited to:

(1) Child Support.

(2) A name change.

(3) The power to manage the property of the child.

(4) A change from Temporary to Permanent Guardianship.

e. Best Interests Study. A Best Interests Study must be filed with the Court any time a motion is filed for modification of a Guardianship Order. The *Guardian Ad Litem* shall perform the study and submit a written report with his/her findings three (3) days prior to the hearing.

f. Notice of Modification. Notice of an Order modifying a guardianship shall be given to the parent(s), guardian(s), and, when appropriate, to the child.

24. **Motions to Revoke Guardian.**

a. Revocation is the voluntary relinquishment of a guardianship by a guardian. The guardianship itself continues with a successor guardian taking over the role of guardian.

b. The Court may revoke any Order or decree, but no revocation of an Order shall be made until there has been a hearing after due notice to all persons concerned.

c. The Court may hold a hearing to revoke a Guardianship Order at any time upon the motion of the guardian(s).

d. The motioning party bears the burden of proving that revocation of the guardianship is in the best interests of the child.

e. Best Interests Study. A Best Interests Study must be filed with the Court any time a motion is filed for revocation of a guardianship. The *Guardian Ad Litem* shall perform the study and submit a written report with his/her findings three (3) days prior to the hearing.

f. Notice of Revocation. Notice of an Order revoking a guardianship shall be given to the parent(s), guardian(s), and, when appropriate, to the child.

25. **Motions to Remove Guardian**.

a. Removal is the process to remove a guardian from his/her role due to his/her failure to perform the guardian's duties as set forth in this Act. The guardianship itself continues with a successor guardian taking over the role of guardian.

b. The Court may order the removal of a guardian for cause, but no removal shall be made until there has been a hearing after due notice to all persons concerned.

c. The Court may hold a hearing to remove a guardian at any time upon the motion of any of the following:

(1) The child age sixteen (16) years of age or older.

(2) The child's grandparents or parent(s).

(3) The child's Traditional Relatives having a legitimate interest in the particular case.

(4) The *Guardian Ad Litem*.

(5) Upon motion of the Court.

d. The motioning party bears the burden of proving that the guardian is or has been neglecting the child and/or estate and is or has been refusing or is unable to perform the guardian's duties. The motion must include factual allegations of neglect or failure to fulfill the guardian's duties.

e. Best Interests Study. A Best Interests Study must be filed with the Court any time a motion is filed for removal of a guardian. The *Guardian Ad Litem* shall perform the study and submit a written report with his/her findings three (3) days prior to the hearing.

f. Notice of Removal. Notice of an Order removing a guardian shall be given to the parent(s), guardian(s), and, when appropriate, to the child.

26. Motions to Terminate Guardianship Orders.

a. Termination is the process whereby the entire guardianship is terminated. This may occur upon the child reaching the age of majority, the child becoming emancipated by Court Order, or a motion to terminate is granted.

b. An Order granting a guardianship shall be for an indeterminate period.

c. The Court, upon motion of a party seeking termination of a Guardianship Order and being satisfied all parties were properly notified of the motion, may schedule a hearing to consider termination of its Order.

d. The Court may hold a hearing to terminate a Guardianship Order at any time upon the motion of any of the following:

(1) The child age sixteen (16) years of age or older.

(2) The child's parent(s).

(3) The *Guardian Ad Litem.*

e. Termination of a Temporary Guardianship of the Person. The motioning party bears the burden of proving that termination of the temporary guardianship is in the best interests of the child.

f. Termination of a Permanent Guardianship of the Person. The motioning party bears the burden of proving that the permanent guardian is unsuitable. The motion must set forth the factual allegations that support a finding of unsuitability.

g. Best Interests Study. A Best Interests Study must be filed with the Court any time a motion is filed for termination of a guardianship. The *Guardian Ad Litem* shall perform the study and submit a written report with his/her findings three (3) days prior to the hearing.

h. Notice of Termination. Notice of an order terminating guardianship shall be given to the parent(s), guardian(s), and, when appropriate, to the child.

i. Visitation Plan. The *Guardian Ad Litem*, or the Court upon its own motion, may deem a visitation plan is necessary if a child has been in a lengthy guardianship. The purpose of said visitation plan will be to allow for a smooth transition from the guardian's home back into the parent's home.

27. **Successor Guardian.**

a. Appointment of an Interim Successor Guardian in the Event of Guardian's Death or Sudden Incapacitation. The Court shall select a successor guardian, from the list of possible successor guardians provided in the Guardianship Petition, upon the death or sudden incapacitation of the guardian. The interim successor guardian shall have the same powers and duties as the appointed guardian, until a new guardian can be appointed pursuant to the procedures described below.

b. If a guardian dies, is removed by order of the Court, or revokes, the Court, on its own motion or upon receiving a motion of any interested party, shall schedule a Guardianship Hearing, so as to appoint a competent and suitable person as a successor guardian.

c. Procedures. The petition for appointment of a successor guardian shall be heard in the same manner and be subjected to the same requirements as provided in this Act for an original appointment of a guardian.

d. Scheduling. Naming of a successor guardian must occur simultaneously with the revocation or removal of the current guardian, unless a suitable guardian cannot be found, at which point the Court shall immediately refer the matter to CFS for an intake.

e. Appointment of Successor Guardian. If the Court determines removal is necessary to protect the best interests of the child, then it shall appoint a successor guardian. The successor guardians will be considered from the list provided in the original petition and from the Guardianship Report submitted by the *Guardian Ad Litem.*

f. Multiple Displacement Assessment. If the Court determines that the best interests of the child are being ignored by multiple guardianships, then it may refer the case to CFS to conduct a Multiple Displacement Assessment. The assessment shall not reflect negatively on the tradition and custom of families placing their children with extended Traditional Relatives.

Chapter 7
Court Appeals

28. **Court Appeals.**

a. Any interested party to the Court proceeding may appeal a final Court Order on a specific legal issue.

b. Procedure. An appeal to the Nation's Supreme Court may be filed from any Order, decree, or judgment of the Court. The Notice of Appeal must be in writing and filed within sixty (60) days from the entry of the Order, decree, or judgment appealed from.

c. Record. For purpose of appeal, a record of proceedings shall be made available to the child, his/her parent(s), guardian(s), the child's counsel, and others upon Court Order. Costs of obtaining this record shall be paid by the party seeking the record.

d. Stay Pending Appeal. The pendency of an appeal shall stay the Order or decree appealed from in a guardianship. Where the Order or decree appealed from directs a change of guardianship of a child, the appeal shall be heard and decided at the earliest practicable time. The name of the child shall not appear on the record of appeal.

Legislative History:

05/05/09 – Ho-Chunk Nation Legislature enacts Hocak Nation Third Party Guardianship Act (4 HCC § 11) by Legislative Resolution 05/05/09I.

06/10/09 – Ho-Chunk Nation Legislature amends Section 18 to clarify the Child Support procedures.