

**IN THE
HO-CHUNK NATION TRIAL COURT**

In the Interest of: _____ _____	Adult Guardianship Petition Case No: _____ Check all that apply: <input type="checkbox"/> Petition for Temporary Guardianship of the Person <input type="checkbox"/> Petition for Temporary Guardianship of the Estate <input type="checkbox"/> Petition for Permanent Guardianship of the Person <input type="checkbox"/> Petition for Permanent Guardianship of the Estate <input type="checkbox"/> Amended Petition
--	---

I, _____, come before the Ho-Chunk Nation Trial Court seeking an adult guardianship on behalf of _____.

Upon information and belief, I state, **UNDER OATH**, as follows:

1. I am interested as:

- a. a relative or spouse. I am related to the individual as _____.
- b. the Ho-Chunk Nation Child and Family Services (“CFS”), coming before the Court by and through the Ho-Chunk Nation Department of Justice, _____, Tribal Counsel.
- c. another public official. My authority to act as petitioner is _____.
- d. other: under the authority of 4 HCC §14.6 and by the customs and traditions of the Ho-Chunk Nation. See Pronouncement of Ho-Chunk Tradition and Custom, attached.

2. The proposed ward is:

- a. Name: _____
- b. Date of birth: _____
- c. Sex: _____
- d. Address: _____

- e. County: _____
- f. Tribal affiliation: _____
- g. Tribal ID number: _____

3. Name and address of the person or institution, if any, who has custody of the adult, or is providing formal or informal care for the adult:

a. Name: _____

b. Address: _____

c. Phone number: _____

d. This person is a

1. professional caretaker,
2. respite service/home health provider, or
3. informal caretaker.

4. I have exercised due diligence to locate all interested parties. The names and mailing addresses of interested parties, including the petitioner and all others relating to the notice are as follows:

a. Attached

b. Listed below

1. Father: _____

DOB: _____

Address: _____

2. Mother: _____

DOB: _____

Address: _____

3. Spouse: _____

DOB: _____

Address: _____

4. Other interested persons: _____
Include attachment if necessary

DOB: _____

Address: _____

5. The adult, if married, does / does not have children born of the current marriage.

6. The adult:

a. Does / Does not have a current, valid financial durable power of attorney ("POA"). This document is / is not activated. Agent's name and address:

Name: _____

Address: _____

b. does / does not have a current, valid power of attorney for health care. This document is / is not activated. Agent's name and address:

Name: _____

Address: _____

c. does / does not have a health care advance directive or other advance planning of record. If so, please attach or explain in attachment.

7. I am: aware / unaware of a guardianship or a spendthrift or related proceeding involving the individual in another jurisdiction. I have made a diligent effort to discover any such proceedings. If one exists, the details shall be included by attachment.

8. I am: aware / unaware of an elder abuse or domestic abuse proceeding involving the individual in this jurisdiction or in any other. If such an action exists, the details shall be included by attachment.

9. The following person is nominated as guardian (check which type of guardian):

Permanent / Temporary Guardian of the Person:

Name: _____

Address: _____

Email: _____

Phone Number: _____

Relationship to proposed ward: _____

Permanent / Temporary Guardian of the Estate:

Name: _____

Address: _____

Email: _____

Phone Number: _____

Relationship to proposed ward: _____

The petitioner requests / does not request that the Court require a bond for this proposed Guardian of the Estate.

- 10.** The following person or people are nominated as standby guardians. Per 4 HCC § 14.4(ee), a standby guardian is “an individual or tribe named... by the Trial Court order whose appointment as guardian becomes effective immediately upon the death, resignation, or court-ordered removal of the initially appointed guardian.” A standby guardian may also assume the duties of guardianship if “the appointed guardian is temporarily or permanently unable, unavailable, unwilling or incapacity, to fulfill his or her duties.”

Standby Guardian of the Person:

Name: _____

Address: _____

Email: _____

Phone Number: _____

Relationship to proposed ward: _____

Standby Guardian of the Estate:

Name: _____

Address: _____

Email: _____

Phone Number: _____

Relationship to proposed ward: _____

11. The approximate value of the adult's property is:

a. Cash/Bank Accounts \$ _____

b. Real Estate

1. In fee simple: \$ _____

2. In individual allotment: \$ _____

c. Other assets (explain) \$ _____

d. Assets of the adult previously derived from or benefits of individual now due and payable from the U.S. Department of Veteran Affairs are \$ _____ or none.

e. The adult receives public benefits, including medical assistance, SSI, SSDI or long term community options program benefits. no yes, amount(s): \$ _____

f. Any other claim, income, compensation, pension, insurance or allowance to which the individual may be entitled to is none or as follows:

1. Social Security (monthly) \$ _____

2. Pension (monthly) \$ _____

3. Disability (monthly) \$ _____

4. Investment Income (monthly) \$ _____

5. Tribal Per Capita (quarterly) \$ _____

6. Other (monthly) \$ _____

12. The proposed ward has ongoing, legal, monetary obligations (including but not limited to child support payments, judgments of tribal debt, or other debts as are contemplated pursuant to the HCN PER CAPITA DISTRIBUTION ORDINANCE, 2 HCC § 8.5) totaling approximately \$ _____ per month.

13. A report of examination by a physician or psychologist:

- a. is being filed with this petition or
- b. will be filed with the Trial Court at least five (5) calendar days in advance of the hearing or
- c. a Certificate of Administrator (or representative) of U.S. Department of Veterans Affairs is filed with this petition.

14. The Ho-Chunk Nation Trial Court shall exercise jurisdiction over this case pursuant to the **ADULT GUARDIANSHIP ORDINANCE, 4 HCC § 14, which grants jurisdiction over all petitions for guardianship over the person or estate of a member, based on the following: (check all that apply)**

- a. The adult is an enrolled member and is subject to guardianship because they are:
 - 1. incapacitated
 - 2. found incompetent by a trial court of law
 - 3. spendthrift
- b. The person is resides on or within the Ho-Chunk Nation lands, and the person is subject to extraordinary circumstances requiring :
 - 1. medical aid
 - 2. prevention of harm to his or her person
 - 3. prevention of harm to his or her property
- c. A guardian of the estate and/or person subject to guardianship is required based on one of the following factors described in 4 HCC § 14.5(f):
 - 1. As a result of impairment, the individual is unable effectively to receive and evaluate information to such an extent that the individual is unable to meet the essential requirements for his or her physical health and safety
 - 2. As a result of impairment, the individual is unable effectively to make or communicate decisions to such an extent that the individual is unable to meet the essential requirements for his or her physical health and safety.
 - 3. Because of an impairment, the individual is unable effectively to receive and evaluate information to the extent that any of the following applies:
 - i. The individual has property that will be dissipated in whole or in part in the absence of a guardianship.
 - ii. The individual is unable to prevent financial exploitation.
 - iii. The individual is unable to provide for his or her support.
 - 4. Because of an impairment, the individual is unable effectively to make or communicate decisions related to management of his or her property or financial affairs to the extent that any of the following applies:
 - i. The individual has property that will be dissipated in whole or in part in the absence of a guardianship.
 - ii. The individual is unable to prevent financial exploitation.
 - iii. The individual is unable to provide for his or her support.
 - 5. The individual's need for assistance in decision making or communication is unable to be met effectively and less restrictively through appropriate and reasonably available training, education, support services, health care, assistive devices, or other means that the individual will accept, and:
 - i. The determination under section 5(2)(a-c) above is not be based on the individual's poor judgment or physical disability (unless the individual is unable to communicate decisions effectively in any way)

15. The individual's risk of abuse, exploitation, neglect, or violation of rights

- a. Attached to this petition
- b. Listed below

16. The availability of other reliable resources to provide for the individual's personal needs or property management, and whether appointment of a guardian is **the least restrictive means** to provide for the individual's need for a substitute decision maker.

- a. Attached to this petition
- b. Listed below

17. **GUARDIANSHIP OF THE PERSON: I request the court appoint a permanent guardian of the person.**

A. **Rights to be removed in full. If removed, these rights may not be exercised by any person.**

I request the court declare the individual has incapacity to exercise one or more of the following rights and remove such right to:

- 1. Execute a will.
- 2. Serve on a jury.
- 3. Register to vote or to vote in an election.

B. **Rights to be removed or exercised by individual with the consent of Guardian of Person.**
If removed, these rights may not be exercised by any person. If a right is to be affected, the box to the far left must be marked. Marking only box (1) or (2) has no effect and the individual retains the right. I request the court declare the individual has incapacity to exercise one or more of the following rights and remove such right or order that the individual is able to exercise the right only with consent of the guardian of the person right to:

- 1. Consent to marriage

Choose (1) or (2):

(1) declare the individual lacks capacity to exercise this right.

(2) order that the individual is able to exercise this right only with consent of the guardian of the person.

- 2. Apply for an operator's license, a hunting, fishing or other license under federal, state, or tribal laws.

Choose (1) or (2):

(1) declare the individual lacks capacity to exercise this right

(2) order that the individual is able to exercise this right only with consent of the guardian of the person.

- 3. Absent legal restrictions not pertaining to this guardianship, keep and bear firearms:

Choose (1) or (2):

- (1) declare the individual lacks capacity to exercise this right
(2) order that the individual is able to exercise this right only with consent of the guardian of the person.

4. Consent to sterilization:

Choose (1) or (2):

- (1) declare the individual lacks capacity to exercise this right
(2) order that the individual is able to exercise this right only with consent of the guardian of the person.

5. Consent to organ, tissue, or bone marrow donation:

Choose (1) or (2):

- (1) declare the individual lacks capacity to exercise this right
(2) order that the individual is able to exercise this right only with consent of the guardian of the person.

C. Powers to be transferred to Guardian of the Person in part or in full. If a power is to be affected, the box to the far left must be marked. Marking only box (1) or (2) has no effect and the individual retains the power.

1. I request the court declare that the individual lacks evaluative capacity in part or in full to exercise one or more specific powers and transfer the specific powers to the Guardian of the Person.

2. Petitioner requests that the powers to be affected are:

- i. Except as otherwise limited, the power to give an informed consent to the voluntary receipt by the guardian's ward of a medical examination, medication, including any appropriate psychotropic medication, and medical treatment that is in the ward's best interest, if the guardian has first made a good-faith attempt to discuss with the ward the voluntary receipt of the examination, medication, or treatment and if the ward does not protest.

Choose (1) or (2):

- (1) The individual retains limited capacity and the power to: _____. The Guardian of the Person holds the powers not retained by the individual.
(2) Individual lacks evaluative capacity in full. The Guardian of the Person shall hold and exercise full power.

- ii. Except as otherwise limited, the power to give informed consent, if in the ward's best interests, to the involuntary administration of a medical examination, medication other than psychotropic medication, and medical treatment that is in the ward's best interest.

Choose (1) or (2):

- (1) The individual retains limited capacity and the power to: _____. The Guardian of the Person holds the powers not retained by the individual.
(2) Individual lacks evaluative capacity in full. The Guardian of the Person shall hold and exercise full power.

- iii. The power to authorize individual's participation in an accredited or certified research project if the research project might help the individual, or others if minimal risk of harm.

- (1) The individual retains limited capacity and the power to: _____. The Guardian of the Person holds the powers not retained by the individual.

(2) Individual lacks evaluative capacity in full. The Guardian of the Person shall hold and exercise full power.

iv. The power to authorize individual's participation in research that might not help the individual but might help others if greater than minimal risk of harm to the individual but evidence indicates individual would have elected to participate.

(1) The individual retains limited capacity and the power to: _____
_. The Guardian of the Person holds the powers not retained by the individual.

(2) Individual lacks evaluative capacity in full. The Guardian of the Person shall hold and exercise full power.

v. The power to consent to experimental treatment in the individual's best interests.

Choose (1) or (2):

(1) The individual retains limited capacity and the power to: _____
_. The Guardian of the Person holds the powers not retained by the individual.

(2) Individual lacks evaluative capacity in full. The Guardian of the Person shall hold and exercise full power.

vi. The power to give informed consent to receipt by individual of social and supported living services.

Choose (1) or (2):

(1) The individual retains limited capacity and the power to: _____
_. The Guardian of the Person holds the powers not retained by the individual.

(2) Individual lacks evaluative capacity in full. The Guardian of the Person shall hold and exercise full power.

vii. The power to give informed consent to release of confidential records other than court, treatment, and patient health care records and redisclosure as appropriate.

Choose (1) or (2):

(1) The individual retains limited capacity and the power to: _____
_. The Guardian of the Person holds the powers not retained by the individual.

(2) Individual lacks evaluative capacity in full. The Guardian of the Person shall hold and exercise full power.

viii. The power to make decisions related to mobility and travel.

Choose (1) or (2):

(1) The individual retains limited capacity and the power to: _____
_. The Guardian of the Person holds the powers not retained by the individual.

(2) Individual lacks evaluative capacity in full. The Guardian of the Person shall hold and exercise full power.

ix. The power to choose providers of medical, social, and supported living services.

Choose (1) or (2):

- (1) The individual retains limited capacity and the power to: _____. The Guardian of the Person holds the powers not retained by the individual.
- (2) Individual lacks evaluative capacity in full. The Guardian of the Person shall hold and exercise full power.

- x. The power to make decisions regarding educational and vocational placement and support services or employment.

Choose (1) or (2):

- (1) The individual retains limited capacity and the power to: _____. The Guardian of the Person holds the powers not retained by the individual.
- (2) Individual lacks evaluative capacity in full. The Guardian of the Person shall hold and exercise full power.

- xi. The power to receive all notices on behalf of an individual.

Choose (1) or (2):

- (1) The individual retains limited capacity and the power to: _____. The Guardian of the Person holds the powers not retained by the individual.
- (2) Individual lacks evaluative capacity in full. The Guardian of the Person shall hold and exercise full power.

- xii. The power to act in all proceedings as an advocate of the individual, except the power to enter into a contract that binds the individual or the individual's property or to represent the individual in any legal proceedings pertaining to the property, unless the guardian of the person is also the guardian of the estate.

Choose (1) or (2):

- (1) The individual retains limited capacity and the power to: _____. The Guardian of the Person holds the powers not retained by the individual.
- (2) Individual lacks evaluative capacity in full. The Guardian of the Person shall hold and exercise full power.

- xiii. The power to apply for protective placement or for commitment.

Choose (1) or (2):

- (1) The individual retains limited capacity and the power to: _____. The Guardian of the Person holds the powers not retained by the individual.
- (2) Individual lacks evaluative capacity in full. The Guardian of the Person shall hold and exercise full power.

- xiv. The power to have custody of the individual, if an adult, and the power to have care, custody, and control of the individual, if a minor.

Choose (1) or (2):

- (1) The individual retains limited capacity and the power to: _____. The Guardian of the Person holds the powers not retained by the individual.
- (2) Individual lacks evaluative capacity in full. The Guardian of the Person shall hold and exercise full power.

- xv. Other specific powers: _____
 - 1. see attachment

18. GUARDIAN OF THE ESTATE:

a. I request the court to: appoint and authorize a permanent guardian of the estate to perform duties and exercise powers as follows, **choose one:**

1. **Most authority retained by ward, limited authority transferred to guardian:**
Individual retains evaluative capacity except for the ability to perform a duty or exercise a power which is to be transferred to the guardian of the estate as follows:

2. **Limited authority retained by ward, most authority transferred to guardian:**
Individual retains limited evaluative capacity and should retain the ability to perform a duty or exercise a power as follows:

Guardian of the estate is to perform the duties of a guardian of the estate and exercise the powers that do not require court approval except as retained by the individual.

3. **Full authority transferred to guardian:** Individual lacks evaluative capacity in full. Guardian of the estate is requested to perform the duties of a guardian of the estate and exercise powers that do not require court approval.

b. Authorize that the guardian of the estate deposit the individual's funds of \$100,000 or less in an insured account of a bank, credit union, savings bank or savings and loan association in the name of the guardian and the ward, payable only upon further order of the court, and waive bond for the guardian of the estate.

WHEREFORE, the petitioner respectfully requests this Court to set a time and date to hear this *Adult Guardianship Petition*, to find that it would be in the best interests of the adult to be considered in need of guardianship, and that this Court enter an order granting guardianship over the individual. The petitioner reserves the right to supplement this *Petition* at any time.

RESPECTFULLY SUBMITTED this _____ day of _____, 20____.
Month Year

Signature: _____

Address of Petitioner: _____

Phone Number of Petitioner: _____ (_____) _____

Signature of Counsel (if any): _____

Address of Counsel: _____

Phone Number of Counsel: (_____) _____

Fax Number of Counsel: (_____) _____

Ho-Chunk Bar Number of Counsel: _____

If petitioner is being represented by counsel, but counsel is not a member of the Ho-Chunk bar, a *Motion to Appear Pro Hac Vice* has been attached in accordance with *Ho-Chunk Nation Rules of Civil Procedure*, Rule 16(B),¹ and/or petitioner's counsel has applied for membership in the Ho-Chunk Nation bar in accordance with the *Ho-Chunk Nation Rules for Admission to Practice*.

¹ Parties can obtain a copy of the *Ho-Chunk Nation Rules of Civil Procedure* by contacting the Ho-Chunk Nation Judiciary at (715) 284-2722 or (800) 434-4070, or by visiting the judicial website at www.ho-chunknation.com/?PageID=123.