

## TITLE 23. GUARDIANSHIP & CONSERVATORSHIP

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**TITLE 23. GUARDIANSHIP AND CONSERVATORSHIP CODE**

**ARTICLE I**

**GUARDIANSHIP AND CONSERVATORSHIP**

(NOTE: The provisions of this Title were enacted on May 6, 2009, by Tribal Council Resolution No. 15-2009)

**CHAPTER 1. GENERAL PROVISIONS**

**Sec. 23-1101. Definitions.**

Unless the context requires otherwise, as used in this Article:

- (a) "Clerk" means the clerk of the Tribal Court of the Sac and Fox Tribe of the Mississippi in Iowa.
- (b) "Conservator" means a person appointed by the court to have the custody and control of the property of a ward under the provisions of this Guardianship and Conservatorship Code.
- (c) "Court" means the Tribal Court of the Sac and Fox Tribe of the Mississippi in Iowa.
- (d) "Estate" means the real and personal property of a ward.
- (e) "Family member" means spouse, children, siblings, parents, uncles, aunts, nieces, nephews, grandparents, grandchildren, mother-in-law, father-in-law, sister-in-law, brother-in-law, son-in-law, and daughter-in-law, of the ward.
- (f) "Functional limitations" means the behavior or condition of a person which impairs the person's ability to care for the person's personal safety or to attend to or provide for necessities for the person.
- (g) "Guardian" means the person appointed by the court to have the custody of the person of the ward under the provisions of this Guardianship and Conservatorship code.
- (h) "Hearing" means a proceeding before the Tribal Court of the Sac & Fox Tribe of

the Mississippi in Iowa.

(i) "Incompetent" means the condition of any person who has been adjudicated by a court to meet at least one of the following conditions:

(1) To have a decision-making capacity which is so impaired that the person is unable to care for the person's personal safety or to attend to or provide for necessities for the person such as food, shelter, clothing, or medical care, without which physical injury or illness may occur.

(2) To have a decision-making capacity which is so impaired that the person is unable to make, communicate, or carry out important decisions concerning the person's financial affairs.

(3) To have a decision-making capacity which is so impaired that both paragraphs "(1)" and "(2)" are applicable to the person.

(j) "Letters" means and includes letters of guardianship and/or letters of conservatorship.

(k) "Meskwaki Settlement" and "Settlement" and "Sac and Fox Reservation in Iowa" may be used interchangeably and means all land within the exterior boundaries of the Sac and Fox Reservation in Iowa.

(l) "Minor" means a person under the age of eighteen (18) years.

(m) "Non-member" means a person who is not an enrolled member of the Sac and Fox Tribe of the Mississippi in Iowa.

(n) "Person" includes enterprises, corporations, and departments of the Sac & Fox Tribe of the Mississippi in Iowa, including but not limited to Meskwaki Family Services, and includes other natural persons, and entities, agencies, and departments, whether public or private, if the other natural person, entity, agency or department is qualified to act as a guardian and/or conservator and has no proprietary or legal interest in an organization which provides direct services to the ward and if authorized to act in a fiduciary capacity and otherwise found to be suitable by the court. Notwithstanding the foregoing, Meskwaki Family Services and any enterprise, corporation and department of the Tribe is a person eligible to be appointed as guardian and conservator pursuant to this Article.

(o) "Property" means and includes both real and personal property.

(p) “Trial” means a proceeding before the Tribal Court of the Sac & Fox Tribe of the Mississippi in Iowa.

(q) “Trial court” means the Trial Court of the Sac and Fox Tribe of the Mississippi in Iowa.

(r) “Tribal Code” means the law Code of the Sac and Fox Tribe of the Mississippi in Iowa.

(s) “Tribal Council” means the members of the Tribal Council of the Sac and Fox Tribe of the Mississippi in Iowa.

(t) “Tribal Court” means the court of the Sac and Fox Tribe of the Mississippi in Iowa.

(u) “Tribal land” means all trust and fee land owned by the Tribe.

(v) “Tribal member” means an enrolled member of the Sac and Fox Tribe of the Mississippi in Iowa.

(w) “Tribe” means the Sac and Fox Tribe of the Mississippi in Iowa and its Tribal Council, commissions, boards, agencies, departments, corporations, divisions, instrumentalities, economic enterprises, Tribal Council members, commissioners, board members, officials, agents, officers and employees.

(x) “Ward” means a person who has a guardian or conservator appointed by the court to care for and take responsibility for that person or that person’s financial and other affairs.

**Sec. 23-1102. Declaration of Purpose and Policy.**

(a) The Tribal Council of the Sac and Fox Tribe of the Mississippi in Iowa hereby declares that in order to provide for vulnerable adults and minors, either enrolled or residing within the Settlement, and to promote the social and economic welfare and to protect the peace, safety, and general welfare of the Tribe, it is necessary to adopt a guardianship and conservatorship code.

(b) The Tribe recognizes that under the Constitution of the Sac and Fox Tribe of the Mississippi in Iowa, the Tribal Council has been delegated the powers and duty to provide for the appointment of guardians for minors and mental incompetents by ordinance or resolution subject to review by the Secretary of the Interior. Constitution & Bylaws at Article X Sec. 1 (o).

**Sec. 23-1103. Authority.**

This Title is enacted pursuant to the powers of the Tribal Council contained in Article X of the Constitution of the Sac and Fox Tribe of the Mississippi in Iowa, according to the following provisions:

(a) Constitution & Bylaws at Article X Sec. 1 (o) provides that the Tribal Council has been delegated the powers and duty to provide for the appointment of guardians for minors and mental incompetents by ordinance or resolution subject to review by the Secretary of the Interior. The Tribe finds that as a means to provide for minors and mental incompetents the Tribe adopts this guardianship and conservatorship code.

(b) Article X, Sec. 1(f) of the Constitution provides that the Tribal Council is empowered to encourage, *inter alia*, the tradition, and culture of the Sac and Fox Tribe. The Tribe finds that as a means to foster Meskwaki tradition and culture in caring for its members in need of a guardian or conservator, the Tribe adopts this guardianship and conservatorship code.

(c) Article X, Sec. 1(k) of the Constitution provides that the Tribal Council is empowered to regulate the use and disposition of property of members or associations of members of the Tribe insofar as necessary to protect the peace, safety, and general welfare of the Tribe. The Tribe finds that as a means to regulate the use and disposition of property of its members in need of a guardian or conservator, the Tribe adopts this guardianship and conservatorship code.

**Sec. 23-1104. Jurisdiction.**

The Tribal Court of the Sac and Fox Tribe of the Mississippi in Iowa shall have personal jurisdiction as set forth in the Code of the Sac and Fox Tribe of the Mississippi in Iowa, Title 5, Sec. 5-4102 and as it may be amended. The Tribal Court of the Sac and Fox Tribe of the Mississippi in Iowa shall have subject matter jurisdiction of conservatorship and guardianship proceedings and shall have the power and duty to appoint guardians and conservators, to grant letters of conservatorship and guardianship, to administer, settle and close conservatorship and guardianship proceedings when: (a) the ward or the proposed guardian or conservator is/are enrolled member(s) of the Tribe; or (b) when the ward or the proposed guardian or conservator reside(s) on Tribal land or within the Meskwaki Settlement.

**Sec. 23-1105. Civil Action.**

Actions and proceedings arising pursuant to this Guardianship and Conservatorship Code are civil actions.

**Sec. 23-1106. Severability.**

If any clause, sentence, paragraph, section or part of this Guardianship and Conservatorship Code shall, for any reason be adjudicated by any court of competent jurisdiction, to be invalid or unconstitutional, such judgment shall not affect, impair or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, section or part thereof directly involved in the controversy in which the judgment shall have been rendered.

**Sec. 23-1107. Construction.**

(a) This Guardianship and Conservatorship Code shall be interpreted and applied in a manner consistent with all other Codes, Laws, Ordinances, Resolutions, and Regulations of the Sac and Fox Tribe of the Mississippi in Iowa.

(b) Unless expressly provided otherwise, nothing in this Title shall be construed as limiting, waiving or abrogating the sovereignty or the sovereign immunity of the Sac and Fox Tribe of the Mississippi in Iowa or any of its agencies, departments, corporations, enterprises, agents, officials, or employees.

(c) Inclusion of or reference to language, definitions, procedures, or other statutory or administrative provisions of other jurisdictions in this Title shall not be deemed an action deferring to or consenting to such other jurisdiction by the Sac and Fox Tribe of the Mississippi in Iowa.

**Sec. 23-1108. Effect of Headings.**

Headings contained herein shall not be deemed to govern, limit, modify, or in any manner affect the scope, meaning, or intent of the provisions of any portion of this Guardianship and Conservatorship Code.

**Sec. 23-1109. Applicability of Rules of Civil Procedure.**

All actions triable in guardianship and/or conservatorship shall be governed by the Rules of Civil Procedure of the courts of the Sac & Fox Tribe of the Mississippi in Iowa.

**CHAPTER 2. PROCEDURES & PROVISIONS APPLICABLE TO GUARDIANSHIPS & CONSERVATORSHIPS**

**Sec. 23-1201. Pleadings and trial - rules of civil procedure.**

All pleadings, hearings, and the trial of the case shall be governed by the Rules of Civil Procedure of the Sac & Fox Tribe of the Mississippi in Iowa. The cause shall be tried as a civil action at law, and neither party shall be entitled to a jury trial.

**Sec. 23-1202. Reports and applications for orders.**

All petitions, reports, and applications for orders in guardianship and conservatorship proceedings must be in writing, verified, acknowledged or certified, and self-explanatory.

**Sec. 23-1203. Combining petitions.**

The petitions for the appointment of a guardian and a conservator may be combined and the cause tried in the same manner as a petition for the appointment of a conservator.

**Sec. 23-1204. Same person as guardian and conservator.**

The same person may be appointed to serve as both guardian and conservator.

**Sec. 23-1205. Service.**

Service of process of the petition to commence a proceeding for guardianship or conservatorship shall be effected as set forth in the Rules of Civil Procedure and the Code of the Sac & Fox Tribe of the Mississippi in Iowa for civil actions and shall be served on persons designated in this Article.

**Sec. 23-1206. Waiver of Notice.**

Any notice required under this Guardianship and Conservatorship Code or by order of the court may be waived in writing by the person, guardian or conservator entitled to receive such notice.

**Sec. 23-1207. Proof of service.**

Proof of service of any notice required by this Guardianship and Conservatorship Code or by order of the court, including those by publication, shall be filed with the clerk.

**Sec. 23-1208. Notice - commencement of action.**

(a) *Proposed ward is an adult.*

(1) If the proposed ward is an adult, notice of the filing of the petition shall be served upon the proposed ward in the manner of an original notice and the content of the notice is governed by the rules of civil procedure governing original notice.

(2) Notice shall also be served upon the ward's spouse. If the ward has no spouse, notice shall be served upon the ward's adult children, if any.

(b) *Proposed ward is a minor.* If the proposed ward is a minor, notice of the petition

shall be served upon the minor and upon the parent(s) or legal guardian(s) of the minor in the manner of an original notice and the content of the notice is governed by the rules of civil procedure governing original notice.

(c) If the court determines, pursuant to Sec. 23-1210 that the proposed ward is entitled to representation, notice in the manner of original notice or another form of notice ordered by the court, given to the attorney representing the ward, if any, is notice to the proposed ward.

(d) Proof of service shall be made by affidavit, which affidavit shall list all of the documents that were served.

**Sec. 23-1209. Notice of hearing or trial.**

(a) *Court prescribes notice of hearing or trial.* Unless otherwise provided in this Code the court shall fix the time and place of hearing of any matter requiring notice and shall prescribe the time and manner of service of the notice of such hearing.

(b) *Notice by publication.* In the case of proceedings against unknown persons or persons whose address or whereabouts are unknown, the court may, after application by the party seeking to serve by publication, prescribe that notice of hearing or trial may be served by publication within the time and manner provided by the Rules of Civil Procedure of the Sac & Fox Tribe of the Mississippi in Iowa.

(c) *Notice otherwise provided.* In its discretion the court's notice may direct each interested party to file the party's objections/responses thereto in writing, if any, within twenty after the day the notice is served upon the party, and that unless the party does so file objections/response in writing that the party will be forever barred from making any objections thereto. Said notice shall be served upon each interested party in compliance with the rules of civil procedure. In the event objections thereto are timely filed, the court shall fix the time and place of the hearing for the judicial determination of the issues raised.

**Sec. 23-1210. Representation.**

(a) In a proceeding for the appointment of a guardian and/or conservator:

(1) If the proposed ward is an adult the proposed ward is entitled to representation. Upon the filing of the petition, or as soon thereafter as reasonably possible, the court shall appoint an attorney to represent the proposed ward if the ward has not retained counsel, subject to the provisions set forth in Sec. 23-1210 (c), below, and the court shall set a hearing on the petition and date therefor, and provide for notice of the appointment of counsel if counsel is appointed by the court.

(2) If the proposed ward is a minor the court shall determine in its sole

discretion whether, under the circumstances of the case, the proposed ward is entitled to representation. The determination regarding representation may be made with or without notice to the proposed ward, as the court deems necessary. If the court determines that the proposed ward is entitled to representation and if the minor has not retained counsel, the court shall appoint an attorney to represent the proposed ward subject to the provisions of Sec. 23-1210(c), below. After making the determination regarding representation, the court shall set a hearing on the petition and the date thereof and provide for notice on the determination regarding representation and notice of appointment of counsel if counsel is appointed by the court.

(3) The court may take action under paragraph (1) or (2) above prior to the service of the original notice upon the proposed ward.

(4) The court may reconsider the determination regarding representation upon application by any interested person.

(5) The court may discharge the attorney appointed by the court if it appears upon the application of the proposed ward or any other interested person that the ward has privately retained an attorney who has filed an appearance on behalf of the proposed ward.

(b) The court shall ensure that all proposed wards entitled to representation have been provided with notice of the right to representation and the right to be personally present at all proceedings and shall make findings of fact in any order of disposition setting out the manner in which notification was provided.

(c) The cost of court appointed or privately retained counsel for the ward shall be paid by the ward or the estate of the ward, except if the ward does not have sufficient assets and funds to pay the cost of legal counsel, the court shall pay such reasonable costs. If the ward subsequently is able to pay the cost of the ward's legal counsel and reimburse the court for legal expenses of the ward paid by the court, the ward shall do so.

(d) An attorney representing a ward shall:

(1) Ensure that the proposed ward has been properly advised of the nature and purpose of the proceeding.

(2) Ensure that the proposed ward has been properly advised of the ward's rights in a guardianship and/or conservatorship proceeding.

(3) Personally interview the proposed ward.

(4) File a written report stating whether there is a return on file showing

that proper service on the proposed ward has been made and also stating that specific compliance with paragraphs (1) through (3) immediately above has been made or stating the inability to comply by reason of the proposed ward's condition.

(5) Represent the proposed ward.

(6) Ensure that the guardianship and/or conservatorship procedures conform to the statutory and due process requirements of the Rules of Civil Procedure and Code of the Sac & Fox Tribe of the Mississippi in Iowa.

(7) Inform the proposed ward of the effects of the order entered for appointment of guardian and/or conservator.

(8) Advise the ward of the ward's right to petition for modification or termination of the guardianship and/or conservatorship.

(9) Advise the ward of the rights retained by the ward.

**Sec. 23-1211. Preference for appointment of guardian and/or conservator - minor and adult.**

(a) *Minor.* The parents or legal guardian(s) of a minor, if qualified and suitable, shall be preferred over all others for appointment as guardian and/or conservator. Preference shall then be given to any person, if qualified and suitable, nominated as guardian and/or conservator for a minor child by a will executed by the parent having custody of a minor child, any qualified and suitable person requested by a minor fourteen years of age or older, or to any family member. Subject to these preferences, the court shall appoint as guardian and/or conservator a qualified and suitable person who is willing to serve in that capacity and the preferences herein are recommended but not mandatory.

(b) *Adult.* The spouse of an adult, if qualified and suitable, shall be preferred over all others for appointment as guardian and/or conservator. Preference shall then be given to any adult child and then to any family member, if qualified and suitable, nominated as guardian and/or conservator for an adult. Subject to these preferences, the court shall appoint as guardian and/or conservator a qualified and suitable person who is willing to serve in that capacity.

**Sec. 23 - 1212. Affidavit of guardian and/or conservator.**

Prior to being appointed as a guardian or conservator, and prior to issuance of letters of guardianship or conservatorship, the proposed appointee shall complete, sign under oath, and file with the clerk, an affidavit stating whether the proposed appointee has:

(a) Ever been convicted of a felony in any jurisdiction;

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**ARTICLE I**

(b) Acted as guardian or conservator in any jurisdiction for any person within three years of the filing of the petition in this matter;

(c) Reviewed and has a working knowledge of the powers and duties imposed on a guardian and/or conservator, as applicable;

(d) Acted in a fiduciary capacity pursuant to a power-of-attorney for any person in any jurisdiction within three years of the filing of the petition in this matter;

(e) Ever been listed in an Elder Abuse or Sex Offender Registry in any jurisdiction at any time and whether any enterprise in which the proposed appointee has an interest has ever been listed in an Elder Abuse or Sex Offender Registry or in any jurisdiction at any time;

(f) If appointed as a guardian or conservator for any person within three years prior to the filing of the petition in this case, whether the proposed appointee in this case has ever failed to file any Report of Guardian or Conservator in any jurisdiction later than three months after the date the report was due;

(g) Ever been removed as a guardian or conservator for any person in any jurisdiction at any time;

(h) Ever received anything of value exceeding a total of one hundred dollars in any one year, by gift, devise, or bequest from any individual, or estate of an individual, to whom the proposed appointee is not related by blood or marriage and for whom the proposed appointee served at any time as guardian, conservator, trustee, or attorney-in-fact;

(i) Ever had an interest in an enterprise that received anything of value exceeding a total of one hundred dollars in any one year, by gift, devise, or bequest from any individual, or estate of an individual, to whom the proposed appointee is not related by blood or marriage and for whom the enterprise and/or proposed appointee served at any time as guardian, conservator, trustee, or attorney-in-fact;

(j) Been named as a personal representative, trustee or other type of beneficiary of any individual to whom the proposed appointee is not related by blood or marriage and for whom the proposed appointee served as guardian, conservator, trustee, or attorney-in fact;

(k) Ever had an interest in an enterprise where the enterprise was or is named as a personal representative, trustee or other type of beneficiary of any individual to whom the proposed appointee is not related by blood or marriage and for whom the enterprise and/or proposed appointee served as guardian, conservator, trustee, or attorney-in fact;

(l) Any interest in any enterprise providing housing, health care, or comfort care services to any individual;

(m) The proposed appointee shall state the nature of his/her relationship with the

proposed ward.

**Sec. 23-1213. Guardianships and conservatorships - burden of persuasion; general provisions.**

(a) The determination of incompetency of the proposed ward or ward and the determination of the need for the appointment of a guardian or conservator or of the modification or termination of a guardianship or conservatorship shall be supported by clear and convincing evidence.

(b) The burden of persuasion is on the petitioner in an initial proceeding to appoint a guardian or conservator. In a proceeding to modify or terminate a guardianship or conservatorship, if the guardian or conservator is the petitioner, the burden of persuasion remains with the guardian or conservator. In a proceeding to terminate a guardianship or conservatorship, if the ward is the petitioner, the ward shall make a prima facie showing of some decision-making capacity. Once a prima facie showing is made, the burden of persuasion is on the guardian or conservator to show by clear and convincing evidence that the ward is incompetent.

(c) In determining whether a guardianship or conservatorship is to be established, modified, or terminated, the court shall consider whether a limited guardianship pursuant to Sec. 23-1303(e) and Sec. 23-1306(b), of this Article is appropriate. In making the determination, the court shall make findings of fact to support the powers conferred on the guardian or conservator.

(d) In proceedings to establish, modify, or terminate a guardianship or conservatorship, in determining if the proposed ward or ward is incompetent as defined in Sec. 23-1101(i) of this Article, the court shall consider credible evidence from any source to the effect of third-party assistance in meeting the needs of the proposed ward or ward if such evidence is offered. However, neither party to the action shall have the burden to produce such evidence relating to third-party assistance.

(e) Except as otherwise provided in Sec. 23-1210(a)(1) and (2), and Sec. 23-1210(c), in proceedings to establish a guardianship or conservatorship, the costs, including attorney fees and expert witness fees, shall be assessed against the ward or the ward's estate or as may be otherwise ordered by the Court. If the proceeding is dismissed either voluntarily or involuntarily the fees and costs may be assessed against the petitioner for good cause shown.

**Sec. 23-1214. Letters of guardian or conservator issued.**

Upon the guardian or conservator filing an affidavit of guardian or conservator pursuant to Sec. 23-1213, and filing proof of bond if any bond is required, the clerk shall issue letters under the seal of the court giving the guardian or conservator the powers authorized by law with said powers to be enumerated in the letters.

**Sec. 23 -1215. Oath - acceptance of appointment.**

Every guardian and conservator, before entering upon the duties herein, shall subscribe an oath or certify under penalty of perjury that the guardian or conservator will faithfully discharge the duties imposed by law according to the best of the guardian's or conservator's ability.

**Sec. 23-1216. Effect of appointment - ward.**

The appointment of a guardian or conservator shall not constitute an adjudication that the ward is of unsound mind.

**Sec. 23-1217. Legal effect of appointment - guardian or conservator.**

By qualifying as guardian and/or conservator any person, whether a resident or nonresident of the Meskwaki Settlement, whether a Tribal member or non-Tribal member, submits to the jurisdiction of the Tribal Court, and, in addition, shall be deemed to agree that:

(a) All property coming into the guardian's and/or conservator's control or possession as a result of the guardianship and/or conservatorship appointment is subject to the jurisdiction of the Tribal Court; and

(b) The guardian and/or conservator is subject to all orders entered by the court in the proceedings in which the guardian and/or conservator is serving and that notices served upon the guardian and/or conservator with respect thereto in compliance with the procedure prescribed in this Code shall have the same force and effect as if such service had been personally made upon the guardian and/or conservator within the jurisdiction and boundaries of the Meskwaki Settlement; and

(c) The guardian and/or conservator shall be subject to the jurisdiction of the Tribal Court in all actions and proceedings against the guardian and/or conservator arising from or growing out of the guardianship and/or conservatorship relationship and activities and that the service of process in such actions and proceedings may be made upon the guardian and/or conservator by serving the original notice upon the guardian and/or conservator outside the Meskwaki Settlement and that such service shall have the same force and effect as though the service had been personally made upon the guardian and/or conservator within the Meskwaki Settlement.

**Sec. 23-1218. Compensation of guardian or conservator.**

The guardian or conservator may be compensated from the estate of the ward at such reasonable amount as may be determined by the court for services rendered and for good cause shown upon application to the court and after hearing and determination and order by the court as to said request for compensation.

**Sec. 23-1219. Self-dealing by guardian or conservator.**

No guardian or conservator shall in any manner engage in self-dealing, except on order of the court after notice to all interested persons, and shall derive no profit other than the amounts to be paid to said conservator or guardian after application therefor by the guardian or conservator and after approval by and order of the court. Every application of a guardian or conservator seeking an order under the provisions of this section shall specify in detail the reasons for such application and the facts justifying the requested order.

**Sec. 23-1220. Liability of guardians and conservators.**

Guardians and conservators shall not be held personally liable for actions or omissions taken or made in the official discharge of the guardian's or conservator's duties, except for any of the following:

(a) A breach of fiduciary duty imposed by this Guardianship and Conservatorship Code.

(b) Willful or wanton misconduct in the official discharge of the guardian's or conservator's duties.

**Sec. 23-1221. Tort liability of guardians and conservators.**

The fact that a person is a guardian or conservator shall not in itself make the person personally liable for damages for the acts of the ward.

**Sec. 23-1222. Cause for termination.**

A guardianship shall cease and a conservatorship shall terminate upon the occurrence of any of the following circumstances:

(a) If the ward is a minor, when the ward reaches the age of majority.

(b) The death of the ward.

(c) A determination by the court that the ward is no longer a person whose decision-making capacity is so impaired as to bring the ward within the categories of section Sec. 23-1301 and/or Sec. 23-1401. In a proceeding to terminate a guardianship or a conservatorship, the ward shall make a prima facie showing that the ward has some decision-making capacity. Once the ward has made that showing, the guardian or conservator has the burden to prove by clear and convincing evidence that the ward's decision-making capacity is so impaired, as provided in Sec. 23-1301(b)(1) and/or Sec. 23-1401(b)(1) that the guardianship or conservatorship should not be terminated.

(d) Upon determination by the court that the conservatorship or guardianship is no

longer necessary for any other reason.

**Sec. 23-1223. Petition to terminate - request for voting rights reinstatement.**

At any time after the appointment of a guardian or conservator, the person under guardianship or conservatorship may apply to the court by petition, alleging that the person is no longer a proper subject thereof, and asking that the guardianship or conservatorship be terminated. A person under an order appointing a guardian which order found the person incompetent to vote may include a request for reinstatement of the person's voting rights in a petition to terminate the guardianship or by filing a separate petition for modification of this determination.

**Sec. 23-1224. Limit on application to terminate.**

If any petition for terminating such guardianship or conservatorship shall be denied, no other petition shall be filed therefor until at least six months shall have elapsed since the denial of the former one.

**CHAPTER 3. GUARDIANSHIP**

**Sec. 23-1301. Petition for appointment of guardian.**

Any person may file with the clerk a verified petition for the appointment of a guardian. The petitioner shall state the following information so far as known to the petitioner.

- (a) The name, age and physical address of the proposed ward and post office box address if there is no physical address where mail is regularly delivered.
- (b) The petitioner's relationship to the ward.
- (c) That the proposed ward is in either of the following categories and the factual basis in support thereof:
  - (1) Is a person whose decision-making capacity is so impaired that the person is unable to care for the person's personal safety or to attend to or provide for necessities for the person such as food, shelter, clothing, or medical care, without which physical injury or illness might occur.
  - (2) Is a minor.
- (d) The name and physical address of the proposed guardian and post office box address if there is no physical address where mail is regularly delivered, and that such person is qualified to serve in that capacity.

(e) That the proposed ward is an enrolled Tribal member or resides within the Meskwaki Settlement, or that the proposed guardian is an enrolled Tribal member or resides within the Meskwaki Settlement, and that the proposed ward's best interests require the appointment of a guardian.

(f) The name and address of the person or institution, if any, having the care, custody or control of the proposed ward.

**Sec. 23-1302. Notification of guardianship powers.**

In a proceeding for the appointment of a guardian, the proposed ward shall be given written notice by the court or the person designated by court order, which advises the proposed ward that if a guardian is appointed, the guardian may, without court approval, provide for the care of the ward, manage the ward's personal property and effect, assist the ward in developing self-reliance and receiving professional care, counseling, treatment or services as needed, and ensure that the ward receives necessary emergency medical services. The notice shall also advise the proposed ward that, upon the court's approval, the guardian may change the ward's permanent residence to a more restrictive residence, and arrange for major elective surgery or any other non-emergency major medical procedure. The notice shall clearly advise the proposed ward of the right to counsel and the potential deprivation of the proposed ward's civil rights. The notice shall also state that the proposed ward may use the ward's own attorney instead of an attorney appointed by the court. In an involuntary guardianship proceeding, the notice shall be served upon the proposed ward with the notice of the filing of the petition as provided in Sec. 23-1208.

**Sec. 23-1303. Responsibilities of guardian.**

(a) Based upon the evidence produced at the hearing, and upon the appointment of a guardian, the court may grant a guardian the following powers and duties which may be exercised without further court approval:

(1) Providing for the care, comfort and maintenance of the ward, including the appropriate training and education to maximize the ward's potential.

(2) Taking reasonable care of the ward's clothing, furniture, vehicle and other personal effects.

(3) Assisting the ward in developing maximum self-reliance and independence.

(4) Ensuring the ward receives necessary emergency medical services.

(5) Ensuring the ward receives professional care, counseling, treatment, or services as needed. If necessitated by the physical or mental disability of the ward, the provision of professional care, counseling, treatment, or services limited to the provision of routine physical and dental examinations and procedures under anesthesia is included,

if the anesthesia is provided within the scope of the health care practitioner's scope of practice.

(b) A guardian may be granted the following additional powers which may only be exercised only upon court approval:

(1) Changing, at the guardian's request, the ward's permanent residence if the proposed new residence is more restrictive of the ward's liberties than the current residence.

(2) Arranging for the provision of major elective surgery or any other non-emergency major medical procedure. For the purposes of this paragraph "*major elective surgery*" and "*non-emergency major medical procedure*" do not include the provision to the ward of professional care, counseling, treatment, or services limited to the provision of routine physical and dental examinations and procedures under anesthesia, if the use of anesthesia is necessitated by the physical or mental disability of the ward, and if the anesthesia is provided within the scope of the health care practitioner's scope of practice.

(3) Consent to the withholding or withdrawal of life-sustaining procedures.

(c) For the purposes of this section:

(1) "Routine dental examinations and procedures" means and includes preventive services, diagnostic services, restorative services, periodontal services, endodontic services, oral surgery, prosthetic services, and orthodontic services.

(2) "Routine physical examinations and procedures" means and includes examinations and procedures performed for the purpose of general treatment or diagnosis or for the purpose of treatment or diagnosis related to a specific illness, symptom, complaint, or injury.

(d) The court may take into account all available information concerning the capabilities of the ward and any additional evaluation deemed necessary, including the availability of third-party assistance to meet the needs of the ward or proposed ward.

(e) The court may direct that the guardian have only a specially limited responsibility for the ward. In that event, the court shall state those areas of responsibility which shall be supervised by the guardian and all other shall be retained by the ward.

(f) The court may make a finding that the ward lacks the capacity to contract a valid marriage.

(g) From time to time, upon a proper showing, the court may modify the respective responsibilities of the guardian and the ward, after notice to the ward and an opportunity to be heard. Any modification that would be more restrictive or burdensome for the ward shall be

based on clear and convincing evidence that the ward continues to fall within the categories of Sec. 23-1301(c)(1) and that the facts justify a modification of the guardianship. Sec. 23-1214 applies to the modification proceedings. Any modification that would be less restrictive for the ward shall be based upon proof in accordance with the requirements of Sec. 23-1223.

**Sec. 23-1304. Qualification of guardian - resident.**

Any natural person over the age of eighteen years who is a family member of the ward, or who resides within the Meskwaki Settlement, or who is an enrolled member of the Sac and Fox Tribe of the Mississippi in Iowa, or who is the Director of Meskwaki Family services or the Director's designee and who is an employee of Meskwaki Family Services, or any other person as defined in this Article who is qualified to serve as a guardian except the following:

- (a) One who is under legal incompetency or is a chronic alcoholic, substance abuser, or a spendthrift.
- (b) Any other person whom the court determines to be unsuitable.

**Sec. 23-1305. Qualification of guardian - nonresident.**

The court may, upon application, appoint the following nonresidents as guardian: A person who does not reside within the exterior boundaries of the Meskwaki Settlement and who is not an enrolled member of the Sac & Fox Tribe of the Mississippi in Iowa and who is otherwise qualified under the provisions of Sec. 23-1304, provided there is a resident guardian appointed to serve with such nonresident guardian; and provided further that the court, for good cause shown, may appoint such nonresident guardian to serve alone without the appointment of a resident guardian.

**Sec. 23-1306. Appointment of guardian.**

(a) If the allegations of the petition as to the status of the proposed ward and the necessity for the appointment of a guardian are proved by clear and convincing evidence, the court may appoint a guardian. If the court appoints a guardian based upon mental incapacity of the proposed ward the court shall make a separate determination as to the ward's competency to vote. The court shall find a ward incompetent to vote only upon a determination that the person lacks sufficient mental capacity to comprehend and exercise the right to vote.

(b) In all proceedings to appoint a guardian, the court shall consider the functional limitations of the proposed ward and whether a limited guardianship as set forth in Sec. 23-1303(e) is appropriate.

(c) Sec. 23-1214 applies to the appointment of a guardian.

**Sec. 23-1307. Appointment of a temporary guardian.**

A temporary guardian may be appointed, but only after a hearing on such notice, and subject to such conditions, as the court shall prescribe.

**Sec. 23-1308. Bond.**

A guardian shall not be required to give bond unless the court, for good cause, finds that the best interests of the ward require a bond. If the court orders a guardian to post a bond, the provisions of Chapter 4 of this Title apply insofar as the provisions relate to a bond and reporting.

**Sec. 23-1309. Reporting requirements - guardian.**

(a) A guardian appointed under this chapter shall file with the court the following written verified reports:

(1) An initial report within sixty days of the guardian's appointment.

(2) An annual report every year within ninety days of the annual anniversary of appointment of the guardian, unless the court otherwise orders that a report should be filed every six months or at some other interval to be determined by and in the discretion of the court.

(3) A final report within thirty days of the termination of the guardianship under Sec. 23-1223 and Sec. 23-1311 unless that time is extended by the court.

(b) Reports required by this section must include:

(1) The current mental and physical condition of the ward.

(2) The present living arrangements of the ward, including a description of each residence where the ward has resided during the reporting period.

(3) A summary of the medical, educational, vocational and other professional services provided for the ward.

(4) A report of the ward's income, assets, debts, disbursements and other relevant financial information for the reporting period.

(5) A description of the guardian's visits with and activities on behalf of the ward.

(6) A recommendation as to the need for continued guardianship.

(7) Other information requested by the court or useful in the opinion of the

guardian.

(c) Reports of the guardian shall be reviewed by the court and either approved or not approved. If the report is not approved notice shall be given to the guardian as to the deficiencies in the report and the court shall set a deadline by which the report must be resubmitted.

(d) Reports required by this section shall be served on any attorney representing The ward in the guardianship proceeding and all other parties appearing in the proceeding.

**Sec. 23-1310. Property delivered - penalty.**

Upon the removal of any guardian pursuant to Sec. 23-1311 or upon termination of guardianship pursuant to Sec. 23-1223, the guardian shall be required by order of the court to deliver to the person who may be entitled thereto all the property in the guardian's possession or under the guardian's control belonging to the ward no later than thirty (30) days following the removal or termination and if the guardian fails or refuses to comply with any proper order of the court, the guardian may be sanctioned, fined, and/or committed to jail until the guardian complies.

**Sec. 23-1311. Removal of guardian.**

When any guardian is, or becomes, disqualified under Sec. 23-1304 or Sec. 23-1305, or has failed to perform any duty imposed by law, or by any lawful order of court, then the court may remove the guardian. The court may upon its own motion, and shall upon the filing of a verified petition by any person interested in the estate, including a surety on the guardian's bond if any, order the guardian to appear and show cause why the guardian should not be removed. Any such petition shall specify the grounds of complaint. The removal of a guardian after letters are duly issued to the guardian shall not invalidate the guardian's official acts performed prior to removal.

**Sec. 23-1312. Appointment of successor guardian.**

When any guardian fails to qualify, dies, is removed by the court, or resigns, and such resignation is accepted by the court, the court may, and if the guardian were the sole or last surviving guardian, the court shall appoint another guardian in the former's place.

**Sec. 23-1313. Powers of successor guardian.**

When a successor guardian is appointed, the successor shall have all the rights, powers, titles and duties of the predecessor, except that the successor shall not exercise powers given in any order creating the power that by its express terms are personal to the guardian therein designated.

**CHAPTER 4. CONSERVATORSHIP****Sec. 23 - 1401. Petition for appointment of conservator.**

Any person may file with the clerk a verified petition for the appointment of a conservator. The petition shall state the following information, so far as known to the petitioner.

- (a) The name, age and address of the proposed ward.
- (b) That the proposed ward is in either of the following categories and the factual basis therefor:
  - (1) Is a person whose decision-making capacity is so impaired that the person is unable to make, communicate, or carry out important decisions concerning the person's financial affairs.
  - (2) Is a minor.
- (c) The name and address of the proposed conservator, the relationship of the proposed conservator to the ward, and that such person is qualified to serve in that capacity.
- (d) The estimated present value of the real estate, the estimated value of the personal property, and the estimated gross annual income of the estate of the ward. If any money is payable, or to become payable, to the proposed ward by any third party, entity or agency of the Sac and Fox Tribal government, or federal, or state government, the petition shall so state.
- (e) The name and address of the person or institution, if any, having the care, custody or control of the proposed ward.
- (f) That the proposed ward resides with the exterior boundaries of the Meskwaki Settlement and/or is an enrolled member of the Sac and Fox Tribe of the Mississippi in Iowa, is a non-resident, is not enrolled, or that the proposed ward's residence is unknown, and that the proposed ward's best interests require the appointment of a conservator.

**Sec. 23 - 1402. Notification of conservatorship powers.**

In a proceeding for the appointment of a conservator, the proposed ward shall be given written notice which advised the proposed ward that if a conservator is appointed, the conservator may, without court approval, manage the proposed ward's principal, income, and investments, sue and defend any claim by or against the ward, sell and transfer personal property, and vote at corporate meetings. The notice shall also advise the proposed ward that, upon the court's approval, the conservator may invest the ward's funds, execute leases, make payments to or for the benefit of the ward, support the ward's legal dependents, compromise or settle any claim, and do any other thing that the court determines is in the ward's best interests. The notice

shall clearly advise the proposed ward of the right to counsel and the potential deprivation of the proposed ward's civil rights. The notice shall also state that the propose ward may use the ward's own attorney instead of an attorney appointed by the court. The notice shall be served upon the proposed ward as provided in Sec. 23-1208.

**Sec. 23 - 1403. Appointment of conservator.**

If the allegations of the petition as to the status of the proposed ward and the necessity for the appointment of a conservator are proved by clear and convincing evidence, and if the proposed ward has assets in an amount exceeding Twenty Five Thousand Dollars (\$25,000.00), then the court may appoint a conservator.

**Sec. 23- 1404. Appointment of a temporary and/or limited conservator.**

A temporary and/or limited conservator may be appointed but only after a hearing on such notice, and subject to such conditions, as the court shall prescribe.

**Sec. 23-1405. Duties of conservator.**

(a) It is the duty of the conservator of the estate to protect and preserve it, to Invest it prudently, to account for it as herein provided, and to perform all other duties required of the conservator by law, and at the termination of the conservatorship, to deliver the assets of the ward to the person entitled thereto.

(b) The conservator shall report to the court at least annually unless the court otherwise orders that a report should be filed every six months or at some other interval to be determined by and in the discretion of the court, and the report shall comply with the provisions of Sec. 23-1418.

**Sec. 23-1406. Powers of the conservator without further order of court.**

Upon appointment by the court as the ward's conservator, the conservator shall have the full power, without further order of the court, with relation to the estate of the ward:

(a) To collect, receive, and provide receipts for, any principal or income, and to enforce, defend against or prosecute any claim by or against the ward or the conservator; to sue on and defend claims in favor of , or against, the ward or the conservator.

(b) To sell and transfer personal property of a perishable nature and personal property for which there is a regularly established market.

(c) To vote at corporate meetings in person or by proxy.

(d) To receive additional property from any source.

(e) To continue to hold any investment or other property originally received by the conservator and also any increase therefor, pending the timely filing of the first annual report.

**Sec. 23-1407. Powers of conservator subject to the approval of the court.**

Upon appointment, a conservator shall have the following powers subject to prior approval of the court after hearing on such notice, if any, as the court may prescribe:

- (a) To invest the funds belonging to the ward.
- (b) To execute leases.
- (c) To make payments to, or for the benefit of, the ward in any of the following ways:
  - (1) Directly to the ward;
  - (2) Directly for the maintenance, welfare and education of the ward;
  - (3) To the legal guardian of the person of the ward; or
  - (4) To anyone who at the time shall have the custody and care of the person of the ward.
- (d) To apply any portion of the income or of the estate of the ward for the support of any person for whose support the ward is legally liable.
- (e) To make an election for the ward who is a surviving spouse.
- (f) To do any other thing that the court determines to be in the best interest of the ward and the ward's estate.
- (g) Under order of court, for good cause shown, after such notice as the court may prescribe, a conservator shall have the power to breach contracts of the ward entered into by the ward prior to the appointment of a conservator, thereby incurring such liability of the ward's estate for such breach as the ward would have incurred for such breach if the ward had been competent.
- (h) Under order of court, for good cause shown, after such notice as the court may prescribe, a conservator shall have the power to sell, mortgage, exchange, pledge and lease real and personal property belonging to the ward, including the homestead and exempt personal property, when it appears to be to the best interests of the ward, upon such terms and conditions that the court may order and as permitted by law.

**Sec. 23-1408. Powers of ward.**

(a) A ward for whom a conservator has been appointed shall not have the power to convey, encumber, or dispose of property in any manner, other than by will if the ward possesses the requisite testamentary capacity, unless the court determines that the ward has a limited ability to handle the ward's own funds. If the court makes such a finding, it shall specify to what extent the ward may possess and use the ward's own funds.

(b) Any modification of the powers of the ward that would be more restrictive of the ward's control over the ward's financial affairs shall be based upon clear and convincing evidence and the burden of persuasion is on the conservator. Any modification that would be less restrictive of the ward's control over the ward's financial affairs shall be based upon proof in accordance with the requirements of Sec. 23-1223.

**Sec. 23-1409. Qualification of conservator - resident.**

Any natural person over the age of eighteen years who is a family member of the ward, or who resides within the Meskwaki Settlement, or who is an enrolled member of the Sac and Fox Tribe of the Mississippi in Iowa, or who is the Director of Meskwaki Family services or the Director's designee and who is an employee of Meskwaki Family Services, or any other person as defined in this Article who is qualified to serve as a conservator except the following:

(a) One who is under legal incompetency or is a chronic alcoholic or substance abuser or a spendthrift.

(b) Any other person whom the court determines to be unsuitable.

**Sec. 23-1410. Qualification of conservator - nonresident.**

The court may, upon application, appoint the following nonresidents as conservator: A person as defined in this Article who does not reside within the exterior boundaries of the Meskwaki Settlement and who is not an enrolled member of the Sac & Fox Tribe of the Mississippi in Iowa and who is otherwise qualified under the provisions of Sec. 23-1409, provided there is a resident conservator appointed to serve with such nonresident conservator; and provided further that the court, for good cause shown, may appoint such nonresident conservator to serve alone without the appointment of a resident conservator.

**Sec. 23 -1411. Bond.**

Whenever a conservator is appointed, or upon the court determining that a guardian shall be required to post bond, the court shall determine the amount of bond as set forth in Sec. 23-1412 below and the terms and conditions thereof. Upon such determination by the court, the conservator and/or guardian shall file with the clerk a certified copy of the conservator's official bond with sufficient surety or sureties and it shall be conditioned upon the faithful discharge of all the duties of the conservator and/or guardian according to law, including the duty to account. The bond shall be procured at the expense of the estate if an approved surety bond is furnished.

## TITLE 23

## ARTICLE I

The bond shall be duly authenticated by the clerk and the court or clerk shall also file as a court record a receipt for the property of the ward received by the conservator or guardian, which receipt shall be provided to the clerk by the guardian or conservator. The clerk shall file and record the bond(s) and receipt(s).

### **Sec. 23-1412. Amount of bond.**

Except as otherwise set forth herein or as may be otherwise ordered by the court for good cause shown, the court or the clerk shall fix the penalty of the bond in an amount equal to the value of the personal property of the estate, plus the estimated gross annual income of the estate during the period of administration. The court shall not exempt a conservator from giving a bond in a conservatorship with total assets of more than Twenty Five Thousand Dollars (\$25,000.00) except for good cause shown.

### **Sec. 23-1413. Bond - approval by clerk.**

The bond shall not be deemed sufficient until it has been examined and approved by the clerk who shall endorse such approval thereon. In the event the bond is not approved, the conservator or guardian shall, within such time as the court directs, secure and file a bond with satisfactory surety or sureties.

### **Sec. 23-1414. Review by clerk when inventory is filed.**

At the time the inventory of the estate is filed, the clerk shall review the amount of bond, and report to the court as to any apparent insufficiency thereof.

### **Sec. 23-1415. Bond changed.**

The court may at any time require a new bond, or increase or decrease the amount of the penalty of the bond of any conservator or guardian when good cause therefore appears.

### **Sec. 23-1416. Obligees of bond - joint and several liability.**

The bond of the conservator or guardian shall run to the use of all persons interested in the estate, and shall be for the security and benefit of such persons. The sureties shall be jointly and severally liable with the conservator or guardian and with each other.

### **Sec. 23 -1417. Order for delivery.**

Upon the filing of the bond as provided above, the court being satisfied with the amount thereof, it shall order the personal property of the ward delivered to such conservator or guardian.

### **Sec. 23-1418. Inventory - reporting requirements.**

- (a) A conservator appointed under this chapter has a duty to make a diligent search

## TITLE 23

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to determine and discover the debts and property, real and personal, of the ward and the conservator shall file with the court:

(1) An inventory within sixty days of the conservator's appointment. This inventory shall include all debts and property of the ward that has come into the conservator's possession or of which the conservator has knowledge. When additional debts and/or property come into the possession of the conservator or to the knowledge of the conservator, a supplemental inventory shall be filed within thirty days.

(2) Written verified reports and accountings as follows:

(A) Annually, within ninety days of the anniversary of the date of appointment of the conservator, unless the court otherwise orders that a report should be filed every six months or at some other interval to be determined by and in the discretion of the court.

(B) Within thirty days following the date of removal of the conservator.

(C) Upon filing resignation and before the resignation is accepted by the court.

(D) Within sixty days following the date of termination.

(E) At other times as the court may order.

(3) The report and accounting shall account for all of the period since the close of the accounting contained in the most recent previously filed report to the date of the present report and shall include the following information as far as applicable:

(A) The balance of funds on hand at the close of the accounting contained in the most recent previously filed report and all amounts received from whatever source during the present accounting period.

(B) All disbursements made during the present accounting period.

(C) Any changes in investments during the present accounting period, including a list of all assets, and the recommendations of the conservator for the retention or disposition of any property, real or personal, held by the conservator.

(D) A list of all debts and indebtedness as of the date of the present accounting.

(E) The amount of the bond and the name of the surety on it.

(F) The residence address or the physical location of the ward.

(G) The general physical and mental condition of the ward.

(H) Such other information as shall be necessary to show the condition of the affairs of the conservatorship.

(b) Reports of the conservator shall be reviewed and either approved or not approved by the court. If the court does not approve a report of the conservator the court shall, by order, instruct the conservator as to the deficiencies in the report and set a deadline by which the report must be resubmitted.

(c) No order shall be entered approving an annual report of a conservator until the court costs which have been docketed have been paid or provided for. The court may, upon application, enter an order waiving payment of the court costs in indigent cases. However, if the conservatorship subsequently becomes financially capable of paying any waived costs, the conservator shall immediately pay the costs. Court costs include the following:

(1) Guardian's fees, if any.

(2) Fees of the attorney for the guardian, if any.

(d) The court shall settle each and every account filed by the conservator by allowing or disallowing it, either in whole or in part, or by surcharging the account against the conservator.

(e) Reports required by this section shall be served on the attorney representing the ward in the conservatorship proceeding and all other parties appearing in the proceeding.

**Sec. 23-1419. Title to ward's property.**

The title to all property of the ward is in the ward and not the conservator, subject however, to the possession of the conservator and to the control of the court for the purposes of administration, sale or other disposition, under the provision of the law.

**Sec. 23 -1420. Conservator's right to possession.**

Every conservator shall have a right to, and shall take, possession of all of the real and personal property of the ward. The conservator shall pay the taxes and collect the income therefore until the conservatorship is terminated. The conservator may maintain an action for the possession of the property, and to determine the title to same.

**Sec. 23-1421. Presumption of fraud.**

If a conservator is appointed, all contracts, transfers and gifts made by the ward after the filing of the petition shall be presumed to be a fraud against the rights and interest of the ward except as otherwise directed by the court pursuant to Sec. 23-1408.

**Sec. 23-1422. Claims against the ward, the conservatorship or conservator in that capacity.**

Claims accruing before or after the appointment of the conservator, and whether arising in contract or tort or otherwise, after being allowed or established as provided in Sec. 23-1423, Sec. 23-1424, and Sec. 23-1425, shall be paid by the conservator from the assets of the conservatorship.

**Sec. 23-1423. Forms and verification of claims - general requirements.**

No claim shall be allowed against the estate of a ward upon application of the claimant unless it shall be in writing, filed in duplicate with the clerk, stating the claimant's name and address, and describing the nature and the amount thereof, if ascertainable. It shall be accompanied by the affidavit of the claimant, or of someone for the claimant, that the amount is justly due, or if not due, when it will or may become due, that no payments have been made thereon which are not credited, and that there are no offsets to the same, to the knowledge of the affiant, except as therein stated. The duplicate of said claim shall be mailed by the clerk to the conservator or the conservator's attorney of record; however, valid contract claims arising in the ordinary course of the conduct of business or affairs of the ward by the conservator may be paid by the conservator without requiring affidavit or filing.

**Sec. 23-1424. Requirements when claim founded on written instrument.**

If a claim is founded upon a written instrument, the original of such instrument, or a copy thereof, with all endorsements, must be attached to the claim. The original instrument must be exhibited to the conservator or to the court, upon demand, unless it has been lost or destroyed, in which case, its loss or destruction must be stated in the claim.

**Sec. 23-1425. How claim entitled.**

All claims filed against the estate of the ward shall be entitled in the name of the claimant against the conservator as such, naming the conservator, and in all further proceedings thereon, this title shall be preserved.

**Sec. 23-1426. Filing of claim required.**

The filing of a claim in the conservatorship tolls the statute of limitations applicable to such claim.

**Sec. 23-1427. Compelling payment of claims.**

No claimant shall be entitled to compel payment until the claimant's claim has been duly filed and allowed.

**Sec. 23-1428. Allowance by conservator.**

When a claim has been filed and has been admitted in writing by the conservator, it shall stand allowed, in the absence of fraud or collusion.

**Sec. 23-1429. Execution and levy prohibited.**

No execution shall issue upon, nor shall any levy be made against any property of the estate of a ward under judgment against the ward or conservator, but the provisions of this section shall not be so construed as to prevent the enforcement of a mortgage, pledge or other lien upon property in an appropriate proceeding.

**Sec. 23-1430. Claims of conservators.**

If the conservator is a creditor of the ward, the conservator shall file the claim as other creditors, and the court shall appoint some competent person as temporary conservator to represent the ward at the hearing on the conservator's claim. The same procedure shall be followed in the case of co-conservators where all such conservators are creditors of the ward; but if one of the co-conservators is not a creditor of the ward, such disinterested conservator shall represent the ward at the hearing on any claim against the ward by a co-conservator.

**Sec. 23-1431. Claims not filed.**

The conservator may pay any valid claim against the estate of the ward even though such claim has not been filed, but all such payments made by the conservator shall be at the conservator's own peril.

**Sec. 23-1432. Waiver of statute of limitations by conservator.**

It shall be within the discretion of the conservator to determine whether or not the applicable statute of limitation shall be invoked to bar a claim which the conservator believes to be just, and the conservator's decision as to the invoking of such statute shall be final.

**Sec. 23-1433. Liens not affected by failure to file claim.**

Nothing in Sec. 23-1423 and Sec. 23-1426 shall affect or prevent an action or proceeding to enforce any mortgage, pledge or other lien upon the property of the ward.

**Sec. 23-1434. Separate actions and claims.**

(a) Any action pending against the ward at the time the conservator is appointed shall be considered a claim filed in the conservatorship if notice is served on the conservator as defendant, and a duplicate of the proof of service of notice of such proceeding is filed in the conservatorship proceeding.

(b) A separate action based on a debt or other liability of the ward may be commenced against the conservator as such in lieu of filing a claim in the conservatorship. Such an action shall be commenced by serving an original notice on the conservator and filing proof of service of notice of such proceeding in the conservatorship proceeding. Such an action shall also be considered a claim filed in the conservatorship. Such action may be commenced only if jurisdiction and venue vested in the Tribal Court of the Sac and Fox Tribe of the Mississippi in Iowa would have been proper if there were no conservatorship and the action had been commenced against the ward.

**Sec. 23-1435. Denial and contest of claims.**

The provisions of Sec. 23-1436 through Sec. 23-1441 shall be applicable to the denial and contest of claims against conservatorship, but shall not be applicable to actions continued or commenced under Sec. 23-1433.

**Sec. 23-1436. Disallowance of claim by conservator.**

At any time after the filing of a claim against an estate, the conservator may give the claimant and the claimant's attorney of record, if any, written notice of disallowance of claim. The notice shall be given by certified mail addressed to the claimant at the address stated in the claim and to the claimant's attorney of record, if any.

**Sec. 23-1437. Notice of Disallowance and request for hearing.**

A notice to a claimant of disallowance of claim shall advise the claimant that the claim has been disallowed and will be forever barred unless the claimant shall within twenty days after the date of mailing the notice, file a request for hearing on the claim with the clerk, and mail a copy of such required for hearing to the conservator and the conservator's attorney of record, if any, by certified mail.

**Sec. 23-1438. Proof of Service.**

Proof of service of the notice of disallowance shall be made by affidavit, shall show the date and place of mailing, and shall be filed with the clerk.

**Sec. 23-1439. Claims barred after twenty days.**

Unless the claimant shall within twenty days after the date of mailing the notice of disallowance, file a request for hearing with the clerk and mail a copy of the request for hearing

to the conservator and to the conservator's attorney of record, if any, the claim shall be deemed disallowed, and shall be forever barred.

**Sec. 23-1440. Request for hearing by claimant.**

At the time of the filing of a claim against an estate, or at any time thereafter prior to the time that the claim may be barred by the provisions of Sec. 23-1439, or the approval of the final report of the conservator after notice to the claimant, the claimant may file a request for hearing with the clerk, and mail a copy of the request for hearing to the conservator and the conservator's attorney of record, if any.

**Sec. 23-1441. Applicability of rules of civil procedure to hearing on claim.**

Within twenty days from the filing of a request for hearing on a claim, the conservator shall move or plead to said claim and file any counterclaim against the claimant for an offset against the claim or other counterclaim in the same manner as though the claim were a petition filed in an ordinary action, and thereafter, all provisions of the law and rules of civil procedure shall apply.

**Sec. 23-1442. Payment of claims in insolvent conservatorships.**

When it appears that the assets in a conservatorship are insufficient to pay in full all the claims against such conservatorship, the conservator shall report such matter to the court, and the court shall, upon hearing, with notice to all persons who have filed claims in the conservatorship, make an order for the pro rata payment of claims giving claimants the same priority, if any, as they would have if the ward were not under conservatorship.

**Sec. 23-1443. Conservator may make gifts.**

For good cause shown and under order of court, a conservator may make gifts on behalf of the ward out of the assets under a conservatorship to persons or religious, education, scientific, charitable, or other nonprofit organizations to whom or to which such gifts were regularly made prior to the commencement of the conservatorship, or on a showing to the court that such gifts would benefit the ward or the ward's estate from the standpoint of income, gift, estate or inheritance taxes. The making of gifts out of the assets must not foreseeably impair the ability to provide adequately for the best interests of the ward.

**Sec. 23-1444. Assets Exhausted.**

At any time that the assets of the ward's estate do not exceed the amount of the charges and claims against it, the court may direct the conservator to proceed to terminate the conservatorship.

**Sec. 23-1445. Accounting to ward upon termination - notice.**

Upon the termination of a conservatorship, the conservator shall pay the costs of administration and shall render a full and complete accounting to the ward and the ward's attorney, if any, or on the ward's guardian and attorney for the guardian, if any, and to the court. Notice of the final report shall be served on the ward and the ward's attorney, if any, or the ward's guardian and attorney for the guardian, if any, in accordance with Sec. 23-1209 unless notice is waived. An order prescribing notice may be made before or after the filing of the final report.

**Sec. 23-1446. Delivery of assets.**

Upon the termination of a conservatorship, all assets of the conservatorship shall be delivered under direction of the court to the person or persons entitled to them.

**Sec. 23-1447. Discharge of conservator and release of bond.**

Upon settlement of the final accounting of a conservator, and upon determining that the property of the ward has been delivered to the person or persons lawfully entitled thereto, the court shall discharge the conservator and exonerate the surety on the conservator's bond.

**Sec. 23-1448. Removal of conservator.**

When any conservator is, or becomes, disqualified under Sec. 23-1409 and/or Sec. 23-1410, or has mismanaged the estate, dies, fails or failed to perform any duty imposed by law, or by any lawful order of court, then the court may remove the conservator. The court may upon its own motion, and shall upon the filing of a verified petition by any person interested in the estate, including a surety on the conservator's bond, order the conservator to appear and show cause why the conservator should not be removed. Any such petition shall specify the grounds of complaint. The removal of a conservator after letters are duly issued to the conservator shall not invalidate the conservator's official acts performed prior to removal.

**Sec. 23-1449. Appointment of successor conservator.**

When any conservator fails to qualify, dies, is removed by the court, or resigns, and such resignation is accepted by the court, the court may, and if the conservator were the sole or last surviving conservator, and the conservatorship is not terminated the court shall appoint another conservator in the former's place.

**Sec. 23-1450. Powers of successor conservator.**

When a successor conservator is appointed, the successor shall have all the rights, powers, titles and duties of the predecessor, except that the successor shall not exercise powers given by court order that by its express terms are personal to the conservator therein designated.

**Sec. 23-1451. Property delivered - penalty.**

**TITLE 23**

**ARTICLE I**

Upon the removal of any conservator, the conservator shall be required by order of the court to deliver to the person who may be entitled thereto all the property in the conservator's possession or under the conservator's control belonging to the estate of the ward and if the conservator fails or refuses to comply with any proper order of the court, the conservator may be sanctioned, fined, or committed to jail until the conservator does.