

INSTRUCTIONS FOR Petition for Guardianship—MINOR *Confederated Salish & Kootenai Tribal Court*

**THE FOLLOWING INFORMATION IS NOT LEGAL ADVICE AND
CANNOT REPLACE THE ADVICE OF A LAWYER OR ADVOCATE.**

These instructions provide legal information and resources only. Legal advice depends on the specific circumstances of each situation. The information contained in this document is not guaranteed to be up to date. The information cannot replace the advice of an attorney or advocate licensed to practice law. **If you choose to represent yourself, you are bound by the same rules and procedures as an attorney or advocate.**

Instructions have been developed to assist you with processing the **Petition for Guardianship-Minor** case. Read the instructions first to determine which forms you may need, based on your personal circumstances, as it may not be necessary to complete all forms listed below.

GENERAL INFORMATION

- ◆ **For additional information**, please review CSKT Laws Codified (2013) and other applicable laws and ordinances at <https://csktribes.org/judicial/cskt-laws-codified>.
- ◆ **Tribal Court Forms** can be found at <http://csktcourt.org> by clicking on the “FORMS & FILINGS” tab.
- ◆ **The State Law Library** can help you find and use legal resources such as books, forms, and websites. You can visit the Law Library website at www.lawlibrary.mt.gov. Or you can contact a Reference Librarian at 1-406-444-3636 or by email at mtlawlibrary@mt.gov.
- ◆ **CSKT Tribal Defender’s Office Civil Division** offers legal assistance to Tribal members in certain civil matters. To find out if you qualify, call (406) 275-2897. <https://csktribes.org/judicial/tribal-defenders>.
- ◆ **Montana Legal Services Association (MLSA)** gives free legal help to low-income people. To find out if you qualify for MLSA, call the MLSA HelpLine at 1-800-666-6899.

COMMON TERMS

- ⇒ **Petitioner:** A person who files a Petition for an Appointment of a Guardian-Minor
- ⇒ **Guardian:** A person at least 21 years of age, resident or non-resident, who has qualified as a guardian of a Minor based on an appointment by the Court.
- ⇒ **Respondent:** The person served a Petition who must respond to the allegations of the Petition in order to have his/her desires considered.
- ⇒ **Interested Person:** Persons identified by CSKT Law who must be given notice of a court proceeding. **See Step 3 for a complete list.**
- ⇒ **Minor:** An un-emancipated person who is under the age of 18.
- ⇒ **Ward:** A Minor for whom a Guardian has been appointed.
- ⇒ **Order:** Official document identifying the authority of the Guardian and his/her responsibilities during the Guardianship.

If you do not understand this information, please contact an attorney or advocate.

FEES

A filing fee is required when filing a **Petition for Appointment of a Guardian-Minor**. Please check with the <http://csktcourt.org> by clicking on the “FORMS & FILINGS” tab to determine what the current fee schedule is for filing Petitions. If you cannot afford the filing fees, you may submit an **Application for a Fee Waiver [TCF-0008]** and the Court will determine if you qualify.

FORMS

Please note that the forms referenced in these Instructions are available with <http://csktcourt.org> by clicking on the “FORMS & FILINGS” tab.

- [TCF 0058] Petition for Guardianship-Minor
- [TCF 0059] Acceptance of Office & Acknowledgement of Responsibilities
- [TCF 0060] Consent or Nomination of Minor Child
- [TCF 0061] Consent of Parent
- [TCF 0062] Response to Petition for Appointment of Guardian-Minor
- [TCF 0063] Letters of Guardianship
- [TCF 0064] Guardian’s Annual Report

STEPS TO FILING YOUR CASE

Step 1: Complete Forms

Selecting these instructions indicates that you are planning on filing a **Petition for Guardianship-Minor**.

The caption below needs to be completed on all forms filed. Make sure that you make a copy of all the forms you file with the Court for your own records.

**IN THE TRIBAL COURT OF THE CONFEDERATED SALISH AND KOOTENAI
TRIBES OF THE FLATHEAD RESERVATION, PABLO, MONTANA**

<p>IN RE INTEREST OF:</p> <hr/> <p>Minor Child(ren).</p> <p>UPON THE PETITION OF:</p> <hr/> <p>Petitioner(s)</p> <p>AND CONCERNING:</p> <hr/> <p>Respondent(s)</p>	<p>Cause No. _____</p> <p style="text-align: center;"><i>Insert Name of Form</i></p>
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[TCF 0058] Petition for Guardianship-Minor

- Petitioner must complete all applicable sections on the form.
- If the child's father is not known (no name appears on the birth certificate), then a copy of the birth certificate of the child should be attached to the Petition. If the parental rights have been suspended, terminated or the parents are deceased, copies of the suspension or termination orders or the death certificates should be attached to the Petition.
- Petitioner must name a successor guardian even if Petitioner is the proposed guardian.
- Petitioner must sign this form in the presence of a Court Clerk or Notary Public.

[TCF 0059] Acceptance of Office & Acknowledgement of Responsibilities

- Proposed Guardian must complete and execute this form and file it with the Petition to Appoint Guardian.

[TCF 0060] Consent or Nomination of Minor

- The Minor who is the subject of the appointment, if 14 years of age or older, has the right to consent or refuse to consent to an appointment of a guardian. The **Consent or Nomination of Minor** form can be completed and signed by the Minor to indicate his/her consent to or refusal of the appointment. The Court will take into account the Minor's wishes, but refusal to consent does not guarantee that the Court will not appoint the proposed guardian.

NOTE: This is not a substitute for personal service. **Step 5 - Notice of Hearing** must still be completed.

[TCF 0061] Consent of Parent

- The parent(s) of the Minor may submit the Consent of Parent.
- The Court will complete the remainder of the form and sign it following the appointment of the Guardian.

[TCF 0063] Letters of Guardianship-Minor

- Complete only the caption on the form.
- The Court will complete the remainder of the form and sign it following the appointment of the Guardian.

Step 2: You are ready to FILE your Papers with the Court

Provide the Court with the documents completed as described in Step 1 above and pay the filing fee. You will receive the Civil Summons. You may receive a hearing date from the clerk at the time of filing your paperwork or you may need to contact the clerk later to obtain the hearing date.

Step 3: Serve the Petition Summons and Other Documents Provided by the Court

It is important that you have the other parties served as quickly as possible. When you file your Petition and other required pleadings, the Court will provide you with a signed **Summons [TCF 0004]** to serve the other party (Respondent) with a blank **Return of Service**.

SERVICE OPTIONS

☐ Waiver and Acceptance of Service

- This is the easiest way to serve the other party. However, the other party must be willing to accept the Petition and other required pleadings to use this method.
- Have the other party complete the form **Waiver and Acceptance of Service [TCF 0005]**. Make sure the other party signs and dates the Waiver and Acceptance of Service before a Court Clerk or Notary Public.
- File the signed original with the Court.

☐ Personal Service—Rule 9(1), CSKT Rules of Practice

- Select the law enforcement department, a private process server, or someone you know over the age of 18 who is not involved in this case and who knows the rules of service to serve Respondent.
- Provide the process server with the Petition, the Summons and other required pleadings.
- The process server will need to return the completed Return of Service attached to the Summons to the Court for filing or return it to you to bring and file with the Court.

☐ Service by Mail— Rule 9(2), CSKT Rules of Practice

- If, after diligent search and inquiry, the Respondent cannot be personally served and you know Respondent's address, then process may be served by mail.
- Service by mail shall be by restricted certified mail with return receipt requested.
- The Respondent **MUST** sign the return receipt.
- All service by mail shall be confirmed by the Court at the time of trial or at the time of the entering of a default judgment and shall be supported by affidavit from the Petitioner.
- The Respondent must receive all documents filed with the Court and the **Summons**, at least 15 days before the time set for the hearing.
- Petitioner must file with the Court an **[TCF 0025] Affidavit of Due Diligence and Proof of Service by Mail** which shall include the original return receipt signed by the Respondent, a description of the documents served on the Respondent, and a statement that a diligent search and inquiry was made in an effort to serve the Respondent personally.

- If the address of the Respondent is unknown, you must publish the Notice of Hearing in the newspaper. Service by Publication instructions are below.

Service by Publication— Rule 9(3), CSKT Rules of Practice

- You must make diligent efforts to locate the other party before selecting this option for service. Service by publication is an option of last resort and should only be pursued if all other methods to serve the other party have failed.
- Service by publication requires a long process of filing more documents with the Court and may include additional expenses required by the newspapers you are ordered to publish notice in. The following forms include more details of the requirements for service by publication.
 - [TCF 0026] **Affidavit of Due Diligence & Requesting Service by Publication** to be completed by Petitioner.
 - [TCF 0028] **Summons for Service by Publication** to be issued by the Clerk of Court.
 - [TCF 0029] **Proof of Service by Publication** to be filed with the Court.
- After receiving the Affidavit, the Clerk of Court will issue a Summons by Publication authorizing service by publication which shall be valid for 40 days from the date of issuance, and thereafter void. Then, you will be able to proceed with service by publication.
- Note that at the time of trial or entering of default judgment, Petitioner shall submit evidence to the Court that the foregoing service by publication procedures were satisfied.
- BE SURE TO ONLY USE THE INITIALS OF THE CHILDREN WHEN PUBLISHING NOTICE.

Step 4: Respondent Files a Response

Respondent may file a response to the Petition. A filing fee may be required. The purpose of the response is for the Respondent to state in writing if they agree or disagree with the information identified in the Petition and mail a copy to the other party. All fees paid are non-refundable.

- [TCF 0062] **Response to Petition for Appointment of Guardian-Minor**
 - **Complete all sections of this form** and make sure all issues are addressed.
- Respondent must file the original copies with the Court and mail copies to Petitioner.

Step 5: Setting Status Conference and Hearing Dates

Once the time for the Respondent to respond has expired, you can request a hearing to finalize your divorce. You will complete and file these forms and submit to the Clerk of the Tribal Court:

- [TCF 0009] **Request for Hearing** -OR-
- [TCF 0023] **Request Hearing and Default Ruling.** This applies if the other party did not

respond to your petition. You may request a default judgment on this form. Which means you are asking the Court to consider only what you have filed when making its decision.

The Court will notify you regarding **the date of the scheduling or status conference** where the Court will set a time for any further paperwork is due in preparation for the final hearing and the final hearing date.

Step 6: Court Hearing

The Petitioner must appear at the hearing and should be prepared to present evidence as to why the Appointment of a Guardian is in the Minor's **best interest**.

- Be prepared to present evidence showing that the parents are aware of the proceedings and if they consent to the Guardianship. If the Petitioner cannot prove that the parents' consent to the Guardianship, then Petitioner must be prepared to present evidence showing that the parents are either unwilling or unable to take care of the child or that their parental rights have been suspended or terminated.

- Preparing for the Hearing**
 - Have available your stamped copies of the papers you filed with the Court.
 - Dress like you were going to an important job interview.
 - Be prepared to explain your position and answer any questions the judge might have.
 - Address the Court and staff respectfully.

The Judge will review all documents filed, testimony and evidence presented at the hearing and enter an Order addressing the issues before the Court.

Step 7: Requirements after the Court Appoints a Guardian.

- Complete, sign, and file the **Acknowledgment of Responsibilities [TCF 0059]** with the court. **Letters of Appointment [TCF 0063]** will not be issued until this form is filed. You may need certified copies of the Letters and Order to provide proof of guardianship when required. The number needed will vary, depending on your circumstances.
- Refer to the Order Appointing Guardian for a Minor to determine if/when the annual report is due. The purpose of the annual report is to report to the Court and any interested person as to the well-being of the Minor. The **Guardian's Report [TCF 0064]** must be provided to the people listed in the **Order of Appointment** at the time of filing with the Court.

The responsibilities of the guardian terminate upon the death, resignation, or removal of the guardian or upon the Minor's death, adoption, marriage, or attainment of majority. Resignation of a guardian does not terminate the guardianship until approved by the Court.

If you do not understand this information, please contact an attorney or advocate.