

INSTRUCTIONS FOR Petition to Terminate 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 **Termination of a 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.

- ◆ 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.

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 to Terminate Guardianship-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 0066] Petition to Terminate Guardianship-Minor
- [TCF 0067] Response to Petition to Terminate Guardianship-Minor

STEPS TO FILING YOUR CASE

Step 1: Complete Forms

Selecting these instructions indicates that you are planning on filing a **Petition to Terminate 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

IN RE INTEREST OF: _____ Minor Child(ren). UPON THE PETITION OF: _____ Petitioner(s) AND CONCERNING: _____ Respondent(s)	Cause No. _____ <i>Insert Name of Form</i>
--	---

❑ **[TCF 0065] Petition to Terminate Guardianship-Minor**

- Petitioner must **complete all applicable sections** on the form.
- Petitioner must sign this form in the presence of a Court Clerk or Notary Public.

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, 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: Hearing

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

- Be prepared to present evidence showing that the guardian, parents and any other interested parties are aware of proceedings and the reasons for terminating the guardianship.

- The Court will make a decision on whether to terminate the guardianship after evidence is presented at the hearing and will provide you with a copy of the Order Terminating Guardianship.
- 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.

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