

RESOLUTION OF THE GOVERNING BODY
OF THE THREE AFFILIATED TRIBES OF
THE FORT BERTHOLD RESERVATION

WHEREAS, This Nation having accepted the Indian Reorganization Act of June 18, 1934, and the authority under said Act; and

WHEREAS, The Constitution of the Three Affiliated Tribes authorizes and empowers the Tribal Business Council to enact laws in the interest of the welfare and benefit of the Three Affiliated Tribes and their members; and

WHEREAS, It is the considered position of the Tribal Business Council that Section 11 of Chapter II of the Code of Laws of the Three Affiliated Tribes of the Fort Berthold Reservation (said Section entitled "Competency") is outdated, if not archaic, and that the inadequate procedural elements provided for therein cannot reasonably be intergrated within the current Tribal Court system with facility and, therefore, said Section 11 of Chapter II should be replaced by a more relevant and adequate procedure governing guardianship proceedings;

NOW, THEREFORE, BE IT RESOLVED, That the Tribal Business Council, pursuant to its Constitutional power and authority, hereby formally approves adoption of the attached provisions entitled "Guardianship Procedure," which provisions shall forthwith supersede and replace the provisions currently set forth in Section 11 of Chapter II of the Code of Laws of the Three Affiliated Tribes of the Fort Berthold Reservation, and shall be so designated as Section 11 of Chapter II of said Code of Laws and shall be so entitled "Guardianship Procedure."

BE IT FURTHER RESOLVED, That said attached provisions entitled "Guardianship Procedure" shall take effect immediately.

CERTIFICATION

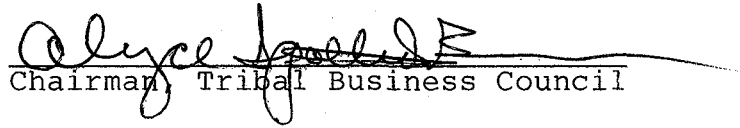
I, the undersigned, as Secretary of the Tribal Business Council of the Three Affiliated Tribes of the Fort Berthold Reservation, hereby certify that the Tribal Business Council is composed of 11 members of whom 11 constituting a quorum were present at a Regular meeting thereof duly called, noticed, convened and held on the 13 day of January, 1983; that the foregoing Resolution was duly adopted at such meeting by the affirmative vote of 10 members, — members opposed, — members abstained, 1 members not voting and that said Resolution has not been rescinded or amended in any way.

Chairman (Voting) (~~Not Voting~~)

Dated this 13 day of January, 1983.


Secretary, Tribal Business Council

ATTEST:


Chairman, Tribal Business Council

GUARDIANSHIP PROCEDURE

(a) Procedure for court appointment of a guardian of an incapacitated person.

(1) The incapacitated person or any person interested in his welfare may petition for a finding of incapacity and appointment of a guardian. The petition shall meet the requirements for commencing an action by complaint set forth in Section 3 of this Chapter.

(2) Upon the filing of the petition, the Court shall set a date for hearing on the issue of incapacity and, unless the allegedly incapacitated person has counsel of his own choice, it shall appoint an appropriate official or attorney to represent him in the proceeding, who shall have the powers and duties of a guardian ad litem. The person alleged to be incapacitated shall be examined by a physician appointed by the Court who shall submit his report in writing to the Court and shall also be interviewed by a visitor appointed by the Court. The visitor also shall interview the person seeking appointment as guardian, and if the person alleged to be incapacitated consents, shall visit his present place of abode. The visitor shall also visit the place it is proposed that the person alleged to be incapacitated will be detained or reside, if the requested appointment is made. The visitor shall submit his report in writing to the Court and provide a copy thereof to the person alleged to be incapacitated. The person alleged to be incapacitated is entitled to be present at the hearing in person, and to see or hear all evidence bearing upon his condition. He is entitled to be present by counsel, to present evidence, and to cross-examine witnesses, including the Court-appointed physician and the visitor. The issue may be determined at a closed hearing if the person alleged to be incapacitated or his counsel so requests.

(b) Findings -- Order of appointment.

The Court may appoint a guardian as requested if it is satisfied by evidence that it is clear and convincing that the person for whom a guardian is sought is incapacitated, that the appointment is necessary or desirable as a means of providing continuing care and super-

vision of the incapacitated person, and that the appointment is in the best interests of the incapacitated person. Alternatively, the Court may dismiss the proceeding or enter any other appropriate order.

(c) Acceptance of appointment -- Consensual relationship establishing jurisdiction.

By accepting appointment, a guardian establishes a consensual relationship with the Court and, by this act, submits to the jurisdiction of the Court in any proceeding relating to the guardianship that may be instituted by any interested person. Notice of any proceeding shall be delivered to the guardian or mailed to him by certified mail at his address as listed in the Court records and to his address as then known to the petitioner. A guardian changing his address shall, within five (5) days of any such change of address, inform the Court in writing of the new address.

(d) Termination of guardianship for incapacitated person.

The authority and responsibility of a guardian for an incapacitated person terminates upon the death of a guardian or ward, the determination of incapacity of the guardian, or upon removal or resignation as provided in Subsection (e) of this Section. Termination does not affect the guardian's liability for his own prior acts or his obligation to account for funds and assets of the ward.

(e) Removal or resignation of guardian -- Termination of incapacity.

(1) On the petition of the ward or any person interested in his welfare, the Court may remove a guardian and appoint a successor if it is established that such action is in the best interests of the ward. On the petition of the guardian, the Court may accept his resignation and enter any other appropriate order.

(2) An order adjudicating incapacity may specify a minimum period, not exceeding one year, during which no petition for an adjudication that the ward is no longer incapacitated may be filed without leave of Court. Subject to this restriction, the ward or any person interested in his welfare may petition for an order that he is no longer incapacitated, and for removal or acceptance of the resignation of the guardian. A request for this order may be made by informal letter to the Court or Associate Judge. Any person who knowingly interferes with transmission of such a request to the Court or to the Associate Judge may be punished for contempt of court.

(3) Before removing a guardian, accepting the resignation of a guardian, or ordering that a ward's incapacity has terminated, the Court may, following the same procedures to safeguard the rights of the ward as apply to a petition for appointment of a guardian, send a visitor to the residence of the present guardian, and with the consent of the ward, to the place where the ward resides, or to the place where the ward is detained, to observe conditions. The Court may require the visitor to report in writing to the Court.

(f) Visitor in guardianship proceedings.

A visitor is, with respect to guardianship proceedings, a person who is trained in law, nursing, or social work and is an officer, employee, or special appointee of the Court with no personal interest in the proceedings who has been appointed by the Court to serve in a proceeding to determine whether a person is incapacitated.

(g) Notices in guardianship proceedings.

(1) In a proceeding for the appointment of a guardian of an incapacitated person other than the appointment of a temporary guardian or temporary suspension of a guardian, notice of hearing shall be given to each of the following:

- a. The ward or the person alleged to be incapacitated and his spouse, parents, and adult children.
- b. Any person who is serving as his guardian, conservator, or who has his care and custody.
- c. In case no other person is notified under subdivision a above, at least one of his closest adult relatives, if any can be found.

(2) Notice shall be served personally on the alleged incapacitated person, and his spouse and parents if they can be found within the Fort Berthold Reservation. Notice to the spouse and parents, if they cannot be found within the Fort Berthold Reservation, and to all other persons except the alleged incapacitated person shall be given in a manner which complies with Section 3 of this Chapter for service of a complaint in a civil action. Representation of the alleged incapacitated person by a guardian ad litem is not required.

(h) Temporary guardians.

If an incapacitated person has no guardian and an emergency exists, the Court may exercise the power of a guardian, pending notice and hearing, for a period not to exceed seventy-two (72) hours. If an appointed guardian is not effectively performing his duties and the Court further finds that the welfare of the incapacitated person requires immediate action, the Court may, with or without notice, appoint a temporary guardian for the incapacitated person for a specified period not to exceed six (6) months. A temporary guardian is entitled to the care and custody of the ward and the authority of any permanent guardian previously appointed by the Court shall be suspended during the period for which the temporary guardian has been appointed. A temporary guardian may be removed by the Court at any time. A temporary guardian shall make any report the Court requires. In other respects, the provisions of this Section concerning guardians apply to temporary guardians.

(i) Who may be guardian -- Priorities.

(1) Any competent person or a suitable institution may be appointed guardian of an incapacitated person.

(2) Persons who are not disqualified shall have priority for appointment as guardian in the following order:

- a. The spouse of the incapacitated person.
- b. An adult child of the incapacitated person.
- c. A parent of the incapacitated person.
- d. Any relative of the incapacitated person with whom he has resided for more than six (6) months prior to the filing of the petition.
- e. A person nominated by the person who is caring for the incapacitated person or paying benefits to him.

(j) General powers and duties of guardian.

(1) A guardian of an incapacitated person has the same powers, rights, and duties respecting his ward that a parent has respecting his unemancipated minor child, except that a guardian is not liable to third persons for acts of the ward solely by reason of the parental relationship. In particular, and without qualifying the foregoing, a guardian has the following powers and duties, except as modified by order of the Court:

- a. To the extent that it is consistent with the terms of any order by the Court, he is entitled to custody of the person of his ward and may establish the ward's place of abode.
- b. If entitled to custody of his ward, he shall make provision for his care, comfort, and maintenance and, whenever appropriate, arrange for his training and education. Without regard to custodial rights of the ward's person, he shall take reasonable care of his ward's clothing, furniture, vehicles, and other personal effects, and commence protective proceedings if other property of his ward is in need of protection.
- c. A guardian may give any consents and approvals that may be necessary to enable the ward to receive medical or other professional care, counsel, treatment, or service.
- d. If no conservator for the estate of the ward has been appointed, he may:
 1. Institute proceedings to compel any person under a duty to support the ward or to pay sums for the welfare of the ward to perform his duty.

2. Receive money and tangible property deliverable to the ward and apply the money and property for support, care, and education of the ward; but, he may not use funds from his ward's estate for room and board which he, his spouse, parent, or child have furnished the ward unless a charge for the service is approved by order of the Court made upon notice to at least one of the next of kin of the ward, if notice is possible. He must exercise care to conserve any excess for the ward's needs.

e. A guardian is required to report the condition of his ward and of the estate which has been subject to this possession or control, as required by the Court or by Court order.