

## **Procedure and review checklist for Guardianship**

**Resources: Squaxin Island Code Chapter 10.12**

### **Critical path:**

- Petition is filed.**
- Determine if consent will or will not be given by biological parent(s).**
- Determine if child is Youth in Need of Care.**
- Hearing is scheduled within 40 days.**
- Court Clerk provides notice of hearing at least 20 days prior to the hearing.**
- ICW prepares preliminary guardianship report.**
- ICW seeks recommendations of social service professionals (Family Wellness).**
- Family Wellness Team meets and confers for consensus recommendation.**
- ICW seeks recommendations, if any, from Tribal Council.**
- ICW completes guardianship report.**
- ICW serves guardianship report at least 10 days prior to the hearing.**
- Anyone else may serve their own recommendation report at least 10 days prior to the hearing.**
- Conduct hearing.**
- Enter order granting or denying petition for guardianship.**
- If guardianship granted, determine if order will limit or define the guardian's powers.**
- Determine when or how order will terminate.**
- Determine if guardianship is subject to continuing or periodic review.**

### **1. Beginning – prepare and file a petition for guardianship.**

To start an action for guardianship, a petition must be prepared. A petition should be prepared by the person promoting the guardianship. The petition must include:

- The name, birth date, residence, and tribal status of the youth who is the subject of the petition;
- The name, birth date, residence, and tribal status, if known, of the youth's parent(s);
- The name, birth date, residence, and tribal status, if known of the petitioner(s);
- If the youth is residing with someone other than a parent, the location and length of time at that location; and
- A concise statement of the facts and reasons supporting the request that the petitioner be appointed as guardian.
- The petition should be signed and verified by the applicant. For example, "I have read the foregoing petition and declare that to the best of my knowledge it is true and accurate."

## **2. Once the petition is filed – notice is given.**

File the petition with the Court.

When the petition is received, the Court Clerk shall immediately notify the ICW.

When the petition is received, the Court Clerk shall set a date no more than 40 days from the date the petition was received.

When the Court date is set the Court Clerk shall give notice of the hearing date to the following people, at least 20 days before the hearing:

- The petitioner(s);
- The youth;
- The youth's parent(s);
- The presenting officer;
- Any person who requests notice;
- Any person the Court deems necessary for proper adjudication; and
- Any person the parties believe necessary for the hearing.

The notice must include the date, time, and place of the hearing, and a copy of the petition.

## **3. The Guardianship Report.**

ICW must prepare a Guardianship report. The time period is short. The hearing will be less than 40 days away, and needs to be filed at least 10 days prior. Thus, ICW will have 30 days or less to complete its work.

When the petition or notice of a petition is received by ICW, ICW shall immediately begin preparation of a guardianship report.

ICW shall consult with social services staff. ICW conduct a complete home study.

ICW shall consult with the youth's parents.

ICW may review any of the youth's prior court record.

ICW shall consult with all social services, health, and education personnel who have had prior professional contacts with the youth and with the petitioner(s) to determine whether the appointment of a guardian is in the best interests of the youth. This is the Family Wellness Team.

ICW shall present the Family Wellness Team's findings and recommendations to Tribal Council and receive from Tribal Council its recommendations, if any.

Thereafter, ICW shall prepare and finalize a written Guardianship Report including the professional opinions of all personnel consulted, the Family Wellness Team's recommendation, and Tribal Council's recommendation.

At least 10 days prior to the hearing, the Guardianship Report shall be mailed by the ICW to:

- The Squaxin Island Court Clerk;
- The petitioner(s);
- The youth;
- The youth's parent(s);
- Any person who requests notice;
- Any person the Court deems necessary for proper adjudication; and
- Any person the parties believe necessary for the hearing;

Any party may file a report which includes his or her recommendations for consideration by the Court.

#### **4. Preference.**

The order of preference in placing a youth with a guardian is:

- An extended family member (a grandparent, an aunt, an uncle, a cousin);
- A member of or person eligible for enrollment in the Squaxin Island Tribe;
- A member of another Indian tribe; and
- If this order of placement preference cannot be met, for good cause shown, then placement may be made with any person who has knowledge of and a desire to foster the youth's tribal affiliation and special needs.

#### **5. The Guardianship Hearing.**

The Guardianship hearing is conducted consistent with the Youth Code. The Court shall hear testimony to determine whether guardianship is in the best interest of the youth. The Court shall consider all guardianship reports submitted for review. All parties shall be given the opportunity to contest the factual contents and conclusions of the guardianship reports.

The grounds for appointing a guardian and the burden of proof are set by statute. The Guardianship Report should consider and speak to the following standards:

First, the Court may appoint a guardian when the following conditions have been proved by clear and convincing evidence:

- The parent has consented in writing to the guardianship; or
- The youth is a youth in need of care as defined under this code.

Second, the Court must also find all the following conditions have been proved by clear and convincing evidence:

- That appointment of a guardian is in the best interest of the youth;
- The youth's best interests would not be served if the youth remains under the parent's care and custody; and

- That the petitioner(s) can provide appropriate and adequate parental care for the youth's financial and emotional support.

#### **6. Order of Appointment – Powers of Guardian.**

If the Court orders the appointment of a guardian, the order may define or limit the guardian's power. Consider the following non-exhaustive list:

- Supervised or unsupervised visits will continue at the direction of ICW.
- Frequency and duration of visits will be determined by ICW.
- Review will occur every six months.
- Guardian will provide periodic reports of cultural activities to ICW.
- Guardianship will terminate when \_\_\_\_\_.

If the order does not define or limit the power of the guardian, the guardian has all the rights and responsibilities of a parent except:

- The power to enroll a youth in a tribe other than the Squaxin Island Tribe if the child is enrolled or eligible for enrollment in the Squaxin Island Tribe;
- The guardian shall not move outside a fifty (50) mile radius of the Squaxin Island tribal center without Court approval upon notice and hearing;
- The guardian may not consent to any adoption of the child;
- The Court may order visitation between the youth and parent(s) or any other person if the Court funds such visitation is in the best interest of the youth.
- Unless ordered by the Court, the guardianship shall not be subject to periodic or continuing supervision.