



MILLE LACS BAND OF CHIPPEWA INDIANS

Executive Branch of Tribal Government

Governmental Operations Executive Order 035

AN EXECUTIVE ORDER ESTABLISHING SUBJECT MATTER JURISDICTION FOR THE COURT OF CENTRAL JURISDICTION IN MATTERS OF CONSERVATORSHIP AND GUARDIANSHIP FOR THE PROTECTION OF BAND MEMBERS UNDER THE JURISDICTION OF THE BAND.

WHEREAS, The Court of Central Jurisdiction has been created to accord equal rights, equal protection and equal opportunity and to provide a forum for the redress of grievance and due process of law for all persons under the jurisdiction of the Band as provided in Band Statute 1024-MLC-3, Section 2.01; and,

WHEREAS, it is necessary to provide a forum to guarantee the rights and privileges of Band members and to protect the interests of those Band members from external control or direction which violates freedoms guaranteed in the Constitution of the Minnesota Chippewa tribe or Band Statute 1011-MLC-5, Civil Rights Code.

NOW THEREFORE, pursuant to the authority vested in me by Band Statute and the Constitution of the Minnesota Chippewa Tribe, I, Arthur Gahbow, do hereby authorize subject matter jurisdiction in matters of conservatorship and Guardianship for the benefit of Band members.

IT IS FURTHER ORDERED, that the Court of Central Jurisdiction shall have the power to appoint a guardianship or conservator who shall be under the control and direction of the Court at all times and in all matters. Additionally:

I. The Court shall grant to any Conservator or Guardian only those specific powers necessary to provide for the demonstrated needs of the ward or conservatee.

II. The Court may grant to any Conservator or Guardian, the following powers and duties:

- a. to recommend and establish the place of abode within the jurisdiction of the Band;
- b. to provide for the ward's or conservatee's care, comfort and maintenance needs, including food, clothing shelter, health care, social and recreational requirements and whenever appropriate; training, education and rehabilitation. The guardian or conservator has the duty to meet and appropriate, the guardian or conservator has the duty to meet these requirements through governmental benefits or services to which the ward or conservatee is entitled, rather than from the ward's or conservatee's estate;
- c. to take reasonable care of the ward's or conservatee's clothing, furniture, vehicles or other personal effects;
- d. to refrain from disposing of the ward's or conservatee's clothing, furniture, vehicles or other personal effects without notice of court hearings for an opportunity of the wards or conservatee to object after he receives written notice of intent. Once notice is served, the conservator shall not dispose of any personal property unless the Court approves of the disposition;

II. (cont.)

- e. to approve or withhold approval of any contract except the necessities which the ward or conservatee may make or wish to make;
- f. to pay out of the ward or conservatee's account all just and lawful debts as determined by Band law;
- g. to initiate civil suit in the Court of Central Jurisdiction on behalf of any ward or conservatee;
- h. to invest all funds not currently needed for the debts and charges of the ward or conservatee's estate in secure and guaranteed accounts.

III. The Court shall require the presence of any proposed ward or conservatee at the hearing unless he is not able to attend by reason of medical condition as evidenced by a notarized letter from two independent licensed physicians. Said letter shall be evidence only of the proposed ward's or conservatee's medical inability to attend the hearing. The Court shall specify its findings of fact the reason for nonattendance.

- a. If the circumstance warrants, the Court may treat a petition for guardianship as a petition for conservatorship.
- b. The proposed ward or conservatee has the right to summon and cross-examine witnesses. The rules of evidence shall apply as established in Band law. In the proceedings, there is a legal presumption of capacity and the burden of proof shall be on the petitioner.
- c. In all cases, the Court shall find the facts specifically which shall include the enrollment of the individual in the Band, state separately the conclusions of law thereon, and direct the entry of an appropriate judgment.
- d. The Court may require a bond in an amount deemed appropriate and shall administer an oath of office to each guardian or conservator as cited in Band Statute 1024-MLC-3, Section 11. The Court waive the findings of a bond if no personal property is involved.
- e. In case of breach of a condition of the bond or any act in breach or trust, an action thereon may be prosecuted by lease of the Court by any interested person.

IV. Letters of Guardianship or Conservatorship.

- 1. A copy of the order appointing the guardian or conservator shall be served upon the ward or conservatee and his counsel, if he was represented at the hearing. The order shall be accompanied by a notice which advises the ward or conservatee of his right to appeal the guardianship or conservatorship appointment within 30 days.

2. Letters of guardianship or conservatorship shall contain:
 - a. the name, address and telephone number of the guardian or conservator;
 - b. the name, address and telephone number of the ward or conservatee;
 - c. the nature and scope of the guardianship or conservatorship;
 - d. the specific powers and legal limitations imposed by the Court on the guardian or conservator;
 - e. a specific listing of the legal rights the ward or conservatee is not able to exercise.
3. Letters of guardianship or conservatorship shall issue the guardian or conservator. Copies shall be mailed or personally served on the ward or conservatee, his counsel, if he was represented at the hearing, the relatives of the ward or conservatee whose names and addresses appear on the original petition, and any other person, institution, organization or agency which the court deems reasonable to notify under the circumstances of the guardianship or conservatorship.

V. Petitioners. Only the Commissioner of Human Services may petition for the appointment of a guardian or conservator for any Band member believed to be subject to guardianship or conservatorship. The petition of an adult Band member for the appointment of a guardian or conservator of his own person or estate shall have priority over a petition of the Commissioner of Human Services.

VI. Contested Cases - Standard of Proof. The standard of proof in contested cases of guardianship or conservatorship shall be that of clear and convincing evidence.

VII. Definitions.

Guardian - a person who is appointed by the court to exercise all of the powers and duties designated for the care of an incapacitated person or his estate, or both.

Conservator - a person appointed by the court to exercise some, but not all, of the powers and duties designated for the care of an incapacitated person or his estate, or both.

Ward - an incapacitated person for whom the court has appointed a guardian.
Conservatee - an incapacitated person for whom the court has appointed a conservator.

Incapacitated Band member - means in cases of guardianship or conservatorship of the Band member, any adult Band member who is impaired by reason for mental condition to the extent that he lacks sufficient understanding or capacity to make or communicate responsible decisions concerning his person, and who has demonstrated deficits in behavior which evidences his inability to meet essential requirements for his health or safety. "Unable to meet essential requirements for his health or safety" means unable to meet his needs for medical care, nutrition, clothing, shelter, or safety so that, in the absence of guardianship or conservatorship, injury or illness is likely to occur in the near future.

IT IS FINALLY ORDERED, that the Court of Central Jurisdiction may appoint a suitable and competent person upon proof of a petition to discharge the trust duties, as conservator or guardian of the person who is a minor or is an incapacitated person or who because of old age or other cause is in need of assistance to guarantee personal freedoms or needs protection from being deceived or imposed upon by persons attempting unlawful activities upon petition of the Commissioner of Human Services. Said petition shall follow:

1. the name and address of the person for whom conservatorship is requested;
2. the date and place of birth;
3. the reasons for the conservatorship request;
4. the name, address and occupations of the proposed conservator.

The Court of Central Jurisdiction shall notify the nearest kin of the person at least seven (7) days prior to the date of court hearing fixing the time and place for the hearing thereof. Unless parties to the matter receive verbal notification of hearings shall be by the certified United States mail, return receipt requested or by personal service by any duly authorized Band law enforcement officer. Failure to receipt notice shall not constitute grounds for dismissal of action. The Court of Central Jurisdiction shall appoint a Legal Officer to represent the interests of the person affected.

DATED at Vineland, Minnesota, this 24th day of May, 1984.

SIGNATURE OF THE CHIEF EXECUTIVE

APPROVED AND NUMBERED AS TO FORM AND EXECUTION

SIGNATURE OF THE SOLICITOR GENERAL

EXPIRATION DATE

OPEN PENDING BAND
ASSEMBLY ENACTMENT OF
LEGISLATION.