

Cherokee Nation Code Annotated
Title 30: Guardianship and Conservatorship
Chapter 1: Guardianships
§ 31. Inquiry to determine suitability of guardian
Cite as: 30 CNCA § 31

A. In conducting an inquiry to determine whether a person is suitable to serve as a guardian, the Court shall determine if:

1. the person proposed to serve as guardian is a minor or incapacitated or partially incapacitated person;
2. the person proposed to serve as guardian is a convicted felon;
3. the person proposed to serve as guardian is insolvent or has declared bankruptcy during the five (5) years immediately prior to filing the petition proposing such person to serve as guardian;
4. the person proposed to serve as guardian is under any financial obligation to the ward; or
5. there exists a conflict of interest which would preclude or be substantially detrimental to the ability of the person to act in the best interest of the subject of the proceeding if such person is appointed.

B. In every case involving guardianship of a minor, the Court shall determine whether any individual seeking guardianship or visitation with the minor:

1. is or has been subject to the registration requirements of a sex offender act or any similar act in any jurisdiction; or
2. is residing with a person who is or has been subject to the registration requirements of a sex offender act or any similar act in any jurisdiction.

C. There shall be a rebuttable presumption that it is not in the best interests of the minor to have guardianship or unsupervised visitation granted to any individual who:

1. is or has been subject to the registration requirements of a sex offender act or any similar act in any jurisdiction; or
2. is residing with a person who is or has been subject to the registration requirements of a sex offender act or any similar act in any jurisdiction.

D. If the person proposed to serve is a convicted felon, the Court shall make further inquiry into the nature of the felony and the circumstances surrounding the conviction. The Court

shall appoint such person proposed to serve only upon determining that the facts underlying the conviction do not give rise to a reasonable belief that person proposed to serve will be unfaithful to or neglectful of his fiduciary responsibilities, and that the appointment is in the best interest of the ward.

E. If the person proposed to serve as guardian is insolvent or has declared bankruptcy within five (5) years prior to the filing of the pleading proposing that such person serve, the Court shall appoint such person only after giving due consideration to the nature and extent of the property of the ward and the anticipated actions necessary to manage the estate of the ward, and only upon a determination that such appointment is in the best interest of the ward. Insolvency or bankruptcy shall not automatically preclude a person proposed to serve as guardian.

F. No minor, partially incapacitated person or incapacitated person shall be appointed.

Historical Data

LA 39-12, eff. October 16, 2012.