

# MORONGO BAND OF MISSION INDIANS

## ORDINANCE NO. 42

### VULNERABLE ADULT PROTECTION ORDINANCE

Ballot Measure Approval January 26, 2021

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## **I. FINDINGS**

- A. The Morongo General Membership affirms that Vulnerable Adults are important and valued members of the Tribal Community.
- B. The Morongo General Membership finds that some Vulnerable Adults within the jurisdiction of the Morongo Band of Mission Indians are subject to abuse, neglect, and exploitation.
- C. It is in the best interest of the Morongo Band of Mission Indians to address the health, safety, and welfare of Vulnerable Adults who are unable to provide their own basic needs, health decisions, or financial decisions.
- D. The needs of Vulnerable Adults can be served by the Morongo Tribal Court and Morongo Tribal Departments.
- E. The Morongo General Membership recognizes that Vulnerable Adult abuse is not a private matter when the wellbeing and safety of a Vulnerable Adult within the jurisdiction of the Morongo Band of Mission Indians is endangered.
- F. The Morongo General Membership hereby enacts this Vulnerable Adult Protection Ordinance to provide protection and to affirm the dignity of Vulnerable Adults.

## **II. PURPOSE**

- A. The purpose of this Ordinance is to protect Vulnerable Adults by providing a Conservator for the care of Vulnerable Adults within the jurisdiction of the Morongo Band of Mission Indians.
- B. This Ordinance does not apply to minors.
- C. This Ordinance should be liberally construed to achieve its purpose of providing a Conservator for the care of any Vulnerable Adult who has a functional, mental, physical or other inability to care for themselves or their estate.

## **III. DEFINITIONS**

- A. “*Business Day*” means a regular workday for the Morongo Band of Mission Indians excluding any designated holidays and weekends.
- B. “*Close Family Member*” means any relative of up to the third degree, including a spouse, a legally-recognized domestic partner, a parent, sibling, child, mother-in-law, father-in-law, brother-in-law, sister-in-law, son-in-law, daughter-in-law, aunt, uncle, first cousin or grandparent of a Conservatee or a Proposed Conservatee.

All relations, including traditional relations and foster children, acting in the role of a Close Family Member will be considered the same as a Close Family Member according to custom and tradition of the family or the Tribe upon a finding by the Tribal Court after considering evidence submitted by the petitioner or by the relative.

- C. *“Extended Family Member”* means any relative of a fourth degree or further, including second-cousin, great-grandparent and all relatives of either “great” or “great-great” degree.
- D. *“Calendar Days”* means every consecutive day on the calendar, including holidays and weekends.
- E. *“Clear and Convincing”* means that an unbiased reasonable person who carefully considered all the evidence would firmly believe that it was highly probable that the claim or fact was true.
- F. *“Conservatee”* means a person who has been determined by the Tribal Court to be Incapacitated and for whom a Conservator of any kind has been appointed.
- G. *“Conservator”* means a person or entity who has been appointed by the Tribal Court temporarily or permanently as either or both a Conservator of the Person (COP) or a Conservator of the Estate (COE).
- H. *“Conservator of the Estate (COE)”* means a person or entity appointed by the Tribal Court to manage the financial affairs of a Conservatee. The Tribal Court may limit the authority of a COE in a manner that meets the needs of the Conservatee while promoting as much independence and responsibility as possible.
- I. *“Conservator of the Person (COP)”* means a person or entity appointed by the Tribal Court to act as the primary caretaker for a Conservatee. The Tribal Court may limit the authority of the COP in a manner that meets the needs of the Conservatee while promoting as much independence and responsibility as possible.
- J. *“Descendant”* means an adult who has a Tribal Member ancestor and is otherwise eligible to receive Tribal Descendant services, as determined by Tribal law at the time a petition is filed under this Ordinance for conservatorship of the named Descendant.
- K. *“Domestic Partner”* means one partner of a couple who have filed a Declaration of Domestic Partnership or Confidential Declaration of Domestic Partnership with the State of California, or the equivalent in another jurisdiction recognizing domestic partnerships, including Tribal Court.
- L. *“Estate”* means all assets including any and all monies, income, per capita distributions, government benefits, Individual Indian Monies (IIM) accounts, wages, taxes owed or refunded, income tax returns, retirement accounts, IRAs, retirement payments/withdrawals, pensions, burial or survivors benefits, union and association benefits, settlements, debts owed to the Conservatee, debts of the Conservatee, income from trusts, rental income, annuities, mutual funds, reparations or settlements, cash, uncashed checks, bank accounts, certificates of deposit, safety deposit boxes, brokerage accounts, stocks, bonds, credit cards, loans, alimony payments, child support payments, promissory notes, any claims, partnerships, business interests, life insurance policies, insurance premiums, medical bills, real estate, property taxes, mortgage payments, escrows, royalties, copyrights, trademarks, utility bills, furniture, antiques, artwork, jewelry, clothing, valuable pets, collections, vehicles, genetic material, regalia, traditional artifacts or heirlooms according to custom and tradition. This includes all rights to income and all income received during the pendency of a conservatorship.

M. “*Ex Parte*” means a proceeding in which the Tribal Court may act without prior notice to all parties including the Proposed Conservatee because there is an emergency situation or urgent condition that requires the Tribal Court to act immediately to prevent irreparable harm to the Proposed Conservatee. The Tribal Court may hold a telephonic hearing and require the Petitioner to give testimony to establish whether there is an emergency situation or urgent condition that requires immediate action.

N. “*Home Study*” means a report by a social worker that is the result of a visit or visits to a home, and that details topics which may include the family structure, backgrounds of the adults in the home, condition of the home, financial situation, accommodations and transportation available, etc.

O. “*Incapacitated*” means the person’s ability to receive and evaluate information or to make and communicate decisions is impaired to the extent the person lacks sufficient understanding or capacity to make or communicate decisions concerning his or her person or estate. Contributing factors to Incapacity may include, but are not limited to, the following: mental illness, mental deficiency, physical illness or disability, chronic drug use or chronic intoxication that makes the individual unable to function, operate, or protect his or her physical safety and well-being, or his or her estate. The following factors are evidence of Incapacitation:

1. As a result of impairment, the individual is unable to effectively receive and evaluate information to such an extent that the individual is unable to meet the essential requirements for his or her physical health and safety; or
2. As a result of impairment, the individual is unable effectively to make or communicate decisions to such an extent that the individual is unable to meet the essential requirements for his or her physical health and safety; or
3. As a result of impairment, the individual is unable to effectively receive and evaluate information to the extent that any of the following applies:
  - i. The individual has income, assets or property that will be dissipated in whole or in part in the absence of a conservatorship; or
  - ii. The individual is unable to prevent financial exploitation; or
  - iii. The individual is unable to provide for his or her support; or
4. As a result of impairment, the individual is unable to effectively make or communicate decisions related to management of his or her property or financial affairs to the extent any of the following applies:
  - i. The individual has income, assets or property that will be dissipated in whole or in part in the absence of a conservatorship; or
  - ii. The individual is unable to prevent financial exploitation; or
  - iii. The individual is unable to provide for his or her support; and

5. The individual's need for assistance in decision making or communication cannot be met effectively and less restrictively through appropriate and reasonably available training, education, support services, health care, assistive devices, or other means that the individual will accept; and
  6. The determination is not based on the individual's poor judgment or physical disability (unless the disability renders the individual unable to communicate decisions effectively in any way).
- P. *"Judge"* means a person who has been duly appointed to serve as a judge of the Tribal Court, acting in his or her capacity as a judge of the Tribal Court.
- Q. *"MCFS"* means the Morongo Children and Family Services Department, or its successor entity, an agency of the Tribe.
- R. *"Medical Treatment"* means the care by a professional in any medical, physical, dental, or mental health field (including addiction) intended to improve a Conservatee's health and well-being, including routine preventative care.
- S. *"Moral Turpitude"* means conduct that is contrary to justice, honesty or morality or so extreme a departure from ordinary Morongo standards of honesty, good morals, justice or ethics as to be shocking to the moral sense of Morongo people. Crimes of Moral Turpitude include, but are not limited to, the following:
1. Fraud;
  2. Embezzlement;
  3. Theft;
  4. Bribery;
  5. Receiving stolen goods knowing they are stolen;
  6. Child abuse, including physical or sexual abuse;
  7. Assault with an intent to kill, commit serious bodily harm, or rape, or assault with a dangerous weapon;
  8. Felony conviction for domestic abuse or stalking;
  9. Intentional manufacturing, use, or distribution of a controlled substance or drug trafficking; and
  10. Aiding or abetting in the commission of, or attempting to commit, a crime involving Moral Turpitude.
- T. *"Motion"* is a request made to the Tribal Court to obtain an order directing some act to be done in connection with a pending case. Except for motions made by a party while Tribal Court is in session, all motions must be filed with the Tribal Court, must be in writing and should conform to the formal requirements of the Morongo Rules of Court. All motions shall state what the moving party is requesting, and why the motion should be granted.
- U. *"Other Member"* means an enrolled member of a federally recognized Indian tribe other than the Morongo Band of Mission Indians who resides on the Reservation or on Tribal Lands.
- V. *"Petitioner"* means the person who files a petition under this Ordinance seeking the appointment of a Conservator.

- W. “*Power of Attorney*” means a legal document by which a principal appoints an individual as an agent or attorney-in-fact to act for the principal.
- X. “*Preponderance of the Evidence*” means that an unbiased reasonable person when carefully considering all of the evidence would be persuaded that the claim or fact is more probably true than not.
- Y. “*Proposed Conservatee*” means a Tribal Member, Descendant or Other Member with respect to whom a petition has been filed under this Ordinance, when the Tribal Court has not yet determined whether that person is Incapacitated.
- Z. “*Proposed Conservator*” means the individual or entity nominated to serve as a Conservator in a petition under this Ordinance, when the Tribal Court has not yet determined whether that person or entity is the Conservator.
- AA. “*Reservation*” means all lands within the exterior boundaries of the Morongo Indian Reservation or otherwise under the jurisdiction of the Tribe, including but not limited to all tribal trust land, allotted land and fee land held by the Tribe.
- BB. “*Self-Dealing*” means the conduct of a person in a trusted position who takes advantage of his or her position and acts for his or her own interests or benefit, whether in a transaction or otherwise.
- CC. “*Successor Conservator*” means the individual or entity appointed by the Tribal Court to be the new Conservator when a previous Conservator has either resigned or been removed.
- DD. “*Tribal Court*” means the Morongo Tribal Court.
- EE. “*Tribal Lands*” means lands owned or held in trust for the Morongo Band of Mission Indians, including off-Reservation lands.
- FF. “*Tribal Member*” means an enrolled member of the Morongo Band of Mission Indians.
- GG. “*Tribe*” means the Morongo Band of Mission Indians, unless otherwise specified.

#### **IV. JURISDICTION**

- A. The Tribal Court shall have jurisdiction, to the fullest extent allowed by law, to hear and rule on any Petition for the appointment of a Conservator, and to enforce all provisions of this Ordinance, including the supervision of any person or the supervision of the estate of any person for whom a Conservator is appointed by the Tribal Court, provided the person is one of the following:
1. An Adult Tribal Member regardless of where they are domiciled;
  2. An Adult Descendant who is domiciled within the Reservation or on Tribal Lands; and
- B. The Tribal Court shall also have jurisdiction, to the fullest extent allowed by law, to hear and rule on any petition for the appointment of a Conservator and to enforce all provisions of this Ordinance, including the supervision of any person or the supervision of the estate of any person for whom a Conservator is appointed by the Tribal Court, provided that the person is an Other Member who qualifies under all of the following:
1. The Other Member is an adult;



2. The Other Member resides within the Reservation or on Tribal Lands;
3. The Other Member does not have the protection of his or her own Tribe available; and
4. All or a significant portion of the Other Member's Estate is located within the Reservation or on Tribal Lands.

C. The Tribal Court shall have civil jurisdiction to enforce any orders issued pursuant to this Ordinance. Any person who is in violation of a Tribal Court order may be required to appear and show cause why he or she should not be held in contempt of court.

If after a hearing, the Judge finds the person in contempt of court, the person shall be subject to all sanctions available under this Ordinance and the Morongo Rules of Court.

D. The Judge shall consider any valid Power of Attorney in determining the scope of a Conservatorship. The Judge will review any Power of Attorney on file with the Tribal Court, and will consider any other valid Power of Attorney submitted to the Tribal Court.

## **V. CONFIDENTIALITY**

A. All pleadings, evidence and other documents filed and all hearings held under this Ordinance are presumed to be confidential, unless there is a contrary order by the Judge.

B. At the discretion of the Judge, only court personnel (including security personnel), the Parties (including Conservators) and their attorneys/spokespersons, Close Family Members, Extended Family Members, MCFS staff and members of the Legal Department or outside counsel shall be allowed to attend any hearing held under this Ordinance.

C. Witnesses shall be allowed to be present in the courtroom only to present witness testimony, unless there is a contrary order by the Judge.

D. Any Tribal Court records relating to a Conservatorship under this Ordinance may be deemed to be confidential and filed under seal at the discretion of the Judge, except orders issued by the Tribal Court appointing or removing a Conservator, defining the authority of a Conservator, or approving or disapproving any action of a Conservator.

## **VI. RIGHTS OF PROPOSED CONSERVATEE, PARTIES AND FAMILY**

A. The Proposed Conservatee shall at all stages of the proceedings have the right to:

1. Be provided with timely notice of all hearings;
2. Be present at all hearings;
3. Be represented by legal counsel or a spokesperson (to explain and communicate on their behalf) at their own expense;
4. Seek independent medical or psychological evaluations at their own expense;
5. Be heard at any hearings or meetings held regarding the Conservatorship;

6. Be allowed to present any evidence, testimony or witnesses, and to cross-examine or challenge any evidence, testimony or witness, pursuant to the Morongo Rules of Court;
  7. Ask any questions during any hearing or meeting;
  8. Request that reasonable accommodations be made for his or her attendance and participation at any hearings or meetings;
  9. Have their case handled with strict confidentiality pursuant to Section V of this Ordinance; and
  10. Be allowed to request reconsideration, orally during a hearing or in writing after a hearing, of any orders regarding the Conservatorship (whether temporary or permanent), in addition to the right to appeal, including the right to ask the Judge to replace the appointed Conservator or to ask that the Conservatorship be terminated.
- B. The Tribal Court shall regularly inform the Proposed Conservatee at all stages of the proceeding of their rights under this Ordinance. At minimum, the Tribal Court shall inform the Proposed Conservatee or their representative or spokesperson orally during each hearing, whether they appear in person or telephonically, of the following rights, unless there is a prima facie showing of detriment to the person or that he or she would be unable to understand the rights (e.g. such as a person who is comatose).
1. You have the right to be represented by legal counsel or a spokesperson (to explain and communicate on your behalf) at your own expense. The Tribal Court will make every effort to provide a list of eligible Morongo Tribal Court admitted attorneys for individual representation, upon request.
  2. You have the right to ask questions of witnesses or the Judge during hearings or by written Motion, pursuant to applicable Morongo Rules of Court;
  3. You have the right to request reconsideration, orally during a hearing or in writing after the hearing, of any orders entered regarding the conservatorship;
  4. You have the right to ask the Judge for reasonable accommodations to facilitate your participation in current and future hearings or meetings; and
  5. You have the right to due process of law within this jurisdiction.
- C. The Close and Extended Family of the Proposed Conservatee and other parties shall have the right to:
1. Be provided with timely notice of all hearings, however, the clerk of the Tribal Court shall only provide notice to those Close, Extended Family and others identified in the petition at the addresses listed in the petition. Such notice and address list may be amended at any time by Motion to the Tribal Court made by an existing or proposed party to the proceeding;
  2. Attend all hearings unless the Judge determines such attendance is not in the best interest of the Proposed Conservator or Conservatee;
  3. Seek independent legal representation at their own expense and effort;
  4. Strict confidentiality regarding any personal information, unless there is a contrary order issued by the Judge; and
  5. Due process of law within this jurisdiction.

## **VII. EMERGENCY *EX PARTE* CONSERVATORSHIP PROCESS; PETITION**

A. An Emergency *Ex Parte* Petition for the Temporary Appointment of a Conservator may be filed in the Tribal Court.

B. At a minimum, an *Ex Parte* Emergency Petition seeking the appointment of a temporary Conservator shall include the following:

1. The name and address of the person filing the petition, and the relationship or capacity in which that person is filing the petition.
2. The name, age and address of the Proposed Conservatee, and a statement that the Proposed Conservatee is either a Tribal Member, a Descendant or an Other Member.
  - a) If the Proposed Conservatee is an Other Member, the petition shall identify the Tribe in which he or she is enrolled, the enrollment number, and any contact information for the other Tribe.
  - b) If the Proposed Conservatee is an Other Member, the petition shall explain in detail why the Other Member's federally recognized Tribe should not exercise jurisdiction over the conservatorship.
3. The reason(s) why the Proposed Conservatee should be found to be Incapacitated.
4. The reason(s) why irreparable harm to the Proposed Conservatee's health or estate is likely to occur if the Tribal Court does not act immediately, including any risk that would be created if the Tribal Court were to issue notice according to the required notice period and a hearing was held with all parties present.
5. A statement that the Petitioner seeks the appointment of a Conservator of the Estate, a Conservator of the Person, or both.
6. The name and address of each Proposed Conservator.
7. A written justification of the Proposed Conservator's qualifications (e.g. resume, previous experience, license(s)).
8. If a Proposed Conservator(s) is not MCFS, the age of the potential Conservator(s) (if an individual) and the relationship, if any, between each potential Conservator and the Proposed Conservatee.
9. Any person held responsible, either directly or indirectly, for a Proposed Conservatee's Incapacity, shall not be eligible to be appointed a Conservator for that person, in any capacity.
10. The name and address of each Close Family Member and Extended Family Member of the Proposed Conservatee, or a statement that the information is not known to the Petitioner and why.
11. A completed Morongo Confidential Conservator Screening Form, available from the Court Clerk.

C. The Tribal Court shall schedule an emergency hearing within two (2) Business Days of the filing of an *Ex Parte* petition, if deemed complete by the Tribal Court.

1. The emergency hearing may be conducted by a Judge telephonically.

2. The Petitioner automatically waives notice by filing an Emergency *Ex Parte* Petition by the usual methods.
  3. The Tribal Court shall attempt to notice the Proposed Conservatee personally, by phone or email or by any other means to accomplish actual notice of the emergency hearing.
  4. The Tribal Court shall attempt to notice any other Close Family Member or Extended Family Member or any caretaker of the Proposed Conservatee whose contact information is listed in the petition by phone or email or by any other means to accomplish actual notice of the emergency hearing.
  5. The Director of MCFS shall be noticed by the Tribal Court by telephone or email, whichever results in actual notice.
  6. The Legal Department shall be noticed by telephone or email, whichever results in actual notice.
- D. Any Tribal Court Order issued following an emergency hearing shall be available to pick up by all parties no later than one (1) Business Day after the conclusion of the hearing.
- E. An emergency order issued pursuant to this section shall be limited to sixty (60) Calendar Days in duration, and may be extended no more than once for a period of not more than an additional thirty (30) Calendar Days upon a finding of good cause by the Tribal Court, either on its own Motion or at the request of any party.
- F. The temporary appointment of a conservator shall only be extended beyond ninety (90) Calendar Days by the filing of a Petition for Conservatorship.

## **VIII. NON-EMERGENCY CONSERVATORSHIP PROCESS; PETITION**

- A. A Petition for Conservatorship may be filed in the Tribal Court.
- B. At a minimum, a petition seeking the appointment of a Conservator shall include the following:
1. The name and address of the person filing the petition, and the capacity in which that person is filing the petition.
  2. The name, age and address of the Proposed Conservatee.
  3. A detailed statement that the Proposed Conservatee is either a Tribal Member, a Descendant or an Other Member.
    - a) If the Proposed Conservatee is an Other Member, the petition shall include the tribe in which he/she is enrolled, the enrollment number and any contact information for the other tribe.
    - b) If the Proposed Conservatee is an Other Member, the petition shall explain in detail why the Other Member's federally recognized tribe should not exercise jurisdiction over the conservatorship.
  4. A statement detailing why the Proposed Conservatee should be deemed Incapacitated, and why the appointment of a Conservator is necessary.
  5. A statement indicating whether the Petitioner seeks the appointment of a Conservator of the Estate, a Conservator of the Person, or both.

6. The name and address of each potential Conservator, and if the potential Conservator is not MCFS, the age of the potential Conservator and the relationship, if any, between the potential Conservator and the Proposed Conservatee.
7. The petition may also identify one or more alternate Proposed Conservators. If any alternate Proposed Conservator is identified, the same information must be provided for the alternate Proposed Conservator (i.e. the name, address, and if not MCFS, the age and relationship between the alternate Proposed Conservator and the Proposed Conservatee).
8. A person held responsible, either directly or indirectly, for a Proposed Conservatee's Incapacity, shall not be eligible to be appointed a Conservator for that person, in any capacity.
9. The name and address (or last known address) of each Close Family Member and Extended Family Member of the Proposed Conservatee, and what efforts have been made to contact or to obtain contact information for each.
10. A Capacity Declaration signed by a physician or licensed psychologist, sufficient to enable the Tribal Court to determine whether the Conservatorship petition should be granted. The Declaration shall present to the Tribal Court and interested parties a professional medical opinion as to the capacity of the Proposed Conservatee.
11. An inventory of the Proposed Conservatee's Estate, to the extent known by the Petitioner.
12. A completed Morongo Confidential Conservator Screening Form, available from the Morongo Tribal Court Clerk.

## **IX. NOTICE OF PETITION AND INITIAL HEARING**

- A. Within fifteen (15) Calendar Days after the filing of a Petition for Conservatorship under this Ordinance, the Morongo Tribal Court shall send notice of the Petition and of an initial hearing to each of the following:
  1. The Petitioner and his or her legal counsel or representative, if applicable.
  2. The Proposed Conservatee, unless there is a prima facie showing of detriment to the person or that he or she would be unable to understand the purpose of the petition and notice (e.g. such as a person who is comatose).
  3. Each person identified as either a Close Family Member or an Extended Family Member or a caretaker of the Proposed Conservatee for whom an address is provided to the Tribal Court either in the petition or by the Tribe's Finance Department, the Tribal Affairs office or MCFS.
  4. The Tribe's In-House General Counsel or designee.
  5. The MCFS Director or designee.
- B. In addition to providing notice of the hearing, the notice sent by the Tribal Court shall notify all recipients of the following consequences if a Conservator is appointed:

1. If appointment of a Conservator of the Person is requested in the Petition, the notice must state that if a Conservator of the Person is appointed, the Proposed Conservatee may no longer have the authority to manage his or her personal affairs, including the authority to make decisions as to where and under what circumstances he or she will live and as to what Medical Treatment he or she will receive.
  2. If appointment of a Conservator of the Estate is requested in the petition, the notice must state that if a Conservator of the Estate is appointed, the Proposed Conservatee may no longer have the authority to manage his or her own financial affairs, including the authority to purchase or sell assets, to maintain bank accounts, to enter into contracts, to incur debt or to receive and dispose of income (including, but not limited to, per capita distributions and insurance or death benefits).
- C. An initial hearing shall be scheduled to take place no sooner than fifteen (15) and no later than forty (40) Calendar Days after the date the notice of the petition and hearing is issued by the Morongo Tribal Court.
- D. With respect to the Petitioner, Proposed Conservatee and Close and Extended Family Members, notice may be sent by certified mail or by another method that provides proof of delivery either to the individual or to his or her address as provided to the Tribal Court. Other methods of notice include:
1. Using an address obtained from other resources of the Tribe, including but not limited to Enrollment and Finance, which may be accessed to determine valid contact information for the Extended and Close Family Members of the Proposed Conservatee.
  2. Using on-line resources, including but not limited to people search, yellow pages, and other on-line means to determine an address.
  3. Publication notice may be provided as a last resort or when a valid address cannot be obtained after a diligent search. The notice will include the posting or listing of the notice as determined to be appropriate by the Tribal Court.
- E. With respect to the Tribe's Legal Department and MCFS, notice may be provided via interoffice mail, with an acknowledgement of service, or via email designated as having a "high" priority with a return or read receipt required.
- F. The Proposed or Temporary Conservatee shall be present at the hearing unless there is a finding by the Judge, based on an affidavit or declaration by a professional in the field of medical care, mental health or addiction, determining that the Proposed or Temporary Conservatee is unable to participate in the hearing, and no accommodation will remedy the inability to participate, or that participation would be detrimental to the health and well-being of the person, or based on information indicating the Proposed Conservatee is currently incarcerated and therefore unavailable, or upon a finding of the Tribal Court Judge that the Proposed or Temporary Conservatee is otherwise unable to attend.

## **X. INVESTIGATION; EVIDENTIARY HEARING**

- A. In the event the Tribal Court finds by a preponderance of the evidence that the Proposed Conservatee is likely to be found Incapacitated if more time were allowed to obtain evaluations, reports or other evidence, the Tribal Court may order an evidentiary hearing to be held no sooner than fifteen (15) Calendar Days and no later than ninety (90) Calendar Days after the initial hearing.
- B. During the time between the initial hearing and the evidentiary hearing, the Tribal Court may enter temporary orders to maintain the health, well-being or assets of the Temporary Conservatee.
- C. The purpose of the evidentiary hearing is to establish that the Temporary Conservatee either is Incapacitated or is not Incapacitated by the standard of clear and convincing evidence.
- D. Prior to the evidentiary hearing, the Tribal Court, upon request or on its own Motion:
  - 1. May order that the Proposed Conservatee be examined by a licensed physician, psychologist, and/or substance abuse counselor for the purpose of providing a written report evaluating the Proposed Conservatee and indicating whether there is a need for the appointment of a Conservator;
  - 2. May order that a Home Study/Home Inspection be conducted by MCFS, or a comparable agency, of the home of any person identified in the petition as a proposed Conservator of the Person;
  - 3. May order that a Home Study/Home Inspection be conducted by MCFS, or a comparable agency, of the Proposed Conservatee's current living situation;
  - 4. May order a Home Study/Home Inspection that includes background checks, credit checks, criminal histories or any other relevant information regarding any adult living in the current home of a Proposed Conservatee;
- E. A copy of any report prepared as a result of any Home Study/Home Inspection shall be provided to the Tribal Court within ten (10) Business Days prior to the hearing, and shall also be provided at least five (5) Business Days prior to the evidentiary hearing, by the Tribal Court, to the petitioner, the MCFS Director or designee, the Tribe's In-House General Counsel or designee, and the Proposed Conservatee or his or her legal representative and/or spokesperson.
- F. The purpose of the Evidentiary Hearing is to enable the Tribal Court to determine whether a Proposed Conservatee is Incapacitated, and to determine whether the appointment of a Conservator of the Person and/or a Conservator of the Estate is necessary in order to provide for his or her protection.
- G. The Tribal Court shall base its decision regarding whether a Proposed Conservatee is Incapacitated on the totality of the evidence, the record, and any other information entered into evidence at the hearing.
- H. The petitioner must prove by a standard of clear and convincing evidence that the Proposed Conservatee is Incapacitated and lacks the ability to manage his or her own affairs to such a degree that the person's health, security or financial security

are measurably threatened. The Tribal Court must also find that there are no less restrictive alternatives available to remedy the risk of harm caused by the incapacity.

- I. The Tribal Court shall consider all evidence presented, and shall give appropriate consideration and weight to all evidence according to the reliability and source of the evidence.
- J. The Tribal Court shall, on its own Motion or at the request of any party, summon or subpoena witnesses or request or subpoena records as necessary to make a finding after the hearing.
- K. The Tribal Court shall provide notice of the hearing date and time to any witness as soon as reasonably possible but not later than five (5) Business Days prior to the hearing date.
- L. The Tribal Court shall dismiss the Petition and vacate all prior orders if it does not find that the Proposed Conservatee is Incapacitated by clear and convincing evidence.
- M. The Evidentiary Hearing shall not be continued or rescheduled except upon a finding of exceptional circumstances by written order of the Tribal Court.
- N. Upon a finding that the Proposed Conservatee is Incapacitated, the Tribal Court shall request that an MCFS caseworker be assigned to support the best interests of the Conservatee. The caseworker shall, without limitation, be responsible for: conducting personal visits with the Conservatee prior to regularly scheduled hearings and reporting back findings to the Tribal Court, reporting the Conservatee's wishes and dissatisfactions to the Tribal Court, and making recommendations to the Tribal Court as requested.
- O. Because circumstances may change in the future, the dismissal of a petition seeking to have a person declared Incapacitated shall be without prejudice to the filing of a new petition based on a change in circumstances, or based on additional facts that occur or were not known until after the dismissal.
- P. If the Tribal Court determines that the Proposed Conservatee is Incapacitated, the Tribal Court shall designate him or her as a Conservatee, and shall address the issue of who should be appointed to serve and in what capacity (i.e., Conservator of the Estate, Conservator of the Person, or both).
- Q. When appointing a Conservator, the Tribal Court shall take into consideration the evidence presented at the hearing and grant to the Conservator only those powers the Tribal Court determines are necessary to protect the Conservatee and/or the Conservatee's assets.

## **XI. QUALIFICATIONS OF CONSERVATORS**

- A. Any adult or entity may be appointed to serve as Conservator of the Person upon the determination of the Tribal Court, except that the individual appointed may not be employed by or affiliated with any entity which is receiving compensation from the protected person to provide services, and may not be receiving financial



assistance from the protected person at the time of appointment. Additionally, the individual may not have been found by a Judge to have been a cause of the Conservatee's Incapacitation. To be qualified to serve as Conservator of the Person, an individual must demonstrate that he or she has the requisite knowledge, skill and experience to perform the duties of a Conservator of the Person, which may include but are not limited to the following:

1. Provide or arrange for and supervise adequate living facilities;
  2. Arrange all appropriate and timely Medical Treatment, and arrange or provide for transportation;
  3. Provide or arrange for appropriate meals;
  4. Provide or arrange for personal care (including bathing and toileting, if necessary) and for housekeeping to ensure a reasonably clean living space;
  5. Provide for clothing, transportation and suitable recreation;
  6. Provide periodic reports to the Tribal Court regarding the physical and mental status of the Conservatee, including how the person's needs are being met and what services are being provided;
  7. The Proposed Individual Conservator of the Person shall comply with Tribal Court orders seeking the following:
    - a) Criminal background checks for all adults living in the home of the Conservator of the Person, where the Conservatee resides with the Conservator of the Person or visits regularly; and
    - b) A Home Study/Home Inspection to be completed by MCFS or their designee, where the Conservatee resides with the Conservator of the Person or visits regularly.
  8. The Tribal Court shall not appoint any person as a Conservator of the Person if that person, or any member of that person's household, has background investigation results that include any of the following:
    - a) A felony conviction at any time for child abuse or neglect, spousal abuse, crimes against a child (including child pornography), or for a crime involving violence, including rape, sexual assault, or homicide, but not including other physical assault and battery.
    - b) A felony conviction, within the last five (5) years, for physical assault, battery, or a drug-or alcohol-related offense.
    - c) Any conviction or guilty plea of a crime, or any civil finding of responsibility, involving Moral Turpitude during the last twenty (20) years.
      - 1) The Tribal Court will determine the classification and result of any conviction or finding, and whether the information is a bar to the Proposed Conservator being appointed.
- B. Any adult or entity may be appointed to serve as a Conservator of the Estate upon the determination of the Tribal Court, except that the individual appointed may not be employed by or affiliated with any entity which is receiving compensation from the protected person to provide services, and may not be receiving financial assistance from the protected person at the time of appointment. Additionally, the

individual may not have been found by a Judge to have been a cause of the Conservatee's Incapacitation. To be qualified to serve as Conservator of the Estate, an individual or entity (such as a fiduciary firm) must demonstrate that he/she/it has the requisite knowledge, skill and experience to perform the duties of a Conservator of the Estate, which may include but are not limited to the following:

1. Manage the Conservatee's finances, including determining the amount(s) and source(s) of income and preparing an appropriate budget to provide for the daily living expenses as well as anticipated extraordinary expenditures;
2. Collect income due to the Conservatee and pay the Conservatee's bills in a timely manner to the extent funds are available;
3. Locate, take inventory of, take control of, and wisely manage the Conservatee's assets, and wisely invest that portion of the Conservatee's assets not needed to pay for daily living expenses, subject to Tribal Court approval;
4. Identify and ascertain the validity of all debts owed by the Conservatee, all claims made against the Conservatee, and all contractual obligations made prior to the appointment of the Conservator of the Estate in amounts over \$500.00;
5. Timely file and pay all taxes due; and
6. Provide an accounting to the Tribal Court on a periodic basis showing income and expenditures of the Conservatee's Estate along with a current inventory of all assets of the Estate and all debts owed by the Estate.
7. If the Proposed Conservator of the Estate is an individual or individuals, he or she will provide the following:
  - a) All adults living in the home will submit to a thorough background investigation. The Tribal Court shall not appoint any person as the Conservator of the Estate if that person, or any adult member of that person's household, has background investigation results that include any of the following:
    1. A felony conviction at any time for child abuse or neglect, spousal abuse, crimes against a child (including child pornography), or for a crime involving violence, including rape, sexual assault, or homicide, but not including other physical assault and battery.
    2. A felony conviction, within the last five (5) years, for physical assault, battery, or a drug-or alcohol-related offense.
    3. Any conviction or guilty plea of a crime, or any civil finding of responsibility, involving Moral Turpitude, embezzlement or bribery during the last twenty (20) years.
      - (a) The Tribal Court will determine the classification and result of any conviction or finding, and whether the information is a bar to the Proposed Conservator being appointed.
      - (b) A Home Study/Home Inspection to be completed by MCFS or their designee;
      - (c) A credit report for all adult household members;

- (d) Verification that the Proposed Conservator is able to financially support their own household without any funds or assistance from the Proposed Conservatee; and
  - (e) Be willing and able to provide a written accounting to the Tribal Court at least quarterly.
- C. Where it is deemed by the Tribal Court to be necessary or appropriate, the Tribal Court may appoint MCFS to serve as Conservator of the Person or Conservator of the Estate. If MCFS is appointed as Conservator, the MCFS Director shall be responsible for assigning appropriate staff to handle the duties, and the MCFS Director also shall be responsible for providing all required reports and/or accountings to the Tribal Court.
  - 1. An order appointing MCFS to act as Conservator shall be temporary, for a period of not more than thirty (30) days, with not more than one thirty (30) day extension. The Tribal Court and MCFS shall endeavor to identify some other person or entity suitable to act as the Conservator on a long-term basis.
  - 2. Notwithstanding the appointment of MCFS as Conservator, MCFS may still be ordered by the Judge to conduct one or more Home Studies/Home Inspections and/or investigations as needed. MCFS shall also be responsible to file monthly reports of the estate of the Conservatee, if applicable.
- D. Where it is deemed by the Tribal Court to be necessary or appropriate, the Tribal Court may appoint an entity and/or individual identified by the Tribe to serve as Conservator of the Person or Conservator of the Estate. The entity or individual identified by the Tribe shall be selected as required by the Tribe's Procurement Policy.
- E. Any Conservator is entitled to reasonable compensation as allowed by the Tribal Court from the estate of the Conservatee, including reimbursement for costs advanced, except that MCFS shall not be entitled to compensation for staff or administrative time. Whether or not a Conservator intends to seek reasonable compensation shall not be a basis for the Tribal Court to favor one proposed or appointed Conservator over another. Proposed or appointed Conservators shall not be expected to use their own resources for the care of the Conservatee, and it shall be presumed by the Tribal Court that expenses for the care of the Conservatee shall be borne by the Conservatee's personal resources. The frequency and amount of all compensation must be approved by the Tribal Court.
- F. Should a Conservator fail to meet the requirements of his or her duties, the Tribal Court shall act to remove him or her. Any party, or the Court on its own motion, may seek relief by filing a Motion for the Conservator to be Relieved of Duties. Upon such filing:
  - 1. A summons will be issued by the Judge and a future hearing date set no later than thirty (30) Calendar Days from the issuance of the summons.
  - 2. The summons shall be served on the Conservator by certified mail or by another method that provides proof of delivery either to the Conservator or to his or her address as provided to the Tribal Court.

3. Upon service of the summons, the Conservator shall have fifteen (15) Calendar Days from the date of service to file a Response and to provide the Court with any requested information.
4. At the hearing, the Conservator will be required to appear personally and to explain to the Tribal Court why he or she should not be removed as the Conservator.
5. The Tribal Court shall be empowered to remove any Conservator, and to assess fees, fines, and other penalties for any failure to meet the requirements of a Conservator when such failure causes harm to the Conservatee or their estate.

## **XII. PREFERENCES**

- A. When there is a Close Family Member who is willing and qualified to serve as a Conservator, preference shall be given to that Close Family Member.
- B. In the event there are multiple Close Family Members willing and qualified to serve as Conservator, preference shall be given in the following order:
  - a) The spouse or Domestic Partner of the Conservatee;
  - b) The adult child of the Conservatee, and if there is more than one adult child of the Conservatee willing and qualified to serve, the Tribal Court shall determine which of them is most suitable;
  - c) A parent of the Conservatee;
  - d) An adult sibling of the Conservatee, and if there is more than one adult sibling of the Conservatee willing and qualified to serve, the Tribal Court shall determine which of them is most suitable.

The preference order is not a bar to the Tribal Court ordering co-Conservators who meet all of the requirements.

- C. The preference order is rebuttable when considering all factors including:
  - a) The nature of the relationship to the Conservatee;
  - b) The ability of the Proposed Conservator to carry out the duties and obligations defined in this Ordinance;
  - c) The complexity of the Conservatee's Estate;
  - d) The life experience, educational and credit backgrounds of all proposed Conservators;
  - e) The geographic distance between the Proposed Conservator and the Conservatee; and
  - f) Any expressed wishes or desires evidenced by the Conservatee's will, power of attorney or other verifiable documents executed prior to becoming Incapacitated.

### **XIII. ACCEPTANCE OF APPOINTMENT; BOND REQUIREMENT**

- A. Any person or entity appointed by the Tribal Court to serve as Conservator of the Person or Conservator of the Estate must acknowledge and accept the appointment in writing.
- B. By accepting appointment as a Conservator of the Person or a Conservator of the Estate, an individual or entity acknowledges:
  - 1. That he/she/it is aware of the duties of a Conservator as set forth in this Ordinance;
  - 2. That he/she/it submits to the jurisdiction of the Tribal Court for all purposes, including sanctions for contempt of court, in all proceedings arising in connection with the appointment as a Conservator and the performance of the duties of a Conservator.
- C. The Tribal Court may, in its discretion, order that a Conservator, especially a Conservator of the Estate, post bond in an amount determined by the Tribal Court.
  - 1. Should the Tribal Court order the posting of a bond, it shall also limit the powers of the Conservator to the extent it deems appropriate during the period after the Conservator has been appointed and before the bond is posted.
  - 2. The amount of any bond required to be posted must be commensurate with the value of the Conservatee's Estate and should take reflect the Conservatee's anticipated income, as determined by the Judge.
  - 3. Any bond must be provided by a surety satisfactory to the Tribal Court, and the cost of obtaining such a bond may be paid by the Estate.
  - 4. Upon showing and finding of good cause, the Tribal Court may reduce or increase the amount of any required bond.

### **XIV. RIGHTS & RESPONSIBILITIES OF A CONSERVATOR**

- A. Except when limited by an order of the Tribal Court, a Conservator of the Person shall have custody of the Conservatee and shall have the following powers:
  - 1. The power to decide where the Conservatee lives, with a preference for places within or near the Reservation versus away from the Reservation, if both are substantially equivalent.
  - 2. The power to authorize Medical Treatment for the Conservatee.
    - a) The power to authorize Medical Treatment includes:
      - (1) The duty to react to any medical situation that demands attention., with the expectation that urgent medical needs and requests for medication will be addressed in 24 hours or less;
      - (2) Securing and authorizing necessary medical care;

- (3) Reviewing medical, dental and mental health treatment with medical professionals to understand the Conservatee's needs and treatment options to the extent that a reasonable person would, to be able to make informed decisions; and
  - (4) Ensuring the Conservatee receives regular preventative medical and dental services.
- b) The criteria for making health-related decisions should include all of the following according to the needs of the Conservatee:
  - (1) Any wishes of the Conservatee, expressed prior to conservatorship, including but not limited to a living will, trust, durable power of attorney, or any other declaration of intent;
  - (2) Knowledge the Conservator has about what the Conservatee would want, if he or she were making the decisions;
  - (3) The current wishes of the Conservatee with regard to the decision;
  - (4) The perceived best interest of the Conservatee;
  - (5) Traditional and/or religious practices and/or beliefs of the Conservatee, their family and the Tribe;
  - (6) Information from personal contact with the Conservatee, family, interested parties, close friends, and religious leaders;
  - (7) Information provided by attending physicians, specialists and other medical professionals;
  - (8) Transportation access for the Conservatee, especially to evaluate and access medical care, prescription medication, medical devices, therapies, activities or other necessities;
  - (9) Any information available to the Conservator leading to a reasonable suspicion of abuse or neglect of Conservatee, including but not limited to visible bed sores, bruises, etc.; and
  - (10) Any other relevant information.
- 3. The power to arrange for any and all services necessary for the Conservator of the Person to carry out the duties enumerated in this Ordinance.
- 4. The power to make social decision and arrangements for the Conservatee.
- 5. The power to request or petition for protective orders, if the action is in the Conservatee's best interest.

B. The Conservator of the Person shall not have the following powers or authority:

1. To prepare or have prepared a will on behalf of or for a Conservatee that disposes of any property, including trust property, without an order of the Tribal Court;
  2. To sell, encumber or otherwise transfer real property, personal property or traditional items of personal property including but not limited to regalia, beadwork, basketry or family items, unless authorized by the Tribal Court.
- C. Except when limited by an order of the Tribal Court, a Conservator of the Estate shall have the following powers:
1. The power to collect, hold, retain and manage assets belonging to the Conservatee, including both real and personal property, and to dispose of such assets as necessary to provide for the living expenses of the Conservatee.
    - a) Notwithstanding the foregoing, a Conservator shall not have the power to dispose of any real property or any personal asset with a value in excess of \$5,000 without prior authorization from the Tribal Court.
  2. The power to receive income and other assets on behalf of the Conservatee.
  3. The power to establish and/or maintain one or more bank accounts on behalf of the Conservatee.
  4. The power to arrange and pay for insurance to protect the Conservatee's assets and to protect the Conservatee from liability to third persons.
  5. The power to use the Conservatee's assets and income to pay the Conservatee's lawful debts.
  6. The power to enter into contracts on behalf of the Conservatee, including contracts for home renovations if necessary to provide suitable living conditions for the Conservatee, provided that any such contract must be for the benefit of the Conservatee.
    - a) Notwithstanding the foregoing, except for contracts for payment for Medical Treatment, a Conservator shall not have the power to enter into a contract having a monetary value in excess of \$5,000 without prior authorization from the Tribal Court.
  7. The power to use the Conservatee's assets to make payments to a Conservator of the Person or others designated by a Conservator of the Person for the daily living and other expenses of the Conservatee, with the expectation that urgent medical needs and requests for medication will be addressed in 24 hours or less. If both the Conservator of the Person and the Conservator of the Estate are the same individual(s), the expenses shall be approved and payment authorized by the Tribal Court.

8. The power to make payments required pursuant to any valid Tribal Court order.
9. The power to breach and /or declare void any contract entered into by the Conservatee prior to appointment of the Conservator of the Estate, and to litigate and/or pay damages resulting from such breach from the assets of the Conservatee.
  - a) Notwithstanding the foregoing, a Conservator of the Estate shall not have the authority to breach or declare void any contract the breach of which is likely to result in costs or damages in excess of \$5,000 without prior authorization from the Tribal Court.
10. Subject to the Conservator of the Estate's fiduciary duties to protect the Conservatee's Estate and to avoid Self-Dealing, the power to make investments which are beneficial to the Conservatee using the assets of the Conservatee that are not required to pay for the daily living expenses of the Conservatee.
  - a) Notwithstanding the foregoing, a Conservator of the Estate shall not have authority to make any investment with a value in excess of \$5,000 without prior authorization from the Tribal Court.
  - b) In the event the Conservator of the Estate is a bank or other financial institution, or is a trust officer or other employee of a bank or other financial institution, it shall not be considered Self-Dealing if the Conservator of the Estate deposits funds of the Conservatee's Estate in one or more accounts maintained at that bank or financial institution.
  - c) The power to make investments includes the power to vote any security, in person or by proxy, which is part of the Conservatee's Estate.
11. The power to prepare and file, or arrange for the preparation and filing of, all required tax documents, and to pay any and all taxes when due.
12. The power to prosecute any legal claim on behalf of the Conservatee.
  - a) Notwithstanding the foregoing, a Conservator of the Estate shall not have authority to compromise or settle any legal claim in excess of \$5,000 without prior authorization from the Tribal Court.
13. The power to make gifts, subject to the following limitations:
  - a) The power to make gifts on behalf of the Conservatee to Close Family Members shall not exceed \$500 per family member per year.
  - b) If the Conservator of the Estate determines that income taxes payable by the Conservatee of the Estate could be reduced by making a tax-deductible gift to a charity or a non-profit organization, the Conservator of the Estate must petition the Tribal Court for authority to make such a gift, if the gift is in excess of \$500.
  - c) If the Conservator of the Estate determines that gift, estate, or inheritance taxes payable by the Conservatee of the Estate could be



reduced by making gifts in excess of \$500 per year to the Conservatee's heir(s) or beneficiaries, the Conservator of the Estate must petition the Tribal Court for authority to make such gift(s).

- d) Under no circumstances may a Conservator of the Estate make any gift from the Estate if making such gift might foreseeably impair the ability to pay the living expenses (including bills for Medical Treatment) of the Conservatee.
  - e) Under no circumstances may a Conservator of the Estate make any gift to themselves, or to their Close Family Members not in common with the Conservatee, or to any other person, unless approved by the Tribal Court in advance.
- D. When deciding whether and to what extent to limit the powers of a Conservator, the Tribal Court will consider all evidence presented regarding the extent to which a Conservatee is Incapacitated, and will ensure that the interests of the Conservatee are protected without unduly limiting the liberty of the Conservatee to live as he or she wishes.
- E. A Conservator may be reasonably compensated by the Conservatee's estate for services rendered to the Conservatee only if the compensation is set and approved by the Tribal Court upon a request made either in the original petition or by a subsequent petition. Compensation does not include expenses incurred by a Conservator in carrying out their duties or responsibilities or other matters related to natural affection. The Tribe and its entities are not entitled to compensation from the Conservatee's estate for services rendered. The right to receive compensation as a Conservator shall be deemed waived for any year in which compensation is not requested.
- F. Any legal fees incurred by any person while a Proposed Conservator and prior to the appointment of a Conservator are not reimbursable from the estate of the Conservatee.
- G. The future retention of an attorney by the Conservator for the benefit of the Conservatee or for the Estate of the Conservatee is subject to Tribal Court approval before a retention can be made by the Conservator. The expertise, hourly rates and location of the attorney's office will be evaluated by the Tribal Court in considering the suitability of the attorney.
- H. Any legal fees incurred or anticipated by the Conservator during the conservatorship must be for the benefit of the Conservatee, and must have prior Tribal Court approval.

## **XV. RIGHTS OF CONSERVATEE**

- A. Every Conservatee has the right to be treated with understanding and respect, and to have his or her wishes considered. Every Conservatee has all basic human rights including the right to be well cared for by a Conservator(s). In addition to the rights

defined by Section VI(A) of this Ordinance, which are hereby incorporated into this Section, after the appointment of a Conservator, the Conservatee retains the following rights:

1. The following rights are absolute and may not be limited by the Tribal Court:
  - a) The right to receive personal mail, phone calls and other communications;
  - b) The right to vote in Tribal and non-Tribal elections;
  - c) The right to be represented by an attorney;
  - d) The right to ask the Judge to change Conservators; and
  - e) The right to ask the Judge to end the Conservatorship.
2. The following rights are discretionary and may be limited or barred by Tribal Court order:
  - a) The right to marry or enter into a registered domestic partnership, unless the Judge has determined that the Conservatee does not have the capacity to do so;
  - b) The right to make or change a will, trust, or any estate planning documents, unless the Judge has made a specific finding that the Conservatee does not have the capacity to do so;
  - c) The right to apply for and obtain government identification, including a passport, unless the Judge has determined that the Conservatee does not have the capacity to do so;
  - d) The right to directly receive or control his or her own income, unless the Judge has determined that the Conservatee does not have the capacity to do so;
  - e) The right to make his or her own medical decisions, unless a Judge has removed that right and has given the authority to a Conservator;
  - f) The right to enter into transactions or contracts, to the extent reasonable to provide the necessities of life to the Conservatee or to his or her minor children, unless the Judge has determined that the Conservatee does not have the capacity to do so;
  - g) The right to control and allowance (defined as personal spending money the Tribal Court has authorized the Conservator to pay directly to the Conservatee), with restrictions as imposed by the Judge;
  - h) The right to domestic and international travel, unless the Judge has determined that the Conservatee does not have the capacity to travel safely; and
  - i) The right to engage in other activities as determined suitable by the Tribal Court, whether at the time of the Conservator's appointment, or a later time following a Tribal Court hearing on a request for authority to engage in activity.

## **XVI. REPORTING TO THE COURT; REVIEW HEARING**

- A. The Tribal Court shall review each Conservatorship at least twice a year by holding a hearing; reviewing all required reports, and issuing appropriate findings and orders.
- B. Each Conservator shall provide the Tribal Court with a written report fifteen (15) Business Days prior to the review hearing. The Tribal Court shall ensure all parties receive a copy of the reports no later than ten (10) Business Days prior to the review hearing.
  - 1. The Conservator of the Person's written report shall include, at a minimum:
    - a) A list of any ongoing or new medical, dental or mental health concerns, including a list of prescribed medications;
    - b) A summary of any medical, dental, mental health or other services provided to the Conservatee since the last review hearing;
    - c) A brief description of the Conservatee's daily schedule;
    - d) A summary of the social, tribal and recreational activities in which the Conservatee participates;
    - e) Information about any contact made with Family Members including Close and Extended Family;
    - f) A list of any concerns or issues the Tribal Court needs to be aware of or act upon;
    - g) A current photograph of the Conservatee; and
    - h) Any other information ordered by the Tribal Court.
  - 2. The Conservator of the Estate's written report shall include a minimum:
    - a) A summary of any significant financial changes including unscheduled income or unscheduled expenses;
    - b) A line-item accounting of all income and expenditures;
    - c) Details of any purchases, transfers or sales of any property;
    - d) Copies of all bank statements, investment statements and tax returns or other documents submitted on the Conservatee's behalf;
    - e) Copies of any bills or statements from medical or service providers that were paid directly; and
    - f) Any other records or information ordered by the Tribal Court.
- C. Reimbursement by the Estate for expenses incurred for the care and custody of the Conservatee must be authorized by the Conservator of the Estate. If the Conservator of the Person and the Conservator of the Estate are the same individual(s), the reimbursement must be reviewed and authorized by the Tribal Court.

## **XVII. CONSERVATEE'S PROTECTED PAYEE TRUST ACCOUNT**

A Trust Account shall be established by the Tribe to properly manage and maintain Tribal distributions made to Tribal Member Conservatees who have a Conservator of the Estate appointed by the Tribal Court. The Trust Account shall be made in compliance with the Indian Gaming Regulatory Act of 1998, as amended (25 U.S.C. §2701 et seq) and all IRS

Revenue Procedures pertaining to Indian gaming per capita distributions and the Tribe's Revenue Allocation Plan.

B. The Trust Account shall be administered according to policies and procedures established in conjunction with this Ordinance.

C. The Trust Account shall be administered through the Morongo Finance Department or another consultant or company selected by the Tribal Council or other designee.

D. For any Conservatorship of the Estate, the Tribal Court shall presume that it is in a Tribal Member Conservatee's best interest to have their Tribal monetary assets held by the Tribal Trust Account, but shall consider alternatives upon the filing of a motion from the Conservator of the Estate that a different arrangement is in the Tribal Member Conservatee's best interest.

### **XVIII. TERMINATION OF A CONSERVATORSHIP; NO LONGER INCAPACITATED**

- A. If at any time a Party believes that the Conservatee is no longer Incapacitated, the Party may file a Motion to Terminate Conservatorship with the Tribal Court. The motion must provide relevant facts and request that the Tribal Court hold a hearing to determine whether to terminate the Conservatorship.
- B. A Motion to Terminate the Conservatorship shall include all evaluations, reports or other evidence relied on by the Party to support the contention that the Conservatee is no longer Incapacitated
- C. The Motion to Terminate the Conservatorship shall also include a statement of the reason(s) why the Party believes the Conservatee should no longer be considered Incapacitated
- D. Notice of a hearing to determine whether to terminate a Conservatorship shall be issued not less than fifteen (15) Business Days before the hearing to each of the following persons:
  - 1. The Conservatee and his or her legal representative and/or spokesperson, if applicable;
  - 2. Each Close Family Member and Extended Family Member of the Conservatee for whom the Tribal Court was provided an address on the original Petition for Conservatorship;
  - 3. Each Conservator previously appointed, unless removed from their position by the Tribal Court;
  - 4. The MCFS Director or designee; and
  - 5. The Tribe's In-House General Counsel or designee.
- E. At the same time the hearing is noticed for a Motion to Terminate the Conservatorship, the Tribal Court may order that the Conservatee be examined by a licensed physician, psychologist, substance abuse counselor or other specialist for the purpose of preparing a written report evaluating the Conservatee and expressing an opinion as to whether there is a need for continuation of the Conservatorship.

- F. If the Tribal Court concludes that the Conservatee is no longer Incapacitated, the Tribal Court shall order the termination of the Conservatorship and shall terminate the appointment of the Conservator(s).
- G. If a Conservator of the Estate previously has been appointed and the Tribal Court determines there no longer is a need for such Conservator, within sixty (60) Calendar Days after termination of the appointment of the Conservator of the Estate, the former Conservator shall submit to the Tribal Court a final accounting of his/her/its management of the Estate.
- H. If a bond previously had been posted, the surety shall not be exonerated and the bond shall not be released until such time as the Tribal Court has examined and approved the final accounting by court order.
  - a) The Tribal Court may seek and obtain assistance from the Tribe's Finance Department in connection with the examination of the final accounting.
  - b) The Tribal Court may, at its discretion, schedule a hearing to consider whether to approve the final accounting. Should such a hearing be scheduled, notice of the hearing must be provided at least fifteen (15) Business Days in advance of the hearing to each person determined as necessary for the termination hearing.
- I. If the Tribal Court concludes, based on the record and hearing, that the Conservatee is still Incapacitated, the Tribal Court may at its discretion modify the power(s) granted to a Conservator based on the record and evidence.

## **XIX. RESIGNATION OR REMOVAL OF CONSERVATOR**

- A. A Conservator may resign upon no less than thirty (30) Calendar Days' notice to the Tribal Court.
- B. Upon receipt of a notice of resignation from a Conservator, the Tribal Court shall schedule a hearing as soon as possible for the appointment of a Successor Conservator, and shall provide notice of that hearing to each Party. The hearing shall be scheduled not more than ninety (90) Calendar Days from notice of resignation.
- C. Notwithstanding having resigned, anyone appointed to serve as a Conservator of the Estate must file with the Tribal Court a final accounting of his/her/its management of the Estate no later than thirty (30) Calendar Days after the effective date of the resignation.
  - a) If a bond previously had been posted, the surety shall not be exonerated and the bond shall not be released until such time as the Tribal Court has examined and approved the final accounting.
    - (1) The Tribal Court may, at its discretion, seek and obtain assistance from the Tribe's Finance Department in connection with the examination of the final accounting.
    - (2) The Tribal Court shall schedule a hearing to consider whether to approve the final accounting. Notice of hearing must be provided to the Parties and any other

person(s) the Tribal Court determines necessary at least fifteen (15) Calendar Days in advance of the hearing.

D. A finding of any failure to fulfill the duties of a Conservator in a reasonable and responsible manner, after a hearing, shall be cause for removal and replacement of the Conservator by the Tribal Court.

1. Failure to file an initial inventory of the estate, failure to file a written report, or failure to appear at the time of a regularly scheduled review, or any violation of any order of the Tribal Court shall constitute grounds for termination of the Conservatorship; provided, that the Conservator must be given the required notice and an opportunity to request a rescheduled hearing and/or to file a later report within such a period to avoid termination.

2. Notwithstanding the foregoing, unless the Tribal Court determines that there is a need for the immediate removal of a Conservator to protect the interests of the Conservatee, prior to the removal of a Conservator the Tribal Court shall schedule a hearing upon not less than fifteen (15) Business

Days' notice to determine whether there is good cause for removal.

3. Notice of removal hearing shall be provided by the Tribal Court to each Party and any other person(s) the Tribal Court determines necessary.

4. Notwithstanding any order of removal, a person who served as a Conservator of the Estate must file with the Tribal Court a final accounting of his/her/its management of the Estate no later than thirty (30) Calendar Days after the effective date of the removal order.

5. If a bond previously had been posted, the surety shall not be exonerated and the bond shall not be released until such time as the Tribal Court has examined and approved the final accounting.

6. The Tribal Court may, at its discretion, seek and obtain assistance from the Tribe's Finance Department in connection with the examination of the final accounting.

7. Where a Conservator of the Estate is removed for cause, the Tribal Court shall schedule a hearing to consider whether to approve the final accounting. Notice of the hearing must be provided at least fifteen (15) Calendar Days in advance of the hearing to each Party and any other person(s) the Tribal Court determines to be necessary.

E. When a Conservator is removed for cause, the Tribal Court shall appoint a new Successor Conservator. If necessary, such an appointment may be made on an interim basis pending a hearing to appoint a new Conservator.

1. Notice of hearing to determine who should be appointed to serve as a Successor Conservator shall be scheduled by the Tribal Court and served no less than fifteen (15) Calendar Days in advance to each Party and any other person(s) the Tribal Court determines to be necessary.

2. The Parties may provide one or more recommendations to the Tribal Court regarding who should be appointed to serve as Successor Conservator.

3. The provisions of this Ordinance regarding background checks, requirements of ability and the posting of a bond shall be applicable to any person or entity appointed to serve as a Successor Conservator. Any Successor Conservator shall be subject to all qualifications and requirements of this Ordinance.

F. An Emergency *Ex Parte* Motion for Removal of a Conservator may be filed in the Tribal Court by any Party. The Tribal Court shall schedule an emergency hearing within two (2) Business Days of the filing of a complete *Ex Parte* Motion for the Removal of a Conservator. To be deemed complete, the Petition must include a proposed qualified Successor Conservator along with supporting documentation.

1. The emergency hearing may be conducted by a Judge telephonically.

2. The Petitioner automatically waives notice by filing an Emergency *Ex Parte* Motion by usual methods.

3. The Tribal Court shall attempt to notice the Parties personally, by phone or email, or any other means intended to accomplish actual notice of the scheduled emergency hearing.

## **XX. FINALITY; APPEAL**

A. Any order finding a person to be Incapacitated or finding that a person previously determined to be Incapacitated no longer is Incapacitated, may be appealed in accordance with the provisions of the Tribe's appellate law.

B. A pending request for reconsideration of a finding that a Conservatee is Incapacitated shall not bar an appeal of the finding, or interfere in any way with the appellate process.