

**Lac Vieux Desert Band of Lake Superior Chippewa Indians
Adult Protection Code**

Table of Contents

Chapter 1.	Title, Purpose, Policy, Jurisdiction, Standing, Eligibility for Appointment, No Waiver of Sovereign Immunity, and Severability.
Chapter 2.	Definitions.
Chapter 3.	Reporting, Contents of Report, and Bad Faith <u>Reporting</u> , Retaliation, or Intentionally Interfering with an Investigation.
Chapter 4.	Mandated Reporters and Failure to Report
Chapter 5.	Multi-Disciplinary Team
Chapter 6.	Adult Protective Services Investigation
Chapter 7.	Petition for Protection Order, Temporary Emergency Ex Parte Order, Protection Order, and Protection Plan
Chapter 8.	Appointment of Guardian for Incapacitated Adult
Chapter 9.	Appointment of Conservator
Chapter 10.	Hearing Procedure
Chapter 11.	Court Ordered Reports
Chapter 12	Miscellaneous Provisions
Chapter 13	Powers and Duties of Guardian, Powers and Duties of Conservator, and Limitations on Powers and Duties
Chapter 14	Procedures for Transfer of Jurisdiction
Legislative History	

Chapter 1
Title, Purpose, Policy, Jurisdiction, Standing, Eligibility for Appointment,
No Waiver of Sovereign Immunity, and Severability

Sec. 1.1 Title.

- A. This Code shall be known as the "Adult Protection Code" or "Code."

Sec. 1.2 Purpose.

- A. The purpose of this Code is to establish Tribal law to protect Adults of the Tribe from Abuse, neglect, Self-neglect and Exploitation and to provide guardianship or conservatorship to protect Tribal Adults who have a physical or mental condition that substantially impairs his or her ability to care for his or her needs.
- B. This Code shall be liberally construed and implemented in the least restrictive manner to affect the purposes stated herein.

Sec. 1.3 Policy.

- A. It shall be the policy of the Tribe that the dignity and self-reliance of the Tribe's Adults shall be acknowledged and respected by family members, the Tribal community, and employees of the Tribe.
- B. The Tribe recognizes that some Adults may be Vulnerable and in need of Protective Services, guardianship, or conservatorship. These services should, to the maximum degree feasible under programs, services, and resources, place the least possible restrictions on personal liberty and exercise of rights consistent with due process.

Sec. 1.4 Jurisdiction.

- A. Jurisdiction. The Tribal Court shall have civil jurisdiction over Vulnerable Adult protection matters and Adult guardianship/conservatorship matters as set forth in this Code.
- B. Persons subject to the jurisdiction under this Code includes:
1. Enrolled members of and those eligible for membership with the Lac Vieux Desert Band of Lake Superior Chippewa Indians residing within the boundaries of the Tribe's Reservation; and
 2. Indian persons enrolled in any federally recognized tribe who reside within the exterior boundaries of the Tribe's Reservation.

Sec. 1.5 No Waiver of Sovereign Immunity.

- A. Nothing in this Code shall be construed to waive the sovereign immunity of the Tribe or any of its governmental officers, representatives, employees, or agents.

Sec. 1.6 Severability.

- A. If any provision of this Code, or the application thereof to any person or circumstances, shall, for any reason, be adjudged by a court of competent jurisdiction to be invalid, such judgment shall not affect, impair, or invalidate the remainder of this Code, which shall continue in full force and effect.

Sec. 1.7 Establishment of Court Rules.

- A. The Court shall establish rules governing procedure for matters under this Code.

Sec. 1.8 Court Hearing Attendance.

- A. Due to the sensitive nature of the proceedings under this Code and with the intent of preserving the dignity of those involved, all hearings shall be closed to the public, and access shall be limited to the Petitioner, the Respondent or proposed Ward, Immediate Family, their respective attorneys, any guardian *ad litem*, fact and expert witnesses called to testify at the proceeding under the authority of the Tribal Court and any other person or entity authorized by the Tribal Court to be present at the proceeding.
- B. The Court may exclude any person, including a party other than the alleged Vulnerable Adult, from Court proceedings if the Court finds that the attendance of the person is not in the Vulnerable Adult's best interests.

Sec. 1.9 Lac Vieux Desert Prosecuting Attorney.

- A. The Prosecuting Attorney is authorized to represent the Lac Vieux Desert Social Services Department in proceedings under this Code where the Department of Social Services is the Petitioner.

Chapter 2

Definitions

Sec. 2.1 Definitions.

- A. Unless otherwise indicated, the following words and terms have the meanings given below:
1. “Abuse” means harm or threatened harm to an adult's health or welfare caused by another person. Abuse includes, but is not limited to, non-accidental physical or mental injury, sexual abuse, or maltreatment.
 2. “Adult” means any person who is eighteen (18) years of age or older.
 3. “Adult in need of Protective Services” means a vulnerable person not less than 18 years of age who is suspected of being or believed to be Abused, Neglected, Self-neglected or Exploited.
 4. “Conservator” means a person or entity that has been appointed by the Tribal Court to perform the duties and exercise the authority relative to the collection, care, preservation, administration and protection of the Ward’s Estate in accordance with this Code and includes a Limited Conservator.
 5. “Social Services Department” means the Lac Vieux Desert Band of Lake Superior Chippewa Indians Social Services Department.
 6. “Estate” means income, accounts, securities, assets, liabilities and personal and real property.
 7. “Exploitation” means an action that involves the misuse of an Adult's funds, property, or personal dignity by another person.
 8. “Fiduciary” or “Fiduciary duties” are the highest legal and ethical standards of care and loyalty, requiring one party (the fiduciary) to act solely in the best interest of another (the beneficiary) regarding financial or property matters. Fiduciaries must put their beneficiaries' interests above their own, avoiding conflicts of interest, acting with prudence, and maintaining confidentiality.
 9. “Guardian” means a person who has been appointed by the Tribal Court to perform the duties and exercise the authority to provide for the care, custody and control of the Ward in accordance with this Code and includes a Limited Guardian.
 10. “Immediate Family” means the grandparent, parent, step-parent, spouse, brother, sister, brother-in-law, sister-in-law and adult children of the proposed Ward.
 11. “Incapacity” impairment by reason of Mental Illness, mental deficiency, physical

illness or disability, chronic use of drugs, chronic intoxication, or other cause, to the extent that the Adult lacks sufficient understanding or capacity to make or communicate informed decisions.

12. “Incapacitated Adult” means an Adult who is impaired by reason of Mental Illness, mental deficiency, physical illness or disability, chronic use of drugs, chronic intoxication, or other cause, to the extent that they lack sufficient understanding or capacity to make or communicate informed decisions.
13. “Indian” means any person who is a member of a federally-recognized Indian tribe.
14. “Limited Conservator” means a person that has been authorized by the Tribal Court to perform less than all duties or to exercise less than all authority set forth in this Code in relation to the Ward’s Estate as enumerated by Tribal Court order.
15. “Limited Guardian” means a person or entity who has been authorized by the Tribal Court to perform less than all duties or to exercise less than all authority set forth in this Code in relation to the Ward as enumerated by Tribal Court order.
16. “Mental Illness” means a substantial disorder of thought or mood that significantly impairs judgment, behavior, capacity to recognize reality, or ability to cope with the ordinary demands of life.
17. “Neglect” means harm to an Adult's health or welfare caused by the inability of the Adult to respond to a harmful situation or by the conduct of a person who assumes responsibility for a significant aspect of the Adult's health or welfare. Neglect includes, but is not limited to, the failure to provide adequate food, clothing, shelter, or medical care.
18. “Petition” means a petition for a protective order or the appointment of a Guardian or Conservator, or any combination thereof.
19. “Person” or “persons” means an individual as well as corporations, associations, firms, and partnerships.
20. “Petitioner” means a person who has filed a Petition with the Tribal Court.
21. “Protective Services” includes, but is not limited to, remedial, social, legal, health, mental health, and referral services provided in response to a report of alleged harm or threatened harm because of Abuse, Neglect, Self-neglect or Exploitation.
22. “Self-neglect” means a significant threat to a Vulnerable Adult’s physical or mental health because the individual is responsible for his or her own care but is unable to provide adequate food, clothing, shelter, or medical care.

23. “Reservation” means:
- a. all lands within the limits of the Tribe’s reservation, including trust land, fee patented land and rights of way running through the reservation;
 - b. all land outside the boundaries of the Tribe’s reservation held in trust by the United States for individual members of the Tribe or for the Tribe; and
 - c. all other land considered “Indian country” as defined by 18 U.S.C. § 1151 that is associated with the Tribe.
24. “Vulnerable” means a condition in which an Adult is unable to protect himself or herself from Abuse, Neglect, Self-neglect or Exploitation because of a mental or physical impairment or because of advanced age.
25. “Ward” means an Adult for whom the Tribal Court has appointed a Guardian or Conservator.

Chapter 3
Reporting, Contents of Report, and Bad Faith Reporting,
Retaliation, or Intentionally Interfering with an Investigation.

Sec. 3.1 Reporting.

A. Departments Receiving Reports. The Social Services Department and Tribal law enforcement are appropriate agencies to take reports of suspected Abuse, Neglect, Self-neglect, or Exploitation of an Adult Indian who resides within the Tribe's Reservation boundaries.

1. Social Services Department.

- a. If the Lac Vieux Desert Social Services Department receives a report of suspected Abuse, Neglect, Self-neglect, or Exploitation, the report shall be assigned to and investigated by its Adult Protective Service Worker (APSW) in accordance with Chapter 6 of this Code and deliver Protective Services and/or file a Petition in accordance with this Code.
- b. The Social Services Department shall notify the Lac Vieux Desert Law Enforcement of the report received within 24 hours of receiving the report in order to:
 - i. Allow the Lac Vieux Desert Law Enforcement to initiate a criminal investigation.
 - ii. Coordinate law enforcement cooperation with the APSW Investigation pursuant to Section 6.4(b) of this Code.
 - iii. The Social Services Department shall forward its completed investigative report to the Lac Vieux Desert Law Enforcement in accordance with Section 6.4(f) of this Code.

2. Law Enforcement.

- a. If Lac Vieux Desert Law Enforcement receives a report of suspected Abuse, Neglect, Self-neglect, or Exploitation, it shall:
 - i. initiate an investigation to determine if a criminal offense has occurred;
 - ii. notify the Social Services Department of the report within 24 hours of receipt of report so that the Social Services Department can investigate the need for Protective Services or the filing of a Petition.
 - iii. notify the Social Services Department of the results of its criminal

investigation, which shall be conducted pursuant to the Department's standard operating procedures, within 48 hours of the conclusion of its investigation.

- b. This Code shall not be construed as limiting the responsibilities of the Lac Vieux Desert Law Enforcement or any other appropriate police agency to enforce applicable laws or as precluding the police agency from reporting and investigating, as appropriate, alleged criminal conduct.
- B. Confidentiality. The identity of a person making a report under this Code shall be confidential, except for those considered mandatory reporters pursuant to Chapter 4, and shall not be released to any person unless a Petition is filed under Chapter 7 and/or 8 and discovery is required.
- C. Presumed Good Faith. Reports of suspected Abuse, Neglect, Self-neglect, or Exploitation are presumed to be made in good faith.
- D. Immunity. Any person who in good faith reports suspected Abuse, Neglect, Self-neglect, or Exploitation of an Adult shall be immune from any legal action based on that person's report.

Sec. 3.2 Content of Reports.

- A. The Social Services Department or Lac Vieux Desert Law Enforcement receiving the report shall reduce to writing the information provided in an oral report received pursuant to this Code.
- B. A report made under this Code shall contain the name of the alleged Vulnerable Adult and a description of the alleged Abuse, Neglect, Self-neglect or Exploitation. The report shall also contain other information available to the reporting person that may establish the cause of the alleged Abuse, Neglect, Self-neglect, or Exploitation and whether the activity is still ongoing.
- C. If possible, the report shall contain the Adult's age, address, tribal affiliation, and the names and addresses of the Adult's guardian or next of kin, and of the persons with whom the Adult resides, including their relationship to the Adults.

Sec. 3.3 Bad Faith Reporting, Retaliation, or Intentionally Interfering with an Investigation.

- A. Bad Faith Reporting. Any person who is convicted of making a report of suspected Abuse, Neglect, Self-neglect, or Exploitation knowing it to be false is guilty of a Class A Misdemeanor. Any person who is convicted a second time of reporting suspected Abuse, Neglect, Self-

neglect, or Exploitation knowing it to be false is guilty of a Class C Felony.

- B. Retaliation. Any person who is convicted of retaliating by intimidating, threatening to cause or causing bodily, emotional, property, or financial harm against a person who reports or investigates Abuse or Neglect, is guilty of a Class C Felony.
- C. Interference with Investigation. Any person who is convicted of intentionally interfering with a lawful investigation of suspected Abuse, Neglect, Self-neglect, or Exploitation is guilty of a Class C Felony.

Chapter 4

Mandated Reporters and Failure to Report

Sec. 4.1 Mandated Reporters.

- A. Those listed in Section 4.1(B) below who have reasonable cause to suspect that an Adult is an Adult in Need of Protective Services shall immediately report the Abuse, Neglect, Self-neglect, or Exploitation to the Social Services Department or to the Lac Vieux Desert Law Enforcement.
- B. The following individuals have a mandated duty to report Abuse, Neglect, Self-neglect, or exploitation to the Social Services or to the Lac Vieux Desert Law Enforcement:
 - 1. any persons employed, licensed, registered or certified to provide health care, educational, social welfare, mental health, or other human services; and
 - 2. law enforcement officials including probation officers.

Sec. 4.2 Failure to Report.

- A. Failure to report for mandated reporters. Any person who is a mandated reporter who is convicted of failing to report suspected Abuse, Neglect, Self-neglect, or Exploitation of an Adult is guilty of a Class B Misdemeanor and may be subject to other appropriate discipline if the mandated reporter is a contractor or employee of the Tribe.
- B. Privileged Communication. No evidentiary privilege except for the attorney-client privilege may be raised as a justifiable defense or reason for failing to report as required by this Code.

Chapter 5 Multi-Disciplinary Team

Sec. 5.1 Adult in Need of Care Multi-Disciplinary Team.

- A. Establishment. There is hereby established an Adult in Need of Care Multi-Disciplinary Team (“Adult in Need of Care MDT” or “MDT”).
- B. Duties. The primary duties of the Adult in Need of Care Multi-Disciplinary Team is to ensure coordination/collaboration of agencies to investigate, intervene, remedy, and prevent Abuse, Neglect, Self-neglect, or Exploitation of Adults and provide coordinated assistance navigating the system to obtain services needed.
- C. Members. Members of the MDT shall include but not be limited to the following:
 - 1. Lac Vieux Desert Prosecutors Office;
 - 2. Lac Vieux Desert Law Enforcement;
 - 3. Lac Vieux Desert Social Services Department; and
 - 4. Lac Vieux Desert Health Center and Behavioral Health.
- D. The Lac Vieux Desert Social Services Department shall develop, in coordination with the Lac Vieux Desert Prosecutor’s Office, bylaws for the MDT.
- E. The MDT shall meet as needed but no less than quarterly.
- F. All information and records acquired by the MDT in the exercise of its duties are confidential and may only be disseminated in accordance with this Code.

Chapter 6 Adult Protective Services Investigation

Sec. 6.1 Timeframe and Basis for Investigations.

- A. Emergent and Non-Emergent Circumstances.
 - 1. Emergent Report. The Adult Protective Service Worker (APSW) shall conduct an initial investigation within 24 hours of receiving a report if the situation appears to be emergent. The APSW shall prepare a written summary of the investigation results which shall include all information in Section 6.4(C)- (F) below, as well as the results of interviews, observations, and assessments and other fact finding. For purposes of this Code, “emergent” means an imminent substantial risk of harm to life, physical health or mental well-being of the Adult.
 - 2. Non-Emergent Report. If the situation does not appear emergent, the investigation shall be initiated within 72 hours and completed within ten (10) business days.
- B. Basis for an Investigation. A reasonable belief based on a report or information received by the Social Services Department that the individual is an Adult in need of Protective Services is a sufficient basis to begin an investigation.

Sec. 6.2

- A. The Social Services Department may request a subpoena from the Court for release of information relevant to an investigation of alleged Abuse, Neglect, Self-neglect, or Exploitation.
- B. Tribal agencies, departments, and programs, including health services, shall provide in a timely manner all relevant reports, files, medical records, welfare check reports, and any other relevant information to the APSW upon receipt of a validly authorized subpoena.
- C. The Social Services Department shall not further disseminate or release such information except as authorized by applicable Tribal or federal statute.

Sec. 6.3 Emergency Action.

- A. If there is good cause for the APSW to believe that an emergency exists and a Vulnerable Adult is at risk of immediate or irreparable harm upon personal observation, the APSW shall take immediate steps to protect the Vulnerable Adult , including, if appropriate, transporting him or her to adequate shelter facilities. Once the person is protected, the Prosecutor’s Office shall immediately review the case and file all appropriate petitions under this Code.

- B. If a law enforcement officer believes that an Adult is at risk of immediate or irreparable harm upon personal observations, law enforcement shall immediately contact the Social Services Department who shall take necessary action pursuant to Section 6.3(A) above.

Sec. 6.4 Non-Emergent Investigation.

- A. Within seventy-two (72) hours of receipt of a report made or information obtained pursuant to this Code, the APSW shall take appropriate action to determine whether the person suspected of being Abused, Neglected, Self-neglected or Exploited is an Adult in need of Protective Services. A non-emergent investigation shall conclude within ten (10) days pursuant to Section 6.1(A)(2) above.
- B. Upon request by the APSW, local law enforcement officers shall cooperate with the APSW in an investigation of suspected Abuse, Neglect, Self-neglect or Exploitation. However, the investigation required by this Code shall not be in place of an investigation by the appropriate police agency regarding suspected criminal conduct arising from the suspected Abuse, Neglect, Self-neglect, or Exploitation.
- C. The investigation by the Social Services Department shall include:
1. an interview with the Adult;
 - a. the APSW shall conduct the interview with the Adult in the Adult's dwelling or in the offices of the Social Services Department, by telephone conversation, or by any other means that may be available to the APSW.
 - b. In attempting to conduct a personal visit with the Adult in the Adult's dwelling, if admission to the dwelling is denied, the APSW may seek the assistance of law enforcement to obtain a search warrant if the APSW can articulate that entry into the home will show evidence of Abuse, Neglect, Self-neglect, or Exploitation of an Adult.
 2. Identification of and interviews with any Adults in the alleged Vulnerable Adult's residence;
 3. An evaluation of the suitability of the environment of the residence;
 4. Identification of and interviews with the person(s) responsible for the care of the Adult, if appropriate;
 5. the relationship of the Adult to the person responsible for the adult's care;
 6. a determination of the nature, extent, and cause of the Abuse, neglect, Self-Neglect or Exploitation;

7. identification, if possible, of the person responsible for the Abuse, Neglect, or Exploitation, if applicable;
 8. an evaluation as to whether the Adult would consent to receiving Protective Services;
 9. The investigation may include medical, psychological, social, vocational, and educational evaluation and review.
 10. and any other pertinent data.
- D. Upon completion of an investigation, the APSW shall determine whether the subject of the investigation is a Vulnerable Adult, whether the subject has been Abused, Neglected, Self-neglected or Exploited, whether the situation is ongoing, and whether they are in imminent danger of harm; whether the Vulnerable Adult should be immediately removed or others removed from the current situation by emergency order, and shall identify any appropriate shelter placement; and shall determine, in consultation with the Tribal Prosecutor, whether further legal action to assure protection of that Adult should be initiated pursuant to Chapter 7 – Petition for Protection Order, Temporary Emergency Ex Parte Order, Protection Order, and Temporary Protection Plan, and/or Chapter 9 - Powers and Duties of Guardian, Powers and Duties of Conservator, and Limitations on Powers and Duties.
- E. If the investigation concludes that the situation does not warrant a petition for protection or guardianship, and the Tribal Prosecutor concurs, voluntary services may be recommended and offered to the Adult, the Adult's caretaker, and family, if applicable by the APSW. Such voluntary Protective Services or placements are provided subject to available resources. The Voluntary Service Plan shall be drafted in accordance with Section (G) below.
- F. Upon completion of an investigation, the APSW shall prepare a written report of the investigation and its findings.
1. The Social Services Department shall report to Lac Vieux Desert Law Enforcement any criminal activity that it believes to be occurring and provide all relevant documents, records, and reports.
- G. The APSW shall identify available resources and services in order to draft a Voluntary Service Plans and Protection Plans in cooperation with Tribal programs and other agencies, and is authorized to convene an Adult Protection Multi-Disciplinary Team where appropriate to accomplish this purpose.

Sec. 6.5 Releasing Records.

- A. Records of an investigation are confidential and may be viewed only by authorized representatives of the Social Service Department and/or applicable Department of Health

and Human Services, law enforcement personnel, the prosecuting attorney for the jurisdiction in which the Adult suspected of being or believed to be Abused, Neglected, Self-neglected or Exploited resides or is found, parties to the matter before the Court, and those people the Court determines have a reasonable cause to view them.

Sec. 6.6 Penalty for Breach of Confidentiality.

- A. Any person who violates any provision regarding confidentiality in this Chapter shall be subject to a civil penalty of up to \$100 per occurrence. The Court shall assess the penalty after petition, notice, opportunity to be heard, and a determination that a violation has occurred. In addition, if the violation is committed by an employee of the Tribe, the person shall be subject to appropriate disciplinary action as allowed in the Tribe's employment policies and procedures.

Sec. 6.7 Criminal Prosecutions.

- A. Any person who commits Abuse, Neglect, or Exploitation of an Adult may be criminally prosecuted under applicable provisions of the Lac Vieux Desert Criminal Code or other Tribal laws.
- B. Criminal prosecutions may run concurrently with civil proceedings under this Code. Dismissal or deferral of criminal prosecutions in no way affects the applicability of this Code.

Sec. 6.8 Rights of Adult in Need of Care, Their Families, and Caretakers.

- A. An Adult may refuse voluntary Protective Services provided that the Social Services Department finds that there is good cause to believe that the person can take care of him or herself, and knows of the services offered, and no emergency exists.
- B. Family members or caregivers may refuse services for themselves but cannot refuse services for a Vulnerable Adult.
- C. A caregiver may not prevent an investigator from privately communicating with a Vulnerable Adult.
- D. A knowing and intentional violation of this section by an Adult's family members or caregiver may be grounds for a protective order pursuant to Chapter 7 of this Code.

Chapter 7
**Petition for Protection Order, Temporary Emergency Ex Parte Order,
Protection Order, and Protection Plan**

Sec. 7.1 Petition for Protection Orders.

A. Petition for Adult Protection Order.

1. The Tribe's Prosecutor, after consultation with the Social Services Department, and based on the results of an investigation and report provided under Chapter 6 above, may file a Petition with the Court seeking a Protection Order. The petition shall include the name and interest of the petitioner, the name and address or location of the Vulnerable Adult with a description of the situation, including a statement of the specific facts or circumstances from which relief is sought, including date(s), times(s) and locations(s) at which the alleged facts occurred; the proposed Protective Services; any previous protection orders; and any other facts that will assist the Court.
2. The Social Services Department shall prepare a proposed protection plan in consultation with the Vulnerable Adult, caregiver and those family members necessary for making decisions regarding the Vulnerable Adult's care, and the Multi-Disciplinary Team.
 - i. The Protection Plan shall be filed with the Court and served on all applicable parties as soon as practicable but no later than 24 hours prior to the hearing on the Petition for Protection held pursuant to Section 7.3

B. Notice and Service of Process for Hearing. Upon receipt of the Petition and issuance of any Temporary Emergency Ex Parte Orders, the Court shall schedule a Hearing on the Petition in accordance with Section 7.1(C) below.

1. Notice and service of the hearing shall be made in accordance with rules established by the Court.
2. If a party cannot be located for service, the emergency order of protection shall be sent by certified mail to the party's last known address. If service of process is not successful within seven (7) days, the Court and the Vulnerable Adult respondent shall be notified of the fact. The Court may continue the hearing if the party is deemed a necessary party, and the emergency protection order shall remain in effect for an additional term of fourteen (14) days unless good cause exists to terminate it.

C. Filing Fee.

1. The cost of filing , which shall be set by the Court, shall be paid by the Petitioner if the Petitioner is not a tribal agency.

2. The Petitioner may request to be reimbursed the cost of the filing fee from the protected person's estate.

Sec. 7.2 Miscellaneous Provisions.

- A. Evaluations. The Court shall order a medical or other professional evaluation, if such would assist the Court to determine degree of capacity or Incapacity, and any relevant evidence of Abuse or Neglect, once the Petition is filed.
- B. Guardian Ad Litem. The Court may appoint a guardian ad litem to advise the Court on the best interests of the Vulnerable Adult and to advise the Court regarding any protection plans that are proposed. The guardian ad litem shall meet, at a minimum, with the Vulnerable Adult, family members, caregivers, and other persons or agencies that may be designated by the Court. A guardian ad litem shall be a person with training or experience as designated by the Court.

Sec. 7.3 Temporary Emergency Ex Parte Orders.

- A. If an initial investigation indicates that the report of suspected Abuse, Neglect, Self-neglect, or Exploitation is substantiated, and there is probable cause to believe that an emergency exists involving danger or threat of immediate and serious harm to person or property, and no competent person is willing and/or authorized by law or court order to take necessary steps to protect the Vulnerable Adult, then upon petition of the Tribal Prosecutor the Court may issue a temporary emergency ex parte protection order, pending a Hearing on the Petition. That includes any emergency remedy it deems proper including:
 1. Restraining a person from committing acts of Abuse, Neglect, or Exploitation with respect to the Vulnerable Adult;
 2. Excluding a person from the residence of the Vulnerable Adult, even if this is a residence they share;
 3. Prohibiting contact, including by mail, telephone, e-mail, or through third parties, with the Vulnerable Adult except by further order of the Court;
 4. Prohibiting any party from knowingly coming within, or knowingly remaining within, a specified distance from a specified location;
 5. Ordering emergency removal of the Vulnerable Adult to protective placement;
 6. Order medical evaluation and treatment;

7. Implementing a Temporary Protection Plan, if one is available, pending the Fact Finding Hearing.
 8. Any other remedy the Court determines necessary to protect the Vulnerable Adult.
- B. Parties entitled to service of emergency orders, under this Code are: the Vulnerable Adult; any third party person or persons restrained or otherwise subject to an emergency order; and any guardian or primary caregiver with responsibility for the Vulnerable Adult.
- C. An emergency protection order shall be effective for a fixed period not to exceed thirty (30) days or until a hearing is held, except for good cause shown.
1. A notice scheduling a Hearing on the Petition shall be issued within 72 hours from the issuance of the emergency protection order, and shall be held within thirty (30) days, unless good cause exists to grant a delay.
 2. Any person restrained or otherwise subject to the emergency protection order shall be personally served with a copy of any temporary restraining order along with a copy of the petition and notice of the date for the hearing, and all parties, and any attorneys that have been retained by a party, are permitted to attend the hearing.

Sec. 7.4 Hearing on the Petition.

- A. The Court shall first address the issue of capacity:
1. Upon a finding based on clear and convincing evidence that the Vulnerable Adult is incapacitated and unable to consent to necessary services or to protective placement, the Court shall invite a Petition pursuant to Chapter 8 - Guardianship and Conservatorship – of this Code. The Court may adjourn the Hearing on the Petition and continue any temporary protection orders until such a petition is filed and a joint Guardianship Hearing/Protection Petition Hearing can be held or continue with a Hearing on the Petition.
 2. If no capacity issues are raised related to the Vulnerable Adult, the Court shall proceed with the issue of whether judicial intervention is necessary because the Vulnerable Adult has been or is at risk of Abuse, Neglect, or Exploitation.
- B. The rules of evidence shall not apply to this hearing. All relevant evidence that is reliable and trustworthy may be admitted and relied upon by the Court to the extent of its probative value.
- C. All parties shall be afforded an opportunity to examine and controvert written reports

and cross-examine individuals whose testimony is presented. The Court may rely on conference by telephone or other electronic means that permits all those appearing or participating to hear and speak to one another.

- D. The Court shall make a decision at the conclusion of the hearing. If the allegations of the petition are not sustained by clear and convincing evidence, the Court shall dismiss the matter. If the allegations of the petition are sustained, the Court shall find the Vulnerable Adult is in need of protection and enter orders to protect the Vulnerable Adult. At the Court's discretion, a hearing to determine the provisions of an order may be conducted immediately or at an appropriate interval following the Hearing on the Petition.
- E. The Hearing on the Petition under this Code shall be a closed proceeding.

Sec. 7.5 **Protection Order.**

- A. A Protection Order shall incorporate any appropriate Protection Plan. The Protection Order shall incorporate, as appropriate, services according to any Protection Plan created by Social Services Department developed in consultation with all applicable departments, agencies, the Vulnerable Adult's caregiver, Immediate Family, and the Vulnerable Adult. Such order shall provide for the least restrictive alternatives while meeting the Vulnerable Adult's needs. The Protection Plan shall include services for the Vulnerable Adults' family or caregiver as necessary to protect the Vulnerable Adult. Necessity shall be determined by the Court. An order may also:
 - 1. Secure removal of the Vulnerable Adult to a safe location;
 - 2. If the Court determines that a Vulnerable Adult has been Abused, Neglected, Self-neglected, or Exploited, the Court may:
 - a. Restrain the offending individual from engaging in any act of harm to the Vulnerable Adult, or from contact with the Vulnerable Adult; and may exclude the offending individual from the residence of the Vulnerable Adult or from any specified location, for a specified period or until further order of the Court, and prohibit contact, including by mail, email, telephone, or by using third parties, for a specified period or until further order of the Court;
 - b. Require an accounting of the Vulnerable Adult's income or other resources at the offending individual's expense;
 - c. Restrain the transfer of the Vulnerable Adult's property for a specified period of time;
 - d. Impose any other financial or other civil penalties as may be provided by Tribal law.

3. Any appropriate provision(s) from Section 7.2(A) above.
- C. Denial of Petition. If the Court declines to issue a protection order, the Court shall state the particular reasons for the Court's denial on the record or in writing.
- D. Review Hearings, Modification of Protection Order. Review by the Court of the need to continue a protection order shall occur annually, or earlier upon motion for good cause shown. The Court shall review all available information provided by the Social Services Department about the Vulnerable Adult including services provided, mental and physical status, living conditions, and other information that may be helpful to the Court. After each such review, the Court may extend or amend the protection order if cause is shown by clear and convincing evidence.

Chapter 8

Appointment of Guardian for Incapacitated Adult

Sec. 8.1 **Authority for Court to Appoint Guardian.**

- A. The Tribal Court may appoint a Guardian for an Adult, if the Court finds by clear and convincing evidence both of the following:
 - 1. The subject of the petition is an Incapacitated Adult; and
 - 2. appointment of a Guardian is necessary as a means of providing continuing care and supervision of the Incapacitated Adult.

Sec. 8.2 **Eligibility for Appointment as Guardian.**

- A. The Court may appoint any competent, suitable and willing person who is over eighteen (18) years of age to serve as Guardian, or
- B. May appoint any suitable and willing Person, which is authorized to exercise fiduciary powers, to serve as Guardian, provided that the Court shall appoint an entity as Guardian only if such appointment is in the best interests of the subject of the petition and there is no person who is competent, suitable and willing to serve as Guardian.
- C. The same Person may be appointed to serve as Guardian and Conservator.
- D. Except as otherwise provided in this Code, the Tribal Court shall appoint a Person as Guardian based upon the following order of priority:
 - 1. a Person designated by the Incapacitated Adult;
 - 2. the Incapacitated Adult's spouse;
 - 3. An Incapacitated Adult's child;
 - 4. An Incapacitated Adult's parent(s);
 - 5. a relative of the Incapacitated Adult, other than those listed above, with whom the Incapacitated Adult has resided for more than six (6) months before the filing of the Petition;
 - 6. a member of the Incapacitated Adult's Immediate Family, other than those listed above; and
 - 7. any other competent, suitable and willing person.

- E. The Court may depart from the order of priority, including appointing a Person with lower or no priority, if the Court determines that such departure is in the best interests of the Incapacitated Adult. In determining the best interests of the Incapacitated Adult, the Court may consider all factors deemed relevant by the Court.

Sec. 8.3 **Standing to File Petition.**

- A. Any person interested in the welfare of an Adult who resides within the Tribe's Reservation boundaries, due to suspected Incapacity may petition the Court for appointment of a Guardian.
1. The Social Services Department may petition the Tribal Court for appointment of a Guardian only in the absence of an available Petitioner, as determined by the policies of the Social Services Department.

Sec. 8.4 **Contents of Petition.**

- A. All Petitions must be filed with the Tribal Court on a form provided by the Court and must be signed and dated by the Petitioner.
- B. Petitions for appointment of a Guardian, shall include the following information, to the extent reasonably available:
1. the Petitioner's full name, address, tribal affiliation, relationship to the subject of the petition and a statement regarding the Petitioner's standing under Section 1.5;
 2. the full name, date and place of birth, residence and tribal affiliation of the subject of the petition;
 3. the full name, address, and any tribal affiliation and relationship to the subject of the petition for every Person whom the Petitioner recommends for appointment as Guardian and a statement of any priority afforded under Section 8.2(C).
 4. the full names and addresses of persons known to have an interest in the Petition, including but not limited to, Immediate Family of the Incapacitated Adult and any current Guardian;
 5. the basis for the Tribal Court's jurisdiction, as set forth in Section 1.4;
 6. the reasons that the appointment of a Guardian is sought, including but not limited to, specific facts about the subject of the petition's condition and

specific examples of the recent conduct that demonstrate the need for such appointment;

7. The probable value and general character of the subject of the Petition's real and personal property; and

C. Filing Fee.

1. The cost of filing, which shall be set by the Court, shall be paid by the petitioner if the petitioner is not a tribal agency.
2. The petitioner may request to be reimbursed the cost of the filing fee from the subject of the petition's estate upon appointment as Guardian through proceedings in Tribal Court.

Sec. 8.5 **Emergency Appointment of Guardian.**

- A. Emergent Circumstances. The petitioner may request appointment of an emergency Guardian whose authority will not exceed thirty (30) days unless good cause is shown for a longer duration and who shall exercise only the powers specified by the Tribal Court in the order. The Tribal Court may grant a temporary order appointing an emergency guardian whose authority shall be limited to those necessary to protect the safety, health, and welfare of the subject of the petition and to allow for a more permanent determination of his or her capacity.
- B. Emergent Ex Parte Circumstances. An ex parte emergency Guardian may be appointed without notice to the subject of the petition only if the court finds from affidavit or other sworn testimony that the subject of the petition will be substantially harmed before a hearing on the appointment can be held. If the Court appoints an ex parte Emergency Guardianship without notice, the subject of the petition must be given notice of the appointment within 48 hours after the appointment. The Court shall hold an Initial Hearing on the Petition pursuant to Chapter 10.

Sec. 8.6 **Due Process Protections**

A. Right to Counsel.

1. The subject of the Petition has the right to be represented by counsel, and if they cannot afford an attorney, the Court shall appoint an attorney to represent him or her.
2. Waiver of Counsel. The subject of the Petition may waive his or her right to counsel unless they are incapable of attending court proceedings either in person or by electronic means; or if the Court determines that due to cognitive

impairment they are unable to make a knowing waiver of the right to be represented. The Court may rely on factors such as statements in the Petition in support of appointment or present impressions of the subject of the Petition during the initial proceedings in making its determination of whether the he or she is capable of knowingly waiving counsel.

- B. Right to be Present at and Participate in Proceedings. The subject of the Petition has the right to be present at proceedings under this Code, to call and cross-examine witnesses, to present evidence, and see and hear all evidence presented.

Sec. 8.7 **Appointment of a *Guardian Ad Litem*.**

- A. If the subject of the petition waives representation by an attorney, the Court may appoint a guardian *ad litem* to advocate for the best interests of the subject of the petition in a proceeding under this Code, who shall serve until dismissed by the Court.
- B. The Court shall establish criteria for those eligible to appear as guardian *ad litem* in guardianship proceedings .
- C. The duties of the guardian *ad litem* shall include, without limitation, the following:
1. to personally visit the subject of the petition prior to the Final Hearing;
 2. to explain to the subject of the petition the nature, purpose and legal effect of appointment of a Guardian;
 3. to explain to the subject of the petition the procedures and the rights of the subject of the petition in connection with proceedings under this Code;
 4. to inform the subject of the petition the name of the Petitioner and of each person or entity, known to be seeking or being considered for appointment as Guardian; and
 5. to make determinations and inform the Tribal Court of the following:
 - a. whether any appropriate alternatives exist to appointment of a Guardian;
 - b. whether the subject of the petition wishes to be present at any applicable hearing, to contest the Petition, if warranted, and, as applicable, seeks a Limited Guardian; and
 - c. whether the subject of the petition objects to or prefers that a specific person or entity, be appointed Guardian, as applicable.

- D. Except as otherwise provided in the Court order appointing the guardian *ad litem*, the guardian *ad litem* shall have the following authority:
1. to fully and actively participate in all aspects of any proceedings under this Code;
 2. to determine the subject of the petition's best interests by conducting an independent investigation, including but not limited to, interviewing the subject of the petition, Immediate Family and others as necessary;
 3. to access relevant information, reports, and documents regarding the subject of the petition; and
 4. to exercise any other authority as reasonably necessary to fulfill the duties under this Code.
- E. The appointment of a guardian *ad litem* shall not create an attorney-client relationship. Accordingly, communications between the guardian *ad litem* and the subject of the petition are not subject to attorney-client privilege, and the guardian *ad litem* may report or testify about any communication with the s u b j e c t o f t h e p e t i t i o n . The guardian *ad litem* must inform the subject of the petition of such lack of privilege as soon as practicable after appointment.
- F. The Court shall assess the Estate of the subject of the petition/Ward the cost of a guardian *ad litem*, provided that if the Estate lacks adequate resources, the Court shall pay such cost. The Estate may be required to pay a portion of the cost of the guardian *ad litem* according to the Estate's resources and pursuant to Rules established by the Court.

Chapter 9

Appointment of Conservator

Sec. 9.1 Authority of Court to Appoint Conservator.

- A. The Tribal Court may appoint a Conservator in relation to the Estate of an Adult, if the Tribal Court finds by clear and convincing evidence either of the following:
 - 1. the Adult is unable to manage his or her Estate effectively because the Adult is an Incapacitated Adult or because of confinement, detention, or disappearance; and
 - a. the Adult's Estate will be wasted or dissipated unless proper management is provided; or
 - b. money is needed for the Adult's support, care and welfare, or for those entitled to the Adult's support; and protection is necessary to obtain or provide money; or
 - 2. The Adult is mentally competent, but due to age or physical infirmity is unable to manage his or her Estate or affairs effectively, and recognizing this disability, files a Petition with the Tribal Court for appointment of a Conservator.

Sec. 9.2 Standing to File Petition.

- A. Any person interested in the Estate of an Adult who resides within the Tribe's Reservation boundaries, due to suspected incapacity, confinement, detention or disappearance or due to conditions described in Section 9.1(A)(2) above, may petition the Tribal Court for appointment of a Conservator.
- B. The Social Services Department may petition the Tribal Court for appointment of a Conservator only in the absence of an available Petitioner, as determined by the policies of the Social Services Department.

Sec. 9.3 Eligibility for Appointment as Conservator.

- A. The Court may appoint any competent, suitable and willing person who is over eighteen (18) years of age to serve as Conservator, or
- B. may appoint any suitable and willing Person, which is authorized to exercise fiduciary powers, to serve as Conservator, provided that the Court shall appoint an entity as Conservator only if such appointment is in the Incapacitated Adult's best interests and there is no person who is competent, suitable and willing to serve as Conservator.

- C. The same Person may be appointed to serve as Guardian and Conservator.
- D. Except as otherwise provided in this Code, the Court shall appoint a Person as Conservator based upon the following order of priority:
 - 1. a person, or entity in the case of a Conservator, designated by the subject of the petition;
 - 2. the spouse of the subject of the petition;
 - 3. The Adult child of the subject of the petition;
 - 4. a parent of the subject of the petition;
 - 5. a relative of the subject of the petition, other than those listed above, with whom the subject of the petition has resided for more than six (6) months before the filing of the Petition;
 - 6. a member of the subject of the petition's Immediate Family, other than those listed above; and
 - 7. any other competent, suitable and willing person.
- E. The Tribal Court may depart from the order of priority, including appointing a person or entity with lower or no priority, if the Tribal Court determines that such departure is in the best interests of the subject of the petition. In determining the best interests of the subject of the petition, the Tribal Court may consider all factors deemed relevant by the Tribal Court.

Sec. 9.4 **Contents of Petition.**

- A. All Petitions must be filed with the Tribal Court on a form provided by the Tribal Court and must be signed and dated by the Petitioner.
- B. Petitions for appointment of a Guardian or Conservator may be combined into a single Petition and, whether combined or not, shall include the following information, to the extent reasonably available:
 - 1. the Petitioner's full name, address, tribal affiliation, relationship to the subject of the petition and a statement regarding the Petitioner's standing under Section 9.2;
 - 2. the full name, sex, date and place of birth, residence and tribal affiliation of the subject of the petition;

3. the full names and addresses of persons known to have an interest in the Petition, including but not limited to Immediate Family of the subject of the petition and any current Guardian or Conservator;
4. the basis for the Tribal Court's jurisdiction, as set forth in Section 9.1(A);
5. the reasons that the appointment of a Conservator is sought, including but not limited to, specific facts about the condition of the subject of the petition and specific examples of the recent conduct that demonstrate the need for such appointment;
6. The probable value and general character of the real and personal property and the probable amount of the debt of the subject of the petition; and
7. the full name, address, and any tribal affiliation and relationship to the subject of the petition of every Person, whom the Petitioner recommends for appointment as Conservator, and a statement of any priority afforded under Section 9.4(G).

C. Filing Fee.

1. The cost of filing, which shall be set by the Court, shall be paid by the petitioner if the petitioner is not a tribal agency.
2. The petitioner may request to be reimbursed for the cost of the filing fee from the subject of the petition's Estate upon appointment as Conservator through proceedings in Tribal Court.

Sec. 9.5 Emergency Appointment of Conservator.

- A. Emergent Circumstances. The petitioner may request appointment of an emergency Conservator whose authority will not exceed ninety (90) days unless good cause is shown for a longer duration and who shall exercise only the powers specified by the Tribal Court in the order. The Tribal Court may grant a temporary order appointing an emergency Conservator whose authority shall be limited to those necessary to preserve and apply the Estate as may be required for the support of the subject of the petition or the dependents of the subject of the petition. The Tribal Court shall hold an Initial Hearing, as provided by Chapter 10 of this Code, after acting under this Section.
- B. Emergent Ex Parte Circumstances. An ex parte emergency Conservator may be appointed without notice to the subject of the petition only if the court finds from affidavit or other sworn testimony that the subject of the petition will be substantially harmed before a hearing on the appointment can be held. If the Court appoints an ex parte emergency Conservator without notice, the subject of the petition must be given notice of the

appointment within 48 hours after the appointment. The Court shall hold an Initial Hearing on the Petition pursuant to Chapter 10.

Sec. 9.6 **Due Process Protections.**

A. **Right to Counsel.**

1. The subject of the petition has the right to be represented by counsel, and if they cannot afford an attorney, the Tribal Court shall appoint an attorney for the subject of the petition.
2. **Waiver of Counsel.** The subject of the petition may waive his or her right to counsel unless the they are incapable of attending court proceedings either in person or by electronic means; or if the Tribal Court determines that due to cognitive impairment they are unable to make a knowing waiver of the right to be represented. The Tribal Court may rely on factors such as an examiner's statement in support of appointment or present impressions of the subject of the petition during the initial proceedings in making its determination of whether they are capable of knowingly waiving counsel.

B. **Right to be Present at and Participate in Proceedings.** The subject of the petition has a right to be present at proceedings under this Code, to call and cross-examine witnesses, to present evidence, and to see and hear all evidence presented.

Sec. 9.7 **Guardian *Ad Litem*.**

- A. If the subject of a petition waives representation by an attorney, the Court may appoint a guardian *ad litem* to advocate for the best interests of the subject of the petition in a proceeding under this Code, who shall serve until dismissed by the Tribal Court.
- B. The Court shall establish criteria for those eligible to appear as a guardian *ad litem* in conservatorship proceedings.
- C. The duties of the guardian *ad litem* shall include, without limitation, the following:
 1. to personally visit the subject of the petition prior to the Final Hearing;
 2. to explain to the subject of the petition the nature, purpose and legal effect of appointment of a Conservator;
 3. to explain to the subject of the petition the procedures and his or her rights in connection with proceedings under this Code;

4. to inform the subject of the petition the name of the Petitioner and of each person or entity, known to be seeking or being considered for appointment as Conservator; and
 5. to make determinations and inform the Tribal Court of the following:
 - a. whether any appropriate alternatives exist to appointment of a Conservator;
 - b. whether the subject of the petition wishes to be present at any applicable hearing, to contest the Petition, if warranted, and, as applicable, seeks a Limited Conservator; and
 - c. whether the subject of the petition objects to or prefers that a specific person or entity, be appointed Conservator.
- D. Except as otherwise provided in the Tribal Court order appointing the guardian *ad litem*, the guardian *ad litem* shall have the following authority:
1. to fully and actively participate in all aspects of any proceedings under this Code;
 2. to determine the best interests of the subject of the petition by conducting an independent investigation, including but not limited to interviewing the subject of the petition, Immediate Family and others as necessary;
 3. to access relevant information, reports, and documents regarding the subject of the petition; and
 4. to exercise any other authority as reasonably necessary to fulfill the duties under this Code.
- E. The appointment of a guardian *ad litem* shall not create an attorney-client relationship. Accordingly, communications between the guardian *ad litem* and the subject of the petition are not subject to attorney-client privilege, and the guardian *ad litem* may report or testify about any communication with the subject of the petition. The guardian *ad litem* must inform the subject of the petition of such lack of privilege as soon as practicable after appointment.
- F. The Tribal Court shall assess the Estate for the cost of a guardian *ad litem*, provided that if the Estate lacks adequate resources, the Tribal Court shall pay such cost. The Estate may be required to pay a portion of the cost of the guardian *ad litem* according to the Estate's resources and pursuant to Rules established by the Court.

Chapter 10 Hearing Procedure

Sec. 10.1 **Initial Hearing on a Petition for Guardianship or Conservatorship.**

- A. Hearing Timeframe. Upon receipt of a Petition and the appointment of an emergency guardian or conservator, if applicable, the Tribal Court shall set a date for the Initial Hearing to occur within fourteen (14) days of filing of the Petition, provided that for good cause the Tribal Court may adjourn the Initial Hearing beyond fourteen (14) days upon motion of any party or on initiative of the Tribal Court.
- B. Notice. The Court shall cause a notice of the Initial Hearing, along with the Petition, to be served on the Petitioner, the subject of the Petition, Immediate Family (who are identified in the Petition), any guardian *ad litem* and other persons as directed by the Tribal Court, in a manner permitted under rules established by the Court.
- C. At the Initial Hearing the Court shall determine whether there is probable cause to determine that a basis exists to appoint a guardian and/or a conservator. If there is probable cause, the Court shall enter orders pursuant to this Code, as appropriate. The Court may also enter appropriate protective orders as the Court determines to be reasonably necessary to protect the best interests of the subject of the petition.
- D. Rules of Evidence. The rules of evidence shall not apply to this hearing. All relevant evidence that is reliable and trustworthy may be admitted and relied upon by the Court to the extent of its probative value.
- E. The Initial Hearing under this Code must be a closed proceeding.
- F. The Court may rely on conference by telephone or other permitted electronic devices that permit all those appearing or participating to hear and speak to one another.

Sec. 10.2 **Final Hearing.**

- A. The Tribal Court shall hold a Hearing on the Petition to determine whether there are grounds for appointment of a Guardian or Conservator, as applicable, to make any such appointment, and to enter any other appropriate order in accordance with this Code.
- B. The Petitioner shall bear the burden to establish by clear and convincing evidence that grounds exist for appointment of a Guardian or Conservator.
- C. The proponent of the appointment of an identified guardian or conservator shall bear the burden to establish by a preponderance of the evidence that a proposed Guardian or Conservator is eligible for appointment, is granted any priority as required under this Code, and is most suitable for the appointment.

- D. The Petitioner, the subject of the petition, Immediate Family, their respective attorneys, any guardian *ad litem* and other persons as permitted by the Tribal Court shall be afforded an opportunity to call witnesses, to cross-examine witnesses, to examine and challenge the information and conclusions contained in any written reports received by the Tribal Court and to examine or cross-examine the signatories of any such reports.
- E. Rules of Evidence. The rules of evidence shall not apply to this hearing. All relevant evidence that is reliable and trustworthy may be admitted and relied upon by the Court to the extent of its probative value.
- F. The Final Hearing under this Code must be a closed proceeding.
- G. The Court may rely on conference by telephone or other permitted electronic devices that permit all those appearing or participating to hear and speak to one another.
- H. Granting or Denying Guardianship Petition. The Court shall grant or deny the Petition at the conclusion of the hearing.
 - 1. If the Court finds any of the following, the Court shall dismiss the petition:
 - a. Contrary to the allegations of the petition, the subject of the petition is not any of the following:
 - i. An incapacitated adult,
 - ii. An adult, or
 - iii. The allegation contained in the petition are unproven.
 - 2. If the allegations of the petition are sustained by clear and convincing evidence, the Court shall find the Adult to be an Incapacitated Adult and appoint a guardian as appropriate.
- I. Granting or Denying Conservatorship Petition. The Court shall grant or deny the Petition at the conclusion of the hearing.
 - 1. If the Court finds any of requirements contained in Section 9.1 are not proven, the Court shall dismiss the petition.
 - 2. If the allegations of the petition are sustained by clear and convincing evidence, the Court shall appoint a conservator.

Sec. 10.3 Court Order to File Conservatorship Petition.

- A. After appointment of a Guardian, if the Tribal Court determines that financial protection of a Ward's Estate is required for the Ward, the Tribal Court may order the Guardian to

petition the Tribal Court for appointment of a Conservator pursuant to Chapter 9 of this Code.

Sec. 10.4 **Review Hearings.**

- A. Review Hearings During the First Twelve Months of Guardianship or Conservatorship.
 - 1. During the first 12 months of a Guardianship or Conservatorship, the Court will hold hearings every 90 days.
- B. After the initial 12 months of a Guardianship or Conservatorship, the Court shall conduct review hearings as it deems necessary and at least upon the filing of the annual report by the Guardian or Conservator.

Chapter 11

Court Ordered Reports

Sec. 11.1 **Report by Physician or Mental Health Professional.**

- A. The Tribal Court may order that the subject of the petition be examined by a physician or mental health professional appointed by the Tribal Court who shall submit a written report to the Tribal Court at least five (5) days prior to the identified hearing date.
- B. The subject of the petition has the right to secure, at his or her expense, an independent examination by a physician or mental health professional who shall submit a written report to the Tribal Court at least five (5) days prior to the identified hearing date.
- C. Any report prepared pursuant to Section 11.1(A) or 11.6(B) shall:
 - 1. describe, in detail, the physical and psychological infirmities of the subject of the petition;
 - 2. explain the manner and extent to which each infirmity interferes with the subject of the petition's ability to receive and evaluate information in making decisions;
 - 3. list all medications the subject of the petition is receiving, the dosage of each medication, and describe the effects of each medication;
 - 4. describe the prognosis for improvement in the condition of the subject of the petition and, as applicable, the most appropriate rehabilitation program; and
 - 5. be signed by all individuals who performed the evaluations upon which the report is based and list their qualifications.

Sec. 11.2 **Report from the Department of Social Services.**

- A. The Tribal Court may order the Social Services Department interview the subject of the petition and any proposed Guardian or Conservator, as applicable, and prepare a written report for the Tribal Court in accordance with applicable Tribal policy.
- B. The report must contain all pertinent information as detailed in within applicable Tribal policy which may reasonably assist the Tribal Court in rendering a decision, including but not limited to, whether grounds exist to appoint a Guardian or Conservator and the suitability of any proposed appointment.
- C. The report must be signed by the representative of the Social Services Department who conducted the interviews and prepared the report.

- D. The Social Services Department shall submit the report to the Tribal Court at least ten (10) days prior to the identified hearing date.

Sec. 11.3 **Disclosure and Service.**

- A. Any report prepared pursuant to Section 11.1(A) – Report by Physician or Mental Health Professional or Section 11.2 – Report from the Social Services Department – of this Code shall be admissible without testimony, may be used without regard to privilege in any proceeding under this Code and shall be available to the subject of the petition, the Petitioner, their respective attorneys, any guardian *ad litem* and other persons as directed by the Tribal Court. Any such report shall not be included within the public record of any proceeding.
- B. Any privilege regarding a report made as part of an independent examination under Section 11.1(B) shall be deemed waived if the subject of the petition seeks to have the report considered in any proceedings under this Code. The Tribal Court may admit such report without testimony. Any such report shall not be included within the public record of a proceeding.
- C. The Tribal Court may limit or condition access to any report submitted to the Tribal Court pursuant to this Code, as reasonably necessary to protect or maintain the confidentiality of any information contained in any such report.

Chapter 12

Miscellaneous Provisions

Sec. 12.1 Bond.

- A. The Tribal Court may, in its discretion, require a Guardian or Conservator to be bonded in such amount as the Tribal Court may deem necessary to protect the Ward's Estate and affairs.

Sec. 12.2 Acceptance.

- A. A Guardian or Conservator shall file an acceptance with the Tribal Court.
- B. The acceptance shall state that the Guardian or Conservator accepts the appointment, submits to the jurisdiction of the Tribal Court, will not delegate any authority of the Guardian or Conservator and will perform all required duties and obligations.

Sec. 12.3 Letters.

- A. Upon a Guardian or Conservator filing proof of any bond required by the Tribal Court, and the required acceptance form, the Court shall issue letters under seal of the Tribal Court granting the Guardian or Conservator the powers authorized by Tribal Court order and this Code, as applicable. Any specific restriction or limitation of the powers of a Guardian or Conservator must be set forth in the letters.

Sec. 12.4 Reimbursement.

- A. A Guardian or Conservator shall be entitled to be reimbursed out of the Ward's Estate for necessary, reasonable, and proper expenditures incurred in the performance of his or her duties, subject to such limitations and requirements of this Code and rules as the Tribal Court may establish.
- B. The Tribal Court may order reimbursement payments to be made on a regular schedule or on the request of the Guardian or Conservator; subject, however, to the submission of adequate proof of the expenditure, the necessity of the expenditure, and the availability of funds.

Sec. 12.5 Compensation.

- A. A Guardian or Conservator may petition the Tribal Court to be compensated at a reasonable amount for services rendered.

- B. The Tribal Court shall determine pursuant to rules established by the Court the amount of any such compensation, which if approved, shall be paid from the Ward's Estate.
- C. A Guardian or Conservator shall not receive any compensation for acting in such capacity without the prior approval of the Tribal Court.
- D. A Guardian or Conservator shall be deemed to have waived any right to compensation for all periods prior to approval thereof by the Tribal Court.

Sec. 12.6 **Guardianship Reports.**

- A. Reporting During the First Twelve Months of Guardianship.
 - 1. During the first 12 months of a Guardianship, the Court will hold hearings every 90 days. The Guardian shall file a report with the Tribal Court no later than five (5) days prior to that scheduled hearing.
- B. Annual Report and Hearing. A Guardians shall file a report with the Tribal Court annually within thirty (30) days after the anniversary of their appointment, and at such other times as ordered by the Tribal Court. If a report is not filed, the Tribal Court shall take appropriate action in accordance with rules established by the Court.
- C. All reports filed by a Guardian shall provide complete and accurate information regarding the condition of the Ward, including but not limited to:
 - 1. the Ward's current mental, physical and social condition;
 - 2. any improvement or deterioration in the Ward's mental, physical and social condition during the reporting period;
 - 3. the Ward's present living arrangement and any changes to the same during the reporting period;
 - 4. whether a different living arrangement is recommended;
 - 5. all services received by the Ward during the reporting period;
 - 6. the dates and times of the Guardian's visits with the Ward during the reporting period;
 - 7. all actions taken on behalf of the Ward during the reporting period;
 - 8. a full accounting of the Ward's Estate, which is subject to the control or possession of the Guardian, including but not limited to, all assets, liabilities,

receipts, disbursements and other relevant financial information for the reporting period;

9. a recommendation as the need for continued guardianship, including but not limited to, a proposed future care plan; and
 10. other information required by the Tribal Court or useful in the opinion of the Guardian.
- D. If a Conservator has not been appointed and the Guardian determines that there is more money or property that is readily convertible into cash in the Ward's Estate than was stated in the Petition or reported to the Tribal Court, then the Guardian shall report the amount of the additional money or property to the Tribal Court within thirty (30) days of such determination.
- E. The reports required under this Section shall be served upon the Ward and other persons as approved by the Court as required by rules established by the Tribal Court.
- F. The Tribal Court shall develop and provide forms to assist in completing the reports required under this Section.

Sec. 12.7 **Conservatorship Reports.**

- A. Initial Accounting of Estate. Within sixty (60) days after appointment, or within another time specified by order of the Tribal Court, the Conservator shall prepare and file with the Tribal Court a complete inventory of the Ward's Estate together with an oath and affirmation that to the best of the Conservator's knowledge, such inventory is complete and accurate.
- B. Reporting During the First Twelve Months of Conservatorship.
1. During the first 12 months of a Conservatorship, the Court will hold hearings every 90 days. The Conservatorship shall file a report with the Tribal Court no later than five (5) days prior to that scheduled hearing.
- C. Annual Report and Hearing. A Conservator shall file a report with the Tribal Court annually within thirty (30) days after the anniversary of their appointment, and at such other times as ordered by the Tribal Court. If a report is not filed, the Tribal Court shall take appropriate action in accordance with rules established by the Court.
- D. All reports filed by a Conservator shall provide a full accounting of the Ward's Estate, which is subject to the control or possession of the Conservator, including but not limited to, all assets, liabilities, receipts, balances, investments, disbursements and other relevant financial information for the reporting period.

1. The Tribal Court shall review and either approve or not approve any such report and, if not approved, the Tribal Court shall, by order, inform the Conservator of the deficiencies in the report and set a deadline by which the report must be resubmitted.
 2. The Tribal Court shall reconcile or settle every account or balance by allowing or disallowing it, either in whole or in part, and may charge or assess the Conservator for any deficiencies.
- E. The reports required under this Section shall be served upon the Ward and other persons as approved by the Court as required by rules established by the Tribal Court.
- F. The Tribal Court shall develop and provide forms to assist in completing the reports required under this Section.

Sec. 12.8 **Term of Service.**

- A. A Guardian or Conservator shall serve until discharged from such duties by order of the Tribal Court, or the walking on of the Ward.

Sec. 12.9 **Modification and Termination of Guardianship or Conservatorship.**

- A. Modification and Termination. A guardianship or conservatorship may be modified or terminated by the Tribal Court based upon the standards set forth in this Code as applicable, and the best interests of the Ward.
- B. Resignation. Any Guardian or Conservator, who wishes to resign, shall file a petition with the Tribal Court setting forth the reasons for the resignation request. A petition may include a request to appoint a successor Guardian or Conservator.
- C. Ward/Interested Person Petition. The Ward, the guardian *ad litem*, or a person interested in the Ward's welfare, may petition for an order for removal and appointment of a successor Guardian or Conservator, or modification or termination of a guardianship or conservatorship.
1. A request for such an order shall be made on a form provided by the Court.
 2. Any person who knowingly interferes with the transmission of such a request shall be subject to the Tribal Court's power of contempt.
- D. The Tribal Court shall set a date for a hearing to be held within twenty-eight (28) days of receiving a request for resignation, modification or termination provided that an order finding incapacity may specify a minimum period, not exceeding 180 days, during which such a request shall not be filed without special leave of the Tribal Court.

- E. Successor Appointment. Upon the resignation, removal, or death of a Guardian or Conservator, the Tribal Court, if necessary, may appoint a successor and, prior to any such appointment, may enter an emergency or interim order which is in the best interests of the Ward.
- F. Before accepting a resignation, removing or appointing a successor Guardian or Conservator, or modifying or terminating a guardianship or conservatorship, the Tribal Court may direct the Department of Social Services to prepare and file a report with the Tribal Court in accordance with Section 11.2.

Sec. 12.10 **Fiduciary Duty.**

- A. Any person acting as a Guardian or Conservator acts in the capacity of a fiduciary and shall observe the standard of care applicable to a trustee, including but not limited to, the duties of loyalty, care and prudence.
- B. Notwithstanding any other provision of this Code, any person that breaches the fiduciary duty will be liable for all damages resulting from such breach.

Sec. 12.11 **Consent.**

- A. Any person who accepts appointment as a Guardian or Conservator submits to the jurisdiction of the Tribal Court, and shall be deemed to agree as follows:
 - 1. The guardian or conservators authority derives from the Ward's tribal membership and tribal legal status.
 - 2. The guardian or conservator knowingly participates in (or benefits from) a formal legal relationship governed by tribal law, including decisions concerning the Ward's care, residence, healthcare, finances, or personal welfare.
 - 3. The guardian or conservator accepts the protections, benefits, and obligations flowing from that relationship, including access to tribal services, tribal dispute resolution, or tribal-regulated decision-making.
- B. The Ward's Estate which is under the control or possession of the Guardian or Conservator in connection with the guardianship or conservatorship shall be subject to the jurisdiction of the Tribal Court.
- C. The Guardian or Conservator shall be subject to the jurisdiction of the Tribal Court in connection with all actions or proceedings related in any way to service in such capacity, and notices served upon the Guardian or Conservator shall have the same

force and effect as if such service had been personally made upon such person within Trust Land.

- D. Any surety of any bond provided in connection with this Code shall be deemed to have consented to the jurisdiction of the Tribal Court for purposes of any action against such surety in connection with any such bond.

DRAFT

Chapter 13
Powers and Duties of Guardian, Powers and Duties of Conservator,
and Limitations on Powers and Duties

Sec. 13.1 **Powers and Duties of Guardian.**

- A. Except as modified by Tribal Court order, a Guardian shall be responsible for the care, custody and control of the Ward and, without limiting such responsibilities, shall have all of the following powers and duties:
1. The Guardian shall be entitled to custody of the person of the Ward and may establish the Ward's place of residence, provided that the Guardian shall give preference as follows:
 - a. to the least restrictive setting in which the Ward's special needs, if any, will be met; and
 - b. to places that are not treatment facilities, unless the only available and appropriate place of residence is a treatment facility, in which case the Guardian shall give preference to any tribal-based treatment facilities over other such facilities.
 2. The Guardian shall visit the Ward within one (1) week of appointment and not less than once a month thereafter.
 3. The Guardian shall make provisions for the Ward's care, comfort, and maintenance and, when appropriate, arrange for the Ward's education, cultural and spiritual needs.
 4. The Guardian shall secure services to restore the Ward to the best possible state of mental and physical well-being in an effort to return the Ward to self-management at the earliest possible time.
 5. Without regard to custodial rights of the Ward's person, the Guardian shall take reasonable care of the Ward's personal property, including but not limited to, clothing, furniture and vehicles, and shall commence protective proceedings if any of the Ward's property needs protection.
 6. The Guardian shall have authority to consent to any medical, legal, psychiatric, psychological, and other professional care, counsel, treatment or service for the Ward and to give any other consent or approval on the Ward's behalf that may be required or in the Ward's best interest. When making such decisions, to the extent permitted under applicable law, the Guardian should consider the intent of the Ward expressed prior to entry of the Order appointing the Guardian.

7. If no Conservator has been appointed, or to the extent consistent with the appointment of a Limited Conservator, a Guardian may do any of the following:
 - a. institute a proceeding to compel a person under a duty to support the Ward or to pay money for the Ward's welfare to perform the duty;
 - b. receive money and tangible property deliverable to the Ward and apply the same for the Ward's care, comfort, maintenance and appropriate training and education; provided, however, the Guardian shall not use money from the Ward's Estate for room and board which is furnished by the Guardian or his or her spouse, parent or child unless authorized by order of the Tribal Court. The Guardian shall exercise care to conserve any excess for the Ward's needs.
8. If a Conservator has been appointed, the Guardian shall provide to the Conservator, any funds received by the Guardian in excess of the amount the Guardian expends for the Ward's current care, comfort, maintenance and appropriate training and education. The Guardian shall account to the Conservator for all amounts expended.
9. Whenever meaningful communication is possible, the Guardian shall consult with the Ward before making any major decision affecting the Ward.
10. The Guardian may petition the Tribal Court for authority to do any act about which the Guardian is uncertain, and the Tribal Court may grant such authority if such act appears to be in the best interests of the Ward.

Sec. 13.2 Powers and Duties of Conservator.

- A. All title to the Estate, including any interest in Trust Land, shall remain with the Ward, and shall not be vested in the Conservator; subject, however, to possession and control by the Conservator and the exercise of powers and duties conferred under this Code.
- B. Except as otherwise provided in this Code, or modified by Tribal Court order, a Conservator has the powers and duties to perform every act that a reasonable and prudent person would perform incident to the collection, care, preservation, administration and protection of the Ward's Estate to accomplish the purpose of the appointment, without further approval of the Tribal Court, including but not limited to, the following:
 1. to collect, hold, and retain the Estate, in the Ward's name, and receive any addition thereto, until proper disposition in accordance with this Code;

2. to continue or participate in any business or enterprise in which the Ward was engaged;
 3. to prudently invest or reinvest the Estate and deposit Estate money in a federally insured financial institution;
 4. to make repairs or alterations to buildings or other structures, and demolish or construct new buildings or structures;
 5. to insure the Estate property against damage or loss or the Conservator against liability with respect to third persons;
 6. to borrow money to be repaid from the Estate property or otherwise for such periods of time and upon such terms and conditions as the Conservator shall deem advisable, for the purpose of paying debts, taxes, and other claims against the Estate or the Ward;
 7. to pay a tax, assessment or other expense incurred in the collection, care, preservation, administration and protection of the Ward's Estate;
 8. to employ persons, such as attorneys, auditors, investment advisors, appraisers and agents to advise and assist the Conservator in the performance of duties under this Code;
 9. to maintain any appropriate action, claim, or proceeding to obtain support to which the Ward is legally entitled, to recover possession of Estate property, to determine the title thereto, or to recover damages for any injury done to the Estate or the Ward;
 10. to compromise, adjust, arbitrate, sue on, defend, abandon, or otherwise deal with and settle any claim in favor of or against the Estate or the Ward; provided that if the Conservator will share in any portion of a settlement, the Conservator shall not enter into the settlement without the prior approval of the Tribal Court;
 11. to expend or distribute the Estate income or principal for the support, education, care, or benefit of the Ward or the Ward's dependents.
- D. A Conservator shall not sell, transfer, mortgage, encumber, lease, or otherwise dispose of the Ward's real property or any interest therein, without the prior approval of the Tribal Court to the extent required under Tribal law.
- E. Whenever meaningful communication is possible, the Conservator shall consult with the Ward before making any major decision affecting the Ward's Estate or affairs.

- F. A Conservator may petition the Tribal Court for authority to do any act about which the Conservator is uncertain, and the Tribal Court may grant such authority if such act appears to be in the best interests of the Ward.

Sec. 13.3 **Limitations on Powers and Duties.**

- A. The Tribal Court shall design any guardianship and conservatorship to encourage the development of maximum self-reliance and independence.
- B. The Tribal Court may impose restrictions and limitations on the duties and powers of a Guardian or Conservator and condition the appointment on the performance of specific duties.
- C. A Guardian or Conservator shall have no authority to relinquish a Ward's enrollment with the Tribe.

Sec. 13.4 **Limited Guardian, Limited Conservator.**

- A. If the Tribal Court finds by Clear and Convincing evidence that grounds exist to appoint a Guardian, but the proposed Ward is partially able to manage his or her personal affairs, then a Limited Guardian may be appointed; or
- B. If the Tribal Court finds by Clear and Convincing evidence that grounds exist to appoint a Conservator, but the proposed Ward is partially able to manage his or her Estate and affairs, then a Limited Conservator may be appointed.
- C. Any Tribal Court order appointing a Limited Guardian or Limited Conservator shall specify all duties and authority of the Limited Guardian or Limited Conservator and any time limits on the appointment.
- D. A Ward for whom a Limited Guardian or Limited Conservator has been appointed shall retain all rights except those which have been granted to the Limited Guardian or Limited Conservator by Tribal Court order or the exercise of which would be inconsistent with those granted by Tribal Court order.

Sec. 13.5 **Retained Rights.**

- A. If a guardian or a conservator is appointed, the protected person retains all rights not restricted by Tribal Court order, and these rights must be enforced by the Tribal Court. These rights include the right to:

1. Treatment with dignity and respect;
2. Due consideration of current and previously stated personal desires, medical treatment preferences, cultural and spiritual beliefs, and other preferences and opinions in decisions made by the guardian and conservator;
3. Exercise control of all aspects of life not delegated specifically by Tribal Court order to the guardian or conservator;
4. Guardianship or conservatorship services individually suited to the protected person's conditions and needs;
5. Care, comfort, social and recreational needs, training, education, habilitation, and rehabilitation care and services, within available resources;
6. Be consulted concerning, and to decide to the extent possible, the reasonable care and disposition of the protected person's clothing, furniture, vehicles, and other personal effects, and to petition the Tribal Court for a review of the guardian's or conservator's proposed disposition;
7. Personal privacy;
8. Communication or visitation with persons of the protected person's choice, provided that if the guardian has found that certain communication or visitation may result in harm to the protected person's spiritual, emotional, mental and physical health, safety, or wellbeing, that communication or visitation may be restricted but only to the extent necessary to prevent the harm;
9. Petition the Tribal Court for termination or modification of the guardianship or conservatorship or for other appropriate relief; and
10. In the case of a conservatorship, only execute a health care directive, including both health care instructions and the appointment of a health care agent.

Sec. 13.6 **Liability.**

- A. The fact that a person or entity is a Guardian or Conservator shall not, in itself, make such person liable to third persons for the Ward's acts.
- B. Unless otherwise provided in a contract, a Conservator shall not be personally liable to a third person on a contract properly entered into in a fiduciary capacity in the course of

exercising any power or performing any duty unless the Conservator failed to reveal the representative capacity and identify the Estate in connection with the contract.

- C. A Conservator shall not be personally liable to a third person for an obligation arising from ownership or control of the Estate or a tort committed in the course of exercising any power or performing any duty unless the Conservator was personally at fault and or acted outside of the scope of their authority.
- D. A claim based on a contract entered into by a Conservator in a fiduciary capacity, an obligation arising from ownership or control of the Estate, or a tort committed in the course of Estate administration may be asserted against the Estate by proceeding against the Conservator in the Conservator's fiduciary capacity, whether or not the Conservator is personally liable for the claim.
- E. Any question of liability between the Estate and the Guardian or Conservator may be determined in a Tribal Court proceeding for accounting, surcharge, indemnification, or other appropriate proceeding or action.

Sec. 13.7 Transactions.

- A. Any person who, in good faith, either assists or deals with a Guardian in the conduct of a transaction may assume the existence and proper exercise of trust powers by the Guardian. A third person is not bound to inquire whether a Guardian may act or is properly exercising power.
 - 1. Unless the third person has actual knowledge that the Guardian is exceeding or improperly exercising the Guardian's powers, a third person shall be fully protected in dealing with the Guardian as if the Guardian properly exercised the power.
- B. Any person who in good faith either assists or deals with a Conservator for value in a transaction, excluding any transaction requiring a Tribal Court order under this Code, shall be protected as if the Conservator properly exercised the power. The fact that a person knowingly deals with a Conservator does not alone require the person to inquire into the existence of a power or the propriety of its exercise.

Chapter 14
Procedures for Transfer of Jurisdiction

Sec. 14.1 **Procedures for Transfer of Jurisdiction to the Lac Vieux Desert Tribal Court.**

- A. The Court may accept transfer of a guardianship or conservatorship if jurisdiction is shown pursuant to Chapter 1, Section 1.4 of this Code, and the Court finds that the proceedings would be in the best interests of the Ward.
- B. In accepting transfer of jurisdiction under this Section, the Court shall recognize a guardianship or conservatorship order from the other court, the Court shall grant full faith and credit to the other court's determination of incapacity of the Ward and the appointment of the guardian or conservator.
- C. The Court shall establish rules governing the procedure for transfer of jurisdiction.

Sec. 14.2 **Procedures for Transfer of Jurisdiction from the Lac Vieux Desert Tribal Court.**

- A. A Guardian or Conservator may petition the Court to transfer the Guardianship or Conservatorship to another tribal or state court.
- B. The Court may grant a petition for the transfer of a guardianship or conservatorship if the Court has received information establishing:
 - 1. That the Ward is reasonably expected to move permanently to the other state or tribal jurisdiction;
 - 2. An objection to the transfer has not been made or, if an objection has been made, the objector has not established that transfer of the proceeding would be contrary to the interests of the Ward;
- C. The Court shall establish rules governing the procedure for transfer of jurisdiction under this Section.

LEGISLATIVE HISTORY

Lac Vieux Desert Band of Lake Superior Chippewa Indians Adult Protection Code,
enacted [redacted] by Res. No. [redacted].

DRAFT