

TRIBAL COURT CODE

OF THE KENAITZE INDIAN TRIBE

KENAITZE INDIAN TRIBE

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TRIBAL COURT CODE

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KENAITZE TRIBAL COURT STRUCTURE

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SECTION 1. NAME OF CODE

This law shall be referred to as the Kenaitze Indian Tribe, Tribal Court Code (hereinafter "the Code").

SECTION 2. NAME OF COURT

The Court of the Kenaitze Indian Tribe shall be referred to as the Kenaitze Tribal Court (hereinafter "the Court").

SECTION 3. PURPOSE

A. HISTORY

Since time immemorial, we the Dena'ina Athabascan people, including the Kenaitze Indian Tribe, have resolved dispute and conflict, maintained community peace, and delivered justice within our Tribal Territory through the use of our Traditional Athabascan Laws, Customs, and Practices.

B. MODERN PURPOSE

The purpose of this Code is to honor and acknowledge our prior Customs, History, Traditions, and Experience for the purpose of preserving, strengthening, and continuing the Tribal Court into the future. To ensure the efficient and fair administration of justice, the Tribal Court shall continue to resolve conflicts and disputes and enforce Tribal Laws through the application of Cultural Traditions, Customary and Traditional Values, Written Law, Codes, and Ordinances.

SECTION 4. AUTHORITY

The Kenaitze Indian Tribe, represented by the duly elected governing body of the Tribal Council, has the authority to operate the Tribal Court pursuant to its inherent sovereign authority and the powers set forth in the Tribe's Constitution, By-Laws, Ordinances, Resolutions and Codes.

SECTION 5. JURISDICTION

The Kenaitze Tribal Court shall have the authority to exercise jurisdiction that is permitted as their valid existing rights as a sovereign nation. These powers include, but are not limited to, matters relating to the governmental processes internal to the Tribe and over matters arising:

1. In the Tribe's Dena'ina Indian Country, including but not limited to all lands and waters customarily and traditionally used by the Dena'ina people; and/or
2. Over all tribal members, enrolled or eligible, regardless of where they live or do business; and/or
3. Over all persons and entities who enter into consensual relations with the Tribe or tribal members, or whose activities affect the political integrity, economic security, or the health or welfare of the Tribe or tribal members.

SECTION 6. COURT STRUCTURE

The Tribal Court will consist of a panel of judges. The Judges shall be appointed by a majority vote of the Tribal Council. At least two and no more than five judges will hear each case. A quorum of no less than two judges shall be convened to hear and decide a case. It shall be a preference that at least one elder judge presides over every case that comes before the Tribal Court. In emergency situations and/or due to disqualification as outlined in the code, the presiding judge may solicit from a list of members who have already pre-qualified or from qualified judges from an associated Tribe to act as judges to make a quorum.

A. Chief Judge: The Tribal Court will select a Chief Judge to be approved by the Council. The role of the Chief Judge is to oversee the functioning of the Tribal Court.

SECTION 7. JUDGES

A. QUALIFICATIONS

In order to be qualified to serve as a Tribal Court Judge, a person must, at a minimum:

1. Be an enrolled Tribal Member, and
2. Be domiciled within the Tribe's customary and traditional Dena'ina Indian Country;
3. Be at least 31 years of age;
4. Not have been convicted of a non-violent crime within the previous two years, unless otherwise approved by the Tribal Court and except that fishing, hunting, and gathering violations will not exclude a person from serving as a judge;
5. Not have been convicted of a violent crime within the previous ten years, unless otherwise approved by the Tribal Council;
6. Not have been convicted of any crime involving sexual assault, molestation, sexual abuse or sexual exploitation in his/her lifetime;
7. Agree to participate in Judicial Trainings as they are made available by the Tribe;
8. Provide Criminal Background Investigation/Child Protection Clearance/Drug and Alcohol Free Workplace Statement.

B. SELECTION OF JUDGES

Judges will be appointed by an affirmative vote of the Tribal Council. Selection of the Judges shall be at the discretion of the Council.

C. TERMS

Judges will serve on the Court unless and until they resign or are removed as described in section D, below.

D. JUDICIAL DISCIPLINARY PROCEEDINGS

Any judge may be dismissed, suspended, removed, or fined if a majority of the Council determines that it is in the best interest of the Tribe. In dismissing, suspending, removing, or fining a Judge, the following procedure must be followed:

1. The person or people desiring to remove the Judge shall file a Grievance Petition with the Tribal Council;
2. The Council shall notify the Judge of the Grievance Petition within 20 days. The notice shall be in writing and shall contain a copy of the Petition;
3. The Judge may request that the Council hold a special meeting so that the Judge may present his or her side to the Council. The Judge and the Petitioner(s) shall be allowed to present witnesses and evidence to the Council.
4. Once the Council makes a decision regarding the Grievance Petition, it shall issue a written decision, explaining the reason(s) for its decision. A copy of the decision shall be given to both the Judge and the Petitioner(s).

E. FILLING JUDICIAL VACANCIES

Should a judicial vacancy occur through death, resignation, removal or otherwise, the Tribal Council shall appoint a qualified Tribal member or a Council member to fill the vacancy.

F. JUDICIAL ETHICS

No judge shall be involved in a case where he or she:

1. Has a direct personal, political, or financial interest; or

2. Has an immediate family member that is a party to the case.
Immediate family members include: spouse, mother, father, sister, brother, son, daughter, or member of the Judge's household; or
3. Does not think that he or she can be fair or impartial for any reason.

SECTION 8: ELDERS AND OTHER ADVISORS

The Tribal Court may confer with and/or request oral or written responses from Tribal Elders, Tribal Council Members, and/or other cultural leaders which may be kept for and relied on by future generations.

SECTION 9: LEGAL AND PROFESSIONAL CONSULTATION

Judges can have access to attorneys and other professionals for consultation including but not limited to legal opinions.

SECTION 10: APPEALS

Parties to Tribal Court proceedings shall be permitted to appeal the Court's final decision. A panel of three members of the Tribal Council shall sit as the Appellate Court. A person may not serve as a Judge on the Appellate Court if he or she is already serving as a Judge on the Tribal Court.

- A. Starting an Appeal: To appeal a final decision of the Kenaitze Tribal Court the appealing party must file a Petition to Appeal with the Tribal Council and provide a copy to the Tribal Court Clerk. A copy shall also be provided to any other parties to the case.
 - i. Time Limit: A Petition to Appeal must be filed within 30 days of the date written on the Tribal Court's final order.
 - ii. Contents of the Petition: The Petition must state with specificity all of the reasons that the party is appealing. A copy of the Tribal Court's final Order must be attached to the Petition.
 - iii. No New Facts or Evidence: Parties to an appeal are not permitted to present new facts or evidence to the Appellate Court.
 - iv. Filing Fee: A party shall be required to pay \$50 to the Tribal Council.

B. Appointing an Appellate Court Panel: Within 10 business days of a Petition to Appeal being filed, the Tribal Council shall call a special meeting. At the special meeting, the Tribal Council shall, without discussing the merits or substance of the appeal, appoint three Council members to sit as the Appellate Court. Within 5 business days of being appointed, the Appellate Court shall convene to review the Petition.

C. Hearing on Petition, Frivolous Petitions:

i. Unless the Appellate Court finds the Petition to be frivolous (see subsection (ii), below), it shall schedule a hearing within 30 days of reviewing the Petition. Notice must be provided to both parties at least 20 days in advance of the hearing. Notice shall also be sent to the Tribal Court Clerk. At the hearing, both parties shall be permitted adequate time to present their position on the issues that are on appeal. The parties are not permitted to present new evidence at this hearing.

1. If the Appellate Court wishes for the parties to submit their position in writing prior to the hearing, it may direct them to do so. They shall be permitted adequate time to prepare their written statements. Each party shall be given a chance to respond to the other party's statement.

2. The original or a true copy of the Tribal Court record of the case at-issue, including recordings and/or transcripts of hearings, shall be made available for review by the Appellate Court and both parties. The party that is appealing the case shall bear the initial cost of copying the file. The parties may refer to the record in the hearing and/or their written statements. The Appellate Court may also consult the record.

ii. Frivolous Appeals: The Appellate Court may dismiss the Petition to Appeal without hearing from the other party if it finds the Petition to be frivolous, *i.e.*, there is no sound basis for reviewing the Tribal Court's Order. If the Court finds an appeal to be frivolous, it shall issue a written

Order dismissing the Petition to Appeal and state with specificity why the appeal is frivolous.

D. Role of the Appellate Court: It is the role of the Appellate Court to consider only the issues set forth in the Petition to Appeal and determine whether an error has been made as to those issues. It shall not consider any new facts or evidence, *i.e.*, facts or evidence that were not presented to the Tribal Court.

i. Fact Issues on Appeal: If the appeal is regarding an issue of fact or the Tribal Court's fact-finding, the Appellate Court can take action adverse to the Tribal Court's decision only if it finds that the Tribal Court has abused its discretion. This is because the Tribal Court, as the trial court that heard all of the witnesses and saw all of the evidence, is in the best position to make findings regarding the facts. If the Appellate Court finds that the Tribal Court has abused its discretion, it can direct the Tribal Court to re-visit its ruling or it can overturn its ruling.

ii. Issues of Tribal Law, Custom or Procedure on Appeal: If the petition to appeal alleges that the Tribal Court has made an error in applying or interpreting Tribal Law, Custom or Procedure, the Court shall review the applicable law, custom and/or procedure to determine whether the Tribal Court has correctly applied or interpreted the law. If the Appellate Court finds that an error was made, it can direct the Tribal Court to review its ruling or it can overturn its ruling.

E. Decision of the Appellate Court

i. After the Appellate Court has held a hearing, reviewed the parties' written statements (if any), and made any necessary review of the record, it shall issue a written decision either affirming the Tribal Court's ruling, directing that the Tribal Court re-visit its ruling, or overturning the Tribal Court's ruling. If the Appellate Court affirms the Tribal Court's ruling, it shall explain in detail why it is affirming the ruling. If the

Appellate Court is directing the Tribal Court to review its ruling, it shall state with specificity why it feels the Tribal Court erred and what part of the ruling must be re-visited. If the Appellate Court overturns the Tribal Court's ruling, it shall explain in detail why it is overturning the ruling. *Note:* The Appellate Court may also find itself in the position of affirming one part of the Tribal Court's ruling and overturning or directing the Tribal Court to re-visit a different part of its ruling. This is acceptable as long as the Appellate Court specifies what part of the ruling it agrees with and what part it disagrees with.

- ii. A copy of the Appellate Court's decision shall be sent to all parties and to the Tribal Court.

F. Confidentiality: Any case that is made confidential in the Tribal Court including but not limited to, Child In Need of Aid cases, Guardian/Conservator cases, and Elder Protection Cases, shall remain confidential during the Appellate Court process. If any information regarding the Appellate Court's ruling is made public, all names and personal information shall first be changed and/or redacted.

G. Code of Conduct: When acting as Judges for the Appellate Court, Council Members shall adhere to the Judicial Ethics set forth in Section 7(F) of this Code. They shall also be required to take the Oath of Confidentiality and Oath of Office as set forth in Sections 12 and 13 of this Code. The Appellate Court shall also have available to it the consultants and advisors set forth in Sections 8 and 9 of this Code.

SECTION 11: OTHER COURT PERSONNEL

A. COURT ADMINISTRATOR

The Council may, funding permitted, appoint a person to serve as Tribal Court Administrator. The purpose of the administrator is to oversee the daily functions of the Court. Nothing shall prohibit the Council from appointing the same person to serve as the Court Administrator and the Court Clerk. The Chief Judge may be appointed to act as the Court Administrator.

B. COURT CLERK

The Council may, funding permitted, appoint a Tribal Court Clerk. Training of the Court Clerk shall be provided by the Tribe. Personnel issue relating to the Court Clerk shall be handled by the Tribal Administrator. For all other issues relating to Court business, the Court Clerk shall be supervised by the Tribal Court Judges. Nothing shall prohibit the Council from appointing the same person to serve as the Court Administrator and the Court Clerk.

SECTION 12: OATH OF CONFIDENTIALITY

The Kenaitze Indian Tribe Tribal Court Judges, Clerk, Tribal Council, and all others called upon by the Court or Council shall take the following oath of confidentiality:

"I _____ do solemnly swear and affirm that I will not discuss any confidential matters outside the Tribal Court unless I am otherwise permitted by the Tribal Court."

SECTION 13. OATH OF OFFICE

Every Judge, prior to taking office or acting in such office, shall take the following oath of affirmation:

"I, _____ do solemnly affirm that I will support, defend and uphold the Constitution and By-Laws of the Kenaitze Indian Tribe and support and defend the best interests of the Kenaitze Indian Tribe; that I will support, uphold, and enforce the Law and Order of the Tribe, Resolutions and Ordinances duly passed by the Kenaitze Indian Tribe; and that I will faithfully and impartially discharge the duties of my office to the best of my ability"

SECTION 14. FULL FAITH AND CREDIT AND COMITY

The Kenaitze Indian Tribe, Tribal Court may give full faith and credit, comity, or other reciprocal recognition to the Laws and Judicial acts of other Tribes, the United States, individual states and local governments which equally extend the same full faith and

credit, comity, and other recognition to the Laws and Judicial acts of the Kenaitze Indian Tribe and Tribal Court.

SECTION 15. SUPREME LAW: THE DENA'INA PRINCIPLES OF REGULATION

In the event of an otherwise unresolvable dispute, the Dena'ina Principles of Regulation, which includes written and unwritten tribal traditions, will take precedence over all other laws, codes and regulations.

Before a court issues a decision on the basis of the Dena'ina Principles of Regulation, it will give the people involved an opportunity to be heard about any question over what those principles are or how they should be applied.

SECTION 16. AMENDMENTS

Amendments to this Code may be made only if 1) the amendments are proposed by a Tribal Member or a Council Member and 2) a majority of the Tribal Council votes in favor of the amendments.

CHAPTER 2

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SECTION 1. PURPOSE

The purpose of the Kenaitze Tribal Court Procedures Ordinance is to provide a fair and equitable process for the operation of the Kenaitze Tribal Court that is consistent with the Kenaitze Tribal Constitution and Ordinances, the requirements of the Indian Civil Rights Act and compatible with the unwritten values and practices of the Kenaitze Tribe. The procedures provided in this Ordinance shall be the guidelines and policies of the Kenaitze Tribal Court unless otherwise specifically provided for by the Kenaitze Constitution or tribal ordinance.

SECTION 2. DEFINITIONS

The following words and phrases, whenever used in this Chapter, shall have the following meanings:

Banishment means sending a person out of the Dena'ina Territory of the Kenaitze Indian Tribe for a period of time or permanently.

Emergency circumstances mean circumstances in which it reasonably appears that there is imminent danger of harm to a person or property.

Parties means person or persons that the Kenaitze Tribal Court considers to be involved in an issue that has been brought before the Court. A person who is a Petitioner may choose not to be a party to a case if it is specifically permitted by tribal ordinance or if the Kenaitze Tribal Court permits it.

Petitioner is the party filing a Petition to Use the Tribal Court.

Proof of Service means written or otherwise documented evidence that parties have been notified of an action of the court, such as notification about a hearing.

Restitution means compensating a person who has been damaged or injured, by paying money or performing services to compensate for damage or injury. Restitution includes apologizing, payment of medical bills or other bills, repair of property, or replacement of property. The Kenaitze Tribal Court may also order people to do other things to provide restitution.

Civil violation means failing to comply with tribal laws and involves conduct inappropriate to an orderly society, but it is not a criminal offense. A person charged with a civil violation is not entitled to a trial by jury or a right to a public defender.

SECTION 3. RIGHTS OF PARTIES

Parties appearing before the Kenaitze Tribal Court have rights as specified by the Indian Civil Rights Act of 1968, as amended. Parties appearing before the Court shall have the following rights, which include and exceed those of the Indian Civil Rights Act:

- The right to be notified of the time, date and place of court hearings, except in cases of emergency when a party is not reasonably available to be notified;
- The right to be notified of the date by which a written response is required to be filed with the Court;
- The opportunity to be heard including the chance to talk, the chance to present evidence and witnesses, the chance to ask questions of the other party and the other party's witnesses;
- The right to be heard by a fair and impartial judge or judges;
- The right to copies of documents submitted to the court and court generated documents (at their own expense);
- The right to request a Change of Order if new evidence or circumstances change in the case;
- The right to appeal the final decision to the Kenaitze Appellate Court;

SECTION 4. CONFIDENTIALITY

All children's cases and hearings shall be confidential. Hearings involving adults may be open to the public if the parties and the Judges agree. Only the parties, Judges, and Court Clerk may have access to court records, unless the Court or Tribal Law specifies otherwise. The Kenaitze Appellate Court shall have access to all records involving cases that are appealed to it.

SECTION 5. RECORDING HEARINGS

The Court shall keep a record of all cases consisting of a tape recording and/or written notes of all panel style hearings, all original documents filed with the Court, and all Orders entered by the Court.

SECTION 6. FAILURE TO APPEAR FOR A HEARING

If parties have been given reasonable notice of a hearing but fail to appear for the hearing, the Court may proceed with the hearing as scheduled and make a decision in the absence of the party, or reschedule it.

SECTION 7. RECESSES DURING HEARINGS

The court may recess during any type of court hearing.

SECTION 8. TESTIMONY AND ASSOCIATED COSTS

Witnesses may testify in person, or, with the Court's permission, by telephone. The Kenaitze Tribal Court may summon witnesses to testify at the hearings by issuing a Summons to Testify.

SECTION 9. EVIDENCE AND AFFIDAVITS

The Kenaitze Tribal Court shall hear all evidence it finds proper. The Kenaitze Tribal Court may Order evidence to be brought before the Court by issuing a subpoena. The Kenaitze Tribal Court may accept sworn Affidavits as evidence in cases if the witness is not available to testify.

SECTION 10. EMERGENCY HEARINGS

Emergency hearings shall involve matters where harm or damage to a person or property may likely occur if the Court had to wait. In cases of emergencies, the Court may hold a hearing as soon as reasonable proof of imminent harm is provided to the Court. Notice of emergency hearings shall be given to parties who are reasonably available to receive Notice, but the Court may proceed without Notice if parties are not available to receive it. Orders issued during emergency hearings shall be written and of limited duration of up to 30 days unless otherwise stated in the tribal code, or, shall stand only until a regular hearing with reasonable Notice is held.

SECTION 11. SEARCH WARRANTS

The Kenaitze Tribal Court shall comply with the Indian Civil Rights Act in requiring tribal search warrants when necessary to search for evidence under circumstances that would lead a reasonable person to believe that a civil violation was or is being committed. Suspicion unsupported by any facts is not sufficient. Search warrants shall specifically state where the search may be done, what items are to be looked for, when the warrant expires, and whether or not the search may take place at night.

- A. Application for Search Warrants: In order to do searches of people, houses, cars, or other private property, a person designated by the Tribal Council to conduct searches shall fill out an Application for Search Warrant. The application shall state why he or she believes a search warrant is needed. The application shall state the name of the person who saw or has knowledge of an illegal activity or item if it is the basis for reason to believe that a search is needed. The person applying for the search warrant shall swear that the statements in the application are true to the best of their knowledge.
- B. Issuing a Search Warrant: The approval of two Kenaitze Tribal Court Judges shall be necessary to issue a search warrant. The Judge must be convinced that the person applying for the Search Warrant has "probable cause,"

meaning evidence of circumstances that would lead a reasonable person to believe that an offense was or is being committed.

SECTION 12. JUVENILES

- A. Application of tribal laws to juveniles: The civil laws of the Tribe and tribal court procedures generally apply to juveniles the same as they do to adults, provided that specific ordinances may apply solely to juveniles and that a Kenaitze Tribal Youth Court may be established and operated under its own written procedures.
- B. Parents or guardians attending hearings: In cases involving civil violations by minor children, written notification shall be given to the child of an upcoming hearing and written notification also given to parents or guardians. The Kenaitze Tribal Court may request a parent or guardian to be present at their child's hearing, or, the Court may request parents or guardians to leave a hearing if the judges believe that it is in the best interest of the child. The Court may appoint a spokesperson for a minor child.
- C. Sealing of juvenile court records: All juvenile court records will be sealed and nothing in such records can be used against the juvenile in any criminal or other action or proceeding except in subsequent tribal court proceedings brought under tribal law.

SECTION 13. TRIBAL COURT FINANCES

- A. Accounting: The Tribal Council shall establish a separate line item account for the finances of Kenaitze Tribal Court.
- B. Fees: The Kenaitze Tribal Court may charge fees to use the Court. Such fees shall be equal for equal types of cases and matters, and shall be made known to any person who wants to use, or files a Petition with, the Kenaitze Tribal Court.
- C. Payment of fines or fees: Fines or fees shall be paid in cash, check, money order, or credit card. Checks or money orders shall be made out to the Kenaitze Tribal Court Clerk, and the Clerk shall issue a receipt.

SECTION 14. BEGINNING A TRIBAL COURT CASE

Cases generally begin by filing a Petition to use the Tribal Court with the Kenaitze Tribal Court Clerk. The Petitioner shall write sufficient information about the circumstances and reasons why the Court should take the case. Cases may also come to the court through referrals or transfer of jurisdiction from another court. Upon receipt of a Petition, referral, or option to transfer a case, the Clerk shall schedule a meeting with the tribal court judges to decide whether to take the case. If the judges decide to take a case, they will decide whether the case is appropriate for a panel style hearing or the Tribe's Traditional Conflict Resolution Program. A minimum of two judges at the meeting is necessary to make this decision. After this meeting, the judges or court clerk shall contact the parties regarding future hearings and proceedings.

A. Decision to not take a case: If the decision is made to not take the case, the Clerk shall write a letter of denial to the Petitioner, or referring entity, as soon as possible after the decision is made.

B. Referral to the Traditional Conflict Resolution Program (TCRP) during a Case: At any time during a case, the Court may refer the case to the TCRP if the Judges feel that the program is appropriate for the case. The parties may request a referral to the TCRP. If such request is made, the Judges that are presiding over the case will make a decision as to whether the program is appropriate.

SECTION 15. NOTICE

A. Notice for hearings: Parties shall be given reasonable notice for all scheduled Kenaitze Tribal Court hearings. The Clerk, or designee, shall personally serve or mail notice to all parties before hearings. In the case of non-emergency

hearings, the Court shall make every effort to provide the parties with seven days notice, unless otherwise specified by Tribal Law. If, at a hearing of the Tribal Court, the Court gives a party oral notice of an upcoming hearing date and time, the Court shall not be required to send written notice to the parties regarding that hearing.

- B. Notice when hearings are rescheduled: If the Court changes the time of a hearing for any reason, the involved parties shall be given reasonable notice of the rescheduled hearing. If a hearing is rescheduled, notification may be made telephonically.
- C. Notice for emergency hearings: Notice of emergency hearings shall be given to parties who are reasonably available to receive notice. If parties are not reasonably available to receive notice, the Court may hold a hearing without notice being given.
- D. Notice for witnesses: Each party shall be responsible for serving notice to their own witnesses. Each party is also responsible for giving the other parties and the Kenaitze Tribal Court Clerk reasonable notice that they have asked witnesses to attend a hearing.

SECTION 16. PROCEDURES FOR PANEL OF JUDGES STYLE HEARINGS

- A. Opening a hearing: The presiding judge shall open the court hearing and may ask that a prayer or words from an Elder be given. The Presiding Judge shall then:
 - Ask the Clerk to begin the recording and/or taking notes;
 - State the case number and the date, time, and place of the hearing;
 - Ask all persons in the courtroom or at any teleconference sites to state their name and relationship to the case for the record;

- Ask if the parties were notified of the hearing;
 - Determine if there are any parties who were notified but are not at the hearing. If a party was notified but is not at the hearing, the Court may either proceed with the hearing or reschedule;
 - Determine if there are any parties who should have been notified but were not notified. If it is determined that there is a party that was not notified, the hearing shall be rescheduled to allow reasonable notification;
 - Inquire as to whether the parties have been advised of their rights and, if they have not been advised, so advise them;
 - In cases that are closed to the public, all present at the hearing shall be instructed to maintain confidentiality outside the Kenaitze Courtroom proceedings;
 - Civil violations: In cases of civil violations, the Respondent shall be asked how he or she pleads: guilty, not guilty, or no contest and the Presiding Judge shall make sure the Respondent understands the pleas. The Respondent shall say what his or her plea is. If the Respondent pleads guilty or no contest, the judges may question the Respondent and any participants in the courtroom to gain information that will help them create an appropriate sentence during their deliberations. They may also counsel the Respondent at that time. If the Respondent pleads not guilty, the hearing shall be held at this time unless the Court finds it appropriate to delay in order for parties to gather witnesses and evidence. If the Respondent is present but will not say anything, the Court shall enter a plea of not guilty.
- B. Hearing process: The Judges shall generally maintain order in the courtroom and direct the order of speaking. If anyone is connected to the hearing by teleconference, all hearing participants shall state their name prior to speaking, and any visual evidence presented to the court shall be described. The parties may present witness and evidence in the order chosen by the Judges. Each party shall be permitted to question each other and all witnesses. Judges may

question anyone in the Courtroom. When the judges determine that all parties have had sufficient opportunity to speak and present everything they feel is relevant to the case, they shall ask everyone to leave the courtroom while they deliberate. The Judges may chose to issue an Order immediately or they may deliberate over several days or weeks. After reaching a decision, the Court will issue either a written or oral order.

SECTION 17. PROCEDURES FOR TRANSFERRING CASES TO THE TRIBAL TRADITIONAL CONFLICT RESOLUTION PROGRAM

A. Referral: Once the Kenaitze Tribal Court Judges have decided that they want to use the Traditional Conflict Resolution Program for a particular case, they shall decide who the Leader will be. The Tribal Court and/or Court Clerk shall provide the parties with further contact information regarding the Leader and the next step in the proceeding.

B. Decisions of the TCRP: Decisions of TCRP shall be immediately reported to the Court and shall be written as Orders of the Kenaitze Tribal Court. If the TCRP is not able to reach a resolution, the case shall be immediately referred back to a hearing panel of Kenaitze Tribal Court Judges. In all cases, the TCRP shall report back to the Tribal Court at the completion of the case or upon the last meeting with the parties. The Court can request status reports from the TCRP Leader at anytime during the pendency of the case.

SECTION 18. OPTIONS FOR ORDERS AND SENTENCES

The Court may issue Orders concerning child custody arrangements, domestic relations issues, and any other type of case where an Order is appropriate. Unless the Kenaitze Tribal Code sets a specific penalty for a particular civil violation, the Kenaitze Tribal Court Judges, either by themselves or through the Traditional Conflict Resolution Program, shall

determine the specific Orders for a particular case. The Judges may choose from the following options:

A. Fines: Fines for violation of a Tribal ordinance shall not exceed \$5,000 or equivalent work sentence. Fines may increase for successive violations of the same ordinance. The Court may garnish wages, permanent fund or dividend checks, village or regional Native corporation dividends, general assistance, or confiscate property in the case of unpaid fines.

B. Community Service: The Tribal Court Judges may order various types of community service work to be completed by the offender. The goal of the community service sentence shall be to provide a benefit to the Tribal community including, but not limited to, the needy, the Elders, the youth, and the victim of the offense. Work sentences shall be completed in 30 days unless otherwise directed by the Court.

Persons have the option of work sentences instead of paying a fine only if the Court specifically permits it. Community work shall contribute the standard minimum wage per hour towards fines ordered by the Kenaitze Tribal Court.

C. Banishment: An Order of temporary or permanent banishment shall only be used to protect the Tribal territory or residents from harm. The length of time a person is banished shall be determined by the severity of the case or upon the completion of treatment that is ordered.

D. Drug and Alcohol Treatment and Other Counseling: The Tribal Court may order an assessment for drug and alcohol treatment and may require that the recommendations of the assessment be met. The Tribal Court may also order other personal counseling. It shall be the responsibility of the party ordered to do such treatment to pay for any and all cost of the treatment.

- E. Counseling by Judges and Elders: The Judges of the Kenaitze Tribal Court may counsel persons brought before them in a helpful spirit. The Kenaitze Tribal Court may bring Kenaitze Elders into the Kenaitze Courtroom to counsel people.
- F. Restitution: The Tribal Court may order an offender to make restitution to his or her victims. Restitution is defined to include payment of money, repairing property, and apologies. Restitution payment shall go through the Kenaitze Tribal Court Clerk. Non-monetary restitution shall be supervised by a person designated by the Kenaitze Tribal Court.
- G. Traditional Activities: The Kenaitze Tribal Court may order a person to participate in seasonally appropriate traditional activities such as fish camps, trapping, hunting, culture camps, and other tribally sponsored or approved traditional activities.

SECTION 19. WRITTEN ORDERS, TIMEFRAME FOR COMPLYING WITH ORDERS

- A. Written Orders: All final orders made by the Kenaitze Tribal Court shall be written unless otherwise specified by ordinance. In ongoing cases, the Court shall be permitted to issue oral or written orders as it sees fit. All written Orders and notations shall be filed in the case records. The Clerk or other designated person shall personally give or mail a copy of the Order to all parties to the case and file a proof of service.
- B. Time frame for Complying with Orders: For cases involving civil violations all sentences shall be accomplished within 30 days after the Respondent has been notified of the Order, unless the Court provides otherwise. For other cases, the Order shall specify timeframes for compliance.

SECTION 20. REQUEST TO CHANGE ORDER

Parties may request the Court for a hearing to consider changing an Order. To make such a request, a Party shall file a Request to Change Order form with the Kenaitze Tribal Court Clerk. The request shall state the reason the person believes a change should be made. The requesting person shall present new evidence or information to the Court to support the request. The request must be made within a reasonable time after the change in circumstances has occurred and if the Court finds that too much time has elapsed, it may deny the request for that reason. Upon receipt of a Request to Change Order, the Clerk shall schedule a meeting with the tribal court judges to decide whether the Court will hear the Request. A minimum of two judges is necessary to make this decision. The Court may deny the request, or set a hearing date to consider it and notify all Parties.

SECTION 21. PROOF OF COMPLIANCE WITH ORDERS

Records of proof of compliance with Orders of the Tribal Court shall be kept by the Tribal Court Clerk in the Court files. Parties shall have 30 days to complete the requirements of an Order unless otherwise specified in the Order. Proof that the action has been completed shall be given to the Court Clerk within 14 days of completion of the act unless otherwise specified by Court Order. The Clerk shall certify the proof of compliance. Payment of a fine to the Tribal Court Clerk and a recording of the payment shall be proof in itself of payment. Financial restitution ordered to another party shall be made through the Clerk of the Tribal Court. The Clerk shall report any failures to comply with Tribal Court Orders to the Court. Failure to comply with an Order of the Court in civil violation cases shall be considered contempt of court as described in Section 22 of this Chapter.

SECTION 22. CONTEMPT OF COURT

A. Reasons Persons may be found in Contempt of Court: The Court may find a person in contempt of court if he or she:

1. Violates the Oath of Confidentiality;
 2. Fails to fully comply with an Order of the Tribal Court;
 3. Lies to the Court; and/or
 4. Disrupts Court proceedings.
- B. Judges: If a Judge is alleged to have violated any of the provisions set forth above in Section A, the grievance procedures set forth in Section 7 (D) (Judicial Disciplinary Proceedings) shall be followed.
- C. Confiscating Personal Property: The Tribal Court may seize a person's personal property if that person is found in contempt of court by the Kenaitze Tribal Court, for not doing what the Kenaitze Court has ordered. The property shall remain confiscated and under the care of the Tribal Council until the person complies with the Court Order to the satisfaction of the Kenaitze Tribal Court. If the person does not comply with the Court Order within the time limits set by the Kenaitze Tribal Court, Kenaitze Tribal Court may sell the confiscated property after providing at least 30 days notice of the proposed sale to the person.

SECTION 23. ELDERS AND OTHER TRADITIONAL ADVISORS

Parties to the case shall be permitted to bring Elders and other traditional advisors with them to a hearing.

SECTION 24. ATTORNEYS AND OTHER COUNSEL

Parties to a case shall be permitted to bring attorneys or other counsel with them to a hearing. The hiring and payment of counsel shall be the sole responsibility of the party wishing to retain counsel. Pursuant to the customary practices and traditional law of the Kenaitze Indian Tribe, it shall be the preference of the Court to hear directly from a party

and not his/her representative. Attorneys or other counsel may not speak directly to the Tribal Court or other parties unless the Court specifically invites him/her to speak.

Unless otherwise requested by a party or his/her representative, copies of notices and other case documents will continue to be sent directly to the party. If a person is requesting that documents be sent to his/her representative, both the party and the representative shall submit a signed writing which includes the representative's name, phone number, address, and the name of the person that he or she is representing.

DOMESTIC RELATIONS CODE

OF THE KENAITZE INDIAN TRIBE

KENAITZE INDIAN TRIBE

P. O. Box 988 Kenai, Alaska 99611/Physical: 150 N. Willow, Kenai, Alaska
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DOMESTIC RELATIONS CODE

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CHAPTER 1

GENERAL PROVISIONS

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Section 1. History and Purpose

Since time immemorial, we the Dena'ina Athabascan people, including the Kenaitze Indian Tribe, have resolved dispute and conflict, maintained community peace, and delivered justice within our Tribal Territory through the use of our Traditional Athabascan Laws, Customs, and Practices.

The purpose of this law is to provide policies and guidance for the Kenaitze Indian Tribe to take an active role in providing for the health, safety, and welfare of the Kenaitze people, to preserve and strengthen family ties whenever possible, to protect and preserve tribal heritage and cultural identity of the people within the Tribe's jurisdiction, and to promote cooperation with the Tribe by other courts and agencies in fulfilling the purposes of this law.

The intention of this law is to promote the health, safety, and welfare of the most valuable resource of the Kenaitze people. The welfare of our children and families is of the utmost importance. Families and children must receive the care and guidance necessary to allow them to become healthy, content, and productive members of society.

Section 2. Authority and Jurisdiction

The Kenaitze Tribal Government regulates domestic relations matters under the authority of its inherent sovereign powers as a federally recognized Indian tribe, under any additional new powers so delegated by Congress, under unwritten tribal law, under the Constitution of the Kenaitze Indian Tribe, and under written tribal ordinances. The Kenaitze Tribal Court shall have the authority to hear and decide all matters under this Code when one or more of the parties in a case are tribal members or are eligible for membership in the Kenaitze Indian Tribe or when the health, safety, or welfare of the tribal members or other residents is affected. Territorial jurisdiction shall not be a factor in establishing jurisdiction under this Code.

A. Jurisdiction over Children's Matters

1. In General. The Kenaitze Tribal Court shall have the authority to make decisions about matters involving children when the children are members or are eligible for membership in the Kenaitze Indian Tribe; when one or more of the parties in a case are tribal members or are eligible for membership in the Kenaitze Indian Tribe; or when the health, safety, or welfare of the tribal members or other residents is affected. Territorial jurisdiction shall not be a factor in establishing jurisdiction under this Code.

2. Exclusive jurisdiction cases. Once the Tribe exercises its jurisdiction in a child welfare case, the Tribe acquires exclusive jurisdiction over all aspects of the case as a matter of tribal law. Upon filing of a complaint or petition under this Code or transfer of a child custody proceeding to this Court, the child who is the subject of the proceeding becomes a ward of the Tribal Court, and remains so until the case is dismissed or concluded, or until the Tribal Court gives authority to another government or another court by Tribal Court Order.

3. Emergency jurisdiction over non-Tribal children. Where a child who is not a tribal member or eligible for membership in the tribe, is physically present on Tribal Territory and is faced with potential abuse or neglect and it appears that

no other court is in a position to intervene within the necessary time frame, the Tribal Court may exercise temporary emergency jurisdiction as necessary to protect the child. Such jurisdiction will not be exclusive and will protect the child only for such time as is necessary for the matter to be brought to the attention of a court that has full jurisdiction over the child.

4. Concurrent jurisdiction cases. If the child is a member of or eligible for membership in more than one tribe, the Kenaitze Tribal Court shall make efforts to communicate with the other tribe or tribes so that, if that tribe is also going to assert jurisdiction, a cooperative jurisdictional arrangement can be explored. If information is provided to the court to the effect that a state court case was already pending in state court at the time the Tribal Court case was filed, the Tribal Court shall make efforts to communicate with the state court to work out any jurisdictional issues.

5. Jurisdiction not based on territory. The Kenaitze Tribal Court has the authority to hear and decide children's cases involving tribal members or children eligible for tribal membership even if the children do not live within their Territory.

Section 3. Applicability

This Code shall be applied to all new cases as well as all pending and existing cases at the Court's discretion or as is appropriate.

Section 4. Best Interest of the Child

In all cases involving children, the Kenaitze Tribal Court shall hear all the facts and evidence brought before it and shall respectfully consider the rights of all parties in the case, however, those of the child shall be most important. The best interest of the child shall be more important than the rights of any other person or entity.

In determining what is in the best interest of the child, the Court shall consider the following factors:

1. The basic needs of the child, including, but not limited to, physical and medical needs, mental and emotional need, educational and cultural, and any other special needs of the child;
2. Any evidence of violence, domestic violence, child abuse or child neglect in the involved adult's household(s) as determined by a criminal background check and/or by testimony of reliable sources;
3. Any evidence of substance abuse [for definition, see Section 6, below] by the involved adults or someone living with them that would or does directly affect the emotional or physical well being of the child;
4. The existing bond between the involved adults and the child;
5. The ability of the involved adults to provide a stable home environment and to meet all of the needs of the child;
6. Whether the involved adults are likely to encourage a positive relationship between the child and the other persons with whom the child has emotional ties;
7. The advantages of keeping the child in the community where the child resides; and
8. Any other things the Court feels are relevant to the best interest of the child.

Section 5. Guardian *ad litem*s and CASAs

The Tribal Court may appoint a Guardian *ad litem* and/or CASA (Court Appointed Special Advocate) for a child in any case involving child abuse or neglect or any other case where the Court deems it necessary for a minor child to have such representation.

Section 6. Child Placement Preferences

The following placement preferences shall be applied in all cases where a child is placed out of the home, unless the Court finds that it would be in the child's best interest to vary the order of preference or place the child not according to these preferences:

1. A member of the child's extended family who resides closest to or in the city or community in which the child resides;
2. A member of the Kenaitze Indian Tribe that resides within the tribe's Territory;
3. A foster home, licensed, approved or specified by the Kenaitze Indian Tribe;
4. A member of another tribe that resides in or around the Tribe's Territory and with whom the child is culturally related.
5. A member of the child's extended family who resides elsewhere;
6. A resident of Kenai or the surrounding communities;
7. A group treatment home.

Section 7. Family Receiving Home

In lieu of placing the child in an out-of-home placement, the Court may order the family to reside in a Family Receiving Home (hereinafter "FRH"). A FRH is a residential, therapeutic home designed to prevent the removal of children from their parents' care by providing intense services and supervision to the family unit. A FRH can be either 1) a separate facility designated by the Tribe for that purpose or 2) the home of a family within the Tribe that has been approved by the Tribe. The

family may be ordered to participate in a FRH only if this service is available and only if it is in the child's best interest. The Tribe may develop further policies and procedures with regard to the development of the Family Receiving Home.

Section 8. Definitions

Unless otherwise specified, the following words and phrases, whenever used in this Code, shall have the following meanings:

"Adoptive placement" means the permanent placement of a child for adoption.

"Adult" means a person who is 18 years of age or older.

"CASA" means a Court Appointed Special Advocate trained by the Tribe or other approved organization.

"Child" means a person who is under 18 years of age.

"Child protection proceeding" means a case where a child is found to be a "child in need of aid," a foster care placement case, a termination of parental rights case, a preadoptive or adoptive placement case, or an adoption case that is contested by a parent, custodian or guardian.

"Corporal Punishment" means the infliction of excessive bodily pain as a penalty for disapproved behavior. It includes actions such as shaking, spanking, delivering a blow with a part of the body or an object, slapping, punching, pulling or action that seeks to induce pain.

"Custodian" means a person who has been given responsibility to care for a child either by a parent, or under tribal custom, court order, tribal law or State law.

"Domestic violence" Domestic violence means assault, threats of violence, or physical, sexual, or mental abuse of a person when the victim is a spouse, a former spouse or partner, an extended family member, a boyfriend or girlfriend, or any other person who has been an intimate partner, or a member of the social unit made up of those living together in the same dwelling as the victim or perpetrator.

"Extended family" means the person's parents, children, grandparents, great-grandparents, great-aunts, great-uncles, aunts, uncles, cousins, sisters, and brothers, or someone who is considered to be extended family under the traditional laws of the Kenaitze Tribe.

"Foster care placement" means any action removing a child from his/her parent or custodian for temporary placement in a foster home, a relative's home, an institution or the home of a guardian where the parent or custodian cannot have the child returned on demand.

"Foster home" means a home certified or licensed to provide foster care by the Kenaitze Tribe or another federally recognized tribe or a state licensed home.

"Guardian" means a person who is not a parent and is appointed by a tribal or state court to have legal custody of a child. A "Guardian" is not the same thing as a "Guardian *ad litem*."

"Guardian *ad litem*" means a person appointed by the Kenaitze Tribal Court to look after the best interests of any child involved in a case under

this Code. The guardian *ad litem* (or GAL) shall be a full party in all cases. The guardian *ad litem's* job is to investigate facts in the case and advise the Court what actions the Court should take that would be in the child's best interest. The Court may adopt the advice of the GAL in whole or in part, or for good cause, may act or order action that is different than the advice of the GAL.

"Involved agency" means an agency that is a party to the case due to the request of the Tribe or because of the jurisdiction of another government over the case. Examples of this might be the Nakenu Family Center, State of Alaska OCS, or the social services department of another tribe or county in another state.

"Most significant contacts" means, among other things, that the Kenaitze Tribal Court shall consider, but is not limited to, the following factors:

1. Length of time the child has lived in or near the Kenaitze Tribal Territory; and
2. The child's participation in the activities of the Kenaitze Indian Tribe; and
3. The child's fluency in the Native Language of the Dena'ina People; and
4. Whether there has been a previous case with respect to the child by the Kenaitze Tribal Court; and
5. The tribal membership of the child's custodial parent or other custodian; and

6. The child's self identification with the Kenaitze Indian Tribe;
7. Matriarchal Considerations; and
8. Any other information relevant to the child's contacts with the Kenaitze Indian Tribe.

"Parent" means the biological parent of a child or any person who has lawfully adopted a child, whether in State or Tribal Court, or under tribal custom. It shall not mean any person as to whom the parent-child relationship has been lawfully terminated.

"Parties" means Petitioner(s) and Respondent(s) listed in the Petition to use the Tribal Court, the guardian *ad litem*/CASA and any other person or entity who is given the right by the Tribal Court to express and protect their interests in a case.

"Preadoptive placement" means the temporary placement of a child in a foster home or institution after the termination of parental rights, but prior to or in place of adoptive placement.

"Probable cause" for the purposes of a "child protection proceeding" means evidence from a reasonable, trustworthy source that would be a reasonable ground for belief that a child is a "child in need of aid" and that an investigation and hearing should be conducted to determine all the facts.

"Substance Abuse" means when the use of drugs, alcohol, or other mind-altering substances negatively affects any aspect of a person's life or their children's lives.

"Termination of parental rights" means any action resulting in the involuntary termination of the parent-child relationship.

"Ward" means a child who has been taken into custody by the Court making the Court the child's legal guardian.

CHAPTER 2

CHILD PROTECTION FOR CHILDREN IN NEED OF AID

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Section 1. Tribal Definition of 'Child In Need Of Aid'

Child protection cases involve a 'child in need of aid' as defined as a child who:

1. Refuses to live at home with significant reason, or refuses to accept available care;
2. Has no parent, guardian, custodian or relative caring for or willing to care for him or her;
3. Has suffered substantial physical abuse or neglect as result of conditions created by the child's parent, guardian or custodian; or
4. Is in need of medical and/or mental treatment, needs help to relieve or prevent substantial physical harm or mental harm as shown by failure to thrive, severe anxiety, depression, withdrawal, exaggerated, inappropriate, unusually aggressive behavior, or hostility toward themselves or others and the child's parents are unwilling to provide the medical or mental health treatment;
5. Suffered substantial physical harm or there is substantial and immediate risk that the child will suffer such harm as a result of the actions of or conditions created by the child's parent, guardian, or custodian;
6. Has been sexually abused by the child's parent, guardian, or custodian; has been sexually abused as a result of conditions created by the child's parent, guardian, or custodian; and/or has been sexually abused because the parent, guardian, or custodian failed to adequately supervise or protect the child; or
7. Has suffered educational neglect, such that the child is not enrolled in school or not being properly homeschooled, and/or the child has had a substantial number of unexplained school absences.

Section 2. Confidentiality of Child Protection Cases

All child protection cases shall be considered and treated as confidential. All Tribal Court Judges, the Tribal Court Clerk, tribal employees or other tribal officials who participate in a case, and involved agency personnel shall be sworn to confidentiality under the Oath of Confidentiality provided in Section 12 of the Tribal Court Code.

Section 3. Duty to Report Child Abuse and Neglect

The following people are required to report cases of suspected abuse or neglect of a child within the Kenaitze Tribal Court's jurisdiction. This duty shall apply 24 hours per day 7 days per week.

1. The child's family or caretaker;
2. Any tribal employee, including the Tribal Administrator;
3. Any tribal appointed or elected official;
4. Any employee of a tribally owned business, even if not managed by the Tribe;
5. Any medical doctor or dentist, nurse, physicians' assistant or human services worker;
6. Any person or agency or employee of such agency with a fiduciary duty to the child such as a lawyer, accountant, financial institution, property manager, or conservator;
7. Any person who has good reason to suspect that a child had been or is being abused or neglected; or
8. Volunteers of the Kenaitze Tribal Court.

Section 4. Immunity for Reporting and Confidentiality

A person who in good faith reports suspected abuse or neglect of a child is immune from any civil or criminal suit based on that person's report. The name

of a reporter who reports abuse as required by this Chapter is confidential and shall not be released to any person unless the reporter consents to the release because it would be necessary to protect the child. No evidentiary privilege except for the attorney-client privilege may be raised as a justifiable defense or reason for failing to report suspected child abuse or for testifying as required by this Chapter.

Section 5. Tribal Court Records of Child Protection Cases

Court records in child protection cases shall not be released to anyone besides the parties to the case without the consent of the Kenaitze Tribal Court. Hard copies of such records shall be kept behind a locked system and shall only be accessible by persons directly authorized by the Kenaitze Tribal Court. Orders, letters, or memos may be given as needed to schools, hospitals, banks, or similar entities for the purpose of verification of who has custody, guardianship, or parental rights to a child.

Section 6. Legal Custody and Status as Ward of the Kenaitze Court in Child in Need of Aid Cases

A child becomes a ward and under the legal custody of the Kenaitze Tribal Court when the child is found to be a child in need of aid as defined in Section 1 of this Chapter. A child may be found to be a child in need of aid upon a hearing conducted under the procedures set forth in this Chapter. In emergency situations when there is no time to hold a hearing, a child may be taken into legal custody and made a ward of the Tribal Court until a hearing may be held. A child may also become a ward of the Kenaitze Tribal Court when a child in need of aid case is transferred from another court. A child remains a ward of the Kenaitze Tribal Court until the Court closes the case or transfers the case to another court.

Section 7. Urgency

All child protection cases shall be considered urgent and shall be placed ahead of all other cases that the Kenaitze Tribal Court may have before it.

Section 8. Rights and Best Interest of the Child

In all child protection cases, the Court shall hear all the facts and evidence brought before it and shall respectfully consider the rights of all parties in the case when deciding what is in the child's best interest. The best interest of the child, as defined in Chapter 1, Section 4 of this Code, shall be placed above the rights of any other person or entity.

Section 9. Filing a Petition in a Child Protection Case

Any person or agency who has reason to believe that a minor tribal member or child living within the Tribe's Territory is a "child in need of aid" shall be permitted to file a Petition to use the tribal court. Upon receipt of the Petition, the Court will contact the parties and notify all the parties of the Petition and any upcoming hearings that have been scheduled. In an emergency, the Court may hold a telephonic hearing with the Petitioner.

Section 10. Contents of Child Protection Petition

The Petition for child protection cases shall provide the following information, provided that such information is available to the Petitioner:

1. The name, address and age of the child;
2. The names and addresses of the child's parents and any custodians of the child;

3. A statement of which tribe(s) the child is a member or with which tribe(s) the child is eligible for membership. This statement should include facts that indicate that the Kenaitze Indian Tribe is the tribe with the most significant contacts with the child;
4. The names and addresses of any other person or tribe with an interest in the child;
5. The reason why the petitioner believes that a child needs protection; and
6. Any available written evidence of injuries, abuse or neglect (doctor report, public health nurse report, health aid report, teacher's report, report of witness to injury, abuse or neglect, etc.), and/or any other information that may be helpful in identifying the cause of the child's injuries or neglect.

Section 11. Emergency Custody

After receiving a Petition, the Kenaitze Tribal Court may take a child into custody and make a temporary placement without notification and full hearing if the Court has reason to believe that immediate removal is necessary to prevent imminent physical damage or harm to the child. The Court shall issue an emergency Order describing the Court's action. If necessary in an emergency situation, the Petition may be communicated to the Court by phone or fax but the original Petition should be provided to the Court as soon as possible. As soon as possible after the emergency hearing, the Court shall serve the parents or guardians with a copy of the emergency Order. If the child is not a tribal member or eligible for tribal membership, the Court shall notify the child's tribe or the appropriate state officials. Emergency custody arrangements shall be for no more than 30 days.

- A. Use of Tribal Funds in Emergency Circumstances. Notwithstanding other policies or ordinances of the Tribe, in an emergency situation, when a child needs to be removed from a home and travel expenses are required to move the child, the Tribe shall, funds permitted, disburse the required funds to the Court Clerk or other authorized person that is making the travel arrangements provided that at least one Judge and/or the Acting Director has authorized the disbursement of funds. Phone, fax, and email authorizations for disbursement of funds in such emergency situations shall be considered valid authorizations.

Section 12. Temporary Custody Hearing after Emergency Custody Has Been Taken

- A. Notification and Hearing within 30 days: After the Court has taken a child into tribal custody under emergency circumstances, the Court shall hold a temporary custody hearing within 30 days. The Court shall issue a Notice to Appear in Tribal Court to the parent(s), custodian, and/or guardian of the child, within a reasonable length of time before the hearing.
- B. Failure to Appear in Court: After reasonable notification has been given, the Court may proceed with the hearing even if parents, custodians, and/or guardians fail to appear in Court.
- C. Witnesses: At the temporary custody hearing, the parent(s), custodian, and/or guardian shall have the right to call their own witnesses and to question witnesses called by any other party. Judges may question all witnesses.
- D. Advisors/Attorneys: The parents or custodians of the child have the right to have an Elder or other traditional advisor with them at a temporary custody

hearing. (See Kenaitze Tribal Court Code, Chapter 2, Section 23). The parents or custodians of the child also have the right to bring attorneys or other counsel with them to the temporary custody hearing. The hiring and payment of counsel shall be the sole responsibility of the parent. (Please refer to Kenaitze Tribal Court Code, Chapter 2, Section 24 for further laws regarding Attorneys and Other Counsel).

E. Decision of the Court: After determining jurisdiction, reviewing the Petition, and hearing the case, the Court shall issue an Order based on the child's best interest as defined in Chapter 1, Section 4 of this Code. The Court's options include, but are not limited to, the following:

1. If the Court decides that the child is not a "child in need of aid," the Court may return legal and physical custody to the parents, custodian, or guardian and dismiss the case; or
2. If the Court decides that the child is a "child in need of aid," the Court may retain legal custody of the child for a period not to exceed one year. If the Court retains legal custody, it can either:
 - a. Place the child with the child's parents, custodian, or guardian with specific directives to participate in family-oriented services, as described in subsection 3, below; or
 - b. Place the child in an appropriate foster care placement based on the preferences of Chapter 1, Section 5 of this Code and, in addition, direct the parents to participate in family-oriented services as described in subsection 3, below;
3. Family Services. If the Court finds that a child is a "child in need of aid," it may order the child, parent(s), custodian, or guardian to participate in any of the following services:
 - a. Educational classes, including but not limited, to parent education;
 - b. Alcohol and/or drug assessments and any recommended treatment;
 - c. Psychological or psychiatric assessments and treatment;

- d. A Family Receiving Home as described in Chapter 1, Section 6 of this Code; and/or
 - e. Any other treatment or programs the Court feels are appropriate, are in the child's best interest, and are likely to result in reunification of the child with the family.
4. Monitoring and Progress Reports: The Court may designate specific persons or entities to oversee the execution of the Kenaitze Tribal Court Order and monitor the family's progress and report such progress to the Court.

Section 13. Temporary Custody Hearing in Non-Emergency Situations

When the Kenaitze Tribal Court receives a Petition to take a child into tribal custody in non-emergency circumstances and determines that the Tribal Court has jurisdiction and chooses to hear the case, the Court shall hold a Temporary Custody Hearing within 30 days to determine whether to take a child into tribal custody. A Notice to Appear in Tribal Court shall be issued to the parent(s), custodian, and/or guardian of the child, within a reasonable length of time before the hearing. The Court shall follow the same procedures and have the same options as it has for temporary custody hearings in emergency cases.

Section 14. Temporary Custody Orders

- A. Orders: The Court may issue written or oral Orders for all temporary custody cases that shall fully communicated to parties in those cases and kept in the permanent records of the Kenaitze Tribal Court.
- B. Short Versions of Orders: If necessary to protect confidentiality, the Court may also issue to custodians a short version of temporary custody Orders

for the use of verification of custody for schools, hospitals, banks and similar entities when necessary.

- C. Extension of Temporary Custody Orders: Extensions of Temporary Custody Orders may not exceed one year.

Section 15. Review Hearing

- A. Review Hearing: The Tribal Court may conduct review hearings periodically while a child is in their legal custody, and shall conduct at least one review hearing before the Tribe's legal custody expires.
- B. Request for Review Hearings by Parties: While the child is in the legal custody of the Tribal Court, any party may request in writing that a review hearing be held. The request must include the reason(s) why the Tribal Court should hold a hearing and the Court may grant or deny the request.
- C. Purpose of Review Hearings: The purpose of review hearings is to determine whether the child should continue to remain a ward of the Court, or if any conditions of the legal or physical custody should be modified or added. After making a decision based upon the child's best interests, the Court shall state any new decisions made in review hearings in a new Order.
- D. Procedure for Review Hearings: The Court shall follow the same procedure for Review Hearings as it does for Temporary Custody hearings as set forth above in Section 10(A)-(E).

Section 16. Interference with a Custody Order

Anyone who interferes with a Court ordered placement of a child shall be subject to an appropriate penalty by the Kenaitze Tribal Court and/or all applicable Tribal, State and Federal law.

CHAPTER 3

VOLUNTARY RELINQUISHMENT AND INVOLUNTARY TERMINATION OF PARENTAL RIGHTS

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Section 1. Cases Where Parental Rights May be Terminated

Parental rights may be terminated in whole or in part in any case involving custody of a child, child protection, where a parent voluntarily consents to relinquish their parental rights, or in the case of an adoption.

Section 2. Findings Necessary for Termination of Parental Rights

The Court may terminate parental rights to a child only if it finds by clear and convincing evidence that:

1. If the parental rights are not terminated, the continued legal and/or physical custody of the child by the parent is likely to result in serious emotional or physical damage to the child; or
2. The child has been subjected by his or her parent(s) to sexual abuse; or
3. The child has been abandoned.

Section 3. Procedure for Involuntary Termination of Parental Rights

A. Petition: Persons or entities may file a Petition to use the Tribal Court form requesting that parental rights of a person to that child be terminated. The Petition shall contain the name, address and age of the child; the names and addresses of parents, any custodians of the child, and any other person or tribe with an interest in the child; the reason why the Petitioner believes that parental rights should be terminated; and any available written evidence to support termination of parental rights.

1. Good Faith Requirement. A person must have good faith in filing a Petition for Termination of Parental Rights and must state with specificity why he or she believes there is good cause to terminate parental rights. No person shall use the Tribal Court's involuntary termination procedures as a vehicle for retaliation against a parent. In addition, a person may not file a Petition to terminate his or her own rights solely for the purpose of excusing his or her financial responsibilities to a child.
2. Fine. If the Court finds that a person grossly misused this procedure, it may order the Petitioner to pay a fine not to exceed \$100.

B. Notice of Petition: The parent(s) against whom the Petition is filed shall immediately be served with a copy of the Petition. If possible, the parent shall be served with the petition by certified mail or by in-person delivery.

C. Hearing

1. Notice of Hearing: The Court shall schedule a hearing and provide a Notice of Hearing to the parties at least 30 days prior to the hearing. Notice shall be served by certified mail, restricted delivery or by personal delivery. If the Court is unable to serve the Notice of Hearing in person or by mail, the Court shall publish the Notice of Hearing in the local newspaper of the town where the parent was last known to reside. When giving notice by publication, the publication shall appear one time per week for at least four weeks. The hearing can be held no sooner than 30 days after the date of the last publication.
2. Procedure: The following procedure shall be followed during a termination of parental rights hearing:
 - a. Failure to Appear in Court: After reasonable notification has been given, the Court may proceed with the hearing even if parents, custodians, and/or guardians fail to appear in Court.
 - b. Evidence: The parties have the right to present all evidence, written or otherwise, that is relevant to the issue of terminating their parental rights.
 - c. Witnesses: The parent(s), custodian, and/or guardian shall have the right to call their own witnesses and to question witnesses called by any other party. Judges may question all witnesses.
 - d. Advisors/Attorneys: The parents or custodians of the child have the right to have an Elder or other traditional advisor with them at the hearing. (See Kenaitze Tribal Court Code, Chapter 2, Section 23). The parents or custodians of the child also have the right to bring attorneys or other counsel with them to the hearing. The hiring and

payment of counsel shall be the sole responsibility of the parent. (Please refer to Kenaitze Tribal Court Code, Chapter 2, Section 24 for further laws regarding Attorneys and Other Counsel).

- D. Decision of the Court: If, after reviewing the Petition and scheduling and holding a hearing in accordance with the procedures set forth above, the Court finds by clear and convincing evidence the conditions necessary to terminate the parental rights exist, it shall issue an Order terminating parental rights in whole or in part depending on what is in the best interest of the child. If the Court finds that the conditions necessary to terminate parental rights do not exist, it shall dismiss the petition to terminate parental rights.

Section 4. Procedure for Voluntary Relinquishment of Parental Rights

- A. Requirements for a Valid Consent. Any parent may voluntarily relinquish his or her parental rights to any minor child. However, no voluntary consent will be valid unless:
1. The consent is given more than ten (10) days after the birth of the child;
 2. The consent is given in the presence of the Tribal Court and on the record, except that in some circumstances the Court may accept a relinquishment of parental rights telephonically; and
 3. In all cases, the parent(s) is fully informed of his or her rights as described in Section B, below, and the consequences of relinquishment on the Court record and he or she states on the record that they understand those rights and consequences.

B. Parental Rights in Voluntary Relinquishment Proceedings. In all cases involving the voluntary relinquishment of parental rights, the Court shall inform the parent that they have the following rights:

1. The right to be provided with an interpreter to explain the voluntary consent and its consequences;
2. The right to withdraw the voluntary consent. A voluntary consent to the termination of parental rights may be withdrawn anytime within 10 days of giving voluntary consent. After 10 days, withdrawal may only be done with the Court's permission. The Court shall give permission only if it finds that it is in the best interest of the child, as stated in Chapter 1, Section 4 of this Code.

Section 5. Effect of Relinquishment or Termination of Parental Rights.

- A. In General. If a parent's rights are terminated, they no longer have any right to the child or any responsibility for that child and parental rights are completely severed, unless otherwise provided by the Court's Order. If the Court provides for anything less than completely terminated parental rights, the Court shall be very specific. For example, the Court may specifically allow parental participation in specific tribal ceremonies in relation to the child.
- B. Right to Inheritance. Nothing in this Chapter shall terminate the child's right to inheritance from their biological parent(s).
- C. Extended Family. Termination of parental rights shall not affect the child's relation to or relationship with their biological extended family members, unless the Court finds that it is in the child's best interest to do otherwise and specifies that in its Order.

- D. Tribal Membership Status. Termination of parental rights shall not affect the child's tribal membership status, nor the child's rights or privileges as an Alaska Native whether written or unwritten, nor shall it effect the jurisdiction of the Kenaitze Tribal Court over the child.
- E. Waiver of Notice of Adoption Hearings: Parents who voluntarily relinquish their parental rights or whose parental rights are terminated shall be deemed to have waived their right to notice of any adoption hearings involving the child, unless otherwise ordered by the Court.

CHAPTER 4

TRIBAL ADOPTIONS

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Section 1. Beginning a Case

Any person over the age of 18 years old, who desires to adopt a child may request that the Kenaitze Tribal Court consider the matter by filing a Petition to use the Tribal Court. The Court shall consider what is in the best interest of the child in all cases, but shall hold the general policy that children of our Tribe be adopted by Tribal members of the Kenaitze Tribe or of another Tribe.

- A. Non-Tribal Member Petitioners: If a non-Tribal member is petitioning to adopt a child that is a member of the Tribe or eligible for membership in the

Tribe, the Court shall seek the Council's approval prior to proceeding with the adoption case.

Section 2. Contents of Adoption Petition

The Petition to use the Tribal Court shall provide the following information:

1. The name, address and age of the person to be adopted;
2. The names and addresses, if known, of the person's biological parents and any custodians of the person;
3. A statement of which tribe(s) the person to be adopted is a member or with which tribe(s) the person to be adopted is eligible for membership. If the person to be adopted is a minor child, this statement should include facts that indicate that the Kenaitze Tribe is the tribe with the most significant contacts with the child;
4. The names and addresses of any other person or Tribe with an interest in the adoption proceeding or in the person to be adopted;
5. Whether the Petitioner has reason to believe that the biological parents of the person to be adopted oppose the adoption and/or if the biological parents right have been terminated or voluntary relinquished;
6. If the person to be adopted is a minor child, the facts which make the petitioner believe that it is in the best interest of the child that an adoption Order be issued by the Court;
7. Whether the child has any property and if so, what that property is;

8. Any relationship between the Petitioner(s) and the child;
9. Where the Petitioner(s) was born and his/her present age and occupation.

Section 3. Homestudy

The Court may order a homestudy completed for the proposed adoptive home. The Petitioner(s) may be required to pay costs involved in the homestudy. The homestudy shall include an evaluation of the home for all of the factors for determining the best interest of the child and anything else the Court requires. If the Court has appointed a guardian *ad litem* or CASA to look after the best interest of the child, the homestudy shall state what recommendation the guardian *ad litem* or CASA makes regarding the granting of the Adoption Order.

Section 4. Adoption Hearing

- A. Notice: Upon receiving a Petition for adoption, the Court shall provide all parties, including the biological parents, with a copy of the Petition. Biological parents need not be notified if their parental rights have been terminated by this Court or another Court or if the parents have voluntarily relinquished their rights to the children.
- B. Hearing: The Court shall hold an adoption hearing no sooner than 10 days after the Petition is filed and notice is given as stated above in Section 4(A). The Court shall issue a Notice to appear in tribal court to all parties no less than seven days prior to the hearing.

- C. Failure to Appear in Court: After notification has been given, the Court may proceed with the hearing even if parents, custodians, and/or guardians fail to appear in Court.
- D. Witnesses: At the adoption hearing, the parent(s), custodian, and/or guardian shall have the right to call their own witnesses and to question witnesses called by any other party. Judges may question all witnesses.
- E. Advisors/Attorneys: The parents or custodians of the child have the right to have an Elder or other traditional advisor with them at the adoption hearing. (See Kenaitze Tribal Court Code, Chapter 2, Section 23). The parents or custodians of the child also have the right to bring attorneys or other counsel with them to the hearing. The hiring and payment of counsel shall be the sole responsibility of the parent. (Please refer to Kenaitze Tribal Court Code, Chapter 2, Section 24 for further laws regarding Attorneys and Other Counsel).

Section 5. Adoption Order

After notice and hearing according to the procedures set forth in Section 4, above, the Court may issue an adoption Order.

The Court shall award the adoption Order if it finds the following things:

1. The biological parents have consented to the adoption or they have had their parental rights terminated in Tribal Court or the Court of any other jurisdiction or the biological parents are unavailable to consent to the adoption; and
2. If the person to be adopted is a minor child, the Court finds that it is in the child's best interest as defined in Chapter 1, Section 4 of this Code, to be adopted by the Petitioner(s).

Section 6. Effect of Adoption Orders

- A. Parent/Child Relationship: The Kenaitze Tribal Court adoption Order creates the relationship of parent and child between the Petitioner(s) and the adopted person, including the right to inherit.
- B. Right to Inheritance: Nothing in this Chapter shall terminate the child's right to inheritance from their biological parent(s).
- C. Tribal Membership Status: Termination of parental rights shall not affect the child's tribal membership status, nor the child's rights or privileges as an Alaska Native whether written or unwritten, nor shall it affect the jurisdiction of the Kenaitze Tribal Court over the child.
- D. Visitation: The Court may require that persons with whom the child has emotional or blood ties shall have visitation with the child. However, even if the Court does not enter such an order, a child's relation to or relationship with their extended family is not severed by the adoption, unless the Court finds it in the best interest of the child to sever such relationships. Specific information concerning such visitation shall be incorporated into the Adoption Order.

Section 7. Cultural Adoptions. The Tribal Council shall retain the power to do Cultural Adoptions as it sees fit and as defined by Tribal law and custom.

CHAPTER 5

CHILD CUSTODY INVOLVING DISPUTES BETWEEN PARENTS AND/OR CUSTODIANS

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Section 1. Beginning a Child Custody Case

If there is a dispute between parents and/or custodians over custody of a child, the matter may be brought in front of the Kenaitze Tribal Court. A child custody case shall be started by filing a Petition to use the Tribal Court.

Section 2. Contents of Child Custody Petition

The Petition shall provide the following information:

1. The name, address and age of the child;
2. The names and addresses of the child's parents and any custodians of the child;
3. The names and addresses of any other person or tribe with a specific interest in the child;
4. A statement of which tribe(s) the child is a member or with which tribe(s) the child is eligible for membership. This statement should include facts that indicate that the Kenaitze Tribe is the tribe with the most significant contacts with the child.
5. The reason the Petitioner is requesting custody of the child; and
6. The facts that make the Petitioner believe that the best interest of the child require that a custody Order be issued by the Court.

Section 3. Temporary Custody Hearing and Order

- A. Temporary Custody Hearing: After the Court determines that it has jurisdiction to hear and decide the case, the Court may hold a temporary custody hearing in cases where it will take considerable time to hold a full custody hearing. Before holding the temporary custody hearing, the Court shall issue a Notice to Appear in Tribal Court to the parent(s), custodian, or guardian of the child, no less than seven days before the hearing.
- B. Temporary Custody Order: At the temporary custody hearing, all parties shall have an opportunity to present evidence and question witnesses. After the hearing is completed, the Court may issue a temporary custody Order

giving a particular person or persons temporary physical custody of the child until a full custody hearing is held.

- C. Equal Access When not Harmful to Child: Unless it is shown to be harmful to the child, the child shall have reasonable equal access to both parents and/or custodians during the duration of the temporary custody Order. The temporary custody Order may also set out a reasonable visitation schedule for a person or persons.
- D. Information Gathering: The Court may direct a designated person to investigate the facts contained in a Petition.

Section 4. Custody Hearing

- A. Custody Hearing Within 30 Days: After a temporary custody Order is issued by the Court, the Court shall set a custody hearing within 30 days of the temporary custody hearing, or as soon as is reasonable and agreeable to the Parties in the case.
- B. Purpose of the Custody Hearing: The purpose of the custody hearing is to make a decision about who should have custody of the child, and what visitation, if any, should be awarded for those persons who do not have custody.
- C. Witnesses: At the hearing, all parties shall have the opportunity to present evidence and question witnesses.
- D. Advisors/Attorneys: The parents or custodians of the child have the right to have an Elder or other traditional advisor with them at a custody hearing. (See Kenaitze Tribal Court Code, Chapter 2, Section 23). The parents or custodians of the child also have the right to bring attorneys or other counsel

with them to the hearing. The hiring and payment of counsel shall be the sole responsibility of the parent. (Please refer to Kenaitze Tribal Court Code, Chapter 2, Section 24 for further laws regarding Attorneys and Other Counsel).

- E. Deciding Custody and Visitation: After the hearing is completed, the Court shall make a decision as to who shall have custody and what, if any, visitation should be awarded. In making this decision, the Court shall consider all factors defining the best interest of the child in Chapter 1, Section 4 of this Code. The best interest of the child shall be considered above all else.

Section 5. Custody Order

- A. Court Orders: After the custody hearing, the Court may Order that:
1. A party or parties be given legal and physical custody of a child; or
 2. That a party not given physical custody be given specified visitation with the child; or
 3. That a party not be given custody of a child.
- B. Child Support Orders: The Court may also order a parent to pay child support to the child's custodian, and may take into account the parent's ability to contribute in cash, in goods or in kind, and also the child's needs.
- C. Other Orders: The Court may order one or both parent/custodian to complete various tasks as is necessary to protect the best interest of the child. Such orders may include, but are not limited to, alcohol and drug

treatment, mental health evaluation/counseling, parenting classes, anger management and/or domestic violence intervention.

Section 6. Change of Custody Order

Any person may request that an award of custody of a child or visitation with a child be modified by filing a Petition to use the Tribal Court. It is up to the discretion of the Court to hold a hearing to consider the request in the Petition. If the Court decides to hold a hearing based on the Petition, reasonable notice shall be provided to all parties, and any new decisions of the Court shall be made through a new custody Order.

CHAPTER 6

DOMESTIC VIOLENCE

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Section 1. Definitions

“Domestic Violence” means assault, threats of violence, or physical, sexual, or mental abuse of a person when the victim is a spouse, a former spouse, an extended family member, a boyfriend or girlfriend, or any other person who has been an intimate partner, a member of the social unit made up of those living together in the same dwelling as the victim or perpetrator, or a caretaker.

“Petitioner” shall be the person who actually files a petition to the tribal court requesting a Protection Order.

“Respondent” shall be the perpetrator of domestic violence.

“Parties” shall be the Petitioner, the victim if other than the Petitioner, and the Respondent.

“Stalking” is when a person engages in more than one act of non-consensual contact with a victim and such contact places that person in fear of death or physical injury or in fear of death or physical injury of a family member. “Contact” could include, but is not limited to, following a person, approaching a person in public, going to a person’s place of employment, telephoning a person and sending mail or electronic communication to a person.

Section 2. Cooperative Enforcement of Protective Orders

In accordance with the full faith and credit provision of the Violence Against Women Act, 18 U.S.C. 2265, the Kenaitze Tribal Court shall recognize protective orders issued by the State of Alaska, another state or another tribal government.

Section 3. Beginning a Case

A person who has been subjected to domestic violence as defined in Section 1 of this Chapter, or any person who has knowledge of domestic violence committed against a person who is unable or unwilling to petition the Court, may request a domestic violence protection order from the Tribal Court. The person shall make the request by filing a Petition to use the Tribal Court form. The person who files such a petition shall be called the “Petitioner.”

Section 4. Contents of the Petition to Use the Tribal Court

In domestic violence cases, the Petition to Use the Tribal Court shall contain the following information:

1. The name, address and age of the person to be protected;
2. The names and addresses, if known, of the person's custodians, if any;
3. The names and addresses of any other person or tribe with an interest in the domestic violence proceeding;
4. Whether the Petitioner is the victim or whether some other person is the victim, and if so, the Petitioner's relationship to the person to be protected;
5. The facts that make it necessary for the person to be protected; and
6. The relief requested by the Petitioner, including whether the Petitioner is requesting a temporary protective order, a long term protective order, or both.

Section 5. Emergency Hearing for Temporary Protective Orders

- A. Hearing without Notice to Respondent. In emergency circumstances, the Court may hold an emergency hearing to consider issuing a temporary protective order. The Court may grant a temporary protective order without written or oral notice to the Respondent if the Court finds that the Petitioner, or victim if other than the Petitioner, has been subjected to domestic violence and that the Respondent poses an immediate threat to the health, safety, or welfare of the victim or a member of his or her household.
- B. Service of Temporary Orders. If the Court enters a temporary protective order and the Respondent was not present at the emergency hearing, the Court shall immediately serve the

Respondent with a copy of the Petition and a copy of the Temporary Protective Order.

- C. Duration of Temporary Orders. A Temporary Protective Order shall remain in effect for 20 days after it is issued unless dissolved earlier by the Court. If the Court receives a request to dissolve a Temporary Protective Order, it must follow the procedures set forth in Section 8, below.
- D. Request for Long Term Protective Order. A Petitioner may request that the Court enter a long term protective order, either in his/her original Petition or during an emergency hearing. If a long term protective order is requested, the Court shall follow the procedures set forth in Section 6, below.

Section 6. Hearing for Long Term Protective Orders

- A. When the Court May Hold a Long Term Protective Hearing. The Court may hold a long term protective order hearing even if an emergency hearing was not requested or if a temporary protective order was denied. In these cases, a hearing shall be held within 20 days of filing the Petition. If a temporary protective order was entered, a long term protective order hearing shall be held within 20 days of granting the temporary order.
- B. Notice. The Court shall provide notice to the Parties at least 10 days prior to a long term protective order hearing. The hearing may proceed regardless of whether the Respondent participates.
- C. Court Decision. The Court may enter a long term protective order if the Court finds by a preponderance of evidence that the Respondent has committed an act involving domestic violence against a victim. A long term protective order shall be in effect for up to one year from the date of the hearing, unless the Court determines that for safety reasons it is in the best

interest of the victim and/or the Tribe to grant the protective order for a longer period including up to life of the person/s being protected.

- D. Service of Long Term Protective Orders. If the Court enters a long term protective order and the Respondent was not present at the hearing, the Court shall immediately serve the Respondent with a copy of the Petition and a copy of the long term protective order.
- E. Extension of Long Term Protective Orders. The long term protective order may be extended for up to one year upon request of the Petitioner or victim if other than the Petitioner, and after another hearing is held indicating that it is necessary to extend the order to protect the victim or a person residing with the victim. Notification of such a hearing shall be given to the parties at least 20 days in advance of the hearing.

Section 7. Contents of Protective Orders

At either an emergency hearing for a temporary protective order or at a hearing for a long term protective order, the Court may include any of the following provisions in its Order:

1. Banishment of the Respondent from the Tribe's Territory;
2. That the Respondent be restrained from threatening to commit or committing domestic violence, stalking or harassment;
3. That the Respondent move out of the home of the victim, regardless of the ownership of the residence;
4. That the Respondent not communicate directly or indirectly with the victim (this may include no telephone calls, letters, or in-person contact, depending upon the Court's Order);

5. That the Respondent stay away from the petitioner's home, school, place of employment, children's daycare and any other place frequented by the petitioner or members of the petitioner's household;
6. That the Respondent stay a specified distance from the petitioner, as determined by the Court;
7. That the respondent not enter any propelled vehicle in the possession of or occupied by the petitioner;
8. That a peace officer accompany the victim to the victim's residence to obtain property or children if the victim has custody of the children;
9. An award of temporary custody of the minor child(ren), with a possible visitation provision with a minor child if the safety of the child and the victim can be protected;
8. If visitation is allowed, the Court may order visitation under specific conditions;
9. That the victim have possession and use of vehicles and other essential personal items, regardless of ownership of the items;
10. That a Respondent pay support to a victim or for a minor child in the care of the victim if the Respondent has a legal obligation to support the child;
11. That the Respondent pay medical or other expenses of the victim that resulted from domestic violence perpetrated by the Respondent;
12. That the Respondent engage in personal or family counseling; substance-abuse counseling or treatment, or a program for the rehabilitation of perpetrators of domestic violence, or a combination of these;
13. That the Respondent be prohibited from consuming alcohol, illegal drugs, and/or controlled substances that have not been properly prescribed;
14. That the Respondent not follow the petitioner in any motorized vehicle.

Section 8. Dissolving or Modifying Temporary or Long Term Protective Orders

If any of the parties wish to dismiss or change an existing temporary or long term protective order in any way, he or she must file a Petition to use the Tribal Court specifically requesting the change. The Tribal Court shall then schedule a hearing only if the Court finds that the request has merit. If the Court chooses to hold a hearing to consider the dissolution or modification, it shall do so within 3 days for temporary protective orders and within 20 days for a long term protective order, with reasonable notice to the parties.

Section 9. Violation of a Protective Order

If the Respondent violates any part of a temporary or long term protective order, he or she shall be charged with contempt of court and be subject to appropriate penalties available to the Court.

Section 10. Rights of Victims of Domestic Violence

A victim of domestic violence is entitled to but not limited to the right to:

1. Be informed of all hearing dates;
2. Be present at all hearings of the Tribal Court on the matter, either in person or telephonically;
3. Advise the Court on conditions required to ensure his or her safety; and
4. Receive restitution for losses sustained as the direct result of the domestic violence

Section 11. Domestic Violence Cases Generally Open to the Public/Exceptions

Generally, domestic violence protective cases will be open to the public. The Court may make a case confidential if necessary to protect the safety or identity of a victim.

CHAPTER 7

MARRIAGES

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Section 1. Definition

It is the written and unwritten tradition of the Kenaitze Indian Tribe that marriage is a union between a man and a woman.

Section 2. Tribal Policy

It is the policy of the Kenaitze Tribe to uphold the validity of marriages whenever possible. The Tribal Court shall recognize the validity of any marriage performed under the law of the jurisdiction where it was performed, unless such marriage is inconsistent with the traditional definition of marriage as set forth above in Section 1.

Section 3. Procedure for Tribal Marriages

Persons wishing to be married by the Kenaitze Tribal Court shall file a Petition to Use the Tribal Court. Marriages performed by the Kenaitze Tribal Court are subject to the following requirements:

- A. Both parties must be at least 18 years of age, or provide evidence of written consent by their parents or legal guardians. If there are two parents or legal guardians, both must consent if their child is under the age of 18.
- B. A filing fee of \$50 shall be paid to the Kenaitze Tribal Court, or the Court may waive the fee upon a finding that both parties are destitute.
- C. Both parties must attest that they are not currently married.

- D. Marriages conducted by the Kenaitze Tribal Court are a privilege and not a right. The Court shall have discretion to decline to perform a marriage for any reason, including if the Tribal Court finds that the marriage is inconsistent with the customary laws and/or traditions of the Kenaitze Tribe.
- E. Following the marriage, the Court shall issue a marriage license.

CHAPTER 8

DIVORCES AND ANNULMENTS

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Section 1. Divorces

Divorce proceedings shall begin with a filing of a Petition to use the Tribal Court. The Court may hear the case or dismiss a Petition where it finds that it lacks necessary personal or subject matter jurisdiction, or where it finds that the action is otherwise inconsistent with Kenaitze Tribal law and custom. The Court shall have the option to issue any Order that it finds appropriate, including, but not limited to the following:

- A. Where the Court finds that it has jurisdiction to dissolve a marriage, but lacks jurisdiction to adjudicate property rights, it may issue such an Order and proceed accordingly.
- B. Where the Court finds that as a matter of comity to another jurisdiction, it should refrain from ruling on all or a part of the requested relief in a Petition for divorce, it may issue an Order setting forth its decision, and proceed accordingly.

Section 2. Annulments

Persons wishing to have a marriage annulled may bring the matter before the Tribal Court by filing a Petition to use the Tribal Court. A marriage performed by the Tribal Court may be annulled where the Tribal Court finds any of the following grounds:

- A. The marriage was the result of fraud or duress.
- B. One of the parties was of unsound mind at the time of the marriage.
- C. There was failure to consummate the marriage.
- D. The marriage violated any applicable written law or any unwritten customary law and/or tradition of the Kenaitze Tribe.

CHAPTER 9

NAME CHANGES

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Section 1. Order of Name Change

The Kenaitze Tribal Court shall have authority to issue an Order changing the legal name of a party or the child of a party. Persons wishing a name change shall begin the proceeding by filing a Petition to use the Tribal Court. It is up to the discretion of the Court to proceed with the name change or not. The Court may charge a fee for the Petitioner to use the Court for name change purposes, and for costs associated with filing the name change with the Alaska Division of Vital Statistics.

Chapter 10

Protection for the Elders and Vulnerable Adults of the Kenaitze Indian Tribe

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Section 1. Policy, Purpose, and Enforcement

- A. **Policy:** It is the traditional way of the Kenaitze Indian Tribe to honor and respect the Tribal Elders. The Elders of the Kenaitze Tribe are valuable resources as they are our custodians of tribal history, culture and tradition. Thus, it is in the best interest of, and serves the welfare of the Kenaitze Tribe to protect tribal Elders. It is also in the best interest of the Tribe to protect vulnerable tribal members.
- B. **Purpose:** The purpose of this Chapter is to protect Elders and vulnerable adults within the jurisdiction of the Kenaitze Tribe from abuse as defined in this Ordinance. This Ordinance shall be liberally interpreted in order to achieve its purpose. This Ordinance provides for:
1. Reporting abuse or neglect to the Tribal Court;
 2. Receiving reports of and investigating suspected abuse or neglect; and
 3. Delivering emergency and non-emergency protective services to Elders and other vulnerable adults.
- C. **Enforcement:** The Kenaitze Tribal Court shall be the primary enforcer of this law, provided that the Kenaitze Tribal Court may enter into agreements with other courts of competent jurisdiction for enforcement when circumstances warrant such cooperation.

Section 2. Application of this Chapter

This Chapter is civil in nature. This Chapter applies to Tribal Elders and to any adult tribal members of the Kenaitze Tribe should circumstances as defined by this Chapter warrant. Any section or portion thereof containing the word "Elder" shall be liberally construed to include and mean or other "vulnerable adult" as defined by Section 3 of this Chapter.

Section 3. Definitions

In this Chapter the following words shall have these meanings:

"Abuse" is intentional or negligent infliction of bodily injury, sexual abuse, emotional abuse, unauthorized and/or improper use of funds, property or other resources of an Elder, neglect, unreasonable confinement, intimidation or cruel punishment of an Elder resulting in physical harm or pain or mental anguish by any person, including anyone who has a special relationship with the Elder such as a spouse, a child, or other relative recognized by the Tribal Council as a caretaker. Abuse is also interfering with delivery of necessary services and resources, failing to report abuse or neglect of an Elder by any person, and failing to provide services or resources essential to the Elder's practice of his/her customs, traditions, or religion.

"Caretaker" is a person who is required by tribal law, custom or state law to provide services or resources to an elder; a person who has voluntarily undertaken to provide care or resources to an elder; an institution or agency which voluntarily provides or is required by tribal law, custom or state/federal law to provide services or resources to an elder, including the duty to follow-up on placements, and any such institutions or agency which receives anything of value in return for providing services or

resources. Caretakers also include employees of the institutions or agencies.

“Elder” is a member or spouse of a member of the Kenaitze Tribe who is 55 years or older.

“Incapacity” is the current inability or functional inability of a person to sufficiently understand, make, and communicate responsible decisions about himself as a result of mental illness, mental deficiency, physical illness or disability, chronic use of drugs or liquor, use of prescription medication and/or illegal drugs and to understand the consequences of any such decision. Incapacity may vary in degree and duration and shall not be determined solely on the basis of age.

“Protective Placement” is the placement of an Elder in a hospital, nursing home, residential care facility, or with a different family or person, or transfer of the Elder from one such institution to another with the Elder's consent or appropriate legal authority.

“Protective Services” are services provided to an Elder with the Elder's consent or with appropriate legal authority and include, but are not limited to, social case work, psychiatric and health evaluation, home care, day care, legal assistance, social services, health care, case management, guardianship, conservatorship, and other services consistent with this Ordinance. It does not include protective placement.

“Reporter” is someone who notifies the Kenaitze Tribal Court of a suspected abuse of an Elder or vulnerable adult.

“Retaliation” is threatening a reporter of Elder abuse or the reporter's family in any way, causing bodily harm to the reporter or the reporter's

family, causing the reporter or any of the reporter's family to be reprimanded by an employer, terminated from a job, suspended from general assistance, or damaging the reporter's or the reporter's family's real or personal property in any way.

"Vulnerable adults" are those persons over 18 who are mentally or physically incapacitated by physical conditions or by drug or alcohol induced conditions.

Section 4. Duty to Report Abuse of an Elder

Failure to report cases of suspected abuse or neglect of an Elder or vulnerable adult is a violation against the Kenaitze Tribe and subject to fine under Section 6 of this Ordinance. The following people are required to report cases of suspected abuse or neglect of an Elder to the Kenaitze Tribal Court. This duty shall apply 24 hours per day 7 days per week.

1. The Elder's family or caretaker;
2. Any tribal employee, including the Tribal Administrator;
3. Any tribal appointed or elected official;
4. Any employee of a tribally owned business, even if not managed by the Tribe;
5. Any medical doctor or dentist, nurse, physicians' assistant, human services worker, or Elder service provider;
6. Any person or agency or employee of such agency with a fiduciary duty to the Elder such as a lawyer, accountant, financial institution, property manager, or conservator;
7. Any person who has good reason to suspect that an Elder had been or is being abused or neglected; or
8. Volunteers of the Kenaitze Indian Tribe.

Section 5. Immunity for Reporting and Confidentiality

A person who in good faith reports suspected abuse or neglect of an Elder is immune from any civil or criminal suit based on that person's report. The name of a reporter who reports abuse as required by this Chapter is confidential and shall not be released to any person unless the reporter consents to the release because it would be necessary to protect the Elder. No evidentiary privilege except for the attorney-client privilege may be raised as a justifiable defense or reason for failing to report suspected Elder abuse or for testifying as required by this Chapter.

Section 6. Failure to Report, False Reports, and Penalty for Retaliation

A. Failure to Report. Any person who is required by this Chapter to report suspected Elder abuse and fails to do so is subject to a fine of up to \$500.00 if found guilty by the Kenaitze Tribal Court. The tribal court shall assess this penalty only after petition, notice, and opportunity for hearing, and a determination that the person has a mandated duty to report, had good reason to suspect elder abuse or neglect, and failed to report as required. The Court shall follow procedures for notice and hearing as set forth in the Kenaitze Court Code at Chapter 2, Sections 15 and 16.

B. False Reports. Any person who makes a report of suspected Elder abuse knowing it to be false is subject to a fine of up to \$500.00 if found guilty by the Kenaitze Tribal Court, and in addition, any of the sentencing options that the Court has at its discretion in the Kenaitze Court Code, Chapter 2, Section 18. As set forth in the Kenaitze Court Code, Chapter 2, Sections 17, such cases may also be referred to the tribe's Traditional Conflict Resolution Program if appropriate. The tribal court shall assess a penalty or impose a sentence only after petition, notice, and opportunity for hearing, and a determination that the

person made a report knowing it to be false. The Court shall follow procedures for notice and hearing as set forth in the Kenaitze Court Code at Chapter 2, Sections 15 and 16.

C. Retaliation. If a person retaliates for the reporting of a suspected case of Elder abuse, the Kenaitze Tribal Court may utilize the full range of sentencing options at its discretion. A sentence shall be imposed only after a petition, notice, and opportunity for hearing, and a determination that the person engaged in such retaliation. The Court shall follow procedures for notice and hearing as set forth in the Kenaitze Court Code at Chapter 2, Sections 15 and 16.

Section 7. Procedures for Reporting, Investigation, Petition, Notice and Hearing

A. Reporting. Reports of suspected elder abuse shall be made to the Program Director or other designated person of the Tyotkas Elders Program. The Elders Program shall be responsible for assigning an investigator or requesting the Court's appointment for an investigator.

B. Investigation: The person assigned to investigate the elder abuse shall investigate the report of harm within 24 hours or one working day and shall immediately prepare a report.

1. Investigators: Persons who shall be permitted to investigate elder abuse shall be any of the following: a qualified investigator through the tribal Elders Program, a qualified investigator through the tribal Family Services Program, or a qualified investigator appointed by the Kenaitze Tribal Court.

2. Guidelines for Investigation: An investigator that is appointed shall exercise cultural competence and awareness in completing

the investigation into elder abuse. The Elders Program and/or the Family Services program have the authority to establish guidelines for investigations into the abuse of elders. If such guidelines are established, they shall be adhered to in reporting to the court. If no such guidelines have been established, the investigator shall consider, at a minimum, the following: the position of the elder and his/her family members and caretaker; reports or statements from agencies or institutions that have information regarding the elder's circumstances; reports of medical providers; any other reports of abuse or neglect that have been made; and the elder's living conditions. The investigator shall make reasonable efforts to meet in person with the elder, his/her family, caretaker, and all other persons with relevant information. If the investigator is unable to meet in person with any of these people, he/she shall document in the report why in-person contact was not possible.

3. Contents of Investigator's Report. The investigators report shall include at least the following information:

- a. The Elder's name, address or location, telephone number;
- b. The name, address or location, telephone number of the person(s) who is suspected of abusing the Elder;
- c. The nature and degree of incapacity of the Elder;
- d. The name, address or location, telephone number of witnesses;
- e. The name, address or location, telephone number of the Elder's caretaker;
- f. A description of the acts which are complained of as abusive; and
- g. Any other information that the investigators believe might be helpful in establishing whether abuse has occurred.

4. Completion of Investigation. Upon completion, the investigator shall submit his or her report to the Director of the Tyotkas Elder's Program. Upon review of the investigator's report, the Director shall decide whether there is sufficient evidence to require legal action. If the Director determines that there is sufficient evidence to require legal action, it shall refer the matter to the Tribal Court by filing a Petition to Use the Tribal Court. A copy of the investigator's report shall be provided with a copy of the petition.

5. Records of Investigations. Any investigation report filed shall remain on file and not be destroyed for a period of seven years, even if it is determined that there is not sufficient evidence to pursue legal action. However, if the investigating agency determines that the report was made in bad faith, it shall be destroyed immediately after the investigation is completed if the evidence is insufficient to show abuse or neglect.

C. Petition and Hearing. If a Petition is filed following an investigation of elder abuse, it shall be the role of the tribal court to determine if Elder abuse has occurred. The determination shall be made only after a petition of suspected abuse has been filed, an investigation has taken place, notice of a hearing is given to all parties, a hearing is held, and the Court finds proof that is clear and convincing.

1. Procedures: Notice and hearing procedures shall be as outlined in the Kenaitze Court Code at Chapter 2, Sections 15 and 16.
2. Services to the Elder: If the Court finds the elder has been abused, it may provide service as outlined in Section 8, below.
3. Consequences for Perpetrator: If the Court has found a person to have committed elder abuse pursuant to this section, it has the following options available to it:

- a. Referral to Traditional Conflict Resolution Program: The court may, at any point during the case involving elder abuse, refer the matter to the tribe's Traditional Conflict Resolution Program as set forth in the Kenaitze Court Code at Chapter 2, Section 17.
- b. Options for Sentencing: If the Court determines that a person had committed elder abuse, it may impose any of the sentencing options set forth in the Kenaitze Court Code at Chapter 2, Section 18.

Section 8. Elder Protective Services and Placements

A. Voluntary Placements and Protective Services: Protective services or placements may be provided on a voluntary basis by the Kenaitze Tribal Court when requested by any abused elder and the Court finds the elder to be in need of services. To request voluntary services, the Elder can file a Petition for Voluntary Protective Services. The Court shall act on such petitions within 10 days. These services or placements shall be provided in the manner least restrictive to the elder's liberty and rights and consistent with the elder's welfare and needs. Such services and placements shall be provided, subject to available funding and resources, and only as determined necessary by the Kenaitze Tribal Court.

1. Duration of Services: Voluntary services shall be provided to the Elder for no more than 30 days at a time. At the end of each period, the tribe shall reassess the elder's needs before agreeing to continue providing services and placement. Voluntary placement shall not be continued without a court order if the elder has been in placement for more than 90 days.

B. Involuntary Protective Placement and Services: Upon an Order of the Kenaitze Tribal Court, involuntary protective services or placement shall be provided to any Elder who is incapacitated or who is abused. These services or

placements shall be provided in the manner least restrictive to the Elder's liberty and rights and consistent with the Elder's welfare and needs. Involuntary placement or services shall be made only on an emergency basis (see procedures in Emergencies in Section 9, below).

C. Funding of Protective Placements and Services: Protective services or protective placements, whether made on a voluntary or involuntary basis, shall be provided subject to available funding and resources and only as determined necessary by the Kenaitze Tribal Court. The Elder, and where appropriate the Elder's family, if able to do so, shall pay for all or part of the costs of services or placement provided to them.

D. Plan for Delivery of Services to Elders: The Elder's Program and/or tribal social services provider shall develop a plan for the delivery of protective services to elders. In addition, a process for conducting a comprehensive physical, mental, and social evaluation of the elder shall be established.

Section 9. Emergencies

A. Emergency Action: The Court shall issue an emergency protection order authorizing protective services or protective placement on an emergency basis upon receiving clear and convincing evidence that an Elder:

1. is at risk of immediate physical harm,
2. is incapacitated and cannot consent to protective services, or
3. an emergency exists

B. Petition: Any person who believes that that Elder is at risk may seek an emergency protective order by filing a Petition. The petition shall contain the name, address, location, and interest of the petitioner; the name, address, location and condition of the Elder; the nature of the emergency; the nature of the

Elder's incapacity; the proposed protective services, and where applicable, protective placement; the attempts, if any to secure the Elder's consent to services; any other facts the petitioner believes will assist the court.

C. Orders: The Tribal Court's Emergency Order shall contain the following information:

1. Services: The Order shall specifically state: 1) the emergency services to be provided to the Elder which may include, if necessary, protective placement; 2) what agency or person shall provide the services; and 3) any other information relevant to the existing emergency.

2. Hearing date: The emergency protective order shall also specify when a hearing will be held. As set forth below in subsection E, this hearing must be held no later than 72 hours after the issuance of the emergency protective order.

3. Duration: The emergency protection order shall be issued for a maximum of 20 days. It may be renewed one time for a maximum of 20 days provided that the evidence shows that the emergency is continuing.

D. Notice: The copy of the Emergency Order and a copy of the Petition must immediately be provided to the Elder, the Elder's family and the Elder's caretaker. If possible, the notice shall be provided prior to implementing the protective services.

E. Hearing: The tribal court shall hold a hearing on a Petition to provide protective services or placement to an elder within 72 hours after the Emergency Order is issued. The Elder, the Elder's Family and the Elder's caretaker shall be provided at least 24 hours advance notice of the hearing. The Elder, the Elder's Family and the Elder's caretaker shall be provided an opportunity to be heard at

the hearing and to ask questions of the investigator or other persons that are alleging that the Elder is in need of services. If the Court finds that there is clear and convincing evidence that the Elder is in need of protective services, it may continue the Emergency Order for up to 20 days. If the Court does not find such evidence exists, then it shall dismiss the Emergency Order.

F. Forcible entry: The Kenaitze Tribal Court may authorize a forcible entry to enforce the emergency protection order after attempts to gain voluntary access to the Elder have failed.

G. Risk of Irreparable or Immediate Harm: If there is good cause to believe that an emergency exists and that an Elder is at risk of immediate or irreparable harm and, based on personal observation, an investigator and/or law enforcement officer believes that the Elder will be irreparably harmed during the time an emergency protective order is secured, the investigator and/or law enforcement officer shall immediately protect the Elder including, where necessary, transporting the Elder for medical treatment or to an appropriate facility. Immediately after the Elder is protected, a petition for an emergency order shall be filed and the procedures for securing such an order shall be followed.

Section 10. Rights of Elders, Their Families and Caretakers

Elders and family of Elders have the following rights:

1. An Elder, the Elder's family, and caretakers shall be informed about an elder abuse investigation before it begins unless an emergency exists.
2. An Elder may refuse to accept elder protection services (even if there is good cause to believe that the elder has been or is being abused),

provided that he/she is able to care for him/herself and/or has the capacity to understand the nature of the services offered.

3. The Elder's family or caretaker may refuse for themselves, but not for the Elder, elder protection services offered pursuant to this Code.

4. An Elder, the Elder's family, or caretaker may refuse to allow an investigator into their home. In this situation, the investigator may seek a warrant for forcible entry before entering the home.

5. The Elder, Elder's family and caretaker have the right to notice of hearings and the right to attend any proceeding pertaining to the determination of the Elder's situation. The Elder shall be present at the hearings unless the Tribal Court determines that the Elder's health would be at risk.

6. The Elder, Elder's family and caretaker have the right, at their own expense, to seek an independent medical, psychological, or psychiatric evaluation of the Elder. These records shall be released to the Kenaitze Tribal Court if the Elder or caretaker wants the Court to consider such evaluations.

7. Whenever it appears that an investigation may lead to criminal charges being filed under the State's criminal statute, the investigator shall inform the elder's family and caretaker of their rights as allowed by the Indian Civil Rights Act.

Chapter 11

Conservators and Guardians

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Section 1. Purpose and Explanatory Notes

- A. Purpose: The purpose of this chapter is to establish a formal procedure enabling the Tribal Court to provide for the protection of the property and welfare of persons closely tied to the Kenaitze Indian Tribe.

B. Explanatory Notes:

1. Appointing a Conservator: A person's property, which is referred to as his or her "estate" is protected by the appointment of a conservator. A common example of such a situation is the case of an elderly person who is mentally competent and able to care for himself or herself physically, but does not have the ability to manage his or her assets. In that case, appointment of a conservator to manage the property and protect the assets is appropriate.
2. Appointing a Guardian: A guardian is appointed to care for the minor or incapacitated person's person, rather than that person's property. Thus, the guardian arranges and provides for such things as food, shelter, clothing, obtaining medical care, and other things of a personal nature.
3. Appointing a Conservator and a Guardian: In some cases, it might be appropriate to appoint both a conservator and a guardian for a particular person. The same person might act as both conservator and guardian, or different individuals may be appointed to fill each position.

Section 2. Definitions

"Conservator" means a person appointed as caretaker and protector to look after the property of a minor or incapacitated person.

"Guardian" means a person appointed as custodian of a minor or incapacitated person.

"Incapacitated person" means a person, other than a minor, who is unable, without assistance, to properly manage or take care of himself or herself or their personal affairs.

"Minor" means an unmarried person who is younger than 18 years of age.

“**Ward**” means a person for whom a guardian or conservator has been appointed.

Section 3. Jurisdiction

The Tribe has authority and jurisdiction to preside over the matters in this chapter as set forth in the Domestic Relations Code at Chapter 1, Section 2.

Section 4. Commencement of Proceedings

Proceedings for the appointment of a conservator and/or guardian shall be commenced in the Tribal Court by filing a Petition to Use the Tribal Court.

Section 5. Persons Entitled to File Petitions

The following persons are entitled to file a petition for the appointment of a conservator and/or guardian:

1. A family member of the proposed ward; and
2. Any interested party who has a close connection to the proposed ward.

Section 6. Contents of Petition

A petition for the appointment of a conservator and/or guardian shall contain the following information:

1. The name and address of the petitioner.
2. The name, age and address of the proposed ward.
3. The facts that make the appointment of a conservator and/or guardian necessary.
4. The name, age and address of the proposed guardian or conservator and the relationship of the proposed guardian or conservator to the proposed ward. If an alternate proposed guardian or conservator is proposed, include the same information for the alternate.

Section 7. Notice of Proceedings

Within 10 days after the filing of a petition for the appointment of a conservator and/or guardian, the Tribal Court shall give notice of the proceedings to the following persons:

1. The children, parents, siblings and spouse of the proposed ward; and
2. If the petition is for the appointment of a conservator, to the creditors of the ward.

Notice shall be given to the persons above in compliance with Section 15 of the Tribal Court Code.

Section 8. Preference in Appointing Conservator and/or Guardian

The parents of a minor or incapacitated person, or either of them, if qualified and suitable, shall be preferred over all others for appointment as conservator and/or guardian for the proposed ward. A second preference shall be made for the adult children of the proposed ward. Subject to these preferences, the Tribal Council shall recommend for appointment as conservator and/or guardian for a proposed ward the qualified person most suitable who is willing to serve, having due regard, among other factors, to:

1. Any request for the appointment as conservator and/or guardian for a proposed ward contained in a written instrument executed by the proposed ward while competent.
2. Any request for the appointment as conservator and/or guardian for a proposed ward contained in a will or other written instrument executed by a parent of the proposed ward.
3. Any request for the appointment as a conservator and/or guardian for a minor 14 years of age or older made by the minor.
4. The relationship by blood or marriage of the proposed conservator and/or guardian to the proposed ward.

Section 9. Hearings; Notice

The Tribal Court shall schedule and conduct a hearing to consider the appointment of a conservator and/or guardian pursuant to the Petition filed with the Tribal Court. At the hearing interested persons shall be entitled to present testimony and other relevant evidence. Notice of the hearing shall be to the same persons entitled to receive notice pursuant to Section 7, above, and shall also be made in the same manner.

Section 10. Emergency Orders

When necessary for the protection of the proposed ward or the ward's property, the Tribal Court may issue an emergency order appointing a conservator and/or guardian pending a formal hearing provided for in Section 9, above. The emergency order shall be effective for no longer than 60 days.

Section 11. Appointment of Spokesman for Proposed Ward

Upon request or upon its own motion, the Tribal Council may appoint a spokesman to represent the proposed ward in proceedings governed by this Chapter.

Section 12. Home Evaluations, Physical and Mental Examinations

Upon request or upon its own motion the Tribal Court may order the proposed ward to be examined by a physician, psychologist or other person who shall submit a report in writing to the Court and may order a home study of the home of the proposed conservator/guardian.

Section 13. Findings and Appointment

1. The Tribal Court may appoint a conservator and/or guardian as requested if the Court is satisfied that:
 - a. The proposed ward is either a minor or incapacitated person;
 - b. The appointment is necessary or desirable as a means of providing continuing care and supervision of the proposed ward and/or the property of the proposed ward; and

- c. The proposed conservator and/or guardian is both qualified and suitable, and is willing to serve.
2. Based on the information provided to the Tribal Court, the Court shall make a guardianship recommendation that is no more restrictive upon the liberty of the ward than is reasonably necessary to protect the ward.

Section 14. Tribal Court Recommendation and Order

After completion of the hearing, the Tribal Court shall issue a written order. This written order shall include the following: 1) a statement of all relevant facts used by the Court in making its recommendation for appointment of a conservator and/or guardian, and 2) the Tribal Court's recommendation regarding the appointment of a conservator and/or guardian and the reasons for making that recommendation.

Section 15. Effect of Accepting Appointment as Conservator and/or Guardian

By accepting appointment, a conservator and/or guardian whether a tribal member or a non-tribal member, submits personally to the jurisdiction of the Tribal Court in any proceeding relating to the conservatorship/guardianship.

Section 16. Termination or Removal of Conservatorship and/or Guardianship

A conservatorship and/or guardianship may be terminated by Tribal Court order upon notice to interested persons and a hearing in the Tribal Court on the removal or termination. The Tribal Court may, in conjunction with termination or removal, require the conservator and/or guardian to provide a full account of the financial affairs of the ward and may also direct that an audit be conducted of the ward's financial affairs. The Tribal Court shall enter a written order of termination.

Section 17. Resignation of Conservator or Guardian

Persons desiring to resign as a conservator or guardian shall submit their resignation to the Tribal Court. The Tribal Court shall accept the resignation after a showing that no other actions in the interim are necessary to protect the ward or the estate of the ward. The Tribal Court shall enter an order confirming the resignation.

Section 18. General Powers of Guardians

In the general performance of powers and duties respecting the ward, a guardian of a minor or incapacitated person:

1. May, to the extent that it is consistent with the terms of the Court order relating to the detention or commitment of the ward, have custody of the ward and establish the ward's place of abode;
2. If entitled to custody of the ward, shall provide for the care, comfort and maintenance of the ward and, whenever appropriate, arrange for training and education of the ward. Without regard to custodial rights of the ward's person, the guardian shall take reasonable care of the ward's clothing, furniture, vehicles, and other personal effects and begin protective proceedings if other property of the ward is in need of protection;
3. May consent to or approve any necessary medical or other professional care, counsel, treatment or service for the ward; and
4. May do all other things necessary for the protection of the ward.

A guardian is not liable to third persons for acts of the ward solely by reason of the guardian and ward relationship.

Section 19. General Powers of Conservators. Unless otherwise specified by the Court, the following are the general powers of the conservator:

1. Collect, hold and retain assets of the estate, including land wherever situated, until, in the conservator's judgment, disposition of the assets should be made, and the assets may be retained even though they include an asset in which the conservator is personally interested. Actual disposition of the assets is not permitted without a specific order;
2. Receive additions to the estate;

3. Continue or participate in the operation of any business or other enterprise;
4. Deposit estate funds in a bank including a bank operated by the conservator;
5. Insure the assets of the estate against damage or loss and the conservator against liability with respect to third persons;
6. Pay taxes, assessments, compensation of the conservator, and other expenses incurred in the collection, care, administration and protection of the estate;
7. Pay any sum distributable to a ward or dependent of the ward by paying the sum to the distribute or by paying the sum for the use of the distribute either to his guardian or if none, to a relative or other person with custody of his person, subject to any programming requirements that may be established by the court; and
8. Execute and deliver all instruments which will accomplish or facilitate the exercise of the powers vested in the conservator.

Section 20. Powers of Conservator Pursuant to Tribal Court Order

Upon authorization by the Tribal Court a conservator may exercise the following powers:

1. Acquire an undivided interest in any estate asset in which the conservator, in any fiduciary capacity holds an undivided interest;
2. Invest and reinvest estate funds as would a trustee;
3. Acquire or dispose of an estate asset including non trust land wherever situated for cash or on credit, at public or private sale; and to manage, develop, improve, exchange, partition, change the character of, or abandon an estate asset in connection with the exercise of any power vested in the conservator;

4. Make ordinary or extraordinary repairs or alterations in buildings or other structures, to demolish any improvements, to raze existing or erect new party walls or buildings;
5. Vote a security, in person or by general or limited proxy;
6. Employ persons, including attorneys, auditors, investment advisors, or agents, even though they are associated with the conservator to advise or assist him in the performance of his administrative duties, to act upon their recommendation without independent investigation, and instead of acting personally to employ one or more agents to perform any act or administration, whether or not discretionary;
7. Prosecute or defend actions, claims or proceedings in any jurisdiction for the protection of estate assets and of the conservator in the performance of his duties;
8. Prosecute claims of the protected person including those for his personal injury.

Section 21. Reports to the Tribal Court

The Tribal Court may require the conservator and/or guardian to submit periodic reports to the Tribal Court in the form prescribed by the Court. The Court may require the report at any time and no less than one time per year.

Section 22. Bonds

The Tribal Court may in its discretion require the posting of a bond by a conservator in an amount to be determined by the Tribal Court.

Section 23. Civil Penalties

Any conservator or guardian who is found by the Court after a hearing to have stolen, diverted, or grossly abused the funds or property of a ward may be subject to any of the civil penalties available to the Court as set forth in the Tribal Court Code at Section 18.

1. The first part of the report is a general
introduction to the subject of the study.

2. The second part of the report is a detailed
description of the methods used in the study.

3. The third part of the report is a discussion
of the results of the study.

4. The fourth part of the report is a conclusion
based on the results of the study.

5. The fifth part of the report is a list of
references to the literature used in the study.

6. The sixth part of the report is a list of
figures and tables used in the study.

7. The seventh part of the report is a list of
appendices used in the study.