



# Keweenaw Bay Indian Community TRIBAL CODE TITLE SIX GUARDIANS AND CONSERVATORS

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An ordinance of the Keweenaw Bay Indian Community adopted under the authority of the Constitution and By-Laws of the Keweenaw Bay Indian Community for the purposes of updating the Juvenile laws and procedures and to ensure compliance with federal laws and procedures to allow the Keweenaw Bay Indian Community Department of Tribal Social Services to become a IV-E agency under Title IV, Part E of the federal Social Security Act.

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**TITLE SIX GUARDIAN AND CONSERVATORS**  
**CHAPTER 6.1 — GENERAL MATTERS**

**§6.101 Definitions.**

As used in this title the following terms shall have the following definitions:

- A. “Conservator” means a person appointed by the Court who shall have the right and obligation to exercise power and control over the estate of a Ward.
- B. “Case plan” means a written document as described in §6.302.
- C. “Estate” means the property and assets of a Ward or Proposed Ward.
- D. “Guardian” means a person appointed and empowered by the Court to make decisions for and enter into contractual obligations on behalf of a ward.
- E. “Legally incapacitated person” means a person other than a minor, who is impaired by reason of mental illness, mental deficiency, physical illness or disability, chronic use of drugs, chronic intoxication, or other cause to the extent that the person lacks sufficient understanding or capacity to make or communicate responsible decisions concerning his or her person.
- F. “Protective proceeding” means a proceeding under the provisions of this title.
- G. “Proposed Ward” means the person who is the subject of a petition for a Guardianship or Conservatorship who has not yet been appointed a Guardian or Conservator.
- H. “Ward” means a minor or a legally incapacitated person for whom a Guardian, Guardian Ad Litem, and or a Conservator has been appointed pursuant to this chapter.
- I. “Child” has the same meaning as juvenile in §4.104(B) and (C).

**§6.102 Jurisdiction.**

The Court shall have jurisdiction over protective proceedings when the Ward or Proposed Ward is a person within the jurisdiction of the Court. Anyone appointed to act as a Guardian, Conservator, or Guardian Ad Litem under this title consents to the jurisdiction of this Court over himself and his actions pursuant to his appointment.

**§6.103 Guardian; Authority to Appoint.**

The Court may appoint a Guardian for an unmarried child or for an unmarried legally incapacitated person who shall come within the jurisdiction of the Court. If the Proposed Ward is married at the time the guardianship is sought, the Proposed Ward’s spouse must consent to the appointment or the Court must make findings that the spouse is not acting in the Ward’s best interest.

**§6.104 Conservator; Authority to Appoint.**

The Court may appoint a Conservator for an unmarried child or for an unmarried legally incapacitated person, who shall come within the jurisdiction of the Court when such minor or legally incapacitated person shall have an estate requiring protection and management. If the Proposed Ward is married when a Conservator is sought, the Proposed Ward’s spouse must consent to the appointment or the Court must make findings that the spouse is not acting in the Ward’s best interest.

**§6.105 Guardian Ad Litem; Authority to Appoint.**

The Court may appoint a Guardian Ad Litem at any time during these protective proceedings to represent the interests of the Proposed Ward or Ward if the Court shall determine that the interests of the Proposed Ward or the Ward may not be adequately represented.

**§6.106 Powers of the Court.**

The Court shall have the power to at any time on its own motion or upon the motion of any other person, to modify the authority and obligations of the Guardian, Conservator, or Guardian Ad Litem, to terminate these appointments, to appoint a successor Guardian or Conservator, to appoint a Co-Guardian or Co-Conservator, or to make any other motion deemed necessary and in the best interest of the Ward.

**CHAPTER 6.2 — GUARDIANSHIP AND CONSERVATORSHIP PROCEEDINGS**

**§6.201 Preferences for Appointment.**

- A. The Court shall appoint as a Guardian or Conservator for a Ward someone whose appointment would be in the best interest of that Ward.
- B. The following preferences shall apply to the appointment of a Guardian or Conservator in the following order unless the Court makes findings that the preferred person under these rules will not be in the best interests of the Ward or is unwilling to serve:
  - 1. The person nominated by the Proposed Ward who;
    - a. If a child, is at least fourteen (14) years of age or older,
    - b. or if a legally incapacitated adult, is capable of making such a nomination.
  - 2. The spouse of the Proposed Ward who is himself not legally incapacitated and at least eighteen (18) years of age.
  - 3. The parent(s) of the Proposed Ward.
  - 4. A person nominated or requested to serve as a Guardian or Conservator for a Proposed Ward contained in a will or other written instrument executed by a parent of the Proposed Ward or a person who was entrusted with the Ward's care prior to the petition currently before the Court.
  - 5. A person related by blood or marriage to the Proposed Ward.
  - 6. Any other person deemed in the best interest of the Ward by the Court.

**§6.202 Initiation of Proceedings.**

- A. Protective proceedings shall be initiated by the filing of a Petition with the Court. A Petition may be filed by any person, Tribal Social Services, or any other agency acting on behalf of the Proposed Ward.
- B. Upon the filing of a Petition, the Court shall set a date for a hearing on the Petition.

- C. Unless the Proposed Ward has legal counsel of his own, the Court shall appoint a Guardian Ad Litem to represent the Proposed Ward in these protective proceedings.

**§6.203 Contents of the Petition.**

A petition for the appointment of a Guardian or Conservator shall contain the following information:

- A. As to the Proposed Ward:
  - 1. Name of the Proposed Ward.
  - 2. Proposed Ward's date of birth.
  - 3. Proposed Ward's current address and phone number.
  - 4. Proposed Ward's tribal affiliation including enrollment status and or eligibility for enrollment.
  - 5. Person nominated by the Proposed Ward to serve as the Guardian and or Conservator if a person is nominated by the Proposed Ward and the Proposed Ward is capable of making such a nomination.
- B. As to the potential Guardian or Conservator:
  - 1. Name of the Guardian or Conservator.
  - 2. Guardian's or Conservator's date of birth.
  - 3. Guardian's or Conservator's current address and telephone number.
  - 4. Guardian's or Conservator's tribal affiliation including enrollment status and or eligibility for enrollment.
  - 5. Statement of the Guardian or Conservator indicating his willingness to serve as a Guardian or Conservator for the Proposed Ward.
  - 6. Statement of the Guardian or Conservator consenting to the jurisdiction of the Tribal Court in compliance with §6.102.
- C. A statement by the Petitioner as to why the Guardian or Conservator is necessary for the Proposed Ward.
- D. A list of potential interested parties to the Petition which shall include the parent(s), spouse, siblings, and the children of the Proposed Ward who are at least eighteen (18) years of age, a physician or mental health professional who has recommended the Proposed Ward obtain a Guardian or Conservator, or who prepared a report pursuant to §6.204, and any other person or agency who has had care and custody of the Proposed Ward immediately preceding the filing of the Petition. The list shall include the last known mailing address of each interested party to the best of the Petitioner's knowledge.

**§ 6.204 Evaluation and Report; Hearing.**

- A. If necessary, the Court may order that an individual alleged to be legally incapacitated be examined by a physician or mental health professional appointed by the Court who shall submit a report in writing to the Court at least five (5) days before the hearing on the Petition. A report prepared as provided in this subsection shall not be made a part of the proceeding's public record, but shall be available to the Court or an appellate court in which the proceeding is subject to review, to the alleged incapacitated individual, to the

petitioner, to their respective legal counsels, and to other persons as the Court directs. The report may be used as provided in the Federal Rules of Evidence.

- B. The alleged legally incapacitated individual has the right to secure an independent evaluation, at his own expense or, if indigent, at the expense of the Community.

Compensation for an independent evaluation at public expense shall be in an amount that based upon time and experience, the Court approves as reasonable.

- C. A report prepared under this section shall contain all of the following information:
  1. A detailed description of the individual's physical or psychological infirmities.
  2. An explanation of how and to what extent each infirmity interferes with the individual's ability to receive or evaluate information in making decisions.
  3. A listing of all medications the individual is receiving, the dosage of each medicine, and a description of the effects each medication has upon the individual's behavior.
  4. A prognosis for improvement in the individual's condition and a recommendation for the most appropriate rehabilitation plan.
  5. The signatures of all individuals who performed the evaluations upon which the report is based.

#### **§ 6.205 Notice for the Hearing on the Petition.**

- A. Notice of the time and place of the Hearing on a Petition for the appointment of a Guardian or Conservator shall be given by the Court to the Proposed Ward, all interested parties named in the Petition and anyone else the Court deems necessary.
  1. The Petitioner may request the Court to issue subpoenas for witnesses to appear to support the allegations contained in the Petition.
  2. The Proposed Ward or the Proposed Ward's representative may request subpoenas for witnesses to appear on behalf of the Proposed Ward.
  3. If a report is prepared in accordance with §6.204, the Court shall issue a subpoena for the physicians or mental health professionals who signed the report in accordance with §6.204 (C)(5) to appear at the hearing. The physicians or mental health professionals shall be allowed to appear telephonically unless the Petitioner or Proposed Ward objects to their telephonic appearance.
  4. Requests for subpoenas must be submitted to the Court at least fourteen (14) days prior to the hearing.
- B. The Notice shall contain the time and date of the Hearing on the Petition and be served at least fourteen(14) days prior to the Hearing on the Petition.
- C. The hearing date shall be set by the Court.
- D. Service may be made by either personal service or by certified mail, return receipt requested.
- E. Any party or interested person required to be served, other than the Ward, Guardian, and Conservator, may request to be removed from the list of those

required to be provided Notice for a Ward's Protective Proceedings by filing a written request with the Court. The Ward, Guardian and or Conservator shall be notified of every proceeding in a Ward's Protective Proceedings under this Chapter.

#### **§6.206 Hearing Process**

- A. Purpose. The purpose of the hearing on the petition shall be to determine if the Proposed Ward is a child or a legally incapacitated person, and if so, whether or not the Proposed Ward is in need of the services of a Guardian and or Conservator.
- B. Procedure. The hearing shall be private and closed and all matters occurring during the course of the hearing, and things said, shall be confidential.
- C. Rights of the Proposed Ward. Prior to the commencement of proofs, the Court shall advise the Proposed Ward of his rights under the Constitution of the United States and the Indian Civil Rights Act. These rights include:
  - 1. To be present at the hearing in person. If the Proposed Ward wishes to be present at the hearing, all practical steps shall be taken to ensure his presence, including, if necessary moving the site of the hearing.
  - 2. To see or hear all evidence bearing upon the Proposed Ward's condition.
  - 3. To contest the petition.
  - 4. To have the assistance of counsel at his own expense.
  - 5. To present evidence in his defense, to cross-examine the witnesses and evidence presented against him including the court-appointed physicians or mental health professionals who prepared a report and evaluation pursuant to §6.204.
  - 6. To consent to the petition and subsequent appointment of a Guardian or Conservator.
- E. Right to Jury Trial. There shall be a right to a jury determination of the truth of the allegations contained in the Petition. The Hearing on the Petition may be determined at a closed hearing without a jury if requested by the Proposed Ward or that individual's representative.
- F. Standard of Proof. The burden of proof shall be upon the petitioner to prove the allegations in the Petition by clear and convincing evidence.

#### **§6.207 Hearing; Court Findings and Disposition.**

- A. Upon hearing the Petition:
  - 1. The Court may appoint a Guardian and or a Conservator if the Proposed Ward or the Proposed Ward's Guardian Ad Litem consents to the appointment and the Court finds that the Proposed Ward has been advised of his rights and the appointment is in the Proposed Ward's best interest.
  - 2. The Tribal Court may appoint a Guardian and or a Conservator when the appointment is contested if the Court finds by clear and convincing evidence:
    - a. That the Proposed Ward is a child or a legally incapacitated person;  
and

- b. The appointment of a Guardian and or a Conservator is in the Ward's best interest; and
  - c. The Guardian and or Conservator are qualified, will act in the Ward's best interest, are willing to serve and consents to the jurisdiction of the Court.
- B. Based on the information provided to the Court, the Court shall make a Guardianship or Conservatorship appointment that is no more restrictive upon the liberty of the Ward than is reasonably necessary to protect the Ward.
- C. If the Court is unable to make the required findings listed in subparagraph (A) above, the Court may:
- 1. Grant the Petitioner a reasonable amount of time to amend the Petition not to exceed forty-five (45) days.
  - 2. Appoint a temporary Guardian or Conservator to serve in the interim.
  - 3. Dismiss the petition.

**§6.208 Emergency Temporary Guardian or Conservator.**

The Court may appoint a temporary Guardian and or Conservator on an emergency basis, who shall have the status of an ordinary Guardian or Conservator, forthwith upon the filing of a Petition for an Emergency Temporary Guardian or an Emergency Temporary Conservator. However, such temporary emergency authority shall not exceed forty-five (45) days. An emergency petition for immediate appointment shall include supporting evidence of the requirement for an immediate appointment and legal incapacity.

**§ 6.209 Duties of Guardian Ad Litem.**

- A. The duties of a Guardian Ad Litem appointed for a Proposed Ward or a Ward shall include all of the following:
- 1. Personally visiting the individual.
  - 2. Explaining to the individual the nature, purpose, and legal effects of a Guardian's or Conservator's appointment.
  - 3. Explaining to the individual the hearing procedure and the individual's rights in the hearing procedure, including, but not limited to the right to consent to the petition, the right to contest the petition, to request limits on the guardian's or conservator's powers, to object to a particular person being appointed as guardian or conservator, to be present at the hearings, to be represented by legal counsel, and to have legal counsel appointed for the individual if he is unable to afford legal counsel.
  - 4. Informing the individual of the name of each person known to be seeking appointment as Guardian or Conservator.
- B. Make determinations, and inform the Court of those determinations, on all of the following:
- 1. Whether there are one (1) or more appropriate alternatives to the appointment of a full Guardian or Conservator. Before informing the Court of his determination under this subparagraph, the Guardian Ad Litem shall consider the appropriateness of at least each of the following alternatives:

- a. Appointment of a limited Guardian and or Conservator, including the specific powers and limitations on those powers the Guardian Ad Litem believes appropriate.
  - b. Appointment of a Conservator in lieu of a Guardian or in addition to a Guardian.
  - c. Execution of a patient advocate designation, do-not-resuscitate declaration, or durable power of attorney with or without limitations on purpose, authority, or duration.
2. Whether a disagreement or dispute related to the guardianship petition might be resolved through a mediation.
  3. Whether the Ward wishes to be present at the hearing.
  4. Whether the Ward wishes to contest the petition.
  5. Whether the Ward wishes limits placed on the Guardian's or Conservator's powers.
  6. Whether the Ward objects to a particular person being appointed as Guardian or Conservator.
- C. The Court shall not order compensation of the Guardian Ad Litem unless the Guardian Ad Litem states on the record or in the Guardian Ad Litem's written report that he has complied with subsection (A).
- D. If the Proposed Ward wishes to contest the petition, to have limits placed on the Guardian's or Conservator's powers, or to object to a particular person being appointed Guardian or Conservator, and if legal counsel has not been secured, the Court shall appoint legal counsel to represent the Proposed Ward. If the individual alleged to be incapacitated is indigent, the Court shall bear the expense of legal counsel.
- E. If the Proposed Ward requests legal counsel or the Guardian Ad Litem determines it is in the individual's best interest to have legal counsel, and if legal counsel has not been secured, the Court shall appoint legal counsel. If the individual alleged to be incapacitated is indigent, the Court shall bear the expense of legal counsel.
- F. If the Proposed Ward has legal counsel appointed under subsections (C) or (D), the appointment of the Guardian Ad Litem terminates and the legal counsel takes on the responsibilities of the Guardian Ad Litem.

## **CHAPTER 6.3 — GUARDIANS**

### **§6.301 Powers and Duties of Guardian Upon Appointment.**

- A. Whenever meaningful communication is possible, the Guardian shall consult with his Ward before making a major decision affecting the Ward.
- B. A Guardian is responsible for the Ward's care, custody, and control.
- C. A Guardian's powers and duties shall specifically include the following:
  1. To the extent that it is consistent with the terms of the Court's orders relating to detention or commitment of the Ward, have custody of the person of the Ward and establish the Ward's place of residence. The

Guardian must notify the Court within fourteen (14) days of a change in the Ward's place of residence.

2. To have a face to face visit with the Ward within ninety (90) days after the Guardian's appointment and not less than once every ninety (90) days thereafter.
  3. To provide for the care, comfort and maintenance of the Ward including the reasonable care of the Ward's clothing, furniture, vehicles, and other aspects of the Ward's estate within the Guardian's control.
  4. When appropriate to arrange for the Ward's training and education.
  5. To commence Conservatorship proceedings if the property of the Ward is in need of protection.
  6. To consent to or approve any necessary medical or other professional care, counseling, treatment or service for the Ward. The Guardian shall secure services to restore the Ward to the best possible state of mental and physical well-being so that the Ward can return to self-management at the earliest possible time.
  7. To do all other things necessary for the protection and in the best interests of the Ward.
- D. If a Conservator for the Ward's estate is not appointed, a Guardian may do any of the following:
1. Institute a proceeding to compel a person under a duty to support the Ward or to pay money for the Ward's welfare to perform that duty.
  2. Receive money and tangible property deliverable to the Ward and apply the money and property for the Ward's support, care and education. The Guardian shall not use money from the Ward's estate for room and board that the Guardian or the Guardian's spouse, parent or child have furnished the Ward unless a charge for the service is preapproved by court order with notice to at least one (1) of the Ward's next of kin, if notice is possible.
  3. The Guardian shall exercise care to conserve any excess of the Ward's income and estate for the Ward's needs.
- E. If a Conservator for the Ward's estate is appointed, the Guardian shall pay to the Conservator, for management as provided in this Chapter, the amount of the Ward's estate received by the Guardian in excess of the amount the Guardian expends for the Ward's current support, care, and education. The Guardian shall account to the Conservator for the amount expended.
- F. However, nothing herein shall authorize any Guardian to do any act, or to omit to do any act, which shall be to the detriment of the Ward.

**§ 6.302 Powers and Duties of Tribal Social Services Upon Appointment of a Guardian in Title IV-E Eligible Cases.**

- A. This section only applies to those cases wherein the Ward is eligible for Title IV-E money, services or programs as Title IV-E is defined in §4.106(J).
- B. TSS shall prepare a case plan for all minors placed with a Guardian within sixty (60) days of that placement.

- C. In the case of a child with respect to whom the permanency plan is placement with a relative and receipt of kinship guardianship assistance payments under 42 U.S.C 673(d), the case plan shall include or the report to the Court shall include a description of:
  - 1. The steps that the TSS or the Court appointed agency has taken to determine that it is not appropriate for the child to be returned home or adopted;
  - 2. The reasons for any separation of siblings during placement;
  - 3. The reasons why a permanent placement with a fit and willing relative through a kinship guardianship assistance arrangement is in the child's best interests;
  - 4. The ways in which the child meets the eligibility requirements for a kinship guardianship assistance payment;
  - 5. The efforts TSS or the Court appointed agency has made to discuss adoption by the child's relative foster parent as a more permanent alternative to legal guardianship and, in the case of a relative foster parent who has chosen not to pursue adoption, documentation of the reasons therefore; and
  - 6. The efforts made by TSS or the Court appointed agency to discuss with the child's parent(s) the kinship guardianship assistance arrangement or the reasons why the efforts were not made.
- D. In every Title IV-E eligible case the Court shall hold a review hearing within ninety (90) days of any prior hearing to review the status of the placement, and the progress of the case plan.

**§6.303 Guardian's Report to the Court.**

- A. Annually, the Guardian shall report to the Court in writing, the condition of the Ward and the Ward's estate that is subject to the Guardian's possession or control, unless the Court shall order such reports more frequently.
  - 1. The report shall be filed at least fourteen (14) days before the anniversary date of the appointment.
  - 2. If the report is not filed timely, the Court shall hold a hearing on the anniversary date, or as soon thereafter as is convenient for the Court, and require the Guardian to provide good cause for his failure to file a timely report.
- B. The Court shall have the power, on its own motion, or on the motion of a party or interested person, to order a Guardian to appear before the Court personally and give his report under oath or to answer as to the contents or lack thereof in the report.
- C. A copy of such report shall be served by regular mail upon all parties and interested persons who were required to be served with the initial petition by the Guardian. The Guardian need not serve a copy of the Guardian's report on a party or interested person who requested not to be served pursuant to §6.205(E).
- D. The Guardian shall provide proof of service of the Guardian's report upon the parties and interested persons to the Court at the time of filing the report.

- E. The Guardian's report to the Court must contain all of the following:
  - 1. The Ward's current mental, physical, and social conditions.
  - 2. Improvement or deterioration in the Ward's mental, physical, and social condition that occurred during the report period.
  - 3. The Ward's present living arrangement and changes in his living arrangements that occurred during the report period.
  - 4. Whether the Guardian recommends a more suitable living arrangement for the Ward.
  - 5. Medical treatment received by the Ward.
  - 6. Services received by the Ward.
  - 7. A list of the Guardian's visits with, and activities on behalf of the Ward.
  - 8. If a Conservator is appointed a copy of the accounting provided by the Guardian to the Conservator for those assets of the Ward in the Guardian's control.
  - 9. If no Conservator is appointed, the report shall include a description of the Ward's income, expenses, assets, liabilities, and investments under the Guardian's control. The report shall contain copies of any monthly statements for the Ward's assets and liabilities such as bank statements, credit card or loan statements, mortgage statements, investment reports, tax statements, and other such reports generated by an outside agency or business regarding that portion of the Ward's estate within the Guardian's control.
  - 10. A recommendation as to the need for continued Guardianship.

**§6.304 Termination of Guardian's Appointment.**

- A. A Guardian's appointment pursuant to this Title shall terminate:
  - 1. Upon a child Ward no longer meeting the definition of "child" at §6.101(I),
  - 2. Upon a Ward's death,
  - 3. Upon a finding of capacity for a legally incapacitated Ward,
  - 4. Upon request by the Guardian,
  - 5. Upon a finding by the Court that the Guardian is not acting in the Ward's best interest.
  - 6. For good cause or on the Court's own motion.
- B. Upon termination of an appointment, the Guardian shall make a full inventory and accounting to the Court within fourteen (14) days of the termination of appointment, and shall forthwith deliver into the custody of the person entitled thereto the property and assets of the Ward.

**§6.305 Liability of Guardian.**

A Guardian shall have no personal liability to his Ward except for gross negligence or willful misconduct. A Guardian is not liable to third persons for acts of the Ward solely by reason of the Guardian and Ward relationship.

## CHAPTER 6.4 CONSERVATORSHIP

### **§6.401 Powers and Duties of Conservator Upon Appointment.**

- A. A Conservator upon being appointed and qualifying shall have the power and authority to do on behalf of the Ward, any and all acts or things regarding the management of the Ward's estate and income which the Ward could, if not a child or legally incapacitated person, do for himself.
- B. Within fourteen (14) days of appointment, a Conservator shall provide the Court with a full and complete inventory of the assets and liabilities of his Ward. A copy of such inventory shall be served by regular mail upon all parties and interested persons named in the initial Petition and by the Court.
- C. The Conservator shall proceed to organize the affairs of his Ward, shall collect his assets, and shall satisfy his liabilities as they shall become due. The Conservator shall be charged with properly investing the assets of the Ward in a safe and prudent manner calculated to bring a suitable return upon investment.
- D. The Conservator shall investigate all possible sources of income for the Ward including, but not limited to pensions, social security, supplemental security income, social security disability, and tribal benefits and entitlements.
- E. The Conservator shall ensure that the Ward is provided with a reasonable living allowance if the Ward is capable of managing such an allowance.
- F. The Conservator shall be authorized to sell and purchase assets for the benefit of the Ward provided that approval of the Court shall be secured in writing prior to the sale or purchase of any asset having a value in excess of five hundred dollars (\$500.00).
- G. A Conservator may pay or secure from the Ward's estate a claim against the estate or against the Ward arising before or during the Conservatorship upon the presentation of the claim and allowance in accordance with the priorities in subsection (4) below.
  1. A claim may be presented by either of the following methods:
    - a. The claimant may deliver or mail to the Conservator a written statement of the claim indicating its basis, the name and mailing address of the claimant, and the amount claimed.
    - b. The claimant may file a written statement of the claim with the Court in the form of a civil complaint against the estate and may deliver or mail a copy of the statement to the Conservator.
  2. The Court shall consider a claim presented when the Conservator receives the written statement of claim or when the claim is filed with the Court, whichever happens first. A presented claim is allowed if it is not disallowed by written statement mailed by the Conservator to the claimant within sixty-three (63) days after the presentation of the claim. The presentation of a claim tolls a statute of limitations relating to the claim until such time as the claim is paid or disallowed.
  3. A claimant whose claim has not been paid may petition the Court for determination of the claim at any time before it is barred by the applicable statute of limitations and, upon proof, may procure an order for the claim's

allowance, payment, or security from the estate. If a proceeding is pending against a Ward at the time of appointment of a Conservator or is initiated against the Ward after the appointment, the moving party shall give notice of the proceeding to the Conservator if the proceeding could result in creating a claim against the estate.

4. If it appears that the estate in Conservatorship is likely to be exhausted before all existing claims are paid, the Conservator shall distribute the estate in money or in kind in payment of claims in the following order:
    - a. Costs and expenses of administration of the estate.
    - b. Claims of the Keweenaw Bay Indian Community, the federal government, or a state government.
    - c. Claims incurred by the Conservator or Guardian for the care, maintenance, and education that were previously provided to the Ward or the Ward's dependants.
    - d. Claims arising before the conservatorship.
    - e. All other claims.
  5. A preference shall not be given in the payment of a claim over another claim of the same class, and a claim due and payable is not entitled to a preference over a pending claim. However, if it appears that the assets of the estate are adequate to meet all existing claims, acting in the Ward's best interest, the Court may order the Conservator to give a mortgage or other security on the estate to secure payment at some future date of any or all claims listed in subsection (4)(e).
  6. If a Ward dies while under a conservatorship, upon petition of the Conservator and with or without notice, the Court may hear a claim for burial expense or another claim as the Court considers advisable. Upon hearing the claim, the Court may enter an order allowing or disallowing the claim or part of it and may provide in an order of allowance that the claim or a part of it shall be paid immediately if payment can be made without injury or serious inconvenience to the Ward's estate.
- H. However, nothing in this section shall authorize any Conservator to do any act, or to omit to do any act, which shall be to the detriment of the Ward.

#### **§6.402 Conservator's Report to the Court.**

- A. Annually the Conservator shall report to the Court in writing, as to the Ward's income, expenses, assets, liabilities, and investments unless the Court shall order such reports more frequently. The Conservator's report shall contain:
  1. Copies of any monthly statements for the Ward's assets and liabilities such as bank statements, credit card or loan statements, mortgage statements, investment reports, tax statements, and other such reports generated by an outside agency or business regarding the Ward's estate.
  2. If a Guardian is appointed, a copy of the Guardian's accounting to the Conservator for that portion of the Ward's estate within the Guardian's control.
  3. The report shall be filed at least thirty (30) days before the anniversary date of the appointment.

4. If the report is not filed timely, the Court shall hold a hearing on the anniversary date, or as soon thereafter as is convenient for the Court and require the Guardian to provide good cause for his failure to file a timely report.
- B. The Court shall have the power on its own motion, or on the motion of a party or interested person to order a Conservator to appear before the Court personally and give his report under oath or to answer as to the contents or lack thereof in the report.
- C. A copy of the Conservator's report shall be served by regular mail upon all parties and interested persons named in the petition and by the Court. The Conservator need not serve a copy of the Conservator's report on a party or interested person who requested not to be served pursuant to §6.203(e).
- D. The Conservator shall provide proof of service of the Conservator's report upon the parties and interested persons to the Court within fourteen (14) days of filing the report.

#### **§6.403 Termination of Conservator's Appointment.**

- A. A Conservator's appointment pursuant to this Title shall terminate:
  1. Upon a child Ward no longer meeting the definition of "child" at §6.101(I),
  2. Upon a Ward's death,
  3. Upon a finding of capacity for a legally incapacitated Ward,
  4. Upon request by the Conservator,
  5. Upon a finding by the Court that the Conservator is not acting in the Ward's best interest,
  6. For good cause or on the Court's own motion.
- B. Upon termination of an appointment, the Conservator shall make a full inventory and accounting to the Court within fourteen (14) days of the termination of appointment, and shall forthwith deliver into the custody of the person entitled thereto the property and assets of the Ward.

#### **§6.404 Liability of Conservator.**

A conservator shall have no personal liability to his Ward except for gross negligence or willful misconduct.

### **CHAPTER 6.5 – EFFECTIVE DATE, SEVERABILITY AND REPEAL OF PRIOR CODES**

#### **§6.501 Repeal of Prior Codes**

Title Six, Guardians and Conservators, of the 1996 edition of the Tribal Code is hereby repealed and replaced by this the 2012 version of Title Six, Guardians and Conservators, of the Tribal Code.

#### **§6.502 Effective date**

This Code shall be in full force and effect according to its terms upon adoption by the Tribal Council.

**§6.503 Severability**

If any provision of this Title or its application to any person or circumstance is held invalid by a court of competent jurisdiction, the remainder of this Title will not be affected thereby.

**Legislative History: Ordinance 2012 – 05 was adopted on October 6, 2012.**