

MORONGO BAND OF MISSION INDIANS

ORDINANCE 28

TRIBAL COURT
and
INDIAN CHILD WELFARE ACT ORDINANCES¹

Approved August 27, 2005
Amended May 2, 2018²

¹ Pursuant to Section 2.2.08 of this Ordinance, the Morongo Tribal Court established by this Ordinance has adopted Rules of Court which apply to all proceedings and matters before the court.

² Proposition No. 2 approved on May 2, 2018 amended the current version of the Tribal Court and Indian Child Welfare Act Ordinance.

Morongo Band of Mission Indians

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MORONGO TRIBAL COURT ORDINANCE

PREAMBLE

The Morongo Band of Mission Indians, a federally recognized Indian tribe with its reservation in the State of California, hereby enacts this Tribal Court Ordinance to protect and promote its sovereignty and self-government; to provide for the administration of justice on the Morongo Indian Reservation, and thereby assure the maintenance of law and order on the Morongo Indian Reservation; to protect the health, safety and welfare of tribal members and all other persons and property within the jurisdiction of the Morongo Band of Mission Indians; and to allow the Tribe to take an active role in providing for the welfare and safety of the children within its jurisdiction, including preserving and strengthening the family ties, tribal heritage and cultural identity of the children within the Tribe's jurisdiction.

TITLE I -- GENERAL PROVISIONS

CHAPTER 1.0 – PRELIMINARY PROVISIONS

1.1.01 Authority

The Morongo Band of Mission Indians, a federally recognized Indian tribe and the governing body of the Morongo Indian Reservation, acting through its General Membership and pursuant to its inherent sovereign powers to enact ordinances and otherwise govern the Morongo Indian Reservation and to safeguard the health, safety and welfare of Morongo tribal members and Reservation residents, does hereby enact this Tribal Court Ordinance.

1.1.02 Findings and Declaration

The Morongo Band of Mission Indians finds and declares that:

- (a) A wide range of civil disputes and civil regulatory issues arise within the exterior boundaries of the Morongo Indian Reservation involving the health, safety, and welfare of tribal members, Reservation residents, Tribal employees and visitors, lands, and property;
- (b) The establishment of a Tribal Court that can exercise jurisdiction over civil disputes and regulatory issues occurring on the Morongo Indian Reservation, and adjudicate issues pertaining to Tribal and Federal law, and State law where applicable, is necessary to maintain peace and order on the Morongo Indian Reservation and the health, safety, and welfare of tribal members and Reservation residents, Tribal employees and visitors, lands, and property; and
- (c) The adoption of this Ordinance is in the best interests of the members of the Morongo Band of Mission Indians and will further the administration of justice on the Morongo Indian Reservation.
- (d) The adoption of this Ordinance governing solely civil and regulatory issues is not in derogation of the criminal jurisdiction vested in the Morongo Band of Mission Indians pursuant to its inherent sovereignty and Federal law, and such criminal jurisdiction is hereby reserved by the Morongo Band of Mission Indians.

1.1.03 Definitions

For purposes of Titles I and II of this Ordinance, the following words and phrases shall have the following meanings:

- (a) “Attorney” means any person admitted to a bar of any state;

- (b) “Spokesperson” means any person not admitted to a bar of any state and who is a member of the Morongo Band of Mission Indians or a relative of a party and speaks for that party in a case before the Tribal Court;
- (c) “Immediate Family” means a person’s parent, child, spouse, person in a spousal-type relationship, sibling, grandparent, grandchild, aunt, uncle, niece, nephew, or spouse of any of the above whether or not related by blood, adoption or marriage;
- (d) “Tribal Court” means the court of the Morongo Band of Mission Indians;
- (e) “Tribal Council” means the Morongo Band of Mission Indians Tribal Council duly elected and assembled;
- (f) “Tribe” means the Morongo Band of Mission Indians;
- (g) “General Membership” means all enrolled members of the Morongo Band of Mission Indians;
- (h) “Indian” means any person of Native American descent enrolled in a federally recognized tribe or recognized by his or her Indian community of residence or origin as being Indian, Alaska Native, or Native Hawaiian, or recognized by federal law as a Native American;
- (i) “Tribal Member” means an enrolled member of the Morongo Band of Mission Indians;
- (j) “Person” means a natural person, corporation, partnership, firm, association, or other entity;
- (k) “Reservation” means the area within the exterior boundaries of the Morongo Indian Reservation, including subsurface lands and air space, or otherwise subject to tribal jurisdiction;
- (l) “Judgment Creditor” means the party, whether plaintiff or defendant, in whose favor a money judgment has been rendered;
- (m) “Judgment Debtor” means the party, whether plaintiff or defendant, against whom a money judgment has been rendered;
- (n) “Tribal Law” means the laws, ordinances, regulations, resolutions, customs and traditions of the Morongo Band of Mission Indians in existence at the time of approval of this Tribal Court Ordinance or as may be duly-adopted at a later date.

1.1.04 Establishment of Tribal Court

The General Membership of the Morongo Band does hereby establish and adopt for the Morongo Band of Mission Indians a court to be known as the Morongo Tribal Court. The Tribal Court shall be empowered to exercise the inherent judicial authority of the Tribe as delegated herein or by subsequent enactments of the Tribe, and shall consist of two departments: the Trial Department and the Appellate Department.

1.1.05 Subject Matter Jurisdiction; Sovereign Immunity

- (a) The Tribal Court shall have jurisdiction to the fullest extent permitted by Federal law, which jurisdiction shall extend to, but not be limited to, the following:
1. actions involving disputes arising within the Reservation;
 2. actions brought by or against Tribal Members;
 3. actions alleging trespass on, damage to, or unauthorized use of lands within the Reservation, even if the conduct causing such trespass or harm occurs or originates outside the Reservation;
 4. actions alleging violations of any Tribal Law; and
 5. actions against the Tribe to which the Tribe has expressly waived its sovereign immunity.

Notwithstanding the foregoing, the Tribal Court shall have no authority to adjudicate civil disputes or probate matters concerning the ownership of beneficial interests in allotted trust lands. This exception to the Tribal Court's jurisdiction shall not be interpreted to limit or preclude the Court's jurisdiction over causes of action concerning the lease or sale of allotted trust lands.

- (b) Nothing contained within this Ordinance shall be deemed to constitute a waiver, abrogation or renunciation of the sovereign immunity of the Tribe from unconsented suit, which immunity is hereby affirmed.

1.1.06 Personal Jurisdiction

The jurisdiction of the Tribal Court shall extend to all Persons to the fullest extent permitted by Federal law, including but not limited to the following:

- (a) all Persons whose conduct threatens or has some direct effect on the political integrity, the economic security, or the health and welfare of the Tribe, Tribal

- Members, and others residing on or visiting the Reservation, including the parent(s) or guardian(s) of a Tribal member child; and
- (b) all Persons who consent, through conduct, contract, or otherwise, to Tribal Court jurisdiction. All Persons residing on, doing business on, owning or leasing real or personal property on, or voluntarily entering the Reservation shall be deemed to have impliedly consented to the jurisdiction of the Tribal Court.

1.1.07 Amendment

This Ordinance may be amended in the manner provided for the adoption of tribal ordinances. Amendments and additions to this Ordinance shall become a part of the Ordinance for all purposes and shall be codified and incorporated herein in a manner consistent with the numbering and organization of this Ordinance. No such amendment shall apply to any case pending before the Tribal Court before the effective date of the amendment.

1.1.08 Code Custodian

- (a) The Clerk of the Court is hereby established and appointed Code Custodian for the Tribe. The Code Custodian shall carry out all duties assigned under this Title including but not limited to:
- (1) Certifying by the signature of the Code Custodian under dated seal, any and all amendments, corrections, revisions, updates, and expansions to this Ordinance;
 - (2) Keeping an official indexed and written record, which shall be public, of all certifications made by the Code Custodian under this Section;
 - (3) Providing copies, free of cost, of all certified amendments, corrections, revisions, updates, and expansions of this Ordinance, to the following agencies, which are hereby declared depositories of the Morongo Tribal Court Ordinance: The Morongo Tribal Court, the Morongo Tribal Court Law Library, the Morongo Tribal Office, the Riverside County Law Library, and the Bureau of Indian Affairs.
 - (4) Providing copies of all certified amendments, corrections, revisions, updates, and expansions of this Ordinance to any other person or agency requesting such copies at a fee to be established by the Tribal Court;

- (5) Certifying under oath to the authentic status of the law as set out in the Morongo Tribal Court Ordinance and the specific date upon which any amendment or repeal went into effect.
- (b) Upon adoption of any and all amendments, corrections, revisions, updates, expansions, or judicial interpretations of the Morongo Tribal Court Ordinance, the Tribal Council shall convey a copy of the amendment, correction, revision, update, or judicial interpretation of this Ordinance together with a copy of the resolution or other official document adopting it to the Code Custodian.
- (c) Upon receipt of all the necessary documents from the Tribal Council, the Code Custodian shall make a written and dated Certification of Amendment which shall be permanently attached to said documents and kept in the permanent files of the Code Custodian. Any and all amendments, corrections, revisions, updates, or judicial interpretations of this Ordinance shall be effective on the date of the written certification required by this Section, and not before.
- (d) The Code Custodian shall, upon certification of any and all amendments, corrections, revisions, updates, or judicial interpretations of this Ordinance, convey copies of the affected sections to the depositories designated under this Title.

1.1.09 C.F.R. Courts Not Applicable

Any and all provisions of the Code of Federal Regulations, Title 25, Part 11, relating to the establishment or operation of “C.F.R.” courts as presently constituted or hereafter constituted which are inconsistent with or in conflict with the provisions of this Ordinance or the spirit of this Ordinance, such as Bureau of Indian Affairs courts, are no longer applicable to the Tribe or its Reservation.

1.1.10 Codification

Any law, enactment, resolution, code, or ordinance duly approved and adopted which is intended to be part of this Ordinance and enforced by the Tribal Court, shall be codified pursuant to the numbering and organization of this Ordinance. Failure to codify or include any law, enactment, resolution, code, or ordinance shall not affect its validity. The Tribal Council shall have the duty to assure the continued updating of this Ordinance.

1.1.11 Court Training Session

The Tribal Court shall periodically, and thirty (30) days prior to the appointment of a new judge, sponsor and pay for a Tribal Court training session to be held on or near the Reservation. The training session will be open to any person wishing to attend. The Tribal Court may require payment of a registration fee to help offset the costs. Each prospective candidate for Tribal Court judge will be required to successfully complete a Tribal Court sponsored training session, or equivalent training session upon prior written approval of the Tribal Council.

1.1.12 Annual Court Budget

The Chief Judge and Clerk shall annually submit a budget to the Tribal Council under the procedures used commonly by other tribal programs. The Tribal Council and General Membership shall strive to appropriate funds sufficient to satisfy that budget unless good cause requires otherwise.

CHAPTER 2.0 – APPOINTMENT AND REMOVAL OF JUDGES

1.2.01 Number of Judges

The Tribal Court shall consist of one Chief Judge and shall also consist of such Associate Judge(s) as may be needed from time-to-time. All Judges may serve on a part-time or full-time basis as the caseload and requirements of the Court may dictate.

1.2.02 Duties

(a) The Chief Judge will be responsible for:

- i. assisting in the development of Rules of Court and procedural standards for carrying out the tribal codes and ordinances;
- ii. hearing all matters delegated to the Court by ordinance;
- iii. maintenance of a list of Associate Judges to be called upon to hear cases in the event of disqualification of a judge or as deemed necessary. The list shall always contain three (3) qualified Associate Judges;
- iv. development and maintenance, with the assistance of the Clerk of the Court and the Court Administrator, of a system for record keeping and a docket system;
- v. maintenance of current copies of tribal, federal, and state laws applicable to proceedings coming before the Court;
- vi. preparation of the Court's annual plan and budget;
- vii. supervising and coordinating training of Tribal Court personnel.

- (b) Associate Judge: The Associate Judge, if any, shall be responsible for hearing all cases assigned by the Chief Judge and other duties as assigned by the Chief Judge.
- (c) Judicial Immunity: All Tribal Court judges shall have judicial immunity from suit while acting in an official capacity within the course and scope of their tribal authority.

1.2.03 Term

The Chief Judge of the Tribal Court shall be appointed by the Tribal Council to a term of four (4) years. All Associate Judges of the Tribal Court shall be appointed by the Tribal Council to a term of two (2) years. The Tribal Council may reappoint the same person as a judge for subsequent and/or consecutive terms.

1.2.04 Compensation

Each judge shall be compensated on a basis to be determined by the Tribal Council under written contract. Under no circumstance may the compensation of a Tribal Court judge be reduced during the term of office of that judge, unless the hours to be served are reduced.

1.2.05 Eligibility and Qualifications

To be eligible to serve as a judge of the Tribal Court, a person must: (1) be at least thirty (30) years of age; (2) have a bachelor's degree, or the equivalent of one year Tribal Court training; or a minimum of two years experience practicing in Tribal Court; or extensive knowledge of Indian Law, Federal Law, and California Law; (3) never have been convicted of, found guilty of, or pled no contest to a felony or a crime involving dishonesty or moral turpitude; (4) not be otherwise employed by the Tribe or hold any elective office of the Tribe during the term as judge; (5) not be an employee, consultant, agent, contractor, or partner of any person doing business with or leasing land from the Tribe; and (6) have successfully completed a court training session or equivalent as approved by the Tribal Council within two years before the appointment date and every two years thereafter. A judge must pass a drug test and submit to a background investigation. No person shall serve as a judge of the Tribal Court until a bond has been posted, at tribal expense, in an amount determined by the Tribal Council, or until the person is covered by a blanket bond provided for all tribal employees. The order of preference for appointment as a judge shall be Tribal Members, then other Indians, then the general public.

1.2.06 Disqualification of Judge

Any judge of the Tribal Court shall disqualify himself or herself, or be disqualified by a majority vote of the other judges, where he or she has any direct or indirect personal or financial interest in a case, cannot be impartial, or the case involves a member of the judge's immediate family or someone residing in his or her household. Any party to a case may bring a motion for disqualification on these grounds. The Tribal Court shall conduct a hearing on said motion and if the Tribal Court grants the motion, shall refer the matter to another judge of the Tribal Court, or if no judge is available, shall appoint a Temporary Judge to hear the case. All Temporary Judges must meet the qualifications of a Tribal Court judge. If the Tribal Court denies the motion, it shall do so by written order setting forth the reason for the denial.

1.2.07 Judicial Cooperation

Judges and personnel of the Tribal Court shall cooperate with branches of federal and state courts and agencies when such cooperation is required by applicable Federal law or is consistent with Tribal Law.

1.2.08 Judicial Conduct

All judges shall protect and promote the highest standards of judicial conduct. A judge shall uphold the integrity and independence of the judiciary, shall avoid impropriety and the appearance of impropriety in all of the judge's activities, shall perform the duties of judicial office impartially and diligently, shall so conduct the judge's quasi-judicial and extrajudicial activities so as to minimize the risk of conflict with judicial obligations, and shall refrain from inappropriate political activity.

1.2.09 Removal of Judges

During the tenure of his or her appointment, any Judge may be suspended or dismissed for cause by the Morongo Tribal Council by a vote of 3/4 of the Council members at a duly called meeting for this purpose. To begin the process, a Tribal Council member(s) or Tribal member(s) must prepare and submit to the Tribal Council a sworn, written statement setting out the facts and reasons for the proposed action as to the Judge in question. This sworn statement shall be provided to the Judge and to members of the Council at least fourteen (14) calendar days before a special meeting of the Tribal Council scheduled for the purpose of hearing this matter. The meeting to consider the allegations shall be held in Executive Session at which the accused Judge shall be given an adequate opportunity to answer any and all charges. Causes deemed sufficient for suspension or dismissal for cause shall include, but not be limited to: use of illegal

drugs or alcohol while on active duty, conviction of any offense other than minor traffic violations and other infractions, inappropriate conduct on the bench, misuse of official position for personal gain, or failure to perform judicial duties adequately and according to the terms of this Ordinance and other rules adopted for the Tribal Court. The decision of the Morongo Tribal Council shall be issued within seven days of the meeting held for the purpose of hearing this matter and shall be final.

1.2.10 Temporary Judges

Whenever the need arises, the Tribal Court may make temporary appointments of persons who otherwise meet the qualifications in this Chapter to serve as Temporary Judges. Appointment as a Temporary Judge shall last only as long as necessary to hear the case(s) assigned.

1.2.11 Oath of Office

Before taking office, and in the presence of the Tribal Council, all tribal judges shall be required to take the following oath of office:

“Tribal Judge's Oath”

I, _____, do solemnly swear:

1. “I will respect and uphold the laws, customs and traditions of the Morongo Band of Mission Indians,”
2. “I will, at all times, act in a professional manner and will promote respect for the integrity of the laws, customs and traditions of the Morongo Band of Mission Indians,”
3. “I will protect and promote the intent and purpose of the Tribal Court Ordinance of the Morongo Band of Mission Indians,”
4. “I will be faithful and honest to the office of the tribal judge for as long as I hold that office,” and
5. “I will uphold and administer all laws fairly and equally to all persons who may come before the Tribal Court without bias, prejudice or discrimination.”

Tribal Court Judge

"Subscribed and Sworn to before me this _____ day of

_____, 20_____.

Tribal Chairperson

1.2.12 Intertribal Agreements

By written resolution, the Tribal Council may enter into an agreement with other Indian tribes or organizations to establish and participate in an organization which makes court personnel and/or administrative services available to any or all participating tribes. In the event of such an agreement, and for the sole purpose of carrying out that agreement, such personnel may be appointed, compensated, and/or removed as provided for in the agreement notwithstanding any provision in this Ordinance.

CHAPTER 3.0 – APPELLATE DEPARTMENT

1.3.01 Appeals

There shall be an Appellate Department of the Tribal Court. The Tribal Council may contract with an organization for handling appeals from the Trial Department of the Tribal Court as needed. Otherwise, any Tribal Court judge may hear an appeal in the Appellate Department provided that he or she was not the Trial Department judge who heard the case. A panel consisting of an odd number of judges, though not less than three, shall hear any appeal with a majority vote being the decision of the Appellate Department.

1.3.02 Limitations

There may be appeal limitations established by the Rules of Court. Limitations may specify the type of cases which may be appealed, the right of appeal, the grounds of appeal, the time for appeal, and the manner in which appeals may be requested and granted.

1.3.03 Stay of Judgment

In any case where a party has filed a notice of appeal as established by the Rules of Court, the party filing the appeal may request that the judgment be stayed until the Appellate Department rules on the appeal. In the event a stay is granted, the party filing the appeal shall

post a bond, deposit cash, or give other assurance of performance of the judgment in an amount set by the Tribal Court unless otherwise ordered, or as provided in Section 1.3.07.

1.3.04 Appellate Hearing

The Appellate Department shall have jurisdiction to review final orders and judgments of the Trial Department. The Appellate Department shall hear the matter at such time and at such place as designated in the Rules of Court.

1.3.05 Evidence

The record and evidence that was developed in the Trial Department shall be used in the appellate proceedings. The Appellate Department may also consider written briefs and oral arguments of the parties. The Appellate Department shall not retry the case or hear testimony. No new evidence will be admitted as part of the appeal.

1.3.06 Grounds for Reversal or Modification

A judgment or final order of the Trial Department shall be reversed or modified where the record indicates that the Trial Department incorrectly applied the law in a manner that materially affected the outcome of the case or when the judgment or final order is not supported by substantial evidence in light of the record taken as a whole. Substantial evidence is such evidence that a reasonable mind might accept as adequate to support a conclusion and is more than a mere scintilla. No judgment or final order shall be reversed where the record shows that the same result would have been attained even had the Trial Department not committed the alleged error or errors.

1.3.07 Tax Appeal

Any party contesting the assessment of any taxes owed to the Tribe, or any party appealing a judgment for taxes owed or a judgment for any other remedy provided under any tax ordinance of the Tribe, must pay the assessed tax or judgment, or provide security equal to the amount of such tax assessment or judgment, before that party may appeal

1.3.08 Decisions

The Appellate Department may either affirm the judgment as entered, modify it, reverse the judgment, or vacate the judgment and remand the case back to the Trial Department for further proceedings. The Appellate Department may also dismiss the appeal for failure to comply with this Ordinance or the Rules of Court. The decision of the Appellate Department shall be

final. The Appellate Department shall provide a written opinion to the parties explaining the decision.

CHAPTER 4.0 – CLERK AND RECORDS

1.4.01 Appointment of a Clerk

The Tribal Council shall employ a Clerk of the Court and, if necessary, one or more full-time or part-time clerk(s) or other staff.

1.4.02 Qualifications

The Court Clerk shall have a high school diploma or the equivalent thereof; have a minimum of two (2) years experience as a paid secretary or paid Clerk; be eligible to become a registered Notary; and shall not have been convicted of a felony or any other crime involving dishonesty. There shall be a six (6) month probationary period after hiring. Furthermore, there shall be Indian preference granted for the hiring. The order of preference for appointment as Clerk shall be Morongo Tribal Members, then other members of federally-recognized tribes, then other Indians, then the general public.

1.4.03 Duties of the Court Clerk

The Court Clerk shall have the following duties:

- (a) give appropriate assistance to the Tribal Court and to residents of the Morongo Indian Reservation in drafting complaints, summons, warrants, and other documents as required; provided, however, the clerk shall not give legal advice;
- (b) attend all sessions of the Tribal Court;
- (c) keep a record of all proceedings of the Tribal Court;
- (d) administer oaths and affirmations to witnesses;
- (e) bear responsibility for all monies collected or paid out by the Tribal Court;
- (f) deposit all receipts into the Tribal accounting system earmarked for inclusion in the Tribal Court's annual plan and budget;

1.4.04 Bond

The Clerk, before entering upon his or her duties, shall, at tribal expense, post bond in an amount determined by the Tribal Council or shall be covered by a blanket bond provided for tribal employees.

1.4.05 Records

The Tribal Court shall keep for its own information and for inspection by duly authorized and qualified officials, a record of all proceedings of the Tribal Court, which record shall reflect the title of the case, the names of the parties, the substance of the complaint, the name and address of all witnesses, the date of the hearing or trial, by whom conducted, the findings of the Tribal Court and the judgment, together with any other facts or circumstances important to the case. Such records of all proceedings shall be kept at the Tribal Court office. All records of the Tribal Court shall be considered public records except as otherwise ordered by the Tribal Court. Access to files shall be closely supervised by Tribal Court personnel. No Tribal Court records may be withdrawn from the custody of the Clerk of the Court.

1.4.06 Seal

The Clerk shall have an official seal which shall be impressed upon the original of each complaint or other paper filed with the Tribal Court, along with a notation of the date of filing.

1.4.07 Copies of Law

The Tribal Court shall secure and maintain current copies of the Tribe's ordinances, ballot measures, and laws, relevant volumes of the United States Code, Title 25 of the Code of Federal Regulations, and other material deemed necessary for the business of the Tribal Court.

1.4.08 Court Law Library

Establishing a full and complete Tribal Court Law Library shall be a high priority of the Tribe. Any Tribal Member, party to a case, or member of the Tribal Bar may have access to the Tribal Court Law Library, provided that no materials may be taken from the Tribal Court Law Library without prior written approval.

TITLE II -- CIVIL ACTIONS

CHAPTER 1.0 – PLEADINGS

2.1.01 Commencement of Civil Action

- (a) Pleadings are the formal written documents filed with the Court by the parties setting forth their respective claims and defenses, for the judgment of the Tribal Court. Pleadings include complaints, answers and cross-complaints. All pleadings must include a caption setting forth the name of the court, the names of the parties, the title of the action, the file number, the name, address and telephone number of the plaintiff or his or her spokesperson or attorney and, if an attorney, his or her bar number and State of membership, and any other information

required by this Ordinance or Rules of Court. All filings with the Tribal Court must be signed by the party or their attorney or representative.

- (b) An individual (the plaintiff or an officer designated by the Tribal Council to prosecute an action in the Tribe's name) commences a civil action by filing a written complaint with the Tribal Court against one or more individuals or entities (known as the defendant(s)). A complaint must list all claims for relief and the facts supporting those claims. Upon the filing of a complaint, the Clerk of the Court shall issue a summons to which shall be attached a copy of the complaint, directing the opposing party (known as the defendant) to answer the complaint or otherwise appear and defend. The summons shall notify the defendant that failure to answer in writing or otherwise appear and defend may result in a default judgment against the defendant. The complaint and summons must be served on the defendant by hand or by U.S. mail or other similar delivery service so long as the defendant has to sign for the package, unless the Tribal Court orders otherwise. The original proof of service of the complaint and summons must be filed with the Tribal Court.
- (c) A defendant, whether served by complaint or cross-complaint, must file and serve a written answer or other response within thirty (30) days from the date of service of the complaint and summons, unless the parties agree to extend the time for filing and service. Service may be by hand or by U.S. mail or other similar delivery service. A written answer should admit, admit in part, or deny each statement in the complaint and set forth any affirmative defenses to the complaint. Failure to respond in writing to the complaint may result in a default judgment against the defendant.
- (d) A party may file a counterclaim, including any claim the party has against an opposing party arising out of the same transaction or occurrence that is the subject of the opposing party's claim. A counterclaim may not require the presence of third parties over whom the Court cannot acquire jurisdiction. An individual commences this counterclaim by filing a cross-complaint containing all claims for relief and supporting facts with the Tribal Court.

- (e) A cross-claim may be filed, including any claim by one party against a co-party arising out of 1) the transaction or occurrence that is the subject matter of the original claim or counterclaim, or 2) any property that is the subject matter of the transaction.

2.1.02 Proofs of Service

All proofs of service shall be signed under penalty of perjury. The original of all proofs of service shall be filed with the Tribal Court after service. A defendant may serve papers on a plaintiff by mail at the address shown on the complaint. After serving the complaint by hand or by U.S. mail or other similar delivery service so long as the defendant has to sign for the package, unless otherwise ordered by the Tribal Court, the plaintiff may serve papers on the defendant by mail at the address shown on the answer to the complaint.

2.1.03 Frivolous Filings

The Tribal Court may sanction any person who submits a frivolous filing or files a document for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation. The Tribal Court may also impose sanctions if it finds a filing to contain intentional misstatements or statements that omit material facts or law that the person knew or should have known were relevant to the action.

2.1.04 Statute of Limitations

Unless provided otherwise by tribal law governing a specific subject matter area and the filing of claims arising thereunder, a plaintiff must file a complaint within one (1) year after the plaintiff discovers, or through the use of reasonable diligence should have discovered, the facts giving rise to the claim for relief.

CHAPTER 2.0 – CIVIL PROCEDURE

2.2.01 Standard of Proof

The plaintiff and cross-complainant, if any, shall have the burden of proving his or her case by a preponderance of the evidence unless provided otherwise by Tribal Law.

2.2.02 Applicable Law

In all civil cases, the Tribal Court shall apply Tribal Law first, then federal law. If there is no relevant Tribal Law or federal law to apply, the Tribal Court may use and adopt as the Tribal Law, the law from another tribe or the law of the State of California. Communications privileged in either a California federal court or a California state court shall be privileged in the Tribal

Court (e.g., lawyer-client privilege, confidential marital communications privilege, physician-patient privilege, etc.). Furthermore, if the Tribe enters into any intertribal agreement pursuant to §1.2.11 of this Ordinance and any conflict arises between the law of the Morongo Tribe and the law of the other tribes in said agreement, the court, in its discretion, can choose to apply the laws of the other tribes or tribal organization.

2.2.03 Customs

In any civil case where the parties agree, and where there is no Tribal law, ordinance or motion to the contrary, the customs and traditions of the Tribe may be used exclusively to resolve the dispute. Where any doubt arises as to the customs and traditions of the Tribe, the Tribal Court may at its discretion request the advice and input of impartial elders familiar with these customs and traditions, either through formal testimony or through less formal procedures mutually agreed to by the Tribal Court and the parties. The Tribal Court shall keep a journal of the customs and traditions of the Tribe as related by these impartial elders.

2.2.04 Evidence

The Tribal Court should consider, but is not bound to apply, the Federal Rules of Evidence when hearing cases.

2.2.05 No Jury Trials

There shall be no right to a jury trial in any civil action.

2.2.06 Informal Dispute Resolution

After the review of a filed complaint and answer, the Tribal Court may require that the parties mediate a dispute before having it heard in the Tribal Court and may create a panel to hear and mediate such disputes before they may be heard in the Tribal Court.

2.2.07 Contempt of Court

Any party, person in the courtroom, or spokesperson or attorney who fails to maintain the respect due the Tribal Court, who abuses or interferes with the process or proceedings of the Tribal Court, or who engages in offensive conduct in the courtroom may be held in contempt of court and subject to a sanction set by the Court in an amount which shall not be less than two thousand five hundred dollars (\$2,500) and/or disbarment.

2.2.08 Rules of Court

The Tribal Court shall adopt Rules of Court to govern procedures in the Tribal Court and to provide clear guidance to persons appearing in Tribal Court. The Rules of Court shall not conflict with Tribal Law.

2.2.09 Tribal Bar

- (a) Any person eighteen (18) years of age or older who is competent to do so may represent himself or herself in Tribal Court. Any person seventeen (17) years of age or younger, or not competent, must appear through a parent or legal guardian, who may designate a spokesperson or attorney on behalf of the minor.
- (b) Any person appearing in Tribal Court shall have the right to be represented by a spokesperson or attorney at his or her own expense, provided that such spokesperson or attorney shall first have been admitted to the Tribal Court Bar. At the time of his or her appearance, no spokesperson or attorney may be a member of the Tribal Council, an employee of the Tribe or an employee of the Tribal Court, though such persons may represent themselves in their own cases.
- (c) To be admitted to the Tribal Court Bar, a person must be at least eighteen (18) years of age, meet the definition of a spokesperson or attorney, be of good moral character, be approved by the Tribal Court, sign and take the spokesperson's/attorney's oath, and pay the Tribal Court Bar admission fee. The Chief Judge must have certified that such requirements have been met. Admission and fee shall be good for a period of one (1) year from the date of execution of the spokesperson's/attorney's oath.
- (d) The Tribal Council may appoint any member of the Tribal Bar in good standing as a Tribal Prosecutor. A Tribal Prosecutor shall have the authority to file civil actions or complaints on behalf of the Tribe, and to otherwise represent the Tribe's interests, consistent with the provisions of any lawfully enacted ordinance. The Tribal Council shall establish the terms and conditions of such appointment, including reasonable compensation for services rendered on behalf of the Tribe.
- (e) The oath which all persons wishing to appear as a spokesperson or attorney in the Tribal Court shall take is as follows:

SPOKESPERSON'S/ATTORNEY'S OATH

I, _____, do solemnly swear that:

1. I have read the Tribal Court Ordinance of the Morongo Band of Mission Indians and am familiar with its contents;
2. I will respect and obey the law of the Morongo Band of Mission Indians in all respects;
3. I will abide by the Rules established by the Morongo Tribal Court;
4. I will, at all times, maintain the respect due the Tribal Court and its officers and acknowledge that I may be penalized if I do otherwise;
5. I will not counsel or appear before the Tribal Court in any suit or proceeding which shall appear to me to be unjust or defend any suit except such as I believe to be honestly debatable under the laws of the Tribe or of the United States; and
6. I will employ such means only as are consistent with truth and honor and will never seek to mislead a judge by any false statement.

Spokesperson/Attorney

Subscribed and sworn to before me this ____ day of _____, 20 ____.

Judge or Clerk

- (f) The Clerk of the Tribal Court shall maintain a roster of all spokespersons and attorneys admitted to practice before the Tribal Court. The Clerk will also keep on file the signed oaths of all such persons.
- (g) Any person wishing to appear as a spokesperson or attorney in the Tribal Court who otherwise qualifies shall pay a membership fee set by Court Rule, which fee shall be for one year.
- (h) Any spokesperson or attorney violating their oath shall be subject to disbarment after a hearing on the matter.

CHAPTER 3.0 – JUDGMENTS

2.3.01 Judgments

The Tribal Court shall enter its judgment in open court or, at the judge's discretion, in writing within twenty (20) days from the end of the presentation of all testimony and evidence and the filing, if any, of post-hearing briefs. Violation of this provision shall be cause to withhold a judge's pay until judgment is rendered. All judgments shall be in writing and may be appealed to the Appellate Department.

2.3.02 Costs and Attorney Fees

The Tribal Court may, in its discretion, award costs, attorney fees, and interest to the prevailing party unless otherwise prohibited by Tribal Law.

2.3.03 Defendant's Estate

A Tribal Court judgment shall be considered a lawful debt in all proceedings held to distribute a defendant's estate.

CHAPTER 4.0 – ENFORCEMENT OF JUDGMENTS

2.4.01 Satisfying a Judgment

Satisfaction of a judgment is not the responsibility of the Tribal Court, unless the Tribal Court is asked to enforce a judgment of the Tribal Court with which a party to an action is not complying. If a person against whom a judgment has been entered fails to comply with that judgment within a reasonable time after that judgment becomes final, the prevailing party may petition the Tribal Court to take further appropriate action to enforce that judgment.

2.4.02 Trust Assets

Assets held in trust by the United States for an individual, or restricted by the United States against alienation, shall not be available to satisfy a judgment of the Tribal Court.

CHAPTER 5.0 – JUDGMENTS OF OTHER COURTS

2.5.01 Full Faith and Credit

The Tribal Court shall give full faith and credit to the orders and judgments of the duly authorized courts of other tribes, states, or the federal government unless:

- (a) The court in question does not recognize the orders and judgments of the Tribal Court;
- (b) The court in question did not have jurisdiction over the case or a party to the case;
- (c) The order or judgment was based on fraud;

- (d) The order or judgment is on appeal or being contested in another jurisdiction; or
- (e) To recognize the order or judgment would violate the public policy of the Tribe or would be likely to harm the culture, traditions, or sovereignty of the Tribe.

2.5.02 Application

Any person may apply in writing to the Tribal Court for an order accepting a civil judgment from another tribal court, or a state or federal court, as a judgment of the Morongo Tribal Court.

2.5.03 Review by Court

The Tribal Court shall review the application described in Section 2.5.02 within ten (10) days of its filing. The Tribal Court shall then decide whether or not to enter the judgment of the other court as a Morongo Tribal Court judgment.

2.5.04 Payment of Judgment

Upon the entry of the order declaring the other court's judgment to be a judgment of the Morongo Tribal Court, the provisions of this Ordinance regarding enforcement of judgments shall apply.

TITLE III -- CHILD WELFARE

PART I: PURPOSE, RIGHTS AND DUTIES

CHAPTER 1.0 – BACKGROUND AND INTRODUCTION

3.1.01 Purpose

The Tribe has determined that its children are the most valuable resource of the Tribe, and that provision for their welfare is of utmost importance. The Tribe recognizes that the rights and welfare of its children must be safeguarded and fostered in order to ensure the future of the Tribe. The purpose of this Child Welfare code is to allow the Tribe to take an active role in providing for the welfare and safety of the children within its jurisdiction, to preserve and strengthen family ties whenever possible, including improvement of home and environment, to protect and preserve tribal heritage and cultural identity of the children within the Tribe's jurisdiction, and to ensure that other courts and agencies will fully cooperate with the Tribe in fulfilling the purposes of this code. The specific purposes include but are not limited to:

- (a) To secure for each child subject to these provisions such care and guidance, preferably in the child's own home, as will best serve his/ her welfare and the interests of his/her tribe and society in general;

- (b) To preserve and strengthen family ties whenever possible, including improvement of the home environment;
- (c) To preserve the tribal heritage and cultural identity of the child;
- (d) To remove a child from the custody of its parents, guardian or custodian, only if the child's welfare and safety or the protection of the public would otherwise be endangered;
- (e) To secure for any child removed from the custody of its parents, the necessary care, guidance, and discipline to assist the child in becoming a responsible and productive member of the child's tribe and society in general; and
- (f) To return the child to his/her family at the earliest time possible consistent with the child's best interest.

3.1.02 Exclusive Jurisdiction

The Tribal Court shall have exclusive jurisdiction over any case involving the custody or protection of any child who resides or is domiciled on the Reservation and is a member of, or eligible for membership in, the Tribe, or is a direct lineal descendant of a member of the Tribe. If a child resides or is domiciled on the Reservation and is a member of or eligible for membership in, or is a direct lineal descendant of a member of, another Indian tribe, the Court may in its sole discretion exercise jurisdiction over such child.

3.1.03 Concurrent Jurisdiction

If a Court of competent jurisdiction determines that the Tribal Court does not have exclusive jurisdiction over a case covered by this code, the Tribal Court shall have jurisdiction concurrent with the state courts over any such case involving a child who is a member of, or eligible for membership in, or a direct lineal descendant of a member of the Tribe. The Tribe may, at its sole option, determine to exercise concurrent jurisdiction rather than exclusive jurisdiction when the best interests of the child so require.

3.1.04 Transfer of Jurisdiction

The Tribal Court may, in its sole discretion, accept or decline transfer of jurisdiction from any other court pursuant to Title I, §101 (b) of Public Law 95-608, the Indian Child Welfare Act, 25 U.S.C. §1911 (b), in any case involving a child who is a member of or eligible for membership in, the Tribe, or is a direct lineal descendant of a member of the Tribe.

3.1.05 Continuing Jurisdiction

Except as otherwise provided in this Title, the jurisdiction of the court over any child adjudicated in need of protection or court supervision shall continue until the child becomes eighteen years of age, unless earlier terminated by a court order.

3.1.06 Definitions

Terms under this Title shall be liberally construed so as not to limit the jurisdiction of the Court over children of Indian descent, and to facilitate the authority of the Court to act to protect the interests of these children and their families. The following words and phrases shall have the following ascribed meaning under this Title:

- (a) “Abuse” means infliction of physical, emotional or mental injury on a child, or sexual abuse or sexual exploitation of a child and shall include failing to maintain reasonable care and treatment or exploiting or overworking a child to such an extent that his/her health or emotional well-being is suffering harm or is being placed at risk.
- (b) “Adult” means an Indian person that has attained the age of eighteen (18) years or older; or an Indian person who is the parent of a minor child.
- (c) “Child” means an Indian person under the age of eighteen (18) years of age.
- (d) “Child in Need of Assistance” means a child:
 - (1) who has been neglected by the child’s parents, guardian, or custodian; or
 - (2) who is being or has been subject to physical, sexual or emotional abuse by or with the knowledge or acquiescence of the child’s parents, guardian, or custodian; or
 - (3) who lacks parental or adult supervision, care and control necessary for the child’s well-being because of the failure or inability of the child’s parents, guardian or custodian to provide such care and control; or
 - (4) who for any reason is deprived of the subsistence, education, medical or other care or necessities essential for the child’s safety and well-being; or
 - (5) whose parents, guardian, or custodian are for any reason unable to discharge their parental responsibilities to and for the child; or
 - (6) who has been placed for care or adoption in violation of the law. (For example, has been left in the care of others without an adequate plan.)

- (e) “Child Protection Proceeding” means a case involving a child who is found to be in need of assistance, including proceedings for foster care placement, termination of parental rights, a pre-adoptive or adoptive placement or an adoption that is contested by a parent, custodian or guardian.
- (f) “Change of Custody” means transfer of legal custody by the court from a parent or a previous legal custodian to another person, or agency.
- (g) “Decision Hearing” means a hearing to determine what course of action should be taken concerning a child that has been found by the Court to be abused, neglected or a dependent of the Court. Such hearings may be part of the proceeding which includes the Temporary Custody Hearing, or may be held after a Temporary Custody Hearing.
- (h) “Domicile” means, for the purpose of this ordinance, that any child who is enrolled or eligible for enrollment in the Tribe or is a direct lineal descendant of a member of the Tribe, is considered to be domiciled within the exterior boundaries of the Morongo Indian Reservation.
- (i) “Extended family” means the person's parents, children, grandparents, great-grandparents, great-aunts, great-uncles, aunts, uncles, cousins, sisters and brothers, or as otherwise defined by the Tribe.
- (j) “Family Preservation/Intervention-Prevention Services” means services provided to the family to prevent removal of an Indian child.
- (k) “Guardian” means a person assigned by a court of law or other than a natural or adoptive parent, having the duty and authority to provide for the care and control of the child. The person may be a “Permanent Guardian,” a “Temporary Guardian,” or a “Guardian Ad Litem.”
- (l) “Guardian Ad Litem” means a person appointed by the court to represent the child's interests before the court.
- (m) “ICWA caseworker” means “Indian Child Welfare Act caseworker,” who is the tribal representative representing the tribe in any child welfare proceeding.
- (n) “Indian Custodian” means any Indian person who has legal custody of an Indian child under tribal law or custom or under State law or to whom temporary

physical care, custody and control has been transferred by the parent of such child;

- (o) “Parental care and responsibility” means the supervision, direction, discipline and responsibility for a child’s welfare, which must be reasonably exercised by a parent, guardian or custodian for the well-being of the child.
- (p) “Party or Parties” shall mean any family member involved in an Indian child welfare proceeding through the Tribal Court.
- (q) “Probable cause” shall, for the purposes of a Child Protection Proceeding, mean testimony, official reports of other evidence from a trustworthy source that would cause a reasonable person to believe that a child may be a Child in Need of Assistance and that an investigation and hearing should be conducted to determine all the facts.
- (r) “Temporary Custody Hearing” means a hearing to determine whether the allegations of a petition are supported by clear and convincing evidence.
- (s) “TCPS worker” means a Tribal Child Protective Services worker that may be employed by the Tribe to represent the interests of the child.
- (t) “Visitation” means supervised or unsupervised visits, as the court sees fit, for the best interests of the child.
- (u) “Ward of the Court” means a child who has been taken into custody by the Tribal Court, making the court the child’s legal guardian.

CHAPTER 2.0 – RIGHTS OF CHILD AND PARENT

3.2.01 Rights and Interests of the Child

- (a) **Child Protection Proceedings.** In all Child Protection Proceedings, the Court shall hear all the facts and evidence brought before it and shall consider the rights of all parties in the case when deciding what is in the child’s interest. The best interests of the child shall be placed above the rights of any other persons or entity.
- (b) **Child Custody Proceedings.** In all Child Custody Proceedings (i.e., where the child has previously been removed from the custody of the child’s parent(s), guardian(s) or custodian(s) in an emergency removal), the court shall hear all the facts and evidence brought before it and shall consider the rights of all parties in

the case, including those of the child. The Court shall award custody on the basis of the best interests of the child whose rights shall be more important than the rights of any other person or entity. The Court may award shared custody if it finds that such shared custody is in the child's best interests.

- (c) **Tribal Membership Status.** Since a child's cultural heritage is crucial to its well-being, the Tribal Court will at all times seek to protect a child's connection to the Tribe. Termination of parental rights will not affect the minor's tribal membership status nor the child's rights or privileges as a tribal member, whether written or unwritten, nor shall it affect the jurisdiction of the Tribal Court over the child.

3.2.02 Rights and Interests of Parents

- (a) **Parental Rights.** Recognizing the important bond between a parent and a child, the provisions of this Title will not apply to custody proceedings between parents.
- (b) **Voluntary Consent to Termination of Parental Rights.** Any parent or guardian may voluntarily consent to the termination of 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 a judge or designated representative of the Tribal Court and the parent or Indian custodian signs a statement declaring that they were fully informed of the legal ramifications of their voluntary consent;
 - (3) a judge or designated representative of the Tribal Court certifies in writing that the terms and consequences of the consent were fully explained in detail and were fully understood by the parent or Indian custodian and that the parent or Indian custodian knowingly and voluntarily relinquished their parental rights; and
 - (4) the person relinquishing parental rights is informed that he/she has the right to be provided with an interpreter to explain the voluntary consent, its consequences and their right to withdraw the voluntary consent, the time limit to do so and the procedure for doing so.
- (c) **Withdrawal of Voluntary Consent.** A voluntary consent to the termination of parental rights can be withdrawn anytime within ten (10) days of giving the

voluntary consent. After ten (10) days, withdrawal can only be done with the Court's permission. The Court shall give permission only if it finds that it is in the best interests of the child to do so.

CHAPTER 3.0 – DUTIES OF THE COURT

3.3.01 Monthly Reports

Subject to sections 3.5.06 and 3.6.01 of this Title, the Tribal Court will furnish the Tribal Council with a monthly report concerning all court actions taken under this Title.

CHAPTER 4.0 – DUTIES OF TRIBAL CHILD PROTECTIVE SERVICES WORKERS

3.4.01 Tribal Child Protective Services Workers

The Tribal Child Protective Services (“TCPS”) worker’s duties involve the investigation of the child’s home environment, history and associations, the present living conditions of the child and family, and evaluation of the familial relationship if no intervention occurs. The TCPS worker’s duties include, but are not limited to the following:

- (a) The TCPS worker is required to investigate all reported allegations of abuse, neglect or exploitation and initiate investigation of suspected abuse, neglect or exploitation within 48 hours of such allegations.
- (b) Investigation of suspected/reported abuse, neglect and/or exploitation incidents must comply with the legal and procedural requirements of the agency.
- (c) The TCPS worker shall establish client and collateral contacts, and will assess each situation and determine the need to prepare and file a petition in the Tribal Court for removal of the child.
- (d) When a petition is necessary, the TCPS worker will document all facts pertaining to the investigation/case that may be used to show clear and convincing proof that the child should be determined to be a “Ward of the Court” as requested in the petition.
- (e) When the TCPS worker determines that removal of the child is not in the best interests of the child, the TCPS worker will refer the case to ICWA’s Preservation/Intervention-Prevention program.
- (f) The TCPS worker will work with the ICWA caseworker and share information on the social, economic, and personal background of the parent(s), guardian(s), or

custodian(s) of the child(ren), to determine the needs of the parent(s), guardian(s), or custodian(s) and those of the child(ren).

- (g) The TCPS worker will develop an individual case/treatment plan (i.e., set goals, action steps and time frames) for reunification to be recommended to the Tribal Court.
- (h) When a case plan is ordered by the Tribal Court, the TCPS worker will implement a case plan specific to the best interests of the child, with and through a meeting with the parent(s), guardian(s), or custodians) of the child, so long as such meeting is practicable due to the availability of the adult responsible for the child.
- (i) The TCPS worker will meet with the client and the ICWA caseworker at least twice a month to monitor and evaluate the case plan, to update case goals and action steps, to identify new client needs, and to assist the Court and participating individuals in assessing progress.
- (j) The TCPS worker shall keep a record and document evidence of abuse, neglect or exploitation to establish or update each client file and to prepare for court testimony.
- (k) The TCPS worker shall review and evaluate temporary and long-term placement of children in relative homes, foster homes, group homes, institutions or child care agencies to assess the need to continue or terminate placement.
- (l) The TCPS worker shall be available to testify in Tribal Court cases or hearings involving abuse, neglect, exploitation, foster care and/or protective service cases to explain and interpret information pertinent to investigations, assessments and other court hearings.
- (m) The TCPS worker shall recommend child reunification with family when appropriate or long-term placement to the Tribal Court.
- (n) The TCPS worker shall notify all interested parties of recommended child placement changes.

CHAPTER 5.0 – DUTY TO REPORT CHILD ABUSE AND NEGLECT

3.5.01 Duty to Report

Any person who has a reasonable cause to suspect that a child has been sexually, physically, mentally or emotionally abused shall, at the earliest opportunity, report such abuse to

the Tribal TCPS worker or other person or department designated by the Tribe. Those persons reporting, except those specified in Section 3.5.02 below, may remain anonymous.

3.5.02 Persons Specifically Required to Report

- (a) Any person in the categories listed below who has reasonable cause to suspect that a child may be a Child in Need of Assistance shall, at the earliest opportunity, submit, by telephone or otherwise, an oral report, or cause an oral report to be made, of the suspected condition to the tribal law enforcement department, social services department, BIA Criminal Investigator or Federal Bureau of Investigation:
- (1) physician, surgeon, dentist, podiatrist, chiropractor, nurse, dental hygienist, optometrist, medical examiner, emergency medical technician, paramedic or health care provider;
 - (2) teacher, school counselor, instructional aide, teacher's aide, teacher's assistant or bus driver employed by any tribal, federal, public or private school;
 - (3) administrative officer, supervisor of child welfare and attendance or truancy officer of any tribal, federal, public or private school;
 - (4) child day care worker, Head Start teacher, public assistance worker, worker in a group home or residential or day care facility, or social worker;
 - (5) psychiatrist, psychologist or psychological assistant;
 - (6) licensed or unlicensed marriage, family or child counselor;
 - (7) person employed in the mental health profession; or
 - 8) law enforcement officer, probation officer, worker in a juvenile rehabilitation detention facility or person employed in a public agency.
- (b) A person mandated to report under this chapter shall immediately report to the TCPS worker or other person or department designated by the Tribe if the person knows or has reason to suspect that a woman is pregnant and has abused alcohol or used a controlled substance for a non-medical purpose during the pregnancy.
- (c) Within 24 hours after making the oral report required by this section, the person making the report shall file a written report as required in this ordinance. If the

reporting person is a member of the staff of a hospital, agency or school, the reporting person shall notify the person in charge of the hospital, agency or school of his or her finding and that the report has been made, and shall make a copy of the written report available to the person in charge. One report from a hospital, agency or school shall be considered adequate to meet the reporting requirement. A member of the staff of a hospital, agency or school shall not be dismissed or otherwise penalized for making a report required by this act or for cooperating in an investigation.

3.5.03 Immunity from Liability

All persons or agencies complying in good faith with the provisions of this chapter shall be immune from civil liability and criminal prosecution resulting from their reporting.

3.5.04 Abrogation of Privilege

Any legally recognized privileged communication, except that between attorney and client, is abrogated and shall not constitute either grounds for excusing a report otherwise required to be made or for excluding evidence in a Child Protection Proceeding resulting from a report made pursuant to this Ordinance.

3.5.05 Penalty for Not Reporting

Any person mandated to report under this chapter who knowingly fails to do so or willfully prevents another from doing so, shall be subject to a charge of civil contempt with a fine of up to \$5,000.

3.5.06 Confidentiality of Informant

The identity of any person making a report described in this chapter shall not be disclosed, without the person's consent, to another person or entity other than a court of competent jurisdiction or an employee of an Indian tribe, or a state or the federal government, who needs to know the information in the performance of such employee's duties.

PART II: PROCEDURE

CHAPTER 6.0 – CHILD PROTECTION

3.6.01 Confidentiality

All Child Protection Proceedings shall be considered and treated as confidential. No person shall give or release any information about the case, including the names of parties and of

the child, to anyone who is not a party to the case, an employee or officer of the Tribal Court, or an officer of the law, without an Order of the Court.

3.6.02 Status as Ward of Court

Upon the filing of a petition under this chapter, the child who is the subject of the proceeding becomes a Ward of the Court and remains so until the Tribal court dismisses the case.

3.6.03 Commencement of a Child Protection Proceeding

A Child Protection Proceeding is commenced by filing a Petition to Use the Tribal Court with the Clerk of the Tribal Court. The Petition may be filed by any person who has probable cause to believe that a child of the Tribe is a Child in Need of Assistance. Except in the case of an emergency removal, the Petition, which may result in removal of the child, shall be filed after all family preservation/intervention prevention services have been offered to the parent, guardian or custodian of the child.

3.6.04 Contents of Child Protection Petition

The Petition shall provide the following information:

- (a) the name, address and age of the child;
- (b) the names and addresses of the child's parents and any custodians of the child;
- (c) the names and addresses of any other person or tribe with an interest in the child;
- (d) the nature and extent of the child's injury, abuse or neglect;
- (e) any evidence of injuries, abuse or neglect (doctor's report, public health nurse report, health assistance report, teacher's report, report of witness to injury, abuse or neglect, etc.);
- (f) any information that may be helpful in identifying the cause of the child's injuries or neglect; and
- (g) a statement of which tribe(s) the child is a member or with which the child is eligible for membership.

3.6.05 Processing of the Petition

(a) Temporary Custody Order:

After determining that the Tribe has jurisdiction, the Court may issue a Court Order directing that the child be taken into the custody of the Tribe and making the child a Ward of the Court if the Court finds there is probable cause to believe the child is a Child in Need of Assistance. The Court may make the child a ward

of the Tribal Court and leave the child in the physical custody of the parent, custodian or guardian if it finds that to do so would be in the child's best interests.

(b) Temporary Custody Placement:

After taking the child into custody, the Court shall place the child in a temporary custody placement least detrimental to the child both physically and emotionally.

The placement preferences specified in this ordinance shall be applied.

3.6.06 Placement Preferences

The following placement preferences shall be applied in all cases where a child is placed for relative placement foster care or for adoption unless specifically changed by Tribal Resolution or unless the Tribal Court finds that it would be in the child's best interests to vary the order of preference or place the child not according to the preferences contained herein:

- (a) an extended family member;
- (b) a licensed Indian foster home on or near the child's reservation;
- (c) a licensed Indian foster home;
- (d) a licensed foster home;
- (e) another licensed facility, i.e., a facility operated by a licensed child welfare services agency; or
- (f) other suitable place, other than a facility for the care of children adjudicated wards of the court and which meets standards for shelter-care facilities established by other agencies.

3.6.07 Temporary Custody Hearing

- (a) If a Court Order is issued taking a child into the physical custody of the Tribe and making a child a Ward of the Court, the Court shall issue a Notice to Appear in Tribal Court to the parent(s), custodian and/or guardian of the child. The notified party shall appear at a hearing scheduled within seventy-two (72) hours of the child being taken into custody. 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. If the court finds that it is in the child's best interests to remain a Ward of the Court until a full hearing is held and a final Custody Order is entered by the Court, it shall issue an Order stating this. The Court may retain legal custody and return physical custody of the child to the parent, custodian or

guardian if it finds that it is in the child's best interests to do so. If the Court finds it is in the child's best interests to return legal custody of the child to the parent, it shall dismiss the case.

- (b) The Court reserves the authority to order the parent, guardian or custodian of the children to participate in such programs or services as it deems appropriate or pursuant to recommendation of the Tribal CPS worker, even if it dismisses the Petition.

3.6.08 Decision Hearing

The Tribal Court shall set a Decision Hearing within thirty (30) days of the Temporary Custody Hearing. The parties may agree to have the hearing held at a later date or the Court may order a hearing at a later date if the Court determines there is good cause. If the Court finds that the child continues to be a Child in Need of Assistance, the Court shall enter a judgment committing the child to the custody of the Tribe and making the child a Ward of the Court for a period of no longer than two (2) years. The Court may order that the child remain in a foster home until further order. The Court may order the child, parents, custodian or guardian to take educational classes, alcohol or drug treatment or programs as it feels are appropriate and likely to serve the best interests of the child or the purpose of reunifying the family. A case plan shall be developed for the family. The case plan shall include coordination of services, monitoring the family's progress, and reporting such progress to the Court.

3.6.09 Case Plan

A written case plan for each child under the jurisdiction of the court shall include a detailed service plan designed to reunite the family, and to achieve placement in the least restrictive (most family-like) setting available and in close proximity to the parents' home consistent with the best interests and special needs of the child. In the event that reunification is determined not to be in the best interests of the child, the family and/or the tribe, the service plan shall be designed to achieve other appropriate permanent placement goals that are in the best interests of the child, the family, and/or the tribe.

3.6.10 Review Hearing

At the request of any party or at the Tribal Court's own initiative, a review hearing shall be held to determine the appropriateness of the child's plan, if the child should continue to remain a Ward of the Court and if any conditions placed on the child or any party should be

modified, or if further conditions are appropriate. A review hearing shall be held prior to the time the Tribe's custody expires according to the Court's Order. If the Court finds that it is in the child's best interests for the child to remain a Ward of the Court, it shall enter another Order committing the child to the custody of the Court, so long as the cumulative period the child is a Ward of the Court does not exceed two (2) years without providing for a long-term foster care plan.

3.6.11 Termination of Parental Rights

- (a) **Parental Rights Termination:** Parental rights may be terminated, in whole or in part, in any case involving the custody of a child, or child protection where the parent(s) voluntarily consent to the termination, or in any adoption proceeding to which the parents consent.
- (b) **Procedure for Termination of Parental Rights:**

Any person or entity with a right to custody of a child may file a Petition to Use the Tribal Court and request that parental rights of the child be terminated. If, after setting and holding the Decision Hearing, the Court finds the best interests of the child would be served and the conditions necessary to terminate the parental rights exist, it shall issue a judgment terminating parental rights in whole or in part depending on what is in the best interests of the child. If it finds that the conditions necessary to terminate parental rights do not exist, it shall dismiss the case; or, the Court may authorize another plan, if it finds the best interests of the child will be served by avoiding termination of parental rights.
- (c) **Necessary Findings:** The Court may terminate parental rights to a child only if it finds beyond a reasonable doubt that:
 - (1) if the parental rights are not terminated, the continued custody of the child by one 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; or
 - (4) the parent(s) voluntarily consent(s) and sign(s) a waiver acknowledging termination of parental rights after full disclosure to the parent(s).
- (d) **Effect of Termination of Parental Rights:**

If a parent's rights are terminated in whole, he/she no longer has any right to the child or any responsibility for that child. A termination in whole completely severs the parent-child relationship. A termination of parental rights in part only terminates the parent's rights to legal and physical custody of the child and their responsibility to financially support the child.

CHAPTER 7.0 – CHILD CUSTODY

3.7.01 Best Interests of the Child

In all Child Custody Proceedings (i.e., where the child has previously been removed from the custody of the child's parents, guardian or custodian in an emergency removal), the Tribal Court shall hear all the facts and evidence brought before it and shall consider the rights of all parties to the case, including those of the child. The Court shall award custody on the basis of the best interests of the child and this shall take precedence over the rights of any other person or entity. The Court may award shared custody if it finds that such shared custody is in the child's best interests.

3.7.02 Commencement of a Case

If there is a Child Custody Hearing, the child custody case shall be brought to the Tribal Court by the Tribal Child Protective Services caseworker. The TCPS caseworker shall file a Petition to use the Tribal Court.

- (a) **Contents of Child Custody Petition.** The Petition shall provide the following information:
- (1) the name, address and age of the child(ren);
 - (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 an interest in the child;
 - (4) the nature and extent of the child's injury, abuse or neglect;
 - (5) any evidence of injuries, abuse or neglect (doctor's reports, public health nurse report, health assistance report, teacher's report, report of witness to injury, abuse or neglect, etc.);
 - (6) any information that may be helpful in identifying the cause of the child's injuries or neglect; and

- (7) a statement of which tribe(s) the child is a member of or with which the child is eligible for membership.

3.7.03 Temporary Custody Order

- (a) After the Tribal Court determines that it has jurisdiction, the Court may issue a Court Order directing that a particular person or persons have temporary physical custody of the child until a Decision Hearing can be held. The Court may issue such an Order if requested and after holding a hearing in which the parties shall participate and may have witnesses and present evidence so long as such witnesses and evidence is within the permissible limits established by Court Rules and Procedure.
- (b) Unless it is shown to be harmful to the child, the child shall have equal access to both parents during the duration of the Temporary Custody Order, if possible under the circumstances. The Tribal Court may issue an Order directing that a person or persons shall have visitation with the child. The Court may set out the schedule of supervised and or non-supervised visitation.

3.7.04 Decision Hearing

The Tribal Court shall set a Decision Hearing within thirty (30) days of the Temporary Custody Hearing. The parties may agree to have the hearing held at a later date. The Court may order a hearing at a later date if the Court determines there is good cause. After the hearing, the Court shall issue a Custody Order. In making a decision about who should have custody of a child, and what visitation with the child is appropriate for people not awarded physical custody, the Court shall take into consideration the following factors:

- (a) The child's wishes if the child is 12 years old, or older; whether the child understands the nature of the proceedings, and the ramifications of declaring his/her preferences; and in asking the child's wishes, the Court will not place the child under undue mental or emotional pressure;
- (b) The love and affection existing between the persons requesting custody and the child;
- (c) The needs of the child, including educational needs, physical needs, emotional needs, manual needs, religious needs, cultural needs, and any other special needs; and which person requesting custody is best able to meet those needs;

- (d) The stability of the home environment likely to be offered by each person requesting custody of the child;
- (e) The advantages of keeping the child in the community where the child resides;
- (f) The most time the child could spend with each person with whom the child has an emotional tie considering the actual time spent with such person, the physical locations of such persons to one another, whether the child is enrolled in school near one of those persons, and the desirability of the child remaining at that school;
- (g) Which person(s) requesting custody is most apt to encourage a loving relationship between the child and the other persons with whom the child has emotional ties;
- (h) Any evidence of domestic violence, child abuse or child neglect in the proposed custodial household or a history of violence between the persons requesting custody;
- (i) Any evidence of substance abuse by the proposed custodian or anyone living with the custodian which would or does directly affect the emotional or physical well being of the child; and
- (j) Any other facts or evidence the Court determines to be relevant to the custody determination.

3.7.05 Custody Order

The Court may order that a party or parties allow visitation, supervised or non-supervised, to the parties not given physical custody, and if the Court finds it would be in the best interests of the child to maintain those relationships.

3.7.06 Change of Custody Order

Any extended family member of the child's tribe may request that an award of custody of a child or visitation with a child be modified. If, after a hearing, the Court determines that the change would be in the best interests of the child, it shall enter such Order.