

TITLE 51
NISQUALLY ELDER ABUSE CODE

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TITLE 51
NISQUALLY ELDER ABUSE CODE

51.01 PURPOSE AND CONSTRUCTION

51.01.01 AUTHORITY

The Nisqually Tribal Council's authority to adopt the ordinance codified in this Title is found in the Nisqually Tribal Constitution and in the inherent sovereign authority of the Nisqually Tribe over its members and over reservation land and activities.

51.01.02 POLICY AND PURPOSE

The Nisqually Indian Tribe holds its elders in high esteem for their efforts and endurance holding Tribal government and community intact during difficult years, and for protecting and preserving history, culture, traditions, and resources. This title is intended to identify and protect elders and vulnerable adults within the jurisdiction of the Nisqually Indian Tribe who are subject to abuse, neglect, or exploitation, and thereby promote the health and welfare of the Nisqually Tribal Community. The ordinance establishes requirements and procedures for reporting and investigating abuse, neglect, and exploitation of elders and vulnerable adults. It establishes procedures for securing Court ordered protective services for elders and vulnerable adults where necessary, but is intended to provide for least restrictive alternatives, to the extent necessary to prevent harm. It provides for the Tribe to request protective guardianships, and for other interested persons, in the absence of any allegation of abuse or neglect, to petition for the Court to make a determination of competency so that a guardian may be appointed as determined appropriate, in order to assist an elder or vulnerable adult.

51.01.03 NATURE AND CONSTRUCTION OF THIS TITLE

- (a) This title provides for civil remedies in the form of elder and vulnerable adult protection orders to address abuse, neglect, or exploitation as defined in this code. The code shall be liberally interpreted in order to achieve its purposes.
- (b) Nothing in this title shall preclude a criminal prosecution in addition to a civil penalty, or affect applicable provisions of the Nisqually criminal code, Title 10, if a crime has also been committed.
- (c) Any section or portion of this code containing the word “elder” may be construed to include and mean a “vulnerable adult” or “incapacitated adult”.
- (d) This title does not apply to actions to withhold or withdraw life-sustaining treatment in accordance with a person’s health care directive that is executed in compliance with applicable law.
- (e) Unless otherwise stated, the standard of proof in all protection order and guardianship proceedings shall be a preponderance of the evidence.

- (f) Nothing in this title shall be deemed to constitute a waiver by the Nisqually Tribe of its sovereign immunity.

HISTORICAL AND STATUTORY NOTES

1. This Title original enacted February 17th, 2022 by Nisqually Tribal Council Resolution No. 18-2022.

51.02 JURISDICTION

51.02.01 JURISDICTION

The Nisqually Tribal Court (hereinafter, “the Court”) shall have jurisdiction over any proceeding arising under this chapter. The Nisqually Tribe intends to vest the Court with the fullest jurisdiction possible in order to protect elders and vulnerable adults. Protective orders filed in any other court of competent jurisdiction that pertain to Tribal members or other persons within the jurisdiction of the Tribe may be recognized in Nisqually Tribal Court in order to protect the health, safety or welfare of an elder or vulnerable adult.

As an initial matter in all cases brought before the Court, the Court shall:

- (a) Determine the basis of the Court’s jurisdiction. This Court shall have jurisdiction over enrolled members of the Nisqually Tribe, regardless of residence, enrolled member of another Indian tribe domiciled within Nisqually Indian Country as the term is defined by 18 U.S.C. § 1151, or any individual domiciled within the exterior boundaries of the Nisqually Reservation.
- (b) Determine whether there has been a guardian or conservator previously appointed by a court of competent jurisdiction. However, completing such determination shall not prevent the Court from acting under this Title to provide an emergency protection order.
- (c) In the event that a guardian or conservator has previously been appointed for a Tribal member elder or vulnerable adult in another court of competent jurisdiction, the Court shall, upon request of the petitioner, confirm the Court’s concurrent jurisdiction, and provide notice to such court that transfer of jurisdiction to the Nisqually Tribal Court would be accepted if provisionally ordered upon the other court’s own motion, or pursuant to a petition for transfer by the elder or vulnerable adult, the guardian or conservator, or another person wishing to assume the guardianship or conservatorship.

51.02.02 PROCEDURES FOR TRANSFER OF JURISDICTION TO THE NISQUALLY TRIBAL COURT

- (a) To confirm transfer of a guardianship or conservatorship of an elder or vulnerable adult Tribal member provisionally transferred to the Court from another state or tribal court, the party who petitioned for and obtained the provisional order of transfer shall petition the Court to accept the guardianship or conservatorship. The petition must include a certified copy of the other court’s provisional order of transfer.

- (b) Notice of a petition under subsection (a) of this section must be given to those persons that would be entitled to notice if the petition were for the appointment of a guardian or issuance of a protective order under this Title.
- (c) On request of the guardian or conservator, the elder or vulnerable adult, or any other person required to be notified of the proceeding, the Court shall hold a hearing on a petition filed pursuant to subsection (a) of this section.
- (d) The Court shall issue an order provisionally granting a petition filed under subsection (a) unless an objection is made, and the objector establishes that transfer of the proceeding would be contrary to the interests of the elder or vulnerable adult.
- (e) The Court shall issue a final order accepting the proceeding and appointing the guardian or conservator upon its receipt from the court from which the proceeding is being transferred of a final order transferring the proceeding to the Nisqually Tribal Court.
- (f) In granting a petition under this section, the Court shall recognize a guardianship or conservatorship order from the other state, including the determination of the incapacitated or protected person's incapacity and the appointment of the guardian or conservator.
- (g) Not later than 30 days after issuance of the final order accepting transfer of a guardianship or conservatorship, the Court shall determine whether the guardianship or conservatorship needs to be modified to conform to the laws of the Nisqually Indian Tribe.

51.02.03 PROCEDURES FOR TRANSFER OF JURISDICTION FROM THE NISQUALLY TRIBAL COURT

- (a) A guardian of the person or estate of an elder or vulnerable adult may petition the Court to transfer the guardianship to another tribal or state court.
- (b) Notice of a petition under subsection (a) of this section must be given to the persons that would be entitled to notice of a petition in this Court for the appointment of a guardian of the person or estate.
- (c) On the Court's own motion or on request of the guardian or conservator, the elder or vulnerable adult, or other person required to be notified of the proceeding, the court shall hold a hearing on a petition filed pursuant to subsection (a) of this section.
- (d) The Court shall issue an order provisionally granting a petition to transfer a guardianship and shall direct the guardian of the person or estate to petition for guardianship in the other court if the Court is satisfied that the guardianship will be accepted by that court, and the Court also finds that:

- (1) The elder or vulnerable adult is physically present in or is reasonably expected to move permanently to the other state or tribal jurisdiction;
 - (2) An objection to the transfer has not been made or, if an objection has been made, the objector has not established that transfer of the proceeding would be contrary to the interests of the elder or vulnerable adult;
 - (3) Plans for care and services for the elder or vulnerable adult are reasonable and sufficient, and include means and assurances to provide continuing relationship with the elder or vulnerable adult's extended family, traditional cultural institutions, and the Nisqually Tribal Community;
 - (4) Adequate arrangements consistent with the Nisqually law and policies will be made for management of the protected person's real and heritage personal property, if any, located on the Nisqually Reservation.
- (e) The Court shall issue a final order confirming the transfer and terminating the guardianship of the person or estate of the elder or vulnerable adult upon its receipt of:
- (1) A provisional order accepting the proceeding from the court to which the proceeding is to be transferred; and
 - (2) Documentation including an inventory and accounting of resources and property at the time of the transfer such as required under this Title.

51.03 DEFINITIONS

51.03.01 DEFINITIONS

“Abuse” means:

- (a) intentional or negligent infliction of bodily injury; unreasonable confinement, including chemical or physical restraints; isolation; ridicule, coercion, harassment or stalking, including unwanted electronic contact, intimidation; verbal abuse; emotional abuse; or punishment of an elder or vulnerable adult that results in physical harm, pain, or mental anguish. If an elder or vulnerable adult is unable to express the fact of physical harm, pain, or mental anguish, the abuse is presumed if it would cause such in a person of like age or condition;
- (b) Sexual abuse including nonconsensual contact with an elder or vulnerable adult with the purpose of obtaining sexual gratification; consent is not voluntary if it is obtained by threat, coercion, intimidation, or fraud, or if the elder or vulnerable adult is not competent or does not have the capacity to consent;
- (c) Exploitation including the use of an elder or vulnerable adult's funds, property, credit, utilities, services, or other resources for another person's profit or advantage, through

improper or unauthorized means including coercion, force, deception, extortion, fraud, forgery, undue influence, violation of a fiduciary duty, or theft. Exploitation includes use of an elder's home or resources to engage in illegal activities. The use, for another person's profit or advantage, of the elder or vulnerable adult's funds, property, credit, services, or other resources when such person knows this use will leave the elder or vulnerable adult unable to pay for food, clothing, shelter, health care, or a safe environment may be deemed exploitation.

“Adult Protection Team” means representatives of Tribal law enforcement, housing, health clinic, behavioral health, senior and other service agencies, who are brought into consultation by Nisqually Adult Protective Services in order to create a Protection Plan for an elder or vulnerable adult under this title. The team may also include a member of the Elders Committee.

“Care Provider” means an adult person, or institution or agency required by law, contract, or tribal custom to provide services or resources to an elder or vulnerable adult; or an adult person who volunteers to provide such services; or a person or agency who has undertaken authority to act for an elder or vulnerable adult under a power of attorney, or guardianship, representative payee, or similar relationship.

“Elder” means a person 55 years of age or older who is an enrolled member of the Nisqually Tribe, regardless of residence, an enrolled member of another Indian tribe domiciled within Nisqually Indian Country as the term is defined by 18 U.S.C. § 1151, or an individual domiciled within the exterior boundaries of the Nisqually Reservation.

“Emergency” means a situation where an elder or vulnerable adult is immediately at risk of death or injury (including substantial financial loss through exploitation or unfair dealing) and is unable to consent, because of physical or mental impairment, to services which would remove the risk.

“Family Member” for purposes of this title, shall mean immediate family members of an elder or vulnerable adult, as well as extended family members with significant contacts with or responsibilities to care for, an elder or vulnerable adult.

“Guardian” means a person or agency appointed by the Court to exercise rights including conservatorship of property, and provide for basic needs of an elder or vulnerable adult; a “Limited Guardian” may be appointed to exercise rights and provide for basic needs to the extent that the elder or vulnerable adult is incapacitated from performing those functions without the assistance of a guardian.

“Heritage Personal Property” includes traditional cultural handwork created by the elder or an ancestor, handed down into the possession and care of the elder or vulnerable adult, including but not limited to, beadwork, basketry, carvings, tools, or other items of material culture.

“Immediate Family Member” shall mean children, parents, and siblings, of an elder or vulnerable adult.

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

“Mandatory Reporter” means a person required by law to immediately report suspected abuse or neglect of elders or vulnerable adults and includes the following: a licensed or paid adult care provider for the elder or vulnerable adult; an elected official of the Tribe; any health care provider including a pharmacist, who is providing services for the elder or vulnerable adult on the Nisqually Reservation; Tribal law enforcement officers, social workers, counselors, or school personnel; and any person or agency, including its employees, with fiduciary duties to elders or vulnerable adults who is employed, licensed or contracted by the Tribe to provide such services to Tribal members or do business on the Nisqually Reservation.

“Nisqually Adult Protective Services” or “Nisqually APS” means the Tribe’s Social Services Department, or another Tribal department or program as may be authorized by the Tribe to act under this Title to carry out investigations and provide reports to the Court regarding alleged abuse; to assist elders, vulnerable adults, and their families by convening an Adult Protection Team; to provide protective services and protective plans; and to assure that responsibilities for Adult Protective Services under this title are carried out by qualified professional staff or contractors, or by cooperative contracts or agreements with Washington State Adult Protective Services.

“Neglect” including “Self Neglect” means any action or inaction by a caregiver, or failure by the elder or vulnerable adult, which leaves the elder or vulnerable adult without the means or ability to obtain food, clothing, shelter, a safe environment, or health care, or to maintain minimum physical and mental health. Neglect may also include, but is not limited to, interference with delivery of necessary services and resources, including reasonable accommodation for the elder’s practice of religion, tradition, or custom, and a caregiver or required reporter failing to report abuse or neglect of an elder or vulnerable adult. “Self neglect” does not include the conscious and voluntary decisions made as a matter of personal choice of a mentally competent elder or vulnerable adult, to live in circumstances that may threaten his or her own health or safety.

“Protective Placement” means placement or transfer of an elder or vulnerable adult in a hospital, nursing home, residential care facility, family or community members home, designated tribal housing, or other suitable placement with the elder’s consent or by appropriate legal authority.

“Representative (Protective) Payee” means a person or agency appointed by the Court to receive payment of funds, to secure the elder or vulnerable adult’s funds, property, services or other resources, and to expend funds so that the elder or vulnerable adult’s needs for food, clothing, shelter health care, and a safe environment are met.

“Vulnerable Adult” means a person 18 years of age or older who does not have the functional, mental, emotional or physical ability to protect him or herself from abuse or neglect and is an enrolled member of the Nisqually Tribe, regardless of residence, an enrolled member of another

Indian tribe domiciled within Nisqually Indian Country as the term is defined by 18 U.S.C. § 1151, or an individual domiciled within the exterior boundaries of the Nisqually Reservation.

51.04 POWERS AND RESPONSIBILITIES

51.04.01 POWERS AND RESPONSIBILITIES OF NISQUALLY ADULT PROTECTIVE SERVICES

- (a) Nisqually APS shall promptly investigate, or cause to be investigated, reported allegations of abuse, neglect, or exploitation, and may request Tribal law enforcement and/or Washington Adult Protective Services under a cooperative agreement approved by the Tribal Council, to assist in such investigations. All investigations shall be documented in written reports.
- (b) Nisqually APS shall, upon completion of an investigation, determine whether a Nisqually elder or vulnerable adult is in imminent danger of harm and whether an emergency exists; whether the elder or vulnerable adult should be immediately removed from the current situation by emergency order, and shall identify appropriate shelter placement; and shall determine, in consultation with the Office of the Tribal Attorney, whether further legal action to assure protection of an elder or vulnerable adult should be initiated by the Tribe. If a legal action is not warranted, Nisqually APS shall determine whether voluntary family counseling and provision of services may address the problems that led to the report, or whether the report was unwarranted.
- (c) Nisqually APS shall identify available resources and services in order to draft voluntary and involuntary protection plans in cooperation with Tribal programs and other agencies, and is authorized to convene Adult Protection Teams where appropriate to accomplish this purpose. Protective services are provided to an elder or vulnerable adult with consent, or by appropriate legal authority and include, but are not limited to: social case work, psychiatric and health evaluations, home care, day care, housing assistance, social services, health care, case management, guardianship, and other services consistent with this title.
- (d) Nisqually APS shall address the potential for abuse, neglect, or exploitation in the Tribal community proactively through the assistance of family members and use of available services, including, where appropriate, by means of voluntary plans including voluntary protective services and guardianships. Nisqually APS may convene family group meetings to accomplish this purpose. Family group meetings may result in an Agreed Voluntary Protective Plan which may be presented to the Court and may be facilitated by a trained neutral third party. Nisqually APS may choose to meet informally with family members without a third-party facilitator and may choose not to file an Agreed Voluntary Protective Plan with the Court.

- (e) Nisqually Adult Protective Services shall report to the Nisqually Elders Committee at each regular meeting of the Elders Committee, and the Committee shall provide recommendations regarding plans or proposals to promote the long-term well-being of elders or vulnerable adults and their families in the Nisqually Tribal Community.
- (f) Nisqually APS shall provide for annual training sessions regarding elder abuse reporting and available assistance and resources, on or near the Nisqually Reservation and free of charge, for the benefit of all mandated reporters, family members with responsibilities for elders and vulnerable adults, and other interested persons.
- (g) Nisqually APS may seek grants, funds, and assistance through cooperative agreements with federal, state, tribal, and local governments. Cooperative agreements must be approved by the Nisqually Tribal Council.
- (h) Nisqually APS shall maintain confidentiality as to all matters involving elders or vulnerable adults, except as necessary to carry out its functions under this title.

51.04.02 INTERAGENCY COOPERATION FOR INVESTIGATIONS AND REQUIRED REPORTS

- (a) Nisqually APS may conduct investigations, provide ongoing case planning and consultation, and prepare required reports under this ordinance in cooperation with the following:
 - (1) any mandated reporter as defined in this Title;
 - (2) Adult Protection Team members;
 - (3) consultants specifically authorized by the Nisqually Tribe to participate in investigations and case planning; and
 - (4) designated representatives of the State of Washington or another Indian tribe, if client information exchanged is necessary to a case under joint investigation or for the joint provision of protective services. Sharing of information considered privileged by Tribal law or policy or other applicable law requires a valid written waiver of the privilege or a Court order.
- (b) An ex parte Court order to disclose information otherwise privileged:
 - (1) May be issued on the request of the Tribal Attorney or Nisqually APS worker where the Court determines that good cause exists to issue such an order, and where other ways of obtaining the necessary information are not available or would not be effective, and where the information is necessary to protect the health, safety, or welfare of the elder or vulnerable adult; and

- (2) Shall limit disclosure to those records essential to fulfill the objectives of the order.

51.05 REPORTING ABUSE AND NEGLECT

51.05.01 DUTY TO REPORT ABUSE OR NEGLECT OF AN ELDER OR VULNERABLE ADULT

Any person may report, and all persons are encouraged to report, suspected abuse or neglect of any elder or vulnerable adult who resides within Nisqually Indian County, or who is a member of the Nisqually Indian Tribe regardless of residence, to the Nisqually Social Services Department or Tribal Law Enforcement.

(a) Mandated Reporters.

The following persons must immediately report suspected abuse or neglect. (1) a licensed or paid adult care provider for the elder or vulnerable adult; (2) an elected official of the Tribe; (3) any health care provider including a pharmacist, who is providing services for the elder or vulnerable adult on the Nisqually Reservation; (4) Tribal law enforcement officers, social workers, counselors, or school personnel, (5) Any person or agency, including its employees, with fiduciary duties to elders or vulnerable adults who is employed, licensed or contracted by the Tribe to provide such services to Tribal members or do business on the Nisqually Reservation.

(b) Persons Receiving Reports.

The Nisqually Social Services Department and Tribal law enforcement are appropriate agencies to take reports of elder or vulnerable adult abuse.

(c) Contents of Report.

A report must include the identification, tribal status if known, and location or last known whereabouts of the elder or vulnerable adult; the nature of the suspected abuse or neglect and the date, time, and location of the events; names and identification where available of those suspected of abuse and/or neglect; the name and contact information for the person making the report; and any other helpful information.

(d) Civil Infraction for failure to report for mandated reporters.

Any person who is a mandated reporter and fails to report abuse or suspected abuse or neglect of an elder or vulnerable adult shall be subject to a civil penalty of up to \$5,000, and may be subject to other appropriate discipline if the mandated reporter is a contractor or employee of the Tribe. Nisqually APS shall report to the appropriate licensing agency or the Director of a Tribal program concerns that a person regulated by that agency or supervised by the Director has failed to comply with mandatory reporting requirements. The Court shall assess the civil penalty after petition by the Tribal Prosecutor, notice and

an opportunity for hearing, and a determination that the person had a mandated duty to report, had good reason to suspect abuse or neglect, and failed to report as required by this title.

(e) Confidentiality and immunity of reporting party.

A person acting in good faith shall be immune from any claim or cause of action stemming from or arising out of making a report under this section. The identity of the reporter of abuse or neglect under this Title is confidential and shall not be released unless the reporter consents, or the Court determines that the need of the elder or vulnerable adult exceeds the reporter's right to privacy and mandates disclosure. The reporter has the opportunity to petition and be heard at a closed evidentiary hearing with regard to any such disclosure, and disclosure shall be limited to the extent necessary to protect the elder or vulnerable adult.

(f) Penalties for bad faith reporting, retaliation, or intentionally interfering with an investigation.

A person who makes a report of alleged abuse or neglect knowing it to be false has committed a civil infraction. Any person who retaliates by intimidating, threatening to cause or causing bodily, emotional, property, or financial harm against a person who reports or investigates abuse or neglect, has committed a civil infraction. It is a civil infraction to interfere intentionally with a lawful investigation of suspected abuse or neglect of an elder or vulnerable adult. The Court shall assess the appropriate civil penalty of up to \$5,000 after petition by the Tribal prosecutor, notice, an opportunity for hearing, and a determination that the person made a report in bad faith, or that interference or retaliation as set out in this section has occurred. Notice of such determination shall also be provided to the person's Tribal employer, and appropriate licensing agencies for appropriate discipline. This Title does not change or affect penalties that may be imposed upon mandatory reporters pursuant to other applicable law or licensing requirements.

(g) Nisqually Police Department/Law Enforcement.

If an initial report of harm is made during hours the APS investigator, caseworker, or other designated Tribal personnel is not available and if it appears that the elder may be in imminent danger of serious harm, law enforcement shall investigate promptly and perform the duties to protect the elder or vulnerable adult to the extent possible and necessary.

51.06 INVESTIGATION

51.06.01 INVESTIGATION AND WRITTEN INVESTIGATIVE REPORT

- (a) The Social Services Department, Tribal law enforcement, or any other person who receives reports of alleged elder abuse or neglect shall refer all such reports to Nisqually Adult Protective Services for investigation.
- (b) Nisqually APS shall conduct an initial investigation within 24 hours if the situation appears to be emergency, and prepare a written summary of the investigation results which shall include all information in part (e) below, as well as the results of interviews, observations, and assessments and other fact finding. If the situation is not emergent, the investigation shall be initiated within 72 hours, and completed within 10 days. The investigator shall conduct in person interviews with the elder, elder's family, caretaker, the person suspected of having committed the abuse, and other persons or agencies with knowledge of the elder's circumstances. The existence and content of medical records shall be ascertained as may be made available by permission of the elder; other reports of abuse or neglect shall be ascertained. The investigator shall assess the elder or vulnerable adult's living conditions. The investigator shall inform all parties of the rights enumerated under in this Title.
- (c) Tribal agencies, departments, and programs, including the Nisqually Health Services, shall provide in a timely manner all relevant reports, files, medical records, welfare check reports, and any other relevant information to the authorized Nisqually APS investigator or other designated APS staff upon request during the investigation of alleged abuse or neglect of an elder or vulnerable adult. Nisqually APS shall not further disseminate or release such information except as authorized by applicable Tribal or federal statute. Access to other relevant medical and treatment records for purposes of investigation shall be obtained with a duly executed waiver, or by Court order.
- (d) If there is good cause for the investigator or law enforcement officer to believe that an emergency exists and an elder or vulnerable adult is at risk of immediate or irreparable harm upon personal observation, the investigator and/or a law enforcement officer (if Nisqually APS is not available to assist) shall take immediate steps to protect the abused person, including transporting him or her to adequate shelter facilities. Once the person is protected, the Office of the Tribal Attorney shall immediately initiate the procedures set out in this Title for obtaining an emergency protection order.
- (e) A written report shall be made and shall include:
 - (1) a description of the allegations made by the initial reporter;
 - (2) a description of the condition of the alleged victim;
 - (3) the conclusions made after the investigation pursuant to (b) and (c) of this section;
 - (4) other information helpful in establishing whether abuse or neglect has occurred;
 - (5) the results of interviews, observations, assessments, and other fact finding.

- (f) A copy of the Investigative Report shall be provided to the Tribal Attorney and Tribal law enforcement. Copies of Investigative Reports shall remain confidential and filed with Nisqually APS for a period of five years, even if it is determined that no abuse or neglect has occurred in the present instance.
- (g) An elder, the elder's immediate family members, adult household members, and caretaker shall be informed about an investigation within 72 hours unless an emergency exists, in which case they shall be informed no later than 24 hours after the investigation is initiated.
- (h) The Investigative Report may recommend that a petition for elder protection be filed, or that no such action is warranted. If the investigation concludes that the situation does not warrant a petition for protective services or guardianship, and the Tribal Attorney concurs, informal resolution services such as family group conferencing or formation of an Adult Protection Team may be recommended and initiated by Nisqually APS in order to develop appropriate voluntary plans for elder support to assist the elder. Such voluntary protective services or placements are provided subject to available resources and only as determined necessary by Nisqually APS and with the elder's consent.

51.07 ADULT PROTECTION TEAM

51.07.01 ADULT PROTECTION TEAM

(a) Adult Protection Team (APT)

- (1) Composition. The APT shall be composed of designated staff from the following departments: Social Services, Elders Program, Office of Tribal Attorney, Law Enforcement, Health Clinic, Behavioral Health, or any other staff or program invited by Nisqually APS to join the Team.
- (2) Powers and Responsibilities. The APT shall have the power and responsibility to:
 - (A) Promote respect for and protection of elders and vulnerable adults within the community;
 - (B) Monitor and assess the treatment of elders and vulnerable adults;
 - (C) Evaluate existing available tribal, state and federal services for the benefit of elders and vulnerable adults; and
 - (D) Evaluate the reports of Nisqually APS on individual vulnerable adults and make recommendations to Nisqually APS for appropriate protective orders and services and an individual's protection plan.

- (3) Meetings. The APT shall meet at least once a month, on a regular date. Additional meetings may be convened by request of any team member or by the Social Services Director.

51.08 AGREED VOLUNTARY PROTECTIVE SERVICES AND FAMILY CONFERENCE

51.08.01 AGREED VOLUNTARY PROTECTIVE SERVICES AND FAMILY CONFERENCE

- (a) Protective services may be provided by Nisqually APS on a voluntary basis when requested or consented to by an elder who Nisqually APS determines to be in need of services.
- (b) An Agreed Voluntary Protection Plan incorporating such services shall be developed as follows:
- (1) Nisqually APS shall arrange a conference with the elder and members of the elder's family and/or caregiver as they are determined to be necessary and appropriate parties.
 - (2) If an Agreed Voluntary Protection Plan is created, it shall be set forth in writing, including any conditions or requirements to be performed, within agreed time periods. The protection plan shall include services for the elder or vulnerable adult's family and care provider, as Nisqually APS determines is necessary to protect the elder or vulnerable adult. The elder, and as applicable, involved family members and the elder's caregiver, shall also sign the voluntary protection plan.
 - (3) If no agreement is reached, or the parties to a voluntary agreement fail to comply with its terms, a petition for an elder protection order hearing may be filed by the Tribe's Attorney or the elder.
 - (4) If at any time Nisqually APS determines that the facts before it during a family conference would be more appropriately handled by the Tribal Court, it may refer the case to the Office of the Tribal Attorney for an elder protection order.
 - (5) Proceedings of the family conference shall be confidential and closed to the public. No information obtained at such a conference may be admitted into evidence at a subsequent Court hearing unless all parties agree; provided that the terms of an agreed upon protection plan are admissible as evidence at any subsequent proceeding for an elder protection order.

51.09 COURT PROCEDURES

51.09.01 EMERGENCY INVOLUNTARY ORDERS AND TEMPORARY PROTECTION PLAN

- (a) If an initial investigation of a report of abuse or neglect indicates that the abuse or neglect is substantiated, and there is probable cause to believe that an emergency exists involving danger or threat of immediate and serious harm to person or property, and no competent person is authorized by law or court order to take necessary steps to protect the elder or vulnerable adult, then upon petition of the Tribal Attorney the Court shall issue a temporary protection order, pending a full hearing. The Court may order any emergency remedy it deems proper including:
- (1) Restrain a person from committing acts of abuse, neglect, or exploitation with respect to the elder/vulnerable adult;
 - (2) Exclude a person from the residence of the elder/vulnerable adult, even if this is a residence they share;
 - (3) Prohibit contact, including by mail, telephone, e-mail, or through third parties, with the elder/vulnerable adult except by further order of the Court;
 - (4) Prohibit any party from knowingly coming within, or knowingly remaining within, a specified distance from a specified location;
 - (5) Limit any authority provided for in an existing power of attorney;
 - (6) Order emergency removal of the elder or vulnerable adult to protective placement;
 - (7) Implement a Temporary Protection Plan, if one is available, from Nisqually APS in consultation with and Adult Protection Team, pending a full hearing.
 - (8) Make any order necessary to protect the property or financial resources of the elder/vulnerable adult from misuse or waste.
- (b) Parties entitled to service of emergency orders, and notice and opportunity to appear at hearings and other non-voluntary procedures under this title are: the elder or vulnerable adult; any person or persons restrained or otherwise subject to an emergency order; any family members that the elder or vulnerable adult wishes to have appear; and any guardian or primary caregiver with responsibility for the elder or vulnerable adult.
- (c) An emergency protection order shall be effective for a fixed period not to exceed 14 days, except for good cause shown. A preliminary hearing shall be held within 72 hours, excluding weekends and holidays, after an emergency protection order is issued, unless good cause exists to grant a delay. Any person restrained or otherwise subject to the emergency protection order shall be personally served with a copy of any emergency

protection order along with a copy of the petition and notice of the date for the hearing, and all parties, and any attorneys that have been retained by a party, are permitted to attend the hearing. At the hearing, the sufficiency of the petition will be determined on a totality of circumstances.

- (d) If a party cannot be located for personal service, the emergency order of protection, notice of hearing, and petition shall be sent by regular and certified mail to the party's last known address. If service of process is not successful prior to the preliminary hearing, the Court shall be notified of the fact, but the hearing shall proceed. A full hearing on the petition shall be held not later than 14 days from the date the emergency order of protection was entered.

51.09.02 PROCEDURES FOR INVOLUNTARY PROTECTION ORDERS

(a) Petition.

- (1) The Nisqually Indian Tribe's Attorney, after consultation with Nisqually APS, and based on the results of an Investigation and report provided under Section 51.11.01, above, may file a petition with the Court seeking a Protection Order. The petition shall include the name and interest of the petitioner, the name and address or location of the elder or vulnerable adult with a description of the elder's situation, including a statement of the specific facts or circumstances from which relief is sought, including date(s), times(s) and locations(s) at which the alleged facts occurred; the proposed protective services; previous attempts to get the elder's consent for protection; and any other facts that will assist the Court.
- (2) The Court shall order a medical or other professional evaluation, at the petitioner's expense, if such would assist the Court to determine degree of capacity or incapacity, and any relevant evidence of abuse or neglect, once the petition is filed.
- (3) Nisqually APS shall prepare a proposed protection plan in consultation with the elder and relevant family members and/or caregiver, and the Adult Protection Team. With the elder's consent, appropriate voluntary services may be initiated pending the full hearing.
- (4) The Court may appoint a guardian ad litem to advise the Court on the best interests of the elder or vulnerable adult and to advise the Court regarding any protection plans that are proposed. The guardian ad litem shall meet, at a minimum, with the elder or vulnerable adult, family members, caregivers, and other persons or agencies that may be designated by the Court. A guardian ad litem shall be a person familiar with the Nisqually Tribal Community; with training or experience working with elders or vulnerable adults with demonstrated ability to exercise good judgment and discretion; with no personal interest in the outcome of the proceeding; and who has passed the Tribe's required background check.

(b) Notice and Service of Process for Hearing.

- (1) Upon the receipt of the petition, the Court shall order a Full Hearing on the petition, which shall be held not later than 14 days from the date the petition was filed. Personal service shall be made upon all parties not less than five days prior to the hearing date. In the event that personal service cannot be timely made, the Court may set a new hearing date to allow sufficient time to complete service.
- (2) On a showing that personal service cannot be made upon a party, the Court may in its discretion allow for service by mail or by publication. Service by mail shall be made via regular U.S. Mail and certified mail to the party's last known address and shall be perfected if mailed within ten (10) days prior to the full hearing. Service by publication shall be made in a newspaper of general circulation in Thurston County, once a week for three consecutive weeks and shall be perfected at the expiration of the time prescribed for publication. Reasons for allowing service of notice by publication shall include, but not be limited to, the following:
 - (A) That law enforcement, a process server, or other party designated by the Court to provide service has made a good-faith effort to locate the party to provide service, but without success.
 - (B) That the party has no known address or whereabouts, but that there is good cause to believe that the party has engaged in activity that constitutes elder/vulnerable adult abuse within the exterior boundaries of the Nisqually Indian Reservation.
 - (C) That there is good cause to believe the party is hiding to avoid service or contact with law enforcement.

(c) Full Hearing.

- (1) The Court shall first address the issue of capacity, and upon a finding based on the preponderance of the evidence that the elder or vulnerable adult is incapacitated and unable to consent to necessary services or to protective placement, or that the elder or vulnerable adult has consented to necessary services or to protective placement, the Court shall proceed with the issue of whether judicial intervention is necessary because the elder or vulnerable adult has been or is at risk of abuse or neglect.
- (2) All relevant evidence that is reliable and trustworthy may be admitted and relied upon by the Court to the extent of its probative value, including hearsay that is corroborated by other evidence. All parties shall be afforded an opportunity to examine and controvert written reports, and cross examine individuals whose testimony is presented. The Court may rely on conference by telephone or other

electronic device that permits all those appearing or participating to hear and speak to one another.

(3) The Court shall make a decision at the conclusion of the hearing. If the allegations of the petition regarding abuse or neglect are not sustained by a preponderance of the evidence, the Court shall dismiss the matter. If the allegations of the petition are sustained, the Court shall find the elder or vulnerable adult is in need of protection, and enter orders to protect the elder or vulnerable adult. At the Court's discretion, a hearing to determine the provisions of an order may be conducted immediately or at an appropriate interval following the fact finding hearing.

(4) The Full Hearing under this title shall be a closed proceeding.

(d) Protection Order.

(1) A Protection Order shall incorporate, as appropriate, services according to any Protection Plan created by Nisqually APS or Agreed Protection Plan developed in consultation with the elder or vulnerable adult's family and extended family. Such order shall provide for the least restrictive alternatives while meeting the elder or vulnerable adult's needs. The order shall include services for the elders' family or caregiver as necessary to protect the elder. Necessity shall be determined by the Court.

(2) An order may also:

(A) Secure removal of the elder or vulnerable adult to a safe location;

(B) Appoint a guardian, limited guardian, or a protective payee for the elder or vulnerable adult, in accordance with Section 51.17.01, below. The Court may set terms and conditions for a protective payee, guardian, or limited guardian including an oath, bond, insurance, or other provisions to protect the elder or vulnerable adult. Any such person appointed has a fiduciary responsibility toward the elder or vulnerable adult. The Court shall set documentation and reporting requirements for any person given authority to receive payments of funds, to secure the elder or vulnerable adults' funds, property, services, or other resources, or to expend funds.

(C) Restrain the abuser from committing any act of harm to and elder or vulnerable adult, or from contact with the elder or vulnerable adult; and may exclude the abuser from the residence of the elder or vulnerable adult or from any specified location, including the Elders Complex, for a specified period or until further ordered by the Court, and prohibit contact, including by mail, email, telephone, or by using third parties, for a specified period or until further ordered by the Court;

- (D) Modify the authority of an agent under a power of attorney; or, terminate an existing power of attorney, upon a finding that the agent has violated or is unfit to perform the fiduciary duties under the power of attorney;
- (E) Require an accounting of the elder or vulnerable adult's income or other resources at the abuser's expense;
- (F) Restrain the transfer of the elder or vulnerable adult's property for a specified period of time, or make any order necessary to protect the property or financial resources of the elder/vulnerable adult from misuse or waste;
- (G) Require the abuser to pay the costs incurred with bringing the action;
- (H) Order the abuser to pay restitution costs, and order attachment of abuser's tribal funds, if any, to pay such costs; and/or
- (I) Require the abuser to do community service; or
- (J) Impose any other financial or other civil penalties as may be provided by Tribal law.

(e) Service and Execution of Protective Orders.

- (1) When an order for protection is issued under this Title and the abuser resides or can be located on the Nisqually Reservation, Nisqually law enforcement shall assist with service and execution of the order.
- (2) When the abuser resides or is located off of the Nisqually Reservation, the Tribal Attorney will arrange for service by the appropriate law enforcement agency.
- (3) Efforts will be made to ensure entry of the order into statewide and nationwide criminal information databases.

(f) Denial, Appeals.

If the Court declines to issue a protection order, the Court shall state the particular reasons for the Court's denial in writing. An order for protection is a final order subject to appeal under the appellate rules and procedures in Title 24 of the Nisqually Tribal Code.

(g) Duration; Review Hearings; Modification of Protection Order.

- (1) A Protection Order issued under this Section 51.14.01 shall remain in effect for one year unless otherwise modified, terminated, or extended by the Court.

- (2) Review by the Court of the need to continue a protection order shall occur every twelve months, or earlier upon motion for good cause shown. The review shall include an accounting for the elder or vulnerable adult's funds, property, credit, services, or other resources if the Court has designated a representative payee or guardian with fiduciary responsibility for safeguarding or expending resources. The Court shall review all available information provided by Nisqually APS about the elder or vulnerable adult including services provided, mental and physical status, living conditions, and other information that may be helpful to the Court. After each such review, the Court may extend or amend the protection order if cause is shown by clear and convincing evidence.
- (3) There shall be no need to serve a review hearing order on a party where such party has failed to appear or has not provided the Court an address where he or she can receive mail, unless the underlying order has been modified. Where the underlying order has been modified, the Court shall arrange for service as set forth in Section 51.14.01(e) above.
- (4) Copy to Nisqually Police Department. Each order of protection granted pursuant to this Title shall be forwarded by the court clerks immediately to the Nisqually Police Department.

51.09.03 CONFIDENTIALITY OF INVESTIGATIVE REPORTS AND COURT RECORDS

Records of investigations and Court proceedings under this Title are confidential. Only the elder or vulnerable adult, parties or attorneys of record as to the case; currently appointed guardians ad litem; Nisqually APS, Tribal law enforcement, court officials, the Tribal Attorney, medical staff treating the elder or vulnerable adult, and other persons determined by the Court to have good cause, may view the records.

51.09.04 RIGHTS OF ELDERS, THEIR FAMILIES, AND CARETAKERS

- (a) An elder or vulnerable adult may refuse protective services provided that Nisqually APS finds there is good cause to believe that the person can take care of him or herself, and knows of the services offered, and no emergency exists.
- (b) Family members or caregivers may refuse services for themselves, but cannot refuse services for the elder or vulnerable adult.
- (c) Elders, vulnerable adults, or caregivers may refuse to allow investigators into their own home, but the investigator shall provide information that he or she may obtain a Court order for entry by showing good cause for entry. A caregiver may not prevent an investigator from having any access to privately communicate with an elder.
- (d) When a petition is filed with the Court under this title, the petitioner must make diligent efforts to provide service of notice to the elder or vulnerable adult, the primary caregiver,

and any adult children, parents, or siblings, or in the absence of children, parents, or siblings, to the closest known relative of the elder or vulnerable adult. The elder or vulnerable adult and the primary caregiver are required parties to any Court proceeding under the title. A family member, including an extended family member, may also attend closed Court proceedings under this title unless the Court determines that the person does not have sufficient ties with the elder or vulnerable adult, or the person's presence is not in the elder or vulnerable adult's best interest.

- (e) The Court may exclude a person, including a party other than the elder or vulnerable adult, from Court proceedings if the Court finds that the attendance of the person is not in the elder or vulnerable adult's best interest, but may not issue an order against that person unless the person has had an opportunity to be heard. Separate hearings may be ordered upon a finding of good cause, including to protect the health and safety of the elder or vulnerable adult.
- (f) A family member, including an extended family member, may seek to intervene as a party upon a showing that the family member has sufficient interest in the outcome of the case that that party status is necessary to protect the rights of the family member or would be helpful in protecting the best interest of the elder or vulnerable adult.
- (g) The Court may limit a party's access to medical or other confidential records as necessary to protect the health, safety, or welfare of the elder or vulnerable adult. A party may petition the Court for the Court to order a medical, psychological, or psychiatric evaluation of the elder or vulnerable adult at the party's own expense.

51.10 GUARDIANSHIP

51.10.01 FULL OR LIMITED GUARDIANSHIPS

An elder or vulnerable adult on his or her own behalf, or any interested person who is seeking a guardianship, including the Tribe, may petition for a limited or full guardianship of an elder or vulnerable adult as defined in Section 51.07.01, above, who is unable to manage all or some of his or her own affairs. A guardianship must promote and protect the well being of the elder or vulnerable adult, and be designed to encourage maximum self reliance and independence in the elder or vulnerable adult, and may be ordered to the extent that the elder or vulnerable adult's physical or mental limitations require assistance.

- (a) The Guardianship Petition shall state:
 - (1) The elder or vulnerable adult's name, birth date, residence, Tribal affiliation and enrollment number, address of the person's own home, or locations or institution (name and address) where the elder or vulnerable adult has resided and is now located, if not at his or her own home;
 - (2) The petitioners name, birth date, residence, tribal affiliation, and relationship to the elder or vulnerable adult;

- (3) A description of the physical and/or mental problems or limitations that make the elder or vulnerable adult unable to manage his or her own affairs;
- (4) A doctor's report or letter, under oath, to the effect that the vulnerable adult is not presently able to handle his or her property and affairs; the anticipated duration of the incapacity, and any prior judicial finding of incapacity, if available;
- (5) If a limited guardianship over the elder or vulnerable adult's person is requested, then a description of the particular powers that the limited guardian is proposed to exercise and the particular areas of protection and assistance required;
- (6) If a limited or full guardianship over any or all real property is requested, than a general description of the personal or non-trust property of the elder or vulnerable adult;
- (7) If a limited or full guardianship over any or all of the financial affairs is requested, then a general description of the income or other financial resource or personal property of the elder or vulnerable adult;
- (8) The names, addresses, and relationship, if reasonably available, of the elder or vulnerable adult's spouse, children, parents, and any siblings, grandchildren or other persons who have been significantly involved in the care of the elder or vulnerable adult during the past three years, and the name or any other person(s) and relationship to the elder or vulnerable adult who may be available to share the guardianship responsibilities with the petitioner;
- (9) Whether a limited or full guardian has been appointed for the elder or vulnerable adult in any other tribal or state court;
- (10) Whether the elder or vulnerable adult has provided for powers of attorney or appointment of representative payee on his or her own behalf;
- (11) The requested length of time for which the petitioner is requesting the guardianship.

(b) Service of the Petition and Summons shall be provided as follows:

- (1) Personal service of a copy of the petition and summons shall be made upon the elder or vulnerable adult for whom the guardianship is requested; the person or persons proposed as guardian for the elder or vulnerable adult; and any existing guardian or primary caregiver with responsibility for the elder or vulnerable adult.

(2) On a showing that personal service cannot be made upon any party, the Court may in its discretion allow for service by mail or by publication. Service by mail shall be perfected if mailed via regular U.S. Mail and certified mail to the party's last known address at least fourteen days prior to the hearing. Service by publication shall be made in a newspaper of general circulation in Thurston County, once a week for three consecutive weeks and shall be perfected at the expiration of the time prescribed for publication. Reasons for allowing service of notice by publication shall include, but not be limited to, the following:

- (A) That law enforcement, a process server, or other party designated by the Court to provide service has made a good-faith effort to locate the party to provide service, but without success.
- (B) That the party has no known address or whereabouts.
- (C) That there is good cause to believe the party is hiding to avoid service or contact with law enforcement.

(3) A copy of the petition and summons shall be served by certified US mail to: parents and any adult children of the elder or vulnerable adult; the spouse of the elder or vulnerable adult if residing outside the service area of the Nisqually Indian Tribe, and any other person with whom the elder or vulnerable adult is living or who is serving as a care provider or undertaking fiduciary responsibilities pursuant to a power of attorney or representative payee appointment.

(4) An initial hearing on the Petition for Guardianship shall be held not more than thirty (30) days from the date the petition was filed, unless otherwise continued for good cause.

(c) Response

Except in the case of joint or agreed petitions, the respondent shall file a written response within twenty (20) calendar days after the respondent is served with a copy of the summons.

(d) Attorney; Guardian ad litem

The Court may appoint legal counsel for the elder or vulnerable adult as court resources allow. The Court may appoint a Guardian ad litem at its discretion in order to represent the elder or vulnerable adult, if it appears from medical or other reports submitted with the petition that his or her interests will not be adequately represented, or that he or she may not be able to participate in or assist counsel during guardianship hearings.

(e) Emergency appointment of Temporary Guardian

In the event of an emergency, where serious harm to the allegedly incapacitated elder of vulnerable adult's health or property is likely to occur before a hearing can be held, the Court may appoint with or without notice, a temporary guardian for the allegedly incapacitated elder or vulnerable adult, for a specified period not to exceed ninety (90) days. The Court shall not invest the temporary guardian with more powers than are required by the circumstances necessitating the appointment.

(f) Initial finding of jurisdiction

The Court shall make an initial determination regarding its jurisdiction over the elder or vulnerable adult, and whether another court of competent jurisdiction has previously issued orders of capacity, guardianship, or conservatorship.

(g) Hearings and Appointment

- (1) The elder or vulnerable adult named in the petition shall be present at all hearings unless the person is incapacitated and unable to appear as documented by a physician, or files a declaration with the Court requesting that the hearing proceed without them. An appointed guardian ad litem may file an affidavit with the Court stating that; a) he or she has fully explained the nature of the hearing to the elder or vulnerable adult and to the best of their belief the elder or vulnerable adult has understood the nature of the hearing and has clearly expressed a desire not to be present; or b), that to the best of his or her information and belief, the elder or vulnerable adult is incapable of understanding the nature of the hearing or participating in the hearing. Upon a finding from the evidence that the elder or vulnerable adult cannot participate in the hearing(s), the court may waive his or her appearance, provided that counsel or a guardian ad litem is present at every hearing on the merits of the petition, in the elder or vulnerable adult's behalf.
- (2) All guardianship hearings under this Title shall be closed to the public and confidential. Persons entitled to notice of the proceeding under Section 51.17.01(b)(1) and (3) may be present at the hearing in the absence of a court order to the contrary.
- (3) Whether or not the Nisqually Tribe is the petitioner, the Tribe's Social Services Department may be invited by the Court to provide testimony or recommendations regarding the guardianship. The Tribe's Social Services Department may also file a motion to intervene in any guardianship proceeding under this chapter and the motion shall be granted unless the Court finds that intervention by the Tribe would be contrary to the welfare or best interests of the elder or vulnerable adult.
- (4) At the hearing, the Court shall examine the petition and take such testimony as any interested party wishes to present. The petitioner must prove by clear and convincing evidence that the elder or vulnerable adult is unable to manage his or her own affairs due to loss of memory or reasoning ability, acute alcoholism or

abuse of drugs; mental illness; other medical condition or incapacity, and that elder or vulnerable adult lacks the ability to manage his or her own affairs to the extent that his or her personal health, or physical or financial security is measurably threatened, and there are no less restrictive alternatives reasonably available to remedy these problems.

- (5) The Court shall make specific findings as to the above. If the Court determines that a limited or full guardianship is necessary to protect the person or property of the elder or vulnerable adult, the Court shall further make written findings regarding the scope of the guardianship, and as to whether the limited or full guardianship should be shared among one or more family members or interested persons. The guardian powers shall extend only to such areas specifically stated in the findings and order, and such powers shall be no more extensive than is necessary to address the facts proven by the petitioner. The preference of the elder or vulnerable adult as contained in an unrevoked durable power of attorney or as otherwise clearly stated, shall control selection of the limited or full guardian or guardians except for good cause or disqualification.
- (6) The order shall clearly state the duration of the guardianship, the date and time of the guardianship review hearing, any reporting requirements, and a requirement that the guardian advise the Tribal Court of any change in his or her address.
- (7) The Clerk shall issue letters of guardianship upon appointment as set forth in the court's order. All letters of guardianship shall be in a form approved by the Nisqually Tribal Court. The Court shall order the clerk to issue letters that are valid for a period of up to five years from the date of appointment.

(h) Who May Be Guardian of Elders and Vulnerable Adults

The following are entitled to consideration for appointment in the order listed:

- (1) The individual appointed by the elder or vulnerable adult in an unrevoked durable power of attorney, unless the Court has made a finding that such an appointment is not in the elder or vulnerable adult's best interest;
- (2) The spouse of the incapacitated person or a person nominated by will of a deceased spouse or by other writing signed by the spouse and attested to by at least two witnesses;
- (3) An adult child of the incapacitated person;
- (4) A parent of the incapacitated person, or a person nominated by will of a deceased parent or by other writing signed by a parent and attested by at least two witnesses;

- (5) Any relative of the incapacitated person with whom the person has resided for more than 6 months prior to the filing of the petition;
 - (6) A person nominated by the person who is caring for or paying for the care of the incapacitated person; or
 - (7) A suitable person or agency of or appointed by the Nisqually Indian Tribe.
- (i) Guardian Inventory
- (1) Persons appointed a limited or full guardianship over the income or personal or non-trust real property of the elder or vulnerable adult shall file an inventory with the Court of all such income and personal or non trust real property prior to the appointment or at such time as may be extended by the court upon a showing good cause of requesting such extension. The inventory shall include all heritage personal property, which means any baskets, beadwork, regalia, tools, or other material of extended family origin that is in the possession of the elder or vulnerable adult.
 - (2) The Court may require certain limited or full guardianship funds be placed into a judicially blocked account or bank account.

(j) Annual Guardianship Reports; Notice of Change in Circumstances; Guardianship Review Hearings

The Court shall set an annual review hearing for each guardianship. Every guardian shall provide a written report at least once a year prior to the annual review hearing, or more frequently upon order of the Court, upon the actions of the guardian on behalf of the elder or vulnerable adult's person and/or estate. Anytime there has been a substantial change in the circumstances of the elder or vulnerable adult, the guardian shall file a Notice of Substantial Change in Circumstances with the Court within thirty (30) days of the change in circumstances.

Annual reports shall include, but not be limited to, the following information:

- (1) Actions taken to provide the elder or vulnerable adult with continued access to his or her accustomed spiritual and religious community;
- (2) Actions taken to provide the elder or vulnerable adult with access to appropriate Nisqually Tribal Community social and cultural activities, and to family and extended family gatherings;
- (3) Actions taken to provide necessary and appropriate medical or therapeutic treatment, and other services that the elder or vulnerable adult is receiving, along with names of service providers;

- (4) The current address and living situation, including names, contact information, and responsibilities of all caregivers and/or family members providing assistance to the elder or vulnerable adult;
- (5) Proposed or anticipated changes, including changes of residence, in order to improve the elder or vulnerable adult's living situation; or additional assistance or services deemed required;
- (6) Proposed transfers of property, or making of a Will;
- (7) An accounting, on a form approved by the Nisqually Tribal Court, if the guardian is responsible for the elder or vulnerable adult's estate or finances;
- (8) Within 30 days of the death of the elder or vulnerable adult, a final report shall be filed with the Court including the above information, and including additional information regarding the transfer of remaining resources to the estate of the elder or vulnerable adult.

(k) Notice

Copies of all subsequent pleadings, reports, or notices filed in a guardianship matter shall be delivered to the guardian, incapacitated person, any currently appointed guardian ad litem, the petitioner, and any other party to the case. If a party is represented by legal counsel, the party's attorney shall be provided copies.

(l) Disposition of Property

- (1) A limited or full guardian, having the appropriate authority, shall not sell, encumber or otherwise transfer nontrust (fee) real or trust property of an elder or vulnerable adult, or an interest therein, unless such transfer is approved by the Court.
- (2) A limited or full guardian shall not prepare or have prepared by another a will on behalf of the elder or vulnerable adult for any property, including trust property, without an order of the Court.
- (3) A limited or full guardian appointed be considered to have authority to sell, encumber, or otherwise transfer traditional items of personal property owned by the elder or vulnerable adult, including, but not limited to, regalia, beadwork and basketry, unless authorized by the Court.
- (4) A limited or full guardian, only if Court-ordered, shall transfer personal property of the elder or vulnerable adult, other than that included in subsection (2) of this section, only when such transfer is in the best interest of the elder or vulnerable adult, as described in subsection (5) of this section.

- (5) In considering whether or not the sale of fee land or personal property is in the best interest of an elder or vulnerable adult, the Court shall consider:
- (A) Ability of the sale of the property to improve the life of the elder or vulnerable adult;
 - (B) The likelihood that the elder or vulnerable adult will need or benefit from the property in the future;
 - (C) The current desires of the elder or vulnerable adult with respect to the sale of the property;
 - (D) The ability of the elder or vulnerable adult to maintain the property;
 - (E) The availability and appropriateness of alternatives to the sale of the property;
 - (F) The likelihood that such property may deteriorate or be subject to waste, if not sold;
 - (G) The benefit versus the liability and costs of maintaining the property;
 - (H) Such other factors that may exist in the particular instance.
- (6) Limited or full guardians may have access to monies or other resources belonging to the elder, if available, in order to provide for the necessary care of the elder or vulnerable adult.

(m) Termination of Guardianship

- (1) Failure to file an initial inventory or to appear and file a written report at the time of a scheduled review, or as ordered by the Court, shall constitute grounds for terminating the limited or full guardianship, provided that the limited or full guardian is given fifteen (15) days notice and an opportunity to request a rescheduling of his or her appearance, and request to file a late report, but not later than 15 days (15) from receipt of notice unless extended by the Court for good cause, in order to avoid termination of the guardianship.
- (2) A finding of failure to fulfill limited or full guardianship duties in a reasonable and responsible manner after a review hearing, shall be cause to terminate the limited or full guardianship. A hearing on the proposed termination may be filed on the Court's own motion or on the motion of any interested party, and shall be scheduled no less than fifteen (15) days from the filing and service to all interested parties, of the motion to terminate.

- (3) The limited or full guardianship shall automatically terminate on the death of an elder or vulnerable adult. The guardian shall provide an accounting of resources and property at the time of death to the Court not later than 30 days from the death of the elder or vulnerable adult, and the Court may require the guardian to appear at a hearing on the matter.
- (4) If the Court terminates a limited or full guardianship and the elder or vulnerable adult continues to be in need of a guardian, the Court will appoint a Temporary Guardian in accordance with Section 51.17.01(e), above, and Nisqually APS will provide assistance and services to protect and care for the health, safety, and welfare of the elder or vulnerable adult pending a hearing for appointment of another full or limited guardian.
- (5) If the Court terminates a limited or full guardianship and the elder or vulnerable adult continues to be in need of a guardian, the Court may consider transfer of guardianship to another court of competent jurisdiction per Section 51.06.01 of this title as is necessary and appropriate.

(n) Guardianship Records; Access to Court Records and Confidentiality

- (1) The clerk of the Court shall keep a permanent file of all records pertaining to each limited or full guardianship proceeding. Any limited or full guardian duly appointed shall be entitled to receive, without charge, certified copies of letters of limited or full guardianship.
- (2) Guardianship records are confidential. Unless otherwise provided by court order, guardianship records shall be open to inspection only by: parties of record as to the case, attorneys of record as to the case, and court appointed guardians ad litem.

(o) Right to Appeal

Any order entered pursuant to this Section 51.17.01 may be appealed under the appellate rules and procedures in Title 24 of the Nisqually Tribal Code.

51.11 CONTEMPT

51.11.01 CONTEMPT OF COURT

- (a) Any willful violation of any order entered pursuant to this Title shall constitute contempt of court and may be punished civilly or criminally.
- (b) When contempt is committed in the presence of the Court, it may be punished at that time. An order shall be prepared stating the contemptuous acts which occurred, that the person is guilty of contempt of court, and the punishment.

- (c) When contempt has not been committed in the presence of the Court, the facts constituting contempt must be presented to the Court by motion of any party or upon the Court's own motion. The Court may then order the person to appear to show cause why he or she should not be held in contempt of court.
- (d) When the contempt consists of the omission or refusal to perform an act which is yet in the power of the person to perform, he or she may be imprisoned until he or she has performed it. In such a case, the act must be specified in the warrant of commitment.
- (e) If a judge determines that a person is in contempt of court, the judge may impose a fine payable to the court. However, the Court may not impose a fine or any other sanction against the Nisqually Indian Tribe nor against its representative.

51.12 GENERAL PROVISIONS

51.12.01 REPEALER

This Title repeals and supersedes the Nisqually Adult Guardianship Code, Title 51.

51.12.02 PENDING ACTIONS

This Title shall become effective on the date determined by Nisqually Tribal Council resolution and shall govern any action pending on that date.

51.12.03 SAVINGS CLAUSE/SEVERABILITY

If any part of this Title shall be declared invalid, or declared invalid as applied to any person or circumstance, such decision shall not affect the validity of the remaining parts of the Title, and those parts are declared severable.

51.12.04 EFFECTIVE DATE; AMENDMENTS

This Title shall be effective upon approval by the Secretary of the Interior. All future Amendments to this Title shall be considered approved by the Secretary of the Interior and shall be effective without additional review.