LEGALLY INCOMPETENT MEMBER PROTECTIVE FUND ADMINISTRATION INTERIM ORDINANCE

CHAPTER I. GENERAL

1.01 Policy and Purpose.

It is the policy of the Ho-Chunk Nation to protect and preserve the interests of its Members who are acting under any legal disability affecting their ability to manage their own financial affairs, in any Per Capita Payments that may be made by the Nation from time to time. Pursuant to the currently effective Per Capita Distribution Ordinance of the Nation, Trust Funds are to be created to hold and administer Per Capita Payments which Legally Incompetent Members are entitled to receive. It is the finding of the Legislature of the Ho-Chunk Nation, as embodied in this Interim Ordinance, that clear and effective standards and procedures should be instituted to guide the consideration and processing of petitions for disbursement of funds held in trust for Incompetent Tribal Members at their death. Issues concerning the disposition of Trust Funds of deceased incompetent Tribal Members have arisen.

In order to address those matters, to provide statutory guidance and direction concerning administration of the trusts formed, the Legislature of the Ho-Chunk Nation does enact this Interim Ordinance. A successor Probate Ordinance, when enacted by the Legislature, supercedes this Interim Ordinance.

1.02 Definitions.

(a) "Guardian" shall mean a parent of a Minor Member having legal custody of the person and property of a Minor Member, or any other person legally entitled to hold and administer the property of a Legally Incompetent Member pursuant to an appointment of a court of competent jurisdiction or on any other recognized legal basis.

(b) "Legal Incompetent" means a Member determined to be, or recognized as, incapable of prudently managing such Member's interest in Per Capita Payments which are or become due to such Member.

(c) "Legal Incompetents Trust Fund" shall mean a protective fund established to hold and administer the Per Capita Payments of a Legally Incompetent Member, whether such protective fund is formally instituted pursuant to a trust agreement or is otherwise set aside pursuant to a protective arrangement on a temporary or permanent basis.

(d) "Member" shall mean a person duly enrolled and recognized as a member of the Nation pursuant to the Constitution and laws of the Ho-Chunk Nation.

(e) "Nation" means the Ho-Chunk Nation, a sovereign and federally recognized Indian Nation.

(f) "Per Capita Ordinance" means the Nation's Per Capita Distribution Ordinance as amended and approved and any subsequently adopted successor or substitute ordinance.

(g) "Per Capita Payment" means a Member's share of any distribution made by the Nation to Members pursuant to the Per Capita Distribution Ordinance.

(h) "Personal Representative" means a fiduciary who collects income from the estate property in his or her possession; pays the debts of the estate; manages and settles the estate in accordance with applicable law; and files any necessary estate and income tax returns on behalf of the deceased Member.

(i) "Trial Court" shall mean the Trial Court of the Ho-Chunk Nation.

1.03 Trial Court Authority

The Trial Court is hereby authorized to name a Personal Representative of the estate of a Member and to determine whether and on what condition to authorize distributions from Incompetent Member Trust Funds when all of the following are met:

(a) the Member is a Legal Incompetent for purposes of the Per Capita Ordinance and this Interim Ordinance; and

(b) the Member has a Guardian named by a court of competent jurisdiction; and

(c) the Member is deceased; and

(d) no court of competent jurisdiction has named any person the Personal Representative of the estate of the deceased; and

(e) under the laws of intestacy, the Personal Representative is the natural object of the estate's bounty to include only parent-child or spouse-spouse.

1.04 Appeals

The decision of the Trial Court shall be final as to all such matters and shall be appealable to the Nation's Supreme Court only on grounds of (1) a manifest failure to observe the standards and procedures of this Interim Ordinance in a manner not involving the exercise of the Trial Court's judgment, (2) unconstitutionality of this Interim Ordinance or its application in any case before the Trial Court, (3) errors of law and (4) clear abuse of the discretion by the Trial Court involving an application of the standards of this Interim Ordinance to the facts presented in an arbitrary and capricious manner.

CHAPTER II. PETITION

2.01 Petition for Distribution from Legal Incompetent's Trust Fund

A Guardian may petition the Trial Court to be named the Personal Representative of the estate of a Legal Incompetent's Trust Fund. The Guardian's Petition shall:

(a) identify the Guardian and Legal Incompetent Member from whose Legal Incompetent's Trust Fund the distribution is sought;

(b) state the basis of the Guardian's guardianship and append evidence of appointment if other than as a parent; and

(c) state upon information and belief that no court of competent jurisdiction has named a personal representative of the estate of the deceased Tribal Member; and

(d) include a request to be named the Personal Representative of the Member's estate, stating that there are no other persons who would succeed to the Trust Fund under applicable laws of intestacy.

III. PROCEDURES FOR PETITIONS FOR DISTRIBUTION

3.01 Ex Parte Proceeding

Proceedings on petitions for distributions from Incompetent Member Trust Funds normally shall be ex parte in nature and shall proceed without any party opposing said petition, except as otherwise provided in Sections 3.02 or 3.03, and except for any intervention in such proceeding which the Trial Court may permit in its discretion in the interests of justice and to fully protect and preserve the interests of the estate of the Legal Incompetent in the Trust Fund.

3.02 Justice Department Right to Intervene or Act as Amicus

A copy of each petition filed with the Trial Court shall be served on the Department of Justice of the Ho-Chunk Nation. The Justice Department shall have ten (10) days from the date of its receipt of service of each such petition to notify the Trial Court if it will intervene in such proceeding to assert and protect a legal interest of the Nation arising from the terms or circumstances of such petition, or that it will file a brief on issues raised by such petition within twenty (20) days of the date of service. If the Justice Department does not deliver such notice to the Trial Court within such ten (10) day period, or notifies the Trial Court that it will not intervene or act as an amicus curiae, it shall not participate in such proceedings. The Justice Department's right to intervene under Section shall not require Trial Court permission or consent, and shall constitute the Department of Justice's right to representation of the Nation.

3.03 Trial Court Authority to Appoint Special Master or Guardian ad Litem

If the Trial Court determines that investigation of facts and circumstances surrounding a petition or representation of the interests of the Minor or Legal Incompetent separate from the Guardian of such Member, is necessary or appropriate for the protection and preservation of the interests

of the Minor or Incompetent in the Trust Fund and/or reaching a proper determination under this Interim Ordinance, the Trial Court may appoint a special master or guardian ad litem with respect to proceedings on the petition on such basis and terms as the Trial Court shall determine.

3.04 Proceedings on Petition

The Trial Court shall have a period of twenty (20) days from the filling of the petition to set the petition for hearing, require further submissions from the petitioner, to make an appointment under Section 4.03, or to grant the petition; provided that the Trial Court shall not grant the petition prior to the expiration of the ten (10) day notice period provided to the Department of Justice to exercise its rights under Section 4.02 unless the Department has by written notice to the Trial Court waived such rights in that proceeding. The Trial Court shall name the Personal Representative and grant or deny the petition not more than sixty (60) days after it is filed, unless a party has intervened in the proceeding or the Trial Court determines that a further period, not to exceed thirty (30) days, is required to properly investigate and establish any fact or circumstances relevant to the Trial Court's ruling on the petition. Except to the extent otherwise specifically provided herein, in all proceedings commenced under this Interim Ordinance, including contested proceedings in which a party intervenes, the Ho-Chunk Nation Rules of Civil Procedure shall apply.

3.05 Court Order

The Trial Court shall issue an order naming the Personal Representative and granting or denying the petition. The order will be served upon the petitioner and Department of Justice of the Ho-Chunk Nation, and if granted shall also be served on the Office of Tribal Enrollment and Treasury Department of the Nation. The order shall specify the terms and conditions on which any distribution for a Trust Fund shall be made, the manner in which the distribution shall be administered and basis on which the petitioner shall account to the Trial Court for the expenditure of such distribution. The order may incorporate any portion or all of the petition or any submission in support thereof in its order. The Office of Tribal Enrollment and Treasury Department of the Nation shall effect any distribution directed by an order from the Trust Fund to which it pertains within thirty (30) days of receipt of such order unless such order is the subject of an appeal which shall stay the effect of the order until a final decision on appeal is rendered.

3.06 Administration of Distribution

The Personal Representative receiving a distribution from a Trust Fund shall administer and expend the funds distributed as specified in the order of the Trial Court. The Personal Representative shall not permit any modification in the use of the distribution form the purposes specified in the Trial Court Order without written permission from the Trial Court. Any failure to administer the distributed funds in the manner specified in the Order shall constitute a contempt of court, and shall be punishable under the Ho-Chunk Nation Contempt Ordinance.

4.07 Accounting

The Personal Representative shall account to the Trial Court for the expenditures of the distribution at the time and on the basis stated in the order. Such accounting may be prepared in any fashion acceptable to the Trial Court that establishes the manner in which the distribution was administered and spent. The accounting need not be done in accordance with any specific accounting standards or other formal requirements other than such requirements as may be established by the Trial Court. The Personal Representative shall provide receipts or other similar evidence of expenditures as the Trial Court may require. Unless otherwise provided in the order, the accounting shall be delivered to the Trial Court not later than thirty (30) days after the distribution has been completely expended; provided that if the distribution is not completely expended within six (6) months, interim accountings every six (6) months shall be required. The Trial Court may accept the written accounting of the Personal Representative without formal proceedings or may require the Personal Representative to appear at the proceeding which the Trial Court may deem appropriate to assure that the distribution has been administered and spent as required in this Interim Ordinance.

(Extract from Draft Minor and Legally Incompetent Member Protective Fund Administration Ordinance)

ADJUDICATION OF LEGAL INCOMPETENCY

1. **Adjudication of Legal Incompetence.** For purposes of this Ordinance, a Member shall be deemed and treated as a Legal Incompetent only upon determination by the Trial Court that, due to a physical or mental condition, the Member is incapable of prudently managing Per Capita Payments which may from time to time be payable to the Member. The pendency of a state court guardianship, conservatorship, or receivership shall be good and sufficient evidence establishing Legal Incompetence, unless the Trial Court upon the circumstances of the case determines otherwise. The Trial Court may reach a determination of Legal Incompetence without the need for or reference to any external proceedings, and may establish a guardianship for a Member's interest in Per Capita Payments upon its finding of the grounds stated above, Notwithstanding the foregoing, any Member for whom a Legal Incompetent's Trust Fund is maintained on the date of passage of this Ordinance shall be deemed a Legal Incompetent for one hundred eighty (180) days after the date of passage to allow proceedings in the Trial Court with respect to such Member to take place.

2. **Proceedings.** Proceedings for the determination of Legal Incompetency may be commenced by a Guardian, conservator, receiver or family member of a Member. Proceedings may also be commenced by the Office of Tribal Enrollment of the Ho-Chunk nation if it has reason to believe that a Member is a Legal Incompetent under the Rules of Civil Procedure of the Ho-Chunk Nation. If the Trial Court determines ;it is appropriate to protect the interests of the Member subject to a proceeding, the Trial Court may appoint a Guardian ad Litem to represent the Member's interests in the proceeding. The Trial Court will serve its order determining a Member to be a Legal Incompetent on the Office of Tribal Enrollment and the Treasury Department of the Nation so that a Legal Incompetent's Trust Fund may be established for that Member.

3. **Adjudication to Remove Disability.** If the mental or physical condition of a Member resulting in a determination of Legal Incompetence by the Trial Court under paragraph 1, above, abates to the extent that the Trial Court is satisfied that the continuation of a Legal Incompetent's Trust Fund is no longer necessary to preserve and protect the interests of the Member in Per Capita Payment, the Trial Court may declare the Member to no longer be a Legal Incompetent and to remove all legal disabilities associated with the prior determination. The Trial Court shall serve its order rescinding the finding of Legal Incompetency of a Member on the Office of Tribal Enrollment and the Department of Treasury of the Nation, and all funds then held on the Legal Incompetent's Trust Fund of the Member shall be distributed to the Member within thirty (30) days of the service of the order on the Office of Tribal Enrollment and the Department of Treasury.