

Ordinance 31-17

An Ordinance amending Chapter 13 of Title 8 entitled “Child/Family Protection” of the Mille Lacs Band Statutes Annotated (MLBSA) to make necessary changes to clarify language and strengthen the protection and obligation to the children of the Mille Lacs Band of Ojibwe.

The District I Representative introduced the following Bill on the 28th day of December, 2017.

Preamble

It is enacted by the Band Assembly of the Mille Lacs Band of Ojibwe for the purpose of amending Chapter 13 of Title 8 entitled “Child Protection” of the Mille Lacs Band Statutes Annotated (MLBSA) in order to strengthen the protection and obligation to the children of the Mille Lacs Band of Ojibwe.

Title I

**Section 1:** The name of the Chapter is hereby amended as follows:

CHILD PROTECTION

**Section 2:** Sections 3001-3246 are hereby amended as follows:

**Chapter 13**

**CHILD PROTECTION**

<b>Subchapter</b>	<b>Section</b>
1. General Provisions	3101
2. Child Protection Court Procedures	3111
3. Child Abuse and Neglect	3141
4. Foster Home Licensing Procedures	3171
5. Guardianships	3201
6. Procedures for the Adoption of Children	3231

**Historical and Statutory Notes**

The preamble of Band Ordinance 01-96 provides:

“Be it enacted by the Band Assembly of the Non-Removable Mille Lacs Band of Ojibwe Indians for the purpose of amending Band Statute 1096 - MLC - 28.

## **§3001. Declaration of Policy**

- (a) Parents are the foundational and capable caregivers for the sacred life of the child. Where that foundation breaks down, it is the responsibility of the Mille Lacs Band of Ojibwe to ensure the care of its children
- (b) One of the Mille Lacs Band of Ojibwe's basic inherent sovereign rights is the right to make decisions regarding the best interests of Mille Lacs Band children including who should provide for the care, custody and control of its children. This code is intended to assure a safe, stable, nurturing and permanent environment for the Band's children and to provide for the protection of our children, our people and our way of life.
- (c) The principles that shall guide decisions pursuant to this code are: protection of the child's safety, wellbeing and welfare and their sense of belonging; preservation of the child's identity as a tribal member and member of an extended family; preservation of the culture, religion, language, values, and relationships of the Band.
- (d) As an exercise of its inherent sovereignty the Mille Lacs Band has the authority and jurisdiction to formally delegate the authority to its Court of Central Jurisdiction to adjudicate its own customary practices regarding child rearing and child custody.

## **Subchapter 1 General Provisions**

### **Section**

3101. Title of Chapter  
3102. Purpose  
3103. Definitions  
3104. Child Protection Records

### **§ 3101. Title of Chapter**

This chapter shall be entitled "The Child Protection Statute".

#### **Historical and Statutory Notes**

**Source:** Band Ordinance 01-96, § 1A.

### **§ 3102. Purpose**

This subchapter shall be liberally interpreted and construed to fulfill the following expressed purposes:

- (a) to recognize and acknowledge the customs and traditions of the Mille Lacs Band with regards to child-rearing;
- (b) to preserve unity of the family, preferably by separating the child from his parents only when necessary;
- (c) to take such actions as may be necessary and feasible to prevent the abuse, neglect or abandonment of children;
- (d) to provide a continuum of services for children and their families ranging from prevention to residential treatment, with emphasis whenever possible on prevention, early intervention and community-based alternatives;
- (e) to secure the rights of and ensure fairness to the children, parents, grandparents, guardians, custodians, Niiya wen'enhyag, or other parties who come before the Court under the provisions of this chapter;
- (f) to ensure that courts from other jurisdictions will be willing to return Mille Lacs Band children to the Band pursuant to this chapter;
- (g) to provide for the welfare, care and protection of the children and families under the jurisdiction of the Mille Lacs Band.

**Historical and Statutory Notes**

Source: Band Ordinance 01-96, § 1.

**§ 3103. Definitions**

See Title 8, Chapter 1 for general definitions applicable to this chapter. For the purposes of this chapter only, “**he**” means he or she, “**his**” means hers or his, and singular includes plural, and the following additional definitions apply:

- (a) “**Abandon**” or “**Abandonment**” means the failure of the parent, guardian or custodian to provide reasonable support and to maintain regular contact with a child or otherwise maintain a parental relationship, unless the parent establishes that an extreme financial or physical hardship or treatment for mental disability or chemical dependency or other good cause prevent the parent from making contact with the child. Placement of a child, by mutual consent, with extended family members does not constitute abandonment, unless the parent does not abide by the terms, if any, agreed upon by mutual consent. Reasonable support includes both financial and emotional support.
- (b) “**Active Efforts**” means a rigorous and concerted level of case work that uses the prevailing social and cultural values, conditions and way of life of the Mille Lacs Band of Ojibwe to preserve the child’s family and to prevent placement of the child or, if placement occurs, to return the child to the child’s family at the earliest possible time. Family Services must consult with extended family members for help and guidance, and use them as a resource for the child whenever possible. Active efforts may include, but are not limited

to:

- (1) Providing concrete services and access to both tribal and non-tribal services in an on-going manner throughout the case to directly assist the family in accessing and engaging in those services;
- (2) Arranging visitation and transportation that will take place, whenever possible in the home of the parent, other family members or other non-institutional setting. Visitation shall include close contact with parent, siblings and other relatives. Visitation shall not be withheld for failure to follow a case plan;
- (3) Using tribally based family preservation and reunification services wherever possible; and
- (4) Providing services to extended family members to allow them to be considered for placement of the child.

(c) **“Band Assembly”** means the duly elected Band Assembly of the Mille Lacs Band of Ojibwe, a federally recognized Indian tribe. The Band Assembly is composed of the Speaker of the Assembly and the three District Representatives.

(d) **“Band Lands”** means lands owned by or held in trust for the Minnesota Chippewa Tribe, the Mille Lacs Band of Ojibwe Indians, or one or more members of the Mille Lacs Band of Ojibwe Indians, and any other lands subject to the jurisdiction of the Mille Lacs Band.

(e) **“Case Plan”** means any written plan for the delivery of services to a child, parent, guardian or custodian developed according to the requirements of this chapter.

(f) **“Chemical Dependency”** means an addiction to alcohol, prescription medication, or illegal drugs.

(g) **“Child”** means a person who is less than eighteen (18) years old and has not been married or emancipated by order of a court of competent jurisdiction.

(h) **“Child Abuse”** means the infliction of physical, emotional or mental injury on a child, 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 physical, mental or emotional health is endangered.

(i) **“Child Protection Team”** means a team established to involve and coordinate the child protection services of various agencies as set forth in § 3142 of this chapter.

(j) **“Child in Need of Protection or Services”** means a child who:

- (1) is abused as defined in this chapter;
- (2) is neglected as defined in this chapter;
- (3) is abandoned as defined in this chapter, or has no parent, guardian or custodian available who is capable and willing to care for him;
- (4) has suffered, or is likely to suffer a physical injury, sexual abuse, or emotional injury, inflicted upon him by other than accidental means, which causes or creates a substantial risk of death, disfigurement or impairment of bodily functions;
- (5) has not been provided with adequate food, clothing, shelter, medical care, education or supervision by his parent, guardian or custodian necessary for his health and well-being;
- (6) exhibits behavior or whose condition or environment is such as to be injurious or dangerous to the child or others—this may include, but is not limited to, exposure of the child to criminal activity in the child’s home;
- (7) being subject to compulsory school attendance, engages in excessive absenteeism (absent on seven (7) or more school days without a reasonable explanation) ;
- (8) habitually disobeys the reasonable and lawful demands of his parents, guardian or other custodian, and is ungovernable and beyond their control;
- (9) has committed delinquent or criminal acts, including truancy, as a result of parental pressure, guidance, approval, or failure to properly supervise;
- (10) has been subjected to ongoing violence in the home whether or not directed toward the child;
- (11) lives where the manufacturing, sale, or possession of controlled substances takes place in the child's home, on the premises of the child's home, or in a motor vehicle that is located on the premises;
- (12) is homeless as defined in this chapter; or
- (13) when used in referring to an unborn child, is exposed to the habitual and frequent use of alcoholic beverages by the expectant mother of the unborn child, or to any use of controlled substances or controlled substance analogs by the expectant mother of the unborn child.

(k) “**Commissioner of Health and Human Services**” is a position appointed by the Chief Executive and ratified by the Band Assembly in charge of the direction and vision of all of the Band’s Health and Human Services departments.

- (l) “**Controlled Substance**” is any drug or chemical whose manufacture, possession or use is regulated by the federal government as defined by the FDA. A **Controlled Substance Analog** is a chemical or drug whose chemical makeup is substantially similar to a controlled substance as defined in 21 U.S.C. § 813.
- (m) “**Conservator**” means a person appointed by the Court to manage the property of the ward as set forth in this chapter.
- (n) “**Domicile**” means a person’s permanent home, legal home or main residence. The domicile of a child is generally that of the custodial parent or guardian. Domicile includes the intent to establish a permanent home or where the parent or guardian considers their permanent home.
- (o) “**Emergency Foster Home**” means a family home, which has been licensed to accept emergency placements of children at any hour of the day or night (see “Foster Home”).
- (p) “**Emergency Guardianship**” means a guardian who has been granted temporary guardianship status on an emergency basis as set forth in subchapter 5 (§§ 3201-3219) of this chapter.
- (q) “**Extended Family**” is defined according to the customs and traditions of the Mille Lacs Band and includes Niiya’wenh’enh’ (Namesake).
- (r) “**Foster Home**” means a family home, which has been licensed under subchapter 4 (§§ 3171-3174) of this chapter.
- (s) “**Foster Home Recruiter**” means a person selected to inspect and recommend for license foster homes under subchapter 4 (§§ 3171-3174) of this chapter.
- (t) “**General Guardian**” means a guardian who has been granted long term guardianship status as set forth in § 3202 of this chapter.
- (u) “**Guardian Ad Litem**” means, for the purposes of this chapter, a person appointed by the Court to represent the child’s interests before the Court.
- (v) “**Homeless**” describes a situation in which an individual is without permanent housing who may live on the streets; stay in a shelter, mission, single room occupancy facility, abandoned building or vehicle; or repeatedly rely on temporary accommodations in a friend or family members’ home or in any other unstable or non-permanent situation.
- w) “**Indian**” means any member of a federally recognized Indian tribe, band or community, or Alaska Natives, or a person considered by the tribe, band or community to be Indian.
- x) “**Solicitor General**” means the Solicitor General or other designated person who

appropriately performs the duties and responsibilities set forth in § 3123 of this chapter.

(y) **“Neglect”** means the:

(1) failure by a person responsible for a child's care to supply a child with necessary food, clothing, shelter, health, medical, or other care required for the child's physical or mental health when reasonably able to do so;

(2) failure to protect a child from conditions or actions that seriously endanger the child's physical or mental health when reasonably able to do so;

(3) failure to provide for necessary supervision or child care arrangements appropriate for a child after considering factors such as the child's age, mental ability, physical condition, length of absence, or environment, when the child is unable to care for the child's own basic needs or safety, or the basic needs or safety of another child in their care; or

(4) failure to ensure that the child is educated as required by law and individual school policy.

(5) “Neglect” shall include “abandoned” children.

(z) **“Open Adoption”** means an adoption, which is intended not to permanently deprive the child of connections to, or knowledge of, his natural family.

(aa) **“Out-of-Home Placement”** means a change in residence for the child away from the home of his parent, guardian, or custodian. This term includes, but is not limited to, placement with relatives, foster homes, group homes, emergency shelters, residential facilities, child care institutions and pre-adoptive homes. During this placement period, the Band Family Services department may maintain legal custody of the child.

(bb) **“Parent”** includes a natural or adoptive parent, but does not include persons whose parental rights have been terminated, nor does it include the unwed father whose paternity has not been established pursuant to 8 MLBSA §§ 2034-2036.

(cc) **“Parties”** to a child protection matter are:

(1) the child's parent, guardian or custodian;

(2) Family Services;

(3) the Petitioner;

(4) the child's grandparent by Motion to the Court; and

(5) any party who is deemed by the Court to be important to the resolution, whose inclusion is in the best interest of the child, and is granted Party status after Motion and hearing.

- (dd) **“Participants”** to a child protection matter are:
- (1) The child;
  - (2) The child’s parent who is not a legal custodian;
  - (3) Grandparents or other relative providing care for the child;
  - (4) Foster parent;
  - (5) Responsible social service agency when they are not the petitioner;
  - (6) Guardian ad litem for the legal custodian; and
  - (7) Any other person deemed by the Court to be important to the best interests of the child.
- (ee) **“Reservation”** means the territory under the jurisdiction of the Mille Lacs Band.
- (ff) **“Social Services”** means the Family Services department for the Band that is the responsible social services agency or the Band’s licensed child placement agency.
- (gg) **“Tribal Court” or “Court”** means the Court of Central Jurisdiction of the Mille Lacs Band.

**Historical and Statutory Notes**

**Source:** Band Ordinance 01-96, § 2.

**§ 3104. Child Protection Records**

- (a) **Court Records.** A record of all hearings under this chapter shall be made and preserved. All Court records shall be confidential and shall not be open to inspection to any but the following:
- (1) the child;
  - (2) the child’s parent, grandparent, guardian or custodian;
  - (3) the prospective adoptive parent;
  - (4) the child’s counsel or guardian ad litem;
  - (5) the Court personnel directly involved in the handling of the case;

(6) any other person by order of the Court, having a legitimate interest in the particular case or the work of the Court. Access under this subsection shall be by written motion. Absent exigent circumstances, parties listed in subsections 1-4 of Section 3104(a) shall be given notice of the motion and a reasonable opportunity to object to the motion. If the Court grants access to records, it shall do so by written order.

(b) **Law Enforcement and Family Services Records.** Law enforcement records and files concerning a child shall be kept separate from the records and files of adults. All Law Enforcement and Family Services records shall be confidential and shall not be open to inspection to any but the following:

- (1) the child;
- (2) the child's parent, grandparent, guardian or custodian;
- (3) the child's counsel or guardian ad litem;
- (4) Law Enforcement and Family Services personnel directly involved in the handling of the case;
- (5) the Court personnel directly involved in the handling of the case;
- (6) any other person by order of the Court, having a legitimate interest in the particular case or the work of the Court. Access under this subsection shall be by written motion. Absent exigent circumstances, parties listed in subsections 1-4 of section 3104(b) shall be given notice of the motion and a reasonable opportunity to object to the motion. If the Court grants access to records, it shall do so by written order.

#### Historical and Statutory Notes

Source: Band Ordinance 01-96, § 28.

## Subchapter 2 Child Protection Court Procedures

### Section

- 3111. General Jurisdiction
- 3112. Jurisdiction Over Extended Family
- 3113. Continuing Jurisdiction
- 3114. Application of the Indian Child Welfare Act
- 3115. Exclusive Jurisdiction
- 3116. Transfer to State Court or Other Tribal Courts
- 3117. Transfer from Other Courts
- 3118. Full Faith and Credit, Conflict of Laws
- 3119. Rules of Procedure
- 3120. Cooperation and Grants

- 3121. Outside Social Services Agencies
- 3122. Social Worker
- 3123. Solicitor General
- 3124. Guardian Ad Litem
- 3125. Additional Court Personnel
- 3126. Modification, Revocation or Extension of Court Orders
- 3127. Appeals
- 3128. Emancipation
- 3129. Authorization of Medical Treatment

## **§ 3111. General Jurisdiction**

(a) The Court of Central Jurisdiction shall exercise subject matter and adjudicatory jurisdiction over matters arising under this chapter. The jurisdiction of the Court shall be civil in nature and shall include the right to issue all orders necessary to ensure the safety of children within the territorial and personal jurisdiction of the Court as established in subsection 3111(b) below, as well as other children who have been declared to be wards of the Court. The Court shall also have the power to enforce subpoenas and orders of restriction, fines, contempt, confinement and other orders as appropriate.

(b) The Court shall have jurisdiction over the following persons under this subchapter:

- (1) Members of the Band under the age of eighteen (18) years;
- (2) Persons under the age of eighteen (18) years who are eligible to become members of the Band;
- (3) Indians, as defined in subsection 3103(w) of this chapter, who are under the age of eighteen (18) years and who are residing or domiciled within Band Lands or the exterior boundaries of the reservation;
- (4) Children residing or domiciled within Band Lands or the exterior boundaries of the reservation, for whatever reason, in the home of a member of the Band or other Indians, as defined in subsection 3103(w) of this chapter, as long as the parents, guardian, or custodians have consented to the jurisdiction of the Court. Such consent, once given, may be revoked only with permission of the Court;
- (5) Children of at least one Band Member who are otherwise ineligible for Band membership, but who are included encompassed by and referenced within Joint Resolution 15-03-207-13, which states, “children of enrolled members of the Mille Lacs Band of Ojibwe shall, for purposes of the Indian Child Welfare Act, be considered enrolled members of the Mille Lacs Band of Ojibwe”;
- (6) Any person between the ages of eighteen (18) and twenty-one (21) whom the Court previously retained jurisdiction over and who has elected to remain in Foster Care until the age of twenty-one (21).

#### **Historical and Statutory Notes**

**Source:** Band Ordinance 01-96, § 3.01.

### **§ 3112. Jurisdiction Over Extended Family**

Where the Court asserts personal jurisdiction over an individual under section 3111 of this chapter, the Court shall also have jurisdiction over the person's extended family, including non-member parents of a Band member, whenever the Court deems it appropriate and does not conflict with Federal Due Process procedures.

#### **Historical and Statutory Notes**

**Source:** Band Ordinance 01-96, § 3.02.

### **§ 3113. Continuing Jurisdiction**

Where the Court deems it appropriate, the Court may retain jurisdiction over children and their extended families who leave the exterior boundaries of the reservation as set forth in the Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA).

#### **Historical and Statutory Notes**

**Source:** Band Ordinance 01-96, § 3.03.

### **§ 3114. Application of the Indian Child Welfare Act**

The Court may apply the policies of the Indian Child Welfare Act, 25 U.S.C. §§ 1901-1963, where they do not conflict with the provisions of this chapter. The procedures for state courts in the Indian Child Welfare Act shall not be binding upon the Court unless specifically provided for in this chapter.

#### **Historical and Statutory Notes**

**Source:** Band Ordinance 01-96, § 3.041.

### **§ 3115. Exclusive Jurisdiction**

The Band has exclusive jurisdiction over child custody proceedings, as defined by the Indian Child Welfare Act (25 U.S.C.A. §§ 1901-1963) if the minor is domiciled or resides on lands under the jurisdiction of the Band.

### **§ 3116. Transfer to State Court or Other Tribal Courts**

In any proceeding before the Court, where the Court does not retain exclusive jurisdiction, the Court may transfer the proceedings to an appropriate state court or another tribal court where the state or the other Indian tribe has a significant interest in the child and the transfer would be in the best interests of the child. Factors to be considered for the best interest of the child in regards to a transfer may include: the burden of travel for the family; the child's connection to the local community; whether the child has siblings who are members of another tribe; and the services available to the child and family in the state or other tribal court.

#### Historical and Statutory Notes

Source: Band Ordinance 01-96, § 3.042.

### § 3117. Transfer from Other Courts

#### (a) Procedures for Transfer from Other Courts.

- (1) **General.** The Band may petition or move for transfer from any court claiming jurisdiction over child welfare or custody proceedings.
- (2) **Timing.** The Band may intervene in State court child welfare or custody proceedings, as defined in the Indian Child Welfare Act, at any point in the proceedings.
- (3) **Notice to the Band.**
  - a. The Band Family Services department shall be the agent for service of notice of child welfare or custody proceedings.
  - b. The Band Family Services department shall conduct an investigation in collaboration with the state social services agency or review the original investigation report.
  - c. The Band Family Services Department will submit their written recommendation for transfer to the Solicitor General at any point in the proceedings.
- (4) **Enrollment Information.**
  - a. The Band Family Services department shall request enrollment information on the child at the initial investigation. The Band Enrollment Office shall verify the enrollment information immediately.
  - b. The Band Family Services Department shall also request information regarding the child's relatives for placement purposes. The Band Enrollment office shall return the relative information within seven (7) days of the request absent good cause.
- (5) **Filing with the Courts.** The Solicitor General or selected representative shall make a motion to transfer with the transferring court within seven (7) business

days of receipt of recommendation from the Band Family Services Department and receipt of child's enrollment status with the Band.

(6) **Acceptance of Transfer.**

a. The Court shall accept all state court transfers of child welfare or custody proceedings initiated by the Solicitor General upon verification of enrollment status in accordance with section 3111.

b. The Court shall accept all state court transfers of child welfare or custody proceedings initiated by the parents' motion upon the recommendation of the Band Family Services department and verification of enrollment status in accordance with section 3111.

c. The Court shall accept all state court transfers of private child custody proceedings initiated by the parents' motion upon verification of enrollment status in accordance with section 3111. The Court may accept state court transfers of private child custody proceedings upon the motion of either parent upon enrollment verification in accordance with section 3111.

(7) **Denial of Transfer.**

a. The Court may choose to deny a motion for transfer where a transfer of services will not benefit the child, the family or the Band. The Court may consider the ability of the Band Family Services Department to provide specialty services to the family when making this determination.

b. The Court's decision not to assert jurisdiction at a given time does not preclude it from asserting jurisdiction at a later time, and the denial of a motion to transfer does not preclude the Band from remaining a party to the case as it moves forward in another jurisdiction.

(8) **Provisional Acceptance.** The Court may also provisionally accept transfer of a child welfare or custody proceeding pending another court's consideration of a motion or petition to transfer jurisdiction. The transfer shall automatically become effective the date the other court orders such transfer.

(b) **Procedures upon Transfer.**

(1) **Petition.** Within five (5) business days of the date of acceptance of Transfer by the Court, Band Family Services shall submit a Child In Need of Protection or Services petition to the Court with the approval of the Solicitor General's Office.

(2) **Reports Included.** The Child in Need of Protection or Services petition shall include the initial investigative report reviewed by the Band Family Services Department upon notice of child custody proceedings. This report may be updated and supplemented with additional materials if the Band Family Services Department finds circumstances have changed since the original investigation. Any

supplemental materials must be provided to the Solicitor General's Office within five (5) business days of the date of an acceptance of transfer of jurisdiction.

**(3) Initial Appearance.** The Court shall hold an initial appearance in accordance with this title no later than two (2) weeks after the Child in Need of Protection or Services petition is filed with the Court.

#### Historical and Statutory Notes

Source: Band Ordinance 01-96, §§ 3.043, 3.044.

### § 3118. Comity; Conflict of Laws

**(a) State Court Orders.** State child custody orders involving children over whom the Children's Court may exercise jurisdiction may be recognized by the Children's Court only after a full independent review of such state proceedings has determined:

- (1) the state court had jurisdiction over the child;
- (2) the provisions of the Indian Child Welfare Act, 25 U.S.C. §§ 1901-1963 were properly followed;
- (3) due process was provided to all interested persons participating in the state proceedings; and
- (4) the state court proceedings did not violate the public policies, customs, or common law of the Mille Lacs Band.

**(b) Court Orders of Other Tribal Courts.** Court orders of other tribal courts involving children over whom this Court could take jurisdiction shall be recognized by this Court after the Court has determined:

- (1) that the other tribal court exercised proper subject matter and personal jurisdiction over the parties; and
- (2) due process was accorded to all interested parties participating in the other tribal court proceeding.

**(c) Mille Lacs Band Interest.** Because of the vital interest of the Band in its children and those children who may become members of the Band, the statutes, regulations, public policies, customs and common law of the Band shall control in any proceeding involving an Indian child.

#### Historical and Statutory Notes

Source: Band Ordinance 01-96, § 3.05.

### **§ 3119. Rules and Procedure**

The procedures for Child Protection cases shall be governed by the rules of procedure for the Tribal Court that are not in conflict with this chapter.

#### **Historical and Statutory Notes**

**Source:** Band Ordinance 01-96, § 4.01.

### **§ 3120. Cooperation and Grants**

The Court is authorized to cooperate fully with any federal, state, tribal, public or private agency in order to participate in any foster care, shelter care, treatment or training program and to receive grants-in-aid to carry out the purposes of this chapter. This authority is subject to the approval of the Band Assembly.

#### **Historical and Statutory Notes**

**Source:** Band Ordinance 01-96, § 4.02.

### **§ 3121. Outside Social Services Agencies**

The Court shall utilize such social services as may be furnished by any tribal, federal or state agency provided that it is economically administered without unnecessary duplication and expense. Outside Local Social Services Agencies may participate in investigation of Child Abuse or Neglect claims, but must coordinate with the Band Family Services Department for any additional contact with Band Families.

#### **Historical and Statutory Notes**

**Source:** Band Ordinance 01-96, § 4.03.

### **§ 3122. Social Worker Duties**

(a) **Selection.** The Mille Lacs Band shall select Social Workers to carry out the duties and responsibilities set forth in this chapter. The persons carrying out the duties and responsibilities set forth in this section may be labeled Social Workers or any other title that the Court finds appropriate so long as they perform the duties and responsibilities set forth in this section.

(b) **Qualifications.** The Social Workers shall have an educational background (i.e., social work or related degree) and licensing and prior experience in the field of delivering social services to youth and families; and shall never have been found guilty of, or entered

a plea of nolo contendere or guilty to, any felonious offense, or any of two or more misdemeanor offenses, under Federal, State or Tribal law involving crimes of violence; sexual assault, molestation, exploitation, contact or prostitution; crimes against persons; or offenses committed against children as determined by a background check performed in conjunction with required pre-employment processes.

(c) **Resource Development.** The Social Workers shall identify and develop resources on the reservation, in conjunction with the Commissioner of Health and Human Services, Court, Chief Executive, and Band Assembly to enhance each tribal child's potential as a viable member of the community.

(d) **Duties.** Social Workers shall:

- (1) make investigations as provided in this chapter or as directed by the Court;
- (2) make reports to the Court as provided in this chapter or as directed by the Court;
- (3) perform such other duties in connection with the care, custody or transportation of children as the Court may require.

(e) **Prohibited Duties.** The Social Workers shall not be employed as or be required to perform the duties of a prosecutor or law enforcement official.

**Historical and Statutory Notes**

**Source:** Band Ordinance 01-96, § 5.01.

**§ 3123. Solicitor General Duties**

The Solicitor General shall:

- (a) File petitions with the Court as provided in this chapter;
- (b) Represent the Mille Lacs Band in all proceedings under this chapter; and
- (c) Perform such other duties as the Court may order and as required under this title.

**Historical and Statutory Notes**

**Source:** Band Ordinance 01-96, § 5.02.

**§ 3124. Guardian ad Litem Duties**

At any stage of private child custody or guardianship proceedings conducted under this chapter the Court shall appoint a guardian ad litem representing the child's best interests. The

Court shall appoint a guardian ad litem to represent the child's best interest in all Child In Need of Protection or Services proceedings.

**Historical and Statutory Notes**

Source: Band Ordinance 01-96, § 5.03.

**§ 3125. Additional Court Personnel – (REPEALED)**

**§ 3126. Modification, Revocation or Extension of Court Orders**

(a) The Court may hold a hearing to modify, revoke or extend a Court order under this chapter at any time upon the motion of:

- (1) the child;
- (2) the child's parent, grandparents, guardian, custodian or wenh'enh;
- (3) the prospective adoptive parent upon Court order;
- (4) the child's counsel and guardian ad litem;
- (5) the Solicitor General;
- (6) the institution, agency, or person vested with the legal custody of the child or responsibility for protective supervision; or
- (7) the Court on its own motion.

(b) Any hearing to modify, revoke or extend a Court order shall be held in accordance with the procedures established for the order at issue.

**Historical and Statutory Notes**

Source: Band Ordinance 01-96, § 27.

**§ 3127. Appeals**

(a) Any party, including the child's wenh'enh, to a Court hearing may appeal a final court order that substantially impacts the rights of the litigant.

(b) Any party seeking to appeal a final court order shall file a written notice of appeal with the Court within thirty (30) days of the final order.

(c) For purposes of appeal, a record of proceedings shall be made available to the child, his parent, grandparents, guardian or custodian, the child's counsel and others upon court order. Costs of obtaining this record shall be paid by the party seeking the appeal.

(d) A court order may be stayed by such appeal.

(e) All appeals shall be conducted in accordance with Band Statute and Court of Central Jurisdiction rules of procedure as long as those provisions are not in conflict with the provisions of this chapter.

#### Historical and Statutory Notes

Source: Band Ordinance 01-96, § 29.

#### § 3128. Emancipation – (REPEALED)

#### § 3129. Authorization of Medical Treatment

(a) At any time whether or not a child is under the authority of the Band the Court may authorize medical or surgical care for a child when:

(1) **Unavailability of Parent, Guardian or Custodian.** A parent, legal guardian or custodian is not immediately available and cannot be found after reasonable effort in the circumstances of the case, or

(2) **Life Endangerment.** A physician informs the Court orally or in writing that in his professional opinion, the life of the child would be greatly endangered without certain treatment and the parent, guardian or other custodian refuses or fails to consent. If time allows in a situation of this type, the Court shall cause every effort to be made to grant the parent, guardian or custodian an immediate informal hearing, but this hearing shall not be allowed to further jeopardize the child's life.

(b) In making its order the Court shall give due consideration to any treatment being given the child by prayer through spiritual means alone or through other methods approved by Band customs, traditions or spiritual practices.

(c) After entering any authorization under this section, the Court shall reduce the circumstances, finding and authorization to writing and enter it in the records of the Court and shall cause a copy of the authorization to be given to the physician or hospital or both that was involved.

(d) Oral authorization by the Court is sufficient for care or treatment to be given and shall be accepted by any physician or hospital. No physician or hospital nor any nurse, technician or other person under the direction of such physician or hospital shall be subject to criminal or civil liability in Court for performance of care or treatment in reliance on the Court's authorization. Any function performed thereunder shall be regarded as if it were performed with the child's and the parent's authorization.

#### Historical and Statutory Notes

Source: Band Ordinance 01-96, § 23.

## **Subchapter 3 Child Abuse and Neglect**

### **Section**

- 3141. Social Workers
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- 3168. Emergency Placement Report and Hearing

### **§ 3141. Social Workers**

- (a) Social Workers shall be employed by the Band Family Services department.
- (b) Family Services may cooperate with such state and community agencies as are necessary to achieve the purposes of this chapter. Family Services may negotiate working agreements with other jurisdictions. Such agreements shall be subject to ratification by the Band Assembly.
- (c) A Social Worker shall as soon as practicable following the filing of a petition:
  - (1) Receive reports from any source, written or oral, of Children in Need of Protection or Services and be prepared to provide temporary foster care for such children on a twenty four (24) hour basis; and
  - (2) Upon receipt of any report or information under subparagraph (1) of this

paragraph immediately:

- a. notify the appropriate law enforcement agency, and
  - b. make prompt and thorough investigation that shall include a determination of the nature, extent, and cause of any condition that is contrary to the child's best interests and the name, age, and condition of other children in the home.
- (3) Take the child into temporary custody if there are reasonable grounds to believe that the child is suffering from illness or injury that would cause substantial harm to the child without intervention or is in immediate danger from his surroundings and that his removal is necessary. Law enforcement officials shall cooperate with Family Services personnel to remove a child from the custody of his parents, guardian, or custodian when necessary.
- (4) After investigation, evaluate and assess the home environment of the child or children in the same home and the risk to such children if they continue to be subjected to the existing home environment, and all other facts or matters found to be pertinent. They shall determine and document whether any of such children are a Child in Need of Protection or Services.
- (5) Offer to the family of any child found to be in need of protection or appropriate services that may include, but shall not be restricted to, protective services, and document such offer(s).
- (6) Within thirty (30) days after a referral of a potential Child in Need of Protection or Services, submit a written report of the investigation and evaluation to the Solicitor General and to a central registry maintained by Family Services which shall include a determination as to whether the report was substantiated or unsubstantiated.
- a. During the investigative stage, no child shall remain in temporary custody for a period exceeding seventy-two (72) hours, excluding Saturdays, Sundays and holidays, unless a Child in Need of Protection or Services petition is filed.
  - b. Before offering protective services to a family, a Social Worker shall inform the family that he has no legal authority to compel the family to receive such services and of his authority to initiate a petition in Court.
  - c. If the family declines the offered services, the Social Worker shall recommend to the Solicitor General that a Child in Need of Protection or Services petition be filed in Court if he believes it to be in the child's best interest.

#### **Historical and Statutory Notes**

Source: Band Ordinance 01-96, § 6.

## § 3142. Child Protection Team

(a) The Mille Lacs Band shall establish a Child Protection Team. The Child Protection Team is established to prevent Indian children from being abused or neglected through the involvement and coordination of various agencies. In cases where children have been abused or neglected, efficient and effective protective services shall be provided so as to immediately secure the children's safety and health. Follow-up actions shall then be taken to stabilize the circumstances for the long-term benefit of the children and, to the extent possible, their family members.

(b) Prevention of child abuse and neglect is to be emphasized. The child protection team is intended to facilitate the identification of danger signs that will prompt immediate intervention and/or preventive actions to be taken. However, when a child's well-being is found to be endangered, the child protection team should recommend protective services as promptly, efficiently, and effectively as possible. These services are to be provided so as to ensure the child's immediate safety and health. Once attained, to the extent possible, actions are to be taken to correct the problems that caused the abuse or neglect and prevent it from occurring again. The child protection team should facilitate the development and implementation of a plan to promote the long-term well-being of the child and the appropriate family members.

(c) The child protection team is technical and advisory in nature. In no way is it intended to undermine the authorities and responsibilities of individual agencies. It is designed to promote cooperation, communication, and consistency among agencies. It is appropriate for the child protection team to debate what actions would best promote the well-being of a child and provide relevant information and advice to decision-making agencies. Confidentiality shall be maintained by all child protection team members.

(d) The Child Protection Team may consist of behavioral health professionals, chemical dependency counselors, Tribal police officers, school psychologists, Band Family Services staff and advocates, and Tribal Court guardians ad litem, and must include one elder who actively follows and practices Band spirituality. The Child Protection Team may include County Social Services staff and County Police officers by invitation. The Child Protection Team may include, wherever possible, a member of the child's own family who is a positive role model to the child.

(e) The duties of the child protection team shall include the development and implementation of procedures for facilitating provision of services such as:

- (1) Identifying available community resources, programs and services;
- (2) Providing recommendations to various pertinent agencies;

- (3) Promoting cooperation, communication, and consistency among agencies;
- (4) Maintaining confidentiality of information.

#### **Historical and Statutory Notes**

**Source:** Band Ordinance 01-96, § 7.

### **§ 3143. Duty to Report Child Abuse and Neglect**

(a) **Duty to Report.** Any person who has a reasonable cause to suspect that a child has been abused, neglected or abandoned should immediately report the abuse, neglect or abandonment to the Band Family Services department and/or Band Law Enforcement.

(b) **Persons Specifically Required to Report.** Those persons who are mandated to report suspected abuse or neglect include any physician, nurse, dentist, optometrist, or any other medical or mental health professional; school principal, school teacher, or other school official; social worker; child day care center worker or other child care staff including foster parents, residential care or institutional personnel, counselor; peace officer or other law enforcement official; judge, juvenile counselor, clerk of Court, Solicitor General or other judicial system official.

(c) **Anonymous Reports.** Any person who has reasonable cause to suspect that a child has been abused, neglected or abandoned, should report the abuse, neglect or abandonment. Those persons reporting, except those specified in paragraph (b) of this section, may remain anonymous.

(d) **Immunity from Liability.** All persons or agencies reporting, in good faith, known or suspected instances of child abuse or neglect shall be immune from civil liability and criminal prosecution.

(e) **Malicious and Reckless Reports.** Any person who knowingly or recklessly makes a false report under the provisions of this section shall be liable in a civil suit for any actual damages suffered by the person or persons so reported and for any punitive damages set by the Court or jury, plus costs and reasonable attorney fees.

(f) **Penalty for Not Reporting.** Those persons mandated to report a case of known or suspected abuse or neglect who knowingly fail to do so or willfully prevent someone else from doing so shall be subject to a civil cause of action pursuant to 24 MLBSA section 1211 in the Court of Central Jurisdiction.

(g) **Abuse and Neglect Reports.**

(1) **Form of Report:** Those persons mandated to report under paragraph (b) of this section shall promptly make an oral report to the Mille Lacs Band Family

Services Department and then make a written report within forty-eight (48) hours. Reporters are encouraged to provide a written report as soon as possible within the 48-hour timeframe.

(2) **Contents of Written Report:** The following information shall be included in the written report:

- a. Names, addresses, and tribal affiliation of the child and his parents, guardian, or custodian.
- b. The child's age.
- c. The nature and content of the child's abuse and neglect.
- d. Previous abuse or neglect of the child or his siblings, if known.
- e. The name, age, and address of the person alleged to be responsible for the child's abuse or neglect, if known.
- f. The name and address of the person or agency making the report.

(3) Failure to technically adhere to the above reporting requirements shall not serve as a justification to refuse performing an investigation.

(4) **Photograph of Visible Trauma:** Persons reporting suspected abuse or neglect may photograph or request X-rays to be taken of the child suspected of being abused and such photographs or X-rays may be introduced into evidence at a hearing.

(h) **Central Registry.**

(1) The Mille Lacs Band Family Services and Mille Lacs Band Law Enforcement shall maintain a central registry of reports, investigations, and evaluations made under this chapter. The registry shall contain the information given to Family Services by Band personnel throughout the reservation, including protective services workers, probation officers, caseworkers, and Indian Child Welfare Program employees.

(2) Data shall be kept in the central registry after the case is closed for three (3) years if the allegations are unsubstantiated and for seven (7) years if the allegations are substantiated (unless the Court orders individual records shall be kept on file beyond that date in order to protect other siblings).

(3) Data and information in the central registry shall be confidential. Any requests for information made by outside social services agencies, public health and law enforcement agencies, licensed health practitioners, and health and educational

institutions may be made available only with the approval of the Director of Family Services. Denial of request by Director of Family Services may be reviewed by the Court upon request. A request for the release of information must be submitted in writing, and such request and its approval shall be made part of the child's file.

(4) If a person who has made an allegation of abuse requests information on the status of the case, the Mille Lacs Band Family Services Department may only provide information as to whether the allegation was received and investigated. Family Services may not share the status or disposition of the case.

#### Historical and Statutory Notes

Source: Band Ordinance 01-96, § 8.

### § 3144. Investigation and Removal

(a) **Investigation.** The child abuse or neglect report shall be investigated within forty-eight (48) hours of the time that the report is received by the Family Services Department or other appropriate agency, unless the Court directs otherwise.

(b) **Authority to Remove.** If the Enforcement or Family Services personnel investigating a report of child abuse or neglect finds that the grounds for removal, listed in paragraph (c) of this section have been met, such person may remove the child from the home in which the child is residing and place the child in a temporary placement or other appropriate placement.

(c) **Grounds for Emergency Removal.** A child shall not be removed from the home of the child's parents, guardian or custodian without the consent of the parent, guardian or custodian absent a specific order of the Court, except as follows:

(1) When failure to remove the child may result in a substantial risk of death, permanent injury, or serious emotional harm; or

(2) When the parent, guardian or custodian is absent and it appears, from the circumstances, that the child is unable to provide for his own basic necessities of life, and that no satisfactory arrangements have been made by the parent, guardian or custodian to provide for such necessities.

(d) **Power to Remove.** A Social Worker or Law Enforcement Officer shall have the power to remove a child pursuant to this section provided that:

(1) Reasonable grounds existed at the time of the removal to believe the removal was necessary;

(2) The person removing the child ensures the safety and well-being of the child, until such time as the Court assumes control of the matter; and

- (3) The person removing the child complies with the notice provisions contained in section 3147 of this chapter.

### **§3145. Child Well-being Warrant**

(a) The Court shall have authority to issue a Child Well-being warrant that enables Tribal Police to enter a home for the purpose of conducting a child welfare safety check and removing a child from the premises if necessary to protect the child's health, safety or welfare. Before issuing the warrant, the Court must find the following:

- (1) probable cause to believe that child's health, safety, or welfare is in imminent and substantial danger;
- (2) credible evidence that the child is being held on the premises or property of a person under the jurisdiction of the Court; or
- (3) prior documented attempts to check on the child or produce the child in Court, including placing the child on a 72-hour hold and the use of a Court Order to produce the child have been ignored, unless Family Services can show good cause for requesting a warrant before any prior attempts at contact have been made.

(b) No Child Well-being warrant shall be issued except upon statement of fact sufficient to show probable cause that entry to the premises will discover the child. Such probable cause shall be supported by an affidavit based upon reliable information and particularly describing the premises to be entered. It shall also contain specific dates and times of previous attempts to check on the welfare of the child or to compel the family to produce the child in Court that were refused.

(c) Child Well-being warrants shall only be executed by Tribal Police Officers. The executing Officer may only search those places where a child could be found. Only evidence that is in plain view or discovered while searching in a place where a child could be found may be admissible in Court. The executing officer shall return the warrant to the Court within the time limit shown on the face of the warrant, which in no case shall be longer than ten (10) calendar days from the date of issuance. Warrants not returned within such time limits shall be void.

### **§ 3146. Preliminary Agreements**

(a) **Unsubstantiated Report.** When Family Services receives a report of suspected abuse, and finds the allegations unsubstantiated, Family Services may enter into a Voluntary Services agreement with the child, if he is able to understand and meaningfully participate in the development and execution of the agreement, the parent, guardian, or custodian, and other parties. An "unsubstantiated report" means the Social Worker has

determined that the interests of the child do not require filing a Child in Need of Protection or Services petition, but the family would benefit from services. This Voluntary Services agreement shall be in writing and signed by the parties.

(1) If at any time during the period of the Voluntary Services agreement the Social Worker determines that new circumstances exist that may place the child at risk of harm, the Family Services worker may request a new investigation into the said circumstances. This investigation shall be treated as separate and the Voluntary Services agreement may continue unless the new allegations are substantiated and Court intervention becomes necessary.

(2) The Voluntary Services agreement will remain in effect for up to six (6) months from the date signed, unless either party withdraws consent to the terms.

**(b) Substantiated Report, Low Risk.** If the Social Worker finds the needs do not rise to the level of necessary removal, but still finds sufficient evidence to substantiate the report and file a Child in Need of Protection or Service Petition, the Court may direct Family Services to enter into a Protective Services agreement with the child, if he is able to understand and meaningfully participate in the development and execution of the agreement, the parent, guardian, or custodian, and other parties.

(1) A Protective Services agreement may be entered into as an outcome of an Initial Hearing as set out in Section 3152 of this Title. A Protective Services agreement will include a case plan for the child and family to follow. Entering into this agreement will suspend further proceedings in Court as the Family Services Department works with the family to complete the case plan.

(2) If at any time during the period of the Protective Services agreement Family Services determines the obligations imposed under the agreement are not being met, the Family Services worker may revoke the agreement and shall recommend to the Solicitor General's Office to proceed with child protection proceedings as if the agreement had never been entered into.

(3) The Protective Services agreement will remain in effect for up to six (6) months from the date signed, unless the child, parent, guardian, or custodian is discharged sooner. The Family Services Department may extend a protective supervision agreement once for six (6) additional months upon a motion to the Court.

(4) The Protective Services agreement shall include language regarding the requirement to have a status hearing two (2) weeks prior to its expiration.

(5) If upon the expiration of the Protective Services agreement, its express terms and conditions have not been fulfilled, the Solicitor General's Office shall continue forward with a Child in Need of Protection or Services petition as if the agreement had never been entered into.

(6) The Solicitor General may file an amended petition if the circumstances have changed since the initial filing.

(c) **Substantiated Report, Moderate or High Risk.** If the Family Services Worker finds that the allegations of the report are substantiated and the risk of harm to the child is moderate or high, the Family Services worker shall proceed with recommendations to the Solicitor General that a Child in Need of Protection or Services petition be filed in accordance with the provisions of this chapter.

#### Historical and Statutory Notes

Source: Band Ordinance 01-96, § 9.

### § 3147. Notice of Removal

(a) **Notice to the Court.** After a child is removed from his home, the Social Worker or Law Enforcement Officer who removed the child shall attempt to contact the Court within eight (8) business hours. The attempt to contact the Court shall be documented. Actual notice to the Court shall be made, by the removing person, no later than 12:00 p.m. the next Court working day.

(b) **Notice to the Parent, Guardian or Custodian.** Family Services shall make all reasonable efforts to notify the parents, guardian or custodian within twelve (12) hours of the Court's actual notice of the child's removal. Reasonable efforts shall include personal, telephone and written contacts at their residence, place of employment, or other location where the parent, guardian or custodian is known to frequent with regularity. If the parent, guardian or custodian cannot be found, notice shall be given to members of the extended family of the parent, guardian or custodian and/or the extended family of the child.

#### Historical and Statutory Notes

Source: Band Ordinance 01-96, § 10.

### § 3148. Restrictions on Placement of Children

A child alleged to be neglected or abused shall not be detained in a jail or other facility intended or used for the incarceration of adults charged with criminal offenses or for the detention of children alleged to be juvenile offenders, but may be placed in the following locations:

(a) A household of a relative of the child who is willing to guarantee to the Court that the child will not be returned to the alleged abusive or neglectful parent, guardian or custodian without the prior approval of the Court and who will be subject to necessary background and home safety checks;

(b) A licensed foster home or a home otherwise authorized under the law to provide

foster care, group-care, or serve as a protective residence;

(c) A facility operated by a licensed child welfare services company; or

(d) Any other suitable place, other than a facility for the care and rehabilitation of juvenile offenders to which children adjudicated as juvenile offenders may be confined, and that meets the standards for shelter-care facilities established by the department.

#### **Historical and Statutory Notes**

**Source:** Band Ordinance 01-96, § 11.

### **§ 3149. Active Efforts Required**

The Court, before determining whether a child should be placed in or continue in foster care or be placed for adoption, shall make a determination as to whether active efforts, as defined in subsection 3103(b), were made to prevent placement or whether active efforts to prevent placement are not required.

### **§ 3150. Filing a Child in Need of Protection or Services (CHIPS) Petition**

(a) **Authorization to File Petition.** Formal child protection proceedings shall be instituted by a CHIPS petition filed by the Solicitor General on behalf of the Band and in the best interests of the child.

(b) **Time Limitations.** If a child has been removed from the home or is subject to a Protective Services Agreement under subsection 3246(b), a CHIPS petition shall be filed with the Court no later than seventy-two (72) hours following the removal.

(c) **Contents of Petition.** The CHIPS petition shall set forth the following with specificity:

- (1) The name, birth-date, sex, residence and tribal affiliation of the child;
- (2) The basis for the Court's jurisdiction;
- (3) The specific allegations that led to filing the petition;
- (4) A plain and concise statement of the facts upon which the allegations of why the child in need of protection or services are based, including the date, time and location at which the alleged facts occurred;
- (5) The names, residences and tribal affiliation of the child's parents, guardian or custodian, if known;
- (6) The names, relationship and residence of all known members of the child's

extended family and all former care givers, if known; and

(7) If the child is placed outside of the home, where the child is placed, the facts necessitating the placement and the date and time of the placement.

(8) Notice to family and extended family members on behalf of the child in placement.

#### Historical and Statutory Notes

Source: Band Ordinance 01-96, § 12.

### § 3151. Court Hearings Required

(a) **Initial Hearing.** An initial hearing in a CHIPS petition shall be held by the end of the second working day following the filing of a CHIPS petition.

(b) **Admit/Deny Hearing.** A hearing shall be held within 30 days of the Initial Hearing. The purpose of the hearing is for the parents, guardian, or custodian to admit or deny the allegations contained in the Petition and for the Court to reassess whether continuing Court intervention is necessary to protect the well-being of the child.

(c) **Formal Trial on the Issues.** If the issues are not resolved at the Initial Hearing or Admit/Deny Hearing, the Court will set a date for a formal Trial on the allegations contained in the Petition. The Trial will be no later than ninety (90) days after the filing of the CHIPS petition. Requests for pre-trial hearings may be granted at the Court's discretion.

(d) **Review Hearings.** Review Hearings shall be held by the Court no later than once every one hundred twenty (120) calendar days after the adjudication in all CHIPS cases or as needed.

### § 3152. Initial Hearing

(a) **Purpose.** The purpose of the initial hearing is to determine whether the petition presents prima facie evidence that the Child is in Need of Protection Services.

(b) **Advice of Rights.** During the hearing, the Court shall advise the parties of the reason for the hearing and of their basic rights as provided for in section 3153 of this chapter.

(c) **Nature of Hearing.** The hearing shall be informal in nature. Concerned parties may present evidence or information relating to the situation. Hearsay evidence will not be excluded at this hearing as long as it is otherwise admissible. The general public shall be excluded from the proceedings. Only the parties, their counsel, witnesses, Family Services, the child's extended family and any other person as determined appropriate by the Court

shall be admitted.

(d) **Possible Outcomes of the Initial Hearing:**

(1) The CHIPS petition may be dismissed and the child returned to the home with no further intervention from the Band. Custody of the child in this case is returned to the parent or guardian.

(2) The Family Services Department may enter into a Protective Services agreement with the family as set out in section 3146 of this Title. Custody of the child is returned to or remains with the parents or guardian.

(3) The child may be returned to the home of the parents, guardian or custodian under the supervision of the Court and another hearing held within thirty (30) days. Custody of the child in this case remains with the Band until the Court determines otherwise.

(4) The child may continue in the child's out-of-home placement and an Admit/Deny hearing will be held. Custody of the child in this case remains with the Band until the Court determines otherwise.

(e) **Notice of Initial Hearing.** The Court shall make all reasonable efforts to advise the parent, guardian or custodian of the time and place of the initial hearing as well as the contents of the petition. The Court shall request that the parent, guardian or custodian be present for the hearing. Reasonable efforts shall include personal, telephone and written contacts at their residence, place of employment or other location where the person is known to frequent with regularity. If the Court is unable to contact the parent, guardian or custodian, notice shall be given to members of the extended family of the child.

**Historical and Statutory Notes**

**Source:** Band Ordinance 01-96, § 13.

**§ 3153. Notification of Rights**

All parties have a right to be represented by an advocate or attorney at their own expense in all proceedings under this chapter, to introduce evidence, to be heard on his own behalf, to examine witnesses, and to be informed of possible consequences if the allegations of the petition are found to be true. All parties shall be entitled to advance copies of Court documents as stated in section 3163.

**Historical and Statutory Notes**

**Source:** Band Ordinance 01-96, § 14.

**§ 3154. Admit/Deny Hearing**

(a) A second hearing will be held within thirty (30) days following the initial hearing. The purpose of this hearing is for the Court to reassess whether continuing Court intervention is necessary to protect the well-being of the child.

(b) The Admit/Deny Hearing shall be held according to paragraphs (b), (c), and (e) of section 3152 of this chapter.

(c) If the parent fails to attend this hearing, parent's counsel may enter a denial on behalf of the parent and the Court may set a date for trial according to section 3155.

#### Historical and Statutory Notes

Source: Band Ordinance 01-96, § 15.

### § 3155. Notice of Formal Trial on the Issues

(a) **Summons.** The Court shall issue a summons to the parent, guardian or custodian and such other persons as appear to the Court to be proper or necessary parties to the proceedings. The summons shall require them to appear personally before the Court at the date and time set for the formal trial.

(b) **Attachments to Summons.** A copy of the CHIPS petition shall be attached to each summons. The Court shall also attach a notice to the parent, guardian or custodian that advises them of their rights under section 3153 of this chapter.

(c) **Personal Service.** If the parties to be served with a summons can be found within the territorial jurisdiction of the Mille Lacs Band, the summons, a copy of the CHIPS petition and the notice of rights shall be served personally upon them at least twenty (20) calendar days before the formal trial on the issues.

(d) **Mail Service.** If there is good cause that the parties cannot be personally served, and if their address is known, the summons, petition and notice of rights may be served by certified mail with a return receipt requested at least twenty (20) business days before the formal trial.

(e) **Notice to Extended Family.** If the Court cannot accomplish personal or mail service on the parent, guardian or custodian, the Court shall attempt to notify the parent, guardian, or custodian by contacting members of the extended family of the parent, guardian, custodian, and/or the extended family of the child.

(f) **Service of Summons.** Service of summons may be made under the direction of the Court by any person eighteen (18) years of age or older who is not a party to the proceedings.

(g) **Publication.** In a CHIPS case where it appears within the body of the petition or within an accompanying statement that the parent, guardian or custodian does not reside within the territorial jurisdiction of the Mille Lacs Band, or that their name, place of residence or whereabouts is unknown, as well as in all cases where after due personal service or service by certified mail has been unable to be effected, legal notice may be accomplished by publishing in Inaajimowin, Mille Lacs Band Website, or a newspaper of general circulation in the area where the party is most likely to be made aware of the notice. Publication must be in two consecutive issues of the Inaajimowin (both in print and online), on the Mille Lacs Band website on a page of prominent display for three consecutive weeks, or in a paper of general circulation at least once per week for three consecutive weeks, or any combination thereof. Proof of publication must be provided to the Court Administrator. Proof of publication requires a signed certificate from the editor and/or publisher of the Inaajimowin, Mille Lacs Band website, or the general circulation newspaper. Such notice shall be directed to the parent, guardian or custodian if their names are known, or, if unknown the phrase “to whom it may concern” may be used and applied to and be binding upon any such person whose names are unknown. The name of the Court, the date of the filing of the petition, the date of the hearing, and the object of the proceeding in general terms shall be set forth. There shall be filed with the clerk an affidavit showing publication of the notice. The publication of the notice shall be paid by the Mille Lacs Band Tribal Court. The publication of the notice shall be deemed equivalent to personal service upon all persons known or unknown who have been designated as provided in this paragraph.

(h) **Contempt Warning.** The summons issued by the Court shall conspicuously display the words:

NOTICE, VIOLATION OF THIS ORDER IS SUBJECT TO PROCEEDINGS FOR CONTEMPT OF COURT PURSUANT TO 24 MLBSA §1210. THE COURT MAY FIND THE PARENT, GUARDIAN OR CUSTODIAN IN CONTEMPT FOR FAILURE TO APPEAR AT A COURT HEARING OR FOR FAILURE TO FOLLOW COURT ORDERS.

#### **Historical and Statutory Notes**

**Source:** Band Ordinance 01-96, § 17.

### **§ 3156. Formal Trial on the Issues**

(a) **Time Limitation.** The formal trial on the issues will be set for no later than ninety (90) days following the filing of the CHIPS petition. The Court may grant a continuance upon a showing of good cause.

(b) **Admissibility.** No records, testimony, admissions, or stipulations made at either the initial hearing or the admit/deny hearing shall be admissible at the formal trial. This shall not be construed to prevent the admissibility of any evidence that was presented at

these hearings that would be admissible under the Court's rules of evidence.

(c) **Closed Hearing.** The general public shall be excluded from the proceedings. Only the parties, their counsel, witnesses, the child's family, and other persons determined to be appropriate by the Court shall be admitted.

(d) **Advise of Rights.** At the beginning of the hearing, the Court shall advise the parties of the reason for the hearing and of their basic rights as provided for in section 3153 of this chapter.

(e) **Child Witnesses.** If the Court determines that it is in the best interests of the child and does not violate the rights of a party, the Court may allow the child to testify by means of a videotape deposition, closed circuit television or other appropriate method. If the court does allow these methods to be utilized, the Court shall specifically set out the reasons for this determination on the record.

(f) **Burden of Proof.** The burden of proof lies with the petitioner. The petitioner must prove that the allegations raised in the Child in Need of Protection or Services petition are more likely true than not, that is, by the preponderance of the evidence, and that the best interests of the child will be served by continued Court intervention.

(g) **Outcome of Hearing.** At the end of the Formal Trial, the Court shall enter an order making one of the following dispositions of the case:

(1) **Dismissal.** The Court may dismiss the CHIPS petition and the child returned to the home. Custody of the child in this case is returned to the parents.

(2) **Return to Home.** The Court may find the allegations of the CHIPS petition to be true, but that out of home placement is not needed to protect the child. The Court may, however, due to unresolved problems in the home require compliance with a written Social Service case plan. As part of the case plan, the Court shall stipulate the circumstances under which the matter shall be considered resolved. The Court may delegate the determination of completion of the case plan to the discretion of Family Services. Custody of the child remains with the Band until the case plan is satisfactorily completed. Once Family Services determines the plan is completed, the Solicitor General will move the Court for dismissal and the Court shall dismiss the case.

(3) **Temporary Continuance of Out-of-Home-Placement.** The Court may find the allegations of the CHIPS petition to be true and out-of-home placement necessary, but with the performance of specified actions by the parent, guardian, or custodian, the child may be returned absent good cause to the contrary. The order of the Court will specify actions, and the time frames for such actions that parents, guardians, or custodians must accomplish before the child is returned. The order will also specify the reasonable responsibilities of any support agency or personnel to be involved. The Court may delegate the determination of when the necessary

actions have been completed to the discretion of Family Services. Custody of the child remains with the Band until the case plan is satisfactorily completed.

(4) **Out-Of-Home Placement.** The Court may find the allegations of the CHIPS petition to be true and that out-of-home placement continues to be necessary and further that the child may not be returned to the home, absent specific order of this Court. The Court shall review and adopt, as modified by the Court, the case plan presented by Family Services after hearing from the parties. A copy of the case plan shall be attached to the Court's order and incorporated by reference. Once the case plan has been completed, the parties must return to Court for a final determination regarding the custody of the child. Custody of the child remains with the Band until the Court determines otherwise.

(h) **Written Order.** The Court shall specify in writing the facts, grounds, and statutory sections upon which it relied to make its decisions.

#### Historical and Statutory Notes

Source: Band Ordinance 01-96, § 16.

### § 3157. Default Judgment

(a) **When Appropriate.** If the parent, guardian or custodian fails to appear for the formal trial, the Court may find the parent, guardian or custodian in default, and enter a default order of CHIPS and order necessary intervention and appropriate steps the parent, guardian or custodian must follow to correct the problem.

(b) **Notice Determination.** Prior to finding a parent, guardian, or custodian in default, the Court must be satisfied actual notice has been given or that all reasonable steps have been taken to provide notice of the formal trial to the parent, guardian or custodian. The Court must also find that the petitioner can substantiate the presence of abuse or neglect through an offer of proof that demonstrates the relevancy of the evidence and the grounds for admissibility.

(c) **Written Order.** If the parent, guardian or custodian is found in default, the Court shall specify the facts, grounds, and statutory provisions upon which it relied to make the decision.

#### Historical and Statutory Notes

Source: Band Ordinance 01-96, § 18.

### § 3158. Six (6) Month Review

(a) **Review Requirement.** The status of all children subject to a CHIPS order shall be reviewed by the Court at least every six (6) months at a hearing to determine whether Court

supervision shall continue, except that the first review following a formal trial on the issues shall be held within ninety (90) calendar days of the formal trial on the issues.

(b) **Return to Home.** A child shall be returned home following a review hearing unless the Court finds that grounds for removal still exist. The Court may, however, due to unresolved problems in the home, continue Court intervention and supervision if appropriate.

(c) **Written Order.** If continued court intervention is determined to be necessary, the Court shall set forth the following in a written order:

- (1) What services have been provided or offered to the parent, guardian or custodian to help correct the underlying problem.
- (2) The extent to which the parent, guardian or custodian has visited or contacted the child, or any reason why such visitation and/or contact has been infrequent or has not otherwise occurred.
- (3) Whether the parent, guardian or custodian is cooperative with the Court and Family Services.
- (4) Whether additional services that are reasonably able to be provided should be offered to the parent, guardian or custodian.
- (5) Whether the parent, guardian or custodian should be required to participate in any additional programs to help correct the underlying problem.
- (6) Whether Family Services has used active efforts to make it possible for the child to return home. Active efforts include providing services that are:
  - a. relevant to the safety and protection of the child;
  - b. adequate to meet the needs of the child and family;
  - c. culturally appropriate;
  - d. available and accessible;
  - e. consistent and timely; and
  - f. realistic under the circumstances.

(d) **Determinations Required for Out-of-Home Placement.** If the Court does not return the child to his home, the Court must find:

- (1) that it is contrary to the welfare of the child to return to the child's home;

(2) that the child is placed in the least restrictive setting that most approximates a family in which his special needs, if any, may be met, and the child is placed within reasonable proximity to his home, taking into account any special needs of the child or the favorability of the placement for the child; and

(3) that it is in the best interest of the child to be placed under the care and control of the Band's Family Services department.

#### **Historical and Statutory Notes**

**Source:** Band Ordinance 01-96, § 19.

#### **§ 3159. Concurrent Permanency Planning**

(a) The Commissioner of Health and Human Services shall establish a program for Concurrent Permanency Planning for Child Protection services.

(b) Concurrent Permanency Planning involves a planning process for children who are placed out of the home of their parents pursuant to a Court order, or who have been voluntarily placed out of the home by the parents for 60 days or more. The Band Family Services department shall develop an alternative permanency plan while making active efforts for reunification of the child with the family. The goals of concurrent permanency planning are to:

- (1) achieve early permanency for children;
- (2) decrease children's length of stay in foster care and reduce the number of moves children experience in foster care; and
- (3) develop a group of families who will work towards reunification and also serve as permanent families for children.

#### **§3160. Transfer of Custody.**

(a) **Established.** The Court may transfer permanent legal and physical custody to a relative or other adult in the best interests of the child according to the following conditions:

- (1) an order for transfer of permanent legal and physical custody shall only be made after the Court has reviewed the suitability of the prospective legal and physical custodian;
- (2) a transfer of legal and physical custody includes responsibility for the protection, education, care, and control of the child and decision-making on behalf of the child;

(3) a permanent legal and physical custodian may not return a child to the permanent care of a parent from whom the Court removed custody without the Court's approval and without notice to the responsible social services agency if any.

**(b) Custodian Eligibility Factors**

(1) Prospective Legal and Physical Custodians must be willing to submit to a background check as part of the petition. If the petition for Legal and Physical Custody does not arise from a Child in Need of Protection or Services case, the Court may require the prospective Custodian to pay a background check fee to Family Services to cover the cost of the background check.

(2) Any person whose background reveals any convictions involving any of the crimes below shall not be granted custody:

- a. Homicide or Attempted Homicide
- b. Rape, sexual assault, molestation, or exploitation; or
- c. Offenses committed against children (including child abuse).

(3) Prospective Custodians who have any felony or 2 (two) or more of the following misdemeanor convictions within the last five (5) years may be subject to further scrutiny from the Court to determine the suitability of granting the petition:

- a. physical assault,
- b. battery,
- c. spousal abuse, or
- d. drug-related offenses

(4) Any person with a diagnosed mental illness that will adversely affect the ability to carry out custodial duties will not be granted custody. The Court may ask for additional information regarding a person's mental health status if it has reason to believe the child's best interests could be adversely affected.

(5) A person with a documented history of chemical dependency problems within the last ten (10) years may be required by the Court to submit to assessments such as a Rule 25 test, proof of attendance at AA meetings, or testimonies from reputable sources as to the prospective custodian's sobriety before custody can be granted.

**(c) Petition.**

(1) Family Services may file a petition naming a fit and willing adult as a proposed permanent legal and physical custodian. The petition shall include a Custodian Report with the following information:

- a. A background check;
- b. Housing status and condition of house of the proposed custodian, including Family Services personnel's own observations of cleanliness and safety;
- c. A plan for custodian to continue providing care for the child following custodial placement
- d. Financial statement detailing the ability of the custodian to care for the child;
- e. Financial statement of the child (if any);
- f. Any special services required for the care of the child;
- g. References from community members such as neighbors and additional family members or friends; and
- h. Family Services Staff member's own observations regarding the capabilities of the proposed custodian to care for the child.

(2) Family Services must make the following determinations regarding permanency for the child prior to the transfer of custody:

- a. a determination that reunification and adoption are not appropriate permanency options for the child; and
- b. a determination that the child demonstrates a strong attachment to the prospective custodian and the prospective custodian has a strong commitment to caring permanently for the child.

(3) Supporting information for completing each determination must be documented in the case file and available for review as requested.

(d) **Court Oversight.** The Court may maintain jurisdiction over the responsible social services agency, the parents or guardian of the child, the child, and the custodian for purposes of ensuring appropriate services are delivered to the child and of ensuring conditions ordered by the Court related to the care and custody of the child are met.

(e) **Transfer of Custody Procedures**

(1) The petitioner, prospective Custodian, and child, if age 14 or older, shall appear personally at the hearing to establish custody unless excused by the Court for good cause shown.

(2) Before establishing custody, the Court must determine that the Petitioner has established by clear and convincing evidence that:

- a. the child's parents have consented to the Transfer of Custody;
- b. there is not a parent available and willing to care for the child; or
- c. if there is a parent available and willing to care for the child:
  - i. the child meets the definition of a child in need of protection because of conduct by the parent;
  - ii. there is a substantial probability of future abuse or neglect if the child were returned to the parent; and
  - iii. the conditions are unlikely to improve within a reasonable period of time.

(3) If the child is 14 years of age or older, the child's wishes regarding the proposed Transfer of Custody shall be considered by the Court.

(4) If the Court is satisfied as to the suitability of the Transfer of Custody, it may enter an order granting custody under such terms or conditions that the Court finds appropriate.

(5) The term of the custody arrangement expires when the child reaches the age of eighteen (18) or the Transfer of Custody is terminated by order of the Court.

**(f) Additional Transfer of Custody Provisions.** All Transfer of Custody proceedings shall follow the provisions of sections 3213 (General Guardian Duties, Powers, and Limitations), 3214 (Management of Property), and 3215 (Annual Guardianship Report) in subchapter 6: Guardianship of Children.

### **§ 3161. Permanency Hearing**

(a) **Frequency.** A permanency hearing to review the permanency plan shall be held within 12 months of the date a child is considered to have entered out-of-home placement or within thirty (30) days of a judicial determination that active efforts to reunify the child and family are not required due to aggravated circumstances. Aggravated circumstances include, but are not limited to abandonment, torture, chronic abuse, and sexual abuse. A

review hearing to analyze the permanency plan shall be held at least once every twelve (12) months thereafter while the child is in out-of-home placement.

(b) **Purpose.** The purpose of the permanency hearing is to review the permanency plan for that child. If reunification is not the goal, within 12 months of the placement, a judicial determination must be made whether or not Family Services made active efforts to finalize the permanency plan that is in effect or an alternative permanency plan. Alternative permanency plans include reunification, adoption, cultural or customary adoption, transfer of legal custody or Permanent Guardianship, placement with a fit and willing relative or placement in another planned permanent living arrangement.

### § 3162. Waiver of Timelines

(a) Timelines established in this chapter may be waived by mutual consent in writing of Petitioner and parent, guardian or custodian subject to the petition.

(b) An extension of timelines may be granted by the Court provided that circumstances exist to justify an extension.

### § 3163. Family Services Report

(a) **Requirement of a Family Services Report.** To aid the Court in its decision, a Family Services report consisting of a written evaluation of matters relevant to the disposition of the case shall be made by the person or agencies filing the petition.

(b) **Contents of a Family Services Report.** The Family Services report shall include the following points, and be made available to the Court, and the parties as deemed appropriate by the Court, at least three (3) business days prior to a CHIPS review hearing:

(1) A summary of the problem.

(2) What steps, if any, have the parent, guardian, custodian or Family Services personnel already taken to correct the problem.

(3) What services could benefit the parent, guardian, or custodian, but are not available in the community.

(4) A report on how the child is doing in his current placement since the last hearing. If there have been any moves, the report will contain the reason for such moves.

(5) Dates of contacts with parent, guardian or custodian and the child since the first hearing was held, method of contact, duration, and subjects discussed.

(6) If there have been no contacts with the parent, guardian, or custodian by the social worker, what efforts have been made to contact such parties.

- (7) An assessment of when the child is expected to return home.
- (8) A list of who the extended family members are and a list of contacts or attempts to contact such family members regarding placement of the child. Family Services shall demonstrate continued efforts to update the list of extended family members at least for each Review Hearing or more frequently as ordered by the Court.
- (9) Documentation of how Family Services has performed Active Efforts as set out in section 3149;
- (10) Family Services personnel shall develop a case plan and shall make recommendations for the next six (6) months. Such recommendations will include:
  - a. A treatment plan for the parents, guardian or custodian.
  - b. Future placement of the child.
  - c. What services should be provided for the child, if services are needed.

#### **Historical and Statutory Notes**

**Source:** Band Ordinance 01-96, § 20.

### **§3164. Family Testimony or Report**

The members of the child's family and extended family may submit reports, documents, or provide oral testimony regarding their position and to aid in the Court's decision at any stage in the proceedings.

### **§ 3165. Placement Preferences**

- (a) **Least Restrictive Setting.** If a child cannot be returned home, the child shall be placed in the least restrictive setting that most approximates a family in which his special needs, if any, may be met. The child shall also be placed within reasonable proximity to his home, taking into account the favorability of the placement and/or any special needs of the child. The placement restrictions set forth in section 3148 of this chapter shall be followed.
- (b) **Order of Preferences.** Whenever appropriate, a child shall be placed in a home with the following characteristics, which shall be given preference in the following order:
  - (1) The child's non-offending parent. whether Indian or non-Indian.

(2) Members of the extended family including Niiya'wenh'enh' whether Indian or non-Indian. The agency overseeing placement of the child should look first at family members who have had a connection to the child or any family members who have requested the child be placed with them before moving on to other family members or the other placement options listed in subsection (b).

(3) An Indian family of the same Band as the child.

(4) An Indian family.

(5) Foster Homes with specialized training to address the specific medical or emotional needs of the child.

(6) A non-Indian family who has agreed to maintain the child's connection to his culture.

(c) **Following the Order of Preferences.** Family Services shall work to find an appropriate placement to meet the specific needs of the child in each category before moving on to the next and shall document each attempt to find a placement within each category. Family Services shall consult with a panel of elders, who actively follow and practice Band spirituality. In all categories, Family Services shall work to place sibling groups together wherever possible.

(d) **Non-Indian Family Placements.** Subsection (b)(6) of this section is not meant to be a permanent placement option. If a child is placed in a foster home under subsection (b)(6), Family Services shall continue to look for alternative placement options within the child's family, Band, or with another Indian family on an ongoing basis. Any placement under subsection (b)(6) shall be reviewed by the Court no later than six (6) months after placement to assess whether an alternative placement has been found.

#### Historical and Statutory Notes

Source: Band Ordinance 01-96, § 21.

### § 3166. Case Plan

(a) The case plan must be designed to achieve placement in the most family-like setting possible, and in accordance with the Band's placement preferences, and consistent with the child's best interests and special needs.

(b) The case plan shall be a written document that is a distinct part of the child's case record. The case plan must be developed no later than sixty (60) calendar days from the time the Band assumes responsibility for the placement and care of the child.

(c) The case plan shall be developed jointly with the parent, guardian, or custodian of the child, and the child's guardian ad litem if he has one, and shall include the following:

- (1) A description of the foster home or residential setting where the child is to be placed, and an explanation of why that placement is appropriate;
- (2) An explanation of the efforts that were offered and made to prevent the need for removal of the child from his home;
- (3) A description of the care and services the child will receive in the foster home, both to meet the needs of the child while in foster care, and to document what steps have been made toward achieving the permanent goal;
- (4) A description of the services the child and his parents will receive with the objective of allowing the child to return home;
- (5) A discussion of why the care and services provided to the child under the plan are appropriate;
- (6) A description, when the child reaches the age of sixteen (16), of the programs and services that will help the child to prepare for the transition from foster care to independent living; and
- (7) Include, to the extent available, the health and education records of the child, which include:
  - a. The names and addresses of the child's health and education providers;
  - b. Their grade level performance;
  - c. Their school record;
  - d. Assurances that the child placement in foster care takes in to account the proximity to the school in which the child is enrolled at the time of placement;
  - e. A record of immunizations;
  - f. Any known medical problems;
  - g. Any medications;
  - h. Any other relevant health and education information determined to be appropriate by the Band.

### **§3167. Change in Placement or Visitation**

If at any time during a CHIPS proceeding, there is a change in the Child's placement or a substantial change to the child's visitation plan (for example, a change from unsupervised to supervised visits), Family Services must notify the parties within twenty-four (24) hours and provide the reason for the change.

### **§3168. Emergency Placement Report and Hearing**

(a) **Report.** In the event of a report and investigation requiring a child to be placed out-of-home for a second time in the course of an open CHIPS proceeding either after a trial home visit, protective supervision, or reunification for a time, Family Services shall file a supplementary Court report to notify the Court, Solicitor General and parties which child was removed and when. This report should include a narrative of why the child was removed and where he was placed, unless the safety of the child requires that information to be withheld.

(b) **Hearing.** The Court will schedule a hearing specifically on the topic of the removal within seventy-two (72) hours.

1. If the parties agree with the circumstances that initiated the removal or fail to appear to object to the placement, the Court will order the placement and indicate whether there is need for a revised case plan.

2. If the parties disagree with the circumstances that initiated the removal, the Court will set an evidentiary hearing to be held within ten (10) calendar days of the Revised Placement Hearing.

## **Subchapter 4 Foster Home Licensing Procedures**

### **Section**

- 3171. Inspection and Licensing Procedures
- 3172. Foster Home Requirements
- 3173. The Foster Family
- 3174. Renewal and Revocation
- 3175. Appealing a License Denial or Revocation
- 3176. General Care for Foster Children
- 3177. Recruiting and Training

### **§ 3171. Inspection and Licensing Procedures**

(a) The Mille Lacs Band Family Services department shall select one or more persons as the Foster Home Licensor. The Foster Home Licensor shall examine homes of Band members and others who seek to foster Band children. The Foster Home Licensor shall submit a recommendation to the Band Assembly, who shall act upon said recommendation

within thirty (30) calendar days of receipt.

(b) Family Services shall develop a policy for determining the maximum number of children to be placed in a licensed foster home at any given time. The policy will take into account such factors as space, help available, and family/sibling groups.

(c) Any license issued by the Band shall apply only to the residence where the family is living at the time an application for a license is made, and a permanent change of residence automatically requires a new licensing home study and procedure. The foster care parents are required to notify the Foster Home Licensor whenever a change of residence is contemplated.

(d) The foster care parents must also notify the Foster Home Licensor whenever a change in the household occurs. Examples of a change in the household include, but are not limited to:

(1) if one of the foster care parents is arrested for or convicted of a felony or gross misdemeanor crime. Such arrest or conviction shall result in an immediate suspension of the license and removal of all foster children from the home.

(2) if one of the foster parents moves out of the residence, or if any other person moves into the residence, the Foster Home Licensor must be informed within seventy-two (72) hours. A foster home may not have adults dwell in the residence without a prior background check. Failure to timely notify the Foster Home Licensor of a change in circumstance may result in the suspension of the license.

(e) The Commissioner of Health and Human Services has the authority to extend reciprocity to Foster Homes licensed by other Foster Home Licensing Agencies.

(f) The provisions of this Chapter, as well as the Placement Preferences in Section 3165 of this Title, shall be enforceable from the date of passage forward. Any Foster Homes licensed or placements before the date these provisions are passed may continue until the children are no longer placed with them.

#### **Historical and Statutory Notes**

**Source:** Band Ordinance 01-96, § 24.01.  
Band Ordinance 36-03, § 1.

The Preamble to Band Ordinance 36-03 (amending paragraph (a) of this Section) provides:

**“Preamble.** It is enacted by the Band Assembly for the purpose of amending the foster home licensing procedures to rescind the automatic implementation of the foster home inspector’s licensing recommendation.”

### **§ 3172. Foster Home Requirements**

- (a) **Physical Structure.** The home shall be constructed, arranged and maintained so as to provide for the health and safety of all occupants. The Foster Home Licenser may, upon twenty-four (24) hours' notice, inspect a foster care dwelling at any time. The Foster Home shall be free from fire and structural hazards as well as unvented gas or oil heaters. Fireplaces, space heaters, steam radiators, and hot surfaces, such as steam pipes, shall be shielded against accidental contact. Every closet door latch shall be able to be opened from the inside. All bathroom door locks shall be designed to permit the opening of the locked door from the outside in an emergency.
- (b) **Housekeeping.** Heating, ventilation, and light shall be sufficient to provide a comfortable, airy atmosphere. Furnishing and housekeeping shall be adequate to protect the health and comfort of the foster child.
- (c) **Food Preparation and Storage.** Foster Homes must have a safe and accessible water and milk supply. Food and cooking utensils shall be stored to protect from dust, vermin, leaking pipes or other contamination. Food needing refrigeration shall be stored at a temperature that will prevent spoilage and bacterial growth. Appliances regularly used in food storage and preparation shall be safe and in good working order.
- (d) **Hazardous Materials.** All medicines, chemicals, cleaning supplies, and other toxic substances shall be stored out of reach of children. They must not be stored with or immediately beside food products. The use of potentially hazardous materials or tools by a foster child shall be supervised.
- (e) **Sleeping Arrangements.** Comfortable beds shall be provided for all members of the family. Sleeping rooms must provide adequate opportunities for rest. Sleeping spaces must be consistent with the needs for privacy of the individual foster child and adequate space for personal belongings must be provided. All sleeping rooms must have a window of a type that may be opened readily and may be used for evacuation in the event of an emergency. Separate sleeping areas must be provided for children over age six (6) who are of the opposite sex. Children, other than infants and/or during times of emergencies such as illness, shall not share sleeping quarters with adults in the household. Exceptions that take into account special cultural traditions and/or the needs of large sibling group placements may be made when such exceptions are not to the detriment of the child.
- (f) **Play Areas.** Play space shall be available and free from hazards that might be dangerous to the life or health of the child. The Foster Home Licenser may also require outdoor play space be enclosed if necessary for safety.
- (g) **Smoke Free Environment.** All foster homes licensed by the Mille Lacs Band of Ojibwe shall be smoke free. Foster parents or others living in the home may smoke outside only and at a distance of ten (10) feet from any entrances or windows to the home. Ceremonial tobacco and the use of cedar, sage or sweet grass for purifying are exempt from this requirement.

#### Historical and Statutory Notes

Source: Band Ordinance 01-96, § 24.02.

### § 3173. The Foster Family

(a) **Health.** All members of the household must be in such physical and mental health as will not adversely affect either the health of the child or the quality and manner of the child's care. If necessary, the Foster Home Licensor may request that the prospective foster parents' health shall be assessed through a physical examination administered and signed by a licensed physician, stating the family is in good health and free from any physical or mental illness that might be detrimental to a foster child. Physical handicaps of the foster parents shall be a consideration only as it affects their ability to provide adequate care to foster children or may affect an individual child's adjustment to the foster family. Cases shall be evaluated on an individual basis with the assistance of a medical consultant when needed.

(b) **Character.** Members of the foster family or household shall be of good character and habits. Good character is exhibited by qualities such as maturity, stability, flexibility, ability to cope with stress, capacity to give and receive love, and strong moral values.

(1) Every member of the household thirteen (13) years and older must submit to a finger-print based background check of national crime information databases.

(2) Any person whose background reveals any convictions involving any of the crimes below shall not be granted a Foster Home License:

- a. crimes of violence (including homicide);
- b. rape, sexual assault, molestation, or exploitation; or
- c. offenses committed against children (including child abuse).

(3) Household members may not have any felony or two (2) or more misdemeanor convictions within the last five (5) years for:

- a. physical assault,
- b. battery,
- c. spousal abuse, or
- d. drug-related offenses.

(4) Exceptions concerning non-sexual felony or misdemeanor convictions may be made given adequate information is provided indicating that a change of character has occurred.

(5) There can be no chemical dependency problems within the household. If

there have been previous issues, the chemically dependent person must present documentation that he or she has been chemically free for at least twelve (12) months. All household members age thirteen (13) and older will be asked to complete a UA upon initial license or re-license and will be subject to random UA checks thereafter or UA checks requested based on a suspicion of drug use.

(c) **Community.** The person in charge of the foster home shall be of suitable temperament to care for the children, shall understand the special needs of the child as an Indian person and shall be capable of bringing the child up as an Indian person who is well-adjusted and able to get along both within the tribal community and in the non-Indian community as well. Prospective foster parents shall provide four (4) references to the Foster Home Licensor for additional information regarding the prospective foster parents character and role in the community.

(d) **Parenting Abilities.** Foster parent's motivation for application should be examined, as well as attitudes of significant members of the extended family regarding child placement. Foster parents should have the capacity to provide for the foster child's needs while giving proper consideration to their own children and should have a realistic assessment of the positive and negative aspects of foster parenthood, including acceptance of the temporary nature of foster care.

(e) **Age.** At least one foster parent must be at least twenty-one (21) years old (unless a member of the child's extended family), but there is no upper age level provided the foster parent has the physical and emotional stamina to deal with the care and guardianship of a foster child. The foster parent must be willing, when necessary, to cooperate with the biological parents and must be willing to help the family re-establish necessary family ties.

(f) **Family Composition.** A foster home does not necessarily have to have both a male and a female foster parent. The Foster Home Licensor may, at his discretion, certify a foster home with a single foster parent or same sex partners who wish to be foster parents, provided that each foster parent displays the outstanding qualities necessary to raise a foster child. Without specific approval by the Band Assembly, a foster home shall not be licensed whenever any member of the family is mentally ill or on convalescent status from a mental hospital or is on parole or probation or an inmate of a penal or correctional institution.

(g) **Income.** The foster parent must have an income sufficient to care for all individuals in the foster home. The Foster Home Licensor may take into account any eligible foster care stipend when determining the financial ability of the foster care parents.

(h) **Young Children.** Any time a pre-school foster child is placed in a foster home there must be at least one (1) foster parent in full-time attendance. For school age children, the foster parent must show the arrangements that will be made for those periods of time when both foster parents are employed. Infants and young children shall never be left alone without competent supervision.

(i) **Standards.** The standards Foster Home Licensor shall use in judging the above

criteria shall be those of the Mille Lacs Band Indian community.

(j) **Authorization.** The Foster Home Licensor is authorized to make a complete investigation to determine the adequacy of the foster care home. The Foster Home Licensor shall be authorized to examine not only the potential foster home parents, but also any other person who is familiar with the applicants and is familiar with the type of care they provide to the children.

### **§ 3174. Renewal and Revocation**

A foster home license must be renewed every two (2) years. When reviewing for renewal, if any circumstances have changed that endangers the foster children, the Foster Home Licensor shall not renew the license and immediately place the foster children in another foster placement. The Foster Home Licensor also has the discretion to remove children from a particular foster home, and revocation of the foster home license remains at the discretion of the Band Family Services department.

### **§ 3175. Appealing a License Denial or Revocation**

(a) If a Foster Home License is denied or revoked, the prospective foster family may appeal the decision by requesting a review from the Mille Lacs Band Commissioner of Health and Human Services.

(1) If the Mille Lacs Band Commissioner of Health and Human Services finds reason to believe the family is fit to be a foster home, he or she may issue a waiver of the denial or revocation, stating the reasons for issuing a license.

(2) Such waiver shall be submitted to the Band Assembly for a vote. The Band Assembly may seek particular input on the recommendation from the prospective foster family's District Representative.

(3) If the Band Assembly upholds the denial, that decision shall be final.

(b) Denial of a Foster Care License due to failure to comply with Federal background standards is not appealable.

#### **Historical and Statutory Notes**

**Source:** Band Ordinance 01-96, § 24.03.

### **§ 3176. General Care for Foster Children**

(a) **Daily Routine.** The daily routine of a foster child shall be such as to promote good health, rest and play habits. Specific age-appropriate agency guidelines shall be given to each foster family to follow.

(b) **Medical Care.** Medical care for a child in foster care is the responsibility of the Band Family Services Department. Only the Band Family Services Department may consent to medical treatment for the child. However, the responsibility for a child's day-to-day health needs rests with the foster parents. In case of sickness or accident to a child, immediate notice shall be given to the Foster Home Licensor and Social Worker assigned to the family. No foster child shall be given prescription medicine not specifically prescribed for him. Any prescribed medicine must be given by an adult and exactly in the manner prescribed.

(c) **Discipline.** The foster care parents shall not subject the child to verbal abuse, derogatory remarks directed at the child, the child's natural parents or relatives, or to threats to expel the child from the foster home. No child shall be deprived of meals, mail or family visits as a method of discipline. When discipline or consequences must be administered, it shall be done with understanding and reason. The method of discipline will be that which is accepted by the people of the Mille Lacs Band community.

#### **Historical and Statutory Notes**

**Source:** Band Ordinance 01-96, § 24.04.

### **3177. Recruiting and Training**

(a) Family Services has an ongoing obligation to recruit new foster families for licensing and to support and provide training for those interested in becoming foster parents to meet the licensing requirements.

(b) Family Services shall provide training, or facilitate opportunities for training elsewhere, for foster parent or prospective foster parent in order to provide specialized care for children with special medical or emotional needs.

## **Subchapter 6 Guardianships**

### **Section**

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**Guardianship of Children**

**§ 3201. Purpose**

The purpose of a Guardianship is to provide a child with long term stability. In the event of a Guardianship petition arising from a voluntary placement agreement or Court order, when it appears that reunification with the child’s parents is not possible, the Court may appoint a Guardian for the person and/or property of a child under the Court’s jurisdiction.

**§3202. Nominating or Appointing a Guardian**

The appointment of a Guardian may be made on the petition of a relative or other person on behalf of the child, or a petition of the child if the child is at least fourteen (14) years of age. Before making such appointment, the Court must cause such notice as the Court deems reasonable to be given to any person having the care of the child, and to such other relatives of the child as the Court may deem proper. If the Guardianship petition arises from a Child Protection case, notice shall be given to all parties involved in the Child Protection case.

**Historical and Statutory Notes**

Source: Band Ordinance 01-96, § 25.01.

**§ 3203. Types of Guardianship**

The types of guardianship shall include General Guardianship and Emergency Guardianship.

#### **Historical and Statutory Notes**

**Source:** Band Ordinance 01-96, § 25.02.

### **§ 3204. General Guardianship**

The Court may appoint a guardian for the child upon a finding of clear and convincing evidence that the guardianship is necessary for the care of the child and under such terms and conditions as the Court sets forth in the written order. A guardianship provides for permanent custody of a child to someone other than the parent, although there may be no termination of the parental rights of the parents. A guardianship shall also include the management of the child's property, if he has any, according to Section 3215 of this chapter. The parent and the child's extended family shall be granted liberal visitation rights unless deemed inappropriate by the Court.

#### **Historical and Statutory Notes**

**Source:** Band Ordinance 01-96, § 25.04.

### **§ 3205. Emergency Guardianship**

(a) The Court may appoint an emergency guardian under such terms and conditions as the Court sets forth in the written order. An emergency guardianship shall be in effect no longer than 180 days at which point the Court must review its status. Upon review, the emergency guardianship may be terminated if the Court determines that it is in the best interests of the child to return the child to the parent, guardian or custodian, or be changed to general guardianship status pending the procedures set forth in this subchapter. During the emergency guardianship, the parent and the child's extended family shall be granted liberal visitation rights unless deemed inappropriate by the Court.

(b) An emergency guardianship may be granted through an ex parte motion for guardianship only when it is established by clear and convincing evidence that immediate and irreparable injury, loss, or damage will result to the child before the adverse party or that party's attorney can be heard in opposition. In any application for ex parte relief, the Court may require a demonstration or explanation of the efforts made to notify affected parties, or the reasons why such efforts were not made. The reasons supporting ex parte relief should be recited in the order.

#### **Historical and Statutory Notes**

**Source:** Band Ordinance 01-96, § 25.05.

### **§3206. Best Interest Factors:**

**Best Interests of the Child** is defined as a variety of factors including:

- (a) the ability of the Band and community to provide for the care of the child;
- (b) the wishes of the Band, parents, party or parties;
- (c) the preference of the child if the child is fourteen (14) years of age or older and can express a preference;
- (d) the intimacy of the relationship between the parties and the child demonstrating a strong attachment of the child to the prospective guardian and a strong commitment of the prospective guardian to care for the child;
- (e) the child's adjustment to home, school and community;
- (f) the length of time the child has lived in a stable, satisfactory environment and the desirability of maintaining continuity;
- (g) the permanence, as a family unit, of the existing or proposed guardian's home;
- (h) the mental and physical health of all individuals involved;
- (i) the capacity and disposition of the parties to give the child love, affection, guidance and to continue educating the child in the child's culture and heritage.

### **§ 3207. Who May File Guardianship Petition**

A guardianship petition under this Section shall be initiated by:

- (a) A petition of any person on behalf of the child;
- (b) A petition of the child himself if he is fourteen (14) years of age or older; or
- (c) The prospective guardian.

#### **Historical and Statutory Notes**

Source: Band Ordinance 01-96, § 25.06.

### **§ 3208. Guardian Eligibility Factors**

- (a) Petitioners for guardianship must be willing to submit to a background check as part of their petition. If the petition for Guardianship does not arise from a Child in Need

of Protection or Services case, the Court may require the petitioner to pay a background check fee to Family Services to cover the cost of the background check.

(b) Any person whose background reveals any convictions involving any of the crimes below shall not be granted guardianship:

- (1) Homicide or Attempted Homicide
- (2) Rape, sexual assault, molestation, or exploitation; or
- (3) Offenses committed against children (including child abuse).

(c) Petitioners who have any felony or two (2) or more misdemeanor convictions within the last five (5) years for the following may be subject to further inquiry from the Court to determine the suitability of granting the guardianship:

- (1) physical assault;
- (2) battery;
- (3) spousal abuse; or
- (4) drug-related offenses.

(d) Any person with a diagnosed mental illness that will adversely affect the ability to carry out guardian duties will not be granted guardianship. The Court may ask for additional information regarding a person's mental health status if it has reason to believe the child's best interests could be adversely affected.

(e) A person with a documented history of chemical dependency problems within the last ten (10) years may be required by the Court to submit to assessments such as a rule 25 test, proof of attendance at AA meetings, or testimonies from other Band members as to the prospective guardian's sobriety before the guardianship can be granted.

### **§ 3209. Contents of Guardianship Petition**

(a) The petition for guardianship shall include the following, to the best information and belief of the petitioner:

- (1) The full name, address and tribal affiliation (if any) of the petitioner;
- (2) The full name, sex, date and place of birth, residence and tribal affiliation of the child;
- (3) The basis for the Court's jurisdiction;

- (4) The relationship of the proposed guardian to the child;
  - (5) The name and address of the person or agency having legal or temporary custody of the child;
  - (6) The type of guardianship requested;
  - (7) A full description and statement of value of all property owned, possessed, or in which the child has an interest (if any);
  - (8) A brief statement as to the motivation for becoming a guardian; and
  - (9) The name of any potential successor guardians proposed. Potential successor Guardians must be willing to submit to a background check at the time of the original petition and are subject to the same eligibility factors found in section 3208. Successor Guardians are also subject to the same placement preference order set out in section 3165.
- (b) All petitions must be signed and dated by the petitioners, and must be notarized or witnessed by a clerk of the Court.

#### **Historical and Statutory Notes**

**Source:**

Band Ordinance 01-96, § 25.07

### **§ 3210. Guardianship Report**

- (a) Upon the filing of a guardianship petition, the Court shall immediately request that the Family Services Department or other qualified agency conduct a guardianship report on the proposed guardian and assess the best interests of the child. The guardianship report shall contain:

- (1) A background check and UA on all household members age thirteen (13) years and older;
  - (2) Housing status and condition of house of the proposed guardian, including the Family Services personnel's own observations of cleanliness and safety;
  - (3) A plan of care for the child to be developed by the Family Services worker and proposed guardian;
  - (4) Financial statement of the guardian;
  - (5) Financial statement of the child (if any);
  - (6) Any special services required for the care of the child;
  - (7) References from community members such as neighbors and additional family members or friends; and
  - (8) The Family Services Staff member's own observations regarding the capabilities of the proposed guardian to care for the child.
- (b) No final determination can be made on a petition for guardianship until the report has been completed and submitted to and considered by the Court. The guardianship report shall be submitted to the Court at least ten (10) calendar days before the guardianship hearing. The Court may order additional reports as it deems necessary.

**Historical and Statutory Notes**

**Source:** Band Ordinance 01-96, § 25.08.

**§ 3211. Guardianship Procedures**

- (a) The petitioner and child, if age fourteen (14) or older, shall appear personally at the hearing to establish the guardianship unless excused by the Court for good cause shown.
- (b) Before conferring a guardianship, the Petitioner must establish and the Court must determine that clear and convincing evidence supports a finding that:
  - (1) the child's parents have consented to the guardianship via a voluntary placement agreement;
  - (2) there is not a parent available and willing to care for the child; or

- (3) if there is a parent available and willing to care for the child:
  - a. the child meets the definition of a child in need of protection because of conduct by the parent; or
  - b. there is a substantial probability of future abuse or neglect if the child were returned to the parent, and the conditions are unlikely to improve within a reasonable period of time, or there has been a determination that adoption or reunification are not appropriate permanency options for the child.
- (c) If the child is fourteen (14) years of age or older, the child shall be consulted regarding the proposed guardianship by the Court.
- (d) If the Court is satisfied as to the suitability of the guardianship, it may:
  - (1) enter an order granting a general guardianship under such terms or conditions that the Court finds appropriate;
  - (2) enter an order granting an emergency guardianship for a stated period under such terms or conditions that the Court finds appropriate;
- (e) The term of a general guardianship expires when the child reaches the age of eighteen (18) or the guardianship is terminated by order of the Court.

#### **Historical and Statutory Notes**

**Source:** Band Ordinance 01-96, § 25.09.

### **§3212. Guardianship Order**

An order establishing guardianship of a child shall include a specific statement establishing who has custody of the child, a time-frame (if emergency guardianship) and the specific circumstances in which a parent may petition the Court for review of custody (if any). Before issuing the order, the Court must ensure that the prospective guardian understands his duties and powers as set out in Section 3213 along with any other information the Court finds pertinent.

### **§3213. General Guardian Duties, Powers, and Limitations**

- (a) **Traditional Ways and Cultural Ties.** Any appointment under this section shall encourage and arrange for a child to maintain cultural ties with the Band, to be informed of the tradition and customs of the Band, to attend powwows and ceremonies, and to have the opportunity to learn his native language.
- (b) **Duties.**

(1) A Guardian appointed by the Court shall:

- a. Use the degree of care, diligence, and good faith when acting on behalf of the child that an ordinarily prudent person exercises in his own affairs;
- b. Advocate for the child's best interests;
- c. Demonstrate the utmost degree of trustworthiness, loyalty, and fidelity in relation to the child; and
- d. Maintain a fiduciary duty when dealing with the child's finances. A fiduciary duty requires that the Guardian consider the child's interests over his own.

(2) A Guardian must also:

- a. Notify the Court of any change in address of the guardian or child;
- b. Make medical, dental and psychiatric care decisions;
- c. Make decisions related to education;
- d. Make decisions related to mobility and travel;
- e. Give consent to military service where appropriate;
- f. Consent/refuse visitation by relatives, subject to limitations set out in the Court order.

(c) **Powers.** A Guardian appointed by the Court may be bestowed with the following powers:

- (1) The ability to manage the child's estate, while maintaining the fiduciary duty set forth in subsection (b) above.
- (2) The ability to seek child support according to the policies and procedures set forth in Chapter 12 of this Title.

(d) **Limitations.** When a guardian has been appointed by the Court for a child, the Court may grant legal custody and care of the child and management of his property until such child arrives at the age of eighteen (18), marries, is emancipated by a court of proper authority, or until the guardian is legally discharged; provided, however, that said guardian shall not have the authority without express written consent of the Court to dispose of any real or personal property of the child in any manner. The guardian is also prohibited from

using coercion, threats or manipulation to access the child's funds upon the child reaching the age of eighteen (18). The disposal of the child's real or personal property in any way shall subject said person to contempt of court and/or to civil penalties or remedies, including restitution provided by the Court.

### **§3214. Emergency Guardian Duties**

(a) **Traditional Ways and Cultural Ties.** Any appointment under this section shall encourage and arrange for a child to maintain cultural ties with the Band, to be informed of the tradition and customs of the Band, to attend powwows and ceremonies, and to have the opportunity to learn his native language.

(b) **Duties.**

- 1) A Guardian appointed by the Court shall:
  - a. Use the degree of care, diligence, and good faith when acting on behalf of the child that an ordinarily prudent person exercises in his own affairs;
  - b. Advocate for the child's best interests;
  - c. Demonstrate the utmost degree of trustworthiness, loyalty, and fidelity in relation to the child; and
  - d. Maintain a fiduciary duty when dealing with the child's finances. A fiduciary duty requires that the Guardian consider the child's interests over his own.
- 2) A Guardian must also:
  - a. Notify the Court of any change in address of the guardian or child;
  - b. Make medical, dental and psychiatric care decisions;
  - c. Make decisions related to education;
  - d. Make decisions related to mobility and travel;
  - e. Give consent to military service where appropriate;
  - f. Consent/refuse visitation by relatives, subject to limitations set out in the Court order.

### **3215. Management of Property**

- (a) Within forty-five (45) calendar days after the appointment of a general guardian, the guardian shall prepare and submit to the Court an inventory and appraisal of the Child's belongings and estate.
- (b) The appraisal shall be made by a disinterested person who shall certify under oath to their appraisal and may receive reasonable compensation for their services.
- (c) No appraisal shall be required of items of obvious, readily ascertainable value, e.g., bank account assets, or where the value of the estate is reasonably believed by the guardian to be less than \$1,000.00. If no appraisal is required, the guardian shall certify under oath to the obvious or estimated value of the assets not appraised.
- (d) A copy of the appraisal will be sent by the Court Administrator to the Office of Management & Budget for record keeping. OMB is charged with the joint responsibility to assure that none of the child's Trust account is spent by the Guardian without prior permission by the Court per Section 3213.
- (e) In the event of a Guardian petitioning the Court for permission to dispose of the child's property, the Guardian must demonstrate that the need was an unforeseen emergency and would be used for the health, education, or general welfare of the child. The Court shall review the petition and, if approved, provide an order allowing the Guardian to apply to the Band Assembly for a Hardship Loan. The Guardian must receive approval from Band Assembly before access to the child's funds may be granted.
- (f) Nothing in this section shall preclude a child from inheriting from his biological family members. In the event of the child inheriting after the Guardianship has been established, the Guardian has thirty (30) calendar days to submit a revised appraisal to the Court.
- (g) In the event of the child's death, any physical and/or monetary property belonging to the child shall be distributed to the child's heirs.

#### **Historical and Statutory Notes**

**Source:** Band Ordinance 01-96, § 25.10.

### **§3216. Annual Guardianship Report**

General Guardians shall file an annual report on or about the anniversary of the guardianship or at such a time as is ordered by the Court. The purpose of said report is to update the Court on the status of the guardianship and well-being of the child. The report shall include the following information:

- (a) A statement regarding the child's status in school (i.e., whether he is attending regularly, has had any incident reports and any steps taken to correct any problems that have arisen);

- (b) A statement regarding the child's health and overall well-being (i.e., regular well-child check-ups, medical care for any injuries, or hospitalization);
- (c) A statement regarding the child's mental health and whether any steps have been taken to address any issues that have come up (i.e., whether the child is seeing a counselor or spiritual advisor or participating in any therapy);
- (d) A statement regarding any interactions the child has had with law enforcement and the outcome of those interactions (i.e., whether the child has been in Court, sentenced, or on probation, etc.); and
- (e) A statement accounting for any of the child's property, which has been disposed of within the last year and the reason for its disposal.

### **§3217. Motions to Modify Guardianship Orders**

- (a) The Court may modify any order or decree made by it, but no modification of an order shall be made until there has been a hearing after due notice to all persons concerned.
- (b) The Court may hold a hearing to modify a Guardianship order at any time upon motion of any of the following:
  - (1) The child age fourteen (14) years or older.
  - (2) The child's parents.
  - (3) The guardian of the child.
  - (4) The guardian ad litem.
- (c) The motioning party bears the burden of proving by a preponderance of the evidence that modification of the Guardianship order is in the best interest of the child as set out in section 3206.
- (d) The motioning party may seek a modification of a variety of things, including, but not limited to:
  - (1) Child Support.
  - (2) The power to manage the child's property.
  - (3) A change from Emergency to General Guardian.
  - (4) Creating or changing a visitation schedule for parents or other family members.

### **§3218. Motions to Revoke Guardianship**

- (a) Revocation is the voluntary relinquishment of a guardianship by a guardian. The need for a guardianship itself may continue with the Band Family Services Department taking custody of the child and renewing a search for a suitable Guardian.
- (b) The Court may set aside any order or decree made by it, but no revocation of an order shall be made until there has been a hearing after due notice to all persons concerned.
- (c) The Court may hold a hearing to revoke a guardianship order at any time upon the motion of the guardian.
- (d) The motioning party bears the burden of proving by a preponderance of the evidence that revocation of the guardianship is in the best interests of the child as set out in section\_3206.

### **§3219. Motions to Remove Guardian**

- (a) Removal is the process to discharge a guardian from his role due to his failure to perform the guardian's duties as set forth in section 3213. This may include a failure to participate in the plan of care set forth in the original Court order for Guardianship. The need for a guardianship itself may continue with the Band Family Services Department taking custody of the Child and renewing a search for a suitable Guardian.
- (b) The Court may order a removal of a guardian for cause, but no removal shall be made until there has been a hearing after due notice to all persons concerned.
- (c) The Court may hold a hearing to remove a guardian at any time upon the motion of any of the following:
  - (1) The child age fourteen (14) years or older.
  - (2) The child's grandparent or parent.
  - (3) The child's relatives having a legitimate interest in the particular case.
  - (4) The guardian ad litem.
  - (5) The Band's Family Services Department.
- (d) The motioning party bears the burden of proving by clear and convincing evidence that the guardian is or has been neglecting the child and/or estate and is or has been refusing or is unable to perform the guardian's duties. The motion must include factual allegations of neglect or failure to fulfill the guardian's duties.
- (e) Nothing in this section precludes the Band Family Services Department from

opening their own CHIPS investigations and/or petition against the guardian.

### **§3220. Motions to Terminate Guardianship**

- (a) Termination is the process whereby the entire guardianship is terminated. This can occur upon the child reaching the age of majority, the child becoming emancipated by the Court's order, or a motion to terminate being granted.
- (b) An order vesting legal custody of a child to an individual shall be for an indeterminate period.
- (c) The Court, upon motion of a party seeking termination of a guardianship order and being satisfied all parties were properly notified of the motion, may schedule a hearing to consider termination of its order.
- (d) The Court may hold a hearing to terminate a guardianship order at any time upon motion of any of the following:
  - (1) The child age fourteen (14) years or older.
  - (2) The child's parents.
  - (3) The child's grandparents.
  - (4) The guardian ad litem.
- (e) The motioning party bears the burden of proving by clear and convincing evidence that that termination of the guardianship is in the best interest of the child as set out in section 3206.

## **Guardianship of Adults**

### **§3221. Types of Guardianship**

- (a) The Court may appoint a guardian of the person, which entails the responsibility for the care and custody of the member. The Court may appoint a conservator of a member, which entails responsibility for the administration and management of the member's property. The Court shall explicitly state whether the appointment is a guardianship of the person, conservator or both based on the needs of the proposed ward and the abilities of the proposed guardian or conservator.
- (b) The guardianship or conservatorship may be either temporary or permanent, based on the needs of the ward. The Court shall explicitly state whether the guardianship or conservatorship is temporary or permanent. If the guardianship or conservatorship is

temporary, the Court shall establish regular review hearings every ninety (90) calendar days to reevaluate the needs of the ward.

### **§3222. Grounds for Appointment of Guardian or Conservator**

(a) The Court, when it appears necessary in order to protect the best interests of a vulnerable adult member of the Mille Lacs Band, may appoint a guardian or conservator of the member of the tribe under the following circumstances:

(1) The adult is found to be incapacitated and incapable of caring for himself and such incapacity is a significant impediment to his health and well-being; or

(2) For purposes of appointment of a conservator, the adult is found to be unable or unwilling to competently administer his financial affairs.

(b) Whether a proposed ward is capable of caring for himself and/or his finances, shall be evaluated by at least two (2) qualified physicians who shall provide written statements as to their determinations.

(c) In addition to the testimony of the physicians in subsection (b) above, the Court shall review the Family Services report. The Court may also hear additional testimony from relevant sources such as the Elder Services investigator, Tribal Police, Family Services, or any other person with direct knowledge of the elder or vulnerable adult's ability to care for himself and/or his finances.

(d) The determination of incapacitation shall be made only after petition, notice, and hearing.

### **§3223. Contents of Guardianship or Conservatorship Petition**

The petition for guardianship or conservatorship shall include the following, as best the petitioner is able to ascertain in good faith:

(a) The full name, sex, date and place of birth, residence and tribal affiliation of the proposed ward;

(b) The full name, address, age, and relationship if any to the proposed ward of the petitioner;

(c) The names and addresses of any other person seeking guardianship or conservatorship over the same proposed ward;

(d) The basis for the Court's jurisdiction;

(e) Whether the petitioner seeks appointment as guardian or conservator and a statement of the reason that the appointment is sought.

(f) A full description and statement of value of the proposed ward's assets and liabilities, with an estimate of the value of any property owned, possessed or in which the proposed ward has an interest, including any income and receivables to which the proposed ward is entitled.

(g) All petitions must be signed and dated by the petitioners, and must be notarized or witnessed by the Clerk of Tribal Court.

### **§3224. Guardianship and Conservatorship Report**

Upon the filing of a petition for guardianship or conservatorship, the Court shall immediately order Family Services or other qualified agency to conduct a guardianship evaluation on the proposed guardian or conservator and on the proposed ward. The resulting guardianship report shall contain all pertinent information necessary to assist the Court in determining the best interests of the proposed ward, including a report on the guardian's or conservator's eligibility pursuant to the requirements of this section, as well as whatever other information the agency believes to be relevant. The report shall be filed with the Court within thirty (30) days and a copy shall be provided to all parties who have received notice of the petition.

### **§3225. Guardian and Conservator Eligibility Factors**

(a) Petitioners for guardianship and conservatorship must be willing to submit to a finger-print background check and a urinalysis as part of their petition. For any party other than Family Services, the Court may require the petitioner to pay a background check fee to Family Services to cover the cost of the background check, except in cases of indigence.

(b) Any person whose background reveals any convictions involving any of the crimes below shall not be granted guardianship or conservatorship:

(1) Homicide or Attempted Homicide;

(2) Rape, sexual assault, molestation, or exploitation; or

(3) Offenses committed against children (including child abuse) or other vulnerable adults.

(c) Petitioners who have any felony or two (2) or more of the following misdemeanor convictions within the last five (5) years may be subject to further inquiry from the Court to determine the suitability of granting the guardianship or conservatorship;

(1) physical assault;

(2) battery; or

(3) drug or controlled substance-related offenses.

(d) Any person with a diagnosed mental illness, which will significantly and adversely impair the ability to carry out guardian or conservator duties will not be granted guardianship or conservatorship. The Court may ask for additional information regarding a person's mental health status if it has reason to believe the proposed ward's best interests could be affected.

(e) A person with a documented history of chemical dependency problems may be required by the Court to submit to assessments as recommended by Mille Lacs Band Behavioral Health, proof of attendance at AA meetings, or testimonies from other reliable Band members as to the prospective guardian's sobriety, before the guardianship can be granted.

(f) In conducting an inquiry into the suitability of the proposed guardian or conservator, the Court shall consider whether the person proposed to serve as guardian or conservator is insolvent or has declared bankruptcy during the five (5) years immediately prior to filing the guardianship or conservatorship petition, or has a conflict of interest that would preclude or substantially impact the person from acting in the proposed ward's best interest.

### **§3226. Accounting**

Upon appointment of guardianship and/or conservatorship, the guardian or conservator shall provide an accounting of the ward's finances every thirty (30) calendar days to the Court. The accounting shall include all income and expenditures made with the ward's money and/or any property sales or investments made on behalf of the ward.

### **§3227. Motion to Modify Guardianship or Conservatorship**

(a) The Court may modify any order or decree made by it, but no modification of an order shall be made until there has been a hearing after due notice to all persons concerned.

(b) The Court may hold a hearing to modify a guardianship or conservatorship order at any time upon motion of any of the following:

- (1) The ward;
- (2) The guardian or conservator of the ward;
- (3) The guardian ad litem; or
- (4) The Mille Lacs Band Family Services Department.

(c) The motioning party bears the burden of proving by a preponderance of the evidence that modification of the Guardianship order is in the best interest of the ward.

(d) The motioning party may seek a modification of any part of the existing guardianship or conservatorship order, including but not limited to:

(1) The power to manage the ward's property; or

(2) A change from Temporary to Permanent Guardian.

### **§3228. Motion to Revoke Guardianship or Conservatorship**

(a) Revocation is the voluntary relinquishment of a guardianship or conservatorship by a guardian or a conservator. The guardianship or conservatorship itself may continue with a successor guardian taking over the role or Family Services may act as temporary guardian until a new permanent one can be found.

(b) The Court may set aside any order or decree made by it, but no revocation of an order shall be made until there has been a hearing after due notice to all persons concerned.

(c) The Court may hold a hearing to revoke a guardianship or conservator order at any time upon the motion of the guardian or conservator.

(d) The motioning party bears the burden of proving by a preponderance of the evidence that revocation of the guardianship or conservatorship is in.

### **§3229. Motion to Remove Guardian or Conservator**

(a) Removal is the process to remove a guardian or conservator from his role due to his failure to adequately perform the guardian's or conservator's duties. This may include a failure to properly account for the ward's finances. The guardianship itself may continue with a successor guardian taking over the role.

(b) The Court may order a removal of a guardian or conservator for cause, but no removal shall be made until there has been a hearing after due notice to all persons concerned.

(c) The Court may hold a hearing to remove a guardian or conservator at any time upon the motion of any of the following:

(1) The ward;

(2) The ward's relatives having a legitimate interest in the particular case;

(3) The guardian ad litem; or

(4) The Mille Lacs Band Family Services Department.

(d) The motioning party bears the burden of proving by clear and convincing evidence that the guardian or conservator is or has been neglecting the ward and is or has been refusing or is unable to perform the guardian's or conservator's duties. The motion must include factual allegations of neglect or failure to fulfill the guardian's duties.

(e) Nothing in this section precludes the Band Family Services Department from opening their own investigations and/or petition against the guardian.

### **§3230. Motion to Terminate Guardianship or Conservatorship**

(a) Termination is the process whereby the entire guardianship or conservatorship is terminated. A motion to terminate may be made if the ward has regained the ability to care for himself and/or his finances, or new evidence is presented that the need for a guardianship or conservatorship has changed.

(b) The Court, upon motion of a party seeking termination of a guardianship or conservatorship order and being satisfied all parties were properly notified of the motion, may schedule a hearing to consider termination of its order. The Court may hold a hearing to terminate a guardianship or conservatorship order at any time upon motion of any of the following:

- (1) The ward;
- (2) The ward's family members with a legitimate interest in the case;
- (3) The guardian ad litem; or
- (4) The Mille Lacs Band Family Services Department.

(c) The motioning party bears the burden of proving by clear and convincing evidence through at least two (2) different physician evaluations that that termination of the guardianship is in the best interest of the ward.

## **Subchapter 7 Procedures for the Adoption of Children**

### **Section**

- 3231. Purpose
- 3232. Open Adoptions
- 3233. Consent to Adoption
- 3234. Execution of Consent to Adoption
- 3235. Receiving Notice of Private Adoption Proceedings
- 3236. Who May File an Adoption Petition
- 3237. Contents of Adoption Petition
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- 3239. Home Studies
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- 3241. Adoption Preferences
- 3242. Background Investigation
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- 3244. Visitation Agreement
- 3245. Contact Agreement
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### **§3231. Purpose**

The adoption code shall be liberally interpreted and construed as an exercise of the inherent sovereign authority of the Mille Lacs Band of Ojibwe to fulfill the following express purposes:

- (a) To embody and promote the basic traditional values of the Mille Lacs Band of Ojibwe regarding the protection and care of the Band's children. The Mille Lacs Band of Ojibwe believes that it is the responsibility of the Band, the Band communities, and extended families to protect, care for, and nurture our children.
- (b) To promote the belief of the Mille Lacs Band of Ojibwe that children deserve a sense of permanency and belonging throughout their lives and at the same time they deserve to have knowledge about their unique cultural heritage including their customs, history, language, religion and values.
- (c) To provide for the best interests of the Band, Band communities, and the Band's children.
- (d) To afford judicial processes that allow for formal adjudications that address the issues of the rights, responsibilities, care, custody and control of minor children when the biological parents are unable or unwilling to provide a safe, stable, nurturing and permanent environment for their children by conferring jurisdiction upon the Mille Lacs Band's Court to hear and adjudicate such matters.

### **§ 3232. Open Adoptions**

Adoptions under this statute shall be in the nature of "Open Adoptions." The purpose of such open adoptions is not to permanently deprive a child of connections to, or knowledge of, the child's biological family. The purpose of adoptions shall be to give the adoptive child a permanent home. To this end the following shall apply and be contained in all adoptive orders and decrees:

- (a) The adoptive parents and adoptive child shall be treated under the law as if the relationship was of a biological child and parent, except as set forth herein.
- (b) The adoptive child shall have an absolute right, absent a compelling reason to the contrary, to information and knowledge about his biological family and heritage.
- (c) The adoptive child and members of the child's biological extended family, including parents, shall have the right of reasonable visitation with each other, subject to

reasonable controls of the adoptive parents.

(d) Adoption shall not serve to prevent an adoptive child from inheriting from a biological parent in the same manner as any other biological child. The biological parent shall not be entitled to inherit from an adoptive child in the same manner as parents would otherwise be entitled to inherit. An adoptive child shall be entitled to inherit from adoptive parents, and vice versa, in the same manner as the biological parents and child.

#### **Historical and Statutory Notes**

**Source:** Band Ordinance 01-96, § 26.01.

### **§ 3233. Consent to Adoption**

- (a) **When Not Required:** Written consent to an adoption shall not be required if:
- (1) The parent's rights have been terminated;
  - (2) The parent has relinquished their parental rights;
  - (3) The parent has been declared by the Court as incompetent or incapable to perform parental duties of the child;
  - (4) The parents are deceased;
  - (5) The paternal biological parent has failed to legally establish his paternity of the child within one (1) year of receiving actual or constructive notice of the birth of the child.
- (b) **When required:** Written consent to an adoption shall be required from:
- (1) The biological or adoptive mother;
  - (2) The biological, adoptive, or acknowledged father;
  - (3) The custodian, if empowered to consent;
  - (4) The Court, if the custodian is not empowered to consent;
  - (5) The child, if the child is over fourteen (14) years of age.

#### **Historical and Statutory Notes**

**Source:** Band Ordinance 01-96, § 26.02.

### **§ 3234. Execution of Consent to Adopt**

Written consent to an adoption shall be executed and acknowledged before the Court. Consent shall not be accepted or acknowledged by the Court until fourteen (14) days after the birth of a child. A certified interpreter shall be provided for the person consenting to the adoption if they do not understand English. The consent of a child over the age of fourteen (14) years shall be given orally either in open court, or in chambers with the judge and any other persons the judge deems necessary to be present.

#### **Historical and Statutory Notes**

Source: Band Ordinance 01-96, § 26.03.

### **§3235. Receiving Notice of Private Adoption Proceedings**

(a) When the Band receives notice from an outside adoption agency of private adoption proceedings in process for a Band member or eligible Band member, Family Services shall notify the parties and the Court exercising jurisdiction of the Band's intention to be a party in the proceedings. As a party to the proceedings, the Band shall request a Contact Agreement be made with the parties which ensures the child be notified of his status as a Band member and allows for the child to maintain contact with the Band. The Contact Agreement may also require notification to the Band of any future name or address changes of the child.

(b) Upon notification of adoption proceedings, Family Services shall also make every effort to contact the biological, Band-member parent to ensure his consent was willingly and freely given.

### **§ 3236. Who May File an Adoption Petition**

Any person may file a petition for adoption. The petition shall be initiated by the person proposing to adopt. In the case of married persons maintaining a home together, the petition shall be the joint petition of husband and wife, except that if one of the spouses is the natural or adopted parent of the proposed adoptee, said person shall not be required to join in the petition.

#### **Historical and Statutory Notes**

Source: Band Ordinance 01-96, § 26.04.

### **§ 3237. Contents of Adoption Petition**

(a) The petition for adoption shall include the following, to the best information and belief of the petitioner:

(1) The full name, address, and tribal affiliation of the petitioner;

- (2) The full name, sex, residence, date and place of birth, and tribal affiliation of the proposed adoptee;
  - (3) The length of time the proposed adoptee has been at his current placement;
  - (4) The name by which the proposed adoptee shall be known if the petition is granted;
  - (5) The basis for the Court's jurisdiction;
  - (6) A full description and statement of value of all property owned, or possessed in which the proposed adoptee has an interest;
  - (7) The relationship of the petitioner to the proposed adoptee;
  - (8) The name, address, and telephone number of any other relatives who may have an interest in the care, custody and control of the minor child to the best of the petitioner's knowledge;
  - (9) The names and addresses of any person or agency whose consent to aid adoption is necessary;
  - (10) A statement or a copy of the final order terminating or suspending the parental rights of the biological parent;
  - (11) A statement as to why a final order for adoption is in the best interests of the proposed adoptee and the best interests of the proposed adoptee's tribe;
  - (12) A statement as to basis for the adoption supported by a home study, medical, psychiatric, child protection worker, family member and/or psychological reports or testimony; and
  - (13) A statement that no similar action is pending in a tribal or state Court having jurisdiction over the child.
- (b) Where there is more than one proposed adoptee, and the proposed adoptees are siblings, only one petition shall be required for the adoption of all or any combination of the siblings, provided that each sibling proposed to be adopted be named in the petition.
- (c) All petitions must be signed and dated by the petitioner, and must be notarized or witnessed by a clerk of the Court.

#### **Historical and Statutory Notes**

**Source:** Band Ordinance 01-96, § 26.05.

## **§ 3238. Notice**

(a) Upon the filing of a petition seeking an order for an adoption of a minor child, the Court shall order a home study as set out in section 3239 of this chapter. Upon the Court's receipt of the contents of the home study report, the Court shall cause written notice of such hearing to be served upon the petitioner; the child's tribe; extended family members as determined by the Band Enrollment office immediately after the filing of the petition, if any; caretaker, if any; and appropriate agencies of the Band that may either have an interest in the proceedings or be of assistance to the Court in adjudicating the matter. Such notice shall be served in the manner provided for in section (b) below.

(b) Notice shall be given by personal service. If service cannot be made personally, the Court may authorize service by registered mail at the last known address of the person to be served. If notice cannot be served by registered mail, the Court may authorize service by publication in the newspaper of the reservation, and a newspaper of general circulation in the county where the Court is located, once a week for three (3) consecutive weeks. All notices served whether personally or by registered mail shall be received by the person named therein no less than ten (10) calendar days prior to the date set for the hearing. No hearing can be held sooner than ten (10) calendar days after the last publication where service is made.

### **Historical and Statutory Notes**

**Source:** Band Ordinance 01-96, §§ 26.06, 26.07.

## **§ 3239. Home Studies**

(a) When a petition for the adoption of a child is filed with the Court, the Court shall immediately request that the Family Services Department or other qualified agency conduct a home study on the petitioner and report on the child. The home study and report shall relate the circumstances of the home, the petitioner and their ability, physically, mentally and financially to assume the responsibilities of a parent of the child. The home study shall contain other pertinent information designed to assist the Court in determining the best placement for the child including fingerprint background check information on all persons over the age of thirteen (13) living in the prospective adoptive home. The home study will also address the issue of whether or not the home most closely resembles that of the child's culture, identity, and where applicable, the child's tribal affiliation.

(b) The home study report shall be completed within thirty (30) days of the Court's order. No determination can be made on a petition for adoption until the home study and report has been completed and submitted to and considered by the Court. All parties must have ten (10) days' notice to review the home study before the hearing. A continuance may be requested if any party has not been given proper notice of the home study. The Court may order additional home studies as it deems necessary.

**Historical and Statutory Notes**

Source: Band Ordinance 01-96, § 26.08.

**§ 3240. Withdrawal of Consents**

(a) Any consent given under the provisions of this subchapter (§§ 3231 - 3246) may be withdrawn by the person or agency that gave the consent at any time prior to the entry of a final decree of adoption. No reason need be stated and no hearing need be held on such withdrawal.

(b) All withdrawals must be written and notarized or witnessed by a clerk of the Court, with the original being filed with the Court.

(c) Within two (2) years after the entry of a decree of adoption, said decree may be vacated upon a petition being filed and a showing that the consent that made the adoption possible was obtained through fraud or duress. Upon such a showing the Court shall vacate the decree and return the adopted person to that status he had prior to entry of the decree.

**Historical and Statutory Notes**

Source: Band Ordinance 01-96, § 26.09.

**§ 3241. Adoption Preferences**

The preference of placement in adoption shall be in the following order unless the Court determines that the child's best interests require deviation from the preferences:

- (1) Extended family members, whether Indian or non-Indian, including Niiya'wenh'enh';
- (2) An Indian family of the same Band as the child;
- (3) An Indian family;
- (4) Adoptive Families with specialized training to address the specific medical or emotional needs of the child;
- (5) Non-Indian Families who agree to maintain the Child's connection to his culture.

**Historical and Statutory Notes**

Source: Band Ordinance 01-96, § 26.10.

**§3242. Background Investigation**

(a) Petitioners for adoption must be willing to submit to a background investigation as part of their petition. If the petition for Adoption does not arise from a Child in Need of Protection or Services case, the Court may require the petitioner to pay a background check fee to Family Services to cover the cost of the background check.

(b) Any person whose background reveals any convictions involving any of the crimes below shall not be granted adoption:

- (1) homicide or attempted homicide;
- (2) rape, sexual assault, molestation, or exploitation; or
- (3) offenses committed against children (including child abuse).

(c) Petitioners who have any felony or two (2) or more of the following misdemeanor convictions within the last five (5) years may be subject to further inquiry from the Court to determine the suitability of granting the adoption:

- (1) physical assault;
- (2) battery;
- (3) spousal abuse; or
- (4) drug-related offenses.

(d) The Court may review the circumstances of any felony or misdemeanor revealed in a background check and consider the nature of the crime and length of time that has lapsed since the crime was committed. The Court may also request testimony or character references be given to determine whether the Petitioner's current life circumstances would be suitable for raising a child. If the Court finds it is in the best interest of the child, the Court may waive the requirements in subsection (c) of this section that would otherwise bar the petitioner from the adoption.

(e) Any person with a diagnosed mental illness which will significantly affect the ability to carry out parenting duties will be given extra consideration before the adoption may be granted. The Court may request testimony or character references be given to determine whether the Petitioner's mental illness would significantly impact his ability to raise the child.

(f) A person with a documented history of substance abuse problems may be required by the Court to submit to assessments before the adoption can be granted.

(g) In conducting an inquiry into the suitability of the proposed adoptive parent, the Court shall consider whether the person petitioning for adoption is insolvent or has declared

bankruptcy during the five (5) years immediately prior to filing the adoption petition, or has a conflict of interest that would preclude or substantially impact the person from acting in the child's best interest.

### **§ 3243. Hearing Procedures**

(a) An adoption hearing shall be held within ninety (90) calendar days of receipt of an adoption petition from the prospective adoptive parent. The Court shall conduct the hearing to determine if it is in the best interests of the child to be placed with the petitioners. In determining the best interests of the child, the Court shall examine:

- (1) The validity of written consent;
- (2) A termination or suspension of parental rights order;
- (3) The length of time of the child's wardship by the Court (if applicable);
- (4) The special conditions of the child;
- (5) The parent communication with the child;
- (6) The minor's consent to adoption, if the child is over fourteen (14) years of age;
- (7) The home studies or other reports; and
- (8) The order of preference of placement.

(b) The petitioner and the proposed adoptee shall appear personally at the hearing. During the hearing the Court shall advise the parties of their basic rights as provided in section 3153 of this chapter. The judge shall examine all persons separately, and may, if satisfied that all other requirements of this section have been met, enter a final decree of adoption, or may place the child in the legal custody of the petitioner for a period not to exceed six (6) months prior to entering a final decree of adoption.

(c) If the Court determines that the adoption will not be in the child's best interest, or finds that all of the requirements of this chapter have not been met, it may deny the petition and make any other order it deems necessary for the care and custody of the child consistent with this chapter.

(d) Proceedings for the termination or suspension of the parental rights and proceedings for adoption may be considered and determined at one hearing provided that all the requirements of this subchapter (§§ 3231-3246) governing termination or suspension are complied with fully.

(e) The hearing shall be informal in nature. Concerned parties may present evidence relating to the situation. Hearsay evidence will not be excluded from the proceedings. Only the parties, their counsel, witnesses, the child's extended family and other persons determined to be appropriate by the Court shall be allowed in the proceedings.

(f) In all cases, the Court shall make specific written findings of fact, state separately its conclusions of law, and enter an appropriate judgment or order. The Court may make findings that it is in the child's best interests that a final order for an adoption be entered and the Court shall specify the basis of those findings.

#### **Historical and Statutory Notes**

**Source:** Band Ordinance 01-96, § 26.11.

### **§3244. Visitation Agreement**

At any point in the proceedings, the prospective adoptive family and the biological family may come to an agreement as to the possibility and nature of visitation between the child and his biological family. Any such agreement shall be included in the final adoption decree per section 3246 of this chapter.

### **§3245. Contact Agreement**

At any point in the proceeding, the biological family or Family Services, on behalf of the Band, may request that the prospective adoptive family agree to allow and support the child in maintaining contact with the Band. Any such agreement shall be included in the final adoption decree per section 3246 of this chapter.

### **§ 3246. Adoption Decree**

If the Court finds that the requirements of this chapter have been met and that the child's best interests will be satisfied, a final decree of adoption may be entered. Such an order shall include, but is not limited to, the following:

(a) A statement that the child has been adopted by the petitioner and the two shall thenceforth sustain toward each other the legal relation of parent and child, and shall have all the rights and shall be subject to all the duties of that relation, including all of the rights of a child of the whole blood to inherit from any person, in all respects, under the provisions of inheritance and succession of the Band statutes or custom.

(b) A notice indicating the new name of the child, if any.

(c) Any agreement made between the adoptive family and biological family as to visitation.

(d) Any agreement made between the adoptive family and the tribe regarding maintaining contact with the tribe.

**Historical and Statutory Notes**

**Source:** Band Ordinance 01-96, § 26.12.

**Ordinance 31-17  
(Band Assembly Bill 17-03-31-17)**

Introduced to the Band Assembly on this  
Twenty-eighth day of December in the year  
Two thousand seventeen.

Passed by the Band Assembly on this  
Twelfth day of April in the year  
Two thousand eighteen.

*Carolyn Beaulieu*  
Carolyn Beaulieu, Speaker of the Assembly

APPROVED  
Date: *April 19, 2018*

*Melanie Benjamin*  
Melanie Benjamin, Chief Executive