

# St. Croix Chippewa Indians of Wisconsin

24663 Angeline Avenue • Webster, WI 54893 • (715) 349-2195 • Fax (715) 349-5768

## ST. CROIX TRIBAL COUNCIL RESOLUTION NO. 05.26.2022.05

### ADOPTION OF AMENDMENTS TO THE “ST. CROIX CHIPPEWA INDIANS OF WISCONSIN TITLE 8, CHAPTER 3, INDINAWEMAAGANIDOG INAAKONIGEWIN FAMILY CODE”

**WHEREAS**, the St. Croix Chippewa Indians of Wisconsin (the “**Tribe**”) is federally recognized Indian Tribe duly organized under Section 16 of the Indian Reorganization Act of 1934, 25 U.S.C. § 476, as amended, and established pursuant to the Constitution and By-Laws adopted by the Tribe on August 29<sup>th</sup>, 1942 and approved by the Secretary of the Interior on November 12, 1942; and

**WHEREAS**, pursuant to Article IV of the Tribal Constitution, the governing body of the Tribe shall be the St. Croix Tribal Council (the “**Tribal Council**”); and

**WHEREAS**, Article V, Section 1(a) the Tribal Council has the authority to negotiate with federal, state, and local governments on all matters affecting the welfare of the members of the Tribe; and

**WHEREAS**, the Tribal Council established the St. Croix Chippewa Indians of Wisconsin Family Code (the “Family Code”) via Resolution No. 10.30.00.01 which was amended on February 11, 2002 via Resolution No. 02.11.02.04 and amended again on November 6, 2015 via Resolution No. 11.05.15.02; and

**WHEREAS**, the Tribal Council has determined that the Family Code needs further amendment to better address the needs of the Tribal Membership and the Tribe which includes an amendment updating the citations within the Family Code in an effort to standardize all tribal ordinances; and

**WHEREAS**, the Indian Child Welfare Department, Tribal Court, and Legal Department collaboratively proposed revisions to the Family Code which were posted for public comment by the Tribal Membership on February 15, 2022; and

**WHEREAS**, the Tribal Council has reviewed the Family Code in its entirety and intends to adopt the proposed amendments and updated citations;

**NOW THEREFORE BE IT RESOLVED**, the Tribal Council on behalf of the St. Croix Chippewa Indians of Wisconsin hereby adopts in its entirety the attached St. Croix Chippewa Indians of Wisconsin Title 8, Chapter 3, Indinawemaaganidog Inaakonigewin Family Code which will replace all previous adopted versions of the Family Code.

**BE IT FURTHER RESOLVED**, that the amendments to Title 8, Chapter 3 Indinawemaaganidog Inaakonigewin Family Code shall be effective immediately and shall be distributed to the Tribal Court, Legal Department, Indian Child Welfare Department, and uploaded onto the Tribe’s website.

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Chairman  
Sand Lake

**Thomas Fowler**  
Vice-Chairman  
Maple Plain

**Richard Benjamin**  
Secretary/Treasurer  
Danbury

**Georgia Cobenais**  
Representative  
Round Lake

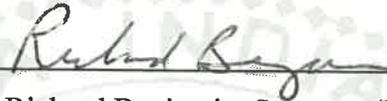
**Conrad St. John**  
Representative  
Sand Lake

# St. Croix Chippewa Indians of Wisconsin

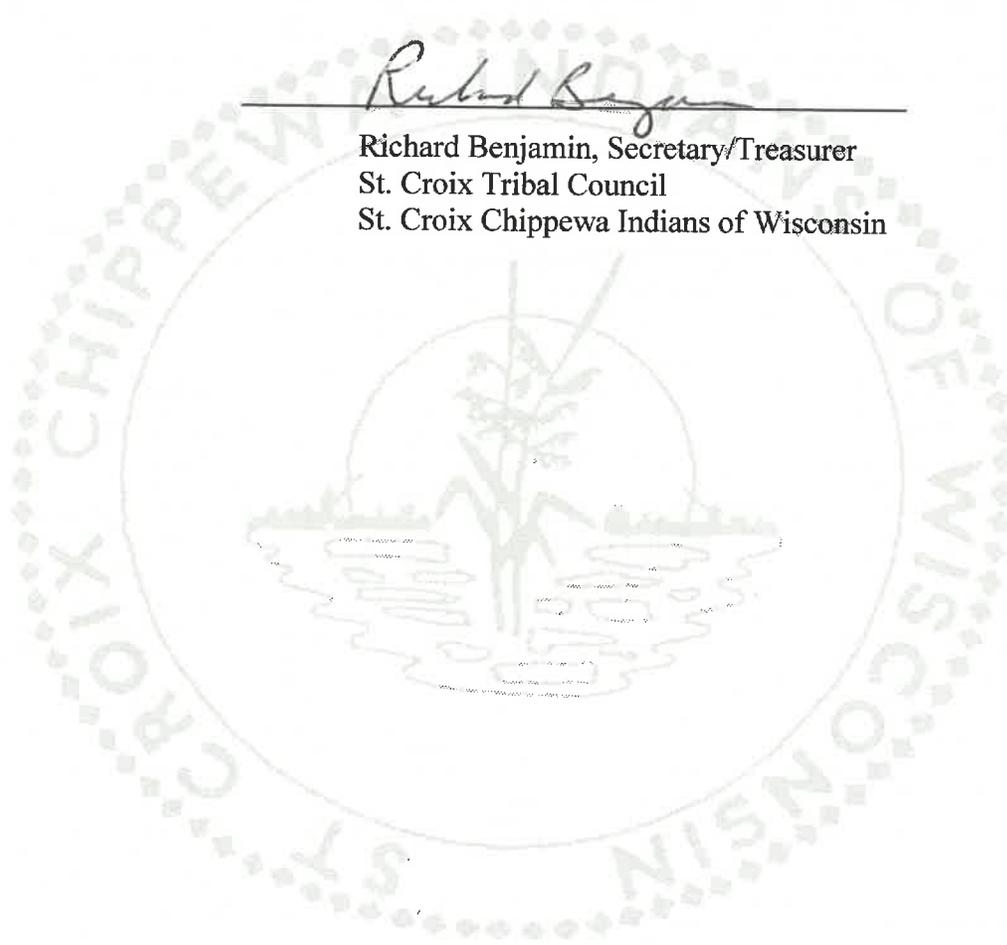
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## CERTIFICATION

I, the undersigned as Secretary/Treasurer of the St. Croix Tribal Council hereby certify that the Tribal Council is composed of five (5) members of whom 4 were present, constituting a quorum at a meeting duly called, convened and held this 24 day of MAY, 2022 and that the foregoing resolution was adopted at said meeting by an affirmative vote of 4 members for 0 against and 0 member abstaining from the vote, and that said resolution has not been rescinded or amended in any way.



Richard Benjamin, Secretary/Treasurer  
St. Croix Tribal Council  
St. Croix Chippewa Indians of Wisconsin



RESOLUTION NO. 05.24.2022.05

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Sand Lake

**ST. CROIX CHIPPEWA INDIANS OF WISCONSIN  
TITLE 8  
CHAPTER 3  
INDINAWEMAAGANIDOG INAAKONIGEWIN  
FAMILY CODE**

**Resolution No. 05.24.2022.05**

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*Legislative History:*

*Established on October 30, 2000 via Resolution No. 10-30-00-01*

*Amended on February 11, 2002 via Resolution No. 02-11-02-04*

*Amended on November 6, 2015 via Resolution No. 11-05-15-02*

*Amended on March 24, 2022 via Resolution No. 05-24-2022-05*

**Indinawemaaganidog Inaakonigewin**  
**Family Code**  
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## ARTICLE I – GENERAL PROVISIONS

### **8 S.C.T.C. § 03.01(1) Title**

This Ordinance shall be known as the St. Croix Chippewa Indians of Wisconsin Indinawemaaganidog Inaakonigewin (the “St. Croix Indinawemaaganidog Inaakonigewin”) or St. Croix Chippewa Indians of Wisconsin Family Code (the “St. Croix Family Code”).

### **8 S.C.T.C. § 03.01(2) Authority**

This Ordinance is enacted pursuant to the Constitution and Bylaws of the St. Croix Chippewa Indians of Wisconsin. Article IV of the Constitution and Bylaws provides that the St. Croix Council (the “Tribal Council”) is the governing body of the St. Croix Chippewa Indians of Wisconsin and Article V, Section (f) grants the Tribal Council authority to regulate its own procedure, to appoint boards or committees, and to delegate to such subordinate agencies such powers as may be necessary in the performance of the duties assigned to them, reserving the right to review any action taken by virtue of such delegated power. Article V, Section (g) provides that the Tribal Council has the authority to establish a Tribal Court for purposes of enforcing tribal ordinances.

### **8 S.C.T.C. § 03.01(3) Purpose**

This Ordinance has the following purposes:

- (a) Set forth the principles and procedures whereby the St. Croix Chippewa Indians of Wisconsin will act to protect the lives, health, security, and future of abinoojiinyag/children and families;
- (b) Promote the restoration of abinoojiinyag/children’s personal security and growth, and families’ and communities’ social harmony and peace, where the lives of children, families, and communities have been harmed;
- (c) Provide safety and security to every abinoojiinh/child, preferably in their own home or in another permanent home within a reasonable time. Reunification efforts shall be reviewed by the Tribal Court after six (6) months and if the parent(s), guardian(s), or custodian(s) are not making adequate progress toward reunification, alternative permanent placement options for the abinoojiinh/child shall be considered by the Tribal Court; and
- (d) Address the specific needs of abinoojiinyag/children and their families and the reasons for the unsafe environment.

### **8 S.C.T.C. § 03.01(4) Effective Date**

This Ordinance shall be effective on upon the accompanying resolution date adopted by the Tribal Council of the St. Croix Chippewa Indians of Wisconsin.

### **8 S.C.T.C. § 03.01(5) Interpretation**

The provisions of this Ordinance shall be interpreted and applied to provide for the safety of abinoojiinyag/children and families and the purposes outlined in 8 S.C.T.C. § 03.01(3). If this Ordinance is inconclusive the law of the Tribe shall be used as precedent and applied. If both are inconclusive on any matter, federal law, laws of other federally recognized Tribes, traditional Ojibwe practices and culture, and the State of Wisconsin may be used as persuasive authority and enforced. When applicable, traditional Ojibwe practices and culture shall be used as the initial persuasive authority as long as it does not violate the law of the Tribe.

### **8 S.C.T.C. § 03.01(6) Severability and Non-Liability**

If any section, provision, or portion of this Ordinance is adjudged unconstitutional or invalid by a court of competent jurisdiction, the remainder of this ordinance shall not be affected thereby. The Tribe further asserts immunity on its part and that of its employees and / or agents from any action or damages that may occur as a result of enforcement of this Ordinance.

### **8 S.C.T.C. § 03.01(7) Specific Non-Liability**

No liability shall attach to the Tribal Court, the Indian Child Welfare Director, the tribal attorney, the Guardian Ad Litem or any person acting under the or authority of any of them, for statements, acts, or omissions made in good faith while in the course of activities taken under this Ordinance.

## **ARTICLE II – DEFINITIONS**

### **8 S.C.T.C. § 03.02(1) Definitions**

For purpose of this Ordinance, except where otherwise specifically provided, or where the context otherwise requires, the following definitions shall apply:

- (a) “*Abandon*” means the failure of the parent(s), guardian(s), or custodian(s) to provide reasonable support and/or maintain regular contact with an abinoojiinh/child, or otherwise maintain a parental relationship, placement of an abinoojiinh/child by mutual consent of relatives does not constitute abandonment;
- (b) “*Abinoojiinh*” or “*Child*” means any of the following and also means the plural:
  - 1. An unborn abinoojiinh/child who would be eligible for or is a direct descendant of the St. Croix Chippewa Indians of Wisconsin and is the abinoojiinh/child of a member of the St. Croix Chippewa Indians of Wisconsin, whether or not the parent is domiciled or residing on the Reservation and whether or not the subject of an unborn child welfare proceeding in any court, and where the expectant

mother does not intend to terminate the pregnancy, assuming this court has jurisdiction;

2. A person under eighteen (18) years of age who is a member of, or is eligible for membership in the St. Croix Chippewa Indians of Wisconsin and is the abinoojiinh/child of a member of the St. Croix Chippewa Indians of Wisconsin, whether or not resident or domiciled on the Reservation and whether or not the subject of a child welfare proceeding in any court, assuming this court has jurisdiction;
3. A person under the age of eighteen (18) years of age of St. Croix Chippewa Indians of Wisconsin descent who is the abinoojiinh/child of a member of the St. Croix Chippewa Indians of Wisconsin, whether or not resident or domiciled on the Reservation and whether or not the subject of a child welfare proceeding in any court, assuming this court has jurisdiction;
4. A person under the age of eighteen (18) years of age of Indian descent who resides in the same household with any other abinoojiinh/child as defined in subsection (1), and whether or not the subject of a child welfare proceeding in any court, assuming this court has jurisdiction;
5. A person under the age of eighteen (18) years of age of Indian descent who resides on the reservation or trust lands of the Tribe, on tribally-owned property, or on tribally-operated fee land, and whether or not the subject of a child welfare proceeding in any court, assuming this court has jurisdiction;
6. In an ongoing truancy case, a person under the age of twenty-one (21), who has failed to meet the requirements for a high school diploma or HSED, whichever occurs first; and/or
7. In an ongoing child welfare proceeding in the Tribal Court, a person under the age of twenty-one (21), who has on-going needs for medical or educational services and continuing the child welfare proceeding is in the best interest of the abinoojiinh/child.

(c) “*Abuse*” means the infliction of physical, emotional, mental injury on an abinoojiinh/child, or sexual abuse or exploitation of an abinoojiinh/child, including failure to thrive and includes but is not limited to any case in which:

1. When used in reference to an unborn abinoojiinh/child, serious physical harm inflicted on the unborn abinoojiinh/child, and the risk of serious physical harm to the abinoojiinh/child when born, caused by the habitual lack of self-control of the expectant mother in the use of alcoholic beverages, controlled substances, or controlled substance analogs;
2. When used in reference to an unborn abinoojiinh/child, physical harm inflicted on the unborn abinoojiinh/child, and the risk of serious physical harm to the abinoojiinh/child when born, caused by physical harm inflicted on the expectant mother by either the expectant mother themselves or others individuals;
3. An abinoojiinh/child is dead or exhibits evidence of skin bruising, bleeding, malnutrition, failure to thrive, burns, fracture of any bone, subdural hematoma, soft tissue swelling and such condition is not justifiably explained or may not be the product of an accidental occurrence;

4. Use or manufacturing of controlled substances in the home of or on the premise of the abinoojiih/child's home, where a reasonable person knew or should have known the controlled substance may be seen, smelled, heard, or impacted the care or wellbeing of the abinoojiih/child;
  5. There is criminal activity in the home of or on the premise of the abinoojiih/child's home, where a reasonable person knew or should have known the criminal activity may be seen, smelled, heard, or impacted the care or wellbeing of the abinoojiih/child; and/or
  6. An abinoojiih/child is subjected to sexual assault, sexual molestation, sexual exploitation, sexual contact, or prostitution.
- (d) “*Adjudication*” means judgment by the Tribal Court, incorporated in an order, that the facts alleged in a petition have been proven or substantiated;
- (e) “*Affected persons*” means the abinoojiih/child who is the subject of a petition under this Ordinance, the Tribe by the Indian Child Welfare Director, tribal youth program or truancy officer, and the abinoojiih/child's parent(s), guardian(s), and custodian(s), including any extended family member deemed to be an affected person by the Indian Child Welfare Director or by the Tribal Court;
- (f) “*Banished Individual*” means a non-Tribal Member who has been deemed by the Tribal Council to be injurious to the welfare of the Tribe and therefore have been banished from all lands owned by or on behalf of the Tribe, including the lands where the Tribal Court is located;
- (g) “*Child Welfare Proceeding*” means:
1. Any action regarding an unborn abinoojiih/child where services are provided to the expectant mother and/or alleged father and are under the continued supervision of the Tribal Court;
  2. Any action not removing an Indian abinoojiih/child from their parent(s), guardian(s), or custodian(s) but where services are provided and the parent(s), guardian(s), or custodian(s) cannot make all decisions for the abinoojiih/child and are under the continued supervision of the Tribal Court;
  3. Any action removing an abinoojiih/child from their parent(s), guardian(s), or custodian(s) for temporary placement in a foster home or institution or the home of a guardian(s) or conservator where the parent(s) or custodian cannot have the abinoojiih/child returned upon demand, but where parental rights have not been terminated;
  4. Any action resulting in the suspension or termination of the parent-child relationship;
  5. Any temporary placement of an abinoojiih/child in a foster home or institution after the suspension or termination of parental rights, but prior to or in lieu of customary adoptive or adoptive placement;
  6. Any permanent placement of an abinoojiih/child for adoption, including any action resulting in a final decree of customary adoption or adoption;

7. Any abinoojiinh/child protective proceeding regarding any abinoojiinh/child who commits an act which but for the abinoojiinh/child's age would be considered a criminal or delinquent act; or
  8. All delegated and inherent power held by the St. Croix tribal government applicable to child welfare proceedings.
  9. Such term or terms shall not include a placement based upon an award, in a divorce proceeding, paternity or other custody or family court placement proceeding, of custody or physical placement to one of the parents.
- (h) “*Custodian*” means a person having care and custody of an abinoojiinh/child under any arrangement with the abinoojiinh/child's parent or guardian or pursuant to order of the Tribal Court;
- (i) “*Domestic Violence*” means violence committed against an individual whom are in a romantic relationship, whom share an abinoojiinh/child in common, or whom are or have cohabitated together; domestic violence can include both physical violence, emotional violence, financial control, and other intimidation tactics which are commonly known as aspects of domestic violence;
- (j) “*Extended Family*” means all persons over eighteen (18) years of age who:
1. Indaanikobijigan, Blood Lines: an abinoojiinh/child's brother, sister, grandparent, aunt, uncle, first cousin, niece, nephew, or any person of a proceeding generation as denoted by the prefix of grand, great, or great-great;
  2. Wiidigendinaaniwan, Marriage ties: an abinoojiinh/child's stepparent, stepbrother, stepsister, brother-in-law, sister-in-law, or any person of a proceeding marriage tie who treats the abinoojiinh/child as a relative;
  3. Niiyawen'enh, Namesake: an abinoojiinh/child's namesake;
  4. An abinoojiinh/child's we'eh or god parents;
  5. Nindoodem, Clan: An abinoojiinh/child's clan relative who treats the abinoojiinh/child as a relative;
  6. Bami'aagan, adopted relatives: an abinoojiinh/child's relatives through adoption including cultural adoption; and/or
  7. Is an abinoojiinh/child's fictive kin.
- (k) “*Family Court*” or “*Tribal Court*” means the St. Croix Chippewa Indians of Wisconsin Tribal Court established pursuant to Tribal Council Resolution No. 84.03.19.01, as amended, and having jurisdiction over this Ordinance.
- (l) “*Fictive Kin*” means a person over eighteen (18) years of age who is not related to an abinoojiinh/child by blood, marriage, or traditional Ojibwe clan systems but who are close family friends and treat that family and abinoojiinh/child as a relative;
- (m) “*Guardian*” means a person appointed by any court to be the legal guardian of an abinoojiinh/child's person and may include a person appointed by any court to be the legal guardian of the abinoojiinh/child's finances;

- (n) “*Guardian Ad Litem*” or “*GAL*” means the individual appointed by the Tribal Court to represent the abinoojiinh/child’s best interest;
- (o) “*Incompetent adult*” means a person eighteen (18) years of age or older who is for any cause mentally incompetent to take care of themselves and to manage their property;
- (p) “*Indian Child Welfare Director*” means the director of the Indian Child Welfare Department of the St. Croix Chippewa Indians of Wisconsin, or their designee;
- (q) “*Indian descent*” means an individual is a descendant of a federally or state recognized Indian tribe, Alaskan Native, a member of regional corporation as defined by 43 U.S.C. § 1606, or Hawaiian Native, an individual may be required to provide evidence of such descent;
- (r) “*Law Enforcement Officer*” or “*Dakoniweinini/ikwe*” includes any tribal, state, or county social worker or peace officer of any jurisdiction within the boundaries of the United States;
- (s) “*Neglect*” means the failure of the parent(s), guardian(s), or custodian(s) to provide adequate food, clothing, shelter, medical care, education or supervision for the abinoojiinh/child’s health and well-being for reasons other than poverty, and does include any ‘abandoned’ abinoojiinh/child.
- (t) “*Person with an interest in an abinoojiinh/child*” means the abinoojiinh/child, if fourteen (14) years of age or over, the abinoojiinh/child’s parent(s), extended family member(s), fictive kin(s), guardian(s), custodian(s), appointed Guardian Ad Litem, tribal juvenile justice worker, or the Indian Child Welfare Director;
- (u) “*Person with an interest in an incompetent adult*” means the person’s parent(s), abinoojiinh/child, extended family member(s), fictive kin(s), and guardian(s), custodian(s), appointed Guardian Ad Litem, St. Croix elder advocate or St. Croix Aging Unit Director;
- (v) “*Predominant Aggressor*” means the individual who poses the most serious, ongoing threat, which may not necessarily be the individual who first aggresses in a specific incident;
- (w) “*Sealed records*” means records that cannot be accessed except for routine maintenance or unless there is an order by the Tribal Court;
- (x) “*St. Croix*” or “*Tribe*” means the St. Croix Chippewa Indians of Wisconsin;
- (y) “*St. Croix Police Department*” means the department created to serve as the Law Enforcement Agency for the Tribe; and

- (z) “*Tribal Council*” means the elected governing body of the St. Croix Chippewa Indians of Wisconsin in accordance with the Constitution and By-Laws of the Tribe.

## **ARTICLE III – JURISDICTION & GENERAL PROCEEDURE**

### **8 S.C.T.C. § 03.03(1) Family Court**

The St. Croix Family Court was established pursuant to the legislative history and shall continue to exercise jurisdiction over this Ordinance as outlined here:

- (a) The Chief Judge and any associate judges of the St. Croix Tribal Court shall serve as judges of the Family Court.
- (b) All proceedings in Family Court shall be designated as “In the interest of \_\_\_\_\_, an abinoojiih/child”.
- (c) All petitions under this Ordinance shall be filed with the Family Court, shall be made under oath, and shall include, if known, the abinoojiih/child or incompetent adult’s name, date of birth, parents’ names and last known addresses, abinoojiih/child of an incompetent adult’s name and last known addresses, and the names and addresses of all other affected persons, if known.
- (d) In the event that a proceeding is transferred to the Family Court from any other Court, the Family Court may require conformity with the substantive and procedural law of the Tribe, and shall permit amendment of pleadings and other actions necessary to effect jurisdiction over the abinoojiih/child and to conform with this Ordinance.
- (e) All hearings in the Family Court shall be to the court without a jury and all hearings shall be closed to the public. All proceedings shall be recorded electronically, or verbatim by the Clerk of Court.
- (f) Notwithstanding any other rules of court, the Family Court may receive hearsay evidence when the declarant is an abinoojiih/child or incompetent adult, provided that the evidence bears sufficient indicia of reliability.
- (g) All records of the Family Court shall be confidential and no person other than a Party or a Party’s representative shall have access to court records, absent permission of the Family Court.
- (h) Any proceeding may be conducted by telephone pursuant to sec. 311(D) of the Tribal Court Code or via any appropriate video-conferencing technology. In addition, the Judge presiding in a matter may in his or her discretion conduct a hearing from a remote location by telephone or video-conferencing, in which some, all, or none of the Parties

are physically present in court under conditions set by the Court. At any stage of a proceeding under this Ordinance a Judge may file any order with a facsimile, scanned signature, or authorize the Clerk of Court to stamp their signature on orders.

### **8 S.C.T.C. § 03.03(2) Full Faith and Credit**

The Family Court, Indian Child Welfare Director, and other officials of the St. Croix tribal government shall grant the public acts, records and judicial proceedings of other entities applicable to Indian Child welfare proceedings full faith and credit to the same extent such entities give full faith and credit to the public acts, records and judicial proceedings of the Tribe.

### **8 S.C.T.C. § 03.03(3) Transfer of Jurisdiction**

The Family Court may, upon petition and by order, accept jurisdiction over a case originally brought in another court. In determining whether to accept jurisdiction, the Family Court shall consider whether transfer will serve the best interests of the abinoojiinh/child, and the basis and justification of any Party or person(s) who petitions for, or who objects to the transfer of jurisdiction. The Family Court shall issue an order within thirty (30) days of the entry of the sending court's order transferring the case, either accepting or declining the case.

- (a) Upon accepting the transfer of the case, dispositional orders in effect when the case was transferred to the Family Court shall have the same effect as if they had been issued from the Family Court, regardless whether the Family Court would in fact have had the power to make the order. A hearing in the Family Court shall be immediately scheduled and held within ten (10) business days of acceptance of jurisdiction, with notice being provided to all Parties. Regardless of the law of other jurisdictions, the Family Court shall review and may modify, extend, suspend, or terminate any order issued in a transferred judicial proceeding pursuant to the provisions of this Ordinance.
- (b) Nothing herein shall be construed to limit the exclusive jurisdiction of the Tribe to make determinations of its own membership, and to make, through its duly designated procedures, all findings of fact necessary to such determinations.
- (c) At the time of the hearing on transferring jurisdiction the Indian Child Welfare Director shall make a recommendation to the presiding Judge on whether the Tribal Court should adopt accelerated timelines than the ones prescribed in this Ordinance. The presiding Judge should consider the recommendation, how far along the case was prior to transferring, and what is in the best interest of the abinoojiinh/child prior to entering an order on time limits.

### **8 S.C.T.C. § 03.03(4) Jurisdiction over Abinoojiinyag/Children in Need of Care**

The Family Court shall have jurisdiction over an abinoojiinh/child upon a petition filed by any person with an interest in the abinoojiinh/child, as defined in 8 S.C.T.C. § 03.02(1)(t), alleging that the abinoojiinh/child is an abinoojiinh/child in need of care because of the existence of any of the conditions enumerated in 8 S.C.T.C. § 03.05(1).

- (a) When exercising jurisdiction over any abinoojiinh/child who is not a member of the Tribe, but who may be a member of another tribe, the Tribal Court shall verify that notice was given to such other tribe, and that the tribe is afforded an opportunity to participate as a witness, to intervene as a party, or to file a motion seeking transfer of proceedings to the other tribe's court.

### **8 S.C.T.C. § 03.03(5) Additional Jurisdiction**

In addition to jurisdiction granted by other sections of this Ordinance, the Family Court shall have jurisdiction to:

- (a) Order a tribal or other Dakoniweinini/ikwe (Law Enforcement Officer), or the Indian Child Welfare Director, to take an abinoojiinh/child into custody pursuant to 8 S.C.T.C. § 03.04(2) and take such other emergency action as required or authorized by Article IV Emergency Custody. Tribal or other Law Enforcement agencies are authorized to release an abinoojiinh/child or children taken into custody to the Indian Child Welfare Director or to the appropriate county child protection agency, for temporary placement;
- (b) Suspend the parental rights of a parent of an abinoojiinh/child pursuant to Article VI Suspension of Parental Rights;
- (c) Terminate the parental rights of a parent of an abinoojiinh/child pursuant to Article VII Termination of Parental Rights;
- (d) Enter an order of customary adoption pursuant to Article VIII Customary Adoption;
- (e) Enter an order of adoption pursuant to Article IX Adoption; or
- (f) Appoint a guardian for an abinoojiinh/child pursuant to Article X Guardianship.

### **8 S.C.T.C. § 03.03(6) Jurisdiction Over Contributing Adults**

In addition to jurisdiction granted by other sections of the Article, the Family Court shall have jurisdiction over persons eighteen (18) years or older alleged to have contributed to, encouraged, or tended to cause, by act or omission, a condition of an abinoojiinh/child as described in 8 S.C.T.C. § 03.05(1).

- (a) The Family Court may make orders in any case under this Ordinance with respect to any person eighteen (18) years or older whom the Family Court is satisfied by a preponderance of the evidence has contributed to, encouraged, or tended to cause, by any act or omission, an abinoojiinh/child to be an abinoojiinh/child in need of care, whether or not the abinoojiinh/child is actually adjudicated an abinoojiinh/child in need of care, if the natural and probable consequences of the act or failure to act would be to cause the abinoojiinh/child to be an abinoojiinh/child in need of care.

- (b) No order with respect to any person eighteen (18) years or older may be entered until the person is given an opportunity to be heard upon the allegation against him or her. Such person shall be served in accordance with 8 S.C.T.C. 03.03(12) no less than ten (10) days prior to a hearing under this subsection with written notice of the time, place, and purpose of the hearing.

### **8 S.C.T.C. § 03.03(7) Continuing Jurisdiction**

The Family Court shall have continuing jurisdiction, subject to 8 S.C.T.C. § 03.04(9) and 8 S.C.T.C. § 03.05(3)-(5), over an abinoojiih/child who is determined to be subject to this Ordinance and shall have the power to modify, extend, or dismiss previous orders, expunge the abinoojiih/child's records, or consider petitions based on new evidence concerning the abinoojiih/child.

### **8 S.C.T.C. § 03.03(8) Indian Child Welfare Director Authority**

The Indian Child Welfare Director is an officer of the Family Court and has the authority set forth in Article XI Administration.

### **8 S.C.T.C. § 03.03(9) Precedence Over Family Court Orders**

Whenever an order rendered under this Ordinance conflicts with any custody, physical placement, or other Family Court order rendered by any court, the order under this Ordinance shall take precedence.

### **8 S.C.T.C. § 03.03(10) Parties**

The following may be Parties to a Family Court proceeding:

- (a) In the absence of a specific provision in this Ordinance or a court order to the contrary, all affected persons, as defined in 8 S.C.T.C. § 03.02(1)(e) shall be Parties to a Family Court proceeding held in the interest of an abinoojiih/child. After a suspension or termination of parental rights, no parent whose rights have been suspended or terminated shall be entitled to notice of any further proceedings regarding the abinoojiih/child, except as the Family Court may deem appropriate.
- (b) Any abinoojiih/child subject to a child welfare proceeding in the Family Court who is the age of fourteen (14) or older shall be a Party to their Family Court proceeding. The abinoojiih/child may but is not required to attend their court hearings. But the abinoojiih/child should attend at least one hearing for the presiding Judge to gauge how often they wish to attend their court hearings.
1. Any abinoojiih/child who is the age of fourteen (14) or older may be Party to Family Court proceedings which involve their siblings. Notice of this option shall be provided by either the presiding Judge or another Party as directed by the presiding Judge.

- (c) The Family Court shall, in all proceedings under this Ordinance, appoint a Guardian Ad Litem in accordance with 8 S.C.T.C. § 03.11(5) to represent, for purposes of the proceeding, the interests of the abinoojinh/child. If possible, appointment shall be made upon filing of the petition, and the Family Court may appoint an attorney or other adult whom the Family Court is satisfied is familiar with this Ordinance and with the procedures of the Family Court, and will sincerely and competently represent the abinoojinh/child's best interests. The Guardian Ad Litem shall be compensated at a rate set by order of the Family Court.
- (d) In all proceedings before the Family Court, the Indian Child Welfare Director shall represent the interests of the St. Croix Tribe. The Indian Child Welfare Director may be represented by the tribal attorney or other attorney appointed by the Tribe to represent its interests before the Family Court.
- (e) Any Party to a proceeding under this Ordinance may be represented by an attorney or lay spokesman or advocate at the Party's own expense, provided the attorney or lay spokesman is admitted to practice before the St. Croix Tribal Court.
- (f) Upon a showing of good cause, and if the best interests of the abinoojinh/child so indicate, the Family Court may order, allow, or invite persons other than affected persons to intervene and participate in any or all phases of this proceeding.

### **8 S.C.T.C. § 03.03(11) Banished Parties**

If a Party is a banished individual who has been banished either by Tribal Council resolution or through Tribal Court order, the Tribal Court shall make telephone and video-conferencing options available. The presiding Judge may order a temporary lift of a banishment with copies of the order going to all Parties and St. Croix Police Department. The temporary lift must have the following minimum conditions:

- (a) The temporary lift is only for either of the following purposes:
  - 1. Attending court hearings at the Tribal Court.
  - 2. Attending a meeting with either the Indian Child Welfare Director or on-going case worker.
- (b) The banished individual must be accompanied by the Indian Child Welfare Director or the on-going case worker;
- (c) Once the court hearing or meeting is finished the banished individual must immediately leave all lands owned by or on behalf of the Tribe; and
- (d) All hearing notices for the banished individual must also be given to the St. Croix Police Department.

### **8 S.C.T.C. § 03.03(12) Service Requirements**

Any petition, report, or other document filed with the Clerk of Court, along with the notice prepared by the Clerk of Court, shall be served on all affected persons. The Clerk of Court shall serve the Parties on behalf of the Petitioner unless otherwise provided by the Petitioner. The following are appropriate forms of service:

(a) Personal service;

1. The Clerk of Court may request the St. Croix Police Department or other service provider serve the notice, petition, or other documents to any Party. Proofs of service shall be filed with the Tribal Court prior to, or at the time of the hearing.
2. The Clerk of Court may request the Indian Child Welfare Director serve the notice and petition on the parent(s), guardian(s), custodian(s) and/or the abinoojiih/child. Proof of service may be filed with the Tribal Court prior to, or at the time of the hearing.
3. Service should be given to an individual who is eighteen (18) or older.

(b) Service in a Conspicuous Place;

1. If an address of an affected person is known but personal service cannot be accomplished, written notice may be left in a conspicuous place at the affected person's home. This notice shall not include the abinoojiih/child's full name but instead only include their initials. The Clerk of Court may request the St. Croix Police Department, Indian Child Welfare Director, or other appropriate individual to leave the written notice for the affected person.
2. Written notice may be left in a conspicuous place however, service must also occur by publication.

(c) Registered mail, return receipt requested;

1. The Parties shall keep the Clerk of Court informed of an accurate mailing address. Service is appropriate if delivered to the last known address on file.

(d) Electronic forms of communication;

1. The Parties may choose to receive service through email or other form of electronic communication.

(e) Service by publication; and/or

1. If the Clerk of Court is unable to provide actual notice to any Party, service by publication may be made in a newspaper of general circulation within the county of the person(s) last known address. The publication shall contain: the name of the Party who notice is given; the former known address of the Party; time, date, and

location of the hearing; the abinoojiih/child's initials and date of birth; and the Tribal Court's contact information.

2. If deemed appropriate by the presiding Judge, notice may be posted on the Tribe's government website for service by publication. If the abinoojiih/child is eligible for enrollment in another Indian Tribe, the Tribal Court may also request notice by publication on their Tribal website.

(f) Other service provisions.

1. In the case of a non-martial abinoojiih/child, the petition shall be served on any man whose paternity has been adjudicated, or who has filed a declaration of paternal interest, or who is alleged in any paternity action to be the father. If an individual claiming paternity appears, the Tribal Court may make an interim disposition pending a paternity determination or may make any other orders fashioned to serve the best interest of the abinoojiih/child.
2. A notice served upon a parent(s), guardian(s), or custodian(s) shall be sufficient notice as to the parent(s), guardian(s), or custodian(s) so served and any other parent(s), guardian(s), or custodian(s) residing at the same location. Any such person who fails to comply with any order issued by the Tribal Court under this subsection may be proceeded against for contempt of court.
3. No summons, petition, or other document need be served on any person who may be the father of an abinoojiih/child conceived as a result of sexual assault or rape.

**8 S.C.T.C. § 03.03(13) Service Fees**

Any third Party serving any notice or other pleading or paper under this Ordinance may charge a service fee and mileage as set by the federal government rates. The presiding Judge may assess any personal, mail, or service through publication charges against any Party.

**8 S.C.T.C. § 03.03(14) Default Judgment**

If proper notice has been given and a person subject to an A/CINC, suspension or termination of parental rights, customary adoption, adoption, or guardianship, does not appear, the Tribal Court may proceed by default and such individual shall be deemed to have contested the petition and such consent shall be deemed informed and voluntary.

**8 S.C.T.C. § 03.03(15) Discovery**

The following provisions shall control discovery in Family Court proceedings:

- (a) Copies of all police officer reports, relevant to the proceeding under this Ordinance, including all officers' memoranda and witness statements, shall be made available by the tribal attorney or the Indian Child Welfare Director upon request of a Party, counsel for a Party, or the abinoojiih/child's Guardian Ad Litem, or any other person by order of the Family Court prior to the initial hearing in any matter.

1. These documents shall be kept separate from Family Court records and files, unless otherwise directed by the presiding Judge. These documents are confidential and shall not be open to inspection except for the above-mentioned individuals.
  2. Upon approval by the presiding Judge, the tribal attorney or Indian Child Welfare Director may redact such information which is sensitive financial or personally identifying information, or which could pose a safety threat.
- (b) All records relating to an abinoojiih/child which are relevant to a proceeding under this Ordinance, and which are in the possession of the Indian Child Welfare Department, shall be open to inspection by a Guardian Ad Litem or counsel for a Party, upon demand without release, unless privileged, unless release is required by federal law, or unless the records contain statements given under a promise of confidentiality, or contain material the non-disclosure of which is necessary to protect the interests of the abinoojiih/child. If any records are not released to a requesting Party, the reason shall be given to the Party, who may ask the Family Court to review the denial of the request, in which case the Family Court may, in its discretion, view the records in camera in order to decide whether to order the records released. Any Party not represented by counsel may have access to records upon order of the Family Court, which may be entered ex parte. Persons entitled to inspect records may obtain copies of them at their expense upon permission of the custodian of the records or the Family Court. The Family Court may require counsel or Parties not to disclose material contained in the records to any other person if the Family Court reasonably believes such disclosure would be harmful to the abinoojiih/child or other individual included in or contained in the records.
1. Medical records shall only be disclosed pursuant to the Health Insurance Portability and Accountability Act (“HIPAA”), and as minimally necessary. Such information which is not necessary to proceed with the case shall be redacted.
- (c) Counsel and Guardian Ad Litem shall have the right to view any videotaped oral statement of the abinoojiih/child upon reasonable notice.

### **8 S.C.T.C. § 03.03(16) Psychological and Other Examinations**

The Tribal Court may, in any proceeding under this Ordinance, order any abinoojiih/child and the abinoojiih/child’s parent(s), guardian(s), or custodian(s), to submit to a psychological evaluation, a developmental examination, or to a drug and alcohol abuse evaluation, if the Tribal Court reasonably believes that any condition that may be illuminated by such an examination would assist in the adjudication or disposition of the case. The costs to any affected person of any such exam, if approved by the Tribal Court, shall be paid by the Tribe, if the costs are not covered by a third-party payor.

### **8 S.C.T.C. § 03.03(17) Parental Contributions**

Upon the Tribal Court's determination of any parent(s), guardian(s), or custodian(s)'s ability to make a financial contribution, any parent or guardian may be ordered to contribute to the costs of services rendered to any abinoojiinh/child or any abinoojiinh/child's parent under authority of this Ordinance or any court order entered under this Ordinance, including the costs of recommended psychological, chemical health or other services. Parent(s), guardian(s), and custodian(s) may be ordered to obtain and maintain insurance to defray the costs of care and/or services. If Parties are determined to be unable to afford needed services, the costs of services to tribal members may be paid by the Tribe.

### **8 S.C.T.C. § 03.03(18) Informal Disposition**

Upon referral of any abinoojiinh/child who is or may be an abinoojiinh/child in need of care under 8 S.C.T.C. § 03.05(1), the Indian Child Welfare Director may investigate the circumstances, counsel the abinoojiinh/child, discuss the situation with the parent(s), guardian(s), or custodian(s) arrange for services to be voluntarily accepted by the abinoojiinh/child or parent(s), or institute any other informal, voluntary arrangements designed to further the best interest of the abinoojiinh/child. At any time that the Indian Child Welfare Director deems it appropriate, proceedings may be instituted consistent with this Ordinance. Informal agreements or voluntary arrangements are not required to but may be submitted to the Tribal Court.

### **8 S.C.T.C. § 03.03(19) Accelerated Proceedings**

Notwithstanding any other provision of this Ordinance, the Family Court may, upon proper notice or waiver of notice, accelerate and combine any of the hearings provided for in Article IV Emergency Custody (emergency custody hearing) or Article V Abinoojiinh/Child in Need of Care Proceedings (initial, adjudicatory, and dispositional hearings in abinoojiinh/child in need of care cases). The Family Court may require the accelerated preparation of any court report required by either Article or may waive the reports, except that any report required as a prerequisite to an out-of-home placement may not be waived.

### **8 S.C.T.C. § 03.03(20) Time Limits**

All time periods prescribed by this Ordinance are mandatory but are not jurisdictional. Any time period may be extended by the Tribal Court on its own motion or on motion of a Party for good cause shown, including the time requirement of 8 S.C.T.C. § 03.04(9). Good cause shall be determined by the Tribal Court, and may be found when significant circumstances beyond the control of a Party arise, such as severe weather or hospitalization, when the Community Center is closed for any reason, or whenever the Tribal Court determines that an extension will serve the best interests of the abinoojiinh/child.

### **8 S.C.T.C. § 03.03(21) Domestic Violence**

Any abinoojiinh/child who is exposed to domestic violence is at risk for long-term physical and mental health problems and may also be at greater risks of being violent in their future

relationships. If the Tribal Court has reason to believe a parent(s), guardian(s), or custodian(s) is experiencing domestic violence the Tribal Court shall:

- (a) Determine which individual(s) is the predominate aggressor;
- (b) If the predominate aggressor is a Party to a case, the Tribal Court may conduct separate child welfare proceedings. The predominate aggressor shall not receive any notice, or information of the abused Party; and
- (c) The Tribal Court may allow for special accommodations for those Parties experiencing domestic violence which may include virtually appearing for hearings, relaxed timelines, referrals to domestic violence service providers, keeping their location confidential from other Parties, or other accommodations deemed appropriate by the presiding Judge.

### **8 S.C.T.C. § 03.03(22) Notices to Foster Parents**

When any abinoojiinh/child has been placed out of the home, copies of all notices shall be provided to the foster placement at the same time as they are provided to the Parties. The notices are for information only and do not require the appearance of the foster placement at any hearing unless specifically stated, and do not confer party status on the placement.

### **8 S.C.T.C. § 03.03(23) Requesting Family Court Records**

A Party to a case may request additional copies of past notices, past court orders, or other documents that would have been previously served to that Party. Those requests must be made to the Clerk of Court and are subject to reasonable administrative and printing fees. A Party should either pay the associated fees to the Tribal Court prior to receiving the documents unless the Tribal Court agrees to an appropriate payment plan.

- (a) Requests for past records must be made within one (1) year of the most recent hearing and can be made either verbally or through written or electronic communication.
- (b) Requests made after the one (1) year deadline must be made through written request including the reason for the requested documents which will be reviewed by a Tribal Court Judge and either approved or denied with the reasoning stated in their response.
- (c) A parent(s) whose rights have been suspended or terminated shall not be entitled any notices, orders, or other documents of any proceedings after the finalization of the suspension or termination of their rights regarding the abinoojiinh/child, unless deemed appropriate and approved by the Tribal Court.
- (d) Due to the sensitive nature of the proceedings under this Ordinance, the Tribal Court may deny requests for past notices, court orders, or other documentations from other individuals who were not originally a Party to that case. If the Tribal Court denies such request, that denial does not need to state the reason for such denial.

- (e) Denials or decisions made regarding any request under this Section is not subject to appeal.

## **ARTICLE IV – EMERGENCY CUSTODY**

### **8 S.C.T.C. § 03.04(1) Taking an Abinoojiih/Child into Custody**

Any Dakoniweinini/ikwe (Law Enforcement Officer), the Indian Child Welfare Director or child welfare worker may take an abinoojiih/child into custody under circumstances in which the officer, director, or worker reasonably believes:

- (a) The abinoojiih/child has run away from his or her parent(s), guardian(s), or custodian(s);
- (b) The abinoojiih/child is suffering from illness or injury or is in immediate danger from his or her surroundings and removal from these surroundings is necessary;
- (c) The abinoojiih/child will cause injury to himself or another, to the property of another, will be or has been subject to injury by another, or another abinoojiih/child living or staying in the same household will be or has been subject to injury by another;
- (d) The abinoojiih/child's parent(s), guardian(s), or custodian(s) is unavailable, unwilling, or unable to provide necessary supervision or care such that the abinoojiih/child's safety or well-being, or the safety or well-being of another abinoojiih/child living or staying in the same household is at imminent risk;
- (e) The abinoojiih/child will run away or be taken away so as to be unavailable for convenient further Tribal Court proceedings; and/or
- (f) Emergency custody of the abinoojiih/child would be permitted under the law of the state where the abinoojiih/child is physically found.

### **8 S.C.T.C. § 03.04(2) Taking an Abinoojiih/Child into Custody Upon Order**

Any Dakoniweinini/ikwe (Law Enforcement Officer) or the Indian Child Welfare Director shall take an abinoojiih/child into custody upon written order of the Tribal Court, which may be entered upon a verified petition showing that the welfare of the abinoojiih/child demands the abinoojiih/child's immediate removal from his or her present placement or custody. A petition for an order to take a child into custody may only be filed by the Indian Child Welfare Director.

### **8 S.C.T.C. § 03.04(3) Taking an Abinoojiih/Child into Custody Notice Requirement**

Any person taking an abinoojiih/child into custody under this Article shall immediately attempt to notify the parent(s), guardian(s) or custodian(s) that the abinoojiih/child has been taken into custody and how to contact the Indian Child Welfare Director or worker, by the most practical means, and shall continue to reasonably make such attempts until notification is made. Any

Dakoniweinini/ikwe (Law Enforcement Officer) acting under this section shall also immediately attempt to notify the Indian Child Welfare Director or any child welfare worker, by telephone or personal communication. If the abinoojiih/child is physically transferred to the Indian Child Welfare Director, the director shall thereafter continue notification attempts until notification is made. The person notifying the parent(s), guardian(s), or custodian(s), need not inform such person of the location of the abinoojiih/child if the notifying person reasonably believes that providing such information will imminently endanger the abinoojiih/child or those individuals caring for or living with the abinoojiih/child.

#### **8 S.C.T.C. § 03.04(4) Taking an Abinoojiih/Child into Custody Medical Attention**

If the person taking an abinoojiih/child into custody, or the Indian Child Welfare Director, believes the abinoojiih/child to be in need of prompt medical diagnosis or treatment, that person shall deliver the abinoojiih/child to a hospital or physician, for that purpose, and may consent to emergency or urgent care of the abinoojiih/child.

#### **8 S.C.T.C. § 03.04(5) Taking an Abinoojiih/Child into Custody Agency Authority**

The agency taking an abinoojiih/child into custody shall thereafter have the authority to make all decisions regarding the care and well-being of the abinoojiih/child until the abinoojiih/child is released from custody under 8 S.C.T.C. § 03.04(6) or by order of the Tribal Court, unless custody is transferred to the Indian Child Welfare Director, in which case such authority shall transfer therewith. The agency taking an abinoojiih/child into custody or the Indian Child Welfare Director retains custody during any placement made under 8 S.C.T.C. § 03.04(3) or (4).

#### **8 S.C.T.C. § 03.04(6) Release from Custody**

Any abinoojiih/child taken into custody shall be released as soon as it is possible to do so, while protecting the abinoojiih/child from the conditions causing the taking into custody.

- (a) The person taking an abinoojiih/child into custody, or the Indian Child Welfare Director or worker, shall attempt to immediately release the abinoojiih/child to his or her parent, guardian, or custodian, unless such release is not in the abinoojiih/child's best interests, or if the parent(s), guardian(s), or custodian(s) is unwilling or unable to receive such abinoojiih/child. If an abinoojiih/child may not be released to a parent(s), guardian(s), or custodian(s) the abinoojiih/child may be released to a responsible adult as determined by the Indian Child Welfare Director or worker, with suitable counsel, advice, or warning, in which case the name and address of the person to whom the abinoojiih/child has been released shall be immediately given to the parent(s), guardian(s), or custodian(s) if such disclosure is deemed appropriate by the Indian Child Welfare Director or worker. If the procedure given in 8 S.C.T.C. § 03.04(7), 8 S.C.T.C. § 03.04(9) and 8 S.C.T.C. § 03.05(3) is not followed, the abinoojiih/child's parent(s), guardian(s), or custodian(s) shall have a right upon court order to exercise custody and supervision over the abinoojiih/child.

### **8 S.C.T.C. § 03.04(7) Holding an Abinoojiihn/Child in Custody**

An abinoojiihn/child may be held in custody if the Indian Child Welfare Director or worker has probable cause to believe that any or the conditions enumerated in 8 S.C.T.C. § 03.04(1) or (2) exists. An abinoojiihn/child may be held in custody in any of the following places:

- (a) The home of a parent(s), guardian(s), or custodian(s);
- (b) The home of a relative;
- (c) The home of another responsible adult;
- (d) A licensed foster home provided the placement does not violate the terms of the license;
- (e) A licensed group home provided the placement does not violate the terms of the license;
- (f) A non-secure facility operated by a child welfare agency;
- (g) A hospital or physician's office;
- (h) A drug or alcohol treatment facility; or
- (i) Other location as deemed appropriate by the Indian Child Welfare Director.

### **8 S.C.T.C. § 03.04(8) Holding an Abinoojiihn/Child in Custody Notice Requirement**

The Indian Child Welfare Director shall immediately notify the abinoojiihn/child's parent(s), guardian(s), or custodian(s) that the abinoojiihn/child is in custody, the reasons for the custody, and the location of the abinoojiihn/child, if the Indian Child Welfare Director deems such disclosure to be safe and appropriate.

- (a) The Indian Child Welfare Director may withhold the abinoojiihn/child's location to any Party where disclosure could result in any safety concern or if the Indian Child Welfare Director has reason to believe disclosure could result in the abinoojiihn/child will run away or be taken away so as to be unavailable for further proceedings.

### **8 S.C.T.C. § 03.04(9) Hearing for Abinoojiihn/Child in Custody**

For any abinoojiihn/child who has been taken into custody and not released under 8 S.C.T.C. § 03.04(6), a hearing shall be held to determine whether the criteria exist under 8 S.C.T.C. § 03.04(1) - (8) to continue holding the abinoojiihn/child in custody. The hearing shall be held within forty-eight (48) hours of the time the abinoojiihn/child is taken into custody, excluding Saturday, Sundays, Tribal Court closures, and holidays, unless extended by the Tribal Court for good cause pursuant to 8 S.C.T.C. § 03.03(20). For purposes of this section, the business day runs from 9:00 A.M. until 4:00 P.M. unless otherwise posted by the Tribal Court. If the abinoojiihn/child has been taken into custody by another agency, the forty-eight (48) hour time period shall run from the time that St. Croix Indian Child Welfare Director is notified of the

placement. A petition under 8 S.C.T.C. § 03.05(2) or a motion under 8 S.C.T.C. § 03.05(13) shall be filed before or at the hearing. All reasonable steps shall be taken to notify the abinoojiih/child's parent(s), guardian(s), and custodian(s) of the hearing. If the parent(s), guardian(s), or custodian(s) does not receive actual notice, he or she may later request a rehearing by right if the abinoojiih/child is still under the court's jurisdiction or the issue is not otherwise moot.

- (a) If, within the time provided by under this Article IV Emergency Custody, no hearing is held, no petition under 8 S.C.T.C. § 03.05(2) or motion under 8 S.C.T.C. § 03.05(13) is filed, the abinoojiih/child shall be released from custody, unless the Tribal Court finds either ex parte or at a post-deadline hearing that probable cause exists to believe that the abinoojiih/child is in imminent danger to themselves or another, or that the abinoojiih/child's parent(s), guardian(s), or custodian(s) is unwilling or unable to provide adequate supervision and care, in which case one forty-eight (48) hour extension may be granted during which time the abinoojiih/child shall remain in custody pending the filing of a petition. Ex parte findings of probable cause shall be considered, and an opportunity to present oral and written evidence and argument shall be provided, by right, if any affected person requests reconsideration or hearing.
- (b) The hearing required under this section may be waived by the abinoojiih/child's parent(s), guardian(s), or custodian(s) or, if the abinoojiih/child is over age fourteen (14), by the joint waiver of the above and of the abinoojiih/child. If a Guardian Ad Litem is subsequently appointed for the abinoojiih/child, or if an unrepresented parent(s), guardian(s), or custodian(s) subsequently retains counsel, such waiver may be subsequently withdrawn and a hearing demanded. If a hearing under this section is demanded, it shall be held immediately; if a hearing under this section is waived, such waiver shall constitute consent to the temporary placement.
- (c) The Tribal Court shall consider appointment of a Guardian Ad Litem in accordance with 8 S.C.T.C. § 03.11(5) at the hearing.
- (d) A copy of the notice of hearing under this Article and the petition under Article V Abinoojiih/Child in Need of Care Proceedings shall be served in accordance with 8 S.C.T.C. § 03.03(12) by the Tribal Court on the abinoojiih/child's parent(s), guardian(s), or custodian(s), and to the abinoojiih/child if age fourteen (14) or older, as soon as practicable, and in no case later than the commencement of the hearing.
- (e) At the commencement of the hearing, the Tribal Court shall advise the abinoojiih/child, and the parent(s), guardian(s), or custodian(s), of the allegations made, the possible consequences of the hearing, the right to counsel at a Party's own expense, the right to confront and cross-examine witnesses, the right to present witnesses, and the right under subsection (g), below.
- (f) If the Tribal Court finds by a preponderance of the evidence that one or more of the conditions enumerated in 8 S.C.T.C. § 03.04(1) or (2) exists, it may continue custody in any of the placements enumerated in 8 S.C.T.C. § 03.04(7). The Tribal Court may direct

that a physical examination of the abinoojiinh/child be conducted within thirty (30) business days by the tribal health department and that a report of such examination be filed with the Tribal Court immediately; the Tribal Court may also impose reasonable restrictions on the abinoojiinh/child's travel, association with other persons, or places of abode, and may assign the abinoojiinh/child to the supervision of the St. Croix Indian Child Welfare Department. Reasonable restrictions may be placed upon the conduct of the parent(s), guardian(s), custodian(s), or other responsible adults as necessary to secure the safety and well-being of the abinoojiinh/child. Any order entered under this section shall be reduced to writing within ten (10) days thereof.

- (g) Any order under this section shall be subject to rehearing for good cause. Any unrepresented parent(s), guardian(s), or custodian(s) may demand a rehearing as of right if counsel is subsequently obtained.

## **ARTICLE V – ABINOOJIIINH/CHILD IN NEED OF CARE PROCEEDINGS**

### **8 S.C.T.C. § 03.05(1) Jurisdiction**

The Tribal Court shall have jurisdiction over an abinoojiinh/child upon a petition filed by Indian Child Welfare Director or any person with an interest in the abinoojiinh/child, as defined in 8 S.C.T.C. § 03.02(1)(t), alleging that the abinoojiinh/child is in need of care because of the existence of any of the following conditions at the time of the petition or immediately prior thereto:

- (a) The unborn abinoojiinh/child is exposed to abuse or unsafe conditions, or is the victim of, or is in danger of harm by other than accidental means. Unsafe conditions may be found due the use of alcoholic beverages or controlled substances by the expectant mother, or physical harm inflicted on the expectant mother by other than accidental means, which includes both self-inflicted harm and harm inflicted by others;
- (b) The abinoojiinh/child, or another abinoojiinh/child living or staying in the same household, is exposed to abuse or unsafe conditions, or is the victim of, or is in danger of physical, sexual, or emotional harm by other than accidental means. Unsafe conditions may be found due to the presence of controlled substances, criminal activity, or significant neglect of an abinoojiinh/child;
- (c) The abinoojiinh/child, or another abinoojiinh/child living or staying in the same household, is or may be deprived of necessary custodial, medical, or other care;
- (d) The abinoojiinh/child has been abandoned by identified or unidentified parent(s), guardian(s), or custodian(s), unless provision for necessary custodial, medical, and other care has been satisfactorily arranged and maintained;

- (e) The abinoojiinh/child is habitually absent from home without permission of the parent(s), guardian(s), or custodian(s);
- (f) The abinoojiinh/child is habitually truant from school;
- (g) The abinoojiinh/child's parent(s), guardian(s), or custodian(s) signs a petition alleging that he or she is unable to fulfill the parental role to provide necessary custodial care or make appropriate provision for the abinoojiinh/child's special custodial, medical or other specified needs after consultation with the Indian Child Welfare Director;
- (h) The abinoojiinh/child's parent(s), guardian(s), or custodian(s) has failed to maintain an appropriate parental role or has failed to maintain significant contact with the abinoojiinh/child for a period of one (1) year;
- (i) The abinoojiinh/child has been placed for care or adoption in violation of law;
- (j) The abinoojiinh/child is without a parent(s), guardian(s), or custodian(s);
- (k) The abinoojiinh/child is receiving inadequate care during the period of time a parent(s), guardian(s), or custodian(s) is missing, incarcerated, hospitalized, or institutionalized;
- (l) The abinoojiinh/child is suffering from alcohol or other drug abuse, for which the parent(s), guardian(s), or custodian(s) is unwilling or unable to provide appropriate treatment;
- (m) The abinoojiinh/child would be an abinoojiinh/child in need of care, protection, or services under the law of the state where the abinoojiinh/child is physically found;
- (n) The abinoojiinh/child is failing to make adequate progress toward school promotion or graduation;
- (o) The abinoojiinh/child is the subject of a child custody proceeding that has been transferred to the Tribal Court by any other court of competent jurisdiction; and/or
- (p) The abinoojiinh/child's mother is a member of the Tribe who is reported to use illicit drugs or abuse alcohol during pregnancy. In the event that the Indian Child Welfare Department receives a report of unborn abinoojiinh/child abuse under this section, such report shall immediately be referred to the county child protection department of the mother's county of residence. The county child protection department and the Indian Child Welfare Director shall collaborate and determine whether the Tribal Court or county will take jurisdiction. The Indian Child Welfare Department shall actively participate in any intervention until the abinoojiinh/child is born if the case proceeds in the county court. If the abinoojiinh/child requires out-of-home placement at birth, the Indian Child Welfare Director shall consider whether to seek transfer of jurisdiction if the case is not already in Tribal Court.

### **8 S.C.T.C. § 03.05(2) Abinoojiih/Child in Need of Care Petition and Notice**

Any Petition filed under this Ordinance must adhere to the following requirements:

- (a) The petition shall be signed by a person with an interest in the abinoojiih/child or by the Indian Child Welfare Director or their designee and be filed with the Tribal Court, shall be made under oath, and shall include the following information if known:
  1. Abinoojiih/child's name and date of birth;
  2. Parent(s)'s names and dates of birth (if known);
  3. Parent(s)'s last known addresses and telephone number;
  4. The Tribal affiliation or eligibility of the abinoojiih/child and if applicable, the Indian Child Welfare Director shall make efforts to enroll the abinoojiih/child in an Indian Tribe prior to case closure;
  5. Parent(s)'s known tribal enrollment, if any; and
  6. The names and addresses of all other affected persons or person with an interest in the abinoojiih/child.
- (b) Cite the specific subsection of 8 S.C.T.C. § 03.05(1) upon which the petitioner alleges jurisdiction, and shall allege the specific facts upon which the petitioner asserts jurisdiction exists. No petition shall be sufficient if it merely reiterates the language of the subsection invoked.
- (c) Upon the filing of a petition, the Clerk of Court shall prepare a notice which shall include notice of the time, date, and place of the initial hearing, and shall instruct any affected person that his or her rights and responsibilities may be affected by the Tribal Court in the course of the proceedings.
- (d) No petition filed by the Indian Child Welfare Director shall be deemed insufficient on account of hearsay, provided that there is a sufficient indication in the petition of the declarant's reliability.
- (e) Each petition filed with the Clerk of Court, along with the notice prepared by the Clerk of Court, shall be served in accordance with 8 S.C.T.C. § 03.03(12) on all affected persons. The Clerk of Court shall serve the Parties on behalf of the petitioner.
- (f) All affected persons whose identity and address can be ascertained through reasonable efforts by the Indian Child Welfare Director must be given notice of the petition and initial hearing. Notice of the petition is sufficient if actual notice, written or oral, is given to an affected person, or if, no less than twenty-four (24) hours before the initial hearing, written notice is left in a conspicuous place at the affected person's home, or when notice is given by publication. Appearance by any affected person waives any deficiencies in notice as to the person.
  1. In the event an affected person who was not personally served does not appear at the initial hearing, the Tribal Court may proceed with the hearing or order a

continuance, and may order the person be served personally; by certified mail, return receipt requested; or through service by publication. The Tribal Court may proceed in the absence of notice to an affected person if it appears that actual service cannot practicably be made.

### **8 S.C.T.C. § 03.05(3) A/CINC Initial Hearing**

Upon filing a petition, the Tribal Court shall schedule an initial hearing. The hearing shall be scheduled within ten (10) days of the date of the filing of the petition in the case of an abinoojiinh/child held in custody, and within thirty (30) days of the date of the filing of the petition in all other cases. All affected persons appearing at the initial hearing shall be served notice of subsequent hearings, either orally in court on the record or in accordance with 8 S.C.T.C. § 03.03(12). The Tribal Court may order additional persons to be served.

- (a) Any affected person has the right to be heard and represented at a hearing by counsel at his or her own expense.
- (b) The Tribal Court shall determine, on a case-by-case basis, whether appointment of a Guardian Ad Litem for any abinoojiinh/child who is subject of a petition is necessary. The Tribal Court may, on its own motion or that of any Party, appoint a Guardian Ad Litem for any minor parent(s), guardian(s), or custodian(s) of an abinoojiinh/child subject of a petition.

### **8 S.C.T.C. § 03.05(4) Rights of Parties**

At the initial hearing, or immediately thereafter in a written notice, the Tribal Court shall inform the abinoojiinh/child, parent(s), guardian(s), or custodian(s) of their rights as follows:

- (a) The right to remain silent, although the silence may be considered adversely against the Party remaining silent;
- (b) The right to confront and cross-examine witnesses;
- (c) The right to an attorney or lay representative at the Party's own expense;
- (d) The right to subpoena and present witnesses;
- (e) The right to have the allegations of the petition proven by clear and convincing evidence;
- (f) The right to demand for cause, or pursuant to § 104(A)(1), a substitution of judge, which if not made before the close of the initial hearing is deemed waived. "For cause" means that the Party is able to prove specific facts that demonstrate the Judge is actually biased against the Party, and that the Party cannot have a fair hearing unless a different Judge is assigned. A motion for a substitute Judge shall be determined initially by the sitting Judge who shall issue an Order containing findings of fact in support of the decision. If the motion is denied, the Party may seek review of the Tribal Court's decision within

twenty (24) hours of service of the Order by filing a written request with the Clerk of Court; any other judge of the Tribal Court may review the finding and decision and such review shall be final;

- (g) The right to refuse service provided by the Indian Child Welfare Department or any other service provider, however, refusal to accept services may have a significant impact on their ability to have contact with their abinoojinh/child; and
- (h) Notice that permanency options other than reunification will be considered by the Tribal Court, including possible suspension or termination of parental rights, if parent(s), guardian(s), or custodian(s) are unable or unwilling to make necessary changes or progress that would enable them to provide care for their abinoojinh/child.

### **8 S.C.T.C. § 03.05(5) A/CINC Initial Hearing Proceeding**

The abinoojinh/child and the non-petitioning Parties shall enter onto the record whether they intend to admit, contest, or not contest the allegations of the petition.

- (a) Plea Options. A Party may admit, contest, or not contest to any or all of the allegations made against them.
  - 1. The Parties will be informed that admitting to the allegations means that they agree that allegations in the petition occurred, they are waiving their right to have a trial and are prepared to accept the conditions ordered by the Tribal Court. The Parties will be further informed that admitting the allegations may result in further legal consequences beyond the child welfare proceeding.
  - 2. The Parties will be informed that not contesting to the allegations means that they are not admitting nor contesting the allegations but agree that the petitioning Party may be able to prove the allegations, are waiving their right to a trial and are prepared to accept the conditions ordered by the Tribal Court.
  - 3. The Parties will be informed that contesting the allegations means that they deny what is alleged in the petition and wish to proceed with a trial where the petitioning Party would have to prove the allegations of the petition by clear and convincing evidence.
- (b) If no Party intends to contest the allegations of the petition, the Tribal Court shall set a date for a dispositional hearing no later than thirty (30) days from the date of the initial hearing. If all Parties consent, the Tribal Court may proceed immediately with the dispositional hearing.
- (c) If the petition is contested, the Tribal Court shall set a date for an adjudicatory hearing (trial) no later than twenty (20) days from the date of the initial hearing, unless this time limit is waived by the Parties and approved by the Tribal Court.
- (d) The Tribal Court may inform the Parties of any alternative dispute resolution methods that may be available, including mediation or peacemaking, or a Party may propose

another method at the Tribal Court's discretion. If all Parties consent to attempt an alternative dispute resolution, the Tribal Court shall continue the initial hearing for a reasonable period of time to give the Parties an opportunity to address the issues without formal Tribal Court intervention or without contested litigation.

- (e) Unless the petition is dismissed, the Tribal Court shall inform the parent(s), guardian(s), or custodian(s) of the need to take corrective action to address the allegations of the petition and shall order the Indian Child Welfare Director to meet with the parent(s), guardian(s), or custodian(s) to develop a written case plan within fourteen (14) days of the Initial hearing that specifies the actions necessary to correct the conditions that brought the matter before the Tribal Court. Any disagreements among the Parties regarding what should be required in the case plan shall be resolved by the Tribal Court; the Indian Child Welfare Director shall work with the Parties to facilitate compliance with the plan, with the goals of the plan being to meet the needs of the abinoojiih/child and family, and to reunite abinoojiih/child with their families or to allow them to remain safely within their own homes, whenever possible.

#### **8 S.C.T.C. § 03.05(6) A/CINC Initial Hearing Outcomes**

Prior to the close of the Initial Hearing the Tribal Court will enter onto the record their order and may order any of the options:

- (a) Dismiss the petition and order the return of the abinoojiih/child to the home with all non-voluntary supervision and services terminated;
- (b) Accept a plea from a Party and return the abinoojiih/child to the home with on-going supervision and services of the Tribal Court, the Indian Child Welfare Department, and other appropriate service providers. The order shall indicate the date and time of the next hearing in accordance with this Ordinance;
- (c) Accept a plea from a Party and order the continued out-of-home placement of the abinoojiih/child with on-going supervision and services of the Tribal Court, the Indian Child Welfare Department, and other appropriate service providers. The order shall indicate the date and time of the next hearing in accordance with this Ordinance; and/or
- (d) Other placement or provisions as deemed appropriate by the Tribal Court.

#### **8 S.C.T.C. § 03.05(7) A/CINC Adjudicatory Hearing (Trial)**

At the adjudicatory hearing (trial) the Tribal Court shall first determine whether the Parties still wish to proceed with the adjudicatory hearing (trial). If the Parties still wish to proceed the Tribal Court will inform the Parties of the expectations and then proceed.

- (a) Burden of Proof. The petitioning Party has the burden of proof. The petitioner must prove that the allegations in the petition have been proved by clear and convincing evidence and

that the best interest of the abinoojiih/child will be served by continued Tribal Court intervention.

- (b) Abinoojiih/Child Witnesses. In an effort to protect the best interest of the abinoojiih/child and to create an environment where testimony may be provided freely without fear, the presiding Judge shall permit any abinoojiih/child to testify in closed chambers. The presiding Judge shall have the discretion to determine who may or may not be permitted in the chambers during the testimony.
- (c) Order. At the close of the adjudicatory hearing (trial) the Tribal Court will make findings on whether the petitioner has met their burden or not and determine the validity of the allegations. The Tribal Court may order its jurisdiction over the abinoojiih/child to extend for any period of time; the orders of the court are effective from the moment they are announced on the record, and shall continue in effect until further Order of the Tribal Court.
- (d) Dispositional Hearing. In the event the petition is proved or admitted, the Tribal Court shall schedule a dispositional hearing no later than fourteen (14) days from the date of the adjudicatory hearing (trial) unless such time limit is waived by all Parties and approved by the Judge. If all Parties consent, the Tribal Court may proceed immediately to the dispositional hearing.

### **8 S.C.T.C. § 03.05(8) A/CINC Adjudicatory Hearing (Trial) Outcomes**

The Tribal Court will enter onto the record their order and may order any of the options:

- (a) Continuance. If the Adjudicatory Hearing (trial) has not concluded but the time allotted for the Adjudicatory hearing (trial) has run the Tribal Court may order the hearing be continued to a specific date and time. Additionally, a Party(ies) may request a continuance to allow for the presentation of further evidence.
- (b) Dismissal. The petition may be dismissed and the abinoojiih/child returned home if the Tribal Court determines the petitioner has failed to prove by clear and convincing evidence that the allegations are true.
- (c) In-Home Placement. The Tribal Court may find the allegations of the petition are true, but that out-of-home placement is not needed to protect the abinoojiih/child and in-home placement is appropriate.
  - 1. The Tribal Court may order in-home 24/7 supervision by another appropriate individual while the abinoojiih/child remains in-home with on-going services.
  - 2. The Tribal Court may order that in-home supervision is not needed but that on-going services are appropriate.
- (d) Out-of-Home Placement. The Tribal Court may find the allegations of the petition are true, and that out-of-home placement is needed to protect the abinoojiih/child. The

Tribal Court shall order that the abinoojiinh/child may not be returned home, without the specific order of the Tribal Court.

- (e) The Tribal Court may make other findings and order other placement or provisions as deemed appropriate for the specific case.

**8 S.C.T.C. § 03.05(9) A/CINC Dispositional Hearing**

At any stage of a proceeding under this Article the Tribal Court may order temporary disposition for the abinoojiinh/child. Such an order may include any disposition authorized by 8 S.C.T.C. § 03.05(10).

- (a) Upon entry of an adjudication order, the Tribal Court shall determine the disposition appropriate for the abinoojiinh/child. The Indian Child Welfare Department and the petitioning Party if other than the Indian Child Welfare Director, shall submit reports to the Tribal Court summarizing the abinoojiinh/child's personal history, the circumstances leading to the petition, the resources available and suitable to the abinoojiinh/child and family, the disposition recommended, and the rationale for the disposition. The report shall specify how the disposition is related to the circumstances leading to the petition and the role any affected person is expected to play in the removal of such circumstances in the future. Any other Party may submit such a report.
  - 1. All such reports shall be filed with the Tribal Court and served on the parent(s), guardian(s), or custodian(s), tribal attorney and Guardian Ad Litem by the person offering the report no later than five (5) days prior to the Dispositional Hearing; service on any represented Party may be made on the attorney of record. In the event that a report is not filed five (5) days prior to the Dispositional Hearing either the Parties can still proceed with the Dispositional Hearing as scheduled and read the report onto the record or the Parties can request the Dispositional Hearing be rescheduled.
  - 2. Any Party requesting out-of-home placement of an abinoojiinh/child shall submit to the Tribal Court, and distribute as provided in subsection 8 S.C.T.C. § 03.05(9)(a) above, a report enumerating the attempts made to prevent an out-of-home placement, and a statement describing the efforts that will be made to make it possible for the abinoojiinh/child to return home.
- (b) In considering an appropriate disposition, the Tribal Court may consider any or all of the following best interest factors:
  - 1. Special physical, intellectual, or emotional needs of the abinoojiinh/child;
  - 2. Social, cultural, or religious tradition of the abinoojiinh/child, the abinoojiinh/child's family, or the Tribe;
  - 3. Availability of resources within the abinoojiinh/child's extended family;
  - 4. The abinoojiinh/child's preference, if the abinoojiinh/child is over fourteen (14) years of age, and the recommendation of the Guardian Ad Litem;

5. The recommendation of the Indian Child Welfare Director or any person with an interest in the abinoojiih/child;
6. Recommendations of professionals experienced in services to abinoojiinyag/children;
7. The mental or physical health of any Party or other person living in the home, if it affects the abinoojiih/child's physical, intellectual, or emotional well-being;
8. The bonds and relationships that the abinoojiih/child has with parent(s), guardian(s), custodian(s), caregivers, relatives, and others;
9. The cooperation and willingness of the Parties to engage in rehabilitative activities, or to make other necessary changes to promote the well-being of the abinoojiih/child; or
10. Any other factors calculated to meet the needs of the individual abinoojiih/child and purposes of this Ordinance.

**8 S.C.T.C. § 03.05(10) A/CINC Dispositional Hearing Order**

The Tribal Court may order disposition in any or all of the following ways:

- (a) Counsel the abinoojiih/child or the parent(s), guardian(s), or custodian(s).
- (b) Remand the abinoojiih/child to the custody of a parent(s), guardian(s), custodian(s), or other responsible relative in the abinoojiih/child's home, with supervision of the abinoojiih/child by the Indian Child Welfare Director and reasonable rules of conduct by the abinoojiih/child and the parent(s), guardian(s), custodian(s), or other responsible relative.
- (c) Require participation of the abinoojiih/child and/or parent(s), guardian(s), or custodian(s) in a specified counseling, treatment, or educational program, which may include use of traditional or culturally appropriate services or activities.
- (d) Removal of the abinoojiih/child from the home and/or placement with a member of the abinoojiih/child's extended family, fictive kin, a tribal member licensed foster home, a licensed Indian foster home, an institution for abinoojiinyag/children approved by the Tribe, or any other foster home.
- (e) Participation of the abinoojiih/child and/or parent(s), guardian(s), or custodian(s) in inpatient or outpatient alcohol, drug, or mental health treatment for specified purposes.
- (f) Any other disposition calculated to provide for physical, mental, emotional, or developmental needs of the abinoojiih/child, or to rehabilitate the parent(s), guardian(s), or custodian(s) of the abinoojiih/child.
- (g) Such order may also provide for visitation by Parties or extended family members, or fictive kin as appropriate.

- (h) Authority to grant consents and to exercise other attributes of guardianship may be assigned.
1. Unless otherwise ordered by the Tribal Court, the parent(s) or parent(s) with legal custody of an abinoojiih/child retain the right to exercise all attributes of guardianship, subject to any foster parent(s)'s right to control the day-to-day activities of the abinoojiih/child, and to execute consents for daily school activities, not including overnight activities for more than one night.
  2. The Indian Child Welfare Director may be granted specific attributes of guardianship, including but not limited to the right to consent to medical treatment and educational services. When an abinoojiih/child has been taken into custody under Article IV Emergency Custody the Indian Child Welfare Director may consent to necessary medical or other treatment without court order.

### **8 S.C.T.C. § 03.05(11) A/CINC Dispositional Hearing Out-of-Home Placement**

If an out-of-home placement is ordered, the Tribal Court shall make specific findings of fact:

- (a) Any Party to a proceeding under this Article may seek and the Tribal Court on its own motion may direct the Indian Child Welfare Director to seek enforcement of any court order in any other appropriate court.
- (b) The Tribal Court on its own motion may waive, and any Party to a proceeding under this Article may, by motion and for good cause shown, seek a transfer of continuing jurisdiction over an abinoojiih/child and refer the case to any other court having jurisdiction in such a case. The Tribal Court shall retain jurisdiction unless the case is affirmatively accepted by another court.
- (c) In any out-of-home placement of an abinoojiih/child, the Tribal Court shall make findings based on sufficient evidence that services designed to prevent the necessity of out-of-home placement are appropriate and available and have been offered. This shall not require any petitioning Party to prove that services that are either not appropriate or not available through or from the Tribe have been offered, attempted, or rejected.
- (d) In any out-of-home placement of an abinoojiih/child, the Tribal Court shall consider and make findings that reasonable efforts were made to prevent out-of-home placement and that continuance of the abinoojiih/child in the abinoojiih/child's home would be contrary to the abinoojiih/child's welfare, and shall further make findings on the availability or appropriateness of custodial care within the abinoojiih/child's extended family or with tribal members before ordering a placement in any other home or facility.
- (e) Whenever the Tribal Court orders an abinoojiih/child to be placed outside the home, the Tribal Court shall, at such time as the Tribal Court determines the parent(s), guardian(s), or custodian(s) are not making adequate progress toward reunification, orally inform the parent(s), guardian(s), or custodian(s) who appear in court of any ground for suspension of parental rights under Article VI Suspension of Parental Rights or termination of

parental rights under Article VII Termination of Parental Rights that may be applicable; the Tribal Court shall include in the written order a notice to the parents that suspension or termination of parental rights is a possible consequence.

- (f) Whenever the Tribal Court orders an abinoojiinh/child to be placed outside the home, the Tribal Court shall order reasonable efforts, as appropriate, to be made to return the abinoojiinh/child home.
- (g) Whenever the Tribal Court orders an abinoojiinh/child to be placed outside the home, the Tribal Court shall make the determination or referral for parental contributions to cost of care required under 8 S.C.T.C. § 03.03(17).

### **8 S.C.T.C. § 03.05(12) Change of Placement**

Whenever the Tribal Court orders an abinoojiinh/child to be placed outside the home, the Indian Child Welfare Director may change the placement without filing a motion for modification under 8 S.C.T.C. § 03.05(13) under the following conditions:

- (a) If a change of placement is necessary, the Indian Child Welfare Director shall file a Request for Change of Placement with the Tribal Court, which must be approved by the Tribal Court. The Clerk of Court shall send to all Parties, including the parent(s), guardian(s), or custodian(s) of the abinoojiinh/child, the tribal attorney and Guardian Ad Litem, by fax, first class mail or hand-delivery, or other electronic communication, notice of the change of placement, giving the name and address of the current placement and the proposed new placement (unless confidential), the reason for the change, and a statement whether the new placement represents any change in the family or tribal member status of the placement or the level of restrictiveness of the placement. The notice shall further advise the recipients that any Party objecting to the change may file with the Tribal Court and serve on the Parties notice of objection within ten (10) days of the date of the notice of the proposed change of placement. If any such objection is filed the Clerk of Court shall promptly schedule a hearing on the matter.
- (b) If the Indian Child Welfare Department has been granted discretion to change placements, a change of placement need not be approved by the Tribal Court before the change can take place, but notice must be provided to the Tribal Court and Parties within a reasonable time.

### **8 S.C.T.C. § 03.05(13) Extensions and Modifications**

Upon motion by any person with an interest in the abinoojiinh/child who was a Party to the original proceedings or the Indian Child Welfare Director, the Tribal Court may, for good cause shown, extend or modify a dispositional order any time during the effective period of the order sought to be modified. Such motion shall be filed with the Tribal Court with copies served on all affected persons who were Parties to the original proceedings, the Indian Child Welfare Director, the tribal attorney and the Guardian Ad Litem, except that the Tribal Court may order additional Parties served. Service may be made by first class mail. The motion shall be filed and served

together with a notice of hearing on the motion. The hearing so noticed will be on the merits of the motion unless the Tribal Court otherwise orders. To assist the Tribal Court, Parties and Guardian Ad Litem must prepare, file and serve and distribute court reports or affidavits that outline the facts relative to their motion.

### **8 S.C.T.C. § 03.05(14) Permanency Planning**

The Indian Child Welfare Director shall prepare a permanency plan in every case where an out-of-home placement is ordered, and shall file the plan within sixty (60) days of the date on which the abinoojiinh/child was first held in physical custody or placed outside the home by the Tribal Court. Copies shall be sent to the parent(s), guardian(s), or custodian(s), Indian Child Welfare Director, tribal attorney and Guardian Ad Litem, and any other individuals named as affected persons at 8 S.C.T.C. § 03.02(1)(e). Copies may be sent to an abinoojiinh/child over fourteen (14) years of age if deemed appropriate by the presiding Judge.

### **8 S.C.T.C. § 03.05(15) Permanency Plan Requirements**

The plan shall describe the following:

- (a) The services offered to prevent out of home placement and/or to facilitate the abinoojiinh/child's return to home;
- (b) The basis for the decision to hold the abinoojiinh/child in custody or to place out of home;
- (c) The current and future planned location and types of placement for the abinoojiinh/child;
- (d) If the abinoojiinh/child is placed more than sixty (60) miles from the abinoojiinh/child's home, documentation that a closer placement is either unavailable or inappropriate;
- (e) The appropriateness of the services provided to meet the needs of the abinoojiinh/child and the family, including a discussion of services that have been considered but are not available, or not likely to become available, or are not being offered and an explanation;
- (f) The services that will be offered to carry out the dispositional order; to ensure proper care and treatment of the abinoojiinh/child and to promote stability in the placement; to meet the abinoojiinh/child's physical, social, emotional, educational, and vocational needs; and to facilitate return of the abinoojiinh/child to home or to obtain an alternative permanent placement;
- (g) The conditions, if any, upon which the abinoojiinh/child will be returned to home, including any changes required in the conduct of the parent(s), guardian(s), or custodian(s), the conduct of the child, or the nature of the home;
- (h) The immunization records of the abinoojiinh/child; and

- (i) The visitation plan that has been arranged with the parent and other affected persons.

### **8 S.C.T.C. § 03.05(16) Permanency Plan Review**

The Tribal Court shall review the permanency plan ninety (90) days after the abinoojiinh/child is placed out of the home if the parent is not engaged with services or not making adequate efforts to address the issues that resulted in the placement; otherwise, the Tribal Court shall review the permanency plan every six (6) months from the first date on which the abinoojiinh/child was held in physical custody or placed outside the home, and shall provide notice to the Parties in an order. The Tribal Court shall include notice of the date and time of the permanency review hearing, and that the Parties may participate in the review hearing. At the plan review hearing the Tribal Court shall determine the following:

- (a) The continuing necessity or appropriateness of the placement.
- (b) The extent of compliance with the plan by the Indian Child Welfare Director, other service providers, the abinoojiinh/child's parent(s), guardian(s), or custodian(s) and the abinoojiinh/child.
- (c) The extent of efforts to involve other service providers to meet any special needs of the abinoojiinh/child or family.
- (d) The progress toward eliminating the causes for the out of home placement and toward returning the abinoojiinh/child home or to another permanent placement.
- (e) The date by which it is likely the abinoojiinh/child will be returned home, placed for adoption, placed under legal guardianship, or otherwise permanently placed.
- (f) Whether reasonable efforts have been made by the agency to make it possible to return the abinoojiinh/child home.
- (g) If the abinoojiinh/child has been placed out of home for six (6) months or more, the appropriateness of the permanency plan and the circumstances which prevent the abinoojiinh/child from:
  - 1. Being returned home;
  - 2. Having a suspension of parental rights petition filed;
  - 3. Having a termination of parental rights petition filed;
  - 4. Being placed for cultural adoption;
  - 5. Being placed for adoption; or
  - 6. Being placed in other permanent care.
- (h) The Tribal Court shall issue an order that includes the determinations made under this section of this Ordinance, and shall provide copies to the parent(s), guardian(s), or custodian(s), the abinoojiinh/child if over fourteen (14) years of age and deemed appropriate by the presiding Judge, the foster parent(s), the Indian Child Welfare

Director, the tribal attorney, and the Guardian Ad Litem. Any Party named in this paragraph may, and the Indian Child Welfare Director shall, move the Tribal Court for any appropriate modifications in the dispositional order based on the plan review.

### **8 S.C.T.C. § 03.05(17) Continuance of Hearings**

Upon written motion by any person with an interest in the abinoojiinh/child who was a Party to the original proceedings or the Indian Child Welfare Director, filed and served at least forty-eight (48) hours prior to the hearing in accordance with 8 S.C.T.C. 03.03(12), the Tribal Court may, for good cause shown, continue any hearing for a reasonable period of time, except that there may only be one forty-eight (48) hour continuance of the Initial hearing unless the presiding Judge determines issuing additional continuances would serve the best interest of the abinoojiinh/child. The motion shall include a sworn statement of facts or shall be supported by an affidavit establishing the reasons for the request, and shall be accompanied by an affidavit of service. The Tribal Court shall determine whether to grant the continuance and shall so inform the Parties as soon as possible after receiving the motion.

- (a) The Tribal Court may accept verbal motions for continuance of hearings while on the record and will consider the motion and enter a determination once the motion is made.

### **8 S.C.T.C. § 03.05(18) Reunification Exception**

Pursuant to 8 S.C.T.C. § 03.01(3) reunification efforts shall be reviewed by the Tribal Court after six (6) months and if the parent(s), guardian(s), or custodian(s) are not making adequate progress toward reunification, alternative permanent placement options for the abinoojiinh/child shall be considered by the Tribal Court. The Tribal Court may order alternative permanent placement options for the abinoojiinh/child be sought prior to the six (6) month timeline for any of the following reasons:

- (a) The abinoojiinh/child or another abinoojiinh/child in the home experienced severe abuse or neglect where reunification would not be in the best interest of the abinoojiinh/child;
- (b) The abinoojiinh/child was conceived as a result of rape and reunification with the perpetrator would not be in the best interest of the abinoojiinh/child or the victim;
- (c) The parent(s), guardian(s), or custodian(s) caused the death of another abinoojiinh/child through abuse or neglect which prompted the removal and it would not be in the best interest of the abinoojiinh/child; and/or
- (d) The parent(s), guardian(s), or custodian(s) have been declared by two physicians to be incapable of caring for an abinoojiinh/child and it would not be in the best interest of the abinoojiinh/child.

## ARTICLE VI – SUSPENSION OF PARENTAL RIGHTS

### **8 S.C.T.C. § 03.06(1) Effect of Suspension of Parental Rights**

Suspension of parental rights means that, pursuant to court order, the legal relationship of parent(s) and abinoojiih/child is suspended. The effect of suspension of parental rights is to suspend the parent(s)-abinoojiih/child relationship, to suspend from the parent(s) all rights, powers, privileges, immunities, duties, obligations, and financial responsibilities; however, tribal membership, rights, privileges, entitlements, or obligations shall not be affected by such suspension.

### **8 S.C.T.C. § 03.06(2) Suspension of Parental Rights Petition**

A petition for suspension of parental rights may only be filed by an abinoojiih/child's parent(s), guardian(s), or custodian(s), or by the Indian Child Welfare Director. The petition shall contain the following:

- (a) The petition shall be signed by an individual petitioning and be filed with the Tribal Court, shall be made under oath, and shall include the following information if known:
  1. Abinoojiih/child's name and date of birth;
  2. Parent(s)'s names and dates of birth (if known);
  3. Parent(s)'s last known addresses and telephone number;
  4. The Tribal affiliation or eligibility of the abinoojiih/child;
    1. If applicable, the Indian Child Welfare Director shall make efforts to enroll the abinoojiih/child in an Indian Tribe prior to the customary adoption.
  5. Tribal affiliation of parent(s), guardian(s), or custodian(s) if any; and
  6. The names and addresses of all other affected persons or person with an interest in the abinoojiih/child.
- (b) The petition shall include a statement as to why an order for the suspension of parental rights of the parent(s) is in the best interest of the abinoojiih/child and the Tribe.
- (c) The Tribal Court shall appoint a Guardian Ad Litem for the abinoojiih/child, and legal counsel for any minor parent, in all proceedings for suspension of parental rights in accordance with 8 S.C.T.C. § 03.11(5).

### **8 S.C.T.C. § 03.06(3) Suspension of Parental Rights Summons**

A summons shall be prepared by the Clerk of Court and filed with the petition, and shall set forth the following:

- (a) The name and birth date of the abinoojiih/child;
- (b) The nature, location, date, and time of the initial hearing;
- (c) Notice that the Party summoned has the right to legal counsel at the Party's own expense;
- (d) Notice that failure to respond or appear at the hearing may result in a suspension of the Party's parental rights; and
- (e) Name of petitioner, and name, address, and phone number of petitioner's attorney or lay representative, if any, or of the petitioner if unrepresented.

**8 S.C.T.C. § 03.06(4) Service of Summons and Petition**

The Tribal Court shall cause the summons and petition to be served on the parent(s) of the abinoojiih/child; any person who may, based on statements of the person or the mother, be the father of the abinoojiih/child; the guardian(s), the custodian(s), Guardian Ad Litem, except that no summons and petition need be served on any person who may be the father of an abinoojiih/child conceived as a result of sexual assault.

- (a) The summons and petition shall be served personally or by certified mail, return receipt requested, with delivery restricted to the addressee, no less than seven (7) days prior to the initial hearing. If personal service or service by mail cannot with reasonable diligence be accomplished, service may be made by publication one time in a newspaper likely to give notice to the Party, together with mailing of the summons and petition to the Party's last known address. The published notice shall contain the following information:
  - 1. The name of the Party or Parties to whom notice is given;
  - 2. The former address of the Party or Parties;
  - 3. The approximate date and place of conception of the abinoojiih/child;
  - 4. The date and place of the birth of the abinoojiih/child;
  - 5. The notice shall not include the name of the mother unless the mother consents. The notice shall not include the name of the abinoojiih/child unless the Tribal Court finds that inclusion is essential to give effective notice to the father;
  - 6. Notice that the parental rights of any parent or alleged parent who fails to appear may be suspended; and
  - 7. Notice that any Party has the right to representation by counsel at his or her own expense.
- (b) Upon motion of petitioner, the Tribal Court may waive constructive notice to any person whose identity is unknown but may be the father of the abinoojiih/child if such notice appears unlikely to give the father effective notice.

### **8 S.C.T.C. § 03.06(5) Grounds for Suspension of Parental Rights**

A suspension of parental rights hearing shall be held within thirty (30) days of the filing of a petition. The Tribal Court shall conduct the hearing for the purpose of determining whether parental rights should be suspended based upon a showing of:

- (a) Abandonment of an abinoojiih/child;
- (b) Willful and repeated or egregious risk to an abinoojiih/child of death, disfigurement, or impairment of bodily functions;
- (c) Willful and repeated or egregious acts of physical or sexual abuse;
- (d) Voluntary suspension of parental rights pursuant to 8 S.C.T.C. § 03.06(6); or
- (e) Any of the grounds for termination of parental rights pursuant to 8 S.C.T.C. § 03.07(6).

### **8 S.C.T.C. § 03.06(6) Methods for Giving Consent to Suspension of Parental Rights**

The Tribal Court may suspend the parental rights of a parent(s) who has given their informed, voluntary consent by one of the methods provided in this section.

- (a) The parent(s) appears personally at a hearing on the record and gives their consent in writing, the Tribal Court explains the effect of a suspension of parental rights, the Tribal Court has questioned the parent(s) and found to its satisfaction that the consent is informed and voluntary, and the consent is accompanied by the Judge's written certificate that the terms and consequences of the consent were fully explained in detail and were fully understood by the parent(s). The Tribal Court shall also certify that either the parent(s) fully understood the explanation in English or that it was interpreted into a language that the parent(s) understood.
- (b) If the personal appearance of the parent(s) before the Tribal Court would be impossible or difficult, the Tribal Court may accept a written consent executed by the parent(s) before any other judge of a court of record as long as the requirements under 8 S.C.T.C. § 03.06(6)(a) are met by the other court.
- (c) Any minor parent stating intent to consent to the suspension of parental rights shall have a legal counsel appointed for them by the Tribal Court. The minor parent's consent to suspend rights shall not be accepted unless joined by their legal counsel. The consent of the legal counsel shall preclude later attack on the validity of the consent on the grounds of incompetence or minority.
- (d) No consent shall be valid unless it is given at least thirty (30) days after the birth of the abinoojiih/child to whom the parent(s)'s rights are to be suspended.

### **8 S.C.T.C. § 03.06(7) Suspension of Parental Rights Initial Hearing**

An initial hearing shall be held on the petition to suspension of parental rights. At the hearing the Tribal Court shall determine whether any Party wishes to contest the petition.

- (a) Any non-petitioning Party shall, upon request, be granted a continuance for the purpose of consulting legal counsel at the Party's own expense. The Tribal Court on its own motion or the motion of a Party may appoint a Guardian Ad Litem to represent any parent(s) whom the Tribal Court is concerned does not fully understand the proceedings. The Tribal Court may order the parent(s) in any such case to reimburse the Tribal Court for any fees and expenses thus incurred.
- (b) A Guardian Ad Litem shall be appointed for the abinoojinh/child in any proceeding for suspension of parental rights in accordance with 8 S.T.C.T. § 03.11(5).
- (c) The Tribal Court shall determine whether all interested Parties, including Parties who may be the abinoojinh/child's father, have been notified. If the Tribal Court determines that an unknown person may be the father of the abinoojinh/child, the Tribal Court shall further determine whether constructive notice will substantially increase the likelihood of actual notice to that person. If the Tribal Court so determines, it shall adjourn the hearing and order such notice to be given. If the Tribal Court determines that constructive notice will not substantially increase the likelihood of actual notice, the Tribal Court shall order that the hearing proceed.

### **8 S.C.T.C. § 03.06(8) Rights of Parties**

At the Suspension of Parental Rights Initial hearing, the abinoojinh/child and the parent(s), guardian(s) or custodian(s) shall be informed of their rights as follows:

- (a) The right to remain silent, although the silence may be considered adversely against the Party remaining silent;
- (b) The right to confront and cross-examine witnesses;
- (c) The right to legal counsel at the Party's own expense;
- (d) The right to subpoena and present witnesses;
- (e) The right to have the allegations of the petition proven by clear and convincing evidence; and
- (f) The right to demand for cause or pursuant to §104(A)(1) a substitution of judge, except this right shall not be available if the case is already proceeding in the Tribal Court as an abinoojinh/child in need of care or guardianship matter. This demand must be made prior to the close of the initial hearing or it shall be deemed waived.

### **8 S.C.T.C. § 03.06(9) Suspension of Parental Rights Initial Hearing Proceeding**

The Parties shall state whether they intend to contest the allegations of the petition.

- (a) If the petition is contested the Tribal Court shall set a date for an Adjudicatory Hearing (trial) no later than forty-five (45) days after the date of the Initial Hearing.
- (b) If the petition is not contested, the Tribal Court shall explain the effect of a suspension of parental rights and shall question the parents consenting to suspension in order to determine if such consent is informed and voluntary. The Tribal Court shall make findings of fact on the record supporting its conclusions that consent is informed and voluntary before proceeding further with a voluntary suspension.
- (c) If proper notice has been given and a person subject to suspension of parental rights does not appear, the Tribal Court may proceed by default and such individual shall be deemed to have not contested the petition and such consent shall be deemed informed and voluntary.

### **8 S.C.T.C. § 03.06(10) Suspension of Parental Rights Adjudicatory Hearing (Trial)**

At the Adjudicatory Hearing (trial) the Tribal Court will first determine whether the Parties still wish to proceed with the Adjudicatory Hearing (trial). If the Parties still wish to proceed the Tribal Court will inform the Parties of their rights, the expectations and proceed with the hearing.

- (a) Burden of Proof. The petitioning Party has the burden of proof. The petitioner must prove that the allegations in the petition have been proved by clear and convincing evidence and that the best interest of the abinoojiih/child will be served by suspending the parental rights.
- (b) Best Interest Factors. In considering the best interests of the abinoojiih/child under this section the Tribal Court shall consider but not be limited to the following:
  - 1. The age and health of the abinoojiih/child, both at the time of the disposition and, if applicable, at the time the abinoojiih/child was removed from the home;
  - 2. Any special physical, intellectual, or emotional needs of the abinoojiih/child;
  - 3. The wishes of the abinoojiih/child, if old enough and mature enough to express their wishes;
  - 4. The duration of, and reasons for, the separation of the parent from the abinoojiih/child;
  - 5. The efforts made by the parents to address their issues, to improve their situation and/or to be able to provide for their abinoojiih/child, and whether the parents are likely to be able to maintain stability and to provide care for the abinoojiih/child; and
  - 6. Whether the abinoojiih/child will be able to enter into a more stable and permanent family relationship as a result of the suspension, considering the conditions of the abinoojiih/child's current placement, the likelihood of future placements and the results of prior placements.

- (c) Abinoojiih/Child Witnesses. In an effort to protect the best interest of the abinoojiih/child and to create an environment where testimony may be provided freely without fear, the presiding Judge shall permit any abinoojiih/child to testify in closed chambers. The presiding Judge shall have the discretion to determine who may or may not be permitted in the chambers during the testimony.
- (d) Order. The Tribal Court may issue an order from the bench or take the matter under advisement for up to fourteen (14) days. The Tribal Court will make findings on whether the petitioner has met their burden or not.
  - 1. If the Tribal Court finds that the petition has not been proved by clear and convincing evidence, the Tribal Court shall dismiss the petition for suspension of parental rights.
  - 2. If the Tribal Court finds that the petition has been proved by clear and convincing evidence, the Tribal Court shall enter a final order suspending the parental rights and specify the basis for that finding.

#### **8 S.C.T.C. § 03.06(11) Suspension of Parental Rights Final Order**

If the Tribal Court determines that it is in the best interest of the abinoojiih/child and the Tribe it shall issue a final order for a suspension of parental rights. The final order shall include, but is not limited to, the following:

- (a) A statement suspending the parental rights, including the suspension of the right to the care, custody, and control of the abinoojiih/child and allowing the abinoojiih/child be customarily adopted;
- (b) A statement suspending the parent(s) right to have contact with the abinoojiih/child except by court order or agreement of the customary adopted parent(s);
- (c) A statement terminating the parent(s) obligation to pay child support, except for arrearages;
- (d) A statement indicating that the parent(s) shall have no standing to appear at any future legal proceedings involving the abinoojiih/child;
- (e) The suspension of parental rights does not sever or affect in any way an abinoojiih/child's relationship to their Indian Tribe or any rights of inheritance from their biological parent(s);
- (f) A statement why it is in the best interest of the abinoojiih/child and their Indian Tribe to suspend parental rights;
- (g) A statement on how the parent(s) may unwind the suspension of parental rights order;  
and

(h) Other provisions the Tribal Court deems appropriate.

### **8 S.C.T.C. § 03.06(12) Reinstatement of Suspended Parental Rights**

Parent(s) may petition the Tribal Court to unwind the suspension of their parental rights. The Tribal Court will review the petition, serve the petition in accordance with 8 S.C.T.C. 03.03(12) on person with an interest in the child, and schedule a hearing within forty-five (45) days of receipt of the petition.

(a) Investigation. The Tribal Court shall assign a Guardian Ad Litem in accordance to 8 S.C.T.C. § 03.11(5) and order the GAL and the Indian Child Welfare Director investigation the claims of the parent(s) and whether unwinding the suspension of parental rights would be in the best interest of the abinoojiih/child taking into considerations the factors of 8 S.C.T.C. § 03.06(10)(b). The GAL and Indian Child Welfare Director shall file a report outlining their investigation and recommendation prior to the hearing. The Tribal Court may continue the hearing if further investigation would be beneficial.

(b) Unwinding the Suspension. The Tribal Court shall only unwind the suspension of parental rights upon the finding that it is in the best interest of the abinoojiih/child and of any of the following:

1. No final permanency order has been entered for a period of one (1) year after the entry of the final order suspending parental rights;
2. The customary adoption of the abinoojiih/child failed;
3. The customary adoptive parent(s) are deceased;
4. The customary adoptive parent(s) and the abinoojiih/child if above the age of fourteen (14) agree to unwind the suspension of parental rights for the purpose of reunification; and/or
5. The customary adoptive parent(s) is no longer an appropriate placement due to an Abinoojiih/Child in Need of Care Petition being filed;

(c) Order. The Tribal Court may issue an order from the bench or take the matter under advisement for up to fourteen (14) days. The Tribal Court will make findings on whether the unwinding of suspension of parental rights is in the best interest of the abinoojiih/child.

1. If the Tribal Court finds that suspension is not in the best interest of the abinoojiih/child, the Tribal Court shall dismiss the petition for unwinding suspension of parental rights.
2. If the Tribal Court finds that the petition is in the best interest of the abinoojiih/child, the Tribal Court shall enter an order reinstating the parental rights and specify the basis for that finding. Reinstatement of parental rights may result in either the reunification of the abinoojiih/child with the parent(s) with services and supervision re-engaged, the continued out-of-home placement with

reunification services re-engaged, the reunification of the abinoojiih/child with the parent(s) and the case dismissed, or any other provision as the deemed appropriate by the presiding Judge.

## **ARTICLE VII – TERMINATION OF PARENTAL RIGHTS**

### **8 S.C.T.C. § 03.07(1) Effect of Termination of Parental Rights**

Termination of parental rights means that, pursuant to court order, all rights, powers, privileges, immunities, duties, obligations, and financial responsibilities existing between parent(s) and abinoojiih/child are permanently severed; however, tribal membership, rights, privileges, entitlements, or obligations shall not be affected by such termination.

### **8 S.C.T.C. § 03.07(2) Petition and Hearing Requirement**

Termination of parental rights may be ordered where a petition is filed that clearly states that the petitioner is seeking an order of termination of parental rights, and where the mother and father have been summoned to appear before the Tribal Court. The parental rights of a non- adjudicated or unacknowledged father may be terminated after service of the summons and petition as provided in accordance with 8 S.C.T.C. § 03.07(5)(a) and (b) on all persons named by the mother as the possible father or, in the case of an unknown father, after publication of the notice as provided in 8 S.C.T.C. § 03.07(5)(b) If any individual appears claiming paternity and contesting the termination of rights, the individual shall be given reasonable time to establish paternity at his own cost before the Tribal Court considers the termination of the individual’s parental rights.

### **8 S.C.T.C. § 03.07(3) Petition for Termination of Parental Rights**

A petition for termination of parental rights may only be filed by an abinoojiih/child’s parent(s), guardian(s), or custodian(s), or by the Indian Child Welfare Director.

- (a) The petition shall be signed by the individual petitioning, be filed with the Tribal Court, made under oath, and include the following information:
1. The name, birthdate, and address of the abinoojiih/child;
  2. The Tribal affiliation or eligibility of the abinoojiih/child and if applicable, the Indian Child Welfare Director shall make efforts to enroll the abinoojiih/child in an Indian Tribe.
  3. The names, birth dates, and addresses of the abinoojiih/child’s parent(s), the names and addresses of any guardian(s), or custodian(s), and the names and addresses of the parent(s), guardian(s), or custodian(s) of any minor parent;
  4. The Tribal affiliation of any parent(s), guardian(s), and custodian(s); and
  5. A statement that consent(s) to termination of parental rights will be given as provided by this Article, or a statement that consent will not be given, a statement of the specific grounds for involuntary termination under this Article, and a statement of facts which petitioner alleges establish the grounds.

- (b) The Tribal Court shall appoint a Guardian Ad Litem for the abinoojiih/child, and legal counsel for any minor parent, in all proceedings for termination of parental rights in accordance with 8 S.C.T.C. § 03.11(5).

**8 S.C.T.C. § 03.07(4) Termination of Parental Rights Summons**

A summons shall be prepared by the Clerk of Court and filed with the petition, and shall set forth the following:

- (a) The name and birth date of the abinoojiih/child;
- (b) The nature, location, date, and time of the initial hearing;
- (c) Notice that the Party summoned has the right to legal counsel at the Party's own expense;
- (d) Notice that failure to respond or appear at the hearing may result in a termination of the Party's parental rights; and
- (e) Name of petitioner, and name, address, and phone number of petitioner's attorney or lay representative, if any, or of the petitioner if unrepresented.

**8 S.C.T.C. § 03.07(5) Service of Summons and TPR Petition**

The Tribal Court shall cause the summons and petition to be served on the parent(s) of the abinoojiih/child; any person who may, based on statements of the person or the mother, be the father of the abinoojiih/child; the guardian(s), the custodian(s), Guardian Ad Litem, except that no summons and petition need be served on any person who may be the father of an abinoojiih/child conceived as a result of sexual assault.

- (a) The summons and petition shall be served in accordance with 8 S.C.T.C. 03.03(12) with delivery restricted to the addressee, no less than seven (7) days prior to the initial hearing. If personal service or service by mail cannot with reasonable diligence be accomplished, service may be made by publication one time in a newspaper likely to give notice to the Party, together with mailing of the summons and petition to the Party's last known address. The published notice shall contain the following information:
  - 1. The name of the Party or Parties to whom notice is given;
  - 2. The former address of the Party or Parties;
  - 3. The approximate date and place of conception of the abinoojiih/child;
  - 4. The date and place of the birth of the abinoojiih/child;
  - 5. The notice shall not include the name of the mother unless the mother consents. The notice shall not include the name of the abinoojiih/child unless the Tribal Court finds that inclusion is essential to give effective notice to the father;
  - 6. Notice that the parental rights of any parent or alleged parent who fails to appear may be terminated; and

7. Notice that any Party has the right to representation by counsel at his or her own expense.

(b) Upon motion of petitioner, the Tribal Court may waive constructive notice to any person whose identity is unknown but may be the father of the abinoojiih/child if such notice appears unlikely to give the father effective notice.

### **8 S.C.T.C. § 03.07(6) Grounds for Involuntary Termination**

Termination of parental rights may be ordered only in cases where the Tribal Court finds that one or more of the following grounds exists, and that termination of parental rights is in the best interests of the abinoojiih/child:

(a) Abandonment:

1. The abinoojiih/child has been left without provision for care or support and without reasonable expectation that a relative or other person would care for and support the abinoojiih/child.
2. The abinoojiih/child has been left by the parent with a relative or other person, or could reasonably expect that a relative or other person would provide for the abinoojiih/child's care and support and the parent has failed to visit or communicate with the abinoojiih/child for six (6) months or longer.
3. The abinoojiih/child has been placed outside the parent's home by the order of a court of competent jurisdiction issued in a proceeding whereby the parent received either an oral or written warning that their parental rights may be terminated in subsequent proceedings and the parent has failed to visit or communicate with the abinoojiih/child for six (6) months or longer.

(b) Failure to Remedy Condition:

1. The abinoojiih/child has been under the jurisdiction of court or courts of competent jurisdiction for at least one (1) year and the parent has made no progress in remedying the conditions requiring jurisdiction.
2. The abinoojiih/child has been under the jurisdiction of a court or courts of competent jurisdiction for at least two (2) years and it is unlikely that the parent will remedy the conditions requiring jurisdiction.

(c) Abuse:

1. The abinoojiih/child is under the jurisdiction of the Tribal Court pursuant to 8 S.C.T.C. § 03.05(1)(a) and the Tribal Court finds that the facts establishing jurisdiction show a pattern of repeated or severe abuse.

(d) Continuing Denial of Periods of Physical Placement:

1. The parent(s) has been denied all periods of physical placement or visitation rights by a court or courts of competent jurisdiction for a period of at least one (1) year, and there is no currently pending action to modify the parent's physical placement or visitation rights in a court of competent jurisdiction.

(e) Failure to Assume Parental Responsibility:

1. The parent has failed to establish a substantial parental relationship with the abinoojiih/child, which means the acceptance and exercise of significant responsibilities for the daily supervision, education, protection, and care of an abinoojiih/child, as evidenced by factors including but not limited to whether the parent has ever expressed concern for or interest in the support, care, or well-being of the abinoojiih/child and whether the parent has neglected or refused to provide support.

(f) Other:

1. The parent's parental rights could be terminated under the law of the state where the abinoojiih/child is physically found.

**8 S.C.T.C. § 03.07(7) Methods for Giving Consent to Voluntary Termination**

The Tribal Court may terminate the parental rights of a parent who has given his or her informed, voluntary consent by one of the methods provided in this section.

- (a) The parent appears personally at a hearing on the record and gives his or her consent in writing, the Tribal Court explains the effect of a termination of parental rights, the Tribal Court has questioned the parent and found to its satisfaction that the consent is informed and voluntary, and the consent is accompanied by the judge's written certificate that the terms and consequences of the consent were fully explained in detail and were fully understood by the parent. The Tribal Court shall also certify that either the parent fully understood the explanation in English or that it was interpreted into a language that the parent understood.
- (b) If the personal appearance of the parent before the Tribal Court would be impossible or difficult, the Tribal Court may accept a written consent executed by the parent before any other judge of a court of record as long as the requirements under 8 S.C.T.C. § 03.07(7)(a) are met by the other court.
- (c) Any minor parent stating intent to consent to the termination of parental rights shall have a Guardian Ad Litem appointed for him or her by the Tribal Court. The minor parent's consent to terminate rights shall not be accepted unless joined by his or her Guardian Ad Litem. The consent of the Guardian Ad Litem shall preclude later attack on the validity of the consent on the grounds of incompetence or minority.

- (d) No consent shall be valid unless it is given at least thirty (30) days after the birth of the abinoojiih/child to whom the parent's rights are to be terminated.

### **8 S.C.T.C. § 03.07(8) Termination of Parental Rights Initial Hearing**

An initial hearing shall be held on the petition to terminate parental rights. At the hearing the Tribal Court shall determine whether any Party wishes to contest the petition.

- (a) Any non-petitioning Party shall, upon request, be granted a continuance for the purpose of consulting legal counsel at the Party's own expense. The Tribal Court on its own motion or the motion of a Party may appoint a Guardian Ad Litem to represent any parent whom the Tribal Court is concerned does not fully understand the proceedings. The Tribal Court may order the parent in any such case to reimburse the Tribe for any fees and expenses thus incurred.
- (b) A Guardian Ad Litem shall be appointed for the abinoojiih/child in any proceeding for termination of parental rights in accordance with 8 S.C.T.C. § 03.11(5).
- (c) The Tribal Court shall determine whether all interested Parties, including Parties who may be the abinoojiih/child's father, have been notified. If the Tribal Court determines that an unknown person may be the father of the abinoojiih/child, the Tribal Court shall further determine whether constructive notice will substantially increase the likelihood of actual notice to that person. If the Tribal Court so determines, it shall adjourn the hearing and order such notice to be given. If the Tribal Court determines that constructive notice will not substantially increase the likelihood of actual notice, the Tribal Court shall order that the hearing proceed.

### **8 S.C.T.C. § 03.07(9) Rights of Parties**

At the Termination of Parental Rights initial hearing, the abinoojiih/child and the parent(s), guardian(s), or custodian(s) shall be informed of their rights as follows:

- (a) The right to remain silent, although the silence may be considered adversely against the Party remaining silent;
- (b) The right to confront and cross-examine witnesses;
- (c) The right to counsel at the Party's own expense;
- (d) The right to subpoena and present witnesses;
- (e) The right to have the allegations of the petition proven by clear and convincing evidence; and
- (f) The right to demand for cause or pursuant to §104(A)(1) a substitution of judge, except this right shall not be available if the case is already proceeding in the Tribal Court as an

abinoojiinh/child in need of care or guardianship matter. This demand must be made prior to the close of the initial hearing or it shall be deemed waived.

### **8 S.C.T.C. § 03.07(10) TPR Initial Hearing Proceeding**

The Parties shall state whether they intend to contest the allegations of the petition.

- (a) If the petition is contested the Tribal Court shall set a date for a fact finding hearing (trial) no later than forty-five (45) days after the date of the initial hearing. The Indian Child Welfare Director shall prepare the disposition report required by 8 S.C.T.C. § 03.07(12), and shall file it at the fact-finding hearing (trial) or at the disposition hearing, whichever comes first.
- (b) If the petition is not contested, the Tribal Court shall explain the effect of a termination of parental rights and shall question the parents consenting to termination in order to determine if such consent is informed and voluntary. The Tribal Court shall make findings of fact on the record supporting its conclusions that consent is informed and voluntary before proceeding further with a voluntary termination. The Tribal Court shall set a date for a dispositional hearing no later than fourteen (14) days from the date of the initial hearing.
- (c) If proper notice has been given and a person subject to termination of parental rights does not appear, the Tribal Court may proceed by default and such individual shall be deemed to have not contested the petition and such consent shall be deemed informed and voluntary.

### **8 S.C.T.C. § 03.07(11) TPR Fact-Finding Hearing (Trial)**

At the fact-finding hearing (trial) the Tribal Court shall determine whether the facts alleged in a petition that has been contested are proved to be true by clear and convincing evidence, and whether termination of parental rights would be in the abinoojiinh/child's best interests considering the factors of 8 S.C.T.C. § 03.07(13)(b). The Tribal Court may issue an order from the bench or take the matter under advisement for up to fourteen (14) days; the Tribal Court shall set a dispositional hearing within thirty (30) days of the fact-finding hearing (trial). If the Tribal Court finds that the petition has not been proved by clear and convincing evidence, the Tribal Court shall dismiss the petition for termination of parental rights.

### **8 S.C.T.C. § 03.07(12) TPR Dispositional Report**

Prior to the Disposition Hearing, the Indian Child Welfare Director shall prepare a report to the Tribal Court including a complete social, adjudicatory, and dispositional history of the abinoojiinh/child and the parent, a statement of feasible alternative dispositions, if any, and a statement applying the standards and factors contained in 8 S.C.T.C. § 03.07(13). The report shall include a description of efforts made to prevent removal of the abinoojiinh/child from the home and efforts made, if any, to return the abinoojiinh/child, and to remedy the conditions resulting in the termination proceeding. If the report recommends termination of both parents, or

of the only living or known parent, the report shall include a statement of the abinoojiih/child's likelihood of adoption, listing factors that might prevent adoption and factors that might facilitate it, and the interim plan and designated guardian recommended pending adoption or, if adoption is unlikely a plan for the continued care, custody, and guardianship of the abinoojiih/child. The report shall also contain a medical and genetic history of the abinoojiih/child and birth parents on a form as provided by the Wisconsin Department of Health and Social Services.

### **8 S.C.T.C. § 03.07(13) TPR Disposition Court Considerations**

In making a decision about the appropriate disposition, the Tribal Court shall consider the standard and factors enumerated in this section:

- (a) Standard. The best interests of the abinoojiih/child shall be the prevailing factor considered by the Tribal Court in determining the disposition of all termination of parental rights proceedings.
- (b) Best Interest Factors. In considering the best interests of the abinoojiih/child under this section the Tribal Court shall consider but not be limited to the following:
  - 1. The age and health of the abinoojiih/child, both at the time of the disposition and, if applicable, at the time the abinoojiih/child was removed from the home;
  - 2. Any special physical, intellectual or emotional needs of the abinoojiih/child;
  - 3. The wishes of the abinoojiih/child, if old enough and mature enough to express their wishes;
  - 4. The duration of, and reasons for, the separation of the parent from the abinoojiih/child;
  - 5. The efforts made by the parents to address their issues, to improve their situation and/or to be able to provide for their abinoojiih/child, and whether the parents are likely to be able to maintain stability and to provide care for the abinoojiih/child; and
  - 6. Whether the abinoojiih/child will be able to enter into a more stable and permanent family relationship as a result of the termination, considering the conditions of the abinoojiih/child's current placement, the likelihood of future placements and the results of prior placements.
- (c) The recommendations of the Guardian Ad Litem, social worker and/or any other professional working with the abinoojiih/child or person with an interest in the abinoojiih/child;
- (d) The social, cultural, or religious traditions of the abinoojiih/child, the abinoojiih/child's family, or the Tribe;
- (e) Availability of resources within the abinoojiih/child's extended family; and
- (f) Other factors calculated to meet the needs of the individual abinoojiih/child and the purposes of this Article.

### **8 S.C.T.C. § 03.07(14) TPR Disposition Order**

Any Party may present evidence relevant to disposition, and may propose alternative dispositions. The Tribal Court shall order enter disposition listed below no later than ten (10) days after a hearing on disposition. Upon a finding that grounds exist for a termination of parental rights the Tribal Court shall issue a dispositional order:

- (a) The Tribal Court may order the termination of parental rights of one or both parents. If the rights of both parents or of the only living or known parent are terminated, the Tribal Court shall transfer guardianship of the abinoojiih/child to the Indian Child Welfare Director if the child is an Abinoojiih/Child in Need of Care, or retain guardianship as previously ordered; the Tribal Court may authorize physical placement with a relative of the abinoojiih/child or other individual with whom the abinoojiih/child resides.
- (b) The Tribal Court shall inform any parent whose rights have been terminated of the provisions of §§ 48.432 and 48.433, Wis. Stats., and of 8 S.C.T.C. § 03.07(14)(c) and 8 S.C.T.C. § 03.09(11)(b) of this Ordinance, relating to medical and identifying information in the order terminating parental rights.
- (c) Any parents whose rights have been terminated shall have a continuing duty to inform the Tribal Court of any information he or she receives regarding any medical or genetic condition that may affect the health or longevity of the abinoojiih/child or the abinoojiih/child's issue. The parent shall be informed of this duty by the Tribal Court in the order terminating parental rights.
- (d) Any order under this section shall be reduced to writing and filed within 30 (thirty) days of its rendition.

## **ARTICLE VIII – CUSTOMARY ADOPTION**

### **8 S.C.T.C. § 03.08(1) Effect of Customary Adoption**

Upon entry of the order of customary adoption, the relation of parent and abinoojiih/child together with all the rights, duties, and other legal consequences of the natural relation of parent and abinoojiih/child exist between the customary adoptive parents and customary adopted abinoojiih/child, except that if the abinoojiih/child is not otherwise eligible for membership in an Indian Tribe, he or she may not gain eligibility through his or her adoptive parent(s).

- (a) The abinoojiih/child and customary adoptive parents are entitled to all records in accordance with 8 S.C.T.C. § 03.09(11). The biological family shall not be entitled to, or have access to, any information regarding the abinoojiih/child unless agreed to by the customary adoptive parents. Visitation rights to the adoptive abinoojiih/child must be sought accordance with 8 S.C.T.C. § 03.08(9).

- (b) Customary Adoption may be unwound meaning that the biological parent(s) may regain or reestablish the relation of parent and abinoojiih/child together with all rights, duties, and other legal consequences. Upon unwinding a customary adoption the customary adoptive parent(s) shall lose their rights, duties, and other legal consequences which were created by the entry of an order for customary adoption.

### **8 S.C.T.C. § 03.08(2) Customary Adoption Principals**

The following principals shall guide the Tribal Court's decision on Customary Adoption:

- (a) Protection of abinoojiih/child's safety, well-being, welfare, and their sense of belonging;
- (b) Preservation of the abinoojiih/child's identity and connection to the Tribe or another Indian Tribe, their extended family, and their clan; and
- (c) Preservation of culture, language, community, value, clan system, and relationships of the Tribe.

### **8 S.C.T.C. § 03.08(3) Who May Customary Adopt and Be Customarily Adopted**

Any abinoojiih/child as defined in 8 S.C.T.C. § 03.02(1)(b) may be customarily adopted. The following individuals are eligible to customarily adopt an abinoojiih/child:

- (a) A married couple jointly;
- (b) A spouse where the other spouse is a parent of the abinoojiih/child; and
- (c) An unmarried person who is at least twenty-five (25) years of age.

### **8 S.C.T.C. § 03.08(4) Customary Adoption Petition**

A petition for customary adoption may be filed by an abinoojiih/child's parent(s), guardian(s), or custodian(s), or by the Indian Child Welfare Director. The petition shall contain the following:

- (a) The petition shall be signed by an individual petitioning and be filed with the Tribal Court, shall be made under oath, and shall include the following information if known:
  - 1. Abinoojiih/child's name and date of birth;
  - 2. Parent(s)'s names and dates of birth (if known);
  - 3. Parent(s)'s last known addresses and telephone number;
  - 4. The Tribal affiliation or eligibility of the abinoojiih/child and if applicable, the Indian Child Welfare Director shall make efforts to enroll the abinoojiih/child in an Indian Tribe prior to the finalization of the Customary Adoption;
  - 5. Tribal affiliation of parent(s), guardian(s), or custodian(s) if any;

6. The Customary Adoptive parent(s) names, dates of birth, address, and their relationship to the abinoojiih/child; and
  7. The names and addresses of all other affected persons or person with an interest in the abinoojiih/child.
- (b) The identity of all persons or agencies which solicited, negotiated, or arranged for the customary adoption on behalf of any Party.
- (c) The petition shall include a statement as to why an order for the customary adoption is in the best interest of the abinoojiih/child and the Tribe.
- (d) The petition shall include a statement that the abinoojiih/child's name is not changing. The presiding Judge may consider granting hyphenated last names on a case-by-case basis taking into account the abinoojiih/child's age; the circumstances of customary adoption; and other relevant factors.
- (e) A report of all transfers of anything of value made or agreed to be made by the proposed customary adoptive parent(s) or on their behalf in connection with the birth of the abinoojiih/child, the placement of the abinoojiih/child with the proposed customary adoptive parent(s), the medical or hospital care received by the abinoojiih/child or by the abinoojiih/child's mother in connection with the birth of the abinoojiih/child and any other expenses, including the estimated legal expenses, of either the abinoojiih/child's parent(s) or the proposed customary adoptive parent(s), including a copy of any written agreement between the birth parent(s) and customary adoptive parent(s). The report shall be itemized and shall show the services relating to the customary adoption or to the placement of the abinoojiih/child for customary adoption which were received by the proposed customary adoptive parent(s), by either parent, by any other person to whom payment was made by or on behalf of the proposed customary adoptive parent(s). The report shall also include the dates of each payment, the names and addresses of each attorney, doctor, hospital, agency or other person or organization receiving any funds from the proposed adoptive parent(s) in connection with the customary adoption or the placement of the abinoojiih/child with them.
- (f) Whether the biological parent(s) are consenting to the customary adoption or whether consent is not required due to one or more of the circumstances outlined in 8 S.C.T.C § 03.08(5) exists.
- (g) The Tribal Court shall appoint a Guardian Ad Litem for the abinoojiih/child, and for any minor parent, in all proceedings for customary adoption in accordance with 8 S.C.T.C. § 03.11(5).

### **8 S.C.T.C. § 03.08(5) Consent Not Required**

Written consent from the parent(s) is not required for a customary adoption if any of the following circumstances exist:

- (a) The parent(s) have had their parental rights suspended either voluntarily or involuntarily;
- (b) The parent(s) have had their parental rights terminated either voluntarily or involuntarily;
- (c) The parent(s) have been declared incompetent by a qualified medical professional; and/or
- (d) The death of both parents attested by a certificate copy of a Certificate of Death.

### **8 S.C.T.C. § 03.08(6) Consent Required**

The consent of the following individuals is required for customary adoption:

- (a) The biological parent(s) if none of the circumstances outlined in 8 S.C.T.C. § 03.08(5) exist;
- (b) The guardian(s) or custodian(s), if empowered to consent;
- (c) The Guardian Ad Litem, if one has been appointed by the Tribal Court;
- (d) The abinoojiih/child if they are over the age of fourteen (14).

### **8 S.C.T.C. § 03.08(7) Customary Adoption Hearing**

A Customary Adoption Hearing shall be scheduled within ninety (90) days of receipt of a petition for customary adoption. The Tribal Court shall conduct the hearing to determine if it is in the best interest of the abinoojiih/child to be customarily adopted.

- (a) Service. The Clerk of Court shall provide the petition and notice of hearing are served on the abinoojiih/child's guardian(s), custodian(s), parent(s) if their consent is required, the Indian Child Welfare Director, and any abinoojiih/child who is the age of fourteen (14) or older in accordance with 8 S.C.T.C. 03.03(12). The Clerk of Court does not need to serve the petition and notice to any person who may be a parent of an abinooiinh/child as a result of sexual assault.
- (b) Investigation. The Indian Child Welfare Director shall complete an investigation and file a report with the Tribal Court prior to the date of Customary Adoption Hearing. If the report is unfavorable or discloses a situation which, in the presiding Judge's opinion, raises concerns for the suitability of the proposed customary adoptive parent(s), the presiding Judge may appoint a Guardian Ad Litem, if one has not already been appointed, to conduct a separate investigation and report back to the Tribal Court.

### **8 S.C.T.C. § 03.08(8) Temporary Order and Final Judgment**

The Tribal Court may issue a temporary order giving the care and custody of the abinoojiih/child to the proposed customary adoptive parent(s) pending further Tribal Court order. A hearing for the Final Judgment for Customary Adoption shall be scheduled no less than

six (6) months and no more than one (1) year after the date of the Tribal Court entering a temporary order for customary adoption.

(a) Waiver of Temporary Order. The Tribal Court may waive the entry of a temporary order and immediately enter a final judgment for customary adoption provided one of the following exist:

1. The abinoojiinh/child is a close blood relative of one of the proposed customary adoptive parent(s);
2. The abinoojiinh/child is a stepchild of a proposed customary adoptive parent(s); and/or
3. The abinoojiinh/child has been living in the home of the proposed customary adoptive parent(s) for a substantial period of time prior to the date of filing the petition for customary adoption.

(b) Rights. A customary adoptive parent(s) shall have all rights and responsibilities of a parent upon entry of a temporary order, except that the customary adoptive parent(s) must cooperate with the Tribal Court, the Indian Child Welfare Director, and the GAL until a final judgment is entered, and may not remove the abinoojiinh/child from the jurisdiction of the Tribal Court without a court order authorizing travel.

(c) Monitoring. Where a temporary order is entered, the Indian Child Welfare Director and GAL may observe the abinoojiinh/child in the customary adoptive parent(s) home and report to the Tribal Court on circumstances or conditions which may have an impact on the abinoojiinh/child's adoption or custody.

### **8 S.C.T.C. § 03.08(9) Visitation Rights**

A person who, within the two (2) years prior to the date of the petition for customary adoption, has maintained a close relationship with an abinoojiinh/child may petition the Tribal Court, at any hearing prior to the entering of a final judgment for customary adoption, to be awarded visitation rights or other contact such as periodic photographs, letter writing or other sharing of information, upon hearing and after notice of the hearing to the abinoojiinh/child's prospective customary adoptive parent(s). Notice shall be served in accordance with 8 S.C.T.C. 03.03(12).

(a) The Tribal Court may award visitation or contact if the Tribal Court determines visitation or contact is in the abinoojiinh/child's best interest and that the petitioner will not interfere in or act contrary to the parental decisions of the customary adoptive parent(s).

## ARTICLE IX – ADOPTION

### **8 S.C.T.C. § 03.09(1) Effect of Adoption**

Upon entry of the order of adoption, the relation of parent and abinoojiih/child together with all the rights, duties, and other legal consequences of the natural relation of parent and abinoojiih/child exist between the adoptive parent(s) and adopted abinoojiih/child, except that if the abinoojiih/child is not otherwise eligible for membership in the Tribe, he or she may not gain eligibility through his or her adoptive parent(s).

- (a) The abinoojiih/child and adoptive parent(s) are entitled to all records in accordance with 8 S.C.T.C. § 03.09(11). The biological family shall not be entitled to, or have access to, any information regarding the abinoojiih/child. Visitation rights to the adoptive abinoojiih/child must be sought accordance with 8 S.C.T.C. § 03.09(10).

### **8 S.C.T.C. § 03.09(2) Who May Adopt and Be Adopted**

Any abinoojiih/child as defined in 8 S.C.T.C. § 03.02(1)(b) may be adopted. The following are eligible to adopt an abinoojiih/child:

- (a) A married couple jointly;
- (b) A spouse where the other spouse is a parent of the abinoojiih/child; and
- (c) An unmarried person who is at least twenty-five (25) years of age.

### **8 S.C.T.C. § 03.09(3) Consent Not Required**

Consent from the parent(s) is not required for an adoption if any of the following circumstances exist:

- (a) The parent(s) have had their parental rights terminated either voluntarily or involuntarily;
- (b) The death of both parents attested by a certificate copy of a Certificate of Death.

### **8 S.C.T.C. § 03.09(4) Adoption Consent**

The consent of the following individuals are required for adoption:

- (a) The parent(s) of none of the circumstances outlined in 8 S.C.T.C. § 03.09(3) exist;
- (b) The Guardian Ad Litem, if one has been appointed by the Tribal Court; and
- (c) The abinoojiih/child if fourteen (14) years or older.

### **8 S.C.T.C. § 03.09(5) Adoption Petition**

A proceeding for adoption shall be commenced by the filing of a verified petition which shall include:

- (a) The petition shall be signed by the individual petitioning and be filed with the Tribal Court, shall be made under oath, and shall include the following information if known:
  1. The name, address and date of birth, or expected date of birth, of the abinoojiih/child to be adopted;
  2. Whether the abinoojiih/child is enrolled or eligible for membership, and the tribal affiliation of the abinoojiih/child. The Indian Child Welfare Director shall make efforts to enroll the child in an Indian Tribe prior to the finalization of the Adoption;
  3. The names, addresses, and ages of the birth parents (if known); and
  4. The names, addresses and ages of the adoptive parent(s) and his or her relationship to the abinoojiih/child.
- (b) The identity of all persons or agencies which solicited, negotiated, or arranged for the adoption on behalf of any Party.
- (c) A report of all transfers of anything of value made or agreed to be made by the proposed adoptive parent(s) or on their behalf in connection with the birth of the abinoojiih/child, the placement of the abinoojiih/child with the proposed adoptive parent(s), the medical or hospital care received by the abinoojiih/child or by the abinoojiih/child's mother in connection with the birth of the abinoojiih/child and any other expenses, including the estimated legal expenses, of either the abinoojiih/child's parent(s) or the proposed adoptive parent(s), including a copy of any written agreement between the birth parent(s) and adoptive parent(s). The report shall be itemized and shall show the services relating to the adoption or to the placement of the abinoojiih/child for adoption which were received by the proposed adoptive parent(s), by either parent, by any other person to whom payment was made by or on behalf of the proposed adoptive parent(s). The report shall also include the dates of each payment, the names and addresses of each attorney, doctor, hospital, agency or other person or organization receiving any funds from the proposed adoptive parent(s) in connection with the adoption or the placement of the abinoojiih/child with them.
- (d) A statement of the tribal membership, if any, of each of the birth parents and each of the proposed adoptive parent(s).
- (e) The domicile of each of the birth parent(s), and the facts supporting the statement of domicile.
- (f) Whether the birth parental rights are terminated; if not that a petition for voluntary termination has been filed and that consent will be given. If rights have been terminated, a certified copy of the court order terminating the rights shall be attached to the petition.

(g) The provisions of 8 S.C.T.C. § 03.09(12) shall be set forth in the petition.

### **8 S.C.T.C. § 03.09(6) Service of Adoption Petition and Notice of Hearing**

The Clerk of Court shall cause the petition and notice of the hearing provided for in 8 S.C.T.C. § 03.09(5) to be served on the abinoojinh/child's guardian, custodian, the natural parents if their parental rights have not been terminated, the Indian Child Welfare Director, and the abinoojinh/child, if fourteen (14) years of age or older, except that no notice and petition need be served on any person who may be a parent of an abinoojinh/child conceived as a result of sexual assault.

- (a) The Indian Child Welfare Director shall have twenty (20) days from the date of service to complete an investigation and file a report pursuant to 8 S.C.T.C. § 03.09(7).
- (b) The notice and petition shall be served in accordance with 8 S.C.T.C. 03.03(12), with delivery restricted to the addressee, no less than seven (7) days prior to the initial hearing.

### **8 S.C.T.C. § 03.09(7) Investigation and Report**

Upon filing of the petition, the Indian Child Welfare Director shall perform an investigation as to the suitability of the petitioner(s) as the abinoojinh/child's adoptive parent(s). The report shall include the blood quantum of both birth parents, if known. The enrollment office will cooperate with the Indian Child Welfare Director in preparing this information for inclusion in the report. The Indian Child Welfare Director shall complete the report and file it with Tribal Court, providing a copy to the Parties within twenty (20) days of receipt of the notice and petition. If the report is unfavorable or discloses a situation which, in the Tribal Court's opinion, raises a serious question as to the suitability of the proposed adoption, the Tribal Court may appoint a Guardian Ad Litem for the abinoojinh/child who shall make an independent recommendation within fifteen (15) days of appointment. The Tribal Court may order the petitioner or adoptive parent(s) to pay the costs of the investigation and report, and of the Guardian Ad Litem.

### **8 S.C.T.C. § 03.09(8) Hearing on the Adoption Petition**

Upon receipt of a petition, the Clerk of Court shall set a date for hearing within thirty (30) days.

- (a) At the hearing, the presence of the petitioners and the abinoojinh/child, if the abinoojinh/child is fourteen (14) years of age or older, shall be required unless the Tribal Court orders otherwise. The Tribal Court shall determine from the Indian Child Welfare Director's report and any evidence presented by the petitioners or other Parties whether the petitioners are suitable adoptive parent(s), such determination to include an inquiry as to the nature and purpose of any transfer of value between or on behalf of the Parties. If the Tribal Court determines that granting the petition is in the abinoojinh/child's best interest, it shall so order.

### **8 S.C.T.C. § 03.09(9) Temporary Order and Final Judgment**

The Tribal Court may issue a temporary order giving the care and custody of the abinoojiinh/child to the proposed adoptive parents pending further order of the Tribal Court. A hearing for the Final Judgment for adoption shall be scheduled no less than six (6) months and no more than nine (9) months after the date of the hearing on the petition.

- (a) Waiver of Temporary Order. The Tribal Court may waive the entry of a temporary order and immediately enter a final judgment for adoption provided one of the following exist:
1. The abinoojiinh/child is a close blood relative of one of the proposed adoptive parent(s);
  2. The abinoojiinh/child is a stepchild of a proposed adoptive parent(s); and/or
  3. The abinoojiinh/child has been living in the home of the proposed adoptive parent(s) for a substantial period of time prior to the date of filing the petition for adoption. For purposes of this provision, a substantial period of time shall be a period of six months or longer.
- (b) Subject to the provisions of this section, an adoptive parent(s) shall have all the rights and responsibilities of a parent upon entry of a temporary order, except that the adoptive parent(s) must cooperate with the Tribal Court and Indian Child Welfare Director until a final judgment is entered, and may not remove the abinoojiinh/child from the jurisdiction of the Tribal Court without a court order authorizing travel.
- (c) Where a temporary order is entered, the Indian Child Welfare Director may observe the abinoojiinh/child in the adoptive home and report to the Tribal Court within six (6) months on any circumstances or conditions which may have a bearing on the abinoojiinh/child's adoption or custody.

### **8 S.C.T.C. § 03.09(10) Visitation Rights**

A person who, within the two (2) years prior to the date of the petition for adoption, has maintained a close relationship with an abinoojiinh/child may petition the Tribal Court, at the initial adoption hearing, to be awarded visitation rights or other contact such as periodic photographs, letter writing or other sharing of information, upon hearing and after notice of the hearing to the abinoojiinh/child's prospective adoptive parent(s). Notice shall be served on those parents in accordance with 8 S.C.T.C. 03.03(12).

- (a) The Tribal Court may award visitation or contact if the Tribal Court determines visitation or contact is in the abinoojiinh/child's best interest and that the petitioner will not interfere in or act contrary to the parental decisions of the adoptive parent(s).

### **8 S.C.T.C. § 03.09(11) Records**

The Tribal Court may not disclose the records of any adoption except as provided for in this section.

- (a) A copy of the medical and genetic history report, as provided in 8 S.C.T.C. § 03.07(12), with the names and other identifying data of the birth parents and of the birth parents' or abinoojiih/child's health care provider removed, shall be provided to the adoptive parent(s) upon entry of the final judgment of adoption. The Tribal Court may, in its discretion, disclose information as needed from the report, including the entire report, to the adoptive parent(s) after entry of a temporary order and before entry of the final judgment. Additional information supplied to the Tribal Court under 8 S.C.T.C. § 03.07(14)(c) shall be made available to the adoptive parent(s) upon receipt or upon later request, provided the adoptive parent(s) sign a statement requesting such information and acknowledging that the Tribal Court or Tribe does not vouch for its accuracy. A copy of the report, the information and any additional information received under 8 S.C.T.C. § 03.07(14)(c) shall also be made available, on request, to the abinoojiih/child after the abinoojiih/child's eighteenth birthday, provided the abinoojiih/child signs a statement acknowledging that the Tribal Court or Tribe does not vouch for the accuracy of the information contained therein. Releases of information under this subsection shall be processed without charge.
- (b) Information confirming membership rights shall be made available upon request to the adoptive parent(s) and, after the abinoojiih/child has reached the age of eighteen (18) years, to the abinoojiih/child, if such information can be released without identifying the abinoojiih/child's birth parents. Releases of information under this subsection shall be without charge.
- (c) Whenever any abinoojiih/child adopted in St. Croix Tribal Court has reached the age of eighteen (18) years, the abinoojiih/child may file a written request for release of his or her birth parent's names and addresses as reflected in the Tribal Court's adoption records. No notice of this request or of the review provided below need be provided to any Party. Upon receipt of such a request, the Clerk of Court shall provide the records to the judge who shall review the records to determine if any special conditions should be attached to the release of such records and who then shall release the records subject to any such conditions.

### **8 S.C.T.C. § 03.09(12) Agreements Between Birth Mothers and Adoptive Parents**

Any agreement between a birth mother and an adoptive parent(s), where either Party is a member of the Tribe, for the payment of fees or expenses, including those expenses referred to in 8 S.C.T.C. § 03.09(5)(c), relating to the adoption of any abinoojiih/child as defined in 8 S.C.T.C. § 03.09(12)(b), shall be in writing.

- (a) Any agreement between a birth mother and an adoptive parent(s) for the payment of fees or expenses, including those expenses referred to in 8 S.C.T.C. § 03.09(5)(c), relating to the adoption of an abinoojiih/child may be rescinded by the birth mother at any time up to the time that she gives consent to terminate her parental rights under 8 S.C.T.C. § 03.07(7) under the following conditions:

1. If neither adoptive parent(s) is genetically related to the abinoojiinh/child, the birth mother can rescind the agreement. If the birth mother rescinds her consent as provided in this section, the adoptive parent(s) shall be entitled to judgment against the birth mother for all fees and expenses paid to her under the agreement between them, 8 S.C.T.C. § 03.09(12)(a).
2. If the birth mother is not genetically related to the abinoojiinh/child due to being a surrogate mother, the birth mother cannot rescind the agreement.
3. If the birth mother has provided the egg and the birth parents have provided the sperm for the abinoojiinh/child, then the Tribal Court may resolve the matter by referral to state circuit court as a custody dispute or decide the matter using the balancing interests of a custody dispute based on the best interests of the abinoojiinh/child.

(b) For purposes of this section “birth mother” means the individual who carries in utero any fetus, however fertilized or implanted. For purposes of this section “child” means any abinoojiinh/child, regardless of tribal membership or eligibility for membership, who, while in utero, was carried by a birth mother as herein defined.

## **ARTICLE X – GUARDIANSHIP**

### **8 S.C.T.C. § 03.10(1) Guardianship of the Abinoojiinh/Child**

The Tribal Court may appoint a guardian(s) of the abinoojiinh/child to exercise custody and the power to make daily and major decisions regarding any abinoojiinh/child as defined in 8 S.C.T.C. § 03.02(1)(b) who has no living parent(s) or whose parent(s) are unavailable by reason of incarceration or commitment or are otherwise unable to care for the abinoojiinh/child. If an abinoojiinh/child is currently an Abinoojiinh/Child in Need of Care pursuant to Article V Abinoojiinh/Child in Need of Care Proceedings, the Tribal Court may dismiss a Petition for Guardianship, unless the Petition was filed in accordance with a recommendation of the Indian Child Welfare Director or the Tribal Court in the Abinoojiinh/Child in Need of Care case.

### **8 S.C.T.C. § 03.10(2) Guardian of the Estate**

The Tribal Court may appoint a guardian(s) of the abinoojiinh/child’s estate to conserve the assets, income, and financial interests of any abinoojiinh/child as defined in 8 S.C.T.C. § 03.02(1)(b) who has no living parent(s) or whose parent(s) are unavailable by reason of incarceration or commitment or otherwise unable to care for the abinoojiinh/child.

- (a) The guardian(s) of the estate shall keep a complete and accurate record and accounting of all funds and expenditures on behalf of the abinoojiinh/child, shall keep a detailed record of any involvement on behalf of the abinoojiinh/child in any other matters, and shall ensure that the abinoojiinh/child’s estate is maintained and utilized solely for the benefit of the abinoojiinh/child.

- (b) A guardian(s) of the person for an abinoojiinh/child may be appointed the guardian of an estate for the abinoojiinh/child or separate guardians may be appointed.

### **8 S.C.T.C. § 03.10(3) Guardianship Duties, Powers, and Limitations**

The following are the duties and powers of any appointed Guardian(s) to an abinoojiinh/child:

- (a) Traditional and Cultural Ties. An appointed Guardian(s) shall encourage an abinoojiinh/child to maintain cultural ties with the Tribe, be informed of traditional and cultural customs of the Tribe, and encourage the abinoojiinh/child to learn Ojibwemowin.

- (b) Duties. Guardian(s) shall:

1. Use the degree of care, diligence, and good faith when acting on behalf of the abinoojiinh/child that would be typical of a safe and responsible caregiver;
2. Advocate for the abinoojiinh/child's best interests;
3. Demonstrate the utmost degree of trustworthiness, loyalty, and fidelity in relation to the abinoojiinh/child;
4. Notify the Tribal Court of any change in address of the guardian(s) or abinoojiinh/child;
5. Make medical, dental, and psychiatric care decisions for the abinoojiinh/child;
6. Consent to marriage, if the abinoojiinh/child is still a minor;
7. Make decisions related to education;
8. Consent to military service; and
9. Consent/refuse visitation by relatives.

- (c) Powers. Guardian(s) may be bestowed with the following powers:

1. The power to manage the abinoojiinh/child's estate;
2. The power to seek child support; and/or
3. The power to seek a name change, if tradition and custom permits.

- (d) Limitation. An appointed Guardian(s) may be granted legal custody and care of the abinoojiinh/child and management of their property until the abinoojiinh/child reaches the age of eighteen (18), marries, is emancipated, or until the Guardian is legally discharged. However, an appointed Guardian(s) shall not dispose of any real or personal property of the abinoojiinh/child in any manner without the express, written authority of the Tribal Court. The disposal of an abinoojiinh/child's real or personal property in any way shall subject said person(s) to contempt of court and/or civil penalties or remedies provided by St. Croix law.

1. This does not apply to the disposal of personal property typical in the course of an abinoojiinh/child growing past life stages, unless such personal property has sentimental or large monetary value.
2. This does not apply to the disposal of personal property where the abinoojiinh/child also consents to the disposal of such property.

### **8 S.C.T.C. § 03.10(4) Petition for Guardianship, Investigation, and Reports**

A person with an interest in an abinoojiih/child as defined in 8 S.C.T.C. § 03.02(1)(t) may petition for the appointment of a guardian of an abinoojiih/child and/or estate of an abinoojiih/child.

(a) A petition for guardianship shall state:

1. The name, residence, address, post office address, and date of birth of the abinoojiih/child, the petitioner, and of the proposed guardian or guardians;
2. The reason guardianship is sought;
3. Whether temporary or permanent guardianship is sought;
4. Whether a guardian of the abinoojiih/child or a guardian of the estate or both is sought;
5. Whether there will be any successor guardian(s);
6. The income and assets of the abinoojiih/child; and
7. Whether any guardian of the abinoojiih/child now exists.

(b) A filing fee determined by the Tribal Court shall be paid by the petitioner when the petition is filed, unless the petitioner is the Indian Child Welfare Director.

(c) Upon receiving a petition for guardianship along with the filing fee, the Tribal Court shall immediately appoint a Guardian Ad Litem in accordance with 8 S.C.T.C. § 03.11(5) for the abinoojiih/child and transmit the petition to the Indian Child Welfare Director with a request to issue a report, or conduct an investigation into the circumstances of the abinoojiih/child, and the suitability of the proposed guardian. The report or investigation shall, at a minimum, include a criminal background check, observations from a home visit, direct contact with the abinoojiih/child(ren) involved and the proposed guardian(s), and a summary of any efforts of the parent(s), guardian(s), or custodian(s) to resume care for the abinoojiih/child. The Indian Child Welfare Director shall file a report detailing the results of the investigation and make a recommendation to the Tribal Court to approve or deny the petition, within thirty (30) days. The Guardian Ad Litem shall prepare a report with recommendations for the hearing, and shall appear at the hearing on the petition.

### **8 S.C.T.C. § 03.10(5) Summons**

The Clerk of Court shall issue a summons that shall state the time, date, and place of hearing on the petition, the names of the abinoojiih/child and guardian, and the name, address, and telephone number of the petitioner and the petitioner's attorney, if any. The summons shall inform the Party that failure to appear at the hearing may result in the Tribal Court granting the relief requested in the petition. The Indian Child Welfare Director shall not be required to appear in a guardianship case under this Article unless the abinoojiih/child is subject to an ongoing abinoojiih/child in need of care proceeding or the Indian Child Welfare Director recommends denial of the petition, however, the Indian Child Welfare Director may appear and the Tribal

Court shall allow the Indian Child Welfare Director to participate as a Party in any guardianship matter.

### **8 S.C.T.C. § 03.10(6) Service of Summons and Petition**

The summons and petition shall be served by the Tribal Court upon any parent(s) of the abinoojinh/child, the abinoojinh/child if fourteen (14) years or older, any current guardian or custodian of the abinoojinh/child, the Indian Child Welfare Director, and the Guardian Ad Litem.

(a) The summons and petition shall be served in accordance with 8 S.C.T.C. 03.03(12) no less than seven (7) days prior to the initial hearing. If personal service or service by mail cannot with reasonable diligence be accomplished, service may be made by publication one time in a newspaper likely to give notice to the Party, together with mailing of the summons and petition to the Party's last known address. The published notice shall contain the following information:

1. The name of the Party or Parties to whom notice is given;
2. The last known address of the Party or Parties;
3. The initials of, and date and place of the birth of the abinoojinh/child;
4. The name of the mother, if the publication is directed to any Party other than the mother;
5. Notice that a guardian of the abinoojinh/child or of the abinoojinh/child's estate may be ordered at the hearing; and
6. Notice that any Party has the right to representation by counsel at his or her own expense.

(b) Upon motion of petitioner or of any other Party, the Tribal Court may waive constructive notice to any person if such notice appears unlikely to give effective notice.

### **8 S.C.T.C. § 03.10(7) Guardianship Hearing**

At the hearing on the petition the Tribal Court shall determine whether the Parties wish to proceed with the Petition for Guardianship. If the Parties wish to proceed the Tribal Court shall hear the petitioner's evidence and the evidence offered by any other Party.

(a) Burden of Proof. The petitioning Party has the burden of proof. The petitioner must prove by clear and convincing evidence that the appointment of a guardian(s) is in the best interest of the abinoojinh/child and whether the proposed guardian(s) is suitable to be appointed. The Tribal Court shall take into consideration the best interest factors below.

(b) Best Interest Factors. In considering the best interests of the abinoojinh/child under this section the Tribal Court shall consider but not be limited to the following:

1. The age and health of the abinoojinh/child;
2. Any special physical, intellectual, or emotional needs of the abinoojinh/child;

3. The wishes of the abinoojiih/child, if old enough and mature enough to express their wishes;
4. The duration of, and reasons for, the separation of the parent from the abinoojiih/child; and
5. Whether the abinoojiih/child will be able to enter into a more stable and permanent family relationship as a result of the guardianship, considering the conditions of the abinoojiih/child's current placement, the likelihood of future placements and the results of prior placements.

(c) Abinoojiih/Child Witnesses. In an effort to protect the best interest of the abinoojiih/child and to create an environment where testimony may be provided freely without fear, the presiding Judge shall permit any abinoojiih/child to testify in closed chambers. The presiding Judge shall have the discretion to determine who may or may not be permitted in the chambers during the testimony.

### **8 S.C.T.C. § 03.10(8) Guardianship Hearing Outcomes**

The Tribal Court will enter onto the record their order and may order any of the options:

- (a) Continuance. If the Guardianship Hearing has not concluded but the time allotted for the Hearing has run the Tribal Court may order the hearing be continued to a specific date and time. Additionally, a Party may request a continuance to allow for the presentation of further evidence.
- (b) Denial. The petition may be denied if the Tribal Court determines if any of the following occur:
  1. The Tribal Court determines that the guardianship will not or is not in the abinoojiih/child's best interest;
  2. The Tribal Court determines that the proposed guardian(s) is unsuitable; and/or
  3. The Tribal Court determines that the requirements of Article X - Guardianships have not been fulfilled.
- (c) Appointment. If the Tribal Court determines that the guardianship is or will be in the best interest of the abinoojiih/child, the requirements of Article X - Guardianships have been fulfilled, and the proposed guardian(s) is suitable, it may appoint the proposed guardian(s) and issue appropriate order.
- (d) The Tribal Court may make other findings and order other placement or provisions as deemed appropriate for the care and custody of the abinoojiih/child in accordance with this Ordinance.

### **8 S.C.T.C. § 03.10(9) Appointment of Guardian**

Upon hearing, the Tribal Court may appoint a guardian(s) of the abinoojiih/child, or of the estate of the abinoojiih/child, or both, as requested in the petition. The guardianship so established may be temporary or permanent, as requested in the petition.

- (a) **Limits.** The Tribal Court may impose restrictions or limitations on the powers of a guardian(s), and may condition the appointment on the guardian's performance of specified duties.
- (b) **Reports.** A guardian(s) of an abinoojiih/child shall report annually to the Tribal Court, on forms provided by the Tribal Court, on the care and status of the abinoojiih/child unless otherwise ordered by the Tribal Court. A guardian of the estate shall report every six (6) months or yearly to the Tribal Court, on forms provided by the Tribal Court, on the income, assets, expenses, and debts of the abinoojiih/child, and any other activities on the abinoojiih/child's behalf. The order appointing guardian shall fix a date or dates for the filing of such reports.
- (c) **Guardian of Estate.** The Tribal Court may require the guardian of an estate to post a bond, and may impose other conditions to protect the abinoojiih/child's interests. The Tribal Court shall include in its order any conditions or requirements that would need to be met or considered before the Tribal Court would terminate or modify the guardianship.
- (d) **Emergency Guardianship.** The Tribal Court may, upon the filing of a petition under this Article, grant emergency guardianship to the petitioner, pending the completion of the investigation and hearing required herein, if the Tribal Court is satisfied that the petitioner is a suitable guardian and the petition demonstrates that the abinoojiih/child does not have any other caregiver. Such emergency appointment shall only last as long as necessary to ensure the safety and well-being of the abinoojiih/child.
- (e) **Permanent Guardianship.** If a permanent guardianship is ordered, there shall be a presumption that the guardianship will remain in the abinoojiih/child's best interests until they reach the age of majority, and termination of a permanent guardianship shall only be considered in extraordinary circumstances as outlined in 8 S.C.T.C. § 03.10(12).

### **8 S.C.T.C. § 03.10(10) Co-Guardians**

The Tribal Court may appoint co-guardians for any abinoojiih/child to better protect the best interest of the abinoojiih/child. Co-guardians will have all the duties, powers, and limitations that the petitioning or primary guardian has except that the petitioning or primary guardian shall have the right to claim the abinoojiih/child as a dependent for tax purposes or as otherwise agreed. Any disputes arising between a petitioning or primary guardian and a co-guardian may be brought to the Tribal Court for final determination. Co-Guardians may be the successor guardian in the event the petitioning or primary guardian dies or is otherwise incapacitated.

### **8 S.C.T.C. § 03.10(11) Modification of Guardianship**

A guardianship may be altered or modified, or a new guardian appointed by the same procedures as established by this Article X – Guardianships for the appointment of a guardian.

- (a) Filing. The Tribal Court may hold a hearing to modify a guardianship order at any time upon the motion of any of the following person(s):
1. The abinoojiinh/child who is the age of fourteen (14) or older;
  2. The abinoojiinh/child’s biological parents;
  3. The Guardian(s); and/or
  4. The Guardian Ad Litem.
- (b) Indian Child Welfare Director. The Tribal Court shall immediately refer any motion to modify a guardianship to the Indian Child Welfare Director who shall conduct an investigation and make a recommendation to the Tribal Court on whether to grant or deny the motion, within fourteen (14) days.
- (c) Minor Modification. If the motion is for a minor modification which would not significantly change the ordered guardianship the Tribal Court may make a determination without holding a hearing or instructing the Indian Child Welfare Director to conduct an investigation.

### **8 S.C.T.C. § 03.10(12) Termination of Guardianship**

A guardianship may be terminated, by the same procedures as established by this Article for the appointment of a guardian. The Tribal Court shall immediately refer any motion to terminate a guardianship to the Indian Child Welfare Director who shall issue a report or conduct an investigation and make a recommendation to the Tribal Court to grant or deny the motion, within fourteen (14) days.

- (a) Filing. The Tribal Court may hold a hearing to terminate a guardianship order at any time upon the motion of any of the following person(s):
1. The abinoojiinh/child who is the age of fourteen (14) or older;
  2. The abinoojiinh/child’s biological parents;
  3. The Guardian(s);
  4. The Guardian Ad Litem; and/or
  5. The Indian Child Welfare Director on behalf of any of the other above-mentioned individuals or in conjunction with filing an A/CINC Petition.
- (b) Temporary Guardianship. A temporary guardianship may be terminated upon the Tribal Court being satisfied by clear and convincing evidence that termination of the guardianship would be in the abinoojiinh/child’s best interests and any of the following exist:
1. The guardianship has terminated upon the terms of the order.

2. The Parties have mutually agreed to the termination;
3. The parent(s) is able to demonstrate that they have been engaged in the abinoojinh/child's medical, educational, and extracurricular activities and the reasons for guardianship no longer exist;
4. The abinoojinh/child has reached the age of eighteen;
5. The abinoojinh/child has become emancipated;
6. An Abinoojinh/Child in Need of Care Petition was filed by the Indian Child Welfare Director;
7. The guardian(s) are no longer fit or able to serve as guardian(s); and /or
8. A motion to terminate was filed with the Tribal Court.

(c) Permanent Guardianship. A permanent guardianship may be terminated upon the Tribal Court being satisfied by clear and convincing evidence that termination of the guardianship would be in the abinoojinh/child's best interests and any of the following exist:

1. The Parties have mutually agreed to the termination;
2. The abinoojinh/child has reached the age of eighteen (18);
3. The abinoojinh/child has become emancipated;
4. An An Abinoojinh/Child in Need of Care Petition was filed by the Indian Child Welfare Director which alleges physical, emotional, or psychological abuse; and/or
5. The guardian(s) are no longer fit or able to serve as guardian(s) for reasons of medical incapacitation, death, or other debilitating illness which renders them unable to care for another.

(d) A/CINC. If an Abinoojinh/Child in Need of Care Petition ("A/CINC") is filed in lieu of guardianship, the Tribal Court shall make a determination whether the guardianship action should be dismissed without prejudice or suspended. If suspension of the guardianship action is appropriate, it shall be for no more than six (6) months.

### **8 S.C.T.C. § 03.10(13) Successor Guardians**

If a guardian dies, is removed by order of the Tribal Court, or is otherwise incapacitated and unable to act as guardian(s), the Tribal Court shall schedule a Guardianship Hearing to find a competent and suitable person to be appointed as successor guardian(s).

- (a) Procedure. The procedure for appointment of a successor guardian(s) shall be heard in the same manner and be subjected to the same requirements as provided in this Article for an original appointment of a guardian(s), including an investigation conducted by the Indian Child Welfare Department.
- (b) A/CINC. The Tribal Court should determine if the best interest of the abinoojinh/child would be better served by the filing of an A/CINC Petition with reunification efforts pursued.

- (c) Appointment. If the Tribal Court determines that the naming of a successor guardian is in the best interest of the abinoojiih/child, the naming of the successor guardian(s) must occur simultaneously with the termination or removal of the current guardian(s).

## **ARTICLE XI – ADMINISTRATION**

### **8 S.C.T.C. § 03.11(1) Notices Under the Indian Child Welfare Act**

The Indian Child Welfare Director is designated as agent for service of notices concerning child welfare proceedings as provided under the Indian Child Welfare Act.

- (a) Upon receipt of such notice, the Indian Child Welfare Director may consult with such tribal staff as may be necessary to determine the eligibility of the abinoojiih/child named in such notices.
- (b) Upon a determination that the notice received concerns an abinoojiih/child as defined in section 8 S.C.T.C. § 03.02(1)(b), the Indian Child Welfare Director shall consult with the tribal attorney for the purpose of determining whether to intervene or seek transfer of the proceeding to the Tribal Court.
- (c) In any proceeding where transfer of jurisdiction is denied or not sought the Indian Child Welfare Director shall maintain a record of all information gathered, actions taken and documents received.

### **8 S.C.T.C. § 03.11(2) Indian Child Welfare Director**

The Indian Child Welfare Director shall have the following authority and duties:

- (a) To file petitions and represent the Tribe in all tribal proceedings concerning the abinoojiih/child under this Ordinance;
- (b) To receive referrals, investigate reports, and ascertain whether an abinoojiih/child is probably subject to this Ordinance;
- (c) To take an abinoojiih/child into emergency custody to protect the abinoojiih/child's safety or welfare;
- (d) To make emergency, foster, group home, and institutional placements on behalf of the Tribe subject to the control of the Tribal Court;
- (e) To represent the Tribe in proceedings concerning the welfare of any abinoojiih/child as defined in 8 S.C.T.C. § 03.02(1)(b) in any foreign court or agency proceeding;
- (f) To maintain records and establish procedures to maintain the confidentiality of such

records;

- (g) To negotiate agreements for services with local, state, or federal agencies, subject to Tribal Council review and approval;
- (h) To establish procedures for compliance with duties as required under this Ordinance;
- (i) To share information for statistical or service purposes in conformity with agreements entered into;
- (j) To receive and administer supervision, guardianship and custody of abinoojiinh/child under this Ordinance;
- (k) To make such reports as may be required to the Tribal Council or its designee, provided that no such report that becomes a part of the Tribal public record shall contain any identifying information concerning the abinoojiinh/child or the abinoojiinh/child's parent(s) except as permitted by the Tribal Court;
- (l) To receive as the Tribe's agent, notifications under the federal Indian Child Welfare Act and Wis. Stats., and to maintain the confidentiality of such records as required by law;
- (m) To perform such other lawful acts as are required or permitted under this Ordinance;
- (n) To determine, after consultation with the tribal attorney, whether to intervene, seek transfer of proceedings to Tribal Court, participate in some other fashion, or not participate at all in any abinoojiinh/child custody proceeding commenced in another court;
- (o) To exercise the Tribal Council's authority under 25 U.S.C. § 1915(c) to establish in individual cases a different order of preference than that set forth in 25 U.S.C. § 1915(a) and (b);
- (p) To disclose otherwise confidential information to any peacemaker or mediator in any case conducted under 8 S.C.T.C. § 03.03(18), except as federal law prohibits; and
- (q) The Indian Child Welfare Director shall have the authority to delegate the authority provided for in this section to such assistants as may be hired by the Tribe to work under the Indian Child Welfare Director's direction.

### **8 S.C.T.C. § 03.11(3) Voluntary Services**

The Indian Child Welfare Department Director and workers may offer families voluntary protective services to a family before filing an Abinoojiinh/Child in Need of Care Petition, after a case has closed, or upon request from a family requesting services.

- (a) Prior to offering voluntary protective services to a family, the Indian Child Welfare Director shall inform the family that they have no legal authority to compel the family to accept such services but that they are completely voluntary.
- (b) Prior to offering voluntary protective services to a family, the Indian Child Welfare Director shall inform the family of their authority to file a petition to initiate a child welfare proceeding in the Tribal Court.
- (c) If the family declines the offered services, the Indian Child Welfare Director may file a petition to initiate a child welfare proceeding if the Indian Child Welfare Director believes it is in the child's best interest or the Indian Child Welfare Director may refer the case to the appropriate county agent.

### **8 S.C.T.C. § 03.11(4) Guardian Ad Litem**

The purpose of the Guardian Ad Litem is to make recommendations for the best interest of the abinoojiih/child, family, and interested Parties in any child welfare proceeding. The GAL must advocate for the best interest of the abinoojiih/child and should conduct the following minimum duties:

- (a) Consider the abinoojiih/child's age, maturity, and culture while monitoring the abinoojiih/child's best interest;
- (b) Listen and report to the presiding Judge about the wishes of the abinoojiih/child when appropriate;
- (c) Explain the role of the GAL with the abinoojiih/child and any parent(s), guardian(s), or custodian(s);
- (d) Have sufficient contact with the abinoojiih/child to ascertain the best interest of the abinoojiih/child;
- (e) Interview the parent(s), guardian(s), custodian(s), and others with knowledge relevant to the case;
- (f) Observe the abinoojiih/child in a home setting;
- (g) Attend each court hearing regarding the abinoojiih/child and make oral reports to the Tribal Court regarding their recommendations;
- (h) Create written reports to the Tribal Court regarding the best interest of the abinoojiih/child including conclusions and recommendations and the facts upon which those recommendations are based;
- (i) Maintain confidentiality of any case they are assigned to, failure to maintain confidentiality may result in being found contempt of court; and

- (j) Comply with other duties as assigned by the presiding Judge.

### **8 S.C.T.C. § 03.11(5) Guardian Ad Litem Appointment**

The presiding Judge on any case involving an abinoojiih/child shall appoint a Guardian Ad Litem to represent the best interest of the abinoojiih/child.

- (a) Assigning Cases. The presiding Judge shall make best efforts to ensure all GALs have similar caseloads. The presiding Judge may assign a GAL more cases than others if that serves the best interest of the child, or the GALs schedules.
- (b) Conflicts of Interest. The presiding Judge shall consider and ask whether a GAL has any conflicts of interest prior to appointing them to a case. Conflicts of interests could exist if the GAL is related to any Party, including the abinoojiih/child; has a professional relationship with any Party; or has a financial relationship with any Party. If a conflict of interest exists, the presiding Judge shall not appoint a GAL to that case.
- (c) Unavailable GALs. In the event the Tribal Court does not have any GALs available for appointment at the filing of a petition, the presiding Judge shall appoint one when a GAL is available. A child welfare proceeding may still proceed forward even in the event a GAL has not been assigned.

### **8 S.C.T.C. § 03.11(6) Guardian Ad Litem Fees**

The fees and cost of the Guardian Ad Litem shall be subject to the approval of the Tribal Court. The Tribal Court may order any appropriate Party to pay the Guardian Ad Litem fees and costs or to reimburse the Tribal Court for such fees and costs. Fees and costs may be garnished through any appropriate sourcing including but not limited to Per Capita Payments, General Welfare Exclusion Payments, Payroll, etc.

### **8 S.C.T.C. § 03.11(7) Contempt of Court**

Any person or Party who violates or fails to comply with this Ordinance may be proceeded against for contempt of court pursuant to St. Croix Chippewa Indians of Wisconsin Tribal Court Code.

- (a) Any person summoned and whom fails to appear without reasonable cause, may be proceeded against for contempt of court and the Tribal Court may cause a bench warrant to be issued to produce such a person in Tribal Court;
- (b) Any Party who fails to cooperate with the Tribal Court through not appearing for hearings without approval or a reasonable reason or refusal to submit to court ordered conditions may be proceeded against for contempt of court;

- (c) Any person who violates any court order issued by a Tribal Court judge without reasonable cause, may be proceeded against for contempt of court; and
- (d) Any person who harasses or intimidates Tribal Court staff, the Indian Child Welfare Department staff, Guardian Ad Litem, witnesses, and/or attorneys operating pursuant to this Ordinance may be proceeded against for contempt of court.

## **ARTICLE XII – APPEALS**

### **8 S.C.T.C. § 03.12(1) Motion for Reconsideration**

A motion for reconsideration may be filed by a Party within ten (10) days after receipt of a judgment issued under this Ordinance. Motions for reconsideration are not to be used as an avenue to appeal a decision finding an abinoojinh/child in need of care, suspending parental rights, or terminating parental rights. A motion for reconsideration must be filed with the Clerk of Court and served upon all Parties pursuant to 8 S.C.T.C. § 03.03(12). The motion for reconsideration must include the following minimum information:

- (a) The case number;
- (b) The provision(s) the Party is requesting the presiding Judge to reconsider; and
- (c) A statement from the Party that one of the following exist:
  - 1. New and material evidence is now available that, despite the Party's due diligence, was not available when the record closed;
  - 2. The final decision was based on an erroneous interpretation of law or there has been an intervening change in the controlling law; or
  - 3. A manifest injustice, clearly apparent or obvious on its face, will occur if the motion for reconsideration is not granted.

### **8 S.C.T.C. § 03.12(2) Motion for Reconsideration Decision**

Upon receiving a motion for reconsideration, the opposing Party shall have ten (10) days to file an opposition brief. The motioning Party will then have ten (10) days to file a reply brief to the brief in opposition. Upon receiving these briefs, the presiding Judge shall issue a decision on reconsideration within thirty (30) days of the filing of the reply brief or the expiration of the time to file a reply brief, whichever is later.

- (a) If the presiding Judge grants the motion, they may reverse or modify the original decision, in whole or in part, from which reconsideration is sought.
- (b) If the presiding Judge denies the motion, that decision is final and not subject to further appeals.

### **8 S.C.T.C. § 03.12(3) Appeals**

Any Party to a child welfare proceeding may appeal a final court order on a specific legal issue. Appeals of any final court order must be filed no later than thirty (30) days after the entry of the judgment or order from which the appeal is taken. The appealing Party must comply with the provisions in the St. Croix Chippewa Indians of Wisconsin Tribal Court Code Court of Appeals.

- (a) Record. For purpose of appeal, a record of proceedings shall be made available to the abinoojiih/child, parent(s), guardian(s), custodian(s), any attorney representing any Party, and any other Party. Costs of obtaining the record shall be paid by the Party seeking a copy of the record.
  
- (b) Stay. The pendency of an appeal shall stay the order appealed for the child welfare proceeding. Where the order appealed directs a change of legal custody of an abinoojiih/child, the appeal shall be heard and decided at the earliest practicable time. The appeal shall not contain the name of the child but instead only initials.