

**MIAMI TRIBE OF OKLAHOMA
CHILDREN’S CODE**

CHAPTER 1 – MIAMI TRIBE OF OKLAHOMA CHILDREN’S CODE

1.1 SECTION 1: AUTHORITY AND PURPOSE

1.1.1

This Code is enacted pursuant to authority vested in the Miami Tribe of Oklahoma pursuant to the Tribal Constitution, Article VI, Section 1.

1.1.2

The Children's Code shall be interpreted and construed to fulfill the following purposes:

- (a) to provide for the welfare, care and protection of the child/children of the Miami Tribe of Oklahoma;
- (b) to preserve the unity of the family, preferably by separating the child/children from his/her Parent(s) only when necessary;
- (c) to facilitate return of tribal child/children to the jurisdiction of the Miami Tribe of Oklahoma.

1.2 SECTION 2: JURISDICTION

1.2.1

Tribal Proceedings Involving a Miami Tribe of Oklahoma Child.

- (a) The Court has exclusive, original jurisdiction of a proceeding involving a child/childrem who is an enrolled member of the Miami Tribe of Oklahoma, or is or eligible for enrollment with the Miami Tribe of Oklahoma, and resides within the Miami Tribe of Oklahoma territorial jurisdiction.
- (b) The Court has concurrent jurisdiction of a proceeding involving a child/children who is an enrolled member of the Miami Tribe of Oklahoma, or is or eligible for enrollment with the Miami Tribe of Oklahoma, and resides outside of the Miami Tribe of Oklahoma territorial jurisdiction.

1.2.2

Tribal Proceedings Involving Other Minor Indian Children.

- (a) The Court has concurrent jurisdiction over an Indian child/children who is a member of any other Indian Tribe and resides within the Miami Tribe of Oklahoma territorial jurisdiction, and the child/children is alleged to be a minor(s)-in-need-of-care.

1.2.3

Other Proceedings:

- (a) termination of parental rights
- (b) adoption
- (c) custody
- (d) guardianship

1.2.4

State Proceedings. The Court shall also exercise jurisdiction over:

- (a) a child/children who is an enrolled member of the Miami Tribe of Oklahoma, or is eligible for enrollment with the Miami Tribe of Oklahoma, living either within or outside of the jurisdictional territory of the Miami Tribe of Oklahoma, in proceedings covered by the Indian Child Welfare Act pending in state courts or other tribal courts.

1.2.5

Jurisdiction Over Adults.

- (a) **Jurisdiction as a Matter of Law.** In any case in which a child/children has come within the jurisdiction of the court, the court shall have authority to exercise jurisdiction over the adults to the extent necessary to make proper disposition of each case, including authority to punish for contempt either in or out of the court's presence.
- (b) **Consent to Jurisdiction.** Any adult living off/outside of the Miami Tribe's territorial jurisdiction who obtains custody of a child/children, however designated, from the court either personally or as the result of association with an agency or institution to which custody has been awarded, shall be deemed to have consented to the

jurisdiction of the court for all purposes or actions in any way related to such Custody of the child/children.

- (c) **Procedures Applicable to Adults**. Except when specific procedures are otherwise specified in this Code, all matters concerning adults or the rights of any adult which come before the court need not be handled according to procedures establish by the court, but rather may be handled in an informal manner.
- (d) **Termination of Continuing Jurisdiction**. Jurisdiction obtained by the court of a child/children under this Code shall continue until the child/children becomes eighteen (18) years of age or the case is dismissed or the underlying Order expires; at which time the continuing jurisdiction of the court shall terminate.

1.3 SECTION 3: DEFINITIONS

1.3.1

"Abandon" means:

- (a) when a Parent(s) or legal Guardian leaves a child without provision for care or support, and the Parent(s) whereabouts cannot be ascertained;
- (b) the Parent(s) has failed, for a period of six (6) consecutive months, to maintain a significant parental relationship with a child/children through visitation or communication in which incidental or token visits or communication are not considered significant;
- (c) the Parent(s) has failed to respond to notice of Deprived Child/Children proceedings after receiving proper service;
- (d) when a Parent(s) or legal Guardian(s) does not provide the proper care of a child/children, or whose home is unfit for a child/children by reason of neglect, abuse, cruelty, or depravity;

“Adjudicatory Hearing” means a hearing to determine whether the allegations of a petition pursuant to this Code, alleging a child/children to be neglected or deprived, in-need-of supervision, or delinquent, are supported by evidence.

“Case Plan” means a written document also known as a “Treatment Plan” stating the services and actions needed to be completed by the Parent(s), Guardian(s), or Custodian(s) before a Deprived Child/Children can be returned home.

“Child” or “Indian Child” (plural “Children” or “Indian Children”) means an unmarried person who is under age eighteen (18) and is either a) a citizen of a federally-recognized Tribe, or b) is eligible for enrollment in an Indian Tribe, and is the biological child/children of a member of an

Indian Tribe. For purposes of this Code, child/children shall be interpreted to mean Indian child/children.

“Children’s Code” means the Children’s Code for the Miami Tribe of Oklahoma.

"Children's Court" means the Miami Tribe of Oklahoma District Court when exercising jurisdiction pursuant to this Code.

"Children's Court Judge" means any duly appointed Judge of the Miami Tribe of Oklahoma District Court when exercising jurisdiction under this Code.

"Custodian" means one who has physical Custody of and who is providing food, shelter, and supervision to a minor(s).

“Child Neglect” means an abandon child/children, or failure or omission of a person responsible for the health, safety or welfare of a child/children, to provide any of the following:

- (a) adequate food clothing, shelter, medical care, or supervision; or who lacks proper parental care through actions or omissions of the Parent(s), Guardian(s), or Custodian(s);
- (b) special care made necessary by the physician or mental condition of the child/children.

“Custody” means the care and control of a child/children.

“Deprived Minor” means a child:

- (a) whose Parent(s), Guardian(s), or Custodian(s) has subjected him to child abuse, or whose Parent(s), Guardian(s), or Custodian(s) has enabled or allowed another to subject the child to child abuse without taking lawful means to stop such child abuse or prevent it from recurring;
- (b) who lacks proper parental care through the actions or omissions of the Parent(s), Guardian(s), or Custodian(s);
- (c) whose environment is injurious to the child’s/children’s welfare;
- (d) whose Parent(s), Guardian(s), or Custodian(s) fails or refuses to provide proper or necessary subsistence, education, medical care, or any other care necessary for the child’s/children’s health, guidance, or well-being, whether because of the fault of the Parent(s), Guardian(s) or Custodian(s), or because the Parent(s), Guardian(s) or Custodian(s) does not have the ability or resources to provide for the child/children;
- (e) who is homeless due to, or without the fault of, his Parent(s), Guardian(s), or Custodian(s);

- (f) who has been abandon by his Parent(s), Guardian(s), or Custodian(s);
- (g) who is in need of special care or treatment because of the child's/children's physical or mental condition, and the child's/children's Parent(s), Guardian(s) or Custodian(s) is unable or willfully fails to provide such special care and treatment;
- (h) who has been born to a Parent(s) whose parental rights to another child/children have been involuntarily terminated by the court and the conditions which led to the making of the finding, which resulted in termination of the parental rights of the Parent(s) to the other child/children, have not been corrected;
- (i) whose Parent(s), Guardian(s) or Custodian(s) has subjected another child/children to abuse or neglect or has allowed another child/children to be subjected to abuse or neglect and is currently a respondent in a deprived proceeding.

“Disposition” means the final determination of a matter (as a case or motion) by the court.

“Disposition Hearing” means a hearing in which the court must determine what treatment or services should be ordered for the family and/or the child/children, and the placement of the child/children during such period.

“Emergency Custody” means custody of a child/children taken pursuant to this Code with a court order prior to adjudication.

“Emergency Custody Order” means an order that may be issued by the court upon a sworn written statement of facts showing that Probable Cause exists to believe that a minor(s) is a deprived or neglected minor(s).

“Emancipation” means a procedure by which a child/children who is over sixteen (16) years of age and who has, with the real or Parent(s) assent of his Parent(s), demonstrated his independence from his Parent(s) in matters of care, Custody and earnings may petition the court for recognition of such status.

“Emergency Custody” means a child/children taken into protective Custody prior to the filing of a petition for temporary Custody. (Section 26.10)

“Foster Care” means the private residence of a Tribal Resource Parent who provides Foster Care for a child/children.

“Guardian” means an individual who has been appointed by a court with the duty to care for another's person or property.

"Guardian Ad Litem" means an adult appointed by the court to represent the best interests of a minor in any proceeding to which he/she may be a party.

“Indian Child” means any unmarried or un-emancipated person who is under the age of eighteen (18) and is either:

- a. a member of a federally-recognized Indian tribe, or
- b. is eligible for membership in a federally-recognized Indian tribe and is the biological child/children of an enrolled member of an Indian tribe.

“ICW” means Indian Child Welfare program, a branch of the Tribe’s social services department.

“Neglected Minor” means a deprived child.

"Parent" includes a natural or adoptive Parent(s), or a Parent(s) established by law.

“Permanency Plan” means a written document that includes the specific steps needed to pursue the identified permanency goal for the child/children.

“Permanent Custody” means court-ordered Custody of an adjudicated deprived child/children whose parental rights have been terminated.

“Presenting Officer” means the attorney designated by Leadership to carry out the functions defined under this Code.

"Probable Cause" exists where the facts and circumstances within a judge's knowledge and of which he/she has reasonable trustworthy information are sufficient in themselves to warrant a person of reasonable caution to believe that the minor is a minor-in-need-of-care.

“Protective Custody” means custody of a child/children taken pursuant to this Code, without a court order.

“Sexual Abuse” includes but is not limited to rape, incest, or lewd or indecent acts or proposals, made to a child/children by any person.

“Shelter Care” means a residential facility which provides care and services for minor(s).

“Termination of Parental Rights” means the end of a legally-recognized parent-child relationship, which may be voluntary or involuntary.

“Tribal Law Enforcement” means the Miami Tribe of Oklahoma Police; or a police officer of a federally recognized tribe.

“Transfer Proceeding” means any proceeding to the court to grant, accept, or decline transfer of any child/children’s case from or to the courts of any Indian tribe or state authorized by tribal, federal, or state law.

1.4 SECTION 4: THE COURT SYSTEM

1.4.1

Establishment. There is hereby established for the Miami Tribe of Oklahoma the Miami Tribe of Oklahoma District Court Children's Court to hear and determine matters pursuant to this Code. The Children's Court shall consist of one Judge (Chief Judge) as appointed by the Tribal Business Committee.

1.4.2

Powers and Duties of Children's Court Judge. In carrying out duties and powers specifically enumerate under the Children's Code, the Judge of the court, who shall also serve as the District Court Judge, shall have all powers and duties as the Judge of the Miami Tribe of Oklahoma District Court Children's Court.

1.4.3

Cooperation and Grants. The court is authorized to cooperate fully with any Federal, State, Tribal, public or private agency in order to participate in any diversion, rehabilitation or training programs and to receive grants-in-aid to carry out the purposes of this Code (subject to the approval by the Tribal Council of expenditure of funds).

1.4.4

Social Services. The court shall utilize such social services as may be furnished by any Tribal, Federal, or State agency, PROVIDED that it is economically administered without unnecessary duplication and expense.

1.4.5

Contracts. The court may negotiate contracts with Tribal, Federal, or State agencies and Departments on behalf of the Tribal Business Committee for the care and placement of minors whose status is adjudicated under this Code, subject to the approval of the Tribal Council before expenditure of funds.

1.4.6

Transfer From State Courts. The Court may accept or decline state court transfers of child/children Custody Proceedings.

1.4.7

Disqualification. In the event that a Tribal Judge is unable to hear and determine a matter due to absence, illness, or conflict of interest, the Tribal Business Committee shall have authority to appoint a substitute Judge.

1.5 SECTION 5: THE INDIAN CHILD WELFARE WORKER

The Tribal Indian Child Welfare worker shall be an employee of the Miami Tribe of Oklahoma, Social Services Department and shall have the following authority and duties:

1.5.1

To accept referrals regarding minor(s) alleged to be in need of care.

1.5.2

To investigate the circumstances of a minor(s) alleged to be in need of care and to seek the assistance of Tribal Law Enforcement Officer's, if necessary.

1.5.3

To make such other investigations as ordered by the Children's Court or authorized by this court.

1.5.4

To develop case plans concerning any minor(s), if an investigation supports an administrative or judicial finding that the minor(s) is in need of care.

1.5.5

To make reports to the Children's Court and to provide information or referrals to recognized child welfare agencies having an interest or service role concerning a tribal child/children.

1.5.6

To maintain a confidential system of records, subject to disclosure to a non-party only upon order of the Children's Court.

1.5.7

Subject to the approval of the Tribal Business Committee, negotiate service agreements with other recognized child welfare agencies.

1.5.8

Pending a determination of the minor(s) status to prevent risk of immediate harm by or to the minor(s), take into emergency Custody and provide emergency placements.

1.6 SECTION 6: GUARDIAN AD LITEM

1.6.1

Appointment. The court, under any proceeding(s) authorized by this Code, may appoint, for the purposes of that proceeding(s), a Guardian Ad Litem (G.A.L.) for a minor(s), except where the Court finds that a Parent(s), Guardian(s), or Custodian(s), is willing and able to effectively represent the best interests of the minor(s).

1.6.2

Qualifications. The G.A.L. must be familiar with the rights of child/children and the provisions of this Code.

1.6.3

Duties. The G.A.L. shall, represent the minor(s) best interests in any proceeding required by the court and make recommendations to the court on disposition.

1.6.4

The court shall compensate the G.A.L. if fees are invoiced. The court may order one or more of the parties involved in the case to reimburse the court for the G.A.L. fees. If more than one party is deemed to be responsible for G.A.L. fees, the court shall determine to what extent each party is responsible and the time frame to reimburse the court for the G.A.L. fees.

1.7 SECTION 7: PRESENTING OFFICER

1.7.1

The Miami Tribe of Oklahoma Children's Court Presenting Officer position shall be filled by the tribe's attorney whom shall carry out the duties and responsibilities set forth in this Code.

1.7.2

The Presenting Officer's qualifications shall be the same as the qualifications for the official who acts as prosecutor for the adult tribal court.

1.7.3

The Presenting Officer shall represent the Miami Tribe of Oklahoma in all proceedings under this Code.

1.8 SECTION 8: PARTIES

1.8.1

In any proceeding(s) the following parties shall be entitled to participate:

- (a) the minor(s) and the appointed G.A.L. or other representative.
- (b) the minor(s) Parent(s), Custodian(s), or Guardian(s).
- (c) the Miami Tribe of Oklahoma District Court.
- (d) any other tribal government or non-tribal child welfare agency having an independent legal interest in the welfare of the minor(s).

1.8.2

A member of the extended family, upon a motion and determination by the Children's Court that the interests of the minor(s) will be best protected by allowing such participation may intervene in a proceeding under this Code.

1.8.3

Any party may be represented by counsel of his or her own choosing at the parties' own expense. The Miami Tribe District Court or Children's Court shall not be required to provide counsel for any party, except in situations where it is ordered by the court.

1.8.4

Any party or counsel appearing in a proceeding shall be permitted access to and inspection of court records, subject to such disclosure limitations as the court may provide.

1.9 SECTION 9: HEARINGS

1.9.1

Private and Closed. All hearings under this Code shall be separate from other proceedings and shall be private and closed to the public. Only the parties, their attorneys, witnesses, and other persons requested by the parties to appear and approved by the court may be present at the hearing.

1.9.2

Denial of Allegations. If the allegations are denied, the court shall hear the evidence and decide whether or not the allegations are proved.

1.9.3

Admission of Allegations. The court must find that an admission is voluntarily and knowingly given.

1.9.4

Standard of Proof. The standard of proof for a deprived or neglected minor(s) adjudicatory hearing shall be proof beyond a reasonable doubt.

1.9.5

Dismissal of Disposition. The court will dismiss the petition if the allegations are not established by the required standard of proof; the court will proceed to the disposition hearing if the allegations are established by a valid admission or by the required standard of proof.

1.10 **SECTION 10: INITIAL CONTACT – REFERRALS/COMPLAINTS**

1.10.1

Referrals. All information, complaints, notices, reports, oral referrals, and inquiries concerning a minor(s) alleged to be deprived/neglected, shall be forwarded or relayed to the Indian Child Welfare worker, who is designated contact person for receipt of such.

1.10.2

Complaint. A complaint may be filed **by a person who has knowledge (Tribe filings see Sec. 17)** of the facts alleged. The complainant shall sign the complaint. The complaint shall contain:

- (a) a citation to the specific statutory provisions of this Code which gives the Children's Court jurisdiction of the proceedings; and
- (b) name, age, address, and tribal affiliations of the minor(s) who is the subject of the complaint.
- (c) a plain and concise statement of the facts upon which the allegations are based, including the date, time and location at which the alleged events occurred or circumstances arose.

1.11 SECTION 11: TEMPORARY EMERGENCY CUSTODY

1.11.1

If it appears that the child/children is in immediate danger of physical or emotional harm, a minor(s) may be taken into Temporary Emergency Custody by the Indian Child Welfare worker or Tribal Law Enforcement if a petition for Temporary Emergency Custody is filed with the court and an order is issued by the Judge.

1.11.2

Temporary Emergency Custody Order. Upon a sworn written statement of facts showing that Probable Cause exists to believe that a minor(s) is a deprived or neglected minor(s), the Court may issue a Temporary Emergency Custody Order.

1.11.3

Search Warrant. The court may issue a warrant authorizing Tribal Law Enforcement, to search for a minor(s) if there is Probable Cause to believe that the minor(s) is within the court's jurisdiction and an emergency order has been issued for the alleged deprived or neglected minor(s).

1.11.4

Upon taking a minor(s) into Custody, the person(s) having Custody of the minor(s) shall make immediate and repeated efforts to notify the minor(s) Parent(s), Guardian(s), or Custodian(s) that the minor(s) is in Custody and of the pending hearing.

1.11.5

Within fourteen (14) days after taking a minor(s) into Custody, the minor(s) shall be presented to the Children's Court for a determination whether there is Probable Cause to believe that the minor(s) is neglected or deprived.

1.12 SECTION 12: SHELTER CARE OR FOSTER CARE

1.12.1

Upon a determination that there is Probable Cause to believe that the minor(s) is deprived or neglected, **or** upon a determination by the Indian Child Welfare worker that the minor(s) requires custodial care pending a Probable Cause hearing, a minor(s) may be placed in Shelter Care or Foster Care.

1.12.2

The Indian Child Welfare worker shall not place a minor(s) in Shelter Care or Foster Care unless a Petition is filed in accordance with Section 17 of this Code, **or** the Children's Court orders that a minor(s) is taken into Custody pursuant to Section 10 (Complaint is filed) of this Code.

1.12.3

If the minor(s) Parent(s), Guardian(s), or Custodian(s) has not been contacted, the Indian Child Welfare worker shall make immediate and recurring efforts to inform him or her that the minor(s) has been taken into Custody and shall release the minor(s) to the Parent(s), Guardian(s), or Custodian(s), unless Shelter Care or Foster Care is immediately necessary.

1.12.4

If a minor(s) is not released to his Parent(s), Guardian(s), or Custodian(s), the Indian Child Welfare worker shall place the minor(s) in Shelter Care or Foster Care, pending the preliminary inquiry.

1.12.5

If a minor(s) is not released to his Parent(s), Guardian(s) or Custodian(s), the Indian Child Welfare worker shall immediately explore alternative preadjudication custody arrangements and prepare recommendations for temporary care and Custody for presentation at the preliminary inquiry.

1.13 SECTION 13: BASIC RIGHTS

1.13.1

Deprived or Neglected Child; Right to an Attorney. In a deprived or neglected minor(s) proceeding, the Parent(s), Guardian(s), or Custodian(s) shall be informed of their rights to an attorney at their own expense.

1.13.2

Guardian Ad Litem (G.A.L.). The Court, at any stage of proceeding, may appoint a G.A.L. for a minor(s) who is a party, if the minor(s) has no Parent(s), Guardian(s), or Custodian(s) appearing on behalf of the minor(s) or if their interests conflict with those of the minor(s).

1.13.3

Hearings: Explanation of Rights at Preliminary Inquiry/First Appearance. When a minor(s) is alleged to be deprived or neglected, the Parent(s) shall be informed by the court of:

- (a) the allegations against him/her;
- (b) the right to an attorney (at own expense or through the Miami Tribe of Oklahoma District Court per this Code);
- (c) the right to testify and that statement made by him/her may be used against him/her;
- (d) the right to cross-examine witnesses;
- (e) the right to subpoena witnesses on his/her own behalf; and
- (f) the possible consequences if the allegations of the complaint are found to be true.

1.14 **SECTION 14: INVESTIGATION BY THE INDIAN CHILD WELFARE WORKER**

1.14.1

The Indian Child Welfare worker shall make an investigation prior to the preliminary inquiry/first appearance to determine whether the interests of the minor(s) and the public require that further action be taken. Upon the basis of this investigation, the Indian Child Welfare worker may:

- (a) recommend that no further action be taken; or
- (b) suggest to the minor(s), his/her Parent(s), Guardian(s), or Custodian(s) that they appear for an informal hearing pursuant to Section 16 of this Code; or
- (c) recommend that the Presenting Officer file a Petition pursuant to Section 17 of this Code in the Children's Court to initiate further proceedings. The Petition (i.e., Petition to Adjudicate the Minor(s) Deprived shall be filed at the preliminary inquiry if the minor is in Shelter Care or Foster Care. If the minor has been previously released to his Parent(s), Guardian(s), or Custodian(s), the Petition shall be filed within ten (10) days of the child's/children's return.

1.14 SECTION 14: PRELIMINARY INQUIRY

1.14.1

If a minor is placed in Shelter Care or Foster Care by the Indian Child Welfare Worker pursuant to Section 12 of this Code, the Children's Court shall conduct a preliminary inquiry within fourteen (14) days, for the purpose of determining:

(a) whether Probable Cause exists to believe the minor is a minor-deprived or neglected; and,

(b) whether continued Shelter Care or Foster Care is necessary pending further proceedings.

1.14.2

If a minor(s) has been released to his Parent(s), Guardian(s), or Custodian(s), the Children's Court shall conduct a preliminary inquiry within fourteen days (14) days after receipt of a Petition for the sole purpose of determining whether Probable Cause exists to believe the minor(s) is a Deprived or Neglected child/children.

1.14.3

Basic Rights. At the beginning of the preliminary inquiry the minor(s), the Parent(s), Guardian(s) or Custodian(s) shall be advised of their basic rights under Section 1.13.

1.14.4

Presence of Minor's Parent(s), Guardian(s), or Custodian(s). If the minor(s) Parent(s), Guardian(s), or Custodian(s) is not present at the preliminary inquiry, the court shall determine what efforts have been made to notify and to obtain the presence of the Parent(s), Guardian(s), or Custodian(s). If it appears that further efforts are likely to produce the Parent(s), Guardian(s), or Custodian(s), the court shall recess until the next scheduled court date and direct the Indian Child Welfare worker to make continued efforts to obtain the presence of a Parent(s), Guardian(s), or Custodian(s).

1.14.5

Criteria for Shelter Care or Foster Care. If a minor(s) is placed in Shelter Care, or Foster Care, the court shall conduct a preliminary inquiry within fourteen days (14) days for the purpose of determining if criteria for Shelter Care or Foster Care exist. Criteria for Shelter Care or Foster Care exists if the court finds:

(a) Probable Cause exists to believe the minor(s) is a Deprived or Neglected minor(s); and

(b) the minor(s) is suffering from an illness or injury, and no Parent(s), Guardian(s), or Custodian(s), or other person(s) is providing adequate care of him/her;

(c) the minor(s) is in immediate danger from his/her surroundings, and removal is necessary for his/her safety or well-being;

(d) the minor(s) will be subject to inquiry by others if not placed in the Custody of the court;

(e) the minor(s) has been abandoned by his/her Parent(s), Guardian(s), or Custodian(s); or

(f) no Parent(s), Guardian(s), Custodian(s) or other person is able or willing to provide adequate supervision and care for the minor(s).

1.15 SECTION 15: NOTICE

1.15.1

Notice of the preliminary inquiry shall be given to the Parent(s), Guardian(s), or Custodian(s) as soon as the time for inquiry has been established.

1.15.2

The Notice shall contain:

(a) the name of the Court;

(b) the title of the proceeding;

(c) a brief statement of the alleged circumstances upon which the minor(s)-in-need-of-care allegation is based; and

(d) the date, time, place and purpose of the preliminary inquiry.

1.15.3

The notice shall be delivered by a Tribal Law Enforcement Officer, or an appointee of the court.

1.16 SECTION 16: INFORMAL HEARING

1.16.1

The Indian Child Welfare worker may hold an informal conference with the minor(s) and the minor's Parent(s), Guardian(s), or Custodian(s) to discuss alternatives to the filing of the petition if:

- (a) the admitted facts bring the case within the jurisdiction of the Children's Court; and
- (b) an informal adjustment of the matter would be in the best interest of the minor(s) and the Miami Tribe District Court, and
- (c) the minor(s) and his/her Parent(s), Guardian(s), or Custodian(s), consent to an informal adjustment with knowledge that the consent is voluntary and revocable at will.

1.16.2

Notice of the informal hearing shall be given to the minor(s) and his/her Parent(s), Guardian(s), or Custodian(s) and their counsel, if applicable, as soon as the time for the hearing has been established. The Notice shall contain:

- (a) the name of the court; and
- (b) the title of the proceedings; and
- (c) a brief statement of the alleged circumstances upon which the minor(s)-in-need-of-care allegation is based; and
- (c) the date, time and place of the informal hearing.

1.16.3

The Notice shall be delivered by the Tribal Law Enforcement Officer or the Indian Child Welfare worker or a designee. If the notice cannot be delivered personally, the notice shall be delivered by registered mail.

1.16.4

No statement made during the informal hearing may be admitted into evidence at an adjudicatory hearing.

1.16.5

At the informal hearing, the Indian Child Welfare worker may refer the minor and the Parent, Guardian, or Custodian to a community agency for needed assistance or recommend that the Presenting Officer file a petition pursuant to Section 1.18 of this Code.

1.16.6

The Indian Child Welfare Worker shall set forth in writing the conclusions reached at the informal hearing and the disposition agreed to by the parties for remedying this situation, which shall be signed by the Parents and the child, if over 12 years of age.

1.16.7

Any informal adjustment period shall not exceed one (1) year.

1.17 SECTION 17: PETITION BY TRIBE

1.17.1

Proceedings under the Children's Code shall be instituted by a Petition filed by the Presenting Officer on behalf of the Miami Tribe District Court and in the interest of the minor(s). The petition shall state:

- (a) the name, birth date, tribal affiliations, and residence of the minor(s);
- (b) the names and residences of the minor's Parent(s), Guardian(s), or Custodian(s);
- (c) a citation to the specific provision of this Code which gives the Children's Court jurisdiction of the proceedings; and
- (d) if the minor(s) is in Shelter Care/Foster Care, the place of Shelter Care/Foster Care and the time he/she was taken into Custody.

1.17.2

Prospective adoptive Parent(s) are authorized to file an adoption petition upon completion of all pre-adoptive reports.

1.18 SECTION 18: PRE-HEARING PROCEDURE- NOTICE

1.18.1

Upon the filing of a Petition (Section 1.18) or Complaint (Section 1.10), the Court shall order Notice delivered or mailed to the parties enumerated in Section 1.8.1

1.18.2

The Notice shall contain the name, date of birth and current residence of the child/children, the name and address of the minor's Parent(s) and the circumstances upon which the complaint is based.

1.18.3

The notice shall be accompanied by a copy of the Petition.

1.18.4

The Notice shall contain the time, place, date, and purpose of the Hearing.

1.18.5

Notice may be delivered in person or by regular mail at a place calculated to give the person(s) notified reasonable time to respond. If by mail, the Notice shall be mailed no less than five (5) days before the Hearing. If delivered in person it shall be delivered no less than three (3) days before the Hearing.

1.19 SECTION 19: SUMMONS

1.19.1

Issuance. Where a Petition alleges violation of a tribal ordinance by a minor(s), the court shall cause a Summons to be issued to:

- (a) the minor(s);
- (b) the minor's Parent(s), Guardian(s), or Custodian(s); and
- (d) any person(s) the court believes necessary for the proper adjudication of the Hearing that is within the court's jurisdiction.

1.19.2

Answer. The Summons shall require the person to whom directed to appear before the Court at a specified date and time and require an answer to the allegations.

1.19.3

Petition. A copy of the Petition shall be attached to the Summons.

1.19.4

Service. The summons shall be delivered personally by a Tribal Law Enforcement Officer or appointee of the Court. If the summons cannot be delivered personally, the Court may deliver the Summons by registered mail. If the Summons cannot be delivered personally or by registered mail, the Summons may be by publication.

1.19.5

Time Limit. Summons shall be issued at least five (5) days before the specified appearance.

1.20 SECTION 20: ADJUDICATORY HEARING

1.20.1

An Adjudication Hearing shall be held at the next regularly scheduled court date following receipt of the Petition by the Court.

1.20.2

The Children's Court shall hear testimony concerning the circumstances, which give rise to the complaint.

1.20.3

If the allegations of the Petition are sustained by clear and convincing evidence, the Children's Court may find the minor(s) to be a Deprived or Neglected minor(s) and may proceed immediately to the Disposition Hearing. If any party requests, a Disposition Hearing may be scheduled at the next regularly scheduled court date.

1.20.4

A finding that a minor(s) is a Deprived or Neglected minor(s) constitutes a final order for purposes of appeal.

1.21 SECTION 21: PRE-DISPOSITION REPORT – CASE PLAN

1.21.1

No less than twenty-four (24) hours prior to a Disposition Hearing, the Indian Child Welfare worker shall file with the Court a pre-disposition report/Case Plan. The Case Plan shall, in detail, describe:

- (a) services that are appropriate and available from or through the Miami Tribe District Court and how such services have or have not been effective;
- (b) social history of the child/children;
- (c) a recommended plan of treatment, rehabilitation, and care that preserves the least restrictive environment appropriate for the child/children and is most likely to preserve and protect the child's/children's family unit;
- (d) care, service, or treatment providers under the plan; and
- (e) the needs of the child/children and how the objectives of the plan will meet those needs.

1.21.2

In the event that out-of-home placement of the child is recommended, the Case Plan shall contain, or be supplemented within thirty (30) days by a report containing the following:

- (a) services available through the Miami Tribe District Court for and provided in an effort to prevent the out of home placement;
- (b) services available through the Miami Tribe District Court to facilitate a return to the minor(s) home;
- (e) description of the minor(s) previous or planned future placements and how such placement has met or will meet the needs or facilitate the return home of the child/children;
- (f) assessment of the appropriateness of any out of home placement and the goals to be met by such placement; and

- (e) conditions upon which the minor(s) will be returned to the home including any changes in the conduct of the child/children or Parent(s) or in the conditions of the home.

1.22 SECTION 22: DISPOSITION HEARING

1.22.1

A Disposition Hearing may immediately follow the Adjudicatory Hearing or may be held at the next regularly scheduled court date, following the Adjudicatory Hearing. The court shall conduct the Hearing for the purpose of determining the proper disposition of the minor(s). The court shall enter a written judgment setting forth the findings, decision, and disposition.

1.22.2

The Disposition Order shall recite the following elements:

- (a) appearances at the Hearing;
- (b) disposition from among the alternatives provided by law; and
- (d) placement of the minor(s), except that the placement may be made after the Hearing and upon Notice to all parties, the location of the child/children shall be made a part of the record. The Court may limit disclosure of the minor(s) whereabouts if necessary to protect the minor(s).

1.22.3

In making disposition the Court may exercise jurisdiction over any adult within the Court's jurisdiction in aid of its orders.

1.23 SECTION 23: DISPOSITIONS

1.23.1

Deprived or Neglected. If a minor(s) has been adjudged a Deprived or Neglected Minor(s), the court may assume or assign legal Custody of the minor(s) and may make any of the following dispositions:

- (a) permit the minor(s) to remain with his/her Parent(s), Guardian(s), or Custodian(s), subject to such limitations and conditions as the Court may prescribe, which may include counseling, restitution, community service, treatment, or other conditions or conduct;

- (b) place the minor with an extended family member subject to such limitations and conditions as the Court may prescribe;
- (c) place the minor(s) in a Foster Home which has been licensed or approved by the Miami Tribe District Court, subject to such limitations and conditions as the Court may prescribe;
- (d) place the minor(s) in Shelter Care or Foster Care facilities designated by the Court;
- (e) transfer legal Custody to an agency (i.e., the Tribe's Indian Child Welfare worker) responsible for the care of a Deprived or Neglected Minor(s) or to an extended family member or other person who the Court finds to be qualified to receive and care for the child/children;
- (f) appoint a Guardian(s) for the minor(s) under supervision of the Court;
- (g) recommend that termination proceedings begin.
- (h) The Miami Tribe District Court and the Tribe's ICW officer shall maintain an active role in all guardianship cases.

1.23.2

Termination of Parental Rights. If parental rights to a child/children are terminated, the Court shall:

- (a) place the minor(s) with an extended family member which has been approved by the Miami Tribe District Court; or
- (b) place the minor(s) in a Foster Home or Shelter Care facility which has been approved by the Miami Tribe District Court; or
- (c) proceed to the adoption section of this Code.

1.23.3

Adoption. The preference of placement in adoption of a minor(s) shall be:

- (a) extended family member(s);
- (b) a member or person(s) eligible for membership in the Miami Tribe of Oklahoma;
- (c) a member of another Indian Tribe; and

(d) if this order or preference cannot be met, then placement may be made with any person who has knowledge of the child's/children's tribal affiliation and his/her special needs.

1.24 SECTION 24: MODIFICATION OF DISPOSITION ORDERS

A disposition order may be modified as to conditions or placement, or dismissed upon the following terms:

1.24.1

Modification. A party may file a Petition for Modification of an existing order in accordance with Section 18, which shall allege the reasons for the proposed change in conditions or placement under the existing order. If the Court finds that it is in the best interest of the child/children to make such modification, it shall enter orders accordingly.

1.25 SECTION 25: PARENTAL RIGHTS

1.25.1

Termination of Parental Rights. A Termination of Parental Rights Hearing shall be held at the next regularly scheduled court date following the filing of a Petition to terminate pursuant to Section 18 of this Code. The Court shall conduct the Hearing for the purpose of determining whether parental rights should be terminated based upon a showing of:

- (a) abandonment of the child/children;
- (b) willful and repeated risk to the child/children of death, disfigurement, or impairment of bodily functions;
- (c) willful and repeated acts of Sexual Abuse;
- (d) relinquishment of parental rights acknowledged before the Court; or
- (e) failure to correct the conditions that led to court ordered out of home placement.

1.25.2

Pre-Termination of Parental Rights. If the Court determines that grounds for termination are proven beyond a reasonable doubt, it shall order a Disposition Hearing pursuant to Section 23. The Indian Child Welfare worker shall prepare and present a written report to the Court, at least

three (3) days before the Disposition Hearing. The report shall contain the opinions of all professionals consulted and their recommendations to the Court.

1.25.3

Relinquishment. Parental rights may be relinquished by a Parent in writing, if signed by the Parent in the presence and with approval of the Children's Court. Relinquishment shall not be accepted or acknowledged by the court prior to ten (10) days after birth of the child/children.

1.26 SECTION 26: ADOPTION

1.26.1

Consent Not Required. Written consent to an adoption is not required if:

- (a) the Parent(s) has abandoned his or her child/children;
- (b) the Parent(s) rights have been terminated;
- (c) the Parent(s) has relinquished his or her Parental rights; or
- (d) the Parent(s) has been declared incompetent.

1.26.2

Consent Required. Except as provided above, written consent to an adoption is required of:

- (a) the biological or adoptive mother; or
- (b) the biological, adoptive, or acknowledged father; or
- (c) the Custodian(s), if empowered to consent; or
- (d) the court, if the Custodian(s) is not empowered to consent; and
- (d) the minor(s), if he/she is over twelve (12) years of age.

1.26.3

Execution of Consent to Adopt. Written consent to an adoption shall be executed in writing and acknowledged in person before the court. Consent shall not be accepted or acknowledged by the court prior to ten (10) days after birth of a child/children.

1.26.4

Withdrawal of Consent to Adopt. Written consent to an adoption cannot be withdrawn after the entry of an Order of adoption. Upon a showing at a Hearing before the Court that the consent was obtained by fraud, duress, or coercion, consent may be withdrawn prior to the final Order of Adoption.

1.26.5

Pre-Petition Report on Prospective Adoptive Parent. Within thirty (30) days of an Application for Adoption, the Indian Child Welfare worker or Guardian Ad Litem shall investigate the prospective Parent(s) and file a written report with the Court with recommendations for or against placement with the applicant.

1.26.6

Pre-Petition Report on Minor. Within thirty (30) days of a court ordered investigation of a minor(s) to be adopted, the Indian Child Welfare worker or Guardian Ad Litem shall file a written report with the Court.

1.26.7

Adoption Hearing. An adoption Hearing shall be held within sixty (60) days of receipt of an Application for Adoption from the prospective Parent(s). The court shall conduct the Hearing to determine if it is in the best interest of the minor(s) to be placed with the applicants. In determining the best interest of the minor(s), the Court shall examine:

- (a) validity of written consent;
- (b) termination of parental rights order;
- (c) length of time of the minor(s) ward ship by the court;
- (d) special conditions of the minor(s);
- (e) Parent communication with the minor(s);
- (f) minor(s) consent to adoption, if the minor(s) is over twelve (12) years of age;
- (g) pre-petition reports; and
- (g) order of preference of placement.

1.26.8

Conditional, Defeasible, or Postponed Adoption. An adoption may be ordered by the Children's Court upon conditions that are reasonable and calculated to preserve the minor(s) tribal relationship. Such orders may include visitation rights, retained supervision or postponing final adoption orders pending proof of good faith in compliance with conditions established by the Court.

If it appears to be in the child's/children's best interest, the Court may postpone confirmation of the adoption for a period up to two (2) years to determine whether reasonable and necessary conditions for the welfare of the minor(s) are being met. If such conditions are met, the Court may then confirm the adoption without further hearing. If such conditions have not been met, the Court may issue an Order to show cause why the adoption should not be vacated, and may extend the period of supervision. Unless previously vacated by Order of the Court, an adoption shall be confirmed by the death of either natural Parent(s) or adoptive Parent(s), or by the death or attainment of eighteen years of age of the adopted child/children.

1.27 SECTION 27: FOREIGN PROCEEDINGS

1.27.1

Receipt of Notice. The Tribal Agent for service of Notice of state court Child Custody proceedings, as defined by the Indian Child Welfare Act, shall be the Indian Child Welfare worker.

1.27.2

Open File and Investigation. The Indian Child Welfare worker shall open a case file, conduct an investigation, and continue to monitor all cases in which the Miami Tribe District Court receives Notice of a foreign proceedings.

1.27.3

Intervention. ICW shall determine whether or not to intervene in a foreign proceeding. Intervention shall occur through filing an Entry of Appearance and Motion to Intervene in the foreign proceeding by ICW or the Miami Tribe's Attorney.

1.27.4

Intervention in State Court Proceedings. The Miami Tribe may intervene in State Court Child Custody proceedings, as defined by the Indian Child Welfare Act, at any point in the proceedings.

1.27.5

Petition for Transfer. The tribal Petition for Transfer shall be filed by the ICW or the Presenting Officer.

1.27.6

Petition to Accept Transfer. A Petition to Accept Transfer and Order shall be filed by the Presenting Officer once the foreign court approves transfer of jurisdiction to the Miami Tribe of Oklahoma Tribal Court.

1.27.7

Minors In Need of Care Application and Adjudicatory Hearing. Upon receipt of transfer of jurisdiction from State Court, the Indian Child Welfare worker shall file a Minor(s)-In-Need-of-Care Application. An Adjudicatory Hearing shall be held at the next regularly scheduled court date.

1.28 SECTION 28: RECORDS

1.28.1

Records of the Miami Tribe and Miami Tribe District Court concerning a minor(s) under the Code shall be confidential.

1.28.2

In any proceeding requiring action or consideration of the Tribal Council, any meeting, action, or record shall require such measures as will preserve the confidentiality of the matter, including but not limited to executive session, identification of persons by initials, and limitation of participants and advisers.