

CHAPTER 3 – FAMILY LAW AND CHILD WELFARE	
3.1	FAMILY CODE 1
3.1.1	General Provisions
3.1.2	Miscellaneous Provisions
3.2	FAMILY CODE RULES OF PROCEDURE..... 9
3.2.1	Commencement
3.2.2	Summons
3.2.3	Service of Process
3.2.4	Service by Publication
3.2.5	Waiver of Service
3.2.6	Requests to Transfer to the Traditional Peacemaking Court
3.2.7	Requests for Assistance from the Traditional Peacemaking Court
3.2.8	Subpoena
3.2.9	Discovery
3.2.10	Default and Judgment
3.2.11	Motions
3.2.12	Conferences and Scheduling
3.2.13	Intervention
3.2.14	Contempt Proceedings
3.2.15	Attorney Fees
3.2.16	Appeals
3.2.17	Court Rules
3.3	CHILD WELFARE OFFICE 14
3.3.1	Establishment
3.3.2	Duties
3.3.3	Other Tribal Resources
3.4	CHILD WELFARE PROCEEDINGS..... 15
3.4.1	Child in Need of Protection or Services
3.4.2	ICWA Policy
3.4.3	Transfer of Jurisdiction
3.4.4	Taking a Child into Custody
3.4.5	Emergency Hearing
3.4.6	Petition
3.4.7	Initial Hearing
3.4.8	Fact Finding Hearing
3.4.9	Disposition
3.4.10	Court reports
3.4.11	Review Hearing
3.4.12	Change of Placement
3.4.13	Two Year Hearing
3.4.14	Closed Hearings
3.4.15	Costs of Support
3.5	TERMINATION OF PARENTAL RIGHTS 21
3.5.1	Voluntary Termination of Parental Rights
3.5.2	Grounds for Involuntary Termination

3.5.3	Petition for Involuntary Termination	
3.5.4	Hearing	
3.5.5	Investigation	
3.5.6	Disposition	
3.5.7	Effect of Termination	
3.6	CHANGE OF NAME	23
3.6.1	General Provisions	
3.7	MARRIAGE	24
3.7.1	Marriages Recognizable	
3.7.2	Rights of Married Persons	
3.7.3	Property Rights; Presumption of Community Property; Child’s Interest in Property; Best Interests of the Child in Case of Divorce or Separation; Child’s Property	
3.7.4	Divorce; Grounds	
3.7.5	Annulment; Separation; Grounds	
3.7.6	Petitions; Contents	
3.7.7	Proceedings; Temporary Relief During Pendency of the Proceedings; Modification of Orders; Continuing Jurisdiction	
3.8	CHILD CUSTODY	27
3.8.1	Change of Custody by Consent	
3.8.2	Petition in Contested Proceeding	
3.8.3	Investigation	
3.8.4	Initial Hearing	
3.8.5	Disposition	
3.8.6	Best Interests; Standards for Determining Custody	
3.8.7	Determination of Child Support	
3.8.8	Standard When Contest is Between Parent and Non-Parent	
3.8.9	Special Conditions for Non-Community Custodian	
3.8.10	Modification	
3.9	PATERNITY	30
3.9.1	Acknowledgment of Paternity	
3.9.2	Petition to Determine Paternity	
3.9.3	Initial Hearing	
3.9.4	Blood Tests	
3.9.5	Fact Finding Hearing	
3.9.6	Judgment	
3.9.7	Limitations	
3.10	TRADITIONAL ADOPTION	32
3.10.1	Traditional Adoption	
3.10.2	Sealing of Records	
3.10.3	Petition Deemed Request for Declaratory Judgment Agreement by Parties Required; Decree of Traditional Adoption	
3.10.4	Violation of Conditions	
3.10.5	Court Shall Consider Best Interests	
3.10.6	Level of Proof Required	

3.10.7	Rules of Evidence	
3.10.8	Adjudication Not Required for Effectiveness	
3.11	ADOPTIONS	34
3.11.1	Petition	
3.11.2	Consent	
3.11.3	Home Study and Report	
3.11.4	Documentation to be Filed	
3.11.5	Fact Finding Hearing	
3.11.6	Disposition	
3.11.7	Special Conditions for Non-Member Petitioner	
3.11.8	Effect of Adoption	
3.11.9	Certificates	
3.12	FOSTER HOME LICENSING	36
3.12.1	Application for License	

**CHAPTER 3
FAMILY LAW AND CHILD WELFARE**

3.1 FAMILY CODE

3.1.1 GENERAL PROVISIONS.

A. Purposes. The Family Code shall be construed to affect the following legislative intent:

- (1) To exercise the broadest possible jurisdiction over children and families and over all tribal affairs and territory;
- (2) To strengthen the Chippewa Family and to preserve and protect the children of this Chippewa Community;
- (3) To instill in youth, in members of this Community, and in families of this Community a sense of value of self and an understanding of the history, values, and purposes of the Chippewa Tribe and of every member thereof,
- (4) To maintain the peace of this Community; and
- (5) To strengthen, rejuvenate, and maintain Chippewa law, traditions, customs, and to create and preserve the Chippewa way, differences with other cultures notwithstanding.

B. Definitions:

- (1) “Abused Child” means a child:
 - (a) Who has been physically, emotionally, or psychologically harmed by the parent, Indian custodian, or custodian;
 - (b) Who has been sexually abused or exploited by the parent, custodian, or Indian custodian;
 - (c) Whose parent, Indian custodian, or custodian has knowingly, intentionally, or negligently placed the child in a situation that may endanger the life or health of the child; or
 - (d) Whose parent has knowingly, intentionally, or negligently tortured, cruelly confined, or cruelly punished.
- (2) “Adult” means an individual who is eighteen (18) years of age or older.
- (3) “Child” means an individual who is less than eighteen (18) years of age or because of a physical or mental disability is not capable of supporting her/himself. The singular shall stand for the plural when more than one child is involved.

- (4) “Community” means the Sokaogon Chippewa Community, Mole Lake Band of the Lake Superior Indians unless otherwise indicated.
- (5) “Community Child” means a child who is either:
 - (a) An enrolled member of the Community; or
 - (b) Eligible for enrollment in the Community in his or her own right.
- (6) “Court” means the Sokaogon Chippewa Tribal Court.
- (7) “Custodian” means a person, other than a parent or guardian who exercises physical control, care, or custody of the child including a baby-sitter, employee of a residential facility or social worker, or any person providing out-of-home care.
- (8) “Domestic Abuse or Domestic Violence” means physical harm, bodily injury, assault, or the infliction of fear of imminent harm, bodily injury or assault, between family or household members; sexual assault of one family or household member by another, or stalking of one family member or household member for purposes of this definition by another family or household member. Family or household member means spouses, former spouses, persons who have a child in common regardless of whether they have been married or have lived together at any time, adult persons related by blood or marriage, adult persons who are presently residing together, or who have resided together in the past, persons sixteen (16) years of age or older who are presently residing together or who have resided together in the past and who have or have had a dating relationship, and persons who have a biological or legal parent-child relationship, including step-parents and step-children and grandparents and grandchildren.
- (9) “Domicile” in terms of Community culture and tradition means that relationship, a spiritual relationship, developed with a particular place and from having ancestral ties from at least one parent with a particular tribe, community or band of Indians, or having resided with a member, family or group of members thereof on or off the reservation for any period of time. Such relationship is irrevocable and permanently binds one to that community, tribe or reservation, and shall be acknowledged by this Code and by the laws of the Sokaogon Chippewa Community as a permanent attachment thereto, such that jurisdiction of the Community shall always be present when a member of the Community is involved in the dispute.
- (10) “Family” or “Family member” means the siblings of the child, biological and/or step-parents, grandparents, siblings of each parent and grandparent of the child, and all cousins of the first degree. If traditional adoption has occurred, then this term also includes all those as indicated above of the biological family, and those, as described above, of the adoptive family as well.

- (11) “Grandparent(s)” means the parents or step-parents of the child’s parents.
- (12) “Guardian” means the person having the duty and authority of guardianship as determined by a court of competent Court.
- (13) “Guardian ad Litem” means a person appointed by the Court to represent the interests of a child or an incompetent to a particular Court proceeding.
- (14) “Guardianship” means the duty and authority of legal and physical custody.
- (15) “ICWA” or “Indian Child Welfare Act” means 25 U.S.C.A § 1901 et seq. the Indian Child Welfare Act of 1978.
- (16) “Indian” means any person who is a member of an Indian tribe or who is an Alaska native and member of a Regional Corporation as defined in § 1606 of Title 43 of the United States Code.
- (17) “Indian Custodian” means those Indian persons who have been authorized by the parents to exercise the same rights and responsibilities, except financial responsibilities, to the child as the parents pursuant to Chippewa common law.
- (18) “Interested Party” means any person who with respect to a child is the child’s parent whose rights have not been terminated, a family member, a guardian, a legal custodian, a physical custodian, the nearest relative of a deceased or absent parent whose rights have not been terminated, and any person who is an Indian custodian as defined in the Indian Child Welfare Act and as defined in this Chapter. Interested party shall also include the child who is the subject of proceedings if such child is over twelve (12) years of age. With respect to a child born out of wedlock, interested party includes a person who has acknowledged paternity pursuant to this Code, or has been adjudicated to be the child’s father.
- (19) “Joint Custody” means that both parties have equal right and responsibilities toward the child and neither party’s rights are superior.
- (20) “Legal Custody” means the right and responsibility to make major decisions concerning the child.
- (21) “Major Decisions” includes, but is not limited to, decisions regarding consent to marry, consent to enter military service, consent to obtain a motor vehicle operator’s license, authorization for non-emergency health care and choice of school and religion.
- (22) “Neglected Child” means a child who:
 - (a) Has been abandoned by the parent with a designated custodian without provision in circumstances that cause the child’s health or well-being to be at risk of harm;

- (b) Has been left for long term care and without proper care or supervision;
 - (c) Has been without proper parental care or control necessary for the well-being of the child because of the faults, habits, or the refusal or failure of the parent to provide them when able to do so for reasons other than poverty;
 - (d) Has been physically or sexually abused, and the parent, guardian, designated custodian or Indian custodian knew, or reasonably should have known, of the abuse and failed to take reasonable steps to protect the child;
 - (e) Has parents, guardians, custodian or Indian custodian who are unable to care for the child due to infirmity and whose family or We-ehs are unable to take on the responsibilities of that care;
 - (f) Has parents that have knowingly, intentionally, or negligently allowed the child to witness or otherwise be affected by incidents of domestic abuse or violent crime.
- (23) “Order of Protection” means a Court order granted for the protection of victims of domestic abuse.
- (24) “Parent Child Relationship.” The relationship of parent-child is established by:
- (a) The mother giving birth to the child;
 - (b) The father:
 - (1) By being married to the mother of the child at the time of the child’s birth;
 - (2) By signing an acknowledgement of parentage; or
 - (3) By petitioning the Court to establish paternity under the terms of this Code.
 - (c) By adoption.
- (25) “Parent(s)” means a person who has a legal parent and child relationship with a child which includes both natural, adoptive parents, or traditional parents.
- (26) “Physical Custody” means the right to have a child physically reside, even temporarily or periodically, with that party and the right and responsibility to make routine daily decisions regarding the child’s care, consistent with major decisions made by a person(s) having legal custody.

- (27) “Protective Supervision” means a legal status created by Court order under which a child is permitted to remain in his or her home or with others as determined by the Court under conditions which are monitored or supervised by the Child Welfare Office, other social worker, or other authority as approved by the Court.
- (28) “Reservation” means all areas within all exterior boundaries of the Mole Lake Reservation and all lands held by the Community.
- (29) “Sole Legal Custody” means the custody of an unwed mother or if awarded by the Court, the conditions under which a person has legal custody.
- (30) “Traditional Parents” or “Secondary Parents” means all grandparents, other family members, and We-ehs.
- (31) “Victim” means any person who is injured or suffers damage of any kind by an act that is the subject of a complaint or referral to law enforcement officers, to a social worker, juvenile probation authorities, or to tribal officials.
- (32) “We-eh” is defined most closely in English terms and cultural concepts as “god-parent”. However, “We-eh” entails more responsibilities of parenthood pursuant to traditional Chippewa law which confers upon the We-eh all the rights and responsibilities of parenthood should the biological parents and grandparents, for any reason, fail to carry out their parental responsibilities over the physical, spiritual, emotional, and psychological well-being of the child.

C. Subject Matter Jurisdiction. The Court has jurisdiction in all proceedings governed by the Sokaogon Chippewa Community Family Code.

D. Personal Jurisdiction. The Court has jurisdiction over the following persons;

- (1) Members of the Community;
- (2) Persons who are eligible to become members of the Community;
- (3) Indians, as defined in § 3.1.1.B.16 above;
- (4) Children of members of the Community or other Indians, § 3.1.1.B.16 above including adopted Children;
- (5) Children and adults residing within the exterior boundaries of the reservation, for whatever reason, as long as in the case of children the parents, guardian, Indian custodian or custodian have consented to the jurisdiction of the Court. Once jurisdiction is asserted, consent cannot be revoked;
- (6) Incompetent persons residing or domiciled within the exterior boundaries of the reservation;

- (7) Extended Family Jurisdiction. Where the Court asserts jurisdiction over a person under this Code, the Court shall also have jurisdiction over the person's extended family whenever the Court deems appropriate;
- (8) Contacts Jurisdiction. Any person, whether or not a member of the Community, who in person or through an agent, has done any of the acts enumerated in this subsection thereby conclusively submits himself or herself or his or her agent or personal representative to the jurisdiction of the Court as to any cause of action arising from:
 - (a) Transaction of any business on the reservation;
 - (b) Operation of a motor vehicle within the reservation;
 - (c) The commission of a tortuous act on the reservation;
 - (d) Any act of child neglect, child abuse or domestic abuse within the reservation;
 - (e) Consents to the jurisdiction of the Court; and
 - (f) With respect to non-member divorce, annulment, legal separation, separate maintenance, child support or child custody or guardianship, is a member of a family or household as defined in § B.9 above as to all obligations of alimony, child support, visitation matters, and property settlements.
- E. Jurisdiction of the Court shall be liberally construed in favor of the Court's jurisdiction and is based upon inherent sovereignty of the people of this Community. This Community has the right to make its own laws and be governed by them.

3.1.2 Miscellaneous Provisions

- A. Traditional Chippewa Law: Common Law. Traditional Chippewa tribal law, wherever and insofar as possible, shall be the common law of the land. Traditional law shall be codified wherever and insofar as possible and the provisions thereof which are not codified shall be applied as the common law of the land. In cases of dispute, expert witnesses may be requested or summoned by the Court for clarification.
- B. Grandparent Visitation. Nothing in this act or other law shall be construed to suspend, modify, or otherwise interfere with the rights of the Grandparents to visit and contact a minor child unless those rights have been either terminated or specifically adjudicated by the Court and orders and judgments have been rendered by the Court thereon.
- C. Child Custody - Generally.

- (1) Custody under Chippewa law and tradition is spiritual and cannot be terminated except as indicated by the laws of the Sokaogon Chippewa Community, Mole Lake Band of Lake Superior Indians.
- (2) Pursuant to the dictates of Chippewa law and tradition, this term includes all rights of guardianship and custody and constitutes a relationship between the child and the child's parents, family members, We-ehs, and the Community. Unwed fathers have no standing for physical child custody unless paternity has been established. However, the child's blood quantum shall be measured by the actual father and mother regardless of the father's acknowledgement or establishment of paternity or rights to legal custody.
- (3) Voluntary temporary transfers of custody have been long recognized by the Chippewa Community and are, therefore, well established as traditionally acceptable parenting. A voluntary temporary transfer of partial rights of custody by a parent, guardian or Indian custodian shall not alienate or modify the parent's, guardian(s) or Indian custodian's ultimate and inherent right to regain full custody of the child immediately upon demand unless a traditional adoption has occurred or unless the parental rights have been terminated or unless otherwise ordered by the Court or other Court of competent jurisdiction.

D. Judgments of Other Courts. Judgments from other courts shall be given full faith and credit by the Court as follows:

- (1) Generally. Only if the other Court recognizes and gives full faith and credit to orders from this Court.
- (2) Custody Orders. Judgments of other Courts regarding the custody of children if demonstrated the parents or parties were afforded due process, including adequate notice of the proceedings and an opportunity to be heard. The party opposing enforcement has the burden of proof to establish that the parents or parties were not afforded due process.

E. Order of Protection. Any Order of Protection for domestic abuse issued by the court of a State or Indian Tribe shall be accorded full faith and credit by the Court if consistent with the following:

- (1) With regard to an Order of Protection:
 - (a) Such court has jurisdiction over the parties and matter under the laws of such State or Indian Tribe; and
 - (b) Reasonable notice and opportunity to be heard is given to the person against whom the order is sought sufficient to protect that person's right to due process. In the case of ex parte orders, notice and an opportunity to be heard must be provided within the time required by State or Tribal law,

and in any event within a reasonable time after the order is issued, sufficient to protect the respondent's due process rights.

(2) With regard to a Cross or Counter Petition:

(a) An Order of Protection order issued by a State or Tribal Court against one who has petitioned, filed a complaint, or otherwise filed a written pleading for protection against abuse by a spouse or intimate partner, is not entitled to full faith and credit if:

(1) No Cross or Counter Petition, complaint, or other written pleadings was filed seeking such a protection order; or

(2) A Cross or Counter Petition has been filed and the Court did not make specific findings that each party was entitled to such an order.

F. Child Abuse and Neglect Reporting. The provisions of Wis. Stat. § 48.981 regarding the reporting and investigation of child abuse and neglect are hereby adopted except for the provisions contained therein relating to the central registry. The Child Welfare Office is the department responsible for carrying out the Community's duties under this section and is acting as the County Department or other licensing agency.

G. Records. Records kept by the Court and the Child Welfare Office relating to proceedings governed by this Code, except for Court records of proceedings conducted pursuant to S.C.C.C § 3.4 shall be confidential and the information contained therein shall not be disclosed to non-parties unless authorized by this Code and is necessary to carry out duties imposed by this Code, or authorized by written order of the Court.

H. State Records. Whenever an order of the Court may affect records kept by a state or subdivision thereof, such as a birth certificate, the Clerk of Court shall transmit a certified copy of the Court order and shall attempt to ensure that the state or local record is changed accordingly.

I. Cooperation with State and County. The Court and the Child Welfare Office are hereby authorized to negotiate agreements with the state and any county thereof to assist in and facilitate the carrying out of the provisions of this Code. Any such agreement shall require the approval of the Tribal Council by resolution before becoming effective.

J. Fees.

(1) Any person other than the Child Welfare Office who files a petition pursuant to the provisions of this Code shall pay a filing fee of \$20.00 to the Clerk of Court at the time of filing thereof.

(2) Any person other than the Child Welfare Office who obtains an order or judgment in his or her favor under the provisions of this Code shall pay a docketing fee of

\$10.00 at the time of entry of the order or judgment. This provision does not apply to an order dismissing a petition.

- (3) The cost of obtaining a certified copy of any document filed with the Court shall be \$2.00 per document.
 - (4) If the Court has appointed a Guardian ad Litem for any child or incompetent in any proceeding under this Chapter, the Court may assess the fees therefore against any party to the proceeding except the Child Welfare Office, provided that party has the ability to pay. The Court may apportion the fees among the parties in such manner as the Court deems equitable.
 - (5) The Clerk of Court shall charge a fee for processing any support payments ordered pursuant to this Code of 2% of the amount of support paid. The Clerk of Court shall deduct that amount from each support payment before that payment is disbursed.
- K. Sovereign Immunity Preserved. Nothing in this Code shall be construed to constitute a waiver of the sovereign immunity of the Community in any suit for money damages or other relief against the Community, its officials, or its employees in connection with any matter or from carrying out the duties and responsibilities arising therefrom.
- L. Severability. If any Court of competent jurisdiction finds any section of this Code illegal, said section is severable, and that which remains is capable of separate enforcement.
- M. Repealer. The Juvenile Code, formerly Chapter VI of the Tribal Court Code, is hereby repealed. All other provisions of the tribal law inconsistent with this Code are hereby repealed to the extent it is inconsistent with this Code.

3.2 FAMILY CODE RULES OF PROCEDURE

3.2.1 Commencement. A civil action begins by filing a complaint or petition with the Court and paying any required fees. Return of Service must be filed with the Court within one-hundred and twenty (120) days of filing or the Court may dismiss the matter.

3.2.2 Summons.

- A. Summons Issued. Upon the filing of a complaint or petition, the Court Clerk or other as the Court directs shall issue a summons and deliver it to the plaintiff or petitioner for service pursuant to 3.2.1 (C). Any defendant or respondent may waive the issuance or service of the summons.
- B. Form. The Court shall approve a form for summons which shall contain the following information:
 - (1) The name of the Court and the name of the sovereign;

- (2) The docket number of the case;
- (3) The name of the first party on each side with an indication of the other parties;
- (4) A direction that the defendant or respondent respond to the summons within thirty (30) days or within the time prescribed by law from the date of service; that response must be in writing to the Court with a copy serviced upon each party of record and that a default judgment may be entered against the defendant or respondent if they do not respond within the prescribed time;
- (5) The name and address of the petitioner or plaintiff, or the attorney representing the petitioner or plaintiff, or the name and address of the tribal department causing the complaint or petition to be filed.

3.2.3 Service of Process. Service of process is the manner in which a party is notified of a petition, a complaint or a motion and the time required to answer. Service may be made by personal service or by U.S. Mail service as provided below. After the initial service, written communication may be by U.S. Mail at the addresses provided to the Court. All parties have an affirmative duty to inform the court of a change in address within ten (10) days of such change.

- A. **Personal Service.** A copy of the document(s) together with a summons, if required, shall be personally served on each defendant or respondent or to a person who is over the age of fourteen (14) and resides at the residence of the defendant or respondent. If the defendant or respondent is found and refuses to accept service, service may be accomplished by leaving a copy of the summons at the place where the defendant or respondent was found. If the defendant or respondent cannot be found at the usual place of residence, then a copy may be posted in the most public part of the premises.
- B. **Service by U.S. Mail.** Service may also be accomplished by mailing certified mail return receipt requested a copy of the document(s) together with a summons, if required, to the defendant or respondent..
- C. **Service upon Minors.** If the defendant or respondent is a minor, service shall be made upon the parent, Indian custodian, guardian, or custodian of the minor.
- D. A return of service shall be filed in the Court record to show how and when service was accomplished.

3.2.4 Service by Publication. Service may be accomplished by publication only upon Court approval if the action does not require personal service by law and/or if the defendant or the respondent is so situated that process cannot be personally served upon him or her within the territorial jurisdiction of the Court, or in situations where the party to be served has deliberately avoided service of process or whose whereabouts cannot be ascertained after good faith search.

- A. Form. Service by Publication shall be in the following manner: Notice shall contain the name of the petitioner or plaintiff, if any, and the name of the party to whom constructive notice is given by publication, the notice shall also contain the name of the Court in which the cause is pending and a statement of the general object of the action, shall show the name and address of the petitioner's attorney, if any, and shall state that the defendant or respondent must respond by filing a responsive pleading within the time required and if s/he does not respond, judgment or other appropriate relief will be rendered in said cause against the defendant or respondent.

3.2.5 Waiver of Service. Waiver of Service may be accepted by the Court if the person to whom the summons is directed provides a written acceptance of service, or if the person voluntarily appears at the hearing. If the respondent is a child, then the legal representative or parent Indian custodian, guardian, or custodian may waive service of the summons with the consent of the child or as otherwise directed by the Court.

3.2.6 Requests to Transfer to the Traditional Peacemaking Court. Whenever a party or parties have a right to be heard by the Traditional Peacemaking Court, a party may request a transfer to appear before the Traditional Peacemaking Court. All parties must voluntarily consent to appear before the Traditional Peacemaking Court and be bound by its decision.

3.2.7 Requests for Assistance from the Traditional Peacemaking Court. Upon motion of the Court or the party the Court may request assistance of the Peacemaking Court on matters relating to custom and tradition of the Sokaogon Chippewa.

3.2.8 Subpoena. The Clerk of the Court may, under the seal of the Court, issue subpoenas with the name of the parties on forms approved by the Court or in blank to a party requesting it. Subpoenas may be issued to compel attendance at depositions or for the purpose of production of documents or other evidence or for attendance of witnesses with or without documentary evidence at any hearing. Failure to obey a subpoena is punishable by contempt of Court.

3.2.9 Discovery. Unless otherwise ordered by the Court, any party may request discovery from any other party including oral questions, written questions, admissions, and requests for production of documents and inspections to obtain information which is relevant or which may lead to relevant information to the proceedings pending before the Court.

A. A party receiving a request for discovery must produce the answers or documents or respond to the request within thirty (30) days of the date of the mailing of the request.

B. If a party refuses or otherwise willfully or negligently fails to comply with any reasonable discovery request, the Court may, upon written request, conduct a hearing to determine whether the request is reasonable and whether the failure to comply with the request is justified. If the Court determines that such request is reasonable and that the failure to comply is unjustified, then the Court may, in its discretion:

- (1) Order the non-complying party to comply fully within a reasonable time;
- (2) Order that the matters which the requesting party inquired into have been proven;
- (3) Order that the disobedient party not be allowed to present evidence on the issue being inquired into;
- (4) Order that the pleadings or any part of the pleadings be stricken from the Court record;
- (5) Order the disobedient party and/or his or her attorney to pay the reasonable expenses incurred by the requesting party for the purposes of having to obtain Court orders to enforce the reasonable request;
- (6) In addition to any of the foregoing, hold the disobedient party in contempt for failure to comply; or
- (7) Impose any other sanctions, which the Court deems just and proper under the circumstances.

3.2.10 Default Judgment. A default judgment may be entered against a party who fails to respond or answer if the party was properly served in accordance with these rules or if a party fails to appear for a hearing, conference or trial for which he/she received proper notice. A default judgment shall not be set aside except upon a showing of good cause.

3.2.11 Motions. Motions may be filed by a party any time after the first pleading has been filed. A copy of all motions shall be served upon the other parties at least five (5) calendar days before the court date for a hearing on the motion. A response to a motion must be filed and served at least one (1) day before the hearing.

3.2.12 Conferences and Scheduling. The Court may hold a scheduling conference, issue a scheduling order and/or hold a pre-trial conference in its discretion. The purpose of which is within the discretion of the Court and may include fostering a resolution without trial, scheduling discovery, scheduling motions and hearings to expedite the action, to formulate a plan for the trial, identify witnesses to be called, evidence to be presented, handle unresolved factual and legal issues, and discussion of any other matters among the parties. A party may be sanctioned for failing to attend a conference if served with proper notice of the conference.

3.2.13 Intervention.

- A. Intervention as of Right shall be permitted by the Court if requested by any parent, family member, grandparent, or We-eh of any child who is the subject of any pending case before the Court.
- B. Discretionary Intervention may be permitted by the Court if requested by any person including unwed fathers if it is shown to the Court by clear and convincing evidence at a

hearing that the prospective intervener has a significant interest in the matter before the Court in the child and/or family involved.

3.2.14 Contempt Proceedings.

- A. The Court may punish any person subject to the court's jurisdiction for contempt of its authority including:
 - (1) Disobedience or resistance to any lawful order, rule, process, decree, or other command of the Court;
 - (2) Misbehavior in the presence of the Court or within proximity to the court so as to obstruct in any way the administration of justice;
 - (3) Misbehavior of any officer of the Court, including attorneys and Court appointed advocates, during Court proceedings; and
 - (4) Other actions for cause and in the sole and exclusive discretion of the Court to ensure the orderly administration of justice.
- B. Summary Disposition. Contempt may be punished summarily if the judge certifies that s/he saw or heard the conduct constituting the contempt and that it was committed in the presence or constructive presence of the Court. The order of contempt shall recite the facts and shall be signed by the judge and entered of record.
- C. Disposition upon notice and Hearing. Contempt, except as provided in subparagraph B, shall be prosecuted on notice including an Order to Show Cause why the defendant should not be held in contempt of Court for failure to obey a lawful Court order, rule, process, or other command of the Court. The notice may be given orally in open Court by a judge, by an order to show cause, by summons, or otherwise as the Court directs.
- D. Upon a finding of guilt, the Court shall enter judgment and sentence.

3.2.15 Attorney Fees. The Court may award reasonable attorney's fees in any action under this Chapter.

3.2.16 Appeals. An appeal may be taken from any final order or judgment of the Court in any proceeding under the Sokaogon Chippewa Community Family Code affecting a substantial right of the aggrieved person. A "final order or judgment" shall mean any decree or judgment intended to conclude the adjudication of the merits of the case and any adjudicatory hearing order or judgment. A Notice of Appeal must be filed with the Clerk of Court within thirty (30) days of filing of any final order or judgment. Interlocutory Appeals may be obtained only on Court approval by showing that an interlocutory appeal will substantially shorten the length of the litigation or obtain substantial justice to the parties in a more expedient manner regarding Court time and convenience to the parties.

3.2.17 Court Rules. The Chief Judge is authorized to promulgate additional procedural rules to aid in the efficient running of the Court and its calendar which are not inconsistent with this Chapter or Sokaogon Chippewa Community, Mole Lake law.

3.3 CHILD WELFARE OFFICE

3.3.1 Establishment. The primary responsibility for performing the duties and responsibilities of the Community pursuant to this Code shall belong to the Community's Child Welfare Office. The Office shall be administered by a Child Welfare Director, subject to the immediate supervision of the Tribal Council.

3.3.2 Duties. The Child Welfare Office shall have the following powers, duties and responsibilities:

- A. Receive and process all notices sent to the Community pursuant to the ICWA, intervene in ICWA proceedings, petition for transfer of ICWA proceedings to tribal Court where appropriate, and carry out all other duties and responsibilities of the Community under the ICWA.
- B. Receive and investigate reports of suspected child abuse and neglect involving children.
- C. Receive referral information, conduct intake inquiries, and determine whether to initiate child welfare proceedings.
- D. Determine whether a child should be held pursuant to the emergency provision of S.C.C.C. § 3.4, and provide crisis counseling during the intake process when such counseling appears to be necessary.
- E. Make referrals of cases to other agencies and share information with other agencies if their assistance appears to be needed or desirable.
- F. Make a dispositional report and recommendation to the Court in child welfare proceedings, including a plan of rehabilitation, treatment and care.
- G. Supervise and assist children pursuant to child welfare proceeding dispositions, offer family counseling, and make an affirmative effort to obtain necessary or desired services for the child and the child's family.
- H. Accept legal custody of children when ordered by the Court.
- I. Investigate and make recommendations with regard to child custody in child custody proceedings, if directed to do so by the Court.
- J. Initiate petitions for the termination of parental rights or investigate and report to the Court on petitions to terminate parental rights brought by others.

- K. Make a home study, report and recommendation to the Court with regard to adoption petitions.
- L. Investigate, inspect and make recommendations to the Child Protection Team on the licensing of foster homes, and monitor and supervise foster homes and children in foster care.
- M. Retain counsel to assist in carrying out these duties and to represent the Community in all matters relating to the Code.
- N. Perform any other functions ordered by the Court in matters related to the Code.

3.3.3 Other Tribal Resources.

- A. In carrying out its powers, duties, and responsibilities under this Code, the Child Welfare Office may use, and is encouraged to make liberal use of, the psychiatric, psychological, therapeutic, counseling, and other social services available to the Community, both from within and without the Community.
- B. The Court may order the provision of psychiatric, psychological, therapeutic, counseling, or other social services by an appropriate department or employee of the Community in any proceeding under this Code.

3.4 CHILD WELFARE PROCEEDINGS

3.4.1 Child in Need of Protection or Services.

- A. A child is a Child in Need of Protection or Services and may be the subject of a petition under this chapter if:
 - (1) The child is a delinquent;
 - (2) The child is a neglected child as defined above in § 3.1.1(B);
 - (3) The child is an abused child as defined above in § 3.1.1(B);
 - (4) The parent, guardian, or other custodian of the child signs a petition requesting the Court to take jurisdiction because he or she is unable to care for, control, or provide necessary special care or special treatment for the child, or because the child is habitually truant from home or school;
 - (5) The child is truant from home or school as defined under Community law; or
 - (6) The child is the subject of a child custody proceeding as defined in 25 U.S.C.A. § 1903(1) of the Indian Child Welfare Act.

- B. The jurisdiction of the Court over a child pursuant to this chapter shall cease when such child reaches the age of eighteen (18). Extended jurisdiction may be granted upon petition if the Court finds it is in the best interests of the child.

3.4.2 ICWA Policy. The following shall constitute the policy of the Community with regard to the ICWA and off reservation child welfare cases:

- A. The Community shall intervene in all ICWA cases involving a tribal child unless such intervention would be impracticable under the circumstances of the case.
- B. In all ICWA cases in which the Community is the “Indian child’s tribe” within the meaning of 25 U.S.C.A. § 1903(5) of the ICWA, the Community shall petition for transfer of proceedings to the Court unless such transfer would be impracticable under the circumstances of the case.
- C. The Community hereby establishes the following hierarchy of placement preferences should a child be placed outside the child’s home:
 - (1) A member of the child’s extended family.
 - (2) A child’s We-eh.
 - (3) Another member of the child’s Community.
 - (4) A Community licensed foster home.
 - (5) Another Indian family.
 - (6) An institution for children approved by the Community or operated by an Indian organization that has a program suitable to meet the child’s needs.
 - (7) A non-Indian foster home located on the reservation and licensed by the Community.

Within each placement preference category, preference shall be give to a placement on the reservation. These placement preferences shall be applied by the Court in all proceedings pursuant to this Code, and no deviation shall be made without a finding of good cause therefore.

- D. The provisions of sub-section C. above constitute the establishment of a tribal order or preference pursuant to 25 U.S.C.A. 1915(c) of the ICWA and Wisc. Code § 48.028 the Wisconsin ICWA (“WICWA”).

3.4.3 Transfer of Jurisdiction

- A. Procedure for Transfer from the State Court or other Tribal Court. The Court may accept or decline the transfers of child welfare cases from state or tribal courts pursuant to the procedures below.
- B. Petition for Transfer. A Petition for Acceptance of Transfer shall be filed by the Child Welfare Office or Prosecutor.
 - (1) Timing. A Petition for Acceptance of Transfer may be filed at any time in the proceeding including prior to the foreign court granting transfer.
 - (2) Hearing. The Court shall hold a hearing upon the Petition for Acceptance of Transfer. The purpose of the hearing is to determine whether the Court shall accept a transfer from a foreign jurisdiction.
 - (2) Order. The Court shall issue an order upon accepting transfer. The Court shall provide for the orderly transfer of physical custody of the child within the order. An Initial hearing shall be held within ten (10) days of the Court order accepting transfer. The Child Welfare Office or the Prosecutor shall file all necessary papers with the Court before the Initial hearing including a Child in Need of Protection or Services Petition pursuant to this Code. The matter shall proceed pursuant to the requirements of this Code.

3.4.4 Taking a Child into Custody.

- A. A child may be taken into the emergency custody of the Child Welfare Office by any law enforcement officer or any employee of the Child Welfare Office without a Court order if there are reasonable grounds to believe that:
 - (1) The child has committed a delinquent act and the immediate apprehension of the child is necessary;
 - (2) The child has run away from his or her parents, guardian, or other custodian and/or is not in the care of an adequate custodian; or
 - (3) The child is suffering from illness or injury or is in immediate danger from his or her surroundings.
- B. A child may be taken into the emergency custody of the Child Welfare Office upon an ex parte order of the Court if made upon a showing that the welfare of the Child demands that the Child be immediately removed from his or her present custody.

3.4.5 Emergency Hearing. A child may be held in emergency custody for no more than seventy-two (72) hours, excluding weekends and holidays, without a Court order. A petition pursuant to this section shall be filed with the Court the day after the child is removed excluding Saturdays, Sundays, and holidays.

- A. Notice. When a child is taken into custody as provided for in this sub-section, the person taking the child into custody shall immediately attempt to notify all interested parties by practicable means.
- B. The Child Welfare Office shall determine the appropriate level of security necessary in any emergency placement pending a hearing before the Court.
- C. An Emergency Hearing shall be heard within seventy-two (72) hours of removal of the child for the purpose of determining whether probable cause existed to remove the child. The Court shall advise the parents and any other interested parties of their rights. The Court shall issue such orders as are necessary for the safety and protection of the child.
- D. The Court may accept an admission from a party at the Emergency Hearing and in the Court's discretion immediately proceed to Disposition.

3.4.6 Petition.

- A. Filing a petition with the Court shall commence the Child in Need of Protection or Services proceedings pursuant to this chapter. The petition shall be filed by the Child Welfare Office or the prosecutor. Proceedings initiated pursuant to this chapter shall be entitled: "In the Interest of the Child of (Parent's Initials)."
- B. The petition shall be verified, but may be made on information and belief. The petition shall contain the following information:
 - (1) The name, birth date and residence of the child;
 - (2) Information showing whether the child is a Community Child;
 - (3) The name, address and relationship to the child of each interested party; and
 - (4) A plain factual statement showing why the child is a Child in Need of Protection or Services under S.C.C.C § 3.4.1.
- C. The petition shall be served upon each interested party by personal service or certified or registered mail by the Court or other method as the Court designates. Proof of service shall be filed with the Court. If the whereabouts of any interested party is unknown, substituted service shall be made in such manner as the Court directs.

3.4.7 Initial Hearing

- A. As soon as practicable after the filing of a petition or within thirty (30) days of an Emergency hearing the Court shall hold an Initial Hearing.
- B. At the Initial Hearing the Court shall inform the interested parties of the following:

- (1) The nature and possible consequences of the proceedings including grounds for a termination of parental rights;
 - (2) The right to confront and question witnesses;
 - (3) The right to be represented by counsel at the party's own expenses, and the availability, if any, of free or low cost representation of the indigent; and
 - (4) The right to notice and an opportunity to be heard at all proceedings.
- C. After providing this information, the Court shall determine whether any interested party wishes to contest the petition, whether the child should be placed outside the home pending Disposition and, if so, the level of placement necessary to protect the child and the community, whether to order services and any other issue the Court deems necessary.
- D. The Court may accept an admission from a party at the Initial Hearing and in the Court's discretion immediately proceed to Disposition.

3.4.8 Fact Finding Hearing.

- A. If any interested party contests the petition, the Court shall hold a Fact Finding Hearing to determine whether the allegations of the petition are true and whether the child is a Child in Need of Protection or Services pursuant to § S.C.C.C § 3.4.1(A). The hearing shall be conducted expeditiously and fairly. The hearing may be conducted in an informal manner, but the decision must be based solely upon the evidence produced at the hearing.
- B. The Court shall adjudicate the child as a Child in Need of Protection or Services if the Court finds by clear and convincing evidence that the allegations of the petition establish that the child is a Child in Need of Protection or Services pursuant to under §. 3.4.1(A), If the Court finds that the petition is not proven, and the child is not a Child in Need of Protection or Services, it shall dismiss the petition.

3.4.9 Disposition.

- A. If the petition is admitted, not contested or if the Court finds the child to be a Child in Need of Protection or Services at the Fact Finding hearing, the Court shall conduct a Disposition hearing and enter a Dispositional order. The Disposition may be combined with the Emergency Hearing, Initial Hearing or Fact Finding Hearing.
- B. The Court shall order one of the following Dispositions appropriate for the welfare of the Child and the Community and as minimally intrusive upon the family as is possible under the circumstances:
- (1) Warn the child and/or the interested parties;
 - (2) Place the child under the supervision of the Child Welfare Office in the child's home upon such terms and conditions, including reasonable rules of conduct for

interested parties and cooperation with services, as deemed necessary for the welfare of the child;

- (3) Remove the child from the home and place the child in the custody of the Child Welfare Office for placement in an environment more suitable for the child's welfare, specifying the maximum level of placement and the efforts which must be undertaken to return the child to the home.

C. The Court shall order such remedial treatment or services for the child and interested parties as will facilitate the return of the child to his or her home or correct the causes and conditions that led to the filing of the petition.

3.4.10 Court Reports. The Child Welfare Office shall provide a report to the Court at the Dispositional Hearing and the Review Hearings. Such reports shall be filed at least three (3) business days before the hearing.

3.4.11 Review Hearings. Periodically, but not less than once every six (6) months, the Court shall review the progress of the case to determine whether any changes need to occur in the treatment plan and to determine whether, by clear and convincing evidence, the family has made sufficient progress to significantly change the causes and conditions which led to the initial intervention and, if so, the court may dismiss the case or maintain supervisory control.

3.4.12 Change of Placement. The Child Welfare Office may remove the child to a new placement, whether or not authorized by the dispositional order, without prior notice. Notice of the change shall be sent to Interested parties by ordinary mail within forty-eight (48) hours after the change of placement. Any interested party may thereafter demand a hearing on the change of placement.

3.4.13 Two Year Hearing.

A. Hearing. Within two (2) years of filing a Petition, the Court shall hold a hearing to determine a permanent plan for the child. Such hearing shall be an Evidentiary Hearing conducted under the same procedures as a Fact Finding Hearing.

B. Findings. The Court shall determine by clear and convincing evidence whether the causes and conditions that led to the initial intervention have been remedied. The Court may order that:

- (1) If the parents are making progress, the matter be continued for a period of time as determined by the Court;
- (2) The children be placed in guardianship or long-term foster care;
- (3) The matter proceed to a traditional adoption or adoption pursuant to Subchapter 3.12 of this Chapter;

(4) The matter proceed to Termination of Parental Rights action pursuant to Subchapter 3.5 of this Chapter, place the child in a pre-adoptive placement, and/or order the Child Welfare Office to find an appropriate adoptive home for the child in accordance with the order of preferences.

C. Review. The Court shall review the matter every ninety (90) days until the matter is dismissed.

3.4.14 Closed Hearings. Hearings conducted under this chapter shall be closed to the public, and the proceedings shall remain confidential, except upon Court order for good cause shown.

3.4.15 Costs of Support. If a child is removed from the home pursuant to this section, the child's parents or other legally responsible person may be ordered by the Court to pay or contribute to the cost of the child's support. Such payments shall be made to the Clerk of Court who shall disburse the same to the person or organization with whom the child is placed.

3.5 TERMINATION OF PARENTAL RIGHTS

3.5.1 Voluntary Termination of Parental Rights.

- A. The Court may enter an order Terminating the Parental Rights of a parent of a Community Child after the parent has given his or her consent pursuant to this section.
- B. Consent to Termination of Parental Rights shall be executed in writing and recorded before the tribal Court or another Court of record. The consent shall be accompanied by a certification by the presiding judge that the terms and consequences of the consent were fully explained in detail and were fully understood by the parent.
- C. Any consent given prior to or within fifteen (15) days after the birth of a Community Child shall not be valid.
- D. The consent of a minor or incompetent person to the Termination of his or her Parental Rights shall not be accepted by the Court unless it is joined by the consent of his or her Parent and or Guardian ad Litem.

3.5.2 Grounds for Involuntary Termination. Unless consent has been given pursuant to § 3.5.1, no Termination of Parental Rights may be ordered in the absence of a determination supported by evidence beyond a reasonable doubt, that the continued custody of the child by the parent is likely to result in serious emotional or physical damage to the child, or that the parent has abandoned the child without making adequate provision for the care of the child or has not maintained parental contact with the child for more than one (1) year.

3.5.3 Petition for Involuntary Termination.

- A. A proceeding for the involuntary Termination of Parental Rights may be initiated by the petition of an interested party or the Child Welfare Office or Prosecutor.
- B. The petition shall be entitled: “In the Interest of (child’s name)”, shall be verified, and shall contain the following information:
 - (1) The name, birth date, and residence of the child;
 - (2) Information showing whether the child is a Community Child;
 - (3) The name, address, and relationship to the child of all interested parties; and
 - (4) A plain factual statement showing why the grounds for termination are present.
- C. Upon the filing of a petition, the Clerk of Court shall issue a summons to each parent whose rights are sought to be terminated setting a date for an Initial Hearing and commanding the appearance of the parent so summoned.
- D. The petitioner shall cause the summons and copy of the petition to be served pursuant to § 3.2.3 of this Chapter upon each parent whose rights are sought to be terminated and upon all other interested parties. If the Child Welfare Office is not the petitioner, a copy shall also be served upon the Child Welfare Office in the same manner. Service shall be made at least ten (10) days prior to the Initial Hearing. If the whereabouts of a parent or other interested party is unknown, substituted service shall be made in such manner as the Court directs.

3.5.4 Hearing. The procedure for hearing petitions for involuntary termination of Parental rights shall be as provided in S.C.C.C §§ 3.4.5; 3.4.7; 3.4.8; and 3.4.9.

3.5.5 Investigation. If the Child Welfare Office is not the petitioner, it shall conduct an investigation and make a report and recommendation to the Court on the petition. The Child Welfare Office may intervene in any proceedings under this chapter instituted by others in order to assert and protect tribal interests.

3.5.6 Disposition.

- A. The Court shall dismiss the petition if it finds that the petitioner has not sustained its burden of proof.
- B. If the Court finds that the petitioner has sustained its burden of proof under S.C.C.C § 3.5.2, it may enter an order terminating the parental rights of one or both parents.
- C. If the rights of one or both parents or of the only living parent are terminated, the Court shall either:
 - (1) Transfer custody to a relative, or other appropriate custodian pending adoptive placement; or

(2) Transfer custody to the Child Welfare Office for adoptive placement.

3.5.7 Effect of Termination. An order terminating parental rights permanently severs all rights, powers, privileges, immunities, duties and obligations between parent and child. A person whose parental rights have been terminated is not an interested party with respect to such child for any purpose under this Code.

3.6 CHANGE OF NAME

3.6.1 General Provisions. Change of name is permitted by law if approved by the Court by the issuance of a Name Change Order under the following conditions:

- A. A Mide may change the name of any person, with the permission of the parents or one parent if the person is a minor under the age of fourteen (14), or with the permission of any person who is fourteen (14) years of age or over without the permission of either parent provided that the person whose name is changed shall provide a list of creditors or a statement that there are no creditors to the Clerk of the Court who shall prepare and submit a Name Change Order to the Court for approval and shall, then send certified notices of the Name Change Order to each creditor and shall provide the applicant with three certified copies of the Order for submission to the social security administration, to the department of motor vehicles, and to the enrollment clerk. The applicant shall pay the costs thereof.
- B. Except under the provisions of subparagraph A herein above, the petitioner shall publish notice as provided in Section D, below in any newspaper of general circulation in the county or in the nearest county where a newspaper of general circulation is published regularly at least once per week for a period of not less than two (2) weeks and provide proof thereof to the Court by affidavit from the newspaper agent and a copy of the notice.
- C. The petition for name change shall contain the current full name, place of residence, age and tribal affiliation of the petitioner and parental consent, if the applicant is a minor, and the proposed new name, together with a sworn statement that the name change is not being requested to defraud any person.
- D. The Notice shall state: "Notice is hereby given that [current name of petitioner in full] of [name of County] will change [his] [her] name to [proposed new name in full] on [date and time set by Clerk of the Court] in the Sokaogon Chippewa Community Tribal Court, Route 1, Crandon, WI 54520, located 8 miles south of Crandon, WI on Highway 55."
- E. If no sufficient cause to the contrary is brought before the Court at the time of the hearing, then the Court shall grant the name change and issue a Name Change Order which shall state the previous name in full, the new name in full, the county or reservation of residence of the petitioner, a statement that the petitioner has sworn in under penalty of perjury that the name change is not done for the purpose of defrauding any person, that a hearing was conducted, and that the petition has been granted and is lawful for all purposes.

- F. The Clerk of the Court shall prepare three (3) certified copies of the order and deliver them to the petitioner no more than twenty-four (24) hours after the hearing unless otherwise directed by the Court. The Clerk of the Court shall also notify the petitioner's tribal enrollment clerk of the name change within seven (7) days from the date of the hearing and entrance of the order. The order shall be entered the same day as the hearing.
- G. The petitioner shall bear all costs.

3.7 MARRIAGE

3.7.1 Marriages Recognizable. Marriages recognizable by the Sokaogon Chippewa Community shall include the following:

- A. Marriage by license of any competent jurisdiction solemnized by any manner deemed lawful by the laws of the state of Wisconsin.
- B. Marriage by religious ceremonies, including a feast, as traditional marriage of any federally or state recognized Indian Tribe. Children born after the feast or other religious ceremony shall be deemed to be the legitimate birth of the marriage.
- C. Marriage by Chippewa common law, in which an adult man and an adult woman have lived together continuously for a period of one (1) year or more, is recognized as traditional marriage by Chippewa custom. Any children born after the first year of cohabitation shall be deemed the legitimate birth of the marriage.
- D. Traditional or Chippewa common law marriage shall be effective and deemed lawful and shall be recognized retroactively insofar as the date of the commencement thereof can be established within a reasonable certainty and if an approximate date cannot be established, then a date shall be chosen by the parties and the Court shall accept the date as the effective date thereof.

3.7.2 Rights of Married Persons. Each spouse has a mutual duty to support the other spouse and to support the children born of the marriage.

3.7.3 Property Rights; Presumption of Community Property; Child's Interest in Property; Best Interests of the Child in Case of Divorce or Separation; Child's Property.

- A. All property of spouses shall be presumed to be community property. The presumption is rebuttable. Each spouse has a present undivided one-half (1/2) interest in each item of community property.
- B. Children born to the marriage or to either party and residing with the couple shall be deemed to have an interest in the property of the couple in case of divorce or separation. The best interests of the children shall be determined in the division of property of married persons before a distribution of property shall be determined in favor of either spouse.

- C. Property acquired by the earning capacity of any minor child while the child is residing with the couple shall be deemed that child's separate property. Property acquired by gift or inheritance by a minor child residing with the couple may be used to support the minor child and for the necessities of the minor child in the discretion of the parents unless otherwise determined by the Court.

3.7.4 Divorce; Grounds. A dissolution of a marriage shall be granted by the Court where the Court finds that there is an irretrievable breakdown of the marriage relationship. Irretrievable breakdown can be shown if both parties state under oath that the marriage is irretrievable broken or if the parties have voluntarily lived apart for twelve (12) months or more immediately prior to the commencement of the action and one of the parties has so stated.

3.7.5 Annulment; Separation; Grounds.

- A. Grounds for annulment of a marriage shall be:

- (1) Proof of fraud, duress, or manifest injustice in the circumstances surrounding the marriage such that the Court determines that it is in the best interest of the petitioner and the Community to annul the marriage;
- (2) Proof of minority and lack of parental or other lawfully required consent to the marriage at the time the marriage commenced or took place; or
- (3) Failure to consummate the marriage.

- B. Legal Separation. A legal separation shall be granted when the Court finds that one or both parties need a legal separation. If neither party contests the legal separation, the Court shall grant the legal separation. If either party contests the separation a Fact Finding Hearing shall be held and the Court shall determine whether to grant a legal separation.

3.7.6 Petitions; Contents.

- A. Petition for divorce, annulment, separation shall contain the following information:

- (1) The full names, residences, tribal affiliations of each party;
- (2) The full names, birth dates, tribal affiliation, and residences for the previous six (6) months of each child born to the parties;
- (3) Whether any Court action is pending regarding a domestic matter or child custody, visitation, support, or other matter involving the parties and each child and whether the parties or any child involved in the case has ever been involved in any Court action regarding a domestic matter, child custody, visitation or support matter before any Court of competent Jurisdiction;

- (4) A statement of the reasons that the petition is being made;
- (5) A list of all the marital assets and marital debts;
- (6) A statement of the jurisdiction of the Court;
- (7) A verification on oath by the petitioner that the statements and allegations made in the petition are true to the personal knowledge of the petitioner except those statements made on information and belief and that the petitioner believes those statements to be true; and
- (8) A statement of the relief requested and the grounds for relief.

3.7.7 Proceedings; Temporary Relief During Pendency of the Proceedings; Modification of Orders; Continuing Jurisdiction.

A. At the hearing on the merits of the case the Court:

- (1) Shall determine the best interests of the child regarding custody and visitation and shall divide the marital property equitably and in accordance with the best interests of the child, if any;
- (2) May allow either party such a reasonable portion of the spouse's separate property, or such reasonable sum of money to be paid by either spouse, either in a single sum or in installments as alimony in any manner deemed just and proper under the premises;
- (3) May modify and change any order in respect to alimony or child support allowed either spouse whenever the circumstances render such a change just and proper;
- (4) May set apart out of the property of the parties any portion for the maintenance and education of the minor child as the Court may deem just and proper under the circumstances;
- (5) May make any order or change any existing order for the guardianship, custody, care, maintenance and education of the minor child, including support, visitation, shared custody or guardianship, care, maintenance, including grandparent and family visitation as the Court deems just and proper under the premises;
- (6) May make any other further order for the control of the property of the parties including community property as the Court deems just and proper and in the best interests of the child involved, if any; and
- (7) May make any order of divorce, separation, annulment or otherwise as the Court deems just and proper under the premises.

- B. In any proceeding for divorce, annulment, separation, division of property, child custody, child support, visitation, alimony, or other proceedings involving the family over which the Court has jurisdiction under codified or common law, the Court may make and enforce an order to restrain the use or disposition of the property of either party during the pendency of the proceeding, as the Court deems necessary and proper under the premises. The Court may make and enforce any order regarding the expenses of the proceeding as will ensure either party an efficient preparation and presentation of the case.
- C. The Court may modify and change any order regarding division of property, child custody, guardianship, visitation, support, alimony, or other proceedings involving the family over which the Court has jurisdiction under codified or common law whenever the circumstances render such change proper.
- D. The Court shall have continuing jurisdiction of all matters pertaining to the custody, guardianship, care, maintenance and education of the child, alimony, property division until all property has been divided and set over under the terms of the Court's decree, over marital settlement agreements for the purpose of enforcement and over each issue decided by the Court in the original proceedings except the actual granting of the divorce, separation, or annulment.

3.8 CHILD CUSTODY

3.8.1 Change of Custody by Consent.

- A. Any person having legal custody of a child may initiate a change of legal custody by consent by filing with the Court a verified petition containing the following information:
 - (1) The name, birth date and residence of child;
 - (2) Information showing that the child is a Community Child;
 - (3) The petitioner's legal relationship to the child;
 - (4) The name, address, and relationship to the child of the person or persons to whom custody is being transferred;
 - (5) The name, address, and relationship to the child of all other interested parties;
 - (6) The proposed duration of the change of custody;
 - (7) Consent to accept custody signed by the person or persons to whom custody is being transferred; and
 - (8) If the child is twelve (12) years of age or older, the consent of the child.

- B. The Court shall, provide a copy of the petition to the Child Welfare Office, which shall conduct investigations as it deems warranted. The Child Welfare Office may intervene in the proceedings and request a hearing if, in its opinion, the proposed change is not in the best interests of the child or the Community.
- C. A copy of the petition shall be sent by ordinary mail to all interested parties, and a proof of service shall be filed with the Court. Any Interested party may request a hearing on the petition.
- D. If no request for a hearing is received by the Court within twenty-one (21) days of the date the petition was sent out to the interested parties, the Court shall make such inquiry as it deems necessary and may order the change of custody. The change of custody may be limited in duration, and if so, the order shall require the review of the change of custody by the Child Welfare Office at no less than six (6) month intervals.
- E. If a hearing has been requested by any interested party or the Child Welfare Office, the petition shall be treated as contested.

3.8.2 Petition in Contested Proceeding.

- A. Any interested party may petition for custody of a child. A Petition for Custody may also be filed by a person who is related to the child within the second degree of consanguinity. The petition shall be verified and shall contain the following information:
 - (1) The name, birth date and residence of the child;
 - (2) Information showing that the child is a Community Child;
 - (3) The name and address of the person(s) having current legal and physical custody of the child;
 - (4) The petitioner's relationship to the child;
 - (5) The names, addresses, and relationship to the child of all other interested parties; and
 - (6) The reasons why custody is being sought.
- B. The petition shall be served pursuant to § 3.2.3 of this Chapter upon all interested parties and the Child Welfare Office.

3.8.3 Investigation. The Court may request an investigation and recommendation as to custody by the Child Welfare Office. The Child Welfare Office may without request of the Court conduct an investigation and may intervene in the proceedings to protect the interests of the Community.

3.8.4 Initial Hearing. The Court shall expeditiously and fairly conduct an Initial Hearing on the petition. The hearing may be conducted in an informal manner, but the decision shall be solely on the evidence produced at the hearing.

3.8.5 Disposition.

- A. The Court may award legal custody to one of the parties to the proceeding.
- B. The Court may award the legal custody of the child to the parties jointly if the parties agree and the Court finds it would be in the best interests of the child.
- C. If the interests of the child demand it the Court may find that neither of the parties is a fit and proper person to have custody and may proceed pursuant to S.C.C.C § 3.4.
- D. A custody order shall provide for visitation by the non-custodial interested parties unless the Court finds that such visitation would not be in the child's best interests.

3.8.6 Best Interests; Standards for Determining Custody. In making a custody determination, the Court shall determine the custody in accordance with the best interests of the child and the Court shall consider all relevant factors including and not limited to the following:

- (1) The wishes of the parents and the child;
- (2) The wishes of the grandparents, other family members, and We-ehs;
- (3) Who is the primary caretaker;
- (4) Length of time the child lived in a stable, satisfactory environment and the desirability of maintaining continuity;
- (5) The capacity and disposition of the parties to give the child love, affection, and guidance and to continue education and raising the child in the child's culture and child's cultural background;
- (6) The mental and physical health of all individuals involved;
- (7) The child's adjustment to school and community; and
- (8) The interaction and relationship of the child with the parents, siblings, and other family members which may significantly affect the child's life and best interests.

Whenever testimony of a child is taken, the Court may hold a private hearing in chambers and may have a Court reporter or other person, as the Court directs, tape record the hearing, however, the tape or a transcript thereof shall not be filed in the Court record unless an appeal is taken.

3.8.7 Determination of Child Support. In any determination of custody proceeding or other proceeding before the Court in which the Court has the duty and authority to determine liability of a parent for the support of a minor child or the amount of that support, the Court shall:

- A. Make a specific determination and finding of the amount of support to be paid by a parent to provide properly for the care, maintenance, education, and life necessities of the minor child, considering the financial resources of both parents;
- B. Not consider welfare financial assistance payments or food stamp assistance which the child or family may receive or be entitled to receive; and
- C. Order support payments be made to the Clerk of Court, who shall disburse the same to the person having custody of the child.

3.8.8 Standard When Contest is Between Parent and Non-Parent. When a custody contest is between a parent of the child and a non-parent, custody shall not be awarded to the non-parent unless the Court determines by clear and convincing evidence that the continued custody of the child by the parent is likely to result in serious emotional or physical damage to the child.

3.8.9 Special Conditions for Non-Community Custodian. When the custody of a child is awarded to a person who is not a member of the Community, custody shall be expressly conditioned upon the custodian apprising the child of his or her tribal heritage and raising the child insofar as is practicable to foster the child's tribal identification and the child's participation in tribal affairs and cultural heritage. Failure to abide by this condition shall constitute grounds for a change of custody. The Child Welfare Office will monitor the custodial placement to insure compliance with this provision.

3.8.10 Modification. An interested party may petition for modification of a custody decree issued pursuant to this chapter. Unless agreed to in writing by the parties, no petition for modification in custody may be brought within two (2) years of a decree of dissolution or legal separation or within two (2) years of the last change or modification of custody motion or petition was heard by the Court between the parties unless the Court finds that there is willful interference with parenting time or the child's present environment may endanger the child's physical or emotional health or impair the child's emotional development. No modification shall be granted unless the Court after a hearing shall determine that the party seeking the modification has shown a substantial change of circumstances and that the modification is necessary to serve the best interests of the child.

3.9 PATERNITY

3.9.1 Acknowledgment of Paternity. The father of a child born out of wedlock may assume parental responsibility for a child and recognize such child as his heir and offspring by executing a formal acknowledgment of paternity on a form provided for that purpose by

the Child Welfare Office or the Clerk of Court. The acknowledgement shall also be signed by the mother of the child.

3.9.2 Petition to Determine Paternity.

- A. Any interested party, including the mother, father, child, and Child Welfare Office, may petition the Court for the determination of the paternity of a child.
- B. The petition shall be entitled: “In the Matter of the Paternity of (child’s name)”, shall be verified, and shall contain the following information:
 - (1) The name, birth date, and residence of the child;
 - (2) Information showing whether or not the child is a Community Child;
 - (3) The name and address of the mother;
 - (4) The name and address of the person alleged to be the father of the child;
 - (5) The name, address, and relationship to the child of all other interested parties; and
 - (6) The petitioner’s interest in the matter.
- C. Upon the filing of a petition, the Clerk of Court shall issue a summons pursuant to § 3.2.2 of this Chapter.
- D. The petitioner shall serve copies of the petition pursuant to § 3.2.3 of this Chapter upon all interested parties. Service shall also be made on the Child Welfare Office if that office is not the petitioner. Service shall be made at least ten (10) days prior to the initial hearing. If the whereabouts of an interested party(s) are not known, substituted service shall be made in such manner as directed by the Tribal Court.

3.9.3 Initial Hearing. At the initial hearing the Court shall determine whether any interested party wishes to contest the petition. Before doing so, the Court shall inform the parties of the following:

- A. The nature and possible consequences of the proceeding;
- B. The right to confront and cross-examine witnesses;
- C. The right to be represented by counsel at the party’s own expense, and the availability, if any, of free or low cost representation or the indigent; and
- D. The right to request blood tests.

3.9.4 Blood Tests.

- A. The Court may, and upon request of a party shall, require the child, mother, alleged father, or any male witness who testifies or will testify about his sexual relations with the mother at a possible time of conception, to submit to blood tests. The tests shall be performed by an expert qualified as an examiner of genetic markers present on blood cells and components appointed by the Court.
- B. The Court may order such tests by additional experts at the request and expense of a party, as the Court deems desirable.
- C. Whenever the results of the blood tests exclude the alleged father as the father of the child, this evidence shall be conclusive evidence of non-paternity and the Court shall dismiss the action. Whenever the results of the tests exclude any male witness, the tests shall be conclusive evidence of non-paternity of that male witness. If any party refuses to submit to the blood tests this fact shall be taken into account as evidence in the decision. If the child's mother brought the action but she refuses to submit herself or the child to the blood tests, the action shall be dismissed.
- D. The fees and costs for the blood tests shall be paid by either or both parties as ordered by the Court.

3.9.5 Fact Finding Hearing. If after the blood tests are made the matter remains contested, the Court shall hold a Fact Finding Hearing to determine paternity. The hearing may be conducted in an informal manner, but the decision shall be based solely upon the evidence produced at the hearing. The hearing shall be closed to the public, and the proceedings shall remain confidential except upon order of the Court for good cause shown.

3.9.6 Judgment.

- A. If the paternity of the alleged father is established at the hearing by clear and convincing evidence, a judgment establishing paternity and declaring the alleged father to be the child's father shall be entered. If paternity is not so established, the petition shall be dismissed.
- B. If paternity is established, the judgment may make provision for custody, visitation, and support as provided in section 3.8 of this Chapter, but is not required to do so.

3.9.7 Limitations. There shall be no statute of limitation on establishing paternity.

3.10 TRADITIONAL ADOPTION

3.10.1 Traditional Adoption. Traditional adoptions have always been recognized in this Community, and are hereby formally recognized by the Sokaogon Chippewa Community, Mole Lake Band of Lake Superior Indians. Traditional adoption has been a means of sharing children with those who cannot have children or who wish to have more children in their families. Chippewa tradition has been the sharing of the children and parental responsibilities especially among family and clan members. Traditional adoption

arises from custom and tradition. Traditional adoptions do not sever the parent-child relationship between biological parent and child. The child retains the right to inherit from both biological parents and attains the right to inherit from the adoptive parents. The child's name may be changed as agreed by the parties or as the court directs. Any person may initiate proceedings for declaratory judgment of traditional adoption.

Traditional adoptions shall have the same force and effects as other legal adoptions under the following conditions:

- A. Placement. The child has been placed in the traditional adoptive home by the biological parents. Placement by the grandparents or other family member or We-eh may occur if the biological parents are deceased, are minors, incompetent, or otherwise incapacitated as determined by the court, including by chemical dependency;
 - B. Chippewa Home. The adoptive home is to be Chippewa or if one adoptive parent is Chippewa and the other is not, then the home must respect Chippewa traditions and customs and shall agree to the terms and conditions of traditional adoption;
 - C. Visitation Allowed. The adoptive family allows visitation including overnights on some weekends and extended visitations during the summer months with the biological family and We-ehs;
 - D. Agreement Not to Harass. The biological family agrees not to harass or create any nuisance for the traditional adoptive home;
 - E. Adoptive Parent's Responsibilities. The adoptive parents agree to accept all financial responsibilities for the care and maintenance of the child and shall make all major decisions except the spiritual training shall include teachings from the Midewiwin;
 - F. Biological Parent's Responsibilities. The biological parents give up and no longer retain the rights to make major decisions regarding the child's life and no longer have the responsibilities for the financial support or other well being of the child unless otherwise agreed;
 - G. Home Study Discretionary. The Court may, on its own motion, or by motion of a party order the Child Welfare Office to conduct a home study of a potential traditional adoptive home and to make appropriate reports and recommendations to the Court. The reports, if any, shall be made a permanent part of the Court record or may be sealed if the Court so directs. The report shall be reopened only by court order, if sealed.
- 3.10.2 Sealing of Records.** The Court may order the entire Court record of the proceedings to be sealed. When the child attains the age of eighteen (18), the child may petition the Court to open the records and the Court shall permit it. The child must specifically request the Child Welfare Office report to be opened and for good cause shown. Otherwise the report shall not be opened together with the remainder of the court record. No record may be copied or removed from the Court Clerk's office or storage.

3.10.3 Petition Deemed Request for Declaratory Judgment; Agreement by Parties Required; Decree of Traditional Adoption. A petition for traditional adoption shall be deemed to be a request for declaratory judgment. The Court may issue a Decree of Traditional Adoption recognizing a traditional adoption after a hearing at which all relevant parties, unless deceased, incompetent, or otherwise incapacitated as determined by the Court, agree to abide by the terms and conditions of traditional adoption.

3.10.4 Violation of Conditions. If the terms and conditions of a traditional adoption are violated, the Court may, on petition by any interested person or on its own motion upon a showing of good cause, initiate a hearing on notice to the parties; and

- A. Find the child to be a Child in Need of Protection or Services and place the child in the legal custody of the Community and order placement of the child within the placement preference with appropriate orders pursuant to Subchapter 3.4 of this Chapter; or
- B. Retain the traditional adoption and order other appropriate corrective action including permanent injunctions, parenting classes, therapies, or otherwise as the court may find necessary and proper under the premises.

3.10.5 Court Shall Consider Best Interests. The Court shall consider the best interests of the child, the tribe, and the families involved in determining traditional adoption.

3.10.6 Level of Proof Required. The level of proof required for all stages of proceedings unless otherwise specifically stated shall be preponderance of the evidence.

3.10.7 Rules of Evidence. The rules of evidence shall not apply to these proceedings.

3.10.8 Adjudication Not Required For Effectiveness. Nothing herein shall be construed to require the traditional adoption must be adjudicated to be effective and lawfully enforceable and any adjudication, which may occur pursuant to traditional adoptions in common law and statute, shall be deemed retroactive from the date of the actual commencement thereof.

3.11 ADOPTIONS

3.11.1 Petition. Any person who wishes to adopt any child may file a petition for adoption with the Court. The spouse of any person who petitions must join the petition.

- A. Proceedings for adoption shall be initiated by the filing of a petition with the Court. Proceedings shall be entitled “In the Interest of (child’s name).”
- B. The petition shall be verified and shall contain the following information:
 - (1) The name, birth date, and residence of the child;
 - (2) Information showing whether the child is or is not a Community Child;

- (3) The name, birth date, and residence of each petitioner;
 - (4) The tribal affiliation of each petitioner, if any;
 - (5) The relationship of each petitioner to the child; and
 - (6) The names, addresses, and relationship to the child of all other interested parties.
- C. The petition shall be served personally or by registered or certified mail upon all interested parties, and by ordinary mail upon the Child Welfare Office. Proof of service shall be filed with the Court.

3.11.2 Consent. A parent, guardian or legal custodian must consent to the adoption. No consent is required when a parent or guardian's rights are terminated.

3.11.3 Home Study and Report. The Court shall direct the Child Welfare Office to make a home study and report and recommendation to the Court on whether the best interests of the child and the Community would be served by the adoption. In making its report and recommendation, the Child Welfare Office shall consider and apply the placement preferences contained in S.C.C.C. § 3.4.2(C) and the desirability of the child remaining in a Community context. The Child Welfare Office may intervene on behalf of the Community to protect the Community's interests in the Child.

3.11.4 Documentation to be Filed. Prior to the hearing on the petition, there shall be filed with the Court the following:

- A. A copy of any order terminating parental rights to the child;
- B. A consent to the adoption by the child's parent, guardian or legal custodian;
- C. A copy of the child's birth certificate, if one exists, or other satisfactory proof of date and place of birth; and
- D. The home study report and recommendation of the Child Welfare Office,

3.11.5 Fact Finding Hearing.

- A. The Court shall fairly and expeditiously conduct a hearing to determine whether the petition should be granted. The hearing may be conducted in an informal manner, but the decision shall be based solely upon the evidence produced at the hearing.
- B. The Court shall give notice to all interested parties and the Child Welfare Office at least fifteen (15) days prior to the hearing.
- C. If the child is ten (10) years of age or older, he or she shall appear at the hearing and consent to the adoption.

3.11.6 Disposition. If the Court finds that granting the petition would be in the best interest of the child and the Community, the Court shall enter an order of adoption. If the Court does not so find, it shall dismiss the petition.

3.11.7 Special Conditions for Non-Member Petitioner.

- A. An order of adoption granted to a petitioner who is not a member of the Community shall be expressly conditioned upon the petitioner apprising the child of his or her tribal heritage and the raising of the child insofar as possible to foster the child's tribal identity and participation in tribal affairs and cultural heritage.
- B. Failure of an adoptive parent to abide by this provision shall be grounds for voiding the adoption if a petition to void the adoption is brought within six (6) years after the entry of the Order of Adoption.
- C. The Court may order the Child Welfare Office to monitor the adoptive placement to ensure the compliance of the provisions of this section.

3.11.8 Effect of Adoption.

- A. After an order of adoption is entered the relation of parent and child and all the rights, duties, and other legal consequences of the natural relation of parent and child thereafter exists between the adoptive parents and the adopted child.
- B. An order of adoption shall have no effect upon the adopted child's eligibility for membership in the Community.

3.11.9 Certificates. The Clerk of Court shall prepare an application for a birth certificate in the new name of the adoptee and showing the petitioner(s) as the parent(s) and shall submit the same to the appropriate state agency requesting a new birth certificate. The Petitioner shall pay for the cost unless otherwise ordered by the Court.

3.12 FOSTER HOME LICENSING

3.12.1 Application for License.

- A. Any person seeking to possess a license to operate a foster home shall apply for a license with the Community through the Child Welfare Office.
- B. Foster Home Licensing Requirements. The provisions of Wis. Stat. Chapter 48 regarding Foster Home Licensing Requirements are hereby adopted.

History:

Enacted - unknown.

7/20/11 adopted, ratified and codified by Resolution #720A2011 and as amended by Resolution #825A2011 on August 25, 2011.