

CHAPTER 26 - - RED CLIFF CHILDREN'S CODE

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**CHAPTER 26 - RED CLIFF CHILDREN'S CODE**

**26.1      SECTION 1:  AUTHORITY AND PURPOSE**

**26.1.1**      This Code is enacted pursuant to authority vested in the Red Cliff Band of Lake Superior Chippewa Indians pursuant to the Tribal Constitution, Article VI, Section 1(i) and (q).

**26.1.2**      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 children of the Red Cliff Tribe;
- (b)    To preserve the unity of the family, preferably by separating the children from his/her parents only when necessary;
- (c)    To facilitate return of Tribal children to the jurisdiction of the Tribe.

**26.2      SECTION 2:  JURISDICTION**

**26.2.1**      Tribal Proceedings Involving a Child.    The Court has exclusive, original jurisdiction of a proceeding in which a child is alleged to be a minor-in-need-of-care.

**26.2.2**      Other Tribal Proceedings:

- (a)    Termination of Parental Rights
- (b)    Adoption
- (c)    Custody
- (d)    Guardianship

**26.2.3**      State Proceedings.      The Court shall also exercise jurisdiction over:

- (a)    A minor who is domiciled on or a resident of the reservation before a state court in a child custody proceeding pursuant to the Indian Child Welfare Act, 25 U.S.C. sec. 1911(a); or

(b) A minor who is not domiciled on or a resident of the reservation before state court in a child custody proceeding pursuant to the Indian Child Welfare Act, 25 U.S.C. sec. 1911(b) where transfer of jurisdiction has been requested and accepted.

**26.3      SECTION 3: DEFINITIONS**

**26.3.1**      "Abandon" means when a parent leaves a child without provision for care or support, and the parent's whereabouts cannot be ascertained for a period of sixty (60) days, or when a parent voluntarily or pursuant to court order relinquishes care and custody of a child, and fails to communicate with the child other than on an incidental basis for a period of two (2) years or more.

**26.3.2**      "Children's Court" means the Red Cliff Tribal Court when exercising jurisdiction pursuant to this Code.

**26.3.3**      "Children's Court Judge" means any duly appointed Judge of the Red Cliff Tribal Court when exercising jurisdiction under this Code.

**26.3.4**      "Custodian" means one who has physical custody of and who is providing food, shelter, and supervision to a minor.

**26.3.5**      "Guardian" means a person other than the minor's parents who is by court order responsible for that minor. The guardian of a child's person, shall have no authority over the property or income of the child, except public assistance benefits, unless specially authorized by a court.

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

**26.3.7**      "Minor" means a person under eighteen (18) years of age.

**26.3.8**      "Minor-In-Need-Of-Care" means minor who is a member of or is eligible for membership in the Tribe and who:

(a) Has no parent, guardian or custodian available and willing to care for him/her; or

- (b) Has suffered or is likely to certainly suffer a physical or emotional injury, inflicted on him/her by other than accidental means, which causes or creates a substantial risk of death, disfigurement, impairment of bodily functions; or
- (c) Has not been provided with adequate food, clothing, shelter, medical care, education or supervision by his/her parents, guardian or custodian necessary for his/her health and well-being; or
- (d) Has been sexually abused or exploited; or
- (e) Has been emotionally abused or neglected; or
- (f) Is habitually truant from home or school; or
- (g) Has violated tribal laws relating to intoxicating beverages, controlled substances, or curfew.

**26.3.9** "Parent" includes a natural or adoptive parent, but does not include persons whose parental rights have been terminated, nor does it include an unwed father whose paternity has not been acknowledged or established.

**26.3.10** "Probable Cause" exists where the facts and circumstances within a judge's knowledge and of which s/he 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.

**26.4**        **SECTION 4: THE COURT SYSTEM**

**26.4.1**        Establishment. There is hereby established for the Red Cliff Tribe the Red Cliff Children's Court to hear and determine matters pursuant to this Code. The Children's Court shall consist of two Judges (Chief Judge, Associate Judge) as appointed by the Tribal Council.

**26.4.2**        Powers and Duties of Children's Court Judges. In carrying out duties and powers specifically enumerate under the Children's Code, Judges of the Court shall have the same powers and duties as Judges of the Red Cliff Tribal Court.

- 26.4.3 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).
- 26.4.4 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.
- 26.4.5 Contracts. The Court may negotiate contracts with Tribal, Federal, or State agencies and Departments on behalf of the Tribal Council 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.
- 26.4.6 Transfer From State Courts. The Court may accept or decline state court transfers of child custody proceedings.
- 26.4.7 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 Chief Judge or the Tribal Council shall have authority to appoint a substitute judge.

26.5 **SECTION 5: THE INDIAN CHILD WELFARE WORKER**

The Tribal Indian Child Welfare Worker shall be appointed by the Tribal Council with the following authority and duties:

- 26.5.1 To accept referrals regarding minors alleged to be in need of care.
- 26.5.2 To investigate the circumstances of a minor alleged to be in need of care and to seek the assistance of Tribal or the Law Enforcement Officer's, if necessary.
- 26.5.3 To make such other investigations as ordered by the Children's Court or authorized by this court.

- 26.5.4 To develop case plans concerning any minor, if an investigation supports an administrative or judicial finding that the minor is in need of care.
- 26.5.5 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.
- 26.5.6 To maintain a confidential system of records, subject to disclosure to a non-party only upon order of the Children's Court.
- 26.5.7 Subject to the approval of the Tribal Council, negotiate service agreements with other recognized child welfare agencies.
- 26.5.8 Pending a determination of the minor's status to prevent risk of immediate harm by or to the minor, take into emergency custody and provide emergency placements.

**26.6 SECTION 6: GUARDIAN AD LITEM**

- 26.6.1 Appointment. The Court, under any proceeding(s) authorized by this Code, shall appoint, for the purposes of that proceeding(s), a Guardian Ad Litem (G.A.L.) for a minor, except where the Court finds that a parent, guardian, or custodian, is willing and able to effectively represent the best interests of the minor.
- 26.6.2 Qualifications. The G.A.L. must be familiar with the rights of children and the provisions of this Code.
- 26.6.3 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.
- 26.6.4 The Court shall compensate the G.A.L. for their fees. 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. (12/2/96E)

**26.7**        **SECTION 7: PRESENTING OFFICER**

**26.7.1**        The Children's Court shall appoint a presenting officer to carry out the duties and responsibilities set forth in this Code.

**26.7.2**        The presenting officer's qualifications shall be the same as the qualifications for the official who acts as prosecutor for the adult Tribal Court.

**26.7.3**        The presenting officer shall represent the Tribe in all proceedings under this Code.

**26.8**        **SECTION 8: PARTIES**

**26.8.1**        In any proceeding the following parties shall be entitled to participate:

(a)    The minor and the appointed G.A.L. or other representative.

(b)    The minor's parents, custodian, or guardian.

(c)    The Tribe.

(d)    Any other tribal government or non-tribal child welfare agency having an independent legal interest in the welfare of the minor.

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

**26.8.3**        Any party may be represented by counsel of his or her own choosing, provided that the Tribe or Children's Court shall not be required to provide counsel for any party.

**26.8.4**        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.

**26.9            SECTION 9: INITIAL CONTACT**

**26.9.1**        Referrals.        All information, complaints, notices, reports, oral referrals, and inquiries concerning a minor alleged to be in need of care, shall be forwarded or relayed to the Indian Child Welfare Worker, who is designated contact person for receipt of such.

**26.9.2**        Complaints.     A complaint may be filed by a person who has knowledge 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 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.

**26.10           SECTION 10: EMERGENCY CUSTODY**

**26.10.1**        If it appears that the child is in immediate danger of physical or emotional harm, a minor may be taken into emergency custody by the Indian Child Welfare Worker or Tribal Law Enforcement. Within 24 hours after taking a minor into custody, the minor shall be presented to the Children's Court for a determination whether there is probable cause to believe that the minor is in need of care.

**26.10.2**        Upon taking a minor into custody, the person having custody of the minor shall make immediate and repeated efforts to notify the minor's parents, custodian, or guardian that the minor is in custody and of the pending hearing.

**26.10.3**        Upon a determination that there is probable cause to believe that the minor is in need of care, the Court may order a temporary disposition as permitted by this code.

**26.10.4**        Emergency Custody Order. Upon a sworn written statement of facts showing that probable cause exists to believe that a minor is a minor-in-need-of-care, the Court may issue an emergency custody order.

26.10.5 Search Warrant. The Court may issue a warrant authorizing a Tribal Police Officer, to search for a minor if there is probable cause to believe that the minor is within the court's jurisdiction and an emergency order has been issued for the alleged minor-in-need-of-care.

26.11 **SECTION 11: SHELTER CARE**

26.11.1 Upon a determination that there is probable cause to believe that the minor is in need of care, or upon a determination by the Indian Child Welfare Worker that the minor requires custodial care pending a probable cause hearing, a minor may be placed in shelter care.

26.11.2 The Indian Child Welfare Worker shall not place a minor in shelter care unless a complaint is filed in accordance with Section 17, of this Code or the Children's Court orders that a minor is taken into custody pursuant to Section 10 of this Code.

26.11.3 If the minor's parent, guardian or custodian has not been contacted, the Indian Child Welfare Worker shall make immediate and recurring efforts to inform him or her that the minor has been taken into custody and shall release the minor to the parent, guardian or custodian, unless shelter care is immediately necessary.

26.11.4 If a minor is not released to his parent, guardian or custodian, the Indian Child Welfare Worker shall place the minor in shelter care, pending the preliminary inquiry.

26.11.5 If a minor is not released to his parent, guardian or custodian, 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.

26.12 **SECTION 12: BASIC RIGHTS**

26.12.1 Minors-in-Need-of-Care; Right to an Attorney. In a minor-in-need-of-care proceeding, the parents, guardian, or custodian shall be informed of their rights to an attorney.

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

**26.12.3** Hearings: Explanation of Rights at First Appearance. The parent(s), guardian, or custodian, when a minor is alleged to be a minor-in-need-of-care, and the parent(s) in a termination of parental rights proceeding, shall be informed by the Court of:

- (a) The allegations against him/her;
- (b) The right to an attorney;
- (c) The right to testify or remain silent and that any 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.

**26.13** **SECTION 13: INVESTIGATION BY THE INDIAN CHILD WELFARE WORKER**

**26.13.1** The Indian Child Welfare Worker shall make an investigation within twenty-four (24) hours after the preliminary inquiry or the release of the minor to his/her parent, guardian, or custodian to determine whether the interests of the minor 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, his/her parent, guardian, or custodian 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 shall be filed within forty-eight (48) hours if the minor is in shelter care.

If the minor has been previously released to his parent, guardian, or custodian, relative or responsible adult, the petition shall be filed within ten (10) days.

**26.14**      **SECTION 14: PRELIMINARY INQUIRY**

**26.14.1**      If a minor is placed in shelter care by the Indian Child Welfare Worker pursuant to Section 11 of this Code, the Children's Court shall conduct a preliminary inquiry within twenty-four (24) hours for the purpose of determining:

- (a) Whether probable cause exists to believe the minor is a minor-in-need-of-care; and
- (b) Whether continued shelter care is necessary pending further proceedings.

**26.14.2**      If a minor has been released to his parents, guardian, or custodian, the Children's Court shall conduct a preliminary inquiry within three (3) days after receipt of a petition for the sole purpose of determining whether probable cause exists to believe the minor is a minor-in-need-of-care.

**26.14.3**      Basic Rights.      At the beginning of the preliminary inquiry the minor, the parents, guardian or custodian shall be advised of their basic rights under Section 12.

**26.14.4**      Presence of Minor's Parents, Guardian, or Custodian.  
If the minor's parent, guardian, or custodian 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, guardian, or custodian. If it appears that further efforts are likely to produce the parent, guardian, or custodian, the Court shall recess for not more than twenty-four (24) hours and direct the Indian Child Welfare Worker to make continued efforts to obtain the presence of a parent, guardian, or custodian.

**26.14.5**      Criteria for Shelter Care.      If a minor is placed in shelter care, the Court shall conduct a preliminary inquiry within twenty-four (24) hours for the purpose of determining if criteria for shelter care exist. Criteria for Shelter care exists if the Court finds:

- (a) Probable cause exists to believe the minor is a minor-in-need-of-care; and
- (b) The minor is suffering from an illness or injury, and no parent, guardian, or custodian, or other person is providing adequate care of him/her;
- (c) The minor is in immediate danger from his/her surroundings, and removal is necessary for his/her safety or well-being;
- (d) The minor will be subject to inquiry by others if not placed in the custody of the Court;
- (e) The minor has been abandoned by his/her parent, guardian, or custodian; or
- (f) No parent, guardian, custodian or other person is able or willing to provide adequate supervision and care for the minor.

**26.15      SECTION 15: NOTICE**

**26.15.1** Notice of the preliminary inquiry shall be given to the parent, guardian, or custodian as soon as the time for inquiry has been established.

**26.15.2** 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-in-need-of-care allegation is based; and
- (d) The date, time, place and purpose of the preliminary inquiry.

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

**26.16**      **SECTION 16: INFORMAL HEARING**

**26.16.1**      The Indian Child Welfare Worker may hold an informal conference with the minor and the minor's parent, guardian, or custodian 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 and the Tribe, and
- (c)      The minor and his/her parent, guardian, or custodian, consent to an informal adjustment with knowledge that the consent is voluntary and revocable at will.

**26.16.2**      Notice of the informal hearing shall be given to the minor and his/her parent, guardian, or custodian and their counsel 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-in-need-of-care allegation is based; and
- (d)      The date, time and place of the informal hearing.

**26.16.3**      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.

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

**26.16.5**      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 17 of this Code.

**26.16.6** 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.

**26.16.7** Any informal adjustment period shall not exceed six (6) months.

**26.17**        **SECTION 17: PETITION**

**26.17.1** Proceedings under the Children's Code shall be instituted by a petition filed by the presenting officer on behalf of the Tribe and in the interest of the minor. The petition shall state:

- (a) The name, birth date, tribal affiliations, and residence of the minor;
- (b) The names and residences of the minor's parent, guardian, or custodian;
- (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 is in shelter care, the place of shelter care and the time s/he was taken into custody.

**26.17.2** Prospective adoptive parents are authorized to file an adoption petition upon completion of all pre-adoptive reports.

**26.18**        **SECTION 18: PRE-HEARING PROCEDURE**

**26.18.1** Upon the filing of a petition, the Court shall order notice delivered or mailed to the parties enumerated in Section 26.8.1

**26.18.2** The notice shall contain the name, date of birth and current residence of the child, the name and address of the minor's parents and the circumstances upon which the complaint is based. (No termination of parental rights may be ordered unless the notice required under this

subsection states that a termination of parental rights is a possible disposition).

**26.18.3** The notice shall be accompanied by a copy of the petition.

**26.18.4** The notice shall contain the time, place, date, and purpose of the hearing.

**26.18.5** Notice may be delivered in person or by regular mail at a place calculated to give the person 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.

**26.19**     **SECTION 19: SUMMONS**

**26.19.1**     Issuance. Where a petition alleges violation of a tribal ordinance by a minor, the court shall cause a summons to be issued to:

(a) The minor;

(b) The minor's parent, guardian, or custodian; and

(c) Any person the Court believes necessary for the proper adjudication of the hearing that is within the Court's jurisdiction.

**26.19.2**     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.

**26.19.3**     Petition. A copy of the petition shall be attached to the summons.

**26.19.4**     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.

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

**26.20**     **SECTION 20: ADJUDICATORY HEARING**

- 26.20.1 An adjudication hearing shall be held within ten (10) days of receipt of the petition by the Court.
- 26.20.2 The Children's Court shall hear testimony concerning the circumstances, which give rise to the complaint.
- 26.20.3 If the allegations of the petition are sustained by clear and convincing evidence, the Children's Court may find the minor to be a minor-in-need-of-care and may proceed immediately to the dispositional hearing. If any party requests, a dispositional hearing may be scheduled for no more than twenty (20) days after the adjudicatory hearing.
- 26.20.4 A finding that a minor is a minor-in-need-of-care constitutes a final order for purposes of appeal.

26.21 **SECTION 21: PRE-DISPOSITIONAL REPORT**

- 26.21.1 No less than twenty-four (24) hours prior to a dispositional hearing, the Indian Child Welfare Worker shall file with the Court a pre-dispositional report. The report shall, in detail, describe:
- (a) Services that are appropriate and available from or through the Tribe and how such services have or have not been effective;
  - (b) Social history of the Child;
  - (c) A recommended plan of treatment, rehabilitation, and care that preserves the least restrictive environment appropriate for the child and is most likely to preserve and protect the child's family unit;
  - (d) Care, service, or treatment providers under the plan; and
  - (e) The needs of the child and how the objectives of the plan will meet those needs.
- 26.21.2 In the event that out of home placement of the child is recommended, the dispositional report shall contain, or be supplemented within thirty (30) days by a report containing the following:

- (a) Services available through the Tribe for and provided in an effort to prevent the out of home placement;
- (b) Services available through the Tribe to facilitate a return to the minor's home;
- (c) 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;
- (d) 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 will be returned to the home including any changes in the conduct of the child or parent or in the conditions of the home.

**26.22      SECTION 22: DISPOSITIONAL HEARING**

**26.22.1**      A dispositional hearing shall be held within ten (10) days of the adjudicatory hearing. The Court shall conduct the hearing for the purpose of determining the proper disposition of the minor. The Court shall enter a written judgment setting forth the findings, decision, and disposition.

**26.22.2**      The dispositional order shall recite the following elements:

- (a) Appearances at the hearing;
- (b) Disposition from among the alternatives provided by law;
- (c) The duration of the order, not to exceed six (6) months; and
- (d) Placement of the minor, except that the placement may be made after the hearing and upon notice to all parties, the location of the child shall be made a part of the record. The Court may limit disclosure of the minor's whereabouts if necessary to protect the minor.

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

**26.23**        **SECTION 23: DISPOSITIONS**

**26.23.1**    Minor-In-Need-Of-Care. If a minor has been adjudged a minor-in-need-or-care, the Court may assume or assign legal custody of the minor and may make any of the following dispositions:

- (a) Permit the minor to remain with his/her parents, guardian, or custodian, 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 within the external boundaries of the reservation subject to such limitations and conditions as the Court may prescribe;
- (c) Place the minor in a foster home within the external boundaries of the reservation, which has been licensed or approved by the Tribe, subject to such limitations and conditions as the Court may prescribe;
- (d) Place the minor in shelter care facilities designated by the Court;
- (e) Place the minor in a foster home or an extended family member's home outside the external boundaries of the reservation subject to such limitations and conditions as the Court may prescribe;
- (f) Transfer legal custody to an agency responsible for the care of minor-in-need-of-care children or to an extended family member or other person who the Court finds to be qualified to receive and care for the child;
- (g) Appoint a guardian for the minor under supervision of the Court;
- (h) Recommend that termination proceedings begin.

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

- (a) Place the minor with an extended family member;
- (b) Place the minor in a foster home or shelter care facility which has been approved by the Tribe; or
- (c) Proceed to the adoption section of this Code.

**26.23.3** Adoption. The preference of placement in adoption of a minor shall be:

- (a) Extended family member;
- (b) A member or person eligible for membership in the Red Cliff Tribe;
- (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 Tribal Affiliation and his or her special needs.

**26.24** **SECTION 24: EXTENSION, MODIFICATION, DISMISSAL OF DISPOSITIONAL ORDERS**

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

**26.24.1** Extension. Within the time determined by the court for the expiration of any dispositional order, a party may file a petition for extension of the existing order. Such petition shall be filed in accordance with Section 17 and shall include a showing that the circumstances of the child have not improved and warrant continuation of the existing orders, or that new circumstances of the child warrant continuation of the existing orders.

**26.24.2** Modification. Within the time determined by the court for the expiration of any dispositional order, a party may file a petition for modification of an existing order in accordance with Section 17, 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 to make such modification, it shall enter orders accordingly.

**26.24.3** Dismissal. At the end of the time determined by the court for the expiration of an existing dispositional order, if no petition for extension, modification, or dismissal has been filed, the court shall cause notices to be sent to all parties advising of the expiration of the order. If no petition is thereafter filed within ten (10) days after the expiration of the existing order or five (5) days after the sending of the notice of expiration, whichever is later, the court shall enter an order vacating the dispositional order and dismissing the petition.

**26.25** **SECTION 25: PARENTAL RIGHTS**

**26.25.1** Termination of Parental Rights. A termination of parental rights hearing shall be held within thirty (30) days of filing of a petition to terminate pursuant to Section 17 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;
- (b) Willful and repeated risk to the child 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 for a period of two (2) years or more to correct the conditions that led to court ordered out of home placement.

**26.25.2** Pre-Termination of Parental Rights. If the Court determines that grounds for termination are proven beyond a reasonable doubt, it shall order a dispositional hearing pursuant to Section 22. The Indian Child Welfare Worker shall prepare and present a written report to the Court, at least three (3) days before the dispositional hearing. The report shall contain the opinions of all professionals consulted and their recommendations to the Court.

**26.25.3** 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.

**26.26** **SECTION 26: ADOPTION**

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

- (a) The parent has abandoned his or her child;
- (b) The parent's rights have been terminated;
- (c) The parent has relinquished his or her parental rights; or
- (d) The parent has been declared incompetent.

**26.26.2** 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, if empowered to consent; or
- (d) The Court, if the custodian is not empowered to consent; and
- (e) The minor, if s/he is over twelve (12) years of age.

**26.26.3** 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.

**26.26.4** 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.

**26.26.5** Pre-Petition Report on Prospective Adoptive Parent. Within sixty (60) days of an application for adoption, the Indian Child Welfare Worker shall investigate the prospective parents and file a written report with the Court with recommendations for or against placement with the applicant.

**26.26.6** Pre-Petition Report on Minor. Within thirty (30) days of a Court ordered investigation of a minor to be adopted, the Indian Child Welfare Worker shall file a written report with the Court.

**26.26.7** Adoption Hearing. An adoption hearing shall be held within ninety (90) days of receipt of an adoption petition from the prospective parents. The Court shall conduct the hearing to determine if it is in the best interest of the minor to be placed with the petitioners. In determining the best interest of the minor, 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;
- (e) Parent communication with the minor;
- (f) Minor's consent to adoption, if the minor is over twelve (12) years of age;
- (g) Pre-petition reports; and
- (h) Order of preference of placement.

**26.26.8** 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 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 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 or adoptive parent, or by the death or attainment of eighteen years of age of the adopted child.

**26.27      SECTION 27: HEARINGS**

**26.27.1**    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.

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

**26.27.3**    Admission of Allegations. The Court must find that an admission is voluntarily and knowingly given.

**26.27.4**    Standard of Proof. The standard of proof for a minor-in-need-of-care adjudicatory hearing shall be proof beyond a reasonable doubt.

**26.27.5**    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 dispositional hearing if the allegations are established by a valid admission or by the required standard of proof.

**26.28      SECTION 28: FOREIGN PROCEEDINGS**

- 26.28.1 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.
- 26.28.2 Investigation and Pre-Transfer Report by the ICWW. The Indian Child Welfare Worker shall conduct an investigation and file a written report with the Court within two (2) days of receipt of notice from the Tribal Attorney for service of notice.
- 26.28.3 Recommendations for Transfer of Intervention. The Court shall make written recommendations to the Tribal Attorney on whether or not the Tribe should petition for transfer from or intervene in State Court.
- 26.28.4 Petition for Transfer. The tribal petition for transfer shall be filed by the Tribal Attorney, within three (3) days of receipt of recommendations from the Court.
- 26.28.5 Intervention in State Court Proceedings. The Tribe may intervene in State Court child custody proceedings, as defined by the Indian Child Welfare Act, at any point in the proceedings, and the Tribal Attorney or selected representatives shall file a motion to intervene within three (3) days of receipt of recommendations from the Court.
- 26.28.6 Adjudicatory Hearing. Upon receipt of transfer of jurisdiction from State Court, the Indian Child Welfare Worker shall file a minor-in-need-of-care petition, and an adjudicatory hearing shall be held in accordance with this Code.
- 26.29 **SECTION 29: RECORDS**
- 26.29.1 Records of the Tribe and Tribal Court concerning a minor under the Code shall be confidential.
- 26.29.2 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.
- 26.30 **SECTION 30: CARE PROVIDER'S LICENSING**

**26.30.1** Pursuant to written standards, the Tribe may license persons or families to accept minors in need of shelter or foster care. By agreement, the Tribe may recognize or honor such licenses issued by the State of Wisconsin or may co-license with the State or its subdivision.