



# **Keweenaw Bay Indian Community TRIBAL CODE TITLE FIVE ADOPTIONS**

An ordinance of the Keweenaw Bay Indian Community adopted under the authority of the Constitution and By-Laws of the Keweenaw Bay Indian Community for the purposes of updating the Adoption laws and procedures and to ensure compliance with federal laws and procedures to allow the Keweenaw Bay Indian Community Department of Tribal Social Services to become a IV-E agency under Title IV, Part E of the federal Social Security Act.

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## **TITLE FIVE ADOPTIONS**

### **CHAPTER 5.1 — GENERAL PROVISIONS**

#### **§5.101 Jurisdiction.**

The Tribal Court, Juvenile Division, shall have jurisdiction over adoptions of, or by, persons within the jurisdiction of the Court.

#### **§5.102 Purpose.**

The general purposes of this Title are:

- A. To provide procedures and services consistent with tribal values and customs.
- B. To provide prompt legal proceedings to assure adoptive placement at the earliest possible time.
- C. To provide procedures and services which safeguard and promote the best interests of each adoptee.
- D. To protect the rights of all parties concerned.

#### **§5.103 Definitions.**

For the purposes of this Title, the following definitions shall apply:

- A. “Adoptee” shall mean the person who is to be adopted.
- B. “Adoptive parent” shall mean the person who desires to adopt the adoptee.
- C. “Adoptive placement” shall mean the permanent placement of an adoptee for adoption including any action resulting in a final decree of adoption.
- D. “Adult” shall mean any person eighteen (18) years of age or older.
- E. “Agency” shall mean a child placement agency which may include TSS, a TSS Designee, the Michigan Department of Human Services, or any other agency appointed by the Court for this purpose.
- F. “Best interests of the adoptee” or “best interests of the juvenile” shall be determined by a consideration of the following factors:
  1. The love, affection, and other emotional ties existing between the adoptive parent(s) and the adoptee and the adoptive parent’s ability to give the adoptee love, affection, and guidance, and to educate, and create an environment that fosters the religion, racial identity and culture of the adoptee.
  2. The ability of the adoptive parent to provide the adoptee with food, clothing, education, medical care, or other remedial care recognized and or permitted under tribal law and or customs.
  3. The length of time the child has lived in a stable satisfactory environment, and the desirability of maintaining continuity.
  4. Permanence as a family unit of the proposed adoptive home.
  5. Moral fitness of the adoptive parent(s).
  6. Mental and physical health of the adoptive parent(s) and the adoptee.
  7. Home, school, and community environmental factors.
  8. The reasonable preference of the adoptee, if the Court deems the adoptee to be of sufficient age or maturity to express a preference.
  9. Ability and willingness of the adoptive parent(s) to foster and continue the

- relationship between the adoptee and the adoptee's siblings.
10. Any other factors considered by the Tribal Court to be relevant to a particular adoption proceeding.
- G. "Biological" and, or "natural parent(s)" shall mean parent(s) to which the child was born. Whether or not their parental rights have been terminated.
- H. "Born out of wedlock" shall mean a child born to a woman who was not legally married on the date the child was born.
- I. "Child" shall have the same meaning as in §4.104(B) and (C).
- J. "Child placing agency" shall mean an organization licensed to place children for foster care and, or adoption.
- K. "Consent" shall mean a duly executed document in which all parental rights over a particular child are voluntarily relinquished to the Court for adoptive placement with a specific adoptive parent(s).
- L. "Court" shall mean the Juvenile Division of the Tribal Court when exercising jurisdiction under this Title.
- M. "Department" shall mean TSS as defined in section 4.106(F) of the Tribal Code.
- N. "Petitioner" shall mean the person who shall file a petition for adoption with the Juvenile Court.
- O. "Putative Father" shall mean the person alleged to have fathered the child or adoptee.
- P. "Release" shall mean a duly executed document in which all parental rights to the child are voluntarily relinquished for adoptive placement by a child placing agency.
- Q. "Title IV-E" or "IV-E" shall have the same meaning as defined in §4.106(J).

## **CHAPTER 5.2 — ADOPTION REQUIREMENTS**

### **§5.201 Persons Eligible to be Adopted in Tribal Court.**

Any child or adult within the jurisdiction of the Court who meets one of the criteria listed below shall be eligible for adoption through this Court.

- A. Enrolled as a tribal member in any federally recognized Indian tribe;
- B. Eligible for enrollment in any federally recognized Indian tribe.

### **§5.202 Persons Eligible to Adopt in Tribal Court.**

The following persons may file a petition for adoption of a person eligible to be adopted in Tribal Court if any one of the criteria listed below are met:

- A. A person eighteen (18) years of age or older, who is enrolled as a member of any federally recognized Indian tribe; or
- B. A person eighteen (18) years of age or older, who is eligible for enrollment as a member of any federally recognized Indian tribe; or
- C. Married persons, provided that the petition is filed jointly by husband and wife, if at least one is a member of a federally recognized Indian tribe, or eligible for membership in a federally recognized Indian tribe; or

- D. A non-tribal member, eighteen (18) years of age or older, when in the determination of the Tribal Court extraordinary circumstances exist which cause adoption of a tribal member by a non-tribal member to be in the best interests of the adoptee, the petitioner, and the Tribe.

**§5.203 Eligibility for Adoption Assistance Payments.**

Those adoptive parents who enter into an adoption assistance agreement with TSS may receive adoption assistance payments through Title IV-E if eligibility requirements under 42 U.S.C. 673 (as amended) are met. Adoptive parents may be eligible to receive other adoption assistance payments in addition to or in lieu of Title IV-E funds if eligible under the specific program's guidelines. Such adoption assistance payments are not prohibited by this Code or TSS's policies and procedures.

**CHAPTER 5.3 — RELEASE**

**§5.301 Release for Adoption.**

- A. A release for adoption shall be required from the following people and under the following circumstances:
  - 1. By each biological parent of a child to be adopted or by the surviving biological parent if one of the parents is deceased when that parent still retains her/his parental rights;
  - 2. By the guardian of the adoptee or the guardian of the parent of the adoptee if one was appointed by the Tribal Court or a Court of competent jurisdiction;
  - 3. By a duly authorized representative of the child placing agency if the child has been committed by court order to such an agency.
- B. A release for adoption is not required from the biological parents of the adoptee under any of the following circumstances:
  - 1. The rights of the adoptee's biological parent(s) have been terminated by a Court of competent jurisdiction;
  - 2. A guardian has been appointed for the adoptee;
  - 3. A guardian has been appointed for the parent of the adoptee.
- C. If a release for adoption is required, a pre-release investigation shall be conducted as provided in §5.302.

**§5.302 Pre-Release Investigation.**

- A. Prior to a formal release of parental rights, the following procedures shall be followed:
  - 1. A pre-release statement shall be signed by the parent(s), guardian, or duly authorized representative of the child placing agency, as appropriate, providing the following information:
    - a. Name of child,
    - b. Date of birth of child,
    - c. Current residence of child,
    - d. Name of parent(s) of the child,

- e. Tribal Enrollment Certification or eligibility for enrollment, and
  - f. The reason for the release for adoption.
- B. The agency assigned to conduct the pre-release investigation shall file the signed pre-release statement with the Juvenile Division of the Court and the Indian Child Welfare Committee.
- C. Procedures upon receipt of the Pre-Release statement:
1. The Indian Child Welfare Committee shall conduct a review of the pre-release statement within fourteen (14) days of receiving it.
  2. TSS or its designee shall conduct an investigation which shall include inquiry into, but is not necessarily limited to the following:
    - a. Verification of pre-release statement information and signatures,
    - b. A home investigation into the socio-economic conditions of the family requesting the release,
    - c. Any other pertinent matters.
  3. Upon completion of the investigation, TSS or its designee shall file a written report with the Juvenile Division of the Tribal Court and the Indian Child Welfare Committee.
  4. Within seven (7) days of receipt of TSS's report the Indian Child Welfare Committee shall meet and consider the merits of the proposed release for adoption with a view toward the best interests of the adoptee.
  5. Within seven (7) days of such meeting described in (C)(4), the Indian Child Welfare Committee shall file with the Juvenile Division of the Court written recommendations.
  6. Within seven (7) days of receipt of the Indian Child Welfare Committee's recommendations described in (C)(5), the Juvenile Division of the Court shall:
    - a. Review the recommendations of the Indian Child Welfare Committee and enter a written order accepting or rejecting the Indian Child Welfare Committee's findings, stating the reasons for accepting or rejecting those findings, and stating the reasons for the Court's findings.
    - b. Make a finding whether or not a hearing is required for the release for adoption to be accepted by the Court.
      - i. If the Court finds that a hearing is required it shall follow the procedures set forth in §5.303.
      - ii. If the Court finds that a hearing is not required, it shall enter a written order accepting the signed Release for Adoption on file with the Court and schedule the necessary proceedings for adoption of the adoptee.

**§5.303 Hearing on Release for Adoption.**

- A. Prior to the execution of a formal Release for Adoption of parental rights, the Juvenile Division of the Court shall take the following action:
1. Upon acceptance of the recommendation for a hearing from the Indian Child Welfare Committee, or upon its own finding that a hearing is

necessary, the Court shall set a date for the hearing on the release for adoption of parental rights within thirty (30) days.

2. At the hearing, the Court shall clearly and concisely explain to the releasing persons that by executing a formal release for adoption they will voluntarily and permanently relinquish all parental rights to the child, and the effects thereof.
  - a. In the event that the release is to be obtained from the biological parents the procedure set forth in §5.304 shall be followed.
  - b. In the event that the child to be adopted was born out of wedlock, the Court shall utilize the procedures set forth in Chapter 5.5 to obtain a formal release for adoption from mother and to identify the father and determine or terminate his parental rights.
- B. The release shall be executed during the hearing and in the presence of a tribal judge who shall certify thereon that the Court fully explained the effect of executing such release and that such effect was understood by the person seeking to release parental rights.
- C. The hearing shall be conducted on the record.

#### **§5.304 Judicial Procedure to Obtain Formal Release for Adoption from Biological Parents.**

- A. Preliminary Explanation to be read by Judge: ‘This is a hearing in regards to (name of child). It is my understanding that you both intend to release this child to (name of agency or TSS) for the purpose of adoption or suitable placement. We are required by Tribal law to make a record of this hearing. The record will be kept confidential as are all matters regarding adoption. My role as Tribal Judge is to ensure that if you both sign this release for adoption, you both do so of your own free will. Also, I am required to provide a written certification that this release for adoption was fully understood by you.
- B. Identifying Questions to be asked on the record by Judge:
  1. Father: (Swear in father and ask the questions below:)
    - a. Please state your name and address of residence.
    - b. Are you over the age of eighteen (18) years?
    - c. Are you the biological or adoptive father of (name of child)?
    - d. Where and when was this child born?
    - e. Are you a member of a federally recognized Indian tribe and if so which tribe?
  2. Mother: (Swear in mother and ask the questions below:)
    - a. Please state your name and address of residence.
    - b. Are you over the age of eighteen (18) years?
    - c. Are you the biological or adoptive mother of (name of child)?
    - d. Where and when was this child born?
    - e. Are you a member of a federally recognized Indian tribe, and if so which tribe?
- C. Explanation of rights to be recited by Judge:

‘The purpose of this proceeding is to determine whether or not this child is eligible for adoptive placement. A child cannot be placed in an adoptive home until all parental rights have been terminated.

It is my understanding that you both are here today to release your child for adoption to (name of agency). A release is a document which indicates to the Tribal Court that you are voluntarily giving up your parental rights over the child to an agency. You have a right to release your child for adoption if you so desire. A child cannot be taken away from the parent unless there is a showing of neglect or abuse.

If you release your child for adoption you will be giving up all parental rights. These rights include such things as the right to have custody, or the right to seek custody; the right to seek visitation with the child; the right to direct the spiritual upbringing and moral or religious training of the child; the right to know and associate with the child; the right to inherit from the child should the child die and leave an estate; and the right to the services and earnings of the child. These examples, although not a complete list of possible rights, serve as an indication of the types of parental rights that you are giving up by signing the release for adoption. If you both sign the release, both of you will have no more control over the child than a stranger.

If you release your child for adoption, your release must be voluntary. By signing the release, you also waive notice of all future hearings involving this child. If you release the child, I will enter an order terminating your parental rights.

You must understand that the release for adoption is permanent. Although there is a twenty (20) day period following an order terminating your parental rights during which you may request a rehearing in this matter, once that twenty (20) day period is over, the release for adoption is final and binding. You may not return in two or three months or years, for example, because you have changed your mind. If now, or at any time during this hearing you decide that you do not wish to proceed, simply let me know and we will stop the hearing. Do you wish to proceed at this time?’

D. Presentation of Release:

1. Before I give you both the release for adoption form, let me ask both of you separately:
  - a. Have you thought this matter through carefully?
  - b. Is it your desire to release your child for adoption?
  - c. Is anyone promising you anything in exchange for your release?
  - d. Is anyone pressuring or threatening you in connection with your release?
  - e. Do you understand what I have said to you about your rights in this matter?
2. This is the release for adoption which both of you may sign. Please read it carefully, take as much time as you wish. I will remind you again that if you do not wish to proceed, simply let me know and we will stop the hearing. Do you wish to proceed? Then sign the release for adoption with your full name as it is typed.



- E. After the release for adoption is signed ask the following questions:
  - 1. Is this your signature?
  - 2. Did you sign this of your own free will?
  - 3. Do you understand that this release is permanent and binding?
- F. Closing.
  - 1. ‘Based on the release for adoption, which you have signed in my presence, I now find that the release was signed as the free act and deed of both parents who knowingly and voluntarily executed it. I now terminate the parental rights of the mother and the father. It is ordered that the child is committed to (name of agency) for the purposes of adoptive planning.
  - 2. Right to release of identifying information. See §5.805(B) and explain right to release identifying information to person releasing child for adoption. “Do you wish to sign the denial of release of identifying information?” (Present the document for signature if requested)
  - 3. This hearing is now adjourned.’

## **CHAPTER 5.4 — CONSENT TO ADOPT**

### **§5.401 Requirements.**

- A. Consent to adopt is required from the following persons and in the following circumstances when the adoptive placement shall be with a specific prospective adoptive parent and not through an agency:
  - 1. From the mother, biological, or adoptive, who maintains her parental rights;
  - 2. From the father, biological, adoptive, acknowledged and or putative, who maintains his parental rights;
  - 3. From the custodian and or guardian of the adoptee appointed by the Tribal Court or a Probate Court;
  - 4. From the Tribal Court if the custodian or guardian is not empowered to consent to adoption;
  - 5. From the adoptee, if the Court deems the adoptee to be of sufficient age or maturity to express a preference;
  - 6. From the child placing agency where a formal release for adoption has been executed and the proposed adoptee has been committed by a Tribal Court order to a child placing agency;
  - 7. From maternal grandparents in the event the mother is under eighteen (18) years of age and un-emancipated, unless a guardian has been appointed for the mother or adoptee.
  - 8. From paternal grandparents in the event the father is under eighteen (18) years of age and un-emancipated, unless a guardian has been appointed for the father or adoptee.
- B. Consent to adopt is not required from the following persons under the following circumstances:
  - 1. From the parents when they have abandoned the child;

2. From the parents when parental rights have been terminated by Court order;
  3. From the parent who has voluntarily relinquished parental rights:
- C. If a consent to adoption has been executed before another Court of competent jurisdiction, this Court shall determine whether the consent to adoption was executed in accordance with Tribal laws and the Indian Child Welfare Act if applicable.

#### **§5.402 Limitations on Consent to Adopt.**

The following limitations apply with respect to the consent to adopt:

- A. Any consent to adopt given prior to, or within ten (10) days after the birth of the proposed adoptee, shall be null and void.
- B. In any voluntary proceeding for the termination of parental rights where consent to adoption has been secured, such consent to adoption may be withdrawn for any reason and at any time prior to the entry of an order of adoption.
- C. After entry of an order of adoption a parent may withdraw the consent to adoption only upon a showing by clear and convincing evidence that the consent to adopt was obtained through fraud and or duress.

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

Written consent to adopt shall be executed, recorded, and signed before the Tribal Court during a hearing and on the record. Prior to the execution of the consent, the Tribal Judge shall fully explain in detail the terms and consequences of the consent. After explanation, the Judge shall question the parents concerning their understanding of such consequences. If the Court is convinced that the parents fully understand such consequences, the Court shall so certify in writing and on the record as follows:

- A. 'Based on the consent to adopt which you have signed in my presence, I now find that the consent to adopt was signed as the free act and deed of both parents who knowingly and voluntarily executed it. It is ordered that the child is now eligible for adoption through this or another court of competent jurisdiction.
- B. Right to release of identifying information. See §5.805(B) and explain right to release identifying information to person consenting to adoption. "Do you wish to sign the denial of release of identifying information?" (Present the document for signature if requested)
- C. This hearing is now adjourned.'

### **CHAPTER 5.5 — CHILD BORN OUT OF WEDLOCK**

#### **§5.501 Procedure for Release for Adoption from Mother, and to Identify Father and Determine or Terminate His Parental Rights.**

- A. Explanation: 'This is a hearing in the matter of (name of child). It is my understanding that you intend to release this child to (name of agency or TSS) for the purpose of adoption or suitable placement. We are required by tribal

law to make a record of this hearing. The record will be kept confidential as are all matters regarding adoption. My role as Tribal Judge is to ensure that if you sign this release for adoption you do so of your own free will. Also, I am required to provide a written certification that this release for adoption was fully understood by you.'

B. Identifying questions: (Swear in mother)

1. Please state your name.
2. Where do you reside?
3. Are you over the age of eighteen (18) years?
4. Are you the biological or adoptive mother of (name of child)?
5. Where and when was this child born?
6. Are you an enrolled member of a federally recognized Indian tribe or eligible for enrollment in a federally recognized Indian tribe? If so which tribe?

C. Explanation of Rights:

'The purpose of this proceeding is to determine whether or not this child is eligible for adoptive placement. A child cannot be placed in an adoptive home until all parental rights have been terminated.

It is my understanding that you are here today to release your child for adoption to (name of agency). A release for adoption is a document which indicates to the Tribal Court that you are voluntarily giving up your parental rights over the child to an agency. You have a right to release your child for adoption if you so desire. A child cannot be taken away from the parent unless there is a showing of neglect or abuse.

If you release your child for adoption you will be giving up all parental rights. These rights include such things as the right to have custody, or the right to seek custody; the right to seek visitation with the child; the right to direct the spiritual upbringing and moral or religious training of the child; the right to know and associate with the child; the right to inherit from the child should the child die and leave an estate and the right to the services and earnings of the child. These examples, although not a complete list, serve as an indication of the types of parental rights that you are giving up by signing the release. If you sign the release for adoption, you will have no more control over the child than a stranger.

If you release your child for adoption, your release must be voluntary. By signing the release for adoption, you also waive notice of all future hearings involving this child. If you release the child for adoption, I will enter an order terminating your parental rights.

You must understand that the release for adoption is permanent. Although there is a twenty (20) day period following an order terminating your parental rights during which you may request a rehearing in this matter, once that twenty (20) day period is over, the release for adoption is final and binding. You may not return in two or three months or years, for example, because you have changed your mind. If now, or at any time during this hearing you decide that you do not wish to proceed, simply let me know and we will stop the hearing.

Do you wish to proceed at this time?’

- D. Establishing the Identity of the Father: ‘Now I must ask some questions about the father of your child. It is crucial that you answer them honestly and completely to ensure that an adoption of this child(ren) will be legally secure.
1. What is the name of your child’s(ren) father?
  2. What is his address?
  3. Is the father a member of a federally recognized Indian tribe or is he eligible for membership with a federally recognized Indian tribe? If so, which tribe?
  4. Were you married to him at the time of the child’s birth?
  5. Have you ever been married? (If yes, ask about current marital status).
  6. Is the father over eighteen (18) years of age?
  7. Does the father know of the child’s birth?
  8. Has he ever seen the child? (Give details).
  9. Has he ever provided any support or care for you during pregnancy?
  10. Have you ever lived with the father?
  11. Has he ever provided any support or care for you or the child since the child was born?
  12. Has the father ever lived with the child?
  13. Has the father acknowledged that he is the father of the child? Has he denied that he is the father of the child?
  14. Does the father know that you are releasing the child for adoption?
  15. Did you ever start any proceedings to have him declared to be the father, for support or payment of medical bills for yourself or for the child?
  16. Did he ever sign any documents acknowledging that he is the father of the child?
  17. Are you aware of any objections he may have to your plan for the child?’
- E. Presentation of the Release for Adoption:
1. ‘Before I give you the release for adoption form, let me ask you:
    - a. Have you thought this matter through carefully?
    - b. Is it your desire to release your child(ren) for adoption?
    - c. Is anyone promising you anything in exchange for your release?
    - d. Is anyone pressuring or threatening you in connection with your release?
    - e. Do you understand what I have said to you about your rights in this matter?
  2. This is the release for adoption which you may sign. Please read it carefully, take as much time as you wish. I will remind you again that if you do not wish to proceed, simply let me know and we will stop the hearing. Do you wish to proceed? Sign the release with your full name as it is typed.
  3. After the release is signed ask the following questions:
    - a. Is this your signature?
    - b. Did you sign this of your own free will?
    - c. Do you understand that this release is permanent and binding?
- F. Termination of Putative Father’s Rights.

1. If the father has been notified: 'I find that the putative father (full name) was given proper notice of this hearing (or notice of intent to release for adoption, or consent) at least thirty (30) days prior to date of the hearing. I further find that the putative father has not established any custodial relationship with the child and did not provide support or care for the mother during pregnancy or for either mother or child after the child's birth prior to notice of this hearing was served upon him, and it would not be in the best interests of the child to grant custody to the father.'
  2. If the whereabouts of the father cannot be determined: 'I find that reasonable efforts have been made to locate the putative father and that his whereabouts are unknown, and that he has not provided support for the mother, nor shown any interest in the child and has not made any provisions for the child's care for at least ninety (90) days prior to this hearing. I, therefore, terminate any and all rights of (full name), putative father.'
  3. If the identity cannot be determined: 'I find that the identity of the putative father is unknown and that he has not made provisions for the child's care, and did not provide support for the mother during her pregnancy or during her confinement. I, therefore, terminate any and all parental rights of the putative father.'
  4. If notice has not been given and is possible to be given, adjourn hearing to provide notice to the putative father
  5. If putative father has established custodial relationship with the child or has provided support or care for the mother during pregnancy or for either mother or child after the child's birth during the ninety (90) days before notice of the hearing was served upon him, adjourn the hearing so it can be referred to TSS to begin a neglect case.
- G. Closing: 'Based on the release of the child for adoption which you have signed in my presence, I now find that the release for adoption was signed as the free act and deed of the mother who knowingly and voluntarily executed it. I now terminate the parental rights of the mother. The child(ren) are committed to (name of agency) for the purpose of adoptive planning
- H. Right to release of identifying information. See §5.805(B) and explain right to release identifying information to person releasing child for adoption. "Do you wish to sign the denial of release of identifying information?" (Present the document for signature if requested)

**§5.502 Releases for Adoption or Consent to Adoption Executed by Mother.**

If the child was born out of wedlock and a release for adoption or a consent for adoption has been given by the mother, and the identity of the putative father has been determined by the Court, then the Court shall execute a Notice of Intent to Release for Adoption or a Notice of Intent to Consent to Adoption which shall be served upon the putative father in any of the following ways:

- A. Personal service upon the putative father, or if personal service cannot be obtained;

- B. Service by certified mail upon the putative father, with delivery to the addressee only and a return receipt requested, or if such service is not possible;
- C. By publication of an order in a newspaper in general circulation in the area in which the putative father is believed to be residing directing that he appear before the Court within a specified period of time, not to exceed thirty (30) days after the publication. The publication by notice shall state, “in connection with the matter involving (name of proposed adoptee) the (name of the putative father) is to be present at the Tribal Court on (date and time of the hearing)”. To preserve the privacy and confidential nature of the proceeding no other information concerning the nature of the ordered appearance shall be set forth in the publication.

**§5.503 Contents of Notice of Intent to Release for Adoption or Consent to Adoption.**

The Notice of Intent to Release for Adoption or Consent for Adoption shall be upon a form approved by the Tribal Court and the Indian Child Welfare Committee and shall state the date and time of any hearing for the Release for Adoption or hearing for the Consent to Adoption.

**§5.504 Putative Father; Right to Claim Paternity.**

- A. The putative father has the right to claim paternity of the child.
- B. In order for the putative father to claim paternity he shall do one of the following:
  - 1. File with the Tribal Court a Notice of Intent to Claim Paternity. Such notice shall include information prescribed and approved by the Tribal Court;
  - 2. Appear at the Release for Adoption or Consent to Adoption hearing and state on the record his intent to claim his right of paternity.

**§5.505 Putative Father; Right to Deny Paternity.**

- A. The putative father can upon the receipt of the notice of intent to release for adoption or notice of intent to consent to adoption, file a denial of interest in the custody of the child with the Tribal Court. Such denial of interest shall contain information prescribed and approved by the Tribal Court.
- B. If the putative father fails to appear at the hearing scheduled by the tribal Court, that failure to appear shall constitute a denial of interest in the custody of the child which shall result in the Tribal Court’s termination of the putative father’s parental rights in accordance with §5.506 of this Code.

**§5.506 Termination of Parental Rights of the Putative Father.**

Upon a showing that the putative father has received timely notice of the hearing upon the release for adoption or consent to adoption, the Court may permanently terminate his parental rights under the following circumstances:

- A. If the putative father submits a verified affirmation of his paternity and provides a denial of interest;
- B. If the putative father provides a disclaimer of his paternity;

- C. If the putative father was given proper notice of the hearing and fails to appear at the Court hearing;
- D. If the putative father appears at the Court hearing and denies interest in the custody of the child.

**§5.507 Putative Father: Custody Status.**

- A. Appearance.
  - 1. If the putative father appears at the hearing and requests custody of the child, the Court shall issue an order that an investigation be performed by TSS and that a report summarizing such investigation be provided to the Indian Child Welfare Committee.
  - 2. The report shall include information pertaining to the fitness and ability of the putative father to provide proper care for the child as well as any other pertinent information.
  - 3. The Indian Child Welfare Committee shall review the report and shall submit a recommendation as to custody and visitation to the Court based thereon within fourteen (14) days of receipt of the report.
  - 4. The Tribal Court shall conduct a hearing specifically to determine the best interests of the child with respect to granting custody to or terminating the parental rights of the putative father. This hearing shall be conducted no later than fourteen (14) days after receipt of the recommendation of the Indian Child Welfare Committee.
- B. Custodial Relationship. If the putative father has established a custodial relationship with the child or has provided support prior to receiving the notice of hearing to release for adoption or notice of hearing to consent to adoption, the rights of the father cannot be terminated except by proceedings based upon child abuse, neglect, and or abandonment.
- C. Granting Custody. If the parental rights of the mother have been terminated, the Tribal Court may award custody to the putative father, enter an order granting custody to the putative father, and legitimating the child based on this section of the Tribal Code.

**CHAPTER 5.6 — PRE-ADOPTIVE STATUS**

**§5.601 Placement.**

Upon entry of an order terminating parental rights, the Court shall authorize pre-adoptive placement of the child with a child placing agency in a release for adoption proceeding or with a specific adoptive parent in a consent to adoption proceeding. Unless good reason to the contrary shall appear, such placement shall be with a tribal member or an agency which shall give preference to Indian persons as proposed adoptive parents, or which shall otherwise have demonstrated a commitment to recognizing and respecting the continuance of an Indian child's tribal affiliation and Indian heritage.

**§5.602 Status.**

After pre-adoptive placement in a proposed adoptive home the child shall be supervised in a manner and by persons and agencies directed by TSS. Regular reports shall be submitted to the Court and the Indian Child Welfare Committee with respect to the child's adjustment in the proposed adoptive home.

**CHAPTER 5.7 — PROHIBITIONS AS TO MONEY OR OTHER CONSIDERATIONS**

**§5.701 Fees and Expenses.**

- A. Except for charges and fees approved by the Tribal Court, which specifically includes Title IV-E adoption assistance payments, a person shall not offer, give, or receive any money or other consideration or thing of value in connection with any of the following:
  - 1. Placing a child for adoption;
  - 2. Registration, recording, or communication of the existence of a child available for adoption or the existence of a person interested in adopting a child;
  - 3. A release for adoption;
  - 4. A consent to adoption; and
  - 5. A petition for adoption.
- B. Before the entry of the final order of adoption, the petitioner shall file with the Tribal Court a sworn statement describing money or other consideration or thing of value paid to or exchanged by any party in the adoption proceeding, including anyone consenting to the adoption or adopting the adoptee, any relative of a party of the adoptee, any physician, attorney, social worker, or member of the clergy, and any other person, corporation, association, or other organization.
- C. The Court shall approve or disapprove fees and expenses.
- D. Acceptance or retention of the amounts in excess of those approved by the Court shall constitute a misdemeanor.

**CHAPTER 5.8 — ORDER OF ADOPTION**

**§5.801 Hearing.**

- A. The following documentation will be submitted to the Indian Child Welfare Committee thirty (30) days prior to the hearing pertaining to the Order of Adoption.
  - 1. Petition to Adopt;
  - 2. Release for adoption from Parent(s), if applicable;
  - 3. Release for adoption by Agency, if applicable;
  - 4. Order Terminating Parental Rights;
  - 5. Order Committing child to Agency or Department, if applicable;
  - 6. Home Study of Adoptive Parents;



7. Initial Service Plan of Adoptee;
  8. Statement of Money or Other Consideration Paid;
  9. Consent to Adopt by Parent(s), if applicable;
  10. Consent to Adopt by Agency, if applicable;
  11. Health Appraisal on Adoptee;
  12. Health Appraisal on Adoptive Parents;
  13. Record of Adoption;
  14. Consent to Adoption by Adoptee, if applicable; and
  15. Progress or Quarterly Reports from Agency while in progress in pre-adoptive placement.
- B. The Indian Child Welfare Committee shall review the documentation in its entirety for compliance and shall attest to such compliance to the Court.
  - C. The Indian Child Welfare Committee shall file with the Tribal Court no later than ten (10) days prior to the adoption hearing, its certification of the documentation and recommendation regarding the adoption order.
  - D. A hearing on the question of whether or not the order of adoption should enter shall be conducted not less than twelve (12) months nor more than fourteen (14) months after the date the child was placed in the proposed adoptive home.
  - E. The Court shall enter an order of adoption unless good cause to the contrary shall be shown by clear and convincing evidence.
  - F. In the event that an order of adoption shall not be entered, an order shall forthwith enter returning the child to the agency through which he was placed, or such other placement agency as the Court shall direct, for purposes of securing another adoptive placement.

**§5.802 Immediate Confirmation.**

The one (1) year period of pre-adoptive placement prior to confirmation of an adoption may be waived and an order of immediate confirmation of adoption may be entered if the person to be adopted is an adult, or if a child, upon the hearing of a motion for immediate confirmation if good cause shall be shown.

**§5.803 Order of Adoption; Execution and Distribution.**

An order for adoption shall be effective upon execution by the Court. After execution certified copies of the order of adoption shall be issued and distributed to the adoptive parent(s), TSS, the Child Placing Agency through which the adoption is processed, and the Keweenaw Bay Indian Community Enrollment Office.

**§5.804 Order of Adoption; Contents.**

An order of adoption shall contain the following:

- A. The name(s) of the adoptive parent(s) of the child(ren);
- B. The new name(s) of the child(ren) if the name(s) of the child(ren) is (are) changed pursuant to §5.901;
- C. A statement confirming that the legal consequences of the adoption have been explained to all parties by the Court and that all parties have acknowledged their understanding of the legal consequences of the adoption;

- D. A copy of the recommendation of the Indian Child Welfare Committee;
- E. If the Court's order is inconsistent with the recommendation of the Indian Child Welfare Committee, a statement as to why the Court is rejecting the recommendation of the Indian Child Welfare Committee;
- F. A finding that the adoption is in the best interest of all of the parties and a statement of the evidence relied upon to reach this conclusion;
- G. If the adoptive parent(s) is (are) not enrolled as a member(s) of the Tribe, a statement as to why the adoptive parent(s) was (were) selected rather than an enrolled member of the Tribe;
- H. Provisions for visitation with the extended family of the child(ren) or the Tribe;
- I. Provisions for ensuring that the child(ren) will be informed of the heritage and culture of the Tribe as well as his or her (their) enrollment in the Tribe or his or her (their) eligibility for enrollment in the Tribe; and
- J. Any other relevant information specific to the adoption proceedings.

**§5.805 Rights of Child and Extended Family.**

- A. An order of adoption does not terminate the relationship between a child and the child's Tribe, which may include his or her extended family, or the rights of the child and his or her extended family, as determined by the Court.
- B. Release of Identifying Information:
  - 1. A parent or guardian who places, or releases a child for adoption, or consents to adoption, has the right, at any time prior to the child's eighteenth (18<sup>th</sup>) birthday, to file with the applicable agency or the Tribal Court, a denial of release of identifying information. The denial of release of identifying information shall state the following:
    - a. Name of child before placement in adoption;
    - b. Name of the biological parents at the time of the termination of parental rights; and
    - c. The most recent address of the biological parents.
  - 2. A denial of release of identifying information may be revoked at any time by filing a revocation with the same agency or Tribal Court.
  - 3. If a denial of release of identifying information is not filed, or if a previously filed denial of release of identifying information is revoked, the information in subsection (B)(1) will be released upon request of the child after he or she attains the age of eighteen (18) years, unless the other biological parent has filed a denial of release of identifying information which has not been revoked.

**§5.806 Continuing Jurisdiction of Tribal Court; Review and Modification of Order of Adoption.**

- A. The Tribal Court shall maintain jurisdiction over an adoption until the child attains the age of eighteen (18) unless the criteria of 42 U.S.C. 675(8)(B) are met and then the Court shall maintain jurisdiction over an adoption until the child attains the age of twenty-one (21).

- B. The Court may review and modify the conditions of an adoption at any time either upon its own motion or upon a petition filed by a party to the original adoption proceedings; however, no order of adoption may be modified by the Court absent a showing by clear and convincing evidence that there has been a change of circumstances which materially affects the conditions of the adoption or the best interests of the adoptee.

**§5.807 Reports by Adoptive Parents.**

- A. Adoptive parents shall submit reports to the Tribal Court every 180 days unless directed to submit more frequent reports by the Court, while the Court has continuing jurisdiction over the adoption.
- B. Each report shall include:
  - 1. The current address of the adoptee and adoptive parent(s);
  - 2. Any other addresses used by the adoptive parent since the date of the last report;
  - 3. Any substantial changes in employment or income;
  - 4. Any changes in marital status, including separation;
  - 5. All provisions followed for visitation with the extended family of the child(ren) or the Tribe;
  - 6. Any difficulties encountered in complying with the provisions of the order of adoption;
  - 7. A brief summary regarding the emotional and physical well-being of the adoptee.
- C. Failure to submit a report as directed by the Court may result in review of the adoption by the Court pursuant to §5.806.

**CHAPTER 5.9 — NAME OF ADOPTEE**

**5.901 Change of Adoptee's Name.**

- A. In those cases where parental rights were terminated by the Tribal Court, and where the adoptive parent(s) wishes to change the name of the adoptee, the Order of Adoption, and all Court records, shall reflect the adoptee's new name and exclude any reference to the name bestowed upon the adoptee prior to the adoption and the names of the natural parents or parent.
- B. A new birth certificate shall be issued to the adoptive parents after entry of the Order of Adoption reflecting the adoptee's new name and certified copies thereof shall also be provided to the Tribal Enrollment Department, Bureau of Indian Affairs, Baraga County Clerk, and Vital Records Division of the Michigan Department of Public Health.

**§5.902 Names and Rights after Adoption.**

- A. After the entry of the Order of Adoption, the adoptee shall be known by, and called by his or her new name.
- B. The adoptive parent(s) shall thereafter stand in the place of a parent(s) to the adoptee

in law and in all respects as though the child was born onto them and shall therefore become liable for all duties and entitled to all rights of a parent(s).

- C. The adopted person shall become the heir at law of the adopting parent(s), and after the order of adoption is entered shall no longer be an heir at law of a parent whose rights have been terminated, provided, however, that this provision shall not terminate any Tribal rights which the child may have, any treaty rights which the child may have, nor any rights bestowed upon the adopted child as a result of tribal affiliation and descendency.
- D. Nothing in this Chapter of the Tribal Code is intended to supersede or take precedence over the Constitution and its Amendments regarding adoption of tribal members and the rights and entitlements derived therefrom.

## **CHAPTER 5.10 — APPEALS**

### **§5.1001 Manner of Appeal.**

Appeals in adoption proceedings shall be taken in the same manner, and in accordance with the same rules, governing other appeals as is set forth within the Tribal Code. This includes appeals for a fair hearing because of a claimed denial or delay of placement to an approved family that is outside the jurisdiction of the Court.

## **CHAPTER 5.11 – EFFECTIVE DATE, SEVERABILITY AND REPEAL OF PRIOR CODES**

### **§5.1101 Repeal of Prior Codes**

Title Five, Adoptions of the 1996 edition of the Tribal Code is hereby repealed and replaced by this the 2012 version of Title Five, Adoptions, of the Tribal Code.

### **§5.1102 Effective date**

This Code shall be in full force and effect according to its terms upon adoption by the Tribal Council.

### **§5.1103 Severability**

If any provision of this Title or its application to any person or circumstance is held invalid by a court of competent jurisdiction, the remainder of this Title will not be affected thereby.

**Legislative History: Ordinance 2012 – 05 was adopted on October 6, 2012.**