

**MIAMI TRIBE OF OKLAHOMA  
CHILD WELFARE CODE**

Adopted July 11, 2019

## **Table of Contents**

Part I Child Welfare General Provisions.....	1
§ 1 Purpose .....	1
§ 2 Definitions .....	1
§ 3 Jurisdiction .....	3
§ 4 Child Welfare Transfers from Another Court .....	3
§ 5 Child Welfare Transfers to Another Court .....	3
Part II Child Abuse.....	4
§ 6 Requirements to Report Child Abuse or Neglect .....	4
§ 7 Evidence of Abuse.....	4
§ 8 Temporary Protective Custody.....	4
§ 9 Child Abuse or Neglect Reporting Procedures .....	5
§ 10 Investigation upon Receipt of Report .....	6
§ 11 Evidence Not Privileged .....	6
§ 12 Confidentiality of Reports and Investigations .....	6
§ 13 Child Protection Teams .....	7
§ 14 Immunity from Liability .....	7
Part III Protective and Emergency Custody.....	7
§ 15 Taking Children into Custody.....	7
§ 16 Notification of Parents.....	8
§ 17 Notification of Court Officers.....	8
§ 18 Emergency Medical Treatment.....	8
Part IV Procedure of Child Welfare Case.....	8
§ 19 Initial Review.....	8
§ 20 Presenting Officer’s Review.....	9
§ 21 Diversion by Contract.....	9
§ 22 Petition Contents .....	10
§ 23 Summons .....	10
§ 24 Failure to Appear.....	11
§ 25 Appointment of Guardian Ad Litem.....	11
§ 26 Diversion by Consent Decree.....	11

§ 27 Adjudicatory Hearing.....	12
§ 28 Dispositional Hearing.....	13
§ 29 Continuance.....	13
§ 30 Social Study and Other Reports.....	13
§ 31 Treatment Plan.....	13
§ 32 Medical Examination.....	14
§ 33 Order of Protection.....	14
§ 34 Placement Preferences.....	15
§ 35 Neglect or Abused Child; Disposition.....	15
§ 36 Child in Need of Supervision; Disposition.....	16
§ 37 New Hearing Authorized .....	16
§ 38 Continuing Jurisdiction.....	16
§ 39 Records.....	16
Part V Termination of Parental Rights; Guardianship.....	17
§ 40 Motion for Termination of Parental Rights.....	17
§ 41 Petitions.....	17
§ 42 Guardian Ad Litem.....	17
§ 43 Guardianship.....	17
§ 44 Criteria for Termination.....	18
§ 45 Termination Based on Abandonment.....	21
§ 46 Order of Termination and Appeal.....	22
§ 47 Effect of Termination Decree.....	22
§ 48 Orders for Support.....	22
§ 49 Review of Child’s Disposition.....	22
Part VI Foster Care.....	22
§ 50 Foster Parent Program and Homes.....	22
§ 51 Licensing Foster Homes.....	23
§ 52 Basic Standard for Foster Families.....	23
§ 53 Physical Facilities.....	23
§ 54 Family Composition.....	23
§ 55 Foster Parenting Abilities.....	24
Part VII Adoption.....	24
§ 56 Purpose of Adoptions.....	24

§ 57 In Camera Determination of Tribal Enrollment Eligibility.....	25
§ 58 Jurisdiction Over Adoptions.....	25
§ 59 Eligibility to Adopt.....	25
§ 60 Requirements to Report Child Abuse or Neglect.....	26
§ 61 Voluntary Relinquishment.....	26
§ 62 When Consent of Parents is Unnecessary.....	26
§ 63 Consent of Child.....	26
§ 64 Prevention of Sex Trafficking.....	27
§ 65 Petition for Adoption.....	27
§ 66 Investigation of Adoption Petitioners.....	28
§ 67 Adoption Hearing.....	28
§ 68 Report and Final Decree of Adoption.....	29
§ 69 Contents of Adoption Order.....	29
§ 70 Effect of Final Decree of Adoption.....	29
§ 71 Record and Hearing Confidential.....	29
§ 72 Certificate of Adoption.....	30
§ 73 Recognition of Foreign Decree.....	30

**PART I CHILD WELFARE – GENERAL PROVISIONS**

**§ 1 Purpose**

- (a) The purpose of this Code is to:
  - (1) provide for the best interests of each Child;
  - (2) provide for the welfare, care, and protection of each Child;
  - (3) preserve and strengthen the ties between Child and the Miami Tribe;
  - (4) preserve the unity of the Child’s family;
  - (5) secure for any Child the necessary care, guidance, and discipline to assist the Child in becoming a responsible and productive member of the family unite, the Miami Tribe, and society in general; and
  - (6) protect Miami Children and offer protective services in order to prevent any further harm to a Child suffering from abuse.
- (b) Provisions of this Code shall be liberally construed in favor of carrying out the purpose of this Code.

**§ 2 Definitions**

- (a) “Abandon” means any of the following:
  - (1) the Parent or Custodian has left the Child alone or in the care of another, the whereabouts of the Parents or Custodians are unknown, and the Child’s identity cannot be ascertained by the exercise of reasonable diligence;
  - (2) the Parent or Custodian has voluntarily left the Child alone or in the care of another and expressed a willful intent by words, actions, or omissions not to return for the Child;
  - (3) the Parent or Custodian fails to establish and/or maintain a substantial and positive parental relationship with the Child for an unreasonable period of time immediately preceding the filing of a petition. For the purpose of this Section 2(a)(3), incidental or token visits of communications with a Child do not constitute a substantial and positive parental relationship; or
  - (4) the Parent or Custodian fails to respond to notice of proceeding involving their Child after receiving proper service of that notice.
- (b) “Abuse” or “Child Abuse” or “Neglect” means an act or omission, in one (1) of the following categories which seriously threatens the health or welfare of a Child, taking into account accepted child rearing practices and tribal culture:
  - (1) any case in which a Child exhibits evidence of bruising, bleeding, malnutrition, cuts, lashes, burns, bone fractures, subdural hematoma, swelling, or death, or circumstances indicate that such condition or death may be the fault of a Parent or Custodian;
  - (2) any case in which a Child is victim of sexual assault or molestation;

- (3) any case in which the Child's Parents or custodians fail to provide adequate food, clothing, shelter, or supervision that a prudent Parent would take;
  - (4) any case in which a Parent or Custodian has subjected the Child to mistreatment or abuse, including severe emotional abuse, or allowed another to mistreat or abuse the Child without taking means to stop such mistreatment or abuse and prevent it from recurring;
  - (5) any case in which a Child lives in an environment unreasonably dangerous to the Child's welfare;
  - (6) any case in which the Parent or Custodian unreasonably fails or refuses to provide proper or necessary subsistence, education, medical care, or any other care necessary for the Child's health, guidance, or well-being;
  - (7) any case when a Child is Abandoned by his or her parents.
- (c) "Adult" means a person eighteen (18) years of age or over.
  - (d) "Child" means an unmarried person who is under the age of eighteen (18) years and is either a member of an Indian tribe or is eligible for membership in an Indian tribe.
  - (e) "Child Abuse" means acts that fall within the definition of "Abuse."
  - (f) "Child in Need of Supervision" means any Child who:
    - (1) has repeatedly disobeyed reasonable and lawful commands or directives of his or her Parent, Guardian, or Custodian;
    - (2) is willfully absent from his or her home without the consent of his or her Parent, Guardian, or Custodian for a substantial period of time;
    - (3) is willfully and habitually absent from school in violation of law; or
    - (4) has parents unreasonably absent or unwilling to provide adequate parental care, supervision, and discipline.
  - (g) "Child Placement Agency" means an agency designed and licensed for the care or placement of Children.
  - (h) "Custodian" means a person, entity, or agency with Custody of a Child.
  - (i) "Custody" means indefinite guardianship of and legal rights over a Child.
  - (j) "Foster Home" means a facility for the care of not more than ten (10) Children in a family type setting, licensed or approved pursuant to Miami law, or, if outside the Miami jurisdiction, by the law of the jurisdiction in which such facility is physically located or both.
  - (k) "Guardian" means a temporary custodian or a person who has guardianship authority over a Child.
  - (l) "Guardianship" means temporary custody or the duty and authority vested by law, including by appointment of court, to make major decisions affecting the Child.

- (m) “Miami Court” or “Miami Tribal Court” means the Miami Tribe of Oklahoma District Court or division thereof established by the Miami Tribe of Oklahoma Judicial Code.
- (n) “Miami Tribe” means the Miami Tribe of Oklahoma.
- (o) “Neglect” means acts that fall within the definition of “Abuse.”
- (p) “Parent” means either a natural parent or a parent by adoption.
- (q) “Presenting Officer” means the attorney designated by the Miami Tribe to prosecute offenses committed under this Code.
- (r) “Protective Supervision” means a legal status created by court order under which the Child is permitted to remain in his or her own home under the supervision of the Court through the Miami Indian Child Welfare Office during the period in which treatment is being provided to the family by the Miami Indian Child Welfare Office or other agencies designated by the Court.

**§ 3 Jurisdiction**

- (a) The Miami Tribal Court shall have jurisdiction under this Code to the furthest extent the law allows.
- (b) The Miami Tribal Court may issue temporary orders providing for protection, support, or medical treatment as it deems in the best interests of any Child subject to the jurisdiction of this court and consistent with actions under this Code.
- (c) Where a custody award has been made in the Miami Tribal Court in a dissolution of marriage action or another proceeding, the Court may take action under this Code if the Child is Neglected.

**§ 4 Child Welfare Transfers from Another Court**

- (a) Any state or tribal court may transfer to the Miami Tribal Court any proceeding for the foster care placement of or termination of parental rights to any Indian Child who is a member of, or eligible for membership in, the Miami Tribe.
- (b) After the order of transfer is received by the Miami Tribal Court and after a transfer hearing is held, the Court shall accept any proceeding transferred to the Miami Tribal Court unless good cause is shown that the Court should not accept transfer. Good cause includes an express finding that the transfer would be detrimental to the best interests of the Child and a rationale that supports that finding.
- (c) A court transferring a case to the Miami Tribe’s jurisdiction under this Section shall transmit all documents and legal and social records, or certified copies thereof, to the Court, which shall proceed with the case as if the petition has been originally filed or the adjudication had been originally made in this Court.

**§ 5 Child Welfare Transfers to Another Court**

- (a) The Miami Tribal Court is authorized to transfer any case under this Code arising within the Miami Tribe’s jurisdiction, if the Child subject to the case is not a member or eligible for membership in the Miami Tribe, to the Court of the Child’s Indian tribe, or if the Child is a non-Indian, to the courts of the state where the Child is a

resident or domiciled, upon the petition of the Presenting Officer, either Parent, a Custodian or Guardian, the Child's tribe, or an appropriate official of the Child's state.

- (b) When deciding whether to make such transfer, the Miami Tribal Court shall consider:
  - (1) the best interests of the Child;
  - (2) if transfer is requested prior to adjudication, whether witnesses necessary to the adjudication can attend in the receiving jurisdiction;
  - (3) emotional, cultural, and social ties of the Child and its family; and
  - (4) the likelihood that the same Child and family would return to the Miami Tribe jurisdiction within a reasonable time and come before the Court again.
- (c) If the Court receives a case by transfer from a court seated in another jurisdiction, the Court may transfer the case to back to the original court, provided that such transfer is permitted by law and the Court evaluates in the Order of Transfer the factors set forth in Section 5(b).
- (d) Upon entering an order transferring a case as provided under this Section, the Court shall serve a certified copy of the Order of Transfer, the legal case file, and any social or police reports concerning the Child's case to the Court Clerk of the receiving jurisdiction. The Court may retain physical Custody of the Child pending an order or notice of acceptance from the receiving jurisdiction.

## **PART II CHILD ABUSE**

### **§ 6 Requirements to Report Child Abuse or Neglect**

Any person who has knowledge that a Child has been subjected to Abuse or Neglect or who has observed the Child being subjected to circumstances or conditions which would reasonably result in Abuse or Neglect shall immediately report or cause a report to be made of such facts to the Miami Indian Child Welfare Office or the Miami Nation Police Department.

### **§ 7 Evidence of Abuse**

- (a) Any Child health associate, person licensed to practice medicine, registered nurse or licensed practical nurse, hospital personnel engaged in the admission, examination, care or treatment of patients, medical examiner, coroner, social worker, or local law enforcement officer who has before him or her a Child reasonably believed to have been Abused or Neglected may take or cause to be taken color photographs of the areas of trauma visible on the Child. If medically indicated, such person may take or cause to be taken X-rays of the Child.
- (b) Any color photographs or X-rays which show evidence of Child Abuse shall be immediately forwarded to the Miami Nation Police Department and the Miami Indian Child Welfare Office.

### **§ 8 Temporary Protective Custody**

- (a) The Court shall make a judge or officer of the court available by telephone at all times to act with the authority of the Court, to issue written or verbal temporary

protective custody orders, or in the alternative or in addition thereto, the Court shall enter a general order detailing the procedure to be used in taking Children into custody on an emergency basis when no Judge is present at the Court.

- (b) Temporary protective custody orders may be requested by the Miami Nation Police Department, the Miami Indian Child Welfare Office, or any physician who has a Child he or she reasonably believed to have been Abused or Neglected and the circumstances or condition of the Child indicate that care in the Child's residence or in Custody of the person responsible for the Child's care would present an imminent danger to that Child's life or health.
- (c) The Presenting Officer, Miami Nation Police Department, the Miami Tribal Court, and the Miami Indian Child Welfare Office shall be notified of action under this Section immediately so that Child protective proceedings may be initiated.
- (d) Temporary custody under this Section shall not exceed seventy-two (72) hours, except for good cause shown.

## **§ 9 Child Abuse or Neglect Reporting Procedures**

- (a) Reports of known or suspected Child Abuse or Neglect made pursuant to this Part shall be made immediately to the Miami Nation Police Department and/or the Miami Indian Child Welfare Office and shall be followed promptly by preparation of a written report.
- (b) Upon receiving notice of known or suspected Child Abuse or Neglect, the Miami Nation Police Department and/or the Miami Indian Child Welfare Office shall prepare a report. Such report, when possible, shall include the following information:
  - (1) the name, address, age, sex and race of the Child;
  - (2) the name and address of the Child's Parent or, where applicable, Custodian or Guardian;
  - (3) the nature and extent of the Child's injuries, including any evidence of previous known or suspected Abuse or Neglect to the Child of the Child's siblings;
  - (4) the names and addresses of the persons responsible for the suspected Abuse or Neglect;
  - (5) the family composition;
  - (6) the source of the report and the name, address, and occupation of the person making the report;
  - (7) any action taken by the reporting source; and
  - (8) any other information that the person making the report believes may be helpful in furthering the purpose of this Code.
- (c) A copy of the report shall be transmitted immediately to the Presenting Officer's office, the Miami Indian Child Welfare Office, and the Court Clerk.
- (d) A written report prepared under this Section shall be admissible as evidence in any proceeding related to Child Abuse.

## **§ 10 Investigation Upon Receipt of Report**

- (a) The Miami Nation Police Department or the Miami Indian Child Welfare Office shall make a thorough investigation immediately upon receipt of any report of known or suspected Child Abuse or Neglect. The immediate concern of such investigation shall be the protection of the Child.
- (b) The investigation, to the extent that it is reasonably possible, shall include:
  - (1) the nature, extent, and cause of the Abuse or Neglect
  - (2) the identity of the person responsible for such Abuse or Neglect
  - (3) the names and conditions of any other Children living in the same place; and
  - (4) the environment and the relationship of any Children therein to the person responsible for the suspected Abuse or Neglect.
- (c) The investigation shall, at minimum, include a visit to the Child's place of residence or place of custody and to the location of the alleged Abuse or Neglect and an interview with or observance of the Child reportedly having been Abused or Neglected. If admission to the Child's place of residence cannot be obtained, the Court, upon good cause shown, shall order access to the residence and for the investigators to conduct the investigation.
- (d) The Miami Indian Child Welfare Office shall be the primary agency responsible for the coordination of all investigations of all reports of known or suspected Child Abuse or Neglect. The Miami Indian Child Welfare Office may conduct the investigation independently or in conjunction with another appropriate agency or may arrange for the initial investigation to be conducted by another agency with personnel having appropriate training and skill. The Miami Indian Child Welfare Office shall provide for persons to be continuously available to respond to such reports.
- (e) Upon receipt of a report, if the Miami Indian Child Welfare Office or Miami Nation Police Department reasonably believes Abuse or Neglect has occurred, it shall immediately offer social services to the Child who is the subject of the report and his or her family. If immediate removal is necessary to protect the Child or other Children under the same care from further Abuse, the Child or Children may be placed in protective Custody in accordance with Miami tribal law.

## **§ 11 Evidence Not Privileged**

The privilege communication between patient and physician and between husband and wife shall not be a ground for excluding evidence in any judicial proceedings resulting from a report pursuant to this Part.

## **§ 12 Confidentiality of Reports and Investigations**

- (a) Except as provided in this Section, reports of Child Abuse or Neglect and the name and address of any Child, family or informant or any other identifying information contained in such reports, shall be confidential and shall not be public information.

- (b) Disclosure of the name and address of the Child and family and other identifying information involved in such reports shall be permitted only when authorized by the Court for good cause.
- (c) Access to the Child's record under this Section shall be permitted only when necessary for the investigation of a related Child Abuse or Neglect case, such as when a sibling is suspected to be a victim of Child Abuse by the same offender.

### **§ 13 Child Protection Teams**

It is the intent of this Code to encourage the Miami Nation Police Department and the Miami Indian Child Welfare Office to create and maintain one or more Child Protection Teams. The Court Presenting Officer, the Miami Nation Police Department, and the Miami Indian Child Welfare Office shall extend to each other its full cooperation in investigation all reports of Child Abuse and completing all follow-up reports, as required, in a timely manner.

### **§ 14 Immunity from Liability**

Any person participating in good faith in the making of a report or in a judicial proceeding held pursuant to this Part, the taking of photographs or X-rays, or the placing in temporary Custody of a Child pursuant to this Part of otherwise performing duties or acting pursuant to this Part may be held immune from any liability, civil, or criminal, that otherwise might result by reason of such reporting.

## **PART III PROTECTIVE AND EMERGENCY CUSTODY**

### **§ 15 Taking Children into Custody**

- (a) A Child may be taken into temporary Custody by a law enforcement officer without order of the Court when there are reasonable grounds to believe that:
  - (1) the Child is abandoned, lost, or seriously endangered in his or her surroundings, and immediately removal appears to be necessary for the Child's protection; or
  - (2) the Child has run away or escaped from his Parents, Custodian, or Guardian.
- (b) A medical doctor, physician, or similar licensed practitioner of medicine may temporarily detain without an order of the Court a Child brought before him or her for treatment whom he or she reasonably suspects to be the victim of Child abuse. Any person detaining a Child due to possible Child abuse shall notify, without unnecessary delay, a law enforcement officer who shall assume Custody of the Child. The law enforcement officer assuming Custody shall have the authority to consent to the admission of the Child to a medical facility and to consent to emergency medical treatment necessary to protect the life or health of the Child from danger or imminent harm. The opinion of a licensed medical doctor that treatment for a condition could not reasonably be delayed for a period long enough to contact a Judge for an emergency medical treatment order is necessary for emergency medical treatment.
- (c) In all other cases, a Child may be taken into Custody only upon an order of the Court.

## **§ 16 Notification of Parents**

When a Child is taken into temporary Custody, the officer shall notify all Parents, Custodians, and Guardians without unnecessary delay and inform the parent that all parties have a right to a prompt hearing.

## **§ 17 Notification of Court Officers**

Whenever an officer or other person takes a Child into custody or admits a Child to a medical facility and determines not to release the Child, the officer or other person who took the Child into custody or to a medical facility shall notify the Presenting Officer, the Miami Nation Police Department, the Miami Indian Child Welfare Office, and any agency or persons so designated by the Court at the earliest opportunity that the Child has been taken into Custody and where the Child has been taken. The person shall also promptly file a brief written report with the Presenting Officer, Miami Nation Police Department, the Miami Indian Child Welfare Office, and any agency or person so designated by the Court stating the facts which led to the Child being taken into Custody and the reason why the Child was not released.

## **§ 18 Emergency Medical Treatment**

- (a) At any time after a Child is taken into Custody with or without a court order and prior to adjudication on the merits:
  - (1) when the Court find that emergency medical, surgical, or dental treatment is required for a Child in the Miami Tribal Custody, it may authorize such treatment or care if the Parents, Custodian, or Guardian are not immediately available to give their consent or to show cause why such treatment should not be ordered. The power to consent to emergency medical care may be delegated by the Court to the agency or person having physical Custody of the Child pursuant to this Part or pursuant to court order; and
  - (2) after making a reasonable effort to obtain the consent of the Parent, Custodian, or Guardian, and after a hearing on notice, the Court may authorize or consent to non-emergency medical, surgical, or dental treatment or care for a Child in the Miami Tribal Custody.
- (b) After a Child has been adjudicated a ward of the Court, the Court may consent to any necessary emergency, preventive, general medical, surgical, or dental treatment or care, or may delegate the authority to consent thereto to the agency or person having Custody of the Child.

## **PART IV PROCEDURE OF CHILD WELFARE CASE**

### **§ 19 Initial Review**

- (a) Whenever it appears to any person that a Child is the subject of Abuse or Neglect, or in Need of Supervision, the person may refer the matter to the Miami Indian Child Welfare Office, which shall determine, whether the interests of the Child requires that further action be taken.

- (b) If, after review and investigation by the Miami Indian Child Welfare Office, it is determined that the interest of the Child or of the community require that court action be taken, the welfare officer shall make a request to the Presenting Officer to file a petition and also deliver a copy of the entire case file to the Presenting Officer.
- (c) If the Miami Indian Child Welfare Office is unable to determine whether the interests of the Child or of the Miami Tribe require that court action be taken from information available, the matter may be further investigated as set forth in Section 10.
- (d) If the Child Welfare officer determines that the interests of the Child or of the Miami Tribe do not require court action, the Miami Indian Child Welfare Office may offer such social services and make such referrals to other agencies as may be feasible to help the family with any problems it may have.

**§ 20 Presenting Officer’s Review**

- (a) Upon receiving a request to file a petition and the accompanying reports and files from the Miami Indian Child Welfare Office, the Presenting Officer shall review the case file, reports, and lay witness statements to determine if there is sufficient evidence to establish jurisdiction and move forward with a case regarding care of the Child.
- (b) If the Presenting Officer determines that there is not sufficient evidence, the Presenting Officer may request the Miami Indian Child Welfare Office to conduct a further investigation into the matter as set forth in Section 10.
- (c) If the Presenting Officer determines that sufficient evidence is available to establish the jurisdiction of the Court over the Child, a petition for the Child shall be filed.

**§ 21 Diversion by Contract**

- (a) Prior to the filing of a Petition for suspected Child Abuse or Neglect, the Miami Indian Child Welfare Office, with the consent of the Presenting Officer, may withhold filing a case and divert the case to a nonjudicial source for treatment or assistance.
- (b) If a case or prosecution is diverted from the justice system, the case or charges shall not be filed if the Parent, Custodian, or other person participates to the satisfaction of the Miami Indian Child Welfare Office and Presenting Officer in the diversion program offered.
- (c) Diversion shall be made by entering into a contract with the Child’s Parents, guardians, or other custodians whereby the Parent, guardian or other custodian agrees to undergo specific treatment for conditions noticed, including an agreement to do or refrain from doing certain acts.
- (d) Each diversion contract shall contain the following:
  - (1) the specific facts or allegations, including dates, which gave rise to the condition addressed by the contract;
  - (2) the specific treatment programs the Parents, or where applicable Custodian or other persons, agree to successfully complete and their duration;

- (3) the specific facts which the parties agree to do or to refrain from doing;
  - (4) the specific treatment or other social services to be offered by the Miami Tribe and accepted by the family;
  - (5) a fixed, limited time for the contract to run not exceeding two (2) years; and
  - (6) that the Presenting Officer will not file a petition on the subject of the contract for the facts or allegations stated if the Parents, or where applicable Custodian or other persons, comply with the contract terms for the full term of the contract.
- (e) If the person diverted successfully completes the diversion program to the satisfaction of the Presenting Officer and the Miami Indian Child Welfare Office, he or she shall be released from the terms and conditions of the program, and no filing of the case shall be made.
  - (f) Participation by a person accused or suspected of Child Abuse in any diversion program shall be voluntary.
  - (g) No diversion contract may place physical Custody in any person or agency other than the Parent, Custodian, or Guardian unless it bears the approval in writing by the Court.
  - (h) A Child shall not be diverted pursuant to this Section if diversion is not in the best interests of the Child's health and welfare.

**§ 22 Petition Contents**

- (a) In every petition filed under this Part, the Child's Parent, or where applicable, Guardian or Custodian, shall be named as respondent. Summons shall be issued for all named respondents.
- (b) The petition shall set forth plainly the facts which bring the Child within the Court's jurisdiction. The petition shall also state the name, age, and residence of the Child and the names and residences of the Child's Parents, Custodian, or Guardian or of the Child's closest known relative if no Parent, Custodian, or Guardian is known.
- (c) All petitions filed alleging the dependency or neglect of a Child may include the following statement: "Termination of the Parent-Child Legal relationship is a possible remedy available if this petition is sustained."

**§ 23 Summons**

- (a) Upon filing of a petition, the Court Clerk shall issue a summons to the respondents and the Child.
- (b) A summons need not be issued or served upon any respondent who appears voluntarily, or who waives service in writing before a notary public or Court Clerk, or who has promised to appear at the hearing in writing upon the release of a Child from emergency Custody or otherwise, but any such person shall be entitled to a copy of the petition and summons upon request.

- (c) The Court on its own motion or on the motion of any party may join as respondent or require the appearance of any person it deems necessary to the action and authorize the issuance of a summons directed to such a person.
- (d) If the parties required to be summoned cannot be found within the jurisdiction of the Miami Tribal Court, the fact of the Child's presence within the Miami jurisdiction shall confer jurisdiction on the Court as to any absent Parent, Custodian, or Guardian, if due notice has been given.

**§ 24 Failure to Appear**

- (a) Any person served with a summons who failed to appear without reasonable cause may be proceeded against for contempt of court and a bench warrant may be issued.
- (b) If after reasonable effort the summons cannot be served or if the welfare of the Child requires that he or she be brought immediately into the Custody of the Court, a bench warrant may be issued for the Parents, Custodian, Guardian, or Child.
- (c) When a Parent or other person who signed a written promise to appear and bring the Child to court, or who has waived or acknowledged service fails to appear with the Child on the date set by the Court, a bench warrant may be issued for the Parent or other person, the Child, or both.

**§ 25 Appointment of Guardian *Ad Litem***

- (a) The Court may appoint a guardian *ad litem* to protect the interest of a Child in proceedings when:
  - (1) the Court finds that the minor does not have a Parent, Custodian, or Guardian willing and able to exercise effective guardianship;
  - (2) no Parent, Custodian, Guardian, or relative of the Child appears at the first or any subsequent hearing in the case;
  - (3) the Court finds that there may be conflict of interest between the Child and the Child's Parent, Custodian, or Guardian, such as when the Child is suffering from Abuse or Neglect; or
  - (4) the Court finds that it is in the Child's best interests, whether or not a Parent, Custodian, or Guardian is present.
- (b) The guardian *ad litem* shall be charged in general with the representation of the Child's interest. The guardian *ad litem* shall be provided with all reports relevant to the case, including the reports made pursuant to Section 9 and Section 10. A guardian *ad litem* shall make such further investigations as deemed necessary to ascertain and understand the facts of the case.
- (c) The Miami Tribal Court shall compensate the guardian *ad litem* for all reasonable fees invoiced. The costs of the proceeding, including guardian *ad litem* and expert witness fees, may be charged to either or both of the parties, as the Court determines just and appropriate.

**§ 26 Diversion by Consent Decree**

- (a) After the filing of a petition, the Presenting Officer with the consent of the Child Welfare officer, the respondents, and the Court may divert a child welfare case by obtaining a Consent Decree if:
  - (1) the Court has informed the Child and the Parents, or where applicable, Custodian, or other persons, of their rights and believes they understand their legal rights;
  - (2) written consent to the decree is obtained from the Parent or Custodian and other respondents; and
  - (3) the Miami Indian Child Welfare Office has prepared a Treatment Plan for the respondents to be incorporated into the Consent Decree which states:
    - (A) the specific treatment programs the Parent or other respondents agree to successfully complete;
    - (B) the specific acts which the Parents or other respondents agree to do or to refrain from doing; and
    - (C) the person or agency to be vested with Custody of the Child if the Child cannot remain in his or her own home, the specific provisions of the Treatment Plan must be completed before the Child is returned to his or her own home, and the period of supervision of the Child in his or her own home.
- (b) After all parties have consented, the Court shall review the Treatment Plan and if the Court agrees that the plan is satisfactory, shall order all parties by the Consent Decree to abide by the provisions of the Treatment Plan. The Consent Decree shall be monitored and modified as in other dispositions, provided that if the family fails to comply with the Treatment Plan, the Court, on motion of the Presenting Officer, shall proceed with adjudication.
- (c) A Consent Decree shall remain in effect for not exceeding one (1) year, provided that upon notice of hearing the Court may extend the force of the decree for additional terms of one (1) year with the consent of the parties. The adjudication shall be continued during the term of the Consent Decree and thereafter dismissed upon completion of the Consent Decree.

**§ 27 Adjudicatory Hearing**

- (a) At the Adjudicatory Hearing, the Court shall consider whether the allegations of the petition are supported by evidence.
- (b) If the Court finds that the allegations of the petition are not supported by evidence, the Court shall order the petition dismissed.
- (c) When the Court finds that the allegations of the petition are supported, the Court shall sustain the petition and make an order of adjudication setting forth whether the Child is Neglected or Abused and making the Child a ward of the Court.

- (d) Upon sustaining a petition, the Court shall make such dispositional orders as may be necessary to protect the Child prior to the Dispositional Hearing which shall be held without undue delay.

**§ 28 Dispositional Hearing**

- (a) The Dispositional Hearing shall be held after an adjudicating hearing has found a Child to be Abused or Neglected, or in need of Supervision.
- (b) The purpose of the Dispositional Hearing is for the Court to determine the treatment which should be ordered to attempt to correct the problems which led to the adjudication, and to provide for the health, welfare, and safety of the Child during the treatment period or, if treatment cannot or does not correct the problems after actual attempts have been made to do so, to provide for the long term health, welfare, and safety of the Child.
- (c) After making an order of adjudication, the Court shall hear evidence on the question of the proper disposition best serving the interests of the Child and the Miami Tribe.
- (d) The Dispositional Hearing shall be informal, and the general rule of procedure and evidence shall not apply so that all pertinent information may be considered in determining treatment and disposition. However, when feasible, the Court shall order the person who drafted any report or study relied upon to appear and answer questions regarding that report if it is challenged by any party. The Court may set or modify timelines for parties submitting reports or other pertinent information.

**§ 29 Continuance**

- (a) The Court may continue the Dispositional Hearing, either on its own motion or on the motion of any interested party, for a reasonable period to receive reports or other evidence.
- (b) If the hearing is continued, the court shall make an appropriate order for the Child's care or release to the custody of the Child's Parents, Custodian, or Guardian, or other responsible person or agency under such conditions of supervision as the Court May impose during the continuance.

**§ 30 Social Study and Other Reports**

- (a) The Court may order any agency to prepare and submit to the court a social study, home study, family or medical history, or other reports which may be helpful in determining proper treatment and disposition for the family in all cases under this Part.
- (b) The general rules of evidence shall not apply for the purpose of determining proper disposition of a Child and written reports and other material relating to the Child's mental, physical, and social history may be received and considered by the Court along with other evidence.
- (c) Such reports shall be filed with the Court and a copy delivered to the parties or their attorney at least five days prior to the Dispositional Hearing.

### **§ 31 Treatment Plan**

- (a) In every case the Court shall order the Miami Indian Child Welfare Office to prepare a detailed treatment plan for the treatment and disposition of the Problems identified in the adjudication.
- (b) The treatment plan shall contain at a minimum:
  - (1) a brief social and family history;
  - (2) a brief statement of the conduct at dispute;
  - (3) the specific treatment programs the family should be required to complete, their duration, and what is expected to be accomplished;
  - (4) the specific actions the Parents, or other respondents, should be ordered to do or refrain from doing;
  - (5) the specific treatment or other social services offered by the Miami Tribe which the family should be required to accept; and
  - (6) the person or agency to be vested with Custody of the child if the Child cannot remain in his or her own home, and a detailed plan describing how and when the Child will be returned to his or her home under supervision and when court supervision should cease.
- (c) Unless modified by the Court, the treatment plan shall be filed with the Court and copy delivered to the parties or their attorney at least five (5) days prior to the Dispositional Hearing.

### **§ 32 Medical Examination**

The Court may order the Child to receive a medical examination to determine the health and welfare of the Child for purposes of the Adjudicatory or Dispositional hearing, as well as other hearings or reports the Court deems necessary.

### **§ 33 Order of Protection**

- (a) The Court may make an order of protection requiring a respondent:
  - (1) to stay away from a Child or the Child's residence;
  - (2) to permit a Parent to visit a Child at stated periods;
  - (3) to abstain from offensive conduct against a Child, the Child's Parent or Parents, Custodian, or Guardian;
  - (4) to give proper attention to the care of the home;
  - (5) to cooperate in good faith with an agency:
    - (A) which has been given legal Custody of a Child;
    - (B) which is providing Protective Supervision of a Child by court order; or
    - (C) to which the Child has been referred by the Court;
  - (6) to refrain from acts of commission or omission that tend to make a home an improper place for a Child; or

- (7) to perform any legal obligation of support.
- (b) When such an order of protection is made applicable to a Parent or Custodian, it may specifically require active participation in the rehabilitation process and may impose specific requirements upon such Parent or Custodian, subject to the penalty of contempt for failure to comply with such order.

**§ 34 Placement Preferences**

- (a) In making a placement of or committing legal Custody of a Child to some person in the dispositional process whether for foster care or adoption, the Court shall consider the following order of preference;
  - (1) the natural Parents, adoptive Parents, Stepparents, Custodian, or Guardian;
  - (2) a citizen of the Miami Tribe over eighteen (18) years of age who is the Child's Grandparent, Aunt or Uncle, Brother or Sister, Niece or Nephew, or Cousin, by blood or by marriage;
  - (3) a member of another Indian Tribe over eighteen (18) years of age who is the Child's Grandparent, Aunt or Uncle, Brother or Sister, Niece or Nephew, or Cousin, by blood or by marriage;
  - (4) any other person over eighteen (18) years of age who is the Child's Grandparent, Aunt or Uncle, Brother or Sister, Niece or Nephew, or Cousin, by blood or by marriage;
  - (5) a Foster Home licensed by the Miami Indian Child Welfare Office;
  - (6) an Indian Foster Home licensed by any licensing authority by a state or by another Tribe;
  - (7) an institution for Children licensed or approved by the Miami Indian Child Welfare Office with a program suitable to meet the Child's needs;
  - (8) any other citizen of the Miami Tribe; or
  - (9) any other Indian person.
- (b) Where appropriate the Court may consider the preference of the Parents and the proximity of the prospective Foster Home to the Child's home in applying these preferences.
- (c) For each possible placement, the Court shall consider the willingness, fitness, ability, suitability, and availability of each potential placement Custodian.
- (d) The Court may place the Child in the Miami Indian Child Welfare Office or a Child Placement Agency approved by the Miami Indian Child Welfare Office for further placement in lieu of a direct placement pursuant to Paragraph (a) of this Section.

**§ 35 Neglect or Abused Child; Disposition**

- (a) When a Child has been adjudicated to be Abused or Neglected, the Court shall enter a decree of disposition specifying the required placement, supervisions, care, treatment, examinations, and reporting necessary for the best interests of the Child.

- (b) The Court may enter a decree terminating the Parent-Child legal relationship of one or both Parents, as described in Part V when reasonable efforts to treat the family have failed.

**§ 36 Child in Need of Supervision; Disposition**

When a Child has been adjudicated as being in need of Supervision, the Court shall enter a decree of disposition which may:

- (a) place the Child on probation or under Protective Supervision in the legal Custody of one of both Parents or the guardian;
- (b) place the Child in the legal Custody of a relative or other suitable person which may include placing the Child on probation or under Protective Supervision;
- (c) require as a condition of probation that the Child report for assignment to a supervised work program or place such Child in a Child care facility which shall provide a supervised work program, if:
  - (1) the Child is not deprived of the schooling which is appropriate to his or her age, needs, and specific rehabilitative goals;
  - (2) the supervised work program is of a constructive nature designed to promote rehabilitation, is appropriate to the age level and physical ability of the Child, and is combined with counseling form guidance personnel; and
  - (3) the supervised work program assignment is made for a period time consistent with the Child's best interests, but not exceeding one hundred eighty (180) days.
- (d) place legal Custody in the Miami Indian Child Welfare Office or a Child Placement Agency for placement in a Foster Home or Child care facility; or
- (e) commit the Child to any institution of Group Care Facility designated by the Court.

**§ 37 New Hearing Authorized**

- (a) An interested party may petition the Court for a new hearing when:
  - (1) new evidence, which was not known or could not with due diligence have been made available at the original hearing and which might affect the decree, has been discovered; or
  - (2) substantial irregularities in the proceedings prevented a fair hearing.
- (b) If it appears to the Court that the motion should be granted, it shall order a new hearing and shall make such disposition of the case as warranted by all the facts and circumstances and the best interests of the Child.

**§ 38 Continuing Jurisdiction**

Except as otherwise provided in this Part, the jurisdiction of the Court over any Child adjudicated as Abused, Neglected or in Need of Supervision shall continue until he or she becomes eighteen (18) years of age unless terminated by court order.

**§ 39 Records**

- (a) A record shall be taken of all proceedings which might result in the loss of custody unless waived by the parties in the proceeding and so ordered by the Court.
- (b) Records of court proceedings shall be open to inspection by the Parents or guardian, attorneys and other parties in proceedings before the Court, and to any agency to which legal Custody of the Child has been transferred, except records of court proceedings in formal adoptions and formal relinquishment shall be confidential and open to inspection only by court order.

**PART V TERMINATION OF PARENTAL RIGHTS; GUARDIANSHIP**

**§ 40 Motion for Termination of Parental Rights**

Termination of Parent-Child legal relationship shall be considered only after the filing of a written motion alleging the factual grounds for termination, and termination of a Parent-Child legal relationship shall be considered at a separate hearing following an adjudication of a Child as Neglected. Such motion shall be filed at least thirty (30) days before such hearing.

**§ 41 Petitions**

- (a) A petition for Termination of Parental Rights may be filed by the Presenting Officer, Guardian of the Child, or Miami Indian Child Welfare Office.
- (b) If a Child's Guardian or the Miami Indian Child Welfare Office files a petition for the termination of the parental rights of the Parents of the Child, the Presenting Officer shall join in the petition or motion for those petitions or motions required to be filed by the Presenting Officer.

**§ 42 Guardian *Ad Litem***

- (a) A guardian *ad litem* shall be appointed to represent the Child's best interests in any hearing determining the Termination of the Parent-Child Legal relationship. Such representation shall continue until an appropriate permanent placement of the Child is effected or until the Court's jurisdiction is terminated.
- (b) The Court shall compensate the guardian *ad litem* if fees are involved. The Court may order one or more of the parties involved in the case to reimburse the Court for the guardian *ad litem* fees. If more than one party is deemed to be responsible for guardian *ad litem* fees, the Court shall determine to what extent each party is responsible and the timeframe to reimburse the Court for the guardian *ad litem* fees.

**§ 43 Guardianship**

- (a) A decree vesting Guardianship of a Child shall be for an indeterminate period, not to exceed two years from the date it was entered. Such decree shall be reviewed by the Court no later than six (6) months after it is entered.
- (b) The individual, institution, or agency vested with Guardianship of a Child may petition the Court for renewal of the decree. The Court, after notice and hearing, may renew the decree for such additional period as the Court may determine, if it finds such renewal to be in the best interests of the Child. The findings of the Court and the

reasons therefore shall be entered with the order renewing or denying renewal of the Decree.

- (c) An individual, agency, or institution having Guardianship of the Child shall give the court any information concerning the Child upon the Court's request.
- (d) If Guardianship of the Child is transferred to an agency or institution, the Court shall transmit with the court order, copies of the social study, any clinical reports, and other information concerning the care and treatment of the Child.
- (e) Any individual, agency, or institution vested by the Court with Guardianship or a Child Shall:
  - (1) have the authority to –
    - (A) consent to medical and surgical treatments;
    - (B) represent the Child in the legal actions and make other decisions of substantial legal significance concerning a Child;
    - (C) determine where and with whom the Child may live; and
  - (2) have the duty and responsibilities of a Parent.

#### **§ 44 Criteria for Termination**

- (a) The Court, in paramount consideration of the health, safety or welfare and best interests of the Child, may order a Termination of the Parent-Child Legal Relationship where the Parent is a biological parent, if the Court finds beyond a reasonable doubt that any one of the following circumstances exists:
  - (1) a finding that the Child has been Abandoned by his or her Parent or Parents, subject to Section 45;
  - (2) a finding that the Child is adjudicated Abused or Neglected and all of the following exist:
    - (A) that an appropriate treatment plan approved by the Court has not been reasonably complied with by the Parent or Parents or has not been successful;
    - (B) that the Parent is unfit; and
    - (C) that the conduct or condition of the Parent or Parents is unlikely to change within a reasonable time;
  - (3) a finding that the Parent of a Child:
    - (A) has voluntarily placed physical custody of the Child with the Miami Indian Child Welfare Office or with a Child-Placement Agency for out-of-home placement;
    - (B) has not complied with the placement agreement; and
    - (C) has not demonstrated during such period a firm intention to resume physical custody of the Child or to make permanent legal arrangements for the care of the Child;

- (4) a finding that a subsequent Child has been born to a Parent whose parental rights to any other Child has been terminated by the Court; provided, that the condition which led to the making of the finding which resulted in the termination of such parent's parental rights to the other Child has not been corrected;
- (5) a finding that a Parent required to contribute child support has for a period of twelve (12) consecutive months out of the last fourteen (14) months immediately preceding the filing of a petition for Termination of Parental Rights, willfully failed, refused or neglected to contribute support to the Child both in substantial compliance with an order entered by the court of jurisdiction and according to such Parent's financial ability to contribute to such Child's support.
- (6) a conviction in a criminal action for child abuse or enabling child abuse, neglecting a Child or enabling the neglect of a child, child sexual abuse or enabling child sexual abuse, knowingly permitting or consenting to the use of a Child in child pornography, rape, or lewd or indecent proposals or acts upon a Child under the age of consent in any court of record;
- (7) a conviction in a criminal action that the Parent:
  - (A) caused the death of a Child as a result of physical abuse or neglect of such Child;
  - (B) caused the death of a sibling of the Child as a result of physical abuse or neglect of such sibling;
  - (C) committed the murder or voluntary manslaughter of any Child or aided or abetted, attempted, conspired or solicited to commit such act;
  - (D) committed a felony assault that has resulted in serious bodily injury to the Child or another Child of the Parent;
- (8) a finding in a Neglect or Abuse action either that:
  - (A) the Parent has physically or sexually abused the Child or sibling of such Child or failed to protect the Child or a sibling of such Child from physical or sexual abuse that is heinous or shocking to the Court;
  - (B) the Child or sibling of such Child has suffered severe harm or injury as a result of such physical or sexual abuse.
  - (C) the Parent has physically or sexually abused the Child or a sibling of such Child or failed to protect the Child or a sibling of such Child from physical or sexual abuse subsequent to a previous finding that such Parent has physically or sexually abused the Child or a sibling of such Child or failed to protect the Child or a sibling of such Child from physical or sexual abuse;
  - (D) the Child has been adjudicated as a deprived Child as a result of a single incident of severe sexual abuse, severe neglect or the infliction of serious bodily injury or torture to the Child, a sibling of the Child,

or a Child within the household where the Child resides, by the Parent of the Child; or

(E) the Parent has inflicted chronic abuse, chronic neglect or torture on the Child, a sibling of the Child or another Child within the household where the Child resides;

(9) the Parent conceived the Child as a result of rape on the other Parent;

(10) a finding that all of the following exist:

(A) the Child has been adjudicated Abused or Neglected;

(B) custody of the Child has been placed outside the home of a natural or adoptive Parent, guardian or extended family member;

(C) the Parent whose rights are sought to be terminated has been incarcerated;

(D) the continuation of parental rights would result in harm to the Child based on consideration of the following factors, among others: the duration of incarceration and its detrimental effect on the Parent/Child relationship; any previous incarcerations; any history of criminal behavior, including crimes against Children; the age of the Child; the evidence of abuse or neglect of the Child or siblings of the Child by the Parent; and the current relationship between the Parent and the Child and manner in which the Parent has exercised parental rights and duties in the past; and

(E) Termination of Parental Rights is in the best interests of the Child.

(11) a finding that all of the following exist:

(A) the Child has been adjudicated Neglected or Abused;

(B) custody of the Child has been placed outside the home of a natural or adoptive Parent, guardian or extended family member;

(C) the Parent whose rights are sought to be terminated has a mental illness or mental deficiency which renders the Parent incapable of adequately and appropriately exercising parent rights, duties and responsibilities;

(D) the continuation of parental rights would result in harm or threatened harm to the Child;

(E) the mental illness or mental deficiency of the Parent is such that it will not respond to treatment, therapy or medication and, based upon competent medical opinion, the condition will not substantially improve;

(F) Termination of Parental Rights is in the best interests of the Child; or

(12) the Parent of the Child has a history of extensive, abusive and chronic use of drugs or alcohol and has resisted treatment for this problem during a three (3) year period immediately prior to the filing of the petition.

- (b) The Court, in paramount consideration of the health, safety or welfare and best interests of the Child, may order a Termination of the Parent-Child Legal Relationship where the Parent is a legal guardian, foster parent, or otherwise vested by court order with the caretaking responsibilities and privileges of a parent, if the Court finds by clear and convincing that any one of the circumstances identified in Section 44(a)(1)-(12) exists.
- (c) In determining unfitness, conduct, or condition, the Court shall consider, but not be limited to the following:
  - (1) emotional illness, mental illness, or mental deficiency of the parent of such duration or nature as to render the parent unlikely within a reasonable time to care for the ongoing physical, mental, and emotional needs of the Child;
  - (2) conduct toward the Child of a physically or sexually abusive nature;
  - (3) history of violent behavior;
  - (4) a single incident of life-threatening or gravely disabling injury or disfigurement of the Child;
  - (5) excessive use of intoxicating liquors or narcotic or dangerous drugs which affect the ability to care and provide for the Child;
  - (6) neglect of the Child;
  - (7) long-term confinement of the parent;
  - (8) injury or death of a sibling due to proven parental abuse or neglect; or
  - (9) reasonable efforts by the Child care agencies which have been unable to rehabilitate the parent or parents
- (d) In considering any of the factors in Paragraph (b) of this Section in terminating the Parent-Child Legal Relationship, the Court shall give primary consideration to the physical, mental, and emotional conditions and needs of the Child. The Court shall review and order, if necessary, an evaluation of the Child's physical, mental, and emotional conditions.

#### **§ 45 Termination Based on Abandonment**

- (a) When a Child has been adjudicated neglected because he or she has been abandoned by his or her Parent or Parents, the Court may enter a decree terminating the Parent-Child relationship if it finds:
  - (1) that the Parent or Parents having legal Custody have left the Child and willfully failed to support the Child with no indication of the Parent's willingness to assume a parental role; and
  - (2) that the identity of the Parent or Parents of the Child is unknown and has been unknown for a period of ninety (90) days and that reasonable efforts to identify and locate the Parent have failed.
- (b) Before a Termination of the Parent-Child Legal relationship based on abandonment can be ordered, the petitioner shall file an affidavit stating what efforts have been

made to locate the Parent or Parents of the Child subject to the motion for termination.

**§ 46 Order of Termination and Appeal**

- (a) The Court shall order termination of parental rights if it finds by clear and convincing evidence that termination of parent rights and permanent placement with another person is in the best interests of the Child.
- (b) An order directing the Termination of Parent Rights is a final appealable order.

**§ 47 Effect of Termination Decree**

- (a) An order for the Termination of the Parent-Child Legal relationship divests the Child and the Parent of all legal rights, powers, privileges, immunities, duties, and obligations with respect to each other, except for the right of the Child to inherit from the Parent.
- (b) No order or decree entered pursuant to this Code shall disentitle a Child to any benefit due from any third person, including but not limited to, any Indian tribe, any agency, any state, or the United States.
- (c) After the termination of a Parent-Child legal relationship, the former Parent is not entitled to any notice of proceedings for the adoption of the Child by another, nor does the Parent have any right to object to the adoption or to otherwise participate in such proceedings.

**§ 48 Orders for Support**

- (a) Whenever a Child is removed from the Custody of his or her Parent or Custodian, the Parent or Custodian may be ordered by the Court to contribute a reasonable amount within their means or take other reasonable action to provide support for the Child.
- (b) When the Miami Tribe, or some other agency is paying for foster care for such Child, the contribution of the Parent shall be paid to the Court Clerk and dispensed by court order to that agency or the Miami Tribe as may be necessary by law or appropriate in the circumstances.

**§ 49 Review of Child's Disposition**

- (a) The Court, at the conclusion of a hearing in which it ordered the termination of a Parent-Child legal relationship, shall order that a review hearing be held no later than ninety (90) days following the date of the termination. At such hearing, the agency or individual vested with Custody or Guardianship of the Child shall report to the Court what disposition of the Child, if any, has occurred, and the Miami Indian Child Welfare Office or guardian *ad litem* shall submit a written report with recommendations to the Court, based upon an independent investigation, for the best disposition of the Child.
- (b) If no adoption has taken place within a reasonable time and the Court determines that adoption is not immediately feasible or appropriate, the Court may order foster placement of the Child.

## **PART VI FOSTER CARE**

### **§ 50 Foster Parent Program and Homes**

- (a) The Miami Indian Child Welfare Office shall have the authority to recruit, screen, and license Foster Homes for Children in accordance with this Part.
- (b) A list of legally qualified foster parents and foster homes identified and established by the Miami Indian Child Welfare Office must meet the qualifications required herein.
- (c) The Miami Indian Child Welfare Office shall provide the Court with any complete list of approved families qualified for the Foster Parent Program that it creates. The Miami Indian Child Welfare Office shall prepare a list of fostered Indian children by name, age, sex and a short background history including the reasons for their being sent to a foster home.

### **§ 51 Licensing Foster Homes**

The Miami Indian Child Welfare Office shall have the authority to license foster care homes for the care of Children and shall file any licensure with the Court Clerk's office.

### **§ 52 Basic Standard for Foster Families**

In considering Indian foster Parents, the primary consideration should be the Parents' capacity, flexibility, capability, and willingness to provide proper care to a Child or Children and act in the Child's best interests.

### **§ 53 Physical Facilities**

- (a) Physical standards for the Foster Home shall be set according to individual living standards for the community in which the Foster Home is located.
- (b) The following standard for comfort, safety, and privacy shall be considered:
  - (1) It is preferable for no more than two Children share sleeping rooms;
  - (2) The sharing of sleeping rooms by Children of opposite sexes is undesirable;
  - (3) Children, other than infants and during emergencies (illness), shall not share sleeping quarters with Adults in the household;
  - (4) Individual space shall be provided for the Child's personal possessions; and
- (c) Foster family homes shall be accessible to schools, recreation, churches, tribal facilities, other community facilities, and special resources (such as medical clinics) as needed.
- (d) If the home is otherwise suitable, it is recommended the foster family be provided with assistant in meeting foster home requirements, standards, and/ or codes.

### **§ 54 Family Composition**

- (a) Two Parents shall be selected in most cases; however, single Parents shall be selected when they can more effectively fulfill the needs of a particular Child.

- (b) The presence of other Children (either own or foster), and other Adults (i.e., Grandparents, Aunts, etc. or unrelated persons) shall be taken into consideration in terms of how they might be affected by or have an effect upon another Child.
- (c) The number and ages of Children in a home (both own and foster) shall be considered on an individual basis, taking into account the foster Parent's(s') abilities to meet the needs of all Children present in the Home, physical accommodations of the home, and the effect which an additional Child would have on the family as a unit.
- (d) It is preferred that:
  - (1) foster Parent(s) shall care for not more than two (2) infants (under two), including the foster Parent's own Children; and
  - (2) foster families should not have more than a total of six (6) Children, including foster Children and foster Parent's(s') own Children, in the Foster Home but exceptions may be made in order to keep siblings together or when no other feasible or preferable option exists.

### **§ 55 Foster Parenting Abilities**

An assessment of prospective foster Parent's(s') ability regarding a specific Child should take into account the following:

- (a) motivation for the Petitioner's(s') application;
- (b) characteristics and number of Children best suited to foster family;
- (c) existing family relationships, attitudes, and expectations regarding own Children and Parent-Child relationships;
- (d) ability to accept and love the Child;
- (e) capacity of Parent(s) to provide for foster Child's needs;
- (f) own Child's(ren's) attitudes toward accepting foster Child;
- (g) realistic assessment of positive and negative aspects of foster parenthood;
- (h) personal characteristics necessary to provide continuity of care throughout Child's need for placement;
- (i) flexibility to meet changing needs over the course of placement;
- (j) ability to accept Child's relationship with own Parent(s);
- (k) special ability to care for Children with special needs (physical handicaps, emotional disturbances, etc.);
- (l) ability to help a Child return home or be placed for adoption and gain satisfaction from the experience; and
- (m) ability to provide care, welfare, education, maintenance, support, food, clothing, shelter, ordinary medical care, and discipline to the Child.

## PART VII ADOPTION

### § 56 Purpose of Adoptions

The purpose of an adoption is to establish a formal and legal family relationship between persons which, after adoption, shall exist as if the parties were born into the adoptive relationship by blood. Adoptions pursuant to this Part shall be so recognized by every agency and level of the government except in eligibility for enrollment determination which shall continue to be based upon biological parentage.

### § 57 *In Camera* Determination of Tribal Enrollment Eligibility

- (a) Whenever a Parent, whether biological or adoptive, has expressed a desire that the name of the Parent or the original or adoptive name of the Child and the Child's relationship to themselves or others remain confidential, and a question arises as to the eligibility of the Child as an enrolled member of the Miami Tribe, the Court is authorized to receive from any source such information as may be necessary for a determination of the eligibility of such Child for membership, to review such information *in camera* and to enter its order declaring whether or not the Child is eligible for enrollment with the Tribe. In doing so, the Court shall be provided with Miami Tribe enrollment information of record for the Child or any other information necessary to evaluate eligibility for the necessary period(s) and shall seal all records received to maintain their confidentiality of the parties.
- (b) If the Court determines that such Child is eligible for enrollment as a member of the Tribe, it shall enter its order declaring said fact and the officers of the Miami Tribe who are responsible for determining whether a person is eligible for enrollment shall accept such orders as conclusive proof of the eligibility of the Child for membership and enroll the Child accordingly.
- (c) If the Court determines that such Child is not eligible to be enrolled with the Tribe, it shall enter its order accordingly, and the officers of the Miami Tribe who are responsible for determining whether a person is eligible for enrollment shall accept such order as proof of the ineligibility of said Child and refuse to enroll the Child unless other or further qualifications for enrollment are demonstrated in accordance with Tribal law.

### § 58 Jurisdiction Over Adoptions

- (a) The Court shall have exclusive jurisdiction regarding the adoption by or of any Child who is a resident of or domiciled within the jurisdiction of the Miami Tribe and a citizen of the Miami Tribe or eligible for citizenship of the Miami Tribe.
- (b) The Court shall have concurrent jurisdiction over the adoption of a Child who resides or is domiciled within the jurisdiction of the Tribe, and either:
  - (1) is a member of, or eligible for membership in, an Indian tribe other than the Miami Tribe; or
  - (2) is one whose case has otherwise been transferred to the Court from the courts of a state or tribe which has assumed jurisdiction over said Child.

## **§ 59 Eligibility to Adopt**

The following persons are eligible to adopt a Child pursuant to this Part:

- (a) a married couple jointly;
- (b) an unmarried person who is at least twenty one (21) years old; and
- (c) in the case of a Child born out-of-wedlock, the Child's father.

## **§ 60 Requirements to Report Child Abuse or Neglect**

- (a) Adoption of a Child may be decreed only if consent to such adoption has been executed and filed in the Court by:
  - (1) both Parents, if living, or the surviving Parent, unless their parental rights have been terminated by judicial decree;
  - (2) parent(s) less than sixteen (16) years of age may give their consent only with the written consent of the minor Parents' Parents or Custodians, or upon approval of the Court for good cause; or
  - (3) if both Parents are deceased, or if their parental rights have been terminated by judicial decree, then the Custodian of the Child, or the Guardian with consent of the Court.
- (b) Where any Parent or Custodian voluntarily consents to an adoption or Termination of parent rights, such consent shall not be valid unless executed before a judge of a court of competent jurisdiction and accompanied by the judge's certificate that the terms and consequences of the consent were fully explained in detail and were fully understood by the Parent or Indian custodian.
- (c) Any consent given prior to or within ten (10) days after the birth of a Child shall not be valid.
- (d) Any consent given for the adoption of, or Termination of parent right to a Child may be withdrawn at any time prior to the entry of a final decree of adoption or termination as the case may be and the Child shall be returned to the Parent.

## **§ 61 Voluntary Relinquishment**

- (a) Any Parent, Custodian or Guardian of a Child may relinquish any rights they may have to the care, Custody and control of a Child.
- (b) A relinquishment shall be made by filing a petition in the Court with notice to the Miami Indian Child Welfare Office, the Presenting Officer, and the Parent(s) not a petitioner(s).
- (c) The petition may relinquish rights to the Court or to a particular person for adoption.
- (d) The Court shall not accept or acknowledge relinquishment prior to ten (10) after the birth of the Child that is the subject of the relinquishment.
- (e) This Section's applicability is not limited to an adoption proceeding.

## **§ 62 When Consent of Parents is Unnecessary**

Adoption of a Child may be decreed without the consent required by Section 61 of this Part only if the Parents or Custodian, have had their parental or custodial rights terminated by a decree of a court of competent jurisdiction.

## **§ 63 Consent of Child**

- (a) Whenever a Child is of sufficient maturity and understanding the Court may require the consent of the Child, expressed in such form as the Court shall direct, prior to the entry of a decree of adoption.
- (b) Whenever possible, the Court should interview such Child in private concerning the adoption prior to approving the Child's consent.

## **§ 64 Prevention of Sex Trafficking**

- (a) It shall be unlawful to:
  - (1) accept any compensation, in money, property or other things of value, at any time, from the person or persons adopting a Child, for services of any kind performed or rendered, or purported to be performed or rendered, in connection with such adoption;
  - (2) accept any compensation, in money, property or other thing of value, from any other person, in return for placing, assisting to place, or attempting to place a Child for adoption or for permanent care in a foster home;
  - (3) offer to place, or advertise to place, a Child for adoption or for care in a foster home, as an inducement to any woman to enter an institution or home or other place for maternity care or for the delivery of a Child.
- (b) This Section does not apply to attorneys or advocates licensed by the tribal courts receiving reasonable fees for legal services actually rendered in the course of lawful adoption proceedings, nor shall subparagraphs (a)(1) or (1)(2) apply to any bona fide social worker or government employee receiving his or her normal salary and making such placements as part of his or her official duties.

## **§ 65 Petition for Adoption**

- (a) A Petition for adoption shall be filed in duplicate, verified by the petitioner(s), and shall specifically state:
  - (1) the full names, ages and places of residence of the petitioner(s), and if married, the place and date of their Marriage;
  - (2) the petitioner's(s') relationship with the Child, if any, and any tribal affiliation by blood and membership, if any;
  - (3) when and from whom the petitioner(s) acquired or intend to acquire physical Custody of the Child;
  - (4) the names of the Child's biological parents and their tribal affiliation by blood and membership, including tribal roll numbers, if known;

- (5) the date and place of birth of the Child including the jurisdiction issuing the birth certificate for said Child, the Child's sex, race, and tribal affiliation by blood and membership, including tribal roll number, if known;
  - (6) the name used for the Children in the proceeding and, if a change in name is desired, the new name;
  - (7) that it is the desire of the petitioner(s) that the relationship of Parent and Child be established between the Parent's(s') and the Child;
  - (8) the facts, if any, which excuse the consent of the Child's Parent(s) to the adoption; and
  - (9) the facts which bring the Child within the jurisdiction of the Court.
- (b) Any required consents to the adoption may be attached to the petition or filed with the Court prior to entry of a decree of adoption.

**§ 66 Investigation of Adoption Petitioners**

- (a) Upon the filing of a petition for adoption, the Court shall order an investigation be made:
- (1) by the agency having Custody or legal guardian ship of the Child;
  - (2) in other cases, Miami Indian Child Welfare Office or other appropriate tribal agency; or
  - (3) by a person qualifies by training or experience, designated by the Court.
- (b) The Court shall further order that report of such investigation shall be filed with the Court by the designated investigator within the time fixed by the Court and in no event more than forty-five (45) days from the issuance of the order for investigation, unless time therefore is extended by the Court.
- (c) Such investigation shall include the conditions and blood relatives of the Child for the purpose of determining whether the Child is a proper subject for adoption; appropriate inquiry to determine whether the proposed home is a suitable one for the Child; the capability, fitness, qualification, and willingness of the petitioners to act as parents to the Child; and any other circumstances and conditions which may have bearing on the adoption and of which the Court should have knowledge.
- (d) Where the adopting Parent is the spouse of a Parent, or in the event that a report from another jurisdiction is deemed adequate for the purpose of the Court and has been made within the six (6) months preceding the filing of the petition for adoption, the Court in its discretion, may waive the investigation and report requirements.

**§ 67 Adoption Hearing**

- (a) At any time after the written investigation report has been filed, the Court, upon motion or request of the petitioners or upon its own motion, shall fix a time for hearing the petition for adoption. The adoptive Parent or Parents shall appear personally at the hearing. All other persons whose consent is necessary to the adoption and who have not filed their written consent shall be duly notified and may

appear or be represented by an attorney or by an unpaid personal representative at their request, with the approval of the Court.

- (b) The Judge shall examine all persons appearing separately and, if satisfied as to the suitability of the Child for adoption, the financial ability and moral and physical fitness and responsibility of the adoptive Parents, and that the best interests of the Child will be promoted by the adoption, may enter a final decree of adoption or may place the Child in the legal Custody of the petitioners for a period of not more than six (6) months prior to entering a final decree of adoption.
- (c) If the Court is satisfied that the adoption will not be in the best interests of the Child, the petition shall be denied and the Child's guardian instructed to arrange suitable care for the Child.

### **§ 68 Report and Final Decree of Adoption**

- (a) If the Court does not enter a final decree of adoption at the time of the hearing for adoption but places the Child under the Guardianship of the petitioner(s), within six (6) months after the Child has been under the Guardianship of the Petitioner(s), the Court shall request a supplementary written report as to the welfare of the Child and the current situation and conditions of the adoptive home and the adoptive Parents.
- (b) If the Court is satisfied that the interests of the Child are best served by the proposed adoption, a final Decree of Adoption may be entered.
- (c) No final order shall be entered by the Court unless it appears to the Court that the adoption is in the best interests of the Child.
- (d) In any case where the Court finds that the best interests of the Child will not be served by the adoption, a guardian shall be appointed and suitable arrangements for the care of the Child shall be made.

### **§ 69 Contents of Adoption Order**

The final order of adoption shall include such facts as are necessary to establish that the Child is within the jurisdiction of the Court and eligible for adoption and that the adoptive Parents and home are adequate and capable for the proper care of the Child, as shown by the investigation reports and findings of the Court upon the evidence adduced at the hearings, the new name of the Child, if any, and that a Parent-Child relationship exists between the petitioner(s) and the Child.

### **§ 70 Effect of Final Decree of Adoption**

- (a) After a final decree of adoption pursuant to this Part is entered, the Parent Child relationship, and all the rights, duties, and other legal consequences of the natural relation of a Parent and Child, shall thereafter exist between such adopted Child, the adopting Parents, and the kindred of the adopting Parents. The adopted Child shall inherit real and personal property from the adopting family and the adopting family shall inherit from the Child in accordance with law as if such Child were the natural Child of the adopting Parent(s).
- (b) After a final decree of adoption pursuant to this Part is entered, the natural Parents of the adopted Child, unless they are the adoptive Parents or the spouse of an adoptive Parent, shall be relieved and terminated from all parental rights and responsibilities

for said Child, including the right to inherit from the Child, provided that the Child shall remain eligible to inherit from said natural Parents and retain all rights to membership in a tribe by virtue of his or her birth to said natural Parents.

- (c) Challenge of an adoption, when not made within two (2) years of the date the final decree is entered, shall be barred.

#### **§ 71 Record and Hearings Confidential**

Unless the Court shall otherwise order:

- (a) All hearings held in proceedings under this Part shall be confidential and shall be held in closed court without admittance of any person other than the interested parties.
- (b) All papers, records and files pertaining to the adoption shall be kept as permanent records of the Court and withheld from inspection. No person shall have access to such records except upon order of the Court for good cause shown, including for the purpose of determining enrollment in a Tribe as set forth in Section 57.

#### **§ 72 Certificate of Adoption**

- (a) For each adoption, the Court shall prepare, within thirty (30) days after the decree becomes final, a certificate of such decree on a form furnished by the registrar of vital statistics of the state or other jurisdiction having issued the birth certificate of said Child and shall attach thereto certified copies of the petition and decree of adoption, and any other information required by law.
- (b) Such form and certified copies, along with any other pertinent information requested by the jurisdiction having issued the birth certificate, shall be forwarded forthwith to the registrar of vital statistics of the jurisdiction.

#### **§ 73 Recognition of Foreign Decree**

When a Parent-Child relationship has been created by a decree of adoption by another court having authority and jurisdiction to enter such decrees, the rights, authorities, and obligations of the parties shall be recognized as an adoption under this Part.