

**KARUK TRIBE**

**CHILDREN AND FAMILY CODE**

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## **CHILDREN AND FAMILY CODE**

### **TITLE I: CHILDREN AND YOUTH IN NEED OF CARE**

#### **SECTION 1: PURPOSE AND PLACEMENT PREFERENCES**

##### **A. Purpose**

The Karuk Tribe's Tribal Court, when exercising jurisdiction under this Code, shall be known as the "Children and Family Court," or, alternatively, "the Tribal Court."

This Code shall be liberally construed and interpreted to fulfill the following purposes whenever possible:

- (1) To secure, for each child coming before the Court, the care, guidance, protection and control needed to continue placement in her or his own home where possible, and to serve the welfare and the best interests of the child, the family, and the Karuk Tribal Community;
- (2) To preserve and strengthen the unity of the Karuk family, preferably by only separating children from their parents or siblings when absolutely necessary;
- (3) To preserve and strengthen each child's Tribal, cultural, or ethnic identity whenever possible;
- (4) To take such actions that may be necessary and feasible to prevent the abuse, neglect or abandonment of children;
- (5) To provide a continuum of services for children and their families, with emphasis whenever possible on early intervention, prevention and community-based alternatives;
- (6) To secure the rights and ensure fairness to children, youth, parents, guardians, custodians or other parties who come before the court; and
- (7) To provide a non-adversarial forum for culturally appropriate resolution of child and family welfare issues coming before the Tribal Court.

##### **B. Tribal Placement Preferences**

In the event a child falling under the Tribal Court's jurisdiction is placed outside the child's home and such placement can secure the best care, guidance, and control for the child, the Tribe hereby establishes the following placement preferences, in order of preference:

- (1) A member of the child's immediate family, according to tribal laws, customs, and traditions.
- (2) A member of the child's extended family, according to tribal laws, customs, and traditions.
- (3) Another member of the child's Tribe.
- (4) Another Indian family, including an Indian foster home licensed or approved by any federally recognized Indian tribe and approved by the Tribe.
- (5) An institution for children licensed or approved by the Tribe or operated by an Indian organization that has a program suitable to meet the child's needs.
- (6) A non-Indian foster home located on or near Tribal lands and licensed or approved by the Tribe.
- (7) A non-Indian foster home located off Tribal lands and licensed or approved by any federally recognized Indian tribe and approved by the Tribe.
- (8) Any other foster family home licensed or approved by the Tribe.
- (9) A home certified by a California licensed foster family agency.

Within each placement preference category, preference shall be given to a placement on or nearest Tribal lands. The Tribal Court shall apply these placement preferences in all proceedings pursuant to this Code and no deviation from these preferences shall be made without a finding of good cause.

## **SECTION 2: DEFINITIONS**

**“Abandoned”** the Court may make a determination that an infant or child is abandoned if: (1) the child has been left without any provision for support; (2) physical custody of the child has been voluntarily surrendered pursuant to relevant state safely surrendered baby laws and the child has not been reclaimed within 14 days of surrender; (3) the child's parent has been incarcerated or institutionalized and cannot arrange for the care of the child; (4) a relative or other adult custodian with whom the child resides or has been left is unwilling or unable to provide care or support for the child, the whereabouts of the parent are unknown, and reasonable efforts to locate the parent have been unsuccessful; or (5) the parent or guardian of the child willfully abandoned the child, and the court finds that the abandonment itself constituted a serious danger to the child. For the purposes of this definition, "serious danger" means that without the intervention of another person or agency, the child would have sustained severe or permanent disability, injury, illness, or death, and "willful abandonment" shall not be construed as actions taken in good faith by the parent without the intent of placing the child in serious danger. An Indian child will not be deemed to be abandoned simply because a parent leaves the child in the care and

custody of an Indian custodian unless the parent demonstrates an intent to abandon the child.

**“Adoption”** means a permanent legal status, including a customary adoption, with a change in legal parents that is designed to ensure permanency for children while maintaining meaningful contact with biological parents, extended tribal relatives, and their tribal community.

**“Child Abuse or Neglect”** means, at a minimum, any recent act or failure to act on the part of a parent or caretaker, which results in death, serious physical or emotional harm, sexual abuse or exploitation, or an act or failure to act which presents an imminent risk of serious harm or endangerment to a child.

**“Child Custody Proceeding”** means all proceedings, whether voluntary or involuntary, involving a child or youth subject to the Tribal Court’s jurisdiction.

**“Enters Foster Care”** means the earlier of the date of the first judicial finding by any court that the child has been subjected to abuse or neglect; or the date that is sixty (60) days after the date on which the child is removed from the home.

**“Foster Care”** means the 24-hour substitute care provided for a child who is removed by court order or a voluntary placement agreement from his or her home and for whom the Tribe has responsibility for placement and care.

**“Guardianship”** means a judicially created relationship between child and caretaker, which is intended to be permanent and self-sustaining as evidenced by the transfer to the caretaker of the following parental rights with respect to the child: protection, education, care, and control of the person, custody of the person and decision-making. The term legal guardian means the caretaker in such relationship.

**“Modification of Parental Rights”** means changing the rights and obligations of the parent or guardian of the child against whom the order of modification is entered and of the child who is the subject of the petition to that parent or guardian, to a lesser extent than fully terminating and severing such rights and obligations.

**“On or Near Tribal Lands”** include all lands on or near the Karuk Aboriginal Territory as set forth in the Tribe’s Constitution, service areas, and all lands subsequently and hereafter acquired by and for the Tribe, whether within or outside of the Tribe’s Aboriginal Territory.

**“Reasonable Efforts”** means with respect to a given obligation, the efforts that a reasonable person in that position would use so as to perform that obligation as expeditiously as possible. Reasonable efforts determinations are made on a case-by-case basis, weighing factors such as: (1) Whether the child's health or safety have been compromised had Karuk Child and Family Services (“KCFS”) attempted to maintain him or her at home; (2) Whether the service plan was customized to the individual needs of the family or whether it was a standard package of services; (3) Whether KCFS provided

services to ameliorate factors present in the child or parent, i.e., physical, emotional, or psychological, that would inhibit a parent's ability to maintain the child safely at home; (4) Whether limitations exist with respect to service availability, including transportation issues, and if so, what efforts KCFS undertook to overcome these obstacles; and (5) Whether KCFS's activities associated with making and finalizing an alternate permanent placement consistent with the permanency goal.

**“Relative”** includes extended family members, as shall be as defined by the law or custom of the Tribe or, in the absence of such law or custom, shall be a person who has reached the age of eighteen and who is the child's grandparent, aunt or uncle, brother or sister, brother-in-law or sister-in-law, niece or nephew, first or second cousin, or stepparent.

**“Termination of Parental Rights”** means permanently changing a parent’s rights, which shall have the effect of severing forever all legal rights and obligations of the parent or guardian of the child against whom the order of termination is entered and of the child who is the subject of the petition to that parent or guardian.

**“Tribe”** means The Karuk Tribe.

Additional definitions and obligations for child custody proceedings applicable to Title IV-E – eligible children only are found in the Title IV-E Intergovernmental Agreement between the California Department of Social Services and the Karuk Tribe, and in the KCSF Plan.

In this Code, the words “child” and “youth” are used interchangeably, and both mean unmarried minors under 18 in need of care; however, in this Code “youth” generally refers to such minors between the ages of 10 and 18, and, for Independent Living Program services, minors who are 14 through 20 years old.

### **SECTION 3: JURISDICTION AND CASE TRANSFERS**

#### **A. Tribal Court Jurisdiction**

- (1) The Children’s Division of the Tribal Court shall have jurisdiction over children, their parents, guardians, legal custodians and Indian custodians and all necessary members of the household involved in any child custody proceeding governed by this Code. Unless the Tribal Court discharges the child, the Court for cause shown, may reopen the case at any time and take such action with respect to a child, as it deems appropriate.
- (2) The Tribal Court shall have jurisdiction over children and youth in need of care, which includes any unmarried child under the age of eighteen (18) years who has exhibited a pattern of behavior that poses a serious risk of harm to himself, herself or others, or whose parent, guardian, legal custodian, or Indian custodian has:
  - a. Abandoned him or her;
  - b. Subjected him or her to mistreatment or abuse, whether physical,

- emotional or sexual;
- c. Failed to protect him or her from such mistreatment or abuse; or
  - d. Failed or refused to provide proper or necessary subsistence, medical care, shelter, a safe environment, or any other necessary care for his or her health, guidance, or well being.
- (3) The Tribal Court shall have jurisdiction in child custody proceedings concerning any child of a member of the Tribe who may be properly brought before the Court.
  - (4) The Tribal Court shall have jurisdiction in proceedings concerning any Indian child of another Tribe, so long as the governing body or other duly authorized entity of such tribe has validly consented in writing to the Tribal Court's exercise of jurisdiction, such consent has been filed with the Tribal Court, and jurisdiction is accepted.
  - (5) The jurisdiction of the Tribal Court shall be civil in nature and shall include the right to issue all orders necessary to ensure the safety of children that come before the court as well as those who have been declared to be subject to the jurisdiction of the Tribal Court. The Tribal Court shall also have the power to impose fines, issue and enforce subpoenas, and issue and enforce stay away, contempt, protection, and detention orders and any other orders as appropriate.
  - (6) **Concurrent Jurisdiction.** The jurisdiction invoked by this Code over any person, cause of action, or subject may be concurrent with any valid jurisdiction over the same of the courts of the United States, any Indian Tribe, any state, or any political subdivision thereof. In the event of concurrent jurisdiction controversies, the Tribal Court shall compel and hear sufficient evidence and legal arguments to make a prompt jurisdictional determination for each such controversy.
  - (7) The Tribal Court may decline to exercise its jurisdiction if it finds any of the following exist:
    - a. Another court has the jurisdiction to hear the case and it would be more convenient for the parties than the Tribal Court;
    - b. One or more of the parties objects to the jurisdiction and is not a person over whom the Tribal Court may properly exercise its jurisdiction; or
    - c. The case is of such a nature that the Tribal Court declines to hear it.

## **B. Transfer of Jurisdiction to Tribal Court**

A Karuk Tribal Court judge is authorized to accept the transfer of jurisdiction from any state or other tribal court, so long as the other Tribe's governing body has validly consented in writing to the transfer of jurisdiction.

- (1) A party interested in transferring jurisdiction to Tribal Court must first file a petition to transfer, along with any supporting documentation, stipulations, or legal authorities, as appropriate or necessary, with the Tribal Court.
- (2) Upon issuance of a Tribal Court order accepting transfer of jurisdiction, the transferring court must transfer the case absent good cause to deny the transfer. Both courts must approve of the transfer.

**C. Transfer from Tribal Court to State or other Tribal Court**

- (1) In any proceeding before the Tribal Court, any interested party may petition to transfer the proceedings to an appropriate state or another tribal court where the state or other Tribe has a significant interest in the child and the transfer would be in the best interests of the child and the child's tribe.
- (2) If the Tribal Court determines that transfer to another tribal or state court is in the best interest of the child, the Court shall transmit all legal court documents and records filed with the Court or certified copies thereof, to the receiving court.

**D. Intergovernmental Relationships and Full Faith and Credit**

- (1) **Policy.** It is the policy of the Karuk Tribe to encourage cooperation and the formation of agreements between the Tribe and any tribal, state, federal, county, or non-governmental organization that can assist in providing care and support to children. It is also the policy of the Karuk Tribe to ensure that other governments and agents of those governments respect its sovereign status and the jurisdiction of its Tribal Court.
- (2) **Agreements.** The Karuk Tribe may enter into such intergovernmental agreements with federal agencies, states and their political subdivisions, and Indian Tribes, as it deems appropriate for the provision of care to children in need of care, the orderly transfer of cases between jurisdictions and division of jurisdictional authority over children subject to the Children and Family Code.
- (3) **Full Faith and Credit.** State court orders involving children under the jurisdiction of the Tribal Court may be recognized by the Court only after a full independent review of such state proceedings has determined that:
  - a. The state court had jurisdiction over the child;
  - b. The applicable provisions of the Indian Child Welfare Act and other applicable laws were properly followed;
  - c. Due process was provided to all interested persons participating in the state proceeding; and
  - d. The state court proceeding did not violate the public policies, customs or common law of the Karuk Tribe.
- (4) Court orders of other Tribal courts involving children and families over whom the Tribal Court may take jurisdiction shall be recognized by the Court after the court has determined that:

- a. The other Tribal court exercised proper subject matter jurisdiction and personal jurisdiction over the parties, and;
- b. Due process was accorded to all interested parties participating in the other tribal court proceeding.
- c. The Tribal court proceeding did not violate the public policies, customs or common law of the Karuk Tribe.

#### **E. Intervention under the ICWA**

The governing body of the Tribe shall be authorized to intervene on behalf of the Tribe in all state court proceedings that implicate the ICWA and involve a child subject to the Tribal Court's jurisdiction, whether or not enrolled. The Tribe shall intervene in such matters unless such intervention would be impracticable under the circumstances of the case

### **SECTION 4: ACTIONS OF THE TRIBAL COURT**

#### **A. General authority**

Upon a sworn affidavit by a law enforcement officer or any other person, and upon the examination of other witnesses if required by the judge that there is probable cause to believe that a child is being or has been abused, neglected, or is in need of care as defined herein and is within the jurisdiction of the Court, the Court shall make such orders for the removal, custody, protection and care of the child. The Court shall additionally take such other actions as it may deem advisable and appropriate in the interest of the child and the interests of the Tribe, including protection orders related to domestic or family violence.

#### **B. Custody of child pending hearing**

Pending final disposition of the case, the child shall be subject to the order of the Court and may be permitted to remain in the control of parents, guardians, persons having his or her custody, child welfare or probation office, or he/she may be ordered to remain in an appropriate placement provided by the Tribe or designated by the Court.

#### **C. Medical care and examinations**

The Tribal Court may order necessary medical examinations and care as may be required for children under its jurisdiction.

#### **D. Judgment for support**

The Tribal Court may, by order, direct the person or persons required by law to support the child to pay for the support of the child in such amount as the Court may determine to be fair and reasonable, including the cost of the temporary placement of the child pending hearing. Such orders shall have the force and effect of judgment for money and shall be enforceable as are other judgments for money.



Where appropriate, the Tribal Court shall also order the child's social worker to make a child support referral to the appropriate child support agency for the purpose of securing assignment to the State of any rights of support of each child receiving foster care maintenance payments pursuant to Title IV-E, unless there is documentation that such referral would not be in the best interests of the child.

Circumstances that may be considered in the evaluation of whether the child support referral is not in the best interest of the child may include, but are not necessarily limited to the parent(s)' employment status, housing status, the impact on other children who may be at risk of removal, availability of community-based services, efforts to reunify, whether parental rights have been terminated, connection with Cal Works or other public assistance programs and, whether payment of child support will pose a barrier to family reunification or successful outcome of the child's case plan.

#### **E. Removal from Tribal Lands**

The Court may permit removal of a child or youth in need of care from Tribal lands by the person or institution in whose physical custody the child is given on condition that such custodian will return the child on order of the Tribal Court.

### **SECTION 5: RECORDS OF THE KARUK TRIBAL COURT**

#### **A. Caption Headings**

The captions for all child welfare actions shall be titled "In re the Matter of (child's initials), a Minor."

#### **B. Court Records**

The Court shall maintain a confidential record of all proceedings under this Code in records labeled "Records of the Karuk Tribal Court." The confidential records of proceedings under this Code shall not be open to public inspection absent an order from the Court.

### **SECTION 6: KARUK CHILD AND FAMILY SERVICES**

#### **A. Duties**

The Karuk Tribe's Child and Family Services ("KCFS") social workers shall have the following powers, duties, and responsibilities:

- (1) Process all Indian Child Welfare Act ("ICWA") notices sent to the Tribe, assist the Tribe in intervening in child custody proceedings, and assist the Court in petitioning for transfer of child custody proceedings to the Court where appropriate.

- (2) Be present in Court when cases are heard concerning children subject to the Tribal Court's jurisdiction and provide the Court with information and assistance as it may require.
- (3) Receive, respond to and investigate reports of suspected child abuse and neglect involving children subject to the Tribal Court's jurisdiction.
- (4) Subject to the Tribe's confidentiality policies, receive referral information, conduct intake inquiries, and determine whether to initiate child welfare proceedings.
- (5) Determine whether a child subject to the Tribal Court's jurisdiction should be removed for reasonable cause to believe that child is in immediate danger of physical or sexual abuse or the physical environment poses an immediate threat to the child's health or safety after considering whether there are any reasonable services which, if provided to the child's parent, legal guardian, Indian custodian, or to the minor, would eliminate the need to remove the minor from the custody of his or her parent, legal guardian or Indian custodian.
- (6) Make child abuse and neglect reports or referrals of cases to other agencies and share information with other agencies if their assistance appears to be needed or desirable.
- (7) Make a placement and services report and recommendation to the Court in child welfare proceedings, including a plan of rehabilitation, treatment, and care.
- (8) Locate and approve prospective foster parents and their homes as meeting approval requirements under this Code for foster care placement of children under the Court's jurisdiction.
- (9) In the approval of prospective foster care or adoptive placements, commence and secure criminal record and child abuse clearances of prospective adoptive or foster care providers and of adult household members.
- (10) Supervise and assist children subject to the Tribal Court's jurisdiction pursuant to child welfare dispositions, offer family counseling, and make an affirmative effort to obtain necessary or desired services for the child subject to the Tribal Court's jurisdiction and the child's family.
- (11) Accept legal custody and the care and placement responsibility of children subject to the Tribal Court's jurisdiction when ordered by the Tribal Court.
- (12) Initiate petitions for the modification of parental rights or investigate and report to the Tribal Court on petitions to modify parental rights brought by others.

- (13) If specifically authorized by the Tribal Council, retain counsel to assist in carrying out these duties and to represent the Tribe in special matters relating to this Code.
- (14) Develop case plans and conduct case plan reviews pursuant to placement and service orders.
- (15) Negotiate agreements for services, information sharing, referral, and funding for child welfare services pursuant to placement and service orders.
- (16) Provide measures and procedures for preserving the confidential nature of child welfare services records within the Child and Family Services office.
- (17) File and mail such reports as may be required by this Code.
- (18) Perform all other duties and responsibilities regarding all child custody matters, in accordance with Tribal laws, customs and traditions, and pursuant to the instructions or order of the Court in matters related to this Code.

**B. Use of other Tribal resources**

- (1) In carrying out its powers, duties, and responsibilities under this Code, KCFS may use, and is encouraged to make liberal use of, the psychiatric, psychological, therapeutic, counseling, and other social services available to the Tribe, both from within and outside the Tribe. Child and Family Services shall be required to identify and use qualified tribal or other resources, if available and appropriate.
- (2) The Court may order the provision of psychiatric, psychological, or therapeutic counseling, or other social services by an appropriate department or employee of the Tribe or other qualified agency in any proceeding under this Code.

**SECTION 7: INDIAN CHILD WELFARE COMMITTEE**

The Indian Child Welfare (ICW) Committee shall assist the Tribal social workers in an advisory role and bring pending matters before the Tribal Council as set forth in that Committee's policies and guidelines. The ICW Committee Guidelines shall contain provisions pertaining to the strict confidentiality of children's and criminal history records.

**SECTION 8: DUTY TO REPORT CHILD ABUSE AND NEGLECT**

**A. Duty**

Any person who has a reasonable cause to suspect that a child has been abused, neglected, abandoned, or is otherwise in need of care, shall immediately report the abuse, neglect or abandonment to KCFS. Those persons reporting may remain anonymous.

### **B. Mandatory Reporters**

Those persons who are mandated to report suspected child abuse or neglect to the proper authorities include KCFS staff, any physician, nurse, dentist, optometrist, or any other medical or health professional; school principal, school teacher, or other school official; social worker, child day care center worker, or other child care staff including foster parents, residential care or institutional personnel; counselor; peace officer or other law enforcement official; judge, attorney, court counselor, CASA, clerk of the court, or other officers of the court or judicial system officials.

### **C. Immunity**

All persons or agencies reporting, in good faith, known or suspected instances of abuse or neglect shall be immune from civil liability and criminal prosecution for such good faith reporting.

## **SECTION 9: CASE PLANS AND EVIDENCE**

### **A. Case Reports and Plans**

The Tribal Court, in conjunction with KCFS or other agency designated by the court shall develop a case plan in all cases.

For the purpose of determining proper disposition of a child, 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.

The court, either on its own motion or if requested by the child, the child's parent or guardian, or other interested party, shall require that the person who wrote the report or prepared the material appear as a witness and be subject to both direct and cross-examination.

The case plan shall be made available to the court and the parties as deemed appropriate by the court at least seven (7) court days prior to the hearing at which it will be considered. The case plan for each child involved in a child custody proceeding must:

- (1) Be a written document that is a discrete part of the case record, in a format determined by the Tribe, which is developed jointly with the parents or guardian(s) of the child;
- (2) Be developed within a reasonable period, but no later than sixty (60) days from actual removal of the child;
- (3) Development of the case plan shall engage family members and the child as appropriate for their age and development. Children 12 years of age or older shall have the opportunity to review, sign and have a copy of their case plan.

- (4) Include a description of the services offered and the services provided to maintain the family, prevent removal of the child from the home, and if already removed, to reunify the family, including a description of the appropriateness of the services offered and provided to the child and family;
- (5) Include a description of the home or institution in which the child is placed;
- (6) Include a discussion of the safety and the appropriateness of the placement and other services provided to the child and include a plan for assuring that the child receives safe and proper care;
- (7) Include a discussion of the services provided to the parent(s) in order to improve the conditions in the parent(s) home to facilitate the child's return to his or her own home, or for providing a another permanent placement for the child;
- (8) Include a plan for assuring that services are provided to the child and foster parents in order to address the needs of the child while in foster care;
- (9) Where appropriate, for a child fourteen (14) years of age or older, include a written description of the programs and services that will help such child prepare for the transition from foster care to independent living;
- (10) In the case of a child with respect to whom the permanency plan is an adoption, or placement in another permanent home, document the steps KCFS is taking to find an adoptive family or other permanent living arrangement for the child. At a minimum, such documentation shall include child specific recruitment efforts used by KCFS such as the use of State, regional, and national adoption exchanges including electronic exchange systems to facilitate orderly and timely in-State and interstate placements;
- (11) Discuss how the case plan is designed to achieve placement in a safe setting that is the least restrictive (most family-like) setting available, that is in close proximity to the home of the parents when the case plan goal is reunification, and is consistent with the best interest and special needs of the child;
- (12) If the child has been placed in a foster family home or child-care institution a substantial distance from the home of the parent(s), or in a different state, set forth the reasons why such placement is in the best interest of the child;
- (13) The child has been placed in foster care in a state outside the state in which the child's parent(s) are located, assure that an authorized caseworker visits the foster home or institution no less frequently than once per month, and submits a report on the visit to the Karuk Tribe Child and Family Services;

- (14) To the extent available and accessible, incorporate the health and education records of the child, including:
- a. The names and addresses of the child's health and educational providers;
  - b. The child's grade level performance;
  - c. The child's school record;
  - d. Assurances that the child's placement in foster care takes into account proximity to the school in which the child is enrolled at the time of placement;
  - e. A record of the child's immunizations;
  - f. The child's known medical problems;
  - g. The child's medications; and
  - h. Any other relevant health and education information concerning the child determined to be appropriate by the Karuk Tribe Child and Family Services; and
- (15) Provide that a child's health and education record (as described above) is reviewed and updated, and supplied to the foster parent or foster care provider with whom the child is placed, at the time of each placement of the child in foster care and is supplied to the child at no cost at the time the child leaves foster care if the child is leaving foster care by reason of having attained the age of majority under State law.

## **B. Evidence**

The Karuk Tribe's Rules of Evidence shall be followed. However, generally, where the Tribe's rules are silent as to a particular evidentiary issue, the federal rules of evidence may be followed. The exception to these rules is that hearsay evidence shall be admissible in proceedings under this Code, except that a finding of fact cannot be supported by hearsay alone.

## **C. Confidentiality**

All matters under this Code shall be confidential and heard in closed Court, excluding all persons except parents, guardians, foster parents, the attorney for the child, witnesses called by the Court, the CASA, Tribal social workers and with the permission of the Court others having a direct interest in the matter. Confidential KCFS records shall only be released to others by Court order, and the purpose for releasing such records must meet the confidentiality criteria set forth in 25 CFR § 205.50 prior to such release.

## **SECTION 10: REPRESENTATIVES FOR MINORS**

### **A. Appointment of Representative**

If the proceeding necessitates the removal of a child, the Tribal Court will appoint a Court Appointed Special Advocate (CASA) to represent the child, and may appoint a guardian ad litem or attorney on behalf of the child depending on the circumstances of and availability of funding for such appointment in the case.

## **B. CASA Qualifications and Duties**

- (1) A "CASA" is a person who has been recruited, screened, selected, and trained, in accordance with Tribal and National CASA Association Standards who is being supervised and supported by a CASA program approved by the Karuk Tribe, and who has been appointed by the court as a sworn officer of the court to help define the best interests of a child or children in Tribal Court proceedings.
- (2) The duty of the CASA is to represent the interests of the child, and he or she shall be a party to the proceedings and shall serve as a guardian ad litem for the child.
- (3) CASA workers must be duly qualified and appointed pursuant to the CASA program guidelines and policies adopted by the Karuk Tribe prior to working on any case and receiving confidential information.
- (4) The Tribal Council through its CASA Advisory committee shall adopt guidelines for the screening of CASA volunteers, which shall include personal interviews, reference checks, check of records of sex offences and other criminal records, information from the Department of Motor Vehicles, and other information as the Tribal Council deems appropriate.
- (5) Each CASA is an officer of the Court, with the relevant rights and responsibilities that pertain to that role and shall act consistently with the rules of court pertaining to CASA volunteers.
- (6) A court judge, associate judge, or commissioner shall swear in each CASA before beginning his or her duties.

## **SECTION 11: PEACEMAKER MEDIATION FORUM / FAMILY UNITY**

### **A. Peacemaker Mediation Forum / Family Unity**

- (1) Because of the Tribe's preference for a non-adversarial approach to resolution of internal conflicts involving the Tribe's children and families, the Tribal Court Judge, at any stage of the proceedings under this Code, shall order the relevant parties to participate in the Tribe's confidential Peacemaker Mediation Forum. Mediations so ordered shall be conducted pursuant to the Karuk Tribe's Peacemaker Mediation Forum's written guidelines.
- (2) Additionally, the Tribal Court Judge shall order the child's family to participate in Family Unity, to provide the child's family with an opportunity to establish a plan that will ensure the safety of the child. Family Unity shall be conducted and facilitated according to that program's written guidelines. The Children and Family Code recognizes a preference for family decision-making opposed to judicial intervention and determination, thereby encouraging families to take seriously the issues with which they are presented.

- (3) Once the parties have reached a mediated/facilitated services plan for the family, the plan shall be presented to the Tribal Court Judge who shall review the plan, listen to any argument by any of the professionals or family members involved in the case, and shall approve, modify, or disapprove of the plan.
- (4) If the judge disapproves the plan, the judge may send the family back for an additional conference, peacemaking or mediation, or may set the case for hearing. If the judge approves the plan, he or she shall convert the plan, including any judicial modifications, into a valid Tribal Court order.

## **SECTION 12: NOTICE AND SERVICE OF NOTICE OF REMOVAL OF A CHILD**

### **A. Removal - Notice to the Parent, Guardian, or Custodian**

KCFS and/or law enforcement shall make all reasonable efforts to notify, through the most efficient means available, the parents, foster parents, guardian, or custodian of the Tribal Court, that the child was removed from the home or otherwise detained. KCFS will exercise due diligence to identify and notify all adult relatives within 30 days of the child's removal, of the relatives' options to become a placement resource for the child.

## **SECTION 13: INVESTIGATION, REMOVAL, AND NOTICE**

### **A. Investigation**

All reports of alleged child abuse or neglect shall be responded to by KCSF staff, and investigated in coordination with other appropriate investigatory agencies including law enforcement in a manner that proves to be timely and diligent unless the Tribal Court directs otherwise. If necessary, the KCFS staff may immediately remove a child if there exists risk of physical harm to a child. An emergency removal order must be first obtained by the Court unless the emergency circumstances are such that the delay in obtaining such an order would likely result in serious harm to the child. For such orders, the Court must make a determination that remaining in the home is contrary to the child's welfare.

### **B. Authority to Remove and Place in Temporary Custody**

If the person responding to and investigating a report of child abuse or neglect finds that any of the following grounds for removal have been met, such persons shall arrange for removal of the child from the home in which the child is residing and place the child in a temporary receiving home or other appropriate placement, with an emergency removal order from the Tribal Court:

- (1) When there is reasonable cause to believe the child is, has been or is in immediate risk of being subjected to abuse or neglect;
- (2) When the child is abandoned, lost, or seriously endangered in his or her surroundings and immediate removal appears to be necessary for the child's protection or the protection of others;
- (3) When there are reasonable grounds to believe that the child has run away or



escaped from his parents, guardian, or legal custodian due to abuse or neglect; or

- (4) When there are reasonable grounds to believe that the child is in imminent danger of serious physical or psychological harm.

### **C. Efforts to Prevent Removal**

Before taking a child into custody, a social worker shall consider whether the child can remain safely in his or her residence. The consideration of whether the child can remain safely at home shall include, but shall not be limited to, the following factors:

- (1) Whether there are any reasonable services available to the worker which, if provided to the child's parent, guardian, caretaker, or to the minor, would eliminate the need to remove the child from the custody of his or her parent, guardian, or caretaker.
- (2) Whether a referral to public assistance would eliminate the need to take custody of the child. If those services are available they shall be utilized.
- (3) Whether a non-offending caretaker can provide for and protect the child from abuse and neglect and whether the alleged perpetrator voluntarily agrees to withdraw from the residence, withdraws from the residence, and is likely to remain withdrawn from the residence.

## **SECTION 14: FILING A YOUTH IN NEED OF CARE PETITION**

### **A. Grounds and Content of the Petition**

A Youth in Need of Care Petition, (the "Petition"), may be filed by any interested party when there is reasonable cause to believe that a child is, has been or is in immediate risk of harm to himself herself or others, or at immediate risk of abuse or neglect. The Petition shall state the specific facts concerning:

- (1) The name, address, gender and age of the child;
- (2) The names and address of the child's parents and any custodians of the child; unless it is known that one of the parents is a victim of domestic violence and there exists good cause that the address shall be kept confidential;
- (3) A concise statement of facts that support the conclusion that the child is, has been or is in immediate risk of being subjected to abuse or neglect or other serious risk of harm;
- (4) The names and addresses of any other person or Tribe with an interest in the

child;

- (5) The nature and extent of the child's alleged injury, abuse or neglect or other serious risk of harm;
- (6) Any evidence of injuries, abuse or neglect (including reports from doctors, public health nurses, health assistance, teachers, and witnesses to injury, abuse or neglect, etc. and the date, time and location supporting allegations of abuse and neglect);
- (7) Any information that may be helpful in identifying the cause of the child's alleged injuries or neglect;
- (8) A statement identifying of what Tribe(s), if any, the child is a member or eligible for membership; and
- (9) The factual basis for the Court's jurisdiction.

If the child is placed or detained outside of the home, the Petition shall state where the child is placed, the facts necessitating removal, and the date and time of the removal. If the child has been removed from the home, he or she must be returned home if a Petition has not been filed within two (2) court days of the date of removal.

#### **B. Notice upon filing of a Petition**

Upon the filing of a Petition, the Judge or Clerk of the Tribal Court shall issue a written notice, which may be in the form of a summons directing the parents, guardians of the child and all other necessary parties to the proceedings, to be present in Court for hearing at the time and place fixed in the notice.

Notice of the hearing and the parties' rights may also be issued to foster parents if any, pre-adoptive parents or relative providing care for the child except that this paragraph shall not be construed to require any foster parent or relative providing care to be made a party to the action solely on the basis of such notice.

The Summons shall contain a statement, when appropriate; that the modification of the parent/child legal relationship is a possible remedy under the proceedings as well as any other legal rights of the child, the parents, or guardian, or any other respondent, including the right to have an attorney present at the hearing shall be on the Summons.

If the whereabouts of the parents or guardians are unknown, the Tribal Court may proceed to take any action to protect the child. Any person served with notice who fails to appear without reasonable cause may be subject to contempt of Court and a bench warrant may be issued. The returns or proofs of service shall be filed in the record of the case.

#### **C. Service of Summons**

- (1) Summons shall be served personally, at least two days before the time fixed in the summons for the appearance of the person served.
- (2) If the parents, guardian, or other legal custodian of the child required to be summoned cannot be found within the Tribe's jurisdiction, the fact of the child's presence within the Tribe's jurisdiction shall confer jurisdiction on the Tribal Court as to any absent parent, guardian, or legal custodian, if notice has been given in the following manner:
  - a. When the residence of the person to be served is outside Tribal lands, a copy of the Summons shall be sent certified mail with postage prepaid to such person at his or her place of residence with a return receipt requested. Service of Summons shall be deemed complete upon return of the requested receipt.
  - b. When the person to be served has no residence within Tribal lands and his or her place of residence cannot be determined after due diligence, service may be made by publication in a newspaper of general distribution for three (3) consecutive weeks.

**D. Required Notice and Rights for All Judicial Proceedings**

- (1) The Judge or Clerk of the Tribal Court shall issue a written notice, which may be in the form of a summons directing the parties named in the action, the parents, and the guardians of the child, to be present in Court for hearing or proceeding at the time and place fixed in the notice. Notice of the proceeding and the parties' rights, including the right to be heard, shall also be issued to foster parents, pre-adoptive parents, or relatives providing care for the child in all permanency hearings and six-month reviews, at a minimum.
- (2) All parties have a right to be represented by an advocate or attorney at their own expense in all proceedings under this Code, to introduce evidence, to be heard on his or her own behalf, to examine witnesses, and to be informed of possible consequences if the allegations of the petition are found to be true. All parties shall be entitled to copies of court documents, including petitions and reports, no less than forty-eight (48) hours before the hearing whenever possible, unless deemed inappropriate by the court. Missing parties and relatives shall be noted and notice to the parties shall be reviewed.

**SECTION 15: INITIAL (DETENTION) HEARING**

- (1) The initial hearing regarding the removal or detention of a child shall be held before the end of the third working day (72 hours) following the filing of the Petition.
- (2) In the event a child is not removed or detained, the initial hearing shall be held before the end of the fifteenth (15<sup>th</sup>) court day following the filing of the Petition.
- (3) The purpose of the initial hearing is to determine whether probable cause

establishes that the allegations in the Youth in Need of Care Petition are true. During the hearing, the court shall advise the parties of the reason for the hearing and of their rights to be heard on all issues.

- (4) Any agency reports shall be received as evidence.
- (5) The allegations of abuse or neglect shall be admitted or denied by the parent(s), guardian, or any other persons exercising legal custody and care of the child.
- (6) Missing parties and relatives shall be noted and notice to the parties shall be reviewed.
- (7) The court shall make the following findings:
  - a. Whether continuation of the child in the home would be contrary to the child's welfare.
  - b. The factual basis for the court's decision.
  - c. Award the care, custody and placement of the child with KCFS upon a finding that removal is necessary.
  - d. Whether reasonable efforts have been made to prevent removal.
- (8) Reasonable efforts to prevent removal or reunification are not required if the parent has committed murder or voluntary manslaughter, of another child of the parent; parental rights of the parent with respect to a sibling have been terminated involuntarily; the parent has abandoned an infant; a parent or guardian has aided or abetted, attempted to conspire, solicit commission of a murder or voluntary manslaughter of a child of the parent; the parent has committed a felony assault that results in serious bodily injury to the child or another child of the parent; or finds that the parent has subjected the child to other aggravated circumstances pursuant to relevant law.
- (9) If the court makes a determination that reasonable efforts to prevent removal or reunification are not required, the court shall then make a judicial finding that reasonable efforts are being made to finalize the permanency plan for the child. The court shall hold a permanency hearing within 30 days of the determination that reasonable effort to prevent removal or to reunify are not required, and then hold a permanency hearing no less frequently than every 6 months thereafter. In such cases, KCFS will file a petition to terminate parental rights within 60 days of a judicial determination that reasonable efforts are not required to prevent removal or reunify because of one of the reasons set forth in (8) above.
- (10) The court shall specify the terms of any visitation.
- (11) Possible Outcomes of the Initial Hearing:
  - a. The Youth in Need of Care Petition may be dismissed and the child

remains or is returned to home with direction to the parties concerning future parental conduct and the provision of services to the child and parents;

- b. The child may remain or be returned to the home of the parents, guardian or custodian under the supervision of the court, pending the Determination Hearing;
- c. The child may be continued in the child's out-of-home placement pending the Determination Hearing; or
- d. The child may be continued in the child's out-of-home placement pending a mediation or family unity conference.

## **SECTION 16: DETERMINATION (JURISDICTION) HEARING**

### **A. Timing**

The Determination Hearing shall be held no later than twenty-one (21) days following conclusion of the Initial Hearing or family unity conference, whichever occurs later.

### **B. Purpose**

The purpose of the Determination Hearing is for the Court to reassess whether continuing court involvement is necessary to protect the well-being of the child, and to determine whether continuation in the home is contrary to the welfare of the child and whether reasonable efforts have been made to prevent the child's removal from home and to safely reunify the family.

### **C. Findings**

- (1) The Court shall find the allegations of the petition to be true or dismiss the petition, unless the hearing shall be continued to a date certain to allow for the presentation of further evidence.
- (2) Jurisdictional matters of the age and residence of the child shall be deemed admitted by or on behalf of the child, unless specifically denied prior to the Determination Hearing.
- (3) When it appears that the evidence presented at the hearing discloses facts not alleged in the petition, the Court may proceed immediately to consider such additional or different matters raised by the evidence.
- (4) In such event, the Court, on the motion of an interested party or on its own motion, shall order the petition to be amended to conform to the evidence. If the amendment results in a substantial departure from the original allegations in the petition, the court shall continue the hearing on the motion of any interested party, or on its own motion, if it finds such continuance to be in the best interests of the child or any other party to the proceedings materially prejudiced by the change in allegations.
- (5) The burden of proof lies with the petitioner (the person filing the petition). The

petitioner must prove that the allegations raised in the petition are more likely true than not, that is, by a preponderance of the evidence, and that the best interests of the child and the child's Tribe will be served by continued court intervention.

- (6) Determine whether and why continuation of the child in the home would be contrary to the child's welfare;
- (7) If the petitioner is KCFS, KCFS shall be ordered to be responsible for the care and placement of the child upon a finding that the child will be removed;
- (8) Determine whether reasonable efforts have been made to reunify;  
Reasonable efforts to prevent removal or reunification are not required if the parent has committed murder or voluntary manslaughter, of another child of the parent; parental rights of the parent with respect to a sibling have been terminated involuntarily; the parent has abandoned an infant; a parent or guardian has aided or abetted, attempted to conspire, solicit commission of a murder or voluntary manslaughter of a child of the parent; the parent has committed a felony assault that results in serious bodily injury to the child or another child of the parent; or finds that the parent has subjected the child to other aggravated circumstances pursuant to relevant law.
- (9) If the court makes a determination that reasonable efforts to prevent removal or reunification are not required, the court shall then make a judicial finding that reasonable efforts are being made to finalize the permanency plan for the child. The court shall hold a permanency hearing within 30 days of the determination that reasonable effort to prevent removal or to reunify are not required, and then hold a permanency hearing no less frequently than every 6 months thereafter. In such cases, KCFS will file a petition to terminate parental rights within 60 days of a judicial determination that reasonable efforts are not required to prevent removal or reunify because of one of the reasons set forth in (8) above.
- (10) After making the necessary findings but before judicial ruling/determination on the Petition, the Tribal Court may continue the hearing from time to time, allowing the child to remain in his or her own home or in the temporary custody of another person or agency, subject to such conditions of conduct and of visitation or supervision by KCFS as the Tribal Court may order, if:
  - a. Consent is given by the child and his or her parent, guardian, or other legal custodian after being fully informed by the court of their rights in the proceedings, including their right to have a determination made either dismissing or sustaining the petition; and
  - b. Such continuation shall extend no longer than three (3) months without review by the court. Upon review, the court may continue the case for an additional period not to exceed six months, after which the petition shall either be dismissed or sustained.

## **SECTION 17: PLACEMENT AND SERVICES (DISPOSITION) HEARING**

## **A. Timing**

The Placement and Services Hearing shall be held no later than sixty (60) days after issuance of a Determination order, and in no event more than six months after the child has entered foster care. The Tribal Court shall hear evidence regarding the proper disposition best serving the interests of the child and his or her tribe.

## **B. Evidence**

The evidence shall include, but not necessarily be limited to, the social study and other reports, and such other oral and documentary facts as the parties may present.

## **C. Findings**

- (1) If the court determines that it is in the best interests of the child and does not violate the rights of a party, the court may allow the child to testify by means of a videotape deposition, closed circuit television or other appropriate method. If the court does allow these methods to be utilized, the court shall specifically set out the reasons for this determination on the record.
- (2) The Tribal Court shall determine:
  - a. The appropriate disposition of the case and long-term plan for the child;
  - b. Where the child should be placed;
  - c. Whether the proposed case plan reasonably address the problems and needs of the child and parent;
  - d. Whether reasonable efforts were made to reunify.
- (3) The court may find that out-of-home placement is not needed to protect the child, but may continue court intervention and supervision due to unresolved problems in the home.
- (4) The court may find that the child shall remain out of the home. The grounds for continued removal are:
  - a. The child has no parent, guardian or custodian available, willing and capable to safely care for the child;
  - b. The child is likely to suffer serious emotional or physical injury inflicted upon them by other than accidental means;
  - c. The child has not been provided with adequate food, clothing, shelter, medical care, education or supervision by his/her parent, guardian or custodian, which is necessary for the child's health and well being;
  - d. The child has been sexually abused or sexually exploited; or
  - e. The child has suffered, or is likely to suffer, emotional damage, as a result of severe emotional abuse or neglect, which causes or creates a substantial risk of impaired development.
- (5) The court may find that out-of-home placement is necessary, but with the performance of specified actions by the parent, guardian, or custodian, the

child may be returned absent good cause to the contrary. The order of the court shall specify actions, and the time frames for such actions, that the parents, guardians or custodians must accomplish before the child is returned. The order shall also specify the responsibilities of any support agency or personnel to be involved.

- a. The Tribal Court may order a trial home visit, for no more than six (6) months, unless the Court authorizes them for a longer period. The Court order must explicitly extend the trial home visit. During such trial home visits, KCFS retains the responsibility for the placement and care of the child and may remove the child from the home for any of the reasons set forth in Section 13 herein, without having to file a new Youth in Need of Care Petition.
  - b. While the child is on a trial home visit, the months during which a child is on a trial home visit do not count towards the child being in foster care when counting whether the child has been out of the home for 15 of the last 22 months. Of the most recent 22 months, (all months are counted, whether the child is in foster care or at home) if the child has been in foster care for 15 or more of those months, KCFS shall file a petition to terminate parental rights as set forth in Section 21 herein.
- (6) The court may find that out-of-home placement continues to be necessary and further that the child shall not be returned to the home, absent further order of the court. The court shall specify what steps the parents, guardians, or custodians shall take to demonstrate their abilities to care for their child, and specify what factors the court will consider at a subsequent hearing to determine whether the child should be returned home.
  - (7) In addition to the placement disposition alternatives, the court may order the child, parents, custodians or guardians to attend any of the following, if the court determines they are related to the circumstances which caused the child to come to the attention of the court, and if they are likely to promote the best interests of the child and his or her Tribe and the reunification of the child with his or her family:
    - a. Parenting education classes;
    - b. Alcohol or substance abuse treatment;
    - c. Counseling for victims or perpetrators of domestic violence; or
    - d. Any other services that the court determines may be useful in aiding family reunification.
  - (8) The court may continue the Placement and Services Hearing, on its own motion or on the motion of any interested party, for a reasonable period to receive reports or for good cause. If the hearing is continued, the court shall make an appropriate order for care of the child during the continuance.
  - (9) In scheduling investigations and hearings, the court shall give priority to proceedings concerning children who have been removed from their homes



before an order of disposition has been made.

- (10) If a parent, guardian, custodian fails to appear for the hearing, the court may find such parent, guardian, or custodian in default, and enter any orders it could otherwise enter.
- (11) Before finding a parent, guardian, or custodian in default, the Court must be satisfied that actual notice has been given or that all reasonable possible steps have been taken to provide such notice.
- (12) If the parent, guardian, or custodian is found in default, the court shall specify the facts, grounds, and Children and Family Code sections upon which it relied to make such finding.

## **SECTION 18: STATUS REVIEW HEARINGS**

### **A. Timing**

The Tribal Court shall review the status of all children at least every ninety (90) days at a hearing to determine whether court supervision shall continue. In no event shall a status review hearing for children placed in foster care, another out of home arrangement, or where a child has been returned to the home of the parent as a family maintenance case, be made less frequently than once every six (6) months beginning with the date the child is considered to have entered foster care.

### **B. Purpose and Findings**

- (1) A child shall be returned home at the Status Review Hearing unless the Tribal Court finds that a reason for removal as set forth above in this Children and Family Code still exists. The Court may, however, due to unresolved problems in the home, continue court intervention, services, and supervision as may be deemed appropriate.
- (2) If appropriate, the Court may refer the matter to the Tribe's Peacemaker Mediation Forum or for Family Unity.
- (3) The general purpose of Status Review Hearings is for the court to determine the safety and continuing necessity for and appropriateness of the placement, the extent of compliance with the case plan, and the extent of progress that has been made toward alleviating or mitigating the causes necessitating placement in foster care, and will project a likely date by which the child may be returned to the home or placed for adoption or legal guardianship.
- (4) Status Review Hearings are not required for children for whom a legal guardian has been appointed by the Karuk Tribal Court as a permanent plan and the KCFS is no longer vested by the court with responsibility for the child's placement and care (i.e., the child has exited foster care) unless the child has been removed from the guardian.
- (5) The specific purpose of the Status Review Hearing is for the Tribal Court to:

- a. Review the placement and plan for assuring that the child receives safe and proper care;
- b. Determine the continuing need for and appropriateness of the placement;
- c. Determine the extent of compliance with the case plan;
- d. Determine the extent of progress made toward alleviating or mitigating the causes necessitating the placement;
- e. Project a likely date by when the child may be (1) returned and safely maintained at home, (2) placed with a legal guardian, (3) placed with a fit and willing relative, (4) placed for a adoption and the KCFS will file a petition to terminate parental rights, or (5) placed in another planned permanent living arrangement provided that the KCFS has documented to the court a compelling reason that it is not in the child's best interest to be reunified, placed with a legal guardian or fit and willing relative, have parental rights be terminated, or be adopted.;
- f. In the case of a child who will not be returned to the parent, the hearing shall consider in-State and out-of-State placement options;
- g. If the child is placed out of state, determine whether the out-of-state placement continues to be appropriate and in the best interest of the child;
- h. If the child is in the custody of the parent, as a family maintenance case, determine whether there continues to be a need for continuing court supervision or terminate jurisdiction over the case; and
- i. In the case of a child who has attained age fourteen (14), determine the services needed to assist the child to make the transition from foster care to independent living.
- j. The court consults, in an age-appropriate manner, with the child regarding the proposed permanency or transition plan for the child.

## **SECTION 19: PERMANENCY HEARINGS**

### **A. Timing**

A Permanency Hearing to determine the permanency plan for the child, must be held no later than twelve (12) months from the date the child enters foster care and not less frequently than every 6 months thereafter during the continuance of foster care, including voluntary foster care placements. However, if there has been a judicial finding that reasonable efforts to prevent removal or reunification are not required as set forth in Section C below, the first Permanency Hearing must be held within 30 days of such finding.

### **B. Purpose**

The purpose of Permanency Hearings is to determine:

- (1) The permanency plan for the child that includes whether, and if applicable when, the child will be (1) returned to the parent, (2) placed with a legal guardian, (3) placed with a fit and willing relative, (4) placed for adoption and the KCFS will file a petition to terminate parental rights, or (5) placed in another planned permanent living arrangement provided that KCFS has documented to the court a compelling reason that it is not in the child's best interest to be reunified, placed

- with a legal guardian or fit and willing relative, have parental rights be terminated, or be adopted.;
- (2) In the case of a child who will not be returned to the parent, the hearing shall consider in-State and out-of-State placement options;
  - (3) In the case of a child placed out of the State in which the home of the parent(s) of the child is located, the hearing shall determine whether the out-of State placement continues to be appropriate and in the best interests of the child;
  - (4) In the case of a child who has attained age 14, the services needed to assist the child to make the transition from foster care to independent living;
  - (5) In any permanency hearing held with respect to the child, including any hearing regarding the transition of the child from foster care to independent living, procedural safeguards shall be applied to assure the court consults, in an age-appropriate manner, with the child regarding the proposed permanency or transition plan for the child;
  - (6) Determine the safety of the child, the continuing need for and appropriateness of the placement;
  - (7) Determine the extent of compliance with the case plan;
  - (8) Determine the extent of progress made toward alleviating or mitigating the causes necessitating the placement; and
  - (9) Project a likely date by which the child may be returned and safely maintained at home or placed for adoption or legal guardianship.

### **C. Findings**

- (1) The Tribal Court must make a finding whether the Tribe's Child and Family Services have made reasonable efforts to finalize a permanency plan for the child. The permanency plan may be to reunify the family or to secure the child a new permanent home. This finding must be made within twelve (12) months from the date the child enters foster care, and it must then be made every six (6) months thereafter.
- (2) The Court must also make a finding whether reasonable efforts have been made to reunify. The Court may find that a lack of efforts is reasonable, such as when there is no safe way to make efforts to reunify.
- (3) The Court's reasonable efforts findings must be detailed. They must include relevant case facts.
- (4) The Court may waive reasonable efforts to reunify if it finds the parent has

committed murder or voluntary manslaughter, of another child of the parent; a parent or guardian has aided or abetted, attempted to conspire, solicit, commission of a murder or voluntary manslaughter of a child of the parent; the parent has committed a felony assault that results in serious bodily injury to the child or another child of the parent; or the parental rights of the parent with respect to a sibling have been terminated involuntarily; the parent has abandoned an infant; or finds that the parent has subjected the child to other aggravated circumstances. If the reasonable efforts requirements are waived under the above circumstances, a separate reasonable efforts finding is not required.

- (5) The Court may determine at a permanency hearing that there is a compelling reason that reunification, adoption, guardianship, and relative placement are not in the child's best interests. If it makes such a finding, the Court may order another planned permanent living arrangement, provided that KCFS has documented to the Court why KCFS has ruled out other permanency goals before recommending another planned alternate living arrangement and a compelling reason, on a case-by-case determination, for such alternative plan.
- (6) The Court may order reunification as the permanent plan if the parents have been diligently working toward reunification, and reunification is expected in a period consistent with the child's developmental needs.
- (7) If the child has not been returned to the custody of his or her parent, guardian or legal custodian at the Permanency Hearing, or if the child has been in foster care for 15 of the most recent 22 months, the Court will order a hearing under Section 21, unless the child is being cared for by a relative, the KCFS has documented in the case plan a compelling reason for not filing to terminate parental rights, or the KCFS has not provided to the family services that the KCFS deemed necessary for the safe return of the child when reasonable efforts to reunify are required.
- (8) The Court shall make a finding whether KCFS shall retain continued responsibility for the placement and care of the child.

## **SECTION 20: GUARDIANSHIPS**

### **A. Purpose**

- (1) The Tribal Court, when it appears necessary or convenient, may appoint guardians for the persons and/or property of children under the Court's jurisdiction. Such appointment may be made on the petition of a relative or other person on behalf of the child, or a petition of the child if at least fourteen (14) years or age. Before making such appointment, the court must cause such notice, as the court deems reasonable to be given on any person having

the care of the child, and to such other relatives of the child, as the court may deem proper.

- (2) If a child is under the age of fourteen (14) years, the court may nominate or appoint his or her guardian. If he or she is fourteen (14) years of age or older, he or she may nominate his or her own guardian who, if approved by the court, must be appointed accordingly. If the guardian nominated by the child is not approved by the Court, or if, after being duly cited by the court, he or she neglects for ten (10) days to nominate a suitable person, the court may nominate and appoint the guardian in the same manner as if the child were under the age of fourteen (14) years.
- (3) When a guardian has been appointed by the court for a child under the age of fourteen (14) years, the child, at any time after he or she attains that age, may nominate his or her own guardian, subject to approval of the court. A guardian appointed by the court shall have the custody and care of the child and management of his or her property until such child arrives at the age of eighteen (18), marries, is emancipated by the court, or until the guardian is legally discharged by the court. The guardian shall not have the authority without express written consent of the court, to dispose of any real or personal property of the child in any manner, including, but not limited to, the child's Individual Indian Money Account. Said guardian shall also have the authority to consent to the medical care and treatment of the child.
- (4) The court may order regular payments to the person or agency to which custody is granted under this code, provided that sufficient funds are available. The person must use said disbursements for the sole purpose of covering expenses incurred in the care and custody of said child and shall not be used for any other purpose. The use of said funds for any purpose other than that described in this section shall subject said person or agency to contempt of court and to any criminal and civil penalties or remedies provided by the tribal code.

## **B. Types of Guardianship**

The types of guardianship shall include guardianship of property and/or guardianship of the person. Guardianship of the person shall include both temporary guardianship and permanent guardianship.

## **C. Guardianship of Property**

The court may appoint a guardian over the property of a child if necessary, and under such terms and conditions, as the court deems appropriate. The terms and conditions of the guardianship over a child's property shall be set forth in the court's written order. A temporary or permanent guardianship of the person may also include appointment of a guardian of the child's property.

#### **D. Temporary Guardianship**

The court may appoint a temporary guardian under such terms and conditions as the court sets forth in the written order. A temporary guardianship may be modified if the court determines that is in the best interests of the child to change custody from the temporary guardian to a new guardian or to return the child to the parent, guardian, or custodian. The parent(s) and the child's extended family shall be granted liberal visitation rights unless deemed inappropriate by the court.

#### **E. Permanent Guardianship**

The Court may appoint a permanent guardian for the child under such terms and conditions as the court sets forth in the written order. Permanent guardianship provides for permanent custody of a child to someone other than the parent(s), although there is no modification of the parental rights of the parents. There shall be a presumption of continued permanent guardianship in order to provide stability for the child. However, any party or interested person may petition the Court to terminate or otherwise modify the terms of the guardianship upon a showing of good cause, material change in circumstances or that such a change is otherwise in the best interest of the child. The parent(s) and the child's extended family shall be granted liberal visitation rights unless deemed against the child's best interest by the court.

#### **F. Who May File Guardianship Petition**

Any person may file a petition for guardianship. The petition shall be initiated either by the proposed guardian or by the child if at least fourteen (14) years of age.

#### **G. Contents of Guardianship Petition**

The petition for guardianship shall include the following, to the best information and belief of the petitioner:

- (1) The full name, address and tribal affiliation of the petitioner;
- (2) The full name, gender, date and place of birth, residence and tribal affiliation of the proposed child;
- (3) The basis for the court's jurisdiction;
- (4) The relationship of the proposed guardian to the proposed child;
- (5) The name and address of the person or agency having legal or temporary custody of the proposed child;

- (6) The type of guardianship requested; and the basis or facts supporting the guardianship request;
- (7) A full description and statement of value of all property owned, possessed, or in which the proposed child has an interest (if guardianship of property is requested)

All petitions must be signed and dated by the petitioners.

#### **H. Guardianship Report**

- (1) Upon the filing of a guardianship petition, the court shall immediately request that KCFS or other qualified agency conduct a guardianship report on the proposed guardian and the proposed child, provided that for uncontested guardianships, such report is not necessary. The guardianship report shall contain all pertinent information necessary to assist the court in determining the best interests of the proposed child.
- (2) No determination of permanent of guardianship can be made until a guardianship report has been completed and submitted to and considered by the court. The guardianship report shall be submitted to the court no later than ten (10) days before the hearing. The court may order additional reports, as it deems necessary.

#### **I. Management of Property**

In the event that a guardian shall receive any money or funds of any child during his or her term as guardian, before taking and receiving into custody such money or funds, the court must require of such person a bond with sufficient surety to be approved by the court and in such sum as he or she shall order, conditioned that the guardian will faithfully perform the duties of his or her trust, and the following conditions shall form the part of such bond without being expressed therein:

- (1) To make an inventory of all the estate of the child that comes into his or her possession or knowledge and to return the same within such time as the court may order, and;
- (2) To dispose of and manage the estate according to laws and for the best interests of the child, and faithfully discharge his or her trust in relation thereto, and also in relation to the care, custody and education of the child, and;
- (3) To render an account on oath of property, estate and money of the child in his or her hands and all the proceeds or interests derived therefore, and of the management and disposition of the same, within three (3) months after the appointment, and at such other times as the court directs, and at the expiration of the trust, to settle all accounts with the court or judge or with the child if he or she be of full age, or the legal representative, and to pay over

The funds of any child must be used by his or her guardian solely for the support and education of such child and shall be expended by the guardian in a reasonable manner according to the circumstances and station in life of such child, and in such manner as can reasonable be afforded according to the income and estate of said child.

If determining to be appropriate by the court, the written order may set forth that the child's property may not be used for the child's care, but rather to be managed for the child until he or she reaches the age of eighteen (18) or is emancipated by the court.

## **SECTION 21: TERMINATION AND MODIFICATION OF PARENTAL RIGHTS**

### **A. Purpose**

In accordance with custom and practice, absent extreme circumstances, it is against the Karuk Tribe's policy and philosophy to terminate parental rights for the children subject to the Tribal Court's jurisdiction but rather to modify parental rights and allow another permanent plan for the child including where appropriate, an adoption as provided for in Section 22 of this Code.

This section shall be construed in a manner consistent with the premise that all parties shall be secured their rights as set forth in the Karuk Tribe's Constitution, that the family unit is of utmost value to the Tribal community and individual family, and that all efforts shall be made to keep the family intact. The parent-child relationship is of such vital importance that termination or modification of parental rights may be used only as a last resort when all efforts have failed to avoid separation and that it is found to be in the best interests of the child and Tribe to proceed under this section. When moving to terminate parental rights, KCFS shall document in the child's case plan whether the preservation and continuation of tribal customs and practice of tribal families constitutes a compelling reason to not terminate a parent's rights and whether termination of parental rights is in the best interests of the child and the Tribe. In such cases where a compelling reason exists to not terminate parental rights, KCFS may recommend, and the Court may order, modification of parental rights (as set forth in Section C, below) or another permanent plan.

A Petition for Termination of Parental Rights shall be filed with the Tribal Court as set forth in the below sections.

The purpose of this section is to provide for the voluntary and involuntary modification of the parent-child relationship to achieve family permanency including allowing for permanency of the child through the adoption process as set forth in section 22 of this Code.

### **B. Grounds for Involuntary Termination of Parental Rights**

The Tribal Court may terminate parental rights to a child without the parent's consent only if, by proof beyond a reasonable doubt, it finds that terminating parental rights is in the best interest of the child and the Tribe based on one or more of the following grounds:



- (1) Abandonment. The child has been abandoned as defined herein;
- (2) Physical or severe emotional injuries. Willful and repeated physical and or severe emotional injuries of the child by the parent(s); or that the parent(s) knew that another individual willfully caused physical or severe emotional injuries and failed to remove the child from the abusive situation, to ask law enforcement to remove the individual, or to take other steps to protect the child;
- (3) Sexual Abuse. Willful and severe or repeated acts of sexual abuse or sexual exploitation by the parent or parents or that the parents knew that another individual willfully and severely or repeatedly caused acts of sexual abuse or sexual exploitation and failed to remove the child from the depraved situation and/or to ask law enforcement to remove the individual;
- (4) Emotional Harm. The return of the child may result in serious permanent emotional damage as supported by the best evidence available;
- (5) Severe Neglect. Pervasive and uncorrectable failure or refusal to provide proper or necessary subsistence, education, medical care, shelter, a safe environment or any other necessary care for the child's health, guidance, or well-being.
- (6) Domestic or Family Violence. There is a severe continuing pattern of domestic or family violence taking place in the presence of the child.
- (7) Other Aggravated Circumstances, such as where the parent has committed murder or voluntary manslaughter of another child of the parent; a parent or guardian has aided or abetted, attempted to conspire, solicit commission of a murder or voluntary manslaughter of a child of the parent; the parental rights of the parent with respect to a sibling have been terminated involuntarily; the parent has abandoned an infant; the parent has committed a felony assault that results in serious bodily injury to the child or another child of the parent; or finds that the parent has subjected the child to other aggravated circumstances as defined by relevant law.
- (8) Decisions to Terminate Parental Rights. Decisions to terminate a parent's legal and custodial right to his or her child shall be made on a case-by-case basis.

### **C. Modification of Parental Rights**

A party may file a Petition for Modification of Parental Rights, instead of a Petition for Termination of Parental Rights, provided all of the requirements for filing a Petition for Termination of Parental Rights have been followed. The Court has the discretion, if compelling reasons exist on a case-by-case basis, to order modification of parental rights, instead of full termination of parental rights, upon hearing either a Petition for Termination of Parental Rights or a Petition for Modification of Parental Rights.

#### **D. Pre-Filing Requirements**

A petitioner seeking involuntary termination of the parent-child relationship must establish the following:

- (1) The child has been declared to be under the jurisdiction of the Tribal Court under this Children and Family Code or a dependent of a state juvenile court for at least a consecutive one-year period of time, and has been removed from his or her parent at the time of this modification hearing for a cumulative period of 15 of the previous 22 months, unless a compelling reason not to file a termination petition exists;
- (2) The court has entered an order which states what the parent was required to accomplish to correct his or her underlying problem(s) to regain custody;
- (3) The social service agency involved has engaged in active efforts to offer or provide all court ordered services that are reasonably available in the community and which are capable of helping the parent resolve his or her underlying problem(s);
- (4) There is little likelihood the conditions will be remedied so that the child can be returned to the parent(s) in the near future;
- (5) Continuation of the current parent-child relationship clearly diminishes the child's prospects for successful placement into a permanent and stable home; and
- (6) Not returning the child to his or her parent is the least detrimental alternative that can be taken.

#### **E. Who May File a Petition for Termination of Parental Rights**

A Petition may be filed by:

- (1) Either parent when termination is sought with respect to the other parent;
- (2) An authorized Tribal representative or KCFS;
- (3) Any other person possessing a legitimate interest in the matter; or
- (4) A parent seeking voluntary termination of his or her parental rights.

No parental rights may be terminated or modified unless a Petition has first been filed, written notice has been given, and a hearing held in accordance with the provisions of this section.

#### **F. Contents of the Termination of Parental Rights Petition**

The Petition for Termination or Modification of Parental Rights shall include the following to the best information and belief of the petitioner:

- (1) The name, place of residence and tribal affiliation of the petitioner (if other than an authorized Tribal representative);
- (2) The full name, gender, date and place of birth, residence and tribal affiliation of the child;

- (3) The basis for the court's jurisdiction;
- (4) State the relationship of the petitioner to the child, or the fact that no relationship exists;
- (5) The names, addresses, tribal affiliation, and dates of birth of the child's parents;
- (6) If the child's parent(s) is a minor, the names and addresses of the parents' parents or guardian; and if such parent has no parent or guardian, the members of such parent's extended family;
- (7) The name and address of the person or agency having legal or temporary custody of the child;
- (8) The grounds on which the modification is sought under this Children and Family Code;
- (9) A statement that the pre-filing requirements set forth in this Children and Family Code have been met; and
- (10) A list of the assets of the child together with a statement of the value thereof.

When any of the facts required by this section are unknown, the Petition shall so state. The petitioner shall sign and date the Petition.

#### **G. Notice**

After a petition for the involuntary termination or modification of parental rights has been filed, the Tribal Court shall set the time and place for hearing and shall cause written notice of the date time and place of the hearing, and consequences of a modification. Notice shall be given to the child if 10 years of age or older, the child's representative, petitioner, the parents of the child, any guardian of the person of the child, the person having legal or temporary custody of the child, and the child's extended family, and any representative of record in the action as determined by the court. If the child's parent is a minor, notice shall also be given to that parent's parents or guardian of the person unless the Tribal Court is satisfied, in exercise of its discretion, that such notice is not in the best interest of the parent and that it would serve no useful purpose.

Notice of the hearing and the right to be heard shall also be issued to foster parents if any, pre-adoptive parents or relatives providing care for the child except that this paragraph shall not be construed to require any foster parent or relative providing care to be made a party to the action solely on the basis of such notice.

#### **H. Service**

Notice shall be given by personal service. If service cannot be made personally, the Tribal Court may authorize service by registered mail at the last known address of the person to be served. If notice cannot be served by registered mail, the Tribal Court may authorize service by publication in either the tribal newspaper or a newspaper of general circulation in the county where the court is located, once a week for three consecutive weeks. All notices served whether personally or by registered mail shall be received by the person named therein no less than ten (10) days prior to the date set for the hearing. No hearing can be

held sooner than ten (10) days after the last publication where service is made by publication. Except where service is by publication, notice shall include a copy of the petition.

### **I. Waiver**

Notice and appearance may be waived by a parent in writing before the Tribal Court, or in the presence of and witnessed by a clerk of the court, provided that such parent has been apprised of the meaning and consequences of the modification of parental rights action, including that the modification could allow an adoption to go forward. Any parent who has executed such a waiver shall not be required to appear at the hearing. Where the parent is a minor, the waiver shall be effective only upon approval by the court.

### **J. Pre-Termination or Pre-Modification of Parental Rights Report**

- (1) Upon the filing of a petition under this section for the involuntary termination or modification of parental rights, the Tribal Court shall order that KCFS or another qualified agency prepare and submit to the court a report in writing. The report shall be submitted to the court no later than ten (10) days before the hearing with copies given to the parents, the child's representative, and all counsel of record. The purpose of the report is to aid the Tribal Court in making a determination on the petition and shall be considered by the Tribal Court prior thereto. The Tribal Court may request additional reports where it deems necessary.

The report shall include the following information: the circumstances of the petition, the investigation, the present condition of the child and parents, documentation of the basis for the recommendation of removal or remaining in the home, the proposed plans for the child's well being and placement, including efforts to identify, recruit, process and approve a qualified prospective adoptive parent or guardian, and other such facts as may be pertinent to the parent and child relationship.

The report shall include a recommendation and the reasons therefore, as to whether or not the parent and child relationship should be modified.

- (2) The Court may also consider the report of any Court-appointed advocate for the child.

### **K. Relinquishment of Parental Rights by Voluntary Modification**

It is not the Tribe's policy to encourage relinquishment of parental rights, and such action is not to be taken lightly. Parental rights may be relinquished by a parent in writing, if signed by the parent in the presence and with approval of the Court. Relinquishment shall not be accepted or acknowledged by the court prior to ten (10) days after birth of the child. The Tribal Court must find prior to approving the relinquishment that the parent understands the consequences of the relinquishment, and has made a knowing and intelligent waiver of all of his or her parental rights subject to the modification order, that his or her parental rights will be modified, and that the parent's decision may result in adoption of the child. A parent

who wishes to relinquish his parental rights shall be provided an interpreter if he or she does not understand English.

**L. Hearing**

The hearing procedures shall be in accordance with those set forth in this Children and Family Code and the Karuk Tribal Court Rules.

**M. Burden of Proof**

The burden of proof lies with the petitioner to prove the allegation(s) in the modification petition are supported by evidence beyond a reasonable doubt and that the best interests of the child will be served by modification of parental rights. Pre-modification reports shall be received in evidence so long as the preparer is available to be cross-examined.

**N. Findings of Facts And Conclusions of Law**

The Tribal Court shall make formal findings of fact and conclusions of law as a basis for the written order modifying the parent-child relationship including making findings on:

- a. Make a finding on whether there is documentation of the grounds as to why the child cannot or should not be returned to the home of his or her parents;
- b. Make findings on whether reasonable efforts were made to prevent removal of the child or whether such efforts were not required,
- c. Make findings on whether reasonable efforts were made to reunify the child or whether such efforts are not required,
- d. Make findings on whether reasonable efforts have been made to achieve a permanency plan for the child and/or finalize an alternate permanent placement for the child when the child cannot be reunified with the family.
- e. In the case of parental relinquishment, make a finding that the parent has knowingly and voluntarily relinquished the child in writing.

**O. Result of Termination or Modification of Parental Rights Order**

Upon the termination of parental rights, all rights, powers, privileges, immunities, duties, and obligations including any rights to custody, legal or physical control, visitation, or support existing between the child and parent shall be severed.

The Court is also empowered to modify parental rights without full legal severance of all parental rights, and the parties are encouraged to negotiate a modification agreement, subject to the Court's approval, that is tailored to meet the best interest of the child and the Tribe.

Any child support arrears shall remain in place and payable up to the date of the modification or termination order unless otherwise ordered by the Court. Modification of the rights of one parent shall not affect the rights of the other parent.

A modification order shall be considered a factor in determining whether the child remains eligible to inherit property or other interest from the parent whose rights were modified. A parent whose rights were modified shall not, be eligible to inherit from such child after modification unless expressed by the child after reaching the age of adulthood in a written

Will instruction.

**P. Children’s Continued Right to Benefits**

An order modifying the parent-child relationship shall not disentitle a child to any benefit due the child from any third person, agencies, state, or the United States, nor shall any action under this Children and Family Code be deemed to affect any rights and benefits that the child derives from the child's descent from a member of a federally recognized Indian tribe.

**Q. Custody after Modification of Parental Rights Order**

If upon entering an order modifying the custodial and legal rights of a parent, there remains no parent having parental rights, the Tribal Court shall determine whether the child shall continue to remain under care and placement responsibility of the KCFS for the purpose of placing the child for adoption, or in the absence of an adoptive home, KCFS may place the child in a licensed foster home or with an extended family member, guardianship or take other suitable measures for the care and welfare of the child.

The order shall specify the permanency plan for the child and if the child will be placed for adoption order that efforts be made to locate an appropriate adoptive family for the child within a period not to exceed 180 days.

Appoint, consistent with Tribal placement preferences, a relative or relatives, extended family member or tribal member as legal guardian or guardians for the child, and order that letters of guardianship be issued; or order an alternative permanent placement plan for the child.

Where a child is appointed a legal guardian, as distinct from a placement into foster care, the legal guardian shall have the authority to consent to the adoption of the child, the marriage of the child, the enlistment of the child in the armed forces of the United States, necessary care including but not limited to surgical and other medical treatment for the child and consent to such matters as might normally be required of the child's parent.

**R. Future Status Review Hearings**

If a child has not been adopted or permanently placed within six (6) months of the modification order, another six (6) month Status Review Hearing will be held. Such six (6) month hearings and 6-month permanency hearings will continue until the child is adopted or permanent placement can be established.

**SECTION 22: ADOPTIONS**

**A. Adoptions**

Tribal custom and practice does not recognize completely severing children from their connections to, or knowledge of, their biological parents, or extended Indian family. The Court however, shall seek to establish permanency and stability for children subject to the Tribal Court’s jurisdiction in accordance with their best interest and determined on a case-by-case basis.

The purpose of adoptions shall be to give the adoptive child a permanent home and family who will assume all legal duties, rights, relationship, and decisions involving the child. To this end, the following shall apply and be contained in all adoptive orders and decrees:

- (1) The adoptive parents and the adoptive child shall be treated under the law as if the relationship was that of a biological child and parent, except as set forth herein;
- (2) The adoptive child shall have an absolute right, absent a convincing and compelling reason to the contrary, to accessing information and knowledge about his or her biological family and tribal heritage;
- (3) The adoptive child and members of the child's biological extended family (including parents) shall have a right of reasonable visitation with each other, subject to reasonable controls of the adoptive parents or by order of the Tribal Court;
- (4) Adoption shall not serve to prevent an adopted child from inheriting from a biological parent in the same manner as any other natural child. The natural parents shall not be entitled to inherit from an adopted child in the same manner, as parents would otherwise be entitled to inherit. An adoptive child shall be entitled to inherit from adoptive parents, and vice-versa, in the same manner as if natural parents and child.

## **B. Consent**

- (1) When Not Required. Written consent to an adoption is not required if:
  - a. The parent has abandoned the child;
  - b. The parent's rights have been terminated or modified;
  - c. The parent has relinquished parental rights; or
  - d. The parent has been declared incompetent.
- (2) When Required. When written consent to an adoption is not waived per section 1, (1) – (d), above, written consent to an adoption is required of:
  - a. The biological or adoptive mother;
  - b. The biological, adoptive, or acknowledged father;
  - c. The custodian, if empowered to consent;
  - d. The court, if the custodian is not empowered to consent; and
  - e. The child, if over twelve (12) years of age.

## **C. Execution of Consent**

Written consent to an adoption shall be executed and acknowledged before the Tribal Court. Consent shall not be accepted or acknowledged by the Tribal Court prior to ten (10) days after the birth of the child. An interpreter shall be provided if the person consenting to the adoption does not understand English. Consents of a child over the age of twelve (12) years shall be made orally either in open court or in chambers with only the judge and any

other person(s) he or she deems necessary, and the child present.

#### **D. Petition to Adopt**

Any person may file a petition for adoption. The person proposing to adopt may initiate the petition. In the case of married persons maintaining a home together, the petition shall be the joint petition of husband and wife, except that if one of the spouses is the biological or adopted parent of the proposed adoptee, said parents shall not be required to join in the petition.

#### **E. Contents of Petition**

The petition for adoption shall include the following, to the best information and belief of the petitioner:

- (1) The full name, address, and tribal affiliation of the petitioner;
- (2) The full name, the gender, residence, date and place of birth, and tribal affiliation of the proposed adoptee;
- (3) The name by which the proposed adoptee shall be known if the petition is granted;
- (4) The basis for the court's jurisdiction;
- (5) A full description and statement of value of all property owned, possessed or in which the adoptee child has an interest;
- (6) The relationship of the petitioner to the proposed adoptee; and
- (7) The names and addresses of any person or agency whose consent to the proposed adoption may be necessary.

#### **F. Multiple Adoptees**

Where there is more than one proposed adoptee, and these proposed adoptees are siblings, only one petition shall be required for the adoption of all or any combination of the siblings, provided that each sibling proposed to be adopted, be named in the petition.

#### **G. Signing**

All petitions must be signed and dated by the petitioner.

#### **H. Notice**

Notice shall be provided in accordance with the notice procedures set forth in this Children and Family Code except that the court may determine that it is unnecessary to give notice to specific individuals, including a parent whose parental rights have been modified.

#### **I. Background Checks and Home Studies**

When a petition for the adoption of a child is filed with the Tribal Court, the Tribal Court shall immediately request that the social services department or other qualified agency conduct a finger-print based FBI criminal background check of the prospective adoptive parents and child abuse/neglect central registry checks of the prospective adoptive parents and all adults in the home and a home study on the petitioner and report on the child. The



home study and report shall relate the circumstances of the home, the petitioner, and his or her ability, both physical and mental, to assume the responsibilities of a parent to the child. The home study shall contain other pertinent information designed to assist the court in determining the best placement for the child. The home study will also address the issue of whether or not the home most closely resembles that of the child's culture, identity, and where applicable, his or her tribal affiliation. The home study or report shall not be required where the proposed adoptee is an adult.

#### **J. Timing**

No determination can be made on a petition for adoption until the home study and report has been completed and submitted to and considered by the Tribal Court. The home study shall be submitted to the Tribal Court no later than ten (10) days before the hearing. The home study and report may be consolidated into one document. The court may order additional home studies or reports, as it deems necessary.

#### **K. Withdrawal of Consent**

Any consent given under the provisions of this Children and Family Code may be withdrawn by the person or agency, which gave the consent at any time prior to the entry of a final decree of adoption. No reason need be stated and no hearing need be held on such a withdrawal. All withdrawals must be in writing and notarized or witnessed by a clerk of the court, with the original being filed with the Tribal Court.

#### **L. Vacating Decree**

Within six (6) months after the entry of a decree of adoption, said decree may be vacated upon a petition being filed and a showing that the consent that made the adoption possible was obtained through fraud or duress. Upon such a showing, the court shall vacate the decree and return the adopted person to that status he or she had prior to the entry of the decree.

#### **M. Adoption Preferences**

The preference of placement in adoption shall be applied to ensure the placement is the least restrictive setting appropriate to the needs of the child, and shall be on or near Tribal Lands when possible. Adoption placement preferences shall be in the following order unless the court determines that the child's best interests require deviation from the preferences:

- (1) A member of the child's immediate family, according to tribal laws, customs, and traditions.
- (2) A member of the child's extended family, according to tribal laws, customs, and traditions.
- (3) Another member of the child's Tribe.
- (4) Another Indian family.

- (5) Another suitable family.

#### **N. Hearing Procedures**

An adoption hearing shall be held within ninety (90) days of receipt of an adoption petition from the prospective parent(s). The Tribal Court shall conduct the hearing to determine if it is in the best interests of the child to be placed with the petitioners. In determining the best interests of the child, the Tribal Court shall examine:

- (1) Validity of written consent;
- (2) Modification of parental rights order;
- (3) Length of time of the child's dependency by the court;
- (4) Special conditions of the child;
- (5) Parent communication with the child;
- (6) Minor's consent to adoption, if over twelve (12) years of age;
- (7) Home studies or other reports, including criminal and child abuse/neglect history checks; and
- (8) Order of preference of placement.

#### **O. Findings**

Prior to entering an order of an adoption, the court shall make a finding documenting the valid reason why the child cannot or should not be returned to the home of his or her parents. Where a child has been voluntarily relinquished, the court shall make findings that the biological parents have voluntarily relinquished their child and there is a petition to the court to remove the child from his/her home within six months of the date the child lived with the specified relative from whom she is being removed, and there is a subsequent contrary to the welfare determination made by the court. In making its adoption findings and determination, the Court shall consider whether or not the Tribe approves of the adoption.

#### **P. Appearance and Examination**

The petitioner and the proposed adoptee shall appear personally at the hearing. During the hearing, the Tribal Court shall advise the party(s) of their basic rights as provided herein. The judge shall examine all persons separately, and may, if satisfied that all other requirements of this section have been met, enter a final decree of adoption, or may place the person to be adopted, if a child, in the legal custody of the petitioner for a period not to exceed six (6) months prior to entering a final decree of adoption.

#### **Q. Denial**

If the Tribal Court is satisfied that the adoption will not be in the child's best interest, or finds that not all of the requirements of this section have been met, it may deny the petition and make any other order it deems necessary for the care and custody of the child.

#### **R. Consolidation**

Proceedings for modification of the parent-child relationship and proceedings for adoption

may be consolidated and determined at one hearing provided that all the requirements of this section are complied with.

**S. Adoption Assistance**

Prospective adoptive parents shall be notified of the potential availability of Title IV-E Adoption Assistance for children with special needs who are unlikely to be otherwise adopted. KCFS as further set out in the KCFS Plan shall set forth the required eligibility standards for adoption assistance and implement the provisions of the adoption assistance program and of potential eligibility for a Federal tax credit under section 23 of the Internal Revenue Code of 1986 (Section 471(a)(33) of the SSA.)

**SECTION 23. APPEALS**

**A. Who Can Appeal.**

Any party to a Tribal Court proceeding may appeal a final Court order.

**B. Time Limit for Appeal.**

Any party seeking to appeal a Court order shall file a written notice of appeal with the Court no later than twenty (20) days after notice of the final order has been given.

**C. Appellate Panel.**

Upon receipt of a Notice of Appeal to the Tribal Court, an Appellate Panel, consisting of three (3) appointed judges, will convene to hear the appeal within a reasonable time.

**D. Record.**

For purposes of appeal, a record of proceedings shall be made available to the child, the child's parent, guardian or custodian, the child's counsel or advocate and others upon court order. The appealing party shall pay costs of obtaining this record.

**E. Stay of Appeal.**

A court order may be stayed by such appeal

**F. Conduct of Proceedings.**

All appeals shall be conducted in accordance with the Tribe's Rules of Court as long as those provisions are not in conflict with the provisions of this Children and Family Code.

**G. Administrative Appeals.**

Grievances and appeals from KCFS administrative decisions shall be referred to the Peacemaker Mediation Forum for resolution pursuant to that program's guidelines and the fair hearing procedures set forth in the KCFS Plan.

## CERTIFICATION

The undersigned Tribal Chairperson of the Karuk Tribe hereby certifies that the foregoing Children and Family Code is a true and correct copy of the Children and Family Code that was approved by a vote conducted on the 30th day of **April, 2009**, was duly adopted by a vote of 5 For, 0 Opposed, 0 Abstentions.

This Children and Family Code, which amends the original Children's Code adopted on April 22, 2004, and amended on February 16, 2005 and September 3, 2008, has not been rescinded or amended in any way. The Tribal Council is comprised of 9 members of which 5 (a quorum) voted.

\_\_\_\_\_ Date: April 30, 2009

Arch Super  
Tribal Chairperson

The Tribal Council adopted Resolution 09-R-062 on April 30, 2009 (Amending Resolution 08-R-101 which was approved September 3, 2008).